

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No. 1100 OF 2012

JUDGMENT:

(per the Hon'ble Dr. Justice Shameem Akther)

1. This Criminal Appeal is directed against the judgment dated 26.03.2012 in Sessions Case No.249 of 2010 on the file of the XI Additional Sessions Judge (Fast Track Court), East Godavari at Kakinada, whereby the appellant/sole accused was found guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'I.P.C.'), accordingly convicted of the said offence and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of three months.

2. The case of prosecution, in brief, may be stated as follows:

P.W.3 is the wife, and L.W.4-Mokana Venkata Ramana is younger son, of the deceased Mokana Vishnu Murthy (hereinafter referred to, as 'the deceased'). Accused is elder son of the deceased. He is habituated to consuming liquor regularly. The deceased performed marriage of his daughter and she is residing with her in-laws at Pallipalem village. The deceased, P.W.3, the accused and his younger brother were residing in one house in Nadakuduru village, and were eking out their livelihood as agricultural coolies. The deceased used to consume liquor now and then and used to pick up

quarrel with his wife. In the night of 05.12.2009, the deceased abused his wife for not cooking curry tastily, picked up quarrel with her and pushed her aside. On seeing the same, the accused picked up a brick from the window of the house, beat on the head of the deceased twice, pushed the deceased on a cot, beat on his head indiscriminately with the brick inspite of his mother asking not to beat. As a result, the deceased sustained multiple bleeding injuries and died on the spot.

On coming to know about the incident, P.W.1, who is the Village Revenue Officer, and P.W.2, who is Village Servant, of the village rushed to the spot. The accused gave a statement to P.W.1 which was reduced into writing by him. The accused affixed his thumb impression on the statement. On the report lodged by P.W.1 along with the statement of the accused, police registered a case in crime no.145 of 2009 of Karapa police station for the offence punishable under Section 302 IPC. The investigating officer observed the scene of occurrence, seized the incriminating material from the scene, conducted inquest on the dead body of the deceased and sent the same to hospital for postmortem examination. During the course of investigation, the accused was arrested, sent to judicial custody and his confession was recorded. After recording statements of witnesses, preparing rough sketch, obtaining report of the Forensic Science Laboratory, postmortem report and completion of investigation, the charge sheet was laid.

3. The learned IV Additional Judicial Magistrate of First Class, Kakinada had taken cognizance of the case for the offence punishable under Section 302 IPC, numbered it as P.R.C. No.3 of 2010 and committed the same to the Court of Session as the offence is exclusively triable by the Court of Session, and thereafter, the case was made over to the trial Court.

4. After hearing both sides, the trial Court framed the following charge against the accused.

"That you on 05.12.09 at about 9.30 p.m., you committed murder intentionally causing the death of your father Mokana Vishnu Murthy, s/o. Somaraju @ Somayya, age 42 yrs., by hitting with a stone on his head indiscriminately and that you thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance."

When the charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

5. To substantiate its case, prosecution examined P.Ws. 1 to 13 and got marked Exs.P1 to P14, besides case properties M.Os. 1 to 3.

6. After closure of prosecution side evidence, the accused was examined under Section 313 Cr.P.C. to explain the incriminating circumstances found against him in the evidence of prosecution witnesses. The accused denied the same and stated that he had no defence evidence.

7. The trial Court, upon appreciation of the evidence on record, found the appellant/accused guilty of the charge levelled against him, and accordingly convicted and sentenced him as above. Aggrieved thereby, the present Criminal Appeal is preferred by the accused.

8. Now, the point that arises for determination is whether the prosecution is able to bring home the guilt of the appellant/accused for the offence punishable under Section 302 IPC beyond all reasonable doubt and whether the conviction and sentence recorded by the learned Sessions Judge are liable to be set aside or modified ?

9. Having argued for some time on merits, alternatively, the learned counsel appearing for the appellant contended that the trial Court erred in convicting and sentencing the appellant/accused of the offence punishable under Section 302 IPC; that there is no pre-plan or intention on the part of the appellant/accused to cause death of the deceased, who is his father; that due to sudden provocation and in a fit of anger, as the deceased was harassing his mother, the appellant/accused beat his father with M.O.1-brick, which resulted in the death of the deceased, and hence, he prays to set aside the conviction and sentence for the offence punishable under Section 302 IPC and modify the same to that of the offence punishable under Section 304 Part-II IPC.

10. On the other hand, the learned Additional Public Prosecutor would contend that from the evidence of P.Ws.1 and 2 and the recitals

in Ex.P1, the prosecution is able to establish that the appellant/accused is the assailant of the deceased; that P.Ws.1 and 2 have no grouse or enmity against the accused to implicate him falsely in a case of this nature, and that their evidence and the recitals in Ex.P1 are trustworthy and reliable and can be placed in the category of 'wholly reliable' to hold that the appellant/accused is the assailant of the deceased.

As regards the contention of the learned counsel for the appellant/accused for modification of the conviction and sentence to that of the offence punishable under Section 304 Part-II IPC, there is not much dispute on this aspect by the learned Additional Public Prosecutor.

11. The case of the prosecution, in nut shell, is that the appellant/accused is the elder son of the deceased. The deceased is in the habit of consuming alcohol and harass his wife (mother of the accused). On the fateful day, i.e. on 05.12.2009, the deceased, in a drunken state, abused his wife for not cooking curry tastily, picked up quarrel with her and pushed her aside. On seeing the same, the accused picked up a brick from the window of the house, beat on the head of the deceased twice, pushed the deceased on a cot, beat on his head indiscriminately with the brick. As a result, the deceased sustained multiple bleeding injuries and died on the spot.

12. There is no much dispute with regard to the scene of occurrence. P.Ws.1 and 10 are mediators present at the time of

observation of scene of occurrence by police. According to them, they attested the scene observation report marked as Ex.P5. From their evidence and recitals in Ex.P5, the scene of offence is established by the prosecution.

13. P.Ws.1 and 10 were also present at the time of conducting inquest on the dead body of the deceased under Ex.P4-inquest report. P.W.8 is the photographer who photographed the scene of occurrence and the photographs along with C.D. are marked as Ex.P6.

14. P.W.3 is the mother of the accused. P.Ws.4 and 6 are neighbours of the deceased. P.Ws.5 and 7 are relatives and neighbours of the deceased. Admittedly, all the material witnesses P.Ws.3 to 7 did not support the case of the prosecution. Though the learned Additional Public Prosecutor declared them hostile and cross-examined them with the permission of the Court, no incriminating material has been elicited in their cross-examination to connect the accused with commission of the offence.

15. The entire case rests upon the evidence of P.Ws.1 and 2 to whom the accused said to have made extra-judicial confession marked as Ex.P1. The Court cannot start with the presumption that extra-judicial confession is a weak piece of evidence. After scrutinizing the extra-judicial confession, if it is found to be true and voluntary, it can be acted upon. In such a case, there is no requirement of law that it should be corroborated on material particulars. On this aspect, it is

pertinent to refer to the decision in (i) in **Mulk Raj vs. The State of Uttar Pradesh**^[1], wherein it is held at para No.11 as under:

“We must notice another argument of the learned Advocate at this stage. It is said that the exact words used by the appellant when he made the extra-judicial confession were not given and that therefore the confession should be excluded. P.Ws.1, 5, 6 and 7 repeated before the learned Additional Sessions Judge what the appellant stated before them and there is no appreciable difference in the gist of the confession made by the accused. Every one of them stated that the accused had stated that he stabbed the deceased because Amarnath and Milkiraj brought him there to do so. An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. If the rule is inflexible that the Courts should insist only on the exact words, more often as not, this kind of evidence, sometimes most reliable and, useful, will have to be excluded; for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused. It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the evidence or not. In this case, the confession made by the appellant was not a complicated one and the witnesses stated without any conflict practically the exact words used by the appellant and also how they understood the words. In the circumstances, if

^[1] A.I.R. 1959 S.C.902

the evidence of the witnesses is acceptable, there is no reason why the extra-judicial confession made by the accused could not be acted upon.”

(ii) in **Piara Singh and others v. State of Punjab**^{2[2]}, wherein it is held at para No.10 as under:

“Thus taking an over-all view of the picture presented by the prosecution case we find that there is sufficient evidence against the accused to prove the charge of murder against them. The evidence of the eyewitnesses is fully corroborated by the medical evidence, the evidence of the recoveries, the evidence of the Ballistic expert and the evidence of P. W. Balbir Singh who deposed regarding the extra judicial confession made by the accused Piara Singh. The learned Sessions Judge regarded the extra judicial confession to be a very weak type of evidence and therefore refused to rely on the same. Here the learned Sessions Judge committed a clear error of law. Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, the extra judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellants. There was hardly any justification for the Sessions Judge to disbelieve the evidence of Balbir Singh particularly when the extra judicial confession was corroborated by the recovery of an empty (sic) (cartridge?) from the place of occurrence.”

From the above decisions, it is clear that when the witnesses, who gave evidence about the extra-judicial confession, are reliable and the words spoken by them are precise and manifestly clear, such

^{2[2]} A.I.R. 1977 S.C. 2274

evidence is sufficient to convict the accused. When the extra judicial confession inspires confidence and the defence could not elicit anything to discredit the extra judicial confession made by the accused, and the evidence of the witnesses is trustworthy, it is an admissible piece of evidence and it can be relied upon to base a conviction.

16. Bearing the above principles in mind, it has to be seen as to whether the extra-judicial confession made by the accused is true and voluntary or not ?

17. P.W.1 is the Village Revenue Officer of the village. P.W.2 is the Village Servant. P.W.1 deposed that on 05.12.2009 at 9.45 PM, P.W.2 informed him the subject murder at S.C. peta of Nadakuduru village; immediately, he went there, where he found dead body of the deceased in a pool of blood; he also found blood stained brick underneath the cot with broken pieces; he also found blood stains on wall of the house; that the accused was present there. It is his further evidence that when he questioned, the accused voluntarily gave a statement stating *inter alia* that as the deceased beat his mother, he got provoked and beat the deceased on his head indiscriminately and as a result, the deceased lost his breath. P.W.1 also stated that the accused confessed killing of his father i.e. the deceased, and that he prepared a statement to that effect i.e. Ex.P1 and thereafter lodged Ex.P2-report to police. Ex.P1 statement was signed by the accused. P.W.2 also

corroborated the evidence of P.W.1 with regard to the accused giving the extra judicial confession before P.W.1 as in Ex.P1.

18. P.Ws.1 and 2 were present at the time of observation of scene of occurrence and conducting inquest by the police, and also at the time of taking photographs of the scene by P.W.8. They are not related to the accused. They withstood the test of cross-examination. The defence could not elicit anything in their cross-examination to discredit testimony. There is no reason for them to depose false against the accused. The confession made by the accused is reduced into writing and is marked as Ex.P1. Ex.P2 is the report given by P.W.1 to police. There is consistency and corroboration in the evidence of P.W.1 and the recitals in Exs.P1 and P2. Admittedly, P.W.1 was not in a dominant position. P.W.1 will not gain anything by supporting the prosecution version. P.Ws.1 and 2 are officers of the village, and unbiased and not inimical to the accused. Their evidence inspires confidence. From their evidence, it is clear that the accused made voluntary confession and the same was reduced into writing as in Ex.P-1. There is specific mention in Ex.P1 and the evidence of P.W.1 that the accused beat his father with brick. Circumstantial evidence placed on record also reveals the same and the brick was seized under cover of panchanama. The trial Court elaborately dealt with, with regard to the admissibility of Ex.P1 as well as the evidence of P.W.1. It relied on number of decisions and acted upon the evidence of P.W.1 and the recitals in Ex.P1. There is

no infirmity with regard to the said findings. Therefore, it can be held that the accused is the assailant of the deceased.

19. Now, it has to be seen whether it is a case of murder or culpable homicide not amounting to murder. Where the culpable homicide falls under any one of the four clauses of Section 300 IPC and none of the exceptions applies, the culpable homicide is murder and is punishable under Section 302 IPC. Exception 4 of Section 300 IPC can apply if all the four conditions laid down therein are satisfied viz. (1) absence of pre-meditation; (2) there must be a sudden fight; (3) the killing must be in the heat of passion upon a sudden quarrel; (4) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

20. On this aspect, it is appropriate to refer to a decision in *State v. Sanjeev Nanda*,³ wherein it is held that to make an offence punishable under Section 304 Part-II IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that the accused knew that his such act is likely to cause the death.

In *Asu v. State of Rajasthan*⁴, it is held that where the accused inflicted fatal injury on head of the deceased which caused death, without intention to kill him, he is liable to be convicted for the offence punishable under Section 304 Part-II IPC, and the accused

³ AIR 2012 SC 3104

⁴ 2000 Cr LJ 207 (Raj.)

who inflicted sword injury are liable to be convicted under Section 323 IPC.

21. As per the case of the prosecution, the deceased, who is father of the accused, is a drunkard. He used to spend his earnings on drinking alcohol. He used to beat his wife P.W.3 in drunken state and also to get money for his daily drinking. On 05.12.2009, the deceased picked up a quarrel with his wife i.e. P.W.3, on the ground that she did not cook tasty curry. When the accused entered into the house and questioned the deceased as to why he was beating P.W.3, an altercation took place. Then the accused picked up a brick and beat the deceased on his head indiscriminately which resulted in his death.

22. Admittedly, the accused was not armed with any weapon when he went to the scene of offence. When the deceased was ill-treating his wife P.W.3 (who is mother of the accused), and particularly, on 05.12.2009, when the deceased quarreled with his wife that she did not cook tasty curry, having come to know the same, the accused, in a fit of anger, beat the deceased on head with a brick available there which resulted in instantaneous death of the deceased. Even as per the case of prosecution, there was no previous animosity or grudge between the accused and the deceased. So, in a fit of anger as the deceased was ill-treating his mother, the accused lost control and beat the deceased with M.O.1-brick. There was no pre-meditation.

Therefore, there was no intention on the part of the appellant/accused to kill the deceased.

23. But, the accused must be having a knowledge that his act would likely to cause death of the deceased. Though appellant/accused has no pre-meditation to cause death of the deceased, at the same time, he must have knowledge that the injuries are likely to cause death of the deceased. Head is a vital part of the body. A man is presumed by law to intend the ordinary and natural as well as the necessary consequences of his acts. As seen from Ex.P12-postmortem examination report and the evidence of P.W.9-Doctor, the deceased sustained 5 grievous injuries on head, right eye-brow, etc. and those injuries were caused by the accused with M.O.1-brick. The said brick and broken pieces were seized under cover of panchanama. Therefore, it can be inferred that the accused had knowledge that the said injuries are likely to cause death. But, as per the evidence on record, it cannot be presumed or held that the accused had any intention to cause the death. Therefore, the act committed by the appellant/accused squarely falls under exception 4 of Section 300 IPC. So, the appellant/accused is liable to be convicted for the offence punishable under Section 304 Part II I.P.C. Therefore, the trial Court ought not to have convicted the appellant/accused of the offence punishable under Section 302 IPC.

24. In the result, the conviction and sentence recorded in the judgment dated 26.03.2012 in Sessions Case No.249 of 2010 on the

file of the XI Additional Sessions Judge (Fast Track Court), East Godavari at Kakinada, against the appellant/accused are set aside. The appellant/accused is found guilty of the offence punishable under Section 304 Part-II IPC and accordingly convicted of the said offence. The sentence of imprisonment is confined to the sentence already undergone by the appellant/accused during investigation, trial and after conviction.

Accordingly, the Criminal Appeal is partly allowed.



(ARR, J.)

(Dr.SA, J.)

28.07.2018
DRK

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



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+CRIMINAL APPEAL No. 1100 OF 2012

%Dated: 28.07.2018

Mokana Satyanarayana @ Sathibabu,
s/o. Vishnu Murthy, aged 22 years,
r/o. S.C. peta, Nadakuduru village, Karapa Mandal,
East Godavari district

- - - **Appellant**

and

\$ The State of Andhra Pradesh,
Rep. by Public Prosecutor through the
S.H.O., Karapa police station,
East Godavari district.

- - - **Respondent**

! Counsel for the Appellant : Sri K.Venkatesh Gupta,

^ Counsel for Respondent : Public Prosecutor (A.P.)

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? Cases referred :

A.I.R. 1959 S.C.902
A.I.R. 1977 S.C. 2274
AIR 2012 SC 3104
2000 Cr LJ 207 (Raj.)

