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Rambir vs.state

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Court : Delhi

Decided On : Oct-11-2017

Appellant : Rambir

Respondent : State

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

23. d Septemebr, 2017 Date of Decision:

11. h October, 2017 + CRL.A. 1316/2012 RAMBIR ..... Appellant Through Ms. Inderjeet Sidhu, Advocate STATE with appellant in custody. versus ..... Respondent Through Ms. Kusum Dhalla, APP for the State with Inspector Sanjeev Sharma & SI Ravinder Chandra PS Jafrabad. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI HON'BLE MS. JUSTICE REKHA PALLI JUDGMENT REKHA PALLI, J1 The Appellant-Rambir has impugned the judgment dated 19.07.2012 and the order on sentence dated 23.07.2012 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, whereby he has been convicted under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs. 1000/- and in default of payment of fine, to further undergo imprisonment for one year.

2. According to the prosecution case, on the intervening night of 31.08.2010 and 01.09.2010, the Appellant strangulated his wife- Sua and intentionally caused her

death on the roof top of premises No.C-834, Gali No.30/3, Jafrabad, Delhi. A DD No.7A was recorded on a PCR call in PS Jafrabad, Delhi CRL.A.1316/2012 Page 1 of 13 whereupon the Investigating Officer reached the spot and found the body of a woman lying on the rooftop of the aforesaid premises. The body was identified as that of Sua-wife of Rambir by Sh. Kishan-PW-17 who was found on the spot. The Investigating Officer-SI Dharmender Singh-PW-15 registered FIR No.205/2010 under Sections 302 and 34 of IPC on 01.09.2010. Though the Appellant was found missing from the crime scene, he was, subsequently, arrested on the same day itself. On being interrogated, he confessed to his guilt and pursuant to his confession he led the police to the crime scene and got recovered an iron rod Saria which was seized from the spot. The body of the deceased was sent for postmortem and the postmortem report opined the cause of death to be asphyxia as a result of ante mortem compression of neck produced by a blunt hard object. The FSL report opined that the compression mark appearing on the neck of the deceased was possibly by an iron rod. After completion of the investigation, the Appellant was sent to face trial, as he pleaded not guilty to the charge.

3. In support of its case, the prosecution examined 18 witnesses while the Appellant did not produce any defence witness. The primary witness being PW-7, the son of the Appellant and the deceased, stated that he had seen the Appellant strangulate his mother-the deceased with the 'Saria' after she had taken out some money from the Appellant's wallet. PW-15-SI Dharmendra Pratap was the first to arrive at the scene of the crime and testified as to the presence of the body of the CRL.A.1316/2012 Page 2 of 13 deceased on the terrace along with, amongst other things, a 'Saria', an empty liquor bottle and a plastic glass. PW-9 Fayaz, who was working in the workshop in the said premises, testified to have witnessed the Appellant leave the premises in the morning at 6-6:30 a.m. on 01.09.2010 with his son, PW-7. PW- 17 Kishan, who was also working in the said premises and PW-18 Shahid, who was the owner of the workshop, also confirmed the presence of the Appellant, deceased and their minor son at the premises on the night of the incident. PW-18 further stated he had allowed the Appellant to work in his workshop on 31.08.2010 and permitted him to stay on the roof with his wife and son for some time till necessary arrangements were made by him for his stay.

4. In his statement under Section 313 Cr.P.C, the Appellant denied the entire incident. He stated that he had never been to the factory or to the rooftop of the factory. He also denied having spent the night on the rooftop of the factory on the date of the incident. He further pleaded that on the date of the incident, he was residing in a room situated in Gali No.1, Seelampur, Shastri Mohalla. According to him, on 31.08.2010, when he returned to his room in Seelampur, he did not find his wife there and upon enquiry learnt that she had gone with one Sh. Fayaz. Further, when he was questioned, about his son Anurag-PW-7 deposing against him, his plea was that Anurag had been tutored to depose against him by his brother-in law Vijay. CRL.A.1316/2012 Page 3 of 13 5. After considering the testimony of the prosecution witnesses and other evidence on record, the learned Trial Court i.e. the learned Additional Sessions Judge, held the Appellant guilty under Section 302 of IPC for the murder of his wife vide order dated 19.07.2012. The learned Trial Court found that the testimony of the PW-7-Anurag-son of the deceased and the Appellant, was creditworthy and acceptable as it was in consonance with the statements of the other prosecution witnesses, which was further corroborated by the circumstance that on the night of 31.08.2010, the Appellant had come to the workshop premises along with his wife and their son (PW-7) and the next morning his wife was found dead on the roof of the said premises. The learned Trial Court further held that the explanation given by the Appellant in his statement under Section 313 of Cr PC was found to be unacceptable as he had failed to explain any circumstance as to why and how his wife was murdered.

6. The Appellant, who is undergoing sentence, is being represented by Ms. Inderjeet Sindhu,legal aid counsel appointed by Delhi High Court Legal Services Committee.

7. The Appellant is challenging his conviction mainly on the following grounds: - i) The Trial Court has erred in ignoring the fact that the presence of Anurag: the child witness (PW-7) was highly doubtful on the scene of crime and his testimony could not be relied upon as the witness PW-7 was a tutored witness. ii) PW-1 (Constable Neeraj Kumar) who was posted as Photographer in the Crime Team stated in his testimony CRL.A.1316/2012 Page 4 of 13 that, No eye witness came forward

before the IO claiming himself to have seen any event in his presence, whereas PW-7 has been cited as a witness of a crime. iii) None of the witnesses had deposed about the presence of PW-7 at the scene of the crime whereas the witness PW-7 had deposed that he was also sleeping on the roof. iv) The Trial Court failed to consider the fact that the body of the deceased was preserved for 72 hours before it was subjected to postmortem, from which it was apparent that the police had no clue about the accused. In these circumstances Anurag was introduced as a tutored witness. Neither any inquiry or investigation was carried out as to where the child had been till then and from where he was produced and by whom, which clearly suggested that the witness had been deliberately introduced. v) The Trial Court erred in presuming the fact relating to the presence of the Appellant at the scene of occurrence for the entire period of inquiry whereas it had come in evidence that he had been arrested through a secret informer which clearly shows about false implication of the Appellant. vi) The weapon of the offence saria which was allegedly got recovered by the Appellant pursuant to his disclosure, was a piece of rod bearing twist marks but the post mortem did not suggest whether the strangulation mark appearing on the neck of the deceased had those twist marks of the saria. The Learned Counsel for the Appellant has also 8. contended that the place of occurrence was not the place of residence of the deceased and was in fact an under construction building wherein workshop exists. She submits that a number of laborers were residing and working there and thus there was free access to the rooftop for everyone. According to her, the learned Trial Court had wrongly connected the Appellant with the murder by relying on the statement of PW-7, even though there was no clear evidence as to when, under what CRL.A.1316/2012 Page 5 of 13 circumstances and what stage, the statement of PW-7 was recorded.

9. The Counsel further submitted that the learned Trial Court failed to notice the fact that there had been vast improvements in the court deposition of PW-9 relating to material aspects. She submits that the fact that the Appellant left the premises with his son around 6-6:30 am in the morning was not proved conclusively beyond reasonable doubt. The statements of PW-9, PW-17 as well as the PCR form contradicts the case of the prosecution relating to arrest and presence of the Appellant on the spot. She further submits that the place of

occurrence was under construction and the Saria was already existing on the spot which was in the knowledge of the police, therefore they could have easily planted the same at the place of the incident to falsely implicate the Appellant by alleging that the same was used as a weapon of offence and was recovered from the spot.

10. The Counsel further contended that the prosecution failed to establish any motive for the Appellant to kill his wife and on the contrary, there was evidence available on record to show that there was no quarrel between the Appellant and the deceased, as they were in a good mood and were taking meals along with their child in the evening, as stated by PW-17 Kishan and PW-18 Shahid in their statements.

11. The appeal being jail appeal and the Appellant being represented by the legal aid counsel, who argued in the presence CRL.A.1316/2012 Page 6 of 13 of the Appellant, was also given an opportunity to make submissions if he so desired. The Appellant initially submitted before this Court that he had been falsely implicated and he was unable to state as to how his wife was murdered. He later, however, subsequently submitted that the incident had occurred in a fit of anger and he did not intend to kill his wife.

12. In these circumstances, the learned counsel for the Appellant, has thus contended that, no case under Section 302 IPC is made out and at the most, the prosecution allegations make out a case under Section 304 IPC. According to her, the Appellant never intended to cause the death of the deceased and at the most, his intention was to cause grievous injuries to her, which he did not know would cause her death.

13. She further contended that the present case falls under Exception 4 of Section 300 of IPC as the Appellant hit his wife with the Saria at the spur of the moment on account of the sudden fight between them. According to her, the Appellant was under the influence of liquor when he had a quarrel with the deceased who asked him for money, which he refused to give and it is only when the deceased, forcibly took out the money from his pocket, the Appellant acting in a fit of anger hit her. She submits that the Appellant picked up the Saria lying nearby and hit her, without any intention to kill her. She submits that the Appellant did not pre-

meditate to kill the deceased nor he took any undue advantage or acted in a cruel manner, as he just picked up the Saria lying nearby in the heat of passion CRL.A.1316/2012 Page 7 of 13 upon a sudden quarrel between them. She has placed reliance on the decision of the Supreme Court in case of Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC770in support of her contention that no case under Section 302 IPC is made out.

14. Having considered the entire evidence, we are of the view that the prosecution case stands proved beyond any reasonable doubt from the statement of the PW-7 itself. PW-7 is the son of Appellant and the deceased and was an eye-witness to the whole incident of murder. He claimed that he saw his father- Appellant killing the deceased-his mother by strangulating her with the Saria in the night at the roof of the said premises. The statement of PW-7 has been duly corroborated by statements of PW-9-Fayaz, who had last seen the Appellant leaving the place of incident in morning around 6-6:30 am with his son PW-7 and of PW-17-Kishan and PW-18 Shahid, who confirmed the presence of the Appellant, deceased and their son at the roof of the premises on the night of the incident.

15. We also find that, the statements of all the four material prosecution witnesses i.e. PW7 PW9 PW17and PW18inspire confidence and they have all stood the test of cross- examination. In fact, in our considered view, the only conclusion which emerges from the evidence on record is that, the Appellant had strangulated his wife with a Saria, as a result of which she died. CRL.A.1316/2012 Page 8 of 13 16. Accordingly, this Court has no hesitation in holding that the Appellant is guilty of causing the death of his wife and, therefore, the only other issue that arises for our consideration is whether on the facts of the case an offence under Section 302 or Section 304 Part II IPC is made out. We may also note that, this was in fact the only issue, which was pressed by the learned counsel for the Appellant.

17. To decide this issue, we may first notice the opinion of the doctor, who examined the deceased and conducted the post-mortem examination. Dr Shweta Garg PW-13, found the following two injuries and opined that the cause of death was asphyxia as a result of ante-mortem compression of neck produced by blunt hard object, the two injuries are as follows:-

"(i) Reddish abrasion measuring 10.5cm X05cm present on left side of back obliquely placed 7cm from midline and 6.5cm above waist line. (ii) Reddish brown dry hard abrasion present on anterior aspect of neck over thyroid cartilage as mentioned by me in figure X. 18. Thus, what emerges from the post-mortem report, is that the death of deceased Sua was a result of compression of the neck by a hard blunt object. The Appellant had evidently pressed the neck so hard by using a Saria, that it led to the death of his wife Sua. He claims that he had no intention to kill his wife and there was no pre-meditation of any kind. According to him, it was a case of a normal quarrel between husband and wife, which turned ugly, upon the wife trying to CRL.A.1316/2012 Page 9 of 13 forcibly take out money from his pocket. The submission of the Appellant is that, in this heat of anger, the Appellant who was under the influence of liquor, lost his cool and picked up the Saria to hit his wife. He claims that he neither intended to cause her death nor he realized during the sudden fight that his act of pressing her neck with the Saria would cause her death.

19. The law is well settled that intentional causing of a bodily injury which is likely or sufficient in ordinary course of nature, to cause death is covered by Section 300 IPC. In these circumstances, there can be no doubt about the fact that, the Appellants action in causing an injury, on the most vital part of the body of the deceased with a large iron rod (Saria) would be covered within the ambit of Section 300 IPC. The question which, however, still remains is, whether in these circumstances, Exception 4 to Section 300 IPC on which reliance has been placed by learned counsel for the Appellant, would apply to the facts of the present case. Can it be said that the ingredients of Exception 4 to Section 300 IPC are satisfied and consequently the Appellants act of culpable homicide cannot be treated as murder?. Before we decide this issue, it would be appropriate to refer to Exception 4 to Section 300 IPC which reads as under:-

"Exception 4:-

"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a CRL.A.1316/2012 Page 10 of 13 sudden quarrel and without the offenders having taken undue advantage or acted

in a cruel or unusual manner. A plain reading of the same shows, that the following are the four mandatory ingredients of Exception 4:-

"(i)There must be a sudden fight. (ii) There was no premeditation. (iii) The act was committed in a heat of passion. (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner. It is thus only an unpremeditated assault committed in the heat of passion upon a sudden quarrel which would come within Exception 4 and it is mandatory that all the aforesaid four ingredients must be present.

20. When we apply the above test to the evidence on record in the present case, we find that atleast two of the ingredients are missing from the nature of assault and the weapon used for assault, even if we agree that there was a sudden fight without any pre-mediation, we are unable to find the existence of the other two ingredients. The act of picking up a Saria and compressing forcefully the neck of his wife by the Appellant, can by no stretch of imagination be said to be an act committed in a heat of passion. Moreover, the manner in which the Appellant compressed his wifes neck also depicts an act of extreme cruelty. CRL.A.1316/2012 Page 11 of 13 21. In our view, the act of the Appellant does not at all satisfy the ingredients of Exception 4 to Section 300 IPC. It is not a case of pressing the neck manually in a fit of anger. The Appellant had acted in a most cruel manner and he had not merely hit his wife with a Saria but had intentionally used it to press her neck with so much force that it resulted in her death.

22. We have considered the decision of the Supreme Court in the case of Ankush Shivaji Gaikwad (supra) relied upon by the Appellant, but in our considered view, the same is not of any avail to the Appellant in view of the materially different facts of the present case. In the case of Ankush Shivaji Gaikwad (supra), the incident involved hitting spontaneously with an iron pipe whereas the present case involves a deliberate act of using the Saria to forcefully compress the neck of his wife. Thus even though there can be no quarrel with the legal propositions laid down by the Supreme Court in Ankush Shivaji Gaikwad (supra), upon a careful examination of the facts of the aforesaid case and of the case in hand, we are of the view that Ankush Shivaji Gaikwad (supra) does not advance the Appellants case.

23. In view of above discussion, we are convinced that all the facts and circumstances established by the prosecution are consistent with all guilt of the Appellant only for the offence punishable under Section 302 IPC. We are of the opinion that findings of the learned Trial Court holding the Appellant guilty for committing murder of his wife are sound and do not call for any interference. CRL.A.1316/2012 Page 12 of 13 24. Resultantly, the conviction and sentence awarded to the Appellant for committing the offence punishable under Section 302 IPC is confirmed.

25. Appeal is dismissed.

26. LCR be sent back alogwith a copy of this order. The Appellant be also informed through the concerned Jail Superintendent. REKHA PALLI, J PRATIBHA RANI, J OCTOBER11, 2017 saurabh CRL.A.1316/2012 Page 13 of 13

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