

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

CRIMINAL APPEAL NO.1630 OF 2019

Angad Samsherbahadur Singh

.....Appellant

Versus

The State of Maharashtra

.....Respondent

....

WITH

INTERIM APPLICATION NO.85 OF 2025

IN

CRIMINAL APPEAL NO.1630 OF 2019

....

WITH

INTERIM APPLICATION NO.892 OF 2025

IN

CRIMINAL APPEAL NO.1630 OF 2019

....

WITH

INTERIM APPLICATION NO.1457 OF 2025

IN

CRIMINAL APPEAL NO.1630 OF 2019

Mr. Yashodeep Deshmukh, Advocate a/w. Vaidehi Pradeep for the Appellant.

Ms. Sharmila S. Kaushik, APP for the Respondent-State.

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

DATE : 13th JUNE, 2025

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

1. The Appellant has challenged the judgment and order dated 26.12.2017 passed by the Additional Sessions Judge, Palghar in Sessions Case No.69/2013. The Appellant was convicted for commission of offence punishable under Section 302 of IPC and he was sentenced to suffer life imprisonment and to pay a fine of

Rs.10,000/- and in default of payment of fine to suffer RI for six months. The Appellant was acquitted from the charges of commission of the offence punishable under Section 4 read with 25(1-B) of the Arms Act. The Appellant was given benefit of set-off under Section 428 of Cr.P.C.

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

3. The prosecution case is that the deceased Kapildev and the Appellant were knowing each other. They were residing at Boisar. The Appellant had given some financial help to Kapildev. He was refusing to return the money. Therefore, the Appellant committed his murder. PW-4 Mohan Gupta and Ravinder Pal had gone to the room occupied by the Appellant on 16.6.2013 at about 3.25 p.m.. They saw that the Appellant was cutting the throat of Kapildev. They got scared. The Appellant threatened them. He told them to bring a gunny bag to dispose of the body. Taking advantage of his command, they left the place. They went outside the room and latched it from outside. They rushed to the police station. They gave information to the police. The police officers

accompanied them to the room. They tried to open the door. It was also latched from inside. The police asked the Appellant, who was inside, to open the room. He opened the room. The police went inside the room and found that the deceased was beheaded. The head of the dead body was near the bathroom. There was a pool of blood. The Appellant was taken into custody. One of the police officers lodged his FIR vide C.R. No.I-88/2013 at Boisar police station. The Appellant was formally put under arrest at about 9.00 p.m.. At his instance, the knife was recovered from the same room. On the next day, at his instance, his underwear was recovered from the same room. The body was sent for postmortem examination. The seized articles were sent for chemical analysis. The statements of the witnesses were recorded and ultimately the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During the trial, the prosecution examined ten witnesses. The most important witness in this case was the eye witness PW-4 Mohan Gupta. The other important witnesses were police officers who had gone to that room and had arrested the Appellant. The prosecution also examined the panchas who were

present during the recovery panchnama and spot panchnama. The medical evidence was in the form of PW-9, who had conducted the postmortem examination. The defence of the Appellant was of total denial. The learned trial Judge relied on the evidence of the eye witness and those of the police officers. Though he did not find the recovery evidence to be reliable, based on the direct evidence and the evidence of the police officers the Appellant was convicted and sentenced.

5. PW-4 Mohan Gupta is an important witness in this case. He has deposed that he and his friend Ravinder Pal knew the Appellant and the deceased Kapildev, who was residing in Monica Galli. Kapildev was a Contractor and the Appellant was working with him. On 16.6.2013, he and Ravinder Pal went to the Appellant's room. The door of the room was latched from inside. They looked inside from a window. They saw that the Appellant had sat on Kapildev's chest. The Appellant opened the door. PW-4 and Ravinder Pal went inside. The Appellant was wearing a half pant. The Appellant started cutting Kapildev's neck with the help of hacksaw blade. PW-4 and Ravinder Pal pleaded with him not to do so. At that time, the Appellant threatened them that he would

kill them instead of Kapildev. They got scared. The Appellant told them to bring a gunny bag. He asked whether they had any money. Ravinder Pal told the Appellant that he had Rs.50/-. He, therefore, asked them to get a gunny bag. Taking advantage, PW-4 and Ravinder Pal came out of the room. They closed the door of the room and latched it from outside. Thereafter, they rushed to Boisar police station and informed the incident to the police. Two police persons boarded an auto-rickshaw. PW-4 and Ravinder Pal also sat in the same rickshaw. On the way, they picked up one Traffic Head Constable and all of them went to the Appellant's room. The police asked the Appellant to open the room. The Appellant opened the room. The police apprehended the Appellant. PW-4 and others saw that the deceased's neck was completely cut and the beheaded body was lying under a cot and the head was lying in the bathroom. After that the Police recorded their statements. The police also got their statements recorded under Section 164 of Cr.P.C.

In the cross-examination, he stated that he was residing in Boisar since about 5 to 6 months before the incident. He knew the deceased Kapildev. He denied the suggestion that Kapildev was

his relative. He accepted that there was no dispute between the Appellant and Kapildev prior to that incident. He went to the police station at about 2.45 p.m.. He denied the suggestion that at the time of incident he was at his house. He denied the suggestion that the deceased was murdered by some unknown person and the Appellant was falsely implicated.

6. PW-1 Bapu Pawar was attached to Boisar police station as a Police Naik. He deposed that on 16.6.2013, two boys came running towards the Beat Chowky at about 3.25 p.m.. They were under fear. One of them told the police that the Appellant had committed murder of the deceased at Avadhnagar with the help of a knife. They asked to police to accompany them. One of the boys was PW-4 Mohan Gupta and another was Ravinder Pal. PW-1 then went to the spot in a rickshaw with those two boys and other police personnel Sachin Marde. On the way, they picked up Head Constable Gurav, who was on the traffic duty. All of them went to the Appellant's room. It was latched from inside. The boys had latched the door from outside as well. The police unlatched the door from outside and asked the Appellant to open the door from inside. He accordingly opened the door. The police entered the

room. They saw a pool of blood from a body without head under the iron cot. The head was lying near the bathroom. The Appellant was saying that since the deceased had not paid his money for the work which he had done, therefore, he had cut his head.

In the cross-examination, he deposed that they did not prepare the panchnama when they apprehended the Appellant. Apart from that merely suggestions were given to this witness.

7. PW-2 Police Naik Sachin Marde had given evidence on the similar lines as that of PW-1 Bapu Pawar. In addition, he has deposed that they took the Appellant to Boisar Police Station and PW-2 then lodged the FIR against the Appellant. The FIR is produced on record at Exhibit-18, which substantially corroborates the evidence of PW-2 and PW-1. After registration of the FIR, PW-2 went to the spot of incident along with the investigating officer Vishwas Patil.

In the cross-examination, he deposed that when they received the information at the station beat, they did not inform the police station about the incident. There were residential houses near the spot of the incident. He did not know the relatives of the deceased, who were residing in Boisor. The relatives of the

deceased or his neighbours did not tell him to lodge the FIR but they went to lodge the FIR on their own.

8. PW-6 ASI Krushnakant Gurav was on the Traffic Duty at that point of time. He was a Head Constable. He accompanied the other two police officers when they went to the spot. He described the incident in the very same manner as is described by PW-1 and PW-2.

9. PW-3 Kamaluddin Shaikh was a pancha of the spot panchnama, which was conducted between 11.30 p.m. to 12.30 a.m. i.e in the midnight between 16th and 17th June, 2013. The blood stained earth and part of the cement block was seized for sending it to the FSL. The spot panchnama is produced on record at Exhibit-21.

10. PW-5 Nagina Chauhan was a pancha for recovery of the Appellant's underwear on 17.6.2013 at his instance.

11. PW-7 Raju Chauhan was a pancha for recovery of knife from the same room, which was effected at 9.15 p.m. on 16.6.2013. The recovery panchnama is produced on record at Exhibit-29. It was conducted between 9.15 p.m. to 9.30 p.m. on 16.6.2013. Thus, this recovery panchnama was conducted before

the spot panchnama was conducted. PW-7 deposed that the Appellant showed readiness to show the place where he had concealed the knife. His statement was recorded and then he led the police to his own room. A knife was seized from that room, which was hidden under a bag kept on a wooden plank.

The cross-examination of this pancha witness shows that he was a habitual pancha of Boisar police station and he was giving his Scorpio jeep to the police station since last 14 to 15 years. Thus, he was under the thumb of police and, therefore, the learned Judge has rightly chosen not to rely on his evidence. In our opinion, the approach of the learned Judge was correct and PW-7 cannot be termed as a reliable witness.

12. PW-8 Mainuddin Khan was the landlord. The room in question was originally given on rent to one Shamsheer Singh and Jamadar Singh. Shamsheer Singh had returned to his village and did not come back. Therefore Jamadar Singh was residing with the Appellant in that room where the incident had taken place. He admitted that he had not rented that room to the Appellant.

13. PW-9 Dr. Manoj Shinde had conducted the postmortem examination. He deposed the following injuries:

“3] Following are the surface wounds and injuries :

- i] Complete transverse cut injury on neck and decapitation of head from rest of the body;
 - ii] There was fracture to the sternum with fracture ribs both sides of chest on palpation.
The injuries mentioned in Serial Nos.17 and 18 of postmortem report are ante-mortem injuries.
- 4] On internal examination of the body, following injuries were found :
- i] Fracture of sternum with 3rd, 4th and 5th ribs of both sides with mediastinal soft tissue a haematoma;
 - ii] Complete transverse section of larynx with blood in mucosal layer with transection of greater vessels of neck;
 - iii] Right lung and left lung were intact;
 - iv] Heart chambers empty and intact;
 - v] Cervical spine completely transversely cut;”

He opined that the cause of death was decapitation of head (beheaded) with sharp edged weapon. He also opined that it was possible to cut the head by the knife which was recovered at the instance of the Appellant.

14. PW-10 Ramdas Tomar was a pancha in whose presence the clothes of the deceased were seized.

15. PW-11 Ms. Anandi Dalvi had carried the articles to FSL on 21.6.2013.

16. PW-12 API Vishwas Patil was the investigating officer. He deposed that on 16.6.2013 when he was on duty, he received

a phone call from Police Constable Marde informing him about the murder. PW-12 then went to the spot. He along with other two police officers brought the Appellant to the police station. Two boys i.e. PW-4 Mohan Gupta and Ravinder Pal told them about the incident. The inquest panchnama was conducted under his supervision. The knife was recovered at the instance of the Appellant. The underwear worn by the Appellant at the time of the incident was seized at his instance. The articles were sent by this witness for C.A. examination. After concluding the investigation, this witness had filed the charge-sheet. In his cross-examination, he was asked questions about the entries made in the station diary. He admitted that when the Appellant was actually apprehended, at that exact point arrest panchnama was not prepared in the room and at that time panchanama of the situation of the person of the accused was also not prepared . Rest of the cross examination was in the form of suggestions of false implication, which he denied. He denied that the pancha for recovery of knife was under their control. He produced the C.A. reports on record. The C.A. reports show that human blood was found on the clothes of the deceased, underwear of the Appellant and the knife, but, the blood grouping

was inconclusive. As mentioned earlier, the recovery of knife is not believable and, therefore, these C.A. reports do not take the prosecution case any further. The prosecution case will have to be tested on the basis of rest of the evidence.

17. Learned counsel for the Appellant submitted that there are too many lacunas in the prosecution case. The police have not brought forth the proper story. The Appellant was allegedly taken in custody in the afternoon from the room but his arrest was shown at 9:00 p.m.. Therefore, it appears that the police were not aware as to who had committed murder and the Appellant was falsely implicated by arresting him subsequently. The inquest panchnama does not make any reference to the Appellant having anything to do with the murder. It was the first step in investigation after registration of the FIR. The FIR was registered at 4:30 p.m. on 16.1.2013. He submitted that the prosecution has not examined Ravinder Pal. Therefore, adverse inference be drawn against the prosecution case. He submitted that the prosecution were required to produce the best evidence before the court. In absence of the best evidence, the benefit of doubt must be given to the accused. He relied on the judgment of the Hon'ble Supreme Court in the

case of **Tomaso Bruno and another Vs. State of Uttar Pradesh**¹.

18. The learned counsel further submitted that there is discrepancy in the timings mentioned by the pancha who was subsequently present at the spot when the spot panchnama was conducted. It is deposed that the police had called him at the spot at 5.00 to 5:30 p.m. however the spot panchnama was actually conducted at 11:00 p.m..

19. Learned APP submitted that the conduct of PW-4 Mohan Gupta and his friend Ravinder Pal was natural. They were young boys, aged 17 years and 15 years. They were not expected to do anything than to rush to the police on seeing this incident. She submitted that arrest of the Appellant was effected in the night but he was taken from the spot at around 4:00 p.m.. After he was apprehended, the police were busy in lodging their FIR, conducting inquest panchnama and sending the dead body for postmortem examination. Only thereafter the other panchnamas, including spot panchnama, recovery panchnama and arrest panchnama were effected. That will not affect the prosecution case. There are injuries on the chest as is reflected from the postmortem

1 (2015) 7 SCC 178

examination which is in consonance with the evidence of PW-4 that the Appellant was sitting on the chest of the deceased which could have caused those injuries.

20. We have considered these submissions. As mentioned earlier, the evidence of recovery of knife being doubtful need not be relied on for decision of this case. The most important and crucial evidence in this case is that of PW-4. We have carefully perused his evidence and we find no reason to disbelieve him. His conduct was absolutely natural. He and his friend Ravinder Pal went to the room of the Appellant when they saw the ghastly incident of the Appellant cutting head of the deceased. He immediately threatened both of them. He wanted to dispose of the dead body and therefore he sent them to bring a gunny bag. Taking due advantage of this, they could rush out of the room. Thereafter they immediately rushed to the Beat Chowky and informed about the incident. Then police officers went to the spot and started investigation. This conduct on the part of PW-4 and his friend Ravinder Pal was natural. They are also natural witnesses as they knew the Appellant and they also knew the deceased. They had actually seen the Appellant cutting the head of the deceased with a hacksaw-blade.

21. PW-4's evidence is corroborated by the evidence of PW-1, PW-2 and PW-6, were the police officers who had accompanied PW-4 and Ravinder Pal to the room of the deceased. When they reached the spot, the Appellant was still inside the room. He opened the door. The police officers found a beheaded dead body under the cot lying near the bathroom.

22. The prosecution has sufficiently established that the Appellant was present inside the room which was latched from inside and the dead body lying inside the room. No explanation is offered in any manner about the defense in that behalf. The evidence of the three police officers read together with the evidence of PW-4 makes a seriously incriminating case against the Appellant. This direct evidence of PW4 supported by the evidence of police officers, is further corroborated by the Medical Officer PW-9 Dr. Shinde. The postmortem injuries are in consonance with the description given by PW-4. There was absolutely no reason as to why PW-4 could have deposed against the Appellant. The blood grouping of the flood found on the articles was inconclusive. Therefore, even leaving aside that corroborative piece of evidence, the other evidence is sufficiently proved by the prosecution.

23. We do not find force in the submission of learned counsel for the Appellant that the prosecution has not brought forward the best evidence as they have not examined Ravinder Pal. In the present case the prosecution has examined PW-4 Mohan Gupta whose evidence is on the same lines. Ravinder Pal had accompanied PW4 Mohan Gupta, and therefore, the story could have been narrated by either of them.

24. In the present case Mohan Gupta is examined as PW-4 and he has narrated the incident in detail. Therefore, it was not required for the prosecution as an absolute necessity to have examined Ravinder Pal. As a result, we are satisfied that the prosecution has proved its case beyond reasonable doubt. We see no reason to interfere with the judgment of conviction and the sentence recorded by the learned trial Judge. Therefore, we do not find any merit in the Appeal. The appeal is dismissed. With dismissal of the Appeal, the connected Applications are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)