IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 326 OF 2022

APPELLANT : Arvind S/o Kanjibhai Rajpopat,
Aged about 40 years, Occu. Labourer,
R/o Juni Kamptee Road, Vajpayee Nagar,
Kalamna, Dist. Nagpur.

VERSUS

RESPONDENT : State of Maharashtra,
through Police Station Officer,
Police Station, Kalamna, Dist. Nagpur.

Mr. R. Siddharth, Advocate appointed for the appellant.
Mrs. S. V. Kolhe, A. P. P. for the respondent /State.

CORAM : G. A. SANAP, J.
DATED : SEPTEMBER 09, 2024.

ORAL JUDGMENT

1. In this appeal, challenge is to the judgment and order dated 30.03.2022, passed by learned Additional Sessions Judge-6, Nagpur, whereby the learned Judge convicted the accused for the offences punishable under Sections 307 and 201 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 5 (five) years and to pay fine of Rs.3,000/- (Rupees three thousand only) and in default to suffer further SI for 6 (six) months ; and to suffer rigorous

imprisonment for one year, respectively.

2. BACKGROUND FACTS

A crime was registered on the basis of the statement of PW2 Sneha Ashutosh Thete, who is the sister-in-law of injured Bhavna Arvind Rajpopat (PW3). The case of the prosecution, which can be gathered from the first information report (Exh.10) is that injured Bhavana (PW3), prior to her marriage with the appellant, was married with one Dharampal Goyal, resident of Bhopal, in 2005. Her daughter Unnati was begotten from the said wedlock. After the birth of daughter Unnati, divorce took place between Bhavna (PW3) (referred to as injured) and her first husband. The injured was married with the appellant. The appellant is a resident of Bhavnagar in the State of Gujarat. After marriage, the injured went with her daughter Unnati to stay with the appellant at Bhavnagar. From the said wedlock, one son Nirbhay was begotten to the injured. The appellant was jobless. They were having financial problems and difficulties. Besides, the appellant was addicted to gambling. On account of this, discord developed in their married life. The injured, along with her two children, returned back to Nagpur and started residing with her mother. The appellant also followed her and started residing at Nagpur. After few days, the appellant made his separate arrangement for residence at Nagpur. He got engaged himself as a street vendor for his livelihood. The injured was residing with her mother. The

appellant would frequently visit the residence of the injured to meet his son Nirbhay. It is stated that on the fateful day i.e. 05.12.2020 at about 4.30 p.m., the appellant came to the house of the injured and carried Nirbhay with him. He gave him chocolates and spent some time with him. Thereafter, the appellant dropped Nirbhay at the house of the injured and went away. The appellant returned after a few minutes and insisted to meet his son Nirbhay. The daughter of the injured, namely Unnati, told him that Nirbhay was sleeping. Unnati informed the appellant that Nirbhay would come out of the house and then he should meet him. At that time, there was exchange of harsh words between Unnati and the appellant. The appellant told Unnati that she should not intervene in the dispute between him and the injured, as she was totally stranger to their family. The appellant slapped Unnati twice.

3. The injured (PW3), after hearing the altercation, came out of the house and tried to bolt the gate. It is stated that at this very moment, the appellant assaulted the injured with a pointed weapon. He inflicted the blows with the weapon on her stomach, shoulder, back, legs and chest. The injured made hue and cry. The sister-in-law of the injured, by name Sneha (PW2), came out of the house and saw that the appellant was assaulting the injured. PW2 questioned the accused as to why he was assaulting the injured, on which the accused threatened her to get away from the spot, otherwise he would kill her as well. Thes injured (PW3) sustained multiple bleeding

injuries and she became unconscious. The appellant fled from the spot. After hearing the hue and cry made by Sneha (PW2), the neighbours Kishor Wankhede and Shubham Pansare came to the spot. They took the injured to Mayo Hospital, Nagpur for treatment. She was admitted in the hospital. PW2 was with the injured. On receipt of the information, police came to the hospital and recorded the statement of Sneha (PW2) in the hospital.

4. On the basis of the statement of PW2, a crime bearing No. 904/2020 was registered at Police Station, Kalamna, Nagpur. The investigation was conducted by API Rahul Sawant (PW8). Police Head Constable Dhanarkar went to the spot and drew the spot panchanama on the same day. PW8 again visited the spot on the next day. PHC Rewatkar recorded the statement of the injured. The clothes of the injured were seized under seizure panchanama. On 13.12.2020, the accused was arrested from Gujarat. On the basis of his discovery statement, the knife used in the assault was discovered. The Investigating Officer (PW8) forwarded the samples and articles to the Chemical Analyser for analysis. On completion of investigation, charge-sheet was filed against the appellant.

5. Learned Additional Sessions Judge framed the charge (Exh. 5) against the appellant/accused. The accused pleaded not guilty. It is the defence of the appellant/accused that the injured was not ready to cohabit

with him. She was residing with her mother. On the date of the incident, when the appellant went to the house of the injured, her daughter Unnati insulted him. There was altercation between him and Unnati. The injured came out with a kitchen knife and assaulted him with the knife. It is his defence that the injured tried to inflict the blow on his private part, but he saved himself. He tried to overpower the injured. It is his defence that in the scuffle, the injured sustained injuries. The prosecution, in order to prove the charge against the accused, has examined 8 (eight) witnesses. The learned Judge, on consideration of the evidence, convicted and sentenced the appellant as above. The appellant is before this Court in appeal against the said judgment and order.

6. I have heard Mr. R. Siddharth, learned advocate appointed to represent the appellant and Mrs. S.V. Kolhe, learned Additional Public Prosecutor for the respondent/State. Perused the record and proceedings.

7. Mr. Siddharth, learned advocate submitted that one injury was found on the thigh of the appellant at the time of his medical examination. The prosecution has not explained this injury. Failure to explain the injury goes to the root of the case. On account of failure to explain the injury, the very genesis of the crime has not been proved. Learned advocate further submitted that there was delay in lodging the report. The delay has not been

properly explained and as such, it is vital to the case of the prosecution. Learned advocate further submitted that the defence of the accused is probable and as such deserves acceptance. The injuries sustained by the injured were self-inflicted injuries. It is further submitted that the aggressor in the assault was the injured. The appellant had acted in exercise of his right to private defence of his body. Learned advocate further submitted that a panch witness (PW1) has admitted that on the date of drawing the spot panchanama i.e. 05.12.2020 itself, a knife was recovered by the police from the spot. It is submitted that therefore, the case of the prosecution that the knife was discovered at the instance of the appellant after arrest, is totally unbelievable. Learned advocate submitted that the C.A. report does not extend any support to the case of the prosecution inasmuch as the blood group of the injured as well as blood group of the appellant is "O". The samples were not sent for DNA analysis. Learned advocate submitted that the investigation is faulty and therefore, the accused is entitled to the benefit of doubt.

8. Mrs. S.V. Kolhe, learned Additional Public Prosecutor submitted that the admission given by the panch witness (PW1) in his cross-examination with regard to the recovery of knife from the spot on 05.12.2020, was under complete misconception. Learned APP submitted that the prosecution, by leading cogent and concrete evidence, has proved

that after arrest of the accused on 13.12.2020, he made disclosure statement and expressed his willingness to point out the place where he had concealed his clothes and the knife. Learned APP submitted that the evidence adduced by the prosecution to prove this fact, if considered in juxtaposition with the admission given by PW1 in his cross-examination under misconception, would show that there was no substance in the submission made on behalf of the appellant. Learned APP pointed out that the appellant has admitted the medical certificate. The appellant has, therefore, not denied the injuries sustained by the injured. Learned APP submitted that the evidence of the injured (PW3) has been corroborated by PW2 Sneha and the independent witness PW7, who were instrumental in carrying the injured to the hospital. Learned APP submitted that on the basis of the evidence, the prosecution has proved that the appellant, with an intention to kill the injured, inflicted merciless blows with the knife, which has been proved to be a dangerous weapon. Learned APP submitted that the defence of right to private defence of the appellant was rightly rejected by the learned Judge. Learned APP, in short, supported the judgment and order passed by the learned Additional Sessions Judge.

9. The prosecution has examined the Medical Officer Dr. Akmal Raja (PW4), who had examined the victim on 05.12.2020 when she was admitted in Mayo Hospital. The injury certificate is at Exh.15. He has stated

that the injuries on the body of the injured were recorded in injury certificate. PW4 noticed following injuries on the vital parts of the body of the injured.

i] Stab wound over ant. abdominal wall epigastic region of size 4.5 cm x 4 cm approximately, stomach coming out of wound.
ii] Stab wound over left side of post chest wall of approx. 4 cm x 2 cm x pleural deep.
iii] Stab wound over ant. chest wall one in right second ICS 1.5 cm from midline of size 1.5 x 1 cm x 0.5 cm and one in left 6th ICS 2 cm from midline.
iv] Stab wound over lateral aspect of left side of gluteal region of size 3 x 1 x 4 cm.
v] Stab wound over right hip lateral 5 cm, lateral to anterior superior iliac spine of size 2 x 1 x 1 cm.

10. It is evident that the Medical Officer (PW4) in his report has stated that out of five injuries, four injuries were grievous in nature. Injury no.1 was on the abdomen of the injured. On account of this injury, the stomach portion had come out of the wound. Injury no.1 was 4.5 cm x 4 cm deep. The length of the blade of the knife is 13.5 cm. The remaining injuries were also deep stab injuries. Injury no.2 was on the chest wall of the injured. Injury no.3 was on the ant. chest wall of the injured. Injury no.4 was on lateral aspect of left side of gluteal region. Injury no.5 was over right hip of the injured. The appellant has admitted the injury certificate. After recovery of the knife, a requisition was sent to the Doctor with the weapon with multiple queries. The query report is at Exh.17. PW4 has stated that the injuries sustained by the injured could be possible by the said weapon. It is necessary to mention that the blood was found on the knife when it was

recovered at the instance of the appellant. The knife was sent to the Regional Forensic Science Laboratory (RFSL), Nagpur. The CA report is on record. The CA has opined that the blood of "O" group was detected on the knife.

11. In the backdrop of the above, the oral evidence adduced by the prosecution to prove the charge is required to be carefully scrutinized. It is undisputed that one injury was found on the thigh of the accused. The question is whether failure on the part of the prosecution to explain this injury on the person of the accused, would be fatal to the case of the prosecution and would inure to the benefit of the accused. Perusal of the evidence on record as well as the defence of the accused would show that there is hardly any dispute about occurrence of the incident. It is the defence of the accused that the injured inflicted the blow on him with the kitchen knife with an intention to cause injury to his private part. However, he tried to save himself and in that process, he sustained injury to his thigh. It is the case of the prosecution that the appellant, on being questioned by Unnati, the daughter of the injured, in connection with his insistence to meet his son, the quarrel took place between them. It is stated that the injured was not allowing the appellant to meet his son Nirbhay. It is the case of the prosecution that the accused wanted custody of the son, but the injured did not allow him to take custody of the son and therefore, the accused was fed up. According to the prosecution, this was the motive for the merciless attack

on the injured with the knife with an intention to kill her and take away the son.

12. Learned advocate submitted that if it is assumed for the sake of argument that the incident narrated by the injured and other witnesses had occurred and in the said incident, the injured sustained injuries, the evidence on record is not sufficient to prove that the appellant intended to kill the injured. In the submission of the learned advocate for the appellant, the offence made out on the basis of the available evidence would be under Section 324 of the IPC. In order to address this submission, it would be necessary to see the evidence. PW3 Bhavna, the injured, has deposed that on 05.12.2020 at about 4.30 p.m., the appellant came to her house and questioned her daughter about son Nirbhay. The appellant took Nirbhay to spend some time with him. He offered him chocolates and dropped Nirbhay back to her house. She has stated that after some time, the appellant came back and made an inquiry about Nirbhay. The accused questioned Unnati about Nirbhay and hearing the arrogant answer given by Unnati, he slapped her. She has stated that after hearing this altercation, she came out of the house and went to bolt the gate. She has stated that at that time, all of a sudden, the appellant mounted assault with a weapon on her. He inflicted blows on her stomach, shoulder, back, legs and chest. It has come on record that after hearing the hue and cry made by the injured, the sister-in-law of the

injured came out of the house and witnessed the incident. She tried to intervene, however, the accused threatened to kill her as well. The evidence on record would show that after sustaining multiple stab injuries, the injured started profusely bleeding. She fell down. Evidence of PW2 Sneha is consistent with the evidence of the injured. The evidence of PW2 corroborates the occurrence of the incident, presence of the appellant on the spot and the injuries sustained by the injured. It has come on record in the evidence of PW2 that after sustaining the bleeding injuries, the injured became unconscious. The neighbours Kishor and Shubham came to the spot and carried the injured to the Mayo Hospital. The injured was admitted in the hospital for 17 days. The statement of PW2 was recorded when she was in the hospital with the injured.

13. PW7 Shubham, who had accompanied the victim to the hospital, has deposed that on 05.12.2020 at about 3.30 p.m., the incident occurred. At that time he was taking rest in his house. He has stated that he heard the hue and cry made by one lady. He went there and found that the injured was lying on the spot in a pool of blood. They tried to stop the auto-rikshaw, however, it was of no use. Therefore, he brought his car and took the injured to the hospital. The evidence of this independent witness is sufficient to corroborate the evidence of the injured (PW3) as well as Sneha (PW2). Perusal of the evidence this witness would show that she has not

tried to exaggerate the incident in any manner. On the basis of the evidence of the Medical Officer (PW4), the multiple injuries sustained by the injured have been proved. The incident and the involvement of the accused has been proved on the basis of the evidence of PW3 injured, PW2 Sneha and PW7 Shubham. Their evidence is corroborated by the evidence of the Medical Officer. In my view, this evidence is sufficient to prove the incident and the involvement of the accused in the incident.

14. The next important question is whether the intention of the accused was to kill the injured or not ?. It is to be noted that the intention and motive is always locked in the mind of the accused. The direct and circumstantial evidence is the key to unlock the intention and motive of the accused. In this case, there was matrimonial discord between the injured and the appellant. The injured had left the house of the accused from Bhavnagar (Gujarat) and settled at Nagpur with her mother. The appellant also followed her and started residing separately at Nagpur. There was dispute between them on account of the visits of the appellant to the house of the injured to meet Nirbhay. It has come on record that the appellant wanted the custody of the son, but the injured was not willing to part with the custody of the son. The record shows that the appellant was fed up with this. It has come on record in the evidence that the appellant was addicted to gambling. It is evident that the ship of their marriage was sailing through a rough

weather. The appellant was desperate to get the custody of the son or frequently meet the son. The injured did not want to join the company of the appellant as well as she did not like the frequent visits and trouble to them at the behest of the appellant. It is, therefore, apparent that the appellant out of this frustration, mounted the assault on the injured. All these facts have a bearing with the intention or knowledge of the appellant. The question is whether the intention of the appellant was to kill the injured or not ? It is to be noted that the proof of intention or knowledge is a necessary, rather essential, pre-condition to convict the accused under Section 307 of the IPC. The intention or knowledge of the accused can be ascertained from the facts and circumstances. Under Section 307 of the IPC, what the Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. The intention is to be gathered from all the circumstances and not merely from the consequences that ensue. The prime factors to be considered to determine the intention or knowledge are the nature of the weapon used, manner in which it is used, the motive for the crime, severity of the blow, the part of the body where the injury was inflicted etc. It needs to be stated at this stage that the intention is the state of mind. There cannot be any straight jacket formula or a hard and fast rule to determine the intention of the accused in the commission of a crime. The

above factors coupled with the evidence are to be used as guiding factors for ascertaining the intention of the accused.

15. Coming back to the case on hand, it is evident that the appellant inflicted merciless blows on the vital parts of the body of the injured. Even as per the defence of the appellant, the injured did not prevent him from meeting his son on the date of the incident. The quarrel had ensued between the appellant and the daughter of the injured, by name Unnati. The appellant did not assault Unnati with the said weapon. In my view, this is the vital fact to reflect upon the intention of the appellant. The appellant had come there prepared. He came there with the weapon. The knife, which was recovered at the instance of the appellant, is a dangerous weapon. Injury No.1 sustained by the injured on her stomach was a deep injury. The stomach part had come out of the wound. The injured was shifted to the hospital without wasting any time and therefore, her life was saved. The appellant mounted merciless attack with dangerous weapon on the injured. He inflicted multiple injuries on the vital parts of the body. The quarrel ensued with Unnati was on a trifle issue. Even if the appellant was enraged by the conduct of Unnati, he would not have, all of a sudden, mounted the assault of this kind on the injured, who admittedly had not provoked or enraged the appellant in any manner. The appellant, as can be seen from the record, had come with preparation. On account of a trifle

nature of quarrel with Unnati, the appellant, in ordinary circumstances, would have slapped Unnati or the injured. In my view, this reflects upon the intention of the appellant. It is further seen that after the incident of assault, the appellant fled from the spot leaving the injured on the spot. She was lying in a pool of blood when she was shifted from the spot to the hospital. The evidence on record shows that the assault was premeditated. The weapon used is a dangerous weapon. The injuries inflicted were on vital parts of the body. The nature of injury indicates that the appellant inflicted forceful blows on the injured. In my view, the intention can be gathered from the evidence and all the above stated facts. If all these facts are considered cumulatively, the same would show that the appellant wanted to eliminate the injured. The injured, as can be seen from the record, was not willing to part with the custody of the son. In that way, the injured was thorn in the flesh of the appellant. The accused wanted to remove this hurdle by eliminating the injured. In my view, therefore, the evidence on record is sufficient to prove the intention of the appellant

16. It is seen that PW1, a panch witness, in his cross-examination has stated that at the time of drawing the spot panchanama, the knife lying on the spot was seized by the police on the same day of the incident. It is submitted by the learned APP that this admission was given under misconception. The fact of seizure of the knife from the spot is not recorded

in the panchanama. Similarly, in his examination-in-chief, he did not state that the knife was recovered from the spot. It is to be noted that the police had no reason to conceal this fact. The panchanama was drawn within 4-5 hours of the occurrence of the incident. Perusal of the panchanama would show that the blood was found by the police on the spot. This fact has been recored in the panchanama. In this context, it is necessary to see the evidence of the panch witness, in whose presence the appellant made the disclosure statement. He is PW5 Bhavesh Kshirsagar. He has stated that on 14.12.2020, he was called by the police to Kalamna police station. He has stated that at that time Sawant saheb, the accused, two constables and one Hardik Shaikh were present. He has stated that police told him that the appellant wanted to make a statement and they should hear the same. He has stated that the appellant told his name to them and made a disclosure statement that he had concealed the clothes and the knife at some place and he would point out the same. He has stated that the appellant took them near one *nala* and pointed out that at the said place he had thrown his clothes. Police took search of *nala* in the presence of the panchas, but the clothes were not found. PW5 has further stated that the appellant took them to an open plot near a well. He has stated that the appellant pointed out a place near the well where he had concealed the knife. He took out a knife in their presence. He has further stated that the knife was stained with blood. In his evidence, he has narrated the description of the knife. This witness was

cross-examined. He has denied almost all the suggestions put to him. Perusal of his evidence would show that it is not a concocted version. If a witness makes a statement on the basis of tutoring or with his sheer imagination, then he is bound to miss the sequence. Similarly, he can be caught in the cross-examination. Perusal of his evidence would show that there is no material to suggest that he is unreliable and the account of the events narrated by him is on the basis of tutoring or on the basis of sheer imagination. The solitary admission of PW1, therefore, has been sufficiently explained. The blood was found on the knife. This fact has been corroborated by the CA report. This evidence is also sufficient.

17. Learned advocate for the appellant, relying upon the decision of the Hon'ble Apex Court in ***Lakshmi Singh and others .vs. State of Bihar,*** reported at ***(1976) 4 SCC 394***, submitted that failure to explain the injury on the person of the accused is sufficient to probabalise the defence of the appellant. It is true that the prosecution has not adduced any evidence to explain the injury on the person of the appellant. In ***Laxmi Singh's*** case (*supra*), the Hon'ble Apex Court has held that non-explanation of the injuries sustained by the accused at the time of occurrence or in the course of altercation is very important circumstance from which the Court can draw the following inferences :

(1) that the prosecution has suppressed the genesis and the

origin of the occurrence and has thus not presented the true version ;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable ;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

It is held that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. The Hon'ble Apex Court in this case has also held that there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principal would obviously apply to the cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

18. In my view, in the case on hand, the evidence is cogent and concrete. PW3 is the injured witness. PW7 is an independent witness. The injured (PW3) and the informant (PW2) did not hide anything from the Court. The prosecution was, therefore, required to explain the injury on the thigh of the appellant. However, the cogent and concrete evidence, in my

view, would outweigh the effect of the omission on the part of the prosecution to explain the injury.

19. In the above background, I conclude that the prosecution has proved the charge against the appellant beyond reasonable doubt. The evidence is cogent, concrete and reliable. The evidence, despite having been subjected to the scrutiny in the cross-examination, has not been shaken. The evidence is credible and trustworthy. The oral evidence has been corroborated by the medical certificate. The evidence on record is not sufficient to accept the defence of the accused, including his defence of right of private defence. Therefore, as far as the conviction is concerned, no interference is warranted.

20. Learned advocate for the appellant submitted that the offence was committed by the appellant under frustration. Learned advocate submitted that during the period of imprisonment, the appellant must have reflected on his conduct. It is submitted that the accused might have repented over the mistake committed by him. He is a family man. He can very well mend his ways and join the company of the wife. They can lead happy family life. Learned advocate submitted that considering the circumstances prevailing on the date of the crime, the sentence already undergone by the appellant, would be a sufficient sentence. Learned APP

submitted that considering the gravity of the offence, the appellant does not deserve any leniency. Learned APP submitted that the submissions advanced by the learned advocate for the appellant that the appellant might have repented or have remorse over the brutal act committed by him, is an assumption of the learned advocate. I have given thoughtful consideration to the submissions. The substantive sentence awarded under Section 307 of the IPC by the learned Judge is five years imprisonment. The accused has undergone the sentence of 2½ years. In my view, therefore, the imprisonment undergone by the appellant would be sufficient to meet the ends of justice.

21. Before parting with the matter, it is necessary to place on record the appreciation of the Court for the valuable assistance rendered to the Court by learned advocate Mr. R. Siddharth, appointed to represent the appellant.

22. Accordingly, the Criminal Appeal is partly allowed.

i] The judgment and order of conviction and sentence, passed against the appellant by learned Additional Sessions Judge-6, Nagpur, dated 30.03.2022 in Sessions Trial No. 298/2021, is modified.

ii] The conviction of the appellant for the offences punishable under Sections 307 and 201 of the Indian Penal Code, is maintained.

The sentence awarded to the appellant is modified.

iii] Appellant – Arvind S/o Kanjibhai Rajpopat is sentenced to undergo the imprisonment, which he has already undergone. As far as the sentence of fine is concerned, it is maintained. However, the sentence in default of payment of fine is modified. The appellant shall undergo simple imprisonment for one month in default of payment of fine.

iv] Mr. R. Siddharth, learned advocate, appointed to represent the appellant, is entitled to receive the fees. The High Court Legal Services Sub Committee, Nagpur shall pay the fees to the learned appointed advocate, as per the rules.

v] The appeal stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Diwale