



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.515 OF 2004

Kashabai W/o. Madansingh Kakarwal,
(Rajput), Age : 40 years, Occu. : Labour,
R/o. Bhagatsingh Nagar, Waluj,
Taluka : Gangapur, Dist. Aurangabad ... Appellant.

Versus

The State of Maharashtra,
Through Police Sub-Inspector,
Police Station Waluj,
Taluka Gangapur, Dist. Aurangabad ... Respondent.

...
Mr. P. N. Sonpethkar, Advocate for Appellant
Mr. Rajdeep D. Raut, APP for Respondent – State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30th JULY, 2024

PRONOUNCED ON : 9th AUGUST, 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction recorded by Ist Ad-hoc Additional Sessions Judge, Aurangabad on 26.11.2002 in Sessions Case No. 262 of 2002, recording guilt and sentencing appellant for commission of offence punishable under section 304 Part II of Indian Penal Code (IPC).

IN SHORT PROSECUTION VERSION IN TRIAL COURT IS AS UNDER

2. Appellant delivered male child on 19.04.2002 in the

maternity hospital of PW1 Dr. Gangawal. She sought discharge and took the new born away. However, she caused head injury to the infant, resulting his death and thereafter disposed of the dead body on Aurangabad - Ahmednagar Road. PW3 Santosh noticed dead body and approached Waluj police station and lodged report at Exh.17. Police machinery swung into action and investigation was carried out by PW8 P.I. Dasare, who after gathering evidence, arrested accused and charge-sheeted her and she was tried before Ist Ad-hoc Additional Sessions Judge, Aurangabad vide Sessions Case No. 262 of 2002.

The trial culminated into conviction for above offence. Present appeal is offshoot of said conviction.

EVIDENCE ON RECORD

3. **PW1** Dr. Anil Gangawal, who ran maternity hospital named Leela Nursing Home, deposed about appellant hospitalized for delivery and she giving birth to a male child and getting discharge, he carried certificate and medical papers (Exhs.13 and 14)

PW2 Syed Bibi, neighbour of appellant, stated that, she had accompanied to the hospital of PW1 Dr. Gangawal for delivery of appellant and appellant delivered a male child. On the next day, she saw accused appellant passing from the rear side of her house

along with her son and daughter, but she was not carrying the new born delivered on previous day. She identified dead body of the new born.

PW3 Santosh, informant, who, while on morning walk noticed dead body of the new born on Aurangabad-Ahmednagar road and approached Waluj Police Station.

PW4 Harun is a pancha to inquest panchanama at Exh.13.

PW5 Raosaheb, Police Head Constable, who drew inquest panchanama, spot and cloth seizure panchanama and referred dead body for postmortem.

PW6 Rashid is a pancha to seizure of clothes of accused (Exh.27).

PW7 Dr. Parshuram Kothekar, Autopsy Surgeon, who issued opinion as probable cause of death due to head injury.

PW8 P.I. Dasare, the Investigating Officer, who conducted investigation and charge-sheeted accused.

SUBMISSIONS

On behalf of Appellant :-

4. Learned counsel for appellant would submit that, there is false implication and in absence of cogent, reliable and

trustworthy evidence, he pointed out case is based on circumstantial evidence. According to him, none of the circumstances were so compatible or complete in nature so as to hold appellant responsible. He pointed out that, there is no evidence that, she is responsible for the death of the new born. He pointed out that, there is no evidence or witness in support of prosecution version that she caused head injury. Therefore, according to him, learned trial court ought not to have accepted the prosecution version and convicted the accused. Therefore, he prays that, the judgment under challenge is required to be set aside by allowing the appeal.

On behalf of Prosecution : -

5. In answer to above, learned APP submitted that, there is strong and reliable evidence demonstrating and substantiating that accused delivered baby in the hospital of PW1 Dr. Gangawal. Such doctor has been examined. It is pointed out that, PW2 Syed Bibi, immediate lady neighbour, who had accompanied accused for getting admitted for delivery, has also been examined. She had seen the new born. She has also spotted accused appellant on the very next day without new born. That, dead body of new born was abandoned and disposed of on a road. Complaint to that extent was received from a citizen. That, thorough investigation revealed

involvement of appellant and therefore, learned trial court committed no error in accepting the case of prosecution and so it is prayed the appeal be dismissed.

ANALYSIS

6. Here, guilt recorded by trial court for offence punishable under section 304 Part II of IPC i.e. culpable homicide not amounting to murder.

On careful scrutiny and analysis of evidence of PW1 Dr. Gangawal and PW2 Syed Bibi, it is emerging that, appellant got admitted for delivery in the hospital of PW1 Dr. Gangawal. In his maternity home PW1 Dr. Gangawal performed delivery of appellant at around 3:50 p.m. He also deposed that, she took discharge on her request. This doctor has placed medical papers Exhs.13 and 14. He has identified accused to be the same lady, who had come for delivery and he also gave her name. His such testimony has not been rendered doubtful or shaken.

7. Likewise, testimony of PW2 Syed Bibi also goes to show that, she is immediate neighbour and she had accompanied accused appellant to the hospital of PW1 Dr. Gangawal. She is very categorical about male child being born. She has spotted accused passing behind the back of her house on the very next day without

the infant. She has also visited mortuary and identified the dead body of infant. Therefore, even her evidence has not been rendered doubtful in the cross examination. Thus, the testimony of PW1 Dr. Gangawal and PW2 Syed Bibi categorically established that accused gave birth to a male child and after taking discharge from the hospital, new born was in her custody.

8. PW3 Santosh, a morning walker, had spotted dead body of infant abandoned on a road while he was on a walk in the morning of 20.04.2002. He had immediately reported the same to police and on the strength of the same, FIR has been lodged. Even his testimony has remained intact in spite of being cross examined.

9. PW7 Dr. Parshuram, who conducted postmortem, deposed about conducting autopsy and issuing opinion regarding death of infant and regarding head injury.

In cross examination, doctor has answered that, there was possibility of fracture if head of infant is hammered with force and that head injury noticed in column no.19 is possible by stone. He also admitted that, said injury is possible if the delivery is not performed by gynecologist, i.e. while taking out the the infant out of uterus. However, he volunteered that, injury noted in column no.19 is not possible due to forceps.

Therefore, autopsy doctor's opinion about death due to head injury is also proved by prosecution.

10. The above discussed evidence shows that, appellant is the mother of the infant, who was born in the hospital of PW1 Dr. Gangawal. It is a maternity home, where she herself got admitted for delivery. Doctor has identified accused in the court. PW2 Syed Bibi, independent witness and a neighbor, who accompanied and admitted her in hospital, was present at the time delivery has seen the male child. After two days, this witness has seen appellant without the infant. The infant was noticed by PW3 Santosh in dead condition, but wrapped and abandoned on a public road. Autopsy surgeon confirmed death due to head injury. There is, both, direct evidence on the point of admission for delivery and giving birth to a male child, who was spotted dead. PW2 Syed Bibi has identified the dead body to be the baby of appellant. Circumstances of being abandoned and spotted by independent witness clearly shows that appellant is responsible for the death. There was no explanation from her assigning any reason for the death of her own child and reason for abandoning the dead child. Consequently, there is evidence against appellant for being responsible for death of her child.

11. Learned trial court has correctly appreciated the available evidence. The conclusion drawn and the view taken by learned trial Judge seems to be the possible view that could emerge with such quality of evidence on record. There is no illegality or perversity in the finding arrived at by the learned trial court. Accordingly, I proceed to pass the following order :-

ORDER

The Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)