

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 08th January, 2013**

+ **CRIMINAL APPEAL 899/2012**

JOGINDER YESU DASS Appellant
Through Mr. A.J. Bhambhani, Advocate with
Ms. Nisha Bhambhani and
Ms. Bhavita Modi, Advocates.

versus

STATE Respondent
Through Mr. Richa Kapoor, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J. (ORAL)

Joginder Yesu Dass impugns his conviction under Section 302 of the Indian Penal Code, 1860 (IPC) for murder of his wife Sheela Dass in the intervening night of 26/27th May, 2011, vide judgment dated 30th April, 2012 in Session Case No. 49/2011, arising out of FIR No. 204/2011 P.S. Malviya Nagar. By the impugned order dated 4th May, 2012, the appellant has been sentenced to life imprisonment and fine of Rs. 20,000/-, in default of payment of fine, he has to undergo Simple Imprisonment for three months.

2. Homicidal death of Sheela Dass stands undisputedly established.
Dr. Pankaj Kumar (PW-1), Senior Resident, AIIMS, Department of

Surgery has deposed that, on 27th May, 2011 at about 12.56 A.M., Sheela Dass was rushed to the hospital by her son Ashish Dass (PW-10) with alleged history of being stabbed. On examination, it was found that Sheela Dass had incised wounds over the abdomen and chest region. The patient was unfit for statement, as is recorded in the MLC (Ex. PW1/A). Sheela Dass was immediately shifted for further treatment and as per the medical record (Ex. PW1/B) she had three external injuries on her body. In the cross-examination, PW-1 has averred that the injuries were on the vital body portion but he could not say whether any vital organ of the body was damaged because that could only be determined after internal examination.

3. Dr. Thejaswi (PW-6), Senior Resident, Department of Forensic Medicines, Jai Prakash Naryan Trauma Centre, AIIMS, New Delhi has deposed that, on 7th June, 2011, he had conducted post mortem of the deceased Sheela Dass. He has proved his detailed report (Ex.PW6/A) and verified that the deceased had three injuries and all were sufficient in the ordinary course of nature to cause death. In his subsequent opinion, (marked Ex. PW6/B), on examining the knife he has opined that “it cannot be ruled out” that injuries were sustained with the said weapon of offence.

4. The Post Mortem Report (Ex.PW6/A) records that Sheela Dass had expired on 6th June, 2011 at about 3.10 P.M. while the treatment

was being administered. On internal and external examination, the following injuries were noticed:-

(i) Surgically stitched incised stab wound measuring 1.6×0.1 cms obliquely oriented was present on the left side of the lower chest. The lower inner edge was located 5 cms from midline and 18 cms from left clavicle.

(ii) Surgically stitched incised stab wound measuring 2cms × 0.1 cms obliquely oriented was present on the left side of the upper abdomen, the lower inner edge was touching the midline and was located 21 cms below the suprasternal notch.

(iii) Surgically stitched incised stab wound measuring 1.6 cms × 0.1 cms obliquely oriented was present on the left side of the lower abdomen, inner edge was situated 6 cms from midline and 9 cms above the inguinal ligament.

The cause of death, as opined in Ex. PW6/A, reads as follows:-

“Septicemic shock and its complications due to peritonitis as a result of incised stab wound of the abdomen (injury no-2). All injuries are ante mortem in nature. Injury no 1, 2 and 3, individually and in combination of others, would be sufficient to cause death in ordinary course of life.”

Ex. PW1/B is deceased's medical record which delineates surgical and other treatments administered to the deceased by the hospital.

5. There are two eye witnesses to the occurrence, namely Ashish Dass (PW-10) and Yebrina Dass (PW-12), the son and daughter of the deceased and the appellant. The statements of the two natural eye witnesses are categorical and veritable. PW-10 has testified that on

26th May, 2011, his father returned inebriated from his duty at about 8.00 P.M. and quarreled with all the family members, including his mother till he went to sleep at around 10.00 P.M. At about 11.30 P.M. he woke up hearing his father and mother fighting. He saw that his father, who was on his mother, had a knife in his hand while his knee pressed his mother's body. From the one hand he was throttling while from the other hand he was giving knife blows to Sheela Dass. He gave three knife blows on the chest and abdomen portion and blood started oozing out from the wounds. PW-10 pushed his father aside and knife fell from the appellant's hand. PW-10's sister also woke up and both of them gave first aid to their mother. PW-10 and his sister took their mother in an auto to the AIIMS Hospital where she was admitted and attended to. The same night she was operated upon for about 3-4 hours. PW-10 narrated all the facts verbatim to the police and his statement (Ex.PW 10/A) was recorded. Thereafter, he returned to the house with police officers but his father was not present there. Photographs were taken, site plan was prepared and neighbours were inquired by the police. On 28th May, 2011, PW-10 was called by the police as they searched for his father around Chirag Delhi till the appellant was found at Prachin Shiv Mandir and arrested. The appellant was interrogated and, thereafter, on his pointing out the weapon of offence i.e. the knife, it was recovered from underneath the

cushion in the house. The knife (Ex.P-1) was produced before PW-10 and he recognized it. PW-10 has stated that throughout the treatment his mother i.e. Sheela Dass remained on the ventilator till she died on 6th June, 2011. In the cross examination, PW-10 agreed that, on 27th May, 2011, police had come, and thoroughly searched the house and had taken photographs at the crime spot. He has accepted that knife was not found at that time. He has averred that relations between his parents were not cordial because his father never gave the entire salary to his mother. The given money was insufficient to run the house, therefore, his mother did odd jobs outside the house, which use to make his father suspicious.

6. Yebrina Dass (PW-12) has deposed on virtually identical lines that at about 11.30-11.35 P.M., she heard cries of her mother and saw her father giving knife blows to her mother. Her father was saying that he would “finish her story that day”. Her brother also woke up hearing the noise. She immediately switched on the light, on which, she saw that her father was pressing her mother’s neck. She has deposed that her brother intervened and twisted her father’s hands, as a result of which the knife fell down from his hands. They took their mother to the hospital where she was treated till she expired on 6th June, 2011. Minor contradictions in PW-12’s statement, viz., the statement recorded by the police under Section 161 Code of Criminal Procedure,

1973 were confronted to PW-12. The said discrepancies are whether PW-12 had stated to the police that street light was coming from the window and whether she had actually seen her father pressing her mother's throat. According to us, these discrepancies are insignificant and not material. These elaborations/improvement do not create a doubt or dent her core deposition. PW-12 has indubitably implicated her father, in her police statement and the Court, and has clearly stated to the police that she had seen her father stabbing her mother.

7. Learned appellants counsel has argued that recovery of the knife is doubtful and pointed out that the knife (Ex.P-1) was recovered from the house itself from where father was absconding for many days. Recovery attributed to the disclosure statement of the appellant (Ex. PW4/C) is highly unbelievable as the police records suggest that, on 27th May, 2011, the entire house was scrupulously inspected by the police in order to collect incriminating evidence and material. There is, therefore, some merit in this contention of the appellant's counsel but this is not a tenable ground to upset the appellant's conviction. Even if the disclosure statement and the recovery pursuant thereto is disregarded, statements of eyewitnesses PW-10 and PW-12 are sufficient to implicate the appellant. We also notice that, as per the FSL Report (Ex.PW 15/F1) blood could not be detected on the knife (Ex. P-1) but blood was detected on the bed sheet and the cloth piece.

It cannot be ruled out that the appellant might have plausibly washed the knife after PW-10 and PW-12 had rushed to the hospital with the deceased. However, we record that bed sheet, on which blood stains were found, was also not recovered by the police till 27th May, 2011. This anomaly remains inexplicable as the police could have recovered the bed sheet when it searched the house thoroughly for incriminating evidence. However, this lapse, on prosecution's part, is nonfatal since it does not shake the substratum of the case or the eye witness account rendered by PW-10 and 12.

8. Learned counsel for the appellant has drawn our attention to the medical records (Ex. PW 1/B) and highlighted that, on 27th May, 2011, the patient i.e. Sheela Dass, was fully oriented and in effect it should be presumed that she had the ability to speak and give her statement. This argument cannot hold ground as it has come on record that the deceased Sheela Dass was operated in the intervening night of 26/27th May, 2012. Surgical interventions have also been indicated in the Post Mortem Report. On a plain reading of the medical records, one can see that under column "responsiveness" the words "fully oriented" is mentioned but it also delineates that the patient was earlier given Anesthesia and, specifically under the heading "intervention Management", "rapid Sequence Anesthesia" is mentioned. PW-10 has averred that, after the surgery, his mother was on the ventilator. She

throughout remained on ventilator. It was not suggested to PW-10 that the deceased was at any time in the position to make a statement. SI Amit Choudhary (PW-14), in the cross examination, has deposed that deceased Sheela Dass's statement was never recorded as she was unconscious. He has repudiated the suggestion that the deceased became conscious after two days and spoke to her daughter. PW-14 has deposed that he had been in touch with the doctors and, therefore, he did not move any application for fitness of the deceased for her statement. ASI Surender Singh (PW-15), in his cross examination, has clarified that, in the MLC itself, doctor had opined that patient was unfit for statement. Thus, this contention of the learned counsel of the appellant has to be rejected.

9. The appellant, in his statement under Section 313 Cr.P.C., has not disputed his presence in the house, at the time of occurrence. He disputed and denied that knife and blood stained bed sheet were recovered at his instance. He has averred that he was arrested from the house. Regarding the testimony of his children, he has stated that they are interested witnesses and have falsely implicated him. The prosecution as recorded above has succeeded in proving otherwise.

10. Learned counsel for the appellant has challenged the conviction of the appellant under Section 302 IPC and submitted that his conviction, at best, could have been under Section 304, Part I. He

contends that there was a sudden quarrel as a result of which stab wounds were inflicted. We have duly considered the said argument, but the facts of the present case justify conviction of the appellant under Section 302 IPC. Testimonies of PW-10 and 12 reflect that there was a quarrel before the father had gone to sleep, at around 10.00 P.M. Thereafter, the two children woke up at about 11.30 P.M. and found that their father was giving knife blows to their deceased mother. PW-10 has impelled that when he woke up, after hearing noises, he saw that the appellant was pressing the throat of her mother while he kept his knee on her body. He has deposed that his father gave three knife blows to her mother and only on his intervention his father threw the knife. The fact that three knife blows were given by the appellant to his wife has also been mentioned and gets corroborated by PW-12's statement. Post Mortem Report further accentuates that there were three incised wounds on the deceased's body. The knife blows were on the abdomen and chest area. This is not a case of simple or single injury. The appellant continuously attacked his wife with a knife and gave her three blows on the vital part of her body i.e. abdomen and chest with the purpose of finishing her. Looking at the nature of the attack, the manner in which it was done, the factum that the appellant got up at night after having gone to sleep to attack his wife, while the children were sleeping and could not rescue her, justifies his conviction under Section 302 IPC. As recorded the three injuries individually and in combination were sufficient to cause death in the ordinary course of nature (see Post Mortem Report Exhibit PW-6/A). About hour and a half after the altercation between the deceased and the appellant, the appellant struck the deceased, while the two children were asleep, inflicting three grievous wounds. The conduct of the appellant, as narrated

above, cannot be said to fall within the ambit of Section 300 Exception 4 as it was not a sudden quarrel, in heat of passion. The appellant has acted in a cruel and unusual manner.

11. In view of the aforesaid position, the appeal is dismissed. The conviction and the sentence of the appellant are maintained.

SANJIV KHANNA, J.

SIDDHARTH MRIDUL, J.

JANUARY 08, 2013
NA/VKR