

Raman Vs. State

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Court : Delhi

Decided On : Nov-19-2014

Judge : Sanjiv Khanna

Appellant : Raman

Respondent : State

Judgement :

\$~25. * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.274/1999 Date of decision:

19. h November, 2014 RAMAN Appellant Through Mr. Ankur Sood, Advocate.
versus STATE Respondent Through Ms. Rajdipa Behura, APP. CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE V.
KAMESWAR RAO SANJIV KHANNA, J.

(ORAL): This appeal against conviction under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short) was filed by two brothers, Raman Kumar and Arun Kumar. By order dated 20 th August, 2014, Arun Kumar was held to be a juvenile on the date of commission of offence and accordingly the benefit under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 was granted. The said order records that Arun Kumar had stated that he would not like to contest his conviction but the order of sentence may be set aside and quashed. The appeal, therefore, filed by Arun Kumar stands disposed of vide

order dated 20th August, 2014. The present appeal filed by Raman Kumar survives and is being disposed of.

2. This appeal impugns the judgment dated 30th March, 1999 and order of sentence of the same date arising out of FIR No.486/1997, Police Station Model Town, Delhi. As already noted above, the appellant stands convicted under Section 302 read with Section 34, IPC. By order on the point of sentence, the appellant-Raman Kumar has been sentenced to imprisonment for life and fine of Rs.10,000/-. Upon recovery of the fine, the same is to be paid to the legal heirs of the deceased, Ajay Kumar.

3. The deceased, Ajay Kumar was admitted in the Sunder Lal Jain Hospital on 22nd June, 1997 at 8.30 P.M. The MLC (Ex.PW-4/A) stands proved by Dr. Hilal Ahmed (PW-4). The MLC (Ex.PW-4/A) records the cause of the injuries as alleged H/O [i.e. history of]. fall from height from fourth floor, someone throwing. It also records that the patient, i.e. Ajay Kumar was conscious and oriented. In the crossexamination, PW-4 affirmed that the patient had claimed that he was thrown from the fourth floor and that the patient was conscious but did not reveal the name of the person who had thrown him.

4. Ajay Kumar died at about 6 A.M. on 23rd June, 1997 and the said factum is proved by the Inquest report marked as Ex.PW-25/D and the letter requesting autopsy/post-mortem (Ex.PW-25/C). The letter mentions the date and time of death as 22nd June, 1997 at 6 A.M. The date is a clerical/typographical error, should be read as 23rd June, 1997. The Inquest report (Ex.PW-25/D) mentions the date and hour of discovery of death as 7.10 A.M. on 23rd June, 1997. The aforesaid documents were proved in the testimony of Inspector P.C. Mann (PW25), the Investigating Officer.

5. The post-mortem of the body of Ajay Kumar was conducted by Dr. K.L. Sharma (PW-8), who, in his report (Ex.PW-8/A) and his oral testimony, has referred to internal and external injuries, which we shall be referring to in detail later on. In the post-mortem report (Ex.PW8/A) and in his oral deposition, Dr. K.L. Sharma (PW-8) has stated that the injury No.5, i.e. muscle tear and fracture of the lower one-third part of the femur bone, was likely to cause death in the ordinary course of nature.

PW-8 has affirmed and accepted presence of chilli powder particles in the eye lashes and that the injuries mentioned by him could have been a result of falling from a height. He had preserved the blood sample, chilli powder particles etc. which were sealed and handed over to the police.

6. The deceased Ajay Kumar was about 22 years old as has been proved by the testimony of his father, Chander Bhan (PW-18). Chander Bhan (PW-18) had also deposed to the fact that he heard screams of Ajay and saw the accused-Raman, along with Arun and Babu Lal (acquitted) going downstairs. He then went to the roof top and found Ajay lying on the ground floor after being pushed from the fourth floor. Ramji Lal (PW-11) deposed having heard shouts that Ajay has been thrown down. Aruna (PW-9), neighbour residing at A-70, Sangam Park had also affirmed that she had heard something falling and then saw Arun lying on his face. Thus, it is established beyond any reasonable doubt that the deceased Ajay Kumar had fallen from the fourth floor and had sustained the injuries.

7. The next inquiry would involve establishing whether the fall was a result of a malevolent act of a third party or a mere accident. The MLC (Ex.PW-4/A) and the testimony of Dr Hilal Ahmed (PW-4) do support and affirm the hand and act of a third party. Chander Bhan (PW-18) has named the appellant Raman as one of the persons whom he had seen running down. He had also deposed about the past acrimony and animosity between the deceased Ajay Kumar and the appellant Raman on account of use of the staircase. The factum of the appellant pushing the deceased Ajay Kumar is positively professed and vouched in the dying declaration of Ajay Kumar (Ex.PW-23/A), which was recorded by Inspector Vipin Kumar (PW-23) in the presence of ASI Robin Topo (PW-24). The said dying declaration (Ex.PW-23/A) is reproduced for convenience:

Statement of Ajay Kumar s/o Chander Bhan R/o House No.A-94, Sangam Park, Rana Pratap Bagh, Delhi aged 22 years. Stated that I reside with the members of my family at the above address and work as Safai-karamchari in Hindu Rao Hospital. Babu Lal (accused) lives with the members of his family in A-77, which is in front of his house. He (Babu Lal) is a Safaikaramchari in Civil Lines. His sons Raman aged about 23/24 years and Arun aged about 14/18 years also reside

there. They do not have any occupation. They and we have quarrels frequently about the stairs and the way. Pardhan Jai Singh PW17) had settled the matter several times. However, today at about 8.15 pm, I had gone to the roof to bring pipe. Raman was already present there. He called me threateningly. I did not go near him. Thereupon, he threw red chillies in my eyes all of a sudden and exhorted Raman (sic, Arun) Ise Niche Fenk Do. At the same time, Raman and Arun who had also come there pushed me with force from the roof to down below. I could not see because of the chillies in my eyes as to where I had fallen and became un-conscious. Now I have regained conscious in the hospital. My several teeth have broken. There is an injury on the eye. Left leg is broken. Whole body and head is in pain. Raman and Arun had intentionally tried to kill me by pushing me from the roof of fourth Manzil downwards. Legal action be taken against them. Sd/Ajay Kumar (in English) Attested Robin Topo, ASI Witnesses 1. Sd/- (in English) (Probably Kailash Birla) 2. Ram Ji Lal (in Hindi) (The aforesaid is a translation and is reproduced from the impugned judgment. Counsels state that the translation is correct).

8. Ramji Lal (PW-11), as is apparent, had signed the said dying declaration as a witness. He had deposed that on 22nd June, 1997, that he had heard the shouts Ajay has been thrown down, further corroborating that the fall was not accidental but a result of a push by someone. He deposed that the family members of Ajay took him to the hospital and that after about 1 or 1 hours, he had also gone to the hospital. Statement of Ajay i.e. dying declaration (Ex.PW23/A), was recorded in his presence by the Inspector. In his cross-examination, PW-11 affirmed that the dying declaration (Ex.PW23/A) was recorded at about 10 P.M. and that he was present inside the room during the recording of the statement. Testimonies of Inspector Vipin Kumar (PW-23) and ASI Robin Topo (PW-24) fully support and affirm the dying declaration (Ex.PW-23/A) and its contents.

9. It is, hence, established beyond a reasonable doubt that the deceased Ajay Kumar had died an unnatural or a homicidal death as a result of being pushed by a third party. As per the dying declaration, the appellant Raman was involved and was the person responsible.

10. The father of the deceased, Chander Bhan (PW-18) had stated that at about 22nd June, 1997 at about 8 P.M. he was sitting in his house at A-93, Sangam Vihar and his son had gone to the roof to fetch a pipe for refilling water in the cooler. As noted earlier, he deposed that upon hearing the screams of Ajay, he rushed towards the roof and had seen the appellant-Raman Kumar with Arun and their father, Babu Lal (acquitted) coming downstairs from the roof on his way. Babu Lal was also prosecuted and charged but was acquitted by the trial court as his name was conspicuously not mentioned as a perpetrator in the dying declaration (Ex.PW-23/A). PW-18 had claimed that he had suffered injuries by a brick blow given to him by Babu Lal (acquitted), but the findings recorded by the trial court hold that this version of Chander Bhan was doubtful and debatable. Acquittal of Babu Lal has not been challenged by the State or otherwise. However, the said acquittal would not result in acquittal of the appellant Raman, who has been specifically named in the dying declaration (Ex.PW-23/A).

11. Learned counsel for the appellant drew our attention to site plan (Ex.PW-14/A) to urge that the dying declaration (Ex.PW-23/A) should be disbelieved and not accepted. He relied upon the Charge as framed which the appellant Raman was required to meet. In the Charge put to the appellant, it was recorded that he (Raman Kumar) along with Arun and Babu Lal (acquitted) in furtherance of common intention had committed murder of Ajay Kumar by pushing him down from the fourth floor of House No.A-93, Sangam Park.

12. We have considered the two contentions but are unable to agree with the submissions made by the appellant. Site plan (Ex.PW-14/A), indicates and shows that Flat No.A-93 and Flat No.A-77 at Sangam Park had a common roof. The staircase for reaching the said roof was in the passage between the two flats. The flats were small and roof was connected. The roof over the two flats was eight to ten feet in length. Further, we do not think any prejudice has been caused and the appellant for conviction had been asked to meet a different case. The assertion in the Charge is that the appellant-Raman Kumar along with Arun Kumar had committed offence under Section 302 read with Section 34, IPC on 22nd June, 1997 at about 8.15 A.M. by throwing Ajay Kumar off the roof.

13. Learned counsel for the appellant submitted that Dr. Hilal Ahmed (PW-4) and the MLC (Ex.PW-4/A) do not mention and refer to presence of chilli powder. Thus, the dying declaration (Ex.PW-23/A) should be disbelieved as it specifically mentions and states that chilli power was thrown in the eyes of Ajay Kumar. We do not accept the said submission. Dr. Hilal Ahmed (PW-4) in his cross-examination did accept that he had examined the eyes of the patient, but clarified that he had not examined the patient very carefully in the casualty. Therefore, he could not state whether there was chilli power in the eyes of the patient, which were infused with blood. On the said aspect, we have clear testimony of Dr. K.L. Sharma (PW-8), who had conducted the post-mortem examination on the body of Ajay Kumar. He has categorically deposed that particles of chilli powder were deposited at the roots of the eye lashes. Chilli powder particles were picked up by cello-tape and were sealed and preserved. Lifting of chilli powder from the spot/place of occurrence has been deposed to and mentioned by police officers Inspector Vipin Kumar (PW-23), ASI Robin Topo (PW-24) and Inspector P.C. Mann (PW-25). The said officers had visited the spot on the same night between 22nd and 23rd June, 1997, after the occurrence.

14. In these circumstances, we are inclined to accept the prosecution version and the finding of the trial court recording involvement of the appellant-Raman Kumar in the occurrence. We have already noted the observations recorded by Dr. Hilal Ahmed (PW-4) in the MLC (Ex.PW-4/A) which was recorded immediately after the occurrence at about 8.30 P.M. on 22nd June, 1997. The dying declaration (Ex.PW23/A) became the subject matter of the FIR No.486/1997 exhibited as Ex.PW-25/E. In addition we also have the PCR form (Ex.PW-10/A) as per which at about 8.38 P.M. on 22nd June, 1997, information was conveyed about a quarrel between two neighbours and that Ajay Kumar had fallen from the roof and had been shifted to hospital.

15. The moot and the principal question raised before us is whether conviction of the appellant Raman Kumar should be sustained under Section 302, IPC or the conviction should be converted to culpable homicide not amounting to murder under Section 304, Part-I or Part-II of the IPC.

16. The dying declaration refers to the quarrels between the deceased Ajay Kumar and the family of Raman Kumar on the use of staircase, etc. Discord for said reason, is deposed to by Chander Bhan (PW-18), father of the deceased Ajay Kumar. No doubt there is evidence to show that chilli power was thrown in the eyes of the deceased Ajay Kumar but this cannot be a conclusive ground or reason to hold that the intention of the appellant Raman Kumar was to commit murder of deceased Ajay Kumar. It is noticeable and it is not the case of the prosecution that any weapon like knife, rod or sharp instrument, etc. was used at the time of occurrence. We have also examined the site plan (Ex.PW-14/A) and find that the height of the parapet on the roof from where Ajay Kumar had fallen was about 40 cm. The parapet clearly was not very high. A person could have toppled even upon a slight push or on becoming unsteady while trying to save oneself from a jab or a punch. We do not know what exactly happened at the roof top at about 8.15 P.M. on the night of 22nd June, 1997. In the dying declaration (Ex.PW-23/A), Ajay Kumar does mention that he was thrown down from the roof top by Raman Kumar, the appellant and his brother Arun Kumar, but this portion of the dying declaration has to be read with some caution and care. As per the dying declaration, Ajay Kumar had stated that Raman Kumar had thrown red chilli power in his eyes all of a sudden and at that time exhorted Arun to throw him down. Both of them used force to push him from the roof top and he fell down. Ajay Kumar could not see, as he had chilli powder in his eyes and that thereafter he became unconscious. The phrase, throwing down can refer and imply being pushed. Ajay Kumar was not lifted or picked up and then thrown down. This apart, we find that the cause of death as opined in the post-mortem report, Exhibit PW-8/A is deformity in the left thigh with swelling and cut by incision along with massive clots, muscle tear and fracture on the lower one-third of femur (thigh bone). The post-mortem report (Ex.PW-8/A) opines that the cause of death was asphyxia due to fat embolism consequent to fractured left thigh bone (shaft of left femur). The other injuries mentioned in the said post-mortem report are as under:

EXTERNAL INJURIES- Chilly powder particles deposited in the roots of the eye lashes (removed by cello tape and preserved) Injuries (1) Abrasion with bruise over outer part of the left eye. Below and upper lid 4x4 cm. (2) Upper lip lacerated over mucus part with fracture dislocation of upper two central incisors and left

lateral incisor and canine. Teeth with gums bleeding from injured part. (3) Linear (sic, Linear) abrasion 9x1 cm over front of Rt. Shoulder and chest, vertical in disposition. (4) Bruise, multiple and scattered over front of chest and upper part of abdomen. xxx (6) Avulsion lacerated wound of Rt. Feet thumb 2x2 cm. (7) small lacerated wound 1x1 cm over lower front of chin.

17. The post-mortem report records that all injuries were ante- mortem in nature and consistent with the hypothesis of falling from a height and injury No.5 was likely to cause death in ordinary course of nature. It is noteworthy that the said injury, it stands opined, was likely to cause death, but has not been stated to be sufficient to cause death in ordinary course. Fat embolism, as medically understood, is a process involving fat tissue or droplet passing into the blood stream and eventually lodging itself into a blood vessel thereby blocking it. Fat embolism is to be found in cases associated with trauma, fracture or surgery of a large bone such as the femur bone of the thigh. This is caused as a result of bone marrow fat escaping into the blood stream. Sometimes it can arise due to conditions such as widespread trauma or diseases that alter lipid metabolism in the body. It can occur suddenly 12 to 36 hours after the injury. The mortality rate in the medical texts is recorded as between 10-20 per cent, with elderly and those with underlying medical conditions or poor health having worse outcomes. In Modis Medical Jurisprudence and Toxicology, 23rd Edition, at p.845 it is observed:

Fractures are not ordinarily dangerous, unless they are compound, when death may occur from loss of blood, if a big vessel is wounded by the split end of a fractured bone, or from fat embolism, septicaemia, gangrene or tetanus. (emphasis supplied)

18. Keeping in view the aforesaid aspects in mind, we feel the present case would be covered under Section 304, Part-I and not under Section 302, IPC. The case would not fall in Part Three of Section 300, IPC as it has not been established by the prosecution that the injury inflicted was sufficient in ordinary course of nature to cause death. Part III of Section 300 IPC is attracted when the accused inflicts the bodily injury intended and the prosecution is able to prove and establish as a matter of pure objective inference that the injury intended and caused was

sufficient in ordinary course of nature to cause death. The factum of causing of injury attributable to the accused is the first requirement but this would not bring the offence within Part III of Section 300, IPC, unless it is established that the injury was sufficient to cause death in ordinary course of nature. The prosecution in the present case has not been able to establish this second requisite to bring the offence within Part III of Section 300, IPC.

19. Part IV of Section 300 IPC would also not be satisfied in the present case. The said part requires the knowledge of the accused that his act is imminently dangerous and of the nature that in all probability would cause death or such bodily injury as is likely to cause death. The act must be committed with the knowledge that it will in all probability cause death. The expression knowledge postulates the existence of positive mental attitude as to the consequence of the conduct. Such attitude on the part of the accused must be of highest degree of probability, proximate to a practical certainty. To fall under fourth part of Section 300 IPC, the accused must have foreseen that he was running to risk of causing death of the victim or such body injury as was likely to cause death in all probability. For applying the fourth part, the word probability has to be distinguished from mere possibility. Further, the word probable is prefixed by the word all to mean that the act should be so imminently dangerous that it must in all probability cause death or bodily injury likely to cause death.

20. It is important to note here that Chander Bhan (PW-18) apparently did not feel the injuries, suffered by deceased Ajay Kumar, were serious as he had left the hospital after the deceased Ajay Kumar was admitted there. The police officers, namely, Vipin Kumar (PW23) and Robin Topo (PW-24) did not find Chander Bhan (PW-18) in the hospital when they had visited and had recorded the dying declaration (Ex.PW-23/A). In the facts of the present case, we do not think the appellant Raman Kumar had the requisite mens rea in the form of knowledge or requirement of the Part III of Section 300, IPC was satisfied which would justify his conviction under Section 302, IPC and, therefore, we convert the conviction of the appellant-Raman Kumar from Section 302, IPC to Section 304, Part-I, IPC.

21. The last question relates to the quantum of sentence. The appellant as per the nominal roll has already undergone incarceration of about six years, including remission. The offence in question was committed in the year 1997 and the appellant was released on suspension of sentence vide order dated 21st January, 2003. It has been stated that the appellant is not involved in any other case and is presently working as a security guard. Keeping in view the aforesaid factors, the sentence of the appellant is converted to the period already undergone but the quantum of fine is enhanced from Rs.10,000/- to Rs.30,000/-. The fine shall be paid within a period of six weeks from today. In default of payment of fine, the appellant-Raman Kumar is sentenced to undergo simple imprisonment for a period of two months. The aforesaid fine upon collection will be paid to the legal heirs of Ajay Kumar. A copy of this judgment will be sent to the trial court. The appeal is accordingly disposed of. SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

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