



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1568 OF 2018**

Prashant Ashok Kamble  
Convict No.C/16789  
Yerwada Central Prison,  
Age 29 years, Occ-Rickshaw driver,  
R/o. 108/109 Anand Nagar,  
Ramtekdi, Pune.

... Appellant  
(Orig. Accused)

V/s.

The State of Maharashtra,  
(Notice to be served on the  
Public Prosecutor, High Court,  
(Appellate Side), Bombay.

... Respondent

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Smt. Sonia S. Miskin, Appointed Advocate through High Court Legal Services.  
Smt. Madhavi H. Mhatre, A.PP for the State.

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**CORAM : A. S. GADKARI AND  
RANJITSINHA RAJA BHONSALE, JJ.**

**RESERVED ON : 26<sup>th</sup> SEPTEMBER 2025  
PRONOUNCED ON : 19<sup>th</sup> DECEMBER 2025**

**JUDGMENT [Per : RANJITSINHA RAJA BHONSALE, J] :-**

1) By the present Appeal, the Appellant seeks to challenge the Judgment and Order dated 3<sup>rd</sup> February, 2014, passed by the learned Sessions Judge, Pune in Sessions Case No. 475/2010 whereby the Appellant has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo further rigorous imprisonment for six months. The Appellant has been acquitted for the offence under Section 4 punishable under Section 25 of the Arms Act and under Section

37(1) punishable under Section 135 of the Bombay Police Act.

2) Prosecution case in brief, is as under.

2.1) On 29<sup>th</sup> March, 2010 Aruna Mahendra Shinde (PW-2), sister of deceased lodged complaint with the Wanwadi Police Station stating that, one year ago there was quarrel between her brother Shrinath @ Bhultu Sakharam Gaikwad and the Accused No.1 Vishal Ashok Kamble and his brother Krushal (juvenile in conflict with law). During the said quarrel, the Appellant Vishal and his brother Krushal assaulted Shrinath @ Bhultu Sakharam Gaikwad on his head by a blade. That, initially a complaint was filed, which was then compromised. Appellant Vishal and his brother Krushal used to demand money from Shrinath for drinking liquor. On the refusal of Shrinath to pay any amount, the accused used to give threats to kill him. That, Shrinath had informed these facts to the PW-2.

2.2) On the date of the incident i.e. 29<sup>th</sup> March, 2010, the Complainant went for her work and on return inquired with her mother about Shrinath, when she was informed that, Shrinath had gone out. That, at about 3.45 p.m., Babita, sister of PW-2 came and told her that, the Appellant Vishal and his brother Krushal have assaulted Shrinath by some weapon and that he was lying in a pool of a blood. PW-2 immediately rushed to the spot and saw her brother Shrinath lying in the pool of blood, with injuries on his face and head. The police arrived at the spot and injured Shrinath was taken to Sassoon Hospital, Pune where he was declared dead before admission.

2.3) On receipt of the Complaint, a crime was registered as Crime No. 85 of 2010 for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code. Investigation was carried out by Dattatraya Mane (PW-9), who visited the spot, prepared Spot Panchanama (Exhibit 36) in the presence of panch witness Chandrakant Gholap - PW4. The spot of incident is in front of grocery shop in a small lane having width of 5 feet to 5 ½ feet. Blood samples were collected, hair found on the spot was collected. Inquest Panchanama (Exh-37) was drawn up. Ajit Ramchandra Khadke (PW-10) took over the investigation, recorded the statement of witnesses including PW-2 Aruna Mahendra Shinde (Complainant), PW-3 Raheman Ismail Shaikh (person who heard conversation between the Accused), PW-4 Chandrakant Baliram Gholap (Panch), PW-5 Anita Laxman Gaikwad Eye-witness (Hostile), PW-6 Shivaji Maruti Waghmare (Eye-witness), PW-7 Amir Husain Sayyad (Recovery Panch), PW-8 Sudhakar Genu Deshmukh (Panch for clothes of Accused).

2.4) During the investigation as per Panchanama (Exh-60) clothes of the deceased were attached. Sample of blood of the deceased as well as Accused were collected. Clothes of the Accused were attached by effecting Panchanama (Exh-50). During the investigation, Appellant Vishal made statement before Police and Panch that he was willing to show place where weapons were hidden and led the panch and police to the spot i.e. place of Balwadi. Axe and one sickle were recovered vide Memorandum (Exh-46) and

Panchanama (Exh-47). In the presence of PW-7 all the seized articles, blood and sample of hair found on the spot, weapons were sent to the Chemical Analyzer. The Chemical Analyzer's Report is at Exhibit Nos. 72 and 73. After completion of investigation, charge-sheet was filed against Appellant and separate charge-sheet was filed against Krushal (juvenile in conflict with law).

2.5) The case being committed, charge was framed on 9<sup>th</sup> December, 2010 (Exhibit-5) under Section 302 read with Section 34 of the Indian Penal Code under the provisions of Section 4 punishable under Section 25 of the Arms Act and for offence punishable under Section 135 of the Bombay Police Act.

3) To bring home the guilt of the Accused, the Prosecution has examined in all 10 witnesses including eye-witness, Panchas, Investigating Officers etc. The Prosecution has relied on the contents of Memorandum and Recovery Panchanama at Exh-46 and 47, Spot Panchanama at Exh-36, Inquest Panchanama Exh-37, Panchanama for seizure of clothes of deceased Exh-60, Post Mortem Report at Exh-28, letters forwarding articles to Chemical Analyzer at Exh-62 to 65, Chemical Analyzer's Report being Exh-70 to 73.

4) After recording the evidence, statement of Accused was recorded under Section 313 of the Code of Criminal Procedure. The defence of the accused is that of denial.

5) Heard Smt. Sonia S. Miskin, appointed Advocate through High Court Legal Services for Appellant and Smt. Madhavi H. Mhatre, A.P.P. for the

State. Perused entire record, impugned Judgment and Order dated 3<sup>rd</sup> February, 2014.

6) At the outset, learned counsel for the Appellant fairly pointed out that there is material evidence against the Appellant which has been relied upon by learned trial Court to arrive at findings of the guilt of the Appellant and for convicting him under Section 302 of the Indian Penal Code. Learned Advocate for the Appellant submits that, considering the facts and circumstances the case of the present Appellant be considered either under Exception 1 or 4 of Section 300 and the conviction be altered/modified accordingly and sentence be reduced. In view of the said submission, we requested the learned Advocate appearing for the Appellant, to point out from the evidence, the facts which in her assessment could be taken into account to consider her prayer.

7) PW-1 Dr. Satyanarayan B. Punpale has conducted Post-Mortem alongwith Dr. Dekhane. In the examination-in-chief, this witness has specifically stated that deceased Shrinath had 42 external injuries which were either chopped wound or incised wounds. That, the external injuries were possible to be caused by an axe or chopper. On internal examination, the witness found injury on the head i.e. scalp haematoma over frontal region 8 x 4 cms and on the brain i.e. subdural haemorrhage was seen over right parietal region posteriorly 7 x 5 cms and left parietal region middle 6 x 2 cms. The

witness has opined that cause of death is multiple chopped wounds on head. We have also noted that, the cross-examination of the said witness at the hands of Appellant has not yielded any favourable result. In fact it has come in the cross-examination that, all injuries found on dead body were on its head and face and were abutting each other, due to which, it was not possible to distinguish which injury was caused by axe and which injury was caused by sickle.

7.1) PW-2 is the Complainant and sister of deceased, who lodged the complaint on being informed by her sister Babita Kamble that deceased Shrinath was assaulted. She has stated in her evidence that, when she reached spot the deceased Shrinath had head injuries on his face and his face was totally torn. In her cross-examination she has admitted that deceased Shrinath was having several crimes registered against him.

7.2) PW-3 Raheman Ismail Shaikh, according to prosecution is an eye-witness. In his evidence he has stated that, he saw deceased Shrinath going towards house of the accused with an axe in his hand. That, he had heard a sound of quarrel and then saw deceased Shrinath being chased by Appellant Vishal and his brother Krushal. That, Appellant Vishal was holding Koyta (Sickle) and Krushal was holding an axe. That, after some time when the Appellant Vishal and his brother Krushal came back, the weapons in their hands were stained with blood. That, he heard them saying that they had committed murder of Shrinath. The cross-examination of this witness has not

brought out anything which is beneficial to the accused.

7.3) PW-4 Chandrakant Baliram Gholap is panch witness for the Spot Panchanama. In his examination-in-chief he has stated that the spot of incident was in front of Grocery Shop in a lane having width of about 5 to 5 ½ ft. That, blood and hair was found there and the walls on both sides of the lane were stained with blood. That, samples of blood and hair were collected, packed in plastic bags and were sealed. That, Panchanama was prepared at the spot, sketch was drawn and the witness has admitted his signature on the Panchanama which is at Exh-36. We have noted that, the defence has been unsuccessful in bringing on record anything which is beneficial to it in the cross-examination.

7.4) PW-5 Anita Laxman Gaikwad- the eye-witness of the Prosecution has turned hostile.

7.5) PW-6 Shivaji Maruti Waghmare is an alleged eye-witness and has stated to have known the deceased Shrinath and also the accused. That, he works with Health Department of the Pune Municipal Corporation, leaves his house at 5.30 a.m. to go to work and returns home at about 1.30 or 3.00 p.m. That, on 29<sup>th</sup> March, 2010 when he returned from work and was sleeping in his house, he heard shouting/screaming of people, therefore he came out of the house and saw that Appellant Vishal and Krushal his brother were assaulting one boy with axe and koyta on head. We have noted that, this witness in the cross-examination has stated that, after getting up from his

sleep when he came out of his house, he saw one boy was lying there and blood was oozing from head and that said boy was not known to him. From the evidence of this witness the fact of him being an eye-witness becomes doubtful as he has gone back on his statement and contradicted himself. This witness in our opinion is therefore not reliable and cannot be considered as eye-witness.

7.6) PW-7 Amir Hussain Sayyad is Panch Witness for recovery of weapon at the instance of accused. In his cross-examination he has stated that he was called the Wanwadi Police Station where accused was present and that the Police Officer in his presence had recorded say of the accused and after which the statement was signed. That, Appellant led them to Ramtekdi area and stopped jeep near the Blind school and led them to some distance and climbed up Balwadi structure and took out one koyta and axe. That, the koyta and axe were stained with blood. That, the said weapons were wrapped by the police and label was affixed to it. The panchanama is at Exh-47 and he identified koyta(Article 7) and axe (Article 8). That, the cross-examination of this witness, has not revealed anything which is beneficial to the Appellant.

7.7) PW-8 Sudhakar Genu Deshmukh would act as Panch for recovery of the clothes of the Appellant. That, at the Wanwadi Police Station, the accused were present. The Police informed him that, the clothes worn by both the accused were required to be seized. The accused gave their names as Vishal Kamble and Krushal Kamble. That, another set of clothes for the

accused were provided and worn by them. The clothes of the accused which were stained with blood were packed in paper packets and then sealed by applying wax seal. He identified muddemal Article 9 and 10 i.e. full pant and shirt which were seized from Appellant. That, he identified Article 11 i.e. jeans pant and Article 12 i.e. white shirt seized from Krunal Kamble. In his cross-examination, this witness states that he has signed panchanama without reading contents.

7.8) Perusal of the Chemical Analyzer's Report shows that, the clothes of the Appellant were stained with human blood of 'B Positive' group. It is pertinent to note that 'B Positive' blood group is blood group of the deceased.

7.9) PW-10 is the Investigating Officer who done initial investigation i.e. recording of the Complaint given by PW-2. PW-10 has proved recovery of clothes of the accused, proved Panchanama of seizure of clothes of the deceased and recovery of weapons at the instance of the Accused. In the cross-examination PW-10 has admitted that, the Appellant and his brother Krushal were injured and sent to Sassoon Hospital Pune for medical treatment. That, the distance between house of the Accused and place of incident was about 250 to 300 ft. That, being illiterate has put his thumb impression.

7.10) PW-9 is the Investigating Officer who had effected Spot Panchnama and collected sample of blood and hair. He also issued request letter to Sassoon Hospital for collecting samples for blood and scalp hair of

deceased Shrinath. He has sent Krushal Kamble to Sassoon Hospital, Pune.

8) We have carefully perused the entire evidence, particularly the evidence of PW-1 Dr. Satyanarayan Badrinarayan Punpale, PW-2 the Complainant, PW-3 Raheman Ismail Shaikh, PW-4 Chandrakant Baliram Gholap, PW-5 Anita Laxman Gaikwad, PW-6 Shivaji Maruti Waghmare and PW-7 Amir H. Sayyad.

8.1) The perusal of evidence of PW-1 Doctor, who conducted Post Mortem Report, reveals that the deceased had 42 external incised and chopped injuries, which were possible by an axe and chopper. The cause of death of deceased Shrinath is “multiple chopped wounds on head”. That, there were corresponding internal injuries in the head, brain and subdural hemorrhage was seen over right parietal region posteriorly 7 x 5 cm and left parietal region middle 6 x 2 cm. It is noted that all the 42 injuries were found concentrated on the region of the head and face of the deceased, to such an extent that the injuries were abutting/overlapping each other, and the doctor was unable to distinguish which injury was caused by sickle. From the nature and description of the injuries as given by this witness, the intention and intensity of the attack is clearly evident. By no stretch of imagination, it can be said that the reaction of the Appellant was measured or proportionate. According to us, the conduct of the Appellant cannot be termed as “without the offender having taken undue advantage”. In fact the acts of the Appellant amounts to act of cruelty or acting in a cruel or unusual manner. According to

us the Appellant has with a cruel intention, in an unusual manner and with knowledge and awareness of the outcome of his acts. The possibility of Exception IV of section 300 being invoked and made applicable is therefore ruled out. So also the Appellant has exceeded his right of private defence.

8.2) PW-2 Aruna M. Shinde is the Complainant and sister of the deceased Shrinath, who has deposed as to the past disputes between the deceased and the Appellant, which were settled. She has also deposed that, the Appellant used to demand money from the deceased for drinking liquor and on being meet with a refusal used to threaten the deceased. This witness has seen the deceased lying in the pool of blood with head injuries at the spot of the incident. That, the face of the deceased was totally torn.

8.3) PW-3 Raheman Ismail Shaikh, has deposed that he saw the deceased Shrinath going towards house of the Appellant with axe in his hand and that he heard some quarrel. He has stated that, after some time he saw Shrinath being chased by the Appellant and his brother Krushal who was having the bleeding head injury. The Appellant was holding a koyta (Sickle) and Krushal was holding an axe. After sometime the Appellant Vishal and his brother Krushal came back, at which time the weapons they had were stained with blood. He has heard the conversation between the Appellant and his brother, wherein they mentioned that they had committed murder of Shrinath.

8.4) PW-4 Chandrakant Baliram Gholap is panch witness for the Spot

Panchanama. This witness has stated that spot of incident was in front of Grocery Shop in a lane having width of about 5 to 5 ½ ft., blood and hair was found there and the walls on both side of the lane were sustained with blood. That, samples of blood and hair were collected, packed/sealed in plastic bags. The witness has deposed that the Panchanama was prepared at the spot and sketch was drawn. This witness has admitted his signature on the Panchanama which is at Exhibit 36. We have noted that, the defence has been unsuccessful in bringing on record anything which is beneficial to it in the cross-examination.

8.5) PW-7 Amir Hussain Sayyad is Panch Witness for recovery of weapon at the instance of Appellant. He has deposed that the accused was present at the police station and in the presence of the Police Officer say of the Appellant was recorded and statement or the thumb impression of the Appellant was taken immediately at Exh-46. He deposes that the Appellant led the team to Ramtekdi area and stopped jeep near Blind school. The Appellant led them to some distance and then climbed up Balwadi structure and took out one koyta and axe. He has deposed that the koyta and axe were stained with blood. The said weapons were wrapped by the police and something was affixed to it. The panchanama is at Exhibit 47. The witness has identified koyta (Article 7) and axe (Article 8). The cross-examination of this witness, has not revealed anything which is beneficial to the defence.

8.6) PW-8 Sudhakar Genu Deshmukh, is the Panch for recovery of the

clothes of the Appellant. He has deposed that at the Wanwadi Police Station, the Appellant was present and the Police informed him that the clothes worn by both the accused were required to be seized. The accused gave their names as Vishal Kamble and Krushal Kamble. He deposed that another set of clothes for the accused were got, which were provided to the accused and worn by them. The clothes of the accused, were stained with blood. The clothes were packed in paper packets and sealed by applying wax seal. He has identified muddemal Article 9 and 10 i.e. full pant and shirt which were seized from Appellant. That, he also identified muddemal Article 11 jeans and muddemal Article 12 white shirt seized from Krunal Kamble. In his cross-examination, this witness states that he has signed panchanama without reading contents. Perusal of the Chemical Analyzer's Report shows that the clothes of the Appellant were stained with human blood of 'B Positive' group. It is pertinent to note that 'B Positive' blood group is blood group of the deceased.

8.7) PW-6 Shivaji Maruti Waghmare has stated in his evidence that he saw Appellant and his brother Krushal assaulting one boy with axe and koyta on the head. That, due to assault the boy fell down and after that Appellant and his brother Krushal ran away from the spot. In the cross-examination, PW-6 has contradicted his statements.

9) Considering the aforesaid evidence it is clear that, the deceased in the first instance, was seen going with an axe towards house of the Appellant. The reason for the said act, is not clearly brought out by the evidence on

record. As per the evidence of the Prosecution witnesses, after sometime, the Appellant and his brother are seen chasing deceased with axe and sickle in their hands. The evidence on record indicates that, the distance between the house of the Appellant and spot of incident is nearly 250-300 feet, which would also indicate that the chase was for that entire distance. One thing which is established from the evidence on record is that, the deceased was the initiator of the quarrel. The brother of the Appellant, was assaulted by the deceased and suffered an injury. One may safely infer that, there was a quarrel. The deceased assaulted the Appellants younger brother, who sustained the bleeding injury and therefore the Appellant and his brother chased the deceased. We have also noted that, the fact of the deceased, being the initiator, is watered down by the acts of the Appellant and his brother, in assaulting and causing 42 incised and chopped injuries on the face and head of the deceased. This, act and conduct of the Appellant, is clearly indicates the fact that, the Appellant had the knowledge that, the said acts would cause the death of the deceased instantly. The multiple injuries, inflicted on the head region clearly demonstrate the knowledge and intention of the Appellant that the said act would in all possibilities culminate into the death of the deceased or that the same would sufficient in the normal course to cause the death of the deceased. Further, the fact that, the younger brother (Juvenile in conflict) also chased the deceased with weapon in his hand clearly shows that, the injury inflicted by the deceased on him was not serious or grievous. We are of

the opinion, that had the said injury been serious or even grievous, the younger brother of the Appellant i.e. Krushal would not have been in a position to chase the deceased.

10) The manner of assault i.e. 42 injuries on the head and face, according to us clearly makes out the intention of the Appellant as also the fact that he had the knowledge that said injury will cause death. The act of the Appellant in chasing deceased for 250 to 300 feet and then committing the gruesome and brutal murder clearly will not fall under Exception 1 or 4 of Section 300 of the Indian Penal Code. According to us the present case, is not a case which can attract any of the exceptions of the section 300. According to us, even the defence of appellant i.e. right of private defence is ruled out, due to the said extreme disproportionate aggression, manner and intensity of the assault.

11) Exception 1 of section 300, would be invoked only if, the act of the accused is committed whilst he is deprived of the power of self-control, by a grave and sudden provocation, which is given, by the very same person. In the present case, even if it is to be assumed that, the deceased gave the provocation by assaulting the Appellant's younger brother, the said provocation cannot be termed as "grave and sudden" as the Appellant chased the deceased for a distance of 250 to 300 feet and then carried out the repetitive and gruesome assault. Firstly, the reaction of the Appellant may not strictly fall within the ambit of being "immediate" so also as "grave and

sudden”. Pertinent to note, that the reaction is not at the same spot, were the deceased assaulted the Appellant and his younger brother. More importantly, one needs to keep in mind that, the assault also was not on both the Appellant and his younger brother. It seems that, there is no direct assault on the present Appellant. The deceased was chased by two persons, apprehended and then a brutal, concentrated and repeated assault on a vital part of the body i.e head was carried out in a gruesome manner. In our opinion, in the facts of the present case, the said exception cannot be called in aid of the Appellant.

12) We are of the opinion that, the present case also does not fall within the Exception IV of section 300. The said exception cannot be invoked as the ingredients thereof are not attracted. To invoke exception IV, it is the requirement of law, that the act was 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. In the present case, the Appellant and his brother have used an axe and sickle. The weapons are not such as would be readily available to the Appellant and that is not even the case of the Appellant. Further, as noted above, there are 42 chopped and incised injuries, concentrated on the head of deceased, to such an extent that the injuries overlap each other. It is clearly indicative of the fact that the Appellant has acted in an extremely gruesome, cruel and unusual manner. Considering the fact that the injuries are all on the head and

considering the number of the injuries and the concentrated attack which had completely destroyed the face of the deceased. In these facts and circumstances, we are clear and sure that exception IV cannot be called in the aid of the Appellant.

13) Considering the facts of the case and the evidence, though not argued, we have also analysed the case, from the point of view of the Appellants right to private defence of self and or family. Considering the facts, the chase, the weapons used and most importantly the manner and nature of assault, we are of the opinion that the right of private defence has clearly been over exceeded. More than the required force has been employed. We have also taken into consideration, the fact that the deceased was chased and the ultimate assault took place not at the original place where the brother of the Appellant was attacked. If the first place is considered, the mitigating fact in favour of the Appellant, to a limited extent would have been that the deceased was the initiator.

14) We find that the prosecution evidence i.e of PW-1 and PW-3 is reliable, trustworthy and clearly makes out a case that the Appellant is the culprit of crime. We have also noted that, in the present case there is direct ocular evidence of PW-3 and other witness which clearly makes out case against Appellant. The recovery of the weapons i.e. koyta (Sickle) and axe have been at the instance of the Appellant, which have been proved through PW-7- Panch witness and there is nothing in the cross-examination of the

Panch witness to disbelieve said recovery. The blood stained clothes of the Appellant and blood of the deceased on the clothes of the Appellant i.e. blood group 'B Positive' has been corroborated and proved. Further the weapon i.e. koyta and axe had blood of blood group of 'B Positive' which also connect the Appellant to the murder. We have also noted that the Appellant in his 313 statement, has only denied the prosecution case and stated nothing in his defence.

15) Considering the aforesaid facts and circumstances and evidence on record, we are of the opinion that, no case is made out to interfere with the conviction under Section 302 of the Indian Penal Code and impugned Judgment and Order dated 3<sup>rd</sup> February, 2014.

16) In view thereof, the Appeal is dismissed.

**(RANJITSINHA RAJA BHONSALE, J.)**

**(A.S. GADKARI, J.)**