
(1977) 06 BOM CK 0007
In the Bombay High Court

Pralhad Narayan Nafade and Another	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 29-06-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (1978) CriLJ 830

Hon'ble Judges : Dighe, J

Bench : Single Bench

Judgement

Dighe, J.—This is an application in revision by the two original accused, convicted u/s 307 read with Section 34 I.P.C., by the Assistant Judge, Jalgaon, whose conviction was upheld in appeal by the Sessions Judge, Dhulia.

2. The petitioners are brothers, appellant No. 1 being the husband of complainant Chhabubai. Chhabubai belonged to village Ruikhede and is the daughter of one Shama Bombale. The appellants are the residents of village Shirsoli in Malkapur Taluka.

3. According to the case for the prosecution, there was bickering between the husband and the wife, because the husband was in the habit of asking for money from his wife, who was expected to bring the same from her father. Some time immediately before the date of the incident viz., 4th July, 1975, such a talk had started and although in the first place, the woman was reluctant to accede to her husband's request of going to her father but in the morning of 4th July 1975, she along with the husband and the husband's brother started going to Ruikhede. They had finished their bus-journey and were walking by a cart-track towards Ruikhede. It is said that on way, while walking, again the talk about the woman making "the demand from her father cropped up. The woman hesitated and according to the case for the prosecution, when the two petitioners felt that Chhabubai would not do the work, they suddenly decided to end her life, A well was nearby that was in the precincts of the village Tarode Shi-var. The two petitioners are alleged to have taken her forcibly to the well and thrown her

inside. The case further proceeds that the woman managed to float to the surface and was clinging to the water-pipe coming from the engine-room fitted to the well. The prosecution alleges that at that time at the behest of petitioner No. 1, the 2nd petitioner jumped into the well just to drown the woman. While he was in the act of so doing, petitioner No. 1 spotted a cart coming by the way, petitioner No. 2 was alerted. He came out of the well and both of them ran away. In the meantime, witness Samadhan and his cousin Shriram came to the spot by the bullock-cart, they asked for help from the villagers and ultimately Chhabubai was taken out of the well. Her father's Mala was nearby. She thereafter walked up to that place. The incident was narrated to her father and the brother. It was morning. At about 10.00 a.m. the matter was discussed and ultimately in the night of that day a complaint came to be lodged with the police station of Edlabad, which appears to be 5/6 miles away from Rui-khede. Next day morning a panchanama of the scene of the offence was prepared by the investigating Sub-Inspector. Statements were recorded and the two accused were hauled up under the charges of Section 307 read with Section 34 I.P.C.

4. The main evidence on behalf of the prosecution consisted of Chhabubai supported by witness Samadhan, one of the persons who was in the cart. On behalf of the defence, a suggestion was made that the woman while in the company of her husband and her brother-in-law, suddenly thought of committing suicide and had therefore taken a jump in the well. It is their case that Chhabubai had an illicit relationship with a neighbour. She was twice spotted out and cautioned but it was of no avail. She was being taken to her father with the idea of keeping her in her father's house. According to the defence, Chhabubai was afraid of showing her face to her father, brother and to the family members, hence she decided to commit suicide. It is the case of the defence, that the husband and the brother immediately went to the rescue of the woman, petitioner No. 2 jumped in the well for the purpose of saving Chhabubai. Shouts for help were given, two villagers had come over there and with their help the woman was taken out. Subsequently, all the three went to the Mala of her father, where although the husband was asked to take back Chhabubai, he declined, so that he and his brother returned home,

5. On behalf of the defence, it is also said that one Supe, their cousin, was a person who had brought about the marriage. He was informed of the misdeeds of Chhabubai and he had promised to go to the father-in-law of petitioner No. 1 with the complaint of the husband. On that count he was present in the house of the father-in-law. He saw the three persons viz., Chhabubai and the two petitioners coming to Shama Bombale's house. He also took part in persuading the 1st petitioner to take back his wife, but that was not agreed to by the petitioners.

6. Mr. Khare, the learned counsel appearing for the revision-petitioners, says that the story put forward by the defence is a true story. At any rate, it is equally a probable story. The version for the prosecution is not supported By good

evidence. Samadhan was not at all present. He is a concocted witness and therefore the two courts below were wrong in accepting the prosecution version. In this revision petition, he makes out a case that "when there is a reasonable possibility of the innocence of the accused and when according to him, the courts have drawn wrong inferences on proof of facts and when the circumstances connected with the transaction are in favour of the defence, the conviction cannot be maintained.

7. On the other hand, Mr. Damle, the learned Public Prosecutor appearing for the State, says that Chhabubai has given evidence in a straightforward manner without keeping .back anything. She is supported on material particulars by Samadhan, who is a natural witness and an independent witness. Samadhan has a field nearby the well where the incident took place, so that his presence there could not be stated to be casual, Supe, who has given evidence on behalf of the defence is a concocted witness, no complaint as suggested, must have been made to him. There was no reason for Mm therefore to visit the house of the father-in-law of petitioner No. 1 and it is more important to note that what he says is a total fiction of imagination. According to Mr. Damle, the suggestion that the woman was of a loose character or had an illicit relationship is not borne out.

8. To begin with, there does not appear to be any dispute that in the morning of 4th July 1975, the three persons viz., the two petitioners and Chhabubai started from Shirsoli for going to Ruikhede. The journey was completed by a bus up to Chikhali and thereafter the three persons were going by the cart-track along side the well of the incident. It is also not disputed that as a matter of fact, the woman was found inside the well and efforts were made to take her out with the help of at least two persons nearby and that ultimately, she went to the Mala of her father,

9. Mr, Khare made a submission that the F.I.R. filed in the case is delayed. There was enough time for manipulation and concoction and as such the prosecution version in its inception looks doubtful and ought to be scrutinised with caution. Police station Edlabad is hardly 5/6 miles away from Ruikhede. The incident had taken place in the morning and the woman had been to her father's Mala by 10-00 a.m. Till night time of that day, the First Information was not lodged. In fact, the delay is looked upon as natural delay by the learned Sessions Judge. He says that the persons in the house of Chhabubai could naturally have been thinking into their minds whether or not to break up the relations with the son-in-law by filing the complaint and hence they may have taken time for deliberations. That is a possible explanation but at the same time the interval taken could have been utilised for manipulating the incident and as long as such a possibility could be conceived, the accused could not be denied the benefit of an adverse inference. Therefore, the court ought to expect a clinching and convincing evidence for believing the version put forward by Chhabubai.

10. According to the prosecution version, Chhabubai had reluctantly started with the two petitioners to approach her father. The demands of money were

frequently made, the same were embarrassing and also difficult to be acceded to but since she was ill-treated, she had no go except accompanying the two petitioners. It is her case that as they came near the house of her father, the talk cropped up, she expressed her diffidence to get money and that enraged the husband and his brother, so that they decided to throw her into the well.

11. It looks providential that just at the time this difference of opinion between the husband and the wife came in, a well was nearby. Again it was a sudden decision of the two persons taken on the spur of the moment to end her life. It was about day time and they were on the cart-track. Yet, they seemed to have found it fit to go to the well for throwing the woman inside. The woman says she was resisting and it is expected that she was crying for saving her life. She has not specifically stated about it. But one cannot keep aside the possibility of her making efforts to attract the attention of others. In her version we also do not find the specific mention of the amount for which the three persons had proceeded to go to Shama Bombale. What prevented her from speaking about the amount demanded is not very clearly brought on the record.

12. The competitive version in this connection is that the woman was not behaving properly, she had illicit connections with one Khapare, a neighbour of the petitioners. She was caught red-handed two days before the date of the incident, even a grievance was made with the defence witness Supe and although Supe had promised to go to Ruikhede and talk about it to the father-in-law of petitioner No. 1, according to the version for the defence, they decided to take the woman to Ruikhede. What was the anxiety on their part to go personally with the woman, when normally in such circumstances the woman is left to herself by kicking her out of the house and what prevented or prohibited these two petitioners for not waiting for the intervention of Supe has not been made clear by the defence. It however, appears that the defence is seeking support from the versions given by Supe and one Sonu Wankhede for proving that the woman was of bad character and as such she was sought to be taken to her father. It was suggested on behalf of the defence that as a matter of fact, petitioner No. 1 was in affluent circumstances. He was adopted by one Sakhubai and there was no need for him to ask for money from his father-in-law. The evidence shows that Sakhubai had some four acres of Bagayat land. The evidence also shows that recently before the incident, petitioner No. 1 had started living separate from Sakhubai, obviously, because of quarrels. That the brothers were not in good financial circumstances cannot be disputed, it is therefore possible that he may have required some money and he could have looked upon the father-in-law to help him.

13. The case has to be decided on determining as to what exactly happened when the three persons came to the well. From the discussions so far made one would be inclined to give credit to both the versions leading to the journey of the three persons to go to the father-in-law of petitioner No. 1. But therein it must also be emphasised that if a probability arises in favour of the accused, that will

have to be given more credit. This is possible when we scrutinise the evidence given by Chhabubai and Samadhan, on behalf of the prosecution and also by looking to the circumstances connected with the case.

14. Witness Samadhan is not related to Chhabubai's family. In that respect he is an independent witness. No ill-will has been established between him and the petitioners. It is however, said that this witness though from a nearby village, has been falsely introduced. As a matter of fact, he was not present, Even according to the evidence, two agriculturists came to the help while the woman was taken out. Chhabubai in her evidence says that two persons were there. She was not knowing them. The accused also have not been able to say clearly as to who those two persons were. In these circumstances, we have to approach the case made out by Samadhan and of his cousin Shriram that they had gone to the spot by the bullock-cart. It is Samadhan's say that when the cart was near about the well they saw one person standing near the parapet wall of the well, the other person came out of the well and the two then ran away. If this part is believed, it would go in furthering the prosecution case that the two persons, the two petitioners, petitioner No. 2 having come out from the well they had the guilty conscience and hence ran away. Samadhan was not knowing these two persons. No Identification parade has been held. On the contrary, the cross-examination establishes that when the second man came out from the well, Samadhan was about 70 to 80 feet away from them. When they went to the well the two had run away to a distance of nearly two furlongs. Samadhan has identified in court petitioner No. 2 as the person who came out of the well. It seems to recognise a person not seen earlier and looked at from a distance of about 70/80 feet, much after the incident looks a dubious piece of identification. Although there is no dispute that the two petitioners were with Chhabubai when she was inside the well, the veracity of Samadhan gets doubted and hence no reliance could be placed on him unless there is good corroboration.

15. It is in this light we have to see how Samadhan was contacted by the police. A supplementary statement of Chhabubai was recorded on the next day morning after the filing of the complaint and thereafter Samadhan was contacted by the police for recording his statement, Chhabubai has a case that she was not knowing Samadhan. Consequently, the investigating agency reaching Samadhan is by some other method. According to Samadhan, he had spoken about what he saw to two persons, Sukhadeo and Govind. He also says that Sukhadeo had accompanied the police when he was contacted by them. But it could not be held that with the help of Sukhadeo the investigating officer came to know about Samadhan being a witness. No statement of Sukhadeo is recorded. He could have been interrogated only but there is no clear evidence as to how Sukhadeo was contacted. Persons from village Shirole were examined by the police on the next day after Samadhan's statement was recorded. There persists therefore some non-satisfactory element in concluding as to how Samadhan could have been known as a witness.

16. According to the defence witness Supe, he was present in the house of Shama Bombale when the woman came to her father. He says that the two petitioners were also present. That however, is not the prosecution version because according to the prosecution, they had run away. In fact, according to the prosecution, Supe also must not have been present at the house of Shama Bombale and the whole case about a complaint to him and his promise to go to Ruikhede is false, false for two reasons, viz., the immoral behaviour of the woman is not proved and the two petitioners could not have accompanied Chhabubai, if Supe was to look to the problem arising out of the immoral behaviour. The defence has relied upon the evidence of Wankhede who merely speaks of an incident in a Bazaar on way to Shirsoli, Chhabubai was seen with her minor child. The child was kept in the care of Wankhede and Chhabubai is reported to have gone for an hour or so in the company of Khapare. In the first place, if Chhabubai had openly done so, the inference of illicit connection would not be a satisfactory inference. Secondly, the witness himself says it did not strike him odd about the woman going like that keeping the child with him. This would therefore, be an infirm piece of evidence to prove the immoral behaviour of Chhabubai. As remarked earlier, if Supe were to intervene in the matter, normally the petitioner and his brother would not have taken the woman to her father until the result of Supe's efforts were known. That part of the evidence produced by the accused therefore, has to be looked with little uncertainty. As the evidence proceeds Supe reproduces the talk with Shama Bombale. Shama Bombale had asked the accused whether or not the woman was thrown in the well and Supe says that, that the answer was that "she jumped in the well of her own accord". This conversation is relied upon to show that from the beginning the family members of Chhabubai were consistent with the case of she being thrown inside the well. But if this conversation is believed, Supe going for the purpose of compromising the matter will have to be believed and in that case the presence of the two accused at the time of the talk in the house of the father-in-law Shama Bombale. also will have to be believed, showing that they had not run away.

17. Leaving aside however, the defence evidence, one has to go by the circumstances of the case and in that connection one more circumstance has to be noted.

18. According to the case for the prosecution as well as for the defence, certain persons were called while rescuing the woman, Samadhan speaks of he and Shriram saving the woman. He speaks of rope having been thrown inside the well. However, he has not spoken anything about how the rope was obtained or the manner in which it was put inside the well. On behalf of the accused the present petitioners, a case was made out that the 2nd petitioner had to break open the lock of the engine room and then the rope was obtained from that room before it was sent down the well. This version of the defence gets supported by reason of the finding of a broken lock in the engine room, thus making it preferable to rely upon the version put forward by the defence.

19. To take a resume therefore, the prosecution version depends on appreciating the statements made by Chhabubai corroborated by Samadhan but Samadhan's evidence is not free from doubt, in which case, the version given by Chhabubai remains uncorroborated. In these circumstances when there are two parallel stories put forth, the one in favour of the defence will have to be preferred. This has to be appreciated on the background that the two persons chose to throw the woman in a well, which was very near the fields of the father-in-law of petitioner No. 1. It is a matter for consideration whether the persons would take the risk of going to such a well, where Chhabubai's relations or persons known to her would easily gather. Apart from the fact that the idea of killing her seems to have been spurred at the very moment when the suggested quarrel took place, it seems that the place and the manner of killing is one which normally would not have been taken recourse to by the persons placed in the situation, the petitioners were put in. For these reasons it can be said that the correct inferences have not been drawn by the courts below. When the other parallel version is equally probable the accused ought to have been given the benefit of doubt. Consequently, this revision application is worth allowing. Hence I pass the following order:

The Revision Petition is allowed. The two petitioners are acquitted of the offences with which they are charged. They be set at liberty forthwith. Bail-bonds are cancelled. Fine if paid, to be refunded.