
(2017) 06 BOM CK 0201
In the Bombay High Court
Case No : 784 of 2015

Bhimsinh s/o Amarsingh Thakur

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-06-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 324](#),
[Section 307](#), [Section 326](#), [Section 506](#), [Section 320](#) - Voluntarily
causing hurt by dangerous

Citation : (2017) 06 BOM CK 0201

Hon'ble Judges : V.L. Achliya

Bench : SINGLE BENCH

Advocate : Shinde Ashish B., G.O. Wattamwar

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order dated 01.01.2015 passed in Sessions Case No.66/2014 by the Sessions Judge, Nanded whereby, the appellant has been held guilty of the offence punishable under Section 307 of IPC and sentenced to suffer R.I. for 10 years and to pay a fine of Rs.1000/. Being aggrieved, the appellant has preferred this appeal.

2. Before advertng to appreciate submissions advanced, it is necessary to consider few facts leading to prosecution of the appellant and filing of appeal. The appellant was subjected to trial to face charge under Section 307, 506 of IPC and section 4 r.w. Section 25 of the Arms Act.

3. On 20.03.2014, Ashabai Harichandra Telang - complainant (P.W.3) visited the Police Station, Air Port, Nanded and reported that at about 19.30 Hrs. while she was present in her house, she heard shouts outside her house. She, therefore, came out of house to see as what happened. She saw the appellant - accused standing in front of house of Savitri Kadam (P.W.2) - the injured. Accused was telling her that he wants to marry with her daughter Archana Kadam (P.W.5). He

was quarreling and harassing Archana. When Savitri (P.W.2) asked the accused not to touch her daughter Archana, the accused assaulted Savitri over right side of her chest with the help of sword in his hand and caused bleeding injury. When she tried to intervene and save Savitri, the accused caught her arm and pushed her. He left the place by giving threat to see all of them. It is further stated that accused ran away from the spot. She further informed that she along with other persons brought injured Savitri to Vithai Hospital. On the basis of the complaint lodged by Ashabai Telang (P.W.3), offence punishable under sections 307, 506 of IPC and Section 4 r.w. Section 25 of the Arms Act came to be registered as against the accused. Suryakant Jagdale (P.W.10) Police Inspector attached to Police Station Airport conducted the investigation. He visited the spot of incident and made panchanama and collected the plain earth and earth mixed with blood from the spot and also obtained the scrapping of the blood stains from the wall of staircase and surrounding area where the incident occurred. He also obtained scrapping of blood which was found on the door. He seized clothes of Savitri soaked with blood. He arrested the accused and secured his remand. During the custody, accused made voluntary disclosure to show the place where he concealed the sword used in commission of offence. He recorded memorandum statement of accused in presence of panchas and later on, seized the sword used in the commission of offence, which was found to be concealed in the bushes in Shahunagar locality. He recorded statements of the witnesses which include Rani Hardipsingh Maire (P.W.4). Further investigation was conducted by Sanjay Pise (P.W.9). He recorded statements of witnesses which include Savitribai Sambhaji Kadam (P.W.2), Shivkanta Sambhaji Kadam and Archana Sambhaji Kadam (P.W.5). He forwarded Muddemaal property to Chemical Analyzer. On conclusion of investigation, he filed chargesheet against the accused.

4. In order to prove its case, prosecution has examined ten witnesses and further proved certain documents. The accused has not entered into defence. The defence of the accused appears to be of total denial and false implication at the instance of Savitribai and her daughter Archana. On conclusion of trial, learned Sessions Judge, Nanded has found the accused guilty of offence punishable under Section 307 of IPC and awarded sentence as stated above. Being aggrieved, appellant has preferred this appeal.

5. I have heard the submissions advanced by Mr.A.B. Shinde, learned Counsel appearing for the appellant and the learned APP appearing for the respondent State and, further perused record and proceedings.

6. Learned Counsel for the appellant assailed the impugned judgment and order passed by the trial Court with contention that there is no cogent, convincing and reliable evidence to sustain the conviction. He submits that the conviction is wholly based upon testimony of interested witness Savitribai (P.W.2) the injured and her daughter Archana (P.W.5). The independent witnesses which include Ashabai (P.W.3) complainant, have not supported the case of prosecution and declared hostile. Savitribai was against marriage of appellant - accused with her

daughter Archana and carrying grudge against the appellant. He further submits that Archana has deposed at the instance of her mother - Savitri. In this background, it is contended that in absence of corroboration to the testimony of Savitribai through independent witness, conviction is not sustainable in law and liable to be set aside.

7. He further submits that no offence punishable under Section 307 of IPC is made out against the accused. By referring the injury certificate (Exh.39), the learned Counsel submits that as per injury certificate, the injury caused to Savitribai (P.W.2) found to be simple in nature. He, therefore, submits that in the facts and circumstances of the case and evidence on record, the conviction of appellant for the offence punishable under Section 307 of IPC is not justified.

8. By referring the overall evidence, learned Counsel submits that no inference can be drawn that accused had attempted to kill Savitribai (P.W.2). It is pointed out that Archana (P.W.5) has deposed that accused was trying to assault her. In order to protect her from accused, her mother Savitri came in front of her and sustained the injury. He, therefore, submits that by no stretch of imagination it can be said that accused attempted to cause the death of Savitribai. In this background the learned Counsel contended that the act of accused can be termed as voluntarily causing hurt, which may invite penalty for committing offence punishable under Section 324 of IPC.

9. On the other hand, learned APP supported the judgment and order passed by the trial Court and submitted that Savitribai (P.W.2) the injured has sustained grievous hurt caused by means of sword. She was assaulted by accused on the vital part of her body i.e. over chest. The injury caused proved to be grievous in nature. Looking to the nature of the injury and seriousness, the injured was required to be shifted to J.J. Hospital, Mumbai where she was required to undergo extensive treatment for a period of more than one month as an indoor patient. In this background, learned APP submits that the injury caused to injured Savitribai can well be termed as a grievous hurt within the meaning of section 320 of IPC. He further submits that carrying and possessing sword by accused at the time of incident itself reflects that accused went to the house of injured Savitribai with an intention to assault Archana the daughter of Savitribai. He further submits that the evidence of Savitribai (P.W.2) and Archana (P.W.5) inspires full confidence. Nothing is elicited through their cross-examination so as to discard or disbelieve their testimonies. He further submits that the testimony of Savitribai (P.W.2) finds due corroboration from Archana (P.W.5) and other evidence such as seizure of sword, detection of blood as that of the group of injured on the spot as well as the sword used in commission of offence. He submits that the injury certificate as referred and relied upon by the appellant cannot be treated as final opinion given as to nature of injury caused to Savitri (P.W.2). The injury certificate was issued on 19.03.2014 on the basis of preliminary observations made by medical officer without opening the injury and examining the same. The evidence on record shows that the injured had

sustained serious injury over chest. Due to seriousness of injury and complications the injured was sent to J.J. Hospital, Mumai. Only due to timely treatment, the injured was survived. Otherwise, death of injured was eminent on account of injury sustained by her. He submits that the impugned judgment and order is well reasoned and calls for no interference in exercise of appellate jurisdiction.

10. In order to appreciate the submissions advanced, I have perused the record and proceedings and closely scrutinized the oral and documentary evidence adduced by prosecution to prove its case. As discussed, the prosecution has come out with a case that accused intended to marry Archana (P.W.5) daughter of Savitribai (P.W.2). It has been brought on record that accused had affair with Archana. Some time prior to the incident, accused as well as Archana went to Shirdi and stayed there for 2 to 3 days. Savitribai (P.W.2) was against marriage of her daughter with accused. On the day of the incident, accused went to the house of Archana to force her to marry with him. When Savitri (P.W.2) refused to perform marriage of her daughter with the accused, it appears that the accused caught the hands of Archana to forcibly take her away. When Savitri intervened, the accused assaulted her with the help of sword in his hand.

11. In order to establish its case, the prosecution has examined ten witnesses which include Savitribai (P.W.2), Archana (P.W.5). Besides Savitribai (P.W.2), Archana (P.W.5), prosecution has examined Asha (P.W.3) the complainant and eye witness to the incident. However, she has not supported the case of the prosecution and declared hostile. Besides said witnesses, prosecution has examined Rani Hardeepsingh Maire (P.W.4) an independent witness to incident. She has also not supported the case of the prosecution and declared hostile. In order to corroborate the testimony of Savitribai, prosecution has examined Dr.Umesh Kolekar (P.W.6) Medical Officer attached to Vithai Hospital, Nanded and Dr.Dilip Gaware (P.W.8) Medical Officer attached to J.J. Hospital, Mumbai, who examined and treated Savitribai. Besides the said witnesses, prosecution has examined Santosh Tahkur (P.W.1) Panch witness to spot and seizure panchanamas and Police Constable Avadhut Kalne (P.W.7) who carried Muddemaal property to the Forensic Laboratory and Assistant Police Inspector Sanjay Pise (P.W.9) and Police Inspector Suryakant Jagdale (P.W.10), the Investigating Officer. Thus, if we consider the overall evidence as adduced by the prosecution, then the conviction of accused is mainly based upon the testimonies of Savitribai (P.W.2), Archana (P.W.5), Dr.Umesh Kolekar (P.W.6), Dr.Dilip Gaware (P.W.8) and recovery of weapon used in commission of offence at the instance of accused.

12. Savitribai (P.W.2) has testified before the Court as per Exh.22. She has deposed that on 19.3.2014 at 7.30 p.m., when she came out of her house after hearing shouts, she heard accused demanding gold ring from her daughter and telling her to marry with him. Accused also told her that he wants to marry with her daughter Archana, to which she refused. Thereupon, the accused assaulted

her with sword on the upper right side of her chest. She was initially taken to Vithai Hospital, Nanded and later on, shifted to J.J. Hospital, Mumbai and discharged after one month. She identified the sword i.e. Article "A" as the same sword which was used by the accused in assaulting her. She further identified the sari, blouse i.e. Articles "B" and "C" as same clothes, which were on her body at the time of incident and seized by police. She further deposed that at the time of incident, the accused was wearing green Tshirt and identified the Article "D" as same "T" shirt.

13. It has been brought on record through her crossexamination that at the time of incident, there were about 20 - 25 tenants residing in the same building belonging to Asha (P.W.3). She has admitted that her daughter Archana had gone to Shirdi and stayed for 3-4 days and accused had also gone to Shirdi and stayed for 2-3 days. It is further brought on record that before the incident, she had verbally told accused not to chase her daughter, who used to follow her while she was going to school. It is brought on record that at the time of incident, 50 - 60 persons were residing in the building and incident was occurred on the steps of staircase going towards upper floor. It is also brought on record that when she raised shouts the neighbours ran away towards their houses seeing sword in the hand of accused. It is further brought on record that she rushed to room of one of tenants after she was assaulted by accused. Thus, if we consider the testimony of Savitribai (P.W.2), there is nothing to show that she had cooked a false story to falsely implicate the accused. The testimony of witnesses appears to be natural and truthful and same can be safely accepted to form basis to prove guilt of accused even in absence of corroboration.

14. If we consider the testimony of Savitri (P.W.2) in the light of other evidence, then her testimony finds due corroboration from other evidence on record. Archana (P.W.5) has duly corroborated the testimony of Savitri. She has deposed that on 19.3.2014 at about 7.30 p.m., the accused came to her house and demanded gold ring. When she refused to give him gold ring, the accused started quarreling with her. When her mother i.e. Savitri (P.W.2) came out of house, the accused told her that he wants to marry with her. Her mother refused to marry her with accused. She further deposed that her mother wanted the accused not to touch her. She further deposed that accused assaulted her mother with sword on the right side of her chest. On receiving the blow, her mother fell down. There was profuse bleeding from the injury. Her mother was taken to Vithai Hospital and later on shifted to J.J. Hospital, Bombay. Accused left the place by giving threats. She further deposed that her mother remained admitted in J.J. Hospital, Mumbai for one month. She identified the sword article "A" as the same used in the commission of offence i.e. assault on her mother. Through her crossexamination, it is brought on record that accused was quarreling with her and as her mother thought that accused would assault her, her mother Savitri pushed her aside and at that time, her mother sustained blow of sword on her chest.

15. Besides the testimony of Archana (P.W.5) the sole eye witness, there is other evidence in the nature of corroboration to the testimony of Savitribai. Dr.Umesh Kolekar (P.W.6) Physician attached to Vithai Hospital has duly corroborated testimony of Savitri as to injury sustained by her in assault made on her on 19.3.2014. He has categorically deposed that on 19.3.2014, Savitribai (P.W.2) was brought to Vithai hospital with injury on upper right side of her chest. He further deposed that the said injured was referred to Dr.Shrikant Zanwar and later on, to Dr. Gulati as it required surgical intervention. She was kept overnight under observation and later on, advised to take her to Mumbai for expert treatment as major damage found to be caused to the vessels. The testimony of the injured Savitri further finds corroboration through the testimony of Dr. Dilip Gaware, (P.W.8) Medical Officer, attached to J.J. Hospital, Mumbai. He categorically deposed that on 21.03.2014, Savitribai was brought from Nanded to J.J. Hospital with history of assault by sharp object made on 19.3.2014. At the time of admission, she found to have sutured wound approximately 10 cm in length over right side of her chest. She was then referred to Surgical Department for further treatment. She remained admitted as indoor patient w.e.f. 21.03.2014 to 20.04.2014 and treated by Surgery unit headed by Dr.Rushad Udwadiya.

16. Besides oral testimonies of above referred witnesses, there is corroboration to testimony of Savitri (P.W.2) in the form of seizure of clothes, seizure of weapon used in the commission of offence at the instance of accused. The injured as well as eye witness have identified the sword i.e. Article "A" as the same weapon was used in commission of offence. The report of Chemical Analyzer reveals that on the sword, human blood of group "A" was detected. Similarly, on the clothes of injured Savitribai i.e. blouse and sari, human blood of group "A" as that of injured was detected. The blood found on the spot, was also found to be human blood of group "A". Thus, there is ample corroboration to the testimony of Savitribai (P.W.2) as to material facts deposed by her. I have, therefore, no hesitation to observe that the prosecution has proved its case beyond reasonable doubt to prove the complicity of accused in commission of offence of assault on Savitribai (P.W.2).

17. I am not inclined to accept the contention of the learned Counsel for the appellant that in absence of corroboration to the testimony of Savitribai (P.W.2) through independent witness, the accused deserves to be acquitted. In my view, the evidence of Savitribai is such that it requires no corroboration from independent witness. The testimony of Savitribai inspires full confidence. Apart from this, her testimony finds due corroboration from other evidence.

18. In fact, the prosecution had examined two independent witnesses. However, they have not supported the case of the prosecution. Only for the reason that independent witnesses have not supported the testimony of injured, the testimony of Savitri, her testimony cannot be brushed aside. In my view, the testimony of Savitribai and Archana are such that it inspires full confidence and

can be safely accepted without corroboration from independent witness. In this view, the reasons and findings recorded by the trial Court are fully in consonance with the evidence adduced by prosecution as well as based upon due appreciation of evidence. Hence, calls for no interference in exercise of appellate jurisdiction.

19. The next question which poses for consideration is whether the act of the accused can be termed as an attempt to commit murder punishable under Section 307 of IPC.

20. Learned Counsel for the appellant has strenuously contended that the injury caused to Savitri, the injured cannot be termed as an injury, sufficient in ordinary course to cause the death of any person. He submits that as per the report of injury at Exh.39, the injury found on the body of injured Savitribai described as simple injury. He has contended that only for the reason that the injured was lying admitted in the hospital for a period of more than twenty days itself not sufficient to draw conclusion that injury was grievous in nature and may have resulted fatal if it would not have been treated immediately.

21. In my view, no much weightage can be given to the injury report at Exh.39. If we consider report at Exh.39, then the nature of injury described as sutured wound with approximately 10 cm in length on right side of chest caused by sharp weapon. The certificate appears to be given on the basis of superficial examination of the injury. The sutured wound was not opened before issuing certificate. There is ample evidence to show that the injury which was caused to the injured was grievous and serious in nature. If the treatment would not have been provided immediately after the incident to the injured then the injury caused to the injured may have resulted into her death. Dr. Kolekar (P.W.6) has categorically deposed that Dr. Gulati, the Surgeon was called in the hospital as the case was found to be requiring surgical intervention. He deposed that Dr. Gulati shifted the injured into Operation Theater and opened the bandage. After examining the injury, he found that there was major damage to vessels. The services of Vascular Surgeon was not available in Nanded City, therefore, he advised to shift the patient to Mumbai for expert treatment. He further deposed that Savitribai was referred to J.J. Hospital, Mumbai. He has produced on record the Medico Legal Case Papers in respect of treatment given to Savitribai. The papers are at Exh.32. It reveals from the papers produced at Exh.32 that on opening the wound, there was heavy bleeding and it was suspected that there was vascular injury and therefore, the wound was sutured and the patient was referred to Mumbai.

22. Dr. Dilip Gaware, C.M.O. attached to J.J. Hospital (P.W.8), deposed that on 21.3.2014 Savitribai kadam was brought to J.J. Hospital from Nanded. He examined her clinically and found sutured wound over her right side chest. He immediately referred patient for emergency surgical department for further treatment. Thus, the injury certificate produced at Exh.39 which was issued only on the basis of clinical examination is not sufficient to accept the contention that

the injury suffered was simple injury. P.W.8 has deposed that Savitribai remained as indoor patient w.e.f. 21.3.2014 till she was discharged on 20.4.2014. She was under treatment and care of Dr. Rushad Udawadiya, the Head of General Surgery Department. He produced the report of Medico Legal Case in respect of admission and treatment given to injured, which are produced at Exh.38. He has deposed that location of the injury was on vital organ of body of the injured. Thus, the injury caused to the injured Savitribai cannot be termed as a simple injury. The fact that the injured was required to be shifted to Mumbai for treatment itself reflects seriousness of the injury caused to the injured. The period of hospitalization of injured for more than one month has not been undisputed. Thus, the evidence on record sufficiently proves that the injury caused to the injured Savitribai was grievous in nature.

23. In order to term the act of the person as an act amounting to attempt to murder punishable under Section 307 of IPC, it is necessary for the prosecution to establish two ingredients i.e. (a) an intention or knowledge of committing murder; (b) the doing of an act towards it. Thus, the intention or knowledge at the time of incident is very relevant to assess as to whether the accused intended to cause murder of the injured or the intention was confined to inflict an injury. The injury itself is not sufficient to infer the intention of a person. The intention of the accused needs to be gathered on the basis of the facts and circumstances of the case and evidence brought on record.

24. The requisite ingredients of the offence u/s 307 of the Indian Penal Code are as under :

[i] that the death of a human being was attempted;

[ii] that such death was attempted to be caused by, or in consequence of the act of the accused; and

[iii] that such 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 imminently dangerous that it must in all probabilities cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

25. Thus, if we consider the ingredients of offence u/s 307 of the Indian Penal Code, then one of the necessary ingredients of offence is to be established that the accused had acted with intention of causing death or such bodily injury, which the accused knew or likely to know to cause death. Therefore, the nature of injury itself is not significant to draw the conclusion whether the accused acted with intention to cause death. What is important is the intention of accused in inflicting the injury. The intention of a person being locked in his mind, it is

difficult to get any direct evidence to ascertain the intention of person. Such intention is to be inferred on the basis of overall facts of the case and evidence as adduced in the case. The intention to cause death can be gathered generally on the basis of following circumstances :

- [i] Nature of the weapon used ;
- [ii] Whether the weapon was carried out by accused or was picked up from the spot ;
- [iii] whether the blow is made on the vital part of the body ;
- [iv] force applied in causing injury ;
- [v] whether the act was sudden ;
- [vi] whether the incident occurred by chance or whether there was any premeditation;
- [vii] whether there was any prior enmity or the injured was stranger ;
- [viii] whether there was sudden provocation ;
- [ix] whether it was in the heat of passion ;
- [x] whether the person inflicting injury has taken undue advantage or acted in a cruel or unusual manner ;
- [xi] whether the accused dealt single blow or several blows.

26. The circumstances mentioned above are some of the circumstances and the list is not exhaustive. There may be several other special circumstances depends upon the facts and circumstances with reference to particular case which needs to be taken into consideration while drawing inference as to intention of assault.

27. In order to prove the offence punishable u/s 307 of the Indian Penal Code, it is incumbent upon the prosecution to prove that the accused has attempted to cause death of the injured. The word "attempt" referred in section 307 of the Indian Penal Code necessarily refers in a sense as an intentional preparatory action which fails in its object. The intention to cause the death can be gathered from the circumstances. It is not necessary to constitute an offence u/s 307 of the Indian Penal Code, the attack should result in an injury. An attempt is itself sufficient if there is requisite intention. Thus, for the purpose of assessing whether the act committed by the accused amounts to an offence of attempt to commit murder, the Court has to see whether the act irrespective of its results, was done with intention or knowledge and under circumstances mentioned in section 307 of the Indian Penal Code.

28. Keeping in mind the above discussed broad principles, I proceed to examine the submissions advanced in the light of evidence adduced by the prosecution. If, we consider the facts of the case, then the case of the prosecution is that on the

day of the incident, the accused had visited house of injured and found him quarreling with her daughter. He was asking Archana (P.W.5) to give the golden ring. It has been brought on record that the accused as well as Savitribai were residing in same locality. It is also brought on record that earlier Archana as well as accused had gone to Shirdi and they stayed there for 3 - 4 days. It is also brought on record that the accused used to chase Archana while she was going out of her house. When the accused wSec. 307 and 326 of IPC as quarreling with Archana, the injured was inside the house. She came out of house after hearing quarrel going on outside her house and saw the accused quarreling with her daughter. She found the accused had caught the hands of Archana. When she intervened, the accused told her that he wants to marry with Archana. She refused to marry her daughter with the accused. Archana (P.W.5) deposed that her mother thought that the accused might assault her (i.e. Archana), and therefore, she pushed her aside and at that time her mother received blow of sword on her chest, dealt by the accused. Thus, it can be safely gathered that though the accused had visited the place with sword in his hand, but he had no such intention to assault Savitribai. It is during the course of quarrel, the accused assaulted Savitribai. If, we consider the facts as deposed by Archana, then her mother Savitribai suspected that the accused is going to assault her daughter, she pushed her and in that process, came ahead and sustained injury on her chest. In this view, the inference can be drawn that the accused had no intention to kill Savitribai. So also, it cannot be inferred that the accused had sufficient knowledge that by doing such act, it may result into death of Savitri. In this view, I am of the opinion that the offence under section 307 of IPC is not attracted. Looking to the overall facts of the case and the evidence on record, it can be said that the accused had committed an act of voluntarily causing grievous hurt to the injured and thereby, committed an offence punishable under Section 326 of IPC. There is evidence to show that the injured had sustained grievous hurt as defined under Section 320 of IPC. There is no challenge to the evidence adduced by the prosecution that the injured remained hospitalized as an indoor patient from 19.03.2014 to 20.04.2014. Thus, the injury, which was caused to the injured Savitribai, sufficiently falls within the meaning of "grievous hurt" as defined in section 320 of IPC, as the injured has suffered bodily pains and unable to follow her ordinary pursuits for a period of more than twenty days. Thus, on due consideration of evidence on record, I am of the view that offence punishable under Section 326 of IPC has been made out against the accused.

29. In view of above, the appeal filed by the appellant deserves to be partly allowed to the extent of alteration of conviction of appellant from section 307 of IPC to section 326 of IPC as well as modification of sentence. In the result, I pass the following order:

: ORDER :

i) Criminal Appeal No.784 of 2015 is partly allowed;

ii) The conviction of the appellant for the offence punishable under Section 307

of IPC is altered from section 307 and 326 of IPC to section 307 IPC to section 326 IPC. The sentence awarded to the accused to suffer is modified. The appellant is sentenced to undergo R.I. for five years and pay fine of Rs.1000/, in default of payment of fine, to undergo further R.I. for fifteen days, instead of sentence awarded to undergo R.I. for ten years and fine of Rs.1000/

iii) Appeal is disposed of in above terms.