

Satish Kumar Agarwal Vs. the State

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Court : Mumbai

Decided On : Jul-06-2009

Reported in : 2009(111)BomLR2928

Judge : B.H. Marlapalle and ;S.J. Vazifdar, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24 and 106; Code of Criminal Procedure (CrPC) - Sections 164, 313, 374, 428, 433; Indian Penal Code (IPC) - Sections 302 and 309

Appeal No. : Criminal Appeal No. 186 of 1989

Appellant : Satish Kumar Agarwal

Respondent : The State

Advocate for Def. : D.A. Nalawade, Adv. for Union Territory and ;P.S. Hingorani, APP

Advocate for Pet/Ap. : A.P. Mundargi, Sr. Counsel and ;Niranjan Mundargi, Adv.

Disposition : Appeal dismissed

Judgement :

B.H. Marlapalle, J.

1. This appeal filed under Section 374 of Cr.P.C. arises from the order of conviction and sentence dated 4/2/1989 in Sessions Case No. 67 of 1987 passed by the learned Addl. District and Sessions Judge at Daman. By the said order the appellant came to be convicted under Section 302 of IPC and he has been sentenced to undergo RI for life. It is said that Alcoholism coupled with gambling has the power to free a man from the shackles of self control and unleash bloody paths, but this case goes much beyond that general belief and puts up a gory story of triple murders by a loving and caring husband and father who was liberated from self control by alcoholism and gambling. He killed his dearest wife and two daughters while they were fast asleep and attempted to end his life as well but destiny had ordained a different course, namely, he survived and faced a trial and perhaps die as a prisoner as the very same vices saved him from going to the gallows.

2. The appellant was married to Lalitaben sometimes in the year 1979-80 and begot two daughters, elder daughter Sushma was 7 years of age and younger daughter Anjana was only eight month old when the incident took place on 23/6/1987. He was living with his wife and children in the rear portion of family house at Jain Street, Daman whereas front portion of the said house was occupied by his brother Rakesh Agarwal and his family. He was running a grocery shop in partnership with his brothers. The parents of Lalitaben as also some of her brothers i.e. Ramsharan and Dr. Ashok were staying at Udhwadha and another brother Dr. Vaishya was staying at Jampaber street at Nani Daman.

As per the prosecution case on 22/6/1987 the accused had gone to his in-law's place at Udhwada along with his family and two children and he returned to his residence at about 9.45 p.m. along with the family. His brother Rakesh returned home on the same day at about 22.30 hours and found that Lalitaben was at home with children but the accused was missing. On his enquiry Lalitaben told him that the accused had gone to Vapi but Rakesh suspected that the accused could have gone near the talav for gambling and, therefore, he went in search of the accused but did not find him. However, the accused returned home at about 11.40 p.m. and went to his room. On the next day i.e. on 23/6/1987 at about 6.45 a.m. Rakesh told his wife Jyotiben to get Anjana, the younger daughter of the accused from the

house of the accused and, therefore, Jyotiben went to the house of accused and returned with a slip of paper and showed it to Rakesh. It was written in Hindi by the accused stating that he had killed all three of his family and that he was going to kill himself by jumping in the sea. Rakesh, therefore, went to the house of accused and noticed that Lalitaben and her two daughters were lying dead on the bed. He rushed towards seashore and sent his son Pavan to inform Dr. Vaishya. At the seashore he met Mahesh the son of his another brother Gopal. At that time he saw the accused being brought on a canoe by some fishermen and Rakesh and Gopal took the accused home. On the way Rakesh enquired from the accused as to why he had killed his wife and two daughters. The accused replied that on the previous night he had lost a lot of money on gambling and he had decided to kill them and end his own life as well. It is further the case of the prosecution that at about 7 a.m. on 23/6/1987 when Hirabhai Tandel, a fisherman with his brother was fishing near the bridge, he had heard a big sound in the water and also heard people saying 'Pakado pakado' and that he rescued the accused from the sea/river water with their canoe and at that time the accused is reported to have asked them as to why they saved him when he wanted to die and that he had come after assaulting. He uttered the words 'mai marine aviyo'. Hirabhai Tandel and his brother had brought him to the shore and handed over to one Magan Tandel. Dr. Vaishya on reaching the house of the accused asked the accused as to what had happened and the accused told him 'Tinho ke hatya maine ke hai aur main darya mein marne ko ja raha hoo.' Rakesh had shown the chit to Dr. Vaishya and it was in the handwriting of the accused. Dr. Vaishya sent his car to bring his parents and Ramcharan and Ashok reached the house of the accused. On Ramcharan's asking the accused had stated that he had killed all the three by pressing their necks. The accused gave a similar reply to Dr. Ashok as well. Ramcharan lodged a complaint to the police which was received and recorded by PSI Rosario and the PSI reached the scene of offence, held an inquest panchanama in respect of three dead bodies, arranged photographs to be taken of the dead bodies and sent them for post mortem. Rakesh also handed over the chit to the I.O. which he attached under a panchanama. The accused was arrested and sent to Marwar hospital for medical examination. His nail clippings were taken. Scene of offence panchanama was drawn and writing pad and ball pen were

attached. The I.O. also obtained specimen writings of the accused and also notebook having his handwriting. The chit, specimen writings and the notebook were forwarded to the Government Examiner of Questioned Documents. The handwriting expert sent his opinion stating that the chit was in the handwriting of the accused. On completion of investigation PSI Rosario filed the charge-sheet. The case was committed to the Sessions Court and charge was framed on 19/7/1988, for the offence punishable under Section 302 of IPC. But surprisingly, there was no charge framed under Section 309 of IPC, against the accused.

3. The accused pleaded not guilty to the charge framed against him under Section 302 of IPC and in the statement recorded under Section 313 of Cr.P.C. he stated that after he returned to his house in the night of 22/6/1987 along with his wife and children, he had gone to his brother Gopal's house at Moti Daman along with his books of accounts of partnership and in the morning at about 7 a.m. when he reached near the bridge he met his nephew Pavan and learnt that his wife and children were dead. He became nervous and just then a heavy vehicle was passing by when he lost his balance and fell in the sea. He heard some people saying 'bachao, bachao' but he did not know who removed him from the sea. However, he admitted that the chit recovered by the police from his brother Rakesh was in his handwriting but according to him it was obtained from him by the police. This is the defence he took, but did not state as to how his wife died. At the same time he simply denied his involvement in the crime.

4. The trial Court framed the following two issues and answered them in the affirmative:

1. Whether the prosecution has proved that the death of Lalitaben, Sushma and Anjana were homicidal, and

2. Whether the prosecution has proved that it is the accused who had killed all three of them.

5. In support of its case the prosecution examined in all 15 witnesses. The complainant Ramsharan Agrawal - PW 1, Awabib Kalpati i.e. PW 2 as panch witness in respect of the inquest panchanama, Sayed Kureshi PW 3, panch

witness in respect of the chit (Exh.PW 3/A), Amarsingh - PW 4, Bhagwanji Patel - PW 5 panch witness in respect of the scene of offence panchanama for the seizure of writing pad, PW 6 - Dr. M.R. Prabhakar, Hirabhai Tandel - PW 7, Laxman Tandel - PW 8 panch witness in respect of panchanama for obtaining specimen writing of the accused Dr. B. Hans Raj Medical Officer - PW 9 who had performed the autopsy of three dead bodies, photographer Paresh as PW 10, Dr. Vaishya - PW 11, the Judicial Magistrate First Class who had recorded the statement of witnesses and of the accused under Section 164 of Cr.P.C. as PW 12, Rakesh Agrawal - PW 13, Durlabhai Damania - PW 14 and PSI Rosaria - PW 15.

6. Admittedly the case of the prosecution was based on circumstantial evidence and extra judicial confessions which included the chit written by the accused. None of the witnesses turned hostile and the failure of the prosecution to examine Dr. Ashok or Jyotiben did not weaken its case in any way. Dr. B. Hans Raj - PW 9 had conducted the autopsy on three dead bodies between 10-30 a.m. and 2 p.m. He first conducted the post mortem of Lalitaben's dead body between 10.30 to 11 a.m. and then that of Sushama's dead body between 11 a.m. to 12 noon and finally that of Anjana between 1 to 2 p.m. He was assisted by Dr. C.A.Jog in conducting the post mortem. The P.M. report of Lalitaben at Exhibit PW 9/C, P.M. report of Sushama at Exhibit PW 9/D and P.M. report of Anjana at Exhibit PW 9/E. On the dead body of Lalitaben he found four bruises of 1 cm in size over the anterior part of neck caused by hard object and they were ante mortem. Age of the injury was within one to four hours. On the neck he found that there were nail marks and haemorrhage in sub cutaneous tissue of hyoid bone as well as in the larynx. Trachea was congested and there was fracture of hyoid bone. He opined that these injuries could be caused only by hand i.e. due to compression by hand. From the nature of injuries found on the neck he stated that sufficient force was used. He also found that both the lungs were congested and in his opinion the cause of death was asphyxia due to throttling.

On the dead body of Sushama he found three bruises of 1 cm. size on the anterior part of neck and caused by hand. These injuries were ante mortem and were recent. The injuries on the neck were of nail marks and there was haemorrhage in

the sub cutaneous tissue, fracture of hyoid bone and also hemorrhage in the larynx. Trachea was congested. The cause of death in his opinion was asphyxia due to throttling.

On the dead body of Anjana he found two bruised of 1 cm. length on neck anterior aspect. The injury was caused by hand. Membranes and brain were found to be congested, hemorrhage in the sub cutaneous tissue as well as larynx and trachea were congested so also the right and left lungs. The cause of death was in his opinion asphyxia due to throttling. Injuries were of about six hours of age.

The inquest panchanama at Exhibit PW 2/A also shows nail injuries around the neck of all the deceased.

7. The prosecution, through the evidence of Dr. Hans Raj proved that Lalitaben, Sushama and Anjana died homicidal death and the cause of death was asphyxia due to throttling. 8. On 23/6/1987 PW 9 also conducted the medical examination of the accused and he found the following injuries on his person:

(1) One abrasion 3 cm x 1/2 cm over the left shoulder joint simple in nature and recent duration.

(2) Another abrasions two in number. 2 cm x 1/2 x 1/2 cm and 1 cm x 1/2 cm., irregular in shape over the second and third toes Simple in nature and recent duration.

The doctor explained that recent duration meant 2 to 6 hours. He further stated that he removed the nail clippings of the accused and then handed them over to the police as per Exhibit PW 9/F and the report of the Medical Examiner at Exhibit PW 9/G. In his cross-examination he admitted that he had recognised the dead bodies as that of the sister of Dr. Vaishya and her two daughters. He stated that he was unable to opine from the photographs if those three persons could be killed in the position in which they were and he was also not able to give distance between the assailant and the deceased on the basis of the photograph. He was also unable to say if it was possible to kill all the three persons at a time. He further stated that since the abrasion marks on the neck were 1 cm. in size, it

appeared to him that it was the work of one person. He also stated that the nail marks depended on the pressure applied. All the three PM reports have been found to be reliable by the trial Court. The medical evidence clearly proved beyond doubt that Lalitaben, Sushma and Anjana met a homicidal death by throttling.

9. PW 13 - Rakeshkumar, the brother of the accused turned hostile during trial and, therefore, he was subjected to cross-examination. He denied that the accused had left behind any chit and the one that was brought on record along with the attachment panchanama at Exhibit PW 3/A, though he admitted that on 23/6/1987 he got up at about 6.30 to 6.45 a.m. and after his tea asked his wife to get Anjana from the bedroom of the accused, his wife went in that room but came back immediately. He, therefore, went to the room of the accused and lifted Anjana and found her lifeless. He also found that Lalita and Sushma were lying on the bed dead and he was frightened. He further admitted that he had gone to the bridge where he saw that two fishermen had brought the accused out from the river water. PW 15 Rosario was the Senior PSI of Daman Police Station from June 1987 onwards. At about 8 a.m. on 23/6/1987 Ramsharan Agrawal - PW 1 went to the police station and lodged complaint with PW 15 against the accused. The complaint (FIR - Exhibit PW 1/A) was recorded and PW 1 signed the same in his presence. He proceeded to the scene of offence on Jain Street, Daman and in the room of the accused he found three dead bodies lying on the cot. He held inquest panchanama of the dead bodies (Exhibit PW 2/A). He arranged for photographer - PW 10 who snapped the photographs. He stated that in addition to PW 1, PW 13 - Rakeshkumar was also present at the spot and Rakeshkumar had shown him piece of paper written by the accused. The accused was arrested at about 10.45 a.m. and arrest panchanama was prepared. He again came back to the scene of offence and recorded statement of PW 13 and attached the chit (Exhibit PW 3/A) and drew panchanama in the presence of the witnesses. PW 3 - Sayed Kureshi identified the said chit as Exhibit X and he signed on its reverse. He further stated that it was produced by PW 13 - Rakesh when the panchanama for scene of offence was being drawn by PW 15 and it was handed over to PW 15 by PW 13. As per the said witness Rakesh had stated to PW 15 while handing over the chit that it was given to him by his wife who had in turn found the same in the room of the accused. The said chit along with the handwriting sample of the accused at

Exhibit PW8/A was sent to the handwriting expert who confirmed that it was the handwriting of the accused on both the documents i.e. PW3/A and PW8/A. The report of the handwriting expert (Exhibit 19 and P/5 collectively) is not disputed. The evidence of all these witnesses, though PW 13 turned hostile, went to show that the chit originated from the bedroom of the accused and it was written and left behind by the accused. The chit read as under:

In teeno ki hatya maine ki hai aur main darya mein marne ja raha hoo kyoki main jiye aur teer main pareshan ho gaya hoo aur aap ko barbad kar diya hai, is leye mujhe maaf karna. Aapka bhai Sati.

10. Ramsharan Agrawal - PW 1 and the brother of Lalitaben was staying at Udwada, about 9 kms. away from the Court building. He stated that they were five brothers and three sisters and deceased Lalita was wife of the accused. He reached the house of the accused on 23/6/1987 at about 7.30 a.m. after receiving the message from his brother Dr. Vaishya. He entered the room of Lalita and saw that she and her two daughters were dead, their tongues were protruding out and the accused was sitting in the room near the dead bodies. He asked the accused as to what had happened and the accused replied that around 6.15 a.m. on that day he had killed them by pressing their necks. He also heard people talking outside the house that the accused had attempted to commit suicide by jumping into Damanganga river and he was saved by some fishermen. He further stated that on the previous day of the incident i.e. on 22/6/1987 at about 6.20 p.m. the accused had gone to his house at Udhwada along with Lalita and two daughters. He had left them in the house of PW 1 and gone back to Daman. The accused returned at about 9.45 p.m. and took Lalita and her daughters back to Daman. He proved complaint lodged with police station i.e. FIR at Exhibit PW 1/A. Dr. M.R. Prabhakar - PW 6 was the Medical Officer in the Primary Health Center at Daman and was a colleague of Dr. Vaishya - PW 11. He stated before the trial Court that on 23/6/1987 at about 7.45 a.m. he was on his way to drop the children at the convent school at Moti Daman via Jain street and he noticed a crowd near the house of the accused. He dropped his children and came back to the house of the accused. When he entered the house of the accused along with PW 1 and Dr. Ashok Agrawal, Dr. Ashok Agrawal asked the accused who was sitting near the

dead bodies, as to how it had happened. The accused thereafter replied looking at Dr. Vaishya, 'Hamne gala daba ke mar diya. Muje marne do. Muje fansi de do.' In his cross-examination the witness reaffirmed the confession made by the accused to Dr. Ashok Agrawal in his presence. In his statement recorded under Section 164 of Cr.P.C. (Exhibit PW 6/B) the confessions made by the accused to Dr. Agrawal was stated as 'Doctor sahab in tino ko maine gala daba ke mara. Muje fansi de do. Muje marne do.' PW 14 - Durlabhai Damania stated that on 23/6/1987 at about 6.30 a.m. he had gone to Daman bridge to remove his fishing net and one Maganbhai was with him at that time. He further stated that as they were removing the net, he saw the accused jumped in the river and was rescued by PW 7 and was brought to the shore. He had helped the accused to come out of the river clay and brought him to the bank of the river. After the accused was in good and solid ground, he was taken by his brother and he went walking.

11. Dr. Shrinivas Vaishya - PW 11 in his depositions before the trial Court stated that Ramsharan Agarwal-PW 1, Ramnivas Agarwal, Bhavdayal Agarwal and Ashok Agarwal are his brothers in addition to three sisters by name Munni Agarwal, Anita Agarwal and Lalita Agarwal. Lalita was married to the accused and they were living at their house on Jain street with two children. On 23/6/1987 between 6.30 am to 6.45 a.m. he received a message from Gopal to come to Daman bridge at Nani Daman and felt that there was some emergency. He went on his motorcycle to the bridge. He saw crowd of people and a person from that crowd told him that his brother (accused) was removed from the river and was taken home. He, therefore, went to the house of the accused, knocked on his door which was opened by Gopal, brother of the accused. He saw Lalita and her two children lying dead on the bed and the accused was sitting there next to the dead bodies holding the dead body of the younger daughter and was crying. He asked the accused as to what he had done and what had happened to which the accused replied 'Tino ki hatya maine ki hai or mai dariya me marne ku gaya tha.' At that time Rakesh - PW 13 showed him the chit which was written and left behind by the accused (Exhibit PW 3/A). After some time Ashok, his other brother, came and asked the accused as to what had happened. The accused replied, 'In tino ki hatya maine ki hai or mai marne ja raha tha'. After 8 a.m. the Daman police came to the spot. These depositions in the cross-examination remained intact,

though some contradictions / improvisations were sought to be brought out with the help of the statement recorded by the police on 24/6/1987 (Exhibit PW 11/A). In the evidence of PW 15 - Rosario it has been proved that the accused on his arrest at about 10.45 a.m. on the date of incident, he was sent for medical examination to Marwar hospital. In his evidence the handwriting expert's opinion at Exhibit P/3 collectively was also brought on record. In his cross-examination he stated that the water surface of the river was about 40 ft. below the bridge. The discrepancies in the PM report about the timing of receipt of dead bodies and sought to be brought through the cross- examination of the witness do not affect the case of the prosecution, more so when Dr. Hans Raj - PW 0 has stated that there might be some error in writing the timings. He reiterated in his cross-examination that PW 11 - Dr. Vaishya had stated the portion 'My brother Ashokkumar asked him as to why he had done it'

12. The evaluation of the evidence adduced by the prosecution has proved the following circumstances:

(a) On 22/6/1987 the accused had taken his wife and two daughters to the house of his in-laws at Udhwada and at about 9.45 p.m. on the same day he brought them back to his house.

(b) The accused along with his wife and two children was staying in the family house on Jain Street at Daman and his brother Rakesh - PW 13 was occupying the front portion and the accused and his family was occupying the rear portion of the house.

(c) On 23/6/1987 between 6.15 a.m. To 6.30 a.m. Rakesh - PW 13 had asked his wife Jyotiben to get Anjana, the younger daughter of the accused, from the room of the accused and Jyotiben returned with a chit (Exh.PW 13/A). PW 13 - Rakesh along with Jyotiben then went to the room of the accused and saw Lalitaben and the two daughters dead in the room of the accused and the accused was not present there.

(d) PW 7 - Hirabhai Tandel was present at Damanganga river near Daman Bridge for fishing along with his brother Vishnubhai and at that time he had heard a big

noise in the water and people shouting from the Bridge, 'Pakado Pakado'. He, therefore, took his canoe in the river and pulled the accused from the river water. The accused asked him why he saved him since he wanted to die himself and the accused further stated, 'Mai Marine Aaviyo'. The accused was then handed over to Magan Tandel.

(e) After receiving the message about the incident from Rakesh and Gopal's son, PW 11 called PW 1 to the house of the accused on 23/6/1987 and PW 1 Ramsharan filed the F.I.R. The accused, after he was escorted from the river, was taken to his house and he was seen by PW 1 and PW 11 holding the dead body of his youngest daughter Anjana and crying.

(f) PW 1, PW 11 and their brother Dr. Ashok Agarwal had reached the house of the accused before 8 a.m. On the date of the incident and when Ashok Agarwal asked the accused as to what had happened and what he did, he replied, 'Hamne Gala Daba Ke Mar Diya, Muje Marne Do, Muje Fansi De Do. This confession has been proved in the evidence of 1, PW 6 and PW 11. Dr. Vaishya - PW 11, had also asked the accused as to what had happened and he had replied, 'Tino ki hatya maine ki hai aur main dariya me marne gaya tha'.

(g) I.O. PW 15 - Rosario along with his team arrived at the scene between 8 and 8.15 a.m. On 23/6/1987, Inquest Panchanama at Exh. PW 2/A was drawn and Attachment Panchanama at Exh. PW 3/B was also drawn and the same has been proved in the testimony of PW 3 - Sayeed F. Kureshi, PW 11 - Dr. Shirinivas Vaishya and PW 15 - Rosario. The said chit was handed over to PW 15 by PW 13 and the contents of the said chit in Hindi language have been reproduced in para 9 hereinabove.

(h) There was no scope for any outsider to enter the home of the accused and commit the triple murder between 11 p.m. On 22/6/1987 to 6.15 a.m. On 23/6/1987.

(i) There was no mark of physical violence on the person of the deceased which was likely in case of any encounter with an intruder or of any sexual assault.

(j) There was no evidence of theft or attempt to commit theft of any of the properties inside the room.

13. The accused had two injuries on his body and one of them was abrasion 3 cm. X 1/2 cm over the left shoulder joint, simple in nature and recent duration. It is well settled that the prosecution is not obliged to explain the injuries on the person of the accused in all cases and in all circumstances, and it is not the law. In the case of Mohar Rai : 1968 CriLJ1479 the Supreme Court observed, .But such a non-explanation may assume great importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case.

On the other hand, in the instant case the injuries noted on the person of the accused may be reasonably believed to have been caused when he was throttling the victims and more particularly Lalitaben. The two daughters were so young in age that there was no possibility of any resistance by them when they were being throttled.

14. In his statement recorded under Section 313 of Cr.P.C., accused did not state that he was not in the house in the night of 22/6/1987 after he returned from his in-laws' house along with his family. He admitted that in the morning at 7 a.m. he had gone to the Daman Ganga. He admitted that the contents of the chit at Exh. PW 3/A were written by him and took the defence that it was written while he was in the police custody. The prosecution has disproved this contention and it has been established that the said chit was recovered from his home by PW 13 and he in turn handed over to PW 15 during the course of the investigation, when attachment panchanama was drawn, as per the evidence of PW 3, PW 11 and PW 15.

15. The confessions are of two types i.e. Judicial confession and extra judicial confession. The judicial confessions are the statements made before and recorded

by the Judicial Magistrate under Section 164 of Cr.P.C. Whereas, extra judicial confessions are those made to third person by the accused and they may also include written confessions or oral confessions. In the instant case, written confession made by the accused in the form of chit at Exh.PW 3/A and the oral confessions made to PW 11 Dr. Vaiysha. They also include the oral confessions made to Dr. Ashok Agarwal in the presence of PW 6 Dr. Prabhakar and PW 11 Dr. Vaishya. The prosecution has proved these extra judicial confessions, written as well as oral. The oral confessions made to PW 11 and Dr. Ashok Agarwal were prior to the police coming at the scene. Section 24 of the Indian Evidence Act states that a confession made by an accused person is irrelevant in the criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having regard to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. These confessions were neither made under any inducement or threat or any promise and they are inculpatory in nature i.e. admitting the offence. These confessions are voluntary. There is no doubt that conviction can be based on extra judicial confession. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses. : 1998 CriLJ3624 Kavita v. State of Tamilnadu].

In a recent decision in the case of State of Punjab v. Harjagdev Singh JT 2009 (7) SC 538 for the purpose of relying upon the extra judicial confession to establish the charge, the Supreme Court stated as under:

7. ...As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or

promise, (1) having reference to the charge against the accused person, (2) proceedings from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person or (b) it does not proceed from a person in authority; or it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Indian [Evidence Act, 1872](#) (in short 'Evidence Act'). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements or through some other agency employed by them for the purpose of securing such a confession....

16. In the instant case the prosecution having established its case and on the other hand the accused having failed to offer any explanation as to how his wife and two daughters met a homicidal death by throttling, Section 106 of the Indian Evidence Act 1872 comes into play. In the case of *Vikramjit Singh alias Vicky v. State of Punjab* (2006) 12 SCC 306, the Supreme Court on the applicability of the said Section stated as under,

14. Section 106 of the Evidence Act does not relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule e.g. where burden of proof may be imposed upon the accused by reason of a statute.

17. In the case of *State of Rajasthan v. Kashi Ram* : AIR 2007 SC144 , the Supreme Court stated, .The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially with the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain....

Following the above well settled position in law it is clear that the failure of the accused to explain, before the trial Court, as to how and in what circumstances his wife and two daughters were murdered, is an additional link in the chain of circumstances.

18. We are thus satisfied that the prosecution case, on the basis of the circumstantial evidence, has been established beyond any reasonable doubt and the findings set out by the trial Court holding the accused guilty under Section 302

of IPC is required to be confirmed.

19. On the point of sentence it was submitted by Mr. Mundargi, the learned Senior Counsel for the accused that the evidence of the prosecution itself went to show that there was no motive attributed to the accused while committing the murders and it appears to be the case that he lost his self control after losing money in gambling and in that frustration he decided to kill his family members and himself. It was further sated that it was not a pre planned or designed crime that the accused committed. There was no evidence that he was ill treating his wife or had any grouse against her. Mr. Mundargi pointed out the evidence of PW 6 - Dr. Prabhakar and PW 11 - Dr. Vaishya to show that the accused was holding the dead body of his youngest daughter and crying and the confessions made to Dr. Agarwal were eloquent to demonstrate his repentance and that there was no motive to do away his family members. Mr. Mundargi also submitted that the incident had taken place on 23/6/1987, the order of conviction and sentence was passed on 4/2/1989 and thereafter the accused has been on bail for the last about 20 years. The accused was 32 years of age when the incident had taken place and as of now he has attained the age of 55 years.

Section 302 of IPC prescribes the sentence of life imprisonment or death and the trial Court in the instant case, considering all the submissions made by the defence as well as the prosecution, has awarded the R.I. for life. It is true that the accused has been on bail for the last about 20 years or so but that by itself cannot be a reason and, in fact, Section 302 of IPC does not permit to do so, to award any other sentence short of RI for life or death sentence. This appeal has been pending for the last about 20 years and it is imperative for the Bar and the Bench to work out appropriate methodology so as to ensure that in future such appeals do not remain pending for more than 3 to 5 years. When the trial court completed the trial within a period of two years, there is no justification why the appeal should remain pending for more than 20 years.

Be that as it may, we are satisfied that the order of sentence also requires to be confirmed. However, as and when the case of the accused is being considered for commutation under Section 433 of Cr.P.C. by the competent authority on

completion of minimum sentence of 14 years, the said authority may consider his case sympathetically having regard to the peculiar facts of this case.

20. In the premises, this appeal fails and the same is hereby dismissed. The order of conviction and sentence is confirmed. The bail granted to the accused stands cancelled and the accused shall surrender to undergo the sentence within a period of two weeks from today. The accused shall be entitled for the benefit of set off, if any, under Section 428 of Cr.P.C.

21. A copy of this order along with the R & P be sent to the concerned Sessions Court forthwith.

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