

Ved Prakash Vs. State

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Court : Delhi

Decided On : Mar-04-2016

Judge : G.S. Sistani & The Honourable Ms. Justice Sangita Dhingra Sehgal

Appeal No. : CRL.A.No. 710 of 2012

Appellant : Ved Prakash

Respondent : State

Judgement :

1. Present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure against the order of conviction and order on sentence dated 09.05.2012 passed by the Additional Sessions Judge in Sessions Case No. 55/08, by virtue of which the appellant has been convicted and sentenced to undergo imprisonment for life and to pay Rs.20,000/- as fine and in default of payment of fine to further undergo rigorous imprisonment for four months for the offence punishable under Section 302 of the Indian Penal Code.

2. In brief, the case of the prosecution is that on 31.05.2008 W/ASI Shakun received information that a lady was lying in unconscious condition at house no. 448, Type-A, Ahata Kidara, Sadar Bazar, Delhi and she communicated this information to SI Rajbir telephoically, while recording DD No. 13A. The above information pertained to Smt. Amarjeet Kaur, who was residing at house No. 448, the government accommodation allotted to her. ASI Rajbir along with Ct. Sunil

reached the spot. Thereafter Inspector Dara Singh and other police officials also reached the spot vide DD No. 14A. Accused was also found present on the spot and he informed the police that he had come to see Amarjeet Kaur and found her lying on the ground and he had made her lie on the sofa and thereafter switched on the fan. Persons from the neighbourhood informed the police that the appellant used to visit the house of Amarjeet Kaur. Amarjeet Kaur had ligature marks on her neck/throat. Inspector Dara Singh conducted the preliminary inquiries and then prepared a rukka, dead body of Amarjeet Kaur was shifted to the mortuary at Subzi Mandi. Statements of witnesses were recorded. On 31.05.2008, the appellant was got medically examined and on completion of the investigation, challan was filed in court. Prima facie case having been made out, charge for an offence under Section 302 of Indian Penal Code was framed against the appellant to which he pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution examined 36 witnesses. Statement of appellant was recorded under Section 313 of the Code of Criminal Procedure wherein the appellant denied all the incriminating circumstances appearing in evidence against him and claimed to be falsely implicated. One witness was examined in defence.

4. Mr. Manish Kumar Bishnoi, learned counsel appearing on behalf of the appellant concedes that he does not challenge the judgment of conviction on merits but only challenges the order on sentence while doing so counsel submits that even if the allegations against the appellant are believed to be true, the case falls within the purview of Section 304 Part II and not Section 302 of the Indian Penal Code. Admittedly, according to the prosecution there were no marks of violence found upon the body of the deceased even there were no abrasions and bruises on the neck of the deceased during strangulation. It was highlighted that the pressure exerted on the neck was not excessive, in as much as the thyroid complex or other structures underneath were not found fractured. It was submitted that the unfortunate saga transpired in a fit of rage during a sudden quarrel that erupted between the two. The appellant was not armed and used his bare hands. He did not take undue advantage or act in a cruel or unusual manner.

5. The counsel for the appellant has argued that the present case is squarely covered under Exception 4 of Section 300 of the Indian Penal Code, which reads as under:

"300. Murder- Exception 1. - xxxx xxxx xxxx xxxx Exception 2. - xxxx xxxx xxxx xxxx Exception 3. - xxxx xxxx xxxx xxxx Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault."

6. Per contra, Ms. Aashaa Tiwari learned APP for the State submits that the evidence produced on record clearly establishes the guilt of the appellant and the trial court has rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code, hence the impugned judgment does not call for any interference.

7. We heard learned counsel for both the parties and considered their rival submissions. The counsel also took us through the record of the trial court and the testimonies of the witnesses.

8. In this case, although the learned counsel for the appellant, on instructions, has not challenged the judgment as far as the conviction of the appellant is concerned on merits, however, we have carefully examined the judgment, the testimonies of various witnesses and the documents placed on record.

9. In this case, the prosecution has relied upon the following circumstances to prove the guilt of the appellant:

1. Presence of Smt.Amarjeet Kaur at her Government accommodation.
2. Presence of accused at the house of Smt.Amarjeet Kaur on 31.05.2008 from 10 am.
3. Accused used to visit the house of Smt.Amarjeet Kaur even earlier.
4. Relations of accused and Smt.Amarjeet Kaur.
5. Condition of Smt.Amarjeet Kaur on 31.05.2008 at 12.15 p.m. as noticed by the prosecution witnesses.
6. Medical Evidence.
7. Electronic Evidence.

8. Recovery of mobile phone from the accused. 9. Recovery of the mobile phone of the deceased. 10. Recovery of motorcycle at the instance of accused. 11. Recovery of hair strands. 12. DNA profile of the accused-comparison with their hair strands recovered from the fist of the deceased. 13. Dupatta used in strangulating Smt. Amarjeet Kaur.

10. Based on the testimony of PW-1, Smt.Sunita; PW-2, HC Ramesh; and PW-6, HC Ramesh, the circumstance no.1 was proved that the deceased Amarjeet Kaur was employed in Delhi Police as a Cook and was residing at Quarter No.446, Police Colony, Ahata Kinara, Sadar Bazar, Delhi. She was present in her house on the fateful day at about 12.15 p.m. Her body was also found in the house. The presence of the appellant was also proved based on the evidence of PW-1, who has testified that the appellant had knocked at her house and informed her that the deceased had become unconscious. PW-2 has also testified that he had seen the appellant entering the Quarter of the deceased. Similar statement was given by PW-6. Based on these testimonies, the presence of the appellant at the house of the deceased stood established.

11. Testimonies of PW-1, PW-2 and PW-6 also establish that the appellant was a frequent visitor at the house of the deceased. This fact was also supported by the testimony of the eight year old son of the deceased, who has testified that the appellant had taken him and his mother to India Gate on his motorcycle, which shows that it is more than a familiarity between the deceased and the appellant.

12. Based on the Police complaint, PW-9, W/ASI Shakun, had recorded DD No.13A, Exhibit PW-9/C. The electronic evidence, in the form of CDR details, proved the presence of the appellant at the spot. SMSs received on the mobile phone were also established. Recovery of hair strands of the appellant from the hands of the deceased and the DNA report, all of which leave no room for doubt that the appellant had strangulated the deceased.

13. Section 304 of the Indian Penal Code reads as under:

304. Punishment for culpable homicide not amounting to murder: Whoever commits culpable homicide not amounting to murder shall be punished with

imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Section 304 consists of two parts, the first dealing with second degree culpable homicide and the second dealing with third degree culpable homicide as has been noted above.

14. In *Sukhbir Singh v. State of Haryana*: (2002) 1 SCR 1152, wherein two fatal blows were inflicted by the appellant therein by a bhala on the upper right portion of chest of the deceased, the Hon'ble Apex Court opined:

19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given, the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner.

15. Under similar circumstances, in *State of Punjab v. Joginder Singh and Another*: 2003 (9) SCALE 604, the Hon ble Supreme Court fastened the respondent-accused guilty for the offence punishable under Section 304 Part II of the Indian Penal Code and awarded a sentence of six years imprisonment. It was observed by the Apex Court that the accused was not armed with any weapon and visited the house of the deceased to recover the money lent to him. When the deceased was not in a position to pay the money, the accused flared up and caught hold of the neck of the deceased. The deceased was frail and slight pressure on his neck resulted in his death. It would be apposite to highlight that a careful perusal of the report in Joginder Singh's case (Supra) reveals that the hyoid bone of the deceased was found fractured and he suffered abrasions on various parts of the body including the neck.

16. In *Sandhya Jadhav v. State of Maharashtra* 2006 Cri LJ 2111, the Hon ble Supreme Court came to the conclusion that the Courts are bound to consider a large number of factors for arriving at an opinion as to whether the fight was sudden or not and/or whether the offender has taken undue advantage of the situation in the following words:

9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case or prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation ..

. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any

general rule as to what shall be deemed, to be sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage."

17. In *Rampal Singh v. State of U.P.* reported in (2012) 8 SCC 289, the Hon ble Supreme Court while altering the conviction from Section 302 of the Indian Penal Code to Section 304 Part-I of the Indian Penal Code observed as follows:

20. In order to hold whether an offence would fall under Section 302 or Section 304 Part I of the Code, the courts have to be extremely cautious in examining whether the same falls under Section 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder.

21. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two Sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of this section includes only those cases in which offence is really 'murder', but mitigated by the presence of circumstances recognized in the exceptions to Section 300 of the Code, the second clause deals only with the cases in which the

accused has no intention of injuring anyone in particular. 25. Classification of an offence into either Part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of pre-meditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view, i.e., by applying the 'principle of exclusion'. This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, 'culpable homicide amounting to murder'. Then secondly, it may proceed to examine if the case fell in any of the exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused.

30. ...It is clear that the Appellant had not committed the crime with any pre-meditation. There was no intention on his part to kill. The entire incident happened within a very short span of time. It is true that there was knowledge on the part of the Appellant that if he used the rifle and shot at the deceased, the possibility of the deceased being killed could not be ruled out. He was a person from the armed forces and was fully aware of consequences of use of fire arms. But this is not necessarily conclusive of the fact that there was intention on the part of the Appellant to kill his brother, the deceased. The intention probably was to merely cause bodily injury. However, the Court cannot overlook the fact that the Appellant had the knowledge that such injury could result in death of the deceased.

18. However, upon anxious consideration of the matter we are persuaded to accept the alternative limb of submission advanced by the learned counsel for the

appellant that the present case would fall within the ambit of Section 304 Part I of the Indian Penal Code.

19. The case of the prosecution is premised on circumstantial evidence and in absence of direct evidence, we are required to reconstruct what may have transpired at the locus in quo (scene of crime), after taking valuable clues afforded from the material available on record that would throw some insight. The attending circumstances in consonance with the natural line of probabilities in as much as it is quite possible for the appellant to commit the alleged offence. We cannot also be oblivious to the fact that such crimes are not executed by seasoned criminals after meticulous planning and pre-meditation, wherein the accused contemplates before-hand how to cover his tracks. Thus, the subsequent conduct of the accused after committing such a crime cannot be tested on the lofty anvils of abstract rationality.

20. PW25 Dr. S. Lal who proved the post mortem report conducted by Dr. Rohit had deposed as under:

The external injuries observed by Dr. Rohit in the postmortem report at point-P to P-1 are Ligature mark 31 cm long, brown parchment type present on front and both side of neck. In the centre the ligature mark is 1 cm wide and is present 7 cm below the chin on right side the ligature mark is 2.8 cm and 5 cm below right angle of jaw. On left side of neck the ligature mark is 0.9 cm wide, and is present 2cm below left angle of jaw bone. The ligature mark is absent on back of neck. The ligature mark is incomplete. As mentioned in this report at point Q to Q-1, on internal examination of neck by fine dissection, it was observed the area underneath the ligature mark is pale with effusion of blood at margins. There is effusion of blood in surrounding neck muscles. There is fracture of greater horn of hyoid bone. There is no fracture of thyroid fracture. As per opinion of Dr. Rohit given at point- R, death in this case is due to asphyxia consequent upon compression of neck by means of ligature. Asphyxia produced is sufficient to cause death in ordinary course of nature. All injuries are anti mortem. The time since death was around one day.

21. PW25 in his cross examination stated as under:

Q. Is it correct that in case of strangulation scratches, abrasions, finger nail marks and bruises on the face, neck and other parts of the body usually appear? Ans. Such types of signs would appear when strangulation is caused manually. In the present case strangulation was caused by means ligature and, therefore, such type of signs would not appear.

22. Perusal of the post mortem report reveals that no marks of violence were found upon the body of the deceased that she might suffer during the process of strangulation. It assumes significance that the thyroid complex or the underlying structures in the neck region such as the cartilages of the larynx and the rings of the trachea were not found fractured. At this juncture, we may profit from the luminous observations expressed by Dr. Jaising P. Modi in his authoritative treatise Modi- A Textbook of Medical Jurisprudence and Toxicology, 24th Edition, Reprint 2012, Lexis Nexis Butterworths, Wadhwa Nagpur . It has been stated by the eminent author that the cartilages of the larynx or the rings of trachea may be fractured when considerable force is used [Pg. 454]. The said fact evinces that excessive pressure was not exerted by the appellant and he may not have harboured the intention to kill the deceased. The appellant did not take undue advantage or act in a cruel or unusual manner. The unfortunate incident seems to have erupted at the spur of the moment and stemmed from extra marital discord. It has emerged in evidence that the appellant was terrified that the deceased may complain to his senior officers which may have other repercussions on his service. There were provocative utterances exchanged between the two. In a fit of rage during the sudden quarrel the appellant grabbed the neck of the deceased that resulted in asphyxiation and snuffed her life.

23. The aforesaid fact when analyzed in conjunction with the attending circumstances enwombing the present incident, strongly dispels the possibility that the appellant harboured an intention to kill the deceased. Keeping this in view, we are of the opinion that the conviction of the appellant should be altered from Section 302 to one under Section 304 Part I of the Indian Penal Code. It is stated by the learned Counsel that the appellant has continuously been in jail for more than 8 years. The fine imposed upon the appellant Ved Prakash and the default sentence awarded to him shall remain unaltered. In view of the submissions made

by learned Counsel for the appellant, we are of the opinion that the ends of justice would be met if we modify the sentence awarded to the appellant as the period already undergone by him. The appeal is allowed to the above extent. The appellant shall be set at liberty forthwith, if not required in any other case.

24. The appeal is partly allowed and orders of conviction and sentence are modified in the above terms.

25. Trial Court Record be returned.

26. Copy of this judgment be sent to the Superintendent- Central Jail, Tihar for updating the jail record.

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