

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.46 of 2012

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

Accused in Sessions Case No.69 of 2009, on the file of the Principal Sessions Judge, West Godavari Division at Eluru, filed this appeal against the judgment, dated 01.11.2011, by and under which, the learned Sessions Judge has convicted the appellant/accused for the offences punishable under Sections 302 and 380 IPC and sentenced him to undergo rigorous imprisonment for life for the offence under section 302 IPC and to pay a fine of Rs.100/- (Rupees one hundred only); and to undergo rigorous imprisonment for a period of one year for the offence under Section 380 IPC and to pay a fine of Rs.100/- (Rupees one hundred only), and in default of payment of fine amounts, he was directed to suffer rigorous imprisonment for one month and 10 days respectively on each count.

2. The case of the prosecution in brief is that the appellant/accused is a farm servant of PW 1 and he used to attend the works at agricultural fields and also attending the household works of PW 1. The accused used to get the milk to the house of PW 1 every day morning and after taking breakfast in the house of PW 1, he used to go to the fields. PW 1 and his wife Atchutamba (hereinafter referred to as "the deceased") were residing in one house and opposite to the said house, their son-PW 2 and daughter-in-law-PW 3 were residing in another house. On 23.06.2008 morning PW 1 along with PW 4 went to Eluru in search of a suitable job to one Yesu, a handicapped person. While so, at 7.30 a.m on the same day,

the accused, in usual course, brought the milk from the fields and gave it to the deceased and while taking breakfast, PW 2 came and instructed him to come early to the fields. PW 6 who is the cook of PW 1 had not attended the house on that day. While the accused was in the house of PW 1, PW 5, the cook of PW 2 & PW 3 came to the house of PW 1 to give mangoes, and then the accused attended and took the mangoes from PW 5 and informed her that the deceased was sleeping due to ill-health. On the same day, at about 11 a.m PW 2 returned to the house of the deceased and witnessed the dead body of the deceased on bed with injuries and he informed the same to PW 1 over telephone, and after reaching the house, PW 1 gave report to the police. The police personnel rushed to the spot and after following due procedure, sent the dead body of the deceased for post mortem examination. According to the prosecution, on 30.07.2008 at 2 p.m the accused went to the Village Revenue Officer-PW 18 and confessed that he killed the deceased. The case of the prosecution is that finding the deceased alone in the house, the accused committed theft of Rs.2,230/- from underneath the bed and when the deceased witnessed the same, the accused pressed her neck with hands and with an electric wire and strangled her. After completion of investigation, PW 23 filed the charge sheet.

3. In support of its case, the prosecution examined PWs 1 to 23 and marked Exs.P1 to P12 and M.Os.1 to 15. On behalf of defence no oral evidence was adduced, but Exs.D1 and D2 were marked.

4. On appreciation of oral and documentary evidence, the trial Court has convicted the appellant of the offences alleged and awarded sentence against him, as noted hereinbefore.

5. The learned counsel for the appellant submits that the trial Court erred in convicting the accused on the evidence which is not at all cogent, convincing and satisfactory. The material discrepancy in the evidence of the witnesses has not been appreciated in proper perspective which resulted in the erroneous finding of the accused being found guilty of the charge. The learned counsel further submits that admittedly the case is based on circumstantial evidence and the main stay of the prosecution is the extra judicial confession, said to have been made by the accused before the Village Revenue Officer-PW 18. The learned counsel further submits that the medical evidence on record falsifies the case of the prosecution that the deceased was killed in between 8.30 a.m. and 11 a.m on 23.06.2008. The Medical Officer conclusively opined that the death took place in between 4 p.m. of 22.06.2008 and 4 a.m of 23.06.2008. The learned counsel further submits that the evidence of the interested witnesses cannot be made the basis for conviction and hence the appellant is entitled for acquittal.

6. On the other hand, the learned Public Prosecutor submits that the trial Court has properly appreciated the evidence on record and held that it is the appellant who is the author of the crime and the discrepancies or inconsistencies that are highlighted by the defence counsel are too trivial in nature which do not go to the root of the case and hence the appeal is liable to be dismissed.

7. We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

8. The point for consideration is whether the prosecution proved its case against the appellant beyond reasonable doubt so as to sustain the

conviction and sentence recorded against him, or whether the same need to be set aside, modified or varied.

9. The admitted case is that the deceased Smt.Atchutamba is the wife of PW 1 and mother and mother-in-law of PWs 2 and 3 respectively. PW 1 happened to be a two-term Member of Legislative Assembly of Tadepalligudem from 1989 to 1999. The accused was engaged by PW 1 as a farm servant and was also looking after the household chores. PWs 2 and 3 being the son and daughter-in-law of the deceased and PW 1 were living separately in a house which was just opposite the house where the deceased and PW 1 were living.

10. The allegation is that on 23.06.2008 PW 1 and PW 4 left the village and went to Eluru leaving behind the deceased alone in the house. At that time, the accused was attending to certain works. The deceased noticed the accused committing theft of some money from underneath the pillow of the deceased and when the deceased threatened him of the consequences and the matter being informed to PW 1, the accused is alleged to have throttled the deceased with the help of an electronic wire and due to strangulation, the deceased died. It is further alleged that about 5 weeks thereafter i.e., on 30.07.2008, the accused approached PW 18, the Village Revenue Officer, at about 12 noon and spilled the beans. PW 18 is said to have taken the accused to the police station and handed him over to the investigating officer, who also recorded his confession, which led to the recovery of M.Os.1,11 and 12, viz., the electrical wire, bag and cash of Rs.2,230/-.

11. As already noticed, the plea of the accused is one of denial and according to him, he has been falsely implicated to save the real culprits,

who might have grouse or disputes with the family of the deceased in respect of properties.

12. As stated above, there are no eyewitnesses to the incident. The case is based on circumstantial evidence. The obligation on the part of the prosecution is to prove its case against the accused beyond reasonable doubt and all the connecting links in the circumstances should lead to conclusion that it is the accused and the accused alone who has perpetrated the crime.

13. It is in the evidence of PW 1 that he left the house along with PW 4 at about 7.30 a.m. and at about 11 a.m he rushed back on being informed about the death of his wife by his son-PW 2. He is conspicuously silent as to whether the accused was in the house at the time when PWs 1 and 4 left the house leaving the deceased alone. PW 1 admits that though he found some cash missing, the jewelry on the body of the deceased wife was left intact. It is also in the evidence of PW 1 that before he left the deceased at about 7.30 a.m, himself and his deceased wife had their breakfast. At this juncture, it may be apt to mention that the deceased was alleged to have been killed within about two hours after the breakfast. The Medical Officer-PW 15 categorically asserted that he did not observe any semi digested food in the stomach of the deceased. This aspect falsifies the case of the prosecution that the deceased was done to death somewhere in between 8.30 a.m. to 11 a.m. on 23.06.2008. If really the deceased and PW 1 had breakfast at about 7.30 a.m. and she was killed thereafter, the Medical Officer-PW 15 would certainly found some semi digested food in the stomach.

14. It is in the evidence of PW.2 that on the date of the incident at about 8.30 a.m. he went to the house of the deceased to inform that he is

going to the fields and at that time he has seen the accused being fed by the deceased. It is further in his evidence that at about 11 a.m the accused came to the fields and at that time he was in the confused manner. Seeing that, PW 2 claims to have offered cold drinks to the accused and other workers. Thereafter, PW 2 claims to have returned to the house and when he went inside the house of his mother to inform her that himself and his wife PW 3 are leaving for Tadepalligudem, he found his mother lying dead on the cot with injuries and blood. PW 2 also found the papers in the room in a pell-mell condition. He suspected the accused for the crime and immediately sent people in search of him. He informed his father who came and lodged the complaint.

15. Similar is the evidence of PW 3. The evidence of PW 2 only creates suspicion against the accused and nothing more.

16. PW 5 is a domestic help of PWs 2 and 3. It is in her evidence that on the date of the incident, she was sent by PW 3 to go to the house of the deceased to hand over mangoes, and accordingly, when she went there and called out, the accused came and collected the mangoes from her stating that the deceased was sleeping due to illness.

17. PW 5 did not enter inside the house to see as to what happened to the elderly woman, i.e., the deceased who according to the accused was sleeping due to illness. PW 5 is the domestic help of PWs 2 and 3 who are none other than the son and daughter-in-law of the deceased. It is unnatural that even though she was informed that the deceased was sleeping due to illness, she did not think it proper to enter into the house to verify the same, more particularly, in view of the fact that they all know that at that time, the deceased was alone in the house. It is not as though that all this happened during afternoon or in the late

hours. According to PW 5, it was at about 9 a.m that she went to the house of the deceased when she was informed that the deceased sleeping due to illness. If what she is saying is true, curiosity would have automatically cropped in the mind of PW 5 as to why the deceased was sleeping at about 9 a.m. and even though she was told that she was ill, she went back to PW 3 and did not even inform her that the deceased was sleeping at about 9 a.m due to sickness and this is against the natural human conduct.

18. PW 6 is the domestic help of the deceased, whose duty was to go everyday to the house at about 6 a.m and prepare food for the aged couple. On the date of the incident, she claims to have abstained from work on the ground that she had to take her younger sister to the hospital for delivery. The claim of PW 6 is difficult to be believed for the reason that she admits that her sister developed labour pains at about 11 a.m and then they contemplated to take her to the hospital in Tadepalligudem. When this was the situation, she would not have abstained from going to the house of the deceased where she was required to be present by about 6 a.m., for preparing food for elderly couple. In our opinion, it appears that the absence of PW 6 in the house of the deceased when the incident said to have taken place is not genuine or well founded.

19. PW 8 is the person, who claims that he was asked by PW 2 to go and search for the accused in the fields suspecting him to be the person who killed the deceased. It may be stated that even according to PW 2, the accused came to the fields and met him at about 11 a.m. According to PW 9, he has seen certain blood marks on the legs of the accused before he went towards the fields. If what PWs 8 and 9 are saying is true, the accused who has just killed the deceased would not

have gone to the fields where PW 2 and others were working. It is also in the evidence of PW 6 that at the time PW 2 and others came, the deceased was lying dead and the accused is very much present sitting in a corner of the room. Though she tried to explain this aspect in the cross examination by the prosecution, we see no reason to disbelieve her spontaneous statement during course of chief examination that she has seen the accused sitting in a corner of the room when all went and found the deceased lying dead.

20. PW 11 is the person who claims to have applied first aid to the wound of the accused. He deposed that he has seen the accused coming on his bicycle with a bleeding injury on his leg, that he took the accused to his house and applied bandage, that the accused gave him Rs.100/- to get some beer as he was suffering with pain, that when beer bottle was brought, the accused gulped the same hurriedly and thereafter, he gave Rs.500/- to PW 11 for obtaining electricity connection to his house, since there was no electricity connection to his house. All this sounds to be innocuous. If really the accused killed the deceased, he would not have conducted in the manner in which PW 11 claims.

21. PW 12 is another witness to whom the accused said to have given Rs.200/- at about 11 a.m on the date of the incident asking her to obtain a cable connection to her house and thereafter left that place in a bit of confusion and with an injury on his right leg.

22. Similar is the evidence of PW 14, who claims that at about 11 a.m on 23.06.2008 when he was in his shop, the accused came to him with an injury on leg and purchased two rasna packets for consumption and thereafter left the place.

23. The material evidence is that of PW 15, the Doctor, who conducted post mortem examination on the dead body of the deceased. It is not in dispute that the death of the deceased is homicidal. If the evidence of PW 15 is perused, it negatives the case of the prosecution. It may be recalled that the deceased was last seen alive by her son PW 2 at about 8.30 a.m and that PW 2 is the first person who has seen his mother lying dead at about 11 a.m. The post mortem examination was conducted at 4 p.m on the same day. The Medical Officer asserted that the deceased might have been killed in between 4 p.m. of 22.06.2008 and 4 a.m of 23.06.2008. This material discrepancy creates any amount of doubt about the case of the prosecution that the deceased was killed after 8.30 a.m and before 11 a.m on 23.06.2008. This fact coupled with the fact that the Medical Officer did not find semi digested food in the stomach of the deceased goes to show that the deceased might have been killed even before sunrise of 23.06.2008.

24. It is settled proposition that in a case based on circumstantial evidence, motive plays predominant role. It however pales into insignificance if there is direct evidence. In the instant case, according to the prosecution, the accused killed the deceased for gain when he was found committing theft of a sum of Rs.2,230/- It is also on record that when the deceased was found lying dead, the gold Mangalasutra and gold ear studs on the body of the deceased are left intact. If really the accused intended to kill the deceased for gain, he would not have committed theft of paltry amount of Rs.2,230/- leaving the valuables. Except the said amount, nothing is found missing from the house of the deceased. On the other hand, there is consistent evidence of the witnesses that the papers in the room were found in pell-mell condition.

The accused who was a farm servant would not have meddled with the property documents and other papers of the deceased if really he has intention to commit theft.

25. The prosecution heavily relies upon the extra judicial confession said to have been made by the accused in the presence of PW 18, the Village Revenue Officer. There are catena of authorities which lay down that extra judicial confession is a weak piece of evidence and the same cannot be made the basis unless there is evidence which is corroborated by other prosecution evidence and should inspire the confidence of the court. Suffice it to refer to a decision of the Supreme Court in *Kala v. State*¹ wherein the Apex Court observed at paras-8 and 9 as under:

“8. In *Sahadevan v. State of T.N* {(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 T.N* {(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 T.N* {(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 *Aloke Nath Dutta v. State of W.B* {(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},

¹ (2016) 9 SCC 337

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*.

9. In the circumstances of the case, the confession made to Susheela, PW 4 does not inspire confidence. She was not having good relationship with the accused and is not corroborated by other evidence on record, hence, it would not be safe to act upon it in the facts and circumstances of the case. The extra-judicial confession made to police is admissible only with respect to the recoveries made of the moped as well as a piece of nylon saree, pursuant to the information, which articles are not proved to be connected with offence.”

26. The extra-judicial confession by its nature is as such a circumstance which has to be accepted, if it fully convinces the court about it being genuine. Such a confession should be made before an acquaintance or a person in whom the criminal thinks it prudent to confess. The time gap in between the incident and the so-called extra judicial confession is also significant and a relevant factor to be considered. In the instant case, the crime is said to have been committed on 23.06.2008. On the very same day, the needle of suspicion was towards the accused. The extra judicial confession is made on 30.07.2008, i.e., more than 5 weeks after the incident. There is evidence on record that immediately after the discovery of the dead body, the accused was very much around and meeting several people and spending joyful time with them, such as, consuming beer, consuming cold drinks, going and meeting PW 2, the son of the deceased and drolling out charities in the shape of Rs.200/- to PW 12 for purpose of obtaining cable connection and Rs.500/- to PW 11 for obtaining electricity connection to his house. Having done that, more than 5 weeks thereafter, the prosecution wants to believe that the accused went to PW 18, the Village

Revenue Officer, who is not known to him and confessed that he is the person who killed the deceased.

27. The evidence of PW 18 does not inspire the confidence of the court. It is he who acted as the panch witness for the inquest and other panchanamas conducted immediately on the date of the incident. According to PW 18, on 30.07.2008 at about 12 noon when he was in Tadepalligudem in the house of Tahsildar, the accused came to him, that at that time PW 18 was taking tea in a buddy, located by the side of the office of the Tahsildar, and the accused came to him and sought his protection claiming that he killed the deceased by throttling with hands and electric wire.

28. In the cross-examination, PW 18 claims that he has close acquaintance with the accused even prior to the so-called extra judicial confession. However, in the report, which he filed before the police under Ex.P7, PW 18 stated that an unknown person came to him and introduced himself as P.Sreenu (accused). This material inconsistency goes to the root of the case and makes it difficult to believe the claim of PW 18, who appears to be the stock witness of the investigating officer, whose services are utilized for conducting different panchnamas. It is also in the evidence of PW 18 that he reduced the confessional statement Ex.P7 from the accused in writing, but he has neither read over the same to the accused nor the signature of the accused was obtained. Significantly, PW 18 admitted that Ex.P7-the confessional statement and also the confessional panchnama made before the police, were all written in the police station after the accused was produced by him before the police. It may also be mentioned that according to the prosecution, the accused confessed having committed the crime and led to the recovery of M.Os.1,

11 and 12, viz., the electric wire, bag and cash of Rs.2,230/-. These recoveries should follow the confession, but not vice versa. PW 18 admitted in his cross examination that after M.Os.1, 11, and 12 were seized and brought to the police station, Ex.P9-the confessional statement panchnama was written. For all these reasons, we find it difficult to believe the statement of PW 18 that the accused made any confession inculcating himself in the crime.

29. In view of the foregoing circumstances which clearly go to show that the prosecution could not prove its case against the accused beyond reasonable doubt and the findings of the Trial Court cannot be sustained. The evidence on record at best raises suspicion about the involvement of the appellant but as is well known, suspicion howsoever strong, cannot take the place of proof. The appellant/accused is therefore entitled to the benefit and consequential acquittal.

30. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused for the offences under Sections 302 and 380 IPC are set aside. The appellant/accused is set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

SURESH KUMAR KAIT,J

M.S.K.JAI SWAL,J

Date: 11.10.2017
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