

SANWARIYA LAL  
v.  
STATE OF RAJASTHAN

SEPTEMBER 14, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

*Penal Code, 1860—s. 302—Murder—Deceased being son of the accused, out of his broken marriage—Accused doubting the paternity of the deceased and also having eye on the fixed deposit in the name of deceased—At the relevant time deceased was with the accused—Multiple injuries on the deceased—Defence that the injuries were due to fall from bi-cycle—Witnesses to the incident turning hostile—Conviction by courts below on the basis of circumstantial evidence—On appeal, held: Conviction justified—The motive, the fact of the deceased being with the accused and, multiple injuries on the deceased leads to implicate the accused of the offence u/s 302.*

Appellant-accused was prosecuted u/s 302 IPC, for having caused death of his son. Prosecution case was that the deceased was the son of the accused out of his first marriage. On account of dispute between the couple, they got separated. Both of them got remarried. Deceased remained with his maternal grand parents. Under a settlement between the accused and his first wife Rs. 20,000/- had been deposited in the name of the deceased. Accused used to suspect paternity of the deceased and had also an eye on his fixed deposit. Accused and his second wife (PW 7) went to the school of the deceased, but the teacher did not grant permission to take him with them. He was sent with them after the permission from the maternal grandmother of the deceased. Thereafter PW 5 (maternal uncle) got an information that the deceased had succumbed to injuries in the hospital. Accused was charge-sheeted. During trial, the two eye-witnesses turned hostile. Defence version was that the death of the deceased was on account of fall from a bi-cycle. The same was supported by maternal grand-father (DW 2) of the deceased. Trial Court on the basis of circumstantial evidence, convicted the accused. High Court confirmed the conviction. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. The circumstances of the case clearly implicate the appellant

**A** in the murder. The chain of circumstances against the appellant is nonetheless clearly made out. The fact of marriage with 'S' (his first wife), a dispute between them, which had resulted in a separation and a second marriage for both under custom has been virtually admitted. It also stands admitted that a sum of Rs. 20,000/- had been deposited in a fixed deposit for 20 months by the appellant in the name of the deceased. The prosecution evidence further reveals that the appellant had suspected paternity of the deceased and believed that he was not the father and that he also had an eye on the fixed deposit which had been put in the name of the deceased. It is thus clear that the motive for the incident stands proved. [Paras 13 and 9] [948-D; 947-A, B]

**C** 2. It is found from the prosecution evidence, including the statement of the school teacher that the appellant had taken the deceased away from the school and the Court tends to believe that this exercise had been planned as the appellant intended to do away with him. [Para 10] [947-C]

**D** 3. In view of the medical evidence, such extensive injuries including a fracture could not have been caused by a simple fall as has been suggested and clearly show the use of excessive force. The appellant has not been able to explain the presence of such a large number of injuries as he was called upon to do, as they had undoubtedly been suffered at home. The attempt by the defence to prop up grand father of deceased as a defence witness to support the story of a fall from a bi-cycle cannot be believed as he was not an eye-witness to the fall. [Para 12] [948-C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1219 of 2007.

**F** From the Judgment and Order dated 13.9.2005 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. CrI. Appeal No. 362 of 2002.

Shipra Ghose (A.C.) for the Appellant.

Jatinder Kumar Bhatia for the Respondent.

**G** The Judgment of the Court was delivered by

**HARJIT SINGH BEDI, J.** 1. Leave granted.

2. This is a case of filicide - the victim Rajesh aged eight years was the son of the accused/appellant.

**H**

3. This appeal arises out of the following facts.

4. The appellant Sanwariya Lal was married to Shanti Bai several years earlier and a son Rajesh was born out of the marriage. On account of a discord between the couple, Shanti Bai returned to her parental home and the appellant started to live with Anguri PW.7 whereafter Shanti Bai was given in 'Nata' to some other person though Rajesh remained with his maternal grand parents. It also appears that a settlement had been arrived at between the appellant and his wife and their respective second spouses and a sum of Rs.20, 000/- was deposited in a fixed deposit in Rajesh's name though he continued to stay with his maternal grand parents and was admitted to a school in Jalian. The appellant and Anguri came to the school to take the child with them but he showed his reluctance. The teacher too refused permission to take the child during school hours and called his maternal grand mother who permitted Rajesh to go with his father. On 25th December 2000 at about 5 or 6 p.m. information was received by Prahlad PW.5, Rajesh's maternal uncle that he had been taken to hospital with injuries and had thereafter succumbed to them. A First Information Report was lodged by Prahlad at Police Station Nimbaheda alleging that Rajesh had been murdered. Inquest proceedings under section 174 of the Cr.P.C. were conducted and the dead body was dispatched for the post-mortem examination. The Post-mortem conducted by Dr. Ganpat Lal Jain confirmed the presence of several injuries on the dead body - one, a fracture of the right pelvis and contusion marks in the muscles and the second a contusion on the head and neck and multiple abrasions on the right hand and frontal side of the arms. He also stated that the injury on the pelvis could not have been caused by a simple fall though the injury was possible if the fall had been on a hard surface. The trial Court in its judgment observed that the case was based on circumstantial evidence and for this purpose placed reliance on the statement of PW4, the first informant, PW2 Bagdi Ram and PW5 Jasraj who deposed with regard to the dispute between Shanti and the appellant and circumstances which had led to the compromise between them, their respective second marriages and that the appellant had suspected Rajesh's paternity and believed that he had been conceived on account of an illicit relationship of his mother with some other person. It was further observed that the appellant had his eye on the sum of Rs.20, 000/- that had been deposited in a fixed deposit in the name of the deceased. Two important witnesses PW7 Anguri the second wife of the appellant and PW 10 Satya Nariyan a close relative and also a resident of village Arniya Mali to which the appellant belonged were however declared hostile. By way of corroboration, the prosecution also relied on the statement of R.B.Mishra

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A PW18 who was the senior Branch Manager in the Bank of Baroda, Nimbahaida and who deposed that on 28.8.2000 the appellant had deposited a sum of Rs.20, 000/- in the name of the Raju. The prosecution also sought support from the statement of PW21 Lila Malviya the teacher in the Government Primary School who stated that on 2.12.2000 the appellant and his second wife had come to take Rajesh from School but had been advised to wait till 4.30 pm, and finally the opinion of the Medical Board that the injuries could not have been caused by a fall from a by-cycle.

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C 5. The accused in his statement denied all the allegations against him and further stated that Rajesh had suffered serious injuries after falling from a by-cycle and also produced DW-2 Bheru Lal, the maternal grand-father of the deceased in support of this plea.

D 6. The trial court relying on the evidence of the aforesaid witness observed that as the appellant was none other than the father of the deceased, and that the incident had happened in the family home and no cogent explanation for the death had been offered by the appellant, convicted the appellant for an offence punishable under Section 302 of the IPC and sentenced him to undergo rigorous imprisonment for life and to a fine of Rs.1000/- and in default thereof to undergo an additional sentence of 6 months. It is in this circumstance that the appeal is before us.

E 7. The learned counsel for the appellant has argued that PW7 Anguri Bata and PW10 Satyanarain the two primary witnesses who could have revealed as to what had actually happened had been declared hostile at the trial and as such the case rested on circumstantial evidence alone and the chain of circumstances sufficient to justify an order of conviction were not complete. She has pointed out that from the medical evidence the cause of death could not be categorically ascertained and that the nature of injuries on the dead body being contusions and abrasions largely suggested that the death was on account of a fall from a by-cycle and this has been confirmed by DW-2 who was none other than the maternal grand-father of the deceased.

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G 8. The State counsel has on the contrary emphasized that the chain of circumstances envisaged in a case of circumstantial evidence was complete, and the judgment of conviction was justified.

H 9. We have gone through the evidence very carefully. It is true that the only two persons who could have perhaps put light on the incident that is PW7 and PW10 have not supported the prosecution. We, however, find that

the chain of circumstances against the appellant is nonetheless clearly made out. The fact of marriage with Shanti, a dispute between the couple which had resulted in a separation and a second marriage for both under custom has been virtually admitted. It also stands admitted that a sum of Rs. 20,000/- had been deposited in a fixed deposit for 20 months by the appellant in Rajesh's name in the Bank of Baroda. The prosecution evidence further reveals that the appellant had suspected Rajesh's paternity and believed that he was not the father and that he also had an eye on the fixed deposit which had been put in the name of the deceased. It is thus clear that the motive for the incident stands proved.

10. We also find from the prosecution evidence, including the statement of the school teacher that the appellant had taken the deceased away from school and we tend to believe that this exercise had been planned as the appellant intended to do away with him.

11. We have also gone through the medical evidence with particular reference to the statement of the Doctor who had conducted the post-mortem examination. The injuries are reproduced below:

1. There is contusion of muscles and fracture of supramus of Rt. side of pelvis. Ante mortal in nature.

2. There is dissection of abdominal muscles from Rt. Renal to public area present. Muscles contused. Ante mortal in nature.

3. Contusion 3 x 5 cm over Rt. Parietal region. Ante mortem in nature.

4. Contusion 6 x 5 cm over Parietal region. Ante mortem in nature.

5. Contusion 3 x 1 cm and 2 x 1 cm over Lt. Ear region. Ante mortem in nature.

6. Abrasion 1.5 x 3 cm over on chin Rt. Side. Ante mortem in nature.

7. Abrasion 1.5 x 1 cm on frontal side of neck. Ante mortem in nature.

8. Multiple abrasions of various sizes over Lt. side of chest. Ante mortem in nature.

9. Multiple abrasions of various sizes on Rt. Arm, Rt. forearm. Ante mortem in nature.

A 10. Abrasion 3 x 1 cm size over Lt. Shoulder joint. Ante mortem in nature.

11. Abrasion 2 x 2 cm on Rt. Knee, Rt. Thigh region. Ante mortem in nature.

B 12. Contusion 3 x 1 cm Lt. Knee and Lt. side of 4/3 of thigh. Ante mortem in nature.

13. Abrasion 3 x 1 cm size above umbilicus. Ante mortem in nature.

C 12. We are of the opinion that such extensive injuries including a fracture could not have caused by a simple fall as has been suggested and clearly show the use of excessive force. It is pertinent to note that the appellant has not been able to explain the presence of such a large number of injuries as he was called upon to do as they had undoubtedly been suffered at home. The attempt by the defence to prop up Rajesh's grand father as a defence witness to support the story of a fall from a by-cycle cannot be  
D believed as he was not an eye witness to the fall.

13. We are therefore of the opinion that the circumstances clearly implicate the appellant in the murder. We accordingly dismiss the appeal.

E K.K.T.

Appeal dismissed.