



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 940 OF 2025
WITH
CRIMINAL APPLICATION NO. 3181 OF 2023

Ganesh Shamrao Thorat
Age:33 years, Occu.: Labour,
R/o Lakhmapur, Tq. Gangapur,
Dist. Aurangabad

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Officer,
MIDC Waluj Police Station,
Tq. Gangapur, Dist. Aurangabad

..RESPONDENT

....
Mr. A.P. Yenegure, Advocate for appellant
Mr. V.K. Kotecha, A.P.P. for respondent - State
....

CORAM : RAJNISH R. VYAS, J.
DATE : 05th MARCH, 2026

ORAL JUDGMENT :

. This appeal takes exception to the judgment of conviction rendered by the Additional Sessions Judge, Vaijapur in Sessions Case No. 56 of 2016 dated 3rd May, 2023 at the instance of the appellant by which the appellant is convicted for commission of offence punishable under section 307 of the Indian penal Code (hereinafter referred to as 'I.P.C.') and directed to suffer rigorous imprisonment for seven years and pay fine of Rs.7,000/-, in default to suffer rigorous imprisonment for six months. The appellant was acquitted of commission of offence punishable under section 452 of I.P.C.

2. In brief, it is the case of prosecution that wife of the accused used to visit the flour mill run by the informant / injured and had chitchat with the informant. The accused thus suspected the character of his wife and on one occasion had abused the informant / injured under the influence of liquor which resulted into supplying information to the concerned police station and registration of non-cognizable offence. On 21st March, 2016 when the informant was taking bath, accused entered the bathroom, at which time he was carrying sickle(koyata) with him and by means of that caused injury to the informant.

3. The aforesaid incident resulted into setting the criminal law in motion by lodging of F.I.R. No. 109 of 2016 dated 21st March, 2016 and consequently arrest of the accused. During the course of investigation, the informant / injured was forwarded for medical examination. His clothes were seized, weapon was recovered, spot panchanama was drawn, the incriminating material was forwarded for chemical analysis report and after completion of investigation, charge sheet was filed. As the case was triable by the Sessions Court, it was committed to it and charge was framed against the accused below Exhibit 9 by the Additional Session Judge, Vaijapur on 03rd February, 2017 for commission of offence punishable under Sections 307 and 452 of the I.P.C. The accused did not plead guilty to the charge.

4. In order to bring home the guilt, the prosecution in all examined seven witnesses and relied upon several documents. The Court then questioned the accused under Section 313 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') and thereafter considering the material on record, convicted the accused as stated above and sentenced by following mandate of section 235 of Cr.P.C.

5. It is in this background, challenging the conviction, learned counsel for the appellant has contented that the case advanced by the prosecution fell short of Section 307 of I.P.C. He submitted that the manner in which the offence is committed clearly reveals that the jump of the prosecution is not so high to reach the Section 307 of I.P.C. At the most the case can fall back on Section 324 or 325 of the I.P.C.

6. He submitted that non examination of the independent witnesses, advancement of different stories by the prosecution, few admissions on the part of the victim destroys the case of prosecution.

7. Per contra, learned A.P.P. contended that the offence under Section 307 of I.P.C. has rightly been proved. The intention of the accused is required to be gathered from the previous and subsequent conduct. He submitted that previous enmity was brought on record by the prosecution and the motive is clearly established. He thus submitted that conviction was properly awarded.

8. With the help of respective counsels, I have gone through the record of the case. I have also given my thoughtful consideration to the arguments advanced.

9. Since the offence punishable under Section 307 of I.P.C. is in question, it is necessary to mention here that the said offence is intention as well as knowledge based offence. The injury is not sine qua non to prove offence under Section 307 of I.P.C., but is rendered as guiding principle for arriving at a conclusion whether accused has committed an offence punishable under Section 324 of the I.P.C.

10. In this background the testimony of injured / PW 1 is required to be taken into consideration, who in his deposition has stated that the accused is his relative and PW 1 was running a flour mill. Wife of the accused used to visit the flour mill where she had some talk with the informant. This was suspected by the accused, and therefore, on one occasion the accused abused the informal under the influence of liquor.

11. According to him, on the day of the incident i.e. 21st March, 2016, in morning hours, when the informant was taking bath in the bathroom, the accused came and assaulted on the head, both shoulders and chest of the informant by means of sickle. He then raised hue and cry, due to which his mother and wife, so also the persons residing in the locality gathered. At that

time his brother by name Ganesh also came and snatched away the weapon which was in the hands of the accused. Then the other persons viz. Pandurang, Shrikant, Sagar and Ajinkya rescued the appellant. The accused ran away from the spot. The injured was taken to the hospital by Pandurang and Sagar. Prior to it, injured went to the police station by riding motorcycle.

12. The police had given him medical memo and forwarded to the Civil Hospital. PW 1 was initially treated at Civil Hospital, Gangapur and thereafter in Civil Hospital, Aurangabad, where the medical treatment was given to him. His statement was recorded on 21st March, 2016 which he proved below Exhibit 22 and identified his signature. He also admitted the contents are correct. He submitted that his T-shirt and almond's colour towel was soaked with blood, were seized by police. The sickle was also seized. These articles were shown to the injured during his testimony, which he identified to be the same, which were Article-A i.e. towel and Article-B i.e. T-shirt. The sickle was at Sr.No.3 and marked as Article-C.

13. He was subjected to cross-examination. By way of cross-examination, the defence tried to brought on record the spot of incident surrounded by several houses i.e. situated in thick locality and therefore several persons had an opportunity to see the incident. The spot of incident is the bathroom, height of wall of which is 5 feet.

14. At this stage it is necessary to mention here that the injured in his cross-examination admitted that after the incident he went to the police station by motorcycle and narrated the entire incident to the police. He submitted that at that time police did not write down the incident narrated by him. He further stated that prior to three days of incident, he had lodged report against the accused in the police station. He stated that he reached Civil Hospital, Aurangabad at 12:00 noon on that day and he took an hour to reach the hospital. He further stated that prior to reaching the police station, he had not taken any medical treatment for the injuries. He volunteers that he soaked the blood by towel. He further submitted that he lodged report in police station after two days and after the initial incident he went to police station for 2 to 3 days thereafter.

15. In cross examination this witness has also stated that prior to lodging the initial complaint in police station, he had informed sister of accused viz. Vijayabai for giving understanding to the accused. He admitted that after the incident Sagar, Shrikant, Ajinkya and Ganesh had taken the accused in the custody, but the accused ran away. The omissions were put to this witnesses i.e. :

- 1) under the influence of liquor accused raised suspension and there is immoral relations between his wife and the accused;
- 2) arrival of wife of accused at the flour mill.

The suggestions regarding false implication were denied by PW 1, since according to him, he raised hue and cry, and therefore, his wife arrived.

16. It is necessity to go through the testimony of PW 4, who in her examination-in-chief stated that the injured was her husband and working on the post of peon in the Grampanchayat, Lakhmapur. She admitted that accused was her nephew and therefore they were on talking terms. PW 4 has stated that since the flour mill was installed at their house, wife of the accused used to visit it and used to talk with the injured, due to which the accused raised suspension. The accused used to say that injured was having illicit relationship with his wife, and therefore, she should not visit the flour mill. She also stated that all of them gave understanding to the accused. On one occasion accused, under the influence of liquor, abused her husband and consequently report was lodged with police station. She stated that on 21st March, 2016 when her husband was taking bath, she heard shouts and went outside the house and saw that her husband had sustained injuries and blood was oozing from the injuries. The accused was there carrying *koyta* in his hand and there was a knife in the pocket of pant of the accused, which fell down.

17. PW 4 stated that she caught hold of the weapon in hand of the accused, at which time the accused was assaulting the injured by means of *koyta*. She further deposed that since she had caught hold of one weapon in

her hand, she had sustained injuries. Thereafter, Shrikant, Pandu, Sagar, Ajinkya and Ganesh interfered and Ganesh took the weapon from the hands of the accused. She then stated that she is unable to state as to from whose hand the weapon was taken by Ganesh. She stated that *koyta* and knife were kept by her in the house and they took injured in the police station.

18. In cross-examination, PW 4 has admitted that she had been to the police station on 22nd at about 12:00 noon to 01:00 p.m. At that time her husband and one Bhaiyya were present and they handed over *koyata* and knife to the police. She then volunteered that weapons were not handed over to police. The police had come to the house and thereafter took the weapons. She stated that she had kept the weapons in the bathroom. Defence tried to bring on record the spot of incident was surrounded by many houses and was situated in thick locality. She further deposed that she had taken the treatment in Civil Hospital, Gangapur for the injuries sustained to her hand, but she could not tell as to on how many occasions she visited the hospital.

19. The defence, in order to destroy the case of prosecution, has put omissions to PW 4 that accused came under the influence of liquor and gave understanding to her. Same omission was put to PW 7 / Ganesh(IO) and thus same consequently proved. The other suggestions were denied.

20. Since according to PW 1 and PW 4, PW 1 had sustained injuries in scuffle, it is necessary to go through the evidence of medical officer that is PW

3, who has deposed that on 21st March 2016 he was working at Gangapur Sub-District Hospital in the capacity of Medical Officer. He stated that the concerned police station had forwarded injured for medical examination under letter, which he proved below Exhibit 34. He noticed following injuries:-

1. CLW on right parital region having size 3 x $\frac{1}{2}$ x $\frac{1}{4}$ cms.
2. Incised injury on right shoulder having size 4 x $\frac{1}{2}$ x $\frac{1}{4}$ cms.
3. Incised injury on left side of chest having size 1 x $\frac{1}{4}$ x $\frac{1}{4}$ cms.
4. Incised injury on left scapular region having size 4 x $\frac{1}{4}$ x $\frac{1}{4}$ cms

According to him all the injuries were having age of twenty-four hours and the type of weapon in first injury was hard and blunt object and in remaining three injuries the weapon was hard and sharp.

21. He submitted that so far as first injury is concerned, he could not opine the nature of it, whereas remaining injuries were of simple nature. He accordingly issued the injury certificate below Exhibit 35, which is a provisional certificate which contains columns i.e. type of injury, site of part of the body, size, sharp margin directions, age of injury, type of probable weapon used, nature of injury and remarks. Exhibit 35 also reveals history of assault at 07:30 a.m.

22. In cross-examination to this witness, it was tried to bring on record that in fact Exhibit 35 is the only document which speaks about the nature of

injuries, but Exhibit 36 is the final certificate of injury. At this stage it is necessary to mention here that Exhibit 36 is brought to the notice of PW 3 by the defence, and therefore, in cross-examination that document was proved.

23. The crux of arguments advanced by the defence counsel, so far as Exhibit 36 is concerned, is Column No.7 which deals with type of probable weapon used. In the final certificate of injury, below Exhibit 36, the type of injuries stated above are described, whereas in Column No.7, it is stated that the probable weapon used was hard and blunt. This particular certificate was brought to the notice of PW 3 and defence was tried to be built that all the injuries were caused by the hard and blunt object/weapon. It was also admitted in cross-examination by PW 3 that all the injuries were simple in nature.

24. As far as PW 6 – Ganesh Thorat is concerned, he is not an eye witness. He came on the spot of incident after sometime. The gist of his testimony is that on 21st March, 2016 when he was on the way to his home, he heard noise of persons and consequently reached the spot of incident. He saw that accused - Ganesh was assaulting the informant – Rambhau by means of *koyta*, and therefore, he along with Ajinkya and Madane took the accused to side. He then took *koyta* from the hands of accused and thereafter injured was taken to the hospital. This witness admitted that his statement was recorded after one month by police authorities.

25. In cross-examination, this witness has admitted that he is deposing in the Court as told by the informant – Rambhau. He also admitted that both, the injured and the accused are his relatives and the injured is closely related. He denied the suggestion that he was deposing falsely.

26. The testimony of aforesaid witness would reveal that on the day of incident i.e. 21st March, 2016 in the morning, when the victim was taking bath, the accused entered the bathroom and assaulted the victim by means of sickle. It is not disputed that the weapon used is sickle and not knife, which the accused was carrying. There are total four injuries caused and even according to the testimony of Medical Officer, the injuries were of simple nature.

27. Further the Medical Officer has not proved the final medical examination report, through prosecution . The final medical examination report, which is at Exhibit 36, would reveal that the injuries caused were by hard and blunt object. Thus, questions which are required to be answered, whether there was intention or there was knowledge, and under such circumstances that, if he by that cause death, he would be guilty of murder.

28. The intention behind a crime, often referred to as *mens rea*, is rarely can be proved directly and it is usually inferred through the surrounding circumstances and the conduct of the accused before, during, and after the offence.

29. The first fact that accused reached the injured's house in the morning hours carrying the weapon, shows that he was having an intention to commit crime. The assault by the accused and consequent causing injuries on the person of the victim clearly shows that the intention of accused has culminated into accomplishment. The aforesaid fact clearly shows that there was intention to cause injury. The question is whether there was intention to cause death or not.

30. For deciding the aforesaid question, the testimony of aforesaid witness will have been looked into. The body part chosen and injuries sustained would provide the guiding light. The first injury is on right parital region, the second is incised injury on the right shoulder, the third incised injury on left side of chest and fourth is incised injury on left scapular region. It is pertinent to note that in the final opinion what has been stated is that injuries could occurred due to hard and blunt object. Thus provisional injury report and the final injury report, speaks different stories so far as causing of injuries by hard and blunt object or hard and sharp object.

31. Learned A.P.P. contended that the sickle has two sides, one sharp and other blunt, and therefore, there was intention to kill the accused which is crystal clear.

32. Considering the above aspect that hard and blunt object was used, it is clear that it was not an intention of accused to kill the victim. The

testimony of Medical Officer and Exhibit 36 would also make it clear that that intention was not to kill but to commit crime, since the nature of injuries were also simple.

33. There is one more aspect that the weapon in hands of the accused was snatched away by PW 6. The accused thereafter was caught by other four persons and then accused ran away. The aforesaid fact of not restraining the act of other persons and running away from the spot would show that there was no intention on the part of the accused to commit murder of the victim.

34. A fact which is also required to be taken into consideration is the size of injuries. The size of injuries would clearly reveal that the weapon was not used with such a force that it would cause grievous injury. As already stated, even according to PW 3 – Medical Officer, the injuries were simple in nature. This takes me to another point, whether the accused was having a knowledge that by his act, he would cause death of accused or not.

35. In this regard it is necessary to mention here that even knowledge is the mental fact which will have to be decided from the surrounding circumstances. For that it will also have to be seen which body part was chosen. In the deposition, PW 1 has stated that the accused has assaulted on head, shoulders and chest by using *koyta*. So far as first injury is concerned, it is contused lacerated wound on parietal region. Suffice it to say that size of

injury stated above would clearly reveal that blow was not given with force and the injury, therefore could not have been sufficient to cause death. Even the second, third and forth injury's size would reveal that those injuries were not at all grievous, but simple in nature. There is one more fact. Had the injuries been serious, PW 1 would not have traveled to the police station by riding the bike.

36. PW 1 in his cross-examination has categorically stated that he started proceeding towards police station after 10-15 minutes after occurrence of the incident and it took him 10 minutes duration to reach the police station. In cross-examination he admitted that he has gone to police station on motorcycle. Had there been serious injuries, he would not have been in a position to travel on the motorcycle. The nature of injuries would clearly show that the accused has no intention or knowledge as required under Section 307 of the I.P.C.

37. At this stage it is also necessary to mention here that the prosecution, in order to prove guilt of the accused, ought to have come with the corroborative piece of evidence i.e. seizure of clothes of the accused, which has not been done.

38. Learned A.P.P., then, has invited my attention to the law laid down by the Apex Court in case of *Maniklal Sahu Vs. State of Chhatisgarh, 2025 SCC OnLine 1960*, more particularly paragraph nos.29 to 33.

“29. An offence Under Section 307 Indian Penal Code has the following essential ingredients:

- (i) The death of a human was attempted;*
- (ii) That the death was attempted to be caused, or caused in the consequence of the act of the Accused; and*
- (iii) That the act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:*
 - a. the Accused knew to be likely to cause death; or*
 - b. was sufficient in the ordinary course of nature to cause death, or that the Accused attempted to cause death by doing an act known to him to be so dangerous that it must in all probability cause:*
 - i. death, or*
 - ii. such bodily injury as is likely to cause death.*

30. Thus, from the above, the most important ingredient to constitute the offence of attempt to commit murder punishable Under Section 307 of the Indian Penal Code is the intention or knowledge. To bring home guilt against an Accused under this provision, it is necessary for the prosecution to establish that the intention of the Accused was one of the three kinds mentioned in Section 300 of the Indian Penal Code. A person commits an offence Under Section 307 of the Indian Penal Code when he has the intention to commit murder and in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. The provision requires that the act must be done with such intention, or knowledge, or in such circumstances that if death be caused by that act, the offence of murder will emerge.

31. It is clear as noonday that causing an injury that would endanger life is not an essential condition for the applicability of Section 307 of the Indian Penal Code. Even if the injuries inflicted are simple in nature, that by itself cannot be a ground for acquittal, if the offence otherwise falls Under Section 307 of the Indian Penal Code.

32. The word "intent" means design, or determination with which a person acts. It presupposes knowledge. It is the purpose to use particular means to effect certain result. The "act" referred in

Section 307 of the Indian Penal Code attempted to must be with the "intention" of killing a human. Intention is a state of mind which cannot be proved by direct evidence as a fact; it can only ordinarily be inferred from proved facts. It may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, or on admission. We say so because it shows the presence of will in the act which consummates a crime. The relevant circumstances from which the intention can be gathered. We have supplied a suggestive, and not exhaustive list:

- 1. the nature of the weapon used;*
- 2. the manner in which the weapon was used;*
- 3. the part of the body where the injuries were inflicted;*
- 4. the nature of the injuries caused;*
- 5. the opportunity available which the Accused gets.*

33. We may quote with profit one very erudite decision of the High Court of in the case of Sreedharan v. State of Kerala, reported in MANU/KE/0020/1970MANU/KE/0020/1970, wherein the Court illustrated the metrics by which intention and knowledge can be inferred. It was held that intention can be inferred from the circumstantial evidence of the case, such as the motive, the preparations made, the declarations of the offender, the weapon used, the persistent of the assault, and the nature of the injuries inflicted, and its position. In the Indian Penal Code, the word "intention" is understood in the context of the consequences of an act, and not in relation to the act. The Court lucidly elaborates that the presence of intention is gathered when an act is done deliberately or purposely, it is not contingent on the resultant effect. Most importantly, the inference lies in reading of the consequences from the eyes of a reasonable man. The relevant observations read thus:

16. Intention and knowledge are a man's state of mind; direct evidence thereof except through his own confession cannot be had; and apart from a confession they can be proved only by circumstantial evidence. In other words, they are matters for inference from all the circumstances of the case such as the motive, the preparations made, the declarations of the offender, and, in the case of homicide, the weapon used, the persistence of

the assault, and the nature of the injuries actually inflicted as also their location. In the case of what are generally described as unpremeditated offences or as offences committed on the spur of the moment, intention may be contemporaneous with the physical act, at best of just an instant before, and is generally to be gathered from the nature and consequences of the act and the attendant circumstances. It is here that the much criticised maxim that every man is presumed to intend the natural and probable consequences of his act comes into play.

17. Like most words, the word, "intention" is capable of different shades of meaning. In the Penal Code, 1860 it is used in relation to the consequences of an act, the effect caused thereby, not in relation to the act itself-the voluntariness required to constitute an act is implied by that very word. Thus, in the case of murder, the intention required is (omitting Clause secondly of Section 300 which rarely comes into play) the intention of causing death or the intention of causing bodily injury sufficient in the ordinary course of nature to cause death, more or less the malice aforethought of the English law, the former being generally described as specific intent or malice and the latter as implied malice or sometimes as constructive malice, though the use of the latter term seems open to criticism. It seems to us clear from the illustrations to Sections 88, 89 and 92, that the Code uses the word, "intention" in the sense that something is intentionally done if it is done deliberately or purposely, in other words, is a willed though not necessarily a desired result or a result which is the purpose of the deed. The surgeon of the illustrations certainly does not desire the harm that may be caused; nor is that his purpose. Nevertheless, the provisions of the Sections show that he could have intended the harm, and is saved from being a criminal only by those provisions. Likewise a man who shoots another in the heart and kills him in self-defence might not desire, on the contrary might very much dislike, causing the latter's death. His purpose is not to cause death but to save himself. Yet his case falls squarely within the first Clause of Section 300-he has undoubtedly caused death by doing an act with the intention of causing death-and is saved from being a murderer only by Section 100. Lang v. Lang (1955) A.C. 402 rather than Rex v. Steane (1947) K.B. 997 at 1004 or Hosegood v.

Hosegood 66 The Times L.R. 738 illustrate the sense in which the word, "intention" is used in Section 300 of the Penal Code, 1860-of course none of these cases was construing that statute. And, once you dispense with desire or purpose, it follows that foresight of the consequences of an act gains the upper hand in determining whether the consequences were intended or not. And, the foresight of a particular person is prima facie to be gauged by the foresight of an ordinary, reasonable man, in other words, by what is sometimes disparagingly referred to as the objective test or external standard-as if that were enough to condemn it-of the reasonable and probable consequences of the act.

(Emphasis supplied)

39. Learned A.P.P. is right in relying on the said judgment, but the material produced on record would clearly show that the accused was not aware that bodily injury would cause death or the injury was sufficient in ordinary course of nature to cause death. The act also cannot be called as so dangerous that it in all probability cause death or such bodily injury as is likely to cause death. Thus, though the ratio of this judgment cannot at all be doubted, it cannot be made applicable to the present case. As already stated, nature of weapon used, the manner in which it is used, body part where injury is inflicted and nature of injury caused suggests that there was intention to commit crime but not a crime as defined under Section 307 of the I.P.C.

40. Thus, I come to the conclusion that offence punishable under Section 307 of the I.P.C. is not made out by the prosecution.

41. This now takes me to the another aspect as to which offence the appellant / accused has committed. Before answering said question, it is necessary to bear in mind that presence of accused, causing injuries to PW 1 is rightly proved by the prosecution. Not only PW 1, who is an injured witness, but also PW 4 and PW 6 have categorically stated about presence of the accused on the spot.

42. PW 1 is an injured witness. The law in this regard is very clear. The Hon'ble Apex Court in catena of cases has stated that the injured witness is the natural witness and his evidence does not require any corroboration, if it inspires confidence.

43. PW 4 and PW 6 are the most natural witnesses. PW 4, who was the wife of injured, has categorically stated that she was working in kitchen and when she heard shouts, she came outside and noticed that blood was oozing from the injuries of the injured and accused was carrying weapon in his hand. PW 6 has also stated that he has seen the accused assaulting the injured and he snatched weapon from the hands of the accused. Thus, it is rightly proved by prosecution that it was accused, who had caused injury to PW 1.

44. The testimony of PW 3 / Medical Officer has already discussed, who has stated that the injuries sustained by the injured were of simple

nature. In this regard it will have to be seen whether the case of appellant falls either under Section 324 or 325 of the I.P.C. Section 324 of the I.P.C. states that whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Whereas, Section 325 of the I.P.C. prescribes punishment for voluntarily causing grievous hurt.

45. for understanding Section 325 first definition of 'hurt' is required to be seen. Section 319 of the I.P.C defines hurt as bodily pain, disease, or infirmity to any person. whereas Section 320 defines 'grievous hurt', which reads thus :-

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

This clearly reveals that the nature of injuries sustained by the injured would not fall in the categories mentioned above.

46. Suffice it to say that it is neither the case of prosecution nor defence that hurt was caused on the provocation. The act was unprovocative and without there being any grave or sudden provocation, the accused had caused injuries to PW 1. Section 324 of I.P.C. also speaks about nature of weapons used and so far present case is concerned, it is necessary to mention here that koyta which is used in the present crime can be called as an instrument for cutting. Thus, the instrument/weapon falls within the category of the instrument which is mentioned in Section 324 of the I.P.C. Section 324 speaks about ‘voluntarily causing hurt by dangerous weapons or means’ and not about ‘grievous hurt’. In Case in hand, the injured has sustained bodily pain due to the act committed by the accused, and therefore, it would amount to ‘hurt’, and therefore, it is proved that the accused has committed an offence punishable under Section 324 of the I.P.C.

47. At this stage it is necessary to look into the another facet of case, whether an accused can be convicted for commission of offence for which he

was not charged. Admittedly, in this case the offence for which the accused was charged was under Sections 307 and 452 of the I.P.C. and not under Section 324. Section 324 of the I.P.C. cannot be called as a family member of the offence defined under Section 307 of the I.P.C. The question is whether the ingredients of offence are proved and in case of non framing of charge any prejudice is caused to the accused or not. Line of cross-examination conducted by the defence if perused, it would reveal that it was specifically brought to the notice of accused that he will have to be dealt with the aspect of causing bodily injury by way of weapon. The accused has also cross-examined the witnesses on the same lines. Thus, it cannot be said that any prejudice would be caused to the accused. Thus, I come to the conclusion that accused has committed an offence punishable under Section 324 of the I.P.C.

48. At this stage, the question is regarding the sentence which is required to be awarded to the accused for commission of offence punishable under Section 324 of the I.P.C.

49. Learned counsel for the accused submitted that the accused has no criminal antecedent and he is not threat to the society. He submitted that considering the age of the accused, just punishment be imposed.

50. He may be right, but the conviction is rightly proved by the prosecution, though not under section 307, but under section 324 of Indian penal code. Hence, I pass following order.

ORDER

- (I) Appeal is partly allowed.
- (II) The conviction of accused is altered from commission of offence punishable under section 307 to section 324 of Indian Penal Code.
- (III) The accused is convicted for commission of offence punishable under section 324 of Indian Penal Code and directed to suffer rigorous imprisonment for 3(three) years and pay fine of Rs. 5000/-. In default of payment of fine, the accused is directed to suffer rigorous imprisonment for four months.
- (IV) Record and proceedings be sent to the trial court.
- (V) Appellant be released forthwith, if not required in any other proceeding.
- (VI) Pending criminal applications if any, stands disposed of accordingly.

(RAJNISH R. VYAS, J.)

SSD