

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI**

CRIMINAL APPEAL No.1277 OF 2012

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

The sole accused in Sessions Case No.84 of 2012 on the file of II Additional Sessions Judge, East Godavari District at Amalapuram, is the appellant herein. He was tried on two charges. The first charge was under Section 302 I.P.C. for causing the death of his wife, by name Rama Lakshmi. The second charge was under Section 201 I.P.C. Vide judgment, dated 11.06.2012, rendered in the aforesaid Sessions Case, the learned Sessions Judge, convicted the appellant-accused for the offences punishable under Sections 302 I.P.C. and 201 I.P.C. and sentenced him to suffer imprisonment for life and to pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for three months for the offence punishable under Section 302 I.P.C. and further sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for a period of three months for the offence punishable under Section 201 I.P.C. Both the sentences were directed to run concurrently. M.O.1 was directed to be destroyed after appeal time is over. Challenging the same, the present appeal came to be filed.

2. The facts of the case, as culled out from the evidence adduced by the prosecution, are as under:

The deceased Rama Lakshmi and PW.2 are the daughters of one Satyavathi. The husband of Satyavathi died when the deceased and PW.2 were at tender age. Since then, PW.1, who is the maternal uncle of the deceased and PW.2, used to look after the welfare of Satyavathi, the deceased and PW.2. PW.1 got performed the marriage of deceased and PW.2. The deceased Rama Lakshmi was given in marriage to the accused about 24 years prior to the date of incident and PW.2 was given in marriage to one B. Nageswara Rao, who was examined as PW.3. Thus, is the relationship between the accused and the prosecution witnesses.

The evidence of PW.1 discloses that since the date of marriage between the deceased and the accused, which took place 24 years earlier to the date of incident, accused used to harass the deceased to sell Ac.0-22 cents of land, which stands in the name of Satyavathi. As the deceased did not meet the demand of the accused, he used to beat her every day. The evidence on record also discloses that unable to bear the harassment, on one occasion, the deceased attempted to commit suicide by pouring kerosene. In that attempt, her body was burnt. PW.1 himself got admitted the deceased with burn injuries in Government Hospital. The evidence on record further discloses that ever since then, the accused used to

harass the deceased demanding her to sell Ac.0-22 cents of land belonging to Satyavathi, who is the mother of the deceased. One day, the deceased came to the house of PW.1 and informed him about the harassment meted out by her and also shown the injuries on her body. Immediately thereafter, PW.1 took the deceased to the house of the accused, admonished him and advised him to lead a peaceful marital life with the deceased.

On 28.11.2011, the accused came to the house of PW.1 at 10:00 AM and enquired whether the deceased came to his house, to which, PW.1 replied that the deceased did not come to his house. Then, PW.1 questioned the accused as to what happened, for which the accused stated that nothing has happened on the night of 27.11.2011, but, however, stated that from 06:00 PM onwards, the deceased was not to be seen in the house. Thereafter, the accused went to the house of mother of the deceased and enquired about the whereabouts of the deceased. Later, PW.1, PW.3, mother of the deceased and others went in search of the deceased in Anthervedi Karra Village, but in vain. It is stated that while they were searching for the deceased, PW.3 went into a casuarinas grove, which was situated at a distance of two furlongs from the house of the deceased, and during the search, he noticed a hand of human being projecting upwards. The said casuarinas grove belongs to the brother of the accused. After noticing the hand of a human being, PW.3 came and informed

PW.1 about the same. Pursuant thereto, PWs.1 and 3 and others went to the grave pit situated in the casuarinas grove, where PW.1 identified the hand as that of the deceased. All of them came back to the house of the accused and questioned him about noticing the human hand in the casuarinas grove, which belongs to the brother of the accused. The accused replied stating that he has committed the murder of the deceased, as she was not heeding to his request of selling Ac.0-22 cents of land, which stands in the name of Satyavathi, the mother of the deceased. The accused also confessed that he dealt a blow on the temple of the deceased with the butt end of the spade, as a result of which, she fell down. Thereafter, using the frill of her saree, he strangled her. Pursuant thereto, PW.1 went to the police station and presented a report, Ex.P1, before PW.10, the Sub-Inspector of Police, who registered a case in crime No.83 of 2011 of Sakhinetipalli Police Station for the offences punishable under Sections 302 and 201 I.P.C. Ex.P10 is the original of F.I.R.

PW.10 informed the same to his superior officials and posted a head constable and a guard at the grave pit situated in the casuarinas grove. After seeing the copy of the F.I.R., PW.11 took up further investigation and proceeded towards the scene of offence. On 30.11.2011 at about 07:30 AM, he received information about the movement of the accused at cycle shop center, Anthervedhi Karra Village. Then, he along

with PW.10 and other staff proceeded towards the said place, where PW.7 identified the accused and accordingly, he was apprehended. On interrogation, the accused confessed stating that he is responsible for the death of the deceased. Pursuant to the confession, the accused lead the police to the scene of offence, which is situated in the casuarinas grove of his brother. PW.11 got the scene of offence photographed and videographed the grave pit covering the dig up.

On 30.11.2011, PW.11 got exhumed the dead body of the deceased with the help of PW.9. After exhumation, inquest was conducted over the dead body of the deceased in the presence of PW.7. Ex.P6 is the inquest report. After conducting inquest, he has sent the body of the deceased to postmortem examination. PW.8, the Civil Assistant Surgeon in Area Hospital, Razole, conducted autopsy over the dead body of the deceased and issued Ex.P7, the postmortem examination report. According to him, the approximate time of death was about 3 to 4 days prior to the postmortem examination and the cause of death might be due to asphyxia and meddling the neck either by throttling or strangulation. PW.11 proceeded with the investigation and examined PWs.1 to 6.

After obtaining necessary documents and examining the witnesses, a charge sheet came to be filed before the Court of Judicial Magistrate of First Class, Razole, which was taken on

file as P.R.C.No.3 of 2012. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.84 of 2012.

3. On consideration of material placed on record, charges under Sections 302 and 201 I.P.C. came to be framed against the accused, which were read over and explained to him, to which, he pleaded not guilty and claimed to be tried.

4. To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P11 and M.O.1.

5. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same, but, however, he did not place on record any defence evidence.

6. Basing on the evidence available on record, more particularly, the fact of accused making confession before PWs.1 to 3 and also the recovery of dead body of the deceased at the instance of the accused, the trial Court, vide its judgment under challenge, convicted the accused for the offences punishable under Sections 302 and 201 I.P.C. and sentenced him to suffer imprisonment as aforestated.

Challenging the same, the present appeal came to be filed through the legal aid counsel.

7. The point that arises for consideration is whether the accused is responsible for the death of the deceased?

8. Smt. M. Padmalatha Yadav, learned counsel for the appellant, would contend that there are no direct witnesses to the incident and the circumstances relied upon by the prosecution are not established and even if they are established, they do not form a chain of events to connect the accused with the crime. According to her, the alleged confession said to have made by the accused before PWs.1 to 3 cannot be accepted, as there is any amount of doubt with regard to the said statement. She would further contend that even if the said circumstance is proved, that by itself will not be suffice to convict the accused. She would also contend that the finding of the trial Court that the dead body of the deceased was recovered at the instance of the accused is also false, since, the dead body came to be identified as that of the deceased even prior to the accused making confession and leading the police to the said place.

9. On the other hand, the learned Public Prosecutor would submit that the statement of the accused made before the witnesses disclosing the commission of the offence is sufficient to base a conviction. It is his plea that there is no need for PWs.1 to 3 to speak false against the accused and as

such, the finding of the trial Court warrants no interference. He would further contend that since the F.I.R. itself discloses making of the statement by the accused before PWs.1 to 3, it cannot be said that such a confession was introduced at a belated stage.

10. In order to decide the rival issues raised, it would be just and proper to refer to the evidence available on record. Before going through the evidence of the prosecution witnesses, it is to be noted that none of the prosecution witnesses in their evidence have deposed about seeing the accused and the deceased together, before commission of the offence. None of the witnesses, including the daughter of the deceased, stated that the accused and the deceased left the house together on the date of incident. The finding of the trial Court that the accused and the deceased left the house together is without any evidence being adduced by the prosecution. It appears that the Court below proceeded on the confession made by the accused before the police in holding that the accused and deceased together left the house.

11. As seen from the evidence on record, the case of the prosecution is that the accused killed the deceased, dug a pit and buried her. While doing so, he is said to have projected one hand above the ground.

12. The evidence of PW.2 would show that the accused used to cut the trees, to eke out his livelihood and on one day,

while he was cutting trees, a trunk of the tree fell on him, as a result of which, he became permanently crippled and since then, he started harassing the deceased. Similarly, PW.4 in his evidence deposed that the accused used to cut trees to eke out his livelihood and on one occasion, while the accused was cutting trees, a branch of it fell on his leg and he became permanently crippled. The evidence on record further shows that the accused used to walk with the help of a stick or crutch. Further, PW.11 in his evidence admits as under:

“It is true the accused was a lean built and he could not walk without help of walker stick.”

Further, it is also to be noticed that PW.1 in his cross-examination admits that the deceased was hefty and having strong personality and she can resist any unpredictable danger. The relevant admission in the cross-examination of PW.1 is as under:

“It is true the deceased was hefty and strong personality and she can resist any unpredictable danger.”

13. From the evidence adduced, it is clear that the deceased, who was having strong personality, can resist any kind of situation, whereas the accused was a person, who was permanently crippled and used to walk with the help of a stick. Keeping these circumstances in mind, one has to see whether the accused would have killed the deceased, dug a

pit and buried her all by himself. As stated earlier, there are no eye-witnesses to the incident and the case rests only on the circumstances relied upon by the prosecution.

14. As seen from the record, two circumstances are relied upon by the prosecution to connect the accused with the crime. The first circumstance being the oral disclosure made by the accused before the witnesses disclosing commission of the offence and the second circumstance is recovery of the dead body of the deceased at the instance of the accused.

15. Insofar as the confession made by the accused before the witnesses is concerned, it is to be noted that as per the evidence of PW.1, after noticing the hand of a human being in the casuarinas grove, PW.3 claims to have returned and informed the same to PW.1 and thereafter, PW.1, his sister and other witnesses went to the grave pit situated in the casuarinas grove, where they identified the hand as that of the deceased. Thereafter, they came back and questioned the accused about noticing a hand in the casuarinas grove, belonging to his brother. At that time, the accused is said to have confessed about the commission of the offence and also the manner in which he committed the offence. Similarly, PW.2 in her evidence states that after identifying the hand, which was projecting out of the pit as that of the deceased, all the witnesses returned to the house of the accused and on their questioning, the accused confessed about the

commission of the offence. Thereafter, they went to the police station and informed about the revelation made by the accused about the murder of Rama Lakshmi and her burial. Similar is the evidence of PW.3.

16. PW.3, in his evidence, deposed as under:

“About six months, on Sunday, the accused came to my house and informed to me that my sister-in-law Ramlakshmi (wife of accused) was not appearing in his house, then, he went to the house of mother of deceased as well as house of PW.1 and informed to them about disappearance of deceased. Then, myself, LW.3, LW.7, LW.9, LW.5 and LW.6 together searched for the deceased near the sea and also casurina group, which is at a distance of one furlong away to the house of accused. The casurina group belonged to LW.12. When, I was searching the casurina group, I have noticed a human hand raising from a grave pit in the casurina grove. Then, I went to PW.1, who was also searching for the accused in another direction and informed to him about the noticing of human hand in the grave pit in the casurina grove of LW.12. Then, myself, PW.1 and other persons who are searching at different directions came to the casurina grove and noticed the hand and identified as it belongs to the deceased Ramalakshmi. Then, we all came to the house of accused and questioned about missing of Ramalakshmi and also noticing of human hand in the grave pit. For that, accused gave reply that he himself beat and killed the deceased by slapping on her eardrum as a result, she was fell down, then, he used saree of the deceased around her neck strangulated and further stated that after death of the deceased, and buried it in the casurina grove of LW.12. LW.12 prepared a report against accused and presented it by PW.1 to the police. After presentation

of report, police came to the casurina grove and noticed the human hand in the grave pit and employed two constable to watch the grave pit till the next day morning. On the next day morning, the police, MRO and other officials have dig up the dead body of the deceased in the presence of PW.1, myself and other relatives of the deceased...”

17. PW.4 in his evidence reiterated what all PWs.1 to 3 have stated.

18. From the evidence of all the witnesses, it appears that on the basis of the information furnished by the accused about the missing of the deceased, the family members of the deceased, including PWs.1 to 4, started searching for the deceased and during the course of search, PW.3 is said to have traced a hand coming out of the grave pit. Immediately thereafter, he found a human body and then PWs.1 and 2 identified the hand as that of the deceased. Thereafter, all of them came to the house of the accused and questioned him, pursuant to which, the accused claims to have confessed. But the version given in the cross-examination is different from the version set out by the witnesses in their chief.

19. PW.1, in his cross examination, stated as under:

“... It is true the accused after enquiring me and my sister satyavathi where about of deceased then he went to the house of LW.2. It is true even before the accused coming to my house in search of deceased, his brother LW.12 went to police station and gave report with a photo of the deceased stating that she was missed from the house of the accused. The police

station is at a distance of 10 KM away to the house of accused.

On 28.11.2011 when LW.5 noticed the human hand from a grave pit in the casuarinas' grove. On the same day evening at about 4 PM I went to police station and informed the same. On receipt of my information the police reached casuarinas grove on 28.11.2011 at 6 PM and noticed the human hand from a grave pit. Myself, LW.5, LW.3, LW.12 and 6 others went to police station after noticing the human hand from the grave pit in the casuarinas grove. On receipt of our information, the police came to the accused house and questioned him where about of his wife Ramalaxmi. There up on the accused confessed before police that he beat the deceased and he buried the deceased in as grave pit in casuarinas grove. Then the accused himself lead the police party as well as myself and others to the casuarinas grove and pointed out the grave pit in which he had buried the deceased."

20. From the version given by PW.1 in the cross-examination, it is clear that even before the accused came to the house of PW.1 in search of the deceased, LW.12 went to the police station and lodged a report with the photo of the deceased stating that she is missing from the house of the accused. Pursuant thereto, the police came to the house of the accused and questioned him about the whereabouts of his wife. There upon, the accused is said to have confessed before the police that he beat the deceased, buried her in a grave pit at the casuarinas grove. From the evidence of PW.1 and the answers given by him in the cross-examination, it

appears that a different version has come on record, wherein the confession is said to have made by the accused only before the police when they came to the house of the accused and questioned him. This version of accused confessing before the police does not find place in PW.1's chief evidence. Obviously, it creates doubt in the mind of the Court as to whether the accused conveyed such an impression before PWs.1, 3 and 4. Even assuming that such a confession was made before PWs.1, 3 and 4, the question is whether such a confession was free and voluntary. As seen from the record, PWs.1 to 3 categorically stated that after identifying the dead body as that of the deceased, they came and questioned the accused as to what happened to the deceased. Number of people were present at the time when the accused was questioned. On repeated questioning, he is said to have admitted his guilt. The said fact finds place in the evidence of PW.4, wherein he admits that about 25 persons insisted the accused to reveal the truth about the missing of the deceased. The relevant portion in the evidence of PW.4 is as under:

“... There were about 25 persons have insisted the accused to reveal the truth about the missing of my deceased mother...”

21. In order to make a confession admissible in evidence under Section 24 of the Indian Evidence Act, 1872, the said confession made by the accused person becomes irrelevant, if the making of the confession appears to the Court to have

been caused due to inducement, threat or force. As seen from the evidence of all the witnesses, more particularly, the evidence of PW.4, which is referred to above, nearly 25 persons insisted the accused to reveal the truth, pursuant to which, he is said to have made the confession. Therefore, it cannot be said that the alleged confession made by the accused was voluntary. Therefore, we are not inclined to believe the alleged confession made by the accused for two reasons. Firstly, the version set out by PW.1, that the accused voluntarily made confession disclosing about the commission of offence cannot be acted upon as the same came to be made before the police and secondly, the material on record does not indicate that the said confession was made voluntarily. Viewed from both the angles, we are not inclined to believe the statement/confession made by the accused before PWs.1, 3 and 4.

22. In **Kala Alias Chandrakala v. State, through Inspector of Police**¹, the Honourable Apex Court in paragraph No.8 observed 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

¹ (2016) 9 SCC 337

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 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) 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*.”

23. Having regard to the above, the said circumstance cannot be relied upon to connect the accused with the crime.

24. The next circumstance which is relied upon by the prosecution is that the dead body came to be recovered at the instance of the accused. We are afraid that the same also cannot be accepted for many a reasons. As seen from the evidence on record, the incident in question is said to have

taken place on 27.11.2011 at 06:00 PM. The family members of the deceased, including PW.3 and others, went in search of the deceased and accordingly, PW.3 noticed a portion of the hand coming out of the pit, situated in the casuarinas grove of one Abbulu. Immediately, thereafter, he informed the family members about the seeing a human hand in the grove. Accordingly, all the family members went there and identified the hand as that of the deceased. But, however, nobody made any effort to take out the body. From the above it is clear that even before they questioned the accused about the offence, the body of the deceased was traced. Therefore, the argument of the learned Public Prosecutor that the circumstance of dead body being traced at the instance of the accused is sufficient to connect the accused cannot be accepted. It is also to be noted here that by the time the accused lead the police to the place where he dug the pit and buried the dead body of the deceased, information has already reached the police and the police have already arrived at the place where the dead body was said to have been buried. Therefore, the argument of the learned counsel for appellant that this recovery cannot be construed as one under Section 27 of the Indian Evidence Act appears to be correct. Hence, it cannot be treated as a discovery made pursuant to the confession made under Section 27 of the Indian Evidence Act.

25. At this stage, it would be useful to refer to the evidence of PW.4, who is no other than the son of the deceased and the accused. In the cross-examination, he admits as under:

“... The police took me and accused to police station on 28.11.2011 night time. It is true the accused was continued in the custody of the police since the date he was taken into custody. The police sent me back on the next day...”

26. From the admission of PW.4, it is clear that on the night of 28.11.2011, the police took PW.4 and accused into custody and detained them in the police station for a day. That means the police were aware about the death even by the night of 28.11.2011. If really the accused has made a disclosure statement or a confession as projected now on 28.11.2011 itself, at 06:00 PM or 08:00 PM, as the case may be, there was no reason for the police to take PW.4 into custody and keep him for one day.

27. Since, there is no other material establishing the guilt of the accused, we are of the view that the circumstances relied upon by the prosecution to connect the accused with the crime are not sufficient.

28. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused vide judgment, dated 11.06.2012, in Sessions Case No.84 of 2012 on the file of the II Additional

Sessions Judge, East Godavari District at Amalapuram, for the offences punishable under Sections 302 and 201 I.P.C., are set aside and he is acquitted for the said offences. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime. The order passed by the trial Court with regard to the Material Objects holds good.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

December 21, 2017
MD

