

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
RESERVED ON : 25th JULY, 2013
DECIDED ON : 26th AUGUST, 2013

+ CRL.A. 1017/2011
PINKI Appellant
Through : Mr.R.K.Dikshit, Advocate.
versus
THE STATE (G.N.C.T. OF DELHI) Respondent
Through : Mr.M.N.Dudeja, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Pinki (the appellant) impugns a judgment dated 20.05.2011 in Sessions Case No. 218/1/10 arising out of FIR No. 55/10 PS Moti Nagar by which she was convicted for committing offence punishable under Section 304 part-II IPC. By an order dated 26.05.2011, she was sentenced to undergo RI for five years with fine ₹ 200/-.

2. Allegations against Pinki were that on 25.02.2010 at about 02.30 P.M. at Jhuggi No. 155/74, Jakhira, Chara Mandi, Delhi, she committed culpable homicide not amounting to murder by causing death of Akash aged 13 years. The police machinery came into motion when Daily Diary (DD) No. 24A (Ex.PW-9/A) was recorded at 01.45 P.M. on 26.02.2010 on getting information from his father that Akash had died for unknown reasons. The investigation was assigned to ASI Preet Pal Singh

who with Const.Raju Palwe went to the spot. On inspection of the body, ligature marks were found on the deceased's neck. The Investigating Officer made endorsement (Ex.PW-7/A) and lodged First Information Report under Section 304 IPC. Statements of the witnesses conversant with the facts were recorded. On 26.02.2010, the appellant's involvement in the incident surfaced and she was arrested. Pursuant to her disclosure statement, 'chunni' ligature material used to strangle Akash was recovered. Post-mortem examination on the body was conducted. After completion of investigation, a charge-sheet under Section 304 part-I IPC was submitted in the Court. Pinki was duly charged and brought to trial. The prosecution examined thirteen witnesses. In her 313 Cr.P.C. statement, Pinki pleaded false implication. She claimed that Akash had committed suicide. Mahavir Singh (Pinki's husband) stepped into the witness-box in her defence as DW-1. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant perpetrator of the crime under Section 304 part-II IPC and sentenced her accordingly. Being aggrieved, she has preferred the appeal.

3. Indisputably, Mahavir Singh was married earlier to Babli who expired after giving birth to two boys Akash and Vikas. After about

four years of her death, Mahavir Singh married to Pinki (the present appellant) and she was blessed with three children out of this wedlock. Akash used to live with her natural father Mahavir Singh and step-mother Pinki and was studying in Government Boys' Secondary School, Tulsi Nagar, Delhi in 8th Standard. On 25.02.2010, he was found dead in the house. No complaint was lodged for his death with the police that day. Last rites were not performed to await arrival of Mahavir Singh's father who had gone to his village.

4. Appellant's conviction is based upon the sole testimony of PW-6 (Murti Devi), Babli's mother. In her statement under Section 161 Cr.P.C. given on 26.02.2010, she revealed that Pinki had given beatings to Akash when he was roaming on a cycle rikshaw on 25.02.2010. She had put a 'chunni' around his neck and had dragged him giving beatings inside the house. Thereafter, she went out of the house to an unknown place. After some time, her tenant Julli informed her that Akash was not responding. When she went to the Mahavir Singh's house and examined Akash, he was dead. Ligature marks were found on his neck. She suspected Pinki to have killed Akash by strangulating him with 'chunni' put around his neck. She deposed in the Court that on 25.02.2010 at about 09.00 A.M., Akash went for tuition and returned at about 11.00 A.M.

Thereafter, he with his three step-brothers started roaming in a rickshaw in the area. After some time, Akash went for toilet behind the jhuggi and at about 02.30 P.M., she saw Pinki bringing Akash from behind the jhuggi. She had taken Akash inside the jhuggi after beating him. After half an hour, she saw her (Pinki) coming out from the jhuggi and running towards the market. She returned at about 04.00 P.M. and raised alarm that Akash was lying inside the jhuggi in sleeping mode and was not responding. On hearing the news from Julli, she went inside the jhuggi and saw a crowd there. When she made enquiries from Pinki as to what had happened, she expressed ignorance and she noticed that there were ligatures mark on the child's neck. When she enquired from Pinki about that, she told that these were due to hitting of the ball. On the next day, when relatives gathered and removed the cloth from the dead body, they also noticed ligature marks and questioned Pinki. On hearing that, she attempted to flee the spot on the pretext to go to toilet. Thereafter, Mahavir Singh informed the police at No. 100. Pinki recovered the 'chunni' from underneath the bed and it was seized by the Investigating Officer. In the cross-examination by APP after Court's permission, she admitted the suggestion that the accused had wrapped a 'chunni' around Akash's neck and had dragged him inside the house after beating.

5. From the inception, the appellant's case was that she was not instrumental in causing Akash's death. After she scolded Akash for not paying attention to his studies for the examination, which were to take place next day, he committed suicide in the house in her absense. Defence taken by her appears plausible and fair. It seems that Pinki is the victim of circumstances being step-mother of the deceased child. Akash was residing with Pinki at her house after the death of his natural mother since long. Pinki had given birth to three children after her marriage with Mahavir Singh. The child was studying in 8th standard in a Government School and was getting tuitions as well. When Akash returned after taking tuition classes and was roaming on the rickshaw with Pinki's children, she (Pinki) rebuked him and asked him to pay attention to his studies as his examinations were going to take place next day. It demonstrates that Pinki was concerned with the welfare and progress of the child and wanted him to pay proper attention to his studies instead of roaming on the rickshaw. PW-6 (Murti Devi)'s assertion in her deposition that Akash was beaten and dragged by putting 'chunni' around his neck does not inspire confidence. Her presence at that time seems doubtful as she did not intervene to restrain Pinki to give beatings to Akash. Even after Akash was allegedly taken inside the house, she did not bother to enquire about

his well-being and went to the spot only after getting some information about Akash from Julli. On that day she did not lodge any complaint with the police regarding the conduct and attitude of the appellant in giving beatings and strangulating the child. The other family members were duly informed and the body was kept for cremation for the next day to await arrival of the grandfather of the child. No plausible explanation has been given for inordinate delay in lodging report with the police. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. Again, the FIR was not lodged on Murti Devi's complaint. The police machinery came into motion on getting information from Mahavir Singh about the death of his child Akash. He did not suspect Pinki to have caused Akash's death. The Investigating Officer did

not record his statement to ascertain the truth. He rather appeared in defence on behalf of the appellant as DW-1 and fully supported her version. He testified that Akash was poor in studies. His wife had asked him to sit for studies on 25.02.2010 as there were exam on the next day. He left for his duties at 11.00 A.M. At 04.30 P.M., he got a telephonic message that Akash had committed suicide. He further deposed that when police came on the spot next day, he and his wife told them that Akash had committed suicide. Murti Devi who was not happy with his second marriage and was not on visiting terms with them demanded a sum of ₹ 50,000/- or else she will lodge complaint with the police. In the cross-examination, he again asserted that he had not lodged any complaint against the appellant. He fairly admitted that Akash never attempted to commit suicide and volunteered to add that he used to extend threat to do so. There are no sound reasons to discard the testimony of DW-1 who was natural father and had all love and affection for the child. Being the real victim who has lost his young son, he was not expected to support the appellant for the gruesome incident. It is well settled that defence witnesses deserve to be given due weightage and their testimony is to be treated at par with that of prosecution witnesses.

6. PW-6 (Murti Devi) has made vital improvements in her deposition before the Court. Her testimony has not been corroborated by direct or circumstantial evidence. Post-mortem examination report (Ex.PW-13/A) proved by PW-13 (Dr.Guru Praksh Devgun) falsifies her version that Akash was given beatings by Pinki. In the post-mortem examination report (Ex.PW-13/A), no external injuries were found over the body. The cause of death was 'asphyxia from ante-mortem ligature hanging'. In the cross-examination, PW-13 admitted that the height of the boy was 5 ft. and if one is hanged forcibly, there would be some external injuries on the part of the body.

7. At no stage prior to the incident, there was any complaint against the conduct and behaviour of the appellant for treating the child in a cruel manner. PW-6 (Murti Devi) admitted in the cross-examination that Pinki used to look after Akash and he never made any complaint to her. She was not sure as to how Akash died. She stated that she could not say if Akash was hanged by Pinki or he himself committed suicide. It is unbelievable that Pinki who was taking care of the child from the very beginning and had desired him to pay attention to his studies would be so cruel to hang him inside the house in the presence of her own small children. PW-6 (Murti Devi) has admitted that after Akash was taken

inside the house, Pinki had gone to market. It is quite possible that during this period Akash who was an innocent/ immature child of thirteen years got enraged after he was rebuked by Pinki and committed suicide. This possibility, under the circumstances cannot be ruled out. The prosecution did not examine any witness from neighbourhood to find out the conduct and behaviour of the appellant towards the child and other family members. Adverse inference is to be drawn against the prosecution for not examining Julli who lived as a tenant in the premises in question. DW-1 (Mahavir Singh), her husband claimed that there were cordial relations in the family. She had no motive to kill Akash. Recovery of 'chunni' on the next day from underneath the bed is highly doubtful.

8. The prosecution case is based upon circumstantial evidence alone. It is well settled that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so complete as not to leave any reasonable

ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

9. The circumstances from which the conclusion of guilt is to be drawn should be fully established. It is a primary principle that the accused 'must be' and not merely 'may be' guilty, before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

10. In the instant case, on close analysis of all the circumstances brought on record it cannot be said with certainty that it was the appellant Pinki who in every eventuality committed the crime. If two views are possible, the view favouring the accused is to be preferred.

11. In the light of above discussion, the appeal filed by the appellant is accepted. The conviction and sentence of the appellant are set aside. The appellant is directed to be released forthwith if not required in any other case. The Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

AUGUST 26, 2013/tr