

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

CRIMINAL APPEAL NO.35 OF 2025

Mr. Sishirkumar Gopalchandra Padhy (Padi)	]	
Age: 36 years,	]	
R/at : Chawl No. A, Room No. 7,	]	
Tilak Nagar Hos. Society, Krushna Nagar	]	
90 Feet Road, Sakinaka, Mumbai	]	
(Presently Lodged in	]	
Kolhapur Central Prison, Kolhapur)	]	... Appellant

V/s.

The State of Maharashtra	]	
(Through Sakinaka Police Station,	]	
Mumbai)	]	... Respondent

Mr. Sandeep Karnik, Appointed Advocate through Legal Aid for the Appellant.

Smt. P. P. Shinde, APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 10th April, 2026.

PRONOUNCED ON : 8th May, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By the present Appeal, the Appellant seeks to quash and set aside the Judgment and Order passed against the Appellant by the trial Court on 27th June, 2024, convicting him under section 302 of the Indian Penal Code, 1860 ('IPC') and sentencing him to suffer life imprisonment

and fine of Rs.20,000/- and in default of payment of fine, to undergo rigorous imprisonment (RI) for a period of six (6) months. The Appellant was also convicted under Section 452 of the IPC and directed to suffer rigorous imprisonment (RI) for one year (1) and a fine of Rs.500/- and in default of payment of such fine, to further undergo simple imprisonment (SI) for a period of two (2) months.

2) The case of the prosecution in brief, is as under :-

2.1) The Appellant was residing along with his 3 friends i.e. Santosh Gauda, Prashant Gauda and Jagannath Panigrahi in rented accommodation situated on the first floor at Krushna Nagar Housing Society. Adjacent to his room resided one Mr. Bilet Sone Das along with his wife (the deceased), their minor daughter Riya, aged about 8 months and his brother-in-law, Mohandas. On 16th January, 2016, at about 4.30 pm, the Appellant heard cries of a woman and rushed out, opened the door of the deceased house and saw an unknown person assaulting the deceased with a knife by holding her from behind, while the daughter was crying. On noticing the Appellant, the assailant pushed the deceased towards him and fled from the house.

2.2) That, the Appellant laid the deceased on the ground and attempted to chase the assailant, who fled towards Gundecha Temple. Despite the chase, he could not catch the assailant. During the course of the chase, the Appellant met his relative, Kailash Sahu, who noticed blood

stains on the Appellant. Upon being questioned, the Appellant, informed him that an unknown person had assaulted the wife of Bilet Das with the knife and fled. The said relative, Kailash Sahu came to the house of Bilet Das and dialed No.100, informing the police about the said incident. The deceased was examined by Dr. Firoz Khan (PW No- 20) who declared her dead. On the basis of the statements recorded from the husband of the deceased and the Appellant, an FIR came to be registered against an unknown person.

2.3) During the course of investigation, the Appellant came to be arrested. After completion of investigation the police filed charge-sheet. The trial Court convicted and sentenced the Appellant as noted above.

3) Mr. Sandeep Karnik, learned Advocate appointed through the Legal Aid for the Appellant submits that the impugned judgement is palpably erroneous and deserves to be set aside. He challenges the prosecution's case on multiple grounds, highlighting serious inconsistencies and evidentiary weaknesses.

3.1) He argues that firstly, the CCTV footage is unreliable due to (i) a time discrepancy of over two hours, (ii) failure to seize the DVR (original source) by the Investigation Agency, (iii) absence of hash value verification, and (iv) doubts surrounding the authenticity of the Section 65B certificate, which was allegedly prepared with police assistance.

3.2) He also questions the alleged recovery of incriminating articles

(knife and clothing) due to contradictions between the memorandum statement, recovery panchnama, and witness testimony. He argues that the panch witness Jagannath Udugade (PW-7) provided a conflicting version and described him as a “stock witness,” reducing credibility. Additionally, according to him, the recovery occurred in a public place, not within the exclusive knowledge of the accused, thereby weakening its evidentiary value under Section 27 of the Evidence Act.

3.3) He assailed and criticized the prosecution’s reliance on an oral dying declaration. According to him the three witnesses conduct appeared unnatural, one key witness namely Javi Damaji Patel (PW-19) turned hostile, and there was an unexplained delay of seven days in recording statement of PW-9. According to him, the medical evidence of Dr. Sanjay Wathore (PW-16) further weakened the prosecution’s theory of dying declaration, because the doctor opined that the deceased’s severe neck injuries would have resulted in instant death.

3.4) Mr. Karnik argued that, the Chemical Analyzer’s report failed to conclusively link the blood on the weapon to the deceased. He also faulted the prosecution for not examining several key witnesses, including those present at the scene namely, Mrs. Kaniben Patel and Mr. Madhuben Patel, who were present with Javi Patel (PW-19) and the officer API Mr Jaikar who initially identified the accused from CCTV footage, raising concerns about the completeness and fairness of the investigation.

3.5) Finally, he emphasized on the accused's conduct—informing the police immediately about the incident and not fleeing—as consistent with Appellant's innocence. Relying on Supreme Court precedent in *Jitendra Kumar Mishra alias Jittu vs. State of Madhya Pradesh* reported in (2024) 2 SCC 666, he argued that a dying declaration without corroboration cannot be accepted as conclusive evidence.

3.6) Accordingly, he argued that, in light of the aforementioned inconsistencies and gaps, a substantial and reasonable doubt arises, demonstrating that the prosecution has failed to establish its case beyond reasonable doubt.

4) *Per contra*, Smt. Shinde, APP for the Respondent-State supports the impugned judgement of the trial Court.

5) We have heard Mr. Karnik for the Appellant and Smt. Shinde, APP for the Respondent, State and have carefully perused the entire record.

The persuasive arguments of Mr. Karnik though made us believe that, the Appellant was innocent and wrongly framed, however, upon a careful and evaluation of the evidence on record, we are unable to accept the same.

CCTV Footage:

6) In our considered view, the contention that the CCTV recording reflects a time ahead by two hours and forty minutes does not materially affect the evidentiary value of the footage. This discrepancy is apparent on

the face of the record and can be readily reconciled by a simple arithmetical adjustment.

7) What assumes significance, however, is the interplay between the version of the Appellant and what is discernible from the CCTV footage. According to the Appellant, upon witnessing the assault, he attempted to chase the unidentified assailant. If such a version was to be accepted, even for the purpose of analysis, the footage corresponding to the relevant timeline ought to have captured two individuals in motion—namely, the assailant running ahead and the Appellant in pursuit.

8) The CCTV footage, however, does not support this narrative. It depicts only a single individual running during the relevant period, with no indication of any other person preceding him. This absence is not a minor omission but goes to the root of the Appellant's version.

9) In such circumstances, the version put forth by the Appellant stands contradicted by the contemporaneous electronic record. The footage, therefore, lends support to the prosecution case and renders the explanation offered by the Appellant untenable.

10) The mere non-seizure of the DVR machine by the Investigation Agency by itself, does not render the CCTV footage either unreliable or susceptible to discarded. In the absence of any material to suggest tampering or manipulation, the footage cannot be disbelieved solely on that ground. We also find no circumstance on record which would justify an

inference that the contents of the recording were doctored. Equally no motive is either alleged or established as against the shopkeeper or the investigating agency to manipulate the recording.

11) The contention that, the contents of the certificate under Section 65B of the Evidence Act were furnished by the police also does not, in our view, undermine its evidentiary value. It is not uncommon for a person issuing such a certificate to be guided on the legal requirements thereof, particularly where such requirements are technical in nature and not within ordinary public knowledge. The mere fact that such particulars were provided by the police does not, *ipso facto*, render the certificate unreliable or vitiate the electronic evidence.

12) In the absence of any substantive material to doubt the authenticity of the recording or the certification, the challenge to the CCTV evidence on these grounds cannot be sustained. The submissions advanced on behalf of the Appellant in this regard, therefore, do not merit acceptance.

Recovery of knife and clothes:

13) We find substance in the case of the prosecution insofar as the recovery of the knife and baniyan at the instance of the Appellant is concerned. The recovery was effected on 18th January, 2016, i.e., within two days of the incident. It is material to note that the Appellant, in his statement, merely indicated that he had thrown away the said articles

without specifying their precise location. The subsequent discovery of these articles from a particular spot, where they were found concealed beneath a plastic sheet and cement bags, lends assurance to the prosecution case.

14) The recovery panchnama indicates that, the articles were not lying in the open but were concealed at a specific location. This aspect assumes significance, as it points to knowledge attributable to the Appellant regarding the place of concealment. The minor discrepancies in the description of the exact manner of concealment, whether beneath a plastic sheet and cement bags or as referred to by the panch witness in his deposition, do not, in our view, affect the substratum of the recovery.

15) The contention that, the panch witness is a “stock witness” also does not materially detract from the evidentiary value of the recovery in the absence of any material to demonstrate fabrication or falsity. What is of relevance is the factum of recovery pursuant to the information furnished by the Appellant.

16) In our view, the discovery clearly falls within the ambit of Section 27 of the Evidence Act. Though the place of recovery may be a public location, the articles were concealed and not visible to a passerby. The discovery of such concealed objects pursuant to the information supplied by the Appellant is a relevant and admissible circumstance.

17) The inconsistencies pointed out in the memorandum, the panchnama and the deposition of the panch witness are, at best, peripheral

in nature. They do not go to the root of the prosecution case. They are insufficient to discredit the recovery, which, in our view, stands duly proved.

Oral dying declaration given to PW No.9.

18) We do not find merit in the contention that the prosecution case is rendered doubtful merely because one of the three women, namely PW No.19, turned hostile. It is not in dispute that PW No.19 had informed PW No.9 about an untoward incident having taken place in the room of the deceased. The fact that she did not fully support the prosecution does not, by itself, efface the evidentiary value of the information conveyed or the testimony of PW No.9.

19) The submission that the statement of PW No.9, recorded on 23rd January, 2016, i.e. after a period of seven days, ought to be discarded also does not merit acceptance. Mere delay in recording a statement is not fatal unless it is shown to have caused prejudice or appears to have been improved upon. In the present case, no such circumstance is brought on record. Human conduct in the aftermath of a traumatic incident cannot be reduced to a rigid formula, hesitation or delay in approaching the police is not uncommon.

20) We also find no circumstance to suggest that PW No.9 had any motive to falsely implicate the Appellant. In the absence of any demonstrated animus, there is no reason to disbelieve her version solely on

account of the delay.

21) Insofar as the alleged dying declaration is concerned, the evidence of PW No.9, being the direct recipient thereof, cannot be lightly discarded. The medical opinion that the injuries could result in instantaneous death does not, in itself, rule out the possibility of the deceased making a brief statement prior to succumbing. There is no material on record to conclusively establish that the deceased was incapable of speech at the relevant time. There is no evidence on record to indicate that, the vocal cord of deceased had any injury to make her incapable to speak.

22) In these circumstances, we find no reason to disbelieve the testimony of PW No.9. The delay in recording her statement does not detract from its credibility.

Chemical Analyzer Report:

23) We are not placing sole or determinative reliance on the Chemical Analyzer's Report to sustain the conviction of the Appellant. The report, at best, provides limited assistance, as it does not conclusively establish that the blood found on the knife belongs to the deceased.

24) However, the evidentiary value of the recovery cannot be diluted on that account. The knife and baniyan were recovered at the instance of the Appellant and were found to be stained with blood. This circumstance, when read in conjunction with the proved recovery, furnishes

a relevant link in the chain of circumstances connecting the Appellant with the crime. The Appellant has not offered any explanation in his 313 statement about the said recovery

25) The absence of a conclusive serological match may affect the weight to be attached to the report, but it does not render it wholly inadmissible or devoid of evidentiary value. The report, therefore, lends corroborative support to the prosecution case, though it is not the sole basis for the conviction.

Non-examination of material witnesses:

26) Having regard to the evidence on record, it would have been desirable for the prosecution to examine the other two women, namely Mrs. Kaniben Patel and Mrs. Madhuben Patel, who were stated to be present along with PW No.19, as also the father-in-law and mother-in-law of PW No.9. However, the mere non-examination of these witnesses does not, ipso facto, render the prosecution case doubtful or give rise to any serious infirmity in the investigation. It is well settled that the prosecution is not bound to examine each and every witness, so long as the evidence adduced is sufficient to establish the case beyond reasonable doubt. In the present case, we do not find that the omission to examine the aforesaid witnesses affects the substratum of the prosecution case or undermines its overall credibility.

Conduct of the Appellant:

27) In our view, the version put forth by the Appellant does not inspire confidence. The explanation offered appears to be an attempt to deflect the course of investigation by projecting the involvement of an unidentified assailant. Significantly, there is no satisfactory explanation for the presence of blood stains on the clothes of the Appellant. Equally, it is difficult to accept that the Appellant, having allegedly witnessed the assault from close quarters, was unable to furnish any description of the assailant.

28) The Appellant's version is further rendered doubtful by its inherent inconsistencies. If, as claimed, the deceased was pushed towards the Appellant, it is reasonable to expect that he would have had a clear opportunity to observe the assailant. The assertion that he could not identify the person, therefore appears improbable. Conversely, if the Appellant had not come into such close proximity, there would have been no occasion for him to lay the deceased on the ground for his clothes to be stained with her blood.

29) The explanation regarding the blood-stained clothes also does not merit acceptance. More importantly, the conduct of the Appellant in relation to the knife and the baniyan is inconsistent with that of an innocent person. While the Appellant initially stated that he had thrown these articles in a public place, the subsequent recovery establishes that they were, in fact concealed at a specific location known to him. If the Appellant

was innocent, there would have been no reason to conceal the articles rather than produce them before the police.

30) The circumstance that, the articles were recovered from a concealed location, coupled with the inconsistency in the Appellant's explanation, constitutes a significant incriminating circumstance.

31) The submission that, the Appellant did not abscond and therefore deserves the benefit of doubt also does not advance his case. Mere non-abscondence is not determinative of innocence, particularly where the surrounding circumstances and the inconsistencies in the version of the Appellant point otherwise. On an overall appreciation of the evidence, we find that the prosecution has established a consistent chain of circumstances which unerringly points towards the guilt of the Appellant.

32) Insofar as the reliance placed on the decision in *Jitendra Kumar Mishra alias Jittu vs. State of Madhya Pradesh*, (2024) 2 SCC 666 is concerned, the same is distinguishable on facts. In that case, the alleged dying declaration was made after a considerable lapse of time, and the medical evidence cast serious doubt on the possibility of the victim being in a position to make such a statement. In the absence of corroboration, the Hon'ble Supreme Court declined to accept the dying declaration. In these circumstances, the said decision does not assist the Appellant.

33) In the present case, however, the evidence indicates that PW No.9 reached the spot immediately upon hearing the commotion and

received the statement of the deceased immediately after the incident. The proximity of time, coupled with the surrounding circumstances, lends assurance to the testimony of PW No.9. The medical evidence does not conclusively rule out the possibility of the deceased making such a statement. The chain of circumstances is completed. The Appellant is the only author of the crime.

34) Before parting with the Judgment, we place on record our appreciation for the efforts put in by Mr. Karnik, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant. He was thoroughly prepared in the matter and assisted this Court in arriving at the aforementioned proper conclusion.

35) In view of the aforesaid, the trial Court has not committed any error in convicting the Appellant. The Appeal stands dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.).