

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

Criminal Appeal No.1121 of 2010

Between:

Syed Jahangeer,
S/o Yousuf

... Appellant

And

The State of Andhra Pradesh, repled by its
Public Prosecutor

...

Respondent

JUDGMENT PRONOUNCED ON 21.6.2016

**HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD**

1. Whether Reporters of Local newspapers : No
may be allowed to see the
Judgment?
Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? :
Yes

3. Whether Their Ladyship/Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

Criminal Appeal No.1121 of 2010

% 21.6.2016

Between:

Syed Jahangeer,
S/o Yousuf

..... Appellant

And:

\$ The State of Andhra Pradesh, repled by its
Public Prosecutor

.....Respondents

< Gist:

> Head Note:

! Counsel for the Appellant: Mrs. Naseeb Afshan

^ Counsel for the Respondent: Public Prosecutor (TS)

? Cases Referred:

1. (1995) 2 SCC 76
2. (2003) 3 SCC 21
3. (2007) 12 SCC 230
4. (2014) 7 SCC 443
5. AIR 1946 PC 45
6. AIR 1949 PC 257
7. AIR 1968 SC 1270
8. AIR 1980 SC 628
9. (2013) 14 SCC 266

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Criminal Appeal No.1121 of 2010

Date:21.6.2016

Between:

Syed Jahangeer,
S/o Yousuf

**.....Appellant/
Accused**

And:

The State of Andhra Pradesh, repled by its
Public Prosecutor

....Respondent

Counsel for the appellant: Mrs. Naseeb Afshan

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Criminal Appeal is instituted against judgment, dated 27.7.2010, in Sessions Case No.256 of 2008 on the file of the learned II Additional Sessions Judge (Fast Track Court), Adilabad, whereby he has convicted the appellant for the offence under Section-302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months.

The prosecution case, in brief, is that the accused is the uncle of the deceased (husband of the maternal

aunt of the deceased) and is a resident of Chamanpally Village of Laxmanchanda Mandal. The deceased was a resident of Shaik sahabpet, Nirmal. Since a long time prior to the date of occurrence, there were family disputes between the accused and P.W-2-his wife. On account of these differences, P.W-2 came to Nirmal and started residing with her mother-P.W-1, whose portion of the house is situated in the same premises belonging to the deceased. On 06.5.2006, the accused came to the house of P.W-1, picked up quarrel with P.W-2-his wife and beat her mercilessly. Meanwhile, P.W-1, L.W-2-Akram Bee and the deceased intervened and rescued P.W-2 from the hands of the accused. Thereupon, the accused uttered 'talak' twice to P.W-2 and threatened her with dire consequences that he will see her end and that of her family members and went away. Due to summer season, P.W-1, L.W-2, the deceased and other family members slept in front of their house on the cots and on the floor. On the intervening night of 06/07.5.2006, the accused, who bore grudge against P.W-2 and her family members, came to their house with a knife, mercilessly cut the throat of the deceased when he was in deep sleep on the cot and ran away from the spot.

At about 07 hours on 07.5.2006, P.W-1-the mother of the deceased went to the Police Station and lodged a report in Telugu about the occurrence leading to the death of the deceased. On receipt of the report, L.W-16-Sub-Inspector of Police, Nirmal Town Police Station registered Crime No.108 of 2006 for the offence under Section-302 IPC and issued express FIRs to all the officers concerned duly examining and recording the statement of P.W-1. Thereafter, P.W-9- Circle Inspector of Police, Nirmal took up investigation, visited the scene of offence, examined and recorded the statements of the witnesses, got the dead body of the deceased

photographed with the help of L.W-7-Bandari Raghu, secured the presence of P.W-6 and L.W-13-Shaik Ahmed, conducted inquest over the dead body of the deceased, during which, he has seized the blood stained earth, control earth, wearing apparels of the deceased, one blood stained piece of navar, blood stained cap of the deceased and blood stained piece of bed cloth under the cover of inquest for chemical analysis. Thereafter, the dead body of the deceased was sent to Government Hospital, Nirmal for conducting autopsy. P.W-9 examined and recorded the statements of L.Ws.8 to 11, who include P.Ws.3 to 5. On 09.5.2006, the accused surrendered himself before the Judicial First Class Magistrate, Nirmal-P.W-8 along with the crime weapon admitting his guilt about the commission of offence. P.W-8 recorded Ex.P-4-confessional statement of the accused, seized the crime weapon, remanded the accused to judicial custody and forwarded the accused to judicial custody. The Court of the Judicial First Class Magistrate, Nirmal forwarded the crime weapon i.e., knife used by the accused in the commission of offence to the Regional Forensic Science Laboratory, Warangal for examination and report and obtained the same. P.W-7-Medical Officer, Nirmal who conducted autopsy over the dead body of the deceased has issued Ex.P-3-post-mortem report opining that the cause of death of the deceased was due to shock and hemorrhage due to cut throat injury. After collecting the evidence, P.W-9 filed the charge sheet.

After the case was committed, the learned Sessions Judge, Adilabad framed the charge. As the accused has denied commission of offence, he was tried.

In order to prove the charge, the prosecution has examined P.Ws.1 to 9, got marked Exs.P-1 to P-16 and produced M.Os.1 to 9. On behalf of the defence, no oral

or documentary evidence was adduced.

On appreciation of the evidence on record, the Court below has convicted the accused and sentenced him as stated hereinbefore.

We have heard Ms. Naseeb Afshan, learned counsel for the appellant-accused and Mr. C.Pratap Redy, learned Public Prosecutor for the State of Telangana.

As noted hereinbefore, one of the crucial pieces of evidence, produced before the trial Court and relied upon by it, is Ex.P-4-confesional statement of the accused recorded by P.W-8. Before referring to this evidence, we would like to briefly refer to the evidence produced by the prosecution.

P.W-1 is the mother and P.W-2 is the paternal aunt of the deceased. Both these witnesses have not witnessed the commission of the offence. However, they have referred to the background in which the offence was committed. Both of them have deposed that in the afternoon of the intervening night on which the incident has occurred, the accused quarrelled with Akram Bee-L.W-2 (mother of P.W-1); that meanwhile, P.W-1 and the deceased intervened and pacified the matter; that the accused warned P.W-1 and the deceased with dire consequences to kill them and went away; that on the night following the said incident, the deceased came back to the house at about 1 am, had dinner and slept; and that in the early hours, L.W-2-Akram Bee informed P.W-1 that the deceased was laid down on the bed with cut injury on neck. Except making suggestions such as P.W-1 not mentioning in Ex.P-1 that the accused was responsible for the death of her son and that with a view to file a false case against the accused, she has stated for the first time in her Section-161 of the Code of Criminal Procedure (for short 'Cr.P.C.') statement that the

accused has caused death of the deceased, nothing relevant which could discredit the evidence of both these witnesses could be elicited. Since P.Ws.1 and 2 happened to be the interested and circumstantial witnesses, their evidence needs to be corroborated by an independent witness.

P.W-3, a resident of Nirmal and a neighbour of the deceased, deposed that he saw the accused one week prior to the date of the incident; that on the date of the incident, he saw the deceased at his house and noticed that there was a cut injury on his neck; that he came to know that the deceased was killed by the accused; and that on the date of incident, at about 4 am., he saw the accused while running and he focused his torch light on him and observed that he was holding a knife with him. He has further deposed that the Police examined him and recorded his statement.

In his cross-examination, P.W-3 deposed that he left his house at 4 am on the date of the offence for reaching the Water tank, situated at a distance of 4 kilometers from his house; that he reached the water tank within 20 minutes; that he was at the water tank for 30 minutes; that it takes 40 minutes for him to reach his home from the water tank after observing the nallas in the streets; and that he went to his house at 5.30 am. He has further stated that in his Section-161 Cr.P.C. statement, he has stated that he returned home by 5 am. He has also stated that he has focused the torch light from the back side. He has admitted that when he saw the person on the focus of the torch light, he cannot identify the face of the accused. He has also admitted that he has never stated with the relatives of the deceased and the public gathered at the house of the deceased that one person ran away with knife. He has also admitted that he is the neighbour of the deceased and that he did not raise hue

and cry after seeing the person who was running with a knife. He has denied the suggestion that himself, P.Ws.1 and 2 and L.W-2 colluded and foisted a false case with the help of Police against the accused.

A careful reading of the evidence of P.W-3 would, no doubt, reveal some contradictions therein, especially, relating to the identity of the person running away with a knife, as seen by him. In his chief-examination, he has clearly stated that at about 4 a.m., he saw the accused while running and he focused his torch light on the accused and observed that he was holding a knife with him. In his cross-examination, he has, however, stated that he has focused the torch light from the back side and that he cannot identify the face of the accused by focusing the torch light on him. The fact that P.W-3 is a neighbour of the deceased itself, does not lead to the presumption that he would have colluded with P.Ws-1 and 2 and L.W-2 to depose falsely against the accused. However, as the evidence of P.W-3 on the identity of the accused is somewhat hazy and there is also some discrepancy in his evidence between his chief-examination and cross-examination regarding the time at which he has seen the accused running away with a knife in his hand, it is not safe to rely upon his testimony.

Let us now discuss Ex.P-4. On 09.5.2016, at 10.15 am., P.W-8-Judicial First Class Magistrate, Nirmal has recorded the statement of the accused.

A perusal of Ex.P-4 reveals that at the end of the statement recorded by P.W-8, he has stated that he has recorded the statement of the accused when the latter has voluntarily come to the Court to surrender before it; that he gave precautions to the accused that he is not bound to give any statement; that if any statement is given, it should be used against him; and that, when he has asked the accused why he is making confession, the

latter has stated that he is voluntarily making an admission without any compulsion or coercion from others. P.W-8 further mentioned that he has recorded the statement after satisfying himself that the accused has given his statement voluntarily and without coercion; that as he was not perfect in understanding Urdu, he asked the accused to clarify the meaning of the word '*salee*' as, he has not properly understood the meaning of the said word and described the same by mistake as 'sister' instead of 'sister-in-law'. It is further stated that on being informed by his Attender that a person came with a knife when he was in his chambers, he immediately proceeded to the Court hall and recorded the statement of the accused between 10.15 am and 10.30 am. At the end of the statement, P.W-8 signed. The accused has subscribed his thumb impression at the bottom of page-1 and at the middle portion of page-2, at which his statement ended.

P.W-8 was put to searching questions in his cross-examination, which we shall say he has withstood. While admitting that he has not given any time to the accused to rethink, he has, however, stated that he has explained the consequences of confessional statement to the accused. He has also explained the reason for his not asking the accused to rethink as, he was satisfied that the accused was giving the confessional statement voluntarily. While stating that he has not directly asked the accused whether there was any coercion by the Police, he has further explained that the accused himself has stated before him that without any coercion or compulsion from others, he has given the statement voluntarily. He has admitted that under Ex.P-4, he has not given cautions to the accused in writing prior to the recording of the confessional statement.

We shall now consider whether P.W-8 has followed

the procedure prescribed for recording Section-164 Cr.P.C. statement.

Section-164 Cr.P.C. authorizes that any Metropolitan Magistrate or Judicial Magistrate, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation. Sub-section-(2) thereof prescribed the procedure to be followed while recording such confession. It adumbrates that a Magistrate before recording the confession, must explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and that the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily. Sub-section-(3) thereof provides that if at any time, before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody. Under Sub-section-(4) thereof, the confession shall be recorded in the manner provided in Section-281 Cr.P.C. for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.”

Section-281 Cr.P.C. laid down the manner in which

the Metropolitan Magistrate or other Magistrate shall record the statement of the accused and it *inter alia* provides that the statement of the accused shall be recorded by the Magistrate himself including every question put to the accused and every answer given by him or where he is unable to do so, owing to physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf. Under this provision, the statement shall be signed by the accused and also by the Magistrate or Presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

If we consider Ex.P-4 in the light of the procedure envisaged by the afore-mentioned two provisions, we have least doubt that P.W-8 has scrupulously complied with the procedure prescribed by these provisions.

One minor procedural irregularity committed by P.W-8 was his not mentioning at the beginning, before the actual statement of the accused, what he has recorded at pages-2 and 3, *viz.*, that he was satisfied that the accused was making the statement voluntarily and that he has also cautioned the accused that he is not bound to give any statement and that, if any statement is given, it should be used against him.

In our opinion, this is not a serious procedural illegality as, what the Court needs to be satisfied is whether the Magistrate before recording the statement has sensitized the accused on two aspects, *viz.*, (1) that he is not under obligation in law to make any statement; and (2) that, if he makes such statement, it will be used against him as evidence in the case.

Ex.P-4 clearly reveals that before the Magistrate has started recording the statement of the accused itself,

he has informed the accused on the above two mentioned aspects and that, thereafter, the accused has made his statement.

From the statement recorded by P.W-8, it could be seen that the accused has briefly narrated the facts which led to the commission of the offence by him and also the manner in which he has committed the same. He has stated that he has spent huge amount on the treatment of his wife, who was admitted in the hospital due to illness; that about 20 to 25 days back, when he was in hospital, he came to know that his wife's sister, her husband and her son were crying and that he went to their house to know as to why they were crying and immediately, Kareem Mohamed Wazer attacked and beat him by saying that he has stolen the gold from their house; that he has given complaint to the Police; that the Police have not taken any action against them; that he has reported the matter to the Councilor, who has also not taken any action against them; and that, therefore, he decided to take revenge by killing them. He has further stated that about 2 or 3 days back, at about 4 am., he went to the house of Shaik Jamel Wazer (father of the deceased) with talwar (knife), saw the deceased sleeping in front of the house on a cot; that he has killed the deceased by cutting his throat; and that the deceased died on the spot. He has further stated that he has fled away to Jagityal and thrown the knife in the well; that as he came to know that the Police were causing harm to his father and brother-in-law, he decided not to give any trouble to them and accordingly, he decided to surrender before the Court along with the knife.

In several judgments, the Supreme Court has laid down the manner in which a statement under Section-164 Cr.P.C. has to be recorded. In ***Shivappa Vs. State of Karnataka***^[1], it dealt with in detail the procedure to be

followed by the Magistrate while recording the confession under Section-164 Cr.P.C.

It is instructive to reproduce the relevant part of the judgment hereunder:

“From the plain language of Section 164 CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 CrPC, it is manifest that the said provisions emphasis an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 CrPC. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 CrPC and the rules framed by the High Court is imperative and its non- compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for

reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of [Section 164](#) namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.”

In ***Bhagwan Singh Vs. State of M.P.***^[2] the Supreme Court held that when the judicial confession is found to be not voluntarily made and more so, when such confession is retracted, it is not safe to rely upon such confession or even treat it as a corroborative piece of evidence in the absence of other reliable evidence.

In ***Aloke Nath Dutta Vs. State of W.B.***^[3], the Supreme Court held that Section-164 Cr.P.C. makes the confession before a Magistrate admissible in evidence; that Section-164 Cr.P.C. takes into its embrace the right of the accused flowing from Article-20(3) of the Constitution of India as also Article-21 thereof; and that although Section-164 Cr.P.C. provides for safeguards, the same cannot be said to be exhaustive in nature. It

was further held that in a case, where confession is made in the presence of a Magistrate conforming to the requirements of Section-164 Cr.P.C., if it is retracted at a later stage, the Court should probe deeper into the matter; that despite the procedural safeguards contained in the said provision, the learned Magistrate should satisfy himself whether the confession was of voluntary in nature and that the judicial confession must be recorded in strict compliance with the provisions of Section-164 Cr.P.C. and while doing so, the Court shall not go by the black letter of law as contained in Section-164 Cr.P.C., but, must make further probe so as to satisfy itself that the confession is truly voluntary and had not been by reason of any inducement, threat or torture.

In ***Mohd. Jamiludin Nasir Vs. State of W.B.***^[4], the Supreme Court held that what is to be required while recording the confessional statement of the accused under Section-164 Cr.P.C is that the same is made voluntarily by the offender; that there was no external pressure particularly by the police; that the concerned person's mindset while making the confession was uninfluenced by any external factors; that he was fully conscious of what he was saying; that he was also fully aware that based on his statement. there is every scope for suffering the conviction which may result in imposition of extreme punishment of life imprisonment and even capital punishment of death; that prior to the time of making the confession, he was in a free state of mind and was not in the midst of any persons who would have influenced his mind in any manner for making the confession; that the statement was made in the presence of the Judicial Magistrate and none else; that while making the confession, there was no other person present other than the accused and the Magistrate concerned; and that if he expressed his desire not to

make the confession after appearing before the Magistrate, the latter should ensure that he is not entrusted to police custody.

A careful perusal of Ex.P-4, in our opinion, shows that it strictly conforms to the law laid down in the aforementioned judgments.

What is the evidentiary value of Section-164 Cr.P.C. statement is the next question which needs our consideration.

When the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced, the Police Officer may feel that it is expedient to record the statement of a witness under Section 164 Cr.P.C. (Vide ***Mamand Vs. Emperor***^[5], ***Bhuboni Sahu Vs. R.***^[6], ***Ram Charan Vs. State of U.P.***^[7], and ***Dhanabal Vs. State of Tamil Nadu***^[8]). In ***R. Shaji Vs. State of Kerala***^[9], the Supreme Court, dealing with the evidentiary value of the statements under Section 164 Cr.P.C., held as under:

“Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the Magistrate should ask the witness

explanatory questions and obtain all possible information in relation to the said case.

So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted [Vide *Jogendra Nahak v. State of Orissa*, (2000) 1 SCC 272; and *Collector of Central Excise v. Duncan Agro Industries Ltd.*, (2000) 7 SCC 53].

Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.”

As held by the Apex Court in the afore-discussed judgment, the confessional statement under Section-164 Cr.P.C. is admissible in evidence and can be used for contradiction as well as corroboration.

In the instant case, what needs to be observed is that the accused himself approached the Magistrate and he stated before him that he was making the statement voluntarily without any compulsion or coercion from others. The very fact that he was not under the Police custody or not brought by the Police itself shows that he is completely free from any external influence and his statement was purely voluntary.

A perusal of Section-313 Cr.P.C. statement of the

accused shows that to question No.6, which pertains to his statement recorded by P.W-8, the answer given by the accused was “not true”. He has not explained that either he has not made the statement voluntarily or that, he was not made aware of the consequences of making such statement by the Magistrate. Besides Ex.P-4, the testimony of P.Ws.1 and 2 amply support the prosecution case, proving the involvement of the accused in the commission of the offence.

Hence, in our opinion, it is absolutely safe to rely upon Ex.P-4 and the testimony of P.Ws.1 and 2 to convict the accused for the offence under Section-302 IPC.

In the above facts and circumstances of the case, we do not find any reason to interfere with the judgment of the lower Court and the Criminal Appeal is, accordingly, dismissed.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

21st June 2016

Note:

LR copies to be marked.

B/o

DR

[\[1\]](#) (1995) 2 SCC 76

[\[2\]](#) (2003) 3 SCC 21

[\[3\]](#) (2007) 12 SCC 230

[\[4\]](#) (2014) 7 SCC 443

[\[5\]](#) AIR 1946 PC 45

- [\[6\]](#) AIR 1949 PC 257
- [\[7\]](#) AIR 1968 SC 1270
- [\[8\]](#) AIR 1980 SC 628
- [\[9\]](#) (2013) 14 SCC 266