

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

RESERVED ON : 10th SEPTEMBER, 2015

DECIDED ON : 22nd SEPTEMBER, 2015

+

CRL.A.118/2007

SANT RAM

..... Appellant

Through : Mr.Arun Sharma, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through : Mr.Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. This appeal has been filed by the appellant – Sant Ram against a judgment dated 29.01.2007 of learned Addl. Sessions Judge in Sessions Case No.107/05 arising out of FIR No.23/05 PS I.P.Estate by which he was held guilty for committing offence under Section 325 IPC. By an order dated 12.02.2007, he was sentenced to undergo RI for three and a half years with fine ₹1,000/-.

2. Concisely stated, the case of the prosecution leading to the trial of the appellant for commission of offence under Section 304 IPC was that on 13.01.2005 at about 08.30 p.m. at Public Street, opposite Railway Office, Tilak Bridge, ITO, Delhi, he gave a violent push to the victim – Ganga, as a result of which, her head struck against the road and she sustained internal head injuries. She expired on 16.01.2005 in the hospital. Police machinery swung into action on receiving information about the occurrence vide Daily Diary (DD) No.56B (Ex.PW-8/A) at 08.47 p.m. at PS I.P.Estate. The investigation was assigned to ASI Ram Niwas who with Const.Vikrant went to the spot. After recording statement of the complainant – Suraj (Ex.PW7/D), the Investigating Officer lodged First Information Report. On 16.01.2005, information was received vide DD No.22A (Ex.PW-8/C) that the victim had succumbed to the injuries. Post-mortem examination on the body was conducted. Statements of the witnesses conversant with the facts were recorded. The accused was arrested. Upon completion of investigation, a charge-sheet was filed against the appellant for committing offence under Section 304 IPC. The prosecution examined eight witnesses to substantiate its case. In 313 Cr.P.C. statement, the appellant pleaded false implication and denied his involvement in the crime. He examined DW-1 (Rambir) in defence. After

considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court, by the impugned judgment, convicted the appellant under Section 325 IPC. It is pertinent to note that State did not challenge the acquittal under Section 304 IPC. Being aggrieved and dissatisfied, the appellant has preferred the present appeal.

3. I have heard the learned counsel for the parties and have examined the file. It is not in dispute that on 13.01.2005, the appellant had gone at the residence of complainant – Suraj to demand money borrowed by him. When the complainant expressed inability to pay the borrowed amount that time, a quarrel ensued between them. In the scuffle, both PW-7 (Suraj) and the appellant came out in the street. Victim Ganga – complainant's wife rushed outside to intervene. It is alleged that the appellant gave a forceful push to her as a result of which, she sustained head injuries. The victim was taken to J.P.N.Hospital immediately and was medically examined vide MLC (Ex.PW-5/A) at around 09.00 p.m. The alleged history records that the victim assaulted approximately half an hour ago at Sanjay Amar Colony had suffered swelling over occipital region approximately 3 cm x 1 cm. She was unfit to make statement. Finally, she succumbed to the injuries and expired in the hospital on 16.01.2005. PW-6 (Dr.Sunil) conducted post-mortem examination on the

body and proved report (Ex.PW-6/A). Injury No.1 i.e. Contusion 7 cm x 3 cm present over right temporal occipital region of head was found sufficient to cause death in the ordinary course of nature. Cause of death was due to cranio cerebral damage consequent upon blunt force impact to the head. All the injuries were opined ante-mortem in nature. In 313 Cr.P.C. statement the appellant did not deny the injuries sustained by the victim in the occurrence. His defence is that when she rushed out of the house on seeing them quarrelling, she stumbled against the pavement and got injuries after fall.

4. Crucial testimony to prove that victim Ganga sustained injuries due to push given by the appellant is of PW-7 (Suraj). In his statement (Ex.PW-7/D) to the police at first instance, he gave detailed account as to how and under what circumstances, a quarrel had taken place with the accused over demand of money. He further informed that when his wife Ganga intervened to save him, she was also beaten. The appellant gave her a forceful push as a result of which she fell down on the road and sustained head injuries. Immediately, she was taken to hospital by her mother-in-law. In Court statement as PW-7, he proved the version given to the police without major variations. He deposed that when he expressed inability to pay ₹1,700/- demanded by the appellant

from him, the appellant started abusing him. He dragged him out from the house and started beating him. When his wife came out to save him, the accused gave beatings to her; caught hold her from her hair and struck her head on the road. In the cross-examination, he was confronted with the statement (Ex.PW-7/D) where certain facts mentioned by him in examination-in-chief were omitted to be recorded. He denied the suggestion that the victim had sustained injuries on her head as she struck against the pavement.

5. No valid reason exists to disbelieve the statement of PW-7 (Suraj). It was not uncommon to push the victim on her intervention to save her husband by the appellant as quarrel was going on between the two and both of them had suffered superficial injuries. It was victim's anxiety to pacify both of them. Since the FIR was lodged without inordinate delay, there was least possibility of the complainant to have concocted a false story in such a short interval. Statement of the complainant coupled with medical evidence establishes beyond doubt that the appellant gave a push to the victim as a result of which, she fell down and sustained injuries.

6. Trial Court did not commit any error when it came to the conclusion that offence under Section 304 IPC was not proved as the

appellant had no intention or knowledge that the injuries so sustained by the victim would be fatal. Neither the State nor the victim has challenged the findings of the Trial Court in this regard.

7. Moot point is that even if the incident is accepted to have taken place in the manner as deposed by the prosecution witnesses, whether the appellant could be convicted under Section 325 IPC. The Trial Court was of the view that the appellant was guilty under Section 325 IPC as the victim had sustained fracture of right temporal bone extending to right middle cranial fossa of the skull and it was grievous in nature. Undeniably, relations between the appellant and the complainant were cordial before the incident and in good faith certain sum was borrowed by the complainant from him. On the day of occurrence, the appellant had gone to the complainant's house only to demand the loaned amount. An altercation took place between the appellant and the complainant on refusal to pay the amount. Both the parties came out of the house while quarrelling. The victim – complainant's wife, present in the house rushed out to pacify the parties. At this juncture, she was given a push by the appellant to prevent her intervention as a result of which, she fell down and sustained injuries. Obviously, the appellant, who was not armed with any weapon whatsoever had no intention to pick up quarrel

with the complainant or his wife. His only motive to visit the house was to get back his money. In the altercation, both the complainant and the appellant suffered superficial injuries. It was a sudden quarrel that took place on a trivial issue at the spur of the moment. The victim was not the target and her arrival on the spot to intervene was not in appellant's anticipation. From the attendant circumstances, it cannot be inferred that the appellant had intention or knowledge that the push given to the victim would result in severe internal injuries causing her death. He himself had not caused any 'fracture' or grievous hurt on the victim's body voluntarily. Obviously, it was due to fall on the ground due to the said push. For the 'fracture' suffered by the victim, the appellant, in my considered view, cannot be held liable. The offence proved by the prosecution falls only under Section 323 IPC.

8. In '*Jani Gulab Shaikh vs. The State of Maharashtra*', 1970 (1) SCC (Cri) 532, in similar circumstances the accused therein had given blows to the deceased who fell down with his face towards the sky. Immediately, he became unconscious and his mouth and ear started bleeding. High Court convicted him under Section 304 part-II IPC. In the post-mortem examination, number of injuries were found on the head and it included fracture of occipital; laceration to brain underneath; subdural

hematoma right temporo parietal region 4"x 3"; Contusion 3.2/3"x3" over the occipital region; Contusion at temporoparietal region 2"x1". Hon'ble Supreme Court was of the view that it was difficult to impute knowledge to the accused that death was likely to result by the push he is alleged to have given. The accused therein was convicted under Section 323 IPC.

9. In the light of above discussion, conviction under Section 325 IPC is modified to Section 323 IPC.

10. Nominal roll dated 05.05.2007 reveals that the appellant has already suffered incarceration for nine months and fourteen days besides remission for ten days as on 04.05.2007. Custody period increased to fifteen months including remission period as substantive sentence was suspended by this Court by an order dated 26.09.2007. The Trial Court has awarded reasonable compensation to the LRs of the victim as detailed in the sentence order. The appellant who has suffered agony of trial / appeal for about ten years is not involved in any other criminal case and is not a previous convict. Considering all these facts and circumstances, the period already undergone by the appellant in this case shall be taken as substantive sentence under Section 323 IPC. The appellant shall, however, deposit fine of ₹1,000/- (if not paid) and the compensation amount (if not deposited) within two weeks before the Trial Court.

11. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

SEPTEMBER 22, 2015 / *tr*