

Smt. Phino

Vs

State of Punjab

Criminal Appeal No. 169 Of 1971

(A. Alagiriswami, N. L. Untwalia JJ)

07.03.1975

JUDGMENT

UNTWALIA, J. –

1. Mst. Phino the sole appellant in this appeal was living with her father Narain Singh in village Ramuwala Nawan as her husband was serving in the Army. She was on visiting terms with Gurdial Singh of the same village who was examined as prosecution witness No. 5. Sometime in the middle of April, 1966, Gurdial Singh lost Rs. 110 from his house and suspected that the appellant had committed the theft of the money. He approached the Gram Panchayat who made Narain Singh, the appellant's father, pay a sum of Rs. 50 to Gurdial Singh. One Sardara Singh and Karnail Singh (PW 13) sided with Gurdial Singh at the Gram Panchayat. The appellant, therefore, is said to have borne grudge against Gurdial Singh and his helpers. According to the prosecution case it so happened that on May 3, 1966 three children who all were 4 or 5 years old were playing in the afternoon at about 4.30 p.m. in the lane near the house of the appellant. The three children were (1) Ranjit Singh, S/o Gurdial Singh; (2) Maghar Singh, S/o Karnail Singh and (3) Jalaura Singh, S/o Sardara Singh. The appellant is said to have given gur mixed with poison to eat to all the three children. They ate a portion of the poisoned gur. The rest was collected from them as something black was noticed in the gur by the father of the children. The children were taken to Dr. Ujagar Singh of the village, who was examined as a court witness. He advised Gurdial Singh and others to take the children to Moga hospital. The three children were admitted in the hospital as cases of suspected poisoning. Their stomachs were washed. Maghar Singh and Jalaura Singh improved and were discharged from the hospital but the condition of Ranjit Singh became worse and he died on May 4, 1966 at about 11.45 a.m. The appellant was prosecuted for administering poison to the three children and causing the death of one of them by such poisoning. At the trial she pleaded not guilty. The learned Additional Sessions Judge, Ferozpur acquitted the appellant of the charge of murder under Section 302 Penal Code, found her guilty under Section 328 and sentenced her to undergo rigorous imprisonment for 3 years. The appellant filed an appeal in the High Court of Punjab and Haryana at Chandigarh against her conviction under Section 328 of the Penal Code and the State preferred an appeal against the order of acquittal recorded in her favour under Section 302. The High Court dismissed the appellant's appeal, maintained her conviction and sentence under Section 328, allowed the government appeal and convicted her under Section 302 of the Penal Code also. Under the latter count she has been sentenced to life imprisonment. The sentences have been directed to run concurrently. On obtaining special leave as also under the Supreme Court (Enlargement of Jurisdiction) Act, 1970, the present appeal has been preferred.

2. Both the courts below have found that the appellant had a grudge against Gurdial Singh and his helpers. She had, therefore, a motive to commit the alleged crime. Nothing substantial could be

pointed out by learned Counsel for the appellant to persuade us to take a different view.

3. On the evidence of Atma Ram, PW 4 both the courts have found that the appellant had purchased from him half a tola of the poison meant for killing rats under a pretext that she required it for that purpose. The poison was zinc phosphide. We see no reason to differ from the concurrent findings of the courts below in this regard too.

4. On the question of the appellant's giving the poisoned gur to the three children the trial Judge did not believe the evidence of PWs Gurdial Singh and Karnail Singh. Nor did he place any reliance on the evidence of Sita Singh PW 12 who was selling vegetables in the lane at the time of the occurrence. The two surviving children were examined as PWs 10 and 11. Relying on their evidence the trial Court found the prosecution story of administering poison to the three children by the appellant proved. It, however, did not feel satisfied on the medical evidence and on the evidence of the Chemical Examiner to whom viscera was sent that Ranjit Singh died as a result of the poison administered to him by the appellant. In that view of the matter the trial Court acquitted the appellant of the charge of murder but convicted her under Section 328 of the Penal code. The High Court has taken a different view. It has agreed with the trial Judge that the evidence of PWs Gurdial Singh and Karnail Singh was not trustworthy in so far as it directly involved the appellant in the act of giving poisoned gur to the three children. In disagreement with the trial Court the High Court has, however, placed reliance upon the evidence of Sita, PW 12 to find the fact of giving the gur which contained some black or gray substance to the three children by the appellant. The High Court did not consider it safe to rely upon the evidence of the two surviving children. After carefully considering the matter we do not find any substantial reason to differ from the High Court in this aspect of the matter.

5. But we do not think that on the facts and in the circumstances of this case it was proved beyond reasonable doubt that the appellant had administered poison to Ranjit Singh with the intention of causing his death or that he had died as a result of the said poisoning. In this regard we think that trial Judge was right and the High Court was wrong.

6. The evidence of Dr. Balbir Singh has rightly been criticised by the High Court as also by the trial Court. The three children were admitted in the hospital under his care and he was the Medical Officer who had performed autopsy on the dead body of Ranjit Singh. Two other doctors were examined as prosecution witnesses to prove its case that Ranjit Singh had died as a result of zinc phosphide having been administered to him. They were Dr. Moti Singh and Dr. Ahluwalia. Dr. Moti Singh found from the post-mortem examination report that only pieces of stomach of Ranjit Singh were sent to the Chemical Examiner for examination. On the other hand the evidence of Dr. Balbir Singh was that the whole of the stomach had been sent. The Chemical Examiner was repeatedly of the opinion that there was no poison content found in the viscera. Dr. Ahluwalia gave his opinion on consideration of the outdoor ticket, bed-head ticket and history of the case. The symptoms of vomiting, temperature, convulsions and quick pulse were there. He opined that death of Ranjit Singh Could have resulted from zinc phosphide but he could not rule out possibility of his death due to some virus infection. He further stated when referred to Modi's Medical Jurisprudence that zinc phosphide being a very fine powder adheres very firmly to the crypts in the mucous membrane of the stomach. It also appears from the evidence that the poison after going into the blood must have entered viscera of the deceased. No zinc powder was found adhering to the crypts in the mucous membrane of the stomach of Ranjit Singh. Death of the child was within 24 hours of the administering of the poison. In all prob ability if it would have been caused due to the intake of the poison by him the Chemical Examiner must have detected traces of it in the viscera. The other two

children, it appears, had taken very little quantity of the poison and they soon recovered only by stomach wash. It is not clear from any piece of evidence in this case that the deceased child had taken a larger quantity of the poisoned gur. The possibility of his death due to any virus infection or any different cause other than the one attributable to poisoning cannot be ruled out. In such a situation, when two views were possible, the High Court was not justified in interfering with the order of acquittal recorded by the trial Court in favour of the appellant in so far as it related to the charge under Section 302 of the Penal Code.

7. For the reasons stated above we allow the appeal in part, set aside the appellant's conviction and sentence under Section 302 of the Penal Code and maintain those under Section 328.

</html