

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 640 OF 2014

Navnath Uttam Ghule

Age:30 years, Occu: Driver

R/o. Kakhe Tal: Panhala, near Birdev

Mandir Gangaramnagar, Top

Tal. Hatkanangle District- Kolhapur

...Appellant

Versus

The State of Maharashtra

Through Shirol MIDC Police Station

District- Kolhapur.

...Respondent

....

Mr. Abdul K. Millawala, Advocate for the Applicant.

Mr. S. S. Hulke, APP for the Respondent – State.

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**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 8th MARCH 2023
PRONOUNCED ON : 18th JULY 2023**

JUDGMENT – (Per : Prakash D. Naik, J.) :-

1. Appellant has challenged the Judgment and Order dated 3rd May 2014 passed by learned Additional Sessions Judge, Kolhapur in Sessions Case No. 156 of 2010 convicting him for offence punishable under Section 302 of Indian Penal Code and sentencing him to suffer imprisonment for life.

2. The case of the prosecution is as under:-

(i) The accused was residing with his children namely Shubham

and Priyanka begotten from his first wife Satyabhama and second wife Ashwini along with her children Nitin and Nikita begotten from her first husband Baban. He was working as driver on a dumper.

(ii) Accused used to hate Nikita as she was his step-daughter. He used to beat her. The neighbours Bapu Powar, Babutai Bhosale and Mangal Nalawade had intervened and told the accused not to beat Nikita.

(iii) After intervention of neighbours, the appellant did not assault Nikita for a period of about 8 days. Thereafter the accused again assaulted Nikita by saying that he was defamed in the locality. She was assaulted since she could not recite multiplication table.

(iv) On 7th September 2010, the first informant returned home at about 07:00 p.m. from her work. She found that accused was beating Nikita as she had eaten Sugar. Nikita was assaulted by fist and kick blows. First informant intervened. At about 09:00 p.m. the accused again assaulted Nikita by fist and kick blows as she could not recite multiplication table in the school. When the first informant intervened, the accused assaulted her and prevented her from intervening.

(v) The accused made Nikita to stand and whenever she tried to sit, she was beaten up. When the first informant tried to convince

the accused, he did not listen to her. At about 10:00 p.m. Nikita sat on the floor. Accused again assaulted her with fist and kick blows. The accused threatened her that he would not keep Nikita alive. He forcibly pushed Nikita on the wall. Nikita had severe injury on the head and it started bleeding. In spite of that accused started assaulting her and he continued to do so till 05:00 a.m..

(vi) Thereafter accused went to sleep. Nikita sustained several injuries on her body. She woke up in the morning. She had water. At about 09:00 a.m. when the first informant was about to go for work, Nikita requested her not to go for work as there is pain in her abdomen. First informant had no money to take her to doctor and she convinced Nikita that on her return from work, she would bring money and take her to doctor. She left home along with her colleague Mangal Nalawade. First informant disclosed about the incident to Mangal.

(vii) On 8th September 2010, when the first informant was at work, her neighbour Babutai Bhosale, approached her and informed that Nikita had expired. The first informant immediately rushed to home and found that Nikita was no more. Satyabhama told her that she tried to wake up Nikita and notice that she was no more.

(viii) First informant Ashwini lodged her complaint to Shirol MIDC

Police Station and crime No. 72 of 2010 was registered for offence under Section 302, 323 of Indian Penal Code. Station House Officer Mr.Shahaji Khot recorded the FIR. Investigation was entrusted to PI. Mr. Yadav. Investigating Officer proceeded to the spot. He recorded inquest and spot panchnama. Body of the victim (Nikita) was shifted for postmortem. During spot panchnama, he noticed blood stains on the brick of wall in kitchen room in the house of the accused. Brick was seized under the panchnama. Accused was arrested. His clothes were seized. Clothes of the deceased Nikita were also seized. Articles were sent to Chemical Analyzer. Statements of witnesses were recorded. On completing investigation, charge-sheet was filed.

3. Charge was framed against the accused for offence under Sections 302 and 323 of Indian Penal Code.

4. Prosecution has examined 8 witnesses.

- (i) PW-1 Bapu Rajaram Powar is the panch witness for inquest panchnama.
- (ii) PW-2 Ananda Dagadu Dinde is the panch witness for inquest panchnama.
- (iii) PW-3 Negesh Nagappa Kurade is the panch witness for seizure of brick.
- (iv) PW-4 Ashwini Navnath Ghule is the first informant (mother of the victim).
- (v) PW-5 Mangal Gangaram Nalawade, who was working with first informant.
- (vi) PW-6 Dr. Reshma Paigonda Patil is the medical Officer as she conducted postmortem of victim.
- (vii) PW-7 Shahaji Lahu Khot is the Station House Officer. He recorded FIR.

(viii)PW-8 Shivprasad Mahadev Yadav is the Investigating Officer.

5. Statement of the accused was recorded under Section 313 of Cr.P.C. The defence of the accused as reflected in the explanation in statement recorded under Section 313 of Cr.P.C. is that he was not at home on 8th September 2010. The victim fell in gutter. First husband of Ashwini has got up this false case.

6. PW-1 Bapu Rajaram Powar in his deposition has deposed that, he knows accused Navnath. Nikita was daughter of accused. Ashwini is mother of Nikita. Navnath had first wife by name Satyabhama. Accused Navnath and Ashwini were residing together along with their children as husband and wife. Nikita was born to Ashwini from her first husband. They all were residing together. Navnath was working as driver. Ashwini was doing labour work. Satyabhama used to stay at home. He was not knowing how the accused Navnath was treating the children of Ashwini from her first husband. He did not know whether Nikita was not good with her performance in her school. He did not know Navnath used to beat Nikita as she was begotten from first wife of Ashwini. He had signed inquest panchnama at police station. He had seen dead body of Nikita. Since it was covered, he did not notice anything.

7. In the cross-examination by learned APP, he stated that, it is not

true that, inquest panchnama was drawn in his presence, when he had seen the dead body of Nikita. It is not true that, he had noticed injuries on head, lips, neck, back, hands, legs and buttocks. He signed the panchnama in C.P.R. hospital. He knows Ananda Dinde (PW-2). He was residing after three houses from the house of Navnath. Ananda Dinde might be there at that time. It is not true to say that, he was knowing as to how Navnath was treating Nikita. It is not true that, Navnath used to beat Nikita. It is not true that, he tried to convince Navnath not to beat Nikita. On 8th September 2010, after knowing about death of Nikita, he had been to the house of accused. He noticed that, Nikita had expired. Ashwini returned home thereafter. Police made inquiry with him. He denied that, he had stated portion marked 'A' read over to him. He denied that, he was deposing false to save the accused.

8. From the deposition of this witness, it is apparent that he has not supported the prosecution. He denied the suggestions put to him. However, his evidence discloses that Ashwini is the mother of Nikita. Ashwini and Accused were residing together as husband and wife along with children. Nikita was born to Ashwini from her first husband. Ashwini was doing labour work. He admitted his signature on inquest panchanama. He stated that, panchnama was signed at police station and also at C.P.R. hospital. He admitted that, on 8th

September 2010 he had been to the house of accused and noticed that Nikita had expired. Ashwini had returned home thereafter. Police made inquiry with him.

9. PW-2 Ananda Dagadu Dinde is the panch witness to inquest panchnama. According to him, the accused is residing as tenant near his house. There was hue and cry in front of the house of accused. He went there. Dead body of daughter of wife of accused was lying in the house. He identified the accused as the person in whose house the dead body was kept. The victim had injuries on the back side of her left ear, lips. victim had also injury over her head and abrasions on her back. Panchnama was drawn in respect of all injuries by the police. It was read over to him. He signed the panchnama. Bapu Powar is another panch witness. He also had signed panchnama. He identified panchnama. It was marked as exhibit-28.

10. In the cross-examination, he stated that there were about 100 to 200 people near the spot. When he visited the place, writing of panchnama was going on there. He was asked to make signature. He did not know what is written in the panchnama. He cannot read panchnama. Panchnama was not read out to him. He denied that he is falsely deposing that he has signed the panchnama after visiting the house.

11. From the evidence of aforesaid witness, it is evident that he had deposed about the injuries on the person of the victim. He had signed the panchnama. He also referred to presence of PW-1 and his signature on the panchnama. The panchnama was exhibited as evidence. This has supported case of the prosecution. Inquest panchanama was proved in evidence and it was marked at exhibit-28.

12. PW-3 Nagesh Nagappa Kurade has deposed that his house is close to the house of accused. He knows wife of accused Ashwini. Ashwini had one daughter. He came to know that accused killed his daughter. He had gone to the house of accused. Police were there. There is wall in the house of accused. There were two rooms. The inner room consists of kitchen room. There was blood on the wall of kitchen. It was the brick wall. The brick portion to which blood was there that brick was removed. The entire episode was reduced into writing. He signed it. Prakash Patil was also with him. He also signed panchnama. He identified his signature and that of Patil on the panchanama. He made two signatures on the panchnama. He identified the accused, who was residing in the said house. Wife of accused by name Ashwini was also there. He identified the brick which was taken out from the wall.

13. In the cross examination, he stated that, he was standing

outside the house. When he visited the spot, panchanama was written and he was asked to sign. He did not know what is written in the panchnama. He did not recollect as to how many signatures were obtained. He knows the accused because he had been to the house of accused.

14. This witness has supported the prosecution case. Panchanama about removal and seizure of brick has been proved and exhibited through his evidence. He has referred to the blood on the brick wall of kitchen room in the house of the accused.

15. PW-4 Ashwini Navnath Ghule is the first informant. She is the second wife of accused. She has stated that, accused is her husband. Satyabhama is the first wife of her husband. Satyabhama was also residing with them at the time of incident. Navnath had son by name Shubham and daughter Priyanka from Satyabhama. Before marriage with accused, she was married to Narayan Baban Munde. She had son by name Nitin and daughter Nikita (victim) from Narayan. She had no child from Navnath. She was residing along with accused Navnath, his first wife Satyabhama, her children as well as her children from Narayan. Accused used to behave properly with his children from Satyabhama. Nikita died on 8th September 2010. On that day after giving bath to Nikita, she had gone to her work. Satyabhama was at home. Nikita was also at home. Her husband was

also at home in the prior night. The other kids had gone to school. In the morning at about 11:00 am., Navnath had been for his work. He was driver on a dumper. When she had given bath to Nikita on that day in the morning, she had noticed injuries on head, lips, back and on her buttocks. There were injuries at various places. On 8th September 2010, she did not take Nikita to Doctor. When she was at work place, Babutai came and informed that there was hue and cry at her house. She immediately rushed to her house. She met Sattyabhama. She saw Nikita. Nikita was no more. Satyabhama told her that when she tried to woke Nikita up at about 10 to 11 a.m., she did not wake up. Nikita had bleeding to her head injury. Nikita died due to injuries to her person. There were abrasions at various places on person of Nikita. Injury to the head of Nikita was appearing like injury which could be sustained after heavy blow. Her head was little broken and blood was oozing. Nikita sustained all those injuries on 7th September 2010. There was frock on the person of Nikita worn by her on 7th September 2010. On that day, she had worn shirt and pant of her son. She identified article Nos. 4 and 5 which was on the persons of Nikita on that day. She identified article Nos. 2 and 3 shirt and pant as clothes of her husband Navnath. After death of Nikita, Police appeared at her house and she lodged complaint. She made thumb impression. She identified her thumb

mark. After lodging complaint, her husband was arrested. He is in jail. Police used to visit village to inquire about the incident. Mangal was working with her. On that day Mangal was present on her job. She is residing in her locality. Most of the time Mangal used to come for work along with her. On the day on which Nikita died, she had accompanied Mangal to her work place. She had no discussion with Mangal. On the day of incident, after giving bath to Nikita, she was requested by Nikita not to go for job. She is doing labour work. Wages are paid weekly. She told Nikita that after her arrival from the job, she would take her to doctor as she had no money. She could not take Nikita to doctor. She has stated above referred portion before police. Police came to her and made inquiries about the incident. Nikita was brought to CPR Hospital. Nikita was not good at her performance in school. Navnath was treating her children properly. It did not happen that, accused Navnath used to assault Nikita on she being step daughter and was not good in her school.

16. Learned APP was permitted to cross examine the witness as the witness was not disclosing the truth. The witness had denied all the suggestions. The thumb impression was marked at exhibit-35. The witness denied that Nikita died because of beating by accused. It was denied that accused killed her daughter Nikita. She had not made any complaint to the police that a stranger has assaulted her

daughter Nikita.

17. In the cross-examination by the defence Advocate it was stated that, Navnath never used to return back home for two to three days because of his job. She used to work. Accused used to treat all the children equally. Navnath had never assaulted any of the children. Two days prior to 7th September 2010, Navnath had been to work on the dumper. On 7th September 2010, she returned home from her work at about 09:00 p.m. Nikita told her that, she had fall in gutter and sustained injury to head. She also told her that she had injury on the back in the said incident. On 7th September 2010 or on 8th September 2010, accused was not at home. After complaint by Nikita, she had treated her with homely medicines. She cannot read and write. After the death of Nikita, she was frightened and her physical condition was not good. She did not visit police station on 8th September 2010. She did not lodge complaint against accused about assault of Nikita. She told police that Nikita sustained injury on fall in the gutter. Police have not read over the contents of the documents on which she made her thumb impression. She made thumb impression on blank paper. It did not happen that, police asked her and she had given her statement. It did not happen that, after reading the contents of complaint she put thumb impression. She had identified the clothes because they are usually used in her

house. She do not know who produced those clothes.

18. Although, this witness was cross-examined by prosecution, her evidence cannot be brushed aside in *toto*. She had deposed that, victim Nikita was begotten from her first husband. She has stated that accused Navnath used to behave properly with children from Satyabhama. In the examination-in-chief, she did not state that, accused was behaving properly with children of Ashwini born from her first husband. In the night prior to 8th September 2010, Nikita was at home. Her husband was also at home in the prior night. Thus, the presence of the accused on 7th September 2010 has been referred to by the witness. The accused left for work on 8th September 2010. This witness has also admitted that, she had seen injuries on various parts on the person of victim Nikita, when she was giving bath on 8th September 2010. These injuries were sustained by victim in the night on 7th September 2010. Nikita died on 8th September 2010. She died of injuries on her person. The witness also admitted that, there were abrasions at various places on Nikita and there was injury to the head which is sustained after heavy blow. It was broken and blood was oozing. Head was little broken. The victim had categorically stated that, victim sustained all those injuries on 7th September 2010. She also identified clothes of the victim. She also admitted that, on the day of incident she had accompanied Mangal to their work place.

She identified her thumb impression on the complaint. It is also apparent that, the witness could not take the victim to the doctor for want of money.

19. Her version that she had treated the victim with homely medicine is not supported by the postmortem report. Her version that Nikita had sustained injury by fall in gutter is not reflected anywhere in the statement made to the police.

20. PW-5 Mangal Gangaram Nalawade has stated that, Ashwini is working with her. On 7th September 2010, she accompanied Ashwini at work place. Accused Navnath is husband of Ashwini. Nikita was daughter of Ashwini from her first husband. She did not know how Navnath was treating the children of Ashwini. It did not happen that Ashwini told her that Navnath assaulted Nikita and that she was injured.

21. The witness was cross-examined by learned APP. In the cross-examination she stated that, after getting information, she came to the spot and she had seen injuries on the person of Nikita. Police made inquiry with her. She did not state anything to the police. She denied that she is deposing falsely to save the accused.

22. In the cross-examination Advocate for the Accused she stated that, she did not how know Nikita died. She was knowing Navnath

distantly.

23. This witness has not supported prosecution on major part of prosecution case. However she has admitted that, she accompanied PW-4 for work. It is pertinent to note that, PW-4 has stated that on the day of incident on which Nikita had died, she had accompanied Mangal (PW-5) to work place.

24. PW-6 Dr. Reshma P. Patil is the Medical Officer. She conducted postmortem of dead body of Nikita on 8th September 2010. She was attached to C.P.R. hospital. She stated that on external examination she found following injuries:-

- (i) CLW over Lt. Occipital area 1x0.5x0.5 cm. Infiltration of blood in Tissues+
- (ii) CLW over upper lip 1x0.5x0.5 cm. Infiltration of blood tissues+
- (iii) CLW over Rt. Side of Neck Midpart laterally 1x0.5x0.5 cm infiltration of blood in tissue.
- (iv) Contusion over Rt.arm laterally 3x2 cm, infiltration of blood in tissues.
- (v) Abrasion over Rt. Groin 2x1 cm Red colour.
- (vi) Abrasion over Lt.groin 2x1 cm Red colour.
- (vii) Abrasion over Rt.side of back 5 cm below scapula end 1x1 cm Red colour.
- (viii) 2 cm below above injury Abrasion present 1x1 cm Red colour.
- (ix) 1 cm below above injury abrasion present 1x1 cm Red colour.
- (x) Lt. Side to injury No.8 3 cm away laterally abrasion present 1x1 cm Red colour.
- (xi) Abrasion over Rt.buttock mid part 1x1 cm Red colour.
- (xii) 1 cm below above injury Abrasion present 1x1 cm Red colour.

All these injuries were antemortem. She noted following

internal injuries.

Below scalp haematoma present over Lt.occipital Rt.occipital, Lt.Parietal Rt. Parietal area 3x3 cm. Fracture of Lt. Occipital, Lt. Parietal bone hairline, irregular displaced. Subdural haematoma present over Lt. Occipital area. Subarachnoid haemorrhage over Lt. Occipital area. Contusion of Lt. Occipital lobe.

According to her, the age of the injury Nos.1 to 3 in column No. 17 might be before 12 hours before the postmortem. The abrasions noted by her are possible 8 to 10 hours prior to postmortem. She conducted the postmortem between 05:50 pm to 07:00 pm. Injury No.1 mentioned in column No.17 is possible if, the head of person is struck to the wall. The injury at Sr. Nos. 2, 3 and 4 in column No.17 are possible by assault by hard and blunt object. Injury No.2 in column No. 17 over the upper lip is possible if, a person is assaulted by hand with force. In her opinion, the cause of death was due to "head injury". Postmortem notes was marked at exhibit 40. The injury to head is possible by mere fall but have no support in any book. However, it is her opinion that the injuries are not possible by one fall.

25. In the cross-examination conducted by Advocate for accused it is stated that, she had not noted the age of injury in the postmortem notes. In case of small children, bones are not developed and does

not have sufficient strength. In case of accidental fall from *otta*, injury to the head is possible. In case of accidental fall from *otta* while avoiding the impact the person may sustain abrasions on palmer aspect or dorsal aspect.

26. From the evidence of aforesaid witness and the postmortem report it can be seen that, the victim had suffered several injuries and the cause of death was probable due to head injury.

27. PW-7 Shahaji Lahu Khot was Station House Officer at the relevant time. He was attached to Shirol MIDC Police Station. On 8th September 2010, he was on duty as Station House Officer for 24 hours. According to him, the complainant Ashwini Ghule visited Police Station and lodged her report. Complaint was recorded as per her say. It was read over to her. She admitted the contents of complaint to be true and thereafter, put her thumb impression. On the basis of said complaint, he registered crime No. 72 of 2010 under Section 302, 323 of I.P.C. He was shown the said complaint. He admitted its contents. He admitted thumb impression of complainant countersigned by him. Portion marked 'A and B' read over to him were stated by the complainant in her complaint. They were marked as exhibit 47 and 48. Extract of station diary was shown to him. It is as per the original register. It was marked as exhibit 49.

28. In the cross-examination he stated that, thumb impression of the complainant is not identified/attested. He denied that portion mark 'A and B' was not stated by complainant.

29. PW-8 Shivprasad Mahadev Yadav was attached to Shirol MIDC Police Station as A.P.I. He proceeded to the spot of incident. He visited house of accused. He found that, the said house consists of two rooms. Victim was lying on the floor. She was dead. She had injury on her head on the back side. He had drawn inquest panchnama by calling two panchas. The panchnama was signed by the panch witnesses. The dead body was sent for postmortem. Spot panchnama was drawn. It was pointed out by complainant. There was blood stain on the brick of wall. The brick was removed and seized under panchnama. Accused was arrested. Clothes of the accused were seized. He has recorded the statement of witnesses. Clothes of the deceased were also seized under panchnama. Seized articles were sent to C.A. It's report has been received and it is at exhibit 57 to 60. He filed charge-sheet.

30. In the cross-examination by the Advocate for accused he stated that, during investigation it was revealed that accused was residing with both of his wives and their children. He has not recorded statement of Nitin (son of accused). He denied the suggestion by defence. In the re-examination he identified muddemal article Nos. 1

to 5 as the same which was seized and sent to C.A.

31. C.A. report in respect to the brick and clothes of the victim and the accused indicate that, brick was stained with blood. The clothes of the victim were stained with blood. No blood was detected on the clothes of the accused. The blood group and clothes of the victim was of A group. The C.A. report with regard to the blood of victim indicate that it was of blood group-A. C.A. report with regard to the blood of accused shows that his blood was of A group.

32. It is settled law that the evidence of hostile prosecution witness cannot be rejected in *toto*. Merely because, the prosecution chose to treat him as hostile and cross-examined him, the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof. The fact that the Court gave permission to the prosecutor to cross-examine his own witness, thus characterizing him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. When the prosecution witness is cross-examined and contradicted with the leave of the Court, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for

the judge of fact to consider each case, whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. (Khuiji alias Surendra Tiwari Vs. State of Madhya Pradesh, AIR (1991) SC 1853; Bhagwan Singh Vs. State of Haryana (1976) 2 SCR 921; Rabinder Kumar Dey Vs. State of Orissa, AIR (1977) SC 170; Syed Akbar Vs. State of Karnataka, AIR (1979) SC 1848; Gurbachan Singh Vs. Satpal Singh, AIR (1990) SC 209; Sat Paul Vs. Delhi Administration, AIR (1976) SC 294.

33. PW-4 has lodged the FIR. She was married to Narayan Baban Munde from whom she has son by name Nitin and daughter Nikita (victim). He deserted her and therefore she got married to accused Navnath. The accused Navnath was married to Satyabhama. He has son by name Shubham and daughter Priyanka. PW-4 has stated that, all of them were residing with accused.

34. The prosecution case is that, in the night intervening between 7th September 2010 and 8th September 2010, the accused had beaten up Nikita throughout the night as she was not performing well in the school. The victim's mother (PW-4) was declared hostile. PW-7 Police Head Constable Shahaji Khot had recorded her FIR. Scrutiny of evidence of PW-4 would reveal that accused used to behave properly with his children begotten from Satyabhama. It is true that

she has not disclosed in clear words that accused was not behaving properly with her children begotten from Narayan Munde. Apparently, she was trying to suggest the same thing indirectly. After PW-4 was declared hostile, she was cross-examined by the Advocate for accused and admissions were sought from her. As per version of PW-4 Ashwini, Nikita died on 8th September 2010 at about 10:00 am. She also stated that Nikita was at home in the prior night. Her husband Navnath was also at home. On 8th September 2010 at about 11:00 am her husband (accused) had gone for his work. She also stated that she had given bath to her daughter Nikita in the morning hours and found injuries on her head, lips, back and buttock. She also had injuries at various places. She also stated that victim requested her not to go for job but she convinced the victim that on return from her job she would take her to doctor as she had no money. Thereafter PW-4 had gone to her work. When she was at her work place, she was informed by Babutai, that there was hue and cry in her house. Hence, she was rushed to her home and found that Nikita was no more. Satyabhama told her that she tried to wake up Nikita but she did not. PW-4 noticed that, there was bleeding from the head injury of Nikita and abrasion at various places. She stated that her head was little broken and blood was oozing. She also noted that, head injury to Nikita was appearing like injury which is

sustained after heavy blow. She has categorically stated that, Nikita had sustained all the injuries on 7th September 2010. The police arrived at her house and she lodged the complaint and made her thumb impression. She admitted her thumb impression on complaint. After lodging the complaint, accused was arrested by police and since then he is in jail. The witness also stated that, victim had worn shirt and pant of her son and identified article Nos. 4 and 5 before the Court.

35. In the cross-examination by learned APP she admitted her thumb impression on the FIR. She denied the portion mark A and B in her FIR. It was suggested that, she was deposing false to save the accused being her husband which was denied by her. In the cross-examination by Advocate for accused, she has changed her version and stated that, accused had been to work two days prior to 7th September 2010. He never used to return back home for two to three days because of his job. On 7th September 2010 and 8th September 2010 accused was not at home. It is relevant to note that, PW-4 had specifically stated that initially in the night intervening 7th September 2010 and 8th September 2010 the accused was present at home and left for his job at 11:00 am on 8th September 2010. Subsequent version of PW-4 that, accused was not at home on 8th September 2010 is falsified by the fact of arrest of accused on 8th

September 2010 at about 17:30 hours vide arrest panchanama. PW-8 Shivprasad Yadav (Investigating Officer) has stated that, he arrested the accused on 8th September 2010. In the statement under Section 313 of Cr.P.C., the accused has stated that he was asked to attend the police station. This would show that, the accused was very much available on 8th September 2010. In the cross-examination PW-4 has stated that, on 7th September 2010 when she returned home at about 09:00 pm Nikita had told that she had fallen in the gutter and sustained injuries to her head. PW-4 admitted that Nikita told her that, she had injury on her back in the same incident. She stated that, the victim was treated with homely medicine. She also stated that it was disclosed to the police that, Nikita had fallen in the gutter. She did not visit Police Station nor made complaint against the accused. She also stated that, contents of the complaint were not read over to her on which she made her thumb impression. She had also deposed that, thumb impression was made on blank paper. Thus, the defence had urged that, the victim had sustained injuries due to fall in the gutter and the said fact was reported to the police. It is pertinent to note that, PW-6 Ms. Reshma Patil in her evidence stated that, she conducted autopsy on the dead body of Nikita on 8th September 2010 between 05:50 to 07:00 pm. She noticed external and internal injuries which are reproduced hereinabove. According

to her, the age of external injury Nos. 1 to 3 before 12 hours of postmortem and the abrasions noted by her were within 8 to 10 hours prior to postmortem. According to her, the injury No.1 i.e. injury on left occipital region which has also resulted in below scalp haematoma and fracture coupled with sub-dural haematoma is possible if, head of person is struck to the wall. It is important to note that, the opinion on record indicate detection of blood stains on brick of wall of kitchen of the house of accused. Brick was recovered vide exhibit-30. PW-6 has accepted proposition that injury Nos. 2 to 4 are possible by assault with the help of hard and blunt object and Injury No.2 i.e. injuries on the upper lip of victim is possible if a person is assaulted by hand with force. It is nobody's case that victim was assaulted by Ashwini or Satyabhama. So, it was accused, who was charged to have assaulted the victim. PW-6 has clarified that, though injury to head is possible by mere fall, she could not support it her opinion with the help of any book or any other material. She also stated that all the injuries sustained by Nikita are not possible by one fall.

36. In the cross-examination by Advocate for the accused PW-6 stated that, she had not noted the age of injuries in the postmortem notes. There is no such column in the postmortem form. She admitted that, in case of small children, bones are not developed and

do not have sufficient strength. In case of accidental fall from otta, injury to head is possible. She further clarified that in case of accidental fall from otta for avoiding the impact, the person may sustain abrasion on palmer aspect or dorsal aspect. If, the victim had sustained injury to her head by accidental fall, it was natural death. She would have sustained fracture to her hand or leg. However, there was no such fracture, it rules out the possibility of accidental fall. The version of PW-6 that, head injury was possible by mere fall is not supported by any material and such admission is of no significance. More particularly, in the light of her version that all the injuries are not possible by one fall. According to PW-6, there were severe injuries viz. injury Nos.1 to 4 and the same are possible by hard and blunt object like hitting with force. This corroborate version of PW-4 that, she has stated that the injury to head of Nikita was appearing like when person is hit heavily. In case of accidental fall, there is no likelihood of such serious injury like injury No.1 on account of accidental fall. There is no likelihood of injury on the right side, neck mid part in the nature of contused lacerated wound with infiltration of blood in tissues. PW-6 has noticed any mud or other articles in the injuries of Nikita, which would have been present in the accidental fall in gutter. Apparently, the head injury had resulted in sub-dural haematoma. The impact on head was such

that there was injury beyond the lobe. The case of accidental fall is ruled out. In case of accidental fall person would try to avoid the impact and may sustain abrasion to palmer or dorsal aspect. There is no such injury on the hands of the victim. PW-4 has admitted that, the evidence as to fall in the gutter is coming for the first time in the cross-examination of Ashwini. The place where the incident had occurred is not disclosed. In spot panchnama at exhibit-30 nowhere existence of gutter near the house of accused is mentioned. There is no such cross-examination to both panch witnesses. The admission of PW-4 that Nikita informed that she had a fall in gutter is not supported by natural conduct on the part of PW-4 as well as accused. PW-4 stated that, she treated Nikita with homely medicine but there is no such evidence recorded in the postmortem notes. In the cross-examination of PW-6 it is not brought on record that, the injuries sustained by victim were treated in any manner. PW-4 has stated that, she had no money to treat Nikita in the morning hours and she convinced her that after returning from her job, she would take her to doctor.

37. The trial Court while scrutinizing the evidence of PW-4 has observed that, PW-4 got married to accused though he was already married to Satyabhama, having two children from her. It indicates that PW-4 has accepted to be second wife of accused, who is the

driver by profession. She was deserted by her first husband and therefore she got married to accused. The main reason is of financial and social support from him for herself and for her children. It is proved on record that, financially she is so weak that she could not take victim to the doctor. Although, the accused was at home, he did not take her to doctor, probably because she was his step daughter. Thus, financial dependency of PW-4 on the accused, the fact that he has given her shelter after she was deserted by her husband etc. are the factors for her not to depose against the accused. The Court cannot overlook the above factors while assessing the her evidence. When there are various factors indicated above, showing the probability of she was won over by the accused.

38. In paragraph Nos. 21, 22 and 23 of the impugned judgment, the trial Court has recorded that the charge was framed on 15th September 2011. Matter could not be fixed for recording evidence of prosecution witnesses for quite sometime on account of oral request by the Advocate for the accused for fixing the matter for evidence. Application at exhibit 19, 20, 21 and 22 shows that at the instance of accused, matter was postponed and the evidence could not be recorded. It is the matter of record that even thereafter there was continuous reluctance on behalf of the defence to fixed up the matter for evidence as is reflected from the roznama. The programme for

recording evidence of prosecution witnesses was fixed for three days i.e. on 17th February 2014, 18th February 2014 and 19th February 2014 and accordingly summons was issued. It is the matter of record that though the witnesses were present as per the programme, which includes complainant, the accused moved application exhibit 23 for adjournment and therefore, the matter was adjourned to 19th March 2014. On 19th March 2014, the complainant did not turn up and therefore, evidence of Bapu Powar (PW-1) was recorded. On 20th March 2014, when the witnesses were present application for adjournment at exhibit 26 was moved. The same was rejected. It is interesting to note that on that day the complainant remained absent and therefore, warrant was issued against her vide order on exhibit-31. It is only thereafter the complainant appeared and her evidence was recorded. What can be seen from the above referred circumstances is that, the possibility that either accused or somebody on his behalf has approached the complainant cannot be ruled out. The above are the circumstances indicating the conduct of the accused in not allowing the evidence to be recorded until at a particular time, which has to be read in between the lines. Therefore the above factors will have to be borne in mind before appreciating the evidence of complainant.

39. As per the evidence of PW-4, the accused was present in the

house in the night intervening between 7th September 2010 and 8th September 2010. If the victim had fallen in gutter, natural conduct on the part of the accused being father of the victim would have been taken her to doctor. However there was no action from him. He was silent in his statement under Section 313 of Cr.P.C. as to the reason for him not taking Nikita to doctor.

40. It is pertinent to note that, accused had taken plea of alibi by claiming that he was not at home. It was for him to prove that he was not present between 7th September 2010 and 8th September 2010. He has not adduced any evidence in support of such plea. In his statement under Section 313 of Cr.P.C. he has not disclosed as to where he was on night intervening 7th September 2010 and 8th September 2010 hence plea of alibi is required to be rejected.

41. The evidence of PW-4 to the extent of unchallenged and supports the case of prosecution has to be accepted. The Court can rely upon the circumstances, which are appearing from the evidence which form a charge leading to guilt of the accused.

42. PW-7 has stated that, he was working as Station House Officer on 7th and 8th September 2010. PW-4 visited Police Station and lodged crime report. Complaint was recorded as per her say and after she admitted the contents of the FIR, she made her thumb

impression. In the cross-examination the defence tried to record that thumb impression was not attested. It is pertinent to note that, the thumb impression is not disputed. PW-4 has admitted her thumb impression.

43. PW-1 has acted as panch to inquest panchnama. He is the neighbour of accused. He has stated that, accused is residing with his two wives and children. Nikita was born to Ashwini from her first husband. He admitted that, inquest panchnama bears his signature. He stated that, inquest panchnama was signed at C.P.R. hospital. He also stated that, Ananda Dinde was another panch witness. He denied portion from his statement. He was not cross-examined by the defence. His admission of signing the panchnama and presence of Ananda Dinde (PW-2) is unchallenged. PW-2 Ananda Dinde has supported prosecution case. According to him, he has stated that he had seen dead body of victim in the house. She has suffered injuries on back, left, lips, head and abrasion on her back. Panchnama was exhibited. He has given same admission in his cross-examination. The witness has given details of the injuries noticed by him on account of certain admissions his evidence cannot be discarded. He corroborated injuries seen by him which are noted in inquest panchnama at exhibit-28. He had noticed hue and cry from the house of accused and several injuries on her person.

44. PW-3 is neighbour of accused. He stated that house of accused consists of two rooms and inner room is the kitchen. He noticed blood stains on the wall of kitchen which was the brick wall. The brick portion to which blood stains were present was removed with the help of hammer and it was seized by police. The events were reduced into writing in the form of panchnama and it was signed by him. In the cross-examination, he tried to denied in the examination-in-chief. There is no challenge to the evidence that the brick was removed with the help of hammer and that it was reduced into writing. The admission that brick was not removed in his presence and it would not discard his evidence.

45. The blood stains were found on the brick. C.A. has analysed that the stains on it were blood stains. The blood group of the said blood stains were found to be A and it was a human blood. The blood sample of Nikita were sent for analysis. The blood group was found to be 'A'. PW-4 had identified clothes of Nikita, which was on her person on that day. The same were found stained with blood. It was human blood of group-A. The blood group of Nikita was of group A. It was also revealed that, blood group of accused is also A. However, there was no injury on the person of accused so that his blood was stuck to the wall. It is not even the defence of the accused. The evidence of PW-2 and 3 was put to the accused in the

statement under section 313 of Cr.PC. He merely denied it. There is nothing to show that, as how and in what circumstances the wall of the kitchen in the house of the accused had blood stained. There was no explanation as to how the victim suffer several injuries on her person. The accused had no explanation. All the aforesaid circumstances to establish that, the accused, who had committed crime, there were 12 injuries on the person of the victim. There was head injury. Considering the nature of injuries, it is clear that intention was to commit murder of the victim, a small child. Hitting the head of child on the wall depicts the intention of the accused. This supports the charge under section 302 of Indian Penal Code.

46. Thus, the conviction deserves to be confirmed. However the trial Court has directed that the accused shall not be released from captivation until his death. The said part of sentence appears to be unreasonable in view of the facts and circumstances of the case and is required to be set aside.

Hence, the following Order.

ORDER

- (i) Criminal Appeal No. 640 of 2014 is dismissed.
- (ii) The Judgment and Order dated 3rd May 2014 passed by learned Additional Sessions Judge, Kolhapur in Sessions Case No.

156 of 2010 convicting the appellant for offence punishable under Section 302 of Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs. 1,000/- is confirmed.

(iii) Clause (ii) of operative part of Judgment and Order dated 03rd May 2014, directing that accused shall not be released from imprisonment/captivation until his death is set aside.

(iii) Criminal Application stands disposed off.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)