

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD
CRIMINAL APPEAL Nos.892 AND 1610 OF 2017**

COMMON JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

These two appeals arise out of the same judgment, namely judgment dated 19.07.2017, passed by the Special Sessions Judge for trial of cases under SCs & STs (POA) Act-cum-VIII Additional Sessions Judge at Nizamabad. Therefore, these appeals are being decided by this common judgment.

2. By the said judgment, the learned Judge had convicted Masam Sayanna @ Saireddy @ Saleem (Accused No.1/A-1), Odde Gangaram @ Gandikota Gangaram @ Gangadu (Accused No.2/A-2), and Thogarla Nagesh (Accused No.3/A-3) for offences under Section 302 read with Section 34 IPC, and Section 201 read with Section 34 IPC. For the offence under Section 302 read with Section 34 IPC, the accused persons have been sentenced to life imprisonment, imposed with a fine of Rs.500/-, and in default, directed to undergo a simple imprisonment for one month. For the offence under Section 201 read with Section 34 IPC, they have been sentenced to rigorous imprisonment for five years, imposed with a fine of Rs.500/-, and in default, to undergo a simple imprisonment for one month. It was further ordered that all the sentences and default sentences shall run concurrently.

3. Briefly stated, the facts of the case are that on 14.12.2002 at 11:00 A.M., Perumandla Ashok, Kothapally Village Servant, the complainant (P.W.1) lodged a complaint before Karimnagar Rural Police Station, stating that he noticed two unidentified dead bodies in SRSP canal siphon. On the strength of the same, the Sub-inspector of Police (P.W.14), registered a case in Crime No. 302 of 2002 under Section 174 Cr.P.C., and investigated the case. In the meantime, a cousin brother of the male deceased, Kottala Rajeshwar (P.W.3), identified the dead body of Kottala Sayanna, S/o Rajamallu, resident of Padgal Village of Nizamabad District (deceased No.1). According to him, the deceased was a commission agent in cattle trading. He left the house on 01.12.2002 on his scooter, bearing No.AP25E 4427, but did not return. Subsequently, they have seen the scooter of the deceased in newspaper that it was found in SRSP canal water at Renjerla Village, and it was kept at Balkonda Police Station. On their complaint, a case in Crime No.54 of 2002 under the head "Man Missing" was registered at Velpur Police Station.

4. During the course of investigation, on 25.08.2014 at 2.00 PM., A-1 was arrested by the Sub-Inspector of Police, Morthad (P.W.10). During the interrogation, he confessed that in the month of December, 2002, he along with A-2 and A-3, killed the deceased at Padigel cross road of Velpur, and had thrown him along with his scooter in SRSP canal by taking away money from him. On 18.10.2014, A-2 and A-3 were

apprehended and their confessional statements were recorded in the presence of Dudati Ravi (P.W. 8) and Talari Chinna Rajanna (L.W. 18). At the instance of A-3, a scooter bearing No.AP25D 3915 was seized. A-1 to A-3 confessed that on 2.12.2002, they had liquor, and when quarrel took place between them, A-1 took a stick and beat the deceased. When the deceased made toilet in his clothes, accused directed him to wash his clothes in nearby pond. The deceased got huge amount as he was a cattle trader, they planned to kill him and take away money. Accordingly, A-1 to A-3 hatched a plan and killed the deceased by drowning him in the pond and they waited till 8.00 PM. They carried the dead body, on the scooter of the deceased, and threw the same along with scooter into the canal at the outskirts of Doodgaon Grampanahayat. After completion of investigation, charge sheet was filed.

5. In order to establish its case, the prosecution examined fifteen witnesses, and submitted twenty documents, and produced three material objects. After appreciating the evidence brought on record, the learned trial Court convicted and sentenced the appellants as aforestated. Hence, the present appeal.

6. Ms. Jaya Reddy and Mr. P. Bhanu Prakash, the learned counsel for the appellants, have pleaded that before a conviction can be based on the testimony of a sole witness, the witness must be of a "sterling worth". However, in the present case, Dudati Ravi (P.W.8), is not a witness of sterling worth.

For, in order to falsely implicate the appellants, he has fabricated a story, which is belied by the surrounding circumstances. They have further pleaded that the evidence of Dudati Ravi (P.W. 8), though inconsistent, based on such testimony of such witness, recording conviction is illegal. They have further pleaded that recording of conviction by the trial Court basing on the confessional statements of accused i.e., Exs. P.5 to P.8, which cannot be relied upon for purpose of conviction as per Section 25 of the Evidence Act, is unjust. They have further pleaded that the entire case is based on circumstantial evidence, as there is no eye-witness to the alleged crime. They have further pleaded that the circumstances produced by the prosecution do not unerringly point to the guilt of the appellants. For, a complete chain of circumstances has not been produced by the prosecution in the present case. Therefore, the learned counsel have prayed this Court to set-aside the findings recorded by the trial Court, and to acquit the accused for the offence punishable under Sections 302 and 201 r/w.34 IPC.

7. On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor, has pleaded that when the prosecution proved each and every circumstance of the case, more particularly, all the links in chain of circumstances, the Court can record conviction of the appellants. Therefore, this Court should not interfere with the fact findings recorded by the learned trial Court, unless the findings are manifestly perverse,

or without any evidence by exercising power under Section 374(2) Cr.P.C. Thus, the learned Public Prosecutor has requested this Court to confirm the conviction and sentence imposed upon the appellant for the offences punishable under Sections 302 and 201 r/w 34 IPC.

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

9. Before advertng to the arguments advanced by the learned counsel, we shall at the threshold point out that in the present case, there is no direct evidence to connect the accused with the offence in question; the prosecution rests its case solely on evidence of Dudati Ravi (P.W. 8), a confessional panch witness. It is never the case of the prosecution that the incident was witnessed by any witness. It is the duty of prosecution to establish each and every circumstance to complete the chain of circumstances unerringly pointing to the guilt of the accused/appellant, and such circumstances should be inconsistent with their innocence.

10. When the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused, and any circumstance consistent with innocence of accused, they are

entitled to benefit of doubt. (Ref. to **Kishore Chand v. State of Himachal Pradesh**¹).

11. The Apex Court while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence held that, in a case of murder when the prosecution relying on circumstantial evidence, it is for the prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw inference of guilt and such evidence should be tested by touchstone of law relating to circumstantial evidence laid down by Supreme Court (Ref. to **Syed Hakkim & another v. State**²).

12. In view of the principles stated above, to connect the accused/appellants with the offence alleged against them, we deal with the events in the order of circumstances hereinafter.

13. In the present case, the prosecution mainly relied on the evidence of Dudati Ravi (P.W.8), basing on which, the trial Court convicted the accused. The evidence of P.W. 8 goes to show that about two years prior to his examination before the Court, he was called by the police to Velpur Police Station along with Talari Chinna Rajanna (L.W.18). On their enquiry, A-1 to A-3 confessed to have committed the murder of the deceased for money, and led them to Chepoor shivar and shown the place where they killed the deceased and later they threw the dead body into SRSP canal.

¹ AIR 1990 S.C. page 2140

² 2009 Cr.L.J. page 1891

14. In the case of **Bheru Singh v. State of Rajasthan**³, the Hon'ble Supreme Court had 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. As per Section 27 of the Indian Evidence Act, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

15. In the present case, the prosecution mainly relied on the alleged confession made before Dudati Ravi (P.W. 8). It is the case of the prosecution that A-1 to A-3 confessed before Dudati Ravi (P.W. 8) in the presence of G.Govardhana Giri (P.W. 12) to have involved all the accused in the commission of offence of killing the deceased, and on their instance, M.O.1-scooter of A-3, was recovered. The trial Court, stating that Dudati Ravi (P.W. 8), is a Government Official, and he is no way connected

³ (1994) 2 SCC 467

with either of party and does not have any interest, convicted the accused.

16. In the present case, the main and in fact may be the most important item of evidence is the extra-judicial confession said to have been made by the accused before Dudati Ravi (P.W. 8) and recovery of M.O.1, scooter of A-3, basing on such extra-judicial confession. It is to be noted that the extra judicial confession is after 12 years of the incident. Even assuming that recovery is proper, that by itself cannot constitute a substantive evidence and it can at best be only corroborative item of evidence in support of other substantive evidence. In the case on hand, the motive and extra-judicial confession alleged by the prosecution cannot be accepted, as no evidence is placed to prove the same. Therefore, we are unable to uphold the finding of the trial Court that the above stated circumstances are clearly established and they lead to the irresistible conclusion that it was the accused who had committed the offence. For the reasons already stated, we are unable to accept the items of evidence relied on by the prosecution as inspiring confidence in the mind of court. Therefore, the accused are entitled to benefit of doubt.

17. For the reasons stated above, Crl.A.No.1610 of 2017, filed by Appellants-accused Nos.1 & 2, and Crl.A.No.892 of 2017, filed by Appellant-accused No.3 are hereby allowed. Consequently, the sentence and conviction of the Appellant No.1-Masam Sayanna @ Saireddy, S/o. Rajanna (accused

No.1), Appellant No.2-Odde Gangaram @ Gandikota Gangaram @ Gangadu, S/o. Mallaiah @ Chinnaiah (accused No.2) and Appellant in Crl.A.No.892 of 2017-Togarla Nagesh, S/o. Laxmaiah (accused No.3), for the offences punishable under Section 302 read with Section 34 IPC and Section 201 read with Section 34 IPC in S.C.No.242 of 2015 on the file of the Court of Special Sessions Judge for trial of cases under SCs & STs (POA) Act-cum-VIII Additional Sessions Judge at Nizamabad, are hereby set aside. Since accused Nos.1 to 3 are still languishing in jail, they shall be set at liberty forthwith, if they are not required in any other criminal case.

18. The Criminal Appeals are, accordingly, allowed.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 20.03.2019
TJMR