

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1306 OF 2024
WITH
INTERIM APPLICATION NO. 4939 OF 2024
IN
CRIMINAL APPEAL NO. 1306 OF 2024

Shravan Kisan Gaikwad]
Adult, Aged 32 Years, Occupation]
Presently lodged at Nashik Road Central]
Prison Nashik]
R/o- New Gaothan, Raulas,]
Taluka-Niphad, District Nashik] ... Appellant/ Applicant

Versus

The State of Maharashtra]
(the instance of Niphad, Police Station]
District, Nashik in respect of C.R. No.]
85/2019 u/s 302 of Indian Penal Code)] ... Respondent

Mr. Aliabbas Delhiwala, for the Appellant/ Applicant.

Ms. Mahalakshmi Ganapathy, Addl. P. P. for the Respondent-State.

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

DATE : 6th FEBRUARY, 2026.

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

1. The Appellant has challenged the Judgment and Order dated 21/05/2024 passed by the learned Additional Sessions Judge-I, Niphad, District Nashik in Sessions Case No.86 of 2019. By the

impugned Judgment and Order, the Appellant was convicted for commission of offence punishable under Section 302 of Indian Penal Code **(IPC)**. The Appellant was sentenced to suffer life imprisonment and to pay fine of Rs.10,000/- and to suffer simple imprisonment for 10 months in default of payment of fine.

2. Heard Mr. Aliabbas Delhiwala, learned Counsel for the Appellant and Ms. Mahalakshmi Ganapathy, learned Addl. P. P. for the Respondent-State.

3. The Prosecution's case is that the Appellant was a married man. He had a house at Raulas, Taluka Niphad, District Nashik. His family consisted of wife-Seema and two sons. The Appellant used to take up some petty jobs in Nashik and used to occasionally visit his house at Raulas. According to the Prosecution's case, he was doubting his wife's character. In the night between 30th and 31st of March, 2019, the Appellant entered his house where his wife and two young sons were sleeping. He gave blows with an axe on his wife's head. One of the sons woke up. The Appellant told him to keep quiet. He then left the place. According to the Prosecution's case, both the sons went to sleep. In the next morning they woke

up and saw that there was pool of blood around their mother's head. They went to their relatives in the village and told them about the incident. One of the relatives lodged the F.I.R. The Police carried out the investigation, different panchanamas were drawn. The statements of the witnesses were recorded. The dead body was sent for postmortem examination. The Appellant was arrested on 06/04/2019. At the conclusion of the investigation, the chargesheet was filed. The case was committed to the Court of Session.

4. During trial, the Prosecution examined nine witnesses including three relatives of the deceased who were residing in that village, the Medial Officer, the Police Officer and the panchas. The most important witnesses were son of the deceased and PW-8-Samadhan Beldar who had dropped the Appellant near his house on the night of the incident. The defence of the Appellant was of total denial. According to him, he was in Nashik, at the time of the incident. He was with one Mr. Popat Kardile. He had taken a job of helping in the construction of Mr. Popat Kardile's house and had slept in his house at the time of incident. Thus, he was nowhere near the village where the incident had taken place.

5. The learned Judge disbelieved his defence. He relied on the evidence of the son of the deceased, the other relatives and also on the evidence of PW-8 in reaching his conclusion for convicting and sentencing the Appellant.

6. Before referring to the evidence of the son of the deceased and PW-8, we will discuss the evidence of the other witnesses whose evidence comparatively is not that material for decision of this case.

7. PW-3-Bharat Amruta Gaikwad had lodged the F.I.R. He deposed that the deceased was his niece. She was married to the Appellant. After their marriage, initially they were residing at Ugaon-Khede. After six years of the marriage, the Appellant and the deceased started residing in village Raulas. Both of them were working as labourers. He deposed that the Appellant used to go to Nashik for work. Importantly, he has stated that many times the Appellant was not returning to the house for many days. He was addicted to liquor. PW-3's house was situated near the house of the deceased. On 31/03/2019 at about 7:00 a.m., PW-3 heard shouts from his relatives Kalpana Gaikwad and Indubai Jadhav. The shouts

were coming from the deceased's house. They reached there. Kalpana Gaikwad told him that the deceased was lying in a pool of blood as the Appellant had killed her. He went inside the house and saw that the deceased was lying in a pool of blood. She had sustained two blows on her head. PW-6-Harshad Gaikwad, the elder son of the deceased told them that, in the night there was dispute between the Appellant and the deceased. The Appellant gave blows of axe on his mother's head. As far as the statement made by Harshad Gaikwad to this witness is concerned, it is hearsay evidence and hence inadmissible. After he came to know about this incident, PW-3 made a phone call to the Police Patil and informed him about the incident. He telephonically informed the paternal aunt of the deceased. She told him that, in the night, the Appellant had been to her house and after meals he had gone to Niphad by Panchavati Express. However, even that paternal aunt Shakuntula is not examined by the Prosecution and whatever she told this witness also becomes hearsay evidence. He then called one Sanjay Jadhav who was his nephew and informed him about the incident. He told PW-3 that he had seen the Appellant in the night at 2:30 a.m. at Niphad Railway station. Even Sanjay Jadhav is not examined therefore, his statement made to PW-3, also is hearsay

evidence and hence, inadmissible. PW-3 then went to Niphad Police Station and lodged his complaint. The F.I.R is produced on record at Exhibit-21.

In the cross-examination, he deposed that his house was at a distance of about 100 ft. from the house of the deceased. Sanjay Jadhav's house is situated near the house of the deceased. The Appellant was married to the deceased for 13 years. There was no dispute pending between the Appellant and the deceased in any Court or in any Police Station. Importantly, he admitted that the deceased was living with their support, meaning that she was living on the support of her relatives. He further added that the Appellant used to go for work at Bytco Point, Nashik. He accepted that he had not seen the Appellant for two to three days prior to the incident. There is an important omission from his police statement. He had not stated to the Police that at the time of incident Harshad was awake and was frightened and that he had seen the incident by pulling the quilt. This statement he had made before the Court in his examination-in-chief but this important statement was missing from his police statement. This is an important omission. In any case, as mentioned earlier, what Harshad told him was hearsay.

8. PW-2-Bapu Jadhav, was another relative of the deceased. He was maternal cousin of the deceased. His house was adjacent to the deceased's house. He deposed that the Appellant was addicted to liquor and there would be frequent quarrels between the Appellant and the deceased. On 31.03.2019 in the morning, he heard some noise. He went to the house of the deceased and saw that she was murdered. Both her sons told him that in the night, their father i.e. the Appellant gave axe blows on the head of the deceased. PW-2 then telephonically informed his brother Sanjay. He further deposed that, Sanjay told him that, on the previous night Sanjay had seen the Appellant at Kundewadi railway station. As mentioned earlier, this Sanjay is not examined. He further deposed that he then called his maternal uncle Bharat Gaikwad i.e. PW-3 about the incident and then PW-3 informed the Police about the incident. This particular statement is contrary to PW-3's evidence as PW-3 has not referred to any phone call by PW-2. Both the statements of PW-3 and PW-2 cannot be true at the same time because PW-2 and PW-3 have both stated that they had gone to the spot of incident in the morning after hearing the noise, but they had not seen each other at the spot; instead, PW-2 had called PW-3 telephonically and had informed him about the incident. Therefore,

there is a serious doubt as to whether either of these two had actually gone to the spot and whether the sons of the deceased had told them anything.

In the cross-examination, he stated that PW-5-Kalpana Gaikwad was residing near his house. Kundewadi station was at a distance of 2 km from their house. In his police statement he had not mentioned that PW-6-Harshad had told him that his father had been to their house and had given blows of axe on the head of the deceased. He accepted that Harshad had not told him that fact but he denied the suggestion that the other son of the deceased Jayesh had not told him this fact. In further cross-examination, he accepted that when he went to the spot, PW-3-Bharat Gaikwad was not present; but all of them were present when police reached there. Therefore, it is still doubtful as to who had informed the Police. He accepted that the house, where the incident had taken place was belonging to the Appellant. He also accepted that, the Appellant was going out of station for labour work occasionally and that PW-2 and others were helping the deceased, if required.

9. PW-5-Kalpana Atmaram Gaikwad was aunt of the

deceased. She was residing nearby. On the day of the incident PW-6-Harshad came to her house and called her to his house to see what red substance was spread near the deceased. On this information, PW-5 and others went to the house of the deceased and saw that she was dead. After that, the sons of the deceased told her that the Appellant had given axe blows on the head of the deceased.

In the cross-examination, she accepted that she had not told the Police that Harshad had been to her house and had given that information. PW-2-Bapu Jadhav's house is adjacent to the house of the deceased and PW-5's house was situated at a longer distance. Bharat Gaikwad's house was situated even further.

10. PW-1-Mahesh Sahadeo Gaikwad was a panch for the spot and seizure panchanama which is produced on record at Exhibit-17. The spot of incident is hardly in dispute. The Police had seized certain articles from the spot. They had seized the blood mixed soil, quilts, pillow and the axe. All these articles were seized

11. PW-7-Doctor Krushna Yadav had conducted the

postmortem examination. He had observed one open wound over vertex with open fracture of vertex crossing from right parietal to left temporal bond, measuring 20 x 5 cm x brain deep. The cause of death was haemorrhagic shock due to massive intracranial bleed due to head injury due to assault. The injury was possible by the axe shown to him. The postmortem report was produced on record at Exhibit-31 and the Medical Officer's opinion is on record at Exhibit-32.

12. PW-4-Madhav Gavle was a panch in whose presence clothes of the Appellant were seized. The seizure Panchama is produced on record at Exhibit-23. The CA Report produced on record shows that there was no blood detected on the clothes of the Appellant and, hence, this circumstance is innocuous.

13. PW-8-Samadhan Beldar is an important witness. He deposed that on 30.03.2019, he was working in the Niphad Tahsil Office. At about 10:30 p.m. on that day, after finishing his office work, he was going towards his house on a motor cycle. He met the Appellant near Kundewadi. On the Appellant's request, he gave him lift and dropped him near his house in village Raulas. On the next

day at about 9:30 a.m., when PW-8 was proceeding towards his Niphad Tahsil Office on his motorcycle, he saw a crowd near the Appellant's house. He made inquiries. He was informed that the Appellant had killed his wife. After that he went to the office.

In the cross-examination, he accepted that Niphad Police Station was hardly at a distance of one minute from his office. In the cross-examination he could not tell the name of the person from the crowd who had informed him about the murder. When he reached the Appellant's house in the morning, there were no police officers present but he was not sure whether they were present inside the house.

14. PW-6-Harshad Gaikwad is the most important witness in this case. He is the son of the deceased. At the time of his deposition, he was 13 years of age on 07/06/2023. The incident had taken place in March, 2019. That means, he was around 9 years of age at the time of the incident. The learned trial Judge at the time of recording his evidence was satisfied that PW-6 was able to understand the sanctity of oath and was giving rational answers. PW-6 deposed that at the time of the incident, he was residing at

village Raulas with his parents and brother. In the night of the incident, he himself, his younger brother Jayesh and mother were sleeping. In the night his yougner brother Jayesh woke him up. PW-6 saw from the quilt that the Appellant had assaulted the deceased with an axe. He gave blows on PW-6's mother's head. PW-6 further deposed that, in the morning, his brother Jayesh woke him up and Jayesh called their grandmother-Indira. Jayesh told them that some red substance was oozing from his mother's head. PW-6 identified the axe produced in the Court. He identified his father.

In the cross-examination, he deposed that at the time of the incident, he was taking education in the primary school in the 3rd standard in Raulas. Bharat Gaikwad's house was at a distance of 10 minutes walk from their house. He did not know Babu Jadhav. His brother Jayesh was 2 years younger than him. He was not going to school at the time of the incident. PW-6 never visited village Raulas after the death of his mother. He denied the suggestion that two to three days before the incident his father had been to Nashik for work. He deposed that on that day, his father had gone out with his friends but he did not know where his father had gone. He denied the suggestion that, his mother fell on the axe and suffered

the injury. He denied the suggestion that he was deposing false at the instance of his neighbours. His statement was recorded under Section 164 of Cr.P.C. but it was not shown to him and hence was not exhibited properly.

15. PW-9-Vishnu Mhatardeo Avhad is the Investigating Officer. He deposed about the investigation carried out in this case. He investigated the present offence registered vide C.R. No.85/2019 at Niphad Police Station. He conducted the spot panchanama, inquest panchanama and sent a letter to the Judicial Magistrate, Niphad for recording statement of PW-6 under Section 164 of Cr.P.C. The Prosecution has not produced the said statement on record as per the procedure and it is not exhibited. He sent the seized articles to Forensic Science Laboratory, Nashik. He arrested the Appellant on 06/04/2019 and seized his clothes under the seizure panchanama at Exhibit-23. The seized clothes were also sent for forensic examination.

In the cross-examination, he stated that the Niphad Tahsil Office is situated adjacent to Niphad Police Station. The employees of Tahsil Office were called to act as panchas. It was revealed in the

investigation of other witnesses that PW-8-Samadhan Hiralal Beldar had given lift to the Appellant. PW-9 therefore, searched for Samadhan Beldar and recorded his statement on 08/04/2019. PW-8's name was revealed from the secret information received by him.

16. This, in short, is the evidence led by the Prosecution. As mentioned earlier, no blood was detected on the clothes of the Appellant as can be seen from the CA Certificate at Exhibit-27. The other articles including clothes of the deceased and the axe shows presence of human blood. The blood group of the blood on the quilt and pillow was of 'O' Group. The blood group on the other articles was inconclusive.

17. Learned Counsel for the Appellant submitted that the Prosecution's case rests on the evidence of PW-6, but, it is totally unreliable. His conduct is extremely doubtful. He has deliberately given answers to help the Prosecution. He has denied the knowledge that PW-2-Bapu Jadhav was residing nearby. His conduct is completely unnatural. There is no corroborative admissible piece of evidence. PW-8's statement was recorded by

Police on 08/04/2019. PW-8 is a got up witness. The other son of the deceased is not examined. The other important witnesses who had allegedly seen the Appellant in the night are not examined. No blood is detected on the clothes of the Accused and no other clothes of the Accused are recovered.

18. Learned A.P.P. on the other hand submitted that PW-6 was only 8 to 9 years of age and therefore, it was not unnatural that he would be in a shock and would go to sleep for the entire night. In the morning, he had immediately informed the neighbours, therefore, his conduct is not unnatural. He had described the incident in detail. The other witnesses have not seen the incident but they have corroborated the conduct of the son of the deceased of informing them about the incident. She relied on the evidence of PW-8 who had dropped the Appellant near his house in the night. Shortly thereafter, he had committed the murder of the deceased. She submitted that since the Appellant was arrested after about 6 days, he could have destroyed the blood stained clothes which he was wearing at the time of the incident. Therefore, not finding of the blood on Appellant's clothes would not help him in his defence. She submitted that if it was the specific defence of the Appellant

that he was in Nashik with someone else then it was easy for him to have proved his defence but no evidence is led in that behalf by him. He has not explained the facts which were within his exclusive knowledge and therefore adverse inference needs to be drawn.

19. We have considered these submissions. As submitted by both the learned Counsel, the Prosecution's case depends heavily on the evidence of PW-6-Harshad Gaikwad. He was around 8 to 9 years of age at the time of the incident. In a given case, the conviction can be based on the testimony of a child witness, but his evidence is required to be scrutinized carefully. In the present case, we have carefully considered his evidence and we have examined whether his evidence can be relied on for convicting the Appellant. PW-6 has stated that in the night, he himself, his brother Jayesh and mother were sleeping. He woke up because his brother Jayesh woke him up. Then he saw the incident from the quilt. After having seen the incident his conduct is completely unnatural. According to him, the father had left the house but PW-6 did not raise any alarm or shouts. He did not rush to the neighbours. The relatives of the deceased were residing in the neighbourhood. They were helping the deceased and her sons as is reflected from their evidence. PW-6 and

his brother did not react in any manner but they simply went to sleep. In the morning, PW-6's brother Jayesh woke him up and then they called their grandmother-Indira. Their grandmother is not examined by the Prosecution. We find that the conduct of PW-6 is completely unnatural. It is not possible to believe that he and his brother would quietly sleep in their room with their mother having been murdered by their father with an axe with blood spreading all around the dead body. The Prosecution's evidence is also not clear as to exactly which witness was informed by PW-6 first. According to him, they had told their grandmother-Indira, who is not examined, but, the other witnesses are not consistent as to how this information was given to others in the village. PW-5 has stated that PW-6 came to her house and the first thing he told was that there was some red substance in his house near his mother. He did not even tell her at that point of time that his father had given blow of axe on the head of the deceased.

20. The Prosecution has not examined Harshad's younger brother Jayesh. Though he was two years younger than Harshad, atleast some efforts could have been made to get him before the Court. As mentioned earlier, there is inconsistency between the

evidence of PW-2 and PW-3 as to how they came to know about the incident and who reached at the spot. All these circumstances together raise a serious doubt about the Prosecution's case.

21. The evidence of PW-8-Samadhan Beldar could have been another incriminating circumstance for the Prosecution against the Appellant, however, we find that even his evidence is not reliable. He was a government servant working in Talathi Office. The said Office was adjacent to the Police Station. For about 8 days PW-8 did not inform the said fact either to his villagers or even to the Police. He had no reason to shield the Appellant. He was attending his work as usual. Some of the employees from his Office were called to act as panchas but at no point of time, he informed the Police that he had dropped the Appellant near his house on the night of the incident. His statement was recorded two days after the Appellant was arrested. The Investigating Officer has not given clear answer how they came to know that PW-8 had dropped the Appellant near the Appellant's house. The Investigating Officer has attributed that knowledge to a secret information. It is also important to note that nobody else from the village had seen PW-8 and the Appellant together in the night near his house. Nobody had

seen the Appellant anywhere near his house or in the village. It is the Prosecution's case itself that the Appellant used to work in Nashik and only on some occasions used to visit his house in village Raulas. There is evidence of the witnesses to show that 3 to 4 days prior to the incident he was not in the village. PW-3 has categorically stated that he had not seen the Appellant two to three days prior to the incident. There is a reference to Sanjay Jadhav and Shakuntala Jadhav who had allegedly seen the Appellant in the night near the railway station but those important witnesses are not examined. It was not difficult for the Prosecution to examine those two witnesses to establish presence of the Appellant near the village Raulas.

22. Thus, the Prosecution has failed to establish the presence of the Appellant in village Raulas when the incident had taken place. The Prosecution's case itself, as mentioned earlier, is that the Appellant was working on many occasions in Nashik. Even the PW-6 had stated that he, his brother and his mother had gone to sleep in the night. Thus, the Appellant was not in the house. The Prosecution has not proved that the Appellant was in the village therefore, it was not for the Appellant to have explained the facts

concerning the murder.

23. Another circumstance in favour of the Appellant is that, there were no blood stains found on his clothes. While it is true that he was arrested after 6 days and therefore, he could have easily concealed or destroyed his clothes which he might have been wearing at the time of the incident; but the investigation has not proceeded in that direction to find as to what the Appellant did with his clothes. Therefore, this is another loophole in the Prosecution's case. It is not possible to rely on the evidence of the sole eyewitness PW-6-Harshad (son of the deceased). PW-8 is not a reliable witness. The Prosecution has not proved any other circumstance connecting the Appellant with the offence. As a result, in our opinion, the Prosecution has not proved its case beyond a reasonable doubt. The benefit of doubt in this case must go to the Appellant. Hence the following order.

ORDER

- (i) Criminal Appeal No.1306 of 2024 is allowed.
- (ii) The Judgment and Order dated 21/05/2024 passed by the learned Additional Sessions Judge-I, Niphad,

District Nashik in Sessions Case No.86 of 2019 convicting and sentencing the Appellant is set aside. The Appellant is acquitted from the charges for which he faced the trial. The Appellant is in custody, he shall be released forthwith, if not required in any other case.

(iii) Before being released the Appellant shall execute PR Bond in the sum of Rs.15,000/-under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for his appearance in case an Appeal is preferred against his acquittal.

(iv) Accordingly, the Criminal Appeal No.1306 of 2024 is disposed of.

(v) In view of dismissal of the Appeal, the connected Interim Application Nos.4939 of 2024 is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)