



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 682 OF 2016

Sagar Sanjay Barve
Age- 22 years, Occ: Agriculturist
R/at. Samrat Nagar, Dindori Road,
Panchavati, Nashik.
(at present lodged in Nashik Road,
Central Prison, Nashik)

.... Appellant
(Orig. Accused No.1)

V/s.

1.The State of Maharashtra
(Through Panchavati Police Station,
Nashik)

2.Pandurang Narayan Keyute
Aged:55 years, Occ:Driver
R/o. Near Mico Hospital, Galli No.4,
Dindori Road, Panchavati, Nashik

.... Respondents

Mr. Rajesh Khobragade a/w Mr.Ludha Bhoir. Mr.Vinit Dholre,
Ms.Gayatri Naik, Mr.Akash Tayade, Ms.Gargi Gupta, Mr. Sanjeev Gaikwad
for the Appellant.
Mr. Tanveer Khan, APP for the Respondent - State.

CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.

DATE : 03rd NOVEMBER, 2025

JUDGMENT (Per : SHYAM C. CHANDAK, J.)

1) Present Appeal is directed against the judgment and order dated 30/08/2016 in Sessions Case No.335 of 2015 passed by the learned Additional Sessions Judge, Nashik, thereby the appellant was convicted for

the offences punishable under Sections 302, 324 and 34 of the Indian Penal Code (“I.P.C.”) and under Sections 135 of the Maharashtra Police Act, 1951 (“**the Act**”) and he was sentenced as under:

Under Section 302 of the I.P.C., to suffer life imprisonment and pay fine of Rs.5,000/- and in default to suffer simple imprisonment for six months. Under Section 324 of the I.P.C., to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for two months. Under Section 135 of the Act, to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- and in default to suffer simple imprisonment for one month. It was directed that the sentences under Section 324 of the I.P.C. and Section 135 of the Act shall run concurrently giving benefit of set under Section 428 of the Code of Criminal Procedure, 1973. Out of the total fine amount, Rs.5,000/- was directed to be paid as compensation to the Respondent No.2 – Pandurang Kuyate, who was the father of the deceased – Yogesh and brother-in-law of the first informant Rangnath Takate (PW.1).

2) As unfolded from the record, the prosecution story was that on 10/07/2015, at about 7.30 am, PW.1 was present at home. At that time, his neighbor Ms. Lilabai Karankar called him and informed that a quarrel was going at the public toilet, which was near their residence. PW.1 came out and saw that a crowd had gathered near the said public toilet. Immediately,

he went there and saw that the appellant and his associate/a juvenile in conflict with law (“**JB**”) were beating his nephew Yogesh. The appellant was giving knife blows to Yogesh. P.W.1’s brother-in-law Pandurang Kuyate, his other nephew Vilas Pandurang Kuyate and P.W.5 Dinesh Thakur were rescuing the quarrel. P.W.1 also tried to rescue Yogesh. However, the appellant got annoyed and therefore, he gave a knife blow on the chest of P.W.1. Then the appellant and the JB fled away from the spot. P.W.1 chased them but he could not find them. P.W.1, then returned to the spot. Yogesh had sustained bleeding injuries. Pandurang Kuyate removed Yogesh to the Civil hospital in an auto rickshaw. Since P.W.1 had also sustained bleeding injury on his chest, P.W.5 took him on his motor-cycle to Suyog hospital for treatment. Meanwhile, P.W.1 learnt that at the time of the incident Yogesh had gone to the said public toilet. The appellant and the JB raised a quarrel with Yogesh on account of the number in the queue for toilet and then the appellant and the JB assaulted Yogesh and P.W.1 with a knife.

3) On getting information of the incident, the police visited P.W.1 at Suyog hospital and recorded his statement-cum-report (Exh.13) therein he had narrated the incident as stated above. Initially, the police registered that Report at FIR No.241 of 2015 under Sections 307 and 34 of I.P.C. and Section 135 of the Act. By that time, Yogesh had succumbed to his injuries. Therefore, an offence of Section 302 I.P.C. was added. During investigation

the police recorded the spot panchnama, inquest panchnama and referred the body for post mortem. The Investigation Officer recorded the statement of the witnesses, arrested the appellant and seized the clothes of Yogesh, P.W.1 and the appellant. The knife used in the offence was recovered by the police pursuant to the appellant's voluntary statement recorded under Section 27 of the Evidence Act.

Investigation revealed that, a quarrel had occurred in-between the appellant and Atul Kuyate (P.W.7) on account of their number in the queue for the toilet. Therefore, the appellant and the JB assaulted P.W.7. When the above named persons tried to rescue the quarrel, the appellant stabbed Yogesh and P.W.1 on vital parts of their body. Yogesh died due to the injuries. Hence, the charge-sheet was filed against the appellant in the 2nd Court of the learned Judicial Magistrate First Class, at Nashik.

4) The trial Court framed the charge of the offences punishable under Sections 302, 307 and 34 of I.P.C. and Section 135 of the Act.

5) In order to prove the charge, the prosecution examined 16 witnesses, which include the first informant, the eye witnesses P.W.5 & P.W.7, autopsy surgeon, various panch witnesses, carrier to CA, Chemical Analyser, Investigating Officer, etc. In addition, the prosecution rests its case on various documents of investigation as referred to above. The closure of the prosecution evidence followed by the statement of the appellant under

Section 313 of Cr.P.C. in which he denied the incriminating evidence. The defence of the appellant was of total denial and false implications. After considering the evidence in the light of the rival arguments, the trial Court held the appellant guilty of the murder of Yogesh and causing hurt to P.W.1. Therefore, convicted and sentenced him as aforesaid. Hence, this Appeal.

6) We have heard Mr. Khobragade, the learned counsel for the Appellant and Mr. Khan, the learned APP for the State. Perused the record.

7) The learned Counsel appearing for the appellant took us through the prosecution evidence and made two fold submissions. Firstly, he has submitted that the incident did not occur as testified by P.W.1, P.W.5 and P.W.7. He has urged that P.W.5 and P.W.7 are not the reliable witness. The second limb of his submission is that even if the prosecution case as established from the evidence on record is accepted, the appellant cannot be held guilty for the offence of Section 302 of I.P.C. because there was no intention on the part of the appellant to commit the murder as Yogesh was not present when the quarrel had started between P.W.7 and the appellant; the incident occurred at the spur of the moment and the knife blows were inflicted only when Yogesh tried to stall the quarrel. Therefore, the impugned conviction and sentence may be brought down to Section 304 Part II of I.P.C., submits the learned counsel.

8) The learned APP appearing for the State, on the other hand,

submitted that there is absolutely no materiel in the evidence to discard the testimonies of the injured P.W.1 and the two eye witnesses P.W.5 and P.W.7. Looking at the size of the knife used in the offence; the fact that the knife blows were inflicted on the vital parts of the body of Yogesh and P.W.1; and the body offences committed in the past by the appellant, the learned trial Court has rightly held that there was intention to commit the murder and cause the hurt. As such, the impugned conviction and sentence is proper and it need not be upset.

9) In the backdrop of these submissions, we have considered the evidence on record. In so far as the testimony of P.W.1 is concerned, he has deposed in line with his narration in the Report (Exh.13). In short, his evidence is that at the time of the incident, he was present at home. Smt. Lilabai Karmarkar called him and informed that a quarrel was going on near the public toilet. Therefore, he came out and saw that there was a crowd near the toilet. He then went to the spot. At that time, the appellant and the JB were assaulting his nephew Yogesh with kicks and fist blows. The appellant was armed with a knife and he stabbed Yogesh in the chest and stomach. P.W.1 deposed that he tried to rescue Yogesh but the appellant got annoyed and gave him a knife blow on his chest. P.W.1 deposed that after assaulting him, the appellant started to run away. He tried to catch the appellant but he could not find him. P.W.1 deposed that, he then

returned to the spot. Pandurang Kuyate and his sons – Atul (P.W.5) and Vilas Kuyate moved Yogesh to the Civil hospital in an auto rickshaw. P.W.1 deposed that since he had also sustained a bleeding injury over his chest, P.W.5 took him on his motor-cycle and admitted him to Suyog hospital, at Panchavati. In the hospital he came to know that there was an altercation between the appellant and Yogesh on account of the queue for the toilet and that, Yogesh died due to the assault by appellant. P.W.1 deposed that the police visited the hospital and recorded his statement-cum-report as per his narration. P.W.1 identified his Report (Exh.13).

10) The eye witness P.W.5 has deposed that the said public toilet was in front of his lane. At the time of the incident, he was at home and brushing his teeth. At that time he saw that Yogesh and the appellant were quarreling. The JB was accompanied with the appellant. The said quarrel had occurred on account of the serial number for going to the public toilet. P.W.5 deposed that he rushed at the spot to stop the quarrel. However, the appellant warned him not to interfere. Yogesh, his father and Uncle (P.W.1) also rushed to the spot to rescue the quarrel. P.W.5 deposed that the appellant was carrying the knife and he assaulted Yogesh with the said knife on his chest and stomach. P.W.1 tried to intervene but the appellant assaulted P.W.1 on his chest by the same knife. They attempted to catch hold of the appellant and the JB, however, they fled away. He deposed that

thereafter Yogesh was moved to the hospital in an auto rickshaw. He took P.W.1 to Suyog hospital as he had sustained injury.

11) P.W.7, the real brother of Yogesh has testified that at the time of the incident, he was inside the said toilet. Somebody kicked on the door of the toilet. When he came out, he saw that the appellant was standing there. Therefore, he questioned the appellant as to why he kicked the door. The appellant also questioned him as to why he went to the toilet when it was his turn and then, the appellant gave him a blow on the right eye. The JB also joined the appellant and then the duo gave him kicks and fist blows. He, therefore, shouted loudly. His father, Dinesh Thakur and Yogesh rushed to the spot to rescue the quarrel. However, the appellant abused and assaulted Yogesh. He deposed that, the appellant then removed a knife concealed on his body and inflicted its blows on the chest and stomach of Yogesh. He deposed that the appellant also assaulted P.W.1 on his chest by the same knife. He deposed that meanwhile, a crowd had gathered there. The appellant and the JB fled from the spot. He deposed that they then moved Yogesh to Suyog hospital but as advised by the doctor there, they took Yogesh to the Civil hospital. However, by then, Yogesh was dead.

12) P.W.1, P.W.5 and P.W.7 have identified the appellant and the seized knife. P.W.1 and P.W.7 have also identified the seized clothes.

13) The said testimonies of P.W.1, P.W.5 and P.W.7 are consistent

with each other and the Report (Exh.13). The Report was filed by P.W.1 very promptly, eliminating the possibility of concocting the story against the appellant. These witnesses had no enmity with the appellant. They had no other reason to depose falsely against him. In so far as the cross-examination of P.W.1, P.W.5 and P.W.7 is concerned, except minor omissions and inconsistencies, nothing fruitful to the defence has emerged there so as to discard their version on oath.

14) PW.11 – Dr. Parasram Bhoje, the then Medical Officer had conducted the post mortem examination. His testimony coupled with the post mortem report (Exh.38) clearly established that Yogesh had sustained the following injuries in the incident.

External Injuries-

- i) Abrasion below right eyelid 5 cm x 5 cm.
- ii) Abrasion over right leg knee joint, size 1 cm x 5 cm, reddish in colour.
- iii) Stab wound of size 3 cm x 1.5 cm x 10 cm, oval shaped, on the anterior aspect left side chest, one angle acute and the other blunt, ending in pulmonary artery.
- iv) Stab wound on the gluteal region 7 cm from the left leg iliac crest, of size 3 cm x 1.5 cm x 5 cm, oval shaped with one acute and one blunt angle. The track passed through the gluteal muscles.

Internal Injuries-

Thorax – left side intercostal space cartilage had cut injury. The left lung lob had a stab injury, oval shaped, of size 2.5 cm x 1 cm x 4 cm. There was a cut injury to the pulmonary trunk and the arch of aorta.

15) Hence, P.W.11 opined the cause of the death as 'haemorrhagic shock due to stab injury'. The police had referred the said knife for P.W.11's opinion alongwith the Query Letter (Exh.39). P.W.11 had examined the knife and noticed that, the knife was blood stained. One edge was sharp and the other was blunt. In his opinion, the abovenoted injury Nos.3 and 4 were possible by the said knife. Accordingly, he had given his opinion letter (Exh.40) alongwith the sketch (Exh.41) of the knife.

16) Dr. Kailash Rathi (PW.12) was the owner of Suyog hospital, who had medically treated the injured witness PW.1. In this regard PW.12 has testified that on 10/07/2015, PW.1 was admitted in his hospital with the history of assault by means of a knife over the chest. The police had visited his hospital to record the statement of PW.1. He had issued the certificate (Exh.46) that PW.1 was fit to give his statement. PW.12 identified that certificate which he had jotted on the Report (Exh.13). Further, PW.12 deposed that PW.1 had sustained a CLW, admeasuring 1 cm X 2 cm X 4 cm, below the left nipple on the chest. The injury was fresh and caused within one hour. Accordingly, he had issued the injury certificate (Exh.48) in reply to the police letter (Exh.47). In the cross, PW.12 has admitted that the said injury was not grievous in nature. PW.1 was discharged on the next day.

17) The said evidence of PW.11 and PW.12 remained unshaken in the cross-examination. Thus, it corroborated the versions of PW.1, PW.5 and PW.7 that the appellant had assaulted Yogesh and PW.1 with the said knife.

18) PW.9 Rajendra Koshti has deposed that on 15/07/2015, when the police enquired with the appellant in respect of the weapon, the appellant voluntarily stated that he will produce the knife from the place where it was kept. The police recorded the memorandum (Exh.33) of the said disclosure. He deposed that then the appellant led them to his house and produced the said knife which was concealed in the roof tiles. The

police seized and sealed the knife and recorded the recovery panchnama (Exh.34), accordingly. P.W.9 has identified the said knife.

19) The testimony of P.W.16 Bajirao Mahajan relate to the steps taken by him and other police officials during the course of the investigation, *i.e.*, recording statement of the witnesses, seizure of the clothes, the recovery of the knife, sending the *muddemal* articles for the purpose of chemical analysis etc. Since the learned counsel for the appellant has not disputed the date, time and place of the incident as well as the involvement of the appellant in the crime, we do not deem it necessary to discuss the testimony of P.W.16 in detail.

20) P.W.15 Harishchandra Sonawane, the police carrier has proved that on 31/07/2015 he had carried and deposited the *muddemal* articles at the office of C.A, except the knife. In this regard, he has referred the acknowledgment of the receipt (*vide* Exh.52). P.W.13 Narayan Chowdhary was the Chemical Analyser, serving at Nashik Region Forensic Laboratory. His evidence indicates that he had analysed the *muddemal* articles including the knife as were received from the police and he issued the CA Reports, accordingly. He deposed that the blood of Yogesh was of group 'B' (*vide* C.A. Report Exh.53). He deposed that human blood was found on the seized knife, but, the result of the analysis for the blood grouping was 'inconclusive' (*vide* Exh.54). Further, P.W.13 has proved the CA report

(Exh.55) which pertains to the seized clothes etc. The CA report (Exh. 55) coupled with the testimony of P.W.13 established that the blood found on the seized clothes of the deceased, the appellant and P.W.1 was of group 'B' and it matched with the blood group 'B' of Yogesh (*vide* Exh.53).

21) The aforesaid testimonies of P.W.9, P.W.13, P.W.15 and P.W.16 also remain unaffected in the cross-examination. Thus, it provided an additional strength to the testimonies of P.W.1, P.W.5 and P.W.7.

22) In the backdrop of the above discussion we hold that the appellant caused the said injuries to Yogesh and the CLW to P.W.1 by means of the knife. Further, we hold that the injuries sustained by Yogesh resulted in his death. However, there is no evidence to indicate that the appellant and the JB had shared the common intention to stab Yogesh and P.W.1. Hence, the provisions of Section 34 of I.P.C. cannot be invoked in the case.

23) The issue now is whether the appellant is guilty of murder or not. The learned trial Judge recorded the conviction under Section 302 of I.P.C. for the reason that, the appellant forcibly assaulted Yogesh on the chest by means of the knife with an intent to cause his death.

In this regard we have noticed that, initially, the appellant had the quarrel with P.W.7. However, till the arrival of P.W.1, P.W.5, P.W.7 and Yogesh, the appellant did not use the knife against P.W.7. Rather, the appellant and the JB assaulted P.W.7 only with kicks and fists blows. Out of

the four injuries sustained by Yogesh, only injury Nos. 3 and 4 were serious. Although P.W.11 has deposed that the cause of the death was stab injury, he has not specifically deposed that the injury No.4 also contributed to the cause of the death. As such, we are of the opinion that only injury No.3 proved fatal in this case. However, the fact remains that the said injury was caused only when Yogesh intervened in the quarrel. Therefore, we are of the considered view that the appellant had no intention to cause the death of Yogesh when he stabbed him in the chest. This conclusion is fortified by the fact that, although P.W.1 was defenceless, the appellant did not give him a forceful blow of the knife. Resultantly, only simple injury was suffered by P.W.1 in the incident. As such, the conviction and sentence recorded against the appellant for committing the offence of Section 302 read with Section 34 of I.P.C. is not justifiable in law. These aspects were not considered by the learned Judge of the trial Court. Therefore, the conviction and sentence imposed on the appellant for the offence of Section 302 is not appropriate, though, in our view, the appellant is definitely guilty of the offence of Section 304 Part II of I.P.C., which punishes culpable homicide not amounting to murder as the act is done with knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury which is likely to cause death.

The conviction and sentence imposed on the appellant for the

offence of Section 324 for causing the CLW on the chest of PW.1 with the knife, is proper and deserves to be upheld.

24) With the help of the testimony of P.W.10 Chandrakant Shelar, Police Naik the prosecution has proved that the prohibitory Order (Exh.36) issued by the Assistant Police Commissioner & the Dy. Police Commissioner concerned, invoking Section Section 37 (1) (3) of the Act, was properly promulgated by P.W.10 in the areas concerned. However, the appellant carried the knife in contravention of said Order. Therefore, the conviction and sentence for the offence of Section 135 of the Act is also upheld.

25) In the wake of above, the appeal partly succeeds. Hence, following Order is passed:

26) The Appeal is partly allowed.

26.1) The conviction and sentence imposed on the appellant for the offence of Section 302 and 34 of I.P.C. is quashed and set aside. In stead, the appellant is convicted under section 304 Part II of I.P.C. for causing the death of Yogesh Pandurang Kuyate and he is sentenced to suffer rigorous imprisonment for a period of 10 years and to pay fine of Rs.5,000/- and in default to suffer simple imprisonment for six months.

26.2) The conviction and sentence imposed on the appellant for the offence of Section 324 of I.P.C. and Section 135 of the Maharashtra Police Act, 1951 is upheld.

26.3) All the sentences shall run concurrently.

26.4) If the Appellant has already undergone the sentence, then he be released forthwith, if not required to be detained in any other case.

26.5) Appeal stands disposed of in aforesaid terms.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)