

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL No.331 OF 2013

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

The sole accused in S.C.No.111 of 2009 on the file of II Additional District and Sessions Judge, Fast Track Court, Srikakulam, is the appellant herein. He was tried for the offences punishable under Sections 302 and 201 IPC. By its judgment dated 07.03.2013, learned Sessions Judge acquitted the accused for an offence punishable under Section 201 IPC, while convicting him for an offence punishable under Section 302 IPC and sentenced him to suffer rigorous imprisonment for life and pay fine of Rs.100/- in default to suffer imprisonment for one month.

2. The substance of the charge against the accused is that on 12.10.2008, between 08.30 and 09.30 p.m., the accused is said to have caused the death of one Pothabathula Jayalaxmi, aged about 19 years, on the railway track between Km Nos.681/46 and 682/2 near Bendigate, within the limits of Vajrapukothuru Police Station in Srikakulam District.

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

(i) PW2 is the sister of the deceased, while PW3 is the husband of PW2. PW4 is the Sarpanch of the village before

whom the accused is said to have made an extra judicial confession. PW5 is the neighbour of PW2, while PW6 is the then driver of a private bus who was requested to drive his bus on that day.

(ii) The deceased Jayalaxmi studied intermediate in Orissa State and about four years prior, she came to the house of PW2 and started staying there. She completed her nursing training and thereafter joined in the hospital of PW8. It is stated that the deceased used to go to the hospital everyday by 09.00 a.m. and return home by 05.00 p.m. The deceased used to travel in the bus by name "Bhayankar", which was driven by the accused. The house of the accused is situated behind the house of PW2. About three years prior to the date of incident, on a Saturday evening, the mother of the accused came to the house of PW2 and told her that the deceased was having extra-marital relation with the accused and asked her to keep her sister away from the accused. She further told her that due to said relation, the wife of the accused was living with her parents quite often. At that time, the deceased and PW4 were also present there apart from other neighbours. However, PW2 did not question the deceased about her behaviour, with a view to ask the accused first about it. On the next day, at about 09.00 a.m., the deceased left the house to go to Parlakhidi, but did not return home even after 06.00 p.m. When the same was informed to the husband and parents of PW2, they went to Parlakhidi and

on enquiry at the hospital, came to know that she left the hospital stating that she has got some work. Thereafter, they requested PW5 to contact the accused and when he telephoned the accused, he told him that he was at Palasa and was busy. However, later he switched off his telephone. On the next day morning, the accused is said to have returned to the village in the morning. Then, PWs.2 and 3 went to PW4, informed him about the missing of the deceased, who chastitised about the relation between the accused and deceased, thereby expressed a doubt against the accused. Immediately, PW4, PW5 and some of the villagers including accused gathered near the village church and when PW4 questioned the accused about the deceased, he confessed about the commission of offence, i.e., killing the deceased at the Railway Track at Bendigate. Immediately, thereafter, the Sarpanch (PW4) telephoned to PW19, the SI of Police and informed him about the matter. On receiving the information about dead body of a woman being found at railway track near Bendigate, PW19 telephoned to PW4 and informed the same to him. When the same was informed to PW2, 3 and the parents of the deceased, all of them reached the spot and identified the body as that of the sister of PW2 i.e., the deceased. On 13.10.2008, PW18 received the death intimation from PW19. Ex.P1 is the said death memo received by him, basing on which, PW18 registered a case in Crime No.152 of 2008 of GRP Police Station, Palasa, under

Section 174 Cr.P.C. and sent original FIR to MRO Palasa and other officials. Thereafter, PW18 visited the place where the dead body was lying. As it was late in the night, he posted a guard and informed the neighbouring General Police Station about the dead body. At about 10.00 p.m., through the SI of Police, Vajrapukottur Police Station, PW18 received information about missing of a woman and that he would send the Sarpanch of Kurigam village to the dead body on the next day morning. On 14.10.2008, at 09.00 a.m., PW18 went to the scene of offence, by which time, PWs.2, 3 and mother of the deceased were present. PW18 along with PW14 conducted panchanama of the scene, found blood traces on the railway track running from Pundi to Palasa; severed left hand of the deceased, pieces of flesh of the body on the track, traces of dragging of the body and the body was found in water situated by the side of railway bridge, which was covered with bushes. They brought out the body from the water, found an injury on the head and also found MO1 on the railway track. The left side stomach portion of the body was found cut and intestines were protruding out, the right hand was found cut at the elbow and hanging to the body. He got prepared an observation report which is marked as Ex.P22. Thereafter, PW18 prepared a rough sketch of the scene which was marked as Ex.P30. On receiving requisition from PW18, PW17 conducted inquest over the body of the deceased. Ex.P23 is the inquest report.

After inquest, the dead body was sent for post mortem examination. PW15, the Civil Assistant Surgeon at Community Health Center, Palasa, conducted autopsy over the dead body of the deceased and issued Ex.P24 the post mortem report. According to PW15, the cause of death was due to injury to vital organ like skull and cerebral parenchyma and long bones and according to him the injuries found on the deceased could be caused due to running over by the train. After receiving the post mortem report and taking into consideration the panchanama of the scene, PW18 altered the Section of Law from Section 174 Cr.P.C. to Sections 302 and 201 IPC and issued an altered FIR, which is placed on record as Ex.P31. An intimation about the alteration of Section of Law was sent to PW21, the Inspector of Police, who took up further investigation of the case. He secured the presence of PWs.1, 4, 12, 13, examined them, but as their version tallied with the statements already recorded by PW18, he did not record their statements separately. After recording the statement of PW3, he seized MO4 box relating to cell phone used by deceased. On the same day, he recorded the statements of PWs.5 to 7 and three others. On 04.11.2008, at about 02.00 p.m., PW4 and one D.Chittayya came to the office of PW21 along with the accused and presented Ex.P2 containing signatures of PW4, Chittayya and the accused. Thereafter, the accused is said to have confessed about commission of offence, which was

reduced into writing. On receipt of the same, PW21 recorded the statements, interrogated the accused in the presence of mediators. Ex.P27 is admissible portion of the statement of the accused. Pursuant to the confession made, the accused led PW21 along with the mediators to the shop of PW9, wherein the cell phone MO5 was said to have been recovered under Ex.P25. From there, the accused took PW21 and mediators to Swapna Lodge at Kasibugga and told them that it was the place wherein he along with the deceased stayed. The accused showed PW10 as the Manager present at the time when he along with deceased came to the lodge. PW10 showed the register maintained by the lodge, wherein it is stated that the accused checked into room No.208 of the lodge on 12.10.2008, occupied the room at 02.20 p.m., and vacated it at 07.35 p.m. Thereafter, PW21 seized said register under Ex.P26. After completing investigation, a charge sheet came to be filed, which was taken on file as PRC No.7 of 2009.

(iii) 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.111 of 2009.

(iv) On consideration of material placed on record, the charge as stated above came to be framed, read over and

explained to the accused, to which, he pleaded not guilty and claimed to be tried.

(v) To substantiate its case, the prosecution examined PWs.1 to 21 and got marked Exs.P1 to P35 and M.Os.1 to 5.

(vi) 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, to which he denied, but, however, got marked Exs.D1 to D3 on his behalf.

4. Relying upon the evidence available on record, more particularly, the evidence of PWs.2, 4, 10 and Ex.P2, extra judicial confession made by the accused and also the confession leading to recovery of cell phone belonging to the deceased, the trial Court convicted the accused for an offence punishable under Section 302 IPC. Assailing the same, the present appeal came to be filed.

5. Sri P.Vidyasagar, learned counsel for the appellant would contend that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form chain of events to connect the accused with the crime. According to him, the version of the witnesses, now spoken to in the Court, is a complete improvement of what they have stated in the earlier statements. He took us through the evidence of witnesses and demonstrated as to how the Court

should not rely upon the theory of last seen, extra judicial confession made before PW4 and the recovery of MO5.

6. On the other hand, learned public prosecutor would contend that insofar as seizure of register is concerned, the same was misplaced by the Court, for which, an enquiry has already been ordered and is pending. Therefore, he would contend that Ex.D3, which has been brought into existence and which did not contain entries on 12.10.2008 cannot be made a basis to through out the entire case of the prosecution. He would further contend that even if the said circumstance is ignored, there is evidence of PW10, to show that the accused and the deceased stayed together on the date of incident. He also took us through the evidence of witnesses to show recovery of cell phone and the extra judicial confession which itself is sufficient to convict the accused, coupled with the motive. In reply, the learned counsel for the appellant would contend that the deceased being of tender age, the possibility of she committing suicide cannot be ignored, in view of the evidence of PW15. It is his plea that even if the accused and deceased are seen together in the hotel, but the body was found on the next day at railway track and there was long time gap between the time of stay of the accused and deceased and the time when the body was recovered. Having regard to the above, learned counsel

would contend that there is absolutely no legal evidence to connect the accused with the crime.

7. The point that arises for consideration is whether the circumstances relied upon by the prosecution to connect the accused with the crime are true?

8. As stated earlier, there are five circumstances which are sought to be relied upon by the prosecution:

- (i) The accused being last seen in the company of the deceased,
- (ii) The extra judicial confession made by the accused before PW4 on 13.10.2008,
- (iii) Ex.P2, the confession statement made by the accused before PW4 on 04.11.2008, in the presence of one Chittaya.
- (iv) Recovery of MO5 cell phone which was said to have been identified by PW3 as it was he who is said to have purchased and gifted the cell phone to the deceased, and
- (v) The motive for the accused to commit the offence.

9. **The accused being last seen in the company of the deceased:**

The entire evidence revolves around PW10, who, in his evidence, states that on 12.10.2008, at about 11.00 a.m., the accused came to the said lodge along with a girl and

requested him to give a room stating that they have to go to Hyderabad by Falaknuma train on that day, for which PW10 gave double room and collected Rs.150 as advance, made entry in the registry and obtained signatures of the accused. It is stated that the accused and the said girl stayed there in the room from 12 noon till 07.00 p.m. When PW10 left the lodge and return back at 07.00 p.m., he is said to have asked the accused as to why he did not vacate the room, though the Falaknuma train left Palasa at 06.00 p.m. The accused replied that he slept and could not wake up on time. He seems to have stated that he would go to Hyderabad in the next train i.e., East Coast Express.

10. From the evidence in chief, it appears that on 12.10.2008, the accused came to the lodge along with a girl, took a room, stayed there till 07.00 p.m. and then left the place. PW10 claims to have made an entry in the register and also took signature of the accused. It is to be noted here that PW10 was never shown with the photograph of the deceased to identify as to whether it was the same girl who came along with the accused on that day to the said hotel. Be that as it may, the evidence of PW10 further shows that on 04.11.2008 in the afternoon, the Inspector of Police came to the said lodge, verified the register of the lodge and then he seized the same under Ex.P26. Strangely, this register is missing from the Court record, to which enquiry has been

ordered by the trial Court . It is stated that another register Ex.D3 came to be placed in place of the register seized under Ex.P26, which do not contain any entries to show that the accused and one lady stayed in that hotel on 12.10.2008. In the cross examination of PW10, it has been elicited that there are no entries in the register, shown to him, dated 12.10.2008, vide Ex.D3. The investigating officer in his evidence, categorically admits and states that this was not the register which was seized during the investigation. It is true that some fraud or misplace of record did occur before the trial Court. But the document which was furnished to the accused was confronted to PW10 who categorically speak of the absence of any entry dated 12.10.2008. There is no material on record to show that accused was responsible for misplacing of the record. Hence, *prima facie* we feel that there is no legal material to show that the accused and deceased stayed in the hotel. Even if the evidence of PW10 is to be accepted, still there is no evidence to show that it was the deceased who was there along with the accused on that day.

11. The extra judicial confession made by the accused before PW4 on 13.10.2008:

PW4 is the Sarpanch of the village, who knows PWs.2, 3 and the deceased Jayalaxmi. When he was informed that the accused had illicit intimacy with Jayalaxmi, and when PWs.3

and 5 expressed their doubt that the accused might be responsible for missing of the girl, he asked them to find out the whereabouts of the accused. Within an hour thereafter, they came back and told PW4 that the accused was in his house. Then he sent PW5 and one Ramudu to bring the accused near to the church in the village at rachbanda and accordingly by 06.45 p.m. on the same day i.e., on 13.10.2008, all of them including the accused gathered at rachabanda. When PW4 questioned the accused whether he took Jayalaxmi, the accused is said to have narrated the entire story about he taking the girl to Palasa, about his intimacy with Jayalaxmi since last six months to one year, his proposal to marry and she refusing the proposal. He has also confessed about both of them taking a room in a lodge at Palasa, taking her out of the lodge stating that he has got some relatives at Bendigate and after crossing Bendigate, the accused took her to railway track and pushed her towards running train and then put her dead body in a nearby canal. It is his evidence that after making confession, the accused escaped from the place. Infact, no effort was made by anyone to apprehend the accused or atleast took steps to inform the police about his escape. However, PW4 was cross examined at length, in which it was suggested that accused never made extra judicial confession before him on that day. The suggestions put before PW4 with regard to the above said

alleged acts of the accused were all denied by him. But in the cross examination, PW18 admits as under:

“...PW4 did not state before me about deceased traveling everyday in the bus named as Bhayankar, about PW3 and P35 approaching suspecting accused and about his asking them to find out the whereabouts of accused and about their coming back and telling him about PW5 to bring the accused, about PW5 bringing accused to the Church by about 06.45 p.m. and about presence of PWs.2, 3 and others at the meeting, about accused telling him that he took deceased to Palasa and that he was having illicit intimacy with deceased and about deceased asking accused to marry her and about refusal of accused, about accused taking deceased staying in lodge at Palasa, and later taking her to a railway track and pushing her against running train and about accused placing dead body of deceased near a canal.”

From the above it is clear that the version which PW4 spoke in the Court was never spoken by him before the police when he was examined under Section 161 Cr.P.C. At this stage, it is to be noted here that the inquest of the dead body was conducted on 14.10.2008 between 10.00 a.m. and 12.30 p.m. The evidence on record discloses that on 13.10.2008 at about 06.45 p.m., the accused is said to have made confession near a Church before PW4 in the presence of PWs.2 and 3. When the said confession was made by the accused before so many witnesses, none of them spoke about the alleged confession made by the accused disclosing commission of offence by him at the time of inquest.

Therefore, a doubt arises as to whether really the accused made such confession on the next day and then escaped.

12. Ex.P2 the confession statement made by the accused before PW4 on 04.11.2008, in the presence of one Chittaya:

Insofar as this circumstance is concerned, it is to be noted that the prosecution failed to examine the said Chittaya. When the version of the prosecution is that the accused has already made confession on 13.10.2008, PW4 and others and immediately escaped from their clutches, there was no necessity for him to again go to PW4 to make a confession on 04.11.2008, in the presence of Chittaya. Infact the confession nowhere discloses about any apprehension to his life, which warranted him to make such confession. It is not even the case of the prosecution that PW4 the Sarpanch was known to the accused, which made him to confess. These two circumstances throw any amount of doubt with regard to Ex.P2 being made by the accused. Infact, it is contended by the counsel that the said statement was pressed into service after the arrest of the accused, which is evidence from the evidence of investigating officer, which is already referred to above.

13. Recovery of cell phone after the arrest of the accused:

With regard to recovery of cell phone – MO5, pursuant to the confession made by the accused, PW9 in his evidence deposed that on 13.10.2008, he opened his shop at about 06.00 a.m., and at about 07.30 a.m., the accused came to him and told him that his family members are in the railway station; he has no money and offered PW9 a cell phone for sale. When PW9 denied to buy the same, he requested PW9 to give atleast Rs.1,000/-. It is stated that the accused took Rs.500/- from him promising to repay the same. On 04.11.2008 at about 04.30 p.m., the accused along with the Inspector of Police came to the shop and the cell phone which was in his possession was seized. The prosecution tried to contend that the cell phone which was seized from the shop of PW9, was that of the deceased. The same was also sought to be established through the evidence of PW3, who is none other than the brother-in-law of the deceased. PW3 in his evidence deposed that he has purchased the cell phone at Berhampura and gave it to the deceased, six months prior to the date of incident. But however, PW3 could not produce the bill and details of the purchase of cell phone. He also admits that he does not know the name of the shop from where he purchased cell phone and he does not even remember the street where he bought the cell phone. But he placed on record MO4 – the box used to keep the cell from an

almirah. Therefore, prosecution sought to connect the accused with the crime by establishing seizure of MO5 cell phone belonging to the deceased through evidence of PW3. But the evidence of PW18, the Investigating Officer show that PW3 never told him during the course of investigation about purchasing and giving of MO5 to the deceased as a gift. The relevant portion of which reads as under:

“...PW3 did not state before me about his admitting deceased in the hospital of PW8 at Parlakhimidi about 3 months before her death, about timings of her leaving the house of PW3 and returning back to his house, about mother of accused informing them, about extra marital relationship between deceased and accused and about wife of accused going to her parents house and about her asking PWs.2 and 3 to keep away deceased from accused and about her threatening to do something to the deceased and about PW2 telling him that deceased did not return home, about his making telephone call to the deceased and to his parents-in-law, about himself and PW5 going to the hospital of PW8 at Parlakhimidi and enquiring PW8 about deceased, about PW5 making telephone call to accused and getting reply from accused. PW3 also did not state before me, about his purchasing and giving MO5 to deceased.”

14. Therefore a doubt arises as to whether really the cell phone seized was that of the deceased and whether PW3, purchased the same for her sister-in-law about six months. As contended by the learned counsel for the appellant, if really PW3 purchased cell phone, definitely, he would have atleast mentioned the place from where he purchased the cell

phone. Having regard to the above circumstances, doubt arises as to whether really MO5 belongs to the deceased.

15. Coming to the aspect of motive, though all the witnesses in the chief spoke about the relationship between the accused and the deceased, the mother of the deceased coming to the house of PWs.2 and 3, informing them about the relationship between the accused and the deceased, asking them to see that the relation is discontinued by the deceased, and subsequent events, but strangely the said version is not found in the statements recorded by PWs.18 and 20 during their investigation. The relevant portion of which are as under:

PW18 in his cross examination admits as under:

.....1st I recorded statement of mother of deceased. PW2 did not state before me about mother of accused coming and informing her about relation between accused and deceased and asking PW2 to keep away deceased from accused, about mother of accused telling PW2 that her daughter-in-law was going to her parents house leaving the accused, about her husband making call to the cell phone of deceased and about PW5 making call to accused and about answer given to the accused and subsequently switching off cell phone by the accused, about PW3 and 5 going to Parlakhimidi on the night of Sunday and enquiring PW8 and about her informing her parents about missing of deceased, about the details of complaint made to PW4 against the accused and about MOs.1 to 3 being identified her as that of PW3.

PW3 did not stated before me about his admitting deceased in the hospital of PW8 at Parlakhimidi about 3 months before her death, about timings of her leaving the house of PW3 and returning back to his house, about mother of accused informing them, about extra marital relationship between deceased and

accused and about wife of accused going to her parents house and about her asking PWs.2 and 3 to keep away deceased from accused and about her threatening to do something to the deceased and about PW2 telling him that deceased did not return home, about his making telephone call to the deceased and to his parents-in-law, about himself and PW5 going to the hospital of PW8 at Parlakhimidi and enquiring PW8 about deceased, about PW5 making telephone call to accused and getting reply from accused.

PW4 did not state before me about deceased traveling everyday in the bus named as Bhayankar, about PW3 and PW5 approaching him and complaining to him about missing of deceased, about their suspecting accused and about his asking them to find out the whereabouts of accused and about their coming back and telling him about PW5 to bring the accused, about PW5 bringing accused to the Church by about 06.45 p.m. and about presence of PWs.2, 3 and others at the meeting, about accused telling him that he took deceased to Palasa and that he was having illicit intimacy with deceased and about deceased asking accused to marry her and about refusal of accused, about accused taking deceased staying in lodge at Palasa, and later taking her to a railway track and pushing her against running train and about accused placing dead body of deceased near a canal.

In the chief examination of PW21, he admits as under:

“...PW2 did not state before me that mother of accused quarreled with her stating that her daughter-in-law was going to her parents house leaving accused and about presence of PW3 and neighbours at that time, about PW3 making call to the cell phone of deceased and found it to be switched off....

PW4 did not state before me about deceased traveling in the bus called as Bhayankar everyday, about accused telling him that about his taking deceased to Palasa and staying in lodge at Palasa and about accused having illicit intimacy with deceased and about deceased asking accused to marry her and about refusal of accused and pushing her against running train...

PW7 did not state before me about mother of accused telling PW2 about the illicit intimacy between accused and deceased about disputes that arose in the house of accused and about wife of accused going to her parents house, about PW4 calling accused to Panchayat office.”

16. From the above statements, it is clear that the mother of the accused informing about the illicit relation between the accused and the deceased cannot be said to be true as the statements made before the Court and the one made before the investigating officers run contrary to each other. Hence, the observation made by the Court below that the motive of the accused to eliminate the deceased was that the deceased insisted accused to marry her to save her reputation in her village, as their affair was disclosed by his mother to her family members and villagers, cannot be accepted.

17. In view of the above, we feel that the prosecution was not able to prove and establish the circumstances relied upon by the prosecution, to connect the accused with the crime. Hence the appeal is liable to be allowed.

18. Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 07.03.2013, in Sessions Case No.111 of 2009, on the file of the II Additional District and Sessions Judge (FTC), Srikakulam, for an offence punishable under Section 302 IPC are set aside. Consequently, the

appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.AMARNATH GOUD

March 19, 2018
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