

Chepuri Krishnamurthy Vs. State

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Court : Andhra Pradesh

Decided On : Apr-29-1998

Reported in : 1998(4)ALD362; 1998(2)ALD(Cri)1; 1998(2)ALT(Cri)371

Judge : N.Y. Hanumanthappa and;Vaman Rao, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Cri.A. No. 322 of 1997

Appellant : Chepuri Krishnamurthy

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. B. Madhava Reddy, Adv.

Judgement :

ORDER

Vaman Rao, J

1. This appeal is directed against the judgment of the AdditionalSessions Judge, Medak at Sangareddy in S.C.No.344/93 convicting the appellant herein for the offence under Section 302 IPC and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer imprisonment for a period of six

months.

2. The facts in brief representing prosecution version of the case can be stated as follows:

Accused No. 1 after the death of his first wife, married the deceased Vinoda. Thereafter he married another woman and started ill-treating the deceased Vinoda. The deceased is said to have complained about the ill-treatment to the village elders. On this grudge accused No. 1 is said to have decided to eliminate the deceased. Accordingly on the intervening night of 10/11-6-1992 midnight accused No.1 (appellant) with the help of A2 throttled the deceased. It is stated that while A1 caught the feet of the deceased Vinoda, A2 throttled her when she was fast asleep. It is stated that the accused thereafter hanged the dead body to a beam to make it appear as if it was a suicide. On the next day morning, the Village Administrative Officer who was doing some work in the nearby Chawdy was informed that the deceased Vinoda was murdered. He went to the house of accused No. 1 and saw the dead body of the deceased lying on the ground. When questioned, A1, it appears, told that the deceased had hanged herself and committed suicide. The Village Administrative Officer who was later examined as PW1 when questioned accused No.1 as to how the dead body was lying on the ground when she hanged herself to a beam, the accused replied that he thought that the deceased might have been still breathing, so he removed her from the beam and put her on the ground. According to the prosecution, the Village Administrative Officer took A1 aside and kept him under his custody in the Chawdy. The villagers present there suspected that the explanation given by the accused could not be correct and when they further questioned him, A1 made a confessional statement stating that he himself with the help of A2 strangled the deceased. PW1 gave a report about these facts to the police under Ex.P1, the first information report. After investigation, the accused was duly arrested and his confessional statement was recorded. After conducting inquest and post-mortem and completion of investigation, a charge-sheet was laid in the Court of the Judicial First Class Magistrate, Medak, who in due course, committed the case to the Court of Sessions under PRC. No.46/93.

3. The case has been made over to the learned Additional Sessions Judge, Medak, who duly framed the charge for an offence under Section 302 IPC. The accused having denied the charge, the trial was taken up. During the course of trial, PWs.1 to 13 have been examined and Exs.PI to P8 and MOs.1 and 2 have been marked. When examined under Section 313 Cr.P.C., the accused denied the veracity of the alleged incriminating circumstances against him. The accused had not chosen to adduce any defence evidence on his behalf.

4. On this evidence, mainly, relying on the extra judicial confessional statement of A1 and relying on the medical evidence, the learned Additional Sessions Judge came to the conclusion that the prosecution had succeeded in bringing home the charge against the accused beyond reasonable doubt.

5. It is this judgment and finding, which is now assailed in this criminal appeal.

6. The question for consideration is whether the prosecution has established the charge against the accused beyond reasonable doubt.

7. Obviously there are no ocular witnesses to the incident. The prosecution relies upon the extra judicial confessional statement of A1. Before discussing the evidence, it may be mentioned that extra judicial confessional statement, if not made to a person in authority is not hit by Section 24 of Evidence Act but it is considered weak kind of evidence because evidence adduced in proof of such confession lacks the rigorous safeguards associated with a judicial confession to prove that the confession was voluntary and truthful.

8. In the case of State of Punjab v, Bhajan Singh, : 1975 CriLJ282 the Supreme Court has observed that the evidence of extra judicial confession in the very nature of things is a weak piece of evidence. A similar view has been taken by the Supreme Court in the case of Makhan Singh v. State of Punjab, : AIR 1988 SC1705 . However, we are aware that it is not an inflexible rule of law that in no case extra judicial confession can form basis for the conviction of the accused. In the case of State of U.P. v. M.K. Anthony, : 1985 CriLJ493 the Supreme Court observed that extra judicial confession can be relied upon and conviction can be ordered only on the basis of such extra judicial confession. Thus, it would appear

that in a given case considering the contents of the confessional statement itself and the nature of evidence by which extra, judicial confession is sought to be proved, such a confession can form the basis of a conviction against the accused. But, generally speaking, the extra judicial confession is a weak kind of evidence and before it is acted upon by the Court, some corroboration is sought to strengthen such evidence.

9. In this case, extra judicial confession has been given by PW1 the first informant himself and the alleged confession is recorded in the complaint given by PW1. The learned Additional Sessions Judge mentions that the evidence of PW1 in regard to extra judicial confession is corroborated by PW10. It would appear that this part of the observation of the learned Additional Sessions Judge must have been a result of a confusion. The evidence of PW1 disclose that the alleged extra judicial confession was made by A1 in the presence of other villagers and PW1 specifically mentions the names of the two persons who were said to be present at the time the accused made the alleged confession. PW10 is not one of those persons. It would appear that PW10 has been examined as a panch witness in respect of confessional statement of the accused leading to recovery of material objects. Thus, PW10 is the attesting witness of the recovery panchnama Ex,P5 and also inquest panchnama Ex.P6. The confession which PW1 refers to is quite different from the alleged confession which PW10 attested. The confessional statement except that part which resulted in the recovery of the incriminating objects, is inadmissible in evidence under Section 27 of Evidence Act inasmuch as it was recorded by the investigating police officer. PW10 however mentions as if he was present when in the presence of PW1, A1 made confessional statement.

10. The following infirmities in the evidence pertaining to extra judicial confession in this case render it unreliable.

(i) PW1 while in his examination in chief refers to the fact of A1 having made confessional statement which he recorded in the first information report Ex.P1. But in his cross-examination, he candidly admits that he was not present when actually A1 made the confessional statement. The following passage from his evidence is extracted.

'It is correct I did not mention the names of Vishwanadham Rangaiah and Madhavarao in Ex.P1, since I was not present when A1 revealed the abovesaidfacts.'

11. Further, the evidence of PW1 discloses that Ex.P1 which according to PW1 was based on the confessional statement made by the appellant herein was not after all a statement, based on what he heard from A1 before the arrival of the police. In his cross-examination PW1 admitted that he went to the police station and orally reported about the offence to the police and that after the arrival of the Sub Inspector of Police to his village, he drafted Ex.P1. From this, there is every reason to suspect that after all Ex.P1 could have come into existence after the arrival of the police and may be at the instance of the police. There is another circumstance which makes the so-called extra judicial confession unreliable. According to the prosecution the confessional statement made by A1 was that while he caught hold of the legs of the deceased it was A2 who throttled the deceased. But the learned Additional Sessions Judge considered this part of the confessional statement of PW1 unbelievable and held that there was no evidence incriminating A2 at all. Thus, it would appear that the learned Additional Sessions Judge had chosen to ignore a part of the extra judicial confession and accepted a part as far as A1's involvement was concerned.

12. There is another circumstance which affects the credibility of so-called extra judicial confession relied on by the prosecution. Extra judicial confession is to be made to a particular person or persons. A confessional statement said to have been made before the entire group of villagers would certainly lose much of its value. This view was held in judgment in *Jadwani Khanda v. State*, 1993 Cr.LJ 2701. It would thus appear that the three tests for acceptance of evidence relating to extra judicial confession viz., (1) reproduction of exact words; (2) reason or motive for confession, and (3) persons selected should have been those in whom confidence is reposed by the accused, have not been satisfied in this case.

13. Thus the circumstances in this particular case would show that the nature of the evidence in regard to extra judicial confession is not such as would inspire confidence and which could be considered sufficient to form sole basis for

convicting the accused.

14. In this view of the matter, the finding of the learned Additional Sessions-Judge cannot be accepted.

15. In the result, the appellant accused No.1 is acquitted of the charge under Section 302 IPC and the appeal is accordingly allowed. The appellant accused No. 1 shall be set at liberty forthwith if he is not required in any other case.

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