



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 483 OF 2020
WITH
CRIMINAL APPLICATION NO. 900 OF 2024

Shaikh Samir Shaikh Vali Mohmmad,
Age : 23 Years, Occ. Labour,
R/o. Behind Aaksa Masjid,
Barkat Nagar, Parli-Vaijnath,
Tq. Parli-Vainath, District Beed.

..Appellant
(Accused)

VERSUS

The State of Maharashtra

..Respondent

....
Advocate Shaikh Tarekh Mobin H. holding for
Adv. Satej S. Jadhav for the appellant.
Additional Public Prosecutor : Mr. S. R. Wakale

....

CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.

RESERVED ON : SEPTEMBER 11, 2025
PRONOUNCED ON : DECEMBER 2, 2025

JUDGMENT (PER SANDIPKUMAR C. MORE):-

1. The appellant/ accused Shaikh Samir Shaikh Vali Mohammad, has challenged judgment and order dated 6.7.2020, passed by the learned Additional Sessions Judge, Ambajogai, District Beed (hereinafter referred to as the 'learned Trial Judge') in Sessions Case No. 12 of 2019, wherein he has been convicted for the offence punishable under Sections 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 50,000/- with default clause.

2. The story of the prosecution unfolds as under :-

On 04.12.2018, Sk. Mustafa Sk. Kalander, who is brother of deceased Sk. Makdum S/o Sk. Kalander in the instant case, lodged a report with Parali Rural Police Station and thereby alleged that on 03.12.2018 at about 11.00 to 11.30 p.m. they got information from one Nasarkha Afsarkha Pathan resident of Bhim Nagar, Parli that Sk. Maqdoom met with an accident at Nandagaul shivar. Accordingly, he along with Ayyub Malikhan Pathan, Ismile Maula Shaikh, Shaikh Mahemood Sk. Kalander, Sayyed Juber Ali Shafakat Ali, Jakirkhan Afsarkhan Pathan and Baba driver reached there at Pus road, in one jeep of Ismile Maula Shaikh, around at 11.45 p.m. Police from Parali Rural Police Station were also present there. He saw Sk. Maqdoom lying dead at the middle of road, having injuries on his stomach, back and his throat was slit. He came to know that late Maqdoom and the present appellant/ accused were having dispute before about one month of the incident, on account of domestic issues. At the relevant time, the appellant had asked deceased Maqdoom not to interfere in his family affairs, otherwise he would kill him. It further revealed to him that on 03.12.2018 at about 4.00 p.m. the deceased with Sayyed Jamir Noor, Sk. Saddam Vazir, Sk. Khazi Hamid, Sk. Shafik Khayajoddin, Sk. Wahed Papamiya, Sk. Ejaj Vazir and the appellant had gone to Chandpur lake for having meal. Thereafter, those persons returned to Parali. But the appellant took deceased Maqdoom towards

Pus via Nandagaul on motorcycle and then killed him on the spot of incident with the help of a sharp weapon.

3. On the basis of such report, Parali Rural Police registered Crime No. 246 of 2018 and the Investigating Officer A.P.I. Maroti Nivrutti Shelke i.e. P.W.-7 started investigation. During the investigation, he conducted inquest *panchnama*, spot *panchnama*, seizure of the clothes of dead body and sent the dead body for *post mortem*. He then recorded statements of witnesses, arrested the appellant/ accused and seized blood stained knife, knife cover, motorcycle as well as clothes of accused. At his instance, in presence of *panchas*, blood samples of accused and deceased were also collected and the seized articles and samples were sent to Forensic Laboratory, Aurangabad. On completion of investigation, he filed charge sheet against the appellant for the aforesaid offence.

4. The learned Trial Judge conducted the trial by examining as many as seven witnesses. In addition to oral evidence, the prosecution also relied on the documentary evidence, which we are going to discuss hereinafter. On the basis of evidence led before the Court, the learned Trial Judge convicted the appellant as aforesaid.

5. The learned counsel for the appellant/ accused Mr. Satej Jadhav, vehemently argued that there is no eye witness in this case,

and it is completely based on circumstantial evidence. According to him, when the case is based on circumstantial evidence, then the prosecution has to establish complete chain of circumstances leading to the guilt of the accused, by considering every hypothesis. He submitted that the prosecution did not examine Nasarkha Afsarkha Pathan, who had in fact intimated the informant Shaikh Mustafa i.e. brother of deceased and also informant i.e. P.W.-3. He pointed out that the evidence of P.W.-3/informant is not at all helpful to the prosecution, as it was based on information received from other and in the nature of hearsay. He pointed out that even the evidence of P.W.-5 Sk. Waheed Sk. Papamiya on last seen theory is not convincing in as much as it relates to the story of prosecution of having an evil eye on the lady member of the family of appellant/ accused. According to him, it was also hearsay in nature.

6. Further, learned counsel for appellant pointed out that though the person accompanied deceased and accused at Chandpur Dam were workers, but it is hard to believe that all of them were given holiday from their respective duties. He also raised doubts in respect of the evidence of P.W.-1 Sultan Shaikh, who had seen the accused and deceased together at Ambajogai and stated that up to 8.15 p.m. on the day of incident, deceased was alive. He pointed out that this witness had gone to Darga at about 2.00 p.m and after spending four hours

there, it was impossible for him to return back before 7.15 p.m. when he had allegedly met the deceased and accused. He also pointed out that how the police knew that deceased and accused had met Sultan, when Sultan had got knowledge of the incident from police itself for the first time, since no one from Chandpur Dam stated that accused and the deceased went to meet Sultan. He further pointed out that the police did not examine the carrier of *muddemal* articles and therefore, there was every possibility of tampering with those articles. He also raised doubt about the timing of spot *panchnama*. Further, he submitted that only one panch witness P.W.-4 Vijaykumar Ganpat Tate is examined as panch to all the recoveries and memorandums.

7. Learned counsel for the appellant further contended that it was surprising to note that when the accused started giving blows of knife to the deceased, who was driving the motor-cycle, no injuries on the person of accused were found as due to assault they might have fell on the ground. He further submitted that the accused was found in his house till 05.12.2018, when everybody was knowing the fact that he had committed murder of deceased. He further pointed out that nothing is mentioned in the requisition letter, as to where those *muddemal* articles and samples were kept. Thus, he pointed out that the evidence of prosecution does not inspire confidence, recovery is doubtful and motive is also not established. According to him, when

the deceased himself had called accused at Chandpur Dam with bottle of liquor, then the accused had no reason to carry weapon with him. Further, C.D.R. and tower location were also not obtained by the Investigating Officer. Therefore, according to him, the benefit of doubt should have been given to the appellant/ accused by the learned Trial Judge. In support of his submissions, he relied on the following judgments :-

- (i) ***Hon'ble Apex Court in the case of Bobby Vs. State of Kerala [Criminal Appeal No. 1439 of 2009]***
- (ii) ***Nagpur Bench of this Court in the case of Suresh Purushottam Ashtankar Vs. The State of Maharashtra and another [Criminal Appeal No. 408 of 2012]***

8. On the contrary, the learned A.P.P. strongly opposed the submissions made on behalf of the appellant/ accused and submitted that though there is no direct evidence against the appellant/ accused, but the prosecution has established each and every circumstance indicating the guilt of accused. He pointed out that the deceased was seen lastly in the company of accused at 4.30 p.m. on the day of incident by P.W. No.5. Moreover, P.W.-1 Sk. Sultan also saw appellant and deceased at Ambajogai at 7.15 p.m. Further, it has also come in the evidence of P.W.-1 Sk. Sultan that deceased was alive till 8.15 p.m. on that day and within 45 minutes it was learnt that he died. According to him, the medical evidence on record definitely indicates homicidal death of Sk. Maqdoom and as per the evidence of Dr. Vitthal

Karad (PW-6), the time of death was probably between 8 p.m. and 9 p.m. of 03.12.2018. Thus, according to him, the time of death and last seen together were in proximity. He also pointed out that there was recovery of incriminating articles and weapons at the instance of appellant/ accused and as per the Chemical Analyzer report on record, blood of the deceased was found on the knife as well as clothes of accused. Further, according to him, PW-3 and PW-5 have established the motive for commission of crime and therefore, the chain of circumstances in respect of the guilt of the appellant/ accused is thus completely established. In support of his submissions, he relied on the following judgments :-

- (i) ***State of Uttar Pradesh Vs. Stish [(2005) 3 Supreme Court Cases 114]***
- (ii) ***Praful Sudhakar Parab Vs. State of Maharashtra [(2016) 12 Supreme Court Cases 783]***

9. Heard rival submissions. Also perused the entire oral and documentary evidence on record along with the record and proceeding of original Sessions Case with the able assistance of learned counsel for the appellant/ accused as well as learned A.P.P.

10. It is significant to note that considering the medical evidence on record, no one can dispute that the death of Sk. Maqdoom was homicidal. PW-6 Dr. Vitthal Karad, who conducted the *post mortem* over the dead body has deposed about external and

internal injuries found on the dead body and cause of death was due to haemorrhagic shock, due to multiple stab injuries. Further, the medical evidence has also established that probable time of death of Sk. Maqdoom was in between 8.00 p.m and 9.00 p.m. of 03.12.2018. Further, injuries found on the dead body of Maqdoom were possible by the knife, which was shown to this witness.

11. Admittedly, there is no direct evidence in the present case, but the case of prosecution is completely based on circumstantial evidence. The prosecution has claimed that there are so many circumstances indicating the involvement of the appellant/ accused in the crime. Such circumstances can be summarized in brief as follows :-

- (i) The deceased and appellant were seen together firstly at about 4.30 p.m. on the day of incident at Chandpur Dam and thereafter at about 7.15 p.m. at Ambajogai.
- (ii) Dead body of Maqdoom was found lying on Nandagaul shivar, Push road at about 9.00 p.m. on the day of incident. There was recovery of murder weapon and other incriminating material at the instance of appellant/ accused.
- (iii) The blood of deceased was found on the murder weapon knife and clothes of accused and the Medial Officer established the fact that the injuries found on the person of the deceased were sufficient to cause his death in ordinary course of time and the

same were possible due to the knife seized at the instance of appellant.

- (iv) Lastly, the appellant/ accused could not give any probable and satisfactory explanation as to how he was not connected with the murder of deceased.

Therefore, let us discuss the evidence of the prosecution in respect of the aforesaid incriminating circumstances.

12. P.W.-1 Sk. Sultan Sk. Rahim is examined by the prosecution at Exh.20 on the point that he was the person, who had seen the deceased lastly in the company of appellant/ accused just before his death. According to this witness, he had met accused and the deceased together near his house at Ambajogai on 03.12.2018 at about 7.15 p.m. This witness has specifically deposed that he had conversation with them and thereafter, they left together on the motorcycle. He has further deposed that he also spoke to the deceased on phone at about 8.00 p.m, which indicates that the deceased was alive at least till 8.00 p.m. It is to be noted here that police got the knowledge of death of Maqdoom at about 9.00 p.m, therefore, the evidence of this witness on the last seen together theory has gathered utmost importance, since there was remote possibility of intervention of any third person for committing the crime in between 8.00 p.m. and 9.00 p.m, specially when the deceased and appellant/ accused were proceeding further on the same motor-cycle. Though the

learned counsel for the appellant/ accused raised doubt that when this witness had gone to Dargha at about 2.00 p.m. and spent there period of four hours, then it was highly impossible for him to meet the accused and the deceased at Ambajogai at 7.15 p.m. However, the learned Trial Judge has properly verified the timeline and observed that it was possible for this witness to meet the accused and the deceased together at the given time. Considering the said observation, we are satisfied that it was possible for this witness to meet the accused and deceased together at 7.15 p.m. on the day of incident at Ambajogai.

13. The learned counsel for the appellant/accused by relying on the judgment of Hon'ble Apex Court in the case of ***Boby Vs. State of Kerala in Criminal Appeal No. 1439 of 2009*** submits that, in case of last seen theory, a gap between last seen incident and actual incident is material. He relied on the judgment of Hon'ble Apex Court in the case of ***State of Uttar Pradesh Vs. Satish*** discussed in the aforesaid judgment (supra) is as under :-

“22. The last-seen theory comes into play where the time- gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the

deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs3 and 5, in addition to the evidence of PW2.”

However, we have already discussed that in the instant case, there is no such long gap, in the last seen and the actual incident. It is to be noted that, the evidence in the instant case has indicated that deceased was in the company of appellant/accused till 8.00 p.m. and immediately thereafter at 9.00 p.m., the information regarding death of deceased received. Thus, considering this no so long gap, no doubt can be raised that, there was intervention of any third person. Therefore, the observation of Hon’ble Apex Court in the light of facts of this case, is not helpful to the appellant/accused.

14. The evidence of Sk. Khadir Sk. Munir (PW-2) at Exh. 21, who is panch witness of spot *panchnama* Exh. 23 as well as inquest *panchnama* Exh. 22, has verified the multiple injuries found on the dead body leading to death. He also established the fact that Investigating Officer had seized blood mixed plain soil, mobile of deceased and a shoe from the scene. This witness has also established

the seizure of victim's clothes. Nothing doubtful has been elicited from the cross-examination of this witness.

15. Then come to evidence of Sk. Mustafa Sk. Kalander (PW.-3) Exh. 25, who is the informant and brother of deceased. He stated about lodging of F.I.R. at Exh.26. Though he did not witness the incident, but his testimony at least confirms the discovery of dead body with multiple injuries and also provided the preliminary information about the motive in form of threats given by the appellant /accused to the deceased over family affairs.

16. Vijaykumar Ganpat Tate (PW. No.4) is the panch witness on the point of discovery and as per his evidence at Exh.28, on 07.12.2018 while on duty at Municipal Council, Parli-Vajnath, he was called by Office Superintendent and asked to act as a panch. Accordingly, with another panch Dhondiba Bhusewad went to Parli Rural Police Station, where appellant/ accused was in custody of the police. He has stated that, appellant then gave voluntarily memorandum and expressed willingness to produce the weapon used in the crime. He has established the portion of the memorandum which is admissible in evidence as Exh.29. Thereafter, he deposed that how he along with police, co-panch and accused went to Nandagaul shivar, where accused shown the place, where he had thrown the knife. He specifically deposed further that one iron knife

with handle was found near the heap of soil, having blood stains. He also stated that at the instance of appellant /accused, police seized one motor-cycle from a pit hole of drain covered with garbage and the same was also having blood stains. He also stated about recovery of knife cover and then established the contents of seizure *panchnama* of all these articles at Exh. 30. This witness has specifically identified the appellant/ accused being the same person, who had produced the aforesaid articles. This witness has also deposed that on the next day, the appellant/ accused made disclosure statement and showed willingness to produce his blood stains clothes and the said memorandum was recorded and is at Exh.31. According to this witness, the appellant/accused took him to his house and then produced blood stains clothes comprising black jacket, T-Shirt and blue-white colour pant, which were seized under *panchnama* Exh.32. This witness has identified the articles iron knife, iron cover of knife, black jacket, blue jeans pant and black full sleeves T-shirt being produced by the appellant/ accused. Nothing fruitful has come on record in his cross-examination, which can render the prosecution story doubtful.

17. The evidence of Sk. Waheed Sk. Papamiya (P.W. 5) at Exh.34 speaks about the motive and also last seen theory. According to this witness, he had seen accused and deceased at Chandpur Dam and they left together on motor-cycle towards Ambajogai. He has also

deposed that the deceased had an evil eye on the wife of brother of appellant/ accused. Nothing special has been elicited in the cross-examination of this witness which can produce dent in the prosecution story.

18. The evidence of Dr. Vitthal Karad (P.W.6), who conducted the *post mortem* over dead body of Maqdoom, clearly indicates that there were stabbed wounds on abdomen as well as chest of the deceased along with incised wound on the neck and multiple contusions on the chest and abdomen. He has disclosed that there were additional stab incised wounds on the chest, back, shoulder and lower abdomen of the deceased. He has specifically described the internal injuries to lung, liver and spleen corresponding to external injuries as mentioned in *post mortem* report Exh.37. We have already given the cause of death earlier in the judgment, which is not disputed. However, as per the opinion of this witness, all the injuries were possible by the knife at article 'B', which was recovered at the instance of accused, by its pointed edge and blade and they were sufficient to cause death in ordinary course of time. Though this witness in his cross-examination admitted that those injuries were also possible by sword, but it is extremely important to note that sword is also weapon having sharp edges like the knife at article 'B' which was specifically recovered at the instance of accused. Therefore, in

absence of any evidence of use of sword in the present case, the appellant/ accused cannot get benefit of such type of admission.

19. The evidence of A.P.I. Mr. Maroti Nivrutti Shelke (P.W.7) from Parali Rural Police Station, who has conducted the investigation, is though on the procedural aspect, but it is revealed from the said evidence that he received call at 9.00 p.m. on 03.12.2018 about presence of one dead body on Pus-Nandagaul road. The said body was identified on the basis of *Adhar Card* initially as that of Sk. Maqdoom. Subsequently, the informant confirmed the aforesaid identification. Thereafter, inquest *panchnama* as well as spot *panchnama* were drawn and body was sent to *post mortem*. His evidence further discloses that on 05.12.2018, the appellant/ accused was arrested under *panchnama* Exh. 51 and on 07.12.2017 knife, motorcycle, knife cover used in the crime were seized at the instance of the appellant under memorandum (Exh.29) as well as seizure *panchnama* (Exh.30). On the next day, blood stained clothes were also recovered at the instance of appellant/accused from his house under memorandum (Exh.31) and discovery *panchnama* (Exh.32). This witness had also collected C.A. reports of the seized articles and samples from Forensic Laboratory, Aurangabad. No serious admissions are secured by the defence.

20. Therefore, considering all this evidence and material on record, it reveals that the prosecution has established the chain of circumstances leading to the guilt of accused. PW. No.5 Sk. Waheed and PW. No.1 Sk. Sultan have established the fact that from 4.00 p.m. to 4.45 p.m. on 03.12.2018, the appellant/ accused and the deceased were in company of each other and they left Chandapur Dam together on the motorcycle for Ambajogai. Further, it is also established that they were together near the house of PW.1 Sk. Sultan at Ambajogai at about 7.15 p.m. and then it was also revealed that around 8.00 p.m. when PW. No.1 Sk. Sultan called the deceased, he was alive.

21. It is pertinent to note that the body of deceased was discovered at 9.00 p.m. and therefore, it appears that within short time gap i.e. from 8.00 p.m. to 9.00 p.m. the incident must have taken place. Considering such short time gap, there appears no intervention of any third person then the accused for committing murder of the deceased. It is also important to note that blood stained knife, knife cover, Hero S.S. motorcycle and blood stained clothes were recovered at the instance of appellant/ accused only and these recoveries are established by PW. No.4 Vijaykumar Tate as a panch witness. Not only this, but medical evidence also supported the prosecution case that the deceased died due to stab wounds which were possible by the seized knife at the instance of the appellant and those wounds were on the

vital part of the body sufficient to cause death in ordinary course. It is extremely important to note that the blood found on the knife, knife cover and motorcycle and accused clothes was of group 'O' and the blood group of deceased was also confirmed as 'O'. As such, this fact has created a strong link between the appellant/ accused and this crime.

22. Thus, it appears that though the case is based entirely on circumstantial evidence, but the established chain of circumstances, is so complete, that it is unerringly pointing out to the guilt of the accused and none else. As such, as per Section 106 of the Indian Evidence Act, the accused was under obligation to offer plausible explanation in what circumstances the deceased died. However, no such explanation is coming from the appellant/accused. Thus, it can be summarized that the appellant/ accused driven by motive to protect honour of his own family, took the deceased to a secluded spot and committed his murder. Thus, it appears that the prosecution has definitely established the guilt of appellant/ accused beyond reasonable doubts. Considering this, we found that the conviction recorded by the learned Trial Judge, is on proper appreciation on the evidence on record and therefore, no interference is called for in the same. Resultantly, the appeal stands dismissed.

23. Needless to say that on dismissal of appeal, the pending Criminal Application No. 900 of 2024 for suspension of sentence also stands disposed of.

(MEHROZ K. PATHAN)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

YSK/