

\* THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY  
AND  
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

+ Criminal Appeal No.1324 of 2012

%24.02.2018

# Boya Akuthota Nagaraju

..Appellant

Vs.

\$ State Rep. by Public Prosecutor,  
High Court of A.P., Hyderabad  
And another.

..Respondents.

!Counsel for the Appellant : Sri S. Nagender

^ Counsel for the Respondents : Public Prosecutor (AP)

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> Head Note:

?Cases Referred:

1. 2018 (1) ALT (CrI) 155 (SC)
2. 2009 (3) SCC (CrI) page 66
3. 2005 (6) SCC page 551
4. 1996 SCC (CrI) page 1158
5. 2004 (1) ALT (CrI) page 1 (A.P)
6. AIR 1959 SC 18
7. AIR 1969 SC 422
8. AIR 1971 SC 1871
9. AIR 1975 SC 889
10. 1997 SCC (CrI) 234
11. AIR 1996 SC 607

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY  
AND  
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**CRIMINAL APPEAL No.1324 OF 2012**

**JUDGMENT:** *(Per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The sole accused in Sessions Case No.218 of 2009 on the file of the Special Sessions Judge for Trial of S.Cs & S.Ts Cases-cum-Additional Sessions Judge, Anantapur, (hereinafter will be referred as trial Court for convenience), preferred this appeal under Section 374 (2) of Cr.P.C, questioning the legality of the conviction and sentence recorded by the trial Court finding him guilty for the offence under Section 302 of IPC.

It is the gruesome murder of the wife allegedly by the husband on 15.04.2008 on the hillock of Palavai village of Kalyandurg Mandal, Anantapur, at about 11.00 a.m suspecting her fidelity for the last many years, though they lead happy marital life for three years. One Nagaraju, on coming to know about the incident, telephoned to PW.1 about committing murder of their daughter Lalitha @ Lalithamma. On that, PWs.1 and 2 came to the village and PW.1 lodged a report marked as Ex.P1 with the police and, on the strength of the same, a case in Crime No.49 of 2008 was registered for the offence punishable under Section 302 of IPC and Ex.P15 – First Information Report was issued. PW.16 – G.Indru Basha, Circle Inspector of Police, recorded the statements of PWs.3 to 8 under Section 161 of Cr.P.C and later visited the scene of offence and seized M.Os.1 to 11 under the cover of Ex.P11 – seizure

mahazar dated 17.04.2008. An inquest was also held on the dead body of Lalithamma in the presence of independent mediators and blood relations. Ex.P12 is the inquest report dated 15.04.2008. The mediators opined that the cause of death was murderous assault against Lalithamma. Later, the body was sent to Post Mortem examination and autopsy was conducted over the dead body by PW.15 - Dr. Rajendra Prasad, he issued Ex.P14 – Post Mortem report. PW.17 – B. Sreenivasulu, Circle Inspector of Police, took up further investigation and he sent the material objects seized to RFSL through Ex.P17 – letter of advice. On examination, the report of RFSL marked as Ex.P18 was received and, on the basis of evidence collected during investigation, the investigating agency concluded that the accused perpetrated the murder of his wife Lalithamma suspecting her fidelity for the last several years and filed charge sheet before the Judicial Magistrate of First Class, Kalyandurg, vide PRC.No.35 of 2008. In turn, the Judicial Magistrate of First Class, having concluded that the offence is exclusively triable by Court of Sessions, by following procedure under Section 207 of Cr.P.C., committed the case to the Sessions Division, Anantapur, under Section 209 of Cr.P.C.

The Sessions Judge took the case on file and registered the same as Sessions Case No.218 of 2009 and made over to the Special Sessions Judge for Trial of S.Cs & S.Ts Cases-cum-Additional Sessions Judge, Anantapur, for disposal in accordance with law.

Upon securing the presence of the accused/appellant, the Sessions Judge framed a charge for the offence punishable under Section 302 of

IPC, readover and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

During trial, the prosecution has examined PWs.1 to 17 and got marked Exs.P1 to P18 and M.Os.1 to 11. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., and when explained the incriminating material that appeared against him in the testimony of prosecution witnesses, he denied and reported no defence.

Upon hearing the arguments of both the Public Prosecutor for State and defence counsel, the Court below found the accused guilty for the offence punishable under Section 302 IPC and convicted him under Section 235 (2) of Cr.P.C for the offence punishable under Section 302 IPC sentencing him to undergo imprisonment for life and to pay fine of Rs.100/- with default sentence of Simple Imprisonment for one month.

Aggrieved by the conviction and sentence passed by the Special Sessions Judge for Trial of S.Cs & S.Ts Cases under impugned Calender and Judgement, the present appeal under Section 374 (2) of Cr.P.C is filed on various grounds.

The main grounds urged before this Court in the grounds of appeal are that, there is absolutely no evidence to connect the accused/appellant with the offence punishable under Section 302 IPC, but based on extra judicial confession, allegedly made by the accused before PW.12 in the presence of PW.14, the trial Court concluded that the accused committed a grave offence punishable under Section 302

IPC and the trial Court also did not appreciate the evidence with regard to seizure of M.O.1 and the evidence of the doctor is not totally reliable in view of material contradictions in the evidence. Hence, the conviction sentence recorded by the Court below against the appellant for the offence punishable under Section 302 IPC is erroneous and liable to be set aside and prayed to set aside the conviction and sentence passed against the accused finding him not guilty for the offence under Section 302 IPC and acquit him.

Learned legal aid counsel for the appellant, during hearing, contended that except the evidence of PWs.12 and 14, there is absolutely no evidence to connect the accused with the offence punishable under Section 302 IPC and even otherwise, the evidence of PW.12 inspires no confidence as he had no acquaintance with the accused prior to 17.04.2008 when the accused allegedly made a confession, which is reduced into writing obtaining the signature of the accused in the presence of PW.14, if Ex.P9 – confessional statement of the accused is excluded from consideration, there is nothing to substantiate the prosecution case and prayed to acquit the accused finding him not guilty for the offence punishable under Section 302 IPC.

The Public Prosecutor for the State mainly supported the conviction and sentence under impugned Calender and Judgement while contending that the trial Court recorded conviction on the sole basis of Ex.P9 - confessional statement made before PW.12 in the presence of PW.14.

Considering rival contentions and the material available on record, the point that arises for consideration is:

***“Whether the accused hacked his wife Lalithamma with an intention to kill her suspecting her fidelity and, if so, whether the evidence on record is sufficient to convict the accused/appellant for the offence punishable under Section 302 IPC and whether the conviction recorded by the Court below be sustained?”***

**POINT:**

P.Ws.1 and 2, who are the father and mother of the deceased, are admittedly not direct witnesses to the incident, but they came to know about the murder of their daughter through one Nagaraju over a phone. The said Nagaraju was not examined as a witness before the trial Court and the evidence of P.Ws.1 and 2 is suffice to conclude that there were disputes between the deceased and the accused/appellant suspecting the character or fidelity of the deceased on the ground that she developed extra marital relation with some other person.

PWs.3 is another related witness. He is the brother of the deceased Lalithamma. He is working as a Lecturer in a Government Junior College, Vemula Village. His evidence also corroborated the testimony of PWs.1 and 2 with regard to the disputes between the deceased Lalithamma and the accused/appellant regarding alleged development of extra marital relationship of the deceased. Therefore, the evidence of P.Ws.1 to 3 is not suffice to connect the accused with the offence punishable under Section 302 IPC, except to prove the differences or disputes between the deceased and the accused/appellant.

The prosecution examined P.Ws.4 to 11. P.Ws.4 and 5 are the residents of Palavai Village, where the incident took place, but they did not support the case of the prosecution. The Public Prosecutor, after obtaining permission of the trial Court, cross-examined them, but nothing was elicited to substantiate the prosecution case. Therefore, the testimony of P.Ws.4 and 5 is of no use to establish the guilt of the accused/appellant for the grave offence punishable under Section 302 IPC.

P.W.6 is native of Yenumuladoddi Village. He had acquaintance with the accused and identified the accused in the Court hall. He also stated that Lalitha was the wife of the accused and that the accused and Lalitha were blessed with a son. He is a related witness. The disputes between the accused/appellant and the deceased were referred to him for settlement, but he did not settle the disputes. He was not cross-examined by the counsel for the defence. Even in the absence of any cross-examination, the testimony of PW.6 is not useful to establish the guilt of the accused, but useful to prove that there were disputes between the deceased and the accused/appellant and reference of those disputes to him.

P.Ws.7 to 9 are the villagers of Palvai Village. They did speak nothing in favour of the prosecution. Despite cross-examination by the Additional Public Prosecutor after obtaining permission of the trial Court, nothing could be elicited in support of the prosecution case. As such, their evidence is of no assistance to the prosecution to establish that the accused/appellant committed murder of his wife Lalithamma.

The crucial witnesses in this case are P.Ws.12 and 14. P.W.12 is the Village Revenue Officer (VRO) of Palavai Village and he allegedly recorded the confessional statement of the accused on 17.04.2008 at about 7.30 a.m., as he was apprehending torture in the hands of police and sought help of the VRO in the presence of PW.14, who is VRO of another village.

According to the evidence of PW.12, on 17.04.2008, when the accused came to him at about 7.30 a.m., Sudhakara Rao, VRO of another village, was also along with him by then he was at Kalyandurg in his house. The accused confessed before him that he killed his wife and apprehending torture in the hands of police, he sought help. On his enquiry, the accused disclosed details of the incident and that cause for commission of offence is that Lalitha's conduct was not good. Immediately, the confessional statement of the accused was reduced into writing and his signature was obtained thereon. The evidence in the examination-in-chief of PW.12 with regard to reducing confessional statement marked as Ex.P9 is consistent, but in the cross-examination, he admitted that for the first time, the accused came to his house on 17.04.2008 and he never came to his house earlier. It is clear from this piece of evidence that prior to 17.04.2008, the accused never visited the house of PW.12 for any purpose, he had no acquaintance and that too he is a resident of Kalyandurg, which is 2 kms away from Palavai Village.

The evidence of PW.14 shows that he was allegedly present throughout recording of confessional statement of the accused and

though he was having prior acquaintance with the accused, he did not record the statement of the accused. In normal course, the accused would have approached the person with whom he had acquaintance and seek help, but strangely, in this case, the accused approached PW.12, a person with whom he had no acquaintance prior to 17.04.2008. This is quite improbable to the natural conduct of a human being. In such case, recording of confessional statement by P.W.12 is doubtful. Similarly, P.W.14 testified that he had acquaintance with the accused, but the accused did not approach him seeking help to avoid torture in the hands of police. This is another suspicious circumstance to disbelieve the evidence of PW.12 and recording of confessional statement marked as Ex.P9.

Though extra-judicial confession is a piece of evidence, it is not a strong piece of evidence as held by the Apex Court in **State of Rajasthan v. Ramanand**<sup>1</sup>. Extra judicial confession is a weak type of evidence and that by itself is not sufficient to record the judgment of conviction against accused, unless the same is corroborated and in the absence of any disclosure before a particular person, a conviction cannot be recorded (vide **Baldev Singh v. State of Punjab**<sup>2</sup>).

In **State of A.P v. Kanda Gopaludu**<sup>3</sup>, a Division Bench of the Apex Court held that extra judicial confession is admissible even if it inspired confidence and made voluntarily and basing on that, Court can record conviction of the accused. Undoubtedly, if the extra judicial

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<sup>1</sup> 2018 (1) ALT (Crl) 155 (SC)

<sup>2</sup> 2009 (3) SCC (Crl) page 66

<sup>3</sup> 2005 (6) SCC page 551

confession is believed and made voluntarily, the same can be made basis for recording conviction.

In **Balbir Singh and another v. State of Punjab**<sup>4</sup>, the Apex Court is of the view that extra judicial confession alleged to have been made by the accused to the Municipal Commissioner having friendship with the accused, cannot be accepted as trustworthy and basing on such evidence, the accused cannot be convicted.

In **K. Brahmachari @ Kammari Brahamachari v. State of A.P**<sup>5</sup>, the Division Bench of this Court held that, when there was no relationship between the accused and the person before whom he made a confession, it is highly improbable to believe the confession of accused made before the third party and conviction cannot be relied.

Extra judicial confession, if inspires confidence of the Court and the true version of the accused is mentioned on extra judicial confession, conviction can be recorded, if corroborated by other circumstances. But, extra judicial confession itself alone cannot form the basis for conviction and such conviction is illegal. Before touching evidentiary value of extra judicial confession, the court must look into various circumstances like prior acquaintance with the person to whom the accused allegedly gave statement and whether it is voluntary in nature.

In the present case, it is an admitted fact that the accused/appellant never visited the house of PW.12 prior to 17.04.2008 and he had acquaintance with PW.14, who was present at the time of alleged

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<sup>4</sup> 1996 SCC (CrI) page 1158

<sup>5</sup> 2004 (1) ALT (CrI) page 1 (A.P)

recording of Ex.P9. The natural conduct of any human being is that he would approach the person with whom he had acquaintance and seek help, but approaching PW.12 is quite improbable to the natural circumstances. Therefore, when extra judicial confession is made to a totally unknown person, it cannot be accepted as true and voluntary. The accused when examined under Section 313 Cr.P.C., denied giving such statement marked as Ex.P9 to PW.12 in the presence of PW.14.

In **Ratan Gond v. State of Bihar**<sup>6</sup>, the Apex Court accepted an extra judicial confession as a reliable piece of evidence, but underscored the need for some more evidence that may connect the accused with the crime. In other words, the Court held that as to the extra judicial confession, two questions arise: is it voluntary, and if so, is it true? The appellant/accused denied at a later stage that he had made a confession, but it is not necessary to consider in the facts of the said case, the abstract question as to whether, as against its maker, a conviction can be based on a confession, which is found to be voluntary and true. It is enough to state that usually and as a matter of caution, Courts require some material corroboration to such a confessional statement. Corroboration which falls for decision in the facts of the said case is the circumstance proved against the appellant for sufficient corroboration to the confessional statement of the appellant. Therefore, the principle laid down by the Apex Court is that though conviction can be based on extra judicial confession, but some corroboration is required to inspire confidence on the statement of a witness.

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<sup>6</sup> AIR 1959 SC 18

In **Nishi Kant Jha v. State of Bihar**<sup>7</sup>, the Apex Court, while holding that the exculpatory portion of the confessional statement can be separated and declared that the conviction can be based only on the inculpatory portion of the confession. But, the Full Bench of the Apex Court in **Thimma v. State of Mysore**<sup>8</sup> took a different view that an extra judicial confession worth acting upon, but before it was contested that the extra-judicial confession said to have been made to a person is inadmissible and in any event without corroboration in material particulars from independent source, it is unsafe to act upon it.

In **Darshan Lal v. State of Jammu and Kashmir**<sup>9</sup> the Apex Court declaring that the confession made by a Constable to the Commanding Officer and the Inspector is inadmissible for the reasons that these two officers were persons in authority qua the accused but held that the confession made before he killed his wife's uncle and cousin was reliable and sufficient for the conviction of the accused.

In that view of the matter, such confessional statement has to be tested based on the relationship with the person to whom the confession was made by the accused.

Here in this case, P.W.12 is a foreigner to the accused/appellant as the accused/appellant never visited PW.12 prior to 17.04.2008. This itself is suffice to conclude that PW.12 had no acquaintance prior to the visit of the accused on 17.04.2008. When extra judicial confession is made to a third person, to whom the same is said to have made by the

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<sup>7</sup> AIR 1969 SC 422

<sup>8</sup> AIR 1971 SC 1871

<sup>9</sup> AIR 1975 SC 889

accused, the credibility of such person, relationship of the accused and the circumstances in which the extra judicial confession is made, are important questions to be addressed by the Court to rely upon such extra judicial confession.

In **Ballu and others v. State of Haryana**<sup>10</sup>, the Apex Court disbelieved the extra judicial confession made to three different persons. In the facts of the above judgment, each of three witnesses stated that after making confession, the accused concerned requested them to produce him before the Police. The story of the three appellants making confessions, which are on identical terms, before three different persons, who live in villages far off from the villages of the respective appellants, at periodical intervals appeared to be artificial and unnatural. If really their conscience compelled them to make a clean breast of their guilt, the appellants themselves could have surrendered before the Police instead of taking a circuitous route of first approaching the above three witnesses for help. Thereby, the Apex Court disbelieved the extra judicial confession and acquitted the accused.

Yet another relevant strong circumstance is the time of giving such statement. In the present facts of the case, the alleged incident took place on 15.04.2008 at about 11.00 a.m. and the extra judicial confession made to PW.12 in the presence of PW.14 was allegedly made at 7.30 a.m. on 17.04.2008 i.e., after a gap of nearly two days. Then what are the circumstances which lead the accused to approach P.W.12 and gave such statement, though he had acquaintance with PW.14, who is another

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<sup>10</sup> 1997 SCC (CrI) 234

VRO, is not explained anywhere. The time gap between the incident and the alleged extra judicial confession made by the accused is a strong circumstance to disbelieve the said confession. There are a good number of reported cases on the point, but the principle can safely be read from a judgment of the Apex Court in **Balwinder Singh v. State of Punjab**<sup>11</sup>., wherein the Court made the following observations:

“The manner in which the extra-judicial confession is alleged to have been made and the silence of PW.3 for three days in disclosing the same to the police even though she had admittedly been with the police between 21<sup>st</sup> and 23<sup>rd</sup> March, 1984 renders it unsafe to rely upon the statement.”

From the law declared by the Apex Court in various judgments referred supra, the following guidelines emerged for deciding the evidentiary value of extra judicial confession and rely on such confession to record conviction of the accused:

- (1) An extra-judicial confession to be admissible in evidence and one to be relied upon must fulfil the requirements of its voluntary character and truthfulness. The latter turns to be more important and the former is read from it in cases of retracted extra-judicial confessions.
- (2) It is required to be established from the fact and evidence produced as to whether the accused did make the extra-judicial confession or not.
- (3) The inculpatory statement, when separated from the exculpatory statement of the accused, must constitute the confession when tested on the requirements of Section 24.

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<sup>11</sup> AIR 1996 SC 607

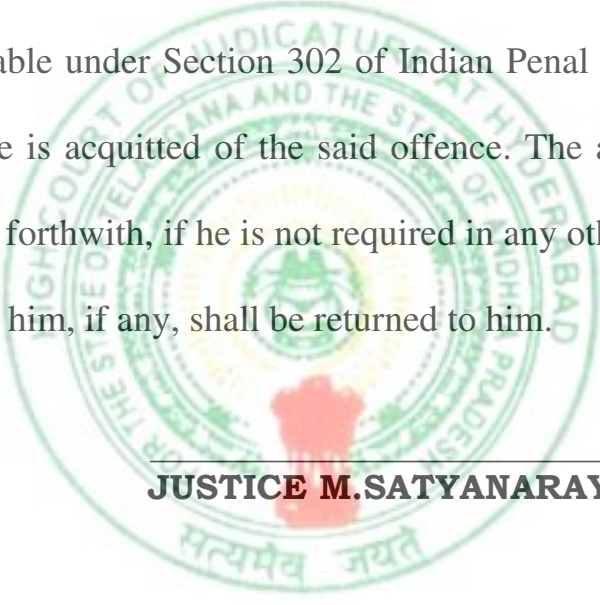
(4) The veracity of the extra-judicial confession is read from the credibility of the persons to whom made, the circumstances in which made and the explanations of the delay between the receipt of confession by a person and its transmission to the police.

(5) Extra-judicial confessions if voluntary and true can be sufficient evidence to base conviction of the accused, but if the same is corroborated with some additional independent evidence, the rule of prudence also gets thereby satisfied. In the case of retracted extra-judicial confession such a corroboration turns to be all the more important to take this rule of prudence, the place of a rule of law.

Coming to the facts of the present case, P.W.12 had no acquaintance with the accused/appellant, but P.W.14 had acquaintance, but he did not record the statement since the accused did not approach him for help, though he was present at the house of P.W.12 at the time of alleged recording of Ex.P9. This is a strong suspicious circumstance to disbelieve Ex.P9. Though P.W.12 allegedly recorded Ex.P9 at 8.00 a.m on 17.04.2008, he produced the same along with the accused before the police at 10.00 a.m. on the same day i.e., with a gap of two hours. In such case, such statement would not inspire confidence of this Court to record conviction on the sole basis of it and it is not supported by any corroborative evidence to establish that the accused is the person who murdered his wife Lalithamma, but the trial Court, based on the sole testimony of P.Ws.12 and 14 and Ex.P9- extra judicial confession, recorded conviction of the accused without insisting any corroboration to the testimony of P.Ws.12 and 14. Therefore, by applying the Division Bench judgment of this Court and two other judgments of Apex Court

referred to above, it is difficult to sustain the conviction recorded by the trial Court against the accused for the offence punishable under Section 302 of IPC and thereby, the conviction, finding the accused guilty for the offence punishable under Section 302 IPC is liable to be set aside as it is erroneous.

In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the accused/appellant by the Special Sessions Judge for Trial of S.Cs & S.Ts Cases-cum-Additional Sessions Judge, Anantapur, in Sessions Case No.218 of 2009, on 24.03.2011, for the offence punishable under Section 302 of Indian Penal Code, are hereby set aside and he is acquitted of the said offence. The accused/appellant be set at liberty forthwith, if he is not required in any other case. The fine amount paid by him, if any, shall be returned to him.



**JUSTICE M.SATYANARAYANA MURTHY**

**JUSTICE T.AMARNATH GOUD**

Dt: 24.02.2018

**Note:** L.R.Copy to be marked

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