

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 753 OF 2015

Kalidas s/o Kundlik Lomte ... **Appellant**
Age 42 years, Occu: Agri.
R/o Malkaranja, Tq. Kallamb,
Dist. Osmanabad

VERSUS

The State of Maharashtra ... Respondent

Mr. Ganesh G. Kore, Advocate for the appellant,
Mr. R. D. Sanap, APP for respondent-State

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

DATE : 02.02.2023

JUDGMENT (Per Abhay S. Waghwase, J.):

1. The appellant convict for offence under section 302 and 324 of the Indian Penal Code, is questioning the judgment and order of conviction dated 28.08.2015 passed by the learned Additional Sessions Judge, Osmanabad in Sessions Case No. 180 of 2013.

PROSECUTION CASE IN TRIAL COURT

2. As per the case of prosecution, telephonic information was received at Police Station in the early hours of morning of 14.06.2012 that a boy name Suraj was admitted at Primary Health Center, Dhoki in injured condition. On taking note of the same in Station Diary, PW12 Suryakant, Investigating Officer visited Primary Health Center, Dhoki,

however, there he learnt that the boy was shifted and referred to Civil Hospital, Osmanabad and so he went there and recorded statement of Suraj.

Consequently, on the strength of the same, prosecution was launched against the accused on the premise that, accused was married to deceased and out of wedlock, they had a son namely Suraj, aged 16 years. Accused had grudge that his deceased wife Sumanbai was not behaving as per his wish. On such count, he used to beat her. On 13.06.2012, the accused, his wife and their minor son worked in the field for the entire day and after returning home, they had their dinner and went to sleep. Accused picked up quarrel with his wife and said that she was not behaving properly and that she repeatedly went to her maternal home. He initially gave her kick and fist blows and thereafter assaulted his wife with axe and koyta. Minor Suraj who was sleeping with his mother woke up and requested his father to spare his mother but the accused hit minor also on his head, chin, left ear and left hand. Thereafter, the accused went out of the house and closed the house from the outside. After regaining conscious, the minor Suraj managed to dismantle the tin sheet and came out of the room and thereafter, he initially went to his parental uncle Haridas, informed him about the incident and thereafter he went to his grand parents alongwith whom he visited Primary Health Centre. On the basis of his

statement given to police at PHC Crime No. 50/2012 was registered for the offence under section 302, 307, 504 of the Indian Penal Code.

3. Investigation was carried out by the concerned investigating officer i.e. P.W. 12 who visited the room, prepared spot panchanama, thereafter inquest panchnama was drawn and dead body was referred for postmortem and report was gathered. The investigating officer recorded the statement and supplementary statement of relevant witnesses; seizure was caused; clothes of deceased were gathered. The accused came to be arrested, necessary panchanamas were also drawn and after gathering sufficient evidence against the accused, the accused came to be charge-sheeted.

4. The case being exclusively triable by the Sessions Court, it came to be committed to the Sessions Court and ultimately was on the file of learned Additional Sessions Judge, Osmanabad, who framed the charge, explained it to the accused and on denial of charge, the trial was undertaken. During the trial, the prosecution has examined in all 14 witnesses. That apart, the postmortem report, various panchanamas, C.A. report, seizure panchanamas were also relied by the prosecution.

After hearing both sides, and after examining oral and documentary evidence adduced by the prosecution, the learned trial

Court reached to a finding that the prosecution has established the charges only for the offence under section 302 and 234 and accordingly held the accused guilty and sentenced him as per the operative order.

It is the conviction which is taken exception to by the accused on various grounds raised in the appeal.

5. The instant appeal is under section 374 of the Criminal Procedure Code which empowers the appellate court to re-appreciate, reanalyze, reassess the evidence adduced by the prosecution and to ascertain whether the judgment under challenge is just, legal and proper.

EVIDENCE ON BEHALF OF PROSECUTION

Witnesses and their role:-

PW-1 :- Suraj, Minor son of accused and deceased on whose statement the FIR has been lodged.

PW-2 :-Arun, Brother of deceased Sumanbai.

PW-3:- Sandipan, Panch witness of seizure Panchanama Exh. 18 during which one towel, one bed-sheet, one koyta was seized.

PW-4 & PW-5:- Ramchandra and Ratnamala, Panch to inquest and spot panchanamas.

PW-6 & PW-7:- Rajaram and Ayyub, Panch to memorandum of disclosure and seizure.

PW-8 :- Ashok, Panch to seizure panchanama Exh. 29 i.e. clothes of deceased.

PW-9:- Bhairavnath, Panch to seizure panchanama of clothes of accused and deceased.

PW-10:-Dr. Suhas, Autopsy Doctor who conducted postmortem on 14.06.2012.

PW-11:- Uttam, Panch witness to seizure of clothes of accused.

PW-12:- Suryakant, Investigating Officer.

PW-13. Sunil, Carrier of Muddemal.

Defence has not adduced any evidence.

SUBMISSIONS ON BEHALF OF APPELLANT-ACCUSED

6. Learned counsel for the appellant would submit that at the first count, the prosecution has not come with any cogent evidence about the motive behind the occurrence. Secondly, there is no independent eye witness. That the evidence of child is the only evidence with prosecution, but his testimony seems to be tutored one, as he had already came in contact with his uncle and grand parents who were annoyed with the appellant since beginning. It is pointed out that even statement of child witness under section 164 Cr.P.C. is recorded at the belated stage.

7. Taking us through the judgment of the trial court, it is submitted that the ocular evidence does not find support from medical evidence. That the child whose statement is recorded and relied, is confusing as there is alleged use of both axe as well as koyta. Though

recovery is claimed to be at the instance of appellant, it is not trustworthy. That apparently none of the punch witnesses to spot, seizure, have supported the prosecution. Therefore, except evidence of child witness which is held by the Hon'ble Apex Court, time and again to be a weak evidence, there is no trustworthy and cogent evidence against the appellant-accused.

8. That the learned trial court has failed to consider and appreciate the evidence in its proper perspective and has also lost sight of settled position and requirements. Required ingredients to attract the charges were not available in the evidence of prosecution and therefore, according to him, the trial court erred in recording and holding the accused guilty for the offence. On all above counts, the learned counsel for the appellant submits that the appeal deserves to be allowed.

SUBMISSIONS ON BEHALF OF STATE

9. Refuting the above submission, the learned APP would strenuously submits that there is ample evidence to show that the relation between accused husband and deceased wife were strained. She had instituted maintenance proceeding against the husband-accused. That, on the day of incident, the deceased as well as eye witness child were at Dhoki and it is the accused who had called them

to reside with him. That night, he had picked up quarrel on petty counts and beaten her with kick and fist blows. The evidence of child who was very much in house shows that the accused assaulted to his mother with both, axe and koyta. In presence of the child brutal murder has been committed. That when child tried to intervene he too was assaulted. Thereafter, the accused fled by locking the door and child managed to escape by dislodging by dismantling the tin sheet. There is evidence to that extent. In such condition the the child has managed to come out of the house and he has initially reported the incident to his uncle and thereafter to grand parents and then had been referred to the Hospital where he gave statement against his own father to Police. The child has narrated all the sequence of events that ensued that day. His evidence is not at all tutored. It is natural testimony of child witness which he had seen.

10. It is submitted that, there is motive and same has also been established by the prosecution. Both, accused and deceased were present in the house. That, deceased had died in the house. Therefore the husband being custodian of wife, learned APP submitted that he is expected to offer possible explanation on account of unnatural death met by his wife in his house, in his presence. No explanation being offered, by virtue of Section 106 of Indian Evidence Act, finger of guilt gets pointed to the accused. That, though Panchas unfortunately have

not supported and though there are minor discrepancies, the core case of prosecution has not been shattered or disturbed and therefore the learned APP submitted that no fault of whatsoever nature can be found in the judgment and order of conviction passed by the trial Court.

11. That the child, in his testimony has also stated that when he requested his father not to assault mother, the accused mercilessly assaulted his own son on his head, chin, left ear and left hand and tried to kill him therefore there is charge against him for commission of offence under section 307 IPC. For all above reasons, learned APP prays that the appeal be dismissed in toto.

ANALYSIS

12. We proceed to examine to ascertain whether the prosecution has at all discharged its primary burden of proving the guilt of accused beyond reasonable doubt.

On taking survey of entire evidence of prosecution, it is emerging that the sheet-anchor of prosecution case is the child witness. Son of accused and deceased namely Suraj was stated to be present on that fateful night with his parents in one room abode. He has given information to police and on strength of the same here the crime has been registered. Before touching to the merits of his deposition, we propose to give a brief account of settled legal position, while

appreciating the testimony of a child witness and the course to be adopted by a Court while evaluating and relying the evidence of child witness. It would be profitable to name a few land mark pronouncements which are as under:

In **Mangoo and another Vs. 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 Vs. 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 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 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 Vs. State of Gujrat, (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 Vs. 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. Vs. State of Maharashtra, AIR 2008 SC 1460**, 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 molded, 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 salient features that can be culled out from above ratio laid down by the Hon'ble Apex Court could be summarized as under :-

- [1] The child witness must be found to be competent to depose i.e. he should understand the import of his testimony in the Court of Law.
- [2] The Court has to be over cautious while evaluating and relying on the testimony of child witness.
- [3] The Court must ascertain whether the child witness has been tutored or not and it can be ascertained by examining the evidence and observing his demeanour in the Court.
- [4] A child witness if found competent to depose and if found reliable, then conviction can safely be based on his testimony.
- [5] Even if part of statement of a child witness is found to be tutored, such part can be separated from the untutored part and it can be used if the same inspires confidence.”

13. Child witness is examined at **Exh.13**. In his substantive evidence, he named his mother and accused to be his father. He stated that his mother was murdered by his father two years back. That incident took place in the night of 13.06.2012 and 14.06.2012. According to him, during the day of 13.06.2012, he himself, his mother, father worked in the field and after taking meal at 09:00 p.m., they went to sleep. He elaborated that initially they all were sleeping outside but due to wind they came inside the house and he and his mother slept on one bed whereas his father slept on ground. Then he stated that there was

quarrel between his parents and his father was saying to his mother that she was not behaving properly and told her that she was residing at her maternal home and not behaving as per his wish. Then child stated that his father beat his mother with fists and kick blows and thereafter beat her by axe and Koyta. He gave axe blow on the neck of his mother. He stated that he asked his father not to beat his mother on which his father assaulted him also by axe and Koyta on his head, chin, left ear and left hand. His mother died on the spot. He fell unconscious. His father left the house with axe and he locked the door from outside. Child stated that he folded the zinc-sheet of door with the help of grinder and came out of house and went to the house of his paternal uncle Haridas and disclosed him the incident and thereafter, his grant parents took him to Dhoki Police Station. Police immediately referred him to hospital and he was treated there and further referred to Civil Hospital, Osmanabad where Police Officer Kokane came and recorded his statement. He identified it to be at Exh.14 and he further stated that after 15 days his supplementary statement has been recorded. He gave description of the clothes on his person, which were seized in hospital. He identified the same. He also identified the gown on the person of his mother and he gave description of the clothes on the person of his father and he identified the same, axe and Koyta. He also identified his father to be present in the Court.

14. Substantive evidence of child is in consonance with the version reported by him at the time of recording of his statement at hospital. The conclusion that can be drawn from statement of the child and his testimony in the Court is that, child seems to be very categorical about he and his parents sleeping that night and his father picking up quarrel with his mother and thereafter, mounting assault on her. Virtually, contents of the statement are emphatically reiterated by him in his testimony before the Court regarding he seeing father assaulting his mother with axe and Koyta and he has named his father to be responsible for murder of his mother.

15. The child is subjected to extensive **cross**, wherein he has answered that he was studying 10th Standard at Dhoki. He has denied that on 13.06.2012 he was at Dhoki. He answered that his statement was recorded at Kallamb. He again corrected himself and stated that in the morning of 13.06.2012 he was at Dhoki and his mother was alongwith with him. He is asked about the date of marriage of his sister Santoshi. He answered that his father had called them by giving phone call, to the village Malkaranja on phone no. of his mother. He answered that his father did not have phone and he is unable to state from whose phone, his father called his mother. He answered that the mother has filed maintenance petition. He admitted that his grand

parents were with him when his statement was recorded in the Hospital. He is unable to state whether the police made enquiry with his grand parents. He flatly denied that his grand parents told him what he has to state to the police. He also denied that the contentions in his complainant that they were residing at Malkaranja since four months is not correct. He answered that at the time of recording his statement, he was in the Hospital. He again denied stating that on 13.06.2012, he was in house. He was asked about the surroundings and circumstance in the house, whereupon he has answered that there are houses of two persons at some distance, namely Sarang and Karad. He answered that his maternal uncle has accompanied him to the police when his statements were recorded. He denied that the maternal uncle and police tutored him to give statement. The omission is brought to the extent of father giving blow by axe on the neck of his mother that is in his statement. He denied that he suffered head injury while he was coming out of the house by folding the tin of the door of house. He has answered that he did not make any statement that his father was sleeping on the ground and that his father took axe when he went out of the house. He denied that his father was having grinder in his hand. He answered that he did not read his statement recorded by police. There is again suggestion to him which is denied that his maternal uncle, grand parents and villagers made him to understand

as to what was to be deposed in the court. He answered that article - axe is generally used by the agriculturists. He has stated that there was no light in the house at the time of incident. He answered that incident lasted for about half an hour.

16. Above is the testimony of the child witness. He is trump card for prosecution and so, in trial court, the prosecution was heavily banking to his testimony.

17. Having discussed the statement of the child witness, on the strength of which the FIR was lodged, we are of the considered opinion that his statement and testimony in witness box both inspire confidence of the Court. We did not find any element of being tutoring. Specific and repeated suggestions to that extent are flatly refuted.

18. Child is shown to be 14 years of age and in his statement he has reproduced all the events he saw that night. As stated above, in spite of being cross examined, the core of his statement about father calling him and his mother to stay with him that night, they all retiring to bed after dinner and thereafter father picking up quarrel with his mother followed giving kicks and fist blows and thereafter mounting assault by weapon has remained intact. Defence could not give dent or shake the testimony of child, on above crucial aspect. His statement

is apparently recorded barely few hours after the occurrence, therefore, his memory was fresh. It is to be borne in mind that the minor has seen the ghastly attack on his mother by his own father and has mustered courage to name his father to be assailer. It is pertinent to note that at that point of time, he was alone, but he still managed to come out of the house and has further boldly given statement to the police while taking treatment for the injuries suffered by him.

19. Child is also a victim of assault and as such he is an injured witness. Apart from being direct evidence, his version can be looked as an injured eye witness account. Law is fairly settled that testimony or evidence of injured eye witness always is on the higher pedestal and should not be generally discarded or doubted unless there are cogent reasons to do so. We take support of rulings of Hon'ble Apex Court in case of ***Brahm Swaroop and Another v. State of Uttar Pradesh***; (2011) 6 *Supreme Court Cases*, 288 wherein Hon'ble Apex Court in paragraph no.28 has observed as under :

“28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

It is reiterated in following pronouncements that *“Convincing evidence is required to discredit an injured witness.”*

State of U.P. v. Kishan Chand; (2004) 7 SCC 629, Krishan v. State of Haryana; (2006) 12 SCC 459, Dinesh Kumar v. State of Rajasthan; (2008) 8 SCC 270, Jarnail Singh v. State of Punjab; (2009) 9 SCC 719, Vishnu v. State of Rajasthan; (2009) 10 SCC 477, Annareddy Sambasiva Reddy v. State of A.P.; (2009) 12 SCC 546, Balraje v. State of Maharashtra; (2010) 6 SCC 673.

20. It is pertinent to note that while cross examining the child, learned defence Advocate has tried to suggest that the child suffered injuries to him while he attempted to come out of the room through the gap after folding the zinc-sheet. Such suggestion shows that there is no serious dispute that child was present in the room wherein he slept with his parents and mother was found dead.

21. Investigating machinery has also taken efforts to record statement of child witness under section 164 Cr.P.C. and he seems to have reiterated whatever he informed to police and whatever is deposed in the witness box. Therefore, at all places i.e. in statement, in statement before learned JMFC and the witness box his version is consistent regarding the overt act of his father.

22. We have already quoted the settled legal position as to when and how the testimony of child witness should be appreciated. Therefore, in our opinion, applying the law expounded on evidentiary

value of child witness i.e. discussed above, the statement given by the child witness PW-1 can be very well and safely relied upon.

23. Testimony of PW-2 Arun, brother of deceased, has also testified about conduct and behavior of accused towards his sister. He being resident of Pune, whatsoever he has deposed about the occurrence is hearsay, however as stated above, treatment given by accused to his sister lend support to the story of persecution.

24.. PW-3 Panch to spot, inquest and seizure has supported prosecution in his testimony at Exh. 17. He stood steadfast while facing cross. Therefore his evidence can safely be relied. Unfortunately, another panch to spot PW-4 Ramchandra, PW-5 Ratnamala, panch to seizure of articles, panchas to memorandum of disclosure PW-6 Rajaram and PW-7 Ayyub, have not supported prosecution. However, prosecution has succeeded in getting the same proved through I.O.

PW-8 Ashok, PW-9 Bhairavnath and PW-11 Uttam, Panchas to seizure of clothes of deceased, minor and accused have also supported the prosecution. PW-11 Uttam has confirmed shirt of accused to be blood stained.

PW-10 Dr. Suhas Autopsy Doctor has confirmed that injury No.5 to the neck, in ordinary course of nature is sufficient to cause death. Defence could not render his opinion doubtful.

PW-12 Suryakant is the I.O. PW-13 Sunil is the carrier and he testified about carrying muddemal to analyzer.

25. Here, position is that admittedly, accused is husband of deceased. Child witness whose testimony has gained confidence, has spoken about father calling deceased mother from Dhoki and that night after dinner all three went to sleep in their house. Deceased is found dead in the house. Therefore, when prosecution has established the death to be homicidal one, accused being husband and not denying to be elsewhere that night, the inference is that deceased is in his house and in his custody. He having met grisly murder, in the night when he was present in the house, he is bound to explain such manner of death. No explanation whatsoever is coming from his side when by virtue of Section 106 of the Evidence Act, he has knowledge about events taking place in his house. Opportunity was offered to him to answer the incriminating circumstance by posing question under Section 313 of Cr.P.C., however, as stated above, there is no explanation. Therefore, by bringing into play Section 106 of the Evidence Act, he having failed to offer plausible explanation, he can safely be held accountable as he failed to rebut the presumption.

GROUND AND OBJECTIONS RAISED BEFORE US BY APPELLANT

26. While hearing the learned counsel appearing for the appellant, we heard him strenuously, submitting that there was no motive behind the incident.

We are afraid as to whether such objection can at all be accepted, more particularly when there is ample evidence in that regard. Child has stated that his father was upset on account of alleged behaviour of his mother. Child also spoke about his father saying to his mother that she is residing with her parents rather than with him and that he did not like her such behaviour. The child has also stated that his mother has instituted maintenance proceeding. The maternal uncle of child and brother of deceased has also stated about his sister being not treated properly and they were residing separately. Therefore, there is motive behind occurrence. The motive has been reflected in the conduct and act at the hands of the accused. Therefore, said objection does not sustain.

27. Second objection is that, child witness has admitted that there is no light in the house and therefore, actual occurrence has not been firmly proved.

We are not impressed with the above points raised before us for the reasons that child has categorically stated that after completing agricultural work, he, his parents returned home and they went to sleep

after dinner. Thus, only child, accused and deceased were present in the house. As stated above, the child has narrated the sequence of events that took place in his presence about quarrel picked up by his father while this witness was sleeping next to his mother on the cot. He is categorical about seeing his father initially showering kicks and first blows and thereafter assaulting with weapon. Therefore, merely because child has answered that there was no light, that too while facing cross, it will not render testimony of child and circumstances at the scene of occurrence doubtful.

The **third** objection of appellant is that child is speaking about use of two weapons i.e. koyta and axe. Therefore, exactly what was put to use is not proved by prosecution.

True it is that the child has stated in the statement that his father was armed with koyta as well axe. But scene of occurrence shows that amongst other articles, koyta was lying in the room and at the instance of accused, upon disclosure there is recovery of axe. Autopsy Doctor PW-10 has confirmed in Para 4 of the chief that injury to neck is possible by koyta article-4 and remaining injuries are possible by axe. Therefore, here ocular account is supported by medical evidence. Therefore, there is no substance in the above objection raised by the appellant and there is no confusion of any sort.

The **fourth** objection of the appellant is that there is no evidence except that of child witness and he is susceptible to tutoring. His uncle and grand parents have tutored him and therefore his testimony cannot be relied.

We are afraid whether such objection at all can be entertained in this case because we have already carefully examined and scrutinized statement, 164 Cr. P. C. statement, his substantive evidence and answers given by him in cross. We have found the same to be worthy of credence. It is pertinent to note that uncle did not accompany him to the PHC. Though grand parents took him to the Hospital for treatment of his injuries, it has not been brought by defence that grand parents were preset around the child and they tutored him. In fact, neither uncle nor grand parents were aware of the occurrence. The child alone is an eye witness and he has narrated what he saw. Therefore, there was no reason for any one to tutor him. Hence, above objection is rendered insignificance.

28. Objection is also raised that child witness does not speak before Police that there was assault by axe on the neck and therefore, there is material omission.

True it is that it has not been so stated by the child to police, and even medical witness speaks of injury on the neck not to be possible by axe. However, it is required to be noted that incident had

taken in the dead of the night. The child is unfortunately eye witness to the assault on his mother by his own father. It needs to be considered what must have prevailed over the tender mind. Therefore, even if there is inconsistency to that extent, we do not consider it so material so as to disbelieve his entire evidence. Under such frightened state of mind, the child within few hours of the occurrence has given statement to police and therefore, variances or inconsistencies needs to be ignored, more particularly in the circumstances in which the incident has taken place and seen by a minor child.

SUMMATION

29. On taking survey of prosecution evidence, it is evident that entire case of prosecution is based on sole testimony of child witness who is examined as PW1. Here, testimony of PW-1 Child is subjected to minute scrutiny and on doing so, it is found to be free from suspicion, doubt or tutoring. Child was very much in the company of his parents. He has narrated about arrival of himself and his mother on being called by his father from Dhoki that day. He spoke about all three of them rendering agricultural work during the day, returning home in the evening, taking meals and going to bed. Child stated about the quarrel picked up by his father and he woke up and saw his father initially hitting his mother with hands and kicks and later on

assaulting her by koyta and axe. When he pleaded to his father to spare his mother, accused father assaulted him too and caused him injuries. Child himself has given statement to the Police within few hours of occurrence. He has not budged in cross on above crucial aspect. Accused husband fled after the occurrence. He being husband and incumbent of the house, and wife meeting death with fatal injuries and suffering unnatural death, he being her custodian, is answerable for her death. There is no explanation coming from his side. Relations between accused and deceased were bitter and so deceased resided separately at Dhoki and it is accused who called her to his house. He was annoyed on account of her alleged behaviour. Therefore, the motive is explicit. Blood of deceased is detected on his shirt for which there is no explanation. In the light of such quality of evidence, in our considered opinion, here, guilt of accused is proved by prosecution beyond reasonable doubt.

30. We have carefully examined the judgment and order passed by learned additional sessions Judge, Osmanabad dated 28.08.2015. We have re-appreciated, re-examined to our satisfaction the entire evidence before the Court. In our view, the findings and reasons assigned by the learned trial judge are in consonance with the evidence on record. Legal position has been appreciated and applied. Nothing adverse or erroneous is brought to our notice in appeal. Consequently,

we refrain from disturbing the judgment and order passed by the learned trial judge. Resultantly, we proceed to pass the following order:

O R D E R

The appeal is dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan