

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 332 OF 2017

Mujahid s/o Maqeed Qureshi
age 27 years, occ. Labour
R/o Murtuza Colony, Pathri,
Tq. Pathri, Dist. Parbhani.

Appellant

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, Advocate for the appellant.
Mr. R. B. Bagul, APP for the respondent/State.

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.**

RESERVED ON : 8th DECEMBER, 2022.
PRONOUNCED ON : 13th DECEMBER, 2022.

JUDGMENT : (PER R. M. JOSHI, J.)

1. Appellant is sentenced to suffer life imprisonment by Additional Sessions Judge, Parbhani in Sessions Case No. 151/2015 and against the said conviction, he has preferred present appeal under Section 374 of the Code of Criminal Procedure.

2. In short, case of the prosecution is as under :-

On 31st July, 2015, at about 6.00 pm, Mujahid/appellant, came to the house of Vishwanath/informant and took Kisan, son of

the informant, with him. At about 7.00 pm, Balu Satpute, nephew of the informant, came home stating that Kisan is found in injured condition behind bus stand near cinema hall. They went to the spot and found that Kisan was already removed to Onkar Multi Speciality Hospital, Pathri, for treatment by Bharat, Bandu and Vishal. From there, he was taken to Government Hospital, Parbhani. Informant further stated about Kisan and appellant being friends and appellant being addicted to liquor. According to him, there used to occur quarrels between Kisan and appellant for last 2 to 3 months as Kisan was refusing to accompany appellant for committing theft. This report came to be recorded at 10.00 pm on 1st August, 2015 and pursuant thereto, at 11.35 pm, offence came to be registered vide C.R. No. 134/2015.

3. During the course of investigation, police visited the spot and spot panchanama (Exhibit 24) was drawn and inquest of the body was done under panchanama (Exhibit 22). The dead body was referred for post mortem and post mortem notes (Exhibit 34) were included in the investigation papers. Statements of witnesses were recorded. There was seizure of clothes of deceased and accused. Seized muddemal was sent for forensic examination. On conclusion

of examination, charge-sheet was filed and case was committed to the Sessions Court for trial. Since appellant abjured the charge, he was put on trial.

4. Prosecution examined in all twelve witnesses in order to bring home guilt of the appellant. Amongst these witnesses, Vishwanath Rode (PW 1) is informant, who set law in motion, Krishna Pitale (PW 2) is the one who had seen deceased for the first time in injured condition lying on the spot. Dr. Kazi (PW 5) conducted post mortem and gave his opinion about cause of death being interracial hemorrhage due to head injury. Police Head Constable Radkar (PW 4) was examined for the purpose of proving the fact about recording of statement of informant at 10.00 pm on 1st August, 2015 in the hospital. Inquest panchanama (Exhibit 22), spot panchanama (Exhibit 24) and panchanamas of seizure of clothes of deceased and accused (Exhibit 25 and 26) were admitted by the defence.

5. According to learned advocate for the appellant, there is delay in lodging report to the police and in the facts and circumstances, when there is a reason for the informant to lodge false report against the appellant, such delay becomes fatal to the

case of the prosecution. He also submitted that there is absolutely no evidence on record except statement of the informant about last seen of appellant with the deceased to connect him with the crime as seized clothes of the deceased do not show any blood stains nor there is recovery of any weapon. It is also argued that the fact of homicidal death is not conclusively established nor the manner in which the alleged assault is caused is proved by the prosecution beyond doubt and from the cross-examination of the Medical Officer, the possibility of accidental injury is not ruled out. In support of his contention, he has placed reliance on following judgments :-

- i) *Chandrapal vs. State of Chhattisgarh,*
AIR 2022 Supreme Court 2542
- ii) *Kanhaiya Lal vs. State of Rajasthan,*
reported in (2014) 4 Supreme Court Cases 715.

6. All the aforesaid submissions are vehemently opposed by learned APP by placing reliance on the evidence of informant, which according to him, indicates that there used to occur quarrels between deceased and appellant for refusal of the deceased to accompany appellant for committing theft and, considering the fact that within less than an hour of deceased being taken with him by the appellant, he was found in injured condition and, in the absence of any

explanation from the appellant, it needs to be held that he is the author of the injuries caused to the deceased. By referring to the other evidence on record, prosecution has sought for dismissal of the appeal. In support of his submissions, he placed reliance on the judgment in the matter of Surajdeo Mahto and another vs. State of Bihar, reported in **2021(4) Bom.C.R. (Cri.) 343**.

7. The incident in question has occurred on 31st July, 2015 between 6.00 to 7.00 pm whereas the statement of informant for the first time came to be recorded at 10.00 pm on 1st August, 2015, as admitted by informant himself as well as deposed by Police Head Constable Radkar (PW 4). It is further appearing from evidence of this police personnel that he attempted to record statement of the injured but since the injured was not in a position to make statement due to his unfit physical condition, no statement was recorded and finally, statement of informant was recorded at 10.00 pm on the next day of incident.

8. From the testimony of Vishwanath (PW 1), it is clear that there was history of quarrels between appellant and deceased Kisan, son of the informant, for the reason that Kisan was refusing to

accompany appellant for committing theft. It has further come in his evidence that due to fear of appellant, deceased was not going for work since one month and on the day of the incident in the afternoon, the deceased was beaten by the appellant. In such circumstances, it is difficult to accept that the informant did not suspect causing of injuries to his son at the hands of appellant. When it is a specific case of the informant that on the day of the incident at about 6.00 pm, appellant took Kisan with him and thereafter at 7.00 pm, Kisan was found in injured condition, the normal conduct of any person would be that of reporting such incident to the police immediately. Even accepting the fact that the injured was taken to the hospital and preference was given to his treatment, evidence on record suggests that the injured was not taken to the hospital by the informant but by other persons who found him in injured condition at the spot. Apart from this, there is other evidence to indicate that the informant has three other sons than the deceased and one of them is also duly examined before the Court. Thus, it stands to no reason as to why immediate First Information Report was not lodged by indicating the fact of appellant having taken the deceased with him.

9. Delay caused in lodging First Information Report is not explained by informant or Investigating Officer. Accepting the circumstances appearing on record as it is, they are not enough for condonation thereof. More particularly when there is evidence showing informant having grudge against the appellant owing to the instances of assault/beating by the appellant to the deceased prior to occurrence of last incident. Thus, informant had every reason to lodge report against the appellant. Non-explanation of delay becomes fatal in such circumstances.

10. Though it is sought to be argued that there was only one hour time gap between deceased having gone with appellant and he found in injured condition, the evidence of informant about Balu coming to him at 7.00 pm does not get support from the evidence of Pandhari (PW 8), brother of the deceased. This witness claims that at about 8.00 pm, Balu came and informed about Kisan lying in the injured condition behind cinema talkies. Thus, the time gap between alleged last seen and discovery of incident of assault is not that small as sought to be projected. Similarly, the conduct of informant as well as brother of deceased of even not informing to any other person who had seen deceased in injured condition about the deceased having

gone along with appellant gives further support to theory of false implication. Moreover, it also does not stand to any sort of justification as to why deceased would go along with the appellant if he was beaten on the very same day in the afternoon. In such circumstances, we do not find any reason to place reliance upon the sole belated statement of informant about appellant having taken deceased with him and thereafter in short period of time he was found in injured condition. Since his testimony is not wholly reliable unless there is corroboration on material particulars, it would be unsafe to consider the same for the purpose of conviction of the appellant.

11. Since it is a case of circumstantial evidence, all the circumstances must unerringly lead to the sole conclusion of involvement of appellant in this crime excluding any other possibility. Prosecution, therefore, at the first place must prove that the death of deceased is homicidal. In this regard, it would be material to refer to the testimony of Dr. Kazi (PW 5) who has noted external injuries and corresponding internal injuries found on the dead body. He has opined about cause of death as interracial hemorrhage due to head injury. In the cross-examination, however, he has accepted that

causing of haematoma may be by accident or assault or even otherwise. It is thus clear that there is no candid opinion of Medical Officer which leads to the conclusion that the death of the deceased is homicidal. On the basis of such evidence, it can not be held that prosecution has proved beyond doubt that deceased died homicidal death.

12. According to the Investigating Officer, appellant was arrested from his house and seizure of his clothes did not indicate any blood stains thereon. There is no recovery of any weapon and in fact no evidence is adduced by the prosecution in order to show as to how the injuries were probably caused to the deceased. In the circumstances, except for the belated statement of informant that deceased went along with appellant at 6.00 pm on 31st July, 2015, there is absolutely no evidence on record to connect the appellant with this crime.

13. In the facts and circumstances of the case, delayed statement of informant against appellant creates serious doubt about its veracity and, in the absence of any other evidence connecting

appellant with this crime, we are not inclined to uphold the judgment of conviction. Hence the order :

ORDER

- (i) Appeal is allowed.
- (ii) Impugned judgment and order dated 6th July, 2017 in Sessions case No. 151/2015 is set aside. Appellant Mujahid s/o Maqeed Qureshi is acquitted of the offence punishable under Section 302 of the Indian Penal Code.
- (iii) Appellant Mujahid s/o Maqeed Qureshi be released forthwith, if not required in any other crime.
- (iv) Fine amount be refunded, if paid.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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