
(2004) 10 AP CK 0019
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1218 of 2003

P. Konda Babu

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2004) 10 AP CK 0019

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S. Jayasree, for the Appellant; Mohd. Osman Shaheed, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This is a case where the appellant/sole accused in S.C.No.42/2002 on the file of District & Sessions Judge, Visakhapatnam was convicted u/s 304 Part-I IPC and sentenced to undergo Rigorous Imprisonment for 7 years and also to pay a fine of Rs.100/-, in default to undergo Simple Imprisonment for one month on the strength of circumstantial evidence.

2. The case of the prosecution in brief is as hereunder :

The appellant/accused married Chinathalli, hereinafter referred to as "deceased" for the purpose of convenience, nearly eight years ago and in the wedlock they begot a daughter by name Mani and they were living in their house situated in agricultural fields of the appellant/accused. It is also the case of the prosecution that the accused is a drunkard and was subjecting the deceased and also their daughter Mani to ill-treatment by beating them unnecessarily. Nearly six years prior to the offence, the accused brought another woman as his second wife which was not acceptable to the deceased and hence she discarded and reached her brother's house. Through his second wife the accused begot two children and subsequent thereto the second wife also discarded him on account of his

stupidity and reached her parents. The accused again came to Chinathalli who was living with her brother about one year prior to the incident and had taken the deceased to his house. The deceased retained Mani at her brother's house having anticipated danger to her at the hands of the accused. Subsequent thereto the deceased became pregnant and delivered a female child on 27-8-1999 but the new born baby died on the very next day. It is also the version of the prosecution that on the night of 30-8-1999 at about 10 p.m. the appellant/accused picked up quarrel with the deceased for the reason that their daughter Mani was kept away from him even after the new born child died and in the course of quarrel he grew wild and beat her with a bamboo stick on her head with an intention to murder her and on account of receiving grievous injuries on her head, the deceased died on the spot in the main room of the house. The appellant/accused left the house leaving the dead body all alone. At about 7 or 8 a.m. on 31-8-1999 PW-1, the sister of the deceased noticed the dead body of the deceased and informed the villagers and all the villagers searched for the appellant/accused and finally they have apprehended him on the same day at about 3 p.m. at the village outskirts and brought him to the house of the Village Sarpanch (PW-4) where it is said that he confessed having committed the offence. PW-1 lodged the report at G.Madugula Police Station at about 6 p.m. and police had registered the case and had taken up the investigation. Final report and the charge sheet were filed before the Mandal Executive Magistrate, G.Madugula who committed the case as per the procedure contemplated under the old Code of Criminal Procedure and the charge also was framed u/s 302 IPC against the appellant/accused and he pleaded not guilty and claimed to be tried.

3. The learned Judge in S.C.No.42/2002 in view of the committal made by the Mandal Executive Magistrate in P.R.C.No.8/99/Cr.No.32/99 G.Madugula Police Station, recorded the evidence of PW-1 to PW-7 and marked Exs.P-1 to P-16 and M.Os.1 and 2 and arrived at a conclusion that the prosecution was able to establish the guilt of the appellant/accused u/s 304 Part-I IPC and convicted him and sentenced him accordingly as specified supra. Hence the Appeal.

4. The learned Counsel representing the appellant/accused made the following submissions. The learned Counsel would submit that on the strength of the extra-judicial confession alleged to have been made by the accused to PW-4 and also PW-1, PW-2 and PW-3, the conviction was recorded. The Counsel would submit that PW-4 is a close relative of PW-1 and PW-2 is the sister of the deceased and PW-4 also deposed about the changed version said to have been made by the accused. PW-1, PW-2 and PW-3 just made a general statement and the exact words and the alleged extra-judicial confession said to have been made by the accused had not been spoken to by any of these witnesses. The nature of evidence of PW-4 and also PW-1 to PW-3 would not inspire confidence of the Court for the reason that due to the happening inasmuch as all these villagers caught hold of the accused who was in a drunken condition, even at the relevant point of time as per the version of the prosecution it is said that he made such extra-judicial confession and definitely on the strength of the same conviction

cannot be sustained. The learned Counsel also commented relating to Ex.P-2 and would submit that inasmuch as the same was prepared in the Police Station even the portion of the alleged confession specified in Ex.P-2 also is inadmissible in evidence. The learned Counsel ultimately concluded that this is just a case based on circumstantial evidence and on suspicion only the conviction had been recorded and suspicion at any rate cannot be a substitute to proof.

5. Per contra the learned Additional Public Prosecutor Mr.Mohd.Osman Shaheed would submit that it is no doubt true that this is a case based on circumstantial evidence, but PW-4 is a disinterested witness who clearly deposed about the extra-judicial confession which was made by the accused and the other witnesses i.e., PW-1 to PW-3 supported the version of PW-4 in this regard. The learned Additional Public Prosecutor also would submit that the house is a lonely house and the accused was absconding from the house and on the search made by the villagers the accused was caught hold of and these aspects definitely would be suggestive of the commission of the offence by the accused and the accused alone since there is no possibility for any other person to perpetrate the commission of such a crime as against the deceased.

6. Heard both the Counsel.

7. The version of the prosecution in nut-shell is that on the fateful day, the accused picked up quarrel with the deceased for the reason that his daughter Mani was kept away from him even after the new born child died and in the course of quarrel he grew wild and beat the deceased with a bamboo stick with an intention of doing away with her life and on account of the grievous injuries she died at the spot in the main room of the house.

Evidence available on record :

The sister of the deceased was examined as PW-1 who presented the report Ex.P-1. On seeing the dead body she called PW-2 who also had seen the deceased and he was also present when the accused was said to have been apprehended and made the confessional statement before the Village Sarpanch PW-4. The evidence of PW-3 is also to the same effect. PW-4, the then Village Sarpanch had spoken to the background of the accused, the confessional statement made by the accused and about he being a pancha to the scene of offence and the inquest panchanama. PW-5 conducted post mortem examination over the dead body of the deceased and issued Ex.P-5 Post Mortem Examination certificate. PW-6 is the Magistrate who recorded Section 164 Cr.P.C. statements Exs.P-7 to P-10. PW-7 is the Investigating Officer who deposed about the details of investigation. Ex.P-1 is the report given by PW-1, Ex.P-2 is mediators report, Ex.P-3 is observation report, Ex.P-4 is the inquest report, Ex.P-5 is the post mortem certificate, Ex.P-6 is the requisition of the Inspector of Police and Exs.P-7 to P-10 are the statements recorded u/s 164 Cr.P.C., Ex.P-11 is the F.I.R. in Cr.No.32/99, Ex.P-12 is the rough sketch, Ex.P-13 is photographs 7 in number, Ex.P-14 negatives, Ex.P-15 is the report of Director of Forensic Science

Laboratory, Ex.P-16 is the Statement of accused recorded by Mandal Executive Magistrate, G.Madugula. MO-1 is the bamboo stick and MO-2 is the grinding stone.

Circumstantial evidence :

PW-1 deposed that she had gone to the house of the accused and the deceased. She had also deposed in detail about the happenings prior to the incident. She further deposed that she pushed the door and found the deceased lying stretching her hands on either side and immediately she called one Sannibabu (PW-2) and Lingamma who were coming on the nearby road and informed them about the death of the deceased and they came and saw the dead body and there was bleeding from the nostrils and she requested the said Sannibabu (PW-2) to go and inform her brothers and others. All the relatives came to the house and saw the dead body and the accused was not found in the house and all the villagers suspected that the accused might have killed the deceased and the villagers and her brothers searched for the accused and at 3 p.m. the accused was located under Bondara Mamidi Chettu. The villagers caught hold of him and brought him back to the house of the Sarpanch (PW-4) and the accused was holding a knife at that time and in the presence of the villagers when he was interrogated by the Sarpanch (PW-4) the accused made a confession stating that he killed the deceased with a grinding stone. When asked as to why he killed the deceased the accused confessed in their presence that he called his daughter Mani who was afraid of going to him over which there ensued a quarrel between the accused and the deceased and during that quarrel he killed the deceased and he also confessed that he killed the deceased on the preceding night. The evidence of PW-2 is also to the same effect. PW-2 simply deposed that the Sarpanch interrogated the accused about the death of the deceased after bringing him to the village and the accused gave a confession stating that he had killed the deceased whereupon a report was got drafted by PW-1. It is needless to say that PW-1 lodged Ex.P-1 report. PW-3 also deposed to the same effect and also deposed that the accused was fully drunk at the time when he caught him and the Sarpanch enquired the accused as to why his wife died. The accused gave a confession statement that he killed the deceased with a grinding stone as she was not bringing their elder daughter Mani even after the death of the second daughter.

8. This is the evidence of PW-1 to PW-3 relating to the incident and also the alleged extra-judicial confession said to have been made before the villagers inclusive of the Sarpanch PW-4 in their presence.

9. PW-4 is related to the deceased and PW-1 and there is an admission to that effect in the cross-examination of PW-4. PW-4 also deposed about the aspect that the accused is a habitual drinker and used to pick up quarrels with the deceased and three years back PW-1 informed that she found the deceased lying dead and the accused was not found and PW-4 along with other villagers went to the house of the accused and found the deceased lying dead and blood was

oozing from the nostrils and ears. PW-4 also found an injury on the back of the right side shoulder of the deceased. This witness also deposed about the catching hold of the accused and making enquiry and he also deposed that later they brought the accused to his house where he enquired him as to how he killed the deceased in the presence of all the villagers and the accused made a confession that he had killed the deceased with a grinding stone as she was not agreeable for bringing their first daughter Mani from her grand parents house. PW-4 also deposed about Ex.P-2 drafted at the Police Station and he further deposed that the accused gave his earlier statement to the effect that he had beat the deceased with grinding stone whereas he changed his statement before them and stated that he killed the deceased by beating with a bamboo stick. The statement of the accused under Ex.P-2 was reduced into writing and PW-4 and another mediator signed on it. This witness also deposed about Ex.P-3 and also MO-1 and MO-2.

10. These are the witnesses who deposed about the circumstances on the strength of which the accused was found to be guilty.

11. Medical evidence: PW-5, the Doctor who had conducted post mortem examination over the dead body of the deceased found the following ante mortem injuries :

External injuries :

1. Contusion of 10 x 8 cms. on right side of head 6 cms. above the right ear.
2. Bone deep laceration of 5 x 3 cms. on right side of the back of head just behind the right ear.
3. Contusion of 8 x 6 cms. on left bony cheek and soft cheek on left side of the face.
4. Abrasion contusion of 6 x 4 cms. on back of right hand.

Internal injuries :

1. Bruising of 10 x 10 cms. of all the underlying tissues of right frontal parietal regions of the scalp.
2. Fissured fracture of 10 cms. present on right frontal bone of vault of skull extending into right base of the skull.
3. Fissured fracture of 10 cms. long present on right parietal bone of vault of skull extending into right middle base of skull.
4. Diffused sub-dural haemorrhage and sub arachnoid haemorrhage present on right side of the brain.
5. Fissured fracture of 6 cms. long present on right front base of the skull as a continuation fissured fracture of internal injury No.6.

6. Fissured fracture of 8 cms. long present on right middle base of the skull as a continuation fissured fracture of internal injury No.7.

12. PW-5 concluded the post mortem examination at 5.30 p.m. on 1-9-1999 and he was of the opinion that the deceased would appear to have died of respiratory and circulatory failure due to injury to brain due to fracture of skull due to head injury and the internal injuries which are fatal in nature could be caused either by MO-1 or MO-2 or by both. The injuries shown on the dead body are sufficient to cause instantaneous death as the fatal injuries were caused to the brain. Ex.P-5 is the post mortem certificate.

13. Section 164 Cr.P.C. statements :

PW-6, the Munsif Magistrate at the relevant point of time, had deposed about the recording of Section 164 Cr.P.C. statements of PW-1, PW-2 and PW-3. Ex.P-6 is the requisition of the Inspector. Exs.P-7 to P-10 are Section 164 Cr.P.C. statements of the said witnesses.

Investigating Officer:

PW-7 is the Investigating Officer who deposed about all the details of investigation and after completing investigation he filed the final report. On the date of offence PW-4 was the Sarpanch of the village panchayat and he was not aware whether the deceased happened to be the sister-in-law of PW-4 and till PW-1 presented Ex.P-1 report he had no knowledge about the offence and at the house of the Sarpanch PW-4 he had taken custody of the accused as well as the knife. MO-1 bamboo stock does not contain slip having signatures of panchayatdars affixed. Pw7 further deposed that the accused was not present at his house when the material objects were seized and PW-3 had not stated before him about the second wife of the accused and further the accused had quarrels with the second wife and after the second wife abandoned him he brought back the deceased to his house. It was suggested to PW-7 that at the behest of the village sarpanch PW-4 who is related to the deceased, the accused was falsely implicated and no doubt this suggestion was denied.

14. The learned Judge recorded findings and on the strength of this evidence recorded conviction u/s 304 Part-I IPC. This is a case of death of a wife and the version of the prosecution is that the deceased died due to the appellant/accused hitting the deceased with MO-1 or MO-2 in view of the quarrel in relation to the daughter. The very version whether MO-1 or MO-2 had been used in the perpetration of the crime itself is doubtful in view of the fact that even the evidence of PW-4 is to the effect that the accused himself had given a changed version. Even as per the evidence available on record, the accused is a habitual drinker. Except the circumstantial evidence with regard to what transpired on the fateful day there is no other evidence available on record. The strong circumstances which weighed with the learned Judge in convicting the accused appear to be that it is a lonely house and though some suggestions were put that he was away the same could not be substantiated and it is said that the accused

made the extra-judicial confession to PW-4 and other villagers and these are the circumstances which would prove the guilt of the accused and the guilt of the accused alone and after recording such findings the conviction had been recorded. It is no doubt true that conviction can be based on circumstantial evidence. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, it was held that for conviction to be based on circumstantial evidence, the following conditions are to be satisfied :

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" established.

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude every possible hypothesis except the one to be proved, and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

15. It is now well settled that before a person can be convicted on circumstantial evidence, the circumstances in question must be satisfactorily established and the circumstances must bring home the guilt of the accused beyond all reasonable doubt and if these circumstances can be explained by any reasonable hypothesis, then the accused must have a benefit of the hypothesis.

16. In the present case, even as per the evidence of PW-4 who is interested in PW-1 and also the deceased, two versions are said to have been given by the accused. Apart from this aspect of the matter, the evidence available on record would show that the accused is a habitual drinker. It is no doubt true that it was suggested that the accused was away doing some work elsewhere but this version of the accused was disbelieved by the learned Judge. Except the general statement made by PW-4, the Sarpanch, and the vague statements relating to the alleged confession made by the accused before PW-1 to PW-3, there is no other acceptable evidence. It is also doubtful whether MO-1 or MO-2 had been the weapon which is said to have been the weapon used by the accused in hitting the deceased. It is also pertinent to note that it is the version of the prosecution that all the villagers apprehended him and brought him and in view of the prevailing circumstances it is equally doubtful whether this alleged extra-judicial confession had been made voluntarily or under the circumstances under which he was placed at the relevant point of time. It is settled law that extra-judicial confession may have to be generally looked upon as a weak type of evidence and the exact words in relation to the extra judicial confession said to have been

made by the accused also had not been clearly deposed either by PW-4 or by the other witnesses. The mere fact that the accused was not present and the mere fact that the dead body was lying in the house which is a lonely one situated at the fields coupled with the nature of evidence which had been let in, in the considered opinion of this Court cannot be taken as circumstantial evidence of such a nature which would point out only the guilt of the accused and the guilt of the accused alone and the possibility of the happening of the incident otherwise also cannot be ruled out. The nature of evidence of PW-4 and Ex.P-2 also would create some suspicion relating to the version of PW-4.

17. Reasons may be numerous for the implication of a particular person and the burden is on the prosecution to establish the guilt of the accused. The learned Judge had recorded conviction on the strength of strong suspicion. As already discussed supra, extra judicial confession alleged to have been made to PW-4 would not inspire the confidence of the Court for the reasons specified supra and the circumstantial evidence is not so clear so as to point out only the guilt of the accused and hence in the facts and circumstances the appellant/accused is definitely entitled to the benefit of doubt and hence the conviction and sentence recorded by the learned Judge are hereby set aside and the Appeal is accordingly allowed. The appellant/accused shall be released forthwith.