

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 477 OF 2023
WITH
INTERIM APPLICATION NO. 1547 OF 2023
IN
CRIMINAL APPEAL NO. 477 OF 2023

Mr. Vinodkumar Keharisingha Banjara]
Aged-30 years, Occupation-Nil]
R/at- Pruthvipur, Post Bilawan,]
Taluka-Auraya, Uttar Pradesh]
(At present in Yerawada Central Jail)] ... Appellant/
Applicant

Versus

The State of Maharashtra]
(Through P.I. Paud Police Station District-Pune)] ... Respondent
(CR No. 72/2017)

Ms. Pooja Agrawal, appointed Advocate for the Appellant/ Applicant.

Ms. Mahalakshmi Ganapathy, Addl. P.P., for the Respondent-State.

CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.

DATE : 28th APRIL, 2026.

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

1. The Appellant has challenged the Judgment and Order dated 04/01/2023 passed by the learned Additional Sessions Judge, Pune in

Sessions Case No.454 of 2017. Vide the impugned Judgment and Order, the Appellant was convicted as follows:

(i) The Appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code **(IPC)** and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for one month.

(ii) The Appellant was acquitted from the charges of commission of offence punishable under Section 504 of IPC.

2. Heard Ms. Pooja Agrawal, learned Counsel for the Appellant and Ms. Mahalakshmi Ganapathy, Addl. P. P., for the Respondent-State.

3. The Prosecution case in brief is as follows:

The Appellant and his wife Sunitadevi were working on a

brick-kiln. There were two other couples working at the same brick-kiln. They were staying in the tin-shed constructed by the brick-kiln owner near the brick-kiln. On 19/02/2017, the Appellant and his wife were having a holiday. The other couples were working. In the afternoon, at around 4:00 p.m., there was a quarrel between the Appellant and his wife Sunitadevi. The Appellant tried to assault her. She ran away from their shed but the Appellant caught her and gave a blow with a heavy iron pickaxe on her head. She fell down motionless. The incident was witnessed by the brick-kiln owner and the co-workers. The Appellant tried to run away. The Appellant escaped from the spot. The owner telephonically informed the owner's son about the incident. The owner's son searched for the Appellant on his motor cycle and caught him. The Appellant was brought near the brick-kiln. He was tied to the wheel of a bullock cart. The Police were informed, they reached the spot. Sunitadevi had succumbed to her injuries. The Appellant was arrested. The F.I.R. was lodged by the brick-kiln owner Ramesh Kamble vide C.R. No.72 of 2017 at Paud Police Station, District Pune. It was registered at 9:47

p.m. The Appellant was put under arrest. He was already under the custody of the police. During his pre-arrest medical examination, injuries were noticed on his head, forehead and face. The investigation was carried out. The spot panchanama was conducted. The clothes of the Appellant and the deceased were seized. The postmortem examination was conducted. The statements of the witnesses were recorded and at the conclusion of the investigation the chargesheet was filed. The case was committed to the Court of Session.

4. During trial the Prosecution examined six witnesses including the first informant- brick-kiln owner, the other labourer, pancha, the Medical Officer and the Investigating Officer. The defence of the Appellant was of denial. In addition, the Appellant stated that he had suffered head injury requiring stitches. He did not know anything. The first informant himself had killed the Appellant's wife and had lodged a false complaint against him-the Appellant.

5. The learned Judge disbelieved the defence taken by the

Appellant and relied on the evidence of the two eye-witnesses. Accordingly, the learned Judge convicted and sentenced the Appellant.

6. PW-1-Ramesh Kamble was the first informant and an eye-witness. PW-1 deposed that his brick-kiln was situated at a distance of 1 km from village Kasar Amboli. He had six labourers working for his brick-kiln. The Appellant and his wife were working for PW-1 at his brick-kiln. They were residing at the brick-kiln in a tin-shed. The work started at 5:00 a.m. and used to go on till 5:00 p.m. On the day of incident, the other labourers namely Ravi Shinde and his wife as well as Kiran Adagale and his wife attended the work. The Appellant and his wife did not attend the work as it was their holiday. At the relevant time, they were in their tin-shed. At around 4:15 p.m., PW-1 heard the sound of quarrel between the Appellant and his wife. PW-1 rushed there and saw that the Appellant gave a blow with a pickaxe on the head of Appellant's wife. The Appellant's wife fell down. The Appellant ran away by jumping over the wall near the brick-kiln. PW-

1 then called his son Vishal Kamble and informed him about the incident. Vishal Kamble caught the Appellant and brought him at the brick-kiln. PW-1 further deposed that while running away the Appellant sustained injuries on his head. The Appellant was then tied to a wheel of the bullock-cart. After that PW-1 lodged the F.I.R. with Paud Police Station, Pune. The F.I.R is produced on record at Exhibit-8. PW-1 identified the pickaxe used in the offence.

In the cross-examination, PW-1 deposed that the Appellant and the deceased had started working with him three months prior to the incident and they were having five children. Their three children were above 10 years of age. PW-1's own house was situated near the brick-kiln at a distance of about 15 feet. The brick-kiln was situated between the workers' shed and his house. PW-1 denied the suggestion that the worker's rooms were not visible from his house. He deposed that he heard loud shouts of the deceased. When PW-1 rushed to the spot of incident, the deceased was lying in injured condition. The other workers Shinde and Adagale had also reached the spot. Except them, nobody else was present at the spot. However, he further

accepted that he had not personally seen while the Accused was assaulting the victim. PW-1 further admitted that on the day of incident, the Accused had also sustained injuries on his head and face.

The F.I.R. lodged by PW-1 sufficiently corroborates his deposition and gives some details. The F.I.R. can be safely used as a corroborative piece of evidence to the deposition given by PW-1.

7. PW-4-Kiran Adagale is another important eye-witness. He deposed that he and his wife were working on the brick-kiln of PW-1. The Appellant and his wife as well as one Ravi Shinde and his wife were also working with them. They were staying in the shed constructed near the brick-kiln. The incident took place on 19/02/2017. At about 4:15 p.m., PW-4 and others heard Sunitadevi shouting loudly therefore, the four labourers and the owner ran in the direction from where they heard the scream. PW-4 further deposed that Sunitadevi was running and the Appellant was chasing her. They were quarreling. The Appellant gave a blow with heavy pickaxe on

the head of Sunitadevi. The Appellant tried to run away with the weapon by jumping over the compound wall. PW-4 and others tried to give water to Sunitadevi but she had died on the spot. She had suffered bleeding injury on her head. PW-4 further deposed that PW-1 made a phone call to his son Vishal and told him about the incident. After that, Vishal and his friend brought the Appellant. The Appellant was tied to a wheel of the bullock-cart. The Police were informed telephonically. They came near the brick-kiln. They took custody of the Appellant. They recorded statement of PW-4. He deposed that his statement was recorded in the Court as well. He identified the Appellant produced through video conferencing.

In the cross-examination, PW-4 deposed that PW-1 was staying in a house near PW-4's tin-shed. It was at a distance of around 20 feet. He admitted that between the tin-shed and the spot of incident, there were heaps of bricks, soil and coal. The heap of bricks was around 20 to 25 feet in height. PW-4 accepted that the spot where the deceased fell down was visible from the labourers' shed. The spot

where the work of arranging the bricks was going on, was also not visible from the place where the deceased had fallen down. At the time of incident, PW-4, Ravi Shinde and their wives were arranging the bricks. PW-4 admitted that he was concentrating on his work. He further deposed that, when he heard the scream, he went in that direction and saw the deceased had fallen down. PW-4 deposed that the deceased was motionless. He had not seen the Appellant having injuries on his head and face. PW-4 further deposed that after the incident, he had left the job with that brick-kiln. He denied the suggestion that PW-1 was harassing the deceased and when the Appellant tried to stop PW-1, at that time, PW-1 assaulted the Appellant and the deceased with a sharp weapon. PW-4 also denied the suggestion that the Appellant had become unconscious because of the assault caused by the deadly weapon and that he was unconscious when he was tied to a wheel of the bullock-cart.

8. PW-3-Vishal Kamble was PW-1's son who had apprehended the Appellant after the incident. He deposed that, on 19/02/2017 at

about 4:15 p.m. he received the phone call from his father. At that time, he and his friend Suresh Salunkhe had gone to Ghotavde Road on a motor cycle. PW-1 informed PW-3 that there was a quarrel between the Appellant and his wife, and that the Appellant had assaulted the deceased on head with a pickaxe, and that he had run away by jumping over the compound wall towards Good deal company. PW-3 then went on his motorcycle towards that direction. He saw that the Appellant was trying to run away. PW-3 further deposed that, while running the Appellant fell down and suffered injuries on his forehead and head. PW-3 and his friend Suresh apprehended the Appellant and brought him to the brick-kiln. The Appellant was tied to the bullock-cart. They had taken the Appellant to the brick-kiln with the murder weapon. By that time, the deceased had already died at the spot. The police came at the spot at around 5:15 p.m. and took custody of the Appellant.

In the cross-examination, PW-3 deposed that his father was staying in a room constructed by him (PW-1) near the tin-shed where the labourers were staying. It was at about 50 feet distance from the

shed. He saw the Appellant after about 10 minutes from receiving the phone call from his father. Then, PW-3 and his friend took 10 minutes to catch the Appellant. PW-3 had seen where the Appellant had suffered the injuries. He denied that the Appellant had fallen down with his head downwards. PW-3 admitted that since the Appellant had suffered serious injury to head he apprehended that as the owner of the brick-kiln they themselves would be in trouble. But PW-3 denied the suggestion that they had instructed the other labourers as to what was to be told to the police about the injuries. PW-3 denied the suggestion that PW-1 had assaulted the Appellant and the Appellant's wife, and that he caught the Appellant when the Appellant was trying to save himself by running away.

9. PW-2-Anil Bansode is a pancha for spot panchanama. The panchanama is produced on record at Exhibit-13. The map was produced at Exhibit-13/A. PW-2 deposed that the police had seized the iron pickaxe having bloodstains, plain soil and bloodstained soil from the spot. There is some discrepancy as to exactly when the spot panchanama was conducted. Whether it was conducted on

19/02/2017 in the evening or in the morning on 20/02/2017. However, the spot of incident is not in dispute.

In the cross-examination, PW-2 accepted that the spot of incident was not visible from the worker's shed, and that between the heap of bricks and the compound wall there was space of about 5 feet. The incident had occurred there.

10. PW-5-Dr. Sunil Patil had conducted the postmortem examination on the dead body of the deceased. He deposed that there were following two injuries on the dead body:

- i. CLW on the scalp-9 cm in length.
- ii. Fracture on occipital bone horizontally about 3 x 2 cm.

The cause of death was “cardio respiratory arrest due to asphyxia due to hypovolemic shock due to grievous head injury” and that both the injuries were caused by a heavy weapon. The postmortem notes were produced on record at Exhibit-34. There was hardly any cross-examination of this witness. The cause of death is

hardly in dispute.

11. PW-6-Narayan More had conducted the investigation. PW-6 deposed that when he started the investigation, the Accused was already brought to the police station. The Accused was sent for pre-arrest medical examination. The Accused was then arrested, his clothes were seized, they were bloodstained. PW-6 then conducted the spot panchanama. The bloodstained weapon, the plain soil and the bloodstained soil were seized from the spot. The map of the spot was prepared. Clothes of the deceased were seized. The postmortem examination was caused to be conducted. The articles were sent to FSL. After the investigation was over, Mr. Golde, P.I., filed the chargesheet.

In the cross-examination, PW-6 deposed that during the investigation, he recorded statements of atleast of around five to six eye-witnesses. He denied that the spot panchanama was conducted at 7:45 p.m. on 19/02/2017. PW-6 explained that since the informant's house was around 20 feet away from the place of incident, that house

was not shown in the spot panchanama or in the map. PW-6 stated that the spot of incident was between the compound wall and the heap of bricks but was not in a small lane between the compound wall and the bricks. PW-6 was not aware that the pancha for spot panchanama was related to the first informant. According to him, the Appellant had suffered head injury with a hard weapon. PW-6 admitted that his investigation did not reveal as to what was the dispute between the Appellant and the deceased.

12. This was the evidence led by the Prosecution's witnesses. In addition, the Prosecution produced the CA Report on record which shows that the clothes of the deceased as well as the clothes of the Appellant showed presence of blood of 'B' Group. The pickaxe showed presence of human blood but the blood group was inconclusive.

13. The statement of the Accused was recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.). After that, the

Medical Certificate regarding the injuries of the Appellant was produced on record. It was admitted on behalf of the Accused. Hence, it was exhibited. It showed that the Appellant had suffered one CLW over parietal region of head of the size 6 x 1 x 1 cm. There was other CLW over forehead of the size 4 x 1 x 1 cm and there was abrasion on nose. The learned Judge relied on the evidence of PW-1, PW-3 and PW-4. The learned Judge referred to the subsequent conduct of the Appellant in trying to run away with the murder weapon. Considering the overall evidence, the learned Judge convicted and sentenced the Appellant as mentioned above.

Submissions of Ms. Pooja Agrawal, learned Counsel appearing for the Appellant :

14. Learned Counsel for the Appellant submitted that PW-1 and PW-4 are unreliable witnesses. They are interested witnesses. PW-1 is trying to save himself. PW-4 was under the fear of PW-1. Therefore, both of them have to be discarded. PW-3 was only trying to help his father PW-1. His evidence is not reliable. The Prosecution has not proved the motive in this case. The injuries suffered by the Accused

are not explained. None of the children of the deceased and the Appellant was examined. They were the most natural witnesses but they were deliberately kept back. From the description of the spot, it was clear that from the place where PW-4 was working or from the place where the labourers and PW-1 were staying, it was not possible to see the actual incident. The evidence shows that the witnesses have admitted that they had seen that the deceased had already fallen down when they reached the spot, that means, they could not have seen the actual assault. Learned Counsel for the Appellant also relied on the admission given by the PW-1 that he had not actually seen the assault caused by the Appellant.

Submissions of Ms. Mahalakshmi Ganapathy, learned Addl. P.P. for the Respondent-State :

15. Learned Addl. P. P. on the other hand submitted that there is no reason to disbelieve PW-1 and PW-4. Both of them were natural witnesses. She submitted that the Appellant has not taken up a specific defence in his statement recorded under Section 313 of Cr.P.C. that the injuries suffered by the Appellant were caused due to the assault

committed by PW-1. The Appellant has not explained as to how he had suffered those injuries by attributing them to PW-1. There is no plausible reason for PW-1 to have assaulted the deceased. She submitted that PW-1 and PW-4 are wholly reliable witnesses. Their evidence is supported by the other circumstances and also by the evidence of PW-3. The description given by the eye-witnesses is supported by the medical evidence. She submitted that the Prosecution has proved its case beyond reasonable doubt.

Reasons and Conclusion :

16. We have considered these submissions. The case depends on the evidence of PW-1 and PW-4. Though the learned Counsel for the Appellant has relied on the statement in the cross-examination that PW-1 had deposed that he had not seen the Appellant assaulting the deceased, however, his attention is not drawn to his deposition to the contrary or to the statement given in his F.I.R. The evidence of PW-1 is quite clear. He has described the incident in detail. He has deposed in his examination-in-chief that when he reached the spot after hearing the commotion he had noticed that the Appellant hit iron

pickaxe on the head of his wife and due to that assault she fell down on the ground. His F.I.R. also describes the incident in the same manner. In that statement also, he has stated that he had seen the incident of actual assault. The F.I.R. is lodged first in point of time. Therefore, there is no substance in the submissions of the learned Counsel for the Appellant that PW-1 could not have or did not see the incident.

17. PW-4-Kiran Adagale's evidence is equally important. He was an independent witness. He has deposed that after the incident he had left the job with PW-1. Therefore, PW-4 was not under PW-1's authority or pressure. He has described the incident in detail. PW-4 has also stated that the Appellant had given the fatal blow on the deceased. We find that, PW-1 and PW-4 are wholly reliable witnesses. There is no reason whatsoever to disbelieve them. Their evidence is further supported by the medical evidence in the form of PW-5-Dr. Sunil Patil's evidence and his deposition about the postmortem examination. The blow given by the Appellant was quite forceful and it had caused immediate death.

18. The evidence of PW-1 and PW-4 is further supported by the subsequent events deposed by PW-3. As per his deposition, after PW-3 received phone call from his father, he searched for the Appellant. PW-3 was on a motor cycle and therefore, chased the Appellant and could apprehend him. PW-3 with the help of his friend brought the Appellant back to the spot of incidence and kept him tied to a bullock-cart. He also brought back the weapon carried by the Appellant. Shortly, thereafter the police were informed, who took the Appellant's custody.

19. As far as the injuries suffered by the Appellant are concerned, PW-3 has stated that while trying to run away the Appellant fell down causing injuries to his head and forehead. He had also shown that particular spot to the police. There is no reason to disbelieve PW-3 on that aspect. Apart from that, the clothes of the Appellant showed presence of blood of 'B' Group which was also the blood group of the blood found on the clothes of the deceased. This is one more additional incriminating circumstance against the Appellant. The weapon seized from the possession of the Appellant which was

brought at the spot by PW-3 also showed presence of human blood. All these are corroborative incriminating pieces of circumstances. Considering this clear, consistent and cogent version of the witnesses, failure to bring the motive on record pales in comparison. The direct evidence of the eye-witnesses in this case prevails over any other consideration. In our opinion, the Prosecution has proved its case beyond reasonable doubt based on this direct and corroborative pieces of evidence. In this view of the matter, we do not see any reason to interfere with the impugned Judgment and order. As a result, we pass the following order:

ORDER

- (i) The Criminal Appeal No.477 of 2023 is dismissed.
- (ii) However, it is clarified that the Appellant shall get the benefit of set-off under Section 428 of Cr.P.C.

(iii) With these observations, the Criminal Appeal No.477 of 2023 is disposed of.

(iv) With disposal of the Appeal, the connected Interim Application No. 1547 of 2023 is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)