

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE MS.JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.64 of 2013

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

1) The sole accused in Sessions Case No.614 of 2011 on the file of VII Additional Sessions Judge, Kakinada, is the appellant herein. He was tried for an offence punishable under Sections 302 and 201 IPC for causing the death of one Muliki Trimurthulu. Vide its judgment, dated 26.07.2012, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 and sentenced him to suffer "Life imprisonment" and to pay a fine of Rs.200/- in default to suffer imprisonment for a period of one month and also sentenced to suffer rigorous imprisonment for a period of 5 years for the offence under Section 201 IPC. Both the sentences were directed to run concurrently.

2) The facts as culled out from the evidence of prosecution witnesses are as under:-

P.W.1 is the wife of accused, P.W.2 is the uncle of the accused while P.W.3 is the daughter of P.W.1 and the accused. P.W.4 is the mother of P.W.1 while P.W.5 is the adoptive mother of P.W.1. P.W.6 is the co-sister of P.W.1. The marriage of the accused with P.W.1 was performed about 10 years prior to the date of incident and out of wedlock they were blessed with one daughter by name Anusha (P.W.3)

and one son by name M.Trimurthulu(deceased). Both P.W.1 and accused lived happily for some time till the birth of the deceased. After the birth of the deceased, differences arose between them as the accused started suspecting P.W.1 on the ground that the boy was not born through him. As such P.W.1 left the company of the accused and started staying with P.W.5, who is the adoptive mother of P.W.1. The dispute was placed before the elders, who advised P.W.1 to stay with the accused. It is said that though P.W.1 stayed with the accused for two months, there was no change in his attitude. However, in the month of December, 2010 i.e., few days prior to the Christmas, P.W.1 went to attend the work, but the accused did not go to work and stayed in the house. It is said that on that day the children were also sent to the school. After lunch, P.W.2 came and informed P.W.1 that her mother-in-law was suffering with weakness and asked her to come to the house. As per his request, she followed P.W.2 on his scooter. At the time when she reached house, she noticed the deadbody of the deceased in the thatched house of P.W.8, who is none other than the elder brother of the accused. The tongue of the deceased was out, blood was oozing from the back side of the head and teeth protruded into the tongue. She fell down unconscious and by the time she regained conscious, her mother and relatives were present. On the next day morning when the dead-body was taken to perform obsequies, the accused fled away from the village. The relatives of the accused did not allow P.W.1 to move till the completion of the obsequies of 8th day. Thereafter she went to

police station and lodged a report with P.W.17-the A.S.I. of Police. Ex.P-1 is the report. Basing on the said report, a case in Crime No.210 of 2011 was registered under Section 174 Cr.P.C. Ex.P-28 is the FIR. P.W.17 recorded the statement of P.W.1 and then proceeded to the scene of offence along with the mediators and took photographs. He prepared a rough sketch of the scene in the presence of P.W.10 and others. Ex.P-2 is the scene of offence panchanama while Ex.P-29 is the rough sketch of the scene. During the said proceedings he examined P.Ws.2 to 7, 13 and 14. While things stood thus, on 03.01.2011 the accused is said to have gone to the panchayat office and gave a confession before P.W.10 the V.R.O., wherein he disclosed about the commission of the offence, due to suspicion against his wife. The same was reduced into writing under Ex.P-3 and the signature of the accused was taken on it. Along with Ex.P-3, the accused was handed over to P.W.17 at 3.00 p.m. Basing on Ex.P-3, the section of law was altered from 174 Cr.P.C. to 302 IPC. P.W.18, who is Inspector of Police took up further investigation on receipt of a copy of the altered FIR. On 04.01.2011 he along with his staff proceeded to the scene of offence. As the observation of the scene of offence, was already done by P.W.17, he verified the statements of P.Ws.1 to 7 and returned back to the police station by 10.30 a.m. In the presence of P.W.15 and L.W.24, P.W.18 examined the accused and recorded his confession. Pursuant to Ex.P-25, he recovered a stone and a cloth, used in the commission of the offence, which are marked as M.Os.1 and 2. The same were seized under Ex.P-26. As the body was already

cremated, he called for exhumation of the body on 11.01.2011. On that day all of them went to the burial ground and in the presence of Mandal Executive Magistrate, the body was exhumed. He then conducted inquest over the dead body in the presence of P.W.10 and L.W.16. Exs.P-14 to P-23 are the photographs of the deadbody, which was exhumed. Ex.P-33 is the inquest report. Thereafter the body was sent for post mortem examination. P.W.16 the Civil Assistant Surgeon at P.H.C., Peda Mallapuram, on a requisition from the M.R.O., Prathipadu, conducted post-mortem examination at the Vommangi burial ground and issued Ex.P-27 post-mortem certificate. He observed fracture of hyoid in the body. The said post-mortem examination was conducted on 11.01.2011. He opined that the time of death was about 15 to 20 days prior to post-mortem examination and the death was due to the pressure over the neck leading to Asphyxia. After examining all the witnesses and after collecting RFSL report, P.W.19, the successor to P.W.18, filed the charge-sheet before the court of Judicial Magistrate of First Class, Prathipadu, which was taken on file as P.R.C.No.201of 2011, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.614 of 2011.

3) Basing on the material available on record, charges under Sections 302 and 201 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 21 and got marked Exs.P1 to P33 and MOs.1 and 2. 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 evidence was adduced except marking Exs.D-1 and D-2.

5) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused for the offences to which he was charged. Challenging the same, the present appeal is filed.

6) The learned counsel appearing on behalf of the appellant mainly submits that there are no direct witnesses to the incident and the circumstances relied upon by the prosecution do not form the chain of events connecting the accused with the crime. She would further contend that merely because the deceased was seen last in the company of the deceased, does not by itself inculcate the accused in the commission of the offence. Insofar as the extra-judicial confession is concerned, she would contend that this being a weak type of evidence, requires corroboration in all material aspects. In the absence of the same, she would contend that the motive, last seen theory and the extra-judicial confession are not sufficient to convict the accused. In alternative, she submits that in view of the averments in the extra-judicial confession, wherein the accused developed grouse against P.W.1 as she proclaimed that the son(deceased) was not born to him, the nature of offence requires to

be scale down since the attack was out of grave and sudden provocation.

7) On the other hand, the learned Public Prosecutor would contend that there is a lot of time gap between the date of proclamation of the birth of the child and the commission of the offence. He would further submit that if the accused had any grouse, it should be against P.W.1 and not against the young boy, who has done no harm to the accused. The Learned Public Prosecutor would further submit that as the genuinity and authenticity of the extra-judicial confession is not questioned by the appellant, he would submit that the said confession coupled with the accused being seen last in the company of the deceased and the motive, are sufficient to base a conviction.

8) Therefore, the question that falls for consideration is; "Whether the accused is responsible for the death of the deceased and whether the nature of offence can be scaled down to a lesser offence?"

9) It is no-doubt true that there are no direct witness to the incident and the case rests on the circumstantial evidence. There are four circumstances, which are relied upon by the prosecution to connect the accused with the crime are:- **i) motive for the accused to cause death of the deceased; ii) the accused being seen last in the company of the deceased by P.Ws.3 and 9; iii) credibility of extra judicial confession; iv) conduct of the accused in escaping from the village when the body was taking to burial ground.**

10) As seen from the arguments advanced by the learned counsel for the appellant, the genuinity or otherwise of the extra-judicial confession is not questioned. Since making of extra-judicial confession and its validity in the eye of law, is not questioned by the learned counsel for the appellant, the same can be taken as one of the circumstances to connect the accused with the crime. As seen from the record, the said extra-judicial confession was made before P.W.10-the Village Revenue Officer on the next day of the date of the incident. In order to appreciate the same, it would be useful to refer to the evidence of P.W.10, which is as under:-

"On 03.01.2011 the accused came to Panchayat office, and wanted to give statement to me. He also stated that he killed his son due to suspicion against his wife. Then I put it in writing under Ex.P-3, myself village servant and accused signed on it. Then I handover the accused to Prathipadu S.I. of Police at 3.00 p.m. "

11) Though PW.10 was subjected to cross-examination, nothing useful was elicited except suggesting that he not only acted as a panch of the scene observation report but also examined to prove the extra-judicial confession made before him on 03.01.2011. The entire cross-examination of P.W.10 was with regard to the proceedings which took place on 02.01.2011 viz., with regard to the preparation of the scene of offence, panchanama and the seizures made therein. On the other hand, it was elicited from the cross-examination that when the accused gave statement, nobody was present except himself and village servant. He further stated that he did not inform to the Sarpanch or Panchayat members about the statement of the accused.

From the evidence of P.W.10, it is clear that nobody was present in his office, except the village servant, when the accused made extra judicial confession disclosing the commission of the offence. Immediately the same was reduced into writing. The signature of accused was also taken and thereafter the accused was handed over to the S.I. of Police. As stated earlier, no suggestion was given, to disbelieve the extra-judicial confession and even before this Court no argument was advanced as to the genuinity and reliability of the confession. Therefore, we feel that the extra-judicial confession can be taken into consideration as one of the circumstances to connect the accused with the crime. In fact the Apex Court in **Kadamanian alias Manikandan v. State Represented by Inspector of Police**¹ held as under:-

"Insofar as the veracity of the extra judicial confession made by the appellant is concerned, it would be relevant to mention that, learned counsel during the course of hearing, placed reliance on a judgment rendered by the Apex Court in *Kala alias Chandrakala v. State through Inspector of Police* (AIR 2016 SC 3912). Based on the said judgment rendered by the Apex Court, it was submitted, that the extra-judicial confession being a weak piece of evidence, should not have been relied upon, for determining the culpability of the appellant.

Having given our thoughtful consideration on the above contention, we are of the view, that the judgment relied upon by learned counsel, is wholly inapplicable in the facts and circumstances of this case, for two distinguishing features in the present case, namely, that the extra judicial confession in the instant case was made to the Village Administrative Officer R.V.Alagurajan - P.W.12, who was totally unbiased and unconnected with the controversy in hand. He could also not be stated to be inimical to the appellant. He is not shown to have any relationship with either the complainant or the accused. Moreover, insofar as the extra judicial confession made in the judgment relied upon by the appellant is concerned, the same

¹ AIR 2016 Supreme Court 4266

had been made by the accused, to the sister of the deceased, which by itself made the extra judicial confession extremely doubtful. We are therefore not impressed with the submission advanced by the learned counsel for the appellant, based on the cited judgment."

12) The next circumstance relied upon by the prosecution is the motive of the accused to commit the offence. Admittedly, the evidence of the witnesses, more particularly, the evidence of P.W.1 shows that the accused was quarreling with her on the ground that the son born to her was not through him. He used to suspect P.W.1 from the date of birth of the son and was harassing her because of which she left the company of the accused and started living in the house of P.W.8. Though mediations were held, there was no change and because of that it is said by P.W.1 that the accused killed the son born to her. Though P.W.1 was cross-examined, nothing material came to be elicited except she informing the villagers as to who was responsible for the death of the deceased. From the evidence of P.W.1, which gets corroborated from P.Ws.2 and 3, it is clear that the accused was quarrelling with P.W.1 after the birth of the male child and keeping the issue in mind he took revenge by eliminating the boy. From the above, it is clear that there was a strong motive for the accused to kill the child as according to him he was not born through him.

13) The third circumstance, relied upon by the prosecution, is theory of last seen in the company of the accused. The same was proved through the evidence of P.Ws.3 and 9.

14) The relevant portion in the chief examination of P.W.3 is as under:

"My brother died two days prior to Christmas day in 2010. On that day I went to school. My mother went to attend the work. My father and my younger brother are at the house. I returned to home to get lunch plate to have the lunch at the school. Then I noticed my father and my younger brother are sitting in the thatched shed belongs to my senior paternal uncle. I took the meals plate return back to school. After closing of school hours I returned back to my house, kept school bag in the house went to my friend Rani's house. Myself Rani went to pluck flowers at the house of my senior paternal uncle where my father and brother sat in the lunch hour. There I saw my younger brother laying up words and the tongue came out of the mouth and blood is oozing from the back of the head. I tried to awaken my younger brother but he did not move myself and Rani went and called, Manga and Veerabrahmam who are my senior maternal aunt, who is wife of elder brother of my father by name Chakram."

The relevant portion in the chief-examination of P.W.9 is as under:-

"Prior to two days of Christmas in 2010 at 11.00 a.m., accused brought his son and purchased two buns and gave to his son. At 3.00 p.m., I noticed the accused going away through my shop. At 4.00 p.m., I came to know deceased died."

15) From the evidence of these two witnesses, it is clear that in the afternoon the accused and the deceased were sitting in the thatched shed belonging to the senior paternal uncle of P.W.3. After closing of school, when P.W.3 returned back to house, herself and Rani went to pluck flowers at the house of her senior paternal uncle, where her father and brother sat in the lunch hour and they noticed the deceased lying on the floor, his tongue out of the mouth and blood oozing from the back of the head. No explanation is coming from the accused as to how the deceased died, except stating that the

deceased fell down from the tree and died. Further, section 106 of the Indian Evidence Act imposes an obligation on the accused to explain as to what happened after they were last seen together.

16) The last circumstance, which can be taken as one of the circumstances to complete the chain, is the accused leaving the village at the time of the obsequies. If really he was innocent and if his version that the deceased died after falling from the tree is correct, there was no reason for him to leave the village and fail to attend the obsequies, which took place in the village. Having regard to the circumstances referred to above, which are proved beyond doubt, we feel that the prosecution was able to prove the chain of events connecting the accused with the crime. Hence, the findings and sentence imposed by the trial court warrants no interference.

17) In the result, the Criminal Appeal is Dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

Dt:09.02.2018
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