



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.43 OF 2016

Aslam Ajim Sayyed
Age: 30 years, Occu.: Labour,
Residing at post Takli,
Tq. Kopargaon, Dist. Ahmednagar

.. Appellant

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Ashti, Tq. Ashti,
District Beed.

.. Respondent

...
Mr. Arun S. Shejwal, Advocate for the appellant.
Mr. S. M. Ganachari, APP for respondent/State.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 01.09.2026

Pronounced on : 02.09.2026

JUDGMENT :-

1. By way of instant appeal, there is challenge to the judgment and order of conviction dated 06.01.2016 passed by the learned Sessions Judge, Beed in Sessions Case No.138 of 2013 recording guilt of the appellant for offence under Section 335 of Indian Penal Code [IPC].

2. In short, prosecution case in trial Court was that there was altercation between accused and deceased on the point of occupying

seat in State transport bus travelling from Ambejogai to Pune. Said quarrel escalated into assault by accused to deceased, who suffered injury on the forehead and fell unconscious. He was shifted to hospital. On report of one Pandit Pokale, who is the son of deceased, crime was registered for offence under Section 326 of IPC and subsequently, Section 307 of IPC came to be added, but as deceased died on 25.06.2013 while undergoing treatment, crime was converted to Section 302 of IPC and accused was duly charge sheeted and tried by the learned Sessions Judge vide Sessions Case No.138 of 2013. Oral and documentary evidence adduced by prosecution was appreciated and learned trial Judge reached to a finding that prosecution has failed to prove that offence under Section 302 of IPC was made out, but held accused guilty for offence under Section 335 of IPC and sentenced him to suffer imprisonment for two years.

. Instant appeal arises out of said judgment and order of conviction.

3. Learned Counsel for the appellant pointed out that there is false implication. According to him, there is no eye witness. Secondly, accused and deceased being strangers, there was issue of identification of accused. That, no Test Identification parade was conducted by prosecution in the trial Court.

4. Learned Counsel took this Court through the prosecution evidence, more particularly, the evidence of PW2, who is the son of the deceased, as well as PW3, who had informed PW2 about the incident. It is submitted that the testimony regarding the alleged eye-witness account is also without corroboration. He further questioned the prosecution case on the ground that the scene of occurrence panchanama has not been duly proved, as the panch witness has stated that he did not narrate the contents of the panchanama. Taking this Court through the evidence of PW2, it is submitted that this witness, being the son of the deceased, has deposed that his father was not in a position to speak. He further deposed that he came to know the name of the accused only subsequently, after recording of his statement.

5. On the point of injury to deceased is concerned, by taking this Court through the testimony of PW5 medical expert, learned Counsel for the appellant submits that there was clear admission that said injury is possible due to fall on hard surface. Moreover, inquest panchanama does not carry any injuries or marks. He pointed out that there was no injury to the skull, nor any artery was ruptured and therefore, death could not be attributed to assault or injury. Moreover, according to him death was due to septicemia.

6. Lastly, it is submitted that the aforesaid evidence has not been correctly appreciated by the learned Trial Court. He, therefore, prays that the judgment and order of conviction be set aside and the appeal be allowed.

7. Per contra, learned APP for respondent/State, who would support the judgment and order of conviction, also took this Court through the prosecution witnesses examined in the trial Court and he laid emphasis on the testimony of PW3, who, according to him, was direct eye witness. He pointed out that there was identification of accused in trial Court by this witness and therefore, failure to conduct no Test Identification parade is of no much significance. He took this Court through the postmortem report, evidence of medical expert PW5 as well as cause of death certificate and would submit that death was only and only due to assault and for no other reason and therefore, he justifies the the and prays to dismiss the appeal for want of merits.

8. After hearing above submissions and on going through the evidence on record, it appears that, initially, charge was framed under Section 302 of IPC, but on appreciation of evidence, learned trial Court seems to have recorded the conviction for offence under Section 335 of Indian Penal Code and the same is not challenged.

9. Though the prosecution has adduced the evidence of as many as six witnesses, the crucial evidence is that of PW3. Though the son of the deceased, PW2, has been examined, on analysing his evidence at Exhibit-26, it appears that, admittedly, he was not a party to the occurrence and his evidence appears to be based on hearsay information. Therefore, the only evidence which remains for consideration is that of PW3 at Exhibit-28.

10. **PW3** testified that, on 08.06.2013, he had been to the bus stand for repairing water pump of the motor. There, he saw a mob gathered near parking place meant for buses in the vicinity of bus stand and so he went there. He deposed that he saw one person assaulting Kalyan Pokale i.e. after catching hold by neck with one hand and with other hand assaulting on the head. Therefore, he went and reported the incident to his son, who came to the bus stand and Kalyan was taken to the hospital. He has deposed that he came to know that assault was due to quarrel in the backdrop of seat in the bus. Though above witness is subjected to cross-examination, there is little or no cross on the point of what this witness saw and deposed in paragraph No.1 of his examination-in-chief. Rather, the manner of cross-examination, more particularly, paragraph No.3 shows that there is no serious challenge to the occurrence. He denied falsely

deposing about witnessing the incident.

. Thus, here there is eye witness account, which has virtually remained unshaken.

11. Deceased Kalyan died on 25.06.2013 in consequence to occurrence of assault dated 08.06.2013. **PW5** medical expert, who conducted autopsy, narrated the injuries noted by him i.e. external injuries and he specifically deposed that there was history of assault on 08.06.2013. On external examination, he has noted following injuries :-

- i) Therapeutic Tracheostomy wound present over front of neck,
- ii) Partially healed contused abrasion present over medial aspect of right arm over upper half of size 10 cm x 5 cm, small dark black scab present over lower margin of size 1 cm x 1 cm.
- iii) Partially healed contused abrasion present over medial aspect of left arm, middle 1/3rd region, small bluish scab present.

. PW5 Doctor opined that probable use of weapon was hard and blunt object. In examination-in-chief, he deposed that after referring final cause of death certificate, he opined that cause of death was infarction of midbrain and pons due to traumatic thrombotic occlusion of basilar artery, which, according to him, is possible, if a head is

stuck by fighter forcibly, resulting into traumatic injury due to rupture of artery.

. However, while under cross-examination, he admitted that he did not locate rupture of artery during postmortem. He also admitted that if aged person is assaulted and he falls on hard surface, traumatic rupture to arteries is possible. Thus, in the cross-examination itself there is suggestion that the said injury was possible on account of the assault followed by a fall on a hard surface.

12. In the backdrop of the aforesaid evidence and having regard to the circumstances in which the occurrence had taken place, it would be appropriate to refer to the statutory provision under Section 335 of IPC, under which the appellant has been convicted. Section 335 of the IPC reads thus:-

“335. Voluntarily causing grievous hurt on provocation. -

Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine, which may extend to two thousand rupees, or with both.”

13. Taking into consideration the eye witness account of PW3 and there being direct evidence of the occurrence, learned Trial Court

committed no error in holding accused guilty for voluntarily causing hurt on sudden provocation.

14. In view of above discussion, the following order is passed :-

ORDER

. Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

scm