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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30th January, 2015

+ CRL.A. 1451/2012
VANDANA KUMARI AND ANR. Appellants
Through: Mr.J.S. Kushwaha, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. O.P. Saxena APP along with SI
Varun Kumar

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Feeling aggrieved by the judgment dated 6th October, 2012 in Sessions Case No. 67/2011 arising out of FIR No.283/10 u/s 317/304/120B IPC whereby the appellants were convicted under Section 304 Part I IPC r/w Section 120 B IPC, u/s 317 IPC r/w Section 120B IPC and 120 B IPC and order on sentence dated 24th November, 2012, whereby they were sentenced to undergo 7 years rigorous imprisonment and fine of Rs.5000/- each, in default three months SI u/s 304 Part I IPC r/w Section 120 B IPC, 5 years RI u/s 317 IPC r/w 120B IPC and 7 years RI and fine of Rs.5,000/- each u/s

120B IPC in default three months SI, the present appeal has been preferred.

2. At the outset, learned counsel for the appellant submitted that he does not contest the conviction of the appellants on merits, however, appellants are in jail for more than 4 years. As such, they be released on the period already undergone.

3. The prosecution case in brief is that on 20th September, 2010, an information was received at Police Station Aman Vihar regarding a new born baby lying abandoned at A-123, Balbir Vihar, Aman Vihar which was recorded vide DD No. 6A. The same was entrusted to ASI Nand Kishore, who along with Constable Om Prakash reached the spot and came to know that a new born baby has been removed to hospital by PCR. No eye-witness was found at the spot. ASI Nand Kishore along with Constable reached at SGM Hospital, Mangol Puri, Delhi and collected the MLC of the child. As such, endorsement was made on DD No.6A and the case was got registered. After the registration of the case, the baby expired in the hospital on the same date. As per the allegations, accused Prem Lata, Vandana and Rahul hatched a criminal conspiracy as a result of which on 20th September, 2011 Prem Lata gave birth to a female child and the said female child

was thrown in a vacant plot by accused Rahul and Vandana. During the course of investigation all the three accused were arrested and charge sheet was submitted against them. Charge u/s 120B IPC, S.304 r/w S.120B IPC and S.317 r/w Section 120 B IPC was framed against them to which they pleaded not guilty and claimed trial.

4. During the course of trial, accused Prem Lata was declared a juvenile and she was sent to face trial before learned Juvenile Justice Board.

5. In order to substantiate its case, prosecution examined as many as 12 witnesses out of whom material witnesses were PW1-Smt. Malti, PW4-Raas Bihari and PW9-Dr. Kirti Vijay Kumar Verma.

6. PW1-Malti was the owner of the house in which the accused Vandana and Prem Lata were residing as tenants along with one Kamal. When they came to reside in her house, at that time, Prem Lata was pregnant. She made inquiry from Vandana and Prem Lata about husband of Prem Lata but no satisfactory reply was given. On 20th September, 2010 at about 6:30 am, on hearing some noise she went outside her house and found one female child lying in the vacant plot who was alive at that time. Someone informed the police and the child was removed to the hospital. After 2-3 days Vandana was

cleaning the floors and stairs of rented house. She noticed some red substance in the water and on suspicion went to the room of accused and found Prem Lata lying on a cot. She enquired from Prem Lata about her pregnancy and that one female child was found in the plot, thereupon Prem Lata started weeping and confessed “*mujhse galti ho gai*”. Prem Lata further informed her that the new born female child was hers. She told this fact to her neighbour Raas Bihari who went to the Police Station. Thereafter police officials came but by then accused persons were found missing.

7. PW4-Raas Bihari was residing in front of house No.D-137, First Floor where Prem Lata, Vandana and Rahul were residing as tenants. According to him, many a times inquiry was made regarding husband of Prem Lata because she was pregnant but no proper reply was given. He further deposed that on 20th September, 2010, at about 6:30 am, a female girl child was found lying in a vacant plot. Someone informed the police who removed the child to the hospital. He further deposed that he was informed by Malti that the child which was found in the morning of 20th September, 2010 belonged to Premlata. Thereupon he went to Police Station and informed the

police who came to the house of accused persons but all had fled away.

8. PW9- Dr. Kirti Vijay Kumar Verma examined Prem Lata on 15th October, 2010 and deposed that patient was having history of delivery two months back as given by her. She further deposed that the patient told her that she delivered a female child at night. On examination vitals were stable, breast *engorged* veins present, stretch marks plus milk secretion from nipple present. As per abdomen examination *linea nigra* present *stria gravidarum* present. On per speculum healed mid line scar present, hymen torn, white discharge present. Pursuant to a Court question, as to what does she mean by *engorged veins, linea nigra and stria gravidarum*, she answered that they are all signs of postpartum, i.e., after delivery.

9. After examining the entire evidence adduced by the prosecution, the learned Additional Sessions Judge rightly observed that pregnancy of Prem Lata was duly proved. There was extra judicial confession made by Prem Lata to PW1 Malti. Moreover she refused to undergo DNA Test. Complicity of the appellants in the crime was also proved by the fact that Prem Lata along with her sister Vandana and brother-in-law Rahul came to reside in the tenanted

premises about 10 days prior to the incident. After delivery, the child was found lying in a plot. The accused persons did not disclose about the husband of Prem Lata which they were supposed to disclose because this fact was within their special knowledge. The factum of paternity of the child was kept secret by the accused persons which points towards illegitimacy of the child from which the accused persons wanted to get rid of. At the time of delivery, only the accused persons were present and, as such, they conspired together in throwing the child in the plot which resulted in her death. No fault can be found in the findings of learned Trial Court. As such, conviction of the appellants is upheld.

10. Needless to say, offence committed by accused persons is grave and serious in nature but the mitigating circumstances in which it was committed cannot be ignored. The appellants and co-accused Premlata belongs to poor strata of society. They were resident of village Vijay Devpur, PS Aliganj, Distt. Etah, UP. Premlata was minor and unmarried. Premlata was subjected to rape by one boy namely Brijesh as a result of which she conceived. In order to conceal this fact and to save their reputation in the society, they came to Delhi where Premlata gave birth to a female child. In order to get

rid of illegitimate child, she was left in the open plot and ultimately she died. Premlata even refused to undergo DNA Test. As per the nominal roll, the appellants have undergone sentence for a period of 4 years 3 months and 13 days besides earning remission of 6 months and 16 days; their antecedents are clean and their conduct has been reported to be satisfactory. They are having one minor child who is without the company of her parents for the last more than four years. Keeping all the aforesaid circumstances in mind, the substantive sentence of the appellants is reduced to the period already undergone while maintaining the sentence of fine. With this modification, the appeal stands disposed of.

A copy of the judgment be sent to the Superintendent Jail for information to the appellant.

Trial Court record be sent back along with the copy of the judgment.

(SUNITA GUPTA)
JUDGE

JANUARY 30, 2015

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