

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

CRIMINAL APPEAL NO. 5 OF 2019

Vishwas Sopan Mandale

..Appellant.

Versus

The State of Maharashtra

..Respondent

Mr. Mahindra B. Deshmukh for Appellant.

Smt. M. R. Tidke, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 10 JANUARY 2023

JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 11/09/2018, passed by learned DJ-2 & Additional Sessions Judge, Sangli, in Sessions Case No.31 of 2011. 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 10 years and to pay a fine of Rs.5000/- and in default of payment of fine to suffer R.I. for six months. The Appellant was given set off U/s.428 of the Cr.p.c.

2. Heard Shri. Mahindra Deshmukh, 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 the victim Chandani in this case. They had a son who was about 7 year of age at the time of the incident. The incident took place on 15/09/2010 at about 11.00a.m. Before the incident, the victim was residing separately from the Appellant since about 6 years. The Appellant was doubting her character. He was harassing her and, therefore, she had left him. She was residing with her parents in a different village with her son. The Appellant wanted to continue cohabitation with her. He had even sent notices for cohabitation, but she did not return. The Appellant got married second time and had a daughter from that second marriage. The victim's sister and her sister's husband were residing in the same village as that of the Appellant. The victim had gone to her sister's village for attending a festival. On the day of incident, she had taken her son to a place near the house as he wanted to answer nature's call. While she was standing on the road, the Appellant came with an axe and gave forceful blow on her neck. He gave further blows on other parts of her body. She fell unconscious on

the spot. The Appellant ran away from the spot. He concealed the weapon i.e. Axe below a heap of fodder. The victim was taken to hospital. Her parents were informed. Her father gave information to Vishrambaug police station. The F.I.R. was registered vide C.R.No.00 of 2010. Since the incident had taken place within the jurisdiction of Atpadi police station, it was transferred to Atpadi police station and it was registered vide C.R.No.96 of 2010 on 15/09/2010, at about 7.05p.m. The Appellant was arrested in the same night at about 10.00p.m. The investigation was carried out. The statements of the witnesses were recorded. The axe was recovered at the instance of the appellant. The clothes of the Appellant and the clothes of the victim were seized. The articles were sent for C.A. examination. The investigation was completed and the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined seven witnesses including the victim, her father, her nephew, the Medical Officer, the panchas and the Investigating Officer. Besides oral evidence, the C.A. reports were produced on record. The defence of the

Appellant was of total denial. According to him, somebody else had assaulted the victim and because of the strained relationship, he was implicated falsely. After considering the evidence and submissions, learned Trial Judge convicted and sentenced the Appellant, as mentioned earlier.

5. The victim was examined as PW-6. She has deposed that, she had got married with the Appellant about 10 years before the incident. At the time of incident, their son was 7 years of age. The Appellant was addicted to liquor. He used to suspect her character. He used to beat her after consuming liquor. About 7 years before the incident, she had left the Appellant because of this harassment. She started residing along with her son with her parents at village Shingurdi. The Appellant was residing in the village Banpuri. The Appellant tried to call her back through her relatives, but she was apprehensive and she did not return. Her elder sister Suvarna married to one Sanjay Mandale. He was also residing in Banpuri. PW-6 had gone to Suvarna's house for a festival. She had gone along with her son. On the date of incident, Suvarna and her husband had gone out for work. PW-6, her son Nilesh and

Suvarna's children Ganesh and Ajit were in the house. PW-6 took her son Nilesh out as he wanted to answer nature's call. They went behind the house of one Sukhdeo Pokhale. PW-6 was standing there. At about 11.00a.m. the Appellant came behind her and asked her why she was not returning for cohabitation. He blamed her for loss of his reputation. He then gave a blow with an axe on her neck and on the right side. She fell unconscious. She regained her consciousness in Sangli Civil Hospital. She has deposed that the Appellant had also beaten her on her cheek, near left elbow and on back. She was then taken to hospital of Dr. Sanjiv Kulkarni. She was unable to identify the axe before the court, but she identified the Appellant. Her statement was recorded by the police in Dr. Sanjiv Kulkarni's hospital. She identified her slippers and other articles seized from the spot.

In the cross-examination, she deposed that, Suvarna and her husband were the mediators in PW-6's marriage with the Appellant. Once she had left the Appellant's house, she did not go back and the Appellant also did not come to her parent's house to bring her back during 7 years of their separation before the

incident. The Appellant wanted to cohabit with her and, therefore, he was trying to bring her back through relatives. He had sent three notices through his advocate. Those notices were produced on record at Exhibit 62 to 64. In the meantime, the Appellant got married second time and had a daughter from that marriage. PW-6 had not lodged any complaint for harassment or illtreatment U/s.498-A of the I.P.C. She had gone to Suvarna's house about 4 to 5 days before the incident. She could not give exact walking distance between Suvarna's house and the spot of the incident. The blow was given to her from her back side. After the blow she fell unconscious. She could not tell after how many days she regained consciousness in the hospital at Miraj. Before she had regained consciousness, her father had lodged the F.I.R. at the police station. The victim's statement was recorded by the police. Her parents and other relatives were with her. She denied the suggestion that her *saree* got entangled in her slipper and she fell down on the cutter causing these injuring.

6. PW-3 Ganesh Mandale was an eye witness to the incident. He was Suvarna's son. He was studying in the 10th

standard at the time of the incident. He has deposed that, on 15/09/2010, in the morning, his parents had left the house to attend their work. He then described the incident. PW-6 had gone near the house of Sukhdeo Pukale on the village panchayat road. Within a short time, PW-3 heard her shouts. The Appellant was giving blows with an axe on the neck of PW-6. He rushed towards PW-6. While he was going there, he saw that the Appellant was running away from that spot along with his son. He went near PW-6 and saw her injuries. Then he came back to his house and told about the incident to his neighbour Padmini. He along with Padmini went to the spot. The other villagers had reached there. The victim was brought to the Government Hospital, at Atpadi. He identified the Appellant and the axe before the Court.

In the cross-examination, he was asked about the location of the spot. There were other houses near the spot. It took him 10 to 12 minutes for going back from the spot to Padmini's house and then returning to the spot with her. He further deposed that the Appellant was running away. He was not having the axe with him.

7. PW-4 Tanaji Chavan was PW-6's father. He has deposed about the history about strained relationship between the Appellant and PW-6. On the date of incident, his other daughter called him telephonically in the morning and told about the assault on PW-6. She told him that PW-6 was admitted to Civil Hospital, Sangli. PW-4 then went to that hospital. He met one Baburao Mandale, a resident of Banpuri. He told PW-4 that the Appellant had given a blow with an axe from the back side of PW-6 on her neck. PW-4's daughter – PW-6 was not in a position to talk with him. Thereafter he went to Vishrambaug police station and lodged his F.I.R. It was produced on record at Exhibit 42.

In the cross-examination, he deposed that the Appellant's house was at a distance of 50ft. from the house of Suvarna. He admitted that the Appellant wanted to cohabit with PW-6 and he was sending messages for that purpose.

8. PW-5 Dr. Rahul Devadkar was the Medical Officer attached to Rural Hospital at Atpadi. He was the first doctor who had examined and treated PW-6. He examined her at about

11.58a.m. and found following injuries:

- i) CLW over back of neck transverse. Suspected vertebra fracture and trans section of spinal cord. Dimensions of the injury were 8cms x 3cms x bone deep.
- ii) CLW over right mandible region admeasuring 4cms x 2cms x bone deep.
- iii) CLW over back of inter-scapular region admeasuring 3cms x 1cm x skin deep.
- iv) CLW over right deltoid region admeasuring 2cm x 1^{1/2}cm x skin deep.
- v) CLW over left forearm admeasuring 15cm x 4 cm x bone deep.

According to him, the probable cause of injuries was due to hard and blunt object. He issued the medical certificate which is produced on record at Exhibit 48. He also produced other case papers. He was shown the muddemal article axe. He stated that the injuries to the victim were possible by that axe. According to him, except for injury No.1, the other injuries were simple in nature.

In the cross-examination, he was asked the question about difference between a sharp and a blunt object. He stated

that, on examination of the axe it was found that, end of the axe which was inserted in the handle, was blunt. The blade of the axe was sharp at some places and blunt at other places. He answered that the axe may not always be described as hard and blunt object. The nature of injury depends on the force applied while giving the blow. He further answered that, it was not possible for the patient to recover in this case because of nature of injury to the spinal cord.

9. PW-2 Bapu Mandale was a pancha for recovery of the axe at the instance of the Appellant. The Appellant had given his statement at 11.00a.m. on 16/09/2010 in PW-2's presence. The Appellant led the police and the panchas to the Grampanchayat road behind the house of Sukhdeo Pukale and the axe was taken out from that heap. The memorandum panchanama and recovery panchanama are produced on record at Exhibit 34 and 35.

10. PW-1 Damodar Pukale was a pancha in whose presence the clothes of the Appellant were seized on 15/09/2010 under panchanama Exhibit 32.

11. PW-7 Rasiklal Gujar, P. I. was the investigating officer. He has deposed that, he was attached to Atpadi police station at the relevant time. He received the F.I.R. from Vishrambaug police station. He registered the offence vide C.R.No.96 of 2010 at Atpadi police station, at about 7.05p.m. on 15/09/2010. Then he went to the spot. It was shown by PW-6's sister. He prepared the spot panchanama. He seized the articles like footwear etc. from the spot. He also collected the earth samples from the spot. He recorded the statement of witnesses. At about 10.05p.m. he arrested the Appellant. On the next day, PW-6's sister produced her clothes. They were seized. On that day, the axe was recovered at the instance of the Appellant. The blood samples were collected. On 29/09/2010, PHC Titkare recorded PW-6's statement in the hospital. The prosecution produced C.A. report on record which shows that the clothes of the victim and axe was having blood stains of 'A' group blood. The blood of the Appellant was of 'B' group.

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

12. The defence of the Appellant was of total denial. He has filed his statement. According to him, he had got married with PW-6 in the year 2000; but she never liked him and she had told him that. They had a son who had survived amongst the twins. PW-6 used to go to her parent's house without telling the Appellant. When he went to bring her back, she refused. He had sent notices for cohabitation, but she did not come back. Then he got married to his other wife and had a daughter from that marriage. On 15/09/2010, he had gone for his work. He was not aware that PW-6 had come in the village. He did not know who could have assaulted PW-6. According to him, her family members were holding grudge against him because of their strained relations and, therefore, he was implicated falsely.

13. Learned counsel for the Appellant submitted that the incident is not true as mentioned by the Appellant in his statement. There was no motive to commit this offence. The couple had separated six years prior to the incident. The Appellant had tried to bring her back and had even sent legal notices; which shows that he was not entertaining hatred towards her. As far as

the incident is concerned, the prosecution has not examined any independent witness; though the spot was surrounded by many houses. The conduct of the only eye witness PW-3 was unnatural. He had not immediately rushed to her to help her or to take her to the hospital, but he had come back to inform his neighbour Padmini. According to learned counsel, this conduct was not natural. The victim-PW-6 had not identified the weapon in the Court. PW-3 has seen the Appellant; he was not carrying any weapon when he was running away from the spot. Therefore, the evidence of concealment of axe and recovery of the same axe subsequently is not proved beyond reasonable doubt. Learned counsel submitted that the victim could not have seen the assailant as the blow was given from her back side.

14. Learned APP opposed these submissions. She submitted that, PW-6's evidence is quite clear and reliable. She has given reasons why she was present in the village. She has given history of the relationship. Even the Appellant has accepted that their relations were strained and that they were residing separately since about 6 years prior to the incident. Her evidence is supported

by deposition of PW-3 Ganesh, who had actually seen the incident. His conduct was not unnatural. He had gone to seek help from his neighbour and then had returned to the spot immediately. The recovery of axe at the instance of appellant was incriminating. There were blood stains of 'A' group on the axe which was the same blood group of PW-6. This has remained unexplained by the accused. Learned APP further relied on the evidence of PW-5 Dr. Rahul Devadkar. She submitted that, the injuries are quite serious and though only one of the injuries was described as grievous injury, the manner of assault leaves no manner of doubt to show that the Appellant had attempted to cause death of PW-6 and with that intention and knowledge he had committed that act. It was only through sheer fortune she had survived.

15. I have considered these submissions. As submitted by both learned counsel, the evidence of PW-6 is vital. I have considered her deposition carefully. She has given the past history of strained relations between herself and the appellant. She had given the reasons why she was in that village. Her elder sister was residing with her husband. PW-6 had come to that village to attend

a religious festival. She had gone to the spot as her son was required to answer nature's call. At that time, the Appellant came there and gave a blow with an axe on her neck. Before giving that blow he questioned her why she was not returning back for cohabitation. He also told her that, because of her conduct he was facing loss of reputation. After this conversation the blow was given. Therefore, there is no substance in the submission that the victim could not have seen the assailant as the blow was given from her back side.

16. The victim – PW-6 had ample opportunity to observe the assailant who was none other than her husband. He spoke with her before giving the blow. The victim-PW-6 had no reason to implicate the Appellant falsely if the blow was given by somebody else. No plausible reason is suggested as to why and how anybody else could have given that blow. From the evidence it is clear that the Appellant was holding grudge against PW-6 as she was not returning back for cohabitation. He was continuously making attempts to bring her back. He was sending messages through relatives. Therefore, her behaviour was a point of concern for the

Appellant. The Appellant had motive, opportunity and weapon with him at the time of incident.

17. His role is clearly described not only by PW-6 herself, but by her nephew PW-3 Ganesh. I do not find anything unnatural in PW-3's conduct. He saw the incident from some distance. He went to the spot and saw that the victim was seriously injured. He rushed back to the house to inform his neighbour and to seek help. Then he returned to the spot immediately and with the help of other villagers he had taken the victim to the hospital. This conduct was quite natural. The injured PW-6 was staying in his house at the time of incident and the incident had taken place in the vicinity. Therefore, his deposition is also important. He has sufficiently corroborated PW-6's version.

18. PW-6's version is further supported by the medical evidence. She had described the blows given by the appellant and her injuries caused by those blows were seen by PW-5 Dr. Rahul Devadkar during medical examination. Thus, the medical evidence supports the ocular evidence.

19. Apart from that, the recovery of axe is also another incriminating circumstance. The incident had taken place near the house of Sukhdeo Pukale and the axe was found in a heap of fodder near his house. PW-3 had seen the appellant running away from the spot; but at that time the axe was not with him. The axe was recovered at the instance of the appellant from the same heap. This sequence shows that, after the incident the appellant had concealed the axe immediately into a heap of fodder which was nearby and then he ran away. Significantly, the C.A. reports show that the said axe recovered at the instance of the appellant shows presence of blood of 'A' group which was the same as the blood group of the injured. Therefore, it is an additional serious incriminating piece of evidence against the appellant. All these factors show that the prosecution has proved beyond reasonable doubt that the incident had taken place in the manner which is described by PW-6.

20. The next question is, whether it would be an offence U/s.307 of the I.P.C. In that regard, the medical evidence is important. The injury on the neck was quite serious. It was on a

vital part. Though the medical evidence mentions suspected fracture to the spine, the learned Trial Judge has noted that the victim was paralyzed and she could neither walk, sleep or sit. She gave the deposition while sitting on a chair. She was in a great discomfort. All this is noted in his judgment. This shows that the injury was quite serious. It was given on a vital part with a deadly weapon. Therefore, all the ingredients of Section 307 of the I.P.C. are clearly made out.

21. The next question which arises for consideration is about the quantum of sentence. In that regard, learned counsel for the Appellant submitted that, some leniency be shown to the Appellant. He submitted that, the Appellant's mother is paralyzed since past many years. His father is old. He has a wife and a daughter to support. He was doing small labour work. His family is dependent on him. He was on bail during trial and there is no allegation of commission of any other offence. He submitted that the Appellant has completed more than five years of actual sentence out of the total sentence of 10 years R.I. imposed on him.

22. Learned APP opposed these submissions. According to her, the attack on PW-6 was quite cruel. She has suffered permanent damage for the rest of her life and, therefore, leniency need not be shown to the appellant.

23. I have considered these submissions. Undoubtedly, the attack is serious causing serious damage to the victim-PW-6. At the same time, there are certain mitigating circumstances as pointed out by learned counsel for the appellant. He has a family to support which consists of old parents. His mother is paralytic. He has one daughter and wife. The incident is old. It had taken place in the year 2010. More than 12 years have passed. He was on bail during trial and he has not committed any other offence. Considering these mitigating circumstances, some leniency can be shown to him by reducing the quantum of sentence. However, it is also necessary that PW-6 gets some compensation because apparently she is in need of constant attention because of her state of health. Therefore, considering all these aspects, I am inclined to reduce the sentence. I am also inclined to increase the fine amount to a reasonable extent, so that, even the victim can get some

compensation for her benefit. In my opinion, in stead of R.I. for 10 years, the Appellant can be sentenced to suffer R.I. for 7 years. The amount of fine can be enhanced by Rs.50000/-. The fine amount, if recovered, can be given to the victim by way of compensation.

24. Hence, the following order:

O R D E R

- i) The Appeal is partly allowed.
- ii) The conviction of the Appellant recorded by the Trial Court for commission of the offence punishable under section 307 of the I.P.C. is maintained. However, instead of 10 years of R.I. the Appellant is sentenced to suffer Rigorous imprisonment for 7 years and to pay additional fine of Rs.50000/-. Thus, he will have to pay a fine of Rs.55000/- in total and in default of payment of fine to suffer R.I. for two years.
- iii) The Appellant is given set off U/s.428 of the Cr. P. C.

- iv) The fine amount of Rs.55000/-, if deposited by the Appellant, is directed to be paid to the victim as compensation.
- v) Rest of the clauses in the operative part of the impugned Judgment and order, if they are not inconsistent with this order, are maintained as they are.
- vi) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)