

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 203 of 2015

Diwansingh s/o Balwantsingh
age 40 years, Occupation Gas
Mechanic, residing at Adarsh
Nagar, Jogeshwari (W), Mumbai **..APPELLANT.**
ORIG. ACCUSED.

Versus

The State of Maharashtra **..RESPONDENT.**
(Oshiwara Police Stn.Mumbai)

Ms Nasrin Ayubi, appointed Advocate for the Appellant.
Mrs Anamika Malhotra, APP for the State.

CORAM : A.R.JOSHI,J
DATE : 27th August,2015.

ORAL JUDGMENT :-

1) Heard rival submissions on this appeal
preferred by the appellant challenging his
conviction in the matter of offence punishable
under section 305 of IPC. The impugned

judgment and order was passed by Ad hoc Additional Sessions Judge, Mumbai on 30th November, 2012. The appellant is convicted for the offence under section 305 of IPC and sentenced to suffer RI for five years. No fine is imposed on the appellant on the ground that it will not be realized.

2) At this juncture, it must be mentioned that there was no option for the trial Court after coming to the conclusion as to establishment of the offence punishable under section 305 of IPC but to award the substantive sentence of imprisonment and also the sentence of fine. Section 305 of IPC attracts both the punishments and there is no option for the Court but to impose fine also. Inability of any accused to pay the fine amount cannot be criteria for not awarding of the fine if it is mandatory. This is

specifically in view of the wordings in Section 305 of IPC, which read as under :-

“305. Abetment of suicide of child or insane person. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine”.

3) The case of the prosecution in nut-shell is that the present appellant was very often beating his son, the victim boy, then aged about 11 years, mercilessly and on flimsy grounds. Even at time, the appellant used to parade the boy in the open market around his residence while beating him with a bamboo stick. At occasions the neighbours and also the informant intervened and reprimanded the appellant and asked

him not to beat his son. On such occasions the appellant used to reply his neighbours saying that he will do whatever he like with his son. Apparently, such type of torture and beating continued for years together and due to this physical assault the young boy was remaining ill and was also not talking to anybody and used to remain in frightened condition most of the time. This situation of the boy was observed by the neighbours and specifically PW 1, complainant PW 2 and PW no.4 who are the witnesses deposed to that effect during the trial.

4) PW no.1 was running a gymnasium in the area where the appellant and his son were residing. They were also visiting the said gymnasium and as such complainant was well acquainted with PW no.1 and at occasions had seen the assault on the boy at the hands of his father the present appellant. On 13th July, 2011 PW no.1 noticed that the small boy, son of the

appellant had ended his life. As he had earlier witnessed that the boy was beaten mercilessly on various occasions by the appellant, he took it that the appellant was responsible for the death of the boy. The boy had consumed some poisonous substance and had died. Accordingly on 14th July, 2011 the FIR was lodged with the police by PW no.1. However, prior to that accidental death was registered by PW no.5, a police officer, after getting the information from the Cooper Hospital in the evening of 13th July, 2011. On 13th July, 2011 the boy was admitted in the Cooper Hospital and he was declared dead on admission and as such intimation was passed on to the police. On the next day of the death of the boy i.e. on 14th July, 2011 the FIR (Exh.16) was lodged by PW no.1 Pravin Shedge as mentioned above. Further investigation was conducted by the police officers attached to Oshiwara Police Station. Matter was committed to the Court of Sessions

after filing of the charge-sheet before the Metropolitan Magistrate's Court.

5) During the trial, total six witnesses were examined. Out of them material witnesses are PW nos. 1, 2 and 4. These are the neighbours of the appellant and had consistently deposed that very often the appellant was beating his son and due to this the boy used to remain quiet and in fact in frightened condition. Most of the times the boy was not talking to anybody. PW no.3 is the wife of the appellant. However, her evidence is not of much significance so far as the events which happened proximate to the death of the boy as she had already left the house of the appellant sometime in the year 2005 and was staying with her father and with her small daughter. At the time of leaving the house of the appellant, her son i.e. the victim boy remained with the appellant and staying with the appellant at Mumbai.

6) So far as the postmortem report is concerned, the cause of death was initially recorded as various multiple injuries all over the body of the victim boy but the cause of death was reserved for the chemical analysis of the viscera parts. The viscera which was sent for the chemical analysis shows the presence of Cresols, a chemical substance. This is the CA report Exh.27 admitted by the defence. The CA report is dated 23rd January, 2012.

7) Considering the substantive evidence, the trial Court came to the conclusion as to the establishment of the offence punishable under section 305 of IPC. After going through the substantive evidence of these witnesses and mainly of PW nos. 1, 2 and 4, in the opinion of this Court the final conclusion arrived at by the trial Court against the present appellant is required to be accepted. In other words, it must be said that there is nothing to interfere with the

impugned judgment and order of conviction of the appellant for the offence punishable under section 305 of IPC. However, the anomaly created by the learned trial Court in not awarding the fine amount is required to be cured in the appeal and as such the present appeal is liable to be dismissed.

8) At this stage, this Court must record appreciation for Advocate Ms Nasreen Ayubi who was appointed to represent the appellant in this appeal. This Court found that she had meticulously prepared the matter and has very ably argued the appeal. This Court quantify total legal fees to be paid to her in appeal by the High Court Legal Services Committee at Rs. 5,000/- (Rupees Five Thousand only).

: ORDER :

(i) The appeal is dismissed. The impugned judgment and order in Sessions Case No. 878 of 2011 dated 30th November, 2012 is

maintained. However, in addition to the sentence of rigorous imprisonment, already imposed by the trial Court, the fine amount of Rs.5,000/- (Rupees Five Thousand) only is imposed on the appellant. In default of payment of fine amount, the appellant shall further undergo rigorous imprisonment (R.I.) for the period of six months.

(ii) The present order be communicated to the appellant through the concerned jail authority.

(iii) The appeal is disposed of accordingly.

(A.R. JOSHI, J.)