

Ramu Vs. State

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Court : Delhi

Decided On : Mar-19-2014

Judge : V. K. Jain

Appellant : Ramu

Respondent : State

Advocate for Def. : Ms. Ritu Gauba

Advocate for Pet/Ap. : Mr. Rajender Chhabra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

19. 03.2014 + CRL.A. 665/2010 Appellant RAMU Through: Mr Rajender Chhabra, Adv. versus STATE Respondent Through: Ms Ritu Gauba, APP for the State CORAM: HON'BLE MR. JUSTICE V.K. JAIN JUDGEMENT V.K. JAIN, J.

(Oral) The case of the prosecution, as set out in the charge-sheet is as follows: On 20.02.2008, SI Sahib Singh of Police Station Timar Pur along with Constable Satbir was on patrol when the complainant got down from a bus in injured condition, accompanied by another injured, namely PW5. The statement of the complainant was recorded by the police officer who, inter alia, alleged that in the night intervening 19/20.02.2008, he along with PW5 was sleeping in the bus No.DL1A7801 At about mid night, 2-3 boys entered the bus and insisted on doing

unnatural act with him. They had consumed liquor. When he resisted, one of the boys took out a knife and gave a knife blow on his right hand. When his companion PW5 intervened, he was beaten by those boys. Thereafter, they were threatened by them with a knife and were taken towards jungle. He further alleged that the boy who had given the knife blow to him was previously known to him, his name being Deepak. He further alleged that Deepak along with his two companions made him lie down on a bench in the jungle and then all the three sodomized him. Thereafter, both, the complainant as well as PW5 were locked in the bus and threatened to be killed, in case they disclosed the incident to anyone. He also claimed that he could identify the other two boys, who had sodomized him.

2. After completing investigation, three persons, namely Deepak, Sonu and Ramu were prosecuted under Section 365/377/342/506/324/325 and 367 of IPC read with Section 34 thereof and one of them was also chargesheeted under Section 27 of Arms Act.

3. All the three accused persons were charged under Section 450/34, 324/34, 365/34, 377/34 342/34 and 506/34 to which they pleaded not guilty and claimed trial. As many as 12 witnesses were examined by the prosecution. No witness, however, was examined in defence.

4. The complainant came in the witness box as PW-1 and inter alia stated that when he was sleeping inside bus No DL1PA-7801, parked at Timar Pur in the night intervening 19/20.02.2008, Sonu came in their bus and requested to take rest inside their bus. PW5, however, refused to provide rest to him in the bus. This resulted in altercation between Sonu and PW5. Thereafter, Sonu went away. After about 15 minutes, Sonu, accompanied by 3-4 associates came to the bus, opened the folding gate of the bus with the help of the knife, entered the bus with his associates and caused injury on his arm. The associates of Sonu also caused injuries to him. His friend PW5 was beaten by dandas and lathis. The witness identified Sonu as well as the accused Deepak @ Deepu and Ramu who were present in the Court at that time, though he claimed that Deepak and Ramu were not present along with Sonu on the date of the offence. The witness further stated

that at about 12.30 AM, on 20.02.2008, when he and PW5 were going to lodge a report against Sonu and his associates, on account of their having threatened them, Sonu and his six associates met them on the way and took him and PW5 to jungle, where he was confined near bushes and beaten with lathis, dandas and knife blows were also given to him. He further alleged that PW5 was also beaten with an iron pipe causing fracture on his left arm. He also alleged that Sonu and his associates removed his garments and thereafter took him and PW5 to a nearby park where Sonu performed unnatural act upon him against his wish and consent. Thereafter, his associates also sodomized him one by one against his wish and consent. The witness identified the accused Deepak by pointing his finger at him. He further alleged that Sonu and his associates then took him and PW5 to the bus and confined them there, threatening to kill them in case they lodged a complaint with the police. He also stated that in the morning when he and PW5 came down from the bus and met other helpers and conductor, police was called and his statement was recorded. This witness was cross-examined by the learned Additional PP and during cross-examination, he admitted that accused Ramu had caused injuries to him and PW5 at the time he had come for the first time along with Sonu and his associates. He, however, denied the suggestion that Ramu had also come with Sonu or that Ramu did unnatural offence upon him. During crossexamination, he stated that three persons had committed sodomy on him, out of whom only two were present in the Court.

5. PW5 is the other injured in this case. He inter alia stated that in the night of 19/20.02.2008, he along with the complainant was sleeping in bus No DL1PA7801 which had been parked in a parking near petrol pump, Timar Pur. At about 12.00 midnight, Sonu along with some boys came there and gave beating to them. He further stated that when they were going to police, those boys met them on the way and took them towards jungle where both of them were again beaten. Complainant was made to lie on a seat on the park and then Sonu forcibly sodomized him. He also stated that one Deepu caught hold of the mouth of Complainant and the act of sodomy was recorded by mobile phone camera. Thereafter, Deepak sodomized Shamshar. He also alleged that Ramu forcibly put his penis into his mouth and urinated in it. He further alleged that Ramu had given three sariya blows on his head. He also alleged that on 16.03.2008, the accused

Ramu and Sonu were arrested at his instance. This witness was cross-examined by the learned APP, but he denied having told the police that all the three accused had committed sodomy with Shamesher. However, at one place in the crossexamination, he stated that all the three accused persons in the Court had committed sodomy with Complainant turn by turn though in the very next sentence, he admitted that he had not seen the accused persons doing sodomy since he was made to see in a different direction. He also admitted in cross-examination that he was beaten by accused persons only and his clothes were removed by the accused person, but, he was not sodomized by any one of them.

6. PW-8 Dr. Rajinder Kumar examined PW-2 in hospital on 20.02.2008 vide MLC Ex.PW-8/A. He also examined the complainant vide MLC Ex.PW-8/B. PW-9 Dr. Sangita Kumari examined Deepak, Sonu and the appellant Ramu vide MLC Exs. PW-9/A to 9/C.

7. In their statement under Section 313 Cr.P.C., the appellant denied the allegations against him and claimed to be innocent. Vide impugned judgment dated 18.03.2010, all the accused, including the appellant Ramu were convicted under Section 450/324/506/342/377/34 IPC and vide impugned Order on Sentence dated 31.03.2010, they were sentenced to undergo RI for two years each and to pay fine of Rs 25,000/- each or to undergo SI for six months in default under Section 377/34 of IPC. Identical sentence was awarded to them under Section 450/34 of IPC. The convicts were sentenced to undergo for the period already spent by them in custody for the offences under Sections 324/342/506 read with Section 34 IPC. Being aggrieved from his conviction and sentence awarded to them, the appellant-Ramu are before this Court by way of this appeal.

8. As far as appellant - Ramu is concerned, according to the complainant, no act of sodomy was committed by the said appellant with him. He expressly identified Deepak and Sonu as the persons who had sodomized him in the night of 19/20.02.2008. According to this witness, three incidents had taken during the aforesaid night. The first incident took place when Sonu came near their bus, sought to take rest inside the bus and on PW8 refusing to accede to his request, an altercation took place between Sonu and PW5 outside the bus, whereafter

Sonu went away. The second incident took place when Sonu returned after about 15 minutes along with his associates near the bus, opened the bolted gate of the bus with the help of a knife, entered the bus with his associates and caused injuries to him with a knife. The associates of Sonu also caused injuries to him and PW5 at that time. The third incident according to the complainant happened when while going to police, they were intercepted and taken to a jungle where he was sodomized by two persons i.e. Sonu and Deepak. During cross examination by learned Additional PP, this witness admitted that the appellant - Ramu had caused injuries to him and his friend PW5 when he had come along with Sonu and his associates at the first time. Obviously, the witness was referring to the incident when Sonu returned to the bus with his 3-4 associates, entered the bus with them and caused injury to complainant, using the knife and thereafter both, the complainant as well as PW8 were beaten. At the time there was an altercation on the issue of Sonu seeking to rest inside the bus, Sonu was not accompanied by any associate and, therefore, the witness, during cross examination by learned Additional PP could not be referring to the altercation which took place at that time.

9. As far as PW5 is concerned, he maintained in his examination-in- chief that the act of sodomy with the complainant was committed by Deepak and Sonu. This witness also referred to the earlier incident in which Sonu accompanied by his associates had come to the bus and given beatings to him and the complainant. The witness also claimed that Ramu had given three saria blows on his hand. The witness also claimed that the appellant - Ramu had put his penis into his mouth. A perusal of the FSL report would show that human semen was detected on the underwear of the appellant - Ramu when it was examined in the laboratory. However, since the appellant - Ramu was arrested only on 16.03.2008, about four weeks after the aforesaid incident, no importance to the presence of the semen on his underwear can be attached.

10. As regards oral deposition of PW5, I find that in his statement under Section 161 Cr.PC he made no such claim. Nowhere did he allege that the appellant - Ramu had inserted his male organ inside his mouth. Though at one point in his cross examination, he stated that all the three accused had sodomized the complainant turn by turn, the said part of the deposition cannot be accepted in

view of emphatic denial by the complainant as far as appellant - Ramu is concerned. Moreover, PW5 also admitted in his cross examination that the actual act of sodomy was not seen by him.

11. However, the facts and circumstances of the case clearly indicate that the act of sodomy with the complainant was committed in furtherance of a common intention which the appellant - Ramu shared with his co-accused Deepak and Sonu. It has come in evidence that all the three persons were together when they were met PW1 and PW2 and took them inside the jungle/ park where the complainant was sodomized. It has also come in the deposition of PW5 that two accused persons would stay with him when the third accused would do the act of sodomy with the complainant. According to him, he was asked by two accused persons present with him, always to look into different direction when the third was doing the act of sodomy. The aforesaid act on the part of the accused persons, which would include the appellant - Ramu leaves no reasonable doubt that the complainant was sodomized in furtherance of a common intention which all the three accused shared with each other. Had that not been the position, there would be no reason for the two persons to stay with PW5, when the third person sodomized the complainant nor would they have asked PW5 to look in a different direction at the time when the third one was engaged in the act of sodomy. Therefore, the appellant - Ramu is also vicariously liable for the act of sodomy committed with the complainant and has rightly been convicted under Section 377 of IPC read with Section 34 thereof.

12. All the three accused came together to the bus where PW1 and PW5 were present, after Sonu had left on altercation with PW5 and then all the three gave beatings to PW1 and PW5, a knife was used for threatening them and causing injuries to PW1. The above referred facts and circumstances clearly show that the injuries to PW1 using a knife was given in furtherance of common intention which all the three accused including the appellant - Ramu shared with each other. The injuries were caused not only to the complainant, but also to PW5, at the aforesaid time. The MLC Ex.PW8/B of the complainant would show that he had the following injuries on his person when he was examined in Aruna Asaf Ali Hospital: (i) Bruise, reddish blue in colour over back of LF thigh Horizontal three in number 6 cm x 1-2

cm wide 4 cm x 2 cm wide (ii) Bruise over LF thigh 6 inch above knee (dorsal) Reddish blue (iii) (iv) Superficial abrasion over popliteal fossa (LF side Bruise over upper 1/3rd of RF thigh dorsally reddish blue over size of 4 cm, irregular shape Tenderness over upper 1/3rd of RF leg, movements (N) Bruise over LF scapular region Superficial abrasion medical side of RF scapula Abrasion over RF nipple Tenderness over RF shoulder Movements normal Tenderness & swelling (LF) temporal area. Bruise mark over RF arm three in numbers Tenderness over RF wrist. Clean incised wound over RF forearm upper 1/3rd 5 cm x 1 cm x 0.5 cm. No active bleeding Bruise reddish blue over gluteal region. (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) (xiv) A perusal of MLC of PW5 Ex.PW8/A would show that he had the following injuries on his person when he was examined in the hospital: (i) Tenderness & swelling over forearm (ii) Abrasion over LF forearm above wrist above 5 cm (iii) Tenderness and swelling around RF elbow. (iv) Abrasion over RF alae of nose. (v) 13. Abrasion over RF lower back. Considering the deposition of PW1 and PW5, which finds ample corroboration with their respective MLCs, the appellant - Ramu has rightly been convicted under Section 324 and 506 IPC read with Section 34 thereof. Since PW1 and PW5 were confined inside the bus, after they were brought back from the jungle, conviction under Section 342 of IPC read with Section 34 thereof is also justified. However, the charge under section 450 of IPC does not stand proved against the appellant - Ramu since a bus is not a building, tent or a vessel, used for dwelling, nor a bus the place of worship or a place for the custody of property. However, since the appellant - Ramu and his co-accused had trespassed in the bus, they committed offence of trespass as defined under section 441 of the Indian Penal Code which is punishable under Section 447 of the said Code. Therefore, while acquitting the appellant - Ramu of the charge under Section 450 of IPC, he is convicted under Section 447 thereof, which is a minor offence qua the offence punishable under Section 450 of the Code.

14. As far as sentence awarded to the appellant - Ramu under Section 324/506/342/377 of IPC read with Section 34 thereof is concerned, there is no scope either for reducing the substantive sentence awarded to him or to reduce the quantum of fine imposed on him. It is, however, directed that in default of payment of fine, the appellant shall undergo SI for two months as against six months awarded by the learned trial court. Under Section 447 of IPC, the appellant

is sentenced to undergo SI for two months. All the sentences shall run concurrently. The appeal stands disposed of in terms of this order. One copy of this order be sent to the Jail Superintendent for information and necessary action. Trial court record be returned with a copy of this order. MARCH19 2014 BG/rd Crl. A. No.665 of 2010

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