



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.596 OF 2025

Vishwanath Kashinath Savle,
Age : 29 years, Occu. : Labour,
R/o. Malegaon Pimpri, Tq. Soygaon,
Dist. Aurangabad.

... Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Soygaon,
Dist. Aurangabad.

2. Savita Mangaldas Ahire,
Age : 39 years, Occu. : Household,
R/o. Manegaon, Tq. Soygaon,
Dist. Aurangabad.

... Respondents

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Mr. Ujwal Patil h/f Mr. Amol S. Sawant, Advocate for Appellant.
Mrs. Saie Swapnil Joshi, APP for Respondent No.1 – State.
Ms. Deepali S. Patil, Advocate for Respondent No.2 (Appointed)
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 APRIL 2026

PRONOUNCED ON : 16 APRIL 2026

JUDGMENT :

1. Instant appeal takes an exception to the judgment and order of conviction dated 31.05.2025 rendered by the learned Additional Sessions Judge, Court No.6, Aurangabad in Sessions Case No. 150 of 2020.

FACTS GIVING RISE TO THE SESSIONS CASE

2. In nutshell, prosecution was launched against present appellant on the premise that, PW2 Savita, a anganwadi worker, was initially questioned for filing complaint and then assaulted by accused Vishwanath by inflicting blows of knife in the abdomen as well thigh. When her minor daughter came for her rescue, she was also assaulted on the right hand. Both injured were taken to the hospital. On the statement of PW2 Savita, crime was registered, investigated and finally accused were charge-sheeted and tried for offence punishable under sections 307 and 324 read with section 34 of Indian Penal Code vide above sessions case, which concluded in conviction vide judgment and order dated 31.05.2025, which is now subject matter of instant appeal.

SUBMISSIONS

On behalf of Appellant :

3. Learned counsel for appellant would point out that, there is false implication on account of previous quarrel. He would point out that, though there are 10 witnesses examined by prosecution, there is no independent eye witnesses. That, only interested witnesses are examined. He would submit that, evidence of child witness is tutored one. That, there are contradictions in the testimony of husband, wife and daughter. That, there was no

intention to commit murder, and therefore, charge of section 307 of IPC is misplaced. According to him, learned trial Court did not consider the evidence in its correct perspective and also failed to appreciate the settled law and erred in recording conviction and hence, for above reasons, he seeks interference.

On behalf of Respondents :

4. Learned APP as well as for learned counsel for victim, have supported the judgment and order of conviction and the reasons given by the learned Sessions Judge while recording the conviction.

EVIDENCE BEFORE TRIAL COURT

5. **PW1** Mangaldas, husband of informant, deposed that, his wife and daughter had been to answer call of nature. His minor daughter came home running, weeping and in injured condition and informed about assault on her mother as well as on her by means of knife by accused. Therefore, he rushed to the spot and shifted her to the hospital. According to him, accused had initially approached him to ask the lady with him to take her case back, or else she would kill her. In that grudge, his wife was assaulted.

While under cross, he admitted that, he had not personally seen the incident and being a Police Patil, he has taken note of every incident of the village. He volunteered that, he had

intimated to Mr. Mhetre, P.I. on phone. Omission is brought about knife lying on the ground in two pieces and he admitted to not reporting incident in previous meeting with accused at Soygaon.

6. **PW2** Savita, an injured and wife of PW1 stated that, on 26.12.2019, there was beating in the office and at that time, her husband was with her. That time, accused approached her and asked one Rani to take back the complaint. Upon which, she told him that case is filed in the Court and that accused issued life threats. She further deposed that, the accused also told her that he has murdered two ladies on first date and he will murder and abscond after attending the date of the Court. On 01.01.2020, while she and her daughter went to answer call of nature, accused came from the cotton field, stabbed her in abdomen as well as her thigh by means of knife, as a result of which, she fell. Then accused stabbed on the naval part. When her daughter, who was crying and saying not to assault, accused assaulted her with knife to the right hand and so her daughter ran, who informed her husband. She caught one leg of the accused, but he managed to flee himself. She admitted that, she was admitted in Ghati Hospital and that her statement was recorded.

While under cross, she admitted acquaintance with accused and his parent prior to incidence and no personal grudge with accused. Omission is brought about accused saying that he

would murder Rani on first date. She admitted that, at the time of incident, it was dark. She admitted that, her thumb is obtained.

7. **PW3**, child witness, deposed at Exh.43 that, incident took place on 01.01.2020 at 7:30 p.m., when she accompanied her mother to answer call of nature, that time, initially one motorcycle came and so her mother stood up. While they were near the water tank, a person wearing black clothes came towards them, they started shouting loudly and stabbed her mother with knife in stomach and also on her hand, as a result of which, blood was oozing and she ran away. On the way, she met her uncle Anil Jadhav. She informed him and thereafter he also ran towards her mother and she ran to inform her father at the house. She identified accused in the Court.

While under cross, she answered that they had left house 7:15 to 7:30 p.m. She answered that she had not seen the number and colour of motorcycle and she was knowing the accused prior to the incident.

Again in cross, she answered that, her mother was stabbed near naval of stomach and her right hand. Rest is all denial.

8. **PW4** Devanand is the panch to the seizure panchanama of the clothes of victim.

9. **PW5** Anil is an independent witness, who deposed at Exh.48, that on 01.01.2020, around 7: 30, while he was in front of his house, daughter of Police Patil Akanksha came and informed about commotions. Hearing commotion of his daughter, her father also came. That the child was terrified and had an injury on the hand and she told that one person from the village stabbed her mother in the stomach by knife, and therefore, they rushed towards the water tank and found Savitabai lying on the ground stained with blood and found that she was stabbed by knife in the stomach and the hand, and therefore taken to the hospital.

Above witness in cross admitted that, he has participated in village politics. He denied not knowing hands of mother were stained with blood. He answered that, he along with his brother went towards the water tank and admitted that he knew accused. He also answered that he had seen knife on the spot and he volunteered that it was broken in two parts.

10. **PW6** Dr. Ingale is the medical expert, who examined Savita and he narrated the injuries noted by him, which are 4 to 5 stab wounds. He identified certificate at Exh.50. He deposed that injuries are grievous and that condition of patient was critical. He further stated that, if the patient was not given timely medical aid, the patient could have died.

In cross he denied that such injuries are possible on account of fall.

11. **PW7** More and **PW8** Mankar, are the panchas to seizure of knife and seizure of clothes of accused, respectively. **PW9** API Shirsath is the Investigating Officer and **PW10** Dr. Ghorpade is the doctor at Rural Hospital to whom both Savita and the child Akanksha brought in injured condition and he further referred them to further treatment. He also described the nature of injuries noticed by him.

ANALYSIS

12. On complete re-appreciation of evidence, here, there is injured witness account of both **PW2** Savita and **PW3** her minor daughter, who is the child witness. They both deposed about they being assaulted around 7:30 p.m, when they had been to answer call of nature. **PW2** Savita has stated that, the accused, in the previous incident in question, had approached her to give understanding to one Rani to take back a complaint and she deposed about receiving life threats. Her husband **PW1** was party to the said incident. Though cross examined, witness **PW2** has stated about accused assaulting her in the stomach by means of knife and the knife breaking in two pieces. Her testimony about actual assault by accused has remained intact. Her evidence finds support from her own daughter **PW3** a child.

13. As regard to child witness is concerned, learned counsel for appellant submitted that she was tutored and there is false implication in the backdrop of previous enmity. Therefore, it is incumbent upon this Court to deal with settled legal position while appreciating child witness account to ascertain its trustworthiness and credibility.

There are umpteen judgments on the credibility and evidentiary value of child witness, which we propose to state as under :-

In ***Mangoo and another v. State of Madhya Pradesh***, AIR 1995 SC 959, the Hon'ble Apex Court while dealing with the evidence of a child witness observed that;

“There was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The Court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring.”

In the case of ***Dattu Ramrao Sakhare v. State of Maharashtra***, 1997 (5) SCC 341, Hon'ble Apex Court held that;

“A child witness if found competent to depose to the facts and reliable on such evidence could be the basis of conviction. In

other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.”

In ***Ratansinh Dalsukhabhai Nayak v. State of Gujarat***, (2004) 1 SCC 64, the Hon’ble Apex Court held that;

“Child witness – evidence of – conviction on the basis of – held, permissible if such witness is found to be competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same.”

The Hon’ble Apex Court in the case of ***Gagan Kanojia and another v. State of Punjab***, (2006) 13 SCC 516 has ruled that,

“Part of statement of child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence.”

In ***Nivrutti Pandurang Kokate and ors. v. State of Maharashtra***, AIR 2008 SC 1460, the Hon’ble Court dealing with the child witness has observed as under:

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

In a celebrated case of ***Hari Om v. State of U.P.***, (2021) 4 SCC 345, very recently the Hon’ble Apex Court, in para 22 of this judgment, has spelt out legal principles, summarized the evidentiary value of child witness, effects of its discrepancies, and duty of court and corroboration when to be insisted upon, which we borrow and quote here:

“22. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is require to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base

conviction by accepting the statement of the child witness. If the child witness is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. The evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law.”

14. Here, keeping the above settled legal position in mind and on close scrutiny of evidence of PW3 a child witness, this Court is of the considered opinion that story of the child witness inspires confidence. She is star witness, as she was in the company of her

mother, who is victim of assault. She has narrated that, she had accompanied her mother to answer call of nature. She had narrated about arrival of accused from cotton field and assaulted her mother. She had also suffered injury, and as such, she is also an injured witness. The manner of cross even this witness like that of her mother shows that there is no serious challenge to the occurrence. There is nothing adverse to disbelieve her testimony.

15. Apart from the injured witness account, though there is father's evidence and admittedly though he has hearsay information, he and PW5 Anil had both rushed to the scene of occurrence on hearing the commotion and learning from the daughter. Both of them saw the injured PW2 lying with injuries on the ground. Witnesses are already admitting their acquaintance with accused. Child witness had also identified in the Court, and therefore, there is convincing evidence in the form of testimony of PW2 Savita and PW3 daughter, which is consistent and finding corroboration from PW1 Mangaldas and PW5 Anil.

16. Here, prosecution has examined two medical experts as PW6 Dr. Ingale and PW10 Dr. Ghorpade. PW10 Dr. Ghorpade was the first doctor, who was posted at Rural Hospital and had occasion to examine injured. PW6 Dr. Ingale, who has examined and treated injured, has deposed about nature and extent of injuries. Apart from

issuing certificate, said medical expert has categorically stated in examination-in-chief that, if injured PW2 had not received timely medial aid, it would have turned out to be fatal. Therefore, attempt to commit murder has been brought home by the prosecution. There is injury to the victim daughter, and therefore, both charges of 307 and 324 of IPC are proved by prosecution beyond reasonable doubt. No perversity has been pointed out in the judgment and the reasons arrived at. No case being made out on merits, I proceed to pass the following order :-

ORDER

(i) The criminal appeal stands dismissed.

(ii) Fees of learned Advocate, who is appointed to represent cause of respondent no.2 is to be paid by the High Court Legal Services Sub-Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)