

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.576 of 2012

Date: 30.11.2018

Between:

Smt. Chatla Archana

... Appellant/Accused No.1

And

State of A.P., rep. by Public Prosecutor,
High Court, Hyderabad.

... Respondent/Complainant

COUNSEL FOR APPELLANT: Sri C. Sharan Reddy

for Smt. C. Vasundhara Reddy

COUNSEL FOR RESPONDENT: Public Prosecutor (T.S.)

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This appeal arises out of the judgment dated 12.06.2012, passed in S.C.No.343 of 2011, by the learned Principal Sessions Judge, Sangareddy, Medak District (for short, 'the trial Court'). By the aforesaid judgment, the appellant/A.1 was convicted for the offence punishable under Sections 302 and 201 IPC, and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default, to undergo R.I. for 2 months for the offence punishable under Section 302 IPC, and further sentenced to undergo R.I. for a period of 6 months and pay a fine of Rs.1,000/-, and in default to undergo S.I. for 15 days for the offence punishable under Section 201 IPC. The learned Sessions Judge acquitted A.2 of the charges framed against him.

2. The brief facts of the case of prosecution are that A.1 was the wife of Chatla Anjanna (hereinafter referred to as "the deceased") and they hail from Yellaram village of Sadasivpet Mandal. A.2 is the brother of A.1 and he hails from Venkatapur village of Kohir Mandal. The marriage of A.1 with the deceased was performed in the year 1999 and after marriage, they led marital life happily for a few years, and they were blessed with three female children. The deceased was addicted to alcohol and used to come home in a drunken condition, and used to suspect the fidelity of A.1, alleging that she had illicit relationship with others, and used to beat her. Having vexed with the attitude of the deceased, A.1 had designed

a plan to kill the deceased. On 11.08.2010 in the evening hours, A.1 called A2 over phone, asking him to come to her house, to assist her in killing the deceased. On that day the deceased returned home in the evening hours.

3. As per their plan, A.1 caught hold of the head of the deceased, and pushed him on a brick pole in the house. Thereafter, A.2 took one pestle and beat on the head of the deceased repeatedly, as a result of which the deceased sustained severe bleeding injuries on his head. A.1 took one chunny of the deceased's elder daughter and gave it to A.2, with which he, tied the neck of the deceased, as a result of which, the deceased bled profusely and died on the spot.

4. Thereafter, A.1 kept the body of the deceased in a gunny bag with the help of A.2. Thereafter A.2 had washed the blood stains on the ground, and the pestle to screen the evidence. A.2 then left Yellaram on the early hours of 12.08.2010. A.1 had burnt the chunny, which was used in the commission of the offence, in the morning hours to screen the evidence.

5. Thereafter, A.2 brought one Auto bearing No.AP 23V 8742 from Venkatapur village at 11.30 hours and A.1 kept the gunny bag containing the dead body of the deceased in the Auto with the help of A.2 , and left from Yellaram village and proceeded to Venkatapuram village of Kohir Mandal outskirts. As per their plan, they dumped the gunny bag containing the dead body of the deceased in a pit,

which was dug to build a latrine. Thereafter, A.1 left Venkatapur village and returned to Yellaram village, and A.2 went to his house.

6. Learned Magistrate has taken cognizance of the offences punishable under Sections 302 and 201 IPC against A.1 and A.2, committed the case to the Court of Session for trial. The learned Principal Sessions Judge, Medak District, after complying with all the legal formalities and based on the material, framed charges for the offences punishable under Sections 302 and 201 IPC against the accused A.1 and A.2. The accused pleaded not guilty of the charges and claimed to be tried.

7. In order to bring home the guilt of the accused, the prosecution has examined PWs.1 to 21, and got marked the documents under Exs.P.1 to P.11, besides material objects MOs.1 to 6. On behalf of the defense, no witness was examined and no documents were marked.

8. The trial Court, on consideration of the oral and documentary evidence available on record, found A.1 guilty of the offences punishable under Sections 302 and 201 IPC, and accordingly convicted and sentenced her as stated above, while acquitting A.2 of the said charges.

9. Aggrieved by the impugned judgment, dated 12.06.2012 , in S.C.No.343 of 2011, passed by the trial Court, the appellant/A.1 has preferred the present appeal.

10. Heard the arguments of Sri C. Sharan Reddy, learned counsel appearing for Smt. C. Vasundhara Reddy, learned counsel for the appellant/A.1 and the learned Public Prosecutor appearing for the respondent-State. Perused the impugned judgment and the material on record.

11. The point for determination in this appeal is –

Whether the prosecution proved the guilt of accused, A.1 beyond reasonable doubt for the offences punishable under Sections 302 and 201 IPC , and whether the trial Court erred in convicting A.1?

12. Learned counsel for appellant/A.1 submitted that there are no direct witnesses to the occurrence. The case is based on circumstantial evidence. The important circumstance relied on by the prosecution is the extra judicial confession made by accused No.1. The extrajudicial confession is a weak piece of evidence and it has not been proved by the prosecution. The prosecution has also failed to prove the other circumstances to connect the accused with the crime. Therefore the accused no 1 is entitled for acquittal. He further submitted that the extra-judicial confession is a weak piece of evidence, and the same is inadmissible in evidence.

Further, the learned counsel submitted that there is no corroboration to the evidence of P W.2.

13. On the other hand, the learned Public Prosecutor appearing for the respondent-State contended that the evidence of witnesses and documents relied upon by the prosecution would prove the guilt of the accused. He further contended that the various circumstances appearing against the accused show that accused No 1 alone was responsible for commission of offence.

14. At the outset, this is a case based on circumstantial evidence. The prosecution mainly relied on the circumstance of extra-judicial confession made by A1 to PW.2, the VRO.

15. According to prosecution, this is a case of a brutal murder that occurred on the intervening night of 11/12 August, 2010 at Yellaram village of Sadasivpet Mandal.

16. PW.1 was the younger brother of the deceased. His testimony reveals that the deceased was missing from the house and they have searched for him and having waited for him for about one month, gave complaint, Ex.P.1, to the police.

17. PW.2, the Ex-Sarpanch of Yellaram Village, deposed that the maternal uncles of the deceased came to Yellaram village, and told him that the

deceased was missing for the last 5 or 6 days prior to 04.10.2010. Then they called A.1 and talked to her, and advised her to give a report to the police. On that evening, A.1 telephoned to PW.2 and told him that if a report is given to the police, the police would apprehend her. Thereafter, A.1 came to her house, and confessed that she had killed her husband and asked him to protect her from the police.

18. In fact, there was no need for A.1 to inform PW.2, who was a stranger to her, that she had killed her husband, leaving all her relatives. The natural conduct of a person in those circumstances would be to inform the nearest relative and take his or her advice whether to give a complaint to police or not? But, it is the case of the prosecution that A.1 straight away informed PW.2, with whom she had no acquaintance, and sought his help as if he was very close to her. Further, A.1 had not even taken any of her close relative to PW.2 for making the alleged confession. The conduct of A.1 raises any amount of doubt on the version of the prosecution about the A.1 believing a stranger and confessing and seeking his help. The police also had not taken any steps for getting recorded the statement of A.1 under Section 164 Cr.P.C. before the concerned Magistrate.

19. The testimony of PW 2 reveals that the confession made by accused No. 1 is not voluntary. The evidence of PW.2 reveals that he knows PW.1, deceased, A.1 and A.2, that 5 or 6 days prior to 4/10/2010 the maternal uncle of the deceased came from Tekur village to Yanam and told him that the deceased was

missing and that they called A.1 and talked to her and told her that a report should be given to the police. On that same evening accused No.1 telephoned to PW 2 and told him that if a report is given to police, police would apprehend her. Thereafter, she went to the house of the PW.2 and confessed that she herself killed the deceased and asked him to protect her from the hands of the police. PW.2 having sensed that the situation in the village became bad and if he informs the villagers that A.1 killed the deceased everyone would beat her, he took her to the police station and handed her over to the police.

20. As a matter of fact, accused No.1 went to PW.2 only and he informed her that she has to give a report to the police about the missing of her husband. The accused No. 1 has not gone to PW 2 voluntarily to make a confession to him. PW.2 himself called her and talked to her at the instance of her uncles. On that the accused No. 1 came to PW 2. The accused No. 1 telephoned to him and informed that if a report is given to the police the police would apprehend her. This fact reveals that accused No.1 was scared of giving a report to the police and she wanted PW.2's help. PW 2 has taken her to the police stating that she had confessed before him about the commission of the offence. Under these circumstances, the confession made by the A.1 does not appear to be a voluntary confession. It was on the promise of PW 2 to protect A.1 from the villagers, he had taken her to the police station.

21. As far as the acquaintance between the accused No.1 and PW.2 is concerned, he stated in his cross examination that neither the deceased nor A.1 came to him at any time and shared their personal feelings with him. This fact reveals that there was no prior acquaintance between PW.2 and the accused No.1 prior to the incident, for making any confession before him.

22. There is an admission made by PW 2 in his cross examination that his father, the maternal uncle of the deceased and the Sarpanch of TEKUR village and another person were present at the time of the confession made by A1. This fact reveals that A.1 had not made the alleged confession voluntarily to PW.2 alone. She made the alleged confession before several persons about the incident. The alleged confession made by A.1 before so many persons cannot be believed. If she really intended to make a confession, A.1 would have made the confession only before PW 2. Therefore, the alleged confession does not appear to be voluntary confession.

23. PW.2 attempted to justify his not informing the villagers about the confession made by A.1 on the ground that the situation in the village became bad and that if he informs the villagers about the confession of A.1, everyone would beat her and hence he took her to the police station and handed over her to the police. If A.1 had made any confession to PW.2, he should have reduced it into writing and informed the police. He being the Ex.Sarpanch of the village must be aware of the

procedure of reducing the statement of A.1 into writing with actual words, in which she made the confession. The conduct of PW.2 in not reducing the statement of A.1 and also not informing to villagers about the said fact, raises any amount of doubt about the veracity of his evidence.

Further, PW 2 did not even inform PW 1, the elder brother of the deceased, that accused No.1 had made a confession to him about the commission of the offence. The cross examination of PW 2 further reveals that by the time he reached the house from his fields after receiving the phone call from Accused No.1, all the persons before whom A.1 made the alleged confession were already present there, but A.1 came to his house only after he reached the house, that all of them have reached the police station with about a gap of few minutes, and that all the persons before whom A.1 made the alleged confession also came to the police station. This evidence of PW.2 reveals that accused No.1 made a confession before several persons in the village including PW 2 and that they all went to police station along with her clearly reveals that the confession made by A.1 was not a voluntary confession and that it was a confession made by coercion and threat. Therefore the extrajudicial confession alleged to have been made by accused No.1 to PW.2 cannot be accepted as true and voluntary.

PW.3 is a resident of Yellaram village. He works as Field Assistant of the village and he came to know through PW.2 that A.1 made the confession before

PW.2 that she killed the deceased and hence they went to Venkatapuram, whereas, PW.2 stated that he did not inform villagers about her confession, but PW.2 had stated in his evidence that he informed PW.3 about the confession. PW.3 further deposed that the Municipal people exhumed the dead body of the deceased, and that it was totally decomposed and emitting bad smell. Pw 3 identified the dead body as that of the deceased, by seeing his Dhothi and Shirt.

PW.4, the cousin brother of the deceased, deposed that he came to know about the same on 04.10.2010 through PW.2.

PW.5 is a resident of Venkatapuram Village and he deposed that about one year back at the request of the police, he went to Kallam in their village, where the police got the ground dug with the help of Municipal people, and got exhumed a dead body, which was in a totally decomposed state.

The police did not take any steps for conducting the scientific test of 'Super imposition' of the skull of the deceased with that of the photograph of the deceased, when the body was decomposed and skeleton only remained .

PW.6 is a resident of Yellaram village. He knows both the accused and the deceased. He deposed that in the month of September, 2010 there was a quarrel between them and thereafter deceased was not seen. They searched for the deceased, but could not find him. Then they discussed the matter with PW.2. who

was their Sarpanch. Then they called A.1 and enquired her and then she confessed that she herself killed the deceased. If this version is true, it is not known why PW.6 did not accompany A.1 to the police station. On the other hand, the version of PW.2 that he did not inform villagers about the confession made by the A.1 as they may become furious and beat her, is not a true version, as the village assistant and relatives of the deceased knew about the confession made by her.

PW.7 is the daughter of the deceased, who is aged about 12 years. The learned Sessions Judge put some preliminary questions to this witness and having dissatisfied with her capacity of giving evidence, he did not record her statement .

PW.8 is a resident of Sadasivapet, working in Sadasivapet Municipality. He was taken in a Jeep to Venkatapuram Village by the police stating that there was a body in a septic tank, and that with the help of LW.11, the dead body was lifted, which was kept in a gunny bag. He further deposed that the dead body was in a totally decomposed state and that the villagers identified the dead body as that of the deceased.

PW.9 is a photographer having a photo studio in the village. He had taken photographs of the dead body of the deceased. Ex.P.2 is a bunch of 5 photographs along with CD.

PW.10 is a Videographer, who had recorded the videograph while lifting the deceased from the septic tank. Ex.P.3 is the video cassette.

PW.11 is the Auto driver. In fact, this witness is a crucial witness, but he did not support the case of prosecution and denied the suggestion made by the prosecution that in his auto A.2 took the Jower bag and a sewing machine on 12.08.2010.

PW.12 was the VRO of Yellaram village and a panch witness for confession and recovery of the dead body of the deceased. He deposed that in pursuance of the confessional statement of A.1, she led him and police to the septic tank, where the dead body was kept in Venkatapuram village, that by seeing the clothes on the dead body, he identified it as that of the deceased. Ex.P.5 is the admissible portion of the confessional statement of A.1. She led them to her house where she handed over a brick with the help of which she beat the deceased and also handed over pestle with which the deceased was beaten, which are MOs.1 and 2, respectively.

PW.13 is another panch witness for the recovery of material objects MOs.1 and 2. PW.14 is the Revenue Inspector, Koheer. On 04.10.2010 at about 11.00 or 11.30 a.m., at the request of the Tahsildar, he went to Venkatapuram Kallam, where the dead body of the deceased was exhumed from a pit by the Municipal workers. The dead body was totally decomposed and unidentifiable. Ex.P.6 is the Inquest Report prepared in his presence.

PW.15 is working as VRO of Sadasivapet. He spoke about his going to the place where the dead body was exhumed on 04.10.2010 and seizure of material objects MOs.3 to 6. This witness was declared hostile at the stage of his examination, as he did not support the case of prosecution with regard to seizure of 2 cell phones in pursuance of the confession made by A.2.

PW.16 is the Mandal Revenue Inspector of Sadasivapet. He deposed that on 04.10.2010 he went to Venkatapuram on the instructions of the Tahsildar and questioned A.1 as to why she was there and then she confessed about killing the deceased, and a panchanama was drafted. In pursuance of her confession, she led them to her house at Yellaram Village where she has brought a pestle and a brick MOs.2 and 1, respectively.

PW.17, who is a resident of Sangareddy. He was working as VRO of Sadasivpet village, but he did not support the case of the prosecution.

PW.18 is the Tahsildar of Yeldurthy village. He is one of the inquest punch .
Ex.P.6 is the Inquest Report.

PW.20 is the Medical Officer. She examined the dead body and deposed that she found the dead body in a highly decomposed state. She spoke about the injuries found on the dead body and opined that the deceased died of head injury.

PWs.19 and 21 are the Investigation Officers. The sum and substance of the investigation is that in pursuance of the confessional statement of the accused, the material objects were seized, and that A.1 confessed before the VRO about the commission of the offence by her.

24. The prosecution based the identification of the dead body on the clothes worn by the deceased and the same raises any amount of doubt about identification of the body of deceased.

25. On consideration of the evidence of the above witnesses, it clearly reveals that the case of prosecution based on circumstantial evidence. The motive plays an important role in a case based on circumstantial evidence. The motive for commission of this offence was stated to be the disputes between the wife/A.1 and husband/deceased. In fact, there is no satisfactory evidence on record to show that there were disputes between A.1 and the deceased, which led her to kill her husband. Therefore, the motive for commission of offence by A.1 is not proved beyond reasonable doubt.

26. Extra-judicial confession is a weak piece of evidence. Unless there is corroboration, the same cannot be believed. It is not a substantive piece of evidence for consideration. There is a contradiction in the evidence of PW.2. On one hand, he says that he has not informed the villagers about A.1 confessing her guilt and, on

the other hand, he says that the extrajudicial confession was made by the accused No. 1 before several villagers. On a careful consideration of the evidence it clearly reveals that the accused had not made her confession voluntarily but the said confession had been obtained by coercion and threat at the instance of the villagers and the relatives of the accused therefore the confession cannot be considered as a voluntary confession.

27. The other circumstance relied on by the prosecution is recovery of material objects at the instance of A.1. The alleged recovery of M.Os. is only one of the circumstance in the chain of circumstances and conviction cannot be based on mere recovery of M.Os.

28. The prosecution based its case on grave suspicion against A.1 as she quarreled with her husband/deceased, she might have killed him and buried his dead body in the septic tank. The entire investigating agency and revenue mechanism made several efforts to connect the accused with the crime, with a weak piece of evidence of extrajudicial confession which was not a voluntary confession and also the alleged recovery of material objects. Therefore version of prosecution is not acceptable as true and natural.

29. The prosecution has miserably failed to bring home the guilt of A.1 beyond reasonable doubt. The findings of the learned Sessions Judge convicting

A.1 for the offences punishable under Sections 302 and 201 IPC are liable to be set-aside.

30. In the result, the Criminal Appeal is allowed, and the judgment dated 12.06.2012 in SC.No.343 of 2011 of the trial Court is set aside, A.1 is acquitted of the offences with which she was charged. The bail bonds of A.1 shall stand cancelled and she shall surrender herself before the Superintendent, Central Jail for Women, Hyderabad, for completing the formalities for her release, if she is not required in any other case or crime.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

30.11.2018

Msr

THE HON' BLE SRI JUSTICE C.V. NAGARJUNA REDDY
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(P.D. Judgment prepared by GSP, J)



30.11.2018

Msr