Pawan Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-22-1999

Reported in : 1999CriLJ2329

Judge : D.M. Dharmadhikari and ;Usha Shukla, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300, 302, 304 and 317; ;Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cr. A. No. 35 of 1997

Appellant : Pawan Kumar

Respondent : State of M.P.

Advocate for Def. : B.P. Athya, Govt. Adv. and ;Archana Chouhan, P.L.

Advocate for Pet/Ap. : Abhay Kumar Tiwari, Adv.

Disposition : Appeal dismissed

Judgement :

D.M. Dharmadhikari, J.

1. The appellant-prisoner has appealed against his conviction and sentence under Section 302, I.P.C. for causing death of his two year old female child Yeshoda.

2. The prosecution case mainly rests on the oral evidence of Rajbai (P.W. 10), wife of the accused, Gajraj (P.W. 8) and his wife Dhasnin (P.W. 9) - maternal uncle and aunt respectively of the accused. As per the version of P.W. 10 Rajbai, a day before the discovery of the dead body of the child the accused quarrelled with her on a minor irritation of she having administered medicine to the child with a tea spoon. The accused got angry, snatched the bottle of medicine and spoon and threw them away. He then started beating the wife. This quarrel was witnessed by Gajraj, maternal uncle and Dhasnin, maternal aunt and they intervened. Thereafter the members of the house went to bed.

3. Thereafter, in the next morning when the child was with the mother the accused demanded custody of the child. The wife said that she would give the child only if the husband would clean his mouth and hands. The accused lost his temper and caught hold of her neck. He then snatched the child from the mother and went out of the house. Thereafter he did not return.

4. The maternal uncle Gajraj (P.W. 4) who had seen the incident of quarrel between the husband and wife lodged a report in the police station Arang on 27-1-89. A copy of the report is Ex. P/14 in which it has been mentioned that the accused had forcibly carried away the child and had not returned. The child was found dead in a pond on 28-1-89. The dead body was sent for post-mortem and according to the post-mortem report Ex. P/5 proved by Dr. A. K. Shukla (P.W. 3) there was no mark of any injury caused by any instrument or weapon on the body. According to the opinion of the doctor the cause of death was asphyxia due to drowning. The doctor also found that there was a white leucodermal patch on the back of the dead body of the child.

5. The accused having snatched the child and carried it from the house is also proved by his maternal uncle Gajraj (P.W. 8) and maternal aunt Dhasnin (P.W. 9). The accused in his statement under Section 313, Cr. P. C. denied that he had carried the child with him. His defence is that his father was suffering from leucoderma or leprosy and his wife used to hate him and wanted to leave him. It is likely that she threw away the child as about 15-20 days after the death of the child she has contracted a second marriage and has left him.

6. The learned trial Judge rejected the defence of the accused and believing the testimony of the three above mentioned witnesses examined by the prosecution coupled with circumstantial evidence on record convicted and sentenced the appellant under Section 302 of the Indian Penal Code.

7. Shri A. K. Tiwari, learned counsel appearing for the accused, took this Court through the evidence on record and contends that the appellant had no motive to kill the child. Merely on the evidence of the witnesses that he had carried the child no inference can be drawn that he either threw away the child or killed it. The provisions of Section 317 of the Code have also been brought to the notice of this Court. It is submitted that even if it is a case of culpable abandonment of the child by the accused as the father, the offence made out is under Section 317 of the I.P.C. punishable with maximum sentence of seven years' imprisonment.

8. We have also heard Shri B. P. Athya, learned Dy. G. A., appearing for the State who has supported the conviction. We have carefully gone through the testimony of the three -above named witnesses i.e. Rajbai (P.W. 10) wife of the,, accused, Gajraj (P.W. 8), maternal uncle, and Dhasnin (P.W. 10), maternal aunt. Their version of the incident of quarrel between the husband and wife of the previous night and carrying away of the child by the accused next morning is consistent and natural and inspires confidence. The learned trial Judge, therefore, committed no error in relying on the testimony of the three above named witnesses.

9. The only argument that deserves consideration which has been advanced on behalf of the accused, is whether the proof of the fact by the prosecution that the accused forcibly took away the child and never returned till he was arrested after discovery of dead body of the child, should necessarily lead to the inference of commission of murder by the accused or the only offence, if at all, committed is one under Section 317, I.P.C.

10. We have given our thoughtful consideration to the arguments advanced. Section 317, I.P.C. reads as under :

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with

the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.- This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child died in consequence of the exposure.

The ingredients of the above offence are exposure of a child or abandonment of a child below 12 years by parents. The Explanation below Section 317 quoted above is important and cannot be lost sight of. It is to the effect that if the child is found dead, the offender, who had abandoned the child, can be tried for murder or culpable homicide depending upon the facts of the case.

11. In the instant case, there is reliable evidence against the accused of having forcibly carried away the child. On this proved fact two inferences are possible, namely, (i) he killed the child by throwing it in the pond where its body was found; and (ii) he left the child by abandoning it in a place resulting in its fall and death in the pond. The medical evidence does not show injuries on the body of the child. There is also no evidence led by the prosecution, as there is none that the accused had thrown away the child in the pond resulting in its death by drowning. It is settled that where on the basis of proved facts more than one inferences arise, then the inference more favourable to the accused is-to be drawn. It is amply proved that the accused snatched the child from the mother and it was found dead and the accused never returned till the discovery of the dead body of the child. Out of the two inferences, the inference that he abandoned the child, therefore, has to be drawn against him. As the abandoned child has died, may be as a result of fall in the pond, the offence of murder is made out under Section 300, 4thly. Section 300 4thly reads thus :

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly...or

3rdly...or

4thly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

The act of the accused in abandoning the two year old child was imminently so dangerous that it would have in all probability caused death or such bodily injury as is likely to cause its death. Therefore, offence of murder under Section 300, 4thly has clearly been made out.

12. We are not prepared to accept the other alternative submission made on behalf of the accused that it would be a case of culpable homicide not amounting to murder punishable under Section 304, I.P.C. We find that the offence does not amount to culpable homicide not amounting to murder as it does not fall in any of the Exceptions under Section 300 of the I.P.C.

13. For the aforesaid reasons, we dismiss this appeal and uphold the judgment and conviction of and sentence of the accused-appellant under Section 302 of the Indian Penal Code.