



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

CRIMINAL APPEAL NO. 576 OF 2021

Bablu @ Abdul Maheboobsab Sayyed
Age: 34 years, Occu.: Labour,
R/o Malwati Road, Latur,
Tq. & Dist. Latur

..APPELLANT

VERSUS

State of Maharashtra
Through Police Inspector,
Gandhi Chowk Police Station,
Latur, Tq. & Dist. Latur

..RESPONDENT

....
Mr. P.P. More, Advocate for appellant
Mrs. S.D. Ghayal, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 13th FEBRUARY, 2025
PRONOUNCED ON : 24th FEBRUARY, 2025

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

1. The challenge in this appeal is to the judgment of conviction and order of consequential sentence dated 21st September, 2021 passed by the Court of Additional Sessions Judge-2, Latur ('trial Court') in Sessions Case, No. 65 of 2019. The appellant was the accused in the said case. He has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- with default stipulation.

2. The facts in brief, giving rise to the prosecution case, are as follows :-

The appellant is the resident of Latur. Lakhan (deceased) was one of his friends. Lakhan was debaucherous. He had illicit relationship with the wife of the appellant. In spite of having been reasoned with, Lakhan continued to keep the relationship. The appellant, therefore, called him to his workplace by 03:00 p.m. on 12th April, 2019. Lakhan accordingly went to the appellant's place. The appellant had already brought acidic liquid in one pot and splashed it on the person of Lakhan. Their two more friends were there. Drops of the acidic liquid also fell on their person. Lakhan started running away. The appellant chased him and assaulted on his back and stomach with the knife blows. The appellant then fled.

3. Lakhan was rushed to Government Hospital, Latur. On the following day he was shifted to Vivekanand Hospital. He, however breath his lat. Lakhan's brother, PW 2 - Prashant lodged the First Information Report ('F.I.R.') (Exh.36) with Gandhi Chowk Police Station, Latur.

4. A crime, vide C.R. No. 163 of 2019 was registered. The appellant was arrested. Crime scene panchanama (Exh.27) was drawn. The container of acidic liquid and other articles were seized from the crime scene. Inquest and autopsy were conducted before registration of crime itself. Clothes on the person of both, the deceased and the appellant, were seized. The CCTV footage available at the shop in the vicinity of the crime scene were obtained. Transcript thereof was prepared in the presence of panchas. Pursuant to the disclosure statement made by the appellant, a knife came to be recovered.

All the seized articles were submitted to R.F.S.L., Nanded. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the charge-sheet was filed.

5. The trial Court framed the charge (Exh.11). The appellant pleaded not guilty. His defence was that the deceased was a womaniser. He had even illicit relationship with the wife of his real brother (Ram). When the brother realised the same, his wife committed suicide by setting her ablaze. Therefore, he (Ram) and his associates committed Lakha's murder.

6. To bring home the charge, prosecution examined twelve witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court passed the impugned judgment and order. The appellant was acquitted of the offence under Section 326-A of the I.P.C. There is no appeal against his acquittal.

7. Learned counsel for the appellant would submit that the F.I.R. (Exh.35) was lodged twenty-four hours after the incident. The same suggests brother and relations of the deceased thought over the matter and falsely implicated the appellant. The F.I.R. (Exh.35) lodged by the real brother of the deceased was hit by hearsay. The informant was not an eye witness. Statement of PW 3 - Rajendra, so called eye witness, was recorded 10/12 days after the incident. He was maternal uncle of the deceased. Being a close relative, he allowed himself to be planted as an eye witness.

His presence at the crime scene has not been made out from the evidence of other witnesses. Had he really been at the crime scene and rushed Lakhan to the hospital, clothes on his person would have been stained with the blood of Lakhan. Nothing of that sort had happened. Even the acidic liquid did not fall on his person. He even did not know the topography of the city of Latur. The same is evident from his cross-examination. On the evidence of another eye witness, PW 4 – Manoj, learned counsel would submit that his statement was recorded three days after the incident. The police had suspected his role in the crime. He was, therefore, detained by the police. His statement, therefore, could not be termed to be voluntarily made. This witness neither supported the prosecution nor the defence. His evidence is, therefore, not reliable. There was no other corroborative evidence to rely on the evidence of this witness. Another witness, PW 5 - Vinod too turned hostile. Although PW 6 – Bharat testified that the appellant had purchased acidic liquid from him, the Investigating Officer did not conducted test identification parade. Although the CCTV footage were collected and transcript thereof was prepared and referred to in the evidence by the Investigating Officer, it was in the nature of secondary evidence. Neither Section 65-B certificate has been proved, nor the CCTV footage was played before the trial Court. The CCTV footage was not shown to the eye witnesses during the trial for identification of the culprit. The CCTV footage, therefore, lost its efficacy.

8. On the question of recovery of knife, learned counsel would submit that the place wherefrom it was seized, was an open and accessible

to all. The Investigating Officer had related the panchas that the appellant was going to take out the knife. The alleged disclosure statement and recovery of knife pursuant thereto, would therefore, not be relevant under Section 27 of the Evidence Act. The C.A. reports do not further the prosecution case. Learned counsel, therefore, urged for allowing the appeal.

9. Learned Addl.P.P. would, on the other hand, submit that the appellant had a strong motive to commit the offence in question. He adverted our attention to the postmortem report (Exh.56). An injury on the thigh of the deceased was caused by the appellant with a knife few days before the incident. The said incident had specifically been admitted in other words by the appellant. The evidence of the informant, thus gets reinforced. On the question of delay in lodging of the F.I.R., learned Addl.P.P. would submit that the relations were engaged in securing best of the treatment to Lakhan. He was shifted to two hospitals. It was only after his demise the F.I.R. came to be lodged, promptly. PW 3 - Rajendra was an eye witness to the incident. Although his statement was recorded 10/12 days after the incident, this witness had gone to his village on the evening of the fateful day. No questions were put to the Investigating Officer in that regard. As such, the Investigating Officer lost the opportunity to explain the delay in recording of his statement. Learned Addl.P.P. then strongly relied on the evidence of PW 4 – Manoj. Although this witness had faltered in some respect, his evidence has been corroborated by his own injury certificate (Exh.64) which indicates that drops of the acidic liquid, splashed by the appellant, fell on his

person. He suffered burns thereby. Same suggests PW 4 – Manoj was very much present at the crime scene. The appellant admitted him to have rushed Lakhan to the hospital. Learned Addl.P.P. then adverted our attention to the C.A. report regarding the articles seized from the crime scene revealing absence of the acidic substance thereon. He would further submit that pursuant to the disclosure statement, a knife came to be seized at the behest of the appellant. Then he would further submit that the CCTV footage in the form of its transcript, prepared in the presence of the panchas, was produced in evidence. Reading thereof indicates the appellant was seen assaulting the deceased. Learned Addl.P.P., therefore, urged for dismissal of the appellant.

10. Considered the submissions advanced. Perused the judgment impugned herein and the evidence on record. Let us turn thereto and appreciate the same.

11. Admittedly, Lakhan died of hemorrhagic shock due to stab injuries. The postmortem report (Exh.56) proved by the evidence of PW 8 – Dr. Rishikesh indicates Lakhan to have had suffered ten injuries. Injury No.9 was somewhat old. The fact that Lakhan met with homicidal death was not in dispute. The question is whether the appellant is the author of the crime.

12. PW 1 – Vijaykumar is a witness to the crime scene panchanama (Exh.27). The crime spot is in the Scrap Market at Latur. Admittedly, in that vicinity the appellant had his workplace. Exhibit 30 is the inquest, while

Exhibit 31 is the panchanama regarding seizure of the clothes of the deceased.

13. PW 2 – Prashant was the younger brother of deceased – Lakhan. He testified that Lakhan was a Manager with Maharashtra-Andhra Transport Company. His office was located at the Scrap Market, at Latur. The appellant was his friend. Five days prior to the incident, the appellant had assaulted Lakhan with a sickle. Lakhan thereby had suffered injury to his thigh. The reason for assault was the appellant suspecting Lakhan to have extra-marital relationship with his wife. He further testified that a day after the said incident, he alongwith his mother and other relations held a meeting with the appellant to reason with him. The appellant had assured that he will not do Lakhan anything.

14. It was suggested to him in the cross-examination that there was scuffle between the appellant and the deceased 4-5 days before the incident. It was further suggested that Lakhan had suffered injury in the said scuffle. As such, the appellant impliedly admitted the incident of assault by the appellant on the deceased 4-5 days prior to the incident in question. The same is reinforced by injury no.9 noted in the postmortem report (Exh.56). Description of the said injury is “5 stitched healing wound on antero-lateral aspect of lower 1/3 of left thigh, horizontally placed, 6 cm in length and is 9 cm above knee joint. Well approximated, no oozing and no gaping, blackish in colour”.

15. PW 2 - Prashant was not at or around the crime scene. He was informed by PW 3 - Rajendra. He, therefore, rushed to Government Hospital, Latur. On the next day i.e. 13th April, 2019, he shifted Lakhan to Vivekanand Hospital, Latur. However, he died by 10:45 a.m. that day. He thereafter lodged the F.I.R. (Exh.36).

16. Since this witness is not an eye witness to the crime, his evidence only establishes the fact that the appellant and the deceased were friends. The appellant would suspect the deceased to have extra-marital relationship with his wife. Over the said issue, quarrel had ensued between the two. The appellant had even assaulted Lakhan with a knife five days before the incident. In our view, since both were friends and worked out a consensus in meeting, no police report of that incident was lodged.

17. PW 3 – Rajendra was the maternal uncle of the deceased. He claimed to have had come to Latur from Killari on the fateful day and accompanied the deceased to the place of the appellant. He testified that he remained by the side of one stationary auto-rickshaw. The appellant splashed acidic liquid on the person of Lakhan. Sensing danger, Lakhan started running away. The appellant chased him and stabbed with knife. He and two others rushed Lakhan to Government Hospital, Latur. He then informed the matter to PW 2 – Prashant (informant) on cell phone.

18. Presence of this witness at the crime scene has been seriously doubted by the defence. Those, who were admittedly there viz. PW 4 – Manoj and Sameer, did not vouch for the presence of this witness. Lakhan had suffered grievous bleeding injuries. This witness claimed to have rushed him to the hospital in a small tempo (छोटा हॉली). Still clothes on his person did not get stained with the blood of the deceased. To top it, this witness returned to his village in the evening without informing the matter to police. The Investigating Officer recorded his statement 10/12 days after the incident. We, therefore, do not propose to rely on the evidence of this witness.

19. The material witness in this case is PW 4 – Manoj. He tried to run with hare and hunt with the hound. He testified that the incident took place by 03:00 p.m. on 12th April, 2019 at Scrap Market, Latur. Lakhan had called him to Royal Garment. Shaikh Sameer was with him besides Gausuddin Shaikh. There was quarrel between the appellant and Lakhan. The appellant splashed water like liquid on the person of Lakhan. Lakhan thereby started running. He was followed by the appellant and Sameer. They crossed the road. Lakhan suffered injury and he took him to the hospital. He further testified that drops of the said liquid also fell on his person. He, however denied that the appellant was armed with a knife.

Learned A.P.P., therefore, cross-examined him. He admitted that when Lakhan was chased, Bablu (appellant) was armed with a knife. He himself suffered inflammation due to fall of the liquid on his person. When he

reached near Rehamat Steel, crowd had gathered. Lakhan was lying in a pool of blood. He denied that Lakhan to have told him of having assaulted by the appellant. He admitted to have rushed Lakhan to the hospital in his vehicle.

20. During cross-examination by the defence advocate, he testified to have been illiterate. According to him, police had called him to the police station repeatedly for 2-3 days only for the reason that he had rushed the injured to the hospital without informing them. He admitted that Lakhan used to sit in the office as Manager and his (PW 4 – Manoj) job was to deliver goods. He admitted that on the fateful day he had gone outside in connection with delivery of goods. In the crowd, Sameer was the known person. A suggestion admitting him and Sameer to have rushed Lakhan to the hospital was put to him. He further admitted that police had read over him the statement while he was to give statement before the Judicial Magistrate. According to him, the deceased used to watch pornography on cell phone.

21. In our view, the fate of this case is based on the evidence of this witness. His presence at the crime scene and then taking the injured to the hospital has been proved. He also testified that the appellant splashed acidic liquid on the person of Lakhan. Some drops thereof also fell on his person. Presence of this witness at the crime scene gets reinforced by his injury certificate (Exh.64). PW 9 – Dr. Anuradha had examined him and Sammer on 14th April, 2019. Sameer's injury certificate is at Exhibit 65. These injury

certificates indicate both of them to have suffered burn injuries / inflammation. The nature of injuries were simple. The said medical officer was suggested in his cross-examination that the injuries on the person of both of them were not totally healed when she examined them. The same reinforces the case of the prosecution that the burns suffered by them were of recent past and that too by the time the appellant assaulted Lakhan.

22. True, this witness testified that the appellant had called him to the police station 2-3 times. No such questions were put to the investigating officer. This witness was partially won over. The record indicates that his police statement was recorded immediately on the following day of the incident, necessarily on the day on which the F.I.R. was lodged.

23. Testimony of this witness proves that a quarrel took place between the appellant and the deceased. The appellant splashed acidic liquid on the person of Lakhan. Some drops thereof fell on the person of him and Sameer. Both, he (PW 4 – Manoj) and Sameer suffered burns thereby. The appellant was armed with a knife. Admittedly, 4-5 days prior, a scuffle had occurred between the appellant and the deceased. There is consistent evidence as regards the appellant to have grudge against the deceased since he felt the deceased to have extra marital affair with his wife. He was seen armed with a knife (PW 4 – Manoj). On proof of these facts, an inescapable conclusion is drawn that the appellant, and none else, assaulted the deceased with the knife blows and immediately fled.

24. True, there is delay in lodging of the F.I.R. We, however do not find the delay to have been misused to implicate the appellant sparing the real culprit. No sooner PW 2 – Prashant informed of the incident, he rushed to the hospital. Since Lakhan's condition was critical, he shifted him to Vivekanand Hospital on the following morning, however Lakhan died by 10:45 a.m. same day. Then postmortem, etc. followed. The case of the appellant that the real brother (Ram) of the deceased had killed Lakhan is a far fetched defence. The deceased was said to be debaucherous. It has come on record that Ram was the real brother of Lakhan. Lakhan had brought Ram to Latur alongwith his wife. They were staying in one premises. Ram's wife committed suicide by setting ablaze. There is, however nothing to indicate that she committed such act after Ram to have seen her in compromising position with Lakhan. The said alleged incident took place way back in 2011, however present incident took place eight years thereafter.

25. So far as CCTV footage is concerned, we discard the same since it was not played before the trial Court, nor the eye witnesses were called upon to identify therefrom the appellant to have been seen assaulting Lakhan. We also do not propose to rely on the evidence of PW 6 - Bharat, the vendor of the acidic liquid, since no test identification parade was held to identify the appellant as the person to have been to his shop to buy such liquid.

26. No particular number of witnesses are required to prove a fact. We find the evidence of PW 4 – Manoj to be cogent and reliable, although he was partially won over. His presence at the crime scene has been proved by his injury certificate (Exh.64), since the acidic liquid splashed by the appellant on the person of Lakhan and drops thereof fell on the person of him and Sameer as well.

27. In view of above, we find the prosecution to have proved the charge. In the result, appeal fails. Same stands dismissed accordingly.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)