

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

% Date of Decision : 26th April, 2010

+ **CRL.A. 398/2010**

RADHEY SHYAM Appellant
Through: Mr.V.Madhukar, Advocate
with Mr.Jayendra Sevada,
Advocate

versus

STATE (N.C.T.) OF DELHI Respondent
Through: Mr.M.N.Dudeja, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. On 04.05.2007 at about 1:30 PM information was received; informant being the appellant, that his mother had died and as deposed to by ASI Preet Pal Singh PW-12 to whom DD No.16 recording said information at the police station was handed over, accompanied by Ct.Suraj Prakash he proceeded to the Jhuggi cluster near Rajasthan Udyog Nagar Jahangirpuri and as further deposed to by ASI Preet Pal Singh he saw a dead body of a 60 years old lady ready to be taken to the cremation ground when he reached the jhuggi of the

appellant near Rajasthan Udyog Nagar Jahangirpuri. He found abrasion marks on the neck and injury marks on the arms of the body and hence seized the dead body and sent the same to the mortuary.

2. Doctor K.Goel PW-5 conducted the post-mortem on the body on 06.05.2007 and noted bruises on the forehead, cheeks, neck and chest of the deceased. He noted two abrasions on the right shoulder top and left shoulder top. He noted lacerated wound over the dorsum of left hand. Internal examination evidenced effusion of blood in neck layers and greater horn of hyoid bone being fractured with bruising around. He noted the same in the post-mortem report Ex.PW-5/A. He opined that death was due to asphyxia resulting from manual strangulation and that all injuries were ante mortem. He opined that manual pressure over the neck was sufficient to cause death in ordinary course of nature.

3. At the trial, Ramu Singh PW-1, a neighbour of the appellant, deposed that the appellant used to frequently beat his wife and the mother of the appellant used to intervene to save the wife of the appellant and angered by that the appellant used to beat his mother. He deposed that in the evening prior to when the deceased was found dead, the appellant had beaten his mother in the street and dragged her inside. On the next day morning at around 9:00 AM he learnt

that the deceased had expired. Since he saw injury marks on the person of the deceased he asked the appellant to inform the police and not cremate the body. At his insistence the appellant informed about his mother's death to the police.

4. Ramu Singh has been cross-examined and nothing of substance has been brought out to discredit the witness.

5. Meena PW-2, the sister of the appellant, deposed that after consuming alcohol the appellant used to quarrel with his wife and used to beat her and for said reason the wife of the appellant had gone away to her parental home and that the appellant along with her mother were living together in a jhuggi. On 04.05.2007 a resident informed her of her mother expiring. She reached the jhuggi and when she saw injuries on her mother she told the appellant to inform the police. On being declared hostile and cross-examined by the APP she admitted that the appellant used to fight with his mother on account of the grievance that her mother was not helping in the wife of the appellant returning to him.

6. Suffice would it be to record that nothing has been brought out in the cross-examination which discredits the testimony of Meena.

7. It is thus apparent that the conduct of the appellant in attempting to cremate his mother who admittedly died not a natural death is a highly suspicious conduct. This, coupled

with the fact that the appellant used to beat his mother in the past as also the fact that only the appellant and his mother were the two residents of the jhuggi and that the two were seen alive in the jhuggi in the night and next day morning, at around 9:00 AM, as deposed to by Ramu the mother of the appellant was dead with injuries have been opined to be sufficient circumstances wherefrom the guilt of the appellant can be inferred.

8. Having perused the evidence afore-noted, learned counsel for the appellant very frankly concedes that any prudent person would conclude that the appellant was the one who has inflicted the injuries on his mother.

9. But, learned counsel urges that in view of the testimony of PW-1 and PW-2, it is apparent that the appellant used to beat his mother and instant act was also one of beating. Thus, it cannot be said that the appellant intended to murder his mother urges the counsel.

10. Mr.M.N.Dudeja, learned counsel for the State urges that Section 300 Fourthly IPC is attracted. Counsel urges that the doctor has opined that due to manual pressure applied on the neck of the deceased, as a result of asphyxia, she died. Counsel urges that the doctor concerned has categorically opined that said act was sufficient in the ordinary course of nature to cause death.

11. Having considered the rival contentions, it is apparent that the evidence shows that even in the past, on account of grievance that his mother was not taking pro-active steps to bring back his wife, the appellant used to beat his mother. Thus, it cannot be said that on the eve in question, when the appellant gave beating to his mother, he intended to kill her.

12. The intention being to beat the mother, it is apparent that the appellant caught his mother by the scuff of her neck and inflicted fist blows on her. Unfortunately, the frail lady could not withstand the pressure applied on her neck when she was caught by the scuff of her neck. We have used the expression "frail" for the unfortunate lady with reference to the photographs Ex.PW-8/2 to Ex.PW-8/10 which show her frail body.

13. But, where a young man catches an old woman by the scuff of the neck, knowledge can certainly be attributed to such person that his act may likely result in the death of the victim.

14. Thus, we hold that the offence committed by the appellant is that of culpable homicide not amounting to murder.

15. For the act committed by the appellant we feel that appropriate sentence which he must undergo is to suffer RI for

a period of 10 years.

16. The appeal stands disposed of partially allowing the same. The appellant is acquitted of the charge of having murdered his mother but is convicted for the offence of having caused the homicidal death of his mother but not amounting to murder.

17. For the offence committed by the appellant we sentenced him to undergo RI for a period of 10 years.

18. The appellant shall be entitled for the benefit of Section 428 Cr.P.C.

19. Since the appellant is still in jail, we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar, to be supplied to the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

APRIL 26, 2010
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