

(2022) 10 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 573 Of 2015

Manisha @ Janglabai Ganesh Chavan

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 174, 235(2), 313(1)(b)
Indian Penal Code, 1860 — Section 302

Citation : (2022) 10 BOM CK 0036

Hon'ble Judges : A.S. Gadkari, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : Dushyant A. Purekar, H. J. Dedhia

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. This Appeal challenges the validity and legality of Judgment and Order dated 18.04.2011 passed by learned Additional Sessions Judge-1, Niphad, in Sessions case no. 27 of 2010 convicting Appellant under Section 235(2) of Criminal Procedure Code, 1973 (for short "Cr.P.C.") for offence punishable under Section 302 of Indian Penal Code, 1860 (for short "IPC") and sentencing her to suffer imprisonment for life and to pay fine of Rs.1000/- in default, to suffer further rigorous imprisonment for two months.

2. Appellant is convicted for the offence of murder of her own infant daughter viz. Pinky (2 months) by throwing her in the well and causing her death due to drowning.

3. Facts which emerge for consideration from the record of the case are as under:-

3.1. On 14.03.2010 at around 5:30 pm. Mr. Suresh Nandaram Wagh, Police Patil of village Mukhed, on telephone informed Yeola Taluka Police Station, about

sighting a dead body of a baby in the well situated at village Satyagaon ADR No.15 of 2010 under Section 174 Cr.P.C., was registered. PW-1 ASI Mr. Satish P. Nikam went to the spot of incident, ascertained the above fact and conducted the Spot panchanama (Exh.13) and Inquest panchanama (Exh.12) of the dead body of the baby in the presence of pancha witnesses. The dead body was then sent for autopsy along with Police Report (Exh.16) to Rural hospital, Yeola. PW-2 Dr. Swati Dhule and one Dr. S.R. Kotak conducted the autopsy and prepared PM notes vide (Exh.23). Advanced certificate for cause of death (Exh.19) was issued, cause of death being mentioned as asphyxia (respiratory failure) due to drowning. PW-6 Priya Thorat, Investigating Officer (for short "I.O.") initially registered the offence against unknown person. Thereafter, she issued direction to the Police Patil and the Kotwal for beating of drums in the village to ascertain the identity of the baby. Inquiry was conducted and Statements were recorded during investigation, statements of Devidas Jadhav and Lakubai Devidas Jadhav, villagers were recorded and they identified the Appellant as mother of the said infant baby. On the basis of statements of these two villagers recorded under Section 161 Cr.P.C., the dead body was duly identified and Appellant was arrested on 18.03.2010.

3.2. Statements were recorded and reports were received, and it was revealed that Appellant had given birth to the infant baby on 14.01.2010 at Primary Health Center, Mukhed. Birth certificate in the prescribed form (Exh.27) and entry in the birth register at Sr. No.10, 14.01.2010 proved that name of father of infant is Ganesh Mahadu Chavan and name of mother is Jugnabai Ganesh Chavan (Appellant).

3.3. It was also revealed during investigation that, 8 months prior to the incident husband of Appellant fled away with the advance amount which he received towards the work of sugarcane cutting; at that time Appellant was four months pregnant. Hence, she came to reside with her parents in village Satyagaon. She delivered a female child on 14.01.2010. She along with her parents worked as a sugarcane cutting laborer on the farm.

3.4. After completing investigation IO submitted charge sheet against Appellant in the court of Judicial Magistrate First Class (JMFC), Yeola for the offence punishable under Section 302 IPC. As the offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned JMFC committed the case to the Sessions Court, for trial. On 26 08.2010, charge (Exh.7) was framed against Appellant. Its contents were read over and explained to her in vernacular, to which she pleaded not guilty and claimed to be tried.

4. Prosecution case is based on circumstantial evidence and medical evidence. Deceased infant was two months old and a sucking child on the date of incident.

5. To bring home the guilt of the Appellant Prosecution examined 6 witnesses. PW-1 ASI Satish Nikam is the complainant. He set the criminal law into motion and in his evidence proved four documents viz. Police Report, Inquest

panchanama (Exh.16), Police Complaint dated 15.03.2010 (Exh.17), FIR in C.R. No. 39 of 2010 (Exh.18) and Advance Cause of Death Certificate of deceased Infant (Exh.19). He also recorded Spot panchanama, Inquest panchanama and police report for conducting postmortem.

6. PW-2 attached to Rural Hospital Yeola conducted postmortem on the dead body of deceased infant baby and proved PM Notes (Exh.23) and Medical examination certificate (Exh.24) in her evidence. PW-3 Mr. Somnath Waditke, Gram Sevak, of Gram Panchayat Mukhed, was examined by prosecution to prove the birth certificate of the deceased infant dated 14.01.2010 (Exh.27). PW-4 was examined as he is the owner of the field in which the well is situated. He was the first person to have spotted the dead body of the infant floating in the well at about 05:30 p.m. on 14.03.2010. He immediately informed the said fact to the Police Patil of village Mukhed, who then telephonically informed Yeola Taluka, Police Station.

7. PW-5 Dr. Santosh Anganwar is the Medical Officer, attached to Primary Health Center, Mukhed. In his deposition, PW-5 has proved the entry in the Maternity Register at Sr. No. 5 of 72. whereby Appellant delivered a female child on 14.01.2010.

8. PW- 6 has deposed and testified about the documents which were drawn and received during the course of investigation namely, statement dated 19.04.2010 of Appellant (Exh.32), Spot panchanama (Exh.33), letter seeking information about date of delivery by Appellant and other relevant papers and reply received from Medical Officer of Primary Health Center, Mukhed, furnishing details of delivery (Exh.35).

9. We have heard Mr. Purekar, learned appointed Advocate appearing for Appellant and Mr. Dedhia, learned APP appearing on behalf of State and with their able assistance perused the entire record.

10. The question before the Trial Court was, whether death of the said infant (Pinky) was homicidal. It is noted that the actual incident occurred on 14.03.2010. It has come in evidence that Appellant worked as a labourer for sugarcane cutting in a field along with her parents. That on the date of incident i.e. 14.03.2010, Appellant as usual left for her work in the morning at around 06:30 a.m. The farm where Appellant worked was at a distance from her parental house. The spot of incident i.e. the well (field of PW-4) was on the way. It is the prosecution case that, on 14.03.20210 at about 16:00 hours or prior thereto, Appellant committed murder of her own infant daughter Pinky (2 months) by throwing her alive in the well, situated in the field of PW-4. According to prosecution, Appellant committed the act out of anger as she was battling with the fact of bringing up her daughter alone, since her husband had deserted them and fled away. As noted above in the Spot panchanama (Exh.33).It is revealed that the well had a parapet wall of 3 feet height. It has been proven in the deposition of PW-5 that, Appellant had given birth to Pinky on 14.01.2010.

Medical evidence in this respect supports the case of prosecution which has mainly relied on the testimony of PW-2 and the PM notes (Exh.23). According to PW-2, on 15.03.2010, she along with one Dr. S.R. Kotak conducted autopsy on the dead body of deceased infant (Pinki) from 10.00 a.m. to 11.00 a.m. and while conducting the autopsy, they noticed that eyes of the deceased were closed, her mouth was semi-opened and tongue was inside the mouth.

The following observations are made in the PM notes:-

- i. abrasion over left foot, size 3 x 2 cm, both lungs were congested and there was frothing and no blood was found in any of the four chambers.
- ii. She has further testified that after opening the abdomen, they found fluid in the stomach of the deceased and both intestines contained fluid and gases. Liver, pancreas, suprarenals, spleen and kidneys were found congested and frothing.
- iii. bladder and organs of generation were found empty.

10.1. PW-2 opined that the cause of death was asphyxia due to drowning. PM notes are prepared by both the Medical Officers viz. PW-2 and Dr. Kotak vide (Exh.23). In the view of PW-2, injuries mentioned in column No. 17 are possible if an infant is thrown in the well. It is clear that the death of the said baby is homicidal.

11. Before we advert to any conclusion it would be apposite to reiterate the settled position of law while considering any case based on circumstantial evidence, it has been held that onus is on the prosecution to prove that the chain of circumstances is complete and the infirmity of lacunae in prosecution cannot be cured by false defence or plea. The conditions precedent to be fully established are laid down by the Apex court in the case of Sharad Birdhichand Sarda v. State of Maharashtra(1984) Cri L J 1738. They are:

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

12. The argument of the learned Advocate for the Appellant that some other person may be the author of the crime cannot be accepted, from the evidence on

record as the same is not discernible. If it would have been the case that the crime is committed by some other person than the Appellant, then it is difficult to fathom that Appellant did not lodge a missing report for her own child after 14.03.2010, for the next three days, until recording of statements of two villagers, it was not revealed that Appellant was the mother of the deceased infant. As observed, deceased infant was a sucking child. Hence it is improbable to believe or theorize that a two month old child would meet an accidental death by falling into the well.

13. There are no circumstances what so ever brought on record to disbelieve the medical evidence which fully corroborates the circumstantial evidence in proving that death of Pinky (deceased infant) was homicidal. In order to link the chain of circumstances and make it complete, prosecution has placed reliance on four documents namely, Exh. 24, Exh.26, Exh.27 and Exh.35 which are proved through the deposition of PW-2, PW-3, PW-5 and PW-6. Exh.24 is the certificate issued by PW-2 in respect of medical examination of the Appellant. It is crystal clear that at the time of examination of the Appellant, her general condition was fair and suggestive of post-natal care period and that there was white discharge and her uterus showed involution phase. Exh.35 is the letter issued by Medical Officer, Primary Health Centre, Mukhed informing PW-6, the Investigating Officer and certifying that Appellant, was admitted in the said hospital on 14-01-2010 for maternity/delivery and at about 1.25 p.m. she gave birth to a female issue weighing 2500 gms and her delivery was normal. Exh.27 is the birth certificate of Pinky issued by the Village Development Officer of Gram Panchayat, Mukhed, Taluka Yeola District Nashik. On minute perusal of the said public document, it is clear that the said infant was born on 14-01-2010 at Primary Health Centre, Mukhed. Name of father of the infant is shown as Ganesh Mahadu Chavan while her mother's name is shown as Mrs. Jugnabai Ganesh Chavan i.e. Appellant. Exh.30 is the true extract of the delivery register maintained by Primary Health Centre, Mukhed. It is duly proved by PW-5. On perusal of the document, it is revealed that at serial No. 5/72, there is an entry with respect to maternity details of the Appellant. The name of the mother of the infant is shown as Mrs. Janglabai Mahadu Chavan. Ganesh Mahadu Chavan is the husband of the Appellant. Entries therein further show that Appellant was admitted in the said hospital on 14-01-2010 and her delivery was performed from 1.25 p.m. to 1.40 p.m. during which she conceived a female issue. Weight of the said child is mentioned as 2500 gms. and that nurse Deshpande performed the said delivery. It is material to note that accused is the real mother of the deceased infant. On the date of her death, she was hardly two months old. It is not the case of prosecution that she was taken away from the custody of the Appellant or that she was missing for a considerable period of time. Genesis of prosecution case is that it was PW-4 who set the wheels of investigation into motion. It was he who found the dead body of the infant floating in the water of the well owned by him. He informed the Police Patil of village Mukhed, who in turn informed Yeola Taluka Police Station. Accordingly, police arrived at the spot and drew spot panchanama

(Exh.13) and inquest panchanama (Exh.12). Thereupon, the whereabouts of the child were located by the Investigating Agency. It transpired that Appellant was the mother of the deceased infant. Dead body of the infant was sent for autopsy in which it transpired that the said infant died because of asphyxia due to drowning.

14. These circumstances when put together, it was for the Appellant to show as to how the death of the said infant occurred when it was a sucking child or as to how the said child landed in the said well. This was certainly within the special knowledge of the Appellant herself. However, she has not countenanced all these circumstances pointing to her guilt. Even when she was called upon to explain all the circumstances pointing towards her guilt in her statement recorded under Section 313(1)(b) of the Cr.P.C., she denied the prosecution case in toto. This conduct of Appellant clearly appears to be unnatural of a biological mother.

15. In view of the above discussion and findings, we are of the considered opinion that Appellant and no other person is the author of crime and the prosecution has proved its case beyond all reasonable doubts that Appellant has committed the murder of her own daughter (Pinky) by throwing her alive in the well.

16. In view of the aforesaid discussion and observations, we do not find any reason to interfere with the Judgment and Order of the learned Trial Court.

17. Criminal Appeal No.573 of 2015 is dismissed.

18. Before parting with the Judgment, we would like to place on record appreciation for the efforts put in by Mr. Dushyant A. Purekar, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant; he was thoroughly prepared in the matter and rendered proper and able assistance to the Court.