



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

CRIMINAL APPEAL NO. 956 OF 2022

Vikas Bapurao Choudante
Age: 20 years, Occu.: Labour,
R/o Panchasheel Nagar, Purna,
Tq. Purna, Dist. Parbhani

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

**AND
CRIMINAL APPEAL NO. 846 OF 2022**

Roshan Natha Ingole
Age: 22 years, Occu.: Labour,
R/o Panchasheel Nagar, Purna,
Tq. Purna, Dist. Parbhani

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.J. Salunke, Advocate for appellants
Mrs. K.B. Patil Bharaswadkar, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : 22nd JANUARY, 2025
PRONOUNCED ON : 28th JANUARY, 2025**

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

1. Both these appeals are taken up together for decision since the challenge therein is to one and the same judgment of conviction and order of consequential sentence dated 22nd September, 2022 passed by the Court of Sessions Judge, Parbhani ('trial Court') in Sessions Case, No. 1 of 2021. Vide the impugned order, the appellants have been convicted for the offence

punishable under Section 302 read with Section 34 of the Indian Penal Code, and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,500/- each with default stipulation. For the sake of convenience, appellant – Vikas is referred to as Appellant No.1 and appellant – Roshan as Appellant No.2.

2. Briefly stated, the case of the prosecution is as under :-

Appellants and Nitin (deceased) were the friends. The trio alongwith their other friends consumed country liquor on cement road behind railway quarters at Hari Nagar, Purna. Those friends left the company of the trio midway or after consuming country liquor to their satisfaction. With a view to take revenge of an earlier quarrel between the deceased and Appellant No.2, Appellant No.1 cut the throat of Nitin (deceased) with a sharp cutter.

Appellant No.1 was said to have approached the police station and confessed (inadmissible) to have committed murder of Nitin. In the meanwhile, somebody had reported about murder of Nitin to his sister, PW 12 - Deepika, who rushed to the crime scene. Police also arrived there. Nitin was rushed to Purna Civil Hospital, where he was declared dead.

3. A Crime, vide C.R. No. 297 of 2020, was registered based on the First Information Report ('F.I.R.') (Exh.79) lodged by PW 12 - Deepika, sister of the deceased. The appellants were arrested. Clothes on their person were seized. Crime scene panchanama (Exh.49) was drawn. Clothes on

the person of the deceased too were taken charge of. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The seized articles were submitted to R.F.S.L., Nanded. Upon completion of investigation, the appellants were proceeded against by filing the charge-sheet.

4. The trial Court framed the charge (Exh.24). The appellants pleaded not guilty. Their defence was of false implication.

5. To bring home the charge, the prosecution examined fifteen witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court convicted and sentenced the appellants as stated above.

6. Learned counsel for the appellants would submit that the case is based on circumstantial evidence. The witnesses examined in proof of the appellants and the deceased were in the company of each other, did not support the prosecution. They were the friends of the appellants. It was also submitted by learned counsel for the appellants that statements of these witnesses were recorded 5-6 days after the incident. All of them were detained at the concerned police station and made to sweep the police station and do other work there. As such, the statements (u/Sec. 161 of the Cr.P.C.) of those persons could be treated to have not been made voluntarily. He would further submit that the crime registered based on the

F.I.R. lodged by sister of the deceased would in no way be termed as the F.I.R. in the eyes of law. It would at the most be a statement under Section 161 of Cr.P.C. Whatever was alleged by Appellant No.1 to the police officials was inadmissible in evidence, being a confession to police. According to him, even mere recovery of blood stained clothes and alleged weapon of assault would be of no avail to bring home the charge beyond reasonable doubt. It would at the most be one of the circumstances. The prosecution proposes to rely on it to make a complete chain thereof. In support of his contentions, learned counsel has relied on the following authorities to ultimately urge for allowing the appeal in to-to :-

**(I) *Lalchand Cheddilal Yadav Vs. State of Maharashtra,*
2000 ALL MR (Cri.) 1485**

**(II) *Jasobanta Sahu Vs. State of Orissa,*
2024 (5) Mh.L.J. (Cri.) (SC) 452**

7. Learned Addl.P.P. would, on the other hand, took us through the entire evidence on record. She would submit that Appellant No.2 was equally responsible for the death of Nitin. The incident in fact occurred on account of previous quarrel between Nitin and Appellant No.2. Evidence of relevant witnesses in that regard was adverted to. Learned Addl.P.P. then placed reliance on the disclosure statement made by Appellant No.2 and recovery of a cutter and his clothes stained with blood. According to her, these articles borne blood stains of the blood group of deceased. Moreover, Appellant No.1 himself surrendered to the police station. The clothes on his person were found to have blood stains of the blood group of the deceased.

There was ample evidence to indicate the appellants to have been in the company of the deceased. They did not offer any explanation as regards incriminating circumstances. According to learned Addl.P.P., the trial Court has rightly convicted the appellants and sentenced as well. According to learned Addl.P.P., no interference with the impugned order of conviction and sentence is warranted.

8. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert thereto and appreciate the same.

9. Admittedly, the incident took place by evening of 24th September, 2020 on a cement road at Hari Nagar, Purna, Dist. Parbhani. Nitin met with homicidal death is also undisputed. The postmortem report (Exh.75) indicates he died of hemorrhagic shock due to deep throat cut injury. In Column No.17 of the postmortem report, following injuries were mentioned appearing on the person of the deceased :-

- “1) Deep incised wound two in number placed one above the other (i) 18 x 5x 4 cm, (ii) 18 x 4 x 3 cm over the neck with complete cutting of skin, subcutaneous tissues, muscles, vessels, trachea and oesophagus*
- 2) Abrasion of size 6 x 0.5 x 0.5 cms. over chest on Rt. Side on upper aspect.*
- 3) Abrasion of size 1 x 0.5 x 0.5 cms. over lower lip on Lf. side.”*

These injuries were antemortem. The same has been duly proved by the evidence of PW 11 – Dr. Nandini.

10. The question is whether the appellants are the authors of the crime in question. Since the case is based on circumstantial evidence, we first need to have reference to the judgment of the Apex Court in case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622***, wherein it has been observed thus :-

“(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must or should’ and not merely ‘may be’ established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

11. Following circumstances were relied on to bring home the charge against both the appellants :-

- (i) Homicidal death – not disputed;
- (ii) Motive – previous quarrel between Appellant No.2 and the deceased;
- (iii) The appellants being in the company of the deceased a while before he (deceased) met with homicidal death
- (iv) Recovery of blood stained cutter and dead body pursuant to the statement made by Appellant No.1.

12. Although the prosecution examined fifteen witnesses, four of them viz. PW – 2 to 4 and 11 did not stand by the prosecution. Same is the case of PW 8 – Vishal, who although supported the prosecution case in his examination-in-chief, was won over by the defence. From his cross-examination nothing fruitful could be elicited for the prosecution. These witnesses were examined in proof of the appellant to have been in the company of the deceased for consumption of country liquor when the incident took place. We, therefore, do not advert to the evidence of these witnesses.

13. PW 1 – Shivprasad is a witness to various panchanamas. He was a public servant, a Kotwal in the Talathi Office at Purna. He attended the police station on the directions of the Tahsildar. He testified that he went to Purna Police Station by 07:30 p.m. on 24th September, 2020. Appellant No.1 was present at the police station. His clothes and hands were stained with blood. The police officer on duty collected blood stains with cotton swabs for analysis. He further testified that there was a cutter lying on the floor of the police station. The same too was stained with blood. It was seized in his presence. He referred to a panchanama (Exh.45) in that regard.

PW 1 – Shivprasad went on to testify that he accompanied the police to Purna Rural Hospital whereat dead body of Nitin was. The clothes on the person of Nitin were soaked with his own blood. Those were required to be removed with scissor. Those clothes were taken charge of under panchanama (Exh.47). He then returned to the police station alongwith PW

15 - PSI Bhume. At the police station, clothes on the person of Appellant No.1 were seized under panchanama (Exh.48). Thereafter he joined the police to the crime scene. A panchanama of the situation at the spot was drawn vide Exhibit 49.

14. This witness was subjected to a searching cross-examination. It was suggested to him that they went to the crime scene by 12:30 midnight. He was further suggested that time street lights and headlights of the vehicle of the police officer were on. This suggestion goes a long way to indicate the defendants to have admitted the presence of this witness for drawing of the crime scene panchanama. Nothing was brought on record to indicate that this witness has any reason to take side of the prosecution. He is an independent witness.

15. PW 9 – Kishor was a Police Naik on duty at the relevant time. He testified that Appellant No.1 had come to the police station. He was armed with a cutter stained with blood. Clothes of his person and his hands were also stained with blood. He (Appellant No.1) threw the cutter on the floor. PW 9 – Kishor availed services of panchas. He seized the cutter under panchanama (referred to hereinabove). PW 9 – Kishor further testified that he collected blood spots with cotton swabs from the cutter and hands of the appellant. Those were kept safe and sealed. Diary entry to that effect finds place at Exhibit 65. According to him, the appellant told him to have committed murder of Nitin. He recorded the same in the station diary. It is

true that whatever the appellant has stated to the police officer on duty about having committed murder of Nitin, would be inadmissible in evidence. The same would, however be admissible as the appellant's conduct and recovery of cutter, relevant under Sections 8 and 27 of the Evidence Act, respectively.

16. PW 15 – Bhume, Investigating Officer testified that he rushed to the police station on receipt of a phone call. Thereafter, he alongwith panchas went to the crime scene and saw Nitin was lying in a pool of blood. This fact of Nitin to have been found in the pool of blood came to the knowledge of the Investigating Officer and police officials for the first time pursuant to the information given by Appellant No.1. The same too would be admissible in evidence, although the sequence appears to have been changed in view of evidence of PW 1.

17. PW 12 – Deepika, sister of Nitin, testified that she learnt about the murder of her brother, Nitin from his friend, PW 2 – Shatru Bhole. She, therefore, rushed to the crime scene. The police too arrived. The police then shifted Nitin to government hospital. Nitin could not be saved. She thereafter lodged the report (F.I.R., Exh.79).

18. Learned counsel for the appellant was right in submitting that when one of the appellants had been to the police station and made a confession about commission of cognisable offence, Exhibit 79 could not have been treated as F.I.R. We are in agreement with learned counsel. The same is, however of little consequence. Exhibit 79 could not be read in

evidence as corroborative to the evidence of PW 12 – Deepika, since she was not an eye witness. She only set the criminal law in motion.

19. During her cross-examination, it has been brought on record that some crimes were registered against the deceased. Learned counsel for the defence meant to say that the deceased had many enemies. It has also been brought on record that the deceased was an alcoholic.

20. Learned counsel for the appellants referred to C.A. report (Exh.90) to submit that clothes and the cutter seized pursuant to so called disclosure statement made by Appellant No.2, did not bear blood stains. Learned Add.P.P., on the other hand, referred to the forwarding letter wherein blood stains were shown on the cutter. We have to go by the final analysis report. The C.A. report (Exh.90) indicates that cutter and clothes recovered pursuant to the disclosure statement made by Appellant No.2, did not bear blood stains except his trouser. Blood stains on both the articles are of the blood group of the deceased. Since learned counsel have relied on the C.A. reports, those can very well be read in evidence, although not referred to the appellants in their examination under Section 313 of Cr.P.C. The said C.A. report indicates the clothes on the person of Appellant No.1, the cutter that was seized from him at the police station and the blood stains collected from his hands were all stained with blood of blood group ("A") of the deceased. Appellant No.1 did not offer any explanation except denial of the prosecution evidence.

21. PW 5 – Kunal was the cousin of the deceased. He testified that both the appellants had been to his shop by 05:00 p.m. on 24th September, 2020. They took Nitin's phone number from him. He thereafter informed Nitin of giving them his cell phone number.

During his cross-examination it was suggested to him that the appellants and the deceased were acquainted to each other and were friends as well. This suggests that the trio had reason to be together on the given day.

22. True, this witness approached the police station to give his statement three days after the incident. Moreover, he is relative of the deceased. We, therefore, rely on his evidence only to the extent of what has been brought on record through his cross-examination and that is the fact that the appellants and the deceased were close friends.

23. PW 6 – Pandurang testified that on 24th September, 2020 he had gone to his friend Laddya. It was 02:30 p.m. Nitin (deceased) too was there. Then they went to the market. They purchased liquor. Then they went to a community hall. The appellants met them there. Then all of them went to near a Hanuman temple for consuming liquor. He further testified that verbal wrangle ensued between Appellant No.2 and the deceased on account of Nitin to have had beaten Roshan in the past. This witness, however gave a vital admission that the said quarrel was subsided then and there. This admission was elicited through his cross-examination. Although this helps

Roshan, evidence of PW 6 goes a long way to suggest that the appellants and the deceased were together alongwith others. The others left after consumption of alcohol to their content. The appellants and Nitin remained behind to consume more liquor. Although this witness stated that he, for the first time, met the appellant there and learned counsel would submit that the Investigating Officer, therefore, ought to have held the test identity parade, we find the same to have not been fatal in view of the fact that this witness categorically named the appellants and it was suggested to him that the quarrel between Roshan and Nitin was subsided then and there. He identified the appellants before the Court. In view of certain questions to have been put to him admitting his presence at the crime scene for consumption of alcohol sometime before the incident, the fact that his statement was recorded 4-5 days after the incident, takes a back seat.

24. PW 7 - Khalil was a panch witness to the recovery of cutter and clothes pursuant to the disclosure statement made by Appellant No.2. Other evidence in that regard has already been adverted to hereinabove with the C.A. reports.

25. PW 8 – Vishal was another witness. He testified that Appellant No.2 gave him Rs.100/- to buy country liquor. He accordingly bought the same. He sat with them. They were Nitin, Vijay, Shatru, Balu, Roshan and Vikas. According to him, after an hour he left for his home. Thereafter he came to know about the murder of Nitin. He was cross-examined. He

testified that he gave his statement 4-5 days after the incident. His evidence further indicates that the police officials had detained him at police station for 4-5 days and made to serve them by sweeping police station, etc. Same is stated to have happened with some other prosecution witnesses. At the cost of repetition, it is stated that we do not rely on the evidence of these witnesses.

26. We further referred to the evidence of PW 11 – Dr. Nandini, who testified that the police officials had referred her the cutter, on examination of which she opined that the injuries noticed on the throat of the deceased could have been caused by said cutter. Communications in that regard were placed on record vide Exhibit 74 and 77.

27. PW 13 – Mangesh was a Police Constable, who carried the seized articles to R.F.S.L., Nanded. PW 14 – Dr. Gajanan had examined appellant – Roshan and obtained his blood sample.

28. Aforesaid was the evidence in the case. We have also appreciated the same simultaneously i.e. while adverting thereto.

29. Appreciation of the evidence on record undoubtedly makes out a case that the appellants and the deceased were close friends. The deceased had criminal antecedents. The trio alongwith PW 6 - Pandurang had been to the crime scene for consumption of alcohol. PW 6 - Pandurang left midway. The trio remain behind (admitted in view of suggestion on behalf of the

appellant). It was little past 06:00 p.m. on 24th September, 2020. Within an hour appellant – Vikas approached the police station. Clothes on his person and his hands were stained with blood. He was armed with a cutter. The cutter too had blood stains. He threw the cutter on the floor of the police station. Pursuant to his disclosure statement, PW 15 – Bhume, Investigating Officer visited the crime scene and noticed Nitin lying in a pool of blood. The C.A. report (Exh.90) indicates that blood group of deceased – Nitin was “A” and the blood found on the clothes and hands of Appellant No.1 and the cutter in his hands were stained with blood of blood group “A” (Nitin’s). Although the prosecution could not make out a case of motive, the same is not vital for the prosecution. Even sometimes based on circumstantial evidence, the prosecution fails to unearth the motive which is said to be always looked in the mind of a culprit. As such, this evidence undoubtedly make out a case that the appellant was done to death by Appellant No.1.

Role of Appellant No.2 :-

30. Although this appellant was in the company of the deceased and the co-accused, there is nothing to attribute him with any overt act. His quarrel with the deceased had already been subsided. Although other three injuries were found on the person of the deceased, those were minor and superficial. We cannot jump to the conclusion that those were caused by him (Appellant No.2). The cutter seized pursuant to his disclosure statement did not bear blood stains. The said recovery was, therefore, not relevant under Section 27 of the Evidence Act. The mere fact that a few blood stains were

found on his trouser does not lead us to hold him guilty of a capital offence. Possibility of blood of the deceased spilled over his trouser could not be ruled out. Section 34 of the I.P.C. reads thus :-

“34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

31. For holding Appellant No.2 guilty with the aid of Section 34 of the I.P.C., there is nothing to attribute him with any overt act. Mere presence in the company of the deceased when he was done to death would not make him liable for the offence. He, therefore, deserves grant of benefit of doubt.

32. We have considered the authorities relied on. In criminal cases, law of precedent hardly applies. The judgment in case of Jasobanta Sahu (supra) was relied on to disbelieve the witness, whose statements were recorded 4-5 days after the incident. On facts we too not rely on the statements of such witnesses, except one through whose cross-examination his presence at the crime scene and some other vital material prejudicial to the defence has been brought on record.

33. For all the aforesaid reasons, the appeals stand disposed of in terms of following order :-

ORDER

(I) Criminal Appeal No. 956 of 2022 stands dismissed.

- (II) Criminal Appeal No. 846 of 2022 is allowed.
- (III) Impugned judgment and order dated 22nd September, 2022 passed by the Court of Sessions Judge, Parbhani ('trial Court') in Sessions Case, No. 1 of 2021 thereby convicting appellant – Roshan Natha Ingole for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code is set aside. Appellant – Roshan Natha Ingole stands acquitted thereof.
- (IV) Since he is on bail, his bail bonds stand cancelled.
- (V) Fine amount paid, if any, be refunded to him.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)