

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.258 of 2011

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

By judgment dated 23.11.2010, the learned IV Additional Sessions Judge (FTC), Khammam, convicted the sole accused in Sessions Case No.532 of 2009 of murdering his wife, Bogga Vijaya, by cutting her throat and sentenced him under Section 302 IPC to rigorous imprisonment for life and to pay a fine of Rs.100/-, in default of which he was to suffer simple imprisonment for one week. He was also convicted under Section 324 IPC for causing hurt to Mosam Kannaiah by a dangerous weapon and sentenced to undergo rigorous imprisonment for six months. Aggrieved by the convictions and sentences visited upon him by the Sessions Court, the sole accused preferred this appeal under Section 374(2) CrPC.

The case of the prosecution, in brief, was as under:

On 24.03.2009 at 14.00 hours, P.W.1 submitted Ex.P1 written complaint to the Sub-Inspector of Police, Kunavaram Police Station (P.W.9). Thereupon, P.W.9 registered a case in Crime No.50 of 2009 under Sections 302 and 307 IPC and issued the printed FIR (Ex.P7). Investigation was then taken up by the Circle Inspector of Police, Bhadrachalam Circle (P.W.10). He went to the scene of the offence and examined the same in the presence of mediators. He recorded the statements of P.Ws.2 to 4. The statement of P.W.1 was already recorded by the Sub-Inspector of Police (P.W.9). He instructed the Station House Officer to send the injured witness, Mosam Kannaiah (P.W.3), to the hospital. He prepared a Crime Details Form (Ex.P3) and obtained the mediators' signatures therein. He also seized

controlled and blood-stained earth from the scene of the offence and conducted an inquest over the body of the deceased. He then sent the dead body to Kunavaram Civil Hospital for post-mortem examination. He apprehended the accused in Potlavaigudem on 31.03.2009 and at his instance, he recovered the knife used in the commission of the offence under the cover of a panchanama (Ex.P4). He sent the accused to Court for remand. He received the post-mortem examination report on 10.04.2009 and sent the material objects to the Regional Forensic Science Laboratory for chemical analysis on 20.04.2009. Upon his transfer, his successor-in-office (P.W.11) took over the investigation and after receiving a report (Ex.P8) from the Forensic Science Laboratory, he completed the investigation and laid the charge-sheet.

Upon committal, the Sessions Court framed charges against appellant-accused under Sections 302 and 307 IPC. The charge under Section 302 IPC related to the homicide of Bogga Vijaya, the wife of the accused, by cutting her neck forcibly with a thatikathi, a toddy tree knife. The charge under Section 307 IPC was with regard to the attack upon Mosam Kannaiah (P.W.3) with the same thatikathi with the intention to do away with his life.

The accused denied the charges and claimed to be tried.

The prosecution thereupon examined eleven witnesses and marked eight exhibits in evidence. No evidence was let in by the accused. The recovered thatikathi, the knife, was marked as M.O.1.

Salient points emerging from the evidence may now be noted.

P.W.1 is the brother of the deceased while P.W.2 is her mother. Both of them spoke of the fact that the accused doubted the fidelity of the deceased and suspected that she was having illicit intimacy with

others. They referred to the efforts at mediation before elders and the advice given by the elders to the accused and the deceased to live together amicably. They spoke of the fateful day and the incident which resulted in the death of the deceased, but both were admittedly not present at the scene.

P.W.1 said that he went to the scene of the offence upon seeing people rushing there and found his sister lying dead with an injury on her throat. He said that his mother (P.W.2) also came there. In his cross-examination, P.W.1 stated that B.Venkamma was the younger sister of the accused and Kudiya Vasantha Rao (L.W.3) was the elder brother of P.W.1 and the deceased. He was already married but B.Venkamma, the sister of the accused, was impregnated by Kudiya Vasantha Rao (L.W.3) and begot a daughter, by name Meghana. He said that a panchayat was held to settle the issue and it was decided that as Kudiya Vasantha Rao (L.W.3) was already married, he could not marry the sister of the accused, but he was directed to give half a bag of rice and a pig to the panchayat as fine. P.W.1 denied the suggestion that naxalites were moving around in their village. He however admitted that about two years back, the brother-in-law of ex-Minister Vanama Venkateshwar Rao was killed in Marrigudem Village, which was at a distance of four kilometres from their village. He denied the suggestion that he and his deceased sister used to give information to the police about the movement of naxalites. He however said that the police would come to their village and question about movements of naxalites. He denied the suggestion that naxalites attacked his deceased sister suspecting her of having given information to the police. He denied the suggestion that P.W.3 also received injuries at the hands of naxalites. He denied

that after the death of his sister, he lodged a false complaint against the accused due to their family disputes.

P.W.2 spoke on the same lines as P.W.1. In her cross-examination, she said that after the panchayat advised the accused and the deceased to live together amicably, there were no disputes between them. She denied the suggestion that there was no such panchayat and that the accused and deceased did not live together amicably thereafter.

P.W.3, the injured eye-witness, and P.W.4, the other eye-witness, were crucial to the case of the prosecution. P.W.3 stated that he was a resident of Pottlavaigudem Village, Kunavaram Mandal, Khammam District, and had completed his degree. He said that on 24.03.2009 at 12.00 in the afternoon, he was present in the house of Kusti Jogamma and at that time, the deceased, P.W.4 and he were watching television. The accused came there and asked for the keys of the almirah and having taken them from the deceased, he went away. Half an hour thereafter, he again entered the house of Jogamma and while handing over the keys to the deceased, he stabbed her with a knife and cut her throat. P.W.3 said that he tried to intervene to save the life of the deceased and the accused hit him with the knife on his head, due to which he received bleeding injuries on his head and his right shoulder. He said that P.W.4 was also present and witnessed the incident. After receiving injuries, he ran out of the house due to fear and P.W.4 also came running out with him. Fifteen minutes thereafter, all the neighbours came to the house of Jogamma and he along with P.W.4 saw the dead body. He then informed P.Ws.1 and 2 about the same. In his cross-examination, P.W.3 said that the accused cut the throat of his wife and did not

stab her. He said that after he ran away from the house of Jogamma, within fifteen minutes he returned back. He said that he ran to a distance of 100 feet and by the time he returned, about 100 people had already gathered there. He said that the deceased was already in the house of Jogamma by the time he went there and about one hour after he went there, the accused came to the house. He said that he went to the house of Jogamma to prepare notes and he did so for about twenty minutes and about half an hour after completion of his preparing the notes, the accused entered into the house of Jogamma and cut the throat of his wife. He said that after he completed preparing notes, he was watching television. He said that after the accused took the keys from his wife, he again came back to the house of Jogamma within half an hour. The house of the accused was at a distance of fifty feet from the house of Jogamma. He said that by the side of the house of the accused, his own house is situated. He said that within five minutes of entering the house, the accused cut the throat of his wife and ran away. He said that he had stated before the police that when the accused was cutting the throat of his wife, he shouted to the effect: 'do not cut, uncle (KOYYADDU BABAI)' and tried to prevent the accused from doing so but at that time, the accused attacked him with his knife on the head. He said that by the time he returned to the house of Jogamma, the accused was no longer there. He denied that there were any disputes between his family and the accused with regard to a boundary wall and that elders had acted as mediators to settle the same. He admitted that there was a television in his own house. He said that he was not doing anything at the time of the incident, but was a Vidya Volunteer at the time of his deposition. He denied that he and the wife of the

accused were giving information to the police relating to movements of naxalites and that the naxalites attacked him and the deceased. He denied that when he and the deceased went to the house of Jogamma, naxalites attacked them.

P.W.4, the daughter of Kusti Jogamma, stated that on 24.03.2009 at about 12.00 noon, she was present in her house along with the deceased. She said that the accused entered their house and cut the throat of his wife with a knife. She said that the deceased came to her house on that day at about 9.00 AM and accused came there to ask his wife for almirah keys and he took the keys from his wife at about 11.30 AM and went away and thereafter, he came back to her house at 12.00 noon and cut the throat of his wife and ran away. She said that at that time, she and P.W.3 were present in the house. She said that P.W.3 had come to her house to prepare notes. She said that at the time the accused came to her house to ask for the keys of almirah, they were watching television. She said that P.W.3 tried to intervene when the accused was attacking his wife but he attacked P.W.3 also with the knife and caused injuries on his head and shoulder. She said that she and P.W.3 ran out of the house due to fear. She said that she informed P.Ws.1 and 2 about the incident after running out of the house and thereafter, neighbours rushed to her house and she also returned after the police came there. She identified M.O.1 knife, which is used for cutting toddy trees, as the knife with which the accused cut the throat of his wife. In her cross-examination, P.W.4 stated that the police came to her house at 1.00 PM. She said that she ran to a distance of 100 feet after the incident from her house and returned back after the police came. She said that P.W.3 came to her house at 11.00 or 11.30 AM

and stayed for about one hour. The deceased was stated to have come to her house at 9.00 AM to see TV. She denied the suggestion that there was a TV in the house of the deceased also. The accused was stated to have come to her house at 11.30 AM. She said that he came there about half an hour after P.W.3 came and after taking keys from his wife, the accused again came back about half an hour later, the second time. She said that she was by the side of the deceased when the accused came the second time. She said that when the accused was cutting the throat of the deceased, P.W.3 shouted not to cut her throat. She said that the accused cut the throat of his wife and then attacked P.W.3, causing injuries on his head and shoulder. She denied the suggestion that naxalites, upon suspecting the deceased and P.W.3 of being informers, attacked them and caused injuries to both of them, resulting in the death of the deceased. She denied the suggestion that there were disputes between the accused and the family of P.W.3 with regard to the southern side land of the accused and that she and P.W.3, with the intention of grabbing the land on the southern side, got foisted a false case against the accused.

P.W.5 was a panch witness for Ex.P2 inquest report.

P.W.6 was a witness to Ex.P4 panchanama, whereunder M.O.1 sickle/knife was seized. He stated that about eight months back, the police brought the accused to Madakam Jogamma's house and called him from the place where he was working. He stated that at the instance of police, he questioned the accused who stated that at the house of Kusti Jogamma, he cut the throat of his wife with a knife and killed her and hid the knife by the side of the road near the bus stop. Thereupon, he and another mediator accompanied the police

and the accused to the bus stop, where the accused picked up a knife from the bushes and the same was seized by the police under Ex.P4 panchanama. He identified M.O.1 as the knife which was seized by the police at that time. In his cross-examination, P.W.6 stated that by the time he reached the house of Madakam Jogamma, about ten villagers were already present there. He said that while he was attending work in his agricultural land, the police called him to act as a mediator and he reached the village within 15 minutes. He stated that the accused gave his statement before them for one hour and that the distance between the house of Madakam Jogamma and the bus stop was one kilometer. The bushes from which the accused picked up the knife were by the side of that road and it took half an hour for the accused to search for the knife in the bushes. From there, they returned back to the police station where the report was prepared and he signed therein at the Police Station itself.

P.W.7, a Civil Assistant Surgeon at the Community Health Centre, Kunavaram, examined P.W.3 on 24.03.2009. He spoke of his three injuries - (1) Laceration of 3 x .1 cm over left parietal region of scalp, (2) Laceration of 5 x .1 cm over left frontal region of scalp and (3) Laceration of 2 x .1 cm over left supra clavicular region. He said that the said injuries might have been caused with a sharp-edged weapon and that they were fresh in nature. He identified Ex.P5 as the wound certificate issued by him.

P.W.8, a Civil Assistant Surgeon at the Government Hospital, Kunavaram, conducted the post-mortem examination of the body of the deceased. She spoke of the seven ante-mortem external injuries found by her on the body of the deceased. The injuries are as under:

- (1) Penetrating injury over front of neck extending from angle of left mandible to right mandible upto back towards cervical vertebra.
- (2) Laceration of 5 x 1 cm over interphalangeal Joint of left thumb.
- (3) Laceration of 3 x 1 cm cut in base and middle of nail of left thumb.
- (4) Laceration of 2 x 1 cm over left index finger.
- (5) Laceration of 3 x 0.5 cm over right thumb.
- (6) Laceration of 5 x 1 cm over left side of upper lip.
- (7) Laceration of 6 x 1.5 cm below left side of lower lip.

She said that the injuries were caused with a sharp-edged weapon and were caused 18 to 20 hours prior to the post-mortem examination. She said that the deceased died due to hemorrhage shock caused by the penetrating injury to her neck with a sharp-edged weapon. She said that the deceased might have died about 20 hours before her examination. When shown M.O.1 knife, she said that the injuries were possible with the said knife. She confirmed that Ex.P6 was the post-mortem examination report issued by her.

P.W.9, the Sub-Inspector of Police, Kunavaram Police Station, spoke of registration of Ex.P7 FIR. In his cross-examination, he said that he visited the scene of the offence and by that time, some villagers were present there. He admitted that in Kunavaram Police Station area, there were naxalite activities but denied the suggestion that the naxalites killed the deceased and that he registered a false case against the accused.

The Inspector of Police, Bhadrachalam Circle, P.W.10, spoke of the steps taken by him during his investigation. In his cross-examination, he stated that it takes 30 to 35 minutes to reach the scene of the offence from Bhadrachalam Police Station. He said that the Sub-Inspector of Police reached there before him. He denied the suggestion that out of the fear that they were unable to control naxalite activities in the area, a false case was registered against the

accused. He said that during his tenure of four months as an Inspector of Police in Bhadrachalam Circle, no cases were registered against naxalites.

P.W.11 was the successor of P.W.10 and spoke of filing of the charge-sheet.

The Sessions Court relied upon the eye-witness accounts of P.Ws.3 and 4 and convicted the accused under Section 302 IPC for the homicidal death of his wife. However, the Sessions Court found no clear evidence to show that the accused attacked P.W.3 with the intention of murdering him. The Sessions Court accordingly reduced the charge under Section 307 IPC to one under Section 324 IPC and convicted the accused thereunder. He was sentenced accordingly, leading to the filing of this appeal.

Heard Smt.C.Vasundhara Reddy, learned counsel for the accused, and the learned Public Prosecutor, State of Telangana.

Smt.C.Vasundhara Reddy, learned counsel, would argue that the eye-witness accounts of P.W.3 and P.W.4 are not worthy of acceptance. She would point out that the keys said to have been handed over to the deceased by the accused before the attack were never found and assert that the entire story was concocted. She would contend that the presence of P.W.3 at the house of P.W.4 is doubtful as there was no indication as to what notes he was preparing at the house of P.W.4.

However, it was stated by the witnesses that several villagers assembled at the scene of the offence immediately. It is therefore possible that the keys in question either got misplaced or were picked up. The failure of the prosecution to recover and seize the said keys cannot therefore be held to be fatal to its case. Further, it has come

out in the evidence of P.W.3 that he is a graduate and was working as a Vidya Volunteer by the time of the deposition. There is no indication as to what is the level of education of P.W.4. However, the possibility of P.W.3 making notes at the house of P.W.4 cannot be ruled out as both the witnesses consistently spoke of this and no suggestion was put to either of them during their cross-examination with regard to P.W.3's preparation of notes at the house of P.W.4 or to elicit further information relating thereto. What is to be noted is that both of them spoke in one voice about the accused coming there to collect the keys of the almirah from the deceased, in the first instance, and then returning along with M.O.1 knife and attacking the deceased and thereafter, P.W.3. No doubt, there were some inconsistencies in their testimonies, but the same are not sufficient in themselves to discredit their evidence.

Reference in this regard may be made to **STATE OF U.P. V/s. M.K.ANTHONY¹**, wherein the Supreme Court observed that if the Court, before whom the witness gives evidence, had the opportunity to form an opinion about the general tenor of evidence given by the witness, the appellate Court, which does not have such benefit, has to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons, weighty and formidable, it would not be proper to reject such evidence on the ground of minor variations or infirmities in trivial details.

Further, the evidence of P.Ws.1 and 2 demonstrates that the accused used to doubt the fidelity of his wife and a panchayat was also held in this regard. Another reason for turmoil between them was the sister of the accused being impregnated by the brother of the

¹ AIR 1985 SC 48

deceased. There was therefore sufficient motive for the accused to harbour ill-will against his wife, the deceased.

Recovery of M.O.1 knife is admissible evidence under Section 27 of the Indian Evidence Act, 1872, and the said evidence remained unshaken as P.W.6 stood by his version and remained stoic during his cross-examination. Human blood was also detected on M.O.1 knife. This squarely puts the accused in the dock as he knew the whereabouts of this knife and did not choose to explain the source of the blood-stains on the said knife.

Though suggestions were put to the witnesses to the effect that the deceased, along with her brother, P.W.1, and P.W.3 were police informants of the movements of naxalites in the area and that naxalites were responsible for the attack upon the deceased and P.W.3, no evidence has been produced in support thereof. Further, there is no getting away from the fact that the eye-witness accounts of P.Ws.3 and 4, both independent witnesses, completely demolish any such possibility. Further, P.W.3 was an injured eye-witness and his evidence carried great weight.

Smt.C.Vasundhara Reddy, learned counsel, would point out that in Ex.P4 recovery panchanama, wherein the confessional statement of the accused was also recorded, he stated that he suspected that his wife had illicit intimacy with P.W.3 and having found them together, along with P.W.4, in the house of Kusti Jogamma, he resorted to the murderous attack. Learned counsel would refer to the observation of the Division Bench in **KANDI VENKATA SUNEEL KUMAR REDDY V/s. STATE OF ANDHRA PRADESH²** to the effect that though a confession made to the police

² 2010(1) ALD (CrI.) 699 (AP)

is inadmissible against the accused, if the same favours the accused in extricating himself from the situation or justifies his conduct which is culpable, Section 25 of the Indian Evidence Act, 1872, would not prohibit use of such confession to the extent it favours the accused. She would argue that as the accused resorted to the act of killing his wife in a disturbed state of mind owing to his suspicion that she was having an affair with P.W.3, Exception 4 to Section 300 IPC would stand attracted and it would not be murder, but culpable homicide not amounting to murder. She would therefore pray that the conviction be altered and the sentence imposed upon the accused reduced accordingly.

We however find no merit in this submission. Exception 4 to Section 300 IPC states to the effect that if the culpable homicide is committed without premeditation in a sudden fight or in the heat of passion or upon a sudden quarrel, it would not amount to murder. In the present case, there is no indication of any altercation between the accused and the deceased. There was no sudden fight or heat of passion or a sudden quarrel between them provoking the accused to resort to the murderous attack upon his wife. Merely because he imagined that his wife was having illicit intimacy with P.W.3 and his emotions went haywire upon seeing them together, and at that in the presence of another (P.W.4), his reaction cannot be said to be one which would be covered by Exception 4 to Section 300 IPC. We therefore reject the contention of Smt.C.Vasundhara Reddy, learned counsel, in this regard.

In the light of these indestructible eye-witness accounts, which clinchingly established that the accused cut the throat of his wife, the deceased, with M.O.1 knife, thereby intentionally causing her death,

this Court finds no reason to interfere with the findings recorded by the Sessions Court which formed the basis for the conviction and sentencing of the accused under Section 302 IPC. His attack upon P.W.3 thereafter, with M.O.1 knife, is also borne out by the record. Therefore, the conviction and sentence under Section 324 IPC also do not warrant interference.

The judgment dated 23.11.2010 of the learned IV Additional Sessions Judge (FTC), Khammam, in Sessions Case No.532 of 2009 is therefore confirmed and the appeal is dismissed.

SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

12th SEPTEMBER, 2017

PGS

