



(1)

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

**CRIMINAL APPEAL NO.169 OF 2021  
WITH  
CRIMINAL APPLICATION NO.139 OF 2025**

Pundlik Govind Kale,  
Age: 27 years, Occ.: Labour,  
Resident of Pandharkur (Kamroddinpur),  
Tal.: Deoni, Dist. Latur (Maharashtra) .....APPELLANT

**VERSUS**

The State of Maharashtra,  
Through the Police Inspector,  
Investigating Officer, (C.R.No.224/2018),  
Chakur Police Station, District: Latur .....RESPONDENT

....

Mr Abhaykumar D. Ostwal, Advocate for appellant  
Mrs S. N. Deshmukh, A.P.P. for respondent/State

**CORAM : R. G. AVACHAT  
AND  
PRAFULLA S. KHUBALKAR, JJ.**

**Reserved on : 13th March, 2025  
Pronounced on : 9th May, 2025**

**JUDGMENT : (PER: Prafulla S. Khubalkar, J.)**

1. Heard Advocate Mr Abhaykumar Ostwal for the appellant and Ms S. N. Deshmukh, learned A.P.P. for the respondent/State.
2. Challenge in this appeal is to the judgment and order of conviction and consequential sentence passed by the Court of the

(2)

Additional Sessions Judge-5 at Latur, District Latur in Sessions Case No.58/2018 on 21/01/2021. Vide impugned judgment and order, the appellant has been convicted for offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life.

3. The appellant has challenged the judgment and order of conviction on several grounds elaborately stated in the memorandum of appeal under Section 374 of the Code of Criminal Procedure, primarily contending that the prosecution has utterly failed to establish the guilt of the accused beyond reasonable doubt. Main thrust of the arguments of the appellant is that the alleged eyewitnesses cannot be considered as trustworthy so as to conclusively arrive at a decision of guilt of the accused on the basis of the their evidence. The appellant's contention is that the entire prosecution case rests on the evidence of eyewitnesses PW-2 and PW-3 and in view of the ample evidence on record, it is submitted that they are planted witnesses. The appellant, therefore, submits that, ignoring the evidence of the two planted eyewitnesses, there is absolutely no evidence to establish the guilt of accused beyond reasonable doubt, and therefore, the impugned judgment and order is assailed.

(3)

4. The prosecution case in the instant matter can be briefly stated thus :-

Vijaykumar Bhimrao Nandgave (PW-1), the informant is the real younger brother of deceased Venkat Nandgave. Elder daughter of deceased Venkat by name Janabai had been married to accused three years prior to the incident. On the day of incidence i.e. on 15/07/2018, at about 11.00 a.m., the deceased Venkat left village Rachannawadi and he reached at Bothi Chowk, Chakur at around 8:30 p.m. for boarding a bus which would carry him to his village Rachannawadi which was about 11 kms. away. On the same day, at evening time, Shivaji Devidas Wagalgave (PW-2) and Vikram Sambhaji Wagalgave (PW-3), both residents of Rachannawadi had also come at Chakur at about 6.00 p.m. by S.T. bus from their village for purchasing insecticides. They were together and had purchased insecticides and then at about 7:30 p.m., Shivaji and Vikram came to Bothi Chowk in order to catch a vehicle to reach Rachannawadi. At that time, Shivaji and Vikram met deceased Venkat at Bothi Chowk. All three were chitchatting and at that time, accused Pundlik Govind Kale (son-in-law of deceased Venkat) came there on one two wheeler-Scooty. Some conversation started between accused and Venkat.

(4)

Shivaji and Vikram stood at some distance observing that Venkat and accused Pundlik had engaged in some personal discussion. When Venkat and accused were talking with each other at around 8:45 p.m., some quarrel started between them and suddenly, accused Pundlik took out one Koyata/Sickle (sugarcane cutting instrument) from the dicky of his Scooty and started assaulting Venkat by the same. Initially, Venkat saved himself by forwarding his left hand. The first blow injured left hand of Venkat. Immediately thereafter, accused Pundlik inflicted second blow of sickle upon the neck of Venkat and Venkat collapsed on the ground. When Shivaji and Vikram and other persons tried to catch-hold accused Pundlik, he ran away on his Scooty.

5. PW-1 Vijaykumar Bhimrao Nandgave, younger brother of deceased Venkat lodged first information report at Police Station, Chakur at about 1:30 a.m. in the midnight between 15<sup>th</sup> July and 16<sup>th</sup> July, 2018, mentioning suspicion against accused Pundlik. A crime vide offence No.224/2018 came to be registered against accused Pundlik. The inquest panchnama and postmortem was conducted during the course of enquiry. Spot panchnama of the incidence was also conducted. Statements of persons acquainted with the facts and circumstances of the incidence were recorded. On completion of the

(5)

investigation, charge-sheet was filed. The Trial Court framed charge against accused Pundlik for offence punishable under Section 302 of the Indian Penal Code. Accused pleaded not guilty. His defence was of false implication.

6. To bring home charge, the prosecution examined nine witnesses as under :

PW-1 Vijaykumar Bhimrao Nandgave is the younger brother of deceased Venkat. PW.2 Shivaji Devidas Wagalgave is the eyewitness of the incidence. PW.3 Vikram Sambhaji Wagalgave is another eyewitness of the incidence. PW.4 Satish Vitthal Kamble is the panch on Spot panchnama. PW.5 Sanjay Baswanappa Swami is the panch on Seizure panchanama of weapon i.e. sickle. PW.6 Jawed Nasiroddin Chaudhari is the shop owner of hardware. PW.7 Dr. Purshottam Virbhadrha Kotgire is the doctor who who conducted postmortem on the dead body of deceased. PW.8 Sanjay Venkatrao Nandgave is the son of deceased, Venkat. PW.9 Rameshwar Saudagar Tat is the Investigating Officer of the crime.

7. The prosecution produced in evidence various documents including Inquest panchanam (Exhibit 44), Spot panchnama (Exhibit

(6)

48), Seizure panchnama of clothes of deceased (Exhibit 49), Seizure panchnama of clothes of accused (Exhibit 50) and other documents.

8. On appreciation of the evidence in case, the Trial Court has passed the judgment of conviction, which is impugned herein.

9. Heard the arguments of the learned Advocate for the appellant, as well as of the learned Assistant Public Prosecutor for the State.

10. Learned Advocate Mr Otswal for the appellant submits that the impugned judgment and order of conviction is unsustainable in law being based on evidence of alleged eyewitness PW-2 and PW-3, who are planted witnesses. He, therefore, submits that, on minute scrutiny of evidence of these witnesses, it becomes clear that they have conspicuously remained silent for sufficiently long time, despite having opportunity to immediately report the incidence to the police or to the relatives of the victim. He, therefore, submits that the entire conduct of the prime witnesses, coupled with the suspicion expressed by the informant in his first information report, create serious doubts about these witnesses having witnessed the actual incidence. He vehemently submits that, ignoring evidence of these two witnesses

(7)

PW-2 and PW-3, there is nothing to establish the guilt of the accused beyond reasonable doubt. He submits that the entire prosecution story itself is doubtful and the offence is not proved against the accused beyond reasonable doubt. In support his submissions, he relies on a number of judgments of the Hon'ble Supreme Court highlighting various principles relating to appreciation of evidence in criminal trials. Amongst other judgments, he adverts our attention to the judgment in the matter of **Harbeer Singh Vs. Sheeshpal and others, (2016) 16 SCC 418** to point out cardinal principles of criminal trial, which are reiterated therein.

11. The learned A.P.P. would on the other hand, reiterate the reasons given by the Sessions Court and urged for dismissal of the appeal. The main thrust of arguments of the learned A.P.P. is the evidence of the eye witnesses PW-2 and PW-3, coupled with the circumstantial evidence of recovery of the weapon at the instance of the accused and the report of the chemical analyser proves the guilt of the accused. She would submit that the conduct of the PW-2 and PW-3, being rustic villagers, is natural and their silence and failure to disclose the incidence immediately, is not at all abnormal. On the basis of evidence on record, it is submitted that the learned Sessions

(8)

Court has rightly appreciated the evidence and the impugned judgment of conviction needs no interference. In support of her submissions, learned A.P.P. relies on the judgment in the matter of **Ranbeer Singh (Dead) by Legal Representative Vs. State of Uttar Pradesh and others, (2015) 12 SCC 221.**

12. We have considered the submissions advanced. Perused the impugned judgment and also record and proceedings of the Sessions Case.

13. In order to prove its case, the prosecution has examined total nine witnesses. The entire prosecution case rests on the evidence of PW-2 Shivaji and PW-3 Vikram, alleged to be the eye witnesses.

14. PW-1 Vijaykumar Nandgave, the informant is younger brother of the deceased Venkat, who has undisputedly not witnessed the actual incidence and he was not present on the spot at the time of alleged assault on Venkat. PW-2 Shivaji has deposed that, on 15<sup>th</sup> July 2018, he and Vikram had gone to village Chakur in the evening for purchasing insecticides, and thereafter went to Bothi Chowk, Chakur at about 7:30 p.m. While they were waiting for a vehicle to return to their village, they met with Venkat and were talking with him. At that time, the accused came on one two wheeler-Scooty and he started

(9)

talking with Venkat about their private matter. PW-2 further deposed that, at that time, suddenly a quarrel started between accused and Venkat at about 8:45 p.m., and thereafter, accused took out one sickle, which was kept under the seat of the Scooty and gave two blows of the sickle on Venkat, which he tried to prevent, but on receiving second blow on neck, Venkat collapsed. He further deposed that, when he and Vikram tried to stop the accused Pundlik, the accused raised sickle upon them, and therefore, they stayed back. Thereafter, the accused fled away from the spot.

15. PW-3 Vikram also deposed on the same lines as that of PW-2 Shivaji, however, with some variance in his deposition with respect to the attempt of intervention on their part at the time of second blow of sickle by the accused.

16. The prosecution case is primarily based on the evidence of these two witnesses, and therefore, evidence of these two witnesses needs to be minutely considered. The main thrust of arguments of the appellant is the unnatural conduct of these two witnesses who have alleged that they have witnessed the incidence of assault and they were present since beginning, but neither of them reported the incidence to the police or to relatives of the deceased Venkat on that day i .e. on 15<sup>th</sup>

July, 2018. It is crucial to note that, both these witnesses accompanied the dead body of Venkat up to the Government Hospital and remained there till the Inquest Panchnama and postmortem was completed, where they even met with the younger brother of the deceased Vijaykumar (PW-1), the informant. These two witnesses even signed the Inquest panchnama as Panchas. The first information report came to be lodged in the midnight of 15<sup>th</sup> and 16<sup>th</sup> July at about 1:30 a.m. by Vijaykumar on the basis of suspicion against the accused Pundlik. It has to be noted that, PW-1 has deposed that, on next day, these two eyewitnesses (PW-2 and PW-3) informed him that they have witnessed the incidence. As such, the post incidence conduct of the two prime witnesses, PW-2 and PW-3, maintaining silence for sufficiently long time creates doubt about they having witnessed the actual incidence. Further, during cross-examination of PW-2, he has deposed that, when he was on the spot, Police had come and also that police took body of Venkat to the hospital and prepared the Inquest Panchnama. He states that, he and Vikram PW-3 have signed as Panchas. It is important to note that, although PW-2 and PW-3 have deposed that they informed the informant at the time of Inquest Panchnama and gave details about the incidence, however, the informant lodged the report specifically mentioning suspicion against the accused. It is important to note that,

(11)

PW-2 has stated in his cross-examination that he did not feel it necessary to tell the police about the incidence and he can't tell the reasons for this.

17. As such, on careful appreciation of evidence of PW-1, PW-2 and PW-3, it becomes clear that the informant/PW-1 lodged the report on the basis of suspicion, although PW-2 and PW-3 stated in their evidence that they informed the details of incidence to PW-1 at the time of Inquest panchnama. On the other hand, PW-1 has deposed that, PW-2 and PW-3 have informed him about the details of the incidence on next day. Thus, on careful consideration of the deposition of PW-2 and PW-3, it becomes clear that they have not witnessed the actual incidence and that they are brought up witnesses. Although, the prosecution has tried to put forward an explanation about their silence, stating that they are rustic villagers, however, their silence for long time, despite opportunity to report the incident to the police, and the evidence of informant about getting knowledge from them on next day, create serious doubt about PW-2 and PW-3, being eyewitnesses. On giving due consideration to the evidence of these two witnesses, it is not possible to arrive at a definite conclusion that

(12)

they have witnessed the incidence, and thus, the entire prosecution case, based on evidence of these two witnesses, gets shattered.

18. One more important aspect relating to the alleged motive of the accused is considered and highlighted by the prosecution. It has to be seen that, at the time of incidence, the accused was going by his Scooty when he met the deceased on the square. This meeting of the accused with the deceased was by way of coincidence, even going by the version of the alleged eyewitness PW-2 and PW-3. As such, there is no question of any premeditated plan of the accused to meet the deceased for the purpose of committing his murder. It is also important to note that the incident has occurred at a public place on the square of the village, however, although prosecution witnesses have mentioned names of several persons, like Biru Gade, Santosh and Balaji, who were present during evening time and even accompanied the informant, however, none of them are examined as prosecution witnesses. It is crucial to note that, PW-1 has admitted in his cross-examination that, Balaji, who is husband of his sister also got the same information about the incidence like him and he took Balaji with him to Chakur Village. Non-examination of other persons while examining only PW-2 and PW-3 as eyewitnesses shows that the

(13)

prosecution has selectively examined the interested witnesses, leaving aside the natural witnesses.

19. As regards the circumstantial evidence about recovery of weapon of offence under Section 27 of the Evidence Act, 1872 at the instance of accused, it is crucial to note that the weapon Article-A alleged to have been used by the accused is itself doubtful. It has to be noted that the weapon Article-A is blunt on both the sides, which fact was confronted during cross-examination to PW-6 Jawed and Doctor PW-7. So also, the cross-examination of PW-5 (panch on memorandum and seizure panchnama) reveals that, Article-A was not seized by the police in his presence with his signatures.

20. Even as regards, the seizure of the clothes from the person of the accused, it is clear that the seizure was made prior to his arrest. It has to be seen that the accused was arrested at 8.00 p.m. on 16<sup>th</sup> July 2018, whereas the Seizure Panchnama vide Exhibit 50 shows that the clothes from the person of the accused were seized at 7:30 p.m. This again raises serious suspicion to the prosecution case. It is pertinent to note, the learned Sessions Court has also referred to these doubtful circumstances, creating dent to the prosecution case, about seizure of

(14)

weapon and seizure of clothes, however, there is no consideration of evidence with respect to these suspicious circumstances.

21. In view of these serious lacunae with respect to the weapon of the offence, seizure of clothes, coupled with the post incidence conduct of the PW-2 and PW-3, it is clear that the prosecution case, as put up, is itself doubtful and prosecution has failed to establish the involvement of the accused beyond reasonable doubt.

22. A perusal of the impugned judgment shows that the learned Sessions Court got carried away with the evidence of PW-2 and PW-3, who claimed themselves to be the eyewitnesses and by ignoring the crucial aspects about their conduct, the Sessions Court believed on their testimony to conclusively infer that they are fully trustworthy. The tenor of the judgment of the Sessions Court clearly shows that the Sessions Court accepted the evidence of PW-2 and PW-3 in its entirety and concluded about guilt of the accused.

23. Having considered the entire evidence of the prime prosecution witnesses, we are of the considered view that, PW-2 Shivaji and PW-3 Vikram have not actually witnessed the incidence and they are planted witnesses. In any case, no conclusion can be

arrived on the basis of their evidence about involvement of the accused in the actual assault.

24. Counsel for appellant has submitted several case laws dealing with general principles of criminal law. While considering the legal position as regards appreciation of evidence in criminal cases, it is worthwhile to reproduce the settled position of law as mentioned by the Hon'ble Supreme Court in the matter of **Harbeer Singh** (supra), as follows :

*“11. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond all reasonable doubt lies on the prosecution and it never shifts. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. (Vide Kali Ram v. State of H.P. ; State of Rajasthan v. Raja Ram ; Chandrappa v. State of Karnataka ; Upendra Pradhan v. State of Orissa and Golbar Hussain v. State of Assam)”*

25. The reliance is placed by the learned A.P.P. on the judgments, laying down the proposition that, in a given case, the conduct of the witnesses in not disclosing the incidence immediately, is not abnormal. The position of law is not disputed, however, in the

(16)

instant case, the conspicuous silence of the two star witnesses, despite having opportunity to report the incidence to Police, proves the fact that they have not actually witnessed the incident. Only because they happen to be villagers, cannot be a circumstance to conclude that being rustic persons, their suspicious conduct must be ignored. The reliance placed on judgment in the matter of **Ranbeer Singh** (supra) is of no assistance since it is a case in which the acquittal of the accused was reversed in view of the evidence of that case.

26. Considering all the above mentioned aspects, we are of the firm opinion that there is a serious doubt about the truthfulness of the entire prosecution case. The evidence led by the prosecution, particularly the evidence of PW-1, PW-2 and PW-3 is not reliable, and the benefit of doubt must go in favour of the appellants. The conviction of the appellant is therefore liable to be set aside.

27. Hence, we pass the following order:-

**ORDER**

The conviction and sentence of the appellant Pundlik Govind Kale under the impugned judgment and order dated 21/01/2021 in Sessions Case No.58/2018, passed by the learned Sessions

(17)

Judge-5, Latur, Dist. Latur, is hereby quashed and set aside and the appellant is acquitted of the offence alleged against him. The appellant/accused be released from Jail and fine amount be refunded to him.

28. The criminal appeal is allowed in above terms.

29. Criminal Application No.139/2025 stands disposed of.

**(PRAFULLA S. KHUBALKAR, J.)**

**(R. G. AVACHAT, J.)**

sjk