

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

**CRIMINAL APPEAL NO. 281 OF 2016**

Shaikh Akbar Shaikh Maheboob ... **Appellant**  
Age 24 years, Occu: Labour  
R/o Near Dabakpul, Degloor Naka, Nanded

**VERSUS**

The State of Maharashtra ... **Respondent**

Mr. Joydeep Chatterji, Advocate for the appellant,  
Mr. A. M. Phule, APP for respondent-State

**CORAM : SMT. VIBHA KANKANWADI AND  
Y. G. KHOBRADE, JJ.**

**DATE : 24.03.2023**

**JUDGMENT ( Per Y. G. Khobragade, J.):**

1. By the present appeal under section 374(2) of the Criminal Procedure Code, the appellant/accused takes exception to judgment and order passed by the learned Additional Sessions Judge-4, Nanded on 31.05.2016 in Sessions Case No. 57 of 2014, thereby holding him guilty for the offence punishable under section 302 of the Indian Penal Code and directed him to suffer rigorous imprisonment for life with fine of Rs.500/- and in default of payment of fine, suffer rigorous imprisonment for thirty days.

2. In nutshell, it is the case of prosecution that on 09.02.2014, the informant Shaikh Gousoddin, the father of deceased Shaikh Kalim lodged a report with Itwara Police Station, Nanded alleging that, he was at the house of his son-in-law Rafiq at Khusronagar for programme at about 5.00 p.m. on the same day. His son Shaikh Salim informed him on

phone that the accused was quarreling with Shaikh Kalim – another son of informant, on account of money on the road near Khuba Masjid, Jabbar Complex. Accused was abusing and assaulting Shaikh Kalim. Therefore, the informant with his friends and relatives immediately visited the spot of incident and saw the accused No.1 Shaikh Akbar while assaulting Shaikh Kalim with knife. They had also seen original accused No.2 Shaikh Yusuf (now acquitted) was assaulting Kalim by fighter. Both the accused fled away after they saw the informant and others. Injured Kalim was lying on the spot of incident. According to the informant, his son Kalim sustained bleeding injuries to his left thigh, so also, sustained injuries by fighter. Thereafter, the informant took his son Kalim to Government Hospital, Nanded but on advice of medical officer, the injured was shifted in another hospital in the city due to his serious condition. It is alleged that accused persons have tried to commit murder of Kalim.

3. On the basis of said statement/report, offence vide Crime No.20 of 2014 was registered against the appellant/accused and his associate for the offence punishable under sections 307 read with section 34 of IPC.

4. Investigating officer visited the spot of incident and has drawn the spot panchanama, seizure panchanama after seizure of simple soil and blood mixed soil and footwear of injured Kalim. Injured Kalim succumbed to injury while undergoing treatment in Hospital on 10.02.2014; hence offence under therefore, the offence punishable under section 302 of IPC was added to the Crime No. 20/2014.

5. Accordingly, the investigating officer drawn inquest panchanama and seized clothes of deceased and referred the dead body

for postmortem. The Investigating Officer had arrested Accused No.1 Akbar and accused No.2 Yusuf on 12.02.2014 under separate arrest memos. During the course of investigation, Investigating officer interrogated both the accused and seized weapons like knife and fighter under section 27 of the Evidence Act.

6. The investigating officer collected postmortem report and C.A. report and on completion of investigation, charge sheet came to be filed against both the accused before the learned Judicial Magistrate, First Class. After compliance of section 207 Cr.P.C., the learned Judicial Magistrate, passed order under section 209 of Cr.P.C. and committed the trial to the Court of Sessions on 20.05.2014.

7. The learned trial court framed charge at Exh. 2 against both the accused for the offence punishable under sections 302, 504 read with 34 of IPC on 16.06.2014, and recorded the plea of the accused at Exh. 3 and 4 respectively. The accused pleaded not guilty and claimed for trial.

8. In order to bring home the guilt of the accused, the prosecution examined following witnesses:

| Sr. No. | Name of Witness                            | Exh. No. |
|---------|--------------------------------------------|----------|
| PW-1    | Shaikh Gousoddin, informant & eye witness. | Exh. 14  |
| PW-2    | Shaikh Ahmed - inquest Panchanama          | 19       |
| PW-3    | Mohmmad Gaus                               | 23       |
| PW-4    | Skaikh Mohd. Siraj                         | 30       |
| PW-5    | Mohamad Khalid                             | 33       |
| PW-6    | Mohd. Akhil Mohd.                          | 36       |
| PW-7    | Sk. Mohd. Sallimoddin                      | 39       |
| PW-8    | Dr. Maroti Dake                            | 41       |
| PW-9    | Sanjay Shinde                              | 44       |
| PW-10   | Syed Akhil                                 | 46       |

9. Besides oral evidence, the prosecution proved FIR/report Exh.15, Inquest Panchanama Exh. 20, Seizure panchanama Exh. 24/ Spot panchanama Exh. 31, Postmortem report Exh.42, C.A. Reports.

10. After hearing both sides, the learned trial court passed the judgment and order on 29.03.2014, and convicted accused No.1 Shaikh Akbar for the offence punishable under section 302 of IPC as afore-said. However, accused No.2 Shaikh Yusuf came to be acquitted for the offence punishable under section 302 and 504 of IPC. Being dissatisfied with the said judgment, the appellant/accused No.1 has presented this appeal.

11. Mr. Joydeep Chattarji, the learned advocate for the appellant vehemently canvassed that though the prosecution examined PW-1 Gousoddin/informant at Exh. 14, who deposed that he has witnessed accused no.1 Akbar assaulting on left thigh of his son Kalim by knife and accused No.2 Shaikh Yusuf assaulting with fighter to Kali; yet, in cross examination PW-1 Gousoddin admitted that he and Shaikh Salim were not present at the spot when the incident was going on. There is material omission about presence of Shaikh Salim near Jabbar Complex and witnessing the quarrel. PW-1 admitted that he as well as Salim were not with Kalim till 5.30 p.m. Learned trial court failed to appreciate material omissions and contradictions.

12. The learned counsel appearing for the appellant further canvassed that PW5 Mohamad Khalid, PW6 Mohd. Akhil and PW7 Mohd. Salimoddin are the relatives of the informant PW-1 and therefore, they were interested witnesses. Their testimony is not

trustworthy and full of *inter se* discrepancy on material facts. Learned trial court has wrongly relied on the testimony of these interested witnesses.

13. The learned counsel appearing for the appellant further submitted that as per the evidence of medical officer PW8 Dr. Maroti Dake at Exh.41, the autopsy surgeon has found external injuries on left thigh and below left anterior superior iliac spine, which was horizontally placed. It is non-vital part of the body. Therefore, the prosecution failed to prove the intention of the appellant accused was to cause death of the victim. Learned trial court has acquitted the co-accused on the same set of evidence, but convicted the appellant. Therefore, the impugned judgment is perverse, illegal and bad in law. Hence, he prayed for quashing and setting aside the same.

14. Per contra, Mr. A. M. Phule, learned APP supported the findings of the learned trial Court and submitted that PW-1 Sk. Gousoddin, PW-5 Mohd. Khalid, PW-6 Mohd. Akhil and PW7 Mohd. Salimoddin, are eye witnesses to the incident of assault. All these eye witnesses have deposed that the appellant/accused had assaulted deceased Kalim by knife on left thigh and another accused Shaikh Yusuf had assaulted the victim by fighter. The cross examination of the eye witnesses conducted by defence has not discarded their testimony. Evidence of medical officer PW-8 Dr. Maroti Dake, shows that he had noticed stab injuries over medial aspect of left thigh, above left knee, below left anterior superior iliac spine, horizontally placed and Intra venous cannula with intra venous puncture on the person of deceased. The cause of death of Kalim was due to stab injury to left femoral artery. The said stabbing was caused by knife [Article 9]; hence the death is

proved to be homicidal. Though the defence has given suggestion about possibility of causing injury due to fall on iron rod but the said suggestion is denied by the medical officer PW8. Therefore, we conclude that the learned trial Court has properly considered the evidence on record and held the appellant/accused guilty and no grounds are set out by the appellant/ accused to interfere with the findings recorded by the trial court, hence, prayed for dismissal of the appeal.

15. Having regard to the submissions canvassed on behalf of both the sides, we have gone through the record. Evidence of PW-8 Dr. Maroti Dake [Exh.41] deposed that he had found following external injuries on the dead body:

- (1) There was tense swelling present on left thigh. Stab injury was present over medial aspect of left thigh in mid 1/3 part situated 19 cm above left joint and 23 cm below left anterior superior iliac spine, horizontally placed of size 2.5 cm x 1 cm x muscle, on approximation 2.8 cm in length, both angles were acute, injury was directed upwards and laterally, piercing through skin, subcutaneous, tissue, sartorius muscle, half part of femoral artery on its medial side and adductor longus muscle, extra vesation of blood present in surrounding thigh muscles.
- (2) Intra venous cannula with intra venous puncture mark was present over dorsum of left hand and left side of neck with sticking.
- (3) Intra venus injection mark was present over both cubital fossa.

- (4) Surgical venesection mark was present over medial aspect of right ankle, horizontally placed, 3cm. above medial malleolus of size 3.5 cm x 0.5 cm x tissue deep, with vein cut and ligated at both ends.
- (5) Abrasion present over front of left knee of size 2 cm x 1 cm, red. The injuries were ante mortem in nature."

As per said medical expert's opinion, cause of death of deceased is "due to stab injury to left femoral artery". Left femoral artery is vital part of the body, as it is component of cardio vascular system. Injury No.1 in column No. 17 of PM report Exh. 42 was sufficient to cause death.

16. Inquest Panchanama Exh. 20 of dead body of Kalim proves about appearing injury on left thigh and private part, which is vital part of the body. The inquest panchanama Exh. 20 and PM report Exh. 42 proves death of deceased is homicidal.

17. PW.4 Mohd. Siraj is the panch to the spot panchanama. He has deposed that PW-1 Gousoddin showed the spot of incident on the road of Jabbar Complex in his presence, where a pair of black colour footwear (chappal) was found. Said pair of footwear was seized along with simple and blood soaked soil under seizure-cum-spot panchanama Exh. 31. In cross examination, PW-4 Siraj admitted that spot of incident was the cement road but he denied about not collecting blood soaked and simple soil in his presence from the spot of incident. Nothing more was solicited in cross examination. The investigating officer PW-10 Syed Akhil has supported the testimony of PW 4. Therefore, the prosecution proved panchanama Exh 31 beyond reasonable doubt.

18. As per evidence of PW-1 Gousoddin- father of deceased, he received a phone call of his son Salim on 09.02.2014 at about 5.00

p.m., he went to the spot immediately and saw that the accused Yusuf was assaulting to his son Kalim and the appellant/accused Akabar assaulting with knife on left thigh of Kalim (deceased). Both the accused fled away from the spot of incident after people gathered at the spot.

19. The prosecution examined PW-3 Mohd. Gous at Exh.23 another panch witness, in whose presence police seized black square shirt Article 7 and black jeans pant Article 11 at the instance of accused No.1 Akbar on 10.02.2014 under seizure Panchanama Exh. 24. PW-3 deposed that on 13.02.2024 memorandum panchanama Exh. 27 of present appellant accused was prepared which lead to recovery of Article 9- knife from the house of appellant/accused under seizure panchanama Exh. 27. In cross examination of PW-3 Mohd. Gous it was brought on record that on 10.02.2014, the work of reducing panchanama started at 10.15 a.m. and finished at 10.45 a.m. but he denied about not drawing panchanama in his presence. PW-3 Mohd. Gous denied that accused No.1 was not present in police station in his presence and there were no seizure of clothes of the appellant-accused in his presence and no recovery of Article 9 knife was made at the instance of accused no.1/appellant.

20. PW-10 Investigating Officer- Syed Akhil deposed at Exh.47 about seizure of clothes Articles 7 and 11 from the accused under seizure Panchanama Exh. 24, so also, recovery of knife Article 9 under section 27 of the Evidence Act at the instance of accused no.1 in presence of PW-3. Though the defence cross examined the witnesses PW-3 and PW-10 on the point of seizure of clothes of accused

no.1/appellant which were worn by him at the time of incident and recovery of knife Article-9 but no substantial material brought on record to discard testimony of PW-3 and PW-10.

21. The Medical Officer PW-9 Dr. Maroti Dake who conducted postmortem found five injuries described in postmortem report Exh. 42 and opined about possibility of sustaining stab injuries described in column no. 17 of postmortem report by Article-9 knife. Articles like footwear (chapel), simple and blood mixed soil, clothes of deceased, knife article-9 seized during course of investigation were referred for chemical examination. Chemical analysis report Exh. 60 suggests blood of the deceased in the sample of earth, pair of footwear, clothes of deceased i.e. full open shirt lungi, shando banian, shirt, jeans pant of the present appellant so also blood stain on Article 9.

22. As per testimony of prosecution witness, deceased Kalim was doing electric work and he had taken Rs.5000/- from his Father PW-1 Gousoddin and had given as hand loan to accused/appellant Akbar and on the day of incident, Kalim (deceased) had been to the accused /appellant for getting refund said hand loan amount, due to which there was quarrel between deceased Kalim and the accused. During the course of quarrel, accused No.1 Akbar/appellant assaulted by knife (Article 9) on thigh of the deceased Kalim and private part which resulted into his death.

23. Father of deceased PW-1 Gousoddin, PW-5 Mohd. Khalid, PW-6 Akhil appear to be eye witnesses to the incident. PW-5 Mohd. Khalid deposed that on 09.02.2014, at about 5.00 to 5.30 pm, he and one Auto-rickshaw driver Gous khan were taking tea in Jabbar Complex and after hearing hue and cry, he and Gous Khan went in front of a

tailor shop and noticed presence of PW-1 Bousoddin- father of Kalim and at that time, the appellant-accused Akbar was assaulting to Kalim by knife on his left thigh. Thereafter, he, Gousoddin (PW1) and Salim took the injured Kalim to Government Hospital in Gouskhan's Rickshaw.

24. On perusal of evidence of eye witness PW-1 Gousoddin, it appears that, soon after receipt of phone call of his son Salim on his mobile about occurrence of quarrel between his son Kalim (deceased) and accused, he immediately visited the spot of incident and found Salim was present there and saw that accused No.1 Akbar while assaulting Kalim with knife on his left thigh. On careful considering evidence of the prosecution witnesses, motive and intention of the appellant accused no.1 to cause homicidal death of deceased appears to be because of the deceased had given hand loan of Rs.5000/- to the appellant/accused No.1 Akbar after owing from his father and the deceased demanded refund of said hand loan. No doubt, PW-5 Mohamad Khalid and PW-7 Sk. Mohd. Salimoddin are relatives of the informant PW-1, father of deceased and they are eye witnesses to the incident, but their testimony is not shaken by the appellant/accused. The appellant/ accused has not denied his presence at the spot of incident. Therefore, it is apparent on the face of record that the appellant/accused is the author of the injuries caused to deceased Kalim, as described in Column No. 17 of PM report Exh. 42 and committed his murder. On scrutiny of evidence available on record, the learned trial court passed the impugned judgment and order holding that the appellant/accused is No.1 guilty for the offence punishable under section 302 of IPC and directed him to suffer rigorous imprisonment for life, which does not appear perverse, illegal and bad in law.

25. From the discussion above, we conclude that the learned trial court was justified while convicting the appellant accused. The findings and reasons recorded by the learned trial judge are in consonance with the evidence available on record. No substantial grounds are set out to interfere with the conviction of the appellant-accused. Therefore, the present appeal deserves to be dismissed. Accordingly, the Criminal Appeal is dismissed.

26. Record and proceeding be remitted back to the trial court.

**(Y. G. KHOBRAGADE, J.)**

**(SMT. VIBHA KANKANWADI, J. )**

JPChavan