

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

Crl.A.No.712 of 2012

Date: 13.11.2018

Between:

Anil Kumar Goswamy,
S/o.Ganesh Kumar Goswamy,
Aged 26 years, R/o.Flat No.F T/1,
Sanjeeveni Hills View-II,
Prahladapuram,
Near Simhachalam,
Visakhapatnam.

...

Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

...

Respondent

Counsel for the Appellant : Mr. C.Nageswara Rao, Senior Counsel
for Mr.E.Venkata Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice Nagarjuna Reddy)

The sole accused in Sessions Case No.69 of 2008 on the file of the Sessions Judge, Mahila Court, Visakhapatnam, filed this appeal against judgment dated 28.06.2012, whereby he was convicted for the offences punishable under Sections 302 and 201 IPC and *inter alia* sentenced to undergo life imprisonment.

2. The accusation against the appellant in brief is that, he was in relationship with one Barli Chamanthi Revathi Kumari (for short 'the deceased'), caused pregnancy, deceived and misled her into believing that they entered suicide pact by taking sleeping pills and having made the deceased consume sleeping pills and fall unconscious, the appellant has strangled the deceased by means of a rope and thereby he has committed the offence of murder.

3. Based on the charge sheet and the material collected during the investigation by the police, the lower court has framed the following charges:

“Firstly, that you on the 21st day of April, 2005 at about 02.00 p.m. at Sagardurga Hil Marripalem Railway Quarters, Visakhapatnam did commit murder by intentionally causing the death of Barli Chamanthi Revathi Kumari by administering sleeping pills and after the deceased fell unconscious you strangled her neck by means of a rope and that you thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

Secondly, that you, on the same day, at the same time and place knowing or having reason to believe that certain offence punishable with death or imprisonment for life has been committed, did cause certain evidence of the said offence to disappear to wit, buried the dead body of the deceased Barli Chamanthi Revathi with the intention of screening the said offence caused by you from legal

punishment and thereby committed an offence punishable under Section 201 of the Indian Penal Code and within my cognizance”.

4. As the plea of the accused was one of denial, he was subjected to trial during which, the prosecution examined PWs.1 to 16, got Ex.P1 to P14 marked and produced MOs.1 to 3. On behalf of the defence, no evidence was let in. On appreciation of oral and documentary evidence, the lower court has disposed of the case in the manner as noted hereinbefore.

5. At the hearing, Mr.C.Nageswara Rao, learned senior counsel representing Mr.E.Venkata Reddy, counsel for the appellant, submitted that the prosecution failed to prove the guilt of the appellant beyond reasonable doubt. That PW-11, the doctor who conducted autopsy over the purported body of the deceased, opined that having regard to the fact that the body was in the shape of skull and bones only, it is not possible to give any opinion on the cause of death, that the prosecution failed to produce any other material proving the cause of death as homicidal and that, therefore, the court below has committed a serious error in treating the death as homicidal and convicting the appellant for the offence of murder.

6. Opposing the above submissions, the learned counsel representing the learned Public Prosecutor, sought to support the judgment of the lower court.

7. We have carefully considered the respective submissions of the learned counsel for respective parties, with reference to the evidence on record. This is a case based on circumstantial evidence, pure and simple. The deceased went missing on 19.04.2005, the FIR was registered based on Ex.P1 – report on 29.04.2005, showing the appellant as a suspect and it was altered on 26.07.2005, based on an alleged voluntary confession of the accused, showing the appellant as the accused and adding Sections 302 and 201 IPC. Interestingly, though the appellant was shown as suspect in F.I.R. registered on 29.04.2005, the prosecution failed to place before the court, any material as to the conduct of investigation and its progress if any, between 29.04.2005 and 26.07.2005. No efforts were made to arrest and interrogate the appellant for nearly 3 months. Suddenly, on one fine day, PW-14, the investigation officer picked up the accused (‘on reliable information’) and based on the purported confessional statement reduced into writing by way of mediator’s report (Ex.P4), he found the skull and bones in and around a pit at a place called Sagardurga Hill, Visakhapatnam. PW-14 did not explain as to what is the source of the information on which, he treated the suspect as the accused.

8. Mr.C.Nageswara Rao, learned senior counsel, addressed the court on the scope of Section 27 of the Indian Evidence Act, 1872, with reference to the judgment of the Privy Council in PULUKURI

KOTTAYA VS. KING-EMPEROR¹ and the judgment of the Supreme court in BHARAT VS. STATE OF U.P.² and submitted that in order to rely upon the admissible portion of the confessional statement leading to discovery, such confession must be voluntary. He invited our attention to the evidence of PW-8, one of the mediators to Ex.P2, who deposed that when he along with the police went to the bus stop junction at Gurudwara, they found the accused there; that the police had taken the accused into custody and interrogated him during which, he has confessed to his committing murder. The learned senior counsel further submitted that PW-8 did not state in his deposition that the accused voluntarily made the confession, but that he made the alleged confession during the interrogation, which pre-supposes that the police have forcibly extracted the confession from the appellant. He also pointed out the discrepancy in the evidence of PW-8, as to the place where the police have apprehended the accused, in that, in his chief examination, PW-8 deposed that they have found the accused at the bus stop junction at Gurudwara, whereas in his cross-examination, he stated that they found the accused at Maddilapalem bus stop and that they drafted Ex.P2 at Maddilapalem bus stop itself. A perusal of Ex.P2 does not show the place where it was prepared. It however refers to Gurudwara junction, as the place where the police found the accused

¹ AIR 1947 PC 67

² 1971 3 SCC 950

and interrogated him. In PULUKURI KOTTAYA (1 supra), the

Privy Council has lucidly explained the scope of Section 27 as under:

“Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be proved to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the ‘fact discovered’ is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships’ view it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the

house of the informant to his knowledge; and if the knife is proved to have been used in the commission of an offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant".

9. Emphasising on the confession to be voluntary in order to be admissible under Section 27 of the Indian Evidence Act, the Supreme Court in BHARAT (2 supra), held as under:

"The law as to confessions is perhaps too widely stated. Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an after-thought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its user. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an after-thought and that the earlier statement was true. This was laid down by this court in an earlier case reported in Subramania Gounden Vs. The State of Madras".

10. It was suggested to PW-8 that he has put his signature on Exs.P2 to P4 at the instance of the police and that the appellant did not confess before PW-8. It was also suggested to PW-14, the investigation officer, that he has kept the appellant in wrongful

custody and in that connection, he received a telephonic message from the Advocate for the appellant and that due to the said reason, he bore grudge against the appellant and foisted a false case against him. As observed herein before, having not made any headway in busting the crime for nearly 3 months, the police have suddenly picked up the appellant. PW-14 failed to explain as to on what basis he took the appellant into custody after 3 months and registered the FIR. Added to this, there is a serious discrepancy at the place where the appellant was taken into custody. The testimony of PW-8 that during interrogation, the appellant has confessed, also gives rise to a strong presumption that the alleged confession was not voluntary. All these reasons impel us to doubt the claim of the prosecution that the appellant has confessed to the commission of offence.

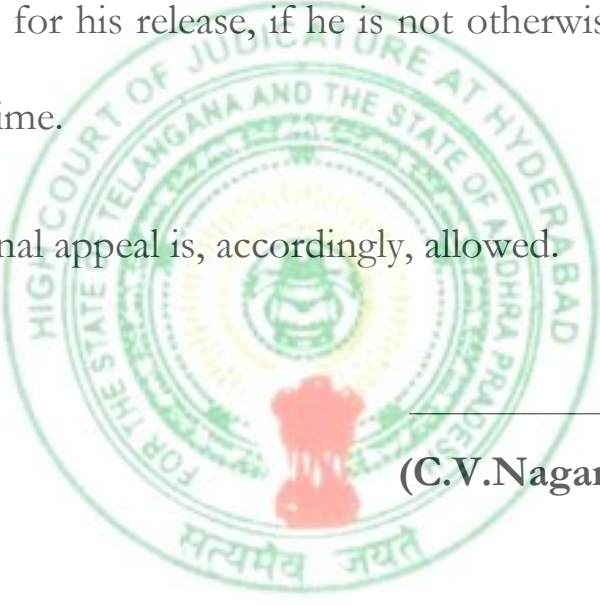
11. Except the alleged confession leading to the police finding the skull and bones, no other circumstances link the appellant to the commission of the alleged offence. Though PW-2, the brother of the deceased allegedly saw the appellant and the deceased going together on 19.04.2005, he did not inform the police about the said fact. As per the case of the prosecution, the deceased died on 21.04.2005. The last seen theory cannot be made applicable, as there is substantial gap between the time when the appellant and the deceased were allegedly seen together and the time of death.

12. The weakest aspect of the prosecution case lies in the fact that PW-11, the doctor who conducted autopsy and issued Ex.P8- post-mortem certificate, opined that no opinion regarding the cause of death is possible, as all the body parts are not available, except for a few bones on which no fractures were noted. When the prosecution failed to prove the cause of death as homicidal, merely because the skeleton alleged to be of a woman was found, no presumption could be drawn that the death was homicidal. Unless the prosecution proves beyond reasonable doubt that the death was homicidal, it is preposterous to find a person guilty of homicide on suspicion. Assuming that as suspected by the police, there was relationship between the appellant and the deceased, there is no warrant to draw a presumption that the death was homicidal and that the former was responsible for causing the death. In our opinion, this crucial aspect slipped from the mind of the court below. As rightly pointed out by the learned senior counsel, even if the admissible portion of the confession, leading to recovery of body is accepted on its face value, it only proves that the appellant had knowledge of the existence of a body in skeleton form. However, it is not permissible for the court to draw any further presumption that the death might have been homicidal and that it is the appellant who must have caused the death. For the aforementioned reasons, we are of the opinion that the prosecution miserably failed to prove the two crucial aspects, namely,

(1) that the deceased has met with homicidal death and (2) that the appellant has caused the death of the deceased.

13. On the above analyses, the judgment under appeal is set aside and the appellant is held not guilty of the offences for which he is charged and he is, accordingly, acquitted. The fine amount, if any, paid by him shall be refunded to him. The bail bonds of the appellant shall stand cancelled. The appellant shall surrender himself before the Superintendent, Central Prison, Visakhapatnam, for completing the legal formalities for his release, if he is not otherwise required in any other case or crime.

14. The criminal appeal is, accordingly, allowed.



(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 13th November, 2018

msb

