



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

CRIMINAL APPEAL NO. 526 OF 2021

Rajesh @ Raju Babu Bhore (Bhangarwala)
Age: 44 years, Occu.: Business,
R/o Chikhalikala, Tq. Multai,
Dist. Baitul (MP)
At Present Vijay Nagar,
In the house of Baban Rathod,
Garkheda Area, Aurangabad

..APPELLANT

VERSUS

1. State of Maharashtra
Through Police Inspector,
Mukundwadi Police Station,
Aurangabad

2. Nilofar Shaikh Sadik
Age: 29 years, Occu.: Household,
R/o Misarwadi/Aratinagar,
House No.5 in Galli No.1,
Aurangabad

..RESPONDENTS

....
Mr. S.S. Jadhav, Advocate for appellant (appointed)
Mrs. S.N. Deshmukh, A.P.P. for respondent no.1 – State
Mr. Darshan Sahuji, Advocate h/f Mr. Pramod Gaikwad, Advocate for
respondent no.2 (appointed)

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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 03rd SEPTEMBER, 2024
PRONOUNCED ON : 30th SEPTEMBER, 2024

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

1. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, and therefore, sentenced to suffer imprisonment for life and fine of Rs.20,000/- with default stipulation. He is, therefore, before us in this appeal.

2. The facts giving rise to the present appeal are as follows :-

Shaikh Sadiq (deceased) was the elder brother of Shaikh Shahed (PW 1). Sadiq would run a garage (Sana Auto Garage) at Vijay Nagar, Garkheda Area, Aurangabad. The appellant would sit in front of the garage and harass women passing by the garage. Therefore, on 03rd October, 2016 by 08:30 p.m., Sadiq had reasoned with him. The appellant thereafter went home and returned armed with a knife. He was accompanied by his wife. Sadiq, therefore, went towards him. Some talk took place between the two. The appellant assaulted on the ribs of Sadiq with the knife.

3. It is also the case of prosecution that the deceased had called his brother – Shaikh Shahed (PW 1) before that. It appears that he (deceased) had thought that something amiss would happen. Naeem Painter and Altaf were also at the garage. They were the friends of the deceased.

4. Sadiq was rushed to Ghati hospital. He was declared dead on admission. Inquest (Exh.33) and postmortem examination took place on the mortal remains of Sadiq. PW 1 – Shahed lodged the F.I.R. (Exh.26) at Mukundwadi Police Station by 05:00 in the morning on 04th October, 2016, claiming therein the appellant to have killed his brother on account of the reason stated above.

5. Crime, vide C.R. No. 278 of 2016 was registered. Crime scene panchanama (Exh.40 & 41) was drawn twice. During drawing of the first crime scene panchanama (Exh.40), a bent knife was recovered from the

crime scene, besides some earth was taken charge of. The appellant was arrested. He made a disclosure statement (Exh.42) pursuant to which a shirt on his person at the material time came to be seized from his residence. The shirt was stained with blood. All the articles were sent to R.F.S.L., Aurangabad. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the charge-sheet came to be filed against the appellant.

6. The Court of Additional Session, Aurangabad ('trial Court') framed the charge (Exh.4). The appellant pleaded not guilty. His defence was of false implication.

7. To bring home the charge, prosecution examined eight witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court passed the order impugned in this appeal.

8. Learned counsel for the appellant would submit that the F.I.R. (Exh.26) was lodged about nine hours after the incident. The informant was allegedly present at the crime scene. He did not explain the reason for delay in lodging of the F.I.R., either in the F.I.R. itself or in his evidence before the trial Court. He was, therefore, nothing but a planted witness. Those two, who carried the deceased on motorbike to Ghati hospital, have not been examined. Clothes on their person must have been stained with blood of the deceased. Those were not seized. The Medico-Legal Case ('MLC') report (Exh.65) is silent to state the name of the assailant. It records one Shaikh

Sadiq Shaikh Sajjad was admitted to the hospital by one Shaikh Mustafim Shaikh Imam. He was not examined as a witness. The MLC further records that the incident of fighting took place. The preliminary report of the crime (Exh.66) does not contain full name of the appellant. It only records name as, "Raju Bhangarwala". Learned counsel would further submit that blood group of the appellant and the deceased was same. The police official, who carried the seized articles to R.F.S.L., Aurangabad, has not been examined. The C.A. reports (Exh.82 to 85) would, therefore, not further the prosecution case. According to him, no explanation is offered for drawing second spot panchanama.

He would further submit that the Test Identification Parade ('T.I. Parade') was held two months after the arrest of the appellant. The investigating officer did not take precautions to keep the appellant in veil while producing before the Court and taking back to jail. The same happened in day time. The identification by PW 1 – Shahed of the appellant in the T.I. Parade, therefore, lost its efficacy. According to him, the other witness, who claimed to have seen the incident, was not summoned to identify the appellant in the T.I. Parade. His evidence as to identification of the appellant before the Court for the first time would be of little consequence. Learned counsel ultimately urged for allowing the appeal.

9. Learned A.P.P. would, on the other hand, submit that the case is based on eye witness account. The F.I.R. (Exh.26) was lodged within hours of the incident. On the crime scene itself the weapon of assault was found.

The C.A. report (Exh.83) indicates it to be stained with blood. Since the evidence of the witnesses were recorded some days after the incident, minor inconsistencies therein was bound to occur. According to her, no witness was expected to have photographic memory. When the incident took place in the presence of family members and close relatives, they would alone be the most natural witnesses. Their evidence cannot be discarded on the ground that they were either interested or chance witnesses. Learned A.P.P. has, therefore, relied on the judgment of the Apex Court in case of ***Thoti Manohar Vs. State of A.P., 2012 Cri.L.J. 3492***. She then took us through the entire evidence on record to submit the offence to have been duly proved. According to her, this Court has, therefore, no reason to interfere with the order impugned herein. She, therefore, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence on record and the order impugned herein. Let us now advert thereto and appreciate the same.

11. PW 8 – Dr. Ganesh conducted autopsy on the mortal remains of Sadiq. He noticed following injuries on the person of the deceased :-

“1. Stab wound of size 1.7 cm. X 0.4 cm, cavity deep, elliptical shaped, obliquely placed, over the left side of chest, 3 cm medial to anterior axillary line and 6 cm below and left to left nipple, in inter costal space between 5th to 6th rib with fracture of 5th rib, and with acute angles on both sides. The margins are reddish, curved, clean-cut and regular with blood infiltration seen.

On exploration : direction of wound from left to right and lateral to medial and below upwards Track of wound - subcutaneous tissue - inter costal space between 5th to 6th rib - pleura - anterior border of lower lobe of left lung - pericardium - antero-lateral wall of left ventricle near apex - left ventricular cavity.

Track of wound is blood infiltrated.

2. Incised wound of size 1 cm x 0.2 cm, tissue deep, obliquely placed, over abdomen, 10 cm above umbilicus and 2 cm left to midline and with acute angles on both sides. The margins are reddish, curve, clear-cut and regular with blood infiltration seen.

3. Stab wound of size 2 cm x 1 cm, muscle deep, elliptical shaped, obliquely placed, over postero-medial aspect of right forearm 12 cm above wrist joint, with acute angles on both sides. The margins are reddish, curved, clean-cut and regular with blood infiltration seen.

4. Stab wound of size 1.2 cm x 0.3 cm, muscle deep, elliptical shaped, obliquely placed, over medial aspect of right forearm 12 cm below medial epicondyle, with acute angles on both side. The margins are reddish, curved, clean-cut and regular with blood infiltration seen.

5. Graze abrasion of size 8 cm x 7 cm present over dorsal aspect of distal 1/3rd of left foot and all toes, reddish.”

In his opinion the deceased died of hemorrhagic shock due to stab injuries. The postmortem report under his signature is at Exhibit 80. General questions were put to him. It was suggested to him that all the injuries suffered by the deceased were possible by fall on a sharp object. To this question the medical officer gave a nod.

12. When there is an eye witness account suggesting the appellant to have assaulted the deceased, we find him (deceased) to have met with a homicidal death. Let us now turn to the other evidence on record.

13. PW 1 – Shahed was the younger brother of the deceased. His evidence indicates that the deceased had made him a phone call by 08:30 p.m. on 03rd October, 2016. He was at Shivajinagar rickshaw stand. The

deceased had called him to his garage. He accordingly went there. According to him, Naeem Painter and Altaf Shaikh were present at the garage. On his query, the deceased asked him to wait. During his interaction with Naeem Painter and Altaf Shaikh he learnt that one Raju Bhangarwala (appellant) used to tease and harass the people including women passing by the garage. The deceased had, therefore, reasoned with him. The appellant was thereafter sent home.

Evidence of PW 1 further indicates that the appellant alongwith his wife was seen coming towards the garage. Sadiq, therefore, went towards them. Some talk took place between the appellant and the deceased. In a while, the deceased raised shouts. He, Naeem and Altaf, therefore, rushed to Sadiq. He saw the appellant was armed with a knife. It was found that he had stabbed the deceased. As a result, the deceased had fallen down. He (PW 1 – Shahed) snatched the knife from the appellant and bend it to avoid further assault. He then threw the knife on the spot. He then went to bring the auto-rickshaw. In the meanwhile, Naeem and Altaf took Sadiq to Ghati hospital on their motorbike. He followed them in an auto-rickshaw. The doctor declared Sadiq dead on admission. He then approached the police station and lodged the F.I.R. (Exh.26).

14. During his cross-examination it has been brought on record that he had no occasion to meet the appellant prior to the incident. The same suggests the defence advocate impliedly admit the appellant to have been at the crime scene and met the appellant. He (PW 1 – Shahed) was not in the

know of the appellant. On his reaching to the garage, Sadiq simply asked him to wait. No further talk between the two took place. Then distance between Jawahar Nagar Police Station, Mukundwadi Police Station from the scene of offence was brought on record. It has also been brought on record that Kranti Chowk Police Station is on the way to Ghati hospital. He admitted that a police chowki was there in the premises of Ghati hospital. True, the same suggests PW 1 – Shahed to have not approached either these police stations or the police chowki in the premises of Ghati hospital, no sooner he reached Ghati hospital. In our view, it was his first priority to see his brother is extended the medical treatment to save his life. It has also been brought on record that the shops in the nearby of the garage were closed. Lights of the shops were also off. His evidence further indicates that street lights were glowing.

15. A vital suggestion was given to PW 1 – Shahed in the following form :-

“It is correct that only on hearing the shouts of the deceased I learnt that something happened.”

The same undoubtedly goes a long way to infer PW 1 – Shahed was present nearby the crime scene. Postmortem examination took place in the morning. Till receiving the dead body, he was there. Last rites were performed five hours after receipt of the dead body. Until then he was busy in those rituals. He did not relate the incident to anyone, except to his relatives and friends. He admitted that Naeem Painter and Altaf Shaikh were

his friends. It has been brought on record in his cross-examination that until lodging of the F.I.R., he was only knowing the name of the appellant as 'Raju Bhangarwala'. He did not know his full name. Close reading of the entire evidence on record and police papers would indicate the appellant to have never denied to have been known as 'Raju Bhangarwala'. In the charge (Exh.4) itself in the bracket he has been named as 'Bhangarwala'. The name 'Rajesh @ Raju' has also been mentioned in the charge. The plea of not guilty of charge (Exh.5) bears his name as 'Rajesh @ Raju s/o Babu Bhoire (Bhangarwala)'. Had the appellant really not been known as 'Bhangarwala', he would have objected to record the same. Accordingly, he came to know the name of the appellant from his friends. PW 1 – Shahed denied to have had seen the appellant post his arrest in the police station and before he was brought to the Court for remand. He denied the photographs of the appellant was published in the daily. He denied to have been to the police station before leaving for participating in the T.I. Parade. According to him, those who carried the deceased on motorbike, must have clothes on their person been stained with blood of the deceased. He denied to have not witnessed the incident in question.

16. PW 2 – Mustkin is a witness to the inquest panchanama (Exh.33). It was drawn by 08:00 in the morning on 04th October, 2016. The dead body was identified by PW 1 – Shahed. It has been recorded in column no.16 that the deceased was assaulted with a knife and died of the injuries suffered thereby. True, the name of the appellant does not figure therein. We do not

find it necessary to have name of the suspect mentioned in the inquest panchanama. There is column no.10 regarding how the deceased suffered injuries. It has been mentioned therein that “आरोपीने मारहाण केल्याने”. Crime was registered little past 05:00 in the morning.

17. PW 3 – Ajij was a witness to multiple panchanamas. First one is crime scene panchanama (Exh.40) drawn in his presence. It is in his evidence that a bent knife was found at the crime scene. The police seized the same alongwith some soil from the crime scene. He was a panch witness to second crime scene panchanama (Exh.41) (does not know as to why it was drawn again).

He is a witness to another panchanama (Exh.42). His evidence indicates that at Mukundwadi Police Station one person was in the custody of police. He told his name as ‘Rajesh Bhangarwala’. He identified him in the Court. He made a statement that he would take out the clothes which were on his person by the time of the incident. His statement was recorded (Exh.42). He then took the panchas and the police to his residence and took out a shirt from below the cot. It was seized under panchanama (Exh.43). He admitted that articles seized from the crime scene and from the house of the appellant were not sealed by using seal or wax.

18. First crime scene panchanama (Exh.40) was drawn from 06:50 a.m. to 07:30 a.m. on 04th October, 2016, while the second (Exh.41) was drawn little past 04:00 p.m. on 05th October, 2016. True, the alleged

disclosure statement (Exh. 42) made by the appellant and recovery of the blood stained shirt under panchanama (Exh.43) indicate that the appellant made a statement at Pundaliknagar Police Station, while according to PW 3 – Ajj, the disclosure statement was recorded at Mukundwadi Police Station. For more than one reason we propose to discard the alleged disclosure statement made by the appellant and the recovery of a blood stained shirt. A reference to the other reason would be made a little later.

19. PW 4 – Syed Naeem was another eye witness to the incident. His evidence discloses that he was present at the garage of Sadiq (deceased) at Vijay Nagar. His friend Altaf had come there. There was one shutter in closed condition. One person was sitting there (he meant to say the appellant). He was teasing women who were passing by the garage. Sadiq had asked that person not to be there. He, therefore, started abusing Sadiq. Then he picked up two stones. Altaf then went near to that person and convinced him. He again started abusing Sadiq and said he would teach him lesson. He thereafter left that place. Thereafter PW 1 – Shahed came there. After that the said person came back alongwith one lady. Sadiq (deceased) went closer to convince them. He (PW 4 – Naeem) heard cries of Sadiq. He, Altaf and Shahed, therefore rushed towards Sadiq. The said person was armed with a knife. Sadiq had received blows on his ribs with the knife. He had fallen on the ground. PW 1 - Shahed took out the knife and bend it. According to him, Shahed and Altaf took Sadiq to Ghati hospital on the motorbike. He identified the appellant before the Court as the said person,

who assaulted Sadiq with knife. According to him, there was light of public lamp post.

20. This witness was subjected to a searching cross-examination. True, there is some inconsistency between his evidence and evidence of PW 1 – Shahed. According to this witness, it was PW 1 – Shahed and Altaf, who took Sadiq to Ghati hospital on motorbike. While PW 1 – Shahed testified that Altaf and Sameer took Sadiq to Ghati hospital on motorbike. In our view, this inconsistency is the result on account of evidence to have been recorded after little over one and half year of the incident. He admitted to have had good relations with Sadiq. The same was, however missing in this police statement. We, however do not find it to be a material omission. His friendship with the deceased is writ large, based on the evidence of the fact that he was present at Sadiq's garage. He denied to have not seen the incident. According to him, the other shops in the nearby were closed. He could not tell what talk took place between Sadiq and the appellant. Only on hearing shouts of Sadiq, he realised something to have happened. It has further been brought on record that when he rushed to the spot, Sadiq had suffered injury. He admitted to have not been to the police station. He claimed to have lifted Sadiq when he was in injured condition. He denied that clothes on his person were stained with blood.

21. Again a vital piece of evidence that goes against the appellant has been brought on record during cross-examination of this witness, which

reads as under :-

“After the incident, I did saw the accused for the first time today in the court.”

The same suggests implied admission that this witness had seen the appellant at the time of the incident and thereafter before the Court only when he gave his evidence. True, this witness was not summoned to identify the appellant in the T.I. Parade.

22. PW 5 – Meena was the Nayab Tahasildar-cum-Executive Magistrate. She held T.I. Parade two months after the incident. The Investigating Officer admitted in his evidence that the appellant was not kept in veil until T.I. Parade was held. The appellant was removed from jail to the Court and back and even to other places during day time. We, therefore, do not propose to rely on the evidence in respect of the T.I. Parade. Needless to mention, the T.I. Parade is not the substantive piece of evidence. It is only in aid for the prosecution to further its investigation. We also do not propose to rely on the C.A. reports relating to the seized articles viz. knife and shirt on the person of the appellant at the relevant time, since those were not seized with seal and wax when taken charge of. The crime was investigated by two police officials. The subsequent investigating officer admitted that those articles were in the custody of the first investigating officer (PW 6) until he took over the investigation. Moreover, the blood group of both, the appellant and the deceased, was found to be common.

23. The fact, however remains that the evidence of PW 1 and PW 4, whose presence at the crime scene has been admitted by the defence during their cross-examination, lead us to conclude that it was the appellant and none else, who committed murder of Sadiq. Although these witnesses were not knowing name of the appellant. After all, what is in the name, when person was the same. He even did not deny he was Rajesh @ Raju Bhangarwala. He was seen assaulting the deceased and later on identified in a substantive evidence by PW 1 and PW 4 before the Court during recording of their evidence. In spite of the T.I. Parade to have been discarded by us, it is reported that the evidence of PW 1 and PW 4 brought home the charge. The trial Court had, therefore, rightly convicted the appellant. We find no reason to interfere with the impugned order of conviction and consequential sentence. The appeal, therefore, fails.

24. Before parting with this judgment, we acknowledge the able assistance given by Mr. Satej S. Jadhav, learned counsel, appointed to represent the appellant.

25. In the result, criminal appeal is dismissed.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)