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

+ **CRL. A.231/2015**

Date of decision: 26.08.2015

STATE (NCT) OF DELHI Petitioner
Through: Mr. Raghuvinder Verma, APP.
Inspector Dinesh Kumar, PS
Kanjhawala
versus

VIJAY AND ORS. Respondents
Through: Mr.M.K.Gahalut, Adv. for R1
& R-2.
Mr.Puneet Singhal, Adv.
(DHCLSC) for R-3.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

Crl.M.A No.2503/2015

For the grounds taken in the petition, the delay of 46 days is condoned.

Application is disposed of.

CRL.A.231/2015

1. The present appeal on behalf of the State is directed against the judgment and order of conviction dated 16.10.2014 passed by the Additional Sessions Judge-04 (North), Rohini Courts, Delhi in Sessions Case No.32/1/14 (FIR No.145/2008, P.S.Kanjhawala) whereby the respondents have been convicted only under Section 325/34 of the IPC and have been sentenced for imprisonment which

they have already undergone during investigation/trial and a fine of Rs.10,000/- each, with the benefit of Section 428 Cr.P.C.

2. The respondent No.1 was charged for offence under Section 304/34 and Section 509 of the IPC whereas respondent Nos.2 & 3 were charged for the offences under Section 304/34 of the IPC.

3. The facts giving rise to the filing of the present appeal are as hereunder.

4. While Smt.Shivpati (deceased) and Ms.Roshni (PW-7) were sitting outside their house No.B-26, Sukhbir Nagar, Karala, Delhi on 12.9.2008, they heard somebody crying inside the house of respondent No.1. Since the house of respondent No.1 is adjacent to the house of the deceased, an enquiry was made from respondent No.1 as to who was weeping in the house. This infuriated respondent No.1, and he started abusing the deceased and also threatened Ms.Roshni (PW-7). The deceased and Ms.Roshni, in order to avoid any further embarrassment, came inside their house. After sometime Ghanshyam (PW-1), son of the deceased came home from his duty and was informed by Ms.Roshni (PW-7) about the occurrence. Ghanshyam thereafter accosted respondent No.1 and tried to know from him as to why he had abused Shivpati (deceased) and Roshni. The respondents are thereafter alleged to have grappled with Ghanshyam and assaulted him. The respondents also assaulted Govind Gupta (PW-4). When Shivpati (deceased) came to the rescue of Ghanshyam, respondent No.1 went inside his house, procured one 'thapi' a wooden rod and assaulted Shivpati (deceased) with the aforesaid weapon. Shivpati

(deceased) received injuries on her thigh and leg. The respondents thereafter made good their escape.

5. Smt.Shivpati (deceased) was taken by Ghanshyam to BSA Hospital, Rohini. She was thereafter referred to Senior Resident, Orthopaedic for opinion and management. The X-Ray of Smt.Shivpati disclosed that her left femur had fractured.

6. The intimation regarding the aforesaid occurrence was received in Kanjhawala police station and thereafter Head Constable Rajkumar (PW-7) reached the spot. After having come to know that the injured has been taken to BSA Hospital, the MLC of the injured (Smt.Shivpati) was obtained. Since she was not in a position to give any statement regarding the accident because of pain, the aforesaid Head Constable Rajkumar came back to the police station.

7. The further case of prosecution is that the respondents, feeling penitent about the occurrence met Ghanshyam (PW-1) and offered to bear all medical expenses incurred on the treatment of Shivpati (deceased). Because of such an offer, no report was made to the police on the date of the accident. Only when the respondents refused to pay the expenses, Smt.Manju (PW-3), wife of Ghanshyam (PW-1) went to the police station on 7.10.2008 and gave her statement (Ex.PW-3/A) before Head Constable Rajkumar (PW-7). On the basis of such statement, FIR No.145/08 was instituted under Section 323/509 and 34 of the IPC.

8. Smt.Shivpati died on 1.1.2009 at her house. On being informed, the local police arrived at the house of Shivpati and sent the dead body for post mortem.

9. Dr.Manoj Kumar (PW-10) conducted the post mortem over the dead body of Shivpati and prepared a report (Ex.PW-10/A). In his opinion the death was caused due to septicaemia.

10. Section 304 IPC was thereafter added on 14.11.2010.

11. At the trial the prosecution examined 17 witnesses on behalf of the prosecution. One witness was examined on behalf of the defence. The Trial Court, on analysing the evidence against the respondents, convicted them under Section 325/34 of the IPC and sentenced them for imprisonment which they had already undergone during the investigation/trial. The respondents were also directed to pay a fine of Rs.10,000/- each.

12. Ghanshyam (PW-1) who is the son of the deceased has deposed that respondent No.1 gave one thapi blow to his mother Shivpati (deceased) as a result of which she got injury on her thigh and leg. He took her mother to the hospital where she remained admitted for quite some time. It has also been stated by him that the respondents had promised to pay for the medical expenses but they did not keep their promise. It was only then that his wife Smt.Manju (PW-3) lodged a report against the respondents on 7.10.2008. The mother of PW-1 died on 1.1.2009 i.e. after about 3½ months of the occurrence.

13. Smt.Manju (PW-3) who is the complainant has also supported the version of PW-1 and has testified to the fact that she gave her statement to the police on 7.10.2008 (Ex.PW-3/A).

14. Similarly, Govind Gupta (PW-4) who is the grandson of the deceased and Ms.Roshni (PW-7) who is the granddaughter of the

deceased have also testified to the occurrence of quarrel between the deceased, PW-1 and the respondents.

15. Thus from the deposition of PWs.1, 3, 4 and 7, it stands established that the respondents, in retaliation, grappled and assaulted PW-1 and PW-4. When Shivpati, mother of PW-1 came to her son's rescue, respondent No.1 assaulted her by means of a thapi.

16. The MLC disclosed a fracture on the femur of the deceased. The depositions of Sarla (PW-2); SI Ashok Kumar (PW-5); ASI Nand Singh (PW-6); SI Shiv Narain (PW-9); Constable Parveen (PW-12); Inspector Surender Kumar (PW-14); Constable Vinod (PW-15); Constable Ajeet Singh (PW-16) and Head Constable Raj Kumar Tyagi (PW-17) further establishes and confirms that a quarrel had taken place at House No.A-24/25 where the mother of PW-1 was hit by a thapi as a result of which she suffered injuries and had to be hospitalized.

17. Inspector Surender Kumar (PW-14) who is the IO of the case has deposed that he recorded the statements of PW-3 and PW-4. He further confirms that the respondents were arrested on 10.3.2011 when Section 304 IPC was added in this case. However, during the cross examination he has deposed that none of the neighbours agreed for joining the investigation and he has denied the suggestion that no effort was made to enquire from any neighbour about the occurrence.

18. Dr.Geetesh Kumar (PW-8) testifies to the fact that he had examined Shivpati (deceased) on 12.9.2008 and has proved the MLC (Ex.PW-8/A). He has, however, in his cross examination stated that fracture of femur bone could be caused even by a fall. Dr.Manoj

Kumar (PW-10), as has been stated earlier, conducted the post mortem over the dead body of Shivpati and prepared the post mortem report (Ex.PW-10/A). During internal examination, fluid and puss were found in between the layers of muscle. The cause of death was stated to be septicaemia.

19. The evidence of the aforesaid doctors, therefore, confirm the fact that the respondents had quarrelled with the family of the deceased and respondent No.1 had hit her by a wooden substance leading to fracture of the femur bone. However, death was caused because of septicaemia and not because of any injury inflicted by the respondents. One witness who has been examined on behalf of the defence namely Anuj has only stated that the deceased was weak in her legs and walked only with the help of a walker. It has also been stated by him that there was a quarrel and in the commotion Shivpati (deceased) was pushed and she fell down on road.

20. From the deposition of witnesses it becomes very clear that the offence under Section 509 of the IPC which provides for punishment for indulging in act which is intended to insult the modesty of a woman, is not made out against respondent No.1 who has been charged for such an offence.

21. The Trial Court has, therefore, rightly acquitted respondent No.1 of the offence under Section 509 IPC.

22. It was urged on behalf of the defence that there was an unreasonable delay in the registration of the FIR and the explanation for the delay further weakened the prosecution version. The fact that the daughter-in-law of the deceased i.e. PW-3, being a witness to the

occurrence did not report or lodge the FIR on the same day but only after considerable lapse of time, goes a long way in discrediting the prosecution version. The weapon of assault i.e. thapi was also not recovered.

23. The Trial Court, however, brushed aside such arguments and relied upon the medical evidence to come to a finding that because of the assault by thapi by respondent No.1 who was being accompanied by respondent No.2 and 3, the deceased had suffered fracture on her femur. However, with respect to the offence under Section 304 IPC, the Trial Court was of the view that on 12.9.2008 the deceased had sustained fracture on her left femur. Ghanshyam (PW-1) and son of the deceased deposed before the Court during the cross-examination that his mother was discharged from the hospital on the advice of the doctors. The death of the deceased took place about four months after the incident. The Trial Court also took note of the fact that the deceased was 85 years of age which fact stood confirmed by the testimony of PW.1. The post mortem report (Ex.PW-10/A) finally confirmed the fact that the death of Shivpati was not relatable to the assault made by the respondent No.1; rather death was because of septicaemia after about 3½ months of the occurrence. Taking such aspects of the case into consideration, the Trial Court convicted the respondents of the offence under Section 325/34 of the IPC and sentenced them for imprisonment which they had already undergone during the investigation/trial. The respondents were also ordered to pay a fine of Rs.10,000/- each. The fine has been deposited by all the three respondents.

24. This Court finds no folly with the reasoning, logic and appreciation of evidence by the Trial Court. The judgment and order of conviction and sentence, therefore, brooks of no interference.

25. The appeal, on the aforementioned ground, is therefore, dismissed.

AUGUST 26, 2015
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ASHUTOSH KUMAR, J