

Sushil Kumar Vs. State

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Court : Delhi

Decided On : Feb-23-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Code Of Criminal Procedure (Cr.P.C) - Sections 313, 161

Appeal No. : CRL.A.72/1999

Appellant : Sushil Kumar

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Ms.Manjusha Wadhwa, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. When examined under Section 313 Cr.P.C., to the last question: 'Have you anything else to say?' The appellant answered:-

"I am innocent. On 10.5.1997 my daughter Rano was not keeping well and was vomiting. My wife Madhu was not able to feed her and milk was being

administered to my daughter from outer sources. On that day, I alongwith my elder brother who has since died and my mother was in the house I had told my wife to not to administer the milk since the child was vomiting but despite my advise Madhu administered her the milk from a bottle and after that she went to the dispensary and in the meantime, when I went near the child after meeting my elder brother who was sitting on the ground floor, I found that the child was not responding. I immediately rushed to the doctor S.T.Singh about whom I had told the I.O. also in my statement, he saw my daughter and declared her dead. My daughter died since her nostrils got blocked and choked because of milk. May be as my wife could not control her at that particular moment, and since she had a baseless doubt, the present case was falsely got registered against me. The I.O. of this case was also biased with me and he did not even visit Dr.S.T.Singh after recording of my statement and deliberately concealed the true and correct facts during the investigation. I have been falsely implicated. I am innocent."

2. The case of the prosecution is that Madhu was married to the accused on 15.5.1996. The accused was her second husband and from her first husband she had two daughters. This was the second marriage of the accused and from the first marriage he was blessed with two children. On 14.4.1997 Madhu and the accused were blessed with a daughter whom they named Rano. Hoping that a son would be born and unhappy with a daughter being born the accused seized the opportunity to do away with the unfortunate infant child when Madhu went to the nearby dispensary as she required some medical assistance, inasmuch as Rano was a caesarean child, at around 9:00 AM on 10.5.1997 leaving Rano in the care of her husband i.e. the accused. The appellant strangled Rano to death and which was detected by Madhu when she returned from the dispensary at around 9:30 AM.

3. We note that Madhu PW-5 has deposed in support of the case of the prosecution and learned counsel for the appellant would concede that except for trivial omissions or additions in the deposition of Madhu vis-a-vis her statement recorded under Section 161 Cr.P.C. nothing of substance needs to be noted by this Court with respect to Madhu's testimony, for the apparent reason the appellant admitted that Madhu had gone to the dispensary and the child was in his custody,

but gave a reason for the child dying. The reason given by the appellant, is as per his statement made under Section 313 Cr.P.C. and as noted in para 1 above. Thus, counsel concedes that everything would turn upon the post-mortem report Ex.PW-1/A of Rano and the testimony of Dr.A.K.Tyagi who conducted the post-mortem of the child.

4. But, we may independently note that the testimony of Mrs.M.M.Peter PW-11 corroborates the testimony of Madhu that she i.e. Madhu had gone to the nearby dispensary at around 9:00 AM on 10.5.1997 and when PW-11 had asked her how was Rano, had informed her that Rano was fine in the care of her father i.e. the appellant.

5. In the post-mortem report Ex.PW-1/A it stands recorded that there were 4 places where the unfortunate child was injured. The injuries consisted of reddish blue bruises on the lips and the gums; bruises and abrasions on the nostrils; a bluish bruise in the area starting from the mandible to the mouth; and a red bruise starting from right side of upper chest at the middle of clavicle (collar bone) running downwards to the manubrium sterni and then to the left side of middle of clavicle. All injuries were ante-mortem. Cause of death opined is asphyxia due to blocking of nostrils and mouth and compression of neck. It further stands recorded that the stomach contained about 10 CC of creamish mucoid material.

6. It may thus be noted that all the injuries on the body of the child were centred at the mouth area and the area around the neck and the stomach contained about 10 CC of creamish mucoid material. Relevant would it be to note that the report was proved at the trial by the author thereof Dr.A.K.Tyagi PW-1.

7. Dr.A.K.Tyagi PW-1 deposed before the court that he had conducted the post-mortem on 11.5.1997 and had prepared the post mortem report, Ex.PW1/A contents whereof were correct. In his cross-examination he stated that the injuries caused on the body of the child could not be collectively caused by a fall or at the time of administering artificial respiration. He also stated that presence of creamish mucoid material in the stomach of the deceased meant that no food was given to the deceased for a long time and that the stomach was empty.

8. In his statement under Section 313 Cr.P.C. the appellant admits that his wife had gone to the dispensary and Rano was in the house, but claims that after meeting his brother who was sitting on the ground floor, when he went to the child he saw the child not responding and immediately rushed to the Dr.S.T.Singh. He gave a probable reason for the child dying due to asphyxia i.e. the possibility of the child choking when his wife fed milk with a bottle to the child.

9. It may be highlighted at the outset that the appellant has rendered no explanation as to how his daughter sustained the injuries around her nostrils, mouth and the neck, which injuries as per the doctor who conducted the post-mortem were clearly suggestive of manual strangulation and not the result of a fall, a suggestion given to the doctor concerned during cross-examination. The purported justification of the petitioner that the child could have been suffocated when his wife administered milk to her is falsified from the post-mortem report. The stomach contents of the child had no trace of milk. On the contrary the stomach had mucous suggestive of the child not being fed for quite a while.

10. There exists a motive for the crime which has surfaced through the testimony of Madhu PW-5. The appellant was hoping to be blessed with a son and was unhappy with a daughter. The usual Indian story.

11. The petitioner has not examined Dr.S.T.Singh, the doctor to whom the petitioner allegedly took his daughter to.

12. Commonsense and logic guides us that where a child aged 25 days suffers a homicidal death and at the time of the death the child is in the custody of a person, the person must speak as to what happened for the reason these are facts within the special knowledge of the person concerned and if the person refuses to speak an adverse inference of guilt can be inferred by raising a presumption against the person concerned. Thus, the evidence of the appellant having a motive to kill his daughter; the evidence that the daughter was in the custody of the appellant.; the evidence that the child died a homicidal death; that a false reason was given by the appellant of the possibility of his daughter being choked when his wife gave milk to her: a justification falsified by the post- mortem report of the child, are evidence of circumstances which unerringly points towards the guilt of the

appellant and rules out his innocence.

13. The appeal is accordingly dismissed and the impugned judgment of conviction and the order on sentence are affirmed. Since the appellant has been admitted to bail we cancel the bail bond and the surety bond and direct the appellant to surrender and undergo the remaining sentence, which we note is to undergo imprisonment for life.

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