



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 72 OF 2026

Vishwas @ Vishu Ravasu Gavit

Age: 31 years, Occu.: Agriculture and Driver,

R/o. Wagadi, Tal. Navapur, District Nandurbar. Appellant

(Original Accused)

Versus

The State of Maharashtra

Through Police Station Officer,

Visarwadi Police Station,

Tal. Navapur, District Nandurbar.

(In Crime No.303/2023)

.....Respondent

.....

Ms.Ranjana D.Reddy, Advocate for Appellant (Appointed through
Legal Aid)

APP for Respondent : Mrs.A.S.Mantri

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28-09-2026

Pronounced on : 29-09-2026

JUDGMENT :

1. Appellant, a convict hereby challenges Judgment and order dated 17-10-2025 passed by learned Sessions Judge, Nandurbar in Sessions Case No.12 of 2024 convicting accused for offence under Sections 304 (Part II) and 324 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. In short, story of prosecution in trial Court is that, in June 2023 appellant assaulted one Chaganibai by means of axe in front of house

of informant and said episode was reported by Dinesh (son of Chaganibai) at Visarwadi Police Station thereby naming appellant and informant's husband Naresh. On said report, crime was registered and criminal case was pending before the Court of Judicial Magistrate First Class (JMFC), Navapur. In the night of 25-08-2023, while informant was preparing meals, at that time, accused appellant Vishwas came to their house and her husband allegedly said to appellant that had he not assaulted Chaganibai, there would not have been any criminal case against them. Feeling annoyed by the questioning, accused lifted an axe kept near the door and hit it on informant's head. He also assaulted her husband Naresh, who collapsed with bleeding injury. Informant raised hue and cry and her husband was taken to the hospital. On her report to the above extent, Crime was registered bearing No.303 of 2023 for offence under Sections 302, 307 of the IPC. Said crime was investigated by PW6 Investigating Officer, who after gathering sufficient evidence, chargesheeted accused and finally, he was tried vide above Sessions Case and ultimately stood convicted for offence under Sections 304 (Part II) and 324 of the IPC.

Feeling aggrieved by the above, instant appeal has been preferred questioning the sustainability of the Judgment passed by the learned Sessions Judge, Nandurbar.

SUBMISSIONS

On behalf of appellant :

3. Learned counsel for appellant pointed out that case of prosecution was not proved beyond reasonable doubt. That, at the time of alleged occurrence, there was no source of light and therefore, who assaulted and how deceased died has not been proved beyond reasonable doubt. She would point out that, infact accused was at Gujarat, but such plea of *alibi* has not been considered by the learned trial Court. Moreover both informant and her husband were alcoholic and therefore, informant's evidence is not worthy of credence. That, learned trial Court failed to assign sound reasons while convicting the accused by accepting case of prosecution. On such counts and grounds, appeal is sought to be allowed.

On behalf of Respondent State :

4. Learned APP supported the impugned Judgment by submitting that, prosecution evidence was full-proof. That, there was eye witness/injured witness account. That, informant was natural witness. That, testimonies of prosecution witnesses having remained unshaken has rightly been taken aid of by learned trial Court to convict the accused.

BRIEF ACCOUNT OF EVIDENCE BEFORE TRIAL COURT

5. Re-appreciated the entire evidence. Case of prosecution was rested on evidence of as many as six witnesses and their status is as under :”

PW1 Sarita Naresh Gavit is informant, who set law into motion by lodging report Exhibit 15; **PW2** Harish Ravasu Gavit, brother-in-law of informant; **PW3** Nilima Naresh Gavit, is child eye witness; **PW4** Amit Girji Gavit, pancha to spot panchanama; **PW5** Dr.Ajayraj Anandraj Kuwar, Autopsy Surgeon and **PW6** Prakash Marutrao Wankhede (API), is the Investigating Officer.

6. Prosecution case revolves around testimony of informant **PW1**, brother-in-law of informant **PW2**, child witness **PW3** and therefore, their evidence is primarily dealt with.

PW1 Sarita Naresh Gavit, informant in her testimony at Exhibit 14 deposed that, deceased was her husband and accused was her brother-in-law i.e. brother of her husband. She deposed about quarrel between present appellant and one Chaganibai of which Dinesh, son of said lady, had filed a criminal case and also naming husband of informant alongwith appellant and the case to be on the file of JMFC, Nawapur and on 25-08-2023, her husband and accused

returning home after attending the Court date. According to her, at about 8:30 p.m. while she, her husband, children sat for dinner, at that time, present appellant came to their house and informant's husband deceased Naresh said to appellant that "if he had not beaten Chaganibai, there would not have been any case against them". Upon this, it is alleged that, accused picked up an axe and hit it on the head of informant and when deceased questioned him, it is alleged that, accused assaulted by means of axe on his head. Her deceased husband died due to assault by axe on head and therefore, she lodged report.

While under **cross-examination**, she is initially questioned about location and geographical set up of the house. She admitted that, she is unable to give reason for Chaganibai filing complaint. She also admitted that her husband consumed liquor and there used to be quarrel between husband and wife. She admitted that, iron cot and wooden peg used for hanging clothes and that, her husband had agricultural implements in the house. She admitted that, there were no lights in the village that night, but while answering a question to that extent, she answered that her husband fell down after assault by appellant and thereafter, lights got switched off. Rest is all denial.

7. **PW2** Harish Ravasu Gavit is brother of deceased and brother-in-

law of informant and he claims to have seen his brother lying on the ground with blood oozing from his head and seen informant crying and about shifting his brother to the hospital.

While under **cross-examination**, he denied a suggestion that there was quarrel between informant and her husband and informant pushing him as a result of which, he fell.

8. **PW3** Nilima Naresh Gavit is the star witness and she is a child witness. In her testimony at Exhibit 18, she gave name of her mother, father and even identified accused and deposed that, on 25-08-2023, her uncle killed her father. That, her uncle dealt a blow of axe on the head of her father after which her father fell down. She also deposed that, her uncle dealt a blow of axe on the head of her mother.

While under **cross-examination**, she flatly denied suggestion that she was deposing as per say of her mother.

9. **PW4** Amit Girji Gavit is pancha to spot panchanama of which there is no challenge.

10. **PW5** Dr.Ajayraj Anandraj Kuwar is the Autopsy Surgeon, who has opined death of Naresh due to “cardio-respiratory arrest due to hemorrhagic shock due to head injury.

11. **PW6** Prakash Marutrao Wankhede is the Investigating Officer, who narrated about all steps taken by him during investigation.

ANALYSIS AND CONCLUSION

12. Thus, on analyzing above discussed evidence, here, there is indeed direct injured witness account i.e. of PW1 informant. She has deposed that, she being hit by axe on head by accused. PW5 an Autopsy Surgeon also seems to have occasion to examine PW1 informant and noticed she too have suffered CLW on her fronto parietal region admeasuring 4 cm x 1 cm and he issuing medical certificate Exhibit 29. Therefore, there is evidence about voluntarily causing hurt by dangerous weapon like axe. PW1 Informant's evidence also finds support from her child PW3.

13. As regards to assault on deceased by means of axe is concerned also PW1 informant's evidence finds support from her child PW3. She was very much in the house at the time of dinner when the incident took place. This child has also stated about assault by axe on her father by accused. She has flatly denied in cross-examination that she was tutored by her mother.

14. The settled law on the point of evidence of child witness is as under :

In ***Mangoo and another v. State of Madhya Pradesh***; AIR 1995 SC 959, the Hon'ble Apex Court while dealing with the evidence of a child witness observed that;

“There was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The Court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring.”

In the case of ***Dattu Ramrao Sakhare v. State of Maharashtra***; 1997 (5) SCC 341, the Hon'ble Apex Court held that;

“A child witness if found competent to depose to the facts and reliable on such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour

must be like any other competent witness and there is no likelihood of being tutored.”

In ***Ratansinh Dalsukhabhai Nayak v. State of Gujarat***; (2004) 1 SCC 64, the Hon’ble Apex Court held that;

“Child witness – evidence of – conviction on the basis of – held, permissible if such witness is found to be competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same.”

The Hon’ble Apex Court in the case of ***Gagan Kanojia and another v. State of Punjab***; (2006) 13 SCC 516 has ruled that,

“Part of statement of child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence.”

In ***Nivrutti Pandurang Kokate and ors. v. State of Maharashtra***; AIR 2008 SC 1460, the Hon’ble Apex Court dealing with the child witness has observed as under;

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any

examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

In a celebrated case of ***Hari Om v. State of U.P.***; (2021) 4 SCC 345, very recently the Hon’ble Apex Court, in paragraph 22 of this judgment, has spelt out legal principles, summarized the evidentiary value of child witness, effects of its discrepancies, and duty of Court and corroboration when to be insisted upon, which we borrow and quote here:

“22. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is require to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement

of the child witness. If the child witness is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. The evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law.”

15. Consequently, apart from testimony of injured informant, there

is credible child witness account.

16. Here, there is conviction for offence under Section 304 (Part II) of which there is discussion by trial Court in paragraph 40, 41, 42 of the judgment. Going by the sequence of the events that took place that night, it is seen that PW1 informant and PW3 child witness speak about arrival of accused to their house, it is only after questioning by deceased, accused allegedly picked up an axe and used it. He had not come there with any predetermined intention to carryout assault. Therefore, case was not of homicide, but as rightly held by learned trial Court, it is a case of culpable homicide not amounting to murder and so rightly convicted accused by the learned trial Court for said offence.

17. Perused the judgment under challenge. Learned trial Court has dealt and appreciated available evidence in its proper perspective. Findings are supported by sound reasons. Settled law has been applied. The view taken by the learned trial Court is the most probable view that could emerge with such quality of evidence on record. There being no illegality or infirmity, this Court does not find any reason for interference in the impugned judgment. Accordingly, following order is passed :

ORDER

- I. The Criminal Appeal is dismissed.
- II. The fees of the learned counsel (appointed through Legal Aid) for appellant, is quantified at Rs.10,000/- and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

SPT