SUPREME COURT OF INDIA

Manju

Vs.

State of Delhi

Crl.A.No.1268 of 2013

(Mohan M.Shantanagoudar and R.Subhash Reddy,JJ.,)

17.12.2019

JUDGMENT

R.Subhash Reddy,J.,

1. This criminal appeal is filed by the sole accused, aggrieved by the judgment dated 12th March 2010 passed in Criminal Appeal No.168 of 2010 by the High Court of Delhi at New Delhi, by which the appellant herein was convicted and sentenced to life imprisonment for the offence punishable under Section 302, IPC.

2. The appellant herein was admitted in the maternity !rifward of the Lady Hardinge Medical College Hospital and delivered a baby girl around 12:30 in the afternoon on 24th August 2007. It is the case of the prosecution that as the new born was a baby girl, as such the appellant- mother has caused her death by strangulation after baby was handed over to her at 04:30 p.m. on the said date. On 26th August 2007 post-mortem was conducted on the dead body and the doctor opined that cause of death was asphyxia due to ante mortem strangulation. On 31st August 2007 a case was registered against the appellant for the offence under Section 302 IPC, for causing death of her new born baby. She was tried for the charge under Section 302 IPC by the court of Additional Sessions Judge, Fast Track Court, New Delhi. In her statement, she has not pleaded guilty and claimed trial, as such, she was tried in Sessions Case No.78 of 2009 by the Additional Sessions Judge, New Delhi. To prove the charge against the appellant, prosecution in all, has examined 23 witnesses. The evidence against the accused was put to her and her statement was recorded under Section 313, Cr.P.C. she has pleaded her innocence and deposed that she has been falsely implicated by the police in connivance with the hospital authorities, to shift the blame from doctors on duty.

3.The trial court, by judgment dated 19.12.2009, by recording a finding that prosecution has been able to prove complete chain of circumstances and proved its case beyond reasonable doubt, has held the appellant- accused is guilty for the commission of offence under Section 302 IPC and by order dated 22.12.2009 imposed the sentence of imprisonment for life and to pay a fine of Rs.2000/-.

4. As against the conviction recorded and sentence imposed the appellant carried the matter in appeal to the High Court and the High Court by the impugned judgment, confirmed the conviction and sentence imposed on the appellant.

5. We have heard Ms. Mahalakshmi Pavani, learned senior counsel appearing for the appellant and Mr. Anmol Chandan, learned counsel appearing for the State of Delhi.

6. It is contended by learned senior counsel appearing for the appellant that there are no eye witnesses to the incident, and the incident is said to have happened in the ward of the hospital, where the delivery took place. The conviction is based solely on circumstantial evidence and the chain of circumstances is not complete. It is submitted that the appellant had no reason to commit the murder of her new born baby girl as she already had a male child and her parents- in-law had died even before she was married. By referring to the oral evidence of PW-8 and PW-9, it is submitted that even according to the deposition of said witnesses it is clearly established that the new born was kept in the incubator with an oxygen mask. Further the appellant-mother was sleepy in view of the drugs administered on her and by the time she has seen the child, the new born was dead. It is submitted that the trial court as well as the High Court has committed error in convicting the appellant in absence of proving chain of circumstances, leading to her conviction. It is also brought to the notice of this Court that though incident occurred on 24th August 2007 post-mortem was conducted on the body only on 26th August and further, crime was registered on 27th August 2007. It is submitted, if the totality of evidence is taken into consideration, the guilt of the accused-appellant is not proved beyond reasonable doubt and the judgments of the High Court as well as the trial court are based on surmises and conjectures.

7. On the other hand, it is contended by the learned counsel appearing for the State, after the birth of the child the new born was kept in the incubator upto 04:30 p.m. and after 04:30 p.m. baby girl was handed over to the appellant herein. Thereafter she was found dead by nursing staff of the hospital. Further it is submitted that though the conviction rests on circumstantial evidence, chain is established to prove the guilt of the accused-appellant, and there are no grounds to interfere with the well considered judgment of the trial court, as confirmed by the High Court.

8. Having heard learned counsel on both sides, we have perused the impugned judgments and other material placed on record.

9. In this case it is clear from the record that the conviction of the appellant herein is based on circumstantial evidence. The trial court mainly relied on the evidence of two staff nurses - PW-8 and 9, who have deposed that baby girl was placed with the mother at about 04:30 p.m. and the child was found dead by 06:30 p.m. The husband of the appellant was examined by the prosecution as PW-7. In his deposition he has stated that on 24th August 2007 he had taken his wife, i.e., the appellant herein to Lady Hardinge Medical College Hospital, for delivery and on the same day at around 12:00 noon appellant gave birth to a female baby. He was called to the labour room and the nurse had shown him the new born

baby and at that time eyes of the baby were closed. She was not moving and she was not weeping. He has also stated that there was also a red mark on the nose of the child. At around 05:00 p.m. again when he was called by the nurse and he was informed that child had expired and on questioning, staff have not given any reason for death. Further it is also stated that he was not allowed to meet his wife and he was allowed only after post-mortem was conducted on the body of the child on 26th August 2007. None of the doctors on duty on the date of delivery was examined. PW-8, staff nurse was examined. In her deposition she has stated that new born was under observation in incubator. She has deposed that the new born was handed over to the mother at around 04:30 p.m. by taking her out of the incubator. Thereafter at around 06:30 p.m. during rounds Ward Doctor found baby was sick. PW-8 in her cross-examination has stated that baby was on oxygen mask in the incubator. Another staff nurse, by name, Sangeeta Rani was examined as PW-9 who has deposed that on the date of incident she joined duty at 03:00 p.m. and new born baby had been kept in the incubator and had been on oxygen mask.

10. By considering the oral evidence on record and taking into consideration the post-mortem report, the appellant was convicted for the offence by attributing motive that she has strangulated her because the new born is a baby girl. There is no evidence on record to draw such a conclusion against the appellant. It is clear from the evidence on record, as deposed by PW-7, they already had a male child of the age of 5 years. He has also stated that as they already had a male child, they wanted a female child to complete the family. He further stated that his brother had three daughters which shows that the family was not orthodox and was not averse to have a female child. It is clear from the evidence on record that immediately after birth the baby was put in incubator with oxygen mask and it is also clear that she has not opened the eyes and she did not cry. PW-7, though he was declared hostile by the prosecution, but he has stated in his deposition that he was called to the labour room at 05:00 p.m. to inform that his baby had expired and he was not allowed to see her wife who is the appellant herein upto 26th August 2007 on which date dead body of the baby girl was sent for post-mortem. It is also to be noticed that there is no reason for sending the body for post-mortem on 26th August when the baby girl died on 24th August 2007. At the same time, it is also to be noticed that the crime was registered against the appellant only on 31st August 2007. It is true that in the post-mortem, doctor has opined that death is due to asphyxia and there were marks of strangulation, but at the same time if totality of evidence on record is considered, motive is not established and it is totally unnatural for the appellant-mother to kill her own baby by strangulation. It is also clear from the record that in view of the drugs administered on her she was sleepy and drowsy. In absence of any clear evidence on record, High Court as well as the Trial Court committed error, in attributing motive to the appellant that, she has killed her baby as she was female. The Trial court as well as the High Court has based conviction on presumptions without any basis. It is fairly well settled that to base conviction solely on the circumstantial evidence, unless chain of circumstances is established conviction cannot be recorded. From the totality of evidence on record it is clear that the baby girl was put in incubator with an oxygen mask and she has also not opened her eyes and she did not cry after birth. There was a possibility of natural death. Though the doctor has opined in the post-mortem report, the cause of death is asphyxia but in absence of any clear evidence on

record it is not safe to convict the appellant for the offence under Section 302 IPC. As the evidence on record is not sufficient to bring home the guilt of the accused, beyond reasonable doubt. We are of the considered view that the appellant is entitled to benefit of doubt, for acquittal from the charge framed against her.

11. For the aforesaid reasons, this criminal appeal is allowed. The judgment of the trial court dated 19.12.2009, as well as the impugned judgment of the High Court dated 12.03.2010, in Criminal Appeal No. 168 of 2010 by the High Court of Delhi are set aside, consequently the appellant is acquitted of the charge framed against her. As the appellant is on bail, her bail bonds stand cancelled.