

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL APPEAL NO.1188 OF 2013
AND
CRIMINAL APPEAL NO.132 OF 2014**

COMMON JUDGMENT: (Per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Both these criminal appeals, namely Criminal Appeal No.1188 of 2013, and Criminal Appeal No.132 of 2014, arise out of the same impugned judgment, namely judgment dated 18.10.2013, passed by the Principal Sessions Judge at Mahabubnagar, whereby the learned Judge has convicted Mr. Wadde Venkatesh @ Bottu Satyam ('A-1' for short), the appellant in Crl. Appeal No.1188 of 2013, and Mr. Sevakula Narasimha ('A-2' for short), the appellant in Crl. Appeal No.132 of 2014, for offences under Section 302 read with Section 34 of IPC, and under Section 201 IPC. The learned Trial Court has sentenced both the appellants to life imprisonment, for offence under Section 302 read with Section 34 IPC, and to three years of imprisonment for offence under Section 201 IPC. The sentences are directed to run concurrently. Since both the appellants are aggrieved by the said judgment, they have filed two separate appeals before this court. However, both the appeals are being decided by this common judgment.

In a narrow compass the facts of the case are that on 01.04.2012, around 10:30 p.m., Mr. B. Ravinder Goud (P.W-1) lodged a complaint (Ex.P-1), in Telugu, before the Police Station, Jadcherla, wherein he claimed that "*around 7:30 p.m., he*

and his tractor driver, Charan Kumar, left for his farm in order to switch on the electric motor. They discovered that a dead body of an unknown male person was lying on the thrashing floor of the adjacent farm of one Krishnaiah Goud, located in Sy. No.53. Blood was still oozing out of the trunk as the body was decapitated. The head of the unknown person was discovered on the National High Way No.44, road leading towards Kurnool at the Malleboinpally bus stage. The head was tied in a shirt cloth, and the head is unidentifiable as it is in broken condition. He further claimed that they came to know that some unknown persons have murdered the unknown male individual, with a deadly weapon, by cutting his head, and separating the body. The body was thrown in the field of Krishnaiah Goud, and the head is thrown at a distance of 300 metres on the National High Way No.44 road. The body is wearing "Nasham colour" lining readymade full shirt, and blue colour jeans pant, and chain watch on the left hand, and the head is having long hair."

On the basis of the said complaint, a formal FIR, namely FIR No.92/2012 (Ex.P-1) was chalked out for offences under Section 302 IPC, 201 IPC; the investigation commenced. During the course of the investigation, both the appellants were arrested. Subsequently, they were charged for offences under Section 302 read with Section 34 IPC, and Section 201 IPC.

In order to prove its case, the prosecution examined fifteen witnesses, exhibited fourteen documents, and submitted six material objects. However, the defense neither examined any witness, nor submitted any documents. After appreciating the

evidence, the learned trial Court convicted and sentenced the appellants as aforementioned. Hence, these two appeals before this Court.

Mrs. B. Vasantha Laxmi, the learned counsel for both the appellants, has raised the following contentions before this court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish a complete chain of circumstances unerringly pointing towards the guilt of the appellants. Therefore, in the absence of the complete chain, the learned trial court is legally unjustified in convicting the appellants of the aforementioned offences.

Secondly, the learned trial court has relied on four pieces of evidence in order to convict the appellants: (i). motive for the incident; (ii). Extra-judicial confession made by A-1 to Mr. C. Srinivasulu (P.W.7); (iii). recovery of the auto, used in the commission of the alleged offence, at the instance of A-2, and (iv). the medical evidence as testified by Dr. M.S. Narendra (P.W-12), supported by the Post-Mortem Examination Report (Ex.P-13), and the FSL report (Ex.P-14) dated 11.07.2012. However, none of these pieces of evidence even remotely point to the appellants' guilt.

Thirdly, the prosecution has relied mainly on the extra-judicial confession allegedly made by A-1 to Mr. C. Srinivasulu (P.W-7). However, the alleged extra-judicial confession does not pass the tests for accepting the extra-judicial confession as a legally valid evidence. For, in his cross-examination, Mr. C. Srinivasulu (P.W-7), clearly admits that he has no acquaintance

with A-1. Therefore, it is difficult to believe that A-1 would have stepped into the office of Mr. C. Srinivasulu (P.W-7), who was working as a Tahsildar, and would have made an extra-judicial confession to a total stranger. Moreover, relying on the case of **SK. Yusuf v. State of West Bengal**¹, the learned counsel has pleaded that extra-judicial confession is an extremely weak piece of evidence for basing the conviction. It needs to pass through certain tests before the extra-judicial confession can be taken as legally valid. However, in the present case, the extra-judicial confession has not passed the tests. Hence, the learned trial Court should not have relied upon the alleged extra-judicial confession allegedly made to Mr. C. Srinivasulu (P.W-7).

Fifthly, even the evidence with regard to the recovery of auto at the instance of A-2, does not support the case of the prosecution. For, according to the Auto Recovery Panchanama, dated 13.12.2012 (Ex.P-8), A-2 had taken the police to a house in the Patha Palamoor area, had pointed to a person saying that “*he is Mr. Abdul Mukramsha, and the auto belongs to him.*” Subsequently, the auto was produced by Mr. Abdul Mukramsha. Thus, the auto was not recovered from the possession of the A-2. Furthermore, while the alleged incident had taken place on 01.04.2012, the auto was recovered after a lapse of eight months. Therefore, no tell tale signs were discovered in the auto. Hence, the prosecution has failed to link the recovery of the auto to the offence allegedly committed by the appellants. Hence, the impugned judgment deserves to be set aside by this Court.

¹ (2011) 11 SCC 754

On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor, has pleaded that, since Mr. C. Srinivasulu (P.W-7) was holding a responsible post of Tahsildar, A-1 was inclined to make an extra-judicial confession as he was under the impression that the Tahsildar could save him from the gallows.

Secondly, the auto used for the commission of offence was recovered at the instance of A-2. Thus, the prosecution has fairly succeeded in proving the case against the appellants. Therefore, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and critically examined the record.

In the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir**², the Hon'ble Supreme Court has laid down the principles to be applied while dealing with a case of circumstantial evidence. The principles are as under:-

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established,
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused. that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) The circumstances should be of a conclusive nature and tendency,
- (4) They should exclude very possible hypothesis except the one to be proved, and

² AIR 2002 SC 3164

(5) There must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Similar views have also been held in the case of **Jagroop Singh v. State of Punjab**³.

Therefore, the issue before this court is whether the prosecution has managed to establish each piece of evidence, and forged the individual pieces of evidence into a chain of circumstances which would unerringly point towards the guilt of the accused or not?

The prosecution has mainly relied upon the alleged extra-judicial confession made by A-1 to Mr. C. Srinivasulu (P.W-7), and on the recovery of the auto at the instance of A-2, in order to connect the appellants to the alleged crime.

Mr. C. Srinivasulu (P.W-7), in his chief-examination, states that *"I have been working as Tahsildar, Vangoor. Earlier I worked as Tahsildar, Mahabubnagar. I know A-1 who is present in the court hall. On 09.11.2012 while I was present in my office at about 4:30 p.m. A-1 came to my office and approached me and made extra-judicial confession stating that on 23.10.2012 while two persons were coming from Government Hospital, Mahabubnagar, and one of the person asked whether arrack would available near by here. A-1 further confessed that another person asked as 'Oray Yekkada arrack dorikedi'. In the meantime A-1 picked up stick available there and beat those two persons near by HDFC Bank,*

³ AIR 2012 SC 2600

Mahabubnagar. A-1 further confessed before me that he is involved in other two crimes of Jadcherla P.S. and Rural Mahabubnagar P.S. Then I sent A-1 to the II-Town P.S. through my V.R.O. along with Ex.P-2 covering letter. I was examined by the police.”

However, in his cross-examination, he clearly admits that “*I do not have any acquaintance with accused (A-1) earlier meeting me.*” Thus, the accused was a total stranger to this witness. Prior to making the alleged extra-judicial confession.

It is settled principle of Criminal Jurisprudence that extra-judicial confession is generally made to a person in whom the alleged offender has an implicit faith. Thus, extra-judicial confession is made to those whom the alleged offender is closed to.

Secondly, the extra-judicial confession must be proved by the prosecution to be made voluntarily and not under any coercion or duress, or enticement, or inducement.

Thirdly, the words used by the alleged offender while making the extra-judicial confession need to be stated before the trial court.

However, in the present case, A-1 has allegedly made an extra-judicial confession to a person who is a total stranger. That, too, according to Mr. C. Srinivasulu (P.W-7), A-1 walked into his office at 4:30 p.m. in the evening on 09.11.2012 to make an extra-judicial confession. Moreover, he made extra-judicial confession not only with regard to the present incident, but even with regard to another case registered at Police Station, Mahabubnagar. There is nothing to indicate that A-1 would repose so much of faith in

this witness so as to confess about two different incidents registered with two different police stations.

Furthermore, a perusal of the testimony of Mr. C. Srinivasulu (P.W-7) clearly reveals that he has not reproduced the words spoken by A-1 in his testimony. Thus, the alleged extra-judicial confession does not pass the tests prescribed for accepting the extra-judicial confession as a true one. Hence, this court is of the opinion that the extra-judicial confession allegedly made by A-1 is too weak a piece of evidence for convicting A-1.

Even the alleged recovery of the auto at the instance of A-2, does not unerringly prove the guilt of appellants. According to Pandurangaiah (P.W-9), A-1 and A-2 led the police to Patha Palamoor and produced the auto used in the commission of the offence. However, according to Auto Recovery Panchanama (Ex.P-8), dated 13.12.2012, it is only A-2, who took the police to Patha Palamoor area; he showed a person sitting there, and introduced him as Mr. Abdul Mukramsha. It is Mr. Abdul Mukramsha, who pointed out the said auto, bearing registration No.AP 22X 2527, while the auto was parked before an ESSAR petrol bunk. Thus, the auto was not recovered from possession of A-2. It was, in fact, recovered from an open space namely from front ESSAR petrol bunk and that, too, from the possession of Mr. Abdul Mukramsha.

Furthermore, although the alleged incident took place on 01.04.2012, the auto was recovered on 13.12.2012, after inordinate delay of eight months. Thus, no tell tale signs could be discovered in the auto. Hence, the recovery of the auto at the

alleged instance of A-2 does not connect A-2 to the alleged offence. Therefore, the prosecution has failed to establish the chain of circumstances, which would unerringly point to the guilt of A-2.

In the result, both the criminal appeals are allowed. The impugned judgment dated 18.10.2013, passed by the Principal Sessions Judge at Mahabubnagar, in S.C. No.403 of 2013, is set aside. Wadde Venkatesh @ Bottu Satyam, S/o Wadde Eswaraiah (the appellant in Crl. A. No.1188 of 2013) and Sevakula Narasimha, S/o Hanumanthu (the appellant in Crl.A. No.132 of 2014), are acquitted of the offences punishable under Section 302 read with Section 34 IPC, and Section 201 IPC. They shall be set at liberty, forthwith, if they are not required in any other case.

RAGHVENDRA SINGH CHAUHAN, J

M. SATYANARAYANA MURTHY, J

Date: 11.12.2018

MSB/MRKR