

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SMT. JUSTICE ANIS
CRIMINAL APPEAL No. 699 OF 2010

JUDGMENT: (Per the Hon'ble Smt. Justice Anis)

1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is directed against the judgment dated 26.04.2010 in Sessions Case No.345 of 2009 on the file of the learned Additional District & Sessions Judge, Kamareddy, whereunder and whereby the appellant/sole accused was found guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and accordingly convicted and sentenced her to undergo imprisonment for life.

2. The case of the prosecution, in brief, is as follows:

PW1, who is the resident of Vellutla village, gave a complaint to the police on 16.01.2009 and the same was registered as a case in Crime No.11 of 2009 of Yellareddy Police Station for the offence punishable under Section 302 IPC. Then, PW12 – Inspector of Police took up investigation, recorded the statements of the witnesses, conducted the scene of offence panchanama, held inquest panchanama, got photographed the scene of offence, recorded the confessional statement of the accused in the presence of mediators and seized the crime weapon. After receiving the reports, PW12 filed the Charge sheet into the Court.

Thus, the investigation reveals that one Gundla Bagaiah (hereinafter referred to as 'deceased') was the eldest son of PW1. Initially, the deceased married to one Balamani, but she committed

suicide due to unbearable torture. They are having a son. Thereafter, the deceased married the accused and they were blessed with a daughter by name Renuka. The deceased not only addicted to liquor but also a sadist and womanizer. The deceased was demanding the accused to provide a woman to fulfil his sexual desires and when she failed to do so, he used to assault her mercilessly apart from beating his mother and brother. The deceased also demanded the accused to participate in perverted sex. Having unbearable of the same, the accused developed a grudge against the deceased and decided to do away with his life. While so, on 15.01.2009, the accused went to attend the labour work in the morning at 6.30 a.m. and requested her brother-in-law i.e. PW2, who was aged about 14 years, to fetch her an axe for cutting firewood and after receipt of the axe, she kept it in their house. Later in the evening, the accused asked PW2 to fetch toddy bottle and the accused got herself intoxicated even prior to the toddy bottles being brought to the house. Thereafter, when the deceased returned to the house, the accused, the deceased and PW2 consumed liquor and had the dinner. When PW2 went to sleep, the accused took an axe and hacked the deceased on the right side of the neck causing a deep cut injury resulted in his death. At that time, PW2 woke up and witnessed the incident. Then, PW2 immediately ran out of the house and informed the same to his mother. The accused also confessed before the village elders that she murdered the deceased due to unbearable torture. After that, the accused ran away from the scene of offence and hid herself in the hillock, but in the evening she returned home in view of the fact that her three years old daughter was starving. Immediately, the police apprehended the accused and recorded her confession in the presence of mediators.

Therefore, the accused is liable for the offence punishable under Section 302 IPC.

3. The trial Court framed the following Charge against the accused:

“That on 16-01-2009 at the night hours you along with the deceased Gundla Bhagaiah, LW-2 Gundla Ramulu, and Renuka while sleeping, you took the axe and hacked the deceased Gundla Bhagaiah twice and thrice over the right side of the neck and due to injuries caused by you the deceased Gundla Bhagaiah died on the spot and on the report of LW-1 Gundla Rukkavva Yellareddy Police registered a case against you as Crime No.11/2009, U/Sec.302 of IPC, and after completion of investigation, the Inspector of Police Yellareddy filed charge sheet against you and thereby you committed an offence punishable U/Sec.302 IPC within my cognizance.”

When the said charge was read over and explained to the accused, she pleaded not guilty and claimed to be tried.

4. To substantiate its case, prosecution examined PWs. 1 to 12 and got marked Exs.P.1 to P.13, besides case properties MOs 1 to 8.

5. After closure of prosecution side evidence, the accused was examined under Section 313 Cr.P.C. to explain the incriminating circumstances found against her in the evidence of prosecution witnesses. The accused denied the same and stated that she had no defence evidence.

6. Upon considering the evidence on record, the trial Court found the accused guilty and accordingly convicted and sentenced her as stated supra. Aggrieved thereby, the present Criminal Appeal is preferred by the accused.

7. Now, the points that arise for determination are –
1. Whether the cause of death of the deceased is homicidal in nature?
 2. Whether the prosecution is able to prove the guilt of the appellant/accused for the offence punishable under Section 302 IPC beyond all reasonable doubt?
 3. Whether the judgment of the trial Court is correct, legal and proper or not?

8. The learned counsel for the appellant/accused argued that PW2, who is a minor, consumed toddy along with his brother i.e. deceased and sister-in-law i.e. accused on the date of incident and slept along with the accused in an intoxicated state, and therefore, after hearing the commotion, PW2 woke up and saw while the accused was attacking his brother, cannot be believed; that to prove its case, the prosecution set up the evidence of PW2 who was not resided with the accused on the date of incident; that PW2 and his mother i.e. PW1 are residing separately, therefore the prosecution failed to establish that PW2 slept on the date of incident in the house of the deceased; that confession made before the police is inadmissible in evidence under Section 25 of the Indian Evidence Act, 1872; that the person who brought MO1 axe is not proved, but the axe is a new one; that PW2 had no capacity to purchase the new axe; that axe is not recovered from the scene of offence; that the prosecution failed to produce any evidence to show that the accused procured an axe; that the prosecution also failed to establish the fact that from which place the accused brought the axe and produced before the police; that there are disputes between the accused and PW1 and other family

members; that there are several inconsistencies in the evidence of prosecution witnesses; that the independent panch witnesses turned hostile; that there is a delay in lodging the complaint as the distance between the village and the police station is only 3 Kms., and finally, prayed the Court to allow the appeal.

The learned counsel relied on a decision reported in *Madhu Vs. State of Kerala*^[1], wherein the Hon'ble Supreme Court held at Paras 55 to 57 as follows:

“The question to be determined is whether the confessional statements made by the accused (vide Exhibit P-9 and P-10) can be said to have led to the discovery of an unknown fact?

The answer to the aforesaid query has to be in the negative, because the statements of PW7, PW11, PW13 and PW15 reveal that the factual position in respect of the recovery of the articles from the place from where the same were shown to have been eventually recovered, was known to the public at large by noon (and certainly before 2.30 p.m.) i.e., well before the confessional statements had been recorded. As per the deposition of P.J. Thomas (PW21), Circle Inspector of Police, '... A-2's confession statement was recorded at about 2.45 p.m....'. Interestingly, the public had become aware of the recovery by 'noon', whereas, Madhu-accused No. 1 was arrested at 1.00 p.m., and Sibi-accused No. 2 was arrested at 1.30 p.m. and their confessional statements were recorded by the police after their arrest. In the background of the aforesaid factual position, it is not possible for us to conclude that the confessional statements made by Madhu-accused No. 1 vide Exhibit P-10 and Sibi-accused No. 2 vide Exhibit P-9, can be stated to have resulted in the discovery of any fresh facts.

The factual position that recovery of stolen ornaments would be made by the police was a matter of common knowledge well before the confessional statements were made. The said statements recorded vide Exhibits P-9 and P-10 are inadmissible in spite of the mandate contained in Section 27 of the Indian Evidence Act for the simple reason, that they cannot be stated to have resulted in the discovery of some new fact. In the factual background of

the present controversy, the gold ornaments which eventually came to be recovered by the police, allegedly at the instance of accused, may well have been planted by the police.”

The learned counsel further relied on a decision reported in *Jiten Besra Vs. State of West Bengal*^[2], wherein the Hon’ble Supreme Court held at Para 14 as follows:

“Thus, in this case all the alleged incriminating circumstances could not be said to have been established. Once that was clear and once it is found that the circumstances could not point out towards the guilt of the accused, without any other inference being probable, the accused must get the benefit of doubt. There is hardly any discussion regarding this aspect in the judgments of the trial court as well as the High Court. Those judgments, therefore, cannot be sustained.”

The learned counsel further relied on a decision reported in *Radhey Shyam Vs. State of Rajasthan*^[3], wherein the Hon’ble Supreme Court held at Para 12 and 14 as follows:

“In *Panchhi*, after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned Counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be

accepted without hesitation. We will scrutinize PW-2 Banwari's evidence in light of the above principles.

PW-2 Banwari's version that he saw the incident through the hole of the door does not inspire confidence. He has changed his version frequently. At one stage, he says that when he went to bring the matchbox, he peeped through the hole of the door and saw necks of Rakesh and Rajkanta being cut. Then he says that he opened the door by inserting his fingers through the hole and saw the Appellant cutting the throat of Rakesh and when he went to call his sister, the Appellant cut the throat of Rajkanta. A doubt is, therefore, created as to whether he really saw the incident. Moreover, if the throats of two children were cut, it is inconceivable that he would not have heard cries of the children. It is also difficult to accept that at that time, his cousin came there to ask for a matchbox and he went to the house to bring the matchbox. This story appears to have been created to establish that PW-2 Banwari went to the house and saw the incident through the hole of the door. In such a situation, when it is difficult to place reliance on the testimony of a child witness, it is necessary to look for corroboration to his evidence from other witnesses. We find that the other prosecution witnesses do not corroborate the evidence of PW-2 Banwari, at all, as we shall soon see. It is, therefore, very difficult to rely on PW-2 Banwari's evidence."

The learned counsel further relied on a decision reported in *State of Gujarat Vs. Sonbai* ^[4], the Hon'ble Supreme Court held at Para 6 and 7 as follows:

"True it is that the respondent-accused was residing in room No. 30. At the relevant points of time her husband was out on work. There is a time gap of an hour or so between the return of the boys to their residence and the alarm raised by the respondent-accused. The High Court was of the view that in the absence of evidence ruling out the presence of a third party it would be hazardous to hold the respondent-accused responsible for the crimes in question. The High Court came to the conclusion that the marriage had taken place on 26th June, 1977 and the incidents in question occurred in the second week of August, 1977 i.e. hardly one and a half months after marriage. The; neighbours do not depose that she was ill-treating the children. On the contrary, she had taken them with her to the residence of her mother on 9th August, 1977.

She had, therefore, the opportunity to do away with them if she so desired at that point of time. Besides, as the High Court points out she had no motive to kill them and justifiably brushes aside the husband's belated evidence of ill-treatment in one of the cases since he stood contradicted by his earlier statement to the police. The High Court then points out that there was a time gap between the return of the boys to the residence and the alarm of the respondent-accused. It did not approve the Trial Court's approach that it was the duty of the respondent-accused to show third party intervention as in its view it was well-settled that the prosecution had to establish the guilt beyond reasonable doubt. The High Court, therefore, thought it hazardous to convict the respondent-accused on the slender circumstantial evidence tendered by the prosecution.

The manner in which the two infants died is bound to shock the conscience of the Court but it is exactly for that reason that we must administer caution to ourselves not to allow ourselves to be carried away by the gruesomeness of the crimes. The respondent-accused was a young girl of 19 or 20 years on the dates of the incidents. Her marriage had taken place hardly a month and a half before the incidents. There is no reliable evidence to hold that she was ill-treating her step sons. Her husband's belated statement, duly contradicted by his earlier version, is of no consequence so far as this aspect is concerned. If that is accepted she had no motive to kill the boys unless you infer that being a stepmother she must be full of hatred for the boys. In the absence of evidence manifesting such hatred we cannot jump to any, such conclusion. The High Court was, therefore, right in concluding that the prosecution has not established by evidence that the respondent-accused had a strong motive to do away with both the boys. The High Court is also right that she had the opportunity to do away with both of them when she took them to her mother's house on 9th August, 1977. Besides the prosecution version does sound somewhat artificial as it is difficult to believe that she would do away with both the boys in virtually identical manner in quick succession without waiting for sometime to pass between the two incidents. There was no compelling reason for her to act in such haste. Then, as the High Court points out, the possibility of third party presence during the time gap has not been eliminated. In the circumstances the High Court thought it would be hazardous to convict on the slender circumstance of the boys entering the room and being found dead after an hours time in the absence of positive proof that she alone could have done it. We do appreciate

that a grave suspicion may arise against her but that is not enough. In the said circumstances if the High Court did not consider it safe to convict, we cannot hold that the High Court's view is so palpably wrong as to demand interference under Article 136 of the Constitution.”

9. The learned Public Prosecutor argued that the delay in lodging the complaint by PW1 is well explained; that the copy of FIR shows that the distance between the village and the police station is 16 Kms. but not 3 Kms. as argued by the defence counsel; that PW1 is a true witness and in his examination, nothing has been elicited; that PW2 was present on the date of incident and consumed liquor along with the deceased; that the prosecution proved the guilt of the accused basing on the confession made by the accused to PWs 3 and 4 about committing the offence coupled with the evidence of PWs 1 and 2; that the report of Regional Forensic Science Laboratory shows that item No.8 saree contained human blood, but the accused failed to explain how her saree MO6 contained the human blood; that the Court below rightly gave a finding that the accused committed the offence punishable under Section 302 IPC, and finally, prayed the Court to dismiss the appeal.

10. **Points:**

A perusal of the evidence of doctor PW10 shows that he received a requisition from the Inspector of Police PW12 on 16.01.2009, as such he conducted the post-mortem examination over the dead body of the deceased and found a single injury of an incised wound on the right side of the neck measuring about 5 x 5

inches. The doctor opined that the death could have been caused by the incised wound on the neck and the injury could have been caused by a sharp weapon such as MO5. The doctor issued Ex.P.8 post-mortem examination certificate. The evidence of PW10 was not challenged.

11. The Investigating Officer PW12, on receiving the case file from PW11, conducted the inquest panchanama on the dead body of the deceased in the presence of PW8 and one Ayyala Kishan (LW14) under Ex.P.4 and got photographed the dead body as well as scene of offence through PW7 under Ex.P.3 photographs with corresponding negatives.

12. A perusal of the above evidence clearly established that the death of the deceased is a homicidal one.

13. PW1 gave a complaint to the police under Ex.P.1 on 16.01.2009 and the same was registered as a case in Crime No.11 of 2009 for the offence punishable under Section 302 IPC by the Sub-Inspector of Police PW11. Thereafter, PW11 recorded the statement of PW1 and handed over the case file to the Inspector of Police, Yellareddy - PW12 for investigation. Then, PW12 recorded the statements of all the material witnesses, visited the scene of offence, conducted the scene of offence panchanama under Ex.P.5, seized MOs 1 to 4 i.e. bloodstained earth, control earth, shirt and banian apart from MOs 7 and 8 i.e. muflar and cloth rug, prepared rough sketch of the scene of offence under Ex.P.6, conducted inquest over the dead body of the deceased in the presence of PW8 and LW14 under Ex.P.4, sent the dead body to the post-mortem examination where PW10 conducted the autopsy and issued Ex.P.8 post-mortem examination certificate, and the

material objects were sent to the Regional Forensic Science Laboratory. After receiving the reports, PW12 filed the Charge sheet into the Court against the accused.

14. PW1 is the mother of the deceased and the mother-in-law of the accused. She stated that PW2, who is one of her sons, informed that the accused killed the deceased with an axe. Thereafter, she went and saw the dead body of her son along with PWs 3 and 4. She found a cut injury on the side of the deceased's throat and gave a complaint under Ex.P.1. In the cross-examination, PW1 admitted that she does not know the contents of Ex.P.1, but she stated that the accused was present at the place of offence when she went and saw the body of the deceased.

15. PW2, a 14 year old boy, stated in his evidence that on the date of incident he slept along with the accused and the deceased; that prior to their taking dinner, the accused asked him to get toddy, as such he brought the same; that himself, the accused and the deceased consumed the toddy and slept; that he woke up on hearing the commotion and saw the offence that the accused axed the deceased; that he ran out of the house due to fear and informed about the offence to his mother PW1. In the cross-examination, PW2 admits that they slept at about 10.00 p.m. and he did not know what happened later. PW2 also admits that there were disputes between his mother PW1 and the accused, as such they were living separately.

16. PWs 3 and 4 are the wife and husband and related to PW1. They stated that on the intervening night of 16/17.01.2009, the accused came to their house, knocked the door and informed that she killed the deceased. PWs 3 and 4 stated that they went to the place of incident and witnessed the dead body of the

deceased. They further stated that even at the scene of offence, the accused confessed before them that she killed her husband.

17. PW5, who is a Sarpanch of Velutla village, stated that after coming to know about the death of the deceased, he went to the house of the deceased and witnessed the dead body of the deceased with a slit injury on his throat, and at that place the accused was present. He further stated that the police came to the scene of offence and asked the accused as to how her husband died, and then she informed that she herself killed the deceased with an axe by causing injury on his throat. In the cross-examination, nothing has been elicited to disprove the evidence of PW5. On the other hand, PW5 categorically denied a suggestion that the accused did not tell police that she killed her husband.

18. The evidence of PW6 is not much relevant as he turned hostile and did not support the case of prosecution, but he stated in his chief examination that the accused informed that she killed her husband.

19. PW8 deposed that on the instructions of the police, he was present when they conducted inquest over the dead body of the deceased under Ex.P.4, conducted scene of offence panchanama under Ex.P.5 and drew the rough sketch under Ex.P.6. He further deposed that he signed on Exs.P.4 to P.6 along with other panch witness LW14 and the police seized MOs 1 to 4.

20. PW9, who is working as village servant, stated that the police called him to the place of offence where the accused confessed before them that she killed the deceased with an axe and at that time her brother-in-law PW2 was also present. PW9

further stated that the accused produced an axe from inside the room of her house stating that she killed the deceased with the said axe. He further deposed that police also seized MO6 saree of the accused under the cover of panchanama under Ex.P.7. This witness identified his signature on Ex.P.7.

21. The evidence of PWs 11 and 12 are formal in nature as PW11 registered the case and PW12 conducted the investigation and filed the charge sheet into the Court.

22. The evidence produced by the prosecution shows that except the evidence of PW2, all the testimonies are circumstantial evidence. PW2, who is an eyewitness, stated that he saw while the accused killed his brother with an axe. After the incident, PW2 informed the said fact to his mother PW1. PW2 in his evidence also stated that on the date of incident, accused asked him to get toddy, as such he brought the same and later he along with the accused and the deceased consumed the same and slept. PW2 further deposed that he woke up on hearing the commotion and witnessed the incident, and thereafter due to fear he ran out from the house and informed the same to his mother. Therefore, the evidence of PW2 is reliable and the trial Court also subjected his evidence to close scrutiny. Thus, the case-law (4 supra) relied on by the learned counsel for the accused is not applicable to the present facts of the case.

23. The main contention of the accused is that the deceased was a vagabond without any employment apart from being womanizer and sadist and was harassing the accused. It is further contended that due to unbearable harassment of the deceased, some of the villagers must have killed the deceased. It is also contended that apart from the evidence of mother and

brother of the deceased, the remaining witnesses i.e.

PWs 3 to 6 are closely related to the deceased and thereby their evidence cannot be believed.

24. In the cross-examination of the prosecution witnesses, nothing has been attributed to them for giving evidence except suggesting that the accused has not confessed about committing the offence. Therefore, since the accused has not attributed any motive or malice to the prosecution witnesses, there is no reason to disbelieve their evidence. Further,

PWs 1 and 2 are closely related to the deceased as well as to the accused. The accused is the wife of the deceased and she was present in the house when the offence has taken place. It is not the case of the accused that she was not sleeping with the deceased and PW2. Therefore, non-explanation of the accused as to how the deceased died, clearly established the fact that the accused committed the offence.

25. The learned counsel for the accused argued that Ex.P.7 cannot be relied upon as it is not admissible in evidence and further it was not given voluntarily by the accused. However, the Hon'ble Supreme Court time and again in various judgments held that the extra-judicial confession if voluntary can be relied upon by the Court in convicting the accused. In a decision reported in *Ratan Gond Vs. State of Bihar*^[5], the Hon'ble Supreme Court held at Paras 9 and 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 another decision reported in *Mulk Raj Vs. The State of Uttar Pradesh*^[6], 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 another decision reported in *State of Uttar Pradesh Vs.*

M.K. Anthony^[7], the Hon’ble Supreme Court held at Para 10 and 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.**

26. A perusal of the confessional statement Ex.P7 shows that the accused admitted about committing of offence due to unbearable torture meted out by her in the hands of her husband

i.e. deceased. As per the confessional statement of the accused, she led the police to their old house where she hid an axe which is having a new stick and she herself brought the axe which was seized by the police. Further, the confessional statement of the accused was corroborated with the evidence of PWs 3 to 6. Moreover, the evidence of PW9 coupled with the evidence of Investigating Officer PW12 shows that the accused after committing the offence voluntarily confessed about the offence and produced MO5 from their old house.

27. Further, the evidence of prosecution witnesses also corroborated with the medical evidence. The Forensic Science Laboratory report Ex.P.13 also shows that the axe and the saree of the accused contained human blood and the group of blood is 'AB'. Therefore, the prosecution is able to prove that the accused killed the deceased by causing a deep cut injury on the right side of the neck with an axe MO5 due to the unbearable torture meted out by her in the hands of the deceased. Moreover, after confessing about the offence, she herself brought MO5 axe and produced before the police, which was recovered in the presence of mediator PW9. The case-laws relied on by the accused (1 to 4 supra) have no bearing on the facts of the present case. Thus, the prosecution is able to prove the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 IPC.

28. At this juncture, the learned counsel prayed the Court to take a lenient view and relied on a decision reported in

Mohd. Maqbool Tantray Vs. State of Jammu and Kashmir^[8], wherein the Hon'ble Supreme Court held at Para 7 and 8 as follows:

“We also see from the record that appellant has undergone more than 11 1/2 years of the sentence after facing protracted a trial spread over almost 20 years. We have also been told by Mr. Agrawal that he had been released on bail for a period of 11/2 years and during this period his conduct and behaviour had remained exemplary. We also notice that in Gurdip Singh's case (supra) this Court observed as under:

“25. Before concluding we would like to record our conscientious feeling for the consideration by the legislature, if it deem fit ad proper. Punishment to an accused in criminal jurisprudence is not merely to punish the wrongdoer but also to strike a warning to those who are in the same sphere of crime or to those intending to join in such crime. This punishment is also to reform such wrongdoers not to commit such offence in future. The long procedure and the arduous journey of the prosecution to find the whole truth is achieved sometimes by turning on the accused as approvers. This is by giving incentive to an accused to speak the truth without fear of conviction. Now turning to the confessional statement, since it comes from the core of the heart through repentance, where such accused is even ready to undertake the consequential punishment under the law, it is this area which needs some encouragement to such an accused through some respite may be by reducing the period of punishment, such incentive would transform more such incoming accused to confess and speak the truth. This may help to transform an accused to reach the truth and bring to an end successfully the prosecution of the case.”

We find that the aforesaid observations would apply to the present case as well. We, accordingly, while dismissing the appeal, reduce the sentence from fourteen years to that already undergone. The appeal stands disposed of accordingly.”

The learned counsel also relied on a decision reported in *Pashora Singh and another Vs. State of Punjab*^[9], wherein the Hon'ble Supreme Court held at Para 9 as follows:

“So far as the question of sentence is concerned, the incident had taken place as far back as on 27.8.1981. The accused is a cultivator and has already suffered the agony of the case of the Trial Court for more than one year and for more than 10 years in the High Court and this Court. The co-accused Lahora Singh, the real brother of Pashora Singh has died on 30.1.1992. It has been submitted that the burden of looking after the widow and three minor children of Lahora Singh has fallen on the shoulders of Pashora Singh apart from the burden of his own wife and three minor children. Pashora Singh has remained in jail for 52 days during the trial and is now continuing in jail after having surrendered on 28.2.1992 during the pendency of the appeal before this Court. Thus, taking in view the entire facts and circumstances of the case, we consider that justice would be met if the accused-appellant-Pashora Singh is awarded a sentence of imprisonment of the period already undergone by him for the offence under Sections 326/34 of the Indian Penal Code.”

However, the aforesaid case-laws cannot be applied to the facts of the present case where no leniency can be given to the accused since she killed her husband with a clear intention without any regret though there are other remedies available to her when she was unable to bear the torture of her husband, but not by way of committing ghastly offence.

29. The trial Court, considering all the aspects into consideration, rightly convicted the appellant/accused for the offence punishable under Section 302 IPC and there are no reasons to interfere with the conviction and sentence recorded by the trial Court. Hence, the appeal is devoid of merit and is liable to be dismissed.

30. In the result, the Criminal Appeal is dismissed, confirming the judgment dated 26.04.2010, passed by the learned Additional District & Sessions Judge, Kamareddy, in S.C.No.345 of 2009.

31. Miscellaneous Petitions pending, if any, in this appeal I shall

stand closed.

(K.C. BHANU, J)

(ANIS, J)

25.06.2015
Anr

THE HON’BLE SRI JUSTICE K.C.BHANU
AND
THE HON’BLE SMT. JUSTICE ANIS

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CRIMINAL APPEAL No. 699 OF 2010
(per the Hon’ble Smt. Justice Anis)

25.06.2015

Anr

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- [\[1\]](#) (2012) 2 S.C.C. 399
[\[2\]](#) (2010) 3 S.C.C. 675
[\[3\]](#) (2014) 5 S.C.C. 389
[\[4\]](#) 1991 Supp(2) S.C.C. 120
[\[5\]](#) AIR 1959 SC 18
[\[6\]](#) AIR 1959 SC 902
[\[7\]](#) AIR 1958 SC 48
[\[8\]](#) (2010) 12 S.C.C. 421
[\[9\]](#) 1993 Supp(2) S.C.C. 33