



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE FOURTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU
CRIMINAL REVISION CASE NO: 733 OF 2008

Between:

1. HARIJANA ULIGAPPA AND ANOTHER, S?o. Late Ramappa,
R/o. Chinna Heta (V),
Holagunda Mandal,
Kurnool District.
2. Harijana Mallappa, S/o. Ampaiah,
R/o. Chinna Heta (V),
Holagunda Mandal,
Kurnool District.

...PETITIONER(S)

AND:

1. STATE OF A.P., REP BY PP., PS,Kurnool District, rep by Public
Prosecutor,
High Court of A.P.,
Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): J PRABHAKAR

Counsel for the Respondents: PUBLIC PROSECUTOR

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL REVISION CASE No.733 OF 2008

Between:

- 1) Harijana Uligappa, S/o late Ramappa,
Aged about 42 years, R/o Chinna Heta Village,
Holagunda Mandal, Kurnool District.
 - 2) Harijana Mallappa, S/o Ampaiah,
Aged about 45 years, R/o Chinna Heta village,
Holagunda Mandal, Kurnool District.
- Petitioners/Accused.

Versus

- 1) Circle Inspector of Police, Alur Police Station,
Kurnool District.
 - 2) The State of Andhra Pradesh through
Public Prosecutors, High Court of Andhra Pradesh.
- ... Respondents.

DATE OF ORDER PRONOUNCED : 04.05.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
Fair copy of the order? Yes/No

A.V.RAVINDRA BABU, J



*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

+ CRIMINAL REVISION CASE No.733 OF 2008

% 04.05.2023

Between:

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Public Prosecutors, High Court of Andhra Pradesh.
... Respondents.

! Counsel for the Petitioners :

Smt. G. Padmavathi Srinivas,
representing Sri J. Prabhakar.

^ Counsel for the Respondents : Public Prosecutor.

< Gist:

> Head Note:

? Cases referred:

- (1) MANU/SC/2012/1995: 1995 Supp. (4) SCC 259
- (2) 1997(4) R.C.R. (Criminal) 441 : MANU/SC/1319/1997 :
(1997)8 SCC 158
- (3) 1998(3) R.C.R. (Criminal) 555 : MANU/SC/0436/1998 :
(1998)6 SCC 10
- (4) 2003 (4) R.C.R. (Criminal) 238 : 2004 (1) Apex Criminal
471 : MANU/SC/0595/2003 : (2003) 8 SCC 180
- (5) MANU/AP/2521/2022

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL REVISION CASE NO.733 OF 2008****ORDER:-**

This Criminal Revision Case is filed by the petitioners, who were the appellants in Criminal Appeal No.23 of 2007, on the file of II Additional Sessions Judge, Kurnool at Adoni ("Additional Sessions Judge" for short), challenging the judgment, dated 13.05.2008, whereunder the learned Additional Sessions Judge, dismissed the Criminal Appeal confirming the conviction and sentence imposed against the appellants in C.C.No.38 of 2003, on the file of Judicial Magistrate of First Class, Alur, for the offences under Sections 304-A and 201 of the Indian Penal Code ("I.P.C." for short).

2) The parties to this Criminal Revision Case will hereinafter be referred to as described before the trial Court for the sake of the convenience.

3) The State, represented by the Inspector of Police, Alur, filed a charge sheet in Crime No.43 of 2002 of Holagunda Police Station, alleging the offences under Sections 304-A and 201 of I.P.C.

4) The case of the prosecution, in brief, as set out in the charged sheet is as follows:



(i) A.1 and A.2 are the brothers and they are residents of Chinnaheta village, Holagunda Mandal. One Boya Mallappa, S/o Boya Kesanna and one Boya Ayyappa, S/o Boya Kesanna (hereinafter will be referred to as "deceased 1 and 2") were also brothers and they were residents of Santhakudlur village, Adoni Mandal. Their dead bodies were recovered from Cantor trench, near Chakaligutta of Peddaheta village, Holagunda Mandal.

(ii) Deceased 1 and 2 were doing arrack business since about one year prior to their death. Ten days prior to 19.08.2002, they died. They used to go to Hadligi village in Karnataka State to bring the arrack sachets and used to sell the same in their village, Santhakudluru. As usual, they went to Hadligi village to purchase arrack sachets about 10 days prior to 19.08.2002. On 10.08.2002 or 09.08.2002 while they were returning with arrack sachets during night time to avoid police and Excise officers, they came near Chinnaheta village in Holagunda Mandal. On the way, they came into contact with the electrical wire put up around the fields of A.1 to protect his Sunflowers crop from animals. So, the deceased 1 and 2 contacted with electricity and died on the spot. On the next day morning, A.1 went to his fields and found two dead bodies fallen in the fields with two bags of arrack sachets by their side. Having noticed the dead bodies and found that they died due to electrocution from the electric wire fenced by him, he



feared and tried to conceal the same. He disclosed the incident to A.2 during night. Both A.1 and A.2 with an intention to screen away the evidence of the death of deceased 1 and 2, at about 10-00 p.m., took the two dead bodies along with two bags of arrack sachets in a double bullock cart from the fields of A.1. They took the dead bodies to cantor trench situated near Chakaligutta and the fields of one Gowramma. They buried two dead bodies in the said trench and also two bags of arrack sachets. They did not disclose the incident to anybody till 29.08.2002.

(iii) Ten days subsequent to the burial of the dead bodies by A.1 and A.2, rumors spread in the village that two dead bodies were buried in the cantor trench. On that L.W.1-Reddy Seetharami Reddy, Village Secretary and L.W.6-Talari Dodda Basappa went to the said place on 19.08.2002 at 8-00 p.m. They found two dead bodies and two bags of arrack sachets there. L.W.1 gave report to Sub-Inspector of Police, Holagunda Police Station and on his report, the Head Constable registered it as a case in Crime No.43 of 2003 under Sections 302 and 201 of I.P.C. suspecting that both of them were murdered. The Inspector of Police, Aluru, during investigation found that they were not murdered, but they died due to electrocution due to live electric wire put up by A.1 around fields and after coming to know that A.1 and A.2 buried the said dead bodies to screen the evidence.



(iv) On 29.08.2002 both the accused approached L.W.13-Harijana Dasari Krishna Murthy and disclosed the facts of the case and sought his help in the matter. Then, L.W.13 took A.1 and A.2 to the Village Secretary (L.W.12) on 30.08.2002 and produced before him. Then, A.1 and A.2 disclosed the facts before L.W.12 and L.W.12 recorded their confession in the presence of L.W.13, L.W.21 -Reddy Rajasekhar Reddy and L.W.22-Chakali Anjanaiah and produced A.1 and A.2 before Inspector of Police along with confessional statement. Then, the Inspector of Police arrested A.1 and A.2 in the presence of L.W.12, L.W.21 and L.W.22 and accused also confessed about the offence before the Inspector of Police. In pursuance of the confession of A.1 and A.2, electric wire and one spade were seized under the cover of panchanama in the presence of panch witness. Thereafter, A.1 and A.2 were sent for remand. The Medical Officer, who conducted autopsy on the dead bodies of deceased 1 and 2, opined that the cause of death was consistently due to electric shock. Therefore, for the negligent act of A.1 in putting electricity wire around the fields, deceased 1 and 2 died by coming into contact with wire and both the accused with an intention to screen the death of the deceased 1 and 2 from negligent act of A.1, buried two dead bodies without informing to anybody, as such, A.1 rendered himself for the offence punishable



under Section 304-A of I.P.C. and further A.1 and A.2 rendered themselves for the offence under Section 201 of I.P.C.

5) The learned Judicial Magistrate of First Class, Alur, took cognizance for the offences under Section 304-A of I.P.C. against A.1 and Section 201 of I.P.C. against both A.1 and A.2 and issued summons to them. On appearance of the accused before the Court below and as it was a summons procedure, both of them were examined under Section 251 of Cr.P.C. for which they denied the allegations in the case of the prosecution, pleaded not guilty and claimed to be tried.

6) To bring home the guilt against the accused before the Court below, the prosecution examined P.W.1 to P.W.20 and got marked Ex.P.1 to Ex.P.21 and M.O.1 and M.O.2. After closure of the evidence of the prosecution, accused were examined under Section 313 of Cr.P.C., for which they denied the incriminating circumstances. They did not let in any defence evidence.

7) The learned Judicial Magistrate of First Class, Alur, on hearing both sides and on considering the oral as well as documentary evidence, found A.1 guilty of the offence under Section 304-A of I.P.C. and further found A.1 and A.2 guilty of the offence under Section 201 of I.P.C. and convicted them under Section 255(2) of Cr.P.C. and after questioning them about the quantum of sentence, sentenced A.1 to undergo rigorous



imprisonment for one year and to pay a fine of Rs.300/-, in default to suffer simple imprisonment for one month for the offence under Section 304-A of I.P.C. and further sentenced A.1 to undergo rigorous imprisonment for four months and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for 15 days for the offence under Section 201 of I.P.C. The Court below further sentenced A.2 to undergo rigorous imprisonment for four months and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for 15 days for the offence under Section 201 of I.P.C. The imprisonment awarded to A.1 shall run concurrently. Felt aggrieved of the same, the unsuccessful accused, filed Criminal Appeal No.23 of 2007, before the II Additional Sessions Judge, Kurnool and the learned Additional Sessions Judge dismissed the said Criminal Appeal confirming the conviction and sentence imposed against the appellants before the Court below. Challenging the same, the unsuccessful appellants in Criminal Appeal No.23 of 2007, filed the present Criminal Revision Case.

8) This Criminal Revision Case is preferred against concurrent findings of the Court below and the learned Additional Sessions Judge.

9) Now, in deciding this Criminal Revision Case, the point that arises for consideration is whether the judgment, dated 13.05.2008 in Criminal Appeal No.23 of 2007, on the file of II



Additional Sessions Judge, Kurnool at Adoni, suffers with any illegality, irregularity and impropriety and whether there are any grounds to interfere with the same?

Point:-

10) Smt. G. Padmavathi Srinivas, learned counsel, representing the learned counsel for the petitioners, would contend that except the evidence of P.W.14, the Village Secretary, regarding the alleged extra-judicial confession of the revision petitioners, there remains nothing in support of the case of the prosecution. According to P.W.14, Ex.P.13 extra-judicial confession was recorded by him in the Panchayat Office. As per Ex.P.13, it was recorded in the house of P.W.14. P.W.14 deposed in cross examination that Ex.P.13 was recorded in the police station. This is a serious infirmity in the case of the prosecution. Both the Courts below failed to look into this aspect overlooking the evidence of P.W.14. P.W.9, who allegedly brought the accused before P.W.14, did not support the case of the prosecution. Hence, basing on Ex.P.13 extra-judicial confession, which was not at all proved as voluntarily and ignoring the admissions made by P.W.14, the learned Judicial Magistrate of First Class, Alur, convicted and sentenced the accused and even the learned Additional Sessions Judge also failed to look into this irregularity and illegality and overlooking all these aspects, dismissed the



Criminal Appeal, as such, the Criminal Revision Case is liable to be allowed.

11) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, sought to support the judgment of the learned Additional Sessions Judge on the ground that the learned Additional Sessions Judge with tenable reasons, upheld the case of the prosecution and P.W.14 supported the case of the prosecution with regard to the confession of the accused under Ex.P.13, as such, the Criminal Revision Case is liable to be dismissed.

12) The case of the prosecution is that about 10 days prior to noticing of the dead bodies of the deceased 1 and 2, they were found missing. The prosecution alleged that both the deceased used to purchase arrack sachets clandestinely and in that process they went to Hadligi Village in Karnataka State and while bringing the arrack sachets to avoid the police during night they passed through the lands of A.1. Then, they came into contact with the live electricity wire, which was fenced by A.1 clandestinely and they died and noticing the same on the next day, A.1 contacted with A.2. Then, both of them removed the dead bodies in a double bullock cart during night and buried the same in cantor trench and that after 10 days thereafter, the lying of dead bodies came to the knowledge of P.W.1 and P.W.2. The



further case of the prosecution is that later, P.W.9 brought A.1 and A.2 and produced before P.W.14 who recorded the extra-judicial confession and after that P.W.14 produced A.1 and A.2 before the investigating officer, who again got recorded the regular confession and in pursuance of the confession, police party proceeded to the fields of A.1 and recovered M.O.1-wire and M.O.2-spade, which were used in concealing the offence. The crucial case of the prosecution is the so-called extra-judicial confession under Ex.P.13 claimed to be recorded by P.W.14.

13) Before going to appreciate the above, it is necessary to look into other part of evidence.

14) The substance of the evidence of P.W.1 is that on 19.08.2002 while he was in-charge of Chinnahata village, as Village Secretary, he heard about the rumors that there are two dead bodies buried in the ground, near Chakaligutta by the side of Harijana Gowramma's land. There is trench canal dug by forest department. Then, he along with the Village Servant (Talari) Dodda Basappa proceeded to Chakaligutta and found two legs which are appearing outside and the bodies of those two persons were buried in the ground. He also found arrack sachets there. He returned to the village and enquired in the village and came to know that those two persons were of Sandhakoduru village, who were in the habit of doing arrack business. He came to know that



those persons as Boya Mallappa and Boya Ayyappa. With those particulars, he went to the police station and presented Ex.P.1 to police. The Sub-Inspector of Police accompanied him to the scene of offence where the dead bodies were found. Police observed the dead bodies. Inquests were held on the dead bodies. Firstly, the inquest was conducted on the dead body of Boya Mallappa and thereafter, the inquest was conducted on the dead body of Boya Ayyappa. Ex.P.3 and Ex.P.4 are the inquest reports.

15) P.W.2, the Village Talari, deposed in support of the evidence of P.W.1 with regard to rumors about two dead bodies which were buried and his accompanying to P.W.1 to the place where the dead bodies were found, etc.

16) P.W.3 is father of deceased 1 and 2, who testified that both the deceased are his sons and their names are Boya Mallappa and Ayyappa. Mallappa is his third son and Ayyappa is his fourth son. Two years back his two sons were not found for some days and he searched for them for 10 or 15 days and finally, near Chinna Yatagutta, the dead bodies of their sons were found. She identified the same.

17) The prosecution by the evidence of P.W.1 and P.W.2 established the manner of the incident coming to the knowledge of P.W.1 and that P.W.1 and P.W.2 having visited the dead bodies and having identified the particulars, lodged Ex.P.1. P.W.3



identified that the dead bodies were of his sons. The prosecution further examined P.W.16, the panch witness, to speak about the inquest over the dead bodies of Boya Mallappa and Ayyappa and further examined P.W.19, the concerned Mandal Revenue officer, to speak that the inquest was conducted over the dead bodies of the deceased. So, by virtue of the evidence of P.W.1, P.W.2, P.W.16 and P.W.19-Mandal Revenue Officer as well as the evidence of the Inspector-P.W.18, the identities of the dead bodies were established and that the police conducted inquest over the dead bodies of the deceased. What is apparent from the case of the prosecution as evident from Ex.P.2 and Ex.P.3, inquest reports, is that two inquestnamas concluded that the death of the deceased 1 and 2 was of homicidal. By then, as investigating officer did not get the opinion of the postmortem examination. Therefore, by the time of conducting inquest over the dead bodies, the investigating officer was under the impression that the death of the deceased was of due to homicide and for that even the F.I.R. was registered under Section 302 and 201 of I.P.C. and it is altogether a different aspect that after so-called extra-judicial confession of the accused under Ex.P.13, the section of law was altered into Section 304-A and 201 of I.P.C.



18) Admittedly, P.W.4, P.W.5, P.W.6, P.W.8, P.W.9, P.W.10, P.W.11, P.W.12 and P.W.13, did not support the case of the prosecution.

19) According to P.W.4, he live by Talari. He knows P.W.3 and his wife. He does not know the accused. He does not know anything about this case. He was not examined by the police. Prosecution got declared him as hostile and during cross examination, he denied that he stated to the police as in Ex.P.4 (Section 161 of Cr.P.C. statement).

20) According to P.W.5, he does not know the deceased Ayyappa and Mallappa. He did not come to know about the death of the deceased. He was not examined by police. The prosecution got declared him as hostile and during cross examination, he denied that he stated before police as in Ex.P.5 (Section 161 of Cr.P.C. statement).

21) According to P.W.6, he does not know whether Uligappa-A.1 raised Sunflower crop and erected fencing with electrical wire around his crop to save his crop from wild animals. He does not know anything about the case. He was not examined by the police. The prosecution got declared him as hostile and during cross examination, he denied that he stated before police as in Ex.P.6 (Section 161 of Cr.P.C. statement).



22) P.W.8 deposed that he did not state anything to the police about the rumors with regard to the death of two persons in the village by coming into contact with electric wire. During cross examination by the learned Assistant Public Prosecutor, he denied that he stated before police as in Ex.P.7 (Section 161 of Cr.P.C. statement).

23) P.W.9 deposed that A.1 and A.2 never came to him and never narrated anything about the case. He also never produced A.1 and A.2 before the Village Secretary. He does not know whether L.W.12-Village Secretary recorded any statement from the accused. He was never examined by the police. Learned Assistant Public Prosecutor got treated him as hostile and during cross examination, he denied that he stated before police as in Ex.P.8 (Section 161 of Cr.P.C. statement) and that he is deposing false.

24) P.W.10 deposed that he never advised A.1 not to fence with electric wire to protect the Sunflower crop as it is dangerous to human being. He does not know whether A.1 used to fence his field with electrical wire to protect his Sunflower crop. He was not examined by the police. During cross examination by the learned Assistant Public Prosecutor, he denied that he stated before police as in Ex.P.9 (Section 161 of Cr.P.C. statement) and that he is deposing false.



25) According to P.W.11, he does not have any land adjacent to the land of A.1 and A.2, but, his land is situated faraway to their land. He does not know anything about the case. He denied during the cross examination by the learned Assistant Public Prosecutor that he stated before police as in Ex.P.10 (Section 161 of Cr.P.C. statement) and that he is deposing false.

26) According to P.W.12, he does not know anything about the case. The prosecution got declared him as hostile and during cross examination by learned Assistant Public Prosecutor, he denied that he stated before police as in Ex.P.11 (Section 161 of Cr.P.C. statement).

27) P.W.13 deposed that he has Ac.4-00 cents of land. He knows A.1 and A.2. A.1 and A.2 never informed him that they have put an electrical wire around their land as fencing and they never informed him about any incident happened due to electrical wire. He also never advised A.1 and A.2 to approach P.W.9. He was never examined by the police. The prosecution declared him as hostile by the learned Assistant Public Prosecutor, during cross examination he denied that he stated before police as in Ex.P.12 (Section 161 of Cr.P.C. statement).

28) The hostility of the above prosecution witnesses is proved by virtue of the evidence of P.W.18, the investigating officer, who deposed that P.W.4 to P.W.6 and P.W.8 to P.W.13



stated before him as in Ex.P.4 to Ex.P.12 (Section 161 of Cr.P.C. statements respectively). What the prosecution was able to establish by virtue of the above answers from the mouth of P.W.18 is that the above said witnesses exhibited hostile attitude towards the case of the prosecution. It does not mean that the prosecution case is true. Therefore, their evidence is of no use to the case of the prosecution.

29) It is no doubt true that by virtue of the evidence of P.W.20, the medical officer, that he conducted postmortem examination over the dead body of Deceased No.1-Boya Mallikarjuna @ Mallappa and further the dead body of Deceased No.2-Boya Ayyappa. He spoken about the superficial lacerated injuries two in number on the dead body of the deceased No.1 and blacking of palm of right hand of deceased No.2 and ultimately his evidence is that the cause of death is due to electrocution.

30) Admittedly, none of the witnesses spoke to the fact that A.1 arranged live electrical wire around his lands. So, the crucial evidence relied upon by the prosecution is that of the evidence of P.W.14, the Panchayat Secretary, for recording Ex.P.13, the extra-judicial confession of the accused and further the case of the prosecution is that on production of A.1 and A.2 by P.W.14 at the police station, investigating officer recorded



another confession under Ex.P.14 which leads to the recovery of M.O.1 and M.O.2. This is the evidence available before the Court below in support of the case of the prosecution.

31) Before going to appreciate the evidentiary value of Ex.P.13, the extra-judicial confession, it is pertinent to look into the well established precedents.

32) In **Balwinder Singh v. State of Punjab**¹, the Hon'ble Supreme Court stated the principle that an extra - judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

33) Further the Hon'ble Supreme Court in **Pakkirisamy v. State of Tamil Nadu**² held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra - judicial confession.

34) Again the Hon'ble Supreme Court in the case of **Kavita v. State of Tamil Nadu**³ held that there is no doubt that conviction can be based on extra judicial confession, but it is well

¹ MANU/SC/2012/1995: 1995 Supp. (4) SCC 259

² 1997(4) R.C.R. (Criminal) 441 : MANU/SC/1319/1997 : (1997)8 SCC 158

³ 1998(3) R.C.R. (Criminal) 555 : MANU/SC/0436/1998 : (1998)6 SCC 108



settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.

35) Further the Hon'ble Supreme Court in the case of ***State of Rajasthan v. Raja Ram***⁴ stated the principle that an extra - judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court, further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

36) This Court in ***D. Jagaidsh vs. the State of A.P.***⁵ in Criminal Appeal No.29 of 2016, dated 15.12.2022 Division Bench also relied upon the well established principles of the Hon'ble

⁴ 2003 (4) R.C.R. (Criminal) 238 : 2004 (1) Apex Criminal 471 : MANU/SC/0595/2003 : (2003) 8 SCC 180

⁵ MANU/AP/2521/2022



Supreme Court and held at para No.29 that extra-judicial confession is a weak piece of evidence and it requires corroboration in all material aspects, but, if the same inspires confidence, it can be believed to connect the accused with crime.

37) Keeping in view the above, the well established principles, now I would like to decide as to whether the judgment, dated 13.05.2008 in Criminal Appeal No.23 of 2007, on the file of learned II Additional Sessions Judge, Kurnool at Adoni, is in accordance with the well established principles and as to whether the evidence on record would warrant the Court that Ex.P.13 can be a basis to sustain a conviction without there being any corroboration and it is trustworthy, etc.

38) The case of the prosecution is that A.1 and A.2 after the police started the investigation as to how the deceased died, approached originally P.W.13 due to fear and P.W.13 advised A.1 and A.2 to approach P.W.9 who was their relative and they approached P.W.9 and then P.W.9 brought A.1 and A.2 before P.W.14, as such, P.W.14 recorded the extra-judicial confession of A.1 and A.2. As pointed out P.W.13 deposed that he never advised A.1 and A.2 to approach P.W.9. Further P.W.9 did not support the case of the prosecution. On the ground that they turned hostile to the case of the prosecution, but basing on their Section 161 of Cr.P.C. statements under Ex.P.8 and Ex.P.12 which



cannot be read in substantive evidence and which can only be used to contradict their testimony, the case of the prosecution cannot be upheld. So, what was the basis before the Court below is only the evidence of P.W.14 and Ex.P.13 and further the so-called recovery of M.O.1 and M.O.2 pursuant to the disclosure statement under Ex.P.14.

39) In this regard, the evidence of P.W.14 is as follows:

“Presently he is working as Panchayat Secretary of Holagunda Village. Previously he worked as Executive Officer, Gram Panchayat, Holagunda. He knows A.1 and A.2. He knows one Dasari Krishnamurthy (P.W.9), who was resident of Chinnahata Village. On 30.08.2002 P.W.9 brought A.1 and A.2 to him while he was present in Gramapanchayat Office, Holagunda. When he enquired with A.1-Ulgappa, he stated to him that he has got Ac.1-75 cents in between Chinnahata and Peddahata villages and that he raised the sun-flower crop in the said land. As the land is nearby the hill and in order to protect the crop from wild animals, he erected an electrical wire around his land. He also stated to him that he used to put electrical fence with electrical wire from 8-00 p.m. to 6-00 a.m. on every day. A.1 also stated to him that he identified two dead bodies nearby the electrical wire by the side of said wire on 11.08.2002 morning. Then, A.1 out of fear immediately returned to the village and informed the



same to A.2, who is his brother and both of them again went to the place of dead bodies and that A.1 and A.2 removed two dead bodies from that place and kept them in the land and both the dead bodies were covered with waste material. Accordingly, both A.1 and A.2 watched the dead bodies there itself whether anybody would identify the dead bodies, as such, A.1 and A.2 watched the dead bodies till evening. A.1 and A.2 also stated to him that both of them returned to the house during night time and at 10-00 p.m., night both of them took a bullock cart to the place of dead bodies and dead bodies were loaded in the bullock cart and took the dead bodies to the nearby hill known as Chakali Konda and buried in the ground near the water shed i.e., trench (Kandhakam). The arrack sachets, which were with the dead bodies, were also brought along with the dead bodies to that place and arrack sachets were also put it in the ground. On 19.08.2002, the dead bodies were exposing outside. The dead bodies were identified by the people that those dead bodies were of Santhekular village. The dead bodies were identified as Mallappa and Ayyappa. For fear of relatives of the deceased persons and as the police were enquiring with cause of death of deceased persons, 10 days thereafter i.e., on 30.08.2002 both A.1 and A.2 came to him along with P.W.9. After enquiring with A.1 and A.2 accordingly, when he received such information from



A.1 and A.2, he produced A.1 and A.2 before the police of Holagunda on that day on 30.08.2002. A.2 also stated before him on 30.08.2002 as to what was stated by A.1. The C.I. of Police, Alur was present in Holagunda police station. The police recorded confessional statement of the accused in his presence and also in the presence of Rajasekhar and Anjanaiah in the police station. A.1 and A.2 were produced by P.W.9 at 2-00 p.m. and they gave statement before him at Panchayat Office. Ex.P.13 is the confessional statement given by A.1 and A.2 to him. Ex.P.13 was written by him. All the contents of Ex.P.13 were read over to A.1 and A.2 and after that, he obtained signature and thumb impression of the accused on Ex.P.13. A.1 and A.2 also gave the similar statement before the C.I. of Police in the police station of Holagunda in his presence and also in the presence of one Anjanaiah and Rajasekhar Goud. The confessional statement was reduced into writing in his presence at 3-45 p.m. on 30.08.2002. It is Ex.P.14. The police examined him. The contents of Ex.P.14 were also read over to A.1 and A.2 and thereupon, the signature and thumb impression of the accused were obtained on Ex.P.14.”

40) During cross examination on material aspects, he deposed that after the confessional statement given by A.1 and A.2 at the Gram Panchayat office to him, they all proceeded to the police station, Holagunda, where Ex.P.13 was written by him.



41) It is to be noted that originally the chief examination of P.W.1 means that after enquiring with A.1 and A.2 and when he received information from A.1 and A.2 as told by them, he produced them before the office of Holagunda and C.I. of Police recorded the confessional statement of the accused in that context, he did not depose that he recorded the confessional statement of A.1 and A.2 at his office. The prosecution in the subsequent para elicited that A.1 and A.2 were produced by P.W.9 at 2-00 p.m. and they gave statement under Ex.P.13 and it was written by him and he read over the contents to A.1 and A.2 and after that he obtained the signature and thumb impression of the accused on Ex.P.13. Later, he spoken about the similar statement before the C.I. of Police after they were produced there.

42) In cross examination, he specifically stated that after the confession given by A.1 and A.2 at the Gram Panchayat office, they all proceeded to the police station of Holagunda where Ex.P.13 was written by him. It means that P.W.14 written Ex.P.13, the so-called confessional statement in the police station only, but not at his office as spoken by him in chief examination. The subsequent answers spoken by him in cross examination are very clear that Ex.P.13 was separately written in a separate room and at that time P.W.9 and A.1 and A.2 were only present. The said room is located in northern side i.e., in the middle of the



police station. It further supports his admission as above that he written Ex.P.13 in the police station. The further answers spoken by him in cross examination means that at the end of Ex.P.13 and also on the second page, his signatures are there. After his arrival to the police station, C.I. of Police, S.I. of Police and some constables were present. Therefore, it further means that when P.W.9 was writing Ex.P.13 confessional statement of A.1 and A.2, the concerned police were also present in the police station. The above admissions made by P.W.14 means that he recorded Ex.P.13 literally in the police station. It is quite interesting to note that without these admissions from P.W.14 even the contents of Ex.P.13 would leads to a conclusion that it was purportedly written in the police station. As seen from Ex.P.13 at the conclusion P.W.13 made a mention that after recording the statement of A.1 and A.2, he brought them to the police station and at 3-30 p.m. he produced them before the C.I. of police, as such, it is the confessional statement. It is to be noticed that the contents of Ex.P.13 itself discloses that P.W.14 produced A.1 and A.2 before the C.I. of Police and it is also mentioned in Ex.P.13. It is to be noticed that Ex.P.13 did not disclose that it consists of any two parts. If really P.W.14 recorded the statement of A.1 and A.2 under Ex.P.13, as deposed by him in chief examination at his office, there would not have been any whisper in writing in



Ex.P.13 that he produced the accused before the C.I. of Police at 3-30 p.m. This itself indicates that Ex.P.13 was recorded in the police station.

43) Apart from this, according to the contents in Ex.P.13 while P.W.14 was at his house in Holagunda village, Krishnamurthy brought A.1 and A.2, as such, he recorded the purported statement of A.1 and A.2 at his house i.e., the house of P.W.14. As evident from the judgment of the learned Judicial First Class Magistrate, absolutely, he did not look into the cross examination part of P.W.14 to the effect that Ex.P.13 was recorded in the police station. If really A.1 and A.2 disclosed the commission of offence at the residence of P.W.14, he had no necessity to depose that Ex.P.13 was recorded at his office. If really it was recorded at his office as deposed by him in chief examination, Ex.P.13 would not have contained a whisper in writing that he produced A.1 and A.2 before the police on that day. The learned Judicial Magistrate of First Class simply brushed aside that the variance with regard to the place of recording Ex.P.13 is not material.

44) It is to be noticed that the accused during cross examination of P.W.18, the investigating officer, got suggested to him with reference to Ex.P.14, the confession, that he did not use the actual words which were given by the accused in the



statement. Basing on this suggestion, which was denied by P.W.18, the learned Judicial Magistrate of First Class gave a finding that the presence of A.1 and A.2 and P.W.9 and P.W.14 at the police station was admitted by the accused. It is to be noticed that even if the presence of A.1 and A.2 was admitted by them at the time of Ex.P.14, but, Ex.P.14 is hit under Section 25 of the Indian Evidence Act. The learned Judicial Magistrate of First Class did not look into and absolutely ignored the admissions made by P.W.14 during cross examination which can only mean that he recorded Ex.P.13, extra judicial confession, in the police station when the C.I. of Police, S.I. of Police and other police personnel were present. He failed to look into the aspect that Ex.P.13 itself discloses that it was written in the police station. Therefore, the learned Judicial Magistrate of First Class ignored the crucial admissions made by P.W.14 and further brushed aside the place of Ex.P.13 as minor one which are not at all tenable in my considered view.

45) It is a case where P.W.9 did not support the case of the prosecution. The findings of the learned Judicial Magistrate of First Class are that as P.W.9 happened to be relative of A.1 and A.2, he deposed false. It is to be noticed that the very alleged extra-judicial confession on the part of accused means that accused having repented or having feared of the police, etc., were



inclined to reveal the facts. If really P.W.9 was of such a person, who did not support the case of the prosecution on account of his relation with A.1 and A.2, there was no question of his taking A.1 and A.2 to the police station having knowledge that A.1 and A.2 would be shown as accused, if they are produced before the police. So, on account of the close relationship, there was every possibility that P.W.9 would not think over to take A.1 and A.2 before the police, if they revealed the offence in question to them. The learned Judicial Magistrate of First Class failed to look into this aspect. On the other hand, he simply held that P.W.9 on account of relation did not support the case of the prosecution. Whatever the reason may be that P.W.12 and P.W.9 did not support the case of the prosecution, but the manner in which P.W.14 claimed to have recorded extra-judicial confession has no corroboration. Apart from this, it is rather irregular and illegal to record the statement under Ex.P.13 by P.W.14 in the police station especially when A.1 and A.2 were alleged to have revealed the incident to him in his office even according to him. Apart from this, when Ex.P.13 literally runs that it was recorded at the house of P.W.14, it is shrouded mystery as to why P.W.14 deviated from the place and introduced his office as a place where he claimed to have recorded Ex.P.13, but, during cross examination he was made to admit that he written Ex.P.13 in the police station. The



presence of C.I. of Police, S.I. of Police and other officials were admitted by P.W.14 after he produced A.1 and A.2. Even in the charge sheet, there was a narration that A.1 and A.2 disclosed the facts before L.W.12-Village Secretary and L.W.12 recorded their confession in the presence of L.W.13-Harijana DasariKrishna Murthy, L.W.21-Reddy Rajasekhar Reddy and L.W.22-Chakali Anjanaiah. As per the case of the prosecution, the presence of L.W.21 and L.W.22 was secured before the Inspector of Police so as to record Ex.P.14, confession. But, according to charge sheet narration, A.1 and A.2 confessed under Ex.P.13 even before their presence also. Therefore, it goes to show that there is any amount of suspicious circumstances revolved around Ex.P.13.

46) A look at Ex.P.13 shows that in the first page in the margin column on the left side which was supposed to be kept in blank the purported signature of A.1 and Left Thumb impression of A.2 were there. Page No.2 did not contain the signature or thumb impression of A.1 and A.2 as the case may be. Curiously, at page No.3, the signature of A.1 and thumb impression of A.2 as the case may be there that too on the left side margin which was supposed to be kept in blank. Coming to Ex.P.14 at page No.1 in the left side margin the signature of A.1 and thumb impression of A.2 were there. Page No.2 did not contain anything. Even page No.3 did not contain such signatures. Page



No.5 also did not contain. At the end of page No.6, there is a whisper that they received the copy and at (1) Uligappa signature and (2) Left Thumb impression of Mallappa is there. It is shrouded mystery that as to why P.W.14 ventured to obtain the left thumb impression and signature of the accused as the case may be at first page of Ex.P.14 that too in the left side margin, but not under the bottom of it. Similar is the situation in respect of page No.3 of Ex.P.14. So, the style of obtaining signature or thumb impression of A.1 and A.2 on Ex.P.13 and Ex.P.14 is similar. Hence, it goes to show that Ex.P.13 was prepared in the police station. The prosecution miserably failed to say as to why Ex.P.13 was prepared in the police station when A.1 and A.2 were alleged to have given such a statement at the house of P.W.14. P.W.14 failed to depose that it was prepared at his house. All these circumstances go to show any amount of doubtful circumstances. There were serious irregularities found on Ex.P.13 and Ex.P.14.

47) As seen from the judgment of the learned Additional Sessions Judge without there being any basis whatsoever, he gave finding that Ex.P.13 contains the signature of P.W.9 and P.W.9 failed to explain as to how he was there and how his signature was there. It is to be noticed that the Assistant Public Prosecutor did not impeach the testimony of P.W.9 inviting his



signature on Ex.P.13, but he impeached his testimony stating that he stated before police as in Ex.P.8. So, without inviting the attention of P.W.9 to his purported signature under Ex.P.13, it cannot be held that for obvious reasons, P.W.13 having put his signature on Ex.P.13, deposed false. Even the learned Additional Sessions Judge did not look into the admissions made by P.W.14 in cross examination. Both the Courts below placed implicit reliance on the oral testimony of P.W.14 without looking into the cross examination part and without looking into the contents of Ex.P.13 which itself discloses that it was recorded in the police station. The manner in which the prosecution projected Ex.P.13 and P.W.14 was not at all free from blemish. There were a serious suspicious circumstance hovering around Ex.P.13 and Ex.P.14. Hence, I am of the considered view that the prosecution miserably failed to prove before the Court below that extra-judicial confession under Ex.P.13 was of a voluntary act on the part of A.1 and A.2 and it was free from blemish.

48) It is to be noticed that the suspicion, however, grave cannot be taken as a substitute for proof. It is not for the accused to explain that he did not fence the electricity wire. It is for the prosecution to prove the said aspect. Further the prosecution should establish that both the deceased came into contact with the live electricity wire around the fields of A1, as such, they died.



It is not a case where the dead bodies were found in the fields of A.1. The entire judgment of the learned Additional Sessions Judge is nothing but overlooking into the crucial aspects in the evidence of P.W.14 as done by the learned Judicial First Class Magistrate and it is further basing on the imaginations, assumptions and presumptions. The extra-judicial confession under Ex.P.13 did not meet the requirements of well established principles. Neither the learned Judicial Magistrate of First Class nor the learned Additional Sessions Judge looked into the legal principles relating to extra-judicial confession and they did not take any care to ascertain whether it was of voluntary and simply believed the contents in Ex.P.13 ignoring the serious infirmities in the case of the prosecution. Therefore, I hold that the judgment, dated 13.05.2008 in Criminal Appeal No.23 of 2007, on the file of II Additional Sessions Judge, Kurnool at Adoni, is not legally sustainable and it suffers with irregularity, as such, it is liable to be interfered with by acquitting the Revision Petitioners of the offences under Sections 304-A and 201 of I.P.C.

49) In the result, the Criminal Revision Case is allowed setting aside the judgment, dated 13.05.2008 in Criminal Appeal No.23 of 2007, on the file of II Additional Sessions Judge, Kurnool at Adoni, thereby both the Revision Petitioners shall stand acquitted of the offences under Sections 304-A and 201 of I.P.C.



The fine amount if any of A.1 and A.2 shall be refunded to them after appeal time is over.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 04.05.2023.

Note: L.R. copy be marked.

B/o
PGR



THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL. REVISION CASE NO.733 OF 2008

Note: L.R. copy be marked.

Date: 04.05.2023

PGR