

Prashant Jain Vs. State

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Court : Delhi

Decided On : Jan-08-2014

Judge : Kailash Gambhir

Appellant : Prashant Jain

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: January 08, 2014 + CRL.A. 1452/2010 PRASHANT JAIN Through Appellant Mr.Harin Raval, Sr.Advocate with Mr.Vineet Malhotra & Mr.Aman Khan, Advocates versus STATE Through: + Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State CRL.A. 1454/2010 YASH JAIN Through Appellant Mr.K.K.Sud, Sr.Advocate with Mr.Chirag Khurana, Mr.Vishal Dabas & Mr. Ujas Kumar, Advocates versus STATE Through: + Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State CRL.A. 1455/2010 VEENA JAIN AND ANR Through Appellants Mr.K.K.Sud, Sr.Advocate with Mr.Chirag Khurana, Mr.Vishal Dabas & Mr. Ujas Kumar, Advocates versus STATE Through: Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State
CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

KAILASH GAMBHIR, J.

1. Challenge in the present appeals is the impugned Judgment dated 08.12.2010 passed by the learned Additional Sessions Judge-FTC (Central), Tis Hazari Court, Delhi, whereby the appellant, Yash Jain has been sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 304-B IPC. He has also been directed to undergo rigorous imprisonment for a period of three years for an offence punishable under Section 498-A of IPC in addition to payment of fine of Rs.10,000 and in default whereof to undergo simple imprisonment for a period of six months. Appellants -Veena Jain and Prashant Jain have been sentenced to undergo rigorous imprisonment for a period of ten years for the offence punishable under Section 304-B IPC. They have also been sentenced to undergo rigorous imprisonment for a period of three years for an offence punishable under Section 498-A IPC together with fine of Rs.75,00/- each and in default whereof to undergo simple imprisonment for a period of four months. The appellant, Subhash Jain has been sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 304-B IPC and for the offence punishable under Section 498-A IPC he has been sentenced to undergo rigorous imprisonment for a period of three years together with imposition of fine of Rs.7,500/- and in default whereof to undergo simple imprisonment for a period of four months.

2. Appellant - Yash Jain who is the husband of the deceased has filed Crl.A.No.1454/2010, appellants, Veena Jain and Subhash Jain, who are parents-in-law of the deceased, have filed Crl.A.No.1455/2010 while appellant, Prashant Jain, who is the brother-in-law (Nandoi) of the deceased has separately filed Crl.A.No.1452/2010.

3. The case of the prosecution in brief can be summarised as under:

As per the charge-sheet, on 13.06.2000, telephonic information was received at Police Station Darya Ganj that Smt. Shalu Jain w/o Yash Jain r/o 4676/21, Ansari Road, Darya Ganj, Delhi had been taken by CATS Ambulance to JPN hospital in burnt condition. DD No.24A was accordingly recorded and SI Prabhu Dayal reached the hospital and obtained MLC of Smt. Shalu Jain she was declared unfit

for statement. SI Prabhu Dayal met the complainant Smt. Kamlesh, mother of Smt. Shalu Jain and recorded her complaint Ex. PWI/A. the complainant stated that her daughter was married to accused Yash Jain s/o Subhash Jain on 23.01.1998. She alleged that since her marriage, her daughter was harassed by her in-laws and her husband use to beat her and ask for money. Even after the birth of her child, Shallu was harassed by her inlaws and was turned out of the matrimonial house with the condition that she should return after bringing Rs. 40000/- which were spent on the delivery of her child. Shalu was again kept in the matrimonial house upon receipt of said 40,000/- Rs. The complainant also alleged that accused Yash Jain was unemployed and use to beat their daughter frequently. Complainant also alleged that her daughter also told her that her mother in law, Veena Jain also harass her on account of dowry and some days ago she was turned out of the matrimonial home, pursuant to which meeting was held in a temple in Shalimar Bagh where the matter was compromised and Shalu was taken back to the matrimonial home by the accused persons. She also alleged that her daughter was burnt by accused Yash Jain and accused Veena Jain. Subsequently, on 14.06.2000 Smt. Shalu Jain expired. As per the post mortem report her death was due to shock consequent on the ground of 75% burn injuries.

4. After completing the investigation, the police had also filed a charge sheet against Anjali Jain (wife of Prashant Jain), Ruchi Jain (sister-in-law) and Sanjay Jain (husband of Ruchi Jain) besides the above appellants but at the time of hearing on the charge learned trial court found allegations against Ruchi Jain, Sanjay Jain, and Anjali Jain quite vague and inherently improbable and therefore these accused persons were discharged by the court.

5. To prove its case, the prosecution had examined as many as 35 witnesses in order to bring home the guilt of the accused persons. After the evidence of the prosecution, the entire incriminating evidence were put to the accused persons at the time of recording of their statements under Section 313 of Cr.P.C. and in response, they denied the prosecution case as false and pleaded their innocence. In defence evidence, the only evidence adduced by the defence was that of DW-1 - Dr. Bharat Singh.

6. Arguments on behalf of appellants in CrI.A.No.1454/2010 and 1455/2010 were addressed by Mr. K.K Sud , Senior Advocate assisted by Mr. Chirag Khurana, Advocate, while in CrI.A.No.1452/2010, arguments were addressed by Mr. Harin Raval, Senior Advocate assisted by Mr. Vineet Malhotra, Advocate. State was represented through Ms. Richa Kapoor, learned APP. Besides addressing extensive arguments, both the parties, i.e., learned counsel for the appellants as well as learned APP for the State have also filed their written synopsis.

7. Mr. K.K. Sud, learned Senior Advocate for the appellant - Yash Jain, Veena Jain and Subhash Jain, of the outset, laid much strong emphasis in his argument that the prosecution in the present case had set up one case but tried to prove another case and such approach of the prosecution is against the very tenets of criminal jurisprudence. Contention raised by learned counsel for the appellant was that the prosecution has built up a case of accidental death based on the dying declaration of the deceased made to PW-13, Dharam Singh (CAT Ambulance Officer) and PW-25, Dr. Nitin Kumar who examined the deceased and prepared the MLC and before whom the deceased truthfully stated that she had sustained burn injuries while cooking food. Learned counsel for the appellant also submitted that at the time of examination by the Doctor and also, while she was being carried out in the Ambulance, the deceased was fully conscious and well oriented and her vitals were stable and therefore there could be no reason for not believing her said statements. Learned counsel for the appellant also submitted that giving complete go-by to the case set up by the prosecution, the prosecution ventured to set up another case i.e. of dowry death punishable under Section 304-B of IPC. Learned counsel for the appellants further argued that the prosecution has also made a vain attempt to set up a case of homicidal death with the help of supplementary post mortem report proved on record as Ex.PW32/B and FSL Report, proved on record as Ex.PW-33/A, wherein one of the reasons for the cause of the death was opined to be due to the presence of organophosphorous poison in the stomach of the deceased. Learned counsel for the appellant also submitted that no charge under Section 302 IPC was framed by the learned trial court against the appellants although, nothing prevented the prosecution to press for framing of additional charge under Section 302 IPC.

8. Ms. Richa Kapoor, learned Additional Public Prosecutor for the State on the other hand with all her vehemence urged that all these appellants were trying to hide their crime under the cover of alleged statement made by the victim to the PW-13 (Ambulance incharge) and PW-25, Doctor Nitin Kumar, who had conducted the medical examination of the victim and prepared the MLC, were informed by the victim that the cause of her getting burnt was due to accidental fire while working in the kitchen. Contention raised by the learned APP was that the FSL report proved on record as Ex.PW-33/A supported by the post mortem report (Ex.PW-27/A), supplementary post mortem report (Ex.PW-32/B), testimonies of PW-1, PW-2, PW-9, PW-10 and the other corroborated evidence, clearly proves that the death of the victim was an unnatural death and the said unnatural death resulted due to her murder at the hands of these appellants. Learned APP for the State had invited attention of this court to the FSL report Ex.PW-33/A wherein Dr. Madhulika Sharma, Senior Scientific Officer clearly opined that the Ex.3A and Ex.3B gave positive test for organophosphorous insecticides and Ex.1 and Ex.2 were found to contain residue of kerosene oil. Learned APP also submitted that after receipt of the said FSL Report, supplementary opinion was sought by the prosecution from the post mortem doctor and vide supplementary post mortem report proved on record as Ex.PW-32/B the post mortem doctor opined that death of the victim was due to combined effect of shock due to burn injuries and organophosphorous poison. Placing reliance on the judgment of the Apex Court in *Rajbir vs. State of Haryana*, reported in AIR 2011 SC568 learned APP for the State submitted that this court may enhance the sentence of these appellants after taking into consideration the medical and scientific evidence proved on record or in the alternative, to remand the matter back to the trial court for framing the additional charge under Section 302/34 of IPC against all the appellants. Learned APP for the State also addressed extensive arguments on the other aspects of the case.

9. This is an unfortunate case of a young woman of 28 years who got married with the appellant -Yash Jain on 23.01.1998 but lost her life within a short span of two and a half years. There is no doubt and there cant be any, between the prosecution and the defence that the victim had died due to burn injuries and as per the MLC proved on record she had suffered 75% burn injuries. The victim was

taken in the CAT Ambulance Van to JPN Hospital when she was accompanied by the appellant Mr.Subhash Chand Jain. As per MLC report proved on record as Exhibit 15/A the victim was admitted in the JPN hospital on 13.6.2000 at 6.00 p.m. Ironically, in the column name of relative or friend name of Shri Dharam Singh, who was a junior ambulance officer, has been mentioned instead of father-in-law of the victim. The MLC also disclosed the history of assault as disclosed by the victim to the doctor being that she had sustained burn injuries while she was cooking food and her sari caught fire. MLC also discloses the condition of the patient as cautious/oriented and her vital stable. In the left hand column of the MLC the patient was shown to be unfit for her statement at 6.50 p.m, at 9.30 p.m. on 13.6.2000 and also at 1.30 a.m. and 7.00 a.m. on 14.6.2000 by the doctor who attended the victim. The victim hardly survived for 15 hours. Rukka Ex.PW-1/A was prepared based on the statement of the deceased PW-1, Smt. Kamlesh Jain and on the basis of rukka, FIR was registered by the police. After the death of the victim, the SDM had conducted the inquest proceedings on 14.06.2000 and thereafter dead body was sent for autopsy examination. The doctor conducting the post mortem of the dead body, handed over the scalp hair and vicesera of the deceased to the Investigating Officer which was taken into possession by the police vide Memo Ex. PW-7/A and the same were deposited by the Constable Virender (PW-7) in the Malkhana on the same day. The burnt clothes of the deceased, Ex.P-2 to Ex.P-4 were also taken into possession vide Memo Ex.PW-3/A after breaking open the lock of matrimonial house, which was the place of incident i.e. house No.4676/21, Ansari Road, Darya Ganj by the police in the presence of the SDM. The burnt clothes of the deceased, her scalp hairs and her Viscera were sent for scientific analysis to the Forensic Science Laboratory on 10.07.2000 and the FSL Report to this effect was proved on record by the prosecution as Ex.PW33/A. The first post mortem report and the supplementary post mortem report were proved on record as Ex.PW27/A and Ex.PW32/B. In the first post mortem report Ex PW27A, the post mortem doctor opined that the cause of the death of the victim was due to shock consequent upon her receiving 75% burn injuries. It was further opined that all injuries were ante mortem, recent in duration and were caused from flames due to fire. It was further stated that the scalp hair sample has been preserved at the request of the SDM and Viscera of

the deceased was preserved for chemical analysis to rule out any common poisonous substance. The result of examination as opined in the FSL report dated 7 th December 2001 with regard to Ex.1 and Ex.2 and Ex.3A and Ex.3B are reproduced as under:On chemical examination: (i) Exhibits 1 & 2 were found to contain residue of kerosene. (ii) Exhibits 3A and 4B gave positive tests for organophosphorous insecticide. (iii) Exhibit 3C gave negative test for chemical poison.

10. To correlate the said exhibits, it is pointed out that Ex.1 relates to the burnt clothes of the deceased; Ex.-2 was a bunch of brown black hair of the deceased; while Ex.3A and 3B is the Viscera of the deceased and Ex-3C was preservative sample, S.S of common salt. After receiving the FSL report, firm opinion was sought from the medical experts regarding the exact cause of death.

11. In the supplementary post mortem report, which was proved on record as Ex.PW-32/A, Dr. Rohit, Sr. Resident, Dept. Of Forensic Medicine MAMC, New Delhi after having examined the first post mortem report Ex.PW-27/A and FSL report Ex.33/A, gave his opinion with regard to the death of the deceased being due to combined effect of shock due to burn injuries and organophosphorous poisoning.

12. Dr. Rohit (PW-32), Dr. Madhulika Sharma (PW-33) and Dr. Akash Jhanjee (PW-35) were duly cross-examined by the defence.

13. PW-35 in his cross-examination in an answer to a question put by the accused that could he specifically pin-point the material leading to suspecting poison:-replied as under:

My finding that the stomach has burst open and 250 ml of greenish semi digested food material present in the peritoneal cavity was one such material for the reason that in the normal burn cases, stomach does not burst open. It is only in the cases of poisoning that the stomach gets burst.

14. Dr. Madhulika Sharma, (PW-33/A) in her examination-in-chief deposed that Ex.1 and Ex.2 were found to contain residue of kerosene and while Ex.3A and

Ex.3B gave positive tests for organophosphorous insecticides and Ex.P-3C gave test for negative chemical poisons.

15. Dr. Rohit (PW-32) in his deposition proved his supplementary post mortem report as Ex.PW-32/A wherein he opined that the cause of death was due to combined effect of shock due to burn injury and organic phosphorous poisoning.

16. The presence of the said medical and scientific evidence placed on record by the prosecution, we are distressed to find that no additional charge was framed by the learned trial court against these appellants under Section 302/34 of IPC. On perusal of the trial court record, we find that supplementary charge sheet was filed by the prosecution on 31 st July 2004 and based on this supplementary chargesheet, the prosecution sought to summon the experts and Inspector Ranbir Singh to prove the said reports. That was the stage when the accused persons were under examination for recording their statements under Section 313 of Cr.P.C. The evidence of Dr. Rohit (PW-32) and, Dr. Madhulika Sharma (PW-33) was recorded by the learned trial court on 27th January 2005. It is thereafter, on 18th March 2006, the statements of all the accused persons were recorded by the learned trial court under Section 313 of Cr.P.C. and the matter was adjourned for defence evidence. It is also a matter of record that the defence had also examined an expert witness Dr. Bharat Singh (DW-1) with a view to counter the said scientific and medical evidence. After grant of several adjournments, final arguments were heard by learned trial court on 23.11.2011 and 25.11.2011 and the judgment was finally delivered on 8th December 2012 and order on sentence was passed on 14th December 2012.

17. It is quite evident that the said FSL report and the supplementary post mortem report was placed on record by the prosecution even prior to recording of the statements of the accused persons under Section 313 of Cr.P.C. and we find no reason for the learned trial court for not framing an additional charge under Section 302/34 of IPC against the accused persons. Even from the body of the judgment, we find that the learned trial court had discussed these reports but in Para 67, it gave a reason by saying that had the FSL report come in time, probably the case could have been investigated from the angle of presence of

organophosphorous poison, which was found to be contained in the stomach of the deceased, Shalu Jain. It is a settled legal position that under section 216 Cr. P.C the charges can be amended by a trial court at any stage during a trial. The said section reads as under Section 216 of CrPC¹ Any Court may alter or add to any charge at any time before judgment is pronounced. (2) Every such alteration or addition shall be read and explained to the accused. (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge. (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

18. This section invests a comprehensive power in the Court to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage prior to judgment. If there is any omission in the charge framed at the commencement of the trial and the omission is discovered at any time before giving the judgment, that omission can be remedied under this section and an appropriate charge may be framed. The court has ample power to amend or alter a charge only with a condition that it should give full opportunity to the accused to make out his defence. The words "add to" in the section do not mean an addition of a few words to the existing charge. They mean addition of a new charge. Even after being empowered with such vast power, we fail to comprehend that as to why such an injudicious approach was adopted by the learned trial court.

19. The learned trial court perhaps had forgotten that fair and proper trial is at the core of our judicial system to reach the ultimate goal of dispensation of justice

between the parties. It is first and foremost duty of every court to see that neither any innocent man is punished nor any guilty person escapes from the clutches of law. Both are public duties of a Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a judicious manner. A watchful and a diligent trial Judge, before whom every piece of evidence is placed by the prosecution and the defence, has to be a protector of the rights of both the victims and the accused and nothing should escape his sight which can unduly benefit either of them. While appreciating the evidence on record the Court is expected to be fully cautious and ensure that the determinative process is not sub-served. For truly attaining the object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

20. Nevertheless, although a mistake had been committed by the learned trial court in not framing an appropriate charge against the accused persons, even this court is empowered under Section 464 Cr. P.C to remand back the case to the trial court in case there is an omission on the part of trial Court to frame any charge and where such omission results into failure of justice. To fortify our aforesaid view point, it will be useful here to refer to the recent decision of the Honble Apex Court in the matter of Manjit Kaur vs State of Punjab CrI.A.Nos. 418/2008 and 1511/2008 decided on 23rd July, 2013. In this case also the Trial Court and High Court had not taken note of the serious injuries as were found on the person of the deceased, opined in the post-mortem report. They had taken note of only minor injuries mentioned in the postmortem report and thus framed the charge under Section 304B IPC and the view taken was that in the presence of such major injuries as per the post-mortem report why could not the trial Court have altered the charge. Relevant paras of the said judgment are reproduced as under:

We have heard Mr. S.K. Aggarwal, learned senior counsel for both the appellants, and Mr. V. Madhukar, learned AAG for the State of Punjab. The trial Court, as well as the High Court have proceeded on the basic charge of Section 304B IPC by appreciating the entire evidence. However, the medical report makes it crystal clear, that while convicting and awarding the sentence to the appellants, the Courts have taken note of only the minor injuries mentioned in the post-mortem report, and have completely brushed aside, and have not taken note of the serious

injuries found on the person of the deceased Smt. Surjit Kaur. There is evidence on record to show this, which has also been proved by Dr. Baldev Singh, PW1 in his statement that, "there was abnormal mobility of head at the neck". Further, "there was fracture of second and third cervical vertebrae". Both the Courts below did not take note of these serious injuries or abnormalities, and instead, concentrated on minor injuries 1,2 & 3 mentioned in the post-mortem report, which are mere abrasions on the neck and the right knee of the deceased. The trial Court, after appreciating the evidence, came to the following conclusions: "However, as regards accused Jagninder Singh, from the evidence on the record there is no manner of doubt that it was he who was responsible for causing the death of Surjit Kaur alias Parveen Kaur deceased who died due to poisoning as well as due to injuries caused to her. As stated above upon post mortem examination injuries were found on the neck and right knee of the deceased and the death of Surjit Kaur deceased was opined to be due to poisoning as well as injuries on her neck. Injuries on the person of Surjit Kaur deceased are of such a nature which would not be self suffered or self inflicted. Of course, Dr. Baldev Singh PW1 stated in his cross examination that injuries on the neck of the deceased could be caused if the deceased struck against the Pawa (wooden arm of the Cot) and that injury on the right knee could also be the result of striking against some hard substance but there was no occasion for the deceased to sustain such injuries by striking against any hard substance and accused Jagninder Singh in fact appeared to be responsible for causing injuries to the deceased as well as for administering poison to her resulting in her death and was liable for the same."

In view thereof, we fail to understand that if the trial Court was of the considered opinion that it was a case of murder, and that the appellant Jagninder Singh was responsible for causing her death, causing the mentioned injuries, and administering the poison, then why could the trial Court not have altered the charges at such a stage, and have heard the parties on that issue. The High Court, without taking note of the serious injuries, has dealt in a casual and cavalier manner with the case, and has taken a more lenient view and reduced the sentence of appellant Jagninder Singh from 10 years to 7 years. After hearing the learned counsel for the parties and perusing the record, we were shocked at how

the trial Court, as well as the High Court have dealt with such a serious matter. It is, thus, in the interests of justice, that we set aside both the judgments and orders, and remand the cases to the trial Court. The evidence is already on record. If additional evidence is required in the opinion of the trial Court, the parties may be permitted to lead the same further, after altering the charge. The learned trial Court is directed to proceed in accordance with law.

21. In the light of the aforesaid discussion, instead of dealing with the various contentions raised by the counsel for the parties, for and against the judgment, we find this to be a fit case to be remanded back to the trial court for framing an additional charge under Section 302/34 of IPC against the accused persons and it is only after the trial on additional charge, this court will be in a position to appreciate the contentions raised by both the sides whether the case in hand was a case of accidental death or unnatural death or of culpable homicide. Accordingly the Judgment and Order on sentence dated 08.12.2010 & 14.12.2010, passed by the Learned Additional Sessions Judge is set aside and the matter is remanded back to the concerned Additional Sessions Judge for framing an additional charge under Section 302/34 of IPC against the accused persons.

22. Not to prejudice the case of either of the parties on its merits, we have not touched the merits of the case and we also make it explicitly clear that if any observation made by us hereinabove touches the merits of the case, the same shall not influence the learned trial court in arriving at its own conclusion in its final judgment.

23. We also request the learned trial court to complete the trial, after framing the additional charge under Section 302/34 of IPC against these accused persons, within a period of six months from the date of this order. We also permit the prosecution and the defence to lead any further evidence after taking leave of the trial court on the additional charge. We also direct that the appellants, who are already on bail need not seek their bail again even after the framing of charge against them under Section 302/34 IPC and they shall remain on bail till the conclusion of the trial.

24. The matter shall be listed before the learned Trial court on 18th January 2014. Appellant - Yash Jain shall be produced by jail Superintendent before the learned trial court on the said date.

25. With the above directions, these appeals stand disposed of. KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

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