



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.185 OF 2018

Amol s/o. Dattatraya Choudante,
Age : 23 years, Occ. Labour,
r/o. Bhimnagar, Mudkhed,
Dist. Nanded

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.M.M.Parghane, Advocate for appellant
Mr.S.D.Ghayal, APP for respondent

CORAM	:	R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON	:	JANUARY 15, 2024
PRONOUNCED ON	:	JANUARY 30, 2024

JUDGMENT (PER R.G.AVACHAT, J.) :-

This is an appeal against conviction. The appellant has been convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation, vide judgment and order dated 22.01.2018, passed by learned Addl. Sessions Judge-5, Nanded, in Sessions Case No.94 of 2014.

2. Learned counsel for the appellant would submit that it is not an offence of murder. He adverts our attention to the cause of

death given in the post mortem report, as “septicemia in an operated case of stab injury to abdomen”. According to him, it may, at the most, be an offence of attempt to commit murder or any lesser offence. According to him, the appellant, at the relevant time, was just 22 years of age. He is in jail since little over nine years and six months. He, therefore, urged for disposing of this appeal with appropriate orders.

3. Learned APP would, on the other hand, submit that the appellant inflicted two knife-blows at the vital part of abdomen of the deceased. The deceased died within eight days of the incident. The cause of death is said to be “septicemia in an operated case of stab injury to abdomen”. Same is result of the fatal injury caused by the appellant. He, therefore, urged for dismissal of the appeal.

4. In view of the submissions advanced by learned counsel for the appellant, we need not refer to the evidence in extenso. Suffice it to say that the appellant had assaulted the deceased with knife. He gave two blows on the stomach and equal number of blows in the back of the deceased on 09.05.2014.

5. The trial Court has recorded conviction relying on the FIR-cum-dying declaration of the deceased. The incident took place on

09.05.2014 by little past 07.00 p.m. The appellant and the co-accused (acquitted) had been to the front-yard of the house of the deceased. All of a sudden, they mounted assaults. The appellant wielded sharp weapon like knife.

6. The post mortem report (Exh.108) records the cause of death - septicemia in an operated case of stab injury to abdomen. PW 9 - Dr.Santosh had noticed following injuries on the person of the deceased:-

1. Sutured wound present over right side of back situated 12 cm. from shoulder tip and 13 cm. from midline, oblique with lower angle medially, size 8 cm. with 8 sutures in situ. On removal of sutures margin partially adherent and clean cut and muscle deep.
2. Sutured wound present over right side of back situated at lower angle of scapula and 2.5 cm. from midline, of size 8 cm. in length with 6 sutures in situ. On removal of sutures margins partially adherent, clean cut and muscle deep. Wound was horizontally placed.
3. Incise wound present at back at the level of T – 7 vertebra, horizontal, of size 4 cm. x 0.3 cm. x subcutaneous tissue deep, margin clean cut.
4. Sutured wound present over right iliac region situated 7 cm. from anterior superior iliac spine and 16 cm. from umbilicus, oblique with lower angle anterior, of size 6 cm in length with five sutures in situ. On removals of sutures margins partially adherent, sutures present in layers of peritoneum.
5. Mid line laparotomy sutured wound present over abdomen extending from 3.5 cm. below xiphoid

process in mid line, 23 cm. in length with 18 sutures in situ, no oozing no gaping, margins partially adherent.

6. Punctured wound present over right lumbar region 6 cm. above injury No.4, of size 1 cm. x 1 cm. x cavity deep suggestive of surgical drain wound.

7. Abrasion present over right middle finger knuckle, of size 1 x 0.5 cm. with brownish black scab.

8. Multiple intravenous injection marks present on both forearms.

In view of PW 9 – Dr.Santosh, injury no.4 was sufficient to cause death in the ordinary course of nature.

7. PW 10 – Dr.Kavita had examined the deceased soon after the incident. She noticed stab injury on the back of the deceased. Whereas, the police information letter on record indicates the deceased to have suffered penetrative injury to his abdomen.

8. Admittedly, the Doctor, who had treated the deceased, was not examined as witness. The incident is of 09.05.2014. The victim breathed his last on 17.05.2014.

Septicemia In An Operated Case (*literature from google*) :-

Sepsis does not always happen after an operation. It can occur as a result of another infection, a pressure sore or other illness.

However, sepsis is a common post-operative complication. This is because the patient will have an open wound which is very vulnerable to infection. The skin is a natural defence against bacteria. Once it is cut open the body will immediately be more susceptible to infection as the wound provides an opportunity for the bacteria to get in.

Therefore sepsis happens after an operation because bacteria infect the surgical wound. It may be that the bacteria were present on a surgical instrument or tool. Alternatively the bacteria occur naturally on the skin and inside the body, and may infect the wound in this way.

When the wound becomes infected, it must be treated immediately. Otherwise the infection could get into the bloodstream, leading to sepsis.

What is septic shock?

Septic shock is a serious medical condition that can occur when an infection in body causes extremely low blood pressure and organ failure due to [sepsis](#). Septic shock is life-threatening and requires immediate medical treatment. It's the most severe stage of sepsis.

Septic shock is the last and most dangerous stage of sepsis. Sepsis can be divided into three stages: sepsis, severe sepsis and septic shock.

Sepsis: Sepsis is life-threatening. It happens when [immune system](#) overreacts to an infection.

Severe sepsis: This is when sepsis causes organs to malfunction. This is usually because of low blood pressure, a result of inflammation throughout body.

Septic shock: Septic shock is the last stage of sepsis and is defined by extremely **low blood pressure**, despite lots of IV (intravenous) fluids.

Why does sepsis happen after an operation?

Sepsis does not always happen after an operation. It can occur as a result of another infection, a pressure sore or other illness.

However, sepsis is a common post-operative complication. This is because the patient will have an open wound which is very vulnerable to infection. The skin is a natural defence against bacteria. Once it is cut open the body will immediately be more susceptible to infection as the wound provides an opportunity for the bacteria to get in.

Therefore sepsis happens after an operation because bacteria infect the surgical wound. It may be that the bacteria were present on a surgical instrument or tool. Alternatively the bacteria occur naturally on the skin and inside the body, and may infect the wound in this way.

When the wound becomes infected, it must be treated immediately. Otherwise the infection could get into the bloodstream, leading to sepsis.

9. Had the patient been not infected by septicemia, he might have survived. Therefore, the cause of death cannot directly be attributed to the assault made by the appellant. Since the blows were given on the vital part of the body of deceased, same indicates the appellant to have had intended to finish off the deceased. Since

the deceased died of septicemia to have developed post-operation, we find it to be a case of the appellant committing the offence of attempt to commit murder.

10. The appellant is behind the bars since little over nine years and six months. Considering the same, we are inclined to allow the appeal partly.

11. In the result, the following order:-

- (i) The appeal is partly allowed.
- (ii) The order of conviction and sentence dated 22.01.2018, passed by learned Addl. Sessions Judge-5, Nanded, in Sessions Case No.94 of 2014, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code, is set aside.

Instead, the appellant is convicted for the offence punishable under Section 307 of Indian Penal Code and sentenced to suffer rigorous imprisonment for nine years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand), in default, to suffer rigorous imprisonment for six months.

(iii) The appellant is in jail since 17.05.2014. He be set at liberty forthwith, if not required in any other case.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP