



Judgment

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

CRIMINAL APPEAL NO.217 OF 2023

Suresh Mahadeorao Deshmukh,
aged 56 years, occupation : labour,
r/o Kokanwadi, Murtizapur,
district Akola. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through PSO PS Murtizapur,
district Akola. **Respondent.**

**Shri Amit Kukday, Counsel Appointed for the Appellant.
Shri M.J.Khan, Addition Public Prosecutor for Respondent
No.1/State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 06/02/2025

PRONOUNCED ON : 28/02/2025

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order dated 17.10.2022 passed by learned Additional Sessions Judge, Akola (learned Judge of the trial court) in Sessions Trial No.309/2019.

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2. By the said judgment and order impugned, the accused is convicted for offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years and to pay fine Rs.1000/-, in default, to undergo further rigorous imprisonment for six months.

3. Brief facts of the prosecution case are as under:

Dipak Ghashiprasad Ahirwal (the informant), is brother of Ram Ahirwal (the injured). On 30.8.2019, at about 5:00 pm, the injured had proceeded in the village. Whereas the informant was present at “Ahilya Bai Complex, Murtizapur at around 7:00 pm. He heard the noise of quarrel in front of “Sarika Wine Bar” and witnessed that his brother was being assaulted by the accused. He had intervened in the quarrel along with Manoj Shrivastav and Rajesh Fulwale. His brother had

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received bleeding injury over his neck. The injured was taken to the hospital. During enquiry with the injured, it revealed that the accused was demanding money from him for consumption of liquor and on that count, on denial by the injured, the accused inflicted blows of sharp edged weapon. On the basis of the said report, the police registered the crime. During investigation, the Investigating Officer has recorded the statement of the injured and other relevant witnesses, drawn spot panchanama, collected blood stained soil from the spot, seized clothes of the injured as well as the accused. The accused made memorandum statement and on his instance, weapon of the offence was recovered. After completion of the investigation, chargesheet was filed against the accused.

4. Learned Judge of the trial court has framed the charge vide Exh.4. In support of the charge, the

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prosecution has examined in all nine witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Dipak Ghashiprasad Ahirwal, informant	22
2	Ram Ahirwal, injured	27
3	Vijay Rahate, eyewitness	28
4	Rajesh Boyatkar, Pancha on various panchanamas	31
5	Dr.Pankajkumar Patalbansi	41
6	Ashish Shinde, Police Officer	47
7	Dr.Mitali Mankar, Medical Officer	49
8	Tukaram Dhoke, Investigating Officer	55
9	Dattatraya Avahale, Investigating Officer	58

5. Besides the oral evidence, the prosecution placed reliance on CA Report Exh.23, spot panchanama Exh.32, seizure memo Exh.33, seizure of the clothes of the injured Exh.34, memorandum statement by the accused Exh.35, discovery panchanama Exh.36, seizure memo Exh.37,

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seizure of the clothes of the accused Exh.38, medical certificate Exh.43, requisition memo Exh.44, query report Exh.45, opinion Exh.46, FIR Exh.48, referral letter Exh.50, medical certificate Exh.51, query report Exh.53, and opinion Exh.54.

6. On the basis of the oral as well as the documentary evidence, learned Judge of the trial court held the accused guilty and convicted and sentenced him as the aforesaid.

Hence, the appeal.

7. Heard learned counsel Shri Amit Kukday appointed for the accused and learned Additional Public Prosecutor Shri M.J.Khan for the State.

8. Learned counsel for the accused submitted that that the evidence of the prosecution adduced is not sufficient to hold the accused guilty. Informant PW1 Dipak Ahirwal and eyewitness PW3 Vijay Rahate are the interested witnesses.

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Evidence of PW7 Dr.Mitali Mankar shows that the injured was under the influence of liquor when he was examined. It was the injured on whose instance the alleged incident has taken place. The medical evidence is not sufficient to show that injuries are sufficient to cause death if he was not treated immediately. Alternatively, he submitted that at the most, the case would cover under Section 324 of the IPC and, therefore, the sentence is to be reduced.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that merely because informant PW1 Dipak Ahirwal is brother of the injured, that by itself cannot be treated as interested witness. Eyewitness PW3 Vijay Rahate is the independent witness. The oral evidence is corroborated by the medical evidence and the discovery of the place where the weapon was kept is at the instance of the accused. The CA Report shows that the blood stains were not only on the clothes of the injured but also on the

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clothes of the accused. Blood stains found on the clothes of the accused were of Blood Group “AB” i.e. of the injured for which no explanation is put forth. For all above these grounds, the appeal is devoid of merits and liable to be dismissed.

10. Before entering into the merits of the case, it is necessary to mention that while the accused was undergoing the sentence, the remission was given to him on the occasion of “Amrut Mahotsav of Independence” and released from the jail.

11. Coming to the merits of the case, the prosecution has examined informant PW1 Dipak Ahirwal and eyewitness PW3 Vijay Rahate.

12. As per the evidence of PW1 Dipak, the alleged incident occurred on 30.8.2019 at 7:00 pm. On hearing noise, he rushed to the spot of the incident and witnessed

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the accused inflicting the blows on his brother. His brother has sustained bleeding injuries on his neck as well as on his chest i.e. vital part of the body. He separated the accused and the injured with the help of Manoj Shrivastava and Rajesh Fulwale.

The evidence of the said witness further states that the accused met the injured at the Daryapur Road and was demanding the money and also abused the injured. On denial by the injured to pay the money, the accused removed a small cutter from his pocket and inflicted blows on the left portion of his neck and also on his chest and nose due to which he sustained injuries. As he has raised alarm, Vijay Rahate, and Manjor Shrivastava came there and took the injured in the hospital.

13. Eyewitness PW3 Vijay Rahate, corroborated the evidence of informant PW1 Dipak and the injured on

material particular that the injured was assaulted by the accused. His evidence further shows that when he was proceeding to his house, he heard the noise of quarrel and witnessed that the accused was demanding money from the injured and on refusal to pay the amount, accused gave blow of cutter on the neck and chest of the injured. They intervened in the quarrel and took the injured in the hospital.

14. All three witnesses informant PW1 Dipak, injured PW2 Ram, and eyewitness PW3 Vijay are cross examined.

15. Informant PW1 Dipak denied that his brother is addicted to drink liquor and used to beat other people. He also denied that upon enquiring with his brother, he came to know that the accused has assaulted him.

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16. During the cross examination, injured PW2 Ram has admitted that occasionally he takes liquor, but he denied that he takes liquor in shop.

Except this cross examination, the entire cross examination is in the denial form.

17. During the cross examination of eyewitness PW3 Vijay, an attempt was made to show that he is interested witness. The cross examination of the said witness shows that he had good relation with the accused and he considers him as his brother. He admitted that there were various customers near the outlet.

18. All the above three witnesses identified the clothes of the injured and the accused and Article-1 cutter.

19. PW4 Rajesh Boyatkar, has acted as a pancha on spot panchanama, seizure memo Exh.33, seizure of the clothes of the injured Exh.34, memorandum statement of the

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accused Exh.35, discovery panchanama Exh.36, seizure of the cutter Exh.37, and seizure of the clothes of the accused Exh.38. He narrated about the said panchanamas during his evidence. He specifically stated that the accused made memorandum statement in his presence that he will produce the cutter concealed in his house and accordingly led them to his house and shown the place where he has kept the cutter wrapping in the paper below earthen pot in the courtyard of his house. During the cross examination, he admitted that no written instructions were given to them to act as a pancha. He further admitted that after spot panchanama, they again went to the police station. The accused was removed out of the lockup. He stated that he is not recollecting whether the accused was handcuffed at the time of taking him for recovery panchanama.

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20. Recital of the spot panchanama shows that from the alleged spot of the incident the police collected simple as well as blood stained soil. The clothes of the injured were seized having blood stains vide seizure memo Exh.34. Exh.35 shows that the accused made a voluntary statement as to the discovery of place where he kept the incriminating article weapon and the said blood stained weapon was seized at his instance. Though pancha witness is cross examined, it was nowhere suggested that the statement was not voluntary. On the contrary, it came in the cross examination that the accused was brought out of the lockup at the time of recording memorandum statement.

21. As per the evidence of PW5 Dr.Pankajkumar Patalbansi, who initially examined the injured, shows that he received requisition from police Exh.42. On examination, he found incised wound 5x0.5.0.5 cms over

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palmer which could be used by sharp object and shoulder pain, swelling tenderness, and range of movement which could be caused by blunt object. He issued certificate Exh.43 and also issued requisition memos. He has also obtained blood samples of the accused. His evidence further shows that on 2.9.2019 the police has produced weapon and injury report through requisition Exh.45. It was a cutter having sharp edge by one side. He opined that injury No.1 could be caused by the said weapon. During his cross examination he admitted that the said injury could be caused by any sharp edged weapon and injury No.2 is also possible by fall on rough surface. He has not carried out the alcohol examination of the accused.

22. PW7 Dr.Mitali Mankar, is another medical officer who examined the injured and found that CLW wound of 7x2x4 cms deep wound on left lateral side of neck and CLW wound of 5x2x3 cms deep on lateral side of nose on

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left side. She has referred the said patient for surgical opinion to higher centre. The injuries caused to the injured was life threatening. The referral letter is at Exh.50. On the next date, she received letter vide Exh.52 for issuing medical certificate. She has also received a letter from police station issuing opinion. She examined the weapon and opined that injuries sustained to the injured could be possible by the cutter. Her cross examination shows that history of assault was given. She had mentioned that the patient was under the influence of liquor. She further stated that she is unable to tell whether the injuries were self inflicted or otherwise. she further explained that the injuries were not self inflicted. She admitted that the above injuries could be possible by any sharp object like glass. She further admitted that she has not mentioned in the injury report that there was danger to the life of the said injured.

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23. PW6 Ashish Shinde, is Police Officer who recorded the FIR, PW8 Tukaram Dhoke and PW9 Dattatraya Avahale are Investigation Officers who narrated about the investigation carried out by them. As far as their cross examination is concerned, nothing fruitful is brought on record. The incriminating articles were forwarded for its chemical analysis along with referral letter Exh.61. The CA Report shows full pant and shirt of the accused had considerable number of blood stains, Exh.3 cutter and Exh.6 blood stained soil are stained with the blood. The blood group found on clothes of the accused and shirt of the injured are stained with Blood Group "AB". As far as the said Blood Group is concerned, no explanation is put forth by the accused.

24. As far as submission on behalf of the accused is concerned, the same is to the extent that informant PW1

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Dipak and eyewitness PW3 Vijay are the interested witnesses.

25. It is well settled that mere relationship is not sufficient to term the witnesses as “interested witnesses”.

26. As far as involvement of the accused in the crime is concerned, it is established by the prosecution through the evidence of informant PW1 Dipak, who witnessed the alleged incident. Eyewitness PW3 Vijay, was also present at the spot of the incident. Their presence is not at all denied at the spot of the incident. The evidence of injured PW2 Ram is at higher pedestal. Though they are cross examined at length, neither their presence nor the involvement of the accused in the alleged incident is denied. To justify the conviction under Section 307 of the Indian Penal Code, it is not essential that bodily injury capable of causing death should have been inflicted. It is

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sufficient to show a conviction under the said Section 307 if there is present an intent coupled with some overt act in execution thereof. The intention of the accused can be gathered from the circumstance that he was having sharp edged weapon along with him and injuries were caused on vital part of the body.

27. Thus, the act was intended.

28. There are different stages in crime; (1) the intention to commit it, (2) preparation to commit it, and (3) attempt to commit it.

As far as intention is concerned, the same can be gathered from the fact that the injuries are caused on vital part of the body.

The preparation to commit the crime can be gathered from the circumstance that the accused was

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carrying weapon in his pocket and attempt was made by causing the injuries.

29. Thus, the evidence on record sufficiently establishes involvement of the accused in the alleged offence.

30. As far as defence of the accused is concerned, as to the false implication, the same is not substantiated by any material or the cross examination of the witnesses.

31. Thus, the prosecution succeeded in establishing the guilt of the accused. Learned Judge of the trial court had considered the entire evidence and rightly convicted the accused. As I do not find any merits in the appeal, following order is passed:

ORDER

(1) The Criminal Appeal is **dismissed**.

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(2) The accused, who was undergoing the sentence, is already released from the jail by giving remission of the Scheme of the Government on the occasion of “Amrut Mahotsav of Independence”.

(3) Fees of learned counsel Shri Amit Kukday appointed for the accused be quantified and the same be paid to him as per rules.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!