



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

CRIMINAL APPEAL NO. 928 OF 2015

Shri Nitin Aganda Lade,
Residing at Vasti Sakurdi, Tal Karad,
District Satara ... Appellant

vs.

The State of Maharashtra
(at the instance of Sr. P.I. Karad Taluka
Police Station, Karad, District Satara) ... Respondent

Mr. M.K. Kocharekar a/w Mr Vinayak Patil, for the Appellant.

Mr. S.S. Kaushik, A.P.P for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 11th AUGUST, 2023

ORAL JUDGMENT (PER: REVATI MOHITE DERE, J.)

1. By this appeal, the appellant has impugned the judgment and order dated 23rd August 2013, passed by the learned Additional Sessions Judge, Karad passed in Sessions Case No. 15 of 2012, by which, he has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the

Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 5,000/- in default, to suffer simple imprisonment for six months.

2. According to the prosecution, the incident took place on 27th October 2011 between 11.00 a.m. to 11.30 a.m, when Prajwal (deceased) aged about 2 ½ years, was playing in the courtyard. As Prajwal(deceased) did not return, his mother P.W.-6-Nutan Nilesh Sawant, started searching for him and even went to Karad, to find out whether Prajwal(deceased) had gone along with his maternal aunt. Prajwal(deceased) was later found in the well of one, Shankar Pandurang Kadam and as such, had died due to drowning. Pursuant thereto, an FIR was lodged by PW-5-Nilesh Baban Sawant, father of the deceased and brother-in-law of the appellant, as against the appellant, alleging an offence punishable under section 302 of the IPC. On registration of the FIR, the appellant came to be arrested. After investigation, chargesheet was filed in the court of learned Magistrate, since the offence under section 302 was sessions triable, the case came to be committed to the Court of Sessions

for trial.

3. Thereafter, the Trial Court framed charge as against the appellant under section 302 of the IPC to which the appellant pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case examined 9 witnesses i.e. **P.W-1**-Umrao Baba Shinde-Panch to the Spot Panchanama dated 28/10/2011; **P.W-2**-Dilip Tukaram Chavan, Panch to the Inquest Panchnama dated 27/10/2011 and also seizure of clothes of the deceased; **P.W No.3**-Nitin Mohan Yadav-Panch to the arrest Panchnama dated 28/10/2011; **P.W-4**—Chandrakant Pandurang Satpute(Medical Officer), who conducted the postmortem; **P.W-5**-Nilesh Baban Sawant(complainant - father of deceased and brother-in-law of the Appellant); **P.W-6**- Nutan Nilesh Sawant (Mother of the deceased and Sister of the Appellant); **P.W-7**-Vinod Balasaheb Kadam-Panch to the memorandum panchnama dated 29/10/2011; **P.W-8**-Suraj Baban Nikam - witness with respect to last seen and; **P.W-9**-Ashok Shankarrao Chaudhari, the Investigating Officer.

5. Thereafter, the appellants statement was recorded under section 313 of Cr.P.C. The appellant did not examine any witness in support of his defence.

6. After hearing, the learned counsel for the parties and after considering the evidence on record, the learned Sessions Judge, Karad convicted and sentenced the appellant as stated aforesaid in Paragraph No.1.

7. Being aggrieved and dissatisfied by his conviction and sentence the appellant has filed the aforesaid appeal.

8. We have heard the learned counsel for the appellant and the learned APP for the State.

9. The prosecution case, rests on circumstantial evidence. As far as motive is concerned, the prosecution examined two witnesses in support of the same i.e. P.W-5- Nilesh Baban Sawant(Complainant-father of the deceased) and P.W-6- Nutan Nilesh Sawant (mother of the deceased). Both the said witnesses resiled from their statements and hence were declared hostile, as they did not support the prosecution case.

10. It is not in dispute, that the dead body of the deceased was found in a well i.e. a well having depth of 45 feet, having water upto 21 feet. The said well was constructed in cement concrete, having a protected wall of 3 feet height from the ground. The wall was having 18 steps. Similarly, Panch to the Inquest Panchnama has not been seriously disputed. Similarly, the evidence of P.W-4-Chandrakant Pandurang Satpute (Medical Officer) who opined the cause of death as 'asphyxia due to drowning' has also not been seriously disputed/challenged.

11. Therefore, the question that arises for consideration is, whether the evidence of last seen by itself is sufficient to convict the appellant. The prosecution in order to prove that the deceased was last seen in the company of the appellant (on 27/10/2011 at about 1.00 p.m.) examined P.W-8-Suraj Baban Nikam. In his evidence P.W-8-Suraj Baban Nikam has stated that he had seen the appellant going through the field with Prajwal(deceased). The said witness was not cross-examined by the defence, as the appellant's advocate was absent on the day, when P.W-8's examination-in-chief was recorded.

12. The Trial Court only on the basis of the last seen evidence convicted and sentenced the appellant as stated aforesaid.

13. When the appeal came up for hearing before this Court on 1st August 2022, whilst perusing of the evidence, it was noted that the most important witness in the case, was P.W.-8- Suraj Baban Nikam, who had disclosed, with respect to the appellant being last seen in the company of the deceased. The Additional Sessions Judge, Karad had noted after P.W-8's-Suraj's examination-in-chief was over, as under:

“Advocate for the accused, Shri S.M. Sankpal though repeatedly called out remained absent. Accused is asked to take cross examination of the witness in person. He declined. Hence, no cross.”

14. Therefore, this court after observing the same, opined that the Trial Court ought to have offered an opportunity to the Advocate for the appellant to cross-examine the said witness i.e. P.W-8- Suraj Baban Nikam. This Court (**Coram: A.S. Gadkari and Milind N. Jadhav, JJ.**) was of the considered opinion that, an opportunity to cross-examine P.W-8-Suraj Baban Nikam needs to be afforded to the appellant, through an Advocate. Accordingly

the matter was remitted back to the Trial Court only for the purpose of recording the cross-examination/re-examination of P.W-8- Suraj Baban Nikam. This Court in fact, even directed the learned Sessions Judge to appoint Mr Mohan Yadav, Advocate to represent the appellant, for conducting the cross-examination of P.W-8-Suraj Baban Nikam and the Advocates professional fees were directed to be paid from the account of Satara District Legal Services Committee. The said order passed in this Appeal is dated 1st August 2022.

15. Pursuant thereto, the learned Judge conducted the cross-examination of P.W-8- Suraj Baban Nikam. Learned counsel for the appellant has placed before us the cross examination so conducted of P.W-8-Suraj. The same is taken on record.

16. A perusal of the cross-examination of the said witness i.e. P.W-8-Suraj shows that the said witness had not seen the child with the appellant nor had he, any occasion to visit the well, where the dead body of Prajwal(deceased) was found. Infact, P.W-8- Suraj Baban Nikam has stated that at the time of recording his evidence, the police had tutored him. Pursuant to

the said answer, P.W-8-Suraj was again re-examined by the learned prosecutor, in which he stated that he has no personal knowledge of how the child had fallen in the well or drowned thereafter.

17. As noted earlier, P.W-5- Nilesh Baban Sawant and P.W-6- Nutan Nilesh Sawant, witnesses were cross-examined by the prosecution, after they were declared hostile. However, despite the same, the prosecution has not adduced any other evidence to prove motive. Thus, the only evidence is that of last seen, as against the appellant i.e. the evidence of P.W-8-Suraj Baban Nikam. Considering what is stated by P.W-8-Suraj Nikam, in his cross examination, we cannot place implicit reliance on his evidence, that the appellant was last seen in the company of Prajwal(deceased).

18. As noted above, the prosecution case rest entirely on circumstantial evidence. Since the circumstances as stated aforesaid, have not been proved by the prosecution, the impugned judgment and order cannot be sustained.

19. Hence, the following order;

ORDER

i. Appeal is allowed and the impugned judgment and order dated 23rd August 2013, passed by the learned Additional Sessions Judge, Karad passed in Sessions Case No. 15 of 2012 is quashed and set aside;

ii. Appeal stands disposed of accordingly.

20. All concerned to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)