

RAMBIR

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v.

STATE OF NCT, DELHI

(Criminal Appeal No. 839 of 2019)

MAY 06, 2019

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[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Penal Code, 1860: ss. 300 exception 4, 302 – Murder – Husband-appellant strangled his wife with saria and caused her death – Testimony of the eye witness-son of the victim, oral evidence of prosecution witness whose statement was further corroborated, prosecution witness who had last seen the appellant leaving the place of incident and two more prosecution witness who confirmed the presence of the appellant – Conviction of the appellant for offence u/s. 302 and sentenced to life imprisonment by the courts below – On appeal, held: Since the incident occurred in sudden quarrel and there was no premeditation, the act was committed in a heat of passion, and having regard to nature and manner of incident, the act of the victim was not of extreme cruelty, thus, the act of the appellant would fall under Exception 4 to Section 300 – Conviction of the appellant modified to one u/s.304 Part II and sentence of 10 years’ simple imprisonment imposed.

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Partly allowing the appeal, the Court

HELD: 1.1 A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required :there must be a sudden fight; there was no premeditation; the act was committed in a heat of passion; and the offender had not taken any undue advantage or acted in a cruel or unusual manner. By applying the above tests, the High Court found that two of the ingredients were absent so as to bring the case of the appellant under Exception 4 to Section 300 IPC. The High Court found that the act of picking up a ‘saria’ and compressing forcefully the neck of his wife by the appellant, can, by no stretch of imagination, be said to be an act committed in a heat of passion. Further it is held that, the manner in which the appellant compressed his wife’s neck also depicts an act of extreme cruelty. From the evidence

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A on record it is clear that incident occurred in a sudden fight and there was no pre-meditation. Even the primary witness PW-7, the son of the accused and deceased, deposed that he had seen the appellant strangulating his mother with the 'saria' when she had taken out some money from the appellant's wallet. It is not as if 'saria' was brought in a pre-planned way to murder the wife of the appellant. The iron rod (saria) was picked up at the spur of the moment at the time of incident and used to compress the neck forcefully. In that view of the matter it was nothing but an act committed by the appellant in a heat of passion. Having regard to nature and manner of incident, it cannot be said that act of the appellant was extremely cruel. Unless it is barbaric, torturous and brutal, strangulation of the appellant's wife cannot be said to be an act of extreme cruelty for denying the benefit of Exception 4 to Section 300 IPC. [Para 13] [168-F-H; 169-A-D]

D 1.2 The case of the appellant falls within Exception 4 to Section 300. Having regard to evidence on record, all the four ingredients which are required to extend the benefit of Exception 4 to Section 300, apply to the facts of the case on hand. Since the occurrence in sudden quarrel and there was no premeditation, the act of the appellant-accused would fall under Exception 4 to Section 300. As such, the conviction recorded against the appellant u/s 302 is set aside and the conviction of the appellant-accused u/s. 302 IPC is modified, as the one u/s. 304 Part II and a sentence of 10 years' simple imprisonment is imposed. [Para 14] [169-E-H; 170-A]

F *Surinder Kumar v. Union Territory, Chandigarh* (1989) 2 SCC 217 : [1989] 1 SCR 941 - relied on.

Case Law Reference

[1989] 1 SCR 941 relied on. Para 14

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 839 of 2019.

From the Judgment and Order dated 11.10.2017 of the High Court of Delhi at New Delhi in Criminal Appeal No. 1316 of 2012.

Shikhil Suri, Shiv Kumar Suri, Advs. for the Appellant.

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Ms. Pinky Anand, ASG, Ashok Panigrahi, P. S. Sudheer, Ms. Kirti A
Dua, B.V. Balaram Das, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J. 1. Leave granted.

2. This criminal appeal is directed against the judgment dated B
11.10.2017 passed by the High Court of Delhi at New Delhi in Criminal
Appeal No.1316 of 2012, by which High Court has dismissed the criminal
appeal, confirming the conviction and sentence imposed on the appellant
by the learned Additional Sessions Judge, Karkardooma Courts, Delhi,
whereby he has been convicted for offence under Section 302 IPC and C
sentenced to undergo life imprisonment.

3. As per the case of the prosecution, on the intervening night of
31.08.2010 and 01.09.2010, the appellant strangled his wife – Sua
and caused her death on the rooftop of the premises no.C-834, Gali
No.30/3, Jafraabad, Delhi. In connection with the said incident, a case D
was registered in FIR No.205/2010 against the appellant-accused under
Sections 302 and 34 IPC on 01.09.2010. The appellant-accused was
tried by the learned Additional Sessions Judge, Delhi. To prove the guilt
of the appellant-accused, prosecution examined 18 witnesses. After
considering the testimony of the prosecution witnesses and other evidence
on record, the learned trial court, i.e., learned Additional Sessions Judge, E
held that appellant is guilty for offence under Section 302 IPC, for the
murder of his wife, vide judgment dated 19.07.2012. Further, the trial
court, by order dated 23.07.2012 sentenced the appellant for life
imprisonment for the offence under Section 302 IPC.

4. The conviction recorded and sentence imposed by the trial court F
was challenged before the High Court mainly on the following grounds :

“i) The Trial Court has erred in ignoring the fact that the presence
of Anurag: the child witness (PW-7) was highly doubtful on the
scene of crime and his testimony could not be relied upon as the
witness PW-7 was a tutored witness. G

ii) PW-1 (Constable Neeraj Kumar) who was posted as
Photographer in the Crime Team stated in his testimony that, ‘No
eye witness came forward before the IO claiming himself to have
seen any event in his presence’, whereas PW-7 has been cited as
a witness of a crime. H

A iii) None of the witnesses had deposed about the presence of PW-7 at the scene of the crime whereas the witness PW-7 had deposed that he was also sleeping on the roof.

B iv) The Trial Court failed to consider the fact that the body of the deceased was preserved for 72 hours before it was subjected to postmortem, from which it was apparent that the police had no clue about the accused. In these circumstances Anurag was introduced as a tutored witness. Neither any inquiry or investigation was carried out as to where the child had been till then and from where he was produced and by whom, which clearly suggested that the witness had been deliberately introduced.

C v) The Trial Court erred in presuming the fact relating to the presence of the Appellant at the scene of occurrence for the entire period of inquiry whereas it had come in evidence that he had been arrested through a secret informer which clearly shows about false implication of the Appellant.

D vi) the weapon of the offence ‘saria’ which was allegedly got recovered by the Appellant pursuant to his disclosure, was a piece of rod bearing twist marks but the post mortem did not suggest whether the strangulation mark appearing on the neck of the deceased had those twist marks of the ‘saria’.”

E 5. The High Court, by considering the judgment under appeal and by re-appreciating the evidence on record, has come to the conclusion that prosecution has proved the case against the appellant beyond any reasonable doubt. The reliance is placed by the trial court on the deposition of PW-7 who is the son of the appellant and deceased who was an eye witness to the incident of murder. By further considering the oral evidence of PW-7 whose statement was further corroborated by PW-9 – Fayaz, who had last seen the appellant leaving the place of incident in the morning at 06:30 a.m. and on the deposition of PW-17 – Kishan and PW-18 – Shahid who confirmed the presence of the appellant, the High Court has recorded a finding that their deposition inspired confidence and all the aforesaid witnesses stood the test of cross-examination and thus confirmed the finding of the trial court that appellant has strangled his wife with ‘saria’ as a result of which she died.

G 6. Further, while considering the plea of the appellant’s counsel
H who was appointed by the Delhi High Court Legal Services Committee,

that the incident happened in the fit of anger and under influence of liquor, lost his cool, picked up quarrel with the wife and strangled her with the help of 'saria', as such the case of the appellant falls within Exception 4 to Section 300 IPC, the High Court has found that two ingredients of Exception 4 are missing. High Court has not accepted such plea and confirmed the conviction under Section 302 IPC and sentence of life imprisonment imposed by the trial court.

7. This Court, by order dated 13.11.2018, has issued notice limited to the nature of the punishment and the quantum of sentence.

8. We have heard Sri Shikhil Suri, learned counsel for the appellant and also Ms. Pinky Anand, learned Additional Solicitor General appearing for the respondent-State.

9. In this appeal, mainly it is contended by learned counsel for the appellant that having regard to facts of the case and the evidence on record, no case is made out for convicting the appellant under Section 302 IPC. It is submitted that the appellant had no intention to kill his wife and there was no pre-meditation of any kind. According to learned counsel, it was a case of normal quarrel between the husband and wife which turned ugly upon the wife trying to forcibly take out money from his pocket. The submission of the appellant is that in the fit of anger, the appellant, who was under influence of liquor, lost his cool, picked up 'saria' to hit his wife. It is submitted that he neither intended to cause her death nor did he realise during the sudden fight that his act of pressing her neck with 'saria' would cause her death. By referring to Exception 4 to Section 300 IPC, learned counsel has submitted that all the four ingredients thereof apply to the facts of the case on hand and it is submitted that the finding of the High Court, that two of the ingredients to bring the case of the appellant under Exception 4 are not satisfied, runs contrary to the evidence on record.

10. On the other hand learned Additional Solicitor General appearing for the respondent-State has submitted that it is a clear case of murder which is proved against the appellant by four material witnesses, viz., PW-7; PW-9; PW-17 and PW-18. It is submitted that the appellant has strangled his wife with a 'saria' as a result of which she died. It is submitted that the act of picking up of 'saria' and compressing forcefully the neck of his wife, can by no stretch of imagination be said to be an act committed in a fit of anger. Further it is submitted that the strangulation

- A with the help of ‘saria’ is an extremely cruel act upon the appellant, as such, the plea of Exception 4 to Section 300 IPC is negated rightly by the High Court and there are no grounds to interfere.

11. Having heard learned counsel for the parties, we have perused the impugned judgment and other material placed on record.

- B 12. As indicated above, this Court has issued notice limited to the nature of punishment and quantum of sentence. While it is the case of the appellant that even by accepting the evidence on record, the case of the prosecution falls under Exception 4 to Section 300 IPC, as such, trial court and High Court have committed error in convicting the appellant
C for offence under Section 302 IPC and sentencing him for imprisonment for life. Even as per the case of the prosecution the incident occurred on the intervening night of 31.08.2010 and 01.09.2010 on the rooftop of premises no.C-834, Gali No.30/3, Jafrabad, Delhi. The primary witness is PW-7 who is the son of the appellant and the deceased, who has
D stated that he had seen the appellant strangulating his mother – the deceased – with the ‘saria’ after she had taken out some money from the appellant’s wallet. PW-15 – SI Dharmandra Pratap was the first to arrive at the scene of crime and testified as to presence of the body of the deceased on the terrace along with, among other things, a ‘saria’, an empty liquor bottle and a plastic glass. PW-9 – Fayaz, who was working
E in the workshop in the said premises, testified to have witnessed the appellant leaving the premises in the morning on 01.09.2010.

13. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required :

- F (i) There must be a sudden fight;
(ii) There was no premeditation;
(iii) The act was committed in a heat of passion; and
(iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.

- G By applying the above tests, the High Court has found that two of the ingredients are absent so as to bring the case of the appellant under Exception 4 to Section 300 IPC. The High Court has found that the act of picking up a ‘saria’ and compressing forcefully the neck of his wife by the appellant, can, by no stretch of imagination, be said to be an act

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committed in a heat of passion. Further it is held that, the manner in which the appellant compressed his wife's neck also depicts an act of extreme cruelty. From the evidence on record it is clear that incident occurred in a sudden fight and there was no pre-meditation. Even the primary witness PW-7, the son of the accused and deceased, has deposed that he had seen the appellant strangulating his mother - deceased – with the 'saria' when she had taken out some money from the appellant's wallet. It is not as if 'saria' was brought in a pre-planned way to murder the wife of the appellant. The iron rod (saria) is picked up at the spur of the moment at the time of incident and used to compress the neck forcefully. In that view of the matter it is nothing but an act committed by the appellant in a heat of passion. Further, the High Court has not given the benefit of Exception 4 to Section 300 IPC on the ground that appellant compressed his wife's neck also depicts an act of extreme cruelty. Having regard to nature and manner of incident it cannot be said that act of the appellant was extremely cruel. Unless it is barbaric, torturous and brutal, strangulation of the appellant's wife cannot be said to be an act of extreme cruelty for denying the benefit of Exception 4 to Section 300 IPC.

14. Having regard to evidence on record, we are of the view that the case of the appellant falls within Exception 4 to Section 300 IPC. Further, the judgment in the case of **Surinder Kumar v. Union Territory, Chandigarh**¹ also supports the case of the appellant. In the aforesaid case, the knife blows were inflicted in the heat of the moment, one of which caused death of the deceased, this Court has held that accused is entitled to the benefit of Exception 4. In the aforesaid judgment, this Court further held that in a sudden quarrel, if a person, in the heat of the moment, picks up a weapon which is handy and causes injuries one of which proves fatal, accused would be entitled to the benefit of Exception 4. We are of the view that the said judgment supports the case of the appellant and further having regard to evidence on record we are of the view that all the four ingredients which are required to extend the benefit of Exception 4 to Section 300 IPC, apply to the facts of the case on hand. Since the occurrence in sudden quarrel and there was no premeditation, the act of the appellant-accused would fall under Exception 4 to Section 300 IPC. As such, the conviction recorded against the appellant under Section 302 IPC is liable to be set aside and is accordingly

¹ (1989) 2 SCC 217

A set aside and the conviction of the appellant-accused under Section 302 IPC is modified, as the one under Section 304 Part II, IPC and we impose a sentence of 10 years' simple imprisonment on the accused.

15. The appeal is partly allowed and the conviction recorded and sentence imposed on the appellant stands modified as indicated above.

Nidhi Jain

Appeal partly allowed.