

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

Criminal Appeal No.825 of 2012

Between:

Pedakapu Kannayya

..Appellant

And

The State of Andhra Pradesh, rep. by its
Public Prosecutor, High Court of A.P., Hyderabad

..Respondent

DATE OF JUDGMENT PRONOUNCED: 09.11.2017

SUBMITTED FOR APPROVAL:

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/ No
2. Whether the copies of judgment may be
marked to Law Reporters/ Journals Yes/ No
3. Whether Your Lordships wish to
see the fair copy of the Judgment? Yes/ No

C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

*HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
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!Counsel for appellant : Sri G. Jaya Reddy

^Counsel for Respondent : Public Prosecutor (AP)

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? Cases referred:

1. (2015) 12 SCC 644
2. AIR 2016 SC 3912



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HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. KONGARA VIJAYALAKSHMI

CRIMINAL APPEAL No.825 of 2012

JUDGMENT : (per Hon'ble Smt. Justice Kongara Vijayalakshmi)

The appellant herein, sole accused, who was tried for an offence punishable under Section 302 of IPC, for causing the death of his wife by strangulation, was convicted by the Special Sessions Judge for the trial of cases under SCs & STs (POA) Act cum Additional District and Sessions Judge, Vizianagaram, by judgment dated 07.02.2012 in SC No.80 of 2011, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine, to undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution, as seen from the material on record, is as under:

The accused is the resident of Pathapadu village, Konda Lingalavalasa Panchayat, Mentada Mandal. He married one Laxmi of Payivalasa village and out of wedlock, they were blessed with one son. After the demise of Laxmi, he married Pedakapu Somamma (hereinafter referred to as 'deceased') and they were blessed with two sons. The accused got addicted to alcohol and neglected the family. As the deceased started questioning the accused, towards his addiction to alcohol, the accused used to torture the deceased. The deceased left the matrimonial house twice or thrice. PW.1, the brother of the deceased, used to hold panchayats and the accused used to bring back the deceased with a promise that he would look after her well. On 01.03.2011, at about 4 p.m., when the accused came to the house, in a drunken state, and when the deceased questioned him, the accused beat

her indiscriminately, pushed her down on the floor, tied a plastic rope around her neck and strangled her to death. Later, he fled away from the hut. Having heard the cries and the commotion and also seeing the accused fleeing away from the scene, PWs. 2 to 4 rushed to the thatched hut and found the deceased lying dead with a plastic rope around her neck. On 02.03.2011, at about 10 a.m., Somula Sukrayya-PW.1 got scribed report-Ex.P.1, through PW.6 Pydithalli, and presented the same before the police, Andra PS PW.11, the Head Constable, who was present in the station, registered it as Cr.No.11 of 2011 under Section 302 of IPC and issued FIR-Ex.P.14 to all concerned. PW.12, the Inspector of Police, Gajapatinagaram, took up investigation. His evidence discloses that, after receipt of copy of FIR, on 02.03.2011, he rushed to the scene of offence, secured the presence of witnesses and held inquest over the dead body of the deceased, vide Ex.P.8. On 03.03.2011, the accused approached PW.9, G. Narayanarao, VRO, and one Reddi Venakta Raju, when they were at MRO Office, Mentada Mandal, and made an extra judicial confession before them, admitting the guilt. They have recorded the statement of the accused and produced him before the police along with the confessional statement. PW.12 arrested the accused, recorded a detailed confessional statement and sent the accused to the judicial custody. After completion of the investigation, a charge sheet came to be filed against the accused for the offence punishable under Section 302 of IPC.

3. The Judicial Magistrate of I Class, Gajapathinagaram, took the case on file as PRC No.4 of 2011 and on appearance of the accused, furnished copies of documents to the accused, as required under Section 207 Cr.P.C., and then committed the case to the Court of Sessions, as

the offence alleged against the accused is triable by the court of Sessions.

4. On committal, the accused appeared before the Court of Special Sessions Judge, Vizianagaram, and a charge under Section 302 of IPC came to be framed, read over and explained to him in Telugu in open court, for which the accused pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P.1 to P.15 and MO.1. PWs. 1 to 6 did not support the prosecution case and they were treated hostile.

6. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied and did not choose to examine any witnesses on his behalf.

7. After considering the entire material available on record, including oral and documentary, the Special Sessions Judge, Vizianagaram, found the accused guilty for the offence punishable under Section 302 of IPC and convicted and sentenced him to undergo imprisonment for life. Assailing the same, the present Criminal Appeal came to be filed.

8. Learned counsel for the appellant would submit that the trial court failed to see that there are no direct witnesses to the occurrence and the case rests only on the circumstantial evidence. He further submits that the links to the circumstantial evidence are missing to

complete the chain of evidence and hence the conviction and sentence passed by the trial court are liable to be set aside.

9. Learned Public Prosecutor would submit that, basing on the extra judicial confession made before PW.9, since the trial court rightly found the accused guilty of offence punishable under Section 302 of IPC, the conviction and sentence passed in the impugned judgment needs no interference by this court.

10. PW.1 is the brother of the deceased. His evidence discloses that after the marriage of the deceased with the accused, they both lead marital life and were blessed with two sons. About nine months prior to giving evidence, on one day, at about 4 p.m., he received information about the death of the deceased. Then, he came to the house of the accused, found the dead body of the deceased and gave Ex.P.1 report to the police. In his presence, the police conducted inquest over the body of the deceased. The evidence of PW.6 discloses that, on 02.03.2011, at about 7 or 8 a.m., PW.1 came to him and told him that the accused strangled the deceased with a plastic rope and killed the deceased and requested him to draft the report. Accordingly, he drafted Ex.P.1 report and made an endorsement on the report that he is the scribe of Ex.P.1.

11. The evidence of PW.7, who was the sarpanch of the village, discloses that, on 02.03.2011, he along with PW.6, went to the scene of offence and found the deceased lying dead with a plastic rope around the neck of the deceased. His evidence further shows that the police seized the rope under Ex.P.7 and he was also present when the police conducted inquest. According to his evidence, the panchayatdars opined that the deceased died due to strangulation with the rope.

12. As per the evidence of P.W.9, who was working as V.R.O, Gajapathinagaram, the accused is known to him and that, on 03.03.2011, when himself and one R. Venkata Rao were in MRO Office, Mentada Mandal, the accused came there and stated that he killed his wife by strangulating her to death with a plastic rope. Ex.P.10 is the confessional statement made by the accused. PW.9 and R. Venkata Rao obtained the thumb impression of the accused on the confessional statement, took him to the police station and produced him before the police along with the confessional statement along with Ex.P.11, the covering letter. In their presence, the police interrogated the accused.

13. The issue as to whether a conviction under Section 302 of IPC can be based on the solitary circumstance viz., the extra judicial confession made before PW.9?

14. While dealing with the evidentiary value and reliability of extra judicial confession, the Apex Court, in Vijay Shankar vs. State of Haryana¹, held as follows:

“18. Principles in respect of evidentiary value and reliability of extra-judicial confession have been summarized by this Court in *Sahadevan v. State of T.N.* [*Sahadevan v. State of T.N.*, (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] , which reads as under: (SCC pp. 412-13, para 16)

“(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.

¹ (2015) 12 Supreme Court Cases 644

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

15. The Apex Court, in ‘*Kala vs. State through Inspector of Police*², while discussing the law with regard to extra-judicial confession, observed as follows:

“*In Sahadevan and Anr. v. State of Tamil Nadu* (2012) 6 SCC 403, it has been observed that extra-judicial confession is weak piece of evidence. Before acting upon it the Court must ensure that the same inspires confidence and it is corroborated by other prosecution evidence. *In Balwinder Singh v. State of Punjab* 1995 Supp (4) SCC 259, it has been observed that extra-judicial confession requires great deal of care and caution before acceptance. There should be no suspicious circumstances surrounding it. *In Pakkirisamy v. State of Tamil Nadu* (1997) 8 SCC 158 it has been observed that there has to be independent corroboration for placing any reliance upon extra-judicial confession. *In Kavita v. State of Tamil Nadu* (1998) 6 SCC 108 it has been observed that reliability of the same depends upon the veracity of the witnesses to whom it is made. Similar view has been expressed in *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180, in which this Court has further observed that witness must be unbiased and not even remotely inimical to the accused. In *Alokenath Dutta v. State of West Bengal* (2007) 12 SCC 230 it has been observed that the main features of confession are required to be verified. *In Sansar Chand v. State of Rajasthan* (2010) 10 SCC 604 it has been observed that extra-judicial confession should be corroborated by some other material on record. *In Rameshbhai Chandubhai Rathod v. State of Gujarat* (2009) 5 SCC 740 it has been observed that in the case of retracted confession it is unsafe for the Court to rely on it. *In Vijay Shankar v. State of Haryana* (2015) 12 SCC 644 this Court has followed the decision in *Sahadevan* (supra).”

16. From the judgment, (2 supra), it is clear that extra judicial confession is weak type of evidence and it has to be examined by the Courts with greater care and caution. However, if the extra-judicial confession is the basis for conviction, it should not suffer from any material discrepancies and inherent improbabilities. Further, extra judicial confession statement alone cannot be made the basis to confirm the conviction, when it is doubtful or when it is surrounded by suspicious circumstances.

² AIR 2016 SC 3912

17. As seen from the record, the incident in question is said to have taken place on 01.03.2011 and the extra judicial confession was said to have been made before P.W.9 – the Village Revenue Officer, Gajapathinagaram, on 03.03.2011.

18. It is to be noted here that Ex.P.10 is the extra judicial confessional statement, recorded by PW.9, in the office of the Mandal Revenue Officer, Mentada Mandal, whereas the present crime came to be registered within the limits of Andhra Police Station. There was no reason for the accused to go and confess before PW.9. Further, the evidence of P.W.9 shows that, on 03.03.2011, when himself and one R. Venkata Raju, were in the Mandal Revenue Officer, Mentada Mandal, the accused came there and confessed his guilt.

19. On the date when the confession was made, PW.9 was in the Office of the Mandal Revenue Officer, Mantada Mandal, and the accused is said to have gone to Mentada Mandal and confessed about the offence. Definitely, the accused could not have imagined that PW.9 would have been there in the office of M.R.O., at Mentada. The said circumstance itself creates some suspicion in the mind of the Court. Further, there were no special reasons for the accused to confess about the commission of the offence. It is not even his case that the police were after him and if he is arrested, there is every likelihood of being tortured or beaten.

20. Having regard to the above, we feel that the solitary circumstance, relied upon by the prosecution, is doubtful and the same cannot be made the basis to establish the guilt of the accused beyond reasonable doubt.

21. Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 07.02.2012, in Sessions Case No.80 of 2011, on the file of the Special Judge for Trial of Cases Under S.Cs & S.Ts. (POA) Act-cum-Additional District & Sessions Judge, Vizianagaram, for the offence punishable under Section 302 I.P.C., is set aside and he is acquitted for the said offence. Consequently, the appellant/ accused shall be set at liberty forthwith, if he is not required in any other case or crime.

22. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.


C.PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 09.11.2017
Note: LR copy to be marked.
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CRIMINAL APPEAL No.825 of 2012
(*per Hon'ble Smt. Justice Kongara Vijayalakshmi*)



Date: 09.11.2017

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