

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

Date of Hearing : 03rd March, 2011

Date of Decision : 09th March, 2011

+ **CRL.L.P.21/2011**

STATE

... PETITIONER

Through: Mr. Jaideep Malik, APP for the State.

Versus

JAI PRAKASH @ PRAKASH & ORS.

... RESPONDENTS

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G.P. MITTAL, J.

Crl.M.A. 461/2011 (under Section 5 of the Limitation Act)

Allowed subject to just exceptions. The application stands disposed of accordingly.

CRL.L.P.21/2011

1. The petitioner seeks leave to file an appeal against the order dated 12.5.2010 passed by the learned Additional Sessions Judge, New Delhi whereby the respondents Jai Prakash and Vijay Kumar were acquitted of the offence punishable under Section 304/34 IPC.
2. On 4.8.2006, D.D. No.54-B (Ex.PW 17/A) was recorded in the Police Station on receiving information from constable Vikram (3766/PCR), that a quarrel had taken place at B-119 Tigri Extension. The DD was assigned to SI Ram Kishan (IO) who along with constable Satya Narain reached the spot. He found that

injured Ram Swaroop had already been taken to All India Institute of Medical Sciences (AIIMS). MLC PW-11/A was prepared by Dr. Prabhat Kumar. Ram Swaroop was admitted with the alleged history of assault by some unknown persons. At the time of admission the patient complained of pain in the abdomen. He was found to be conscious and oriented. He was bleeding from the nose, but no active bleeding was there at the time of admission of the patient. No injury was noticed by the doctor as per MLC Ex.PW11/A. The IO accordingly proceeded to AIIMS and found injured Ram Swaroop admitted there. Though injured was not declared to be unfit to make the statement, yet SI Ram Kishan did not record the statement as according to him Ram Swaroop was so drunk that he was not in a fit state of mind to make any statement. The IO kept D.D. No. 54-B pending and went into deep slumber. On the morning of 5.8.2006, Ram Swaroop was discharged from the hospital but later in the evening at about 8:00 P.M. he was readmitted to AIIMS. According to the prosecution, the IO reached AIIMS on readmission of Ram Swaroop there, by his son-in-law Santosh Kumar PW-2. He recorded his statement and forwarded the same at 8:30 PM for registration of case under section 308/34 IPC. As per the statement of Santosh Kumar Ex.PW-2/A Ram Swaroop and respondents Jai Prakash @ Pinky and Vijay Kumar @ Sonu had taken liquor. On 4.8.2006 at about 9:30 PM the three came out in the street and started making grievance with Ram Swaroop that he (Ram Swarop) opens the *Lungi* in the street. There was an exchange of abuses followed by some fist and kick blows on the chest and abdomen of Ram Swaroop by the respondents. Ram Swaroop started bleeding from the nose. In the meanwhile his sister-in-law Bitto Devi PW-1 also came out. Thereupon the respondents picked Ram Swaroop's lathi and gave blows on his stomach. Santosh Kumar further informed the IO that on hearing the noise some persons from the street gathered there. Some persons out of them informed the police about the incident at Telephone No.100. His sister-in-law (Bitto Devi) moved Ram Swaroop to AIIMS.

3. Since Ram Swaroop was declared brought dead at the time of second admission on 5.8.2006 at 7:53 PM, the case was converted to section 304/34 IPC. Inquest in

respect of dead body of Ram Swaroop was held; respondents were arrested leading to recovery of some glasses and empty bottle of liquor which are not of much importance.

4. On respondents pleading not guilty to the charge, the prosecution examined as many as 17 witnesses including PW-1 Bitto Devi, PW-2 Santosh Kumar, PW-5 Gyan Lata, eye witnesses to the incident; PW-10 Dr.Narottam Sharma who prepared MLC Ex.PW-10/A on 5.8.2006 at 7:53 PM when Ram Swaroop was declared brought dead, PW-11 Dr. Ashish Sr. Resident AIIMS who proved MLC Ex.PW11/A prepared on 4.8.2006 by Dr. Prabhat Kumar at the time of admission of Ram Swaroop and PW-12 Dr. Chittaranjan Behera. PW-12 Dr.Chittaranjan Behera, who conducted autopsy on the dead body has testified as under:

“.....Swelling in right inguino scrotal region of size 15 X 10 cm. Small intestine of length 50 cm was found descended in the inguinal canal to the scrotum and was strangulated in the inguinal ring. The intestinal wall showed brownish black discoloration suggestive of gangrene formation.

Postmortem report Ex.PW-12/A also mentions about MLC dated 04.08.2006 Ex.PW-11/A in which ultrasound of abdomen was advised and as per the report no solid organ injury and free fluid was found.

The subsequent opinion of Dr.Chittaranjan Behera PW-12 Ex.PW-12/B is with regard to cause of death. It reads as under:

“Opinion-After examining the portmortem report No.1105/06 dated 06.08.2006 of deceased Ram Swaroop, the FSL report No.FSL-2006/C-3236 dated 28.12.2006 and MLC report No.G-96771/2006 dated 04.06.2006 in detail, I am of the considered opinion that cause of death is strangulated inguinal hernia and its complications.”

PW-12 Dr. Chittaranjan Behera has deposed before the court that cause of death was strangulated inguinal hernia and its complications meaning thereby that the cause of death is not due to any of the injuries sustained by deceased on 04.08.2006 i.e. the incident which is reported in this case. The cause of death is only because of

strangulated inguinal hernia and its complications which is not incidental to the incident” ;

5. PW-17 Sub Inspector Ram Kishan Investigating Officer of the case deposed about his visit to the spot and to AIIMS on 4.8.2006 on receipt of DD No.54-B, and recording of statement Ex.PW2/A of Santosh Kumar on the next evening i.e.5.4.2006 after readmission of Ram Swaroop. He also deposed about various steps taken by him during the investigation of the case.
6. In their examination under Section 313 Cr.P.C., respondents denied prosecution's allegation. They took up the plea that they had been falsely implicated in the case, merely on suspicion. The deceased was a drunkard and the entire locality used to object to his drunken behavior.
7. The learned Additional Sessions Judge, by impugned judgment went in great detail into the types of hernia, history of inguinal hernias, direct inguinal hernia, strangulated inguinal hernia and treatment thereof. She extensively quoted from standard medical literature titled as “Bailey and Love, Short Practice of Surgery, 24th Edition, Chapter 73 dealing with hernias”. she also quoted from another publication i.e. “Journal of Forensic Medicine and Toxicology, Volume 43, No.2, July-december 2006 containing an Article titled as “Sudden Death Due To Strangulated Inguinal Hernia: a Forensic Autopsy Case Report by C. Behera”. In fact C.Behera is the same doctor “Chitranjan Behera” who had conducted the autopsy on the dead body of Ram Swaroop in this case. We would like to extract a portion of the impugned judgment hereunder for ready reference:

Types of hernia

- *Reducible-contents can be returned to abdomen.*
- *Irreducible- contents cannot be returned but there are no other complications.*
- *Obstructed – bowel in the hernia has good blood supply but bowel is obstructed.*
- *Strangulated – blood supply of bowel is obstructed.*
- *Inflamed- contents of sac have become inflamed.*

Reducible hernias

The hernia either reduces itself when the patient lies down or can be reduced by the patient or the surgeon. The intestine usually gurgles on reduction and the first position is more difficult to reduce than the last. Omentum, in contrast, is described as doughy and the last portion is more difficult to reduce than the first. A reducible hernia imparts an expansile impulse on coughing.

Irreducible hernia

In this case, the contents cannot be returned to the abdomen but there is no evidence of other complications. It is usually due to adhesions between the sac and its contents or from overcrowding within the sac. Irreducibility without other symptoms is almost diagnostic of an omentocoele, especially in femoral and umbilical hernias. Note that any degree of irreducibility predisposes to strangulation.

Natural history of hernias.

- *Irreducible hernias- there is a risk of strangulation at any time.*
- *Obstructed hernias- usually goes on to strangulation*
- *Strangulated hernias – gangrene can occur within 6 hours.*

Strangulated hernia

A hernia becomes strangulated when the blood supply of its contents is seriously impaired, rendering the contents ischaemic. Gangrene may occur as early as 5-6 hours after the onset of the first symptoms. Although inguinal hernia may be 10 times more common than femoral hernia, a femoral hernia is more likely to strangulate because of the narrowness of the neck and its rigid surrounds.

Pathology

The intestine is obstructed and its blood supply impaired. Initially, only the venous return is impeded, the wall of the intestine becomes congested and bright red with the transudation of serous fluid into the sac. As congestion

increases, the wall of the intestine becomes purple in colour. The intestinal pressure increases, distending the intestinal loop and impairing venous return further. As venous stasis increases, the arterial supply becomes more and more impaired.”

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On page 1278 of this book it has further been observed about the percentage as follows:-

“Direct inguinal hernia

In adult males, 35% of inguinal hernias are direct. At presentation, 12% of patients will have a contralateral hernia in addition, and there is a fourfold increased risk of future development of contralateral hernia if one is not present at the original presentation.....”

On page 1279 strangulated inguinal hernia has been further dealt with as under:-

Strangulation of an inguinal hernia occurs at any time during life and in both sexes. Indirect inguinal hernias strangulate more commonly, the direct variety not so often owing to the wide neck of the sac. Sometimes a hernia strangulates on the first occasion that it descends; more often, strangulation occurs in patients who have worn a truss for a long time and in those with a partially reducible or an irreducible hernia.

In order of frequency, the constricting agent is : (a) the neck of the sac, (b) the external inguinal ring in children, (c) adhesions within the sac (rarely).

Treatment of strangulated inguinal hernia

The treatment of strangulated hernia is by emergency operation. Vigorous resuscitation with intravenous fluids, nasogastric aspiration and antibiotics is essential, although operation should not be unduly delayed in moribund

patients. It is also advisable to empty the bladder, if necessary by catheterization.”

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I could lay hands on another publication i.e. Journal of Forensic Medicine and Toxicology, Volume 23, No.2 July-December 2006, article titled “Sudden Death Due To Strangulated Inguinal Hernia. A Forensic Autopsy Case Report” by C.Behera (Dr.Chittranjan Behera who has been examined in this case as PW-12 who has conducted the postmortem of deceased in this case), Sunay M, Millo T. have discussed the strangulated hernia. They have discussed about the instant case in this article. They are Senior Resident, Junior Resident and Assistant Professor, Department of Forensic Medicine & Toxicology, AIIMS, New Delhi. They have shown the four pictures showing the loop of intestine in the scrotal sac, showing dark brown discoloration of the intestine, showing patchy sub scalp haematoma and the fourth figure showing Histopathology-Part of strangulated intestine.

After discussing the details of this case and strangulated hernia, it has been observed in this article that at the time of first admission patient was complaining of pain in abdomen and bleeding from nose. There was no history of vomiting. On examination there was abdominal rigidity, tenderness or guarding. On ultrasound of abdomen there was no visceral injury or free fluid inside the abdomen which suggests that the patient was not having strangulation of inguinal hernia or intestinal rupture within the abdomen or inside the sac at the time of first admission. Patient was discharged on the next day in satisfactory condition. The postmortem findings are suggestive of strangulation of indirect inguinal hernia and there was no intestinal rupture. A strangulated hernia causes swear excruciating pain, forcible vomiting and gangrene formation starts as early as 5-6 years after the onset, if it is not relieved. If it occurred after the trauma in the hospital it is unlikely to be note diagnosed with the signs and symptoms. Interval between the time of assault

and time of death is about one day. The process of strangulation might have occurred after being discharged from the hospital and the relationship between the trauma and the process of strangulation is ruled out.”

8. Learned ASJ noticed the testimony of PW-1 Smt.Bitto Devi wherein she had admitted that Ram Swaroop was suffering from hernia. Thus on the basis of post-mortem report Ex.PW-12/A supported by testimony of PW-1 regarding the ailment of Ram Swaroop, the learned ASJ reached the conclusion that the cause of death of Ram Swaroop was strangulated inguinal hernia and its complications. The learned ASJ further concluded that the conduct of the close relations PW-2 Santosh Kumar Singh (son-in-law of Ram Swaroop) and PW-5 Smt.Gyan Lata (daughter of Ram Swaroop) in not intervening and saving deceased Ram Swaroop, who was very old was unnatural and non examination of any public witnesses made the prosecution version improbable and the witnesses unworthy of reliance. The learned ASJ accordingly acquitted the respondents of the charges framed against them.
9. From post-mortem report Ex. PW-12/A coupled with the testimony of PW-12 Dr. Chittaranjan Behera and PW-1 Smt.Bitto Devi that the deceased was suffering from Hernia there is no manner of doubt that cause of death was natural and not on account of injuries alleged to be inflicted by the respondents. It is also not the prosecution case that there were complications or strangulation of hernia on account of the injuries inflicted by the respondents. Thus even if the prosecution case is taken as a gospel truth, the respondents could be said to have committed an offence punishable under Section 323 IPC. It is also not out of place to mention that both the respondents were in custody since the date of their arrest on 6.8.2006. Respondent Jai Prakash was ordered to be released on bail some time in August 2007, thus he remained in custody for over a year in this case. Respondent-Vijay Kumar was also ordered to be released on bail by order dated 3.11.2007 passed by the learned ASJ. It seems that he was unable to fulfil the conditions of bail and remained in custody till the case was decided by the impugned judgment on 12.5.2010 wherein both the respondents were acquitted of

the charges. Unfortunately respondent Vijay Kumar remained in custody for almost four years.

10. An offence punishable under Section 323 IPC is a non-cognizable offence. PW-17 IO of the case, according to his statement, reached AIIMS on 4.8.2006 itself but did not record the statement of Ram Swaroop. He himself did not give any explanation for not recording his (Ram Swaroop) statement. When cross-examined, he deposed that the patient was fit for statement but he was so drunk that he was not in a fit state of mind to make any statement. A perusal of the MLC Ex.PW11/A, however, does not reveal any such fact. It has been specifically recorded in the MLC on 4-8-2006 that at about 10.05 PM the patient was conscious and oriented. The testimony of the IO that he was unable to make a statement even without obtaining any certificate from doctor is suspect. Even if it is assumed that on account of consumption of large quantity of alcohol Ram Swaroop was unable to make the statement at 10.05 PM on 4.8.2006, the IO is silent as to what was the effort made by him to record his (Ram Swaroop) statement on the morning of 5.8.2006. It has not been explained as to why the IO did not record the statement of PW-1 Bitto Devi, (daughter of Ram Swaroop) who according to the prosecution had accompanied Ram Swaroop to AIIMS. PW-2 Santosh Kumar, PW-1 Bitto Devi and PW-5 Gyan Lata who are the son-in law and daughters of Ram Swaroop and alleged eye witnesses of the incident were also not examined by the IO not only on the night of 4.8.2006 but also on the morning of 5.8.2006. In the cross-examination, the IO admitted that the neighbours of Ram Swaroop did not state anything regarding the incident alleged to have taken place on 4.8.2006. He was frank enough to admit that except the family members of Ram Swaroop nobody supported the version of the relation witnesses.

11. According to the prosecution, respondents were not armed with any weapon not even any stick. Some fist and leg blows were allegedly given to Ram Swaroop. PW-1 Bitto Devi, PW-5 Gyan Lata and PW-2 Santosh Kumar are the close relations being the daughters and son-in-law of Ram Swaroop. It is highly

improbable that these close relations would be silent spectators to the incident of neighbours giving fist and leg blows to their aged father/father-in-law. Moreover, the DD entry No.54-B (Ex.PW 17/A) which is the first information regarding the incident simply refers to a quarrel at B-119 Tigri Extension. Under these circumstances, we are of the view that no fault can be found with the view of the learned Additional Sessions Judge in finding the three eye witnesses to be not credible and prosecution version to be not believable.

12. The law is well settled that while hearing an appeal against an order of acquittal, the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the same, because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court shall interfere only if it finds that some admissible evidence has been ignored or the conclusions reached by the trial court are perverse and are wholly untenable. In ***Ghurey Lal v. State of UP 2008 (10) SCC 450***, the Supreme Court, after reviewing the previous decision reported as ***Chandrappa & Others v. State of Karnataka (2007) 4 SCC 415*** observed as follows:

“In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court’s acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court’s acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court’s decision. “Very substantial and compelling reasons” exist when:

(i) The trial court’s conclusion with regard to the facts is palpably wrong;

(ii) The trial court’s decision was based on an erroneous view of law;

- (iii)The trial court's judgment is likely to result in "grave miscarriage of justice";*
- (iv)The entire approach of the trial court in dealing with the evidence was patently illegal;*
- (v)The trial court's judgment was manifestly unjust and unreasonable;*
- (vi)The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.*
- (vii) This list is intended to be illustrative, no exhaustive.*

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached- one that leads to acquittal, the other to conviction- the High Courts/appellate courts must rule in favour of the accused.

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

13. In the present case, we are of the opinion that the findings and conclusions of the trial court are based on correct and proper appreciation of evidence. We do not find any substantial or compelling reasons to interfere with the order of acquittal recorded by the Trial Court. The leave petition is without any merits; it is accordingly dismissed.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

March 9th, 2011
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