

**HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL APPEAL No.515 of 2012

JUDGMENT *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The accused in Sessions Case No.157/2011, on the file of the Sessions Judge, Mahila Court, Vijayawada, preferred this appeal under section 374(2) Cr.P.C, 1973, questioning the conviction and sentence passed against him, finding him guilty, for the offence punishable under section 307 IPC., directing him to undergo imprisonment for life and to pay fine of Rs. 1,000/-.

2. The prosecution case in brief is that one Peethala Kasamma, resident of Ranigarithota, Krishna Lanka, Vijayawada is running a buddy shop (wooden bunk) at her house. The accused is her sister's husband, whose marriage was performed about 20 years ago and blessed with three daughters. The accused addicted to vices and failed to take care of his family. When the injured PW.1 admonished him, he developed grudge against her on the ground that she is responsible for differences between him and his wife and on one occasion he threatened PW.1 with dire consequences.

3. While the matter stood thus, on 06.05.2010 at about 6.30 P.M. when injured PW.1 was present at her buddy shop, accused went there, proclaimed that he will kill her and nobody can save her, while yelling so, he hacked her with a knife (mango cutter) on the right side of the neck and right ear of PW.1 with an intention to kill her. When neighbours gathered there, accused hurled the knife (mango cutter) into nearby drainage canal and escaped from the scene of offence.

4. The injured PW1 was shifted to Sri Neelima Nursing Home, M.G.Road, Vijayawada for treatment and thereafter, on receipt of information, PW.10 registered the same as case in Cr. No. 236/10 for the offence punishable under Section 307 IPC. During investigation PW.1 to 10 were examined and recorded the statements under section 161 of Cr PC, arrested the accused, interrogated the accused in the presence of mediators, during interrogation accused made a confession leading to discovery and in pursuance of the confession seized MO.1, under the cover of Ex.P.11, also seized MO.1 to 5, collected wound certificate marked as Ex.P6 and send MO.1 to 5 along with letter of advise marked as Ex.P.13 and on receipt of R F S L report Ex.P14, the investigating officer filed charge sheet against the accused for the offence punishable under Section 307 IPC, before the II Additional Chief Metropolitan Magistrate, Vijayawada.

5. The charge sheet was taken on file for the offence punishable under sec.307 I P C, registered as PRC 9/11 and by an order dated 12.05.2011 committed to the Court of Metropolitan Sessions, by following necessary procedure contemplated under Section 209 of Cr.P.C, as the offence punishable under sec.307 is exclusively triable by the court of session. The Metropolitan Sessions Court registered the same as Sessions case and made over to the Mahila Court, Vijayawada for disposal in accordance with law.

6. On securing the presence of the accused, upon hearing Public Prosecutor for State and the counsel for accused, the Trial Court framed charge for the offence punishable under section 307 IPC and the contents of the said charge were read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

7. During the trial, PWs-1 to 12 are examined and marked Exs.P1 to P14. After closure of the prosecution evidence, the accused was examined U/s 313 Cr.P.C. explaining the incriminating circumstances that are appearing against him in the evidence of prosecution witnesses. The accused denied the same and stated that he did not commit any offence and reported no defence.

8. Upon hearing the Public Prosecutor for the State and the defence counsel, the Trial Court found the accused guilty for the offence u/s.307 IPC and convicted him U/s.235 (2) Cr.P.C, as the appellant accused caused grave injury on the neck of the PW.1 sentenced him to undergo life imprisonment and to pay fine of Rs.1000/- with default sentence.

9. Aggrieved by the conviction and sentence imposed under the impugned calendar and judgment, the present appeal is filed mainly on the ground that there is material discrepancy in the medical and ocular evidence and none of the witnesses spoke anything about the accused caused injury on left side of neck i.e., seat of injury as found by Dr.Hanumaiah Bodepudi, who treated Pw.1 and issued certificate marked as Ex.P.6 where he found cut injury on left side of the neck of injured and in view of material discrepancy with regard to the seat of injury, the evidence of prosecution witnesses cannot be believed and requested to set aside the conviction and sentence passed against the petitioner under the impugned calendar and judgment.

10. During the hearing, Sri Ch.Vidyasagar, Counsel for the Petitioner/legal aid counsel, reiterating the same contention, contending that the Court below did not go into mitigating circumstances while imposing sentence under part-II of Section 307 and committed an error in imposing sentence against the accused/appellant to undergo imprisonment

for life and to pay fine of Rs.1000/-, requested the Court to set aside the conviction and sentence, finding the accused/appellant not guilty for the offence.

11. The Public Prosecutor supported the case of prosecution in all respects.

12. After considering rival contentions and perusing the material on record, a sole point that arose for consideration is:

“whether the appellant accused caused injury on the body of PW.1 with an intention to kill her and the discrepancy pointed out by the counsel with regard to seat of injury is fatal to the prosecution case, if so, conviction and sentence imposed against the accused/appellant, by the Court below is liable to be set aside?”

POINT

13. There is no dispute regarding relationship between PW.1 and accused/appellant. Only dispute is with regard to cause of injury with an intention to kill PW.1 by the accused/appellant. The reason for causing injury was PW.1 admonished the appellant/accused on many occasions as he failed to take care of his family members, due to addiction to vices. Evidence of PW.1 is consistent with regard to the relationship, admonishing accused/appellant for his failure to take care of his family members, because of his addiction to vices and causing injury. According to PW.1 to 3 the accused hacked on her right side of the neck caused an incised wound also lacerated injury near right ear, with an intention to kill her, with knife (mango cutter). In the cross-examination the counsel for the defence elicited the relationship between the parties and suggestion was put to PW.1, the victim to the effect that the marriage of her sister was performed with accused without the consent of her parents, as such he bore grudge against her family. But the suggestion was denied by the

witness, suggestion put to the witness, denied is no evidence, only evidence recorded by presiding officer of the court is substantive evidence. On the other hand, it indicates the enmity between the two families. However, PW.1 is injured witness, whose testimony can be accepted unless it is proved that there is possibility of implicating the petitioner for different reasons. Here, PW.1 is an injured witness and she categorically testified about the reason for causing injury with knife on the body of PW.1, by the accused and also spoke about the injury. The question of the weight to be attached to the evidence of witness that herself injured in the course has been extensively discussed by the Apex Court. Where a witness to the occurrence herself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as she is a witness that comes with in-built guarantee of her presence at the scene of the crime and is unlikely to spare his actual assailant in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness vide, ***Ramalagan Singh and other V. State of Bihar***¹, ***Malkar Singh and Another V. State of Uttar Pradesh***², ***Machi Singh and others V. State of Punjab***³, ***Appabhai and another V. State of Gujarat***⁴, ***Bonkya alias Bharat Shivaji Mane and Others V. State of Maharashtra***⁵, ***ahar and other V. State of Uttar Pradesh (2002)***⁶, ***Dinesh Kumar V.State of Rajasthan***⁷, ***Vishnu and others V. State of Andhra Pradesh***⁸ ***A I R 2009 S C 2261***, and in ***Brahm Swaroop and another Vs State of Uttar Pradesh***⁹ the Apex Court while considering the credibility of injured

¹ *A I R 1972 S C 2593*

² *AIR 1975 S C 12*

³ *AIR 1983 S C 957*

⁴ *AIR 1988 S C 696,*

⁵ *(1995) 6 S C C 447*

⁶ *7 S C C 606*

⁷ *(2008) 8 S C C 270*

⁸ *A I R 2009 S C 2261*

⁹ *(2011) 6 SCC 288*

witnesses, held that when there is evidence of injured witness, the same has to be accepted unless the circumstances put forth by the defence that there is possibility of false implication. In ***Bhag Singh and others V. State of Punjab***¹⁰ while dealing with similar contention, Apex Court held: It is general handicap attached to all eyewitness, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case and eye witness may be able to narrate the incident with all details without mistake, if the occurrence had made an imprint on the canvas of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptionally registered in his mind, the testimony cannot be dubbed as artificial on that score alone.

14. In the present case the motive attributed to the accused is admonition by PW.1 for his failure to take care of his family. Motive is only a corroborative piece of evidence, not a substantive piece of evidence but, the present case is based on direct evidence of injured witness who reliable witness and her evidence is corroborated by other eye witness.

15. Pw-2, 3 also testified that the appellant/accused caused injury on the right side of the neck of PW-1 but, Dr.Hanumaiah Bodepudi who treated PW.1, who was examined as PW.7 issued a certificate marked as Ex P-6

¹⁰ (1997) 7 S C C 712

wherein he noted injury on the left side of the neck, there is discrepancy regarding seat of injury. ocular testimony of injured and eye witness will prevails over the medical evidence as held in **Abdul Sayeed V. State of Madhya Pradesh**¹¹.

In Ram Narain Singh V.State of Punjab 3/1975 : AIR 1975 SC 1727, this Court held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution's case and unless reasonably explained it is sufficient to discredit the entire case.

In State of Haryana V Bhagirath and Ors. (1999) 5SCC 96, it was held as follows:

The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions by persons who are experts in the particular subject.

Drawing on Bhagirath's case (supra), this Court has held that where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities can not be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the credit of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation (vide Thaman kumar V State of Union Territory of Chandigarh (2003) 6 SCC 380; and Krishnan V State (2003) 7 SCC 56.

In Solanki Chimanbhai Ukabhai V. State of Gujarat AIR 1983 SC 484, this Court observed.

¹¹ (2010) 10 S C C 259

Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

A. similar view has been taken in *Mani Ram and Ors. V. State of U.P.*:1994 Supp (2) SCC 289; *Khambam Raja Reddy and Anr. V. Public Prosecutor, High Court of A.P.* : (2006) 11 SCC 239; and *State of U.P. V. Dinesh* : (2009) 11 SCC 566.

In *State of U.P.v Hari Chand* (2009) 13 SCC 542, Court reiterated the aforementioned position of law and stated that, “ In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy”.

and in another judgment of Apex court in “***Sayed Darain Ahsan @ Darain v. State of West Bengal***¹²”, wherein it was held that when medical evidence made, ocular testimony is improbable, that became a relevant factor in process of evaluation of evidence, where medical evidence went so far that, if completely ruled out all possibility of ocular evidence being true, then ocular evidence might be disbelieved and that in impugned judgment that, all eyewitnesses had given a vivid and true account of incident and had seen occurrence on close range and there was nothing on record suggesting that they nurtured ill feeling and harboured enmity against appellant therein and that the evidence of eyewitnesses was consistent and found due corroboration from post-mortem report.

16. The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular evidence improbable, that becomes a relevant factor in the process of evaluation of evidence. However, where the medical evidence goes so far

¹² AIR 2012 SC 1286

that completely rules out all possibility of the ocular evidence being true the ocular evidence may be discarded. Therefore, based on the medical evidence of PW.7 and Ex P-6, it is difficult to throw the ocular testimony over board, on the strength of oral evidence of Pw.1, 2, 3 regarding seat of injury, the intention of the accused/appellant is to be accepted, ignoring the medical evidence of PW.7. Hence, we find no error in finding accused/appellant guilty for the offence punishable under section 307 I P C, by trial court.

17. Apart from the direct evidence of Pw.1, 2 and 3, the other circumstantial evidence like recovery of MO-1 which was allegedly hurled by the accused/appellant, after committing the offence, due to gathering of neighbours was sent to Forensic Experts along with letter of advice Ex.P-13, the Expert vide Ex.P-14 opined that the blood found on MO-1 is of human blood but did not detect the blood group. Therefore, this is also another strong circumstance that the accused/appellant caused injury on the right side of the neck of PW.1 with an intention to kill her as neck is vital part of the body. Taking into consideration facts and circumstances of the case, the Trial Court gave more credibility to the injured witness, PW.I, found the accused guilty for the offence punishable under Section 307. The Trial Court found the appellant/accused guilty for the offence punishable under section 307 I P C, imposed sentence under the II part of section 307 I.P.C. i.e. life imprisonment and fine of Rs.1,000/- with default sentence. The prescribed punishment for I part of Section 307 IPC is 10 years rigorous imprisonment with fine and later part i.e., the II part prescribed that punishment to be imposed against a person, who caused injury with an intention to commit murder, the substantive punishment is life imprisonment or punishment in the I part hereinbefore. When the accused/appellant was examined as to the quantum of sentence, he

clearly stated that he blessed with three children and one of them is daughter and he has to take care of them.

18. The Trial Court did not consider the mitigating circumstances while imposing sentence, though mitigating or aggravating circumstances are relevant circumstances for imposing sentence, but taking into consideration the mitigating circumstances stated by the accused/appellant, the substantive sentence of life imprisonment is reduced to rigorous imprisonment for 10 years, from life imprisonment while confirming the fine amount and default sentence imposed by the Trial Court.

19. In view of our discussion and finding recorded, the sentence of life imprisonment is converted into rigorous imprisonment for ten years with the above modification, while confirming fine amount and conviction, the appeal is allowed in part.



JUSTICE P.NAVEEN RAO

JUSTICE M.SATYANARAYANA MURTHY

Date: 18.11.2017

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