

**Sunil Vs. State of Up**

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**Court :** Allahabad

**Decided On :** Mar-31-2011

**Judge :** F.I Rebello, CJ; Imtiyaz Murtaza, J.

**Acts :** Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 313; Arms Act - Section 302/309 and 25/4

**Appeal No. :** Criminal Appeal No 1249 of 2010

**Appellant :** Sunil

**Respondent :** State of Up

**Judgement :**

1. Challenge in this Appeal is to the verdict of conviction recorded by Addl Sessions Judge Kanpur Nagar vide judgment and order dated 21.12.2009 whereby the appellant who was arraigned of offences under section 302/309 and section 25/4 Arms Act has been visited with the punishment by awarding sentences of imprisonment for life studded with fine totalling Rs 11,0,00/- for the offences aforesaid.

2. The informant/complainant in the case is Smt Maya Devi who gave a written report at the police station Chakeri Kanpur Nagar on 22.3.2008 at 11.30 am alleging therein that her son namely Sunil appellant in this case had a row with her daughter Anita, who refused to give in before the demand of the appellant for Holi expenses and infuriated over refusal, the appellant assaulted the Anita, and two

daughters of Sunita who was a divorcee, (Saloni aged about 8 years and Pragiya aged about one year) with a Chopper (an edged weapon) and thereafter, he also attempted self immolation by striking himself with a razor on his neck. She further alleged that people of the locality removed the accused/appellant to hospital. This incident, it is stated in the written report, was witnessed by her, her daughter Sunita and several people of the localities.

3. The investigation of the case was taken by Smt Asma Majid, S.H.O Police Chakeri who rushed to the spot and recorded the statements of the ocular witnesses, prepared site plan, collected blood smeared and simple earth and prepared memo. Thereafter, she went to Haillat Hospital where the accused was undergoing treatment and put him under arrest. Thereafter she recorded statement of the accused and on his pointing out, the weapon of attack was recovered and prepared recovery memo in the presence of the witnesses. The investigating officer also recovered the razor on his pointing out and also prepared recovery memo. The investigating officer also prepared inquest report and other papers on the spot and sent the dead bodies for post mortem examination. She also prepared various papers which were marked as exhibits Ka 19 to Ka 28 and after completion of investigation, the charge sheet was submitted in Court. The case was in due course committed to the court of Sessions and thus, the trial commenced. The trial court after evaluating evidence of the witnesses recorded verdict of conviction against the appellant as stated supra.

4. The prosecution in its efforts to prop up its case, has examined in all six witnesses out of which two are the ocular witnesses namely Pw1 Smt Maya Devi, mother of the appellant and PW 2 Sunita who is also related to the appellant as his sister. The other two witnesses are PW 3 Head Moharrir of PS Chakeri namely Sarnam Singh and PW 4 Smt Asma Majid Investigating officer of the case. PW 5 and PW6 are doctors who conducted autopsy on the dead bodies.

5. No evidence was let in on the side of defence but the accused denied the charges necessitating the trial.

6. The present appeal has been preferred from Jail against the judgment and order of conviction recorded against him by the appellant. Since the appellant was

un-represented in Court, Sri Rajiv Joshi was appointed as Amicus Curiae in this matter who argued the case touching on each and every pros and cons of the case with commendable candidness.

7. The sessions Judge relying upon the prosecution evidence rendered verdict of conviction against the appellant as aforesaid. Hence this Appeal.

We have heard Sri Rajiv Joshi, Amicus curiae appearing for the appellant and Sri D.R.Chaudhary Government Advocate at prolix length.

8. The learned counsel appearing for the appellant assailed the judgment of the court below inter-alia contending that there was no ocular witness of the occurrence and in this connection, the learned counsel adverting to the testimonies of the prosecution case argued that in fact some intruders entered into the house and they initially attacked the appellant and when he fell unconscious, the intruders committed murder of Anita, and two other girls Saloni and Pragya.

9. The next argument advanced across the bar is that the accused himself was assaulted and he was removed to hospital attended with submission that the accused was not arrested from the spot. He also adverted to the statement of the witnesses stating that according to their testimonies the occurrence took place in a room which was bolted from inside. The learned counsel also challenged the finding recorded by the trial court submitting that the prosecution has miserably failed to prove its case attended with submission that the sentences awarded in the facts and circumstances of the case err on the side of severity.

10. Per contra, learned Government Advocate has canvassed for the correctness of the view taken by the trial judge attended with submission that sufficient evidence was adduced by the prosecution and the Sessions Judge has rightly convicted the appellant relying on the prosecution evidence and that the testimonies of witnesses do not suffer from any contradiction, or infirmity.

11. In order to appreciate the aforesaid rival contentions of learned counsel for the parties, we have to independently scrutinise the oral and documentary evidence on record adduced by the prosecution. PW 1 Smt Maya Devi deposed that from

prior to the occurrence, she was living in the house alongwith Anita who was a divorcee, Sunita, her widowed daughter and two daughters of Sunita aged six years and one year respectively. Her son Sunil appellant was perturbed over increased household expenses and on the day of occurrence, a row erupted between him and Anita over the expenses to be incurred on Holi festival and Sunil got enraged and boiling with anger, he uttered that he was being burdened with unnecessary expenses which have to be cut short and mounted assault on the deceased with Chopper at about 11 am as a result of which Anita and Saloni succumbed to injuries instantaneously while deceased Pragya breathed her last on way to hospital. She also deposed that the appellant also struck himself with a razor on his neck and as a result, he was also injured. She also deposed that when she and her daughter Sunita arrived at the house, appellant was boiling with rage and after attacking the deceased, had tried to self immolate himself by striking himself with razor and that he was taken to hospital by the neighbours. She also deposed that the incident was witnessed by her, her daughter Sunita and a lot of people from the locality. She also deposed that the report was dictated by her to her younger son Anil and thereafter the report was handed over at the police station. In her cross examination, the quintessence of what she stated is that she and her daughter Sunita were doing menial work for earning livelihood and they had come back together on the day of occurrence as it happened to be the birthday of Saloni deceased, the elder daughter of Sunita. She also stated that the door was found bolted from inside. She also stated that when she returned, the deceased were found lying supine with their neck bearing deep cut. She also stated that the appellant did not commit murder in her presence.

12. However, she reiterated that it was Sunil who had committed murders of everyone present in the house. She also stated that the police came at the scene after elapse of half an hour. She also stated that seeing the gruesome murders, she had fallen unconscious and she regained conscious after someone had sprinkled water on her face. She denied knowledge whether the police interrogated other people on the spot. She also denied the suggestion that any unknown assailant had committed murders. She also stated that at the time Sunil was at home and that he was not earning anything and used to harangue others by demanding money. She also stated that the appellant was not engaged in any

work and used to while away his time. She also stated that the appellant was younger to the two sisters named above.

13. P.W 2 is Sunita, who happens to be elder sister of appellant. She deposed that two of the murdered persons were her children namely Pragya and Saloni. She was a widowed lady and used to earn livelihood by doing menial work as maid servant in different houses. She deposed that there erupted a row between appellant and Anita over the expenses to be incurred in Holi festival and Sunil was heard saying that he would not bear expenses of his two sisters and their children. When she and her mother returned from work she saw the door bolted from inside upon which her mother banged at the door which opened with the pressure of banging and upon opening of the door, she witnessed ghastly scene with Sunil holding Chopper in his hand and he had already inflicted injuries on the neck of deceased Anita Saloni and Pragya was also wounded but she seemed gasping for breath and seemed alive. She also deposed that thereafter, Sunil struck himself with razor on his neck . Pragya was rushed to hospital but she breathed her last there.

14. In her cross examination, she deposed that on the day of occurrence she had returned earlier than usual time as it was birthday of her daughter Sonali. She also deposed that her daughter was studying in class 1 and that she and her mother used to earn thousand of rupees. She also stated that deceased Anita was the eldest of all of children and she (Anita) had been divorced by her husband on account of her illness. She also deposed that since she was constantly sick she did not work anywhere. She also stated that<sup>6</sup> when she and her mother returned from work, the door was found closed from inside and when the door was opened she saw that Anita and Saloni had already been murdered while Pragya was being attacked by Sunil. Pragya was rushed to hospital by her and her mother. She also stated that when she came back from hospital the dead bodies had already been removed by the police. She denied that any outsider ever visited the house and only relatives and known people used to come. She stated that Sunil used to pick up quarrel almost every day stating that he was unable to bear the expenses of the sisters and her children. She denied the suggestion that Sunil had not committed murder. She also stated that Sunil was not earning anything and it was

Anil the youngest brother who used to do painting work. She again denied the suggestion that the murder was committed by her in-laws and in order to screen them, the appellant has been falsely nominated in the case.

15. PW 3 is Sarmaan Singh who was then posted as Head Mharrir police station Chakeri. He deposed that on the basis of written report he prepared chik report and that chik FIR is in his hand writing. He also deposed that he also recorded the incident in G.D. In cross examination, he stated that he used to register the case on the basis of written complaint attended with statement that whenever SO was not present, he used to register the case and no permission was required. He also stated that the informant had come to the police station alongwith one Janak Verma and Mrs Kusum Lata and her son Anil was not seen in her company. She also stated that the information about the incident was conveyed to Senior Officers.. He also stated that the complaint was brought at 11.30 am and the case was registered about the same time.

16. PW4 is Asma Majid who was then posted as SO Chakeri. She deposed that after the case was registered, she rushed to the spot and recorded statements of informant, and PW 2 Sunita Devi. She also prepared site plan on the pointing out of informant. Upon being informed by the informant that the murders had been committed by the appellant and that the appellant had also tried to self immolate himself and that he was held up at the gate by her younger son, she immediately rushed to the Hallet Hospital and arrested the appellant and recorded his statement. She also deposed that she made recovery of weapon used in the commission of the crime on the pointing out of the appellant. She also recovered razor which the appellant used to self immolate himself and prepared recovery memo.

17. She also prepared inquest reports. She pinpointed that inquest of deceased Anita and Saloni was conducted at the spot while the inquest on the body of deceased Pragya was conducted at the mortuary. She also deposed that on 23.3.2008 she recorded statements of Jagdish and Rakesh Kumar who were witnesses of recovery memos and also Mrs Mtihlesh Kumar eye witness, HCP Bhagwan Singh HCP writer of FIR and Const Ramesh Singh, Const Marg Sri and

Const Maharani Deen. On 21.4.2008, she completed investigation and submitted charge sheet in the Court.

18. The witness was recalled on 23.7.2008. On further cross examination, she stated that she rushed to the site of occurrence where she saw dead bodies lying outside in front of door and Sunil was also lying there and his condition was critical. She also stated that informant informed her that the murders were committed by Sunil. She also stated that she was informed by the informant that she and her daughter Sunita was present at the house. She explained that her statements to the said effect were recorded and the said statements were also entered in the case diary. She also mentioned the length and dimension of Chopper. She also stated that forensic laboratory also opined that human blood was present on the chopper.

19. She did not mention about finger prints having been lifted from the scene of occurrence. She also gave details about the topography of the house and also gave details of the household effects kept in the room. She denied the suggestion that the murders were committed by someone else.. She also stated that Sunil who had suffered badly was rushed to hospital. She also denied suggestion that police report was not submitted within 24 hours or that she did not abide by the rules.

20. The next witness is PW 5 namely Dr D.K Dwivedi who was then posted as Medical Officer K.P.M Hospital Kannpur Nagar. He deposed that on 22.3.2008 he examined the injuries on the person of Sunil at 3.30 pm and he found following injury on his person.

"One stitched wound in front of neck 9 cm long 3 cm below the lower jaw. There were 13 stitches.

21. He opined that no inference could be drawn about the time and reason of injury as there were stitches on wound. He also opined that he could not tell whether the injured had a self inflicted wound or it was caused by a sharp razor as the injury wound was stitched.

22. In cross examination, he stated that he had examined the external injuries and not internal. He could not tell whether the appellant was brought on foot or on a stretcher. He stated that when the appellant was brought his wounds had 13 stitches. One 9 cm long stitched wound was noticed by him on the front of neck and 3 cm below the lower jaw., He could pinpoint how old the stitches were. On being queried, he stated that he did not make enquiries from the accompanying constables where the wound were got stitched.

23. Dr Jageshwar Prasad is arrayed as PW 6 who had conducted post mortem on the bodies of Anita, Saloni and Pragya deceased. The ante mortem injuries on the body of deceased Anita was as under:

Incised wound 5 cm x 6 cm which was 5 cm left of the chin and 4 cm below the left ear. This injury had cut the food pipe wind pipe and vocal chords. Incised wound had sharp edges.

On examination of the body of Saloni the doctor found following ante mortem injuries.

(1) Incised wound 5 cm x 5 cm which was 5 cm left of the chin and 2 cm below the left ear. This injury had cut the food pipe wind pipe and vocal chords.

(2) Abrasion wound 5 cm x 4 cm upon the right shoulder. On examination of the body of Pragya following ante mortem injuries were found.

"(1) Incised wound 5 cm x 5 cm in middle of the neck 4 cm below chin 3 m below left ear and 2 cm below right ear. This injury had cut the food pipe wind pipe and vocal chords.

(2) Abrasion wound 2 cm x 1 cm on chin. In cross examination, he stated that the injuries were possible from Gadansa or Axe explaining that only sharp edged weapons can cause such injuries. At the time of autopsy, he stated, the bodies had turned blue. He could not tell the distance from which the injuries were inflicted. He also stated food pipe wind pipe and vocal chords had been cut. He also stated that bone of the neck was not fractured nor was it severed from the torso. He also stated that Saloni and Pragya had abrasion wounds.

24. Challenge to the finding in this appeal is premised on various grounds. It is worthy of notice here that time and place of occurrence has not been called in question. The appellant has not disputed his presence at the scene at the alleged time of occurrence. To cap it all, his presence is proved by the fact that he had also sustained serious injuries on his neck.

25. The first contention mooted by the learned counsel for the appellant that in our view, calls for consideration is that the testimony of PW1 Smt Maya Devi is discrepant with the testimony of PW2 Sunita. In connection with this submission, we have delved into the testimonies of the aforesaid two witnesses. In our considered view, their testimonies are not poke-marked with any contradiction. To elaborate it, both the witnesses have consistently deposed that when they arrived at the house, the door was bolted from inside and when Smt Maya Devi pushed open the door they witnessed the gory occurrence. It was precisely deposed that Sunil was holding Chopper in his hand and he had inflicted injuries on the neck of deceased Anita, Saloni and Pragya. Thereafter, Sunil inflicted injury on his neck by means of a razor. By this reckoning, we do not find any contradiction on this count between the two testimonies.

26. The next argument is that the prosecution did not examine Anil who was the material witness of the occurrence and he propped up the above contention by citing a decision of the Apex Court in State of U.P and another v Jagga alias Jagdish (AIR 1971 SC 1586) where the substance of what has been laid down is that "It is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the unfolding of the narrative should be called." In connection with this submission, we have delved into the evidence on record all over again. It is significant to note here that neither PW 1 nor PW 2 mentioned about presence of Anil at the time of occurrence. His role in the entire setup of the prosecution case is that of a scribe of the FIR. By this reckoning, his testimony is not significant for "unfolding of the narrative." It is worthy of notice in connection with the above submission that in the instant case, the prosecution has annexed importance to the two witnesses namely PW Smt Maya Devi and PW 2 Sunita to substantiate its case. These two witnesses have categorically stated that the occurrence was witnessed by other persons of the

locality. In the facts and circumstances, it would suffice to say that no adverse inference can be drawn by non-examination of other persons of the locality. What is noteworthy in this case is that the incident took place inside the house and the presence of both the witnesses is natural and it is but natural to assume that they have truthfully narrated the entire incident. Both the witnesses namely Smt Maya Devi and Sunia are closely related to the appellant being his mother and elder sister and what adds to the truthfulness of their deposition is that no suggestion has been made to any of the witnesses that they were deposing falsely against the appellant in order to screen the real culprit .

27. The next submission is that the time of arrest of the appellant is in the realm of doubt. In connection with this submission, we have again delved into the record. The first deposition is of PW1 Smt Maya Devi. She is indubitably an illiterate lady earning her livelihood by doing menial work in various houses. She has deposed that after the incident, the appellant was taken to Hallet Hospital for treatment. PW4 Asma Majid, the investigating Officer deposed that the appellant was arrested from the gate of Hallet Hospital. The Investigating officer also deposed that after getting information about the incident, she immediately rushed to the place of occurrence and she found appellant lying in injured condition at the place of occurrence. In the light of the above depositions, we have no hesitation to say that the time of arrest is at all in the realm of doubt. It is worthy of mention here that if the appellant was arrested from the Hallet Hospital, it does not generate any doubt that the testimonies of PW1 and PW 2 are not worthy of being placed any credence. As we have found, the case of the prosecution is quite consistent in all material aspects in as much as when both PW1 and PW2 arrived at the place of occurrence, the house was found bolted from inside upon which she banged at the door and the door opened with push and pressure and upon opening of the door, they witnessed the ghastly site. Both the witnesses have consistently deposed that the appellant was present inside the house alongwith other deceased persons. By this reckoning, it leaves no manner of doubt that the appellant was present inside the room which was bolted from inside and that the witnesses pushed the door open. In this light, the burden of proving how three persons were murdered, lay on the shoulders of the accused/appellant.

28. In connection with the above contention, we feel called to draw attention to the ratio flowing from the decision in Trimukh Maroti Keerkan v State of Maharashtra (2007, Cr. L.J 20) in which the essence of what has been held is quoted below.

"Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of the evidence to be led by it to establish the charge, cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of section 106 of the Evidence Act, there will be corresponding burden on the inmates of the house to give a cogent reason as to how the crime was committed. The inmates of the house cannot get away by simply keeping quite and offering no explanation on the premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all that an accused to offer any explanation."

29. In the perspective of the above observation of the Apex Court, we have very carefully scrutinized the evidence on record. It is worthy of mention here that the defence did not examine any witness. In his statement recorded under section 313 Cr.PC, the appellant stated that on the date of incident, Holi celebration was in full swing with colours being squirted freely and at that time he was in his room alongwith sister and nieces. He was struggling to sleep. At that time, one unknown person arrived there whom he did not recognise. He took out a shining thing (sharp edged weapon) from his pocket and inflicted injury on his neck and thereafter, he fell unconscious. He probalised that the said person might have committed the murder of his sister and nieces. He also stated that her murdered sister had a shady character and on this score, there used to ensue a quarrel and altercation and on that day also, her sister and mother had picked up quarrel with him. He also stated that her mother and Sunita her sister might have been behind the murders. He also stated that several persons of shady character used to frequent the house to meet his mother and sister.

30. In the light of his statement under section 313 Cr.P.C, we have again delved into the testimonies. It would transpire that it was not suggested at any point of time to PW 1 Smt Maya Devi that either she or PW2 Sunita were instrumental in

causing the death of the deceased persons. The only suggestion made to PW 1 Smt Maya Devi was to the effect that some other persons might have committed the murder. On similar line was also the suggestion made to PW2 Sunita. The further suggestion made to PW 2 Sunita was that her in-laws might have been behind the murder of the persons. It is thus obvious that the suggestions made to the witnesses were inconsistent and contradictory.

31. The next aspect worthy of consideration is that two different weapons have been used in the entire episode; the first weapon is denominated as Chopper (sharp cutting weapon) with which the deceased persons were attacked and another a razor with which the appellant inflicted injury upon himself. The investigating officer has recovered both the weapons from the place of occurrence. Again, reverting to his statement under section 313 Cr.P.C, it is stated by the appellant that he had seen a person entering the room and the said person had taken out a shining weapon from his pocket. He does not attribute any weapon in the hand of the person. The Chopper is not a small weapon easily to be concealed in the pocket. The post mortem report also props up the case of the prosecution that the injuries on the persons of the deceased were inflicted by a heavy cutting weapon. Dr PW6 Dr Jageshwar Prasad opined that injuries of the deceased could be caused by Chopper. It was not suggested to him that the injuries on the persons of the deceased could be caused by a razor. The suggestion made to him was to the effect that the injuries could be caused by Gadansa (a heavy cutting weapon).

32. It is also worthy of notice here that the learned Sessions Judge after evaluating and appraising the entire evidence on record, converged to the conclusions that the testimonies of Pw1 and PW 2 were inspiring and reliable and the same were fully corroborated by the medical opinions. We have no reason to differ from the finding recorded by the learned Sessions Judge and therefore, the findings recorded by the trial court are cogent and convincing and the conviction and sentences are therefore affirmed.

33. In the result, the appeal fails and is dismissed. The conviction and sentences recorded by the trial court are affirmed. The appellant is in jail and he shall serve

out the sentences accordingly.

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