

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

-
CRIMINAL APPEAL NO.1220 OF 2010

-
J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

This appeal is directed against the judgment dated 11.08.2010 passed by the learned Special Judge for Trial of Offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional District and Sessions Judge, Medak at Sangareddy, in Sessions Case No.194 of 2008, whereby the appellant/accused was convicted of offences punishable under Sections 302 and 379 IPC. In so far as the offence punishable under Section 302 IPC is concerned, he was sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of which he was to undergo three months simple imprisonment. As regards the offence punishable under Section 379 IPC, he was sentenced to suffer rigorous imprisonment for one year and pay a fine of Rs.500/-, in default of which he was to undergo one month simple imprisonment. Both sentences were to run concurrently.

The case of the prosecution before the Sessions Court was as under: The Sub-Inspector of Police, R.C.Puram police station (P.W.11), received Ex.P.1 report from P.W.1 at 3.00 P.M. on 14.12.2006 and registered a case in Crime No.437 of 2006 under Section 302 IPC. Ex.P.9 is the FIR. As per Ex.P.1 report, P.W.1, a watchman in the service of Ramana Murthy, a builder (P.W.2), was working at a building under construction for one Ahmed at R.C.Puram and went to the first floor for curing purpose and saw a man aged about 30 years killing an old woman of about 65 years with a knife and upon his raising an alert, the man pointed the knife at P.W.1 threateningly but as he started shouting out of fear, the man fled from the scene with the knife and he was also seen by one Tirupataiah, a tractor mechanic (P.W.4), who chased him. P.W.11 thereupon recorded the statement of P.W.1, visited the scene of the offence and also examined P.W.2, the building contractor. The scene of the offence panchanama (Ex.P.10) was prepared in the presence of P.W.18 and Vavalapally Laxmi (L.W.14). An inquest was also held by him

over the dead body of the deceased in their presence. Ex.P.11 is the inquest report. The dead body was sent to the Government Hospital, Sangareddy, for post-mortem examination and the blood stained clothes of the deceased were seized. P.W.12, the Civil Assistant Surgeon, District Hospital, Sangareddy, conducted the post-mortem examination of the deceased. Ex.P.12 is the report of the post-mortem examination. The deceased was identified as one Tatikonda Punnamma alias Annamma, through her son Tatikonda Anand Rao (L.W.3) and daughter-in-law (P.W.6). On 17.12.2006, P.W.11 handed over the case diary to the Sub-Inspector of Police, R.C.Puram (P.W.17), for further investigation. P.W.17 took up investigation in the case on 17.12.2006 and examined P.Ws.3 to 5, 8 and 14 and Uppari Karuna (L.W.9) and Uppari Anjaneyulu (P.W.7), the wife and brother of the accused respectively, and recorded their statements. On 26.03.2007, the accused was arrested at Jyothi theatre, BHEL, and produced before P.W.17. He then interrogated the accused in the presence of P.Ws.9 and 10. The accused confessed to the offence and it was recorded as a confessional panchanama (Ex.P.16). The accused then led them to his house at Mallampet Village. The accused went into his house and brought out one gold chain, one gold ear top and a knife which were seized under a recovery panchanama (Ex.P.8). The accused was produced before the Court for remand. On the requisition of P.W.17, the Additional Judicial First Class Magistrate, Jangaon (P.W.16), conducted an identification parade on the property and recorded the statements of P.Ws.4, 5 and 14 under Section 164 CrPC. P.W.17 then filed a charge sheet against the accused. Thereupon, the Sessions Court framed a charge that at about 1500 hours on 14.12.2006, in the under-construction building situated at R.C.Puram, the accused had killed the deceased T. Punnamma alias Annamma by stabbing her with a knife and committed an offence punishable under Section 302 IPC and that he had also committed theft of a gold chain and gold kammalu (ear top) by taking them from the possession of the deceased without her consent, thereby committing an offence punishable under Section 379 IPC.

The prosecution examined 18 witnesses and marked 17 exhibits in evidence. Case properties were marked as M.Os.1 to 4. No evidence was led by the accused. The Sessions Court found that the prosecution had

proved the guilt of the accused for both the offences alleged and accordingly convicted and sentenced him.

Smt.C.Vasundhara Reddy, learned counsel for the appellant/ accused, would point out that though a test identification parade was conducted in relation to the stolen property which was recovered, no such parade was held for identification of the accused. She would point out that the incident took place on 14.12.2006 and the accused was arrested on 26.03.2007 but he was identified by P.W.1, the eye witness, only on 10.07.2009 in the Court, more than two and a half years later. She would rely upon **JASPAL SINGH ALIAS PALI V/s. STATE OF PUNJAB**^[1], wherein the Supreme Court pointed out that identification for the first time at the trial is evidence of a weak character. Learned counsel would point out that the delay of one month after the arrest in holding an identification parade was held to be fatal in **MUSHEER KHAN @ BADSHAH KHAN V/s. STATE OF MADHYA PRADESH**^[2]. She would further contend that there is no evidence worth the name to incriminate the accused for the charged offences.

Perusal of the oral evidence of P.W.1 reflects that he reiterated the contents of Ex.P.1 report submitted by him to the police. He stated that he was attending curing work on the first floor of the building which was under construction and noticed through the window in the wall of the flat that a person was stabbing a woman and raised a hue and cry. He further identified the accused, who was present in the Court, as the person who had stabbed the woman. In his cross-examination, P.W.1 stated that there were six flats in each floor and at that time, plastering of the outside walls of the flats was over and he was curing the same. He further stated that he saw the appellant/accused stabbing the deceased through the window from outside, so the wall of the flat was between him and the scene of the offence. He also stated that there were no doors fixed to the room of the scene of the offence. He denied the suggestion that a dispute had arisen between him and the accused about some money transaction and that he was deposing falsely against him. He also denied the suggestion that the accused had to pay some money to him.

P.W.3, a supplier of the toddy shop situated at Reddy Colony,

Chandanagar, was treated as hostile but stated in his evidence that he knew the cashier of the said toddy shop (P.W.5) and that he had been supplying toddy to the said shop since six years. He further stated that the deceased used to consume toddy occasionally in his shop. P.W.4, the tractor mechanic, also turned hostile. P.W.5, the cashier of the toddy shop at Reddy Colony, stated that the deceased had come to his shop to purchase toddy and she stayed there for about 15 minutes. He also turned hostile. P.W.6, the daughter-in-law of the deceased, stated that she had identified the gold jewellery (M.Os.2 and 3) in the test identification parade of the property conducted by P.W.16. P.Ws.7 and 8 turned hostile. P.W.9, the Panchayath Secretary of Osman Nagar Gram Panchayat, and P.W.10, the Executive Officer, Panchayat Raj, Rural Development, Patancheru, stated that they were present in the police station when the accused confessed to the crime under Exs.P.16 and 7. They further stated that they, along with the police officials, went to the house of the accused where the accused produced a knife, gold chain and an ear stud. Ex.P.8 was the recovery panchanama prepared in this regard. P.Ws.9 and 10 also identified M.Os.2, 3 and 4, the gold chain, the ear stud and the knife respectively. P.W.12, the doctor who conducted the post-mortem examination, spoke of the external and internal injuries sustained by the deceased and opined that the death was owing to shock due to the hemorrhage caused by the injuries and that Ex.P.12 was his post-mortem report. P.W.14, an employee at Dolphin Wines in Chandanagar in the year 2006, stated that he knew both the accused and the deceased. He stated that on 14.12.2006, the accused and the deceased came to his shop on a bicycle and purchased beer and cheap liquor. He stated that they then went towards M.Kunta where a new complex was under construction. He further stated that he came to know about two hours later that an old lady was murdered in the said complex. Later, he went to the complex and found that the old lady who came to the shop along with the accused was the dead woman. In his cross-examination, P.W.14 admitted that about 500 to 1000 customers would visit the shop daily to purchase liquor. He also admitted that he could not identify the customers who used to visit the shop daily and that he did not state before the police that the accused came to the wine shop.

It is significant to note that when some of the prosecution witnesses turned hostile, the prosecution did not choose to confront them with specific relevant portions of their Section 161 CrPC statements but elicited bald statements to the effect that the witness had not stated before the police as in the Section 161 CrPC statement instead. This is not in keeping with the requirement of law and therefore, no value can be attached to the averments made by these hostile witnesses in their Section 161 CrPC statements despite the IOs asserting that they had recorded the said statements.

The prosecution failed to conduct a test identification parade after apprehension and arrest of the accused in March, 2007. When a test identification parade in respect of the stolen property, M.Os.2 and 3, which were recovered under Ex.P.8 on 26.03.2007, was conducted through P.W.16 in April, 2007, the prosecution should have adopted a similar procedure and subjected the accused to a test identification parade as mandated by Section 9 of the Indian Evidence Act, 1872.

Further, the extra judicial confession (Ex.P.16) cannot be believed, being hit by Section 25 of the Indian Evidence Act, 1872, and the evidence of P.Ws.9 and 10 in this regard does not lend credibility to the accused making such a confession in their presence. P.W.14, the employee of Dolphin Wines, where the accused and the deceased were stated to have bought one beer and cheap liquor, admitted that he could not identify even customers who visited his shop daily but does not explain as to how he is in a position to identify the deceased and the accused. Though he also stated that he knows the accused, he did not choose to elaborate on this. Therefore, the above evidence is of no real utility in bringing home any guilt to the accused.

Thus, as matters stand, the only evidence to link the accused to the main offence is that of P.W.1, the alleged eye witness to the killing. The question is whether his testimony and belated identification of the accused can be relied upon.

The learned Public Prosecutor would rely on para 13 of ***RANJEET KUMAR RAM ALIAS RANJIT KUMAR DAS V/s. STATE OF BIHAR***^[3] and assert that though, ordinarily, much credence is not given to identification of the accused made in the Court for the first time, such

identification is still permissible in law. He would assert that this principle has to be applied taking into account the facts and circumstances of each case. He would also rely upon **PARGAN SINGH V/s. STATE OF PUNJAB**^[4], wherein the Supreme Court dealt with the issue of memory and the scientific understanding of how memory works. The observations of the Supreme Court in this regard are of crucial significance and read as under:

18.1. First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires *fragments* of information from the environment. These fragments are then *integrated* with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information--both information from external sources, and information generated internally in the form of inferences-- that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete." Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event--revisits his or her memory of it--the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event.

18.2. Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the event has ended.

18.3. The first set of circumstances involves the state of the *environment* at the time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will

ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.

18.4. The second set of circumstances involves the state of the *observer* at the time the event is experienced. Examples of sub-optimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.

18.5. The third set of circumstances involves what occurs during the *retention interval* that intervenes between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate information learned by the person during the retention interval that can get incorporated into the person's memory for the original event.

18.6. The fourth set of circumstances involves errors introduced at the time of *retrieval* i.e. at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself.'

Applying these principles to that case, the Supreme Court ultimately concluded that given the nature of the incident, 90 seconds were long enough to enable the eye witness, who had watched the accused, to not forget such a horrible experience. The Supreme Court observed that a near-death experience by a witness would be etched in the memory for long and therefore faces of the accused would not be forgotten even after 7½ years.

It is to be remembered that witnessing a murder is not an everyday experience for a layman and a person who is subjected to such an occurrence may not easily forget the details thereof, including the face of the perpetrator, despite the lapse of time. In the present case, it has been brought out by P.W.1, in Ex.P.1 itself, that the man who killed the old lady pointed the knife at him threateningly. The incident was witnessed by P.W.1 through the window in the wall of the flat when he was standing in the corridor. There were no doors fixed to the room in question. All that separated the perpetrator and P.W.1 was the wall of the flat. The palpable and imminent life threat that P.W.1 must have sensed at that moment in an unoccupied floor of the building, where he was all alone with the perpetrator of the crime, would have definitely left an indelible impression on him. It is

therefore quite possible and probable that he would retain the memory of the incident in full detail, including the face of the perpetrator. In **MUSHEER KHAN @ BASHEER KHAN²**, the eye witness only had a fleeting chance of seeing the accused and there was no evidence of the eye witness having any confrontation with the accused. The case on hand presents a different scenario altogether as P.W.1's encounter with the perpetrator was much more personal. Given the aforestated chain of events, this Court finds no reason to disbelieve the testimony of P.W.1, the eye witness, merely because he identified the accused two and a half years later. Significantly, in **NOORAHAMMAD V/s. STATE OF KARNATAKA^[5]**, the Supreme Court observed that the law is well settled that identification in Court is a substantive piece of evidence and test identification parade simply corroborates the same.

In **STATE OF MAHARASTRA V/s. SUKHDEO^[6]**, the Supreme Court observed that great care must be exercised before acting upon a belated identification in Court by a witness who could not be said to be an independent and unbiased person. In the present case, though an attempt was made during the cross-examination of P.W.1 to discredit his testimony by hinting at some prior disputes between the accused and P.W.1, no material was produced in proof thereof and his testimony remained unshaken. This judgment is thereof of no avail to the appellant/accused.

It is also an irrefutable fact that the gold jewellery of the deceased (M.Os.2 and 3) was recovered from the custody of the appellant/accused. No explanation is forth coming from him as to how he came into possession of this stolen property. Significantly, in his examination under Section 313 CrPC, when he was asked as to what he had to say about the seizure of these articles under cover of a panchanama when he led them to his house and brought them out, the accused only said 'abaddam' (it is a lie).

Smt. C.Vasundhara Reddy, learned counsel, would also rely upon **UNION TERRITORY OF GOA V/s. BEAVENTURA D'SOUZA^[7]**, wherein it was held that merely because the accused did not give an explanation for possession of the stolen articles it could not be presumed that he had committed the murder also. In the aforestated decision, the Supreme Court

was satisfied that there were no other circumstances to connect the accused with the murder and his failure to explain his possession of the stolen property was not, by itself, sufficient to connect him with the murder. However, in the present case, the evidence against the accused is not limited to that single fact. The eye witness testimony of P.W.1 lends credibility to the case of the prosecution and despite the failure to hold a test identification parade, the identification of the accused by P.W.1 in the Court is worthy of acceptance. These two facts taken together would therefore distinguish this case from ***BEAVENTURA D'SOUZA***⁷.

On the above analysis, this Court finds that the prosecution has proved the guilt of the appellant/accused for both the offences charged beyond reasonable doubt and no grounds are made out warranting interference with the conviction and sentence inflicted upon him by the Sessions Court. The judgment under appeal is therefore confirmed.

The appeal is accordingly dismissed.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

3rd AUGUST, 2016

Svv

^[1] (1997) 1 SCC 510

^[2] 2010 (1) ALD (Cri.) 813 (SC)

^[3] 2015 AIR SCW 3284

^[4] (2015) 1 SCC (Cri) 462

^[5] (2016) 2 SCC (Cri) 97

^[6] (1992) 3 SCC 700

^[7] 1993 Supp. (3) SCC 305 = AIR 1993 SC 1199