

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.994 OF 2023

Vijay Gopal Shinde

.....Appellant

Versus

The State of Maharashtra

.....Respondent

.....

WITH

INTERIM APPLICATION NO.1936 OF 2025

IN

CRIMINAL APPEAL NO.994 OF 2023

Mr. Abhishek Kulkarni, Advocate a/w. Sagar Wakale, R.S. Pere for the Appellant.

Mr. Vinit A. Kulkarni, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATE : 03rd JULY, 2025

ORAL JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The Appellant has preferred this Appeal challenging the judgment and order dated 27.9.2018 passed by the Ex. Jt. Additional Sessions Judge, Barshi, District-Solapur in Sessions Case No.66/2015. The Appellant was convicted for commission of the offence punishable under Section 302 of IPC. He was sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- and in

default to undergo further RI for six months. The Appellant was granted set off from 25.4.2015 for the period undergone by him as an under-trial prisoner under Section 428 of Cr.P.C..

2. Heard Mr. Abhishek Kulkarni, learned counsel for the Appellant and Mr. Vinit Kulkarni, learned APP for the Respondent-State.

3. The prosecution case is that the deceased Nitin Gore and the Appellant Vijay Shinde were working in Garava Hotel at Barshi. There was some dispute on a petty issue between them on 23.4.2015 in the night. The Appellant got angry. On the next day, in the afternoon, PW-1 the first informant Vishwanath Jadhav heard shouts from their resting room. PW-1 rushed there and found that the Appellant was assaulting the deceased on the head with an iron pipe. PW-1 raised shouts. The Appellant ran away from the spot. The police were informed. The injured Nitin was taken to the hospital, but, he was declared dead. The investigation commenced. The statements of the witnesses were recorded. The spot panchnama was conducted. The Appellant was arrested on 25.4.2015. At the conclusion of the investigation, the charge-sheet

was filed and the case was committed to the Court of Session.

4. During trial, the prosecution examined six witnesses. The main witness was PW-1 Vishwanath Jadhav who was an eye witness. The other eye witness PW-5 Pandurang Chavan did not support the prosecution case and he was declared hostile. The other witnesses were the panchas for different panchnamas, and the investigating officer who had conducted the investigation. The postmortem notes were admitted in the evidence.

5. The defence of the Appellant was that he was taking rest in the staff room which was outside the hotel. He did not know how the deceased died. He was not giving money and tips received to the first informant– PW-1 and therefore he was deposing falsely against the Appellant. The deceased Nitin and Akshay were stealing food from the hotel. The Appellant had objected to the same and, therefore, he was falsely implicated.

6. The learned Judge relied on the evidence of the eye witness and convicted and sentenced the Appellant as mentioned earlier. The learned trial Judge did not accept the defence of the Appellant.

7. PW-1 Vishwanath Jadhav, the first informant, is an important witness. He is the sole eye witness examined by the prosecution. The other eye witness had turned hostile. PW-1 deposed that in the year 2015 he was serving as a cook in Garwa hotel at Barshi. The Appellant Vijay was a waiter in the hotel. On 23.4.2015 at about 11.45 p.m. there was some quarrel between the deceased Nitin and the Appellant Vijay. The Appellant had hidden the food parcel of Nitin, who got upset and there was a quarrel. PW-1 and others separated them. Nitin went to his house and PW-1 went to his own house. On 24.4.2015, he had come on duty at 11.00 a.m.. The Appellant did not attend the duty. He was on leave. He was resting in the hotel staff room. At about 3.30 p.m., the deceased Nitin told PW-1 that he was going to the staff room for taking rest. After some time, he heard shouts from Nitin. PW-1 rushed towards the staff room. He saw that the Appellant was holding a black coloured iron pipe and he was assaulting Nitin with that pipe on his head. Nitin fell down in a pool of blood. PW-1 separated the Appellant and Nitin. The Appellant was saying that since Nitin had given him trouble on previous night, therefore, he had murdered him. After that, the Appellant pushed him and

ran out of the room. PW-1 raised shouts. The other staff members gathered there. One Shekhar Shetty called the police and Nitin was taken to Jagdale Mama Hospital. The doctor declared him dead. On 25.4.2015, he lodged his FIR at Barshi police station vide C.R. No.37/2015. He identified the iron pipe used by the Appellant.

In the cross-examination, he stated that he was working in the hotel before the Appellant joined that job. The Appellant was a resident of Mumbai. PW-1 himself and Nitin were residents of Barshi. Nitin was his friend. The waiters used to get tips from the customers. PW-1 was not getting any tip. He denied the suggestion that since he wanted a share in the tip from the Appellant and since he refused, there used to be quarrels between them. He also denied the suggestion that since the Appellant had complained to the owner about PW-1 stealing liquor from the permit room, PW-1 was angry with the Appellant. He denied the suggestion that the police had taken him in custody on suspicion.

The exhibited FIR shows that it was registered at about 12.30 a.m. in the night between 24.4.2015 and 25.4.2015. The narration in the FIR substantially corroborates PW-1's substantive

evidence.

8. PW-2 Pravin Pawar was a pancha for the spot panchnama, which is produced on record at Exhibit-18. The spot panchnama was conducted between 6.00 a.m. to 7.30 a.m. on 25.4.2015. The iron pipe lying at the spot was seized from the spot.

9. PW-3 Amrut Nagane was a pancha for seizure of clothes of the accused. They were seized at the time of conducting the arrest panchnama. The said panchnama is produced on record at Exhibit-21. It was conducted between 1.00 p.m. to 1.45 p.m. on 25.4.2015.

10. PW-4 Satish Koli was a pancha for seizure of the clothes of the deceased.

11. PW-5 Pandurang Chavan was examined by the prosecution as an eye witness. However, he turned hostile and did not support the prosecution case. His contrary statement describing the incident implicating the Appellant was mentioned in portion marked 'A' in his police statement dated 26.4.2015. He resiled from that statement and therefore he was declared hostile. However that

statement was not proved through the evidence of the investigating officer and, therefore, we will have to ignore the evidence of PW-5.

12. PW-6 API Bhujbal had conducted the investigation after the FIR was registered vide C.R. No.37/2015 at Barshi police station. He had conducted the inquest panchnama. He had arrested the Appellant and had seized his clothes. He had seized the weapon of assault from the spot. He recorded the statements of the witnesses. He sent the articles to C.A.. He submitted the charge-sheet in the court.

13. The postmortem notes are produced on record at Exhibit-24. These notes are not challenged. The injuries noticed in the postmortem examination as as follows :

- i. CLW on left cheek 2 cm below left eye of the size 3 x 2 x 1 cm.
- ii. CLW on right frontal region on right eyebrow of the size 2 x 0.5 x 0.5 cm.
- iii. CLW on mid-chin one vertical of the size 4 x 1 x 0.5 cm.
- iv. Contusion on left frontal region of the size 3 x 2 cm. There was depressed skull fracture.

The cause of death was mentioned as death due to shock due to injury to vital organ brain i.e. head injury.

. This, in short, is the evidence led by the prosecution.

14. Learned counsel for the Appellant submitted that it is a case based on evidence of the sole eye witness. He is an interested witness. He was a friend of the deceased and, therefore, considering the circumstances, the conviction cannot be based on his evidence. He relied on the judgments of the Hon'ble Supreme Court as follows:

[I] Sunil Kumar Vs. The State Government of NCT of Delhi¹

[II] Chunthuram Vs. State of Chhatisgarh²

[III] Sarwan Singh Rattan Singh Vs. State of Punjab³

15. Learned APP, on the other hand, submitted that the evidence of PW-1 is cogent and reliable. The murder weapon was found at the spot. The description given by PW-1 corroborates with the weapon referred to in the postmortem notes.

16. We have considered these submissions. As rightly submitted by both the learned counsel, this case is based on the evidence of PW-1. Therefore, we have to scrutinize his evidence

¹ 2004 CrLJ 605

² 2020 AIR (SC) 5495

³ 1957 AIR (SC) 637

carefully. We have already referred to the narration given by him. There is hardly any effective cross-examination of this witness. PW-1 is a natural witness. He was a cook in the same hotel. He knew both the Appellant and the deceased. He had described the quarrel which had taken place on the earlier night. It was a petty quarrel but on the next day the Appellant had not joined the duty. He was taking rest in the staff room. The deceased, after speaking to this witness, went to the staff room and within a short time this incident took place. PW-1 went to that room and he saw that the Appellant was assaulting the deceased with an iron pipe. He threw the iron pipe there and ran away. The iron pipe was found at the spot when the spot panchnama was conducted. PW-1 immediately informed the other staff. The ambulance was called and the deceased was taken to the hospital. This shows that PW-1's conduct was natural.

17. The first priority was to save the deceased. After he was taken to the hospital, the police recorded PW-1's statement and the FIR was registered in the midnight. The sequence is clearly stated by PW-1. His evidence is supported by the postmortem notes and the injuries suffered by the deceased which were possible by the

seized weapon and in the manner of the assault described by PW-1.

18. The other corroborative piece of evidence about the finding of blood of the same group of the deceased i.e. 'B-Group' on the weapon. This also corroborates the version of PW-1 that the Appellant had thrown the weapon at the spot and had run away. Considering the sequence of events, we do not find that there is unexplained and inordinate delay in lodging the FIR.

19. Though the other eye witness has turned hostile, since we are satisfied with the quality of evidence of PW-1, his evidence can form the sole basis for conviction of the Appellant. In fact the judgment of **Sunil Kumar**, as cited by the learned counsel for the Appellant, mentions that the evidence is to be weighed and not counted. The test would be whether the evidence had a ring of truth and was cogent, credible and trustworthy. In that case, the Hon'ble Supreme Court had referred to the case of **Vadivelu Thevar Vs. The State of Madras**⁴; and the witnesses were divided in three categories, namely, wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. In the present case we find PW-1 to be a 'wholly reliable' witness.

4 AIR 1957 SC 614

20. In the case of **Chunthuram**, the Hon'ble Supreme Court found that there were inherent improbabilities in the prosecution story and the conduct of the eye witness was inconsistent with the ordinary course of human nature. However, in the present case we find that the presence of PW-1 on the spot of incident and his conduct was natural. He was not a chance witness. He was a natural witness and he has given cogent evidence against the Appellant.

21. In **Sarwan Singh's** case, the Hon'ble Supreme Court held that the distance between 'may be true' and 'must be true' must be travelled by the prosecution through legal, reliable and unimpeachable evidence.

22. At the cost of repetition, it has to be observed that in the present case we do not find any infirmity in the evidence of PW-1, which is supported by the other corroborative pieces of evidence as mentioned earlier. From this evidence it is clear that it was a premeditated, preplanned attack committed by the Appellant. The quarrel between them had taken place on the previous night. In the next afternoon, the Appellant was waiting

for an opportunity and as soon as the deceased went to the staff room, the Appellant assaulted him with an iron pipe. Therefore, it cannot be said that the incident had occurred on a spur of the moment. The Appellant had sufficient time to think about their quarrel and to plan the attack on the deceased.

23. As a result of this discussion, we are satisfied that the prosecution has proved its case beyond reasonable doubt based on these circumstances and the direct evidence of PW-1. We do not find merit in the Appeal. The Appeal is accordingly dismissed. With dismissal of the Appeal, nothing survives in the connected Interim Application and it is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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