



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.93 OF 2023

Anjabapu Asaram Shinde,
Age : 57 years, Occ. Agri.,
r/o. Limbejalgaon, Tq. Gangapur,
Dist. Aurangabad

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.S.J.Salunke, Advocate for appellant
Mrs.Uma S. Bhosle, APP for respondent - State

AND

CRIMINAL APPEAL NO.539 OF 2022

Deelipsing s/o. Kashiram Rajput,
Age: 45 years, Occ. Agri.,
r/o. Malkapur, Taluka Gangapur,
Dist. Aurangabad

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.Dhanraj Ingole, Advocate h/f. N.S.Ghanekar, Advocate for appellant
Mrs.Uma S. Bhosle, APP for respondent - State

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : NOVEMBER 14, 2024
PRONOUNCED ON : NOVEMBER 19, 2024**

JUDGMENT (Per R.G.Avachat, J.) :-

The challenge in this appeal is to the judgment and order of
conviction and consequential sentence passed on 10.06.2022, by

learned Addl. Sessions Judge-1, Vaijapur, Dist. Aurangabad, in Sessions Case No.46 of 2015. The details thereof are given below in the tabular form:-

Sr. No.	Name of Appellant	Conviction under Section	Punishment
1	Anjabapu Asaram Shinde	302 of I.P.C.	Life imprisonment and to pay fine of Rs.10,000/-, in default, S.I. for 06 months
2	Deelipsingh Kashiram Rajput	201 of I.P.C.	R.I. for 3 years and to pay fine of Rs.2,000/-, in default, S.I. for 1 month.

2. For the sake of convenience, the appellants in both these appeals are referred to as per their serial number in the Charge (Exh.43), i.e. Anjabapu, appellant in Criminal Appeal No.93 of 2023, would be referred to as 'A1' and Deelipsingh, appellant in Criminal Appeal No.539 of 2022, would be referred to as 'A2'.

The State did not prefer an appeal against acquittal of A2 of the offence punishable under Section 302 read with Section 34 of I.P.C.

3. The facts, in brief, of the prosecution case before the trial court are as under:-

Both the appellants and Prakash (deceased) were friends. A1 would run a fair-price shop. He had quarrel with one Harish Akbar

Patel, three years before. Prakash was one of the witnesses in the said case. A1 did not want Prakash to give evidence in favour of Hairsh Patel. Just a day or two before the incident, said case was on the board of the court concerned. Prakash had been to the court to give evidence. The case was, however, adjourned.

4. It so happened that on 19.03.2015, by 07.30 p.m., A2 came in his Indica car to Limbe-Jalgaon fata. He made a phone call to Prakash (deceased). Prakash came. He took Prakash in the car. Sitaram (PW 2), friend of Prakash, also wanted to join the duo. A2, however, told him that he had urgent work and would drop Prakash off back within half an hour. As such, both A2 and Prakash, thereafter, went to Gokul Dhaba/Hotel to wine and dine. A1 joined them in a while. First, they consumed liquor. A petty quarrel had ensued. A1 assaulted Prakash with a sword. He gave not less than two blows with the sword and fled in the darkness. The waiters in the hotel witnessed the incident. A2 took the sword and threw it in the dark behind the hotel. Somebody called the ambulance and informed the police as well. Prakash was rushed to Ghati hospital, Aurangabad. He was declared dead. His nephew - Bharat (PW 1) was informed of the incident. He too rushed to the hospital and then, lodged the First Information Report (Exh.60). A crime vide C.R.

No.37 of 2015 was registered. Crime-scene panchnama (Exh.104) was drawn. The sword was seized. Inquest and autopsy was conducted on the mortal remains. The appellants were arrested. The clothes on the person of the deceased and the appellants were seized besides Indica car and motorcycle as well. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, charge sheet was filed.

5. The trial court framed Charge (Exh.43). The appellants pleaded not guilty. Their defence was of false implication. To bring home the charge, the prosecution examined 25 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the order impugned herein was passed with reasons in support thereof.

6. Heard learned counsel for the parties.

7. Learned counsel for A1 would submit that the FIR was lodged by PW 1 - Bharat based on the hearsay information. He then took us through the evidence of PW 11 - Chandrakala, widow of deceased Prakash. He brought to our attention her evidence,

suggesting that Prakash had told A1 that he was going to give evidence in the case between him and Harish Patel, in accordance with what he had seen, meaning thereby, he was not going to favour Harish Patel. Learned counsel meant to say that there was no motive for A1 to do away with Prakash. According to him, one of the waiters in the hotel claimed to have witnessed the incident in C.C.T.V. footage. No electronic evidence has been tendered in the case. The other so called eye witnesses examined by the prosecution did not know the names of the appellants. The Investigating Officer did not conduct the test identification parade. He then adverted our attention to the C.A. reports and submitted that those are inconclusive. Thus, the C.A. reports do not support the prosecution case. He would, therefore, submit that the prosecution failed to bring home the charge beyond reasonable doubt.

8. Learned counsel for A2 would submit that A2 was not in the know that the incident was going to happen. Video-clips of the incident were shown to the witnesses, wherein A2 was seen to have thrown the sword in the dark only with a view that the same shall not be used to assault the deceased. He would further submit that A2 was all along present in the hotel. It was he, who lifted the deceased and put in the ambulance. He then invited our attention to the

evidence of some of the eye witnesses, to indicate that A2 had pushed A1, so as to prevent him from assaulting Prakash (deceased). He would, therefore, submit that the trial court erred in convicting A2 for the offence under Section 201 of Indian Penal Code.

9. Learned APP would, on the other hand, submit that the case is based on direct evidence. There are not less than four eye-witnesses. The appellants and the deceased were regular customers of the said hotel. The witnesses knew them well since before the incident. The fact that the name of A1 was learnt by the witnesses post incident, would, therefore, be of little consequence. In the facts and circumstances of the case, no test identification parade was required to be held. She would further submit that A2 did throw away the sword only with an intention to cause disappearance of the evidence. According to learned APP, the trial court has rightly convicted the appellants. She relied on the judgment of the Apex Court in the case of **Shivaji Sahebrao Bobade vs. State of Maharashtra, 1973 DGLS (SC) 252.**

10. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

11. Admittedly, the incident took place by little past 09.00 p.m. on 19.03.2015, at Hotel Gokul, whereat, liquor was, admittedly, served. PW 19 - Dr.Ramesh conducted autopsy on the mortal remains of the deceased. He noticed following external injuries and corresponding internal injuries as well:-

External injuries:-

01. Stab wound of size 3 cm. x 1.5 cm., cavity deep, elliptical in shape, horizontally placed with slightly oblique, upper end of injury on right side and lower end of left side, present over the middle of the body of sternum, situated 8 cm below the sternal notch, reddish and margins curved and clean-cut and regular with blood infiltration seen.

Track of the stab : skin-subcutaneous and soft tissue-body of the sternum-restrosteral muscle – pericardium – right atrium of the heart – right lung anterior border.

02. Incised wound of size 7 cm. x 0.2 cm., muscle deep, over the nape of neck, horizontally placed with tailing of 4 cm towards the left, situated 12 cm from the occiput, margins clean cut and well defined, reddish.

03. Linear abrasion of size 6 x 0.1 cm. horizontally present, situated 2 cm from injury No.2 and 4 cm from left mastoid region, reddish.

04. Linear abrasion of size 4.5 x 0.5 cm. present obliquely over the right hypochondriac region, reddish.

05. Contusion of size 2 cm x 1 cm present over the medical aspect of middle 1/3rd of right arm, bluish red.

06. Linear abrasion of size 5 cm. 0.5 cm situated 2 cm below injury no.5, dark reddish.

07. Contused abrasion of size 0.5 cm, irregular shaped, present over the dorso-lateral aspect of right wrist dark reddish.

Internal injuries:-

Thorax a. Walls, ribs, cartilages	Body of sternum – Through and through penetrating injury, corresponding to injury no.1 of column 17, obliquely horizontal bony defect with restrosternal contusion of the soft tissues.
b. Pleura	Stab injury present on anterior aspect of right pleura, corresponding injury no.1 of column 17, About 2500 cc of blood and blood clots present in the right pleural cavity.
c. Larynx, Trachea and Bronchi	Intact, no foreign body detected.
d. Right Lung	Stab wound, horizontally situated of size 2.5 cm. x 1 cm., parenchymal deep, present over the anterior aspect of middle lobe of lung. Lung collapsed, displaced upwards and postero-medially; pale.
e. Left lung pericardium	Intact, Pale. Stab wound, horizontally present on anterior aspect of size 2.5 cm. x 1.2 cm. corresponding to the injury no.1 in column 17 with hemorrhages surrounding the stab. 300 cc of blood and blood clots present in the pericardial cavity
Large vessels Additional remarks	Containing blood and blood clots

12. Since Prakash met with homicidal death is a fact proved before the trial court and not disputed before us, we do not propose to refer to the evidence of the witnesses who have deposed in relation to the inquest panchnama (Exh.114).

13. The question is, whether A1 is author of the crime. The FIR (Exh.60) was lodged by PW 1 – Bharat. He was not an eye witness to the incident. The FIR was based on hearsay information. We, therefore, propose to refer to his evidence, which is relevant for deciding the present appeals. His evidence disclose that he was serving as a Waiter with Hotel Milan. His duty hours were from 08.00 a.m. to 08.00 p.m. Prakash (deceased) was his uncle. He know A1, who too was from village Limbe-Jalgaon. He would run a fair-price shop. According to him, A2 was *Sabhapati* of Panchayat Samiti. Both A1 and A2 belonged to a political outfit, “*Shiv Sena*” and were friends. Three years prior to the incident, quarrel had taken place between A1 and Harish Patel. Harish Patel was accused therein. Prakash (deceased) was one of the witnesses in the said case, pending in the Court, at Vaijapur. A1 thought that Prakash was taking side of Harish Patel. Just a day or two before the incident, the date of the court-case was there. Even, Prakash had attended the court. The matter was, however, adjourned. The fact that A1

entertained feeling that Prakash was going to take the side of Harish Patel and therefore, he was eliminated, is said to be the motive for the offence in question. Since the case is based on eye-witness account, we find the alleged motive to be little relevant, although PW 11 - Chandrakala, widow of the deceased, had testified that her husband had assured that he would depose in accordance with what he had seen, meaning thereby, he would not going to take side of Harish Patel. Be that as it may.

14. The evidence of PW 1 - Bharat, however, disclosed that Hotel Milan, wherein he was working as waiter, was near Limbe-Jalgaon fata. On 19.03.2015, by 07.30 p.m., both Prakash and his friend Sitaram (PW2) were taking tea at Venkatesh Tea stall, near Hotel Milan. A2 came in a car. He gave a phone call to Prakash. Prakash went to him and boarded his car. Sitaram too went there since he wanted to join the duo. The evidence of Sitaram (PW 2) disclosed that A2 told him that he had some urgent work and he would drop Prakash Off back within half an hour. Sitaram (PW 2), therefore, did not join them. Thus, the evidence on record indicates that A2 drove Prakash directly to Hotel Gokul. A1 joined them after a while.

15. PW 3 - Kishor, who was working as a Waiter in Hotel Gokul, testified that both the appellants and deceased Prakash used to visit Gokul Hotel, regularly. According to him, the trio came to Gokul Hotel between 08.00 pm. and 09.00 p.m. on 19.03.2015. The trio sat at a table in the family-garden of the hotel. They ordered for wine and soda. The evidence further disclosed that the trio were talking about the court case. They took drinks for half an hour and paid the bill for Rs.520/-. He returned the balance amount. After a while, he heard shouts. He, therefore, rushed towards the place whereat the trio were sitting. He saw A1 was talking on phone. He then went to the kitchen. He then heard shouts of Prakash. He, therefore, went thereat. C.C.T.V. footage facility was available in the hotel. He saw in the C.C.T.V. footage that A1 inflicted blow on the neck of Prakash with sword. Prakash, thereby, fell down. He also saw A1 gave second blow on the chest of Prakash with the very sword. Prakash removed the sword and handed it over to A1. Thereafter, A2 threw the same to the backside of the hotel. A phone call was, thereafter, made to the ambulance service. It was further disclosed from his evidence that when he came back towards the kitchen room and was standing near Ganesh and Ajay (waiters), he saw A1 came from bathroom and assaulted Prakash with sword on

his neck and again inflicted blow of sword on the chest of Prakash. A1 then disappeared in the darkness after having seen them.

16. Statement of PW 3 – Kishor, recorded under Section 164 of the Code of Criminal Procedure was referred to him. It is at Exh.72. He was subjected to a lengthy cross-examination. His attention was adverted to a sentence in his statement under Section 164 of Cr.P.C., that he had learnt the name of the assailant as Anjabapu after the incident. According to him, it was wrongly written. His attention was also adverted to the portion marked as “A”, appearing in his police statement. According to him, said sentence was correctly recorded. It was, therefore, marked as Exh.71. In the statement, he had stated that "अंजाबापू हे नाव घटना घडल्यानंतर मला समजले". Learned APP in-charge of the case had referred to this witness to his statement under Section 164 of Cr.P.C. in his examination-in-chief. This witnesses testified the entire statement to have been stated by him. Close reading of said statement would indicate the same to be so brief. The contents thereof are as under:-

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साक्षीदाराच्या शपथेवर जबाब सुरु

तिघे जण हॉटेल मध्ये आले. त्यांनी ट्रिंक केली. त्या हॉटेल मध्ये मी वेटर म्हणून काम करतो. त्या हॉटेलचे नाव गोकुळ आहे. ट्रिंक केल्यानंतर त्यांनी

बिल पेड केले. बिल पेड केल्यानंतर त्यांचे मध्ये भांडण झाले. अंजाबापुनी प्रकाश अलोणे यांचेवर तलवारीसारखे धारधार शस्त्राने वर केला. प्रकाश अलोणे हे जमिनीवर पडले. त्यानंतर ऍम्ब्युलन्स - १०८ ले फोन केला. तसेच पो. स्टेटे. ला फोन केला. पोलीस तेथे आले. प्रकाश अलोणे याना मी ओळखून होतो. ते आमचे नेहमीचे कस्टमर होते. अंजाबापू हे नाव घटना घडल्यानंतर मला समजले

17. One need not state importance of the statement recorded under Section 164 of Cr.P.C., although most of the evidence in the examination-in-chief, did not find place in the statement under Section 164 of Cr.P.C., The fact remains that the said statement contains material part of the incident and the same thereby reinforces the oral evidence of PW 3 – Kishor. Although this witness, initially, stated to have witnessed the incident in the C.C.T.V. footage, in the next paragraph, he claimed to have witnessed while he was near the other two witnesses and A1 returned from the bathroom of hotel. It appears that this witness was cross-examined with reference to his police statement recorded under Section 161 of Cr.P.C. Be that as it may. He was also cross-examined on behalf of A2. He admitted in his examination-in-chief that both Prakash and A2 sat on the chairs adjoining to each other. They were talking like friends. A2 was present in the hotel even post incident, that too, until the police had arrived and even thereafter. He admitted that A1 had pushed A2 aside when A2 had initially pushed him away. He went on to

admit to have seen A2 had intervened to rescue Prakash when he was being assaulted. The sword was stuck in the chest of Prakash after the second blow. Prakash himself removed the sword and gave it to A2, who, in turn, threw it away. This witness was shown video-clip of the incident. What was appearing therein was admitted by him. The same is as under:-

“A scuffle had taken place between the deceased and the assailant. A2 was seen to have intervened to save the deceased. Then it is seen that A2 and other witnesses lifted the deceased for placing him in the ambulance.”

18. We are conscious of the fact that what has been recorded in the statement under Section 161 of Cr.P.C. would not be a substantial evidence.

19. PW 4 – Ajay was another waiter in the very hotel. His evidence is on the lines of PW 3 – Kishor. According to him, both the accused persons before the court and the deceased were their regular customers. Little past 9 p.m., he heard shouts from the table, which was being attended to by waiter Kishor (PW 3). He along with the other waiters, therefore, rushed towards that table.

He saw that Prakash was lying on the ground. He saw scuffle between A1 and A2. A1 assaulted Prakash with sword. After having seen them, A1 disappeared in the darkness behind the bathroom. Prakash removed the sword and handed it over to him. A2 took it from him and threw in the darkness. Somebody had informed the police and the ambulance service provider as well. Prakash was thereafter shifted to the hospital.

20. PW 4 - Ajay too was subjected to searching cross-examination. In paragraph 6 of the cross-examination, it was suggested that there were 4-5 tables near the table where A1 was sitting. As such, presence of A1 at the hotel at the relevant time has been admitted much less fortified. He admitted that he had not attended the trio in the hotel in the past. He was further suggested that after hearing the shouts, he had rushed towards the place of incident and others followed him. He denied the suggestion that when Prakash was lying on the ground, A1 was not present. Even, this suggestion goes a long way that after the assault, A1 took to heels. He was confronted with his statement under Section 164 of Cr.P.C., wherein, it was suggested to him that A1 was not there while he reached on hearing of shouts. Taken the said piece of evidence as it is, the logical answer can be drawn that no sooner A1 assaulted

Prakash with sword, he disappeared/ran away. This statement (Exh.92) was also referred to in the examination-in-chief by the witnesses, wherein, presence of three customers at the crime-scene has been brought on record. It means that the examination-in-chief of PW 4 – Ajay reinforces the case that the trio had come to the hotel and took seat in the garden area of the hotel.

21. PW 5 – Ganesh was another waiter in the very hotel. He testified that at the relevant time, the appellants and deceased Prakash visited the hotel. He saw scuffle between A1 and A2. A1 pushed A2 aside. A1 then inflicted blow on the chest of Prakash with sword. After having seen him, A1 ran away. He too was subjected to searching cross-examination. The statements of the waiters appear to have been recorded within two days of the incident. He was confronted with his statement under section 164 of Cr.P.C. to bring on record very many omissions. True, the statement under section 164 of Cr.P.C. is in brief. Learned counsel, however, did not cross-examine this witness with reference to his police statement.

22. PW 7 – Rajendra was Manager of the hotel. His evidence disclosed that first, A2 and Prakash came to the hotel. Within ten minutes, A1 joined them. The trio sat in the garden area of the

hotel. Kishor (PW 3), waiter, was attending them. On having learnt from Kishor that Prakash was injured, this witness went to the spot. Prakash was lying on the ground. He had suffered injuries to his chest and neck. He did not speak about the presence of Anjabapu. Same suggests that Anjabapu immediately ran away. Had Anjabapu been innocent and had not been involved in the crime, he had no reason to take to his heels. It was the Manager (PW 7 - Rajendra) who contacted the ambulance service provider. Ambulance arrived. Prakash was shifted to the hospital. Police too were informed. They came. In his presence, the crime-scene panchnama (Exh.104) was drawn.

23. The aforesaid is the evidence of the material witnesses examined in the case. Although 25 witnesses were examined five of them namely 14, 15, 17 and 18 were police constables, who carried the seized articles to the F.S.L. Kalina and F.S.L., Aurangabad. Two of the witnesses were panchas to the inquest panchnama. Some other witnesses pertain to the disclosure statement made by both the appellants. One pertain to the disclosure statement made by A2, pursuant to which, his clothes came to be seized from the car. Said disclosure statement and panchnama find place at Exh.99 and the seizure panchnama at Exh.99-A; while, pursuant to the disclosure

statement made by A1, clothes on his person at the time of commission of crime, came to be seized from the heap of fodder from a particular place. It is at Exh.107 and Exh.110. Exh.107 is the memorandum statement. It was proved based on the evidence of PW 8 - Santosh. PW 10 - Atul is another witness to the crime-scene panchnama (Exh.104). PW 21 - Wasim, PW 22 - Sanjay and PW 23 - Ashok are the police officials, who did investigation of the crime.

24. The C.A. reports did not further the prosecution case. However, the fact is that human blood was notice on the seized sword, i.e. an incriminating circumstance.

25. Appreciation of the evidence referred to herein above indicates that both the appellants and Prakash (deceased) had visited the hotel by little past 8:00 in the evening on the fateful day. They consumed liquor there. The evidence of the waiters referred to herein above indicates that their presence in the hotel was admitted. Their evidence further indicates that they had seen A1 assaulting Prakash with a sword. As a result of the assault and the injuries suffered by Prakash, he succumbed thereto. As such, it was the assault made by A1 with an intention to do away with Prakash. The trial court has rightly convicted A1 for the offence punishable under Section 302 of I.P.C.

26. The question is, whether in the facts and circumstances of the case, conviction of A2 is sustainable in the eye of law. The answer thereto would be, a big “No”. For better appreciation, we propose to reproduce Section 201 of I.P.C :-

201. Causing disappearance of evidence of offence, or giving false information to screen offender.— Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.— shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.— and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.— and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

27. The evidence on record indicates that A2 had even pushed A1 with a view to prevent him from making assault on Prakash. After removal of the sword, A2 threw it into the darkness. Same has to be taken as with a view that the same shall not be reused. A1 disappeared from the crime scene. A2 remained there all along, even post arrival of the police. It was A2 who took the police to the back side of the hotel and then, the sword was seized. The act of A2 in throwing the sword would, in no way, could be construed to have been done with an intention to cause disappearance of the evidence, so as to screen A1 from legal punishment. In our view, the trial court erred in convicting A2. Interference with the impugned order so far as regards conviction and consequential sentence imposed against A2 is, therefore, warranted.

28. In the result, the appeal preferred by A1 fails and the appeal preferred by A2 succeeds. Hence, the following order:-

(i) Criminal Appeal No.93 of 2023 preferred by appellant - Anjabapu Asaram Shinde is dismissed;

(ii) Criminal Appeal No.539 of 2022 preferred by appellant - Deelipsing s/o. Kashiram Rajput is allowed. The impugned order

dated 10.06.2022, passed by learned Addl. Sessions Judge-1, Vaijapur, Dist. Aurangabad, in Sessions Case No.46 of 2015, convicting and sentencing the appellant – Deelipsing, for the offence punishable under Section 201 of Indian Penal Code, is set aside. He is acquitted of the said offence. Fine amount paid by appellant – Deelipsing, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP