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IN THE COURT OF THE SESSIONS JUDGE, SANGLI
AT SANGLI

(Presided over by V.V.Patil)

SESSIONS CASE NO. 01 OF 2018

The State of Maharashtra
through Police Station Officer,
Sanjaynagar Police Station, Sangli
Tal. Miraj, District – Sangli. : **Complainant**

versus

Sandesh Sanjay Kamble,
Age 20 years, Occu. Education
R/o Harshvilla Bungalow, Plot No.
28, Vasantnagar, Sangli. : **Accused**

**Charge:- Offence punishable under Sections 302,
504 r/w. 34 of the Indian Penal Code**

Shri. S.K. Yadav, Ld. A.G.P. for the State
Shri. G.D. Tapkire, Ld. Advocate for the accused

J U D G M E N T
(Delivered on 18.01.2021)

1. The accused is facing trial for an offence punishable under Sections 302, 504 r/w. 34 of the Indian Penal Code.

In brief the prosecution case is as below :-

2. On 25.07.2017 at 01.10 p.m., the informant Karan Gajanan Kadam was going to K.W.C. College. On the way, near Chinmay Park, Juvenile accused Sumit Kamble and his friend met him. They were riding on black colour Unicorn motorcycle. Juvenile accused Sumit Kamble was wearing black colour shirt having white strips. The friend of juvenile accused Sumit Kamble was wearing pink colour shirt. His age might be 22 years. He knows him by face. He asked juvenile accused Sumit Kamble where he was going, on which, he told him to sit on his motorcycle, and they have to go in the lane of Prathmesh. As such, he sat on the motorcycle of juvenile accused Sumit Kamble and they started to go towards Ayodhya Nagar. On the way he noticed that from front side, Prathmesh Tavade was coming. At that time, the friend of juvenile accused Sumit Kamble abused him in filthy language. As such, Prathmesh Tavade picked up a stone from the road. By seeing this, he got down from the motorcycle. After this, Prathmesh Tavade thrown that stone towards the motorcycle of juvenile accused Sumit Kamble. The friend of juvenile accused Sumit Kamble got down from the motorcycle and started to abuse Prathmesh Tavade and was scuffling. The friend of juvenile accused Sumit Kamble took out a knife which has hanged to his waist and gave its blow on the right side of throat of Prathmesh Tavade. As such, Prathmesh Tavade fallen on the ground and was requesting to take

him in the hospital. He went near him. Some persons also gathered there. They carried Prathmesh Tavade to Civil Hospital, Sangli for treatment where Prathmesh Tavade succumbed to the injuries sustained by him. Thereafter, he went to Sanjaynagar Police Station and lodged the report. On 25.07.2017, Mr. Ramesh Shankar Bhingardive was the Police Station Officer in Sanjaynagar Police Station. He registered the crime bearing No.104/2017 for an offence punishable under Sections 302, 504 r/w. 34 of the Indian Penal Code against the accused and handed over the investigation of the said crime to A.P.I. Mr. S.B. Bondar.

3. The Police Station Officer Mr. Ramesh Bhingardive after registration of crime visited the Civil Hospital, Sangli and prepared inquest panchnama on the dead body of Prathmesh Tavade in presence of two panch witnesses. He recorded the supplementary statement of the informant Karan Kadam as per his say.

4. The Investigation Officer Mr. S.B. Bondar after receipt of the investigation, visited the spot and prepared spot panchnama in presence of panch witnesses. He snapped photographs of the spot, collected blood stains from the road, he collected simple soil and sealed the same on the spot. On 25.07.2017, he arrested the accused Sandesh Sanjay Kamble under arrest panchnama. On 26.07.2017, he seized the clothes of the accused Sandesh Kamble under seizure panchnama. He recorded statement of the witnesses. During investigation, he collected birth certificate of Sumit Kamble and as he was juvenile in conflict with law, he sent the matter to Juvenile Court of Sumit Kamble. During investigation, he seized the knife at the instance of juvenile accused Sumit Kamble under seizure panchnama.

On 26.07.2017, he seized the clothes of the informant Karan Kadam and Tejas Shelar under panchnama. He also got recorded statement of the informant under Section 164 of the Cr.P.C. On 28.07.2017, he seized the motorcycle of juvenile accused Sumit Kamble. On 29.07.2017, he sent the letter to the Chief Judicial Magistrate, Sangli for permission to conduct test identification parade of the accused Sandesh Kamble. On 31.07.2017, he sent all the seized muddemal articles to Chemical Analyzer, Kolhapur and Pune for its chemical analysis. As he was transferred, he handed over further investigation to P.S.I. Mr. Ramesh Bhingardive. P.S.I. Mr. Ramesh Bhingardive during investigation carried the muddemal knife which was seized at the instance of juvenile accused Sumit Kamble to Medical Officer for his opinion. In presence of Medical Officer, he opened the seal of knife and showed the knife to Medical Officer and obtained his opinion whether the injuries sustained by Prathmesh can be caused by the said weapon. After getting opinion from the Doctor, he re-sealed the knife under panchnama. He sent the knife to Chemical Analyzer, Kolhapur through special constable Mr. Rajendra Patil. On 11.09.2017, he sent the letter to Tahsildar, Miraj to conduct test identification parade of the accused Sandesh Kamble. During investigation, he collected all the relevant documents and after completion of investigation, submitted charge-sheet in the Court of Judicial Magistrate First Class, Sangli.

5. The learned Magistrate after compliance of Sections 207 and 209 of Cr.P.C. committed the charge-sheet to the Court of Sessions as the offence punishable under Section 302 of the Indian Penal Code was exclusively triable by the Court of Sessions.

6. My learned predecessor framed charge against the accused for the offence punishable under Sections 302, 504 r/w. 34 of the Indian Penal Code. The same was read over and explained to the accused in vernacular, the accused abjured the guilt and claimed to be tried. His defence was of total denial and false implication.

7. The prosecution to unfold its case has examined in all nine witnesses. After recording the oral evidence of prosecution witnesses, the statement of accused under Section 313 of the Cr.P.C. was recorded, by which an opportunity was given to the accused to explain the incriminating evidence appeared against him. According to him, a false case has been filed against him.

8. Heard learned A.P.P. Shri S.K. Yadav for the State and Shri G.D. Tapkire, learned Counsel for the accused. Following points arise for my determination and I record my findings against each of them for the reasons given below :-

	POINTS	FINDINGS
1.	Does the prosecution prove that the death of Prathamesh Mahendra Tavade was homicidal ?	Yes
2.	Does the prosecution prove that on 25.07.2017 at about 1.10 p.m., on road, in front of house of Ananda Masal at Satala Mala, Ayodhyanagar, Sangli, accused Sandesh Sanjay Kamble along with Juvenile-conflict with Law Sumit Sukhadev Kamble, in furtherance of common intention, committed murder intentionally and knowingly causing the death of deceased Prathmesh Mahendra Tavade by assaulting him under right ear and throat by means of knife and thereby committed an offence punishable under section 302 r/w. 34 of the Indian Penal Code ?	No

3.	Does the prosecution prove that on the aforesaid date, time and place, accused along-with Juvenile-conflict with Law Sumit Sukhadev Kamble, in furtherance of common intention, intentionally insulted by abusing deceased Prathmesh Tavade and thereby gave provocation to him, intending that such provocation would cause him to break public peace and thereby committed an offence punishable under section 504 r/w. 34 of the Indian Penal Code ?	No
4.	What order ?	As per final order

REASONS

POINT NO.1:-

9. The Prosecution in order to prove its case has examined following witnesses.

<i>PW.No.</i>	<i>Name of witness</i>	<i>Exh.</i>
1.	Karan Gajanan Kadam	13
2.	Dipak Shahaji Desai	19
3.	Mahadeo Jaywant Hipparkar	22
4.	Shripad Sanjay Salunkhe	26
5.	Dilip Govind Patil	27
6.	Archana Mahendra Tavade	28
7.	Ramesh Shankar Bhingardive	31
8.	Dr. Pramod Ajinath Bobade	38
9.	Shivshankar Bhagwan Bondar	41

10. Apart from the oral evidence, the prosecution has relied upon the following documentary evidence.

<i>Name of the document</i>	<i>Exh.</i>
Statement of informant Karan Kadam under Section 164 of Cr. P.C.	14
Spot panchanama	15
Seizure panchanama of clothes of deceased	16
Seizure panchanama of clothes of Juvenile-conflict with Law Sumit Kamble	17
Seizure panchanama of clothes of informant and witness Tejas Shelar	18A
Inquest panchanama	18
Disclosure panchanama dated 26.07.2017 of Juvenile-conflict with Law Sumit Kamble.	20
Seizure panchanama of motorcycle	23
Cause of death certificate	24
Postmortem report	25
Report of Test Identification Parade	30
Report (Vardi Jabab)	32
Printed FIR	33
Letter dated 26.07.2017 issued by IO to Principal, New Maharashtra Collage Sangli	34
Panchanama dated 30.08.2017	35
Letter dated 31.08.2017 issued by IO to CA Kolhapur	36
Letter dated 11.09.2017 issued by IO to Tahsildar Miraj	37
Final postmortem certificate	39
Opinion dated 30.08.2017 given by Medical Officer	40
Seizure panchanama of clothes of accused Sandesh Kamble.	42
Letter dated 27.07.2017 issued by IO to CA Kolhapur	43
Letter dated 28.07.2017 issued by IO to CJM, Sangli.	44
Letter dated 29.07.2017 issued by IO to CJM, Sangli.	45
Letters dated 31.07.2017 issued by IO to CA Kolhapur.	46 & 47
C.A. reports	48 to 55

11. The Learned Additional Public Prosecutor argued at length. He took me through the oral as well as documentary evidence adduced and produced on record by the prosecution and urged to convict the accused.

12. As against this, the learned Counsel for the accused argued that the prosecution has utterly failed to bring on record sufficient material which would suggest that the accused assaulted Prathmesh Tavade on 25.07.2017, as such he is entitled for acquittal.

13. I have considered the submissions advanced by both sides and gone through the record and proceeding of the matter. Before embarking upon the arguments advanced, it is essential to decide whether the death of Prathmesh Tavade was a homicidal death. The prosecution in order to prove the death of Prathmesh Tavade was homicidal death has relied upon inquest panchnama (Exh.18) and the postmortem report (Exh.25). The accused has not disputed the correctness of the inquest panchnama dated 25.07.2016 as such, inquest panchnama has been directly exhibited without its formal proof. I have gone through the same. This document depicts that Prathmesh Tavade was having injuries on his throat, face, chest and back. I have also gone through the postmortem report. The postmortem report indicates that Prathmesh Tavade was having following external injuries :-

- (1) Abrasion lateral to right eye 0.5 x 0.5 cm, reddish colour.
- (2) Stab wound at right side of neck at middle 1/3rd of right sternocleidomastoid region 5 x 3 x cavity

deep, margins clear, sharp defined, cutting platysma, sternocleidomastoid, right carotid artery and jugular vein, obliquely directed.

- (3) Incised wound on right shoulder at anterior deltoid region, 6 x 0.5 x 0.1 cm margins are clear, sharp defined with tailing at medial side, obliquely directed.
- (4) Abrasion on right arm upper 1/3rd, 2.5cm x 0.1 cm, reddish colour with tailing at medial side, horizontally directed.
- (5) Stab wound, on right scapular region at middle 1/3rd, located 2cm from posterior axillary line, 5.5 cm x 2.5 cm x cavity deep, piercing thoracic cage, at 4th intercostal space posteriorly and right lung upper lobe at lateral and lower aspect.

14. The postmortem report also indicates that Prathmesh Tavade was having following internal injuries :-

- (1) Thorax – Wall, Ribs and Cartilages : Punctured at respective site of injury 17.5) Ribs and Cartilages intact.
- (2) Pleura : Right pleura punctured at 4th Intercostal space posteriorly. E/O 100 ML Blood in right pleural cavity.
- (3) Right Lung : Punctured at Upper lobe at lateral and lower aspect, collapsed.

15. The prosecution to prove the postmortem report Exh.25 has examined its author i.e. P.W. No.8 Dr. Pramod Ajinath Bobade (Medical Officer) at Exh.38. He categorically deposed about the performance of postmortem report on the dead body of Prathmesh Tavade on 25.07.2017. He deposed that the injuries sustained by Prathmesh Tavade were ante mortem and the cause of death of

Prathmesh Tavade was hemorrhage due to stab injury. He was cross-examined. However, nothing could be brought on record so as to disbelieve or discard the version of this witness. Thus, by relying upon the postmortem report Exh.25, inquest panchnama Exh.18 and evidence of PW No.8 Dr. Pramod Bobade at Exh.38, it can safely be held that the death of Prathmesh Tavade was homicidal death. Thus, I answer Point No.1 in the affirmative.

POINT NOS.2 AND 3 :-

16. While deciding Point No.1, I have come to the conclusion that the death of Prathmesh Tavade was homicidal death. Now, it is to be ascertained whether the accused was the author of the injuries sustained by Prathmesh Tavade on 25.07.2017 on his throat, neck and other parts of body.

17. The prosecution to establish its case has examined the informant Karan Gajanan Kadam as PW-1 at Exh.13. He deposed that on 25.07.2017, he was going to K.W.C. College, the time was 01.15 p.m. At that time, he heard noise of someone, as such he went in that direction and saw that his friend Prathmesh Tavade was there. He had sustained injuries on his neck i.e. on the right side and was shouting and requesting to take him to the hospital. He deposed that he and his friend Tejas Shelar took him to the hospital. This witness has not uttered a single word against the accused Sandesh Kamble that in his presence, he gave blow of knife on the throat or neck of Prathmesh Tavade. He was declared hostile and the learned A.P.P. cross-examined him at length. However, nothing could be elicited during the cross-examination of this witness. The prosecution further has

examined Dipak Shahaji Desai as PW-2 at Exh.19. This witness deposed about the disclosure statement given by juvenile accused Sumit Kamble and discovery of knife at his instance from his house. In my view, the evidence of this witness is not at all helpful to the prosecution to connect the present accused Sandesh Kamble to the crime in question. Therefore, I hold that the evidence of this witness is not helpful to the prosecution.

18. The prosecution further has examined Mahadeo Jaywant Hipparkar as PW-3 at Exh.22. He deposed that on 25.07.2017, in the afternoon, he heard some noise outside his house and he came outside his house and saw that Prathmesh Tavade was fallen on the ground in the pool of blood and people were gathered there. He deposed that he along with other people carried Prathmesh to the hospital, however in the hospital, the Doctor declared him dead. He has also not supported the case of the prosecution, though he was declared hostile nothing could be brought on record against the accused Sandesh Kamble. The prosecution further examined Shripad Sanjay Salunkhe as PW-4 at Exh.26 to prove the seizure of the clothes of the accused Sandesh Kamble. However, this witness has also not supported the case of the prosecution. The prosecution further examined Dilip Govind Patil as PW-5 at Exh.27 to prove that in his presence police showed one knife to the Medical Officer of Civil Hospital, Sangli for his opinion and the concerned Medical Officer gave his opinion and thereafter, the knife was re-sealed under the panchnama. This witness has also not supported the case of the prosecution. The prosecution further examined Archana Mahendra Tavade as PW-6 at Exh.28. This witness is the mother of deceased Prathmesh Tavade. Undisputedly, this witness was not the eye witness of the incident in question. She

simply deposed that she heard about the deadly assault on her son and that she went to Civil Hospital, Sangli and found that her son was dead. She deposed that from her neighbourers she came to know that the accused Sandesh Kamble assaulted on her son Prathmesh by knife and ran away from the motorcycle. The evidence of this witness is hear-say and therefore, the same cannot be relied upon to bring home the guilt of the accused. The prosecution further examined Ramesh Shankar Bhingardive as PW-7 at Exh.31, who registered the crime and prepared inquest panchnama upon the dead body of Prathmesh Tavade on 25.07.2017 and Investigating Officer Mr. S.B. Bondar as PW-9 at Exh.41. Both these witnesses deposed in respect of the investigation carried out by them. However, as the material prosecution witnesses have not supported the case of the prosecution, the evidence of these two prosecution witnesses is of no use to the prosecution to bring home the guilt of the accused.

19. The record shows that during the course of investigation, PW-7 Mr. Ramesh Bhingardive on 11.09.2017 had requested the Tahsildar, Miraj to conduct test identification parade of the accused Sandesh Kamble. Accordingly, the Tahsildar, Miraj conducted the test identification parade by adopting due process as contemplated in the criminal manual. It appears that during the test identification parade, the informant Karan Kadam has not identified the accused as the same person, who had assaulted on Prathmesh Tavade on 25.07.2017.

20. The prosecution produced on record the Chemical Analysis reports which are at Exh.48, 49, 50, 51 and 52. I have gone through the same. The clothes which were seized from the person of the accused Sandesh Kamble were found human blood. However, the

Chemical Analysis report does not disclose that the human blood which was found upon the clothes of the accused Sandesh Kamble was of deceased Prathmesh Tavade. It appears that the DNA profile was also carried out by the Chemical Analyzer, Pune. However, the blood group of deceased Prathmesh Tavade could not be detected. Thus, though the chemical analysis report indicates that the clothes and the knife which were seized during the course of investigation were found human blood, in my view, this much evidence is not sufficient to connect the accused in the homicidal death of Prathmesh Tavade.

21. The prosecution produced on record the panchnama about seizure of motorcycle bearing No.MH-10-BW-9005 on dated 28.07.2017 (Exh.23), the spot panchnama dated 25.07.2017 (Exh.15), seizure of clothes of deceased Prathmesh Tavade vide Exh.16, the seizure of clothes of juvenile accused Sumit Kamble vide Exh.17, seizure of clothes of the informant Karan Kadam and Tejas Shelar vide Exh.18, the defence side has not disputed the correctness of these documentary piece of evidence. However, in all these documentary evidence, nothing incriminating found against the accused so as to connect him with the homicidal death of Prathmesh Tavade.

22. The totality of the above discussion is that the prosecution has utterly failed to bring home the guilt of the accused for commission of an offence punishable under Sections 302, 504 r/w. Section 34 of the Indian Penal Code. As such, I have no other go but to acquit the accused from all the charges levelled against him. As such, I answer the above points accordingly and pass the following

order.

: O R D E R :

1.	Accused Sandesh Sanjay Kamble, aged 20 years, R/o. Harshavila Bungalow, Plot No.28, Vasantnagar, Sangli, Tal. Miraj, Dist. Sangli is hereby acquitted under Section 235(1) of the Code of Criminal Procedure of the offence punishable under Sections 302, 504 r/w. Section 34 of the Indian Penal Code.
2.	The bail bond of the accused stands cancelled.
3.	The muddemal property i.e. Unicorn motorcycle bearing No.MH-10-BW-9005 be returned to its registered owner, after appeal period is over, if not returned.
4.	All other muddemal property being worthless be destroyed after period of appeal is over.
5.	The accused is directed to execute P.R. and S.B. of Rs.15,000/- (Rs. Fifteen thousand only), as provided under Section 437-A of the Code of Criminal Procedure.

(Pronounced in the open Court)

Sangli
Date : 18.01.2021

(V.V. Patil)
Sessions Judge, Sangli

: CERTIFICATE :

I affirm that, the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Stenographer:	H.G. Sutar (Grade-II)
Court -	Principal District & Sessions Judge, Sangli
Date	18.01.2021
Order signed by the Presiding Officer on -	18.01.2021
Order uploaded on -	19.01.2021