



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 741 OF 2005

Shammi Gafoor Pathan,
Age 43 years, Occ. Hotel,
R/o. Northern Branch,
Shrirampur, Dist. Ahmednagar.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....
Mr. S. P. Katneshwarkar, Advocate for the Appellant.
Mrs. Vaishali S. Chaudhari, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.02.2025

Pronounced on : 04.03.2025

JUDGMENT :

1. Appellant hereby takes exception to the judgment and order dated 15.09.2005 passed by learned Additional Sessions Judge, Shrirampur in Sessions Case No. 68 of 2000 recording guilt of the appellant under Section 332 of the Indian Penal Code [IPC].

2. PW1 Police Constable Sahebrao was proceeding towards his house on his motorcycle on 17.06.2000. He was given call by present appellant, who was standing on the other side of the road. Informant responded and halted. Appellant came, caught hold of informant by his neck saying that he would not spare him alive for giving information resulting into raid at the gambling den, and saying so, he inflicted blows with razor on throat, neck and back. Other police constables rushed to save him, but they were also assaulted. Informant was taken to Doctor. Thereafter, in the hospital itself, he lodged report resulting into registration of crime vide Exhibit 17.

3. PW 10 conducted investigation and after gathering evidence, chargesheeted accused. He was tried by learned Additional Sessions Judge, Shrirampur, who appreciated evidence of in all 10 witnesses and also appreciated documentary evidence like FIR, spot panchanama, injury certificates etc. On hearing both sides, learned trial Judge held charge for offence under Section 332 of IPC to be proved and recorded guilt of the appellant.

Above judgment of conviction is now subject matter of the instant appeal.

SUBMISSIONS**On behalf of the appellant :**

4. Learned counsel for the appellant pointed out that there is false implication. That, there is no independent witness even when alleged incident had taken place on public road. That, all witnesses are police personnel. That, panchas did not support prosecution. He also questioned recovery of razor. According to him, there is improper appreciation and evidence has not been correctly appreciated and necessary ingredients for attracting the charge were not available and thus, criticizing the judgment, learned counsel seeks interference by allowing the appeal. In the alternate, he would submit that, conviction is almost two decades back and therefore, at least sentence be reduced than that awarded by learned trial Judge.

On behalf of the State :

5. In answer to above, learned APP took this Court through the evidence of informant PW1, PW2, PW4 and PW5 and submitted that, not only informant, but other police personnel who had intervened, were also inflicted injuries and they have all deposed to that extent. That, appellant was caught red handed. Medical experts, who examined injured witnesses, have also stepped into the witness box. Therefore, according to her, there is no infirmity in the appreciation

or conclusion reached by learned trial Judge and hence she prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

PW1 Police Constable Sahebrao Tarkase is the informant and injured. His evidence at Exhibit 16 reads as under :

“1. In 2000, I was attached to Shrirampur City police station. In June 2000, I was attached to D.B. Squad. In D.B. Squad, we are supposed to work in civil dress. Incident took place on 17/06/2000. I know the accused. On 15/06/2000, on information about gambling on Sangamner road near Sangamner Naka, raid was operated on a gambling den. The accused Shammi Gafoor Pathan was running the said gambling who was also owner of the said hotel where he was running the gambling den. The members of the raiding party were PHC Gaikwad, PC Shelar, Sonawane, myself. We had arrested five persons including accused Shammi Gafoor Pathan. We produced them before the JMFC concerned. He released them on bail.

2. On 17/6/2000, I came to my duty at City police station. I was in plain clothes as I was attached to Detection Branch squad. At about 2.30 p.m., I was proceeding to my house by Sangamner road after finishing my work in the police station. I was staying over near spot Girni. I have to go by Sangamner road. When I reached near Sangamner Naka, one person gave

me call saying Tarkase. Therefore, I stopped my motorcycle and got down from motorcycle. I saw the person who had called me was none else but accused Shammi Gafoor Pathan. Till he crossed the road he was talking nicely with me till he reached to me. When he came near me, he caught hold of my neck with his left hand and angrily said that raid on his den was due to my information. Then he told that he would not leave me alive. He then took out a razor from his pocket. By holding the razor in right hand, he gave blows on my neck, on my back, on my throat. I tried to avoid the blows, In the process, I sustained injury at my left thumb and left brow. I also sustained injury on my throat, neck and back. During the course of attack, PC Gadhave, Misal, Ayub Shaikh and PC Mali reached there. They came from police station. Accused saw them. Then he rushed towards them and also assaulted them. In the attack, PC Gadhave, Davkhar, Misal and Ayub Shaikh and PC Mali were injured. I was shifted to Saint Lukes Hospital. Dr. Masurkar examined and treated me there. PI Mundhe came in the hospital. He recorded my FIR in the hospital. I read the contents and signed the FIR. The FIR now shown to me is the same. It bears my signature. Contents are correct. Exh. 17. Doctor had examined me when my statement was recorded by PI. My clothes were attached under panchanama as they were stained with blood. The accused before court is same. I can identify my clothes and the razor. The clothes article No. 2, 3, 4 now shown to me are the same. The razor Art. 1 now shown to me is the same.

PW2 Police Constable Prashant Misal is also injured. He is examined at Exhibit 18 wherein he stated that :

“1. I was attached to Shrirampur police station as a constable in the year 2000. That time, complainant was also attached to City Police Station Shrirampur. The incident took place on 17.6.2000. The informant was attached to D. B. Squad having 24 hours duty. The PSO received a phone call. Somebody informed him that accused was assaulting the informant with razor. It was about 2.30 p.m. when PSO told us to go there. Myself, constable Mali, Ayub Shaikh and Gadhave, Deokhar went on the spot of incident on motorcycle. We saw a person was assaulting on informant with razor. The accused was the same person who is present in Court. We tried to intervene when the accused inflicted injury with razor on my ribs. The other constables who were with me also sustained injury of raiser. When we were trying to intervene, we saw accused tried to run away. In the process he fell on the ground. People also gathered there. They also assaulted the accused. We then took the informant as well as the accused to Saint Lukes Hospital. The informant Tarkase sustained bleeding injuries on his neck, throat and back. On enquiry, we came to know that there was raid on the gambling den. Therefore, accused was annoyed and he assaulted the informant. I can identify the razor. The muddemal Art. No. 1 now shown to me is the same razor. I was also given medical treatment for my injuries.”

PW3 Bhagwan acted as pancha to spot panchanama. His evidence at Exhibit 19 is as under :

“1. I know Sangamner Naka area. I was not called on the spot of incident on 17/6/2000. The panchanama bears my signature. On that day police had called me at Tilaknagar police station. They obtained my signature. It did not happen that police prepared spot panchanama in my presence.

2. On the same day. I was not called at Shrirampur police station. No weapon was recovered in my presence.”

Thus, this pancha witness was declared hostile and cross-examined by the APP.

PW4 Police Naik Chandrakant Mali, also deposed about the incident at Exhibit 20 as under :

“1. In In the year 2000, I was attached to Shrirampur police station as a police constable. On 17/6/2000, there was some fight near Sangamner Naka. Then we 4-5 constables rushed towards the spot of incident on motorcycle. We saw accused assaulting to informant Tarkase with Razor *vastara*. The accused before the court is same. When we tried to catch hold the accused, he tried to run away. In the process, accused fell on ground. People also assaulted him. Myself, Gadahve, Shaikh, Davkhar and Misal were the constables who came to pacify the incident. The accused also assaulted us and inflicted razor injuries. Then we took accused and informant and other

injured in a jeep to hospital for treatment. We were sent to hospital for treatment. Doctor examined all of us. Doctor had issued certificates. The razor was produced by me which was thrown by accused near the spot of incident. I produced the same. It was attached under panchanama. The razor Article no. 1 now shown to me is the same.”

PW5 Police Constable Bhima Sonwane was party to the raid at the gambling den. While in the witness box, he stated as under :

“1. I Was attached to Shrirampur City police station in June 2000. On 15.6.2000, I was on duty. On that day we received intimation in respect of gambling being played by 5 persons at Sangamner road near Sangamner Naka. We called two panchas. Alongwith the panchas, police party operated raid at about 11.00 a.m. The accused and 4 others were playing gambling. The gambling was being played in the premises of the accused. We attached play cards and arrested the accused, and others. I lodged complaint against the accused and others. The O.C. of the said complaint now shown to me is the same. It bears my signature. Contents are correct. It is at Exh. 24. The accused before the court was the same, who was involved in the gambling.”

PW6 Police Constable Bhausaheb Gadhave, also an injured, deposed at Exhibit 25 as under :

“1. In June 2000, I was attached to Shrirampur city police station. I know the informant Tarkase. So also the accused. On

that day at about 2.30 p.m., we received message about assault on constable Tarkase near Sangamner Naka. We police constables myself, constable Misal, and others went to the spot of incident. We saw the accused was assaulting the informant. Public had also gathered there. The accused was assaulting with razor. When we tried to intervene, accused assaulted us with razor. I sustained bleeding injury below my waist. Immediately was sent to Kamgar hospital for treatment. Doctor examined me and treated me. The injury certificate now shown to me. I can identify the razor if shown to me. The razor before the court is the same.”

PW7 Dr. Masurkar, who examined informant Sahebrao, Prashant Misal and Chandrakant Mali, is examined at Exhibit 26, wherein he deposed that :

“1. I am in service as Chief Medical Officer at Saint Lukes Hospital since 1971. On 17.6.2000, informant Sahebrao Tarkase was admitted in the hospital at 3.30 p.m. He gave a history of alleged assault by known person about an hour ago. I examined him and found following injuries -

1. Multiple incise wounds in various sites on the body. a) On the neck, skin deep, left upper neck below the ear 7x.5 cm.
2. Skin deep, over the nape of neck left of midline 8 X 0.5 cm.
3. Skin deep, antero-lateral aspect of neck on left side, 8 X 1 cm.

4 very superficial, non-grapin 7 cm. long on antero-lateral left side, 2 cm. above and parallel to clavicle.

5. Skin deep in right submandibular region 7 X cm.

6. Skin deep on right side, placed antero-laterally extending from the midline to anterior border of sterno-mastoid muscle 10 X cms.

7. Skin deep, antero-lateral in lower neck on right side. platysma muscle incised laterally 16x 1.5 cm.

The following injuries were on the back-

1) Skin deep, 2 in number, both 15x1.5 cm horizontally placed on either side of midline over left 12th rib and right 10th rib respectively.

2) Very superficial 2 in number, 5 cm long each on either side of midline over left 10th and right 12th rib.

C) Minor, very superficial wounds were found on

1) Medial border of the nail of right thumb, 1.5 cm long

2) Forehead above left eyebrow at its outer border, 2.5 cm long.

3) Upper lip above the line of mustache, on right side 2.5 cm. long.

All these wounds were incised wounds. I also found some other wounds on the person

Skin loss over an area of 1 cm diameter over the intermediate phalanx of left index finger on the dorsum

2) Bite marks 2 sets of teeth marks with bruising no open wounds at almost the same size in the upper third of left forearm 6 cm below the fold of the elbow Joint medially. Area affected was 3.5 in diameter.

All the above injuries were fresh. All the injuries in the 1st category were caused by sharp weapon with light weight. Injury under the category No. 1 also appeared to have been caused by similar weapon. Injury under category (2) was due to human teeth bite. Accordingly, I have issued certificate. The certificate of informant Sahebrao Tarkase now shown to me bears my signature. Contents therein are correct. It is at Exh. 27. On the same day I had examined injured Prashant Misal and Chandrakant Mali.

Prashant Misal was treated only once in our hospital. I examined him and found the following injuries on his person.

1) minor abrasion over left lumbar region on the back. The said injury was fresh and appeared to have been caused by a blunt trauma. I issued the same. It bears my signature. The contents are correct. It is at Exh. 26.

On the same day at about 3.00 p.m., I also examined injured Chandrakant Mali and found following injuries.

1. Minor abrasion over left foot and left knee. The above injuries were fresh and appeared to have been caused by a blunt trauma. Accordingly, I issued certificate to the injured. It

is now shown to me is same, it bears my signature. Contents therein are correct. It is at Exh.29.

The injured Sahebrao Tarkase was indoor patient from 17.6.2000 to 26.6.2000. The injuries found on his person can be possible by muddemal razor A. No. 1 now shown to me.

I have sent a memo to police in respect of the injured admitted in the hospital. The memo now shown to me is same, it bears signature of my assistant doctor who was on duty at the relevant time. Thereafter, police had come in the hospital and recorded his statement. I certified that on the statement that the patient was fully conscious and was able to give a statement. The endorsement on F.I.R. Exh. 17 now shown to me is in my handwriting, it bears my signature, contents therein are correct.”

PW8 Dr. Satpute, who examined injured Bhausahab, has deposed as under :

“1. In June 2000, I was attached to Kamgar Hospital as M.O. on 17.6.2000. I examined Bhausahab Dnyaddeo Gadhave. I found following injuries on his person.

Lacerated wound over left thigh lateral side 5X 1/4th cm. He was admitted in the hospital. However, same day he was discharged after treatment. I issued certificate. It is now shown to me is same. It bears my signature, contents are correct Exh. 31. The injury can be possible by razor like weapon. The muddemal A. No. 1 which is now shown to me can cause such type of injury.”

PW9 Shankar acted as pancha to seizure panchanama Exhibit 33.

His evidence is as under :

“1. On 18.06.2000, I was called by police at Saint Lukes Hospital. In our presence police attached clothes. Accordingly, the panchanama was prepared. Our signatures were obtained. The panchanama now shown to me bears my signature. The contents therein are correct. It is at Exhibit 34. The muddemal clothes now shown to me are the same.”

PW10 Prakash Mundhe was the Investigating Officer.

ANALYSIS

6. PW1 Sahebrao is the informant and he, in his evidence at Exhibit 16, has stated that on 15.06.2000, on information being received about gambling activity going on in a hotel owned by present appellant, raid was conducted and 5 persons were arrested. He further deposed that on 17.06.2000, while he was returning home, appellant gave him call, approached him, came near him, caught him by his neck with the left hand and said that the raid on his gambling den was due to information by this witness, and saying that he will not leave this witness alive, he took out a razor and gave blow on the back side of neck and throat. Witness states that he sustained injuries on throat, neck and back. At that time, police constables Gadhave,

Misal, Ayyub and Mali reached there to save him, but accused rushed on them also and assaulted them. Informant and other injured were taken to Doctor Masurkar (PW7) who treated them. He claims to have lodged report while in the hospital.

Though informant is subjected to extensive cross, the manner of questioning and suggestions, more particularly para 4, shows that there is no serious challenge to the occurrence as the questions put to the informant are, as to how long the incident lasted; when appellant spoke after holding neck; whether people gathered there, whether he fell unconscious. Therefore, such manner of questioning clearly shows that occurrence is not disputed.

7. PW2 Prashant Misal also stated that while at police station on 17.06.2000, PSO received phone call about the incident and therefore, he, constable Mali, Ayub, Ghadve and Davkhar went to the spot. He identified accused to be the same person present in the court for assaulting informant with razor. He deposed that when they tried to intervene, appellant inflicted injury on his ribs and also assault other constables. He also took treatment for the injuries.

Even in his cross, above occurrence has remained intact.

8. PW4, Chandrakant Mali, another Police Constable, has also reported that when they saw accused assaulting PW1 with razor, they ran there and tried to catch the accused and that time, accused assaulted them also by means of razor. He identified the article razor shown to him in the court.

In cross, it is brought that this witness saw informant lying on one side of the road and accused had also sustained injury.

9. Similarly, PW6 Bhausaheb Gadhave, also a police constable and who had suffered injuries to his waist, has reported like PW1 and PW3 and he was also examined by doctor and treated.

10. PW7 Dr. Masurkar is the doctor who, in his evidence at Exhibit 26, deposed about examining PW1 Sahebrao. He narrated the size and nature of injuries on neck and back, which, according to him, are incise injuries. He further deposed that PW1 was treated from 17.06.2000 to 26.06.2000. He further deposed about examining Prashant Misal and Chandrakant Mali and he identified injury certificates issued by him.

11. PW8 Dr. Satpute is another doctor who had examined injured constable Bhausahab Gadhave.

12. Therefore, here, there is injured eye witness account, finding support from medical evidence. The investigating Officer has testified that razor was produced by Chandrakant Mali (PW4) and he drew panchanama Exhibit 39. Said razor was handed over on same day at 18.05 hours i.e. immediately after the occurrence by said Mali, i.e. none other than injured witness PW4 Chandrakant Mali, who took accused in custody and shifted him to hospital for suffering injuries. He deposed that the said razor was picked up by him which was thrown by accused near the spot of incident. Therefore, seizure of razor is also through injured eye witness and his evidence to this extent has remained intact and unshaken. Therefore, there is no reason to doubt his version.

13. Consequently, here, there is injured eye witness account supported by two medical witnesses. However, In view of alternate submissions made that conviction is awarded almost two decades back and as apparently the sword of conviction is looming over appellant's head since then, considering the circumstances in which the incident took place, sentence awarded by the trial court is required to be reduced. Hence, following order is passed.

ORDER

- I. The appeal is partly allowed.
- II. The conviction awarded to the appellant Shammi Gafoor Pathan by learned Additional Sessions Judge, Shrirampur in Sessions Case No. 68 of 2000 under Section 332 of IPC on 15.09.2005 is hereby maintained.

HOWEVER

- III. The sentence is reduced and the appellant is hereby sentenced to suffer rigorous imprisonment for one year.
- IV. There shall be no change in the fine amount as well as the default sentence.
- V. Rest of the impugned judgment and order is kept intact.

[ABHAY S. WAGHWASE, J.]