

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.548 OF 1998**

Vasant Laxman Wagh
Residing at Karhati,
Tal. Baramati, Dist. Pune

.. Appellant

VERSUS

State of Maharashtra

.. Respondent

Mr. Shailesh Chavan i/b Mr. Milind Deshmukh for the Appellant.

Mr. Y. Y. Dabake, APP for the State/Respondent.

CORAM : BHARATI DANGRE, J.

DATED : 22nd MARCH, 2021.

JUDGMENT :-

1. The appellant was charged for the offence punishable under Sections 307 and 498-A of the Indian Penal Code (for short, "IPC"), the former being framed in light of the incident, which took place on 21st March, 1992 at about 12.30 p.m. to 1.00 p.m. on Nimbut Chapari Road, Taluka Baramati, District Pune, when he gave a blow with a knife to his wife, who sustained serious injuries. The appellant came to be charged for causing injuries with such an intention or knowledge and under such circumstances, that if by that act he had caused the death of his wife-Kusum, he would have been guilty of murder since he stabbed her with knife. The charge under

Section 498-A was framed in the backdrop of the prosecution case that the appellant was subjecting his wife to cruelty and harassment and suspecting her character, prior to the date of the incident.

2. The appellant pleaded not guilty to the said charge and was tried by the Additional Sessions Judge, Baramati in Sessions Case No.45 of 1992.

3. The prosecution proved its case by examining the witnesses and at the end of the trial, the appellant was held guilty of voluntarily causing hurt to his wife by means of a knife and came to be convicted under Section 324 of IPC. On being convicted, he was sentenced to suffer R.I. for one year and to pay fine of Rs.2,000/-, in default to suffer R.I. for six months. He was acquitted of the charge under Sections 307 and 498-A of IPC. Pursuant to the said judgment, he deposited that fine and was released on bail.

4. The appellant is aggrieved by his conviction and sentence imposed upon him and claim to be innocent and being falsely implicated.

Mr.Chavan, learned counsel appearing for the appellant, urge that the prosecution has failed to establish its case by cogent, convincing and clinching evidence and his submission is that the evidence brought on record demonstrate that the appellant was desirous of cohabiting with the complainant, his wife and as such, there is no motive which can be attributed to him to assault his wife. His submission is that the prosecution has only examined the interested witnesses and they have an

axe to grind against him since the relationship with his wife was not cordial and she used to visit her parental house on and off by leaving his company. The further submission is that the complainant (P.W.1) has specifically admitted that if money is paid to her, she has no grievance against the appellant and according to the learned counsel, the false implication of the appellant at the instance of the complainant is only for receipt of monetary consideration.

The learned APP, Mr.Dabake appearing for the State, submit that the prosecution has brought on record sufficient evidence to establish that it is the appellant, who inflicted blows, on the date of the incident, which resulted into injuries, which have been described by the medical expert to be caused by sharp cutting object and by hard and blunt object and had occurred within six hours. Though the injury nos.1 and 2 are not assigned to be fatal or dangerous to life, the learned APP would submit that the appellant has been rightly convicted under Section 324 of IPC for voluntarily causing hurt by means of a knife and a minimum penalty of simple imprisonment for one year has been imposed upon him. The learned APP would seek dismissal of the appeal.

5. The prosecution has examined the complainant as P.W.1, who deposed that she was married with the accused in the year 1972 and out of wedlock, two children are born. She has deposed before the Court that she was residing with her parents at Nimbut Chapari prior to the incident, since she was being threatened by the appellant/accused and he used to suspect her character. On earlier occasion also when she

received threats at his hands, one Kisan Wagh had reached to her to her parental house and accused made an attempt to seek intervention of 'Sarpanch' and police party. On such intervention, she went to cohabit with the accused and stayed with him for one month, but he continued with his reckless behaviour and continued to threaten her, which compelled her to return to her parental house. She has deposed that she used to work under Mason for earning the livelihood and prior to the incident, the accused had visited her parental house on 3 to 4 occasions and had thrashed her, suspecting her character.

6. The complainant narrated the incident, which took place when she sustained injuries at the hands of the accused and as per P.W.1 while she was at her workplace, the accused came there and informed her that Shekhar Bhaiyaa had called her at her parents house, which compelled her to accompany the accused. When she was walking, the accused again picked up the topic and told her that she should call her lover and that he would beat him and would also not left her alive. On the way to the house, he pounced upon her and by means of a knife, gave blows on her left arm, left thigh and on the left thumb of her toe. She screamed and people gathered around. As the pain become unbearable, she caught hold of knife, as a result, she sustained injury on the thumb of the right hand and became unconscious. The accused ran away towards Maghalwadi and she was referred to the hospital in Baramati where she took treatment as an indoor patient for one month.

Her statement was recorded in the hospital and the same came to be exhibited, which bear the thumb impression of her

left hand. The said statement is in sync with her deposition before the Court. In her examination before the Court, she has admitted that she had filed an application seeking maintenance from the accused and that after the marriage, the relationship was not cordial. She denied the suggestion that she has implicated the accused for demand of money and that she had demanded Rs.25,000/- from her husband.

7. The case of the complainant is corroborated by her brother-Gajanan (P.W.2), his wife-Laxmi (P.W.3), neighbour-Jijaba (P.W.4), father-Vitthal (P.W.5) and Sudam (P.W.6), who had acted as a mediator in reconciling the discord between the husband and wife.

P.W.2-Gajanan has corroborated the version of the complainant by deposing that one or two months before, his sister had started residing with the parents as there was some grumbling between the duo. He also corroborated that the attempts were made to reconcile the differences and her sister had been to the house of the accused for cohabitation. He deposed that on 21st March, 1992, he was informed that Kusum (P.W.1) was being beaten by the accused and when he approached the place, she was lying beyond the road and was bleeding. He saw the accused running and he chased him in a truck and apprehended him subsequently at Waghalwadi alongwith two other persons accompanying him and made him over to the police Barge, when he found the clothes of the accused were stained with blood.

8. P.W.3-Laxmi, wife of P.W.2 and P.W.5-Vitthal speak of the complainant residing at her parental house on account of differences with the accused. P.W.5 is also a witness, who had seen the accused giving a kick on the back of Kusum (P.W.1) due to which she fell in a ditch and sustained injuries. In the cross-examination, P.W.5 had admitted that accused had given Rs.25,000/- to Rs.30,000/- to Kusum and he denied the suggestion that his daughter was demanding more.

9. Through the aforesaid witnesses, the prosecution has brought on record the strained relationship between the accused and the complainant and that on the date of the incident, she was residing at her parental house and was on work place when the accused approached her and asked to accompany him on the pretext of being called at the house. In the midway, he assaulted her by means of a knife and then she fell into a ditch, in an injured condition. The witnesses had seen her in such a condition and even the presence of the accused at the spot has been brought on record by the prosecution.

10. Let me now turn to the injuries sustained by the complainant and as to whether they corroborate with the nature of assault described by her in her complaint and before the Court.

On sustaining injuries, Kusum (P.W.1) was sent to S.J.Hospital, Baramati on being referred by Vadaon-Nimbalkar Police Station, Dr.Sanjay Gandhale (P.W.7) examined her and issued a certificate depicting the following injuries :-

“1. Incised wound 1/2” x 1/2” on left upper thigh at outer mid-region at femur neck, transverse in direction, muscle deep, bleeding present.

2. Incised wound 2” x 1/2” on left side, lower part of arm, just near elbow joint, transverse in direction, bleeding present.

3. C.L.W. 1/8” x 1/8” on right hand thumb at second digit, bleeding present.

4. C.L.W. 1/8” x 1/8” over left side foot at top of the toe, bleeding present.”

11. While in the witness box, P.W.7 opined that injury nos.1 and 2 were caused by sharp cutting object whereas injury nos.3 and 4 were caused by hard and blunt object. He also opined that injuries were within six hours. He admits that injury nos.1 and 2 are possible by knife (Article 3) shown to him. He also confirmed that Kusum was admitted in the hospital for ten days and the certificate (Exhibit 21) was issued by him on examining Kusum. The suggestion that the injuries are not deep and, therefore, the depth of the injuries are not mentioned in inches or centimeter is specifically denied. Though the suggestion given by the accused that injury nos.1 and 2 are possible by self infliction or by weapon like sickle is admitted by this witness alongwith an admission that injury nos. 1 and 2 are also possible by sharp stone and injury nos.3 and 4 are possible by a simple fall. The attempt of the accused to attribute the injuries on the complainant on account of this suggestion is not acceptable and not accepted by the trial court for a simple reason that the prosecution has brought a positive evidence on record to the effect that it is the accused, who had caused these injuries by means of a knife.

Since the presence of the accused at the spot where Kusum (P.W.1) was found lying in an injured condition has been established by evidence of P.W.2, P.W.4 and P.W.5, there is no reason to give weightage to the said admissions.

12. The prosecution has also relied upon the recovery of the knife at the instance of the accused while in custody. The Sub-Divisional Police Officer (P.W.8), who conducted the investigation of the crime registered on 22nd March, 1992, deposed that the accused had expressed his willingness to lead the investigating team to a knife, which was concealed by him in the cattle shed of his maternal uncle. The memorandum panchanama (Exhibit 23) came to be recorded and the accused accompanied the investigating team and led them to a cattle shed and took out a knife, which was concealed in a loft in the heap of gunny bags in a sack. The same was taken into possession by executing the panchanama (Exhibit 24) alongwith sack/bag. Ganesh (P.W.11), a panch, who has signed the panchanama has been declared hostile and, therefore, the recovery of the weapon cannot be said to be conclusively established though the other panch Tanaji Kakade (P.W.12), a signatory to the said panchanama is examined as a panch on spot; he do not speak of recovery of knife, but the said witness has proved the spot panchanama from where the blood stained soil was seized under a panchanama.

13. There are witnesses, who have been examined by the prosecution on seizure of the clothes and Chaban (P.W.9) is a panch witness on the seizure of the clothes of the accused, who

has also turned hostile. Satyawar (P.W.10) has proved the seizure of clothes of the complainant, which were stained with blood. With this material brought on record, the accused was tried for the charge under Section 307 of IPC.

Though a serious attempt was made to doubt the prosecution case on the ground that the panch on the recovery of clothes of the accused and to the seizure of the knife turned hostile and in absence of any report of the chemical analysis, there is a serious flaw in the prosecution case, I find no substance in the submission. The prosecution has been successful in establishing its case on material particulars about the incident taken place and the injuries on the person of the complainant being proved by P.W.7 and injury nos.1 and 2 being the incise injuries whereas injury nos.3 and 4 being in the form of contused lacerated wounds on the right hand thumb and on the left side foot, opined to be caused by hard and blunt object and they having been occurred within a period of six hours, the prosecution has established that Kusum (P.W.1) had sustained injuries and it has also established that the appellant is the author of the injuries.

The testimony of P.W.1 inspire confidence and there is no reason to doubt her trustworthiness, particularly when she is a injured, who remained hospitalised for one month on account of the assault upon her. There is no inconsistency in the version of P.W.1 when compared with version of P.W.2, P.W.3, P.W.4 and P.W.5. P.W.6 also speak of the strained relationship between the accused and P.W.1. The prosecution having been successful in establishing the assault on Kusum (P.W.1) by the accused, the trial court, on taking into account the evidence of

P.W.7 where injuries sustained by Kusum were opined to be simple in nature, acquitted the accused of the charge under Section 307 of IPC and convicted him for causing hurt by dangerous weapon being the knife. The recovery of the knife, which appear to be doubtful, does not weaken the case of the prosecution, which is otherwise established by convincing evidence brought on record. The benefit of probation of offenders Act has been denied to the accused and for his gruesome act of assaulting his wife by means of a weapon like knife in broad day light, in my considered opinion, the sentence imposed, being R.I. for one year is justifiable and would render justice to the complainant.

14. In my considered opinion, no legal infirmity can be found in the judgment delivered by the learned Additional Sessions Judge, Baramati in Sessions Case No.45 of 1992 and I am not inclined either to interfere with the conviction or the sentence imposed upon the appellant. Upholding the judgment and order dated 21st April, 1998, the appeal is dismissed.

SMT. BHARATI DANGRE, J