

Andre Fernandes Vs. State and Another

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Court : Mumbai Goa

Decided On : Aug-03-2012

Judge : A.P. Lavande

Appeal No. : CRIMINAL APPEAL NO. 33 OF 2010

Appellant : Andre Fernandes

Respondent : State and Another

Advocate for Pet/Ap. : Mr. Rebello

Judgement :

Oral Judgment :

By this appeal, the appellant takes exception to the Judgment and Order dated 27.5.2010, passed by the Additional Sessions Judge-1, Panaji, Goa in Sessions Case No. 16/2009, convicting the appellant (hereinafter referred to as "the accused") for the offence punishable under Section 307 of Indian Penal Code (IPC) and sentencing him to undergo Rigorous Imprisonment for four years and to pay compensation of Rs.1,00,000/- (Rupees one lakh only) to the victim and in default, to undergo Rigorous Imprisonment for one year.

2. Briefly, the prosecution case is as under:

In the year 2006, the victim PW5 Sweta Zantye was working in the shop "Rohit Vision" at Mapusa as an Accountant. She used to leave her house to go to work at 9.00 a.m. and return home at 7.00 p.m. Her aunt Smt. Satyabhama Bhagkar was staying at Chicalim, Vasco and sometimes, she used to go to her house to stay there. Once, while she was going to Chicalim, the accused sat beside her and started talking to her and started asking her name, address, etc. He then told her that he was interested in her and then asked her whether she was interested in him, to which she stated that she was not interested in him.

On 11.5.2006, when she was coming out of her office, in the evening hours, the accused came near her office and asked her whether she would marry him, but she told him that she was not interested in marrying him. Again on 13.5.2006, in the evening hours, the accused came to her house at Bastora. At that time her brother and parents were present in the house along with her. On that day, the accused asked her parents and also her as to whether they were interested in his marriage with her, to which the victim, as well as her parents gave negative reply.

On 16.5.2006, the victim left her office at 6.00 p.m. and was walking towards Mapusa Bus Stand and when she reached near Titan shop at Mapusa, she decided to telephone at her residence, through PCO (coin box) and while she was dialing the phone, the accused assaulted her from behind with coita, which hit her rear portion near the neck. She then turned around and saw that the accused was trying to assault her on her head. The coita hit on her left eye and the accused again raised the said coita to hit her, but she tried to defend herself with her hands. The coita hit her left hand and then she shouted and ran away from the point. People gathered and caught hold of the accused, and removed the coita from the hands of the accused. The police then came to the spot and the victim was shifted to Asilo Hospital, where she was given first aid and then was shifted to Goa Medical College at Bambolim where she was admitted. The accused who was caught on the spot, was taken in the police jeep to Asilo Hospital where he was given treatment on account of the injuries suffered by him due to assault by the people who had gathered at the spot. The accused was also shifted to Goa Medical College at Bambolim. On the same day, i.e. 16.5.2006, PW.2 Purvesh Zantye , brother of the victim Sweta lodged FIR at Mapusa Police Station at 21.00

hours. Thereafter, scene of offence panchanama (Exhibit 10) was conducted between 21.30 hours to 22.30 hours and the coita (chopper) which was used in the commission of offence was attached. Photographs of the scene of offence were also taken. Clothes of the victim were seized on 17.5.2006 at Goa Medical College. Thereafter, statements of several witnesses were also recorded. Identification parade was also held by PW.4 Mr. Antonio Mascarenhas on 13.6.2006. Suresh Kashinath Chari identified the accused as the person who had assaulted the victim. Articles seized were sent for analysis. After completion of the investigation, charge-sheet was filed against the accused in the Court of Judicial Magistrate, First Class, at Mapusa. The same was committed to the Court of Sessions at Panaji. Learned Sessions Judge, Panaji made over the case to the Additional Sessions Judge, at Panaji.

3. In Sessions Case No.16/09, the prosecution examined 12 witnesses and produced several documents to prove the charge. The defence of the accused was of total denial. Learned Additional Sessions Judge, upon appreciation of the evidence led, held that the offence punishable under Section 307 of IPC was proved beyond reasonable doubt against the accused and convicted and sentenced the accused as above.

4. Mr. Rebello, learned Counsel appearing for the appellant submitted that the prosecution evidence does not inspire confidence and the same is not sufficient to prove the offence of attempt to murder beyond reasonable doubt against the accused. Learned Counsel further submitted that the victim did not make reference to the presence of PW.6 Suresh Tari and PW.7 Dipraj Zantye who was her cousin and as such, their evidence does not inspire confidence. Learned Counsel further submitted that in the seizure panchanama, there is no mention of blood on the coita, however, the evidence of pancha witness for the scene of offence and the chemical analysis report produced by the prosecution disclose presence of blood on the coita which creates serious doubt about the prosecution case. Learned Counsel further submitted that PW. 3 Raghuvir Salgaonkar who acted as pancha witness for the seizure of the clothes of the accused panchanama, has not made any reference to the presence of blood on the clothes of the accused at the time of seizure, but the chemical analysis report discloses

that there was human blood on the clothes of the accused. Learned Counsel further submitted that though the prosecution has relied on photographs allegedly taken at the time of panchanama, the panchanama does not disclose that the photographs were taken by the I.O.. Learned Counsel further points out that there are different versions regarding taking of the accused and the victim to the hospital, as is evident from the depositions of prosecution witnesses. Learned Counsel further submitted that several shop owners nearby the scene of offence were present, but none of them has been examined, which raises serious doubt about the complicity of the accused in the commission of crime. Learned Counsel further submitted that although the prosecution claims that the accused had used the coita in the commission of offence, owner of the coita has not been examined, nor the fingerprints on the coita were taken. Learned Counsel further submitted that the accused was arrested at 9.45 a.m. on 17.5.2006. But, there is absolutely no evidence as to where the accused was, after he was discharged from Goa Medical College at Bambolim on the night of 16.5.2006. Learned Counsel further submitted that there is absolutely no evidence to show that the accused was referred to Goa Medical College at Bambolim for treatment. Learned Counsel further submitted that the conviction of the accused is unsustainable in law and in any case, the sentence imposed is harsh.

In support of his submissions, learned Counsel relied upon the following Judgments:

(1) **State of U.P. vs. Madan Mohan and others**, reported in AIR 1989 SC 1519; and

(2) **Rehmatvs. State of Haryana**, reported in AIR 1997 SC 1526.

5. Per contra, Ms. Pinto, learned Addl. P.P. for the respondent submitted that the evidence of the victim stands corroborated by the evidence of PW.6 and PW.7 who are the independent witnesses and is also corroborated by the medical evidence. Learned Counsel further submitted that PW.6 and PW.7 have absolutely no reason to falsely implicate the accused and the injuries present on the victim, as well as on the accused, clearly establish the veracity of the prosecution case. Learned Addl. PP further submitted that the injuries found on the victim within the

few hours of the incident, could not have been self-inflicted. Learned Addl. P.P. further submitted that the accused was infuriated on account of refusal by the victim and her family members to get the victim married with the accused and, as such, the motive for the commission of the crime has been clearly established by the prosecution. Learned Addl. P.P. further submitted that PW.6 and PW.7 were natural witnesses and it was not expected of the victim to refer to their presence, having regard to the nature of the sudden assault by the accused on the victim, and that too with a coita. Learned Addl. P.P. further submitted that the accused had not denied the presence of blood on his clothes, but, on the contrary had made a suggestion to that effect to PW.5. She further submitted that the shop owners in the vicinity claimed that they had not seen the incident and as such, were not examined. Learned Addl.P.P. further submitted that no blood was found on the ground at the scene of offence, since the scene of offence panchanama was conducted after about three hours of the incident and considering that it was a busy place near the bus stand, it was quite natural that the blood, which had fallen on the ground, had disappeared. She further submitted that the prosecution has been able to establish the offence punishable under Section 307 of IPC beyond reasonable doubt and as such, no fault can be found with impugned Judgment and Order. She further submitted that considering the nature of assault and the injuries suffered by the victim, the sentence imposed on the accused is quite adequate and not harsh.

In support of her submissions, learned Addl. P.P. relied upon the following Judgments:

- (1) **LachmanSing vs. State of Hararyana**, reported in 2006(2) Cri. L.R. 4041;
- (2) **Patted Amarappa and ors., vs. State of Karnataka**, reported in AIR 1989 SC 2004;
- (3) **Abuthagirand ors., vs. State, represented by Inspector of Police, Madurai**; reported in (2011) 1 SCC (Cri) 970;
- (4) **BrahmSwaroop and anr. vs. State of Uttar Pradesh**, reported in (2011) 2 SCC (Cri) 923; and

(5) **BirendraPoddar vs. State of Bihar**, reported in (2011) 2 SCC (Cri) 957.

6. I have carefully considered the rival submissions, perused the record and the Judgments relied upon.

7. The main question which arises for consideration is whether the prosecution has been able to prove the offence punishable under Section 307 of IPC, beyond reasonable doubt against the accused and whether the sentence imposed on him is appropriate?

8. The victim PW.5 Sweta Zantye deposed that Purvesh Zantye was her brother and she knew the accused who was sitting in the dock. Prior to her marriage, she was residing at Bastora, along with her family members. She was working at Rohit Vision, Mapusa as an accountant and she used to leave her house to go to work at 9.00 a.m. and come back home at 7.00 p.m. Sometimes, she used to go to Chicalim to visit her aunt Satyabhama Bhagkar and at times, she used to stay there. Once, when she was going in a bus to visit her aunt at Vasco, the accused sat beside her and started talking to her and started asking her name, address, etc. and then told her that he was interested in her and asked her whether she was interested in him, to which she replied that she is not interested in him and that she was not of that type girl. She deposed that she did not remember the date and month when she had gone to Vasco. Thereafter, on 11.5.2006, when she was coming out of the office in the evening hours, the accused came near her office and asked her whether she would marry him and she told him that she was not interested in marrying him.

She deposed that again on 13.5.2006, in the evening hours, the accused came to her house at Bastora and at that time, her brother and parents were present in the house along with her. The accused asked her parents and also her as to whether they were interested in his marriage with her, to which all of them replied in the negative.

PW.5 deposed that on 16.5.2006, her brother dropped her at Mapusa near her office on his bike at about 9.30 a.m. and went away. She left her office at 6.00 p.m. and was walking towards Mapusa bus stand. She stated that she wanted to

make a call at her residence. She reached near Titan shop at Mapusa market to do phone call through PCO (coin box) and while she was dialing the phone to her residence, someone came from behind and assaulted her with a weapon which hit the rear portion of her left ear (neck). She turned behind and saw the accused behind her with a coita, having wooden handle. The accused tried to assault her on head but the coita hit her left eye. The accused again raised the coita to hit her and she tried to defend herself with her hands and at this time, the accused hit the coita on her left hand. She shouted and ran away from the spot. Thereafter, people gathered and caught the accused. One person took her in a police van and she was shifted to Asilo hospital, where she was given first aid. Thereafter, she was shifted to Goa Medical College Bambolim, where she was admitted. Her statement was recorded in Goa Medical College on 17.5.2006.

She further deposed that on account of assault by the accused with coita, she sustained injuries on her neck, near ear and also near her left eye, left hand and the injuries were bleeding injuries. Her left hand got fractured and she was given twenty stitches on her hand. She had more than 10 stitches on her neck, near the ear and there was also fracture near the ear. She deposed that her left hand was operated and the doctor put rod inside the hand. She deposed that her hand was still bearing scar marks. Scar marks were shown to the learned trial Judge and a note has been made to that effect. She further deposed that till date she was unable to work properly because of the injuries on her hand. Further she stated that if she was lifting something or doing any work, her hand was still paining. She further deposed that she was taking treatment at Goa Medical College for three months and thereafter she started treatment from Dr. Tople, a private doctor at Mapusa. She claimed that the accused had assaulted her with coita because she refused his proposal of marriage. She stated that she was wearing a white colour churidar top and green pant. She further stated that the blood fell on her clothes. The clothes were attached by the police. She identified the clothes and also the blood stains on the clothes, upon clothes being shown to her. She also identified the blue colour long sleeves shirt and long black pant, worn by the accused at the time of the incident, upon the same being shown to her. She also identified the photographs (exhibit 15) showing the scene of offence. She identified the photographs "F" and "J" showing the coita with which she was assaulted.

In the cross examination, she stated that when her statement in GMC was recorded, one policeman was present. She admitted that the scene of offence was a crowded place and there were many shops near the same. She claimed that the incident lasted for about 2 to 3 minutes, but stated that she could not tell the exact duration. She further stated that no discussion took place between she and the accused on the day of the incident. She stated that she knew Suresh Tari, who was her neighbour i.e. her parents' house and she knew him since her childhood. She had not given any additional statement to the police. She claimed that her neighbour Suresh Tari had shifted her to Asilo Hospital. She further stated that Dipraj Zantye was her cousin. Siddhesh Bagkar was also her cousin. Ajay Salgaonkar was her husband. She admitted that she had not stated to the police that at the time of the incident she was wearing white colour churidar top and green pant and also the clothes worn by the accused at the time of the incident. She admitted that the photographs shown to her were not clicked in her presence. She further stated that when the people caught hold of the accused, they removed the coita from the hands of the accused. She stated that she was conscious after the incident, but she was dizzy. She knew Manoj Tari who was working with her in her office. She denied the suggestion that she was sending emails to the accused from 2005 to 2006 or that she was calling the accused on phone when he was in Bahrain for five minutes and similarly the accused used to phone her. She denied all the suggestions put by the accused to the effect that the case set up by her that it was the accused who had assaulted her was not correct. She further deposed that she did not notice any special marks on the coita. She denied the suggestion that since the accused was assaulted badly, blood of the accused had fallen on her clothes. She claimed ignorance as to whether the accused was assaulted by public and that he had suffered injuries near his forehead and upper lip. She denied the suggestion that while running away in Mapusa market, she dashed against a sign board made up of metal, fixed to the tar road and got injured. She denied the suggestion that she was having love affair with the accused for about 5 years prior to the incident. She also denied that she had filed a false complaint against the accused in order to pressurise him not to marry her.

9. The prosecution has also relied upon the evidence of PW.6 Suresh Tari who claimed to be an eye witness to the incident. PW.6 Tari deposed that he knew the

complainant by name Purvesh Zantye and also his family members as he was staying at Bastora in his old house. According to him, Bhagwan Zantye had his shop at Mapusa market. He stated that he was a driver by profession, working for private vehicles. He deposed that on 16.5.2006, at about 5.30 p.m. he had gone to Mapusa market to purchase electrical material. He parked his Hero Honda motor cycle outside Mapusa market and while he was coming back after purchasing electrical material, at about 6.15 p.m. and while walking towards his motor cycle which was parked near Bharati Cold drink, which is opposite to Sirsat Lodge, he heard shouts of one girl and on hearing the shouts, he went towards her. He saw the girl at a distance of about 7 metres and recognized her as Sweta Zantye. He saw one person assaulting Sweta by a coita on backside of her head, on her face, near her eye and she was trying to defend herself by using her hands and at that time the person hit the coita on her hand instead of head. People gathered there and removed the coita from the hand of the said person and threw it down on the road. He identified the accused as the assailant. Thereafter, he telephoned at the residence of Bhagwan Zantye and informed Purvesh about the incident since Sweta was bleeding profusely. He brought the motor cycle to take Sweta , however, police came there, took Sweta in the police jeep and took her to Asilo Hospital for medical treatment. He also went to Asilo hospital. Thereafter Sweta was shifted to Goa Medical College Bambolim for further treatment for the injuries sustained by her. He further claimed that the police requested him to wait in order to show the scene of offence to the panchas and he was present when the scene of offence panchanama was conducted. Two panch witnesses were present at the time of scene of offence panchanama. The police attached the coita which was used by the accused for assault and which was thrown at the scene of offence. The said coita had a wooden handle and a curve. He identified the coita- Exhibit 27 as the coita which was attached under the scene of offence panchanama. He claimed that the police had clicked photographs of the scene of offence. He also identified the photographs. He stated that the panchanama was conducted on the same day, at night. He was thereafter called for identification parade on 13.6.2006 and he identified the accused in the parade from several persons, paraded by the Magistrate.

In cross examination, he claimed that he knew the complainant since his childhood. He could not tell the name of the shop from where he purchased the electric material as there were many shops in the market. But he could tell the location of the said shop. He stated that he did not have with him the bill pertaining to the purchase made by him on that day. He stated that at the time of the assault about 10 persons were standing at a distance of about 4 metres from her and there were about four shops near the scene of offence and they were open at that time. He claimed that since he was having the residential phone number of Bhagwan Zantye, he gave a call from his mobile. He further claimed that he used to visit the shop of Bhagwan sometimes. He was confronted with the statement where it was not stated that the accused assaulted Sweta near the eye, but it was stated that the accused had assaulted on her face. He further stated that he had not told the police that the blood was oozing out profusely from Sweta. He was confronted with the police statement wherein he had not stated that he had gone to Asilo Hospital in police jeep. The witness stated that he could not say why it was not recorded. He also did not give the names of the panch witnesses, as they were not known to him. He did not have any conversation with the panch witnesses. He also did not know the person who clicked photographs. He did not tell the panchas that the accused assaulted Sweta, nor did he tell them that the public gathered there removed the coita from the hands of the accused and threw it on the road, and also assaulted the accused. He stated that he did not know whether the name of husband of Sweta was Ajay Salgaonkar. He denied the suggestion that Sweta suffered injuries since she dashed against a metallic board, when she was running in Mapusa Market. He further stated that he had seen public beating the accused after the incident. But he had not seen the bleeding injuries on the accused. He had gone with Sweta to the hospital. He claimed that he had not assaulted the accused, nor did he ask accused as to why he assaulted Sweta. He stated that he did not know whether there was love affair between Sweta and the accused. He denied that the statement made by him in the examination in chief regarding the assault on Sweta was false or that he had not seen the assault on Sweta by the accused. He further stated that the distance between his old house at Bastora and the house of Bhagwan Zantye at Bastora was about 300 to 400 metres. He further stated that he had not noticed any identification marks on the coita, except that it

was having a wooden handle. He denied the suggestion that he was not present at the scene of offence.

10. The prosecution also relied upon the evidence of PW.7 Dipraj Zantye, cousin of Sweta. He deposed that he knew PW.2 Purvesh Zantye. On 16.5.2006, he had gone to ITI classes at Peddem, Mapusa and around 5.30 p.m. his classes got over. Thereafter, he went to Mapusa market for shopping and after shopping, at about 6.15 p.m. when he was proceeding from market towards Mapusa bus stand to go home, when he reached near the passage leading towards Mapusa bus stand from market, he heard shouts and screams of a girl coming from the side of watch shop. So he went to see as to what had happened and he saw many people gathered there and one person was assaulting the girl with a coita on face and she was trying to defend herself with hands. When he went closer, he saw that the said girl was his cousin Sweta Zantye. He identified the accused as the person who had assaulted Sweta with the coita. He further stated that people removed the coita from the hands of the accused and assaulted him. Someone phoned the police and the police jeep came at the spot and his sister was taken in the police jeep to Asilo hospital. He also went to Asilo hospital by hiring a motor cycle. After sometime, Sweta was taken to Goa Medical College, Bambolim for further medical treatment and the accused was also taken to the hospital. He deposed that Sweta had received injuries on the neck, behind the left ear, on her face near her left eye and on her left hand and she was bleeding profusely. He claimed to have identified the accused at the identification parade.

In cross examination, he admitted that his statement was recorded on 19.5.2006. He stated that near the scene of offence, there were about 100 people gathered. There were about 25 shops near the scene of offence and they were open. After the incident, he had conversation with Sweta. He denied the suggestion that he had no conversation with Sweta. He claimed that he had not assaulted the accused. He admitted that he had not stated to the police specific location of the injuries on Sweta. But claimed that he had not stated about the injuries, since he was not asked by the police. Similarly, he did not state to the police that Sweta was bleeding profusely. He admitted that the police took the accused as well as Sweta in police jeep to Asilo Hospital for treatment. He admitted that Ajay

Salgaonkar was the husband of Sweta, but he claimed that at that time he was not knowing him. He did not know whether Siddesh Bagkar was the cousin of Sweta.

11. In order to prove the injuries on the victim, prosecution examined PW.10 Dr. Roshan Nazareth and PW.12 Dr. Zelio D'Mello. PW.10 Dr. Nazareth who was attached to Asilo Hospital, Mapusa in the month of May, 2006 deposed that on 15th May, 2006 he had examined Sweta Zantye at about 6.40 p.m. and found the following injuries on her body:

1. Incised wound measuring 6 x 3x3 cms. on the outer left eye with tailing on the lateral side caused by sharp edged weapon within six hours duration;
2. Incised wound 8 x 4x3 cms. behind left ear with fracture of outer bone table of skull tailing posteriorly caused by sharp edged weapon within 6 hours of duration.
3. Contused lacerated wound 4x3x3 cms. on left forearm with tears of muscles and tendon sheath caused by hard blunt force within six hours duration. For injuries no.1, 2 and 3 as stated above the patient was referred to GMC for expert opinion.
4. Contused lacerated wound with fracture of forearm bones measuring 6x3x3 cms distal to injury no.3 caused by hard blunt force within six hours duration and grievous in nature.
5. Contused lacerated wound with fracture first phalanx of left index finger measuring 4 x 2 cms on left index finger posteriorly caused by hard blunt force within six hours duration and grievous in nature.

He further deposed that the patient was referred to Goa Medical College for orthopaedic opinion and management, as no consultant orthopaedician was on duty on that day. He identified his signature at point "A" on the hurt certificate Exhibit 38. Upon Coita Exhibit 27 being shown to the witness, he stated that the aforesaid injuries could be caused by the said coita and further stated that if the person with the aforesaid injuries was not treated in time, the said injuries would have been sufficient in the ordinary course of nature to cause death.

In cross examination, he admitted that he had not given his opinion in the hurt certificate that the aforesaid injuries if not treated in time, were sufficient in the ordinary course of nature to cause death. He also admitted that in the hurt certificate the history of the said injuries was not mentioned. He stated that he did not remember whether, at the time of examination, Sweta was conscious or not. He stated that he did not remember whether Sweta informed him during examination that she was assaulted by any person. The witness admitted that if a person was assaulted by the assailant from a close range, the blood of the victim could fall on the assailant and there was a possibility of the blood stains on the weapon and also there was a possibility of the blood falling on the ground. He stated that if a person while running dashed against a metallic sign board attached to the tar road and fell down, the aforesaid injuries could not be caused. He denied the suggestion that his statement was not correct. He stated that he had examined the accused on the same day, but he did not remember what were the injuries on the accused. He denied that he was deposing falsely.

Upon re-examination, he stated that he examined the accused on 16.5.2006 at 7.05 p.m. and he found the following injuries:

- (1) Right black eye caused by hard blunt force within six hours duration;
- (2) Contused lacerated wound 1 x 1 cm. outer right eye, simple in nature caused by hard blunt force;
- (3) Contused lacerated wound on the scalp above forehead 6 x 2 cms. bone deep caused by hard blunt force. X-ray of skull was taken and sent for radiologist opinion.
- (4) Contused lacerated wound 1 x 1 cms. left side of upper lip.
- (5) Multiple bruises and abrasions on upper back largest measuring 3 x 2 cms. and smallest 3 cms. linear.
- (6) Abrasion 1 x 1 cms. on left elbow.

He stated that the bruises and abrasions were caused by hard blunt force within six hours of duration and all of them were simple in nature. He stated that the patient was referred to neurosurgical department of Goa Medical College as the patient was drowsy and for psychiatric evaluation. He produced the Medical Certificate and identified his signature at point "A". He further stated that the said injuries could have caused if a person is assaulted by public with slaps, fists, kicks.

In cross examination he has denied the suggestion that his statement that the aforesaid injuries could be caused if a person is assaulted by public with slaps, fists, kicks is false. He also denied that he had not examined the accused on 16/5/2006 at 7.05 p.m.

12. The prosecution also examined PW.2 Purvesh Zantye. He deposed that he knew the accused present in the dock. He had filed the complaint (Report) on 16.5.2006. PW.5 Sweta was her sister. His house was at Bastora, however, due to education, he was residing at his aunty's place at Chicalim. At the time of the incident, his sister was working in Mapusa with one Rohit Vision. He deposed about the visit of the accused to their house at Bastora on 13.5.06 and the proposal made by the accused of marriage with his sister. He further stated that the parents and his sister did not accept the proposal of the accused. He further deposed that on 16.5.06, he went along with his sister to drop her at Mapusa at around 9.30 a.m. since he was having holidays. He came back to his house at Bastora at around 6.15 p.m. at which time he received a call from one Suresh Tari, stating that his sister was assaulted by coita near Sirsat Hotel, Mapusa. He immediately went to Mapusa on his motor cycle. He noticed that public had gathered at the spot and he was informed that his sister, as well as the person who assaulted, were shifted to Asilo Hospital. Thereafter, he went to the hospital. His sister was treated by a doctor and the accused was also in the hospital since he was assaulted by the public at the spot. He further stated that his sister informed him that she was assaulted by the accused. Thereafter, he lodged the report regarding the assault on his sister by the accused. He identified his signature on the report Exhibit 13 at point "A".

In cross examination, he admitted that Suresh Tari was his neighbour and a family friend. He admitted that in the report he had not stated that his sister informed him that the accused assaulted her. He denied the suggestion that the accused had not visited their house on 13.5.2006.

13. PW.12 Dr. Zelio D'Mello who was attached to Orthopaedic Department of Goa Medical College, Bambolim in May, 2006, deposed that he knew Dr. Pravin Patel, who was working as a Senior Resident in Orthopaedic Department of Goa Medical College. He further stated that Dr. Pravin was not attached to the Goa Medical College at the time of his deposition and he was not residing in Goa. He deposed further that he examined the patient by name Sweta Zantye, 23 years old, at Goa Medical College Bambolim on 16.5.2006, with history of alleged assault at 6.30 p.m. at Mapusa. He deposed that she was diagnosed as a case of compound fracture of the left ulna, with multiple contused lacerated wounds on the left forearm. The patient was treated by external fixation and discharged on 19.5.06. The patient had injury on the left eye. The said injuries were grievous in nature. He identified his signature on the medical certificate (Exhibit 44) at point A and that of Dr. Pravin Patel at point B. He further stated that all the injuries could be caused by coita. Upon coita being shown to him, he stated that the said injuries could be caused with the said coita.

In cross examination, he stated that said Sweta was not personally examined by him, but she was under his care and supervision. He further stated that Exhibit 44 was written by Dr. Pravin Patel and it was countersigned by him. He admitted that in the medical certificate it was not stated that the injuries could be caused by coita. He stated that such injuries could not be caused by vehicular accident. He denied that his statement was false. He further stated that the medical certificate is based on the findings and on the relevant case papers.

14. A close scrutiny of the evidence of the aforesaid witnesses, discloses that the version of PW.5 Sweta Zantye that she was assaulted by the accused at Mapusa on 16.5.2006 at about 6.00 p.m. with a coita is not only corroborated by PW.6 Suresh Tari, but also by the medical evidence tendered by the prosecution through PW.10 Dr. Roshan Nazareth and PW.12 Dr. Zellio De Mello. The evidence of

PW.5 Sweta Zantye stands corroborated on material aspects by PW.6 Suresh Tari. Presence of PW.6 Suresh Tari at the site is quite natural and nothing has been brought in his cross examination to discredit his evidence.

15. So far as PW.7 is concerned, I find it difficult to accept his claim that he was an eye witness to the actual assault. From close scrutiny of his evidence, it appears that he had reached the scene of offence after the assault was complete. Moreover, his statement was recorded on 19.5.2006. In his examination-in-chief, PW.7 has stated that he heard shouts and screams from some distance and thereafter he went to the actual spot where PW.5 Sweta was assaulted. If this is the case, then it is difficult to accept that he could see the actual assault. The assault must have taken place for not more than a minute or so. But his evidence conclusively establishes that he had reached the spot after the accused assaulted PW.5.

16. It is well settled that the evidence of a victim who had suffered injuries is entitled to a great weight. In the present case, the version of PW.5 that she was assaulted by the accused with a coita, stands corroborated not only by the evidence of PW.6, but by cogent medical evidence which discloses that within a few minutes time she was referred to Asilo Hospital, Mapusa and PW.10 found several grievous injuries on her person and that the injuries found on the person of PW.5 Sweta by PW.10 Dr. Nazareth corroborated her version before the Court. There is absolutely no reason for me to disbelieve the version of PW. 5 that it was the accused who had assaulted the victim. The version of PW.5 also stands corroborated by the evidence of PW.2 Purvesh Zantye, her brother who lodged the report at about 9.30 p.m. after being informed about the incident. The delay of about three hours in lodging the report cannot be said to be fatal inasmuch as he was informed about the assault on his sister on telephone by PW.6 Suresh Tari and it would be quite natural for him to go to the site and upon being informed that his sister was taken to Asilo Hospital, to rush to the hospital to attend her and as such, delay of about three hours in lodging the report cannot be said to be fatal. The report lodged by PW.2 Purvesh Zantye also lends corroboration to the evidence of PW.5 Sweta.

17. The evidence of above referred witnesses also stands corroborated by the scene of offence panchanama Exhibit 10, which has been proved by PW.1 Salvarajan Reddy and PW.3 Raghuvir Salgaonkar. Photographs Exhibit 15 - colly also lend assurance to the prosecution case.

18. In so far as statement made by PW1 Reddy that blood was noticed on the coita which fact is not found in the attachment panchanama of the weapon is concerned, it appears that there is a lapse on the part of the Investigating Officer to record in the panchanama that the blood was found on the coita. But it is now well settled that any lapse on the part of the investigating officer cannot lead to the acquittal of the accused in the crime. Evidence of PW.1 that blood was found on the coita deserves to be accepted in view of the cogent evidence led by the prosecution that the accused had assaulted PW.5 with coita, causing her grievous injuries.

19. In so far as the absence of blood on the ground at the time of scene of offence is concerned, the same cannot be said to be fatal inasmuch as the scene of offence panchama was conducted at about 9.30 p.m. and admittedly, the place where the alleged offence had taken place, was a crowded place and must have been trampled upon by several persons using the road. Therefore, absence of blood on the ground at the time of scene of offence panchanama, cannot discredit the cogent evidence led by the prosecution to which reference is made hereinabove.

20. Moreover, the prosecution has established the motive on the part of the accused. Version of PW.5 Sweta that sometime before the incident the accused approached her and thereafter on 13.5.06 he visited the house of the victim and proposed to the victim as well as her father that he wanted to marry her, has been conclusively established. It is pertinent to note that the visit of the accused to the house of the victim has not even been denied in the cross examination of PW.5 Sweta. It appears that this is a case of one sided love affair and upon being frustrated by refusal of PW.5 and her father to get Sweta married to him, accused assaulted PW.5 Sweta. The evidence led by the prosecution, in my opinion, conclusively establishes the offence punishable under Section 307 of IPC against

the accused. To that extent, no fault can be found with the impugned judgment and order.

21. Insofar as discrepancies and inconsistencies in the evidence of the prosecution witnesses pointed out by Mr. Rebello are concerned, in my opinion, the same do not shake the cogent evidence led by the prosecution to prove the complicity of the accused in the commission of crime. The inconsistencies and variations in the testimonies of the prosecution witnesses pointed out by Mr. Rebello are minor in nature and are not sufficient to discredit the cogent ocular evidence, more particularly of PW.5 and PW.6 which is corroborated by the medical evidence. Therefore, in my opinion, the inconsistencies and variations in the testimonies of the prosecution witnesses are not sufficient to give benefit of doubt to the accused.

22. Insofar as the judgments relied upon by both the sides are concerned, I do not deem it necessary to refer threadbare to each authority. I have taken into consideration the ratio of the said judgments while analysing the prosecution evidence in order to find out whether the prosecution has been able to establish complicity of the accused in the commission of crime beyond reasonable doubt.

23. Coming to the sentence, learned Additional Sessions Judge has imposed sentence of imprisonment of 4 years and ordered to pay compensation of Rs.1 lakh, on the ground that the victim had suffered grievous injuries, on account of assault on her by the accused. In so far as substantive sentence of 4 years rigorous imprisonment is concerned, in my opinion, considering the manner of assault and the injuries suffered by the victim, the said sentence cannot be said to be harsh. However, in so far as direction to pay the compensation of Rs.1 lakh is concerned, in my considered opinion, the same appears to be excessive. The amount of compensation payable by the accused depends upon several factors, such as the manner in which the offence was committed, the injuries suffered by the victim, etc., but at the same time the Judge also has to take into consideration the financial status of the accused. There is absolutely nothing on record to indicate the financial status of the accused. Therefore, in my opinion, the compensation of Rs.1 lakh ordered by the trial Court is excessive and the interest

of justice would be served if the compensation payable to the victim is reduced to Rs.50,000/-. In default sentence imposed by the learned Trial Judge deserves no interference. The order passed by the learned trial Judge insofar as disposal of property is concerned, is maintained. The appellant shall be entitled to set off the period of detention in terms of Section 428 of Cr.P.C.

24. In the result, therefore, the appeal is partly allowed to the extent indicated above. The substantive sentence imposed on the accused is maintained.

25. At this stage, Mr. Rebello, learned Counsel for the appellant/ accused seeks time of two weeks to surrender to undergo the remaining sentence imposed on him. Time of two weeks is granted to the appellant to surrender before the learned Additional Sessions Judge-1, Panaji to undergo the remaining sentence. In the event, the accused-appellant fails to surrender within the period of two weeks, learned Additional Sessions Judge shall take appropriate steps to take the accused in custody to undergo the remaining sentence imposed on him. The bail bond executed by the appellant shall stand discharged upon his surrender.

26. Appeal stands disposed of.

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