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STATE OF A.P.

V.

E. SATYANARAYANA

Criminal Appeal No. 40 of 2004

APRIL 30, 2009

B

(DR. ARIJIT PASAYAT, D.K. JAIN AND DR.
MUKUNDAKAM SHARMA, JJ.)

Penal Code, 1860:

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S.302 – Murder of wife and minor son – Extra judicial confession found reliable by the trial court – Accused convicted to life imprisonment – High Court directing acquittal – On appeal, Held: In the facts and circumstances of the case, judgment of High Court does not suffer from any infirmity to warrant interference – Extra judicial confession – Reliability of – Evidence Act, 1872, Sections 24, 25, 26.

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Appellant was charged with the murder of his wife and minor son. Trial court found him guilty of the offence punishable under section 302 IPC and sentenced him to life imprisonment. On appeal, High Court directed his acquittal. Hence the appeal.

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Dismissing the appeal, the Court

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HELD: 1. There are some relevant aspects which the High Court has rightly taken note of. Firstly, the extra-judicial confession is said to have been made at about 8.00 a.m. The First Information Report was given at 11.30 a.m. It has not been explained as to why there was delay in lodging the FIR by the Village Administrative Officer. The evidence of PW.2 shows that police was in the house of the accused around 8.00 a.m. If that be so, the first thing PW.1 would have done was to report to the police about the extra-judicial confession. That apparently has not been done. PW.1 stated that after the extra judicial confession

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was made, he asked two persons to keep a watch over the accused and then the police came and the accused was handed over to the police officials. This runs contrary to the evidence of PW.14 who has clearly admitted that the position was not so. [Para 8] [210-F-H; 211-A]

Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1954 SC 322; *Maghar Singh v. State of Punjab* AIR 1975 SC 1320; *Narayan Singh v. State of M.P.* AIR 1985 SC 1678; *Kishore Chand v. State of H.P.* AIR 1990 SC 2140; *Baldev Raj v. State of Haryana* AIR 1991 SC 37; *Piara Singh v. State of Punjab* AIR 1977 SC 2274 and *Madan Gopal Kakkad v. Naval Dubey* 1992 (3) SCC 204 – referred to.

2. Another piece of material on which the trial Court had placed reliance related to the recovery of the blood stained sickle on the basis of the disclosure made by the accused. The High Court has noticed that the police was at the place of occurrence from 8.00 a.m. till 4.00 p.m. If that was so, no explanation has been offered as to why the blood stained sickle in the house of the accused was not noticed. The conclusions of the High Court leave no manner of doubt that the judgment of the High Court does not suffer from any infirmity to warrant interference. [Para 9] [211-B-C]

Case Law Reference

AIR 1954 SC 322	referred to	Para 6
AIR 1975 SC 1320	referred to	Para 6
AIR 1985 SC 1678	referred to	Para 6
AIR 1990 SC 2140	referred to	Para 6
AIR 1991 SC 37	referred to	Para 6
AIR 1977 SC 2274	referred to	Para 6
1992 (3) SCC 204	referred to	Para 6

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 40 of 2004

From the Judgement and Order dated 09.07.2003 of the
Hon'ble High Court of A.P. at Hyderabad in Criminal Appeal
No. 897 of 2000.

B I. Venkatanarayana, D. Bharathi Reddy, Altaf Fatima, V.
Prabhakar Rao, with him for the Appellant.

Nikhil Goel (A.C.) for the Respondent.

C The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

D 1. Challenge in this appeal is to the order of the Division
Bench of the Andhra Pradesh High Court directing acquittal of
the respondent who faced trial for alleged commission of murder
of his wife and minor son in the intervening night of 14/
15.11.1996.

E 2. Learned Sessions Judge, Nizamabad, had found him
guilty of the offence punishable under Section 302 of the Indian
Penal Code, 1860 (in short 'IPC') and sentenced him to undergo
imprisonment for life.

F 3. The whole prosecution case rested on the alleged extra
judicial confession purported to have been made by the
accused before the Village Administrative Officer (PW.1) around
8.00 a.m. The First Information Report was given to the police
at 11.30 a.m. on 15.11.1996. It was indicated in the FIR that the
accused had made a confession before Village Administrative
Officer to have killed the wife and son because of the quarrel
over family affairs.

G 4. The trial Court found the evidence of PW.1 so far as
alleged extra judicial confession is concerned to be reliable and
directed the conviction. In appeal, the primary stand taken by
the accused respondent was that the evidence of PW.1 is not
believable. It contradicts the evidence of PW.2, and the
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Investigating Officer. The High Court analysed the evidence and came to the conclusion that the so-called extra judicial confession has not been established. A

5. The High Court analysed the position in law relating to extra judicial confession, namely, that the Court has to be satisfied that the so-called extra-judicial confession is voluntary and not as a result of any inductment, threat or promise as envisaged in Section 24 of the Indian Evidence Act, 1872 (in short 'Evidence Act') or was brought about in suspicious circumstances to circumvent Sections 25 and 26 of the Evidence Act. B C

6. In *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* (AIR 1954 SC 322), and *Maghar Singh v. State of Punjab* (AIR 1975 SC 1320), this Court 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 conviction can be found on such evidence alone. In *Narayan Singh v. State of M.P.* (AIR 1985 SC 1678) 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.* (AIR 1990 SC 2140) 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 inductment, H

- A 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* (AIR 1991 SC 37). After referring to the judgment in *Piara Singh v. State of Punjab* (AIR 1977 SC 2274), this Court in *Madan Gopal Kakkad v. Naval Dubey* (1992 (3) SCC 204) held that the extra judicial 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.

7. Learned counsel for the appellant-State submitted that the evidence of PW.1 should not have been discarded by the High Court as he was a person on whom the accused could have reposed confidence as he was the Village Administrative Officer. Additionally, it is submitted that minor discrepancies in the evidence of PW.1 vis-à-vis other witnesses should not have been magnified to direct acquittal. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.

8. We find there are some relevant aspects which High Court has rightly taken note of. Firstly, the extra-judicial confession is said to have been made at about 8.00 a.m. The First Information Report was given at 11.30 a.m. It has not been explained as to why there was delay in lodging the FIR by the Village Administrative Officer. The evidence of PW.2 shows that police was in the house of the accused around 8.00 a.m. If that be so, the first thing PW.1 would have done was to report to the police about the extra-judicial confession. That apparently has not been done. PW.1 stated that after the extra judicial

confession was made, he asked two persons to keep a watch over the accused and then the police came and the accused was handed over to the police officials. This runs contrary to the evidence of PW.14 who has clearly admitted that the position was not so. A

9. Another piece of material on which the trial Court had placed reliance related to the recovery of the blood stained sickle on the basis of the disclosure made by the accused. The High Court has noticed that the police was at the place of occurrence from 8.00 a.m. till 4.00 p.m. If that was so, no explanation has been offered as to why the blood stained sickle in the house of the accused was not noticed. The conclusions of the High Court leave no manner of doubt that the judgment of the High Court does not suffer from any infirmity to warrant interference. B C

10. The appeal is dismissed. D

11. We record our appreciation for the able assistance rendered by Mr. Nikhil Goel who acted as Amicus Curiae in this case.

G.N.

Appeal dismissed.