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

+ CRL.A. 1218/2019 & CRL.M.(BAIL) 1872/2019

NOOR JAHAN

..... Appellant

Through Mr. Suhail Khan, Mr. Anwar A.  
Khan, Mr. Gufran Ahmed and  
Mr. Sunil Sagar, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Ms. Aashaa Tiwari, APP for State  
with Insp. Rajender Singh and SI  
Jasmer Singh, PS Jahangir Puri.

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Date of Decision: 13<sup>th</sup> December, 2019

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

### **J U D G M E N T**

**MANMOHAN, J (Oral):**

1. Present criminal appeal has been filed challenging the judgment and order dated 07<sup>th</sup> December, 2018 and 11<sup>th</sup> December, 2018 passed by learned ASJ (North District), Pilot Court, Rohini in FIR No.228/2017 under Section 302/307/328 IPC registered with PS Jahangir Puri.
2. After completion of investigation, charge-sheet was filed against Banne Khan (father of the deceased-Ruksana as well as the victim-Muskan) for offences punishable under Sections 302/307/328 IPC on the basis that he had given them tablets containing Aluminium Phosphide.

3. After a full trial, the father Banne Khan was acquitted and on the basis of the evidence which came on record, the appellant-maternal grandmother was summoned under Section 319 Cr.P.C. She was charged for offences punishable under Sections 302/307/328 IPC, to which she pleaded not guilty and claimed trial.

4. The Trial Court by way of the impugned judgment has held the appellant guilty under Sections 302/307/328 IPC. The relevant portion of the impugned judgment is reproduced hereinbelow:-

*“60. On the other hand, PW-8 specifically stated that she was threatened to be killed by the accused if she did not name her father and that is why she named her father. The record also shows that when at the first instance doctor inquired from her as to who gave tablet to her, she named the accused only and none also. No doubt there is possibility of a child witness being liable to be influenced easily, shaken and moulded but after careful scrutiny of the evidence of PW-8, I found that she was able to understand the question and answer rationally. Her testimony inspires confidence and having sufficient intelligence to understand the questions and answer the same. There is nothing on record to disbelieve or discredit her testimony. The record also shows that in the gastric lavage of PW-8, in the intestine and stomach of Ruksana and in the tablets found in the metallic tube, aluminium phosphide was found which is also the cause of death of Ruksana as deposed by the Dr. Mukesh examined as PW-18.*

*61. Keeping in view the testimony of PW-8 and the other connecting evidence, in my opinion PW-8 is reliable, trustworthy and inspire confidence. Her testimony is not the result of any influence or tutoring. The onus which was on the prosecution has fully been discharged that it was Noor Jahan, who delivered the tablets of aluminium phosphide to Muskan with the direction that she shall consume these tablets and her headache will be gone, resulting into death of Ruksana, Muskan could be saved due to medically intervention only. I therefore, hold the accused guilty*

*and convict her for the offence punishable under Sec. 302/307/323 IPC.”*

5. Learned counsel for the appellant states that the appellant has been falsely implicated in the present case. He points out that the appellant's daughter Rukhsar (PW-2) was married to Banne Khan who used to beat Rukhsar (PW-2) and that is why, she along with her three daughters started living in Delhi near the house of the appellant.

6. Learned counsel for the appellant states that Banne Khan was pressurising Rukhsar (PW-2) to return back to the native village along with her children, but she refused unless all the disputes amongst them were settled.

7. He further states that Rukhsar (PW-2) used to ask her daughter Muskan (PW-8), aged about eight years, to do household work, which was not liked by her. He states that Muskan complained about this fact to her father-Banne Khan, who gave her Aluminium Phosphide tablets stating “if she consumes the tablet and also gives one to her sister-Ruksana, they will become unconscious and thereafter their mother would never ask them to work”. He contends that Muskan (PW-8) not only consumed the aforesaid tablet but also gave one to her sister-Ruksana, resulting in the latter's death.

8. Learned counsel for the appellant states that in accordance with the advice given by her father-Banne Khan, Muskan (PW-8) told the doctor at the hospital that it was the appellant-maternal grandmother who had given her the tablets to consume.

9. Learned counsel for the appellant-maternal grandmother emphasises that subsequently Muskan (PW-8) had told the police in her statement

(Ex.PW-14/A) that the tablets had been given to her by her father. A statement was also recorded by the learned Metropolitan Magistrate under Section 164 Cr.P.C. (Ex.PW-14/B).

10. Having perused the paper book, this Court finds that the Trial Court by way of impugned judgment has held the appellant-maternal grandmother guilty of murder on the sole testimony of a child witness i.e. Muskan (PW-8).

11. It is settled law that evidence of a child witness must find adequate corroboration before it is relied upon as the rule of corroboration is one of practical wisdom than of law. The Supreme Court in ***State of Madhya Pradesh Vs. Ramesh & Anr., 2011 (3) SCALE 619*** has held as under:-

*“In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.*

12. In the present case, there are discrepancies in material particulars in the statement of the child witness i.e. Muskan (PW-8) given at different points of time. Though initially Muskan (PW-8) had told the doctor that the tablets in question were given to her by the appellant-maternal grandmother, yet in the statement to the police as well as in her statement under Section 164 Cr.P.C., she had stated that the tablets in question had been given to her by her father-Banne Khan. There are also material

discrepancies in the deposition of Muskan in the trial of the father-Banne Khan and the appellant-maternal grandmother. A chart showing statements made by Muskan at different points of time are reproduced hereinbelow:-

| <b>Statement of Muskan (PW-8) in Rukka</b>                                                                                                                                                                                                                                                                                                                                        | <b>Statement of Muskan (PW-8) without Oath under Section 164 Cr.P.C.</b>                                                                                                                                                                                                                                                                                                            | <b>Deposition of Muskan (PW-14) without Oath in Banne Khan's Case</b>                                                                                                                                                                                                                                                                                                                                       | <b>Deposition of Muskan (PW-8) without Oath in the present case</b>                                                                                                                                                                                                                                                                                                                                        |
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| <p>On 23.5.17, accused Banne Khan visited Delhi and gave tablets of Aluminium Phosphide to his daughter Muskan and told her to take the same and also give one to her sister.</p> <p>On 24.5.2017 Muskan took one tablet and gave half tablet to her sister Ruksana.</p> <p>After consuming the tablet, she would become unconscious and mother would never ask them to work.</p> | <p>My father gave iron type bottle have black colour tablet (of Bhang) and ask her to take tablet and also gave to her sister. You will become unconscious. After one hour you become conscious and I will bring police and will implicate your grandmother (Nani) and then take all of you to U.P.</p> <p>Next day Papa in the morning, rang up and started fighting on phone.</p> | <p>Whenever, I and my sisters used to say that we want to go to our father, they used to say, "Jada Mat Bol, Abhi Kaat Ke, Bori Mein Daal Ke Naale Mei Faink Aaungi."</p> <p>One day during summer season, my Nani gave me one silver colour tube having some tablets and asked me, "Do Goli Tum Kha Lena, Do Apni Behan Ko Dena."</p> <p>My mother had already gone out with my youngest sister Saina.</p> | <p>My mother left the room with my youngest sister. Thereafter my nani reach in our room—we are suffering from headache.</p> <p>My nani gave one dibbi to me and told to me to consume one tablet and also told me to give half tablet to my sister Ruksana.</p> <p>gave half tablet to my sister and I consumed one tablet.</p> <p>I felt giddiness and left the house for searching my mother. Again</p> |

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| <p>Also told her if anybody ask as to who gave tablets then tell Nani gave tablets.</p> <p>Father left in the evening.</p> <p>When mother went out, I and my sister took one tablet each.</p> <p>Become unconscious.</p> <p>Were taken to hospital by my mother Rukhsar where Ruksana died but Muskan survived.</p> | <p>Mother gave me phone and Papa told me that you take two (2) tablets and give one tablet to your sister.</p> <p>I took one tablet and gave half to sister. My sister became unconscious.</p> <p>Black colored froth started coming from her mouth. I started vomiting.</p> <p>My mother came and took both of us to hospital.</p> <p>In the hospital, I took name of Nani and told that Papa gave these tablets.</p> <p>Then Nani also came there and I spoke the truth that Papa gave the tablets.</p> | <p>It was a big tablet and Nani also told that if you feel that it will not go down to throat, you can break it into two.</p> <p>Tablet was big, I broke in into two. gave half tablet to my sister and took one tablet.</p> <p>After taking the tablet, I searched for my mother, as froth of black colour started coming out of the mouth of my sister.</p> <p>My mother came and asked what happened and I told that we had eaten tablets given by Nani.</p> <p>My mother took me and my sister to Hospital.</p> <p>Sister dies in Hospital.</p> <p>Nani met us at the house.</p> | <p>reached to my house where my sister Ruksana was lying unconscious and I started vomiting.</p> <p>Kala Jhaag meri behn ke muh se aane laga.</p> <p>Mother reached the house. I informed that nani had given one dibbi containing tablets—advised half tablet for consumption.</p> <p>My mother did not believe and told box must have been given by my father and not by Nani.</p> <p>My mother threatened me on phone—if I come to court and depose against nani—will kill me.</p> <p>My mother in the village</p> |
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|  |  | <p>I told the Police that we ate the tablets given by my Nani but Nani stared at me</p> <p>tablets were found lying at the door of the house which we ate.</p> <p>Nani threatened me to either name my father or</p> <p>she would kill me as she had killed my sister.</p> <p>My Nani threatened me to be killed, if I did not name my father.</p> <p>XXXXXX</p> <p>Father not given to me the tablets. Father do not take liquor and never misbehaved with mother.</p> <p>Father used to beat my mother</p> | <p>threatened me if I reached in the court, she would kill me.</p> <p>I conveyed these facts to my father, who called the police- my mother ran away from the village.</p> <p>XXXXXX</p> <p>I was made to tell a lie against him at the instance of my nani and mother.</p> <p>One person used to come at our house in Delhi or that when that person stay in the night hours at our house my mother used to send us outside the house.</p> <p>My father never take liquor in my presence.</p> <p>My mother bhaag bhaag ke uncle ke pass Delhi aa jati thi.</p> |
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|  |  | whenever she used to commit a wrong act. | <p>Mere papa itna bhi mummy ko nahi maarte they.</p> <p>I was made to tell a lie by my nani before the Magistrate that my papa gave dabbi of zehar to me.</p> <p>My father never visited in Delhi.</p> |
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13. Further, the testimony of Muskan (PW-8) is not corroborated by her mother Rukhsar (PW-2) inasmuch as Muskan (PW-8) in her testimony had stated that she had gone looking for her mother after she and her sister had consumed the tablets. However, her mother Rukhsar (PW-2) in her testimonies in both the present case and in Banne Khan's case (as PW-15) stated that she had gone to the public toilet and returned in ten minutes and when she came back she had found both Muskan (PW-8) and the deceased- Ruksana in an unconscious condition. The relevant portion of the testimony of Rukhsar (PW-2) in the present case is reproduced hereinbelow:-

**A. Testimony of Rukhsar (PW-2) in the present case**

*“.....I had gone to the public toilet alongwith my youngest daughter. It was morning time. I returned home after about 10 minutes. I found that my daughter Muskan and Rukhsar were lying unconscious.....”*

14. Keeping in view the diametrically opposite accusations in the statement before the Court and the statement recorded before the Magistrate under Section 164 Cr.P.C., the deposition of Muskan (PW-8) does not inspire confidence. In fact, tutoring of Muskan (PW-8) cannot be ruled out. Consequently, this Court is of the view that the appellant-maternal grandmother is entitled to benefit of doubt.

15. Accordingly, the present appeal is allowed and the impugned judgment of conviction and order on sentence are set aside. The appellant-convict is directed to be released forthwith, if not required in any other case. In view of the aforesaid, the pending bail application is disposed of as infructuous. A copy of judgment be sent to Jail Superintendent.

**MANMOHAN, J**

**SANGITA DHINGRA SEHGAL, J**

**DECEMBER 13, 2019**

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