



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 580 OF 2024 (Filing No.)

Mr Dinesh Kumar
S/o Sohan Lal,
Aged 47 years old,
r/o Premierwado, Velsao Goa
n/o Misrapur, Etmatpur, Allahabad
Post Phoolpur, Uttar Pradesh,
Presently in Judicial Custody
At Central Jail Colvale. ...Appellant

Versus

State of Goa,
Through Public Prosecutor,
Hon'ble High Court of Bombay
At Porvorim Goa. ...Respondent

Mr Sahil Sardesai, Advocate under Legal Aid Scheme for the
Appellant with Ms Bhaghyawati Guddamavar, Advocate.
Mr S. G. Bhohe, Public Prosecutor for the Respondent.

AND
CRIMINAL APPEAL NO. 57 OF 2024

Mr Shivnath Mhaji,
Age 46 years,
Prisoner No.48/2024
Presently lodged in Colvale Jail
Colvale Bardez Goa. ...Appellant

Versus

1. State of Goa
Police Inspector,
Verna Police Station,
Verna Salcete, South Goa-Goa.

2. Public Prosecutor,
High Court having office at
Porvorim Goa.

...Respondents

Mr Sagar Dhargalkar, Advocate for the Appellant under Legal Aid Scheme.

Mr S. G. Bhohe, Public Prosecutor for the Respondent.

**CORAM: SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ**

DATED : 12th NOVEMBER 2025

JUDGMENT (Per Sarang V. Kotwal, J.)

1. Both these appeals are decided by this common judgment today because they arise out of the same impugned judgment and order. The appellant in Criminal Appeal No.580 of 2024 (F) Dinesh Kumar was the original accused No.1 and the appellant in Criminal Appeal No.57 of 2024 Shivnath Mhaji was the original accused No.2 in Sessions Case No.6/2021 before the Additional Sessions Judge, South Goa, Margao. For convenience, both the appellants are referred to by their original status as accused Nos.1 and 2, respectively in the Sessions case.

2. Heard Mr Sahil Sardesai, learned counsel for accused No.1, Mr Sagar Dhargalkar, learned counsel for accused No.2 and Mr S. G. Bhohe, learned Public Prosecutor for the State.

3. At the conclusion of the trial, the learned Judge convicted both the appellants – accused for commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They were sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- each. The judgment and order was passed on 05.04.2024. It is under challenge before this Court in these two appeals.

4. The prosecution case in brief is that the deceased Lalu Singh and both the accused were workers in the employment with one Anil Naik (examined as PW7 in this case). They were residing in the same hut with one Fulchand Munda (examined as PW4). On 02.04.2021 at about 3.00 p.m., when Fulchand had gone to the Cansaulim market, both the accused and the deceased Lalu Singh were in the hut. There was some quarrel between the accused on one side and Lalu Singh on the other. Both the accused assaulted Lalu Singh with a heavy wooden stick all over his body and they threw the heavy wooden stick outside the hut near the bushes. They started proceeding towards Cansaulim market. Fulchand Munda met them on the way. According to the prosecution case, accused No.1 confessed to Fulchand about the murder of Lalu Singh. Accused No.2 proceeded ahead towards Cansaulim Railway Station. Fulchand took accused No.1- Dinesh Kumar to the employer Anil

Naik. One Severino Colaco (examined as PW6) was present in the house of Anil Naik. Accused No.1 allegedly told them that they had committed murder of Lalu Singh. Severino went to the hut and noticed that Lalu Singh was lying dead in the hut. The police were informed and they came to the spot. They shifted Lalu Singh from the hut. One of the police officers lodged the FIR vide Crime No.31/2021 at Verna Police Station.

5. As the accused No.1 was already with the witnesses, the police took him into custody and with his help, the search was carried out to find accused No.2. He was found in the early hours of the next morning, and he was taken to the Police Station. The clothes of the accused were seized at the Police Station in the presence of the panchas. It is alleged that a heavy wooden stick was recovered at the instance of both the accused from bushes near the hut, and it was seized. The statements of various witnesses were recorded. The statement of Fulchand was recorded under Section 164 of the Criminal Procedure Code. The investigation was carried out. The post-mortem of the deceased was conducted and both the accused were subjected to medical examination after their arrest. The seized articles were sent for chemical analysis. At the conclusion of the investigation, the charge sheet was filed and the case was committed to the Court of Sessions.

6. During the trial, the prosecution examined 18 witnesses. PW4 Fulchand Munda, PW7 Anil Naik and PW6 Severino Colaco referred to herein above were the important witnesses, to whom allegedly accused No.1 made extrajudicial confession. The prosecution also examined panchas who were present at the time of arrest panchanama, recovery panchanama, inquest panchanama, and seizure of clothes panchanama. The photographers who had taken photographs at various stages were examined. The medical officers who conducted the post-mortem were also examined. The Police Officers who had registered an FIR and carried out the investigation were also examined.

7. The case of the accused was of total denial. The learned Judge relied on the following circumstances. (1) last seen together theory; (2) blood of the victim found on the clothes of the accused; (3) blood of the victim found on the recovered wooden stick; (4) blood of accused No.1 found on the clothes of the deceased and non-explanation of the incident by the accused attracting presumption under Section 106 of the Evidence Act.

In these circumstances, since the accused are convicted and sentenced, the appeals are filed as mentioned above.

8. As mentioned earlier, PW4 Fulchand Munda is an important witness in this case. He stated that he used to work with both the accused on a fishing trawler at Cansaulim and they were working for PW7 Anil Naik. He very categorically stated in examination in chief itself that the police did not record his statement. He further deposed that the hut in which he along with the deceased and accused were residing belonged to Anil Naik. The incident occurred on 02.04.2021. He had gone to Cansaulim market at about 3.00 p.m. According to him, the deceased and both the accused were in the hut. At about 3.30 p.m., when he returned back to the hut, both the accused were proceeding towards Cansaulim market and both of them told him that they had assaulted and killed Lalu Singh. PW4 went to the hut and saw that Lalu Singh was lying dead and he had seen injuries on his body. He accordingly informed Anil Naik that both the accused had murdered Lalu Singh. He further deposed that he came to Cansaulim market and caught accused No.1 who in turn told him that accused No.2 had proceeded towards Cansaulim Railway Station. PW4 took accused No.1 to Anil Naik's house. In the house of Anil Naik, one Seby was present. Anil told Seby to take accused No.1 in the hut to verify those facts, and accordingly, Seby took accused No.1 and PW4 to the said hut. Seby confirmed that Lalu Singh was dead. After that, the police came to the spot and took accused No.1 into custody. PW4 identified both the accused

before the Court. Initially, he deposed that he had not given statement before any Court. But his statement under Section 164 of the Criminal Procedure Code was shown to him. He identified his signature on the statement. He further deposed that prior to the incident, there used to be fights between both the accused and deceased. He admitted that his statement was recorded by the Court at Vasco. He stated that the accused and the deceased used to stay in the hut. They used to cook food and eat together. Two days prior to the incident, there was a fight between the deceased and the accused. According to him, he had seen Lalu, the deceased, alive at 3.00 p.m. on that day before going to the market. When he returned to the hut, the door was open. He did not know the reason why the fight took place between the accused and the deceased.

In the cross-examination, he stated that the police came to the spot and took away the body of the deceased. He was at the spot when the body of the deceased was taken by the police. After taking the body of the deceased by the police, he was waiting there for about half an hour. The police did not seal the hut. The police did not take any articles from the hut. Importantly, he further deposed that the police did not ask him anything at the spot. The police also did not take his signature or thumb impression at the spot. He stated that PW7 Anil Naik told him to give the statement, and to oblige the boss, he had given the statement. He further admitted that Anil

Naik had told him to give a statement in the Court at Vasco and therefore, he had given the statement in the Court at Vasco. The record shows that his statement under Section 164 of the Criminal Procedure Code was recorded on 07.04.2021.

9. PW7 Anil Naik is another important witness. He deposed that the accused were fishermen working on his canoe. Accused No.1 was working with him for a period of one month from February to March 2021 and accused No.2 had joined him only 15 days before the incident. On 02.04.2021, he had an appointment with the Doctor in respect of injury suffered by him. When he was in the Clinic at Arlem, he had received a phone call from PW4 Fulchand regarding the fight with the accused and the deceased Lalu Singh and that Lalu Singh was not responding as he had succumbed to the injuries. PW7 then asked PW4 to keep a watch on both the accused. PW7 deposed that while he was returning home, he called one of his friends Seby, who used to assist him in his business when he was ill due to the incident. When he reached his house, Seby was already there. Fulchand and accused No.1 then came to his house. He inquired with accused No.1, who told him that there was a fight between him, accused No.2 and deceased Lalu Singh. PW7 then requested Seby to go to the hut. After that, Seby took accused No.1 and PW4 to the hut. After reaching there, Seby called PW7 and

informed that Lalu Singh had passed away. PW7 then informed the police attached to the Verna Police Station. The police asked him to come to the spot and accordingly he went there and saw that the police had taken accused No.1 in their custody, who then went inside the hut and found that Lalu Singh was dead. The statement of PW7 was recorded at the Police Station on 07.04.2021.

In the cross-examination, he stated that he had not seen any fight between the accused and the deceased and they did not complain to him that they had any problems with others. When he reached the spot on 02.04.2021 at 6.15 p.m., there were about 15 people at the spot. He denied the suggestion that the deceased suffered injuries when he had climbed the coconut tree and had fallen on the ground and had died.

10. PW6 Severino Colaco was the third witness who deposed about the extrajudicial confession. He deposed that on 02.04.2021 at around 6.00 p.m., he received a phone call from PW7 Anil Naik requesting him to come to his house as there was a fight between his labourers and accordingly, he went to Anil's house and saw that accused No.1 and PW4 were present in Anil's house. PW7 Anil requested him to go to the hut and see what had happened. Accordingly, he took both PW4 and accused No.1 on his motorcycle and proceeded towards the hut on the beach. He saw

Lalu Singh was lying on the bed without any movement. He accordingly made a call to Anil and told him that Lulu Singh is not making any movement and was dead. Upon hearing this, accused No.1 started running. He asked PW4 to apprehend him. He further deposed that accused No.1 told him that he had assaulted the deceased with the wooden stick with the help of accused No.2. In the cross-examination, he has stated that when he reached the hut nobody was inside the hut from the police but neighbours had gathered outside the hut. When he had reached at 6.30 p.m., there was no light in the hut.

11. PW1 Ismail Jamadar acted as a pancha witness for the spot panchanama, which is produced on record at Exhibit 10. The spot of the incident is not disputed. He noticed fishing articles such as fishing nets, wooden logs, bamboos and some utensils in the hut and one dead body of a male person lying on the floor. The panchanama was conducted between 11.00 p.m. on 02.04.2021 and is concluded at 12.30 a.m. on 03.04.2021. He also acted as a pancha witness to the inquest panchanama.

12. PW2 Wasim Khan acted as a pancha witness for arrest panchanama of the accused and seizure of the clothes. The arrest panchanama and the seizure of the clothes panchanama were conducted between 04.15 a.m. to 05.10 a.m. on 03.04.2021.

13. PW3 Anand Kamat was a pancha in whose presence the recovery of wooden stick at the instance of accused No.1 was effected. He stated that when he reached the police station after the police had called him, both the accused were shown to them. Accused told him and the other panchas that they would show the place where they had thrown the heavy wooden stick used in the offence. Further he added that the statement was made to them by the accused No.1. The pancha i.e. PW3 and the other pancha, police and accused went near the beach area. Accused No.1 showed the place where the wooden stick was thrown by the accused. It was at about 10 metres from the hut. It was lying in the bushes. The stick was about one metre in length. The panchanama is produced on record at Exhibit 16. In the cross-examination, he admitted that there were several heavy wooden sticks lying in the hut. There were 10 such heavy wooden sticks. The panchanama mentions that the heavy wooden stick was visible in the bushes. The panchanama was carried out between 04.35 p.m. to 6.00 p.m. on 03.04.2021.

14. PW8 Sudhir Naik was the other pancha present at the time of recovery of the wooden stick (weapon). He deposed that accused No.1 expressed willingness to show the place where the weapon, which was used in the assault, was kept. He further stated that even accused No.2 told the police that he was ready to show the place

where the weapon was kept. Both the accused then told the driver to proceed to Cansaulim. When they reached Cansaulim, they asked the driver to take the vehicle to Velsao and when they reached Velsao, the accused told the driver to stop and got down from the vehicle. The accused took all of them towards the hut where the incident had taken place. After that, they led them to the bushes which were situated near the hut. They saw one danda near the bushes. It was seized. PW5 Mahendra Bhandari had taken photographs during this recovery.

15. PW9 Dr Nimisha Naik was examined to show the blood group of the deceased and the accused. According to the sample collected, the accused No.1 was having blood group of A Rh positive, the accused No.2 was having blood group of AB Rh positive and the deceased was having blood group of B Rh positive.

16. PW10 Dr Ankush Patil had medically examined both the accused on 03.04.2021. Accused No.1 was having a split laceration, with dried lymph, 1x1 cms at the base of nail of right hand ring finger (4th finger) with contusion of nail bed, bluish caused by blunt force impact.

17. PW11 Head Constable Nilesh Kaskar had arrested both the accused. He deposed that on 02.04.2021 at about 6.45 p.m., he

received a phone call from PW7 Anil Naik that he was informed by PW4 that one of his labourers was killed by the other labourers. He went to the spot. PW7 informed him that accused No.1 was detained by one of his labourers and upon verifying the spot where the incident had taken place, he noticed one person in injured condition. Soon the Police Inspector and other staff of Verna Police Station came to the spot. As per the direction given by the Police Inspector, PW11 and others took accused No.1 with them in search of accused No.2. On the next date early morning, the accused No.2 was found on the Cansaulim Verna Highway walking on the road. The accused No.1, who was with them, identified accused No.2. Thereafter, both of the accused were taken to the Police Station.

In the cross-examination, he stated that when they went there, there were around 15 people outside the hut, and he did not inquire with those people about the incident. When he went inside the hut, he saw some liquor bottles and some cooking oil packets in the hut. This statement is in contrast to the statement made by PW1 pancha witness to the spot panchanama.

18. PW12 Dr. Sunil Chimbolkar had conducted the post-mortem examination. He had noticed 30 injuries which were in the nature of graze abrasions, bruises and contusions. In his opinion, the cause of death was due to haemorrhagic shock with blunt chest

trauma consequent to multiple blunt force injuries. There was a fracture on left clavicle bone and left second rib, fracture of left lower third of ulna bone, fracture of right lower third of ulna bone and fracture of right fifth meta carpal bone near knuckle. He denied the suggestion that the injuries could have been caused due to fall from a great height.

19. PW13 Nilesh Naik was a photographer who had taken photographs at the scene of offence. PW14 Filipo Cardozo, acted as a pancha witness for the seizure of the clothes of the deceased. He was also the other pancha for the spot panchanama produced at Exhibit 10. PW15 PSI Sankeet Talkar, attached to the Verna Police Station, had lodged a complaint/FIR at Exhibit 57, which was registered vide Crime No.31/2021 under Section 302 read with Section 34 of the Indian Penal Code at the Verna Police Station. He deposed that he had gone to the spot, made an inquiry, and on that basis he had lodged a complaint, which was treated as an FIR. He had taken part in the search operation for the accused No.2. He and other staff took part in the search for accused No.2, who was subsequently arrested. Both the accused were brought to the police station.

20. PW16 PI Sherif Jacques had conducted some part of the investigation in this case. He had conducted spot panchanama, the

inquest and arrest panchanama and had collected the post-mortem report. He had formally arrested both the accused and supervised the recovery panchanama and had caused the photographs to be taken. In the cross-examination, he has admitted that there were other similar heavy wooden sticks inside the hut. Apart from that, there was no much cross examination. PW17 Vijay Pednekar, had drawn the sketch of the scene of offence. PW18 P. Jaikrishna was a chemical analyst. He has produced CA report showing the DNA test conducted by him. He has produced the CA report on record. It shows that the blood of the deceased was found on the clothes of the accused, and the blood grouping on the wooden stick could not be determined.

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

21. The learned counsel for both the accused submitted that the prosecution has failed to prove the case against the accused beyond a reasonable doubt. The evidence of the 'last seen together theory' is based on the evidence of PW4. He is wholly unreliable. There is no clear evidence about PW4 having seen the accused and deceased together inside the hut before he had left for the market. He had deposed at the instance of PW7 Anil Naik. He has, in clear terms, admitted to that effect. Therefore, his evidence will have to be discarded. If his evidence is tested against the deposition of PW6

and PW7, then the entire evidence becomes unbelievable. It was not possible, that, after the commission of the offence, the accused Nos.1 and 2 would simply go to market and would confess regarding their crime to PW4. Significantly, it is further impossible that PW4 would return to the hut and again go back towards the market and apprehend accused No.1. It is also not believable that PW4 then easily could take accused No.1 to the house of PW7 Anil Naik. The entire description is improbable. There is major inconsistency in the evidence of PW4, PW6 and PW7. PW7 had deposed that PW6 was already in the house, but it is not the case of PW6. They further submitted that the recovery of the weapon was suspicious. The recovery evidence will have to be discarded because it is a joint recovery effected at the instance of both accused at the same time. This approach was impermissible in law. They submitted that if these major incriminating circumstances are left out, then all other circumstances are quite minor. They submitted that the arrest of the accused is in suspicious circumstances and, consequently, the recovery of the clothes is also highly suspicious. Since the prosecution has failed to prove the basic occurrence of the incident, the learned Judge erred in relying on the presumption under Section 106 of the Evidence Act.

22. The learned Public Prosecutor, on the other hand, supported the impugned judgment. According to him, the prosecution has proved that PW4 had seen accused No.1 with the deceased person shortly before the incident. There was proximity of the time and place regarding 'the last seen together' theory. Therefore, this supports the case of the prosecution. He submitted that though the recovery was shown against both the accused, the statement was given by accused No.1 alone. He further submitted that blood of the deceased on the clothes of the accused is incriminating piece of evidence. Taking all these circumstances together, form a complete chain and in this situation, it was necessary for the accused to have explained the incident, discharging his burden under Section 106 of the Evidence Act.

He therefore submitted that the learned Judge has rightly relied on the evidence of the witnesses to convict and sentence the accused.

We have considered these submissions.

23. The prosecution case heavily relied on the evidence of PW4. We find that his evidence is wholly unreliable. He has, in clear terms, admitted that he was deposing only to oblige his employer, Anil Naik. Though he was the best available witness for the prosecution, his admission had destroyed his evidence. He has

further categorically admitted that PW7 Anil Naik had told him to give statement in this case and to oblige the boss he has given his statement. He further admitted that Anil Naik told him to give statement in the Court at Vasco and he had given his statement at Vasco. In this case, the statement was given by this witness at the instance of PW7 Anil Naik. More importantly, in the examination in chief itself he has admitted that the police had not recorded his statement. His statement under Section 164 of the Criminal Procedure Code came to be recorded only on 07.04.2021 that was three days after the incident. Thus the theory of extrajudicial confession and that he had last seen them together was brought out quite belatedly. All this makes his evidence extremely doubtful. He was a star witness of the prosecution and since his evidence is unreliable, it gives a serious blow to the veracity of the prosecution case.

24. Even otherwise, his conduct is improbable. There was no reason for the accused to confess to him that they had committed murder of the deceased, when they were trying to go away from the spot of the incident. The evidence of PW4 shows that he went to the hut and found the dead body, and then he came back and caught the accused No.1. It is highly difficult to believe that the accused No.1 would wait in the market for PW4 to return from the hut and to allow him to apprehend him in that situation. According to the

prosecution case, accused No.1 had simply accompanied PW4 to the house of PW7 Anil Naik. This is yet another unbelievable circumstance. Accused No.1 had not resisted and had simply accompanied PW7 Anil Naik. In the given situation, it was highly improbable.

25. As rightly submitted by the learned counsel for the accused, there is a contradiction in the evidence of PW4, PW6 and PW7. According to PW6 Severino Colaco, he went to the house of Anil Naik at his request made on a phone call. When he reached there, PW4, accused No.1 and PW7 were already present in the house. This is in sharp contrast to the evidence of PW7 Anil Naik, who has stated that when he reached his house, PW6 Seby was already there and PW4 and accused No.1 were seen coming towards his house. After that, PW7 requested PW6 to take both PW4 and accused No.1 to the hut. It is again unbelievable that accused No.1 did not try to escape and simply accompanied PW4 and PW6 to the hut. Therefore, the evidence of these three witnesses i.e. PW4, PW6 and PW7 does not inspire confidence and therefore, the extrajudicial confession allegedly made to all these witnesses becomes even doubtful piece of evidence. The circumstances in which the accused were arrested are also doubtful.

26. There is also a significant time difference as far as the time of the incident is concerned. According to PW4 Fulchand, at about 3.30 p.m. he had returned to the hut and had found the deceased was already dead. He had informed PW7. But PW6 has stated that he had received phone call from PW7 at about 6.00 p.m. and PW7 has stated that he had reached the hut at about 6.15 p.m. In this time, there is a difference of at least two hours, which in the present case assumes significant importance. During all this time, accused No.1 had not even tried to escape from the spot. The arrest of the accused was also suspicious. By evening at around 6.15 p.m., the accused No.1 was already under the control of the police. But he was put under arrest at about 4.15 a.m. along with accused No.2. Throughout the night, he had accompanied the police staff to take search of the accused No.2. It is also unbelievable that accused No.2 was simply walking on the highway and he was caught by the police. There was a time gap between 6.00 p.m. of 02.04.2021 till 4.15 p.m. on 03.04.2021, when accused No.1 was continuously in the custody of the police. In this situation, the seizure of the clothes of the accused is doubtful. Consequently, the blood of the deceased found on the clothes of the accused is also a doubtful circumstance. The accused No.1 was medically examined after his arrest. There were no scratch marks on his persons. Therefore, finding blood of the accused No.1 in the nail clipping of the deceased is suspicious.

27. The last circumstance mentioned is about the recovery of the weapon. From the evidence itself, it is clear that the weapon was very much near the hut in the bushes. The panchanama shows that it was visible to the panchas. It was not even concealed and it was just thrown in the bushes. The place was open and accessible to the public. The panchanama mainly referred that both the accused showed the spot of the incident from where the wooden stick was recovered. In any case, blood group on the wooden stick was inconclusive. There were many wooden sticks found inside the hut but neither of those wooden sticks was seized.

28. Thus, each of these circumstances, is not proved by the prosecution beyond a reasonable doubt. Therefore, the learned Judge erred in taking recourse to Section 106 of the Evidence Act to draw an adverse inference against the accused. The incident had not taken place at odd hours. Admittedly, the hut was used not only by the deceased and the accused but also by PW4 for their residence. There is evidence on record that the hut was open and the dead body was lying inside the hut.

29. As far as the circumstance of the last seen together theory is concerned, PW4 is the only witness who has deposed about it. He has not very clearly stated that he had seen the accused with the

deceased. He has merely stated that they were in the hut. Even otherwise, even if this statement is taken as PW4 having seen them together, the evidence of PW4 itself is unreliable. He is the only witness to this 'last seen together theory'. Therefore, that circumstance will have to be discarded.

30. Based on the cumulative effects of the above discussion, we are of the opinion that the prosecution has failed to prove the case against the accused beyond a reasonable doubt and the benefit of doubt must be given to the accused.

31. Hence, the following order:-

- (i) The appeals are allowed.
- (ii) The judgment and order dated 05.04.2024 passed by the Additional Sessions Judge, South Goa, Margao, convicting and sentencing the appellants under Section 302 read with Section 34 of IPC is set aside.
- (iii) The appellants are acquitted of all the charges in Sessions Case No. 6/2021 before the Additional Sessions Judge, South Goa, Margao.
- (iv) The appellants are in custody. Before being released, they shall execute a PR bond in the sum of Rs.15,000/- each (Rupees Fifteen Thousand Only) under Section 481 of the

Bharatiya Nagarik Suraksha Sanhita, 2023. Such a bond shall be executed before the Superintendent of the Jail. Once the said bond is executed, both the appellants shall be released forthwith, if not required in any other case.

- (v) The appeals are disposed of.

ASHISH S. CHAVAN, J

SARANG V. KOTWAL, J