



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.167 OF 2023

Anil s/o Laxmanrao Mohod,
aged about 39 years,
r/o Chikhalsawangi, tahsil Morshi,
district Amravati,
(presently in Central Jail, at Amravati
Convict No.C-5926). **Appellant.**

:: V E R S U S ::

State of Maharashtra,
Police Station Officer, Police Station
Morshi, tahsil Morshi,
district Amravati. **Respondent.**

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Shri Amit Balpande, Counsel for the Appellant.
Shri C.A.Lokhande, Additional Public Prosecutor for the
Respondent.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 02/01/2025
PRONOUNCED ON : 09/01/2025

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order dated 24.6.2021 passed by learned Additional Sessions Judge, Amravati in Sessions Case No.41/2016.

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2. By the said judgment impugned, the accused is convicted for offence under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay fine Rs.5000/-, in default, to undergo simple imprisonment for one month.

3. Facts of the prosecution case necessary for disposal of the appeal are as under:

Vandana (the informant), is the wife of the accused whose marriage was solemnized with the accused on 2.5.2010. Out of the said wedlock, they had two children. After the marriage, the accused was addicted to bad vices like drinking liquor and was suspecting character of the informant and on that count was assaulting and ill-treating her and, therefore, she left matrimonial house in the year 2015 and started residing at Chandur-Bazar along with her children. She had her bank account in the Bank of Maharashtra, Branch Khanapur wherein the accused had deposited Rs.30,000/-. On 6.12.2015, she had gone to the said bank for

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withdrawing amount. At about 1:00 pm, when she came out of the bank, the accused demanded money from her to which she refused and, therefore, the accused took out a knife and gave a blow of the knife on left side of her stomach due to which she sustained bleeding injury. The accused was caught at the spot. The informant was taken to the hospital whereat her statement was recorded. On the basis of the said statement, the crime was registered against the accused.

4. After registration of the crime, wheels of investigation started rotating. The Investigating Officer immediately rushed to the spot of the incident and drawn spot panchanama. Blood stained clothes of the informant as well as clothes of the accused were seized. The samples from the spot of the incident of soil were also collected. The knife was seized during personal search of the accused, which was sealed. All incriminating articles were forwarded to the Chemical Analyzer. After completion of the investigation, chargesheet was submitted against the accused. Learned Magistrate

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committed the case to the Court of Sessions as offence under Section 307 of the Indian Penal Code is exclusively triable by the Court of sessions. Learned Sessions Judge framed charge vide Exhibit-4. The accused pleaded not guilty and claimed to be tried.

5. In support of the prosecution case, the prosecution has examined in all nine witnesses namely Vandana, the informant, vide Exhibit-25 (PW1); Dilip Raut, the Police Constable, vide Exhibit-31 (PW2); Megha Khade, the Pancha on the spot, vide Exhibit-33 (PW3); Rajesh Purohit, the eyewitness, vide Exhibit-42 (PW4); Dr.Balwant Ramteke vide Exhibit-43 (PW5); Bhupesh Meshram, the bank employee, vide Exhibit-48 (PW6); Sandesh Palande, the Investigating Officer, vide Exhibit-53 (PW7); Dilip Raut, the Police Constable, vide Exhibit-63 (PW8); and Sachin Chavan, the Investigating Officer, vide Exhibit-66 (PW9).

6. Besides the oral evidence, the prosecution placed reliance on report Exhibit-27, FIR Exhibit-32, spot panchanama Exhibit-34, medical certificate Exhibit-45,

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query letter Exhibit-46, medical treatment papers Exhibit-47, arrest panchanama Exhibit-54, letter to the Chemical Analyzer Exhibit-68, and the Chemical Analyzer's Reports Exhibits-73 and 74.

7. The incriminating evidence is put to the accused in order to obtain his explanation as to the evidence appearing against him. Defence of the accused is of total denial and of a false implication. After appreciating the evidence, learned Sessions Judge was pleased to convict the accused as the aforesaid.

8. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused on the ground that learned Sessions Judge has not appreciated the evidence in the light that there is no medical evidence to show that the injury caused is sufficient to cause death. Only one injury is sustained by the informant. At the most, the case would cover under Section 324 of the Indian Penal Code and, therefore, the judgment impugned

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in the appeal is erroneous and liable to be quashed and set aside.

9. Heard learned counsel Shri Amit Balpande for the accused and learned Additional Public Prosecutor Shri C.A.Lokhande for the State.

10. Learned counsel for the accused took me through the entire evidence and submitted that there was a matrimonial dispute between the informant and the accused. There was motive to implicate the accused falsely in the alleged offence. As far as medical evidence is concerned, the same is not sufficient to hold that the injury caused was sufficient to cause death if timely treatment was not given. Recovery of the knife is also suspicious. No blood stains were found on the knife during the Chemical Analysis Examination. Even, if the case of the prosecution is accepted as it is, at the most the case would cover under Section 324 of the Indian Penal Code and, therefore, the judgment impugned deserves to be quashed and set aside.

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11. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment impugned in the appeal and submitted that the nature of the injury as well as the weapon of the offence clearly proves an intention to commit murder of the informant and the injury sustained by the informant satisfies ingredients of Section 307 of the Indian Penal Code. Therefore, the appeal is devoid of merits and liable to dismissed.

12. After hearing the rival submissions and appreciating the evidence adduced before the trial court, allegations against the accused, who is husband of the informant, are that he has assaulted the informant by giving a blow of knife on her stomach on refusal by her to give him money.

13. To substantiate the prosecution case, the entire thrust was on the evidence of PW1 informant and eyewitness PW4 Rajesh Purohit. To corroborate the version of the informant, the prosecution also placed reliance on the evidence of PW5 Dr.Balwant Ramteke who

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examined the informant and issued the medical certificate.

As far as the evidence of the informant is concerned, it states that her marriage with the accused was performed on 2.5.2010 and till 2015, she cohabited with the accused. She had two children from the accused. The accused was suspecting her character and was assaulting her under the influence of liquor. She specifically deposed that nephew of her mother namely Vishwajeet used to visit her house and, therefore, the accused was suspecting her character. Therefore, she left the house along with her children during Diwali 2015 and started residing at Chandur-Bazar along with her children. On 6.12.2015, she received a phone call of the accused who asked her to come to Morshi to collect Aadhar Cards of her children. On 7.12.2015 also, she received a phone call of the accused. On 7.12.2015, she had been to the Bank of Maharashtra for withdrawing amount whereat the accused was sitting wrapping his face by a handkerchief. After withdrawal of the money, she came out of the bank

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and the accused approached her and demanded money from her. On her refusal, he took out a knife and gave her a blow on left side of the stomach due to which she sustained an injury. She was taken to the hospital. Her blood stains clothes were seized by the police.

14. During cross examination of PW1 informant, an attempt was made to show that the accused was suspecting that she had relations with one Vishwajeet. It was also suggested that she herself left the company of the accused to which she explained that due to the assault at the hands of the accused she left his company. As far as her evidence on the incident is concerned, the same was not shattered during the cross examination. She admitted that during her hospitalization, Vishwajeet was along with her.

15. To corroborate the version of PW1 informant, eyewitness PW4 Rajesh Purohit was examined. He stated that on 7.12.2015, he was standing near bus stop. One lady along with two children was standing near a pan stall.

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At the relevant time, one person came there and picked up quarrel with the lady on the count of money and assaulted her with knife on her stomach. The lady shouted and kept her hand on the portion where she sustained the injury. People gathered there. He along with other persons caught the accused who gave blow of knife and handed over his custody to police. On enquiry with the lady, she disclosed her name as Vandana and name of the assailant as her husband Anil. During the personal search of the accused by police, the knife was seized. Though this witness is cross examined, nothing is eliminated from his cross examination.

16. Besides the oral evidence of this witness i.e. eyewitness PW4 Rajesh Purohit, the prosecution placed reliance on medical evidence. PW5 Dr.Balwant Ramteke was attached to Sub Divisional Hospital at Morshi as Medical Officer, who stated that he was on the duty on 7.12.2015 at about 1:30 pm to 2:00 pm. The PW1 informant was brought to the hospital and he treated her. History was narrated as assault by a knife. On

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examination, he found on her person, "*stab injury over left lumber region 2x1 cm with localized hematoma with peritorial tear with bleeding*". The informant was assaulted by a sharp weapon and the age of the injury was 4 to 6 hours and the injury was grievous in nature. She was also referred to the General Hospital. He issued medical certificate Exhibit-44. Injury is possible by knife. He also received a query from the Investigating Officer by referring the weapon to him and he opined that the injury is possible by the weapon referred to him. The said query report is Exhibit-46.

During the cross examination, it was suggested that Exhibit-47 nowhere shows name of hospital and bed number etc. As far as nature of the injury is concerned, it was not challenged during the cross examination.

17. Thus, the evidence as to the nature of the injury remained unchallenged.

18. Police Constable PW2 Dilip Raut, after receipt of the information, went in the hospital and recorded the

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statement of the informant on the basis of which the crime was registered.

19. Pancha on the spot PW3 Megha Khade, testified that she was called to act as Pancha. Spot of the incident was shown by person namely Rajesh Purohit, who also pointed out towards the accused and disclosed that he assaulted a woman by knife. In their presence, personal search of the accused was taken and the knife was seized during the personal search panchanama. Spot panchanama is at Exhibit-34. During her cross examination, it came on record that when the knife was seized, there were faint blood stains on the knife.

20. The evidence of bank employee PW6 Bhupesh Meshram is only to the extent that on the day of the incident the informant had been to the bank.

21. Investigating Officer PW7 Sandesh Palande, narrated about the investigation carried out by him. His evidence discloses that on receipt of the information, he visited the spot of the incident whereat people caught the

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accused who was taken into custody. From his personal search, one knife was seized on which faint blood stains were there. Accordingly, panchanama was drawn. The arrest panchanama of the accused was also drawn. The clothes of the informant were also seized and after completion of the investigation, the chargesheet was submitted. Though he is cross examined, only suggestion was given that the false investigation was carried out.

22. Police Constable PW8 Dilip Raut, seized the blood stains clothes of the informant by drawing panchanama Exhibit-64 and another Investigating Officer PW9 Sachin Chavan is formal witness.

23. The Chemical Analyzer's Report Exhibit-73 shows no blood is detected on knife (Exhibit-1). Whereas, blood detected on the clothes of the informant is human blood.

24. Learned Sessions Judge has accepted the contention of the prosecution case on appreciating the evidence and held that the prosecution has proved its case beyond reasonable doubt.

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25. Learned counsel for the accused submitted that only one injury was sustained by the informant which is not sufficient to cause death under normal circumstances and, therefore, the offence under Section 307 of the Indian Penal Code is not made out. As far as the evidence adduced by the prosecution is concerned, the evidence of PW1 informant is sufficient to show that out of matrimonial dispute and on refusal by her to give a money, she was assaulted by the accused and this fact is corroborated by eyewitness PW4 Rajesh Purohit, who is an independent witness in whose presence the alleged incident has taken place. He also stated that there was some altercation of words between the informant and the accused on account of money and the accused has taken out the knife and assaulted the informant by giving blow on her stomach. The medical evidence shows that the injury sustained by the informant is grievous in nature. Learned Sessions Judge has considered that the evidence of the informant is not shattered during the cross examination and is duly corroborated by the independent

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witness. The genesis of the occurrence is duly established by the prosecution.

26. The only question needs to be dealt with relates to applicability of Section 307 of the Indian Penal Code. The evidence of the informant and eyewitness PW4 Rajesh Purohit goes to show that there was altercation between the informant and the accused on account of money and the accused took out a knife and dealt a blow on stomach, which is a vital part of body.

27. It is vehemently submitted by learned counsel for the accused that only one injury was sustained and which was not sufficient to cause death in the ordinary course of nature. Section 307 of the Indian Penal Code reads as under:

307. Attempt to murder.— Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by

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such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Lustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not

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yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

Classification of offence. - The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.

The first part of the said Section refers to an act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder. The second part of the said Section carries as heavier punishment refers to the hurt caused in pursuance of such an act.

28. The Hon'ble Apex Court in the case of **State of Madhya Pradesh vs. Kanha alias Omprakash**¹ by referring the judgment in the case of **State of Maharashtra vs. Balram Bama Patil**² observed that , it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been

¹ AIR 2019 SC 713

² AIR 1983 SC 305

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inflicted, by quoting paragraph No.9 of the said judgment, as follows:

“9...To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal

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need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

29. Thus, in view of observations, it was held that to establish the commission of the offence under section 307 of the Indian Penal Code, it is not essential that a fatal injury capable of causing death should have been inflicted.

30. For the purpose of conviction under Section 307 of the Indian Penal Code, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Admittedly, whether the accused intended to commit murder of another person would depend upon the facts and circumstances of each case. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances. Admittedly, intention of the accused is the inner compartment of his mind and

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is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury. The intention of the accused can be ascertained from actual injury and surrounding circumstances.

31. In the present case, learned Sessions Judge has based its conviction on the basis of the evidence of PW1 Vandana, eyewitness PW4 Rajesh Purohit, and PW5 Dr.Balwant Ramteke. The evidence on record shows that the accused was carrying the knife who took out knife and gave a forceful blow on the stomach of the informant. The nature of injury shows that it was a stab injury over lumbar region 2x1 cm with localized hematoma with peritorial tear with bleeding. The evidence on record shows that the accused was aware that the informant is coming to Khanapur in a bank for withdrawing the amount as there was a phone call by him on that day to the informant. The informant had been to bank to withdraw the amount and she has withdrawn the amount and the

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accused came there by covering his face carrying knife with him. As the informant refused to pay him the amount, he immediately took out the knife and gave a blow of knife on her person.

32. Thus, the intention of the accused to cause injury is established. The circumstance, that the accused carried the knife along with him, itself is sufficient to show his intention. Merely because there was no blood stain on the knife, in view of the Chemical Analyzer's Report Exhibit-73, that by itself is not sufficient to hold that Section 307 of the Indian Penal Code is not applicable. It must be noted that Section 307 of the Indian Penal Code provides imprisonment for life if the act causes hurt. It does not require that hurt should be grievous or of a particular degree. What is material is, the intention to cause death, which is clearly attributable to the accused in the present case. The circumstances clearly indicate the same and, therefore, no interference is called for in the judgment impugned in the appeal.

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33. In this view of the matter, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

34. The accused shall forthwith surrender himself before the Superintendent of Central Prison at Amravati to undergo the sentence.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!