



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 584 OF 2023

Santosh Kacharu Walunje
Age: 45 years, Occu.: Labour,
R/o Galle Borgaon, Tq. Khultabad,
Dist. Aurangabad

..APPELLANT

VERSUS

State of Maharashtra
Through : Police Station, Veergaon,
Tq. Vaijapur, Dist. Aurangabad

..RESPONDENT

....
Mr. S.G. Bobde, Advocate for appellant
Mrs. S.N. Deshmukh , A.P.P. for respondent – State
Mr. N.S. Ghanekar, Advocate for assist to Court
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 04th MARCH, 2025**

ORAL JUDGMENT :

1. The challenge in this appeal is to a judgment of conviction and order of consequential sentence imposed on the appellant for offence punishable under Section 302 of the Indian Penal Code ('I.P.C.') by the Court of Sessions, Vaijapur on 01st August, 2022 in Sessions Case No.48 of 2019. The appellant has, therefore, preferred the present appeal.

2. The facts giving rise to the present appeal are as follows :-

The appellant alongwith his mother, wife and four minor children would reside at Galle Borgaon, Tq. Khultabad, Dist. Aurangabad. In the

afternoon on 28th December, 2018, the appellant dropped his two minor children in a well. The children died of drowning. The reason behind the commission of offence was his quarrel with his wife.

3. The dead bodies of both the children were found floating in the well of PW 9 – Bapusaheb. The report in that regard was lodged (Exh.47). A case of unnatural death was registered. During enquiry thereof, identity of the deceased children was established. It was further revealed that the appellant had left the house with both the children after quarrel with his wife. He roamed with the children at various places, such as road side eatery, stayed at the house of one of his relations overnight and travelled in a tempo and on a motorbike. All these persons were contacted and their statements were recorded. PW 1 - Harishkumar, Police Officer attached to Veergaon Police Station lodged the First Information Report ('F.I.R') (Exh.27). The appellant was arrested. During enquiry of unnatural death / enquiry under Section 174 of the Code of Criminal Procedure ('Cr.P.C.'), inquest and autopsy were conducted. After completion of investigation, the appellant was proceeded against by filing the charge-sheet.

4. The trial Court framed the charge (Exh.11). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined sixteen witnesses and produced in evidence certain documents. The trial Court, on appreciation thereof,

convicted the appellant and consequentially sentenced to imprisonment for life and to pay fine of Rs.5,000/- with default stipulation.

6. Learned counsel for the appellant would submit that the case was based on circumstantial evidence. The appellant had allegedly left the house long before the dead bodies of his children were found. The well, wherein the dead bodies were found, had no protective wall. Our attention was drawn to the crime scene panchanama (Exh.23) and even photographs of the well to indicate one side of the parapet wall of the well was not at place. Learned counsel meant to say that the children might have fallen in the well accidentally. A slightest of benefit of doubt would come to rescue of the appellant. Even the statement of his wife was recorded twelve days after the incident. All was not well between the appellant and his wife. She has, therefore, every reason to speak against him. The other witnesses, who claimed to have seen the appellant with his children, were unknown to the appellant. The Investigating Officer did not hold test identity parade. Learned counsel further submits that brother-in-law of the appellant was inimical with him. According to learned counsel, all in all it is a case based on circumstantial evidence. None of the circumstances relied on have been duly established pointing towards the guilt of the appellant excluding involvement of anyone else. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that wife of the appellant had no reason to speak against him, at the cost of her marital

relation. The appellant nowhere disputed he left the house with the children. He, therefore, owes explanation as to what he did with the children. Section 106 of the Indian Evidence Act was strongly relied on. The reasons given by the trial Court were reiterated to ultimately submit for dismissal of the appeal.

8. Considered the submissions advanced. Perused the judgment impugned herein. The case is based on circumstantial evidence. It would, therefore, be not out of place to refer to the judgment of the Apex Court in case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622***, wherein it has been observed thus :-

“(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must or should’ and not merely ‘may be’ established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

9. Let us advert to the evidence on record and appreciate the same.

Admittedly, the dead bodies of the two children of the appellant were found in a well at village Savarkhed on 29th December, 2018. A report

(Exh.47) was lodged in that regard by PW 9 – Bapusaheb, the well owner. His evidence indicates that he had visited his field in the evening on 29th December, 2018. He saw bodies of two children floating in his well. He, therefore, made report (Exh.47) to Veergaon Police Station.

During his cross-examination, he admitted that his well did not have an iron cap. He further admitted that anybody can accidentally fall in the well. Police recorded his statement 4th/5th day post finding of the dead bodies.

10. Based on his report (Exh.47), case of unnatural death was registered. It was enquired into by PW 1 – Harishkumar, Assistant Police Inspector, attached to Veergaon Police Station. His evidence indicates that during enquiry he could find out identity of the deceased children. From further enquiry he found the appellant to be their father. The trio (the appellant and his two deceased sons) had been seen roaming. They had visited various places and traveled in vehicles. He contacted all such persons and ultimately found that it was the appellant, who dropped his children into the well. He, therefore, lodged the F.I.R. (Exh.27).

This witness was subjected to a searching cross-examination. He being the enquiry and investigating officer, whatever material he collected during the same, would either hit by hearsay, and therefore, cannot be acted upon solely based on his testimony. What can be proved by the report lodged by PW 9 – Bapusaheb and the evidence of this witness was that dead bodies of two minor children of the appellant were found in the well on 29th

December, 2018. The postmortem reports (Exh.70 & 71) indicate the children died of drowning.

11. Now it is to be found out whether the children died accidentally or the appellant committed their murder.

12. PW 13 – Sunita is the wife of the appellant. She testified that on 26th December, 2018 there was quarrel between her and her mother-in-law. The appellant was at his workplace by that time. The appellant would work as waiter with one hotel. Somebody informed him of the quarrel. The appellant came home. He slapped his wife. The appellant then left the house taking with him his two minor children. Some days thereafter police had made enquiry with her. She narrated them the incident.

During her cross-examination, she testified that she had married the appellant fifteen years back. Her husband (appellant) had no vices. She did not lodge any report against the appellant with the police station about assault by him or taking away the children with him and to have not returned. She further testified that her statement was recorded by police thirteen days after the incident. According to her, anybody might have committed the crime.

13. PW 2 – Ganesh was the appellant's employer (hotel owner). His evidence does not further the prosecution case. PW 3 – Nitin's evidence too is irrelevant. PW 4 – Annasaheb was a landlord, in whose premises the

appellant would reside on rent. He testified that on the following day i.e. on 27th December, 2018 the appellant's wife (PW 14) had come to his grocery shop and related him the appellant to have left the house with their two minor children after quarreling with her. Evidence of this witness reinforces the evidence of PW 14. PW 5 – Sarita was a distant relative of the appellant. Her evidence indicates that the appellant and his two children had been to her residence. They stayed overnight there on 26th December, 2018. On the following day the trio took meals and left the house.

14. So far as the other prosecution witnesses viz. PW 7 – Arjun, PW 6 – Amjad Khan and PW 8 – Dnyaneshwar are concerned, they claimed to have seen the appellant with his two children. One of these three witnesses is a hotelier. The other one claimed to have given lift to the appellant and his two children on his motorbike, while the third one claimed to have given them lift in his tempo. Admittedly, the Investigating Officer did not hold test identity parade. The evidence of these witnesses, therefore, would be of little consequence.

15. We have the evidence of the wife of the appellant. Her evidence indicates that the appellant, after having quarreled with her, left the house taking their two children with him. PW 5 – Sarita, appellant's relative, testified the appellant and his two children had stayed at her house overnight on 26/27th December, 2018. The appellant did not specifically dispute the evidence of these two witnesses. His examination under Section 313 of the

Cr.P.C., is silent to state where he was at the material time. It is reiterated that his wife has no reason to testify against her husband at the cost of her marital future. As such, the fact that the appellant after quarreling with his wife left with his two children, gets proved. Since the children were too small, it is for him to explain what he did with them or when he parted their company. The appellant offered no explanation in that regard. The only conclusion, therefore, that could be drawn is that the appellant and none else dropped his children in the well with an intention to kill them or knowing fully well the consequence thereof would be death of his children. We, therefore, find the trial Court to have rightly convicted the appellant.

16. In the result, criminal appeal fails. The same, therefore, stands dismissed. However, the quantum of sentence of three months in default of payment of fine of Rs.5,000/- is reduced to ten (10) days. With this modification of the order impugned herein, the appeal stands disposed of.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)