

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

CRIMINAL APPEAL NO.171 OF 2015

Shri Dinkar s/o. Uttam Gharte,
Age: 31 years, Occu. : Labourer,
R/o. : Ambedkar Nagar, Nakane Road,
Deopur, Dhule, Tq. and District Dhule.

**.. APPELLANT
(Orig. Accused)**

VERSUS

The State of Maharashtra
Through West Deopur Police Station,
Deopur, Tq. and District Dhule.

..RESPONDENT

...

Mr.S.J.Salunke, Advocate for the appellant.
Mr.P.K.Lakhotiya, APP for the respondent-State.

...

**CORAM : SMT. SADHANA S. JADHAV &
S.G.DIGE, JJ.**

RESERVED ON : 22.03.2022
PRONOUNCED ON : 06.05.2022
(THROUGH V.C.)

JUDGMENT (PER S.G.DIGE, J.) :

1. The appellant – original accused impugns a judgment and order dated 17.01.2015 passed by the learned Additional Sessions Judge, Dhule, in Sessions Case No.92 of 2014, whereby the appellant is convicted for the offence punishable under sections 302 and 323 of the

Indian Penal Code (for short, "IPC"). For the offence punishable under section 302 of IPC, the appellant is sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/-, in default of payment of fine, to suffer rigorous imprisonment for 06 (six) months. For the offence punishable under section 323 of IPC, the appellant is sentenced to suffer rigorous imprisonment for 06 (six) months and to pay a fine of Rs.500/-, in default of payment of fine, to suffer rigorous imprisonment for 1 (one) month. The appellant is acquitted for the offence punishable under Section 504 of the IPC.

Brief facts of the case are as under :

2. The deceased Yogita was married with appellant. They have son, namely, Gaurav, aged 4 years from their wedlock. When Yogita was cohabiting with the appellant at his village Kokale, the appellant was not gainfully employed and used to consume alcohol. He also used to suspect the character of Yogita, and on that count the appellant used to assault Yogita. Due to this, Kaushalya

(complainant, PW-1) mother of Yogita brought Yogita and her son to her house at Deopur, Dhule. After some days, the appellant came to Dhule and requested (complainant) mother of Yogita that he will not consume liquor hereinafter and requested to allow him to reside with Yogita at Deopur, Dhule. Considering the future of Yogita and her son, complainant (PW-1) and family members allowed the appellant to reside at Deopur, Dhule. Thereafter, Yogita used to go for labour work, whereas the appellant used to go to a garage for work for his livelihood but the appellant would spend his income for consuming liquor. The appellant would take suspicion on the character of Yogita and would assault her. Complainant and family members persuaded the appellant to behave properly, but it was in vain.

3. On 23rd February, 2014 at around 7.30 p.m. the complainant, his son Avinash, Yogita and step mother of Yogita, namely, Nanda and son of Yogita, namely, Gaurav, were present at home. Then the appellant came there and

asked Yogita, whether she did not cook food for him. Yogita replied that she had just come from work, thereon the appellant abused Yogita and went towards chair where Yogita was sitting he suddenly took out a scissor which was hidden in his hand and assaulted on Yogita's chest by that scissor. Due to said assault, Yogita shouted loudly and fell down. The appellant again assaulted on Yogita's thigh with scissor. Complainant, Nanda and Avinash tried to stop the appellant, at that time appellant slapped complainant and assaulted her with scissor on her left hand. Due to shouting of the complainant and others, some persons from nearby area rushed there and caught hold the appellant and take him out of the house. Thereafter, Yogita, who had sustained bleeding injuries, was immediately taken to Civil Hospital, Dhule. From there, she was taken to Siddheshwar, Sudha and Sparsh Private Hospitals but the Doctors of the said Hospitals refused to admit her, hence, she was again brought to the Civil Hospital, Dhule, where the Doctor on duty declared her as dead. Thereafter, the complainant lodged a complaint against the appellant. The Police

registered the offences against the appellant under Sections 302, 323 and 504 of the Indian Penal Code.

4. After completing the investigation, the charge sheet was filed against appellant. The case was committed to the Additional Sessions Judge, Dhule. Charge was framed against the appellant. He pleaded not guilty and claimed to be tried. The prosecution has examined in all 13 witnesses. The statement of appellant under Section 313 of the Code of Criminal Procedure [for short 'Cr.P.C.'] has been recorded. It is defence of the appellant that on the day of incident he was under the influence of liquor. When he went to the house, he started abusing his wife Yogita, mother-in-law Kaushalya and brother-in-law Avinash in filthy language. Due to this behaviour of the appellant, Avinash got angry and he came to assault the appellant by taking a knife from kitchen. At that time, Yogita intervened in between them and sustained blow of a knife. In scuffle, she had received other injuries.

5. Considering the evidence on record and

submissions of the parties, the learned trial Court convicted the appellant as aforesaid.

6. Heard the learned Advocate Mr.S.J.Salunke for the appellant and the learned APP Mr.P.K. Lakhotiya for the State.

7. It is the contention of learned counsel for the appellant that the learned trial Court has erroneously convicted the appellant. The learned counsel further submitted that the learned trial Court has mainly relied upon the evidence of PW-1- the mother of deceased and PW-10- step mother of deceased, who are interested witnesses. There are material omission, contradictions and variances in the evidence of PW-1 and PW-10. So also PW-2 to 6 and PW-11 are concerned, they are the neighbours of the complainant and some of them are the friends of the brother of the deceased, therefore, their evidence cannot be relied upon. It is the contention of the learned counsel that there is delay in lodging the First Information Report. At the

time of incident, the present appellant was under the influence of liquor and abusing in filthy language, therefore, son of complainant viz. Avinash, who is brother of deceased Yogita got angry and rushed to assault accused by means of a knife but his wife i.e. deceased Yogita intervened and received blow of a knife, which was in the hand of Avinash. In this regard the PW-1 in her cross examination admitted that at the time of incident, the accused had consumed liquor and was under the influence of liquor. PW-1 further admitted in her cross examination that due to influence of liquor, he was not knowing what he is doing. It is also contention of the learned counsel that the prosecution did not send the seized weapon to the fingerprint expert, as to who was holding the said weapon. If the same ought to have been sent to the fingerprint expert, then the picture would have been different and the appellant may not have been convicted. It is contention of the learned counsel that the learned trial Court has erred while considering the evidence on record. Hence requested to allow the appeal. The learned counsel for the appellant relied upon the

judgments of the Hon'ble Apex Court in the cases of ***Didar Singh Vs State of Haryana*** [1993 Supp (2) SCC 557], ***Radha Kishan Vs. State of Haryana*** [(1987) 2 SCC 652], ***State of Rajasthan Vs. Teja Singh and others*** [2001 All MR (Cri) 994 (S.C.)], ***State of Uttar Pradesh Vs. Mohd. Iqram and another*** [(2011) 8 SCC 80].

8. It is the contention of learned A.P.P. that the prosecution evidence is based upon the direct evidence. There is direct evidence of PW-1 and PW-10, who are the eye witnesses to the incident to prove that when the accused came at home, he was under the influence of liquor, at that time he abused all the family members in filthy language and he was having a scissor hidden in his hand and suddenly he assaulted Yogita with the blade of scissor. The said evidence is corroborated by the evidence of other witnesses. The nature of injuries caused to Yogita shows, it was not caused accidentally but those were inflicted with force. Considering the evidence on record, learned trial Judge has convicted the appellant. Hence, the judgment and order passed by the learned trial Judge is

legal and valid.

9. We have considered the submissions of both the learned counsel and perused the judgment and order of the learned trial Court.

10. There is no dispute about homicidal death of Yogita. It is the case of the prosecution that the accused assaulted Yogita with scissor, due to which, her death is caused, whereas it is a defence of the accused that Avinash tried to assault the accused with knife, at that time Yogita intervened and sustained knife blow of Avinash. So the death of Yogita is homicidal death. No doubt there is burden on the prosecution to prove the case, but considering the defence of the appellant, he is admitting his presence on the spot where incident took place, hence it is necessary to see the evidence came on record. The prosecution case is based on the direct evidence. There are two eye witnesses to this incident i.e. PW-1 Kaushalya (complainant) and PW-10 Nanda. PW-1 (complainant),

mother of deceased Yogita, has deposed that Yogita married with the accused before 6 years prior to the incident and she is having one son of 4 years, namely, Gaurav. After marriage, Yogita went to cohabit with the accused at village Kokale, Taluka Sakri. Two months after marriage, the accused used to come under the influence of liquor and started taking suspicion on the character of Yogita. The accused was not doing any work. Four months before the incident, this witness brought Yogita and her son to her home at Dhule. This witness along with her husband, his second wife Nanda and two sons, namely, Akash and Avinash were residing jointly.

11. After some days of bringing Yogita to the house of this witness, the accused came there. He assured that he will treat Yogita well and asked this witness to allow him to reside with them. Considering future of Yogita and her son, this witness and family members permitted the accused to reside with them. There was one room in front of their house, accused, Yogita and their son were residing

separately there. Yogita used to go for labour work on daily wages basis. The accused used to go to garage for work but used to spend the money for consuming liquor. The accused would quarrel with Yogita.

12. On 23.02.2014 at around 7.30 p.m., this witness was present at her home along with Nanda, Avinash, Gaurav and Yogita. Yogita was sitting on a chair along with her son. At that time the accused came there by keeping his both hands behind. He asked Yogita, whether she did not cook food for him, Yogita stated that she has just come from work and she will cook food, then the accused started abusing her. Suddenly, he took out blade of scissor and gave stab injury on the chest of Yogita. Yogita shouted loudly and fell on ground. The accused again assaulted on left thigh of Yogita with blade of scissor. This witness, Nanda and Avinash tried to prevent the accused then the accused caught hold hair of this witness and slapped on her cheek. The accused also assaulted on left hand of this witness with blade of scissor.

13. This witness shouted loudly, hence the neighbourers, namely, Ghanshyam and Raju Wankhede and others came there. They caught hold of the accused and pulled him out and made him to sit on the platform of the house. Yogita was lying in a pool of blood. She was lifted and taken to Civil Hospital, Dhule. Yogita's condition was serious. Hence, she was brought to Siddheshwar Hospital, but Doctor of Siddheshwar Hospital refused to admit her, thereafter, Yogita was brought to Sudha Hospital. There also the Doctor refused to admit her, thereafter, she was taken to Spursh Hospital, Dhule. Doctor of said Hospital also refused to admit her, therefore, again Yogita brought to the Civil Hospital. The Doctor of Civil Hospital examined Yogita and declared her as dead. This witness was examined by the Medical Officer of Civil Hospital. This witness identified scissor blade by which Yogita and this witness was assaulted. It is at Article 11.

14. This witness in her cross-examination admitted that no complaint was filed against the accused before this

incident though he used to come under the influence of liquor or taking suspicion on the character of Yogita. This witness denied suggestion that this witness and family members were angry with the accused. This witness further admitted that the accused used to be under influence of liquor for 24 hours. At the time of incident, the accused had consumed liquor. He was under the influence of liquor. Due to influence of liquor, he was not knowing what he is doing. This witness denied the suggestion that due to influence of liquor, he was unable to walk and control himself as well as he was unable to stand and speak properly.

15. To corroborate the evidence of this witness, the prosecution has examined PW-10 Nanda, who is a second wife of husband of complainant (PW-1). This witness has deposed the same facts as deposed by the PW-1 Kaushalya. To corroborate the evidence of PW-1 Kaushalya and PW-10 Nanda, the prosecution has examined PW-11 Raju Wankhede. This witness is not an eye witness to the incident of assault by the accused to his wife Yogita. But

this witness has deposed that when he was standing in the Chowk near his house, he heard some shouts from the house of PW-1 Kaushalya. When he went there, he saw that accused was assaulting his mother-in-law (PW-1). This witness prevented the accused and caught hold him and took him out of the house. This witness further deposed that wife of accused (Yogita) was lying and was having bleeding injuries on her chest. Thereafter, Yogita was sent to the Hospital. Nothing elicited in cross examination of this witness.

16. From the evidence of PW-1 Kaushalya and PW-10 Nanda, it establishes that the accused has assaulted Yogita with a blade of scissor. PW-11 Raju Wankhede corroborates the evidence of these witnesses. As accused is admitting his presence on the spot of incident and there are specific allegations against him, hence accused has to give reasonable explanation about his innocence.

17. It is the defence of the accused that at the time

of incident, he was under the influence of liquor when he came at home. At that time, Yogita, Avinash and Kaushalya PW-1 were present at home. He abused all the persons under the influence of liquor. Therefore, Avinash got angry and brought a knife from kitchen and tried to assault the accused. At that time, Yogita intervened, and sustained blow on her chest, which was inflicted by Avinash as accused was under influence of liquor, hence, false complaint was lodged against him.

18. The burden of the parties to establish their respective cases in a criminal trial are really only in two kind, the higher one of the prosecution to establish its case beyond reasonable doubt and the lower one of the accused to prove his plea by a mere preponderance of probability. It is enough for the accused to raise a reasonable doubt as to his guilt.

19. There is direct evidence of PW-1 and PW-10 against the accused who are eye witnesses to the incident,

moreover, post mortem report is at Exh.27. In column no.17, it is mentioned that there are total 8 ante mortem injuries on the dead body of Yogita. PW-7 Dr.Kapileshwar Chaudhari, who has conducted post mortem on dead body of Yogita has deposed that injuries mentioned in column no.17 needs the treatment of super specialist Doctor or Vascular Surgeon. In our view, considering nature of the injuries on the body of Yogita, it is not possible that said injuries were caused accidentally or during scuffle. Had there been intervention by Yogita, she would have sustained single blow injury but there are 8 grievous injuries which show that these are inflicted with force. It proves prosecution case and falsifies the defence of the accused.

20. It is the contention of the learned counsel for the accused that Avinash is not examined by prosecution, though he was eye witness to the incident. It creates doubt about the prosecution case. It is true that the prosecution has not examined Avinash as witness, but it cannot dent to the prosecution case, not examining any witness cannot

wipe out prosecution evidence came on record, when it is proved that accused is author of injuries caused to Yogita. It is the contention of the learned counsel for the accused that the accused was under the influence of liquor, he was not in a position to do any act. It has come in the evidence of PW-1 Kaushalya and PW-10 Nanda that when the accused came at home, he was under influence of liquor. He was not aware what act he was doing, it shows he had no intention to commit any offence. In our view, the accused have inflicted blow of blade of scissor on the chest (vital part) of Yogita, thereafter accused inflicted several blows on other parts of body of Yogita, he had hidden said blade of scissor in his hands. It proves he had intention to kill Yogita and he was aware what act he was doing.

21. It is contention of learned counsel for the appellant that finger prints on seized weapon i.e. blade of scissors were not sent for examination, hence it is not proved that who has used it. It is case of prosecution that the accused has assaulted with blade of scissor, whereas it is

defence of accused that Avinash used kitchen knife by which injury is caused to Yogita, so question of sending offence weapon i.e. blade of scissor for finger print examination does not arise as it was not held by Avinash. Moreover blood stains on the clothes of PW-1, Gaurav son of Yogita, Yogita and accused were sent for chemical analysis. PW-8 – Jitendra Khairnar has deposed that clothes of Kaushalya (PW-1) and Gaurav seized in his presence and panchanama was prepared. It is at Exhibit-30. The clothes are at Muddemal Article 8 to 10. PW-6 – Vijay Khandekar has deposed that clothes of accused i.e. one light blue colour Jeans and ash colour shirt were seized in his presence, they are at Muddemal Article Nos.6 and 7. The Police prepared panchanama and it is at Exhibit-25. PW-4 Gokul Bhamre has deposed that in his presence clothes of deceased Yogita i.e. black colour blouse and ash colour knicker were seized. It is at Muddemal nos.4 and 5. Panchanama is at Exhibit-20. The clothes of deceased Yogita, her son Gaurav, Kaushalya, and accused, which he had worn at the time of incident were sent to Chemical

Analyzer for examination. It was sent through PW-12 – Balmukund Dusane. Along with clothes, blood found on the spot, pieces of bangles found on the spot, blood found on chair, on which deceased Yogita was sitting and the blade of scissor having blood stains on it which was seized from the house of accused, were sent for chemical analysis. The said letter is at Exhibit-37. The result of analysis is at Exhibit-43. The description of articles sent to Chemical Analyser and it's results are as follows :-

Description of parcel/s

--- Four sealed packets & Seven sealed parcels seals intact &
as per copy sent. ----

Description of articles contained in parcels/s

- 1) Scrapping put in a packet Labelled - 1a
- 2) Pieces of bangle put in a packet Labelled – 1b
- 3) Scrapping put in a packet Labelled – 1c
- 4) Saree (torned) wrapped in a paper Labelled – 2a
- 5) T-shirt wrapped in a paper Labelled – 3a
- 6) Full pant wrapped in a paper Labelled – 3b
- 7) Blouse (cut) wrapped in a paper Labelled – 4a
- 8) Knicker (cut) wrapped in a paper Labelled – 4b

- 9) Full pant wrapped in a paper Labelled – 6a
- 10) Full shirt wrapped in a paper Labelled – 6b
- 11) One blade of scissor put in a packet Labelled – 7a

--- Species Origin and blood grouping results are as follows.---

Exhibit No.	Species Origin	Blood Grouping
1	Human	Inconclusive
2	Human	Inconclusive
3	Human	Inconclusive
4	Human	`A'
5	Human	`A'
6	Human	`A'
7	Human	Inconclusive
8	Human	`A'
9	Human	`A'
10	Human	`A'
11	Human	`A'

Item nos.9 and 10 are clothes of accused. The blood group of accused is “O”, blood of Yogita was sent for analysis but its report is inconclusive. This table shows blood group “A” was found on clothes of Gaurav, Yogita, accused and blade of scissor. As blood group “A” is found on clothes of accused and scissor blade, strengthens

prosecution case that assault on Yogita is made by this blade of scissor.

22. The blade of scissor (Article 11) which was used by the accused to assault Yogita and complainant, the said blade of scissor is recovered from the house of accused.

23. PW-5 Akash Bhavsar has deposed that on 27.02.2014, he was called by Deopur Police Station, Dhule. Another panch, Pradeep Sananse was present there, accused made disclosure statement in their presence, stating that he had kept the blade of scissor under the grain tin box in his house and he is ready to produce it. Police prepared panchanama of it, it is at Exhibit-22, then they went towards house of the accused, there accused produced blade of scissor from the place behind the food grain tin box. The blade of scissor was having blood stains. It is at Exhibit-11. Police seized and sealed blade of scissor and prepared panchanama. It is at Exhibit-23. It is contention of the learned counsel for appellant that accused was caught hold on the spot, then how blade of scissor recovered from his house. Exhibit-25 is arrest

form of accused. It shows accused is arrested on 24.02.2014 at 00.45, it means midnight at 00.45 a.m. PW-13 Chandrakant Gavali, Investigating Officer has deposed that after receiving information of offence, he orally directed Station Diary Officer of West Deopur Police Station to arrest the accused. Accordingly Shri Jagtap arrested the accused. In cross examination, this witness stated that on 23.02.2014 at around 10 p.m., he received report about incident, at around 10.15 p.m., he took investigation of this case. This witness denied suggestion that the accused was already present in Police Station. This witness also denied suggestion that immediately after incident, the people from nearby area gathered to the incident spot, caught hold the accused, who was under the influence of liquor and brought him to Police Station. From the evidence of this witness, it reveals that accused was arrested after 10.15 p.m. i.e. after taking investigation by this witness. It corroborates by Exhibit-25 arrest form of accused, which shows accused was arrested at 00.45 a.m. Incident has taken place at 7.30 p.m. The residence room of accused is in front of house of complainant, so after incident as per version of PW-11 Shri Wankhede, accused was taken outside of house

of complainant (PW-1) it proves that, thereafter accused concealed blade of scissor in his room and it was recovered in presence of PW-5. It is significant to note that blood stains found on blade of scissor. It is of 'A' blood group, which matches blood group found on the clothes of Yogita, Gaurav and accused. It proves the said weapon was used to assault Yogita.

24. It is contention of the learned counsel for the appellant that all witnesses are interested witnesses, they are not reliable, appellant is falsely implicated in this case. In our view, incident has taken place in the house of complainant, so naturally witnesses can be from that family. PW-11-Wankhede is resident of same lane, he came on the spot after hearing shouts, he has seen accused slapping PW-1 and assaulting her with blade of scissor. PW-9 Dr. M.M. Suryawanshi has deposed that on 24.02.2019, she examined PW-1 and found blunt trauma to left foot, blunt trauma with abrasion of 2 x 0.5 cm on her left forearm, the injury was caused by hard and blunt object. The injury

certificate is at Exhibit-32. This injury can be caused by weapon like article no.11 (scissor blade). The injury caused to PW-1 as well as other corroborative evidence i.e. injuries mentioned in postmortem report of Yogita, analysis of C.A. report, offence weapon recovered from the house of the accused and blood stains found on it, strengthen the prosecution case. Moreover, it is not rule of law that evidence of interested witnesses cannot be accepted, unless it is corroborated. The reliable evidence of interested witness is sufficient for conviction of accused.

25. We have gone through the case laws cited by learned counsel for the accused i.e. ***Didar Singh Vs State of Haryana, Radha Kishan Vs. State of Haryana, State of Rajasthan Vs. Teja Singh and others, State of Uttar Pradesh Vs. Mohd. Iqram and another (supra)***. The facts of cited cases and the case at hand are different. In the present case, there are two eye witnesses in whose presence, the accused assaulted the deceased Yogita with blade of scissor, the evidence came on record falsifies the defence of accused

that Yogita sustained knife blow of her brother. The evidence of eye witnesses is corroborated by the evidence of other witnesses.

26. Considering the evidence on record, in our view, prosecution has proved the case beyond reasonable doubt against the appellant, hence we do not find any infirmity in the judgment and order of the learned trial Court. Thus we pass the following order:-

ORDER

. The Criminal Appeal is dismissed.

(S.G.DIGE, J.)

(SMT. SADHANA S. JADHAV, J.)