

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

CRIMINAL APPEAL NO. 218 OF 2003

Madhav S/o Anandrao Pawar,
Aged 27 years, Occupation-Agriculturist,
R/o. Ambala, Taluka Hadgaon,
District Nanded.

... Appellant

VERSUS

The State of Maharashtra

... Respondent

.....
Mr V. S. Deshmukh, Advocate h/f Mr A. B. Kale, Advocate for the
appellant
Mrs M. A. Deshpande, APP for respondent/State
.....

CORAM : A. M. DHAVAL, J.
DATE : 24TH JULY, 2017.

ORAL JUDGMENT:

1. The accused from Sessions Case No. 42/2001, prosecuted for offences u/s 307 and 324 of IPC and convicted for offence u/s 324 of IPC and sentenced to suffer simple imprisonment for six months and to pay fine of Rs. 2,000/-, in default to suffer simple imprisonment for two months, has preferred this appeal challenging the Judgment & Order dt. 18.02.2003, passed by Sessions Judge, Nanded.

2. As per the prosecution case, PW4-Poornima was residing at Ambala, Tq. Hadgaon, Dist. Nanded and at the relevant time was studying in XIth std. in a college at Hadgaon. On 30.01.2000, while she was proceeding towards her new house at 4:30 pm, the accused Madhav suddenly came there and abruptly inflicted a blow of knife on her right thigh. She raised shouts. Her father was moving just ahead of her. On hearing her shouts, he turned around. She had received a bleeding injury. The accused fled away from the spot. People gathered there and her father brought her to the hospital and her FIR came to be lodged to that effect at 17:45 at Police Station, Hadgaon for offences u/s 324 of IPC. The injured was taken to Hadgaon Hospital. During investigation, spot panchanama was drawn where blood spots and a blood stained knife were found. Those were seized. Statements of material witnesses were recorded. Blood stained Panjabi dress of the victim and one Baniyan, which was used to stop the bleeding, were seized. The accused was arrested and seized articles were sent to Chemical Analyzer and Chemical Analysis reports were collected. The investigation revealed that, the accused had one sided love affair with PW4-Poornima and he had written her name on a public road near Rest House proceeding to Hadgaon. After completion of investigation, the charge-sheet submitted in the Court for offences u/s 324 & 307 of IPC. In due course, the case was

committed to the Court of Sessions. The learned Sessions Judge framed charge u/s 307 and in the alternative 324 of IPC at Exh. 9. The accused pleaded not guilty. The prosecution examined seven witnesses. It is defence of the accused that, PW4-Poornima sustained injuries by fall. Her marriage was settled with the accused but parents of the accused declined to accept her as daughter-in-law and therefore she has falsely implicated him.

3. The learned Sessions Judge accepted the evidence but held that it was sufficient to convict the accused only for offence u/s 324 of IPC, and hence, the accused was convicted u/s 324 of IPC and was sentenced as referred above. Hence, this appeal.

4. Mr V. S. Deshmukh, learned advocate holding for Mr A. B. Kale, counsel for the appellant, has taken me through the evidence on record. He argued that the case about one sided love affair and intimidation by the accused to PW4-Poornima was not substantiated by lodging FIR. There are admissions to show that the accused got married within eight days after the incident. The accused and PW4-Poornima belong to the castes in which the marriages are common. The weapon-knife used in commission of offence in question was not shown to the witnesses and the discovery of knife is also doubtful and hence the accused should be given benefit of doubt. Hence, the appeal be allowed and the accused be acquitted.

5. Per contra, Mrs M. A. Deshpande, learned APP for the State submitted that evidence of PW4-Poornima is cogent, consistent, trustworthy and reliable. It is well supported by father-PW1 and one independent witness PW2-Uttam. The spot panchanama has been duly proved. The medical evidence shows that the said injury is possible by knife. The Sessions Judge has already taken into consideration that the injury would not threaten the life and therefore the accused has been acquitted of offence u/s 307 of IPC and convicted u/s 324 of IPC only, and the sentence passed thereon is based on reliable material and the same is proportionate to the nature of offence & hence there is no necessity to interfere with the same.

6. The points for my consideration with findings thereon are as follows:

Points	Findings
(i) Whether the accused has caused simple hurt to PW4 by deadly weapon Knife?	Proved...
(ii) Whether any interference is necessary in the conviction or sentence?	No..
(iii) What order?	The Appeal is dismissed.

:- REASONS :-

7. The prosecution has examined following witnesses :-

- [1] PW1 - Narayan – Victim's father.
- [2] PW2 - Uttam - who came to the spot immediately after hearing cries.
- [3] PW3 - Suryabhan, Panch. He has deposed about a blood stained knife and blood stains found on the spot and proved spot panchanama Exh. 16. He has also proved seizure of clothes of Poornima (Exh.17).
- [4] PW4 - Poornima, the victim girl.
- [5] PW5- Dr. Lomte has proved Medical Certificate Exh. 23.
- [6] PW6- Constable - Dnyaneshwar is a carrier.
- [7] PW7- Head Constable-Latkar is the Investigating Officer. He proved letter to CA office Exh. 25 and CA reports Exh. 27 & 28.

8. PW4-Poornima deposed that, on 30.01.2000 at about 4:30 PM when she was proceeding along with her father from her old house to new house, that time the accused was sitting on *otta* in front of house of Sambhaji Pawar. Her father was few paces ahead and she was following him. The accused suddenly came there and inflicted a blow of knife on her right thigh. She raised shouts and as

she had sustained bleeding injury, she became unconscious. Her father came there immediately. The accused then fled away. In the hospital, her statement was recorded which is treated as FIR (Exh. 20). Her evidence regarding this material incident is consistent with her FIR, which was lodged within short time after the incident.

9. Earlier she had stated that, she noted that the accused had written her name on a public road near the rest house. That time she was studying in XIth std., while the accused was not taking education. Her father had accosted the accused as to why he had written her name on road. That time, the accused had threatened her father that he would kill him and his daughter.

10. Evidence of PW1-Narayan, father of PW4-Poornima, is consistent with the above evidence. He stated that, at the relevant time, he was moving ahead and his daughter was following him. There was distance of about 10 to 15 ft. between them. When they reached near Sambha Pawar's house, the accused was sitting in front of that house. When he was few paces ahead of his daughter, he heard hue and cry of his daughter as 'Baba, Baba'. He immediately turned around and saw that the accused had inflicted a blow of knife on her right thigh. It is obvious that, PW4-Poornima must have raised shouts only after receiving the knife blow and, therefore, evidence of

PW1-Narayan that he saw the accused giving blow of knife cannot be believed, but he has seen the accused with a knife on the spot. The accused dropped the knife and fled away from the spot. His daughter collapsed on the spot with bleeding injury and lost consciousness for a while. He wrapped the injury with handkerchief and baniyan to stop the bleeding. He found one car of his relative nearby and he took his daughter in the said car to a hospital at Hadgaon. Thereafter, her statement was recoded by police in the hospital. He has also stated that the accused was resident of his village and he had written his daughter's name on a public road. When he accosted the accused for the same, that time he quarreled with him and threatened of committing murder of him and his daughter. Since there is no charge for this act of writing name of PW4 and giving threats, this much part of the evidence is not significant except for showing the motive. It was suggested to PW1-Narayan that marriage of his daughter was settled with accused but parents of the accused had not given consent to the marriage and the marriage of accused was arranged with some other girl and therefore the accused has been falsely implicated. All these suggestions are denied by PW1. PW2-Uttam Pawar stated that he was residing near the spot and at the material time he heard shouts of Poornima and he came out of house. He saw that she had sustained bleeding injuries to her right

thigh. He asked her as to what had happened. Then she told him that the accused inflicted a blow of knife on her right thigh. He also stated that her father was also standing there. He helped to stop the bleeding by tying baniyan over injury and then she was sent to Hospital.

11. PW5-Dr Lomte has deposed that, on 30.01.2000, Poornima was brought to the Hospital at Hadgaon by police and her relatives. On examination, he found one injury having size of 1.5 cm x 1 x 1 cm on her right thigh caused by sharp edged weapon. It was elliptical in shape. There was fresh bleeding. He described it as simple injury not on vital part. He admitted that such injury was possible by accidental fall on sharp edged iron rod. He further deposed that, the said injury is not self-inflicted injury.

12. PW3-Suryabhan is a panch to the spot panchanama and seizure of clothes at Exh. 17 & 18. He has deposed that, blood stains were found on the spot and knife was also recovered from the spot. The prosecution has proved Chemical Analysis reports through PW6 & PW7, however, knife was not shown to the injured witness and to eye-witnesses PW4, PW1 & PW2. The identity of knife as a weapon has not been proved through the evidence of PW4 or PW1.

Therefore, the CA reports and evidence of PW6 is not material.

13. After carefully considering the arguments of both the sides, I find that there are minor discrepancies in the evidence. The weapon used in commission of offence i.e. knife was not shown to the witnesses. The story regarding one sided love affair and writing name of PW4-Poornima on a public road by the accused and intimidation was not disclosed in the FIR. The accused himself got married within eight days after the incident.

14. The learned trial Judge has found the evidence of PW4, PW1 & PW2 trustworthy and reliable. The evidence shows that, the incident took place in front of house of Sambhaji Pawar where there was no such material on which PW4 could have fallen & sustained injury. The injury is also possible by knife. I also find the evidence of PW4-Poornima trustworthy and reliable. It is well supported by PW1 & PW2 whose evidence is also reliable. Their evidence is not shaken in cross-examination.

15. Mere non-discovery of weapon is not material when the evidence of injured and eye-witnesses is trustworthy and reliable. In this regard, I rely on the judgment of the Hon'ble Supreme Court in

the case of Himanshu Mohan Rai Versus State of Uttar Pradesh and Another (2017) 4 SCC 161, wherein in para nos. 21 & 22 it is held as under:

21. *Apparently the police recovered a licensed gun from the accused Imran Afreen while he was boarding a train and the ballistic report showed that the licensed gun was not used for the killing. This means that the police did not recover the actual weapon used for the killing and the accused had ample time to dispose off the weapon. It is however not possible to reject the credible ocular evidence of the eyewitnesses who witnessed the shooting and who are found to be truthful.*
22. *It is possible that the prosecution may not recover the actual weapon in some cases. However, this cannot have the effect of discrediting reliable ocular testimony as we have here, that he accused shot and killed the deceased, particularly when the lead bullets have been recovered and are found belonging to a commonly used 7.65 mm calibre i.e. 32 bore weapon.*

16. As far as the story regarding previous enmity in the form of writing name of PW4 on the road and intimidation are concerned, non-lodging of report at the Police Station is not significant. People are always conscious and careful while reporting the matter in which the reputation of their daughter is likely to be affected. I find that, defence story regarding settlement of marriage between accused and PW4 and non-acceptance of the same by father of the accused is not even made probable. Mere fact that the accused himself got married within eight days of the incident is not enough to accept the defence story.

17. I find that the learned trial Judge has rightly considered the nature of injury which is caused by sharp edged weapon like knife. The medical evidence is consistent with the ocular evidence. The learned trial Judge has taken note of the fact that the injury was not likely to cause death and, therefore, the accused has been rightly acquitted under Section 307 of IPC. After carefully considering the evidence on record, I find no reason to differ with the finding recorded by the learned trial Judge that evidence of PW4 supported by evidence of PW1 & PW2 is trustworthy and reliable for holding the accused guilty for causing simple hurt. Therefore, there is no scope for interference with the conviction awarded by the learned trial Judge u/s 324 of the IPC. As far as the sentence is concerned, the injury is not much grave, it is 1.5 cm x 1 x 1 cm. The accused had inflicted blow only on account of one sided love affair. PW4 had become unconscious and was hospitalized for one day.

18. Considering the facts, I find that the sentence is proportionate to the gravity of the offence. The accused was, at the relevant time, aged 25 years, hence there was no mandate for consideration of his case under Probation of Offenders Act. The attack was on a girl out of one sided love for no fault on her part.

The facts don't indicate that the accused should be dealt with leniently. I therefore find no reason to interfere with the conviction and sentence imposed upon him. Thus, the appeal deserves to be dismissed. Hence, the order.

ORDER

1. The appeal is dismissed.
2. The appellant-accused shall surrender before the learned Sessions Judge, Nanded within four weeks from today to undergo the sentence. If the appellant-accused does not surrender within the time stipulated, learned Sessions Judge, Nanded shall be at liberty to take action against him & his surety to secure his presence.

[A. M. DHAVAL]
JUDGE

sgp