

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.542 of 2002

Raosaheb s/o Dhondiram Darandale,
Age : 33 yrs, Occ. : Agri.,
Resident of Sonai, Taluka Newasa,
Dist. Ahmednagar.

.. Appellant
(Original accused)

Versus

The State of Maharashtra

.. Respondent

..
Mr.D.R.Adhav, Advocate for appellant

Ms.R.P.Gaur, APP for the respondent

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CORAM : SANGITRAO S. PATIL, J.
DATE : 14 JULY, 2017.

ORAL JUDGMENT :

The appellant has challenged his conviction and sentence for the offences punishable under Sections 307, 323 and 506 of the Indian Penal Code recorded by the learned Addl. Sessions Judge, Shrirampur, on 21.08.2002 in Sessions Case No.84/1998.

02. The case of the prosecution, in short, is that the informant namely Mangal (PW 1) is the wife of the appellant. The appellant used to take suspicion against character of the informant. On 23.07.1998 at about 10.00 p.m., the appellant who was under the influence of liquor, asked the informant to tell the names of the persons with whom she had relations or else, threatened to kill her. Then, at about 4.00 a.m., the appellant tied a rope around the neck of the informant, sat on her chest and pulled the rope forcefully. The informant raised shouts, however, the appellant did not release the rope that was tied around her neck. She became unconscious. She regained consciousness in the Hospital of Dr.Mate. She was informed in the hospital that the appellant also tried to commit suicide by hanging himself. The appellant was also admitted in the same hospital, where the informant was admitted. The informant was discharged from the hospital on the same day and then, she lodged

F.I.R. in Police Station, Sonai. On the basis of that F.I.R., Crime No.I-74/1998 came to be registered against the appellant for the offences punishable under Sections 307, 498-A, 309, 323 and 506 of the Indian Penal Code. The investigation followed. A rope came to be seized under a panchnama. Statements of witnesses were recorded. After completion of the investigation, the appellant came to be charge-sheeted for the above-mentioned offences.

03. The prosecution examined nine witnesses to bring home guilt of the appellant. The appellant examined his sister - Mirabai as defence witness. After evaluating the evidence on the record, the learned Sessions Judge found the appellant guilty of the offences punishable under Sections 307, 323 and 506 of the Indian Penal Code, however, did not find him guilty for the offences punishable under Sections 498-A and 309 of the Indian Penal Code. He, therefore, acquitted the appellant of the said

two offences. The appellant was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 307 of the Indian Penal Code; rigorous imprisonment for one month and to pay a fine of Rs. 200/-, in default to undergo simple imprisonment for seven days for the offence punishable under Section 323 of the Indian Penal Code; and rigorous imprisonment for three months and to pay fine of Rs.500/-, in default to undergo simple imprisonment for one month for the offence punishable under section 506 of the Indian Penal Code.

04. The learned Counsel for the appellant submits that there has been delay of more than 24 hours in lodging the F.I.R., which has not been explained. He submits that the facts of the case as well as the evidence on record do not disclose the ingredients of the offence punishable under Section

of 307 of the Indian Penal Code. According to him, during the course of domestic quarrel, the informant sustained injuries. There was no intention on the part of the appellant to commit murder of the informant. He pointed out to the medical evidence which does not support the case of the prosecution that the informant sustained injuries on her neck because of tying of a rope. He further submits that the panchas to recovery of rope did not support the prosecution. As such, the seized rope cannot be connected with the incident in question. He further submits that there is no independent corroboration to the version of the informant. On these grounds, he submits that the appellant may be acquitted of the above-mentioned offences.

05. As against this, the learned A.P.P. submits that the appellant was suspecting character of the informant, which was the cause for his attacking the informant with intent to kill her.

When the intention of the appellant to kill the informant is proved by her evidence, even if there is no injury noticed on the neck of the informant, it cannot be said that the offence of attempting to commit murder is not established. She submits that the medical evidence shows that there was contusion having length of 4 inches, which would indicate that the appellant tried to kill the informant by tying rope around her neck. She submits that the evidence on record is sufficiently clear to establish guilt of the appellant for the offences, for which he was convicted by the trial Court.

06. The informant deposes that on 23.07.1998 at about 10.00 p.m., the appellant came home under the influence of liquor and asked her to tell names of the persons with whom she had relations. He threatened to kill her in case names of those persons were not disclosed. She provided food to the appellant. At the time of having meals also, the appellant repeated his demand for disclosure of

the names. He then assaulted her by fists and kicks on her chest. Thereafter, both of them went to sleep near their daughter. At about 4.00 a.m., the appellant tied a rope around her neck and sat on her chest. He pulled the rope forcefully when she raised shouts. The appellant did not release the rope that was tied around her neck. She became unconscious and regained consciousness in the hospital of Dr.Mate (PW 9). This is all the account of the incident given by the informant.

07. Dr.Mate (PW 9), who examined the informant on 24.07.1998 at about 6.00 a.m., found a contused lacerated wound around her neck. According to him, it was a traumatic injury. He states that when the informant came to his hospital, she was conscious. She came there on foot. This evidence falsifies the version of the respondent that she regained consciousness in the hospital of Dr.Mate (PW 9). When the informant tends to state something far from the factual position, it will be risky and

hazardous to rely on her sole testimony in respect of the incident. The daughter of the informant was present at the time of the incident, who could have come before the Court to corroborate the version of the informant. However, she has not been examined by the prosecution without assigning any reason. It has come in the cross-examination of Dr.Mate (PW 9) that if neck of a person is tied by means of rope, there would be a ligature mark around the neck of that person. He further states that there was no injury of such kind around the neck of the informant.

08. Dr.Madhavi Raje (PW 7), who examined the informant on 25.07.1998, states that there was a reddish blue contusion mark on front side of neck of the informant, having length of 4 inches with few abrasion marks extending behind right ear. She further noted blunt trauma on back, chest and left thigh of the informant. She mentioned that the said injuries were caused by a blunt object. She states

that if the neck of a person is tied by a rope (Art.1), injury no.1 found on the neck of the informant was possible. However, in her cross-examination, she admits that if neck of a person is tied by rope (Art.1), there would be ligature mark around the neck. Admittedly, no ligature mark was noticed around the neck of the informant. Moreover, rope (Art.1) cannot be characterised as a blunt object. In the circumstances, the case of the informant that the appellant tried to kill her by tying rope around her neck, cannot be accepted.

09. It is true that for establishing the offence of attempting to commit murder, it is not always necessary that there should be an injury. The intention of the offender to kill a person has to be established. In the present case, only because it is alleged by the informant that the appellant was suspecting her character, intention on the part of the appellant to kill her cannot be attributed. At the most, it can be said that

because of suspecting character of the informant, the accused used force against the informant during the course of quarrel and caused her injuries. The nature of the injuries sustained by the informant reflects intention of the appellant. The said injuries would rule out the possibility of there being any intention on the part of the appellant to kill her. Thus, the evidence on record is not sufficient to establish guilt of the appellant for the offence punishable under Section 307 of the Indian Penal Code.

10. So far as the offence punishable under Section 506 of the Indian Penal Code is concerned, there must be positive and clinching evidence to establish that the offender threatened the victim with injury to his person, reputation or property with intent to cause alarm to that person or to cause him to do an act which he is legally bound to do or to cause him to omit to do an act which he is legally bound to do.

11. In the present case, the single-sentenced evidence of the informant that the appellant threatened her of death, in case she did not disclose the names of the persons with whom she had relations, by itself would not be sufficient to constitute the offence of criminal intimidation punishable under Section 506 of the Indian Penal Code.

12. So far as the offence punishable under Section 323 of the Indian Penal Code is concerned, the evidence of the informant coupled with the medical evidence, is sufficient to establish guilt of the appellant. I subscribe to the findings of the learned Additional Sessions Judge in respect of proof of guilt of the appellant for the offence punishable under Section 323 of the Indian Penal Code.

13. In view of the above facts and circumstances of the case, the conviction of the

appellant for the offences punishable under Sections 307 and 506 of the Indian Penal Code would not be sustainable. The prosecution has established guilt of the appellant for the offence punishable under Section 323 of the Indian Penal Code only.

14. The appellant has been sentenced by the learned Sessions Judge to suffer rigorous imprisonment for one month and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for seven days for committing the offence punishable under Section 323 of the Indian Penal Code. The appellant was in jail from 25.07.1998 to 21.09.1998 during the investigation. Even after he was convicted, he was behind the bars from 21.08.2002 to 15.12.2003. As such, he has already undergone the sentence that was imposed on him for the offence punishable under Section 323 of the Indian Penal Code. He has already deposited the fine amount. The amount of Rs.2,500/- deposited by the appellant towards fine in respect of the

offences under Sections 307 and 506 of the IPC, though liable to be refunded to him, will have to be ordered to be paid to the informant, as compensation.

15. In the result, I pass the following order :-

(i) The appeal is partly allowed.

(ii) The impugned judgment and order is partly quashed and set aside.

(iii) The conviction and sentence of the appellant for the offences punishable under Sections 307 and 506 of the Indian Penal Code are set aside and he is acquitted of the said offences.

(iv) The conviction and sentence of the appellant for the offence punishable under Section 323 of the Indian Penal Code, is maintained.

(v) The appellant has already undergone the

sentence of imprisonment in respect of the offence punishable under Section 323 of the Indian Penal Code.

(vi) The amount of Rs.2,500/- deposited by the appellant towards fine in connection with his conviction for the offences punishable under Sections 307 and 506 of the Indian Penal Code, be paid to the informant namely, Mangal Raosaheb Darandale, resident of Gopinathnagar, Shrirampur, Dist. Ahmednagar as compensation.

(vii) The bail bonds of the appellant are cancelled. He is set at liberty.

(viii) The appeal is accordingly disposed of.

[SANGITRAO S. PATIL, J.]

kbp