**SUPREME COURT OF INDIA**

Arumugham

Vs.

State Rep. By Inspector of Police

Crl.A.No.515 of 2007

(Harjit Singh Bedi and C.K.Prasad JJ.)

28.07.2010

**JUDGEMENT**

**HARJIT SINGH BEDI, J.**

1. This appeal by way of special leave at the instance of the solitary accused arises out of the following facts:

2. Saroja was the second wife of PW2, the appellant's father and, therefore, the step mother of the appellant. PW5 was the appellant's step sister having been born out of the marriage of PW2 and the deceased whereas PW3 was the husband of PW5. All the persons aforementioned were residents of village Thuluvaspushpagiri and were agriculturists by profession.

PW2 had lost his first wife, the mother of the appellant, about 22 years prior to the date of the incident, and one year after her death PW2 had married the deceased Saroja. It appears that Saroja

was a lady of easy virtue and was involved with several persons in the village which had annoyed the appellant and he often asked her to behave in a dignified way.

The deceased, however, told the appellant that it is not his business to interfere in her affairs as she was an independent person and entitled to live her life as she pleased. Saroja's affairs, however, continued to rankle the appellant.

3. At about 9 a.m. on 19th March 2000, PW5 and the deceased went to the field to perform their daily agricultural operations.

At about 11 a.m. the appellant also arrived at that place and called out to the deceased to help him lift a bundle of firewood. The deceased walked towards the appellant and both of them went into the sugarcane field. A short while later the appellant alone returned and when questioned by PW5 told him that he had strangled and killed Saroja. The appellant also appeared before PW1 the Village Administrative Officer at 4 p.m. and made an extra judicial confession that he had murdered his step mother. The statement given by the appellant was reduced to writing (Ex.P-1) by PW1 and he also took the appellant to Santhavasal Police Station and handed him over along with the document Ex.P-1 to the Head Constable. A case was accordingly registered against the appellant under Section 302 of the IPC. The investigation was, however, taken over by PW15 the Inspector of Police, Arni Taluk, who was holding the additional charge of Santhavasal Police Station. PW15 reached the place of incident and recorded the statement of various witnesses and on the statement made by the appellant recovered the rope used for strangling the deceased. The dead body was also sent to the hospital for its post-mortem examination which was performed the next day at about 4 p.m. by PW10, the Civil Assistant Surgeon, attached to the Government Hospital, who found the following injury on the dead body:

"A ligature mark seen above thyroid cartilage encircling the neck completely.

The width of the ligature mark was 3 cm in size."

4. The Doctor after receiving the report of the Chemical Analyst opined that the death was on account of Asphyxia due to strangulation and that the death had occurred between the 27-30 hours prior to the autopsy. On the completion of the investigation, a charge sheet was filed against the appellant.

The trial court on the basis of the evidence of PW1 to whom the appellant had made the extra judicial confession which had been reduced to the writing Ex.P1 which formed the basis of FIR and the fact that the medical evidence supported the contents of the extra judicial confession and that as

per the statement of PW5 the appellant had often called her mother as being of low character woman which constituted the motive for the offence, convicted and sentenced him to imprisonment for life under Section 302 of the IPC. The judgment of the trial court was thereafter challenged in appeal in the High Court which too has been dismissed leading to the filing of the present appeal.

5. It has been argued that the conviction of the appellant only on the basis of the extra judicial confession was not called for in the light of the fact that PW2 the father of the appellant, his sister PW5 and her husband PW3 had turned hostile and had not supported the prosecution. It has accordingly been contended that there was, in fact, no valid evidence which could be utilized for making an order of conviction. It has also been submitted that as per the prosecution story the statement Ex.P1 had been recorded at 4 p.m. but the FIR on its basis had been recorded at 6 p.m. though the office of the Village Administrative Officer and the Police Station shared a common wall, was also a factor fatal to the prosecution story, as the delay had not been explained. It has also been pleaded that the medical evidence did not support the ocular evidence in the light of the fact that (as per the Doctor) the body was in a decomposed state and the occurrence had therefore happened before 11 a.m. on the 19th March 2000.

6. The learned State counsel has, however, pointed out that both the trial court and the High Court on an appreciation of the evidence had recorded the conviction against him and there was absolutely no reason whatsoever to discard the statement of PW1 to whom the appellant had made an extra judicial confession and that the medical evidence fully supported the prosecution story far from the contradicting it.

7. We have heard the learned counsel for the parties and gone through the record. As per the prosecution story, the incident happened at 11 a.m. on 19 th March 2000 in the fields adjoining village Thuluvaspushpagiri. Soon after committing the murder the appellant made a confession to PW5 his step sister that he had murdered her mother and, thereafter, repeated the same to PW1, the Village Administrative Officer who recorded the same in Ex.P1 a written memorandum which was handed over in the Police Station at 6 p.m. leading to the registration of the FIR. It is true that an extra judicial confession is often called a weak type of evidence but we find that the present case has certain distinctive features. It is of significance that the appellant had made the extra judicial confession to PW5 and thereafter to PW1 within a very short time and had not attempted to run away and he had been handed over to the police by the Village Administrative Officer at about 6 p.m. at the time when the FIR had been recorded.

PW5 also admitted in her statement that the appellant was annoyed with the deceased as he suspected her of being of low character and an embarrassment to him and he had often asked her to mend her behaviour to which she had responded that she would live life on her terms and it was not his business to interfere in her life. It is true that the appellant's father PW4 and brother-in-law PW3 had turned hostile but their evidence would have been merely to the effect that the appellant had found fault in the deceased's behaviour and in the background of the statement of PW5 that the

appellant was indeed annoyed with her mother, the factum of PWs.4 and 3 having turned hostile would not adversely affect the prosecution story.

8. The medical evidence far from contradicting the ocular evidence clearly supports it. It has been submitted by the learned counsel for the appellant that body was in a decomposed state on the 20th March 2000 at 4 p.m. when it was subjected to the post mortem examination which indicated that the incident must have happened much before 11 a.m. There is a basic flaw in this evidence. The Post mortem certificate Ex.P8 shows that the post mortem had commenced at 4 p.m. and the finding was of a fracture in the body of the thyroid bone and that the deceased would appear to have died due to strangulation 27 to 30 hours prior to the commencement of the post-mortem. In this background, it can, by no stretch of imagination, be said that the death had occurred prior to 11 a.m. on the 19th of March. The cause of death also reveals that the death had been caused by strangulation with a rope as there was ligature mark on the neck. It has been submitted by the learned counsel for the appellant that as per the evidence of PW5 the deceased was a healthy and strong woman and was perhaps physically stronger than the appellant. An inference is, thus, sought to be drawn that in this situation, it would have been well nigh impossible for the appellant to have strangulated her. We absolutely find no merit in this submission as well.

It is clear from the evidence that the appellant had prepared well for the day and had apparently hidden the rope in the field much earlier. It looks, therefore, that the deceased, though a strong woman, had been overwhelmed by a sudden attack and strangulated with the rope, as no other injuries which could show signs of a struggle, were found on the dead body.

9. For the reasons mentioned above, we endorse the findings of the High Court and the trial court and dismiss the appeal.