

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.443 OF 2013

Baban s/o Padavi Pawara,
Age-37 years, Occu:Labour,
R/o-Boradi, Tq-Shirur,
Dist-Dhule.

...APPELLANT

VERSUS

The State of Maharashtra,
Through P.S.O. Police Station,
Shirpur, Tq-Shirpur,
Dist-Dhule.

...RESPONDENT

...

Mr.P.P. Khandagale Patil Advocate appointed
for Appellant.

Mr.Y.G. Gujrathi, A.P.P. for Respondent.

...

**CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.**

DATE OF RESERVING JUDGMENT : 24TH JULY, 2018

DATE OF PRONOUNCING JUDGMENT: 27TH JULY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the

Judgment and order dated 7th September, 2013, passed by the Additional Sessions Judge, Dhule in Sessions Case No.76 of 2012, thereby convicting the accused/Appellant - Baban Padavi Pawara for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/- (Rupees Two Thousand), and in default of payment of fine, to suffer simple imprisonment for four months.

2. The prosecution case, in brief, is as under:

A) The incident has occurred on 31st December, 2011, at about 10.00 p.m. to 11.00 p.m. in the house of the accused, situated in Shashtri Nagar, Boradi, Tq-Shirpur. The accused is the husband of deceased Kavita. The accused was residing with his wife in the house. Arti is the daughter of accused, who was also residing along

with accused. Eight to ten days prior to the incident, the accused went at Nandurbar for doing mason work. However, he accused came back at his house on Friday at about 3.00 p.m., under the influence of alcohol. During the night hours, the accused had demanded money from his wife for consuming liquor, but she refused to give money. On that count, there was a quarrel between the accused and his wife. The accused started beating his wife by means of stick, due to which his wife has sustained injury on her back, stomach and head. Arti, who is the daughter of the deceased, had seen the alleged incident in the house. The accused has caused injury to his wife by means of stick, due to which his wife died in the house itself. The accused had given threats to Arti to kill her. The accused has locked the door of the house from inside. The accused and his daughter Arti were in the house during the night time. On the next day, during morning hours, the accused went outside the house by saying to Arti that he

is going for nature's call. But thereafter the accused did not come in the house.

B) At about 5.30 a.m., the maternal uncle of Arti, namely Manohar Pawara came in the house. He has made inquiry with Arti about the incident, on which Arti has disclosed the said incident to him. On the same day, Manohar Pawara lodged report about the incident against the accused.

C) On the report of the informant, Crime No.1 of 2012 punishable under Section 302 of the I.P. Code came to be registered against the accused. The inquest panchnama over the dead body of Kavita has been prepared in the presence of panchas. The clothes of the deceased has been seized under panchnama in the presence of panchas. The spot panchnama of the offence has been prepared in the presence of panchas by the concerned investigating officer. The stick used in the offence by the accused was lying on the spot.

The concerned investigating officer has seized the said stick by preparing spot panchnama. The said stick has been deposited in the concerned police station by obtaining muddemal receipt to that effect. On the same day, the clothes of the deceased have also been deposited in the concerned police station by obtaining its receipt.

D) The medical officer has carried out the post-mortem examination over the dead body of Kavita. The accused was arrested on 2nd January, 2012, at about 5.20 p.m. in the alleged crime. On 4th March, 2012, the concerned investigating officer has shown the said stick used in the offence by the accused to medical officer. The medical officer has given his opinion that injuries caused to the deceased could be possible by means of the said stick and accordingly medical officer has given his opinion by issuing a letter to that effect. The statements of the witnesses have been recorded by the concerned investigating

officer. After completion of investigation, the charge-sheet came to be filed against the accused. In due course, the case was committed to the Court of Sessions.

E) A charge for the offence punishable under Section 302 of the I.P. Code was framed against the accused and the same was explained to him. Accused pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted the accused for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine, as afore-stated. Hence this Appeal by the accused.

4. Heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the

State, at length. Learned counsel appearing for the Appellant, in support of his submissions, placed reliance upon the exposition of law in the case of K. Venkateshwarlu vs. State of A.P.¹, and in the case of Manisha w/o Ravindra Humbe and another vs. the State of Maharashtra². With the able assistance of learned counsel appearing for the parties, we have carefully perused the entire notes of evidence, so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. The prosecution has examined in all five witnesses. PW-1 Manohar Guljar Pawar, is the informant. PW-2 Aapsing Tedshya Pawara is a panch to the spot panchnama (Exhibit-17). PW-3 Arti Baban Pawara is the daughter of the deceased, who was about 10 to 11 years old at the time of incident, and who has witnessed the whole

1 A.I.R. 2012 S.C. 2955

2 2017 ALL M.R.(Cri) 1215

incident. PW-4 Dattatray Shamrao Patil is the investigating officer. PW-5 Dr. Purushottam Ratanlal Agrawal is the medical officer who has carried out the post-mortem examination over the dead body of Kavita.

6. First of all, we will examine the oral evidence of PW-5 Dr. Purushottam Ratanlal Agrawal. During the course of examination-in-chief, he deposed that on 1st January, 2012, he was attached to Cottage Hospital, Shirpur as a Medical Officer. On that day, the police had brought the dead body of Kavita Baban Pawara in the hospital for post-mortem examination. On that day, he has carried out the post-mortem examination over the dead body of Kavita. He found following injuries on the person of deceased Kavita:-

"A] Abrasion over abdomen 2 X 2 cm.

B] Abrasion over nose 2 X 2 cm.

C] Contusion over face 4 X 4 cm.

D] Multiple abrasion over right knee 4

X 1 cm.

E] Abrasion over abdomen 4 X 1 cm.

F] Contusion over abdomen 2 X 2 cm.

G] Contusion over chest 3 X 2 cm.

H] Abrasion over abdomen,

I] Contusion over chest,

J] Fracture of right side ribs 3rd,

4th, 5th and 6th,

K] Fracture of left side over ribs over

3rd, 4th and 5th,

L] Fracture of parietal bone on right

side,

M] Fracture of right femur.

7. PW-5 Dr. Purushottam Agrawal further deposed that all the above mentioned injuries were ante-mortem injuries. He further deposed that he found following internal injuries on the person of deceased:

"a] Contusion right parietal region 3 X 3 cm.
b] Skull dash of right parietal bone,
c] Intracranial hemorrhage,
d] Fracture of right side ribs 3rd, 4th, 5th and 6th,
e] Fracture of left side ribs 3rd, 4th and 5th,
f] Right lung and left lung are found in rupture,
g] Liver, spleen and kidneys are found in rupture."

. PW-5 Dr. Purushottam Agrawal further deposed that according to him, the cause of death of Kavita is "due to cardio respiratory failure due to hemorrhagic shock due to injuries to vital organ like brain, lungs, liver, heart, kidney and spleen and multiple fractures". Accordingly, he issued post-mortem note of deceased (Exhibit-31). He further deposed that the injuries mentioned in

Column No.17 and 19 would be possible if the person was beaten by sticks and fist and blows. According to his opinion, the person may die due to the injuries caused to him.

8. PW-5 Dr. Purushottam Agrawal further deposed that on 29th February, 2012, the investigating officer Mr. Patil had given a letter to him for obtaining his opinion as to whether injuries caused to the deceased would be possible by sticks or not. He further deposed that Mr. Patil had brought stick with him for showing the same to PW-5. He was shown the copy of said letter (Exhibit-26) which bears his signature. He further deposed that on 4th March, 2012, he has given his opinion about the same in the said letter. He further deposed that the letter (Exhibit-32) bears his signature and the contents of it are correct. He was shown the said stick (Article No.A). According to his opinion, the injuries caused to the deceased as mentioned in post-mortem notes

would be possible by means of said stick, Article No.A.

9. During the course of cross-examination, PW-5 Dr. Purushottam Agrawal has stated that he has mentioned the age of deceased as 26 years in clause No.7 of the post-mortem notes. There is mention in letter vide Exhibit-26 that the stick has been found on the spot of offence. He further stated that he has minutely perused the said stick. He observed that there were blood stains on the said stick. He has not obtained blood sample by removing those blood stains from the said stick for sending it to C.A. He denied the suggestion that if a person consumes liquor of heavy dose for years together, then his bone becomes weak. He further stated that there are several reasons to become bones weak. He further denied the suggestion that if a person consumes excess dose of liquor and if he falls in a ditch or on sloppy area of stone, then such person would sustain such

type of injuries as mentioned in post-mortem notes. He further stated that according to his opinion, injury Nos.10 to 13 mentioned in post-mortem notes vide Exhibit-31 would not cause to the person if the person falls on stony surface.

10. The evidence of PW-5 Dr. Purushottam Agrawal, shows that deceased Kavita received multiple injuries, her right side ribs and left side ribs were fractured, her lungs, spleen and kidneys were found in rupture condition. According to PW-5 Dr. Purushottam Agrawal, the cause of death of Kavita is "due to cardio respiratory failure due to hemorrhagic shock due to injuries to vital organ like brain, lungs, liver, heart, kidney and spleen and multiple fractures". Thus, from the perusal of the evidence of PW-5 Dr. Purushottam Agrawal, the injuries mentioned in the post-mortem notes, it is clear that death of Kavita was homicidal.

11. Now, we will examine the evidence of sole eye witness. PW-3 Arti Baban Pawara deposed that accused Baban is her father. Manohar Pawara is her maternal uncle. Deceased Kavita was her step mother. Accused was doing agricultural work. Accused was addicted to liquor. Accused used to beat Kavita under the influence of liquor. She further deposed that incident took place on Saturday. Incident took place in the night time. Her father demanded money to her mother for consuming liquor and when her mother refused to pay money, her father beat her mother with stick, on back, stomach and head. She further deposed that due to that beating, her mother expired. After death of her mother, her father closed the door from inside, and on next day morning her father ran away. In the morning hours, her maternal uncle Manohar came there. She narrated all the incident to her uncle. She further deposed that the stick which was used by her father for beating her mother, if shown to her, she can

identify the same. She identified the stick Article-A shown to her in the Court, to be the same.

12. During the course of cross-examination, PW-3 Arti Pawara stated that accused also does mason work. Accused used to go out of village Boradi for doing the said work. Accused used to go frequently to Nandurbar for the said work. She further stated that her mother Kavita also used to consume liquor and after consuming liquor, her mother used to quarrel with her father. She denied the suggestion that in the night of incident her father had gone to Nandurbar. She further stated that, during whole night she did not sleep. She admitted the suggestion that in the said night her father and mother both consumed liquor together. She further stated that surrounding to their house, there is no any other hut. The hut of Bansi Baraku is on one side of their house. The hut of Gaba Kathha Pawara is also on one side of their

house. The hut of Gaja Bansi Pawara is also near their house, and opposite to their house, there is hut of Dikya Pawara. She further stated that in the said night, nobody came to her house. Her maternal uncle resides at a distance of 500 feet from her house. She further stated that on the day of her deposition also, her maternal uncle came in the Court. She further stated that she came along with her uncle. She further stated that on next day of incident she accompanied her maternal uncle for lodging report. She denied the suggestion that she gave her statement to police as per instructions of her maternal uncle. She denied the suggestion that her father had not beaten any time to her mother with sticks. She denied the suggestion that due to over dose of liquor her mother was falling, due to which her mother sustained injuries.

13. Upon careful perusal of the evidence of PW-3 Arti Pawara, she unequivocally stated that

at the time of incident, she was present in the house. Her father demanded money from her mother for consuming liquor and when her mother refused to pay money, her father beat her mother with stick, on back, stomach and head. She further deposed that due to such beating her mother expired. Being daughter of accused, her presence in the house, during the night time, was natural. Though PW-3 Arti Pawara is a child witness, her evidence is cogent, reliable and trustworthy. Admittedly at the time of incident PW-3 Arti was about 10 to 11 years old and at the time of her deposition in the Court she was about 11 to 12 years old. However, perusal of her examination-in-chief and cross-examination shows that she has given rational answers. No doubt before recording her evidence, being a child witness, it would have been better if the trial Court has asked some general questions to her to understand whether she was able to give her oral testimony. However, on that count the evidence of PW-3 Arti could not be

discarded, which is otherwise cogent, trustworthy and reliable. As observed earlier, PW-3 Arti has given rational answers to each question which was put to her during the course of her examination-in-chief and also in the cross-examination. Further, her evidence is corroborated by the medical evidence. PW-3 Arti deposed that her father beat her mother with the stick, on her back, stomach and head. The medical evidence shows that deceased Kavita sustained injuries to her ribs, vital organs such as lungs, liver, spleen, kidneys and also on her head.

14. The Supreme Court in the case of State of Karnataka vs. Shantappa Madivalappa Galapuji and others³, in para 14 and 15 of the Judgment , observed as under:-

"14. The position in law relating to the evidence of child witness has been dealt with by this Court in Nivrutti Pandurang

3 (2009) 12 S.C.C. 731

Kokate v. State of Maharashtra⁴ and Golla Yeluu Govindu v. State of A.P.⁵.

15. "6.... The Evidence Act, 1872 (in short 'the Evidence Act') does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in Wheeler v. United States⁶. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction,

4 (2008) 12 S.C.C. 565

5 (2008) 16 S.C.C. 769

6 40 L Ed 244

based thereon. (See Suryanarayana v. State of Karnataka⁷).

7. In Dattu Ramrao Sakhare v. State of Maharashtra⁸ it was held as follows: (SCC p.343, para 5)

'5..... A child witness if found competent to depose to the facts and reliable one 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 questions and able to give rational 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.'

7 (2001) 9 S.C.C. 129

8 (1997) 5 S.C.C. 341

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, shaken 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."

The above position was highlighted in Ratansingh Dalsukhbhai Nayak v. State of

Gujarat at SCC pp.67-68, paras 6-7."

15. In the present case also, on close scrutiny of the evidence of PW-3 Arti Pawara, it reveals that she has intellectual capacity to understand questions and give rational answers thereto. PW-3 Arti Pawara has given rational answers to the questions which were put to her. Her evidence is reliable and trustworthy. We have closely scrutinized the evidence of PW-3 Arti Pawara and we are convinced that the same is reliable. We have also carefully perused the findings recorded by the trial Court in this respect. The trial Court has accepted the oral testimony of PW-3 Arti Pawara. In Para 19 of the impugned Judgment the trial Court has given cogent reasons why it has accepted the oral evidence of PW-3 Arti Pawara. The relevant part of Para 19 of the impugned Judgment reads as under:

"19..... I have carefully scrutinized the evidence of P.W.3 being a child witness

and I am satisfied that she has given rational answers to the questions put up to her while recording her statement before the Court. I am also satisfied that really P.W.3 though she is a child witness but she is capable to understand the questions put up to her on behalf of the accused and also on behalf of State and she has really given rational answers about the same by considering the evidence produced on record. I am satisfied that really she has not exaggerated her version or she has not developed the prosecution story about the incident. She has stated the true facts of incident by involving her father in the alleged crime. P.W.3 is mature and on that basis she has given rational answers to the questions put up to her while recording her statement and on that basis I am satisfied that really she has not been tutored by her maternal uncle or by any other person. Therefore, I have no hesitation to rely upon the testimony of P.W.3 for involving the accused in the alleged crime. Her evidence cannot be discarded she being the daughter of the accused. I do not find any material omission or contradiction in her evidence for discarding her evidence entirely. Therefore, I am relying upon the evidence

of P.W.3 whose testimony inspires the confidence for involving the accused in the alleged crime."

16. Thus, it is clear that the trial Court has carefully scrutinized the evidence of PW-3 Arti Pawara and thereafter relied upon her evidence, though she is a child witness. After carefully considering the findings recorded by the trial Court, we are of the opinion that the trial Court has rightly relied upon the evidence of PW-3 Arti Pawara.

17. The prosecution has examined PW-1 Manohar Guljar Pawara, who is the informant. He deposed that deceased Kavita was daughter of his sister. Kavita was married with the accused about 10 years back from the date of incident. She was having two daughters, namely Kalpana and Vandana, and a son Banti. At the time of incident, the deceased Kavita was having a daughter aged four months. Before marriage with deceased Kavita, accused

Baban had earlier performed a marriage but his wife had deserted him. The accused Baban was having a daughter Arti (PW-3) from his first wife. Arti was residing with Baban and Kavita. At the time of incident, Arti was aged about 10 to 11 years. He further deposed that accused was resident of village Gadhad Deo but after marriage with Kavita, accused shifted to village Boradi. Accused was residing at a distance of 40 to 50 feet from his house. Accused Baban was addicted to liquor. Accused used to demand money from deceased for consuming liquor and when she refused to pay money, accused used to beat her. He further deposed that several times he tried to give understanding to the accused but he did not listen.

18. The informant PW-1 Manohar Pawara further deposed that the incident took place on 31st December, 2011, at about 10.00 to 11.00 p.m. That time he was present in his house. He heard noise

of quarrel between accused and Kavita. As there was routine quarrel between them, he did not go there. He further deposed that on next day, at 5.30 a.m., he visited the house of Kavita. Kavita was dead. When he went inside, only Arti was present there. He asked Arti about the incident and she told him about the incident. Arti told him that accused Baban beat Kavita with stick and kick blows in the night. Arti told him that accused was under the influence of liquor and again he was demanding money for consuming liquor and when Kavita refused to pay money, accused beat Kavita with stick, fist and kick blows. Arti told him that accused threatened to kill her and on the next day morning the accused told her that he was going for nature's call and ran away. He further deposed that he saw dead body of Kavita. There was abrasion on her face, back and knee joint and skin was removed. Her face turned blackish. Her blouse was in torn condition. On 1st January, 2012,, he visited Shirpur police station and lodged first

information report. Police recorded his report, read over its contents. The report (Exhibit-12) bears his signature. He further deposed that accused before the Court is the same.

19. During the course of cross-examination, the informant PW-1 Manohar Pawara stated that he usually signs in English. He is educated up-to S.S.C. The accused was residing at Boradi since last ten years. Out of the wedlock, the accused is having four children and the accused was residing with his family in his locality. He further stated that his locality consists of 50 to 100 huts. The hut of Baban is surrounded by four sides of huts. Baban was a mason and for sometimes he used to visit Nandurbar for said work. Eight to ten days prior to the incident, the accused had gone to Nandurbar for the work of mason. He further stated that he has not personally witnessed as to how Kavita died and who had beaten her. He stated to police in his first information report that in the

night of 31st December, 2011, he heard noise of quarrel between accused and Kavita. He admits that at that time he did not hear the noise of quarrel but he heard cries of Kavita. He stated to the police that Arti told him that accused threatened her to stay there, else he would kill her. He was unable to state any reason as to why the said fact is not mentioned in the first information report. He was further unable to state any reason as to why it is not mentioned in the first information report that skin of back of Kavita was removed. He was also unable to state any reason as to why it is not mentioned in the first information report that the blouse of Kavita was torn. He admits that Kavita was also in habit of consuming liquor. He denied the suggestion put to him that, as it was 31st December, Kavita was heavily drunk and in the influence of liquor she fell down and sustained injuries.

20. After careful perusal of the entire

evidence of the informant PW-1 Manohar Pawara, it is clear that though he has not witnessed the incident, soon before the incident he has heard noise of the quarrel between Kavita and accused. On the next day at about 5.30 a.m. he visited the house of the accused. At that time he saw that dead body of Kavita was lying in the house and only Arti was present in the house. His evidence shows that Arti narrated the incident to him that accused, under the influence of alcohol, beat Kavita with the help of stick, fist and kick blows and Kavita died on the spot. Thereafter he lodged first information report. Thus upon conjoint reading of the evidence of PW-3 Arti Pawara and PW-1 Manohar Pawara, it is clear that the accused is the only author of the injuries on the person of Kavita. There is no reason to disbelieve the oral testimony of both these witnesses. PW-1 Arti is the eye witness and she has witnessed the whole incident. She has no reason to depose against her father. PW-1 Manohar has visited the house of

the accused soon after the incident and noticed that dead body of Kavita was lying in the house and PW-3 Arti has told him that due to beating given by the accused, Kavita died. The evidence of both these witnesses is cogent, reliable and trustworthy.

21. The prosecution has examined PW-2 Aapsing Tedshya Pawara. He is a panch to the spot panchnama (Exhibit-17). He has also deposed that under the spot panchnama, police also seized one stick which was lying on the spot. Thus, it is clear that the weapon which was used in the crime, was lying on the spot and the same was seized by the Police. The evidence of PW-5 Dr. Purushottam Agrawal reveals that the police had asked his opinion as to whether injuries caused to the deceased would be possible by the stick or not. The evidence of PW-5 Dr. Purushottam Agrawal further reveals that he was shown the said stick (Article-A) and according to his opinion, the

injuries caused to the deceased as mentioned in the post-mortem notes would be possible by means of stick (Article-A). Thus, the prosecution has proved that the accused has caused injuries to deceased Kavita with the help of stick, Article-A.

22. PW-4 Dattatraya Shamrao Patil, A.P.I. Shirpur, is the investigating officer, who deposed about the manner in which he has carried out the investigation.

23. Thus, upon careful perusal of the evidence brought on record, it reveals that at the time of incident, accused, his wife Kavita and Arti, daughter of accused, were only present in the house. Accused was under the influence of liquor. He demanded money from his wife Kavita for consuming more liquor. Kavita refused to pay money and therefore the accused got annoyed and he mercilessly beaten Kavita with the help of stick, and also by fist and kick blows. Kavita died on

the spot. The child witness PW-3 Arti witnessed all the incident. When accused noticed that Kavita died, he closed the door from the inside and threatened his daughter Arti to keep quiet. On the next day, early in the morning, the accused ran away from the house. In the early morning hours, at 5.30 a.m., the informant PW-1 Manohar came to the house of the accused. He noticed that dead body of Kavita was lying in the house. At that time PW-3 Arti narrated the whole incident to the informant. The prosecution has brought on record through the evidence of panch witness PW-2 Aapsing Pawara and the investigating officer PW-4 Dattatray Patil that a stick, which was used as a weapon to commit the offence, was lying on the spot and the same was seized. The prosecution has brought on record, through the evidence of PW-5 Dr. Purushottam Agrawal that death of Kavita was homicidal. Thus, the prosecution has proved beyond reasonable doubt that the accused committed an offence punishable under Section 302 of the I.P.

Code.

24. The trial Court has considered the entire evidence brought on record and observed in Para-29 of the impugned Judgment that, admittedly PW-3 was the only witness to the incident and no any other witness had seen the incident except PW-3. The trial Court has further observed that it has no hesitation to rely upon the testimony of PW-3 as her evidence inspires the confidence on the point of incident for involving the accused in the alleged crime. The trial Court has further observed that it has considered the scope of Section 134 of the Evidence Act and there is no bar to rely upon the sole testimony of a single witness for connecting the accused in the crime if testimony of such witness inspires confidence on the point of incident. The trial Court has further observed that, there is sufficient evidence on record to show that the accused has intentionally or knowingly caused the death of his wife by

inflicting injury on her head, back and stomach by means of stick. The trial Court has further observed that, when the accused has caused injury on the vital part of the body of the deceased including the head, then it can be held that the intention of the accused was to kill the deceased by means of stick. The trial Court has further observed that the act of the accused would certainly cover under Section 302 of the I.P. Code. The trial Court has convicted the Appellant/accused for the offence punishable under Section 302 of the I.P. Code and sentenced him, as afore-stated.

25. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record and convicted the Appellant/ accused.

The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

26. It is alternatively argued by the learned counsel appearing for the Appellant that there was no intention on the part of the Appellant to kill his wife, and therefore the offence would fall under Section 304 Part II of the I.P. Code. The said submission deserves no consideration for the simple reason that in absence of any explanation offered by the Appellant under which circumstances his wife Kavita died, it is not possible to read the mitigating circumstances in favour of the Appellant. On the contrary, the conduct of the Appellant to run away from the house after commission of the offence, clearly shows his involvement and intention in the commission of offence. There are no mitigating circumstances to accept the submission of the counsel appearing for the Appellant that the Appellant had no intention

to kill his wife. Further, it is significant to note that the assault is on the vital parts of the body of Kavita.

27. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal. The Criminal Appeal stands dismissed.

28. Since, P.P. Khandagale Patil, learned counsel is appointed to prosecute the cause of the Appellant - Baban s/o Padavi Pawara, his fees and expenses are quantified at Rs.7,000/- (Rupees Seven Thousand).

O[V.K. JADHAV, J.]

asb/JUL18

[S.S. SHINDE, J.]