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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 1110/2017 & CRL.M.(BAIL) 2150/2017

SUNIL KUMAR THAKUR

..... Appellant

Through: Mr. Jagat Rana with Mr. Nirmal Goenka
and Mr. Abhinav Dang, Advocates.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP
SI Ranbir Singh PS Neb Sarai

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

05.02.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the impugned judgment dated 16th October 2017 passed by the learned Additional Sessions Judge (South District) Saket, New Delhi in Sessions Case No. 6469 of 2016 arising out of FIR No. 521 of 2015 registered at Police Station (PS) Neb Sarai convicting the Appellant, Sunil Kumar Thakur, for the offence punishable under Section 302/342 of the Indian Penal Code (IPC) and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act') while acquitting the Appellant for the offence under Section 323 IPC.

2. This appeal is also directed against the order on sentence dated 24th October 2017 whereby for the offence punishable under Section 302 IPC the Appellant was sentenced to imprisonment for life with a fine of Rs. 50,000

and in default of payment of fine, to undergo Rigorous Imprisonment (RI) for six months; for the offence under Section 342 IPC, he was sentenced to undergo RI for one year and for the offence punishable under Section 23 JJ Act, to undergo RI for six months. The sentences were directed to run concurrently. It was further directed that under Section 357(1) (b) Cr PC, a sum of Rs. 50,000 as compensation should be released to the mother of the deceased after the period of appeal expires.

3. The case of the prosecution begins with DD entry No.30A dated 19th April 2015 which was noted at PS Neb Sarai on information received on the wireless at around 7.15 pm to the effect that there had been an accident involving a person seriously injured near Shiv Park, Khanpur. Information was passed on to Assistant Sub Inspector (ASI) Ranbeer Singh (PW-17) who along with Constable (Ct.) Parvez Alam (PW-7) reached B-155, Shiv Park, Khanpur, where he met the complainant Surender Kumar (PW-5) who had passed on the information. PW-5 informed PW-17 that a child was weeping as he had sustained injuries and the child's mother had removed him to the hospital in an ambulance.

4. In the meanwhile, the second DD No. 36A was received from the Trauma Centre, All India Institute of Medical Sciences (AIIMS) by PW-17 and he along with PW-7 rushed to the Trauma Centre. The MLC of the Jai Prakash Narayan Apex Trauma Centre, AIIMS showed that a male child, Prem, son of the Appellant, aged 6 years was brought there by one Virender (who was not examined) with a history of assault and having suffered head injuries on 19th April 2015 at around 7.59 pm. The said child was examined by Dr.

Mahavir Singh (PW-9) who noted that the child was “brought in a gasping state by the neighbours”. It was noted that “the patient thrown multiple times on the ground by the father at Khanpur, Delhi.”

5. At this stage an FIR No. 521 of 2015 was registered under Section 308/342 IPC. As it turned out, the injured child expired soon after midnight. In the meanwhile, at around 11.40 pm on the same day the police recorded the statement of the child’s mother, Babita, (PW-10). She disclosed to the police about the sequence of events leading up to the fateful day. She had earlier been married and had two sons from her first marriage. Her husband had passed away after four years of the first wedlock. She had married the accused in the year 2011. One child from her first marriage was staying with her parents whereas the other child, Prem (the deceased), was living with the Appellant and her. The Appellant and PW-10 had another child of their own, Monty (PW-2), who also staying with them.

6. PW-10 told the police that she was running a shop selling *subzi puri* within 15 minutes from their house at Shiv Park. PW-10 informed the police that on the relevant date, she was at the shop with the deceased and PW-2. At around 6.30 pm, the accused came and took away the deceased and PW-2 to the house. The two boys returned after a while crying, and said that the accused had beaten them. The accused then came back again and took away the deceased and PW-2 with him. PW-10 ran after them to release the deceased, subsequent to which the accused flung the deceased against the ground and then took him inside a room and locked the door. PW-10 had informed the police that the Appellant had in fact thrown the child on the

ground in her presence. She heard the deceased shouting *bachau bachau* (save me) from the room and the sounds of him getting assaulted inside. With the help of a neighbour, Rohit Bahadur, and other public persons gathered on the spot, they broke into the room and found that the deceased was bleeding from his head and nose. Thereafter PW-10 had taken the deceased to the trauma centre.

7. When the child expired soon after midnight, Section 302 IPC was added to the FIR. This happened after recording the statement of PW-10.

8. The post-mortem of the child was conducted the following day, i.e., 20th April 2015 by Dr. Manjul Bijarnia (PW-14). The post-mortem report noted the following external injuries:

“(i) Contusion swelling over upper lip.

(ii) Contusion present over lower lip.

(iii) Lacerated wound measuring 1x0.5 cm is present on left ear pinna surrounded by contusion of size 3x1cm.

(iv) Multiple abrasions of sizes ranging from 1x0.5 cm to 0.5x0.5 cm are present over face.

(v) Abrasion of size 3x1 cm is present over lateral aspect of right ankle.

9. The observations upon an examination of the scalp, brain etc. were as under:

“Sub-scalp haematoma present over right occipital and left temporal area. Skull-linear fissure fracture of occipital bone extending to posterior cranial forsa. Subdural haematoma present over occipital and bilateral high parietal area of brain. Subarachnoid haemorrhage

present over bilateral parietal and occipital area over cerebellum and base of brain".

10. The opinion for the cause of death was "shock due to head injury caused by blunt external force impact which would be possible in alleged circumstance. The viscera report was preserved to rule out concomitant intoxication."

11. It is significant that in the cross-examination of PW-14 a suggestion was given to her by learned counsel for the accused, which she agreed with, that the injuries could be possible due to a road traffic accident. This was followed by the following question and answer:

"Court Question: As per the alleged history recorded by you at point Y to Y, the deceased lost consciousness after physical assault. Are the injuries detailed in the post mortem report, Ex.PW.14/A i.e. at SI. No.7 and at X to X possible due to a physical assault?

Ans: Yes."

12. In fact the line of defence of the Appellant in the present case was that the deceased got injured in a road accident. In other words there was a complete denial by the Appellant that he had caused any injury whatsoever to the deceased.

13. At the end of investigation, a charge sheet was filed and the following charges were framed against the Appellant by an order dated 5th October 2015 of the trial Court:

"That on 19th April 2015 at about 06.30 pm at House No. B-156, Shiv Park at the house of Nirmal, Khanpur within the jurisdiction of PS Neb Sarai, New Delhi, you wrongfully confined your step-son Prem born of the wedlock of your wife Babita and her previous spouse

Swaran Mandal and also wrongfully confined your son Monty born of the wedlock of you and your wife Smt. Babita and thereby committed an offence punishable under Section 342 of the I.P.C., 1860 within my cognizance;

Secondly, on the abovesaid date, time and place, you with such intent and knowledge that by your act of hitting the head of the minor child on the floor, you committed an act so imminently dangerous that it would in all probability cause the death and such bodily injury as was likely to cause death and in the said circumstances, caused injuries on the head and neck of the minor child Prem including a linear fissure fracture of occipital bone extending occipital bilateral high parietal area of brain and subarachnoid haemorrhage present over bilateral parietal occipital area over cerebellum base of the brain with rigormortia present all over the body, and committed such act without any excuse for incurring the risk of causing the death and injuries as caused to the minor child Prem and that you thereby committed the murder of the minor child Prem, an offence punishable u/s. 302 of the I.P.C.1860 within my cognizance;

Thirdly, on the abovesaid date, time and place, you also caused simple hurt with a blunt object to your son Monty by beating him and thereby committed an offence punishable u/s. 323 of the I.P.C., 1860 within my cognizance.”

14. An additional charge was framed under Section 23 of the JJ Act against the Appellant.

15. 18 prosecution witnesses (PWs) were examined. In his statement under Section 313 Cr PC the Appellant denied the evidence put to him. Significant among the witnesses who spoke for the prosecution was Savita (PW-12), a neighbour who stated that on 19th April 2015, she heard ‘*dhak dhak*’ sounds for a long time emanating from the house of PW-10. Although the television in her house was going on she came out of her house and saw that the

Appellant was beating the deceased (Prem). She mentioned that the child said 'mummy' once. She could not hear the child shouting. She noticed that the child was bleeding from the nose when she saw him. She could not recollect what the Appellant did or where he was after he beat the deceased. Nothing much came from the cross-examination of this witness particularly since there was no question put to her about any previous quarrel between her and the Appellant.

16. When the Appellant, in his statement under Section 313 Cr PC, was confronted with the evidence of PW-12, he came up with a new story about having had a quarrel with PW-12 three-four days prior to the incident and about her threatening him stating that "she would fix me if she got an opportunity." However, no such suggestion was given to PW-12 in her cross-examination.

17. The other important witness who spoke against the Appellant and fully supported the prosecution was none other than his own son, Monty (PW-2), born to him and PW-10. Monty was only three and a half years old when he was examined in the Court. He could not, therefore, be administered an oath. However, it is remarkable that a child of that age could answer with clarity as to what had transpired on the fateful day. Apart from confirming that he was present in the house along with the deceased and the Appellant, when he was asked the following questions, importantly about the deceased, this is what he said:

“Q: Was Prem injured?

Ans. The child has answered in the affirmative with a nod of his head.

Q: Who hit Prem and caused him injury?

Ans: Papa.”

18. The child, PW-2, was not spared the ordeal of cross-examination. When learned counsel for the accused put the following questions to PW-2, he answered as under:

“Q: Had you seen your Papa beating Prem?

Ans.: The child answers in the affirmative with a nod of his head.

Q: Where was Prem at that time, in the room or was playing with you?

Ans.: Kamrey Mein.

Q: Where were you at that time, were you in the room or were you playing or were you with your mother- the question has been put in Hindi to the child to the effect "Aap Kahan Pe They Us Time, Kamrey Mein, Khel Rahe They Ya Mammi Ke Pas"?

Ans: Mammi Ke pas.

Q. Kisi Ne Kaha Aap Ko Ki Prem Ko Papa Ne Mara?

Ans. Answers in the affirmative with a nod of his head.

Q: Kisne Kaha?

Ans: Mainey.”

19. The aforementioned evidence of the young child, PW-2, was both consistent and convincing. It persuaded the trial Court to return the finding of guilt against the Appellant for the offence under Section 302 IPC.

20. It is unfortunate that the child's own mother, PW-10, did not support the prosecution. The trial Court noticed in its impugned judgment that shortly

before her deposition in the Court she went to the jail to meet the Appellant. Whether the Appellant persuaded her to turn hostile is a matter of speculation. The fact remains that she adopted the line of defence taken by the Appellant and deposed that the deceased had suffered injuries in a road accident.

21. However the overwhelming evidence is to the contrary, particularly the eye-witness accounts of PW-2 and PW-12 which completely nail the case of the prosecution as far as the guilt of the Appellant for the offence under Section 302 IPC is concerned.

22. A desperate attempt has been made before this Court by Mr. Jagat Rana, learned counsel for the Appellant, to argue that the offence of murder punishable under Section 302 IPC was not attracted because there was no use of a lethal weapon; that at the highest the intention of the Appellant was only to give some beatings to his child, and not to kill the child. It is interesting to note that it is not the case of the Appellant that this was a case of culpable homicide not amounting to murder. On the other hand, Mr. Rana took the line of argument as explained by the Supreme Court in *Virsa Singh v. State of Punjab AIR 1958 SC 465* that this was a case where the injury caused was not with the intention of causing death and therefore, Section 300 IPC was not attracted at all. Mr. Rana also relied upon the judgment of the Full Bench of the High Court of Madras in *In Re: Palani Goundan (1919) ILR 42 Mad 547*.

23. The injuries suffered by the deceased child involved have already noticed hereinabove. The eye-witness accounts of PWs 2 and 12 are clear, that by striking child on the ground repeatedly, and smashing his head in the

process, his murder was committed by the Appellant. Although it was repeatedly urged that there was only one head injury which was noted in the post-mortem which caused the death of the deceased, the Court cannot help but notice that an innocent child who was 6 years old was brutally attacked by the Appellant. The child had multiple injuries on his face. In other words the Appellant was merciless and brutal in assaulting a 6 year old child without any restraint. The Court is, therefore, not persuaded at all by the argument that the Appellant did not intend to cause an injury that was likely to cause the death of the child. The Court is, therefore, unable to accept the submission of Mr Rana that the offence punishable under Section 302 IPC is not attracted in the present case.

24. The evidence also clearly substantiates the commission of the offences under Section 342 IPC and Section 23 of the JJ Act. The Court is unable to find any error having been committed by the trial Court in its analysis of the evidence or the conclusion reached by it or even the sentence awarded to the Appellant for the offences mentioned above.

25. For the aforementioned reasons, the Court finds that no ground has been made out to interfere with the impugned judgment of the trial Court.

26. The appeal is accordingly dismissed. The pending application also stands dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

FEBRUARY 05, 2018/Rm