

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

**CRIMINAL APPEAL NO.655 OF 2024
WITH
CRI-INTERIM APPLICATION NO.112 OF 2026**

Hajimalang Matab Nadaf,
Age 43 years, Occupation: Labour,
Residing at Chapalgaowadi;
Tal-Akkalkot, District Solapur.

... Appellant

VERSUS

1. The State of Maharashtra,
Through Inspector Incharge,
Akkalkot (North) Police Station,
District Solapur,

2. Shahid Gafar Nadaf,
Age 19 years, Occu: Shopkeeper,
R/o. Post Chapalgaowadi, Tal – Akkalkot
District – Solapur.

... Respondents

Appearance :

Mr. Ishaan Kapse, Advocate for the Appellant (Appointed).

Mr. S. H. Yadav, APP for Respondent No.1 - State

**Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.**

Reserved on : 15th September, 2026

Pronounced on : 06th October, 2026

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This is an Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC'] against the

Judgment and Order dated 10.01.2023, passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.224/2019, convicting and sentencing the Appellant as follows :

- "1) Accused Hajimalang Matab Nadaf is hereby convicted vide u/sec.235(2) of Cr. P. C. for the offence punishable u/sec.307 of Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- (in words Ten thousand Rs. only) in default of payment of fine to undergo S. I. for six months.
- 2) Accused Hajimalang Matab Nadaf is hereby acquitted vide u/sec. 235(1) of Cr. P. C. of the offence punishable u/sec.323 of Indian Penal Code.
- 3) Accused Hajimalang Matab Nadaf is hereby acquitted vide u/sec. 235(1) of Cr. P. C. of the offence punishable u/sec.504 of Indian Penal Code.
- 4) Accused Hajimalang Matab Nadaf is hereby acquitted vide u/sec. 235(1) of Cr. P. C. of the offence punishable u/sec.506 of Indian Penal Code.
- 5)
- 6)
- 7)
- 8)
- 9)
- 10)
- 11)"

2. The Prosecution's case, as revealed from the police report, is that, on 21.06.2019 at about 08:00 p.m. when Shahid Gafoor Nadaf [hereinafter referred to as 'Injured'] was lying on the platform in front of the kirana shop of the Informant – Ladlemashak Nadaf in village – Chapalgaowadi, Taluka – Akkalkot, District – Solapur and watching mobile phone, the Appellant came and asked Injured as to why he

argued with him in the Mosque and said that, he will kill and stabbed the Injured with knife in the stomach. The injured suffered bleeding injury. The witnesses present over there came to the rescue of the Injured. The Injured was given medical treatment. The incident was reported to the police and Crime No.0218/2019 came to be registered with Akkalkot ('North') Police Station for the offence punishable under Sections 307, 323, 504 and 506 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'].

3. The Investigating Officer conducted the Spot Panchnama and recorded the statement of the Injured and witnesses. The Appellant came to be arrested. The knife came to be seized at the instance of the Appellant. The necessary documents were collected. The seized articles were referred for examination to the Chemical Analyser (CA). On completion of the investigation, the Appellant came to be charge-sheeted. After the committal order by the learned Magistrate, the learned Trial Court framed the charge for the offence punishable under Sections 307, 323, 504 and 506 of IPC against the Appellant below Exhibit – 5. The Appellant pleaded not guilty and claimed to be tried. To prove the charge, the Prosecution examined the following witnesses :

PW Nos.	Names
PW – 1	Shahid Gafoor Shaikh - Injured
PW – 2	Ladlemashak Imam Nadaf - Informant

PW – 3	Shankar Dhondappa Jamindar - Panch for the discovery of knife
PW – 4	Dr. Rohan Shashikant Khairatkar, who examined the Injured at the Civil Hospital, Solapur;
PW – 5	Dr. Ashok Ramu Rathod, who examined the Injured at the Rural Hospital, Mandrup;
PW – 6	Kalappa Satu Pujari – Investigating Officer;

3.1. The relevant documents, such as, the Report / FIR, Panchnamas, Injury Certificates, CA reports etc. were brought on record in the evidence of the aforesaid witnesses. After filing of evidence closure pursis by the Prosecution, the statement of the Appellant came to be recorded under Section 313(1)(b) of Cr.PC. The Appellant denied the Prosecution evidence. On appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order convicting and sentencing the Appellant.

4. Heard the learned Counsel for the Appellant and the learned APP for the Prosecution. Scrutinized the evidence available on record.

[A] It is submitted by the learned Counsel for the Appellant that, there is unexplained and inordinate delay in lodging the FIR. The evidence on record do not form the complete chain of events. Though the Prosecution claimed that, several persons were present at the spot of incident, only one eyewitness was examined, who was an interested witness. The discovery of the weapon under Section 27 of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act'] is a

weak piece of evidence, as the pancha partially not supported the case of Prosecution in respect of voluntary disclosure of the place from where the knife was seized. The knife was seized after four (04) days from arrest and from the open space accessible to the public. The forensic evidence do not support the Prosecution's case in its entirety, and the principle of '*proof beyond reasonable doubt*' comes into play. The learned Trial Court did not record any finding in respect of plea of alibi taken by the Appellant. The Prosecution failed to establish the motive behind the crime. He submitted that, the Appeal be allowed and the conviction and sentence be set aside. In support of his submissions, he relied on the decisions in **Nikhil Chandra Mondal Vs. State of West Bengal; (2023) 6 SCC 605** and **Pramod Kumar Mishra Vs. State of Uttar Pradesh; (2023) 9 SCC 810**.

[B] It is submitted by the learned APP that, the Prosecution examined the Injured witness, who deposed of the incident. The evidence on record goes to show that, the Appellant came with a knife and stabbed the Injured witness. The spot of incident is admitted by the Appellant. The medical evidence corroborate the testimony of the Injured witness. The blood of the Injured was found on the knife. The learned Trial Court has rightly appreciated the evidence on record, and no interference was called for in the impugned Judgment and Order and the Appeal be dismissed.

5. As regards the incident is concerned, the Prosecution's case mainly rests on the testimony of PW – 1 [Injured Witness] and PW – 2 [Informant]. The evidence of PW – 1 [the Injured witness] shows that, when he was lying on the platform in front of the kirana shop of PW – 2 [Informant] on 21.06.2019 at about 08:00 p.m., the Appellant came there and questioned him as to who was he to ask him and why he quarreled with him in the Mosque and dealt the forceful blow in his stomach on the right side by the knife. He deposed that, he suffered bleeding injury and the Informant and other persons came and rescued him from the Appellant. He deposed that, due to the bleeding, his clothes were stained with blood and he was taken to the Police Station and from there to the Rural Hospital where he was given first aid and thereafter referred to the Civil Hospital, Solapur. He deposed of one incident dated 13.05.2019 prior to the incident in question when the Appellant came under the influence of liquor and switched of bore-well motor pump and he gave understanding to the Appellant. He further deposed that, he was operated in the Civil Hospital and had 44 stitches on his stomach. The police recorded his statement and statement was also recorded before the Magistrate. He identified the knife [Article – P-A-1] and his clothes [Articles – P-A-2, P-A-3 and P-A-4].

6. PW – 1 [Injured witness] was subjected to the cross-examination. Nothing has come in the cross-examination to create any dent in his

evidence. The entire cross-examination is in the nature of suggestion. The evidence of PW – 1 [Injured witness] in the examination-in-chief remained unshaken.

7. The evidence of PW – 2 [Informant] shows that, the place of incident was in front of his kirana shop by named '*Mashala-Allah Kirana Shop*'. He deposed that, PW – 1 [Injured witness] was watching his mobile phone in front of his shop and there were other persons present. He deposed of the incident of stabbing by the Appellant to PW – 1 [Injured witness] by the knife. He deposed that, he and the persons present over there, rescued PW – 1 [Injured witness] and was taken to the Police Station, and thereafter to the Hospital. He deposed of lodging the report below Exhibit – 37 to the concerned Police Station. He identified the knife [Article – P-A-1]. He was also subjected to the cross-examination and his testimony remained unshaken. His evidence corroborate the testimony of PW – 1 [Injured witness] in all material aspects.

8. The evidence of PW – 5 [Dr. Ashok Ramu Rathod] shows that, in the year – 2019, he was attached to the Rural Hospital, Akkalkot as Medical Officer and on 21.06.2019, around 7:30 p.m., PW – 1 [Injured] came to the Hospital with injury and history of assault by sharp object. He examined PW – 1 [Injured] and found incise wound over right side

umbilicus over abdomen, size 4 cm x 3 cm x deep and caused by hard and sharp weapon and the age of injury was less than 24 hours and it was grievous in nature. He provided first aid to the Injured and referred for further management to the higher center. He deposed that, the injury was grievous in nature and likely to cause death. He deposed that, he issued Medico Legal Certificate [MLC] below Exhibit – 50. His evidence shows that, the knife [Article – P-1-A] was shown to him and he deposed that, the injury shown by him in the certificate was possible by the said weapon. The cross-examination could not create any dent in the evidence of this witness. The suggestion that, the injury was not grievous in nature is denied. The Exhibit – 50 corroborates the testimony of this Medical Officer.

9. The evidence of PW – 4 [Dr. Rohan Shashikant Khairatkar] shows that, since June – 2018, he was attached to the Solapur Civil Hospital as a Medical Superintendent. On 21.06.2019, PW – 1 [Injured] was brought with injury in his stomach, which was sutured by the Medical Officer of Rural Hospital, Akkalkot. PW – 1 [Injured] was admitted for treatment. The stab wound was grievous in nature on the vital part of body, which was likely to cause death. He deposed of providing medical treatment and operation to PW – 1 [Injured]. His evidence shows that, the medical papers were exhibited below Exhibit – 48, collectively. His evidence shows that, the knife [Article – P-A-1] was shown to him and he deposed

that, the injury suffered by PW – 1 [Injured] was possible by the said weapon. He expressed that, the said injury was possible if a person falls down on rocky surface. Though in the cross-examination, it has come that, the depth of the injury was not mentioned in the MLC and the witness was unable to state as to whether the said injury was possible due to fall on the surface having stones, his evidence in the examination-in-chief remained undiluted.

10. The evidence of PW – 3 [Shankar Dhondappa Jamindar] and the evidence of PW – 6 [Kalappa Satu Pujari], the Investigating Officer shows that, the knife [Article – P-A-1] was discovered and seized at the instance of the Appellant on 26.06.2019 while in police custody. The memorandum and seizure panchnama in that regard are brought on record below Exhibits – 42 and 43, respectively. The evidence of both the witnesses shows that, the Appellant disclosed the place where the knife [Article – P-A-1] was hidden and pursuant to his statement, the Appellant led the Investigating Officer and pancha to one tin-shed in front of his house and removed the knife [Article – P-A-1] from the earthen stove. The evidence of PW – 3 [Shankar Dhondappa Jamindar] and the evidence of PW – 6 [Kalappa Satu Pujari], the Investigating Officer, in respect of the discovery and the seizure of knife is consistent and the same is corroborated by previous memorandum and seizure panchnama. In view of the cogent and consistent evidence in respect of

discovery and seizure of knife [Article – P-A-1], the delay of three [03] days for the same from the date of arrest will not be sufficient to discard the said evidence under Section 27 of the Evidence Act. The CA report below Exhibit – 58 in respect of blood group of PW – 1 [Injured] shows the blood group as 'B' and the CA report below Exhibit – 59 shows the human blood of 'B' group on the knife [Article – A-P-1]. Thus, in view of the said reports, the discovery and seizure of the knife [Article - A-P-1] becomes relevant.

11. The evidence available on record is discussed above. The evidence of the Injured witness stands on the higher pedestal. The evidence of PW – 1 [Injured] finds corroboration by the evidence of PW – 2 [Informant] and the medical evidence. The injury on PW – 1 [Injured] is proved through the medical evidence. The identity of the Appellant is not in dispute. The answer to Question No.57 put to the Appellant by the learned Trial Court shows that, as per the instructions of the Appellant, his Counsel admitted the spot panchnama below Exhibit – 38. The Prosecution proved beyond reasonable doubt that, the Appellant assaulted PW – 1 [Injured] on the date and at the place mentioned in the charge. The weapon of assault having blood stains of PW – 1 [Injured] came to be discovered and seized at the instance of the Appellant. The FIR was lodged immediately on the next day. Non-examination of the other witnesses is not fatal, as the Injured witness is examined by the

Prosecution and his testimony supports the case of Prosecution in respect of assault by the Appellant. As the Prosecution's case is based on the testimony of Injured eyewitness, the motive behind the crime becomes inconsequential.

12. As regards the submissions in respect of alibi is concerned, there is nothing in the cross-examination of the witnesses that, the plea of alibi was taken by the Appellant. What is seen from the record is that, at the time of final arguments before the learned Trial Court, the learned Counsel for the Appellant tendered across the bar the Exhibit – 64, which is a copy of discharge summary showing the name of the Appellant as a patient and his date of admission as 22.06.2019 at 12:45:43 p.m and date of discharge as 23.06.2019. The incident is dated 21.06.2019 at 08:00 p.m. It is settled position under the law that, the plea of alibi is required to be proved in the trial by cogent and reliable evidence. In that regard, useful reference can be made to the decision in **Kamal Prasad and Others Vs. State of Madhya Pradesh; (2023) 10 SCC 172**. The scrutiny of the evidence on record nowhere shows that, the Appellant had proved the plea of alibi. Thus, non-consideration of plea of alibi by the learned Trial Court cannot be faulted, as it was neither the plea of alibi by the Appellant before the learned Trial Court nor it was proved.

13. In **Nikhil Chandra Mondal** [*supra*], the case of Prosecution was based on circumstantial evidence, and therefore is of no assistance to the Appellant. In **Pramod Kumar Mishra** [*supra*], it was the Appeal against the conviction for the offence under Section 307 of IPC and sentence was five (05) years rigorous imprisonment. It is observed that, *it is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.* The observations in the case of **Mohd. Giasuddin Vs. State of A.P.; (1977) 3 SCC 287**, wherein, *the objects behind sentencing and the factors to be kept in mind while imposing the punishments are discussed.*

14. In the case at hand, the Appellant is convicted for the offence punishable under Section 307 of IPC and sentenced to suffer imprisonment for life with fine and default sentence on failure to pay the fine. The offence of attempt to commit murder is punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to the person, then punishment may extend to imprisonment for life, or to such punishment as is mentioned before. The assault on the injured witness is by knife in the stomach. The medical evidence shows one incised / stab wound. The Injured witness was discharged from the Hospital on 13.06.2019, i.e. after nine (09) days. Neither it is the case of Prosecution,

nor there is evidence that, due to the intervention of the Informant, the Appellant was prevented from inflicting more injuries on the Injured witness. In FIR/Report below Exh. 37 lodged by PW-2 (Informant), it is stated that, after one blow by the knife to PW-1(Injured) the Appellant assaulted by hands and legs. From this, a clear interference can be drawn that, Appellant did not intend to commit the murder of PW-1 (Injured). Though the intention to commit the murder is not seen, the knowledge of the consequences of such an act, i.e. it may cause death, can very well be attributed to the Appellant. The observations in Paragraph No.35 of the Judgment by the learned Trial Court indicate that, the Appellant was convicted previously for the offence punishable under Section 304(II) of IPC and sentenced to suffer Rigorous Imprisonment for seven (07) years and the Appeal was pending against the Judgment of conviction dated 10.10.2014 in Sessions Case No.366/2013. This goes to show that, the said conviction was much prior to the incident in question and the Appeal was filed against the said conviction. In Paragraph No.38 of the said Judgment, it is observed by the learned Trial Court that, the Court did not notice any repentance on the face of the Appellant during entire trial. At the time of incident, the Appellant appears to be 40 years old. The impugned Judgment shows that, the Appellant was behind the bars from 23.06.2019 to 14.07.2020 and thereafter, from 05.04.2021 till date. This shows that, the Appellant

is behind the bars for a period of six (06) years and some months. The occupation of the Appellant is shown as Labourer. Considering all these factors, in our considered view, the substantive punishment awarded by the learned Trial Court is excessive and the same can be scaled down to strike a balance between the nature of crime and sentence. In our view, the rigorous imprisonment for seven (07) years, with the same amount of fine and default sentence, would meet the ends of justice. Hence, the following order :

ORDER

- [a] The Criminal Appeal is partly allowed.
- [b] The conviction awarded to the Appellant by the learned Trial Court for the offence punishable under Section 307 of IPC is maintained.
- [c] The sentence imposed by the learned Trial Court on the Appellant is modified to Rigorous Imprisonment for seven (07) years and fine of Rs.10,000/-, in default, to pay the fine, to undergo Simple Imprisonment for six (06) months.
- [d] Rest of the operative order passed by the learned Trial Court shall remain the same.
- [e] The fees of learned counsel appointed for the Appellant is quantified to ₹25,000/- (Rupees Twenty Five thousand only) to be paid by the High Court Legal Services Authority.
- (f) In view of disposal of the Appeal, pending application, if any, stands disposed of accordingly.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]