

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

**CRIMINAL APPEAL NO. 113 OF 2024
WITH
INTERIM APPLICATION NO. 429 OF 2024
IN
CRIMINAL APPEAL NO. 113 OF 2024**

Eknath Tukaram Sutar

Age : 34 years, Occupation : Business,
R/at Nikte Vasti, Pirangut, Taluka – Mulshi,
District – Pune, presently at Kolhapur Central
Prison, being convict No.C/7754.

.... Appellant/Applicant

v/s.

The State of Maharashtra

(Notice to be served on Public Prosecutor,
High Court Appellate Side, Mumbai)

.... Respondent

Mr. Aniket Vagal for the Appellant.

Ms. Dhanalaxmi Iyer, APP for the Respondent – State.

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

DATED : 22nd SEPTEMBER, 2025

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

. The Appellant had challenged the Judgment and Order dated 01/12/2021 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.205/2015. The Appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code, 1860. He was sentenced to suffer imprisonment for life and to pay a fine of

Rs.5,000/- and in default to suffer rigorous imprisonment for three months. He is in custody since 14/12/2014. He was granted set-off under Section 428 of the Criminal Procedure Code.

2) Heard Mr. Aniket Vagal, learned Counsel for the Appellant and Ms. Dhanalaxmi Iyer, learned APP for the Respondent – State.

3) The prosecution case in brief is that, the Appellant and the deceased – Nilesh Kamble were knowing each other. There was a quarrel between Nilesh and the Appellant on 13/12/2014. After a day i.e., on 14/12/2014 at about 04:00 p.m., the Appellant went to the place where the deceased was working and assaulted him with a knife causing fatal injuries. Nilesh was taken to the hospital but he succumbed to his injuries. Nilesh's cousin Amol lodged the FIR vide C.R.No.269/2014 at Paud Police Station, Pune at around 07:45 p.m. on 14/12/2014. The Appellant was already apprehended at the spot by the others who were present at the time of the incident. He was taken in custody and the investigation was carried out. Various panchanamas were prepared. The Spot Panchanama was conducted. The weapon i.e., a knife was lying at the spot. The clothes of the Appellant were seized. The clothes of the deceased as well as those of the witnesses who had carried the deceased to the hospital, were seized. All the articles were sent for chemical analysis. After conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

4) During the trial, the prosecution examined seven witnesses including two eye witnesses, Panchas, the Medical Officer and the Investigating Officer. The defence of the Appellant was of total denial. The learned Judge relied on the evidence of the eye witnesses and also on the CA Report which showed presence of blood on various articles. After consideration of the evidence, the defence and the arguments, the learned Judge convicted and sentenced the Appellant as mentioned earlier.

5) PW-1 Amol Mankar was the first informant and an important eye witness. He deposed that his paternal aunt – Leela was staying next to his house. Nilesh was her son. He and his sister – Vandana Waghmare used to reside with PW-1's aunt – Leela. Nilesh used to sell utensils in the weekly market. He did not have a shop or a fixed stall. On 13/12/2014, there was a quarrel between the Appellant and Nilesh. PW-1 was informed by Nilesh about this quarrel. According to PW-1, the Appellant had threatened Nilesh on that occasion. It was a Sunday on 14/12/2014. There was a weekly market at Tathagat Chowk, Pirangud. On 14/12/2014, PW-1 and Nilesh went to the weekly bazaar. Nilesh placed his utensils for sale in front of Shri. Swamy Samarth Super Shoppy. A shop selling spices and other shops selling vegetables, were in the vicinity. At about 03:45 p.m. to 04:00 p.m., Nilesh shouted and called PW-1 who went to the spot. According to him, the Appellant stabbed Nilesh in the chest. Nilesh fell down. There was a bleeding injury. The Appellant threw the weapon-knife at the spot. PW-1

and others caught the Appellant and handed him over to the Police Patil – Shri. Prakash Patil. Nilesh was taken to Sahyadri Hospital, Kothrud in a van but, at around 07:00 to 08:00 p.m., Nilesh succumbed to his injuries. The Police made inquiries with PW-1 at the hospital. PW-1 gave his statement. It was treated as F.I.R. It is taken on record at Exhibit – 19. PW-1 showed the spot of the incident. Police seized the big knife, earth, etc. from the spot. Police also seized PW1's clothes and clothes of one Santosh Waghmare as well as clothes of the deceased. PW-1 identified the weapon and his own clothes as well as clothes of the deceased in the Court.

In the cross-examination, PW-1 stated that every vendor had to pay a fee of Rs.20/- for arranging a stall but on the day of the incident, he did not have such receipt. He could not tell the registration number of the car in which Nilesh was taken to the hospital. The police had recorded his statement at around 07:30 p.m. and the FIR is lodged at 07:45 p.m. The F.I.R. is produced on record at Exhibit – 19 as mentioned earlier. It substantially corroborates the evidence of PW-1.

6) PW-4 Bandu Kamble was another eye witness. He has stated that he was present in the weekly market at Pirangud on 14/12/2014. PW-1 and the deceased-Nilesh were selling utensils in that market. At about 03:45 p.m., he heard a loud noise. He saw the Appellant was holding a big knife. He assaulted PW-4's nephew - Nilesh on the neck and on the chest. Nilesh fell down. PW-4 and others caught the Appellant and handed him

over to the Police Patil. Nilesh was taken to the hospital but he succumbed to the injuries.

In the cross-examination, he denied the suggestion that there were no CCTV cameras. He deposed that there was a crowd of people when he reached the spot of the incident. When he reached, at that time, the assailant was trying to run away but he was caught at a distance of 10 feet. He learnt from others about the incident of assault but he added that he had witnessed the incident. Police reached the spot within ten minutes.

7) PW-2 Amol Kedari was a Pancha for seizure of clothes of the deceased. There is no dispute about this evidence.

8) PW-3 Avinash Kedari was a Pancha when clothes of the witnesses i.e., PW-1 and one Santosh Waghmare were seized. According to the prosecution, PW-1 was present at the spot and had carried the deceased to the hospital. PW-3 was examined to establish the witnesses' presence by showing blood on their clothes. According to this witness, PW-1 Amol Mankar and the said Santosh Waghmare produced their clothes in the Police Station. On 14/12/2014, the Panchanama was carried out between 11:20 p.m. to 11:50 p.m.

In the cross-examination, he admitted that he had accompanied PW-1 Amol Mankar who had told him that clothes of the witnesses were to be seized.

9) PW-6 Aniruddha Jagtap was a Pancha for Spot Panchanama.

The Spot Panchanama is produced on record at Exhibit – 41. It was conducted between 08:00 p.m. to 09:00 p.m. The weapon and the blood-stained earth were seized from the spot. The spot of the incident is hardly in dispute but in the cross-examination, he denied the suggestion that there were CCTV cameras near the spot of the incident.

10) PW-5 Dr. Harish Tatiya had conducted the post-mortem examination. He had found the following injuries :-

(a) Stab injury present over left lateral aspect of chest wall situated 20 cm left to mid line and 1 cm below left axilla of size 02 cm x 01 cm x cavity deep, horizontally placed, margins clean cut, red.

(b) Stab injury present over antero-medial aspect of right shoulder vertically placed, situated 04 cm below root of neck on right side and 06 cm medial to right shoulder tip of size 1.5 cm x 0.7 cm x muscle deep for 03 cm clean cut, red.

(c) Stab injury present over posterior aspect of neck on right side, situated 3.5 cm right to midline and 08 cm below posterior hairline, of size 02 cm x 01 cm x cavity deep, margins clean cut, red.

(d) Incised wound present over medial aspect of upper 1/3rd of right arm, of size 01 cm x 01 cm x sub cute deep, margins clean cut, red.

(e) Laceration present over great toe of size 03 cm x 02 cm x muscle deep, irregular, red.

The cause of death was mentioned as “death due to stab

injuries”. The internal injuries showed that the pericardium was cut on the left side corresponding to the injury No.1. Descending part of the *Aorta* was also cut on the left side.

11) PW-7 Mr. Nandkumar Gaikwad, Police Inspector was the Investigating Officer. He deposed about the investigation carried out by him. He had reached the spot after receiving the information about the incident. He kept his staff at the spot and went to Sahyadri Hospital. He took the report of PW-1 and registered the offence vide C.R.No.269/2014 at Paud Police Station, Pune. He caused the Inquest Panchanama to be conducted. He arrested the Appellant. He recorded the statements of the eye witnesses and the other witnesses. He sent the seized articles for Chemical Analysis.

In the cross-examination, he admitted that there were several other shops situated near the spot. Apart from this oral evidence, the prosecution produced the CA report at Exhibit – 51(1). The said Report read with Exhibit – 50 i.e., the Covering Letter shows that there was blood of ‘B’ Group on the clothes of the deceased, on the clothes of the accused, on the clothes of PW-1 and on the clothes of the said Santosh Waghmare. There was blood of ‘B’ Group on the big knife as well.

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

13) Learned Counsel for the Appellant submitted that, admittedly there were many shops around the spot but the prosecution chose to

examine only the interested relatives of the deceased. Therefore, adverse inference needs to be drawn against the prosecution case. An important witness – Police Patil to whom the deceased was handed over, was not examined. There is no evidence regarding as to how the knife was brought by the Appellant at the spot. There is a possibility that the incident could have occurred on the spur of the moment and therefore, the offence may not be the one punishable under Section 302 of IPC but could be a lesser offence.

14) Learned APP, on the other hand, submitted that there is strong evidence of two eye witnesses. Their evidence cannot be discarded only because they were related to the Appellant. She submitted that, the offence was committed with premeditation and preparation and therefore, it would not be a lesser offence.

15) We have considered these submissions.

16) The prosecution has examined PW-1 and PW-4 as the eye witnesses in this case. Though both of them are relatives, they were also natural witnesses. They were not only the relatives of the deceased, but were carrying on their small business of selling utensils in a weekly market. PW-1 had seen the incident after he heard the shouts and then he saw that the Appellant had stabbed the deceased in the chest. There were two injuries on the dead body. One was on the shoulder and the other was on the chest. Therefore, his evidence is quite believable that after hearing the

scream, he saw the incident when the Appellant stabbed the deceased in the chest. His evidence is corroborated by the medical evidence.

17) Similarly, even PW-4 was present in the vicinity and he has described the incident. He had also witnessed the incident of stabbing. Both these witnesses with the help of others, had apprehended the Appellant at the spot itself and therefore, the weapon was also found at the spot when the Spot Panchanama was conducted. We do not find any infirmity in the evidence of both these witnesses which is supported by the medical evidence. Thus, in this case, there is a strong ocular evidence supported by the medical evidence.

18) The murder weapon was found at the spot and the prosecution has explained that it was lying at the spot after the Appellant was apprehended at the spot. The witnesses had caught the Appellant at the spot which is again a very strong circumstance against the Appellant. Though the Police Patil is not examined, the evidence of PW-1 and PW-4 establishes the fact that the Appellant was caught at the spot.

19) There is some doubt about the evidence of PW-3 Avinash Kedari who was a Pancha for seizure of clothes of the witnesses because he had admitted that he had accompanied PW-1 Amol Mankar to the police station and he had learnt from PW-1 that clothes of the witnesses were to be seized. It means that the police had not called him as an independent pancha. To that extent, we are ignoring his evidence. But in any case, at the

highest, it was a corroborative piece of evidence introduced by the prosecution to show that the clothes of the witnesses were having blood of the deceased and hence, their presence was established. But even if this evidence is ignored, it does not affect the quality of the evidence given by the eye witnesses. The CA report shows presence of blood of 'B' Group on the clothes of the deceased, on the knife found at the spot and also on the clothes of the accused. This is yet another corroborative piece of evidence against the Appellant.

20) The evidence of PW-1 shows that on 13/12/2014, there was a quarrel between the Appellant and the deceased. This was informed to PW-1 by the deceased himself since it relates to the transaction leading to the death of deceased, the information given by the deceased to this witness is admissible. At that time, the Appellant had threatened the deceased and within two days i.e., on 14/12/2014, that the Appellant actually assaulted the deceased with a big knife. The injury was penetrating heart and it had cut a major artery. Thus, we do not agree with the submissions of the learned Counsel for the Appellant that the incident had occurred on the spur of the moment. The Appellant had carried a weapon. There was premeditation, preparation and there was execution of his intention. Therefore, the offence punishable under Section 302 of IPC is clearly made out.

21) Considering the above discussion, we are of the opinion that

the prosecution has proved its case beyond a reasonable doubt. We do not feel it necessary to interfere with the finding of guilt. There is no merit in the Appeal. The Appeal is dismissed.

22) 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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