

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.718 OF 2015

SUKUMAR KALLAPPA KAMBLE

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Nasreen S.K.Ayubi, Advocate for the Appellant.

Mr.Arfa Sait, APP for the Respondent - State.

**CORAM : SMT.V.K.TAHILRAMANI &
A. M. BADAR, JJ.**

DATE : 8th SEPTEMBER 2017

JUDGMENT : (PER : A. M. BADAR, J)

1 By this appeal, the appellant / accused is challenging the judgment and order dated 30th September 2014 passed by the learned Additional Sessions Judge, Ichalkaranji, District Kolhapur, in Sessions Case No.9 of 2010, thereby convicting him of offences

punishable under Sections 307 and 341 of the Indian Penal Code (IPC). For the offence punishable under Section 307 of the IPC, he is sentenced to suffer imprisonment for life so also to pay fine of Rs.2,000/- and in default, to undergo further rigorous imprisonment for 3 months. For the offence punishable under Section 341 of the IPC, he is sentenced to suffer simple imprisonment for 1 month.

2 Facts leading to the institution of the present appeal can be summarized thus :

(a) Victim of this crime is PW1/Surekha Kamble. She is sister of Ranjana Sukumar Kamble – wife of the appellant / accused Sukuram Kamble. First marriage of PW1/Surekha Kamble took place with Deepak Kamat. After death of said Deepak Kamat, Surekha performed second marriage. PW1/Surekha Kamble was in employment of I.D.B.I. Bank, Ichalkaranji Branch, as a peon. She was residing at Village Dattawad, Taluka Shirol, in Kolhapur district. She used to undertake to and fro journey Ichalkaranji.

(b) The appellant / accused Sukumar Kallappa Kamble along with his wife Ranjana and son Nirman used to reside at Village Abdullat. However, after two years of his marriage, the appellant / accused Sukumar started treating his wife Ranjana with cruelty by suspecting her character after consuming alcohol. Hence, Dinkar Kamble – father of Ranjana, brought her as well as her son Nirman to her parental house at Village Dattawad.

(c) The incident in question allegedly took place on 9th February 2009. After performing her duty at the bank, PW1/Surekha Kamble was returning by walk towards S.T. Bus Stand of Ichalkaranji for boarding the bus for going to her house at Dattawad. On her way to bus stop in front of hotel Amrut, the appellant / accused Sukumar accosted her. He was armed with scythe (koita). Then he assaulted PW1/Surekha Kamble by means of that scythe (koita) on her head, neck, face, both upper limbs as well as stomach. In this murderous assault, according to prosecution case, right hand of PW1/Surekha Kamble got chopped off and she sustained several injuries.

(d) Police got information of the incident which was witnessed by PW5 Krishna Dhumal and PW6 Santosh Dhatunde. Police came on the spot. Injured PW1/Surekha Kamble was then taken by auto rickshaw driven by PW2 Sanjay Wadagave to IGM Hospital, Ichalkaranji. At that hospital, on 9th February 2009 itself, her First Information Report (FIR) (Exhibit 34) came to be recorded by PW9 Bharat Suryawanshi, P.S.I., working with Shivaji Nagar Police Station, which resulted in registration of Crime No.26 of 2009 for the offence punishable under Section 307 of the IPC with Shivaji Nagar Police Station, Ichalkaranji.

(e) During the course of investigation, on 9th February 2009 itself, in presence of PW3 Vijay Thombare - panch witness, the spot came to be inspected and spot panchnama Exhibit 40 came to be recorded by police. From the spot of the incident, blood stained earth, simple earth, broken pieces of green bangles, one handkerchief stained with blood, so also a ladies purse stained with blood came to be seized.

(f) At IGM Hospital, Ichalkaranji, injured PW1/Surekha Kamble came to be medically treated by Dr.Surekha Rawal and PW7 Dr.Pradip Mane along with other medical officers. On the very same day, husband of PW1/Surekha Kamble had taken her to Niramay hospital, Ichalkaranji, for further treatment where she was treated by PW8 Dr.Gurudas Banne.

(g) According to prosecution case, soon after the incident on 9th February 2009 itself, the appellant / accused holding blood stained scythe (koita) and nylon bag appeared before PW10 Dattatray Kurane, P.S.I. at Shivaji Nagar Police Station, Ichalkaranji, and disclosed the incident to him. PW10 Dattatray Kurane, P.S.I., then called two panch witnesses and seized blood stained scythe (koita), nylon bag, so also clothes of the appellant / accused. He came to be arrested.

(h) On 9th February 2009 itself, in presence of panch witness PW4 Mahesh Kabboor, police seized blood stained clothes of PW1/Surekha Kamble.

(i) Statement of witnesses came to be recorded and seized articles were sent for chemical analysis. On completion of routine investigation, the appellant / accused came to be charge-sheeted.

(j) On committal of the case, charge for offences punishable under Sections 307 and 341 of the IPC was framed and explained to the appellant / accused. He abjured guilt and claimed trial.

(k) In order to bring home the guilt to the appellant / accused, prosecution has examined in all ten witnesses. Injured Surekha is examined as PW1. The FIR lodged by her is at Exhibit 34. Sanjay Wadagave, driver of the auto rickshaw which took injured PW1/Surekha Kamble to IGM Hospital, Ichalkaranji, is examined as PW2. PW3 Vijay Thombare is a panch witness to spot panchnama Exhibit 40. PW4 Mahesh Kabboor is a panch witness to seizure of clothes of PW1/Surekha Kamble. PW5 Krishna Dhumal and PW6 Santosh Dhatunde are eye witnesses to the crime in question. However, PW5 Krishna Dhumal turned hostile to prosecution. PW7 Dr.Pradip Mane, Medical Officer with IGM

Hospital, Ichalkaranji, proved injury certificate Exhibit 56 and other documents of medical treatment given to PW1/Surekha Kamble at that hospital. PW8 Dr.Gurudas Banne proved medical case papers of treatment of PW1/Surekha Kamble at Niramay hospital, Ichalkaranji, and deposed about her medical condition and injuries suffered by her. PW9 Bharat Suryawanshi, P.S.I, had recorded FIR Exhibit 34 and deposed about written information given to the police station by IGM hospital. PW10 Dattatray Kurane, P.S.I., conducted further investigation of the crime in question.

(1) Defence of the appellant / accused, as seen from line of cross-examination of prosecution witnesses as well as from his statement under Section 313 of the Code of Criminal Procedure, is that of total denial. According to the appellant / accused, he is falsely implicated in the crime in question, as injured PW1/Surekha Kamble insisted him to have illicit relations with her, but he refused to oblige her. It is further contended by the defence that the prosecuting party was harbouring the grudge

against him and hence he is falsely implicated in the crime in question.

3 We have heard Ms.Nasreen Ayubi, the learned advocate appearing for the appellant / accused. She vehemently argued that evidence on record does not establish commission of offence alleged against the appellant / accused. The incident took place at a populous locality of Ichalkaranji, which is said to have been witnessed by many people. In submission of the learned advocate for the appellant / accused, PW5 Krishna Dhumal has not supported the case of prosecution and cross-examination of PW6 Santosh Dhatunde reveals that he was having a stall on the side of the road and because of running traffic he was not in a position to witness the incident in question. The learned advocate further argued that evidence on record and particularly that of PW1/Surekha Kamble indicates that she as well as her family members were harbouring grudge against the appellant / accused, and therefore, he is falsely implicated in the crime in question. Hence, the appellant / accused deserves benefit of doubt. As against this, the learned APP supported the impugned judgment and order by contending that

evidence on prosecution is clear, consistent and cogent. The learned APP further argued that this is a second incident of assault on PW1/Surekha Kamble by the appellant / accused. In past, in the year 2004, the appellant / accused assaulted PW1/Surekha Kamble, which ultimately resulted in conviction for the offence punishable under Section 324 of the IPC vide judgment and order dated 11th June 2009 passed by the learned JMFC, Kurundwad, in R.C.C. No.13 of 2014.

4 We have carefully considered the rival submissions and also perused record and proceedings including deposition of witnesses and documentary evidence adduced on record. At the outset let us examine whether the prosecution has established that the appellant / accused, at about 5.15 p.m. of 9th February 2009, in front of Amrut hotel, Ichalkaranji, after wrongfully restraining her, intentionally assaulted the PW1 / Surekha Kamble by giving blows of scythe (koita) on her head, stomach, hands and neck with an intention or knowledge and under such circumstances, that if by the said act, he had caused death of said PW1 / Surekha

Kamble, he would have been guilty of the offence for murder. The case of the prosecution on this aspect primarily hinges on testimony of PW1 / Surekha Kamble who is victim of the alleged offence. She is an injured witness. The incident in question took place when she was undertaking return journey from her work place i.e. IDBI Bank, Ichalkaranji, to the S.T.Bus stand for going to her place of residence i.e. Village Dattawad.

5 The law regarding appreciation of evidence of an injured witness is explained by the Hon'ble Apex Court in the matter of **Bonkaya V/s. State of Maharashtra**¹. The ratio which can be culled out from this ruling is to the effect that evidence of injured eye witness cannot be discarded in toto on the ground of inimical disposition towards the accused or improbabilities of narrating the details of actual attack. His evidence has to be scrutinized with caution taking into account the factum of previous enmity and tenancy to exaggerate. It is well settled that a witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested. A

1 1995 (2) SCC 447

witness is interested only when he derives some benefit from the result of the litigation. If evidence of injured witness is otherwise reliable and trustworthy then it carries more weight and cannot be thrown away merely because it is not corroborated by any independent witness. Little discrepancies cannot make evidence of injured witness unacceptable, when his evidence as a whole has a ring of truth. Let us therefore scrutinize evidence of injured PW1 / Surekha Kamble on the touchstone of these principles.

6 In the case in hand, as stated in foregoing paragraph, it is defence of the appellant / accused that he is falsely implicated in the crime in question because the injured First Informant / PW1 / Surekha Kamble and her family members were harbouring grudge against him and they were on inimical terms with him. So far as the incident is concerned, it is in evidence of PW1 / Surekha Kamble that while undertaking return journey to S.T.Bus stand of Ichalkaranji, at about 5.15 p.m. on 9th February 2009, in front of hotel Amrut, appellant / accused who is husband of her younger sister Ranjana came holding a scythe (koita) and

started assaulting her by the said weapon. This witness further stated that blows of scythe (koita) given by the appellant / accused landed on her head, cheek, neck, both hands, stomach and left leg. As a result of the blows of scythe (koita), her right hand was chopped off from the wrist. She also suffered injuries to her fingers and palms of left hand. PW1 / Surekha Kamble described the manner in which blow on her stomach was given by the appellant / accused by stating that after giving blow of scythe (koita) on left side of her stomach, the appellant / accused pulled the scythe (koita) downwards. This injured witness further added that because of this assault, she suffered bleeding injuries.

7 Chief examination of injured PW1 / Surekha Kamble gives motive for the assault on her. This witness stated that the appellant / accused Sukumar - husband of her sister Ranjana, was in habit of drinking liquor and he used to suspect character of Ranjana. PW1 / Surekha Kamble further stated that the appellant / accused used to beat Ranjana, and therefore, her father brought Ranjana and her son Nirman to parental house at Dattawad.

However, the appellant / accused was thinking that it was PW1 / Surekha Kamble who was not sending his wife Ranjana and his son Nirman to his house at Village Abdullat. Therefore, he was angry. PW1 / Surekha Kamble further stated that because of this reason, even in past, and particularly in the year 2004, the appellant / accused assaulted her by means of a sickle on her neck and back which resulted in his conviction by the competent court. This is the eye witness account, with motive for the assault, given by PW1 / Surekha Kamble. She was subjected to searching and lengthy cross-examination by the learned advocate appearing for the appellant / accused, in order to bring on record that he is falsely implicated in the crime in question. The defence has put suggestion to her that after death of her husband Deepak Kamat, PW1 / Surekha Kamble insisted the appellant / accused to keep sexual relations with her and as the appellant / accused declined to satisfy her physical desire, he is falsely implicated in the crime in question. PW1 / Surekha Kamble candidly denied this suggestion. Then, it was suggested to her that she was having illicit relations with Gopinath Kallappa Kamble even during

subsistence of her marriage with Deepak Kamat and for continuing such illicit relations, she committed murder of her husband Deepak Kamat. Informant PW1 / Surekha Kamble denied these suggestions also, but accepted the fact that subsequent to death of her husband Deepak Kamat, she married Gopinath Kamble in the year 2001 itself. It is, thus, clear that PW1 / Surekha Kamble, the incident in question, was a married lady. Therefore, absurd suggestions given to her that she insisted the appellant / accused to satisfy her physical desire, as such, does not deserve even a moment's consideration. Moreover, this is a case of a single accused and a single victim. Injured PW1 / Surekha Kamble had suffered serious injuries in the assault. In such a situation, it cannot be believed that she would spare her real culprit and rope in the appellant / accused, who is her near relative, being husband of her younger sister, and that too for a flimsy reason, as suggested by the defence.

8 From cross-examination of PW1 / Surekha Kamble, it is brought on record by the defence that she saw the appellant /

accused approaching her when he was two feet away from her. Similarly, it is further brought on record from cross-examination of PW1 / Surekha Kamble that the incident of assault on her continued for a period of about two minutes. This material brought on record from cross-examination of PW1 / Surekha Kamble, as such, makes it clear that she had an ample opportunity to see her assailant approaching her as well as during the course of assault on her. The incident took place in the day light. As such, question of mistaken identity of the assailant does not arise. Ultimately, the appellant / accused was very much known to this witness and he was closely related to her.

9 Evidence of PW1 / Surekha Kamble further goes to show that at the time of the incident in question, she was wearing white saree with blue border as well as white petticoat. As per her version, she was also wearing a blouse and green bangles. While in the dock, she identified her clothes as well as pieces of green bangles. She has also identified the weapon of the offence. Overall scrutiny of evidence of PW1 / Surekha Kamble, who is an

injured witness, does not allow me to hold that she is shielding the real culprit, particularly when she has suffered serious injuries in this murderous assault. She is a natural witness to the incident in question being injured in the said incident and there is no possibility of her leaving the real assailant and substitute him with an innocent person. Evidence of injured PW1 / Surekha Kamble is clear, cogent and consistent with Exhibit 34 FIR lodged by her with promptitude and that too, on the date of the incident itself i.e. on 9th February 2009. Very insignificant omissions from her version are of no use to jettison her otherwise truthful version regarding the incident in question. However, at this stage, without putting explicit reliance on her testimony, let us examine if evidence of PW1 / Surekha Kamble is gaining corroboration from other evidence adduced on record by the prosecution.

10 As per prosecution case, PW5 Krishna Dhumal and PW6 Santosh Dhatunde are eye witnesses to the incident in question. PW5 Krishna Dhumal has not supported the case of prosecution. Let us therefore consider what PW6 Santosh

Dhatunde says about the incident in question. He is owner of the ready made clothes stall at the footpath adjacent to Jai Hind Mandal. His stall was located opposite to hotel Amrut. The incident in question took place in front of hotel Amrut and his ready made clothes stall belonging to PW6 Santosh Dhatunde. Evidence of this witness may be criticized by branding him as a chance witness. In the matter of **Sachchey Lal Tiwari vs. State of Uttar Pradesh**² the Hon'ble Apex Court while considering evidentiary value of the chance witness in case of murder which had taken place in a street and when a passer by had deposed that he had witnessed the incident, has observed as under :

“If the offence is committed in a street only a passer by will be the witness. His evidence cannot be brushed aside lightly or viewed with a suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.”

11 In **Thangaiya Vs State of Tamil Nadu**³ similar observations are made by the Hon'ble Apex Court. In the matter of

² (2004) 11 SCC 410

³ (2005) 9 SCC 650

Jarnail Singh and Others vs. State of Punjab⁴ the Hon'ble Apex Court has observed that the expression "Chance Witness" is borrowed from countries where the place home is considered as castle and everyone must have an explanation for his presence elsewhere or in another man's castle. The Hon'ble Apex Court has cautioned that it is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate, in the manner of explaining their presence. Thus, at the most, what is expected from a chance witness is adequate explanation to his presence at the place of occurrence. Keeping in mind this aspect, let us examine evidence of PW6 Santosh Dhatunde.

12 Evidence of PW6 Santosh Dhatunde, that he is owner of ready made clothes stall situated on the footpath, opposite to Amrut hotel on road of Ichalkaranji, proceeding towards S.T.Bus stand, is not at all shattered in the cross-examination. This witness vouched that he was very much present at his stall at about 5.15 p.m. on the day of the incident. There is nothing in

4 (2009) 9 SCC 711

cross-examination of this witness to disbelieve this version. As such, PW6 Santosh Dhatunde, being owner of the ready made clothes stall, situated at the spot of the incident, has satisfactorily explained his presence at the place of the occurrence, at the time of the incident. It appears that though this witness has stated that he is in a position to identify the assailant, the learned APP, while conducting chief examination, has not pointed out the appellant / accused to this witness in order to enable this witness to identify him. Be that as it may, this witness has stated the manner in which the incident in question took place. He stated that upon hearing shouts he saw one man assaulting a woman by scythe (koita). PW6 Santosh Dhatunde further deposed that because of blows of the said weapon, right hand of the victim woman was cut off from the wrist and she sustained injuries on her neck. PW6 Santosh Dhatunde has duly identified PW1/Surekha Kamble as the woman who had suffered murderous assault on the day of the incident. Thus, evidence of PW6 Santosh Dhatunde duly corroborates version of PW1/Surekha Kamble and establishes that PW1/Surekha Kamble was assaulted on the day of the incident by

a dangerous weapon. As the appellant / accused was closely related to her and as there was ample opportunity for PW1/Surekha Kamble to identify her assailant, her evidence that it was the appellant / accused who assaulted her cannot be disbelieved, in the wake of eye witness account of the incident given by PW6 Santosh Dhatunde.

13 Version of PW1/Surekha Kamble in respect of murderous assault on her is gaining further corroboration from the situation prevalent on the spot of occurrence coming on record through evidence of PW3 Vijay Thombare – a panch witness. This witness deposed that he had inspected the spot of the incident and found blood lying on the spot. This witness testified that pieces of green bangles, one ladies handkerchief and one ladies purse was also lying on the spot. As per version of this panch witness, police seized blood stained soil, simple soil, broken pieces of bangles, blood stained handkerchief and ladies purse by preparing spot panchnama Exhibit 40. Searching cross-examination of this witness could not cast a shadow of doubt on his clear and cogent testimony which is gaining corroboration from contemporaneous spot panchnama Exhibit 40.

The spot panchnama shows that there was pool of blood on the spot and size of that pool of blood was 6 feet x 6 feet. The spot panchnama also reflects that pieces of broken bangles, blood stained handkerchief and ladies purse were lying on the spot. Recitals in the spot panchnama coupled with version of PW3 Vijay Thombare goes to show that police seized those articles from the spot and sealed them with wax seal.

14 This evidence adduced by the prosecution fully corroborates the testimony of injured PW1/Surekha Kamble to the effect that she was assaulted by means of scythe (koita) by the appellant / accused causing severe bleeding injuries to her. On the day of the incident i.e. on 9th February 2009 itself, as seen from evidence of PW4 Mahesh Kabboor – a panch witness, blood stained saree, petticoat and blouse belonging to injured PW1/Surekha Kamble came to be seized while seizure panchnama Exhibit 43. This witness duly identified those clothes during the course of cross-examination by the defence. Panchnama at Exhibit 43 drawn on 9th March 2009 duly corroborates version of this witness. This oral as well as documentary evidence clearly

corroborates version of the injured PW1/Surekha Kamble to the effect that she was assaulted by the appellant / accused by means of scythe (koita) causing bleeding wounds to her.

15 Now let us examine what was the condition of injured PW1/Surekha Kamble after sustaining murderous assault on 9th February 2009. PW1/Surekha Kamble was taken to IGM hospital at Ichalkaranji from the spot of the incident by PW2 Sanjay Wadagave in the auto rickshaw driven by him. At the said hospital, PW1/Surekha Kamble was medically examined and treated by Dr.Surekha Rawal, Medical Officer, as well as PW7 Dr.Pradip Mane, who was accompanying Dr.Surekha Rawal. Evidence of PW7 Dr.Pradip Mane shows that upon examination of PW1/Surekha Kamble on 9th February 2009 itself, following injuries were noticed on her person :

- i) Incise wound (IW) right temporal region, oblique 4' x 2' bone deep, bleeding present, fracture temporal bone.
- ii) Incise wound (IW) right temporal region, 1' above would No.1 size 2" x 1" scalp deep, bleeding present oblique.

- iii) Incise wound (IW) right side of chest oblique extending from 6th and 7th rib axillary line upwards size 4" x 1" muscle deep, bleeding present.
- iv) Incise wound (IW) right elbow, size 6"x4" muscle deep, bleeding present.
- v) Incise wound (IW) right hand cut from wrist separated amputated completely accidentally.
- vi) Incise wound (IW) left hand, ring finger cut at 1st interphalangeal joint, bleeding present, hanging from joint.
- vii) Incise wound (IW) left thigh buttock oblique size 4" x 2", muscle deep, bleeding present.
- viii) Incise wound (IW) left wrist horizontal size 2"x1" skin deep, bleeding present.
- ix) Incise wound (IW) left forearm just above No.8 3"x1", muscle deep, bleeding present.
- x) Minor lacerations over left arm 3 in numbers size 1 cm x 1 cm red in colour.
- xi) Deep laceration over left arm 1"x1" red.
- xii) Incise wound (IW) left anterior triangle of neck size ½ " x ¼ ", skin deep, bleeding present.
- xiii) Incise wound (IW) left cheek “” (Horizontal V) shaped size 3"x2" muscle deep bleeding present
- xiv) Incise wound (IW) left lumbar region size 6"x4" small intestine out.

xv) Incise wound (IW) left illiac region, oblique size 4"x2" muscle deep, bleeding present

xvi)Incise wound (IW) left thigh 4"x1" muscle deep, oblique, bleeding present.

This witness has duly proved Medico Legal Certificate Exhibit 56 which also reflected injuries suffered by PW1/Surekha Kamble. Document at Exhibit 57 proved by this witness comprises of papers of medical treatment of PW1/Surekha Kamble. These documents shows general condition of the injured during the course of medical treatment. In cross-examination, an attempt was made to demonstrate that this witness had not personally examined PW1/Surekha Kamble. However, in cross-examination, PW7 Dr.Pradip Mane has categorically stated that he was on duty and present at the time of medical treatment of injured PW1/Surekha Kamble. From evidence of this witness, it is seen that though IGM hospital has advised that PW1/Surekha Kamble be taken to higher center for further management, her relatives took her to Niramay hospital at Ichalkaranji.

16 PW8 Dr.Gurudas Banne then examined PW1/Surekha Kamble at Niramay hospital on her admission to that hospital at about 11.05 p.m. on 9th February 2009. He found her to be suffering from hypo-volumic shock due to excessive bleeding. Her Blood pressure was found decreased to 110/70 and pulse rate was 96 per minute. As deposed by this witness, two bottles of blood and IV fluid were required to be administered to injured PW1/Surekha Kamble. PW8 Dr.Gurudas Banne testified that C.T.Scan and other radiological investigations were carried on and it was found that PW1/Surekha Kamble had suffered depressed fracture of right parietal bone extending to squamous part of temporal bone. As her general condition was deteriorating, she was taken on mechanical ventilator and for raising her blood pressure. Inotropic support was given to her. She was required to be put on ventilator on her admission up to 13th February 2009 and thereafter her general condition started improving. This evidence certainly demonstrates the impact of murderous assault on injured PW1 / Surekha Kamble and her vulnerable condition after sustaining injuries.

17 Evidence of PW7 Dr.Pradip Mane and that of PW8 Dr.Gurudas Banne, as such, reveals serious wounds suffered by injured PW1 / Surekha Kamble in the incident dated 9th February 2009. Perusal of evidence of both these witnesses coupled with contemporaneous medical certificate shows that infact, injured PW1 / Surekha Kamble had suffered injuries all over her body and prominently on her head, face, both upper extremities, chest as well as back and buttocks. The number of wounds found on person of PW1 / Surekha Kamble goes to show that she must have sustained atleast 16 blows of scythe (koita) at the hands of the appellant / accused. Her evidence, as such, is gaining corroboration on material particulars from truthful and trustworthy evidence of PW7 Dr.Pradip Mane and PW8 Dr.Gurudas Banne.

18 Now let us examine, how, according to the prosecution case, the appellant / accused came to be apprehended. For that purpose evidence of PW10 Dattatray Kurane, P.S.I. attached to Shivaji Nagar Police Station, is material. This witness has deposed

that on 9th February 2009, on the basis of FIR of PW1 / Surekha Kamble, he registered Crime No.26 of 2009, and subsequently, the appellant / accused came to the police station with blood stained clothes on his person. At that time, he was holding scythe (koita) as well as nylon bag. The confessional statement of the appellant / accused then made to this witness cannot be considered as a piece of admissible evidence. However, appearance of the appellant / accused soon after the incident at the Police station and before PW10 Dattatray Kurane while armed with the weapon of offence having blood stained clothes on his person indicates post event conduct of the appellant / accused. This evidence is admissible as per provisions of Section 8 of the Evidence Act, as such conduct of the accused is as a result of the incident in question. On this aspect, evidence of PW10 Dattatray Kurane is not at all shattered in the cross-examination. This witness seized scythe (koita), nylon bag, as well as clothes which were on person of the appellant / accused by preparing seizure panchnama Exhibit 83. Evidence of this witness shows that seized articles were duly sealed with wax seal.

19 Article seized from the spot vide spot panchnama Exhibit 40, clothes of injured PW1 / Surekha Kamble seized as per seizure panchnama Exhibit 43, weapon of the offence, nylon bag and clothes worn by the appellant / accused at the time when he approached the police station were sent for chemical analysis. Evidence on record does not indicate any possibility of tampering these articles during the course of transmission to the Forensic Laboratory. They were duly sealed and Chemical Analyser's Report Exhibit 87 shows that they were received by the Forensic Laboratory in a sealed condition. Chemical Analyser's report at Exhibit 89C shows that blood of injured PW1 / Surekha Kamble was of "B" group. She is a person who profusely bled after the incident. Nature of injuries suffered by her and recitals in spot panchnama are significant on this aspect. Perusal of Chemical Analyser's Report at Exhibit 87C shows that human blood of "B" group was found on articles seized from the spot i.e. broken pieces of glass bangles, handkerchief, as well as ladies purse. Similarly, the blood of same group was found on saree, petticoat and blouse

worn by injured PW1 / Surekha Kamble at the time of the incident. Shirt and banyan of the appellant / accused was also found to be stained by blood of "B" group. Human blood was found on his full pant as well as scythe (koita) seized from him. Nylon bag seized from the appellant / accused was also found to be having stains of blood of "B" group. Witnesses examined by the prosecution have identified all these articles. This forensic evidence, as such, fully supports case of the prosecution to the effect that on 9th February 2009, the appellant / accused had assaulted injured PW1 / Surekha Kamble by means of scythe (koita) and incriminates the appellant / accused.

20 Now let us examine whether the appellant / accused by his act of injuring PW1 / Surekha Kamble by means of scythe (koita) has committed the offence punishable under Section 307 of the IPC after wrongfully restraining her on the public road at Ichalkaranji.

21 One circumstance brought on record by the

prosecution is relevant to determine whether the act of the appellant / accused amounts to the offence punishable under Section 307 of the IPC. The prosecution has placed on record and proved the judgment and order passed by the learned JMFC, Kurundwad, in R.C.C. No.13 of 2004 whereby the appellant / accused was found to be guilty of the offence punishable under Section 324 of the IPC and was sentenced to suffer rigorous imprisonment for 1 year apart from imposition of fine of Rs.2,000/-, in default to undergo further rigorous imprisonment for 1 month. This prosecution was launched as, on 13th February 2004, in a similar manner the appellant / accused had assaulted the injured PW1 / Surekha Kamble. Perusal of the judgment and order in R.C.C.No.13 of 2004 shows that PW1 / Surekha Kamble, in that assault by the appellant / accused, had sustained injury to her back, neck, as well as on palm. Though the injuries were on neck of the informant by a sharp edged weapon, the learned Magistrate concluded that the appellant / accused had not intentionally assaulted PW1 / Surekha Kamble. Causing wounds to PW1 / Surekha Kamble in past, by using sharp edged weapon,

prima facie, depicts the intention of the appellant / accused in committing the instant crime. This is one of the factor to gather intention of the appellant / accused which is a mental state of mind and for which no tangible evidence can be produced.

22 As the question which falls for determination is whether the assault on PW1 / Surekha Kamble by the appellant / accused was for committing murder of PW1 / Surekha Kamble, one will have to take brief resume of distinction between murder and culpable homicide not amounting to murder. Culpable homicide is the genus and murder is its specie. The Indian Penal Code practically recognizes three degrees of culpable homicide. Culpable homicide of the first degree is the gravest form which is defined as “murder” vide Section 300 of the IPC. The second may be termed as “culpable homicide of second degree” which is made punishable under first part of Section 304 of the IPC. Lowest type of culpable homicide is the “culpable homicide of third degree” made punishable under the second part of Section 304 of the IPC. For making out the offence of murder punishable under Section

302 of the IPC, the prosecution is firstly required to establish that a bodily injury is present on the victim. Secondly, the prosecution is required to establish nature and size of the injury on the victim. Then, it must prove that there was an intention to inflict that particular injury by adducing clear and cogent evidence to the effect that the said injury was not accidental or unintentional or that some other kind of injury was intended. Lastly, the prosecution has to establish that the injury so caused was sufficient to cause death in the ordinary course of nature. If all these factors are established, then the offence defined under Section 300 and punishable under Section 302 is made out. The offence punishable under Section 307 is made out when the accused had the intention to commit murder and in pursuance of that intention, does any overt act towards commission of murder. In order to establish the offence punishable under Section 307 of the IPC, the prosecution is enjoined to establish the intention or knowledge of committing murder and doing of an act towards it. Thus, Section 307 of the IPC contemplates intention or knowledge and not the consequence of the actual act done for the purpose of

carrying out the intention. Requisite intention coupled with some overt act is sufficient to constitute the offence punishable under Section 307 of the IPC.

23 Evidence of the prosecution discussed in foregoing paragraphs and particularly that of injured PW1 / Surekha Kamble, PW7 Dr.Pradip Mane and PW8 Dr.Gurudas Banne establishes existence of bodily injuries as well as nature and extent of those injuries on person of PW1 / Surekha Kamble. Intention of the appellant / accused to cause those injuries can be inferred by the type of weapon used i.e. heavy sharp edged scythe (koita), large number of blows given by him by using sharp edge of that weapon to PW1 / Surekha Kamble, force with which those blows were given and parts of the body of the victim chosen for inflicting blows. Force used for giving blows is reflected from extensive damage caused to injured PW1 / Surekha Kamble by blows given by the appellant / accused by means of sharp edged weapon. Medical case papers at Exhibit 56 shows extensive damage caused to the injured because of successive blows by a sharp edged

weapon. Her right hand palm was literally chopped off from the wrist. Several blows were given to the victim on her head, neck, face, chest and back, apart from limbs. This led to profuse bleeding causing hypo-volumic shock to injured PW1 / Surekha Kamble. Spot panchnama reflects pool of blood of size 6 feet x 6 feet at the spot of the incident. The injured was required to put on ventilator immediately for about five days.

24 It is, thus, clear that, the appellant / accused gave successive blows of sharp edged weapon to injured PW1 / Surekha Kamble with such intention and knowledge, and under such circumstances that if her death had occurred, the offence would have amounted to murder. The act of the appellant / accused in giving successive blows by a sharp edged weapon to PW1 / Surekha Kamble and that too on vital parts of her body, was of such a nature as would have caused her death in the usual course of events. Fortunately for injured PW1 / Surekha Kamble, timely medical help by PW7 Dr.Pradip Mane and PW8 Dr.Gurudas Banne, prevented result of her death, which the appellant /

accused desired. This is evident even from the contemporaneous medical record at Exhibit 56 reflecting very bad general condition of PW1 / Surekha Kamble after the incident dated 9th February 2009 for considerably long period of time.

25 Thus, with clear, cogent, consistent and trustworthy evidence adduced by the prosecution, it is proved on record that after wrongfully restraining injured PW1 / Surekha Kamble, the appellant / accused has attempted to commit her murder. Therefore, no infirmity can be found with his conviction for offences punishable under Section 307 and 341 of the IPC.

26 The appellant / accused is sentenced to suffer life imprisonment for the offence punishable under Section 307 of the IPC. The question is whether, this sentence can be termed as appropriate or excessive. Some relevant factors are required to be kept in mind before awarding sentence to the accused on proof of charges leveled against him. Such factors are illustrative and not exhaustive, as each case is required to be examined on its own

facts. The punishment is required to be proportionate to the proved offence. Relevant factors for determining proportionality in sentences are motive or previous enmity, intention / knowledge of the accused while committing the offence, the nature and size of weapon used while committing the offence, the criminal background and adverse history of the accused, the general conduct and behaviour of the accused, relation of the accused with the victim and whether the incident occurred within the family or close relations etc. The gravity, dimension and nature of injury, helplessness of the victim, degree of criminality shown by the accused, are also relevant factors while imposing sentence. In the case in hand, the appellant / accused had accosted his own sister-in-law on main road of the town and gave several blows by sharp edged weapon on her mercilessly. She suffered 16 serious wounds including loss of her right palm in the incident. She is permanently incapacitated to enjoy her life to the fullest extent because of brutal act of the appellant / accused. In such a situation, it cannot be said that the proportionality is not maintained by the learned trial court in imposing the sentence.

The sentence imposed on the appellant / accused for proved offences is appropriate and cannot be faulted.

27 In the result, the appeal is devoid of merits, and therefore, the same is dismissed.

(A. M. BADAR, J.)

(SMT.V.K.TAHILRAMANI, J.)