

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.1028 OF 2013

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

The appellant, Thupakula Anjaneyulu @ Anji, has challenged the legality of the judgment, dated 18.10.2013, passed by the Principal Sessions Judge, Mahabubnagar, whereby the learned judge has convicted the appellant for offence under Section 302 IPC, and sentenced him to life imprisonment, and has also convicted him for offence under Section 404 IPC and sentenced him to five years of rigorous imprisonment.

Briefly the facts of the case are that on 12.06.2012, Mr. Md. Fareed (P.W. 4), the Village Revenue Officer, lodged a report (Ex. P. 1) with the Police Station, Jadcherla wherein he claimed that on 12.06.2012, around 4:00 pm, they have discovered a dead body of an unknown person in Jadcherla Sivar, NH-44 road to Badepally Club beside road, near Vasundara Estate, Survey No.18. According to the complainant, the person was aged between twenty-five to thirty years. He was killed by some unknown miscreants with the use of three granite stones. Injuries were caused on hands, legs and testicles. The deceased wore light cream colour full shirt, a white innerwear, ash colour pant, and ash colour underwear. Height of the person is five feet five inches, whitish complexion, and on the right knee, a white bandage was there. According to the complainant, yesterday between 11:00 a.m. to 12:00 at night, some unknown persons might have killed the said deceased person. Hence the report to the police. On the

basis of the said report (Ex. P. 1), the police chalked out a formal FIR, namely FIR No. 162 of 2012 (Ex. P. 6) for offence under Section 302 IPC.

During the course of investigation, the appellant was arrested by the police. On the basis of the alleged confessional statement made by him, he was put up for trial. In order to substantiate its case, the prosecution examined eleven witnesses, and submitted eight documents. The defense neither examined any witness, nor submitted any documents. After going through the evidence produced during the trial, the learned trial court convicted and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

Ms. A.Gayathri Reddy, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. But the prosecution has failed to prove all the links of the chain which would unerringly point towards the guilt of the appellant.

Secondly, the learned trial court has relied on the alleged confession (Ex. P. 2) made by the appellant before the police. However, any statement made by the accused while he is in police custody cannot be read against the accused in light of Section 25 of the Evidence Act. Only so much of the statement can be read which leads to the discovery of a fact. Therefore, the confession made by the appellant with regard to the alleged commission of the offence cannot be relied upon by the learned trial court.

Lastly, although the learned trial court claims that in his statement given under Section 313 of Cr.P.C, the appellant has confessed to the commission of the crime, but no such confession

was made by the appellant. In order to buttress this plea, the learned counsel has drawn the attention of this court to the answers given by the appellant to question Nos. 7 to 9. Therefore, according to the learned counsel, it is a case of “no evidence” against the appellant. Hence, the appellant deserves to be acquitted by this court.

On the other hand, the learned Public Prosecutor has raised the following counter-arguments:-

Firstly, the appellant had made an extra judicial confession to P. W. 7 wherein he had admitted that he had not only killed the deceased, but had also taken Rs.5,000/- from him. Therefore, the learned trial court was justified in convicting the appellant for both offences under Sections 302 and 404 IPC.

Secondly, since the appellant had admitted his guilt in his statement under Section 313 Cr.P.C, the learned judge was justified in relying upon the same in order to convict the appellant. Therefore, she has supported the impugned judgment.

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

In the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir**¹, 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,

¹ AIR 2002 SC 3164

(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

(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."

In catena of cases, the Hon'ble Supreme Court has also opined that the distance between "may be true" and "must be true" is a long distance, which the prosecution is required to cover. Moreover, in catena of cases, the Hon'ble Supreme Court has also held that suspicion, however strong, cannot take place of legal proof. Furthermore, a person cannot be convicted on the basis of surmises and conjectures.

In **Shivaji Sahebrao Bobade v. State of Maharashtra**², the Hon'ble Supreme Court made the following observations:-

"(1) Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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,

² 1973(2) SC 793 = AIR 1973 SC 2622

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete 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.”

In catena of cases, the Hon'ble Supreme Court also held that the prosecution must prove its case beyond reasonable doubt in the case of direct evidence, but in case of circumstantial evidence, the prosecution needs to probablise its case, to the extent that the chain of circumstances unerringly point to the guilt of the accused. Such a chain of circumstances does not admit of any hypothesis, which may point towards his/her innocence.

In the present case, Mr. Sardar Baig (P. W. 7), in his examination-in-chief, states that *“on 31.12.2012 at about 4:00 p.m. police called me and L.W.13, another V.R.O. I and L.W.13 followed the police and reached Nethaji circle, Badepally and found the presence of a person. On seeing the police party, the said person tried to ran (sic) away and the police apprehended him. The said person disclosed his name as Thupakula Anjaneyulu @ Anji, S/o Masaiah, resident of Badepally village, who is the accused in this case. At the instance of the police, we took the accused to the aside, and asked him about his involvement in the alleged incident. The accused confessed for having murder (sic) of the deceased. The accused further confessed that he demanded the deceased to give Rs.5,000/- as the deceased refused to pay the said amount, the*

accused killed the deceased. After killing the deceased, the accused took away Rs.5,000/- and odd from the dead person of the deceased and he spent the said amount for his lavishes.”

While recording the statement of the accused under Section 313 Cr.P.C, the learned trial court asked the following questions to the accused as under:-

“Q. No.7:- P. W. 7 Sardar Baig, VRO deposed that P. W. 7 knows you accused. What do you say?

Answer:- *Nijam.* (True).

Q.No.8:- P.W. 7 Sardar Baig further deposed that on 31.1.2012 at about 4-00 pm police called him and another VRO (LW13). He (PW7) and LW13 another VRO followed the police and reached Nethaji circle, Badepally and noticed the presence of one person and on seeing the police the said person tried to ran away and the police apprehended him. The said person disclosed his name as Thupakula Anjaneyulu @ Anji S/o. Masaiah resident of Badepally village you accused in this case. What do you say?

Answer:- *Nijam.* (True).

Q.No.9:- P.W. 7 Sardar Baig, further deposed that at the instance of police PW7 and another mediator took you accused aside and asked you accused about your involvement in the death of the deceased and you confessed for having murder of the deceased and you further confessed that you demanded the deceased to give Rs.5,000/-, as the deceased refused to pay the said amount you accused killed the deceased and after killing the deceased you accused took away Rs.5,000/- and odd from the dead person of the deceased and you spent the said amount for

your lavishes. Ex P2 is the confession and seizure panchanama of you accused. What do you say?

Answer:- *Nannu Vicharinchinaru.* (I was interrogated).”

A bare perusal of these three questions clearly reveals that the appellant has merely admitted to the fact that he is known to P.W.7 Sardar Baig. However, when the accused was asked about the alleged confession, his answer (in question No.9) is “*yes, I was interrogated*”. He does not admit that the testimony of P. W. 7 with regard to the confession, or with regard to the contents of the confession are true. He merely states that he was “interrogated”. Therefore, the learned trial court is unjustified in concluding that the appellant has “admitted his guilt”. Therefore, the learned trial court is unjustified in relying on the alleged “admission” made by the appellant in his statement under Section 313 Cr.P.C.

Moreover, the learned trial court has ignored the fact that according to Sardar Baig (P. W. 7), the alleged confession was made by the appellant while he was in police custody. Section 25 of the Evidence Act clearly states that any statement made by the accused while he is in police custody cannot be read against him. Therefore, even if the appellant had confessed his guilt while in police custody, such confessional statement to the extent of his having committed the murder cannot be read against him.

Section 25 of the Evidence Act is as under:-

Confession to police officer not to be proved – *No confession made to a police officer, shall be proved as against a person accused of any offence.*

In the case of **Raja Ram Jaiswal v. Bihar**³, the Apex Court had held that Section 25 of the Evidence Act was enacted to eliminate from consideration confession made to an officer who, by virtue of his position, could extort by force, torture or inducement a confession.

In the case of **Raj Kumar Karwal v. Union of India**⁴, the Hon'ble Supreme Court has clearly opined that the purpose of restriction imposed under Section 25 of the Evidence Act on admissibility of confessional statement made to a police officer is two fold, namely, (i) to protect the person accused of a crime from third degree treatment, and (ii) to ensure a proper and scientific investigation of the crime with a view to bring the real culprit to book.

In the case of **Bheru Singh v. State of Rajasthan**⁵, the Hon'ble Supreme Court had also opined that Section 25 of the Evidence Act not only bars proof of admission of an offence, but also of other incriminating facts relating to the offence. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against the accused. According to the Apex Court, Section 25 of the Evidence Act is based on the ground of public policy. However, the only part of the confession statement that can be read against the accused is the one permissible under Section 27 of the Evidence Act.

³ AIR 1964 SC 828

⁴ (1990) 2 SCC 409

⁵ (1994) 2 SCC 467

Whatever information is given by the accused in consequence of which a fact is discovered, only such information is protected by Section 27 of the Evidence Act. Thus only such part of confessional statement is admissible as evidence against the accused. The basic idea embodied under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in the discovery of a fact, it becomes reliable information. The “*fact discovered*” as envisaged under Section 27 embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [Ref. to: **Pawan Kumar v. State of U.P.: (2015) 7 SCC 148**].

In the case of **Kripal Mohan Virajmani v. S.D. Mishra Intelligence Officer**⁶, this Court has also opined that “*the intention of the legislature for enactment of Section 25 of the Evidence Act, it appears was to prevent extortion of confessions and the inventions facilitating the procuring of convictions, which the police officers were considered likely to employ. The purpose of enacting Section 25 of the Evidence Act was to put a stop to the extortion of confessions by the police officers by malpractices.*”

Therefore, while dealing with an alleged confessional statement of an accused, the principles pronounced by the Apex

⁶ (1990) 2 APLJ 10 (DNC) (DB)

Court and by this Court have to be kept in mind. Of course the only part of the statement made by the accused in the police custody which can be read against the accused is part falling within the ambit of Section 27 of the Evidence Act. However, in the present case nothing was recovered from the appellant under the provision of Section 27 of the Act.

Therefore, the learned trial court is unjustified in reading the alleged confession, made by the appellant, against him while he was in police custody.

It is a misnomer that a statement made by the accused to the arrest witness, while the accused is in police custody, should be treated as “an extra-judicial confession.” For, such an alleged confession would necessarily have to pass through the tests which are applicable to extra-judicial confessions: firstly, an extra-judicial confession is generally made to someone, who is a friend or relative or a close associate of the person making the confession. Secondly, the said confession has to be voluntarily made; it can neither be induced, nor compelled to be made. Thirdly, the exact words of the confession need to be stated before the trial Court.

The arresting witnesses are independent witnesses. Therefore, invariably they would be total strangers to the accused. Hence, it is unlikely that the accused persons would make an “extra-judicial confession” before a total stranger. Secondly, the said confession being made in police custody may be induced, or compelled to be made. Thus the said confession is not voluntarily made. For these two reasons, a confessional statement allegedly made to the arrest witness should not be accepted by the learned trial court. However, in the present case, the learned trial court

has relied heavily on the alleged confessional statement. Therefore, the learned trial court has misapplied itself.

But for the alleged confessional statement and the alleged “admission” made by the appellant in his statement given under Section 313 Cr.P.C, there is no other cogent and convincing evidence produced by the prosecution against the appellant. Hence, the prosecution has miserably failed to establish its case against the appellant.

In the result, the Criminal Appeal is allowed. The conviction and sentences recorded against the appellant, Thupakula Anjaneyulu @ Anji, S/o. Maisaiah, for the offences punishable under Sections 302 and 404 IPC in the Judgment, dated 18.10.2013, in Sessions Case No.358 of 2013 on the file of the Principal Sessions Judge at Mahabubnagar, are set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not required in any other case or crime.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

06th March, 2019
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