

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.663 OF 2015

RAJARAM @ RAMANNA BALYA NAYAK)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Rushikesh Kale i/b. Mr.V.V.Purwant, Advocate for the Appellant.

Mrs.M.R.Tidke, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 6th DECEMBER 2018

ORAL JUDGMENT :

1 The appellant/accused, who is husband of the victim, by this appeal, is challenging the judgment and order dated 19th March 2014 passed by the learned Adhoc Additional Sessions Judge, Kalyan District, Thane, in Sessions Case No.54 of 2007, thereby convicting him of the offence punishable under Section

307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 10 years apart from imposition of fine of Rs.5,000/- and default sentence of simple imprisonment for 3 months.

2 Facts, in brief, leading to the prosecution of the appellant/accused and his ultimate conviction, can be summarized thus :

- (a) The victim of the crime in question is PW1 Geeta, who happens to be wife of appellant/accused Rajaram Nayak. The appellant/accused is holding degree of Bachelor of Homeopathic Medicine and Surgery (B.H.M.S.) and was doing practice in medicine at Bhaskar Nagar area of Ambernath(West) in District Thane. PW1 Geeta was serving with BPL Company at Bandra. As lot of time used to be spent by her in to and fro journey to the work place from her house, she was trying to seek employment in the Ordinance Factory in Ambernath. For that purpose, she was in need of documents pertaining to her educational

qualification. However, the appellant/accused had kept those documents concealed with him and he was refusing to give those documents to his wife PW1 Geeta.

- (b) The incident in question took place at about 11.30 p.m. of 17th August 2006. At that time, the appellant/accused came back to his house with a knife which was wrapped in papers. Immediately on entering inside the house, the appellant/accused gave successive blows of knife on left cheek, neck, both upper limbs, waist and back of injured PW1 Geeta. The appellant/accused then took his daughter with him and fled from the spot.
- (c) Injured PW1 Geeta then made a telephonic call to her landlord PW2 Muniappa Walekar. He came to the tenanted premises in possession of injured PW1 Geeta and found the door closed from outside. After opening the door, he found PW1 Geeta sitting in the chair in the room of that house. There were bleeding injuries on her person. She was then

taken to the Ambernath Police station and was then referred to the Central Hospital, Ulhas Nagar, where she was treated by PW6 Dr. Vivek Malve, Medical Officer. Then the injured was referred to Sion Hospital, Mumbai, where she was medically treated by PW4 Dr. Avinash Badne.

- (d) At Central Hospital, Ulhas Nagar, PW3 Madhukar Patukle, Police Station Officer, Ambernath Police Station, recorded statement of the injured and accordingly First Information Report (FIR) Exhibit 7 came to be lodged, which has resulted in registration of Crime No.I-299 of 2006 for the offence punishable under Section 307 of the Indian Penal Code against the appellant/accused.
- (e) During the course of investigation, the spot of the incident came to be inspected in presence of PW2 Muniappa Walekar and Panchnama Exhibit 15 was drawn. Statement of witnesses came to be recorded. The appellant/accused came to be arrested on 18th August 2006. In presence of

panch witness his voluntary disclosure statement Exhibit 28 came to be recorded which ultimately resulted in recovery of a knife vide Seizure Panchnama Exhibit 28A from the house of the appellant/accused which he used to share with his wife PW1 Geeta. After completing routine investigation, the appellant/accused came to be charge-sheeted.

- (f) The learned trial court framed Charge for the offence punishable under Section 307 of the Indian Penal Code. The appellant/accused pleaded not guilty and claimed trial.
- (g) In support of its case the prosecution has examined in all seven witnesses. Injured Geeta Nayak is examined as PW1. Her landlord Muniappa Walekar is examined as PW2. Madhukar Patukle, who at that relevant time was serving as Police Station Officer of Ambarnath Police Station, is examined as PW3. He had recorded FIR Exhibit 7 lodged by PW1 Geeta. Similarly, this witness had inspected the spot and had drawn Spot Panchnama Exhibit 15. He had

sent the seized articles for chemical analysis with covering letter Exhibit 16. Dr.Avinash Badne of Sion Hospital, Mumbai, is examined as PW4. This Medical Officer proved Injury Certificate Exhibit 20 as well as papers of medical treatment of PW1 Geeta which are at Exhibit 21. PW5 Asmuddin Khan was examined for proving the Panchnama Exhibit 23, but it appears that after deferring his chief-examination, his further evidence was not recorded by the prosecution. Dr. Vivek Malve, Medical Officer, working with Central Hospital, Ulhas Nagar, is examined as PW6. This witness proved the Injury Certificate Exhibit 27 issued by him after medical examination of injured PW1 Geeta. Investigating Officer Baburao Jagtap is examined as PW7.

- (h) Defence of the appellant/accused, as seen from his statement under Section 313 of the Code of Criminal Procedure as well as from line of cross-examination of prosecution witnesses and from evidence of defence witness is to the effect that injured PW1 Geeta was having boy

friends and she had illicit relations with other persons. On one occasion, she had eloped with a person named Hanumant. The appellant/accused lodged report of this incident with police and for all these reasons, he is falsely implicated in the crime in question. In support of his contention, the appellant/accused entered in the defence and had examined Rangrao Doiphode, Assistant Sub-Inspector as DW1.

- (i) After hearing the parties, the learned trial court, by the impugned judgment and order of conviction and the resultant sentence came to the conclusion that the appellant/accused is the author of injuries found on the person of his wife PW1 Geeta. He had inflicted those injuries in an attempt to commit murder of the injured. Accordingly, the appellant/accused is sentenced, as indicated in the opening paragraph of this judgment.

3 Heard the learned counsel appearing for the appellant/accused. He vehemently argued that the appellant/accused is falsely implicated in the crime in question and no motive to the crime in question has surfaced from evidence adduced by the prosecution. The learned counsel further argued that the appellant/accused has undergone sentence for five years and leniency in imposing the sentence be shown to him. It is further argued that the offence punishable under Section 307 of the Indian Penal Code is not proved.

4 The learned APP supported the impugned judgment and order of conviction and resultant sentence by arguing that the appellant/accused is proved to have inflicted several injuries on vital part of the body of the injured and during the course of medical treatment hundred stitches were required to be given to the injured as seen from the medical evidence.

5 I have carefully considered the rival submissions and also perused the record and proceedings including oral as well as documentary evidence adduced by the parties.

6 This is a case of a single injured and a single accused. In such case, theory of false implication does not deserve a moment's consideration. The prime evidence against the appellant/accused is that of the injured witness. What is the value which needs to be assigned to evidence of the injured witness can be found in catena of judgments of the Honourable Apex Court. In the matter of **Shivalingappa Kallayanappa vs. State of Karnataka**¹ it has been held that the deposition of the injured witnesses should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident. In **State of Uttar Pradesh vs. Kishan Chand**² a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends supports to his testimony that he was present during the occurrence. In **Krishan**

1 1994 SCC (Cri) 1694

2 2004 SCC (Cri) 2021

vs. State of Haryana³ it has been held that in case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. In the matter of Bonkaya V/s. State of Maharashtra⁴ the Honourable Apex Court has held that injured witnesses are stamped witnesses whose presence admits no doubt as being themselves victims of the crime. As such, they would not leave the real assailants and substitute them with innocent persons. It is, thus, clear that evidence of injured witness, if otherwise reliable and trustworthy, it carries more weight and cannot be thrown away because it is not corroborated by any independent witness. Little discrepancy in such evidence is not sufficient to make the prosecution case suspect.

7 In this backdrop, let us examine what the injured has spoken about the appellant/accused. Her evidence makes it clear that she married the appellant/accused on 29th March 1998 and the couple was blessed with a son and a daughter. They were

3 (2006) 12 SCC 459

4 1995(2) SCC 447

residing in tenanted premises at Bhaskar Nagar of Ambernath town in Thane District. Chief-examination of PW1 Geeta itself reveals that her husband i.e. the appellant/accused was a doctor with a degree of B.H.M.S. and was working in Nandini clinic. She stated that she was trying to acquire a job in the Ordinance factory at Ambernath, and therefore, she was in need of documents regarding her educational and other qualifications. The appellant/accused refused to give those documents to her and had picked up a quarrel with her and had even assaulted her. All these, according to her version, was going on for a period of three months prior to the incident. So far as the incident is concerned, the injured witness has deposed that on 17th August 2006, at about 11.30 p.m., when she was all alone in her house, the appellant/accused came along with their daughter. He locked the door from inside and took out a knife kept inside in the roll of the newspaper. Then the appellant/accused gave blows of that knife on her neck as well as both hands, stomach and back causing bleeding injuries to her. Thinking that she is dead, the appellant/accused went out of the room along with their

daughter and ran away by locking the door from outside. The injured witness further deposed that she then tried to call her father by making a call from her mobile phone and ultimately, was succeeded in contacting her landlord PW2 Muniappa Walekar. He came and then she was taken to the Central Hospital, Ulhas Nagar, and at that hospital her FIR Exhibit 7 came to be recorded. She then deposed that she was shifted to the Sion Hospital and took treatment for a week at that hospital. Cross-examination of injured PW1 Geeta is focused on strain relations between the couple. From cross-examination of this witness it is brought on record that after marriage, the injured took admission in the college for further education and had started residing in the hospital. A suggestion was given to her to the effect that on 7th November 2004 she had eloped with a person named Hanumanta Chalwadi which resulted in lodging the report by the appellant/accused against her. It was suggested to her that this Hanumanta is a rickshaw driver by occupation and after eloping with him, she started to reside with him for a period of one month. Though these suggestions are denied by the injured, she

accepted the fact that both families have amicably settled the dispute and then she started cohabiting with the appellant/accused. It was suggested to her that she used to return late at night and was not looking after the children. To crown this all, it was suggested to the injured that she had illicit relations not only with Hanumanta but with several other persons working in the Call Center. With such type of cross-examination, it is hard to believe that there was no motive on the part of the appellant/accused to assault his wife. If all these, which is suggested to the injured, is considered, then it goes to show that the appellant/accused was suspecting her character. She had eloped once with a person named Hanumanta and all these indicate the motive on the part of the appellant/accused to cause harm to his wife, even though in a case related to eye witness, motive has no role to play. Suffice to say that, I see no reason to disbelieve version of the injured which reflects that the appellant/accused has caused several injuries to her by means of knife.

8 Evidence of injured PW1 Geeta is further corroborated by evidence regarding disclosure statement and resultant recovery at the instance of appellant/accused. PW7 Baburao Jagtap, the Investigating Officer, has proved the recovery of blood stained knife at the instance of the appellant/accused on 21st August 2006. As per version of this witness, while in custody, the appellant/accused had shown willingness to produce the knife, and accordingly, the appellant/accused had taken the police as well as panch witnesses to his house and from the rack in the kitchen room, he took out the knife, which was stained with blood.

9 Spontaneous statement made by injured PW1 Geeta to PW2 Muniappa Walekar which is admissible under section 157 of the Evidence Act also corroborates the version of the injured victim. It is in evidence of PW2 Muniappa Walekar that he received a telephone call on his mobile phone from PW1 Geeta. She told him that the appellant/accused had assaulted her and sought help. PW2 Muniappa Walekar testified that when he

reached the house of the appellant/accused, which he used to share with injured PW1 Geeta, he found the door of that house closed from outside. On opening the door, he saw PW1 Geeta sitting on a chair with injuries on her person. She again told him that the appellant/accused had attacked her with a knife causing injuries. This former statement made soon after the incident by the injured which is disclosed before the trial court by PW2 Muniappa Walekar, certainly corroborates the version of the injured giving authorship of wounds on her person to the appellant/accused. With this evidence, I conclude that the learned trial court has correctly arrived at the finding that the appellant/accused was the author of injuries found on the person of PW1 Geeta.

10 Now let us examine whether the appellant/accused is proved to have committed the offence punishable under Section 307 of the Indian Penal Code. At this juncture, it is apposite to quote the relevant observations in the matter of **Vasant Vithu Jadhav vs. State of Maharashtra**⁵ which read thus :

5 2004 CRI.L.J. 1786

“9 To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deducted from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

“10 It is sufficient to justify a conviction under S. 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. the section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under S. 307, I.P.C., merely because the injuries inflicted on the victim were in the nature of simple hurt.”

“13 Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of S. 307 I.P.C. The determinative question is intention or knowledge, as the case may be, and not nature of the injury”

11 It is, thus, clear that, whether there was intention to kill or knowledge that a death will be caused, is a question of fact, and has to be determined by examination of facts in each case. As stated in foregoing paragraphs, facts of the instant case are not sufficient to come to the conclusion that the appellant/accused attempted to commit murder of injured PW1 Geeta.

12 Now let us examine what were the wounds suffered by the injured in the incident in question. Immediately after the incident, the injured was taken to the Central Hospital, Ulhas Nagar, where she was examined by PW6 Dr. Vivek Malve. Evidence of this Medical Officer shows that he found in all six injuries on person of PW1 Geeta. This Medical Officer found that injured PW1 Geeta had suffered skin deep injuries on left forearm of size 1.5 inch x ½ inch. The other injury is also skin deep injury on right mandible region of size 2½ inch x 1 inch. The third injury noticed by this Medical Officer was a muscle deep injury on right forearm of size 2 inch x 1 inch. The fourth injury noticed by PW6 Dr. Vivek Malve was also a skin deep injury on mid of

cervical region of size 1 inch x ½ inch. This Medical Officer has noticed a stab injury on right hypogastrium of size 1 inch x 1 inch, apart from incised wound on right paraspinal region of size ½ inch x ½ inch. As per version of PW6 Dr.Vivek Malve, these injuries were possible by a sharp edged weapon like knife.

13 Another Medical Officer examined by the prosecution is PW4 Dr.Avinash Badne of Sion Hospital, Mumbai. With some variation in size, this Medical Officer has also found injuries which were subcutaneous deep or muscle deep apart from stab wounds at right iliac fossa. He testified that the injuries are possible by the seized knife.

14 Evidence of the prosecution reflects that the knife used in commission of subject crime was having a blade of 12 cm length. The Recovery Panchnama Exhibit 28A shows that the blade was sharp. The total length of the knife, stated in the Recovery Panchnama, is 23 cm. Thus, it was a heavy knife.

15 With this evidence, one will have to examine whether the facts of the case reflect attempt to commit murder. At the cost of repetition, it needs to be stated that for justifying a conviction for the offence punishable under Section 307 of the Indian Penal Code, it is not necessary to cause even a bodily injury. However, nature of weapon used, seat of injury and size of injury are the aspects which give some idea about intention harboured by the accused in causing wounds on the victim. In somewhat similar situation, in the matter of **Jai Narain Mishra vs. The State of Bihar**⁶ the Honourable Apex Court has held thus :

“Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307-IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra PW 6 as a penetrating wound 1½” x ½” x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean cut. Suraj according to the evidence had thrust a bhala into the chest when Shyamdudd had fallen as a result of the blow given by Mandeo with the Farsa

6 1972 CRI.LJ. 469

on his head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death. In the present case however, three injuries are of a simple nature though deadly weapons were used and the fourth injury caused by Suraj though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is not one under Section 307-IPC but Section 326-IPC. His conviction therefore, under Section 307 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years

rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment.

In that case, the injury was on the chest wall with profuse bleeding and condition of the injured was low and serious. The Hon'ble Supreme Court, considering these facts held that such injury could not be deemed to be an injury which would have necessarily caused death, but for timely medical aid. Fact situation in the case in hand is not so serious. On the contrary, in the case in hand, almost all injuries are either skin deep or muscle deep. Those are on the upper extremities as well as face. Considering the nature of weapon attributed to the appellant/accused and the ultimate result reflected shows that the wounds inflicted by the appellant/accused are totally superficial. For making out the offence punishable under Section 300 of the Indian Penal Code, it is required to show that the act by which the death is caused, is done with the intention of causing death, or that the intention of causing such bodily injury, as the offender knows to be likely to cause death of person to whom the harm is caused. Similarly, the act causing death is done with the intention of causing bodily injury to any person

and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, then the offence of murder is made out. In a like way, if the person committing the act knows that the same is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and still commits such act without any excuse for incurring the risk of causing death or such injury, then also the offence of murder is made out. If in commission of such act, the attempt fails, then the offence turns to the offence of committing murder. Such is not the case in hand. Even though the appellant/accused was holding a big knife and his wife i.e. PW1 Geeta was all alone in the house, and that too not in a position to resist him, still the appellant/accused has caused only superficial wounds to her and that too mostly on non-vital parts of the body. The injury on neck, as stated by PW4 Dr.Avinash Badne, was just of size 2 x 1 cm and its depth was up to subcutaneous tissue. As such, it cannot be held that the appellant/accused had attempted to commit murder of his wife. He is certainly entitled for benefit of doubt in this regard.

16 Now let us examine what offence is committed by the appellant/accused. The injured was required to take medical treatment for a period of one week after sustaining wounds inflicted by the appellant/accused. Though prosecution has failed to prove that the appellant/accused had attempted to commit murder of his wife, evidence on record does establish that he had caused wounds which endangered life and which caused the sufferer during the span of twenty days in severe body pain. With the injuries noted by the Medical Officer examined by the prosecution, it is writ large that the injured PW1 Geeta was unable to follow her ordinary pursuits. As such, the prosecution has made out the offence punishable under Section 320 of the Indian Penal Code punishable under Section 326 thereof. In the result, the following order :

ORDER

- i) The appeal is partly allowed.
- ii) Conviction and resultant sentence imposed on the appellant/accused by the impugned judgment and order dated 19th March 2014 passed by the learned Adhoc

Additional Sessions Judge, Kalyan District, Thane, in Sessions Case No.54 of 2007, thereby convicting him of the offence punishable under Section 307 of the Indian Penal Code, is quashed and set aside.

- iii) Instead, the appellant/accused is convicted of the offence punishable under Section 326 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for a period of 5 years apart from payment of fine of Rs.3,000/- and in default, the appellant/accused to undergo further rigorous imprisonment for 3 months.
- iv) Needless to mention that the appellant/accused is entitled for set off under Section 428 of the Code of Criminal Procedure.

(A. M. BADAR, J.)