

[Non-Reportable]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1941/2010

NAWAZ

...Appellant

Versus

THE STATE REP. BY INSPECTOR OF POLICE ...Respondents

WITH

Criminal Appeal No. 2153/2013

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

The appellants herein were charged, tried and convicted for offences punishable under Section 302 read with Section 34 and Section 201 of the Indian Penal Code (hereinafter 'IPC'). The High Court confirmed the judgment of conviction passed by the Trial Court and hence they are in appeal before us.

2. The brief facts of the case are as under:-

Accused No. 1 – Smt. Ragila had an illicit relationship with Accused No. 2 – Shri Nawaz. The accused No. 1 is the wife of the deceased.

3. The deceased used to suspect the fidelity of Accused No. 1 as well as his daughter's integrity. He was of the opinion that Accused No. 2 Nawaz not only had an illicit relationship with Accused No. 1 but also with the elder daughter of the deceased.

4. On the date of the incident at about 9.00 a.m., the deceased quarrelled with Accused No.1 and called her a 'prostitute'. He also told her that Accused No. 1 has converted the daughter into a prostitute as well. At that point of time, Accused No. 2 came from the first floor and asked the deceased not to quarrel with Accused No. 1 and her daughters. Since the deceased did not stop, Accused No. 2 slapped the face of the deceased. Immediately, thereafter, both the accused throttled the deceased with the help of a towel and burnt the dead body to try to conceal the offence. Subsequently, they transported the dead body in a Maruti Car owned by PW 15 and abandoned the body elsewhere.

5. The dead body was found after two days following the incident by PW 1, who lodged the First Information Report. After about 40 days, extra-judicial confession of Accused No.1 was recorded by PW 8 (teacher of the village) and based on the same and other material collected subsequent thereto, the charge-sheet came to be filed.

6. The Trial Court as well as the High Court convicted both the accused for the offences punishable under Section 302 and Section 201 of IPC.

7. Shri S. Nagamuthu, learned senior counsel appearing on behalf of the appellants, taking us through the material available on record contends that the entire case is built up on the extra-judicial confession which is a weak piece of evidence. He further submits that there is no reason for Accused No.1 to confess before PW 8 who is a teacher of a school and stranger to the family and that too after 40 days. He further draws our attention that the dead-body was not identified even after superimposition test. The aspect of motive is deposed by PW 17, who is the maid servant working in the house of accused. According to him, if the extra-judicial confession is disbelieved, the accused are entitled

to get acquitted. Alternatively, he submitted that even assuming that extra-judicial confession is believed in its entirety, the case may fall under Section 304 Part I of the IPC.

8. Mr. M. Yogesh Kanna, learned counsel appearing for the State argued in support of the judgments of the Trial Court and the High Court.

9. Both the Courts below have relied upon the extra-judicial confession which is said to have been made by Accused No.1 before PW 8 who is a teacher of the school. We have perused the extra-judicial confession, read over to us by Shri Nagamuthu, learned senior counsel, and translated by him in English.

10. It is no doubt that the extra-judicial confession is recorded by PW 8 who is a teacher after about 40 days of the incident in question. Admittedly PW 8 is not the relative of the deceased nor the relative of the accused. If one goes through the extra-judicial confession, it is clear that the same is recorded as if it is a statement recorded under Section 161 of the Code of Criminal Procedure, 1973.

11. Be that as it may, both the Courts below on facts have relied upon the extra-judicial confession and we find that the extra-

judicial confession in all probability might have been made by Accused No. 1 implicating herself and other accused. In other words, we also subscribe to the views of the Trial Court as well as by the High Court that such a confession was made by Accused No.1

12. Material on record also reveals that Accused No.1 tried to hide the offence for about 40 days by giving false explanation about the whereabouts of her husband. Be that as it may, on going through the extra-judicial confession carefully, we find that the case may fall under Section 304 Part I of IPC inasmuch as the offence may fall under explanation 1 of Section 300. Immediately, after hearing the deceased calling the Accused No. 1 and her daughter as prostitutes, the Accused No. 2 suddenly slapped the cheek of the deceased. Immediately, after receipt of said assault, the deceased fell down unconscious and thereafter he was throttled to death. Everything has occurred in the fraction of a minute. Since the accused, because of the aforesaid conduct of the deceased calling accused No. 1 and her daughter as prostitute, was deprived of the power of self-control. The sudden

provocation by the deceased has resulted in the incident in question.

13. The deceased provoked the accused No.1 by uttering the word 'prostitute'. In our society, no lady would like to hear such a word from her husband. Most importantly, she would not be ready to hear such a word against her daughters. The incident is a result of a sudden and grave provocation by the deceased. Since the body came to be transported by the accused to a different place in order to hide the offence, the accused are rightly convicted for offence under Section 201 of IPC.

14. Having regard to the totality of the facts and circumstances of the case, the following orders are made:-

(A) The judgments of the Trial Court in S.C. 10/2005 and the High Court in Criminal Appeal Nos. 563/2007 and 599/2007 convicting the accused for offence punishable under Section 302 of IPC stands modified and the accused are hereby convicted under Section 304 Part I of IPC and sentenced to rigorous imprisonment for a term of ten years. Sentence imposed on the accused under Section 304 Part I and Section 201 IPC shall run

concurrently. The accused will have the benefit of set off of the period already undergone in prison.

(B) The appeals are accordingly allowed in part.

.....J
(MOHAN M. SHANTANAGUDAR)

.....J
(DINESH MAHESHWARI)

NEW DELHI;
22ND JANUARY, 2019.