

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

CRIMINAL APPEAL NO.886 OF 2023

Kumaran Subbiya Konar	Appellant
Versus	
The State of Maharashtra	Respondent

**.....
WITH
INTERIM APPLICATION NO.4821 OF 2024
IN
CRIMINAL APPEAL NO.886 OF 2023**

Mr. Veerdhawal Deshmukh, Advocate (appointed) for the Appellant.
Ms. Sharmila S. Kaushik, APP for the Respondent-State.

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

**RESERVED ON : 11th SEPTEMBER 2025
PRONOUNCED ON : 23rd SEPTEMBER, 2025**

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The Appellant has challenged the judgment and order dated 28.4.2022 passed by the Additional Sessions Judge, Greater Mumbai in Sessions Case No.534/2015. The Appellant was convicted for commission of the offences punishable under Section

302 of IPC and under sections 37 read with 135 of the Maharashtra Police Act. For the offence punishable under Section 302 of IPC, he was sentenced to suffer life imprisonment and to pay a fine of Rs.1,000/- and in default to suffer RI for six months. For the offence punishable under Section 37 read with Section 135 of the Maharashtra Police Act he was sentenced to suffer RI for six months and to pay a fine of Rs.500/- and in default to suffer SI for one month. All the substantive sentences were directed to run concurrently. The Appellant was arrested on 1.4.2015 and since then he is in custody. He was granted set off under Section 428 of Cr.P.C..

2. Heard Mr. Veerdhawal Deshmukh, learned appointed counsel for the Appellant and Ms. Sharmila Kaushik, learned APP for the Respondent-State.

3. The prosecution case is that the deceased Kajal was earning her livelihood through prostitution. The Appellant was interested in her, but, she showed interest in one Kamal Bahadur Singh. The Appellant was against that relationship and out of jealousy he committed her murder on 31.3.2015 at about 9.15 p.m. in Kamathipura area in the presence of the eye witnesses. He slit her

throat with a knife and fled away from the spot. The FIR was lodged by a friend of the deceased vide C.R. No.140/2015 at 10.10 p.m. at Nagpada police station, Mumbai. The Appellant was named in the FIR. The investigation commenced. He was immediately arrested in the night itself. The statements of the eye witnesses were recorded. The dead body was sent for postmortem examination. At the instance of the Appellant, a knife was recovered. The articles were sent for Chemical Analysis. At the 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 twelve witnesses, including three eye witnesses who knew the deceased and were her friends. The other witnesses were the panch witnesses, the Medical Officer and the Police Officers.

5. The defence of the Appellant was of total denial. He did not lead any defence evidence.

6. The learned trial Judge considered the evidence on record and the defence of the Accused/Appellant. He heard both the sides. The learned Judge relied on the evidence of the eye witnesses

and recovery of weapon at the instance of the Appellant. Based on this evidence, he convicted and sentenced the Appellant as mentioned earlier.

7. There are three eye witnesses in this case. PW-1 Pinki was the first informant and the main witness. She has stated that she knew the deceased Kajal who was earning her livelihood through prostitution. She deposed that she knew the Appellant before the Court. He used to visit the deceased Kajal. He had informed that he was a Bank Manager. On the date of incident at about 9.30 p.m., PW-1 along with the deceased Kajal and three other friends including PW-8 Sheetal were standing near Alexandra Theater. They were looking for some customers. They went to a tea stall of one Mr. Bhatt. PW-1 noticed that Kajal had some heated telephonic exchange with someone.. After sometime, the Appellant came there. He caught Kajal's hair and pulled her head. He gave three blows of knife on her neck. He then ran away. Somebody informed the police. They came on the spot and took Kajal to J.J. Hospital. She succumbed to her injuries. PW-1 went to Nagpada police station and lodged her FIR, which is produced on record at Exhibit-10. PW-1 identified the knife shown to her in the Court. According to her, at the time of

incident the Appellant was wearing a blue-coloured shirt and a blue coloured jeans. She identified both these clothes produced in the Court.

In the cross-examination, she stated that she was from Jharkhand but she did not have the documentary proof to that effect. Nagpada police station was a five-minute walk from her house. She was knowing the deceased Kajal for about one year. Kajal was from Bangladesh. PW-1 did not know the details regarding all the customers of Kajal. PW-1 knew Kamal Bahadur Singh and she had seen him with Kajal. He used to work at a Chinese Food Stall in Kamathipura area. Her attention was drawn to her statement in the FIR that Kajal was staying with Kamal Bahadur Singh as they were in love relationship. She admitted that she had stated so before the police, but, in her cross-examination she denied that Kajal was having love relationship with Kamal Bahadur Singh and that he used to reside with Kajal. Except this contradiction, rest of her FIR sufficiently corroborates her deposition. She further admitted in her cross-examination that she was prosecuted by the police on several occasions and she had been detained in jail for about two years. She knew some of the police officers from Nagpada police station. She

denied the suggestion that because of fear of prosecution against her for prostitution she was deposing in favour of the police. She further stated that the incident was going on for about 10-15 minutes. She did not try to save the deceased because the Appellant was armed with a knife. About 100 persons had gathered at the spot. After the incident, the Appellant went towards Mumbai Central. He had carried the knife with him. It was shown to her by the police at the police station. She reiterated that she had seen that knife in the hands of the Appellant at the time of the incident. According to her she had stated before the police that the Appellant had given three blows of knife on the neck of the deceased. However, the FIR did not mention that there were three blows though it specifically mentions that he slit her throat. She denied the suggestion that she identified the Appellant on the say of the police.

8. PW-2 Ruby was another eye witness. She was also similarly working in Kamathipura area as PW-1. She deposed that the incident took place in 2015 during summer. It was around 9.00 p.m when the incident took place. She along with PW-1, the deceased Kajal and two other friends were standing on the main road near Alexandra Theater at Nagpada. They were having tea. Kajal

was sitting on the road below a tree near the tea stall. At that time, the Appellant came there from behind, pulled her hair and gave three blows of knife on her throat. PW-2 specifically named him in her deposition. The Appellant then ran away. Kajal collapsed on the road. She further deposed that she had seen the Appellant visiting Kajal and that Kajal had told her that the Appellant was her husband. She identified the Appellant in the Court. According to her, the Appellant was wearing a blue shirt and a blue jeans pant at the time of the incident. She identified the clothes in the Court.

In the cross-examination, she denied the suggestion that she was from Bangladesh. Her place of residence was a one- minute walk from Nagpada police station. She admitted that she had visited Nagpada police station on various occasions. She was asked to describe the Appellant in the Court without looking at him. She described him to some extent. However, this line of cross-examination did not lead the defence anywhere.

According to her, since the Appellant had visited their brothel to meet Kajal for 4-5 times, PW-2 knew him and also knew his name. The portion of her statement was shown to her wherein

she had mentioned before the police that PW-1 Pinki had told this witness (PW-2) that the Appellant had assaulted the deceased and that he was having love relationship with the deceased. However, PW-2 denied having stated so before the police. She could not say in which direction the Appellant had run away. She further stated that since the accused was holding a knife, no one went to help Kajal.

9. PW-8 Sheetal was another eye witness. She deposed that she was earning her livelihood in the same manner as that of PW-1 and PW-2. Their area of work was near Alexandra Theater, Nagpada. She deposed that on 31.3.2015, at about 8.00 p.m., she reached that footpath. The deceased and PW-1 were already there. They went to a tea stall, and PW-8 herself went to another shop to place an order for a *lassi*. Around that time, she heard a scream. She looked back and saw the deceased lying on the ground below a tree. One person had caught her by one hand. He had a knife in his other hand. When the crowd gathered, that person ran away from the spot. Within 15-20 minutes, the police came to the spot. She identified the Appellant in the Court. She stated that she could not forget the horrific incident and the face of the assailant. She identified the clothes of the Appellant produced in the Court.

In the cross-examination, she was asked about her identity card. According to her, after the incident she went to the police station after three days with PW-1 and PW-2. At that time her statement was recorded. She could not explain as to why her police statement did not mention that she had seen Kajal lying on the ground below a tree and that after 15-20 minutes the police arrived at the spot. She could not explain why her police statement did not mention the fact that she could not forget the incident and face of the assailant, though she had stated so before the police. She was about 30 ft away from the spot of incident when the incident took place. She could not say in which direction the assailant ran away.

10. PW-5 Dr. Chikhalkar was the Medical Officer, who conducted the postmortem examination. The deceased had suffered the following injuries:

1. Incised wound anteriorly over the neck directed horizontally from left to right side of midline of neck at the thyroid cartilage level, 13 cm x 6 cm x tracheal deep cutting the left common carotid artery, trachea, thyroid cartilage, neck muscles and tissues with clean cut margin with tailing on the right side, esophagus intact. Right carotid sheath intact,

2. Incised wound with clean cut margins over the right thenar eminence obliquely directed, 2 cm x 0.5 cm muscle deep.
3. Incised wound over base of distal pharynx of left thumb, 1 cm x 0.5 cm muscle deep with clean cut margins,
4. Multiple old healed horizontally situated scar marks of varying length from 4 cm x 6 cm over 1/3 rd middle of left forearm.”

. The cause of death was hemorrhage and shock due to cut throat injury (unnatural). In the cross-examination, he denied the suggestion that injury No.1 was possible in a case of accident or that the injury No.4 could be an self-inflicted injury.

11. PW-4 Baby Pal was a pancha for inquest panchnama. His evidence is not very material in view of the medical evidence led by the Medical Officer.

12. PW-3 Akhtar Hashmi was a pancha for recovery of knife at the instance of the Appellant on 3.4.2015. He deposed that on 3.4.2015 he was called at Nagpada police station at about 12.15 p.m.. The police asked him where he had kept the knife. The Appellant told the police that he was willing to show the place where he had kept the knife. The panchnama was prepared. This witness had identified the panchnama. Then they went towards the

Alexandra Theater, Nagpada. The Appellant led them towards an MTNL box on the road. There was a gap between that box and the wall on the road. The Appellant put his hand in the gap and took out a knife with a wooden handle. It was wrapped in a paper. The paper and the knife were blood stained. The police seized the knife and concluded the recovery panchnama at 2.00 p.m.. He identified his signature on the panchnama. It is produced on record at Exhibit-13. He identified the knife. In spite of this clear evidence in favour of the prosecution, the learned APP sought permission to cross-examine him. It was noted that the witness was hostile. The learned Judge granted permission to the learned APP to cross-examine this witness.

In the cross-examination, he deposed that the Appellant had said in the presence of this witness that he was willing to show the place where the weapon was kept. Perhaps the prosecution wanted to show that police had not asked this witness about his disclosure sentence but he had stated so on his own.

In the cross-examination conducted on behalf of the Appellant, this witness was asked whether he had worked as a pancha for Nagpada police station in more than fifty cases. To this

specific question, this witness did not give any answer. He further deposed that he knew the accused as the accused was his neighbour.. The memorandum panchnama and the recovery panchnama are produced on record at Exhibits-13 and 14.

13. PW-6 Ganesh Gaikwad was a pancha witness in whose presence the clothes of the accused were seized. He admitted in the cross-examination when he went to the police station the clothes were already kept on the table. Therefore, this piece of evidence does not help the prosecution case. In any case, the blood stains were not detected on his clothes. Therefore, this piece of evidence can be discarded.

14. PW-7 Head Constable Sanjay Ghadge had carried the muddemal articles to FSL for chemical analysis.

15. PW-9 Tajuddin Malik was serving with the police. He deposed about the circular issued by the Deputy Commissioner of Police dated 2.3.2015 for prohibiting possession and use of weapon in that area at the relevant period. He produced that circular on record at Exhibit-52. According to him, this circular was displayed on every street-wall for bringing it to the notice of the public in

Nagpada vicinity.

16. PW-10 PI Kishor Shinde had arrested the Appellant. He and his team went to Mumbai Central Railway Station with the help of informant. PW-10 Kishor Shinde arrested the Appellant in the night of 31.3.2015. He seized the clothes of the Appellant.

17. PW-11 PSI Vasant Jadhav was the next investigating officer. He deposed about receiving wireless message regarding the incident. He and another police inspector went to the spot. He supervised the conduct of inquest panchnama. According to him, one Kamal Bahadur Singh was accompanying the deceased who claimed that he was residing with the deceased as husband and wife. He seized the clothes of the deceased.

18. PW-12 DCP Kusum Waghmare was attached to Nagpada police station as a Woman PI at the time of incident. She was on night duty. She conducted part of the investigation. She registered the FIR. She conducted the spot panchnama. It is produced on record at Exhibit-61. She supervised the recovery of a weapon at the instance of the Appellant. She deposed about the willingness shown by the Appellant to show the spot where he had concealed the knife.

Pursuant to his statement made before the panchas, the knife was recovered. This witness sent the articles for chemical analysis. She handed over the investigation to PI Kadam who filed the charge-sheet on completion of the investigation.

In the cross-examination, she stated that when she reached the spot, the eye witnesses, namely, Pinki and Ruby were present there. She made inquiries with them. She did not find any CCTV installed around the spot. She proved the contradictions and omissions from the statements of the witnesses.

19. Besides this oral evidence, the prosecution produced the C.A. reports before the Court. It showed that the blood found on the clothes of the deceased was of 'O' Group. The knife showed the presence of human blood but the blood grouping was inconclusive.

20. The learned counsel for the Appellant made the following submissions :

- i. PW-1 was acting at the behest of the police. She had admitted that she was prosecuted in the past and hence she was under the thumb of the police.

- ii. PW-2 was not knowing the Appellant as is clear from the contradiction brought out on record from her police statement. Even PW-8 did not know the assailant.
- iii. The Test Identification Parade was not held, and though she claims that she could not forget the incident, the investigating agency needed to conduct the Test Identification Parade to fix the identity of the Appellant.
- iv. The prosecution has not examined Kamal Bahadur Singh who was the main person involved in the entire episode.
- v. The motive behind this crime is not clearly brought on record by the prosecution.
- vi. The recovery of knife is extremely doubtful. The pancha for the recovery of knife was a habitual pancha. The police officer and the pancha both have not given clear and reliable evidence in respect of recovery of knife. Though the knife showed presence of blood, it did not show that it was of 'O' blood group, which was the blood group of the deceased. The clothes of the Appellant did not show the blood stains.
- vii. The presence of PW-2 is not mentioned by PW-1 and PW-8. There are material omissions from the evidence of PW-8.

viii. There is a reference to the phone call just before the incident, but, there is no investigation in that behalf.

ix. The clothes of the Appellant were already kept on the table. Therefore, the seizure of the clothes and identification of those clothes in the Court is doubtful.

21. On the other hand, the learned APP submitted that the evidence of the eye witnesses is sufficient to prove the case against the Appellant. They have consistently narrated the incident. There is no contradiction in the description of the actual incident. All of them are the natural witnesses because their area of work was around the same place and the deceased was also working in the same area. The eye witnesses and the deceased were together when the incident took place. There is a corroborative evidence in the form of recovery of knife. There is a motive for commission of this crime as the Appellant did not approve of the relationship between the deceased Kajal and Kamal Bahadur Singh. Thus, the prosecution has proved its case beyond reasonable doubt based on all this evidence.

22. We have considered these submissions. In our opinion, the most important evidence in this case is that of PW-1. Though

she has admitted that she was working in the same area and was indulging in prostitution and had admitted that she was detained in jail for about two years that by itself is not a reason to discard her evidence at all. In fact this shows that she was giving her deposition honestly without hiding any unfavourable or inconsistent facts. The main feature of her evidence is that she was the first informant and the FIR was lodged immediately after the incident. The incident had taken place at about 9.15 p.m. and the FIR was lodged at 10.10 p.m. in the same night on 31.3.2015. The FIR specifically mentions the Appellant's name. There was no time gap to concoct a false story and to implicate the Appellant falsely. PW-1 was a natural witness. She was working in the same area. The deceased was also working in the same area. Their area of operation and timings were the same. We do not find any infirmity in her deposition at all. There is only a minor contradiction as to whether the deceased was residing with one Kamal Bahadur Singh. But that contradiction does not go to the root of the matter. She has described the incident clearly. She has named the Appellant as the assailant. Her evidence is supported by the medical evidence. Therefore, we find that her evidence is of sterling quality and she is a reliable witness. She has also deposed

about the presence of PW-8.

23. Though the learned counsel for the Appellant submitted that PW-1 did not mention the presence of PW-2, it is not necessary that the first informant should have named the every other eye witness in her deposition or in her FIR. In fact, her FIR does mention the presence of PW-2. Therefore, the defence cannot take advantage of the fact that she had not specifically referred to PW-2's name in her deposition to claim that PW-1 had not witnessed the incident at all. Therefore, on the basis of her evidence alone the prosecution is successful in proving the case against the Appellant.

24. In addition, there are two other eye witnesses, namely, PW-2 Ruby and PW-8 Sheetal. PW-2 Ruby has named the Appellant in her deposition. Her police statement mentions a portion that PW-1 had told her the name of the assailant as that of the Appellant. Therefore, there could be an indication that she was not aware of the name of the Appellant. She identified the Appellant before the Court. The Test Identification Parade was not held to enable her to identify the Appellant. Therefore, from her evidence it appears that she had seen the incident but she might not be aware of the identity

of the Appellant. She has identified the Appellant before the Court, but, her evidence was recorded on 13.2.2019 i.e. after about four years from the incident. Therefore, we are of the opinion that the evidence shows that she had seen the incident but it would not be safe to rely on her evidence to conclude that she knew the identity of the assailant. Therefore, her evidence is not wholly reliable in support of the prosecution.

25. PW-8 Sheetal is another witness. She fairly stated that she was in the vicinity when the incident took place. She turned around when she heard a scream; at that time she saw one person holding hair of the deceased in one hand and a knife in the other. She identified the Appellant in the Court. Her evidence was recorded on 20.9.2021 which was more than six years from the incident. Hence, it would not be safe to rely on her capacity to identify the Appellant in this case.

26. The only other piece of evidence is of recovery of knife at the instance of the Appellant. PW-3 was declared hostile. He initially stated that when he went to the police station, the police officer asked the accused as to where he had kept the knife. That

was the only reason why he was declared hostile because according to the prosecution the accused on his own had stated in presence of the panchas that he wanted to disclose where he had kept the weapon. The memorandum statement was recorded in presence of the panchas. This contradiction will not make any difference to the quality of the evidence of recovery because the fact remains that the Accused/Appellant had made a statement to show his willingness to produce the knife from where he had concealed it. The other criticism of his evidence is that there was a possibility that he was a habitual pancha for the police. In that context PW-3 was asked whether he had acted as a pancha for more than fifty cases and the pancha had avoided to answer that question. But it has to be noted that in the same cross-examination he stated that he had not given evidence as a pancha in any other Sessions Case except in one case. Therefore, the defence has not established that he had acted in many cases as a pancha and that he was a habitual pancha for the police. Even the police officer had not accepted that PW-3 was a habitual pancha. Therefore, we do not see any reason to discard the evidence of recovery of weapon. The weapon was concealed at a spot that was within the exclusive knowledge of the Appellant; from where it was

later taken out. It showed the presence of blood stains.

27. The prosecution through the evidence of PW-9 has led reliable evidence about existence and publication of the Prohibition Order in respect of possession of arms in that area during the relevant period.

28. Thus, from the above discussion we are of the opinion that the evidence of PW-1 is absolutely reliable. She has described the incident very clearly and she has specifically named the Appellant as the assailant. There is no reason to discard her evidence. This is a strong evidence against the Appellant. Her evidence is corroborated by the evidence of recovery of knife at the instance of the Appellant. The knife was found having blood stains. The eye witness has identified the knife in the Court. The evidence of the eye witness is also corroborated by the medical evidence. She was a natural witness, as discussed earlier. PW-1 has also proved the motive for commission of offence. Non-examination of Kamal Bahadur Singh makes no difference to the decision of this case. His evidence would not have thrown any light on any other important aspect. He was not an eye witness to the incident. The phone call, referred to by PW-

1, indicated that the deceased was having a heated exchange with someone on the other end., However, this would not make any difference as PW-1 had actually seen the incident of assault committed by the Appellant. In that context even if there is no investigation regarding that phone call, it does not affect the prosecution case.

29. As a result of this discussion, we are of the opinion that the prosecution has proved its case beyond reasonable doubt. The Appellant is rightly convicted and sentenced for commission of the offence punishable under Section 302 of IPC and under Sections 37 read with 135 of the Maharashtra Police Act. Therefore, we do not see any reason to set aside the conviction and the sentence imposed on the Appellant. With the result, the Appeal is dismissed. With dismissal of the Appeal, the connected Application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

PRADIPKUMAR
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