

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL NO.738 OF 2012

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

Allegedly having caused the death of his own son, Pandipati Samuel Raju, a two years old child, having caused the death of his sister-in-law, Bulla Ireesha, aged 12 years, having attempted to murder other family members of his in-laws family, having been convicted for the offences under Sections 302 and 307 of the Indian Penal Code (IPC), the appellant has been sentenced to life imprisonment for the offence under Section 302 IPC, fined with Rs.1,000/-, and in default of payment to further undergo a simple imprisonment of three months, and sentenced to rigorous imprisonment for a period of ten years for the offence under Section 307 IPC, fined with Rs.1,000/-, and in default of payment to undergo a simple imprisonment of three months, the appellant has challenged the judgment dated 29.05.2012, in S.C.No.79 of 2002, passed by the XI Additional District and Sessions Judge (FTC), Guntur at Tenali before this Court.

Briefly stated, the facts of the case are that on 07.10.2001 Smt. Pandipati Rajani (P.W.1), the wife of the accused, lodged a FIR, namely FIR.No.91/2001, (Ex. P.27), at P.S. Duggiralapalli, wherein she claimed that the accused is resident of Valiveru Village of Tsundru Mandal. She was married to him five years ago. During their marriage, they had a daughter, and a son. While they were living with the accused, she was suffering from ill-health. Therefore, she, along with her children, shifted to her parents'

place at Padepalem Village. One month prior to 07.10.2001, the accused visited his parents-in-law's house, and requested his in-laws to send back his wife and children with him. However, her parents refused to send her back as she had not recovered from her illness. Two days prior to 07.10.2001, when the accused came again to fetch his wife, he quarrelled with her parents. He threatened them that he would see what he could do. On 06.10.2001, at about 9:00 pm, the accused came to her parents' house. After taking meals, all of them retired for the night. While, she, her son, her sisters, and other family members slept in the verandah, the accused slept in another room. However, in the intervening night of 06/07.10.2001 around mid-night, the accused attacked Bulla Rajamma (P.W.3) with an axe on her head, and on her nose. When she shouted, Pandipati Rajani (P.W.1), Bulla Sowjanya (P.W.2), Bulla Nagaiah (L.W.4) and Bulla Ireesha (deceased No.2) rushed to her rescue. They saw that the accused was attacking Bulla Rajamma (P.W.3) with an axe. When they intervened, the accused attacked Bulla Sowjanya (P.W.2) with the axe on her right forearm, left wrist, on fingers, on the head, and also on the left side of her face. He also attacked Bulla Nagaiah (L.W.4) with axe on his head. He further attacked Bulla Ireesha (deceased No.2) with the axe on her forehead. He also attacked her two years old son, Pandipati Samuel Raju, (deceased No.1), who was lying on a cot with the axe. Due to the injury caused by the axe, the child died instantaneously. Seeing all this, in order to raise an alarm, the complainant rushed out of her house. The accused followed her, caught hold of tuft of her hair, and hit her with an axe on her head. Subsequently, Bulla Mariyadaas (P.W.6)

and Bulla Pamulu (P.W.7) rushed to the rescue of the family. They caught hold of the accused; they took the injured persons in a taxi to the District Hospital, Tenali. However, on the way to the hospital, the complainant's twelve year old sister, Bulla Ireesha, expired.

During the course of investigation, the accused was arrested by the police. Subsequently, charges for offences under Sections 302 and 307 IPC were framed. In order to support its case, the prosecution examined nineteen witnesses, exhibited thirty-two documents, and submitted twelve material objects. After completing the trial, the learned trial Court convicted and sentenced the accused as aforementioned. Hence, this appeal before this Court.

Sri Ch.Ravindra Babu, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, due to animosity between the complainant's family and the accused, the accused has been implicated falsely in this case. In fact, it is not the accused who has caused the said murders. Instead, it is a case of decoity where unknown persons had entered the house, and killed the inmates of the house. But the accused has been implicated falsely in the present case.

Secondly, in the alternative, the accused had pleaded that he was suffering from insanity. This plea was raised by the accused not only during the cross-examination of the eye witnesses, but also claimed in his statement under Section 313 of Cr.P.C. before the learned trial Court. In order to emphasize this point, the learned counsel for the petitioner has strenuously argued that allegedly the accused has killed his own son, a two year old child,

without any rhyme or reason. According to the prosecution, the accused was agitated that his parents-in-laws were not sending his wife and children back with him. But there was no reason why he would have killed his own son? Although insanity has been pleaded as a defence, but the benefit of the defence has not been given to the accused by the learned Trial Court.

Lastly, according to the prosecution, the twin murders had allegedly occurred in the night, in the verandah of the house. But there is not an *iota* of evidence to show that there was any source of light at the scene of the crime. In the darkness of the night, it would be difficult to identify the accused as the culprit. Therefore, the learned Trial Court has erred in convicting and sentencing the accused for the offences under Sections 302 and 307 IPC.

On the other hand, Mr. Posani Venkateswarlu, the learned Public Prosecutor for the State, has submitted the following counter-contentions before this Court:-

Firstly, the accused has taken self-contradictory stand in his defence. For, on the one hand, he claims that he was not present at the scene of the offence; it is a case of false implication. Yet, on the other hand, he claims to have committed the acts, but under insanity. These two defences cannot be pleaded simultaneously.

Secondly, insanity, like any other defence, needs to be proven by cogent and convincing evidence. But, no evidence was submitted to probabalise the said defence. Therefore, the defence of insanity was rightly rejected by the learned Trial Court.

Thirdly, both Bulla Sowjanya (P.W.2) and Bulla Rajamma (P.W.3) clearly state in their testimonies that while the family slept in the verandah, they always keep a light on. Thus, there was

sufficient light at the scene of the crime for the witnesses to identify the accused as the culprit of the twin murders.

Lastly, the presence of the eye-witnesses cannot be doubted as the eye-witnesses are injured persons in this case. Pandipati Rajani (P.W.1), Bulla Sowjanya (P.W.2) and Bulla Rajamma (P.W.3) have given a consistent account of the incident. Godavarthi David (P.W.4), Bulla Mariyadaas (P.W.6) and Bulla Pamulu (P.W.7) have corroborated the statements of the injured witnesses. The prosecution case is further strengthened by the testimonies of Dr. J. Nageswararao (P.W.11) and Dr. R.Venugopal Reddy (P.W.18) and by the medical evidence. Thus, the prosecution has succeeded in proving its case against the accused. Hence, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Pandipati Rajani (P.W.1), the wife of the accused, has categorically described the incident in her testimony. Initially, she tells the Court that two and a half years back she came back to her parental house as she was unwell. The accused came to her parental house and requested her parents to send her back. However, they refused. On 06.10.2001, the accused came to her parental house and stayed with them. After having his dinner they all slept. But, in the intervening night of 06/07.10.2001, between 11 pm and 12 'o' clock, she heard some noise. When she woke up, she saw that the accused was hitting her mother with an axe. Her mother immediately raised hue and cry. Instantly, her father, her sister and Bulla Sowjanya (P.W.2) rushed to her mother's rescue. At first, the accused attacked her father on his head.

Subsequently, he attacked her sister, Bulla Ireesha (deceased No.2), with the axe on her head, on nose and cheek and on the left side of the face. Due to these attacks, both her father and her sister collapsed. He further attacked another sister. Having attacked the sister, he attacked her son, who was sleeping on the cot, with the axe. He hit the child with the axe on his head. The child immediately died on the spot. Due to the fear of the accused, the witness claims that she ran out of the house in order to raise an alarm. The accused followed her, caught hold of tuft of her hair, and hit her with the axe on her head. She claims that she also collapsed. Later, Godavarthi David (P.W.4) and Godavarthi Prabhudasu (P.W.5) caught hold of the accused, and tied his hands with a rope. Immediately, Bulla Mariyadas (P.W.6) came to the spot with a car and took the injured to the Government Hospital at Tenali. On the way to the hospital, her sister expired. Subsequently, her statement was recorded by the police. In the cross-examination, a suggestion was made to her that her husband was suffering from some mental disorder, but the same was denied by the witness. In fact, in the cross-examination, she was not shattered as a witness.

Her statement is also supported by the testimony of Bulla Sowjanya (P.W.2), who described the incident in almost identical terms. She further claims that she was attacked by the accused on her head with an axe, on her right, and left wrist, and on the left cheek. She also claims that due to the assault, she collapsed. According to her, the accused also attacked her sister (deceased No.2) on the head, and on her chest with the axe; her sister also collapsed. In her testimony, she further claims that since they

used to put a light on whenever they slept, she saw the entire incident in the light. In her cross-examination, a suggestion was again made with regard to the insanity of the accused, but it was denied.

Her testimony is also supported by the testimony of Bulla Rajamma (P.W.3). P.W.3 also states in her examination-in-chief that *"On the same night the lights were on. Generally everyday night also without the lights we are not sleeping."* This witness further tells the Court that at about 12 'o' clock at night, she heard some noise. When she got up, she was hit by the accused with an axe on her head. When she raised hue and cry, the accused hit her on her head. In her cross-examination, she described the attack made by the accused on the other family members.

Godavarthi David (P.W.4), who happens to be the neighbour of the injured witnesses, claims that at mid-night, he heard hue and cry from the house of the injured persons. Therefore, he came out from his house. He saw that accused was chasing his wife, Pandipati Rajani (P.W.1). He also saw that when the wife fell down, the accused hit her on the head with the axe. He claims that he and Godavarthi Prabhudas (P.W.5) caught, hold of the accused, and dragged him till the transformer. At the transformer, the accused threw away the axe. Subsequently, the accused was tied to a tree. When they came to the house of the injured persons, they discovered that the inmates of the house had sustained injuries. Therefore, a car was brought by Bulla Mariyadas (P.W.6), and the inmates were rushed to the hospital. The said testimony of this witness was further corroborated by the testimonies of Bulla Mariyadas (P.W.6) and Bulla Pamulu (P.W.7).

P.W.1, P.W.2 and P.W.3 are injured witnesses. Therefore, their presence at the scene of the crime cannot be doubted. Further, since they have been injured, there is no reason why they would falsely implicate the accused, and let go off the real culprit. Therefore, the first contention raised by the learned counsel that decoits had entered the house, and assaulted the inmates, and committed the crime is a fanciful story being woven in order to save the skin of the accused-appellant. Hence, the said contention is, hereby, rejected.

In order to prove that the death of Pandipati Samuel Raju (deceased No.1), the two year old child, and death of Bulla Ireesha (deceased No.2) were homicidal in nature, the prosecution has examined Dr. R. Venugopal Reddy (P.W.18), who conducted the Post-Mortem Examination of Pandipati Samuel Raju, and Dr. Budhan Saheb (P.W.10), who conducted Post-Mortem Examination on Bulla Ireesha, the twelve year old child, and the sister of the complainant.

Dr. R. Venugopal Reddy (P.W.18) discovered the following external and internal injuries on Pandipati Samuel Raju (Deceased No.1):

External Injuries:-

1. *A cut lacerated wound of 10x1 cms x scalp deep present on the left temple area oblique upwards starting from a point 4 cm below the outer angle of eye to a point 3 cm above the pinna of left ear.*
2. *A cut laceration of 13 cm x scalp deep present on the right parietal area of the scalp measuring 3 cm width upto front 5 cm. 1 cm. width of the remaining 8 cm. length vertical*

extending from right cornal suture to the right lambdoidal suture, 2 cm. away from the midline and he found the following internal injuries:

Internal Injuries:-

- 1. Depressed fracture of 10 cm x 1 cm x brain cavity deep present, corresponding to the injury No.1. The brain matter is exposed out side. The margins and angles are clean cut.*
- 2. Depressed fracture of 13 cm x 2 cm x upto the brain cavity deep present corresponding to injury No.2. The angles and margins are clean cut.*
- 3. Subarachnoid hemorrhage all over the brain.*

According to him, the cause of death was shock and hemorrhage; the injuries were sufficient to cause death of the deceased in the ordinary course of nature. The injuries were caused within eighteen to twenty-four hours prior to his Post-Mortem examination.

Dr. Budan Saheb (P.W.10) informs the Court that he had conducted the Post-Mortem Examination on Bulla Ireesha (deceased No.2). According to him, he found the following external and internal injuries:-

External Injuries:-

- 1. An inseized wound of 5" x 1" x cut edges of Parietal bone esprising the underlying brain and menigens present.*
- 2. Inseized wound of 5" x ½ " x cut edges of occipital bone exposing the underlying brain and menigens present.*

Internal Injuries:- *All vital organs are normal in that weights in put cut section. Hyoid intact. Stomach contain 4 Ons. Liquid juice. Uterus is infatile. Blader contain 2 0.zs Urine.*

The deceased would appear to have died of shock due to injury to brain within about 24 hours prior to P.M. examination. Ex.P.5 is the P.M. Certificate issued by me.

Further, Dr. J.Nageswara Rao (P.W.11) examined the injuries of Pandipati Rajani (P.W.1). According to his testimony, she had sustained a bleeding incised wound, situated transversely over the summit of the head, measuring 5 cm x 1 cm, scalp deep. This injury was duly recorded by him in the wound certificate (Ex.P9).

According to Dr. J.Nageswara Rao (P.W.11) he also examined Bulla Sowjanya (P.W.2) and discovered the following injuries upon her:-

1. *A dramatic amputation of right hand at wrist level and loosely hanging on the radial side. All the extension and flesh tenders are cut. Ulnar artery is cut and radial pulse is present.*
2. *A crush lacerated injury of the distal phalanx of left thumb.*
3. *A cut lacerated injury of 6x2x1 c.m.s in size over of the left hand, on ulnar side extending to palmar aspect.*
4. *A horizontal cut incised wound of 10x2x2 c.m.s in size over the left side of the face extending from lower end of nose.*
5. *A cut incised wound of 5x2x1 c.m.s in size over the left parietal area.*
6. *Fracture of 5 x 2 c.m.s over the left parietal nose.*

Dr. J. Nageswara Rao (P.W.11) issued Wound Certificate (Ex.P8).

He further examined Bulla Rajamma (P.W.3) and found the following injuries:-

1. *A bleeding incised wound of 18 cm x 3 cm x 2 cm in size over the face extending from the right lower eye lid to left angle of the mouth cutting through right ala of nose and left side of the upper lip.*
2. *A bleeding incised wound situated over the right angle of the upper eye lid measuring 3 cm x 1 cm x 1 cm in size.*
3. *A red contusion of 8 cm x 2 cm in size over the right parietal area.*

Dr. J. Nageswara Rao (P.W.11) issued Wound Certificate (Ex.P7).

He further examined Bulla Nagaiah (L.W.4) and found the following injuries:-

1. *A bleeding incised wound of 12 cms x 3 cm x 2 cm over the right side of the forehead extending from the bridge of the nose to right angle of the ear.*
2. *An incised wound of 15 cm x 5 cm x brain matter exposed over the left tempore frontal region.*

Dr. J. Nageswara Rao (P.W.11) issued Wound Certificate (Ex.P.8).

He further examined Pandipati Rajani (P.W.1) and found the following injuries:-

1. *A bleeding incised wound situated transversely over the summit of the head measuring 5 cm x 1 cm scalp deep.*

Dr. J. Nageswara Rao (P.W.11) issued Wound certificate (Ex.P9).

Dr. Ch.Kishore Kumar (P.W.13), the Assistant Radiologist, had examined the fracture injuries sustained by Bulla Sowjanya (P.W.2) and Bulla Rajamma (P.W.3). Therefore, medical evidence, both oral and documentary, fully corroborates the testimonies of Pandipati Rajani (P.W.1), Bulla Sowjanya (P.W.2) and Bulla Rajamma (P.W.3).

Although the learned counsel for the appellant had suggested to the witnesses that the accused may have been suffering from insanity, but the accused has not produced any cogent and convincing evidence to establish the same. Once a defence of insanity is taken by the accused, under Section 105 of the Evidence Act it is his duty to establish his defence through probabilities by producing convincing evidence. (Refer to **Uttam Nandram Somwanshi v. State of Maharashtra**¹). Interestingly, when the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded by the learned Trial Court, the accused did not plead insanity. It is only at the time when the accused was heard on sentence, that he pleaded that he was insane at the time the offence was committed. But this plea was raised for escaping the death penalty. Therefore, the second contention raised by the learned counsel for the accused that the twin murders were caused due to insanity of the accused is clearly unsustainable.

Although learned counsel for the accused has stressed on the point that in mid-night due to the lack of light source, the accused could not be identified, but even the said contention has been denied by Bulla Sowjanya (P.W.2), and Bulla Rajamma

¹ (2016)13 SCC 205

(P.W.3). Both the witnesses have clearly stated that all the family would sleep in the verandah with a light on. Both of them have stated that it is in the light that they could readily identify the accused as the culprit who caused the twin murders. Therefore, even the third contention raised by the learned counsel is unacceptable.

This case is based on direct evidence of three injured witnesses who have given a truthful version of the incident. Their testimony is further corroborated by other witnesses, and by documentary evidence in the form of the Wound Certificates (Ex.P.6), (Ex.P.7), (Ex.P.8), and (Ex.P.9), and the two Post-Mortem Reports (Ex.P.32), and (Ex.P.5). Hence, the prosecution has succeeded in proving its case against the accused beyond a shadow of doubt.

For the reasons stated above, the conviction and sentence awarded by the learned Trial Court in S.C.No.79 of 2002, by Judgment dated 29.05.2012, is hereby confirmed.

The appeal is, accordingly, dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(M.SATYANARAYANA MURTHY, J)

27th November 2018
RRB