IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1256 OF 2019
WITH
INTERIM APPLICATION NO. 2891 OF 2025
WITH
INTERIM APPLICATION NO. 1057 OF 2024

Durgaprasad Shrirajnarayan Pande
Age- 29 years, Occupation- Nil, R/at- S No. 26/2, Near Jaygurudev Society, Kharadi, Pune- Originally from Rampura Thuwa, Taluka- Musafirkhan, District- Sultanpur,
(Presently in custody at Yerwada Central Jail) .. Appellant

Versus

The State of Maharashtra
(Yerwada Police Station CR. No. 523/2013) .. Respondent

...

Ms Pranali Kakade, for the Appellant.

Dr. Dhruti Kapadia, Amicus Curiae, for the Appellant.

Ms Sangeeta Shinde, APP, for the Respondent-State.

...

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATED : 12th MARCH, 2026

Judgment : (Per Manjusha Deshpande):-

1. The Appellant challenges the Judgment and Order dated 25.07.2016, passed by the learned Adhoc Additional Sessions Judge- 1, Pune, convicting the Appellant/Accused for offence

punishable, under Section 302 of the Indian Penal Code, thereby sentencing him to life imprisonment.

2. The brief facts of the present case as pleaded by the prosecution are as under:

The informant lodged the FIR on 24.12.2013, alleging that on 23.12.2013, at about 10:15 p.m., while he was taking a round at the construction site undertaken by his maternal uncle, he heard a loud noise coming from the temporary tin shed of deceased Siddharth. The Appellant and Siddharth were residing in the temporary tin shed at the construction site. Upon hearing the noise, he moved towards it to ascertain its cause and saw ongoing quarrel taking place between Siddharth and the Appellant. The Appellant gave knife blow on the neck and face of Siddharth. Siddharth came running out of the room with bleeding injuries and fell on a heap of sand. Thereafter, the Appellant again assaulted him with a knife on his neck. Due to the loud noise, people gathered nearby at the spot, and upon seeing them, the Appellant ran away. However, he was followed by two persons who caught hold of him.

In the meanwhile, somebody had called the police and the Appellant was arrested. On inquiry by the police, the Appellant stated that, deceased Siddharth has stolen Rs.3000/- from him, which he was demanding back, while doing so there was exchange of heated words between them and Siddharth started assaulting him, therefore, he picked up the knife lying in the room and gave blow on his neck and face. The police admitted Siddharth in the hospital, where he succumbed to the injuries.

The informant filed the FIR, on the basis of which, CR No.

523 of 2013 came to be registered and the investigation was carried out. The spot panchanama at Exhibit – 20 was drawn. Sample of blood on the clothes, wrist watch of Casio Company lying on the spot with blood stains, sample of blood stained sand and simple sand were collected. The weapon of assault, i.e. knife, was seized from the Appellant under panchanama at Exhibit- 21. Clothes of the Appellant were also seized under panchanama at Exhibit – 22. Postmortem was carried out on the dead body, which is at Exhibit 48.

Charge under Section 302 of the IPC was framed against the Accused. The prosecution has established its case through PW-1 Sandeep, who is the sole eye witness and the informant; PW-2 Atul, the panch witness for panchanamas at Exhibits- 20 and 21; PW-3 the Investigating Officer and PW-4 Dr. Vijay, who conducted the postmortem. The prosecution has produced evidence to establish the guilt of the accused for the offence under Section 302 of the IPC, which has resulted in his conviction.

3. Ms Kapadia, learned counsel for the Appellant submits that in the Judgment and Order of conviction, the trial Court has failed to appreciate the right of private defense exercised by the Appellant, as provided under section 97 of the IPC, and this stands corroborated by the injuries present on his person. The learned counsel submits that, PW-1 is not a reliable eye witness. His testimony is full of contradictions and omissions. The entire case of prosecution is based on the testimony of PW-1, who is the sole eye witness. The testimony of the said eye witness is not supported by any other corroborative evidence.

The testimony of PW-1 is doubtful since the offence has

taken place in the night after 10 pm, when the light were very poor, hence, reliance on the sole testimony of PW-1 is not trustworthy.

It is further submitted that the material evidence is insufficient and lacking. The C.A. report of the deceased does not establish the blood group of the deceased. The conviction based on the sole testimony of the eye witness, who has seen the incident occurred in poor light at night, is not reliable and not corroborated by any other cogent evidence. Hence, the impugned Judgment and Order of conviction is required to be quashed and set aside.

4. Per contra, the learned APP Ms. Sangeeta Shinde appearing for the State submitted that, since this case is totally based on the testimony of the eye witness, no corroboration of other evidence is required. In fact, the testimony of PW-1 is completely reliable. The offence has taken place in his presence and he has closely watched the incident taking place. The Appellant has been caught red handed while running away from the spot with the weapon, in blood stained clothes, therefore, there is no question of doubting the testimony of PW-1. The testimony of PW-1 is corroborated by the injuries in the postmortem report conducted at Exhibit 48. PW-4 has categorically stated that injuries at Serial No. 2, 4, 5, 7 to 12, 15, 18, 23, 24 and 25 are possible to be caused by knife, which has been seized from the Appellant.

5. The learned APP further submits that though the Appellant has resisted the conviction on the ground of exercise of right of private defence, the number of injuries exceeds the limit of right of private defence; which do not

commensurate with the stand of private defence taken by the Appellant. There are 26 injuries, which cannot be said to have inflicted while exercising right to private defence. As per the postmortem report, the Appellant has inflicted 26 injuries on the deceased. Thus, it is difficult to comprehend that such injuries could be inflicted in exercise of right of private defence. She therefore submits that in view of the testimony of Eye witness, PW-1; alongwith the fact that appellant was immediately apprehended at the spot alongwith the weapon 'knife', establishes the guilt of the Appellant. Thus, according to her, the learned Additional Sessions Judge has rightly appreciated the evidence and convicted the Appellant, thus the judgment convicting the Appellant does not deserve any interference.

6. We have heard the respective counsel and we have also perused the paper-book along with the record and proceedings.

The Appellant has raised challenge to his conviction under section 302 of the IPC on the ground that the testimony of PW-1 is not reliable since the incident had taken place in the poor light condition at night, therefore, PW-1 was not in a position to identify the Appellant, hence, there is every possibility of mistaken identity of the Appellant. So far as this ground is concerned, PW-1 in his testimony has stated that, he was assisting his maternal uncle on the construction site, therefore, he was conversant with the labours on the site. He has also deposed that he used to make payment of the labours including the Appellant and the deceased, therefore, even though there was darkness during the incident at about

10:10 p.m. in the night, there was no possibility of mistaking identity of the appellant by PW-1. More particularly, in view of the fact that the Appellant was immediately caught while running from the scene of offence. Thus, there does not remain any doubt about the identity of the Appellant.

Though PW-1 is the sole eye-witness of the incident, his testimony is clear and unambiguous and does not create any doubt whatsoever. There are no inconsistencies or contradictions in his testimony which could be elicited during his cross-examination. The fact of infliction of blow of knife is not challenged in the cross examination. It is settled position of law that the testimony of single eye witness is sufficient for recording conviction, provided his testimony is reliable and is of sterling quality.

As observed hereinabove, we do not find any inconsistency or contradiction in the testimony of PW-1. Therefore, we do not find that there is necessity of plurality of witnesses, as testimony of PW-1 itself is reliable and trustworthy.

In this regard, We may profitably refer to the observations of the Hon'ble Supreme Court about reliability of testimony of single eye witness in case of ***Vadivelu Thevar Vs. State of Madras***[1]**,** which reads thus:

> *"10..... On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:*

1 1957 SCC OnLine SC 13

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts 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 the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as in 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence-- 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian legislature has not insisted on laying down any such exceptions to the general rule recognised in Section 134 quoted above. The section enshrines the well-recognised maxim that "Evidence has to be weighed and not counted". Our legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to

be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way—it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective

of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

7. It also needs to be appreciated that the weapon 'knife' was seized from the custody of the Appellant after he was taken in custody by the police immediately after commission of the offence. When the personal search of the Appellant was taken, a knife was found concealed at his waist. Panchanama Exhibit-22, while seizing the knife was drawn, which is proved by PW-2. PW-2 has also identified the Appellant to be the same person from whom the knife is seized. He has also identified the knife Article-C. The testimony of this witness remained unshaken. No serious dent could be made by the defence counsel in his testimony. There are no serious omissions or inconsistencies in the deposition of the said witness. Thus,

there cannot be any challenge to the recovery of the weapon knife from the possession of the Appellant.

8. The next limb of argument of the learned counsel for the Appellant is about his exercise of right of private defence. Although in his statement under Section 313 of the Cr.P.C. the Appellant has stated that he did not assault the deceased, on the contrary the deceased had assaulted him, he admits that he held the knife. He also admits that there was quarrel between him and the deceased. He has also admitted that he was sure that deceased Siddharth has stolen Rs.3000/- from him. In order to prove his stand of right of private defence, the Appellant has also examined defence witness Dr. Darshan Kishor Gaud. According to the Doctor, after the Appellant was taken in police custody, he was examined by the Doctor and he found three injuries on his person; (i) incised wound over right hand between thumb and index finger 3 X 0.5 X 0.5 cm. (ii) Incised wound over parieto occipital region of scalp 3 X 0.5 X 0.5 cm. (iii) Abrasion over lower back 6 X 0.5 cm. and 7 X 0.5 cm. The doctor has further stated that these injuries are not life-threatening injuries and they are possible in a scuffle.

In the cross-examination DW-1 has admitted that, the injury on the hand of the Appellant is possible if a person was carrying knife at the time of scuffle. This statement clearly supports the statement of the Appellant recorded under section 313 of Cr.P.C. where he stated that there was knife in his hand at the time of the incident. It also corroborates the testimony of PW-1, who has stated that he saw the Appellant armed with a knife and the Appellant was assaulting the deceased with the said knife. He has further stated that he saw

that the deceased came running towards heap of sand and fell on it, and after he fell on the heap of sand, the Appellant has assaulted him on his neck. Thus, it is evident that even after falling on the heap of sand, the Appellant has assaulted the deceased on the neck which is a vital part of body, which most likely caused his death. The fatal blow of knife inflicted on the deceased after he fell on the heap of Sand, by the appellant by no stretch of imagination can be said to be inflicted in exercise of right of private defence. There was no eminent threat or danger to the life of appellant, when the deceased had already fallen down on the heap of Sand.

Thus, we have no hesitation in holding that the death of deceased Siddharth was caused intentionally by the Appellant, particularly in view of the quarrel that had ensued between them. The number and nature of the injuries also speak volumes. The injuries inflicted are wholly disproportionate to the threat allegedly apprehended by the Appellant and do not support the plea of private defence taken by him.

9. A useful reference can be made to the principles laid down by the Hon'ble Supreme Court in case of ***Darshan Singh Vs. Sate of Punjab and Another***[2] wherein it is held that, while exercising right of private defence the force used by the accused should not be wholly disproportionate or greater than necessary for protection of the person or property. The relevant paragraph laying down the principles, after appreciating various judicial pronouncement on the issue

2 (2010) 2 SCC 333

rendered by the Supreme Court, is reproduced hereinbelow:

> ***"58.*** *The following principles emerge on scrutiny of the following judgments:*
>
> *(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.*
>
> *(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.*
>
> *(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.*
>
> *(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.*
>
> *(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.*
>
> ***(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.***
>
> *(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.*
>
> *(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.*
>
> *(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.*

> *(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."*
>
> ***[Emphasis Supplied]***

Thus, in view of the aforementioned decision, we are unable to accept the stand of the Appellant about the exercise of private defence. The number of injuries on the deceased establishes that, Appellant has exceeded the right of Private Defence, hence he would not be covered by section 100 of the IPC.

Hence, we do not find any case made out by the Appellant for causing interference in the judgment and order of the learned Ad hoc Sessions Judge, Pune-1, recording conviction against the Appellant for the offence punishable under Section 302 of the IPC, sentencing him to undergo imprisonment for life.

In the result, the challenge to the impugned Judgment and Order fails and the Appeal stands dismissed.

Before parting with this judgment, we deem it appropriate to record our appreciation for the valuable assistance rendered by Dr. Dhruti Kapadia, learned Amicus Curiae, in this matter.

Pending Interim Applications also stand disposed of.

RUSHIKESH VISHNU PATIL
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Date: 2026.06.16 12:59:30 +0530

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

Rushikesh