

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

**CRIMINAL APPEAL NO. 749 OF 2019
WITH
INTERIM APPLICATION NO. 1934 OF 2025
IN
CRIMINAL APPEAL NO. 749 OF 2019**

Phularam Navaramji Meghawad
Age : 30, Adult Indian Inhabitant,
Occu – Presently in Jail, R/o.-Lotiwala Bada,
Taluka – Simganj, District – Sirohi,
Rajasthan Appellant

V/s.
The State of Maharashtra
Through Sr. Inspector of Police,
Mangaon Police Station,
District Raigad Respondent

**WITH
CRIMINAL APPEAL NO. 1196 OF 2024
WITH
INTERIM APPLICATION NO. 4375 OF 2024
IN
CRIMINAL APPEAL NO. 1196 OF 2024**

Prakash Mohanji Garg
Age : 29, Adult Indian Inhabitant,
Occu – Presently in Jail, R/o.-Lotiwala Bada,
Taluka – Simganj, District – Sirohi,
Rajasthan
Presently at High-Security Prison,
Ajmer, Rajasthan Appellant

V/s.
The State of Maharashtra
Through Sr. Inspector of Police,
Mangaon Police Station,
District Raigad Respondent

Mr. Shashikant P. Chaudhari for the Appellants.
Ms. Geeta Mulekar, APP for the Respondent – State.

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

DATED : 04th JULY, 2025

ORAL JUDGMENT : (Per : Sarang V. Kotwal, J.) :-

. Both these Appeals are decided by this common Judgment because they arise out of the same Sessions Case.

2) The Appellants have challenged the Judgment and Order dated 07/11/2015 passed by the learned Additional Sessions Judge, Mangaon, District Raigad in Sessions Case No.11/2014. The Appellants were the Original Accused Nos.1 and 2. The learned Judge convicted the Appellants for commission of the offences punishable under Section 302 read with 34 of the Indian Penal Code, 1860. They were sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/- each and in default to suffer S.I. for two months. They were granted set-off under Section 428 of Cr.PC. for the period which they had spent in custody since their arrest on 03/12/2013.

3) Heard Mr. Shashikant Chaudhari, learned Counsel for the Appellants and Ms. Geeta Mulekar, learned APP for the Respondent – State.

4) The prosecution case is that the deceased Prashant Vijayaji was a Priest in a Jain Temple at village Potner near Mumbai-Goa Highway. Both the Appellants were labourers. They were doing labour work in connection with some construction in the temple. They wanted Rs.1000/- for the job that they had done. The deceased Prashant Vijayaji refused to pay them that amount instead he offered to pay Rs.500/-. Both of them got angry. On 02/12/2013, at about 10:30 p.m., when the deceased was alone in his room, both the Appellants assaulted him with an iron pipe and a knife on his head. The accused remained inside the room. The room was bolted from inside. Another priest in the next room heard the shouts of the deceased. He understood that some untoward incident had taken place. He telephonically called the other prominent members of their community. They rushed to the spot. They forced open the door and found that the deceased was lying in a pool of blood. The Appellant - (Accused No.2) Prakash was lying nearby and the Appellant - (Accused No.1) Phularam was hiding himself in a corner. Both the accused – Appellants were apprehended at the spot. An iron rod and a knife lay nearby. In the meantime, the police were informed. They reached the spot shortly.

5) PW-1 who was at the spot, gave his FIR. The Appellants were arrested. The investigation commenced. The dead body was sent for Post Mortem examination. The statements of the witnesses were recorded. Some of the statements were recorded under Section 164 of Cr.P.C. and at the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session and was tried before the learned Additional Sessions Judge, Mangaon.

6) During trial, the prosecution examined 12 witnesses including the other priest from the temple, the persons who had rushed to the spot on being informed about the incident, the photographer, the panchas and the Police Officers who had taken part in the investigation.

7) The defence of the Appellants in their statements recorded under Section 313 of Cr.P.C., was of denial and in addition, stated that they had come to the temple two days prior to the incident. They were given accommodation. Before that, they had no concern with the deceased. When the incident occurred, both of them were sleeping in their room. The people from their community came to their room and assaulted them. Those persons handed them in the custody of police. They had no relatives. They were from Rajasthan.

They were implicated falsely.

8) The learned Judge disbelieved their defence. He relied on the circumstances produced by the prosecution through their evidence. Learned Judge also repelled the contention that it could be an offence under Section 304(II) of IPC based on the attending circumstances. He recorded his finding of guilt as mentioned earlier.

9) PW-1 Kantilal Osawal had lodged the FIR. He has deposed that he was having his general store at Indapur, Taluka Mangaon. There was a Jain Temple at village Potner adjacent to Mumbai-Goa Highway. PW-2 Chandreshbhai Ratava was a priest in the temple. He used to reside in the kitchen room in that temple with his wife. The deceased Prashant Vijayaji was a religious priest. He was also staying within the area of the temple in a separate room. On 02/12/2013 at about 10:13 p.m., PW-1 received a phone call from Chandreshbhai (PW-2) on his cell phone informing him that some incident had occurred involving the deceased Prashant Vijayaji. He requested PW-1 to come to the Jain Temple along with other members of their community. Accordingly, PW-1 went there with others. They went to Prashant Vijayaji's room. The door was locked from inside. They opened the window of that room. It was dark. They used a torch-light

and saw that Prashant Vijayaji was lying on the floor. There was a pool of blood around him. All of them then kicked the door and opened it. They entered the room. They switched on the light. They saw one iron pipe lying near Prashant Vijayaji's head. The Appellant No.1 was standing in a corner near the door. Prashant Vijayaji had sustained head injury. PW-1 then inquired with the Appellant No.1 who told PW-1 that he had asked Prashant Vijayaji about the payment. Prashant Vijayaji had abused them and therefore, the Appellant No.1 had caught him and the Appellant No.2 had assaulted Prashant Vijayaji on his head with an iron pipe. Hearing this, PW-1 informed Mangaon Police. They came at the spot. PW-1 lodged his FIR. It is produced on record at Exhibit – 17. He identified the Appellants in the Court. He also identified the iron rod and the knife produced in the Court. Apart from that, he had also identified the clothes worn by the accused at the time of the incident.

In the cross-examination, he had stated that the deceased was residing in the room near the said temple. He was 72 years of age at the time of his death. He was strict by nature. He was outspoken and was firm on his decisions. He was short-tempered. He used to abuse when annoyed. Chandreshbhai's room was about 100

feet away from the room of the deceased. The knife and iron pipe were lying near the dead body. The Appellant No.2 – Prakash appeared to be in a confused condition when he woke up. The Appellant No.2 did not tell them anything. They also did not ask him anything. The Appellant No.1 looked under stress. Neither of the Appellants tried to run away nor they shouted. They appeared to be normal though initially, they appeared confused. PW-1 further stated that he and the other members handed over the custody of the Appellants to the police. At the time of the incident, the work of construction of a new shed adjoining the temple, was in progress. The deceased himself had hired both the Appellants for labour work. The Appellants started working two to four days prior to the incident and there was no dispute about the work done by them. PW-1 was not concerned with the labour charges of the Appellants. The offence was registered vide C.R.No.187/2013 at Mangaon Police Station. The proforma shows that the Police Station was informed at 11:15 p.m. on 02/12/2013 and the FIR was lodged at 12:25 a.m. in the midnight between 02/12/2013 and 03/12/2013. The FIR sufficiently corroborates the version of PW-1 except that he had not mentioned in the FIR that the knife was lying at the spot.

10) PW-2 Chandreshbhai Ratava was the other priest working in the same temple. He joined that temple since about six months prior to the incident. He was residing with his wife in the same temple. His room was inside the kitchen room and there was one more room adjacent to his room. The deceased was a Guru of their community. He was residing in a room which was near the main gate of the temple. PW-2 knew both the Appellants. Two to three days prior to the incident, the deceased had called both the Appellants in the temple for construction of a shed. On 02/12/2013 at about 09:30 p.m., he closed the temple and went to sleep in his room. At about 10:30 p.m., he heard shouts of the deceased. He was shouting and calling PW-2. He rushed to the room of the deceased. The light was switched off. He tried to open the door but the door was bolted from inside. He could not open the door. He made a phone call to PW-1 and others. They were from their community. He informed them about the incident. Within 10 to 15 minutes, PW-1 and others reached the temple. They tried to open the door but they could not open it. From the window, they looked inside with the help of a torch. They saw that the deceased was lying in a pool of blood. The others then forcefully opened the door and switched on the electric light.

They saw an iron pipe and a knife lying near the deceased. The Appellant No.1 was hiding himself in a corner. He told them that since the deceased did not pay the labour charges and instead abused them, there was exchange of words. He caught the deceased and the Appellant No.2 gave a blow of the iron pipe. PW-1 and others then called the police who reached there within half an hour. One Dr. Jain came to the spot and declared that Prashant Vijayaji was dead. PW-2 then identified the photographs shown to him.

In the cross-examination, PW-2 admitted that he did not personally know about the transaction between the deceased and the Appellants. His statement was recorded under Section 164 of Cr.P.C. He identified the weapons and the clothes of the accused in the Court.

11) PW-3 Bhairulal Jain was residing at Indapur, Taluka Mangaon. He had cloth business. He has deposed exactly as PW-1. In addition, he deposed about the incident which had taken place at about 05:00 p.m. on 02/12/2013. He stated that he had visited Jain Temple at Potner and he had met the deceased who had discussed with this witness regarding the construction of a shed within the premises of the temple. At that time, two labourers came there. He

identified those two labourers as the present Appellants. They demanded Rs.1,000/- from the deceased. He further stated that the deceased told this witness to pay Rs.500/- to those labourers i.e., the present Appellants and he told the Appellants that the remaining payment would be made after the work was completed. Accordingly, PW-3 paid Rs.500/- to both the Appellants. Thereafter, the deceased told both the Appellants to purchase the material for construction but the Appellants got angry and they left the spot. PW-3 returned to his house at 07:00 p.m. After that, he received a phone call at 10:30 p.m. from PW-2. He had described the events after that as are deposed by PW-1.

Even his cross-examination proceeds on similar lines. He stated that his statement was recorded by the police on 04/12/2013. The police also recorded the statements of other people from their community. According to him, he did not have any conversation after he had paid of Rs.500/- to the Appellants. He identified the clothes of the Appellants and the weapons as were identified by the other two witnesses.

12) PW-5 Amaresh Jain was a pancha for the spot panchanama which is produced on record at Exhibit – 35. He has

described the scene of offence and seizure of both the weapons from the spot. PW-6 Suresh Jain was a pancha for seizure of clothes of the Appellants. That panchanama is produced on record at Exhibit – 37. It was conducted at 01:00 a.m. on 03/12/2013 i.e., immediately after the FIR was registered.

13) PW-4 Sachin Narkhede had taken photographs of the scene of offence.

In the cross-examination, he deposed that he had deleted the photographs from his phone memory but before that, he had taken the prints which are produced on record. The spot of incident and the location of other rooms is not in dispute. Therefore, all this evidence has remained unchallenged.

14) PW-10 Rupali Sonavane had prepared the sketch of the spot of the incident and the surrounding area.

15) PW-8 Sanjay Salavi, Police Naik was a carrier of the articles to FSL.

16) PW-12 Dr. Umesh Dumpalwar had conducted the Post Mortem examination. He found the following injuries :-

- (1) *Contusion to right maxillary*
- (2) *Left eye dull-bluish*
- (3) *Multiple scratch marks over abdomen from xiphi-sternum to umbilicus*

- (4) *CLW on frontal bone, 10 x 1 x 1 cm.*
- (5) *CLW on parietal bone 10 x 1 x 1 cm.*
- (6) *CLW transverse parietal bone 4 x 1 x 1 cm.*
- (7) *CLW on occipital area 7 x 1 x 1 cm.*

All the above injuries were antimortem injuries. During internal examination of dead body, the following injuries were noticed :-

- (1) *In skull depressed fracture parietal bone left side.*
- (2) *Brain congested, partial subdural heamatoma 10 x 10 cm*
- (3) *Meninges are congested.*

From the presence of undigested food, he concluded that the death could have occurred within three hours from the last meal and the death had occurred about five to six hours before the Post Mortem examination which was conducted at 03:15 a.m. on 03/12/2013. All these timings match with the prosecution case. He added that all the injuries were possible by multiple blows of a weapon and they were sufficient to cause death. For causing the depressed fracture of parietal bone, the blow must be with force. The blow was given by a hard and blunt object. The injuries were possible by a blow of the iron pipe - Article A before the Court which was seized from the spot. The multiple scratch marks appearing on the abdomen of the dead body were possible by the knife which was produced in the Court and which was seized from the spot of the incident.

In the cross-examination, he stated that he had mentioned the age of the deceased as 56 years but he added that it was mentioned as per the Inquest Panchanama. But the age of the deceased could be more than 56 years. The Post Mortem notes were produced on record at Exhibit – 68.

17) PW-9 Vinod Chavan, PI had gone to the spot at the first instance before the other police officers. He stated that at around 10:30 p.m., he received the information about the murder. He reached the spot and saw the dead body. There were two persons near the dead body. There were two weapons i.e., an iron pipe and a knife lying near the dead body. There were blood stains on the wall. He recorded the FIR lodged by PW-1 Kantilal. He took the accused in custody who were found near the dead body. He then referred the dead body for Post Mortem examination. He conducted the spot panchanama. API – Bhujang Hatmode (PW-11) arrested both the accused and seized their clothes.

In the cross-examination, he stated that when he received the information of the incident, he was not informed as to who had committed the murder. The Station Diary Entry prior to the lodging of the FIR, did not mention the names of the Appellants.

18) API – Bhujang Hatmode was examined as PW-11. He had arrested the Appellants and had seized their clothes. There were blood stains on their clothes. There was blood on the palm of one of the accused and there were blood stains near his right eye. He had also seized the clothes of the deceased.

In the cross-examination, he admitted that the panchas for the arrest panchanama were from the same community as that of the deceased.

19) PW-7 Atul Zende, SDPO, Mangaon was the Investigating Officer. He had carried out most of the investigation after it was entrusted to him on 04/12/2013. He recorded the statements of some of the witnesses. He sent the Articles for CA examination. He caused some of the statements of the witnesses to be recorded under Section 164 of Cr.P.C. He filed the charge-sheet after completion of the investigation. After the charge-sheet was filed, he received the DNA report. It was produced on record at Exhibits - 44 and 45. The CA report was produced at Exhibit – 43. The DNA report mentions that the DNA profile of the blood detected on the iron pipe, the knife and the clothes of both the accused matched with the DNA profile as it was from one and the same source of male origin. Those profiles did

not match with the blood samples of the Appellant No.1 or the Appellant No.2. Therefore, it was quite clear that the blood on the clothes of both the Appellants was that of the deceased. The blood on the weapons was also of the deceased. The CA report showed the presence of blood but the DNA report was conclusive because the Articles were tested for DNA analysis.

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

20) The learned Counsel for the Appellants submitted that there were no eye witnesses to the incident. The case is based purely on circumstantial evidence. The evidence shows that the Appellants were behaving normally. It would not have been possible if they had committed the murder. The prosecution has not established the motive. The photographer had deleted the original photographs from his mobile phone. Therefore, the spot of the incident is not properly proved by the prosecution. The panchas for seizure of the articles knew about the incident. They were from the same community and therefore, their evidence is not independent. There were no injuries on the person of the Appellants. Therefore, it can be seen that there was no scuffle. The deceased could have atleast struggled to protect himself. The absence of injuries on the accused shows that they were

not responsible for the offence. He submitted that from the prosecution evidence itself it is clear that, the incident had occurred because of the quarrel between the Appellants and the deceased. It was not a pre-planned or premeditated offence and therefore, at the highest it may not be an offence punishable under Section 302 of IPC as defined under Section 300 of IPC, but it could be a lesser offence punishable under Section 304(II) of IPC.

21) Learned APP opposed these submissions. According to her, the evidence of PW-1, PW-2 and PW-3 is consistent. The Appellants were found in the same room with the dead body. They had not offered any other explanation. There was no reason for PW-1, PW-2 and PW-3 to implicate the accused falsely. Their evidence is supported by the DNA report which shows that the blood on the weapons found at the spot, was that of the deceased and also the blood found on the clothes of the accused, was that of the deceased. She submitted that looking at the manner of the assault, it cannot be said that it could be a lesser offence.

22) We have considered these submissions.

23) Undoubtedly, it is a case of circumstantial evidence but the circumstances proved by the prosecution are quite strong. All the

witnesses i.e., PW-1, PW-2 and PW-3 have narrated the incident consistently. PW-2 was a natural witness. He was present in a room in the area of the temple itself. He had heard the shouts raised by the deceased calling him for help. He had rushed to the room of the deceased. It was bolted from inside. He thereafter immediately called others telephonically who also reached the spot. At that time also, the room was bolted from inside. PW-1 and PW-3 with the help of others, had pushed the door forcefully thereby opening it. The spot panchanama shows that the bolt of the door was broken. This corroborates the version of these witnesses that the door was opened forcefully. At that time, both the Appellants were found in the same room where the dead body was lying. The Appellant – Phularam was trying to hide himself in a corner. The Appellant – Prakash was in a confused condition. They had switched off the light. This is the very strong circumstance and the Appellants have not explained this circumstance at all. There is no reason to disbelieve these three witnesses i.e., PW-1, PW-2 and PW-3. Their evidence is supported by the fact that the clothes of the accused were stained with blood and it was proved beyond doubt that those blood stains were of the blood of the deceased. All these circumstances not only corroborate

each other but they form a complete chain. The weapons were lying at the spot itself.

24) PW-1 had immediately informed the police who had reached the spot within a short time. PW-1's FIR was immediately recorded and registered. There was no scope for deliberation or discussion amongst the witnesses to implicate the Appellants falsely. PW-3 has deposed about the incident which had taken place at 05:00 p.m. on the same evening. At that time, the Appellants had become angry because the deceased had refused to pay the entire amount which according to them, was due and payable. This is another link in the chain of the circumstances.

25) Thus, we find that the prosecution has proved each of the circumstances separately beyond a reasonable doubt and all of them together form a complete chain of circumstances pointing to the guilt of the Appellants.

26) We have also considered the submissions of the learned Counsel for the Appellants that it could be a lesser offence but we are unable to agree with this submission. The Appellants had a quarrel with the deceased at 05:00 p.m. After that, this incident had taken place in the night at around 10:30 p.m. The Appellants had sufficient

time to think about and ponder over their options. They had chosen to assault the deceased after quite some time. They had taken the weapons to the room of the deceased. They had switched off the light and they had assaulted the deceased with their weapons. All this shows that, the incident had not occurred on the spur of moment or as a result of a sudden quarrel. PW-2 who was residing in a nearby room did not hear any noise of quarrel around that time but he heard the desperate shouts for help. All this shows that the offence was committed with pre-planning, preparation, premeditation and with full intention. Looking at the nature of the injuries which are referred to hereinabove, it is quite clear that the Appellants did not stop at giving one or two blows, but atleast four forceful blows were given on the head of the deceased besides the other blows which shows their clear intention to commit the murder of the deceased. In this view of the fact, we do not see how the offence could be a lesser offence than that punishable under Section 302 of IPC.

27) Considering this discussion, we are satisfied that the prosecution has proved its case beyond a reasonable doubt. Consequently, no relief can be granted in these Appeals. The Appeals are dismissed.

28) With the disposal of the Appeals, the connected Applications are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2025.07.10
18:33:38 +0530