

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on: July 29, 2016
+ CRL.A. No.1737/2014
RAMA CHOUHAN Petitioner
Through: Ms.Anu Narula, Adv. with Ms.Jasmy
M.J., Advocate.

versus

STATE Respondents
Through Mr.Amit Chadha, APP for the State
with Inspector Raj Bala, Police Station
South Rohini.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT
P.S.TEJI, J.

1. By this appeal filed under Section 374 (2) read with section 482 of the Cr. P.C., the appellant seeks to challenge the judgment dated 30.09.2014 as well as order on sentence dated 16.10.2014, passed by the learned Additional Sessions Judge, Rohini Courts, Delhi in Sessions Case No.24/13 (FIR No.88/2012 under Section 302/34 IPC, Police Station South Rohini).

2. Brief facts of the present case are that the present case was registered on the basis of the statement of the complainant Ashok Sehgal, who in his neighbor stated that on 04.05.2012 at about 10.15 PM, when he was sitting on a chabutra under the tree in front of house No.212, he saw that his neighbor Dinesh (since deceased) was strolling in the street and he seemed to be in a drunken state.

According to the complainant, Ms. Rama Chauhan (appellant herein) who was his neighbor and known to him for the last 2-3 years, came near Dinesh alongwith one boy. The appellant told Dinesh “kyo be too us din us nai ko mere bare me kya patti padha raha tha.” Dinesh replied “mere muh mat lag apna rasta nap”. According to the complainant, the appellant started quarrelling with Dinesh and told him that “us din to badi hekdi dikha raha tha aaj tujhe maja chakhati hu.” It is further stated by the complainant that the appellant attacked the head of Dinesh with a heavy object which she was holding in her right hand, thereupon Dinesh caught his head with both hands and the boy who was accompanying the appellant gave a head blow to Dinesh as a result of which Dinesh Fell down. The complainant further stated that he reached near Dinesh and started lifting him. It is further stated that it was the appellant who made a call at No.100, whereupon the police reached at the spot and the victim was taken to B.S.A. Hospital.

3. The case was registered as FIR No. 88/2012 at Police Station South Rohini and investigations were carried out. Appellant as well as her companion were arrested. After completion of investigation, the police filed the final report under Section 173 of Cr. P.C. On 21.11.2012, the charge under Section 302/34 of IPC was framed against the accused persons, to which they pleaded not guilty and claimed trial.

4. To prove the guilt of the accused persons, the prosecution examined as many as 26 witnesses. After closing of the prosecution evidence, the statement of the appellant under Section 313 of Cr. P.C.

was recorded and all the incriminating evidences were put to her, to which she claimed to be innocent and claimed trial. In her defence, the appellant examined four witnesses.

5. Ashok Kumar (PW-4) who was the eye witness, had supported the case of the prosecution and as far as motive is concerned, it is reported by the prosecution that the appellant thought that the deceased was spreading rumor about her, so in connivance with co-accused Milan she killed Dinesh. The eye witness to the incident, i.e. Ashok Kumar (PW-4) in his cross-examination stated that he used to take liquor with Dinesh in the evening and at the time of the incident he was sitting on the road in front of his house on a chabutra. He further stated that the incident took place at a distance of 25 ft. from the chabutra. He further stated that though he had seen the appellant coming but he cannot say whether she was carrying any heavy object and he had only seen her hitting on the head of the deceased Dinesh with a heavy object. He further deposed that he had not seen the heavy object but it was the appellant who after the arrest told that she had hit Dinesh with a stone.

6. Dr. Sumeet Khetrapal (PW-14) was the consultant radiologist, Max Hospital Shalimar Bagh, Delhi, who deposed that on 5.5.2012, he had reported the CT Scan of the deceased and his report in on record as Ex.PW-14/A and Ex.PW-14/B. However, in his cross-examination he deposed that he cannot comment on the means which resulted into the injury. Another medical witness Dr. Vijay Dhankar (PW-16), who is HOD Forensic Medicine, B.S.A. Hospital conducted the post

mortem on the body of the deceased. In his report, he found the following external injuries:

- (a) Stitched wound 28cm “C” shaped present over the left front of temporo parietal region of head.
- (b) Stitched wound 12 cm present over the left middle portion of front of abdomen.
- (c) Scabbed abrasion 1 cm x 1 cm present over the left lateral malleolus.

7. According to his opinion the death was due to cerebral damage consequent to blunt force injury to the head. All the injuries were ante mortem and recent. It was further opined that the injuries to the head were sufficient to cause death in the ordinary course of nature. The report of doctor is exhibited as Ex. PW-16/A.

8. The prosecution led the evidence of Dr. Rakesh Kumar Dua, Senior Consultant-Neuro Surgery, Max Super Speciality Hospital, as PW-17, who deposed that the patient was shifted to Max Hospital from B.S.A. Hospital. The doctor conducted the surgery on the patient and was in charge of the surgery team. He further deposed that the left FTP decompressive craniectomy, partial FT lobectomy, lax duroplasty and placement of bone flap in abdomen was done. Patient was shifted to ICU and his condition progressively deteriorated. He suffered cardiac arrest and despite best efforts, he could not be revived and declared dead at 12.04 pm on 07.05.2012. Dr. Rajiv Baishya, (PW-18)

Senior Resident (Surgery) BSA Hospital, Rohini, Delhi also examined the patient on 04.05.2012 and made his endorsement on the MLC Ex. PW-12/A.

9. After considering all the facts and circumstances of the case, deposition of prosecution as well as defence witnesses, the learned Additional Sessions Judge discussed the issue of common intention and on the basis of settled principle of law, it was held that looking into the overt acts committed by the accused persons the inference of common intention cannot be drawn and accordingly the co-accused Milan was held guilty for giving a head blow only and convicted under Section 323 of IPC. So far as the appellant is concerned, on the question of holding the appellant under Section 302 of IPC or 304 Part II IPC, the learned Additional Sessions Judge discussed the Section 299, 300 and 304 of IPC in detail and ultimately, the appellant was held guilty and convicted for the offence punishable under Section 304 Part II IPC and vide order on sentence she was ordered to undergo rigorous imprisonment for a period of 5 years and a fine of Rs.10,000/- and in default of payment of fine the appellant was ordered to undergo simple imprisonment for two months.

10. When the present appeal came up for hearing before this court on 23.12.2014, this court while admitting the appeal, called for the latest nominal roll of the appellant, and keeping in view the seriousness and gravity of offence alleged against the appellant, declined the request for suspension of sentence. Since then, the appellant is in custody.

11. Ms. Anu Narula, learned counsel for the appellant contended that it is the admitted case of the prosecution that the deceased was in drunken state and the medical documents also establish this fact. Not only this, it is also the admitted fact that it was the deceased who was harassing the appellant by spreading rumors in the society. There was a verbal altercation followed by only one blow by the appellant and the co-accused Milan, who was convicted under Section 323 of IPC had also given single blow with his hand and it is only after his blow, the deceased actually fell down. Therefore, in an incident where both the accused gave single blow and the sentence imposed upon the appellant under Section 304 (Part II) IPC is harsh and improper and contrary to the principles of natural justice.

12. Learned counsel for the appellant further contended that though all the allegations of prosecution are strongly refuted as false and not proved, but for the sake of argument, even if the version of the prosecution is assumed to be correct, then there is no material on record which can show that the appellant had any knowledge or could have any knowledge that such a small stone could lead to any injury or cause death. It is further contended that the size of stone and injury clearly defy and knowledge to be attributed to the appellant. Therefore, the order convicting the appellant under Section 304 (2) is bad in law, and the appellant is entitled to be acquitted.

13. Learned counsel for the appellant further contended that the material eye witness to the present case, i.e. PW-4 was the close friend of the deceased and he himself has criminal antecedents and was a

drinking buddy of the deceased. And the prosecution has not been able to prove any previous quarrel between the deceased and appellant. It is further contended that the appellant was not laced with any weapon and she picked up a small stone from the spot only. So far as recovery of alleged stone is concerned, it is an ordinary stone, and was lying at the open place. It is further contended that it was the appellant, who herself called police at 100 number, which shows her innocence.

14. Learned counsel for the appellant further contended that the prosecution has not demolished the defence witnesses and they should also be given equal importance as prosecution evidence and the onus to prove the guilt of accused is only on the prosecution. Learned counsel for the appellant further went on contending that even if any of the defence raised by the accused is not proved or proved to be true or proved to be false, the prosecution cannot be allowed to take any advantage out of it. The prosecution is still liable to prove its own case and in a situation where two views are possible on same evidence, the one favourable to the accused is to be taken into consideration.

15. On the medical evidence, learned counsel for the appellant contended that the prosecution could not prove that the trace of human blood found on the stone were that of the deceased or the same was used by the appellant to hit the accused. the prosecution has failed to send the stone for finger print test. While drawing attention of the court to the statement of Lady Ct. Hemalata (PW-21), it was submitted that the lady constable stated in her deposition that “no recovery was effected at the instance of Rama Chauhan”, which was however,

during her cross-examination, by the APP she improved the same.

16. To demolish the deposition of Ct. Raman (PW-9) it is contended that he was part of investigation and during his cross-examination he mentioned that he took the deceased to the hospital alongwith Ashok Sehgal and Investigating Officer and when he was confronted, he said that he did not remember, whether he had stated the same in the statement under Section 161 Cr. P.C.. Even in the original rukka and FIR this fact is not mentioned that the PW-9 was with them while taking the person to the hospital.

17. It is further contended on behalf of the argued that in fact only one injury was present on the body of deceased, i.e., on the occipital region and it was only 2x1 cm according to the MLC report and no other external injuries found on the deceased and the blood clotting found in the brain of deceased was caused due to the fall and not otherwise. It is further contended on behalf of the appellant that all other injuries found on the deceased were due to the surgery (decompressivecraniectomy, partial FT lobectomy, lax duroplasty and placement of bone flap in abdomen was done at Max Hospital).

18. On the point of sentence, learned counsel for the appellant contended that the order on sentence passed by learned Additional Session Judge is highly unjust, unfair, improper and disproportionate though she had pleaded that being a divorcee, her minor daughter has nobody to support and her mother who is old and infirm unable to take care of her daughter. It is also contended that the appellant has no

previous record of conviction and no case in previous has been registered against her. Lastly, it is contended that while looking to the condition of the appellant and the fact of the present case, in which a lady was compelled to take a step of hitting the victim with stone and the fact that she has a her minor and nobody is there to take care of her, except her old and ailing grandmother, and the fact that the appellant is in custody since 05.05.2012, some lenient view be taken on the quantum of order on sentence and the sentence imposed upon the appellant be reduced. In support of her contentions, learned counsel for the petitioner relied upon the following judgments:

- i) ***State of M.P. vs. Bacchudas alias Balram and others, (2007) 9 SCC 135;***
- ii) ***Basappa vs. State of Karnataka, (2014) 5 SCC 154;***
- iii) ***Md. Alimuddin and others vs. State of Assam, 1992 Cri.LJ 3287;***
- iv) ***Chhotan Mahton and others vs. State, AIR 1959 Patna 362.***

19. Mr. Amit Chadha, learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised by the counsel for the appellant and submitted that the prosecution has proved the guilt of the appellant beyond all reasonable amounts and in this case the victim has lost his life. It is further submitted that there is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the material witnesses have supported the prosecution case and the testimonies of the prosecution

witnesses do not suffer from any infirmity, inconsistency or contradiction and are consistent and corroborative. It is further submitted that the learned Additional Sessions Judge has passed a reasoned order thereby convicting the appellant after considering all the aspects of the matter which does not call for any interference from this Court.

20. I have heard the submission made by both the sides and also gone through the contents of the appeals and the impugned orders passed by the learned Additional Session Judge in this case.

21. The proportionality of sentence imposed upon the accused depends on the roll attributed to the accused. In Criminal ***Appeal No. 945/2004, titled as Pulicherla Nagaraju @ Nagaraja vs State Of A.P.***, decided on 18.08.2006, the Hon'ble Apex Court dealt with the question of determination of the offence under Section 302, 304, Part I/Part II IPC, in the following words:

“Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters, plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally

absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken

undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

22. In the case in hand, while perusing the facts and circumstances of the case, the indisputable facts are that the appellant – Rama Chouhan was arrested on 05.05.2012 and since then she is in custody.

23. As per the medical opinion, the death was due to cerebral damage consequent to blunt force injury to the head. It was further opined that the injuries to the head were sufficient to cause death in the ordinary course of nature. The report of doctor is exhibit as Ex. PW-16/A.

24. This Court has also gone through the impugned judgment and order on sentence and observes that the learned Additional Sessions Judge had elegantly discussed the issue of deciding the punishment under the relevant section in the present facts and circumstances and ultimately reached to the conclusion of holding the appellant guilty for the offences under Section 304 (Part II) IPC.

25. Thereafter, the Trial Court has passed the impugned judgment and order on sentence while dealing with the issue of falling of a case under the purview of Section 300 IPC or Section 304 IPC and

applying the settled principles of law to the facts of the present case and in the light of the deposition of witnesses and the material on record.

26. From the aforesaid discussion of the settled principles, facts and circumstances as well as the impugned order, this Court finds no illegality or infirmity in the reasoning given by learned Additional Session Judge in his judgment whereby the Appellant – Rama Chouhan has been convicted and this Court finds no reason to take a different view from the said order. Accordingly, the impugned judgment convicting the appellant vide order dated 16.10.2014 is upheld.

27. On the quantum of sentence, this Court observes that the appellant was charged for the offence punishable under Section 302 IPC and the learned Additional Sessions Judge while dealing with all the pleas taken by the appellant for the purpose of reducing the sentence, and the judgments relied upon by the appellant, has passed the sentence convicting her under Section 304 Part II IPC. Impugned order itself reflects that the learned Additional Sessions Judge, has considered all the facts and circumstances of the present case and while considering the quantum of sentence imposed upon the appellant, he has awarded a sentence of RI for a period of five years with fine of Rs.10,000/- and in default of payment of fine the appellant was ordered to undergo simple imprisonment for two months. This Court finds no illegality or infirmity in the impugned judgment and order on sentence, therefore the same are upheld.

28. In conclusion, the facts emerging from the record culminates into dismissal of the present appeal. Accordingly, the present appeal filed by the appellant is dismissed.

29. The appellant is in jail. A copy of the order be sent to the Jail Superintendant to apprise the appellant regarding the fate of her appeal.

30. The appeal stand disposed of in the aforesaid terms.

JULY 29, 2016
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