

HON'BLE SRI JUSTICE K.C.BHANU

AND

HON'BLE SMT JUSTICE ANIS

CRIMINAL APPEAL No.712 OF 2010

J U D G M E N T: *(per Hon'ble Smt Justice Anis)*

This Criminal Appeal is filed by the appellant/accused, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), against the Judgment, dated 18.01.2010 passed in Sessions Case No.400 of 2008 on the file of the III Additional District & Sessions Judge, (Fast Track Court), Nizamabad, whereunder and whereby, the appellant/accused was found guilty of the offences punishable under Sections 302 & 201 of the Indian Penal Code, 1860 (for short, 'I.P.C') and accordingly, convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for two months; and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.200/-, in default, to undergo simple imprisonment for one month for the offences punishable under Sections 302 & 201 I.P.C respectively.

2. The brief facts that are necessary for disposal of the appeal may be stated as follows:

On 28.09.2007 at about 14:00 hours, PW.1 along with others came to the Police Station, Balkonda and lodged a complaint Ex.P1, wherein he stated that he is working as Home Guard at Police Station Boath of Adilabad District and on the same day at 10:00 a.m, people of Babera thanda by name Jadav Kashinath, Rathod Balram Naik, Rathod Govind and others along with accused came to the Police Station, Boath and disclosed that the accused killed his wife by name Smt. Rathod Jhanabai (hereinafter referred to as 'the deceased') on 22.09.2007 at the outskirts of Pochampad village of Balkonda Mandal besides the Godavari river in a channel, suspecting her character; and that the Sub Inspector of Police, Boath Police Station immediately deputed him and another Head Constable No.375 by name Rathod Gulab Singh to handover the accused to Balkonda police. Thereafter, PW.1 and others handedover the accused to police, Balkonda Police Station for taking necessary action. Basing on the complaint, PW.9-Sub Inspector of Police Balkonda Police Station registered it

as a case in Crime No.128 of 2007 for the offences punishable under Sections 302 & 201 I.P.C, issued First Information Report and investigated the case. During the course of investigation, he recorded the statements of PW.1 and LW.2. PW.10-Circle Inspector of Police took up further investigation of the case and interrogated the accused. The accused voluntarily confessed about committing the offence in the presence of mediators PW.6 & LW.14 and it was recorded as a confessional statement. Thereafter, the accused led the police, panch witnesses and relatives of the deceased to the scene of offence, where the dead body was found. The Investigating Officer-PW.10 conducted inquest over the dead body of the deceased in the presence of PW.6 & LW.14, conducted scene of offence panchanama in the presence of PW.6 and recovered the material objects MOs.1 to 7 under the cover of panchanama. He also got photographed the scene of offence and the dead body of the deceased through PW.4. He also gave a requisition to the Medical Officer-PW.7 to conduct postmortem over the dead body of the deceased. On 29.09.2007, PW.7 visited the scene of offence, conducted postmortem and gave a postmortem report opining that the death of the deceased is due to Asphyxia as a result of strangulation. After completion of investigation and after receiving the reports, PW.10 filed the charge sheet against the accused into the Court.

3. On appearance of the accused, the trial Court framed the following charges against him:

“Firstly:- that you on 22-09-2007 at about 03:340 p.m, the outskirts of Pochampad (V) of Balkonda (M) in the business of Ramalayam Temple committed murder intentionally or knowingly causing the death of your wife Smt. Rathod Jhanabai @ Shardha by strangulated her with the Saree and thereby you committed an offence punishable U/S.302 I.P.C, and within my cognizance.

Secondly:- That you on the date, time and place mentioned under charge No.1 supra knowingly that the offence namely causing the death of deceased Smt. Rathod Jhanabai @ Shardha has been committed, caused certain evidence connected with the said offence, namely the dead body of the deceased was hidden in the bushes of a small channel (Orre) to disappear with intention to screen the evidence and thereby you committed an offence punishable U/S.201 I.P.C, and within my cognizance.

And I hereby direct that you be tried by this Court on the above charge.”

4. When the said charges were read over and explained to the appellant/accused in Telugu, he pleaded not guilty and claimed to be tried.

5. To substantiate the charges, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.9, besides the case properties MOs.1 to 7.

6. After closure of the prosecution evidence, the appellant/accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances, appearing against him in the evidence of the prosecution witnesses. He denied the same and reported no oral or documentary evidence on his behalf.

7. The trial Court after hearing both sides and taking into consideration, the oral and documentary evidence available on record, convicted and sentenced the appellant/accused as stated above. Aggrieved by the said conviction and sentence, the present appeal has been preferred by the appellant/ accused.

8. The learned counsel appearing for the appellant/accused argued that the trial Court convicted the accused on the basis of the confessional statement; that there is no corroborative evidence; that the alleged confession is not voluntary and therefore, the case of prosecution cannot be relied upon. It is also argued that there is no motive for the accused to kill the deceased; that the prosecution failed to prove the motive and the evidence produced is hearsay evidence; that the procedure followed by the police in recording the confessional statement is not proper; and that there is no direct or circumstantial evidence against the accused. The learned counsel also argued that there is no complaint filed by the deceased at any point of time regarding the alleged harassment and there is no enmity between the accused and the deceased and therefore, the benefit of doubt should be given to the accused and finally prayed the Court to acquit the accused from the charges leveled against him by allowing the appeal.

9. On the other hand, the learned Public Prosecutor appearing for the State argued that after committing the offence, the appellant/accused confessed about killing his wife suspecting her character as she was having illegal contacts with others; and that his confessional statement was voluntary and

recorded in the presence of independent mediators i.e., PW.6 & LW.14. It is also argued that the evidence of PWs.2 & 5 is corroborated with each other to prove that the accused took the deceased along with him two or three days prior to the incident; that PWs.2 & 5 has seen the accused and deceased when they were going to Velgatoor village to meet another sister; and that at that time, the deceased was wearing black colour saree and black colour blouse when she left the house along with the accused. It is also argued that PW.2 also stated that in the evening hours, the accused returned without the deceased to the village and when she questioned the accused, he informed her that she did not accompanied him; that the evidence of PW.2 also corroborated with the evidence of PW.5, who is an independent witness and who is also working as a Home Guard of Boath Police Station; that PW.5 stated about his seeing the accused along with the deceased and thereafter, the dead body was found and thus, it is clear that PWs.2 & 5 has last seen the deceased in the company of the accused and therefore, the accused has to explain the whereabouts of the deceased. It is also argued that PW.2 in her evidence categorically stated that accused used to harass the deceased and suspect her character and accused failed to explain what happened to his deceased wife after he left the house along with her on 22.09.2007 and therefore, the confessional statement given by the accused in the presence of PW.6 & LW.14 is voluntary and further, it was corroborated with the evidence of PWs.2 & 5. The learned Public Prosecutor also argued that there is no dispute about the identity of the dead body of the deceased; that the learned counsel for the accused in the cross-examination of the doctor also not suggested that the dead body does not belong to the deceased and that the prosecution able to prove the guilt of the accused; that the trial Court rightly convicted the accused for the offences punishable under Sections 302 & 201 I.P.C and the said finding needs no interference and prayed the Court to dismiss the appeal.

10. Now, the points for determination in this appeal are as follows:

1. Whether the death of the deceased is a homicidal death?
2. Whether the prosecution is able to prove its case beyond all reasonable doubt against the appellant/accused of the offences punishable under Sections 302 & 201 I.P.C?
3. Whether the Judgment of the trial Court is correct, legal and proper?"

11. **POINT No.1:** A perusal of the evidence of the doctor-PW.7 shows that as per the requisition given by PW.10- Circle Inspector of Police, Balkonda, she conducted postmortem on the dead body of the deceased on 28.09.2007 and found the following injuries.

1. The external appearance of the body highly decomposed skin.
2. Some portion of the head eaten by some wild animals and skeleton found released the body highly decomposed.
3. Fracture of hyoid bone on both sides of the body.
4. All the internal organs are highly decomposed and chest also highly decomposed.

PW.7 further stated that the approximate age of the death of the deceased is seven to eight days prior to her postmortem examination and opinion of death is due to Asphyxia as a result of strangulation. She issued Ex.P8 postmortem report to that effect. In the cross-examination of PW.7, nothing has been elicited about the identity of the dead body of the deceased and about the injuries on the dead body of the deceased. Thus, from the evidence of PW.7, it is clear that the death of the deceased is homicidal in nature.

12. PW.1 is working as Home Guard in Police Station Boath, Adilabad District. He gave a complaint Ex.P1 to the police, Balkonda Police Station. As per the complaint, on 28.09.2007 at about 10:00 a.m, the villagers of Babera thanda came to the police station and informed the Sub Inspector of Police that the accused killed his wife and thrown away the dead body at Pochampad village besides Godavari river in bushes and he also informed that he killed his wife on 22.09.2007. The Sub Inspector of Police, Boath directed PW.1 and others to handover the accused to Balkonda Police Station as the offence comes under the jurisdiction of the said police station. In the cross-examination of PW.1, nothing has been elicited to disprove the evidence of PW.1 except suggesting that accused was implicated in a false case.

13. PW.2 is the sister of the deceased. She stated that the deceased was given in marriage to the accused and they do not have children. Then the accused married one Kavitha as second wife and accused used to harass the deceased

by suspecting her fidelity after the second marriage. PW.2 specifically stated that her sister died about two years back; that prior to two or three days of the incident, her deceased sister informed her that herself and accused were going to Velgatoor village to meet another sister and at the time of going, she wore a black colour saree and black colour blouse, but, on the same day, the accused returned alone; that when she questioned the accused the whereabouts of the deceased, then accused informed her that his wife has not accompanied him and he does not know where she left; that she informed these facts to the village elders and when the village elders questioned the accused about the whereabouts of the deceased, the accused admitted about committing the offence; that thereafter, they went to police station and the Sub Inspector of Police registered the case and enquired about the alleged offence; and that after registering the case, the police of Balkonda Police Station proceeded to the scene of offence and accused shown the dead body of the deceased and the dead body of the deceased was in decomposed state. PW.2 identified the dead body as of her deceased sister. In the cross-examination, it was elicited that accused married the deceased twenty years back and they lived happily; and that thereafter, the accused suspected the character of the deceased. PW.2 admitted in the cross-examination that her sister did not give any complaint against the accused after the second marriage and they lived happily. PW.2 denied that some unknown persons killed her sister and a false case has been foisted against the accused. PW.3 has not supported the case of prosecution and turned hostile. PW.4 is the photographer, who took photographs of the deceased on 28.09.2007 as per the directions of Balkonda police. Ex.P3 is the eight photographs along with negatives.

14. PW.5 is the Home Guard working under Circle Inspector of Police, Boath Police Station. He stated in his evidence that deceased is the first wife of the accused, one Kavitha is his second wife and accused does not have children with the deceased; that on 22.09.2007, he has seen the accused and the deceased at Boath bus stand; that when he questioned them, the accused told that they were going to Velgatoor village to see their relatives and on the same day night, he saw the accused alone when he got down from the Auto; that when he questioned the accused what happened to the deceased, the accused told him that he left his wife at Velgatoor; that on 27.09.2007 at night hours, PW.2 along with others met him, went to the house of the accused and when

asked about the whereabouts of the deceased, the accused informed that he killed his wife; and that PW.1 gave a complaint to the police and the same was investigated. PW.5 in his evidence also stated that accused informed before him and others about committing the offence and also stated that if they accompanied him, he will show the place of the dead body. In the cross-examination of PW.5 also, nothing has been elicited to disprove his evidence.

15. PW.6 is the person in whose presence the accused voluntarily gave the confessional statement about committing the offence. PW.6 clearly stated that accused was suspecting the character of the deceased as such he took her to Pochampad and killed her by tying the saree to her neck. PW.6 also stated that a panchanama was recorded under Ex.P4 and MOs.1 to 6 were recovered at the scene of offence under the cover of panchanama Ex.P5; that police conducted inquest over the dead body of the deceased under inquest panchanama Ex.P6 and that police drafted the rough sketch of the scene of offence under Ex.P7.

16. PW.8 worked as Sub Inspector of Police, Boath Police Station at the time of incident. He stated that on 28.09.2007 at 10:00 a.m, while he was at police station, the villagers of Babera thanda and Lingapoor thanda approached him along with the accused; and that he sent the accused along with the villagers to Balkonda Police Station on the point of jurisdiction. PW.9 is the Sub Inspector of Police, Balkonda Police Station. He stated that he received the complaint from PW.1, registered the case in Crime No.128 of 2007 for the offences punishable under Sections 302 & 201 I.P.C, issued Ex.P9 First Information Report and handedover the investigation to PW.10. PW.10 recorded the statements of PWs.1 & 2, conducted the scene of offence panchanama, inquest panchanama in the presence of mediators, got photographed the scene of offence through PW.4 and recorded the confessional statement of the accused in the presence of witnesses. PW.10 stated that PW.7 conducted postmortem and issued postmortem report and after completing investigation, he filed the charge sheet into the Court.

17. A perusal of the above evidence produced by the prosecution clearly goes to show that there are no eye witnesses in this case to show that accused killed his wife, but the prosecution relied upon the circumstantial evidence of

the witnesses and also confessional statement given by the accused. The Hon'ble Supreme Court time and again in various judgments held that the judicial confession if voluntary can be relied upon by the Court in convicting the accused. In ***Ratan Gond v. State of Bihar***, the Hon'ble Supreme Court held at paras 9 & 13 as follows:

9. Let us first see if the confession was voluntary. Section 24 of the Evidence Act states :

"A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

13. To sum up : we see no reasons to differ from the conclusion arrived at by the courts below that the confessional statement made by the appellant was voluntary and admissible; there are no reasons for thinking that it was not true. The circumstances clearly proved against the appellant, even excluding the circumstance which rested on the statements of Aghani, afford sufficient corroboration to the confession of the appellant, though denied at a later stage, and the corroboration is of such a nature as to connect the appellant with the murder of the child Baisakhi. The only reasonable inference which can be drawn from the confession read with the circumstantial evidence is that the appellant killed the child Baisakhi between May 7, and 8, 1957, in the hope of getting some money. Whether that hope was realised or not is more than we can tell. The head was never recovered, but there can be no doubt that the dead body was correctly identified to be the dead body of the child Baisakhi.

In ***Mulk Raj v. The State of Uttar Pradesh***, the Hon'ble Supreme Court held at para 10 as follows:

10. We must notice another argument of the learned Advocate at this stage. It is said that the exact words used by the Appellant when he made the extra judicial confession were not given and that therefore the confession should be excluded. PWs 1, 5, 6 and 7 repeated before the learned Addl. Sessions Judge what the Appellant stated before them and there is no appreciable difference in the gist of the confession made by the accused. Every one of them stated that the accused had stated that he stabbed the deceased because Amarnath and Milkiraj brought him there to do so. An extra judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court

should not accept the evidence, if not the actual words but the substance were given. If the rule is inflexible that the Courts should insist only on true exact words, more often as not, this kind of evidence, sometimes most reliable and useful, will have to be excluded; for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused. It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the evidence or not. In this case, the confession made by the Appellant was not a complicated one and the witnesses stated without any conflict practically the exact words used by the Appellant and also how they understood the words. In the circumstances, if the evidence of the witnesses is acceptable, there is no reason why the extra judicial confession made by the accused could not be acted upon.

In ***State of Uttar Pradesh v. M.K. Anthony***, the Hon'ble Supreme Court held at para 10 & 15 as follows:

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.

15. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless

corroborated by some other credible evidence. The courts have considered the evidence of extra-judicial confession a weak piece of evidence. In *Sahoo v. State of U.P.* [1966 CriLJ 68], it was held that 'an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.' Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extra-judicial confession is corroborated by circumstantial evidence. However, in *Pyara Singh v. State of Punjab* [(1978) 1 SCR 661], this Court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, **the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trust-worthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.**

The entire prosecution case was started when PW.1 lodged Ex.P1 with the police, Boath Police Station on 28.09.2007. The Sub Inspector of Police, Boath Police Station in turn sent the complaint along with the accused and other witnesses to Balkonda Police Station as the offence comes under the jurisdiction of the said police station. PW.9-Sub Inspector of Police, Balkonda received the complaint Ex.P1 and registered the case in Crime No.128 of 2007 for the offences punishable under Sections 302 & 201 I.P.C and issued First Information Report Ex.P9. The investigation was taken up by PW.10-Circle inspector of Police, who recorded the statements of the witnesses and also confessional statement of the accused, proceeded to the place of offence and

found the dead body in a decomposed state. The said dead body was identified by PW.2 as of her sister Rathod Jhanabai. PW.10 gave a requisition to PW.7-doctor for conducting postmortem. PW.7 conducted postmortem and gave opinion that the deceased died due to Asphyxia due to strangulation. The contention of the learned counsel for the appellant/accused is that the statement given by the accused is not voluntary and there is no evidence on record to prove the guilt of the accused in this case and therefore, the appellant/accused is entitled to clean acquittal.

18. A perusal of the confessional statement-Ex.P4 shows that the accused admitted about committing of offence and as per his confessional statement, the dead body of the deceased was recovered. In the present case, the confessional statement of the accused was corroborated with the evidence of PWs.2 & 5. PWs.2 & 5 stated about their last seeing the deceased in the company of the accused. Both the witnesses categorically stated that on 22.09.2007 they saw the deceased in the company of the accused and when they asked them, they stated that they are going to Velgatoor village. On the same day, during night time, the accused returned alone. When PWs.2 & 5 questioned, he informed that the deceased did not accompanied him. Thereafter, the dead body of the deceased was recovered in pursuance of the confession given by the accused.

19. PW.2 in her evidence stated that the accused used to harass the deceased during her lifetime and he used to suspect her character. The learned counsel for the appellant/accused argued that there is no evidence to show that the dead body belongs to the deceased. This contention of the learned counsel cannot be accepted because PW.7 is the doctor who conducted postmortem, wherein she mentioned that she conducted postmortem on the dead body of the deceased. PW.2 stated that the dead body is of her sister and she identified the clothes wore on that day when she left the house. In the cross-examination of PW.7 and also other witnesses, no suggestion was given regarding the identity of the dead body of the deceased. Therefore, the prosecution is able to prove that the accused has murdered his wife and thrown her dead body into bushes.

20. Thus, in view of the above discussion, we are of the view that the prosecution has established the guilt of the appellant/accused for the offences punishable under Sections 302 & 201 I.P.C beyond all reasonable doubt and the

trial Court after proper appreciation of the evidence on record, rightly convicted and sentenced the appellant/accused for the said offences and therefore, there are no reasons to interfere with the Judgment of the trial Court.

21. Accordingly, the Criminal Appeal is dismissed confirming the Judgment, dated 18.01.2010 passed in Sessions Case No.400 of 2008 on the file of the III Additional District & Sessions Judge, (Fast Track Court), Nizamabad. Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

Date: 09.06.2015.

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