

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

**CRIMINAL APPEAL NO. 1138 OF 2024
WITH
INTERIM APPLICATION NO. 3950 OF 2024
WITH
INTERIM APPLICATION NO. 3952 OF 2024
IN
CRIMINAL APPEAL NO. 1138 OF 2024**

Amol Eknath Gangawane

Age : 34 years,

Residing at Musalgaon, Taluka Sinnar,

District Nashik

.... Appellant/Applicant

V/s.

The State of Maharashtra

through Inspector Incharge,

Sinnar Police Station, District Nashik,

to be served through a Public Prosecutor,

High Court, Bombay.

.... Respondent

Mr. Sangram B. Suryavanshi for the Appellant.

Ms. Kranti Hiwrale, APP for the Respondent – State.

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

DATED : 16th JULY, 2025

JUDGMENT : (Per : SARANG V. KOTWAL, J.) :-

1) The Appellant has challenged the Judgment and Order dated 20/03/2013 passed by the learned Additional Sessions Judge-3, Nashik in Sessions Case No.257/2011.

2) There were two accused in this case. The Accused No.1 Sunil Phatangare was acquitted and the Appellant who was the original Accused No.2, was convicted. The learned Judge convicted the Appellant for commission of the offence punishable under Section 302 read with 34 of the Indian Penal Code, 1860 and sentenced him to suffer R.I. for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer R.I. for six months. He was granted set-off under Section 428 of Cr.PC. The Appellant was acquitted from the charges of commission of the offence punishable under Section 397 of IPC. The Accused No.1-Sunil Phatangare was acquitted of both these charges.

According to the prosecution, there were two more accused who had taken part in the offence but they were minors and therefore, their trial was separated.

3) The prosecution case is that, the deceased Ramesh Bogati was working in a private company. He was originally from Nepal. On 06/09/2011 at around 08:15 p.m., he was assaulted by some unknown persons. According to the prosecution case, there were four assailants including the present Appellant. He was assaulted near Musalgaon Industrial Area, Taluka Sinnar, District – Nashik and the motive behind this offence was robbery. According to the prosecution

case, his mobile phone was taken away by the offenders. One of the drivers passing through the area saw the incident. He went near the deceased who, at that time, was alive. He told that person to inform his co-workers in the company. Accordingly, that person went to the company of the deceased. His co-workers were informed. They came at the spot. The deceased was taken to the hospital but he was declared dead.

The FIR was lodged and the investigation was conducted. The Appellant was arrested on 12/09/2011 and since then, he is in custody. The prosecution case is that, at his instance, the blood stained clothes and the mobile phone, were recovered and at the instance of the Accused No.1, the murder weapon and his blood stained clothes were recovered. After conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.

4) During the trial, the prosecution examined five witnesses including the co-worker who had lodged the FIR but he had not seen the incident, the person who had seen the incident, the Medical Officer, a pancha and the Investigating Officer.

5) The defence of the Appellant was of total denial. The learned trial Judge relied on the evidence of the eye witness and also on the recovery of blood stained clothes at the instance of the

Appellant. Based on these circumstances, the Appellant was convicted and sentenced. At the same time, benefit of doubt was given to the Accused No.1 as the murder weapon recovered, did not show any blood stains and he was not identified by anyone.

6) Heard Mr. Sangram Suryavanshi, learned Advocate for the Appellant and Ms. Kranti Hiwrale, learned APP for the Respondent – State.

7) The most important witness in this case is PW-4 Valmik Jadhav but he had not supported the prosecution case and he was declared hostile. He deposed before the Court that he was having a pick up van. On 06/09/2011, he was working in his company upto 08:00 p.m. He heard loud shouts from near the gate. He went there and saw that four persons were assaulting the deceased. PW-4 raised shouts and confronted the assailants. One of them came towards him and told him not to interfere and that it was some dispute about their company. The other three persons were assaulting the deceased across the road. Since they had weapons, PW-4 was scared and did not go near them. He went back inside his company. The assailants went away on their motorcycles. After some time, several persons gathered there. He went near the injured. He was in a position to speak. He told them that he was working in Liberty Pipes. He requested them to

call one of the co-workers. Accordingly, PW-4 went to that Company and called some co-workers from there. One Pagare (PW-1) came there along with others. They identified the injured as one of the co-workers. They put the injured in PW-4's pick-up van and took him to Yashwant Hospital. After that, PW-4 left.

In his evidence, he specifically stated that he did not see the face of the person who had come near him and had told him not to interfere. PW-4 further added that, there was darkness. The said person was tall and had long hair. He did not see the remaining three assailants. According to him, there were street lights in MIDC area. The police recorded his statement on 07/09/2011 and then, he was called again on 08/09/2011 as by that time, the police had arrested the accused. PW-4 was shown those accused and the police told him their names. Even at that time, he had not identified any of the accused. After he gave these answers in his examination-in-chief, the learned APP sought permission to ask leading questions on the point of identification. However, the learned Judge did not declare him hostile and permitted further questioning through the leading questions. At this stage, the learned Judge should have declared the witness as a hostile witness and should have permitted the learned APP to cross-examine that witness. But that was not done and the

learned APP was permitted to ask the leading questions.

In answer to further questions asked by the learned APP, PW-4 stated that he was working as a Security Guard for about two to three months before the incident. Though he had reading glasses, he could see everything from a distance. There were several companies in MIDC area. The area was having sufficient light as there were several activities like loading of trucks, etc. during the night hours. He was a resident of Musalgaon and the Accused No.2 was working in the MIDC area. He added that it would not be correct to say that he was well-acquainted with the Accused No.2. The Liberty Company was about half a kilometer away. He then answered that it would be correct to say that he had seen the face of the person who had come near him to warn him not to interfere in the incident and that person was the Accused No.2 with whom he was well-acquainted. He further answered that the Accused No.2 was also from Musalgaon Village. He admitted that, he was deposing falsely to save him. The learned APP then showed him portion mark 'A' from a supplementary statement. He admitted that he had made that statement to the police in his supplementary statement and he further stated that he could not identify any of the accused in the Court. The portion mark 'A' was proved through the evidence of the Investigating Officer in which he

had mentioned that the Accused No.2 had come near him. He had named the Accused No.2 in that statement but that was a supplementary statement recorded on the next day. Thus, it can be seen that this witness has given contrary and evasive answers. He is not a reliable witness at all.

8) PW-1 Gorakh Pagar was the co-worker of the deceased who was informed by PW-4 about the incident. He was examined as PW-1. He deposed that he was working in the Company owned by one Bhupendra Singh Chabra. The deceased was working in the Company. There were five workers. The deceased, PW-1 along with others stayed in the Company premises. The deceased was originally from Nepal. He was working as a helper. On 06/09/2011 PW-1 had gone to Sinnar. When he came back at about 08:00 p.m., he did not see the deceased who had gone out. He had not told anybody where he was going. PW-4 who was a pick-up van driver came to PW-1 with another person and informed him that someone had stabbed the deceased and that he lay unconscious. All the co-workers rushed to the spot. He was bleeding profusely. He was unconscious. They picked him up and put him in the pick-up van and took him to Yashwant Hospital at Sinnar. From there, he was taken to Jairam Hospital in an ambulance. However, he was declared dead in that hospital. After that, PW-1

went to Sinnar Police Station and lodged his FIR. The FIR is produced on record at Exhibit – 29.

In the cross-examination, he admitted that PW-4 Valmik had not told him the names and description of the assailants. He had told them that he did not know how the incident had taken place. He also admitted that there were other guards posted in the Company where the deceased was assaulted.

9) PW-3 Dr. Ramesh Koshi had conducted the Post Mortem examination. The Post Mortem notes are produced on record at Exhibit – 31. There were five incised wounds as follows :-

(1) Elliptical vertical sharp incised wound on left side of abdomen penetrating deep into the abdomen of the size 2 cm x 1 cm.

(2) CLW on right side of chest 4 cm x 2 cm skin deep.

(3) Incised wound on the left index finger of the size 2 cm x 0.5 cm, skin deep.

(4) Elliptical sharp edged wound near 10th rib of the size 1 cm x 0.5 cm, skin deep.

(5) Elliptical sharp edged wound near the injury no. 4 of the size 1 cm x 0.5 cm, skin deep.

The cause of death was mentioned as ‘shock due to perforating injury to the abdomen’.

10) PW-2 Kailas Navale was a Recovery Panch in whose presence the Accused No.1 had shown willingness to show the place where he had concealed his clothes and the weapon. Accordingly, the Accused No.1 led the panchas and the Police Officers to his house. A knife and his clothes were produced by him from his house. However, this evidence is discarded by the learned Judge and the Accused No.1 is acquitted. Therefore, this evidence is not material as far as the Accused No.2 i.e., the present Appellant is concerned.

11) The recovery from the Appellant was effected on 15/09/2011. That panchanama is admitted in evidence by the learned Advocate for the Appellant. It is produced on record at Exhibit – 44. That panchanama shows that the Appellant had produced his clothes and the mobile phone which were seized. This panchanama was conducted on 15/09/2011.

12) PW-5 Dattatraya Nikam, PSI was the Investigating Officer. He has deposed about the investigation carried out by him. He had conducted the Spot Panchanama which is produced on record at Exhibit – 33. He had arrested the Appellant. He had sent the dead body for Post Mortem examination. He had effected the recoveries and at the conclusion of the investigation, he had filed the charge-sheet. He had proved the portion mark 'A' from the statement of PW-4. It was

marked at Exhibit – 65.

13) Besides this oral evidence, the prosecution produced the CA certificate at Exhibit – 59. The CA certificate shows that there was human blood on all the Articles sent to the CA but the blood group on all of them, was inconclusive. Those Articles were clothes of the deceased, clothes of all the accused and also the murder weapon but the blood group was inconclusive. The learned Judge gave benefit of this fact to the Accused No.1 by observing that the blood group on the knife and the clothes recovered at the instance of the Accused No.1 did not have any connection with the deceased.

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

14) The learned Counsel for the Appellant submitted that the prosecution has failed to prove its case beyond a reasonable doubt. The learned Judge has acquitted the Accused No.1 and on the similar set of evidence, he committed error in convicting and sentencing the Appellant. He submitted that except for the evidence of PW-4, who is an unreliable witness, the evidence led by the prosecution against both the accused was almost similar. He further submitted that PW-4 Valmik Jadhav is a completely unreliable witness and conviction cannot be based on his evidence.

15) The learned APP submitted that the learned Judge has

rightly relied on the evidence of recovery of blood stained clothes from the Appellant. The CA report shows that those clothes were stained with blood though the blood group was not mentioned but that would still be an incriminating circumstance. He submitted that the said panchanama was admitted by the Appellant and therefore, he cannot take a stand that the recovery was not incriminating particularly when the clothes were stained with blood. Apart from that, there was recovery of mobile phone at his instance as is reflected in the said panchanama at Exhibit – 44.

Learned APP relied heavily on Exhibit – 65 which was a portion mark 'A' from the supplementary statement of PW-4 wherein he has specifically named the Appellant. He submitted that it was the distinguishing feature between the case of the Appellant and the Accused No.1 and therefore, the learned Judge has rightly distinguished the evidence against them and has convicted the Appellant.

16) We have considered these submissions.

17) As far as recovery of the clothes and the mobile phone is concerned, the CA report shows that there was human blood on the clothes. However, the blood group was inconclusive. The blood group of the deceased and the blood found at the spot, was also not

determined. Therefore, there is no connection between the blood stains on the clothes of the Appellant and the blood of the deceased found at the spot and consequently, there is no connection with the recovery of these clothes and the offence.

18) The mobile phone which is recovered at the instance of the Appellant, was not identified by any witness as belonging to the deceased. There is no such evidence led by the prosecution. The Investigating Officer also has not produced any evidence to show that the mobile phone handset recovered from the Appellant's house was belonging to the deceased. Therefore, conviction cannot be based on the evidence of recovery of the clothes and the mobile phone at the instance of the Appellant.

19) The only evidence which needs serious consideration, is that of PW-4. He is the sole eye witness examined by the prosecution. Therefore, it is necessary to see whether he was a wholly reliable witness or even a partly reliable witness. Scrutiny of his evidence shows that, his evidence was much short of the requirement for proving the case beyond a reasonable doubt. First of all, though PW-4 is not formally declared a hostile witness, the learned Judge permitted the learned APP to ask leading questions to him after he gave important answers which were not supporting the prosecution case. In

the first part of his examination-in-chief, he has clearly stated that he could not see faces of the assailants as there was darkness at the spot. He clearly stated that he could not see the face of the person who had come near him and had threatened him. As against this clear statement made by him in the examination-in-chief, his portion mark 'A' which is proved at Exhibit – 65 shows that in his supplementary statement, he had named the Appellant as the person who had come near him. However, it must be noted that by that time, all the accused were arrested by the police and they were shown by the police to PW-4. PW-4 has also admitted that when he was called to the police station after the accused were arrested, the police had told him the names of all the arrested accused. In that background, his evidence that he knew the Appellant, is extremely doubtful. The quality of his evidence shows that he is not a reliable witness at all. He is not even a partly reliable witness. Since he is the star witness for the prosecution and since we have found that his evidence is absolutely unreliable, the prosecution cannot be said to have proved its case beyond reasonable doubt based on his evidence. Moreover, PW-4, at the conclusion of his evidence, has reiterated that he was unable to identify the accused in the Court that included the present Appellant. Thus, even in the Court he has not identified any of the accused.

20) From the above discussion, it is clear that, the prosecution has failed to establish the identity of the assailants and the prosecution has failed to connect the recovered Articles with the murder of the deceased. There is no other circumstance brought out by the prosecution in this case. Therefore, in this backdrop, the benefit of doubt must be given to the Appellant. Accordingly, the Appeal succeeds. Hence, the following Order :-

- (a) Criminal Appeal No.1138 of 2024 is allowed.
- (b) The impugned Judgment and Order dated 20th March, 2013 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.257/2011 convicting and sentencing the Appellant, is set-aside. The Appellant is acquitted from all the charges.
- (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 under Section 481 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, in case an Appeal against

Acquittal is preferred.

21) The Appeal is disposed of. With the disposal of the Appeals, the connected Applications are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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