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

CRIMINAL APPEAL NO. 43 OF 2012

Akram Khalil Ahmed Inamdar

..Appellant

Vs

The State of Maharashtra
(Through Vishrambag Police Station,
Sangli.

..Respondent

Dr. Yug Mohit Chaudhary for the Appellant.
Mr. J.P. Yagnik, A.P.P. for Respondent-State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

**Reserved On: 17th January 2019.
Pronounced On: 27th February 2019**

JUDGMENT (Per Shri A.S. Gadkari, J.):-

1] The appellant has impugned the Judgment and Order dated 19th November 2011 passed by the learned Additional Sessions Judge-3, Sangli in Sessions Case No.160 of 2009 convicting the appellant for the offence punishable under Section 302, 452 read with 34 and under section 342 of Indian Penal Code, sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.1500/-, in default of payment of fine to further

undergo rigorous imprisonment for six months under section 302 read with 34 of the Indian Penal Code.

By the same Judgment and Order, the appellant has been directed to suffer rigorous imprisonment for two years and to pay a fine of Rs.1500/-, in default of payment of fine to further undergo rigorous imprisonment for six months under section 452 read with 34 of the Indian Penal Code.

The appellant is also sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500, in default of payment of fine to further undergo rigorous imprisonment for two months under section 342 of the Indian Penal Code.

The Trial Court has directed that all the sentences shall run concurrently.

2] Heard Mr. Y.M Chaudhary, the learned counsel for the Appellant and Mr. J.P. Yagnik, the learned APP for the State. Perused the entire record.

3] The date and time of the incident is 26th April 2009 at about 8.00 a.m and the place of the incident was the residential premises of Farukh Shaikh (deceased).

It is the prosecution case that, the deceased Farukh Shaikh was having two wives namely Smt. Madina F. Shaikh (PW No.10) and Smt. Shahista. Six months prior to the date of incident Farukh Shaikh married with Smt. Sahista. Smt. Shahista was residing separately in a room situated at Rajiv Nagar, Taluka-Miraj, District- Sangli. Smt. Madina (PW No.10) was residing along with her two children at a room situated at Nehrunagar, Taluka-Miraj, District Sangli.

The appellant and co-accused Saddam (juvenile in conflict with law) were friends of deceased Farukh Shaikh. The appellant and co-accused Saddam are cousin brothers. Farukh Shaikh came to know that, Saddam was having illicit relationship with Smt. Shahista. It is also the prosecution case that, Madina (PW No.10) was having illicit relationship with the appellant who was residing near her house at Gandhi Colony. Farukh Shaikh told the said fact to Smt. Madina and therefore the appellant and co-accused were angry with Frukha Shaikh. Prior to the date of incident i.e. 26th April 2009, Farukh Shaikh (deceased) had disclosed the said fact to his brother Firoz Y. Shaikh (PW No.9) and this was also the reason that the appellant and co-accused Saddam were angry with Farukh Shaikh and he had expressed his apprehension to Firoz Shaikh (PW No.9) that, co-accused

Saddam will cause grievous hurt to him.

On 25th April 2009 at about 10.00 p.m, Farukh Shaikh had been to the house of Smt.Madina (PW No.10) and slept there. At about 1.30 a.m on 26th April 2009. Smt.Shahista and Saddam came to the house of Smt. Madina and a discussion took place between Smt. Shahista and Farukh. The said discussion was going on for an hour. Saddam left the said place and went to his house. Smt. Shahista left the house at about 6.00 a.m of 26th April 2009. At about 8.00 a.m, Smt.Madina (PW No.10) and Farukh (deceased) were having taking tea. Smt.Madina (PW No.10), Farukh Shaikh and their daughter Ipthesam (PW No.11) then aged about 14 years were present in the house. That time, there was a knock on the front door of their house. Farukh Shaikh opened the door. After opening the door, Saddam entered into the house and latched the door from inside. At the same time, from the backside of the door of their house, the appellant came inside the house and gave a blow of wooden log on the back of the head of Farukh. Saddam also assaulted Farukh with wooden stick. Due to said assault, Farukh fell down and became unconscious. Smt.Madina (PW No.10) made hue and cry. The appellant threatened Smt. Madina with dire-consequences, if she continue to shout. It is alleged that, the appellant

pushed out Smt. Madina and her daughter Ms.Ipthesam (PW No.11) from back side door of their house. Smt.Madina (PW No.10) alongwith Ms.Ipthesam (PW No.11) therefore rushed to her parents house by an auto-rickshaw. She narrated the said incident to her parents and thereafter all the concerned persons came at the scene of offence when she was informed that, Farukh Shaikh was admitted to Civil Hospital.

4] Firoz Y. Shaikh (PW No.9) is the younger brother of deceased Farukh. On 26th April 2009 he was plying an auto-rickshaw when his cousin mother-in-law stopped it and disclosed to him that, the appellant and Saddam (juvenile in conflict with law) have assaulted his elder brother Farukh and kept him inside the house by locking door from outside. He immediately rushed to the house of Farukh and noticed a lock on the door of house. He tried to break it open. The appellant who was present near the said spot told him that he is having key of the said lock and asked Firoz Shaikh (PW No.9) to take the key. Firoz Shaikh (PW No.9) took the key from him and opened the lock and entered into the house. He saw Farukh, his elder brother was lying in the house with blood stream. He thereafter took Farukh from his auto-rickshaw and admitted him in Civil Hospital. Farukh was admitted in the casualty ward of the Civil Hospital, Sangli. He

thereafter lodged the present crime with Vishrambag Police Station, Sangli on 26th April 2009 at about 8.30 a.m.

5] Dr. Madhuri S. Kamble (PW No.18) initially treated Farukh and gave preliminary treatment at the Civil Hospital. She noticed the following external injuries on the person of Farukh Shaikh:-

1. Contusion over occipital region of 10 c.m x 5 c.m reddish.
2. Contusion over left temporo Parietal region of 15c.m x 12 c.m
3. Contusion over left right temporo parietal region 10 cm x 3 c.m.
4. Contusion over abdomen around umbilicus of size 4 c.m x 6 c.m. size reddish along with three scratch abrasion over it of 1 x 1 c.m size.
5. Contusion over right thigh of 4 x 3 cm reddish.
6. Contusion over left thigh of 15 x 12 c.m reddish.

At Civil Hospital, Sangli Farukh Shaikh was further treated by Dr. Appasaheb V. Ingale (PW No.17) a Surgeon. He noticed discharge of blood from the left ear and both nostrils. Blood Pressure of Farukh Shaikh was 120/70 which was normal. He informed the condition of Farukh Shaikh as serious to his relatives. The relatives of Farukh Shaikh were not willing to continue with the treatment at Civil Hospital, Sangli and therefore they got Farukh Shaikh discharged from the said hospital against

the medical advise . The relatives of Farukh Shaikh shifted him to Sanjeev Neurosurgical Centre owned by Dr. Sanjeev M. Kulkarni (PW No.16) at about 2.00 p.m In the said hospital Farukh Shaikh was under treatment of Dr. Sanjeev M. Kukarni (PW No.16) upto 2nd May 2009.

6] The appellant when was in the police custody expressed his desire to give recovery of wooden log used by him for assaulting Farukh Shaikh. Accordingly, a wooden log admeasuring about 51 inches in length was recovered at the instance of the appellant in presence of panch-witness namely Altaf H. Pakhali (PW No.8) by effecting a detailed panchanama (Exh.49)under Section 27of the Indian Evidence Act on 29th April 2009.

7] On 2nd May 2009, at about 6.30 p.m. Farukh Shaikh developed cardiac arrest and expired at about 7.00 p.m. After the death of Farukh Shaikh, the hospital administration handed over the dead body of Farukh to the police. Dr. Vyankatrao Hulwan (PW No.15) conducted autopsy on the dead body of Farukh Shakh on 2.5.2009 between 10 to 11 p.m and opined that, the death of Farukh Shaikh occurred due to 'Head Injury'. Accordingly, he made an endorsement in the postmortem notes.

8] After the death of Farukh Shaikh Section 302 of Indian Penal Code was added to CR No.81 of 2009 which was originally registered with

Sections 307, 452, 342 read with 34 of Indian Penal Code. After completion of investigation, the police had submitted chargesheet in the Court of Judicial Magistrate First Class, Sangli.

As the offence punishable under Section 302 of Indian Penal Code was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Sangli, committed the said case to the learned Sessions Court by an Order dated 6th October 2009 passed below Exh.1. The Trial Court framed charge below Exh.6. The said charge was read over and explained to the appellant to which he denied and claimed to be tried.

The prosecution in support of its case, examined in all 21 witnesses. The Trial Court after recording the evidence and after hearing the parties to the case, was pleased to convict the appellant by the impugned Judgment and Order as noted hereinabove.

9] The aforestated chronology of events are admitted facts on record.

In view of the facts and circumstances of the present case mentioned herein above, the question arises for our consideration is, as to what offence the appellant has actually committed.

10] Mr. Chaoudhary, the learned Counsel for the appellant submitted that due to the causation i.e. the shifting of Farukh Shaikh against medical advise from the Civil Hospital, Sangli to Sanjeev Neurosurgical Centre owned by Dr. Sanjeev M. Kulkarni (PW No.16), the nature of injuries got aggravated and subsequently the applicant died due to cardiac arrest. He, therefore, submitted that the appellant therefore can be held liable for the death of Farukh Shaikh. The injuries received at the hands of appellant mentioned in paragraph No.5 hereinabove, which would at the most attract Section 326 of the Indian Penal Code.

11] A minute scrutiny of the evidence on record would indicate that, after Firoz Shaikh (PW No.9) admitted Farukh Shaikh at Civil Hospital, Sangli, Dr. Madhuri S. Kamble (PW No.18) at the first instance examined him and gave primary treatment. As noted earlier in paragraph-5 she noticed the said six external injuries on the person of Farukh Shaikh and has issued a medical certificate (Exh.75) to that effect. In her testimony, she has stated that, the Civil Hospital informed the relatives of the patient that, a nuro-surgeon was not available in the said hospital and therefore patient's relatives have to decide if they want to keep the patient

in the said Civil Hospital and continue with the treatment or they would like to take the patient to a private hospital.

In her cross-examination, she has admitted that she had given advise to the patient to continue treatment at Civil Hospital, Sangli. She further stated that, Dr. Ingale (PW No.17), General Surgeon attached to the Civil Hospital examined the patient. Dr. Ingale is master of surgeon and was more experienced than her.

12] Dr. Ingale (PW No.17) in his testimony has stated that, on 26th April 2009 at 9.45 a.m., the patient namely Farukh Shaikh aged about 36 years was brought in unconscious condition by his father Mr. Yusuf Shaikh. He found the condition of the patient to be serious. That the patient was facing discharge of blood from his left ear and both nostrils. His blood pressure was 120/70 which was normal. He noticed multiple abrasions over abdomen. He advised to do CT Scan and accordingly CT Scan was undertaken at about 10.30 a.m.. The report of CT Scan was made available at 11.00 a.m. After receiving CT Scan report, he noticed massive cerebral odema. There was subarachonoid blood in the basal cisterns. He also noticed well defined blood clots in right posterior parietal region and also noticed multiple fracture in left occipital region and left frontal region.

After perusing the said report, he noticed that the condition of the patient was very serious and it was informed to relatives of the patient. The relatives of the patient were not willing to keep him in Civil Hospital and therefore, the patient i.e. Farukh Shaikh (deceased) was discharged against medical advice at 1.15 p.m.

In his cross-examination, Dr. Ingale has admitted that the general condition of the patient was quite serious. He stated that such blood clots were not necessary to be removed. He stated that, such type of patient can be cured in Civil Hospital, Sangli and therefore, he gave suggestion to the relatives of the patient that he can be cured in the Civil Hospital and advised them not to remove the patient from the Civil Hospital. He has further admitted that, he was having hope for this patient (Farukh Shaikh) and he asked relatives of the said patient not to remove the patient from Civil Hospital. He also admitted that, according to him, such type of patient can be cured. He has further admitted that, if patient is shifted in such condition to other hospital, it may be fatal for the patient. That if such patient is shifted, during shifting, injuries may worsen. He has

explained that “worsen” means if the injury is minor, it may become major during shifting and wastage of time when patient is shifted from his hospital to other hospital. At that time there would be a break in the treatment. He has further opined that the break in the treatment might cause death of the patient. He has further admitted that, though the patient's condition was serious, there was still good hope for his survival.

13] Dr. Sanjeev M. Kukarni (PW No.16) in his testimony has stated that, the patient Farukh Shaikh was brought from Civil Hospital, Sangli to his hospital on 26th April 2009 at about 2.00 p.m. He gave treatment to Farukh Shaikh (deceased) from 2.00 p.m of 26th April 2009 till 2nd May 2009 when Farukh Shaikh died in his hospital while undertaking treatment. He has stated that, the patient was brought to his hospital when he was unconscious and never conscious till his death. The condition Farukh Shaikh was critical since beginning. That he had multiple fractures to both side of skull bones. He has further stated that, it was difficult for the patient to survive with those injuries. That on 2nd May 2009 at about 5.30 p.m., Farukh Shaikh developed 'cardiac arrest'. That resuscitation was tried, however, he could not survive and expired at 7.00 p.m. He has stated that in such type of patient, surgery treatment was not helpful. That after

his death, the body of the said patient was handed over to the police.

In his cross-examination, he has admitted that, injuries on the person of Farukh Shaikh were superficial injuries and were accordingly noted on record. He noted superficial injuries of scalp. He has further admitted that, usually when patient was already treated in Civil Hospital, they would have mentioned all superficial injuries. He has further stated that, in treatment certificate (Exh.69), the cause of death in particular words is not mentioned. That in the said certificate, he has not mentioned the cause of death of the patient was due to 'head injury'. He has further admitted that, there are many reasons for developing 'cardiac arrest'.

14] Dr. Vyankatrao Hulwan (PW No.15) had performed the autopsy on the dead body of Farukh Shaikh. In his testimony, he has stated that, he was attached to Government Hospital, Miraj as a Medical Officer. That on 2nd May 2009, the dead body of Farukh Shaikh was received by Miraj Government Hospital for postmortem at about 9.45 p.m. He conducted the said procedure between 10.00 p.m to 11.00 p.m. He noticed surface wounds and injuries which are mentioned in Col. No.17 of postmortem report. That after conducting internal and external examination he found that the same occurred due to 'head injuries' and accordingly he put the

said remark in paragraph 21 under the head “opinion as to probable cause of death”. He has further stated that, injuries noted by him in Column No.17 of the postmortem report are probable by hard and blunt objects.

15] After taking into consideration the aforestated evidence of medical experts available on record, it is clear that as per the assertive evidence of by Dr. Appasaheb V. Ingale (PW No.17), that there was every probability of survival of Farukh Shaikh if he would not have been shifted from civil hospital against medical advice and if there would not have been a break in the treatment at the said hospital.

16] As noted earlier, Dr. Sanjeev M. Kukarni (PW No.16) has stated that, Farukh Shaikh died due to “cardiac arrest” and there are so many reasons for developing cardiac arrest. Dr. Vyankatrao Hulwan (PW No.15) has recorded the probable cause of death due to “head injury”. However, evidence on record is silent about cardiac arrest suffered by Farukh Shaikh is the ultimate result of said head injury. The evidence on record is absolutely silent in that behalf. In view of the evidence of Dr. Appasaheb V. Ingale (PW No.17), it is clear that it is due to the causation i.e. shifting of Farukh Shaikh from Civil Hospital, Sangli to another hospital of Dr. Sanjeev M. Kukarni (PW No.16), the patient ultimately expired due to 'cardiac

arrest'. As noted earlier, there is no direct co-relation of the head injury with the said cardiac arrest in view of admission given by Dr. Sanjeev M. Kukarni (PW No.16).

It is, therefore, difficult for us to hold that, Farukh Shaikh died due to assault by the appellant and co-accused Saddam (juvenile in conflict with law).

17] We are therefore of the view that the appellant is liable for causing grievous hurt to Farukh Shaikh (deceased) and his act would therefore fall within the ambit of Section 326 of the Indian Penal Code and the appellant cannot be held guilty of an offence under Section 302 of the Indian Penal Code.

Hence, the following Order:-

(a) The Judgment and Order dated 19th November 2011 passed by the learned Additional Sessions Judge-3, Sangli is modified and the appellant is held guilty for the offences punishable under Sections 326, 342, 452 read with 34 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5000/-, in default of payment of fine to suffer further rigorous imprisonment for six months.

(b) The appellant is entitled for set off as contemplated under Section 428 of the Code of Criminal Procedure.

(c) Criminal Appeal is accordingly partly allowed.

(A.S.GADKARI, J.)

(A.S. OKA, J.)