

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

**CRIMINAL APPEAL NO.39 OF 2023**

**WITH**

**INTERIM APPLICATION NO.872 OF 2020**

Rahul @ Uddal Jagatbali Sing .... Appellant

versus

The State of Maharashtra .... Respondent

.....

- Mr. Amit Icham a/w Mr. Chaitanya Purankar, Advocate for Appellant.
- Ms. Geeta P. Mulekar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &  
MANJUSHA DESHPANDE, JJ.**

**DATE : 23<sup>rd</sup> JUNE, 2025**

**JUDGMENT : (PER : SARANG V. KOTWAL, J.)**

1. The Appellant has challenged the Judgment and Order dated 02/12/2019 passed by the Additional Sessions Judge, Pune, in Sessions Case No.206 of 2016. The learned Judge convicted the Appellant for commission of the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs.2,000/-

and in default of payment of fine to suffer rigorous imprisonment for three months. The Appellant was granted set off for the period undergone as an undertrial prisoner.

2. Heard Mr. Amit Icham, learned counsel for the Appellant and Ms. Geeta P. Mulekar, learned APP for the State.

3. The prosecution case is that the deceased Avinash @ Shiva Jadhav was a painter, who used to give jobs to others. According to the prosecution case, the deceased had not paid dues of Rs.200/- of the Appellant's uncle and therefore there was a quarrel between the deceased and the Appellant on 19/04/2015 in the late evening. The quarrel was escalated to a scuffle. It is alleged that the Appellant picked up a piece of floor tile and gave a blow on Avinash's head causing serious injury. The incident was seen by P.W.2 Aslam Saiyyad and P.W.3 Hasam Shaikh. Somebody from the crowd informed the police, who came on the spot. Avinash was taken to the hospital, but he succumbed to his injuries. Avinash's wife lodged her FIR. The investigation was conducted. The Spot Panchanama was

conducted. The Appellant was arrested on 20/04/2015. At his instance, a piece of tile was recovered from the spot. It was kept behind the electricity meter in the area.

4. The Appellant's clothes were seized. The clothes of the deceased and other articles along with Appellant's clothes were sent for chemical analysis. The statement of witnesses were recorded and after the investigation was over, the charge-sheet was filed.
5. During trial, the prosecution examined 8 witnesses including the eyewitnesses, another Doctor whose clinic was in the vicinity, the Medical Officer who had conducted the post-mortem examination, Panchas and the Investigating Officer. Avinash's wife was not traceable and therefore she could not be examined.
6. The defence of the Appellant is reflected in his answer given in the examination u/s 313 of the Cr.P.C. According to him, the eyewitness Hasam and Aslam were Estate Agents. They had

good relations with the police. They had assured to pay Rs.30 lakhs and give one room to the Appellant, but they did not want to fulfil their promise and therefore they deposed against the Appellant. He claimed that he was not knowing Avinash.

7. Learned Trial Judge relied on the evidence of the eyewitnesses and recovery of the tile and recorded the finding of guilt.

8. The main witnesses are the two eyewitnesses. P.W.2 Aslam has deposed that he had a scrap business at Kakde Vasti. On 19/04/2015, he and his friend Hasam Shaikh (P.W.3) had attended one birthday function at their friend's house. They were returning home on a two wheeler. They reached the area in front of Sai Clinic at 09.30 p.m., they saw that the Appellant was assaulting the deceased Avinash, who was known as Shiva, by means of fist blows. P.W.2 questioned the Appellant as to why he was beating Shiva @ Avinash. The Appellant told him that Shiva @ Avinash was not paying the amount of Rs.200/- of his uncle. For a while the Appellant stopped beating him. P.W.2 and P.W.3 parked their vehicle. In the meantime, the Appellant again

started beating Avinash. P.W.2 further deposed that the Appellant banged Avinash's head on a wall, due to which Avinash fell down on the ground. The Appellant then fled away from the spot. Avinash had sustained bleeding injury on his head. A crowd had gathered there. Somebody informed the police. The police came at the spot. Avinash was taken to the Hospital, but he succumbed to his injuries. P.W.2 identified the Appellant in the Court.

In the cross-examination, he denied that the Appellant and Avinash were under the influence of liquor and they were not able to stand properly. He admitted that the place where the incident took place was a stony surface. He was at the spot for about 15 to 20 minutes. After that he returned home. P.W.3 Hasam came with him to his house. He admits that Hasam came after some time and then Hasam returned back to his house. More importantly, P.W.2 has admitted that he had seen the Appellant pushing the deceased, but he did not know whether he banged Avinash on the wall or not. This is an important admission.

9. P.W.3 Hasam Shaikh is another important witness. He had also seen the incident. He has deposed that he and P.W.2 Aslam were returning back after attending a birthday function at around 09.30 p.m. The spot of incident was about 40 ft from his house. He had seen a crowd. The Appellant was assaulting Shiva @ Avinash with fist blows. Both of them were under the influence of liquor. P.W.2 and P.W.3 rescued Shiva @ Avinash from the Appellant. P.W.2 and P.W.3 parked their vehicle. P.W.3 has further deposed that the Appellant again started beating Shiva @ Avinash. P.W.3 had seen the piece of floor in the hand of the Appellant. Shiva @ Avinash fell down on the ground and sustained bleeding injury on his head. The Appellant assaulted Shiva with that piece of floor tile. The police came at the spot and took Shiva @ Avinash to the hospital. The Appellant had fled away. P.W.3 identified the Appellant before the Court.

In the cross-examination, he admitted that there were pieces of stones and floor on the spot. His house was situated at 40 ft distance from the spot. He denied that there was no

electricity. He further deposed that when he returned home, at that time, P.W.2 was not with him. He did not know where P.W.2 Aslam went after the incident. Apart from that, there was no further cross-examination.

10. P.W.4 Dr. Ujwala Sable, is also an important witness. She had her clinic in the vicinity. On 19/04/2015, at about 08.30 p.m., she heard a noise of quarrel and abuse. After 5 to 10 minutes, the Appellant came to her clinic. He was under the influence of liquor. The person shouting was none other than the present Appellant. P.W.4 knew him as he had done some painting work in her flat. When P.W.4 was in the clinic, she had heard the Appellant's shouts loudly and calling her outside to see whether the person who was lying on the ground was dead or alive. P.W.4 closed her clinic after 15 minutes and came out. She saw one person lying on the ground. At that time, that person was conscious. He had lifted his neck. But P.W.4 left from there. On the next day, she learnt that the said person had died. There is hardly any significant cross-examination of this witness. She admitted that she had not personally seen the incident. The

Appellant was her regular patient and she was knowing him. When the Appellant had come to her clinic, at that time, he was in a good condition.

11. P.W.5 Dr. Ajay Taware had conducted the post-mortem examination and he had found the following injuries -

1. Lacerated wound present over left eyebrow, of size 1 cm. X 1 cm. muscle deep, irregular, red.
2. Contusion present surrounding injury No.1, of size 6 X 4 cm irregular, reddish, blue.
3. Abrasion present over forehead on right side of size 1 cm. X 1 cm., irregular, red.
4. Abrasion present over left cheek of size 3 cm. X 1 cm., irregular, red.
5. Abrasion present over left clavicular region of size 3 cm. X 2 cm., irregular, red.
6. Abrasion present over dorsum of left hand of size 2 cm. X 1 cm., irregular, red.

12. On internal examination, she found the following injuries -

1. Under scalp hematoma present all over, red.
2. Skull vault : Depressed communicated fracture over left parietal region of size 6 x 4 cm., with fracture line running to right parietal region for length of 12 cm margins irregular, red.
3. Skull Base : Left middle cranial fossa fracture, irregular, red.
4. Dara : Intact, no injury, pale, Subarachnol hemorrhage present all over red.
5. Brain : Oedematous, pale.

The cause of death was 'Traumatic and haemorrhagic shock due to multiple injuries'.

13. P.W.5 admitted that the injuries mentioned in the post-mortem report were possible by inflicting a blow by means of piece of floor. He denied the suggestion that the injuries were possible if someone fell on a wall under the influence of liquor.

14. P.W.1 Pralhad Mane, was the Pancha for Spot Panchanama. The Spot Panchanama is produced on record at Ex.28. The blood stained earth sample and one shoe and one leather wallet of the deceased were seized on the spot.

15. P.W.6 Aslam shaikh was a Pancha for the seizure of the clothes of the deceased.

16. P.W.7 Nilesh Sharma was a Pancha in whose presence pursuant to the statement made by the Appellant, a piece of tile was recovered. The Panchanama is produced on record at Ex.47. However, P.W.7 was declared hostile as he did not support the prosecution case. The Investigating Officer P.I. Bagwan then deposed about this recovery Panchanama, wherein it is mentioned that it was conducted on 19/04/2015 and the piece of floor tile was recovered from behind electricity supply box. It was 6.5 x 4 cm. There were blood stains on the same.

17. P.W.8 PI Anjum Bagwan had conducted the investigation. He had conducted the Spot Panchanama. The wife of the deceased had lodged the FIR. It is produced on record at Ex.54. He deposed that the wife of the deceased Asha was not traceable. He had arrested the Appellant and had seized the blood stained clothes. The Panchanama of the seizure and arrest

is produced on record at Ex.57. Nothing much was elicited from his cross-examination.

18. The C.A. reports show that there was blood on the clothes of the Appellant, but the blood group was inconclusive. The earth found on the clothes of the Appellant tallied with the earth found on the clothes of the deceased.

This in short is the evidence led by the prosecution.

19. Learned counsel for the Appellant submitted that there is material discrepancy in the evidence of the eyewitness. Both of them have deposed inconsistently about the assault. P.W.2 had deposed that the Appellant had banged the head of the deceased on the wall. In the cross-examination he admitted that he had seen the Appellant pushing the deceased but he did not know whether the Appellant had banged his head on the wall. He submitted that this is an important discrepancy in the evidence of P.W.2 himself. In addition, the P.W.3 has given a different narration about the assault. He has deposed that Shiva @

Avinash fell on the ground and sustained bleeding injury to his head. Then the Appellant assaulted Shiva by means of a piece of tile. He further submitted that there is no connected piece of evidence so far as the recovery of the weapon and the clothes are concerned. The Pancha for recovery had turned hostile. The Pancha for Arrest Panchanama is not examined and therefore it is not safe to rely on the these recoveries from the Appellant. He further submitted that the evidence of P.W.4 in fact shows that the Appellant had sought medical help for the deceased. Therefore, he could not have committed the offence intentionally. There is inconsistent evidence of P.W.2 and P.W.3 as to where they had gone after the incident because P.W.2 had deposed that P.W.3 had come to his house, but P.W.3 denies that fact. He further submitted that in any case the offence would not fall within the meaning of section 302 of the Indian Penal Code, but it would be a much lesser offence; at the highest it could be an offence u/s 304(I) of the Indian Penal Code. He submitted that the Appellant is in custody for more than 10 years i.e. from 20/04/2015 and his conviction and sentence is not sustainable.

20. Learned APP on the other hand, relied on the evidence of P.W.2 and P.W.3. She submitted that apart from minor discrepancies, the fact of the quarrel and then the deceased suffering the injuries is consistently deposed by both these witnesses and therefore the Appellant cannot derive any benefit from the minor discrepancies. She submitted that even P.W.4's evidence shows that the Appellant was very much present at the spot. There are corroborative pieces of evidence in the form of recovery of tile with which the offence was committed. The clothes of the Appellant shows presence of the same earth which is found on the spot and also on the clothes of the deceased. She submitted that looking at the nature of the injuries and the weapon used, the offence would still be punishable u/s 302 of the IPC.

21. We have considered these submissions. Undoubtedly, there are discrepancies between the evidence of P.W.2 and P.W.3. But they are definitely consistent on the main aspects. The first one is when they reached the spot, the quarrel was going on between the deceased and the Appellant. Both of them

intervened in the quarrel. After that, the main incident of assault took place. P.W.2 at one place has deposed that the Appellant banged the head of the deceased on the wall, causing the deceased to fall down on the ground. In the cross-examination however, he has deposed that he had seen the Appellant pushing the deceased, but he did not know whether he banged the head of the deceased on the wall or not. Therefore, to that extent, the evidence of P.W.2 regarding the actual assault varies in his examination-in-chief and cross-examination. However, P.W.3 is more specific about the actual assault. He has deposed that in the second part of the incident, he had seen a piece of floor tile in the hand of the Appellant. The deceased fell down on the ground and sustained bleeding injury. The Appellant assaulted Shiva @ Avinash by a piece of the floor tile. This part of the deposition has remained unchallenged and in the cross-examination there is nothing brought out on record to enable the Court to disbelieve this main part of the description regarding the incident.

22.           Though both of them have not deposed consistently

about whether P.W.3 had accompanied P.W.2 after the incident, this particular discrepancy is not quite material. The house of P.W.3 was at a distance at about 40 ft from the spot of the incident. Therefore, he was not a chance witness. He was returning home. He was a resident of the same locality. His evidence is more trustworthy.

23. The evidence of P.W.4 is also important. She was knowing the Appellant and she has clearly deposed that the Appellant had consumed liquor. He was shouting and asking P.W.4 to check whether the deceased was dead or alive. Thus, the presence of the Appellant at the spot is clearly established through the evidence of all the three witnesses and in fact, the specific role is attributed to the Appellant by P.W.2 and P.W.3. P.W.3's evidence is more trustworthy. There is no reason to doubt his testimony. The evidence of these two eyewitnesses is corroborated by the recovery of a piece of tile at the instance of the present Appellant. The tile shows presence of human blood. There was blood on the clothes of the Appellant as well as some earth which is found at the spot. Even if the we leave aside these

two corroborative pieces of evidence, because either of the Panchas have not supported or were not examined for these two aspects, but even then the evidence of P.W.2, 3 and 4 and in particular that of P.W.3, is strong and incriminating against the Appellant. Therefore, we are satisfied that the prosecution has proved that the Appellant has caused those injuries to the deceased.

24. The defence taken by the Appellant does not appear to be probable. It is not possible to accept that the P.W.2 and P.W.3 would implicate him falsely because they did not want to fulfil their own promise. There is no other material brought on record by the Appellant as to why P.W.2 and P.W.3 had promised him to give a room and the amount as stated by him.

25. The next question is whether the offence would be one punishable u/s 302 of the IPC, as defined u/s 300 of the IPC or it would be a lesser offence. In this context, it is undisputed that the incident had occurred due to sudden a quarrel between the Appellant and the deceased because of some petty money

dispute. There was a scuffle between them. There is evidence that the Appellant pushed the deceased because of which he fell down and then the Appellant gave a blow with a floor tile on his head. Though there are some injuries on the dead body, as shown in the post-mortem report, the main injury appears to be one fatal blow on the head. The other injuries were a result of the scuffle. That particular blow was given forcefully and it has caused fracture of the skull at the base. Therefore, the prosecution has established that the Appellant gave a blow with a tile on the head of the deceased. It was a forceful blow. Looking at the nature of the injury and force used by the Appellant, it cannot be said that the Appellant had no intention to cause such bodily injury as was likely to cause death. We are of the opinion that from the nature of the incident, it is clear that the act of the Appellant would fall within Exception 4 to section 300 of IPC, which reads thus:

**“Exception 4 to section 300 -**

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the

offender having taken undue advantage or acted in a cruel or unusual manner.”

Section 304 of IPC, reads thus :

**“Section 304 -**

**Punishment for culpable homicide not amounting to murder —**

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

26. Thus, it can be seen that the act of the Appellant displays his intention to cause such bodily injury which is likely to cause death. It is not necessary that the prosecution should

establish that the intention was to cause death alone. It is sufficient if they establish that the accused intended to cause such bodily injury as was likely to cause death. The blow was given on the head with such force as causing skull fracture and fracture to the base of the skull. Therefore, that intention can be gathered from the incident. It is also important to note that after the incident the Appellant had in fact approached the P.W.4 and sought some help. He had asked P.W.4 to check the condition of the deceased. If the Appellant had intention to commit murder, nothing stopped him from giving more blows to ensure that the Appellant died on the spot. Therefore, from the over all circumstances, we are of the opinion that the prosecution has not proved that the Appellant has committed offence of murder within the meaning of section 300 of the IPC;, but the prosecution has successfully proved beyond the reasonable doubt that the Appellant has committed offence punishable u/s 304(I) of the IPC. To that extent, the conviction recorded by the learned Trial Judge will have to altered. Consequently, the sentence will also have to be altered. The Appellant is in custody since 20/04/2015. More than 10 years have passed. Therefore,

in our opinion, the ends of justice would meet if the sentence is reduced to the period, that is already undergone by the Appellant.

27. Hence, the following order :

**ORDER**

- (i) The Appeal is partly allowed.
- (ii) The conviction and sentence u/s 302 of the Indian Penal Code awarded to the Appellant, by the Additional Sessions Judge, Pune, in Sessions Case No.206 of 2016, is set aside; instead the Appellant is convicted for commission of offence punishable u/s 304(I) of the Indian Penal Code.
- (iii) The Appellant is sentenced to suffer rigorous imprisonment for the period which he has already undergone since his arrest i.e. from 20/04/2015. The imposition of fine of Rs.2,000/- and in default of payment of fine to suffer rigorous imprisonment for three months, is maintained.
- (iv) Rest of the clauses in the operative part i.e. clause Nos.2, 3 and 4 are also maintained.

- (v) The Appeal is disposed of in the aforesaid terms.
- (vi) With disposal of the Appeal, the Interim Application is also disposed of.

(MANJUSHA DESHPANDE, J.)

(SARANG V. KOTWAL, J.)