



Judgment

appeal677.19

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

CRIMINAL APPEAL No. 677 OF 2019.

Madhukar s/o Kashiram Surpam,
Aged about 55 years, Resident of
Parwa, Tahsil and District Yavatmal. ... **APPELLANT.**

VERSUS

The State of Maharashtra,
through Police Station Officer,
Police Station Awadhutwadi,
Yavatmal. ... **RESPONDENT.**

Ms H. Kavi, Advocate for the Appellant.
Mr. U.R. Phasate, A.P.P. for the Respondent/State.

CORAM : ANIL L PANSARE AND
M.M. NERLIKAR, JJ.

JUDGMENT RESERVED ON : 18.08.2025.
JUDGMENT PRONOUNCED ON : 25.08.2025.

JUDGMENT (Per M.M. Nerlikar, J).

Rgd.

The Appellant – Madhukar Kashiram Surpam (original accused) who is convicted by judgment and order dated 28.06.2019 delivered by the Sessions Judge, Yavatmal in Sessions Case No.60/2018 and sentenced to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code, with payment of fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for three months, has filed this Appeal under Section 374 of the Code of Criminal Procedure, challenging their aforesaid conviction and sentence. It is informed that the accused is in jail.

2. The prosecution case in brief is as under :

That on 24.03.2018 a first information report came to be lodged by the informant – Krushna Laxman Atram (P.W.1), stating that his younger brother deceased Munna Atram was residing with his grandmother Vithabai in village Bhosa. Deceased Munna was doing the work of Mandap decoration and was also doing labour work in weekly market, near Hanuman Temple at Yavatmal, as and when the work of Mandap decoration was not available. It is further

Rgd.

stated by the informant that he knows the accused Madhukar Surpam, as he was wandering in the weekly market at Yavatmal, when he used to visit the said market to meet his younger brother deceased Munna. Deceased Munna and accused Madhukar were addicted to liquor.

3. It is further stated that on 24.03.2018 at about 2 to 2.30 p.m. both the deceased and accused were standing near vegetable stall of Akash Wagade, where a scuffle took place between them on account of consuming liquor. Madhukar had threatened the deceased that he should wait there, and accused will see him, and he thereafter went away. It is further alleged that after some time Madhukar came near the vegetable stall of Akash with a knife in his hand and gave knife blows on the chest and stomach of the deceased Munna. Immediately the deceased fell on the ground and died. Thereafter, the accused ran away from the spot of incident. The informant came to know about this incident from his wife, accordingly he rushed towards Vasantrao Naik Government Medical College and Hospital, Yavatmal and thereafter lodged the report with the Police Station Awdhutwadi, Yavatmal (Exh.12) which was

Rgd.

registered as first information report No.336/2018 (Exh.13) for the offence punishable under Section 302 of the Indian Penal Code. This report was recorded and registered by API Shri Dhere. He visited the place of occurrence and found the dead body with bodily injuries lying in a pool of blood on the road. Spot panchnama was drawn. He collected simple earth and blood stained earth from the spot. The investigation was thereafter handed over to API Amol Barapatre (P.W.5).

4. The investigating officer has prepared inquest panchnama (Exh.18), sent the body for postmortem examination. He arrested the accused. He recorded statements of witnesses. Blood stained clothes of the deceased were seized under seizure panchnama (Exh.19). Similarly while in custody, upon disclosure by the accused, blood stained clothes of the accused and knife used in commission of the crime, came to be seized under seizure panchnama (Exh.22). Seized articles were forwarded to the Chemical Analyzer, and the report of analysis was received by the investigating officer and they are stated to be at Exh.29 to 32. Postmortem report (Exh.34) was also received. After completion of

the investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Yavatmal, who committed the case for trial to the Sessions Court. Charge was framed vide Exh.4. It was read over and explained to the accused in vernacular language. The appellant/accused pleaded not guilty, and claimed to be tried. The defence of the accused is of total denial. He pleaded that P.W.2 Akash Wagade and P.W.3 Mangesh Neware are having suspicion that the accused had given tips to the police in the matter of their illegal gambling business and upon such tips, the police had conducted raid, and therefore, they have spoken against him.

5. In order to bring home the guilt of the accused, the prosecution has examined as many as 6 witnesses. P.W.1 – Krushna Atram is brother of the deceased Munna, who has lodged the first information report. P.W.2 – Akash Wagade, is the eye witness to the incident. Similarly, P.W.3 -Mangesh Neware is also an eye witness to the incident. P.W.4 – Vishnu Wanawe is a panch witness to various panchnamas, whereas P.W.5 Amol Barapatre is the Investigating Officer. Lastly, P.W.6 – Sharad Kuchewar, is the Autopsy Surgeon who has conducted autopsy.

6. After appreciating the evidence, the learned trial Court was pleased to convict the accused Madhukar and sentenced him to suffer life imprisonment as stated above.

7. We have heard Ms H. Kavi, learned Counsel h/f. For Ms P.Rane, Advocate appointed for the appellant/accused and Shri U.R. Phasate, learned A.P.P. for the respondent /State.

8. The learned Counsel for the appellant/accused submitted that the appellant/accused is falsely implicated in the aforesaid crime. The first information report is registered on the basis of hearsay information, which was supplied by the wife of the informant. The appellant has not committed murder of the deceased Munna. She further submits that some unknown person might have committed murder of deceased Munna. She further submits that the testimony of so called eye witnesses – P.W.2 and P.W.3, cannot be relied on, as there are material contradictions and omissions in their evidence. She further submitted that as there was enmity between the appellant/ accused and P.W.2 and P.W.3, they have falsely

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implicated him in the said crime. It is also submitted that the testimony of P.W.2 and P.W.3 does not inspire confidence, as their presence on the spot itself is doubtful.

9. She further submits that as regards recovery under Section 27 of the Indian Evidence Act is concerned, it cannot be believed for the simple reason that in the memorandum panchnama, the articles are shown to be recovered from the pipe situated at back side of the State Excise Department. Whereas P.W.4, panch witness, has deposed that accused had produced knife and clothes from grass, and therefore, consequential sending of the articles i.e. knife and clothes of the accused is of no use, since there are material discrepancies in respect of place of recovery. In this background it is submitted that since there is no evidence to connect the appellant/accused with the alleged crime, she prayed for acquittal of the appellant/accused.

10. On the other hand, the learned A.P.P. vehemently submitted that it is an open and shut case. There is direct evidence against the appellant/accused, as the incident is witnessed by P.W.2 -

Akash Wagade and P.W.3 – Mangesh Neware, who have stick up to their version in the examination-in-chief and their testimony is not shaken in the cross-examination. He further submits that the death of deceased Munna was a homicidal death, which was duly proved by examining P.W.6 Dr.Sharad Kuchewar, wherein he opined that the injuries inflicted on the person of the deceased were antemortem. He further submits that two serious blows were inflicted with the deadly weapon like knife, due to which the deceased died on the spot itself. He further submits that apart from direct evidence, there is circumstantial evidence in the nature of recovery of weapon-knife having blood stains on it, so also the clothes of the accused were seized under Section 27 of the Indian Evidence Act, at his behest only. It is further submitted by the learned A.P.P. that as the recovery under Section 27 was effected at the behest of the appellant/accused – Madhukar, those articles were forwarded for chemical analysis, and those articles were having blood stains on it. Accordingly, he submits that the chemical analyzer's report connects the accused Madhukar with the crime, as the blood group of deceased Munna was "A", which was detected on

the knife and clothes which are seized from the appellant/accused and used while committing murder of deceased Munna.

11. The learned A.P.P. further submits that all the witness on which the prosecution has relied, have stickup to their version, and nothing is brought on the record in their cross-examination in order to disbelieve their testimony. Accordingly he supported the judgment and order of conviction and prayed for dismissal of the appeal

12. Upon careful perusal of the record, after appreciating the evidence led by the parties and after hearing the parties, following points arise for our determination.

- (1) Whether the prosecution proved that the death of deceased Munna is a homicidal death ?
- (2) Whether the accused Madhukar has committed murder of deceased Munna Atram on 24.03.2018 at about 1 p.m. at weekly market, near Hanuman Temple, Yavatmal by inflicting knife blows on his chest and stomach, with an intention and knowledge to cause his death, which is an offence punishable under Section 302 of the Indian Penal Code ?

REASONS**Point No.1.**

13. In order to prove the factum of homicidal death, the prosecution has examined P.W.6 Dr. Sharad Kuchewar at Exh.33, who deposed that he along with Dr. Alone had conducted the postmortem of the deceased Munna and found the following external injuries.

- 1] Stab wound present over left side of chest obliquely placed of size 3 cm x 1.5 cm x cavity deep. The center of the obliquely placed is 7 cm from left nipple and 11 cm from right nipple medially, 12 cm below superasternal notch, both angles are acute. Margins are clean cut and reddish. No evidence of oozing of any fluid.
Trace of injury-skin-subcutaneous tissues-pectoralis major muscle cutting 3rd rib and 3rd intercostal space-pericardium-right ventricle.
- 2] Evidence of stab wound present just medial to right anterior superior iliac spine of size 4.5 cm x 2.8 cm x cavity deep, 12 cm below umbilicus on right side, vertically placed, upper angle is obtuse and lower angle is acute. Margins are clean cut and reddish. Evidence of hemiation of underlying peritoneal fat and intestine. Track of injury-skin-subcutaneous tissues-rectus abdomis muscle and transverse abdomis muscle-peritoneus-mesentery-ascending colon.

- 3] Evidence of multiple abrasion present over the dorsal aspect of proximal interphalangeal joints of all fingers of right hand and left thumb of size ranging from 0.2 cm x 0.2 cm to 0.5 cm. Reddish in colour.

He has deposed that all the above injuries were antemortem in nature and were fresh. He found the following external injuries on the body of deceased Munna.

- 1] 3rd rib and 3rd intercostal space on left side are cut corresponding to injury No.1 mentioned in column No.17.
 - 2] Evidence of 518 gm of clotted blood and 250 ml of fluid blood present in left pleural cavity.
 - 3] There was a cut to pericardium corresponding to injury No.1 mentioned in column No.17.
 - 4] There was stab wound injury present over right ventricle anteriorly corresponding to injury No.1 mentioned in column No.17.
 - 5] There was cut injury to the mesentery and ascending colon corresponding to injury No.2 mentioned in column No.17.
14. P.W.6 has deposed that injury nos.1 and 2 mentioned

in column no.17, are corresponding to internal injury mentioned in column no.20 and 21 of the postmortem report, and those injuries are collectively and individually sufficient in ordinary course to cause death. He opined that the cause of death is shock and hemorrhage due to stab injuries to heart. In respect to injury nos. 1 to 3 and the corresponding injuries, he has stated that they can be caused by a weapon like knife, which is marked as Article 'A'.

15. There is no much dispute on the issue that deceased Munna died homicidal death. Even the defence has not disputed this fact, however, the only defence seems to be that, some unknown person assaulted deceased Munna. Considering the above evidence, we can safely come to the conclusion that the death of deceased Munna is a homicidal death.

Point No.2.

16. So far as this point is concerned, the prosecution has relied on 2 eye witnesses i.e. P.W.2 and P.W.3.

P.W.2 – Akash in his deposition stated that he runs a vegetable stall in weekly market at Yavatmal. He was knowing

deceased Munna, so also accused Madhukar. He has deposed that on 24.03.2018, when he was in his vegetable stall in the weekly market, at about 2 to 2.30 p.m. deceased Munna and accused Madhukar were standing near his vegetable stall. At that point of time, a dispute arose between them on account of consuming liquor. Accused Madhukar threatened deceased Munna by uttering the words 'I will see you'. Thereafter Madhukar went away. P.W.2 Akash went to bring water in the temple, and when he returned, he found that again the dispute is going in between the accused and the deceased. Accused Madhukar gave knife blows on chest and stomach of deceased Munna, because of which he fell down. Blood started oozing from his chest and stomach, and thereafter, Madhukar ran away from the spot. Munna died on the spot.

17. So far as the testimony of P.W.3 Mangesh is concerned, he deposed that the incident took place on 24.03.2018 between 2 to 2.30 pm. when he was taking lunch in the Bajrangbali temple. He saw that a dispute was going between them near the vegetable shop of Akash. He further deposed that people resolved the dispute between them. He further deposed that after some time accused

Madhukar brought a knife from chicken shop and gave blows on the chest and stomach of deceased Madhukar. Blood was oozing from the chest and stomach of deceased Munna, who fell down and died on the spot.

18. Thus these two eye witnesses have specifically stated that on 24.03.2018 the incident took place in weekly market, near vegetable stall of P.W.2 Akash. They have further deposed that the accused Madhukar gave knife blows on chest and stomach of the deceased Madhukar. Immediately he fell down and died on the spot itself. In cross-examination nothing was brought on record in order to discard their testimony. It was however, tried to brought on record that the witness P.W.2 has no vegetable stall in the weekly market, however, the cross-examination further shows that P.W.2 did not made any attempt to caught hold the accused on the spot or obstructed the accused while he was assaulting deceased Munna. It is to be noted that P.W.2 Akash is an independent witness, and therefore, his testimony would stand on a higher pedestal. Not only that the testimony of P.W.3 Mangesh was also on the same line. However, nothing was brought on record in the cross-examination to

disbelieve his testimony. On the contrary, the testimony of both these witnesses, who are independent, inspires confidence as their testimony is not shaken in the cross-examination, and they have specifically deposed that accused Madhukar gave knife blows on the chest and stomach of deceased Munna.

19. So far as other evidence is concerned, it is circumstantial in nature, which connects the accused with the commission of the crime, such as recovery of knife and clothes under Section 27 of the Indian Evidence Act at the behest of accused Madhukar. To prove this fact, the prosecution has examined P.W.4 – Vishnu Wanve, who is a Panch. He has specifically stated that accused produced knife and clothes kept by him in the grass, accordingly police has seized the said knife and clothes in presence of the panchas and prepared seizure panchnama. In cross-examination, this witness denied the suggestion that the accused did not gave memorandum in his presence and accordingly no weapon and clothes were produced before the police. He further admits that he had seen the knife and clothes firstly at the police station and secondly before the Court. It

is to be further noted that we have perused Exh.22 Memorandum panchnama, wherein the accused is said to have taken out a knife and clothes from the pipe situated behind the Excise Office. However, in the cross-examination of P.W.4, this fact was not brought on record by the defence, which runs contrary to the evidence of P.W.4 in examination-in-chief. He has deposed that the accused produced knife and clothes kept by him in the grass.

20. P.W.5 – Amol Barapatre is the investigating officer. His evidence on this point is consistent with what is recorded in the memorandum panchnama [Exh.22]. The investigating officer has deposed that the accused produced an iron knife and clothes from one cement pipe situated at back side of building of State Excise Department. Accordingly, the investigating officer seized the said clothes and knife in presence of panchas.

Though there are some discrepancies in respect of recovery of knife and clothes, as can be gathered from the depositions of P.W.4 and 5, however, that fact itself will not affect the case of prosecution for the reason that the evidence of the investigating officer and the recitals of memorandum panchnama

[Exh.22] to the extent of recovery is consistent. However, it would not be fatal to the case of prosecution when defence has failed to bring on record contradictions in this respect. Therefore, though some part of evidence of P.W.4 is kept aside, still the fact of recovery under Section 27 of the Indian Evidence Act was duly proved by P.W.5, which is consistent with the memorandum Panchnama Exh.22, and therefore, this vital piece of evidence can be believed. It is to be noted that the recovery was effected from the place which is in the special knowledge of the accused – Madhukar.

21. Further the evidence in the nature of chemical analyzer's report is concerned, the weapon i.e. knife which was seized, so also clothes of the accused were stained with human blood of group 'A', which was of the deceased. The C.A. report [Exh. 32] goes to show that the blood group of deceased Munna was 'A', and the blood found on the knife is also of group 'A', so also the blood stains found on the clothes of the accused were of group 'A'. Thus, we have no hesitation to hold that the blood stains on the weapon and clothes were of the deceased Munna, and therefore, it is crystal clear that

the accused Madhukar has committed murder of deceased Munna by inflicting knife blows on the vital part of his body i.e. chest and stomach. It is also to be noted that P.W.6 medical officer has specifically mentioned about the parts of body on which the injuries are inflicted. He has stated that injuries found on the body of deceased are collectively sufficient in ordinary course of nature to cause death.

22. Therefore, considering the evidence of eye witnesses [P.W.2 and P.W.3], further evidence of P.W.6 Autopsy Surgeon, evidence of recovery of weapon and clothes, further having human blood stains on those articles of blood group 'A', which is of the deceased Munna, we have no hesitation to hold that the prosecution has proved the case beyond reasonable doubt that the accused Madhukar has committed murder of the deceased Munna. We accordingly hold that no error is committed by the learned trial Court in convicting the appellant. The findings recorded by it are based on sound reasonings, and therefore, we decline to interfere with the same. Hence, the following order.

ORDER

- (i) Criminal Appeal is hereby dismissed.
- (ii) Muddemal property be dealt with in accordance with law.

23. Fees of the appointed Counsel be quantified and paid as per Rules.

JUDGE

JUDGE