

Hamidullah vs.state

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Court : Delhi

Decided On : Jul-18-2019

Appellant : Hamidullah

Respondent : State

Judgement :

#R-13 IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

18. h July, 2019 CRL.A. 183/2002 HAMIDULLAH STATE versus Appellant
Respondent Advocates who appeared in this case: For the Appellant For the
Respondent : Mr. Madhav Khurana, Advocate (Amicus Curiae) along with Mr.
Ankit Bhatia, Advocate with appellant in person. : Mr. Ravi Nayak, APP with ASI
Puram Singh, PS Gokulpuri. CORAM: HON'BLE MR. JUSTICE SIDDHARTH
MRIDUL HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

SIDDHARTH MRIDUL, J (OPEN COURT) 1. The present appeal under section 374 of the Code of Criminal Procedure, 1973, (hereinafter referred to as Cr.P.C.) assails the judgment and order dated 04.02.2002 and the order of sentence dated 04.02.2002, rendered by the Additional Sessions Judge, Karkardooma Court, Shahdara, Delhi in FIR No.356/99, PS Gokalpuri, whereby the appellant has been convicted for offences Crl.A.183/2002 Page 1of 22 under Section and 307 IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay the fine of Rs.1,000/-, in default of the payment of fine, further rigorous

imprisonment for one month under Section 328 IPC; sentenced to imprisonment for life and fine of Rs.2,000/-, in default of the payment of fine, further rigorous imprisonment for two months under Section 302 IPC; and further sentenced to rigorous imprisonment for five years and a fine of Rs.1,000/-, in default of the payment of fine, further rigorous imprisonment for one month for the offence under Section 307 IPC.

2. The facts, as are necessary for the adjudication of the present appeal, are encapsulated as follows: (i) Majida (hereinafter referred to as PW-8), the daughter of the appellant (the appellant hereinafter referred to as father) lodged a report on 30.07.1999 with the concerned Police Station to the effect that, on the previous evening at about 10:30 p.m., her father came back to the house and gave her three capsules, Crl.A.183/2002 Page 2 of 22 the colour of which was described as blue from the outside and white from the inside. (ii) The appellant asked PW-8 to consume one capsule and give one capsule each to her two younger sisters, namely, Roshan and Gulistan (subsequently the deceased). (iii) PW-8 enquired from her father, as to why he was administering capsules to the other sisters, since she was the only one suffering from stomach pain. (iv) After PW-8 removed the capsules from the strip, she went out to fetch water and upon her return, the father woke up the two younger sisters abovenamed and put one capsule each, in their mouths. (v) Then, the father administered one capsule to her which however, PW-8 placed below her tongue, whilst drinking the water. Crl.A.183/2002 Page 3 of 22 (vi) Thereafter, the father asked PW-8 to lock the room in which the sisters were supposed to sleep, from inside and switch off the lights, and then went to another room. (vii) PW-8 noticed that Gulistan became unconscious, immediately on ingesting the capsule, and both the sisters had labored breathing with froth in their mouths. (viii) PW-8 immediately rushed out of the room and informed her father and asked the latter to enquire about their well-being. (ix) PW-8 also felt irritation and immediately went outside the house and spit out the capsule in a nali. (x) PW-8 then rushed to the house of Khurshida Begum (hereinafter referred to as PW-1) and narrated the entire incident to her. When the two rushed back to the house, her father was nowhere to be seen and the Crl.A.183/2002 Page 4 of 22 elder brother of her father Noor Mohd., his sons and PW-1, removed Gulistan and Roshan, her younger sisters to the hospital.

3. It is the case of the prosecution that Gulistan died on the way to the hospital and Roshan died in the hospital.

4. During investigation, the appellant was arrested on 31.07.1999 and he made a disclosure statement [Ex.PW-13/C]. pointing out the shop, from where he had purchased six capsules of Spasmo Proxyvon.

5. Further, the appellant also got three capsules of Spasmo Proxyvon and empty covers of other capsules recovered from behind the water motor in his house.

6. The postmortem qua the deceased girls Roshan [Ex.PW-5/A]. and Gulsitan [Ex.PW-7/A]. was performed, and the stomach wash and viscera pettis were taken into possession, which were sent to FSL, Malviya Nagar, New Delhi, for the latters examination and report. Crl.A.183/2002 Page 5of 22 7. After completing investigation, and subsequent upon recording of the statements of the witnesses and collecting the relevant reports; the appellant was charge-sheeted.

8. The appellant was charged under sections & 307 IPC; to which he pleaded not guilty.

9. In support of its case, the prosecution examined 16 witnesses and thereafter, the statement of the appellant under section 313 Cr.P.C. was recorded, wherein he denied the case of the prosecution in toto; denied having made any disclosure or pointing out the place from where he had purchased the subject capsules; denied having got the capsules and the empty covers recovered; and urged that PW-8 had falsely implicated him, in retaliation to his having reprimanded her for being embroiled in a love affair with one Abid.

10. The appellant also examined his other daughter Rasida as DW-1, to establish his innocence. Crl.A.183/2002 Page 6of 22 11. The star witness of the prosecution was PW-8. In order to appreciate her testimony-which has heavily been relied upon by the Trial Court-whilst returning a finding of guilt against the appellant, it would be necessary and profitable to extract the same in extenso: PW-8 Mazida w/o Tayub, aged 18 years, r/o village Arseni, Shahjahanpur, Distt. Meerut, U.P. On S.A. that that time my father On 29.07.99 at about 10 or 10.30 PM I was present at

Mustfabad, Delhi at my house at the house of my father the accused present in court. In that house my two younger sisters Gulistan and Roshan were also present and the accused present in court was also present. At that time I was performing Namaz. At the accused present in Court came from outside with three capsules. He handed over three capsules to me and told me to consume one capsule myself and give two other capsules to my younger sisters Gulistan and Roshan. I asked the accused that so why he has given the capsules to me for serving me and my two younger sisters. Only I am feeling some trouble but he again told me to serve the capsules to my younger sisters. At time my two younger sisters were sleeping inside the room and he directed me to bring water and I gave three capsules to him as per his direction. When I returned after taking water he had already woke up my two younger sisters Gulistan and Roshan. The accused put one capsule each in the mouth of my younger sisters Roshan and Gulistan and I served water to my sisters. Then the accused had served me the third capsule and directed me to take that capsule I put that capsule in my mouth and at that time I saw that my two younger sisters laid down and told me that they are feeling bitterness in their mouth. The accused served the water. I drink water but I did not swallow that capsule and kept the same in my mouth. Then the accused directed me to go to bed. Then he directed me to close the door Crl.A.183/2002 Page 7 of 22 from inside and he put off the light and I bolted the room from inside. The accused present in court went outside. My younger sisters were breathing with long breathing. Then I terrified. I switched on the light and saw froth in their mouth. Then I came out from that room and the accused was present and was standing. I informed him that the condition of my two younger sisters is critical and asked him to see them. The accused asked me as to whether I am feeling well. When I replied I am also feeling irritation. Then I went outside the house and spit out the capsule in the nail. Then I went at the house of my aunt Khurshida and told her the entire incident. Then she immediately rushed at our house. At the time the accused present in court was not available there. My uncle the elder brother of accused, Noor Mohd., his sons and my aunt Khurshida removed my two sisters in the hospital and I remained sitting at the door of my house with the mohalla people. Then I called my Dulha Bhai (Jeejaji). Then the mohalla people and my uncle Noor Mohd. and the persons who removed my sisters to hospital returned

and informed me that Gulistan died on the way to the hospital and Roshan died in the hospital. After long time the accused came there. My younger sister Gulistan was taken back at the house and I had seen her dead body and on next day I identified the dead body of my other younger sister Roshan in the hospital. I had made statement before the police and same is Ex. PW8/A which bears my signature at point A. Thereafter my brother Majid turned me out from my house on the second day of occurrence. Thereafter my maternal aunt and her husband took me with them at Mandawali. XXXXXXXXX by Sh. Shakil Ahmed Adv. for accused. When the accused had given me capsules at that time I was performing prayer of Namaz of Isha (Night). The time of Isha Namaz used to be started in the summer at about 8 or 8.30 PM. The house in which the incident took place was having a big hall at ground floor and a small room at first floor and there was a roof. We used to sleep in the terrace outside the room at first floor in summer season. There was no fixed time to sleep and I used to CrI.A.183/2002 Page 8 of 22 sleep at about 10 or sometime 11 or 11.30 PM. Further, cross-examination is deferred as it is 1.30 PM. PW-8 Mazida recalled for further cross-examination after lunch. On S.A. Xxx xxx by Sh. Shakil Ahmed adv. for accused. At the time of incident I alongwith my other three sisters and brother and father/accused were residing in the house. At the time of incident I alongwith my deceased sisters Gulistan and Roshan alongwith my father accused were present. My brother and another sister went to village Kaliyar, Distt. Roorkee. At the ground floor there was dye punching factory of my father and there were eight machines installed in the factory by my father. Only one person used to do work at one machine. Again said it is not a factory but we used to do the work on the machines on our own family members. Rings used to be manufactured from those machines but I do not know where the same were sent for polishing as I did not go anywhere. I do not know any boy named Abid again said Abid was residing in front of my house and he is son of my aunt (Tai). She was not my real aunt but she was my Muhboli Tai. It is incorrect that Abid used to visit in our house frequently volunteered no one was allowed by us to enter in my house even we do not allow our khalas son. It is incorrect that there was a love affair between me and Abid. It is further incorrect to suggest that many times my father scolded me not to run this affair further with Abid. It is incorrect to suggest that on the day of incident my father went to Kaliyar alongwith

my brother and sister volunteered my father remained at home. My aunt/Fufo also accompanied with my brother and sister for Kaliyar. It that I was apprehended red handed by my deceased sisters Roshan and Gulistan when I was talking with Abid. It is incorrect to suggest that at that time my both sisters told me that they will disclose this to the father. It is further incorrect to suggest that I alongwith Abid administered poison to my both deceased sisters. I was not medically examined by the police. My is incorrect to suggest Crl.A.183/2002 Page 9 of 22 statement was recorded by the police on the second day of the incident. I had stated to the police that when my father administered capsules to my both younger sisters then at that time Dulha Bhai was called by me. Confronted with statement Ex.PW8/A where it is not so recorded. It is incorrect to suggest that accused did not administer poison to my sisters and nor me. It is further incorrect to suggest that I am deposing falsely to get share from the properties from father. PW-8: Mazida, w/o Sh. Tayub recalled for cross- examination. On S.A. Xxxx by Sh. Jashbir Tyagi, counsel for the accused. I am completely illiterate. I do not know how to sign. In the P.S. of Gokul Puri one police official had helped me in signing by holding the pen in my hand as well as his hand. I cannot tell the date of death of my mother.

2/2

years have passed when she had died. My father i.e. the accused present in the court, used to take care of me and other children i.e. my brother and sister. My father has been taking care properly of my other sisters, namely, Gulshan and Gulistan. Both of them were happy with my father. I had seen three capsules. Those capsules were inside the plastic wrapper, i.e. they were wrapped in its packing. Those capsules were taken out in my presence by my father. Those capsules were brought by my father and those were with him and were not in the house. My father had handed over all the three capsules to me but there was no water in the house and I had to go to take water so, I again I handed over all the three capsules to my father and went to take water. That capsule which was given to me was not eaten by me. I had thrown it in the street. I had told to the police that I had thrown the capsule in the street. Police has picked up that capsule and was seized. Crl.A.183/2002 Page 10 of 22 it Before throwing that capsule I had put in my mouth. I had kept that capsule in my mouth for about five minutes. I had bolted from inside for about

minutes. I had opened it after hearing the voice of weeping of my sisters. When I was inside the bolted room, capsule was not in my mouth. There is no fix time for our sleeping. Vol. usually I sleep after observing Namaz of Isha. It is wrong to suggest that all of us sleep together. Vol. somebody sleeps earlier and somebody sleeps later. Further statement is deferred as it is lunch time. PW-8: Smt. Mazida recalled for further cross-examination. On S.A. Xxxby Sh. Jasbir Tyagi, Advocate for accused. Israr Shamim is daughter of my mothers uncle (mamu). is my maternal uncle (mamu). It is correct that I do not have real maternal uncle (mamu). It is correct that Israr is my maternal uncle (MOOH BOLA MAMU). It is correct that after the death of my mother, my maternal uncle Israr has not been visiting us. It is wrong to suggest that he has not been visiting us because our relations with him has become stained. Volt. he stopped coming by saying that in the absence of his sister what will he do in coming to our house. It is correct that Israr is not belonged to same caste to which we belong. It is correct that after the present occurrence and death of my sisters I had gone with Israr i.e. on next day. It is wrong to suggest that my marriage was got solve nice by Israr voltd. My maternal grandmother had arranged my marriage. It is wrong to suggest that Shamim had not been visiting us after the death of my mother. It is wrong to suggest that my father i.e. accused present in the court has not been visiting to Shamim after the death of my mother. It is correct that in my marriage none of my brother or sister or father were invited. It is also correct that my real uncles (CHCHA AND TAU) were also not invited in my marriage. It is wrong to suggest that I am deposing falsely against my father due to stained relations of my father with my maternal uncle, maternal grandmother. It is CrI.A.183/2002 Page 11of 22 correct that on the day of occurrence there was a pain in my stomach. My both the sisters were not having any pain on that day. I did not eat the capsool because stomach pain was stopped. I had taken capsool for that but that was different. That capsool was brought by my younger sister Roshan. Only one capsool was brought by her. She had brought that capsool from a chemist shop after telling that some medicines may be given for stomach pain. The learned APP submits that he may be allowed to clarify a point regarding the sign. of PW-8. Heard allowed. XXXXXXXX by Ld. APP Neither I can read nor write. Namaz has been learned by me orally. I had asked the police official to take my thumb impression as I was not knowing how to sign

but he obtained my sign. and not my thumb impression in the manner stated hereinabove. It is correct that on 26.5.2000 I had signed on my statement in Hindi language. Volt. I had learned signing. I had opted to put my thumb impression today as I was given offer either to put my thumb impression or signature so I preferred my thumb impression. As on this day I do not know how to sign. It is wrong to suggest that I could sign on 30.7.99 and can sign even today. It is wrong to suggest that I am deposing falsely. It is correct that Ex.PW8/A bears my sign. at point A, voltd. I had signed it in the manner stated above. It is wrong to suggest that I had signed on Ex.PW8/A without any help of police official. It is correct that on previous date of hearing I had put my sign. on my statement on five pages. Xxxxxby Shri Jasbir Tyagi Adv. for accused. Nil opp. given. 12. Before appreciating the testimony of PW-8, it would be necessary to examine the relevant testimony of the other prosecution Crl.A.183/2002 Page 12of 22 witnesses, as well as, that of DW-1 Rasida, examined by the appellant in his defence.

13. Although, PW-1 resiled from her statement made under Section 161 of Cr.P.C. to the police at the material time and turned hostile, it is relevant to observe that, she testified that PW-8 did come to her residence on the fateful night and informed her that, her father had administered capsules to her, as well as, to her sisters, and the latter had then become serious; and also responded to a suggestion made in that behalf, by the appellant, to the following effect It is correct that PW-8 told me that she along with her two other sisters be saved from their father as their father has given the capsules to consume.

14. PW-6, Shiv Shankar s/o Om Prakash, turned hostile in Court as well, but testified that the police had seized one small dibba (box) containing potash from his factory vide possession memo [Ex.PW6/A]. on 02.08.1999. Crl.A.183/2002 Page 13of 22 15. PW-9, Zulfikar s/o Ashraf Ali, testified before the Court that the appellant, duly identified, came to his shop on 29.07.1999, with a prescription from the doctor and further bought Spasmo Proxyvon capsules from him, to be administered to treat abdomen pain.

16. PW-9 further testified that, the appellant was brought to his shop by the police two days later, at the pointing out of the former, recorded vide pointing out memo

Ex.PW9/A.

17. PW-16, SI Karam Chand, the I.O., testified that he had taken into possession a newspaper from the house of the appellant, with which the vomit of the deceaseds sister was cleaned by PW-1, vide memo PW13/A. He further deposed that the appellant was arrested from outside his house and his personal search was conducted vide memo Ex. PW13/B on 31.07.1999 and that, he then made a disclosure statement PW-13/C. PW-16 also testified that the clothes of the deceased were taken into possession vide memo Ex. PW13/D and the viscera patti was also seized vide the same memo, in relation to Roshan. He further deposed that the pullandas and viscera patti of Gulistan were seized vide memo Ex. PW13E. CrI.A.183/2002 Page 14 of 22 18. The testimony of PW-16 also shows that, the appellant pointed out the place of hiding of the subject capsules, both the empty strips as well as full ones, vide memo Ex. PW16/L.

19. However, it is observed that, PW-16, the I.O. also testified that despite his best efforts, he could not find the capsule allegedly spat out by PW-8 as recorded in the latter's statement and testimony.

20. DW-1, Rasida stepped into the witness box in defence of the appellant and testified that the latter had scolded her sister PW-8 twice or thrice for going out of the house to meet Abid and that, Roshan and Gulistan were receiving beatings from her for having informed the appellant, in this behalf.

21. Just like her brother PW-3, DW-1 also deposed that, the appellant used to keep them in a normal manner and bear their expenses.

22. PW-5, Dr. Navnit Sharma and PW-7, Dr. Mukta Rani testified qua the cause of death of Roshan and Gulistan respectively, as follows: CrI.A.183/2002 Page 15 of 22 I have seen the viscera report of deceased Roshanara and same is Ex.PX. The report of Roshana is at point A and B in which the exhibits gave positive test for potassium cyanide. Today I have seen the chemical analysis report Ex.PX vide which the viscera of Gulistan was examined by FSL, Malviya Nagar, New Delhi and result of examination is at point C on Ex.PX. After going through this report I have definite opinion that the death of Gulistan was due to cyanide poisoning. 23.

Mr. Madhav Khurana, learned counsel appearing on behalf of the appellant, would invite our attention to the testimonies of PW-8 in contradistinction to the testimony of PW-1, PW-13 and DW-1 to urge that the same is riddled with contradictions and does not inspire confidence.

24. Counsel would further urge that the Trial Court has proceeded on conjectures and surmises and failed to appreciate the defence led on behalf of the appellant to the effect that, PW-8 had animus towards the appellant, as well as, her deceased sisters, on account of her being involved with Abid, which was viewed with disfavour by the father. Crl.A.183/2002 Page 16 of 22 25. Learned counsel would also point out that, it is improbable as deposed by PW-8, that she could keep the Spasmo Proxyvon capsule laced with potassium cyanide for five minutes in her mouth and still not demonstrate any ill-effects from the said capsule, which renders her testimony improbable and unnatural.

26. Lastly, the learned counsel appearing on behalf of the appellant would urge that, the prosecution has been completely unable to establish any motive for the act alleged to have been committed by the appellant.

27. Per contra, Mr. Ravi Nayak, learned APP appearing on behalf of the State supports the impugned judgment in its entirety and submits that a cogent reading of the testimonies of PW-8, PW-13, PW-16, PW-5 and PW-7 and the FSL report as Ex.PX clearly, supports the findings arrived at therein, qua the establishment of the guilt of the appellant in the murder of his deceased daughters beyond reasonable doubt. Crl.A.183/2002 Page 17 of 22 28. Mr. Ravi Nayak, learned APP would emphasize that the recovery of the empty and full strips of the Spasmo Proxyvon tablets, as well as, their purchase from PW-9, clearly establish and support the testimony of PW-8, in relation to the material particulars of the commission of offence by the appellant.

29. Mr. Ravi Nayak, learned APP would lastly, submit that even though PW-1 turned hostile in Court, her testimony-in relation to the interaction between her and PW-8 at the fateful hour, the latter had disclosed to the former that the appellant had administered capsules to all the three sisters, pursuant to which, the condition of the deceased sisters deteriorated-remains uneffaced and uncontroverted on

record.

30. Having heard learned counsel appearing on behalf of the parties and further after giving our anxious consideration to the record, we are of the view that, the appeal instituted on behalf of the appellant assailing the impugned judgment and order of conviction and sentence is devoid of merits for the following reasons: Crl.A.183/2002 Page 18 of 22 (i) The ocular testimony of PW-8 is trustworthy and reliable. The only defence articulated on behalf of the appellant to discredit PW-8's testimony was a suggestion that the latter had falsely implicated the appellant, on account of his having scolded her for carrying on with Abid. (ii) In this behalf, it is observed that the testimony of DW-1 does not come to the aid of the appellant, inasmuch as, it was not the testimony of DW-1 that she had told the appellant about the alleged affair and in that context, her testimony is both ambiguous and unreliable, and tantamounts to hearsay. (iii) The testimony of PW-8 is corroborated by the uneffaced testimony of PW-1, in relation to the occurrence of the crime. (iv) It is further corroborated by the testimonies of PW-13 and PW-16, in relation to the disclosure statement made on behalf of the appellant, which have led to the discovery of the subject tablets, as well as, identification of the Crl.A.183/2002 Page 19 of 22 individuals, who sold them to the appellant on the fateful evening. (v) The testimony of PW-8 receives support from the testimonies of PW-5 and PW-7 and a purposive reading of FSL report (Ex.PX), which clearly establishes the presence of potassium cyanide, not only on the clothes of Roshan but also its recovery from the deceased girls viscera and blood samples and in addition thereto, the newspaper [Ex.2], with which their vomit was cleaned by PW-1. (vi) It is also observed that PW-6, was examined to prove that the appellant procured potassium cyanide from his on either the 24th or 25th of July, 1995. Although PW-6 turned hostile and did not support the case of the prosecution in court, nevertheless the circumstance that the police seized one small dibba vide Ex. PW6A from his shop containing potash, remains uncontroverted. Crl.A.183/2002 Page 20 of 22 (vii) PW-8, in her complaint [Ex PW-8/A], attributed motive to the appellant, by stating that, the appellant was having an extra-marital affair with one, Shamim Begum.

31. In view of the foregoing, the contradictions brought to our notice by Mr. Madhav Khurana, learned counsel appearing on behalf of the appellant, in relation to the number of tablets of Spasmo Proxyvon recovered by the police and non-recovery of the tablet spat out by PW-8, in our considered view, are minor and inconsequential.

32. Insofar as, the argument in support of the motive is concerned, we find ourselves unable to agree with the submission made on behalf of the appellant, inasmuch as, motive is not a sine qua non in a case of ocular testimony. (Ref. Bipin Kumar Mundal vs. West Bengal, (2010)12 SCC121.

33. In view of the foregoing, we are in complete agreement with the findings arrived at by the Trial Court in the impugned judgment CrI.A.183/2002 Page 21 of 22 and order to the effect that, the prosecution had proved its case against the appellant beyond reasonable doubt.

34. Consequently, we dismiss the present appeal, whilst upholding the appellants conviction and the judgment of the Trial Court. However, there shall be no order as to costs.

35. The appellants bail bond stands cancelled and he is directed to surrender before the jail authorities forthwith.

36. Copy of this order be given to the learned counsel appearing on behalf of the parties. SIDDHARTH MRIDUL (JUDGE) BRIJESH SETHI (JUDGE) Page 22 of 22
JULY18 2019/as/ym CrI.A.183/2002

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