



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

CRIMINAL APPEAL NO. 17 OF 2019

Shankar s/o Vithoba Dhengare,
aged about 35 years, Occ. Labourer,
R/o Ambedkar Ward, New Wadsa,
Tah. Wadsa, Dist. Gadchiroli.

...APPELLANT

Versus

State of Maharashtra,
Through Police Station Officer,
Police Station – Armori,
District – Gadchiroli.

...RESPONDENT

Mr. R.R. Gour, Counsel for the appellant (appointed).
Mr. S.S. Hulke, A.P.P. for the respondent/State.

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**CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.**

**ARGUMENTS WERE HEARD ON : 29/1/2026
JUDGMENT IS PRONOUNCED ON : 23/2/2026**

JUDGMENT (PER : ANIL L. PANSARE, J.) :

The appellant has taken an exception to the judgment and order dated 29/11/2017 passed by the learned Sessions Judge, Gadchiroli, in Sessions Case No. 121/2015, thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC). He has been sentenced to suffer imprisonment for life. As such, the

appellant and one Dadaji Nimbaji Gajbhiye were tried for the offence punishable under Section 302 read with Section 34 of IPC, however, the trial Court was pleased to acquit Dadaji.

2] The facts in a nutshell are that on 26/7/2015, at Kasavi forest area, when the appellant, along with the informant – Abdul Kadir Abdul Sattar Sheikh – PW1, co-accused – Dadaji and one Vishnu Sahu, was sitting at Railway Station – Desaiganj, a beggar, named Madhukar Shende, was listening to songs on mobile handset of the co-accused – Dadaji. There was one more beggar sitting nearby. The appellant snatched Rs.7/- from that beggar. On being asked as to why the appellant snatched the money, the appellant beat him. Then, all of them, except both the beggars, went to Navegaon Bandh. After consuming liquor, when they were returning by train, Madhukar met them at Wadegaon Railway Station. The appellant took him in the train, and on not returning the mobile handset, the appellant started quarreling with him. Thereafter, the appellant took him, co-accused – Dadaji and the informant – Abdul Kadir to his home. He took one steel rod. Thereafter, they went inside the forest from

Kasavi Phata. Thereafter, both the accused asked Madhukar about the mobile handset, and on his denial, the appellant hit him with steel rod on his leg. When, PW1 tried to intervene, the appellant also beat him. Again, both the accused started beating the deceased, so he fell down. Therefore, PW1 fled away.

3] It is further the case of the prosecution that thereafter, both the accused came near Kasavi Phata, and took him to Village – Kondhala. He (Shankar) administered him (Abdul (PW1)) liquor. Thereafter, again they returned to Wadsa. The informant told the incident to one Policeman by name Faiyyaj. He took him to Wadsa Police Station. He told the incident to Police. Wadsa Police took him on the spot. That time, deceased – Madhukar was lying seriously injured. He was moaning. He had injury to his both legs, hands, and blood was oozing. The deceased was taken to Armori Hospital, where Doctor declared him dead. PW1 lodged report, and accordingly, crime was registered against both the accused, vide Crime No. 41/2015 for the offence punishable under Section 302 read with Section 34 of IPC.

4] The investigation was taken-up by PW5 – Narayan. He conducted inquest panchanama, referred body for postmortem, visited the spot at Kasavi Phata, seized blood stained earth and simple earth, drawn necessary panchanamas of spot and recovery of articles. Both accused were arrested on the same day. Blood samples of accused were also taken, blood stained iron rod was recovered at the instance of the appellant, from the bushes near Kasvi Jungle, rod was sent for medical opinion, statement of witnesses were recorded, and chargesheet was filed.

5] The trial Court framed charge. The original accused did not plead guilty. The prosecution examined seven witnesses to bring home their guilt. The trial Court, having considered all attending circumstances, found appellant guilty of crime. The co-accused was, however, acquitted for want of sufficient evidence. The said finding is challenged by the appellant.

6] We have heard Mr. R.R. Gour, learned Counsel for the appellant, and Mr. S.S. Hulke, learned A.P.P. for the respondent/State. We have gone through the evidence and documents, impugned judgment, etc. We will refer to the same

to the extent necessary to decide following points that arises for our consideration. We have recorded our findings thereon for the reasons to follow.

Sr. No.	Points	Finding
1	Whether the prosecution has proved that the appellant is responsible for homicidal death of the deceased – Madhukar Shende ?	In the negative
2	Whether interference is called for in the impugned judgment ?	In the affirmative
3	What order ?	Appeal is allowed

REASONS

As to point nos. 1 and 2

7] Both points are interlinked, and hence, decided by common reasoning. The appellant has not disputed the homicidal death of Madhukar Shende. The dispute is about involvement of appellant in the crime. Accordingly, the evidence is being considered.

8] The testimony of PW1 is heavily relied upon by the trial Court. He was with the accused persons almost throughout the day. He has given details of the offence in following manner :

9] PW1 stated that he knew both the accused persons, as they belonged to his Village, and that, he was also acquainted with the deceased - Madhukar. He stated that the incident had occurred about two years prior to his deposition. On the date of incident, he was facing some family tension, and therefore, was sitting at the Railway Station - Desaiganj, between 8:00 to 8:15 am. The deceased – Madhukar was also sitting with him at the railway station. At that time, co-accused – Dadarao, the appellant and Vishnu came there. Another beggar was present at the station. The deceased was listening to songs on the mobile handset of Dadarao. He stated that the appellant snatched money from the other beggar. When the beggar questioned the appellant as to why he had snatched his money, the appellant took a stick from the same beggar and assaulted him on his legs. He further deposed that his Uncle - Sheru, who was serving in C.R.PF., was also present at the railway station. Sheru objected to the act of beating the beggar, and slapped the appellant twice or thrice.

10] Thereafter, a train arrived, and PW1, co-accused – Dadarao, the appellant and Vishnu boarded the train, and went

to Navegaon Bandh. At Navegaon Bandh, they consumed liquor. Thereafter, they returned towards Desaiganj by train scheduled at about 12:30 p.m. While returning, deceased – Madhukar met them at Wadegaon. PW1 stated that the appellant took the deceased inside the train and questioned him regarding the mobile handset. When the deceased replied that he did not have the handset, the appellant assaulted him. Due to this assault, passengers in the train became aggressive. Thereupon, the appellant told them that he would take the deceased to the hospital. PW1 further stated that all of them alighted at Wadsa.

11] Thereafter, PW1, appellant, deceased and Vishnu sat on a motorcycle. However, instead of proceeding towards hospital, the appellant took them to his house and picked up a steel rod. Thereafter, the appellant took them towards Kasvi Jungle. PW1 stated that he tried to stop appellant, but he did not listen. They proceeded about 500 to 600 meters inside the jungle from the main road. Vishnu alighted on the road, while appellant assaulted the deceased with steel rod inside the jungle, allegedly demanding the mobile handset. PW1 stated

that when he intervened to stop the assault, the appellant also assaulted him with two blows of steel rod. PW1 stated that thereafter, he fled from the spot and came onto the road. A Tata S vehicle was passing by, which he stopped by giving a signal. However, the occupants of the vehicle refused to help, and went away. Thereafter, appellant and Vishnu came near him, took him on motorcycle, and brought him to Village – Kondhala, and thereafter, to Desaiganj. PW1 stated that appellant again offered liquor at Wadsa.

12] PW1 then directly went to one Police Constable, viz., Faiyyaj, who resided near his house, and narrated entire incident to him. Faiyyaj took PW-1 to Police Station. Thereafter, they went to the spot of incident, where the deceased was found alive, but with grievous injuries. PW1 stated that he gave water to the deceased. The deceased was, then, taken to Armori Hospital, but he died on the way. The doctor at Armori Hospital declared him dead, following which, PW1 lodged report. He deposed that the report was written as per his narration, though name of Dadarao was incorrectly mentioned instead of Vishnu Sahu. He stated that the report was not read

over to him, but the remaining contents were correct. The report was marked at Exhibit 28, and printed FIR at Exhibit 29.

13] In cross-examination, PW1 admitted several omissions in his report. He admitted that although he stated before police that his Uncle – Sheru was present at the railway station, the same was not mentioned in the report, and he could not assign any reason for the omission. He admitted omissions regarding assault on beggar, slapping of appellant by Sheru, and aggressive reaction of passengers in the train. He admitted omissions regarding going to appellant's house before proceeding to the hospital, attempting to stop appellant, distance inside the jungle, Vishnu alighting on the road, stopping of the vehicle, refusal by its occupants, and giving water to the deceased. He admitted that he did not state before police that the deceased died before reaching the hospital.

14] PW1 further admitted that a theft case was registered against him at Desaiganj Police Station. He denied the suggestion that he had consumed liquor since morning, though he admitted that appellant had consumed liquor with him twice. He denied that after consuming liquor at Navegaon,

they went to their respective homes. He also stated that he did not know as to whom the mobile handset belonged. He denied all defence suggestions that he had assaulted the deceased, taken his money, or falsely implicated the accused due to previous enmity or to save himself from prosecution. He admitted that he did not know the name of the Officer, who reduced his report into writing, and that he never read the report. He denied the suggestion that he had confessed his own guilt to the police or that he lodged a false report to save himself.

15] PW1 then deposed that when his statement, under Section 164 of the Code of Criminal Procedure, 1973 (for short “the Code”), was recorded, he did not state anything against Dadarao. Upon being declared hostile to that extent, the learned APP was permitted to cross-examine him. PW1 stated that the name of Dadarao, in his statement under Section 164 of the Code, was incorrectly written. He denied the suggestion that he had falsely named Vishnu to save Dadarao.

16] As could be seen, PW1 – informant’s testimony suffers from several omissions on vital facts. He has also

modified his version on material points. The most significant modification is that, while lodging report before police, he did not name Dadarao as accused, but had named Vishnu Sahu. The prosecution, however, made an attempt to point out that PW1 is trying to save Dadarao, and therefore, falsely named Vishnu. PW1's testimony will have to be, therefore, carefully scrutinized.

17] On the point of involvement of appellant, we find that, there are several omissions in his statement recorded by police. He stated before police that the deceased was listening to songs on mobile handset of co-accused – Dadarao. PW1, co-accused – Dadarao, appellant and Vishnu boarded train, and went to Navegaon Bandh. They consumed liquor. While returning back, deceased met them at Wadegaon. The appellant took up a quarrel with him on the count of mobile handset. We find no reason why should appellant have any objection for deceased using mobile of co-accused, particularly when co-accused is completely silent on this point. There is further no reason why should appellant assault deceased when he said that he does not have mobile handset. Most

importantly, after such assault, when all of them alighted at Wadsa, they all, except Dadarao, went to the house of appellant, where appellant picked-up a rod. They all, then, proceeded to Kasvi jungle. They proceeded inside the jungle, where appellant assaulted deceased by means of steel rod inside the jungle demanding mobile handset.

18] Thus, despite assaulting deceased in the train, he accompanied appellant to jungle. This theory doesn't appeal to common sense. As such, PW1 has deposed that appellant took them all towards jungle on motorcycle. While doing so, he stopped motorcycle at his house, went inside, picked-up steel rod, and took them all to jungle. In normal circumstances, person, like deceased, should flee away from the spot, or at least, make an attempt to do so. He, however, continued to remain pillion rider on motorcycle, and ultimately, was beaten to death by means of steel rod.

19] The steel rod was allegedly recovered at the instance of the appellant. The Investigating Officer – PW5 and the Medical Officer – PW7 both deposed that the steel rod was stained with blood. The steel rod was sent to Forensic Science

Laboratory (FSL). The FSL report (Exh. 62), however, indicates that no blood was found on the metallic rod. This discrepancy will create doubt whether the weapon produced before the Court was the same as was allegedly seized at the instance of the appellant.

20] That apart, PW1 has also deposed that he came back home, and reported the matter to his neighbour – Mr. Faiyyaz, who is Police Constable. He took him to Wadsa Police Station. He informed the incident to Police Station – Wadsa. They all went to spot, and found that deceased was lying seriously injured. The deceased was taken to Armory Hospital, where doctor declared him dead. In cross-examination, however, he deposed that he was taken to spot by Policeman – Pathan, and thereafter, vehicle from Armori Police Station came at the spot and PW1 was taken to hospital.

21] Thus, there is discrepancy as regards the manner in which movement of vehicle of police took place. In chief examination, PW1 states that he was taken to Police Station – Wadsa, who took him to the spot, whereas, in cross-examination, he states that policeman, namely, Pathan, took

him to the spot of incident, and thereafter, vehicle from Armori Police Station arrived, and took PW1 to hospital.

22] PW7 – Dr. Rakesh attached to Sub-District Hospital, Armori, deposed that dead body was brought by PW1. Thus, PW7 does not say that dead body was brought by police. The prosecution has not explained as to why the police did not refer the dead body to hospital when they visited spot with PW1 and brought him to hospital. The prosecution has further not examined policeman – Pathan or Faiyyaz to corroborate the testimony of PW1. The above discrepancy would create serious doubt about credibility of PW1. In such cases, the prosecution would be under obligation to put forth additional evidence, which it failed to do in the present case.

23] PW2 – Anil is a panch witness to the seizure of clothes, recovery of weapon and inquest panchanama. His evidence on recovery of weapon will be insignificant for the reasons, which we have discussed above, where we have held that the weapon produced before the Court was not the same as was allegedly recovered at the instance of the appellant. His evidence will be, therefore, of no significance to show

involvement of appellant in the crime.

24] PW3 – Vijay, though cited as witness to the incident, has not supported the prosecution version. He was declared hostile, and cross-examined by the prosecution. He denied that co-accused – Dadarao and PW1 used to visit appellant for consuming liquor. He further denied that on the date of incident, at about 1:30 pm, he had seen appellant, co-accused, PW1 and an unknown person going on motorcycle towards appellant's house. He also denied having seen appellant riding motorcycle while co-accused carrying steel rod. His evidence, therefore, is of no use.

25] PW4 – Premsing is the one, who has drawn map of the spot. PW5 is the Investigating Officer, whose evidence, to the extent necessary, has been already discussed. PW6 – Kalyan is a Police Constable, who carried muddemal to FSL. PW7 is doctor, whose testimony, to the extent necessary, has been discussed.

26] Put altogether, prosecution's case is based only on the testimony of PW1. His testimony, in our considered view, is not credible enough to inspire confidence in a case that attracts

punishment for life imprisonment. It is well settled that in such cases, the proof of guilt should be placed on higher pedestal. Here is a case, where the trial Court has believed the testimony of PW1, despite there being multiple omissions on material facts, so also, improvement on the point of involvement of co-accused. Most importantly, the story of deceased joining appellant and others despite having been assaulted in the train, is something that does not appeal to common sense. It is unbelievable that the deceased also permitted appellant to go to his house and get weapon, and thereafter, continued to be a pillion rider on his motorcycle. The role of police, to whom PW1 reported the incident, and who accompanied PW1, either to Police Station or to spot, is also not spelt out by the prosecution. The prosecution, for the reasons known to it, has not examined these witnesses. Further, though the PW1 has stated that appellant has assaulted him with two blows of steel rod, the prosecution has failed to produce any medical evidence to substantiate the alleged injuries. In the absence of medical corroboration the said allegation remains unproved. The other witness, i.e., PW3, who has allegedly seen the

incident, has not supported the prosecution.

27] As such, the learned A.P.P. submits that PW1's evidence is trustworthy, however, the Counsel for appellant has rightly pointed out to us various discrepancies in prosecution story to disbelieve PW1's testimony.

28. The trial Court has committed serious error while appreciating the evidence of PW1. We find it extremely risky to attribute guilt to appellant based on such evidence. In the circumstances, the concept of proof beyond reasonable doubt will favour the appellant. The trial Court's finding, therefore, will have to be overturned.

29] Accordingly, point no.1 is answered in the negative. Point no.2 is answered in the affirmative.

As to point no.3

30] Having answered first two points in the manner hereinabove, the prosecution failed to establish appellant's guilt. The appellant has made out a case in his favour. Resultantly, following order is passed :

ORDER

I] The appeal is allowed.

II] The judgment and order dated 29/11/2017 passed by the learned Sessions Judge, Gadchiroli, in Sessions Case No. 121/2015, is quashed and set aside.

III] The appellant is acquitted of the offence punishable under Section 302 of IPC. He shall be released forthwith, if not required in any other case.

IV] Fees of the Counsel appointed to represent the appellant be quantified and paid as per Rules.

JUDGE

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