



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.58 OF 2022

Somnath s/o Shivaji Salunke
Age 32 years, Occ. Nil,
R/o Sanjay Nagar, Latur,
Tq. & dist. Latur, presently at-
Central Prison, Aurangabad

... **APPELLANT**

VERSUS

The State of Maharashtra
Through Police Station Officer,
Vivekanand Chowk Police Station,
Latur, Tq. & Dist. Latur
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad)

... **RESPONDENT**

.....
Mr. V.P. Savant, Advocate for appellant
Mr. N.R. Dayama, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 12th JULY, 2024

JUDGMENT (PER R.G. AVACHAT, J.) :

The challenge in this appeal is to a judgment and order of conviction and sentence, dated 18/9/2021, passed by learned Sessions Judge, Latur in Sessions Case, No.116/2019. Vide impugned judgment and order, the

appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- with default stipulation.

2. The facts giving rise to the present appeal are as follows :

The First Information Report (F.I.R.) (Exh.36) was lodged by P.W.1 Madhuri. She is wife of the appellant. It is her case that, she was married the appellant way back in June 2014. The couple was blessed with children, Soham aged 2 years and Swapnil, 8 months old (deceased). It is her case that, after birth of Swapnil, the appellant started harassing and ill-treating her. The appellant wanted to have a baby girl. Moreover, since it was a pre-mature birth of Swapnil, the appellant started suspecting her (P.W.1) fidelity. He, therefore, beat up Swapnil often.

3. It is further her case that, about 7 days before 10/8/2019, the appellant stretched both the legs of Swapnil in opposite direction of each other. Swapnil suffered fracture

thereby. Her mother-in-law was away at some other village. It is further her case that, on 10/8/2019, the appellant returned home at 11.00 Hrs. in the morning. He started beating up Swapnil. He hit on the head of Swapnil with stone grinder (pestle). She, therefore, went to her neighbour's house to report the matter and then took Swapnil to hospital. The doctor, on examining, declared Swapnil to have been brought dead. She, therefore, approached Vivekanand Chowk Police Station, Latur and lodged the F.I.R. Crime vide C.R. No.344/2019 for the offence punishable under Section 302 of the Indian Penal Code came to be registered at Vivekanand Chowk Police Station, Latur.

4. During investigation, crime scene panchanama (Exh.43) came to be drawn. Inquest panchanama (Exh.39) and autopsy (Exh.60) were conducted on the mortal remains of deceased Swapnil. Clothes of deceased Swapnil came to be seized vide seizure panchanama (Exh.41). The appellant came to be arrested vide arrest panchanama (Exh.40). Clothes on the person of the appellant too were seized under seizure panchanama (Exh.42). A pestle and spatula also came to be seized from the scene of offence. All the seized

articles were sent to Forensic Science Laboratory, for analysis. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, charge sheet was filed before the Court of learned Judicial Magistrate, First Class, Court No.1, Latur, who in turn, committed the case to the Court of Sessions, Latur.

5. The learned Sessions Judge (Trial Court) framed the Charge (Exh.9). The appellant pleaded not guilty. His defence was of false implication.

6. To establish the charge, the prosecution examined 8 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the learned Trial Court convicted and consequently sentenced the appellant as stated above.

7. Heard. Learned Advocate for the appellant would submit that, P.W.1 Madhuri was an interested witness. The prosecution came with a case of two motives, (1) The appellant wanted a baby girl and (2) Swapnil being born prematurely. He disowned himself to be the father of the child

(Swapnil). The prosecution did not prove motive. The evidence of rest of the witnesses, namely the neighbour was hearsay. Although the post mortem report indicates 15 injuries, most of them were not caused by the appellant and those had occurred about 8 – 10 days before the fateful day. According to learned Advocate, there used to be frequent quarrel between the appellant and his wife. Swapnil being 8 months old, accidentally fallen on the ground from the hands of P.W.1 Madhuri herself. He would further submit that, elder brother of Swapnil being immature, used to jump over body of Swapnil. Swapnil thereby died. According to learned Advocate, the appellant is behind the bars for years together. There is no one to look after his mother and elder son as well. According to him, the evidence of the prosecution fell short to bring home the charge beyond reasonable doubt. He would further submit that, one Shyamal Atya to whom P.W.1 Madhuri used to relate the happenings, was not examined. Learned Advocate ultimately urged for allowing the appeal.

8. Learned A.P.P. would, on the other hand, submit that, it is an open and shut case. P.W.1 Madhuri, wife of the appellant did not have any reason to give evidence against her

own husband, putting her matrimonial life at stake. According to him, the incident took place within the four-walls of a house. There could, therefore, be no independent witness. The fact that, legs of Swapnil were in plaster reinforce the prosecution case that the appellant had pulled legs of Swapnil in opposite direction of each other, causing severe injuries, some days before he killed him. The learned A.P.P. reiterated the reasons given by the Trial Court in support of the impugned judgment and order. He ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record and the judgment as well. Let us appreciate the same.

10. Admittedly, the appellant married P.W.1 Madhuri way back in June 2014. The couple was blessed with two sons, Soham (3 year old) and Swapnil (deceased), 8 months old. The couple along with their children and the appellant's mother would reside together. It is case of the prosecution that, all was well between the couple until birth of Swapnil. It is just unpalatable that the appellant wanted the second baby to be a girl child. It was suggested on behalf of the appellant

himself in the cross-examination that, birth of Swapnil was premature. The appellant would suspect fidelity of Madhuri. Be that as it may. When the case is based on eye witness account, the prosecution is not under obligation to prove motive.

11. P.W.4 Dr. Dharmaraj was Medical officer at Government Medical College, Latur. He was on duty on 11/8/2019 from 8.00 a.m. to 8.00 a.m. of the next date (round the clock). It is further in his evidence that, the Police Constable Surwase had brought a dead body of Swapnil for post mortem examination. He conducted post mortem. He found following external injuries on the person of Swapnil :-

- (1) Abrasion present on right frontal region, 5 cm. from middle and 7 cm. from right ear, of size measuring 3 x 1 cm. dark red colour.
- (2) Multiple abrasion present on right parietal region ranging from of size 1 x 0.5 cm. to 0.5 cm. x 0.3 cm., dark red colour.
- (3) Multiple contusion present on forehead, of size ranging from 3.5 cm. x 2.5 cm. to 1 x 0.5 cm. red in colour.

- (4) Contusion present on nose, of size measuring 1.9 x 0.8 cm. red in colour.
- (5) Contusion present on right cheek, 1 cm. below right eye of size measuring 4.3 cm. x 2.1 cm. red in colour.
- (6) Contusion present on left cheek, 1 cm. below left eye, 3.5 cm. x 3.2 cm., red in colour.
- (7) Abrasion present on upper lip, in midline, inner aspect, 1 x 0.5 cm., dark in colour.
- (8) abrasion present on right side of neck, 2 cm. below right ear and 2.5 cm. above middle 1/3rd of clavicle of size measuring 4.7 cm. x 3.2 cm., dark red colour.
- (9) Contusion present on abdomen, 3 cm. below xiphisternum upto umbilicus, of size measuring 14 x 6.8 cm., red in colour.
- (10) Contusion multiple present on right lumber region of abdomen, of size ranging from 3 x 2.5 cm. to 1 x 1 cm., red in colour.
- (11) Contusion present on hypogastric region of abdomen, 3 cm. below umbilicus and 3.5 cm above pubic symphysis of size measuring 3.5 cm. in diameter, red in colour.
- (12) Contusion present on right thigh, middle 1/3rd region, 4 x 3.2 cm., greenish yellow in colour. On opening evidence

of fracture of right femur shaft, middle 1/3rd region, obliquely placed with blood infiltration seen in surrounding tissue, fractured margins are well approximated showing signs of partial healing.

- (13) Abrasion present in right hypochondriac region, on abdomen, of size measuring 1.5 cm. x 1 cm., dark red colour.
- (14) abrasion present on right side of back, 8 cm. below inferior angle of right scapula 7 cm. from midline of back, of size measuring 2.8 cm. x 1.5 cm., dark red colour.
- (15) Contusion present on left forearm, middle 1/3rd region, posterior aspect, 6 cm. below elbow joint, vertically placed, of size measuring 6.9 cm. x 2 cm. red in colour.

On internal examination, the Medical Officer also found contusion under scalp on right fronto-parieto-occipital region, 9.8 cm. x 6.5 cm., dark red colour. Haematoma under scalp on right temporal region, 3.9 cm. x 2.5 cm. dark red colour.

12. On skull, the Medical Officer found linear undisplaced fracture of right temporal bone, vertically placed

3.8 cm. in length with blood infiltrated margin, injuries on brain region, Meninges intact, subdural blood clot in occipital lobe 25 grams. in weight, subarachnoid haemorrhage on right parietal lobe 6.2 cm. x 4.1, dark red colour. On abdomen, he found contusion present on abdominal wall muscle, 3 cm. from midline on right hypochondriac region of abdomen 4 cm. in diameter, red in colour and contusion present on abdominal wall muscle, in left hypochondriac region of abdomen, 2 cm. from midline, 4.8 cm. x 3.9 cm., red in colour.

13. All the above injuries were ante-mortem. In his opinion, Swapnil died of head injury. The post mortem report (Exh.60) states cause of death as “head injury”. The Medical Officer P.W.4 Dharmaraj was categorical to rule out the head injury to be possible by sudden fall of a child on head in scuffle between a couple. The doctor has, however, admitted that, rest of the injuries were simple in nature except thigh fracture.

14. P.W.1 Madhuri, wife of the appellant testified that, she married appellant way back on 16/6/2014. They had two sons, Soham and Swapnil. After birth of Swapnil, appellant Somnath started quarreling with her. He (appellant) would say

that he wanted a baby girl. He, therefore, started beating up Swapnil. The appellant used to put red pepper in the eyes and mouth of Swapnil. He would ask Soham to bite Swapnil. He used to beat her (P.W.1 Madhuri) as well and ask her to leave the house.

15. It is further in her evidence that, about 8 days before the incident, her mother-in-law was away at village Aurad. The appellant pulled both the legs of Swapnil in opposite direction. 8 days thereafter, mother-in-law returned. Having seen health condition of Swapnil, she took him to hospital after 2 days. The doctor asked them to admit Swapnil to hospital. The appellant refused. It is further in her evidence that, she thereafter took Swapnil to the hospital. The doctor applied plaster on his leg.

16. It is further in her evidence that, the incident took place on 10/8/2019. appellant questioned her as to how and why the plaster was applied to Swapnil. The appellant thereafter assaulted Swapnil with spatula. He then gave him (Swapnil) fist and kick blows. The appellant then hit on head of Swapnil with pestle, took Swapnil to the hospital. Doctor

examined him and declared dead. She thereafter approached the Police Station and lodged the report against the appellant. Report (F.I.R.) is at Exh.36. It is further in her evidence that, her statement was also recorded by a Court. We referred to her statement (recorded under Section 164 of the Cr.P.C.). It is at Exh.38.

17. She was subjected to a searching cross-examination. It was suggested to her that, birth of Swapnil took place within 7-8 months of conception. She denied that Swapnil was weak since birth. She denied that, in the birth certificate of Swapnil it was stated that he was born premature and, therefore, was weak. She denied the appellant was taking fatherly care of both the children. She denied that, there used to be frequent quarrels between her and the appellant since it was the appellant alone who would take care of both the children. She, however, admitted that there used to be quarrels between her and the appellant due to her mother-in-law. This admission is not unusual. She denied that she was insisting the appellant to live separately i.e. away from his mother and brother-in-law. She denied that Soham, the elder son, used to jump on the person of Swapnil. It appears that,

the suggestion was put to bring on record that injuries suffered by Swapnil were as a result of Soham jumping on person of Swapnil. It is further in her evidence that, she had related the incident to one Shyamal Atya and Radha Magar. It is true that, Shyamal Atya was not examined. In the facts and circumstances of the case, we find non-examination of Shyamal Atya to be not fatal. True, P.W.1 Madhuri was confronted with her F.I.R. which is silent to record that the appellant would ask elder son to bite Swapnil. However, close reading of the F.I.R. would indicate that P.W.1 Madhuri's oral evidence before the Court has been corroborated/ reinforced by the F.I.R. Exh.36 and even her statement under Section 164 of the Cr.P.C. (Exh.38).

18. Exh.39 is the inquest panchanama. Column 17 thereof indicates that Swapnil died due to beating. Column 9(viii) indicates that, right leg of Swapnil was in plaster. This fact too reinforces P.W.1 Madhuri's case that 8 days before the incident the appellant had stretched Swapnil's legs and, therefore, the leg was required to be plastered. Column No.16 of inquest further indicates various injuries on the person of Swapnil. We find no inconsistency between inquest

panchanama (Exh.7) and post mortem report (Exh.60).

19. P.W.2 Radha was the immediate neighbour of P.W.1 Madhuri. P.W.1 Madhuri testified that, she used to relate the incident to her neighbour Radha. It is in the evidence of P.W.2 Radha that, Madhuri used to tell her that appellant would frequently quarrel with her and used to beat younger son Swapnil. She even testified that she was related by Madhuri that the appellant would put chilly powder in the eyes of Swapnil. It is further in her evidence, about 8 to 12 days before the incident, she (P.W.2) was cleaning utensils outside her house. She saw Madhuri taking Swapnil with her. Madhuri related her the appellant to have pulled the legs of Swapnil in opposite direction and therefore she was taking Swapnil to the hospital.

20. True, since the incident took place in the house, P.W.2 Radha and other neighbours namely P.W.3 Gitabai and P.W.7 Shankar could not be said to have an occasion to witness the incident of assault made by appellant, whereby Swapnil passed away. P.W.2 Radha's evidence indicates that, she heard Madhuri weeping. Madhuri had been to her

residence to ask for her mother-in-law's cell phone number. She accompanied Madhuri to her residence. She saw Swapnil with his eyes closed.

21. During her cross-examination, it was suggested that there used to be frequent quarrels between the appellant and Madhuri. It was further suggested that, no neighbour would intervene to subside quarrel. She admitted to have not witnessed the incident of appellant beating up his son Swapnil.

22. P.W.3 Gitabai is another witness residing in the neighbourhood of the appellant. It is in her evidence that, Madhuri used to tell her that appellant, under the influence of liquor, would beat up her and their son. It is further in her evidence that, about 12 days before the incident, she met Madhuri on way. Madhuri was taking her son to the hospital. That time Madhuri told her the appellant to have pulled Swapnil's legs. This statement made to Gitabai soon after the incident would very much be admissible in evidence to corroborate Madhuri's evidence before the Court by her own previous statement to Gitabai (Section 157 Evidence Act).

23. The evidence of P.W.3 Gitabai further indicates that, on 8/8/2019, there was crowd in front of the house of the appellant. P.W.1 Madhuri was crying. She told the appellant to have killed her son. The police then came and took the child to the hospital.

24. Our attention was drawn to paragraph 4 of the cross-examination of P.W.3 Gitabai, wherein she has not stated arrival of police and taking the child to hospital and appellant to the Police Station.

25. P.W.5 Daivat was a Police Head Constable. He had carried seized articles to Forensic Science Laboratory, Aurangabad vide forwarding letter (Exh.62). P.W.6 Baliram was another police official who carried other muddemal articles to Forensic Science Laboratory, Nanded vide forwarding letter Exh.65.

26. P.W.7 Shankar is another witness residing in the neighbourhood of the appellant. It is in his evidence that, on 10/8/2019, Madhuri had been to his house. He asked for cell phone of her mother-in-law. Madhuri (P.W.1) was crying. On

enquiry, she told the appellant to have assaulted Swapnil. It is further in his evidence that, she had brought her child to her house at the say of his wife. He noticed the child to have nodded.

27. This witness appears to have been supporting both the prosecution and the appellant as well since he admitted in cross-examination to have never heard appellant to have assaulted Soham. The suggestion was in respect of elder son and not Swapnil. He was suggested that, there used to be quarrels between appellant and Madhuri.

28. P.W.8 Dayanand did the investigation of the crime.

29. On appreciation of the evidence on record, we reach to the conclusion that, there used to be frequent quarrels between appellant and his wife Madhuri (P.W.1) post birth of their second child Swapnil. The evidence of neighbours indicate that there used to be frequent quarrels. Even 8-10 days before the fateful day, the appellant had stretched legs of Swapnil in opposite direction with each other. The neighbours had seen Madhuri taking the child to hospital and related the

said incident to them immediately (P.W.2 Radha) and P.W.4 Gitabai. The same reinforces Madhuri's case that the appellant was cruel with his second child Swapnil. It was suggested to Madhuri in her cross-examination that, Swapnil was born prematurely. The same explicitly suggests the appellant to have suspected her fidelity. Madhuri (P.W.1) being wife of the appellant, had no reason to speak against her husband putting her matrimonial life at stake. Nothing of that sort was brought on record through her cross-examination. Even she was not suggested that child suffered head injury accidentally. P.W.4 Dr. Dharmaraj ruled out the head injury (cause of death) to be the result of fall on the ground. It needs no mention that, for proof of a fact, no particular number of witnesses are required to be examined (Section 134 Evidence act). The appellant's case that Swapnil fell down and fractured his leg found to be false. We find the evidence of P.W.1 Madhuri to be reliable and inspiring confidence. The same has been reinforced by evidence of P.W.2 Radha and P.W.3 Gitabai. The medical evidence further reinforces her case. We, therefore, find the Trial Court to have rightly convicted the appellant and sentenced him accordingly. As such, no interference with the impugned order of conviction and

consequential sentence is warranted. In the result, the appeal fails. The appeal, therefore, stands dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-