

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

**CRIMINAL APPEAL NO. 141 OF 2020**

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| Mohammad Dawood Iliyas Shaikh | ..Appellant  |
| Versus                        |              |
| The State of Maharashtra      | ..Respondent |

**WITH  
INTERIM APPLICATION NO. 275 OF 2025  
IN  
CRIMINAL APPEAL NO. 141 OF 2020**

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Mr. Abdul Kalam Shaikh for the Appellant.  
Mr. Vinit A. Kulkarni, APP for State/Respondent.

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

**DATE : 07 JULY 2025**

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

1. The Appellant has challenged the Judgment and order dated 24.10.2018, passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.264 of 2016. The Appellant was convicted for commission of the offence punishable U/s.302 of the I.P.C. He was sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- and in default to suffer S.I. for two months. On

payment of fine or recovery of fine, an amount of Rs.4000/- was directed to be paid to the legal representative of the deceased Imran Shaikh as compensation and the remaining amount was directed to be credited to the State. Set off U/s.428 of the Cr.P.C. was granted to the Appellant for the period he had already undergone as an undertrial prisoner.

2. The Appellant is in custody since 13.04.2016. Thus, more than nine years and two months have passed. Learned counsel for the Appellant submitted that the Appellant is continuously in custody since then. Therefore, we have heard this matter finally.

3. The prosecution case is that the Appellant and the deceased Imran were working in a same small scale embroidery factory. On 13.04.2016, on some petty issue the scuffle started between them. In that scuffle, the Appellant whipped out a knife from his pant pocket and gave blows on Imran. Imran was taken to the hospital, but he was declared dead. The F.I.R. was lodged at Mumbra police station vide the C.R.No.184 of 2016. The

investigation started and the Appellant was arrested on the same day. According to the prosecution, at the instance of the Appellant the recovery of knife was effected on 17.04.2016, from an open place, hidden in a ditch. The statements of the witnesses were recorded, the spot panchanama was conducted, the postmortem was performed on the dead body and at the conclusion of the investigation the chargesheet was filed.

4. During the trial, the prosecution examined 10 witnesses including three eye witnesses, the brother of the deceased, the Medical Officers who had conducted the postmortem examination and had examined the deceased earlier, the Doctor who had examined the Appellant, and the police officers.

5. The defence of the Appellant was specific. He not only denied that he had assaulted the deceased, but he had taken a specific defence through his statement. According to him, on 13.04.2016 he had come to attend his job at 11:30a.m. At that time, the deceased Imran, Samir Shaikh and Deepak Sakhre were already working. On the previous night, the deceased had told the

Appellant that he would not come for his job from that day, but even then he had joined the duty, therefore, the Appellant was surprised. The Appellant questioned Imran. At that time, the deceased Imran was having *gutkha* in his mouth. He got up to spit. The Appellant thought that Imran was about to assault him, therefore, he pushed Imran; who got angry. Imram spat outside the window and gave a blow with his fist to the Appellant. The scuffle ensued. A plastic drum filled with water fell on the floor. The water spread all over the kitchen and the bedroom and the floor became slippery. They went in the bedroom while scuffling. There was a machine platform inside the room which was used for embroidery work. It was made of iron angles. There were pointed nails on that machine. In the scuffle, Imram slipped and fell on that machine. One nail pierced his chest causing serious injury. According to the Appellant, he himself went to the police station and informed the police about it. He added that Imran was his good friend. Many times he did not have money. To help him the Appellant had given his blood to get money. Imran had also helped him similarly and, therefore, it was not possible that he could

commit Imran's murder.

6. The learned Judge considered the evidence on record and the defence of the Appellant and ultimately convicted the Appellant, as mentioned earlier.

7. Heard Mr. Abdul Shaikh, learned counsel for the Appellant and Mr. Vinit Kulkarni, learned APP for State/Respondent.

8. The prosecution case is based on the evidence of three eye witnesses. PW-1 Mohd. Shaikh had lodged the F.I.R. He was doing the embroidery work in that premises. That premises consisted of a small bedroom and one small room. He has deposed that the Appellant, the deceased, Deepak Sakhare and Sameer Shaikh were working with him. The Appellant had once told PW-1 Mohd. Shaikh that Imran should be removed from the job, but PW-1 had not listened to the Appellant. On 13.04.2016, at about 10:00a.m. the factory was opened. At about 11:30a.m. Imran, Sameer and Deepak were working. The Appellant came at 11:30a.m. and asked Imran why he had come for work. Imran

replied that, he might work anywhere. The Appellant slapped Imran. There was a quarrel between them. The fight continued in the kitchen and in the bedroom. PW-1 Mohd. Further deposed that the Appellant was holding a small knife in his hand and he gave blows to Imran. He told others not to intervene. He then ran away. Imran had suffered injuries on his chest and head. He was bleeding profusely. PW-1 Mohd. then took him to Noor Hospital. The doctor advised him to shift Imran to Kalshekar hospital, but he was declared dead. PW-1 Mohd. then gave F.I.R. It is produced on record at Exhibit-11.

In the cross-examination, he deposed that, he was the owner of that *zari* (embroidery) factory. Four persons were employed on the job. There was a hall, a kitchen and a bedroom in that flat. The employees were working in the hall on one side of the wall, besides the frame. Imran had tobacco in his mouth. At the time of the incident, he got up to spit. This fact is admitted by PW-1. He denied the suggestion that the knife was already there for work in the kitchen. He further admitted that the Appellant and the deceased went to the bedroom. At that time, they were

quarreling with each other. The witnesses were standing in the hall. After that the Appellant came in the hall and fell down holding a knife in his hand. Imran also came in the hall and fell down on his head. He was bleeding.

9. PW-2 Deepak Sakhare is another eye witness. He has stated that on 13.04.2016 at about 10:30a.m. he came to work. Others, i.e. Sameer, Dastagir, the Appellant and the deceased had also come to work. He deposed that the deceased Imran and the Appellant had some quarrel in the previous night. They started quarreling and then started fighting. They went to the other room. Their owner Mohd. Dastagir told them not to fight, but the Appellant told him not to intervene. He gave blows of a small knife on Imran's chest, head and back. He then ran away. They took Imran to the hospital. The Doctor declared him dead.

In the cross-examination, he admitted that the deceased and the Appellant were having good friendly relations between them. On the day of the incident also all of them were good friends. He denied the suggestion that on the previous night,

they had gone to Mumbra Creek for a party.

10. PW-6 Mohd. Shamim Shaikh is another eye witness. He deposed that, he came to their factory at 10:30a.m. The Appellant came at 11:00a.m. At that time, Deepak, he himself and the deceased Imran were working in the hall. The Appellant asked Imran what he was doing there. Imran replied that, it was his choice. The Appellant slapped Imran. He then dragged Imran to the kitchen. The Appellant gave fist blows to Imran. He then took out a knife from his pant pocket and stabbed Imran. Imran was shouting for help. Others went to intervene. The Appellant threatened them. He then ran away. These witnesses took Imran to Noor hospital and then to Kalsekar hospital. But he was declared dead.

In the cross-examination, he admitted that the Appellant had employed Imran in the factory. Both of them sold their blood to pharmaceutical company to meet the expenses of their family. At the time of the incident, Imran had *gutkha* in his mouth. He went to spit in the kitchen. Imran and the Appellant



went inside quarreling with each other. He admitted that the witnesses heard their shouts. Then the Appellant ran away from the spot. He denied the suggestion that, Imran sustained injuries by falling on the platform.

11. PW-3 Rajendra Jadhav is a pancha for recovery effected at the instance of the present Appellant on 17.04.2016. The memorandum statement and the recovery panchanama are produced on record at Exhibits-18 and 19. The panchanama shows that the knife was recovered from a ditch in an open place near Bosco school.

12. PW-5 Mohammad Shaikh was the brother of the deceased. But he has not seen the incident and his evidence is not of much important except that, his brother i.e. the deceased Imran had told him that the Appellant was torturing him for quitting the job.

13. PW-4 Professor Dattatraya Kulkarni had conducted the postmortem examination. The postmortem notes are produced on record at Exhibit-23. The deceased had suffered the following

injuries:

- i. Stab injuries on chest 2cm right of midline on sternum of second intercostal space level 1 x 0.1cms, stab injury was directed from front to back, right to left, one angle acute, other obtuse. On dissection sternum injured. Perforated injury pericardium.
- ii. Stab injury of chest 3cms. Left of midline, in 4<sup>th</sup> intercostal space 1.5cm x 0.2cm. One angle acute, other obtuse, directed front to back injuring pericardium and left ventricle of the heart, with blood in pericardial cavity with clots 60 cc.
- iii. Stab injury on abdomen 3cms. above and left of umbilicus 1.5 x 0.2cm. one angle acute, other obtuse directed front to back and below upwards and left, injuring abdominal wall and diaphragm.

There were other following internal injuries:

- i. Scapular and sub scapular hemorrhage on left side present.
- ii. The sternum perforated 4<sup>th</sup> intercostal space perforated. 700Cc blood with clots in left hemithorax. Blood smeared mucosa.
- iii. Both lungs pale. Left lung collapsed.
- iv. Pericardium injured at two places. Cavity contains 60 ml blood clots. Left ventricle shows stab wound at wall with adherent clot.
- v. In the abdomen- wall injured on left side with diaphragm. Few cc of blood clot adhered.
- vi. Stomach contain 100 cc of semi digested food.

No peculiar odour mucosa pale.

According to this witness, the cause of death was “death due to stab injury of heart with multiple injuries leading to hemorrhage and shock”.

In the cross-examination, he admitted that, if the patient was taken immediately to the hospital, it was possible that his life could have been saved.

14. PW-9 Dr. Gulshan Shaikh had examined the patient at Kalsekar hospital and she had noticed the following injuries:

- i. Multiple injuries around right eyebrow measuring about 2 x 1 x 0.1cm.
- ii. CLW over scalp at tempero-occipital region 7 x 1 x 1 cm.
- iii. CLW over left side of face – 1 x 1 x 0.1cm.
- iv. One CLW over left and right side of chest – right side measurement 0.5 x 1 x 0.1cm. Left CLW measuring about 1x0.5x.0.2.
- v. CLW over abdomen 1.5x0.2x0.5cm
- vi. CLW over left shoulder 9x0.1x0.1.

She has sufficiently corroborated the evidence of PW-4 Prof. Dattatraya Kulkarni. She admitted that, except the injuries on

abdomen and chest, all other injuries were superficial. This is important in the context of this case.

15. PW-10 Dr. Rajesh Adhav is another important witness who had examined the Appellant on 13.04.2016 at 7:35p.m. He found the following injuries:

- i. Abrasion on frontal region 1/2cm.
- ii. Abrasion on right forehead 1cm.
- iii. Abrasion on left ear pinna 1/2cm.
- iv. Abrasion on the right neck posteriorly 1cm.
- v. Abrasion on right side of neck 3cm.
- vi. Abrasion on right side of the neck 4cm.
- vii. Abrasion in the right clavicular region 1cm.
- viii. Abrasion on right shin 5cm.
- ix. Abrasion on left side of back 3cm.
- x. Abrasion on left scapular region 1cm.
- xi. Incised wound on right index finger 1cm x 1/2cm x subcutaneous deep.
- xii. Abrasion on left thumb 1cm.

According to him, the injury Nos.1 to 10 and 12 were probably caused by tip of a sharp object and those injuries were possible by nails of human being in fighting.

16. PW-7 API Sachin Bendre had conducted the inquest panchanama. It is produced on record at Exhibit-36.

17. PW-8 API Dushyan Chavan had carried out major part of the investigation. He had conducted the spot panchanama. It is produced on record at Exhibit-38. He had arrested the Appellant and had effected the recovery at his instance. He had recorded the statements of the witnesses. He also admitted that, he had sent the Appellant for the medical examination. The injury certificate of the Appellant is produced on record at Exhibit-44. He has further deposed that the doctor had examined the Appellant and had given the opinion regarding those injuries. The injuries were caused in the scuffle between the Appellant and the deceased.

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

18. Learned counsel for the Appellant submitted that the eye witnesses are not believable. They are all interested witnesses. Their evidence is not consistent. From their evidence it can be gathered that there was some scuffle and the Appellant and the deceased had entered the inside room where the actual injuries were suffered by the deceased. But nobody has seen the actual cause of these injuries. Therefore, the Appellant's defence becomes

probable. He submitted that the knife was admittedly recovered from an open place. It was allegedly thrown in a ditch. But that ditch was not covered and, therefore, that place was open and accessible to all. This recovery would not be of much importance. He further submitted that the description of the knife shows that the length of the blade was 7.5cm, which was admittedly a small knife. Therefore, if the Appellant had an intention to cause death of the deceased, he would not have carried and used such a small knife. He lastly submitted that the evidence shows that incident had occurred on the spur of the moment. The knife was an ordinary knife regularly used in such embroidery factory. It was a small knife which was already lying in the factory, therefore, it cannot be said that it was carried by the Appellant. There is nothing to show that there was premeditation and preparation to commit this offence. At the highest, it can be said that the incident had occurred on the spur of the moment and, therefore, the offence would not be the one punishable U/s.302 of the I.P.C., but it would fall within the *Exception 4* to Section 300 of the I.P.C. and, therefore, it would not be the offence of murder. He

submitted that, at the highest, it would be an offence punishable U/s.304(I) of the I.P.C. The appellant is already in custody since 13.04.2016. At no point of time, he was released for temporary period, therefore, more than nine years and two months have passed. In this situation, the offence can be brought down to Section 304(I) of the I.P.C. and the sentence may be reduced to the one undergone by the Appellant.

19. Learned APP opposed these submissions. According to him, there was consistent evidence of all the witnesses who had described the incident. The Appellant had carried the weapon and, therefore, it can be said that there was premeditation. He submitted that, there were three blows on the vital organs of the deceased and, therefore, the Appellant, with intention and knowledge had committed this offence. Though, it was on the spur of the moment, looking at the nature of the offence, it would not be a lesser offence, but would be an offence punishable U/s.302 of the I.P.C. He submitted that the recovery evidence also does not suffer from any infirmity. Learned APP submitted that if the conviction is to be modified then at least ten years sentence be

imposed on the Appellant.

20. We have considered these submissions. As described earlier, there is consistent evidence of the eye witnesses PW-1 Mohd., PW-2 Deepak and PW-6 Mohd. Shaikh. Therefore, at this stage, it cannot be said that the incident had not taken place or that the Appellant was not present at the spot when the incident had taken place. The question is regarding the manner in which the incident had taken place; whether the Appellant straightaway gave the blows with knife or there was some scuffle or quarrel. All the witnesses have consistently deposed that when the deceased had joined the duty, the Appellant had questioned the deceased as to why he had come for the job. Therefore, it would mean that the Appellant was not expecting the deceased to join the duty on that particular day. Therefore, there was no question of coming to the job with premeditation to assault the deceased. In any case, the evidence of the eye witnesses is consistent because all of them have stated that the deceased had *gutkha* or tobacco in his mouth and when he got up to spit *gutkha*, the scuffle started. All of them have not denied that there was a scuffle. In fact, their evidence



shows that, first, the scuffle started, there was exchange of blows and then the Appellant and the deceased went inside the room. To that extent, the defence of the Appellant and the prosecution story run parallel to each other. The difference is that the Appellant has taken a stand that the deceased had suffered accidental injuries as he slipped and fell on the platform with sharp nails. However, we are not willing to accept this defence because of the nature of the injuries described in the P.M. notes. At the same time, we are of the opinion that the prosecution evidence shows that it was a sudden quarrel, there was a scuffle between the Appellant and the deceased and thereafter this assault had taken place. Both of them had gone inside the bedroom.

21. Significantly, the Doctor Rajesh Adhav who was examined as PW-10 has described the injuries suffered by the Appellant himself. There were twelve injuries on him. One was caused perhaps while using a knife, but all the other injuries were in the nature of abrasions. The doctor has opined that they were possible by nail marks. That means there was scuffle between the Appellant and the deceased. This is also admitted by the eye

witnesses. In that scuffle the deceased had caused those many abrasions on the Appellant with his nails. That would also mean that the Appellant had not straightaway assaulted the deceased with the weapon during the scuffle. These blows with knife were given subsequently as the scuffle continued. Therefore, we find substance in the submissions of learned counsel for the Appellant that the incident had occurred on the spur of the moment and there was no premeditation. The knife used in this assault was a small knife and it is possible that it would be an instrument used for doing embroidery work and could be used for cutting the threads etc. Both of them had entered the kitchen and the bedroom. Therefore, there was a possibility that the knife was in the bedroom or kitchen. Be that as it may, the deceased had suffered injuries with a knife. As can be seen, there were three stab injuries; two were on the chest and one was on the abdomen. Rest of the injuries were superficial as was admitted by the Medical Officer herein above. Out of those three injuries, first two injuries were very near to each other and the other injury was on the abdomen. Therefore, it can be seen that, though, he had given

blows with knife on the vital parts, there was no premeditation and preparation to commit murder. Looking at the nature of the injuries on the vital parts, it can be held that the Appellant had no knowledge or intention that those injuries would cause death.

Section 304 of the I.P.C. reads thus:

**“Section 304 - Punishment for culpable homicide not amounting to murder**

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Looking at the nature of the injuries, it has to be held that the Appellant had intention of causing death, or of causing such bodily injuries as were likely to cause death. Therefore, looking at the over all circumstances in the case, we are of the

opinion that the offence would fall within Part I of Section 304 of the I.P.C.; as it would be covered under *Exception 4* of Section 300 of the I.P.C.

22. As far as, recovery evidence is concerned, there is substance in the submission of learned counsel for the Appellant that it was found from a ditch in an open place. It was not even covered. The recovery was effected after four days from the incident. The place was accessible to all. Therefore, we are not giving much importance to the recovery of weapon. At the same time, the evidence of the eye witnesses cannot be ignored as they have deposed that the Appellant had used a small knife in assaulting the deceased.

23. As a result of the above discussion, in our opinion, the prosecution has proved that the incident had taken place, in which, the appellant had assaulted the deceased. However, the offence would not be the one punishable U/s.302 of the I.P.C. but it would be a lesser offence punishable U/s.304(I) of the I.P.C. The Appellant is already in custody since 13.04.2016. Thus, more than

nine years and two months have passed. Therefore, the ends of justice would meet if the sentence is reduced to the period which the Appellant has already undergone in prison. We are not inclined to reduce the fine amount or to waive the fine amount. The legal heirs of the deceased to whom compensation is awarded would not suffer any loss because of modifying the conviction from Section 302 of the I.P.C. to Section 304(I) of the I.P.C. The 'in default' sentence for not paying the fine amount shall remain as it is.

24. Hence, the following order:

#### ORDER

- i. The Appeal is partly allowed.
- ii. The Judgment and order dated 24.10.2018, passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.264 of 2016 convicting the Appellant U/s.302 of the I.P.C. is set aside.
- iii. Instead, the Appellant is convicted for the offence punishable U/s.304(I) of the I.P.C.

- iv. The sentence of imprisonment for life imposed on him is set aside. Instead, the Appellant is sentenced to suffer R.I. for the period which he has already undergone from 13.04.2016.
- v. The Appellant is also sentenced to pay the amount of Rs.5000/- as a fine amount and in default to suffer S.I. for two months. On payment of the fine amount, Rs.4000/- shall be paid to the legal heirs of the deceased Imran.
- vi. The Appellant is already granted set off U/s.428 of the Cr.P.C. That clause of the operative part of the impugned order is maintained.
- vii. The Appeal is disposed of.
- viii. With disposal of the Appeal, the connected interim application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)