

(2009) 04 DEL CK 0007
In the Delhi High Court
Case No : Criminal Appeal 822 of 2007

N. Muralidharan Nair

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 293, 293(1), 293(4), 313
Evidence Act, 1872 — Section 24, 25, 26
Penal Code, 1860 (IPC) — Section 302, 307, 309

Citation : (2009) 04 DEL CK 0007

Hon'ble Judges : Pradeep Nandrajog, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Sumeet Verma, for the Appellant; Richa Kapoor, APP, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—This appeal is directed against the judgment dated 18.08.2007 and the order on sentence dated 31.8.2007 passed by the learned Additional Sessions Judge (ASJ). The appellant was tried for having committed offence punishable under Sections 302/307 as well as u/s 309 Indian Penal Code (hereinafter referred to as IPC?) for having murdered his child Vishnu, aged about five years and for causing grievous hurt to his younger child Varun aged about three years. He was acquitted of the offence punishable u/s 309 IPC. However, he was convicted for offence punishable u/s 302/307 IPC. He was sentenced to undergo imprisonment for life and pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo rigorous imprisonment (RI) for one month for the offence u/s 302 IPC. He was further sentenced to undergo RI for ten years and pay a fine of Rs. 1,000/- in default of payment of fine to further undergo simple imprisonment (SI) for one month for the offence punishable u/s 307 IPC.

2. An information was received by Head Const. Umed Singh at Police Station

Naraina on 21.5.2001 at about 11.18 P.M. that one person had killed his son in House No.67, Kirbi Place, Double Story, Army Quarters and that the child had been removed to the hospital. Another telephone call was received by HC Umed Singh that a murder had been committed at P-76, Kirbi Place. This information as recorded in DD No.34-A (Ex.PW-1/B). PW-12 SI Pankaj Yadav along with PW-19 Ram Niwas reached the spot around 11.45 P.M. There he recorded the statement of complainant PW-6 Baby Joseph, he made his endorsement Ex.PW-12/A at 2.15 A.M. on 22.5.2001 i.e. intervening night of 21-22.5.2001 and got the FIR Ex.PW-1/A of this case registered through PW-19 Const. Ram Niwas at 2.45 A.M. Both Vishnu and Varun, the injured had already been removed to Base Hospital, Delhi Cantt. by PW-21 Major Philomina and PW-8 Major Anamma. Vishnu was declared brought dead and Varun was declared unfit for making statement by PW-20 Dr. Jasvinder Kaur. After examination of the victims, she prepared the MLC Ex.PW-20/A of deceased Vishnu and also the MLC of Varun.

3. Brief facts of the case are that the appellant was married to PW-3 Major K.G. Sridevi Amma, an Army Officer. He himself was unemployed and lived with his wife at the place of her posting along with his two sons, namely, Vishnu and Varun. PW-3 Sridevi Amma intended to visit Bangalore to see her sister. She was threatened by the appellant that if she took the children with her, he would kill them and also would kill himself. Later on, she came to know that her mother had expired and she left for Trivendram. On 20.5.2001 appellant made a telephone call to his wife PW-3 Sridevi Amma and asked her to come back immediately by flight and threatened her of the life of the children and also of himself. A bizarre incident took place on 21.5.2001 when he murdered his elder son Vishnu aged about five years and caused grievous injuries on the person of his younger son Varun, aged about three years and also made efforts to set himself on fire.

4. PW-6 Baby Joseph, the complainant in his statement Ex.PW-6/A made to the police disclosed that on the intervening night of 21-22.5.2001 at about 10.40 P.M. when he was present in his own house, he heard a sound of blast from House No.P-76-B which was in front of his house. He immediately came out of the house and saw Varun standing outside smeared with blood and was weeping. He immediately went inside and saw smoke coming out of the bed room of the said house and found the door slightly ajar. He peeped inside the bed room and found the other child, Vishnu lying on the bed smudged with blood and the appellant, Muralidharan was standing near Vishnu. He was saying that he had restrained his wife from going to Bangalore but still she went and therefore he had stabbed both of his children with a knife and had killed them. He (PW-6) also extinguished the fire by throwing out the gas cylinder lying in the room and sent both the children to the hospital in a neighbour's car and informed the police. He handed over appellant to PW-12 SI Pankaj Yadav.

5. As PW-6, Baby Joseph has testified that on 21.5.2001 at about 10.30 P.M. he

was preparing his dinner when he heard a big sound and came out of his house. He looked around and also towards opposite House No.76 which is situated at a distance of 50 yards. He noticed people standing outside that house. He also went there and found the windows of the said house having transparent glass and saw the house lit. He saw one boy lying on the bed in a pool of blood and another injured boy standing near the bed. He also saw appellant standing nearby the boy with a gas stove pipe in his hand. Flame was coming out of one end of the pipe. Appellant was trying to put fire to the bed lying there. Appellant was also trying to burn the child standing near the bed with the gas flame. He forced open the door which was having single latch from inside and went inside. He again found door of the room where incident took place bolted from inside which was forced open by him. Sheejan (PW-10) also reached inside the room to help him. He lifted Varun and handed him over to Sheejan as he was bleeding from his neck. He also threw the gas cylinder out of the house to extinguish the fire. He lifted Vishnu lying on the bed and found that his throat was also slit and he handed him over to another person so that he could be taken to hospital. He asked appellant N. Muralidharan as to what he had done, to which he said that it was a family matter. He pulled out the appellant from his house and handed him over to the persons standing there. He informed the PCR and within ten minutes police reached and the appellant was apprehended by the police. He is a witness to the recovery of bloodstained clothes, mosquito net, weapon of offence i.e. knife Ex.P-1 which were seized vide memo Ex.PW-6/B. He identified the knife Ex.P-1 as the same which was recovered.

6. Since PW-6 Baby Joseph stated that appellant had not said anything to him when he entered the room or apprehended him, he was allowed to be cross examined by learned Additional Public Prosecutor (APP) for the State. When cross examined by the learned APP, he accepted that after coming out from the house appellant had stated that his wife went to Bangalore despite his refusal to allow her to go, he (appellant) stabbed both of his children with a knife and killed them. He deposed that there was no other person in the house except the appellant and his two sons who were in an injured condition. He did not notice any injury on the person of the appellant at that time.

7. In his cross examination he deposed that it was upon enquiry from appellant Muralidharan after reaching the spot that, he came to know that, appellant had hit the gas cylinder on the wooden frame of the door which produced the sound heard by him. He denied the suggestion that doors were not bolted from inside and were open. He also denied the suggestion that appellant was trying to extinguish the fire and was not trying to set the bed on fire.

8. When further cross examined, he replied that from the transparent window pane the incident was also being witnessed by him and the crowd. When asked further, he replied that he remained at the spot till 11.00 P.M. and thereafter he went to the hospital and in the hospital he remained for about an hour and then came back to his house. He deposed that recovery memos were prepared at the

Police Station in his presence as he was called there on the next day at about 11.00 A.M. and he had signed every recovery memo in the Police Station. His statement was recorded at the spot in 20 minutes before his leaving for the hospital and his supplementary statement was recorded by the police in the Police Station. When further questioned, he deposed that he did not know from where knife was recovered by the police as he had seen it after it was recovered. He deposed that sketch of the knife was prepared in his presence in five minutes. When confronted with the pipe, he stated that he could not see any burn portion but, after careful examination of the pipe, he deposed that there were burnt marks at the end of the pipe which could be seen unevenly broken. To a question put to him in the cross examination regarding the burn injuries on the person of appellant, he replied that he did not notice if appellant was having any burn injuries as he was concentrating on the children.

9. PW-10 Mr. Sheejan George has deposed that on 21.5.2001 he heard a noise and saw crowd gathered in front of the house situated opposite the house of her aunt with whom he was residing. He saw Philomina, Baby Joseph, Annama O.T. present in the crowd. He also went inside the house of the appellant whom he identified in the court and found Varun crying. He along with Baby Joseph brought Varun outside the house. Varun was having injuries on his left hand and was bleeding. Therefore, Annama O.T., Philomina and other persons removed Varun to the hospital. However, he did not see Vishnu, but later came to know that he had died.

10. In his cross examination he has stated that the noise which he heard was similar to a blast in the transformer. He followed Baby Joseph inside the house. He further testified in the cross examination that he also saw appellant Muralidharan at the spot.

11. PW-21 Major Philomina went to the house of the appellant on hearing the noise from the rear side of his house and he found Vishnu lying on the bed inside the house. On finding him in an injured condition, he lifted him in his arms and Varun was lifted by Major Anamma O.T. and they both took the children in a vehicle to the Base hospital where Vishnu was declared dead.

12. PW-8 Major Anamma reached the spot on hearing the noise at about 10.30 P.M. and found a crowd gathered near Sridevi's house. He saw Varun being taken out from Sridevi's house in a critical injured condition. He also saw Major Philomina had lifted Vishnu, the elder son of the appellant in his arms. Both the children were taken to the hospital. Later on he came to know that appellant had injured his own sons and his elder son Vishnu died.

13. PW-4 Mohanan Nair is the brother of PW-3 Sridevi Amma, wife of the appellant. He has testified that on coming to know on 14.5.2001 that his mother had expired at Waynad, Kerala, he went there to attend her last rites. PW-3 Sridevi Amma and PW-5 Anand Valli, his sisters had also reached there to attend the last rites of their mother on 20.5.2001. A telephone call was made by the

appellant to PW-3 Sridevi Amma which was attended by PW-5 Anand Valli, as Sridevi Amma was not well and had suffered head injury. He deposed that appellant threatened her on telephone "If Sridevi did not reach Delhi next day then he will kill the children and himself?". On 21.5.2001, his cousin brother Anil Kumar informed him on telephone "accused Muralidharan has killed his elder son Vishnu while other son was admitted in hospital in a critical condition." PW-5 Anand Valli, has corroborated the testimony of PW-4.

14. PW-3 Major K.G. Sridevi Amma testified that she was married to the appellant in December, 1992. They had two sons out of the wedlock and at the time of the incident her husband was unemployed. On 29th December, 2000 she had received head injuries in an accident and she remained on two month's sick leave. Since she wanted to go to Bangalore to visit her sister to take care of her, she was threatened by the appellant that if she took the children with her then he would kill them and he would also end his life. She joined her services after availing of the sick leave. She further testified that on 14.5.2001 she came to know that her mother had died and therefore she left for Trivandrum by air to attend last rites of her mother leaving behind the appellant and her two sons in her house bearing No. P-76-B at Kirbi Place, Delhi. After reaching Trivandrum she enquired on phone at about 10.00 P.M. about the well being of her children. On 20.5.2001 she received a call from the appellant who told her that if she did not come to Delhi immediately, he would kill his sons and also himself. On 22.5.2001 she received information from her brother that her children were admitted in the hospital and were in a serious condition. She came to Delhi with her brother and two sisters, where she came to know that her elder son Vishnu had succumbed to his injuries and Varun was under medical treatment. She has also deposed that Varun had told the police in Malayalam that his father had killed Vishnu with a knife.

15. PW-2, Anil Kumar had received phone call from the appellant at about 8.00 P.M. on 21.5.2001 and appellant had told him that he had killed his sons. On receipt of this information he went to the house of appellant where he found police officials present and the injured already removed to the hospital.

16. PW-12, SI Pankaj Yadav seized knife Ex. P-1 from the spot vide seizure memo Ex. PW-6/B; clothes of the appellant Ex. P-2 and P-3 having blood-stains vide seizure memo Ex. PW-12/C; a diary Ex. P-7, a pen Ex. P-8 vide seizure memo Ex. PW-6/F, a gas pipe and various other articles. He also seized one small diary having admitted hand writing of the appellant vide seizure memo Ex. PW-12/H.

17. PW-17 Dr. Chandra Kant had conducted postmortem examination on deceased Vishnu on 23.5.2001. On examination, as per his report Ex. PW-17/A, he noted following injuries:

External injuries:

1. One incised wound on the outer aspect of lower 1/3rd of left leg, 3 cm above

from left ankle, both margins clean cut, both angles acute, size 5 cms x 1.2 cm x tissue and tendon deep/vessels severed.

2. One incised wound on the lower 1/3rd of left forearm 4 cms above from left wrist joint. Both margins clean cut, both angles acute size 5 cms x 1.8 cms x tissue and tendon deep blood vessels severed.

3. One incised wound on the lower 1/3rd of interior aspect of right forearm 4 cms above from right wrist, both margins clean cut, both angles acute size 5 cms x 2 cms x tendon severed, blood vessels severed.

4. One incised wound on front of neck 5 cms away from chin and 5 cms above from supra-external notch, both margins clean cut, both angles acute size 8 cms x 2 cms x trachea deep and severed, blood vessels severed.

Internal injuries:

1. Thyroid cartilage was transversely severed. Trachea was transversely severed with both margins clean cut, both angles acute. Underneath tissues and blood vessels were transversely severed and all injuries were corresponding externally with injury No. 4.

2. Both lungs were congested; clotted blood was present in the cavity and bronchioles.

3. Stomach contain undigested, liquid contents, rice pieces identified, mucosa was healthy.

4. Liver, Kidneys and spleen were all congested.

18. He appended his opinion in his report Ex. PW-17/A regarding cause of death as "Shock, haemorrhage, injury to trachea, injuries are ante-mortem in nature, caused by sharp edged weapon and collectively all are sufficient to cause death in ordinary course of nature.?"

19. On 23.5.2001, knife Ex. P-1 was examined by him. After examination he appended his opinion in his report Ex. PW-17/B, "On examination of weapon in my opinion all four ante mortem injuries as described in the post mortem report could be produced by the weapon examined by me."

20. PW-20 Dr. Jasvinder Kaur had examined Vishnu on 21.5.2001 when he was brought to Base hospital with incised injuries on his neck, both wrists and legs. She declared him dead vide MLC Ex. PW-20/A prepared by her. Weapon of offence i.e. knife Ex. P-1 was also shown to her and after examining the weapon of offence and the injuries mentioned in the MLC of Varun (not exhibited), she penned down her opinion vide her report Ex. PW-20/B "the injuries sustained by Varun, aged about 3? years son of N. Muralidharan as reflected in MLC No. 1133 dated 21 May, 2001, are in my opinion caused by a sharp weapon. The weapon which is shown to me may not be the same weapon with which the injuries were caused. However, such a weapon is capable of inflicting such injuries on the

person of Varun as observed by me on 21.5.2001.?

21. PW-22 Ms. Deepa Verma, Senior Scientific Officer (SSO) after comparing the specimen handwriting of the appellant with the admitted handwriting and disputed handwriting opined vide her report Ex. PW-16/A that "In my opinion the person who wrote the blue enclosed writings stamped and mark S-1 to S-8 also wrote the blue enclosed writings similarly stamped and marked Q-1.?

22. On appreciation of the evidence available with him on record, the learned ASJ found the appellant guilty of committing murder of his son Vishnu and causing grievous injuries on the person of his younger son Varun. He accordingly convicted the appellant for offence punishable under Sections 302/307 IPC.

23. Mr. Sumeet Verma, Amicus Curiae appointed by Legal Services Committee for the appellant has urged that PW-2 Anil Kumar, PW-3 Major K.G. Sridevi Amma, PW-4 Mohanan Nair, PW-5 Mrs. Anand Valli, PW-6 Baby Joseph; the complainant, PW-8 Major Anamma, PW-10 Mr. Sheejan George and PW-21 Major Philomina are unworthy of credence being at variance with each other. He has urged that PW-6 Baby Joseph, as a prosecution witness has deposed that on hearing a big sound, he came out of his house. Whereas in his complaint Ex.PW-6/A he has stated that he heard sound of some blast. In contradiction to his statement PW-8 Major Anamma stated in his cross examination that he heard the sound just like a blast of a transformer. PW-10 Mr. Sheejan George in his cross examination also stated that the noise he heard was similar to the blast of a transformer. Learned Counsel for the appellant has pointed out that PW-21 Major Philomina in his cross examination has described the noise heard by him as something had fallen.

24. He further urged that PW-6 Mr. Baby Joseph in his examination-in-chief has deposed that he forced opened the door which was bolted from inside with a single latch and entered inside the room. Whereas in his complaint Ex. PW-6/A he did not state that he entered the room after forcibly opening the door. The fact remains in the complaint Ex. Pw-6/A the witness has stated that the door was closed.

25. The contradictions as highlighted above by the learned Counsel for the appellant are insignificant. The description of the sound heard by the witnesses was according to their perception. In his cross examination PW-6 has explained the cause of sound. He was told by the appellant that he had hit the gas cylinder with the wooden frame of the door while keeping it.

26. Much has been argued that the witnesses are inconsistent as to who lifted which child from the room and who took them to the hospital. PW-6 Baby Joseph in categorical terms has deposed that he lifted Varun, who was standing near the bed and handed him over to PW-10 Mr. Sheejan George and after throwing out the gas cylinder to extinguish fire, he lifted Vishnu lying on the bed. He handed over this child to someone so that he could be taken to the hospital. May be, and it is natural that, he did not remember the name of the person to whom he had

handed over Vishnu to be removed to the hospital.

27. PW-10 Mr. Sheejan George corroborated the testimony of PW-6 Baby Joseph when he deposed that he found Varun lying there, he along with Baby Joseph took Varun outside the house. According to him PW-8 Major Annama O.T., PW-21 Major Philomina, and other persons removed the child to the hospital. Naturally, in the entire scenario PW-10 Sheejan George was more concerned about the welfare of Varun who was handed over to him by PW-6 Baby Joseph to be removed to the hospital immediately. PW-21 Major Philomina found Vishnu lying on the bed and he lifted him and removed him, whereas Varun was lifted by PW-8 Major Anamma. He along with Anamma had taken the children in one vehicle to the Base hospital. In tune with the other witnesses, PW-8 Major Anamma deposed that Vishnu was lifted by Major Philomina and both the children were taken to the hospital. Small variations are natural with the lapse of time.

28. PW-7 Master Varun appeared as a prosecution witness on 8.3.2004. The court observed that he was shy and abstracting himself from the witness box and was not ready to depose as seemed to be of tender age and did not appear to be a competent witness to depose and also that he was not well conversant with Hindi language. The court dropped him from the list of witnesses holding that his deposition was not required to be recorded. Therefore, non examination of Varun is not fatal to the prosecution case and no adverse inference can be raised against the prosecution that had he been examined, he would not have supported the prosecution case.

29. The credibility of testimony of PW-6 Baby Joseph that he saw the incident from outside the window, has also been questioned. It is urged that he could not have seen the incident from outside by peeping through the window as a cooler was installed in the window and nothing could be seen from the window. PW-6 in categorical terms has deposed that on hearing the sound, he went out of his house and peeped inside from the window of the appellant to see what was happening. Photographs Ex. PW-15/1-11 were taken at the spot by the prosecution. These photographs belie the submissions. Photograph mark "A" clearly depicts lower portion of one side of the window open and uncovered and unblocked by the cooler which block the other part of the window. In Photograph "D" one full side of window is seen open and the remaining window is blocked with the cooler. This is the window from where PW-6 peeped inside and witnessed the occurrence. Photograph "N1" clearly shows the place where the cooler is fixed in the window. The window has three doors, two doors are blocked with the cooler and some upper part of the window is unblocked. Third door of the window is seen open which gives full view of the room from outside. "R-1" is a photograph of the window taken from outside the house. His testimony that he had seen the occurrence from outside through the window is comprehensive. Suffice to say, Baby Joseph is a truthful witness and is fully reliable.

30. The prosecution witnesses, therefore, are consistent in their deposition. The

appellant has been unsuccessful in demolishing their credibility during their cross examination. The contradictions pointed out by the learned Counsel for the appellant are trivial in nature and are of no consequence.

31. Learned Counsel for the appellant has argued that weapon of offence i.e. Knife Ex. P-1 as shown in the sketch is different from the one produced in the court. It is argued that in the photograph of the knife it is shown to be bloodstained and its handle appears to be of black colour, whereas, the knife produced before the court did not have any blood-stains and its handle is of brown colour. It is emphasized that this shows that the blood-stained weapon shown in the photograph is not the weapon which was produced in the court this is also evident on comparison of sketch of the knife Ex. PW-12/F prepared by the Investigating Officer and sketch of the knife prepared by PW-17 Dr. Chandra Kant on the back of his report Ex.PW-17/B.

32. When these arguments were raised before the trial court, the matter was examined by it on 31.7.2007. The court placed the weapon of offence i.e. Knife Ex.P-1 on the sketch Ex.PW-12/F prepared by the IO as well as on the sketch prepared by Dr. Chandra Kant on the back of his report Ex.PW-17/B. It was observed, after demonstration, weapon fully fits in the sketches and corresponds both the sketches. Court observed that in the sketch prepared on the back of Ex.PW-17/B, the dimension was inadvertently written as 3.5 cm. Therefore, the theory of double weapon as raised by the learned defence counsel falls. These submissions were dealt with by the learned trial court in para 23, 24 and 25 of the judgment. It is observed:

23. I have considered the submissions of Ld. Defence counsel. In his testimony PW12 SI Pankaj Yadav has testified that he seized the knife EXP1 vide memo Ex.PW6/B. this knife was produced in the court duly sealed with the court seal and after opening this seal, this knife was exhibited as Ex.P1. In cross examination it was not suggested to the witness that the knife produced in the court was not the same knife which was seized by this witness from the spot. The appropriate opportunity for the appellant to draw the attention of the witness as well as of the court to this fact was at the time of cross examination of PW12. Failure to dispute the fact that the weapon Ex.P1 produced in the court is the same which was seized by PW12 itself goes against the double weapon theory. Further more, the difference in the colour of the handle of the knife as shown in the photograph EX-I and the knife produced in the court is of no consequence. The colour of an article which appears in a photograph depends upon the quality of the photographic reel and the quality of light at the time of taking of the photograph. Therefore, it is understandable that a dark article might appear darker in the photograph.

24. As a matter of abundant caution and with a view to remove any doubt, I myself saw this weapon and I am of the considered opinion that the weapon produced is the same which appears in the above photograph. It is necessary to produce my observations dt.16.5.2007, regarding this weapon of offence which is

as under: 31.7.2007 Present : Ld APP for the State Appellant from J.C. with counsel Sh.Jagdish Dhawan,Adv. Case property is produced today again in the court. The sharp edged weapon EXP1 is produced and placed on the sketch EXPW12/F and the sketch made on the back opinion ExPW17/B. The weapon fully fits in the sketches and corresponds both the sketches. However, it appears that in the sketch prepared on the back of Ex.PW17/B, the dimension 3.5 cm has been wrongly written. The gas regulator is also produced. However, it is found that its nozal is broken. The broken piece of nozal is also lying in the case property. The gas pipe is shown by Ld Defence Counsel and it is pointed out by him that there is no burnt end of this pipe. Further arguments are heard. It is 4.00 pm.

To come up for remaining arguments on 1.8.2007. ASJ/31.7.2007

25. In view of above observations, I am left in no doubt that the weapon which was seized from the spot by PW12 SI Pankaj is the same which appears in the photograph EX-I and it is the same weapon, sketch of which was prepared by PW12 and which was sent to doctor Chander Kant for opinion. The sketch prepared by Dr. Chander Kant (PW17) and the sketch prepared by PW12 are of one and the same knife, although due to inadvertence Dr. Chander Kant had noted wrong dimension of brass rivet in the knife.

33. We find ourselves in agreement with the observations of the trial court and find that knife Ex.P-1 is the only weapon which was used by the appellant in inflicting injuries on his sons resulting into death of Vishnu.

34. It is argued by the learned Counsel for the appellant that as per medical evidence, injuries on the body of deceased were not caused by knife Ex.P-1. PW-17 Dr. Chandra Kant in his opinion Ex.PW-17/B as well as in the court has deposed ?On examination of the weapon in my opinion all four ante-mortem injuries as described in the post mortem report Ex.PW-17/A could be produced by the weapon examined by me.? In other words, in his opinion the injuries which were found on the person of deceased Vishnu could be caused by the weapon examined by him. Sketch of the weapon produced before him was prepared by him on the back of his report which, as discussed above, is of the knife Ex.P-1 and conforms the other sketch prepared by the IO. Therefore, the plea that the medical opinion was that the injury on the body of deceased were not caused by the weapon of offence is feeble and is not sustainable.

35. This argument seems to have been lifted from the opinion of PW-20 Dr. Jasvinder Kaur who had examined deceased Vishnu as well as injured Varun and prepared their MLCs on 21.5.2001. She has declared Vishnu brought dead in MLC No.1132, Ex.PW-20/A. She has given her opinion on the weapon of offence in relation to the injuries sustained by Varun in MLC No.1133. She opined, "the injuries sustained by Varun, aged about 3? years son of N. Muralidharan as reflected in MLC No. 1133 dated 21 May, 2001, are in my opinion caused by a sharp weapon. The weapon which is shown to me may not be the same weapon

with which the injuries were caused. However, such a weapon is capable of inflicting such injuries on the person of Varun as observed by me on 21.5.2001.

36. Thus, it is clear that she had no occasion to examine the knife Ex.P-1 qua the injuries found on the person of Vishnu to opine if the injuries could be co-related to have been caused by Ex.P-1. Her opinion related to the injuries found on the person of Varun only. Besides, her opinion is not conclusive and cannot be considered either side. According to her, weapon Ex. P-1 may not be the same with which the injuries were caused on the person of Varun, but such a weapon is capable of inflicting such injuries found on the person of Varun as observed by her. As PW-20 she deposed, 'if Ex.P-1 is the same weapon which caused injuries is to be opined then such opinion may be given by a Forensic Expert.' In view of this testimony of Dr. Jasvinder Kaur, it cannot be said that the medical opinion evidences that the injuries on the body of the deceased were not caused by Ex.P-1. It is pertinent to mention, that in her cross examination she deposed that her opinion did not mean that some other weapon was used to cause injuries. What she meant was that weapon shown to her might not be the same which caused injuries. Therefore, we find medical evidence supporting the prosecution case that injuries found on the body of the deceased were caused by knife Ex.P-1.

37. It is argued that the rubber pipe attached to the regulator or gas cylinder Ex.P-5 did not have any burnt portion when produced in the court and therefore, the prosecution story that appellant was holding the gas pipe burning from one end is not believable and therefore prosecution case stands demolished.

38. In the order dated 31st July, 2007, the trial court examined the rubber pipe Ex.P-5 noting down the plea of the learned defence counsel that there was no burnt end of the pipe. PW-6 Baby Joseph in his cross examination was shown the pipe and was asked if he noticed any burnt portion on the pipe to which the witness initially replied that no burnt portion is seen but after watching the pipe carefully, he again stated that there are burnt marks on the end of the pipe which is seen unevenly broken. Photograph Ex. ?? depicts the rubber pipe. True that, from this photograph it is difficult to make out if the pipe has any burnt end. The fact remains that Baby Joseph had thrown out the gas cylinder from inside the house to avoid spreading of fire and also to extinguish the fire. It has been observed by the trial court in para 32 of the judgment that he examined the pipe produced before him, one end of it was not intact and therefore possibility of falling off the burnt portion of the pipe at the time of making efforts to extinguish the fire cannot be ruled out. However, the trial court did not properly take into consideration the MLC of the appellant Ex.PW-11/A. As per this MLC, the doctor found burns over right hand, face, some area over B/L foot. It has come in evidence that appellant was holding the pipe out of which flames were coming out. He was trying to set the bed on fire as also Varun standing near the bed, with the gas pipe. The mosquito net was partially burnt in the process. To extinguish the fire PW-6 Baby Joseph disconnected the pipe from the cylinder after closing its regulator and thereafter kept the cylinder outside.

39. Appellant in his statement recorded u/s 313 Cr.P.C. in response to question No. 24 put to him replied that he had already extinguish the fire himself which was burning his bed and mosquito net and during the process he suffered burnt injuries on his hand, face and feet. However, he has not explained how the fire had broken in the room which partially burnt his bed and mosquito net and also he suffered injuries on his person. Rather, in his statement he stated that he had no knowledge how his children suffered injuries and how his bed caught fire. According to him he was sleeping on the bed along with his children and when he felt heat on his hand, he got up and started extinguishing the fire and also shouted for help. Some people came in the house. It is not the case of the appellant that his house was tress-passed by someone.

40. Admittedly, none else was present in the house who could be responsible for setting the bed and mosquito net on fire or, who could be responsible for causing injuries on the person of Vishnu and Varun. We note that there is strong probability that appellant was trying to set the bed on fire and may be his younger son who survived his stabs. This also explains the burn injuries on his person.

41. Admissibility of FSL report has also been challenged by the appellant per-se Section 293 Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."). Section 293 Cr.P.C. contains a sub rule of evidence making any document purporting to be a report under the hand of Government Scientific expert upon any mater or thing duly submitted to him for examination and report admissible in evidence without calling such expert as a witness if the report is made by one of the officers of Government, who has conducted chemical examination of the sample in due discharge of his duty as Chemical Examiner by whatever designation he might be known. Prem Shakti Vs. State, . The report of Scientific Expert mentioned in Sub-section 4 of Section 293 are admissible without examining the expert as witnesses.

42. FSL report Ex.PW-16/H is prepared and signed by Shri A.K. Shrivastava, Senior Scientific Officer (Biology), Forensic Science Laboratory, Delhi cum-Ex Officio Chemical Examiner to the Govt. of National Capital Territory of Delhi. This report, therefore, was prepared by a Scientific Officer of the Govt. In other words, the report is prepared by the Chemical Examiner/Analysist of the Govt. This report is enclosed with a letter signed by Director, Forensic Science Laboratory, Delhi. Therefore, examination of Mr. A.K. Srivastava, as a witness, was not required for making the report admissible in evidence. The report has been tendered in evidence and exhibited during the trial of the case and stands proved on record. In State of Himachal Pradesh Vs. Mast Ram, , where the FSL report prepared by Ballistic Expert was challenged on the grounds that it was signed by one Junior Scientific Officer and the report having not been signed by any of the persons enumerated in Sub-Section 4 of Section 293 Cr.P.C., could not be read in evidence without examination of the ballistic expert who signed the report, it was observed:

6. Secondly, the ground on which the High Court has thrown out the prosecution story is the report of ballistic expert. The report of ballistic expert (Ex.P-X) was signed by one junior scientific officer. According to the High Court, a junior scientific officer (Ballistic) is not the officer enumerated under Sub-section (4) of Section 293 of the Code of Criminal Procedure and, therefore, in the absence of his examination such report cannot be read in evidence. This reason of the High Court, in our view, is also fallacious. Firstly, the Forensic Science Laboratory Report (Ex. P-X) has been submitted under the signatures of a junior scientific officer (Ballistic) of the Central Forensic Science Laboratory, Chandigarh. There is no dispute that the report was submitted under the hand of a Government scientific expert. Section 293(1) of the Code of Criminal Procedure enjoins that any document purporting to be a report under the hand of a Government scientific expert under the section, upon any manner or thing duly submitted to him for examination or analysis and report in the course of any proceedings under the Code, may be used as evidence in any inquiry, trial or other proceedings under the Code. The High Court has completely over-looked the provision of Sub-section (1) of Section 293 and arrived at a fallacious conclusion that a junior scientific officer is not an officer enumerated under Sub-section (4) of Section 293. What Sub-section 4 of Section 293 envisages is that the court to accept the documents issued by any of six officers enumerated therein as valid evidence without examining the author of the documents.

43. In this case, the report has been signed by A.K. Srivastava, Senior Scientific Officer who also happened to be Ex Officio Chemical Examiner to the Govt. of National Capital Territory of Delhi. Therefore, the report was submitted under the hand of Govt. Scientific Expert within the ambit of Sub-Section (4) of Section 293 Cr.P.C. The credibility of this report cannot be questioned for non examination of A.K. Srivastava, Senior Scientific Officer as he was not required to be examined in court to prove his report.

44. Another circumstance sought to be proved against the appellant is suicide note written by him in his diary. During investigation PW-12 SI Pankaj Yadav; the investigating officer recovered one diary and pen from the spot which he seized vide memo Ex.PW-6/F in the presence of PW-6 Baby Joseph and HC Mohan Singh. Another diary of 1998 containing 85 pages was also seized. During investigation PW-16 Insp. Ved Bhushan seized specimen handwriting of the appellant, taken with the approval of the court on eight different sheets i.e. S-1 to S-8 vide memo Ex.PW-12/G and a diary containing some admitted handwriting from page 6 to 8. The handwriting was in Malayalam and English. This diary contained 85 pages in all. He signed each page of the diary and seized it vide memo Ex.PW-12/H. The admitted handwriting and signatures of the appellant with the disputed handwriting, signatures and the specimen signatures obtained in the court were sent for expert opinion. PW-22 Ms. Deepa Verma, Senior Scientific Officer Documents, examined the questioned document, purported to be a suicide note dated 21.5.2001 on page 8th January, 1998. After comparison of the specimen handwriting Ex.PW-16/K-1 to K-8 with suicide note

Ex.PW-22/B and the admitted handwriting A-1 to A-J Ex.PW-22/A collectively, she opined that the scribe of the admitted handwriting, the specimen handwriting and the disputed handwriting is the same.

45. In his statement u/s 313 Cr.P.C. appellant has not disputed that suicide note in the diary Ex.P-7 is in his hand. As regards specimen signatures; his answer to question No.46 reads:

It is correct that some specimen handwritings were taken from me on the directions of Hon. Court and same were taken outside the court and my signatures were also taken. I do not know whether the question to whom I am answering is the same hand writing as sample or some other thing. If it is not the same the same is wrong and denied.

46. His answer to question No.67 is:

It is correct that PW22 gave her opinion on my hand writing sample which were taken by S.I Ved Bhushan PW16. But it is wrong and denied that the diaries Ex.PW-22/B belongs to me.

47. Even if the plea of the appellant that he was forced to write in Malyalam and in English in the diary by the Investigating Officer is accepted, the fact remains his specimen handwriting was obtained by the Investigating Officer on the directions and with the permission of the court. There could not be any pressure on the appellant when he gave specimen handwriting. Neither PW-12 SI Pankaj Yadav nor PW-16 Insp. Ved Bhushan has been given suggestion that the appellant was forced to write the suicide note in the diary.

48. In cross-examination Insp. Ved Bhushan stated that the diary did not bear the name and address of the appellant. Viewing this statement, learned Counsel for the appellant has submitted that the diary, recovered from the house of the appellant did not belong to him. The trial court probably did not carefully examine the diary. On examination of the diary during the course of arguments, we noticed the name of the appellant written on the first page of the diary. Not only this, the diary contains various telephone numbers. It is scribed at various places in Malyalam and is also scribed in English at other places.

49. PW-2 Anil Kumar, a relative of the appellant has deposed that on the evening of 21.5.2001, he received a call from the appellant who seemed to be in big tension. He inquired from him about the cause of his tension. Muralidharan told him that he had killed his sons. He went to the spot and found the police and the appellant standing outside the house and the children removed to the hospital. There is no cross examination of the witness that Muralidharan did not telephone him and that he did not tell him (Anil Kumar) that he had killed his sons.

50. PW-3 Sridevi Amma, wife of the appellant and PW-4 Mohanan Nair testified that on 20.5.2001 appellant telephoned and talked to his wife and threatened her that if she did not come back, he would kill his children and himself. This reflects the conduct of the appellant before commission of the crime. When

asked by the complainant Baby Joseph as to what he was doing, the appellant told him that it was his family matter. Subsequently, after coming out of the house, he did tell him that since his wife had gone to Bangalore despite his refusal, he had caused injuries to both his children with knife and killed them.

51. The writing in the diary which stands proved on record is confessional in nature and can also be termed as suicide note of the appellant when, he wrote that he would end his life. The relevant note in English reads. We are dying (Varun, Vishnu and N.M. Nain) because of my wife and her elder sister Anand Vally (living in Bangalore) behaving badly and wife family including her brother are harass me and my children the death is being to wife?s family.? This writing appears on page dated 8th January, 1998.

52. Confession made by the appellant to PW-2 Anil Kumar and PW-6 Baby Joseph can be termed as extra judicial confession wherein he confessed that he had killed his two sons. Extra judicial confession if true and voluntary, can be relied upon by the court to convict the appellant for the commission of the crime alleged. If such confession is made before a person who has no reason to state falsely and whom it is made under the circumstances, which tend to support the statement, cannot be ignored. Corroboration of such type of extrajudicial confession as a piece of evidence is required only by way of abundant caution. An unambiguous extrajudicial confession possesses high probative value force as it emanates from the person who committed the crime and therefore is admissible in evidence, however, such confession should be free from suspicion and suggestion of any falsity.

53. In " Gura Singh Vs. The State of Rajasthan, , the admissibility of extrajudicial confession has been dealt with as follows:

6. It is settled position of law that extrajudicial confession, if true and voluntary, it can be relied upon by the court to convict the appellant for the commission of the crime alleged. Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, , this Court again in Maghar Singh Vs. State of Punjab, held that the evidence in the form of extrajudicial confession made by the appellant to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh and Others Vs. State of M.P., , this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The

retraction of extrajudicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand Vs. State of Himachal Pradesh*, , this Court held that an unambiguous extrajudicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged u/s 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in *Baldev Raj Vs. State of Haryana*, . After referring to the judgment in *Piara Singh and Others Vs. State of Punjab*, , this Court in *Madan Gopal Kakkad Vs. Naval Dubey and Another*, held that the extrajudicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.

54. PW-2 Anil Kumar happen to be a relative of the appellant. He received telephone call on 21.5.2001 from the appellant himself who informed him that he had killed his sons. Initially, this information was not believed by Anil Kumar but, when he went to the house of the appellant, he noticed police, the appellant and also that the injured Vishnu and Varun had already been removed to the hospital. It is significant that Anil Kumar has not been cross examined by the counsel for the appellant on this information, or confession made by the appellant to Anil Kumar.

55. PW-6 Baby Joseph, an independent witness, residing in the same locality and just opposite the house of the appellant, when reached at the spot asked the appellant as to what he had done to which appellant initially replied that it was his family affair and subsequently he told him that he had killed his sons. Presence of Baby Joseph in the house at the time of occurrence is also not disputed by the appellant.

56. Extrajudicial confession made by the appellant, under the circumstances is another reliable piece of evidence which highly probablizes that appellant had injured his sons, killed the elder one and tried to set his bed on fire with an intention to do away with his children and himself.

57. In view of the analyses of the evidence of the prosecution as above, we find none of the grounds of defence taken by the appellant of any consequence. The appellant was in anguish and was mentally disturbed because of his differences with his wife PW-3 Sridevi Amma. He being unemployed was also a frustrated

man. He was obsessed with an idea of killing himself and his children for sometime. His state of mind and pre event conduct is reflected from his talk to his wife on telephone when she was at Bangalore on 20.5.2001 as well as from the diary seized vide memo Ex.PW-12/H from his house. He had told her to come back or he would kill the children and himself. Appellant was alone in the house with his two children at the time of incident and none else was present. The door was bolted from inside. On hearing sound PW-6, the complainant reached the spot and had to force open the door. No other person was present inside the house when the children were stabbed and also the bed, etc. were put on fire.

58. The chain of circumstances in this case clearly nail the appellant of having murdered his son Vishnu and attempted to commit murder of Varun. We find no reason to interfere in the judgment of the trial court.

59. Hence, we find no merits in this appeal, the same is accordingly dismissed.

60. Trial court record be sent back immediately with a copy of the order.