

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

CRIMINAL APPEAL NO. 349 OF 2019

Ahmed Raza Alias Savio Gems Joseph

..Appellant

Versus

The State of Maharashtra

..Respondent

Mr. Swapnil Ovalekar (appointed Advocate) for Appellant.
Smt. M. R. Tidke, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 23 FEBRUARY 2023

ORAL JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 31/10/2018, passed by learned Additional Sessions Judge, Pune, in Sessions Case No.743 of 2013. The Appellant was convicted for commission of offence punishable U/s.307 of the I.P.C. and was sentenced to suffer R.I. for five years and to pay a fine of Rs.3000/- and in default of payment of fine to suffer S.I. for three months. He was also convicted for commission of offence punishable U/s.326 of the I.P.C. and was sentenced to suffer R.I. for two years and to pay a fine of Rs.2000/- and in default of payment of fine to suffer S.I. for one month. Both the substantive

sentences were directed to run concurrently. He was granted set off U/s.428 of the Cr.p.c.

2. Heard Shri. Swapnil Ovalekar, learned counsel for the Appellant and Smt. Tidke, learned APP for the State/Respondent.

3. The prosecution case is that, the appellant was married to PW-1 Huma in the year 2008. They were blessed with a son. In May 2013, they had gone to Pune to attend the wedding of Huma's cousin. On 19/05/2013, the appellant was to return to Mumbai. At that time, there was some quarrel between the appellant and Huma. The appellant assaulted her with a knife causing bleeding injuries on her neck, cheek etc. Huma's brother Mohammad Ruman came to their room to save her. In the process, the appellant also assaulted him causing fracture of his finger besides causing other bleeding injuries. Huma was taken to the hospital. PW-2 lodged his F.I.R. at Kondhwa police station, Pune vide C.R.No.158 of 2013. The investigation was carried out. The injury certificates of both the injured were collected. The spot panchanama showed that the knife was lying at the spot. It was

seized. The clothes of the victim, as well as, clothes of the appellant were seized. All the articles were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined nine witnesses including both the victims, the Medical Officers who treated them, the panchas and the police officers. The C.A. reports are produced on record.

5. The defence of the appellant was very specific. According to him, he and his wife belonged to different religions. They had got married on two separate occasions by following rituals under their separate religions. The family of his wife was not aware of the marriage which they had performed according to the tradition of his religion. In May 2013, when they had gone to attend his wife's cousin's wedding, that time accidentally his wife's family saw the photographs in the mobile phone about their other wedding. Her family got annoyed. PW-2 assaulted his wife. He himself was assaulted by his wife's family members.

6. Learned Trial Judge did not believe his defence. He relied on the evidence of the prosecution. He also relied on the say filed by the appellant in the case of Domestic Violence filed by the appellant's wife, wherein, the appellant had stated that the incident had taken place in between two of them and his wife suffered injuries. In the same incident his wife's brother also suffered injuries.

7. The appellant's wife was examined as PW-1. She has stated that, she had got married with the appellant in June 2008. They were blessed with a son in September 2009. On 12/05/2013, she along with the appellant and their son had gone to Pune to attend her cousin's marriage. On 19/05/2013, the appellant was to go to Mumbai in the evening at around 8.00p.m. At about 9.30p.m., PW-1 put her son to bed. She asked the appellant when he would leave for Mumbai. At that time, he told her that, he wanted to see his son peacefully. At around 2.00a.m., again PW-1 asked him when he would leave for Mumbai. He started quarreling and abusing her. This was repeated at about 5.00a.m. He had latched the door from inside. At about 7.00a.m., PW-1 started

going out. At that time, he removed a knife from his bag and assaulted her on her neck, face, nose, cheek and ear. He also stabbed her on the thumb and left palm. On hearing her shouts, her brother Ruman entered the room. He tried to save her. But he got injuries on his middle finger and fractured his hand. Those injuries were also caused by the appellant. It is her case that the appellant also assaulted her with kicks and fist blows. She was taken to the police station and then to Satyanand hospital at Kondhawa. She was admitted there. Her brother lodged the F.I.R. The police recorded her statement in the hospital. Her blood stained clothes were given to the police by her uncle. She identified the knife produced in the court.

In the cross-examination, she stated that, she was from Pune and after marriage, she was residing at Chembur with the appellant. She was serving in Mumbai. They had a love marriage. They had got married at Lonavala on 29/11/2008. She clarified that, on that day, she was already married to the appellant because they had performed the marriage on 01/06/2008 at Pune. But she did not have any document to support that claim. They had

purchased a bungalow in their joint name at Lonavala. She admitted that, the fact of her marriage with the appellant as per the appellant's religion was not known to her parents. She denied the suggestion that her family came to know about that marriage when they had gone to Pune and that her relatives had got angry. She also denied that the appellant was fearing for his life and suggested to her that both of them should go to Mumbai. She denied the specific suggestion that her cousin assaulted her with a knife and when the appellant tried to save her, her relatives assaulted the appellant mercilessly.

8. PW-2 Mohammad Ruman Sayyad was the brother of PW-1. He has deposed that, on 20/05/2013, at about 7.00a.m. he heard some noise of quarrel between the appellant and PW-1. He along with his mother went to their room. He entered the room. He saw that PW-1 had suffered bleeding injuries on her face, left hand, neck etc. He tried to intervene, but the appellant assaulted him on his left hand with a knife. He sustained injuries on his left hand. He took PW-1 to the police station and from there to the hospital. PW-1 was admitted in the hospital. PW-2 was also treated

in the hospital. He then lodged his F.I.R. It is produced on record at Exhibit 8. He identified the knife in the Court.

In the cross-examination, he stated that, PW-1 got married with the appellant on 01/06/2008. He admitted that the appellant and PW-1 belonged to different religions. He denied the suggestion that when PW-1 accompanied the appellant for going to Mumbai, he got annoyed and assaulted the appellant and PW-1 with a knife. He denied the suggestion that, his family members had assaulted the appellant till he became unconscious.

9. PW-3 Mohammad Ansari acted as a pancha for spot panchanama which is produced on record at Exhibit 14, panchanama for seizure of clothes of the appellant which is produced on record at Exhibit 15 and seizure of clothes of the victim which is produced on record at Exhibit 16. The spot panchanama shows that, the knife was found at the spot. It was seized under the said panchanama. The knife was seized by putting labels of the signatures of the panchas and the police officer.

10. PW-5 Dr. Gulshan Zulphakar and PW-6 Dr. Shabbir Anpin had examined PW-1 medically for her injuries and had treated her. Their evidence shows that, she had suffered following injuries:

- i) 1cm. x 1cm. laceration over right earlobe.
- ii) 6cm. x 1cm. area right cheek laceration.
- iii) 7cm. x 1cm. laceration over the right side neck.
- iv) Z shaped 6cm x 1cm laceration over the left angle of neck.
- v) 1cm. x 10cm. Laceration over the first web space.
- vi) 2cm. x 1cm. over the 2nd web space.

PW-5 had sutured those injuries. He deposed that, if the patient was not brought to the hospital and was not treated immediately, there were less chances of her survival.

He admitted in the cross-examination that the injuries were mentioned in the case papers as superficial, there was no hemorrhage inside the neck and there was no damage to larynx and trachea.

Even PW-6 Dr. Shabbir Anpin has deposed likewise.

11. PW-8 Dr. Rajesh Salunkhe had treated PW-2 and has deposed about his injuries. PW-2 had suffered the following injuries:

- i) Right hand swelling with 4th metacarpal fracture.
- ii) Left hand middle finger deep CLW approximate size 6cm x 3cm x 2cm.
- iii) Small CLW over right thumb approximate size of wound is 3cm x 2cm x 1cm superficial.
- iv) Small CLW over left middle finger deep CLW over proximal end of left middle finger, size 3cm x 2cm x 1cm.

12. PW-7 Police Naik Gopal Birajdar had carried the articles to F.S.L.

13. PW-4 A.P.I. Satish Pawar was one of the investigating officers. He had seized the clothes of the victim and the appellant under different panchanamas. He had recorded the statement of the victim in the hospital. He had obtained the medical certificate and had sent the articles for Chemical Analyzer's examination. He has deposed that, the knife was already in the house of the victim.

14. PW-9 P.S.I. Tukaram Talpade was the investigating

officer. He had supervised conduct of the spot panchanama. He had taken photographs of the spot, as well as, of the knife lying at the spot. He had arrested the appellant.

15. The C.A. reports show that the clothes of the appellant, the clothes of the victim, as well as, the knife showed presence of human blood of 'A' Group. The blood group of PW-1 was 'A' group. The blood group of the appellant was 'O' group.

This, in short, is the evidence led by the prosecution.

16. Learned counsel for the appellant submitted that the evidence of PW-1 and PW-2 is not reliable. They do not corroborate each other on material aspects. A separate panchanama of seizure of knife is not conducted. There is nothing to show that as to how the knife became available at the spot. The injuries caused to both the victims were simple in nature. Therefore, the offence U/s.307 of the I.P.C. is not made out at all. The son of the appellant who was very much present in the room was not examined.

17. Learned APP opposed these submissions. She relied on

the evidence of PW-1 and PW-2. She submitted that, the medical evidence also corroborates the ocular evidence.

18. I have considered these submissions. PW-1 has described the incident in detail right from the inception till she was taken to the hospital. She has narrated as to how the appellant started the quarrel and as to how he removed the knife and assaulted her on the neck, face etc. There is absolutely no reason to disbelieve her version. Her narration of the incident is sufficiently corroborated by PW-2 who had immediately rushed to save her. He was also assaulted by the appellant with the knife causing bleeding injuries including fracture of his finger. The appellant himself has not suffered any bleeding injury. Therefore, it is not believable that, PW-1's family members including her cousin would assault her and leave the appellant, though, the knife was available with them. The defence of the appellant that he was mercilessly beaten till he became unconscious is not supported by anything on the record. After his arrest also, there is nothing to show that he had suffered any blunt trauma. He certainly had not suffered any injuries with a knife. His defence does not appear to be probable. As against that

the prosecution evidence is quite consistent. Non examination of the appellant's son will not make any difference because he was quite young and was about only four years of age at the time of the incident.

19. The C.A. reports also fully support the prosecution case. The blood found on the clothes of the appellant, as well as, on the knife was that of 'A' group which was the blood group of PW-1. Thus, it is quite clear that the prosecution has led sufficient and reliable evidence beyond reasonable doubt that the appellant had assaulted PW-1 and PW-2 on 20/05/2013 at 7.00a.m. The appellant was convicted for commission of offence punishable U/s.326 of the I.P.C. for causing fracture to PW-2. The medical evidence does show that PW-2 had suffered a fracture which was grievous injury and, therefore, conviction U/s.326 of the I.P.C. is properly recorded.

20. So far as, PW-1 is concerned, though the doctors have deposed that the injuries were superficial in nature, PW-5 has also deposed that, if she was not treated immediately, her chances of

survival were less. The injury caused on the neck was 7cm. in length. It was on a vital part. It was a serious injury. The intention of the appellant was clear from the nature of injuries. All the ingredients of Section 307 of the I.P.C. are made out in this case. Thus, I find that the prosecution has proved its case beyond reasonable doubt. I do not find any reason to interfere with the impugned Judgment and order.

21. The Appeal is dismissed.

(SARANG V. KOTWAL, J.)

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