[2026] 10 S.C.R. 331 : 2026 INSC 1091

Appa
v.
The State of Maharashtra

(Criminal Appeal No. 4766 of 2026)

07 October 2026

[Prashant Kumar Mishra* and Shree Chandrashekhar, JJ.]

Issue for Consideration

Whether the conviction of the appellant u/s.394 of the IPC is sustainable; whether the conviction be altered to one under s.325 of the IPC.

Headnotes†

Penal Code, 1860 – s.394 – Conviction under, when not justified – High Court affirmed the appellant's conviction and sentence u/s.394 passed by the Trial Court – Interference with:

Held: Conviction of the appellant u/s.394 is not sustainable – s.394 applies where the offender, in committing or attempting to commit robbery, voluntarily causes hurt – The robbery or attempted robbery is not at all a peripheral circumstance and is rather an essential component of the offense – In the present case, such allegation of robbery rests entirely upon the assertion of the complainant that the appellant snatched her mangalsutra and dorle from her neck – There was no recovery of the alleged jewellery and nothing incriminating was seized from the appellant's possession either – There was no purchase receipt or any other material establishing the identity or value of the articles, as admitted by the complainant herself in cross-examination – Though the High Court relied on the observation in the spot panchanama that wooden tulsi beads and black beads were found scattered on the porch, these beads were never connected through evidence to the mangalsutra, and only pieces of rope were exhibited and their seizure from the spot proved through PW-3, one of two panch witnesses, before the Trial Court – Therefore, the conviction u/s.394 cannot be sustained – Further, the complainant's account is that the appellant had threatened her with a knife, and during a brief ensuing scuffle, slashed her left palm with it – Though,

* Author

this is partly corroborated by the medical evidence showing presence of injury (iv), however, PW-5-Doctor only opined that it was caused by a sharp, hard object, and no such weapon was ever recovered from the appellant or linked to injury – Moreover, the wound itself, measuring 7×½×½ cm, is relatively shallow in nature – Therefore, this is not a fit case attracting offence u/s.326 of the IPC – However, from the evidence on record, the assertion of the complainant that the appellant struck her in her mouth and caused her left upper incisor tooth to fall out is sufficiently proved through witness testimony and medical evidence – The same falls squarely within the definition of 'grievous hurt' given in s.320, IPC *viz.* fracture or dislocation of a bone or tooth – Conviction of the appellant altered to one u/s.325, IPC – Appellant is convicted for the offence punishable u/s.325, IPC – On facts, the sentence of rigorous imprisonment for seven years with a fine of ₹1,000 is reduced to the period already undergone by him with fine – Code of Criminal Procedure, 1973 – s.222. [Paras 9, 11, 12, 15]

Code of Criminal Procedure, 1973 – s.222 – Principle of Cognate Offences:

Held: Under s.222, a person charged with an offence consisting of several particulars may be convicted where the proved facts constitute a minor offence, notwithstanding that the minor offence was not separately charged – The principle of cognate offences, enables Courts to convict and sentence offenders for a 'minor' or less grave offence whose essentials are satisfied by the evidence on record, even when the original charge was framed for the 'major' offence – Complainant's account that the appellant had threatened her with a knife, and during a brief ensuing scuffle, slashed her left palm with it – Though this is partly corroborated by the medical evidence showing presence of injury (iv), however, PW-5-Doctor only opined that it was caused by a sharp, hard object, and no such weapon was ever recovered from the appellant or linked to injury (iv) – Moreover, the wound itself, measuring 7×½×½ cm, is relatively shallow in nature – Therefore, this is not a fit case attracting offence u/s.326, IPC – However, from the evidence on record, the assertion of the complainant that the appellant struck her in her mouth and caused her left upper incisor tooth to fall out is sufficiently proved through witness testimony and medical evidence – The same falls squarely within the definition of 'grievous hurt' given in s.320, IPC *viz.* fracture or dislocation

of a bone or tooth – Conviction of the appellant altered to one u/s.325, IPC. [Paras 10-12]

Evidence – Lack of Test Identification Parade, when not fatal – Plea of the appellant that his identity was not established, as the incident occurred at night, the faces of the assailants were admittedly covered, no Test Identification Parade was conducted, the appellant was shown to the witnesses by the police after his arrest, and the complainant's husband as well as her daughter stated in cross-examination that the assailants were not previously known to them:

Held: Courts below have already comprehensively considered these circumstances and were quite justified in treating the identification of the appellant as satisfactorily proven – FIR was lodged at 1:50 a.m., within four hours of the incident, though it occurred late at night – The complainant (PW-1) categorically identified the appellant, stated his name and place of residence, the nature and manner of their prior acquaintance – She reiterated this in her examination-in-chief and cross-examination – Her daughter (PW-2) and her husband (PW-6), the injured eyewitnesses, corroborated her identification – Her husband also stated that the appellant used to visit their village to meet his relatives – Moreover, the act that the complainant attributed to the appellant was that he sat close to her on the cot and threatened and assaulted her – The entire incident is said to have lasted about an hour, and multiple witnesses have stated that the bulb of the porch was switched on at the time – Therefore, the High Court rightly found that the complainant could not be disbelieved on the point of the appellant's identification – In these circumstances, the lack of a Test Identification Parade cannot be fatal either. [Paras 6, 7]

Case Law Cited

Rafiq Ahmed @ Rafi v. State of U.P., **2011 INSC 546 : [2011] 11 SCR 907;** *Mathai v. State of Kerala*, **2005 INSC 30 : [2005] 1 SCR 450 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Section 394 of IPC; Section 325 of IPC; Robbery or attempted robbery; Committing robbery; Attempting to commit robbery; Voluntarily causing hurt; Mangalsutra snatched; Threatened with knife; Brief scuffle; No recovery of alleged jewellery; Nothing incriminating seized; No purchase receipt; Section 222 of the Code of Criminal Procedure, 1973; Section 245 of the Bharatiya Nagarik Suraksha Sanhita, 2023); Principle of cognate offences; Conviction altered; Conviction altered to Section 325 of the IPC; 'grievous hurt'; Section 320 of the IPC; Section 326 of the IPC not attracted; Fracture or dislocation of a bone or tooth; Identification of accused proven; Identity established; No Test Identification Parade; Lack of Test Identification Parade not fatal; Sentence reduced; Period already undergone.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4766 of 2026

From the Judgment and Order dated 16.01.2026 of the High Court of Judicature at Bombay in CRA No. 690 of 1998

Appearances for Parties

Advs. for the Appellant(s):
Sudhanshu S. Choudhari, Sr. Adv., Mahesh Prakash Shinde, Ratnesh Dube, Ms. Pranjal Chapalgaonkar, Ashok Kumar Gupta II.

Advs. for the Respondent(s):
Ms. Ira Mahajan, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Shrirang B. Varma.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

1. Leave granted.

2. This Appeal is directed against the judgment and order dated 16.01.2026 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 690 of 1998, whereby the High Court dismissed

the appeal *qua* the present appellant and affirmed his conviction under Section 394 of the Indian Penal Code, 1860[1] and the sentence of rigorous imprisonment for seven years with a fine of ₹1,000 (in default of which he would undergo further rigorous imprisonment for six months) passed by the Additional Sessions Judge, Malegaon, District Nashik, Maharashtra. The appellant was accused No. 1 before the Trial Court.

3. The prosecution's case arises out of an incident dated 23.01.1993 and is as follows. The family of the complainant consisted of her, her husband, and their minor daughter, who lived together in a three-roomed farmhouse situated in their agricultural fields. After dinner, the complainant was sleeping on a 'baj' (cot) on the 'otta' (porch) outside the house, her daughter was sleeping on the floor nearby, and her husband had gone to irrigate the onion crop near the well in the field, when four persons came to the farmhouse. The complainant's daughter shouted on seeing them. The complainant arose from slumber and saw the appellant sitting near her on her cot. He threatened her by pointing a knife at her neck and told her to stop talking. When she attempted to resist and seize the knife, she sustained an injury to her hand. The appellant then punched her in the face, causing an upper tooth to fall out. He also removed her gold mangalsutra and 'dorle', weighing approximately five tolas and worth ₹4,000. Another assailant, Kailas/Accused No. 2 took the daughter inside the house, assaulted her, and demanded to know where money received from the onion crop was kept. The remaining two assailants restrained the husband, tied his hands and took him into the room of the house. After some time, the complainant untied her husband's hands. The family shouted, and villagers eventually approached. All four assailants fled toward the railway line. A 'battery' (torch) was also taken while fleeing.

4. After the Sarpanch sent word, a police van was sent. All three injured persons were taken to the police station and a complaint was lodged. Consequently, an FIR, being Crime No. 21 of 1993, came to be registered at Police Station Manmad City under Sections 394 read with Section 34 of the IPC. The complainant and her family were referred to the Rural Hospital, Manmad and examined by

1 For short, 'the IPC'

Dr. Lalchand Jadhav the same night. In the course of investigation, only the appellant and accused No. 2 were traced and arrested, and the other two assailants could not be found. The police filed the chargesheet on 25.04.1993.

5. The Trial Court convicted the appellant under Section 394 of the IPC, and the same was affirmed by the High Court on appeal. Accused No. 2 was tried alongside the appellant, convicted under Section 376 of the IPC, and similarly sentenced to rigorous imprisonment for seven years with a fine of ₹1,000 (with default stipulation of rigorous imprisonment for six months), but was subsequently acquitted by the High Court. However, since the instant Appeal has been preferred by the sole appellant, it is accordingly confined to the extent of only his conviction and sentence.

6. The appellant principally urges that his identity was not established, as the incident occurred at night, the faces of the assailants were admittedly covered, no Test Identification Parade was conducted, the appellant was shown to the witnesses by the police after his arrest, and the complainant's husband as well as her daughter stated in cross-examination that the assailants were not previously known to them. However, in our view, the Courts below have already comprehensively considered these circumstances and were quite justified in treating the identification of the appellant as satisfactorily proven.

7. To briefly recapitulate, the FIR was lodged at 1:50 a.m., within four hours of the incident, though it occurred late at night. The complainant (PW-1) categorically identified the appellant, stated his name and place of residence, the nature and manner of their prior acquaintance. She reiterated this in her examination-in-chief and cross-examination. Her daughter (PW-2) and her husband (PW-6), the injured eyewitnesses, corroborated her identification. Her husband also stated that the appellant used to visit their village to meet his relatives. Moreover, the act that the complainant attributed to the appellant was that he sat close to her on the cot and threatened and assaulted her. The entire incident is said to have lasted about an hour, and multiple witnesses have stated that the bulb of the porch was switched on at the time. Therefore, the High Court has rightly found that the complainant could not be disbelieved on the point of the appellant's identification. In these circumstances, the lack of a Test Identification Parade cannot be fatal either.

8. The medical evidence also materially corroborates the prosecution's case *qua* the appellant. Dr. Lalchand Jadhav (PW-5) examined the complainant and noted seven recent injuries (sustained ≥2 hours prior to examination), namely: (i) linear abrasion on the right side of the chest over the fourth and fifth ribs; (ii) an abrasion on the right side of the neck; (iii) a left upper incisor tooth that had fallen out, with bleeding gums and swelling of the upper lip; (iv) an incised wound on the dorsum of the left hand extending obliquely from the base of the thumb to the wrist joint; (v) blunt trauma to the back in the lumbar region with tenderness; (vi) blunt trauma to both eyes with tenderness; and (vii) blunt trauma to the chest with tenderness. Dr. Lalchand Jadhav opined that injury (iii) was grievous, and the rest were simple in nature.

9. However, at this point, we must examine whether the appellant's conviction under Section 394 of the IPC, specifically, is sustainable. Said provision applies where the offender, in committing or attempting to commit robbery, voluntarily causes hurt. The robbery or attempted robbery is not at all a peripheral circumstance and is rather an essential component of the offense. In the present case, such allegation of robbery rests entirely upon the assertion of the complainant that the appellant snatched her mangalsutra and *dorle* from her neck. There was no recovery of the alleged jewellery and nothing incriminating was seized from the appellant's possession either. There was no purchase receipt or any other material establishing the identity or value of the articles, as admitted by the complainant herself in cross-examination. Though the High Court relied on the observation in the spot panchanama that wooden tulsi beads and black beads were found scattered on the porch, these beads were never connected through evidence to the mangalsutra, and only pieces of rope were exhibited and their seizure from the spot proved through Subhash Kisan Kakad (PW-3), one of two panch witnesses, before the Trial Court. Therefore, in our considered opinion, we cannot sustain the conviction under Section 394 of the IPC.

10. Under Section 222 of the Code of Criminal Procedure, 1973 (corresponding to Section 245 of the Bharatiya Nagarik Suraksha Sanhita, 2023), a person charged with an offence consisting of several particulars may be convicted where the proved facts constitute a minor offence, notwithstanding that the minor offence was not separately charged. This Court in ***Rafiq Ahmed @ Rafi vs.***

State of U.P.[2] had rightly described this as the principle of cognate offences, which enables Courts to convict and sentence offenders for a 'minor' or less grave offence whose essentials are satisfied by the evidence on record, even when the original charge was framed for the 'major' offence.

11. We have considered the complainant's account that the appellant had threatened her with a knife, and during a brief ensuing scuffle, slashed her left palm with it. Though this is partly corroborated by the medical evidence showing presence of injury (iv), mentioned above; however, Dr. Lalchand Jadhav (PW-5) only opined that it was caused by a sharp, hard object, and no such weapon was ever recovered from the appellant or linked to injury (iv). Moreover, the wound itself, measuring 7×½×½ cm, is relatively shallow in nature. Therefore, this is not a fit case attracting offence under Section 326 of the IPC.

12. However, we find that, from the evidence on record, the assertion of the complainant that the appellant struck her in her mouth and caused her left upper incisor tooth to fall out is sufficiently proved through witness testimony and medical evidence. The same falls squarely within the definition of 'grievous hurt' given in Section 320 of the IPC *viz.* fracture or dislocation of a bone or tooth. We thus consider it appropriate to alter the conviction of the appellant to one under Section 325 of the IPC.

13. Lastly, on the point of sentence, we note that the appellant was in custody for 91 days between 27.01.1993 and 27.04.1993. He remained on bail thereafter during the long pendency of the proceedings but surrendered pursuant to the direction of this Court dated 27.02.2026. Thus, as on date, the appellant has suffered incarceration for about 10 (ten) months. His age is stated to be around 63-64 years old. We may refer here to the decision of this Court in ***Mathai vs. State of Kerala***[3]:

> "In the instant case considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used.

2 2011 INSC 546

3 2005 INSC 30

> Therefore, the conviction is altered to Section 325 IPC. No hard and fast rule can be applied for assessing a proper sentence and a long passage of time cannot always be a determinative factor so far as sentence is concerned. It is not in dispute that a major portion of the sentence awarded has been suffered by the appellant. On the peculiar facts of the case we restrict it to the period already undergone."

14. Having regard to the overall circumstances, we are of the opinion that the ends of justice in this case would be met by similarly restricting the substantive jail sentence under Section 325 of the IPC to the period already undergone by the appellant, without interfering with the fine sentence of Rs.1,000/-.

15. For the foregoing reasons, the Appeal is partly allowed. The appellant is convicted for the offence punishable under Section 325 of the IPC. The sentence of the appellant is reduced to the period already undergone by him with fine of Rs.1,000/-. The appellant shall be released forthwith, unless he is required to be in custody in connection with any other case.

Pending applications, if any, stand disposed of.

Result of the case: Appeal partly allowed.

†*Headnotes prepared by:* Divya Pandey