

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 557 OF 2024

WITH

INTERIM APPLICATION NO. 887 OF 2024

IN

CRIMINAL APPEAL NO. 557 OF 2024

Parshuram & Babu Shivkumar Kamble }
Age 35 years, R/at B.D.D. Chawl No.19 }
R.No.1, N.M. Joshi Marg, Lower Parel }
(W), Mumbai – 400 013. } ...Appellant/Applicant

Versus

The State of Maharashtra }
(through N. M. Joshi Marg P.S., }
Mumbai) } ...Respondent

Mr. Pawan Mali for the Appellant.

Ms Kranti T. Hiwrale, APP, for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
MANJUSHA DESHPANDE, JJ.**

DATE : 26th JUNE 2025

Oral Judgment : [Per Sarang V. Kotwal, J.]

1. The Appellant has challenged the Judgment and Order dated 20th January 2016 passed by the Additional Sessions Judge, Greater Mumbai, in Sessions Case No. 562 of 2014. The Appellant was the sole accused before the Court. He was convicted for commission of the

offence punishable under Section 302 of the IPC. He was sentenced to suffer imprisonment for life. He was also convicted for commission of the offence punishable under Section 452 of the IPC, and was sentenced to suffer rigorous imprisonment for 7 years. Both the sentences were directed to run concurrently. He was given set off under Section 428 of the Cr.P.C.

2. The prosecution case is that, the Appellant was having an affair with one Alka Thoravade. Her husband was paralytic. On 01st April 2014 at about 08:30 p.m., the Appellant entered Alka's house. Her husband was in the house. The Appellant inflicted blows with a knife on Alka, and then ran away from the spot. The neighbours informed the police; they came on the spot. She was taken to Nair Hospital but she was declared dead. The FIR was lodged vide C.R. No. 107 of 2014 at N.M. Joshi Marg Police Station. The investigation was carried out. The spot panchanama was conducted. The statements of the witnesses were recorded. The dead body was sent for postmortem examination. The Appellant was absconding. He was arrested on 22nd May 2014 from Goa. After his arrest, the recovery of weapon was effected at his instance. The investigation was conducted, and at the conclusion of the investigation the charge-sheet was filed. The case was committed to the Court of Session.

3. During trial, the prosecution examined 13 witnesses including the eye witness, the husband of the deceased, her son, the Medical Officer, Panchas and the Investigating Officer. The defence of the Appellant was of total denial.

4. The learned Judge considered the evidence on record and the Applicant's defence appearing through the suggestions and also from the examination under Section 313 of the Cr.P.C. The learned Judge relied on the direct evidence and also on the motive brought out by the prosecution. On these aspects, the learned Judge convicted and sentenced the Appellant.

5. Heard Mr. Pawan Mali, learned Counsel for the Appellant and Ms Kranti Hiwrale, learned APP for the Respondent -State.

6. PW-1 Shivaji Thoravade, who was the husband of the deceased is the most important witness in this case. He has deposed that he was staying with his wife and his son Rupesh (PW-2). Rupesh was working in a private company. PW- 1 knew the Appellant very well. PW-1 has further deposed that the Appellant was from Kolhapur. He used to do some miscellaneous work and was of aggressive nature. He used to visit PW-1's house. He used to take meals in his house. The deceased used to give meals to the Appellant but he did not pay for that. He used

to raise dispute about payment of money for his food. He always used to refuse to pay the money. There used to be quarrels on this count. He used to abuse the deceased Alka and used to beat her. He was initially staying next to PW-1's room, but because of frequent quarrels he shifted in a room on the ground floor. The incident took place on 01st April, 2014. According to PW-1, he was at home and his son had gone to work. The deceased Alka was watching T.V.. It was evening time. PW-1 was lying on a Sofa. Suddenly, the Appellant came inside the house and stabbed PW-1's wife on the back. She fell down. The Appellant then stabbed her with full force. The Appellant ran away. On hearing the shouts, PW-1 came down from the Sofa. The Appellant pushed him, and therefore he fell down. The neighbours called the police. The police came there. They prepared the spot panchanama. They inquired with PW-1 and recorded his statement. He gave his complaint. It was treated as an FIR. It is produced on record at Exhibit – 11. His wife Alka had died on the spot. He identified the accused in the Court. He also identified the clothes of his wife, which were on her person at the time of the incident. He described that the Appellant was wearing a jeans and a coloured baniyan. He identified the knife shown to him in the Court. The knife was marked as Article – 3. In addition, he also identified his own clothes which he was wearing at the time of the incident. They were marked as Article – 2 collectively. The clothes

of the deceased were marked as Article – 1 collectively. PW-1 has deposed that the Appellant dropped the knife on the staircase.

In the cross-examination, he has stated that there were 20 rooms on the third floor. His room was the third room from the staircase. According to him, his wife was running a mess, and the Appellant used to come for meals. He knew that the Appellant was a driver. PW-1 himself was suffering from paralysis since about 4 years. He accepted that there were many people who used to sit outside his house on the third floor of the building.

7. The proforma of the FIR mentions that the incident had taken place at 08:30 p.m. on 01st April 2014, and it was reported to the police at 08:40 p.m. The FIR was lodged at 09:20 p.m. on 01st April 2014. The statement in the FIR sufficiently corroborates the evidence of PW-1.

8. PW-2 Rupesh Thoravade was the son of the deceased. He has deposed that he was staying with his parents. Earlier his mother was doing the business of selling vegetables, but after he got a job, she was staying at home. PW-2 was doing a job of security guard. He knew the Appellant as he was staying in the adjacent room. He identified the Appellant in the Court. According to PW-2, the Appellant was a driver.

They were having a good relationship. The Appellant used to come to their house to watch TV and used to have food in their house. The Appellant had given money for his meals for about 3 to 4 months and, after that, he stopped giving money. Thereafter, there were quarrels between the deceased and the Appellant. His mother had lodged a complaint against the Appellant. PW- 2 had seen the messages received by his mother from the Appellant. At the time of the incident, the Appellant was staying on the ground floor. They were staying on the third floor. PW-2 used to leave his house for attending his work at 06:00 p.m. and used to return back at 07:00 a.m. His father used to be at home. The incident took place on 01st April 2014. On that day he had attended his duty as usual. He received a phone call from his neighbour Sakhubai at about 08:30 to 08:45 p.m. regarding the incident. He immediately rushed home. He was residing in BDD Chawl, N.M.Joshi Marg. He was working at Elphinstone road. When he came back, the police were already there. They took his mother to Nair Hospital, but the doctors declared her dead. PW-2 had seen the messages on the mobile phone of his mother. He knew that the Appellant and his mother were having an affair. According to him, as his mother had stopped giving him food the Appellant became annoyed and assaulted his mother. He identified clothes of his parents produced in the Court.

In the cross-examination, he stated that there were 3 floors in their building. There were 20 rooms on each floor. Nobody came to take meals before the Appellant came there. He had not seen any other message on the mobile phone of his mother except those of the Appellant.

9. PW-5 Dr.Bhatanglikar had conducted the postmortem examination and had noticed 10 injuries. There were incised wounds and stab wounds on the chin, mandibular region and near the face as follows:

“(1) Incised wound of size 1 cm x 0.5 cm subcutaneous deep. Margins were clean cut reddish in colour with surrounding contusion seen over left side of chin 2.5 cm away from midline.

(2) Incised wound of size 1.5cm x .5cm subcutaneous deep. Margins were clean cut reddish in colour with surrounding contusion seen over left mandibular region 2.5 cm away from midline.

(3) Obliquely placed stab wound of size 3 cm x 1.5 cm x 5 cm muscle deep, margin clean cut reddish in colour directed antero-medially downward seen over lower part of left pinna below the external auditory canal.

(4) Obliquely placed stab wound of size 2.5 cm x 1 cm x 7 cm muscle deep, margins were clean cut reddish in colour directed antero-medially downward, seen over left side of neck 5 cm below the lobul of left ear.

(5) Horizontally placed stab wound of size: 4 cm x 1 cm x 10 cm, muscle deep, margins were clean cut reddish in colour directed antero-medially and downward seen over middle part of left suprascapular region.

(6) Obliquely placed stab wound of size 2.5 cm x 1 cm x 3 cm, muscle deep, margin clean cut reddish in colour directed laterally downward seen over left side of lower back 36 cm below the external occipital protuberance and 2 cm away from midline.

(7) Obliquely placed stab wound of size 2.5 cm x 1 cm cavity deep, margin clean cut, reddish colour directed antero-laterally seen over left side of lower back, 41 cm below the external occipital protuberance and 1 cm away from midline, 3 cm below the injury no.6 under column no.17.

(8) Vertically placed stab wound of size 6 cm x 2 cm cavity deep margins were skin cut, reddish colour directed antero-medially seen over left loin region. 44 cm below the external occipital protuberance and 7 cm away from midline and 5 cm below and lateral to injury no.6 under column no.17.

(9) Obliquely placed stab wound of size 3 cm x 1 cm x muscle deep, margins clean cut, reddish colour directed obliquely medially forward seen over right loin region, 12 cm above the right posterior superior iliac spine, 15 cm away from midline.

(10) Abrasion of size 0.5 x 0.5 cm reddish in colour seen over palmer aspect of centre of the distal phalanx of left index finger.

All injuries were ante-mortem and fresh.”

10. There was extensive internal damage to thorax. There were 2 puncture wounds on the abdomen. The internal jugular vein was cut. The cause of death was due to shock and hemorrhage due to multiple stab injuries. The postmortem notes are produced on record at Exhibit – 18.

11. PW-3 Prakash Kapte, was the pancha for the spot panchanama which was conducted between 09:45 p.m. to 10:15 p.m. on 01st April 2014. The blood was seen on the spot. A slipper of the Appellant was seized from the spot. PW-4 Samruddhi Bhogale was the pancha for the inquest panchanama, which is produced on record at Exhibit-16. Besides these two main panchanamas, the clothes of the deceased and the clothes of PW-1 Shivaji Thoravade were seized under different panchanamas.

12. PW-7 Santosh Jadhav, was the photographer who had taken the photographs of the scene and of the dead body.

13. PW- 6 Swapnil Kamble, was the pancha for recovery of the knife at the instance of the Appellant. It was recovered on 22nd May 2014 from a house near the railway line at Lower Parel. It was concealed on an air-conditioning unit.

14. PW-8 Pevekar was examined by the prosecution as the former employer of the Appellant. PW-8 was having his business of Tours and Travels. The Appellant was working with him as a cleaner in the past. However, this witness had turned hostile and nothing much turns on his evidence.

15. PW-10 Vandana Ambike was a housemaid working with a family at Nepean Sea Road. According to her, the Appellant was working with that family for about 4 to 5 days. She was called to the Police Station on 5th April 2014. She deposed that, prior to the day when she was called to the Police Station, about 2 to 3 days earlier the Appellant had called her many times. He was asking for Rs.500/- and he had told her that he did not have food for 2 to 3 days. She had given him the money.

The prosecution has led the evidence that, after that the Appellant had gone to Goa and was working there.

16. Other witnesses are the police witnesses. PW-9 ASI, Dattatray Naik was on duty in the mobile van. On 1st April 2014, at about 08:48 p.m, he received a wireless message about the incident in B.D.D. Chawl. He immediately rushed to the spot at around 08:54 p.m. and he saw the dead body lying in a pool of blood. He then took the dead body to Nair Hospital. The doctors had declared Alka to be dead.

17. PW-11 PSI- Sachin Shikhare was the first Investigating Officer. He had conducted the initial part of the investigation including conducting the spot panchanama and the inquest panchanama. He had recorded the statements of witnesses including that of PW- 1. He had sent the dead body for postmortem examination.

18. PW-12, PI - Rajendra Nikam was the second Investigating Officer. He took search for the accused. DCB CID Unit 2 found the accused on 21st May 2014 and they handed over the Appellant to him. On 22nd May 2014, the Appellant showed his willingness to show the place where he had concealed the knife. Pursuant to that statement, he was taken to the building, from there he took out the knife kept on an AC unit. PW- 12 sent the Articles for C.A. examination.

19. PW-13, API- Avinash Kathekar was attached to DCB CIT Unit- 2, Mumbai. He had effected the arrest of the Appellant. Their Unit received a secret information, that the Appellant was doing a job at a tea stall in Goa. Their team went to Goa and arrested the Appellant. His search was taken. The Articles on his person were seized. During his physical search, PW-13 found a tattoo on his right wrist with the name of the deceased. The Appellant's brother was informed about the arrest. The arrest panchanama was conducted. It is produced on record at Exhibit-39. During the personal search of the Appellant, PAN

Card, Club Membership Card, Debit Card, Railway Pass and one chit in the name of deceased were seized.

20. The C.A. Report is produced on record but it does not throw much light on the prosecution case. The C.A. Report is produced at Exhibit-35 collectively. This in short is the evidence led by the prosecution.

21. The learned Counsel for the Appellant submitted that the evidence led by the prosecution is not reliable. Though there is direct evidence of PW- 1, his evidence is not reliable. His story does not corroborate to the prosecution case. According to PW-1, while going away the assailant had dropped the murder weapon on the staircase, however, it is the specific case of the prosecution that the murder weapon i.e. the knife was recovered at the instance of the Appellant only on 22nd May 2014, after he was brought back to Mumbai from Goa. He submitted that the prosecution has not established the motive behind the commission of the offence. The prosecution has not established that either the Appellant was having an affair with the deceased, and out of that relationship, due to some grudge, this offence was committed or because of some monetary dispute this assault was caused. Neither PW-1 nor PW-2 have given any specific reason consistent with each other as to why this offence was committed. He

submitted that the evidence shows that the room of the deceased was surrounded by many other rooms and there were people outside the room, but nobody else was examined by the prosecution to support the case of PW-1.

22. There is no C.A. Report supporting the prosecution case that the knife recovered at the instance of the Appellant had blood stains matching the blood group of the deceased. He therefore submitted that the prosecution has failed to prove the case beyond reasonable doubt.

23. Learned APP, on the other hand submitted that, PW-1 was the most natural witness who had seen the actual assault. The incident had taken place inside the house and, therefore, the others could not have seen the incident and, hence, the defence cannot derive any benefit for not examining any other witness from the locality. However, the evidence shows that the persons in the neighbourhood had immediately informed the police. There is no infirmity in the evidence of PW-1, therefore this can be the sole basis for recording the conviction of the Appellant. This version is supported on material aspects by PW-2 who had given the history and also about the quarrels between the deceased and the Appellant. The conduct of the Appellant of absconding without informing anybody also points to his guilt. The Appellant was arrested from Goa and some chit involving the deceased

was found from him. The name of the deceased was tattooed on his wrist. It all corroborates the version of PW-1 and PW-2.

24. We have considered these submissions. As submitted by both the learned Counsel, the most important witness in this case is PW-1, therefore, his evidence will have to be considered minutely. We have already referred to his deposition. He is the most natural witness. He was the husband of the deceased. He was paralytic and, therefore, was unable to move from the house. He was very much present in the house when the incident took place. All the other witnesses from the locality have also spoken about his presence in the house. When the police came to the spot, at that time also PW-1 was in the house. He could not have moved without any help of anybody else, therefore his presence in the house is beyond any doubt. The dead body of the deceased was also in the house, therefore, there is no reason to raise any suspicion on the veracity of PW-1's evidence that he was in the house, when the incident took place. In that situation when PW-1 has described the incident in detail involving the present Appellant, in our opinion, the prosecution is right in relying on his evidence. His deposition is supported by the medical evidence as well. PW-1 has described the manner of assault and part of the body of the deceased where the stab injuries were inflicted. All these injuries are consistent with the postmortem notes and the evidence of the Medical Officer-

PW-5. We see absolutely no reason as to why PW-1's evidence cannot be relied upon.

25. PW-2, Rupesh has also corroborated the version of PW-1. PW-2 had gone to attend his duty, but he has deposed that PW-1 was in the house when he had left for his duty. He has in fact deposed that his parents were staying at home when he used to go to attend his work. He had received a phone call at about 08:30 p.m. and then he had rushed back home. By the time, the police were already there. The evidence of PW-1 and PW-2 is further corroborated by the prompt lodging of the FIR. The police had immediately recorded the statement of PW-1, and as mentioned earlier, the FIR was actually lodged at 09:20 p.m. The proforma mentions that the police station had received the information at 08:40 p.m. Therefore, there was no scope to deliberate on the fact and to manipulate the facts to lodge a false FIR. The FIR was lodged immediately. Hence, it cannot be said that PW-1 after due thought and deliberation had implicated the Appellant falsely.

26. Though Mr. Mali, learned Counsel for the Appellant submitted that, according to PW-1, the Appellant had dropped the knife on the staircase, this part of the evidence cannot be seriously considered in favour of the Appellant. PW-1 was inside the house. He was a paralytic patient and it was difficult for him to move out and, therefore, he could

not have seen whether the Appellant had dropped the weapon while going away from the house. The staircase was at some distance because there were at least three rooms between the room of the PW-1 and the staircase. This little discrepancy does not go to the root of the matter. On the other hand, the weapon was recovered at the instance of the Appellant on 22nd May 2014. Though there is no conclusive C.A. Report connecting the murder weapon with the blood of the deceased, in the facts of this case, the main evidence is in the form of direct evidence of PW-1, who has described the incident in detail. The prosecution has proved its case beyond reasonable doubt on the basis of the evidence of PW-1 and PW-2. In any case their evidence is further supported by the fact that the Appellant was arrested after about more than a month from Goa. PW-10 has deposed that, after the incident the Appellant had sought help of Rs.500/- from her. The evidence of PW-2 that his mother- the deceased was having an affair with the Appellant is supported by the circumstances when the Appellant was arrested. The name of the deceased was found tattooed on his wrist. A chit in her name was also found with him. So there is direct connection between the Appellant and the deceased as is deposed by PW-2. According to PW-1 and PW-2, there used to be frequent quarrels between the Appellant and the deceased. The incident in question was a result of those quarrels. The medical evidence shows that there were many

blows inflicted by the Appellant on the deceased. This is corroborated by the description of the incident given by PW-1.

27. As a result of the above discussion, we find that the learned trial Judge has given acceptable and cogent reasons in convicting the Appellant. The prosecution has proved its case beyond reasonable doubt. We see no reason to interfere with the impugned Judgment and Order. We find no merit in the Appeal. Consequently, the Appeal is dismissed. With the dismissal of the Appeal, the connected Interim Application is also dismissed.

[MANJUSHA DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

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