

STATE OF ANDHRA PRADESH

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v.

KANDA GOPALUDU

SEPTEMBER 27, 2005

[H.K. SEMA AND P.P. NAOLEKAR, JJ.]

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Penal Code, 1860—Section 302—Conviction by Trial Court on basis of extra-judicial confession allegedly made by accused before PWs. 1 to 3 as also the evidence of the IO and the doctor—But acquittal by High Court—On appeal, Held: Reasoning of High Court that the accused made confession before strangers is contrary to the evidence, hence perverse—Testimony of Pws.1, 2 and 3 found consistent—Evidence of the IO well corroborated in material particulars by the evidence of the Doctor—Plea of the accused that deceased committed suicide completely belied by medical evidence, hence can be taken as an additional link in the chain of circumstances against the accused—Additional incriminating material in form of seizure of shirt stained with blood—Trial Court rightly ordered conviction.

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Evidence Act, 1872:

Extra-judicial confession—Admissibility of—Held, is admissible if it inspired confidence and was made voluntarily.

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Examination of witness—Delay in—Effect of—Held: Prosecution witness being examined almost four years after the incident, could not be expected to depose with mathematical precision—Human memories are apt to blur with passage of time.

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The Trial Court convicted Respondent under Section 302 IPC based upon the extra-judicial confession allegedly made by him before PWs. 1, 2 and 3. The Trial Court also relied upon the evidence of PW9, the Investigating Officer corroborated by the evidence of PW5, the Doctor. The High Court however recorded acquittal on the ground that PW.1 and PW. 2 were strangers and there was no reason for the respondent to make the extra-judicial confession before PWs-1, 2 and 3. The High Court held the statements of PWs.1 and 2 to be full of contradiction and artificial, though it did not assign any reason with regard thereto. Hence the present appeal by the State.

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A Allowing the appeal, the Court

HELD: 1.1. Extra-judicial confession is admissible if it inspired confidence and made voluntarily. The High Court's reasoning that the accused has made a confession statement before a stranger is totally perverse. The evidence on record shows that PW1 is Sarpanch of the village while PW.2

B and PW.3 are ward members of the village gram panchayat. [646-A-B]

1.2. PW.1, 2 and 3 were subjected to lengthy cross-examination. Not even a suggestion was put to the witnesses that the confession was tainted and non-voluntary or that it was obtained by coercion, inducement or promise of favour. [646-D]

C *Gura Singh v. State of Rajasthan*, [2001] 2 SCC 205, referred to.

1.3. The testimony of Pws.1, 2 and 3 are consistent. Though the respondent pointed out that in the evidence of PWs 1 and 2 there is contradiction that the accused did not state before them that he came seeking protection from them, but this discrepancy cannot be termed as a contradiction which would be fatal to the prosecution case. Every discrepancy in the statement of witness cannot be treated as fatal to prosecution case. The discrepancy which is not fatal to the prosecution does not create any infirmity. PW.2 was examined almost four years after the incident. Human memories are apt to blur with the passage of time. After lapse of almost four years, it cannot be expected that a witness can depose with mathematical precision.

E [649-C-D]

2. The dead body of the deceased was found floating in the well waters. The statement of the Investigating Officer about the injuries found on the body of the deceased at the time of preparing the inquest report Ex.P.5 is found well corroborated in material particular by the evidence of the Doctor, PW.5. The Doctor opined that the deceased had apparently died of asphyxia due to throttling with the duration of about 18 to 20 hours prior to the post-mortem examination. [649-E-F; 648-G]

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3. Apart from the unimpeached evidence against the accused, there is yet another strong incriminating material apparent against the accused. In his statement under 313 Cr.P.C. the accused while denying the commission of any offence took the plea that the deceased has committed suicide. His specific plea that the deceased committed suicide as she had no issue is completely belied by the medical evidence of Doctor, PW.5 who categorically ruled out the suicidal death. The accused has taken a false plea and this plea

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can be taken as an additional link in the chain of circumstances. Another incriminating material against the accused is the seizure of shirt stained with human blood. [649-E; 650-F] A

Swapan Patra and Ors. v. State of W.B., [1999] 9 SCC 242 and *State of Maharashtra v. Suresh*, [2000] 1 SCC 471, referred to. B

4. In the premises afore-stated, the High Court has committed a grave error in law as well as in facts in recording the acquittal. The order of the Trial Court recording the conviction of the accused is restored. [650-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1018 of 1998. C

From the Judgment and Order dated 8.8.96 of the Andhra Pradesh High Court in CrI. A. No. 363 of 1996.

Mrs. D. Bharathi Reddy for the Appellant. D

Ms. Sushma Manchanda for the Respondent.

The Judgment of the Court was delivered by

SEMA, J. The respondent was convicted by the trial court under Section 302 IPC. The trial court relying upon the extrajudicial confession made before PW.1, PW.2 and PW.3 found the respondent guilty. The trial court also relied upon the evidence of PW.9, the Investigating Officer corroborated by the evidence of PW.5, Doctor. On appeal being preferred by the accused, the High Court acquitted the accused respondent herein. E

This appeal is preferred by the State by special leave. F

The High Court recorded the acquittal on the ground that PW.1 and PW.2 before whom the accused made extra-judicial confession are strangers and there is no reason for the respondent to make the extra-judicial confession before PW.1, PW.2 and PW.3. The High Court also found that the statements of PWs. 1 and 2 were full of contradiction and artificial. On this ground the accused was acquitted, however, the High Court has not assigned any reason with regard to the alleged contradiction between the statements of PW.1 and PW.2 and the acquittal is not supported at all. It is now well established principle of law that the judicial decision is based on reasons. We have been taken through the evidence of PW.1, 2 and 3 before whom the accused made H

A extra-judicial confession. It is now established principle of law that extra-judicial confession is admissible if it inspired confidence and made voluntarily. The High Court reasoning that the accused has made a confession statement before a stranger is totally perverse. The evidence on record shows that PW.1 is the Sarpanch of the village, PW.2 and PW.3 are also ward members of the village gram panchayat.

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C It is the case of the prosecution that the accused had come to the house of PW.1 where PWs.2 and 3 were sitting together and chatting and he had made extra-judicial confession before them voluntarily. It is also the evidence on record that PWs.1 and 2 went to the Police Station and lodged an FIR while PW.3 was with the accused in the house of PW.1. It is also in the evidence on record that PW.9 arrested the accused from the house of PW.1.

D PWs.1, 2 and 3 were subjected to lengthy cross-examination. Not even a suggestion was put to the witnesses that the confession was tainted and non-voluntary or that it was obtained by coercion, inducement or promise of favour. In the case of *Gura Singh v. State of Rajasthan*, [2001] 2 SCC 205, this Court held in paragraph 6 at SCC p. 212 as under:

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H “It is settled position of law that extrajudicial 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 extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before 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 Vindhya Pradesh*, AIR (1954) SC 322 this Court again in *Maghar Singh v. State of Punjab*, [1975] 4 SCC 234 held that the evidence in the form of extrajudicial 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 *Narayan Singh v. State of M.P.*, [1985] 4 SCC 26 this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extrajudicial 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 extrajudicial confession which is a usual phenomenon in criminal cases would be itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand v. State of H.P.*, [1991] 1 SCC 286 this Court held that an unambiguous extrajudicial 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. To the same effect is the judgment in *Baldev Raj v. State of Haryana*, [1991] Supp 1 SCC 14. After referring to the judgment in *Piara Singh v. State of Punjab*, [1977] 4 SCC 452 this Court in *Madan Gopal Kakkad v. Naval Dubey*, [1992] 3 SCC 204 held that the extrajudicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.”

PW.9, who is the Investigating Officer deposed that he received an information at about 8.30 a.m. on 25.1.1992 and rushed to Hukumpeta PS and reached there at about 9.30 a.m. and there he received a copy of the FIR from PW.8 and took up the investigation. In the course of the Investigation he arrested the accused from the house of PW.1 and interrogated him in the presence of Administrators PW.1 and 2. He also found blood stains on the shirt of the accused which the accused was wearing and seized them under the cover of Ex.P.2 marked as M.O.5. He was also led by the accused in the presence of PWs.1 and 2 to the scene of occurrence. From the place of occurrence in the presence of PWs.1 and 2 he made a seizure under the cover Ex.p.3 and seized M.O.1 and 2 and prepared a sketch map. From the place of occurrence the accused led the Investigating Officer and others where the dead body of the deceased was found. The dead body was found floating in the well waters. The dead body was identified by PW.6 who is the father of the deceased. The Investigating Officer also stated that the depth of the

A water was only two and a half feet. The inquest report is Ex.P.5. The Investigating officer found injuries on the tip of the nose of the deceased, right nostril, nail marks on the neck and throat of the deceased. He also found abrasions on the right and left knees and bitten marks on both the cheeks of the deceased. The statement of Investigating Officer about the injuries found on the body of the deceased at the time of preparing the inquest report Ex.P.5 is found well corroborated in material particular by the evidence of Doctor, PW.5. The Doctor, PW.5 found the following injuries:

1. A lacerated injury over the tip of the nose, both medial ends of the nose shows lacerations measuring about 1" x 1/4" x cartilage deep;
2. An abrasion present over the both elbows on the posterior aspect measuring about 3/4" x 1/4" size;
3. An abrasion present on both sides of the neck about 4 on the left side and 6 on the right side measuring about 1/2"x 1/4" in size; reddish in colour;
4. An abrasion present over the right knee about 1/5" in diameter, reddish brown in colour;
5. A scar mark present in the from of "X+" shaped over the upper 1/3rd of the lateral aspect of the thigh.

On internal examination Doctor found, the following :- On opening the thorax both lungs were reddish brown in colour, cut section showed congested. On squeezing nothing particular, HEART ; Normal size and shape, reddish in colour. Cut Section shows blood clots in the right chamber. LIVER; Dark reddish brown in colour. Normal in size and shape. Cut section nothing particular. Gall bladder full. Spleen : Reddish violet in colour normal in size. Cut Section shows congestion. KIDNEYS ; Both kidneys reddish in colour. Cut Section shows congestion. Intestines : Pale reddish in colour. Stomach : Pale reddish in colour, contains semi-digested food material about 4 ounces. Whitish in colour. Bladder : Empty. UTERUS : Normal in size and shape. Cut Section nothing particular."

The Doctor opined that the deceased appears to have been died of asphyxia due to throttling with the duration of about 18 to 20 hours prior to the post-mortem examination.

The Doctor, PW.5 in cross-examination denied the suggestion that the

death is suicidal. The Doctor categorically ruled out the suicidal death. He stated that in case of drowning by asphyxia on squeezing of lungs there will be frothy blood stained fluid oozing on cut section. In case of death on account of asphyxia by drowning there will be frothy blood stained fluid both from the nose and mouth. There will not be any swelling of the neck in cases of death by drowning on account of asphyxia. The Doctor has denied a suggestion that the fracture of hyoid bone also will occur by a sudden fall on the edge of the stones. A B

We have been taken through the evidence of PWs.1, 2 and 3 before whom extra-judicial confession has been made by the accused. The testimony of Pws.1, 2 and 3 are consistent. The learned counsel for the respondent pointed out that in the evidence of PWs.1 and 2 there is contradiction that the accused did not state before them that he came seeking protection from them. In our view, this discrepancy cannot be termed as a contradiction which would be fatal to the prosecution case. Every discrepancy in the statement of witness cannot be treated as fatal to prosecution case. The discrepancy which is not fatal to the prosecution does not create any infirmity. The incident was taken place on 24.1.1992 and PW.2 was examined on 22.1.1996 after almost four years. Human memories are apt to blur with the passage of time. After lapse of almost four years, it cannot be expected that a witness can depose with mathematical precision. C D E

Apart from the unimpeached evidence against the accused there is yet another strong incriminating material apparent against the accused. In his statement under 313 the accused while denying the commission of any offence took the plea that the deceased has committed suicide. His specific plea was that the deceased committed suicide as she had no issue. This plea is completely belied by the medical evidence of Doctor, PW.5. We have no hesitation to hold that he has taken a false plea and this plea can be taken as an additional link in the chain of circumstances. F

In the case of *Swapan Patra and Ors. v. State of W.B.*, [1999] 9 SCC 242 this Court held in paragraph 4 at SCC p. 243 as under:-

“It is well settled that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain. Applying the aforesaid principle, we have no hesitation to hold that the circumstances established in the case complete the chain of circumstances to prove the charge of H

A murder against the appellant Swapan Patra and, therefore, the conviction of appellant Swapan Patra has to be upheld under Section 302 IPC. So far as the other two appellants are concerned, as stated earlier, in the absence of any positive evidence even about their presence in the house at the relevant point of time, it is difficult to rope them in even if all other circumstances narrated earlier are established and, therefore, they are entitled to an order of acquittal.”

B “In the case of *State of Maharashtra v. Suresh*, [2000] 1 SCC 471, the same was reiterated in paragraph 27 at SCC p. 480 as under:-

C “It is regrettable that the Division Bench had practically nullified the most formidable incriminating circumstance against the accused spoken to by PW 22 Dr. Nand Kumar. We have pointed out earlier the injuries which the doctor had noted on the person of the accused when he was examined on 25.12.1995. The significant impact of the said incriminating circumstance is that the accused could not give any explanation whatsoever for those injuries and therefore he had chosen to say that he did not sustain any such injury at all. We have no reason to disbelieve the testimony of PW 22 Dr. Nand Kumar. A false answer offered by the accused when his attention was drawn to the aforesaid circumstance renders that circumstance capable of inculpating him. In a situation like this such a false answer can also be counted as providing “a missing link” for completing the chain.”

D Another incriminating material against the accused is the seizure of shirt stained with blood. The shirt was sent for FSL. The FSL report was marked as EX.P.15. The report shows that Item No.1 which is the shirt seized from the accused stained with human blood.

E In the premises afore-stated, the High Court has committed a grave error in law as well as in facts in recording the acquittal. The High Court order of acquittal is hereby set aside. The order of the trial court recording the conviction of the accused is restored. The accused, Kanda Gopaludu is on bail, his bail bond and surety stand cancelled. He is directed to be taken into custody forthwith. Compliance within one month.

F The appeal is allowed.