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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 20th January, 2009*

+ CRL.A. 631/2005

PRITAM SINGH Appellant

Through: Mr. V.K.Raina, Advocate

versus

STATE Respondent

Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Vide impugned judgment and order dated 15.7.2004, the appellant has been convicted for the offence punishable under Section 302 IPC. Vide order dated 15.7.2004 he has been sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- failing which to undergo simple imprisonment for 6 months.

2. The undisputed facts of the case are that the appellant and the deceased reside in adjoining jhuggis in a slum

abutting a railway line. On the intervening night of 29th and 30th June 2003 at around 11:30 P.M. a verbal altercation took place between the appellant and the deceased Krishna. The appellant pushed Krishna who lost balance inasmuch as when pushed, her body got displaced. While staggering, her foot landed on a stone resulting in Krishna falling; unfortunately on the railway track. To compound her misery, a goods train which was passing by hit her. She succumbed to her injuries at the spot.

3. The site plan Ex.PW-2/B-6 shows that along the railway track a slum cluster has sprung up. The distance between the railway line and the jhuggis is about eight feet. The place where the appellant pushed Krishna has been marked at point 'A' on the site plan. The distance between point A and the railway line is about 4 feet.

4. The witnesses to the incident were Narbad the husband of the deceased, examined as PW-1, and one Suraj examined as PW-7.

5. Speaking on behalf of the prosecution, PW-1 stated at the trial that there was an altercation between his wife and the accused on an earlier occasion and that he had pacified them. He stated that on the intervening night of 29th and 30th the accused and his wife had an altercation. The accused pushed

his wife towards the railway track. She fell down under a train which was passing by and died at the spot as a result of being run over by the train.

6. PW-7, Suraj also deposed in line with the deposition of Narbad but with a variance. In our opinion what appears to be a slight variance at the first blush is a major variation and is indicative of what actually happened.

7. PW-7 stated that at around 11:00 P.M. the accused and the deceased had a verbal quarrel at which *“accused pushed wife of Narbad and her foot slipped and she fell on the railway track. In the meantime a train approached and the wife of accused crushed under the train.”*

8. In view of the testimony of PW-1 and PW-7 learned Trial Judge has held that the act of the accused has to be considered keeping in mind that a train *“is a big huge lengthy thing”* (Refer para 21 of the impugned judgment). Accordingly it has been opined that a train can crush a human body in a jiffy. Learned Trial Judge has held that the accused was residing near a railway track and would presumably be aware of the trains plying on the railway track. Learned Trial Judge has further held that the evidence establishes (refer para 23 of the judgment) that after throwing the deceased on the track, the accused took

to his heels.

9. In a nut shell, the reasoning of the learned Trial Judge is that the appellant has committed an wanton act wherefrom knowledge can be imputed to him as contemplated by the fourth limb of Section 300 IPC i.e. a person committing the act knowing that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.

10. Having gone through the testimony of PW-1 and PW-7, it would be of relevance to note that PW-7 has stated that when the deceased was pushed her foot slipped; she lost her balance and fell on to the track.

11. PW-1 the husband of the deceased has stated that the accused pushed his wife '*towards*' the railway track.

12. PW-1 has not stated that the accused pushed his wife '*on to*' the track. Pushing somebody towards a particular spot is all together a different act vis-à-vis pushing a person on to a particular spot.

13. In this connection it would be relevant to note that in his statement Ex.PW-1/A made to the police at the spot pursuant whereto the FIR was registered PW-1 makes a statement in complete harmony with the statement of PW-7. It stands

recorded in Ex.PW-1/A: *"Pritam pushed my wife Krishna. As a result of the push she staggered backwards towards the track. She stepped on to a stone lying near the track and lost her body balance resulting in her falling on to the track at the time a goods train was nearing the spot"*.

14. We wonder, wherefrom has the learned Trial Judge opined in para 23 of the impugned decision that the evidence establishes that the appellant threw the deceased on the track.

15. The evidence on record clearly establishes that the intention of the appellant was to push the deceased. He gave no more than a push. Unfortunately, the deceased staggered. She tripped over a stone and as a result thereof fell down. The distance between the track and the jhuggis was so small that by this time she had virtually reached near the railway track. The result was that the staggering movement of the deceased made her fell on to the track.

16. Neither an intention to cause death of the deceased nor an intention to cause a bodily injury which would in all probability cause death nor the doing of an imminently dangerous act surfaces on the evidence on record.

17. We thus hold that the charge of having murdered the deceased cannot be sustained.

18. It may be arguable whether under the facts and circumstances the appellant is guilty of an offence punishable under Section 323 IPC, but we need not quibble with the said for the reason the appellant has already undergone incarceration for a little over 5 years.

19. The appeal is allowed.

20. Impugned judgment and order dated 15.7.2004 convicting the appellant for the offence punishable under Section 302 IPC is set aside. Sentence imposed upon the appellant vide order dated 15.7.2004 is also set aside.

21. If not required in any other case the appellant shall be released.

22. Copy of this order be sent through special messenger to the Superintendent Central Jail Tihar for necessary action.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 20, 2009
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