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**IN THE COURT OF THE 07th JUDICIAL MAGISTRATE F.C.
AT NANDED.**

(Presided over by Mudassar Nadeem)

REGULAR CRIMINAL CASE NO. 783/2015.

Exh.No. 45

The State of Maharashtra,
Through the Police Station Officer,
Police Station Vimantal,
Taluka Nanded, Dist. Nanded.

... Complainant.

VER S U S

1. Dilip Kaluram Jamdade,
Age 45 yrs. Occu: Labour,
2. Sow. Ahilyabai W/o Dilip Jamdade,
Age 40 yrs. Occu: Household,

Both R/o. Triratna Nagar, Sangvi (Bu)
Tq. & Dist.Nanded.

... Accused.

**C H A R G E : U/Ss. 324,323, 504 & 506 R/W 34 of Indian Penal
Code, 1860.**

Smt. S.A. Patil, APP for Prosecution.

Shri D.T. Shelke, Advocate for the accused.





J U D G M E N T

(Delivered on 28/11/2019)

Accused are facing trial for offences punishable under sections 324, 323, 504 & 506 R/w 34 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C for short).

2. **In brief the prosecution's case is as under :-**

The informant Pravin Devrao Khadse and the accused are neighbors. On 30.10.2015 the informant received call of his father. His father told him that the accused without any reason is assaulting him. Therefore, the informant came at his home his mother and father went to police station. When the informant came at home the accused No. 1 assaulted him on his head by means of the iron rod. The accused No. 2 assaulted informant by means of fist blow. Both the accused threatened to cause the death of informant.

3. With above allegations, the informant lodged the report at police station Vimantal on 31.10.2015 and the offence punishable under section 324, 323, 504, 506 R/w 34 of the I.P.C vide crime No.172 /2015 is registered against the accused persons. The investigation was entrusted to R.K. Katte I.O. visited the spot and prepared the spot panchnama. I.O. recovered one Iron rod from accused No.1 and prepared the seizure panchnama. I.O. recorded the statement of informant and the other witnesses. After completion of investigation charge sheet is filed against the accused persons for the offence punishable under sections 324,323, 504, 506 R/w 34 of the IPC.





4. My Id. predecessor has framed charge against the accused persons for offences punishable u/s. 324, 323, 504, 506 R/w 34 of the IPC at Exh.10. The contents of charge were read over and explained to accused in vernacular, they did not plead guilty and claimed to be tried. Their plea is recorded separately.

5. To substantiate the charge against the accused, prosecution has examined the witness as P.W.1 Devrao Ramrao Khadse at Exh.18. Prosecution has examined the informant/injured as P.W.2 Pravin Devrao Khadse at Exh.22 Further prosecution relied upon the report dated 30.10.2015 at Exh.23. Prosecution has examined the Panch witnesses as P.W.3 Kiran Tukaram Kamble at Exh. 30. Prosecution has examined the I.O. Rameshwar Kishanrao Katte as P.W.4 at Exh 34. During trial defence admitted, spot panchanama at Exh 35, Arrest panchnama at Exh. 36 & 37, seizure panchanama at Exh 38, Muddemal Pawati at Exh. 39 and MLC letter at Exh 40. In spite of sufficient opportunities prosecution failed to secure presence of other witness. Hence, the prosecution is closed. The statement of the accused persons under section 313 of Cr.P.C is recorded at Exh. 43 and 44.

6. Considering oral as well as the documentary evidence available on the record. Following points arise for my determination to which I record my findings against each of them for the reason stated below.





<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the prosecution proves that, the accused in furtherance of common intention, voluntarily caused hurt to the informant by means of Iron Rod and thereby committed an offence punishable u/s 324 R/w 34 of I.P. C.?	No
2) Whether the prosecution proves that, the accused in furtherance of common intention, voluntarily caused hurt to the informant by means of fist blow and thereby committed an offence punishable u/s 323 R/w 34 of I.P. C.?	No
3) Whether the prosecution proves that the accused in furtherance of common intention, intentionally insulted and gave abused to the informant intending to give provocation to him with intent to break the public peace and committed an offence 504 R/w 34 of IPC?	No
4) Whether the prosecution proves that on above date and time the accused in furtherance of common intention, gave criminal intimidation to the informant by threatening him to cause death and committed an offence punishable under section 506 R/w 34 of I.P.C ?	No
5) What order?	As per final order.

REASONS

AS TO POINT NOS. 1 to 4 :

7. These points are interconnected hence they are discussed together.





8. In order to prove the guilt of the accused prosecution has examined in are 4 witnesses. PW-1 Devrao is the father of the informant. He is examined as of a eye witness at Exh. 18. He deposed that on 30-10-2015 the accused No. 1 assaulted the informant on his head by means of iron rod. PW-1 further deposed that accused No.2 assaulted the informant by means of fits blow. PW-1 in his cross-examination admitted that the informant was with him when he went to police station.

9. Prosecution has examined informant at Exh. 22. In examination in chief the informant deposed that he received a call from his father that the accused are abusing and beating him. The informant further deposed that he came at his home that time his father and mother went to the police station and he was alone at home. PW-2 further deposed that the accused No. 1 assaulted him by means of iron rod on his head and accused No. 2 assaulted him by fist blow. He further deposed that accused threatened to cause death. PW-1 admitted his signature and the contents of the report at Exh. 23.

10. During the cross-examination PW-2 admitted that the accused did not assaulted him by means of iron rod. He also admitted that accused did not abuse him or his parents. Further in his cross-examination PW-2 admitted that he fell-down and sustained injury to his head. It appears from the cross-examination that this star witness is gain over by the accused at the time of his cross-examination. PW-2 during his cross-





examination deposed contrary to his evidence at the time of examination in chief. In above circumstances the evidence of the informant is not trustworthy and not reliable.

11. As far as the evidence of PW-1 is concerned. In the report at Exh. 23 and the evidence of PW-2 it is reflecting that at the time of incident PW-1 was not present as he went to police station. In such circumstances his evidence can not be considered as the evidence of eye witness.

12. The prosecution has also examined PW-3 as a panch witness at Exh. 30. PW-3 did not support the prosecution. The prosecution has also examined PW-4 as I.O of the case at Exh. 34. During the evidence of PW-4 the prosecution has prove spot panchanama at Exh 35, Arrest panchnama at Exh. 36 & 37, seizure panchanama at Exh 38, Muddemal Pawati at Exh. 39 and MLC letter at Exh 40.

13. Upon careful scrutiny of the evidence on recorded reveals that the prosecution's star witness that is PW-2 the informant and injured is gained over by the accused at the time of the cross-examination. As the PW-2 admitted in his cross-examination that accused does not assaulted him by means of iron rod nor did the accused abuse him. Moreover he admitted that he sustained injury on his head due to fell-down. These admissions in the cross-examination of the PW-2 devastated the prosecution case. Even the evidence of PW-1 and the PW-4 is not helpful for the prosecution being corroborative evidence. As the





evidence of the star witness under the clouds doubt, the spot panchnama, seized panchnama and the other corroborative evidence is not helpful for the prosecution.

14. In order to bring home the guilt of the accused it is the duty of the prosecution to prove the guilt of the accused beyond the reasonable doubt. Prosecution has to established that the accused is the author of the crime.

15. In the instant case, the evidence of PW-2 does not appear to be sterling evidence. As to undoubtedly point out the guilt of the accused. So also the witnesses examined by the prosecution have not deposed that the accused caused hurt and gave any provocation to the informant as to break the public peace. Similarly, no evidence is brought on the record to establish that the accused caused hurt to the informant by means of fist and blow. There is no evidence that the accused threatened to cause death of the informant. In absence of substantial evidence as to the ingredients of the offences leveled against the accused, prosecutions case suffers and consequently benefit goes in favour of the accused persons.

16. Considering, entire evidence on the record and the documents relied upon by the prosecution. It reveals to me that the prosecution has utterly failed to prove the charges leveled against the accused. Hence, I answer the point no. 1 to 4 in negative.





AS TO POINT NO. 5

17. In view of the above discussion and my negative findings to the points Nos. 1 to 5, as the star witness of the prosecution i.e. PW-2 is gain over by accused at the time of cross-examination prosecution case failed. I hold that the prosecution has failed to prove beyond the reasonable doubt the charge against the accused for the offences punishable under sections 324, 323, 504, 506 R/w 34 of IPC. Resultantly, the accused are liable to be acquitted. Hence, the following order.

ORDER

1)	Accused No. 1 and 2 are hereby acquitted vide section 248(1) of the Cr.P.C from the offences punishable under sections 324,323, 504, 506 R/w 34 of Indian Penal Code.
2)	Bail bonds of the accused shall stands canceled.
3)	Seized iron rod be sold as of scrap in public auction and amount realized be credited to Govt, after appeal period is over.
4)	Both accused shall execute a bond of Rs.7,500/- with one surety each in the like amount as per the provisions of section 437 (A) of Cr.P.C.

Dictated and pronounced in open court.

Date :- 28.11.2019

Place :- Nanded

(Mudassar Nadeem)
7th Judicial Magistrate, F.C.,
Nanded.





C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment is same word to word, as per the original Judgment.

Name of Stenographer : A.S. Naik (Jr. Clerk)

Court : Judicial Magistrate F.C.
(Court No.7), Nanded

Date : 28.11.2019

Presiding Officer : 28.11.2019

Judgment uploaded on : 28.11.2019

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