



MHND030048882015

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Judgment in RCC No. 703/2015



RECEIVED ON : 19.11.2015.
REGISTERED ON : 19.11.2015.
DECIDED ON : 17.05.2019.
DURATION : 03Y. 05M.28D.

Exh.No.

IN THE COURT OF THE 10th JUDICIAL MAGISTRATE F.C.

AT NANDED.

(Presided over by Mudassar Nadeem)

REGULAR CRIMINAL CASE NO. 703/2015.

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

..Complainant.

V E R S U S

Habib Rahiman s/o. Abdul Rahiman,
Age 45 yrs. Occu; Business,

Accused R/o. Kumbhar tekdi, Karbala road, Nanded
Tq. & Dist.Nanded

..Accused.

C H A R G E : U/Ss. 452, 323, 504 & 506 of Indian Penal
Code, 1860

Sou. S. A. Patil APP for Prosecution.

Mr. Sk. Shakil, Advocate for the accused .





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J U D G M E N T

(Delivered on 17th May, 2019)

Accused are facing trial for offences punishable under sections 452,323,504 & 506 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C for short).

2. Brief case of the prosecution as under:-

On 13.03.2017 at about 10.00 p.m accused persons came at the house of informant i.e Shivanand Kadam. Accused demanded money from the informant for drinking liquor. Informant refused, on that reason accused started to assault the informant. In order to save himself from the assault informant went in his house. All the accused entered in the house of informant. The accused no.3 Sanjay hold informant and the accused no.1 assaulted him by means of axe. Due to the assault informant sustained injury on his left eye. The accused person also threatened to cause death of the informant as he refused to give money to them. Sakharam Kadam, Rekha, Dinesh intervened and separated the quarrel. The informant went to the hospital for treatment.

3. Accordingly, the informant lodged the report at police station Gramin Nanded on 14.03.2017 and the offence punishable under section 324,323,452,& 506 r/w 34 of the I.P.C vide crime No.152/2017 is registered against the accused person. The investigation was entrusted to police constable





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Deelip Chakradhar. I. O visited the spot and prepared the spot panchnama. During the course of investigation I.O recovered one axe from the accused No.1. I. O recorded the statement of informant and the other witnesses. After completion of investigation charge sheet is filed against the accused person for the offence punishable under sections 324,323,452,& 506 r/w 34 of the IPC.

4. The charge is framed against the accused persons for offences punishable u/ss. 324,323,452,& 506 r/w 34 of the IPC at Exh.16. When the charge was read over and explained to accused persons 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 informant as P.W.1 at Exh.17. Further prosecution relied upon the report dated 14.03.2017 at Exh.20 and the printed FIR Exh.20. During the course of trial defence had admitted the spot panchnama same is at Exh.22, Seizure panchnama same is at Exh.23 and medico legal certificate of the informant same is at Exh.24. As no incriminating evidence against the accused is brought on record, the statement of the accused under section 313 of Cr.P.C. is dispensed with.

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





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them for the reason stated below.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the prosecution proves that, accused persons in furtherance of their common intention voluntarily caused hurt to the informant by means of axe 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 their common intention caused hurt to the informant by means of fist and blows and 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 their common intention committed criminal trespass by entering into the house of informant used as a human dwelling, having made preparation for causing hurt to the informant and thereby committed an offence 452 r.w.34 of IPC?	No.
4) Whether the prosecution proves that, both the accused in furtherance of their common intention threatening the informant to cause his death with intent to cause alarm to him and thereby committed an offence punishable u/s 506 r.w.34 of the I.P.C?	No.
5) What order?	As per final order





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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 the informant PW-1 i.e Shivanand Kadam is examined at Exh.19. PW-1 deposed that the incident took place prior to two years. On that day there was exchange of words between him and the accused person. He further deposed that apart from this nothing more had happened. PW-1 denied the contents of the report. As the PW-1 being informant and injured did not support the prosecution he was cross examined by the learned APP but nothing useful for the prosecution is brought on record. As the informant and the accused filed joint pursis at Exh.25 mentioning therein that they have settled the matter amicable out of the court. Hence, the prosecution did not examine other witnesses and the prosecution's evidence is closed.

00. On the scrutiny of the available evidence on the record it reveals that the star witness of the prosecution did not support the version of the prosecution. The testimony of the prosecution witness in no way helpful to the prosecution. In the instant case to the misfortune of the prosecution star witness i.e PW-1 the informant turn hostile.





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

00. In the instant case, not a single whisper of the evidence is on the record to show that the accused has voluntarily caused hurt to the informant by means of axe. So also the witness examined by the prosecution has not deposed that the accused person trespass by entering into the house of informant and no peace of evidence is brought on the record to establish that the accused persons threatened to cause death of the informant.

00. 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 person. Hence, I answer the point no. 1 to 4 in negative.

AS TO POINT NO. 5

00. In view of the above discussion and my negative findings to the points Nos. 1 to 4, I hold that the prosecution has failed to prove the charge against the accused person for the offences punishable under sections 324, 323, 452, 506 r/w 34 of IPC. Resultantly, the accused are liable to be acquitted. Hence, the following order.





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ORDER

1) Accused Nos. 1 to 3 are hereby acquitted vide section 248(1) of the Cr.P.C from the offences punishable under sections 324,323,452 & 506 of IPC.

2) The seized muddemal property i.e Axe (कु-हाड) be sold in public auction after appeal period is over and proceed the same be deposited to the government.

3. Bail bonds of the accused shall stands cancelled.

4. Accused No. 1 to 3 shall execute a bond of Rs.5000/- each with one surety like amount as per the provisions of section 437 (A) of Cr.P.C.

Dictated and pronounced in open court.

Date:-15.03.2019

Place: Nanded

(Mudassar Nadeem)
11th Judicial Magistrate, F.C.,
Nanded.





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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 : P.M.Narwade

Court : Judicial Magistrate F.C.
(Court No.11), Nanded

Date : 15.03.2019

Judgment signed by the
Presiding Officer : 15.03.2019

Judgment uploaded on : 05.11.2019

