

MHDH050000472013



R.C.C. NO. 19/2013

STATE V/S. REKHABAI MOHITE

ORDER BELOW EXH. 1.
(PASSED ON 29/06/2026)

. The matter is 13 years old. The accused is charge-sheeted for the offence punishable under Section 317 of the Indian Penal Code. The prosecution case in substance is that the accused abandon her newly born child near a canal at village Dahiwel.

2. Record reveals that the charge-sheet came to be filed on 16/01/2013 in connection with C.R. No. 184/2012. During the pendency of the case the accused remained absent for considerable period. Consequently, non-bailable warrants and proclamation came to be issued against her. As the prosecution failed to secure her presence despite due efforts, permission under Section 299 of the Code of Criminal Procedure was granted by order dated 09/06/2023 and the prosecution was permitted to record evidence in her absence.

3. Further, the prosecution has examine total six witnesses. It is further evident from the record that the complainant who was also investigating officer expired before his evidence could be recorded. The report at Exh. 33 shows his death. Likewise report at Exh. 26 and 31 disclosed that

certain other cited witnesses have also expired. Despite sufficient opportunity the prosecution failed to secure the presence of the remaining witnesses and ultimately their evidence is closed vide order dated 10/03/2026.

4. Panch witness (P.W.-1) at Exh. 22 has not supported to the prosecution case. Though the prosecution permitted to cross-examine him nothing material could be elicited to support the prosecution version.

5. The prosecution further examined Himmat (P.W.-2). He merely deposed that on 17/09/2012 a small child was found near the canal at village Dahiwel and proved the First Information Report at Exh. 24. His evidence is confined to the discovery of the child and does not connect the accused with the alleged act.

6. Kaniyalal (P.W.-3) deposed that he heard the cries of a child on 18/09/2012 and informed the police and village Sarpanch. Aarti (P.W.-4) deposed that on receiving such information she accompanied the police and one day old child was admitted to the hospital. Yogesh (P.W.-6) also deposed that he found a child lying in a carry bag and thereafter child was shifted to the hospital. None of these witnesses has deposed that they had seen the accused abandoning the child or that the child belonged to her.

7. Bharti (P.W.-5) deposed that someone has thrown

the child near house and that she subsequently came to know that the accused had thrown the child. However, her statement regarding the involvement of the accused is admittedly not based on her personal knowledge. She has not claimed to have witnessed the said incident. Therefore, her testimony to that extent is purely hearsay and can not be treated as substantive evidence establishing the guilt of accused.

8. Significantly, the prosecution has failed to examine investigating officer who could prove the investigation and the circumstance connecting the accused with offence. Similarly, the medical officer who examined the child and could have thrown light upon the age, condition and other relevant medical aspects of the child has also not been examined. Thus, the important links in the chain of evidence remain unproved.

9. To constitute an offence under Section 317 I.P.C. the prosecution has required to prove beyond reasonable doubt that I) the accused was the father or mother or a person having the care of child below 12 years of age, ii) such child was exposed or abandoned and iii) such exposure or abandonment was with the intention of wholly abandoning the child. Mere recovery of an abandoned child without reliable evidence connecting the accused with such Act and without

proof of requisite intention is insufficient to attract the offence.

10. In the present case, except the hearsay statement of Bharti (P.W.-5) there is absolutely no evidence connecting the accused with the alleged abandonment of the child. The prosecution has failed to establish the essential ingredients of intentional abandonment by the accused. The evidence laid merely proves that an abandoned child was found near the canal and was subsequently admitted to the hospital. In the absence of cogent, reliable and admissible evidence establishing the essential ingredients of Section 317 of I.P.C. the Court finds that the charge of Section 317 appears to be groundless against the accused.

11. The Hon'ble High Court and Hon'ble District Court have time to time issued direction for disposal of old matters. The present matter is more than 12 years of age. I have already scrutinize the prosecution evidence in aforesaid paragraphs. I am of the view that if in future the absconded accused will trace out and she accepted the evidence of prosecution as it is, in such circumstances also no conviction can be possible because there is no material evidence against absconded accused. Therefore, no would purpose would be served by keeping the matter pending for further period. Hence, I pass the following order;

::O R D E R::

1. Accused is discharged.
2. Her bail bonds, if any, stands cancelled.
3. If any warrant or proclamation issued against absconded accused be called back immediately from concern police station.
4. Matter is disposed of accordingly.

Date – 29.06.2026

SD/-
(Milind R. Gadhave)
Judicial Magistrate, F.C.,
(Court No. 2), Sakri.