



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 876 OF 2017

Shashikant Shantaram Tavare

..Appellant

Versus

The State of Maharashtra

..Respondent

WITH
INTERIM APPLICATION (STAMP) NO. 7743 OF 2025
IN
CRIMINAL APPEAL NO. 876 OF 2017

Mr. Ramesh Dube Patil a/w. Sagar Kasar, Rishabh Tiwari, Chaitali Bhogle and Iraa Dube Patil for the Appellant.

Ms. Kranti T. Hiwrale, APP for State/Respondent.

CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.

DATE : 03 JULY 2025

JUDGMENT: *(PER SARANG V. KOTWAL, J.)*

1. The Appellant has challenged the Judgment and order dated 26.09.2017, passed by the learned Additional Sessions Judge-2, Nashik, in Sessions Case No.257 of 2016. The learned Judge, convicted the Appellant for commission of the offence punishable U/s.302 of the I.P.C. and sentenced him to suffer

rigorous imprisonment for life and to pay a fine of Rs.5000/- and in default to suffer S.I. for two months. The Appellant was also convicted for commission of the offence punishable U/s.309 of the I.P.C. and he was sentenced to suffer S.I. for one year and to pay a fine of Rs.500/- and in default to suffer S.I. for 15 days. The substantive sentences were directed to run concurrently. He was acquitted from the charge U/s.135 of the Maharashtra Police Act. He was granted set off U/s.428 of the Cr.P.C. for the period he had spent as an undertrial prisoner from 28.06.2016.

2. Heard Mr. Ramesh Dube Patil, learned counsel for the Appellant and Ms. Kranti Hiwrale, learned APP for the State.

3. The prosecution case is that the Appellant was having a love relationship with the victim. They had even given a notice for registration of their marriage. The victim's family came to know about this notice. They persuaded her to withdraw that notice. They promised her that they would get her married with the appellant once her elder sister's marriage was performed. However, after the elder sister got married, the victim's family did

not take any steps in getting the appellant and victim married. According to the prosecution case, they continued meeting each other.

4. On 18.05.2016, at about 8:30p.m. the appellant and the victim met in a classroom in a school. The Appellant inflicted blows with a cutter on her throat. He also caused some injuries on her hands and other parts. Some boys in the vicinity heard the shouts. They reached there. They saw the scene. They got frightened. They rushed outside the school and informed others. The victim's mother was also informed. She rushed to the spot. She saw that her daughter was lying in a pool of blood. The Appellant was lying nearby. The murder weapon i.e. the cutter was also at the spot. Somebody informed the police. The police came there. The victim had already died. The Appellant was taken to the hospital. The victim's mother lodged her F.I.R. The investigation was carried out. After the Appellant was discharged from the hospital, he was put under arrest. In the meantime, the police had recorded the statements of various witnesses. They had conducted the spot panchanama. The Appellant showed the place from where

he had purchased a cutter from a lady. He took the police and panchas to that spot, however, that lady was not found. The articles were sent for C.A. examination and on conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

5. During trial, the prosecution examined 15 witnesses including the mother, the sister and the brother in law of the deceased, the Medical officer who had conducted the postmortem examination, the panchas and the investigating officer.

6. The Appellant had taken a specific defence. He also filed his statement elaborating his defence. According to him, he and the victim were in love since about 6 to 7 years. They were studying in the same class in school. They had given an application for registration of their marriage. The victim's family came to know about it. They told her that, after her elder sister was married, they would get her married with the Appellant. On this promise, the victim withdrew her application for registration of their marriage. The victim was working at Nashik. The Appellant and the victim

used to meet regularly in Nashik. The victim's family stopped her from attending her work. They took back her mobile phone. They put restriction on her movements. But, in spite of that the victim used to call him by using somebody else's mobile. She also used to send chits to the Appellant. After her elder sister got married, the victim's family members started avoiding to fulfill their promise. She told them that if she was forced, she would take some serious steps. She had informed this to the Appellant through a chit. According to the Appellant, she was very disturbed. Both of them were under immense mental pressure. According to him, the victim's family was opposing their marriage because he had not taken higher education and that he was a truck driver. Three to four days prior to 18.05.2016, the victim had visited her sister's husband's family. At that time, her sister had clearly told her that they would not get her married with the Appellant. Therefore, the victim had got angry and she was under mental stress. She had informed this fact to the Appellant by using a mobile phone of one Kishor Thete. On 18.05.2016, at about 8:30p.m. the appellant went to meet the victim near the school. The victim met him and

started crying. She told him that her family had cheated them and that she would not live without him. She told him that, they had no other option but to commit suicide. She had brought a cutter with her. In that situation, the Appellant also felt immense mental pressure. They decided to commit suicide. He took the cutter from her hand and inflicted blows on his wrist and neck. Because of the bleeding, he became unconscious and he did not know what happened after that. This is the specific defence taken by him.

7. Learned Judge considered the defence of the Appellant. He observed that, there was no strong reason for the deceased for taking such a drastic step of commission of suicide. The chits produced on record showed that the deceased was a girl with a stable mind and was well educated with a job. She would not have committed suicide when she had an easy option to leave the house and to marry the Appellant as they had filed an application for registration of their marriage earlier. In this background, the learned Judge held that the defence of the Appellant was not probable. The learned Judge discarded the prosecution evidence in respect of purchase of the cutter, because there was no linking

evidence produced by the prosecution. The learned Judge relied, particularly on the evidence of PW-1 Kusum regarding the prompt lodging of the F.I.R. Based on all these circumstances, the learned Judge recorded his finding of guilt of the Appellant.

8. PW-1 Kusum, the mother of the deceased is an important witness. She has deposed as follows:

She had two daughters including the victim. She also had a son. They were staying together. The victim had completed MBA and was working in an Agency in Nashik. She knew the Appellant. He was a resident of their village. He was having friendship with the victim since about six months prior to the incident. She further deposed that the victim and the Appellant had applied for registration of their marriage in the Sub Registrar's office, Nashik. She learned about it. She told the victim that her elder daughter's marriage was already fixed and that the victim should wait till the solemnization of her sister's marriage and then they would get her married. The victim had agreed and had withdrawn the application for registration of the marriage. After

that the victim had stopped attending her job.

The incident took place on 18.05.2016. In the evening at around 8:00p.m., PW-1's son and daughter in law had taken her grandson to a doctor's clinic. At about 8:30p.m. her husband left to visit a temple. Her mother in law also left the house to answer nature's call. PW-1 along with the victim were at home. Around 8:45p.m., PW-1's daughter in law's mobile phone rang. The victim attended the call. She went inside to attend the call, but she did not return for about 10 minutes. PW-1 looked for her. She went to the back side of their house and found that the gate was opened. PW-1, therefore, went to the school which was behind their house. She saw a crowd of children gathered near Room No.4 in that school. She went there. The children were looking at the spot with the help of light of their mobile phones. PW-1 saw the victim lying in a pool of blood. Her throat was cut and there were cut injuries on her left hand. The Appellant was lying next to her in an injured condition. The children tried to lift the Appellant. The Appellant told those children not to touch him and added that he had killed the victim and that he also wanted to die. At that time, the

Appellant's friend took him away. PW-1 pleaded with them to help her daughter, but they did not listen to her. PW-1, therefore, rushed home and called her mother in law. She also informed her husband and called them to the school. The ladies from the area gathered there. The victim was not making any movements. The people gathered there stopped each other from touching the victim as according to them it was a police case.

The police came there. They were informed that the Appellant had killed the victim. The police took the Appellant to the hospital. PW-1 and her family members went to the police station. She narrated the incident to the police. They recorded her statement and treated it as an F.I.R. It is brought on record at Exhibit-26. During the night, the police conducted the spot panchanama. Her supplementary statement was recorded on 28.05.2016. She told the police about the application for registration of marriage between the victim and the Appellant. PW-1 told the background to the police. PW-1 has further deposed that, since the victim had withdrawn her application for registration of the marriage, the Appellant was angry with her.

Since then the Appellant used to contact her by coming at the back side of their house. He used to be around when the victim was doing her household work. He used to give signals. He used to threaten her that he would consume poison and would commit suicide and also that he would kill the victim. All these facts were told by the victim to her. However, PW-1 did not disclose these facts to anybody because the date of her elder daughter's marriage was approaching.

During the cross-examination, she gave a history that they were residing at a different place earlier and the Appellant's house was nearby. Her daughter i.e. the victim had studied up to 10th standard in the same school at Palse where the incident had taken place. She admitted that the victim and the Appellant were having a love relationship, but volunteered that she was not knowing about it. Most of her cross-examination is in the form of suggestions, which she had denied. Those suggestions were in consonance with the defence taken by the Appellant. PW-1, however, admitted that, when the victim had made an application to the Sub Registrar's office for registration of her marriage, at that

time, her family had told her that they would get her married with the Appellant after the marriage of her elder sister and, therefore, she had withdrawn her application on 03.02.2016. After that, she stopped attending her job. She denied the suggestion that her family had pressurized the victim for withdrawing that application.

PW-1 was shown eight handwritten chits purportedly written by the victim to the Appellant. PW-1 stated that she did not know whether those chits were sent by the victim to the Appellant. Those chits were taken on record at Exhibits-29 to 36 subject to the objection raised by the learned APP. She further deposed in the cross-examination that her elder daughter was in love relationship with her husband before marriage and their marriage was settled by the consent of family members of both the sides. Their marriage was solemnized on 19.04.2016 at Nashik. She denied the suggestion that, after the marriage, since her family did not take any steps in getting the victim married with the Appellant, the victim was angry and that she had warned them that she would take some serious steps.

The victim had visited the matrimonial house of PW-1's elder daughter on 14.05.2016. She returned on 17.05.2016. PW-1 denied that, since then the victim appeared irritated. PW-1 accepted that on 18.05.2016, between 8:15p.m. to 8:30p.m. the victim had made a phone call to PW-1's elder daughter. But she denied that, after the call, her daughter i.e. the victim was furious and that she had quarreled with PW-1 and her husband. There are certain minor omissions from her F.I.R. which are brought out in her cross-examination. One of the omissions from her F.I.R. was that she had seen the victim in the light of the mobile phones of those boys. She accepted that, in her F.I.R., she had not told the police that the Appellant had said that he would kill the victim and that he also wanted to die. She had gone to the police station at around 10:45p.m. She denied the suggestions that on 18.05.2016 at about 8:30p.m. when the victim had a conversation with PW-1's elder daughter, she came to know that the family was not going to perform her marriage with the Appellant and, therefore, she quarreled with PW-1, went inside the house and then went towards the school where she usually used to meet the Appellant;

and that she was carrying a cutter with her. She denied the suggestion that, in that situation, the Appellant used the same cutter, inflicted injuries on himself and became unconscious.

All these suggestions are in accordance with the defence taken by the Appellant; which this witness had denied. The F.I.R. is produced on record at Exhibit-26. As mentioned earlier, it was registered at 1:26a.m. in the night of 19.05.2016. But she had informed the police at about 10:45p.m. As mentioned earlier, the police had gone to the spot before registration of the F.I.R. Her F.I.R. has substantially corroborated her deposition; except the omissions which are referred to herein above.

9. In this context, the evidence of PW-5 who is elder sister of the victim is also important. She had deposed about the history of the relationship between the Appellant and the victim and about their application for registration of the marriage and about withdrawal of the said application. She deposed that, after that application was withdrawn by the victim, the Appellant was furious. The Appellant used to try to contact the victim through

signals and he used to threaten that he would consume poison and that he would commit suicide. He also used to threaten to commit the murder of the victim if she did not marry him. On 14.05.2016, the victim had visited PW-5's house and had stayed till 17.05.2016. On that day, at about 9:30a.m. PW-5 and her husband had left for Manali. On 18.05.2016, at about 8:27p.m. she received a phone call from her mother. After their conversation, PW-5 spoke with the victim. Their conversation was normal. Then the victim spoke with PW-5's husband who is examined as PW-12. In the night, one of the relatives informed her husband about the incident and then they returned to their village. Again in her cross-examination, some suggestions were put to this witness which were in alignment with the defence taken by the Appellant. All these suggestions were denied by this witness. During her deposition she stated that she had asked the victim to wait till the solemnization of her marriage and then in Diwali they would perform her marriage. But this fact was not stated by her in her statement before the police. Similarly, she had not told the police about the threats given by the Appellant.

10. PW-12 Manoj Gaidhani was the husband of PW-5. His evidence is exactly on the same lines as that of PW-1 and PW-5. He added that, when the victim had visited their house, she had told him that since the application for registration of marriage was withdrawn, the Appellant was troubling her. He used to give signals to her by coming at the back side of their house. He used to threaten her that he would commit suicide by consuming poison if she did not marry him.

In the cross-examination, he denied the suggestion that the victim's brother had taken away her mobile phone and had restrained her from attending her job and at that time he had given understanding to the victim's brother not to do so. He denied the suggestion that, during their conversation when PW-5 Manoj was at Manali, the victim had questioned him that whether they were going to perform the Appellant's and the deceased's marriage or not. He then denied all the other suggestions put to this witness.

11. PW-2 Draupadabai Thete was a pancha for the inquest

panchanama. It is produced on record at Exhibit-38.

12. PW-3 Sunil Chaudhary was a pancha for the spot panchanama. It is produced on record at Exhibit-40. It was conducted between 3:30p.m. to 4:15p.m. on 19.05.2016. He identified the cutter produced in the Court which was seized from the spot. The spot was shown by PW-1. The cutter was having length of 11.5cm, it was having a handle of 7cm with blade of 4.5cm. It was recovered from the spot. It was blood stained. The blood stained scrapings from the floor was also seized.

13. PW-4 Jawed Fakir was a pancha for the panchanama carried out in the police station to show from which place the Appellant had purchased the cutter. This panchanama is produced on record at Exhibit-44. The memorandum statement is at Exhibit-43. However, the prosecution cannot take much help from this evidence because, according to this panchanama, the Appellant had shown his willingness to show the place from where he had procured the cutter. He took them to a place near a footpath near Sinner from where he had purchased it from a lady. But

nothing was recovered and, therefore, this statement which resulted in the panchanama is of no use. He had also shown the spot where the incident had taken place. It was in the room in that school. But that spot was already known to the police and other witnesses, therefore, this piece of evidence does not take the prosecution case any further.

14. PW-7 Sanjay Wadkar was a pancha in whose presence the clothes of the Appellant and the deceased were produced. These panchanamas are produced on record at Exhibits-52 and 53. PW-8 Sachin Vatane was the carrier who had carried the articles to the Forensic Science Laboratory (FSL).

15. PW-9 Rahul Sathye and PW-11 Ganesh Aagale are the two persons who had gone to the spot on hearing the shouts. PW-9 Rahul has deposed that, on 18.05.2016, at about 8:30p.m. he and his friends were watching a movie on the mobile phone near the gate of the said school. At that time, the Appellant came there. He returned some money which he had taken from Ganesh Aagale. He left from there saying that he would return within two minutes. He

went towards that school. PW-9 Rahul and others then heard the shouts coming from that school. They rushed there. There was no light, therefore, they switched on the flash light of their mobile phones and went towards that particular classroom. They saw the Appellant and the deceased were lying in a pool of blood. They got frightened and they ran away from the spot. They told this to others. All of them then returned to the classroom. Some of them took the Appellant to Jayram hospital. When they tried to lift the victim, somebody stopped them.

In the cross-examination, he stated that the Appellant had paid money to Ganesh regarding the subscription of one *bachat gat*. He stated that the Appellant and the victim were having a love relationship 6 to 7 years prior to the incident. He had heard that they used to meet near that place. It was behind the victim's house. He further admitted that the Appellant used to go behind the victim's house and they used to exchange chits. He further stated that, they heard the shouts for about 3 to 4 seconds. When they reached there, the Appellant was unconscious. When the people tried to lift the victim, her mother stopped them from

touching the victim and she restrained others from coming inside the classroom.

16. PW-11 Ganesh Aagale is examined by the prosecution on the same point. His deposition is similar to that of PW-9 Rahul. He added that the Appellant and the victim were his classmates. Both of them were having a love relationship and they had decided to get married. PW-11 Ganesh himself had signed on their application form for the registration of marriage, as a witness. But they did not marry each other and their marriage was cancelled. This witness did not know the reason.

In the cross-examination, he had accepted that, he could identify the victim's handwriting. The chits at Exhibits-29 to 36 were shown to him. He admitted those chits to be in the victim's handwriting. He further added that, till about two to four days before the incident, the love relationship between the Appellant and the victim had continued.

17. PW-6 Dr. Anand Pawar is an important witness who had conducted the postmortem examination. The postmortem notes

are produced on record at Exhibit-47. He noticed total 18 injuries on the dead body; they are as follows:

- 1) Incised wound of size 20cm x 2cm x 4cm present over left side and front of neck, 2.5cm below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, platysma, strap muscles of neck left carotid and jugular veins, cartilages of front and left side of neck.
- 2) Incised wound of size 8cm x 1cm x 1cm present over right side and front of neck 2.8cm below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, and platysma, strap muscles of front and right side of neck.
- 3) Incised wound of size 10cm x 1cm x 2cm present over right side and front of neck, 3cm below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, and platysma, strap muscles of front and right side of neck, jugular veins and cartilages of front and right side of neck.
- 4) Incised wound of size 8cm x 1cm x 2cm present over right side and front of neck 3.3cm below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, and platysma, strap muscles of front and right side of neck jugular veins and cartilages of front and right side of neck.
- 5) Incised wound of size 7cm x 1cm x 2cm present over left side of neck, 3.6cm below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, platysma, strap muscle of neck, jugular veins and cartilages of left side of neck.
- 6) Incised wound of size 6cm x 1cm x 3cm present over

left side and front of neck, [3.7cm](#) below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, platysma, strap muscle of neck, left carotid and jugular veins, cartilages of front and left side of neck.

- 7) Incised wound of size 8cm x 2cm x 3cm present over left side and front of neck, [3.9cm](#) below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, platysma, strap muscles of neck left carotid and jugular veins, cartilages of front and left side of neck.
- 8) Incised wound of size 3cm x [0.5cm](#) x [0.5cm](#) present over left side and front of neck, [3.9cm](#) below lower jaw. Tailing of wound was towards right. Structures involved were skin, subcutaneous tissue, platysma, strap muscles of neck.
- 9) Reddish contusion of size 3cm x 2cm present over left lower jaw, 3cm from midline.
- 10) Incised wound of size 3cm x [0.3cm](#) x [0.3cm](#) present over left side of neck, 2cm below pinna of left ear.
- 11) Incised wound of size 10cm x 2cm x 3cm present over inner aspect and back of left forearm 6cm below elbow.
- 12) Incised wound of size 5cm x [0.3cm](#) x [0.3cm](#) present over inner aspect and back of left forearm 4cm below elbow.
- 13) Incised wound of size 9cm x 2cm x 0.5cm present over back of left hand 3cm below wrist.
- 14) Incised wound of size 3cm x [0.5cm](#) x [0.5cm](#) present over palmar aspect of left thumb.
- 15) Incised wound of size 2cm x 0.5cm x 0.5cm present over palmar aspect of left index finger.
- 16) Incised wound of size 1cm x 0.5cm x 0.5cm present

over palmar aspect of left little finger.

17) Reddish contusion of size 4cm x 3cm present over back of right shoulder, 4cm below tip of shoulder.

18) Reddish contusion of size 4cm x 3cm present over back of right elbow.

The opinion as to the cause of death was “hemorrhagic shock due to cut throat injuries, which are sufficient to cause death in ordinary course of nature, injuries are ante mortem in nature, fresh in duration, caused by sharp edged weapon”. He clearly opined in his deposition that the injuries were possible if inflicted by another person and they were not self inflicted injuries. The injuries at Sr.Nos.9 to 18 were defence wounds. He was shown some passage from the work of Dr. K. S. Narayan Reddy for the opinion on Forensic Science and Toxicology (Edition 33), and an effort was made to show that those injuries would fall within the description of suicidal wounds as opposed to homicidal wounds; as opined in the said Forensic Medicine and Toxicology work of Dr. K. S. Narayan Reddy.

18. PW-10 Dr. Rakeshchandra Kanojiya had examined and treated the Appellant. He had produced the medical certificates at

Exhibits-65 and 66. According to him, the injuries on the wrist could be self inflicted or caused by the assault. The Appellant was admitted to his hospital on 18.05.2016 up to 02.06.2016. The certificate dated 07.06.2016 at Exhibit-66 mentions that the Appellant had multiple incised wounds over the left wrist, right wrist and neck coupled with tendons and vascular injuries. Those injuries were caused by sharp objects. The description was as follows:

- 1) Incised wound over neck anterior surface 4cm x 1/2cm x 1/2cm.
- 2) Incised wound over right wrist 5cm x 1/2cm x 1/2cm.
- 3) Deep incised wound over surface of left wrist 8cm x 2cm x 1cm.
- 4) Left wrist tendons were found cut.
- 5) There were three injuries on three fingers.
- 6) Ulnar artery was cut and ulnar nerve was cut.

19. PW-13 Nitesh Kale was an Assistant Chemical Analyzer with FSL, Nashik. He had produced the C.A. certificates on record. It was mentioned that the blood found on the clothes of the

Appellant and the deceased, as well as, on the cutter was of 'B' group. There is hardly any dispute about the fact that the Appellant and the deceased were lying at the spot in a pool of blood. Therefore, the presence of blood of 'B' group is undisputed.

20. The remaining two witnesses are the police witnesses. PW-14 API Madhavrao Rokade was the first investigating officer. He had conducted the inquest panchanama, had sent the body for the postmortem examination, had conducted the spot panchanama, had seized the articles from the spot and had seized the clothes of the deceased and the Appellant. He had recorded the statements of some of the witnesses. The Appellant was arrested on 28.06.2016. Till then, he was under the protection of interim anticipatory bail order. The panchanama of the Appellant showing the spot of the incident and the spot from where he had procured the cutter was conducted. He carried out the investigation about the application given for registration of marriage.

Though, there is a lengthy cross-examination of this witness, it is mostly in the form of suggestions. The investigation

carried out by him is not really disputed. He proved the omissions from the police statements of the witnesses which were referred to herein above.

21. PW-15 PSI Sagar Chavan carried out the investigation from 21.05.2016. He had submitted a letter to the J.M.F.C., Nashik Road on 23.05.2016 for adding Section 309 of the I.P.C.

This, in short, is the evidence led by the prosecution.

22. Learned counsel for the Appellant submitted that the Appellant has taken a truthful defence which is supported by all the attending circumstances and the past history between the Appellant and the deceased. It has come on record that they were in a love relationship and had in fact applied for the registration of marriage. The application was withdrawn by the victim only on the assurance that her family would get her married with the Appellant once her elder sister got married. There are circumstances to show that, only two to three days prior to the incident the victim had visited the matrimonial house of her elder sister. All this is in support of the defence theory that the victim's

family had resiled from their earlier promise which had put the victim under tremendous mental stress and she herself had suggested the Appellant that they should end their lives. The evidence also shows that they were constantly in touch with each other; even after withdrawing her application for the registration of marriage. The chits produced on record show that, she had warned her family that she would take extreme steps if her wish is not fulfilled. This is an elaborate evidence showing how she had lost her life. Learned counsel submitted that there is a strong possibility that the injuries suffered by the victim are not caused by the Appellant but they were self inflicted injuries in an attempt to end her life; which had in fact resulted in her death.

23. Learned counsel relied on the evidence of the Medical Officer who was cross-examined on the basis of the opinion expressed in the literary work of Dr. K. S. Narayan Reddy in respect of forensic science. He submitted that the said work provides a chart distinguishing suicidal wounds from homicidal wounds. He further submitted that the plan of both; the Appellant and the deceased to end their lives is supported by the fact that the

Appellant himself had inflicted very serious injuries on himself, and it is undisputed that those injuries were caused by him alone. Learned counsel relied on the observations of the Hon'ble Supreme Court in the case of *Narendra Versus State of Rajasthan*¹ to contend that, if it is held that the injuries suffered by the deceased were not self inflicted but were caused by the Appellant himself, even then the offence would not be one punishable U/s.302 of the I.P.C., but it would be U/s.304(I) of the I.P.C.; if it was at her instance, because the case would be covered under *Exception 5* to Section 300 of the I.P.C.

24. Learned APP opposed these submissions. She relied on the evidence of the family members of the deceased to contend that these witnesses have clearly stated that the Appellant was threatening the deceased that he would commit suicide and that he would kill her. The statement made by the appellant to these family members about this threat would be in connection with the transaction leading to her death and, therefore, would be admissible and very relevant. She submitted that, looking at the

1 (2014) 10 Supreme Court Cases 248

nature of the injuries described by the medical officer, it is quite clear that they were not self inflicted injuries and it is the only the Appellant who could have caused those injuries. She submitted that the facts and circumstances does not bring the incident within *Exception 5* to Section 300 of the I.P.C.

25. We have considered these submissions. The Appellant and the victim were in a love relationship. It is an undisputed fact; at least till February 2016 when the application for the registration of marriage was withdrawn by the victim. According to the defence, the said application was withdrawn because the victim's family had promised that they would get her married to the Appellant. However, the evidence of the mother, the sister and the brother in law of the victim in that behalf is different. They have not stated that they had promised the victim that they would get her married with the Appellant. All of them have stated that after when she had withdrawn the application, the Appellant got furious and started threatening and troubling her. This was the troubled past. The question is whether on the date of incident, the deceased and the Appellant had decided to commit suicide or the Appellant

had called her to the spot and then committed her murder and tried to end his life. The submission of the learned counsel for the Appellant is in support of the defence taken by the Appellant that the deceased had committed suicide by inflicting wounds on herself. According to the Appellant, he inflicted blows with a cutter on himself first, he became unconscious and then he did not know what had happened. What he meant by saying so is that after he lost his consciousness, the deceased had inflicted those injuries on herself. That was the submission of the learned counsel for the Appellant, as well.

26. Therefore, we have to test whether the injuries on the person of the deceased could be self inflicted or were caused by the some person other than the victim herself. From that context, the evidence of PW-6 Dr. Anand Pawar is important. We have already reproduced the nature and the number of injuries. It can be seen that, there were multiple injuries of quite some length on the neck. There were in all nine such injuries on both the sides of neck. It is impossible to believe that, after one or two such injuries caused by the victim herself, she would continue or be in a position

to inflict more incised wounds on her own neck. Apart from that, the Medical Officer had clearly opined that, those injuries were not self inflicted injuries. In addition, there were defence wounds on her palm; which is also in support of the prosecution case that those injuries were inflicted on her against her wish. The injuries were not caused pursuant to the plan to end their lives together. The chart submitted by the learned counsel for the Appellant, based on which the cross-examination was conducted, in fact supports the prosecution case. That chart, which was taken out from the literary work of Dr. K. S. Narayan Reddy, distinguishing suicidal wounds from homicidal wounds, mentions that homicidal wounds are usually on both sides of the neck. In case of homicidal wounds, the jugular vein and carotid artery are likely to be cut and the defence wounds would be present. All these characteristics can be found from the postmortem notes of the victim in this case. Thus, from that chart itself it is quite clear that all those injuries are homicidal wounds. This fact is also supported by the evidence of PW-9 Rahul and PW-11 Ganesh who had heard the shouts and, therefore, they had reached to the spot. Therefore, it is quite clear

that only after the Appellant started inflicting blows with the cutter on the victim, she had shouted thereby attracting the attention of PW-9 and PW-11. It is not in consonance with the theory of suicide by permitting the Appellant to assault with the weapon.

27. The facts before the Hon'ble Supreme Court in the case of *Narendra* were materially different. In that case, the defence version was specific. According to the accused in that case, by acting on the consent given by the victim, the accused had inflicted sword injuries on the victim who had died before the accused could kill himself. In the present case, the specific defence of the Appellant is not that the victim died because of his assault on her consent. His defence is that he inflicted injuries on himself and lost his consciousness. It is not his defence that he inflicted blows on the deceased. The first attempt on his part is to suggest that the victim had committed suicide by inflicting those injuries on herself and secondly he is feigning ignorance about what had happened after he inflicted those injuries on himself. This defence taken by the Appellant in this case before us is materially different from the defence taken by the accused in the case before the Hon'ble

Supreme Court. The other distinguishing feature in the case of **Narendra** and the present case is that, in the case before the Hon'ble Supreme Court, the accused had not gone to the house of the deceased armed with the weapon i.e. sword, but it was picked up by him which was there inside the room. In the present case before us, the cutter was taken by the Appellant with him, though, there were some suggestions put to the mother of the victim that the victim had carried that cutter with her. Secondly, in **Narendra's** case, when the accused inflicted the sword blows, the deceased had not raised any alarm or had not shouted for help. In the case before us, as mentioned earlier, the victim had raised shouts because of which PW-9 Rahul and PW-11 Ganesh had gone to the spot and there are also defence injuries on the hands of the deceased. Therefore, the observations of the Hon'ble Supreme Court in **Narendra's** case does not help the defence or the Appellant's case before us.

28. The deceased was an educated girl. She had completed her MBA. She was working in Nashik and was in a position to earn for herself. The circumstances and the evidence do not suggest that

the deceased had suggested to the Appellant that they would commit suicide together. In this case, the victim and the Appellant were together in a classroom in a school. Therefore, these are the only two persons who could have narrated about the incident. Out of them, the victim is dead and, therefore, it was within the exclusive knowledge of the Appellant as to what had happened. The burden was on him to explain under what circumstances the deceased had suffered those injuries. Section 106 of the Evidence Act lays down that when any fact is especially within the knowledge of any person, burden of proving that fact is upon him. In this case, the burden was on the Appellant to explain as to how all these injuries were caused to the deceased. To that extent, his defence is not acceptable. He had not explained as to how the deceased had suffered those injuries. His only defence was that, he inflicted injuries on himself and then he lost his consciousness. He does not utter a word as to how the deceased had suffered injuries. Therefore, this burden is not discharged by him.

29. The strong circumstance was that the Appellant and the deceased were lying next to each other. The cutter i.e. the murder

weapon was also lying nearby. There was no other person who could have committed that offence. Therefore, there is no possibility of any other hypothesis but to accept that it was only the Appellant who could have committed this offence. In view of this, we are of the opinion that the prosecution has proved its case beyond a reasonable doubt. We do not find any reason to interfere with the findings recorded by the learned trial Judge. We are satisfied that the prosecution has proved its case beyond reasonable doubt.

30. Hence, the Appeal is dismissed. With disposal of the Appeal, the connected interim application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)