



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 722 OF 2012

ABDUL WAHID & ANR.

APPELLANT(S)

VERSUS

STATE OF RAJASTHAN

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.1266 OF 2012

ABDUL SHAKUR

APPELLANT(S)

VERSUS

STATE OF RAJASTHAN

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

This judgment and order will dispose of Criminal

Appeal Nos. 722 and 1266 of 2012.

2. Criminal Appeal No. 722 of 2012 arises out of SLP(Crl.) No. 1764 of 2012 filed by Abdul Wahid and Babu (appellants herein). In this appeal, challenge has been made to the judgment and order dated 26.08.2011 passed by the High Court of Judicature for Rajasthan at Jaipur Bench (for short 'High Court' hereinafter) in D.B. Criminal Appeal No. 639 of 2003 whereby the High Court has upheld the judgment and order dated 10.03.2003 passed by the learned Additional Sessions Judge No. 4, Kota ('trial court' for short) in Sessions Case No. 13/1996 convicting the appellants under Sections 302/148 of the Indian Penal Code, 1860 (IPC). However, the High Court modified the conviction by holding the accused guilty of the offence punishable under Section 302 with the aid of Section 149 IPC while maintaining the sentence of life imprisonment.

2.1. Criminal Appeal No. 1266 of 2012 has been filed by Abdul Shakur (appellant herein) against the aforesaid judgment and order of the High Court dated 26.08.2011 affirming the judgment and order of the trial court and convicting the appellant under Sections 302/149 IPC and sentencing him to undergo imprisonment for life.

2.2. So the 3 appellants are Abdul Wahid, Babu and Abdul Shakur.

3. Since Criminal Appeal No. 722 of 2012 was argued as the lead appeal, facts narrated therein are referred to hereunder, though both the appeals arise out of the same incident and the same judgment of the High Court.

4. Faem Ahmed lodged first information before the Maqbara police station, Kota, Rajasthan on 25.06.1988 at about 12:35 AM. He stated therein that Ahsan Ali and himself were on way to the residence of the in-laws of Ahsan Ali in Nayapura around 10:40 PM. While Ahsan Ali was talking to his relatives in the shop of his brother-in-law, he was seen by accused Abdul Sattar and Abdul Wahid. This was noticed by Faem Ahmed who knew them and also about the strained relationship between Ahsan Ali on the one hand and Abdul Sattar and Abdul Wahid on the other hand. He suggested to Ahsan Ali that while returning home, they should change the route. However, Ahsan Ali insisted on going through the same route by which they had come. While returning, when they reached the place called Ghantaghar at around 12 midnight, suddenly accused Babu, Abdul Wahid, Abdul Sattar, Aziz @

Patti, Abdul Shakur, Bundu and Latur Ali accosted them and attacked Ahsan Ali and himself with knives etc. The first knife injury was inflicted by Babu on the stomach of Ahsan Ali whereafter he fell down from the motorcycle; the second injury was inflicted by Abdul Wahid on the chest of Ahsan Ali, also by knife; Abdul Sattar inflicted injury by a *katar* (sword) on the backside of Ahsan Ali. Abdul Shakur and Aziz @ Patti who were also trying to inflict injuries on Ahsan Ali, chased the informant Faeem Ahmed. He ran into the Gauri Hotel lane. When the said two accused persons did not find Faeem Ahmed, they returned back and started assaulting Ahsan Ali.

4.1. Informant somehow managed to escape and went to the police station to lodge the first information. He stated that Ahsan Ali was lying at the place of occurrence in an injured condition. The incident was witnessed by Wahid (brother-in-law of Ahsan Ali) and Jameel. He alleged that due to previous enmity, the above named 7 accused persons i.e. Babu, Abdul Sattar, Abdul Wahid, Abdul Shakur, Aziz @ Patti, Bundu and Latur Ali alongwith Jaffar Mohammad formed an unlawful assembly whereafter they assaulted Ahsan Ali with a murderous intent.

4.2. On the basis of the first information, FIR No. 48/1988 was registered on 25.06.1988 under Sections 147/148/149/307 IPC. Injured Ahsan Ali was taken to the hospital for treatment but he succumbed to his injuries whereafter Section 302 IPC was added to the FIR.

4.3. Police carried out the investigation and on completion of the same, filed chargesheet against the 8 accused persons under Sections 147/148/149/302 IPC. Since it was sessions triable, the case was committed to the Court of Sessions whereafter charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4.4. Prosecution examined as many as 22 witnesses. On completion of the prosecution evidence, the accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) who denied the charge and alleged false implication. The defence also examined 3 witnesses. It may be mentioned that trial against 4 accused persons viz. Abdul Sattar, Bundu, Latur Ali and Aziz @ Patti abetted on account of their death. On conclusion of the trial, trial court *vide* the judgment and order dated 10.03.2003

acquitted accused Jaffar Mohammed of all the charges. The present 3 appellants Abdul Wahid, Babu and Abdul Shakur were convicted for the offence under Sections 302/148 IPC and sentenced accordingly.

5. Aggrieved by the aforesaid conviction and sentence, the 3 appellants preferred appeal before the High Court. The High Court *vide* the judgment and order dated 26.08.2011 (impugned judgment) affirmed the judgment and order dated 10.03.2003 of the trial court with the modification that the conviction was under Sections 302/149 IPC. The sentence of life imprisonment imposed upon the appellants was maintained. The appeal was accordingly dismissed.

6. In the first appeal, notice was issued by this Court in the related SLP on 24.02.2012. Leave was granted on 30.04.2012 and the 2 appellants, Abdul Wahid and Babu, were granted bail. In so far the second appeal is concerned, leave was granted on 16.08.2012 and *vide* order dated 07.12.2012, the appellant Abdul Shakur was granted bail.

7. Learned counsel for the appellants submits that the courts below were not justified in convicting the appellants on the testimony of the sole eyewitness PW-1. After disbelieving

the evidence of other witnesses presented as eyewitnesses by the prosecution, evidence of PW-1 has to be taken with a pinch of salt as he was a relative and an employee of the deceased. He is an interested witness and his testimony is not corroborated by any independent witness.

7.1. Learned counsel further submits that PW-1 is not a reliable and trustworthy witness in as much as in his cross-examination, he has admitted that he is a stock witness; police had produced him as a witness in the Babar Mushtaq case to depose falsely. Further, in his cross-examination he admitted that there are 3/4 criminal cases pending against him. Thus, he has got criminal antecedents. It is evident that PW-1 was being used by the police to nail the accused and, therefore, a great deal of suspicion hovers over his testimony. As such, it would be wholly unsafe to rely on the testimony of PW-1 to convict the appellants without any independent corroboration. In this connection, he has placed reliance on the decision of this Court in *Anil Phukan Vs. State of Assam*¹.

7.2. Learned counsel for the appellant has also cast aspersions on the FIR contending that though the same was

¹ (1993) 3 SCC 282

registered on 25.06.1988 around midnight (12:30 PM), it was forwarded to the concerned magistrate only two days thereafter on 27.06.1988.

7.3. Referring to the testimony of the investigating officer PW-17, learned counsel submits that the said witness admitted in his cross-examination that the motorcycle on which the deceased was travelling alongwith PW-1 when he was allegedly attacked by the accused persons was never seized; the blood soil sample from the place of incident was not collected by the investigating officer and, therefore, could not be subjected to forensic examination. He also submits that the knives and *katar* allegedly used by the appellants to assault the deceased and recovered pursuant to confessional statements of the accused persons were never produced in court. As a matter of fact, all the witnesses to the alleged recovery of weapons turned hostile stating that they had put their signature on being forced by the police.

7.4. Learned counsel also submits that PW-1 in his evidence stated that appellant No. 2 had inflicted a stab wound on the stomach of the deceased. But in the postmortem report, no such injury was found either on the stomach or in the

abdominal region. PW-15, the doctor who had conducted the postmortem examination, deposed in his cross-examination that the weapons used in the offence i.e. knives and *katar* were not shown to him. Further PW-15 stated in his cross-examination that all the injuries from injury No. 1 to injury No. 8 could well be inflicted by only one weapon as the injuries were of the same nature. In this connection, reliance has been placed on the decision of this Court in *Narendrasinh Keshubhai Zala Vs. State of Gujarat*².

7.5. High Court had rightly rejected the evidence of PW-2, PW-3, PW-4, PW-5 and PW-8 as their depositions did not inspire the confidence of the court. The aforesaid witnesses displayed unnatural conduct by not taking the deceased to the hospital when he was in an injured condition even after the assailants had left the place of occurrence. They did not rush to the police station either, though it was so nearby. Such conduct raises grave doubts about the presence of the aforesaid witnesses at the time of the incident.

8. *Per Contra*, learned counsel representing the respondent State submits that both the trial court as well as

² 2023 SCC OnLine SC 284

the High Court had carefully analysed the entire evidence on record and thereafter convicted the appellants under Sections 302/149 IPC. The impugned conviction and sentence do not suffer from any legal infirmity to warrant interference under Article 136 of the Constitution of India.

8.1. Learned counsel submits that PW-1 Faeem is an eyewitness to the incident. It is he who had lodged the FIR where he named the appellants as accused. FIR was lodged very promptly without the slightest delay.

8.2. There is complete consistency between the ocular evidence of PW-1 and the medical evidence. The ocular evidence of PW-1 clearly states that the appellants had given knife blows in the chest and in other parts of the body which were also indicated in the postmortem report. Such sharp injuries caused the death of the deceased. The ocular evidence of PW-1 could not be shaken. He clearly pointed out the role played by the appellants in the murder of Ahsan Ali.

8.3. PW-15, the doctor who had conducted the postmortem examination, stated that the postmortem was conducted promptly. 8 incised wounds were found on the person of the deceased. The first 3 injuries were found on the

abdomen, chest and lungs of the deceased. It has come on record that the said injuries were caused by sharp edged weapons.

8.4. In the circumstances, learned counsel for the State submits that there is no merit in the appeals and accordingly those are liable to be dismissed.

9. Submissions made by learned counsel for the parties have received the due consideration of the Court.

10. At the outset, it would be apposite to advert to the depositions of the material prosecution witnesses.

11. PW-1 is Faeem Ahmed. In his evidence in chief, he stated that on 25.06.1988 (sic), he and Ahsan had left Bhatghat at about 10:45 PM and reached the residence of the in-laws of Ahsan at Nayapura by motorcycle. There Ahsan talked with his brother-in-law Wahid. Ahsan had parked his motorcycle in front of the shop of his brother-in-law and was chatting with his friends who had come over there to meet him. At that time, the motorcycle of Sattar came there from the direction of the hospital. He knew the two persons who were sitting on it. They were Sattar and Wahid who were known to him. The two persons saw Ahsan and went away in the motorcycle. At that

stage, PW-1 told Ahsan that they should go home now by a different route. However, Ahsan brushed aside such suggestion and went back through the same route. When they reached Ghantaghar at about 12:30 AM, Babu, Wahid, Sattar, Shakur, Aziz @ Patti, Bundu and Latur confronted them. They were armed with knives and *katar*. They attacked Ahsan. First blow by knife was given by Babu in the abdomen of Ahsan; second blow by knife was inflicted on the left side chest of Ahsan by Wahid; the third blow was given by Sattar with his *katar* hitting the back of Ahsan. Aziz and Shakur chased PW-1 with a knife. PW-1 ran into the street of Gauri Hotel. After sometime, Aziz and Shakur stopped looking for PW-1 and went back to the place of incident where Ahsan was being assaulted.

11.1. According to PW-1, he came running to the police station and submitted a written report. He knew all the accused persons and identified them in court.

11.2. In his cross-examination, he stated that he was the brother-in-law of Ahsan's elder brother. PW-1 also stated that he used to work as jeep driver of Ahsan. Besides, he used to manage all the labour employed by Ahsan in his contract works since Ahsan was a contractor. PW-1 and Ahsan had stayed in

Ahsan's in-laws' place for about 20-25 minutes. He denied the suggestion that the motorcycle in which he and the deceased were travelling had lost balance and after colliding with a roadside pole, Ahsan fell down as a result of which they sustained injuries.

11.3. Elaborating further, he stated that the attack on him and the deceased started near the shops of Bisayeeti and Hindu Band, east of Garib Nawaj Hotel. The motorcycle did not fall over Ahsan because Ahsan was pulled down by the accused persons. PW-1 stated that he also fell down from the motorcycle and as he got up, he saw the accused assaulting Ahsan. When two of the accused persons charged towards him, he ran away. He saw Ahsan lying on the *thade* of Shakuntala Chemicals shop.

11.4. PW-1 denied in his cross-examination that he had any previous enmity with the accused persons. He went to the site of the assault with the Assistant Sub Inspector (ASI) who took the injured Ahsan to the hospital in an auto rikshaw while asking PW-1 to take the motorcycle to the police station.

11.5. PW-1 stated that he did not raise any alarm while the accused persons were assaulting Ahsan because they had

warned that if anybody raised their voice, they would be killed. On further cross-examination, PW-1 stated that he knew Ahsan since his childhood days. He also knew the accused persons for about 8 to 10 years. The accused persons were having dispute with Ahsan since 7 days prior to the incident. In fact, Ahsan had told him that there could be a fight between the accused persons and him. Therefore, when he saw Wahid on a motorcycle, he apprehended about the possibility of assault and accordingly had warned Ahsan. However, he admitted that neither he nor Ahsan informed the police station about such a threat.

11.6. On further cross-examination, PW-1 stated that when the accused persons started assaulting Ahsan, there were about 100 persons in and around the place. They were accosted all of a sudden by the accused persons as a result of which their motorcycle fell down. No one from amongst the crowd came to rescue them. He defended his fleeing from the scene by stating that if he had tried to rescue Ahsan, he could also have been assaulted. He asserted that the first knife blow was given by accused Babu; the second one by accused Wahid on the chest; and the third blow by way of *katar* was given by Sattar. He stated that he had seen the accused persons assaulting

Ahsan but he did not see which parts of the body of Ahsan had suffered injuries but the three injuries he referred to were inflicted by Babu, Wahid and Sattar immediately after Ahsan fell down from the motorcycle. He denied the suggestion that the public had brought Ahsan to the police station in a *thela*. He stated that Ahsan was taken to the hospital in an injured condition by the ASI. He admitted that he was presented as a witness in a case against Aziz @ Patti where he deposed in favour of the informant Babar Mushtaq. He denied the suggestion that police used to present him as a false witness in criminal cases. He admitted that there were 3/4 cases pending against him.

11.7. PW-1 reiterated that Babu had injured Ahsan first by knife injury which was followed by Wahid. Babu had stabbed Ahsan in his abdomen due to which Ahsan fell on the ground from the motorcycle.

12. PW-4 is Wahid who described himself as the brother-in-law of Ahsan. In his evidence-in-chief, he stated that Ahsan alongwith Faeem had come to his house in the night at about 11:00 to 11:15 PM. He talked with his *jijajee* (Ahsan) whereafter he (Ahsan) went back. Thereafter, he and his brother

Jameel went to Ghantaghar by a motorcycle to have tea and *paan masala*. While at Ghantaghar, they heard the sound of an approaching motorcycle which was being driven by Ahsan with Faem sitting behind. It was about 12:00 to 12:15 hours. All of a sudden, he heard the voice of 8 to 9 persons shouting *gher lo*. He mentioned their names as Babu, Wahid, Sattar, Jaffar, Latur, Bundu and Aziz @ Patti. He also stated that there was one more person whom he identified in court as Shakur. According to him, first knife blow was given on the chest of Ahsan by Babu; second one on the chest by Wahid; Sattar gave blow of *katar* on the back of Ahsan whereafter they charged towards Faem, who ran towards the street of Gauri Hotel. After sometime, they abandoned the chase, came back and started assaulting Ahsan again. They shouted that if 'anybody comes forward, he will be killed'. PW-4 stated that it was for this reason, he hid himself. Thereafter, he came home to inform other relatives. From there, he came to the hospital but in the meanwhile, Ahsan had died.

12.1. In his cross-examination, PW-4 stated that Abdul Jameel (PW-3) was the son of his uncle. Ahsan and Faem were at his house for about 2 to 5 minutes whereafter they went back. They were discussing about domestic issues. PW-4 stated that he had gone to Ghantaghar 10 to 15 minutes after Ahsan had

departed. Though he went by a bike, he stated that the bike was not his but that of a customer whose name he did not remember. PW-4 stated that Makbara Police Station was at a distance of 100-180 steps from the place of occurrence. He did not accompany Faeem to the police station even when the accused persons had left the place of occurrence. He stated that Ahsan's wife Masoom was his sister but could not tell since how long before the incident she was staying in her *sasural*. However, he stated that she was not in his house.

12.2. On further cross-examination, he stated that he had gone to Makbara Police Station two to three days after the incident to submit a written report to the Station House Officer of the said police station. PW-4 stated that the first knife blow was inflicted on Ahsan while he was still on the motorcycle. Ahsan fell down wobbling and the motorcycle also fell down. At that time, there was a big crowd. Though people were standing nearby, none came near Ahsan when he fell down from the motorcycle. Nobody tried to save him.

12.3. PW-4 further stated that he and Jameel (PW-3) remained standing near the *paan* shop without raising any alarm till the fight with Ahsan was over. Since he was nervous, he did

not go to see Ahsan as he was lying on the road. About 100 to 150 persons were present but none came to rescue Ahsan.

12.4. PW-4 deposed that after Ahsan and Faem left his residence, he went to the residence of Jameel who was playing carom. On finishing the game of carom, Jameel and PW-4 came back to the residence of PW-4 where the motorcycle was kept. PW-4 and Jameel rode the said motorcycle to Ghantaghar. He admitted that when he and Jameel reached Ghantaghar, they saw a crowd of 100 to 150 persons saying that a man had been killed. He and Jameel did not try to take Ahsan to the hospital.

12.5. On further cross-examination, PW-4 stated that he had not seen any type of *maarpeet*. At that stage, PW-4 was declared a hostile witness. He denied making any statement before the police and denied seeing any incident.

13. That bring us to the deposition of PW-3 Abdul Jameel. In his examination-in-chief, he stated that he had gone by a motorcycle alongwith PW-4 to Ghantaghar to have tea and *paan*. He also narrated the initial statement of PW-4 regarding infliction of knife and *katar* injuries on the person of the deceased by Babu, Wahid and Sattar. In cross-examination, he stated that he neither rescued Ahsan nor went to the police station to lodge report. He also did not go to the hospital. Later

on, he was declared as a hostile witness since he resiled from his previous statement.

14. Though a number of other witnesses including seizure witnesses testified before the court, many of them were declared as hostile. Otherwise also nothing tangible is discernible from their evidence. Therefore, it is not necessary to advert to and make an analysis of the evidence of all the witnesses. However it would be relevant to deal with the evidence tendered by PW-15 Dr. C.M. Srivastava, the medical officer who had conducted the post-mortem examination on the dead body of the deceased, PW-17 Sh. Surendra Vyas, who was the Station House Officer of the concerned police station at the relevant time, and PW-20, Prem Prakash Tank, the investigating officer.

15. PW-15 stated that he had conducted the post-mortem examination on the person of the deceased on 25.06.1988 at about 09:30 AM. He opined that the deceased had died within 24 hours before commencement of the post-mortem examination. He found the following 8 injuries on the dead body:

- (i) Incised wound measuring $1^{1/2} \times 1/2 \times 1/2$ x transversely right chest lower aspect;

- (ii) Incised wound $1 \times \frac{1}{4} \times \frac{1}{8}$ oblique $\frac{1}{2}$ above mid sternum;
- (iii) Stab wound left mid subclavicular size $2 \times 1 \times 2$ deep cavity;
- (iv) Incised wound $3 \times 2 \frac{1}{2} \times \frac{1}{2}$ left subcostal region obliquely;
- (v) Obliquely stab wound $2 \times \frac{1}{2} \times$ deep left mid (torn) mammary and nipple oblique;
- (vi) Stab wound $3 \times \frac{1}{2} \times \frac{1}{2}$ oblique and injury region (torn);
- (vii) Incised wound with abrasion of nasal bone; and
- (viii) Incised wound $\frac{1}{2}$ lateral to left angle of lip $1 \times \frac{1}{2}$ (illegible) obliquely.

15.1. PW-15 stated that the cause of death was on account of excessive bleeding. According to him, death was due to haemorrhage shock as a result of multiple stab wounds over the body. He proved the post-mortem examination report dated 25.06.1988 (Exhibit P-14).

15.2. In his cross-examination, PW-15 stated that he did not know the deceased whose post-mortem he had conducted. He also did not know the three persons who had identified the deceased. He did not know how the deceased was brought to the

hospital and that he found the body in the mortuary. He stated that if the weapons were shown to him, he could say whether injury Nos. 1 to 8 were caused by those weapons or not. Injury Nos. 1 to 8 were incised/cut wounds and were of the same nature. Therefore, this could have been caused by the same weapon.

15.3 In so far injury No. 1 is concerned, it was only half inch deep but had damaged the cavity. Injury No. 2 was sternum deep but had not damaged any organ. Injury No. 3 was inflicted on the shoulder and had damaged the upper part of the left lung. No damage was caused by injury No. 4. Injury No. 5 was above the left nipple and had injured the left membrane (left cardium). He could not say about the impact of injury No. 6 as that part of the medical report in the file was torn. Injury No. 7 was described as a superficial injury which could be caused with some sharp-edged weapon if two persons armed with sharp-edged weapons were fighting. Injury No. 8 was also described as a superficial injury. On further query, PW-15 stated that nature of injury Nos. 1 to 3 were such that if a person received immediate medical treatment then he could be saved.

16. PW-17 Sh. Surendra Vyas was the Station House Officer of the police station at the relevant point of time. He acknowledged that PW-1 had lodged written information (Exhibit P-1) on the basis whereof FIR No. 48/98 was registered under Sections 302/147/148/149 IPC. As the informant stated that the injured Ahsan was lying at the site of the incident, he had sent Ram Prasad, Assistant Sub Inspector(ASI) alongwith a team of policemen to the place of occurrence. When he received further information that Ahsan was lying injured, he went to the spot himself and took the injured to the hospital while leaving a constable to guard the crime scene. At about 01:30 AM, he received information from the hospital that the injured Ahsan had died. He had prepared the panchnama and had handed over the dead body to the family after the post-mortem examination was conducted.

16.1. He stated that he had recorded the statements of witnesses and thereafter had arrested Bundu, Latur and Abdul Gafoor. On the basis of the information given by Bundu, he recovered a knife *vide* the seizure memo (Exhibit P-28). In the same manner, on the basis of information given by the accused Latur, he had recovered a knife *vide* Exhibit P-9. Similarly, a knife (Exhibit P-28) was recovered on the basis of information

furnished by accused Abdul Shakur. He also stated that as per information furnished by accused Abdul Shakur before PW-20, a team of policemen had gone to Bombay and recovered the *katar* (sword) *vide* Exhibit P-29. Clothes of the deceased were seized and thereafter sent for forensic examination alongwith the seized weapons.

16.2. He stated that accused Abdul Sattar, Abdul Wahid, Aziz, Babu, Raees alias Bundu, Latur and Abdul Shakur were history-sheeters, being habitual offenders.

16.3. PW-17 stated that when he reached the MBS Hospital in the morning at around 07:00 AM, the body of Ahsan was already moved to the mortuary by the police. He inspected the crime scene at around 11:00 AM on 25.06.1988 and drew up the site map. During investigation, the arrested accused Bundu voluntarily informed him that he had concealed the knife behind a stone in his house. On the basis of such disclosure, PW-17 went to the house of Bundu alongwith the said accused. There, accused Bundu produced a fish-shaped knife which was thereafter seized. Similarly, the arrested accused Latur voluntarily informed PW-17 that he had concealed a knife under one of the beds in his house. As per his disclosure, PW-17 took

the said accused to the house where he produced a knife from under one of the beds which was thereafter seized. Likewise, the arrested accused Abdul Shakur had voluntarily informed PW-17 that he had kept a knife on the slope of the house of his father-in-law Abdul Salam. As per his disclosure, PW-17 went to the house of the father-in-law alongwith the said accused where he produced a fish-shaped knife from the slope of the house which was thereafter seized. No blood stains on the handle and edge of the knife were found. Similar statements were made relating to seizure of other knives and the *katar*.

16.4. In his cross-examination, he has stated that Prem Prakash Tank (PW-20) had interrogated accused Abdul Sattar. The recovery of the knife at the instance of Abdul Sattar was not done in his presence. He stated that the Deputy Superintendent of Police had ordered him and, therefore, he had gone to Bombay for recovery of the *katar*. He did not take the witnesses of Bombay while he went for recovery of the weapon. The same was recovered from an open place where anybody could come and go.

16.5. In so far the house of Abdul Samad is concerned, he stated that when he had reached his house, the same was open though he did not find any person inside. He had entered the house alongwith the accused and his staff. They were

accompanied by the witnesses also. The knife was kept on the slab and did not have any blood stains. Likewise, he stated that when he went to the house of Bundu for recovery, the house was found open and inside family members were present. The knife was recovered from an open space. Anyone could come and go from that place. He did not find any blood stains on that knife also. When he went to the house of Latur, it was found unlocked and his family members were present. One knife was produced after taking out the same from under the bedding. No blood marks were visible on this knife either.

16.6. PW-17 stated that on the night of the incident when he went to the scene of crime, Ahsan was lying on the ground but he did not remember as to whether the motorcycle was lying nearby. However, he clarified that he could tell about the motorcycle only after seeing the site map. After seeing the site map, he stated that no motorcycle was there. He also stated that as per the version of PW-1, both he and Ahsan were coming on a motorcycle which was being driven by Ahsan. When he was given knife blows, Ahsan fell down with the motorcycle whereafter PW-1 came to lodge the report. PW-17 admitted that he did not seize the motorcycle as he did not consider it appropriate to seize it. On an inspection of the motorcycle, he

stated that the front wheel, petrol tank and seat of the motorcycle were not stained with blood. He also stated that the place of incident remains crowded till 01:30 AM in the night. Walking distance of Makbara Police Station from the place of incident was five minutes being 300 to 400 steps. He denied the suggestion that when he had reached the place of incident, a crowd of 200 to 300 people had surrounded Ahsan, clarifying that by the time he had reached the spot, no was seen on the spot though there were shops on both sides of the place of the incident. When he reached the spot, Gauri Hotel and Apsara Hotel were closed and there was pervading silence. He also admitted in cross-examination that on the night of the incident except the statement of the complainant, he did not record any other statement which were recorded later on subsequent dates.

17. PW-20, the investigating officer Prem Prakash Tank, stated in his evidence that he had arrested accused Babu, Sattar and Wahid and recovered knives (Exhibits P-28 and P-29) on the basis of information given by accused Babu and Wahid. According to him also the accused persons were all history-sheeters and, therefore, were well-known to the police.

17.1. PW-20 Prem Prakash Tank stated that accused Wahid had voluntarily given him information under Section 27

of the Indian Evidence Act, 1872 ('Evidence Act' hereinafter) that he had concealed one knife in a hotel in Alot. Similarly, accused Babu had given PW-20 information regarding concealment of one knife amidst household goods under the fireplace inside the room at the lower floor of his house. Likewise, accused Abdul Sattar informed him that he had concealed one dagger under the stones behind the Haji Ali Baba Mazar in Bombay.

17.2. In his cross-examination, PW-20 stated that the FIR was lodged within ten minutes of the occurrence. When he had reached the place of occurrence, he did not see anybody present there.

17.3. PW-20 further stated that the knife which was recovered from the house of Babu was not produced before the court. He also admitted that except the claim of Babu that the knife was hidden in the house belonging to him, he did not verify about the ownership of the house. He also stated that the place of incident was at a distance of about 200 metres from the Makbara Police Station.

18. Let us now briefly analyse the evidence of the prosecution witnesses as alluded to hereinabove. Coming first to the evidence of PW-1, his conduct appears to be highly unusual. When the police station was only 200 meters away from the place

of crime, instead of rushing to the police station to save himself and also to inform the police about the assault on Ahsan, he goes into the lane of Gauri Hotel and hid himself there. He did not raise any alarm either. PW-1 contradicted himself by first saying that Ahsan was injured by the knife blows before he fell down from the motorcycle but in the same breath, he goes on to say that Ahsan was stabbed after he fell down. He also deposed that there were about 100 people in and around the crime scene but none came to the rescue of Ahsan which is also quite unusual. Besides being entangled in several criminal cases, it has also come on record that he is a stock witness of the police to depose in favour of the police in other cases including in a case where one of the present accused persons Aziz @ Patti was an accused. Evidence of such a witness without further corroboration cannot form the basis to convict an accused.

19. Insofar PW-4 is concerned, his evidence is mired in inconsistencies. He says that he and his brother Jameel came by a motorcycle to Ghantaghar to have tea and *paan masala* after Ahsan and Faeem had left. It is, therefore, not at all believable when he says that while he and Jameel were at Ghantaghar they heard the sound of an approaching motorcycle being driven by Ahsan with Faeem sitting behind. If PW-4 and Jameel (PW-3) had

left for Ghantaghar after Ahsan had departed, it is inconceivable that PW-4 and Jameel (PW-3) would reach Ghantaghar before Ahsan. Infact he stated that after Ahsan had left, he went to the house of Jameel to pick him up, then came back home whereafter they both came by motorcycle. In the process they left for Ghantaghar 10 to 15 minutes after Ahsan had left. While he identified the accused with the blows, he stated that he hid himself out of fear though in front of his eyes his brother-in-law was being brutally assaulted. In his cross-examination, he stated that he went to the police station two to three days after the incident to submit a written report. Conduct of PW-4 is surprising to say the least. Firstly, he does not make any attempt either to raise an alarm or to rescue his brother-in-law while he was being assaulted. Secondly, even after the assailants had left the place, he did not go to the police station or carry his injured brother-in-law to the hospital. Instead, he goes home saying that he wanted to inform the other family members. It has also come on record that his sister Masoom was the wife of Ahsan and that she was staying in her *sasural* but for how long she was staying, he could not remember. Though he stated that he and Ahsan had discussed domestic issues, he did not elaborate what domestic issues they discussed. In his further cross-examination

he completely contradicted himself by saying that when he and Jameel (PW-3) had reached Ghantaghar, they saw a crowd of 100 to 150 people saying that a man (Ahsan) had been killed.

20. Insofar the investigation is concerned, the same is marred by glaring inadequacies striking at the root of the prosecution case. Firstly, from the evidence of PW-17 and PW-20, it is evident that the motorcycle which was being driven by Ahsan when he was assaulted was not seized. PW-17 has stated in his evidence that he did not see any bloodstain on the front wheel, petrol tank and seat of the motorcycle. PW-15, the doctor who had conducted the post-mortem examination on the dead body of the deceased, deposed that Ahsan died because of profuse bleeding. If that be so, certainly there would have been blood stains on the said motorcycle. To make matters worse, PW-17 in his cross-examination stated after looking at the site map that there was no motorcycle at the place where Ahsan was lying injured. Besides, the investigating officer ought to have collected sample of blood soil and sent the same for forensic examination which would have proved whether the said blood matched the blood of the deceased. But this was not done.

21. Though PW-17 and PW-20 stated about the recovery of the weapons on the basis of information given by the accused

persons, the manner in which the recoveries were made and the circumstances surrounding the recoveries made the recoveries highly suspect. That apart, the alleged recoveries were made after several days of the incident and no bloodstains etc. were found on the weapons. PW-15, the doctor who had conducted the post-mortem examination, deposed in his evidence that the seized weapons were not shown to him. As a matter of fact, the knives etc. were also not produced in court. Besides, all the seizure witnesses turned hostile. Therefore, Section 27 of the Evidence Act cannot come to the aid of the prosecution. Moreover, the clothes of the accused were not seized and sent for forensic examination to find out whether there were any bloodstains. Such examination would have revealed whether there were any bloodstains on the clothes; whether those bloodstains were of human blood; and whether those matched the blood of the deceased.

22. It has also come on record that while according to PW Nos.1, 3 and 4 there were about 100 to 150 people at the crime scene, when PW-17 went to the place of occurrence immediately after lodging of FIR, he did not find anyone there. That apart it is quite unnatural that the policemen in the police station did not hear any noise when such a gruesome assault

had taken place only about 300 to 400 steps away from the police station. Certainly, Ahsan would have screamed on being so brutally assaulted. In fact, it has come on record that the accused persons had yelled warning the crowd not to interfere. It is therefore quite inconceivable that the inmates of the police station would not have heard the commotion from so near a place. If there were indeed 100 to 150 people present, they would not have remained a mute spectator to such a gruesome assault. But this narrative of there being a crowd at the crime scene has been proved false through the evidence of PW-17 and PW-20 who deposed that when they reached the crime scene minutes after the incident after lodging of FIR, they did not find anybody there and that there was all pervading silence.

23. Another significant material inconsistency has come to light from an analysis of the evidence of PW-1 and PW-17. According to PW-1, it was the ASI who had taken the injured Ahsan to the hospital in an auto rikshaw. It is very unusual that PW-1 did not accompany the injured Ahsan to the hospital. Instead, he said that he was asked by the ASI to take the motorcycle to the police station. This is also not at all believable because if at all the motorcycle was required to be taken to the police station for investigation, it would have been

taken by policemen and not by PW-1. On the other hand, PW-17 in his evidence stated that he had sent ASI Ram Prasad alongwith a team of policemen to the place of occurrence on receipt of the FIR. When he received further information that Ahsan was lying injured, he went to the spot himself and took the injured to the hospital leaving a constable behind to guard the crime scene. Where did PW-1 go? PW-17 did not say that PW-1 accompanied him to the hospital; neither did PW-1 say so. Such glaring inconsistency clearly impeached the very credibility of PW-1 and has cast a deep shadow over the prosecution case.

24. There is no doubt that the death of Ahsan is homicidal. Medical evidence has also confirmed multiple stab injuries on his body leading to profuse bleeding and death. According to the prosecution, it is the accused who had committed murder of Ahsan. Therefore, it is for the prosecution to connect the accused to the murder of the deceased by producing credible and legally admissible evidence. However, as we have seen, there is no credible evidence at all to connect the accused persons with the homicidal death of Ahsan. In such circumstances, the appellants are entitled to the benefit of doubt.

25. Consequently, we allow the two appeals by setting aside the impugned judgment of the High Court dated 26.08.2011 and of the trial court dated 10.03.2003. Conviction and sentence of the appellants are accordingly set aside.

26. Since the appellants are on bail, their bail bonds are discharged.

.....J.
[PANKAJ MITHAL]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
FEBRUARY 28, 2025.**