

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

CRIMINAL APPEAL NO. 805 OF 2014

Sanjay Ramchandra Yejgar,
Age-26 years, Occ-Sugarcane Cutting,
R/o – Jalihal, Tal – Mangalwedha
Dist – Solapur

... Appellant
(Ori. Accused)

At present lodged in
Kolhapur Central Prison at Kalamba

Versus

The State of Maharashtra

... Respondent

Mr. Satyam Nimbalkar, as *amicus curiae* for the Appellant

Mrs. P. P. Shinde, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.
MONDAY, 10th JUNE 2024**

JUDGMENT (Per Revati Mohite Dere, J.) :

1 By this appeal, the appellant has impugned the
judgment and order dated 3rd May 2014 passed by the learned
Additional Sessions Judge, Pandharpur, in Sessions Case

No.04/2012, by which the learned Judge convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code (`IPC') and sentenced him to suffer imprisonment for life for the said offence and to pay a fine of Rs. 2,000/-, in default, to suffer SI for 2 months.

2 The prosecution case in a nutshell is as under:

The first informant (PW1-Kavita) is the wife of the appellant and mother of deceased-Prakash, aged 5 years. According to the prosecution, the incident took place on 16th October 2011 at about 4:00 pm, when PW1-Kavita was in her house with her son-Prakash (deceased) and daughter Dipali. It is the prosecution case, that the appellant started assaulting PW1-Kavita and thereafter, during the quarrel, lifted Prakash and took him towards the well in the land and threw Prakash in the said well. PW1-Kavita informed her brother-in-law, who jumped into the well and pulled Prakash out of the well, however, Prakash had

died due to drowning. Thereafter, PW1-Kavita lodged an FIR as against the appellant with the Mangalwedha Police Station alleging an offence punishable under Section 302 of the Indian Penal Code. During the course of investigation, the police drew the spot panchanama, recorded statements of witnesses, etc. and after investigation, filed charge-sheet in the said case in the Court of the learned Judicial Magistrate First Class, Mangalwedha. Since the offence under Section 302 was triable by the Court of Sessions, the case came to be committed to the Court of Sessions, for trial.

The learned Sessions Judge framed charge as against the appellant, to which, the appellant pleaded not guilty and claimed to be tried.

The prosecution in support of its case, examined 7 witnesses i.e. PW1-Kavita Yejgar, wife of the appellant (complainant and eye-witness of the incident); PW2-Rama

Bhusnar, father of the first informant, to whom an extra judicial confession was made by the appellant; PW3-Dr. S.H. Korulkar, the doctor who performed the postmortem of deceased-Prakash; PW 4-Narayan Pranchandrao, ASI attached to Mangalwedha Police Station who recorded the statement of PW1-Kavita; PW5-Siddheshwar Dhavare, panch to the spot panchanama; PW6-Dada Bhusnar, brother of PW1-Kavita and PW7-Prakash Pawar, the Investigating Officer.

The defence of the appellant was that of total denial and false implication. According to the appellant, the deceased died an accidental death by falling into the well. The appellant did not examine any witness in support of his defence.

After hearing the learned counsel for the respective parties, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1. Hence, this appeal.

3 At the outset, we may note that the aforesaid appeal is of the year 2014 and has been on Board for several months. When the appeal was called out, none appeared for the appellant. The name of the Advocate for the appellant was flashed on the electronic board, however, none appeared before us and hence, we were constrained to appoint Mr. Satyam Nimbalkar as an *amicus* to espouse the cause of the appellant. Accordingly, we heard Mr. Nimbalkar as well as the learned A.P.P.

4 Mr. Nimbalkar submitted that the appellant has been falsely implicated in the said case by his wife i.e. PW1-Kavita because of the strained relations between them. He submitted that the prosecution has not ruled out the possibility of Prakash (deceased) accidentally slipping into the well. He submitted that the FIR has also been registered belatedly, on the next day, rendering the FIR suspicious, considering the strained relationship between the appellant and PW1. Mr. Nimbalkar also

submitted that the extra judicial confession being a weak type of evidence, cannot be relied upon. According to him keeping in mind the overall evidence that has come on record, the appellant be acquitted of the offence with which he is charged.

5 Mr. Patil, learned A.P.P supported the judgment and order of conviction and submitted that no interference was warranted in the same. Mr. Patil, learned A.P.P submitted that the evidence of PW1-Kavita, wife of the appellant inspires confidence and cannot be disbelieved merely because the relations between the appellant and PW1, were strained. He submitted that PW1-Kavita is an eye-witness to the incident of the appellant throwing Prakash in the well and that the said ocular evidence is also duly corroborated by the extra-judicial confession made by the appellant to PW2-Rama Bhusnar and PW6-Dada Bhusnar (father and brother of the appellant respectively). He further submitted that the evidence of PW3-Dr. Korulkar clearly reveals that Prakash died due to asphyxia due to drowning and as such, the

cause of death is consistent with the prosecution case i.e. that the appellant threw Prakash in the well.

6 Perused the papers with the assistance of the learned counsel for the respective parties. According to PW1-Kavita, she was residing with the appellant and her son-Prakash (deceased) aged 5 years and daughter-Dipali, aged 3 years. According to PW1, the appellant would abuse, threaten and even assault her and the appellant was also addicted to alcohol. PW1-Kavita has categorically stated that on the date of incident at about 4:00 pm, she was present in the house along with her children-Prakash and Dipali; that the appellant came and started quarreling with her; that the appellant had consumed alcohol and assaulted her; and that when she asked the appellant not to assault her, he abused her and took Prakash with him towards the well. PW1 has further stated that she followed the appellant and saw her husband (appellant) throwing Prakash into the well, pursuant to which, she shouted; after which, her brother-in-law

came to the spot; and that, on informing the incident to her brother-in-law, her brother-in-law pulled Prakash out of the well. PW1 has further deposed that when Prakash was pulled out from the well, he had expired, pursuant to which, she called her parents and brother and informed them about the incident. She has stated that after her parents and brother came, they went to Mangalwedha and informed the police of the incident, pursuant to which, the police recorded her complaint/FIR (Exhibit 16).

PW1-Kavita was cross-examined with respect to her relations with the appellant i.e. her husband and the threats extended by the appellant to her. No doubt, PW1 has not denied the assault by the appellant on her, however, there is nothing in the cross examination to disbelieve her testimony with respect to what happened on the day of the incident and of what she had witnessed i.e. the appellant taking Prakash towards the well and throwing him in the well. Although suggestions were made to PW1 that she was falsely deposing against the appellant, the same

have been categorically denied by her. Having perused the testimony of PW1, we do not find any reason to disbelieve her testimony. We find her evidence to be credible and natural. Merely because there would be quarrels between the appellant and PW1-Kavita, would not be a ground for disbelieving her testimony.

7 The said ocular evidence is duly corroborated by the evidence of PW2-Rama Bhusnar, father of the complainant and PW6-Dada Bhusnar, brother-in-law of the appellant and brother of PW1-Kavita, to whom an extra-judicial confession was made by the appellant. The evidence of PW2-Rama Bhusnar and PW6-Dada Bhusnar is consistent with respect to the disclosure made by the appellant to them. The evidence of these two witnesses reveals that when they asked the appellant as to why he committed the murder of Prakash, he disclosed that he had committed the murder of his son-Prakash and they could do whatever they wanted. There is nothing in the evidence of both

these witnesses i.e. PW2-Rama Bhusnar and PW6-Dada Bhusnar, to whom the extra-judicial confession was made, to disbelieve their testimony, inasmuch as, they had come to PW1's home immediately on being informed of the incident by PW1 i.e. of the appellant throwing Prakash in the well, and on questioning the appellant, the appellant made the said disclosure. The evidence of both i.e. PW2-Rama and PW6-Dada, appears credible.

8 The aforesaid evidence is again duly corroborated by the evidence of PW3-Dr. Korulkar, Medical Officer attached to the Rural Hospital, Mangalwedha. His evidence reveals that Prakash died due to 'asphyxia due to drowning'.

9 Although the defence of the appellant was that Prakash fell accidentally into the well, no suggestions have been made to PW1 with respect to the possibility of Prakash playing near the well or with respect to the height of the well, etc.

Similarly, there is nothing on record to indicate nor any suggestion made to any of the witnesses as to why Prakash had gone near the well, which, although was in his field, was not adjacent to the house. Nor is there any suggestion to show that there was no protection wall around the well and as such, there was a possibility of Prakash slipping into the well.

10 It is pertinent to note that PW7-Prakash Pawar (ASI, Mangalwedha Police Station), the IO was present at the time when spot panchanama was drawn. From the spot panchanama, it appears that the well was situated in Gat No. 223. It also appears that the said spot was shown by PW1-Kavita to PW7-Prakash Pawar (IO) and the panch witness. PW1 had disclosed to PW7 that her husband, had after a quarrel, picked up Prakash, taken him to well and thrown him into the well, as a result of which, Prakash died.

11 From the evidence on record, we find that the prosecution has proved beyond reasonable doubt that the appellant, after a quarrel with his wife i.e. PW1, picked up Prakash from the house, took him near a well and threw him in the well, as a result of which, Prakash died. It is pertinent to note that if Prakash had fallen accidentally, the appellant would have jumped into the well to save his son, however, from the record, it appears that PW1 called her brother-in-law i.e. brother of the appellant, who jumped into the well and pulled Prakash out.

12 As far as delay in registration of FIR is concerned, we do not find that there is any delay, inasmuch as, the incident took place on 16th October 2011 at 4:00 pm and the FIR was lodged on 17th October 2011, within 24 hours of the incident taking place. In the facts, we do not find the delay to be fatal.

13 The evidence on record adduced by the prosecution is direct and circumstantial. We find that the prosecution has

proved its case as against the appellant beyond reasonable doubt, by leading cogent evidence.

14 Considering the aforesaid, no interference is warranted in the judgment and order of conviction and sentence. Accordingly, the appeal is dismissed.

15 We would like to record a word of appreciation for the able assistance provided and the efforts taken by Mr. Satyam Nimbalkar, as an appointed advocate for the appellant, in conducting the appeal. High Court Legal Services Committee to award fees of the learned Appointed Advocate, as per Rules.

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.