

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

MONDAY, THE 29th DAY OF FEBRUARY
TWO THOUSAND AND SIXTEEN

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

CRIMINAL APPEAL No.816 of 2010

Between:

N.Lakshmi Devi

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

Counsel for the Appellant : **Sri M.ANNAPPA SASTRY**

Counsel for the Respondent : **PUBLIC PROSECUTOR (A.P.)**

The Court made the following:

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

CRIMINAL APPEAL No.816 of 2010

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

The appellant-accused was charge sheeted by the Inspector

of Police (Urban), Madanapalle, in Cr.No.13 of 2009 of Madanapalle I-Town P.S., alleging offence punishable under Section 302 IPC. She has been tried by the learned Sessions Judge of Chittoor Division at Madanapalle in S.C.No.338 of 2009. Vide Judgment, dated 09-02-2010, the appellant-accused has been found guilty of the charge, and convicted and sentenced to undergo imprisonment for life and a fine of Rs.100/-, in default simple imprisonment for one week.

2. Facts in brief are as under:-

The appellant-accused was married to one Vijayasagar. She was suffering with Tuberculosis and Diabetics. The deceased Gangulamma @ Laxmidevi was married to one Chinna Ganganna and they had a son, who is examined as PW.2. In the year 2007, Chinna Ganganna died. Thereafter, the deceased moved here and there and about four months prior to the incident viz., 21-01-2009, the deceased developed illicit intimacy with Vijayasagar, the husband of the appellant-accused. Both of them are said to have moved to a rented house at Buggakalva of Madanapalle town. The appellant-accused also used to visit the said tenanted premises where her husband Vijayasagar and the deceased were living. By that date, the deceased was having a son, aged about six months. The deceased used to go out of the house at about 10.00 a.m., in the morning, by entrusting the child to the appellant-accused and returning in the evening. The appellant-accused and her husband came to know that the deceased is leading a questionable life. In that connection, there used to be quarrels between the deceased and the appellant-accused.

On 21.01.2009 at about 10.00 a.m., the deceased is said to have left the house leaving the child in the company of the appellant-accused and returned home at about 07.00 p.m. At

about 09.30 p.m., the appellant-accused questioned the deceased about her behaviour and there ensued a quarrel. The appellant-accused got angry, picked up an iron sickle from the house and hacked the deceased on the left side of the cheek and neck, resulting in her instantaneous death. The appellant-accused left the house along with the child and the iron sickle which she concealed at Buggakalva. She hid herself throughout the night due to fear and subsequently, on 22.01.2009 at about 09.30 a.m., she approached Muniraj (PW.1) and confessed having committed the crime. PW.1 produced the appellant-accused along with the written complaint before the S.I. of Police (PW.6) and on its basis, crime was registered, investigation was taken up by the Inspector of Police (PW.8), who secured the presence of Mandla Srinivasulu (LW.7) and Janne Subba Naidu (LW.8) and in their presence, recorded the confession statement of the appellant-accused and effected her arrest. Thereafter, PW.8 proceeded to the scene of offence along with PW.5 and two others (L.Ws.7 and 8), reached the scene of offence and found the dead body of the deceased lying in her house at Buggakalva. The Inspector of Police (PW.8) secured the presence of PWs.1 to 3 and 5 and two others and in their presence conducted the inquest, recorded the statements of the witnesses and sent the dead body to the Area Hospital, Madanapalle for autopsy, prepared a rough sketch of the scene of offence, seized the crime weapon under cover of panchanama and sent the appellant-accused to judicial remand. The Medical Officer (PW.7) conducted post-mortem over the dead body and opined that the deceased died due to hypovolemic shock due to blood loss caused by multiple injuries on face and neck. The incriminating material objects such as the clothes of the deceased and the appellant-accused, the iron sickle, controlled earth etc.,

were sent to the Forensic Science Laboratory.

After completing the investigation, the charge sheet was filed before the jurisdictional Magistrate and after completing the statutory requirements, the case was committed to the Court of Sessions and during the course of trial, when examined under Section 239 Cr.P.C., the appellant-accused denied the accusations and hence trial was taken up, during the course of which, the prosecution examined PWs.1 to 8 and produced Exs.P.1 to P.15 and M.Os.1 to 12. At the conclusion of the evidence of the prosecution witnesses, the accused was examined under Section 313 Cr.P.C. She denied the evidence on record and stated that she does not know anything about the case and that she has got nothing to say.

After hearing the arguments of the both sides and after considering the oral and documentary evidence on record, by the impugned Judgment, the learned Sessions Judge has found the appellant-accused guilty and sentenced her, as stated above. Aggrieved by that, the present appeal is filed.

3. Learned Counsel appearing for the appellant-accused submits 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 appellant-accused who has committed the crime. That excepting for the alleged extra-judicial confession said to have been made by the appellant-accused before PW.1 and the alleged confession of the appellant-accused, absolutely no evidence is placed before the Court by the prosecution and the learned Sessions Judge has erred in accepting the evidence of the prosecution witnesses and convicting the appellant-accused. Learned Counsel further submits that in a case based on circumstantial evidence, motive

plays a predominant role and the presence or absence of motive tilts the scale. Learned Counsel submits that there is absolutely no motive, whatsoever, for the appellant-accused to cause the death of the deceased, more particularly, since she has accepted the illicit relationship between her husband and the deceased and not only that she was regularly visiting them but also she was taking care of the infant of the deceased. Learned Counsel submits that according to the prosecution, the motive is said to be the errant character and conduct of the deceased and for that the appellant-accused need not nurture any grievance since the deceased was a woman kept by her husband. Learned Counsel submits that the conviction and sentence of the appellant-accused cannot be sustained.

4. On the other hand, learned Public Prosecutor submits that based on the extra-judicial confession made by the appellant-accused before PW.1 and her subsequent confession leading to the recovery of the incriminating crime weapon, the Court below has found the appellant-accused guilty and the conviction and sentence is based on the legally acceptable evidence warranting no interference.

5. The point for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt so as to sustain the conviction and sentence or whether it needs to be set aside, modified or varied?

6. **Point:-** The case is based on circumstantial evidence. According to the prosecution, when the appellant-accused hacked the deceased to death at about 09.30 p.m., on 21.01.2009, none were present in the house. About 12 hours thereafter i.e., at about 09.30 a.m., on 22.01.2009, the appellant-accused is said to have voluntarily approached PW.1 and confessed having killed the

deceased in the previous night. PW.1 is said to have recorded the inculpatory confession of the appellant-accused and produced both the confessional statement and also the appellant-accused before the jurisdictional police, who swung into action and completed the investigation, during the course of which the accused is said to have confessed before the police and the panchas and led to the discovery of a material fact viz., recovery of the iron sickle with which the appellant-accused allegedly hacked the deceased, which was hidden in bushes behind the guest house.

7. What are the essential requisites to be proved by the prosecution in a case based on circumstantial evidence is by now well settled and there is a catena of authorities on this aspect.

8. In **DHARAM DEO YADAV v. STATE OF U.P.** ^[1] in para 14 the Supreme Court has succinctly put the requirements in the following words:-

“We have no eye-witness version in the instant case and the entire case rests upon the circumstantial evidence. Circumstantial evidence is evidence of relevant facts from which, one can, by process of reasoning, infer about the existence of facts in issue or factum probandum. In Hanumant, son of Govind Nargundkar v. State of Madhya Pradesh (AIR 1952 SC 343), this Court held as follows:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance, be fully established and all the facts so established should be consistent only with the hypotheses of the guilt of the accused. Again, the circumstances would be of a conclusive nature and tendency and they should be such as to exclude but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable

ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.” Each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. Even when there is no eye-witness to support the criminal charge, but prosecution has been able to establish the chain of circumstances which is complete leading to inference of guilt of accused and circumstances taken collectively are incapable of explanation on any reasonable hypothesis save of guilt sought to be proved, accused may be convicted on the basis of such circumstantial evidence.”

9. In **PADALA VEERA REDDY v. STATE OF A.P. AND**

ORS.^[2], the Supreme Court has laid down that in a case of circumstantial evidence, such evidence must satisfy the following tests.

- "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) 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 none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of

explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra* (1982) 2 SCC 351)."

The above principles were reiterated by the Apex Court in several subsequent Judgments reference to which is unnecessary in the present context of the case.

10. In the case on hand, according to the prosecution, the circumstances which are sufficient to nail the accused and connect her with the crime are firstly that she made an extra-judicial confession before PW.1 and subsequently, even during the course of investigation, in the presence of the panch witnesses, she confessed having committed the crime and led to the recovery of M.O.3, which is the weapon used in the commission of the crime. Except these two circumstances, no other circumstances are shown to connect the accused. Insofar as the motive is concerned, as noticed above, it is as fragile as it could be for the reason that it is difficult to believe that a legally wedded wife of a person would have killed the concubine of her husband on the ground that the said woman is of a questionable character. As already stated, motive is the pre-requisite for proceeding to connect the links in the chain of circumstances. In the instant case, we find that the motive is very weak and it cannot be said that it is strong so as to conclude that the appellant-accused would have resorted to the heinous act of brutally hacking to death another woman in the life of her husband merely because she was of suspicious character.

11. Insofar as the extra-judicial confession is concerned, the law is well settled. It is a weak link in the chain of circumstances. In

VIJAY SHANKAR v. STATE OF HARYANA^[3], 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.

12. In **SAHADEVAN AND ANOTHER v. STATE OF TAMIL NADU**^[4], 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.”

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

STATE OF TAMIL NADU^[5], 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.”

14. In view of the above principles which are to be kept in mind by the Court while examining the acceptability and evidentiary value of the extra-judicial confession, we may now refer to the extra-judicial confession in the instant case which is said to have been made before and recorded by PW.1, which is Ex.P.1.

15. PW.1 is said to be an elderly person and the President of the local Bharatiya Janata Party and also the State Secretary for the Valmiki Sangham. He is a resident of Madanapalle Town. The

appellant-accused is a native of Bhumulagadda village, which according to PW.1 is at a distance of about 12 KMs., from Madanapalle Town. When PW.1 claims to have acquaintance with the appellant-accused woman for more than six or seven years, he says that he does not know the husband of the appellant-accused or his avocation. It is also admitted by PW.1 that the house of a Municipal Counsellor is very close to the house of the deceased Gangulamma where the alleged incident is said to have taken place. The incident took place at about 09.30 p.m., on 21.01.2009 and according to PW.1, the accused came to him at about 09.00 a.m., on 22.01.2009 along with the small child and she informed him that herself and the deceased had a quarrel in the matter of sharing of meat (mutton), which was brought by her husband and that in the said quarrel the deceased Gangulamma tried to beat the appellant-accused with a pestle and apprehending danger to her life, the appellant-accused is said to have hacked the deceased with a sickle on neck. PW.1 further claims that the appellant-accused told him that since he is the elderly person, she is approaching him for necessary help. It is the further evidence of PW.1 that he advised the appellant-accused that since it is a case of murder, it is better to approach the police. Thereafter, PW.1 visited the house of the deceased and after seeing her dead body, he alerted the police on phone and also the detention of the appellant-accused at his house. PW.1 further claims that the police, Madanapalle, came to the scene of offence within five minutes thereafter and then he prepared the confessional statement of the accused and incorporated the same in his report which he submitted to the police when they came to the scene of offence. According to PW.1, Ex.P.1 bears not only his signature but also the thumb impression of the appellant-accused. PW.1

claims that he produced the appellant-accused before the C.I. of Police and S.I. of Police and that PW.1 did not observe as to whether the clothes of the appellant-accused were stained with blood when she appeared before him and produced before the police.

16. A perusal of the above evidence of PW.1 raises number of suspicious aspects. According to PW.1, he is not a resident of the immediate neighbourhood. He claims to be residing at Madanapalle Town whereas the appellant-accused is a resident of Bhumulagadda village, which is at a distance of about 12 KMs.

17. PW.1 claims that the appellant-accused approached him in the morning at 09.00 a.m., and he handed her over to the investigating agency who claims to have seized the blood stained saree and blouse of the appellant-accused. Significantly, PW.1 claims that he did not observe any blood stains on the wearing apparel of the appellant-accused.

18. The sequence of events, as per PW.1, are that the appellant-accused came to him and confessed having committed the crime and asked her to approach the police. He does not say as to what happened thereafter. However, PW.1 claims that he immediately visited the house of the deceased and after seeing the dead body, alerted the police who came to the scene of offence within five minutes. Thereafter, PW.1 says that he prepared the confessional statement of the appellant-accused and incorporated the same in his report and submitted the same to the police when they came to the scene of offence. What could be gathered from this claim of PW.1 is that even though the appellant-accused has confessed before him even before he went to the scene of offence, he did not prepare any statement which is required to be verbatim in the words of the appellant-accused, but significantly, he went to the

scene of offence and after confirming about the death of the deceased, he alerted the police and only after the police arrived, he prepared the statement purported to be the confession of the appellant-accused and handed it over to the police at the scene of offence itself. It is manifest that the so-called confession of the appellant-accused was reduced into writing only after the police arrived there.

19. PW.1 further claims that on the confessional statement of the appellant-accused, he obtained the thumb impression of the latter. The appellant-accused denied having put any thumb impression on the confessional statement. A perusal of Ex.P.1, which is the statement, raises any amount of doubt as to whether the contents therein were reduced into writing first and thereafter the thumb impression of the appellant-accused was obtained. Ex.P.1 is the statement which is written on either side of a foolscap paper. The statement ends on the second page at half of the page itself. There is sufficient space on the page after the contents for obtaining the thumb impression of the appellant-accused if really it was written before obtaining the thumb impression. On the other hand, Ex.P.1 shows that the thumb impression of the appellant-accused is obtained on the upper part of left hand side margin of second page which leaves no room for doubt that the thumb impression was obtained on a plain paper but not after the statement was reduced into writing. Had the latter been the case, her thumb impression would have certainly appeared underneath her statement for which there was considerable space.

20. PW.1 further admits that in the complaint-Ex.P.1, he stated that after confirming the death of the deceased by visiting the scene of offence, he returned to his house and again took the

accused to the scene of offence and meanwhile, police came there and he handed over the appellant-accused to the police. This claim of PW.1 is contrary to what he deposed in the earlier part of his statement.

21. According to PW.1, he stated in Ex.P.1 that the incident proper is said to have taken place after a quarrel took place in between the deceased and the appellant-accused in the matter of the sharing the meat brought by their husband. However, Ex.P.1 depicts another story. As per Ex.P.1, the appellant-accused is said to have informed PW.1 as under:-

“... .. Every day morning Gangulamma @ Lakshmi by leaving her child in the house, used to stay outside and again at evening hours she used to come to the house and if asked, she used to come against me to beat me and yesterday that is on 21.1.09 in morning 10 hours, Gangulamma @ Lakshmi left her child in the house and went away and came at night at about 7-00 P.M. to the house. At that time, I quarrelled with Gangulamma @ Lakshmi and I thought to kill Gangulamma @ Lakshmi and on that night at 9.30 hours, I took matchu mathi from the house and hacked Gangulamma @ Lakshmi on face and on neck and killed. Thereafter, she took the baby and came out from the house and hide with fear and today that is on 22.1.09 at 9.30 a.m., she approached me and requested to save her.”

Absolutely there is no reference, whatsoever, about there being any dispute in the matter of sharing the meat.

22. It is also admitted by PW.1 that very close to the scene of offence where the appellant-accused, the deceased and husband was living, there is house of Municipal Counsellor, but for unknown reasons, the appellant-accused is said to have approached PW.1 at a far off place and spilled the beans which is not in consonance with the natural human conduct. It is the consistent case of the prosecution that the appellant-accused herself was suffering with

serious ailments such as Tuberculosis and Diabetics and that she is a lady, aged about 45 years. It is difficult, nay impossible to believe that such a lady would have hidden herself in the bushes for about 12 hours after committing the heinous crime, and thereafter travel for a considerable distance and make the confession in the presence of PW.1 and seek his help.

23. Significantly, the prosecution and its witnesses are conspicuously silent about the absence or presence throughout of Vijayasagar, the husband of the accused, who has developed amorous relationship with the deceased.

24. PW.6 is the S.I. of Police before whom PW.1 is said to have produced the confessional statement – Ex.P.1 and also the appellant-accused. According to PW.1, he handed over Ex.P.1 and also the accused to both the S.I. of Police as well as the C.I. of Police when they visited the scene of offence. PW.1 specifically also names the C.I. of Police before whom he produced the appellant-accused as well as Ex.P.1. According to PW.6, the S.I. of Police, the appellant-accused was produced before him by PW.1 along with Ex.P.1 at about 11.00 a.m. The C.I. of Police, who has been named by PW.1, is examined as PW.8. According to him, he took up the investigation and when he reached the police station, he found the S.I. of Police, PW.1 and the appellant-accused in the police station and PW.8 made enquiries from the S.I. of Police (PW.6) about their presence. According to PW.8, he proceeded to the scene of offence after recording the confessional panchanama of the appellant-accused, effecting the recovery of the crime weapon and seizing the blood stained clothes of the appellant-accused. He prepared the scene of offence panchanama and the inquest was held in between 02.00 p.m., to 05.00 p.m.

25. If the evidence of the Investigating Officers is juxtaposed with that of PW.1, there are several inconsistencies which affect the credibility of the testimony of PW.1.

26. In view of the above factual scenario what emerges upon appreciation of the oral and documentary evidence on record is that the prosecution could not establish beyond reasonable doubt that it is the appellant-accused who made any extra-judicial confession in the presence of PW.1 and its endeavour in that direction is too weak to carry the case further.

27. It is also noticed from the scene of offence panchanama that almost abutting the house where the incident took place, there are several houses belonging to one Babu, Eshwaramma, Ramchander, Surender (PW.4), Sk.Sunima and Sk.Nawaz Ali. Excepting PW.4, the prosecution has not examined any other neighbouring residents. The violent incident is said to have taken place at about 09.30 p.m., which is not a late night hour when neighbours could not be expected to hear the commotion or galata said to have taken place in the house of the deceased and the appellant-accused. Even though, PW.4 is not said to be a direct eye-witness to the incident, but according to the prosecution, he reached the house where the incident took place and which was just in front of his house immediately after the incident took place on hearing the commotion inside. This claim of the prosecution is falsified by the evidence of PW.4 who deposed that even though he was resident of the house opposite to the scene of offence and at the time when the offence is alleged to have been committed, he has neither seen nor heard anything unusual there. Only on the next day morning, he has seen the people gathering in front of the house of the deceased and his enquiries revealed that the deceased has been murdered the previous night. He is treated

hostile by the prosecution and in the cross-examination, he denied that he reached the scene of offence immediately after the incident took place and he has seen the appellant-accused going away hurriedly holding a sickle in her hand and a small kid in another hand. He also denied having stated before the police as in Ex.P.4. Therefore, in view of the above, the prosecution could not even establish that immediately after the incident any neighbouring resident has seen the appellant-accused in the vicinity leave alone her walking out of the house carrying with her the sickle with which she is alleged to have killed the deceased and also the two month old child which was at the place where the incident took place.

28. The other material aspect is the requirement of there being medical evidence which should be on all fours with the case of the prosecution. In the instant case, PW.7 is the Medical Officer who conducted the autopsy over the dead body of the deceased. It may be recalled that the deceased died at 09.30 p.m., on 21.01.2009 and the death was said to be instantaneous. The Medical Officer-PW.7 corroborates the fact that considering the nature of the injury, which has cut the main blood vessel on the neck which supplies blood to the brain, the death could have taken place within ten minutes after the attack. According to the Doctor, he conducted autopsy over the dead body of the deceased at 09.30 a.m., in the morning, on 23.01.2009. As per his opinion, the time of death of the deceased was about 12 to 15 hours prior to his conducting the post-mortem examination. Not only in the chief-examination but in the cross-examination he further clarified that since the incident is of January, which will be a winter season, the duration of the freshness of the dead body will be more and in that context he is giving the opinion that the death might have taken place about 12 to 15 hours prior to conducting the post-mortem

examination. This is quite at variance with the case of the prosecution. The deceased died exactly 36 hours prior to the conducting of post-mortem. The complaint of the death itself is lodged nearly 15 hours after the incident and throughout the day on 22.01.2009 the investigation went on and the dead body was sent to the Area Hospital for post-mortem examination only in the evening of 22.01.2009. The assertion of the Medical Officer – PW.7 that the death might have taken place 12 to 15 hours prior to his post-mortem examination brings the time of the death of the deceased in between 07.00 p.m., and 10.00 p.m., on 22.01.2009 but whereas the death in fact took place exactly 24 hours prior thereto. We are conscious of the fact that the medical science has not yet attained the precision and therefore even if a concession of an hour or two is given, the death, if what the Doctor says is believed, would not have taken place on 21.01.2009 at about 09.30 p.m., as is the case of the prosecution.

29. Another essential link to be established in the chain of circumstances is the voluntary confession which is required to be made in the presence of independent and respectable persons leading to the discovery of a fact or object which is exclusively within the knowledge of the person making the confession. In the instant case, according to the prosecution, after having killed the deceased on the night of 21.01.2009, after 12 hours, the accused approached PW.1 and disclosed to him that she has killed the deceased about 12 hours prior thereto. Thereafter, PW.1 claims to have gone to the Police Station by about 12.15 p.m., in the afternoon and handed over the statement – Ex.P.1 along with the accused to the Police Officer-PW.6. Therefore, the jurisdictional police were not aware about a grave crime having been committed within their jurisdiction for well about 15 hours. According to the

Investigating Officer-PW.8, on coming to know that the accused who was already present in the Police Station has committed the crime, sent a police constable and summoned the Revenue Inspector (PW.5) from the Office of the Tahasildar, Madanapalle, for acting as a panch witness for the confession which the suspect was about to make. However, even by that time the Police Officer was aware that it is the accused who already confessed before PW.1 that she perpetrated the crime.

30. In view of the above, the evidence of the panch witness – PW.5 is crucial for the prosecution. At the outset, it may be stated that the statutory requirement is that to the extent possible the investigating agency should secure the presence of the two local independent and respectable inhabitants but not resort to summoning persons from far off places to act as panch witnesses. As such, there is no embargo for the village officials to be the panch witnesses but their evidence will be susceptible to attack that they are the stock witnesses of the investigating agency. That is exactly what has happened in the instant case. PW.5 – the Revenue Inspector admits in the cross-examination that he has already given evidence in five or six other criminal cases in the Courts pertaining to the crimes committed within the jurisdiction of I-Town Police Station in which the present crime is registered.

31. Be that as it may, the evidence of PW.5 is found to be inconsistent with the other evidence that is produced by the prosecution. For instance, according to PW.5, the C.I. of Police has telephoned him and called him to the Police Station to act as panch witness. According to the Police Officers, they have sent a Constable to summon PW.5 and another to come and act as panch witnesses. According to PW.5, the confession panchanama of the

accused was recorded by the C.I. of Police and in the said confession itself, the accused is said to have confessed that she has hidden the crime weapon at a place which was within her exclusive knowledge. This confession panchanama which is Ex.P.5 does not show that in pursuance to the said confession, the crime weapon – M.O.3 was seized at the instance of the assailant. In pursuance to the confession panchanama – Ex.P.5, what all that is seized is the wearing apparel on the person of the accused, which are marked as M.Os.1 and 2. Therefore, Ex.P.5 – confession panchanama which is said to have been made by the accused while in the police custody cannot be said to be admissible insofar as it pertains to the recovery of the crime weapon – M.O.3.

32. It is further in the evidence of PW.5 that after recording the confession panchanama, which concluded by about 01.15 p.m., in the afternoon, PW.5, PW.8 – the C.I. of Police and others left the Police Station and proceeded to the scene of offence and conducted inquest over the dead body in between 02.00 p.m., to 05.00 p.m. Ex.P.7 is the inquest panchanama which also incorporates the fact of it being commenced at 02.00 p.m., and concluded at 05.00 p.m.

33. It is further in the evidence of PW.5 that thereafter they returned to the Police Station and from there they again went to Bakavani Topu along with the accused which is on the rear side of the R&B Guest House and the accused went inside the bushes and brought the sickle – M.O.3 which was seized under separate panchanama (Ex.P.8) at 06.15 p.m., in the evening., on 22.01.2009. On the contrary, it is in the evidence of the C.I. of Police – PW.8 that the crime weapon – M.O.3 was recovered from Bhavanitopu area and from bushes behind Vijayalaxdmi Godown.

According to PW.5, the said Buggakaluva is located almost at a distance of 300 ft., away from the compound wall of R&B Guest House and it is not in the evidence of PW.5 that the said place is behind Vijayalaxmi Godown, as claimed by the Investigating Officer.

34. Immediately after the alleged recovery of the sickle – M.O.3 from behind the bushes at the instance of the accused, the Investigating Officer – PW.8 admits that he did not pack and seal the sickle and affix the labels thereon as is mandatory. The explanation that is offered by the Investigating Officer – PW.8 for this omission is innocuous. He would have it that he did not pack the sickle – M.O.3 immediately after its recovery since the blood thereon was required to be dried up. The recovery of the sickle – M.O.3 is made nearly 21 hours after the incident. It is not possible to believe that even by the time of recovery of sickle after such a long gap of time the sickle would have contained wet blood stains requiring to be dried up which prevented the Investigating Officer from packing the same securely immediately. At this juncture, it may be appropriate to mention that if the evidence of PW.8 of there being wet blood stains on the sickle even by 06.00 p.m., on 22.01.2009 is read along with the evidence of the Doctor about the time of death, which according to the Medical Officer comes in between 06.00 p.m., to 09.00 p.m., on 22.01.2009 it creates any amount of doubt as to whether the incident has really taken place on the night of 21.01.2009 at 09.30 p.m., as claimed by the prosecution.

35. It is also in the evidence of PW.5 – the panch witness that the Inspector of Police has first interrogated the accused and after she made her entire statement, thereafter the C.I. of Police has reduced her statement in writing. According to PW.6, who is the

scribe of confession panchanama – Ex.P.5, the C.I. of Police has simultaneously interrogated the accused and on the narration made by the accused, he has given the dictation, which he scribed. Similar is the claim made by the C.I. of Police – PW.8, which is at variance with the claim of the PW.5, the independent panch witness, that the entire interrogation and confession was made by the accused and thereafter the said statement was reduced into writing. This aspect would not have been so relevant but for the fact that a serious doubt is raised about the confession panchanama itself being conducted between 12.15 p.m., to 01.15 p.m. It is admitted by the Investigating Officer – PW.8 that after completing the confession and recovery panchanama – Ex.P.5, they proceeded to the scene of offence and there the inquest panchanama over the dead body was conducted between 02.00 p.m., to 05.00 p.m. That means even by the time inquest proceedings were conducted, the Police Officers were having in their possession not only the assailant of the crime but also the inculpatory confession said to have been made by her. There is no reference whatsoever to the said material part of investigation in the inquest panchanama.

36. In view of the foregoing discussion, we have no hesitation in holding that the prosecution has failed to prove its case which is based on circumstantial evidence beyond reasonable doubt and the benefit thereof should invariably go to the accused. Learned Sessions Judge has not taken into consideration the above aspects while convicting the accused. Hence, the same is liable to be set aside. The point is accordingly answered.

37. In the result, the Criminal Appeal is allowed. The appellant-accused shall be released forthwith if she is not required in any other case. The fine amount, if any paid, shall be returned to the

appellant-accused.

Pending miscellaneous applications, if any, shall stand closed in consequence.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:29.02.2016

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

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CRIMINAL APPEAL No.816 of 2010
(per Hon'ble Sri Justice M.S.K.Jaiswal)

Date: 29th February, 2016

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[\[1\]](#) (2014) 5 SCC 509
[\[2\]](#) 1989 Supp (2) SCC 706
[\[3\]](#) AIR 2015 S.C., 3686
[\[4\]](#) (2012) 6 SCC 403
[\[5\]](#) (2010) 8 SCC 233