

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 266 OF 2022

Prakash Bhanudas Mohite
Age-44 years, Occupation - Agril.,
R/o. Flat No. 404, Shree Sai Dev,
Survey No.19/1/3 & 4,
Near Bishops School,
Hole Wasti Chowk, Undri,
Pune, Dist. Pune.

. . . Appellant

Versus

1. The State of Maharashtra
2. Gangabai w/o Prakash Mohite,
Age-45 years, Occupation-Household,
R/o. Mandhani, Tq. Jintur,
Dist. Parbhani.

. . . Respondents
(R. No.2 original accused)

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Miss Ashwini Lomte h/f Mr. S. J. Salunke, Advocate for the Appellant.
Mrs. V. S. Choudhari, APP for Respondent No.1-State
.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 23 FEBRUARY 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. The appellant has instituted present appeal by invoking provisions of Section 372 of the Code of Criminal Procedure (Cr.P.C.) assailing the judgment and order passed by learned Additional Sessions Judge-2, Parbhani dated 04.12.2021 in Sessions Case No. 138 of 2012.

FACTS OF THE CASE GIVING RISE TO THE SESSIONS CASE

2. Crime came to be registered at the instance of PW2 Police Head Constable Sudhakar Kanke attached to Jintur Police Station, alleging that on 08.06.2012, present respondent no.2 attempted to commit suicide by jumping in a well along with her three minor children. In the said incident respondent no.2 and a minor daughter survived whereas other children i.e. Ajay aged six years and Didi aged three months got drowned and died. On receipt of information to that extent, Police Head Constable Sudhakar set law into motion and crime bearing no. 100/2012 came to be registered and present respondent came to be arrested. After investigation, present respondent was chargesheeted for commission of offence punishable under Sections 302, 307 and 309 of the Indian Penal Code (IPC).

3. Trial was taken by learned Additional Sessions Judge-2, Parbhani, who after appreciating the evidence on record, passed the impugned judgment and order by which learned trial court held that prosecution failed to establish the charges and thereby acquitted the accused i.e. present respondent no.2. It is this judgment of acquittal which is now challenged.

4. Learned Advocate for the appellant would strenuously submit that prosecution had come with cogent and reliable evidence against present

respondent no.2 who, in spite of being mother of three innocent minor children, had attempted to commit suicide along with them. She managed to survive along with one child but rest two children unfortunately died. She was solely responsible for their death. Therefore she was booked for above offences.

5. Learned Advocate pointed out that after thorough investigation, finding sufficient material against accused, she was duly chargesheeted and made to face trial during which prosecution adduced evidence and in all five witnesses. Appellant, who is husband of respondent no.2, himself stepped in the witness box and has deposed about the acts and deeds of his own wife. Therefore, there was sufficient cogent and reliable evidence and the same ought to have been accepted and relied by learned trial court, but it failed to do so.

6. Learned Advocate for the appellant would also take us through the medical evidence and evidence of other witnesses and submit that there was support from independent witnesses, however, learned trial court failed to consider and appreciate the same. That, respondent no.2 was solely responsible for death of her own minor children but the same has not been taken into consideration by learned trial Judge. According to him, required ingredients for attracting charges under Sections 302, 307 and 309 were very much available on record but learned trial Judge has failed to consider and

appreciate the same and thereby has erred in acquitting respondent no.2 accused and hence, she prayed that, appeal deserved to be allowed.

7. Learned APP for the State also supported the submissions made by learned Advocate for the appellant and submitted that indulgence and interference at the hands of this Court is warranted in this case as respondent no.2 is solely responsible for not only attempt to suicide but also for throwing her own minor children in the well and committing their murder.

8. We have heard learned Advocate for the appellant as well as learned APP for the State to their satisfaction. We have examined the record before us. Prosecution came up with a case in trial court that present respondent no.2, mother of three children, was annoyed with her husband PW4 Prakash i.e. present appellant and therefore she went to the well along with three minor children and jumped in the same along with all children. However, she and one child survived while remaining two children seems to have got drowned and died. Record shows that in all five witnesses were examined by prosecution and therefore we propose to visit their testimonies to ascertain whether there is substantive evidence suggesting commission of offence for which respondent no.2 was chargesheeted and tried.

9. On taking survey of entire evidence, it is emerging that **PW1** Raju has acted as pancha to spot panchanama and he supported prosecution by identifying the same at Exhibit 25 dated 09.06.2012.

10. **PW2** Sudhakar Kanke is the informant Police Head Constable. He in his evidence at Exhibit 28 stated that while he was working at Jintur Police Station, on 08.06.2012 a phone call was received from Police Patil about a lady throwing her children in the well and committing suicide. Accordingly, he reached to the spot. He stated that before he reached there, the villagers had taken out the lady and one daughter. According to him, the well belonged to one Punjare and it has come in his evidence that villagers also informed that two children were in the well water and therefore to dead children were taken out of the well with the help of villagers. He stated that on inquiry, lady informed that her in-laws were ill-treating her on the ground that her parents did not give ornaments to her younger daughter and did not pay dowry and therefore she committed the above act. This witness stated that on the strength of the same, he lodged the FIR and he identified it at Exhibit 29.

Above witness in cross-examination answered that he did not lodge report against the in-laws of the lady. He denied that said lady lodged report against her in-laws. He denied that accused lady stated that her in-laws had driven her out of the house for not bringing ornaments and that the lady

accused said that her husband and mother-in-law followed her and they pushed her in the well with the children.

11. **PW3** A.P.I. Gulam Patel seems to have carried out investigation during which he visited the spot, drew panchanama, recorded statements of witnesses, arrested accused and chargesheeted her. He stated that he can identify the accused but she was not present in the court.

In cross-examination he admitted that he did not record statement of Laxman Wawal as per his say and he denied filing false chargesheet.

12. According to **PW4** Prakash i.e. the present appellant, he is an agriculturist and accused is his wife. He stated that his parents, brother and brother's wife looked after their agricultural land. His marriage was performed with accused 11 years back. He stated that out of four children, one had died in Pune. Rest of the children were Ajay, Poonam and Didi. He stated that Gangabai threw Ajay and Didi in the well and they died. According to him, on 07.06.2012 he had been to Nanded for bringing motor and at that time his wife told him that she was residing at Pune and not to spend money, to which this witness alleged replied saying that their family was joint and his brothers work under him. He stated that on 08.06.2012 when he was returning to his agricultural field, one person told him that a lady had jumped in the well with

her children. Even his sister-in-law called and told that Gangabai had jumped in the well. So he went there and saw his wife present in the well and she was holding one wire in her hand and daughter, namely, Poonam was with his wife. He stated that his other two children died. Police came and carried out panchanama. He also stated that his wife committed murder of his children.

While under cross-examination, he admitted that he did not lodge report against his wife. He denied that there was quarrel with his wife and hence he and his mother followed her and out of quarrel, he and his mother pushed her in the well.

13. **PW5** Rukmini is the sister-in-law of appellant Prakash Mohite. She stated that Prakash was married with Gangabai. That, her brother-in-law wanted money for purchasing motor and at that time accused Gangabai objected, upon which her husband said that they had joint family and that everyone would be benefited. She stated that she came to the house and went to fetch water. At that time, Gangabai went with children and when this witness returned home, she found one person shouting that a lady had jumped in the well. Not finding Gangabai in the house she went towards the well. She stated that Gangabai was holding a wire and her daughter. Therefore, she called her husband. Villagers also came and they took accused Gangabai and her daughter out of the well. She stated that two children died.

In cross-examination she admitted that she did not lodge report. She also denied that mother-in-law pushed Gangabai in the well or about Gangabai lodging report.

14. The postmortem reports Exhibits 33 and 34, shows the cause of death of two children i.e. Ajay and Didi as due to cardiopulmonary arrest due to drowning.

15. Above is the only evidence on behalf of the prosecution. On minute scrutiny of the entire evidence, more particularly that of PW4 appellant husband, it is seen that it is not clear as to what prompted respondent no.2 to jump in the well along with children. There is nothing on record as to what preceded the alleged episode. PW4 appellant merely speaks that he had been to Nanded for purchasing a motor and he heard one person saying about a lady jumping in the well. Though it has come on record that villagers took out the accused i.e. present respondent no.2 and a child out of the well, there is no evidence about anybody seeing her going towards the well with intention to commit suicide along with children. Unfortunately, the persons who allegedly took out respondent no.2 from the well are not only not examined, but there is no evidence to show as to how respondent no.2 fell in the well water. It is surprising that PW4 appellant himself has admitted that he did not lodge report.

16. For attracting charge under Section 302, motive, intention and knowledge are very necessary. There is no evidence in that direction. Even for attracting act of attempt to commit suicide also, there has to be material suggesting abetment to commit suicide. Even there is no material in that direction in the trial court. Though there is evidence suggesting respondent no.2 being taken out of water along with a child, what preceded alleged occurrence is completely missing from the entire case of prosecution. Theory and suggestions put up about respondent no.2 getting annoyed on account of ill-treatment and demand of money by PW4 appellant and his mother are in absence of any foundation. There is no person who has seen the present respondent going towards well along with the children with intention to commit suicide. Therefore, for want of evidence about attempt to commit suicide along with minor children, guilt cannot be fastened. There are other possibilities of alleged fall in the well and such possibilities are not ruled out by prosecution. Therefore, with such quality of evidence, in our view, the view taken by learned trial Judge is the only possible view that could emerge. No case on merits being made out in the appeal, the same is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

VRE