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**(2013) 08 BOM CK 0170**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 519 of 2010**

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| Santosh Hanmant Gavandi  | Vs | APPELLANT  |
| The State of Maharashtra |    | RESPONDENT |

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**Date of Decision :** 01-08-2013

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2013) 5 ABR 715 : (2013) 4 BomCR(Cri) 31

**Hon'ble Judges :** V.K. Tahilramani, J; Mridula Bhatkar, J

**Bench :** Division Bench

**Advocate :** A.G. Toraskar, for the Appellant; V.R. Bhonsale, APP, for the Respondent

**Final Decision :** Allowed

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## Judgement

V.K. Tahilramani, J.—This Appeal has been preferred by the appellant-original accused against the judgment and order dated 9.12.2009 passed by the learned Additional Sessions Judge, Solapur in Sessions Case No. 277 of 2008. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s. 302 of the Indian Penal Code and sentenced the appellant to life imprisonment and fine of Rs. 1,000, i/d RI for 7 days. The prosecution case briefly stated is as under:

The marriage of appellant with PW1 Kirti took place in the year 2000. They had three daughters, namely, Anjali aged about 6 years, Manjali aged about 6 years and Aarti aged about 1.1/2 years at the time of the incident. The appellant alongwith his wife and children was residing at Sanjaynagar Zopadpatti in Akkalkot, District Solapur. Till Kirti gave birth to the 2nd daughter, her marital life was going on smoothly and happily. However, when she gave birth to third daughter, the appellant got annoyed. Aarti was suffering from stomach ache problems. Kirti tried to give understanding to her husband that the fourth time, she would give birth to a male child.

The incident took place on 30.8.2008. At that time Kirti was not in the house and only the daughters of Kirti were in the house. At that time, the appellant smothered Aarti with a pillow and caused her death. FIR came to be registered against the appellant. Thereafter, investigation commenced. The dead body of Aarti was sent for postmortem. PW6 Dr. Mugutrao performed the postmortem on the dead body of Aarti. According to him, the cause of death was asphyxia due to smothering. After completion of investigation, chargesheet came to be filed.

2. Charge came to be framed against the appellant original accused u/s. 302 of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried. The defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant, as stated in para 1 above, hence, this appeal.

3. We have heard the learned advocate for the appellant and the learned APP for the State. We have considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, we are of opinion that there is no credible and reliable evidence on record to show that the appellant caused the death of his daughter Aarti by smothering her.

4. In order to support the conviction, the prosecution has relied on the sole evidence of PW2 Anjali, who is the daughter of the appellant. Anjali was about 5 years old at the time of the incident and about 6 years old at the time of giving of her evidence. The evidence of Anjali is very brief. Anjali has stated that on the day of the incident, her father pressed mouth of Aarti by pillow. However, in the cross-examination, the evidence of this witness has been demolished and she has admitted that on the date of the incident, her father was not present in the house and on that date, she and her sister Manjali were playing outside the house. Besides the evidence of Anjali, there is no other evidence on record to connect the appellant with the crime.

5. The learned APP tried to rely on the evidence of PW6 Dr. Mugutrao, who performed the postmortem. She placed reliance on the evidence of Dr. Mugutrao where he had stated that the cause of death is asphyxia due to smothering. She submitted that this shows that the appellant smothered his daughter Aarti and caused her death. However, on going through the cross-examination of Dr. Mugutrao, it is noticed that he has admitted that smothering may be accidental. Further, Dr. Mugutrao has admitted that symptoms found in the case of Aarti could occur if the face comes into contact with the pillow for sufficiently long period. Dr. Mugutrao has further stated that smothering can occur if the head of the child is covered with pillow when the child is sleeping or the child sleeps with the head under the bedding clothes.

6. Thus, from the medical evidence, it cannot conclusively be said that Aarti died due to smothering as a pillow was pressed on her face.

7. Looking to the evidence on record, we are of the opinion that there is no

credible and reliable material to connect the appellant with the crime. Hence, we are inclined to give the appellant benefit of doubt.

8. In the result, the appeal is allowed. The conviction and sentence of the appellant is set aside. The appellant be released forthwith if not required in any other case.

9. Office to communicate this order to the Appellant and the Superintendent of jail where the appellant is lodged i.e., Yerwada Central Prison, Pune. At this stage, we must record our appreciation for the able assistance rendered by the learned advocate Mr. Toraskar who has very ably conducted the matter. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 2,500/-.