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

CRIMINAL APPEAL NO.367 OF 2002

Thaganabai w/o Bhagwan Ghode,
Age: 55 years, Occu: labour,
R/o Goshegaon, Tq. Bhokardan,
District Jalna

....APPELLANT

VERSUS

1. State of Maharashtra
2. The Superintendent of Police,
Jalna, Dist. Jalna

....RESPONDENTS

.....
Mr Gajendra D. Jain, Advocate (appointed) for Appellant
Ms A. S. Mantri, APP for Respondents/State

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 17 NOVEMBER 2025

PRONOUNCED ON : 17 DECEMBER 2025

JUDGMENT :-

1. By this appeal, appellant/accused prays for quashing and setting aside the judgment and order of conviction and sentence dated 17/06/2002, passed by the learned IIIrd Additional Sessions Judge, Jalna, Dist. Jalna in Sessions Case No.134/1996, convicting her for the offence punishable under Sections 318 of the Indian Penal Code (for shot 'IPC').

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2. The prosecution case in brief is as under :-

On 19/04/1995, PW-8/informant, namely, Munja Madhavrao Muley, Police Sub-Inspector, Police Station, Hasnabad, Tq. Bhokardan, Dist. Jalna, lodged the report. As per the said report, he stated that, on the basis of certain secret information received on 13/04/1995, he came to know that the daughter-in-law of Mithu Jayram Ghode (accused No.1), namely, Thaganabai Bhagwan Ghode (present appellant) resident of Goshegaon had given a birth to a child out of illicit relationship and the said child has been killed by accused Mithu Ghode. Accordingly, he called the Police Patil of Goshegaon, namely, Keshav Yadavrao Ghode for inquiry, who also informed that such talks are going on in the village. Accordingly, inquiry came to be conducted and it is found that, on 02/04/1995 at 2.00 p.m., appellant Thaganabai was having some pains in her stomach. Therefore, her father-in-law i.e. Mithu and PW-3/Prakash Sadashiv Mohite took her to the Civil Hospital, Hasnabad in bullock-cart. One Baburao Mithu Ghode/PW-2/son of Mithu had also followed them. Thereafter, after examining her, doctor asked them to get her admitted in the hospital. However, accused refused to get her admitted. Thereafter, accused Mithu took her in bullock-cart towards Talegaon-Dabhadi. While

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proceeding towards Talegaon and reached near Javkheda, appellant alleged to have delivered birth to one child near Ganesh Temple at around 6:30 to 7.00 p.m. However, accused Mithu Ghode had thrown the said child on road and proceeded towards Dabhadi. Another person accompanying with them, namely, Baburao Ghode had prevented him from behaving so. At that time, one Gopalsing Hirsing came there through Jeep and alongwith whom there were other two persons. They tried to give understanding to accused Mithu Ghode, however, accused Mithu did not listen to them and when they also left from the spot, Mithu alleged to have killed the infant by throttling his neck under his foot heel and took body of said child towards Hasnabad. Accordingly, PW-2/Babu Ghode came to Hasnabad Police Station and informed the Head Constable Haridas Laxman Nikam (accused No.3). However, Nikam took amount from them to asked them to dispose of the dead body of the said child. Thereafter, they took the child towards Hattinala of Gosegaon-Hasnabad road and thrown away the said corpse in the bushes. Accordingly, informant lodged report and a crime bearing C.R.No.I-29/1995 came to be registered against accused persons for the offences punishable under Section 302, 201 read with Section 34 of the Indian Penal Code.

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3. After registration of crime, investigation took place. In order to bring home guilt against accused, the prosecution had examined in all twelve witnesses. PW-1/Keshav Yadavrao Ghode, Police Patil, Goshegaon was examined at Exh.38; PW-2/Baburao Mithu Ghode, eye witness No.1 was examined at Exh.40; PW-3/Prakash Sadashiv Mohite, eye witness No.2, who later became hostile witness was examined at Exh.41; PW-4/Gautam Shamrao Kala, witness to discovery panchnama who later became hostile was examined at Exh.42; PW-5/Shaiikh Mehmood Shaiikh Samad, witness to spot panchnama at hospital was examined at Exh.43; PW-6/Shakilkhan Masoodkhan, witness to discovery panchnama who also later became hostile was examined at Exh.46; PW-7/Moahn Anna Hivarkar, Gold Smith was examined at Exh.48; PW-8/informant Munja Muley, Police Sub-Inspector was examined at Exh.53; PW-9/Abdul Aziz Abdul Kadar was panch to discovery panchhnama, who later became hostile was examined at Exh.59; PW-10/Dr. Dipti Dilip Vaidya, Medical Officer, Thane, who was examined at Exh.63; PW-11/Trimbak Raoji Dabhade, panch to spot panchnama, who later became hostile was examined at Exh.65 and PW-12/Sitaram Harishchandra Pawar, Police Inspector, Basmat, Dist. Hingoli was examined at Exh.69. Statements of material witnesses including two

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eye witnesses PW-2/Baburao Ghode and PW-3/Prakash Mohite were recorded. All the three accused including Head Constable Nikam were arrested. The Investigating Officer took permission of appointing authority for prosecuting accused No.3/Nikam. Thereafter, charge-sheet came to be filed against all three accused on 15/06/1996 in the Court of Judicial Magistrate First Class, Bhokardan, who made over the said case to the learned Additional Sessions Judge, Jalna, who framed charge on 18/07/2000 at Exh.25 under Sections 302 read with Section 34 of the IPC against all the accused and under Section 213 of IPC against accused No.3 at Exh.25. All accused pleaded not guilty and were came to be tried.

4. After recording the evidence and hearing learned Advocates for the respective sides, the learned Additional Sessions Judge, Jalna, vide his order dated 17/06/2002 in Sessions Case No.134/1996 acquitted accused Nos.1/Mithu Jayram Ghode i.e. father-in-law of present appellant and accused No.3 Haridas Nikam, Police Head Constable. However, vide the same impugned judgment and order, the learned Additional Sessions Judge convicted present appellant for the offence punishable under Section 318 of the Indian Penal Code and sentenced her to suffer one year rigorous imprisonment. Being aggrieved by the said impugned judgment and

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order of conviction, appellant has approached this Court in the present appeal praying for quashing and setting aside the same.

5. Heard learned Advocate Mr Jain for appellant and learned APP Ms Mantri for respondents/State

6. Learned Advocate for the appellant submits that the impugned judgment and order is illegal and conviction of present appellant is based on presumptions as the learned Sessions Judge has failed to appreciate evidence on record in its proper perspective. He further submits that the learned Sessions Judge only relied on evidence of Medical Officer that the appellant must have given birth to a child within six weeks whereas that evidence was only on the basis of symptoms, and thus, her evidence is of no value since resemblances will not prove a factum which can be differ from person to person. He also submits that the dead body of child was not found and also nothing was found at the place on which the prosecution had alleged that the said child was thrown and thus, only presumptions cannot prove the guilt of a person beyond reasonable doubt. He further submits that evidence on record does not warrant conviction of appellant and she is also entitled to be acquitted like accused Nos.1 and 3. He also submits that present appellant was alleged to be

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accompanied with accused No.1/Mithu who alleged to have killed the child by pressing neck with his heel, however, learned Additional Sessions Judge yet acquitted accused No.1 for want of evidence and therefore, present appellant is also entitled to be acquitted and her conviction is not warranted. With all these submissions, learned Advocate for the appellant submits that the prosecution has failed to prove the guilt against the appellant beyond reasonable doubt, and thus, prays for allowing of the present appeal.

7. *Per contra*, learned APP Ms Mantri appearing for the respondents/State has strenuously supported the impugned judgment and order passed by learned Additional Sessions Judge. She submits that there is material evidence of eye witnesses. PW-2/Baburao Ghode deposed against present appellant who is his deceased brother's wife. She then submits that doctor had rightly opined that appellant had delivered a child about more than two weeks back but less than six weeks and thus there is no reason to disbelieve her evidence on the point of delivery of a child. According to her, learned Sessions Judge, after analyzing evidence brought on record in proper perspective, has rightly delivered the impugned judgment and order and has rightly convicted the appellant as appellant has committed offence of secretly

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disposing the dead body of her child with intention to conceal the birth of child. Thus, she submits that the prosecution has established its case beyond all reasonable doubts and appellant has failed to prove her defence and thus, there is no scope of interference in the impugned judgment. She, therefore, prays for dismissal of the present appeal.

8. I have heard learned advocates for the parties and have gone through the details of the prosecution case as well as perused record and proceedings minutely. Learned Sessions Court has convicted the appellant for offences punishable under Section 318 of the IPC which reads thus :-

“318. Concealment of birth by secret disposal of dead body.—

Whoever, by secretly burying or otherwise disposing of the death body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. Perusal of the aforesaid section discloses that same is intended to prevent infanticide. It is directed against concealing of birth of child secretly burying or disposal of his body. Thus, the ingredients of aforesaid offence firstly states requirement of secretly burying or otherwise disposal of body of child. Secondly, it is immaterial as to whether such child is died before or after or during its

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birth. Thirdly, the intention to conceal the birth of such child by such secret burying or disposal of child. The complete reading of aforesaid provision would reveal firstly that accused can be convicted if he/she is involved in secret burying or otherwise disposing of dead body of the child. Secondly, there was intention to conceal such birth by secret burying or disposal.

10. In the present case, the prosecution has examined in all 12 witnesses. PW-2 /Baburao Mithu Ghode was examined at Exhibit 40, being eye witness. He had specifically stated that his father Mithu (accused No.1) thrown the child on road and refused to take child into bullock-cart. On the said account, there was verbal exchange between of this witness with his father Mithu (accused No.1). He also stated that his father accused No.1 got down from bullock-cart and pressed his foot on the neck of the child while it was lying on the road. The child had then died. He further stated that accused No.1 thereafter gave that body of child to Thaganabai i.e. present appellant. The said witness, in his cross-examination stated that there were not talking terms between him and his father since partition amongst his brothers took place in respect of ancestral property. Though he was very much present alongwith accused persons, he had not reported to police and his statement was recorded by police after 7-8 days after incident.

Thereafter, he had denied that Thaganabai had delivered a still born child and also denied that villagers were discussing that child was born out of illicit relationship between him appellant Thaganabai. He further denied that, since he apprehended arrest, he concocted story against accused No.1. The another eye witness who was examined by prosecution, namely, Prakash Mohite/PW-3 had turned hostile. With these direct evidences, the prosecution sought to prove the charges against present accused. What is most relevant in this matter is that body of the child had never been found or seized by the prosecution. There is no evidence of burying secretly or disposing of dead body of the child. In absence of discovery of dead body of the child, the prosecution sought to prove its case against accused persons for the offence punishable under Section 318 of the IPC.

11. Learned Sessions Court, since the prosecution failed to discover the dead body of a child, acquitted accused Nos.1 and 3 from the charges. However, on the basis of same evidence, learned Sessions Court held the appellant guilty under Section 318 of the Indian Penal Code and sentenced her to suffer one year rigorous imprisonment.

12. In this entire case of prosecution, the aspect of guilty mind of the appellant is nowhere established. It is nowhere brought on

record that the appellant was having an intent for committing such crime. In this regard, a well-known maxim, namely “*Actus non facit reum nisi mens rea*” is relevant one. The meaning of said maxim is, an act itself does not make person guilty unless his intentions were so. It is thus, absolutely clear that, in order to prove the crime against accused, the prosecution is required to bring before this Court the guilt or evil intent of the accused persons at the time of committing such crime, because unless and until such evil intent is proved, any wrongful act committed by him, cannot be called as crime. If the evidence of the witness is perused, nobody has pointed out any such intention on the part of present appellant to conceal the birth or secret burying or disposal of dead body. If the evidence of the witnesses are minutely scrutinized, it would reveal that the present appellant at the relevant time was in the process of delivering a child. Whatever the actions and events took place between accused and the witnesses, however, in all that, the involvement of present appellant is totally missing. Naturally, even if it is assumed that the appellant had delivered any child she would have been in semi-conscious state, and therefore, her involvement as regards concealing the birth or disposing the body of newly born child, is not clear on the basis of evidence brought by the prosecution on record.

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13. Apart from above, PW-3/Prakash Sadashiv Mohite, eye witness No.2 examined at Exh.41; PW-4/Gautam Shamrao Kala, witness to discovery panchnama, examined at Exh.42; PW-5/Shaiikh Mehmood Shaikh Samad, witness to spot panchnama at hospital examined at Exh.43; PW-6/Shakilkhan Masoodkhan, witness to discovery panchnama examined at Exh.46 and PW-9/Abdul Aziz Abdul Kadar panch to discovery panchhnama, examined at Exh.59 all were later became hostile and their evidence is of no helpful to the prosecution. It is also required to be noted that PW-2/Baburao Ghode and PW-3/Prakash Mohite were also arrested initially by the police on suspicion.

14. Learned Sessions Court, on the very same evidence, had acquitted accused Nos.1 Mithu, father-in-law of appellant and accused No.3 Police Head Constable Haridas Nikam. The said two accused persons came to be acquitted since the body of the child could not be discovered by the prosecution. If the body could not be discovered, whether it was concealed or buried is also not established. Now, the aspect of delivering the child is concerned, the learned Sessions Court relied on the evidence of Medical Officer PW10/ Dr. Dipti Vaidya, whose evidence was recorded at Exhibit No.63. The said witness had

stated that, at the relevant time she was working at Civil Hospital, Jalna and on 21/04/1995 at 7.00 p.m., the appellant was brought by the police to Civil Hospital and she had examined the appellant and opined that patient had delivered a child more than two week but within six weeks and she had issued certificate which is at Exhibit 64. Though such evidence is brought by the prosecution on record, however, there was no cross-examination of PW-10 /Dr. Vaidya. For the purpose of attracting offence under Section 318 of the Indian Penal Code, the prosecution is required to prove that the accused has concealed the birth or secrete disposing of dead body. As stated earlier, since the prosecution could not establish through its evidence as regards birth or secrete disposal or burying the body, it is very difficult to base conviction under Section 318 of the Indian Penal Code to the appellant.

15. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the ingredients of offences charged against appellant beyond reasonable doubt. Consequently, **this Criminal Appeal is allowed** and the judgment and order of conviction and sentence dated 17/06/2002, passed by the learned Additional Sessions Judge, Jalna, Dist. Jalna in Special Case No.134/1996, is quashed and set aside. The appellant/accused is

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acquitted of the said offence. The record and proceedings be sent back to the concerned Court.

16. Fees of learned Advocate appointed to represent appellant is to be paid through the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[SUSHIL M. GHODESWAR, J.]

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