

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.806 of 2012

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

The appellant herein, sole accused, was tried for the offences punishable under Sections 302 IPC, for causing the death of a girl, by name Kum.Ankitha, aged about (4) years, by throttling her neck, with the help of her son, Lakshmi Narayana, and also for the offence punishable under Section 201 IPC, for causing disappearance of the evidence, namely, throwing the dead body of Kum.Ankitha in a tank, and by judgment, dated 23rd February, 2012, in Sessions Case No.17 of 2011, the Judge, Family Court-cum-Additional Sessions Judge, Mahabubnagar, convicted the accused for the offences punishable under Sections 302 and 201 IPC and sentenced her to suffer 'imprisonment for life' under Section 302 IPC., and to suffer rigorous imprisonment for a period of ten years under Section 201 IPC. Both the sentences were directed to run concurrently.

2. The facts, as unveiled, by the prosecution witnesses, are thus:

The deceased was the daughter of PW1. PW2 was working as Ayamma in Anganwadi Centre, at Dondlapalli village, at the time of the incident. Accused is the elder sister of PW1. One Basanna is the husband of PW1 and the accused. The accused is the first wife and PW1 is the second wife of Basanna. One K.Lakshmi Narayana (A2) is the son of the

accused. The accused has two sons and two daughters, while PW1 has only one daughter through Basanna. It is said that the accused committed the murder of the deceased for the sake of property. About three acres of land was in the name of the accused, while ten acres of land stood in the name of her husband, by name Basanna. Disputes arose between the accused and Basanna, after the birth of the deceased, Ankitha. On the date of the incident, i.e., on 30.09.2010, at about 10 a.m., PW1 sent her daughter to Anganwadi Centre and she went to coolie work. She returned back to the house at about 6 p.m., and found her daughter missing. When enquired, PW2 is said to have informed PW1 that the accused came and took the deceased with her. Then, PW1 brought PW2 to her house to enquire the accused as to what happened to the deceased. When PW2 and the villagers enquired the accused about the deceased, Ankitha, the accused is said to have confessed that she killed Ankitha along with her son, Lakshmi Narayana, shifted the dead body in a basket and threw it in a tank, known as Kummari Kunta.

3. The evidence of PW1 discloses that the accused took PW2 and other villagers to Kummari Kunta, where they saw the body of the deceased. She also deposed that the dead body was tied with the help of a cloth piece and the clothes of the deceased were tied to a plant grown in Kummari Kunta. Immediately thereafter, PW1 went to the police station and lodged a report with PW11, the Sub Inspector of Police. Exhibit P-1 is the report. Basing on the said report, a case in Crime No.205 of 2010 came to be registered under Section 302 IPC. Exhibit P-12 is the FIR. On receiving the F.I.R., PW12, the Circle Inspector of Police, took up investigation and visited the scene of offence and found the dead body of a young girl, aged about (4) years. He got the scene of offence

photographed through PW6 and also prepared a panchanama of the scene in the presence of PWs.8 and 9. Exhibit P-5 is the panchanama. He then conducted inquest over the body of the deceased in the presence of PWs.8 and 9. Exhibit P-6 is the inquest report. After completing the inquest, he forwarded the dead body for postmortem examination.

4. PW13, the Civil Assistant Surgeon, Community Health Centre, Shadnagar, conducted autopsy over the dead body of the deceased and issued Exhibit P-14, Postmortem Report. According to him, the cause of death was “due to throttling”. He also found some nail marks on the neck of the deceased.

5. PW12 arrested the accused on 08.10.2010 and when questioned, the accused is said to have confessed about the commission of the offence, which was recorded in the presence of PW10. The accused also produced the empty basket, which was seized under Exhibit P-13. After completion of investigation, PW12 laid the charge sheet against Accused No.1 alone, as, Lakshmi Narayana, (Accused No.2) was a minor by then.

6. The case was taken on file as PRC No.21 of 2015 by the Judicial Magistrate of First Class, Mulug. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.178 of 2011, on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar.

7. Basing on the material, available on record, a charge for the offence punishable under Section 302 of IPC came to be framed, read over and explained to the accused, to which she denied and claimed to be tried.

8. To substantiate its case, the prosecution examined PWs.1 to 13, out of whom PWs.1 and 9 did not support the prosecution case and were treated hostile by the prosecution, and got marked Exs.P-1 to P-14 and M.O.1. No oral or documentary evidence was adduced on behalf of the defence.

9. After closure of the evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances, appearing against her, in the evidence of the prosecution witnesses, to which she denied.

10. Basing on the circumstances relied upon by the prosecution, more particularly, the accused being last seen in the company of the deceased, the extra-judicial confession made before PW2, the accused being seen carrying a basket, and the recovery of the dead body at the instance of the accused, the Sessions Judge convicted the accused for the offences punishable under Sections 302 and 201 IPC. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant mainly submits that there are no direct witnesses to the incident and the case is based only on circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. He further submits that the circumstances, relied upon by the prosecution, are without any legal evidence and that they cannot be made the basis to convict the accused.

12. On the other hand, the learned Public Prosecutor would contend that though there are no eye witnesses to the incident, the extra-

judicial confession made by the accused before PW2 and the evidence of PWs.1 to 5, which establish motive for the accused to commit the crime, are sufficient to base conviction.

13. The point that arises for consideration is whether the circumstances relied upon by the prosecution form a chain of events to connect the accused with the crime ?

14. It is not in dispute that there are no eye witnesses to the incident and the case purely rests on the circumstantial evidence. The circumstances, which are sought to be relied upon by the prosecution, are as under:

1. The accused being last seen by PW2 in the company of the deceased;
2. The extra-judicial confession made by the accused before PWs.1 to 5;
3. The evidence of PW3 who saw the accused proceeding towards the agricultural well with a basket on her head;
4. The body of the deceased being traced at the agricultural well pursuant to the extra-judicial confession made by the accused.

15. Insofar as the theory of 'last seen', it is to be noted here that, on the date of the incident, at about 10 a.m., PW1 sent the deceased to the Anganwadi Centre and then left for her work. When she came back at 6 p.m., the deceased was not found in the house. She contacted PW2 and enquired about the deceased. In her evidence, PW2 stated that after mid-day meals, children were asked to go back to their houses and she observed the deceased playing underneath a tree situated by the side of the Anganwadi school. According to her, the accused came back and took the deceased with her.

16. The prosecution mainly relied on the evidence of PWs.1 and 2 to show that the accused came and took the deceased after the mid-day meal. The evidence of PW1 shows that on coming to know about the missing of the deceased, she brought PW2 and the accused to her house and questioned the accused about the deceased, in the presence of the villagers. At that time, the accused is said to have confessed that she killed the deceased, took PW1 to Kummari Kunta and showed the dead body of the deceased. Thereafter, PW1 lodged a report in the police station at 01.30 hours. If the evidence of PWs.1 and 2 is looked into, it would reveal that the accused was last seen in the company of the deceased and also about the extra-judicial confession made by the accused before PWs.1 and 2 and other villagers.

17. At this stage, it is to be noted that the First Information Report was given by PW1, after the disclosure of the offence by the accused, and also after tracing of the body of the deceased at the kunta.

18. It is to be noted here that though PW1, in her evidence, deposed about the information given by PW2 with regard to the accused taking the deceased along with her in the afternoon, the First Information Report given by PW1, on the very same day night, is silent on the said aspect. It is not the case of the prosecution that PW1 was not aware about the said information given by PW2. In fact, the evidence on record discloses that by 6.30 p.m., itself, PW2 informed PW1 about the accused taking the deceased, in the afternoon. Strangely, the said fact is not referred to in the First Information Report. Even assuming for the sake of argument that the First Information Report is not an encyclopedia, which should contain all the details, strangely, the said fact was not even mentioned in the inquest, which was conducted on the next day. PWs 1

and 2 and others were examined at the time of inquest, but none of them spoke about this fact, during the inquest proceedings. These two circumstances throw any amount of doubt as to whether PWs 1 and 2 are speaking truth as to the accused being seen in the company of the deceased in the afternoon of 30th September, 2010.

19. Coming to the extra-judicial confession made by the accused before PW2 and other villagers, PW1, in her evidence, deposed that she brought PW2 and accused to the house of the accused and when questioned, the accused disclosed about the commission of the offence in the presence of the villagers, who were present in the house, at that time. The report given by PW1 states that when the villagers threatened and forced the accused, only then, the accused disclosed about the commission of the offence.

20. Column No.15 of the inquest shows that when the villagers and others threatened the accused, the accused disclosed that she killed the deceased. The relevant portion of the inquest is as under:

“XV.On threatening by the complainant and villagers, Ramulamma disclosed the above fact and shown the dead body and brought to the house at Dondlapally village.”

21. It is no doubt true that inquest is not a substantial piece of evidence and it can be used only to know the cause of death, but, since the case on hand rests on circumstantial evidence and as the evidence of PWs.1 and 2 was found to be suspicious, we took the aid of Exhibit P-1 (report of PW1) and Exhibit P-6 (inquest report), to find out the truth. In fact, the Apex Court, in a catena of judgments, has held that the version

of the witnesses in the inquest report, can be looked into, to find out the truth.

22. Therefore, we feel that the extra-judicial confession said to have been made by the accused before PWs.1 and 2 and other villagers was not voluntary and it was made under threat and coercion of the villagers, which is evident from the contents of the report, given by PW1 herself.

23. It would be useful to refer to the report, which is as under:

"I, Kattera Mangamma, W/o Bassanna Age: 28 years Caste: Golla Occ: Agriculture R/o. Dondapally submit the application that my husband is having two wives and that first wife is my own sister aged 40 years and that first wife is having two male child and two female child and that I am having one daughter by name Ankitha aged 4 years and I am having Thirteen Acres of Agriculture Land. Yesterday that on 30-9-2010 evening at about 7-30 hours I came from the Agriculture land to my house and my daughter Ankitha is not found in the house. I searched for her in the house and surrounding houses, but invain. Then our villagers threatened and forced my sister Ramulamma who was at the house since from morning to evening, then my sister Ramulamma told that she and her son Laxmi Narayana Aged 18 years both between 5-00 to 6-00 hours throttled my daughter and killed her and kept in a bamboo basket and thrown towards west side at Kummari Kunta and came back and shown us Ankitha's deadbody at Kummari Kunta, and when the villager asked my sister why she killed my daughter, then my sister says that for the purpose of taking the entire property and with that intention

she killed my daughter. Therefore for the sake of the Property my sister and her son Laxmi Narayana killed my daughter by throttling her and thrown her at Kammari Kunta and take action against them as per law.”

24. Hence, there is any amount of doubt with regard to accused being last seen in the company of the deceased and also the extra-judicial confession alleged to have been made by the accused before PWs.1, 2 and other villagers, as the said confession was not voluntary.

25. Interpreting Section 24 of the Evidence Act, as to the effect of extra-judicial confession, if not made voluntarily, a Division Bench of this Court, in *SANGA SAILU v. STATE OF A.P. REP. BY THE PUBLIC PROSECUTOR A.P. HIGH COURT, HYDERABAD*¹, held as under:

“8. P.Ws.3 to 5 are neighbours of the deceased. The evidence of P.Ws.3 and 5 shows that 10 days prior to the incident, P.W.1 left the house of the deceased. She wanted to take the child with her. The accused did not allow her to do so. The accused went to these witnesses and told them that the girl was missing. They questioned him as to how she was missing. Initially he maintained silence. But on being persistently questioned, he told them that he had killed the child and buried the dead body in a corner of his house. Learned counsel for appellant contended that this extra judicial confession is not free and voluntary. The law does not require that an extra-judicial confession should, in all cases, be corroborated. If the evidence of extra-judicial confession comes from the mouth of a witness who appears to be unbiased, not even remotely inimical to the accused and in respect of whom

¹ 2004 (1) ALT (Gr.) 32 (D.B.) (A.P)

nothing is brought out which might tend to indicate that he might have a motive for attributing an untruthful statement to the accused, and the words spoken to by the witness is clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing has been committed by the witness which may militate against him, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, his evidence can be accepted. This has been enunciated by the Apex Court in State v. A.K. Anthony.

9. It is true that a confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by inducement, threat or promise, as per Section 24 of the Evidence Act. To make a confession relevant under this Section, it must be shown that it has been made by an accused person, it is voluntary, and in order to make it foundation for conviction, it must be further shown that it is true. Any inducement in the nature of a promise or of a threat proceeding from a person affects its voluntary character and vitiates the confession. To find out whether there was any inducement, threat or promise, the position in which the accused stands to the person who makes the inducement or causes the inducement to be made has an important bearing on the question. A promise or threat made by a person must be made directly to the accused. The coercion may be physical as well as mental.”

26. Having regard to the findings arrived at above and in view of the judgment of the Division Bench of this Court, we feel that the theory of ‘last seen’ and the extra-judicial confession, cannot be believed.

27. The two other circumstances, which are sought to be pressed into service, by the prosecution, are, PW3 seeing the accused carrying a

basket on her head and the dead body being recovered at the instance of the accused. PW3 was examined to speak to the fact of the accused going towards the kunta with a basket on her head. Though PW3 suspected that the accused was going hurriedly towards the kunta, he did not inform anyone about the same till next day morning. In the cross-examination, he admits that he does not know the article, which was in the basket, carried by the accused. He further admits that, normally, agriculturists carry agricultural implements in those baskets, while going to the fields.

28. Having regard to the above, it cannot be said with certainty that the accused was carrying a dead body in the basket, at that time.

29. At this juncture, we intend to refer to the evidence of PW4. PW4, in his evidence, deposed that his agricultural land and the agricultural land of the accused are situated adjacent to each other and there is a well in the agricultural land of the accused. According to PW4, the accused came to the said well, took bath and thereafter, her husband, Basanna also came to the field of the accused. According to him, at about 7.30 p.m., PW1 and Basanna started searching for the deceased.

30. But, the evidence of PW4 also shows that late in the evening, the accused and her husband had bath in their fields. Therefore, the version of PW3 that he saw the accused at about 7.30 p.m., on that day with a basket on her head, is without corroboration, and even if accepted, will not connect the accused with the crime, since PW3 never spoke about the contents of the basket. Further, the evidence of PW4 creates a suspicion in the evidence of PW3, as PW4 neither noticed a basket nor did he depose about the existence of a basket at the scene.

31. The only other aspect, which remains to be considered, is the discovery of the dead body, at the instance of the accused.

32. Once the circumstances relating to extra-judicial confession, last seen and carrying the body are found to be unreliable, tracing the dead body at the instance of the accused has to be viewed with suspicion, as the same is sought to be established basing on the evidence of the very same witnesses, whose version is already rejected.

33. In view of the above, we find it difficult to hold that the accused alone was responsible for the death of the deceased.

34. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 23.02.2012 in Sessions Case No.17 of 2012, on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Mahabubnagar, for the offences punishable under Sections 302 and 201 read with 34 I.P.C., is set aside and she is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.AMARNATH GOUD

15.11.2017

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