

STATE OF ANDHRA PRADESH

v.

S. SWARNALATHA & ORS.

(Criminal Appeal Nos. 315-316 of 2002)

AUGUST 4, 2009

[S.B. SINHA AND R.M. LODHA, JJ.]

*PENAL CODE, 1860:*

*s. 302 – Murder – A couple found murdered in their house – Their daughter-in-law, her uncle and 4 others prosecuted on charges u/ss 120-B, 392, 302 and 201 – Prosecution based on circumstantial evidence – Trial court acquitting accused of charges u/s 392, 201 and 120-B – Conviction u/s 302 – Acquittal by High Court -- HELD: There are discrepancies in evidence of prosecution witnesses – Extra-judicial confession becomes doubtful – There is no explanation for delay in recording statements of witnesses by police and holding test identification parade – There is no motive for the crime – Besides, the view of the High Court in recording the acquittal is plausible one – Supreme Court would not interfere with a judgment of acquittal in exercise of its jurisdiction under Article 136 of the Constitution – Code of Criminal Procedure, 1973 – ss. 161 and 164 – Evidence – Extra-judicial confession – Test identification parade – Criminal Law – Absence of motive for crime – Constitution of India, 1951 – Article 136.*

**The parents of PW-1 were found murdered in their house on 3.12.1997. PW- 1 lodged a complaint with the police stating that five persons came to his house, killed his parents ransacked the house, tied his wife, took away some gold ornaments belonging to his mother and his wife (accused no. 1) and ran away. His wife stated to have untied herself when she regained consciousness and**

A called her neighbour. She later made confession on 4.1.1998 to the son-in-law of the deceased (PW-6), who handed her over to police. She was stated to have confessed to PW-6 that she told her uncle (A-2) that she was being harassed by her in-laws and on her information the accused came to the house. Since there was no eye witness, the trial court relying upon the circumstantial evidence acquitted the accused of the charges u/ss 392, 201 and 120-B IPC, but convicted and sentenced them u/s 302 IPC. On appeal by the accused, the High Court acquitted all of them of the charge of s.302 IPC also. Aggrieved, the State filed the appeals.

Dismissing the appeals, the Court

HELD: 1.1. An extra-judicial confession is a weak piece of evidence, although in given situations reliance thereupon can be placed. In the instant case, there is no reason as to why the extra-judicial confession should be made by A-1 before PW-6, the son-in-law of the deceased, particularly, when PW6 has admitted that the family of the deceased was not in cordial terms with him. PW6 admitted that prior to the making of confession to him, A-1 never talked to him. In the circumstances, the extra-judicial confession purported to have been made by A-1 to PW6 becomes doubtful. The records of the case also do not disclose any confession to have been made by A-1 before PW6. Name of PW6 did not occur in the case diary. Furthermore, PW6 allegedly took A-1 to the police station. The remand report shows that she was remanded to judicial custody. When she was taken to police custody is not known. Besides, the extra-judicial confessions stated to have been made by her have been retracted. The alleged confessional statements made by A-2 to A-6 were treated as circumstances No.5, 8, 9, 10 and 12. PW3 admits that A-2 to A-6 were taken to the travel agency on 14.12.1997. Why they were arrested on 4-5

January, 1998 has not been explained. [Para 9 and 10] A  
[297-F-H; 298-A-C]

*State of U.P. v. M.K. Anthony* (1985) SCC 505 and *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254, referred to.

1.2. There are discrepancies in the statement of PW-3, the taxi driver who is said to have taken A-2 to A-6 on his taxi to the house of occurrence. PW3 in his statement u/s 164 Cr.P.C. mentioned the names of A-2 and A-3 only as the persons who had gone to hire the taxi. However, in his deposition before the court, he named all the accused having engaged the taxi. The statements of PW3 and PW6 were recorded only on 31.1.1998. The Investigating Officer did not assign any reason as to why so much delay was caused in recording their statements. A panchnama in regard to the scene of offence was conducted. PW6 was admittedly not present at that time. The statements of PW3 and PW6 were recorded u/s 164 Cr.P.C. much before recording their statements u/s 161. Further, PW-3 and PW-6 are not trust worthy witnesses. [Para 7, 13 and 15] [297-B; 298-G-H; 299-A-G] B  
C  
D  
E

*Ganesh Bhavan Patel & Anr. v. State of Maharashtra* (1978) 4 SCC 371, referred to.

1.3. The purported test identification parade, as regards A-2 to A-4, wherein PW3 is alleged to have participated, was conducted on 31.1.1998. No explanation has been offered as to why it could not be held earlier as all the accused were in custody. [Para 8] [297-D] F

1.4. The prosecution did not assign any motive for commission of the offence. [Para 14] [299-D] G

2. The High Court has recorded a well reasoned judgment of acquittal. The view taken by the High Court is a plausible one. It is now well settled that if two views are possible, this Court would not interfere with a H

**A judgment of acquittal in exercise of its jurisdiction under Article 136 of the Constitution. [Para 15] [300-B-C]**

*State of Punjab vs. Sohan Singh* (2009) 8 SCALE 260, relied on.

**B Case Law Reference:**

(1985) SCC 505 referred to para 8

(2006) 12 SCC 254 referred to para 8

**C (1978) 4 SCC 371 referred to para 13**

(2009) 8 SCALE 260 relied on para 15

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 315-316 of 2002.

**D** From the Judgment and Order dated 02.08.2001 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal Nos. 461 and 464 of 2001.

**E** Manoj Saxena, Rahul Shukla and T.V. George, for the Appellants.

D. Ramkrishna Reddy and T. Anamika, for the Respondents.

**F** The Judgment of the Court was delivered by

**G S.B. SINHA, J.** 1. The State of Andhra Pradesh is before us aggrieved by and dissatisfied with a judgment and order dated 2.8.2001 whereby and whereunder a judgment of acquittal was recorded upon setting aside a judgment of conviction and sentence dated 19.3.2001 passed by the Metropolitan Sessions Judge, Hyderabad in Sessions Case No.331 of 1998.

**H** 2. Respondents herein were accused of entering into a conspiracy with each other to commit murder of one Bal Reddy

and his wife Kalavathi. They were in-laws of the accused No.1. Murder of Bal Reddy and his wife Kalavathi were committed at about 2.30 pm on 3.12.1997. Allegedly accused No.1 (the daughter-in-law of the deceased), with a view to cause disappearance of the evidence also give a false information with an intention to save the offenders from legal punishment.

Indisputably, there is no eye-witness to the occurrence. The entire prosecution case is based on circumstantial evidence. In proving its case against the respondents, the prosecution mainly relied upon the evidence of PW3 (the driver of a taxi) and PW6 (son-in-law of the deceased).

The First Information Report was lodged by one G. Damodar Reddy (son of the deceased and husband of the accused No.1). According to him, on the aforementioned day and time, five persons had come to his house. They sat with his father in the drawing room for about half an hour. Later they wanted to have tea whereupon his father asked his wife to get five cups of tea. Tea was prepared by the accused No. 1. After taking tea, they allegedly brought his father to the TV room and pressed the mouth of both of his parents. Some of them tied the legs and hands as well as neck of his parents with clothes as a result whereof they died. They asked his wife to hand over to them the keys of the almirah kept in the said room and on receipt thereof they ransacked the same. They thereafter came to his room and with the key offered by his wife, another almirah was opened and ransacked. The accused took away gold, Pustela thadu and Kammalu from his wife. They also took gold Pustela Thadu from the neck of his mother. While going out, they tied the hands, legs and mouth of his wife also. They had cut the telephone wire and bolted the TV room door and drawing room door from outside. His wife lost her consciousness. At about 5.00 pm, she regained consciousness and untied herself. She called the tenant of a portion of the house Tulasi by name through the window whereafter the latter informed him about the incident on phone whereupon he rushed

A back to his house. According to his wife, the culprits were aged between 25 to 32 years.

B 3. On the basis of said statements, a first information report was recorded. Allegedly on or about 4.1.1998, the accused No.1 made a confession before G. Sukender (PW6) when he allegedly had gone to the house of the deceased in absence of Damodar Reddy. She is said to have told him that as she was being harassed by her parents-in-law, she had complained thereabout to her uncle, the accused No.2. She also informed C that her uncle had asked her as to whether her parents-in-law were to be killed to which proposal she agreed and promised to inform them the date on which they can be killed.

In terms of the said conspiracy, as information was sent to the accused No.2 by the accused No.1.

D PW6 was also told that accused No.2 had asked for some money to which she stated that she would give gold ornaments to them. Pursuant thereto five persons came in a car at about 2.30 pm on 3.12.1997. They were served with tea and with the help of telephone wire, all the accused strangulated Bal Reddy E and Kalavathi as also by putting pillow and a blanket over the face. 50 tolas of gold was given to them. She had also given her gold Pusthalatadu to accused No.2 on being asked. During the course of the incident, they tied her also with a saree.

F 4. PW6 thereafter took accused No.1 to CCS, Hyderabad and handed her over to the Inspector of Police (PW14). She was interrogated whereupon she led the police to a village commonly known as Arutla. Her confessional statement was recorded in the presence of PW6, PW8 and PW10. She had G offered to show two houses of Accused No.2 and others; pursuant whereto the houses of Accused Nos.2 to 6 were raided. They were arrested and were interrogated. Allegedly pursuant to their disclosure, seizures of some stolen goods were effected.

H

STATE OF ANDHRA PRADESH v. S. SWARNALATHA 295  
& ORS. [S.B. SINHA, J.]

A test identification parade was conducted in respect of the accused Nos.2 to 4. A

5. Javeed Hussain (PW3) is a taxi driver. The taxi belonged to one M/s Bhavani Travels, Dilsukhnagar. According to him, five persons had engaged his taxi for going to 'Yadagirigutta'. They asked him to go to Balkampet first with a view to pick up one person. He took his taxi to a house situated near a temple. They entered the said house at about 2.15 pm asking him to wait for them at that place. After about half an hour one of the said five persons came and offered him a cup of tea. He identified him to be the accused No.4. After half an hour all of them came out of the house and asked him to drop them at Ring Road, Dilsukhnagar, stating that they decided to drop the idea of going to Yadagirigutta. For hiring the said taxi, a sum of Rs.500/- was given to him and as they did not go to their destination, they were entitled to some refund. The taxi was said to have been booked by one Rajasekhar Reddy. He was neither arrested nor examined by the Investigating officer. B  
C  
D

6. The learned Trial Judge held the respondents guilty of commission of the offences wherewith they were charged on the basis of the following purported circumstantial evidence: E

- "(1) Both the deceased died homicidal death.
- (2) The two deceased, A-1 and Damodar Reddy were residing in the same house. F
- (3) A-2 to A-6 engaged the taxi of PW3.
- (4) PW3, who took A-2 to A-6, saw the accused entering into the house and he waited for half an hour. G
- (5) After committing the offence, the gold ornaments from the house were found missing.
- (6) A-2 to A-6 engaged the taxi to go to Yadagirigutta H

A but they got down from the taxi at the Ring Road, Dilsukhnagar.

(7) Extra judicial confession made by A-1 before PW6 and PW6 produced a-1 before PW14.

B (8) In pursuance of the confessional statement, A-1 took the police and panch witnesses to the houses of A-2 to A-6.

C (9) A-2 to A-6 alleged to have discovered the gold ornaments from the possession of A-2 to A-6.

(10) The accused did not claim the gold ornaments.

(11) A-2 to A-4 alleged to have identified by PW3 in the test identification parade.

D (12) A-4 alleged to have pledged M.O.14 with the State Bank of Hyderabad.

(13) The conduct of A-1 immediately after the incident.”

E 7. Circumstance No.1 is admitted. As regards circumstance No.2, however, there is no evidence that accused No.1 was present in her house at the relevant time. Circumstances Nos.3 to 6 are said to have been proved by PW3.

F One Rajasekhar Reddy, as noticed heretofore, engaged the taxi from Jaya Durga Bhawani Travels. The Investigating Officer did not examine him. He also did not visit the office of the said travel agent.

G In his statement under Section 161 of the Code of Criminal Procedure PW3 had stated that three persons had gone to Durga Bhawani Travels to engage a taxi but in his deposition before the Court, he stated that all the six persons had met the owner thereof. He although did not know the names of accused

H

STATE OF ANDHRA PRADESH v. S. SWARNALATHA 297  
& ORS. [S.B. SINHA, J.]

Nos.2 to 6, according to him one Rami Reddy, Prabhakar Reddy and Ayub came to hire the taxi. No attempt was made by the Investigating Officer also to examine one 'Murthy' who is said to be the proprietor of Durga Bhavani Travel Agency. A

PW3 in his statement under Section 164 mentioned the names of Accused Nos.2 and 3 only as the persons who had gone to hire the taxi. However, in his deposition before the court, he took the name of all the accused having engaged the taxi. B

PW3 was not taken by the investigating officer to the house in question. He, therefore, did not identify the house where the offence has taken place. C

8. The purported test identification parade, wherein PW3 is alleged to have participated insofar as the accused Nos. 2 to 4, was conducted on 31.1.1998. No explanation has been offered as to why it could not be held earlier as all the accused were in custody. D

9. So far as the extra judicial confessions purported to have been made by the accused are concerned, we may notice that accused No.1 has retracted therefrom. E

We do not find any reason as to why such extra judicial confession should be made before the son-in-law of the deceased, particularly when PW6 has admitted in no uncertain terms that the family of the deceased was not in cordial terms with him. PW6 admitted that prior to the making of confession to him, accused No.1 never talked to him. Why she, instead of her husband, would confide in PW 6, is beyond all comprehension. In the aforementioned situation, the extra judicial confession purported to have been made by the accused Nos. 1 to PW6 becomes doubtful. Extra-judicial confession as is well known is a weak piece of evidence, although in given situations reliance thereupon can be placed. G  
[See *State of U.P. v. M.K. Anthony* (1985) SCC 505 and *State* H

A *of Rajasthan v. Kashi Ram* [(2006) 12 SCC 254]

B 10. Furthermore, PW6 allegedly took A1 to the police station. The remand report shows that the accused No.1 was remanded to judicial custody. When she was taken to police custody is not known. The records of the case also do not disclose that any confession was made by accused No.1 before PW6. According to the Investigating Officer, accused No.1 is said to have made confession before her husband. Name of PW6 did not occur in the case diary.

C Alleged confessional statements made by Accused Nos.2 to 6 were treated as circumstances No.5, 8, 9, 10 and 12. PW3 admits that Accused Nos. 2 to 6 were brought to Durga Bhavani Travels on 14.12.1997. Why they were arrested on 4-5, January, 1998 has not been explained.

D 11. We may also place on record that the learned Trial Judge has acquitted the respondents from the charge of Section 392 of the Indian Penal Code.

E 12. Some gold ornaments are said to have been pledged with the State Bank of Hyderabad by Accused No.4. It has been brought on record that in the application for grant of loan, he is said to have signed in Telugu although ordinarily he signs in English. His signature was also not found on the loan register. Accused No.4 was said to have been introduced by one F Dasarath whose account number was not mentioned in any document of the Bank. Accused No.4 was in police custody from 14.12.1997. It is, therefore, difficult to believe that he had applied for loan on 22.12.1997.

G 13. It stands accepted that the statements of PW3 and PW6 were recorded only on 31.1.1998. The Investigating Officer did not assign any reason as to why so much delay was caused in recording their statements. A panchnama in regard to the scene of offence was conducted. PW6 was admittedly not present at that time. The statements of PW3 and PW6 were H

STATE OF ANDHRA PRADESH v. S. SWARNALATHA 299  
& ORS. [S.B. SINHA, J.]

recorded under Section 164 of the Code of Criminal Procedure much before their recording of their statements under section 161 thereof. A

In *Ganesh Bhavan Patel & Anr. v. State of Maharashtra* [(1978) 4 SCC 371], this Court held : B

"All the infirmities and flaws pointed out by the trial Court assumed importance, when considered in the light of the all-pervading circumstance that there was inordinate delay in recording Ravji's statement (on the basis of which the "F.I.R." was registered) and further delay in recording the statements of Welji, Pramila and Kuvarbai. This circumstance, looming large in the background, inevitably leads to the conclusion, that the prosecution story was conceived and constructed after a good deal of deliberation and delay in a shady setting, highly redolent of doubt and suspicion." C D

14. The prosecution furthermore did not assign any motive for commission of the offence. According to PW1, the accused No.1 wanted to live separately to which the deceased did not agree. However, in his deposition before the Court, PW6 stated that she had been subjected to harassment by the deceased. E

15. The trial Court itself has acquitted all the accused from the charges under Section 120B, 392 and 201 of the Indian Penal Code, but so far as the charge of murder is concerned, it was held that the prosecution case must be held to have been proved by PW3 and PW6. F

We are of the opinion that the said findings are not correct.

We have found hereinbefore that PW3 and PW6 are not trustworthy, and, thus, the impugned judgment cannot be interfered with. G

There is another aspect of the matter which also cannot be lost sight of. The High Court has recorded a judgment of H

A acquittal. The judgment of the High Court is a well reasoned one. The view taken by the High Court is a plausible one. It is now well known that if two views are possible, this Court would not interfere with a judgment of acquittal in exercise of its jurisdiction under Article 136 of the Constitution of India.

B In *State of Punjab vs. Sohan Singh* [(2009) 8 SCALE 260], this Court held:

C "The view taken by the High Court, therefore, in our opinion, was a plausible view. It is now well settled that if two views are possible, this court, ordinarily, in exercise of its jurisdiction under Article 136 of the Constitution of India, would not interfere with the judgment of the High Court. { See *John K. John v. Tom Varghese*, [ (2007) 12 SCC 714] and *State of Punjab v. Gurnam Kaur and others*, [2009 (4) SCALE 343 ] }."

D 16. The appeals are, therefore, dismissed.

R.P

Appeals dismissed.