

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

% *Judgment Reserved on : 10th March, 2010*
Judgment Pronounced on: 12th March, 2010

+ **CRL APPEAL NO.168/2010**

MANJU Appellant

Through: Mr.Udai Raj Singh, Advocate

versus

STATE Respondent

Through: Mr.M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. She was a baby girl and her arrival was a calamity. She was a baby girl and was a source of anxiety to her parents, for in her, they saw a difficult problem of her marriage. She became their compulsion. The very thought of her marriage was enough to ruin them. She was a poor little thing and the blocking of a puff of wind was enough to put her out.

2. The society had scripted her obituary much before she was born. Her mother only published it.

3. This is the story of the unnamed infant; probably this is the first decision which cannot even refer to the victim by her name. She had none!

4. We do not know whether any spirituality transcends human life, for what happens after death, we know not. But it is recognized and accepted that human personality transcends human life. For her, even this was denied.

5. Her brief existence in the world was reduced to a piece of mere statistics – A number stood added to the population of the world. – A number stood added to the female population of the world. – A number stood subtracted from the population of the world. – A number stood subtracted from the female population of the world. – The male female ratio got further imbalanced in India i.e. Bharat. – A credit entry was made in the Register of Births. – A debit entry was made in the Register of Deaths. – A smile was lost forever.

6. The moral regression of the people of India i.e. Bharat has not been crippled by the penal laws. The policy of persuasion has failed.

7. But, should the appellant who is not the architect of the crime which has been created by society i.e. female infanticide, having acted as a pawn, be made to pay for the sins of the society. She is an ignorant lady, living in a wretched condition below the poverty line. That she has

affixed her left thumb impression on her statement under Section 313 Cr.P.C. is proof of her illiteracy. That she lives below the poverty line is evidenced by her address which happens to be a slum area. That she is barely able to keep intact her soul and body is proved by the fact that her husband is a daily wager.

8. A reactive process is itself an injudicious and one sided process, heavily loaded against the ignorant and the weak.

9. That the appellant was admitted at the maternity ward of Lady Harding Medical College and was blessed with a baby girl at around 12:10 noon on 24.8.2007 is a fact which is not in dispute and has been deposed to by Smt.Shakuntala Arora PW-1 posted as an Assistant Nursing Superintendent at the Maternity Ward on 24.8.2007. That the appellant was removed from the labour room to the ward and custody of the new born baby girl was entrusted to the appellant at around 4:30 PM is a fact deposed to by Bindu George PW-8, posted as a staff nurse in the maternity ward on 24.8.2007. That at around 6:30 PM a panic situation came into existence concerning the appellant and her baby has been deposed to by Sangeeta Rani PW-9, another staff nurse posted at the maternity ward. We reproduce through the mouth of Sangeeta Rani as to what the panic situation was:-

“At around 6 pm which is the usual time to give medicine to mothers, PNC case, in the present case I saw accused Manju holding baby in a normal and healthy condition. At around 6:30 pm while we staff nurses Bindu and Salikutty were busy in making arrangements in the labour room for next delivery and where labour room is just adjoined PNC, we were called by doctor intern on duty called us by giving a call “sisters Jaldi Aao Bacha sick”. PNC intern had picked up the baby of accused Manju and we all tried to resuscitate baby. We also called senior Resident Dr.Nidhi through a student nurse. As pointed out by the doctor myself and other staff nurses saw there were marks a kind of red and bluish on the neck as well as on the nose of that victim baby. Doctor Nidhi found that baby was no more alive and police was informed.”

10. The police was informed and the investigating officer seized the dead body of the baby girl and after filling up the inquest papers sent the same for post-mortem to the mortuary of the hospital where Dr.Abhishek Yadav PW-16 conducted the post-mortem of the baby girl in the morning hours of 26.8.2007 and penned the post-mortem report Ex.PW-16/A-1 to Ex.PW-16/A-6 i.e. running into 6 pages. He recorded on the post-mortem report 8 external injuries on the person of the dead baby girl as under:-

- “1. Reddish abraded contusion .7 x .3 cm present obliquely over right ala of nose, 1 cm of upper lip.
2. Reddish abraded contusion .7 x .3 cm present obliquely around left ala of nose, 1 cm from upper lip.
3. Reddish abraded contusion 1.2 x .2 cm present over left side of neck/obliquely placed, lower and touching midline, upper end .5 cm from midline, 5 cm below chin, 5 cm from tip of left shoulder.

4. Reddish abrasion 1 x 2 cm crecentric shape horizontally placed over right side of neck, 1 cm from midline, 5 cm below chin, 5 cm from tip of right shoulder.

5. Reddish abrasion 0.3 x 0.1 cm left side neck .5 cm below injury No.3, .5 cm from midline.

6. Reddish abrasion .6 x .2 cm right lateral side of neck crecentric shape, 3 cm below and behind ear, 5 cm from midline.

7. Reddish crecentric shape abrasion .5 x .1 cm right lateral side of neck, horizontally placed, 0.5 cm below injury No.6.

8. Reddish crecentric abrasion 0.5 x 0.1 cm right lateral side of neck, 1 cm below injury No.7, 3 cm from tip of shoulder, 6 cm from midline.”

11. He recorded that the internal examination revealed as under:-

“1. Head, neck, skull, were NAD. Brain was oedamatus and congested. Meninges were NAD.

2. In neck, extravastion of blood was present in and around carotidsheath, soft tissues and muscles of larynx below injuries. Hyoid bones was intact. Thyroid was intact.

3. Thyrox was NAD, oesophagus was NAD. Trachea and bronchi were congested.

4. Both lungs were congested and patechial Haemorrhage was present at inter labor surface. Patechial haemorrhage was present at ventricular surface in heart.

5. Liver, spleen and kidney were congested.

6. Rest of the body structure was NAD.”

12. He opined that the cause of death was asphyxia due to ante mortem manual strangulation (throttling along with smothering).

13. Dr.Abhishek Yadav was cross-examined as under:-

“It is correct that before conducting the post-mortem I have gone through the inquest papers. It is not mentioned in the inquest papers that after birth of the female child was kept on incubator. It is wrong to suggest that such type of external injuries mentioned above 1 to 8 in the heading of external injury can be possible when the new born baby has to be washed after immediately birth. According to my findings of post-mortem there was no possibility that the death may be caused by respiratory disease. It is wrong to suggest that I did not conducted the post-mortem fairly and as per the requisite medical guidelines. It is wrong to suggest that I gave my wrong findings just to save to doctors of the hospital.”

14. With reference to the testimony of Sangeeta Rani PW-9 it was urged by learned counsel for the appellant that it was apparent that the baby girl was sick and resuscitation was tried on the baby. Counsel drew our attention to the expression '*sisters jaldi aao bacha sick*' used by Sangeeta Rani in her testimony with reference to what the doctor intern had exclaimed when she saw the baby girl lying listless. It was urged that while resuscitating the baby it is possible that the injuries noted by Dr.Abhishek Yadav came to be inflicted upon the baby.

15. The submission is nothing but an attempt to clutch on to straws. Resuscitation would require some use of force

on the chest of the baby girl while using the balloon pump to expel the air from the lungs which has been pumped in with the use of a balloon pump so that the breathing recommences. No injury has been noted on the chest of the baby girl.

16. With reference to the external injuries recorded in the post-mortem report and reproduced in para 10 above it is to be noted that injury No.1 and 2 indicate that the nostrils of the baby were squeezed to prevent air passing through the nostrils. Injury No.3 to 8 indicate that the neck was throttled after it was taken into a pincer like grip and using force the trachea was pressed.

17. Internal injury No.2 noted in para 11 above shows extravasation of blood around the larynx with the soft tissue and muscle being injured.

18. There is no manner of doubt that the unfortunate young baby was strangulated to death.

19. The baby was in the custody of the appellant and her contemporaneous conduct has been deposed to by Shakuntala Arora PW-1 who was the Assistant Nursing Superintendent on duty. When she saw the baby's condition, as deposed to by Shakuntala Arora, she asked the appellant as to how the child had died, to which the appellant responded that inadvertently her hand happened to fall upon the baby.

20. The explanation given by the appellant when she was examined under Section 313 Cr.P.C. is that she was sleeping when at around 5:00 PM she was told by the doctors that her baby had died.

21. In the teeth of the post-mortem report and the testimony of PW-1, PW-8 and PW-9 it is but apparent that the appellant has committed the offence of female infanticide i.e. has murdered her own baby.

22. We quote three stanzas from the poem 'Prayer Before Birth' by LOUIS MACNEICE:-

*"I am not yet born, console me
I fear that the human race may with tall walls
wall me,
with strong drugs dope me,
with wise lies lure me,
on black racks rack me,
in blood baths roll me.*

x x x

*I am not yet born; forgive me
for the sins that in the world shall commit,
my words when they speak me,
my thoughts when they think me,
my treason engendered by traitors beyond me,
my life when they murder by means of my hands,
my death when they live me.*

x x x

*I am not yet born; rehearse me
in the parts I must play and the cues
I must take when old men lecture me,
bureaucrats hector me,
mountains frown at me,
lovers laugh at me,
the white waves call me to folly,*

*and the desert calls me to doom,
and the beggar refuses my gift,
and my children curse me."*

23. The dramatic monologue with the speaker being the unborn child brings out the concern of the unborn child as to how he would face modern humanity and asks of God or humanity to spare him terrors of modern society as are personified by blood sucking bats, stoat and club footed ghoul. There are other fears. There are barriers, drugs, lies, torture and violence. The unborn child wants to be comforted. The earth is deteriorating and the unborn child requests God to provide him these for him to grow physically, intellectually and emotionally healthy. The unborn child realizes that the modern society is losing its identity and sins are ingrained in a person from society, crime is put in him or her by society. Since the child will be a part of this world he is likely to commit sins, speak what he is taught, think the way he is trained and hence seeks forgiveness.

24. The plight of the appellant is akin to that of the unborn child.

25. No reasonable and rational person would countenance female infanticide. It is not only a penal offence but is a sin against God. The greatest gift of God to mankind is the gift of life. Children are life born not to their parents but through their parents. The problem in India is acute with

contempt for the female child writ large on the spectrum of the society. Its proof is the dismal adverse male:female sex ratio where the biologically stronger sex i.e. the female sex is in the minority. 60 years of independence and so-called modernization has not changed the societal attitude towards the female child. Across the board; rural or urban, educated and uneducated, rich and poor, the skewed sex ratio adverse to the female child is a sad mirror image of the social thinking even in the 21st Century.

26. The reason is dowry at the time of marriage of the girl child. The result is the female child being looked upon and treated as a liability and a son being treated as an asset. The society forgets that a son is a son till he gets married but a daughter is a daughter all her life.

27. We wonder why India i.e. Bharat, in spite of all its talent is unable to march with the community of nations, with the head held high. Probably for the reason we treat 50% of the fellow citizens i.e. our sisters as inferior and junior partners in the march ahead without realizing that in the onward march if your fellow companion is made to lag behind, even your progress is slowed.

28. The medical papers pertaining to the appellant show that her parents married her off at the tender and immature age of 15 years. At this immature age, what role

could the appellant play for herself as a housewife and a mother, except what was dictated to her and commanded upon her.

29. No doubt, by the time she became a mother, she had attained the age of majority, but that would be as per law. Whether at all can it be said that under the circumstances she was mature enough to not only think for herself but fight the social environment around her? We think not.

30. The crime against the female child is a product of the perverse social norms and the perverse social thinking and the appellant who is not only illiterate, is not only poor, lives in a slum and was married at the tender age of 15 years cannot be attributed the role of scripting the crime. She is a mere puppet with the strings being pulled by the men who lecture her. The turbulent waves of social thinking have called her to folly and the desert has called her to doom.

31. Where do we peg our-self?

32. Conscious of the fact that the jurisdiction we exercise is under the shadow of: '*Satyamev Jayate*' i.e. 'Truth shall prevail' and the Supreme Court exercises jurisdiction under the shadow of: '*Yato Dharmastato Jayah*' i.e. 'Truth alone I uphold'. In other words our jurisdiction relates to Niti and the jurisdiction of the Supreme Court relates to Nyaya and hence the Supreme Court alone is vested with the power of

complete justice by virtue of Article 142 of the Constitution of India and that we cannot follow as precedent decisions from the Supreme Court where recommendations were made to the executive to exercise the mercy jurisdiction of the State to pardon. But for record we note that in the decision reported as AIR 1974 SC 799 Ediga Anamma Vs. State of A.P. where the murderer was a young unmarried woman suffering from socio-economic compulsions and general social pressures had actuated the crime, it was held that these warrant judicial notice. In the decision reported as AIR 1981 SC 644 Ram Shankar Vs. State of M.P., with reference to facts attracting clemency the Supreme Court recommended to the State to remit or reduce the sentence. In the decision reported as 1999 CrL LJ 487 Kethankamani Vs. State of Kerala noting Rule 131 of the Criminal Rules of Practice, Kerala 1982 the Supreme Court recommended to the Government to consider the matter of remission of sentence upon the appellant therein.

33. Rule 131 of the Criminal Rules of Practice, Kerala 1982 reads as under:-

“Reference to Government in case of infanticide: In all cases where women are convicted for the murder of their infant children, a reference shall be made through the High Court to the Government with an expression by the Sessions Judge of his opinion as to the propriety or otherwise of reducing the sentence, every such reference shall be accompanied by copies of the material papers of the record.”

34. No such rules have been framed by the appropriate Government in-charge of the administration of criminal justice in the Union Territory of Delhi and we thus recommend to the Government of NCT Delhi to consider framing rules on the lines of the rules framed in the State of Kerala at least pertaining to women convicted for the murder of their infant children.

35. We conclude by dismissing the appeal but while so doing direct the Registrar of this Court to send a copy of this decision to the Secretary Law & Justice, Govt. of NCT Delhi with a covering letter drawing the attention to the learned Secretary, Law & Justice, Govt. of NCT Delhi to place the decision before the appropriate authority drawing attention to the facts of the instant case and our observations in paras 31 and 32 above and decide whether appropriate rules need to be framed and if the rules are framed to place the matter before the appropriate authority as per the rules to decide whether the sentence of imprisonment for life inflicted upon the appellant can be reduced or whether she can be pardoned. If such a decision has to be taken the authority concerned would take into consideration that the appellant is an illiterate lady who comes from a poor socio-economic background, she saw no youth being married at the age of 15 years. Her thinking

and rationale could not develop as is expected in a democratic society as she got no education.

36. Before concluding we reiterate that our recommendations are not to be treated as a mandamus. We clarify that our concern for compassion for the appellant is not that it is acceptable to us that female infanticide is not a serious offence. Indeed, it is a serious offence and a culprit needs no compassion, except upon proof that the culprit was herself a victim of the product of the society due to her illiteracy, poverty and social deprivation.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

March 12, 2010
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