

**George Peter Vs. the State of A.P., Rep. by the Public Prosecutor**

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**SooperKanoon Citation :** [sooperkanoon.com/439363](http://sooperkanoon.com/439363)

**Court :** Andhra Pradesh

**Decided On :** Aug-20-2004

**Reported in :** 2005CriLJ1607

**Judge :** P.S. Narayana, J.

**Acts :** Indian Penal Code (IPC) - Sections 201, 302, 304I, 376, 448 and 506

**Appeal No. :** Criminal Appeal No. 1533 of 1998

**Appellant :** George Peter

**Respondent :** The State of A.P., Rep. by the Public Prosecutor

**Advocate for Def. :** Additional Public Prosecutor

**Advocate for Pet/Ap. :** T. Bheemanna, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**P.S. Narayana, J.**

1. This appeal is filed as against the judgment dated 22.11.1999 in Sessions Case No. 89 of 1999 on the file of II Additional Assistant Sessions Judge, Warangal.

2. The accused was charged with the offences as specified hereunder:

Firstly: That you on 20.04.1998 committed house trespass by entering into with intent to commit rape on Krishna Kumari thereby committed an offence punishable u/s. 448 of IPC and within my cognizance.

Secondly: That you on 20.04.1998 committed criminal intimidation by threatening Krishna Kumari with injury to her person with intent to cause alarm to the said Krishna Kumari committed rape on her and thereby committed an offence punishable u/s 506 of IPC and within my cognizance.

Thirdly: That you on 20.04.1998 committed rape on Krishna Kumari thereby committed an offence punishable u/s 376 of the I.P.C., and within my cognizance.

3. The version of the prosecution is that P.W.1 is having two sons and one daughter who are all below 10 years of age. The accused is the neighbour of P.W.1. P.W.1 and his wife P.W.3 used to attend their agricultural coolie work. On 20.04.1998, they left for collie work in the early hours by keeping their minor daughter P.W.2 at home along with their son. When the son went out to play, the accused criminally trespassed into the house of P.W.1 and the accused caught hold of the victim girl and forcibly took her into the house under threat and raped her barbarously. Due to the unbearable pain and oozing of blood from her vegina, the victim raised hue and cries. On hearing hue and cries of the victim-girl, P.W.4, P.W.5 and P.W.10 came there. P.W.10 removed the clothes of P.W.2 and gave her bath and washed the blood stains on her vagina. Thereafter, P.W.1 lodged a complaint with the police. The victim girl was sent to the hospital for examination. On 24.04.1998, the accused was arrested by the police and he was sent for medical examination about his potentiality test. Injuries were found on the private parts such as anus and vagina, and the doctor opined that there was rape committed on the victim girl.

4. The learned Judicial First Class Magistrate, Mulug has committed the case to the Court of Session which was made over to the learned II Additional Assistant Sessions Judge, Warangal. The learned Judge, after framing the charges under Sections 448, 506 and 376 IPC, read over and explained the same to the accused and the accused denied the charges, and then, the learned Judge proceeded with trial.

5. The learned Judge recorded the evidence of P.Ws 1 to 10 and marked Exs. P1 to P.12, and ultimately, the learned Judge found the accused guilty for the offences under Sections 448, 506 and 376 IPC and taking into consideration, that the child was aged about 6 years and was raped, the accused was sentenced to undergo Rigorous Imprisonment for a period of ten years for offence under Section 376 IPC and also sentenced him to pay a fine of Rs. 5,000/- in default, to undergo Simple Imprisonment for a period of six months. The accused was also sentenced to undergo Simple Imprisonment for a period of one year for the offence under Section 448 IPC, and also to undergo Simple Imprisonment for a period of six months for the offence under Section 506 IPC. Questioning the same, the present appeal is filed.

6. P.W.1-father of the victim girl deposed about the alleged offence and there were disputes between the accused and P.W.1 and no doubt, it is not a ground of attack. But this witness specifically denied that this case was foisted due to enmity.

7. As far as the incident is concerned, P.W.2 deposed as follows:

Q: With whom you were playing on that day?

Ans: On that day, I was playing with Madhu at that time. The accused took me inside of the house and threw me this side or that side ( Atu etu nookinadu).

Q: what had happened to you?

Ans: I suffered a scratch on my back. I suffered bleeding.

Q: What had happened further?

Ans: I suffered bleeding on my thighs. Sharada took me and got bath.

Q: Did you go to Police Station?

Ans: Yes. I went to Police Station and police examined me.

Q: Who took you to the hospital?

Ans: My parents.

Q: Doctor examined you?

Ans: Yes.

The evidence of P.W.2 in detail had been appreciated by the learned Judge at paragraph 10 and reasons in detail had been recorded.

8. P.W.3 is the mother of the victim girl and she also deposed that her son came and informed that the accused had spoiled her daughter.

9. P.Ws. 4 and 5 are the brothers of the victim girl. But they could not depose anything about the incident and these witnesses were declared hostile by the prosecution.

10.P.W.10 had deposed that about 1 1/2 years ago at about 10 a.m. her parents went to work in the fields, so also the neighbours and her friend Rajyam came to her house at that time. She deposed that both of them were playing at their house and at that time, she heard some cries from the house of Krishna Kumari (P.W.2) and at that time, herself and Rajyam went to the house of Krishna Kumari and found the accused getting up over the body of Krishna Kumari and on seeing them, he started running away. She deposed that blood was oozing in between the thighs of Krishna Kumari, they have taken Krishnakumari and gave her bath washed her and cleaned her clothes. The evidence of P.W.10 was discussed in detail by the learned Judge at paragraph 11.

11.P.W.6-doctor had examined the victim girl and found injuries on the body. She deposed that she also examined the private parts and found the following injuries:

i) Laceration about 1.5 cm length and 1 mm. deep over the left side of the anus at 1 O' clock position. No active bleeding.

ii) A laceration about 1 cm length and 1 mm. deep at 7 O' clock position of anus. No active bleeding.

iii) Small abrasion about 2 mm. inner side of the left libiaminora and lebia misora normal. Hymen intact.

Thus, in view of the clear evidence of these witnesses, the whole evidence available on record, P.Ws 1 to 10 had been discussed at length and also Ex.P1 report given by P.W.1 and Exs. P2 and P3-statements of P.Ws 4 and 5, who were declared hostile, Ex. P.4 medical certificate, Ex. P.5-First Information Report, Ex. P.6-Final opinion, Ex. P.7 signature of P.W.8 on panchanama, Ex. P.8-rough sketch, Ex. P.9 Panchanama , Ex. P.10 age certificate, Ex. P.11 potentiality certificate and Ex. P.12 First Information Report also had been discussed in detail, and ultimately, findings at length had been recorded, on appreciation of evidence.

12. On a careful scrutiny of the findings recorded and also the evidence available on record, this Court does not see any compelling reason to record different findings and hence, the said findings are hereby confirmed.

13. It is brought to the notice of this Court that the accused is aged about more than 61 years and he is not healthy. Taking into consideration the age of the accused and the fact that he had undergone imprisonment for more than six years and also taking into the consideration the over all facts and circumstances, the conviction no doubt as such is hereby confirmed.

14. In the result, the conviction imposed by the learned II Additional Assistant Sessions Judge, Warangal, in Sessions Case No. 89 of 1999 against the appellant-accused on 22.11.1999 is confirmed.

So far as the sentence of imprisonment is concerned, it is modified as follows:

(i) The sentence of imprisonment under Section 376 IPC is reduced to six years from ten years R.I. So far as imposition of fine of Rs. 5000/- in default, to undergo S.I. for six months is concerned, it is hereby set aside;

(ii) The sentence of imprisonment under Section 448 IPC is reduced to six months from one year S.I.;

(iii) The sentence of imprisonment of six months S.I. under Section 506 IPC is confirmed.

(iv) All the above sentences to run concurrently.

It is however brought to the notice of this Court that the accused already had served the above modified sentences.

If the accused had already served the above modified sentences imposed by this Court, he shall be set at liberty forthwith after computing the period of imprisonment already undergone by him, in accordance with law.

Except modifying the sentence as referred to supra, the Criminal Appeal shall stand dismissed.

1. Heard Sri N. Parameswara Reddy, the learned Counsel representing appellant-accused and the learned Additional Public Prosecutor.

2. George Peter, the sole accused, in Sessions case No. 291 of 1997 on the file of the Metropolitan Sessions Judge, Hyderabad, aggrieved by the conviction and sentence imposed against him for the offence under Section 304 Part I and 201 IPC by judgment dated 25.03.1998, had preferred the present criminal appeal.

3. The appellant-accused, in fact, was charged with Section 302 and 201 IPC and he was convicted and sentenced to undergo Rigorous Imprisonment for a period of six years for the offence under Section 304 Part I IPC and he was also sentenced to undergo Rigorous Imprisonment for a period of three years for the offence under Section 201 IPC, and both the sentences to run concurrently.

4. The case of the prosecution is that the sole accused-George Peter, a paper-picker, killed his friend Babu Rao, by throwing boulder on the head of the deceased, in front of the house of the deceased, situated at Gangaputra Colony, on 19.10.1996 at about 10.00 p.m., and dragged the dead body of the deceased into his hut, and concealed the dead body under the cot of the deceased, and ran away. It is also the version of the prosecution that on 20.10.1996 at 8.00 a.m. P.Ws 1 and 2 came to the Police Station, and stated that the accused confessed about the murder committed by him, and shown the dead body to them, and on the confession made by the accused to them, they reported the same to the Inspector of Police, and he registered the same as a case in Crime No. 144 of 1996 under Section 302 and 201 IPC, and the investigation was taken up and it

revealed that the accused bore grudge with his friend Babu Rao in a petty quarrel on 19-10-1996 in front of the house of the deceased, wherein, the deceased-Babu Rao abused the accused in filthy language, and the accused could not tolerate the same and killed him at about 10.00 p.m. by throwing boulders on the head of the deceased, and concealed the dead body of the deceased under the cot of the deceased and ran away from the scene by closing the hut. It is also the version of the prosecution that on 20.10.1996, the accused voluntarily confessed the same to P.Ws 1 and 2 and lead them to the spot and disclosed the body. It is also the version of the prosecution that Totapally Vijay, M. Mohan and Kamma witnessed the quarrel between the accused and the deceased on 19.10.1996 at about 8.00 p.m. in front of the house of the hut of the deceased. A.P.Ibrahim and Naghabushanam are the panch witnesses for the inquest and scene of observation of panchanama. Mohammad Fasihuddin, Photographer had taken photos and Dr. V. Muni Swamy, conducted Post-mortem examination over the dead body of the deceased and opined that the cause of the death is due to the head injury and hence, the accused was charged with Section 302 and 201 IPC. The prosecution has examined P.Ws 1 to 8 and got marked Exs. P1 to P.16, M.Os 1 to 3 and Ex. D1-arrest memo of accused.

5. On appreciation of the evidence available on record, the learned Metropolitan Sessions Judge had arrived at a conclusion that the accused is liable to be convicted under Sections 304 Part I and 201 IPC and had imposed the respective sentences already referred to supra.

6. Sri N. Parameswara Reddy, the learned Counsel representing the appellant-accused would contend that this is a case based just on the extra-judicial confessions, alleged to have been made by the appellant-accused to P.Ws 1 and 2 which had lead to discovery of the dead body of the deceased. The learned Counsel also would contend that extra-judicial confession is a weak type of evidence and there is no acceptable corroborative evidence in the present case and hence, the conviction recorded and the sentence imposed by the learned Judge, definitely cannot be sustained. The learned Counsel also would contend that it is the version of the prosecution that M.Os 1 and 2 were used by the accused on the date of the incident, but Ex. P1 would refer to ' a granite stone'.

The learned Counsel also would submit that the evidence of the panch witnesses and also the evidence of the Investigating Officer would definitely throw some suspicion as to whether M.Os 1 and 2 had been utilized in the commission of the offence at all or not. The learned Counsel would also submit that not only the M.Os 1 and 2 were sent for any examination whatsoever, but also there is no evidence that any blood stains had been there on those Material Objects and that apart from it, P.W.5-panch witness also had not spoken about any of these aspects. The learned Counsel also would submit that merely because something had been referred to in the panchanama, automatically, it would inure to the benefit of the prosecution and these aspects may have to be proved before the Court. The learned Counsel relied on the evidence of the Investigating Officer in this regard. To substantiate his contentions, the learned Counsel also placed reliance on certain decisions.

7. On the contrary, the learned Additional Public Prosecutor with all vehemence would contend that an extra-judicial confession also can be the basis to sustain the conviction, if the Court is satisfied that those confessions are trustworthy and believable. The learned Additional Public Prosecutor also would contend that the relationship between the accused and P.W.1 also may have to be taken into consideration in this regard, that is the relationship of a paper-picker and P.W.1 being the purchaser and it is the natural that P.W.2 was also present at the relevant point of time, when the confession was made by the accused, which had ultimately lead to discovery of the dead body and that the series of events are so natural and convincing that the version of the prosecution may have to be believed and the findings recorded by the learned Judge are to be confirmed.

8. Perused the oral and documentary evidence available on record and also the findings recorded by the learned Judge.

9. The charges against the appellant-accused in Sessions Case No. 291 of 1997 are as hereunder :

Firstly: That you on 19.10.1996 at about 10.00 p.m., at Gangaputra Colony Huts, Musheerabad, did commit murder by intentionally or knowingly by throwing boulders on the head of deceased Babu Rao causing the death of him and thereby

committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

Secondly: That you on or about the same day, time and place mentioned above in the first charge knowing that the offence punishable under Section 302 IPC has been committed, did cause the evidence of the said offence to disappear by concealing the dead body under the cot with the intention of screening the evidence from legal punishment and thereby committed an offence punishable u/Sec. 201 of Indian Penal Code and within my cognizance.'

And I hereby direct that you be tried on the said charge.

10. In pursuance of the alleged extra judicial confessions made by the accused to P.Ws 1 and 2, P.W.1 made Ex. P1-complaint to the Inspector of Police, Musheerabad, dated 20.10.1996 and the contents of Ex. P.1 also may be of some relevance in this case.

' I do the business of Waste Papers, to-day i.e., on 20.10.1996 Morning at about 7 hrs, George, who gives Waste Paper to me came to my house and said that, night about 10 p.m., due to some small dispute in between Babu Rao, the Waste Paper Collector and him, they both quarreled and used filthy language to each other. When Babu Rao said to him ' Maa ke loude', George could not tolerate it and immediately hurled a granite stone, which was in front of their house, due to hurling of granite stone Babu Rao died. He took the dead body of Babu Rao forcibly from the front side and kept inside his hut, beneath the cot of the deceased and partly closed the door. Then he asked me if I go along with him, he will show me the dead body of Babu Rao. Then myself and T. Narsing Rao S/o T. Lingaiah aged 36 years R/o Gangaputhrakalani went along with him. Then the said accused George pushed the door of the hut, and shown us the dead body of the deceased Babu Rao. When we examined the dead body, it was lying in a pool of blood. Then he got scared at the scene and fled away to the Nallakunta area, and now, as he took it to his heart he could not hide the truth, now he came to me, revealed everything that happened, shown us the dead body of the deceased Babu Rao, agreed in front of us, that he only murdered Babu Rao. Hence, we are reporting you about the incident in writing to take necessary action.'

It is pertinent to note that in Ex. P1 ' a granite stone' was specified. For the purpose of extra judicial confessions alleged to have been made by the accused to P.Ws 1 and 2, the evidence of P.Ws 1 and 2 may have to be looked into.

11.P.W.1 deposed that on 20th October, 1996 at about 7.00 a.m. while he was talking with P.W.2-D. Narsing Rao, near his house at Bapujinagar, the accused came and then, P.W.1 questioned him why he came so early? P.W.1 deposed that the accused lives nearby the hut of the deceased and that the accused came and told him that 'Last night at about 10.00 p.m., the deceased came in a drunken condition and abused me in filthy language and so I hit him with two stones on his head. He died. So I took his body and hide it under his cot.' This witness also further deposed that in pursuance of the information, they accompanied him to the hut of the deceased and they saw the dead body of the deceased underneath the cot and they drafted a complaint, and P.W.2 also signed in it and he had given the same to Musheerabad Police Station. Ex. P1 is the said complaint and M.Os 1 and 2 are the stones. This witness was cross-examined. It is pertinent to note that the accused knows little Telugu since he is from Kerala and he worked in the house of a Muslim for 15 years, and hence he knows Urdu also and it was specifically suggested to P.W.1 that the accused never came to him and never made such a confession and some false complaint is made to the police at the instance of Narsing Rao. No doubt, this suggestion was denied. This witness also deposed that the distance from his house and the house of the accused would be two furlongs and there are huts adjoining both the sides of the hut of the deceased, and that he does not know Malayalam and he cannot read or write Malayam and when they went to the deceased's hut, it was bolted from outside but not locked and that he did not state in Ex. P1 nor he told to police that the accused had shown the stones, and P.W.1 can identify them and that it was not mentioned in Ex. P1 that the accused and Narsing Rao were left behind him when he went to give complaint in police station and that the deceased was the tenant of Narsing Rao (P.W.2).

12. The evidence of P.W.2 is also to the following effect. No doubt, he deposed that he can identify M.Os 1 and 2 and he also deposed that P.W.1 drafted the complaint and he also signed in it and Ex. P1 was given in police station. But it is

pertinent to note that at the same point of time, it is said that the extra judicial confession was made to P.Ws 1 and 2. The exact words of the extra judicial confession alleged to have been made by the accused before P.W.2 is in the following words. ' I and the deceased had altercation in the previous night and I killed him by hitting with stones, I will show you the dead body if you came with me.' On this information, it is stated by P.W.2 that they had accompanied the accused and had seen the dead body. This witness was cross-examined. No doubt, the suggestions were denied. On a careful comparison of the extra judicial confession alleged to have been made to P.Ws 1 and 2 by the accused, which had been referred to supra, there appears to be some variation in between the version of P.W.1 and the version of P.W.2. No doubt, the learned Additional Public Prosecutor would say that in substance, it is one and the same and hence, the same can be made as the basis to sustain the conviction and to sustain the findings recorded by the learned Judge.

13.(i) In *Chepuri Krishnamurthy v. State*, 1998(2) ALD (crl.) 1 (AP) the Division Bench held at paragraph 8, which reads as here under:

'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.'

(ii) In *State of Punjab v. Gurdeep Singh*, 1999(2) ALD (Cri.) 626 (SC) the Apex Court on the aspect of extra judicial confession observed as follows:

' There is no denial of the fact that extra judicial confession is admissible in evidence and the Court in appropriate cases can rely thereon to the extent of even basing conviction of the accused. In a long catena of decisions of this Court, the settled position of the present day is that the extra judicial confession by itself if, otherwise in conformity with the law, can be treated as substantive evidence, and in appropriate cases it can be used to punish an offender. This Court however, hasten to add here that this statement of law stands qualified to the extent that the Court should insist on some assuring material or circumstance to treat the same as piece of substantive evidence.'

(iii) In *State of Karnataka v. M.N. Ramdas*, 2003 SCC (Cri.) 134 at paragraph 7, the Apex Court held as follows:

'Before we proceed to the consideration of the High Court's judgment, we deem it appropriate to refer to a recent decision of this Court in *Gura Singh v. State of Rajasthan* ((2001) 2 SCC 205) wherein the evidentiary value to be attached to an extra-judicial confession has been explained thus: (SCC p.212, para 6)

'6. It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made to a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh v. State of V.P.* : 1954 CriLJ910 this Court again in *Maghar Singh v. State of Punjab* : AIR 1975 SC1320 held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In *Narayana Singh v. State of M.P.* : 1985 CriLJ1862 this

Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand v. State of H.P.* : 1990 CriLJ2289 this Court held that an unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized.'

(iv) In *Baldev Raj v. State of Haryana*, : 1990 CriLJ2643 the Apex Court observed as follows:

'An extra judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness to accept the evidence or not. When the Court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. In the instant case, the confession has been properly accepted and acted upon by the Courts below and there is no scope for any doubt regarding

the complicity of the appellant in the crime. The confession of the accused-appellant was voluntary. The testimony of witness being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. There was no infirmity in the confession which has been accepted and relied upon by the Courts below and hence has to be maintained.'

(v) In *Kishore Chand v. State of Himachal Pradesh*, : 1990 CriLJ2289 the Apex Court on this aspect held as follows:

'An unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the Court has to be satisfied that it is a voluntary one and does not appear to be result of inducement, threat or promise envisaged under S.24 or was brought about in suspicious circumstances to circumvent Ss. 25 and 26. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the Court must scrutinize all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Sometimes it may not be possible to the witness to reproduce the actual words in which the confession was made. For that reason the law insists on recording the statement by a Judicial Magistrate after administering all necessary warnings to the accused that it would be used as evidence against him. Section 26 provides that no confession made by any person while he is under custody of the police officer, unless it be made in the immediate presence of Magistrate, shall be proved as against such person. Therefore, the

confession made by an accused person to a police officer is irrelevant by operation of S.25 and it shall not be proved against him. Likewise, the confession made by accused while he is in the custody of the police shall not be proved against him unless it is made in the immediate presence of the Magistrate, by operation of S.26.'

(vi) In *State of U.P. v. M.K. Anthony*, : 1985 CriLJ493 it was observed as follows

'Extrajudicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extrajudicial confession comes from the mouth of witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may extend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence.'

(vi) In *Narayan Singh v. State of M.P.*, : 1985 CriLJ1862 it was no doubt observed by the Apex Court that

'It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak about such a confession.'

14. In the light of this legal position, the evidence of P.Ws 1 and 2 may have to be scrutinized. Apart from the evidence of P.Ws 1 and 2, the evidence of P.W.3 and P.W.4 is also available to the effect that they saw the accused and the deceased were quarrelling and nothing beyond.

15. P.W.5 deposed that he saw the dead body of Babu Rao a dealer of waste-paper and there were injuries on the dead body, on his hand, head and face and he had signed in the inquest panchanama-Ex. P2 and the panchas opined that the deceased died due to injuries. This witness also deposed that police conducted the scene of offence panchanama and M.Os. 1 and 2. M.Os 1 and 2 are the stones and M.O3 is the empty packets of the liquor. He deposed that the police had drawn rough sketch of the scene of offence, and Ex. P.3 is the scene of offence panchanama, and Ex. P.4 is the rough sketch of the scene of offence.

16. P.W.6 is the photographer and he had deposed about Exs. P-5 to P14 positive photos and negatives taken by him in respect of the scene of offence.

17. P.W.7-doctor deposed that on receipt of a requisition on 20.10.1996 from Musheerabad Police Station, he had conducted autopsy over the dead body of Babu Rao and the dead body was identified by P.C. 6220 of Police Station Musheerabad, and on examination he found the following ante mortem injuries:-

#### EXTERNAL INJURIES:

1. Lacerated wound over the left side of the face near left ear horizontally placed 5 x 1 cms.
2. Lacerated wound over the left side face over the maxilla vertically placed 4 x 1 cm.
3. Lacerated wound near the left eye 2 x 2 cms bone deep.
4. Lacerated wound over the left ear 3 x 2 cms with tuptured of the left ear.
5. Lower jaw is fractured.

#### INTERNAL INJURIES:

1. Sub-diral haemorrhages is seen.
2. Basal skull fractured 8 cms in length horizontally Placed.

He deposed that the cause of death was due to head injury. The Post-mortem examination was commenced at 1.00 p.m. and concluded at 2.00 p.m. and the approximate time of death is 12 hours prior to examination and that the above injuries can be caused by weapons like M.Os 1 and 2. Ex. P.15 is the Post-mortem examination report including the opinion. This witness in the cross-examination deposed that there was no alcoholic smell in the stomach and the vesera was not sent to Chemical analysis and the external injuries 1 to 5 can be caused by a fall from a height.

18. P.W.8-Inspector of Police, the Investigating Officer deposed that on 20.10.1996, P.W.2 came to the police station along with a complaint and P.W.1, and that P.W.1 lodged the complaint-Ex. P1. It is pertinent to note that it was suggested that at the instance of P.W.2, this case was thought of against the accused. This witness deposed that they also produced the accused, on which he registered a case in Crime No. 144 of 1996 under Section 302 and 201 IPC and issued the F.I.Rs to all the concerned. Ex. P.16 is the F.I.R. issued by him and he effected the arrest of the accused and continued investigation. This witness also deposed about the recording of the statements of the witnesses and the seizure of M.Os 1 and 2 and about the panchanama He further deposed that he conducted inquest over the dead body and sending the dead body to the medical examination and the photographs. This witness was cross-examined at length. In the cross-examination, the Investigating Officer deposed that P.Ws 1 and 2 came to the police station and P.W.1 gave the report and he proceeded to the spot along with P.W1 and accused, and P.Ws 1 and 2 brought the accused along with them and he effected the arrest of the accused and the hut was having a ' tatti door' and that the door was unlocked, and the door was closed. He deposed that Tatti door was there and also a wooden door was there as per Ex. P.10., and he had not taken blood stained earth or the control earth. This witness further deposed that he had not sent the boulders M.Os 1 and 2 or M.O3-clothes to Forensic Science Laboratory and he did not try to take finger prints from M.Os 1 and 2 as it was not possible to take from stones. This witness also specifically deposed that he did not verify whether P.Ws 1 and 2 can speak or understand or read or write Malayalam and he had examined the accused but he had not filed any report of examination of the accused. This witness also deposed that P.W.1 did not state about M.Os 1

and 2 either in Ex. P1 or in his 161 Cr.P.C. statement and he had not mentioned in Ex. P.16-FIR about the arrest of the accused and no doubt, he had denied the suggestions that this case was foisted against the accused.

19. On a careful scrutiny of the evidence available on record, the only evidence available as against the appellant-accused is the extra-judicial confessions alleged to have been made by him to P.Ws 1 and 2. The exact reproduction of what had been stated or alleged to have been stated by the accused to P.Ws 1 and 2 already had been reproduced above. It is needless to say that there is variation. Apart from this aspect of the matter, the Investigating Officer deposed that he did not verify as to whether the accused could speak or understand Telugu, likewise, the other witnesses would understand Malayalam or not . No doubt, this is a lapse on the part of the Investigating Officer. The cross-examination of P.W.1 also is clear on this aspect. The accused had been working in a Muslim family and he knows Urdu and it is doubtful whether he knows Telugu and in which language, the accused had communicated the same to P.Ws 1 and 2 and how the same was understood by them, and it is not clear from the prosecution version. Apart from this aspect of the matter, Ex. P1 refers to only 'one granite stone.' Whereas, it is the version of the prosecution that two stones i.e., M.Os 1 and 2 had been seized and the Material Objects were not sent for examination and it is not clear whether there were any blood stains or not, on the material objects though some reliance was placed on panchanama, P.W.5 also had not deposed about it. Thus, there is a discrepancy relating to the weapon used for the commission of the offence as in Ex. P1 only one granite stone was referred to and the version of the prosecution being that to M.Os 1 and 2 had been used for the purpose of commission of this offence. Apart from this aspect of the matter, P.Ws 3 and 4 deposed that there was some incident on the prior night and the same came to light on the next day morning. It is not the case of the prosecution that the hut of the deceased is far away. It is in the midst of the other huts and it is highly improbable that if anything happened in pursuance of the quarrel, the neighbours or the others definitely, would have gathered and witnessed the same. But however, it is the version of the prosecution that the accused voluntarily came to P.W.1, where P.W.2 was also present and made the extra-judicial confession, in pursuance of which they had gone to the dead body of Babu Rao and the dead body was discovered. This

version of the prosecution, especially in the light of the evidence of P.W.5, and also the discrepancy relating to M.os 1 and 2 and Ex. P1, and also in the light of the fact that the accused does not know Telugu at all and he knows Malayalam or in the alternative he knows some Urdu because he has been working in a Muslim family all these years, definitely throw some doubt on the version of the prosecution. It appears that at the instance of P.W.2, P.W.1 on grave suspicion against appellant-accused had thought of giving this Ex. P1. It is no doubt true that there may be some suspicion against a particular person. For suspicion, however, strong it can be a substitute or proof of an offence in a criminal charge. I

20. In the light of the foregoing discussion, this Court has no hesitation in arriving at a conclusion that the learned Judge had erred in relying upon the discrepant extra-judicial confessions alleged to have been made by the accused to P.Ws 1 and 2, especially, in the light of the several facts and circumstances referred to supra. Hence, the said findings cannot be confirmed by this Court and inasmuch as for the reasons referred to supra, the appellant-accused is entitled to the benefit of doubt.

21. Therefore, an acquittal is recorded of all the charges with which he had been charged and the Criminal Appeal is accordingly allowed setting aside the conviction and sentence imposed against the accused by the learned Metropolitan Sessions Judge, Hyderabad, on 25.03.1998.

23. The bail bonds of the appellant-accused shall stand cancelled.

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