

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

CRIMINAL APPEAL NO. 110 OF 2022

Rizwan Sarfaraj Shaikh

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

**WITH
INTERIM APPLICATION NO. 933 OF 2024
WITH
INTERIM APPLICATION NO. 2502 OF 2025
IN
CRIMINAL APPEAL NO. 110 OF 2022**

Ms. Shaheen Kapadia a/w. Irfan Unwala for Appellant.

Ms. Gauri S. Rao, APP for State/Respondent.

Mr. Akshay Bankapur (Appointed Advocate) for Respondent No.2.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 29 SEPTEMBER 2026

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and Order dated 04.07.2019 passed by the learned Sessions Judge, Greater Bombay, in Sessions Case No.806 of 2016. By the impugned Judgment and Order, the Appellant was convicted and sentenced as follows:

- i) The Appellant was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer rigorous imprisonment for one year.
- ii) He was convicted for commission of offence punishable u/s 37(1)(a) r/w 135 of the Bombay Police Act, 1951 and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer rigorous imprisonment for one month.
- iii) Both the substantive sentences were directed to run concurrently.
- iv) The Appellant was granted set off U/s.428 of the Cr.PC.

2. There were two more accused who faced the trial along with the Appellant. They were acquitted. The Appellant was the original Accused No.3.

3. Heard Ms. Shaheen Kapadia, learned counsel for the Appellant, Ms. Gauri Rao, learned APP for the State-Respondent

No.1 and Mr. Akshay Bankapur, learned Appointed Advocate for the Respondent No.2.

4. The prosecution case, in brief, is as follows:

The Appellant was indulging in illegal activities of committing theft of electricity by connecting the wires illegally. One week prior to the incident dated 08.08.2016, he had climbed on the roof of the house of Bakarali (deceased in this case). There was some damage to the roof. However, on that occasion, the issue did not escalate further. On 08.08.2016 again he climbed on the roof to connect the wires illegally. Bakarali and his brother Akbarali objected to his activities. He climbed down. There was a quarrel between them. The Appellant's family members joined him in quarreling with the family members of the deceased. It is the prosecution case that the Appellant removed a knife from his pocket and gave two blows on the back of Bakarali. The Appellant then ran away. Bakarali was taken to the Hospital, but he succumbed to his injuries.

5. C.R.No.319 of 2016 was registered at Shivaji Nagar

police station. The investigation was conducted, the spot panchanama and other panchanamas were conducted, the postmortem was carried out and the statements of the witnesses were recorded. During investigation, the knife was recovered at the instance of the Appellant which was concealed below the roof of his own house. The clothes of the Appellant and the deceased were seized and sealed. The articles were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

6. During trial, the prosecution examined eight witnesses including two eye witnesses, the panchas, the Medical Officer and the Investigating Officers. The defence of the Appellant was of total denial. The learned trial Judge considered the evidence on record and the defence of the Appellant. After considering all the aspects, the learned Judge convicted and sentenced the Appellant, as mentioned earlier.

7. PW-1 Mohd. Shamim Ansari was the first informant and an eye witness. He was the younger brother of Akbarali and

Bakarali. They were all residing together with their sisters and younger brothers. He knew the Appellant and his family members. He also knew one Shahid. The Appellant was working under Shahid. He deposed that, Shahid was illegally supplying electricity in the hutment area and the Appellant was assisting him. One Rani was his fiancée. One Nazma was Rani's mother. Eight days prior to the incident, the Appellant had climbed on the roof of PW-1's house while he was connecting cables. At that time, he broke the cement roof. PW-1 had confronted him. The Appellant had agreed to reimburse the damages. The incident took place on 08.08.2016. The Appellant and one Jafar again climbed on the roof of PW-1's house for connecting the electricity cables. PW-1's brother Akbarali confronted them. They abused him. They came down. In the meantime, Nazma and Rani (Accused Nos.1 and 2) also came there. The Appellant, Shahid, Rani and Nazma started beating PW-1, his mother and brother. The Appellant took out a dagger concealed near his back and stabbed Bakarali on his back. He gave two blows. Bakarali fell down. They all ran away. PW-1 managed to take Bakarali to the hospital, but he was declared dead. Then

they went to Shivaji Nagar police station and lodged the FIR. The FIR is produced on record at Exhibit-27.

Learned APP before the trial Court asked this witness whether he would be able to identify the dagger, if showed to him. He answered that, he was at some distance when the incident took place and, therefore, he would not be able to identify it. Nonetheless, he was shown other articles, as well as, the dagger. He then identified it.

In the cross-examination, he answered that, there were more than 500 huts in that area. Most of them used unauthorised electricity. The height of his house was 24 feet. It was double storied. The roof of the upper floor was of tin sheet. The electricity wires passed through the upper roof of his house. The FIR was lodged at 2:45p.m. on 08.08.2016. It substantially supports his case.

8. PW-2 Shabnam Ansari was another eye witness. She was the wife of Akbarali and sister in law of the deceased Bakarali. She deposed that, they all were staying together. She further deposed

that, at the time of the incident on 08.08.2016 at about 12:30p.m., the Appellant climbed the roof of their house for connecting the cables. Bakarali confronted him. The Appellant was asked to come down, but he refused and started abusing. The Accused No.2 Rani, who was the Appellant's fiancée, came there. The Accused No.1 also reached there. The quarrel became more intense. Shahid was called. He came and started beating Akbarali. There was a scuffle between PW-1's mother and Accused Nos.1 and 2. In that incident, the Appellant took out a knife and stabbed Bakarali on his back, and all of them ran away. Bakarali was taken to Rajawadi hospital, but he was declared dead before his admission. PW-2 identified the weapon before the Court. She identified the clothes produced in the Court.

In the cross-examination, she could not state the height of the mezzanine floor. She deposed that the wiring was above the mezzanine floor. Beyond this, there was hardly anything in her cross-examination.

9. PW-3 Bandenawaz Pathan was a pancha for the spot

panchanama (Exhibit-37), for panchanama of seizure of clothes of the accused (Exhibit-38) and for panchanama of seizure of clothes of the deceased (Exhibit-39). The spot of the incident is hardly in dispute. The clothes of the accused were recovered on the same day at about 6:45p.m. The Appellant was given other set of clothes, as mentioned in the panchanama.

10. PW-4 Dr. Balaji Falke had conducted the postmortem examination on 08.08.2016. He noticed the following injuries:

- i) Stab wound of size 4cm x 1.5cm x chest cavity deep over right side of back, below right scapula, placed obliquely with outer end lower than inner end. It was spindle shaped. The track entered chest through pleura and pierced the right lung middle lobe and part of lower lobe ends in the paranchyma of middle lobe.
- ii) Stab wound of size 4cm x 2cm x chest cavity deep over right side of back, below right scapula; 6cm below and slightly medial to injury No.1, placed obliquely with outer end lower than inner end. It was spindle shaped. The track entered chest through 10th intercostal space piercing pleura.

As a result, the right lung had collapsed. The left lung was intact. The pericardium was intact. Heart was intact. The

cause of death was mentioned as “Hemorrhagic shock due to multiple (two) stab injuries.” The postmortem notes are produced on record at Exhibit-47.

11. PW-5 PC Juber Mulla attached to Shivaji Nagar police station had published the prohibition order issued by the Deputy Commissioner of Police in the area of Shivaji Nagar, Baingan wadi etc. for the period between 27.07.2016 to 25.08.2016.

12. PW-6 PSI Rupesh Dalvi had registered the FIR.

13. PW-7 PI Ravindra Howale was the investigating officer. He recorded the statements of the witnesses. He deposed that, he recorded the disclosure statement of the Appellant and pursuant to that statement, seized the weapon of offence i.e. dagger which was kept under the roof of the house of the Appellant. The memorandum panchanama and the seizure panchanama are produced on record at Exhibit-56 and 56A. He seized the clothes of the deceased and the accused and sent the articles for chemical analysis. After completion of the investigation, he filed the charge-sheet.

14. PW-8 Mohd. Wali Mustaq Shaikh was a pancha for recovery of weapon, but he had turned hostile and did not support the prosecution case.

15. Apart from this ocular evidence, the prosecution produced the C.A. certificate on record. It showed presence of human blood on the weapon, clothes of the Appellant and on the clothes of the deceased. However, the blood group was inconclusive.

This, in short, is the evidence led by the prosecution.

SUBMISSIONS OF MS. SHAHEEN KAPADIA, LEARNED COUNSEL FOR THE APPELLANT:

16. Learned counsel for the Appellant submitted that, admittedly, there were about 400 huts in the area, but no independent witnesses were examined. Both the eye witnesses were closely related to the deceased. The recovery of the weapon was not proved. The pancha for recovery panchanama of the weapon did not support the prosecution case. The investigating officer did not depose about the actual statement made by the Appellant and the steps taken in recovering the weapon. The

learned Judge has discarded the evidence of recovery. She submitted that, there is no evidence against the Appellant. In the alternative, she submitted that the act attributed to the Appellant was not premeditated. There was no preparation. It occurred on the spur of the moment. Therefore, the offence would not fall within the definition of Section 300 of the IPC, but it would be covered under *Exception 4* to Section 300 of the IPC. She submitted that, at the highest, knowledge can be attributed to the Appellant and, therefore, the offence would fall within Part II of Section 304 of the IPC. She submitted that the Appellant is in custody from 08.08.2016. More than ten years have passed. Therefore, the sentence be reduced to the period already undergone by him.

SUBMISSIONS OF MS. GAURI RAO, LEARNED APP FOR THE STATE:

17. Learned APP submitted that, PW-2 Shabnam had identified the dagger produced in the Court as the murder weapon. The evidence of PW-1 Mohd. Shamim and PW-2 Shabnam was consistent. The Appellant had gone to the house of the

deceased, therefore, he was the aggressor. The intention was clear. There was an earlier incident which had taken place prior to one week and in spite of that, the Appellant had again gone to that house and, therefore, this incident was premeditated and would fall within the meaning of 'murder' as defined U/s.300 of the IPC.

REASONS AND CONCLUSION

18. We have considered these submissions. We find that the evidence of PW-1 Mohd. Shamim and PW-2 Shabnam is quite consistent. The spot of the incident is hardly in dispute. Both of them were the natural witnesses. They are the close relatives of the deceased. They also have narrated the incident right from the inception. They also deposed about the earlier incident when the roof was damaged by the Appellant. In spite of that, the Appellant again came to the same place and this incident had taken place. Their evidence is supported by the medical evidence. Therefore, though the prosecution has not examined any independent witness, we are satisfied that the evidence of PW-1 and PW-2 is consistent. The spot of the incident is hardly in dispute. It was in

front of the house. Therefore, PW-1 and PW-2 could have naturally witnessed the incident. Quality of their evidence is satisfactory. Hence, we do not find fault with the prosecution for not examining any independent witness.

19. The learned trial Judge has discarded the evidence of recovery of weapon and we agree with the observations of the learned trial Judge. The pancha for the recovery of weapon has not supported the prosecution case. More importantly, the I.O. in his substantive evidence has merely stated that the Appellant has given a statement and pursuant to that, the knife was recovered. He did not state that the Appellant had showed a particular place and the knife was recovered from that place. The substantive evidence given by PW-7 Ravindra does not satisfy the requirement of Section 27 of the Evidence Act. His only vague statement was that the Appellant had given disclosure statement and pursuant to that statement, the weapon was seized, which was kept on the roof of the house of the Appellant. PW-1 Mohd. Shamim had shown his inability to identify the weapon. In this view of the matter, the prosecution has not proved that a particular weapon was used by

the Appellant. In the context of the case, this assumes importance because the nature of the weapon would be of material significance in this case.

20. Learned counsel for the Appellant rightly submitted that the offence would fall within *Exception 4* to Section 300 of the IPC; which reads thus:

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.”

21. In this case, as per the prosecution case, the Appellant was carrying on activities of connecting wires for supplying the electricity illegally to the people in the area. For that purpose, he had climbed on the roof of the deceased’s house. The purpose for the Appellant coming there was for connecting this illegal connection. He had not gone to the house of the deceased with an intention to assault anyone. After that, he was confronted by the

deceased and his brother. Thereafter, the quarrel started. The Appellant was joined by his fiancée and her mother. On the other hand, the deceased's family members also took part in the quarrel. It is quite clear that the quarrel had started on the spur of moment. During that quarrel, the Appellant took out a knife concealed near his back and gave two blows on the back of the deceased Bakarali. Out of which, one stab reached the cavity below the right scapula piercing right lung, resulting in his death. Therefore, *Exception 4* to Section 300 of the IPC would be attracted in this case. It was a sudden quarrel. The Appellant had not acted in unusual manner. There was no premeditation to commit the offence.

22. Learned counsel for the Appellant has rightly submitted that, as a part of his activity of connecting wire cables, he could have carried the knife and, therefore, possession of knife in this particular case does not mean that, he had come prepared to cause assault by knife on anyone. In that context, the nature of weapon assumes importance. But the prosecution has not led cogent evidence to show that, it was not an ordinary knife. At the highest, it was a sharp weapon which could be used for cutting

wires. Hence, the prosecution has failed to prove that the Appellant had come there with preparation and intention to commit murder. In this view of the matter, the offence punishable U/s.302 of the IPC is not made out.

23. Learned counsel submitted that, at the highest, 'knowledge' as required U/s.304(II) of the IPC can be attributed to the Appellant, and not the intention. However, we are unable to agree with the learned counsel for the Appellant in that behalf. Section 304 of the IPC reads thus:

“Section 304 - Punishment for culpable homicide not amounting to murder

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

24. In this case, the nature of injuries will have to be taken

into consideration. The Appellant had given two blows, out of which, one blow had pierced the right lung causing its collapse, resulting in the death of the deceased. Looking at the nature of injuries, it can be concluded that the Appellant had intention to cause such bodily injury which was likely to cause death as mentioned in Part I of Section 304 of the IPC. From the description of the incident, it is clear that the act committed by the Appellant was done with an intention of causing death or causing such bodily injury, as was likely to cause death. Therefore, his act would fall within Part I of Section 304 of the IPC. To that extent, the conviction and sentence will have to be altered.

25. We seriously considered the submissions regarding quantum of the sentence. The Appellant was slightly above 18 years of age at the time of the incident. He is already in custody from 08.08.2016. Hence, he is in custody for more than ten years. Therefore, the sentence, which he has already undergone in prison after his arrest, would meet the ends of justice.

26. Hence, the following order:

O R D E R

- i) The Appeal is partly allowed.
- ii) The Judgment and order dated 04.07.2019 passed by the learned Sessions Judge, Gr. Bombay, in Sessions Case No.806 of 2016, convicting and sentencing the Appellant for commission of the offence punishable U/s.302 of the IPC, is set aside.
- iii) Instead, the Appellant is convicted for commission of the offence punishable U/s.304(I) of the IPC. His sentence is altered to the period which he has already undergone in prison.
- iv) The fine amount of Rs.10000/- is altered to Rs.1000/-. In default of payment of fine, he is sentenced to suffer S.I. for fifteen days.
- v) The conviction and sentence U/s.37(1)(a) r/w. 135 of the Bombay Police Act, 1951 are maintained.
- vi) The substantive sentence to run concurrently. Set off U/s.428 of the Cr.P.C. be granted to him. If the fine amount is not paid already, the 'in default' sentence be treated as the part of the period

already undergone as sentence.

vii) The Appellant be released forthwith if not required in any other case.

viii) The Appellant shall execute a PR bond in the sum of Rs.10000/- to ensure his availability in case an Appeal against the acquittal is preferred. Such bond shall be executed within a period of one month from his release from prison.

ix) The Appeal is disposed of.

x) In view of disposal of the Appeal, the connected applications are also disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)