

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(12.04.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.990 of 2010

Between:

Kompala Mallaiah and 2 others

..... APPELLANTS/A1 to A3

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **Smt.C.VASUNDHARA REDDY**

Counsel for the Respondent : **PUBLIC PROSECUTOR (TS)**

SUBMITTED FOR APPROVAL:

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Ladyship/Lordship wishes to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

CRIMINAL APPEAL No.990 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

A1 to A3 in Sessions Case No.338 of 2007, on the file of the IX Additional District and Sessions Judge at Kamareddy, Nizamabad District filed this appeal against the judgment, dated 11.08.2010, by and under which, the learned Sessions Judge has convicted the appellants/A1 to A3 for the offences punishable under Sections 302 and 379 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- (Rupees ten thousand only) each, in default to suffer simple imprisonment for a period of two years each for the offence under section 302 IPC; and to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs.2,000/- (Rupees two thousand only) each, in default to suffer simple imprisonment for a period of one month each for the offence under Section 379 IPC.

2. The case of the prosecution in brief is that Dondadi Chinna Beeraiah (since died) lodged Ex.P6 complaint on 01.08.2006 at 10 a.m. with the police, Gandhari P.S of Nizamabad District, stating that since 22.07.2006 his son Dondadi Chinna Kashiram, aged about 35 years, was missing, and that PW 2 found the dead body of his son-in-

law in a decomposed state on the outskirts of Seetaipalli village near Kattukalva. PW 8-ASI of Police registered the complaint as Cr.No.87/2006 under Section 174 Cr.P.C and took up investigation. He visited the scene of offence, seized the material objects, drew rough sketch of the scene of offence, and recorded the statements of witnesses. He conducted inquest over the dead body in the presence of PW 6 and another, and that the *de facto* complainant, PWs 1 and 2 identified the dead body as that of Kashiram. On requisition, PW 9 conducted autopsy over the dead body at the scene of offence, but he could not give any opinion as the skull and other parts of the body were separated from one another. During course of investigation, the investigating agency found that A1 to A3 are responsible for the death of Kashiram, as they made extra judicial confession before PWs 3 to 5 of having killed Kashiram. PW 12-Inspector of Police took up the further investigation and examined the witnesses. His investigation revealed that A2 and A3 are brothers and A1 is their maternal uncle, and that Kashiram had appointed A2 as his shepherd as he was having 200 sheep. That during his tenure of such employment A2 committed theft of 30 to 35 sheep from the sheep flock of Kashiram and added into the sheep flock of A1, that noticing the shortage of sheep, Kashiram asked A2, that A1 to A3 picked up a quarrel with him as he questioned A2 for the shortage of sheep. That on 22.07.2006 Kashiram found and identified his sheep in the sheep flock of A1, chastised the accused, drove his sheep to his sheep flock and threatened the accused that he would place the matter before the village panchayat. That being afraid of damage to their reputation and prestige, if Kashiram places the matter before the village elders, A1 to A3 decided to kill him. That while Kashiram and A1 to A3 were returning from the forest with their sheep flocks and reached the outskirts of the village, A1 coiled the service wire around the neck of Kashiram, A1 & A3 pulled the wire and both of them tied him to a tree,

later A2 took out rumal (short towel) from the head of Kashiram, tied it around his neck and all the accused pressed his neck till he died. That thereafter, A1 to A3 have stolen away the wrist watch, silver hand kada and gold ear pogu from Kashiram and absconded from the village. After completion of investigation, PW 11 filed charge sheet, after altering the section of law to under sections 302 and 379 IPC.

3. The plea of the accused is one of denial.

4. In support of its case, the prosecution examined PWs 1 to 12 and marked Exs.P1 to P9 and M.Os.1 to 6. No oral or documentary evidence was adduced on behalf of accused.

5. On appreciation of the oral and documentary evidence, the lower Court has convicted the appellants and awarded sentence against them, as noted supra.

6. Learned Counsel appearing for the appellants-accused submitted that the case is based on circumstantial evidence and the prosecution failed to establish all the essential links in the chain of circumstances so as to hold that it is the appellants-accused who had committed the crime. That excepting for the alleged extra-judicial confession said to have been made by the appellants before PWs 3 to 5, absolutely no evidence is placed before the Court by the prosecution and that the learned Sessions Judge has erred in accepting the evidence of the prosecution witnesses and convicting the appellants. She has further submitted that M.Os.4, 5 and 6 were not identified by any of the relations of Kashiram. She has further submitted that the corpse that was found was not that of Kashiram and it was in a highly decomposed state, and that as per medical evidence, the deceased died more than 15 days prior to 01.08.2006 when the postmortem was conducted. Learned Counsel therefore submitted that the conviction and sentence of the appellants-accused cannot be sustained.

7. On the other hand, learned Public Prosecutor submits that based on the extra-judicial confession made by the appellants-accused before PWs 3 to 5 and their subsequent confession leading to the recovery of the material objects, the Court below has found the appellants-accused guilty and the conviction and sentence is based on the legally acceptable evidence warranting no interference.

8. We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

9. The point for consideration is whether the prosecution proved its case against the appellants/A1 to A3 beyond reasonable doubt so as to sustain the conviction and sentence recorded against them, or whether the same need to be set aside, modified or varied.

10. The case is based on circumstantial evidence. In such cases, the normal principle is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

11. The case of the prosecution, as spoken to by PW 1, the wife of Kashiram, is that her husband who was a shepherd went to graze his cattle on 22.07.2006 and did not return thereafter. They searched for him for three or four days and thereafter lodged a complaint about his disappearance. On 01.08.2006, a dead body was found on the outskirts of Seetaipalli village near Kattukalva.

11. The main contention of the appellants is that the dead body of the person found is not that of Kashiram and that the said Kashiram

is still missing but was not killed. The alleged identification of the dead body is made on the basis of slippers, stick and turban. Excepting for a turban, nothing has been produced to show as to on what basis the dead body was identified as that of Kashiram. While Kashiram disappeared on 22.07.2006, a highly decomposed body was found on 01.08.2006 i.e., within ten days after the disappearance of Kashiram. As per the Doctor-PW.9, he proceeded to the place where the dead body was lying and he found a completely decomposed body of which only skeleton was available and maggots were crawling on the body. The Medical Officer also found that the skull was separated from the body and the other parts of the body were also separated from one another and that viscera was also not available. The Medical Officer could not conduct any examination since he did not find any material for holding the examination and hence he could not give any opinion with regard to the cause of death.

13. From this evidence, it is manifest that the death of the person whose skeleton was found and which was allegedly identified by the prosecution witnesses as that of Kashiram would have taken place more than two weeks prior to 01.08.2006. The Medical Officer-PW.9 who issued postmortem certificate Ex.P.8 opined therein that the time of death is more than 12 to 15 days prior to the postmortem examination conducted on 01.08.2006. This evidence of the Doctor coupled with the nature of the skeleton found clearly show that the death would have taken place on or about 15th July to 18th July, 2006. It is the case of the prosecution that Kashiram disappeared on 22.07.2006. In that view of the matter, it is difficult to conclusively hold that the skeleton that was found is that of Kashiram.

14. When Kashiram was found missing on 22.07.2006, a complaint is said to have been filed about his disappearance but the same has not been made part of the record. However, only after a

dead body was found in a highly decomposed condition, with only skeletal remains, a complaint was filed on 01.08.2006. The FIR was registered on the same day, but the said FIR reached the jurisdictional Magistrate at 05.00 a.m., on 04.08.2006. In between these two dates, the case of the prosecution is that, the appellants voluntarily appeared before P.Ws.3, 4 and 5 at 05.00 p.m., on 02.08.2006 and confessed that they killed Kashiram.

15. The entire case of the prosecution is based upon the extrajudicial confession said to have been made by the appellants before P.Ws.3, 4 and 5. In **VIJAY SHANKAR v. STATE OF HARYANA**^[1], the Supreme Court observed that extra-judicial confession is a weak piece of evidence and the Courts are to view it with greater care and caution. It is further observed that for an extra-judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

16. In **SAHADEVAN AND ANOTHER v. STATE OF TAMIL NADU**^[2], the Supreme Court, after referring to the several authorities on the subject, laid down the law on the subject in paras 20 and 21 as under:-

“Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it. (Ref. Sk.Yusuf v. State of West Bengal (2011) 11 SCC 754).

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.”

17. Similarly in the decision reported in **S.ARUL RAJA v.**

STATE OF TAMIL NADU^[3], the Supreme Court laid down in para 54 as under:-

“In view of the above case law, it is made clear that an extra-judicial confession is a weak piece of evidence. Though it can be made the basis of conviction, due care and caution must be exercised by the Courts to ascertain the truthfulness of the confession. Rules of caution must be applied before accepting an extra-judicial confession. Before the Court proceeds to act on the basis of an extra-judicial confession, the circumstances under which it is made, the manner in which it is made and the persons to whom it is made must be considered along with the two rules of caution. First, whether the evidence of confession is reliable and second, whether it finds corroboration.”

18. Bearing in mind the above principles, as enunciated by the Supreme Court, the facts of the case in hand need to be considered.

The three appellants are said to have made confession of their culpability of the crime in the presence of PWs 3, 4 and 5. It is in the evidence of these witnesses that in addition to three of them, there were about 70 persons present at the time when the appellants were said to have approached them and made the confession. A careful perusal of the testimony of these three material witnesses leaves no room for doubt that the same is highly artificial, in addition to being inconsistent on material aspects, rendering the same untrustworthy.

19. PW 3 deposed that about three years prior to his giving evidence, at about 5 p.m. in the evening when himself and PW 4 were in the gram panchayat office, A.1 to A.3 came there and confessed that they killed Kashiram over a dispute with regard to straying of cattle and as such, they went to the police station and informed the same to the police, who came and conducted a panchanama. In the cross-examination, PW 3 stated that there were about 70 persons present at the place when the accused made the confession and that all the staff of the gram panchayat office were present. He further admitted that only after they going to the police and informing them about the extra judicial confession said to have been made by the appellants, the police came to the scene of offence and conducted the inquest panchanama under Ex.P1. In Ex.P1 inquest panchanama, which according to PW 3, was conducted subsequent to their informing the police about the complicity of the appellants, there is no mention whatsoever about it. On the other hand, a perusal of Col.No.15 of the inquest panchanama-Ex.P1 shows that when the police and panchaas questioned one Bandari Kashiram, who was the servant of Kashiram, he revealed that the appellants had quarreled with Kashiram with regard to the missing of sheep, and as such, there was suspicion on the appellants. There is no mention whatsoever about the inculpatory confession said to have been made by the appellants. The servant of Kashiram has neither been listed as a witness nor he was examined

by the prosecution.

20. Contrary to the recitals of Col.No.15 of Ex.P1 and the claim made by PW 3, to the query in Col.No.11 of Ex.P1 inquest panchanama as to whether there is any suspicion on any one, who are they and the reasons for suspecting them, the answer is recorded as “not known”. Therefore, the recitals of Ex.P1 inquest panchanama are self-contradictory and the same negative the claim of PW 3 that only after they informed the police about the confession made by the appellants, the inquest panchanama was conducted.

21. It is further noticed that as per the investigating officer-PW 8, on 02.08.2006 at about 7 p.m, PW 3 came to him and informed about the extra judicial confession said to have been made by the appellants that they killed Kashiram. However, if the version of PW 3 is to be believed, it is on 01.08.2006 itself that he went to PW 8 and informed about the extra judicial confession, but not on 02.08.2006, as claimed by PW 8. Further, PW 3 did not speak about the presence of PW 5 at the time of the alleged confession.

22. It is in the evidence of PW 4 that the appellants came to them and informed that they killed Kashiram in view of the disputes with regard to the theft of the sheep. According to him, at the time when the appellants made the confession, along with him, PWs 3, 6 and one Mogulla Kashaiah (LW 9) were present. Significantly, PW 4 also did not speak about the presence of PW 5. According to the prosecution, PW 6 and Mogulla Kashaiah (LW 9) are not the persons in whose presence, the appellants are said to have made the extra judicial confession. In the cross-examination, PW 4 stated that at the time when the appellants made the confession, the staff and sarpanch were not present, whereas PW 3 deposed that the staff of the sarpanch's office were present when the appellants made the confession. According to PW 4, about 4 or 5 people were present when the

appellants made the confession, but according to PW 3, there were about 70 persons at that time. PW 4 claimed that they went to the police station and informed about the said confession, whereas the investigating officer-PW 8 denied that PWs 4 and 5 came to the police station and informed him about the confession said to have been made by the appellants.

23. PW 5 is another person, who claims himself to be the recipient of the confession of the appellants about their culpability. According to him, when himself, PWs 3 and 4 were standing near the gram panchayat office, the appellants came and told them as to how they killed Kashiram. PW 5 further deposed that the appellants asked them for protection and therefore, the witnesses asked the appellants to go to their house and thereafter, they went to the police and informed about the confession of the appellants. This conduct of PW 5 is unnatural. When the appellants made the confession, if really PW 5 was present at that time, he would not have sent away the appellants and he would have gone to the police station to inform about the confession. That apart, as already stated, PWs 3 and 4 did not speak about the presence of PW 5. According to PW 5, the said confession was made by the appellants at about 8 a.m. in the morning, but according to PW 3, the appellants confessed at about 5 p.m in the evening.

24. In view of the above facts, we find it difficult to hold that the evidence of PWs 3, 4 and 5 inspires confidence of the Court for holding that the appellants approached them nearly 10 days after the alleged incident and confessed that it is they who have perpetrated the crime.

25. As already stated, the other circumstance, which is relied on by the prosecution to establish the nexus between the crime and the criminals is the confession said to have been made by the appellants leading to the recovery of the incriminating material objects. According

to the prosecution, the appellants after having killed Kashiram, robbed from him an ear ring, wrist ring and watch which are marked as M.Os.4 to 6. As per the evidence of PW 12, the Inspector of Police, who investigated the case, the appellants were arrested on 03.08.2006 and in the presence of PWs 7 and 10, M.Os.4 to 6 were recovered at the instance of A.1 to A.3.

26. PW 7 deposed that on 03.08.2006 the police came to his house in the afternoon along with A.1, and A.1 confessed that he has hidden M.Os.4 to 6 in the shed behind his house, belonging to one Gore Beeraiah and thereafter, A.1 produced M.Os.4 to 6, which were recovered under Ex.P4 panchanama. In the cross-examination, PW 7 admitted that A.1 confessed to the crime when the police and himself enquired him. Gore Beeraiah, from whose shed M.Os.4 to 6 were produced by A.1, has neither been listed as a witness nor he was examined by the prosecution. According to the investigating officer, it is A.1 to A.3, whose confession led to the recovery of M.Os.4 to 6, but PW 7 is completely silent about A.1 to A.3's confession, which allegedly led to recovery of M.Os.4 to 6.

27. The other panch witness is PW 10. His version is strange with regard to the case. According to PW 10, when himself, PW 7 and others were sitting at the gram panchayat office, at 9.30 a.m in the morning, A.1 to A.3 came there and called him and PW 7, took them aside and told them that they killed Kashiram. PW 10 further deposed that A.1 to A.3 confessed before them the manner in which they killed Kashiram and taking away the ear ring, wrist ring made of silver and a watch from the dead body of Kashiram and hiding them in the hut of one Gore Beeraiah. Thereafter, A.1 to A.3 led them (PWs 10 and 7) to the hut of Gore Beeraiah and produced M.Os.4 to 6.

28. The evidence of PW 10 falsifies the evidence of the investigating officer-PW 12 that at the instance of the appellants

M.Os.4 to 6 were recovered pursuant to their confession. According to PW 10, when M.Os.4 to 6 were produced by the appellants, the police were not in the picture. The evidence of PW 10 further watered down the entire case of the prosecution with regard to the extra judicial confession made by the appellants in the presence of PWs 3, 4 and 5. According to PW 10, the said extra judicial confession was made by the appellants before PW 7 and PW 10 at about 9.30 a.m, but not at 8 a.m. as claimed by PW 5 or at 5 p.m. in the evening as claimed by PW 3.

29. In view of the above, this circumstance relied upon by the prosecution also cannot be said to have been proved for holding that the appellants have killed Kashiram and robbed M.Os.4 to 6.

30. It may be recalled that the consistent defence of the appellants as could be culled out from the cross-examination of all the witnesses is that the person by name Kashiram is missing, but has not died and that the corpse that was found is not that of Kashiram. As noticed from the evidence on record, the dead body was in a highly decomposed state and except the skull and skeleton, nothing more was available. Except the turban, stick and slippers, nothing was found nearby to identify the deceased. The slippers and stick have not been seized and produced, but only the turban was produced as M.O.1.

31. According to PW 2, the cloth, such as M.O.1 will be used by the villagers for covering their head while they go out for rearing their sheep. PW 2 was the father-in-law of Kashiram deceased and it is he who has seen the skull and skeleton for the first time. He claims that he identified the mortal remains to be that of Kashiram only on the basis of the slippers, stick and turban. It is also in the evidence of PW 2 that when he has seen the body, the head was severed and was tied upto a tree with the help of two wires and turban. However, according to the investigating officer, when he visited the scene of offence, he

has found the skull lying in between the two legs of the body and different parts of the body were at different places. Ex.P2-scene observation panchanama and Ex.P5-rough sketch were prepared. As per Ex.P1-inquest panchanama, in Col.No.7, it was mentioned that the dead body was in a highly decomposed state, that the skull of the deceased was kept in between two legs, having no hair on the head, that the skin peeled, that the body was covered with insects, that bones of both legs were visible, and that the stomach and chest portion is inside the shirt.

32. That apart, as already stated, the deceased disappeared on and from 22.07.2006, but as per the condition of the body found, apparently it was the dead body of a person, who died more than 15 days prior to 01.08.2006 when the postmortem was conducted, as spoken to by PW 9-the Medical Officer and borne out from Ex.P9 postmortem report.

33. For the foregoing discussion, we have no hesitation to hold that the prosecution has miserably failed to prove its case, much less beyond reasonable doubt. Neither any motive is established nor is there any evidence to show that Kashiram and the appellants were last seen together and the servant of Kashiram, by name, Mogulla Kashaiah (LW 9) has not been examined. The extra judicial confession said to have been made by the appellants is full of discrepancies and inconsistencies and the same is therefore untrustworthy. The so called confession leading to recovery of M.Os.4 to 6 is also not satisfactorily established. The medical evidence on record has not established the identity of the dead body as that of Kashiram. The above aspects have not been considered by the trial court and therefore, the judgment impugned is not sustainable and the same is liable to be set aside.

34. In the result, the Criminal Appeal is allowed. The conviction

and sentence recorded against the appellants/A.1 to A3 for the offences under Sections 302 and 379 IPC are set aside. The appellants/A.1 to A.3 are set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 12.04.2016

Dsr/Smr

Note:

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B/o

Dsr

[\[1\]](#) AIR 2015 S.C., 3686

[\[2\]](#) (2012) 6 SCC 403

[\[3\]](#) (2010) 8 SCC 233