

(2014) 03 AP CK 0120

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1902 of 2009

Killo Modano

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: March 20, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: M.S.K. Jaiswal, J; L.N. Reddy, J

Bench: Division Bench

Advocate: A. Nagendra Rao, Advocate for the Appellant

Final Decision: Disposed Off

Judgement

L. Narasimha Reddy, J.

The sole accused in S.C. No. 338 of 2008 on the file of the Principal Sessions Judge, East Godavari at Rajahmundry was accused of committing the murder of his wife, by name Kilo Gowri, on 27.04.2008.

2. The complaint, Ex. P1, was submitted in this behalf by P.W.1, one of the brothers of the deceased, to the Station House Officer, Donkarai Police Station. He stated that he has two brothers and one sister and the first husband of his deceased sister died due to illness and thereafter, she married the accused. They are also said to have been blessed with a child, who was aged about three years by that time. He stated that the accused and the deceased lived happily for some time in Navaguda Village and the deceased stayed for about two weeks in their house at Nelajarthi Village complaining that the accused was harassing her alleging that she is not preparing the food properly and thereafter, the accused came to the house and took her away.

3. Mango festival is said to have taken place in the village of the deceased and the accused i.e. Navaguda on 27.04.2008. The accused is said to have beat the deceased indiscriminately with a bamboo stick alleging that she did not prepare the food

properly. On the next day, the information about the death is said to have been passed on to P.W.4 at 9.00 a.m. and that the incident was said to have been witnessed by P.W.3. Police registered Crime No. 8 of 2008 u/s 302 I.P.C. against the accused. They reached the scene of occurrence, recorded the statements of the persons, who are acquainted with the incident, prepared the scene of offence panchanama, caused inquest and post-mortem and thereafter, filed a charge sheet. The accused pleaded not guilty.

4. In the course of trial, the prosecution examined P.Ws.1 to 9 and Exs. P1 to P12 were marked. M.O.1, bamboo stick, was also taken on record.

5. Through its judgment, dated 22.06.2009, the trial Court convicted the accused for the offence punishable u/s 302 I.P.C. and sentenced to undergo imprisonment for life. Fine of Rs. 10,000/-, in default to undergo simple imprisonment for a period of one year, was also imposed.

6. Sri A. Nagendra Rao, learned counsel for the accused, submits that the only source of information for P.W.1 was P.W.4 and according to Ex. P1, the incident is to have been witnessed by P.W.3 and once both, P.Ws.3 and 4, have not supported the case of the prosecution, there was absolutely no basis for the trial Court to convict the accused. He contends that P.W.4 was cited only in the context of witnessing the occurrence, whereas he made an attempt to speak about the extra-judicial confession said to have been made to him by the accused and that the same is totally inadmissible in law. He submits that the so-called extrajudicial confession made to P.W.5, the Sarpanch of Boddagandi Village is his own version not supported by any statement that emanated from the accused, but the trial Court has given much credence to it. Learned counsel further submits that the conviction and sentence ordered by the trial Court cannot be sustained in law.

7. Learned Public Prosecutor, on the other hand, submits that though P.Ws.3 and 4 were declared hostile, the defence did not cross-examine P.W.4, and thereby, the version of that witness about the extra-judicial confession of the accused remained unchallenged. She contends that the accused has a clear motive to kill the deceased and on an earlier occasion also, disputes existed between the spouses.

8. The information about the occurrence reached the police with the submission of Ex. P1 by P.W.1. The incident is said to have been taken place at about 4.00 p.m. on 27.04.2008 at the native place of the accused. The information is said to have reached P.W.1 at 9.00 a.m. on the next day, through P.W.4. In Ex. P1 itself, it was mentioned that the incident was witnessed by P.W.3, an immediate neighbour of the deceased and the accused.

9. P.W.3 has virtually denied any knowledge about the occurrence and obviously because of that, she was declared hostile at the instance of the prosecution. Therefore, one does not find any eye-witness account of the incident. The prosecution, therefore, has to rely only upon the circumstantial evidence.

10. P.W.4 was examined, obviously because he was named in Ex. P1 as the source of information. On this aspect, he totally feigned ignorance. He stated that he did not hear any untoward incident in the house of the accused and that he did not go to that place along with P.W.2 or P.W.3 in the evening. No mention was made about his passing on the information to P.W.1. However, he proceeded to state that the accused called on him at 3.30 p.m. on the date of occurrence and then informed him about the incident. This witness was neither declared hostile nor cross-examined by the defence.

11. The prosecution urges that once the evidence of P.W.4 about the extra-judicial confession of the accused is not doubted, in the cross-examination, it has to be taken as proved.

12. It is, no doubt, true that non cross-examination of a witness would lead to a situation where the statements made during the chief-examination stand accepted or un-rebutted. However, there are certain basic tenets in the context of examining the witnesses in a criminal case. Apart from furnishing the list of witnesses, the prosecution indicates the purpose for or the context in which they are proposed to be examined. The role that is ascribed to the concerned witnesses is mentioned in brief; in the charge sheet. If any statements are recorded from such witnesses under Sections 161 or 164 Cr.P.C. they are made part of record, so that they are readily available for confronting in the course of such examination.

13. In the memo of evidence filed along with the charge sheet, the purpose for which P.W.4 is proposed to be examined as a witness is mentioned as "to speak about their witnessing the occurrence, etc." It has already been mentioned that P.W.4 denied of any knowledge about the occurrence, much less about his witnessing the incident. He has also stated that he was not examined by the concerned police about the case at any point of time. However, he volunteered to state " the accused informed me on the same day that he killed his wife, Gowri, in the house. The accused called on me at bout 3.30 p.m. on the day and then, he informed him about the incident."

14. This statement of P.W.4 is sought to be projected as a mention to extra-judicial confession said to have been made by the accused to him.

15. Had there been any mention by P.W.4 about the extrajudicial confession said to have been made to him by the accused, there would have been a clear reference to that in the charge sheet. There is no such reference. In addition to that, P.W.9, the Investigating Officer, stated in the course of examination "P.W.4 did not state before me that the accused informed him at 3.30 p.m. on the same day that he killed his wife, Gowri, in the house."

16. Once P.W.4 was not cited in the context of any extrajudicial confession, any statement made by him in that behalf would be totally irrelevant and outside the scope of his being examined in the case as a witness. The mention of the purpose

against each witness in a criminal trial has its own significance. Once the purpose is mentioned, the defence will mostly concentrate upon that very aspect and try to elicit necessary information or contradiction in the cross-examination. A witness examined on behalf of the prosecution does not have the right or liberty to throw surprises to the defence. His evidence is required to be confined only to the purpose mentioned against his name. Therefore, non cross-examination of P.W.4 is not at all detrimental to the case of the defence and the statement made by P.W.4 in relation to the extra-judicial confession, just deserves to be ignored, much less it can be the subject matter of cross-examination.

17. P.W.5 is the Sarpanch of the Village. He too stated that the accused made a voluntary confession before him about the commission of the offence. Against the name of this witness, mention is made about the extra-judicial confession. Therefore, his evidence in this behalf cannot be eschewed as was done in the case of P.W.4. At the same time, the so-called extra judicial confession must be scrutinized with reference to the known principles of law.

18. Left to himself, P.W.5 did not record any statement of the accused. He submitted a report, Ex. P6, to the Station House Officer, stating that on 30.04.2008, the accused appeared before him and confessed of the commission of offence. He admitted in the cross-examination that he did not record any statement nor any signature of the accused was taken thereon. The information furnished by P.W.5 through Ex. P6 did not result in recording of any confessional statement from the accused.

19. When the evidence adduced on behalf of the prosecution is so defective, inconsistent, weak and unacceptable, the conviction and sentence ordered against the accused cannot be sustained in law.

20. Hence, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 338 of 2008 on the file of the Principal Sessions Judge, East Godavari at Rajahmundry, dated 22.06.2009, against the appellant-accused, are set aside. The appellant-accused shall be set at liberty forthwith, unless his detention is needed in any other case. The fine amount, if any, paid by the appellant-A1 shall be refunded to him.

21. The miscellaneous petition filed in this appeal shall also stand disposed of.