

State Vs. Riyazuddin and ors.

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Court : Delhi

Decided On : Dec-03-2014

Judge : Mukta Gupta

Appellant : State

Respondent : Riyazuddin and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: November 20, 2014 Judgment Delivered on: December 03, 2014 % + CRL.A. 577/2013 RIYAZUDDIN Represented by: Appellant Mr.Mohit Mathur, Advocate with Mr.Amish Dabas, Mr.Devendra Dedha, Mr.Praman Mathur, Mr.Manoj Pant, Mr.Badar Mehmood, Mr.Pankaj Verma, Ms.Utkarsha Kohli and Ms.Vasudha Datta, Advocates versus STATE NCT OF DELHI Represented by: + Respondent Mr.Varun Goswami, APP with Inspector Lokender Singh, PS Malviya Nagar Ms.Karuna Chhatwal, Advocate with Mr.Shailendra Babbar, Advocate for Board of Homeopathy. CRL.A. 1155/2014 STATE Represented by: Appellant Mr.Varun Goswami, APP with Inspector Lokender Singh, PS Malviya Nagar. versus RIYAZUDDIN & ORS. Represented by: Crl.A.No.577 of 2013 & 1155 of 2014 Respondents Mr.Mohit Mathur, Advocate with Mr.Amish Dabas, Mr.Devinder Dedha, Mr.Praman Mathur and Ms.Vasudha Data, Advocates for R-1 Page 1 of 11 Mr.Chander M.Maini, Advocate with Mr.Satyam Chaturvedi, Advocate for R-2. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Riyazuddin in Crl.Appeal No.577/2013 challenges the judgment dated February 25, 2013 convicting him for the offences punishable under Sections 314/34 IPC and Sections 5 (2) and 5 (3) of the Medical Termination of Pregnancy Act, 1971 (in short MTP Act) and the order dated March 04, 2013 directing him to undergo Rigorous Imprisonment for a period of five years and to pay a fine of `1,05,000/- for offence punishable under Sections 314/34 IPC and Rigorous Imprisonment for a period of three years each for the offences punishable under Sections 5(2) and 5 (3) of the MTP Act. Out of the fine amount if realised `1,00,000/- has been directed to be paid as compensation to the complainant. Simultaneously the State has filed a leave to appeal petition, wherein leave was granted seeking conviction of Riyazuddin for the offence punishable under Sections 304/34 IPC as well and that of Shabana Talat for the offences punishable under Sections 304/314/34 IPC and Sections 5(2) and 5 (3) of the MTP Act in Crl.Appeal No.1153/2014.

2. Learned counsel for Riyazuddin contends that Riyazuddin was not the owner of Ayasha Clinic and was working at the clinic only as a compounder as stated by DW-1 Shabir Ahmed and PW-14 Shri Raj. There is no evidence on record that either Riyazuddin or Shabana Talat conducted surgery of the deceased Sushmita. There is no eye witness to the incident and the circumstantial evidence led is of a very weak character which does not prove beyond reasonable doubt the offences for which Riyazuddin and Shabana Talat were charged with. The conduct of the complainant and his brother is highly unnatural. The documents seized cannot be relied upon in view of the overwriting thereon. Even as per PW-5 Manoj Kumar Karn, Dr.Huma Shamsi was the consultant however, she has already been discharged and the said order of discharge has not been challenged by the State. There are material improvements in the version of the husband of the deceased from the statement recorded in the rukka. The prosecution has neither proved the actus reas nor the mens rea. Further PW-5 Manoj Kumar consented to the surgery being performed. The investigation being tainted Riyazuddin deserves acquittal on all counts.

3. Learned counsel for Shabana Talat contends that no witness has identified Shabana Talat. She was not named in the rukka. The material witnesses have not even stated that Shabana Talat met them on February 04, 2006 and hence there

being no evidence against Shabana Talat the learned Trial Court rightly acquitted her of the charges framed and the judgment on the said count cannot be said to be perverse warranting interference by this Court.

4. Learned APP for the State has taken us to the evidence on record and contends that the name of Shabana Talat could not be mentioned in the FIR as PW-5 Manoj Kumar Karn was not aware of the names of the doctors except Riyazuddin. He has narrated the entire sequence of events at the time when the surgery was to be performed. The complainant was sent for getting money and the deceased was shifted from one hospital to other and she finally died at the Jivan Hospital. Crl.A.No.577 of 2013 & 1155 of 2014 The post-mortem report proves Page 3 of 11 beyond reasonable doubt that the deceased died because of haemorrhagic shock due to perforation of uterus caused by application of irresponsible surgical intervention. The present is not only a case of gross medical negligence but of committing culpable homicide with the knowledge that the act was likely to cause the death of the deceased. Riyazuddin and Shabana Talat both were not having degree as recognised by the Medical Council of India however, they proceeded to conduct the medical termination of pregnancy of Sushmita resulting in her death. Reliance is placed on the decision reported as 213 (2014) DLT259Ravinder Ram Chander Banshi vs. State of NCT of Delhi.

5. Process of law was set into motion on receipt of DD No.26 at PS Sarita Vihar. On reaching J-64/1, Abdul Fazal Enclave, Ayasha Clinic a dead body of a lady was found lying in a room on a bed. No doctor and staff were present there. Manoj Kumar PW-5 and Prem Kant PW-1 were present. Statement of Manoj Kumar was recorded who stated that on February 03, 2006 his wife Sushmita was having stomach ache. To get her checked and treated he brought her to Ayasha Clinic, J-64, Abul Fazal Enclave-1. There he met Riyazuddin who after checking up his wife admitted her. On February 04, 2006 her ultrasound was got done at Shadab Ultrasound Centre, Okhla as his wife was 3 months pregnant and it was necessary to get her operation done otherwise his wife would not have survived. At the clinic where two lady doctors were also present they made him sign on three forms. After taking his wife in the operation theatre doctor asked him to get `1,600/- more whereas `1,800/- had already been paid on February 03, 2006. He went to his

village Jasola to get the money and when he came back at around 8.00 PM after getting the money he neither found his wife nor any doctor at the clinic. He met a boy who told him that their patient had been taken by the doctor to Lines Hospital, New Friends Colony. He went to the Lines Hospital on the bicycle where he found none. The staff of Lines Hospital told that the patient has been referred to Jivan Hospital so he went to Jivan Hospital where also he found none. He came back to Ayasha Clinic where in the meantime his brother Prem Kant Karn had also arrived. There he met Dr.Riyazuddin and both the lady doctors who stated that their patient was alright and has been administered medicine. On insistence to see the patient all the three doctors moved away from there. The two brothers went inside the room where his wife was lying on the bed. When they removed the cloth they saw that she was dead. Thus Prem Kant called the police. Manoj stated that the death of his wife took place due to the negligent treatment by Riyazuddin and his two companion lady doctors whom he could identify on seeing. Thus FIR No.53/2006 under Sections 304/34 IPC was registered at PS Sarita Vihar.

6. The post-mortem of Sushmita was done by Dr.Shalini Girdhar PW-2 who prepared the post-mortem report Ex.PW-2/A and opined the cause of death as Haemorrhagic shock due to perforation of uterus caused by application of irresponsible surgical intervention. No efforts has been made for resustilation of the patient and this is a case of gross medical negligence.

Dr.R.K.Sharma PW-3 who conducted the post-mortem along with Dr.Shalini Girdhar noticed no external injury however, on internal examination of abdomen found pelvic cavity contained about 1500 ml of blood along with products of conception. The products of conception included skull bone, spine, muscles and facial structure which could not be identified. Weight of the products of conception was about 50-60 grams. Uterus was perforated which was present on the left side the area of 7 x 10 am with irregular margin. Weight of the uterus was 400 gram. Height of the uterus on anterior wall was 16 cm. He reiterated the cause of death as sited by PW-2. Both these witnesses were not cross-examined in the witness box and thus their testimony has gone unchallenged.

7. Pursuant to the registration of FIR Riyazuddin, Shabana Talat and Huma Shamsi were arrested. TIP proceedings of Shabana Talat and Huma Shamsi was carried out by PW-12 Devender Kumar the Metropolitan Magistrate however, both of them refused to participate in the TIP on the ground that they had been shown to the witnesses. During the course of investigation the Investigating Officer SI Lokender Singh PW-16 photographed the Ayasha Clinic and Maternity Home and collected the medical register, stock register of medicines, indoor patient record register and daily OPD patient register vide Ex.PW-11/C. He also seized the iron bed, mattress and IV stands from the clinic. He collected documents from Shadab Imaging and Diagnostic Centre vide Ex.PW-8/B. The prescription slip, issued by Riyazuddin for ultrasound of the deceased Sushmita from Shadab Imaging and Diagnostic Centre, was seized vide Ex.PW-8/A. The blood report prepared by Sahara Pathology Laboratory vide Ex.PW-4/A and photocopy of the cash bill from Jivan Hospital pertaining to the deceased Sushmita vide Ex.PW-9/DA. He recorded the statement of relevant witnesses. During the course of investigation and even during the trial neither Riyazuddin nor Shabana Talat have been able to produce any degree showing that they are qualified to conduct medical termination of the pregnancy as per the Medical Council of India Rules nor have they shown any certificate that Ayasha Clinic and Maternity Home was registered under the MTP Act.

8. Though the consistent case of Riyazuddin is that he was not a doctor and had nothing to do with the MTP conducted being a compounder at the clinic however, the documents show otherwise. The documents which were maintained in the ordinary course of business and produced in evidence included Ex.PW-8/A and Ex.PW-8/B the reference slip and the ultrasonography of Sushmita respectively from Shadab Imaging and Diagnostic Centre wherein name of Dr.Riyazuddin has been mentioned. The document Ex.PW-8/A also noticed the discount of `150/-. Ex.PW-4/A is the blood report prepared by Sahara Pathology Lab.

9. Dr.M.P.Sharma from Sahara Pathology, Abul Fazal Enclave, Jamia Nagar, Okhla appeared as PW-6 and deposed that Dr.Riyazuddin had sent the blood sample of Mrs.Sushmita to Sahara Pathology for blood, sugar test fasting. Even the report was taken by Dr.Riyazuddin. In the cross- examination he specifically

denied that the sample was not sent to his laboratory by Dr.Riyazuddin. Similarly PW-8 Dr.Sheadab Mehmood from Shadab Imaging and Diagnostic Centre, Jamia Nagar deposed that on February 04, 2006 Dr.Riyazuddin (AMC) from Ayasha Medical Centre referred one patient Sushmita for ultrasound of lower abdomen and had also requested for discount of `150/- vide his reference slip Ex.PW-8/A. He conducted the ultrasound and noticed a live foetus of 22 weeks. Both these doctors stated that Dr.Shabana Talat also used to refer patients separately from her Tanuni Clinic. Dr.Gunjan Sabharwal PW-9 and Dr.Sanjeev PW-15 from Jivan Hospital deposed that on February 04, 2006 patient Sushmita was brought to the hospital to the Emergency Ward by Dr.Riyazuddin and when the patient was examined her pulse and BP were not recordable and pupils were dilated. The patient was absolutely pale and died because of excessive bleeding. She was found bleeding inter vaginally and she bled so much that the blood coming out of her vagina was of colour of plasma, which generally occurs when almost all the blood has rushed out of the body. Dr.Gunjan Sabharwal deposed that the patient had already expired when she was brought to the hospital. When Dr.Gunjan Sabharwal and Dr.Sanjeev talked to Dr.Riyazuddin regarding his qualification and clinical details he became angry and started shouting that they were not properly treating the patient and he wanted to take the patient to AIIMS. They both identified Dr.Riyazuddin in the Court. Thus the evidence of these four doctors i.e. Dr.M.P.Sharma, Dr.Sheadab Mehmood, Dr.Gunjan Sabharwal and Dr.Sanjeev clinchingly proves that Dr.Riyazuddin prescribed the blood tests and ultrasound and immediately after the incident he took the deceased to Jivan Hospital and when she reached there she had already bled to death.

10. Learned counsel for the appellant Riyazuddin has sought to assail the evidence on the ground that the Admission Summary Record of Sushmita in Ayasha Clinic and Maternity Home noted the name of Dr.Huma Shamsi as the Consultant, which fortified Riyazuddins case that he was not the doctor but was only accompanying her and since Dr.Huma Shamsi has been discharged thus no case is made out against Riyazuddin as well. Merely because Dr.Huma Shamsi has been discharged and there is no challenge to the order of discharge, the same cannot inure any benefit to Riyazuddin. The conviction of Riyazuddin for the offence charged has to be based on the evidence adduced during trial and is

incriminating qua him.

11. Learned counsel for the Riyazuddin has also sought to take mileage from Ex.PW-15/DA the Admission Summary Record of Sushmita where there is overwriting on the date. The letter 4 has been overwritten by 3. A perusal of the treatment chart Ex.PW-5/DA itself would show that the treatment of the patient started from February 03, 2006 and thus the overwriting on the date of admission is only because the letter 4 was noted inadvertently.

12. It is the contention of Riyazuddin that no positive evidence has been led that Riyazuddin performed the operation. Though it is not stated by Manoj as to who performed the operation however, that is not relevant in view of the overwhelming evidence led by the prosecution and the deposition of Manoj Kumar that while taking the patient to the operation theatre Riyazuddin and three lady doctors were present. Each and every fact cannot be proved by the prosecution by direct evidence.

13. As regards Shabana Talat the complainant Manoj Kumar in his rukka stated that when his wife was taken there were two lady doctors. TIP was refused by Shabana Talat and she was later identified by Manoj Kumar. In the Court he stated that Dr.Riyazuddin, his brother Ahmed, Dr.Shabana Talat and the name of the other doctor he did not know fled away from their clinic in Scorpio. He identified Shabana Talat as one of the lady doctors who were present at that time when Sushmita was taken for surgery. Manoj Kumar was sent to fetch `1,600/- more and when he came back none was found in the clinic. However, in the cross-examination Manoj stated that he did not meet Dr.Shabana Talat on February 04, 2006. Thus the participation of Shabana Talat in the commission of an offence has not been proved by the prosecution beyond reasonable doubt.

14. The main contention of learned counsel for the appellant is that to prove an offence under Section 314 both actus reas and intention is required to be proved however, the prosecution has failed to prove the same. The fact that Riyazuddin was not competent to perform MTP is not disputed and the fact that that he took the deceased to the operation theatre and after the surgery went wrong he took her to Jivan Hospital and posed as doctor has also been proved beyond

reasonable doubt. The actus reas can be proved both by direct and circumstantial evidence. In the present case from the conduct of Riyazuddin the actus reas stands proved beyond reasonable doubt. Though Riyazuddin may have no intention to commit the death of the deceased however, the knowledge that as an unqualified person he was performing surgery which was likely to cause death of Sushmita is clearly attributable to Riayzuddin. Hence ingredients of Section 314 IPC are fully satisfied.

15. The Supreme Court in the decision reported as 2008 (14) SCC479Mahadev Prasad Kaushik vs. State of U.P.& Anr. drew a distinction between Section 304 and Section 304A IPC. It held that Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300 IPC. When intention or knowledge is the motivating force of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

16. From the facts of the case the knowledge that the act of appellant Riyazuddin was likely to cause death of Sushmita is clearly attributable hence while upholding the conviction of Riyazuddin for offence punishable under Section 314 IPC and Section 5(2) and 5(3) of the MTP Act we also hold him guilty for offence punishable under Section 304 IPC. However, Dr.Shabana Talat is granted the benefit of doubt.

17. Crl.Appeal No.577/2013 filed by Riyazuddin is dismissed.

18. List Crl.Appeal No.1155/2014 for hearing Riyazuddin on the quantum of sentence for offence punishable under Section 304 IPC on December 10, 2014, when appellant Riyazuddin will be produced in Court from Jail.

19. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER03 2014 vn

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