

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 5 OF 2011

Pintya @ Prashant Babarao Sawarkar,
Aged about 33 years, Occupation – Nil,
R/o. Manki, P.S. Wani, Tahsil – Wani,
District – Yavatmal.

.... **APPELLANT**

VERSUS

State of Maharashtra,
through Police Station, Wani,
Tahsil – Wani, District – Yavatmal.

.... **RESPONDENT**

Mr. S.S. Deshpande, Counsel for the appellant,
Mr. N.R. Rode, Addl.PP for the respondent/State.

CORAM : ROHIT B. DEO, J.
DATED : 22nd DECEMBER, 2021

ORAL JUDGMENT :

The appellant is assailing the judgment dated 13-9-2010 rendered by the learned Additional Sessions Judge, Pandharkawada (Kelapur) in Sessions Trial 57/2005 whereby the appellant, hereinafter referred to as the 'accused', is convicted for offence punishable under Section 307 of the Indian Penal Code (IPC) and is sentenced to suffer rigorous imprisonment for five years and to payment of fine of Rs.500/- (Rupees Five Hundred) and in default, to suffer further rigorous

imprisonment for one month and is further convicted for offence punishable under Section 309 of the IPC and is sentenced to suffer rigorous imprisonment for six months and to payment of fine of Rs.100/- (Rupees One Hundred) and in default, to suffer further rigorous imprisonment for ten days.

2. The prosecution case in brief is that Geeta, who is the daughter of informant Tukaram Latari Piprade, was to marry a boy from village Chikhalgaon. The accused and the informant's family are residents of village Manki. The accused insisted Geeta should marry him, she refused to oblige, and at 7-00 p.m. on 27-5-2005 when Geeta went out of the house to answer nature's call, the accused approached her with knife, dragged her to the cattle shed of Shalik Pund and assaulted her with knife. The accused then consumed poison and both, Geeta and the accused, were rushed to the hospital. On the basis of report lodged by Tukaram Piprade Crime 115/05 was registered and Geeta's statement was recorded by the Executive Magistrate as dying declaration. She was examined by Dr. Nasir Ahemad who referred her to General Hospital, Chandrapur for further investigation and treatment. The investigation proceeded on the usual lines. The knife was recovered from the spot. The clothes wore by Geeta and the accused were seized and sent for chemical analysis. Completion of the

investigation led to submission of the final report under Section 173 of the Code of Criminal Procedure (Code) in the Court of the jurisdictional Magistrate who committed the case to the Sessions Court.

3. The learned Sessions Judge framed charge under Sections 307 and 309 of the IPC. The accused abjured guilt and claimed to be tried. While the prosecution examined as many as seven witnesses, the accused examined the Executive Magistrate to prove the statement of Geeta which was recorded as dying declaration. Since Geeta survived, the statement recorded as dying declaration will have to be treated as a statement under Section 161 of the Code, and the Executive Magistrate was examined to contradict Geeta with the statement recorded by the said Executive Magistrate, on the premise that Geeta did not disclose the name of the assailant.

4. The learned Counsel for the accused Mr. S.S. Deshpande has invited my attention to certain inconsistencies regarding the details of the incident, between the report lodged by Tukaram Piprade and the narrative of the victim Geeta. Considering that Tukaram Piprade is not an eyewitness, I am not inclined to hold the inconsistencies against the prosecution. Mr. S.S. Deshpande then submitted that the accused and Geeta were in love and entered into a suicide pact. It was decided that

Geeta shall administer poison to the accused and then consume the poison herself. She did administer the poison to the accused, however, after the accused felt unconscious, she panicked and inflicted the wounds on her person. Mr. S.S. Deshpande would finally submit that the photographs on record which Geeta admits, show that the accused and Geeta were in a relationship. Even if the prosecution version is accepted, there was no intention as such to cause death and that a reformatory approach needs to be adopted since both the accused and Geeta are now happily married and the accused himself was admitted in the hospital for forty-five days since he consumed poison. Mr. S.S. Deshpande submits, and the learned Additional Public Prosecutor Mr. N.R. Rode does not rebut the submission, that the accused has already undergone pretrial and post-conviction detention of eight to nine months, which is a sufficient sentence considering the facts of the case.

5. I have scrutinized the evidence on record in the context of the defence theory, which is on record in the form of written statement under Section 313 of the Code. Considering the number and nature of the injuries and the locations, it is difficult to accept that the injuries are self inflicted. The text and tenor of Geeta's cross-examination would show that the accused did not deny that he and Geeta were together at the cattle shed of Shalik Pund and that Geeta suffered

injuries. It is in this context that the evidence will have to be tested.

6. Tukaram Piprade is examined as PW 1. He has not seen the incident. According to him, after hearing some turmoil, he rushed out and saw that Geeta was lying in an injured state. PW 2 is Geeta Piprade who has told the Court that the accused confronted her and asked her why he was not marrying him and then stabbed her with a knife on the abdomen and then on her hands. According to Geeta, she went to the house of Baburao There where the accused arrived with a tin of poison, and after confessing that he assaulted Geeta, consumed the poison.

In the cross-examination, she admits that the Executive Magistrate had recorded her statement as per her narrative. She further admits that the Executive Magistrate asked her whether she suspected anybody. However, she denies the suggestion that she replied in the negative. Geeta admits the photographs with the accused. She, however, denies her handwriting in the letters. She denies the suicide pact theory.

7. PW 3-Vinod Kakde, who is examined as witness to the spot panchanama, did not support the prosecution. Similarly, PW 4-Bapurao There, who is a material witness in the sense that according to Geeta,

she went to his house and there the accused arrived with tin of poison and consumed the same, also did not support the prosecution. PW 5-Damdeo Mandalwar is the Police Officer who reduced the oral report in writing and then sent a requisition to the Taluka Magistrate for recording Geeta's statement.

8. PW 6 is Dr. Nasir Ahemad who examined Geeta and the accused. He has deposed to have examined Geeta and noticed the following injuries.

- (i) stab wound of size 3 cm. X 2 cm. deep over right fifth in costal space of chest.
- (ii) Multiple stab injuries over left hand, five in number each of size approximately of 2 cm.
- (ii) Stab injuries of size 2 cm. each 2 in number over right forearm.

PW 6 informs the Court that he referred Geeta to General Hospital for further investigation and treatment. He has proved injury report Exhibit 52. He has also proved the query report Exhibit 55. While in the cross-examination, PW 6 admits that it is necessary to mention direction, shape and edges of the wounds to ascertain whether the injuries are self inflicted or otherwise, he further informs the Court that he cannot say that the injuries are self inflicted. PW 7-Narayansingh Dabherao is the Investigating Officer who has deposed as to the various steps in the

investigation. The Investigating Officer confirms that Geeta did not state before him that the accused stabbed her on the abdomen. The defence witness has informed the Court that the statement of injured Geeta, then recorded as dying declaration, was as per her narrative.

9. In view of the defence that the injuries are self inflicted, the accused was under a certain burden, which is not discharged. The text and tenor of the cross-examination and the statement under Section 313 of the Code reveal that the accused did not dispute that he and Geeta were together at the relevant time and that Geeta suffered injuries. The accused is also not denying that he consumed poison and attempted to commit suicide. I have scrutinized Geeta's testimony, which is corroborated by the injuries noticed in the medical examination. It is true that the injuries ought to have been described with more particularity, as is argued by the learned Counsel for the accused. However, the number of injuries and the locations rules out the defence that the injuries are self inflicted. Moreover, if there was indeed a suicide pact that both, Geeta and the accused, will consume poison, there was no reason for the accused to meet Geeta armed with knife. Nothing is brought to my notice as would shake the credibility of injured Geeta's version. I accept the testimony of Geeta, and agree with the learned trial Judge, that considering that at least one knife blow

was struck on vital part, the offence falls under Section 307 of the IPC. While the other injuries are on the hands, Geeta has told the Court that when she covered her chest with hands, the accused inflicted injuries on her hands.

10. In so far as conviction recorded under Section 309 of the IPC is concerned, there is no argument advanced and obviously so, since the defence is that Geeta and the accused entered into a suicide pact. I am also inclined to confirm the conviction under Section 309 of the IPC.

11. While I am inclined to uphold the conviction recorded, there are certain aspects which persuade me to adopt a reformatory approach. It does appear that the incident is a fall out of a passionate relationship. While, according to the prosecution, the passion may be one sided, the photographs on record suggest otherwise. Both, Geeta and the accused, are now happily married. The incident occurred sixteen years ago and the accused deserves a chance to lead a reformed life. I am, therefore, inclined to reduce the sentence for offence punishable under Section 307 of the IPC to detention already undergone. In so far as offence punishable under Section 309 of the IPC is concerned, the sentence is already served.

12. Upholding the conviction recorded by the learned trial Judge under Sections 307 and 309 of the IPC, the sentence is reduced to detention already undergone for offence punishable under Section 307 of the IPC. As noted supra, the sentence of six months rigorous imprisonment for offence punishable under Section 309 is already served.

13. The bail bonds of the accused shall stand discharged.

14. The appeal is partly allowed in the afore-stated terms.

JUDGE

adgokar