



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

CRIMINAL APPEAL NO. 979 OF 2023

Irwant Nagnathappa Mankari
Age: 43 years, Occu.: Scrap Culling,
R/o Deoni, Tq. Deoni, Dist. Latur

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Udgir (City),
Tq. Udgir, Dist. Latur

..RESPONDENT

....
Mr. Y.G. Birajdar, Advocate h/f Mr. S.S. Deshmukh, Advocate for appellant
(appointed through Legal Aid)
Mr. S.D. Ghayal, A.P.P. for respondent - State
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 12th NOVEMBER, 2024**

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The appellant was charged and prosecuted for the offence punishable under Section 302 of the Indian Penal Code in Sessions Case, No. 33 of 2022 on the file of Additional Sessions Judge, Udgir ('trial Court'). On appreciation of the evidence in the case, the trial Court, vide judgment and order dated 23rd February, 2023, convicted the appellant for the said offence and consequently sentenced to suffer imprisonment for life and fine of Rs.1,000/- with default stipulation. The appellant is, therefore, before this Court.

2. In short, the case of the prosecution before the trial Court was that both, deceased – Baburao Panchal and the appellant were rag pickers. A quarrel ensued between them near a tin shed in the premises of S.T. bus stand. The appellant gave number of blows to Baburao with stone. Baburao thereby died. The appellant fled.

3. Somebody informed the matter to police. S.T. Depot Manager, PW 1 - Yashwant, who was in turn asked by the concerned police officer to visit the bus stand to find what had happened there. He, therefore, went to the site by little past 08:00 p.m. He saw one person in the age group of 60-65 years to have sustained number of injuries. He had seen him earlier picking empty water bottles. Many persons had gathered there. One of them was Shaikh Sharif. He identified the deceased as Baburao Panchal, as he was serving with his hotel 5-6 years before the incident.

4. PW 1 – Yashwant, S.T. Depot Manager, therefore, lodged the F.I.R. (Exh.10) alleging therein that some unknown person killed Baburao Panchal by assaulting him with stone. Crime, vide C.R. No. 326 of 2021 was registered with Udgir City Police Station. Crime scene panchanam (Exh.31) was drawn. Inquest and autopsy were conducted on the mortal remains of Baburao. Some articles were seized from the crime scene viz. blood stained stone. Statements of the persons acquainted with the facts and circumstances of the case were recorded. One of them was PW 4 – Satish. He claimed to have been to the tin shed on the premises of S.T. bus stand at

the relevant time. He further claimed to have seen the appellant assaulted the deceased with a stone. The appellant was thereafter arrested. Clothes on his person were seized. All the seized articles were submitted to R.F.S.L., Nanded. On receipt of the C.A. reports, the appellant was proceeded against by filing the charge-sheet.

5. The trial Court framed the charge (Exh.7). The appellant pleaded not guilty. His defence was of false implication.

6. To bring home the charge, the prosecution examined seven witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court passed the order impugned herein.

7. Initially we had appointed Mr. Sachin S. Deshmukh, learned counsel to assist us in this case. While hearing the application for suspension of sentence, we found the case could be disposed of then and there only. However, after granting suspension of sentence, the appeal was deferred for final hearing with the consent of learned A.P.P.

8. Today, we have heard Mr. Y.G. Birajdar, learned counsel holding for Mr. Sachin Deshmukh, learned counsel appointed to assist the Court. He would submit that the case is based on so called sole eye witness. He was a planted witness. He did not know the appellant. No test identification parade was held. On arrest of the appellant he was shown to the said eye witness.

The F.I.R. was lodged against an unknown person. There is no other evidence to connect the appellant with the crime in question. The evidence of sole eye witness, PW 4 - Satish is not that of sterling quality. He, therefore, urged for grant of appeal.

9. Learned A.P.P. would, on the other hand, submit that although the F.I.R. was registered against an unknown person, PW 4 – Satish had an occasion to be at the crime scene while the incident was underway. He later on identified the appellant in photographs and before the Court as well. The said witness has no reason to falsely depose against the appellant. According to him, the trial Court thus rightly convicted the appellant and no interference with the impugned order is, therefore, warranted.

10. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein. Let us now advert thereto and appreciate the same.

11. Name of the deceased was Baburao Panchal. He was sixty plus. He was found dead at a tin shed on the premises of S.T. Bus Stand, Udgir on 23rd November, 2021. His dead body was shifted to the hospital. Autopsy was conducted on his mortal remains by PW 2 - Dr. Kalpana. It is in her evidence that she noticed following injuries on his person :-

- 1) *CLW on right ear pinna full thickness curved 4 cm in length margins irregular, crushed dark red in colour, with blood in filtration in surrounding tissues.*

- 2) *CLW on right mastoid process, vertically placed, bone deep, 2.5 cm in length, margin crushed, irregular and blood infiltrated.*
- 3) *CLW on occipital tubercle, 3 x 3 cm x bone deep margins irregular, crushed, dark red in colour, blood infiltrated surrounding.*
- 4) *CLW on left eyebrow medial aspect horizontally placed, 2 cm in length x bone depth, margins irregular, crushed, dark red in colour, blood infiltrated.*
- 5) *CLW on right eyebrow, horizontally placed, 7 x 2 cm., margins crushed, irregular, dark red in colour, blood infiltrated.*
- 6) *Abrasion on left axillary region, 0.5 x 0.5 cm. margin irregular, dark red in colour.*
- 7) *CLW on left eyebrow lateral aspect, 2 cm in length x bone deep, margin irregular, crushed, dark red in colour, blood infiltrated.*
- 8) *Right black eye (contusion) seen.*
- 9) *CLW on lower lip (inner aspect) vertically placed 2 x 1 x 0.5 cm margins irregular, dark red in colour.*
- 10) *CLW on lower lip vertically placed 1 x 1 x 0.2 cm, irregular margins, dark red in colour.*
- 11) *CLW on upper lip vertically placed (inner aspect) 3 x 2 x 0.2 cm., margin irregular dark red in colour*
- 12) *Fallen right upper incisor tooth.*

She issued postmortem examination report (Exh.15) stating therein that the deceased died of head injury.

12. During her cross-examination, it was suggested that the injuries noticed on the person of the deceased could be possible in a vehicular accident. She flatly denied the same. According to her, the injuries on the person of the deceased were on his entire body. Had it been an accident, the deceased would have suffered injuries to one side of his person. Learned counsel for the appellant did not dispute the deceased met with homicidal death.

13. The question is whether the appellant is the author of the crime in question. The F.I.R. (Exh.10) was lodged by PW 1 – Yashwant, S.T. Depot Manager, Udgir. His evidence does not further the prosecution case except to the extent of setting the criminal law in motion by filing the F.I.R. against an unknown person. We, therefore, do not propose to refer to his evidence in extenso.

14. PW 3 – Shaikh was a witness in relation to establishing identity of the deceased. It is in his evidence that he would run a hotel. The police had taken him to the bus stand to identify the deceased. On having seen the dead body, he identified the deceased was Baburao Panchal. This piece of evidence too does not further the prosecution case.

15. Then comes the evidence of material witness, PW 4 – Satish. His evidence discloses that he was a Sweeper, serving with Municipal Council, Udgir. On the given day he had taken his nephew to the hospital of Dr. Waigaonkar in an auto-rickshaw. On the way to hospital, he had a nature's call. He, therefore, alighted from the auto-rickshaw and went to the tin shed on the premises of the S.T. bus stand to pee there. It is further in his evidence that he saw that there was a quarrel between two persons. He had seen them earlier picking waste. One of them hit another with a stone. Lateron, the police told him that the injured died. The police shown him photographs of the dead person and told his name. He identified the appellant before the Court as the person, who assaulted the deceased.

16. He was subjected to a searching cross-examination. It was in his evidence that on the given day he was on duty. His work hours from 06.:00 a.m. to 01:00 p.m. He returned home by 01:00 p.m. His nephew (3 years old) was not keeping well. He, therefore, took him to Dr. Waigaonkar. His mother and sister had accompanied them. They reached hospital by 01:30 p.m. Only one patient was ahead of him in number to be examined. As such, his nephew was examined by doctor by 01:40 p.m. He admitted that there was bathroom for urinating at the hospital of Dr. Waigaonkar where at he could have eased himself. He being a sweeper with Municipal Council, Udgir, was very well aware where were the public urinals and toilets at Udgir. The distance between the hospital and the bus stand was of only half kilometer. While he was on his way back home in an auto-rickshaw, he got down at bus stand. He was confronted with his police statement which is silent to state that he was on his way back home in an auto-rickshaw. He admitted that there was toilet at the bus stand. According to him, there were many persons present at the crime scene. He went on to state that police personnel Yedke called him to the police station on the following day. His statement was recorded there. He was further confronted with his police statement wherein the name of 'Waigaonkar' is not appearing.

17. PW 5 - Gopal was a Police Head Constable, who carried muddemal record to R.F.S.L., Nanded. PW 6 – Suresh was a witness to multiple panchanamas. One of such panchanamas is crime scene panchanama (Exh.31). According to him a big stone stained with blood was

seized in his presence. According to him, on 25th November, 2021 again he had been to the police station. The appellant made a disclosure statement about having kept clothes on his person at the time of the incident at a scrap material shop. His statement was recorded. The appellant took them to that place and took out those clothes. The clothes were seized under panchanama (Exh.32). Then there is panchanama (Exh.33) whereunder a pair of sandal was seized on 24th November, 2021. He was also a witness to the inquest panchanama (Exh.35).

18. From his cross-examination we find nothing fruitful could be elicited to further the prosecution case. The reason therefor is the C.A. reports.

19. PW 7 - Edake was a police officer, who did investigation of the crime. We do not propose to refer to his evidence, since what he did is a part of investigation which is already referred to hereinabove.

20. Appreciation of the evidence referred to hereinabove indicate that Baburao Panchal unfortunately met with homicidal death. The case is based on so called sole eye witness i.e. PW 4 – Satish. We do not find him to be a witness of sterling quality. He was serving as a Sweeper with Municipal Council, Udgir. At the material time he had been to the hospital of Dr. Waigaonkar for treatment of his nephew. The distance between the crime scene and the hospital is of half kilometer. If he really had a nature's call (urinating), he could have eased himself at the urinal admittedly available at

the hospital itself. Had he really seen the incident, his conduct/reaction ought to have been to go public with the incident and report the matter to bus depot authority or police station. It is not known as to how the police officers came to know PW 4 – Satish to have witnessed the incident. The police officer - Edake had called him to police station at 07:30 p.m. on the following day. Edake has not been examined in that regard. Learned counsel for the appellant has, therefore, every reason to contend that testimony of this witness inspires no confidence. We are in complete agreement with him.

21. The C.A. reports (Exhs.42 to 47) on record indicate that blood group of the deceased could not be ascertained. The blood group of the applicant was 'B'. While the articles referred to indicate that some of them were stained with blood. No human blood grouping could be ascertained. Thus, it is concluded that the C.A. reports do not further the prosecution case.

22. In short, appreciation of the aforesaid entire evidence lead us to conclude the prosecution to have failed to bring home the charge beyond reasonable doubt. Based on such quality of evidence, the trial Court ought not to have convicted the appellant. Interference with the impugned order of conviction and consequential sentence is, therefore, warranted. In the result appeal succeeds. Hence, the following order :-

ORDER

(I) Criminal appeal is allowed.

- (II) Impugned judgment and order dated 23rd February, 2023 passed by Additional Sessions Judge, Udgir in Sessions Case, No. 33 of 2022 convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, is hereby set aside. He stands acquitted thereof.
- (III) Since the appellant is granted bail, his bail bonds stand cancelled.
- (IV) Fine amount paid, if any, be refunded to him.
- (V) Legal Services Sub-committee, High Court, Aurangabad shall pay fees of Rs.10,000/- (Rupees Ten Thousand) to Mr. Y.G. Birajdar, learned counsel, who represented the appellant in this case.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)