

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

CRIMINAL APPEAL NO. 707 OF 1998

Smt. Radhabai Gabaji Rokade
Age: Adult, Occu: Housewife
R/o. Mungsare, Tal & Dist. Nashik

... Petitioner
(Orig. Accused)

Versus

The State of Maharashtra
(At the instance of PSO
Nashik Taluka Police Station)

... Respondent
(Orig. Complainant)

Mr. Naveen Chomal a/w Mr. Aditya Singh, Advocate for the
Appellant.
Mrs. M.M. Deshmukh, APP for the Respondent- State.

**CORAM : S. S. SHINDE &
V. G. BISHT, JJ.**

**Reserved on : 10th February, 2020
Pronounced on : 4th March, 2020**

JUDGMENT (PER : V. G. BISHT, J.)

This Appeal has been preferred against the judgement of conviction and order of sentence, passed by the learned Addl. Sessions Judge, Nashik in Sessions Case no. 134 of 1997 on 29/08/1998, convicting the appellant for the offences under Sections

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302 and 309 of the Indian Penal Code (for short "IPC") and sentencing her to undergo life imprisonment, for the offence under Section 302 and further sentencing her to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months, for the offence under Section 309 of the IPC.

2 Facts of the case in brief is that the informant, a PSI, at the relevant time was posted at Nashik Rural Division, Nashik. On 08/06/1997 he received a message from SDPO to enquire ADR No. 10/97 registered under Section 174 of Criminal Procedure Code (for short "Cr.P.C.") and accordingly he along with staff members visited the spot and came to know that master Dyaneshwar, aged 3 years, kum. Rupali, aged 1½ year and their mother Radhabai had fallen into a well. All were taken out from the well, however, the children were dead while their mother namely, Radhabai survived and taken to Civil Hospital for treatment.

3 The informant accordingly prepared the inquest panchanama over dead body of those children and sent them for postmortem. He also recorded statements of various witnesses and it transpired from their statements that because of the ill-treatment and

harassment at the hands of husband and parents-in-law, said Radhabai in order to commit suicide had jumped into the well along with her two children.

4 The informant accordingly lodged the report against the accused. On the basis of his report C.R.No. 26/97 under Sections 302, 309 of the IPC came to be registered and after necessary investigation the accused was chargesheeted.

5 The accused abjured her guilt and pleaded false implication. In support of her defence, she also examined defence witness, namely, Haushiram Magan Jadhav.

6 Mr. Chomal, learned counsel for the appellant/accused, submitted that the prosecution evidence suffers from various contradictions and inconsistencies. According to learned counsel there was no reason for the accused to kill her children and to attempt suicide. Rather, it has come on record that the accused was enjoying happy married life sans ill-treatment as is canvased by the prosecution. The learned trial Court in the circumstances wrongly recorded conviction against the accused, argued learned counsel.

7 Mrs. Deshmukh, learned APP, on the other hand, supported the impugned judgment and order by submitting that in the present case PW 6 being an eye witness has clearly proved the involvement of accused in the alleged offences. There are also the testimonies of PW-7 and PW-8, who fully support and corroborate the version of PW-6. In such circumstances, learned trial Court was totally justified in convicting the accused, argued learned APP.

8 The prosecution in order to establish guilt of the accused has in all examined 11 witnesses. The accused on her part has also examined her father as a defence witness. Before we undertake the task of appreciating the prosecution witness, it may be noted that accused is also charged with culpable homicide amounting to murder. Postmortem reports on record reveals that cause of death of children in question was due to asphyxia due to drowning. The accusation against accused is that she had thrown the children into a well leading to drowning and death. In such circumstances, whether the death was homicidal or not, the role played by accused will have to be ascertained with precision.

We propose to go through the evidence of these witnesses.

9 PW-5 Raosaheb Bapurao Bhosale stated in his evidence (Exh.18) that on 08/06/1997 he was attached to Nashik Taluka Police Station as PSI. Accidental report bearing ADR No. 10/97, under Section 174 of the Cr.P.C. was handed over to him for investigation. He visited the house of Bhagwan Rokde and prepared inquest panchanamas (Exh.11 and 12) of the dead bodies of the children Dyaneshwar and Rupali.

10 It is his further evidence that he recorded statements of Ashabai (PW-6), Shivram (PW-7) and Deoram (PW-8). Upon making enquiry with Ashabai, he came to know that on the day of incident at about 10-00 am while she was grazing sheeps in the field of Bhagwan, the accused was proceeding towards the well by dragging her children, who were weeping. The accused then threw her children into the well and thereafter she jumped into the well. After seeing this, she shouted and people rushed. Shivram and Devram took out the accused from the well. It is his further evidence that Shivram and Deoram then told him that when they took out the

accused from the well she was telling them that she doesn't want to live and not to save her and that she had thrown her two children into the well. It is his further evidence that he then lodged complaint against the accused and he proved his complaint at Exh. 19. According to him the further investigation was handed over to API Muthe (PW-10).

11 From a simple reading of evidence of informant, it is clear that initially he was asked to enquire into ADR No. 10/1997 registered under Section 174 of Cr.PC. and during that enquiry and on the basis of statements of witnesses, namely, PW-6, PW-7 and PW-8 it transpired to him that the accused had thrown her two children into the well and thereafter herself jumped into the well in order to commit suicide. Thus, the informant necessarily is a formal informant who based his FIR relying on the statements of PW-6, PW-7 and PW-8. Needless to say for all purposes the evidence of PW-6, PW-7 and PW-8 becomes relevant and assumes significance.

12 PW-6 Ashabai Dagadu Lainj stated in her evidence (Exh.20) that she was residing in the field of Navale at village Mungsare in the year 1997 along with her husband and children.

She was grazing sheep in the field of Navale. She had seen accused while going towards the well situated in her field in the morning time. A daughter and son were accompanying her. The accused was standing at a distance of 200 ft. away from her. It is her further evidence that she then took her daughter and son near the well. She threw her small daughter in the well first and while her son was running, she caught hold of him and also threw him in the well and thereafter she herself jumped into the well. After seeing this she shouted loudly. After hearing the shouts two persons came. Those children and the accused were taken out of the well. The accused was taken to the hospital.

13 On the face of this evidence at first sight it doesn't give much difficulty in inferring that this witness saw lively the whole incident and accordingly narrated it in her substantive evidence. However, there is a reasonable hesitation in our mind as to the conduct of this witness which is further aggravated in higher proportion when we evaluate her cross-examination. That will be dwelt upon immediately herein-after. But, before that we must sound a caution. What disturbs our mind is that when this witness saw the

accused throwing her daughter into the well she did not raise any alarm nor rushed to prevent the accused from doing so. The matter does not end here. She then further saw the accused throwing her son who was running away from her and later on caught hold of by accused only to be thrown into the well. Even then this witness remained standstill and did not bother to move. It is only when according to her when the informant took a plunge into the well she raised an alarm. Somehow, the conduct exhibited by this witness is not at all palatable by any standard. The cross-examination as pointed out herein-above presents altogether different story requiring her testimony to be thrown away at the earliest possible opportunity.

14 In the cross-examination this material witness stated that on the day of incident her husband had gone to other village and therefore, she was grazing the sheeps. She admitted that at about 10-00 to 10-30 am, she had proceeded for grazing the sheeps at a distance of 1 or 2 kms. away for grazing sheeps. She further admitted that there were grapes and sugarcane garden. She further admitted that she was grazing the sheeps in the field of cabbage.

This part of cross-examination needs critical assessment first before we go through the latter part of her cross-examination.

15 Here it must be remembered that according to prosecution the incident in question took place around 10-00 am whereas as per admission of this witness she was grazing her sheeps in a field of cabbage at about 10-00 to 10-30 am and that too at a distance of 1 or 2 kms. The distance and timing so given by this witness definitely matter. If at that time and place she was there, which she admits, then she could not have had any opportunity to witness the incident. Let us go through the remaining part of the cross-examination.

16 There is an admission to the fact that at the time of grazing the sheeps, she was watching the sheeps carefully. She further admitted that it was raining heavily and because of that she had not gone for grazing the sheeps but was grazing the sheeps near the place of her residence. She further admitted that because of heavy rain she was in her tent. Lastly, she further admitted that she had not seen the place where incident occurred because of the grape

garden and that when she was grazing the sheeps, she was seeing at the sheeps only.

17 The above shape of admission needless to say the damaging admission compel us to seriously question her credibility inasmuch as in one breath she admitted something and another quite different. The admissions taken as a whole in itself are baffling. If, as per her admission, because of the heavy rain she was inside the tent then there was no reason for her to see the incident. It is also not her evidence that the place of occurrence was visible from the tent. The last admission gives death blow to the theory of prosecution when she admits that because of the grape garden she was not able to see the place where the incident occurred and that while grazing the sheeps her attention and concentration was at her sheeps only.

18 The above being pitiable shape of cross-examination the optimism of the prosecution is wholly misplaced to the effect that the testimony of this witness clinches the theory of prosecution that it was the accused who committed the offence. We out rightly reject

this optimism for the aforesaid reasons and are not prepared to accept her testimony.

19 This takes us to the evidence of PW-7 and PW-8.

20 PW-7 Shivram Namdeo Girande stated in his evidence (Exh. 21) that on the day of incidence he heard the shouts of a woman and therefore, he rushed towards the well of Bhagwan Rokade. People had gathered near the well. Nobody dared to jump into the well and therefore, he jumped into the well and caught hold of the accused. It is his further evidence that at that time accused was telling him that he should not try to save her and that she had thrown her two children into the well. According to this witness the accused was taken out from the well with the help of rope. Her two children were also taken out.

21 From the evidence of this witness it is clear that when this witness jumped into the well and tried to save the accused, she asked him not to save her and confessed that she had thrown her two children into the well. However, the cross-examination of this witness reveals altogether different aspect.

22 In the cross-examination this witness admitted that the accused was unconscious when she had fallen in the well and was not able to speak as water had entered in her body as well as in the nose. If the examination-in-chief is read minutely and carefully then it would be seen that the moment this witness jumped into the well and tried to save accused, she asked him not to do so and admitted that she had already thrown her two children into the well. Contrarily enough, the cross-examination of this witness shows that the accused was unconscious, was not able to speak as the water had entered into the body including the nose. The fact that she was unconscious is reason enough to infer that she was not in a position to interact and therefore, she could not have spoken anything to this witness. It is not that after taking accused out of the well and regaining consciousness, she confessed of having thrown her two children into the well. In the circumstances, we do not want to give much weightage and leverage to the testimony.

23 PW-8 Deoram Kisan Raut stated in his evidence (Exh.22) that the incidence took place in the field of Rokade. A woman, who was grazing the sheeps shouted and telling that one woman had

jumped into the well, therefore, he jumped into the well as well as Shivram and when they were trying to catch the accused into the well, the accused told that she had thrown her two children into the well and does not want to remain alive. However, the accused was taken out of the well with the help of rope. Her two children were also taken out later on.

24 If we go by the evidence of this witness then it suggests that he and Shivram (PW-7) both had jumped into the well. Interestingly, PW 7- Shivram nowhere attributes the presence of this witness nearby the well leave apart that he had also jumped along with him into the well. In the cross-examination when this witness was given a suggestion that accused was unconscious when he had jumped into the well he termed it incorrect. This denial of suggestion is against the admission given by the PW 7- Shivram in his cross-examination wherein he has plainly admitted that the accused was unconscious when she fell into the well. Thus, for both these reasons i.e. absence of corroboration from the mouth of PW 7 as to the presence of this witness and as also controverting the denial of this witness that accused was not unconscious from the mouth of PW 7,

the evidence of this witness does not in any manner, in our view, further the case of prosecution. No reason is made out by the prosecution to accept the testimony of this witness and hence, inability to approve the same.

25 The prosecution has also examined PW-9 Gabaji Bhagwan Rokade, the husband of accused. It is his evidence (Exh.27) that on the day of incident his wife was doing cow dung wash in the courtyard. As his daughter was weeping, his wife beat her. When her mother objected as to why she was beating her, the accused replied that she would do anything to her daughter and that she has no business to say so.

26 It is his further evidence that thereafter his parents and he went for cutting the grass. At about 10-00 a.m., he heard cries and rushed towards the well and saw that the persons were taking out his wife out of the well. His children were also taken out of the well. In the cross-examination, the husband admitted that he and his wife were residing separately from his parents. They were residing properly and that he was not giving any harassment to his wife. Even he had not beaten his wife at any point of time.

27 The evidence of this witness who is none other than the husband of accused does not augur well for the prosecution inasmuch as he has gone against the theory of prosecution. When we say so we mean it because the foundation of the whole FIR is based on the alleged harassment at the hands of husband and parents-in-law of accused which compelled her to take extreme steps of drowning her two children by throwing them into the well and then plunging herself also thereafter. The whole theory lies in shambles not only in the light of cross-examination of PW 9-husband but also in view of the evidence of defence witness, who is father of the accused.

28 DW-1 Haushiram Magan Jadhav stated in his evidence (Exh. 39) that the accused is his daughter and after her marriage with Gabaji Rokade (PW-9) she was not given any ill-treatment either at the hands of her husband or at the hands of her in-laws. There is nothing in his cross-examination to discredit his testimony.

29 If the evidence of PW 9-husband and defence witness-father of the accused is read conjointly then it nowhere indicates even remotely that there was strained relationship between the accused and PW 9-husband or existence of any kind of matrimonial

discord. Thus, no grounds are established, as claimed in the FIR to show that the accused was undergoing severe mental agony which impelled her to take extreme steps of snuffing the lives of children by throwing them into the well. No such case is made out by the prosecution to say the least.

30 Before parting with the judgment the location and weather on the day of incident needs to be counted. It is admitted position on record that on the day of incident it was raining heavily. The area in and around the well was muddy and slippery. It is also an admitted position that the well in question had no protective structure or wall circumambulating the well, appeared quite treacherously located and therefore possibility of slipping into the well cannot be ruled out. This possible inference is here to stay inasmuch as the prosecution has utterly failed to prove its case beyond reasonable doubt.

31 Therefore, after due consideration of all the facts and circumstances and the evidence of this case, we feel inclined to allow this appeal. Hence, the order as follows:

ORDER

1. Appeal No.707 of 1998 is accordingly allowed.
2. The conviction and sentence passed against the appellant for the offence punishable under Section 302 and 309 of the Indian Penal Code is set aside and she is acquitted of the charges.
3. Fine amount, if any paid, be refunded to appellant after the appeal period is over.
4. Bail bonds shall stand continue till the expiry of the appeal period.

(V. G. BISHT)

(S. S. SHINDE)