

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.220 OF 2016

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

The appellants, Godugu Shankaraiah (Accused No.1) and Mitta Yadamma (Accused No.2) have challenged the legality of the judgment 09.02.2016 passed by the II Additional District and Sessions Court (FTC), Mahabubnagar, whereby the learned trial court has convicted both the appellants for offence under Section 302 of the Indian Penal Code, has sentenced them to life imprisonment, imposed a fine of Rs.1,000/-, and directed them to further undergo simple imprisonment for three months in default thereof.

Briefly the facts of the case are that Godugu Chennamma (P. W. 1) had lodged a complaint (Ex. P.1) before the Police Station, Jedcherla, wherein she had claimed that her husband, Godugu Pedda Pentaiah had assaulted the brother of A. 1 in the year 2006 as the brother of A. 1 had tried to outrage her modesty. However, due to the assault, the brother of A. 1 had died. Therefore, her husband was arrested and tried for offence under Section 302 IPC. But after completion of the trial, her husband was acquitted of the charges. Having come out from the jail, her husband had shifted the family to Karvena Village. A. 1 bore a grudge against her husband, and waited for an opportunity for wrecking his personal vengeance on him. She further claimed that on 11.02.2014 about 4:00 p.m. in the evening, she was informed by the villagers that the dead body of a male person, with injuries on his head, was

lying at Kuchallagutta beside Orgagutta located in the limits of Karivena Village. Immediately, she and her son, Sravan Kumar along with other villagers, rushed to the spot. They discovered the dead body of her husband. She further claimed that about seven years back, one Kavali Krishnaiah had also misbehaved with her; her husband had assaulted Kavali Krishnaiah. Due to the assault, even Kavali Krishnaiah had died. Therefore, even Kavali Buchaiah son of Venkataiah, Shankaraiah and Sailu had developed animosity against her husband. Therefore, she also suspects that they have killed her husband with a sharp-edged weapon. On the basis of the complaint (Ex. P. 1), the police chalked out a formal FIR (Ex. P. 12), namely FIR No. 25 of 2014 for offence under Section 302 r/w 34 IPC.

During the course of investigation, A. 1 was arrested by the police. Allegedly, he made a confessional statement during his police custody. It is in his confession statement that he revealed that the deceased had developed an intimacy with A. 2; since he wanted to take revenge upon the deceased, he tempted A. 2 with an offer of Rs.10,000/-. It is A. 2 who lured him to Kuchallagutta, offered him drinks and subsequently, A. 1 and A. 2 killed the deceased. Upon his confessional statement, A. 2 was also arrested. Both of them were put up for trial.

In order to substantiate its case, the prosecution examined eleven witnesses, and submitted thirteen documents and produced ten material objects. The defense neither examined any witness, nor submitted any documents. Subsequently, by the impugned judgment dated 09.02.2016, the learned trial court convicted and

sentenced the appellants as aforementioned. Hence, this appeal before this Court.

Mr. P. Prabhakar Reddy, the learned counsel for the appellants, has raised the following contentions before this Court:-

Firstly, learned trial court has relied merely on three pieces of evidence in order to convict the appellants, namely, (i) the “alleged confession” (Ex. P. 9) made by A. 1 to the police, (ii) the discovery of an axe at the instance of A. 1, and (iii) the presence of motive for A. 1 to kill the deceased. However, the alleged confessional statement made by the A. 1 to the police cannot be read either against A. 1, or against A. 2. For the same is hit by Section 25 of the Evidence Act.

Secondly, even the alleged recovery of the axe at the house of A. 1 does not connect the accused to the alleged offence. For, according to the F.S.L. report, which was not even marked as a document by the learned trial court, the axe had merely human blood. Therefore, the F.S.L. report does not show the presence of the blood group belonging to the deceased.

Lastly, even the motive is rather a weak one. For, according to Godugu Chennamma (P. W. 1), while suspecting the involvement of A. 1, she had clearly stated in the complaint (Ex. P. 1) that she suspects the involvement of Kavali Buchaiah son of Venkataiah, Shankaraiah and Sailu, whose relative the deceased had killed on a previous occasion. Thus, a grave possibility does exist that the deceased may have been killed not by A. 1 and A. 2, but by Kavali Buchaiah, Shankaraiah and Sailu. Despite the fact that the prosecution has not completed its chain of circumstances, which would have unerringly pointed to the guilt of the accused, the

learned trial court has convicted the accused-appellants. Hence, the conviction is legally unsustainable.

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

Firstly, according to the testimony of witnesses, especially, the testimony of Godugu Chennamma (P. W. 1), Godugu Sharavan Kumar (P. W. 2), Godugu Bheemamma (P. W. 3), and Godugu Venkatesh (P. W. 4), the deceased had killed the brother of A. 1 way back in the year 2006. A. 1 had threatened the deceased. Therefore, the deceased had shifted his family to another village. Hence, a strong motive does exist in the present case.

Secondly, it is only at the instance of A. 1 that a bloodstained axe was recovered at the house of the A. 1. According to the medical evidence, namely the testimony of Dr. Md. Abdul Mohbu Siddiqui (P. W. 10), the deceased had died due to *“hemorrhagic and neurogenic shock due to multiple head injuries caused by a sharp-edged weapon”*. Therefore, the medical evidence and the recovery of the axe at the instance of A. 1 clearly establish that A. 1 had caused the death of the deceased.

Lastly, a confessional statement of A. 1 is sufficient to prove the involvement of A. 2. Therefore, the learned Public Prosecutor has strongly supported the impugned judgment.

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

Repeatedly, it has come to the notice of the court that in cases of circumstantial evidence, the learned judicial officers tend to heavily rely on the confessional statements allegedly made by

the accused while they are in police custody. However, Section 25 of the Indian Evidence Act clearly states that any statement made by the accused while he is in police custody cannot be read against the accused. At times, the police involves the mediator witnesses, and the prosecution produces the mediator-witnesses to inform the trial court that the accused had made “an extra-judicial confession” in their presence. It is, indeed, a misnomer that such an “alleged confession” made by the accused to the mediator-witnesses tantamounts to an “extra-judicial confession.” Since the alleged confession was made by the accused while he was in police custody, such a “confession” would not tantamount to “extra-judicial confession”. In fact, even such a confession would continue to be hit by Section 25 of the Evidence Act.

In the case of **Raja Ram Jaiswal v. Bihar**¹, 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**², 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.

¹ AIR 1964 SC 828

² (1990) 2 SCC 409

In the case of **Bheru Singh v. State of Rajasthan**³, 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. Of course, 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.

In the present case, it is rather surprising that the learned trial court has not only relied on the alleged confessional statement, but has also produced the same in para 19 of the impugned judgment. A bare perusal of the said statement clearly reveals that the A. 1 did not reveal a fact which could be discovered at his instance. Therefore, no part of the alleged confessional statement falls within the ambit of Section 27 of the Evidence Act. Hence, the said confessional statement could not have been read against A. 1 or A. 2 by the learned trial court.

Allegedly due to a confessional statement made by A. 1, an axe was recovered from his house. Allegedly the axe had human blood. However, the FSL report, ascertaining the group of the bloodstains on the axe, has not been filed before the learned trial court. Moreover, the mere presence of human blood does not connect A. 1 to the alleged offence. For the human blood could also be the blood belonging to the accused himself. It is, indeed,

³ (1994) 2 SCC 467

trite to state that it is the bounden duty of the prosecution to eliminate the possibility that the blood on the weapon of offence does not belong to the accused. The prosecution is further required to establish, through cogent and convincing evidence, that the blood found on the weapon of offence belongs only to the deceased. Unless and until the prosecution establishes this fact, the prosecution fails to cover the distance between “may be true” and “must be true”. Hence, the mere recovery of an axe does not connect A. 1 to the alleged offence.

Although motive is an important factor to be considered in a case of circumstantial evidence, although the prosecution has pleaded that there was an animosity between the deceased and the A. 1, but simultaneously, Godugu Chennamma (P. W. 1) had clearly stated in the complaint filed by her that her husband also had differences with Kavali Buchaiah, Venkataiah, Shankaraiah and Sailu, whose relative her husband had killed. Thus, a grave possibility does exist that the deceased was done to death not by A. 1, but by Kavali Buchaiah, Shankaraiah and Sailu. Hence, even the motive, in the present case, is rather weak for convicting the A. 1 and A. 2 for the alleged offence.

As far as A. 2 is concerned, the prosecution has failed to produce any evidence against her, except the alleged confessional statement of A. 1. According to A. 1, the deceased had developed an intimacy with A. 2. Thus, it is very unlikely that A. 2, who herself was in love with the deceased, would have taken a step to cause his death. Hence, as far as the case of A. 2 is concerned, the prosecution case is based merely on surmises and conjectures. Needless to say, a conviction cannot be based on surmises and

conjectures, or even on a strong suspicion. For, such a conviction tantamounts to a moral conviction, and not a legal one. Hence, the prosecution has miserably failed to establish its case against both the appellants.

In the result, the Criminal Appeal is allowed. The conviction and sentences of the appellants, Godugu Shankaraiah, S/o. G.Buchaiah (accused No.1) and Mitta Yadamma, W/o. Narsimhulu (accused No.2), for the offence punishable under Section 302 of the Indian Penal Code, in Sessions Case No.414 of 2014, on the file of the II Additional District and Sessions Court (FTC), Mahabubnagar, are set aside. Both the appellants- Godugu Shankaraiah, S/o. G.Buchaiah (accused No.1) and Mitta Yadamma, W/o. Narsimhulu (accused No.2), shall be released forthwith, if not wanted in any other criminal case. The fine amounts paid by the appellants, if any, shall be refunded to them.

Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

26th March 2019

TSR