

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

**CRIMINAL APPEAL NO. 71 OF 2024
WITH
INTERIM APPLICATION NO. 2987 OF 2023
IN
CRIMINAL APPEAL NO. 71 OF 2024**

Ahmed Kamal Abdul Mobin Ansari @
Pappu Puriwala

Age : 45 years,

Residing at : Somangar, Near Municipal Urdu

School No.3, Chawl of Jethuchi, Dhamankar Naka,

Bhiwandi (presently in Judicial Custody at

Nagpur Central Prison, Nagpur).

..... Appellant

Vs.

The State of Maharashtra

Through Bhiwandi Police Station,

in C.R.No.228/2014

..... Respondent

Ms. Tahera Qureshi for the Appellant.

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

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

DATED : 12th JUNE, 2025

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

. The Appellant has challenged the Judgment and Order dated 04/10/2022 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.156/2015. The Appellant was the Original Accused No.1. He was convicted for commission of the offence punishable under Sections 302, 504 read with Section 34 of the Indian Penal Code and he was

sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- and in default to suffer SI for 15 days. He was acquitted from the charges of committing offence punishable under Section 120(B) of IPC. He was sentenced to suffer simple imprisonment for one month for commission of the offence punishable under Section 504 of IPC and was sentenced to pay a fine of Rs.500/- and in default to suffer SI for 15 days. Both the sentences were directed to run concurrently. He was given set-off for the period he had spent in custody during trial.

2) There were two more accused in the same trial i.e., Arif Abdul Kalam Shaikh and Asif Abdul Kalam Shaikh. By a separate Judgment dated 03/09/2022 passed in the same trial, the learned Judge acquitted these two accused i.e., Accused Nos.2 and 3.

3) The prosecution case is that the deceased Maksood Abdul Kadir Shaikh was a Plumber. He was repairing a borewell. He was accompanied by his friends. His brother was standing nearby. On 10/12/2014, at around 03:25 p.m., the Appellant came there. He picked up a quarrel with Maksood and suddenly took out a knife from his pocket. The Appellant gave several blows to Maksood and ran away. Maksood's brother and friends took him to a hospital but he succumbed to his injuries. Maksood's brother PW-1 - Abdul Sikandar lodged the FIR. The investigation was carried out. The Appellant was arrested on 10/12/2014 itself. His clothes were seized. The murder weapon i.e., the knife was recovered at his

instance. The prosecution case was that there was enmity between Maksood and the Accused Nos.2 and 3 and at their instance, the present Appellant committed this assault. The second theory which was brought forth in the investigation was that the Appellant was having a love affair with his female friend. The deceased was causing trouble in his relationship and therefore because of that grudge, the Appellant committed this offence. The investigation was carried out and the charge-sheet was filed.

4) The prosecution examined eye witnesses, the recovery pancha, the Doctor who had conducted the Post Mortem examination and police witnesses. The other witnesses were in respect of the Accused Nos.2 and 3. They were Nodal Officers of mobile phone service providers. The prosecution wanted to prove the conversation between those two accused and the deceased Maksood as it was alleged that those two accused had threatened Maksood of dire consequences. However, that particular part is not material as the Accused Nos.2 and 3 are acquitted and there is no Appeal against Acquittal preferred. In any case, we have perused the Judgment of Acquittal recorded in their favour and we do not find any infirmity in that part of reasoning of the learned Judge. The Judgment of Acquittal has attained finality.

5) The defence of the Appellant was of total denial. No specific defence was taken. The learned Judge, after recording the statement of the Appellant under Section 313 of Cr.P.C. and after hearing both sides, passed

the Judgment and Order of conviction and sentence as mentioned earlier.

6) As mentioned earlier, the FIR was lodged by Maksood's brother - Abdul Sikandar who was examined as PW-1.

He has deposed that he knew the accused. They were residing in his locality. Maksood was his younger brother. He was a Plumber. On the day of the incident i.e., 10/12/2014 at about 03:00 to 03:15 p.m., Maksood was repairing a borewell. He was accompanied by others namely Zahir Khan, Shahid Aktar, Shamshad and Pintoo. At that time, the Appellant came there and questioned Maksood as to why he was repairing the borewell. The Appellant started a quarrel with Maksood and abused him. Thereafter, he suddenly took out a knife and assaulted the deceased on the neck, head, face and stomach. Maksood became unconscious. PW-1 and others rushed near him and took him to Indira Gandhi Hospital at Bhiwandi. After the assault, the Appellant had run away. The Doctors advised PW-1 and others to take Maksood to Civil Hospital, Thane but it was at a long distance and therefore, they tried to take him to a private hospital at Bhiwandi but on the way to the hospital, Maksood passed away. After that, PW-1 lodged the FIR. It is produced on record at Exhibit-47. He identified the Appellant before the Court. PW-1 handed over Maksood's mobile phone to the police.

In the cross-examination, PW-1 stated that the spot of incident was in a densely populated area. He knew the persons who had witnessed

the incident. He denied the suggestion that a person named Pappu was not present in the Court. At the time of the incident, he was standing about 10 to 15 feet away. The assault took place for 2-3 minutes. After that, the Appellant fled away. He denied the suggestion that the assailant Pappu was a stranger to him and the Appellant was falsely implicated. The FIR produced on record substantially corroborates his evidence.

7) PW-6 Shahid Ansari has narrated the incident in the same manner as narrated by PW-1. He had stated that the deceased was repairing a borewell. At that time, the others namely Shamshad, Zahir, Sonu, Pintoo and PW-1 were present. When they were repairing the borewell and installing the electric motor, the Appellant came behind Maksood and started quarreling with him. The Appellant took out a knife from his pant pocket and assaulted the deceased on his head, neck, nose and other parts. This witness and others then put Maksood in an autorickshaw and took him to IGM hospital at Bhiwandi. They tried to take him to another hospital but Maksood passed away in transit. He identified the knife produced in the Court. According to him, the handle of the knife was broken at the spot of the incident itself.

In the cross-examination, he explained that since the deceased was taken to the hospital and then the funeral was performed, he could not immediately go to the police station. The rest of the cross-examination is in the nature of suggestions which he denied.

8) PW-7 Shamshad Ansari is another eye witness who has deposed exactly in the same manner as PW-1 and PW-6. Same is the evidence of PW-8 Zahir Najir Khan and PW-9 Imteshar Niyaz Ansari. Their evidence is absolutely consistent and there is hardly any material elicited by the defence Counsel through cross-examination except giving suggestions which was denied by these witnesses.

9) PW-11 Dr. Shashikant Madhavi had conducted the Post Mortem examination and had found eight incised wounds as follows :-

- (1) *Laceration on right cheek extending upto nose
8 cm x 4 cm x 2 cm*
- (2) *Incised wound on left inframammory region
8 cm x 4 cm x 2 cm obliquely placed*
- (3) *Incised wound over right shoulder 2 cm x 2 cm x
1 cm obliquely placed.*
- (4) *Incised wound cervical region posteriorly on right
side 8 cm x 4 cm x 3 cm obliquely placed.*
- (5) *Incised wound over left supra scapular region
6 cm x 3 cm x 2 cm obliquely placed.*
- (6) *Incised wound over back left suprailiac
region 4 cm x 2 cm x 2 cm.*
- (7) *Contused lacerated wound over frontal region on
left side above eyebrow 3 cm x 2 cm x 1 cm
obliquely placed*
- (8) *Incised wound left thumb lateral aspect 3 cm
x 2 cm x 1 cm. All the injuries are ante-mortem.
Internal injuries :-
Displaced fracture Nasal bone.*

10) The cause of death was mentioned as haemorrhagic shock due to multiple injuries caused by sharp cutting edged weapon.

11) PW-2 Anwar Ansari was a pancha for spot panchanama and for seizure of mobile phone which was produced by PW-1 on 22/12/2014 but he was declared hostile.

12) PW-3 Nasim Ahmed was a pancha for seizure of the Appellant's clothes on 10/12/2014. The said panchanama is produced on record at Exhibit-58.

13) PW-5 Javed Ansari was another important witness. He was a pancha in whose presence the Appellant showed willingness to point the place where he had concealed the knife and the knife was recovered at his instance. The recovery panchanama was produced on record at Exhibit-67.

He admitted that he was a friend of the deceased but he deposed that the Appellant had shown willingness to produce the knife. He had led the police and the panchas to the place on the way to Dhamankar Naka. The blade of the knife was taken out by him from a tin roof of a closed shop. It was stained with blood.

14) PW-12 Shakil Ahamad Moh. Gilani had repaired the pipe near the spot.

15) The other witnesses were examined in connection with the Accused Nos.2 and 3 and therefore, they are not relevant as far as the present Appellant is concerned. Those witnesses are PW-4, PW-13, PW-14,

PW-15, PW-17, PW-18 and PW-19. They were mostly in respect of the voice samples of the accused – Asif Shaikh and the Nodal Officers of the mobile phone service providers to establish that the Accused Nos.2 and 3 had threatened the deceased Maksood. There was a reference to the NC lodged by Maksood against the Accused No.2-Asif. All these witnesses are not relevant for the purposes of the present Appeal as they have no connection with the present Appellant.

16) PW-16 PI - Suresh Aher was the Investigating Officer. He had conducted the investigation. He conducted the spot panchanama, arrested the accused-Appellant, seized his clothes and effected the recovery of knife at his instance. He had sent the articles for CA examination and had filed the charge-sheet. He had produced the CA reports on record.

In the cross-examination, he accepted that the investigation revealed that the Appellant was having a love affair with a girl and the deceased was creating disturbance and therefore, the relations between them were strained. In the cross-examination, he admitted that he had not recorded any statement to prove that particular fact. He had not collected the CCTV footage but he volunteered that there was no CCTV instrument installed at the spot of the incident. The CA reports are produced on record at Exhibit-137 and it shows that there were blood stains on the clothes of the Appellant. However, the DNA report is confusing because there are two contrary results mentioned in that report.

17) Learned Counsel for the Appellant made the following submissions :-

(a) The prosecution did not prove any motive as to why the Appellant could have assaulted the deceased.

(b) The genesis of the story that the deceased was repairing a borewell cannot be correct because that borewell was owned by the Municipal Corporation and no private person like the deceased could have touched it for repairs.

(c) There are two different versions according to the prosecution case. In the first version, the case was that, the deceased was assaulted by the Appellant at the behest of the other two accused. The second version brought out through some cross-examination and admission given by the Investigating Officer was that, there was a love affair of the Appellant with a girl and the deceased was creating disturbance and therefore, this incident took place. These two different versions cannot be true at the same time.

(d) The spot of incident is not proved.

(e) The broken handle of the knife which was important, was not found at the spot.

(f) Barring one eye witness, the other eye witnesses do not make reference to the presence of PW-1 at the spot.

(g) If there was no handle to the knife, there ought to have been some injuries on the palm of the Appellant if he had caused that particular assault.

(h) The evidence shows that PW-1 could not have been present at the spot. It is unlikely that PW-1 did not take any steps to protect his brother.

(i) Admittedly, the locality was densely populated but apart from the friends and relatives of the deceased, no independent witness was examined.

(j) The prosecution is silent as to in what circumstances, the Appellant was arrested. The link between his arrest and seizure of his clothes, is missing.

She submitted that the prosecution has not proved the case against the Appellant beyond reasonable doubt.

18) Learned APP, on the other hand, submitted that there is direct evidence in the nature of eye witnesses and therefore, the motive is not important. There are corroborative pieces of evidence in the form of recovery of the weapon which was concealed on a tin roof which was not within the knowledge of anybody else. Therefore, there is authorship of concealment and recovery of weapon from that particular spot. The CA report shows that the recovered blade of the knife was stained with human blood. The evidence of the eye witnesses is consistent and therefore, the prosecution has proved its case beyond reasonable doubt.

19) We have considered these submissions. In this case, there are five eye witnesses that are examined by the prosecution. As mentioned earlier, their evidence is absolutely consistent. Nothing favourable is elicited

from their cross-examination. Their presence at the spot is natural. They corroborate each other. They have described the incident consistently. Their ocular evidence is supported by the Medical Officer who had conducted the Post Mortem examination. There are number of injuries, as mentioned earlier, on the person of the deceased. All these are consistent with the description given by these witnesses. The explanation offered by the eye witnesses for not approaching the police immediately, is also acceptable because the priority was to take the deceased to the hospital and thereafter, they had attended the funeral. The explanation is quite reasonable. In any case, PW-1 had immediately gone to the police station after death of the deceased and therefore, there was no delay in lodging the FIR and informing the incident to the police. There was no scope for improvement. Thus, there is consistent direct evidence of five eye witnesses which cannot be doubted at all. On this basis alone, the prosecution has proved its case beyond reasonable doubt. There are other corroborative circumstances in the nature of recovery of blood stained blade of the knife. The blade was recovered at the instance of the Appellant from a tin roof of a closed shop. The evidence in that behalf led by the prosecution, inspires confidence and satisfies the requirements of Section 27 of the Evidence Act. The Appellant's clothes were seized at the police station. The panchanama describes that the Appellant's father was present at the police station with a fresh set of clothes and the Appellant was made to change his clothes and then, the

clothes were seized. It was done immediately in the night after his arrest in the evening on 10/12/2014. The Appellant's arrest is also immediate. Thus, the direct evidence is sufficiently corroborated by the other circumstances. The connection of the Accused Nos.2 and 3 is not established by the prosecution and therefore, they were rightly acquitted by the learned trial Judge. The assault is caused by the Appellant which is a fact which is proved by the prosecution. No other person was involved. There is direct evidence describing the assault. The learned Judge has considered all these aspects properly. We see no reason to interfere with the impugned Judgment and Order. With the result, the Appeal is dismissed.

20) With the disposal of the Appeal, the connected Interim Application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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