



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.109 OF 2006

Ramesh s/o Ratan Pandure,
Age : 42 years, Occupation : Labour
and Agriculture,
R/o Old Nevargaon, Tq.Gangapur,
Dist. Aurangabad.

...Appellant/ accused

- *Versus* -

The State of Maharashtra.
Through Gangapur Police Station,
Aurangabad.

...Respondent/ State.

...
Shri J.V. Deshpande a/w Shri Shivaji N. Dudhate, Advocates for
the appellant/ accused.

Shri Vivek M. Lomte, APP for the respondent/ State.

...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 20 November 2025

Pronounced on : 04 December 2025

JUDGMENT :-

1. By this appeal filed under Section 374(2) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellant/ accused No.1 (Ramesh Pandure) challenges the judgment and order dated 20.08.2005 passed by the learned

Sessions Judge, Aurangabad, in Sessions Case No.195/2004 by which, he has been convicted for the offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (for short, 'the IPC') and he is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/-, in default of payment of fine, he is directed to suffer further rigorous imprisonment for six months. He is also convicted for offence punishable under Section 324 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500 /- and in default of payment of fine, he is directed to suffer further rigorous imprisonment for two months. Both the sentences were directed to run concurrently. Accused No.2 (Santosh Ramesh Pandure) and accused No.3 (Shobhabai Ramesh Pandure) have been acquitted for the charge framed against them.

2. The brief facts leading to filing of the present appeal are as under:

The prosecution case is that on the basis of the complaint lodged by the complainant Tarabai Suresh Pandure (PW-2) on 23.05.2004, FIR bearing Crime No.64/2004 (exhibit

12) came to be registered with Gangapur Police Station, District Aurangabad, for the offences punishable under Sections 302, 324 r/w 34 of the Indian Penal Code against the appellant/ accused No.1 (Ramesh Ratan Pandure), accused No.2 (Santosh Ramesh Pandure) and accused No.3 (Shobhabai Ramesh Pandure). It is alleged that accused No.3 Shobha is wife of accused No.1 Ramesh and accused No.2 Santosh is their son. The appellant/ accused No.1 (Ramesh) was having two brothers, namely, deceased Suresh and PW-4 Ramchandra Ratan Pandure. PW-4 Ramchandra is residing at Aurangabad whereas, the appellant Ramesh and deceased Suresh were residing in the same village, namely, old Navargaon, Taluka Gangapur and their houses were situated nearby. Two days prior to incident, there was dispute between two brothers i.e. appellant and deceased Suresh on account of selling of cow dung fertilizer. The deceased Suresh was willing to sell said fertilizer, however, same was being opposed by the appellant Ramesh. On 22.05.2004 at around 09:00 pm in evening, when the complainant PW-2 Tarabai was preparing food in kitchen and her husband deceased Suresh, PW-4 Ramchandra and her mother-in-law were chitchatting in courtyard of their house, at that time, her husband deceased

Suresh went towards the house of the appellant Ramesh. However, after some time, the complainant heard cries like ‘melo re dhava’ (Marathi words, if translated to English, they would mean in common parlance ‘I am dying, save me’) coming from the side of the appellant’s house. Therefore, the complainant along with PW-4 Ramchandra went towards the house of the appellant and she saw that the appellant was about to assault the deceased Suresh by stick, at that time, PW-4 Ramchandra intercepted that blow by holding the appellant, as a result of which, that blow of stick hit on the right hand wrist of PW-4 Ramchandra, therefore, Ramchandra fell down. However, again the appellant Ramesh gave blow of stick on the head of the deceased Suresh, as a result of which, his head fractured. When the complainant tried to save her husband Suresh, she also got injured due to stick blow of the appellant Ramesh. When the deceased Suresh collapsed on ground, the appellant again gave stick blows on his head and ear. As a result of assault by the appellant, Suresh died on the spot. On the basis of these allegations, the said FIR came to be registered.

3. Criminal law was set into motion. The accused

persons were arrested. The spot panchanama (exhibit 9) and inquest panchanama (exhibit 10) were drawn. The dead body was referred to the postmortem. PW-7 Dr.Firoz Khan carried out postmortem (exhibit 26) and opined that 'the cause of death is due to terminal cardio respiratory failure due to head injury (fracture of skull) leading to haemorrhagic shock causing instant death'.

4. After completion of investigation, the charge-sheet (exhibit 1) was filed. Since offences were triable by the Sessions Court, the case was committed to the Sessions Court. The learned Sessions Judge framed charge at exhibit 3 against the accused persons for offences punishable under Sections 302, 324 r/w 34 of the Indian Penal Code. The appellant/ accused pleaded not guilty and claimed to be tried. The prosecution has examined the following witnesses :-

PW No.	Name of witness	Significance/ role
PW-1	Ramnath Pralhad Aghade	Panch witness to spot panchanama and inquest panchanama (exhibits 9 and 10).
PW-2	Tarabai Pandure	Complainant (wife of deceased)
PW-3	Dr. Datta Deogaonkar	Medical Officer who examined and treated the injured Tarabai, Ramchandra and Sanjay.

PW-4	Ramchandra Ratan Pandure	Brother of deceased and the appellant.
PW-5	Nandu Pandharinath Pandure	Eye witness to incident
PW-6	Rajendra Sundar Suryawanshi	Panch to recovery of stick.
PW-7	Dr. Firoz Khan	Medical Officer, who performed postmortem.
PW-8	Gautam Damodar Gaikwad	Panch to seizure panchanama
PW-9	Suresh Bhika Gaidhane	Investigating Officer

5. After recording evidence and hearing the appellant and prosecution side, the learned Sessions Judge was pleased to pass the impugned judgment. Hence, this appeal before this Court. Vide order dated 13.04.2006, the appellant was released on bail by this Court.

6. Learned advocate appearing for the appellant submitted that the learned Sessions Judge committed grave error by convicting the appellant as it has not properly appreciated evidence brought on record. The prosecution has failed to prove guilt of the appellant beyond reasonable doubt. Learned advocate submitted that the alleged incident took place in the evening at 09:00 pm on 22.05.2004 wherein, the deceased Suresh, who was

husband of the informant, went towards the house of the appellant Ramesh where the quarrel took place. After hearing cries, alleged eyewitnesses, namely, PW-2, PW-4 and PW-5 rushed towards the spot of incident. However, testimonies of these eyewitnesses are inconsistent and unreliable. According to learned advocate, there is no corroboration in testimonies of these eyewitnesses. Evidence of PW-5 alleged eyewitness cannot be relied upon because he resides in the same locality and he came at the spot of incident, after the incident took place. Therefore, his evidence cannot be relied upon. The incident is of hitting the deceased on his head, which had taken place in the spur of moment. The deceased had received single blow on his head due to which, he collapsed. It is the deceased who went towards the house of the appellant and therefore, there is no intention or knowledge on the part of the appellant that such assault will cause death of the deceased. Learned advocate specifically submitted that the appellant was not the aggressor and it is the deceased who came to the house of the appellant where the quarrel took place and during that scuffle, the deceased might have fallen from the platform and sustained injury on the head. PW-7 Medical Officer also opined in his evidence that

there is possibility of fracture to parietal region on forehead of the deceased if he fell on rough and blunt object. Therefore, learned Sessions Judge has committed mistake in convicting the appellant for the offence punishable under Section 304 Part II and Section 324 of the Indian Penal Code.

7. Learned advocate for the appellant submitted that the appellant and the deceased were the real brothers. The appellant is now above 60 years of age and is suffering old age ailments. After having been released on bail, the appellant is staying in the same village and the family of the deceased is also staying near his house. Both the families have forgotten the past and are living happily. Therefore, now putting the appellant behind bar by confirming the impugned judgment and order of conviction, will further spoil his future and also reconciled ties with the family members. Therefore, the appeal needs to be allowed and the appellant be acquitted.

8. *Per contra*, learned APP strongly opposed the submissions of learned advocate for the appellant. According to learned APP, the statements of witnesses proved the guilt of the appellant beyond all reasonable doubts and, therefore, their

evidence cannot be discarded. Learned Sessions Judge has already shown leniency towards the appellant by converting offence from Section 302 to Section 304 part II. Testimonies of eyewitnesses are trustworthy and there is no reason for them to falsely implicate the appellant. Their testimonies inspire confidence. Learned Sessions Judge has rightly considered evidence on record and rightly convicted the appellant. Learned APP, therefore, prayed for dismissal of the appeal.

9. After hearing the submissions of learned advocates for the parties and with their assistance, after going through evidence on record carefully, it is clear that the appellant is residing near the house of the deceased and both are real brothers. The deceased Suresh had sold his cow dung fertilizer to one person, who had come along with his tractor to collect the said fertilizer. However, when the purchaser had come to collect fertilizer, the appellant had obstructed him and thereafter, about three days later, the informant, her deceased husband Suresh, elder brother Ramchandra (PW-4) and mother-in-law were present in their house, the deceased Suresh all of sudden went to the house of the appellant Ramesh, whose house is located

behind the house of the informant. At that time, after hearing hue and cry, the informant along with Ramchandra (PW-4) went to see as to what happened. As per prosecution, they saw that the appellant was beating the deceased Suresh with stick. Eyewitnesses PW-2 and PW-4 were also injured in the said incident. One more person Sanjay Pandure was also injured in the said incident and he was also examined by Dr.Deogaonkar (PW-3), however, said Sanjay Pandure is not examined by the prosecution. Even the mother-in-law of the informant, who was allegedly went on the spot, was also not examined. These injured persons appear to have received injuries in the same scuffle. On careful scrutiny of testimonies of eyewitnesses, namely, PW-2 and PW-4 it clearly discloses that they are giving different versions.

10. As regards testimony of PW-2 Tarabai is concerned, she deposed that when she went at the spot of incident, she saw that her husband Suresh was lying on the ground at the distance of five feet from platform and he was unconscious. She further deposed that all accused persons were beating her husband and the accused Ramesh and Santosh were beating her husband with

sticks whereas, accused No.3 was beating with fists. She also deposed that there was head injury to her husband and she also saw a ear in cut condition. She deposed that when she tried to rescue her husband, accused No.3 bite her on left little finger and accused Nos.1 and 2 also beat her with sticks. When Ramchandra came forward to rescue her, he was also beaten by accused persons. She specifically deposed that her son Sanjay Pandure also sustained injury on account of assault given by accused Santosh with stick. Her husband died on the spot due to injuries sustained by him at the hands of the accused persons and it was the appellant Ramesh who gave blow of stick on head of her husband. The aforesaid evidence of PW-2 Tarabai creates doubt whether, she had actually seen the assault on the head of the deceased or not, because whatever she has deposed is from the point of reaching on the spot of incident and she specifically stated that '*when I went there I saw my husband lying on the ground at a distance of 5 ft from platform. He was unconscious. I also saw all accused beating my husband.*' She further deposed that on reaching there, she was also assaulted by the accused persons. However, there is no mentioning in her deposition that she had actually seen the appellant Ramesh assaulting with stick

on the head of her husband. The testimony of PW-2 Tarabai is also contrary to her own statement in the FIR. In such scenario, it is suggestive of the fact that she had not actually witnessed the act of assaulting on the head of the deceased with stick by the appellant.

11. As far as testimony of another eyewitness PW-4 Ramchandra is concerned, he deposed that he arrived at the spot of incident after the accused persons had beaten the deceased Suresh and the informant. He deposed that he was also beaten and got injured in the said incident. PW-4 Ramchandra in his deposition stated that he had immediately followed the deceased Suresh and he had seen the appellant Ramesh giving a stick blow on the head of Suresh. When he was trying to save Suresh, during that scuffle, PW-4 also sustained injury on his hand. PW-4 stated that Tarabai followed him and Sanjay also followed Tarabai and the accused persons had also beaten Tarabai. However, PW-4 is not sure with what weapon, the accused persons beat Tarabai and Sanjay. PW-4 also stated that he was also unconscious for sometime.

12. Considering the testimonies of PW-2 and PW-4,

who are eyewitnesses, they are not supporting each other. As far as another alleged eyewitness PW-5 Nandu Pandure is concerned, after perusal of his testimony, it is clear that he was not actual eyewitness. He deposed that when he reached on the post, the deceased was already lying on the ground. Therefore, his testimony is not clear on the point as to who has inflicted blow of stick on the head of the deceased. Therefore, these testimonies of crucial eyewitnesses are not consistent with each other and as such, it is very difficult to base conviction on such evidence.

13. PW-7 Medical Officer, who conducted postmortem is concerned, stated that there is possibility of fracture to the parietal region on forehead of the deceased due to fall on rough and blunt object and thus, there is possibility of head trauma to the brain due to such fall.

14. The Honourable Supreme Court in its judgment in ***Vadivelu Thevar v. State of Madras, reported in AIR 1957 SC 614***, divided the nature of witnesses in three categories, namely, (i) wholly reliable, (ii) wholly unreliable and lastly, (iii) neither wholly reliable nor wholly unreliable. The court is concerned

with the quality and not with the quantity. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Moreover, in numerous judgments, the Honourable Supreme Court has observed that testimonies of related witnesses are required to be closely scrutinized. In the case in hand, since testimonies of eyewitnesses are not supportive on the aspect of giving assault on the head of the deceased, it is very difficult to base conviction on the basis of such evidence.

15. It is a settled principle of criminal jurisprudence that

when the prosecution relies upon ocular testimony of related witnesses, their evidence must be subjected to careful scrutiny and must inspire confidence. In the present case, the core fact to be proved by the prosecution is the act of giving a forceful stick-blow on the head of the deceased by the appellant. However, none of the eyewitnesses have consistently or unequivocally deposed to that effect. PW-2 admittedly reached the spot after the deceased was already lying on the ground, whereas PW-4 gives a materially different version and PW-5 is not an eyewitness at all. When the ocular testimony does not conclusively establish the act attributed to the appellant, and the medical evidence simultaneously suggests a possible accidental fall causing similar injury, the only conclusion permissible in law is that the prosecution has failed to establish its case beyond reasonable doubt. The benefit of such doubt must necessarily go to the accused.

16. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. Consequently, **this Criminal Appeal is allowed and the impugned judgment and order is**

quashed and set aside. The appellant/ accused is acquitted for the said offences under Sections 304(II) and 324 of the IPC. As the appellant is on bail, he need not surrender. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The record and proceedings be sent back to the concerned Court.

kps

(SUSHIL M. GHODESWAR, J.)