

A

STATE OF KARNATAKA

v.

P. RAVIKUMAR @ RAVI ETC.

(Criminal Appeal Nos. 1428-1429 of 2013)

B

AUGUST 16, 2018

[R. BANUMATHI AND VINEET SARAN, JJ.]

Appeal: State's appeal against acquittal – Prosecution case was that accused no.3, the wife of the victim-deceased had illicit relation with accused no.1 and on account of this accused no.1 and accused no.3 along with accused no.2 hatched a conspiracy and eliminated the victim-deceased – Trial court convicted all the accused persons under s.302 r/w s.34 and 120B IPC by relying on the extra judicial confessions – High Court maintained the conviction of accused no.1, however, acquitted accused no.2 and 3 on the ground that the evidence of the prosecution witnesses in particular PW-2 , PW-20 and PW-4 did not establish the guilt of A-2 and A-3 beyond reasonable doubt – State's appeal against acquittal of A-2 and A-3 – Held: Extra judicial confession is a weak piece of evidence, which cannot form basis for conviction unless supported by other substantive evidence, which is lacking in this case – Insofar as accused no.3 is concerned, prosecution relied upon photographs recovered on the disclosure statement of A-3 and also examined PW-12 (photographer) who stated that A-1 and A-3 came to his studio and took joint photographs – The said photographs at the most may only show that A-1 and A-3 had illicit relationship – No evidence was adduced to prove that A-3 had hatched conspiracy with A-2 to commit the murder of the deceased – There was no 'compelling reason' or 'substantial infirmity' warranting interference with the order of acquittal of A-2 and A-3 – Appeals dismissed – Penal Code, 1860 – s.302 r/w s.34 and 120B – Evidence – Extra judicial confession.

G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1428-1429 of 2013.

From the Judgment and Order dated 22.01.2009 of the High Court of Karnataka at Bangalore in Criminal Appeal Nos. 1432 of 2005 and 1549 of 2005.

H

Joseph Aristotle, Ms. Prya Aristotle, Ms. Anitha Shenoy, Dr. Sushil Balwada, Advs. for the appearing parties. A

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Challenging the acquittal of respondent nos. 1 and 2 (accused 2 & 3) respectively for the offence under Section 302, IPC the State of Karnataka has preferred these appeals. B

2. Case of the prosecution is that respondent no. 2 (A-3) D.B. Savitha - wife of the deceased - Mohan Kumar was allegedly having illicit relationship with accused no. 1. On account of such motive, Accused No. 1 and respondent nos. 1 and 2 herein (Accused Nos. 2 & 3) are alleged to have hatched a conspiracy in committing the murder of deceased Mohan Kumar- husband of A-3 (D.B. Savitha) on the ground that he used to harass her on the illicit relationship of A-1 and A-3. On 07.07.2003, the deceased Mohan Kumar left the house in the morning for his fertilizer shop and did not return back. At about 9.30 p.m., the mother of the deceased came to know through PW-6 (Basavaraju) that the body of her son is lying on the side of the road and that he had allegedly fallen from the bike. The deceased was taken to the hospital where he declared dead. The law was set in motion and all the three accused were held under Section 302 IPC read with 120(B),IPC. C D

3. The trial court convicted all the accused under section 302 IPC read with 34 IPC and 120(B),IPC. On appeal, the High Court maintained the conviction of accused no. 1 and acquitted respondent nos. 1 & 2 (Accused nos. 2 and 3). E

4. we have heard Mr. Joseph Aristotle, learned counsel appearing for the state of Karnataka. F

5. Though the respondents have entered appearance through counsel but at the time of hearing the matter none appears on behalf of the respondents. We have carefully perused the impugned judgment, evidence and materials on record.

6. Insofar as respondent no. 1 (accused No. 2) - P. Ravi Kumar @ Ravi is concerned, the prosecution relies upon the extra judicial confession made to PW-2 (Auto Driver) who is stated to be the friend of accused nos. 1 and 2. PW-2 has stated that about 20 days prior to the date of incident, when he was sitting in the auto, A-1 was with him and that accused no. 1 asked him to chase the deceased who was going on H

A his motorcycle. PW-2 further stated that about 20 days later accused nos. 1 and 2 approached him and said to have made extra judicial confession that they had committed the murder of deceased Mohan Kumar to whom on earlier occasion they chased. Though PW-2 in his chief examination stuck to his version, when he was cross examined, he resiled from his earlier version and consequently PW-2 was treated
B hostile. When PW-2 resiled from his earlier statement, his statement recorded by PW-22 (Judicial Magistrate) under Section 164 CrI.PC may not be of any relevance; nor can it be considered as substantive evidence to base the conviction.

C 7. So far as the evidence of PW-3 is concerned, it is only confined to the extra judicial confession made by the first accused.

8. Yet another piece of evidence relied upon by the prosecution is that the evidence of PW-4 who is stated to be the friend of A-2.

D 9. Case of the prosecution is that on the night of occurrence A-1 and A-2 went to the residence of PW-4 (M.G. Rajashekher @ Raju) and A-2 clothes were blood stained and A-1 wearing sweater. Both A-1 and A-2 said to have made extra judicial confession to PW-4. But when PW-4 was examined in the court, PW-4 stated that accused nos. 1 and 2 came to his residence on the night of 07.07.2003 and cloth of accused no. 2 was blood stained. PW-4 further stated that when he
E questioned accused No. 1, he stated that they were travelling in an auto towards Karthikere, it toppled and in that process they sustained injuries. The above said evidence of PW-4 explaining the blood stains on the cloth of accused no. 2 due to toppling of auto does not advance case of the prosecution that A-1 conspired with A-2 who committed the murder
F of deceased Mohan Kumar. In any event extra judicial confession is a weak piece of evidence, which cannot form basis for conviction and unless supported by other substantive evidence, which is lacking in this case.

G 10. Insofar as accused no. 3 is concerned, prosecution relies upon exhibit P-8 and P-9. Photographs were recovered on the disclosure statement of accused no. 3. In this regard, prosecution has examined PW-12 (photographer) who has stated that accused nos. 1 and 3 came to his studio and took joint photographs (Exhibit P-8 & P-9). The said photographs at the most may only show that A-1 and A-3 has illicit relationship. There is no evidence adduced to prove that A-3 had hatched
H conspiracy with A-2 to commit the murder of Mohan Kumar.

11. Upon appreciation of the evidence adduced by the prosecution in particular PW-2 , PW-20 and PW-4, the High Court has held that the guilt of A-2 and A-3 has not been established beyond reasonable doubt. We do not find any 'compelling reason' or 'substantial infirmity' warranting interference with the order of acquittal of respondent nos. 1 and 2 (Accused Nos. 2 and 3). A

12. The appeals are, accordingly, dismissed. B

Devika Gujral

Appeals dismissed.