

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

Judgment Reserved on: December 10, 2014

% *Judgment Delivered on: December 11, 2014*

+ **CRL.A. 234/2013**

SHISH RAM

..... Appellant

Represented by: Mr.Ravi Chaturvedi, Advocate for the
appellant with appellant in J.C.

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP
Insp.Mahesh Kumar, PS S.B.Dairy
Complainant Smt.Preeti Sharma in
person with Mr.Ajay Garg, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. There are seven deadly sins : wrath, avarice, sloth, pride, lust, envy and drunkenness. But in the modern society we find that some of them have contrived to pass themselves off as virtues. For instance avarice has re-baptized itself as thrift and pride as self-respect. Envy claims to be the corner-stone upon which the present era's competitive system is founded. But one out of the seven vices continues to be unfortunate. It remains undisguised and does not even make an attempt to disguise itself. Probably this vice knows that so evil is it that no guardian angel can touch it with a magic wand to clothe it with the semblance of legitimacy. The viciousness of this vice is so little distinguished, even from those who habitually practice

it, that there will be a protest against giving it an honourable name. What starts as a peg or two, after sometime becomes a mania for a few. Life seems as insupportable to them without a drink just as without food to others. The disease of alcoholism is thus developed by indulgence and when blended with intolerance, it is bound to destroy the intolerant drunkard and bring misery to the family.

2. Prone to alcoholism and being of an intemperate nature, the appellant has not only destroyed himself but his family. Serving the Indian Army as a Junior Commissioned Officer and earning glory for himself, post superannuation, the wet ration of six bottles of alcohol every month from the Army canteen at subsidised rates took their toll. The missionary in the appellant became a mercenary. Vide impugned decision dated November 08, 2012 the learned Trial Judge has convicted the appellant for having murdered his son in cold blood and vide order on sentence dated November 09, 2012 has sentenced him to undergo imprisonment for life and pay fine in sum of ₹10,000/-, in default of payment of fine to undergo simple imprisonment for one month.

3. HC Shyam Lal PW-11 was the duty officer at PS Nihal Vihar on April 06, 2009. He received information from the police control room that a boy had been shot at S-15, Adhyapak Nagar near Vishwakarma Public School, Nangloi. He noted the same vide DD No.37A, Ex.PW-11/A and handed over copy thereof to SI Kuldeep Singh PW-20 who accompanied by Ct.Pradeep PW-17 left for the spot.

4. On reaching House No.S-15, Adhyapak Nagar near Vishwakarma Public School, Nangloi the two learnt that the incident of shooting had taken place at House No.H-75, Adhyapak Nagar, Delhi. As deposed to at the trial

by SI Kuleep Singh and Ct.Pradeep when they reached House No.H-75 the appellant was standing threateningly with a single barrel gun Ex.P-1 wearing a cartridge holder belt Ex.P-2. He was disarmed by the two police officers and the gun and the belt were seized. A fired cartridge Ex.P-3 was found near the dead body of a male, who happened to be the son of the appellant.

5. Preeti Sharma, the daughter-in-law of the appellant : the wife of the deceased named Purshottam, was crying. All family members which included the wife of the appellant were blaming the appellant for having shot his son when he protested against appellant abusing his i.e. the appellant's wife. The wife was being abused by the appellant because he had an issue with the chillies for the meal not being fried properly. Preeti Sharma's statement Ex.PW-1/A to said effect was recorded by SI Kuldeep Singh. By that time Insp.Mukesh Kumar PW-1 along with Ct.Naseeb Singh PW-16 also reached the spot. SI Kuldeep Singh made the endorsement Ex.PW-20/A beneath Preeti's statement Ex.PW-1/A and got the FIR Ex.PW-12/A registered.

6. Crime team was summoned. The appellant handed over the license Ex.P-4 of his gun which was seized vide seizure memo Ex.PW-16/G. The license is in the name of the appellant for the single barrel gun having butt No.4939-83.

7. The photographer in the crime team Ct.Raj Kumar PW-6 took 9 photographs Ex.PW-1/A1 to Ex.PW-1/A9, negatives whereof are Ex.PW-6/1 to Ex.PW-6/9.

8. The fired cartridge, the unused cartridges in the belt and the firearm were sent for forensic examination and vide FSL Report Ex.PX3, the opinion is that the fired cartridge Ex.P-3 was fired from the double barrel

gun Ex.P-1.

9. The dead body of deceased Purshottam was sent for post-mortem to the mortuary of Sanjay Gandhi Memorial Hospital Mangolpuri where Dr.Deepak PW-7 conducted the post-mortem and recorded in the report Ex.PW-7/A that a single firearm entry on the left side of the chest 5.5 cm lateral from midline, 14 cm below left nipple and 18 cm above umbilicus having oval shape 2.5 cm x 2 cm with blackening present over an area 7 cm x 6.5 cm around the wound was found by him. Death was obviously due to haemorrhagic shock consequent upon the firearm injury. Pellets found within the body were recovered. He handed over the clothes of the deceased, blood sample on a gauze and the pellets to the Investigating Officer.

10. At the trial Preeti PW-1 and her son Master Saurabh aged 8 years when his father was shot and 9 years when he deposed in Court fully supported the case of the prosecution and deposed in sync with what Preeti told SI Kuldeep Singh when he reached the house soon after the incident. Appellant's wife Sona Devi PW-15 was torn apart between the love for her son and loyalty to the husband. Whereas Preeti and her son Saurabh deposed that the appellant was prone to drinking and quarrelling and hurling abuses, on the day of the incident he got angry with his wife on the issue of chillies not being fried properly. He abused his wife. Appellant's son could not tolerate his mother being humiliated beyond a point. He protested. The appellant picked up his licensed gun Ex.P-1 and shot his son point blank, a fact corroborated by the post-mortem report of the deceased which shows that the deceased was shot from close range. Appellant's wife deposed that she and her husband i.e. the appellant as also their son Purshottam, his wife

Preeti and his children were in the house. Her husband had a quarrel with her son. They jostled (hathapai). She was not aware what happened. Her son was shot and he fell on the ground. She started crying and so did Preeti.

11. Except that she did not expressly say that the appellant shot their son, she has said so implicitly because she says that on the day of the incident her husband and her son had hathapai. She was not aware who shot at whom, but saw her son fall on the ground. Obviously the person who shot was the appellant and the one who received the gunshot wound was her son.

12. So telltale is the evidence against the appellant, both ocular and forensic that except for saying '*I do not know*' or '*It is wrong*', the appellant could say nothing else when the incriminating circumstances were put to him.

13. But we find one lapse committed by the Investigating Officer. The license Ex.P-4 of the gun Ex.P-1 has not been proved by examining the concerned officer of the department which had issued the license for the gun Ex.P-1. It may be true that the license Ex.P-1 records the fact that it is in the name of the appellant for the gun with butt No.4939-83, but the document was required to be proved as per law by summoning a witness from the concerned department which had issued the license Ex.P-4. Thus, we hold that the prosecution has not proved that the gun Ex.P-1 was the licensed gun in the name of the appellant. But that would not be of much help to the appellant because the testimony of Preeti PW-1, Master Saurabh PW-3, SI Kuldeep Singh PW-20 and Ct.Pradeep Kumar PW-17 would establish that the gun Ex.P-1 was seized by the two police officers from the hand of the appellant soon after the incident and Preeti and Master Saurabh saw the appellant shoot the deceased with the gun. The testimony of appellant's

wife Sona Devi also points in said direction. The FSL Report Ex.PX3 links the gun to the fired cartridge Ex.P-3 recovered from near the dead body of the deceased, which was the house of the appellant where he lived with his wife, son, daughter-in-law and his grand children.

14. It may be true that there is no motive for the crime, but that takes the appellant nowhere. The testimony of his wife, daughter-in-law and grandson brings out that the appellant was prone to drinking and was a short tempered man. Angered by the fact that his wife had not fried the chillies properly he started abusing her and when his son remonstrated, he picked up the gun Ex.P-1 and shot him from close range. The feeble argument that the offence would not be murder but culpable homicide not amounting to murder because the appellant acted upon a sudden quarrel with his son is noted and rejected for the reason the sudden quarrel envisaged by law – Exception IV to Section 300 IPC which lowers the criminality of the act has to be of a kind where mutual remonstrations lift the heat and hence the temper to a level where the combatants become physical. It is not meant for the hot headed and intemperate. The test is one of a reasonable person losing self control on finding himself in the given situation.

15. The appeal is accordingly dismissed. The conviction and the sentence imposed upon the appellant is affirmed.

Crl.M.A.No.19135/2014

1. This is an application filed by Preeti seeking compensation from the appellant. She invokes sub-Section 3 and sub-Section 4 of Section 357 of the Criminal Procedure Code.

2. In the application Preeti has disclosed that having retired from the

Indian Army the appellant receives a pension of more than ₹50,000/- and owns two houses No.G-119, Adhyapak Nagar, Nangloi and H-75, Adhyapak Nagar, Nangloi built on plots ad-measuring 50 square yards and 62 square yards respectively. He has 15½ killa land in villages Dhirana and Haluwas in District Bhiwani Haryana. Gold jewellery weighing 2 kg and silver jewellery weighing 5 kg besides ₹30,00,000/- in bank deposits.

3. The appellant who had been produced in Court pursuant to the production warrants issued when we heard the appeal yesterday i.e. on December 10, 2014 conceded that he owned two houses No.G-119, Adhyapak Nagar, Nangloi and H-75, Adhyapak Nagar, Nangloi built on plots ad-measuring 50 square yards and 62 square yards respectively and owned 15½ killa land in villages Dhirana and Haluwas in District Bhiwani Haryana, but stated that he had no fixed deposits, gold or silver jewellery. He said that his wife was in the village. The agricultural land was not fertile. His wife was earning a living by letting out the land for tilling. He had three living daughters who were married and his wife had to, on social and religious occasions incur expenditure, as per social norms on the married daughters and their children. He disclosed that his daughter-in-law and grand children were residing on the ground floor of House No.75, Adhyapak Nagar, Nangloi and were deriving rental income from the first floor thereof. The two storied house G-119, Adhyapak Nagar, Nangloi was let out by his daughter-in-law. He said that he was receiving pension having superannuated from the Indian Army till he went to jail and thereafter was not receiving any pension and was not aware for the reason thereof.

4. The applicant who was present in Court admitted that she was residing on the ground floor of House No.75, Adhyapak Nagar, Nangloi and

was deriving rental income from the first floor thereof. The two storied house G-119, Adhyapak Nagar, Nangloi was let out by her and she was receiving the rent for the building.

5. We take judicial notice of the fact that agricultural land in District Bhiwani Haryana is of low quality because said district borders District Jhunjhnu in Rajasthan and is semi-arid.

6. Appellant's wife would need money to live and spend some on the three married daughters of the appellant. There being no proof of appellant possessing gold and silver jewellery or having fixed deposits, we note that from one house of the appellant and from one floor of the other the applicant is receiving rental income and she has to bear no expenses towards rent because she lives on the ground floor of one house belonging to the appellant. Right to compensation of the applicant under Section 357 of the Code of Criminal Procedure, 1973 has to be commensurate to the means of the offender for the reason clause (b) of sub-Section 1 of Section 357 guides : *'in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.'* It would not mean merely the right of the person wronged to recover compensation and the concomitant liability of the wrong doer to pay the compensation, it would also include the paying capacity of the wrong doer.

7. Declaring that till he is in prison, the applicant would have a right to continue to receive and appropriate the rent which the applicant is currently receiving and appropriating from the two immovable properties of the appellant and further till the appellant on suffering the sentence resolves the issue with the applicant, she would be entitled to receive the rent of one

property where she resides and would have a right of residence till she lives, we pass no further orders in the application.

8. But we need to pass one direction to the Delhi High Court Legal Services Committee. The direction would be that the jail visiting officer would obtain from the appellant his service particulars and would thereafter find out from the Army Authorities as to why disbursement of pension to the appellant has been stopped. If it is for the reason that the appellant, being in jail, is not able to present himself before the Bank Manager each year and submit the '*life certificate*', assistance shall be provided to the appellant for him to obtain the pension. If the pension has been stopped under some law on the ground that the appellant has murdered his son, legality of the order would be considered and if found to be unsustainable in law, legal aid shall be provided to the appellant to challenge the order.

9. Two copies of the present decision shall be sent to the Superintendent Central Jail Tihar, one to be supplied to the appellant and the other for jail record. A copy of this order shall also be sent to the Secretary Delhi High Court Legal Services Committee.

10. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

DECEMBER 11, 2014

mamta