

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 49 OF 2000

State of Maharashtra
through Sitabai Chander Taware,
R/o. Dhoki, Tq. & Dist. Osmanabad.

**....Appellant.
(Ori. Complainant)**

Versus

Netaji Ramkrishna Thodsare,
Age 25 years, R/o. Thodsarwadi,
At present Terna Nagar, Dhoki,
Tq. & Dist. Osmanabad.

**....Respondent.
(Ori. Accused)**

Mr. A.A. Jagatkar, APP for appellant/State.

Mr. Satej S. Jadhav, Advocate for respondent.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : JULY 10, 2017.

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed by the State to challenge the judgment and order of learned Sessions Judge, Osmanabad delivered in Sessions Case no. 31/1997. The respondent/accused was chargesheeted for the offences punishable under sections 307, 323 and 504 of Indian Penal Code ('IPC' for short). He is convicted and sentenced for the offence punishable under section 324 of IPC. The sentence of rigorous imprisonment for 21 days and fine of Rs.3000/- is imposed by the learned Sessions Judge. Out of the fine

amount, amount of Rs.2500/- is to be paid to the injured witness Sitabai. As conviction is not given for the offence punishable under section 307 of IPC, the decision is challenged. Both the sides are heard.

2) Both the original complainant and the respondent/accused hail from Terna Nagar, Tahsil Dhoki, District Osmanabad. The houses of these two persons are situated in the same lane, but at some distance from each other. Complainant - Sitabai used to reside with her married daughter Mangalbai, who is deserted by her husband. Mangalbai has two sons and one daughter and they also live with Sitabai. Sitabai has a grocery shop and this shop was being run by Mangalbai and her son Satyviijay.

3) The incident took place on 29.9.1995 in the noon time. When Sitabai heard noise of quarrel coming from the shop, she went there. Mangalbai disclosed that the accused was demanding grocery articles on credit basis and when she refused to give the articles on credit basis, he picked up quarrel and he was giving abuses to her. The accused then already left the spot. Sitabai then went to the house of parents of the accused to make complaint against him. The age of the accused was below 25 years at the relevant time. She reported the incident to the parents of the accused. When she was

returning home, the accused intercepted her on the way and questioned her as to why she had reported the incident to his parents. Then all of a sudden, he took out a knife and gave blow on the abdomen of Sitabai. She sustained bleeding injury and she shouted for help. Satyavijay, grandson of Sitabai, rushed there and Kisan, brother of Sitabai, also rushed there. The accused inflicted injuries on them also. Sitabai was then shifted to Government Hospital, Osmanabad. One operation was performed on her in the hospital and report came to be recorded in the hospital. On the basis of this report, the crime came to be registered for aforesaid offences against the accused.

4) During the course of investigation, police prepared spot panchanama and recorded statements of witnesses, who include Kisan and Satyavijay. The panchanama of the spot of offence was prepared. The accused came to be arrested. When arrest panchanama was prepared, the weapon, knife came to be recovered from his person. The clothes of the accused were taken over under separate panchanama and clothes of the injured Sitabai were also taken over as there were blood stains on the clothes. After completion of investigation, chargesheet came to be filed for aforesaid offences. After committal of the case, the learned Sessions Judge framed charge for aforesaid offences to which the accused

pleaded not guilty.

5) For proving the offences, prosecution examined in all 12 witnesses. The main witness of the prosecution is Sitabai. She has given evidence as per the contents of F.I.R. and she has stated in evidence that she had witnessed the incident in which abuses were given to Mangalbai by the accused. She has given evidence that she had then visited the house of the accused to make complaint to his parents and when she was returning home, in front of one hotel, the accused intercepted her and all of a sudden, gave blow of knife on left side of her abdomen and she sustained bleeding injury. She has given evidence that in her presence Satyavijay and Kisan were assaulted by using knife. The oral evidence shows that the accused had aimed and had given one blow to Sitabai and on that point, the evidence is consistent with F.I.R. which is at Exh. 12. As the prosecution wants conviction for offence punishable under section 307 of IPC, it needs to be ascertained from the evidence of Sitabai and other evidence as to whether there were ingredients of murder as an attempt of murder is required to be proved.

6) There is evidence of Sitabai and Mangalbai on the act of the accused of giving blow of knife to Sitabai. Other two witnesses like Kisan and Satyavijay have also tried to say that they witnessed

the incident. In F.I.R., it is not mentioned that Satyavijay and Kisan were present in the vicinity to witness the incident and so, the evidence of Sitabai needs to be considered separately to ascertain the intention of the accused.

7) The evidence of Sitabai in cross examination shows that on no previous occasion, the accused had come to their shop to purchase grocery or to demand grocery on credit basis. The evidence of Sitabai shows that the incident of assault took place in front of shop of Deshmukh, though she had disclosed in F.I.R. that the assault was made in front of one hotel. It can be said that many persons must have gathered there. It was noon time and there is possibility that the owner of hotel or shop had witnessed the incident, but those independent witnesses are not examined by the prosecution.

8) From the nature of evidence of Sitabai and Mangalbai, it can be said that the reason for the quarrel given by them does not appear to be probable in nature. Due to absence of evidence of independent witnesses, a probability is created that there was other reason for the quarrel or the incident and the incident did not take place in the manner in which it is described. Only one blow of knife was given. The evidence of doctor and injury certificate show that

the injury was having 1.5 c.m. length, it was in lumbar region and it was entering peritoneum. Laparotomy was done on the same day due to nature of injury. The evidence is not given to show that accused wanted to inflict the blow on abdomen or he had intention to inflict more blows. The accused had questioned Sitabai as to why she had reported the incident to his parents. The evidence of the other witnesses show that they were only trying to snatch the weapon from the hands of the accused when they rushed to the spot. Due to that, Kisan sustained injury to his right middle finger, first phalanx palmar aspect and right ring finger, second phalanx palmar aspect. Satyavijay also sustained injury to left forearm and forearm middle showing that there was only attempt to snatch the knife and in that attempt, they sustained injuries. The sites of the injuries sustained by these witnesses show that there was no intention of the accused to assault these two relatives of Sitabai.

9) Medical Officer Dr. Kavita (PW 3) has given evidence that the injury could have resulted in death if Sitabai was not treated in time. The injury is described as grievous. Though these things are there, due to the nature of incident and aforesaid circumstances, it is difficult to believe that the accused had intention to cause the injury sustained and at the site. Inference is easy that he wanted to teach only lesson to Sitabai and there was no intention to finish her.

Thus, the intention of murder or intention to cause injury of aforesaid nature cannot be gathered from the aforesaid evidence. The accused was hardly 25 years of the age at the relevant time.

10) The evidence of Investigating Officer shows that the accused came to be arrested on 30.9.1995, next day of the incident and only during arrest panchanama, the knife was shown to be recovered from his person. The length of the knife is shown as 21 c.m. and the blade was having length of nine and half c.m. There are no bad antecedents of the accused.

11) The aforesaid nature of evidence and particularly, the reason behind the incident show that there is possibility that there was no intention to cause such injury which would be sufficient to cause death in ordinary course of nature and there was no intention to finish Sitabai. In view of the age of the respondent/accused and aforesaid circumstances, this Court holds that nothing wrong can be found in the view taken by the learned Sessions Judge that the act amounts to offence punishable under section 324 of IPC. Though the injury is described as grievous in nature by the doctor, considering the nature of injury and the period for which Sitabai was bed ridden, it is not possible to interfere in that view also. This Court sees no reason to interfere in the decision given by the learned Sessions

Judge. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

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