

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

CRIMINAL APPEAL NO. 1128 OF 2024

Abdul Kayum Yusuf Ansari

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 1381 OF 2026
IN
CRIMINAL APPEAL NO. 1128 OF 2024**

Ms. Rupali Changan i/b. Ms. Reena Prajapati for Appellant.
Ms. Gauri S. Rao, APP for State/Respondent.

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

DATE : 8 OCTOBER 2026

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

1. The Appellant has challenged the Judgment and order dated 30.09.2022 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.616 of 2018. The Appellant was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- and in default to suffer R.I. for three months.

2. Heard Ms. Rupali Changan, learned counsel for the Appellant and Ms. Gauri Rao, learned APP for the State.

3. The prosecution case is as follows:

The deceased Popat Gaikwad and the Appellant were working at a fruit stall of one Santoshi Nepali. After some time, the Appellant started misappropriating the income of the stall, therefore, the stall owner removed him. The Appellant held a grudge against the deceased as he believed that the deceased was behind his removal. The incident took place on 30.04.2018. According to the prosecution case, the Appellant assaulted the deceased with stones and crushed his head. After that, he started running away. The people in the adjacent area caught him. The Appellant led those people to the place where he had assaulted the deceased. The dead body of the deceased was lying at the spot. The police were informed. The wife of the deceased was informed. The deceased had died before he was taken to the hospital. The dead body was sent for the postmortem examination. The wife of the deceased lodged the F.I.R. which was registered vide the

C.R.No.514 of 2018 at Lonikand police station, Pune, for the offence punishable U/s.302 of the IPC, at 5:30p.m. on 30.04.2018. The investigation was carried out. The spot panchanama was conducted in the next morning. The clothes of the Appellant were seized at the time of his arrest. The clothes of the deceased were seized under a separate panchanama. The articles were sent for chemical analysis. The C.A. report showed that the clothes of the deceased, as well as, the pant worn by the Appellant had human blood. But the blood group was inconclusive. After completion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

4. During trial, the prosecution examined six witnesses including the first informant-wife of the deceased, the person who apprehended the Appellant, the panchas, the fruit stall owner, the Medical officer and the Investigating Officer. The learned Judge relied on the circumstantial evidence led by the prosecution and convicted and sentenced the Appellant, as mentioned earlier.

5. PW-1 Kashibai Gaikwad was the wife of the deceased.

She had lodged the F.I.R. She deposed that, she had married the deceased during Diwali, prior to the incident. She was working in the mess of one Pawar. The deceased was working at a fruit stall owned by Santoshi Nepali (PW-4). She knew the Appellant who was also working at the same fruit stall. She deposed that the Appellant and the deceased had a quarrel due to money and business. On 29.04.2018, the Appellant was calling the deceased to meet him, but PW-1 did not permit her husband to meet the Appellant.

6. On 30.04.2018, the deceased told her that he wanted Rs.1000/- as he wanted to start his own fruit stall. PW-1 gave him Rs.1000/- and left for her work. At about 5:00p.m. the police came to the place where she was working. They took her to the place where her husband's dead body was lying. It was on the heap of crushed stones. He had suffered head injury and his body was blood stained. People had gathered there. The Appellant was apprehended. His shirt was stained with blood. He was wearing blue jeans. The deceased was wearing white Tee-shirt and gray pant. The police took her husband in the ambulance. They took the

Appellant away. She lodged the FIR with the police station. It is produced on record at Exhibit-24. It sufficiently corroborates her deposition. On the next day, at 11:00a.m. the police called her for the spot panchanama. She showed the spot of the incident to the police. The police seized the blood stained earth and stones from the spot. She identified the clothes worn by the Appellant and the deceased which were produced in the Court.

In the cross-examination, she deposed that, she had seen the blood stains on the shirt of the Appellant. She had also seen the blood on the stones lying at the spot and, therefore, she came to know that the Appellant had assaulted the deceased with stones. She had not personally seen the incident.

7. PW-2 Parshuram Pawar is the most important witness in this case. He deposed that, he was running a hotel at Avahalwadi road, Wagholi. His working hours were from 11:00a.m. to 10:00p.m. He knew one Gopal Haladar. He was having a hotel next to PW-2's hotel. PW-2 knew the Appellant. He identified the Appellant in the Court through video conferencing. He deposed

that he knew the Appellant because he had seen him at the time of the incident. He further deposed that, on 30.04.2018 at about 4:30p.m. he was standing at the back door of his hotel. He saw the Appellant running towards Avhalwadi road. He saw blood on his clothes. PW-2 asked the Appellant to stop and ran after him. Gopal Haldar came to PW-2's help. Both of them caught the Appellant. Other people gathered there. PW-2 further deposed that, he asked the Appellant as to how there was blood on his clothes. At that time, the Appellant told him that he had beaten one person. PW-2 asked him, who was beaten by him. The Appellant told him that he had assaulted that person with stones. The Appellant led PW-2 and others to Haridwar hotel. A person was lying on the open land near Haridwar hotel. He was covered with blood. He was motionless. It was seen that he was beaten by stone on his head. PW-2 went near him. By that time, that person had already died. PW-2 then made a phone call to the police. After some time, the police came there. They took away the dead body and the Appellant in the ambulance.

8. On 01.05.2018, the police called him to the police

station. In his presence, the clothes of the deceased were seized. A separate panchanama was prepared. It is produced on record at Exhibit-27. He identified the clothes of the deceased in the court.

In the cross-examination, he deposed that, Haridwar Hotel was not visible from his hotel. He had not witnessed the incident personally. The blood stains on the red coloured shirt of the Appellant were not visible, however, the blood stains on the pant were visible. Some construction work was going on near his hotel.

9. PW-3 Deepak Shinde was a pancha for the spot panchanama which is produced on record at Exhibit-30. He described the spot. The spot of incident is not in dispute. The blood stained stones and blood stained earth were recovered from the spot. One of the stones was heavy weighing 20 to 25kg.

10. PW-4 Santoshi Nepali is another important witness. She was the fruit stall owner. She deposed that, she had a fruit stall at Wagholi Bazar. She used to bring fruits from Marketyard, Pune. She knew the Appellant and the deceased. Both of them were

working in Marketyard. She came in contact with them and then hired the Appellant for working in her shop. For about one year, the Appellant did a satisfactory job. Thereafter, the Appellant started misappropriating her income. She, therefore, removed him from the job. After that, she hired Popat Gaikwad (deceased in this case). She deposed that the Appellant used to say that because of the deceased, the Appellant was removed from his job. There used to be hot exchanges between the Appellant and the deceased. They both were in a habit of consuming liquor. They used to move around together as friends. But the Appellant was under the misunderstanding that he was removed because of the deceased. PW-4 came to know that the Appellant had assaulted the deceased by means of stone.

In the cross-examination, she deposed that, her shop was in Marketyard. There were other shops adjacent to her shop. When she removed the Appellant from work, she did not give him any reasons. But when the Appellant asked her the reason, she told him her reason that he used to come for work under the influence of liquor. About three months prior to the incident, she had also

removed the deceased from the work.

11. PW-5 Dr. Abhijit Bandkar was the Medical Officer who had conducted the postmortem examination. He noticed the following external and internal injuries:

External injuries:

- i) Laceration present over right parietal region of head, of size 4cm x 2cm, irregular, red muscle deep.
- ii) Contused abrasion present over area involving forehead on the left side and left zygomatic region, of size 2cm x 1cm, irregular, red, muscle deep.
- iii) Laceration present involving lower lip on left side, of size 2cm x 1cm, irregular, red, muscle deep.
- iv) Abrasion present over dorsum of nose of size 2cm x 1cm, irregular red.
- v) Abrasion present over right zygomatico temporal region, of size 2cm x 1.8cm, irregular, red.
- vi) Abrasion present over right cheek, of size 3.2cm x 1.2cm, irregular, red.
- vii) Laceration present involving right ear pinna of size 3cm x 2.2cm, cartilage deep, irregular, red.
- viii) Laceration present involving right ear lobule, 2cm x 1cm. Cartilage deep, irregular, red.

- ix) Laceration present over right middle finger of size 2cm x 1cm. Muscle deep, irregular, red.

Internal injuries:

- i) Under scalp hematoma present over right fronto-parieto-occipital region of size 22cm x 16cm and over left frontal region of size 8cm x 2cm, red.

Skull Vault :- Depressed comminuted fracture present involving right fronto-parietal region, of size 10cm x 8cm, irregular, red.

Skull Base :- Both side middle cranial fossa fractured, irregular, red.

Dura :- Torn corresponding to skull fracture, irregular, red.

Subdural heamatoma present over both side fronto-parieto-temporal region, of about 200ml. red.

Thin layer of subarachnoid hemorrhage present over left fronto-parietal region.

12. According to him, the cause of death was “Death due to head injury”. The postmortem notes are produced on record at Exhibit-35. There is hardly any dispute about the injuries suffered by the deceased.

13. PW-6 API Ranjitsingh Pardeshi was the Investigating Officer. He was attached to Lonikand police station. On

30.04.2018 at about 4:30p.m., he received information about the murder. He immediately rushed to the spot with his staff. The spot was near Phijiya society by the side of the road which was proceeding towards Avhalwadi. A dead body was lying there. Some people had detained the Appellant. He was wearing red coloured shirt and blue jeans. The people who had apprehended the Appellant told him that, he had committed the murder of the deceased. Thereafter, he sent his staff to call the wife of the deceased. She identified the deceased. She also identified the Appellant. PW-6 then sent the dead body for the postmortem examination. The statement of the wife of the deceased was recorded and it was treated as the FIR. When the Appellant was in custody, PW-6 took his personal search and seized his blood stained clothes in presence of the pancha witnesses. The clothes seizure panchanama is produced on record at Exhibit-38. PW-6 then deposed about the further investigation and other panchanamas. The spot panchanama was conducted on the next day at about 11:30a.m. He sent the seized muddemal articles for chemical analysis. The C.A. report is produced on record at

Exhibit-44. At the conclusion of the investigation, he filed the charge-sheet.

His cross-examination did not raise any material supporting the defence.

14. Apart from this ocular evidence, the C.A. report is produced on record. The T-shirt of the deceased and jeans of the Appellant showed presence of blood, but the blood group was inconclusive.

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

SUBMISSIONS OF MS. RUPALI CHANGAN, LEARNED COUNSEL FOR THE APPELLANT

15. Learned counsel for the Appellant submitted that, there are no eye witnesses in this case. The case is based purely on circumstantial evidence. The chain of circumstances is not complete. The motive is not established. The Appellant was removed from the job some time before the incident and, therefore, there was no immediate motive. The evidence of PW-2 Parshuram is not trustworthy. He is an interested witness. The blood found on the jeans of the Appellant did not establish the

blood group. Considering the weak nature of circumstantial evidence, the Appellant deserves to be acquitted.

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

16. Learned APP, on the other hand, submitted that the chain of circumstances is complete. Each of the circumstances is proved beyond reasonable doubt by the prosecution. She submitted that, there was extra judicial confession made by the Appellant to PW-2 Parshuram. The Appellant himself had led PW-2 Parshuram and others at the spot where the dead body was found. The Appellant was seen running away. He was apprehended near the spot. All the circumstances complete the chain. She, therefore, submitted that the prosecution has proved its case beyond reasonable doubt.

REASONS AND CONCLUSION

17. We have considered these submissions. As can be seen, this case is based purely on circumstantial evidence. Following are the circumstances against the Appellant: 1) Motive, 2) Extra Judicial Confession, 3) The Appellant having been caught near the spot immediately after the incident, 4) He had shown the spot

immediately, 5) The body was lying at the spot and 6) The blood stains on his pant.

18. As far as, the motive is concerned, the evidence is given by PW-4 Santoshi. She had given the history as to how the Appellant and the deceased were engaged by her in her fruit selling shop. She also deposed as to why the Appellant was removed from the job and as to how the deceased came to be appointed. She deposed about the quarrel between the Appellant and the deceased. She was aware about the reason for their enmity. Therefore, the prosecution has proved that the Appellant was on inimical terms with the deceased. There is no reason to disbelieve the deposition of PW-4 Santoshi.

19. The evidence of PW-4 Santoshi is also supported by PW-1 Kashibai who was the wife of the deceased. She has also deposed about the enmity between the Appellant and the deceased. Both the witnesses PW-1 and PW-4 corroborate each other. Therefore, we are satisfied that the prosecution has proved the circumstance of motive beyond reasonable doubt.

20. The next circumstance is about the extra judicial confession. The case of the prosecution is that, after commission of the offence, the Appellant was running from near the hotel of PW-2 Parshuram. The said hotel was situated near the spot. PW-2 Parshuram saw the Appellant running from in front of his hotel. He immediately stopped the Appellant with the help of another hotel owner. At that point of time, they made enquiries with the Appellant as to why he was running. At that time, the Appellant told him that, he had assaulted one person, and that he was lying at the spot. The Appellant had committed the murder of the deceased and was trying to run away and, therefore, on being caught, he told PW-2 Parshuram the reason of his running away. His conduct immediately after the incident is important.

21. The next circumstance is that the Appellant had shown the spot immediately where the dead body was lying. Neither PW-2 Parshuram nor others knew the spot where the incident had taken place. PW-2 Parshuram and others were led by the Appellant to the spot where the dead body of the deceased was lying. This was within the knowledge of the Appellant. Therefore, this is yet

another important incriminating circumstance against the Appellant.

22. The next circumstance is finding of blood stains on the jeans of the Appellant. The clothes were seized. He was put under arrest on 11:48p.m. on 30.04.2018 at Lonikand police station. Though, the blood group was not determined, the jeans did have human blood on it. There is no explanation offered. From the circumstances it appears that, the appellant threw stones on the deceased's head when he was lying down. Therefore, there was blood on the Tee-shirt of the deceased and only on the pant of the Appellant. There was no bleeding injury to the Appellant. The blood on his pant, in this case, is an incriminating circumstance.

23. Thus, the evidence shows that the Appellant was caught very near to the spot immediately after the incident. However, absolutely no explanation is offered by him regarding the incriminating circumstances.

24. As a result of the above discussion, we are of the opinion that the prosecution has proved all the incriminating

circumstances beyond reasonable doubt, forming a complete chain of circumstances. The prosecution has been successful in proving the case against the Appellant beyond reasonable doubt. Therefore, we do not find any merit in the Appeal. However, it is clarified that the Appellant shall be entitled to set off U/s.428 of the Cr.PC.

25. The Appeal is dismissed. With dismissal of the Appeal, the connected interim application is also disposed of.

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