

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

CRIMINAL APPEAL NO. 51 OF 2024

Sunil Mahadev Shendge

Age : 40 years, Occ. Mason,

R/o. R.No.28, Building No.A-1,

Mhada Vasahat, Dist. Ahamadnagar.

At present in Nashik Road Central Jail

.... Appellant

V/s.

The State of Maharashtra

Through PI, Sarkarwada Police Station,

Nasik, Dist. Nashik

.... Respondent

Mr. Nitesh Nevshe, appointed Advocate a/w. Mr. Vishal Nevshe and
Ms. Shweta Nevshe for the Appellant.

Ms. Supriya Kak, APP for the Respondent – State.

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

DATED : 07th OCTOBER, 2025

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

. The Appellant has challenged the Judgment and Order dated 16/02/2023 passed by the learned Additional Session Judge-12, Nashik in Sessions Case No.63/2013. By the impugned Judgment and Order, the Appellant was convicted for commission of the offence punishable under Section 302 of the Indian Penal Code, 1980 and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to suffer three months of simple imprisonment. The Appellant was in custody since 21/01/2021. He was granted set-off

under Section 428 of the Criminal Procedure, Code, 1973.

2) Heard Mr. Nitesh Nevshe, learned appointed Counsel for the Appellant and Ms. Supriya Kak, APP for the Respondent – State.

3) The prosecution case is that, the Appellant was suspecting that his wife was having illicit relations with one Vavroji. The incident occurred on 20/12/2010. A day prior to that incident, the wife of the Appellant was missing. She was found in a cement pipe which was used as a shelter home by Vavroji. The Appellant got enraged. He dragged his wife towards his hut. Vavroji came there. The Appellant got angry. He took out an iron stand which is used to fix tubelights. The Appellant used it to give a forceful blow on the face of Vavroji. He succumbed to his injuries. The police were informed. The Appellant absconded. The FIR was registered *vide* C.R.No. 792/2010 at Sarkarwada Police Station, Nashik. The record shows that the Appellant was absconding for more than ten years. Initially, the charge-sheet was filed showing him as an absconding accused. Subsequently, he was arrested and faced the trial. During trial, the prosecution examined seven witnesses including the brother of the deceased who had lodged the FIR, one eye witness – Nandu Bhagre, Pancha witnesses, the Medical Officer and the Investigating Officers. The defence of the Appellant was of total denial. The learned trial Judge believed the evidence of the eye witness - PW-3 and convicted and sentenced the Appellant as mentioned earlier.

4) The FIR was lodged by PW-1 Kisan Dagale. He has stated that the deceased – Vavroji was his brother. The Appellant was residing with his wife next to the house of the deceased – Vavroji. According to PW-1, wife of the Appellant and the deceased were in illicit relationship. One day prior to the incident, there was a quarrel between the Appellant and the deceased in the presence of this witness. PW-1 sorted out their quarrel and went home. On the next day, he received a phone call from his brother-in-law that Vavroji was assaulted with a tubelight stand and was lying on the ground. PW-1 went to the ground and saw that Vavroji had fallen on the ground. He made inquiries with one Nandu Bhagre (PW-3). He informed PW-1 that the Appellant had assaulted the deceased with a tubelight stand. Vavroji had sustained injuries on his face i.e., forehead and eyes and he had passed away. Therefore, PW-1 lodged the FIR. The FIR is produced on record at Exhibit – 6. He identified the Appellant before the Court.

In the cross-examination, he denied the suggestion that there was no quarrel one day prior to the incident. The rest of the cross-examination is in the nature of suggestions which he has denied. In any case, he was not an eye witness. He has only furnished motive for commission of the offence. The FIR sufficiently corroborates his evidence.

5) PW-2 Swapnil Sonar was a Pancha witness. He has deposed that on 23/01/2022, he was called as a pancha at Sarkarwada Police Station. The Appellant expressed willingness to show the spot where the

murder had taken place. This statement was made in the presence of PW-2. The Appellant led the panchas and the police to the spot where the incident had taken place.

This evidence is also not material because nothing was recovered pursuant to the statement made by the Appellant. The spot was already known to the police. Therefore, his evidence is of no consequence.

6) PW-3 Nandu Bhagare is an important witness. He is the only eye witness examined by the prosecution. He has deposed that in the year 2010, he was residing near Dongare Vasati Gruh, old Gangapur Naka. He had met with an accident about fifteen to sixteen years before this incident and therefore, he was mostly staying in the house. There were big cement pipes kept near Dongare Vasati Gruh. The deceased – Wavarya used to stay in those pipes. He was doing labour work. The deceased and the Appellant were known to each other and were visiting each other. The Appellant's wife Savitri was missing on one night. On the next day, the Appellant found his wife Savitri staying in the pipe where Wavarya used to stay. The Appellant slapped his wife and dragged her towards his house. By that time, Wavarya came there and intervened. The Appellant took out an iron stand of tubelight and assaulted on the face of Wavarya. The tubelight stand had a choke. Because of the blow, Wavarya fell down and he died at the spot.

In the cross-examination, he stated that his tent was near

Dongare Vasati Gruh. It was in front of Gangapur Road. There was another road which was seventy to eighty feet wide near his tent. There was another garden beyond Gangapur road and behind that, big cement pipes were kept. Many labourers used to reside in those seven pipes and Wavarya was also residing in that pipe. He denied the suggestion that from his place he could not see the pipe where Wavarya was staying. He could not state whether the Appellant and the deceased were good friends. The rest of the cross-examination was in the form of suggestions which he had denied.

7) PW-4 Sachin Surse was a Pancha witness for Spot Panchanama. He was called by the police on 20/12/2010 to act as a pancha for Spot Panchanama. Police prepared the Spot Panchanama in his presence. It is produced on record at Exhibit – 20. The Spot Panchanama generally describes the place of the incident and the surrounding area. The rough sketch shown in the Spot Panchanama also shows the tent of PW-3 Nandu Bhagare. From that tent, the pipes could be seen. There was an open space between PW-3's tent and those pipes.

8) PW-5 Dr. Gorakhnath Gore had conducted post-mortem examination and had found the following five injuries :-

- (i) Laceration of left eye ball. Left eye absent. 3 cm (length) x 2 cm (breadth) x 4 cm (depth) deep penetrating wound.
- (ii) Incised wound on left side of nose 2 cm x 1 cm.
- (iii) Incised wound of left lower lip 1 x ½ cm.

(iv) Fracture of left maxillary bone.

(v) Fracture of nasal bone.

The post-mortem notes are produced on record at Exhibit – 22. The cause of death was mentioned as “ neurogenic shock due to grievous injury to brain due to stab wound penetrating left eye ball to brain ”.

In the cross-examination, he admitted that if a person fell on a sharp surface or stone, he is likely to sustain injuries as he mentioned in the post-mortem report.

9) PW-6 Manohar Dabhade, PSI was the first Investigating Officer. He deposed that he received the FIR for investigation. He went to the spot and conducted Spot Panchanama. He conducted Inquest Panchanama. He collected the blood-stained soil and sent it for Chemical Analysis. The body was sent for post-mortem examination. The clothes of the deceased were seized. The statement of the Appellant's wife was recorded. According to him, she had stated that the Appellant had assaulted her. He sent her for medical examination. The medical certificate of the Appellant's wife was collected. It is produced on record at Exhibit – 32. He obtained the post-mortem report of the dead body. The Appellant had absconded. He made efforts to search for him but he could not find him and therefore, he filed the charge-sheet against him by showing him as an absconding accused.

In the cross-examination, he denied the suggestion that there was road repair work going on at the spot and therefore, there were sharp

stones lying on the road at the spot of the incident.

10) The medical certificate of the Appellant's wife is produced on record at Exhibit – 32. It shows that she has suffered one abrasion on the occipital region of the size 0.5 cm x 0.5 cm and there were abrasions on the right lower leg of the size 2 x 0.5 cm. Both these injuries were simple in nature. The medical certificate shows that she was examined on 26/12/2010.

11) PW-7 Machindra Kolhe was another Investigating Officer. He was attached to Sarkarwada Police Station from the year 2019. He had made efforts to search the Appellant. He arrested the Appellant from Indira Nagar. He supervised the panchanama when the Appellant had shown the spot of the incident. The Appellant was arrested on 21/01/2022.

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

12) Learned Counsel for the Appellant submitted that the prosecution case depends on the evidence of PW-3 who claims to be an eye witness. However, his cross-examination shows that he was staying at a distant place and from there, the spot of the incident and the pipe where the deceased was staying, was not visible. The panchanama under which the Appellant had shown the spot of the incident, is of no consequence. That evidence led by PW-2 and the Investigating Officer in that behalf has no evidentiary value because the Investigating Agency already knew the

spot of the incident and nothing was recovered pursuant to the said statement. The weapon of assault was not recovered at the instance of the Appellant. Lastly, he submitted that even assuming that the incident as described by PW-3 had taken place, it would not be an offence punishable under Section 302 of IPC but it would be culpable homicide not amounting to murder.

13) Learned APP submitted that there is no reason to disbelieve the eye witness – PW-3. His evidence is reliable. He has clearly described the incident. Based on his evidence, the Appellant's conviction is properly recorded. She further submitted that conduct of the Appellant is also important. He was absconding for more than 10 years.

14) We have considered these submissions.

15) As far as evidence of PW-3 is concerned, there is no reason to disbelieve his evidence. Though the learned Counsel for the Appellant contended, based on the cross-examination, that PW-3 was residing at a distant place from where the spot of the incident was not visible, however, not only PW-3 has denied that suggestion but the spot panchanama shows that the spot was very much visible from the tent of PW-3. Therefore, it was possible for PW-3 to have seen the entire incident.

16) PW-3 has described the incident in detail. He has stated that the Appellant had found his wife – Savitri in the pipe where the deceased used to reside. He dragged her out and was taking her home. He slapped

her. In the meantime, the deceased came there and the incident took place. He has clearly stated the sequence of evidence. There is hardly any cross-examination on this aspect. He has withstood the cross-examination. There is no reason to discard his evidence at all. We find that he is a reliable witness. The Appellant was absconding for a number of years. The incident had taken place in the morning. No other witness was available. The wife of the Appellant was staying with the Appellant and hence, was not available.

17) The prosecution has produced the medical certificate of the Appellant's wife on record. It shows that she had suffered injuries. Though they were minor injuries, they were directly attributable to the assault caused by the Appellant on his own wife because she was found in the pipe frequented by deceased Vavroji. All these circumstances together show that the Appellant is the author of the injury caused to the deceased. The evidence led by PW-2 regarding the Appellant showing the spot of the incident is of no consequence because the spot was already known to the police and nothing was discovered pursuant to the statement. Therefore, we are ignoring that piece of evidence. The prosecution case is proved through the evidence of PW-3. He was a natural witness. He was residing nearby. He was knowing all the parties. He knew the background and therefore, we do not find any reason to disbelieve him.

18) The next question is whether the offence would be the one punishable under Section 302 of IPC or it would be a lesser offence. In that

context, evidence of PW-1 and PW-3 is important. PW-1 has stated that the Appellant's wife was having illicit relationship with the deceased. There was a quarrel one day prior to the incident between the Appellant and the deceased. This evidence has remained unchallenged. Therefore, there was a background to the incident. PW-3 has stated that the Appellant's wife was missing since a day prior to the incident and the Appellant found his wife – Savitri in the pipe where the deceased Wavarya was residing. This would amount to grave and sudden provocation as far as the Appellant is concerned. He was dragging his wife home and in the meantime, Wavarya who was the cause behind all this, came there. PW-3 has stated that, at that time, the Appellant took an iron stand of the tubelight and assaulted on the temples of Wavarya. There was a choke to that stand. Thus, the Appellant was not carrying any weapon in particular with an intention to assault the deceased. The Appellant was searching for his wife throughout the night and when he found her in that pipe, he got enraged. The deceased came there at that time and therefore, the Appellant gave a blow with that stand on his face. The blow was so forceful that it caused all the injuries. The background of this case shows that the Appellant was provoked because of the relationship between his wife and the deceased. He found his wife at the place which was used by the deceased. This would fall within Exception 1 to Section 300 of IPC and in that frame of mind, he gave a forceful blow on the face of the deceased. Therefore, we are inclined to

hold that the offence would fall within the Exception 1 to Section 300 of IPC and therefore, it would not be an offence of murder but it would be an offence of culpable homicide not amounting to murder.

19) Considering the nature of the blow, we are of the opinion that it would be an offence under Part I of Section 304 of IPC. Considering the background of the case, the conviction will have to be altered from the offence punishable under Section 302 of IPC to the offence punishable under Section 304(I) of IPC. Learned Counsel for the Appellant submitted that some leniency be shown as far as the sentencing part is concerned. Learned APP submitted that considering the nature of blow, sufficient sentence be imposed.

20) Based on these submissions, we are of the opinion that sentence of eight years rigorous imprisonment and reducing the fine from Rs.10,000/- to Rs.5,000/- would serve the ends of justice. Hence, the following Order :-

(a) The Appeal is partly allowed.

(b) The conviction of the Appellant under Section 302 of IPC recorded by the learned Additional Sessions Judge-12, Nashik *vide* Judgment and Order dated 16/02/2023 in Sessions Case No.63/2013, is set-aside. Instead, the Appellant is convicted for commission of offence punishable under Section 304(I) of IPC.

(c) The sentence of life imprisonment imposed on the Appellant, is set-aside. Instead, the Appellant is sentenced to suffer rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for three months.

(d) The Appellant shall be entitled for set-off under Section 428 of Cr.PC.

21) The Appeal is disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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