

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.468 OF 2022

WITH

**INTERIM APPLICATION NO.1554 OF 2022
IN
CRIMINAL APPEAL NO.468 OF 2022**

Umesh Dipakbhai Halpati
Aged about 38 years,
Occupation : Labour, Indian Inhabitant
Residing at near Government Hospital,
Chala, Vapi – 396191, Valsad
Gujrat
At present Assistant Jailor, sub-Jail
Daman. Appellant

versus

1. Union Territory of Dadra and Nagar
Haveli and Daman and Diu & Ors.
Through Public Prosecutor,
Bombay High Court, Mumbai
(At the instance of Nani Daman
Police Station, Daman District)
2. Surekha Halpati
Aged about 38 yers, Indian Inhabitant
presently residing at Pardi Falia,
Dunetha, Nani Daman, Dist : Daman
and Diu – 396210,
permanently residing at
near Government Hospital,
Chala, Vapi – 396191, Valsad, Gujrat

3. The State of Maharashtra
Through its Public Prosecutor
High Court, Bombay. Respondents

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- Ms. Namrata A. Agashe, Advocate for Appellant.
- Mr. Harsh Dedhia i/b. Mr. H. S. Venegaonkar, for
UT/Respondent No.1.
- Smt. M. R. Tidke, APP for the State/Respondent No.3.

CORAM : SARANG V. KOTWAL, J.
DATE : 14th DECEMBER, 2022

JUDGMENT :

1. The Appellant is challenging the Judgment and Order dated 23/02/2022 passed by the Sessions Judge, Daman, in Sessions Case No.18 of 2019. The Appellant was convicted for commission of offence punishable u/s 326 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.25,000/-, in default of payment of fine to suffer rigorous imprisonment for six months. He was acquitted of the charges punishable u/s 307 of the Indian Penal Code. He was granted set off u/s 428 of Cr.P.C. Out of the fine amount of Rs.25,000/-, the entire amount was directed to be paid to the victim Surekha Halpati by way of compensation.

2. Heard Ms. Namrata A. Agashe, learned counsel for the Appellant, Mr. Harsh Dedhia, learned counsel for Respondent No.1 and Smt. M. R. Tidke, learned APP for the State.

3. The prosecution case is that the Appellant and Surekha Halpati were residing together since 1999. Initially, for a number of years they stayed in live-in-relationship. Thereafter they got married in the year 2013. They had 3 children. Subsequently, the Appellant saw certain chats on her social networking site between Surekha and a third person. Slowly dispute started between them. In April 2019, there was an attempt made by a social organization for settlement between them. Even police were approached. However, the dispute was not resolved. The victim Surekha started residing separately. On the date of incident, she was staying with her maternal aunt. On 09/05/2019 at about 11.00 to 11.30 a.m., the Appellant went to that house. He had brought a cutter with him. He gave blows with the cutter on the face and head of Surekha causing 7

injuries. He then ran away. Surekha was taken to the hospital, where she was treated. Her statement was recorded and FIR was lodged at Vapi police station. The investigation was carried out. The Appellant was arrested on 11/05/2019. At his instance the cutter was recovered from his house from under a mattress. The articles were sent for C.A. examination. The C.A. examination showed that the blood on the clothes of the victim as well as on the cutter was of the same blood group 'O'. During investigation, statements of various witnesses were recorded. At the conclusion of the investigation, charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined six witnesses including the victim, her aunt, two Panchas, the Investigating Officer and the Medical Officer, who had treated Surekha. The defence of the Appellant was of total denial. At the conclusion of the trial, the Appellant was acquitted for the offence punishable u/s 307 of the IPC. But was convicted for commission of offence punishable u/s 326 of the IPC as mentioned earlier. Learned

Judge observed that there may not be intention to commit murder, but the act definitely fell within the meaning of causing injury with an instrument of cutting as was required u/s 326 r/w 320 of the IPC.

5. The important witness in this case obviously is the victim herself. P.W.1 Surekha Halpati has deposed about the assault committed by the Appellant on her. She has deposed that she started residing with the Appellant since 1999. At that time she was 17 years old. She married the Appellant in 2013. They had three children. The Appellant was not doing any work. He used to doubt about her character. There used to be frequent quarrels between them. The Appellant was addicted to liquor and used to beat her. She had made complaint with Astitva Mahila Mandal on 28/03/2019. She further deposed that on 22/04/2019 she and the Appellant were called by that Astitva Mahila Mandal. But the matter could not be resolved. They were again called on 01/05/2019. Again, there was no settlement. After that, the Appellant lodged a report with Vapi police station

against the P.W.1 that she was not residing with him. She was called to Vapi police station on 07/05/2019. There was some discussion and P.W.1 had demanded Rs.10,000/- per month. After making grievance before Astitva Mahila Mandal, she had started residing with her maternal aunt P.W.2 Saraswati Dhodi at Dunetha, Daman. Vapi police station had asked both of them to come back on 15/05/2019. In the meantime on 09/05/2019 at about 11.00 to 11.30 a.m. the Appellant came to the house of the P.W.1's maternal aunt at Dunetha, Daman. At that time, she was alone in the house. He knocked the door loudly. P.W.1 opened the door. He locked the door from inside. They started quarrelling. He was asking her to accompany him and to stay together. The quarrel continued. P.W.1 pushed him. The Appellant also pushed her and she fell down. He sat on her chest. He took out a cutter from his pocket and started giving blows on her face and head. She sustained five injuries on the face and two injuries on her head. After that the Appellant ran away. Somebody called an Ambulance. She was taken to Marwad hospital. Police came there and recorded her statement.

Based on that, the FIR was lodged. The FIR is produced on record at Ex.17. She identified the cutter produced in the Court. She also identified the clothes which were recovered during investigation.

In the cross-examination, she admitted that during her marriage, the expenses were borne by the Appellant and his parents. She volunteered that they had three children and therefore she married him. The Appellant was not doing any work and used to beat her. She had not lodged any report earlier. From 01/03/2017 till his arrest, the Appellant was working in a company at Daman. She admitted that she was having chats with a third person on a social networking site. The Appellant had seen that chat history. There was a quarrel and he had broken her phone. After that, she purchased another phone. Because of this, there used to be quarrels between them. She admitted that on 01/05/2019 the matter was settled, but because of poor health of her aunt, she came back to her aunt's house at Daman. On the date of incident, her aunt and her

cousin had gone to attend their duties. She denied the suggestion that the injuries were self inflicted. When she came out of the house, her neighbours who had gathered there, got frightened and ran away. There is some contradiction in her FIR that she had called the Ambulance by making phone call or somebody had called that Ambulance. However, this fact is not material. She denied the suggestion that on 09/05/2019 the Appellant had gone to his company to collect his dues. The FIR is produced on record at Ex.17.

6. P.W.2 Saraswati Dhodi was her maternal aunt. She came to know about the incident from her neighbour. She went to the hospital and met P.W.1.
7. P.W.3 Manish Solanki and P.W.4 Arjunbhai Patel were two Panchas. They were declared hostile. They did not support the prosecution case. They had put their signature on the Spot Panchanama and also on the Panchanama for recovery of the cutter effected from the Appellant's house at his instance.

8. P.W.5 PSI Rajendrakumar Pandey was attached to Nani Daman police station. He has deposed that on 09/05/2019 at about 12.45 p.m., he received a phone call from home guard Ramesh Vaja of Marwad hospital. He informed P.W.5 about the injury suffered by P.W.1. Therefore P.W.5 went to the hospital after making entry in the station diary. At 05.00 p.m. he took down P.W.1's statement and lodged the FIR which is at Ex.17. The printed proforma of the FIR was produced on record at Ex.31. Then he went to the spot of incident and prepared spot panchanama. One jacket with blood stains was lying there. On 11/05/2019 he arrested the Appellant. In the presence of two Panchas, the Appellant showed his willingness to show place where he had kept the cutter. The Appellant's statement was recorded u/s 27 of the Evidence Act. The Panchanama was carried out. The Appellant led them to his house. He took out the cutter from under a mattress. The articles were sent to FSL, Surat. The C.A. report was received.

In the cross-examination he deposed that he arrested the Appellant on 11/05/2019 and the cutter was seized in the evening. The Panchanama itself shows that it was completed at around 01.45 p.m. The C.A. report shows that the blood on the clothes of the victim and that on the cutter were of same 'O' group.

9. P.W.6 Dr. Madhuriben Ketan Patel had examined the victim at about 12.30 p.m. At that time, the patient was conscious and gave history that she was assaulted by her husband with a cutter. She examined the P.W.1 and found following injuries.

- (i) Cut injury over right cheek size 5 cm x 1 cm x 1 cm
- (ii) Cut injury over right side of face, lateral aspect size 1 cm x 1/2 cm x 1/2 cm.
- (iii) Cut injury over forehead centrally of size 5 cm x 1 cm x 1 cm.
- (iv) Cut injury over left cheek size 4 cm x 1 cm x 1 cm.
- (v) Cut injury over left law size 10 cm x 1 cm x 1 cm.
- (vi) Cut injury over left side of head parietal region size 3 cm x 1 cm x 1/2 cm.
- (vii) Cut injury over left occipital region size 7 cm x 1 cm x 1 cm.

10. The injuries were grievous and were caused by a sharp object within a day before examination. According to her injuries were sufficient to cause death because they were caused on vital organs. She further added that those injuries had caused cosmetic disfiguration of face and head. The medical certificate recording the injuries is produced on record at Ex.41.

This, in short, is the prosecution evidence.

11. Learned counsel for the Appellant submitted that the conduct of PW.1 gives a rise to suspicion about truthfulness about her story. She is the only witness on whose evidence the conviction is based and if her deposition is found to be doubtful, conviction cannot be sustained. The independent Panchas were declared hostile and they have not supported the prosecution case. There was no investigation particularly in respect of the jacket found at the spot which was stained with blood. The cutter was not sent for finger print examination. The Appellant

and the P.W.1 were living together since 1999 and therefore there was no reason for the Appellant to cause these serious injuries. Learned counsel further submitted that the timings given by the witnesses are not matching. P.W.1 has deposed that the incident had occurred between 11.00 to 11.30 a.m. and her statement was recorded much belatedly. Her aunt P.W.2 has deposed in her cross-examination that she met victim Surekha between 01.00 p.m. to 01.30 p.m. According to her even the medical certificate mentioned that the injuries were seen at 12.30 p.m.

12. Learned Special PP on the other hand submitted that the evidence of victim P.W.1 is absolutely reliable. There is no reason for the victim to implicate the Appellant falsely in the offence. Since she was the injured herself, her evidence assumes more importance. Apart from her evidence, the evidence of the Medical Officer P.W.6 is also important. It corroborates the evidence of P.W.1. He submitted that there was no discrepancy in the timings mentioned by P.W.1, the Medical Officer and the

P.W.2 her aunt. There are hardly any discrepancies in the prosecution evidence. He further submitted that the Panchas not supporting the evidence is not really material. The recovery of the cutter is sufficiently proved through the evidence of the Investigating Officer. The cutter was found to have blood of 'O' group. It was the same blood group, which was on the clothes of the victim P.W.1.

13. I have considered these submissions. I have carefully scrutinized the evidence of P.W.1 Surekha. In my view, her evidence is quite reliable. She has given details of her past history truthfully. She has no reason to implicate the Appellant falsely. They were residing together for about 20 years. After 14 years of live-in-relationship they had three children. Ultimately they got married in the year 2013. She has described as to how the dispute started. The Appellant was addicted to liquor. He used to beat her and finally started doubting her character because he saw some chat history between P.W.1 and a third person. The background of the incident is clearly established by

the PW.1 through her evidence. There was an attempt to approach the police as well as a social organization to bring about the settlement. But the settlement was not possible. Ultimately, the incident took place on 09/05/2019. She was brutally assaulted on her face and head and thereby causing disfiguration of face. There were 7 injuries; five injuries were on the face and two injuries were on the head. They were serious injuries. Intention of the Appellant was quite clear. He intentionally caused injuries on the face to disfigure her features. Her evidence is corroborated by the medical evidence given by PW.6 Dr. Madhuriben Patel. The injuries were possible by the cutter which was recovered at the instance of Appellant. It showed the same blood group which was found on the clothes of the victim. Though the Panchas had turned hostile, the occurrence of the incident and the spot of incident can hardly be disputed. Even the recovery evidence is sufficiently established through the evidence of the Investigating Officer. Only because there was no further investigation about the jacket and the finger prints were not collected from the cutter; that will not

make any difference in this case in light of clear evidence given by the victim herself. The Appellant has taken defence of total denial. He has not explained anything. As against that, the evidence of prosecution is sufficient because the P.W.1 has described everything in detail truthfully.

14. Learned Judge has rightly acquitted the Appellant from the charges u/s 307 of the IPC and has rightly convicted the Appellant u/s 326 of the IPC. Section 320 of the IPC describes 'grievous hurt'. Clause 6 indicates 'Permanent disfiguration of the head or face.'. In this case P.W.1 has suffered such permanent disfiguration, as is clear from the evidence of doctor. Those injuries were caused by means of an instrument of cutting. Hence all the ingredients of section 326 of IPC are established. Thus, the prosecution has proved its case beyond reasonable doubt that the Appellant had committed the offence punishable u/s 326 of IPC. As far as the sentence is concerned, learned Judge has already shown leniency to the Appellant. Considering the number of injuries inflicted on the face and head, no further

leniency can be shown to the Appellant. It was an offence committed with premeditation, intention and preparation. Therefore, no fault can be found with the reasons given by the learned Judge; even while imposing the sentence on the Appellant. With the result, I do not find any merit in the Appeal. The Appeal is accordingly dismissed.

15. With disposal of the Appeal, all the connected pending Applications are disposed of.

(SARANG V. KOTWAL, J.)