

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

CRIMINAL APPEAL NO. 1253 OF 2019

Raju Kshatriya @ Raju Nepali @

Tapan Sarveshwar Das

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 2741 OF 2024
IN
CRIMINAL APPEAL NO. 1253 OF 2019**

Mr. D. G. Khamkar for the Appellant.

Ms. Kranti T. Hiwrale, APP for State/Respondent.

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

DATE : 27 JUNE 2025

JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. The Appellant has challenged the Judgment and order dated 22.07.2016 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.45 of 2015. The Appellant was convicted for commission of the offence punishable under section 302 of the I.P.C. and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10000/- and in

default to suffer R.I. for one year.

2. Heard Mr. Khamkar, learned counsel for the Appellant and Ms. Kranti Hiwrale, learned APP for the State.

3. The prosecution case is that the deceased Virendra Kumar and the Appellant were working as the labourers under the supervision of the first informant Parasnath Vishwakarma. They used to sleep on the fifth floor of the building where the construction was going on. The prosecution case is that, in the late evening on 25.09.2014, there was a quarrel between the deceased Virendra Kumar and the Appellant. The Appellant wanted financial help from the deceased, but he refused; therefore, there was a quarrel. After the dinner, they went to sleep on the fifth floor. In the morning, the deceased was found in a pool of blood with the head injury. There was a cement block and a hammer lying nearby. According to the prosecution case, the Appellant committed this murder in the night and then absconded. On the next morning, when the dead body was discovered, Parasnath informed the police. The police came on the scene. They made enquiries.

Parasnath gave his F.I.R. at about 2:30p.m. on 26.09.2014. The Appellant was arrested on 03.10.2014. His blood stained shirt was recovered at his instance from a field, lying in the grass, on 05.10.2014. In the meantime, the investigation was continued, the postmortem examination was conducted, the statements of the witnesses were recorded and at the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During the trial, the prosecution examined six witnesses. Two witnesses were examined for proving the circumstance of “last seen together theory”. The panchas for spot panchanama and recovery panchanama of the shirt were examined. The Medical Officer was examined and finally the investigating officer was examined.

5. The defence of the Appellant was of total denial. According to him, few days prior to the incident, he had lost his father, therefore, he had gone to Assam. He was falsely implicated.

6. The learned Trial Judge considered the evidence on

record and the defence taken by the Appellant. The learned Trial Judge particularly relied on the evidence of PW-1 Parasnath and PW-2 Wasim who were examined on the point of “last seen together theory”. The learned trial Judge also accepted the recovery of blood stained shirt at the instance of the Appellant. Based on these circumstances, he recorded the findings of guilt against the Appellant.

7. PW-1 Parasnath Vishwakarma was the supervisor at Ciroko Grand Society’s construction site at Punawale, Tal. Mulshi, District Pune. At that time, the Appellant, the deceased and few others were working at that spot with PW-1 Parasnath. Their working hours were between 8:30a.m. to 6:00p.m. He has deposed that the deceased and the Appellant used to sleep on the fifth floor after their work was over. On 25.09.2014, after having dinner, the Appellant and the deceased went to sleep on the fifth floor. On the next day, till about 9:30a.m. both of them did not return for work. Therefore, PW-1 Parasnath and other 2 to 3 persons went to the fifth floor. They saw Virendra Kumar lying in a pool of blood. He had suffered bleeding injuries. They saw one

cement block and one hammer near him. After that, the police came there and took Virendra Kumar to Sassoon Hospital, but he was declared dead. PW-1 Parasnath has further deposed that, he tried to contact the Appellant, but his phone was switched off. Then he lodged his F.I.R. at Wakad police station. The F.I.R. is produced on record at Exhibit-13. The record shows that, C.R.No.32 of 2014 was registered at Wakad police station at 2:30p.m.

In his cross-examination, he stated that on 26.09.2014 somebody had telephoned the police in the morning. When the police came at the spot, PW-2 Wasim and others were with PW-1 Parasnath. In addition, about 100 to 150 people had gathered at the spot. At that time, the police had interrogated PW-1 and others. He admitted that, at that time, they told the police that they did not know as to how the deceased had died. They told the police that they were only aware that he had died and, therefore, the police were called. After that PW-1 Parasnath went to the police station and lodged his F.I.R. The F.I.R. produced at Exhibit-13 repeats the same story which is mentioned in his deposition.

8. PW-2 Wasim Ansari was also working on the same site as deposed by PW-1 Parasnath. PW-2 Wasim has stated that, on 25.09.2014 at about 7:45p.m. there was a quarrel between the Appellant and the deceased. The Appellant asked for Rs.100/- from the deceased for recharging his cell phone, but the deceased refused as there was already some outstanding amount from the Appellant. Because of this refusal, the Appellant got angry and abused the deceased. There was a fight between them. The others separated them. At about 8:30p.m. they all had dinner and at 9:15p.m. the Appellant and the deceased went to the fifth floor of 'D' building to sleep. PW-2 Wasim and one Rachharam went to the fourth floor for sleeping. At about 10:00p.m., the Appellant came down and brought one cement block. PW-2 Wasim questioned him. At that time, the Appellant told him that he had brought it to use it as pillow. PW-2 Wasim has further deposed that, at about 11:45p.m. they heard the shouts and screams. They started going towards the fifth floor. However, on the way, the Appellant was seen coming down from the staircase. At that time, there were blood stains on his person. He did not tell anything to PW-2 Wasim

and others; and ran away. Then PW-2 Wasim and others went to the fifth floor and saw the dead body of the deceased lying in a pool of blood. They also saw a cement block and one hammer.

In his cross-examination, he stated that he did not tell PW-1 Parasnath anything about the incident of fight for money that had taken place on the previous evening. PW-2 Wasim further stated that, after looking at the dead body, he and Rachharam did not raise any shouts. They did not wake up anybody. They did not try to catch the Appellant. According to him, since they were frightened they were not able to speak. He further deposed that, he did not feel it necessary to narrate the incident to PW-1 Parasnath. They went to the room of PW-1 Parasnath and then went to sleep. When they were at the spot, they did not call anybody, nor telephoned anybody. After all this, when they went to the room of PW-1 Parasnath, he was asleep. They did not wake him up and did not tell him about the incident. On the next day, they woke up at 9:00a.m. to 9:15a.m.; though, he claimed that he did not get any sleep. On the next day at 9:00a.m. to 9:15a.m. PW-1 Parasnath told him that the deceased had not returned, at

that time also, they did not tell PW-1 Parasnath that they had seen the dead body in the night itself. PW-2 Wasim then accompanied PW-1 Parasnath and others to the room of the deceased at about 9:30a.m. Even then he did not tell anything to PW-1 Parasnath and others about the incident. PW-1 Parasnath then dialed the number 100 and informed the police. The police came there after 25 to 30 minutes. Even at that time, PW-2 Wasim did not tell anything about the incident to anybody. The police questioned them, but PW-2 Wasim did not tell the police about the incident. In the statement recorded by the police, he did not tell the police about the fight between the Appellant and the deceased. He had not stated before the police in his statement that there were blood stains on the person of the Appellant.

9. PW-3 Jagannath Sawant was a pancha for the spot panchanama. He has described the situation at the spot and how the dead body was lying there. The police seized a cement block and a hammer from the spot. The panchanama was conducted between 3:10p.m. to 4:00p.m. on 26.09.2014. It is brought on record at Exhibit-18.

10. PW-4 Somnath Shelar was a pancha in whose presence the Appellant had produced his shirt on 05.10.2014. He has deposed that the Appellant gave his disclosure statement and led the panchas and the police to one field which was at a distance of 100 to 150ft. from that housing society. The shirt was thrown in the grass in that field. The Appellant took out that shirt. It was seized. The panchanama is produced on record at Exhibit-22.

11. PW-5 Dr. Amol Shinde had conducted the postmortem examination. He had seen the contusion over left ear pinna of the size 6cm x 4cm. There was abrasion and contusion on the left mastoid region, and the contusion over lateral aspect of left shoulder. The cause of death was mentioned as "death due to head injury". According to him, the injuries were possible by hammer which was seized from the spot. The postmortem report was produced on record at Exhibit-24.

12. PW-6 Police Inspector Amrut Marathe had conducted the investigation. He deposed that on 26.09.2014 he was attached to Wakad police station as the Police Inspector. On that day, PW-1

Parasnath came to the police station and lodged his F.I.R. It was produced on record at Exhibit-13 in the trial. On the basis of that complaint, C.R.No.32 of 2014 was registered. PW-6 Amrut had gone to the spot of incident and had prepared the spot panchanama. He deposed that the dead body was sent for the postmortem examination. He had collected the postmortem notes. He had recorded the statements of the witnesses. The Appellant was arrested on 03.10.2014. On 05.10.2014 the blood stained shirt was recovered at his instance. He sent the muddemal articles for chemical analysis on 07.11.2014.

In the cross-examination, he stated that A.P.I. Kendre had submitted a detailed report about the incident to the police station. He further deposed that, he found the contents of that report correct and, therefore, he had submitted the said report along with the charge-sheet. That report is produced on record at Exhibit-30 before the trial Court and it was proved through this witness. This report is of some consequence in this case. We shall refer to that report in the following discussion.

13. Apart from this oral evidence, the prosecution has brought the C.A. report on record at Exhibit-29. It shows human blood on the clothes of the deceased and also on the shirt of the Appellant. However, the blood group on all these articles was inconclusive.

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

14. Learned counsel for the Appellant submitted that the prosecution has not proved its case beyond reasonable doubt. There are two important witnesses in the form of PW-1 Parasnath and PW-2 Wasim and both of them are totally unreliable. There are not only improvements in their depositions, but their conduct is so unnatural that, it is not possible to believe them at all. PW-1 Parasnath had not told the police about the incident or about the 'last seen together theory' when the police had come on the spot. The deposition of PW-2 Wasim is even worse. He had not even told PW-1 Parasnath about the occurrence he had seen on the previous evening and on the night of the occurrence. Both of them are not telling the truth which can be seen from their deposition itself.

Their evidence will have to be tested on the background of the report Exhibit-30. This report was tendered by API Kendre to PW-6 P.I. Marathe. That report shows that the police had gone to the spot. PW-1 Parasnath and PW-2 Wasim had not told them anything about their knowledge at all. The F.I.R. was lodged at 2:30p.m. after much deliberation and the Appellant was falsely implicated in the case.

15. Learned APP opposed these submissions. According to her, the prosecution has proved its case through the evidence of PW-1 Parasnath and PW-2 Wasim. The circumstance of 'last seen together' was the strong circumstance. The Appellant was absconding. There was no explanation offered by the Appellant. The blood stained clothes seized at his instance show presence of human blood. All these circumstances form a complete chain of circumstances and, therefore, the prosecution has proved its case beyond all reasonable doubts.

16. We have considered these submissions. The prosecution case is based on the evidence of PW-1 Parasnath and PW-2 Wasim.

We find force in the submission of learned counsel Mr. Khamkar that both these witnesses are highly unreliable. Their conduct is most unnatural. PW-2 Wasim has deposed about the fight in the previous evening, which he had not told either to PW-1 Parasnath or to the police when his statement was recorded. Curiously, he claims to have seen the Appellant running down from the staircase after commission of the murder. He claims to have heard shouts of the deceased. According to him, he went to the fifth floor and saw that the deceased was lying in a pool of blood. If that was so, then his conduct that followed after this, is most unnatural. According to him, he went to the room of PW-1 Parasnath and went to sleep quietly. He did not wake up PW-1 Parasnath. He did not inform anybody else in the vicinity. He did not call for help. He did not raise any shouts. He did not tell anything to anybody even in the morning at 9:30a.m. when PW-1 Parasnath told him that the deceased had not attended the work. Even then, PW-2 Wasim did not utter a word about the facts which he had seen in the evening and in the night. We find it very difficult to believe that after looking at the dead body, PW-2 Wasim would just go to the room

of PW-1 Parasnath and go to sleep. We find that his conduct was most unnatural. There are important omissions from his police statement as referred to herein above. Therefore, we discard his evidence completely.

17. As far as, PW-1 Parasnath is concerned, his evidence is relevant only to the aspect of the 'last seen together' theory. According to him, at about 9:30p.m. in the night of 25.09.2014, the Appellant and the deceased had gone to sleep to the fifth floor. At the highest, the prosecution can say that the Appellant and the deceased were seen by this witness at 9:30p.m. The dead body was discovered by this witness after about 12 hours. This is a long time gap. It is a gap of 12 hours at least. The prosecution has to rule out all the possibilities of anybody else committing the offence except the present Appellant. The prosecution has failed to do so. Apart from that, we find that he has not disclosed this case to the police at the earliest. We have carefully perused the report Exhibit-30 which is the report submitted by API Kendre to PW-6 PI Marathe. In that report, API Kendre has mentioned that the police received an information that a person was found in a pool of blood in

unconscious condition at that spot. Immediately, police went to the spot of the incident. They made enquiries with all the persons present there. At that time, they came to know the name of the deceased. Then they shifted the deceased to Sassoon Hospital. Significantly, beyond the name of the deceased, they were not told anything by anybody. PW-1 Parasnath's evidence shows that he was very much present when the police had reached the spot. He had not told the police about his suspicion against the Appellant or that the Appellant was also not seen in the morning, or even regarding 'last seen together' theory. API Kendre's report further mentions that the dead body was sent for postmortem examination. The report mentions the C.R.No.32 of 2014. The significant feature of this report is that, it was tendered in the night at around 10:00p.m. on 26.09.2014 and there is a reference to the C.R.No.32 of 2014, as well. This report clearly mentions that the police had gone at the spot. API Kendre was one of the first police officers who had reached the spot and he had made the enquiries with the persons present there. None of the persons including PW-1 Parasnath and PW-2 Wasim had told this police officer about the

suspicious disappearance of the Appellant or the theory of the accused and the deceased having been 'last seen together'. Since that is the only circumstance against the present Appellant, it was necessary for the prosecution to have established that circumstance beyond reasonable doubt. There is no immediate disclosure about this theory of 'last seen together' to the police who had gone at the spot. PW-2 Wasim in fact has deposed that, repeatedly even after getting sufficient opportunity, neither PW-1 Parasnath, nor PW-2 Wasim had told the police or anybody else about the 'last seen together' theory. Therefore, we find the prosecution has not proved the circumstance of the Appellant and the deceased having been last seen together by other witness.

18. The motive brought out by the prosecution is in respect of the monetary dispute. But again, PW-2 Wasim had not told about this to anybody and in particular, he had not told this to PW-1 Parasnath. PW-2's statement was recorded on 27.09.2014. Therefore, we find substance in the submission of Mr. Khamkar that he had introduced that theory as an after thought.

19. The other circumstance of recovery of blood stained shirt at the instance of the Appellant also cannot be an incriminating circumstance. Though, C.A. report shows that there were blood stains on that shirt, but the blood group was inconclusive. It was necessary for the prosecution to have established that the blood found on the Appellant's shirt was not his own blood but was that of the deceased. The blood group was inconclusive. Even more than that, we find that the recovery evidence itself is not reliable. This is an admitted fact and it is brought out on record by the prosecution itself that this shirt was recovered from the grass in a field. The field was open and accessible to all. It was recovered on 05.10.2014. The incident had taken between 25.09.2014 and 26.09.2014. Thus, this recovery from the open and accessible place after a few days, hardly inspires any confidence in favour of the prosecution case.

20. Thus, we find that the prosecution has failed to prove each of these circumstances independently beyond reasonable doubt and even if taken together they do not form a reliable and complete chain of circumstances against the present Appellant.

With the result, the Judgment and order of conviction and sentence is not sustainable. The Appellant deserves to be acquitted from all the charges.

21. Hence, the following order:

O R D E R

- i) The Appeal is allowed.
- ii) The Judgment and Order dated 22.07.2016 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.45 of 2015, convicting and sentencing the Appellant, is set aside.
- iii) The Appellant is in custody. He be released forthwith if not required in any other case.
- iv) The Appellant shall execute P. R. Bond in the sum of Rs.25000/- U/s.481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (correspondingly U/s.437A of the Cr.P.C.) for his appearance, in case an Appeal is preferred.
- v) The Appeal is disposed of.
- vi) With disposal of the Appeal, the interim application is also disposed of.

(MANJUSHA DESHPANDE, J.)

(SARANG V. KOTWAL, J.)