

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

CRIMINAL APPEAL NO. 1323 OF 2024

Bhimrao Nagurao Pandit

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 5227 OF 2024
IN
CRIMINAL APPEAL NO. 1323 OF 2024**

Mr. Ibrahim Shaikh i/b. Mr. Ashraf Ali Shaikh for Appellant.
Ms. Mahalakshmi Ganapathy, Addl.PP for State/Respondent.

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

DATE : 27 JULY 2026

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

1. The Appellant has challenged the Judgment and order dated 06.11.2024 passed by the learned Additional Sessions Judge, Khed-Rajguru Nagar, Pune, in Sessions Case No.154 of 2019. The Appellant was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to suffer R.I. for life. He was also convicted for commission of the offence punishable U/s.397 of the IPC and was sentenced to suffer R.I. for

seven years. Both the sentences were directed to run concurrently. He was given benefit of set off U/s.428 of the Cr.P.C.

2. Heard Mr. Ibrahim Shaikh, learned counsel for the Appellant and Ms. Mahalakshmi Ganapathy, learned Additional PP for the State-Respondent.

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

The deceased Suyash Gund had lost his grand-mother on 28.07.2018. He was about to visit her place in a different village. On the way, he first wanted to go to the house of his friend Satish Gadekar, residing at Chakan. Suyash was originally a resident of Sankrapur, Taluka Rahuri, Dist. Ahmednagar. He was working in MIDC Koregaon. At about 11:30p.m. on 28.07.2018, he came to Chakan. He called the first informant Satish asking him about his address and as to how to reach his room. When he came near the room of PW-2 Satish, he was stopped by three unknown persons. They tried to snatch the mobile phone and money from him. He resisted. One of those three persons inflicted a blow of knife on his stomach. They snatched his mobile phone and went

away. Suyash shouted. The first informant Satish heard his shouts. He came down. He saw that Suyash had suffered serious injury on his stomach. He sought help of other people in the area. He was first taken to Unicare Hospital, Chakan. He was advised to be taken to a bigger hospital. They went to Aditya Birla hospital, but the Doctors demanded heavy deposit. The first informant was not in a position to make that deposit. In the afternoon, Suyash was taken to D. Y. Patil Hospital. Since it was a Sunday, they refused to perform surgery. Suyash was then taken to Vighnaharta Hospital, where he underwent the surgery, but his health deteriorated. In the meantime, Suyash's parents were informed. The police recorded the statement of the first informant in Vighnaharta Hospital. Suyash was shifted to Sassoon Hospital, Pune, where he succumbed to his injury on 05.08.2018. Satish's statement recorded at Vighnaharta hospital was treated as the FIR. The offence vide C.R.No.693 of 2018 was registered at Chakan police station against an unknown person on 29.07.2018 at 7:20p.m. The investigation was carried out. The spot panchanama was conducted. After the death of the deceased, postmortem

examination was conducted. The Appellant was already arrested in connection with a different crime. His custody was transferred to the present offence. It is the prosecution case that, during the investigation, the Appellant showed willingness to take the panchas and police to his house where he had kept the mobile phone taken from the deceased and the knife used in the offence. The recovery was effected on 20.11.2018. 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.

4. During trial, the prosecution examined eight witnesses including the first informant, the father of the deceased, the Medical Officer who conducted the postmortem examination, the panchas and the police officers.

5. The defence of the Appellant was of total denial. The learned Judge relied on the circumstance of recovery of mobile phone and the knife at the instance of the Appellant, and on this solitary circumstance, the learned Judge convicted the Appellant.

6. PW-2 Satish Gadekar was the first informant. He deposed that, in the year 2018 he was residing in Swami Samarth Apartment, on the third floor. He was knowing the deceased Suyash. They had studied in the same college. The deceased was originally from Rahuri. He was working in MIDC Koregaon. In July 2018, the deceased lost his maternal grand-mother. He wanted to attend the funeral. He made a telephone call to PW-2 because he was getting late. It was night time. He wanted to come to the room of the first informant. At around 11:30p.m. on 28.07.2018 he reached Chakan. He made a telephone call to PW-2 and asked his address. He came near PW-2's room. He was stopped by some unknown persons. PW-2 has deposed that, those persons wanted to snatch his mobile phone. When the deceased resisted, he was assaulted on his abdomen with a knife. PW-2 heard the shouts. He came down. He saw Suyash (deceased). His intestine was protruding out. Suyash told him that there were three persons. They had run away. PW-2 brought Suyash to the room. He sought help of others and took Suyash to Unicare Hospital, Chakan. The police were informed. They had reached that hospital. The doctors

gave him first-aid and sent him to Aditya Birla Hospital. The doctors asked them to deposit Rs.1 lakh. The amount was big, therefore, Suyash was taken to D. Y. Patil Hospital. But since it was a Sunday, the Doctors told him that they would not perform the surgery. Then Suyash was taken to Vighnaharta Hospital, where he was admitted. The surgery was performed. Suyash's parents were informed. They came to the hospital. After about three days Suyash's parents shifted him to Sassoon Hospital. In the meantime, the police had come to Vighnaharta hospital. PW-2 had given his complaint. PW-2 further deposed that Suyash was having a mobile handset of Asus company. He was assaulted near a light pole in front of a temple. PW-2 identified his FIR. It is produced on record at Exhibit-21. He explained that Suyash was not in a position to speak in Vighnaharta hospital. The police had made enquiries with Suyash in the hospital at Chakan, but they had not taken down anything in writing.

In the cross-examination, he deposed that the road in front of his building was used by the people. When PW-2 heard the shouts, he came down. But at that time, there was no one else

except Suyash. At that time, Suyash was talking clearly. PW-2 did not know who informed the police. They admitted Suyash in Unicare Hospital at around 1:00a.m. They went to Aditya Birla Hospital one hour after that. They were present in that hospital for about one hour. Then they went to D. Y. Patil Hospital at around 3:00a.m. They reached Vighnaharta hospital at about 4:00a.m. The others who had helped PW-2 to take Suyash to the hospital did not come to Vighnaharta hospital. The police came to Vighnaharta hospital at around 10:00a.m. in the morning. He deposed that he did not know the details of the mobile handset of Suyash. He did not know the SIM card number. Certain minor omissions from his FIR were brought on record, but those omissions did not go to the root of the matter. After the surgery, Suyash was talking a little. PW-2 went to Sassoon Hospital after 4 to 5 days.

7. PW-4 Balasaheb Gund was the father of the deceased. He deposed that the deceased was working in MIDC Bhima Koregaon. His grand-mother passed away on 28.07.2018. Suyash wanted to attend the funeral. When Suyash had reached Chakan, some

unknown person assaulted him and took away his mobile handset of Asus company. PW-4 and his wife (parents of Suyash) came to Vighnaharta hospital in the morning. Even after the surgery, Suyash's health did not improve, therefore, he was taken to Sassoon Hospital. Suyash died on 05.08.2018. PW-4 further deposed that Suyash had purchased that mobile phone through online shopping. At that time, he was studying at Chas. PW-4 stated that he had given a copy of the bill of mobile phone purchase to the police. He brought the original bill and produced it before the Court. It is taken on record at Exhibit-29. One sealed packet was opened in the Court. There was one mobile handset. The parcel was numbered as VPR No.22/2023. He identified that mobile handset as that of his son. It was taken on record as Article 'A'.

In the cross-examination, he admitted that, till his deposition, he had not given the original bill for purchase of that mobile phone to the police. He had not told the police in his statement that he had given a copy of the said bill to the police. He had not informed the police that the original bill was with him.

The Exhibit-29 which is the said receipt mentions two IMEI numbers.

8. PW-1 Waman Gore and PW-3 Aniket Gore were the two panchas for the spot panchanama which is produced on record at Exhibit-19. The spot of the incident is not in dispute. PW-1 Waman in his cross-examination stated that he did not know what process was followed by the police. They obtained his signature on the panchanama, but he did not know what was written in that panchanama.

9. PW-3 Aniket, however, stood firm on his deposition that the spot panchanama was conducted in his presence. He identified the spot panchanama at Exhibit-19. He described the spot as near the light pole near that society.

10. PW-6 Dr. Abhijit Bandgar had conducted the postmortem examination. The postmortem notes are produced on record at Exhibit-41. He noticed three stitched wounds on the abdomen. There were other marks about therapeutic treatment. However, on internal examination, he noticed injuries to small and large

intestines. He deposed that the stab injury was sufficient to cause the death in ordinary course of business. The cause of death was mentioned as “complications following stab injuries”.

11. PW-5 Police Constable Subhash Pawar deposed that the station officer in-charge of Chakan police station directed him to go to Vighnaharta hospital, Morwadi to record the statement of the injured. But Suyash was not in a position to speak. PW-2 Satish was present. He gave the statement. It was treated as an FIR. PW-5 then conducted the first part of the investigation. He conducted the spot panchanama. He recorded the statements of PW-2's room partner and other people residing nearby. He deposed that the deceased succumbed to his injuries on 05.08.2018. Thereafter the other serious offences were applied in the investigation.

In the cross-examination, he denied the suggestion that the spot was of heavy traffic.

12. PW-7 Prakash Hole is an important witness. He was a pancha for the recovery at the instance of the Appellant. He deposed that, on 20.11.2018, the police called him to Chakan

police station. He saw the accused named Pandit. The accused told him that he had kept a knife and the mobile phone in his room. The accused led the police and the panchas to Bhamboli. The accused took out a knife and the mobile phone from a cupboard. Those articles were seized. PW-7 identified the memorandum statement and the recovery panchanama. They are produced on record at Exhibits-43 and 44. He was shown a mobile phone at Article 'A' and knife at Article 'B'. He identified both the articles. He was shown the accused through the video conferencing. PW-7 stated that he thought that, that person was the accused Pandit. He did not positively identify the Appellant.

In the cross-examination, he stated that he did not remember on which date he was called to the police station. He could not tell at what time they left the police station. They did not make any enquiries when they reached that village. They did not make any enquiry as to who was residing in that particular room from where the recovery was effected. Importantly, he deposed that, only the accused had gone inside the room. He further deposed that, he could not tell for how long they were waiting

there. He himself did not take those articles i.e. knife and the mobile phone in his own hands to see them clearly. There were no special signs on those articles. After that, they were left at the police station at about 6:00p.m. He further deposed that the police brought those articles to the police station as they were recovered. He deposed in the examination in chief that the mobile phone and the knife were seized and that his signatures were taken, but there is no reference to sealing of those articles and then taking their signatures on the labels. However, the panchanama mentions that those articles were seized and then sealed with the signatures of the panchas.

13. PW-8 ASI Sanjay Neelpatrewar was the investigating officer. He took over the investigation of C.R.No.693 of 2018 registered at Chakan police station in this case on 05.08.2018. The Appellant was arrested in connection with C.R.No.1064 of 2018 of Chakan police station. His investigation revealed that the Appellant was connected with the present case, therefore, he was taken in custody and was shown as arrested on 17.11.2018. On 20.11.2018, he gave a statement which was recorded at Exhibit-

43. He showed his willingness to produce the mobile phone and knife. He led the police and the panchas to his house. He took out a knife and the mobile phone from the drawer of a cupboard. They were seized. The knife and the blood samples of the deceased were sent by this witness for chemical analysis. He was shown the bill Exhibit-29. He deposed that the IMEI numbers of the seized mobile phone handset and those mentioned on Exhibit-29 were the same. He identified the mobile phone and the knife which he had seized.

In the cross-examination, he deposed that he did not secure the CCTV footage around the area where the incident had taken place. He could not say at what time they left the police station to effect recovery. They had gone by a private vehicle. He could not describe the vehicle. He could not state who had called that vehicle. He had not shown any document regarding payment of the fare of that private vehicle. He could not state at what time they had reached the room from where the recovery was effected. He did not record the statement of the owner of that house. He did not record the statements of the neighbours of the house from where the recovery was effected. He did not record the statements

of the persons residing in the Appellant's house. He could not tell for how long they were at that place. They reached back at the police station at around 3:30p.m.

This is the evidence led by the prosecution. In addition, the prosecution produced the C.A. certificate. It mentions that no blood was detected on the knife sent for the chemical analysis.

SUBMISSIONS OF MR. IBRAHIM SHAIKH, LEARNED COUNSEL FOR THE APPELLANT:

14. Learned counsel submitted that the case is based purely on circumstantial evidence. There is no direct evidence. There is only one circumstance of recovery led by the prosecution. That circumstance is extremely doubtful. It is not proved beyond reasonable doubt.

15. The recovery evidence in the form of PW-7 Prakash and PW-8 ASI Sanjay shows that the conviction cannot be based on such doubtful evidence. There are no other circumstances led by the prosecution. The chain of circumstance is not complete. The alleged recovery was effected after about four months from the incident. The ownership of the house is not established. How the

Appellant had entered the house at the time of recovery is not explained. It is not established that, that room was in exclusive possession of the Appellant. The pancha PW-7 Prakash had not clearly identified the Appellant in the Court. There was no blood detected on the knife, therefore, that knife cannot be connected with the incident. This is an important aspect because the mobile phone was recovered at the same time. The recovery panchanama mentions the IMEI number in a different ink. It is a manipulated document.

SUBMISSIONS OF MS. MAHALAKSHMI GANAPATHY, LEARNED ADDL.P.P. FOR THE STATE:

16. Learned Addl.P.P., on the other hand, submitted that the recovery was effected from the Appellant's own room. The evidence of PW-7 Prakash and PW-8 ASI Sanjay support each other and hence, recovery is proved beyond reasonable doubt. This is a strong circumstance. The purchase bill is produced on record. It mentions the same IMEI numbers as that of the recovered mobile phone and, therefore, this circumstance is enough to base the conviction. The prosecution has proved its case beyond reasonable

doubt.

REASONS AND CONCLUSION

17. We have considered these submissions. As far as the incident of assault and robbery is concerned, there is hardly any doubt or dispute about occurrence of this incident. PW-2 Satish has described as to how he had heard the shouts and then had seen the deceased in injured condition. The injuries suffered by the deceased are corroborated and explained by PW-6 Dr. Bandgar. Therefore, there is no reason to doubt the prosecution story to that extent that the deceased was assaulted with a knife on his abdomen for the purpose of robbery. His mobile phone was not found with him, therefore, it is also a reasonable inference that the offender had taken away his mobile phone. The father of the deceased PW-4 Balasaheb had produced the purchase bill of his mobile phone.

18. Therefore, the only main issue which needs to be decided is, whether the Appellant is connected with the alleged offence. The only evidence against the Appellant is the recovery of

mobile phone and knife from his room. In this context, the evidence which needs to be considered is that of PW-7 Prakash who was a pancha, PW-8 ASI Sanjay, and the documentary evidence at Exhibits-43 and 44 i.e. memorandum statement of the Appellant and the recovery panchanama.

19. In this context, PW-7 and PW-8 have not given reliable evidence. PW-7 Prakash has not clearly identified the Appellant in the Court. PW-8 ASI Sanjay has not given clear answers as to when he had left the police station, at what time they had reached that particular room, how long they had stayed there and how long it took to effect the recovery. PW-8 deposed that, the Appellant entered the room and took out the articles from the drawer of the cupboard. On the other hand, PW-7 Prakash stated that the Appellant alone had entered the room. This statement is contrary to his examination in chief and the panchanama that the Appellant had taken out those articles from a cupboard.

20. The evidence of PW-8 is equally vague. According to him, they had gone in a private vehicle. He did not give the details

of the vehicle. In fact, he deposed that he could not state who had called that vehicle. He could not describe the vehicle. He did not produce the receipt for paying the fare of that vehicle. PW-8 could not tell around what time they reached the place from where the recovery was effected.

21. There is nothing to show that the room was locked or somebody had occupied that room or that it was in exclusive possession of the Appellant. This recovery was effected about four months after the incident.

22. The knife did not show presence of blood. The stolen articles were not found in the possession of the Appellant soon after the incident. Therefore, it would be very difficult to base the conviction regarding commission of the offence against the Appellant, on this solitary, vague and weak piece of evidence. The learned Judge has based his conclusion only on this circumstance to convict the Appellant. Therefore, in this case, the benefit of doubt must be given to the Appellant. The conviction recorded against him is not sustainable.

23. Hence, the following order:

O R D E R

- i) The Judgment and order dated 06.11.2024 passed by the learned Additional Sessions Judge, Khed-Rajguru Nagar, Pune, in Sessions Case No.154 of 2019, is set aside.
- ii) The Appellant is acquitted of all the charges.
- iii) The Appellant shall be released forthwith if not required in any other offence.
- iv) Before being released, the Appellant shall execute a P. R. Bond in the sum of Rs.15000/- in consonance of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, for his appearance in case an Appeal against acquittal is preferred.
- v) The Appeal is disposed of in the aforesaid terms.
- vi) With disposal of the Appeal, the connected interim application is also disposed of.

(ASHISH S. CHAVAN, J.)

(SARANG V. KOTWAL, J.)