



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 235/2020

Nitesh Bharatlal Shahu,
Aged 30 years, Occ. Painter,
r/o Plot No. 100, New Sahakar Nagar,
Nandanvan, Nagpur
(Presently in Central Prison, Nagpur) **.....APPELLANT**

...V E R S U S...

The State of Maharashtra, through
Police Station Officer, Police Station,
Nandanvan, Nagpur. **...RESPONDENT**

Mr. Avinash Gupta, Senior Advocate, Assisted by Mr. Akash Gupta,
Advocate for appellant.
Mr. I. J. Damle, A.P.P. for respondent-State.

CORAM:- ANIL L. PANSARE AND Y. G. KHOBRADE, JJ.
DATE OF RESERVING THE JUDGMENT : 10.10.2025
DATE OF PRONOUNCING THE JUDGMENT : 14.10.2025

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Appellant is aggrieved by judgment and order of conviction dated 12.07.2019 passed by Sessions Judge – 11, Nagpur in Sessions Trial No. 393/2016, thereby convicting the appellant and another for the offences punishable under section 302 read with section 34 of the Indian Penal Code, 1860 (“IPC”). Another accused was Ajay Bharatlal Sahu, who had also preferred appeal being Criminal Appeal No. 606/2019. He has expired pending appeal and, therefore, the said appeal stood abated. Both the accused were sentenced to life imprisonment. The facts in brief are as under:

2. On 30.05.2016, one Rajendra Malode lodged report with Police Station Nandanvan, stating therein that he has two brothers, namely, Chandrashekhar and Narendra. Chandrashekhar was addicted to liquor. He was having company of Chetan Supare (PW3) and Ajay Sahu (deceased accused). They were engaged in painting works. There was previous hostility between Chetan and Ajay arising from a prior quarrel, for which crime under Sections 110/117 of the Maharashtra Police Act, 1951, was registered. On 29.05.2016. Rajendra was at his house. At that time, Sukant Landge came to his house and informed that there occurred quarrel between Chandrashekhar at one side and Ajay and Nitesh, the appellant on other side. He also informed that Chandrashekhar was taken to Medical Hospital. Upon receiving the information, his mother went to Medical Hospital with Sukant. He made a phone call from the hospital and informed that Chandrashekhar expired. Accordingly, Rajendra went to Medical Hospital. He noticed that Chandrashekhar's head was broken with injuries and had other injuries on his person. He asked Chetan about the injuries, whereupon details of incident were given by Chetan and accordingly First Information Report (FIR) was lodged vide Crime No. 418/2016, for the offences punishable under Section 302 read with Section 34 of the IPC.

3. The investigating officer visited the spot. He recorded statements of witnesses, weapon was seized at the instance of appellant,

clothes of deceased and accused were seized and sent to chemical analysis. Investigating officer collected evidence including postmortem report. After completing investigation, charge sheet was filed.

4. The Trial Court examined 14 witnesses and two defence witnesses. The defence of the appellant was of total denial and false implication. The Trial Court after having gone through the entire evidence and after having heard both sides, held appellant and Ajay guilty for the offence. Accordingly, both were sentenced to life imprisonment. Since Ajay has expired, the parties before us have argued the case to ascertain whether the appellant has committed the murder.

5. We have heard Mr. Avinash Gupta, learned Senior Counsel assisted by Mr. Akash Gupta, learned counsel for the appellant and Mr.Indrajit Damle learned APP for the respondent- State. We have gone through the evidence, documents and other materials placed before us. We will refer to the same to the extent necessary to decide the following points that arise for our consideration. We have recorded our findings, thereon for the reasons to follow.

Sr.No	Points	Findings
1.	Has the prosecution proved that Chandrashekhar Malode suffered homicidal death?	In the affirmative.
2.	Has the prosecution proved that appellant has committed murder of Chandrashekhar Malode?	In the affirmative.

3.	Whether interference is called for in the judgment?	In the Negative.
4.	What order?	The appeal is dismissed.

REASONS:

As to point Nos.1 and 2:

6. Both the points are interlinked and hence are decided by common reasoning. The prosecution was under obligation to prove that Chandrashekhar suffered homicidal death and that the appellant was responsible for the same and has caused murder.

7. PW3 Chetan Supare is the star witness. He has witnessed the incident. As such, the appellant's brother PW9 Manoj has also witnessed the incident but he resiled from his statement made before the police and thus did not support the prosecution. The case of prosecution is based upon one witness i.e. PW3 Chetan.

8. He deposed that on 29.05.2016, he met Chandrashekhar at about 8:00 to 08:30 p.m. He referred to the earlier case wherein a quarrel arose between him and Ajay and informed Chandrashekhar that Ajay is not attending the Court and, therefore, warrant may be issued against him. Upon that, Chandrashekhar suggested to meet Ajay so as to give him an understanding. Both went to Ajay's house and called him. Chandrashekhar informed Ajay to go to the Court. Ajay said, he

will. At that time, appellant came out and said to Chandrashekhar that he has informed him many times to not come to his house; on which Chandrashekhar said that he's not talking to him (appellant) and asked him to keep quiet. There occurred altercation between appellant and Chandrashekhar. The appellant slapped Chandrashekhar. He fell down. At that time, PW3 Chetan rushed to save him. Appellant asked Ajay to catch him (PW3). Ajay caught him. Appellant sat on Chandrashekhar's stomach, caught his head and struck his head against road for 10 to 15 times. Appellant then went inside house and brought knife, again sat on the stomach of Chandrashekhar stabbed him on his chest. At that time, appellant's elder brother Manoj came out of the house and tried to catch appellant. He did not pay any heed. Manoj snatched the knife from the appellant's hand but he was not paying heed to anybody. He again sat on stomach of Chandrashekhar and started striking his head on the Ground. Thereafter, Manoj said that he is dead and asked to take Chandrashekhar to Medical Hospital. The appellant informed PW3 to come to Hospital. They all put Chandrashekhar in the auto rickshaw of Manoj. He took Chandrashekhar to Hospital. PW3 also reached and Manoj and PW3 returned back in his auto rickshaw. PW3 then went to the house of Sukant Landge and informed him about the incident. They went to the house of Chandrashekhar. Sukant narrated the incident to Chandrashekhar's mother. Thereafter, they all went to Medical Hospital.

Later on, Chandrashekhar's brother, PW1 Rajendra came there. PW3 informed Rajendra about the incident, who lodged report. PW3 then identified the weapon used in the crime.

9. In cross-examination, the appellant put up a case, indicating that there occurred quarrel between PW3 and Chandrashekhar and few others on one hand and Ajay on the other and that Ajay was beaten by these people. Case was also put up saying that Chandrashekhar was heavily drunk. The case was also put up that PW3 committed murder of Chandrashekhar by strangulating him and falsely implicated appellant and Ajay to take revenge against them. The witness denied the case so put up by the appellant. The witness withstood the cross-examination. The defence has not even questioned about identification of weapon used in the crime.

10. The testimony of PW3, therefore, can be safely relied upon. However, Mr.Gupta, learned Senior Counsel argued that his testimony has been falsified by the medical evidence. He has invited our attention to postmortem report Exh. 68. PW6 Dr. Nitin Baramate, who conducted postmortem examination, deposed that the probable cause of death was head injury with strangulation. The argument is that death has occurred by strangulation as well but PW3 has not uttered a single word about it and, therefore, his evidence is not believable.

11. Mr. Gupta further submitted that the injuries reported in postmortem report, particularly injury Nos. 3 and 4 are said to be caused by knife in question. PW6 Dr. Baramate admitted that the knife is one edged and its other edge was blunt. According to Mr. Gupta, such a weapon with one edge blunt cannot cause an incised wound. Therefore, the weapon allegedly seized is not connected to the incident of crime.

12. The discovery of knife at the instance of the appellant is also said to be not believable because in the first part of memorandum recorded under section 27 of the Indian Evidence Act, 1872 ("Evidence Act"), the appellant has not disclosed the place where the knife was allegedly concealed. Accordingly, it is argued that the recovery of weapon is not believable. In support, reliance is placed on the judgment of Coordinate Bench of this Court in Criminal Appeal No.101/2001 (*Manoj Madanlal Tekam .Vs. The State of Maharashtra*), wherein the Court held that if the place where the weapon was concealed was not stated by the appellant in the first part of memorandum, consequent recovery from the place from where the recovery is made, is of no use.

13. These contentions have been rightly countered by Mr.Damle learned A.P.P. He submits that the Doctor's evidence will have to be

read in the light of what PW3 has said. PW3 has, in clear terms, defined the incident. The appellant has banged Chandrashekhar's head against road for 10 to 12 times. In doing so, he sat on his stomach not once, but twice. In between he brought knife and inflicted blows on Chandrashekhar's chest. Despite such status, the doctor opined that the probable cause of death is head injury and strangulation. Thus, the cause of death includes head injury for which none other than the appellant was responsible. He, therefore, cannot escape the liability by harping upon the other part of the cause of death. The doctor has not opined that the cause of death is either head injury or strangulation. Opinion is that the cause of death is head injury and strangulation. Thus, Chandrashekhar suffered death for two reasons; head injury and strangulation. The evidence as regards head injury is writ large and that being the cause of death, the guilt of the appellant is established.

14. So far as injury Nos. 3 and 4 are concerned, the appellant has not even put up a case that these injuries could not have been caused by the knife identified by PW3. Mr. Damle submits that, had the appellant asked doctor about it, he would have explained how these injuries could have been caused by the weapon having one side blunt. Having not done so, the appellant cannot now question occurrence of injury by the said weapon.

15. Mr. Damle, then referred to the testimony of appellant's brother PW9 Manoj. He did not support the prosecution version. He resiled from his statement made before the police. Accordingly, he was cross-examined by the learned A.P.P. His attention was drawn to his statement made before the police, where he has said that when he came out, he saw appellant was pressing neck of Chandrashekhar. He had also stated before the police that he saw the appellant striking Chandrashekhar's head on road. This contradiction has been proved by the prosecution through the investigating officer. Accordingly, Mr. Damle argued that this part of the evidence will justify the death by strangulation.

16. At this stage, Mr. Gupta, learned Senior Counsel invited our attention to the judgment of the Hon'ble Supreme Court in the case of **Mahavir & others Vs. State of Haryana [Criminal Appeal No.5560-5561 of 2024]**, wherein the Supreme Court reiterated the principles of law that the material elucidated as contradiction by use of section 145 of the Evidence Act is not substantive evidence. The Court accordingly held that contradiction so proved does not translate the contradiction into substantive evidence and thus cannot be acted upon to base a conviction.

17. Thus, the law is well settled that contradictions cannot be taken aid of to base a conviction. However, the argument of Mr. Damle, is that Chandrashekhar suffered death, not only by strangulation, but also by head injury. The prosecution has successfully established the appellant's role in causing head injuries and, therefore, he cannot escape the liability of consequences of such an act. We find merit in the submission. We may add few things here. The doctor, while answering questions, stated that there can be n-number of means of strangulation, which may be by hands, rope, cloth, by bamboo stick, by wire, etc. He denied that if there is strangulation, there has to be marks. He, then admitted that strangulation may be caused by accident.

18. Thus according to the Doctor, there are multiple ways by which strangulation could be caused. In the present case, the appellant sat on Chandrashekhar's stomach and repeatedly assaulted him; firstly, by striking his head against road and thereafter by inflicting knife blows on his chest. Evidence of PW3 indicates that when his brother tried to control the appellant, he was not paying heed to anyone. Thus he continued to assault Chandrashekhar. Ultimately, his brother said that Chandrashekhar has died. Thus, the appellant for substantial time was sitting on the stomach of Chandrashekhar, he mercilessly beat him and multiple acts were performed by him while inflicting the injuries.

Sitting on stomach for considerable time with multiple means of assault on vital parts of body could be the reason for strangulation, showing no mark of strangulation.

19. In any case, the prosecution has proved death by head injury and, therefore, appellant's role is fully established through PW3, whose version is natural and reliable. Law is well settled that the conviction can be based solely on the testimony of an eye witness, if it is reliable. In **Ravi Vs. State represented by Inspector of Police, [2008 ALL SCR 2011]**, the Hon'ble Supreme Court in a case that was based on the testimony of a single witness, held that when prosecution version essentially rests on the testimony of a single witness, the same may be relied upon without corroboration depending on the facts and circumstances of each case. The Supreme Court held that as a general rule, Court can and may act on the testimony of single witness though uncorroborated. It is so because one credible witness outweighs the testimony of a number of other witnesses of indifferent character. The Supreme Court further noted that unless corroboration is insisted upon by statute, the Court should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example, in a case of child witness or of a witness whose evidence is that of an accomplice or of an analogous character.

20. The judgment, in our view, will put to rest the argument of the appellant. Once it is found that testimony of PW3 inspires confidence, the conviction can be based relying on such testimony, without there being corroborative piece of evidence. PW3 has vividly described the entire incident. He has withstood the cross-examination. Thus, conviction of appellant is well founded on his testimony. The defence of the appellant that the prosecution failed to throw light on death by strangulation, carries no substance for the reasons which we have noted in the earlier paragraphs.

21. Another limb of argument is that Chandrashekhar might have suffered accidental death. Mr. Gupta, learned Senior Counsel has invited our attention to station diary entry, Exh. 91, which reads thus :

“There is an entry at this time that Chandabai Madhukar Malode stated that some unknown auto-rickshaw driver admitted her son Chandrashekhar Madhukar Malode, r/o Pandit Nagar, Hasanbaugh for treatment and he died while undergoing treatment. She has come to know that he met with an accident in Kharbi Square at about 21.00 hours. On the basis of the said information, I sent Chandabai Malode to Medical Hospital to confirm the said body and I along with the Police Staff left by Peter mobile van to verify veracity of the said information.”

22. The entry is dated 30.05.2016. The time noted is 1.05 hours. It indicates that Chandrashekhar's mother received information that some unknown auto rickshaw driver admitted her son Chandrashekhar in the hospital for treatment and he died while

undergoing the treatment. She came to know that Chandrashekhar met with an accident at Kharbi Square at about about 21:00 hours. Accordingly, the police officer registered entry, sent her to Medical Officer to confirm the body and the police staff left to verify the veracity of the said information.

23. This entry discloses few facts. One is that she received information that some unknown auto rickshaw driver has admitted Chandrashekhar in hospital and that he informed that Chandrashekhar expired while undergoing the treatment. She was also informed that Chandrashekhar met with an accident.

24. Mr. Damle, learned A.P.P. argued that as per evidence of PW3, Chandrashekhar was admitted by none other than PW9 Manoj, the brother of appellant. The entry referred to above shows that auto driver had given information to Chandabai. Therefore, it is Manoj, who has given false information to Chandrashekhar's mother about his suffering accidental death. Further argument is that the Police Officer left to verify the veracity of the information. Thus, according to Mr. Damle, the information so received was to be verified and after verification what revealed is that appellant is the one who has committed murder. This entry, therefore, will be of no help to appellant.

25. The argument requires acceptance. It is nobody's case that except for PW9 Manoj, some other person has taken Chandrashekhar to hospital in the auto rickshaw and admitted him in hospital. In the circumstances, if an auto rickshaw driver has informed Chandrashekhar's mother that he has admitted Chandrashekhar to hospital and that he suffered accidental death, there is every reason to believe that the auto rickshaw driver is PW9 Manoj and has given false information to save his brother.

26. We may note hear that both; appellant and prosecution have invited our attention to the statement of PW3 (Exh.114) recorded under section 164 of the Criminal Procedure Code, 1973. The appellant relied upon the said statement to point out that PW3 Chetan has stated before the Court that Chandrashekhar and Ajay were consuming liquor on that day and there occurred altercation between the two. This is highlighted to argue that the possibility of Chandrashekhar falling down and suffered accidental death by strangulation, cannot be ruled out. Mr. Damle, learned A.P.P. relied upon the said judgment to point out that PW3 Chetan stated before the Court that Manoj and Ajay, the brothers of appellant asked him to tell to others that it was an accidental death, but he refused to do so.

27. These submissions, however, cannot be relied upon by either side in terms of the law laid down in *Mahavir's case (supra)*, where the Supreme Court reiterated the principle of law that statement under sections 161 and 164 of the Cr.P.C. can be used to prove contradictions or omissions in the testimony of witnesses to impeach their credibility and for no other reason, though statement under Section 164 of the Cr.P.C. can also be used for corroboration.

28. Be that as it may, Mr. Damle, learned A.P.P. is correct in contending that the person who must have informed Chandrashekhar's mother about his accidental death is PW9 Manoj, who had carried Chandrashekhar to hospital in his auto rickshaw. There is thus no substance in the argument of appellant that Chandrashekhar might have suffered accidental death.

29. Put all together based on the testimony of PW3 Chetan, the conviction of appellant can be well sustained. The Trial Court has considered all the attending circumstances and has rendered a well reasoned finding in this regard.

30. So far as the other witnesses are concerned, their evidence in the light of testimony of PW3 Chetan will not have any adverse

impact upon the prosecution's case. Rather, it will only corroborate the same. PW1 Rajendra is the brother of Chandrashekhar. He has lodged FIR after having visited the hospital upon receiving information. He has not witnessed the incident. Therefore, he has no personal knowledge thereof. PW2 Rahul is the witness to spot panchanama. The spot of incident has been well established in the testimony of PW3 and, therefore, evidence of PW2 Rahul will be hardly of any significance. Similar is the status of PW4 Rajesh, who has witnessed the seizure of clothes and blood samples.

31. PW5 is Sukant Landge. He deposed in tune with what PW3 has stated. According to him, he received the information of incident from PW3 and has passed on the same to Chandrashekhar's mother.

32. We should note here the series of events which will clarify as to how the station diary entry regarding accidental death must have been registered. The evidence of PW3 Chetan, indicates that the incident occurred on 29.05.2016 at about 09:00 to 10:00 p.m. PW3 Chetan, Manoj, Ajay and Nitesh - the appellant, put Chandrashekhar in auto rickshaw. Manoj took Chandrashekhar to Medical Hospital in his auto rickshaw. Appellant asked PW3 to come to the hospital, meaning thereby that PW3 did not travel in auto rickshaw. Manoj admitted Chandrashekhar in hospital. Manoj and PW3 then returned back in auto

rickshaw. Manoj dropped PW3 at Hasanbagh Chowk. PW3, took his motorcycle and went to the house of PW5 Sukant Landge and informed him about the incident. Thereafter, PW5 narrated the incident to Chandrashekhar's mother. In the meantime, when Manoj admitted Chandrashekhar to hospital, he must have called Chandrashekhar's mother and informed her about accidental death. This is how the station diary entry must have been registered. Thus, the defence made an attempt to divert the attention of police. In any case, entry was registered for verification of information and after verification, role of appellant was disclosed.

33. PW5 is the doctor, who has performed postmortem. His evidence has been discussed. PW7 is the witness to discovery of knife at the instance of appellant. His evidence has been ignored. PW8 is the carrier of viscera and the blood of the deceased. His evidence is formal and does not require any comment. PW9 is brother of appellant. He has turned hostile. His evidence is already discussed. PW10 is neighbour of the appellant. He has deposed that he has seen one injured lying on the ground. He has also seen that the appellant, his brother Ajay and Manoj carried him to the hospital. Thus his evidence would corroborate the prosecution's version that Chandrashekhar suffered homicidal death and not accidental. PW11 is the one who has prepared spot panchanama and has registered FIR. PW12 is also pancha

to the discovery of weapon at the instance of the appellant. Said part of the evidence has to be ignored. PW13 is yet another formal witness who carried muddemal for chemical analysis. His evidence is also not significant and does not require further comment. PW14 is the main investigating officer whose evidence to the extent necessary is already discussed.

34. So far as the defence witnesses are concerned, Mr. Gupta, learned Senior Counsel for the appellant submits that their evidence is of no use and can be ignored. This is how the evidence is led.

35. The series of events noted above would clearly establish the guilt of the appellant. The appellant made several attempts before the Trial Court to create confusion but the prosecution successfully dealt with the said attempts. The brother of appellant though had witnessed the crime, has resiled from his statements made earlier. PW9 Manoj made an attempt to deviate the attention of the police by misleading Chandrashekhar's mother by giving false information that Chandrashekhar suffered accidental death.

36. Thus, the overall evidence is incriminating against the appellant. Such evidence, if looked into in the light of Section 3 of the Evidence Act, we have no hesitation in upholding the Trial Court's

finding. As per Section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

37. In the present case, the overall evidence, as discussed above, is sufficient to believe that Chandrashekhar's death was homicidal and that the appellant is the one who is responsible for such death. Point Nos. 1 and 2 are accordingly answered in the affirmative.

As to Point Nos. 3 and 4:

38. Having answered first two points in the manner hereinabove, no interference is called for in the impugned judgment. There is no substance in the appeal. The appeal is accordingly dismissed.

(Y. G. Khobragade, J.)

(Anil L. Pansare, J.)

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