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Paras Mani Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-02-1998

Reported in : 1998CriLJ1818

Judge : G.L. Gupta and; S.C. Mital, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 302, 304 and 323

Appeal No. : D.B. Crl. A. No. 192/83

Appellant : Paras Mani

Respondent : State of Rajasthan

Advocate for Def. : D.R. Bohra, Public Prosecutor

Advocate for Pet/Ap. : D.S. Shishodia, Sr. Adv. assisted by; Manish Shishodia, Adv.

Judgement :

1. The above two appeals are directed against the judgment of conviction and sentence dated 22-4-83 passed by the learned Additional Sessions Judge, Rajsamand whereby appellant Paras Mani, who is eunuch has been convicted under Section 302, I.P.C, and sentenced to undergo life imprisonment and a fine of Rs. 100/- co-accused Badrilal, Ghanshyam and Bhanwarlal were convicted under Section 323, I.P.C. and sentenced to pay a fine of Rs. 100/- or in default to

undergo one month simple imprisonment, but they have not preferred any appeal against their aforesaid conviction. Both the appeals are being disposed of by this judgment.

2. The occurrence took place on 23rd May, 1982 at about 6.00 p.m. in village fair in Sardargarh where deceased Mangi Lal Lakhara had installed a bangle shop. Appellant Paras Mani along with three other companions came in the fair and while collecting some money from the shopkeepers, reached the shop of deceased Mangi Lal Lakhara and demanded one rupee. Mangilal Lakhara offered 25 paisa only but the appellant insisted to take one rupee. Deceased Mangi Lal Lakhara then offered 50 paisa but appellant Paras Mani threw away the coin and insisted that he should be given one rupees. Mangi Lal Lakhara asked the appellant to take 50 paisa and remaining 50 paisa on his return from the fair. Even then appellant Paras Mani insisted for giving one rupee and picked up a bundle of bangles which was taken back by the wife of the deceased. Thereafter the appellant dragged deceased Mangi Lal Lakhara from his shop and started beating him. Mangilal fell down and Paras Mani set on his chest and throttled him by both the hands. When Pyaribai (wife) and Kanhaiyalal (son) of the deceased tried to intervene the appellant gave beating to Pyaribai by fists. At this stage two constables Bhanwarlal and Bhagwat Lal came at the place of occurrence and they apprehended appellant Paras Mani on the spot. Mangi Lal Lakhara was taken to a nearby place where doctor declared him dead. The First Information Report was lodged by Jagannath (P. W. 3) at Police Station, Amet where a case under Section 302 I.P.C. was registered and Babulal, S.H.O. initiated investigation. On completion of usual investigation, charge-sheet was submitted against the appellant Paras Mani, Badrilal, Ghanshyam and Bhanwarlal. The case was committed for, trial to the Court of learned Additional Sessions Judge, Rajsamand. A charge was framed against appellant Paras. Mani under Section 302, I.P.C. and Badrilal, Ghanshyam and Bhanwarlal were charged under Section 302/34, I.P.C. who claimed the trial, The learned Sessions Judge, Rajsamand convicted and sentenced the appellant Paras Mani as stated above.

3. The prosecution produced eye-witnesses Jagannath. (P.W. 3), Mohanlal (P.W. 4), Kanhaiyalal (P. W. 6) son of the deceased. Pyaribai (P.W. 7) wife of the

deceased. Manaklal (P.W. 11),Gaharilal(P.W. 12)and Sohanlal(P.W. 14). Bhanwar Lal (P.W. 8) and Bhagwat Lal (P.W. 9) are the Constables, who reached the scene of the occurrence. Dr. Subhash Chand Ranka (P.W. 10) held autopsy of deceased Mangilal Lakhara. Babulal, S.H.O. (P.W. 15) and Taga Ram (P.W. 13) S.H.O. took part in the investigation. Heeralal (P.W. 5) is the motbir witness to the seizure memo Ex. P6 relating to the shirt of the appellant Paras Mani Sheshmal (P.W. 1), Ratanlal (P.W. 2) are motbir witnesses.

4. The learned Additional Sessions Judge found the testimony of the above eye-witnesses reliable. Dr. Ranka opined that the cause of the death of Mangilal Lakhara was asphyxia due to throttling. It was found proved that the appellant Paras Mani was responsible for the death of deceased Mangilal by throttling. The learned Additional Sessions Judge rejected the defence plea that deceased Mangi Lal Lakhara died of attack of asthma and not by throttling.

5. Learned Counsel for the appellant submitted that it is not proved beyond reasonable doubt that the deceased died of throttling. He pointed out certain contradictions in the testimony of eyewitnesses to show that their statements are not trustworthy. It was further argued that the oral testimony does not find corroboration from medical evidence because no injury was found on other part of the body and also no marks of thumb or fingers were found on the neck of the deceased. According to him the symptoms, disclosed in the post-mortem report as to the cause of death by throttling, would be visible even when the death takes place by asthma attack. He pointed out that the deceased was suffering from asthma and hence mere presence of bruises or abrasions on the neck which do not lead to the conclusion that the deceased was subjected to throttling. Learned Counsel for the appellant further contended that even if the prosecution story is accepted, the offence under Section 302, I.P.C. is not proved and only an offence under Section 323, I.P.C. is made out against the appellant. On the other hand the learned Public Prosecutor has supported the impugned judgment.

6. We have given our anxious consideration to the rival submissions and perused the evidence .On record, Kanhaiyalal (P.W. 6) son of the deceased and Pyaribai (P.W. 7) wife of the deceased, who were present on the shop have deposed that

appellant Paras Mani and his companions came there begging money. Mangilal gave 25 Paisa but the appellant Paras Mani did not accept and demanded one rupee. Mangilal then offered 50 Paisa but appellant Paras Mani threw away the coin and insisted that he would take not less than one rupee. He picked up one bundle of bangles which was snatched from him by Pyari Bai. The appellant dragged the deceased Mangilal from the shop and started beating him by fists and kicks. Mangilal fell down and the appellant sat down on his chest and pressed his throat by both the hands. Kanhaiyalal has stated that when he tried to rescue his father, the appellant caught his neck also. Mohanlal, Sohanlal, Gaharilal and Jagannath also came there to save the deceased Mangilal. All the other eye-witnesses Jagarnath (P.W. 3), Mohanlal (P.W. 4), Manaklal (P.W. 11), Gaharilal (P.W. 12) and Sohanlal (P.W. 14) have corroborated the testimony of Kanhaiyalal (P.W. 6) and Pyaribai (P.W. 7).

7. We have carefully gone through the I statements of all the eye-witnesses. We do not find material contradictions in their statements. In our view, the learned trial Court has not committed any error in believing their statements.

8. The medical evidence also corroborates the prosecution version ante-mortem dark brown Coloured bruise of 1' x 1/2' size was present over middle part of right side of front of neck and also one bruise 2 1/2' x 2' front of left side of the neck. It is also important to note that bruises of finger intermingled with each other were noticed which were caused due to pressure of thumb and finger and conjuctive were conjested. Bluish lividity was present on back of neck. The face was swollen, cyanosed and marked with petechae. Tounge was bitten by. teeth Bleeding was found from mouth ;and nostrils and both the hands were clenched. Langrix and trachea were congested and contained mucous. There was, discharge of stool and seminal fluid. The symptoms found on the dead body clearly indicate that the death had not occurred due to asthma but it was the result of the throttling. Dr. Ranka has clearly opined that the deceased died of asphysia due to throttling. There is no reason to disagree with the expert opinion. There is no material on record to infer that the deceased was suffering from asthma or his death had resulted from an attack of asthma. Of course Pyaribai (P.W. 7) has 'stated that her husband had once suffered from asthma but according to her he was completely

cured. We disagree with the contention of learned Counsel for appellant that the prosecution has failed to prove that the death of Mangilal was homicidal. It was not necessary that deceased Mangilal must have suffered injuries on other parts of the body on throttling by the appellant due to resistance because the place of occurrence was sandy. The absence of injuries on the private part also does not affect the veracity of the, eye-witnesses because kicks might have been given on the thighs and deceased did not sustain injuries on his private parts. It is, therefore, proved beyond reasonable doubt that the appellant Paras Mani caused death of Mangilal by throttling. It is amply proved from the statement of the eyewitnesses and medical evidence that deceased Mangilal met homicidal death by throttling. It is also proved beyond reasonable doubt that throttling was caused by appellant Paras Mani by both the hands.

9. Now the important question arises for consideration whether the act committed by the appellant Paras Mani constitutes an offence under Section 302, I.P.C. The appellant came with her companions for begging money from the shopkeepers in the fair. There was no previous enmity between the appellant and the deceased. The quarrel began on very trivial matter of payment of rupee one. The appellant and his companions started beating and in the spur of the moment the appellant caught deceased by his neck and when he fell down, sat on his chest and pressed the throat. There is no material on record to infer any motive on the part of the appellant to cause death of Mangilal. It appears that appellant got enraged and he caught hold of the deceased and pressed his heck. It is obvious that his intention Was not to cause fatal injury. However, the appellant can be attributed with the knowledge that by pressing throat of the deceased he was likely to cause such injury which, may result in death of the deceased. Hence the act of the accused falls within the purview of the offence under Section 304, Part II (culpable homicide not amounting to murder) and not under Section 302, I.P.C. as held by learned trial Court.

10. Learned Counsel for the appellant referred the decision dated 6-11-85 in D.B. Cr. Appeal No. 77/75 (Ahmad Ali Khan v. State of Rajasthan) in support of his contention that an offence only Under Section 323, I.P.C. is made out. The facts of the above case are entirely different wherein there was no evidence that out of the

two accused persons who had throttled the deceased and it was also not proved that five accused had shared common intention. In these peculiar circumstances the accused persons were convicted under Section 323, I.P.C. However, in the present case the prosecution has succeeded in establishing beyond reasonable doubt that the appellant caused throttling of the deceased.

11. In view of the above discussion, we are of the opinion that instead of offence under Section 302, I.P.C., an offence under Section 304, Part II, I.-P.C. is proved against the appellant beyond any shadow of doubt.

12. In the result, the appeals are partly allowed. The conviction and sentence passed under Section 302, I.P.C. is vacated. The appellant is convicted under Section 304, Part II, I.P.C. The appellant shall undergo five years' R.I. and pay a fine of Rs. 500/- in default two months' R.I. more. The appellant is on bail. He is directed to surrender before the learned Additional Sessions Judge, Rajsamand within thirty days, failing which warrant of arrest shall be issued by the learned Additional Sessions Judge against the appellant to send him to prison to serve out the sentence.

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