

Aslam alias Imran
v.
The State of Madhya Pradesh

(Criminal Appeal No. 1538 of 2025)

27 March 2025

[B.R. Gavai* and Augustine George Masih, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the courts below convicting the accused-appellant u/s.302 IPC.

Headnotes[†]

Penal Code, 1860 – s.302 – Murder – Abusive quarrel between the appellant and the victim – Appellant attacked the victim with a butcher knife and victim succumbed to injuries – Relying on the evidence of the prosecution witnesses, the courts below convicted the appellant u/s.302 and sentenced him to life imprisonment – Correctness:

Held: Evidence of the informant-PW-1 contradictory with that of PW-6 – Perusal of the testimony of PW-1 when compared with the testimony of PW-6, clearly casts a doubt on the truthfulness of this witness – Absence of bloodstains on his clothes the witnesses who carried the deceased to the hospital as also witnesses did not inform either the Police Station or the police constable who was standing at a distance of about 50 steps from the place of incident – PW-1 is the brother of deceased and as such an interested witness – Testimony of PW-1 does not inspire confidence – Conduct of PW-2 make his evidence unnatural – Adverse inference can be drawn on the statement of PW-3 – Furthermore, PW-4 was only deposing on the basis of hearsay, and other witnesses declared hostile – Thus, serious doubt on the veracity of the prosecution witnesses – Also, evidence on record that the deceased was history-sheeter and was facing many criminal cases including a case for attempt to murder, and evidence of prosecution witnesses that there was previous enmity between the deceased and the appellant – Enmity is a double-edged weapon – On one hand, it provides motive, on the other hand it also does not rule out the

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possibility of false implication – From the nature of the evidence placed on record, the possibility of the appellant being falsely implicated on account of previous enmity cannot be ruled out – Appellant entitled to benefit of doubt – Order passed by the courts below quashed and set aside. [Paras 13-23]

List of Acts

Penal Code, 1860.

List of Keywords

Murder; Prosecution witness; Hearsay; Interested witness; Benefit of doubt; Falsely implicated.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1538 of 2025

From the Judgment and Order dated 26.09.2024 of the High Court of Madhya Pradesh Principal seat at Jabalpur in CRA No. 6 of 1996

Appearances for Parties

Advs. for the Appellant:

Sanjay R. Hegde, Sr. Adv., Prathvi Raj Chauhan, Venkatesh Rajput, Nepal Singh, Varun Kumar, Meghraj Singh.

Adv. for the Respondent:

Ms. Mrinal Gopal Elker.

Judgment / Order of the Supreme Court**Judgment**

B.R. Gavai, J.

1. Leave Granted.
2. The present appeal challenges the final judgment and order dated 26th September 2024, passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur¹ in Criminal Appeal No. 6 of 1996

¹ Hereinafter referred to as “the High Court”.

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filed by the Appellant herein whereby the High Court dismissed the Criminal Appeal and upheld the order of the III Additional Sessions Judge, Jabalpur (M.P.)² passed in Sessions Trial No. 1023 of 1994 thereby convicting the accused-appellant under Section 302 of Indian Penal Code, 1860³ and sentencing him to life imprisonment.

3. Shorn of details, the facts leading to the present appeal are as under:

3.1. On 22nd August 1994, at noon, the information about an attack on the deceased Zahid Khan alias Guddu was given to Omti Police Station and thereafter a *Dehati* was written by Sub-Inspector A.K Bajpai (PW-12) at 01:30 PM.

3.2. FIR No. 461/1994 was registered at Omti P.S on the same date narrating the attack on the deceased as per the information shared by Shahid Khan (PW-1) - the brother of the deceased. The prosecution case is as follows:

On 22nd August 1994, at around 12.30 PM an abusive quarrel broke out on the road between the accused-appellant Aslam alias Imran and the deceased at an area "Naya Mohalla". The accused thereafter attacked the deceased with a butcher knife (*baka*) causing multiple injuries on his hands and thighs, and a deep wound on his neck leading to the deceased bleeding profusely. The accused fled away from the scene, and the injured deceased was taken by Shahid Khan (PW-1) and others to Victoria Hospital where upon seeing his critical condition, he was shifted to the Medical College.

3.3. The deceased[#] succumbed to the injuries on the same day at around 02:10 PM. The *Lash* Panchnama was written on the same day by Sub-Inspector Vajpayee (PW-11) and signed by Shahid Khan (PW-1) and others. The investigation began, blood on the soil at the spot of crime was seized and the body was sent for medical examination.

3.4. The accused was arrested on 25th August 1994. Based on the disclosure made by the accused, the blood-stained butcher knife (*baka*) was discovered from a container at the residence of the accused.

² Hereinafter referred to as "the trial court".

³ Hereinafter referred to as "IPC".

[#] Ed. Note: "deceased" instead of "accused" in terms of subsequent corrigendum.

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- 3.5. After completion of the investigation, charge-sheet was filed against the appellant for the offences punishable under Section 302 of the IPC. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court.
- 3.6. Vide judgment and order dated 21st November 1995, the trial court convicted the appellant for the offence punishable under Sections 302 of IPC and sentenced him to life imprisonment.
- 3.7. Vide the impugned judgment and order, the High Court upheld the judgment and order of the trial court convicting the appellant under Section 302 of IPC, and directed the appellant who was out on bail to surrender before the trial court to undergo the remaining part of his jail sentence.
- 3.8. Aggrieved thereby, the present appeal.
4. We have heard Mr. Sanjay R. Hegde, learned Senior Counsel appearing on behalf of the appellant and Ms. Mrinal Gopal Elker, learned counsel appearing on behalf of the respondent-State.
5. Mr. Hegde, learned Senior Counsel appearing on behalf of the appellant submits that the perusal of the evidence of the prosecution witnesses would reveal that the said witnesses are not trustworthy and their testimonies are inconsistent to each other. As such, the conviction on the basis of such testimonies would not be sustainable in law.
6. In the alternative, Mr. Hegde submits that even if the evidence of the prosecution witnesses is taken at its face value, it would clearly reveal that there was a quarrel between the appellant and the deceased. It is the deceased who was having a knife. As a result of the quarrel, the appellant picked up the knife of the deceased and assaulted him. He therefore submits that it is thus clear that the prosecution has failed to prove that the appellant-accused had any intention of causing death of the deceased. He submits that, in any case, the appellant would be entitled to benefit of Exception 4 of Section 300 of IPC and the case would not fall under the category of Section 302 of IPC.
7. Per contra, Ms. Elker, learned counsel appearing on behalf of the State submits that the perusal of the testimonies of eye-witnesses would reveal that the prosecution has proved the case beyond reasonable doubt. It is submitted that both the trial court and the

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High Court, upon correct appreciation of evidence, had come to a conclusion that it is the appellant-accused who had committed the murder of the deceased and as such, no interference is warranted in the present appeal.

8. With the assistance of the learned counsel for the appellant and the State, we have scrutinized the material placed on record.
9. The prosecution basically relies on the evidence of Shahid Khan s/o Babu Khan (PW-1), who is brother of the deceased, Rassu s/o Abdul Gaffar (PW-2), Asif Khan s/o Yusuf Khan (PW-3) and Saiyad Wahid Ali s/o Saiyad Abid Ali (PW-4).
10. Insofar as Shahid Khan (PW-1) is concerned, in his examination-in-chief, he stated that, on the date of the incident at around 11:00 AM to 12:00 PM, when he was drinking tea at Gop Chai Wala's shop, accused Aslam @ Imran and deceased Guddu started abusing each other. He stated that, at the same time, accused Aslam @ Imran attacked deceased Guddu with a Baka. He stated that thereafter he and some others picked the deceased Guddu up and took him to the hospital. In his cross-examination, he admitted that the hand and head of deceased Guddu was on his shoulder. He also admitted that a lot of blood was oozing out of the body of the deceased Guddu. He further admitted that though he was wearing a vest, there was no blood on his vest. He further stated that deceased Guddu's blood did not fall on the person of Asif Khan (PW-3) who was also with them.
11. From the deposition of Shahid Khan (PW-1), it is clear that though he states that he had witnessed the incident, he did not report about the same either at the Police Station, which was a short distance away, or at Victoria Hospital.
12. The evidence of this witness is contradictory with that of Abbi s/o Manjoor Khan (PW-6). Abbi (PW-6) stated that when he saw deceased Guddu in injured condition, Shahid Khan (PW-1) was not there. Shahid Khan (PW-1) came only after Abbi (PW-6) called him through one Mukhtar.
13. A perusal of the testimony of Shahid Khan (PW-1) when compared with the testimony of Abbi (PW-6), clearly casts a doubt on the truthfulness of this witness. If the deceased Guddu was carried by Shahid Khan (PW-1) and if the hand and head of the deceased Guddu

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were on his shoulder, then the absence of bloodstains on his clothes creates a serious doubt about the veracity of his version. Apart from that, he has clearly admitted that though he had seen the incident, he had not narrated about the same either to the Police Station or at Victoria Hospital. It is to be noted that Shahid Khan (PW-1) is the brother of deceased Guddu and as such, is an interested witness. No doubt that merely a witness being an interested witness cannot be a ground for discarding his testimony. However, the evidence of such a witness is required to be scrutinized with greater caution and circumspection. From the perusal of the evidence of Shahid Khan (PW-1), we do not find that the testimony of this witness is the one which would inspire confidence.

14. Rattu (PW-2), in his evidence, stated that, on the date of the incident, there was an altercation between the deceased Guddu and the appellant-accused and after that the appellant-accused stabbed deceased Guddu with a knife. He stated that his cycle shop was at a distance of 25-30 feet away from the place of the incident. In his cross-examination, he stated that the knife which was alleged to have been recovered from the appellant-accused, was not the same knife which was used in committing the crime. He admitted in his cross-examination that the Omti Police Station was at a 5-minute walk from the scene of incident. He further admitted that a police constable was also standing at a distance of about 50 steps from the place of the incident. However, neither did he find it necessary to go and inform the police constable about the incident nor did he find it necessary to go to the Police Station which was at a distance of a 5-minute walk. He further admitted that though there was a telephone in the Capital Lodge which was just opposite his cycle shop, neither did he find necessary to make a call to the Police Station nor did he ask anyone to make a call to the Police Station and inform about the incident. He further admitted that he did not know as to how the quarrel started. He further stated that when he saw the accused and the deceased Guddu after the abuse, they were empty handed. He further admitted that the blood of the deceased Guddu had stained the clothes of those who were supporting him. Though he admitted that the house of the deceased Guddu was at a distance of a 2-4-minute walk, he did not find it necessary to inform about the incident to his family members. The conduct of this witness either not finding it necessary to inform to the police about the incident when the Police Station was only at a 4-5 minute walk

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or not even finding it necessary to inform the police on telephone when the telephone was available just opposite his shop and further not informing the Police Constable who was standing at a distance of 50 feet, would make his evidence unnatural. Though the house of the deceased was also at a 2-4 minute walk, he did not find it necessary to inform about the incident to his relatives.

15. Asif Khan (PW-3) stated that on the date of the incident i.e., 22nd August 1994 at around 12:30 PM, when he was drinking tea at Bajid Tea Hotel, deceased Guddu told him that he was going to leave his nephew at his parents' place. He stated that shortly thereafter, he turned around hearing the sound of abuses and saw that accused-appellant was abusing the deceased Guddu. He stated that the accused-appellant hit deceased Guddu on his right arm with a butcher's knife and then on the other hand. He stated that when he was about to reach there, accused-appellant attacked deceased Guddu's neck, as a result of which a lot of blood starting flowing from the body of deceased Guddu and he fell down. Thereafter, the accused-appellant ran away. In his cross-examination, he stated that his statement was recorded initially within 8-12 days from the date of the incident. However, when the counsel for the appellant during the cross-examination demanded a copy of his statement recorded within 10-12 days, the learned Additional Public Prosecutor fairly stated that there was no statement of the said witness recorded prior to 8th October 1994. It is thus clear that either his statement was recorded for the first time on 8th October 1994 i.e., after 45 days of the incident or if an earlier statement was recorded, the same was suppressed. As such, an adverse inference can be drawn on that count. Subsequently, this witness changed his version and stated that on the date of the incident he had a scratch injury on his leg and therefore he could not go till 8th October 1994 and only on 8th October 1994, he became fit to give a statement to the police. He also stated that though he had accompanied the deceased Guddu to the hospital, he did not tell the doctor that he was killed by the appellant.
16. Next witness is Saiyad Wahid Ali (PW-4). This witness in his examination-in-chief stated that there was a tussle between the deceased and the accused and after that the appellant stabbed the deceased in his neck. It will also be relevant to refer to his cross-examination, which reads thus:

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“It is true that I did not see Imran inflicting the injuries, I am saying this based on hearsay. Among those who took Guddu to the hospital, only Abbi was there and no one else.”

17. It is thus clear that this witness has not personally seen the incident and was only deposing on the basis of hearsay.
18. It is further to be noted that though Shahid Khan (PW-1) stated that the deceased was taken to the hospital on a scooter of Asif Khan (PW-3), Asif Khan (PW-3) stated in his evidence that Shahid Khan (PW-1), Rassu (PW-2) and Wahid Ali (PW-4) picked deceased Guddu up and took him to Dr. Khan's dispensary and thereafter, he was taken to Victoria Hospital. As such, the evidence of these witnesses is again contradictory on this point.
19. The other witnesses have not supported the case of the prosecution and were declared hostile.
20. It has come in the evidence on record that the deceased Guddu was a history-sheeter and was facing many criminal cases including a case for attempt to murder. It has also come in the evidence of prosecution witnesses that there was a previous enmity between the deceased and the appellant.
21. The following factors cast a serious doubt on the veracity of the prosecution witnesses:
 - (i) The witnesses who were carrying the deceased Guddu to the hospital not having bloodstains on their clothes;
 - (ii) The witnesses not informing either the Police Station or the police constable who was standing at a distance of about 50 steps from the place of incident;
 - (iii) The contradictions in the evidence of witnesses with regard to presence of each other at the place of incident;
 - (iv) The witnesses not informing the cause of death of the deceased Guddu in the MLC papers, though according to them they were aware about the person who had inflicted the injury on the deceased; and
 - (v) Recording of the statement of the witnesses after a long gap after the date of incident when the said witnesses were very much available.

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22. It is a settled law that enmity is a double-edged weapon. On one hand, it provides motive, on the other hand it also does not rule out the possibility of false implication. From the nature of the evidence placed on record by the prosecution, the possibility of the present appellant being falsely implicated on account of previous enmity cannot be ruled out. In our opinion, therefore, the appellant is entitled to benefit of doubt.
23. In the result, we pass the following order:
- (i) The appeal is allowed;
 - (ii) The impugned judgment and order dated 26th September 2024 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.6 of 1996 and the judgment and order dated 21st November 1995 passed by the trial court in Sessions Trial No.1023 of 1994 are quashed and set aside;
 - (iii) The appellant is acquitted of all the charges levelled against him; and
 - (iv) The appellant is already on bail. His bail bonds shall stand discharged.
24. Pending application(s), if any, shall stands disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain