

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

CRIMINAL APPEAL NO.380 OF 2023

Bhaiyalal Sinh s/o Bandan Sinh

.....Appellant

Versus

The U.T. of Dadra & Nagar Haveli,
Daman & Diu.

.....Respondent

....

**WITH
INTERIM APPLICATION NO.2921 OF 2024
IN
CRIMINAL APPEAL NO.380 OF 2023**

Mr. Aashish Satpute, Advocate (appointed) a/w. Chaitanya Purankar for the Appellant.

Mr. Ashwin Thool, SPP a/w. Ayush Singh, Archishmati Chandramore for the Respondent No.1-UT.

Ms. Supriya Kak, APP for the State.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 28th JANUARY, 2026

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

1. The Appellant has challenged the judgment and order dated 14.7.2022 passed by the learned Sessions Judge, Daman in Sessions Case No.2/2019. The Appellant was the sole accused. He was convicted for commission of the offence punishable under Section 302 of IPC and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer further RI for six months.

2. Heard Mr. Aashish Satpute, learned appointed counsel for the Appellant, Mr. Ashwin Thool, learned SPP for the Respondent No.1-UT and Ms. Supriya Kak, learned APP for the State.

3. The prosecution case is that the deceased Ramlakhan and the Appellant were cousins. On 2.10.2018 both of them along with PW-4 Asan Singh Sugriv went for an outing near the seashore at Daman. They snapped their photographs. After that they consumed beer. It is the prosecution case that there was some quarrel between the Appellant and Ramlakhan. The Appellant strangled Ramlakhan with the Appellant's shirt. In the meantime, PW-4 Asan Singh Sugriv had gone to sleep under the influence of beer. When he woke up, he did not see Ramlakhan. The Appellant was without his shirt. When PW-4 Asan Singh Sugriv asked the Appellant regarding Ramlakhan; the Appellant told him that Ramlakhan had already left. Asan Singh Sugriv and the Appellant then went back to the Appellant's room at around 8.00 p.m. to 9.00 p.m.. On the next day i.e. on 3.10.2018, Asan Singh Sugriv tried to contact Ramlakhan, but he was unsuccessful. There was no telephonic contact either. On 3.10.2018 at about

11.00 a.m., the police received a call that a dead body was found near the polytechnic at Daman. The police went there. They saw the dead body with a shirt tied around his neck. The dead body was taken to Marwad Hospital. There was a photograph of the Appellant with the deceased. On the basis of that photograph, the police tried to identify the Appellant. One labour contractor identified the Appellant, who was arrested.

4. The police tried to contact the family of the deceased but they were not available. The postmortem was ultimately conducted on 9.10.2018. The cause of death was mentioned as strangulation. During investigation the Appellant allegedly gave a statement pursuant to which his pant and banian were recovered from his own house. Along with those clothes, there was a Aadhaar card of the deceased. The seized articles were sent for chemical analysis. The chemical analysis showed presence of similar mud on the clothes of the Appellant, the deceased and the place from where the dead body was recovered. The expert opinion also mentioned that the shirt found tied around the neck of the deceased was similar to the one worn by the Appellant at the time when the photograph was taken. Based on this evidence the

investigation was concluded and the charge-sheet was filed. The case was committed to the Court of Session.

5. During trial, the prosecution examined nine witnesses. The main witness was PW-4 Asan Singh Sugriv who had last seen the Appellant and the deceased together on the previous day. Apart from him, the prosecution examined panchas, the medical officer, the aforementioned Labour Contractor, father of the deceased, an expert for C.A. report and the police officers. The defence of the Appellant was of total denial.

6. The learned Judge relied on the circumstances of last seen together, recovery of the clothes at the instance of the Appellant and similarity of the shirt worn by the Appellant and the one found around the neck of the deceased. Based on these circumstances, the learned Judge concluded that the prosecution had proved its case beyond reasonable doubt. Apart from that, the learned Judge also referred to the presumption under Section 106 of the Indian Evidence Act and observed that the Appellant had failed to explain the facts which were within his exclusive knowledge.

7. PW-9 PSI Purshottam Jadhav was the police officer who had received the anonymous phone call regarding finding of the dead body. He deposed that in the year 2018 he was in-charge of Kalariya outpost, Nani Daman. On 3.10.2018 he received an anonymous call on his phone. The caller had informed him that a dead body of a man was lying in a muddy land near polytechnic at Varkund. PW-9 made a station diary entry and went to the spot. He saw the dead body. It was smeared with mud. A shirt was tied around the neck. The deceased was wearing a full sleeved shirt and a blue jeans. The dead body was pulled out of the mud. The station house officer of Nani Daman was informed. He came to the spot. The body was sent to a Government Hospital, Marwad. Then PW-9 lodged his report. It is taken on record at Exhibit-35.

8. PW-2 Himanshu Shahi was a Labour Contractor. According to the prosecution case, some photographs were recovered from the pocket of the deceased and the police made enquiries about the identity of the persons in the photograph. On 4.10.2018 between 12 noon to 1.00 p.m. the police met him. They showed him a photograph with three persons. The background was of sea-shore. PW-2 knew one of them. He identified that person as

the Appellant because he was in the housekeeping department in Baddar Schulz Laboratory. PW-2 had provided the Appellant's services to that company. PW-2 further deposed that the Appellant was from Madhya Pradesh and at that time he was residing in a chawl of one Pareshbhai at Atiyawad, Char Rasta, Nani Daman. The Appellant was arrested by the police. He identified the Appellant. He further added that on 2.10.2018 the Appellant had met him at 9.00 p.m. and had told PW-2 that he wanted to go to his village. He asked for Rs.2,000/-. PW-2 told the Appellant that he could take money after 10.10.2018. PW-2 identified the photograph which was shown to him by the police. That photograph was Article-B before the trial Court.

In the cross-examination, he deposed that he was working as a Labour Contractor since 2013 in various companies and he had about 700 to 800 labourers under him. He used to maintain registers of labourers. The Appellant had worked for him for about 2-3 months. He was asked as to how he knew about a particular worker since he had 700 to 800 workers working for him. According to him, he knew it because he used to go to the gates of the companies. He used to pay wages to the workers

including the Appellant. He used to pay Rs.360 or Rs.370/- per day to the Appellant. He did not know the other two persons in the photograph.

9. PW-5 Bishnu Singh knew the Appellant and the deceased. The deceased was his cousin. At that time he was residing with the Appellant and one Rajkumar in room No.13 of Pareshbhai Chawl. The Appellant and PW-5 were working at Baddar Schulz Laboratories. According to him, on that particular night at about 9 p.m. to 10 p.m., the Appellant and one Asan Singh Sugriv (PW-4) had come to his room. The Appellant was wearing banian and pant. On the next morning, Asan Singh Sugriv left for Surat. In the cross-examination he added that the Appellant had come to his room with his clothes smeared with mud. The Appellant had vomited. He had not taken bath.

10. In this background, the evidence of PW-4 Asan Singh Sugriv is very important. The prosecution has heavily relied on his evidence. He deposed that the incident took place on 2.10.2018 about three years prior to recording of his deposition. At that time he was residing in Surat. Ramlakhan made a phone call to the

Appellant. PW-4 and Ramlakhan came to Vapi. The deceased Ramlakhan was working with PW-4 and they were staying together. They met the Appellant at railway crossing at about 11.00 a.m. to 12.00 noon. They went to the sea-shore at Daman. They drank beer. They got their photographs taken by a photographer. Then they hired an auto-rickshaw for going to Vapi Phata. But they got down near a police chowky. There was a quarrel between Ramlakhan and the Appellant. PW-4 further deposed that since he had consumed beer, he fell asleep. After sometime, the Appellant woke him up. PW-4 asked the Appellant about Ramlakhan. The Appellant told him that Ramlakhan had gone. At that time the Appellant was wearing a banian and pant. His clothes were smeared with blood. Then they went to the Appellant's room at about 8.00 p.m. to 9.00 p.m.. PW-4 slept in that room. He made a phone call to Ramlakhan in the morning. However, his phone was switched off. After that PW-4 went to Surat. Ramlakhan had not reached Surat. He identified the Appellant in the Court. He identified the photographs Article-D and Article-K which were taken at the beach. He identified himself, the deceased and the Appellant from these photographs. His statement recorded under

Section 164 of Cr.P.C. was produced on record at Exhibit-24.

In the cross-examination, he admitted that since he was under the influence of alcohol, he did not know what had happened. It was dark when the Appellant came and woke him up.

11. The evidence of PW-4 is very important in this case. At this stage some salient features of his evidence need to be noted, as follows:-

- i. He has not described the place where there was quarrel between the Appellant and the deceased.
- ii. He did not state as to what had happened to those photographs and as to whether either of them had kept them with himself.
- iii. He had not named the police chowky where they had got down from the rickshaw. He admitted that he was under the influence of liquor and that he fell asleep. In the cross-examination, he has categorically admitted that since he was under influence of alcohol he did not come to know as to what had happened.

iv. PW-4 is the star witness for the prosecution and as can be seen that his evidence is vague and unreliable.

12. PW-6 Baghraj Singh was father of the deceased. He deposed that Ramlakhan was his son and that the Appellant was his younger brother's son. That means that the deceased and the Appellant were cousins. The police had informed PW-6 about the death of Ramlakhan. PW-6 had identified the dead body of Ramlakhan at Daman.

This witness has not stated as to when the police had informed about Ramlakhan's death. He had also not stated as to when he had identified the dead body. This is important because according to the prosecution case the postmortem examination was not conducted immediately as family of the deceased did not come to Daman immediately. In this context, PW-6 has not stated anything much about when he was informed and when he identified the dead body.

13. PW-3 Kalpesh Damania was a pancha witness for important panchnamas. On 3.10.2018, he was called by the police near the Polytechnic college in front of Deltin Hotel. The dead body

was lying there. It was at a distance of about 250 meters from the road. There were marks of dragging the body on the ground. He saw one shirt tied around the neck of the dead body. The clothes and face of the dead body were smeared with blood. One pair of Relaxo chappal was lying there. The police prepared a sketch. They prepared a panchnama. The panchnama and the sketch are produced on record at Exhibits-16 and 17. The police seized that chappal. On the same day, he was taken to Marwad Hospital and the inquest panchnama was conducted in his presence. It is produced on record at Exhibit-18. At that time the police recovered six photographs from the backside pant pocket of the deceased. In three of those photographs, there were other persons accompanying the deceased. The police seized those photographs. The inquest panchnama is produced on record at Exhibit-18.

On 4.10.2018, the police conducted the arrest panchnama of the Appellant in the presence of PW-4.

On 6.10.2018, the police again called him. According to him, the accused showed willingness to show the place where he had kept the clothes. The police prepared the memorandum

panchnama which is produced on record at Exhibit-19. The Appellant led the police to Pareshbhai Chawl at Atiyawad, Dabhel. He took them to room No.13. One plastic bag was hanging on a wall. The Appellant removed that bag. There was one white pant and banian inside that bag. The banian was wet and had mud stains. The Appellant took out a wallet from the pant pocket. There was one Aadhaar card and a mobile bill in the wallet. That Aadhaar card was of Ramlakhan. The police seized those articles. The panchnama is produced on record at Exhibit-20. He identified those articles in the Court.

On 9.10.2018, he was again called by the police in the mortuary of Marwad Hospital. At that time the clothes of the deceased and the shirt which was tied around the dead body was seized by the police under a panchnama. That panchnama is produced on record at Exhibit-22. He identified those articles.

In the cross-examination, he deposed that the plastic bag in which the clothes were kept in the room of the Appellant were not seized. He did not know whether any other person was residing in that room. When they went there for panchnama, no

one else was there in the room.

The memorandum panchnama at Exhibit-19 recorded the statement made by the Appellant. However, that statement did not mention authorship of concealment of any particular article and the place. It did not mention the place where he was to lead the police party. That statement could not have led the police party to any particular place in search of any particular article. After this statement, according to the prosecution, the Appellant had led the police and the panchas to his room from where his clothes were seized. The learned Judge has rightly discarded this circumstance with proper reasoning.

14. PW-1 Dr. Dhanvidya Prabhakar was the medical officer who had conducted the postmortem examination. PW-1 was working as a Medical Officer with Government Hospital, Marwad, Nani Daman. On 3.10.2018 a memo for postmortem of the dead body of Ramlakhan was received. PW-1 and Dr. Jog conducted the postmortem on 9.10.2018. A shirt was tied around the neck. There was mud on the whole body. There were signs of decomposition. There were ligature marks all around the neck. There was thyroid

cartilage fracture. The cause of death was asphyxia due to strangulation. The postmortem notes are produced on record at Exhibit-11.

In the cross-examination, PW-1 stated that the dead body was brought to the hospital on 3.10.2018. PW-1 did not know who had come to the hospital along with the body. There was no other external injury on the dead body. According to the FSL report no poison was detected in the viscera.

15. PW-7 Sailesh Mistry was an officer in the Regional Forensic Laboratory, Surat. He deposed that in this case the police had sent seven sealed parcels in connection with C.R. No.111/2018 registered at Nani Daman police station. A pair of chappals was marked as '1/A and 1/B'. They were of Relaxo brand. The parcel No.2 had soil. The parcel No.3 had two photographs marked at '3/A and 3/B'. The parcel No.4 had a pant. Some soil was collected from that pant by this witness. The parcel No.5 had one banian. Again some soil was seen on that banian. The parcel No.6 was a shirt with some soil on it. The parcel No.7 was one shirt and one pant, which were fully stained with soil. Those articles were

examined visually, microscopically and were subjected to density gradient examination. According to him, the soil collected from the pant at Exhibit-4, the shirt at Exhibit-6, the shirt at Exhibit-7/1 and pant at Exhibit 7/2 were found similar to the control soil Exhibit-2. According to him, he observed similarity in colour, design and pattern of shirt at Exhibit-6 and the shirt worn by the Appellant seen in photograph Exhibit 3/A. Accordingly, he prepared a report. That report is produced on record at Exhibit-31.

Through this evidence the prosecution wanted to show that the soil found on the pant of the Appellant was the same soil from where the dead body was recovered and it was the same soil on the clothes of the deceased. Similarly the prosecution also wanted to establish that the shirt found around the neck of the dead body was similar to the shirt seen worn by the Appellant in the photograph recovered from the dead body. The report mentions that there was similarity in the pair of chappals worn by the Appellant seen in the photograph and that of the chappals found at the spot. The soil comparison from the banian of the Appellant was not possible.

16. PW-8 Pankesh Tandel was the SHO, Nani Daman Police Station. On 3.10.2018 he was informed about finding of the dead body. He went there and saw the situation. He sent the dead boy to Government Hospital, Marwad. He took the FIR from ASI Purushottam Jadhav. It is produced on record at Exhibit-35. He registered the offence. He prepared the spot panchnama. He seized the photographs from the pocket of the dead body. He recorded statements of the witnesses. He showed the photographs to the Labour Contractor Himanshu Shahi. The Appellant was arrested. On 6.10.2018 he effected recovery of clothes of the Appellant i.e. banian and pant as well as Aadhaar card of the deceased from the Appellant's house. One bill of mobile phone was also recovered. On 9.10.2018 the doctor had given clothes of the deceased and also a shirt which was tied around the neck of the deceased. Those were seized under panchnama at Exhibit-22 in the presence of PW-3 Kalpesh Damania. He had got statements of Asan Singh Sugriv recorded under Section 164 of Cr.P.C.. It appears that the Advocate for the Appellant was absent and, therefore, cross-examination of this important witness could not be conducted. The Appellant declined the cross-examine of this witness.

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

17. The learned counsel for the Appellant made the following submissions:

- i. The evidence of the prosecution is weak. It does not complete the chain of circumstances excluding the hypothesis of commission of offence by somebody else.
- ii. The main evidence on which the prosecution has relied on is the 'last seen together' theory. For that purpose only PW-4 was examined. He is a totally unreliable witness. He was under the influence of liquor. He did not know anything.
- iii. There was a considerable time gap between the alleged quarrel and finding of the dead body or even the time of death. Therefore, the 'last seen together' theory is not incriminating in this case.
- iv. The recovery of banian and pant at the instance of the Appellant is doubtful. The learned Judge has rightly disbelieved that recovery panchnama.
- v. There was no reason for the Appellant to have carried

the wet muddy clothes to his house and kept them as they were in that situation.

- vi. The Appellant was not immediately arrested. He had ample time either to destroy the clothes or to wash them. There was no reason for the Appellant to carry the Aadhaar card of the deceased to his house to create evidence against himself.
- vii. The expert's evidence is based on his opinion. He had merely seen the similarities between the shirt found tied around the neck of the deceased and the shirt allegedly worn by the Appellant which was seen in the photograph.
- viii. There was no scientific analysis of this photograph vis-a-vis the shirt that was seized. The seizure of the shirt is itself doubtful. It was seized on 9.10.2018 whereas the dead body was recovered on 3.10.2018. There is no linking evidence as to which doctor has produced that shirt before the pancha. PW-1 is the only medical officer examined but she did not state about producing of that shirt before the pancha and the police.

- ix. There was no scientific analysis of the slippers found at the spot. They are not connected with the Appellant.
- x. The shirt seized on 9.10.2018 purportedly given by the doctor was not shown to PW-4 as he would have been the best person who could have stated that the Appellant was wearing the same shirt on 2.10.2018.

18. On the other hand, the learned SPP submitted as follows :-

- i. There is no dispute about the fact that the shirt was found tied around the neck of the deceased on 3.10.2018. Therefore, it cannot be even suggested that the shirt was planted or that the police procured a similar shirt to implicate the Appellant falsely in this case.
- ii. There is no reason to disbelieve the evidence of PW-4. He has given truthful answers including the fact that he had consumed alcohol. The spot where the dead body was found was near the polytechnic and more importantly near police quarters which matches the description given by PW-4 that they had gone near the

police chowky.

- iii. Finding of the shirt worn by the Appellant which was seen in the photograph is the most incriminating piece of evidence.
- iv. Moreover the scientific analysis showed that the mud found on the pant of the appellant was the same mud which was found at the spot where the dead body was lying.
- v. The Appellant had admitted that he had produced his clothes before the police.
- vi. Learned SPP explained that the postmortem was not conducted immediately because the family of the deceased could not come to Daman immediately.
- vii. The cause of death was asphyxia due to strangulation. The offence was committed by using a shirt. It was the Appellant's shirt.
- viii. There was quarrel between the Appellant and the deceased. Therefore, the motive stands established.
- ix. The evidence of PW-4 is corroborated by the statement

before the Judicial Magistrate. Since the Appellant was with the deceased on the previous day it was within his special knowledge as to what had happened to the deceased but the Appellant failed to discharge this burden under Section 106 of the Evidence Act.

- x. The conduct of the accused was also incriminating. He had not informed PW-4 regarding the whereabouts of the deceased on 2.10.2018.
- xi. Learned SPP submitted that thus the chain of circumstances is complete and the prosecution has proved its case beyond reasonable doubt.

Reasons and conclusion :

19. We have considered these submissions. The prosecution has relied mainly on the evidence of theory of 'last seen together'. In this case, according to PW-4, the deceased, the Appellant and PW-4 himself were together on 2.10.2018 and the dead body was found at around 11.00 a.m. on 3.10.2018. Since about evening on 2.10.2018 PW-4 had not seen the deceased but the Appellant was with PW-4. Therefore, there was a time gap of around 15 to 16 hours between the time when all of them were together and when

the dead body was discovered. The approximate time of death is not properly brought on record by the prosecution. The postmortem notes mention that the death could have occurred any time between 48 hours to 72 hours; but it is important to note that the postmortem was conducted on 9.10.2018 and the doctor could have only opined about the time of death from the date time of conduct of the postmortem examination. This time definitely does not match even approximately with the prosecution case. Therefore, it is quite clear that there is a considerable time gap between the two points of time i.e. when the appellant was in the company of the deceased and when the dead body was discovered. The prosecution, therefore, has not proved beyond reasonable doubt that it was only the accused who could have had an opportunity to commit the murder and no one else could have committed this murder.

20. The learned SPP tried to contend that the dead body was found from very near where all three of them had got down from the auto rickshaw. However, the prosecution has not led any cogent evidence in that behalf. In any case, the considerable time gap, as mentioned earlier, weakens the evidentiary value of the

‘last seen together’ theory.

21. The other circumstance is of finding of the mud on the pant of the Appellant. According to the C.A. report, the mud was of the same texture and quality as the soil which was seized from the spot where the dead body was found. The learned Judge has rightly disbelieved the recovery of clothes of the Appellant from his house. The learned Judge has rightly observed that there was no reason for the Appellant to keep those muddy clothes in his house without washing. In any case, as mentioned earlier, the memorandum statement pursuant to which the recovery is made is a very vague statement. It does not mention authorship of concealment, place of concealment and the articles i.e. clothes which were allegedly recovered. Therefore, it fails the test of a statement made under Section 27 of the Evidence Act.

22. Apart from that, in any case, the Appellant, the deceased and PW-4 were together. They had gone to the same spot. Therefore, finding the same soil on the clothes of the Appellant and the deceased is hardly incriminating. Even assuming that the murder had taken place at a place which was near from where they had got down, the big time gap between this period and the time of

discovery of the dead body, still gives rise to a reasonable doubt in favour of the Appellant.

23. As far as the 'last seen together' theory is concerned, the only evidence which is led by the prosecution is in the form of deposition of PW-4. As mentioned earlier, his evidence is highly unreliable. He had admitted that he was under the influence of liquor and that he did not know as to what had happened. Therefore, it is not safe to rely on his evidence.

24. The other circumstance is of recovery and seizure of the shirt which was tied around the neck of the deceased. In this context, the prosecution has not examined the doctor who had produced that particular shirt before the police. The shirt itself was produced after about six days of recovery of the dead body. The dead body was discovered on 3.10.2018 and the shirt was seized on 9.10.2018. That particular shirt was not shown to PW-4 who could have been the best witness to have identified that shirt as having been worn by the Appellant when the Appellant was in the company of the deceased. The expert had merely stated that the shirt was similar to the one which was seen worn by the Appellant in the photograph. That hardly can be said to be a conclusive piece

of evidence. Similar is the case with the seized chappals. The prosecution has not conclusively proved that those were the chappals worn by the Appellant at any time.

25. Since the prosecution has failed to prove the basic incriminating circumstances against the Appellant, the burden does not shift on the Appellant to explain certain facts which were within his knowledge.

26. There is one more aspect in this case. According to the police the Appellant had taken the Aadhaar card of the deceased and kept it in his house. That means the Appellant was clever enough to conceal the identity of the dead body but in that case he would not leave the photograph with the dead body showing his own presence near the seashore. Both these facts do not go together. It also raises some reasonable doubt regarding the prosecution case and recovery of those photographs and the Aadhaar card.

27. As a result of the above discussion, we are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt against the Appellant. Therefore, the Appellant deserves to be acquitted from this case. Hence, the order :

:: O R D E R ::

- i. The judgment and order dated 14.7.2022 passed by the learned Sessions Judge, Daman in Sessions Case No.2/2019 convicting and sentencing the Appellant for commission of the offence punishable under Section 302 of IPC is set aside.
- ii. The Appellant is acquitted of all the charges. Fine amount, if paid, be returned to him. The Appellant is in jail. He shall be released forthwith if not required in any other case.
- iii. Before being released, the Appellant shall execute a bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, for his appearance in case an Appeal is preferred. He shall execute such bond before he is released from jail.
- iv. The office shall take steps to send a copy of this judgment and order to the Appellant, who is in prison, as early as possible.
- v. The Appeal is disposed of accordingly. With disposal of the Appeal, the connected application is also disposed of.

(SANDESH D. PATIL, J.)**(SARANG V. KOTWAL, J.)**

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Deshmane (PS)

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