



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.234 OF 2023

Vinod s/o Bhalchand Koram,
a/o 30 years, occupation labour,
r/o post : Musewadi, tahsil:Ramtek
district Nagpur. **Appellant.**

:: VERSUS ::

The State of Maharashtra,
through PSO PS Ramtek,
tahsil : Ramtek, district Nagpur. **Respondent.**

Shri R.R.Rajkarne, Counsel for the Appellant.
Shri A.J.Gohokar, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/06/2025
PRONOUNCED ON : 18/06/2025

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order dated 16.9.2022 passed by learned Sessions Judge, Nagpur (learned Judge of the trial court) in Sessions Case No.177/2018.

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2. By the said judgment impugned in the appeal, the accused is convicted for offence under Section 325 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 5 years and to pay fine Rs.25,000/-, in default, to undergo rigorous imprisonment for 6 months.

3. Brief facts of the prosecution case, as emerged from police papers and recorded evidence, are as under:

Kisna Koram (the informant), has lodged FIR alleging that Atmaraam (the deceased) was his youngest son and was residing along with his wife and they were doing labour work. On 5.2.2010, at about 8:00 am, he had been to his agricultural field and returned at 5:00 pm. The wife of the deceased informed him that the accused and his wife were quarreling and the accused was assaulting his wife and, therefore, the deceased

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intervened and gave the accused understanding. The accused told him that it is their internal matter between husband and wife and he should not intervene and, therefore, the deceased was returning his house. At the relevant time, the accused followed him and pushed him due to which he fell on the ground and received injuries. It was further alleged that the accused sat on chest, twisted his neck, and pressed his throat. Thereafter, the deceased was taken to the Government Hospital and while treatment, he died on 9.2.2018. On the basis of the said FIR, the crime was registered.

4. After registration of the crime, wheels of investigation started rotating. The Investigating Officer has drawn spot panchanama, seized clothes of the deceased as well as the accused. The accused was arrested. Blood Samples of the deceased and the accused were seized and collected postmortem notes. All

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incriminating articles were forwarded to the Chemical Analyzer and after completion of the investigation, chargesheet came to be submitted against the accused. As the offence under section 302 of the IPC was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Nagpur.

5. Learned Additional Sessions Judge, Nagpur framed charge against the accused. The accused pleaded not guilty and claimed to be tried. In support of the prosecution case, the prosecution examined in all six witnesses, namely:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Kisna Chirkut Koram	22
2	Sunita Atmaram Koram	25
3	Dr.Dinesh Akarte	28
4	Sarita Vasanta Koram	32
5	Dindayal Sarote, pancha on various panchanama	34

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6	Tarudatta Balkrushnarao Borsare, the Investigation officer	45
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6. Besides the oral evidence, the prosecution placed reliance on report Exh.23, FIR Exh.24, statement of PW2 Sunita Koram under Section 164 of the CrPC, postmortem report Exh.29, query letter Exh.30, query report Exh.31, spot panchanama Exh.35, seizure of clothes panchanama of the deceased Exh.36, seizure of blood samples panchanama Exh.38.

7. All the incriminating evidence is put to the accused in order to obtain his explanation. The defence of the accused is of total denial and of false implication.

8. After hearing both sides, learned Sessions Judge held the accused guilty considering the entire nature of sequence of events. It cannot be said that there was any

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intention to cause death or bodily injury. Even, knowledge could not be attributed to the accused regarding the death of the deceased. It was not premeditated act and, therefore, held the accused guilty as the aforesaid.

9. Being aggrieved and dissatisfied with the said judgment, the present appeal is preferred by the accused.

10. Heard learned counsel Shri R.R.Rajkarne for the accused and learned Additional Public Prosecutor Shri A.J.Gohokar for the State.

11. Learned counsel for the accused placed reliance on written submissions and submitted that even the offence under Section 325 of the IPC is not made out. The Sessions Court erroneously held the accused as guilty. In fact, PW1 Kisna Koram, who is father of the deceased, is not eyewitness. The main witnesses are not examined by

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the prosecution. The deceased sustained injuries due to fall from tree and due to previous dispute, the accused is implicated in the said crime. It is further submitted that the entire evidence on record is insufficient to connect the accused with the alleged offence. The witnesses examined by the prosecution are interested witnesses and no independent witnesses are examined. For all above these grounds, the judgment impugned in the appeal requires to be quashed and set aside.

12. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment impugned in the appeal and held that PW2 Sunita Atmaram Koram is eyewitness of the incident. Her version is not shattered during the cross examination. The incident is proved by the prosecution. Admittedly, the incident occurred at a spur of moment. There was no premeditation. In a “sudden fight” “sudden quarrel”, the death of the deceased is

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caused and, therefore, the appeal deserves to be dismissed.

13. Having heard both sides and perused the entire evidence on record, core question is, whether the prosecution succeeded in establishing that the death of the deceased is homicidal one. To support the prosecution case, the prosecution has examined PW3 Dr.Dinesh Akarte, who has examined the deceased while conducting the postmortem. On external examination, he found following injuries :

- i) crescentric abrasion present over right side of neck 10 x 0.1 cm in size brownish black in colour.
- ii) linear abrasion present over left side of neck, measuring 1 x 0.1. cm brownish black in colour, and
- iii) contusion over midline back of neck, 4x3 cm bluish in colour.

On internal examination, he found hematoma in neck tissue and muscles spread in the area of 7x5 cms in size. He also found 30 CC brownish colour fluid. He found fracture of C3–C4 cervical vertebra with extravasation of blood in surrounding tissue. On the basis of the postmortem report, he opined that cause of death is cervical spine injury. Accordingly, he prepared postmortem notes (Exh.29).

He has also received query report and opined that fracture of C3–C4 cervical vertebra may be possible by fall from tree, but due to other consequential injuries are missing, it is not possible in this case.

Thus, the evidence of PW3 Dr.Dinesh Akarte shows that the death of the deceased is due to cervical spine injury.

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During cross examination, PW3 Dr.Dinesh Akarte admitted that injuries mentioned in column No.20 i.e. hematoma present in neck tissue and muscles spread in the area of 7x5 cms in size are possible by fall from tree or some height. He also admitted that if someone throttles, a person may die immediately. He admitted that injury mentioned in column No.22 of postmortem report is not possible if the throat is pressed.

On the basis of the above cross examination, it was submitted that the death of the deceased is accidental one.

14. As the Medical Officer has specifically denied the possibility, he deposed that there were no other consequential injuries and, therefore, possibility of fracture of C3 and C4 cervical vertebra is not due to fall.

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15. Thus, the evidence of the Medical Officer sufficiently shows that the death of the deceased is due to sustaining injury on cervical vertebra which sufficiently shows that it is homicidal death.

16. Besides the medical evidence, the prosecution mainly relied upon the evidence of PW1 Kisna Koram, who is, admittedly, not eyewitness of the incident. At the relevant time, he was in the agricultural field. He received information from the wife of the deceased. During cross examination, he denied that death of the deceased is due to fall from tree. He has lodged the report on the basis of information received by him from his daughter-in-law. The said report is at Exh.23 and FIR is at Exh.24.

17. PW2 Sunita Koram, the wife of the deceased, is eyewitness of the incident. Her evidence discloses that

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the accused is her relative and staying near to her house. On 5.2.2018, there was quarrel between the accused and his wife and the accused was beating his wife. At about 10:30 to 11:00 pm, noise of quarrel was audible at her house. As the accused was assaulting his wife, her husband went to intervene and she was witnessing the incident from fencing of her house. Her husband has rescued the wife of the accused and asked her to sit near neighbouring house. The deceased was returning towards his house. At the relevant time, the accused came from backside, pushed him on the floor, and pressed his neck and, thereafter, she intervened and rescued her husband. The neighbouring persons gathered there and removed the deceased in the hospital. After two days of the incident, the deceased succumbed to death.

During cross examination, as to causing of injuries, only a suggestion was given that her husband fell from

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tree and sustained injuries to which she denied. It is also brought on record that her house is surrounded by other houses also.

Except this cross examination, nothing is brought on record.

18. PW4 Sarita Koram, is also another eyewitness who deposed that after hearing shouts of Sunita, she went outside the house. The quarrel was going on between Vinod and Atmaram. Sunita was requesting the accused to leave the deceased and the accused was assaulting her. They both rescued the deceased, but the deceased was in unconscious condition and, thereafter, taken to the hospital.

This eyewitness also denied that the deceased sustained injuries due to the fall from tree.

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19. PW5 Dindayal Sarote, is pancha on various panchanamas including spot panchanama Exh.35, seizure of clothes of the accused Exh.36, seizure of clothes of the deceased Exh.37, blood samples of the accused Exh.38.

Though this witness is cross examined, nothing incriminating is brought on record.

20. Investigating Officer PW6 Tarudatta Borsare, carried out the investigation and narrated about the investigation. During the investigation, it revealed to him that the deceased intervened in the quarrel of the accused and his wife and, therefore, he got annoyed and he caused the death of the deceased. He also admitted that initially, he received wrong information from one Kashiram Koram that the deceased fell on ground and sustained injuries.

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21. On the basis of the above said evidence, the prosecution claimed that the prosecution proved the case against the accused to show that it was the accused who caused the death of the deceased.

22. On appreciation of the evidence, there is no dispute as to fact that the deceased and the accused are related to each other. They are resided in the neighbourhood. On the day of the incident, there was quarrel between the accused and his wife and, therefore, the deceased intervened in the said quarrel and rescued the wife of the accused from clutches of the accused and was about to return to his house. As the accused got annoyed, as the deceased intervened in the said quarrel, the accused came from backside and pushed him due to which he fell on the ground and sustained injuries. The Chemical Analyzer's Report shows that Exh.3 jacket of the deceased was having blood stains. Blood Group of the accused is

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“B”. Whereas, Blood Group of the deceased is also “B”. There is no dispute as to fact that the quarrel was going on between the husband and wife and the deceased intervened in the said quarrel and rescued the wife of the accused. There was no previous enmity between the deceased and the accused. The evidence nowhere shows that there was any premeditation by the accused. However, it is apparent that in a “sudden quarrel”, between the deceased and the accused, on account of intervention by the deceased in the quarrel of the accused and his wife, the accused got annoyed, pushed him, and caused him injuries which resulted into death and, therefore, the present case falls under exception “sudden fight” “sudden quarrel”. The intention to cause death can be gathered generally from a combination of a few or several circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was

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picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; and (xi) whether the accused dealt a single blow or several blows.

23. By applying the above propositions and after coming to facts of this case, there is no dispute that the prosecution has established fact that the quarrel was going on between the accused and his wife. As the

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deceased intervened in the quarrel, the accused got annoyed and by coming from backside, made the deceased fall on the ground and the deceased sustained injuries.

24. Thus, considering the entire sequence of events, by no stretch of imagination, it can be said that there was any intention to cause death or bodily injury which would cause death. Even, there is no evidence to show that the accused was having sufficient knowledge that this act would cause the death of the deceased.

25. Thus, there was no motive or animus against the deceased. Even, the prosecution witnesses were not expecting death of the deceased due to said injuries and, therefore, the FIR is not lodged immediately.

26. Thus, the evidence on record is sufficient to show that it was not a premeditated act, but it was an outcome

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of a “sudden quarrel” because of the intervention of the deceased in the quarrel between the husband and wife. All essential elements show that the accused did not have any previous quarrel with the deceased. Thus, there was lack of animus. Such an act of the accused pushing or throwing on ground is without knowledge and intention to cause his death and, therefore, it is rightly held by learned Judge of the trial court that the offence would come under Section 325 of the IPC.

27. As learned Judge of the trial court has rightly considered the entire aspect that there was no previous enmity and there was lack of animus, the act was not premeditated and the incident happened in a “sudden fight” and, therefore, the case covers under exception given under Section 300 i.e. “sudden fight” “sudden quarrel” and, therefore, no interference is called for in the judgment impugned in the appeal.

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28. In view of the above, the appeal being devoid of merits is liable to be dismissed and the same is **dismissed**.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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