

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.530 OF 2016

Sachin Nandu Bhosale

R/o. Old Jejuri, Taluka-Purandar,
District-Pune.

(At present lodged at Yerwada Central Prison, Pune)

...Appellant

V/s.

The State of Maharashtra

(Through Jejuri Police Station, Pune)

... Respondent

Ms. Ameeta Kuttikrishnan, Appointed Advocate, for the Appellant.

Mr.S.S. Hulke, APP for Respondent-State.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

RESERVED ON : 21st JULY 2023

PRONOUNCED ON : 31st AUGUST 2023

JUDGMENT : (Per Shri.Shivkumar Dige)

. The challenge in the present Appeal is to Judgment and Order dated 15th October 2013 passed in Sessions Case No. 198 of 2011 by Additional Sessions Judge, Pune, whereby Appellant is convicted for an offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to suffer imprisonment for life and pay a fine of Rs.5,000/- in default of payment of fine to suffer further rigorous imprisonment for 3 months.

2. Brief facts of the case are as under:-

On 19th December 2010, first informant Pandharinath Jadhav, lodged report in Jejuri Police Station, stating that, he has received information from his neighbor Balu Bhalerao that, Khandu Dikhale resident of their locality had died in an under construction building at Khomane locality and his death appears to be suspicious. Accordingly, first informant visited incident spot, he saw that dead body of Khandu was lying on ground in pool of blood. There were injuries on his forehead. A stone was lying near him. He reported about this incident to Police. On his report, Police registered FIR against unknown person. During investigation, Police arrested Appellant for committing murder of Khandu.

3. After completion of investigation charge-sheet was filed against the Appellant. The case was committed to Additional Sessions Court, Pune. Charge was framed against Appellant. He pleaded not guilty and claimed to be tried. To prove it's case, prosecution has examined 13 witnesses. Statement of Appellant under Section 313 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was recorded. Defense of Appellant was of total denial.

3.1. Considering evidence on record and submissions of both learned counsel, the trial Court has convicted Appellant as referred above.

4. We have heard both learned counsel. Perused record, Judgment and Order passed by the trial Court.

5. It is the contention of learned counsel for Appellant Ms.Ameeta Kuttikrishnan, that, prosecution case is based on circumstantial evidence, no one has seen the incident of killing. The prosecution witnesses PW-4 and PW-11 have stated that, they had last seen deceased with Appellant. They are interested witnesses, no other witness is supporting the prosecution case. But this fact is not considered by the trial Court and has erroneously convicted Appellant without sufficient evidence. The learned counsel further submitted that, Appellant was arrested from Jejuri bus stand with blood stained clothes. It is hard to believe that, the person who committed murder would roam freely with blood stained clothes but this fact is not considered by the trial Court. Though the prosecution case is based on circumstantial evidence there are missing links in the chain. The learned counsel for Appellant has relied on the decision of Apex Court in the case of *Ajmal V/s. The State of Kerala¹ and Sachin Laxman Dandekar V/s. State of Maharashtra²*. Hence, requested to allow the Appeal.

6. It is the contention of Mr. S.S. Hulke, learned APP that, on the day of incident in afternoon there was quarrel between Appellant and deceased. On the same day in the night deceased had slapped the Appellant. To take revenge of it, Appellant murdered the deceased, by assaulting with a stone on his head. The blood stains found on the clothes of Appellant were matching with the blood group of deceased, it proves involvement of Appellant in the said crime. The learned APP further

¹ Criminal Appeal No.1838 of 2019 decided on 12th July 2022.

² 2022 SCC Online Bom 3120

submitted that, on the spot of incident, one glass was found and the fingerprints on the said glass matches with the fingerprints of the Appellant. It proves that, murder of deceased was committed by the Appellant. Hence, requested to dismiss the Appeal.

7. There is no dispute about homicidal death of deceased. PW-5 Kailash Batte -Medical Officer, conducted postmortem on the dead body of the deceased. On examination of the dead body he found the following wounds and injuries :-

- 1) Deep incised wound, above left eye-brow over forehead about 5x5x6 cms, irregular nature, fracture over skull through which brain matters was came out ;
- 2) Deep incised wound - right side forehead above and lateral to left eye-brow, about 3x6x5 cms;
- 3) Contusion about 3x3 cms – left side cheek with CLW about 3x1x1 cm;
- 4) CLW – below left mandible, 2x1x1 cm;

7.1. On external examination, further injuries were found i.e. one fracture injury was found on skull frontal bone right side irregular nature and another fracture injury on skull frontal bone left side. On examination, he opined a probable cause of death of the deceased was due to Cardio Respiratory arrest, due to Neuroneic and hemorrhage shock due to injury to the brain. Due to it, the said death was caused. The Postmortem Report is at Exhibit-25. He has further stated that, the injuries found on the dead

body could be possible by stone (Article-4) which was seized from the spot of incident, if repeatedly blows of it are given on the head. Nothing elicited in the cross-examination of this witness. Appellant has not disputed the homicidal death of deceased. It proves that, death of deceased was homicidal.

8. It is prosecution case that, on 18th December 2010, Appellant, PW-2 Amol Bhalerao and PW-4 Rohit brother of deceased Khandu had consumed liquor, thereafter they went to Jejuri temple at about 3.00 p.m., they all came down from the said temple, while returning, they met the deceased Khandu, who was holding spade. Appellant snatched away the spade from Khandu's hand, due to which Khandu got angry and he abused Appellant. On the same day at about 7.30 p.m. when deceased was in his house, at that time Appellant came to his house and they both went out. While going out, deceased had told his mother to keep the food ready and he will back within 10 to 15 minutes. Thereafter, they went to wine shop of PW-3 Sou.Ranjana Rathod and drank liquor. There was a quarrel between deceased and Appellant. Deceased slapped Appellant on his cheek. PW-3 asked Appellant and deceased to go from her shop. They went towards Khomane locality and on next day, the dead body of deceased was found.

9. The prosecution case is based on circumstantial evidence. To prove last seen together, prosecution has examined PW-2 Amol Bhalerao. He did not support the prosecution case, nor anything elicited in his cross-examination taken by learned APP. PW-4 Rohit Dikhale is brother of

deceased and PW-11 Rhutu Dikhale is sister of deceased. As PW-2 did not support prosecution case, we would see the evidence of PW-4 and PW-11.

9.1. PW-4 Rohit at Exhibit-18 has stated that, on 18th December 2010, he, Appellant and PW-2 Amol took drinks and went to Jejuri temple. From 9.00 a.m. to 3.00 p.m., they stayed at the place of said temple. At about 3.00 p.m., they came down from said temple from its backside and reached to a platform (Ghumat), where they met his brother Khandu who was holding spade. Appellant snatched away the said spade from Kahndu's hand, Khandu got angry and he abused Appellant. Thereafter, this witness, Appellant and Amol, left that place and went to their houses. Kahndu did not come with them as he was on his duty as sweeper. Thereafter, at about 7.30 p.m., deceased returned to his house, at that time this witness, his mother and other family members were present in the house. On reaching home deceased took wash. At that time Appellant came to their house. Deceased told his mother to keep the food ready and that he would return back within 10 to 15 minutes. Then deceased and Appellant went out together at the wine-shop. After going out from the house, deceased did not return home. This witness and another family members took search of him for the whole night, however, they did not find him. On the next day morning, a person by name Balu Bhalerao came to their house and told that, deceased was lying in a pool of blood having serious injuries in under constructed building of one Mr.Moholkar. Hearing this news, this witness, his mother went to the spot of incident. There they saw, Khandu's dead

body was lying in a pool of blood. There were injuries on his head. One stone weighing around 8 to 10 kg having blood stains was lying near his head. This witness realised that, somebody killed Khandu. Pandharinath Jadhav had informed the Police about the incident. The Police made enquiry and arrested Appellant.

9.2. In cross-examination, this witness admitted that, the deceased Khandu was habitual drinker. He used to take drinks daily in the evening. This witness further admitted that, he did not see Appellant while coming to their house but he saw Appellant and deceased going together from their house and his mother had told him that, Appellant had come to their house.

10. To corroborate the evidence of this witness (PW.-4), prosecution has examined PW-11 Rhutu Dikhale at Exhibit-62. She has stated that, deceased was her elder brother. On 18th December 2010, he returned home at about 7.30 p.m., at that time, Appellant was with him. She knows Appellant as he lived in their locality. Deceased went out with Appellant. Deceased had told her mother that, he was going out and would return back within 10 to 15 minutes and asked her mother to keep the food ready. Thereafter, deceased did not return. The brother and mother of PW-11 tried to take search of deceased but he could not be found. On next day, Mr.Balu Bhalerao informed them that, Khandu was lying in unconstructed building of Mr.Moholkar. This witness, her brother and mother went to the spot of incident. On reaching there, this witness found that, deceased was lying on ground. There were injuries on his person, a

big stone was lying near his head. Then they went on the terrace of that building and found that, there was one glass and two plastic pouches of water lying on the floor. The glass had smell of liquor. The Police had come to the spot of incident. The Police made enquiry with this witness.

10.1. In cross-examination, this witness admitted that, the deceased had habit of drinking. This witness admitted that, in statement before the Police she had stated that, Appellant and deceased had come together to their house but she cannot assign any reason as to why Police did not record it.

11. PW-3 Sou.Ranjana Rathod, owner of wine shop in whose shop Appellant and deceased had taken drink, did not support the prosecution case nor anything elicited in her cross-examination taken by learned APP.

12. From the evidence of PW-4 and PW-11 it reveals that, on day of incident, they had seen Appellant and deceased going out from their house, PW-4 was present when deceased had abused Appellant. The mother of deceased has not been examined as a witness. She could have been a crucial witness.

12.1. Along with last seen together evidence, the prosecution has relied on the report of fingerprints expert and blood stains found on the clothes of the Appellant. To prove it, prosecution has examined PW-10 Balasaheb Bankar, Police Officer, who arrested Appellant and PW-13 Pradeep Astaputre who took fingerprints on glass found on incident spot. It has come in the evidence of PW-10 Balasaheb Bankar that, on 19th

December 2010, he was attached to Office of Dy.S.P. Bhor Division, as a Police Head Constable. On that day, he was on duty with his squad. His duty was detecting crimes and take search of absconded criminals. On that day about 8.10 a.m. his Superior Officer Mr.Kengar, informed him that, incident of murder had occurred within the jurisdiction of Jejuri Police Station and accused was absconding. He instructed this witness and his team to find out the accused of that case. Therefore, this witness and his team took their official vehicle and came to Jejuri within 15 minutes. This witness received secret information that, suspect by name Sachin Bhosale was at the bus stand of Jejuri. This witness went to bus stand along with his team. There they found Appellant at the bus stand. They caught him and on taking search of the Appellant they found that, the pant and shirt on his person and shoes had blood stains. Appellant was brought to Jejuri Police Station. He was arrested in presence of two panch witnesses and his clothes and shoes were seized. The panchnamma is at Exhibit-59. Nothing elicited in cross-examination of this witness to disbelieve his evidence. From the evidence of this witness it appears that, he arrested Appellant on next day of incident, at that time Appellant's clothes and shoes were having blood stains.

13. PW-13 Pradeep Astaputre, Assistance Police Inspector, Fingerprint, Pune Rural, District – Pune at Exhibit-66 has stated that he visited the incident spot along with photographer and other equipments. On incident spot, he found two plastic pouches and one glass. On examining

glass, he found two fingerprints on it. He asked photographer to take photographs of those fingerprints with his camera. Accordingly, photographer took photographs. He received fingerprints of Appellant along with letter of Investigating Officer. It is at Exhibit-46. He matched the fingerprints taken by photographer found on glass with the fingerprints of Appellant, it matched. He prepared report in that regard. It is at Exhibit-74.

13.1. In cross-examination, this witness admitted that, he does not have any document to show that, by a written letter he was called to visit the incident spot. This witness further stated that, fingerprints may remain preserved on any object until it is overlapped by any other print. From the evidence of this witness it reveals that, there was fingerprints on the glass, which was found on the incident spot and said fingerprints matched with the fingerprints of the Appellant. It has come in the evidence of PW-9 Anil Shewale, Investigating Officer, that, on 19th December 2010, he was attached to Jejuri Police Station as Assistance Police Inspector. On that day he received information that, a person had been murdered in an under construction building. He took entry in the station diary and visited the incident spot along with staff. At the incident spot he found a dead body of male person was lying on the ground having injuries on it. There was injury on his head and blood was oozing from it. A big stone weighing about 8 to 10 kg was lying near his head. The first informant Pandharinath was there. The dead body was sent to Jejuri hospital for postmortem. After returning Police station this witness registered FIR. It is at Exhibit-15. This witness

had carried out inquest panchnama of dead body in presence of two panch witnesses. It is at Exhibit-39. This witness had directed the Dog Squad, photographer and Forensic Science team to visit the incident spot. The spot panchnama was prepared in presence of panch witnesses. It is at Exhibit-40. The Forensic Experts collected samples and blood from the spot of incident and also collected the sample of hair. This witness found two plastic pouches and one glass lying on incident spot. Fingerprint expert took fingerprints from the said glass and the pouches. These articles were seized in presence of panchas. It is at Exhibit-40. The Appellant was apprehended by the Police team. The blood stained clothes and shoes of Appellant were seized in presence of panchas by preparing panchnama. The blood samples of deceased was collected.

13.2. On 20th December 2010, this witness took fingerprints of both hands of the Appellant and sent these prints for examination to Fingerprint Experts through Police Inspector (LCB), Pune, vide letter Exhibit-46. The seized muddemal property, sample of blood collected from the spot of incident, blood stained mud collected from the spot of incident, clothes of deceased, clothes of Appellant and shoes of Appellant were sent to Chemical Examiner through Police Naik-Kutwal by covering letter. It is at Exhibit-48. The Chemical Examiner gave their report. It is at Exhibit-53. This witness further stated that, as per Chemical Examiner's report, in blood sample of Appellant 0.083% Alcohol was found. His Morpholine test was positive. The blood group of Appellant was "A" group where as blood group

of deceased was “O” group. In cross-examination this witness admitted that, PW-4 Rohit had not stated before this witness that, on 18th December 2010, Appellant had come to his house. This witness further admitted that, the muddemal glass can be available in market. This witness further admitted that, he has not filed any document to show that, fingerprints of the Appellant were obtained by him.

14. It is contention of learned counsel for the Appellant that, the fingerprints found on the glass are not sufficient to involve the Appellant in the said crime. After the incident many people had visited the spot of incident and the said glass may have touched by any one of them. But this fact is not considered by the Trial Court. In our view, it appears from evidence that, the witnesses who visited the spot have stated that, they found two water pouches and one glass lying on the slab of the said building. The Police had seized the pouches, glass and other articles found on the incident spot. The Fingerprint Experts visited the spot of incident and had taken the photographs of fingerprints on said glass and they found only two fingerprints on it. The said fingerprints are matched with the fingerprints of Appellant. The report is at Exhibit-47. There were no other fingerprints appearing on glass except fingerprints of the Appellant. Hence, we do not find, any merit in the contention of learned counsel for the Appellant that, the said glass was handled by any other person.

15. It is contention of learned counsel for the Appellant that, Appellant was apprehended by Police on bus stand with blood stained

clothes and shoes. It is hard to believe that, a person after committing murder can roam with blood stained clothes and shoes. It has come in the evidence of PW-10 Balasaheb that, he and his team apprehended the Appellant from Jejuri bus stand. There were blood stains on his clothes and shoes. These clothes and shoes were seized in presence of panchas and sent to Forensic Laboratory. The blood group of the deceased was "O". The blood stains found on the clothes of Appellant was "O" blood group. The Forensic Laboratory report is at Exhibit-53, which supports the prosecution case. In our view, the Appellant was aware that, he had committed murder of deceased hence he wanted to flee from said town. He was residing near the house of the deceased. He may have thought that, if he goes to house for changing the clothes, he may be apprehended by the family members of the deceased as they were aware that, deceased had gone with Appellant. We do not see merit in contention that, it was not possible for the Appellant to roam with blood stained clothes. It is contention of learned counsel for the Appellant that, no one saw the Appellant with the deceased. There is omission in the evidence of PW-4 that, he had seen the deceased with the Appellant, when he came to his home. In our view, PW-4 has stated that, on the day of incident, in afternoon there was quarrel between Appellant and deceased, Appellant had snatched spade from the hands of deceased. At that time, deceased was got angry, but in the evening he saw deceased was going with Appellant. The fingerprints of the Appellant found on the glass at the spot of incident as well as blood stains found on the clothes of

Appellant, are of blood group of deceased, which complete the chain of prosecution story. The Appellant was apprehended by Police on the next day of the incident.

16. It is contention of learned counsel for the Appellant that, the murder of deceased was not a pre-planned murder. The Appellant had knowledge about his act. He was under influence of liquor when incident had happened. The Appellant and deceased were good friend. They used to take drink every day. In spite of abusing Appellant in afternoon deceased had gone with the Appellant to take drink at evening. It shows that, there was no enmity between them. Hence, act of Appellant falls under Section 304(Part-II) of IPC and not under Section 302 of IPC.

16.1. It is contention of the learned APP that, the Appellant murdered deceased with intention to cause his death. He had taken him to secluded place and murdered him. The act of Appellant falls under Section 302 of IPC.

17. It appears from the evidence that, though on the day of incident in the afternoon deceased had abused Appellant, in the evening they went together for drinking liquor. There was quarrel between them and deceased had slapped Appellant, but it is not proved, as PW-3 wine shop owner turned hostile. Thereafter, they again went together. At the incident spot one glass and two pouches were found. The glass had smell of liquor. The Police had sent blood samples of Appellant to check whether Appellant had consumed liquor. The report is at Exhibit-50. It shows that,

the blood contained 0.083% of Alcohol and Morpholine test was positive. It shows that, Appellant and deceased drank liquor together on the slab of unconstructed building. Thereafter, there was a quarrel between them and in that quarrel Appellant hit the deceased with stone, lying thereof. The weapon used in the offence is stone. It shows that, the said act was without pre-meditation. There was no intention to kill, the deceased, but hitting on head with stone it shows there was knowledge about it that, assault with stone may cause death. Hence, in our view, the act of Appellant falls under Section 304 (Part-II) of IPC.

18. Hon'ble Apex Court in the case of *Ajmal V/s. The State of Kerala (Supra)* has observed that:-

“21. Considering the statutory provisions laid down in IPC and the law on the point, we find that the present case falls into the category of a culpable homicide not amounting to murder falling under Section 304 PartII IPC for the following reasons:

(i) There was no premeditation of mind to commit murder.

(ii) All the accused were admittedly not armed when they stopped the vehicle of the deceased and his friends and compelled them to alight from the same.

(iii) It was during the verbal altercation at that stage that the three accused picked up the weapon of assault namely, sticks of casuarina tree and a brick from the road side.

(iv) Single blow was given to the deceased by the accused nos.1 and 2.

(v) The case set up for exhortation to kill the deceased has not been found to be proved.

(vi) Both the groups consisted of young men.

(vii) The High Court found that there was no unlawful assembly formed with a common object and accordingly had acquitted three other accused and also the present appellants from the charge of unlawful assembly under section 149 IPC.

(viii) The appellants have been convicted with the aid of section 34 IPC.”

19. In the above case the Hon’ble Apex Court has altered conviction of Appellant from Section 302 to 304 (Part-II) of the IPC. In the present case the weapon used in the offence is stone. There was no premeditation to commit the crime.

20. In view of above, we pass following order :-

ORDER

(i) Appeal is partly allowed.

(ii) The conviction imposed upon Appellant for the offence under Section 302 of IPC is set aside and the Appellant is convicted for the offence punishable under Section 304 (Part-

II) of IPC. He shall suffer rigorous imprisonment for 10 years and to pay fine of Rs.5,000/-, in default of payment of fine to further suffer simple imprisonment for two months.

(iii) Appellant shall be released from jail on completion of sentence as directed, unless required in any other case/cases.

21. Registrar (Judicial-II) is directed to forward the copy of this Judgment to the Superintendent of Yerwada Central Prison, Pune, wherein the Appellant had been lodged.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

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