

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.836 of 2011

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) The sole accused in SC/ ST S.C.No.24 of 2009 on the file of the Special Judge for Trial of Offences under SC/ ST (POA) Act-Cum-V Additional District and Sessions Judge, Medak at Sangareddy, is the appellant herein. He was charged for the offences punishable under Section 302 IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By its judgment dated 30.07.2009, the learned Sessions Judge convicted and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1,000/- for the offence punishable under Section 302 IPC, while acquitting him under Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2) The gravamen of the charge against the accused is that on the intervening night of 19/ 20.03.2009, the accused is alleged to have caused the death of N.Sukkamma (hereinafter referred to as "the deceased") after participating in sexual intercourse with her, when she demanded to pay an amount of Rs.10,000/-.

3) The case of the prosecution as culled out from the evidence adduced by the prosecution is as under:

4) PW.1 is the husband, PW.2 is the daughter, PW.3 is the brother, PW.4 is the sister and PW.5 is the maternal aunt of the deceased. The deceased was a resident of Konapur while the accused is a resident of Nagulapally. Both of them were doing coolie work at Sadasivapet Town and developed illicit intimacy with each other. One month prior to the date of incident, the deceased asked for a sum of Rs.10,000/-, to which the accused assured to pay the same. On 19.03.2009 in the evening hours, the accused purchased liquor at Sadasivapet Town, met the deceased near Maheswari Theater and later both of them went to a nearby isolated area. It is said that both of them consumed liquor and participated in sexual intercourse. When the deceased asked the accused to pay Rs.10,000/-, he refused to pay the same. Then the deceased is said to have abused the accused in a filthy language and kicked him. Enraged by the same, the accused caught hold of the tuft of the deceased, beat her with a boulder on the head and then fled away from the scene. As the deceased did not return to the house, PW.1 went to search of his wife. He came to know that one dead body of a woman lying near Maheswari Talkies. Immediately he rushed there and found his wife dead in the open place behind Maheshwari Talkies, on a sand heap. Thereafter, he went to the Police Station and lodged a report. Ex.P1 is the report. Basing on the said report, PW.15 (S.I. of Police) registered a case in Crime No.82 of 2009 under Section 302 IPC and issued First Information Report. Ex.P18 is the First Information Report. PW.15 examined PW.1 and recorded his statement. Later, he

handed over the case to PW.16. On 20.03.2009, PW.16 visited the scene of offence at Maheswari theatre, Sadasivapet and found the dead body of the deceased. He conducted a panchanama of the scene of offence in the presence of PWs.6 and 12 and also prepared rough sketch of the scene. Ex.P19 is the rough sketch. He then conducted inquest over the dead body of the deceased in the presence of PWs.6 and 12. Ex.P2 is the inquest report. During inquest, he examined and recorded the statements of PWs.2 to 7, 11 and 12. Thereafter, he handed over the C.D. file to PW.17. On receipt of C.D. file from PW.16, PW.17 examined and recorded the statement of PW.8. On receipt of credible information, he arrested the accused and recorded his confessional statement in the presence of PWs.9 and 10. After collecting all the material, PW.17 filed the charge sheet, which was taken on file as P.R.C.No.79 of 2009 on the file of the Additional Judicial Magistrate of First Class, Sangareddy, which on committal came to be numbered as SC/ ST S.C.No.24 of 2009.

5) On appearance, the Court furnished all the documents as per Section 207 Cr.P.C., and later charges under Section 302 IPC and Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 were framed, read over and explained to the accused, to which he denied.

6) To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P21 and Mos.1 to 12. 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. No oral or documentary evidence was adduced on his behalf, in support of his defence.

7) By taking into consideration the circumstances relied upon by the prosecution to connect the accused with the crime, the learned Sessions Judge convicted the accused for the above mentioned charge, in the manner referred to above. Challenging the same, the present appeal came to be filed.

8) As seen from the record, the entire case rests on the alleged extra judicial confession made by the accused before PW.7 and a theory of accused and deceased being last seen together by PW.8.

9) Learned counsel for the appellant mainly submits that there is any amount of doubt as to whether the accused would have gone to PW.7 to make the extra judicial confession. Even accepting that the accused made such confession before PW.7, he should have reduced it into writing and immediately take the accused to the police. In the absence of same he submits that any amount of doubt would arise as to the making of such confession. Insofar as second circumstance is concerned, namely the accused and deceased being last seen by PW.8, he submits that even as per the evidence of PW.8, who was working as counter boy in Neelima Wines, about 200 people purchases liquor from his shop daily and there was no special incident or reason for him to remember the accused and the deceased. He further submits that it would be

practically impossible for PW.8 to remember unless the accused or deceased purchased liquor from his shop regularly, which evidence is lacking in the instant case.

10) Learned Public Prosecutor opposed the same contending that there are no reasons to disbelieve the extra judicial confession made by the accused before PW.7 and also the evidence of PW.8.

11) As stated earlier, the entire case revolves around the evidence of PWs.7 and 8. PW.7 in his evidence deposed as under:

“ On 19.03.2009 the deceased Sukkamma died. 15 days thereafter, accused came to me and confessed that he murdered Sukkamma and stated that he belongs to Konapur, he used to go to Sadasivapet for coolie work, there at the work he met with the deceased Sukkamma and developed intimacy. On 19.03.2009 after completion of coolie work both buy the liquor bottles and went to sand heap near Maheswari talkies and sat on it, consumed liquor and had intercourse, then she demanded Rs.10,000/- as promised, then accused expressed inability to pay amount, she stated that the accused avoiding to pay Rs. 10,000/- and beat him on his cheek, on that accused annoyed, put the boulder on her head and due that injury she died and he returned to his house. I advised him to surrender to the police so that police will not arrest you.”

12) As seen from the evidence of PW.7, nowhere in his evidence, he deposed that the accused was known to him. Apart from that PW.7 is a Sarpanch of Yellaram Village, while the accused is a resident of Konapur Village. There is no reason for the accused to go and confess about the commission of offence before PW.7, who

is a stranger to him. Therefore, a doubt arises as to whether such an extra judicial confession was made by the accused before PW.7.

13) In Baldev Singh Vs. State of Punjab¹, the Apex Court held as under:

“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.”

14) In K.Brahmachari @ Kammari Brahamachari Vs. State of A.P.², a Division Bench of this Court held as under:

“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 confession cannot be relied.”

15) It is well established principles of law that extra judicial confession is a weak type of evidence and the same cannot be acted upon without sufficient corroboration. It is also to be noted here that whenever extra judicial confession is made, the same should be reduced into writing in the same words and thereafter the person who recorded the statement should take the accused to the police station. In the instant case no such effort was made by PW.7. In view of the above, no reliance can be placed on the extra judicial confession made by the accused.

¹ 2009(3) S.C.C. (Cri.) 66

² 2004(1) ALT (Cri.) Page 1 (A.P.)

16) Coming to the evidence of PW.8, it is to be seen that even as per his own evidence, about 100 to 150 people come to his wine shop daily and that he sell wine and take money from the customers. It is not the case of PW.8 that the accused and deceased used to come to his shop regularly, such being the position, it is difficult to believe that he could have remembered these two persons purchasing liquor in his shop on the date of incident. Infact his evidence is silent as to the date on which both the accused and deceased came to his shop and purchased liquor. Except stating that about one year back the deceased and accused came to his shop and purchased one beer bottle and water bottle his evidence is silent as to the date and time. He further deposed that he suspected that the accused might have murdered the deceased due to illicit intimacy and money disputes, for which there is no basis for him to depose in such a manner, as they are not known people to him.

17) Since the evidence is silent as to the date and time of purchase of liquor by the accused and deceased from his shop, the theory of last seen cannot be accepted.

18) In view of the above findings, we feel that the two circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime.

19) Accordingly, the Criminal appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 30.07.2009 in SC/ ST S.C.No.24 of 2009 on the file

of the Special Judge for Trial of Offences under SC/ ST (POA) Act-cum-V Additional District and Sessions Judge, Medak at Sangareddy, for an offence punishable under Section 302 IPC, are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

20) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

04.10.2017
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