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Raju Vs. State

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Court : Delhi

Decided On : Dec-05-2014

Judge : Mukta Gupta

Appellant : Raju

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: December 02, 2014 Judgment Delivered on: December 05, 2014 % + CRL.A. 1048/2014 RAJU Represented by: ..... Appellant Mr.K.Singhal, Adv. with appellant in person. Versus STATE Represented by: .... Respondent Mr.Varun Goswami, APP with Insp.Rajesh Kumar, PS Swaroop Nagar. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Raju was charged for committing the murder of Smt.Shashi Rai and firing upon Ajay thus causing bullet injuries on his person in furtherance of common intention with one A a juvenile. Vide impugned judgment dated July 16, 2014 the learned Trial Court has convicted Raju for the offence punishable under Section 302/34 IPC, 307/34 IPC and 25 Arms Act and has sentenced him to undergo imprisonment for life and to pay fine in sum of `50,000/- for the offence punishable under Section 302/34 IPC; to undergo rigorous imprisonment for 7 years and fine in sum of `50,000/- for the offence punishable under Section 307/34 IPC and to

undergo simple imprisonment for a period of 1 year for the offence punishable under Section 25 Arms Act vide the order on sentence dated July 22, 2014.

2. Learned counsel for Raju assailing the impugned judgment contends that the version of Ajay Rai PW-2 casts a doubt on the presence of Preeti PW-1. Further version of Ajay Rai is not corroborated by any other evidence. The recovery of fire arm is not connected to the offence committed. Even as per the version of the prosecution when the juvenile tried to run away the deceased tried to catch him and the firing took place. There is no evidence on record to suggest that Raju shared common intention with A hence he be acquitted of the charge under Section 302/34 IPC. The incident did not take place in a pre-meditated manner and was on the spur of moment pursuant to an altercation with the deceased. It might be possible that it is Ajay Rai who came up with a loaded country made pistol and during the scuffle between Ajay and Raju firing took place in which Ajay Rai sustained injuries. There is no allegation that Raju exhorted A who fired the deceased.

3. FIR No.7/2008 was registered at PS Swaroop Nagar under Section 302/307/34 IPC and 25/27 Arms Act on the statement of Preeti PW-1 who stated about harassment caused to her by Raju. She told this fact to her father who made Raju understand that he should not trouble Preeti, however Raju continued expressing his love for Preeti and wanted to marry her. Preeti and her parents had refused the marriage alliance between the two. Despite the same he kept troubling her while she used to go out of the house. On January 19, 2008 at about 11.15 AM while she was coming from tuition, Raju called Preeti but she did not pay heed to him. Thereafter Raju stopped her on the way and threatened her that they would have to face the consequences of their act. She came home and informed her parents. Around 1.00 Oclock she along with her mother went out of the house and in the corner of the gali they found Raju and A sitting on the tea stall. When her mother tried to make Raju understand, Raju started abusing her mother and Rajus friend also joined him. Hearing the noise of quarrel Preetis brother Ajay came out. Raju fired a shot which hit her brother and he fell down. When her mother tried to intervene A fired a shot on her chest and thereafter both of them ran away. Preeti appearing as PW-1 deposed in sync with her statement on the basis of which FIR

was registered.

4. Ajay Rai PW-2 the injured witness deposed that his sister was studying in 10th standard from correspondence and used to go for tuitions. Around 3-4 months prior to the incident Preeti informed her parents that Raju used to restrain and tease her and also offered her to marry by threatening her. Preeti and his family members were not interested. On January 19, 2008 at about 12.30 noon Preeti came back home from tuition and told that she was harassed by Raju on the way who was again threatening her to marry him otherwise she would have to face consequences. On this her mother along with Preeti went outside. At around 1.00 PM he heard the noise coming from outside gali, so he came out. He saw hot exchange of words between his mother on the one side and Raju and A on the other side. When he reached near the place, Raju took out a pistol from his right pocket of the pant and fired a shot at his belly due to which he sustained injuries. As soon as his mother made efforts to catch Raju, A fired a shot at the chest of his mother who also sustained bullet injury and fell down.

5. The presence of Ajay Rai on the spot cannot be disputed because of the injuries suffered by him. Dr.Gopal Krishna PW-19 prepared the MLC of Ajay vide Ex.PW-19/A and noticed swelling and tenderness present in left hand, lacerated wound in left hand and wound on the left lumber region and right side back. Dr.S.K.Sahoo PW-24 proved the report of CECT of the abdomen of Ajay Rai and the NCCT of lumber spine vide Ex.PW-24/A and PW-24/B respectively. As per the report the CT scan revealed pellets in left side of abdomen extending across the L2 vertebra into thecal sac, left lower renal pole laceration with left perinephric, anterior pararenal, psoas hematoma, hemopneumo-peritoneum with pellets in close contact to bowel wall suggestive of bowel injury & shrunken atrophic right kidney. Even the NCCT lumber spine revealed multiple high attenuation foci suggestive of small pellets in left postero-lateral part of L2 vertebral body and adjoining spinal canal with fracture postero-lateral part of L2 vertebra. Multiple high attenuation foci are seen embedded in left psoas muscle at L2 and L3 level. The involved psoas muscle is edematous. Dr.K.C.Sood PW-16 appeared in the witness box and exhibited the discharge summary of Ajay Rai vide Ex.PW-16/A. He stated that patient was treated for abdominal injury in which descending colon was lacerated

and colostomy was done by hartmanns procedure. He also noticed injury spine with fractured L2 vertebra and pellets in left postero-lateral part of L2 vertebral body and adjoining spinal canal with paraplegia. There was fracture on the second meta-carpel as well.

6. Post-mortem of Shashi Rai was conducted by PW-20 Dr.K.Goyal who authored her report Ex.PW-20/A and noticed the following injuries.

1. Lacerated penetrating wound almost circular 1 x 1 cm size over left side chest about 2 cm left to the mid line and 9.5 cm right to the left nipple and about 6.5 cm below supra sterna notch. Margins were inverted having fine abraded collar. Fine tattooing seen around the wound with bruising in total area 4 x 3.5 cm, but no blackening was seen (entry wound of fire arm). Wound height from left heeled was 126 cm.

2. Split lacerated perforated wound 1.25 x 0.8 cm over left side back of chest about 13.5 cm left to mid line back of chest, 12 cms below inferior border of left scapula. Margins were everted. No blackening, tattooing seen (exit wound of fire arm). Wound height from the heel was 113 cms. On exploration, injury No.1 pierced left fourth intercostal space and fractured the left 5th costal cartilage, through and through the heart completely shattering it, tearing left dome of diaphragm, lacerated the spleen extensively and exit through left 11th intercostals space, also fracturing left 12th rib and passed through exit wound i.e. injury No.2. Lower lobe of left lung was also lacerated. Chest cavity and peritoneal cavity were full of blood and clots. Right lung, liver, kidneys, pancreas were intact and pale. Direction and plain of injury track was from front to back and above downwards and slightly right to left.

7. Dr.Goyal opined the cause of death as haemorrhagic shock consequent upon extensive injuries to heart, lung and spleen as a result of fire arm injury. Fire arm was rifled and was within blast effect range. He opined all injuries to be ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

8. The ground on which testimony of PW-1 is assailed is that PW-2 in his cross-examination stated that when he reached the spot after hearing the noise his sister

was not present with his mother. The place where the incident took place was a gali and as per the site plan Ex.PW-1/M Preeti though at a distance from her mother was in a sighting distance and could witness everything. This is natural as the mother would have kept back Preeti at a distance. This statement of Ajay Rai cannot be read in isolation and has to be read in consonance with the entire evidence on record.

9. The contention of learned counsel that while A was trying to run away deceased tried to catch him and thus he fired at her does not find mention either in the suggestions of the defence or the statement under Section 313 Cr.P.C. The explanation of Raju in his statement under Section 313 Cr.P.C. is of false implication and that they never fired at Shashi Rai and Ajay Rai and no such incident as alleged ever took place. It is well settled that the defence though is not required to prove beyond reasonable doubt but has to probabilise its version either by way of cross-examination or by leading defence evidence. In the absence of any suggestions by the defence to the prosecution witnesses, the plea of self-defence which is now being sought to be raised cannot be considered.

10. No doubt, the fire arm was recovered from the appellant and as per the FSL report was found to be in working condition, however since the pellets got embedded in the body of the deceased and the injured, the same could not be tested with the fire arm recovered. Thus even though the recovery of fire arm is not connected with the offence committed, the same would not belie the version of the prosecution which has been proved beyond reasonable doubt by the witnesses including the injured witness. The Supreme Court in the decision reported as (2010) 10 SCC259Abdul Sayeed Vs. State of Madhya Pradesh held that the deposition of injured witness cannot be lightly brushed aside and the same alone can form the basis of conviction unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein as his presence at the spot cannot be doubted and his deposition must be given due weightage.

11. The main plank of argument of learned counsel for the appellant is that Raju shared no common intention with A who gave the fatal gunshot injury to Shashi

Rai and thus he cannot be convicted for the offence punishable under Section 302/34 IPC. From the case of prosecution it stands proved that both Raju and A were armed with firearms and when Shashi Rai made Raju understand there was a heated exchange of words between Shashi Rai on the one hand and Raju and A on the other hand. When Ajay Rai intervened Raju gave a gunshot and when Shashi Rai tried to prevent Raju, A gave the second gunshot. The very fact that both were armed with deadly weapons and fired in consonance with each other is sufficient to infer a common intention between Raju and A. In the decision reported as AIR 2003 SC2213 Balram Singh & Anr. Vs. State of Punjab dealing with the issue of common intention under Section 34 IPC it was held that the common intention can be formed on the spur of the moment. On the facts of the said case wherein the prosecution had proved that at the time of incident when the deceased and PW-1 therein were walking towards their house the accused persons out of which A-1 and the appellants therein were armed with deadly weapons with the help of acquitted accused persons waylaid the deceased and while A-1 attacked the deceased PW-1 was prevented by the appellants therein from preventing the said attack on her father and when PW-2 came to the spot and tried to help his father he was also assaulted with a view to thwart his efforts to protect his father. The Supreme Court thus held that the circumstances thus showed that all of them shared common intention of causing the death of deceased though the appellants therein had not assaulted the deceased and the same is clear from the manner in which they were armed and the manner in which they prevented PW-2 and 3 from protecting their father from causing them grievous injuries. In the case in hand when Shashi Rai tried to prevent Raju from committing the offence A thwarted her by giving the gunshot. Further Raju and A were armed with deadly weapons, the place where they had assembled and had been earlier teasing Preeti and the manner of attack clearly proves beyond reasonable doubt the common intention shared by Raju and A.

12. The other contention of learned counsel for the appellant is that the incident happened on the spur of the moment and during the heated argument that ensued firing took place. Thus the offence if at all falls in the fourth exception to Section 300 IPC and thus punishable under Section 304 IPC. In the present case Raju was stalking and threatening Preeti since long and on the said day also while she

was coming home. When Preetis mother went out to reason with the appellant, he started abusing her. The deceased and PW-2 were not armed with any weapon. Moreover Raju and A were armed with deadly weapon and they not only abused the deceased but used deadly weapons thus acting in a cruel and unusual manner. Thus the appellant cannot be granted the benefit of the fourth exception to Section 300 IPC that the murder was committed with premeditation in a sudden quarrel.

13. In view of the aforesaid discussion we find no infirmity in the impugned judgment of conviction and order on sentence. Appeal is dismissed.

14. T.C.R. be returned.

15. 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 DECEMBER05 2014 ga

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