

Dharamveer Vs the State of Delhi

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Court : Delhi

Decided On : Aug-13-2010

Judge : Mr. Shiv Narayan Dhingra, J.

Appeal No. : CRL. APPEAL NO. 735 OF 2010 ; Crl. M. (Bail) No. 880/2010 ; Crl. M.A. No. 8027/2010

Appellant : Dharamveer

Respondent : The State of Delhi

Advocate for Def. : Mr. O.P. Saxena, Adv.

Advocate for Pet/Ap. : Mr. R.S. Juneja, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. This appeal has been preferred against the Judgment dated 15 th May, 2010, and Order on Sentence dated 1st June, 2010, whereby the learned Sessions Judge convicted the appellant under Section 323 IPC and under Section 304 Part-II and sentenced the appellant to undergo Rigorous Imprisonment for a period of one and a half year for the offence under section 304 Part-II and a fine of Rs. 500/-

and the imprisonment for the period already undergone by the appellant for the offence under Section 323 IPC.

2. Brief facts relevant for the purpose of deciding this appeal are that Dharamveer (appellant) earlier used to live in the same colony where Smt. Amna, the deceased was living. The appellant therefore used to come to that colony occasionally. On 19th February, 2007, appellant had come to that colony and Parvej, aged three years, son of the Mohsina (complainant), was playing in the street outside the house. Complainant found that appellant was fondling with the penis of her son. She objected to this act of the appellant. The appellant on this started quarrelling with the complainant, abused her and assaulted her. In the mean time her mother in law Smt. Amna (deceased) came there and told her daughter-in-law to report the matter to police. On this, appellant first threatened and then assaulted Smt. Amna with a big stone on her head with the result that Smt. Amna received head injury. A call was made to PCR by someone and it seems that the appellant was apprehended there. Smt. Amna and Mohsina went to GTB Hospital for their checkup where their MLCs were prepared. While Mohsina received first aid, Amna appears to have left the Hospital without receiving first aid. She later on again was taken to GTB Hospital and the injury received by her on her head was dressed up. It appears that Amna, her son and her daughter-in-law did not realize the seriousness of the wound and instead of taking proper treatment, dressing was got done from local Doctor. However, Amna's condition became precarious on 25th February, 2007 and she breathed her last on 26th February, 2007. FIR against the appellant was registered by police on 25th February, 2007, when complainant went to police station and lodged report with the police. The appellant, who was earlier apprehended by the police and was left, perhaps thinking that it was a trivial matter, was again arrested. Postmortem report of the deceased showed that the cause of death was ante mortem head injury received by Mrs Amna. A charge-sheet was filed against the accused under Section 323/341/302/506 IPC. However, at the time of framing charge, the learned Sessions Judge charged the appellant under Section 323/304 Part-II of IPC.

3. The learned Sessions Judge found that the case against the appellant for Section 323 and 304 Part II was proved beyond reasonable doubt. However,

considering the overall facts and circumstances and the fact that the appellant was not a previous convict, he had a wife, aged parents and two children and was of a young age, taking a lenient view he was sentenced to undergo Rigorous Imprisonment for a period of one and a half year under Section 304 Part-II and imprisonment already undergone during trial as sentence under Section 323 IPC.

4. The appeal has been preferred by the appellant on the ground that there was no evidence to attract Section 304 Part-II IPC and the essential ingredient of Section 304 Part-II of IPC as well as ingredients of Section 323 IPC were missing. The other ground taken is that the learned Trial Court had not appreciated the evidence properly, the judgment was passed on conjectures and surmises, prosecution has failed to prove the charge beyond reasonable doubts, there was delay of seven days in lodging FIR, the FIR was manipulated and fabricated. The deceased had not disclosed the name of the appellant to the Doctor at the time of MLC. There was no recovery of stone with which the deceased was hit. There was no recovery of broken bangles and blood stained clothes of the complainant, neither blood was recovered from the spot and there was grave infirmity in the case of the prosecution. It was also stated that the deceased died due to her own negligence as proper treatment was not taken by her after the incident as was clear from the prosecution story. It was further submitted that the injury suffered by the deceased was simple in nature and no opinion was given by the Doctor about the nature of injury suffered by her in the MLC, no PCR record was summoned during prosecution evidence hence the Trial Court should have disbelieved the prosecution story. It is also submitted that it was a good case where the Sessions Judge should have granted probation to the convict under Section 360 of Cr. P.C. and under Probation of Offenders Act.

5. The prosecution case was proved by PW-3, Smt. Mohsina, the complainant who had objected to fondling of penis of her son by the appellant as well as a neighbour namely Nitin Sharma, PW-2, who was standing at the first floor of his house and had watched the incident. Both these witnesses testified to the fact that it was the appellant Dharamveer who picked up the quarrel with Mohsina on the issue of fondling penis of her son and it was appellant Dharamveer who started abusing and assaulting Mohsina first and when Mrs Amna, the mother in law of

Mohsina came at the spot he assaulted her with a stone. PW-3 testified that when her mother in law told her that she should report the matter to police, the appellant picked up a stone and gave a blow on the head of Mohsina. The presence of the appellant at the spot and the fact that the injuries were caused to Mrs Mohsina and Mrs Amna on 19th February, 2007, is further proved by DD No. 12 A, Ex. PW4/DA, wherein it was recorded that Operator of Control Room had given an information that one drunkard had hit a woman on head (sarabi ne aurat ka sir phar diya hai) and he was caught on the spot. This DD entry, was handed over to Ct. Sohan Pal and HC Pramod for action. The time of information is given as 5.40 pm. This document has been proved on record by the appellant himself. This document coupled with the testimony of PW-2, Nitin Sharma, shows that the appellant was in a drunkard state and he hit Mrs Amna on her head causing her head injury. HC Pramod appeared as PW-6 and he also testified that after receiving information vide DD No. 12A, he along with Ct. Om Prakash reached the place of occurrence and he was informed that both Mrs Mohsina and Mrs Amna had been taken to GTB Hospital. He stated that both ladies were in normal condition at that time, so, DD No. 12A was kept pending and FIR was registered on 25th February, 2007 when it was informed that Mrs Amna had become serious due to her head injury. PW-7 Ct. Sherpal Singh also testified about Mohsina and Amna reaching Hospital. It was thus proved before Trial Court beyond reasonable doubt that it was the appellant who caused injuries to Mohsina and Amna while he was in drunkard condition. Since the police did not think that the injuries were very serious and Mrs Amna and Mrs Mohsina did not pay much attention to the injuries and left the Hospital, the police did not register case nor other investigation was done and that explains why no stone etc. was picked up from the spot nor blood stained clothes of Amna were seized. However, non seizing of blood stained clothes or non picking up of stone does not weaken the case of prosecution since involvement of the appellant in the quarrelling and the fact that it was the appellant who had hit Amna had been proved otherwise by cogent evidence before the Trial Court.

6. The MLC of Mohsina Ex. PW5/C shows that the injuries received by her were opined as simple. However, no opinion was given on the injury of Mrs Amna since Mrs Amna after reaching the Hospital left the Hospital without medical advice. In

any case, her MLC Ex. PW5/A records the injury and it shows that it was a lacerated wound over right side of forehead of 3 x 0.5 cm. The size of wound itself shows that wound was of a big size. However, depth of wound had not been given as Mrs Amna had not stayed in the Hospital for treatment. The postmortem report Ex. PW14/A of Amna shows that she died of shock due to ante mortem injury on head resulting cranio cerebral damage produced by blunt force impact.

7. It was thus proved beyond reasonable doubt that Amna died because of the injury caused by the appellant.

8. Offence under Section 304 Part-II of IPC is complete if the act is done with the knowledge that it is likely to cause death although the perpetrator of the act had no intention to cause death. Head is a sensitive part of the body and an injury on head with a stone is always likely to put danger to the life of victim. The fact that head is vital part of the body is known to every human being and inflicting head injury with stone to the extent that injury is 3 cm x 0.5 cm is dangerous and one can impute knowledge to the appellant that he knew that this injury was so dangerous that it may result into death. In order to convict a person under Section 304 Part-II IPC, it is not necessary that there should be an intention to kill. The only necessary ingredient is that the injury is caused on such a vital part of the body that it is likely to cause death and the person causing injury has knowledge that it is likely to cause death. When a head injury is caused on a woman of 60 years of age with a big stone, the court can safely presume that the accused had knowledge that an injury on such vital part of the body, as head, may cause death, although, he had no intention to cause death. I therefore, consider that the Trial Court rightly convicted the appellant in this case under Section 304 Part-II IPC for causing death of Mrs Amna and also rightly convicted him under Section 323 IPC for causing simple injuries to complainant Mrs Mohsina.

9. The plea taken by counsel for the appellant that the appellant should have been given benefit of probation is not tenable. The conduct of the appellant does not show that he deserved probation. He was fondling with penis of a three years old child and in a drunkard state. When mother of the child objected to, he instead of realizing his mistake, grappled with the mother of child and when grandmother of

the child came at the spot and told her daughter-in-law to report the matter to police, instead of feeling ashamed at his act, he picked up a stone and hit the aged lady on head. I consider he did not deserve benefit of probation. The Trial Court has already shown sufficient leniency to him in awarding sentence. I find no reason to interfere with the sentence. The appeal is hereby dismissed.

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