



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.303 OF 2018

Kisan S/o. Chandar Bhawari,
Age : 29 years, Occu. : Agril.,
R/o. Waranghushi, Tq. Akole,
Dist. Ahmednagar.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra,
Through Police Inspector,
Rajur Police Station,
Rajur, Tq. Akole,
District : Ahmednagar

... Respondent.

...
Mr. Satyajeet S. Dixit, Advocate for Appellant.
Mr. A. M. Phule, APP for Respondent - State
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 07th NOVEMBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. By invoking section 374 of the Code of Criminal Procedure (Cr.P.C.), appellant is questioning judgment and order of conviction, passed by learned Additional Sessions Judge, Sangamner, dated 22.02.2018 in Session Case No.70 of 2015, holding appellant guilty for offence punishable under sections 302, 324 of Indian Penal Code (IPC) and sentencing him to suffer imprisonment for life and rigorous imprisonment for two years and to pay fine.

FACTUAL MATRIX

2. PW1 Kavita lodged report with Rajur police station (Exh.34), informing that, she was married to accused and she was cohabiting with him, his parents and sister. Her husband used to suspect her character and beat her. She had delivered a girl child on 21.02.2015. On 18.06.2015, around 7.00 a.m., husband suspected her character and abused her. When she went to lift her girl child from the swing, declaring that, she is going to her parent's house, it is alleged that, he caught the baby by its legs, held it out of the swing, dashed and threw the baby on the floor by hitting the head on the ground. Husband did not allow her to touch the baby. Her maternal aunt Meenabai and her son Rahul reached the house of accused. Accused pushed Meenabai and even tried to assault her by axe, causing her injury to left hand. Thereafter, Rahul and two-three other persons came to her rescue and they managed to reach police and she lodged above report.

3. Crime was registered and investigated by PW7 Rangnath Salunkhe and PW8 API Rahulkumar Patil, who after completing investigation and gathering sufficient evidence, charge-sheeted accused, who was tried by learned Additional Sessions Judge and was finally held guilty and sentenced as above.

SUBMISSIONS

On behalf of Appellant :-

4. Learned counsel for appellant would submit that, implication is in absence of cogent and reliable evidence. Due to strained relations with wife, he is falsely implicated. Learned counsel would submit that, there is no independent witness. Only interested witnesses, like aunt Meenabai and her son Rahul are examined. That, child fell accidentally and suffered head injury. That, report is at the instance of Meenabai and PW1 Kavita merely caused thumb impression, and therefore, it cannot be said to be a report by her. That, learned trial court has not appreciated the evidence in its correct perspective and has arrived to erroneous conclusion, and therefore, he prays for allowing the appeal.

On behalf of State :-

5. In answer to the above, learned APP would submit that, it is unfortunate case where father has killed his own child. It has happened in presence of wife and mother of the child. She had lodged report against her own husband. He had killed his own daughter and is squarely responsible for the death of baby. Aunt of informant, who had come to rescue was also assaulted by accused and she also suffered injury. She and her son are examined. All three i.e. PW1 Kavita informant, her aunt Meenabai and her son Rahul are all consistent and corroborating each other. Medical

evidence confirms death to be homicidal one. Accused was present in the house and arrested from the house itself. Occurrence has taken place in the house and therefore he was rightly charged, tried and held guilty and hence, appeal sought to be dismissed for above reasons.

6. In support of its case, prosecution has adduced following witnesses :-

PW1 Kavita, is the informant and mother of baby child; **PW2** Meenabai is aunt of informant, who had come to rescue was also assaulted by accused; **PW3** Sakhubai is the mother of informant - Kavita; **PW4** Chintaman is cousin of the accused and informed about the incident to **PW4** Meenabai; **PW5** Rahul is the son of **PW2** Meenabai, who was also present at the time of incident; **PW6** Dr. Chhaya Lohre, Medical Officer, who conducted post-mortem and she issued post-mortem report and opinion about cause of death; **PW7** Salunkhe is a police head constable and **PW8** API Patil is the Investigating Officer.

7. On taking audit, survey and re-appreciation of evidence of **PW1** Kavita, mother of baby and wife of appellant, it is emerging that, husband suspected character and abused wife. Admittedly, they had a girl child of four months old. Evidence of **PW1** Kavita shows that, on 18.06.2015, she was abused after suspecting her

character and therefore when she declared that she would go to her parent's house and when proceeded to lift baby sleeping in the swing, accused went and caught the baby by its legs and dashed him on the ground. According to her, he did this twice and the baby became motionless. She further deposed that, her aunt Meenabai and her son Rahul came, but accused prevented them from going towards the baby, and moreover, it is alleged that he caused injury to Meenabai. After intervention by Rahul and others PW1 Kavita and her aunt Meenabai seem to have approached police.

PW2 Meenabai has also lend support to the testimony of PW1 Kavita by deposing that when she learnt about baby being slammed on the ground and killed, she went to the house of accused and saw the baby on the ground and moved ahead to lift the baby, at that time, accused pushed her away and dealt a blow on her neck with axe, which she tried to ward off and suffered injury on her left hand. Thereafter, she and PW1 Kavita went to police station and thereafter referred to the hospital.

8. Both PW1 Kavita and PW2 Meenabai are cross examined, but in our considered opinion, their testimonies have remained unshaken and have remained intact about accused dashing and slamming the child on the floor and lying motionless. Their testimonies are also finding support from PW5 Rahul who

brought PW2 Meenabai to the house of accused. PW2 Meenabai and PW5 Rahul have hearsay information, but evidence of PW1 Kavita clearly points out overt act of accused of banging the child on the floor, due to which the child laying motionless and on examination by doctor, he was declared dead. Death is attributed due to head injury. Evidence of medical expert thereby confirms homicidal death.

9. It is further noticed that, there is no specific defence raised by appellant. He does not deny his presence in the house. Cross of PW2 Meenabai is not rendered doubtful or shown to be with intention to falsely implicate appellant. His conduct of not taking steps to save the child by taking it to the hospital if at all it was accidental fall, further fix its responsibility on him.

10. Learned counsel for appellant submits that there was no motive behind the occurrence and that prosecution fails to establish it. We cannot accept the above submissions, for the simple reasons that, here there is direct eye witness account of none other than wife and appellant. Therefore, prosecution is relieved from the burden of proving motive.

11. It is also tried to be submitted that, as incident has taken place after quarrel, the case would at the most fall under section 304 of IPC. We are also not at all convinced with such

submissions, for the simple reason that, a child of four months old has been held by its legs and thrashed on the floor not once, but twice. It is evident from the testimony of very wife of appellant and mother of the baby. The child was lying motionless since then and therefore itself suggest that the baby met instant death. Such circumstances compel us to reject the above ground about case to be at the most attracting offence of 304 and not 302 of IPC.

By relying on the evidence of mother of baby i.e. wife of appellant coupled with evidence of PW2 Meenabai and PW5 Rahul, we too find sufficient material to hold accused responsible for the death of baby child.

12. We have considered the judgment under challenge and we are also convinced that with such quality of evidence, the view taken by the learned trial Judge is the most probable view that could emerge on even re-appreciation and re-analysis. There being no case on merits, we proceed to pass following order :-

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)