

Criminal Appeal (D.B.) No. 785 of 2002

[Arising out of judgment of conviction dated 30.09.2002 and order of sentence dated 01.10.2002 passed by learned 2nd Additional Sessions Judge, Fast Track Court, Jamtara in Sessions Case No. 59 of 2002 / 20 of 2002]

Ketari Bala Dasi wife of Shri Kamal Kant Mandal, resident of Village Hadal Bank, P.S. Nala (Bindapathar), District Jamtara

.... **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. Kaushal Kishore Mishra, Advocate
For the State : Mr. Vishwanath Roy, Special P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 22.11.2024

Pronounced On: 27.11.2024

Per Gautam Kumar Choudhary, J. The sole appellant is before this Court in appeal against the judgment of conviction and sentence under Section 302 of the IPC.

2. Informant is the brother of deceased. Appellant is the grandmother, who has been convicted for throttling to death her infant granddaughter aged three years. As per the FIR, sister of the informant, Putula Mandal (P.W. 5) was married to the son of the appellant namely Damodar Mandal about six years ago. She was blessed with a female child (deceased- Raj Kumari). After her sister had conceived of a child, her father-in-law Kamal Kant Mandal had alleged that the child in the womb of P.W. 5 was illegitimate and not of her husband (Damodar). By making this allegation, she was also pressed for abortion. The allegations were refuted and Putula refused to abort the child. Even after the birth of the child, insinuation of her illegitimacy continued to be made. Because of these allegations, informant kept his sister most of the time in his house. On 26.12.2001, Putula gave birth to second female child at the house of the informant and the appellant had come there to celebrate the ritualistic function of

the birth of the child. On 18.01.2002, appellant took the child with her by giving an assurance to return her after two days. On 19.01.2002, informant received information regarding death of the infant child- Raj Kumari. When the informant along with his father went and enquired from the accused persons, it was stated that the baby had died while sleeping at night and the dead body had also been buried by the river side. The dead body was exhumed and the matter was reported to police.

3. On the basis of the *fardbeyan*, Nala (Bindapathar) P.S. case No.05/2002 was registered under Sections 302/34 and 201 of the IPC against this appellant. After investigation, charge sheet was submitted against the appellant, the father and the grandfather of the deceased child and they were put on trial under Sections 302/34 and 201 of the IPC.

4. Altogether ten witnesses have been examined on behalf of the prosecution. Apart from the prosecution evidence, relevant documents including post-mortem examination report, inquest report and *fardbeyan* have been proved and marked as exhibits.

5. After prosecution evidence, statement of the accused persons were recorded under Section 313 of the Cr.P.C. Defence is of innocence and false implication. Specific defence taken is that it was a cold night and the child was covered with thick clothes to save her from cold. In the morning, the child was found to be dead. Appellant admitted that on the night of occurrence, the child was sleeping with her.

6. Learned trial Court convicted the appellant, while acquitting the other two co-accused persons by giving them benefit of doubt.

7. It is argued by the learned counsel on behalf of the appellant that there is no direct eye witness to the incidence and the judgment of conviction and sentence is based on conjecture and surmises. As per the post-mortem examination report, cause of death was due to Asphyxia as a result of strangulation. The specific defence of the

appellant is that the deceased died because of being covered by warm cloth in the winter season to prevent the child from cold. Even the mother of the child (P.W. 5) has deposed that she did not suspect anybody for the death of her child.

8. Learned A.P.P. defended the judgment of conviction and sentence. It is submitted that prosecution has established that deceased was taken by this appellant from the natal home of her mother and on the very same night, she was strangled to death. Plea of Asphyxia being caused due to covering the child with winter cloths, has been falsified by the post-mortem examination report. Suspecting the illegitimacy of the child, she was killed by the appellant. The infant child was strangled to death, is objectively established by the Doctor (P.W. 1) who conducted the post-mortem examination of the dead body and found the following injuries on the dead body: -

- i. Blackish, red, ligation mark on the front of mid neck about more or less straight size 5" x 1/8"

On dissection of the dead body, the Doctor found as follows: -

- i. Blood clots- under the skin of the neck, injury as well as little blood clots in underlying trachea.

Doctor has opined that the death was due to Asphyxia as a result of strangulation.

9. The following incriminating circumstances are proved by the prosecution: -

- I. Appellant and her other family members suspected that deceased was not the child of Damodar, who was the husband of Putula. This has come in the testimony of the informant (P.W. 9).
- II. On the fateful night of 18/19.01.2002, the baby had slept with her grandmother (appellant). This fact has been admitted by the appellant in her statement under Section 313 of the Cr.P.C. Deceased was buried in hot haste by the

river side in the village of the matrimonial home of Putula, is also not disputed and has been proved by evidence of the informant (P.W. 9), P.W. 4 and the Investigating Officer (P.W. 10).

III. The deceased child died of strangulation.

10. Infant child was in the care and custody of the appellant and as per her own admission, on that night, she had slept with her. It was incumbent on her part to disclose as to how the deceased died a homicidal death. Instead of offering any plausible explanation, the defence of natural death has been thoroughly falsified by the post-mortem examination report. These incriminating circumstances, lead to the irresistible conclusion that it was this appellant who had committed the offence. Learned trial Court has dealt at length all these aspects. I do not find any infirmity in the judgment of conviction and sentence.

Criminal Appeal stands dismissed.

Appellant is on bail. Her bail stands cancelled and she is directed to surrender before the learned trial Court to serve the remaining part of sentence.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 27th November, 2024

AFR/Anit