
(2017) 09 BOM CK 0068
In the Bombay High Court
Case No : 526 of 2004

Santosh s/o Bhauji Bodekar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused

[Indian Penal Code, 1860](#), [Section 307](#) - Attempt to murder

Citation : (2017) 09 BOM CK 0068

Hon'ble Judges : Rohit B. Deo

Bench : SINGLE BENCH

Advocate : Dharini Mule, M.H. Deshmukh

Final Decision : Allowed

Judgement

1. Challenge is to the judgment and order dated 23-7-2004 in Sessions Trial 13/2002, delivered by the learned First Ad hoc Additional Sessions Judge, Chandrapur, by and under which the appellant is convicted for offence punishable under Section 307 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years and to payment of fine of Rs.500/.

2. The genesis of the prosecution is the first information report lodged by the complainant Pushpa Deorao Gaurkar (Exhibit 23) The gist of which is as stated infra. The informant states in the first information report that the appellant Santosh (hereinafter referred to as the "accused") is a relative and used to visit the house of the informant intermittently and stay overnight. She states that although her husband was aware of the visits of the accused, due to the relationship, her husband neither voiced any suspension nor questioned the informant. The first information report states that eight days after pola festival of the preceding year, the informant was assaulted by her husband with a stone since he suspected a relationship between the informant and the accused. The

informant further states that although there were no illicit relations or love between the informant and the accused, her husband used to quarrel with her and beat her with a stick. The husband also lodged a report in the police station against the informant suspecting illicit relationship with the accused, is the further recital. The police intervened and asked the accused, the informant and her husband not to have any interaction with each other. The informant then states that she is not on talking terms with the accused since that incident and the accused did not visit her house in the absence of the husband. It is stated in the first information report that sometimes when the informant used to come across the accused on her way back from the field, the accused used to make gesture and utter that he will murder either the informant or her husband.

3. The first information report further states that at 7-00 p.m. on 10-4-2001 the informant went to answer the nature's call in the paddy field. The husband of the informant was attending a function at the house of one Pimpalshende. The informant untied her lugade (9 yard saree), the accused accosted her, dragged her catching hold of her hand, lifted and put the informant in the well situated in the field of his employer. The informant resisted, however, the accused did not listen, is the version in the first information report. The informant caught hold of the pipe in the well, after 2-3 hours she recognized the voice of her husband who was passing from the spot while talking with somebody. The informant called out that "I am in the well, where are you going". The husband of the informant approached the well and rescued the informant with the help of people. The informant further states that since her 9 yard saree had become wet and stuck to the pipe of the well, she came out of the well in a naked condition. Her husband gave her a lungi to cover herself. She states that she did not suffer any injury as there was ample water in the well. The accused was intending to kill the informant, is the statement in the first information report.

4. Offence under Section 307 of the Indian Penal Code came to be registered on the basis of the said first information report. Completion of the investigation culminated into submission of chargesheet in the court of the learned Judicial Magistrate First Class, Chandrapur, who committed the case to the Sessions Court.

5. The learned Sessions Judge framed charge at Exhibit 8, the accused pleaded not guilty and claimed to be tried. The defence as is discernible from the trend and tenor of cross-examination and the statement recorded under Section 313 of the Criminal Procedure Code is of total denial and false implication.

6. Ms. Dharini Mule, learned Counsel for the appellant submits that the version of the complainant who is examined as P.W.1 is inherently incredible. The learned Counsel would submit that the prosecution case has too many shades of grey and the learned Sessions Judge fell in serious error in recording a finding that the offence under Section 307 of the Indian Penal Code was proved beyond reasonable doubt. The evidence of P.W.1 Pushpa is not corroborated by the spot panchanama and the seizure memo, is the submission. The learned Counsel for

the accused would further submit that the two defence witnesses namely Maroti Pimpalshende and Sakharam Pimpalshende have created sufficient doubt about the veracity of the prosecution case. The defence of alibi is probablised on the touchstone of preponderance of probabilities, is the submission.

7. Mrs. M.H. Deshmukh, learned Additional Public Prosecutor submits that the evidence on record is cogent and sufficient to bring home the charge under Section 307 of the Indian Penal Code. The complainant Pushpa did not have any motive to falsely implicate the accused, is the submission. Taking a clue from the observation of the learned Sessions Judge, the learned Additional Public Prosecutor would submit that if Pushpa and her husband Deorao really intended to falsely implicate the accused, rather than asking Pushpa to enter the well at odd hours, Pushpa or her husband would have leveled some other allegation against the accused illustratively that of outraging her modesty. The learned Additional Public Prosecutor submits that the judgment impugned is well reasoned and does not suffer from any infirmity.

8. The fate of the appeal hinges on the credibility or otherwise of the version of P.W.1 that she was thrown in the well by the accused. P.W.1 states that on the date of the incident at 7-00 p.m. she went to answer the nature's call in the field of Maraskolhe. The said field adjoins the road. The accused was then working in the field of Ghanshyam Hiwase which is adjoining to the field of Maraskolhe. P.W.1 states that the accused accosted her, caught her hands, she shouted, the accused gagged her mouth and then dragged P.W.1 towards the well situated in the field of Hiwase by gagging her mouth and holding her hands. P.W.1 then states that the accused dropped her in the well, she caught hold of a pipe fitted in the well and it was at about 10-00 p.m. that she heard the voice of her husband who was talking with someone. She called out to her husband, her husband approached the well, P.W.1 told her husband that the accused threw her in the well. Her husband was accompanied by Harishchandra Thengane. After sometime a rope was thrown in the well. The police patil Bhaurao Patil also arrived at the spot. The saree of P.W.1 was entangled with the pipe and she was not in a position to come out. P.W.1 further states that her husband threw a lungi inside the well which she tied around her waist and came out of the well with the help of the rope.

9. P.W.1 states that two months prior to the incident there was a heated exchange of words between the accused and her husband. She claims ignorance of the reason for the altercation. P.W.1 further deposes that when she fell in the well, she was wearing chappal and was carrying a container. The well water was 6 to 7 feet deep and the parapet wall was 3 feet in height.

10. I will advert to the cross-examination of P.W.1 at a later stage in the judgment. I intend to take the examination in chief at face value and then analyze the credibility of the version in the context of the spot panchanama.

11. The spot panchanama (Exhibit 20) is not in dispute. The spot panchanama

records that the spot from which the complainant P.W.1 was dragged by the accused is situated at a distance of 400 feet from the well in which P.W.1 is allegedly thrown. The depth of the well and the depth of the water is recorded 36 feet and 15 feet respectively. The motor and water pipes are inserted in the well from the southern side and towards the eastern side, there are two water reservoirs, one built with cement and the other built with stones. The version of P.W.1 is that she was accosted by the accused and the spot which, as is revealed from the spot panchanama, is at a distance of 400 feet from the well. P.W.1 has deposed that she was dragged, her mouth was gagged, her hands were held and she was physically lifted and thrown in the well. Interestingly, the slippers which she was wearing and the container which she was carrying continued to be on her feet/in her hands despite the allegedly brutal physical act of the accused who gagged her mouth and dragged her 400 feet to the well and then physically lifted her and threw her in the well. The version of P.W.1 is that she fell in the well alongwith the slippers and container.

Miraculously P.W.1 who was physically manhandled, gagged, dragged and thrown in the well which is at least 35 feet deep if not 45 feet deep as has come in the evidence of P.W.4, she has not suffered a single injury except for a minor abrasion on the elbow. Be that as it may, it would be an extra ordinarily lucky person not to have suffered any significant injury after being thrown in a well with water pumps and pipes etc. Be it noted that on her own admission P.W.1 did not know swimming.

Let me now analyze the evidence of P.W.1 in juxta position with the crossexamination and the evidence of her husband P.W.2 and P.W.3 who accompanied her husband Deorao in the search for the complainant. In the crossexamination, P.W.1 states that the water pipe to which she held on for hours and saved herself, is at a distance of 7 feet from the spot where she fell on being thrown in the well by the accused. Again, P.W.1 must be extremely fortunate to be in a position to reach and caught hold of the pipe since she did not know how to swim. The evidence of P.W.2 and P.W.3 would suggest that they embarked on the search between 7.30 to 8-00 p.m. P.W.2 husband was aware that P.W.1 had gone to answer the nature's call. He was further aware of the fact that most of the villagers answered the nature's call in the field of Maraskolhe. It is not the case of the prosecution that P.W.2 and P.W.3 spent hours in searching for P.W.1. Au contraire, the evidence of both P.W.2 and P.W.3 would show that they immediately took the road to the field of Ghanshyam Hiwase and while passing the well heard the voice of P.W.1. However, according to the case of the prosecution, P.W.1 was rescued after 10-00 p.m. The time line is inexplicable and thus seriously damaged to the credibility and veracity of the version of the prosecution witnesses.

12. It is further difficult to believe that the slippers and the container which a woman was wearing/carrying would remain with her across the distance of 400 feet while she was physically manhandled, gagged, dragged and then lifted and

thrown in the well. The fact that both the slippers and the container were found floating in the well is suspicious, to say the least. In ordinary course, a woman whose life is endangered, whose mouth is gagged and hands are held and who is dragged over a distance of 400 feet by the accused would find it impossible to retain possession of the container and indeed she would rather prefer to let go of the container so that her hands are free to resist the assailant. Equally suspicious is version of P.W.1 that her saree got entangled in the pipe, a lungi was thrown inside the well which she wrapped across her waist and then came out with the help of rope. The spot panchanama shows that the saree is seen hanging on the motor pump pipe and the wire beside the pipe. The seizure memo (Exhibit 21) states that the saree, jug and slippers were removed from the well by Maroti Raghunath Pimpalshende. The said Maroti Pimpalshende is examined as defence witness 1. He has deposed that the saree was lying on the rock inside the well. Interestingly, in the cross-examination, there is no challenge to the testimony that the saree was lying on the rock inside the well. The only suggestion given to D.W.1, which he has denied, is that container and chappal were floating in the well. The possibility that the saree and jug and slippers (if at all) which were found in the well were deliberately planted to make out a case of the accused having thrown Pushpa in the well, is a stark and real possibility.

13. The learned Additional Public Prosecutor poses a question, as indeed was also posed by the learned Sessions Judge, as to why would Pushpa (P.W.1) and her husband take the pains of Pushpa entering the well an odd hours when she could have falsely implicated the accused by alleging molestation etc. It is difficult and most of the times impossible to fathom the working of the human mind. "The Devil himself knoweth not the mind of man" said Justice Brian from the Reign of Edward IV. However, the learned Sessions Judge ought to have appreciated that the prosecution must prove its own case and the guilt of the accused beyond any reasonable doubt. It is true that the accused set up a defence of alibi which is not accepted and, in my opinion, rightly, by the learned Sessions Judge. It is also true that the other defence is of false implication. However, the failure or inability of the accused to prove the defence does not dilute the burden of the prosecution to prove the guilt of the accused beyond reasonable doubt. If the evidence of the complainant P.W.1 is found to be not implicitly reliable and indeed inherently incredible, the accused cannot be condemned by wondering as to why would the accused be falsely implicated in the manner in which the false implication is alleged.

14. On a holistic appreciation of the evidence on record, I am not persuaded to hold that the evidence of P.W.1 Pushpa is implicitly reliable or confidence inspiring. The prosecution has not proved the offence beyond reasonable doubt and the state of the evidence being what it is, the accused cannot be condemned to deprivation of liberty.

15. I would set aside the judgment and order dated dated 23-7-2004 delivered by the learned First Ad hoc Additional Sessions Judge, Chandrapur in Sessions

Trial 13/2002. The accused is acquitted of the offences punishable under Section 307 of the Indian Penal Code. The bail bond of the accused shall stand discharged. Fine paid by the accused, if any, be refunded to him. The criminal appeal is allowed and disposed of accordingly.