



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 372 OF 2020

APPELLANTS

(Ori. Accused No.2)

: 1. Sheikh Salman S/o. Sheikh Ahemad,
Aged about 22 Years, R/o. Pinjar
Mohan, Dist. Akola, at present R/o.
Kureshipura, Yavatmal, Dist.
Yavatmal.

(Ori. Accused No.3)
Appeal is abated against
appellant No.2 as per Court's
Order dated 29/4/22.

2. Sheikh Husen S/o. Sheikh Maheboob
Kureshi, Aged about 35 Years, R/o.
Rahin Nagar, Yavatmal, Dist.
Yavatmal.

(Presently Appellant No.1 is in Jail)

//VERSUS//

RESPONDENT

: The State of Maharashtra, through
P.S.O., P.S. Yavatmal (City), Dist.
Yavatmal.

WITH

CRIMINAL APPEAL NO. 01 OF 2021

APPELLANT

: Sheikh Imran @ Golu Sheikh
Mehemud, Aged 20 Years, R/o.
Pobaru Layout, Yavatmal, Tahsil and
District – Yavatmal.

(Presently at Central Prison,
Amravati)

//VERSUS//

RESPONDENT : The State of Maharashtra, through
Police Station Officer, P.S. Yavatmal
(City), District – Yavatmal.

Mr. R.M. Daga, Advocate for the Appellants in both Appeals.
Mr. A.B. Badar, APP for the Respondent/State.

CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.

RESERVED ON : 3rd NOVEMBER, 2025.

PRONOUNCED ON : 13th NOVEMBER, 2025.

JUDGMENT (PER : RAJ D. WAKODE, J.)

The appellants in both these appeals are the co-accused in Crime No.118/2018, registered with the respondent Police Station on 14th February 2018, for the offences punishable under Sections 307 and 34 of the Indian Penal Code, 1860 (for short, “IPC”). Subsequently, during the course of investigation, the offence punishable under Section 302 of the IPC was added by the respondent Police Station.

02] Appellant Nos.1 and 2 in Criminal Appeal No.372/2020 are the original accused Nos.2 and 3, respectively. The appellant in Criminal Appeal No.01/2021 is the original accused No.1. The aforesaid appellants were prosecuted by the

respondent in Sessions Case No.29/2018, which was decided by the learned Sessions Judge, Yavatmal, *vide* judgment and order dated 20th August 2020.

03] By the said judgment, the learned Sessions Judge acquitted accused No.4 – Sheikh Ahemad @ Amdu Yasin Kureshi of the offences punishable under Sections 120-B read with Sections 302 and 341 of the IPC. However, the learned Sessions Judge convicted the present appellants, namely original accused No.1 – Sheikh Imran @ Golu Sheikh Mehemud, accused No.2 – Sheikh Salman Sheikh Ahemad, and accused No.3 – Sheikh Husen Sheikh Mahemoob Kureshi, for the offence punishable under Section 302 read with Section 34 of the IPC, and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs. 500/- each, in default of payment of fine, to suffer rigorous imprisonment for three months. Accused No.1 was further convicted for the offence punishable under Section 506 of the IPC and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default of payment of fine, to suffer rigorous imprisonment for three months.

04] Being aggrieved by the aforesaid findings and judgment of the learned Sessions Court, the appellants have approached this

Court by filing the present two appeals. During the pendency of the appeal, appellant No.2 – Sheikh Husen Sheikh Mahemoob Kureshi in Criminal Appeal No.372/2020 died on 9th February, 2022. The appeal, therefore, abated as against him. Since both these appeals arise out of the common impugned judgment dated 20th August 2020, passed by the learned Sessions Judge, Yavatmal, in Sessions Case No.29/2018, they are being decided by this common judgment.

05] The brief facts giving rise to the present appeals, as revealed from the record, are as under:

(a) The First Information Report (FIR) in the present case was lodged by the first informant PW-1 Shakil Shah, who is the brother of the deceased Akil. PW-1 Shakil Shah informed the respondent that on 13th February 2018 at about 10:15 p.m., all the family members had dinner and were sitting in the house. At that time, the deceased Akil told that he was going to Kalamb Chowk to meet his friend Tausif. Accordingly, Akil and Tausif went to the S.H.Q. Canteen at about 10:30 p.m. While they were taking tea there, accused Sheikh Imran @ Golu, Sheikh Salman Kureshi, and Husain Sheikh Kureshi came near the canteen. After some time, PW-8 Tausif informed Akil that he was going home for dinner and

left the spot. Thereafter, an altercation took place between Akil and the accused persons Sheikh Imran @ Golu, Sheikh Salman Kureshi, and Husain Sheikh Kureshi. Thereafter, accused Sheikh Salman took his motorcycle and proceeded towards the R.T.O. office, followed by accused Golu and accused Husain. Akil also took his motorcycle and went towards the R.T.O. office.

(b) The deceased Akil, while riding his motorcycle, called PW-6 Sharukh Ali and took him along as a pillion rider towards the R.T.O. office. While they were proceeding on the motorcycle towards Sewa Nagar, accused Ahemad @ Amdu Kureshi wrongfully restrained them and threatened Akil, warning him not to interfere in their matters, else he would face serious consequences. After issuing the threat, accused Ahemad left the spot.

(c) Thereafter, PW-6 Sharukh alighted from Akil's motorcycle near Sewa Nagar School, and Akil continued towards the R.T.O. office on his motorcycle. Subsequently, at about 11:40 p.m., PW-8 Tausif received a phone call from Akil, who informed him that accused Imran @ Golu Kureshi, Husain Kureshi, and Salman Kureshi had called him near Pobaru Layout for a meeting. PW-8 Tausif immediately took his vehicle and went to Pobaru

Layout, where he saw accused Husain Kureshi, Imran @ Golu Kureshi, and Salman Kureshi assaulting Akil with fist and kick blows.

(d) When PW-8 Tausif attempted to intervene and rescue Akil, accused Imran @ Golu Kureshi took out a knife from his trouser pocket and inflicted repeated blows on Akil. PW-8, frightened by the incident, stopped at a distance. Accused Imran @ Golu Kureshi then pointed the knife towards PW-8 and threatened to kill him if he disclosed the incident to anyone. Thereafter, accused Imran @ Golu, Husain, and Salman fled from the spot.

(e) PW-8 Tausif then approached Akil, who was lying injured, took him in his arms, and immediately called PW-1 Shakil. PW-1 arrived at the spot in his car, and together they shifted injured Akil to the Government Hospital, Yavatmal. While on the way to the hospital, Akil narrated the incident to PW-1, the first informant. Upon reaching the hospital, they admitted Akil for medical treatment. PW-1 thereafter went to the City Police Station, Yavatmal, where PW-4 Amol Chaudhary, then PSI was on duty as a Police Station Officer. PW-4 recorded the report of the first informant (PW-1) and registered Crime No.118/2018 for the offence punishable under Section 307 read with Section 34 of the

Indian Penal Code. He thereafter undertook further investigation into the matter.

(f) During the course of investigation, the Investigating Officer visited the place of occurrence and prepared the spot panchanama. At that time, one motorcycle bearing registration No. MH-29/AY-22, a pair of chappals, simple earth, and blood-stained earth were seized from the spot. Subsequently, injured Akil succumbed to his injuries while undergoing treatment in the hospital. Thereafter, the inquest panchanama of the dead body was prepared, and the body was sent for post-mortem examination.

(g) Further investigation was thereafter entrusted to API PW-9 Milan Koyal. He arrested accused Imran, accused Salman, and accused Husain. The blood-stained cloths of accused Nos.1 to 3 were seized under panchanama. On 17th February 2018, while accused No.1 Imran @ Golu was in custody, he made a disclosure statement pursuant to which a knife concealed by him was recovered and seized under a panchanama.

(h) During the course of investigation, it was revealed that accused No.4 was also a conspirator along with the other accused in the commission of the crime. Accordingly, accused No.4 was arrested. PW-9 thereafter submitted a report to the Chief Judicial

Magistrate, Yavatmal, seeking to add the relevant sections and to include accused No.4 in the crime.

(i) The blood samples of the accused persons as well as of the deceased were seized. The post-mortem report and weapon query report were collected from the Medical Officer. Statements of witnesses were recorded, and the learned Judicial Magistrate, First Class, was requested to record the statements of certain witnesses under Section 164 of the Cr.P.C. All the seized articles were forwarded for chemical examination, and the C.A. reports were subsequently received.

(j) Upon completion of the investigation, the Officer-in-Charge of the City Police Station, Yavatmal, filed a charge-sheet against accused Nos.1 to 3 and a supplementary charge-sheet against accused No. 4 in the Court of the Chief Judicial Magistrate, Yavatmal. As per the procedure, the case was then committed to the Sessions Court for trial.

(k) Accused Nos.1 to 4 pleaded not guilty and claimed to be tried when the particulars of the charge (Exh. 51) were read over and explained to them. Their defence was one of total denial. No evidence was adduced on behalf of the defence.

(1) The prosecution, in order to bring home the guilt of the accused, has examined in all nine witnesses. PW-1 Shakil Shah Salim Shah, the brother of the deceased, has deposed regarding the oral dying declaration made by the deceased Akil Shah. PW-2 Syyed Hasan has deposed regarding the dispute between the deceased and the accused that took place at about 11.00 p.m. at Kalamb Chowk; however, this witness has turned hostile. PW-3 Ritesh Kshirsagar is a panch witness to the seizure of the clothes of the accused, the memorandum of accused No.1, and the seizure of the knife. PW-4 Amol Choudhari is a witness regarding the recording of the oral report of the informant and the registration of the F.I.R. He has also deposed about the drawing of the spot panchanama. PW-5 Shaikh Sadiq Shaikh Qureshi has stated that on 13/02/2018 at about 11.00 p.m., accused Nos.1 to 3 had abused the deceased Akil. PW-6 Shahrukh Ali Kabutar has stated that on 13/02/2018 at about 11.30 p.m., an altercation took place between accused No.4 and the deceased Akil near Seva Nagar. PW-7 Dr. Vivek Alone has deposed regarding the post-mortem examination, the query report, and the sketch map of the knife. PW-8 Tausif Khan is an eye-witness to the incident, and PW-9 Balkrushna Koyal is the Investigating Officer.

(m) The learned Sessions Court framed charge on 8th May 2019 against the four accused persons, which is at Exh.51 (page 11 of the paper book). A perusal of the charge reveals that the learned Sessions Court charged accused No.4 for the offence punishable under Section 341 of the IPC; accused Nos.1 to 3 for the offences punishable under Section 302 read with Section 34 of the IPC and under 506 of the IPC; and accused Nos.1 to 4 for the offence punishable under Section 120-B read with Section 302 of the IPC.

(n) After conducting the entire trial, the learned Sessions Court acquitted accused Nos.1 to 4 of the charge under Section 120-B read with Section 302 of the IPC and also acquitted accused No.4 of the offence punishable under Section 341 of the IPC. The learned Sessions Court, however, found accused Nos.1 to 3, i.e., the present appellants — Sheikh Imran @ Golu Sheikh Mehemud in Criminal Appeal No.1/2021 (original accused No.1), Sheikh Salman Sheikh Ahemad (original accused No.2), and Sheikh Husen Sheikh Mahemoob Kureshi in Criminal Appeal No.372/2020 (original accused No.3) guilty of the offence punishable under Section 302 read with Section 34 of the IPC. The learned Sessions Court further convicted original accused No.1 – Sheikh Imran @ Golu Sheikh Mehemud for the offence

punishable under Section 506 of the IPC. Being aggrieved by the said conviction and sentence, the present appellants have approached this Court.

06] We have heard Mr. R.M. Daga, learned counsel for the appellants in both the appeals, and Mr. A.B. Badar, learned APP for the respondent–State in both the appeals. We have perused the impugned judgment, the evidence, and the documents on record, and we shall refer to the same to the extent necessary for deciding the points that arise for our consideration.

07] In the present case, the appellants were prosecuted for the charge of murder of the deceased Akil. Thus, it was for the prosecution to prove that the death of Akil was homicidal. To substantiate the charge, the prosecution has examined the first informant (PW-1 Shakil Shah) at Exh.61, the eye witness (PW-8 Tausif Khan) at Exh.124, and apart from other witnesses Medical Officer (PW-7 Dr. Vivek Alone) at Exh.116.

08] However, it is worth to mention here that there is no dispute on the point that Akil's death was homicidal. This is because the defence of all the four accused in the present trial was that some unknown persons had assaulted Akil to death.

09] Admittedly, the dead body of the deceased Akil was sent for post-mortem examination to the Government Hospital, Yavatmal on 14th February, 2018, where Medical Officers PW-7 Dr. Vivek Alone and Dr. K.S. Patil conducted the autopsy. The post-mortem report at Exh.117 is not disputed by any of the accused persons. The post-mortem report reveals that there were total fourteen fatal injuries on the person of the deceased Akil, and all the injuries were ante-mortem in nature. The external injuries were corresponding with the internal injuries and were collectively sufficient, in the ordinary course of nature, to cause death. The cause of death was mentioned as ‘hamorrhagic shock following multiple injuries’.

10] Thus, in view of the above medical evidence, it is evident that the bodily injuries sustained by Akil were not caused accidentally, naturally, or in an attempt to commit suicide. The necessary conclusion, therefore, is that the deceased Akil was assaulted to death, and while assaulting him, a weapon such as a knife was used. Hence, in our considered opinion, the homicidal death of Akil has been duly proved by the prosecution

11] A perusal of the impugned judgment reveals that the present case is based upon ocular evidence as well as an oral dying

declaration. The eye-witness to the incident is PW-8 Tausif Khan, who was a friend of the deceased Akil, on 13th February 2018. PW-8 specifically narrated the incident wherein he saw the appellants Sheikh Salman and Sheikh Husen, assaulting the deceased Akil with fist and kick blows. He further stated that appellant Sheikh Imran @ Golu took out a sharp-edged weapon (knife) from his pocket and assaulted the deceased Akil. He also deposed that Sheikh Imran @ Golu showed the knife to him and threatened that if he disclosed the incident to anyone, he would kill him as well.

12] Relying upon the aforesaid evidence, the learned Sessions Court convicted the present appellants for the offence punishable under Section 302 of the IPC. Mr. R.M. Daga, learned counsel for the appellants, however, pointed out that the aforesaid eye-witness is a planted witness and has drawn our attention to various admissions made by PW-8 in his cross-examination.

13] A perusal of the cross-examination of PW-8 reveals that though PW-8, who was a friend of the deceased Akil and an eye-witness to the incident, his conduct appears to be unnatural. PW-8 Tausif Khan did not make any attempt to save his friend, the deceased Akil. Further, PW-8 deposed that he helped PW-1 Shakil

Shah in carrying the deceased Akil to the hospital. He admitted that there was a police chowky in the hospital. However, PW-8 did not inform the police officials about the incident or the assault committed by the present appellants on the deceased Akil. On the contrary, PW-8 admitted in his cross-examination that when the police enquired with him about the incident, he informed them that some unknown persons had assaulted Akil.

14] It is worth to mention here that the statement of PW-8 was recorded by the police, but the said statement was never produced during the course of the trial for reasons best known to the respondent. PW-8 further admitted in his cross-examination that he was present at the time when the inquest panchanama and post-mortem of the body of the deceased Akil were conducted. However, he admitted that he did not inform the police about the assault by the present appellants on the deceased Akil at that time. PW-8 also admitted in his cross-examination that he was present at the funeral of Akil, where several persons, including the police, were present; however, he did not inform anyone about the incident.

15] It is worth to mention here that PW-8 was the eye-witness, and it is on the basis of his evidence that the learned

Sessions Court convicted the present appellants under Section 302 of the IPC and sentenced them to suffer life imprisonment. However, the statement of such an important eye-witness was recorded by the police after a delay of thirteen days, which in itself raises serious doubt about the veracity of the witness. This also substantiates the argument of learned counsel for the appellants, Mr. R.M. Daga, that the present witness is a planted witness, produced by the police solely for the purpose of prosecuting the appellants. In our considered opinion, therefore, the learned Sessions Court was not justified in relying upon the evidence of such a witness for convicting the present appellants. Hence, the impugned judgment and order deserves to be quashed and set aside on this count.

16] Another piece of evidence relied upon by the learned Sessions Court for convicting the present appellants is the oral dying declaration of the deceased Akil made to his brother, PW-1 Shakil Shah. PW-1 specifically deposed that when he and PW-8 boarded Akil in the vehicle to take him to the hospital, Akil stated that, on account of a dispute arising from old animosity, the appellants, Sheikh Salman Sheikh Ahemad and Sheikh Husen Sheikh Mahemoob, had beaten him with fist and kick blows and

had thrown him to the ground. He further stated that Sheikh Imran @ Golu Sheikh had assaulted him with a sharp-edged knife on various parts of his body.

17] It is evident from the aforesaid evidence that PW-1 Shakil Shah was completely aware of the acts of the present appellants who had allegedly assaulted his brother Akil, and that Akil had informed him of these acts through his oral dying declaration. PW-1 Shakil also admitted in his examination-in-chief that he identified the accused persons. However, the credibility of the aforesaid dying declaration and the evidence of PW-1 Shakil Shah is subject to serious doubt. In his cross-examination, PW-1 admitted that there is a police chowky near the OPD of the Government Hospital, but he did not inform the police officials about the incident. He further admitted that after admitting the injured Akil in the hospital, he told the Medical Officer that unknown persons had assaulted him. PW-1 also stated that the police had recorded the statements of Akil and PW-8, but these statements were not produced during the trial.

18] Despite not informing the police officials or the Medical Officers at the hospital about the present appellants, PW-1 Shakil promptly took their names and narrated the entire incident, as

described by deceased Akil in his oral dying declaration and his oral report dated 14th February 2018 (Exh.62, page 24 of the paper book). Such conduct of PW-1 Shakil is completely unnatural and raises serious doubt regarding the alleged oral dying declaration of the deceased. In these circumstances, the learned Sessions Court was not justified in relying upon this weak piece of evidence to convict the present appellants for the offence of murder.

19] The Investigating Officer, Milan Balkrushna Koyal, examined as PW-9 by the prosecution, specifically admitted in his cross-examination that he did not seize the blood-stained clothes of PW-1 Shakil Shah and PW-8 Tausif Khan. He also admitted that he did not seize the vehicle in which PW-1 Shakil and PW-8 Tausif had carried the injured Akil to the hospital. These admissions go to the root of the matter, as PW-1 and PW-8 had deposed in their examination-in-chief that they had boarded Akil in the vehicle of PW-1 Shakil and taken him to the hospital. It has also come in evidence that PW-8 had kept the head of the injured Akil on his thighs and that the clothes of both PW-1 and PW-8 were stained with the blood of the deceased.

20] PW-1 Shakil specifically admitted in his cross-examination that he had not handed over his blood-stained clothes

to the police. PW-8 Tausif admitted that he had burned the blood-stained clothes before giving his statement to the police and had not informed the police about the burning of such blood-stained cloths. Similarly, the seat cover of PW-1 Shakil's vehicle, which was stained with the blood of the deceased Akil, was never seized by PW-9.

21] These admissions by PW-1 Shakil, PW-8 Tausif, and PW-9 Koyal raise serious doubt about the veracity of the oral dying declaration and the ocular evidence on the basis of which the learned Sessions Court convicted the appellants for murder and sentenced them to life imprisonment.

22] Apart from the evidence of PW-1 Shakil Shah regarding the oral dying declaration and PW-8 Tausif Khan as an eyewitness to the incident, the prosecution has relied upon the evidence of PW-9 Investigating Officer, to bring home the guilt of the accused. However, a perusal of the cross-examination of PW-9 reveals that he admitted in his cross-examination that he did not find the motorcycle of PW-8 near the spot of the incident. PW-9 further admitted that PW-8 Tausif Khan did not turn up to give his statement even after PW-9 had sent policemen to his house for that purpose two days after the incident. PW-9 also admitted in his

cross-examination that the statements of PW-1 Shakil Shah and PW-8 Tausif Khan were recorded in the hospital.

23] However, it is an admitted fact that the said statements had never seen the light of day and were not included along with the charge-sheet. This again creates a serious doubt that the statements recorded in the hospital were not favourable to the prosecution and, therefore, were not filed in court by PW-9 Investigating Officer. Thus, in view of the aforesaid admissions given by PW-9 in his cross-examination, a doubt is created regarding the veracity of the story put forth by him in his examination-in-chief.

24] Another witness relied upon by the prosecution is PW-3, who was examined on the point of seizure of the cloths of the accused and the memorandum of accused No.1. However, the said witness PW-3 admitted in his cross-examination that on 16th February, 2018, the police had shown him the cloths kept on a table in the police station and seized the same. He further admitted that the said cloths were taken out by the police from an almirah in his presence and were then kept on the table. The aforesaid admission clearly reveals that the seizure of the cloths was effected from the table and not from the person or custody of the accused.

Thus, the seizure of the cloths of the accused has not been duly proved by the prosecution.

25] The evidence of PW-4, and particularly his admission in cross-examination that he received information over the phone from the Government Hospital that one person had been assaulted by unknown assailants, raises a serious doubt on the testimonies of PW-1 and PW-8. Both these witnesses were present in the hospital from the beginning, yet they did not disclose the names of the present appellants as the assailants. On the contrary, they had informed that Akil was assaulted by unknown persons. This circumstance raises a serious question as to how PW-1 Shakil Shah later named the present appellants as the assailants while lodging the FIR. Thus, the learned Sessions Court was not justified in relying upon the aforesaid witnesses and in convicting the present appellants for the offence of murder.

26] In our considered opinion, the conviction was based on weak evidence and was therefore not justified. There is no evidence beyond reasonable doubt against the appellants to establish their involvement in the crime. In our considered opinion, the impugned judgment and order is liable to be quashed and set aside. We, therefore, proceed to pass the following order:

ORDER

- (i) The appeals are allowed.
- (ii) The impugned judgment and order dated 20th August, 2020, passed by the learned Sessions Judge, Yavatmal, in Sessions Case No.29/2018, is hereby quashed and set aside.
- (iii) The appellants - Sheikh Imran @ Golu Sheikh Mehemud and Sheikh Salman Sheikh Ahemad are hereby acquitted of the offences punishable under Section 302 read with Section 34 of the IPC and under Section 506 of the IPC. They shall be released forthwith, if not required in any other case.
- 27] The appeals stand disposed of in above terms.

(RAJ D. WAKODE, J.)

(ANIL L. PANSARE, J.)

Vijaykumar