

**HONOURABLE SRI JUSTICE G. CHANDRAIAH
AND
HONOURABLE SRI JUSTICE M.S.K. JAISWAL**

CRIMINAL APPEAL No. 571 OF 2010

DATED 25TH FEBRUARY, 2015.

BETWEEN

Ollala Ramesh and two others

....Appellants

And

The State of Andhra Pradesh,
Rep. by Public Prosecutor
High Court of Andhra Pradesh,
Hyderabad.

....Respondent.

**HONOURABLE SRI JUSTICE G. CHANDRAIAH
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JUDGMENT: (per Hon'ble Sri Justice G. CHANDRAIAH)

The appellants-Accused Nos. 1 to 3 who faced trial for the offences punishable under Sections 302 and 201 read with 34 IPC in S.C.No. 354 of 2009 before the learned Sessions Judge, Adilabad, convicted therefor and sentenced to suffer imprisonment for life and also rigorous imprisonment for three years and pay fine amounts as directed therein, in default to suffer six months each for the aforesaid offences, have

preferred this Criminal Appeal.

Briefly stated the case of prosecution is that the deceased Pairala Kondu was killed by A.1 to A.3 in between 7.00 and 8.00 p.m. on 08-12-2008 in front of their house in view of the hostilities between the two families in connection with the incident wherein the son of the deceased by name Rajababu is alleged to have eloped with Sulochana, the daughter of A.3 few days prior to the said incident. It is alleged that in connection with that affair, A.1 to A.3 have lodged a complaint against the son of the deceased, for which he was arrested and has been remanded to judicial custody and it is said that even on the date when the incident in question took place the said Rajababu was in judicial custody. It is further alleged that even after the son of the deceased was remanded to juridical custody, the accused were proclaiming that they will kill the deceased and his son Rajababu. Both the accused and the deceased are residents of immediate neighbourhood. There are residential houses around their houses and there is a narrow road and there are houses on either side. Just immediately after the houses, there is a well which has been left unused. The said well had stones around but no parapet wall or any fencing. On 08-12-2008 at about 07.00 p.m., the deceased is said to have left the house informing his family members viz., the wife PW.1 and daughter PW.2 saying that he is going to his fields. However, he did not return in the night. Next day morning at about 06.00 a.m., PWs.1 and 2 went in search of the deceased. They found the chappals of the deceased abandoned in front of the house of the accused and there were blood stains. They have followed the trail of blood which led them to the condemned well and they

found the deceased lying dead in the well. At 08.00 a.m., PW.1 lodged a complaint, on the basis of which crime was registered. However, the F.I.R. that was issued was received by the jurisdictional Magistrate at 08.00 p.m. After completion of the investigation, the Circle Inspector of Police, Chennure filed charge sheet.

The learned Sessions Judge, Adilabad framed charges under Sections 302 read with 34 IPC and 201 read with 34 IPC, to which the accused pleaded not guilty.

To establish the guilt of the accused, the prosecution examined P.Ws.1 to 14 and marked Exs.P.1 to P.14 apart from marking M.Os.1 to 10. On behalf of the defence, none were examined and no documents were marked.

The learned Sessions Judge on analysis of the evidence let in by the prosecution, found the accused guilty for the offences punishable under Sections 302 and 201 read with 34 IPC and sentenced them to suffer imprisonment for life as stated supra.

Aggrieved by the said conviction and sentence, the appellants-accused 1 to 3 preferred the present Criminal Appeal.

It is contended by the learned Counsel for the appellants-Accused that there are no eye witnesses to the incident. He submitted that the evidence of P.Ws.6,7 and 8 is not sufficient to base the conviction on the appellants-accused and that they have been planted only to convict the appellants. He further

submitted that as per the case of prosecution, if the accused really beat the deceased with sticks on the road at about 8.00 PM, the same would have certainly raised commotion which would have invited the attention of P.Ws.1 and 2 and nearby residents, but such is not the case herein. He further submitted that the learned judge erred in placing reliance on the evidence of P.W.6 who spoke as to throwing of something in the unused well in the night, however, it is to be seen that there is no possibility of witnessing the appellant carrying something in the night from a distance of about 40 yards, and therefore no reliance can be placed on his evidence. He pointed out that there is inordinate delay in lodging FIR. He lastly submitted that the learned trial judge grossly erred in holding that the prosecution proved the guilt against the accused. He prayed to allow the Criminal Appeal.

On the other hand, the learned Public Prosecutor appearing for the State while reiterating the contents of the evidence on record in support of the prosecution case, submitted that though there are no eye witnesses to the incident, the circumstantial evidence produced by the prosecution clinchingly proved the chain of events that the accused committed the offence. He contended that the evidence on record clearly shows that the accused have strong motive to kill the deceased in view of the daughter of A.3 was eloped by the son of the deceased. He submitted that if the deceased would have fallen in the well under intoxication, there would not be any possibility of blood stains and cheppals of the deceased finding in front of the house of Accused No.3. The finding of blood stains and cheppals of the deceased is corroborated by

evidence of P.Ws,5 and 10, who are nothing to do with the accused or the deceased and are independent witnesses. He further submitted that the extra-judicial confession made by the accused in the present case is admissible as it is duly corroborated by other prosecution evidence and thus the Court below is justified in convicting the accused. He therefore submitted that the judgment of the Court below is perfectly based on the evidence on record and there are no grounds at all to interfere with the conviction and sentence imposed on the appellants-accused and sought for dismissal of the Criminal Appeal.

Now the point for consideration is whether the prosecution succeeded in proving its case beyond all reasonable doubt against the appellants/accused for the offences punishable under Sections 302 and 201 read with 34 IPC and whether the judgment of the Court below is correct, and proper?

To adjudicate the aforesaid issues, now it has to be seen whether the accused caused the death of the deceased.

P.W.1 is the *de facto* complainant and wife of the deceased, who gave Ex.P.1 complaint dated 09.12.2008 to the police; P.W. 2 is the daughter of P.W.1 and the deceased; P.W.3 is a panch witness who removed the dead body of the deceased with the help of others from the well; P.W.4 is the photographer, who took 21 photographs vide Ex.P.2; P.W.5 is the neighbour of the deceased; P.W.6 is a witness who deposed that A.1 to A.3 threw the dead body in the well; P.W.7 is a MPTC member before whom the accused alleged to have

confessed the killing of the deceased; P.W.8 is a witness from whom the accused sought financial help for expenses; P.Ws.9 to 11 are panch witnesses for the scene of offence, inquest and recovery of the body; P.Ws. 12 is the Assistant Sub-Inspector of Police, who issued FIR, Ex.P.11; P.W.13 is a Doctor who conducted post mortem over the corpus of the deceased and issued Ex.P.12 Post Mortem report and P.W.14 is IO. While Exs.P,5 to P.7 are the relevant portions of confession of panchanama of A1 to A.3 dated 11.12.2008, Exs. P.8 to 10 are the recovery panchanams of A1 to A3, dated 11.12.2008. Ex.P.13 is the rough sketch of scene of offence and Ex.P.14 is the ESL report.

P.Ws.1 and 2 are the wife and daughter of the deceased, who spoke about the factum of the accused threatening their family members and lodging of complaint against the son of the deceased, Rajababu for eloping with the daughter of A.3 and also as to the said Rajababu being kept in jail by the date of incident. According to P.Ws.1 and 2, on 08.12.2008 at about 7.30 PM the deceased left the house for the agricultural fields to bring paddy, but he did not return home till the next day. P.Ws.1 and 2 thought that the deceased would have slept in the fields and on the next day they proceeded to their fields in search of the deceased, but they found blood stains and cheppals of the deceased on the road in front of the house of A.3 and thereupon they went along the blood stains and finally they saw the dead body of the deceased lying in a dilapidated well belonging to one Dubbala Lingaiah in the outskirts of the village and immediately thereafter P.W.1 went to the police station and lodged Ex.P.1 complaint with the police and set the law in motion.

P.W.3 spoke about the removal of the dead body from the well. P.W.4 is a photographer. P.W. 5 is residing opposite to the house of the accused and the deceased and she deposed about the factum of son of the deceased eloping with the daughter of Accused No.3 and as to the killing of the deceased due to rivalry, but she did not see the incident and on the next day of morning she saw the chappal of the deceased and blood stains in front of the house of the accused. She also deposed that she saw the dead body of the deceased along with the villagers.

P.W.6 is the crucial witness of the prosecution, who deposed that at about 7.00 or 8.00 PM while he was returning home after handing over the washed clothes in the house of one G. Ramesh, he saw the accused 1 to 3 from a distance of about 30 to 40 yards going ahead of him taking something with them and they threw it in the well of Dubbala Lingaiah and on the next day morning as the dead body was found in the well his suspicion was proved correct and that the accused killed the deceased and threw him in the well.

P.W.7 is the M PTC member and he deposed that on the same day night at about 9.00 pm the accused came to him and told him that they killed the deceased and threw the dead body in the well of one Dubbala Lingaiah. On such confession, he advised them to go to police station and accordingly the accused went to the police station. He also deposed that the daughter of A.3 eloped with the son of the deceased and therefore there are disputes between their families.

P.W.8 deposed that the accused came to him at about 9.00 or 10.00 PM and informed that they killed the deceased and asked him to give some money for expenses and accordingly he gave Rs.4,000/- on interest at 2%. In the cross examination, he deposed that he is not a licensed money lender and he did not inform to the sarpanch or the police about the incident of killing the deceased.

P.W.9 is a fair shop dealer who removed the dead body of the deceased from the well with the help of some fishermen as directed by the police. He also deposed that he found injuries on the dead body.

P.W.10 is the panch witness, before whose presence the police collected blood stained earth and control earth. They also found blood stains and chappal in front of the house of A.3 and nearby. The police conducted Ex.P.4 scene observation panchanama. The police conducted the inquest over the dead body in his presence.

Thus the sum and substance of the prosecution case is that the son of the deceased, Rajababu, eloped with the daughter of A.3 about one month prior to the incident and for the said reason, A.3 developed grudge against the family of the deceased; lodged a complaint with the police against the said Rajababu, as a result of which, the said Rajababu was kept in jail. Even thereafter, the accused were threatening the deceased and his family and in the said process, the accused 1 to 3 killed the deceased, brought his dead body to the dilapidated well of one Dubbala Lingaiah situated at the outskirts of the village and threw it into the said well with intent to screen

off the offence of murder committed by them.

Admittedly, there were no eye-witnesses to the incident. The case is based on circumstantial evidence. According to the prosecution, PW.6 is the person who has seen A.1 to A.3 carrying something with them at about 08.00 p.m. on 08-12-2008 and dumping the said object in the well. Next day morning, he came to know that the object that was dumped by A.1 to A.3 was the corpus of the deceased. Other aspect relied upon by the prosecution is the extra-judicial confession said to have been made by A.1 to A.3 in the presence of PWs.7 and 8. PW.7 is the MPTC and according to the prosecution, at about 08.00 or 09.00 p.m., on 08-12-2008, A.1 to A.3 went to him and confessed having killed the deceased. Thereupon, PW.7 is said to have advised A.1 to A.3 to go to the Police Station.

The third aspect of the matter is that A.1 to A.3 went to PW.8 and informed him that they have killed the deceased and asked him to give money and accordingly PW.8 gave a sum of Rs.4,000/- to the accused on interest @ 2% per month. This is said to have taken place at about 09.00 or 10.00 p.m. on 08-12-2008.

Therefore, the material evidence comprises of PWs.6, 7 and 8. Before we look into the evidence of these 3 material witnesses, what is required to be seen is as to whether the prosecution could explain the inordinate delay in lodging the F.I.R. and its reaching the Magistrate. As already stated, it took a full 24 hours for the F.I.R. to reach the Magistrate, more particularly, when the jurisdictional Police Station is at a distance of just 3 KMs., from the place where the incident took place. According to the prosecution, the fact that the deceased

died was known only at 06.00 a.m., on 09-12-2008 and therefore the complaint was lodged at 08.00 a.m. This is difficult to be believed for simple reason that even according to the prosecution, at about 09.00 p.m. on 08-12-2008, the accused are alleged to have gone to the house of the MPTC – PW.7 and informed him that they have killed the deceased. Immediately thereafter, between 09.00 or 10.00 p.m., the accused are alleged to have gone to the house of PW.8 and there also they informed him that they killed the deceased and asked PW.8 for financial help and accordingly PW.8 gave them Rs.4,000/-. The village is a very small village with few houses on either side of the narrow road. Even though the fact that the accused have killed the deceased was informed to PWs.7 and 8, none of them have moved the little finger and informed to anybody that is either to the police, to any other villagers, or at least to the family members of the deceased who were living close by.

Further more, the place where the accused are alleged to have killed the deceased by beating him with sticks is just abutting the house of PWs.1 and 2 and in front of the house of PW.5 and others. It is admitted by all the witnesses that if any galata or noise takes place on the road, it will be audible to all the neighbouring residents. The attack on the deceased with sticks is said to have taken place between 07.30 p.m. to 09.00 p.m. By no stretch of imagination it can be said that the time was so late in the night so as to make PWs.7 and 8 immobile, or the neighbouring residents to have not heard anything. When PWs.1 and 2, the wife and daughter, have seen off the deceased at about 07.30 p.m., and if the accused really beat the deceased with sticks on the road at about 08.00 p.m., this would have certainly raised commotion which would have invited the

attention of not only PWs.1 and 2, the family members of the deceased, but also the neighbouring residents including PW.5. In spite of these, the prosecution wants it to be believed that nobody knew about the death of the deceased or the dead body being thrown in the well till about 06.00 a.m., on 09-12-2008.

It is further noticed that in Ex.P.1, which is the complaint, lodged by PW.1 at about 08.00 a.m., on 09-12-2008, it is specifically stated that the deceased left their house at 07.30 p.m. and at about 08.00 p.m., PWs.1 and 2 heard the accused proclaiming that they will kill the deceased and his son. What is manifest from Ex.P.1 is that even by 08.00 p.m., they have not caused any harm to the deceased but were still threatening that they would kill the deceased and also the son who was in juridical custody by then.

Now turning to the evidence of PWs.6, 7 and 8, we have no hesitation in observing that they are not at all reliable and trustworthy witnesses. It does not inspire the confidence of the Court. Their testimony appears to have been planted. PW.6 who is the caste man of the deceased stated as under:-

“At about 7 or 8 p.m., when I went to hand over the washed clothes in the house of G.Ramesh and I was coming back I found the accused 1 to 3 going in front of me and taking something with them. They have thrown something in a well of Dobbala Lingaiah. I have seen the accused throwing something into the well from a distance of about 30 or 40 yards. On the next day morning as the dead body was found in the well my suspicion was proved correct that the accused killed the deceased and thrown away the same in the well.”

From the above statement, it is evident that he has seen

the accused carrying something ahead of him at about 07.00 or 08.00 p.m. itself. It is not the case of the prosecution that there was sufficient light at the place where the incident took place. It is difficult to believe that PW.6 would have seen A.1 to A.3 walking ahead at a distance of 30 to 40 yards and carrying some object and throwing it in the well. What was that object was not noticed or verified by PW.6. The deceased was a well-built person with height of about 5.4". It is not as if the accused was carrying the deceased wrapped or bundled in a cloth, gunny bag etc. The dead body that was found in the well was found only with a banian, shirt and underwear. It was not tied with any other cloth. Therefore, if PW.6 is to be believed, the accused would have carried the deceased openly from the place of attack to the well. If that be so, and if really PW.6 has seen the accused carrying some object, he would have certainly deciphered that the object that was being carried was a human being but nothing else. PW.6 did not say so. Conveniently, PW.6 says that he has seen the accused from a distance of 30 to 40 yards. If there was darkness, he would not have been able to even see A.1 to A.3 and if really he was able to see A.1 to A.3, he would have been able to also see as to what was the object that was being carried by A.1 to A.3. It is not as though that the object that is said to have been carried by A.1 to A.3 was a small thing but it was a huge body of a human being. Therefore, we have no hesitation in holding that PW.6 has not seen anything and he is a planted witness. This aspect is further strengthened from panchanama Exs.P.5,6 and 7 which are said to have been made by the accused after they were brought into police custody. In the said panchanamas, all the

accused stated as follows:

“....Later on seeing that no body coming on the way we three caught hold of the Kondu dead body with hands and thrown in the well belonging to Dabbala Lingaiah

The other evidence is that of PW.7 who is a responsible elected representative of the area. He is a MPTC, aged about 40 years. According to him, at about 09.00 p.m. on 08-12-2008, A.1 to A.3 came to him and confessed that they have killed the deceased and thrown the dead body in the well. Even though such a vital information is furnished to PW.7, pertaining to a heinous and grave crime of a murder, PW.7 simply asked the accused to go to Police Station and did not bother about it thereafter. If really A.1 to A.3 went to PW.7 and made a confession, he would not have conducted himself in the manner in which he claims. It is the moral and legal duty of the person – PW.7 to alert all concerned immediately, if really such a serious confession is made by A.1 to A.3 to the effect that they killed their neighbour and dumped the dead body in the well. He has not recorded the so-called confession said to have been made by A.1 to A.3. He ought to have taken A.1 to A.3 to the police station and handed them over there. The police station is just 3 KMs., away there from.

The relevant portion of the evidence of PW.7 reads as under:-

“The deceased Kavudu was known to me. He died about one year back. On the same night at about 9 p.m., the accused 1 to 3 came to my house and told me that they have killed the deceased Kavudu and that they have thrown the dead body in the well of D.Lingaiah. I advised them to go to Police Station. The accused went to the Police Station.”

It is the duty and obligation of every citizen, more particularly of an elected representative that if any cognizable offence has been committed in his presence or has come to his notice, he is required to immediately swing into action and take remedial measures. Conspicuously PW.7 though was told about a grave crime, having been committed by the accused, he has neither informed the police nor the family members of the deceased nor took the accused to the police station nor did he record the statement of the accused. Therefore, we have no hesitation in holding that PW.7 is not a truthful witness.

The last material witness is PW.8. A plain reading of his testimony goes to show that he has abetted or conspired in the commission of the crime by the accused, if what he deposed is true. It may be useful to extract the words of PW.8:-

“The accused are from my village and from my caste. The accused came to my house at about 9 or 10 p.m., and informed that they have killed Kavudu and wanted some money from me for expenses and I have paid them Rs.4,000/-.”

In the cross-examination, PW.8 admits that he do not know that giving money to the accused was an offence. He is a person aged about 70 years and certainly we can impute knowledge to him that when a person comes to him and confess that they have killed a neighbouring resident and they want money to escape from there and if that person gives money to the offender, it would certainly amount to facilitating the assailants to escape from the rigours of law. An elderly person such as PW.8 would not have conducted himself in the manner in which he claims. Apparently, nothing of that sort took place

and PW.8 has been a planted witness. It is difficult to believe that the accused would have gone to PW.8 at about 09.00 or 10.00 p.m., on 08-12-2008 and asked him for money for escaping from there after having killed the deceased. PW.8 would not have given any money to the accused if really they met him and made such a serious confession.

Further it is to be seen that P.Ws.7,8 and 11 being not related to the accused, it was therefore improbable to believe that the accused would make an extra judicial confession to them and therefore the extra judicial confession stated to have been made by the accused is irrelevant in the circumstances.

It is settled principle of criminal jurisprudence that an extra judicial confession is an extremely weak kind of evidence. Whereever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must insure that the same inspires confidence and is corroborated by other prosecution evidence. In Sahadevan Vs. State of Tamilnadu {(2012)6SCC 403), the Apex Court at Paragraph 16 of its Judgment held as under:

“ Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The Principles

i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the

court with greater care and caution.

ii) It should be made voluntarily and should be truthful.

iii) It should inspire confidence.

iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law. “

On applying the above principle of law laid down by the Apex Court to the facts of the case on hand, we are of the considered opinion that the so called confession stated to have been made in the presence of P.Ws. 7 and 8 is not truthful and it do no inspire confidence and that it suffers from inherent improbabilities.

In view of the foregoing discussion, we are of the opinion that it is doubtful as to the manner in which the death caused to the deceased for which the accused are held responsible. Therefore we entertain a doubt as to the nature of death of the deceased and involvement of the accused in regard thereto. In such view of the matter, benefit of doubt goes in favour of the appellants-Accused 1 to 3 which has not been taken note by the learned Sessions Judge in proper perspective while considering the case. Therefore we set aside the judgment rendered by the learned Sessions Judge and acquit the accused.

In the result, the Criminal Appeal is allowed. The conviction and sentence passed by the learned Principal Sessions Judge, Adilabad against the appellants-Accused Nos.

1 to 3 for the offences punishable under Sections 302 read with 34 IPC and Section 201 read with 34 IPC by judgment dated 26.03.2010 in S.C.No. 354 of 2009 is hereby set aside and they are acquitted of the said offences and they shall be set at liberty forthwith if they are not required in any other case. The fine amount if any paid by the appellants-Accused shall be refunded to them.

JUSTICE G. CHANDRAIAH

JUSTICE M.S.K. JAISWAL

DATED 25TH FEBRUARY, 2015.
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