A STATE OF ANDHRA PRADESH

v.

GANGULA SATYA MURTHY

NOVEMBER 19, 1996

B [DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Indian Penal Code, 1860—Sections 302, 376—Rape and murder—Forcible sexual intercourse—Inference can be drawn from circumstances and medical evidence—The act of throttling indicating vehement resistance by the victim—Extra judicial confession of the accused—Conviction by C *Trial Court—High Court reversed and acquitted the accused holding death was possible due to consumption of poison and victim was habituated to sexual intercourse—On appeal, High Court's finding reversed—Held, Court should deal with rape cases with utmost sensitivity—Minor discrepancies should not be made the basis to throw out allegations of rape—Should not* D *cast stigma on the character of the deceased Evidence Act, 1872—Sections 24, 25 and 26—Extra Judicial confession made by the accused to the witnesses before he was produced to the police—Subsequently such confession reduced to writing inside the police station—Such extra Judicial Confession is not hit by Section 26. Section-26—Confession made during custodial surveillance, is inadmissible—The mere fact that the extra-judicial* E *confession was later put to black and white inside the police station can not make it inadmissible.*

According to the prosecution, the deceased, a girl of sixteen years of age, went to the house of the accused at about 5.30 PM on 26.11.91. There was nobody in the house except the accused. He forcibly F **subjected her to sexual intercourse and throttled her to death. Post Mortem revealed fresh vaginal tears in the inner vaginal walls and fracture of the hyoid bone with bleeding injuries on the neck. The accused made extra-judicial confession before PW 6 and PW 7 and showed them a letter written by the deceased warning the accused** G **not to have leering attitude towards her. They produced him before the police on 2.12.91 alongwith the letter. The trial court convicted the accused under sections 302 and 376 IPC and sentenced him to imprisonment for life for murder and seven years for rape. The trail court relied on the extra judicial confession and the circumstantial evidence established by the prosecution that the deceased was seen** H **entering the house of the accused at about 5.30 PM, the accused was**

seen going out at about 6 PM, death occured between 6 PM to 10 PM, at the relevant time there was nobody in the house except the victim and the accused, and the dead body was found on a cot inside the house of the accused. The High Court reversed the conviction and acquitted the accused holding that possibility of death due to consumption of poison could not be ruled out, and also entertained the doubt that the injuries on the neck could have been post mortem. It also did not rely on the extra judicial confession. The State appealed against acquittal. Allowing the appeal, this Court

HELD: 1.1. The High Court erred substantially in upsetting the conviction and sentence passed by the Sessions Judge supported by sound and sturdy reasons. [818 F]

1.2. The High Court has chosen to advance fragile reasons to upset a well-reasoned conclusion reached by the trial court that the deceased was throttled to death. The mere fact that witnesses present in the inquest had escaped noticing the small abrasions on the neck of the dead body is too tenuous a ground for holding that such abrasions could have come into existence after the inquest was held overruling the definite opinion of the Doctor who saw the injuries and opined that they were ante-mortem. It is totally incorrect to say that no abrasion could be caused if pressure is applied with fingers. If fingers have projecting nails, pressure application with such fingers would quite possibly cause abrasion as well. The finding of the High Court that no bleeding was noticed at the side of the fracture of the hyoid bone, is contrary to the finding of the Doctor (PW 10). [814 G,H, 815 A,B]

2. The Doctor after considering the Chemical examination report of viscera comprising of stomach contents, intestine, piece of level and kidney pronounced his final opinion that death was due to asphyxia as no poison was detected. The chemical report is on record and section 293 of the Criminal Procedure Code would enable the court to use the said document in evidence. The finding of the High Court that death could be caused due to poisoning is erroneous. [815 DE]

3. It is true that PW 6 and PW 7 deposed that the respondent made extra-judicial confession to them at 7 AM but the Sub Inspector deposed that the accused was produced at the police station at 7.30 P.M. Much should not have been made out of that disparity as there could be a possibility of making an error in recording the time A.M.

A for P.M. It is not proper to jettison and otherwise sturdy piece of evidence of extra judicial confession on the ground of such a ricketty premises. [816 DE]

4.1. It is true that any confession made to a police officer is inadmissible under section 25 of the evidence Act and that ban is B further stretched through section 26 to the confession made to any other person also if the confessor was then in police custody, such "custody" need not necessarily be, post-arrest custody. The word "Custody" used in Section 26 is to be understood in pragmatic sense. If any accused is within the ken of surveillance of the police during which his movements are restricted then it can be regarded as custodial C surveillance for the purposes of the section. If he makes any confession during that period to any person be he not a police officer, such confession would also be hedged within the ban contours outlined in Section 26 of the Evidence Act. [816 F-H]

D 4.2. Accused-respondent, at the time of confession to PW 6 and PW 7, was nowhere near the precincts of the Police Station or during the surveillance of the Police, so the mere fact that the confession to these witnesses was later put in black and white is no reason to cover it with the wrapper of inadmissibility. [817 A,B]

E 5. The fact that the body of the victim was found on the cot inside the house of the respondent is a very telling circumstance against him. The respondent owed a duty to explain the presence of the dead body in his house. In absence of any explanation from him, the implication of the said circumstance is definitely adverse to him. [817C]

F 6. The Doctor had found the injury on the right side of the posterior labia Minora and fresh vaginal tear on the right side of the inner vaginal wall posterior. These injuries are indicative of forcible sexual intercourse. The High Court committed serious error in skipping the contents of the letter (P. 13) wherein the victim cautioned the G respondent not to have a leering on her. Further in his extra-judicial confession before P.W.6 and P.W.7 the respondent admitted the factum of rape. The very fact that the sexual intercourse was soon followed, if not contemporaneous with by the act of throttling is strongly suggestive of a vehement resistance offered by the victim. [817 D-H]

H 7. The High Court has observed "There is no direct evidence to

show that the accused alone had sexual intercourse with her. The deceased was aged 16 years,"—by using the word 'alone' the High Court almost cast a stigma on the victim as if, apart from the appellant there were other persons also who had sexual intercourse with her. There is no basis at all for such an assumption. There was no warrant for recording such a finding; the finding is irresponsible. Even if the Court forms an opinion from the absence of the hymen that the victim had sexual intercourse prior to the time when she was subjected to rape by the appellant, she had every right to refuse to submit herself to sexual intercourse by the appellant as she was certainly not a vulnerable object or prey for being sexually assaulted by any one and this position becomes all the more clear from the contents of the letter Ex. P-13. [818 B-E]

8. The courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The court should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses which are not of fatal nature to throw out allegation of rape. This is all the more important because oflate crime against women in general and rape in particular is on the increase. It is emphasised that the courts must deal with the rape cases in particular with utmost sensitivity and appreciate the evidence in totality of the background of the entire case and not in isolation. [818 G,H, 819 AB]

State of Punjab **v.** *Gurmit Singh and others,* **[1996] 2 SCC 384, relied on.**

9. The order of acquittal passed by the High Court is set aside and the conviction and sentence passed on the respondent/accused by the trial court are restored. [818 F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 455 of 1996.

From the Judgment and Order dated 4.11.94 of the Andhra Pradesh High Court in Crl. A. No. 255 of 1994.

Guntur Prabhakar for the Appellant.

A Vidya Sagar K. and Ms. Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. A girl of sixteen (Satya Vani) was raped and throttled to death. This was the gravamen of the charge put against respondent B Gangula Satya Murthy alias Babu. Sessions court convicted him under Sections 302 and 376 of the Indian Penal Code and sentenced him to imprisonment for life and rigorous imprisonment for 7 years respectively under the two counts. But on appeal, a Division Bench of the High Court of Andhra Pradesh acquitted him. This appeal by special leave has been filed by the State of Andhra Pradesh in challenge of the said order of C acquittal.

We shall state the facts of the case as put forth by the prosecution:

Satya Vani was a student of 10th Standard. She was residing with D her parents in the village Talluru (East Godawari District). Respondent Babu, a married youngmen, was residing with his mother in their house situated near the house of the deceased. Satya Vani used to visit respondent's house to see television programmes as there was no television set available in her house. Respondent developed, in course of time, an infatuation for Satya Vani, but the overtures made by him were not favourably reciprocated E by her.

On the evening of 26.11.1991, Satya Vani was sent by her parents to the house where her grand-parents lived with some errand. While returning from there she stepped into respondent's house for seeing the telecast programmes. Respondent was all alone then in that house as his mother F had gone to the town to see a cinema show. Taking advantage of the absence of anyone else in the house, respondent subjected Satya Vani to sexual intercourse by forcibly putting her on the cot. When she threatened that she would complain it to her parents respondent caught hold of her neck and throttled her to death. A little later respondent went out of the G house bolting it form outside.

As Satya Vani did not return home even after a long time her parents became panicky and they made hectic enquiries for her. When respondent's mother reached home by about 10 P.M. she found Satya Vani's dead body lying on the cot in her house, and she immediately conveyed the frightening H news to her anxious parents.

Police was informed of the matter and an FIR under Section 174 of the Code of Criminal Procedure was prepared, and the inquest on the dead body was held by the Sub Inspector of Police. During autopsy it was revealed that Satya Vani was subjected to sexual intercourse and her death was due to throttling. A

On 2.12.1991, respondent was physically produced before the police by two residents of the locality (PW-6 and PW-7) on the premise that respondent had admitted his guilt to them. A letter which Satya Vani had addressed to the respondent was also delivered to the police. After completing the investigation, respondent was challaned. B

Sessions court found on evidence, which is entirely circumstantial, that respondent had raped the deceased girl and killed her by throttling. Accordingly the respondent was convicted and sentenced as aforesaid. C

The following circumstances were found by the sessions court as established firmly by the prosecution: (1) Satya Vani was seen entering the house of the respondent by about 5.30 P.M.; (2) After some time respondent was seen going out of the house bolting the door from outside; (3) Death of Satya Vani took place inside the house of the respondent some time between 6 P.M and 10 P.M.; (4) She was subjected to sexual intercourse before her death and she died due to throttling; (5) Respondent alone was present in the house during the relevant time besides the deceased; (6) Extra judicial confession was made by the respondent to PW-6 and PW-7. D E

The Division Bench of the High Court of Andhra Pradesh, however, expressed the view that possibility of deceased's death due to consumption of poison, could not be ruled out in this case. Learned Judges entertained the doubt that the injuries on the neck including the fracture of the hyoid bone could have been post-mortem injuries. Further, the extra judicial confession spoken to by PW-6 and PW-7 was not acted on by the High Court due to certain infirmities pointed out in the judgment. Resultantly, the High Court reversed the judgment of the sessions court and passed the order of acquittal. F G

Learned counsel, who argued for the State, seriously assailed the reasoning of the High Court for reaching the findings. When we perused the records in the light of the arguments addressed by both sides we are of the opinion that the High Court has manifestly erred in reversing the findings arrived at by the trial court. We shall now advert to our reasons. H

A Dr. K. Trinadahrao (PW-10) of the Government Hospital who conducted the post-mortem examination has recorded his observations in the certificate as follows:

> "Injuries are ante-mortem in nature. Two finger pressure abrasions were present on the right as well as on the left side
B of the neck placed anteriorly, which continued up to the root level on the back of the neck. A fresh vaginal tear on the inner vaginal walls posterior to labia minors, fracture of the right hyoid bone and extravagation of blood on both sides of the neck were found. Both lungs were congested.
C Emphysematoas bullae were present on the surface of both the lungs."

When the vaginal swabs collected from the deceased were examined under microscope, presence of dead non-motile spermatozopa were observed by the doctor.

D

The High Court has reached the conclusion that fracture of the hyoid bone was likely to be a post-mortem injury caused while the dead body was carried in a rickshaw. Learned Judges have advanced the following reasons for reaching the said conclusion: (1) Witnesses who were present
E at the inquest as well as the investigating officer did not notice any abrasion or other injury on the neck of the dead body; (2) Dr. Trinadharao (PW-10) admitted in cross-examination that "if pressure is applied by fingers, only contusions are possible but not abrasions." (3) PW-10 has further stated in his deposition that if the fracture on the hyoid bone was ante-mortem there would have been corresponding bleeding but no such bleeding
F was noted by the doctor during the autopsy. (4) The doctor witness has also stated that it is possible for causing fracture of the hyoid bone when a dead body is carried in autorickshaw.

We cannot resist expressing our distress that the High Court has
G chosen to advance fragile reasons to upset a well reasoned conclusion reached by the trial court that the deceased was throttled to death. The mere fact that witnesses present at the inquest had escaped noticing the small abrasions on the neck of the dead body is too tenuous a ground for holding that such abrasions would have come into existence after the inquest was held overruling the definite opinion of the medical man (who saw the
H injuries) that they were ante-mortem injuries. It is totally incorrect to say

that no abrasion would be caused if pressure is applied with fingers. It is only common sense that if such fingers have projecting nails, pressure application with such fingers would quite possibly cause abrasions as well. Similarly the observations of the High Court that no bleeding was noticed at the site of the fracture of the hyoid bone is not factually correct as PW-10 had noted in the post-mortem certificate that there was extravagation of blood on both sides of the neck.

The High Court has adverted to yet another reason for holding that death might not have been caused due to throttling. The vomitted material found on the cot and mouth of the dead body was not sent for chemical examination, and hence the High Court concluded that " it is also possible that death might have been caused due to asphyxia by poisoning." We are disturbed very much as the High Court has overlooked, if not ignored, the evidence of Dr. Trinadharao (PW-10) that viscera comprising of stomach contents, intestine, piece of lever and also a kidney had been forwarded to the chemical laboratory for analysis and PW-10 had reserved his final opinion till he got the result of such analysis. When he later received the chemical examination report he pronounced his final opinion that the death was due to asphyxia as no poison was detected in the viscera. The report of the chemical examiner is available in the records. Section 293 of the Code would enable the court to use the said document in evidence. Inspite of such unassailable materials the High Court has arrived at the finding that "in the facts and circumstances of the case it cannot be ruled out in its entirety that death was not caused due to poisoning."

One of the circumstances relied on by the prosecution is that respondent had confessed the guilt to PW-6 and PW-7. In other words, prosecution relied on the extra judicial confession of the respondent spoken to by the said two witnesses. In their deposition they said that on 2.12.1991, they buttonholed the respondent and confronted him with certain questions pertaining to the death of the deceased and then respondent had blurted out to them of what happened. Witnesses further deposed that respondent took out a letter and showed it to them. Witnesses thereupon took him to the police station where that letter was also produced. PW-14-Sub-Inspector of Police confirmed that those two witnesses brought the respondent to the police station and produced Ext. P-13 letter.

Truth of the evidence of PW-6 and PW-7 stands vouchsafed by Ext. P-13 letter as the same was proved to be a letter written by the deceased to the respondent. PW-12 Assistant Director, Forensic Scinece Laboratory,

A who was also a Handwriting Expert examined the handwriting on the letter with the admitted handwriting of the deceased found in some answer sheets (which police collected from the Principal of the School where Satya Vani studied—PW-13) PW-12 gave cogent reasons for his conclusion that both were written by the same person. A reading of the contents in that letter admits of no doubt that it was addressed to the respondent in
B this case.

The aforesaid extra judicial confession was relied on by the trail court but the High Court did not act on it for two reasons. First is a seeming disparity between the time of making the confession as spoken to by the witnesses and the time mentioned by the police on the strength of
C station records. The second reason is that the said extra judicial confession was reduced to writing as Ext. P-7 inside the police station and hence it is hit by Section 26 of the Evidence Act.

It is true that in the deposition PW-6 and PW-7 have said that it was at 7 A.M. that the respondent made the confession to them. But the Sub
D Inspector said that accused was produced in the police station at 7.30 P.M. We think that much should not have been made out of that disparity as there could be a possibility of making an error in recording the time A.M. for P.M. We may say this because both PW-6 and PW-7 uniformly said that they took the respondent to the police station situated about 3 kilometres
E away. As the police records show that they produced him at 7. 30 P.M. it is only inferential that respondent would have made the confession on the evening and not during morning hours. At any rate it is not proper to jettison an otherwise sturdy piece of evidence of extra judicial confession on the ground of such a rickety premise.

F The other reasoning based on Section 26 of the Evidence Act is also fallacious. It is true any confession made to a police officer is inadmissible under Section 25 of the Act and that ban is further stretched through Section 26 to the confession made to any other person also if the confessor was then in police custody. Such "custody" need not necessarily be post
G arrest custody. The word "custody" used in Section 26 is to be understood in a pragmatic sense. If any accused is within the ken of surveillance of the police during which his movements are restricted then it can be regarded as custodial surveillance for the purpose of the section. If he makes any confession during that period to any person be he not a police officer, such confession would also be hedged within the banned contours outlined in
H Section 26 of the Evidence Act.

But the confession made by the respondent to PW-6 and PW-7 was not made while he was anywhere near the precincts of the police station or during the surveillance of the police. Though Ext. P-7 would have been recorded inside the police station its contents were disclosed long before they were reduced to writing. We are only concerned with the inculpatory statement which respondent had made to PW-6 and PW-7 before they took him to the police station. So the mere fact that the confession spoken to those witnesses was later put in black and white is no reason to cover it with the wrapper of inadmissibility. We find that the High Court has wrongly sidelined the extra judicial confession.

The fact that body of (Satya Vani) was found on the cot inside the house of the respondent is a very telling circumstance against him. Respondent owed a duty to explain as to how a dead body which was resultant of a homicide happened to be in his house. In the absence of any such exmplanation from him the implication of the said circumstance is definitely adverse to the respondent.

High Court has extricated the appellant from the indictment of rape on the erroneous assumption that it would have been a consented copulation. Learned Judges have relied on two circumstances in support of the said assumption. One is that there was no nail mark on the breast or face or thigh or private parts of the deceased for indicating resistance offered by her. Second is that PW-10 doctor did not notice any hymen for the deceased. In that realm also the High Court committed serious error in skipping the contents of Ext. P-13 letter and also the injury on the right side of the posterior labia minora, (we have mentioned it supra). Of course that injury by itself is not conclusive proof of resistance but it cannot be ignored altogether. In Ext. P-13 letter, she cautioned the respondent not to have a leering on her. She deprecated in her letter the idea of a married man enjoying another lady by terming it an act of "grave sin". Further, in his extra judicial confession made to PW-6 and PW-7, respondent had said that he took the girl by force and kept her on the cot as he was long nurturing the lust to enjoy her. The doctor had found fresh vaginal tear on the right side of the inner vaginal wall posterior. This injury is indicative of forcible sexual intercourse. According to the medical opinion also the presence of fresh vaginal tear, showed that the deceased had been subjected to sexual intercourse prior to her death. The very fact that the sexual intercourse was soon followed, if not contemporaneous with, by the act of throttling is strongly suggestive of a vehement resistance offered by the female victim.

A We have absolutely no doubt that the above circumstances are sufficient to reach the irresistible inference that she was ravished by the respondent despite her refusal.

The High Court after considering the medical evidence, while dealing with the question of rape opined:

B

> "There is no direct evidence to show that the accused alone had sexual intercourse with her. The deceased was aged 16 years."

We are rather distressed on this comment. By using the word "alone" C the High Court almost cast a stigma on the prosecutrix as if, apart from the appellant, there were other persons also who had sexual intercourse with her. There is no basis at all for such an assumption. There was no warrant for recording such a finding and if we may say so, with respect, the finding is an irresponsible finding. We express our strong disapproval of the approach of the High Court and its casting a stigma on the character D of the deceased prosecutrix. Even if the court formed an opinion, from the absence of hymen, that the victim had sexual intercourse prior to the time when she was subjected to rape by the appellant, she had every right to refuse to submit herself to sexual intercourse by the appellant, as she certainly was not a vulnerable object or prey for being sexually assaulted E by anyone and this position becomes all the more clear from the contents of the letter Ex. P-13 as already noticed.

We, therefore, conclude that the High Court erred substantially in upsetting the conviction and sentence passed by the Sessions Judge supported by sound and sturdy reasons. We, therefore, allow this appeal and set aside F the order of acquittal. We restore the conviction and sentence passed on the respondent/accused by the trail court. The bail bond shall stand cancelled. The respondent shall be taken into custody forthwith to undergo the remaining part of the sentence.

G Before parting with the case, we would like to point out that the Courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out H allegations of rape. This is all the more important because of late crime

against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and we must emphasise that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation. One of us (Dr. Anand J.) has observed in *State of Punjab* v. *Gurmit Singh and Others,* [1996] 2 SCC 384 thus:

> "The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity."

We think it is appropriate to reiterate those observations in this case.

H.K. Appeal allowed.