



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 32 OF 2021

Ignasius @ Ignatius Minj,
s/o Anton Munj, aged 43,
Labour, R/o 212 Cadrimunda,
Vill- Tumbilpani, P.O. Cadrimunda,
Kudreg P.S., Simdega,
Jharkand - 835212,
Presently in Judicial Custody,
Modern Central Jail Colvale, Goa.

... Appellant.

Versus

State of Goa
Through
1. Police Inspector
Colva Police Station
Colva Goa

2. Public Prosecutor
High Court of Bombay at Goa

... Respondents.

Mr. L. Raghunandan, Advocate for the Appellant under Legal Aid Scheme.

Mr. S.G. Bhobe, Public Prosecutor for the State.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 17th MARCH, 2025.

PRONOUNCED ON: 9th SEPTEMBER, 2025.

JUDGMENT :

1. This is an appeal against conviction of the Appellant/Accused by the Sessions Court, Margao vide judgment and order dated 28.11.2018, passed in Sessions Case (302) No.15/2018 convicting the Appellant of the offence punishable under Section 304 of the Indian Penal Code, 1860. The Accused has been sentenced to undergo imprisonment for a period of ten years and to pay a fine of Rs.10,000/- and in the case of default in the payment of the fine, to suffer simple imprisonment for six months.

2. It is the case of the prosecution that on 09.07.2018, one Joaquim Gonsalves, resident of Varca reported to the Colva Police Station that an unknown person has killed his labourer, Shri Thadeus Bara, resident of Jharkhand and I.O. registered an FIR under Crime No.68/2018 under Section 302 IPC on the basis of the complaint. The complaint records that the Complainant undertook contracts of construction of residential and commercial complexes and buildings by engaging labourers from Jharkhand. The Complainant stated that he was constructing a building of ground plus two floors at Varca Fatrade Road and had employed for this construction, 20 labourers. The complaint further states that one of the labourers of the Complainant by name Sunil, came to the Complainant's house at

09:00 hours and informed him that one of his labourer was dead at the construction site. On the Complainant visiting the site, the Complainant noticed the dead body of his labourer Thadeus lying on a mat, on the ground floor, with his face and clothes covered in blood. He also saw the body of the deceased covered with multi coloured blanket and a green colour mosquito net and on inquiring with his other labourers, he was unable to receive any clues about the incident that led to the death of his labourer. He then made a complaint to the Police Station where the FIR was registered.

3. It is further the case of the Prosecution that thereafter the I.O., Filomeno Costa requested to depute a photographer and a dog squad to the Police Station and a further request was put in to the Forensic Laboratory to depute a Forensic Team with a Fingerprint Expert. The I.O. proceeded to the scene of the crime along with the Complainant immediately, thereafter where the scene of offence panchanama was drawn up. At the scene of offence, apart from construction material scattered on the ground a wooden rafter was seen resting on the wall of the building and the body of a male person identified by the Complainant as Thadeus Bara, resident of Jharkhand was shown to the I.O. With the help of the Scientific Assistant, control samples of blood were taken from the ground near the head of the deceased apart from various other samples, which were packed and sealed under panchanama. Bloodstains were also lifted from the laterite stone found

at the scene and a green colour mosquito net, covering the body which had bloodstains on it, was also attached and sealed.

4. It is further the case of the Prosecution that apart from recovering several M.Os. from the scene of the offence, besides some bloodstained clothes, the I.O. also attached a wooden rafter which had bloodstains on it and metallic nails protruding from the rafter. An inquest panchanama was drawn up on 09.07.2018 and the body was removed from the site after photographs were taken of the corpse and the body was sent for autopsy. The Accused Ignatius was arrested on the same day in the evening and sent for medical examination. His clothes and mobile phone were also attached and sent for forensic examination. It is further the case of the Prosecution that a statement of one eyewitness to the assault by the Accused on the deceased, of one Ajay Dungdung was recorded, and the same witness has also given his statement under Section 164 Cr.P.C. before the Judicial Magistrate thereafter.

5. According to the Prosecution, the post mortem report reveals that the cause of death of the deceased was due to facio-cervico-cranio-cerebral damage as a result of a fracture/dislocation of the C1 and C2 cervical vertebrae, caused by impact of a blunt weapon. It is the Prosecution's case that based on the eyewitness account of Ajay Dungdung, the weapon used by the Accused to assault the deceased, was a wooden rafter, which was attached during investigation. The

weapon report of the Forensic Department of Goa Medical College, according to the Prosecution, opines that the injuries which were the cause of the death can be caused by this weapon.

A charge sheet came to be filed against the Accused alleging offences of Section 302 IPC. The Accused pleaded to be tried. After charge was framed by the Sessions Court, 16 witnesses were examined by the Sessions Court. On conclusion of the Prosecution evidence, statement of the Accused under Section 313 Cr.P.C. was recorded; the Accused did not lead any evidence. The Sessions Court has convicted the Accused under Section 304 IPC, and sentenced him to undergo imprisonment of a term of 10 years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment of 6 months.

6. The judgment of conviction passed by the Sessions Court has been impugned in this appeal on various grounds which have been argued by learned Advocate Mr. L. Raghunandan, appointed under the Free Legal Aid Scheme on behalf of the Appellant. The submissions advanced by the Appellant are the following:

- a) Based upon the evidence on record, there are glaring discrepancies and contradictions in the evidence led by the Prosecution which give rise to serious doubts in the version of the Prosecution case; it was submitted that the allegations made in the charge sheet, that it is the Accused who has committed

the homicide have not been proved beyond reasonable doubt, and this is borne out from the evidence of the only eyewitness, who claims he has seen the incident of the Accused assaulting the deceased. It was submitted that the sole witness Ajay to the alleged incident, was himself in an inebriate state at the relevant time and reading of his evidence would demonstrate that his story is so improbable and his conduct, both on the date of the incident, and during the intervening night/morning of 09.07.2019 would leave serious doubt as to whether his evidence is to be considered to be reliable.

- b) It was further submitted that from the evidence of the I.O., there is serious doubt as to what formed the basis for the I.O. to conclude that it was the Accused alone who had committed the offence; it is the submission of the Appellant that the statement of the lone eyewitness Ajay was recorded on 20.09.2018 and his further statement under Section 164 Cr.P.C. was recorded on 28.09.2018 The Accused was arrested on 09.07.2018, the very evening of the day when the homicide was discovered. There was no identification of the Accused done by any of the witnesses, prior to his arrest, and the only eyewitness Ajay had not even given his statement or been in touch with the Investigating Officer, prior to the arrest of the Accused. On this count alone, a serious doubt is raised as to

how the I.O. ruled out the involvement of any other person and concluded it was only the Accused who has committed the offence. The arrest of the Accused on 09.07.2018 was in the absence of any witness positively stating, during the course of the investigation till that time, that it was the Accused who had committed the offence.

- c) The learned Advocate for the Appellant, has made reference to the autopsy report and the various reports of the forensic examination of the weapon allegedly used for the commission of the offence, to submit that from the depositions of the experts, there is no evidence whatsoever that correlates the use of the weapon attached (wooden rafter) to the injuries found on the deceased person or the bloodstains found at the site and on other material attached, more specifically on the weapon and the clothes worn by the Accused, to be that of the deceased. It was submitted that in the absence of any other evidence to support the sole eyewitness testimony, it would be unsafe to convict the Accused, when the evidence of the eyewitness himself is unreliable.

7. Learned Public Prosecutor has supported the Judgment rendered by the Sessions Court submitting that it does not call for interference as the findings given are based upon the correct appreciation of the evidence on record.

8. The following points arise for determination in this appeal:

- a) Whether, on a re-appreciation of the evidence before the Sessions Court, the Judgment recording a conviction of the Accused of an offence under Section 304 IPC is sustainable.

9. For ready reference, the witness number and the subject matter of the deposition of each witness is stated in the tabular chart drawn below:

SR. NO.	WITNESS	NAME	DEPOSITION
01	PW-1	Joaquim Gonsalves (Complainant)	PW-1 deposed that he had employed 20 Labourers at the Varca site, and that all 20 of them resided on the site itself. He states that he was informed by one labourer (PW-5/Sunil) that a labourer (deceased) is lying near the staircase pursuant to which he states to have lodged a complaint at the Colva PS against unknown accused. He further identified his signature on the memorandum of autopsy.
02	PW-2	Pedro Fernandes (Witness, Arrest Panchanama)	PW-2 deposed that he was requested to act as Pancha witness while drawing the Arrest Panchanama at the Colva Police Station. He states

			that when he entered the Police Station, he was shown a person who was sitting in the IO's cabin and was told that the person is a suspect in the murder case. [This statement of PW-2 contradicts the Arrest Panchanama which states that the suspect (accused) was brought to the IO's cabin whilst the pancha witnesses were already present there. PW-2 was declared by the Public Prosecutor to be hostile]
03	PW-3	Ravi Chawhan (Witness, Scene of Offence Panchanama)	PW-3 deposed and verified the contents of the Scene of Offence Panchanama and identified the exhibits (MOs) sealed at site. His deposition was consistent with the contents of the Scene of Offence Panchana and no contradictions were recorded.
04	PW-4	Mahendra Bhandari (Police Photographer)	PW-4 deposed to have reached Varca site at 12:00 hours after having received a message from Colva PS at 11:00 hrs requesting him to report to PI Colva. He deposed to have clicked about 35 photographs

			of the proceedings of the Scene of Offence Panchanama and 16 photographs of the Inquest Panchanama which were transferred to the official computer and burnt into two different CDs.
05	PW-5	Sunil Kujur (Witness, Labourer)	PW-5 testified that he discovered the deceased's dead body when he inquired about the deceased not reporting to work on 09.07.2018, and he immediately informed the contractor, PW-1, at 09:00 am. He stated that he did not see the accused at the site on that morning and that PW-13, Ajay Dungdung, was sleeping upstairs and was only called down after police arrived. In cross-examination, PW-5 admitted he did not know who was responsible for killing the deceased.
06	PW-6	Ambrose Bara (Witness, Labourer)	PW-6 states that on 08.07.2018, he collected his payment, went to Margao, returned to the site around 6:00 pm, had dinner, and went to sleep. He was awakened at 9:00 am on 09.07.2018 by Sunil's shouts,

			and although he was informed about the incident, he remained on the fourth floor out of fear.
07	PW-7	Dr. Madhu Ghodkirekar (Forensic Expert)	PW-7 deposed regarding the forensic examination of the deceased, confirming the veracity of the contents of the Forensic Examination Report/ Autopsy Report.
08	PW-8	Dr. Pannag Kumar (Medical Examiner of the Accused)	PW-8 deposed regarding the medical examination of the accused, confirming the veracity of the contents of the Medical Examination Report of the Accused.
09	PW-9	Dhuphaj Mahato (Witness, Labourer)	PW-9 stated that the deceased had told him that the accused and Ajay were not contributing equally for groceries. He further stated that there was a verbal argument between the deceased and the accused on the night of 08.09.2018. However, during cross-examination, he clarified that he had not personally witnessed or heard the argument but was informed

			about it by someone else.
10	PW-10	Christopher Dungdung (Witness, Labourer)	PW10 stated that Thadeus (deceased) had previously mentioned that his group members were not contributing equally for groceries and that he was planning to cook separately. He also heard loud discussions about money transactions on the ground floor but did not investigate further. In the morning of the 09.08.2019, he was informed by PW-9 that Thadeus was killed at the site.
11	PW-11	Cruz Viegas (Witness, Attachment Panchanama)	PW-11 described the proceedings of the Attachment Panchanama drawn on 12.07.2018, confirming the contents of the said Panchanama and identifying the MOs obtained from the Carmona site.
12	PW-12	Harish Raut Dessai (PSI, Colva PS, Attachment Panchanama)	PW-12 stated that the accused, on 12.07.2018, expressed his willingness to disclose that he had kept two bags belonging to him at Sushila Constructions, Carmona. PW-12 further deposed regarding the proceedings of the

			Attachment Panchanama conducted at Carmona on 12.07.2018.
13	PW-13	Ajay Dungdung (Eye Witness, Labourer)	PW-13 has deposed that he, along with the deceased and the accused, lived at a construction site in Varca where they shared responsibilities for groceries and cooking. On the day of the incident, the accused and deceased went to purchase groceries, while PW-13 returned home from Margao at around 6 PM when he found the deceased and the accused arguing over grocery contributions, with the deceased contributing less. He advised the accused not to assault the deceased, stating further that the accused was intoxicated at the time. Despite this, the accused assaulted the deceased at the back of his head with a wooden log under the staircase, then covered him with a mosquito net and fled. PW-13 slept in the other building afterward, and his statement was recorded by police three days later. In cross examination, he states that the

			assault on the deceased was from the right side portion of the accused. (The Section 164 statement of PW-13 was recorded on 28.09.2018, which is more than two months after the incident.)
14	PW-14	Sandip Chari (Witness, Arrest Panchanama)	PW-14 deposed regarding the proceedings of the Arrest Panchanama, confirming the contents of the same.
15	PW-15	Joljas Xaxa (Witness, Labourer)	On 09.07.2018, PW15 went to the Carmona building and went to sleep on the first floor after dinner. The next morning around 05:30 AM, he observed the accused sitting in the parking area, talking with one Laranteus, and heard the accused mention a murder at his site of work and request monetary help, which was refused. On that day, he also saw the accused with two bags in the parking area.
16	PW-16	Filomena Costa (Investigating Officer)	PW-16 testified regarding the entire investigation in relation to the offence. He stated the wooden rafter (murder

			weapon) was found 3.12 meters from the deceased's body, and the accused was arrested on 09.07.2018 in the presence of two witnesses. He further stated that the eyewitness's statement was recorded on 20.09.2018, which was delayed given that the said witness had started working on a different site during the intervening period, and the officer has denied the presence of PW-13 on the site in the morning on 09.07.2018.
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10. The investigation, in the present matter, has commenced on lodging of the FIR Crime No.68/2018 under Section 302. At that time, neither the written complaint filed by PW1 Joaquim, contractor at the construction site, where the deceased Thadeus was found, nor any other witness had suggested either the name of the suspect or who had committed the offence; the FIR records that an unknown accused had committed the offence.

The complaint lodged by PW1 on 09.07.2018 at 10:15 a.m. at Colva Police Station states that PW1 had engaged labourers from Jharkhand at a construction site consisting of a ground plus two floors

building, at Varca, Fatrade Road. The complaint states that about 20 labourers were engaged at this site, all of whom reside at the construction site. The complaint further records that at 9:00 hours on the same day, the complainant's labourer Sunil (PW5) came to his house and informed him that one of his labourers was dead, at the construction site. The complainant rushed to the construction site and noticed at the entrance of the building, near the staircase, towards its right side, that a body of a labourer named Thadeus Bara was lying on a mat, on the ground floor, with his face facing westward. There was blood on the face of the body and on the clothes, and on the cement floor. The complainant observed that some blood had also splashed on the laterite stones close to the body. He noticed that the body was covered with a multi coloured blanket and a green coloured mosquito net. On inquiries with his labourers, the complainant could not elicit any clue with regard to the incident. He also states that he was not aware as to who killed Thadeus.

On this basis, the FIR came to be registered at 10:15 a.m.

11. In his evidence given to the Court, the complainant has recorded his deposition consistent with the statements made in the complaint. He has identified his signature on the complaint and on the memorandum of autopsy; he has identified photographs of the construction site where the body was found, the mosquito net and bedsheet which covered the body and photographs taken at the time

the scene of offence panchanama was drawn up, to be the ones of the site where the body was found.

In cross examination, he states that on receiving a call from his labourer Sunil(PW-5), who had informed him of the incident that took place at the site at 9.00 a.m, on 09.07.2018, he proceeded to the construction site and observed one person, lying near the staircase, with blood oozing from his head. He has deposed that he noticed a mosquito net and one bedsheet covering the body and has identified this person as his labourer Thadeus Bara. He further deposes that he reached the Police Station on 09.07.2018 at 9:30 a.m., from his site and states that he was alone at that time at the Police Station. In his entire evidence, he does not state that the Accused was working at his construction site at Varca. He also does not identify the Accused as being a worker on his site or that the Accused was present at the site between 9.00 hours on 09.07.2018 and during the recording of the scene of offence panchanama (to which he is a signatory) which ended on the same day at 15.40 hours. From this witness, what can be ascertain is that the accused was neither identified by this witness as his worker, at that site, nor does he established the presence of the Accused between 9.00hours and 15.40hours on the same day, at the site.

12. According to PW-1 Joaquim, the information regarding the disclosure of a corpse at the construction site at Varca, was given to

him by PW5 Sunil, who came to his residence around 9.00 hrs. on 09.07.2018. The deposition of PW5 Sunil records that he discovered the body of the deceased Thadeus on 09.07.2018 at around 9.00 a.m., when he was watering the plastered portion on the rear of the building site. He has stated that he called out to Thadeus on six occasions, asking him why he was not attending work, and since there was no response, he came down to the floor where Thadeus used to sleep and found Thadeus lying under the staircase covered by a mosquito net. On lifting the net, he found the face of Thadeus was full of blood, and being frightened he ran away and informed the contractor (PW1 Joaquim) at his residence. He states that PW1 and he returned to the site and thereafter, informed the police.

13. PW5 Sunil has identified the accused as a labourer working together with him at the same site. He has deposed that on Sunday, 08.07.2018 he played a football match after 8.00 a.m. at a ground between Varca and Peda, and returned to the construction site at 5.30 p.m.; When he returned he saw the accused, Ajay (PW13-the sole eye witness) and Thadeus (the deceased) returning together from the market carrying some things. Thereafter he had bath and prepared his dinner, and at around 9.00 p.m. he went to the rear side of the building for a walk, in the area where the accused and his group used to stay. He has stated that he noticed one Ajay (PW13-the sole eye

witness), and Thadeus (the deceased), consuming liquor near the staircase. Thereafter he came back to his room and went to sleep.

From the deposition of PW5 Sunil, it is established that though he has seen the accused, PW13 Ajay and the deceased Thadeus returning to the site at 5.30 p.m. on 08.07.2018, he has not stated that the accused was with the deceased Thadeus and Ajay PW13 at 9.00 p.m., but positively states that PW13 Ajay was seen with Thadeus. This would be an extremely relevant circumstance to establish the presence of the accused, with the deceased Thadeus and PW13 Ajay who later on testifies, as a sole eye witness, that he witnessed the incident of the accused assaulting the deceased Thadeus with a wooden rafter.

14. PW5 Sunil, has further deposed about the circumstances under which he found the body of Thadeus at 9.00 a.m. on 09.07.2018, and has specifically stated that he had not seen the accused at the site when he noticed the body of Thadeus. He has also stated that PW13 Ajay (the sole eye witness) was sleeping on the upper floor on 09.07.2018, and he was called down after the police arrived at the spot. He also states that he had no discussion with Ajay. What is even more relevant is that in cross-examination, this witness states that the contractor “Jack” (PW1), had inquired with him as to who killed Thadeus, but he did not know who had committed the act and hence did not disclose any name to him. He has also specifically denied a

suggestion that when he went for a walk the previous night, that he had seen the accused, Thadeus and Ajay PW13 drinking Whisky whilst having dinner. The deposition of PW5 Sunil therefore rules out the presence of the accused or that the accused was in the company of the deceased on the night of 08.07.2018. This circumstance is very relevant and requires to be considered, in the light of the fact that the conviction of the appellant, is based upon the sole eye witness testimony of PW13 Ajay, who, according to PW5 Sunil, was the only person found with the deceased at 9.00 p.m. on the night of the incident.

15. The deposition of PW13 Ajay, who, according to the prosecution is the sole eye witness, would have to be considered, in the light of the observations made by the Supreme Court, in a catena of judgments, which lay down the circumstances to be considered in such a case. Reference is made to the *Lallu Manjhi and Another v/s State of Jharkhand*, (2003) 2 SCC 401 in which the Supreme Court has first laid down the circumstances under which the Court may consider whether the sole eye witness's testimony is to be considered as **Wholly Reliable** or whether **Wholly Un-reliable** or whether **Neither Wholly Reliable nor Wholly Un-reliable**. In this regard, the following observations made by the Supreme Court may be relevant for considering the deposition of PW13 Ajay:

“10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before actin upon the testimony of a single witness.” (See: Vadivelu Thevar v/s State of Madras)

16. The Supreme Court then considers under each of these three captions, as to how the Court may proceed to base its judgment, and the following observations would be relevant in that context:

“11. In the case at hand, we can neither place implicit reliance on nor a totally discard the testimony of Mannu (PW 9) as it can neither be called wholly reliable nor wholly unreliable. Mannu is a witness who could have been naturally present with his brother while ploughing the field. However, we find his testimony to have been substantially improved at the trial than what it was to begin with when the first information report of the incident was lodged. Though at the trial Mannu alleges all

the 10 accused persons to have dealt blows with their respective weapons on the body of his brother Suphal Hansda, but that is certainly not correct. If 10 accused persons had dealt even one blow each, there would have been a minimum of 10 injuries on the person of the deceased. It is the specific case of Mannu that so far as the chest injuries (fracture of ribs) are concerned, it was the result of the accused Gurua having climbed upon the body of the deceased after he had fallen down and then having pressed him against the ground. As the fracture of ribs is not accompanied by any apparent injury on the body, in all probability such injuries were not caused by any weapon. The injuries could have been caused either by pressing hard as alleged or even by forcefully pushing the deceased during the course of any scuffle. The deceased has suffered only two other injuries, which obviously were not caused by three persons. So far as the assault on the deceased is concerned, there is so much of chaff collected by Mannu (PW 9) in his deposition that it becomes very difficult, almost impossible, to sift the grains of truth from out of the mass of chaff of falsehood and exaggerations.

12. There is another very material aspect of the incident and we cannot resist observing that the investigation in the case has been very defective. The investigating officer did not prepare any

site plan of the place of occurrence. Samples of bloodstained earth were not sent for chemical examination. No effort seems to have been made to recover and seize any weapon of offence. No witness of the locality, who could have been present near the place of occurrence at the time of the incident, has been interrogated. It was /cultivation time and agriculturists or labourers busy ploughing the fields must have been present in the neighbourhood. The witnesses referable to the neighbouring piece of land could have deposed as to the question and nature of possession over the land in dispute; as to whether it was cultivated previously and if so by whom whether the complainant party or the accused persons. The Village Patwari and Chowkidar would have been most material witnesses. Their interrogation and collection of entries in revenue papers would have revealed who was in actual possession of the land prior to the incident. The Court is just left in doubt guessing whether it was the complainant party in possession of the land illegally obstructed by the accused persons or whether the accused persons were in possession of the land which was sought to be trespassed upon by the deceased and his brother Mannu (PW 9) and the attempted trespass was sought to be prevented and a pre-empted by the accused persons.

13. It is, therefore, clear that the genesis or the root cause of the incident is not known. The most crucial question as to the factum of possession over the land in dispute immediately preceding the date of the incident cannot be determined and any specific finding in that regard arrived at. The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident as given in the Court is substantially in departure from the earlier version as contained and available in the first information report. We cannot, therefore, place reliance on the sole testimony of Mannu (PW 9) for the purpose of recording the conviction of all the accused persons.

17. In the background of the above observations, one needs to consider the evidence led through PW13 Ajay. Ajay has deposed that he knows PW3 Ravi, the deceased Thadeus as well as the accused Ignatius and that they all hail from the State of Jharkhand and work on different sites of their contractor “Jack” (PW1). He has deposed that the accused, deceased and himself returned to Varca to the construction site at 6.00 p.m. on 08.07.2018 after purchasing groceries. The accused and deceased were found in “the room”, and he

noticed that the accused and deceased were fighting with each other in connection with contribution towards groceries. He has testified that the accused and deceased regularly fought over such contribution, as the accused was refusing to pay towards purchase of groceries and would contribute less. He then deposes that there was a fight between the accused and deceased over this contribution, and the accused was assaulting the deceased. He further deposes that he attempted to dissuade the accused from continuing the assault but he would not listen as he was under the influence of alcohol. He further deposes that the accused assaulted the deceased on the back side of his head with a wooden log when they were below the staircase, and thereafter the accused lay the deceased on the floor and covered the deceased with a mosquito net and ran away from the site, carrying his bag with him. He then deposes that on seeing this, he got frightened and went to the other building and slept. He further states that the police came to the spot in the early morning hours and the search for the accused started. He left the job at the site and went to Savordem. He then states that his statement was recorded by the police after about three days, and later he was called before a Magistrate at Margao where his statement under Section 164 Cr. P.C. was recorded and he disclosed these facts.

18. In his cross-examination, PW13 states that on that date (08.07.2018) he had consumed alcohol (1 quarter bottle) and after the

assault, the accused left the rafter at the site and ran away. He states that the back of the deceased was towards the accused when the assault took place and the assault was from the right side of the accused.

19. On reading this evidence, at first look, the deposition of PW13 appears to be reliable. However, certain discrepancies as to the time of assault are evident, namely that according to PW13 the assault took place at 6.00 p.m. immediately after they returned together from the market. PW5 Sunil has deposed that he saw the accused, PW13 and the deceased returning from the market at 5.30 p.m., but has also deposed that he saw PW13 and the deceased at 9.00 p.m., drinking below the staircase, when he went for a walk on the night of 08.07.2018. The deposition of PW13 is also fairly consistent with his statement under Section 164 Cr.P.C. before the Magistrate, recorded on 28.09.2018. His statement under Section 161 was however taken on 20.09.2018. The deposition, considering the discrepancies in the timings given by PW13 would therefore render the evidence given by this sole eye witness to be neither wholly reliable or wholly un-reliable. One would therefore have to consider the evidence of the other witnesses, including the medical evidence, to corroborate the deposition offered by PW13 on the incident.

20. What is pertinent to note at this stage are the following facts which are borne from the evidence on record:-

(a) From the deposition of PW13, the assault took place at 6.00 p.m. in the evening. In the deposition of PW5 Sunil, which appears quite reliable, he saw PW13 and the deceased sitting together under the staircase at 9.00 p.m. on 08.07.2018. PW5 has also deposed that the accused was not seen by him with PW13 and the deceased at 9.00 p.m. nor the next day. In fact, from the deposition of PW5, the presence of the accused in the company of the deceased and PW13 is ruled out, at 9.00 p.m. of that night. PW5 also states that the accused was not at the site on the morning of 09.07.2018.

(b) PW5 has deposed that PW13 Ajay was sleeping one floor above the scene of offence on the morning of 09.07.2018, and came down to the floor where the deceased was found, when the police arrived (according to evidence of several witnesses, the police arrived after 9.30 a.m.). There is thus a serious discrepancy as to the presence of the accused at the site and in the company of the deceased and PW13 who states he saw the assault, at 6.00 p.m. on 08.07.2018, which is in evidence of PW13. The deceased was seen alive by PW5 at 9.00 p.m. and was last seen, according to the evidence of PW5 at this time, with PW13. PW13 would therefore, in these circumstances, also be a suspect.

(c) Both, the deceased and PW13 were found drinking alcohol at 9.00 p.m. according to the statement of PW5. PW13 himself admits that he drank quarter of a bottle of alcohol, but states he witnessed the assault at 6.00 p.m. There is no evidence on record from the IO or from any other witness to suggest the spot from which the accused was picked up and brought to the police station on 09.07.2018, when he was arrested at 18.00 hrs. at the Colva police station.

(d) From the evidence, it is established that PW13 has not deposed as to when he has given the police his statement disclosing the assault by the accused but states he left the job and went to Savordem. He also states that his statement was recorded after about three days of the incident which would be on 11.07.2018. His first statement under Section 161 Cr.P.C., was however recorded on 20.09.2018 and his statement under Section 164 Cr.P.C. was recorded by the Magistrate on 28.09.2018, more than two months after the incident. The question then would be, from where did the investigating officer receive information, in the absence of the statement of PW13 Ajay (who left for Savordem immediately after the incident) to conclude that it was the accused who had committed the crime; The accused was arrested on the very day of the FIR being lodged (09.07.2018), the Inquest Panchanama and Scene of

Offence Panchanama being prepared. The record is silent as to by whom the accused was identified as the assailant in the crime.

(e) The deposition of PW2 (Pedro) who has witnessed the Arrest Panchanama, which commenced at 18.00 hrs and concluded at 19.30 hrs on 09.07.2018, records that the investigating officer who was present at the police station showed him one person sitting in the corner of the police station as the suspect in a case of murder. He states that the assailant was caught by the Colva Police Station and he happened to be at the police station to witness this event since it became known to the entire village. His deposition in his examination-in-chief appears very consistent with the statement in the panchanama, however, for no cogent reason, this witness was declared hostile, purportedly since he had deviated from the contents of the panchanama, and was then cross-examined by the Public Prosecutor. During the cross-examination he has stated that when he went inside the cabin of the IO (Filomen) the accused was present there and then he witnessed the arrest and attachment of the clothes of the accused. In his entire cross-examination he has deposed consistently with what is recorded in the Arrest Panchanama which is at Exh.20. This witness has not been shaken at all in the cross-examination by the PP after being declared hostile. What this deposition reveals is that the

accused was already in the chamber of the IO at the time of arrest at 6.00 p.m., though there is no witness statement recorded from PW13 or any other witness to establish that the accused was seen committing the assault on the deceased.

(f) According to the deposition of the IO PW16, the FIR was registered against an unknown accused on 09.07.2018 at about 9.30 a.m. when PW1 Joaquim reported the presence of the body of the deceased at the Varca construction site. This was followed by the IO proceeding to the site where the body was found, where the dog squad was called and the scene of offence panchanama was prepared between 12.30 and 15.40 in the afternoon. After the scene of offence panchanama was recorded, the inquest panchanama commenced at the site at 15.45 hrs. and concluded at 17.05 hrs. which was followed by the body of the deceased being sent for post mortem. The arrest panchanama is stated by the IO to have commenced at 18.00 hrs. and was concluded at 19.30 hrs. at the police station.

The evidence of the IO does not record that any eye witness statements were taken of any witnesses on that day. This fact would be relevant, to conclude that the IO had no independent source or information of positive eye witness identification that the accused had committed the offence. The IO does not state anywhere that it is PW13 Ajay who informed

him that he had seen the accused committing the offence. In cross-examination he denies that PW13 was available at site on that date. It can be safely concluded therefore, that the sole eye witness account of the incident related by PW13 Ajay had not been related to the IO on 09.07.2018, on which date the accused was placed under arrest at 18.00 hrs. at the police station.

(g) Further, the evidence of the IO nowhere discloses the place from which or at which the accused was picked up or detained, even as a suspect, and at whose behest the accused was named as a suspect of having committed the crime. PW1 Joaquim has not disclosed the name of the accused as being either present or a suspect, on the relevant date. PW5 Sunil, who has deposed that he has seen the accused with PW13 and the deceased at 6.00 p.m. pm 08.07.2018 and against whom the deceased and PW13 together at 9.00 p.m. on 08.07.2018, has categorically stated that he has not seen the accused at the site after 6.00 p.m. on 08.07.2018 as also on the next date i.e. 09.07.2018. He has also nowhere deposed that the accused was a suspect or may have committed the crime. The IO admits in his cross-examination that the statement of the eye witness Ajay PW13 was recorded on 20.09.2018 (almost two months after the incident) and explains the delay in recording his statement

since PW13 was working at another site during that period. He has denied the suggestion that PW13 was available at the site where the body was found. This also rules out the fact that the sole eye witness account of PW13, implicating the accused, was the source of the information to arrest the accused on 09.07.2018 at 6.00 p.m. The inconsistencies in all the aforementioned facts therefore clearly leave a serious doubt as to whether the accused would have been said to be the only person who has committed the offence. The discrepancies in the aforementioned depositions also establish that there is a serious doubt as to whether the testimony of the sole eye witness PW13 Ajay should at all be considered as reliable. In fact, on considering all the aforementioned evidence, the only conclusion that one can reach is that the testimony of the sole eye witness PW13 Ajay is unreliable and cannot form the basis for sustaining a conviction of the accused.

21. The post mortem report has been exhibited through Dr Madhu Ghodkirekar. He has also exhibited the weapon report, the weapon allegedly used to commit the offence being a wooden rafter of length 78 cms. weighing 2.8 kgs. The post mortem report reveals six injuries/wounds on the body of the deceased, injuries no.2 to 4 and injury no.6 being abrasions on the left palm and right outer aspect of the back of chest. Injury no.5 is a contused laceration at the web

between the index and middle finger. Injury no.1 was a bruise of 18.00 cms x 12.00 cms covering the entire left side of the face, left mandible, left pinna of the ear with one contused laceration of 1.5 cms x 0.5 cms over the left eyebrow. There was also found under this injury, a fracture of the right side of the left mandible at midline, and there is corresponding fracture dislocation of the C1 and C2 cervical vertebrae. The deposition records that the cause of death was due to facio-cervico-cranio-cerebral damage as a result of the above injury. What this means is that the death was caused by cerebral damage due to the fracture and dislocation of the C1 and C2 cervical vertebrae. According to the opinion of the doctor who conducted the post mortem, a blow from the wooden rafter could have resulted in such injuries and such injuries would in normal course result in death.

What has been established by this evidence is that the injuries that were cause of the death were a fracture of the C1 and C2 vertebrae, which is at the base of the skull. What is evident therefore is that the rafter would either had to be swung from right to left and make contact with the left mandible, which might result in torsion of the skull, breaking the C1 and C2 vertebrae or the contact between the rafter and the victim would be a direct impact on his neck, perhaps from the side of the victim. Swinging such a rafter from behind the victim from right to left is very unlikely to cause any injury to the back of the head, and would certainly not cause a fracture to the left side of

the mandible. The fracture to the left side of the mandible would more likely be caused when the rafter is swung from the front of the victim from the right to the left making contact with the midline of the mandible, which is consistent with the deposition of the doctor, and the post mortem report.

22. Inconsistent with this medical evidence, PW13 deposes that the accused assaulted the deceased on the back side of his head with a wooden log, and in cross-examination he states that the assault was from the rear of the deceased from the right side of the accused. This deposition is inconsistent with the injury of a fracture on the left mandible as also with the injury on the C1/C2 vertebrae, which would require the assailant to be standing to the side of the victim swinging the rafter from right to left or from left to right, both of which would be inconsistent with the mandible injury seen on the deceased.

23. This apart, PW13 categorically deposes that the police came to the spot during early morning and the search for the accused started, but he nowhere states that he had informed the police at any time on that day i.e. 09.07.2018 that he had informed the police of his eye witness account of the incident. In fact, PW13, in cross-examination states that he left the job and went to Savordem, and at one point states that his statement was recorded by the police after three days, and thereafter by the Magistrate.

The conduct of PW13 during and after the incident recounted by him in his deposition is also strange and cannot be termed as a normal reaction of any human being to the incident. He has deposed that he was inebriate state when the incident took place at 6.00 p.m. He has deposed that after he saw the assault at 6.00 p.m. he got scared and went to sleep. He has also deposed, quite inconsistent with the medical evidence, that the accused kicked the deceased on his abdomen (no injury found on the abdomen of the deceased). He has then deposed that in the morning, the dead body was at the same place, but he did not tell anybody out of fear and went to sleep again. The behaviour of PW13 Ajay cannot be termed as a normal conduct of any person who has witnessed such an assault, and much less so, when the next morning he has deposed that the police came to the site, began to search for the accused and even then, instead of giving his eye witness account to the police, he went back to sleep. This evidence is also totally inconsistent with the evidence of PW1 Joaquim and PW5 Sunil. PW5 Sunil has deposed that he has not seen the accused on the morning of 09.07.2018 but he noticed PW13 sleeping on the upper floor and was called down after the police arrived. He has also deposed that there was no discussion with Ajay PW13 on the incident. This establishes that though PW13 was seen at the site on 09.07.2018, when the police arrived, the police had no information from the sole eye witness, as to who had caused the death of the deceased.

24. Considering all the aforementioned elements, there is a serious doubt created as to whether it was the accused who had committed the offence. The evidence of PW13 Ajay, the lone eye witness, is full of inconsistencies and is not corroborated by the evidence of other witnesses or the medical evidence. The benefit of doubt raised by the evidence on record must therefore weigh in favour of the appellant.

25. The findings of the Sessions Court recording guilt of the accused, beyond reasonable doubt are based on the sole eye witness testimony of PW13 Ajay which the Sessions Court found reliable. Perusal of paragraphs 25 to 34, which deal with the testimony of PW1, PW5, PW13 and the medical evidence, records findings that the testimony of PW13 is corroborated by the evidence of the other witnesses. However, based upon the inconsistencies in evidence pointed by me above, and the fact that the evidence of PW13 Ajay is uncorroborated, leaves a serious doubt as to whether the accused alone has committed the offence. As pointed out above, the learned Sessions Court has totally missed the inconsistency in the procedure adopted to arrest the accused nor has it addressed itself to, on the basis of whose statement, identifying the accused as the person who committed the crime, it could be established beyond reasonable doubt that the accused was guilty of the offence charged. The testimony of PW13, after applying the principles laid down in *Lalu Manjhi (supra)*, would certainly fall within the category of being unreliable or at most within

the category of being not wholly reliable or being wholly unreliable. The evidence of PW13 required detailed corroboration, which for reasons cited above, the Sessions Court could have never concluded such evidence of PW13 could be the basis for conviction of the accused.

26. For the reasons stated above, the impugned Judgment and Order dated 08.06.2020 convicting the appellant for the offence under Section 304 IPC is quashed and set aside. The appellant Ignatius Minj stands acquitted of all charges under Section 302 IPC in Sessions Case (302) No.15/2018. He shall be released from the custody of the Central Jail Colvale where he is presently lodged, unless required in any other case.

27. The Superintendent Central Jail, Colvale shall forthwith release the appellant Ignatius Minj, after completing all formalities, and if not required in any other case.

28. The Member Secretary, Goa State Legal Services Authority shall ensure payment of fees to the Counsel appearing for the Appellant under Legal Aid Scheme. One must make mention of the pains taken by the Counsel appearing for the Appellant on Legal Aid Mr. L. Raghunandan who has very ably assisted the Court in disposal of this appeal.

29. Parties to act on an authenticated copy of this order.

VALMIKI MENEZES, J.

In continuation of Judgment dated 09.09.2025:

30. On an official e-mail which may be sent by the Registrar (Judicial) of this Court, who shall communicate this judgment and order to the Superintendent, Central Jail Colvale for release of the Appellant. The communication may also be completed through FASTR platform, if available. In addition, the Member Secretary Goa State Legal Services Authority shall ensure that this order is communicated to the Superintendent of Central Jail and ensure its compliance.

VALMIKI MENEZES, J.