

Ravi Vs. State

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Court : Delhi

Decided On : Aug-07-2014

Judge : Mukta Gupta

Appellant : Ravi

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision : August 07, 2014 + CRL.A. 101/2014 RAVI Represented by: Appellant Mr.Ajay Verma, Adv. DHCLSC versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) Cri.M.B. 198/2014 Since we are proceeding to hear the appeal itself, instant application is dismissed. CRL.A. 101/2014 1. Ravi the maternal uncle of the unfortunate baby Babita (deceased) has been convicted for offence of her murder on the testimony of his own sister Poonam PW-8 vide the impugned judgment dated March 26, 2012 and directed to undergo imprisonment for life for offence under Section 302 IPC and a fine of `2000 and a sentence of two months simple imprisonment for the offence punishable under Section 323 IPC vide order on sentence dated March 31, 2012.

2. Ravi assails the judgment on the ground that even if accepting the prosecution version neither any motive is alleged to him nor any intention is attributed to kill his own niece. The allegations against the appellant are of pushing the child resulting in the fall and dying pursuant thereto. Even the doctor has opined that the injury to baby Babita could have been caused due to fall. No weapon of offence has been used. At best the action of Ravi even as per the prosecution case who was intoxicated at that time was a reckless act unmindful of its consequences. Hence, he be acquitted of the charges framed or in the alternate convicted for a lesser offence and released on the period already undergone. The defence of Ravi is of denial and false implication. To the question No.37 as to Do you want to say anything else?. he has replied:

A. I am innocent and falsely implicated in this case. In fact on 24.03.2011 I was taking bath at about 8.30 am at upper floor in the bath room. I came down at about 8.30 am after taking the bath to the ground floor. I had seen my elder sister was beating her child Radha. I tried to save Radha from the clutches of my sister, in the Dhaka mukki Radha was separated. Nonu was lying on the ground. The elder sister Poonam foot has come on the chest of the Body. My sister had taken his daughter to the hospital.

3. Brief exposition of facts would note that vide DD No.40A dated March 24, 2011 information was received to the Police by the mother of the deceased that her brother Ravi had run away after killing her daughter. On the PCR reaching the spot they found none at the spot. However the neighbourers informed that the victim had been taken to the hospital. Poonam took her daughter to Arpan private hospital where the doctor declared her brought dead.

4. Poonam PW-8 the mother of the baby Babita the deceased and sister of Ravi deposed that she was aged 24 years and was staying with the brother Ravi and Lala and used to work in the houses as a maid servant. She had three daughters, her eldest daughter Reshma aged 6 years was staying with her husband and Nonu@ Babita aged 3 years and Radha aged 2 years were living with her. She had a quarrel with her husband, so for the last two years she was staying with her brothers. On the date of incident when Babita died accused was drunk and it was

about 10 or 11 AM when she entered the jhuggi and found Ravi beating her daughter. She tried to save her daughter from Ravi. At this Ravi pushed her. Due to beating given by Ravi the breathing of her daughter Babita @ Nonu became disturbed (saans upar niche ho rahi thi). She rushed to the hospital but she died on the way. Ravi also caused injury to her with an iron Tawa under influence of liquor and she sustained injury on her right leg. She stated that Ravi threw her younger daughter right on the ground due to which she fractured her leg. She did not know the reason why he threw her daughter. Ravi used to suspect her conduct as she used to go for work outside. A day prior to the incident also Ravi and Poonam had a quarrel. On cross-examination by learned APP she stated that in her presence Ravi threw her daughter Babita @ Nonu on the ground.

5. MLCs of Radha, Babita and Poonam were got done. Babita was brought declared dead. Her post-mortem was also conducted. Poonam stood by her testimony in the Court and in the cross-examination she also stated that due to the throwing away of her daughter Radha she suffered a fracture on her leg. Tawa with the wooden handle was also seized from the spot.

6. Dr. Raghvendra Bagla PW-9 who conducted the post-mortem of the deceased found the following ante-mortem injuries:

i) Reddish abrasion on the left side of neck measuring 4 cm x 2 cm, 1 cm below the ear lobule, 7 cm lateral to the midline. ii) Reddish contused abrasion on the right side of face measuring 7 cm x 5 cm, 1 cm anterior to the tragus of ears.

On internal examination I found the haemorrhage on occipital region of the brain.

7. He exhibited his report as Ex.PW-9/A. subdural He also exhibited his subsequent opinion that the internal injury i.e. subdural haemorrhage which resulted in the death of the deceased could have been caused on the throwing of the deceased on floor as alleged.

8. The MLC of Radha Ex.PW-1/A shows fracture of bilateral shaft of femur and the injury was opined to be grievance and caused by blunt object as per doctor Ripudaman PW-1. He exhibited the MLC as Ex.PW-1/A and the report of

radiologist Ex.PW1/B.

9. The MLC of Poonam Ex.PW-17/A shows laceration below right knee and swelling and tenderness over right forearm. Thus, the version of the complainant Poonam stands corroborated by the medical evidence.

10. This brings us to the question whether the unfortunate incident of taking away the life of baby Babita would fall within the ambit of Section 302 IPC or Section 304 IPC as Ravi contends that neither he had the motive nor intention to kill Babita. Undoubtedly, the act of Ravi was a reckless act, however it cannot be said that it was done with an intention to cause death or with an intention to cause such bodily injury as is likely to cause death. From the statement of Poonam no intention of causing death of baby Babita can be attributed to Ravi who was none other than her maternal uncle living with the child. Even as per Poonam, Ravi was intoxicated at the time of incident. Whatever may be the frustrations of life, Ravi was still possessed of the knowledge that the reckless act caused by him could cause the death of the little baby.

11. The Honble Supreme Court in the decision reported as (2011) 7 SCC110Elavarasan Vs. State held:

42. Fifthly, because the appellant did not evidently use the sharp-edged weapon for causing injuries to the deceased as he had done in the case of Dhanalakshmi and Valli, PWs 2 and 3 respectively. In the circumstances we are inclined to hold that there was no intention on the part of the appellant to cause the death of the deceased, though looking to the nature of the injuries suffered by the deceased, the appellant must be presumed to have the knowledge that the same were likely to cause death. The fact remains that the appellant committed culpable homicide without premeditation in a sudden fight and in the heat of passion. The fact that the appellant did not use the sharp-edged weapon with which he was armed also shows that he did not act in a cruel or unusual manner nor did he take an undue advantage. It is evident from the deposition of Dhanalakshmi, that she did not see the appellant assaulting the deceased. It is, therefore, just possible that a hard blow given to the deceased by his bare hand itself threw the child down from the bed causing the injuries that proved fatal.

12. In view of the aforesaid discussion, the impugned judgment of conviction and order on sentence are modified. The conviction of Ravi is altered to one under Section 304 Part II IPC and he is directed to undergo rigorous imprisonment for a period of five years and to pay a fine of `1000/and in default of payment of fine to undergo simple imprisonment for two months. The conviction of Ravi for offence punishable under Section 323 IPC with regard to causing injury to Poonam is upheld and sentence awarded for the same is maintained. As regards the offence punishable under Section 323 IPC for causing grievous injury to Poonam is maintained. As regards the grievous injury to Radha, since no separate order has been passed by the learned Trial Court and in the absence of any State appeal on that count, we are refraining from passing any order.

13. The appeal is disposed of.

14. T.C.R. be returned. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG)
JUDGE AUGUST07 2014 ga

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