
(2014) 06 BOM CK 0172
In the Bombay High Court
Case No : Criminal Appeal No. 130 of 2011

Dipika Shivilal Suthar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2014) ALLMR(Cri) 3061

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : Indrayani Mandar Koparkar, Advocate for the Appellant; Alpa Javeri, APP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mridula Bhatkar, J.—The Appeal is directed against the judgment and order dated 11th January, 2011 of conviction passed by Sessions Judge of City Civil Court, Greater Bombay thereby holding the appellant/accused guilty for the offence punishable u/s 304 Part II of the Indian Penal Code and sentencing her to suffer R.I. for 7 years with fine of Rs. 500/i/d. to suffer R.I. for 10 days. The incident has taken place on 9th May, 2010 in the house of the appellant. The appellant/accused has married to one Shivilal Sutar six months prior to the incident. It was a second marriage of Shivilal Sutar. He was having one son named Kartik nearly of 2 years old from his first wife. Kartik was residing with his grandparents in Rajasthan. However, the appellant and her husband went to Rajasthan 15 days prior to the incident and brought Kartik to Mumbai to reside with them. The appellant was the stepmother of Kartik.

2. It is the case of the prosecution that the appellant used to ill-treat Kartik and beat him often. On 9th May, 2010 at around 10.30 a.m. appellant beat Kartik and so he was crying loudly. But suddenly his crying stopped as the appellant put his head in the bucket of water and killed him. Thus, Kartik died due to drowning. Thereafter she called the ladies in the neighbor and with their help she

took the body of Kartik to Rajawadi hospital at around 14.00 hours. PW-1 Vasant Halde was P.S.I. at Bhandup Police Station. He was informed telephonically that one dead child is brought to the hospital, so he went to the hospital and enquired about it. He found that Kartik died due to drowning. ADR was registered. He proceeded to the house of the appellant. Spot panchnama (Exhibit 11) was drawn between 3.30 p.m. to 4 p.m. and then inquest panchnama (Exhibit 10) was prepared. Thereafter PW-1 Halde himself gave the FIR (Exhibit 12) on the next day, as nobody was ready to come forward to give FIR. The FIR was registered at C.R. No. 173/2010 on 11th May, 2010 for the offence punishable u/s 302 of the Indian Penal Code against the appellant/accused. He investigated the matter and recorded statements of neighbors and other persons. He took photographs at the time of spot panchnama and also collected the postmortem report. After completion of the investigation, he filed charge sheet in the Court of Magistrate. The appellant/accused was prosecuted u/s 302 of the Indian Penal Code and this being triable by the Sessions Court, the case was committed to the Sessions for trial. The learned Sessions Judge framed charge u/s 302. The appellant/accused pleaded not guilty and therefore the case was put to trial. After recording the evidence, the trial concluded in conviction. Hence, this Appeal.

3. The learned counsel for the appellant/accused submitted that the appellant/accused is innocent. There is insufficient evidence to hold her guilty. The learned counsel submitted that nobody was ready to give the FIR. The father of the deceased child had no complaint against the appellant/accused. At the relevant time, the appellant had gone to terrace to dry the clothes and the boy was alone in the room. She submitted that there is no eye witness to the incident. The appellant/accused is falsely implicated in this case and only on the basis of mere suspicion. In support of her submission, the learned counsel relied on the admissions given by PW-1 Vasant Halde in the cross-examination wherein he has admitted that the appellant was the stepmother of the deceased and, therefore, police suspected that she might have committed the offence. She further pointed out that the panchas of spot panchnama were not examined by the Investigating Officer. The panchnama is faulty. In the cross-examination PW-1 Halde has admitted that there was a plastic bucket and plastic drum, however, the plastic drum was not seized at the time of spot panchnama. She submitted that a possibility of accidental death by drowning in the water cannot be overruled as the capacity of the drum was 30 litres. She further submitted that the police ought to have seized the said drum also. Under such circumstances, she argued that the appellant/accused be given the benefit of doubt and she be acquitted. She further relied on the observations made by the learned Judge in its judgment and submitted that the assessment of evidence in respect of the spot and the manner in which the incident has taken place is not proper. The learned Judge ought to have appreciated that when the child was alone in the room and there was a water in the bucket, then accident was possible. Hence, she submitted that the judgment be set aside and appellant be acquitted. Alternatively, she submitted that at the time of holding the appellant guilty, the charge was

reduced from section 302 to Section 304 Part II and she was sentenced for 7 years. She submitted that from the date of incident i.e. 9th May, 2010 the appellant is behind the bars and has completed 4 years in the prison and with remission she has completed approximately 5 years, therefore, if at all she is held guilty and if the judgment of the Sessions Court is maintained, then leniency be shown on the point of sentence and be reduced from 7 years to 5 years.

4. Learned APP argued that the judgment of the Sessions Court cannot be faulted with. It is a well reasoned order and therefore the conviction is to be maintained. Learned APP relied on the evidence of PW-1 Vasant Halde, PW-3 Ms. Divya Salvi and PW-4 Poornima Gaur. She submitted that the neighbors have deposed that the appellant was not having any love towards the deceased and she used to ill treat him. Learned APP produced photographs Exhibit 17 and 17/1 to 17/4 so also read over spot panchnama and the relevant portion of the appreciation of evidence by the learned Sessions Judge. She submitted that the appellant/accused has committed an offence of killing the child. There is sufficient evidence against her and hence conviction be maintained.

5. Read the evidence of PW-1 Vasant Halde and other witnesses. Seen postmortem report. The prosecution has proved that Kartik died due to drowning. The cause of death asphyxia due to drowning is unnatural. The short point required to be considered in this Appeal is that considering the size of bucket, level of water, age and height of the boy, whether it was possible for the boy to fall in the bucket and die due to drowning. The spot panchnama discloses that there was a bucket of 30 cms. height and the water in the bucket was of 10 cms. The photographs Exhibit 17 and 17/1 to 17/4 clearly disclose that the level of the water in the bucket was low, so it is necessary for the boy to fall in the bucket to get drowned. However, considering the height and size of the bucket and the water level in the bucket, it was impossible for the boy to fall in the bucket. At the most he could have pulled the bucket and would have fallen along with the bucket and the water would have been spilled in the room. In paragraphs 30 and 40 of the judgment the learned Sessions Judge has appreciated this evidence and has also properly construed the incident how it would happen and also overruled the possibility of accident on the basis of water level and size of the bucket. An attempt was made to create some confusion in respect of water level in the drum and bucket, however after seeing the photographs Exhibit 17 and 17/1 to 17/4, it is found that the drum was used for storing water but an opening of the drum was narrow and it was not possible for the boy to go into the drum. Therefore, the possibility of the accidental death was rightly excluded. Though there was no eye witnesses to the incident, it is not detrimental to the case of the prosecution in view of other strong incriminating circumstantial circumstances brought on record by the prosecution. The evidence of neighbours PW-3 Divya Salvi and PW-4 Poornima Gaur is on the point of relationship between the appellant and her stepson Kartik. They have specifically deposed that the appellant used to beat Kartik on small issues and on the day of

incident also he was beaten up by the appellant and he was crying. The neighbours stated that they heard him crying however, suddenly his crying stopped. Their evidence is also very material and the learned Sessions Judge has rightly accepted and believed the said evidence on the point of appellant's relationship with deceased Kartik. In view of this, I uphold the judgment of conviction. The alternative submission of the learned counsel for the appellant is that leniency be shown as she has completed nearly 5 years of her sentence. In view of the facts of the case and as the child of 2 years old who was helpless has lost his life, I am inclined to consider the alternative submission of the learned counsel. I hereby confirm the sentence of 7 years. Hence, the Appeal is dismissed.