

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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CRIMINAL APPEAL NO.1123 OF 2010

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J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 26.08.2010 passed by the learned VII Additional Sessions Judge (Fast Track Court), Visakhapatnam, in Sessions Case No.13 of 2010, whereby the appellant/accused was convicted of an offence punishable under Section 302 IPC and sentenced to suffer rigorous imprisonment for life; pay a fine of Rs,100/- and in default thereof, undergo simple imprisonment for 15 days.

The case of the prosecution before the Sessions Court was as follows: P.W.1, the brother-in-law of Miryala Ramu, the deceased woman, submitted Ex.P.1 report to the Head Constable, Ravikamatham Police Station (P.W.6), on 30.08.2008 stating that his elder brother Appalanaidu, the husband of the deceased, had died about five years ago; that the deceased had an illicit affair with the accused who was living in Hyderabad but frequenting her house; that he had gone to the house of the deceased on 30.08.2008 at 7 A.M. to inform her not to come for transplantation operations in the fields owing to heavy rains; and that when he pushed open the doors of her house and gained entrance, he found the deceased lying dead. P.W.1 further stated in his report that when he enquired with Durga Prasad (L.W.2), the son of the deceased who was aged about six years, he informed him that the accused had come to the house; picked up an altercation with the deceased; tied a jacket (blouse) around her neck and killed her. P.W.1 therefore asked that necessary penal action be taken.

According to the Head Constable (P.W.6), even before receiving Ex.P.1 report from P.W.1, he had received a phone message from Gollapalem Village and reached the scene of the offence, whereupon P.W.1 submitted Ex.P.1 report to him. P.W.6 stated that he then registered a case in Crime No.28 of 2008 under Section 302 IPC and completed the necessary

formalities. Ex.P.8 is the FIR. The Inspector of Police, Kothakota Circle (P.W.8), commenced investigation and prepared the scene observation report (Ex.P.4) in the presence of panchas (P.W.4, P.W.5, K. Sambamurthy (L.W.14), M.Sathibabu and M.Devudamma). Ex.P.5 is the inquest report. P.W.8 thereupon examined P.Ws.1 to 3, Durga Prasad (L.W.2), Miryala Kalyanam (L.W.3), Shaik China Ammanna (L.W.5) and Kondapalli Rajulamma (L.W.7) and recorded their statements. He sent the dead body of the deceased for post mortem examination. P.W.7, the Civil Assistant Surgeon, Area Hospital, Narsipatnam, conducted the post mortem examination and ultimately opined that the cause of death, to the best of his knowledge, might have been due to asphyxia due to strangulation associated with organophosphorous poison, an insecticide. Ex.P.9 is the post mortem examination report. Ex.P.10 is the report of the Andhra Pradesh Forensic Science Laboratory and Ex.P.11 is the final opinion dated 05.12.2008 of P.W.7. P.W.8, the I.O., further stated that on 10.09.2008 at about 8.30 A.M., P.W.5 and K.Sambamurthy (L.W.14) produced the accused before him along with his confessional statement (Ex.P.6) dated 10.09.2008. P.W.8 stated that he also recorded the confessional statement of the accused (Ex.P.7) in the presence of the same mediators, arrested the accused and sent him for judicial remand. P.W.9, the Inspector of Police, Kothakota Circle, who took charge on 19.10.2008, stated that he found that the entire investigation in the case had been completed by his predecessor, P.W.8. He further stated that upon receipt of the report of the Forensic Science Laboratory (Ex.P.10), he laid the charge-sheet on 29.12.2008, alleging that the accused had illicit intimacy with the deceased and had caused her death by strangulation after getting her to consume poison and therefore committed an offence punishable under Section 302 IPC. The charge framed by the Sessions Court however read to the effect that on the night of 29.08.2008, the accused committed the murder of his concubine, the deceased, by strangulation.

The prosecution examined P.Ws.1 to 9 and marked Exs.P.1 to P.12 in evidence. A black blouse was marked as M.O.1. The accused did not choose to adduce any oral evidence but marked Ex.D.1, a portion of the

Section 161 CrPC statement made by P.W.3.

By the judgment under appeal, the Sessions Court held in favour of the prosecution, believing the extra judicial confession (Ex.P.6). The accused was accordingly convicted and sentenced.

Ms. A.Gayatri Reddy, learned counsel for the appellant/accused, would contend that there are any number of discrepancies and shortfalls in the case put forth by the prosecution and that the Sessions Court erred in accepting the prosecution's case and convicting and sentencing the appellant/accused.

Perusal of the evidence reflects the following salient points. P.W.1, the brother-in-law of the deceased, stated that he was aware of the illicit intimacy between the accused and the deceased.

According to him, this relationship developed after the death of his brother, the husband of the deceased. P.W.1 further stated that on the fateful day at about 7 A.M., he went to the house of the deceased to inform her that there would be no work in the fields owing to the heavy rains the previous night. He further stated that when he called the deceased from outside, there was no response and the son of the deceased, Durga Prasad (L.W.2), was playing with other children at a temple situated nearby, separated from the house of the deceased by one house. P.W.1 further stated that one Chinamma (L.W.5), the neighbour of the deceased, went and pushed the doors of the deceased's house open to find out why she was not responding to his calls. P.W.1 said that he followed Chinamma (L.W.5) to the room where the deceased was lying on the floor, flat on her back with her face upwards. P.W.1 further stated that Chinamma tried to wake up the deceased but she had died. He and Chinamma thereupon raised cries and upon hearing the same, Durga Prasad (L.W.2) came to them and informed them that the accused had put something in the mouth of the deceased, tied a blouse around her neck and throttled her to death. P.W.1 further stated that the accused might have killed the deceased because she had illicit intimacy with some others. In his cross-examination P.W.1 denied the suggestion that he had any disputes with the deceased or he was harassing her. He further denied that he had any illicit intimacy with the deceased.

Though Durga Prasad (L.W.2) was sought to be examined, the Sessions Court opined that it was not safe to rely on his evidence as he was not able to give rational answers owing to his tender age.

P.W.2 was the neighbour of the deceased and turned hostile. His evidence is therefore of no practical utility as nothing significant was elicited from him during his cross-examination.

P.W.3, the Zilla Parishad Territorial Constituency member of Ravikamatham Village, was examined to substantiate that all was not well between the accused and the deceased though they were involved in an affair.

P.W.4, the Village Revenue Officer of Marupaka Village, Ravikamatham Mandal, stated that he prepared Ex.P.1 report upon the narration of the incident by P.W.1. He also confirmed his participation in the investigation proceedings thereafter.

P.W.5, P.Sathibabu, was a mediator/pancha during the investigation proceedings. According to him, the accused came to the Panchayat Office, where Karnam Sambamurthy (L.W.14), the Vice Sarpanch, and he were present and confessed to them that he had killed the deceased as she developed illicit intimacy with others. P.W.5 stated that he scribed the confessional statement of the accused, who then affixed his signature thereupon. This confessional statement is Ex.P.6. P.W.5 stated that he and Karnam Sambamurthy (L.W.14) also affixed their signatures on Ex.P.6. P.W.5 further stated that the accused asked them to handover Ex.P.6 to the police at Kothakota. In his cross-examination P.W.5 confirmed that he did not know the accused prior to 10.09.2008. He denied the suggestion that the accused had not made the confession before him and asserted that he and Karnam Sambamurthy (L.W.14) took the accused to the police station.

On an objective analysis of the above aspects, this Court opines as under. In so far as the extra judicial confessions, Exs.P.6 and P.7, are concerned, this Court finds that no value can be attached to them. Admittedly, P.W.5 did not even know the accused prior to the date of the alleged confession. This confession was stated to have been made before P.W.5 and Karnam Sambamurthy (L.W.14), the Vice President, Marupaka

Panchayat. No explanation is forthcoming as to why Karnam Sambamurthy (L.W.14) was not examined before the Sessions Court. Once it is admitted by P.W.5 that he did not even have any acquaintance with the accused, it is highly improbable that the accused would have chosen to confess to a heinous offence before an utter stranger. When this confession (Ex.P.6) was produced before the I.O. (P.W.8), he also claimed that he recorded a further confessional statement (Ex.P.7). This confessional statement is squarely hit by Section 25 of the Indian Evidence Act, 1872, and carries no value whatsoever. There is no explanation forthcoming as to why a judicial confession was not recorded if the accused showed such willingness to confess to his guilt.

Further, according to P.W.1, the neighbour Chinnamma (L.W.5) entered the house of the deceased even before he did. However, she was also not examined before the Sessions Court. She would have been a crucial witness, being the first person on the scene along with P.W.1. P.W.1 further stated that Durga Prasad (L.W.2), who was supposedly an eye witness to the killing of the deceased, was playing with other children at a temple nearby. Durga Prasad (L.W.2) was about five years of age at that time but as per P.W.1, he clearly understood that the accused had throttled and killed his mother. If that be so, it is hardly believable that he would have been routinely playing with friends the next morning without raising a hue and cry.

Apart from these weaknesses in the case of the prosecution, the evidence of the doctor, P.W.7, and Exs.P.9 to P.11 marked by him introduce fatal complications. It is distressing to note that P.W.7, the doctor who conducted the post mortem examination, does not even indicate in clear terms as to what was the cause of death. The final opinion expressed by him as to the cause of death is as under:

‘The cause of death to the best of my knowledge might have been due to Asphyxia Due to Strangulation associated with Organophosphorous poison, an Insecticide traced in RFC report.’

The charge framed by the Sessions Court was significantly in relation to the act of strangulation alone. But, the Forensic Science Laboratory report

(Ex.P.10) reflects that organophosphate, an insecticide poison, was found in the stomach, intestine, liver and kidney of the deceased. However, the post mortem examination report (Ex.P.9) indicates that the ligature mark seen around the neck of the deceased was an ante-mortem injury. There is no indication as to the amount of poison found and as to how it was administered and by whom and its actual effect. As the poison, going by Ex.P.10 report, had already been digested, having reached the intestine, liver and kidney, it is not clear as to the role the poison may have played in causing the death of the deceased. The final opinion of P.W.7 that the death was due to strangulation associated with poisoning is neither here nor there, as these two causes are completely independent of each other and one cannot supplement the other. The deceased must have died either of strangulation or of poisoning but not both.

The only witness who spoke of the presence of the accused was L.W.2, the son of the deceased, who proved to be incompetent to give evidence. In the absence of his testimony and if the extra judicial confessions are ignored, there is no evidence whatsoever to tie the accused to the offence. As it is the case of the prosecution that the deceased had illicit intimacy with others, the possibility of some other person causing her death cannot be ruled out. Given the aforestated facts, reasonable doubt arises as to the guilt of the accused.

The Sessions Court failed to realize that the corroboration so called offered in relation to Ex.P.6 extra judicial confession was not independent corroboration at all. M.O.1, the black blouse said to have been used for killing the deceased, found mention in Ex.P.6. This, by itself, was no real corroboration whereby the said confession could have been accepted. It may be noticed that in **BALBIR SINGH V/s. STATE OF PUNJAB**^[1], the Supreme Court found the extra judicial confession of the accused therein to be highly improbable in the absence of any relationship of the accused with the Sarpanch and as no other good reason had been adduced to explain as to why the accused would have gone to the Sarpanch and confessed before him. The Supreme Court further pointed out that an extra judicial confession, even if believed, is considered a very weak piece of evidence and it should

not be accepted ordinarily without independent corroboration. This decision would therefore apply on all fours to the case on hand.

As pointed out by the Supreme Court in **PADALA VEERA REDDY V/s. STATE OF ANDHRA PRADESH**^[2], a conviction cannot be based on mere suspicion however strong it may be and to make out a case resting solely upon 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.

On examination of the evidence and material on record, this Court has no hesitation to hold that the aforestated tests are not satisfied in the case on hand and the conviction of the accused basing on the faulty evidence adduced cannot be sustained. The prosecution therefore failed to prove beyond reasonable doubt that the accused caused the death of the deceased and that it would qualify as an offence punishable under Section 302 IPC.

The appeal is accordingly allowed setting aside the conviction and sentence imposed upon the appellant/accused by the learned VII Additional District and Sessions Judge (Fast Track Court) , Visakhapatnam, under judgment dated 26.08.2010 in Sessions Case No.13 of 2010. The appellant/accused shall be set free forthwith if his confinement is not required in relation with any other case.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

28th JULY, 2016

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Note: Registry is directed to communicate operative
portion of the judgment forthwith.
B/o GJ

[\[1\]](#) AIR 1999 SC 3227

[\[2\]](#) AIR 1990 SC 79