

**HIGH COURT FOR THE STATE OF TELANGANA**

CRIMINAL APPEAL NO.1122 OF 2012

**Between:**

Parvatham Pentaiah and two others .... Appellants

Vs.

The State of A.P., Represented by its Public Prosecutor, High Court  
of Andhra Pradesh, Hyderabad.

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 23.01.2019

**SUBMITTED FOR APPROVAL:**

**THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN**

**AND**

**THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

1. Whether Reporters of Local newspapers may  
be allowed to see the Judgments?
2. Whether the copies of judgment may be marked  
to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the  
fair copy of the Judgment?

**JUSTICE RAGHAVENDRA SINGH CHAUHAN**

**\* THE HONOURBLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN**

**AND**

**\* THE HONOURBLE SRI JUSTICE T.AMARNATH GOUD**

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! Counsel for the appellant: Ms. A.Gayathri Reddy

^ Counsel for respondent : Mr. C.Pratap Reddy

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> HEAD NOTE:

? Citations:

1. AIR 1964 SC 828
2. (1990) 2 SCC 409
3. (1994) 2 SCC 467
4. (1990) 2 APLJ 10 (DNC) (DB)

**THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN**

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CRIMINAL APPEAL NO.1122 OF 2012

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

Having been convicted for the offence under Section 302 of the Indian Penal Code (IPC), having been sentenced to life imprisonment, having been convicted for the offence under Section 379 IPC, having been imposed with a fine of Rs.2,000/-, and in default to undergo simple imprisonment of three years, the appellants, Parvatham Pentaiah, (accused No.1), Parvatham Narsaiah, (accused No.2), and Thoorpati Sailu (accused No.3) have approached this Court.

Briefly, the facts of the case are that on 07.06.2011 T.Sandeep Reddy (P.W.1) lodged complaint (Ex. P.1) at the Medchal Police Station wherein he claimed that his brother, T.Samath Reddy (the deceased), cultivates about Acs.2.00 of agricultural land and is also engaged in dairy business. As usual, on 06.06.2011, around 09:00 A.M., his brother went to their farm. While his parents returned from the farm in the evening, his brother, T.Samath Reddy, did not come back from the farm. Around 06:00 P.M., his neighbour, B.Naveen (P.W.2), informed him that he heard certain hue and cry from their farm. Therefore, T. Sandeep Reddy (P.W.1), along with his father, went to their farm. There, he discovered that his brother, T.Samath Reddy had dead; the dead body was lying in a pool of blood. A stick was also found lying besides the dead body. According to the complaint (Ex. P.1), some unknown persons had assaulted his brother and killed him. On

the basis of this complaint (Ex. P.1), a formal First Information Report (FIR), namely, FIR.No.181/2011 (Ex. P.12) was registered for offence under Section 302 IPC. The investigation commenced. During the course of investigation, the police also discovered four sticks, having blood, lying near the dead body.

Meanwhile, on 22.06.2011, B. Erena (P.W.7) arrested the accused persons in another criminal case, namely Crime No.86/2011 under Sections 302 and 379 IPC registered at Kukanoorpally Police Station, Medak District. During the investigation of the said case, allegedly appellant Nos.1 to 3 made a confessional statement to the police. In the confessional statement, Thoorpati Sailu (accused No.3), also admitted that he had committed theft of one cell phone from T.Sampath Reddy (the deceased) and had also stolen Rs.110/- from him. Therefore, the police added the offence of Section 379 IPC in Crime No.181/2011. Since the Police Station, Medchal, was informed about the confessions made by the accused before the Police Station Kukanoorpally, P.T. warrant was taken; the accused persons were further interrogated by the police of the Medchal Police Station. Upon the confession statement made by Thoorpati Sailu (accused No.3), a cell phone allegedly belonging to the deceased was recovered from one P.Jagan (P.W.5). During the course of investigation, it was also revealed that Parvatham Pentaiah (accused No.1), Parvatham Narsaiah (accused No.2) are residents of Vemulghat Village of Thoguta Mandal, Miyapur, Ranga Reddy District. Thorpati Sailu (accused No.3) is the resident of Kappalabasthi, Metpally Karimnagar, Miyapur, Ranga Reddy District. While accused Nos.1 and 2 are brothers, accused No.3 is

the brother-in-law of accused Nos.1 and 2. Having completed the investigation, police filed a charge sheet for offences under Sections 302 and 379 IPC against the appellants.

In order to substantiate its case, the prosecution examined nine witnesses, and submitted fifteen documents and also produced eight material objects, before the learned trial Court. After appreciating the evidence, the appellants were convicted and sentenced as aforementioned. Hence, this appeal before this Court.

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

Firstly, the entire case is based only on two pieces of evidence, i.e., the alleged recovery of the cell phone allegedly belonging to the deceased, upon the statement made by the accused No.3, and upon the testimony of P.Jagan (P.W.5). However, the recovered cell phone was never subjected to a Test Identification Parade. According to the learned counsel for the appellant, the identification of the cell phone, for the first time in the Court, is too weak an evidence for convicting the appellants.

Secondly, the impugned judgment is based on “*the confessional statements*” of accused Nos.1 to 3 (Exs. P.8 to P.10). Despite the fact that there is no discussion made by the learned Trial Court with regard to involvement of accused Nos.1 and 2, in the alleged offence, yet they have been convicted solely on the basis of their alleged “*confessional statements*” made before the police. According to the learned counsel, the confessional statement made to the police is inadmissible evidence. Therefore, the learned Trial Court is not justified in reading the confessional statements,

allegedly made by accused Nos.1 and 2 (Exs. P.8 and P.9) against the accused persons. Hence, the entire approach of the learned Trial Court is highly misplaced.

Lastly, since there is lack of linking evidence, and since the entire case is based on the confessional statements made by the accused, the prosecution has miserably failed to establish the guilt of the appellants. Hence, they deserve to be acquitted by this Court.

On the other hand, Mr. C.Pratap Reddy, the learned Public Prosecutor, has pleaded that the confessional statement (Ex. P.10) of Thorpati Sailu (accused No.3), both before the Police Station Medchal, and before the Police Station Kukanoorpally, he had admitted that stole the cell phone, and he had pawned the same with P.Jagan (P.W.5). Moreover, P.Jagan (P.W.5) has also stated in his testimony that it is Thoorpati Sailu (accused No.3), who had brought the cell phone to his shop, and pawned the same. For the cell phone, he had given Rs.500/- to Thoorpati Sailu (accused No.3). Subsequently, the police came and recovered the cell phone. Thus, there is linking evidence to connect Thoorpati Sailu (accused No.3) to the alleged crime.

Secondly, as far as Parvatham Pentaiah (accused No.1) and Parvatham Narsaiah (accused No.2) are concerned, they too have made confessional statements (Exs. P.8 and P.9) before the police which were before the Trial Court. Thus, the learned Public Prosecutor has supported the impugned judgment.

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

The appreciation of evidence in cases of heinous crime is a serious business. The evidence has to be examined, needless to say, meticulously and critically. Evidence cannot be appreciated on the surface. Since the Sessions Courts are dealing with the question of life and death of the accused persons, a minute appreciation of the evidence, and discussion of the evidence have to be reflected in the judgments pronounced by the learned Trial Court. The learned Trial Courts are also expected to apply the law which is relevant to the case. If there are bars contained in law with regard to relevance and admissibility of the evidence, obviously the said evidence cannot be read against the accused. Naturally, there is no place for either moral conviction or conviction based on mere suspicion. For, it is a settled principle of criminal jurisprudence that no matter how strong the suspicion may be, it cannot take the place of proof. Even if the case were based on circumstantial evidence, all the circumstances have to form a complete chain which unerringly point to the guilt of the accused. The inference to be drawn from the chain of events would preclude any possibility of innocence of the accused. If there is a scope of the accused being innocent, naturally the benefit of doubt necessarily has to be given to the accused by the learned Trial Court. Moreover, it is a settled principle of law that it is not the ghastliness of the crime which should prevail in the mind of the learned Trial Court. In fact, it is the weight of the evidence which should convince the Trial Court that the accused is, indeed, guilty of the offence alleged against him. These fundamental and basic principles of criminal jurisprudence

necessarily have to be kept in mind while appreciating the evidence in a criminal case.

A bare perusal of the impugned judgment clearly reveals that the judgment is based on two pieces of evidence. Firstly, the alleged recovery of the cell phone allegedly taken by the accused No.3 from the deceased, and pawned to P.Jagan (P.W.5). Secondly, the alleged confessional statement made by accused No.1 (Ex. P.8) and accused No.2 (Ex. P.9) and accused No.3 (Ex. P.10) to the police wherein they have “*confessed to the crime*”.

Interestingly, in the complaint (Ex.P.1) filed by T.Sandeep Reddy (P.W.1) he does not mention the fact that the deceased was carrying a cell phone with him. Yet in his examination-in-chief, he claims that “*my deceased brother was maintaining a cell phone and also have some cash always with him*”. It is for the first time that he identifies the alleged cell phone in the Court. He tries to explain the basis for identification by stating that “*since it is he who had bought the said cell phone for his brother, he could recognize the same*”. But admittedly, the said cell phone was never subjected to a Test Identification Parade by the police. The importance of a Test Identification Parade cannot be over-stated by this Court. It is, indeed, a settled principle that in case an object of theft is recovered by the police, perforce the object has to be subjected to the Test Identification Parade. For, as the alleged recovered object has to be identified by a witness (es) who would be in a position to identify the object as belonging to the deceased or to others. The relevance of the recovery vests on the touchstone of a Test Identification Parade. A complete procedure needs to be followed for holding a Test Identification parade. Therefore, in catena of

cases, it has been held that identification of an object, or of a person, for the first time in the Court is a weak piece of evidence. Interestingly, in the present case, T.Sandeep Reddy (P.W.1) identifies the cell phone for the first time in the Court. Therefore, the identification is a weak piece of evidence for connecting the accused No.3 to the alleged crime. Yet ironically, but for the identification of the cell phone, and its alleged recovery from P.Jagan (P.W.5), there is no other evidence to connect the accused No.3 to the alleged crime.

As far as the accused Nos.1 and 2 are concerned, the prosecution has not been able to place any evidence against them before the learned Trial Court. Despite the lack of evidence against the accused Nos.1 and 2, the learned Trial Court has relied on the fact that they had made confessional statements (Exs. P.8 and P.9) before the police and before two mediator witnesses, namely Ch.Sridhar (P.W.6) and B.Surender Reddy (L.W. 11).

According to Ch.Sridhar (P.W.6), he was summoned along with one B.Surender Reddy (L.W.11) by the police to the Medchal Police Station. They both saw three persons in connection with murder of deceased at Girmapur Village. According to this witness, Girmapur Village is a neighbouring village. According to him, the accused Nos.1, 2 and 3 confessed that *“they are habituated to commit thefts and they are residents of Medchal”*. According to the confessional statements (Exs. P.8, P.9 and P.10), *“they had gone to Secunderabad after consuming liquor in order to commit theft at Medchal. They came to Girmapur Village and saw the deceased milking his cows. They beat the deceased with sticks and after his death, they snatched one cell phone, cash of Rs.110/-.*

*They spent the amount for consuming liquor, and then the accused persons showed the cell phone to this witness".* The confessional statements are marked as Ex.P.8 to Ex.P.10.

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**<sup>1</sup>, the Apex Court had held that Section 25 of the Evidence Act was enacted to eliminate from consideration confessions 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**<sup>2</sup>, 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**<sup>3</sup>, 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

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<sup>1</sup> AIR 1964 SC 828

<sup>2</sup> (1990) 2 SCC 409

<sup>3</sup> (1994) 2 SCC 467

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.

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 confession 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**<sup>4</sup>, 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*

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<sup>4</sup> (1990) 2 APLJ 10 (DNC) (DB)

*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 solitary principles pronounced by the Apex Court and by this Court have to be kept in mind. Therefore, the learned trial Court was unjustified in reading the alleged confessional statement made by A-1 and A-2 against them. As stated hereinabove, but for the alleged confessional statement of A-1 and A-2, the prosecution has not produced an iota of evidence against them. Therefore, the learned trial Court is legally unjustified in convicting A-1 and A-2 on the basis of their alleged confessional statement.

For the reasons stated above, the sentence and conviction of the appellants-Parvatham Pentaiah, S/o. Narsaiah (accused No.1), Parvatham Narsaiah, S/o. Narsaiah (accused No.2) and Thoorpati Sailu S/o.Yellaiah (accused No.3), for the offences punishable under Sections 302 and 379 of the Indian Penal Code in S.C.No.325 of 2012 on the file of the I Additional District & Sessions Judge, Ranga Reddy District-cum-Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad, are set aside. The appellants-accused Nos.1 to 3 shall be released forthwith, if not wanted in any other case.

The Criminal Appeal is, accordingly, allowed. Miscellaneous petitions, if any, pending shall stand closed.

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**(RAGHVENDRA SINGH CHAUHAN, J)**

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**(T.AMARNATH GOUD, J)**

23<sup>rd</sup> January 2019

Note: L.R. copy to be marked.

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RRB