

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

**CRIMINAL APPEAL NO. 840 OF 2019
WITH
INTERIM APPLICATION NO. 1945 OF 2025
IN
CRIMINAL APPEAL NO. 840 OF 2019**

Mr. Vilas Bhagvan Yelpale
Age – 42 years, occ. Farmer,
R/at – Ajanale, Taluka Sangola,
Dist – Solapur.
(Presently at Central Prison Yerwada,
Solapur)

.... Appellant

v/s.

The State of Maharashtra
through Sangola Police Station, Sangola,
District – Solapur

.... Respondent

Mr. Rahul Khot a/w. Mr. Dattatray Yadav and Mr. Sumer Daithankar
for the Appellant.
Ms. Geeta P. Mulekar, APP for the Respondent – State.

**CORAM : SARANG V. KOTWAL AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 09th JULY, 2025.
PRONOUNCED ON : 16th JULY, 2025.**

JUDGMENT : (Per : SHYAM C. CHANDAK, J.) :-

1) This Appeal arises out of a Sessions Case No.08/2012 relating to the murder of a child who lived barely for a month after his birth. Regrettably, the child was son of the Appellant – the Original

Accused No.1. The Appellant's mother and cousin aunt were the Original Accused Nos.2 to 3. All three accused were prosecuted for the offences punishable under Sections 302, 109, 506 read with 34 of the Indian Penal Code, 1860 in the Court of the learned Additional Sessions Judge, *Pandharpur*.

By the impugned Judgment and Order dated 10/05/2019 passed by the said Court in the said case, the Appellant was convicted for the offence of Section 302 I.P.C. and sentenced to suffer life imprisonment and to pay a fine of Rs.5000/- in default to suffer one year additional imprisonment, with the benefit of the set-off under Section 428 of the Code of Criminal Procedure ("**Cr.P.C.**"). However, the trial Court acquitted the Accused Nos.2 and 3.

2) Heard Mr. Rahul Khot, the learned counsel for the Appellant and Ms. Geeta Mulekar, learned APP for Respondent-State. Perused the record.

3) The prosecution story giving rise to this Appeal is that, the first informant Mrs. Pushpa Yelpale (PW-1) is the wife of the Appellant. They were married 08 years prior to the incident. After the marriage, PW-1 jointly resided with the Appellant and his both parents at village – *Ajanale*, Taluka-*Sangola*, District-Solapur. But after five-six months, both the in-laws of PW-1 started residing separately in the

adjacent room, on account of domestic reasons. Thereafter, PW-1 was blessed with a male child – *Mayur*, aged 06 years at the time of the incident. Since two years prior to the incident, the Appellant had illicit relationship with Accused No.3, who was residing nearby. When PW-1 knew about that relationship, she opposed the Appellant. In response, the Appellant and Accused No.2 started harassing PW-1, at the instigation of Accused No.3. PW-1 informed her plight to her parents. Her parents came to *Ajanale* and gave an understanding to the Appellant and Accused No.2. Thereafter, PW-1 gave birth to a female child namely *Pranjal*, who was aged 1½ years at the time of the incident. Meanwhile, PW-1 conceived a third child from the Appellant. When the first five months of the pregnancy were completed, PW-1 revealed about her pregnancy to the Appellant and Accused No.2. But, the two did not want the third child and therefore, they suggested PW-1 for abortion and also threatened her that they would kill the child, if born. Yet, PW-1 did not listen and she went to her parents' house for her delivery. There, she delivered a male child (“**the baby**”). After the delivery, PW-1 stayed with her parents for a period of one month. Then PW-1 returned to the Appellant's house on 20/10/2011. On seeing the baby, the Appellant and Accused No.2 questioned PW-1 as to why she gave birth to the baby, when she was told to abort him.

Thereafter, the Appellant and Accused No.2 harassed PW-1 more at the instigation of Accused No.3.

On 27/10/2011, at about 08:00 a.m., the Appellant went out of the village, for work. In the night, PW-1 had her meal and slept. At about 12:00 in the midnight, the Appellant returned home and instructed PW-1 to cover the baby with a quilt (made of saree). So, PW-1 covered the baby. The Appellant slept on a cot outside, as their room had no door. At about 01:30 hours of 28/10/2011, PW-1 fed the baby milk and laid him down in the crib, and she also slept in the same room. At about 05:30 a.m., suddenly PW-1 woke up. At that time PW-1 found that the Appellant was not present on the cot and the baby was missing from the cradle. Therefore, PW-1 started crying. Hearing her shouts, the Appellant and Accused No.2 came there from the room of PW-1's father-in-law. At this juncture, the Appellant and Accused No.2 were carrying the same quilt which PW-1 had spread over the baby. Therefore, PW-1 questioned them about the quilt and the baby. The Appellant and Accused No.2 replied that a wolf had taken away the baby and told her not to cry and keep quiet. They also gave PW-1 an understanding to let go of what had happened and that, they would search for the baby in the morning. After the sunrise, PW-1, Appellant and relatives searched for the baby. But, the baby

was not found. The Appellant informed the incident to the parents of PW-1.

On 29/10/2011, in the morning, PW-1's cousin brother-in-law Laxman Yelpale (PW-4) came and informed PW-1, Appellant and Accused No.2 that the baby was lying in a Well in the field of Maruti Patil. Immediately, they went there. The baby was floating in the Well water. PW-1 identified the baby. Then the Appellant and Accused No.2 brought PW-1 home, forcibly. Meanwhile, PW-4 went to the Police Station and filed a Report (Exh.83) of the baby's death. The Police registered that Report at A.D.No.105/2011 under Section 174 of Cr.PC. and arrived at the Well. Therefore, the Appellant and Accused No.2 took PW-1 to the Well. The Police removed the baby from the Well. Then, the Police recorded the Inquest Panchanama (Exh.103), Spot Panchnama (Exh.79) and sent the baby's body for post-mortem examination.

Thereafter, PW-1 questioned the Appellant and Accused No.2 as to where and how they got the said quilt; who threw the baby in the Well. But, the Appellant and Accused No.2 said to PW-1 as *"why did you give birth to the third child? Why did you not abort?" Therefore, we both threw the baby in the well on 28/10/2011, after 01:30 hours, when you were sleeping"*. Further, the Appellant and

Accused No.2 threatened PW-1 not to disclose the said fact to anyone otherwise they would kill her. The health of PW-1 was adversely affected due to the incident and she had become weak. Therefore, she took medicines. On 01/11/2011, PW-1 went to the Police Station alongwith her parents and brother and filed the Report (Exh.64). Therein, PW-1 narrated the incident as above. The Police registered that Report at F.I.R. No.299/2011 against all the accused.

PW-8-Ganpati Mangle, then Assistant Police Inspector (API), carried out the investigation. He arrested the accused persons on 03/11/2011. He recorded the Spot Panchanama (Exh.97) at the room of PW-1 on 04/11/2011. During Police custody, on 05/11/2011, the Appellant made a voluntary disclosure (Exh.98) that the quilt was torn and he would recover the quilt by showing the place where he concealed the same. Then, the Appellant led PW-8 and the panchas to village *Ajanale* and there, he took them to a field and discovered the quilt from a pomegranate tree. PW-8 seized the same. On completion of the investigation, PW-8 submitted the charge-sheet.

4) During the trial, the prosecution has examined following eight witnesses and exhibited several documents as referred above :- PW-1, Pushpa Vilas Yelpale, First Informant. PW-2, Ramchandra Ananda Vitekar, father of PW-1. PW-3, Arun Shankar Yelpale, Spot

Panch near the Well. PW-4, Laxman Pandurand Yelpale, cousin brother-in-law of PW-1, who filed the initial Report (Exh.83). PW-5, Balasaheb Mahadeo Kolawale, the Spot Panch at the house of PW-1. PW-6 Arvind Vaant Yelpale and PW-7 Mahadeo Kaka Karde, both Panchas to the Disclosure Statement and discovery of the quilt. PW-8, Ganpati Bhikaji Mangle, Investigation Officer.

PW-5, PW-6 and PW-7 did not support the prosecution's case. We have therefore jettisoned their evidence.

5) On closure of the prosecution evidence the trial Court questioned the accused persons under Section 313 Cr.P.C. about the incriminating evidence and circumstances. The accused denied all of them and pleaded that they have been falsely implicated in the case. It was their specific defence that the death of the baby was accidental.

6) Upon appreciation of the evidence presented by the prosecution, the trial Court convicted and sentenced the Appellant for commission of the offence punishable under Section 302 of the I.P.C. Hence, this Appeal.

7) The Appellant has not disputed that, after the delivery, PW-1 had come back to him alongwith the baby. That, the baby was found in the Well on 29/10/2011 and he was dead.

8) During the trial, the post-mortem report was admitted by the defence. The post-mortem report mentions that there were no ante-mortem injuries. But, post-mortem aquatic animals bite marks noted on both the ears, around the mouth, nose, Lt eye, Rt forearm, Rt elbow, Lt hand, scrotum, penis etc. The cause of the death of the baby was asphyxia due to drowning. The baby was just one month old. There was no reason for the sudden disappearance of the baby and him falling in the Well. The post-mortem report does not give sign of any bite mark by a wild animal. This has ruled out the possibility of the baby being taken away by a wolf. It is, therefore, safe to conclude that the baby was deliberately thrown in the Well, to cause his death. Thus, the death of the baby was that of culpable homicide amounting to murder.

9) The prosecution depended upon circumstantial evidence to prove its case. According to the prosecution, the chain of following circumstances has been proved which was sufficient to convict and sentence the Appellant under Section 302 of I.P.C. :-

- (i) Illicit relation between Appellant and Accused No.3.
- (ii) PW-1 opposed the said relationship, therefore, she was harassed by the Appellant and Accused No.2.
- (iii) Conception of the third child by PW-1, which the Appellant and Accused No.2 did not want. Therefore,

they suggested PW-1 to abort the baby.

- (iv) PW-1 went to her parents' house and delivered the baby.
- (v) On 20/10/2011, PW-1 alongwith the baby returned to the Appellant's house.
- (vi) On 28/10/2011, in the night, PW-1 alongwith the baby slept in the room and the Appellant slept outside, on a cot.
- (vii) At about 5.30 a.m., PW-1 found that the Appellant was not present on the cot and the baby was also missing.
- (viii) Therefore, PW-1 cried. Hearing her cry, immediately, the Appellant and Accused No.2 came there, from outside.
- (ix) Appellant and Accused No.2 falsely stated to PW-1 that the baby was taken away by a wolf.
- (x) At that time the Appellant was having the said quilt which PW-1 had spread on the baby.
- (xi) The Appellant took a false and contradictory defence that the death of the baby was accidental.
- (xii) The confession by the Appellant and Accused No.2 that they threw the baby in the Well as they did not want him.

10) PW-1 deposed that, her marriage was solemnized with the Appellant 8 years prior to the incident. First, she gave birth to a male child *Mayur* after one year of the marriage. At the time of the incident, she was jointly residing with the Appellant at *Ajanale* and her both in-laws were residing separately, near her house. PW-1 deposed that the Appellant was ill-treating her. The Appellant had illicit relations with Accused No.3. PW-1 deposed that after she became pregnant for the

third time and carrying it for five months, the Appellant and Accused No.2 were telling her at the instance of Accused No.3, that she should not have the third child and she should abort the pregnancy. PW-1 deposed that, the Appellant and Accused No.2 were also threatening her that if she gives birth to that child, they would kill it. However, she did not abort the pregnancy and instead, she went to her parental house at Mumbai and delivered the baby. After the delivery, she stayed in Mumbai for 20 days and then she returned to the Appellant, accompanied with her mother. At that time, the Appellant asked her as why did she bring the baby and that, she should have handed over the baby to someone else.

PW-1 deposed that in the night of the incident, she had put the baby to sleep in a cradle and she slept inside the room. The Appellant returned home at 00.30 hours. At that time, the Appellant woke her up and told to make the baby sleep properly. Then, the Appellant slept on a cot, outside the room. It was 01:30 hours. The said room had no door.

PW-1 deposed that she woke up at about 5.30 a.m. and went outside the room to help her daughter to answer nature's call. When she came back, she noticed that neither the Appellant was on the cot, nor the baby was in the cradle. Therefore, she cried. Hearing

her cry, the Appellant and Accused No.2 came there alongwith the quilt, from the room of Accused No.2. PW-1 deposed that it was the same quilt made of a saree, which she had spread over the baby when she last put him to sleep in the cradle. PW-1 deposed that she asked them about the baby and as to how the quilt was with them. The Appellant and Accused No.2 told her that the baby was taken away by a wolf and that they would search for the baby in the morning. PW-1 deposed that, in the morning they searched for the baby. But the baby was not found. She informed about the incident to her parents.

PW-1 deposed that on 29/10/2011, PW-4 came to her and informed that the baby was lying in the Well of Mr. Maruti Patil. PW-1 deposed that she went to the Well. There was a pink T-shirt on the body of the baby. She identified the baby from the T-shirt as she herself had worn him the same. PW-1 deposed that, thereafter PW-4 filed the Report (Exh.83). PW-1 deposed that then she inquired with the Appellant and Accused No.2. They told her that since she gave birth to the baby though they did not want the third child and therefore, they threw the baby in the Well. PW-1 deposed that at that time, the Appellant and Accused No.2 had threatened her that if she disclosed that fact to anyone, they would kill her. Therefore, she maintained silence about the murder. PW-1 deposed that after the

post-mortem of the baby, her parents and relatives came to her at *Ajanale*. Her mental state was very disturbed. However, she recovered after 2-3 days with medicines. Then, she filed the Report (Exh.64). PW-1 identified the quilt (Art.A) discovered by the Appellant.

11) In her cross-examination, PW-1 admitted that after the birth of her first child, she knew about the illicit relations between the Appellant and Accused No.3. However, till this incident, she did not lodge a report with the Police against the Appellant. PW-1 admitted that prior to the incident her parents and brother were asking about her well-being. She denied that at that time she told them that everything was fine in her life. She admitted that she delivered all her three children at her parental house. PW-1 admitted that she had informed her brother and parents that the Appellant had told her not have the third child and she should abort her pregnancy and that, if she delivered the child, they would kill it. She admitted that hearing the same, her parents felt serious. PW-1 admitted that neither they called a meeting of respected persons in that regard nor they filed a complaint to the Police about the said threat, including herself. She admitted that having a son was a blessing. But, she denied that after the delivery, the Appellant alongwith one Babu Vitekar had come to Mumbai to see the baby. She admitted that she had told her parents

that they should not send her back to her matrimonial house as there was a danger to the life of the baby. She admitted that the Appellant and others were searching for the baby. She admitted that she was in the village *Ajanale* since 27/10/2011 to 01/11/2011. Her parents had come to her village on 28/10/2011. They were with her till lodging the Report (Exh.64).

PW-1 denied that the Appellant was out of the village of *Ajanale* from 27/10/2011 to 29/10/2011. She admitted that initially, the Police had inquired with her about the incident near the Well and then in the hospital. She denied that, at that time, she told the Police that the death of the baby was accidental. PW-1 admitted that she had produced before the Police the case papers and prescriptions of her illness.

12) PW-2 Ramchandra Vitekar deposed that after the marriage of PW-1, she and the Appellant were jointly residing with the latter's parents. PW-2 deposed that after the birth of the first child of PW-1, the Appellant developed illicit relations with Accused No.3. PW-2 deposed that, therefore, he gave an understanding to the Appellant. Thereafter, PW-1 delivered the daughter. PW-2 deposed that at that time also, the Appellant was maintaining the said illicit relations. PW-2 deposed that the Appellant was harassing PW-1 due to his illicit

relations. PW-2 deposed that when PW-1 again became pregnant, the Appellant told her to abort her pregnancy as the Appellant did not want the third child. PW-2 deposed that the Appellant threatened PW-1 that if she delivered the third child, he will kill it. PW-2 deposed that, therefore, he took PW-1 to Mumbai when she was seven months pregnant. PW-2 deposed that after the delivery, he brought PW-1 alongwith the baby to her in-laws on 20/10/2011 and returned. PW-2 deposed that on 28/10/2011, at about 11:00 a.m., he received a phone call from the Appellant that a wolf had taken away the baby. Therefore, he came to PW-1 at *Ajanale* but no one was present in the house. Then he saw a crowd near the said Well. He went there and saw the baby, inside the Well. PW-2 deposed that PW-4 informed the said incident to the Police. The Police came there and took out the baby, who was wearing a pink T-shirt. PW-2 deposed after the burial, PW-1 disclosed him the entire incident that had occurred in the relevant night. Thereafter, they went to the Police Station and PW-1 lodged the Report (Exh.64).

In the cross-examination, PW-2 admitted that after each delivery, PW-1 went to reside with the Appellant. He admitted that PW-1 cohabited with the Appellant till she delivered the baby. PW-2 admitted that he felt disheartened when he knew about the illicit

relations between the Appellant and Accused No.3. He admitted that he felt depressed when PW-1 informed him on the phone that the Appellant does not want the third child. However, he did not file a complaint in that regard. PW-2 admitted that PW-1 or his relatives did not suggest him not to send PW-1 and her new born to the Appellant, as there was a threat to their life. PW-2 admitted that he was with PW-1 till the statement of PW-1 was recorded. PW-2 admitted that between 28/10/2011 and 30/10/2011 there was no discussion between him and PW-1 about filing of the Report against the accused. PW-2 volunteered that, during that period, PW-1 was continuously crying and her mental state was not stable, therefore, there was no discussion. PW-2 admitted that no treatment was taken for her said condition. PW-2 admitted that PW-1 had filed a case for maintenance, against the Appellant. PW-2 denied that he deposed falsely to support PW-1.

13) PW-4 Laxman Yelpale deposed that, on 28/10/2011 in the morning, PW-1 and the Appellant met him. PW-1 informed him that the baby was missing. PW-4 deposed that the baby was found inside the Well. On 29/10/2011, he filed the Report (Exh.83) thereof.

In the cross-examination, PW-4 admitted that, the houses of Maruti Patil, Raju Patil, Arun Patil and Kaka Karade were situated

near the Well. He admitted that he was searching for the baby alongwith the Appellant. He admitted that the Appellant used to do labour work of carrying pomegranate boxes. He admitted that, on 27/10/2011, the Appellant met him and told that he has to go out of the village for some work.

14) PW-3 Arun Yelpale deposed that on 29/10/2011 the Police called him to act as a panch near the said Well. The Well was about 30 feet deep with 2 to 4 feet of water. PW-3 deposed that the baby was lying in the Well. There, Police drew the Spot Panchnama (Exh.79) in his presence.

In the cross-examination, PW-3 admitted that the Police did not summon him in writing. The distance between his house and the Well was 1 km. There were residential houses near the Well. He denied that he deposed falsely that the Panchnama (Exh.79) was prepared in his presence.

15) PW-8 Ganpati Mangale- the Investigating Officer testified that pursuant to the Report (Exh.83) filed by PW-4, Police Head Constable Mr. Patil, recorded the Spot Panchnama (Exh.79) and Inquest Panchnama (Exh.103). Further investigation was marked to him. PW-8 deposed that the baby died due to drowning. Pursuant to the Report (Exh.64), he recorded the Spot Panchnama (Exh.97) at the

house of PW-1. PW-8 deposed that on 05/11/2011, while in Police custody, the Appellant gave a voluntary disclosure (Exh.98) that he would produce the quilt (Article-A) concealed by him, which was wrapped around the baby. He recorded that disclosure in the presence of the panchas. PW-8 deposed that thereafter, the Appellant led the Police and the panchas to the agricultural land in Block No.549/1/B and discovered the quilt (Article-A) from a pomegranate tree. He seized that quilt and recorded the Discovery Panchanama (Exh.99) in the presence of the panchas. PW-8 identified the quilt. PW-8 deposed that he recorded the statements of witnesses. He effected the log book entry (Exh.100) in respect of the visit to the spot. On completion of investigation, he submitted the charge-sheet.

In the cross-examination, PW-8 admitted that initially he felt that this was a case of an accident. He personally did not record the statements of PW-1 and her parents between 28/10/2011 to 30/10/2011. He does not know whether PW-1 took any treatment from a doctor, during the said period. He admitted that no document transpired in his investigation in that regard. He denied that he deposed false that on 05/11/2011, the Appellant gave the Disclosure Statement (Exh.98), discovered the quilt and he recorded the Discovery Panchnama (Exh.99). He denied that he submitted a false

charge-sheet against the accused.

16) Mr. Khot, learned counsel for the Appellant made the following submissions :-

(a) That, the evidence of PW-1 and PW-2 indicate that since the marriage, the Appellant nicely treated PW-1. After each delivery, PW-1 and her new born were sent to the Appellant. Therefore, PW-1 did not file any complaint against the Appellant or his parents.

(b) That, the evidence as to the alleged illicit relationship is vague as neither the witnesses described that relationship nor stated any instance thereof. Said evidence is also inconsistent.

(c) That, despite PW-1 was threatened by the Appellant and Accused No.2 that they would kill the baby, if born, PW-1 or PW-2 did not file any Police complaint nor had any meeting of their relatives. As such, it is false that the Appellant had threatened, as above. In view thereof, no motive was ascribable to the Appellant to commit the murder.

(d) That, the evidence of PW-1 and PW-4 clearly indicate that, since the morning of 27/10/2011, the Appellant was out of the village for his work. There were three accused in the case and PW-1 had grudge against all of them. The room had no door. Therefore, the possibility of committing the offence by the other accused cannot be ruled out.

(e) That, the extra-judicial confession deposed to by PW-1 is in a chorus form, meaning, it was not specifically attributed to the Appellant or Accused No.2. As such, the extra-judicial confession is neither proved and nor admissible.

(f) That the discovery of the cloth at the instance of the Appellant is not proved because both the panchas to the alleged Disclosure Statement and discovery, turned hostile.

(g) That, PW-1 has not complained about the threatening to kill her, when the Police were present near the Well and in the hospital. The parents of PW-1 were

with her since 28/10/2011. However, she did not disclose them the incident.

(h) That, there is no documentary evidence that the mental condition of PW-1 was disturbed due to the incident and she took the medical treatment. On the contrary, the evidence of PW-2 indicates that PW-1 had not taken such treatment. However, the Report (Exh.64) was not promptly lodged. No plausible explanation for the delayed F.I.R. has been forthcoming, which creates a doubt.

Thus, according to Mr. Khot, the prosecution has failed to prove the chain of the evidence, leading to an unerring conclusion that except the Appellant no other person had murdered the baby. He, therefore, urged to acquit the Appellant giving him the benefit of said doubt.

17) Ms. Mulekar, the learned APP, on the other hand, submitted that there is consistent evidence by PW-1 and PW-2 that the Appellant had illicit relationship with Accused No.3. Therefore, PW-1 was harassed by the Appellant. PW-1 has categorically deposed that, soon after revelation of the third pregnancy, the Appellant and

Accused No.2 questioned PW-1 for carrying the pregnancy and forced her to abort, which she did not. Therefore, the Appellant and Accused No.2 developed grudge against PW-1. She submitted that, after delivery of the baby, within one month, PW-1 returned to the Appellant on 20/10/2011, alongwith the baby. Thereafter, within eight days the baby was found dead in the Well. She submitted that on the night of the incident, only PW-1 and the Appellant were present at their house. Since PW-1 did not abort the baby, no question arises of PW-1 killing her own baby. She submitted that only the Appellant was aware that the baby was in the room. There is no challenge to the evidence of PW-1 that after the Appellant returned home, she slept alongwith the baby at about 01:30 a.m. and thereafter, within a short period of time, the baby was found missing. Soon thereafter, the Appellant and Accused No.2 came to the room from outside. Then, the two falsely told PW-1 that a wolf had taken away the baby, although there was no sign of such accident. Subsequently, the baby was found dead in the Well, which was situated near the room of PW-1. As such, the conclusion was inescapable that only the Appellant has committed the murder of the baby. She submitted that, the discovery of the quilt (Article-A) corroborates the testimony of PW-1. Besides that, the Appellant has confessed the crime before PW-1. Lastly, she submitted

that the Appellant's false defence of an accidental death of the baby has provided an additional link to the evidence. As such, the trial Court rightly held the Appellant guilty of the offence punishable under Section 302 of I.P.C.

18) We have carefully gone through the prosecution evidence and given our anxious consideration to the rival submissions.

19) On appraisal of the prosecution evidence, we found that, the cross-examination of the material witnesses was innocuous. PW-1 and PW-2 have specifically deposed that the Appellant was harassing PW-1. That, the Appellant had illicit relationship with Accused No.3. PW-2 deposed that, therefore, he gave an understanding to the Appellant. However, it could not bring any change in the behaviour of Appellant. PW-1 specifically stated that when she became pregnant for the third time, and the pregnancy was of five months, the Appellant and Accused No.2 were telling her not to have the third child and they should abort the pregnancy. The Appellant and Accused No.2 were also threatening PW-1 that if she gives birth to that child, they would kill it. The aforesaid evidence is supported with the Report (Exh.64).

20) The evidence of PW-1 and PW-2 clearly indicate that after delivering the baby, PW-1 alongwith the baby were brought to the Appellant's house on 20/10/2011. That, in the intervening night

of 27/10/2011 and 28/10/2011, at about 00:30 hours the Appellant returned home. At that time, he said PW-1 to make the baby sleep properly. Therefore, PW-1 spread the quilt (Article-A) over the baby and slept him in cradle. At about 01:30 hours, PW-1 and the baby were sleeping inside the room. The Appellant was sleeping on a cot, outside. This entire evidence is very natural and supported by the Report (Exh.64).

21) PW-1 has categorically deposed that the said room had no door. As such, taking away the baby was easily possible, when PW-1 was sleeping. And that exactly happened in the meanwhile, when PW-1 woke up at about 05.30 a.m. and found the baby missing. It is significant to note that, at that very juncture, the Appellant was not present on his cot and he alongwith Accused No.2 came to PW-1 from the room of Accused No.2 when PW-1 cried for the missing baby. However, the Appellant did not explain as to where he had gone in the meantime and why Accused No.2 was with him. That apart, instead of alerting the neighbouring people on seeing the wolf taking the baby away, and searching for the baby, the Appellant persuaded PW-1 not to cry and keep quiet, assuring her that they would search for the baby after the sunrise. But the sunrise was not far and was to happen in an hour or two. This was completely unnatural of the two. In fact, the

predicament of the Appellant was so self-embarrassing, that he put forward the ostensible wolf story.

22) PW-1 clearly deposed that she had spread the quilt (Article-A) over the baby. The same quilt Appellant and Accused No.2 carried, when they attended PW-1 on hearing her cry. However, the Appellant has not offered any satisfactory explanation as to how he came into possession of the quilt or where did he find it in the night without any light, if indeed, the baby was taken away by wolf.

23) Admittedly, the baby was found in the Well, and his death was homicidal, as held above. The Spot Panchanama (Exh.97) clearly recorded that the said Well was at the distance of 700 feet from the room of the couple. Only the Appellant and Accused No.2 were against the pregnancy of PW-1. Not only that, even the Appellant had threatened to kill the baby, if born. Additionally, we noticed that even after the birth of the baby, the Appellant was not ready to accept him despite he was also equally responsible for the baby's appearance in this world. The baby had disappeared from the room within 3-4 hours after PW-1 and the Appellant slept. Only Appellant was not present on the cot when the baby was found missing from the cradle. The discovery of the quilt (Article-A) at the instance of the Appellant has strongly corroborated the version of PW-1 about the incident. In the

backdrop, the conclusion is inevitable that since the Appellant did not want the third child, he only removed the baby from the cradle and threw him in the Well.

24) One more important aspect of the case is that, when the baby was removed from the Well, the falsity of the Appellant came to fore. Therefore, when PW-1 again inquired with the Appellant, he blatantly confessed to her that as she had given birth to the baby against his will, he threw the baby in the Well. This evidence of PW-1 has been strengthened by the Report (Exh.64). Further, the Appellant threatened PW-1 to kill her if she disclosed the murder to anyone. Therefore, PW-1 kept silent. But finally, she filed the Report (Exh.64) on 01/11/2011. Thus, the extra-judicial confession of the Appellant has cemented our conclusion above that the Appellant committed the murder of the baby.

25) In view of Section 106 of the Indian Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation. The learned APP rightly

submitted that since PW-1 did not abort the baby, no question arises of PW-1 killing her own baby. As such, when the Appellant was sleeping outside the room, and suddenly he disappeared from the cot, it was for the Appellant to offer an explanation as to how, all of a sudden, the baby had also gone missing around the same time. In this situation, failure of the Appellant to explain the homicidal death of his own infant and innocent child, is a strong circumstance against him that he is responsible for the commission of the crime.

26) Mr. Khot, learned counsel pointed some inconsistency in the evidence of PW-1 and PW-2 compared with her Report (Exh.64). He also invited our attention towards some omissions in the evidence of PW-1. The omissions are minimum and trifle, therefore, those are eschewed from consideration.

27) Much has been argued by Mr. Khot about the delay in filing the Report (Exh.64) and to accept the defence of the Appellant on that account. Normally, delay in setting the law into motion by lodging a Report and registration of F.I.R. is viewed by courts with suspicion because there is possibility of concoction and embellishment of the occurrence. As such, the prosecution should explain the delay, satisfactorily. The prompt lodging of the Report helps to know the nature of the incident, get the names of witnesses, who was the

perpetrator and how the crime was committed.

In the case at hand, the small delay of 2-3 days between the time of the occurrence of the incident and in registration of the F.I.R. has been well explained by PW-1 in her Report (Exh.64) and the evidence. Moreover, looking at the facts of the case, such a delay is natural as PW-1 and her two children were depending on the shoulders of the Appellant. Therefore, PW-1 needed some time to make up her mind and develop the courage to file the Report against her close one. Moreover, said delay is not sufficient to rate the prosecution story as false and to accept the defence version.

28) Mr. Khot submitted that the evidence against the acquitted Accused No.2 was of equal standard and effect. Yet, according to us, the Appellant cannot derive any benefit from the said circumstance. Because, at least, Accused No.2 was not present when PW-1 had kept the baby in the cradle nor Accused No.2 hid and discovered the quilt. Moreover, no Appeal has been preferred against the said acquittal.

29) The upshot of the aforesaid discussion is that, on careful scrutiny and re-appreciation of the evidence on record in the light of the settled principle of law, we are of the considered view that the prosecution has proved the complete chain of all the circumstances leading to the only hypothesis that, except the Appellant, no other

person has removed the baby from the cradle and committed the murder by throwing the baby in the Well. No reasonable doubt lingers with respect to the probability or conclusiveness of the circumstance relied on by the prosecution, forming a link in the chain of circumstances pointing to the guilt of the Appellant. No two views are possible from the evidence on record, one of which could favour the Appellant. As such, the conviction and sentence handed over to the Appellant is justifiable, and it need not be interfered with. As a result, the Appeal is liable to be dismissed. Appeal is accordingly dismissed.

30) With the disposal of the Appeal, the pending Application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2025.07.16
18:31:04 +0530