

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.190 OF 2012

Pradip Subhash Ingle,
Aged 22 years, Resident of Kherda,
Tq. Barshitakli, Distt. Akola.

..... APPELLANT

// VERSUS //

The State of Maharashtra,
Through Police Station Officer,
Police Station, Pinjar, Distt.: Akola.

.... RESPONDENT

Mr. Ashwin Wasnik, Advocate for appellant.
Mrs. M. H. Deshmukh, APP for respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATED : 06/07/2022

ORAL JUDGMENT :

1. Heard Mr. Wasnik, learned counsel for the appellant and Mrs. Deshmukh, learned APP for the respondent/State.

2. Mr. Wasnik, learned counsel for the appellant submits that there is no explanation as to how the appellant has sustained injury. He further submits that PW-5 Amrapali has not supported the prosecution story. The C.A. report Exh.35 (pg.61) does not indicate any blood on the knife. The panch PW-4 Kishor (pg.28) for the seizure has turned hostile and therefore, the recovery has not been proved. He further submits,

that the weapon was not sent for query as to whether the injury was possible because of it. He therefore submits, that on these grounds the impugned judgment which convicts the appellant for the offence under Section 307 of the Indian Penal Code and sentences him for rigorous imprisonment of 7 years and to pay a fine of Rs.10,000/-, in default rigorous imprisonment of one year and so also under Section 354 of the Indian Penal Code for rigorous imprisonment for one year and fine of Rs.1,000/-, in default rigorous imprisonment of one month, be quashed and set aside.

3. Mrs. Deshmukh, learned APP for the respondent/State opposes the appeal and submits that the evidence of PW-2 - Victim is clear and specific. She further states that even PW-5-Amrapali supports the version of PW-2 to a certain extent. The defence theory, that the victim and the appellant were having a long-standing love affair, which came to the knowledge of the husband of the victim/PW-2, as a result of which, her husband has made an assault, has not been proved. The seizure of the weapon, has been proved by the Investigating Officer and so also by the panch witness PW-4, who admitted his signature upon the spot panchnama, though he has denied about seizure of knife (pg.34). The injuries according to her, have been proved by PW-7 Dr. Syed Irfan Syed Pasha (pg.76) who has issued the certificate at Exh.47 (pg.80) regarding the injuries sustained by the victim, and by PW-8 Dr. Umesh

Agrawal. She therefore submits, that the assault and the injuries resulting from the assault, have been clearly attributed to the appellant and have been proved, considering which, the impugned judgment does not need any interference.

4. The incident is dated 28.5.2007, when in the morning at about 9.30 a.m. the victim Shalu Rathod (PW-2) and her neighbour Amrapali (PW-5) had gone to Godri (an open space used by the villagers to answer nature's call) the appellant/accused had reached there and told the victim/PW-2 that he wanted to talk with her. Upon refusal by the PW-2, the accused caught her hand, and took her in his arms and took her some distance away and demanded sexual favours, which was refused, as a result of which, he took out a knife from right pocket of his pant and assaulted the victim/PW-2 twice on her abdomen, above the navel. A third blow was given by him on the chest of the victim, above the right side, when the victim caught his hand, she sustained bleeding injuries on her right palm on account her catching hold of the knife, to protect herself. It is alleged that PW-5 Amrapali shouted upon seeing the incident. The appellant/accused thereafter inflicted blows by knife upon himself, saying that he would kill the victim/PW-2 and himself too. Upon hearing her cries, PW-5 Amrapali and one Diwakar came running, as a result of which, the accused left her. PW-5 Amrapali, is thereafter stated to have lifted her from the ground and made her stand

whereupon she fell unconscious. The victim thereafter was taken to the Primary Health Center, Pinjar by the police authority under the letter Exh.38. Upon examining the victim/PW-2, PW-7 Dr. Syed Irfan Syed Pasha found the following injuries :

“i. Stab wound admeasuring 3 cm X 2 cm X deep- 5 cm above the umbilicus.

ii. Stab wound admeasurin 3 cm X 2 cm X deep above 7 cm above the umbilicus.

iii. Incised wound 2 cm X 5 cm bony deep on medical aspect of right thumb over the proximal phalanx.

iv. Stab wound admeasuring 3 cm X 2 cm X deep – over the right breast – about 8 cm below right clavicle.”

5. The accused who had stabbed himself was also referred to PW-7 Syed Irfan under letter Exh.39 for examining him and upon examining him, he was found to have sustained a stab wound admeasuring 3 cm X 1 cm in deep – 4 cm. above umbilicus caused by sharp object. The victim was also referred to the Government Medical College/Hospital, Akola by PW-7 where she was admitted on 28.5.2007. The PW-8 Dr. Umesh Agrawal examined her and performed surgery upon her. The bed ticket is at Exh.54.

6. The appellant was thereafter charge-sheeted. The prosecution has examined as many as eight witnesses as under:

Sr. No.	Name of Witness	Exh.	Page No.
1	PW.1: Murlidhar Bhagwan Ingle (Panch spot)	18	12 - 13
2	PW.2: Shalu Mahadeo Rathod (Victim)	20	14 -17
3	PW 3: Kailash Ramdeo Rathod (Panch seizure of clothes)	22	20-21
4	PW 4: Kishor Ramsing Rathod (Panch spot + seizure)	25	28-30
5	PW 5: Amrapali Laxman Ingle (eye witness)	27	38-40
6	PW.6: Shailendra Raghunath Nagarkar (Investigating Officer)	28	41-47
7	PW.7: Dr. Syed Irfan Syed Pasha (PHC Pinjar)	46	76-79
8	PW.8: Dr. Umesh Hanuman Agrawal (Surgery, Akola Medical College Hospital)	53	82-85

7. The evidence of PW-2 Shalu Mahadev Rathod (victim), PW-5 Amrapali Laxman Ingle, PW-7 Dr. Syed Irfan, PW-8 Dr. Umesh Agrawal and PW-4 Kishor Ramsing Rathod is material.

8. PW-2 Shalu Mahadev Rathod has been examined at Exh.20 and has narrated the incident as stated above. She has lodged the complaint which is at Exh.21. She has been cross-examined extensively and has admitted that three months prior to the incident, the accused

had told her that he loved her, however, she had not responded. She denied the suggestion that there was any long-standing love affair between them. She had further admitted that she and PW- 5 Amrapali were sitting at different places for easing themselves. Though, there is a minor omission in her statement which she had admitted in her evidence that though she had stated before the police that Amrapali came to her house at 9.30 a.m. on the day of the incident and had also called Diwakar, these were not in her statement, however, these are not of such consequence so as to make her statement disbelievable. She has also stated that because of the incident, her husband had divorced her. The cross-examination of PW-2, does not indicate anything being brought out, to discredit her testimony.

9. The evidence of PW-2 Shalu regarding the incident to certain extent is supported by PW-5 Amrapali who has been examined at Exh.27 (pg.38), in which, she admits that on 28.5.2007 in the morning at about 10.00 to 11.00 a.m. she and PW-2 had gone to the Godri to answer nature's call, and when they were squatting, the accused Pradip had reached there, lifted PW-2 and took her to some distance and had also asked PW-5 Amrapali not to intervene. When PW-5 was at some distance about 300 to 400 ft. away, she heard shouts of PW-2 saying that she was dying, whereupon PW-5 seeing Diwakar at some distance, gave

him a call and both of them ran to the direction where the accused had taken the victim, whereupon they saw that the victim and the accused were lying in injured condition on the ground having bleeding injuries on their abdomen. Diwakar is stated by her to have taken out his baniyan, torn it into pieces and tied one piece around the injury of the victim and one around the injury of the accused. Though PW-5, does not state that she has actually seen the accused assaulting the victim PW-2, however, she corroborates the prosecution story of the appellant/accused having lifted her and carried her away and she was merely at a distance of 300 to 400 ft., when she heard the victim shouting that she was dying. It is further material to note, that when she reached the spot, she does not say that there was any one there, except the accused and the victim. Though, in her cross-examination, she states that Diwakar, Prameshwar and husband of PW-5 while going towards the Godri were at a distance 25 ft. behind them and the place where Shalu was squatting was not visible to her, however nothing has been brought on record in her cross-examination to discredit her testimony regarding the taking away of the PW-2 by the accused.

10. The evidence of PW-7 Dr. Syed (who has been examined at Exh.46 indicates the nature of injuries suffered by the PW-2. The injury certificate at Exh.47 has been duly proved by him and he categorically

states that injuries 1, 2 and 4 were on the vital parts of the body and were sufficient in the ordinary course of nature to have caused death. When the knife which was seized was shown to him, he affirms that the injury could have been caused by weapon like it. He further says that the injury no.3 to the thumb was possible if the victim was trying to protect herself from the assault. Insofar as the injury caused to the appellant/accused is concerned, he has also proved injury certificate at Exh. 48 as he examined the appellant also and has further opined that it can be a self-inflicted injury. His cross-examination only elicits that the blade of the knife was loose and partly detached from the handle and in the present condition, the weapon could not have been used for assault by holding the handle. He further states that both the edges of the knife were sharp. The nature of extent of injuries along with the report at Exh. 47 have been duly proved by him.

11. PW-2 Shalu was admitted on 28.5.2007, upon referral by the PW-7, to the Akola Medical College Hospital wherein PW-8 Dr. Umesh Agrawal, who has been examined at Exh.53 (pg.82) had tended to her. In his testimony, he has proved the bed ticket at Exh.54 and so also the nature of injuries inflicted upon her. He further states that surgery was required to be performed by him and in his opinion, if the injuries were not treated, they were sufficient in the ordinary course of

nature to have caused death. His cross-examination is perfunctory and does not bring out anything to discredit his evidence.

12. PW-1 Madhukar has turned hostile and though he admits his signature on the panchnama, he however denies any seizure made in front of him. In cross-examination, he admits that the accused was his distant relation.

13. PW-4 Kishor has also proved the spot panchnama and thereby the seizure of the knife. Though, in his evidence PW-4 states that he did not see any knife lying on the spot, he however, upon being cross-examined having declared hostile, admits the contents of the seizure memo to the extent of seizure of sample of earth to be correct denying the contents of the seizure memo about the knife, which is marked as 'A'. A perusal of the seizure memo at Exh.26 would indicate that the spot panchnama itself indicates the seizure of the knife also and portion mark 'A' is the part and parcel of the same. Therefore, when PW-4 admits his signature on the seizure memo, the same being a singular document and not differentiated into various parts, its contents, have to be held to have been proved by PW-4.

14. The above discussion regarding the evidence which has

come on record would indicate that the incident has been duly proved by the testimony of PW-2 Shalu as well as PW-5 Amrapali. The evidence of PW-7 Dr. Syed Irfan Syed Pasha and PW-8 Dr. Umesh Agrawal who have examined PW-2 and certified the injuries suffered by her prove the injuries. There is nothing on record brought by the appellant, either by way of cross-examination or otherwise, to discredit the testimony of PW-2 regarding the happening of the incident. The line of defence sought to be raised as indicated from the cross-examination that it was someone else, who had assaulted the appellant as well as the accused has not been carried forward and no material has been brought on record to substantiate.

15. The facts on record, would indicate that the appellant, was enamoured of the victim who having spurned his advances and statement of love, has indulged into the extreme act intending to do away with the victim as well as himself. It is therefore, apparent that the prosecution story has been properly established. The impugned judgment indicates that all the aspects of the matter have been carefully considered by the learned Sessions Court in arriving at the conclusion regarding the guilt of the appellant /accused, considering which, there is no case made out for interfering in the well-reasoned judgment passed by the learned Court below.

16. Mr. Wasnik, learned counsel for the appellant submits that considering the age of the accused and the fact that the step has been taken by him, on account of his intense love for PW-2 and the fact that he has also sustained injuries coupled with the position that the appellant has already married and having children, leniency be shown, by reducing the sentence by half.

17. Though, the plea, is on the face of it appealing, however, what needs to be considered is that the life of PW-2, has been destroyed because of the said incident as it has come on record that on account of it, PW-2 has been divorced by her husband. On the other hand, the appellant claims to have been happily married and blessed with children too. Such a situation, does not indicate exercise of discretion or any leniency to the appellant to the extent pleaded for. However, considering that the appellant is married, and is having children and since he stands convicted which conviction has been confirmed, ought to undergo sentence. The appeal is therefore dismissed by maintaining the conviction of the appellant. However, having regard to the submission of the appellant being married and having children, the sentence imposed by the learned Sessions Court, for the offence under Section 307 of the

Indian Penal Code shall stands reduced to six years instead of seven years.

(AVINASH G. GHAROTE, J)

Sarkate.