

**Rameshwar Vs. State**

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**Court :** Delhi

**Decided On :** Jan-22-2014

**Judge :** Indermeet Kaur

**Appellant :** Rameshwar

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:20.01.2014. Judgment delivered on 22.01.2014 CRL.A. 56/2006 RAMESHWAR Through ..... Appellant Appellant with his counsel Ms.Puja Anand, Adv. versus STATE Through ..... Respondent Ms. Kusum Dhalla, APP along with SI Vijay Kumar. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal has been directed against the impugned judgment and order of sentence dated 14.11.2005 whereby the appellant Rameshwar has been convicted under Section 304-II of the IPC and had been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo SI for 3 months. Benefit of Section 428 of the Cr.PC had been accorded. 2 DD No.4-A was received in Police Station Kalyan Puri on 22.09.2004. It had reported that one injured person namely Ishwar (hereinafter referred to as the deceased) had been brought to the LBS Hospital in a brought dead condition. 3 Investigation was marked to SI Raj Kishore Dubey (PW-8) who along with

constable Arvind Kumar (PW-5) reached the hospital. The MLC (Ex PW-4/A ) of the victim was obtained. The investigating team reached the spot where they met the complainant Gaje Singh (PW-2). His statement was recorded. 4 The version of PW-2 as unfolded in this complaint (Ex.PW-2/A) was that on the night of Kalipuja while the rituals were being performed at the residence of his bhabhi Kela Devi, there were several invitees present there. After the pooja, people were drinking and taking dinner. At 11:30 pm, the deceased was lying on a cot; he was intoxicated; the accused Rameshwar insisted that he should take another drink; altercations took place between the two. Rameshwar threw a bottle of liquor on the deceased; the bottle hit the wooden post of the cot; splinters from the glass bottle hit the chest and forehead of the deceased. He started bleeding; the deceased was removed to the hospital by his nephew Satyawan (PW-1); he was already dead by that time. 5 Crime team was summoned to the spot. Photographs (Ex.PW-2/D and Ex.PW-3/E) were taken. Site plan (Ex.PW-8/B) was prepared. Inquest proceedings were ordered. 6 The post mortem on the deceased was conducted by Dr. Vinay Kumar Singh (PW-10). The post mortem report has been proved as Ex.PW-10/A. Following injuries were noted upon his person:

1 Stab wound of 5 X2cms deep margins regular directed downwards and inward present over the right side of chest as shown in diagram at point A. 2 Injury No.2 multiple incised wound total 9 in No.with diameter of 6 cms as shows in diagram at point B caused by broken end of the bottle. 3 Injury No.3 multiple incised wound 5 in No.circular 6 cms in diameter as shown in diagram at point C. 4 Multiple incised wounds 3 in No.present over the middle front of the chest semi circular in shape as show in diagram at point D.

7 All the injuries were anti-mortem in nature and recent in duration. Cause of death was due to haemorrhagic shock consequent upon penetrating injury. Injury No.1 was sufficient to cause death in the ordinary course of nature; death was opined to be homicidal. 8 As noted supra, there were four injuries detailed in the post mortem. Injury No.1 which was a stab wound of 5 X2cms by itself was sufficient to cause death in the ordinary course of nature. PW-10 the doctor in his cross-examination explained that a penetrating injury is that in which length is deeper and the width is shorter and the margins are regular. 9 Testimonies of PW-2 and

PW-1 are relevant. As noted supra, PW-2 was the complainant Gaje Singh. He has fully corroborated the version as given by him in his complaint. He has deposed that on the fateful day after the pooja celebration had finished, while the injured and the victim were in intoxicated state, accused asked the victim to take some more liquor; both were in the state of intoxication. Thereupon the accused hit the deceased with the bottle; the deceased had become unconscious and splinters from glass had caused injuries upon the victim. 10 PW-2 had been subjected to a lengthy cross-examination. He admitted that both injured and accused are related; they were brothers-in-law. He explained the manner in which the incident had occurred. He denied the suggestion that he had illicit relations with his bhabhi and this was the reason for the attack on the victim and the resultant incident which had taken place. 11 Admittedly bhabhi of Gaje Singh namely Kela Devi was a widow. Her husband was the brother of PW-2. He had died in the year 1998. It is the case of the prosecution that Gaje Singh was thereafter living with his bhabhi. However the defence sought to be projected by the learned defence counsel that this relationship (which was on since the last so many years) was objected to by the victim is not borne out from any other evidence except this suggestion given to PW-2. The accused had produced evidence in defence. Even the two witnesses in defence i.e. Ramesh (DW-1) and Rajender (DW-2) did not propagate this defence. As per their version, they were present at the time of kali mata pooja and they along with the accused had left the spot at 09:30 pm. 12 Testimony of PW-2 is also fortified by the version of PW-1. He is Satyawan, another independent witness. He had reiterated the incident in the manner in which it had occurred; deposition being to the effect that at 11:00-11:30 pm after the pooja was over, when both the accused and the victim were in the state of intoxication, the accused hit the victim with a bottle as a result of which he started bleeding; thereafter the accused fled from the scene. 13 This witness was subjected to a lengthy cross-examination but he stuck to his stand. He admitted that he was an eye-witness and was standing 3-4 paces away. He also denied the suggestion that was put to him that PW-2 has built up this false case because the accused was objecting to his illicit relationship with his bhabhi. 14 Relevant would it be to note that the testimony of this witness has not been challenged qua his presence at the place of incident. No suggestion has been

given to him that no quarrel has taken place or that he was not present at the spot to witness the incident. 15 It was this ocular version of PW-1 and PW-2 coupled with the medical evidence which had led the Court to hold that the death was homicidal and not suicidal. This appears to be an incident where all the persons were partying together; it has come in the FIR itself that it was in jest and joke that the accused had thrown the bottle on the victim. The weapon of offence is also relevant. Being a bottle of liquor, it can by no stretch of imagination be said that it was a preplan where the weapon has been brought fore in a predesigned manner. It was in this celebration mood that the bottle which was a part of the festivity spirit became the weapon of offence. It was on the spur of the moment; both the accused and the victim were under the influence of liquor; the incident clearly being without motive and on a sudden impulse. 16 In this background, there could be no ulterior motive for PW-2 or PW-1 to have got accused falsely implicated but for the reason that the incident had occurred in the manner in which it had been described. 17 The highlight of the submission of the learned counsel for the appellant is twofold. Firstly it has been argued that the appellant has been falsely implicated as he had objected to the illicit relationship of PW-2 with his bhabhi. Record shows and it is in fact admitted that Gaje Singh and his bhabhi were living together since the last 15-16 years i.e. since 1988 after the death of the brother of PW-2. This could not after so many years be the bone of contention. That apart PW-1, DW-1 and DW2 who were their neighbours have also been examined. None of them have made any deposition on this point. This defence sought to be projected was also not a part of the defence which has emanated produced in the versions of DW-1 and DW-2. 18 The victim was the brother of PW-2. The accused was also related to him; he was his brother-in-law. In this background there could be no reason for a false implication. This argument of the learned defence counsel is without any merit. 19 The second argument propounded by the learned counsel for the appellant is to the effect that the offence relates to the year 2004 and the appellant has already suffered a protracted trial for more than one decade; he is an employee with the MCD; in case his conviction is maintained, he will also lose his job. He is the only bread earner in the family. His wife has passed away last year. Not even knowledge of the act can be attributed to the appellant; it has come in the FIR itself that it was a mood of joke and revelry that the incident had

occurred. This is a clear case where benefit of doubt must accrue to the appellant.

20 The appellant as noted supra has been convicted and sentenced to suffer imprisonment for a maximum of five years and to pay a fine of Rs.2,000/-. The fine amount has since been deposited. The presence of the appellant on the spot as already discussed stands established. As noted supra and at the cost of repetition, there was no reason whatsoever for PW-2 to have falsely implicated his own brother-in-law. PW-1 was an independent witness. The half baked defence sought to be projected by the appellant that it is a case of false implication for the reason that he was sharing his illicit relationship with his bhabhi is negated by the fact that this relation was on since 1998. After a span of 15-16 years, it could not still remain the grievance and grudge of the deceased. There was no reason for a false implication. In fact the motive for the appellant to have falsely implicated is completely ousted.

21 Section 304-II of the IPC, as the language of the Statute itself suggests is an act by an accused whereby culpable homicide not amounting to murder is caused which is attributable to the knowledge of the accused that it is likely to cause death but is minus intention. The conviction of the appellant under this provision of law calls for no interference.

22 The legislative intent and the punishment prescribed for this offence can be gauged from the fact that for a conviction under Section 304-II of the IPC, the offender may be awarded punishment for imprisonment which may extend up to 10 years or for fine. There is alternate punishment which is of fine alone. Thus it is the facts and circumstances of each case which will decide the discretion to be exercised by the Judge while imposing the sentence.

23 Present incident having occurred in a mood of camaraderie, jest and revelry, parties being closely related, the fact that the incident relates back to more than 10 years; much water having flown and the life of the appellant also having taken several turns; this Court has been informed that his wife has passed away. He is in his mid fifties and has a family of two sons whom he has to support; this Court thinks it a fit case to modify the sentence.

24 The nominal roll of the appellant further shows that out of 5 years sentence which has been imposed upon him at the time when he had been granted bail, he has undergone a period of 28 months. His conduct in the jail as per nominal roll was satisfactory. He has also not abused the process of the bail which had been granted to him.

25 In this background, the period of incarceration already

undergone by the appellant shall be the sentence which is imposed upon him. While maintaining the conviction of the appellant under Section 304-II of the IPC, he is sentenced to the period already undergone by him. 26 Appeal disposed of in the above terms. INDERMEET KAUR, J JANUARY22 2014 A

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