

Joginder Vs. the State Nct of Delhi

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Court : Delhi

Decided On : Jul-24-2014

Judge : Pradeep Nandrajog

Appellant : Joginder

Respondent : The State Nct of Delhi

Judgement :

\$~19 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: July 24, 2014 + CRL.A.315/2013 JOGINDER Represented by: Appellant Mr.Braham Singh, Advocate with Mr.N.S.Vidhudi, Advocate versus THE STATE NCT OF DELHI Respondent Represented by: Mr.Lovkesh Sawhney, APP CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) Crl.M.B.No.10058/2014 1. Appellant seeks bail stating that he has been in custody since April 16, 2011.

2. Learned counsel for the State submits that a short issue arises for consideration in the appeal and prays that the appeal itself could be heard today.

3. Learned counsel for the appellant agrees for the appeal to be heard today itself.

4. Crl.M.B.No.10058/2014 is dismissed as not pressed. Crl.A.No.315/2013 1. Joginder Singh has been convicted for the offence of murder of his son Dev aged

about one year. CrI.A.No.315/2013 imprisonment for life.

2. Examined under Section 313 Cr.P.C. Joginder took the stand that it is a case of accident. He stated that his son slipped from his hand when he was at the stairs because of the stairs were slippery due to water on it.

3. Pratap PW-4, brother of Joginder has not supported the case of the prosecution. He deposed that Priyanka, daughter of their brother Sanju came to his jhuggi and told him that Dev was unconscious. He went to Joginders jhuggi and saw Joginders wife weeping. Joginder was standing in a perturbed condition and said that as he was going to the upper floor with the child in his lap his foot slipped on the stairs and his son fell down on the ground. Pillu Ram PW-8, the father of Joginder also did not support the case of the prosecution and said that his grand-daughter Priyanka came to his jhuggi and said that Dev was not well and was crying. He rushed to Joginders jhuggi and was told that Dev slipped from his hand and as a result died. Kunitra PW-14, wife of Joginder also did not support the case of the prosecution. She said that she was preparing food in her jhuggi when her husband Joginder returned from work. He took Dev upstairs and slipped. Her son sustained injuries on his face and died.

4. Kumari Priyanka PW-15, stood her ground and said that she heard Dev cry (Dev ro raha tha). Her uncle Joginder laid Dev on the bed (mere tau ne Dev ko lota diya aur Dev so gaya). Thereafter Dev did not cry. Priyankas testimony clearly establishes that she was present at the spot and heard Dev cry. She saw Dev being put on the bed by Joginder. Thereafter she did not hear Dev cry.

5. Priyanka was aged 7 years when she deposed.

6. All the family members reside in adjoining jhuggis in the slum called Inder Camp, Rangpuri Pahari, Vasant Kunj.

7. Joginders MLC Ex.PW-1/A established that he was drunk. Devs MLC Ex.PW-3/A has a story to tell.

8. As the adage goes: Men may lie but circumstances do not lie, similarly we may create an adage: While living men may lie, dead bodies do not lie and have a story

to tell.

9. MLC of Dev records following external injuries: (a) Multiple contusions of size 3x2 cm present, reddish brown in colour present over the lower back region. (b) A contusion of size 1x1 cm present, reddish brown in colour present on the left angle of mandible, 4 cm from the mentum and 5 cm from the left tragus. (c) A scratch abrasion of size 1 cm, reddish in colour present on the right lateral aspect of the neck, 3.5 cm above from the suprasternal notch and 6 cm below the right mastoid tip.

10. Internal injuries record defused subdural and subarachnoid haemorrhage over the brain stem and occipital lobes.

11. The inquest papers sought opinion with respect to the statements made to the Investigating Officer by the adult members, who unfortunately turned hostile, that the child had suffered injuries due to throttling and the baby being thrown by the father.

12. Now, Dev aged one year, could not have suffered the external injuries noted in the post mortem report of his dead body if he slipped from the hand of his father when his father was climbing the stairs with Dev in his lap.

13. The dead body of Dev speaks. It tells us that somebody gave him a few hard fist blows on his back. One or two hard slaps on the face (Injury No.2 on the mandible). The young boy was caught by the scuff of his neck. The internal injuries show that holding the unfortunate child by the scuff of his neck he was pushed against a blunt hard object, which in all probability could be the wall of the jhuggi or the leg or the frame of a bed in the jhuggi.

14. If we look at the post mortem report keeping in view the testimony, we can put two plus two together. Dev was crying. Accused picked up Dev. He thrashed him and put him on the bed.

15. Joginder being drunk assumes importance. His MLC tells us that.

16. What has happened is apparent. Returning home after a hard days labour, Joginder tried to comfort himself with alcohol. Living in a slum and endangered by dirt and misery Joginder was apathetic and seemingly indifferent to the finer feelings which humans possess. His son Dev was crying. Joginder was disturbed. He got angry. He gave a few hard fist blows at the back of his son, one or two slaps on the face of the child. The child howled more. Holding him by the scuff of his neck, Joginder pushed the child. Being drunk, he did not realize what he was doing. The head of the child was struck with force against a blunt object. Brain was damaged.

17. Joginder cannot be attributed with the intention to kill his son. The offence committed by him is culpable homicide not amounting to murder punishable under Section 304 of the Indian Penal Code.

18. We dispose of the appeal setting aside Joginders conviction for the offence of murder. We convict him for the offence of culpable homicide not amounting to murder and sentence him to undergo RI for a period of 7 years. Joginder would be entitled to the benefit of Section 428 Cr.PC.

19. LCR be returned.

20. Two copies of the present decision be sent to the Superintendent, Central Jail, Tihar. One for his record and the other to be supplied to Joginder. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE JULY24 2014 rk

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