

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL No.129 of 2013

Date: 02.11.2019

Between:

Devandla Narsimha Rao

... Appellant

and

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

...Respondent

Counsel for the appellant:

Mr. P. Prabhakar Reddy

Counsel for the respondent:

**Smt. J. Sridevi,
Additional Public Prosecutor.**

The Court made the following:

JUDGMENT: *(per the Hon'ble the Chief Justice Sri Raghendra Singh Chauhan)*

The appellant (accused) has challenged the legality of the judgment dated 31.01.2013, passed by the III Additional Sessions Judge, Warangal, in S.C.No.50 of 2012, whereby the learned Judge has convicted the accused for the offences under Sections 302 and 364 I.P.C. By the said judgment, the learned trial Court has sentenced the accused for the offence under Section 302 I.P.C to undergo life imprisonment, imposed a fine of Rs.500/- and directed him to suffer simple imprisonment for a period of three months in default thereof. For the offence under Section 364 I.P.C, the learned trial Court has sentenced the appellant to undergo rigorous imprisonment for three years, imposed a fine of Rs.500/- and further directed him to suffer simple imprisonment for a period of three months in default thereof,.

Briefly the facts of the case are that on 17.06.2011, Guguloth Jagan (P.W.1) had submitted a report (Ex.P.1) before the Circle Inspector of Police, Mills Colony Police Station, wherein he claimed that he has two sons. His elder son, Harshavardhan @ Bablu, was aged three years two months old, and his younger son was one year old. The natives of Nellore, who were doing the masonry work were residing near his house. About one year back, the Nellore masons have constructed a building in his locality, and his father was watchman in that building. At that time, Devendla Narsimha Rao (the accused) was doing masonry work, got

acquainted with them and was good with them. He used to lift his son, Harshavardhan, used to hug him, used to carry him with him and was friendly with them. On 16.06.2011 at about 4:30 P.M., the accused kidnapped his elder son, Harshavardhan, and fled away. They have searched all nook and corners but could not find him. On the basis of the said complaint, the police initially registered an F.I.R., namely, FIR No.123 of 2011 for the offence under Section 363 I.P.C. However, with the discovery of the dead body of Harshavardhan on 18.06.2011, the offence under Section 302 I.P.C was added.

During the course of the investigation, the accused was arrested, and was put up for trial. In order to support its case, the prosecution examined twenty witnesses, submitted eleven documents, and produced seven material objects. The learned trial Court convicted and sentenced the accused as aforementioned. Hence, the present appeal before this Court.

Mr. P. Prabhakar Reddy, the learned counsel for the appellant-accused, has raised the following contentions:-

Firstly, the case is entirely based on circumstantial evidence. However, the prosecution has failed to establish the complete chain of circumstances, which would unerringly point towards the guilt of the accused.

Secondly, the prosecution has heavily relied on the testimonies of A. Kedari (P.W.7) and B. Chandulal (P.W.11) in order to establish the evidence of “*last seen*” by A. Kedari

(P.W.7), and to establish the evidence of the extra-judicial confession made by the appellant to B. Chandulal (P.W.11). However, A. Kedari (P.W.7) has been shattered in his cross-examination. Hence, he is an unreliable witness.

Thirdly, B. Chandulal (P.W.11) is a concocted witness. Although this witness claims that the accused had made an extra-judicial confession to him, he is a total stranger to the accused. Moreover, in his cross-examination, B. Chandulal (P.W.11) readily admits that in fact, he is related to the father of the deceased. Therefore, it is highly unlikely that the accused would have made a confession to a total stranger, and that, too, a stranger who is related to the complainant himself. Furthermore, it is only through the testimony of B.Chandulal (P.W.11) that the prosecution has tried to introduce the element of motive for commission of the crime. Yet, the motive, as spelt out by B. Chandulal (P.W.11), has not been supported either by Guguloth Jagan (P.W.1), or by Guguloth Bixapathi (P.W.2).

Lastly, even according to the testimony of Guguloth Jagan (P.W.1) and the testimony of K. Raju (P.W.15), there was a cordial relationship between the complainant's family and the accused. Thus, there was no reason for the accused to kidnap and to kill Harshavardhan. Therefore, according to the learned counsel, the prosecution has miserably failed to establish its case against the accused. Hence, the accused deserves to be acquitted of the alleged offences.

On the other hand, Smt. J. Sridevi, the learned Additional Public Prosecutor, has vehemently pleaded that although M.Sakkubai (P.W.6) has turned hostile, a part of her testimony, as recorded in her examination-in-chief, can certainly be read as it supports the case of the prosecution. According to her, she has seen a person carrying Harshavardhan going near the railway track. She had informed the same to her neighbour A. Kedari (P.W.7).

Secondly, A. Kedari (P.W.7) clearly states in his examination-in-chief that he has seen the accused carrying away Harshavardhan along the railway track. Thus, the prosecution has established the evidence of "*the last seen*".

Thirdly, the fact that it is the accused, who had carried Harshavardhan along the railway track, was corroborated by the crime details form with sketch (Ex.P.3). For, according to the said sketch, the body of the deceased was found near the railway track amongst the bushes.

Fourthly, B. Chandulal (P.W.11) is not a concocted witness. He is a distant relative of Guguloth Jagan (P.W.1). In his testimony, B. Chandulal (P.W.11) has claimed that from 16.06.2011, the accused was absconding. During that time, on 24.06.2011, the accused came to him and confessed that he had killed the boy, Harshavardhan, and he was afraid of the same. When he asked the accused as to why he had killed Harshavardhan, the accused told him that he had illicit intimacy with Harshavardhan's mother. He also informed him

that he had strangled the boy with the red colour T-Shirt, and thrown the dead body near the railway track in the bushes.

Lastly, the testimony of B. Chandulal (P.W.11) is further corroborated by the testimony of Dr. B.V. Nagamohan Rao (P.W.19), who had conducted the autopsy of the dead body of the deceased. According to Dr. B.V. Nagamohan Rao (P.W.19), the deceased had died *“as a result of asphyxia consequent to strangulation”*. Moreover, according to him, an orange colour T-shirt was tied around the neck of the deceased. On removing the T-Shirt, he had seen anti-mortem ligature marks. Therefore, the prosecution had succeeded in establishing the case by adducing oral and documentary evidence against the accused.

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

In his examination-in-chief, Guguloth Jagan (P.W.1) informs the Court that *“I know the accused. He used to attend to coolie work in my neighbouring house and also visit my house now and then. He came from Nellore and he was staying near our house for the past three years. My father is a watchman in the house in which the accused also works. The accused used to purchase biscuits and chocolates to my eldest son Harshavardhan Nayak @ Bablu during his visit to our house. On 16.06.2011 at about 4:30 PM Kedari informed me that the accused was carrying away my eldest son*

Harshavardhan Nayak @ Bablu, since my son has missed (sic), I gave a report to the police on the following day at about 8:00 AM. On that night we have searched for our son in all the places but we could not trace out even at Railway tracks also. Ex.P.1 is the complaint given by me. Police examined me.”

In his cross-examination, P.W.1 states that “I was not present in the house when my son was missing from our house. I was only told by Kedari that the accused was carrying away my son. There are no disputes between the accused and myself. He used to be always cordial relations (sic) with me and my family members. About one month back my wife left me and staying with her parents.”

Guguloth Bixapathi (P.W.2) in his examination-in-chief states that “accused used to come to our house quite often and Harshavardhan Nayak my grandson used to call him Babai, Babai, he was cordial with our family members. On 16/06/2011 at about 4:30 PM accused called my grandson Harshavardhan Nayak, after some time Kedari informed me that my grandson was being carried away by someone along the railway track. Sakkubai had informed to Kedari about my grandson being carried away by somebody, who in turn informed to us. Then P.W-1 telephone to the accused and he responded that he did not take away my grandson and when my son (P.W-1) started abusing accused, he has switched off his phone. Then we searched our grandson in all the places including railway track throughout night. On the following day

P.W-1 lodged a complaint before the police PS Mills colony. Police examined me.”

Even in his cross-examination, Guguloth Bixapathi (P.W.2) admits that *“there were no disputes between myself and the accused prior to the incident. My youngest son spoke to accused on cell phone then the accused switched off his cell phone.”* Moreover, he has stated that *“after one and half hours Kedari informed us that our grandson was being carried away by one person and he did not state the name of the accused.”* He further admits that *“my daughter-in-law Sunitha is not staying with us. I do not know the reason why she left our house, but she left our house three months ago.”*

M. Sakkubai (P.W.6) claims in her examination-in-chief that *“on 16/06/2011 at about 5:00 PM on seeing a person near the railway track going by carrying Harshavardhan I informed the same to my neighbour Kedari (L.W-9). I do not know the accused.”* Since this witness refused to identify the accused and claimed that the accused was unknown to her, the Public Prosecutor had declared her as hostile witness.

A. Kedari (P.W.7), a star witness of one of the two star witnesses of the prosecution, states in his examination-in-chief that *“I know P.Ws.1 to 6 and Sunitha (L.W.2). I also know the accused Narasimha for the past two or three years. P.W-1 has got two sons. Name of the first son of P.W-1 is Harshavardhan. On 16/06/2011 at about 4:30 or 5:00 PM I was bringing water from the bore-well in our house at that time*

P.W-6 was spreading the cloths on her building. Then she called me and told that somebody was carrying away Harshavardhan, then I have seen the accused carrying away Harshavardhan along the Railway track, then I informed the same to P.Ws.1 and 2.”

However, in his cross-examination, A. Kedari (P.W.7) admitted that *“the accused used to come to the house of P.W.1 quite often and he used to fondle the boy Harshavardhan and in that process we have presumed that Harshavardhan might have carried away by the accused. We have searched for the boy throughout day and night but in vain, but on the following day report was given.”*

A bare perusal of the testimonies of these witnesses brings out certain salient points:-

Firstly, according to the cross-examination of Guguloth Bixapathi (P.W.2), A. Kedari (P.W.7) had informed him that *“our grandson was being carried away by one person and he did not state the name of the accused.”*

Secondly, although A. Kedari (P.W.7) claims that he had seen the accused carrying away Harshavardhan, in his cross-examination, he admits that *“he has presumed that Harshavardhan might have been carried away by the accused”*. In case he had actually seen the accused carrying away Harshavardhan, there is no reason as to why he did not inform Guguloth Bixapathi (P.W.2) that Harshavardhan was carried away by *“the accused”* and not *“by one person”*.

Thirdly, even M. Sakkubai (P.W.6) clearly states that she saw a person carrying away Harshavardhan going near the railway track. Moreover, she states that she had informed to her neighbour Kedari (P.W.7) about the same. She further admits that she does not know the accused. Since she is a stranger to the accused, obviously, she could not have named the accused as the person carrying away Harshavardhan. Moreover, according to the cross-examination of Guguloth Bixapathi (P.W.2), A. Kedari (P.W.7) did not state the name of the accused to him. Hence, the statement of A. Kedari (P.W.7), in his examination-in-chief, that he had seen the accused carrying away Harshavardhan is, obviously, a false statement. The falsity of this statement is further revealed by the fact that in his cross-examination, A. Kedari (P.W.7) claims that he has presumed that the accused might have carried away Harshavardhan. If, indeed, he had seen the accused carrying away Harshavardhan, there is no place for a presumption to be drawn by this witness. Hence, naturally, A. Kedari (P.W.7) has not seen the accused carrying away Harshavardhan.

Fourthly, through the testimony of Guguloth Bixapathi (P.W.2), the prosecution has tried to introduce the element that the accused had given a false explanation when he was contacted over the phone. However, interestingly, while Guguloth Bixapathi (P.W.2) claims that his son Guguloth Jagan (P.W.1) had called the accused on his phone, this

statement is not corroborated by the testimony of Guguloth Jagan (P.W.1) himself. For, in his testimony, he nowhere states that he had called the accused on his phone; that there was exchange of hot words between them. Hence, the accused had switched off his phone. Therefore, the statement made by Guguloth Bixapathi (P.W.2) that the accused had denied taking away the child and, hence, he had given a false explanation cannot be believed.

The prosecution has also heavily relied upon the testimony of B. Chandulal (P.W.11). In his testimony, B. Chandulal (P.W.11) informs the Court that *"I know PW-1 and 2 and LW-2 Sunitha. On 16/06/2011 at about 4:00 PM I came to know that Harshavardhan son of PW-1 kidnapped by the accused and subsequently PW.1 and his family members searched to trace out the boy but in vain. On 17/06/2011 PW-1 lodged a complaint before police. From 16/06/2011 accused was absconding. I came to know about death of his son through PW-1 and his family members. Have also seen the dead body of the boy on 18/06/2011 at bushes (sic)".* He further informs the Court that *"On 24/06/2011 accused came to me and told me that he killed the boy Harshavardhan and he is fearing (sic). Then I took the accused and handed over him to police. When I questioned accused as to why he killed Harshavardhan, he told me that he had illicit intimacy with mother of deceased boy by name Sunitha, he also told me that he has strangulated the boy with his red "T" shirt and thrown*

the dead body near the railway track in to the bushes (Thumma Chetlu). Police examined me.”

But, in his cross-examination, B. Chandulal (P.W.11) readily admits that *“PW-1 is my distant relative. PW-2 was a auto driver previously. It is not true to suggest that accused never came to me nor confessed about killing of the boy Harshavardhan and that I am deposing false at the instance of police as if a confessional statement was given before me. It is not true to suggest that I am deposing falsely”*.

It is, indeed, trite to state that before an extra-judicial confession can be accepted by the Court, it needs to pass four tests; *firstly*, an extra-judicial confession is made either to a person in whom the maker of the extra-judicial confession had implicit faith, or a deep relationship with, or a person of authority in whom the accused believes that such a person would be able to save him. *Secondly*, the extra-judicial confession is not made to a perfect stranger, and certainly not to a person who is related to the complainant. *Thirdly*, the exact words used by the accused need to be produced by the witness. *Lastly*, there should be some corroboration of the alleged extra-judicial confession.

However, in the present case, the alleged extra-judicial confession made by the appellant to B. Chandulal (P.W.11) does not meet the above criteria. For, B. Chandulal (P.W.11) does not state that he has any intimate relationship with the appellant. Moreover, considering the fact that B. Chandulal

(P.W.11) is merely an auto driver, it is highly unlikely that the appellant would have gone and made an extra-judicial confession to a total stranger. Moreover, B. Chandulal (P.W.11) admits that he is related to Guguloth Jagan (P.W.1), the father of the deceased boy. Therefore, the possibility that the appellant would have made extra-judicial confession to a person who is related to the complainant himself is very thin.

Lastly, B. Chandulal (P.W.11) claims that the appellant told him that the reason for his killing the child was “*due to his illicit intimacy with the mother of deceased boy by name Sunitha*”. The fact of any illicit intimation has not been corroborated by the testimony of Guguloth Jagan (P.W.1) and the testimony of Guguloth Bixapathi (P.W.2). In fact, Guguloth Jagan (P.W.1) merely states in his cross-examination that his wife had left the matrimonial home one month back, whereas Guguloth Bixapathi (P.W.2) states that his daughter-in-law, Sunitha, has left the family for about three months back. But, Guguloth Bixapathi (P.W.2) does not know the reason why his daughter-in-law left her house three months ago. In case there were any illegal intimacy between the appellant and the wife of Guguloth Jagan (P.W.1), Guguloth Jagan (P.W.1) would have spoken about the same in his examination-in-chief. But, instead, in his cross-examination, he clearly states that “*there are no disputes between the accused and myself. He used to be always cordial relations (sic) with me and my family members*”.

Moreover, even an independent witness like K. Raju (P.W.15) states in his examination-in-chief that *“on 16/06/2011 at about 2.00 PM I was coming from West-fort to Warangal and I found the accused and PW-1 consuming beer”*. Therefore, the relationship between the accused and Guguloth Jagan (P.W.1) is not a strained one, but a cordial one. Therefore, the alleged extra-judicial confession does not find any corroboration from the testimony of Guguloth Jagan (P.W.1) and the testimony of Guguloth Bixapathi (P.W.2). Further, even in the complaint filed by Guguloth Jagan (P.W.1), he does not claim that he has been informed by A. Kedari (P.W.7) that A. Kedari (P.W.7) had seen Harshavardhan being carried away by the appellant. Hence, the learned trial Court is not justified in relying upon the appellant's extra-judicial confession allegedly made before B. Chandulal (P.W.11).

In the absence of the evidence of the last seen, in the absence of any motive for commission of the crime, in the absence of the appellant's extra-judicial confession, the prosecution has miserably failed to establish its case against the appellant.

For the reasons, stated above, this appeal, is, hereby allowed. The judgment dated 31.01.2013, in S.C.No.50 of 2013, on the file of the learned III Additional Sessions Judge, Warangal, is set aside. The appellant, Devandla Narsimha Rao, S/o. Penchalaiah, is acquitted of the offences under

Sections 302 and 364 I.P.C. Since the appellant has been granted bail, his bail bonds stand discharged.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 02.11.2019
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