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IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO.51 OF 2024**

Pitambar Malik,
Age 41 years,
Presently lodged in Colvale Jail,
Colvale, Bardez-Goa.APPELLANT

Versus

1. State of Goa.
2. Public Prosecutor, High Court
having office at Porvorim-Goa. RESPONDENTS

Mr Sagar Dhargalkar, Advocate under the Legal Aid Scheme for
the Appellant.

Mr S.G. Bhobe, Public Prosecutor for the Respondents.

**CORAM : SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ.**

DATE : 4th NOVEMBER 2025

ORAL JUDGMENT : (Per Sarang V. Kotwal, J.)

1. The Appellant has challenged the judgment and order dated 16.08.2023 passed by the learned Additional Sessions Judge-1, North Goa, Panaji in Sessions Case No.6/2021 arising out of CR No.280/2020 registered at Mapusa Police Station.

2. The Appellant was convicted for commission of offence punishable under Section 302 of IPC and was sentenced to suffer imprisonment for life and to pay fine of ₹10,000/- and in default of payment of fine to suffer simple imprisonment for six months. The fine

amount, if realised was directed to be paid to the kin of the deceased. The Appellant was acquitted from the charges of offences punishable under Sections 326 and 504 of IPC.

3. The record shows that nobody came forward to claim the dead body of the deceased. The kin of the deceased was therefore unknown and hence we have heard the Appeal by hearing the learned Counsel for the Appellant and the learned Public Prosecutor for the Respondents.

4. The prosecution case in brief is that the Appellant and the deceased Rahul Bengali were knowing each other. On 14.10.2020, at about 12.30 p.m., there was a quarrel between them. The Appellant assaulted the deceased with a heavy wooden stick. He also assaulted a lady companion of said Rahul Bengali. After the assault, he ran away from the spot. Said Rahul Bengali succumbed to the injuries suffered during the assault. The lady companion was also injured. Somebody from the neighbourhood called the ambulance and the Police. Rahul Bengali and the said lady were taken to the hospital but Rahul was declared dead. A woman PSI recorded the statement of that lady. In the meantime, Police came to the spot of incident. PSI Kiran Naik lodged the FIR in respect of the incident vide CR No.280/2020. The Appellant was arrested shortly from the neighbourhood. He was brought to the Police Station. His clothes were seized. The investigation continued. The spot Panchanama, the inquest Panchanama and other Panchanamas were conducted. The weapon was recovered at the instance of the

Appellant on 15.10.2020 at some distance from the spot of incident. Statements of various witnesses were recorded. The seized articles were sent for chemical analysis. At the conclusion of the investigation, Chargesheet was filed and the case was committed to the Additional Sessions Judge for trial.

5. During the trial, the prosecution examined twelve witnesses. The injured lady was not examined by the prosecution but the prosecution examined PW1/Deepa Chari and PW2/Luis Ferrao as the eye witnesses. Apart from these main witnesses, the prosecution examined the Medical Officer, who had conducted the post-mortem examination. He had also medically examined the Appellant. The prosecution further examined various panch witnesses and the Police Officers, who had taken part at different stages of the investigation. The defence of the Appellant was of total denial.

6. The learned Judge, after considering the evidence on record, the statement of the Appellant recorded under Section 313 of CrPC and after hearing the arguments, reached at a conclusion that the Appellant had committed the said offence. However, in the absence of the evidence of the injured lady and the medical evidence in respect of her injuries, the Appellant was acquitted from the charges under Sections 326 and 504 of IPC.

7. The learned Judge relied on the evidence of the two eyewitnesses, their identification in the Test Identification Parade and the recovery of

weapon at the instance of the Appellant. Based on these circumstances, the Appellant was convicted and sentenced as mentioned earlier.

8. Heard Mr Sagar Dhargalkar, learned counsel under the Legal Aid Scheme for the Appellant and Mr S.G. Bhobe, learned Public Prosecutor for the Respondents.

9. As mentioned earlier, the two most important witnesses in this case are PW1/Deepa Chari and PW2/Luis Ferrao. Both of them claimed to be the eyewitnesses to the incident. PW1/Deepa Chari has deposed that, on the date of incident, she was working at Remy Studios at Mapusa. It was situated on the ground floor and the first floor of the building named as Coscar Corner. She has further deposed that the studio had a one way tinted glass through which one could see outside from the studio but nobody could see inside the studio. Her office timings were 9.00 a.m. till 6.00 p.m. On 14.10.2020 at about 12.30 p.m. she was in her office and was attending to one customer. She heard some noise outside the studio. When she looked outside, she saw one person lying on the ground. There was one woman who was wiping the blood on his hand. She also saw one man running away with a wooden stick in his hand. She called the ambulance by dialling 108 from her mobile phone. She went outside the studio. She met one Luis, who was working at the Lawrence & Mayo Shop, which was near her studio. After sometime, the Police and the ambulance came to the spot. At that time, the injured person had passed away. The Police completed formalities

and shifted the deceased from the spot. She further deposed that the person running with the heavy stick was wearing a blue coloured jersey. According to her, the injured woman was having injury on her hand. On 12.11.2020, she was called to attend the Test Identification Parade. According to her, she identified the Appellant during the Test Identification Parade. She also identified the Appellant in the Court, who was produced through VC.

In the Cross-examination, her attention was drawn to her Police statement and in particular to the portion marked between A to A1. She accepted that it was mentioned by her that Remy Studio had tinted glass including on the door and as such they could not see the things happening outside the studio. After her attention was drawn to this particular statement, she explained that the counter where she was working was outside the door of the building. She admitted that the incident had occurred on the other side of the road, opposite the studio. She identified the wooden stick produced in the Court as the weapon used by the Appellant in the offence. She identified the weapon because of its peculiar shape.

10. PW2/Luis Ferrao was another eyewitness. He deposed that he was working as a Manager for Premier Optical Pvt. Ltd. at Taliwada, Mapusa. On 14.10.2020, he joined his duty at 10.00 a.m. His showroom had a clear glass and he could see what was happening outside from the showroom. At about 12.30 p.m. he saw that two men were

fighting and one woman was trying to stop them. There was a road between his showroom and the place where the fight was going on. The spot of incident was just below Keni Wine Stores. PW2 could not leave his showroom as he was attending to one customer. After attending to that customer, he came out and went to the place where the fight was going on. He saw that one of the two men had fallen down. The other man was not seen on the spot when he reached there. According to him, when he had looked outside the showroom, he had seen that the other man was wearing a blue coloured T-shirt and was wearing 3/4th pant. PW2 then dialled 108 and 100, thus calling the ambulance and the Police. According to him, the woman had injury on her hand. The Police then came on the spot. PW2 identified the Appellant produced in the Court through VC. He further stated that he had identified the Appellant during the Test Identification Parade conducted by the Mamlatdar.

In the cross-examination, his attention was drawn to certain portion in his Police Statement, wherein it was mentioned that it was raining at that time and due to the rains, he could not see properly what was happening outside the showroom as the showroom glass had become foggy. He tried to explain that he could see the incident very clearly when the customers were opening the door of his showroom.

11. The FIR was lodged by PW9 /Kiran Naik. He was attached to Mapusa Police Station. On 14.10.2020 at about 12.40 p.m., he was

informed that a telephonic call was received from the PCR Panaji about the fight going on near Remy Photo Studio, Mapusa. At about 1.50 p.m. he along with his staff proceeded to the spot. He was informed that one lady was injured in the incident and was shifted for medical treatment and the male injured person was lying motionless on the spot. They marked the spot and shifted the injured for medical treatment. He posted two Police Guards at the spot. When he reached the casualty ward of North Goa Hospital, he was informed that the injured lady was one Mrs. Parvati Devappa Lamani and she was discharged after treatment and the injured male by name Rahul Bengali was brought dead to casualty. He accordingly informed PI of Mapusa Police Station. He further deposed that he had recorded statement of one Mr. Nitesh Kumar Rambabu Kartik while LPSI Sneha Sawal recorded the statement of the injured Mrs. Parvati Devappa Lamani. Based on this information, PW9/Kiran Naik lodged this FIR at Mapusa Police Station vide CR No.280/2020. The FIR is produced on record at Exhibit 44.

12. The other Police witnesses mostly depose about the investigation carried out at the different stages. PW7/Samir Salgaonkar was attached to the same Police Station. He had taken some photographs of the disclosure Panchanama. PW8/Santosh Narvekar had guarded the spot at the instruction of PW9/Kiran Naik. PW6/Amey Kundaikar had taken some photographs in respect of scene of offence. All these facts about taking of photographs are mostly undisputed and they do not really take the prosecution case towards the guilt of the accused. PW4/Shekar Naik

was a pancha witness for spot Panchanama. The said Panchanama is produced on record at Exhibit 33. The blood stained earth, etc. were seized from the spot. The spot Panchanama describes the locality which was surrounded by different shops. PW5/Siddheshkumar Tendulkar was a pancha witness for recovery of the wooden stick at the instance of the Appellant on 15.10.2020. The Memorandum Panchanama and the recovery Panchanama are produced on record at Exhibit 33. The weapon was recovered at the instance of the Appellant from a gap constructed between the footpath railing and the ground. It was a heavy wooden stick.

13. PW3/Dr Guirish Kamat had examined the Appellant after his arrest. The Appellant had three abrasions of the size 7x4 cm, 2x2 cm and 4x3 cm. His examination was conducted at 11.15 p.m. on 14.10.2020. The said certificate is produced on record at Exhibit 25. PW3 also conducted the post-mortem examination on the dead body. Post-mortem notes are produced on record at Exhibit 26. The deceased had suffered 12 injuries which were mostly abrasions and there was one CLW on the right occipital region. According to PW3, the cause of death was due to damage to the head and brain corresponding to the CLW on the occipital region.

14. PW10/PI Vijaykumar Chodankar had carried out some part of the investigation. He had conducted the spot Panchanama and seized the samples. He identified the photographs taken during the spot

Panchanama. He caused the sketch of the scene of offence to be prepared. He caused the seizure of the clothes of the injured woman Parvati. He had sent the Appellant for medical examination after his arrest. He supervised the recovery of weapon at the instance of the Appellant. PW11/Tushar Lotlikar had arranged to conduct the Test Identification Parade. The Test Identification Parade Memo was produced on record at Exhibit 70. It was admitted in evidence. The memo shows that PW1 and PW2 had identified the Appellant at the Test Identification Parade. The CA report produced on record shows that human blood of blood group 'A' was detected on the clothes of the Appellant.

This, in short, is the evidence led by the prosecution. As mentioned earlier, the defence of the Appellant was of total denial.

15. Learned Counsel for the Appellant submitted that the prosecution has failed to prove its case beyond reasonable doubt. There was no motive for the Appellant to have committed the murder of the deceased. There is no evidence to show that they were even acquainted. The prosecution has not examined the most important witness, i.e. the injured woman named Mrs. Parvati Lamani. Even the LPSI who had recorded the statement of Mrs. Parvati was not examined. No explanation is offered as to why either of them could not be examined. The incident had taken place in a crowded locality surrounded by the local shops. When the Police arrived, there were many persons, as can be

seen from the FIR. Except these two got up witnesses, nobody was examined by the prosecution. The recovery of the weapon is extremely doubtful. It was recovered from a place which was accessible to the general public. In any case, no blood stains were found on the weapon and hence it could not be connected with the offence. He submitted that the most important fact in this case is that the evidence of the eyewitnesses which is extremely doubtful. They have not only improved their version from their Police statement and have tried to help the prosecution, but their evidence shows that they are not trustworthy witnesses. He submitted that there is no cogent evidence connecting the recovery and seizure of the weapon and it is not an incriminating circumstance.

16. Learned Public Prosecutor, on the other hand, submitted that the eyewitnesses PW1 and PW2 cannot be disbelieved. They had no grudge against the Appellant. They were the natural witnesses as they were working in the same area. Based on their evidence alone the conviction must follow. He further submitted that regarding the recovery of weapon, though the weapon was found from near a footpath it was concealed between a gap and therefore it was neither visible nor easily accessible to general public. He further submitted that the blood of 'A' group found on the clothes of the Appellant is another incriminating circumstance. It was the blood group of the deceased. Therefore, considering all these incriminating circumstances, the prosecution has proved its case beyond reasonable doubt.

17. We have considered the submissions of the learned Counsel for the parties. Having perused the entire record, we are of the opinion that the fate of the case depends on the evidence of PW1 and PW2, who claim to be the eyewitnesses. PW1, in her examination-in-chief, has stated that she was working in a shop, i.e. Remy Studio, which had a tinted glass. She has specifically described that one could see from inside the shop what was going on outside the shop. It was a one-way visible glass. According to her, that is how she could see the incident which had taken place outside her shop. However, when she was confronted with her Police statement, she had to admit that she had stated before the Police that the glass was tinted and it was not possible to see through the glass as to what was happening outside the shop. She tried to explain that her counter was outside that particular door. However, her explanation is not in consonance with her examination-in-chief. It is clear that she is trying to explain her contradiction. Her explanation is difficult to accept. She had no reason to depose in her examination-in-chief that she could see through the glass from her shop which is contrary to her explanation.

The incident anyway had occurred across the road. Therefore, there was some distance from the place where she was working and the place where the incident had taken place. She had not seen the actual incident. She had only seen one man running away with a stick in his hand. She had not even clearly stated that she had seen the face of the

man running away. Therefore, her claim that the Appellant had committed this offence is extremely doubtful.

18. Even the evidence of PW2 does not inspire confidence. He had stated that he saw that two men were fighting and one woman was trying to stop them. There was a road between his shop and the spot of incident. He did not immediately go to the spot of incident as he was attending to one customer. At the point of time when he reached the spot, the assailant was not present. He could only see the injured man lying on the ground. In the cross-examination his attention was drawn to his Police statement that it was raining at the time of incident and due to the rains he could not see properly from his showroom as his showroom glass had become foggy. He accepted that he had stated so before the Police. He tried to explain that he could see the incident when the customers were opening the doors of his showroom. Again this version and explanation is difficult to accept and, in any case, it would be only during fleeting moments when the customers were opening the doors of his showroom that he could see the incident. Therefore, it is very difficult to believe that he could clearly see assailant.

19. Thus, we find that PW1 and PW2 could not have seen the incident clearly and in particular could not have seen the features of the assailant in detail. Their identification during the Test Identification Parade does not really have any serious significance. On all these counts, we are not inclined to place reliance on the evidence of PW1 and PW2.

20. The next incriminating circumstance alleged by the prosecution is the recovery of the heavy wooden stick. As mentioned earlier, the CA report shows that no blood was detected on the weapon. Therefore, this particular evidence cannot also be relied by the prosecution to bring home the guilt of the Appellant.

21. The next circumstance is finding of blood of 'A' group on the clothes of the Appellant. The record shows that the Appellant was arrested at around 2.30 p.m. The Panchanama of the seizure of the clothes was carried on at 5.30 p.m. There is no explanation as to where the Appellant was kept during this period from 2.30 p.m. to 5.30 p.m. and therefore the learned Counsel for the Appellant was right in making the submission that the seizure of the clothes of the Appellant itself is a doubtful circumstance. Therefore, finding of blood of 'A' Group on the clothes of the Appellant also cannot be held to be an incriminating circumstance against the Appellant. Apart from these circumstances, there is no other circumstance.

22. In this case, the prosecution has failed to prove its case beyond reasonable doubt and, therefore, the benefit of doubt must be given to the Appellant. The Appellant deserves to be acquitted. Hence, we pass the following order:

O R D E R

(i) The Appeal is allowed.

- (ii) The judgment and order passed by the learned Additional Sessions Judge-1, North Goa, Panaji in Sessions Case No.6/2021 convicting and sentencing the Appellant is set aside.
- (iii) The Appellant is acquitted of the charges framed under Section 302 IPC.
- (iv) The Appellant shall execute a PR Bond in the sum of ₹15,000/- under Section 481 of BNSS before the Jail Superintendent before being released from jail. After his execution of the Bond the Appellant be immediately released.
- (v) The Appeal is disposed of.

ASHISH S. CHAVAN, J.

SARANG V. KOTWAL, J.