

**THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL APPEAL No.542 of 2012

JUDGMENT: (*per Hon'ble Sri Justice M.Satyanarayana Murthy*)

The accused in S.C.No.258 of 2011 preferred this appeal under Section 374(2) of Cr.P.C aggrieved by conviction and sentence passed by IV Additional District & Sessions Judge, Visakhapatnam dated 30.04.2012, finding him guilty for the offence punishable under Section 302 of IPC.

2. It is a case where the appellant-accused hacked on the neck of his wife (deceased-Vanthala Rukno) suspecting her fidelity, in the presence of P.W.2-daughter-in-law, on 12.06.2011 during evening time on his return to home after completing his field work.

3. The appellant-accused was in the habit of suspecting fidelity of his wife-Vanthala Rukno whenever she went outside to answer calls of nature due to health or other reasons and in that connection he used to pick quarrels frequently, the deceased-Vanthala Rukno tried her best to convince him, in spite of that, the appellant-accused did not change his attitude and the deceased-Vanthala Rukno informed the said disputes to LWs-2 to 7. The deceased-Vanthala Rukno, being vexed with the attitude of the appellant-accused, stopped cooking in the house and they both used to have meal in the houses of their both sons and due to careless behaviour of the deceased, the appellant-accused bore grudge and decided to kill her, as she stopped cooking and was not attending to his needs.

4. While the matter stood thus, on 12.06.2011, when the appellant-accused returned home in the evening, after attending field work, he found the deceased-Vanthala Rukno had her meal and sleeping in the varandah without cooking food for him and then he went inside the house, picked up an axe, hacked on her neck, with a view to kill her and also hacked over her right shoulder and left arm,

as a result, she died instantaneously. P.W.2-daughter-in-law, after noticing the incident, rushed to the scene of offence and informed to P.W.3-her husband, who is son of the deceased-Vanthala Rukno and the appellant-accused. Thereafter, P.W.3 and Vanthala Munno, sons of the deceased, returned home from the fields, found the dead body of their mother, lying in the pool of blood and informed the said incident to P.W.1 who, in turn, lodged Ex.P-1-complaint with the Munchingputt police. P.W.6, the Head Constable, on receipt of information, registered crime against the appellant-accused, issued FIR marked as Ex.P-9 and P.W.7-Inspector of Police examined and recorded the statements of the witnesses, prepared observation report, rough sketch and got photographed the scene of offence, held inquest over the dead body of Vanthala Rukno in the presence of panch witnesses and sent the dead body for autopsy to Paderu Hospital and seized blood stained earth and controlled earth on the floor, arrested the appellant-accused on being surrendered by P.W.1-V.R.O. along with confessional statement of appellant-accused and seized M.Os.1 and 2, on being led by accused to the back side of his place and produced an axe covered with lungi from the bushes, under cover of mediators report, sent them to RFSL, Visakhapatnam for opinion and later sent the appellant-accused for judicial remand. On receipt of the opinion from RFSL and post mortem report, police filed charge sheet before the Judicial First Class Magistrate, Paderu who, in turn, made over the case to the IV Additional District and Sessions Judge, Visakhapatnam for trial and disposal, in accordance with law.

5. The trial Court, after securing the presence of the appellant-accused, framed single charge for the offence punishable under Section 302 of IPC and contents of the said charge were read over and explained to the appellant-accused, he pleaded not guilty and claimed to be tried.

6. During trial, prosecution examined P.Ws.1 to 7 and marked Exs.P1 to P12 and M.Os.1 to 5. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C, explaining the incriminating circumstances appeared against him and he denied the same, reported no defence evidence.

7. The trial Court, upon hearing argument of Public Prosecutor for State and defence counsel, recorded its findings that the appellant-accused perpetrated the murder of his wife Vanthala Rukno and found him guilty for the offence punishable under Section 302 of IPC, convicted and sentenced him to undergo life imprisonment and also to pay fine of Rs.500/- in default to undergo simple imprisonment for a period of six months.

8. The present appeal is filed challenging the conviction and sentence imposed by the trial Court, mainly on the ground that the case of prosecution is totally based on circumstantial evidence but prosecution failed to establish all links in the chain of circumstances so as to draw an inference that the appellant-accused is the person who hacked his wife Vanthala Rukno with an intention to kill her. Therefore, in the absence of substantive evidence on record, the conviction and sentence recorded by the Court below is erroneous and prayed to set aside the same.

9. Learned counsel for the appellant-accused, during the course of arguments, had drawn the attention of this Court to the evidence of P.Ws.2 and 3 and contended that, since they are not direct witnesses, their evidence if excluded from consideration, there is absolutely no iota of evidence to connect the appellant-accused with the offence punishable under Section 302 of IPC and requested the Court to acquit the accused, finding him not guilty for the said offence.

10. Learned Public Prosecutor contended that P.W.2 is the direct witness to the incident and the said fact was recorded by the trial Court in paragraphs 9 and 15 of its judgment. He also contended that

in addition to the evidence of P.W.2, the extra judicial confession made by the accused-appellant before the V.R.O. is a strong circumstance to convict the appellant-accused for the offence punishable under Section 302 of I.P.C and requested the Court to dismiss the appeal.

11. On considering rival contentions and perusing the material available on record, the point arises for consideration is

“Whether the appellant-accused hacked his wife with an intention to kill her and with knowledge that those injuries are sufficient to cause death in normal course of events and, if not, whether the order of conviction and sentence passed by the IV Additional District and Sessions Judge, Visakhapatnam is liable to be set aside?”

POINT:

12. No dispute about the relationship between the deceased Vanthala Rukno and the accused-appellant, so also P.Ws.2 and 3, who are daughter-in-law and son of the deceased Rukno and the accused-appellant. The main contention of learned counsel for the appellant-accused is that the case is based on circumstantial evidence and the prosecution miserably failed to establish all links in the chain of circumstances so as to draw an inference from the proved circumstances that the appellant-accused committed murder of his wife Vanthala Rukno.

13. Though the trial Court started discussion of evidence on a misconception that the case is totally based on circumstantial evidence but, as seen from the testimony of P.W.2-daughter-in-law, she is a direct witness to the occurrence. In her examination-in-chief, she asserted that her father-in-law i.e. appellant-accused axed her mother-in-law, the deceased-Vanthala Rukno with an axe (M.O.1) in the varandah of the house due to suspicion about her fidelity and he used to pick quarrels even earlier to the incident.

14. In the cross-examination of P.W.2, a suggestion was put to her that she was not present at the time of occurrence and she is not the

direct witness to the occurrence. However, this suggestion was denied by her flatly. The suggestion put to the witness and denied is not an evidence and statements of fact recorded by the trial Judge as to what had happened is conclusive. In view of the suggestion put to P.W.2 and denied by her, her witnessing the occurrence cannot be doubted, being the daughter-in-law of the deceased and the accused-appellant. That apart, the evidence further disclosed that P.Ws.2 and 3 were living in a separate house and the distance between their house and the house of appellant-accused is 10 feet, the incident can be viewed or witnessed from a distance and identify the person even with the aid of natural light.

15. P.W.3 is husband of P.W.2 and son of deceased Vanthala Rukno and appellant-accused. He testified that he received information from his wife-P.W.2 about murder of his mother by hacking on her neck by the appellant-accused. On arrival, P.W.3 found the dead body of his mother Vanthala Rukno in a pool of blood in the varandah of house and he immediately reported the same to VRO-P.W.1 who, after visit to the scene of offence, lodged a complaint with the police marked as Ex.P1. The evidence of P.W.1 is in support of the prosecution case about his visit and lodging of the complaint-Ex.P.1 with regard to occurrence of incident, he also testified that he produced the appellant-accused before the police along with confessional statement of the appellant-accused, he recorded.

16. Therefore, the testimony of P.W.2, coupled with evidence of P.W.3, established that P.W.2 is the direct witness to the occurrence of the incident. In the cross-examination of P.W.2, nothing has been elicited to disprove her presence at the time of the incident at a short distance. On the other hand, her presence at the time of incident is highly probable being the daughter-in-law, though residing in the adjacent house, as the deceased Vanthala Rukno was taking meal at the house of her son without cooking food for her husband i.e. the

appellant-accused. Therefore, her presence at the time of incident cannot be doubted at any stretch of imagination, in view of the attendant circumstances, her presence is quite natural and probable to the circumstance of the case.

17. Learned Public Prosecutor contended that besides oral evidence of P.W.2, who is the direct witness, extra judicial confession recorded by P.W.1, marked as Ex.P.2, and production of the appellant-accused by P.W.1 before the police concerned is another strong circumstance. However, learned counsel for the appellant-accused contended that based on extra judicial confession, the Court cannot record conviction of the accused for the reason that there was no relationship between the person who recorded confession and the accused who allegedly made confession and that too he is the V.R.O. of a different village viz, Muvvalaputt Village of Lakshmipuram Panchayat, in view of rival contentions, it is apposite to advert to law to decide the evidentiary value of extra judicial confession.

18. In **K.Brahmachari @ Kammari Brahamachari v. State of A.P**¹, the Division Bench of this Court held that, when there was no relationship between the accused and the person before whom he made a confession, it is highly improbable to believe the confession of accused made before the third party and conviction cannot be recorded.

19. In **State of A.P. v. Kanda Gopaludu**², the Division Bench of the Apex Court held that extra judicial confession is admissible if it inspired confidence and made voluntarily and basing on that, Court can record conviction of the accused. Undoubtedly, if the extra judicial confession is believed and made voluntarily, the same can be made basis for recording conviction.

¹ 2004(1) ALT (Crl.) page 1 (A.P.)

² 2005(6) Supreme Court Cases page 551

20. In **Baldev Singh vs. State of Punjab**³, the Apex Court held that extra judicial confession is a weak type of evidence and that by itself is not sufficient to record the judgment of conviction against accused, unless the same is corroborated and in the absence of any disclosure before a particular person, a conviction cannot be recorded.

21. In **Shiva Karam Payaswami Tewar vs. State of Maharashtra**⁴ the Apex Court held that conviction can be founded on extra judicial confession. Such confession should be clear, specific and unambiguous. However, word by word repetition of statement cannot be insisted upon to judge credibility of the witness's capacity.

22. In view of the latter judgments of the Apex Court, the Division Bench judgment of this Court need not be relied on. Moreover, there is any amount of conflict in the law laid down by the Supreme Court. Even in **Baldev Singh's** case (4 supra), the Supreme Court is of the view that if extra judicial confession is made and it is corroborated by other evidence, the Court can record conviction of the accused.

23. In the present facts of the case, the evidence of both P.W.2 and P.W.3, who are daughter-in-law and son of the deceased and the appellant-accused, is clear that P.W.2 alone is the direct witness to the incident and on receipt of information from P.W.2, P.W.3 informed P.W.1 about causing death of his mother by his father (the accused-appellant) and P.W.1 visited the scene of offence and reported the matter to the police concerned.

24. The appellant-accused and the witnesses are the residents of a tribal area where the VRO is the only available official, in the normal course, the tribals used to approach the VRO for anything. Therefore, the accused-appellant himself approached the VRO, a sole responsible official in that area, made extra judicial confession. The said extra

³ 2009(3) SCC (Cr1.) page 66

⁴ AIR 2009 SUPREME COURT 1692

judicial confession is corroborated by the evidence of P.W.2 thereby the extra-judicial confession made before P.W.1, marked as Ex.P.2, is another strong piece of evidence to find the appellant-accused guilty for the offence. In addition to the evidence discussed, it is not the defence case that she was murdered by any other person. In fact the dead body was found in the varandah, no other person had access to the house to kill her, no reason to kill her. In such circumstances, hacking of Rukno by anybody is improbable.

25. Coming to the medical evidence, P.W.5-Doctor, who conducted post mortem examination over dead body, found the following three injuries:

1. Deep lacerated injury of size 15 x 8 x 10 cm present over the right side of the neck extending from the middle and in front of the neck to the middle and back of the neck. Fracture to the thyroid bone, Thyroid cartilage and C5, C6 cervical spines, dark red in color, Ante mortem in nature.
2. Lacerated injury of size 8 x 4 x 2 cm present over the right shoulder joint anteromedial aspect, dark red in colour, ante mortem in nature.
3. Lacerated injury of size 8 x 4 x 2 cm present at left arm medial side dark red in colour, ante mortem in nature.

He opined that the cause of death was due to cardiac respiratory arrest secondary to haemorrhage shock due to deep lacerated injury to the neck. Ex.P.8 is the post mortem certificate issued by the Doctor-P.W.5.

26. In the cross-examination of P.W.5, defence counsel could elicit nothing to disbelieve the opinion of the Doctor about the cause of death of Vanthala Rukno. On the other hand, a suggestion was put to P.W.5 that the injuries are possible if a person falls on hard surface all of a sudden, but the witness denied the suggestion. Though injury Nos.2 and 3 are possible to be caused on account of sudden fall, injury No.1, which is 15 x 8 x 10 cms in size, could not be caused in such incident as suggested. Therefore, there is nothing to believe that

deceased Vanthala Rukno sustained injuries due to sudden fall. Apart from that, the recovery of M.O.1 on the confession made by the appellant-accused leading to discovery, which is relevant under Section 27 of the Indian Evidence Act, is proved by placing satisfactory evidence by the prosecution. Evidence of discovery is one of the strongest grounds, though not substantive piece of evidence, to connect the appellant-accused with grave offence punishable under Section 302 of IPC.

27. While dealing with the specific question with regard to admissibility of that part of the statement leading to discovery under Section 27 of the Indian Evidence Act, the Apex Court laid down certain guidelines. However, Section 27 of the Indian Evidence Act is an exception to Sections 25 and 26. The conditions necessary for invoking the aid of the Section are as follows:

- a) there must be a discovery of a fact *albeit* relevant fact in pursuance of an information received from a person in police custody;
- b) the discovery of such fact must be deposed to ;
- c) at the time of giving information the accused must be in police custody;

Then the effect is that so much of the information as relates distinctly to the fact thereby discovered is admissible. What is allowed to be proved is the information or such part thereof as related distinctly to the fact thereby discovered. Discovery of evidence is not substantive but it is a corroborative piece of evidence.

28. In **Inspector of Police, Tamil Nadu Vs. Balaprasanna**⁵, the Apex Court held as follows:

“Law is well settled that the prosecution while relying upon the confessional statement leading to discovery of articles under Section 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. The scope and ambit of Section 27 of the Evidence Act had been stated and restated in several decisions

⁵ 2009(1) ALD (CrI.) SC 113

of the Supreme Court. However, in almost all such decisions reference is made to the observations of the Privy Council in *Pulukuri Kotayya vs. Emperor*, AIR 1947 PC 67. At one time it was held that the expression 'fact discovered' in the second is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in *Pulukuri Kotayya's* case. The various requirements of the section can be summed up as follows:-

- 1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- 2) The fact must have been discovered.
- 3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.
- 4) The person giving the information must be accused of any offence.
- 5) He must be in the custody of a police officer.
- 6) The discovery of a fact in consequence of information received from an accused in custody must be deposited to.
- 7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

29. In the present facts of the case, the prosecution could establish recovery of M.O.1 on the basis of confessional statement leading to discovery and seizure of the same in the presence of P.W.1 and another mediator. The RFSL report, marked as Ex.P.12, disclosed that human blood was found on M.Os.1 to 3. This is also another corroborating circumstance to connect the appellant-accused with the offence, since M.O.1 was recovered and seized based on confessional statement, which is relevant under Section 27 of the Indian Evidence Act.

31. The cumulative effect of the proved facts based on both direct and circumstantial evidence is that the appellant-accused caused death of his wife by axing on three parts of her body. Therefore, we

find no ground to overturn the findings recorded by the trial Court while exercising the power under Section 374(2) of Cr.P.C and, consequently, the appeal is devoid of merits and is liable to be dismissed, as we are in total agreement with the finding of trial Court.

32. In the result, the Criminal Appeal is dismissed. Miscellaneous Petitions pending, if any, shall also stand closed.

JUSTICE P.NAVEEN RAO

JUSTICE M. SATYANARAYANA MURTHY

Date: 18.11.2017
JSU/JR



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AND
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