

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

CRIMINAL APPEAL NO.809 OF 2024

Manju @ Manjya @ Mangesh @ Mangya
@ Manjunath Shanmukh Gumanste Appellant
Versus
The State of Maharashtra Respondent

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WITH
INTERIM APPLICATION NO.1933 OF 2023
IN
CRIMINAL APPEAL NO.809 OF 2024

Ms. Saswati Deb, Advocate (appointed) for the Appellant.
Ms. Kranti Hiwrale, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ.**

DATE : 16th & 17th JUNE, 2026

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The Appellant has challenged the judgment and order dated 21.9.2018 passed by the learned Additional Sessions Judge and Special Judge (Prevention of Atrocities), Thane in Sessions Case No.307/2014.

2. Heard Ms. Saswati Deb, learned appointed Advocate for the Appellant and Ms. Kranti Hiwrale, learned APP for the Respondent-State.

3. The Appellant was convicted and sentenced as under :

i. He was convicted for commission of the offence punishable under Section 302 of IPC and was sentenced to suffer life imprisonment and to pay a fine of Rs.2,000/- and, in default, to suffer RI for two months.

ii. He was convicted for commission of the offence punishable under Section 324 of IPC and was sentenced to suffer RI for three years.

Both the sentences were directed to run concurrently. He was given set-off under Section 428 of IPC. He was acquitted from the charges of offences punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act'), under Section 7(1)(d) of the Protection of Civil Rights Act, under Section 7 read with 27(3) of the Indian Arms Act, and under Section 37(1)(A) punishable under Section 135 of the Bombay Police Act.

4. The prosecution case, briefly stated, is as follows:

. The Appellant was occupying half portion of a small house occupied by one Mahananda Kerve and her family. Mahananda had lost her husband. She was residing with her

mother-in-law, a young daughter, and a younger son. It is the prosecution case that the Appellant was trying to establish some relationship with her. As Mahananda did not respond, in the night between 7.1.2014 and 8.1.2014, the Appellant entered Mahananda's room where she was sleeping with her children. He assaulted Mahananda with a knife on her neck and other parts. The children woke up and saw the incident. They started shouting. Her mother-in-law came to help Mahananda. The Appellant assaulted all of them and ran away. The neighbours gathered there. The police were informed. The injured Mahananda was taken to the hospital but she was declared dead. The investigation was carried out after Mahananda's mother-in-law lodged the FIR vide C.R. No.I-5/2014 at Rabale MIDC police station. The dead body was sent for postmortem examination. Various panchnamas were conducted. The Appellant was arrested on 8.1.2014 at 3.00 p.m.. His clothes and the murder weapon i.e. a knife was recovered at his instance. At the conclusion of the investigation, the charge-sheet was filed. According to the prosecution case, the deceased belonged to a Scheduled Caste and, therefore, the provisions of the Atrocities Act were invoked. The case was tried before the Special

Judge.

5. During trial, the prosecution examined the daughter of the deceased who was the eye witness, their neighbour, the panchas, the medical officers and the investigating officers. The defence of the Appellant was of total denial. The prosecution did not produce the caste certificate of the deceased on record. The evidence regarding the allegations under the Maharashtra Police Act and the Indian Arms Act was lacking and, therefore, the Appellant was acquitted from the charges of commission of the offence punishable under these three Acts. However, the learned Judge accepted the evidence of the eye witness, the neighbour, the panchas and the medical officer. The learned Judge thus convicted and sentenced the Appellant, as mentioned above.

6. Before the trial commenced, the first informant i.e. the mother-in-law of the deceased Mahananda had passed away. The FIR was brought on record through the evidence of the police officer who had recorded the FIR. The evidence of the sole eye witness examined by the prosecution i.e. PW-2 Aarti Kerve is the most important piece of evidence in this case. She was the daughter of the deceased. She deposed that she was residing with

her mother, grand-mother and younger brother. At the time of her deposition recorded on 7.11.2017, she was eleven years of age. That means, she was about seven years of age at the time of the incident. She was studying in the second standard. She deposed that the Appellant was residing behind their hut. He used to occasionally come to their hut asking for kerosene or matchbox. In the night of 7.1.2014, PW-2 and her brother Ganesh were sleeping with their mother. Her grand-mother slept in another part of the hut. The Appellant came in the house. She heard some noise. She woke up. She saw that the Appellant had stabbed her mother with an knife on the stomach. She shouted. She tried to save her mother and fell on her person. The Appellant gave a blow of knife on PW-2's shoulder. In the meantime, her younger brother woke up and tried to push the Appellant. The Appellant gave a blow on Ganesh's leg. PW-2's grand-mother came there but the Appellant hit her with a stone on the head. She also started shouting. The Appellant then ran away. He carried away some money belonging to her mother. The neighbours gathered there and took her mother to the hospital. She deposed that she could identify the Appellant. His identity was not challenged.

In the cross-examination, she stated that they were residing in a chawl and there were other rooms in the vicinity. She knew the Appellant as he was a neighbour. Her mother was working. Her father had passed away one year before the incident. Her mother used to leave in the morning and come back in the evening. According to her, the deceased was not talking with the Appellant after the death of PW-2's father. In her further cross-examination, she stated that she could not assign any reason as to why it was not mentioned in her police statement that the Appellant had come inside the house, that she had woke up after hearing noise and that he had stabbed her mother with a knife in the stomach. Her police statement did not mention that Ganesh woke up and tried to push the Appellant and that the Appellant gave blow of knife on Ganesh's leg. It also did not mention that the Appellant had hit her grand-mother on the head.

These omissions to a certain extent are important. However, these omissions are not put to the investigating officer who had recorded her statement. Therefore, these omissions amounting to contradictions are not proved. In any case, the learned APP submitted that the police statement did not mention

the details but it specifically mentioned that the Appellant had assaulted PW-2's mother. Therefore, her evidence is consistent with her police statement to the extent that the Appellant had assaulted her mother with a knife. That is the most crucial aspect of her deposition.

7. PW-3 Shripat Gite was a neighbour of PW-2 as well as of the Appellant. He deposed that he knew the deceased, her mother-in-law, PW-2 and the son of the deceased. They were residing in the room opposites to his room. The Appellant was residing behind the room of the deceased. He was residing with two to three other boys. At around 12.30 a.m. on 8.1.2014 he heard the shouts of PW-2 and her brother. The mother-in-law Malkabai also started shouting. PW-3 and others came to see what had happened. He saw the Appellant coming out from the room of the deceased and running away. He saw that the deceased was lying with injuries. There was injury on the shoulder of PW-2. Malkabai had injury on her head. PW-3 and others took all the injured to Shivaji Hospital. The deceased Mahananda was taken to Vashi Municipal Hospital. He deposed that he could identify the Appellant in the Court. The Appellant's identity was not challenged

by the defence.

In the cross-examination, he stated that there was a slum area around their chawl. There was no street light. Malkabai's son had committed suicide. At the time of incident, he heard the shouts and, therefore, he had come out. He denied the suggestion that he was deposing at the instance of Malkabai. There are certain omissions pointed out to him from his police statement. According to him, he had stated before the police that he had seen the Appellant running away and that PW-2 and her brother had suffered injuries. But, he could not explain why these facts were not mentioned in his police statement. These important omissions from his police statement were not put to the investigating officer who had recorded his statement and, therefore, these omissions are not proved. The investigating officer was not asked anything about his statement recorded by the investigating agency.

8. PW-1 Sudhir Hivrale was a pancha for spot panchnama. He deposed that he was called at about 4.00 p.m. on 8.1.2014 to the spot of incident. Malkabai showed the spot. She also showed the room of the Appellant. There were blood stains in both the rooms i.e. the room of the deceased and the room of the

Appellant. Various articles viz. the blood stained earth, the blood mixed water from a bottle, blood stained gunny bag, footwear, a stone, bed-sheet etc. were seized. He identified those articles in the Court. The spot panchnama was produced on record at Exhibit-22.

In the cross-examination, he deposed that there were other chawls and houses near the spot.

9. PW-7 Mahadev Nagile was a pancha in whose presence the Appellant showed willingness to show the place where he had concealed the weapon and his clothes. He was called by the police officers on 10.1.2014. The Appellant was present in the police station. He stated before this witness that he was willing to show the place where he had concealed the knife and his clothes. His statement was recorded in the memorandum panchnama which is produced on record at Exhibit-54. The Appellant then led the panchas and the police to his house and produced his clothes hidden under a heap of bricks. The clothes were blood stained. He then led them to the house of one Vilas Gaud and told them that he had thrown the knife on the roof of the house. He climbed on the roof and took out a knife. His clothes and the knife were

seized. The panchnama is produced on record at Exhibit-55.

10. In connection with the recovery of knife, the prosecution examined PW-8 Vilas Gaud. The Appellant had thrown the knife on the roof of PW-8's house. He deposed that the deceased was residing near the house with her mother-in-law and children. The Appellant was residing near his house and was working as a Cleaner. He came to know about the incident. On 10.1.2014, the police had come to his house with the Appellant. He deposed that the Appellant climbed the roof of his house and took out the knife. He was not cross-examined on behalf of the defence. Therefore, the recovery evidence remained unchallenged.

11. PW-4 Dr. Bhushan Jain had conducted the postmortem examination on the dead body. She had received the following injuries:

- 1] Chopped wound over right side of the neck up to face along with cut fracture of angle of the mandible of size 11 x 2.5 c.m. along with 1.5 c.m. failing medically, reddish. Infiltration staining of blood seen at the fractural margins.
- 2] Two linear incised wounds seen over right side of the neck posteriorly of length 3 c.m. each, reddish, situated parallel to each other near root of the neck.
- 3] Linear incised wound over back extending from left scapular region

up to right back of length 14 c.m. reddish, obliquely placed.

- 4] Linear incised wound over right arm posteriorly of length 4 c.m. reddish.
- 5] Stab injury over left chest axillary region 5 x 4 c.m. cavity deep along with 3 x 2 c.m. tailing on arm, muscle deep, reddish.

On dissection passes through 2nd intercostal space directing obliquely downwards medially pierces plura, upper lobe and exit through lower lobe posteriorly, tapering at the end cavity contains 1000 cc blood, track haemorrhagic.

- 6] Incised wound over left forearm medially 3 x 1.5 c.m. bone deep, reddish.
- 7] Linear incised wound over left forearm 2 c.m. below above injury of length 2.5 c.m., reddish.
- 8] Incised wound over left forearm 2 c.m. below above injury of size 1.5 x 0.3 c.m. skin deep, reddish.
- 9] Stab injury over left abdomen laterally below thoracic cage of size 4 x 2 c.m. cavity deep along with 7 c.m. tailing on upper side, reddish.

On dissection injury had two tracks

- A] Passing through skin, subcutaneous tissue, muscles, vessels, peritoneum directing obliquely downwards medially up to paraspinal muscles haemorrhagic.
- B] Passing through subcutaneous tissue directing obliquely downwards, tapering at the end and exited as a injury No.10.
- 10] Stab injury over left abdomen above level of inguinal line of size 1.5 x 0.7 c.m. reddish in colour.

Distance between injury No. 9 and injury No.10 is 18 c.m.

- 11] Stab injury over left thigh medially over middle (1/3) region 4 x 2 c.m. reddish.

On dissection track passes through subcutaneous tissue

directing obliquely upwards laterally, tapering at the end and exited as a injury No. 12.

12] Stab injury over left thigh anteriorly below inguinal line of size 1.5 x 0.7 c.m. reddish.

Distance between injury No. 11 and 12 is 18 c.m.”

12. The cause of death was mentioned as hemorrhagic shock due to multiple stab injuries. The postmortem report is produced on record at Exhibit-32.

13. PW-9 Dr. Dinesh Shendarkar had examined the three injured i.e. PW-2, her brother Ganesh and her grand-mother Malkabai. He produced their medical certificates on record at Exhibits-60, 61 and 62. PW-2 had one CLW on the left shoulder of the size 15 x 3 x 3 cm. He described it as grievous hurt. Ganesh had suffered CLW of the size 3 x 2 x 2 cm on his left leg. Malkabai had suffered CLW over left eye-brow of the size 3 x 2 x 2 cm.

14. PW-5 Police Constable Ashok Salve deposed about the notification published by the Commissioner of police, Navi Mumbai for the period 29.12.2013 to 12.1.2014 prohibiting carrying of weapons. He had displayed this notification at a public place.

15. PW-6 API Bile had conducted the initial part of the investigation. He was on duty as PSO at Rabale Police Station. He

received a call from the control room regarding the incident. He went to the spot. He sent the injured to the hospital. He recorded the statement of Malkabai. He produced the FIR lodged by him at Exhibit-43 before the trial Court. He stated that Malkabai had passed away. As a part of the investigation, he supervised the inquest panchnama and the spot panchnama. He had seized the articles. Further investigation was carried out by PI Rajendra Pawar.

In the cross-examination, he stated that he had received the information at about 1.00 to 1.15 a.m. He denied the suggestion that Malkabai was taken to the hospital before they had reached the spot. He had not collected the information as to why Malkabai's son i.e. the husband of the deceased had committed suicide in the past.

16. PW-10 PI. Rajendra Pawar was the investigating officer. He seized the clothes of the injured. He recorded the statements of witnesses including the supplementary statement of Malkabai. He arrested the accused on 8.1.2014 and prepared the arrest panchnama. He supervised recovery of knife and clothes of the accused-Appellant. He sent the muddemal property for chemical

analysis. The investigation was transferred to ACP, Vashi Division. In the crosse-examination, he admitted that the original caste certificate of the deceased was not produced on record.

17. Apart from this ocular evidence, the prosecution produced the C.A. report at Exhibit-77. It shows that there were blood stains on the knife, but the blood group was inconclusive. There was blood of Groups B and AB on the clothes of the Appellant. The blood group found on the clothes of the deceased was of Group B, and that on the clothes of the injured was of Group AB.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT :

18. Learned counsel for the Appellant made the following submissions :

- i. The Appellant is falsely implicated. The prosecution case relied only on the evidence of PW-2. She was a child witness. Her evidence is not reliable. She was tutored. She had named the Appellant at the instance of her grand-mother Malkabai. But since Malkabai was not available for trial, the defence was deprived of cross-examining Malkabai.
- ii. The prosecution has failed to bring any motive on record as

to why the Appellant would commit the murder of the deceased. No evidence is shown that they had any past history of either dispute or of any other relationship.

- iii. The evidence of the main witness is full of material omissions.
- iv. The knife recovered at the instance of the Appellant did not show the blood group of the deceased.
- v. It was improbable that the neighbours would have allowed the Appellant to run away from the spot if they had seen him near the house of the deceased after the incident.
- vi. She, therefore, submitted that the Appellant deserves to be acquitted.

SUBMISSIONS OF THE LEARNED APP ON BEHALF OF THE RESPONDENT – STATE :

19. Learned APP on the other hand relied on the evidence of PW-2. She submitted that though PW-2 was a child witness, her evidence is reliable. She was an eye witness. She had seen the entire incident. There is no scope to disbelieve her evidence. She is supported by the evidence of PW-3 who was a neighbour. Apart from that, her presence at the spot is also established by her

medical certificate. Thus, she is an injured eye witness. Her evidence is further supported by the medical evidence in respect of injuries suffered by Malkabai and PW-2's brother Ganesh. There are other corroborative pieces of evidence i.e. the knife recovered at the instance of the Appellant and blood stained clothes of the Appellant which showed presence of blood of the deceased and the injured on his clothes.

REASONS AND CONCLUSION :

20. We have considered these submissions. As rightly submitted by both the learned counsel, the prosecution case heavily relied on the evidence of PW-2. She was a child witness and, therefore, we have considered her evidence very carefully. She was sleeping with her mother and brother. Her presence in the house was natural. She has described the incident in detail. It is obvious that because of the noise and shouts of her mother she woke up and saw the entire incident. Her presence at the spot at the time of the incident was further established by the medical evidence in respect of the injury suffered by her. It was a grievous injury on the shoulder. She had described the injuries suffered by her grandmother and brother. Those injuries are also supported by the

medical evidence. Though there are some omissions from her police statement; firstly, no questions were asked about the omissions to the investigating officer; and secondly, the omission was in respect of the details but not in respect of the actual assault committed by the Appellant on the deceased. Therefore, based on her evidence alone the prosecution has proved its case.

21. Apart from her evidence, there are other corroborative circumstances. The knife was recovered at the instance of the Appellant. The recovery is supported not only by the panchas but by PW-8 as well. The knife was thrown by the Appellant and only he knew where he had thrown it. Therefore, the recovery of weapon is directly connected to the Appellant. The clothes were found from his house at his instance as he had showed the place himself, as mentioned earlier. Therefore, these are the additional circumstances.

22. The medical evidence in respect of the postmortem examination establishes the cruel manner in which the Appellant had assaulted the deceased. Even PW-3 had seen him running away from the spot. There are certain omissions in his evidence. These omissions were not put to the investigating officer.

Therefore, his evidence is also incriminating against the Appellant.

23. The Appellant was acquitted from the charges of offences under the Atrocities Act because the prosecution failed to prove the caste of the deceased. There was no other evidence in that behalf. Similarly, the prosecution did not produce the reliable evidence in respect of commission of the offences punishable under the Maharashtra Police Act and the Arms Act. The learned Judge has rightly acquitted the Appellant from those charges.

24. However, as mentioned earlier the prosecution has proved its case beyond reasonable doubt as far as assault on the deceased as well as on PW-2 and the other two family members are concerned. Therefore, we do not find any merit in the Appeal. The Appeal is dismissed. With dismissal of the Appeal, the connected Application is also disposed of.

(ASHISH S. CHAVAN, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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