

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 35 OF 2017

1. Sau. Meerabai w/o Parasram Bele
Age - 38 years, Occu. Labour

2. Parasram s/o Satwaji Bele,
Age - 44 years, Occu. Labour

Both R/o Aamdari,
Taluka Aundha Nagnath,
District : Hingoli.

... Appellants
[orig. accused]

Versus

The State of Maharashtra,
Through Police Station,
Akhada Balapur, Taluka Kalamnuri,
District Hingoli.

... Respondent

.....

Mrs. Minakshi L .Sangeet, Advocate for the Appellants.
Mr. A. M. Phule, APP for Respondent-State.

.....

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

Reserved on : 17.10.2023

Pronounced on : 31.10.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Appellants are taking exception to the judgment and order dated 13.06.2016 passed by learned Additional Sessions Judge, Hingoli in Session Trial No. 25 of 2014 holding both of them guilty for offence under Section 302 r/w. 34 of the Indian Penal Code [IPC] and Section 201 r/w 34 of IPC.

2. According to prosecution, this is a case of filicide and accusations are that both appellants, who are parents of both deceased minors, have committed their murder on two counts. Firstly, girl was differently abled and so it had become difficult for them to raise her and secondly, appellant Parasram disowned male child to be his son. On above premise, it is the case of prosecution that, both children were dashed and smashed on the ground, causing head injury and committing their murder. It is further case of prosecution that after being done to death, dead bodies of the children were wrapped in cloth and the same were further kept in a sack and disposed of by throwing it in a well.

Prosecution came with the case that investigation revealed that the third child of appellants, namely, Sunita was the eye witness to the occurrence. She had given statement. Even very near and dear ones of appellant no.1 Meerabai i.e. PW7 Gangasagar (sister), PW8 Prakash (uncle) and PW9 Nilabai (mother) stated about involvement of appellants and therefore they were, on completion of investigation, duly chargesheeted, tried before learned Additional Sessions judge Hingoli, who, on appreciating the evidence, held the charges proved and convicted and sentenced them accordingly.

Such Judgment is now questioned by both the appellants by filing instant appeal.

3. Being first appellate court, in view of powers under Section 374 of the Code of Criminal Procedure [Cr.P.C.], we re-appreciated, re-analyzed and re-examined the entire evidence i.e. both, oral and documentary, which was adduced by prosecution before learned trial Judge.

SUBMISSIONS IN BRIEF

4. Learned counsel for the appellants would submit that judgment under challenge is patently perverse, illegal and not maintainable as there was no strong reliable trustworthy evidence. Learned counsel would submit that prosecution could not adduce any evidence in support of alleged motive. She would further submit that unfortunately, prosecution is relying on testimony of a child witness. That, in view of settled law, learned trial Judge has not sought corroboration to the testimony of child witness and in absence of the same, straightway evidence of child has been accepted. Learned counsel would submit that child was in custody of other relatives after the occurrence and therefore, there is every possibility of child being tutored. That, learned trial court has not borne in mind settled legal

position. Further, it is pointed out that though prosecution put forth circumstances like last seen, there was no evidence whatsoever in that regard and even time gap being huge and time since death being not cogently established, it is her submission that such circumstances ought not have been accepted by learned trial Judge as proved. She would further submit that learned trial Judge seems to have merely taken into account evidence in examination-in-chief of the witnesses and answers given in cross by them are completely overlooked. Therefore, it is her submission that, there is improper appreciation of evidence and therefore such findings and conclusion cannot be allowed to be sustained.

5. In answer to above, learned APP canvassed in favour of the judgment by submitting that very child of appellants deposed about killing of her siblings in her presence. She has narrated what she saw. Finding the testimony of child witness free from tutoring and inspiring confidence, learned trial court has committed no error in accepting the child witness testimony. It is pointed out that even relatives of very appellant no.1 Meerabai are all unanimous about deceased children to be in the company and custody of parents. They have identified the dead bodies. Their evidence was lending support to the prosecution version and therefore, according to learned APP,

learned trial court has rightly accepted the case of prosecution and as such, no fault could be found. He submits that appeal deserves to be dismissed.

6. Here, prosecution has examined as many as 28 witnesses and therefore, it would be apt to categorize the witnesses in different sets.

Relatives and acquaintances.

PW7 Gangasagar w/o Balu Kude is the sister of accused Meerabai. She identified the dead bodies and clothes, when confronted to her at Nanded Hospital, to be of the children of her sister Meerabai.

PW8 Prakash Gulaji Dhakare is uncle of accused Meerabai.

PW9 Nilabai w/o Anandrao Karhale is mother of accused Meerabai

PW10 Ganpat Rajaram Dukare resident of the same village as that of the accused. He claims to have come across accused with three children in train.

PW23 The child witness Sunita Parasram Bele is daughter of accused and an eye witness.

PW27 Shantabai Kamble is resident of village Amdari, who claims to have seen accused going with five kids and that accused Meerabai told her that they were going to railway.

Doctors

PW11 Dr. Vithal Yadavrao Karpe is the autopsy doctor. He identified both postmortem reports Exhibits 34 and 37. He issued cause of death of both children “due to severe head injury”.

Panchas

PW2 Baburao Gangaram Dhokane is pancha to spot panchanama Exhibit 20, who has not supported prosecution.

PW3 Rangrao Tukaram Dhokane is pancha to inquest panchanamas Exhibits 22 and 23, who turned hostile.

PW16 Circle Officer Anandrao Madharao Sule who drew map of the spot.

PW17 Ramrao Shankarrao Makane
and

PW18 Baburao Kondbarao Rokade
are panchas to seizure of clothes and ear rings of female child.
They turned hostile.

PW19 Ganesh Dhondba Kapase
and

PW20 Maroti Vitthalrao Mudhal
are panchas to seizure panchanama of clothes of accused Meerabai. They too did not support the prosecution.

PW21 Rangrao Shivram Pote acted as pancha to seizure panchanama of piece of sari used for tying dead bodies.

PW22 Kashiram Jalbaji Winkar, an acquaintance of informant, who acted as pancha to confessional statement of accused. However he was cross-examined by prosecution itself as he turned hostile.

PW24 Keshav Bhujangrao Dhokane is also a hostile pancha.

Police Officials

PW5 PHC Shesherao Nandu Rathod got identity of dead bodies confirmed by showing photographs to the villagers.

PW6 PSI Ashok Shesherao Jondhale registered crime and arrested accused on 25.02.2014 from Ahmednagar district.

PW12 PC Prashant Bhimrao Shinde

PW13 PHC Yadav Gopalrao Waghmare

PW14 Bashir Bali Saheb Choudhary

These are police officials/carriers.

PW15 Rajeshwar Suryakant Vyawahare is the photographer who snapped photographs of dead bodies at the spot.

PW26 Madhuri Chandrakant Dhule, who claims to be member of Mahila Dakshata Samiti and that PW23 Sunita narrated her the incident in police station in presence of her parents.

PW28 P.I. Narendra Ramrao Deshmukh is the Investigating Officer.

Residents of the locality near spot.

PW1 Waman Mahadji Vinkar is the informant and owner of the field having a water well in which he found the dead bodies. He identified the report lodged by him to be at Exhibit 17.

PW4 Tukaram Mahadji Vinkar is resident of the locality near the spot.

PW25 Prataprao Dulajirao Dhokane, Police Patil of village Bolda in which the spot is situated.

7. Before touching the aspect of culpability of accused, we deem it fit to get ourselves satisfied that death of Saraswati and Khobraji is homicidal.

8. Autopsy doctor PW11 Dr. Vithal Karpe, in his evidence at Exhibit 33, has deposed that on 23.02.2014, on receipt of dead bodies of two children along with inquest panchanamas from Akhada Balapur police station, he first conducted postmortem of female child. He deposed about rigor mortis to be present all over body, no signs of decomposition, eyes to be closed and swollen, tongue within mouth, no oozing from mouth and nostrils and no signs of drowning. On external examination, he deposed about coming across two contusion injuries i.e. (1) over head on left side at temporo parietal region

having dimension 14 cm x 18 cm x deep to brain under scalp and (2) over right side front parietal region 12 cm x 10 cm x deep to brain. According to him, both injuries were ante mortem and caused by hard and blunt surface leading to subdural heamotoma. On receipt of CA report of viscera, he gave final opinion about cause of death to be “due to severe head injury”.

He further deposed about conducting postmortem of male child wherein also found no signs of decomposition and drowning. On external examination, he claims to have come across four injuries as (1) contusion over head on right side having demension 10 cm x 14 cm x deep to brain causing depressed fracture of right parietal bone, (2) contusion over head on right side anterior laterally on frontal bone having dimension 6 cm x 10 cm x deep to brain causing frontal fracture with tearing of right hemisphere frontal lobe, (3) underneath scalp there is 100 ml blood heamatoma present under the injury no.2 and (4) contusion over head at tempora parietal region having dimension 6 cm x 6 cm x deep to brain. Herein also, he gave final cause of death as “due to severe head injury”.

This medical expert has identified both postmortem reports Exhibits 34 and 37 respectively. Considering his above evidence and

the answers given by him in cross, we too are of the opinion that death of both children is nothing but homicidal.

9. Before us, conviction is seriously questioned by learned counsel for the appellants by submitting that trial court has erred in relying and accepting child witness account in absence of any corroboration.

10. In view of above fundamental objection, we deem it fit to first, examine the evidence the child witness and before adverting to the same, we wish to reproduce the settled legal position regarding evidentiary value of a child witness. A few landmark judgments and the ratio that has been laid down is as under:

In the case of **Dattu Ramrao Sakhare v. State of Maharashtra**; 1997 (5) SCC 341, 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.”

In **Nivrutti Pandurang Kokate and ors. v. State of Maharashtra**; AIR 2008 SC 1460, the Hon’ble 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 para 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.”

11. On meticulously going through the evidence of **PW23 Sunita** at Exhibit 69, it is observed that she is undertaking education. Notings

of learned trial court show that preliminary steps of assessing fitness to give statement has been undertaken and on satisfaction, testimony seems to have been recorded. The child has given her age as 7 years. She gave name of her father, mother i.e. appellants herein and about she having three sisters and two brothers whom she named also. To a court question as to where is her sister Jayashree, the child gave answer that she is at home. Then she answered that Saraswati is dead, Somnath is at home but Khobraji is dead. She deposed that Saraswati and Khobraji are killed by her mother. According to her, it was Saturday before one and half year back. At that time, she was with her mother near the well. That, mother had taken this witness, Saraswati and Khobraji. She deposed about mother dashing Khobraji and Saraswati down on the ground and killing them. She claimed that she requested her mother not to kill them, upon which, according to her, appellant no.1 told her that if she informs anybody, then she too would be killed. Child further deposed that thereafter her mother wrapped Khobraji and Saraswati in *lugda* (sari), put it in a bag and put the bag in the well. Thereafter, they boarded railway and went to Narayangaon.

In para 2, she stated that she is able to give description of the cloths on the person of Saraswati and Khobraji and accordingly gave

its description. She also gave description of sari in which Saraswati and Khobraji were wrapped and she identified Articles “B” and “O” confronted to her. She also pointed to the sari in which they were tied and gunny bag Article “A”. Thereafter, by pointing fingers to the photographs, she identified Saraswati and Khobraji. She even identified her parents to be present in the court.

12. It seems that child is subjected to extensive cross which shows that learned defence counsel asked her which day of the week it was on which she was examined and she answered that it was Friday. She answered that yesterday it was Thursday and tomorrow is Saturday. She was unable to tell the month but she gave the year as 2016. She was unable to give date of recording her statement. She admitted that when her sister Saraswati and brother Khobraji were born, at that time she was with her grandmother. She also admitted that sometimes she used to stay with her maternal aunt Gangasagarbai. She flatly denied that she had never seen Saraswati and Khobraji since their birth and that they were not her sister and brother. **She also categorically denied that police had directed her to tell that they were her brother and sister and so she was stating so.** In para 9 she is questioned about gat number and owner of the field in which Saraswati and Khobraji were killed by her mother, which she was

unable to state. She was unable to give boundaries. She answered that the well is far away from village Amdari. She answered that on the day of occurrence, they left their house in the morning around 8.30 a.m. She stated that her father, Jayashree, Somnath, Mother Meerabai and she herself left the house at once and she answered that nobody met them on the way till they reached the well. She was unable to give time when reached to the said well and she answered that she did not narrate the incident to any person . She was unable to give distance between the well and the railway station. To a suggestion, she admitted that they stayed at Bolda platform for 30 to 45 minutes awaiting trail but she did not tell anyone on the platform or the boogie. She denied knowing Ganpat Dukare of the village. She admitted that for five days, she did not inform about the incident to anybody and thereafter, police came to take her and her parents. She admitted that police gave her chocolate and biscuits. She admitted that at that time police told that two kids were found in the well. She also admitted that police told her that they have recorded her statement in connection with the two kids. **She flatly denied that police told her to give such statement on 27.02.2014.** She admitted that police repeatedly told her as to what is to be deposed in the court. She also admitted that when she came to the court, she was taken to the office of Government pleader and police brought her

lunch tiffin but she again denied that police and Government pleader told her to give particular statement and that she was deposing accordingly. Omissions are brought in para 13 on following points:

1. Boarding railway at Bolda railway station to go to Narayangaon.
2. Her sister Saraswati wearing mehendi colour frock
3. Brother Khobraji wearing cap and red shirt

She is questioned by confronting frock that it was not of Saraswati and she answered that she does not know but it was on her person at that time. Same answer is given when red colour shirt and cap was confronted to her. She flatly denied that she was talking about the clothes to be the same at the instance of police and she categorically denied that her mother did not kill Saraswati and Khobraji by dashing them down and thereafter wrapping them in a sari and thereafter their bodies being kept in a gunny bag and thrown in the well. She flatly denied that because her mother did not take her to her workplace, she did not like her mother and out of anger she was deposing against her. She also denied that she was not having knowledge about the alleged incident.

13. On critical analysis of the child witness testimony, in our considered opinion, the child has sufficient intelligence to understand the purport of her evidence in the court. She is a school going girl. Though there are omissions about colour of clothes of her deceased brother and sister, they are not material. Material part of mother, in her presence, dashing her brother and sister and wrapping them in a sari and she requesting her mother not to kill and mother threatening her that she would meet the same fate if she tells anybody, so much part of her testimony has apparently not been touched by the learned defence counsel. The core of the accusation about mother dashing her siblings has remained intact and not rendered doubtful in spite of extensive cross. Repeated attempts of suggesting that she deposed at the instance of police and Government pleader are emphatically denied by the child not once, but twice. Therefore, it cannot be said that the child was under influence or pressure or being tutored and therefore unworthy of credence.

14. Consequently, here, on taking meticulous survey of substantive evidence of the child, we also do not hesitate to hold it to be trustworthy and worthy of credence. In fact, she is an eye witness, whose testimony is finding support from medical evidence as both

children are reported to have died due to head injuries. Child is very categorical about her mother throwing them on the ground.

15. Learned counsel for appellants would strenuously submit that the child has not promptly reported whatever she allegedly saw. No doubt the child has not reported the occurrence immediately, but it needs to be noted and borne in mind that she was in custody of appellant mother who had executed threats to kill if she informs someone. However, still the child seems to have mustered courage to narrate whatever she saw. Therefore, there are reasons for not making immediate disclosure. Hence, above argument, cannot be given undue importance, more particularly in the light of circumstances in which PW23 Sunita was till her statement was recorded.

16. Apart from child evidence, in trial court prosecution has adduced testimonies of PW7 Gangasagar, sister of accused Meerabai, her uncle PW8 Prakash, her very mother PW9 Neelabai and PW10 Ganpat on the point of last seen together. Before visiting their evidence, we wish to state in brief as to how occurrence came to light.

17. PW1 Waman who set law into motion is the owner of a well and he, in his evidence at Exhibit 16, claims that he has a field in Bolda Shivar. When he and his neighbour Onkar as well as his sister in law were fetching water from the well, they came across a sack floating in the well water and a hand of a small child seen coming out of the bag. Matter was reported to police patil, who in turn informed police station and thereafter the bag was extracted in which there were dead bodies of a boy and a girl. Then, further steps of drawing spot panchanama, referring dead bodies for autopsy were undertaken. At the instance of PW1 Waman, crime was registered. Thereafter, bodies being unidentified, police undertook the exercise of confronting the photographs to the villagers as well as adjoining villages for getting identity of the dead bodies confirmed and it is while such exercise undertaken by PW5 PHC Rathod, PW7 Gangasagar expressed suspicion that the dead bodies appearing in the photographs could be of the kids of her sister Meerabai. PW7 PHC Rathod stated that PW7 Gangasagar made this witness make a telephone call to her relative to enquire whether kids of appellant Meerabai are with her and information was reverted back that appellant was saying that kids are with her. Clothes seized and recovered over the dead bodies were said to be identified by PW7 Gangasagar. PW7 Gangasagar told that the frock on the girl was

gifted by her own father during Diwali festival and the cap on the son of her sister was also gifted by her father. PW5 PHC Rathod thereafter took PW7 Gangasagar and her husband to police station and confronted them with the articles. Even bodies of the children were confronted to them.

18. Evidence of Gangasagar is at Exhibit 28 and she is examined as PW7. She identified her sister appellant Meerabai as well as her husband and deposed that they had begotten five kids, i.e. three daughters and two sons. She gave their names. She deposed about PW5 PHC Rathod approaching with photographs and making enquiry and for ascertaining whereabouts of the kids, she claims to have called Prakash Dhakare, requesting him to verify from Meerabai about the kids and appellant confirming that kids are with her.

19. Said Prakash Dhakare is also examined by prosecution as PW8 at Exhibit 29. He confirmed about making call on request of PW7 Gangasagar. According to this witness, when conversation was going on with Meerabai, she had abruptly disconnected the call.

20. PW9 Nilabai is none other than mother of appellant Meerabai as well as PW7 Gangasagar. Mother of appellant in para 4 of her chief

stated that when they had been to Potul for work, that time PW8 Prakash i.e. her brother in law had received phone call from appellant no.2 informing that they were going for work at Narayangaon and so a request was made to take care of the two kids. Accordingly, her husband was called at Aurangabad station for receiving the kids but they did not turn up. So her husband Anandrao made telephonic contact and appellant informed that kids are with them at Narayangaon. Appellant no.2 further confirmed that all five kids are with them. Even mother confirms about inquiry made by PW8 Prakash regarding whereabouts of the kids and appellant no.1 Meerabai answering about kids to be with them and thereafter disconnecting the call. She stated about further receiving information from police and seeing the photographs. Mother deposed that there used to be quarrel between appellants. Deceased Saraswati was handicapped. Children might have been killed as they were unable to maintain five kids. However, her cross in para 9, 10 and 11 clearly shows that her above testimony is full of material omissions and contradictions. Be it so, her evidence regarding all five kids to be in the custody of both appellants has remained intact.

21. Evidence of PW 7 Gangasagar, PW8 Prakash and PW9 Nilabai clearly suggests that at relevant time, appellants being parents were

custodian of five children. Both deceased Saraswati and Khobraji were identified to be dead on account of head injury and their bodies were extracted from well of PW1 Waman. Therefore, mother, sister, uncle all confirm that deceased children were with appellants and none else. These witnesses have identified photographs as well as belongings of deceased children. Therefore, apart from evidence of PW23 Sunita, relatives have identified dead bodies of children who are found to have met homicidal death. Being parents of kids and there being overwhelming evidence of none other than relatives of appellant Meerabai that children were in her custody, by virtue of Section 106 of the Evidence Act, she is expected to offer explanation as to how children met homicidal death. No explanation whatsoever is coming from her side.

22. It seems that in trial court, apart from testimony of PW23 Sunita, prosecution also pressed into service circumstances like motive, last seen and in support of the same, relied on the testimony of PW7Gangasagar, PW10 Ganpat and PW27 Shantabai, but on carefully going through their evidence, there is no material in support of alleged motive except the fact that relatives are speaking about deceased Saraswati to be differently abled. However, as to the further case about appellants to be unable to maintain such child or about

appellant no.2 disowning deceased Khobraji to be his flesh and blood, there is no supportive evidence. However, here, taking the entire the evidence into consideration, we are convinced that very child of accused who claimed to have eye witnessed the occurrence has deposed against mother. We have already found her testimony to be worthy of credence and therefore we do not feel that there should be other supportive or corroborative evidence. Availability of direct evidence itself is sufficient to hold the case of prosecution worthy of credence. Even till bodies were recovered, accused do not seem to have become anxious or reported about children missing. This unnatural conduct on the part of accused further adds to culpability.

23. Evidence of PW10 Ganpat and PW27 Shantabai is weak and fragile in nature as their evidence is only about seeing appellants in the company of their children and nothing beyond this. Both these witnesses have not given details, particulars and even names and description of the children. Therefore, their evidence also cannot be considered to hold circumstances to be proved firmly and cogently.

24. However, we are of the firm opinion that going by the testimony of PW23 Sunita alone, case of prosecution about children being killed by smashing and dashing them on ground stands proved.

But, we are of further opinion that PW23 Sunita has not marked presence of appellant no.2 Parasram during the alleged act at the hands of appellant no.1 Meerabai. No role whatsoever is attributed to him in aiding or participating in killing the children and further wrapping them and throwing them in the well.

25. Consequently, in absence of any material or role of appellant Parasram, he cannot be held guilty. However, learned trial court seems to have held him also responsible and guilty by invoking Section 34 of IPC. In our opinion, there is nothing to hold that appellant no.2 Parasram shared the common intention. In fact, child witness has not named him in any manner and has not attributed any role or overt act and for that simple reason, he cannot be made party to the act done by appellant no.1 Meerabai.

26. Therefore, his conviction is in absence of any evidence and interference to that extent is called for. Hence, we proceed to pass the following order:

ORDER

I. The appeal is hereby partly allowed to the extent of appellant-accused no.2 Parasram s/o Satwaji Bele.

II. The appeal stands dismissed as against appellant-accused no.1 Sau. Meerabai w/o Parasram Bele.

III. Conviction awarded by learned Additional Sessions Judge, Hingoli in Session Trial No. 25 of 2014 under Section 302 r/w. 34 of the IPC and Section 201 r/w 34 of IPC on 13.06.2016, stands quashed and set aside to the extent of appellant-accused no.2 Parasram s/o Satwaji Bele.

IV. Appellant-accused no.2 Parasram s/o Satwaji Bele stands acquitted of the offence punishable under Section 302 r/w. 34 of the IPC and Section 201 r/w 34 of IPC.

V. Fine amount deposited, if any, by appellant-accused no.2 Parasram s/o Satwaji Bele, be refunded to him after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of muddemal.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]