
(2012) 02 DEL CK 0128
In the Delhi High Court
Case No : Criminal A. No. 467 of 1997

Attro Devi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 2 AD 541 : (2012) 187 DLT 487 : (2012) 2 JCC 941

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Shardul Singh, for the Appellant; Richa Kapoor, APP for the State, for the Respondent

Judgement

S.P. Garg, J.—Challenge in this Appeal is to the order of conviction dated 08.10.1997 and Order of sentence dated 14.10.1997, of learned Additional Sessions Judge whereby the Appellant was convicted for committing offence u/s 302 IPC and was sentenced to undergo life imprisonment with a fine of Rs. 300/-.

2. Appellant Attro Devi became a widow at a very young age. She used to reside at A-3/367, Sultanpuri. Anup Singh (since deceased) took a fancy to the Appellant; both developed intimate relations and started residing together without formal marriage. Anup Singh's relations had no objection to this arrangement between the two.

3. On 14.05.1992, as usual, Anup Singh came to the Appellant's house at about 5:00 P.M. At about 9.00 P.M. on receipt of wireless message through PCR, ASI Suraj Bhan reached the spot and found Anup Singh in burnt condition and took him to DDU hospital; Dr.Vijay Kumar Gupta (PW-3) prepared MLC and found 90% burn injuries on his person. He was subsequently shifted to RML hospital.

4. On receipt of DD No.29A (Ex.PW8/A) at about 8:50 P.M. police of PS Sultanpuri came into motion and reached RML hospital where the victim was found unfit to make the statement. On 15.05.1992 on being declared fit IO D.D.Kalshan recorded his statement in the presence of Manjit Singh (PW-4) and

Jai Karan Singh (PW-5). Anup Singh disclosed that he had visited the Appellant's house on 14.05.1992 at about 5:00 P.M., given her Rs. 2,500/- towards domestic expenses and had consumed liquor. The Appellant demanded more money and when he expressed inability to pay more, she quarreled with him and in a fit of rage, set him on fire by pouring kerosene oil from the plastic can lying in the room at about 8:30 P.M.

5. SI D.D.Kalshan (PW-9) made endorsement on the statement and sent the rukka at about 2:45 P.M. for lodging FIR against the Appellant for committing offence punishable u/s 307 IPC. On 18.05.1992 at about 11:35 A.M. Anup Singh succumbed to the injuries and Section 302 IPC was added in the FIR. During investigation IO prepared the site plan; seized burnt clothes and other articles lying inside the room and prepared the necessary seizure memos. The Appellant was arrested on 15.05.1992 and her disclosure statement was recorded. Subsequent investigation was taken over by Insp. Tilak Ram Mongia. Post-mortem of the dead body was conducted and the dead body was released to Tarif Singh (brother of the deceased). Exhibits were sent to CFSL; its report was collected subsequently; statements of concerned witnesses were recorded and after completion of investigation police filed challan against the Appellant.

6. To prove its case, the prosecution examined 23 witnesses. Appellant's statement was recorded u/s 313 Cr.P.C. where she denied her involvement in setting Anup Singh on fire.

7. After appraisal of the evidence and considering rival contentions of the parties, the learned Additional Sessions Judge convicted the Appellant for the offence described above.

8. Learned counsel for the Appellant urged that there was no worth while material before the Trial Court to convict the Appellant as she had no ulterior motive to commit the crime. Both Appellant and the deceased were living together happily for more than 10 years and there was no occasion for the Appellant to set him on fire. She was falsely implicated by the deceased's brothers with the intention of grabbing her property. Learned Counsel further urged that the facts and circumstances of the case do not attract Section 302 IPC as the Appellant had no intention to murder Anup Singh.

9. Learned APP for the State submitted that there was ample evidence in the form of consistent dying declarations of deceased to base a conviction. In all the dying declarations, Appellant was held responsible for setting the deceased on fire. The Appellant's conduct in the incident is inconsistent and unnatural as she did not intervene to save the deceased or to take him to the hospital.

10. We have considered rival contentions of the parties. At the outset, it may be mentioned that prosecution case is based upon circumstantial evidence only. The prosecution has heavily relied upon the dying declaration made by Anup Singh before Dr. Dr.Vijay Kumar Gupta (PW-3), who medically examined him at the first instance. Again, his dying declaration was recorded by SI D.D. Kalshan (PW-9)

after he was declared fit for making statement. PW-4 (Manjit Singh) and PW-5 (Jai Karan Singh) also testified facts disclosed by deceased to them before his death. All the witnesses have stated that Anup Singh had told them that a quarrel had taken place with the Appellant and in the quarrel, she poured kerosene oil and set him on fire with a match-stick.

11. PW-3 (Dr.Vijay Kumar Gupta) had examined Anup Singh on 14.05.1992 at about 10:00 P.M. and had prepared MLC Ex.PW-3/A. The MLC prepared by the said doctor states "patient was having alleged history of being burnt by wife after pouring kerosene oil when he was drunken". At the time of examination, no relative of the deceased was present near him. As per the testimony of Dr. Vijay Kumar Gupta, the alleged history was recorded on the basis of the statement made by the patient who was conscious. Dr.Vijay Kumar Gupta had no ulterior move to fabricate the alleged statement recorded in the MLC Ex.P-3/A where the deceased had clearly stated that he was set on fire by his "wife".

12. Another dying declaration was recorded by PW-9 (SI D.D.Kalshan) in the hospital on 15.05.1992 vide Ex.PW4/A in the presence of PW-4 (Manjit Singh) and PW-5(Sh. Jai Karan Singh). Both PWs 4 and 5 had visited the hospital on 15.05.1992. Anup Singh had made statement to SI D.D.Kalshan:

I have been coming to Attro r/oA-3/367 for the last 10/12 years as her husband Ram Singh @ Subhash has expired and to whom he treats as his wife. I have been paying monthly expenses to her. On 14.05.1992 at 5:00 P.M. I had come to Attro and had handed over to her Rs. 2,500/- towards expenses and he had taken liquor alongwith her at her house. After taking liquor, Attro had demanded from him more money for expenses. I told her that he had no more money. Consequently, Attro started quarrelling with him and had uttered the word "Tune Mujhe Bahut Pareshan Kar Rakha Hai, Aaj Tera Kam Tamam Kar Deti Hoon.? On saying so, Attro had poured kerosene oil over him from the plastic can which was lying there and thereafter, she had thrown the match stick after lighting it. I was sitting inside on the cot and after he was set on fire, he had run out side. Lot of people had collected there who had extinguished the fire after pouring water on him. I had then become unconscious. Attro had earlier picked up the quarrel so many times with him who used to demand money from him. Attro had tried to kill him by setting on fire yesterday at about 8:30 P.M. I want that legal action should be taken against her.

13. The above statement of Anup Singh was recorded by SI D.D.Kalshan after he was declared fit for statement by Dr.Tarun Gupta (PW-21) at about 1:15 P.M. on 15.05.1992. PWs 4 and 5 also corroborated the version given by IO D.D.Kalshan regarding the declaration/statement made by Anup Singh. In their deposition before the court both PWs 4 and 5 categorically proved the statement made by Anup Singh to SI D.D.Kalshan in their presence. Again both these brothers had no ill-will against the Appellant to falsely implicate her for the incident as none of them had ever objected to the relationship of the deceased with her. Lengthy cross-examination of both these witnesses failed to bring out any material

discrepancy or contradictions to disbelieve them.

14. All these dying declarations have been discussed in detail by the Trial Court. Cogent reasons have been enumerated in the judgment for believing the contents of dying declarations made at different times to different persons including doctor Vijay Kumar Gupta. We find no reason to doubt the dying declarations made by the deceased to the doctor, IO and to his brothers Manjit Singh (PW-4) and Jai Karan Singh (PW-5). Some contradictions and discrepancies in the statements of the prosecution's witnesses brought to our notice to discard the dying declarations are trivial and do not go to the root of the case to throw away the entire prosecution's case.

15. There is substance in the plea of learned counsel that the police failed to get the dying declaration of the deceased recorded by the Executive Magistrate. It is true that IO did not make sincere efforts to get the statement of deceased recorded before a Magistrate prior to his death. However, despite the lapse of the police in not getting the statement recorded from a Magistrate, the cogent testimony of PW-3 (Dr.Vijay Kumar Gupta) and that of PWs 4, 5 and 9 cannot be rejected in entirety.

16. The incident admittedly happened at the Appellant's residence. She failed to give any plausible explanation how and under what circumstances the deceased had been burnt. She failed to explain as to why she or her family member present there did not intervene to extinguish the fire. There is no explanation why the Appellant did not take the deceased to the hospital to provide medical assistance. She gave a false explanation alleging that, she sustained burn injuries on her person while saving the Appellant. PW-23 Dr.Jitender Kumar had conducted the medical examination of the Appellant on 15.05.1992 itself and had prepared report Ex.PW23/A in which no burn injuries were found on her person.

17. We are of the view that the dying declarations made by Anup Singh to all these witnesses are true, reliable and are not the result of any tutoring.

18. The Appellant's statement u/s 313 Cr.P.C. is very material to place reliance on the contents of the dying declarations. She admitted that Anup Singh used to visit her house for the last 17 years. She claimed herself to be Anup Singh's wife. She admitted that Anup Singh sustained burn injuries in her house but took a plea that on 14.05.1992, he came to her at 1:00 P.M. after having a quarrel over property issues with his brothers. She had told Anup Singh not to quarrel with his brothers and that she would maintain him. Thereafter, Anup Singh went out and returned after consuming liquor. In the mid night at about 1:00 A.M. she got up on hearing the cries of Kesar's son that "papa was burnt". On being informed, the neighbors rushed to extinguish the fire. She tried to save her husband and in the process, sustained injuries.

19. The Appellant, however, failed to produce any evidence, even her daughter Kesar or neighbours were not brought forward to prove her defence. The story presented by Appellant does not appear plausible as the information regarding

the fire incident was received by the police at about 8:45 P.M. and PW-20 (SI Suraj Bhan) had reached the spot at 9:00 P.M., taken Anup Singh in his PCR van to the hospital. PW-3 (Dr.Vijay Kumar Gupta) had examined injured Anup Singh on 14.05.1992 at about 10:00 P.M. and prepared the MLC (Ex.PW-3/A). From the MLC, it stands confirmed that ASI Suraj Bhan had got Anup Singh admitted in the hospital. There was, thus, no possibility of Anup sustaining burning injuries at about 1:00 A.M. as alleged.

20. No complaint was ever lodged either by the Appellant or by the deceased Anup Singh against his brothers to show any animosity over property. Contents of the dying declarations find corroboration in the Appellant's MLC where she was found under the influence of liquor. In her statement u/s 313 Cr.P.C. she admitted that the Appellant had also consumed liquor.

21. In the absence of glaring defects in the prosecution's case, we find no reason to interfere with the findings recorded by the trial court on conviction. We are also of the view that it was the Appellant who set Anup Singh on fire at her house and as a result he sustained burn injuries and expired subsequently.

22. This takes us to the alternative plea taken by the learned counsel for the Appellant that the offence would not be murder but would be culpable homicide not amounting to murder and would fall within Exception 4 of Section 300, IPC, which reads as under:-

300, Murder.-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault.

23. It is clear from the testimonies of PWs 4,5 and 16 that there was no previous animosity between the Appellant and deceased Anup Singh. Both had intimate relationship for more than 10 years and were living as husband and wife without any objection from any relation. Appellant was a widow and both started living together without formal marriage. There was no complaint about the Appellant's conduct and behavior at any time by the deceased or his family members. Nothing has come on record if at any time prior to the occurrence, any serious quarrel ever took place between the two. Even on the date of incident, initially there was no hostility between the two. The deceased had come to the house as usual at about 5:00 P.M. and had given Rs. 2,500/ to the Appellant to meet the

domestic expenses. Both had consumed liquor on that day. A sudden quarrel took place thereafter when the deceased allegedly expressed his inability to pay more money to the Appellant on her demand. Appellant got enraged as the deceased was spending money on liquor without working or earning. The incident took place without premeditation. The time gap between exchange of hot words and the second incident of pouring kerosene is a few minutes. This clearly indicates that it was a sudden fight and there was no time for tempers to have cooled so as to allow in the concept of premeditation. Observation of the learned Trial Court in para (35) of the impugned judgment reads as under:-

In fact, from the evidence of both these witnesses, it is quite clear that the deceased also disclosed to them that the accused had set him on fire after he could not fulfil her demand of more money after he had paid Rs. 2500/-. In fact the deceased had also disclosed to them that the accused while setting him on fire had also uttered the word that "you have harassed her a lot and I will finish you today.? The said uttering made by accused to the deceased prior to setting him on fire clearly shows that the accused had become desperate and had become disgusted with the behavior and conduct of the deceased who was unemployed and perhaps was not giving any expenses to the accused who was dependent upon him for her survival.

24. We see no evidence that Appellant had taken undue advantage or acted in a cruel or unusual manner. The Appellant had set fire in a fit of rage. It also resulted in burn injuries on the Appellant's person. It also burnt the gadda, bed-sheet and the cot. After the deceased was set on fire, he went outside and neighbours extinguished the fire. He did not succumb to the injuries at the spot and remained admitted in the hospital for about four days. Again, observations of the learned Trial Court in this aspect are relevant :

Her involvement stands confirmed from the fact that she did not try to extinguish the fire as a result of which deceased had sustained 90% burn. In my opinion, if the deceased would have been rendered timely help and fire would have been extinguished in time, he would not have sustained extensive burn on all over the body to the extent of 90%.

25. The Appellant had also sustained injuries on her person in the occurrence. PW-23 Dr.Jitender Kumar medically examined the Appellant and prepared her MLC Ex.PW23/A in which one abrasion on the left fore-arm was found on her person. The prosecution failed to explain injuries on the Appellant's person. An inference can be drawn that she sustained injuries in the quarrel between the two over payment of more money. All these circumstances rule out if the Appellant had acted in a cruel or unusual manner.

26. A similar situation had arisen in the case of Sukhbir Singh Vs. State of Haryana, . In that case also there was no enmity between the parties. The occurrence had taken place when Sukhbir Singh got mud stains on account of sweeping of a street by Ram Niwas and a quarrel ensued. The deceased slapped

the Appellant for no fault of his. The quarrel was sudden and on account of the heat of passion. The accused went home and came armed in the company of others without telling them of his intention. The time gap between the quarrel and the fight was a few minutes only. The Supreme Court observed that it was, therefore, probable that there was insufficient lapse of time between the quarrel and the fight which meant that the occurrence was sudden within the meaning of Exception 4 of Section 300, IPC.

27. In the case of Golla Yelugu Govindu v. State of Andhra Pradesh (2008) 16 SCC 769, at about 2:00 A.M. when the deceased was in the house there was exchange of hot words and quarrel between the accused and the deceased. This happened in the presence of the children. Suddenly the accused hacked the deceased in the neck with a sickle and the deceased fell down and the accused once again hacked on the neck and left ear of the deceased causing severe bleeding injuries. It resulted in the death of the lady. The Appellant therein submitted that Section 302 IPC has no application to the assault made during the course of a sudden quarrel and Exception 4 of Section 300, IPC applied. The Hon"ble Supreme Court discussing the law in detail converted the conviction to Section 304 Part 1 IPC.

28. In the latest case decided by this Court in CrI.A.No.134/2009 titled as Jagtar Singh @ Jagga @ Ganja Vs.State of Delhi, there were two injuries on the neck and two in the chest, of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of Parveen's body, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case pointed to some previous quarrel between the deceased and the Appellant; the latter was agitated and confronted the deceased in the first part of the incident; on the day of occurrence. It was held that though the Appellant inflicted several blows some of which were fatal, it is clear that he did not set out with a pre-mediated intention to kill the deceased. The facts clearly established an offence u/s 304 Part-I, IPC in which intention was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

29. The distinction between culpable homicide and murder was aptly drawn by the Supreme Court in Kandaswamy Vs. State of Tamil Nadu, . It was held that:

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whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder," on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to

"culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the First Part of Section 304, Penal Code.

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30. In the decision reported as Preetam Singh and Others Vs. State of Rajasthan, , it was held that:

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20. In the present case, there are three head injuries, two on the scalp and one on the left parietal region. The first two injuries are, undoubtedly, fatal injuries. As a result of those injuries, multiple fractures of the right parietal bone occurred, the membranes got severed and there was injury to the brain matter. As regards the third injury, which is an incised wound of 2? x 1? on the left parietal region, it cannot be said for certain that in the ordinary course it would have caused death. The medical evidence is silent on this aspect. The doctor did not even say what impact this third injury had internally. All the three appellants inflicted injuries on the head of the deceased with the weapons in their hands according to the prosecution witnesses. There is an allegation that after the deceased fell down all the three went on giving blows on the leg and waist. Certain injuries were found on the knee joint, elbow joint and left forearm of the deceased

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...intention that can be safely imputed to Appellants 1 to 3 or 3 was to cause bodily injuries to Pyara Singh which were likely to cause death. It is this common intention which, in our view, had developed on the spot. Therefore, the offence committed by Appellants 1 to 3 would be culpable homicide not amounting to murder and they are liable to be convicted and punished u/s 304 (Part I). They are also liable to be convicted u/s 148 IPC for the offence of rioting. On the basis of the evidence on record and the findings recorded by the High Court, there is no escape from the conclusion that the appellants were members of an unlawful assembly of five or more persons having the common object falling within the scope of clause (iii) of Section 141, though the common object was not to kill or hurt the deceased person.

22. We, therefore, convict Appellants 1 to 3 u/s 304 (Part I) read with Section 34 and also u/s 148 IPC. The conviction u/s 302 read with Section 34 IPC is set aside. Coming to the question of sentence, we are informed that Appellants 1 to 3 have already suffered imprisonment for a period of about eight years. We are of the view that having regard to the facts and circumstances of the case, imprisonment for eight years coupled with the enhancement of fine would be adequate punishment for the main offence they committed u/s 304 Part I. Accordingly, they are sentenced to eight years' RI and at the same time we consider it just and proper to enhance the fine to Rs 2000 in the case of each of the three appellants. It is further directed that in default of payment of enhanced fine within a period of one month from today, they should suffer rigorous imprisonment for a further period of nine months. Appellants 1 to 3 are sentenced to one year's RI for the offence u/s 148 IPC. The sentences for the aforesaid two offences should run concurrently.

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31. In another decision, reported as Subran alias Subramanian and Others Vs. State of Kerala, it was held that:

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The High Court failed to draw the distinction between an offence under clause (b)++ and (c)+ of Section 299 IPC and that falling under clause (3)+ of Section 300 IPC. The intention to cause murder of Suku deceased, could not be attributed to him and the medical evidence also shows that the injuries attributed to him were not sufficient in the ordinary course of nature to cause death of the deceased. The conviction of appellant 1, Subran, for the substantive offence u/s 302 IPC is therefore unwarranted and cannot be sustained. That Suku deceased died as a result of injuries inflicted on him by all the four appellants is not a matter which is in doubt. From the ocular evidence read with the medical evidence, it stands established that the injuries on the deceased had been caused by all the four appellants and that the death of Suku had occurred due to receipt of multiple injuries. What offence can then be said to have been committed by the four appellants?

12. According to the medical evidence, the injuries caused were cumulatively sufficient to cause death and the death had occurred due to multiple injuries which were found sufficient in the ordinary course of nature to cause death. According to the ocular testimony of witnesses namely, Biju (PW 4) and Anil (PW 5), who have been believed by both the courts below and with which finding we have no reason to differ, all the four appellants had caused those injuries. It is, therefore, necessary in a case like this to determine as to which of the accused is guilty of a particular offence. On a consideration of the circumstances of the case, the type of weapons with which they were armed and nature and seat of the injuries, it is not possible to hold that all the four appellants had shared the common object of causing such bodily injuries on the deceased as were likely to

cause the death of Suku or were sufficient in the ordinary course of nature to cause his death. The appellants would, therefore be liable for the offence committed individually by each one of them.

13. As already noticed, though it may not be possible to attribute to appellant 1, Subran, the necessary intention to cause death of Suku so as to hold him guilty of an offence of murder u/s 302 IPC since the injuries inflicted by him were not found to be sufficient in the ordinary course of nature to cause death of Suku, but looking to the weapon with which he was armed and the nature, number and seat of injuries inflicted by him though not on any vital part, he can certainly be attributed with the knowledge that with those injuries it was likely that death of Suku may be caused and, therefore, he can be clothed with the liability of causing culpable homicide not amounting to murder. The case of the first appellant, therefore, falls within Section 299 IPC punishable u/s 304 Part I IPC. We, accordingly, convict him for the said offence and sentence him to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs 2000 (two thousand) and in default of payment of fine suffer further rigorous imprisonment for one year. Fine if realised shall be paid to the heirs of the deceased.

14. Coming now to the case of the other three appellants. Since, their conviction for an offence u/s 326 with the aid of Section 149 is not sustainable in law, we set aside their conviction under Sections 326/149 IPC. They would be responsible for their individual acts. The injuries caused by Rajan and Preman appellants 2 and 3, were with a torch, iron rod and a cycle chain. None of the injuries caused by them according to the post-mortem report were on any vital part of the body, though some of the injuries caused by blunt weapons were grievous in nature. We, therefore, convict each of the two appellants Rajan and Preman, for an offence u/s 325 IPC and sentence them to suffer rigorous imprisonment for two years each.

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32. Thus, we are clearly of the view that it is a case of culpable homicide not amounting to murder within the ambit of Exception 4 of Section 300 IPC. However, we are not in agreement with the learned counsel for the Appellant that it is a case which will fall u/s 304, Part II IPC. The Appellant certainly knew, even if it is assumed that it was not intended to cause death of Anup Singh, that by pouring kerosene oil and setting him on fire, it would result in causing such bodily injuries as were likely to cause death. We are of the view that the Appellant be punished u/s 304 Part I, IPC. We notice that the Appellant has already remained in custody in this case for more than seven years. Ends of justice would be met if she is sentenced to undergo imprisonment for the period already spent by her in custody. Her conviction for murder is set aside and she is convicted for committing culpable homicide not amounting to murder in view of Exception 4 of Section 300, IPC and is sentenced accordingly. The appeal stands disposed of accordingly.