

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

CRIMINAL APPEAL NO.734 OF 2024

Amol Arjun Kashid

.... Appellant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Prasanna Shahane, Advocate for Appellant.
- Ms. Ranjana D. Humane, APP for the State/Respondent.
- Mr. Nikhil Patil, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 28th JULY, 2025

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 20/05/2024 passed by the learned Special Judge, Pune, in Special Case No.310/2019. The Appellant was the sole accused in that case. The learned Judge convicted the Appellant as follows :

- (i) The Appellant was convicted for commission of the offence punishable u/s 307 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of

Rs.10,000/- and in default of payment of fine to suffer simple imprisonment for one year.

- (ii) He was convicted for commission of the offence punishable u/s 324 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer simple imprisonment for three months.
- (iii) He was convicted for commission of the offence punishable u/s 452 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer simple imprisonment for three months.
- (iv) Out of the fine amount, the entire recovered fine was directed to be paid to the victim.
- (v) All the substantive sentences were directed to run concurrently.
- (vi) The Appellant was acquitted from the charges of the offence punishable u/s 326, 504, 506, 354-D of the Indian Penal Code and u/s 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Prasanna Shahane, learned counsel for the Appellant, Ms. Ranjana D. Humane, learned APP for the State and learned counsel Mr. Nikhil Patil, for the Respondent No.2.
3. The prosecution case is that the Appellant was following the victim. The victim was around 16 years and 11 months at the time of the incident. He was stalking her. On 09/04/2019 at about 01.00 p.m. the Appellant entered the house of the victim and assaulted her with a knife. Her mother intervened. He then threw the knife from the window. The victim was residing on the 4th floor. At that time, her father was not at home. After the assault on the victim, the Appellant ran away from the flat. He dropped his bag near the staircase. Because of the assault, the victim had become unconscious. Her father immediately rushed home. She was taken to the hospital. The police recorded her statement in the hospital and registered C.R.No.256/2019 at Shirur Police Station at about 12.30 a.m. in the night between 09/04/2019 and 10/04/2019. The investigation started. The Spot Panchanama was conducted at

around 12.30 p.m. on 10/04/2019. The Appellant was arrested in the night of 10/04/2019. The clothes of the victim and clothes of the accused were seized. The knife was recovered from the spot. All the articles were sent for chemical analysis. The statements of the witnesses were recorded. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Special Court. The charge was framed under all the above mentioned sections. During the trial, the prosecution examined 7 witnesses including the victim, her parents, the Panchas, the Medical Officer and the Investigating Officer. The prosecution produced the C.A. reports at Ex.49.

4. The defence of the Appellant was specific. According to him, he was in a love relationship with the victim since 2018. He was a resident of Beed. He used to visit his maternal uncle at Shirur. Therefore, he got in contact with the victim and developed a love relationship. She wanted to marry the Appellant and she had insisted that her parents should permit her to marry the Appellant. But her parents were opposing this marriage. Therefore, the victim herself caused injuries on her

own person on 08/04/2019. After that only to save her parents, she lodged a false case. On 09/04/2019, the Appellant was at Beed. He was not in Shirur. On 10/04/2019, the Police Officers from Shirur police station came to his house at Beed and arrested him. They told him to put his documents in a bag. The police seized that bag. They also seized his footwear. The allegations regarding the offence are false. The victim's parents had forced her to lodge the FIR against the Appellant. The clothes recovered in this offence were not his clothes.

This is the specific defence that the Appellant has taken u/s 313 of Cr.P.C. Similar suggestions were given to the witnesses during the cross-examination.

5. The learned Trial Judge disbelieved the defence of the Appellant by observing that the Appellant has not proved his alibi. The learned Judge relied on the evidence of the victim. It was corroborated by her parent's evidence. The learned Judge further relied on the recovery of the weapon and more importantly on the recovery of the bag containing the

documents of the Appellant from outside the house of the victim. Based on this evidence, the learned Judge convicted and sentenced the Appellant as mentioned earlier. However, he found no evidence in respect of the offence u/s 326, 504, 506, 354(D) of the Indian Penal Code and u/s 12 of the Protection of Children from Sexual Offences Act, 2012.

6. The victim was examined as P.W.1. She is the most important witness in this case. She has deposed that her date of birth was 26/04/2002. She produced her birth certificate on record at Ex.13. There is no dispute raised by the defence regarding her age. The incident took place on 09/04/2019. At that time, she was studying in the 11th standard. She knew the Appellant as he was staying in the house of his maternal uncle in the same housing society as that of the victim.

7. She further deposed that when she was going to the college, at that time, the Appellant used to stop her and used to tell her to talk with him and was insisting that she reciprocate his love. P.W.1 told her parents about the incident, who in turn

told the Appellant's maternal uncle to warn him. But there was no improvement and the Appellant continued with his behaviour. On 08/04/2019, she received a phone call from the Appellant. She disconnected it. The call was made on her mother's mobile phone. On the next day, i.e. on 09/04/2019, she returned home from her college at about 11.00 a.m. The Appellant knocked on the door. It was around 01.00 p.m. When she opened the door, she could not see anybody. When she started going back in the house, the Appellant came from behind and caught her. He pressed her mouth and took her to the Pooja room. He closed the door and assaulted her with a knife. The Appellant assaulted on her both hands, legs, chest and stomach. She sustained bleeding injuries. Her mother entered the room from window of the room. The Appellant abused them and threw the knife out of the window. He then went away. P.W.1 became unconscious. When she regained consciousness, she realized that she was admitted in a hospital. She underwent the treatment. The police came to the hospital and recorded her statement. She lodged her complaint. Her complaint was treated as the FIR. It is produced on record at Ex.18. Her statement was

also subsequently recorded by the learned Magistrate u/s 164 of Cr.P.C. That statement is produced on record at Ex.14. She identified her clothes produced by the prosecution in the Court. She also identified the knife. She was in the hospital for about 3 to 4 days. The Doctor had put stitches on all the injuries.

In the cross-examination she stated that there were three buildings in their society. Two of them were having four floors and one of them was having two floors. There used to be a security guard at the entry gate of the society. There were no CCTV cameras installed in those three buildings. She was residing with her parents and grandfather. In the cross-examination, some omissions from her police statement-FIR were sought to be brought on record. She could not explain as to why her police statement did not mention that the Appellant had put a knife near her neck and had dragged her towards the Pooja room. She could not explain as to why her police statement did not mention that the Appellant had given several blows of knife on her person. She could not explain as to why her police statement did not mention that her mother had

entered the Pooja room from the window and that the Appellant threw the knife out of the window and then fled away. She admitted that the police had called her to record the statement u/s 164 of Cr.P.C. and had told her to narrate the facts as were mentioned in her report. She stated that the police had not seized her mobile phone. There was a police chowky near her college, but she had not filed any complaint against the Appellant. The adjacent flat on her floor was 2 ft away. It was possible to hear the shouts from the next flat. She denied the suggestion that she was in a love relationship with the Appellant. She denied the suggestion that she herself inflicted injuries on her person with knife. She denied the suggestion that the Appellant was at Beed and not in Shirur when the incident took place.

8. Though there was some reference to the omissions in the cross-examination of the victim from her police statement, the FIR itself mentions the main incident without any contradictions from her police statement. She had stated in her FIR that the Appellant entered her house and since she refused

to marry him, he assaulted her with a knife on both her arms, legs, chest, abdomen and neck. Those omissions mentioned in the cross-examination are not important..

9. P.W.2 was the mother of the victim. She deposed that on 09/04/2019 P.W.1 returned home from her college. P.W.2 heard noise from the next room. She could not open the door. She looked inside from a window and saw that the Appellant was giving blows of knife on the victim. She lay on the ground. The Appellant was giving blows of knife by putting his knee on P.W.1's person. P.W.2 entered the room from the window and the Appellant pushed her back and threw the knife out of the window. Then the Appellant fled away from the spot abusing both of them. P.W.2's husband and the Appellant's maternal uncle took the victim to a private hospital. P.W.1 had become unconscious. When she regained her consciousness she told P.W.2 and her husband that the Appellant was forcing her to marry him and since she refused, he had committed this offence.

In the cross-examination, she stated that there were 32

flats in their society. There were 3 buildings. There were 4 flats on the floor where they were residing. They were residing on the 4th floor. There were no CCTV cameras installed. She could not explain as to why her police statement did not mention that the Appellant had thrown the knife from the window. She admitted that there was a love relationship between the Appellant and P.W.1 since 2015 and when they came to know about this relationship, they had scolded P.W.1. She denied the suggestion that P.W.1 wanted to marry the Appellant, and P.W.2 and her husband were opposing them. She denied the suggestion that because of their refusal, P.W.1 herself had caused injuries on her person.

10. P.W.3 is the father of the victim. He has deposed that on the date of the incident between 12.30 p.m. to 01.00 p.m. he had gone out of the house for some work. At that time, his daughter P.W.1 called him telephonically. She told him to return home as early as possible. He could hear some shouts in the background. He reached his house. At that time he saw the Appellant coming out from his house and going away from the

staircase. In that rush he pushed the P.W.3. He fell down. The Appellant ran away. P.W.3 then went inside and saw that P.W.1 was lying in a pool of blood. There were glass splinters all around his house. The Appellant's maternal uncle came there. P.W.3 and the Appellant's uncle together took P.W.1 to a private hospital. When he returned home, his wife told him that the Appellant had inflicted blows with knife all over P.W.1's person. When P.W.1 regained consciousness she told him that since she had refused to marry the Appellant, he had assaulted her.

In the cross-examination, he admitted that he had not seen the incident. He further stated that from the opposite flat his own flat was visible. P.W.1's mobile phone was lost about 5 to 6 days prior to the incident. But they had not made any complaint to the police regarding the same. He further denied the suggestion which were similarly denied by P.W.2.

11. P.W.4 was a Pancha for the Spot Panchanama. The Spot Panchanama is produced on record at Ex.28. P.W.4 has stated that he was called by the police to act as a Pancha for Spot

Panchanama. He described the blood stains on the staircase. He saw the blood stains in the victim's flat. The glass of the window of the Pooja room was broken. The Police Officers collected the blood sample with cotton swab. They went outside and went to the backside of the building. A knife was seized from the ground. In his deposition, he has stated that the knife was kept in a plastic bag and it was lying on the ground. However, the Panchanama mentions that the knife was lying on the ground and then it was kept in a polythene bag. They then went to the house of the victim. They saw one sack having some documents and there was one footwear. The Panchanama shows that the sack contained the Appellant's documents viz. Aadhar card, bio-data, election card, photocopy of PAN card, photocopy of his SSC certificate.

12. P.W.5 Dr. Akhilesh Rajurkar was the Medical Officer. He has stated that P.W.1 was brought to his clinic at 02.00 p.m. on 09/04/2019. She was having several stab injuries. She gave history of assault. He described her injuries as follows:

- (1) Three injuries on right arm admeasuring 1 x 1 x 1 cm., 1 x 2 x 2 cm and 1 x 2 x 2 cm.
- (2) Two injuries were on right palm, admeasuring 0.5 x 7 x 1 cm. and second skin laceration.
- (3) Two injuries on left arm, admeasuring 1 x 2 x 3 cm. each.
- (4) Two injuries were on abdomen. First admeasuring 1 x 3 x 3 cm over right lumber region and second was admeasuring 1 x 2 x 3 cm. over right iliac.
- (5) There was one injury on knee admeasuring 1 x 1 x 3 cm.

13. He produced the medical documents at Ex.33. Since it was a case of assault, he prepared the documents regarding Medico Legal case. All the injuries were fresh injuries. Importantly, he deposed that the patient could have died due to bleeding, if immediate treatment was not provided. The police sent the seized weapon to him for examination along with a letter. It is produced on record at Ex.35. He stated that the injuries were possible by that weapon. The letter given to the Doctor mentions the date as 14/04/2019. The Medico Legal Certificate Ex.34 describes all the injuries as simple injuries caused by sharp object.

In the cross-examination, he stated that the victim was conscious and oriented when she was brought to the hospital. She did not narrate the name of the person who had assaulted her. Some injuries were deep and some were not. He could not tell exactly whether those injuries were self inflicted or not. All the injuries were simple in nature.

14. P.W.6 API Amol Shinde was the Investigating Officer. He deposed that he was attached to Shirur Police Station. The investigation was entrusted to him on 10/04/2019. He conducted the Spot Panchanama. He seized the articles at the time of conducting the Spot Panchanama. He recorded the statements of the witnesses. He arrested the Appellant on 10/04/2019 late at night. He seized the clothes of the Appellant. He caused the victim's statement to be recorded u/s 164 of Cr.P.C. After completion of the investigation, he filed the charge-sheet.

In the cross-examination, he admitted that he had not seized the mobile phone of the Appellant. He had not obtained

CDR of the complainant and the Appellant. He had not seized the glass pieces from the spot.

15. P.W.7 Kisan Salkar was a Pancha for the seizure of clothes of the victim and the clothes of the Appellant. The victim's clothes were produced by her father on 11/04/2019. The Appellant's clothes were shown by the police to him and then they were seized.

16. The C.A. report which is produced on record at Ex.49, shows that the victim's clothes showed blood of 'B' group. The Appellant's pant showed presence of blood but the blood group was inconclusive. The knife showed presence of blood of 'B' group.

This in short is the evidence led by the prosecution.

17. Learned counsel for the Appellant made the following submissions :

The prosecution has not proved its case beyond reasonable doubt. The evidence of the victim and her parents is

contradictory. The victim has denied that there was a love relationship between herself and the Appellant. However, her mother has admitted that P.W.1 victim and the Appellant were in a love relationship. He therefore submitted that once it is established that they were in a love relationship and since the victim was suppressing that fact, it takes the defence of the Appellant in the realm of reasonable probabilities. He submitted that it is not possible to believe that the victim's mother would enter the room by breaking the window of that particular room. No evidence is produced on record regarding the collection of glass pieces from the room.

18. The spot Pancha has stated that the weapon was found in a plastic bag. It was shown to the Doctor. It means the seal was removed and the weapon was tampered with. He further submitted that the Appellant had no reason to carry all his documents at the time of committing the assault and then drop that bag near the staircase. That by itself shows that the police had fabricated and planted the evidence. The Appellant was at Beed. He was brought from there along with his documents. The

documents were planted near the staircase and then the Appellant was arrested. The description of the weapon given by the Doctor shows that it was sharp only on one side. In that case, the injuries were not possible with that weapon. Importantly, in his Medical Certificate, the Medical Officer had not given clear opinion that the injuries were not self inflicted injuries. He further submitted that the father's evidence is not believable. The victim had stated that she had immediately become unconscious and therefore there was no occasion for her to call her father telephonically and then describe the incident to him. Therefore, this narration is inconsistent with the truth.

19. Learned APP as well as the learned counsel for the Respondent No.2 submitted that the contradictions between the evidence of the P.W.1 and her parents are minor. This does not go to the root of the matter. The fact remains that the victim had suffered injuries all over her person. Those injuries could not have been self inflicted injuries. There was no other person in the house, who could have inflicted those injuries. The FIR is lodged immediately in the hospital. There was no occasion to

concoct a false story. The weapon was found exactly at the spot where the Appellant had thrown it from the victim's house on the fourth floor of the building. The weapon was found at the backside of the building. The weapon showed presence of blood of 'B' group. She therefore submitted that the prosecution has proved its case beyond a reasonable doubt.

20. I have considered these submissions. In this case as mentioned earlier, the most important piece of evidence is the deposition of the victim herself. She has narrated the incident in detail. The Appellant had entered her house. He had taken her to the Pooja room and had inflicted blows on her with a knife. Her mother is an eyewitness. She has supported the version of the P.W.1. Both of them have corroborated each other. Though it is not clear exactly at what point of time, the victim had called her father telephonically, but that would not mean that the incident had not taken place. There were 10 injuries on the person of the victim and therefore, the incident had taken place. The most important question would be whether those injuries could be self inflicted. Though Doctor has not given a clear

answer, it is to be noted that there were 10 blows given on the arms, legs and abdomen of the victim. The blows were given one after the other and there were as many as 10 blows. Two of them were on the abdomen. The depth of these blows was 3 cms. Therefore, though the major organ was not pierced, the assault was on the vital parts. There is no reason to disbelieve the evidence of the P.W.1 and P.W.2, as they have described the assault with a knife caused by the Appellant. This is the most important incriminating circumstance against the Appellant. The other circumstances are corroborative in nature and they do not adversely affect the prosecution case and they do not help the Appellant's defence.

21. Since the Appellant has raised a specific defence of alibi, he was expected to produce the evidence to show that on that day and at that time he was at Beed as was claimed by him. However, no specific evidence is led by him. Finding of his documents in a bag at the staircase outside the house of the victim is another strong incriminating circumstance against him. The FIR was lodged in the night on 10/04/2019, the Spot

Panchanama was conducted at 12.30 p.m. on 10/04/2019. Therefore, it was not possible to hold that the police went to Beed, brought the documents and planted them on the staircase. The Spot Panchanama was conducted within fairly a short time. The documents of the Appellant were found there. The other circumstance of finding of the weapon at the backside of the building is also an important incriminating circumstance. However, there is force in the submissions of learned counsel for the Appellant that the seized weapon was not kept properly by the police to rule out the possibility of tampering with the evidence. The Spot Panchanama shows that it was seized and sealed at the time of conducting Spot Panchanama. But on 14/04/2019, the weapon was sent to Medical Officer for his opinion. No separate Panchanama for opening the seal and sending the weapon to the Medical Officer was conducted. Therefore, sending a weapon for chemical analysis loses its significance; though there is 'B' blood group mentioned in the C.A. report against the Appellant, because the police have not taken reasonable care to show that the weapon was kept securely. It therefore does not rule out the possibility of

tampering with the weapon. To that effect, this particular circumstance cannot be held against the Appellant.

22. Similar is the justifiable criticism in respect of the clothes of the Appellant. The clothes were simply produced before the Panchas. There is no linking evidence to show that it was produced by the Appellant. Therefore, even that particular circumstance will have to be ignored.

23. As a result of the above discussion what emerges is that the prosecution case depends on the evidence of the P.W.1 and P.W.2. I do not find any infirmity in their evidence. Therefore, I do not find any infirmity in the reasons given by the learned Judge in convicting the Appellant for the offence for which he is charged. However, since the Appellant is convicted and sentenced for committing offence punishable u/s 307 of the Indian Penal Code, for committing assault on the victim, his separate conviction and sentence u/s 324 of the Indian Penal Code is not necessary.

24. The next question is regarding the sentence in particular. The learned counsel for the Appellant has submitted that the Appellant is in custody continuously from 10/04/2019. Thus, more than 6 years and 3 months have passed. The learned counsel submitted that the Appellant was never released even on temporary bail during this long period. The Appellant was a young man of 25 years of age at the time of the incident. He has a family to support. The learned counsel submitted that though there were 10 blows, he did not inflict any grievous injuries which could have led to the death of the victim. He submitted that this factor may be taken into consideration.

25. Learned APP as well as the learned counsel for the Respondent No.2 submitted that considering that the Appellant had inflicted 10 blows on the helpless victim, leniency may not be shown to him.

26. I have considered these submissions. The Appellant is in custody for more than 6 years and 3 months. Even during the period of spread of pandemic he was in prison. He was a young

man of 25 years of age at the time of the incident. There is nothing to show that his behaviour in the prison was objectionable. There are no criminal antecedents against him. He has a family to support. He still has his future ahead of him.

27. In these circumstances some leniency can be shown to the Appellant and I am inclined to reduce the sentence imposed on him from 10 years of rigorous imprisonment to 7 years of rigorous imprisonment.

28. Hence, the following order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the Appellant u/s 307 of the Indian Penal Code recorded by the Special Judge, Pune, dated 20/05/2024, in Special Case No.310/2019, is upheld. However, his sentence of 10 years rigorous imprisonment is reduced to 7 years of rigorous imprisonment.

The fine of Rs.10,000/- and in default sentence of simple imprisonment of one year are maintained.

- (iii) The conviction and sentence as recorded u/s 452 of the Indian Penal Code are maintained.

However, the conviction and sentence u/s 324 of the Indian Penal Code are set aside in view of conviction and sentence imposed in respect of offence u/s 307 of the Indian Penal Code.

- (iv) All the substantive sentences are directed to run concurrently.

- (v) The clause of making payment of the fine amount to the victim is maintained.

- (vi) The Appellant shall be entitled for set off u/s 428 of Cr.P.C. for the period he was in custody from 10/04/2019.

- (vii) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)