

CRIMINAL APPEAL NO.21/2002

Sukharanjan Bepari,
r/o. Maina Curtorim,
Native and Post Pultala. Appellant/
Accused.

V/s.

S T A T E
(through PSI, Maina-
Curtorim Police Station.) Respondent.

Mr. N. Costa Frias, Advocate appointed under the Legal
Aid Scheme, for the appellant.

Mr. S.N. Sardessai, Public Prosecutor for the State/
Respondent.

CORAM : P.V. HARDAS, J.

DATE : 28TH FEBRUARY, 2003.

ORAL JUDGMENT :

The appellant, who is convicted by the Addl. Sessions Judge, South Goa, Margao for an offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo two years S.I., by Judgment dated 18.3.2002, in Sessions Case No.20/2000, has filed the present appeal, challenging the aforesaid conviction and sentence.

2. The facts, in brief, as are necessary for

the decision of the appeal, are set out hereunder :

On 13.12.1999, PW.1 Jose Fernandes, lodged a complaint at Exhibit 24, complaining therein that on 13.12.1999 when he was in field at about 1.45 p.m. one Diniz Rodrigues came and told him that his daughter had been assaulted by a 'koita' by the appellant/accused. PW.1 Jose Fernandes thereupon immediately rushed to the spot and learnt that his daughter had already been taken to Hospicio Hospital. PW.10 P.S.I. Jivba Dalvi who was attached to Maina-Curtorim Police Station, on instructions from the Officer Incharge of Police Station, went to the Goa Medical College and recorded the complaint of PW.1 Jose Fernandes at Exhibit 24. PW.10 Jivba Dalvi returned to the police station and registered the crime. The scene of offence panchanama was drawn by PW.11 A.S.I. Sadanand Raut Dessai at Exhibit PW.5/A in presence of PW.5 Dinizio Sardinha. From the scene of offence one 'koita', one cycle, two plastic bags were attached. Also one carry bag, one pillow cover, one black round cap, two pieces of cloth of red-white and blue colour, one half sleeves banyan of blue colour, one red colour half sleeves T-shirt, one red colour handkerchief with design, a cloth piece of light pink colour, one cloth piece of purple colour with thread inserting arrangement, one steel blade knife, one white colour petticoat stained with blood and one blood

stained black hair pin, were attached. The appellant/accused was found lying at the place of the incident and was taken for medical examination and treatment. PW.11 found one empty bottle and another bottle half filled with white liquid.

3. The victim girl by name Sharon Fernandes, daughter of PW.1 Jose Fernandes was examined by PW.8 Dr. Taful Khan, who noticed the following injuries:

- 1) incised wound at base of left index finger;
- 2) chopped wound across the nose extending to both maxillary area 5 x 3 cms.
- 3) incised wound left side of mandible 5 x 2 cms.
- 4) incised cut wound over parietal bone 5 x 1 cms.
- 5) incised cut wound over parietal occipital region 6 x 1 cms.
- 6) incised cut wound over both occipital bones 10 cms.
- 7) incised cut wound over parietal region 5 cms. and
- 8) incised cut wound over occipital region 6 cms.

According to PW.8, the injuries were suffered by sharp heavy object and were grievous injuries. The Medico Legal Certificate is at Exhibit PW.8/A. Sharon had been earlier examined at Hospicio Hospital, Margao by PW.7 Dr. Vijaya Halarnkar and the Hurt Certificate is at

Exhibit PW.7/A. The clothes which the injured Sharon was wearing, were attached in the presence of PW.6 Derick Costa Correia by panchanama at Exhibit PW.6/A.

4. Charge was framed against the appellant/accused for an offence punishable under Section 307 of the Indian Penal Code and the appellant/accused pleaded not guilty and claimed to be tried. The prosecution, in support of its case, examined in all 11 witnesses. On appreciating the evidence, the learned trial Court came to the conclusion that the offence was established against the appellant/accused and convicted and sentenced him as aforesaid. The defence of the appellant/accused in the trial is of denial.

5. PW.1 Jose Fernandes, the father of PW.4 Sharon Fernandes states that he knew the appellant/accused who was earlier a tenant, residing in their house for 11 months. The appellant/accused had fallen in love with PW.4 Sharon and was, thereafter, harassing while Sharon was attending School. When confronted, the appellant/accused had stated that he would not harass PW.4 Sharon any more. However, after about 2 months the appellant/accused again started following Sharon. PW.1 further states that on 13/12/1999 he had gone to the paddy field and his brother-in-law Diniz Rodrigues came to the paddy field and told him that accused had

assaulted PW.4 Sharon with a 'koita'. PW.1 accordingly rushed to the scene of offence and saw blood stains at the place. He also saw a 'koita' and a white bag. The accused had also fallen there. He has identified the 'koita' (MO.1) and the hair pin of PW.4 Sharon. PW.1 then went to the Goa Medical College at Bambolim and he found that there were 8 injuries on Sharon's head from backside. He lodged his report at Exhibit-24.

6. In the cross examination PW.1 has admitted that he cannot say whether the accused was in his senses or was unconscious. He has admitted that the 'koita' belongs to him and is from his house. He has admitted that his complaint Exhibit-24 was recorded at the Bambolim Hospital. He has stated that the relations between his daughter and the accused were not good. He has also stated that the appellant/accused wanted to elope with her. Similarly, he has admitted that his daughter was not in talking terms with the accused. In the cross examination he has admitted that a month prior to the incident, his daughter was telling him that the accused was harassing her on the way.

7. PW.2 Joaquim Gunja is the uncle of PW.4 Sharon Fernandes. He states that on 13.12.1999, while he was coming home with his wife and children, the sister of PW.4 Sharon by name Roshmina Fernandes met him

and informed him that the appellant/accused had assaulted Sharon by a 'koita' and accordingly he had gone to Bambolim Hospital.

8.PW.3 Josefate Fernandes is an eye witness. He states that on 13.12.1999 at about 1.00 p.m. when he was taking food, he heard cries of the daughter of PW.1. He went running and saw the accused assaulting daughter of PW.1 by a 'koita' on her head. He then went and rescued the daughter of PW.1 and snatched the 'koita' from the hands of the accused. In the cross examination, he has admitted that the girl had fallen on the ground and the accused himself fell on the ground pretending that he had fallen. He has also admitted that after snatching the 'koita' he kept it at the same place. A contradiction is brought in his evidence wherein he had stated in his statement that before his reaching the scene of offence, the accused had already assaulted Sharon on her head.

9. The Prosecution has examined PW.9 Delsy Rodrigues as an eye witness. PW.9 Delsy states that PW.4 Sharon was her school friend and they were studying together in St. Xavier's School at Curtorim. She further states that on 13.12.1999 at about 1.30 p.m. they were returning home. Sharon was ahead of her by about 30 metres. When she reached at Band, she heard

the shouts of Sharon. She saw the accused assaulting Sharon with a 'koita'. She went to the neighbouring area and called people. Sharon had fallen on the ground and was bleeding. PW.9 Delsy Rodrigues is not cross examined at all in respect of the incident which she had witnessed. Thus, her examination-in-chief has, virtually, gone unchallenged.

10. The Prosecution has examined PW.4 Sharon Fernandes, who states that the accused was their tenant. She has further stated that while going to School the accused used to stop her every day, asking her to say that she loved the accused. On 13.12.1999, she started returning home at about 1.30 p.m., without waiting for PW.9 Delsy. The accused met her on the way and again asked her to repeat that she loved him. PW.4 Sharon stated that she would never say so. The accused then removed a bottle from a plastic bag and consumed some white powder. He again told her to say that she loved him otherwise he would consume the powder which he stated was poisonous. PW.4 Sharon again replied in the negative. The accused then consumed some more powder. PW.4 Sharon then started walking fast. The accused then removed a 'koita' and started chasing her and he hit the 'koita' on her nine times. She has identified MO.1 as the 'koita', MO.2 as the hair clip and MO.15 as the white petticoat. In the cross examination, an

improvement is brought on record in respect of the accused stopping her everyday and asking her to repeat that she loved the accused. She denied the suggestion that she had written a letter to the accused and had given her photograph to the accused. She denied the suggestion that she and the accused used to meet at a hillock. Similarly, she has denied the suggestion that she had written love letters to the accused.

11. I have heard Mr. N. Costa Frias, learned Counsel who has been appointed as an Advocate for the appellant/accused under the Legal Aid Scheme. Learned Counsel for the appellant has urged before me that PW.3 Josefat Fernandes cannot be considered to be an eye witness as he has admitted that he had reached the scene of offence after the accused had assaulted Sharon. He further stated before me that PW.9, Delsy cannot be considered to be an eye witness as Sharon had stated that she had started alone. He next submitted that the medical opinion regarding the injuries is that the injuries were grievous. According to the learned Counsel for the appellant, the Medical Officer does not state that the injuries were sufficient in the ordinary course of nature to cause the death. He next submitted that the accused did not have the requisite intention to kill PW.4 Sharon Fernandes as the accused was in love with her and obviously would have no motive to kill

PW.4. Mr. S.N. Sardessai, learned Public Prosecutor, on behalf of the State has supported the Judgment and prayed for dismissal of the appeal.

12. Even if it is held that PW.3 Josefate Fernandes is not an eye witness as he had reached the scene of offence after the assault, the Prosecution has examined PW.4 Sharon who is the injured and PW.9 Delsy. The evidence of PW.4 Sharon Fernandes is reliable and inspires confidence of the Court. After her cross examination she has emerged unscathed, without any blemish. Similar is the situation in respect of PW.9 Delsy, who has not been cross examined in respect of the incident at all. In fact, Delsy states that Sharon was ahead of her and was following Sharon. According to Sharon, she had left the School without waiting for Delsy. In such a situation, there is no force in the submission of the learned Counsel for the appellant that Delsy is a got-up witness to support the charge. Even, apart from the evidence of PW.9 Delsy, the evidence of PW.4 Sharon is cogent and reliable and according to me, the prosecution has been able to prove the offence against the accused beyond reasonable doubt.

13. The accused was stated to be in love with Sharon. The injuries inflicted by the accused by the

'koita' were grievous injuries. When PW.4 Sharon spurned the profession of love of the accused, the accused must have been angered and in fit of rage, must have inflicted the injuries. However, it does not appear that the accused had any intention to kill PW.4 Sharon. Possibly, the intention was to cause grievous injuries to PW.4 Sharon. The Medical Officer has also not stated that the injuries were sufficient in the ordinary course of nature to cause the death. Therefore, according to me, in the peculiar facts of the present case, the offence under Section 326 of the I.P.C. would be made out against the accused. The accused has caused permanent disfiguration of the face of PW.4 Sharon. There are scars on her chin and on her nose. In such a situation, the accused does not deserve any leniency in the reduction of sentence. Therefore, according to me, the conviction of the appellant/accused deserves to be altered from Section 307 to Section 326 of the I.P.C. for having caused grievous injuries by means of a sharp instrument.

14. In the result, therefore, the appeal is partly allowed. The conviction of the appellant for an offence under Section 307 is altered to the one under Section 326 of I.P.C. The sentence of Rigorous

Imprisonment for 5 years and payment of fine of Rs.50,000/-, in default, S.I. for two years, is maintained. Since the appellant/accused is in Jail, a copy of this Judgment be sent to the appellant/accused.

P.V. HARDAS, J.

ssm.