

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

**CRIMINAL APPEAL NO. 101 OF 2024
WITH
INTERIM APPLICATION NO. 2654 OF 2025
IN
CRIMINAL APPEAL NO. 101 OF 2024**

Riyaz @ Bablu Sattar Mujawar
aged 31 yrs, Occ : Worker,
Residing at Room No.301,
Ali Mansion Building, 3rd floor,
Anand Koliwada, Mumbra,
District – Thane
(Presently lodged in Nashik Central Prison) Appellant

v/s.

The State of Maharashtra
(at the instance of Mumbra Police Station) Respondent

Ms. Jahnvi S. Karnik a/w. Smt. B. Sharada for the Appellant.
Ms. Supriya Kak, APP for the Respondent – State.

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

DATED : 15th SEPTEMBER, 2025

ORAL JUDGMENT : (PER : SARANG V. KOTWAL, J.) :-

1) The Appellant has challenged the Judgment and Order dated 12/07/2023 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.324/2015. The Appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code, 1860. He was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default to suffer simple imprisonment for six months.

He was granted set-off under Section 428 of Cr.PC. The Appellant was arrested on 17/04/2015 and since then, he is in custody.

2) Heard Ms. Jahnavi Karnik, learned Counsel for the Appellant and Ms. Supriya Kak, learned APP for the Respondent – State.

3) The prosecution case is that, the Appellant and the deceased - Rohit were close friends. There was a quarrel between them on 13/04/2015. According to the prosecution case, on 16/04/2015, at around 11:15 p.m., the Appellant stabbed Rohit multiple times near Mumbra Railway Station Ticket House, causing his death. Thus, he committed the murder of the deceased Rohit. The FIR was lodged by Rohit's brother – Roshan Jadhav at around 02:00 a.m. in the night between 16th and 17th April, 2015. The Appellant was also arrested in the night itself. The statements of the witnesses were recorded. The Spot Panchanama was conducted. The dead body was sent for post-mortem examination. At the instance of the Appellant, a knife was recovered. At the time of the Appellant's arrest, his clothes were seized. The articles were sent for chemical analysis. At the end of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

4) During the trial, the prosecution examined 11 witnesses including Rohit's brother – Roshan Jadhav who was the first informant, one Brijesh Jaiswal as the eye witness, the Medical Officer who had conducted the post-mortem examination, the Panchas, the Police Officers including

the Investigating Officers. The defence of the Appellant was of total denial.

5) The learned Judge relied on the evidence of the eye witness, the evidence of the first informant who had allegedly heard the deceased mentioning the name of the Appellant as the assailant and the evidence of recovery of knife. Based on this evidence, the learned Judge convicted and sentenced the Appellant as mentioned earlier.

6) PW-1 Mr. Brijesh Jaiswal is an important witness and in fact the prosecution has examined only this witness as an eye witness. He deposed that he was residing in Mumbra since 20 years before his deposition. He had a paan stall in front of Mumbra Railway Station. His business hours were between 07:00 a.m. upto 03:00 p.m. and then from 06:00 p.m. to 11:00 p.m. On 16/04/2015, when he was about to close his stall around 11:00 p.m., he saw that a fight was going on between the Appellant and the deceased Rohit. He went there to separate the quarrel. The Appellant prevented him from intervening in the quarrel. PW-1 then stepped aside. A mob had gathered there watching the fight. He deposed that the Appellant and Rohit were assaulting each other. The Appellant pulled out a knife from his pocket and gave a blow of knife on Rohit's stomach. He inflicted two to three more blows on Rohit's stomach who then fell down. The Appellant ran away from the spot. Blood started oozing from the injuries. After witnessing this, PW-1 went home. In the same night, the police made inquiries with PW-1 and recorded his

statement. He could not identify the knife in the Court.

In the cross-examination, he had stated that his house was at a five minutes walking distance from Mumbra Station bridge. When Rohit fell on the ground, within five to ten minutes, PW-1 had reached his home. Till about 12:15 a.m., he was in the house. According to him, there were fifteen to thirty persons watching the incident. He did not know who helped Rohit after the incident and how he was taken to the hospital in the ambulance. He further stated that when Rohit fell down, he was unconscious and he was not talking. PW-1 himself did not make an attempt to talk with him. PW-1 did not pick up Rohit or give him water. He did not go to the hospital in the night. He could not describe the clothes worn by Rohit at that time. He could not describe the clothes worn by the assailant. He had cordial relations with Rohit. He stated that he did not have any Shop Act license for his paan stall. He did not have documents to show that on that day, he was having a paan stall under that bridge. The Railway ticket window was thirty to thirty-five feet away from his stall. The people who had gathered there, did not attempt to catch the assailant. He had not mentioned in his statement that Rohit and the Appellant were fighting with each other. There were two injuries on Rohit's stomach. According to him, the Appellant had inflicted two to three knife blows on his stomach but he could not assign any reason why this fact was not mentioned in his statement. At about 12:15 a.m. in that night, the police

came to his house to call him. Therefore, he went to the Police Station. He further deposed that he was in the Police Station till 09:00 a.m. or 10:00 a.m. on the next day. The police recorded his statement at about 08:00 a.m. or 09:00 a.m. in the morning. He had admitted that till then, the police had restrained him from going back to his house.

7) PW-3 Roshan Jadhav is another important witness. He was the first informant and the younger brother of the deceased. He deposed that, he knew the Appellant. He ran a small stall of lemon juice. His stall was in front of Mumbra Railway Station near the ticket window. His business hours were between 10:00 a.m. to 07:00 p.m. Rohit was working as a mason. Rohit and the Appellant were close friends. They used to have food together. The quarrels between them used to be solved amicably by themselves. On 13/04/2015, Rohit had told him that he had some dispute with the Appellant. On 16/04/2015, PW-3 closed his business and went to a Darga. At about 11:00 p.m., one Usman Mama and Mujju Bhai came to him and told him that the Appellant and the deceased were fighting with each other near the ticket window. He rushed to the spot and found that his brother lay on the ground and was injured. PW-3 asked Rohit about his condition. Rohit informed him that the Appellant had stabbed him. PW-3 called his friends and shifted Rohit to Chatrapati Shivaji Hospital. There were injuries near Rohit's chest. His friends Ahmad Khaja and Gulam accompanied him to the hospital. However, the Doctor in the hospital

declared Rohit as dead. PW-3 then lodged the FIR at Mumbra Police Station *vide* C.R.No.I-407/2015 on 17/04/2015 at 02:00 a.m.

In the cross-examination, PW-3 admitted that the Appellant and the deceased were close friends and used to live together. They used to have food on many occasions at PW-3's house. The Appellant had attended marriage ceremony of PW-3's cousin at Amravati and had stayed with the family for about fifteen days. The quarrels between the deceased and the Appellant were on petty issues. There was no serious rivalry between them. He did not know the details of the dispute that had occurred on 13/04/2015. He was at a distance of about 100 to 150 feet from the spot of the incident. The Darga was situated at about 1000 to 1500 feet from the "M Gate". There were 10-12 friends with him at the Darga. He admitted that when he reached the spot, he found that his brother was lying in a pool of blood. There were atleast 30-40 persons at the spot when he reached there. He inquired with some of them about the incident. Usman and Mujju did not follow him to the spot. Gulam Shaikh and Ahmad Shaikh were present at the spot. They were Rohit's friends. They also did not tell him about the incident and they did not inform him as to who had assaulted the deceased. After about 20-25 minutes, the ambulance reached the spot. Gulam and Ahmad accompanied him in the ambulance.

The F.I.R. is produced on record at Exhibit – 40 as mentioned

earlier. The F.I.R. substantially corroborates his version.

8) PW-2 Dr. Mangesh Ghadage had conducted the post-mortem examination. He found the following injuries :-

External injuries :-

(1) Stab wound over chest right side 2.0 cm to the right of midline and 4.0 cm to the left of nipple, horizontally 3.0 cm x 1.5 cm into cavity deep.

(2) Stab wound over abdomen, epigastric region 1.0 cm below xiphisternum, horizontal, in the midline, 3.2 cm x 1.4 cm into cavity deep, fatty tissue protruding out of the wound.

(3) Stab wound over chest, left side 2.0 cm to the left of midline near xiphisternum, vertical 3.0 cm x 1.5 cm into cavity deep.

(4) Stab wound over chest left side, 10.0 cm vertically below shoulder 3.00 cm x 1.0 cm into cavity deep vertical.

(5) Stab wound over left side chest in mid-axillary line 1.0 cm below axilla, vertical, 3.1 cm x 1.6 cm into cavity deep.

(6) Multiple small abrasions over left knee size ranging from 1.0 cm x 0.5 cm to 0.5 cm x 0.5 cm.

Corresponding Internal injuries :-

(1) Corresponding to external injury no.1 – cut skin, muscles, 3rd intercostal space, punctured upper lobe of right lung.

(2) Corresponding to injury no.2 – cut skin, fat, muscles,

punctured left lobe of liver.

(3) Corresponding to injury no.3 – cut skin, muscles, cut 4th intercostal space with rib, cut pericardium and left ventricle of heart, evidence of blood clots surrounding the heart in pericardium.

(4) Corresponding to injury no.4 – cut skin, muscle, cut 2nd intercostal space, laterally, punctured upper lobe of left lung.

(5) Corresponding to injury no.5 – cut skin, subcutaneous tissue and upper lobe of left lung.

All the injuries were ante-mortem in nature and were caused by a sharp and pointed weapon. Each injury was sufficient in the ordinary course of nature to cause death. The post-mortem notes are produced on record at Exhibit – 28.

9) PW-4 Sahid Baig was a Pancha for seizure of the clothes of the deceased. He was declared hostile but the seizure of the clothes of the deceased is hardly in dispute. The Panchanama is produced on record at Exhibit – 42.

10) PW-5 Sandeep Kajale was a Pancha for Spot Panchanama. He described the spot of the incident. The Spot Panchanama is produced on record at Exhibit – 45. Again the spot of the incident is hardly in dispute. The Spot Panchanama shows that it was conducted between 02:20 a.m. to 03:15 a.m. on 17/04/2015. However, PW-5 has stated in his cross-examination that the Panchanama was completed between 11:00 p.m. to

11:25 p.m. Thus, there is some dispute as to whether the Spot Panchanama was genuine and whether this witness was present at the time of conducting the Spot Panchanama. However, there is no serious dispute about the spot of the incident. Therefore, this discrepancy will not make any difference to the decision of this case.

11) PW-6 Gajanan Sable is an important Pancha witness. According to the prosecution case, he was a pancha for recovery of a knife at the instance of the Appellant. He deposed that on 21/04/2015, Police Officers attached to Mumbra Police Station called him to the Police Station. They recorded the statement of the Appellant but that statement was not shown to this witness. According to him, the Appellant told them that he was ready to point out the knife by which he had committed the offence. The police obtained the signature of this witness and the other Pancha on the statement of the Appellant. That statement is produced on record at Exhibit – 56. After that, the Panchas, the Appellant and the Police Officers went towards ‘M Gate’ of Mumbra parking. The Appellant removed a knife from the scrap material of cable lying at that spot. The police seized that weapon. The knife was recovered on 21/04/2015. A different panchanama was made and it is produced on record at Exhibit – 57. He identified the knife produced in the Court. He has given one important admission in his cross-examination. He admitted that it was true that Exhibit – 56 was already prepared by the police before he had reached the Police Station.

12) PW-7 Abdul Patel was attached to Mumbra Police Station as ASI. He was working as a Muddemal Karkoon. He has deposed about the articles seized during the investigation having been deposited in the Muddemal Room on 17/04/2015 and 21/04/2015.

13) PW-8 Dhananjay Aher, Police Naik was a driver of the police vehicle that was used for going to the spot from where the knife was recovered. He admitted in the cross-examination that he had not visited the spot personally and he did not know what happened there. He did not bring the logbook with him before the Court.

14) PW-9 Mr. Shantaram Mahajan, API, Nashik City Police Station had seized the clothes of the deceased and he proved the contents of the Panchanama of seizure of the clothes of the deceased which is produced on record at Exhibit – 42.

15) PW-10 Mr. Dilip Jadhav, API was attached to Mumbra Police Station. He investigated this offence in the first part of the investigation. At the relevant time, he was on the duty as a Station House Officer. After receiving the information from the control room, he went to the hospital. He prepared the Inquest Panchanama. He registered the FIR. He conducted the Spot Panchanama. He arrested the Appellant. He conducted personal search of the Appellant. After that, he handed over the investigation to PI – Jadhav.

16) PW-11 Mr. Manikrao Jadhav, Police Inspector attached to

Mumbra Police Station had conducted the next part of the investigation from 17/04/2015. He recorded the statements of the witnesses. He recovered the knife at the instance of the Appellant. He sent the articles for CA examination. At the conclusion of the investigation, he filed the charge-sheet. The CA report is produced on record at Exhibit – 94. It shows that clothes of the deceased were stained with blood of ‘O’ Group. The knife also shows presence of blood of ‘O’ Group. However, importantly, the clothes of the Appellant did not show presence of blood. No blood was detected on his clothes.

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

18) Learned Counsel for the Appellant submitted that the prosecution has miserably failed to prove the case against the Appellant. Though, according to the prosecution, there were 30-40 persons present at the spot, except PW-1, no one else is examined as an eye witness to the incident. PW-1’s evidence is doubtful. He is not a reliable witness. He was detained at the Police Station for the entire night and thereafter, he had to give the statement as per the say of the police. She submitted that therefore, he is not a reliable witness and conviction cannot be based on his evidence. She submitted that PW-3 was not an eye witness. He had reached the spot after being informed about the incident. He admitted that , by the time he reached there, the deceased was already lying in a pool of blood. She submitted that considering the nature of the injuries, it was not

possible that the deceased would be in a position to give the statement. He would not be in a position to utter anything.

19) She further submitted that recovery of the knife is not an incriminating circumstance. It was taken out from a spot which was accessible to the public in general. She submitted that blood was not detected on the clothes of the deceased. It is a significant aspect in this matter in favour of the Appellant.

20) On the other hand, the learned APP submitted that there is no reason to doubt the reliability of PW-1. He was a natural witness. He had a paan stall near the spot of the incident. He was working in the paan stall and therefore he was a natural witness who could have witnessed the incident. She submitted that PW-1 was knowing the Appellant as well as the deceased and therefore, he had no reason to implicate the Appellant falsely. She further submitted that in a given case, the conviction can be based on the sole circumstance of the oral dying declaration. In this case, the brother of the deceased had deposed about the narration given by the deceased himself. It would constitute as the evidence of oral dying declaration which is sufficient to form the basis of conviction of the Appellant. She further submitted that the recovery of knife which ultimately found to be stained with blood of 'O' Group which was the blood group of the deceased, is an incriminating piece of evidence. Thus, all this pieces of evidence together show that the Appellant has committed this

offence and the prosecution has proved its case beyond a reasonable doubt.

21) We have considered these submissions.

22) The prosecution has examined only one witness as the eye witness. The incident had taken place at about 11:00 p.m. near Mumbra Railway Station. The evidence shows that there were other shops and stalls. Though the incident had taken place at 11:00 p.m., it was possible to have examined some other stall owners or shops owners whose shops or stalls would have been open at that time. The prosecution case is that there were atleast 30-40 persons gathered at the spot who had seen the incident. Therefore, it was not very difficult to examine any other witness who had seen the incident. No explanation is offered by the Investigating Officer as to why no other person was examined as an eye witness to the incident. Therefore, we have to scrutinize the evidence of PW-1 closely.

23) Significantly, PW-1 was detained in the Police Station from 12:15 a.m. in the night till about 09:00 a.m. in the morning. It is quite clear that the police were treating him as a suspect and not as a witness. It is only after recording his statement in the morning at about 09:00 a.m., he was allowed to leave the Police Station. This clearly shows that, there is a possibility that his statement got recorded under coercion or that, he had given that statement to save his own skin. In these circumstances, we cannot rely on his evidence to reach to a conclusion that he was a reliable witness. Sufficient doubt is created about his reliability and therefore, his

evidence cannot form basis of the Appellant's conviction. We are not inclined to consider his evidence in favour of the prosecution.

24) The other important circumstance is about the alleged oral dying declaration made by the deceased to his brother – PW-3. Admittedly, according to his own version, PW-3 was informed by somebody else that a fight was going on between the Appellant and the deceased. He was at some other spot from where the spot of incident was not visible. After the incident, two persons came from the spot and informed PW-3 about the fight. After receiving this information, PW-3 went to the spot by which time, Rohit was already lying on the ground in a pool of blood. Thus, there was some time gap between the actual assault and PW-3 reaching the spot. Therefore, it is necessary to see whether the deceased could be in a position to utter anything, leave alone describing the incident with the assailant's name to his brother – PW-3. The medical evidence shows that there were four piercing stab wounds on the chest of the deceased. One stab wound had pierced the heart. There were injuries to the lungs and to the liver. The injuries were quite serious and in particular, injury to the heart shows that there was major bleeding. PW-3 had reached the spot after some time from the assault. Therefore, it was very difficult to accept that the deceased could be in a position to utter anything. In addition, PW-1 had deposed that after the incident, the deceased had fallen on the ground. He was unconscious. Though, we have discarded his evidence, the

prosecution also cannot take help of his evidence because then it would mean that, by the time PW-3 had reached the spot, the deceased had fallen on the ground in an unconscious condition. Thus, we find it very difficult to believe that the deceased would be in a position to give this oral dying declaration. Hence, this piece of evidence of oral dying declaration also cannot form basis of conviction or cannot be taken in aid of the prosecution story.

25) There were two persons accompanying PW-3 in the ambulance. They were also present at the spot. There were two other known persons present at the spot. The prosecution did not examine any one of them who could have lent corroboration to the evidence of PW-3. Thus, we are not satisfied with the evidence of the oral dying declaration.

26) The next circumstance is about recovery of knife at the instance of the Appellant which shows presence of blood of 'O' Group. In this context, his first voluntary statement would be of some importance. That statement is produced on record at Exhibit – 56 by which he had allegedly shown his willingness to point out the place where he had concealed the weapon. However, the Pancha PW-6 – Sable has specifically admitted that when he reached the police station, the statement was already prepared by the police and then, he had signed the statement. That means, the police already had made preparation to effect recovery of the weapon. Therefore, there is strong doubt about this piece of evidence. The

prosecution has not proved that the statement of the Appellant in that behalf was voluntary. It was made by the Appellant only after the Pancha had reached the police station. The recovery made pursuant to that statement, is therefore, not a reliable piece of evidence. Therefore, even this circumstance does not help the prosecution case.

27) Another important aspect in this case, is about the fact that blood was not detected on the clothes of the Appellant. The Appellant was arrested immediately at about 02:15 a.m. in the night i.e., close to the time when the FIR was registered. The police had swung in action immediately after the FIR was registered. Therefore, absence of blood on the clothes of the Appellant assumes importance. It is not the case of the prosecution that the Appellant had changed his clothes and had concealed them somewhere. The prosecution case is that the same clothes were sent for CA report. They did not show presence of blood. There is no recovery of his other clothes which he could have worn at the time of the incident. The Appellant's arrest was immediate after the FIR. The incident had taken place at 11:00 p.m. in the night. Therefore, this is a circumstance in favour of the Appellant.

28) Considering the above discussion, we are of the opinion that the prosecution has not proved its case beyond a reasonable doubt against the Appellant. Therefore, the Appellant deserves to be acquitted. Hence, the following Order :-

- (a) The Criminal Appeal No.101/2024 is allowed.
- (b) The impugned Judgment and Order dated 12/07/2023 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.324/2015 convicting and sentencing the Appellant, is set-aside. The Appellant is acquitted from all the charges in this case.
- (c) The Appellant is in custody. He shall be released forthwith, if not required in any other case.
- (d) Before being released, the Appellant shall execute a P.R. Bond in the sum of Rs.25,000/- for his appearance in case an Appeal is preferred. This direction is issued under Section 481 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.
- 29) The Appeal is disposed of. With the disposal of the Appeal, the connected Application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2025.09.20
11:43:09 +0530