

HIGH COURT FOR THE STATE OF TELANGANA

HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1219 of 2012

Date: 06.08.2019

Between:

Pogula Raju.

...Appellant/Accused

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad.

... Respondent/Complainant

Counsel for the Appellant

: Smt. C. Vasundhara Reddy

Counsel for the Respondent

: The Public Prosecutor

The Court made the following:

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), is filed by the appellant/accused, aggrieved by the judgment, dated 12.10.2012, passed in Sessions Case No.558 of 2011 by the learned IV Additional Sessions Judge (F.T.C.) Karimnagar (FAC: V Additional Sessions Judge, Karimnagar), whereby and whereunder, the Court below, while acquitting the appellant/accused of the offence under Section 376(2)(f) IPC, convicted and sentenced him of the offences punishable under Sections 354, 366 and 302 IPC as follows:

- i) to undergo simple imprisonment for two years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for three months, of the offence punishable under Section 354 IPC;
- ii) to undergo simple imprisonment for five years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for three months, of the offence punishable under Section 366 IPC; and
- iii) to undergo imprisonment for Life and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for three months, of the offence punishable under Section 302 IPC.

All the substantive sentences were directed to run concurrently.

2. In brief, the case of the prosecution is that PW.1-Konda Padmanabham lodged Ex.P.1-report with the police on 26.08.2010 stating that he has three daughters and on 25.08.2010 at about 6:00pm, his second daughter-Konda Kaveri, aged 7 years and third daughter-Konda Spoorthy, aged 3 years, were playing near Hanuman Temple, situated near their house. However, his second daughter did not return to the house and so he searched for her in and around the neighbouring streets but in vain. On the next day morning i.e, on 26.08.2010, PW.6, PW.7 and LW.6-D.Raju, came to him and informed him that the appellant/accused came to them and informed that he kidnapped his daughter-Kaveri and took her to the land of Jakkani Anjaiah and murdered her by pressing her head into wet mud. Then immediately he along with PW.6, PW.7 and LW.6-D.Raju rushed to the scene of offence and found his daughter lying dead naked and the pink coloured frock by the side of the dead body. Hence he lodged Ex.P.1-report. Basing on the said report, PW.15-Inspector of Police, registered a case in Crime No.294/2010 under Sections 365 and 302 IPC and issued Ex.P.9-First Information Report and after completion of investigation, laid charge sheet against the appellant/accused of the offences punishable under Sections 365, 376(2)(f) and 302 IPC before the Judicial Magistrate of First Class, Sircilla.

3. The learned Magistrate has taken cognizance of the case in P.R.C.No.55 of 2011 and committed the case to the District and Sessions Court, Karimnagar, which was taken on file as S.C.No.558 of 2011. On appearance of the appellant/accused, learned Principal Sessions Judge, framed charges under Sections 365, 376(2)(f) and

302 IPC against the appellant/accused and when they were read over and explained to him, he pleaded not guilty and claimed to be tried. Thereafter, the case was transferred to the Court of V Additional Sessions Judge, Karimnagar.

4. During the course of trial, the prosecution examined PW.1 to PW.15 and got marked Exs.P1 to P9, besides case properties MOs.1 to 3.

5. After closure of prosecution evidence, when the appellant/accused was confronted with the incriminating material appearing against him under Section 313 Cr.P.C, he denied the same and contended that he was in Erragadda Mental Hospital for six months and thereafter in District Jail, Karimnagar. On 27.08.2010, while he was at his residence, police arrested him and filed a case. No oral and documentary evidence was adduced on behalf of the appellant/accused.

6. The trial Court on analysis of both oral and documentary evidence and after hearing both sides, relied upon the decision rendered by the erstwhile Hon'ble High Court of Andhra Pradesh in **State vs. Punniakoti**¹ and converted the charge under Section 365 IPC to Sections 366 and 354 IPC. Further, the trial Court held that the prosecution failed to prove the charge under Section 376(2)(f) IPC, but it could prove the guilt of the appellant/accused of the offences under Sections 354, 366 and 302 of IPC and accordingly, convicted and sentenced him as indicated above. Hence this Criminal Appeal by the appellant/accused.

¹ 2008 (1) ALT (Crl.) NRC (2)

7. Heard arguments of Smt.C.Vasundhara Reddy, learned counsel for the appellant/accused and Smt.J.Sridevi, learned Additional Public Prosecutor for the respondent/State and perused the record.

8. Smt.C. Vasundhara Reddy, learned counsel for the appellant/accused would contend that there are no direct witnesses to the alleged offence. The whole prosecution case is based on circumstantial evidence as well as extra-judicial confession alleged to have been made by the appellant/accused to PWs.6 and 7. Admittedly, both PWs.6 and 7 have no prior acquaintance with the appellant/accused. There is no reason for the appellant/accused to confess the alleged commission of offence in their presence. It is alleged that PWs.6 and 7 were present in a hotel, taking tea at the time of alleged confession, which is also unacceptable. As there was no evidence that the appellant/accused had committed rape, the trial Court is justified in acquitting the appellant/accused of the offence under Section 376(2)(f) IPC. There is no corroboration with regard to alleged extra-judicial confession with any material evidence brought on record. No recoveries were made pursuant to the alleged confession made by the appellant/accused. Learned counsel relied upon the decision reported in **Sahadevan and another v. State of Tamil Nadu**² and ultimately prayed to allow the appeal by setting aside the conviction and sentence recorded against the appellant/accused of the offences punishable under Sections 354, 366 and 302 IPC.

9. On the other hand, Smt.J.Sridevi, learned Additional Public Prosecutor for the State, would contend that PWs.6 and 7 are

² 2012 (2) ALD (Crl.) 397 (SC)

independent witnesses and there are no material contradictions in their evidence. There is also other incriminating evidence against the appellant/accused. The trial Court having analysed the entire evidence, justified in convicting and sentencing the appellant/accused of the offences under Sections 354, 366 and 302 IPC and ultimately prayed to dismiss the appeal and sustain the impugned judgment.

10. In view of the submissions made by both sides, the following points have come up for determination:

- 1. Whether the evidence of PWs.6 and 7 is reliable and can be acted upon and form sole basis to record the conviction and sentence against the appellant/accused of the offences under Sections 354, 366 and 302 IPC?***
- 2. Whether the prosecution proved the guilt of the appellant/accused beyond all reasonable doubt of the offences under Sections 354, 366 and 302 IPC?***
- 3. Whether the conviction and sentence recorded against the appellant/accused vide impugned judgment dated 12.10.2012 passed in S.C.No.558/2011 by the trial Court, is liable to be set aside?***

11. **POINTS**: Admittedly, there are no direct witnesses to the commission of murder of K. Kaveri, aged 7 years. The whole case of the prosecution is based on circumstantial evidence. PW.1 had corroborated the averments of Ex.P.1-report. PWs.6 and 7 are the witnesses for extra-judicial confession alleged to have been made by the appellant/accused.

12. The evidence of PW.6 reveals that he is a resident of Ambikanagar, Sircilla. He knows LW.6-Diddi Raju and PW.7. About two years back from the date of his deposition, at about 10:00am, while he was taking tea along with LW.6-Diddi Raju and PW.7 in a hotel, the appellant/accused-Pogula Raju, came to them and told that he killed a child and thrown her body in thorny bushes at Jayaprakash Nagar. Then immediately, himself, LW.6-D.Raju and PW.7 rushed to the thorny bushes and found the dead body of the child of PWs.1 and 2 in a mud pond and the gown of the deceased was also found separately near the pond. Thereafter, all of them went to PW.1 and informed about finding of the dead body of his child and also gown. PW.6 identified the gown found near the mud pond (M.O.1). In the cross-examination, he denied the suggestion that accused did not make any confession as deposed by him. He admitted that he has no prior acquaintance with the appellant/accused.

13. The evidence of PW.7 reveals that he is a resident of Ambikanagar, Sircilla. About two years ago, at about 10:00am, when himself, LW.6-D. Raju and PW.6 were taking tea in a hotel at Sircilla, the appellant/accused came to them and told that he killed a child yesterday evening at J.P.Nagar in bushes and went away. At that time, he heard somebody discussing about missing of a child from yesterday. Thereafter, himself, LW.6-Raju and PW.6 went to the bushes, situated at J.P.Nagar and found child's dead body in naked condition, her head was crushed/pushed into a mud pond. Then he got informed the same to PW.1 over phone through PW.6. Later, PW.1 came there and identified the child as his daughter. One gown (MO.1)

was also found near the mud pond. In the cross-examination, he admitted that he came to know the accused only on the date of incident and he has no prior acquaintance with him.

14. PW.1-*de facto* complainant, deposed that on 25.08.2010 at about 9:00 or 9:30pm, his wife came to him and informed that his daughter-Kaveri was not seen and that they searched for their daughter near their house, but could not find. On 26.08.2010 at about 11:00am, LW.6-Diddi Raju, PW.6 and PW.7 informed him that accused killed his daughter and the same was informed to them by the accused himself. They further informed him that the accused killed his daughter in the vacant site of one Anjaiah i.e, in a street at Jayaprakashnagar of Sircilla. Then he along with LW.6-Diddi Raju, PW.6 and PW.7 went to the said place and found the dead body of his daughter in naked condition, which was pressed in a mud pond and her head was totally dipped in mud and her gown was also found by the side of the pond, which was marked as MO.1.

15. PW.2 is the wife of PW.1. She deposed about loss of the child and corroborated with the evidence of PW.1. PW.3 deposed about the death of the deceased in this case and finding of the dead body in the thorny bushes. PW.4 is the brother of PW.2. He deposed about reaching the mud pond and seeing the dead body of deceased-Kaveri. He stated that he heard from the persons, who were present at mud pond that the accused had caused the death of deceased. PW.5 deposed about the death of the deceased-Kaveri. PW.8 deposed about preparation of Ex.P.3-crime detail form and conducting of inquest panchanama over the dead body under Ex.P.2. PW.9 deposed about taking photographs of the dead body of a female child i.e, Ex.P.4-

photographs on 26.08.2010. PW.10 deposed about video-graphing the interrogation of accused by PW.15-Inspector of Police. PW.11 also deposed about preparation of Ex.P.2-inquest panchanama and Ex.P.3-crime detail form and recovery of MO.1-gown from the scene of offence. PW.12 is a witness to the alleged confession made by the accused and seizure of MO.2-ash colour pant with mud and seminal stains and MO.3-pink colour shirt containing mud stains. PW.13-Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased on 26.08.2010 and issued Ex.P.6-post-mortem report and obtained Ex.P.7-FSL report. The Items 1 to 7 i.e, i) Pink colour flower design polyester frock (MO.1), ii) Hair, iii) Cotton swab, iv) Cotton swab, v) Grey colour terry cotton pant with PC (MO.2), vi) Faded orange colour terry cotton full sleeved shirt with brown colour stripes design with PC (MO.3), and vii) Reddish turbid liquid, were analysed by the expert in the forensic laboratory and issued Ex.P.7-FSL Report. The expert has given an opinion that all the Item Nos.1 to 7 were examined. Semen and Spermatozoa were not detected on Item Nos.1 to 7. Further, blood was also not detected on Item Nos.1, 2, 5, 6 and 7. Admittedly, there is no dispute with regard to the subject death. There is clear evidence of PW.13-doctor that the death of the deceased was caused due to Asphyxia (smothering).

16. PW.14 is another Civil Assistant Surgeon, who examined the appellant/accused on 27.08.2010 and issued Ex.P.8-potency certificate, wherein he opined that the appellant/accused can perform sexual intercourse in normal conditions.

17. PW.15-Investigating Officer, deposed that he received Ex.P.1-report from PW.1 and registered a case in Crime No.294/2010 under

Sections 365 and 302 IPC and issued Ex.P.9-FIR. He deposed about conducting of inquest panchanama over the dead body of the deceased under Ex.P.2 and preparation of Ex.P.3-crime details form. He sent the dead body of the deceased for post-mortem examination and received Ex.P.6-post-mortem report. He arrested the accused on 27.08.2010. He further deposed about recording the confession of accused in the presence of mediators-PW.12 and LW.15-O.Ramakrishna and recovering MOs.2 and 3-pant and shirt belonging to the accused under Ex.P.5-confession and recovery panchanama. He sent the accused to hospital for potency test and also for giving his blood samples for DNA test and received Ex.P.8-potency certificate. He sent MOs.1 to 3 to F.S.L and received Ex.P.7-FSL Report. After completion of investigation, he filed charge sheet. In the cross-examination, he denied the suggestion that accused did not kidnap the child and he was no way connected to the death of the deceased girl. He also denied the suggestion that accused did not confess the commission of offence as deposed by him and the accused did not produce the material objects before him.

18. There is no evidence of sexual assault over the dead body of the deceased and the trial Court having analysed the same, was pleased to acquit the appellant/accused for the charge under Section 376(2)(f) IPC. There is no dispute with regard to homicidal death of the deceased. There is also no dispute with regard to the finding of the dead body at Jayaprakashnagar, Sircilla, in naked condition. The only question that falls for consideration before this Court is, whether the appellant/accused had caused the subject death and made extra-judicial confession, as contended by the prosecution.

19. It is appropriate to refer the decision rendered by the Hon'ble Apex Court in **Devi Lal vs. State of Rajasthan**³, wherein it was observed that while scrutinising circumstantial evidence, a Court had to evaluate it to ensure chain of events was established clearly and completely to Rule out any reasonable likelihood of innocence of accused. Underlying principle was whether chain was complete or not, indeed it would depend on facts of each case emanating from evidence and there could not be a straight jacket formula which can be laid down for purpose. But circumstances adduced when considered collectively, it must lead only to conclusion that, there could not be a person other than Accused who alone was perpetrator of crime alleged and circumstances must establish conclusive nature consistent only with hypothesis of guilt of accused. That apart, in case of circumstantial evidence, two views were possible on case of record, one pointing to guilt of Accused and other his innocence. Accused was indeed entitled to have benefit of one which was favourable to him.

20. In **Sahadevan's** case (supra) relied upon by the learned counsel for appellant/accused, the Hon'ble Apex Court observed as follows:

***“Para 12:** There is no doubt that in the present case, there is no eye-witness. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that*

³ AIR 2019 SC 688

extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

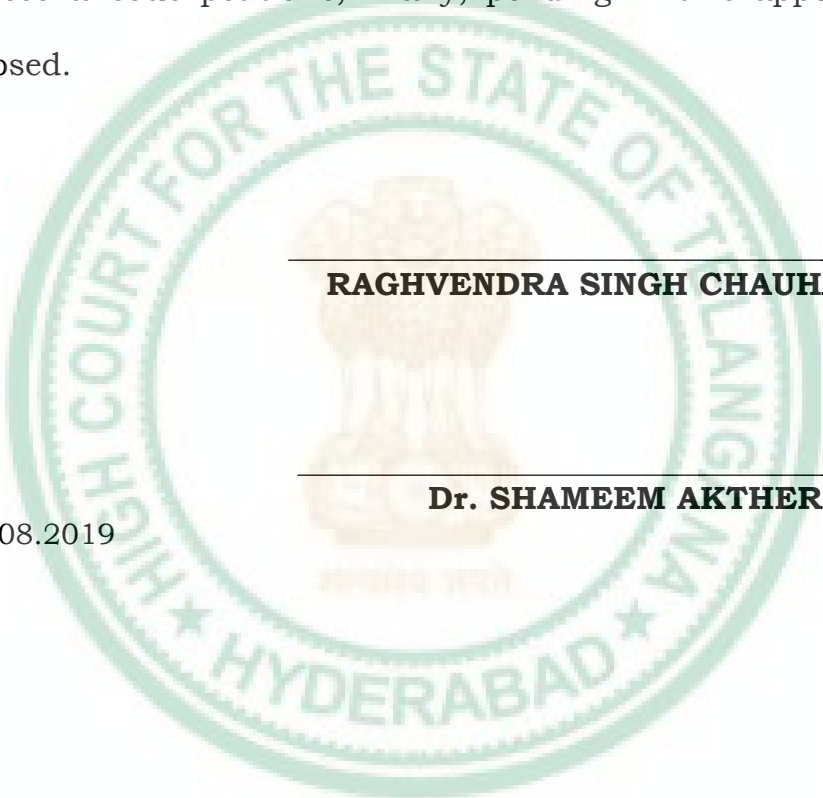
In the case on hand, there is inconsistency in the evidence of PWs.1, 6 and 7. As per the evidence of PW.1, PW.6 along with PW.7 and LW.6-D.Raju, came directly to him and informed him about finding of the dead body of the child. As per the evidence of PW.6, on confession being made by the appellant/accused, he along with PW.6, PW.7 and LW.6-D.Raju rushed to the thorny bushes in Jayaprakashnagar and found the dead body of the child of PWs.1 and 2 in mud pond and also a gown nearby the pond. Immediately, all the three went to PW.1 and told him about finding of a Gulabi colour gown near the mud pond and also the dead body of the child. As per the evidence of PW.7, he along with PW.6 and LW.6-D.Raju, went to the bushes, situated at J.P.Nagar and found the dead body of the child in a naked condition and her head was crushed into a mud pond. Then he got informed the same to PW.1 over phone through PW.6. Further, PW.6, PW.7 and LW.6-D.Raju were taking tea in a hotel. They have no prior acquaintance with accused at all. Further, the material objects seized from the appellant/accused pursuant to his confession though analysed by the forensic expert, no incriminating evidence was found. Even there is no evidence on record to hold that the appellant/accused and deceased were seen together at any point of

time. There is inconsistency in the evidence of PWs.6 and 7 with regard to the information given to PW.1, regarding the death of deceased. Moreover, the appellant/accused was a stranger to PWs.6 and 7. There is no reason for the appellant/accused to make such an extra-judicial confession to PWs.6 and 7. It is also pertinent to state that when the appellant/accused had made the alleged confession to PW.6, PW.7 and LW.7-D. Raju, they would have asked the appellant/accused to lead them to the scene of offence to show the dead body. If the appellant/accused failed to do so, they would have detained him. In the instant case, the appellant/accused was arrested on 27.08.2010 from his house. Even nobody had seen the appellant/accused at the vicinity of the scene of offence on that evening. The onus lies upon the prosecution to complete the chain of events, which shall undoubtedly point towards the guilt of the appellant/accused. Furthermore, since the prosecution relies on the alleged extra-judicial confession made to PWs.6 and 7, their evidence requires to be considered with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In the instant case, the specific case of the prosecution is that the appellant/accused forcibly kidnapped the deceased by gagging her mouth with his hand and took her in the babul bushes, situated in the land of Jakkani Anjaiah at Jayaprakashnagar, which is near the house of the deceased. Thereafter, the appellant/accused removed her frock and forcibly tried to penetrate, for which, she

raised hue and cries. On that, the accused throttled and forcibly crushed her head into the mud, which caused her instantaneous death, due to smothering. When MOs.2 and 3-pant and shirt (Items 5 and 6 in Ex.P.7-report), vaginal swabs and other items as indicated in Ex.P.7-report, were subjected to examination by the forensic expert, no semen and spermatozoa were detected. Ex.P.7-report demonstrates the same. It establishes that there is no incriminating material evidence against the appellant/accused. The extra-judicial confession alleged to have been made by the appellant/accused to PWs.6 and 7 suffers from material discrepancies and inherent improbabilities and does not appear to be convincing and unsafe to act upon. The trial Court had missed all the above mentioned aspects and erroneously came to the conclusion that the appellant/accused had caused the subject death, which is unsustainable. The trial Court had convicted and sentenced the appellant/accused of the offences under Sections 366, 354 and 302 IPC. There is no iota of evidence to believe the kidnapping of the deceased as well as use of criminal force to outrage her modesty by the appellant/accused. Furthermore, neither there is a legally acceptable extra-judicial confession nor the circumstantial evidence to hold that the accused had caused the subject death. Therefore, the trial Court is unjustified in recording conviction and sentence against the appellant/accused of the offences under Sections 354, 366 and 302 IPC. The contentions raised on behalf of the State do not merit consideration. Therefore, the appellant/ accused is liable to be acquitted of the said offences.

21. In the result, the Criminal Appeal is allowed, setting aside the conviction and sentence recorded against the appellant/accused of the offences punishable under Sections 354, 366 and 302 of IPC in the impugned judgment dated 12.10.2012 passed in S.C.No.558 of 2011 by the learned IV Additional Sessions Judge (FTC) Karimnagar (FAC: V Additional Sessions Judge, Karimnagar). The appellant/accused shall be set at liberty forthwith, if he is not required in any other case. The bail bonds, if any, shall stand cancelled.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.



RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 06.08.2019
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