

Rahmatullah Vs. State

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Court : Delhi

Decided On : Nov-25-2013

Judge : Indermeet Kaur

Appellant : Rahmatullah

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on
Judgment delivered on :20.11.2013 :

25. 11.2013 CRL.A. 260/2000 RAHMATULLAH Through: Appellant
Mr.K.B.Andley, Sr. Adv. with Mr. M.Shamikh, Advocate. versus STATE
Respondent Through: Mr.Sunil Sharma, APP. CORAM: HON'BLE MR. JUSTICE
KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET
KAUR, J.

1. The appellant is aggrieved by the impugned judgment and order of sentence dated 19.01.2000 and 24.01.2000 vide which he had been convicted under Section 302 IPC and had been sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-.

2. The version of the prosecution had been unfolded in the testimony of the eye-witness Kamal Khan (PW-6). This statement (Ex.PW-6/A) revealed that on 17.10.1995 at about 7:00 p.m. at House No.D-255, J.J.

Colony, Khyala accused (Rahmatullah) had come to the house of the deceased (Islam) and asked him to come down stairs; on his reaching down accused started abusing him and threatened to kill him; in the course of quarrel he stabbed him on his right hand and his abdomen.

3. It was this statement of PW-6 which had formed the basis of the rukka which had been sent at 9:15 p.m. by H.C. Subh Ram (PW-10) pursuant to which the present FIR under Section 307 IPC had been registered.

4. The statement of PW-6 was corroborated by the statement of Mohd.Muslim (PW-5), the brother of the victim who had also witnessed this incident. In fact, PW-6, PW-5 and the deceased were all living in the same rented house on the first floor of D-255, J.J.Colony, Khayala.

5. DD No.12 had reported the quarrel in the local police station at Police Station Tilak Nagar which had been marked to PW-10; he had reached the spot where he learnt that the injured had already been removed to the hospital; constable Suresh was left at the spot.

6. PW-10 reached the hospital where the MLC of the injured (Ex.PW-14/A) was obtained. The patient was conscious and oriented; his higher senses were noted to be normal. The following injuries were noted upon the victim: Stab 2 cm long over Rt Arm Anterior. upper 3rd Stab 2 cm long on Rt side chest at of 10th Rib Stab 2 cm long on Rt side Abdomen below umbilicus about 2 cm below Abrasion over Lt elbow.

7. Patient was, however, unfit for statement.

8. After the registration of the FIR the investigation was handed over to SI Dinesh Kumar (PW-16). PW-16 had recorded the statement of second eye-witness i.e. PW-5. Accused was arrested and his disclosure statement was recorded. The statement of the deceased Ex.PW-16/A was also recorded by PW-16 after obtaining a fitness certificate from the concerned doctor. This statement was recorded on 21.10.1995. It was in the form of a statement under Section 161 Cr.P.C.; it was not signed by the deceased; there was also no endorsement in this

document evidencing that there is a fitness from the doctor. There is no ocular evidence also to this effect. This statement (Ex.PW-16/A) relied upon by the prosecution as a dying declaration was rightly discarded by the trial judge.

9. The victim had succumbed to his injuries one month later i.e. on 16.11.1995. The post mortem upon the victim was conducted by Dr. K. Goyal. His report is Ex. PW-15/A. The external injuries noted in the post-mortem read as under:

1. There is laprotomy wound print over midline abdomen extending from epigastrium to umbilical region with tension sutures. 2 Healed wound (sutured) about 1 length over right arm front and upper right corresponding with the injury No.1 of the MLC report. 3 There is almost completely healed wound of about 1 over .. side of right chest corresponding with injury No.2 of MLC report. 4 There is about oval shaped wound about 2cms X1.5 cm size with sub-healed margins and pus deposit all around present about 6 cms. Right to the midline and just below umbilical region corresponding with injury No.4 of the MLC. 5 Oval shaped wound of size 2 cms 1 cm x ?. with incised margins having pus deposits all over and print at right iliac torso region (probably draining tube wound). 6 Incised oval wound about 1.75 cm X1m with pus all around the wound at lever side of left lumber region about 8 cms left to the midline (probably draining tube wound) 7 Colostomy wound print over right hypochondrium. 8 Stitched wounds 1 each print at ankle medial side and right side of neck (vevere section wound) 10. Injuries were noted to be ante-mortem and infected and corresponded with injuries mentioned in the MLC report (by sharp object). Cause of death was peritonitis with septicaemia consequent to sepsis of wounds.

11. This is the gist of the case of the prosecution.

12. In the statement of the accused recorded under Section 313 he has pleaded innocence; his submission being that he has been falsely implicated in the present case.

13. No evidence was led in defence.

14. On behalf of the appellant, arguments have been heard at length. Learned counsel for the appellant in the first instance has assailed his conviction. His submission is that PW-6 on whose statement the FIR had been registered was a hostile witness; he has not supported the version of the prosecution; the trial judge had rightly discarded his version. The only evidence with the prosecution was the testimony of PW-5 who is the brother of the victim and being an interested witness he has deposed falsely. Even otherwise the version of PW-6 and PW-5 are in conflict. Attention has been drawn to the statement Ex.PW-6/A; submission being that in this statement it has clearly come on record that PW-5 had entered the scene of crime only after the incident was over. He does not qualify as an eye-witness. PW-5 on this score had given a different version; he has stated that he was present at the scene of the crime right from the inception. These two versions are irreconcilable and benefit of doubt, in this scenario, must accrue in favour of the appellant.

15. We are not in agreement with the submission made by the learned counsel for the appellant. Statement of PW-6 was admittedly the basis of the rukka. Incident had occurred at 7:00 p.m. The rukka was dispatched on the statement of PW-6 at 9:15 p.m. i.e. within a span of just about two hours and fifteen minutes; there was no possibility of manipulation and fabrication. This statement Ex.PW-6/A had specifically mentioned the name of the appellant. A reading of this statement in its entirety does not advance the argument that the testimony of PW-6 evidenced that PW-5 had entered the scene after the incident. In fact, Ex. PW-6/A clearly recites that after the accused had stabbed the victim and had started running PW-5 witnessed the scene. Testimony of a witness has to be appreciated as a whole. Trite it is to say that no one sentence can be picked up from entire narration to give it a meaning which otherwise is not made out from the reading of the entire narration.

16. There is no conflict in the versions of PW-6 and PW-5. In the court PW-6 had become hostile but that does not wipe away the documentary evidence which is the fact that the rukka was dispatched on this statement of PW-6. Testimony of PW-5 is also firm, cogent and coherent. He has stuck to his stand; he has explained the incident in its entirety.

17. Version of PW-5 establishes that because of a previous enmity which the accused was nursing against the deceased, the accused had stabbed his brother. This had been disclosed to PW-5 on the way when he was taking his injured brother to the hospital. He has not been cross-examined on this aspect i.e. about the grudge which the accused was nursing against the victim.

18. On no count can the eye-witness account be discarded.

19. That apart the learned counsel for the appellant after his initial arguments had made a statement that he is not challenging the conviction of the appellant; he, however, prays for the lesser sentence; submission being that his case falls under Section 304, Part-II IPC and the sentence for imprisonment for life is accordingly liable to be set aside.

20. Submission on this count is five fold. The first submission being that there was only one fatal injury which is evident from the injuries recorded in the MLC. This injury was on the abdomen and was only 2 c.m. in length; the injury on the right hand was a mere abrasion. The second submission being that the victim had died after more than one month of the incident and the cause of death was septicaemia. Submission being that septicaemia was the result of the infection which the victim had acquired during his stay in the hospital and could well be because of medical negligence at the time of surgery or in the post operative period. Third submission being that the trial judge had disbelieved the recovery; as such there is no weapon of offence which can connect the appellant with the crime. The fourth submission being that it was a sudden quarrel which had erupted between the parties; it was not pre-planned; the motive has not been spelt out; apart from the one line statement made by the PW-5 about the inimical terms between the deceased and the victim what was the reason for the enmity has not been explained. The case of the appellant is covered under Exception IV to Section 300. Last submission of the learned counsel for the appellant being that the appellant was aged 19-20 years at the time of offence; he is presently in his mid thirties; he has five children of whom two are sons and three are daughters; his eldest daughter is eight years of age; he accordingly prays for leniency in sentence. Reliance has been placed upon AIR 1993 SC973 Harish Kumar Vs.

State (Delhi Administration) to support a submission that in a similar factual situation the conviction of the accused although maintained, the offence had been converted from 302 to 304 Part II IPC; parity has been pleaded.

21. These submissions have been refuted by the learned public prosecutor. Submission being that a valuable life has been lost and there has to be a balance between the rights of the accused and the victim; if a sympathetic approach is adopted in favour of the accused the same sympathy should weigh in the mind of the court for victims family. It is pointed out that the accused had a pre-design to kill the victim and that is why he was armed with a knife and had come to the house of the victim; he was the offender; on no count does he deserve any sympathy.

22. We have appreciated the submissions of the learned counsels for the parties and perused the record.

23. The conviction of the appellant as noted supra is well founded. This conviction has also not been challenged. It is accordingly maintained.

24. This Court has to examine the submissions and the counter submissions of the parties to return a finding as to whether the offender deserves a leniency and his case falls under Section 304 of the IPC as has been pleaded.

25. Section 300 of the IPC reads herein as under:

300. Murder- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

26. There are four exceptions contained in this provision of law. The fourth exception has been relied upon by the learned counsel for the appellant. Exception IV to Section 300 reads herein as under:

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual

manner. Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault.

27. This Exception is based on the proposition that where an offence has been committed without any premeditation in a sudden fight in the heat of passion and the offender had not acted in a cruel or unusual manner, the accused is entitled to seek protection under the said provision of law. It is unfortunate that a life has been lost but all cases are not simplicitor of murder; they can also be case of culpable homicide not amounting to murder. The line of distinction between the two offences is thin but nevertheless it is distinct.

28. The evidence on record which is the version of PW-5 reveals that the accused Rahmatullah was known to PW-5 and his brother. He had come their house in the evening of 17.10.1995 about 7:00 p.m. He called the deceased who was up stairs. On the deceased reaching down the accused started abusing him. What was the reason or the cause of these abuses has not been elicited in the version of prosecution. PW-5 has however spoken of enmity between the accused and the victim; what was the nature of this enmity and why they were on inimical terms has also not been expounded. The injuries were three which is evident from the MLC (Ex.PW-14/A). The ocular version of PW-5 had, however, described two injuries. These injuries have been detailed supra. The stab wound 2 c.m. in length on the right side of the abdomen was just below the umbilical region was the injury which had subsequently become the cause of death of the victim. The other two injuries had healed. This is clear from the post mortem report Ex.15/A conducted on 18.11.1995. MLC further shows that the victim, on the same day, had been directed to be admitted for surgery. Surgery had been performed upon him. The victim had died one month thereafter i.e. on 17.11.1995. There is no record of the post operative care which had been meted out to the deceased. Whether the surgery was successful or not or whether there was any lacking in the care to the patient post operation is also not on record. However, the post mortem report evidences that the fourth external injury corresponded with this injury in the MLC. This injury was in the abdominal area. Further part of this report also shows that in the abdomen the peritrium was inflamed with pus deposits were found in the small intestine. The cause of death was peritonitis with septicaemia consequent to

sepsis of wounds. The patient had thus died as a result of infection which had permeated into his body in his month long stay in the hospital.

29. The injury which had subsequently become fatal was 2 c.m. in length; this would be the less than about one inch. The injury was noted to be sharp; it was caused by a sharp edged weapon. The recovery of this weapon has been disbelieved but since the nature of the injury was sharp it was obviously caused by a sharp weapon.

30. Keeping in view the length of the injury as also the fact that there was only one fatal injury the submission of the learned counsel for the appellant that there was no intention on the part of the appellant to cause the death of the victim is prima facie borne out. This is substantiated by the fact that when the victim was admitted in the hospital he was conscious and well oriented; his parameters were also within normal limits. He had died after one month. The possibility of there being a medical negligence and lack of proper post operative care cannot be ruled out. This also appears to be a case where quarrel had erupted suddenly. The appellant had come to the house of the victim; he called him down stairs. He thereafter started abusing him and threatened to kill him. This has come in the evidence of eye-witness. It was only when these abuses had escalated that the threat given by the appellant got converted into an actual act and the appellant stabbed the victim on his abdomen and on his right hand. This was in a heat of passion and a sudden arousal of emotions. The act may not thus be termed as an act with an intention on the part of the accused to commit murder.

31. These injuries can in no manner be termed as cruel and unusual for the purpose of not availing the benefit of Exception IV to Section 300 IPC to the appellant.

32. The benefit of Exception IV to Section 300 IPC is accordingly granted to the appellant.

33. However, the next question which arises for consideration is whether the case of the appellant would fall under Section 304 Part-I or Section 304 Part-II of the IPC.

34. Section 304 of the IPC reads as under:

304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

35. Part-I applies where the accused causes bodily injury with the intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part-II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

36. The Apex Court in (2006) 11 SCC444 Pulicherla Nagaraju@Nagaraja Reddy v. State of Andhra had observed as under:

.....It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x)

whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

37. The nature of the injuries and the time gap between the time of infliction of the injuries till the date of death which; was one month later and there being no material on record to show the nature of the treatment given to the victim in this intervening period; relying upon the ratio laid down in the judgment of Harish Kumar (*supra*) we are inclined to modify the conviction.

38. We accordingly set aside the conviction under Section 302 IPC and convict the appellant under Section 304 Part -II of the IPC and impose a sentence of rigorous imprisonment for a period of six years.

39. The nominal roll of the appellant shows that the appellant had, in fact, already undergone six years four months and 18 days and had also earned remission of about 9 months and 25 days when he had been granted bail. The appellant has thus undergone the sentence imposed upon him. The bail bond and surety bond of the appellant are discharged. Appeal is allowed in the aforementioned terms. It is disposed of accordingly. **INDERMEET KAUR, J KAILASH GAMBHIR, J**
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