



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 234 OF 2016

Chandrakant Sahadu Kaware
Age: 45 years,
R/o. Warkhedmala, Parner,
Tal. Parner, District Ahmednagar.

....Appellant
(Orig. Accused)

Versus

The State of Maharashtra
Through Police Station, Parner,
Parner, Tal. Parner, District Ahmednagar.

.....Respondent

.....
Mr. Atul B. Gatne, Advocate for Appellant :
Mr.VM. Lomte, APP for Respondents:

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27 AUGUST, 2026

PRONOUNCED ON : 28 AUGUST, 2026

JUDGMENT :

1. In this appeal, there is challenge to judgment and order dated 11-02-2016 passed by learned Sessions Judge, Ahmednagar in Sessions Case No.158 of 2013, convicting the appellant for offence under Sections 332, 336, 324, 353, 427 of the Indian Penal Code (IPC).

BRIEF FACTS OF THE CASE

2. In brief, case of prosecution in trial Court was that, on

16-06-2011, telephonic information was received by PW5 Jagtap, a Police Naik, regarding a person terrorizing people, pelting stones, and obstructing traffic. Accordingly, police party reached the spot at around 01:45 p.m. and noticed that, accused, who was armed with a knife, was raising hue and cry and also terrorizing people. When police went to pacify him, he allegedly abused police official and when he was tried to be nabbed, he gave knife blow on the neck of PW5 Jagtap, a blow which was warded off, but causing injury to finger. Finally, police managed to nab him. Police party learnt from the people gathered there that, said accused person has desecrated statue of “Lord *Hanuman*” and therefore, after bringing accused to the Police station, PW5 Jagtap lodged report, resulting into registration of Crime No.114 of 2011 for offence under Sections 307, 295-A, 452, 353, 324, 323, 332, 427, 504, 506, 336 and 337 of the IPC and under Sections 37(1)(3)/135 of the Bombay Police Act.

PW7 Shivarkar, who was entrusted with investigation, carried out the same, and chargesheeted the accused, who was finally tried vide above sessions case and also came to be convicted. Hence, the instant appeal.

BRIEF ACCOUNT OF EVIDENCE BEFORE TRIAL COURT

In support of its case, prosecution has adduced evidence of in all eight witnesses. Sum and substance of their evidence is as under :

3. **PW1** Sahadu Dnyandeo Jadhav, Panch to seizure of knife, has not supported prosecution.

4. **PW2** Shivaji Paraji Sobale is the Pancha to panchanama of damaged Bus. Said Panchanama is at exh.22.

5. **PW3** Balasaheb Tarate is the Driver of Parner Public School Bus, which was damaged and according to him, while he was taking children to Parner Peth and when the bus reached near Lower “Ves” accused came towards Bus, lifted a cement block and threw it on the Bus causing damage to left side window of the bus. According to him, accused was also holding a knife.

6. **PW4** Ganesh Pandharinath Kanade is the shop owner namely Sheetal Foot Wear, a glass of which was also allegedly broken and he deposed that, accused came near his shop and saw him breaking the glass.

7. **PW5** Vilas Vitthal Jagtap (Police Naik) is the Informant, who

claims that, when he tried to nab accused, he was assaulted by means of knife. That, blow on the neck was warded off, but he sustained injury to right hand finger. He has set law into motion.

8. **PW6** Dr.Balasaheb Kaware is the Medical Officer, who had occasion to examine one of the injured.

9. **PW7** Sunil Bhagwantrao Shivarkar is the Investigating Officer.

10. **PW8** Dattatraya Rambhau Redekar is police personnel, who was present at the spot alongwith other police staff.

SUBMISSIONS

On behalf of appellant :

11. Pointing to above evidence, learned counsel for appellant submits that, prosecution has miserably failed to establish the charges beyond reasonable doubt. That, there was no convincing and cogent evidence in support of the charges. At the outset, he questions the prosecution story for not conducting test identification parade as accused was admittedly a stranger to all the witnesses. He pointed out that, though there was said to be huge crowd at the spot, no independent witness or injured witness is examined. He

would submit that, though there is allegation of use of knife, its recovery is not proved as prosecution witness did not support on that count. According to him, scientific evidence also does not support prosecution as inspite of claiming to be witness suffering bleeding injury, no blood stain was detected over the knife.

12. He further took this Court through the impugned judgment and would point out that, here, learned trial Court on the same set of evidence, acquitted the accused from charges under Sections 295-A, 323, 504, 506, 337, 307 and 452 of the IPC and under Sections 37(1)(a)(3)/135 of the Bombay Police Act, but he questions conviction for offence under Sections 332, 353, 324, 336 and 427 of the IPC, which requires essential ingredients to be established, which prosecution failed to do so and on such count also, he questions the maintainability and sustainability of impugned judgment.

On behalf of State :

13. Learned APP, who supported impugned judgment, would point out that, essential ingredients of causing voluntary hurt to public servant to deter him from performing duty, have been demonstrated by the prosecution in the trial Court. That, all prosecution witnesses stood the cross-examination and their testimony having remained

unshaken, he justifies the order of conviction and prays to dismiss the appeal for want of merits. In support of his submissions, he relied on the judgment of this Court dated 06-05-2026 passed in the case of *Devanand s/o Sahebrao Rochkari v. The State of Maharashtra* in Criminal Appeal No.24 of 2016 with connected matter.

ANALYSIS

14. On studying the papers, it is noticed that, though there was charge for aforesaid offences, learned trial Court undisputedly, on complete appreciation of evidence, has itself acquitted the accused from charges under Sections 295-A, 323, 504, 506, 337, 307 and 452 of the IPC as well as under Sections 37(1)(a)(3)/135 of the Bombay Police Act, however, conviction has been recorded for offence under Sections 332, 324, 353, 336 and 427 of the IPC.

Case of prosecution in trial Court was that, accused initially desecrated and defiled the statue of “Lord *Hanuman*” and thereafter, created chaos and terror in the vicinity by getting armed with knife. He caused damage to the school bus, a shoe shop and when he was tried to be nabbed by police party, he inflicted a knife blow on them and thereby committed above offences.

15. Admittedly, as submitted, when accused was a stranger, it was

incumbent of prosecution at the first count to get test identification parade conducted by confronting accused atleast to the independent witnesses, who were injured. However, here, no such test identification parade is conducted. Even independent injured witness namely Yogesh Shantaram Wagh, whose name is reflected in the FIR for suffering injury, is not made to step into the witness box even when Doctor, who examined him and certified injury, is examined by prosecution.

16. Though there is allegation of use of article knife, pancha witness to its recovery has not been examined. School bus driver and shoe shop owner, whose bus glass and shop glass were allegedly damaged, are examined, but as stated above, no test identification parade has been conducted and there is direct dock identification. Pancha to the panchanama of damage to bus glass admitted that police did not seize the broken pieces of glass and merely seized the cement block.

17. PW4 shop owner has also not supported prosecution. PW5 is the crucial witness and he was tried to be attacked by accused, but though he has suffered injury, there is no injury certificate attributable to same. As pointed out, he has not categorically stated

which of the fingers of his right hand suffered bleeding injury.

18. Again as pointed out, it is noticed that, learned trial Court has, on the same set of evidence, recorded a finding that, prosecution failed to prove voluntary causing of hurt, and answered point No.4 regarding voluntary causing hurt to one Yogesh Wagh in affirmative, but said injured witness was never examined by prosecution in the trial Court.

19. Similarly, one of the striking features of the case is that, when offence of Section 323 of the IPC is held to be not proved, surprisingly, offence of Section 332 of the IPC is held to be proved. Therefore, apparently there does not seem to be correct appreciation of evidence while recording the findings. For the more reason, as there is apparent error on the part of trial Court in appreciating the evidence, such judgment and order cannot allowed to be sustained. Accordingly, following order is passed :

ORDER

I. The appeal is allowed.

II. Conviction awarded to the appellant Chandrakant Sahadu Kaware by learned Sessions Judge, Ahmednagar, in Sessions Case No.158 of 2013, for offence under Sections 332, 353, 324, 336 and 427 of the Indian Penal Code on 11-02-2016, stands quashed and set aside.

III. Appellant stands acquitted of the offence under Sections 332, 353, 324, 336 and 427 of the Indian Penal Code.

IV. The bail bonds of appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of Muddemal.

(ABHAY S. WAGHWASE)
JUDGE