

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 877 OF 2011**

Mukhtyar Jabbar Tadvi

..Appellant

Versus

State of Maharashtra

..Respondent

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

The judgment dated 18.11.2009 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 509 of 2007 is called in question in this appeal. By the impugned judgment, the High Court has confirmed the judgment dated 18.09.2007 passed by the Additional Sessions Judge, Jalgaon in Sessions Case No. 150 of 2006 convicting the appellant herein for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of

Rs.5,000/-, and in default to suffer rigorous imprisonment for six months.

2. The case of the prosecution in brief is that the deceased Munir and his wife Madina (PW8) were residing on the backside of the house of the informant Qutuboddin Sandu Tadvi (PW7); the informant is none other than the father of the deceased; the informant and his wife Shahnoorbi, another son Nawab and Nawab's wife Afsana were staying jointly in one house, which was in front of the house of the accused. Both houses are near each other. On 16.12.2005, the informant and his wife Shahnoorbi were in the house. His son Nawab and his wife Afsana were not present. Deceased Munir came to the house of the informant in the evening and informed him that he was going to see a movie. At about 11:00 or 11:15 p.m., the informant heard shouts from his son Munir, saying "Oh mother, save me – Mukhtyar had assaulted me by knife in my stomach". On hearing the shouts of Munir, the informant and his wife woke up and opened the door of the house. Immediately, the injured Munir entered the house of the informant, at which point of time the accused Mukhtyar was standing behind Munir, holding a blood-stained knife in his hand. Madina, the wife of Munir also reached the spot, by which time Munir fell down with bleeding injuries on his stomach. His intestines had come out of the abdomen. The injured became unconscious. Accused Mukhtyar

ran away from the spot. In his haste, he left his chappal near the door of the house of the informant. The informant went to Dr. Shantilal Teli and requested him to come to the spot of the incident and examine the victim, who accordingly came and after examination declared him dead. Immediately thereafter, the first information came to be lodged by the father of the deceased.

As mentioned supra, both the courts convicted the accused under Section 302 of the Indian Penal Code and sentenced him to life imprisonment.

3. The defence does not dispute that it is a case of homicidal death. However, it is argued on behalf of the accused that the circumstances relied upon by the prosecution are not proved and hence the accused may be given the benefit of doubt.

Per contra, Shri Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the State of Maharashtra argued in support of the impugned judgments.

4. The case rests on circumstantial evidence. Neither the informant nor the wife of the deceased had seen the assault by the accused on the victim Munir. It is by now well established that in cases of such nature, all circumstances relied upon by the prosecution must be established by cogent, succinct and reliable evidence, all the proved circumstances must provide a complete chain, inasmuch as no

link in the chain of circumstances should be missing, and such chain of circumstances should unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

5. In order to establish the guilt of the accused, the prosecution has relied upon the following circumstances:

- a) the informant (PW7) and the wife of the deceased (PW8) noticed the conduct of the victim and the accused immediately after the incident. They heard the cries of the victim and saw him with bleeding injuries, at which point of time the accused was just behind the victim and was holding a blood-stained knife;
- b) the oral dying declaration of the deceased before his father;
- c) the accused was seen in the accompany of the deceased just prior to the incident;
- d) recovery of the weapon at the instance of the accused;
- e) abscondence of the accused; and
- f) raising of false defence by the accused.

6. Both the Courts below, more particularly the trial Court, have gone into the evidence meticulously and concluded that the prosecution has proved all the circumstances relied upon by it, which form a complete chain. On going through the material on record, we

are of the clear opinion that the Courts below have rightly concluded so.

7. The deceased, while leaving his house in the evening on the date of the incident, had informed his father that he was going to see a movie. The incident happened after he returned from the movie. The victim/deceased immediately sustained injuries near his house, crying out 'Oh mother save me, Mukhtyar had assaulted me in the stomach by knife'. After hearing the cries of his son, the informant (PW7) opened the door and saw his injured son. He also saw the accused with a blood-stained knife in his hand. Immediately thereafter, the accused ran away and the injured fell down on the person of the informant. At that point of time, the deceased told his father that the accused Mukhtyar had assaulted him with a knife. The intestines had also come out of the abdomen of the victim. As mentioned supra, the doctor who came to the spot at the request of the informant declared the victim dead. The accused Mukhtyar was the neighbour of the victim.

8. Dr. Shantilal Teli (PW10) has also deposed before the Court that he came to the spot at the request of the father of the victim and declared the victim dead. Exhibit 24 discloses that Dr. Shantilal Teli was informed by the informant that his son had sustained injuries due to assault by knife on the stomach, and that his neighbour had

assaulted him. The incident had occurred at about 11:30 p.m. and the information was lodged before the police station promptly at 1:00 a.m., i.e., within one and a half hours of the incident.

9. The evidence of the informant is fully corroborated by the evidence of his daughter-in-law Madina (PW8), the wife of the deceased. She has also deposed that on the date of the incident, her husband (deceased) had told her that he was going to see a movie, after which she had gone to sleep. At about 11:00 or 11:15 p.m., she heard the shouts of her husband saying "Oh mother save me, Mukhtyar had assaulted me by knife in my stomach". She also came out and found the victim with injuries on the stomach and the accused with a blood-stained knife near the door of her father-in-law. At that point of time, there was sufficient moonlight to identify the accused.

10. The evidence of the aforementioned two witnesses, namely, PWs 7 and 8 is fully corroborated by the post mortem report, Exhibit 22. The doctor has noticed an incised wound on the upper abdomen, forming a cavity through which loops of the intestine were coming out. There was also an incised wound on the right lower lobe of the liver and blood had accumulated in the abdominal cavity. The doctor has opined that all the injuries were ante mortem in nature.

11. As mentioned supra, prior to the arrival of the doctor at the spot of the incident, the injured had stated before the informant and the wife of the deceased that Mukhtyar had stabbed him with a knife and also asked to be saved. It is an oral dying declaration by the deceased just prior to his death. We do not find any reason to doubt the evidence of PWs 7 and 8, who are natural witnesses on the scene of the offence, inasmuch as one is the father of the victim and the other is the wife of the victim, for whom it was natural to be at home at that late hour.

12. In addition to the above, the evidence of PW2 Nisar Tadvi (Gate Keeper of Cinema/Theatre) discloses that there was an English movie at Suhas Talkies. The accused and deceased Munir had been to the theatre for a second show, and the same was over by 10:15 p.m., inasmuch as the movie was only for one and half hours. Both the accused and the deceased left the cinema hall together. PW2 knew both the deceased and the accused. The evidence of PW2 corroborates the evidence of PWs 7 and 8 to the effect that the deceased had gone to see a movie before the occurrence of the incident, and that both the accused and the deceased were seen together immediately prior to the incident.

13. The panch witness Satish Gimar (PW1) went to the spot of the incident along with the police and found signs of a scuffle. One

chappal of white colour was lying there. There were stains of blood over the said chappal. He learnt that the said chappal was of the deceased. One muffler of white colour and another chappal of blue colour with blood stains were also lying there. The said chappal was of the left foot, and the same was of the accused. There were blood stains in the house of the deceased as well as on the wall, near where the deceased was lying. Thus, the Courts below have rightly concluded that the offence had taken place just outside the house of the deceased and the deceased fell inside his house immediately after the incident in a pool of blood.

14. PW4 Deelip Lahore is the black smith. He has deposed that the accused Mukhtyar had been to him on 21.11.2005 with one spear without a handle and had requested PW4 to sharpen the said spear and also to fix a handle to it. Accordingly, PW4 sharpened the weapon and fixed a handle by accepting Rs.50/- from the accused. The said witness is well acquainted with the accused and the deceased. He identified the spear which was seized by the police as the one which the accused had got sharpened from him, which means that the accused had made prior preparation with an intent to commit murder.

15. Immediately after the incident, the accused absconded from the spot with the knife. He was not found for a long time. News was published and circulated to various police stations along with the

photograph of the accused. Ultimately, the accused was found at Nashik after a long gap of time. This factor is also proved by the prosecution by producing the records as well as the evidence of the police personnel. Different police stations were employed to find the absconding accused. Ultimately the police were able to arrest the accused on 3.5.2006, though the incident had taken place on 16.12.2005. The arrest memo is Exhibit 34. Thus, it is clear that the accused absconded for more than seven months.

16. Based on the voluntary statement of the accused, the police and panchas took the accused to the bushes near the railway station about 100 ft. from the spot of the incident, to recover the knife which was used in the crime. The accused took out the knife from the bush and produced the same. The same was seized by the police. The said weapon was blood-stained and it was sent to the laboratory. The C.A. Report, Exhibit 31, also pointed towards the guilt of the accused.

17. The accused took the false plea of alibi in his statement u/s 313 CrPC, which remained not proved. Having regard to the aforementioned material on record, in our considered opinion, the trial Court and the High Court were justified in convicting the accused by concluding that all the circumstances are proved by the prosecution, and form a complete chain. Even on reconsidering the material, we do

not find any reason to interfere with the judgments and orders of conviction. The appeal accordingly fails and is hereby dismissed.

.....J.
[N.V. RAMANA]

NEW DELHI;
OCTOBER 31, 2018.

.....J.
[MOHAN M. SHANTANAGOUDAR]