

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI
Criminal Appeal no.1217 of 2012
JUDGMENT
(per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellant/accused impugned the judgment, dated 16.11.2012, of the learned Special Judge for trial of cases under SCs & STs (POA) Act-cum-VIII Additional Sessions Judge, Nizamabad, in S.C.No.86 of 2012. By the said judgment, the learned Additional Sessions Judge found the accused guilty of the offence punishable under Section 302 IPC and convicted him under Section 235(2) of CrPC and sentenced him to undergo imprisonment for life and pay a fine of Rs.500/- and undergo simple imprisonment for one month in default thereof. The period of imprisonment already undergone, that is, from 14.05.2011 till the said date of judgment, was directed to be set off under Section 428 CrPC.

2. We have heard the submissions of Sri Kadaru Prabhakar Rao, learned counsel, on legal aid, appearing for the accused, and of the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record. It is stated that the accused is in prison.

3. The charge framed against the accused by the learned VIII Additional Sessions Judge, read verbatim as follows:

'That you on or about the 3rd day of May, 2011 at about 10.30 p.m., at the house of Waheda Begum at Zirayath Nagar, Armoor committed murder of Shaik Ghouse causing his death and thereby committed an offence punishable Under Section 302 of the Indian Penal Code and within my cognizance.'

The accused denied the said charge and claimed to be tried.

4. At trial, the prosecution examined PWs 1 to 15 and exhibited P1 to P21 and marked MOs 1 to 6. No evidence was adduced on the side of the defence.

5. The case of the prosecution and gist of the evidence, which was adduced to bring home the guilt of the accused, which need a detailed examination, are as follows:

The accused, Shaik Ahemad, aged about 60 years is the husband of Shaik Waheda Begum-PW1, aged about 45 years. Their marriage was performed about thirty five years prior to the date of PW1's testimony before the Court of Session. The deceased, Shaik Ghouse, is their son, aged about 19 years. PW1 and the accused are also having three daughters. The accused is addicted to liquor and toddy. He used to consume liquor and visit the house and quarrel with PW1 under the influence of liquor. About one year prior to the testimony of PW1, that is, one year prior to 13.08.2012, the accused having consumed liquor came to the house at about 10.30 PM. By that time, PW1 and her children were present in the house. While in the house, the accused abused them. The deceased requested the accused not to abuse them. Accused had his food in the house. Thereafter, the accused and the deceased went outside. Afterwards they both returned to the house. PW1 and the deceased requested the accused not to abuse them. Accused beat the deceased. PW1 and the deceased while remaining inside pushed the accused outside the house and closed the doors. The accused asked them from outside to open the doors. They refused to open the doors. However, at the request of the deceased, PW1 opened the doors. Then the accused entered the house and went to the bathroom. And, after breaking a bottle, the accused brought the broken bottle and stabbed the deceased with the broken glass bottle. On that, blood oozed from the body of the deceased. When PW1 intervened, the accused caused a bleeding injury to her with the broken glass bottle. Thereafter, they both were shifted in an ambulance to M.J Hospital of Dr. Madhu Sekhar-PW11, a private

practitioner of Armoor. The said doctor declared that the deceased died and asked the persons who brought the deceased to take away the dead body. Hence, PW1 along with the others brought the dead body of the deceased to her house. She then went to the police station, Armoor, and gave a report at 00.30 hours on 04.05.2011. She being an illiterate, a report was drafted by the police on her oral complaint made at the police station; and, after reading over the contents, her thumb impression was obtained on the said report-exhibit P1, drafted by the police.

5.1 To complete the narration of the evidence, it is necessary to now make a passing reference to the other and further evidence on record. Afzal Khan-PW2 is the brother of PW1. PW1 went to his house, which is at a distance of about 1 KM from her house, and informed him that the accused beat her son and stabbed him with a bottle. Then, PW2 went to the house of PW1. Shaik Shaheed-PW5 is the son-in-law of PW1. On the date of the incident, PW1 also informed PW5, on phone, that the accused beat the deceased. Ten minutes thereafter, PW5 having hired an auto visited the house of PW1. By that time, the deceased died and the accused was not at the house. PW5 found a bleeding injury on the hand of PW1. He then took the deceased to MJ hospital. The doctor declared that the deceased died. On his questioning, PW1 informed him about the incident that resulted in the death of the deceased at the hands of the accused. PW6, Mohammad Ameenuddin, a retired Government employee knows PW1, the accused and the deceased. On one night during the month of May he woke up on hearing some commotion outside his house and noticed that some people gathered and that Shaik Ghouse, the deceased, was lying on ground with bleeding injuries. He also heard some people saying that the deceased is dead and some people saying that he is alive and shall be taken to a Government hospital. He saw people taking the deceased to the hospital and heard from the people that the accused murdered the deceased. On receiving exhibit P1-report from PW1 at the police station, at 00.30 hours on

04.05.2011, PW14-the then Sub Inspector of Police, Armoor Police Station, registered the subject crime and issued exhibit P20-FIR and recorded her statement and forwarded the copy of the FIR to the concerned. The then CI of Police-PW15 received telephonic information about the incident between 00.30 hours and 01.00 hours and rushed from his house to his police station and received copy of FIR. He then proceeded to the scene of offence. He found the dead body at the scene of offence, but did not conduct panchanama as it was late night; he posted Constables at the scene to guard the scene of offence. At 6 AM on that day, he again visited the scene of offence and observed the scene of offence in the presence of Mohd. Shamshir Ali-PW10 and Malik Mohd. Hussain Ali Khan (LW10) and seized blood stained earth and controlled earth from the scene and prepared exhibit P13-Scene of offence panchanama and exhibit P12-Sketch of scene of offence and recorded the statements of the panch witnesses. He has got taken exhibits P4 to P8, photographs of the scene of offence, through B.Ramesh-PW7, a Photographer. In the presence of the above said panch witnesses, he then conducted the inquest over the dead body of the deceased and seized MO5, Blood stained banian, and MO6, Blood stained grey colour pant, under the cover of exhibit P14, inquest panchanama. He then shifted the dead body of the deceased to the Government Hospital, Armoor. On his requisition, PW9-Dr.A.Narayana, the then Civil Assistant Surgeon, Armoor, conducted Post Mortem Examination on the dead body of the deceased and issued exhibit P11-PM Report stating that the following injuries, viz., (i) Laceration on the lower lip (half inch); (ii) Laceration on left axilla (4 inch X 3 inch); (iii) Laceration on left arm (2 inch X 1 inch); and, (iv) Two laceration injuries on left part of left arm, are found on the body of the deceased. He also stated that left auxiliary vessel is cut and that the injuries mentioned by him in column no.11 of exhibit P11-report are possible with broken bottle and admitted the suggestion that the said injuries are possible if a person falls on his left side on sharp objects. On 05.05.2011,

PW15 secured the presence of PW3-Abdul Mannan and PW4-Mohd. Shadullah and recorded their statements. On 13.05.2011 at 15.45 hours, he arrested the accused at his house in the presence of PW12-Kothur Anand and Narendra-PW13 and pursuant to a confession said to have been made by the accused in the presence of the said witnesses seized, under the cover of exhibit P18, panchanama, a broken blood stained glass bottle/ MO1 from the back side of the house of the accused and a piece of blood stained gauge cloth-MO4. He later produced the accused before the learned Magistrate and obtained orders of judicial remand. On 14.05.2011, he secured the presence of Shaik Shaheed-PW5 and recorded his statement. On 18.05.2011, he secured the presence of Mohd. Aneenuddin-PW6 and Dr.V.Madhu Sekhar-PW11 and recorded their statements. He sent the seized material objects, viz., banian, pant, blood stained earth, control earth, broken bottle and piece of gauge cloth to the FSL, Hyderabad, and received FSL Report, exhibit P21, wherein, it was stated that human blood was detected on items 1 & 2, green colour banian and grey colour pant and that the blood group of the blood found on the said four items is 'AB'. On receiving exhibit P9-requisition from the police, PW8-Dr.Ramesh, the then Civil Assistant Surgeon, Armoor, examined PW1, on 04.05.2011, at the outpatient ward and issued her injury certificate-exhibit P10 stating that she sustained (i) incised wound (3x4 cms) on right arm; and, (ii) incised wound on right fore arm (5x4 cms) and that the said simple injuries are red in colour and are 6 to 12 hours old and are possible by a sharp object. After conclusion of investigation, PW15 filed the charge sheet.

5.2 Be it noted that during the course of trial, PW3-Abdul Mannan, PW4-Mohd. Shadullah, PW12-Kothur Anand and PW13-Narender turned hostile and did not support the case of the prosecution.

6. Learned counsel for the appellant/ accused contended that the entire evidence brought on record with the inherent improbabilities, contradictions,

material omissions and inconsistencies is not sufficient to base a conviction and that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and that the trial Court failed to properly appreciate the evidence and also the contentions of the accused and therefore, the conviction recorded for the offence punishable under Section 302 IPC is unsustainable and that the accused is entitled to be acquitted of the said charge. He would further submit that there is no motive alleged and established and that except PW1, who is the mother of the deceased, no other eyewitness was examined though it is the case of the prosecution that the daughters of the accused were also present in the house at the time of the alleged incident. He also would submit that the neighbours, who are independent witnesses, did not support the case of the prosecution and hence, there is no reliable evidence to establish the case of the prosecution. He alternatively contended that if the Court comes to the conclusion that the accused was responsible for the death of the deceased, then the accused is liable for conviction under Part I or II of Section 304 IPC and not under Section 302 IPC.

7. On the other hand, learned Public Prosecutor while supporting the judgment of the trial Court urged that PW1 is an injured eyewitness and that she is no other than the mother of the deceased and the wife of the accused and that her presence at the scene of offence is undisputed and that she has no reason to speak against her own husband and that her evidence on a perusal would show that she is a truthful witness and that her testimony, which is trustworthy, coupled with the other evidence brought on record sufficiently established the guilt of the accused as required under law for the offence punishable under Section 302 IPC and that the contentions of the accused/ appellant are devoid of merit and that the appeal is liable to be dismissed.

8. We shall now deal with the contentions advanced by the learned counsel for the accused.

Firstly: The first set of submissions in support of the contention that the testimony of PW1 cannot be relied upon are as follows: 'Though PW1 was said to have sustained an injury on the night of 03.05.2011, when she interfered during the course of the attack on the deceased by the accused, she was not treated by the doctor on the same night though she allegedly accompanied the dead body of the deceased to the Hospital of Dr.Madhu Sekhar-PW11. Her injury certificate, exhibit P10, discloses that she was treated by Dr.J.Ramesh, Civil Assistant Surgeon-PW8, on 04.05.2011 at 09.30 AM. Therefore, the contention of the prosecution that PW1 sustained injuries at the hands of the accused during the course of the alleged incident of murder and that she is an injured eyewitness cannot be accepted.' In this regard, as rightly contended by the learned Public Prosecutor, PW1 categorically deposed about the entire incident that happened at her house on that night and also about her sustaining injuries in the incident when she interfered during the course of attack on the deceased by the accused with a broken glass bottle. The incident happened at night after 10 PM. Therefore, the presence of PW1, who is the mother of the deceased and the wife of the accused at the house, is but natural. Further, after the ghastly attack, she along with her relatives shifted her injured Son (the deceased) to M.J. Hospital of PW11. On finding that the deceased was brought dead, the said doctor asked PW1 and her relatives to take away the dead body of the deceased to their house. Therefore, from the evidence it is clear that PW1 did not complain to the said doctor about the simple injuries sustained by her and therefore, the said doctor did not treat PW1 for the injuries sustained by her. On the same day, she lodged exhibit P1 report with the police. In her said report, which contains her earliest version, she stated that she sustained injuries on her right hand. Further, Dr.J.Ramesh-PW8, Civil Assistant Surgeon, Armoor, having examined her at 09.30 AM on 04.05.2011,

issued exhibit P10-wound certificate stating that the two injuries sustained by her on her right hand are simple injuries and that the same are red in colour and are possible by a sharp object and that the same are 6 to 12 hours old; she was treated by him in the outpatient ward. A careful examination of the evidence brought on record thus amply supports the version of the prosecution that PW1 is an injured eyewitness. Therefore, the first set of contentions of the accused is liable for rejection.

Secondly: Learned counsel for the appellant/ accused next pointed out that PW1 in her exhibit P1-report, which was drafted by the police, stated that after opening the doors the accused entered the house and had broken the toddy bottle in his hand and caused an injury on her right hand and that on seeing that her son (the deceased) ran away onto the road and that her husband caught hold of her son and stabbed him with the broken bottle and that her son sustained serious injuries and fell down and that thereafter her husband (the accused) ran away from the house. Learned counsel having then adverted to the evidence of PW1 further pointed out from her deposition that PW1 in her evidence stated that after opening the doors of the house, the accused entered the house and went to the bath room and brought a bottle, after breaking the bottle, and stabbed her son with the broken glass bottle and that when blood oozed from the body of her son, she interfered and that on that the accused caused a bleeding injury to her with the broken glass bottle. Thus, highlighting the said versions, he contended as follows: 'The first version of PW1 is that her husband first attacked her with the broken glass bottle and that thereafter he caught hold of her son who was running away and stabbed him. Whereas, her version before the Court is that she sustained injuries when she interfered after her son sustained bleeding injuries at the hands of her husband.' He also pointed out that PW1 in her testimony stated that the accused entered the house after opening the doors and then went to the bathroom and brought a bottle after breaking it and then attacked them and

that the same is contrary to her version in her report that the accused entered the house with a broken toddy bottle and attacked them. He accordingly contended that the above versions are self-contradictory and irreconcilable and therefore, her testimony is unreliable, more particularly in the absence of examination of any one of her daughters who were admittedly present at the house on that night. However, in the cross-examination, PW1 stated as follows: 'It is true that after causing injury to my son, the accused caused injury to me.' She also testified in her cross-examination that the accused brought the said bottle from behind her house and that the bathroom is behind the house. Even though PW1 deposed that she and her daughter were in the house when the incident took place, in our considered view, the non-examination of PW1's daughter is not fatal to the case of the prosecution in the light of the candid testimony of PW1, an injured eyewitness, who is no other than the wife of the accused and the mother of the deceased. It is axiomatic that the evidence has to be weighed and not counted. Section 134 of the Indian Evidence Act, 1872, also emphasises that no particular number of witnesses in any cases be required for the proof of any fact. Thus, the quality of evidence is important and not the quantity; and, the testimony of a single witness, if reliable, is sufficient to base a conviction. On a harmonious evaluation of the evidence of PW1, it is crystal clear that on the night of the incident, the accused who is her husband came to the house in a drunken state and abused PW1 and her son (the deceased); he then had food and again went outside along with the deceased and returned home; PW1 and the deceased requested the accused not to abuse them; when the accused beat the deceased, they both pushed the accused outside the house and closed the doors; the accused started beating on the closed doors vigorously; on the request of the deceased, PW1 opened the doors; the accused having entered the house, went to the bathroom and had broken a glass bottle and brought the broken glass bottle and stabbed the deceased; when blood oozed from the body

of the deceased, PW1 interfered; then the accused caused injuries to her. The above unshaken and unswerving testimony of PW1 makes it amply clear that in her presence, the accused stabbed her son with a broken glass bottle and caused serious injuries to her Son and that after her Son fell down the accused ran away from the house and that the accused also caused injuries to her in the course of the said incident. What is to be noted is that in the cross-examination of PW1, it was suggested that on that night the deceased came to the house in a drunken condition and slipped and fell down on a batti and died on account of an injury sustained in the said incident. It was further suggested to her that the accused intended to sell away his house with a view to purchase a new house with the sale proceeds and that as she and her son did not like the said proposal, they had falsely implicated the accused in this case. PW1 denied the said suggestions. Indeed, there is no reason for PW1 to speak against the accused, who is her own husband.

Thirdly: Dealing with the absence of the motive for the accused to kill his own son, no doubt, the prosecution evidence does not disclose any motive; however, merely for that reason the evidence of PW1 cannot be disbelieved as motive in a case of this nature is of little importance; and, absence of motive does not create a doubt on the prosecution case which rests on the direct testimony of PW1, the wife of the accused and an injured eye-witness.

Lastly: The alternative submission of the learned counsel for the appellant-accused is that the case on hand at best attracts either Part I or Part II of Section 304 of IPC and not under Section 302 IPC as at the time of the incident, the accused, even according to the admitted case of the prosecution, was under the influence of liquor and his behaviour was also un-natural at the time when he attacked his own Son while under intoxication. In support of the said submission, he relied upon the decision in Poola Ramesh Babu v. State of

Andhra Pradesh¹. The facts of the cited case reflect that the accused poured kerosene on his wife and lit a matchstick and threw it upon her and later made an effort to save her by pouring water. In view of the said facts, the Supreme Court modified the conviction under Section 302 IPC to one under Section 304 Part I of IPC and reduced the sentence from life imprisonment to that of ten years (RI). In the case on hand, after the accused came home in a drunken state, he started abusing his wife-PW1 and his Son-the deceased; then, they both stated not to abuse them; afterwards, the accused had food; thereafter, the accused and the deceased went out of the house and returned home; when the accused again abused them and beat the deceased, PW1 and the deceased pushed him out of the house and closed the doors; when the accused was beating vigorously on the closed doors, the deceased requested PW1 to open the doors; hence, PW1 opened the doors of the house; then, the accused having armed with a broken glass bottle repeatedly attacked his own son and caused injuries on vital parts of the body and further caused injuries to his wife in the course of the said incident and later ran away from the scene. In view of the facts and circumstances of the instant case, we are of the considered view that the instant case is a clear case of murder and, therefore, the alternative submission of the appellant-accused is without merit.

9. On the above analysis, we find that all the contentions of the accused do not in any way affect the trustworthiness of the evidence of PW1, which also finds sufficient corroboration from the medical evidence, and that none of the contentions advanced are sufficient to doubt the case of the prosecution. As a result, we hold that the testimony of PW1 on the incident proper, which has a ring of truth, is trustworthy and that the evidence brought on record unfalteringly reveals that the instant case is a clear case of filicide and that the accused is therefore liable to be punished under Section 302 IPC for the offence of murder.

¹ 2015(1) ALD (CrI) 79

10. For the reasons aforesated we are satisfied that the evidence brought on record is enough to safely hold that the prosecution sufficiently and beyond reasonable doubt brought home the guilt of the accused for the offence with which he is charged and that there are no grounds calling for interference with the judgment impugned.

11. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence imposed upon the accused in S.C.no.86 of 2012 on the file of the Court of the learned Judge for trial of cases under SCs & STs (POA) Act-cum-VIII Additional Sessions Judge, Nizamabad.

Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

16.02.2018
Vjl

