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**IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE,  
AT HINGOLI**

( Presided over by R. M. Choutre )

Regular Criminal Case No.250/2014  
CNR. No.MHPA06-001021-2014

Exh. No.55

**Prosecution:** The State of Maharashtra, Through,  
Police Station, Goregaon  
Taluka Hingoli District Hingoli.

Versus

- Accused:**
- 1- Sanjay s/o Gautam Bhagat,  
Age 35 years occu; Agrist.  
R/o Kanadkheda (Kh)  
Taluka and District Hingoli.
  - 2- Vijay s/o Gautam Bhagat,  
Age 25 years occu: Agrist.  
R/o Kanadkheda (Kh)  
Taluka and District Hingoli.
  - 3- Yashodabai w/o Ramji Bhagat,  
Age 60 years occu: Agrist.  
R/o Kanadkheda (Kh)  
Taluka and District Hingoli.
  - 4- Kavita w/o Bhimrao Bhagat,  
Age 30 years occu: Agrist.  
R/o Kanadkheda (Kh)  
Taluka and District Hingoli.

**Charge:** Under Section 448, 354, 504 and 506 (2)  
r. w. Section 34 of the Indian Penal Code.





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Shri R.V. Bangale, : APP. for the State.  
Shri J. P. Khandare, : Advocate for the accused.  
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**:JUDGMENT:**

( Delivered on this 20<sup>th</sup> day of July, 2019 )

1- The accused Nos. 1 to 4 are facing trial for committing offence punishable under Section 448, 354, 504 and 506 (2) r. w. Section 34 of the Indian Penal Code.

The case of the prosecution, in brief, is that:

2- Informant and accused are resident of village Kanadkheda (Bk) Taluka and District Hingoli. On 20-10-2013 at about 06.00 p. m. when the informant had come to her pregnancy at her father's house, the accused namely Sanjay, Vijay, Yashoda, Kavita and Gautam came there and abused her. They asked her as to whereabouts of his brother namely Vijay. Upon her denial, the accused Nos.1 to 4 in furtherance of their common intention unlawfully entered into the house of informant and assaulted her. At that time the accused also outraged her modesty. Due to which she fell down on ground and become unconscious. When her family members came to home, she narrated all the incident to them. Thereafter, the informant lodged report to the Police Station.

3- On the strength of report of informant, Crime No.68/2013 was registered under Section 448, 354, 504 and 506 (2) r. w. Section 34





of the Indian Penal Code, and investigation was handed over to ASI. Kumrekar who during the course of investigation visited the spot of incident, prepared spot panchnama in presence of panchas. He further obtained medical reports of injured. Recorded the statement of witnesses. On completing investigation, he filed charge sheet before the Court.

4- During course of trial charge has been framed by my learned predecessor against accused Nos. 1 to 4 vide Exh.24 for the alleged offences. It was read over and explained to the accused Nos.1 to 4 in vernacular to which they pleaded not guilty and claimed to be tried. After closure of evidence of the prosecution, statement of accused Nos.1 to 4 came to be recorded under Section 313 (1) (b) of the Code of Criminal Procedure. The defence of accused is of total denial and of false implication.

5- Points for determination alongwith my findings thereon are as under.

### POINTS

### ANSWERS

1- Does the prosecution prove that accused Nos. 1 to 4 in furtherance of their common intention unlawfully entered into the house of informant with an intent to outrage her modesty?

In the negative





- 2- Does the prosecution prove that accused Nos. 1 to 4 in furtherance of their common intention used criminal force to the informant and outraged her modesty? In the negative.
- 3- Does the prosecution further prove that accused Nos. 1 to 4 in furtherance of their common intention hurled abuses to the informant as alleged? In the negative.
- 4- Does the prosecution further prove that accused Nos. 1 to 4 in furtherance of their common intention threatened the informant to her life? In the negative.
- 5- What order? Accused are acquitted.

### REASONS

6- In order to bring home guilt to the accused, the prosecution has examined in all five witnesses i. e. informant Priyanka (PW.1), Ramesh (PW.2), Archana (PW.3), Kondabai (PW.4) and ASI. Bhumiraj (PW.5), investigating officer.

7- Further prosecution has relied on following documentary evidence. FIR at (Exh.36), spot panchnama (Exh.46).

### As to Point Nos.1 and 2 :

8- PW.1 Priyanka is the first informant. She succinctly narrated the incident and deposed (Exh.35) that her father's agricultural





land is situated near the land of paternal uncle of accused. The incident happened on 20-11-2013 when she came to her parents home for her delivery. On relevant time, the accused namely Sanjay, Vijay, Yashoda, Kavita and Gautam came to her house. They abused her and inquired about his brother namely Vijay to which she replied about her unawareness. On that count the accused abused her and started scuffle with her. Accused also snatched golden chain from her neck. At the same time the accused also threatened her to kill her brother. On such commotion one Kondubai, Archana, Kamla and Ramesh rushed there and they pacified the quarrel. In scuffle her wearings were torn and due to such act of accused, she fell down unconscious over the ground. Before that the accused Bhimrao Magar and Ramji also manhandled her and tried to pull out her gown. When her family members came to home she narrated all the incident to them. Later on, she went to Police Station and filed FIR against accused. She has proved her FIR (Exh.36).

9- In her cross examination informant admitted that the agricultural land of accused is not situated near her father's agricultural land. She has admitted that accused are also not her near resident. At the time of incident she alone alongwith her sister was present at home. Near her house there are houses of Gulab Sudam, Sopan Nivrutti and Baburao Sudam. She is not aware as to whether on the same day of





incident one complaint of assault over the husband of accused Yashodabai is filed against her brother, father and uncle Ramesh. The house of Kondubai is at distance of five minutes from her father's house. Witness Ramesh is her uncle, Kamlabai is her Aunt.

10- She has further admitted in her cross examination that police never seized her torn gown at the time of investigation. Police recorded FIR as per her version. She had told the police that her gown was torn in the incident, the name of Gautam Bhagat and Bhimrao Bhagat were also narrated while writing FIR, the accused Bhimrao tried to pull out her gown and the same was torn, the accused Gautam slapped her at the time of incident. However, all those things are not recorded in FIR and she is unable to tell the reason for the same.

11- Informant has further admitted that village Kanadkheda is situated near the village Kanhergaon and village Kanhergaon is having Police Out Post. There is a vehicle facility available to reach Kanhergaon from village Kanadkheda. She further denied that the accused Ramji Bhagat had filed FIR against her father, brother and paternal uncle in respect of assaulted committed by them on husband of accused Yashodabai and paternal uncle of accused No.1 and 2. She further denied that as the accused are witnesses in the said case, in order to create pressure over them she has falsely indulged them in the present







case.

12- PW.2 Ramesh deposed (Exh.38) that informant Priyanka is daughter of his brother i. e. niece. The incident happened near about five years ago at about 6.00 p. m. At the time of incident he had been to his field and when he returned, home he saw the accused fleeing away from the spot. When he inquired with informant she told about scuffle, outraging her modesty and threatening. Thereafter, he alongwith informant came to Police Station.

13- This witness has admitted in his cross examination that witness Kamlabai is his wife. Kondubai is his near relative. The paternal uncle of accused namely Ramji and the other accused used to reside separately. Their residence are also having at some distance. The agricultural land of Ramji is situated near the field of father of informant. He has further admitted that the said Ramji had filed one criminal case of committing attempt to murder by poured kerosene and set him on fire against himself and his nephew. In that case he was further having allegations of assault against the present accused namely Yashoda and Kavita. Further admitted that the accused Sanjay and Vijay were witnesses in the said case. This witness has further admitted that police recorded the statement as per his version. However, the facts i. e.

when he returned from field, saw that accused were fleeing away is not





mentioned in his statement and he is unable to tell the reason for the same.

14- PW.3 Archana, has testified (Exh.41) that the informant is her real sister. The incident happened in the year 2013 at about 7.00 p. m. at her parents house. At that time she came her father's house for residence purpose for short period. At the time of incident accused Sanjay, Vijay, Gautam and Kavita alongwith Lathi came to her house. The accused outraged the modesty of informant and threatened to kill. Thereafter they fled away. After incident informant came out of home with cry and told her the entire incident. She told her that accused took away her golden chain. So when she was trying to intervene accused Sanjay pushed her forcefully.

15- This witness admitted in her cross examination that on the very same day of the incident, accused filed one criminal case against her brother and paternal uncle. Name of witness Ramesh, Ganesh and Sunil were also included in that FIR. She is unable to tell time of incident. Kondabai is her real Aunt and her house is situated near about at a distance of five minutes. She has further admitted that in between house of Kondabai and her house, one another house is situated and therefore, if any incident happens before any house, no one would be able to see the incident. She has further admitted that







Kamalbai is her aunt, Ramesh is her uncle and Harnabai is her grandmother.

16- This witness further admitted that while recording her statement, she has narrated to police that informant came out of her house with cry, the accused took away the golden chain of informant, when she intervened the accused Gautam pushed her forcefully. But the said fact is not included in her statement and she is unable to tell the reason of the same. Further she denied that she is not an eye witness of the said incident.

17- Another witness PW.4 Kondabai deposed (Exh.42) that informant is her niece and she is well acquainted with all accused. The incident had occurred in the year 2013 at about 6.00 p. m. at the house of the informant. At the time of incident she was cooking meal at her home. Her house is situated nearby the house of informant. When she heard about the quarrel she went there. She saw that the accused were scuffling with informant and snatched the golden chain from the neck of informant. Alongwith golden chain accused fled away from the spot. She had seen all the incident.

18- This witness admitted in her cross examination that she is unable to tell the date of birth or even year of her children. There is one





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house is situated in between her house and house of the informant.

That's why she was not able to see directly the incident. It has further admitted that while recording her statement before police, she told that, the accused were scuffling with informant, the accused took away the golden chain of informant. However, the said facts are not included in her statement and she is unable to tell reason for the same. She has further denied defence suggestion that she never witnessed the incident.

19- At the fag end of trial, the prosecution examined PW.5 Bhumiraj, investigating officer vide (Exh.45) wherein he has deposed that the crime bearing No.68/2013 came to be registered at Goregaon Police Station and the investigation was handed over to him. Thereafter, he visited the spot on 23-10-2013 alongwith panch witness and prepared spot panchnama (Exh.46). He recorded the statement of witnesses, arrested the accused, obtained necessary documents at the time of investigation. It is transpired at the end of investigation that accused in furtherance of their common intention unlawfully entered in the house of informant, outraged her modesty, scuffled with her and after abusement threatened her to kill her brother. As a result, he had filed charge sheet against accused.

20- The omissions and contradictions of eye witnesses were

duly proved in the cross examination of investigating officer. He has



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denied that he has prepared false spot panchnama and carried out false investigation.

21- The learned APP Shri R. V. Bangale argued that the version of the informant is corroborated by other eye witnesses in their testimony. There is a substantial evidence available on record regarding unlawful entrance in the house of informant, outraging her modesty, abuse and criminal intimidation. Even sole testimony of informant is not impeached. Spot panchnama has been proved and as such the place of offence is also proved by the prosecution. The informant described the role of each and every accused played by them in the said offence. The prosecution has proved the guilt of accused beyond reasonable doubt and hence, the accused may be convicted.

22- Per contra, the learned Advocate Shri J. P. Khandare on behalf of accused argued that the informant and all other witnesses are highly interested witnesses. Though the incident happened in day light, none of the independent witness has been examined from the locality. The evidence of informant is not corroborated by other witnesses. The evidence of informant is smeared with unnaturalness. The material admission emanated from the mouth of the informant to show false implication of accused. The relations between informant and accused are not cordial on account of dispute against the paternal uncle of





accused persons. There are material contradictions, omissions and improvements in the testimony of prosecution witnesses on the count of actual incident. As such prosecution has failed to prove the case against accused beyond reasonable doubt and accused may be acquitted.

23- It is an admitted position that the agricultural land of paternal uncle of accused namely Ramji, is adjacent to the agricultural land of father of the informant. Further, the open land of Ramji is also adjacent to the house of informant and Ramji used to tie their cattle in such open area and the family of informant was against the said act. On that count the relations between informant and his family members against accused were strained. Previous enmity is a double edged sharp weapon which can be used by its either side. It can be safely be stated the seed of enmity was already been shown between the parties. Now it is to be seen that what is the effect of enmity on the case of prosecution. The facts of the case give rise to two possibilities that either present quarrel annexed to the assault is the result of enmity or the alleged assault otherwise sustained by informant is used to satisfy her vindication against accused.

24- Firstly, the defence assailed prosecution case on the point veracity of FIR and its delay. According to prosecution story the incident happened on 20-10-2013 at about 6.00 p. m. Whereas the FIR





came to be lodged on 21-10-2013 at about 3.00 p. m. It is the contention of defence that the FIR came to be filed only act of after thought of informant and her relatives. It reveals from the evidence of the informant that when her brother and family members came to home, she narrated all the incident to them. However, nowhere such fact is disclosed in the FIR (Exh.36) itself that when family members of informant came to house. The delay caused to lodge FIR has not been explained by the informant. The reason though she has narrated about absence of her family members at the time of incident, not finding any place in FIR itself. More importantly, it is to be seen that the eye witness PW.2 Ramesh has deposed (Exh.38) that he saw the accused persons while left the place of offence and thereafter he alongwith informant came to the Police Station. Obviously, the FIR (Exh.36) is not lodged on the very same day. There are inconsistent statements of prosecution witnesses regarding the approach to Police Station and lodging FIR. That itself creates doubt about the veracity of FIR (Exh.36)."

25- Prompt lodging of FIR is the significant circumstance in support of the prosecution case. The fact that FIR was given almost immediately, rules out any possibility of deliberation to falsely implicate any accused. Though the informant is stating that he lodged FIR after narrating the said fact to her family members, the same came to be registered on next day of the incident. No any explanation or





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justification come forward in the testimony of informant about delay.

Definitely when delay is not properly explained, it renders the case against the accused unreliable. More importantly other prosecution witnesses testified that on the same day they went to Police Station and narrated the whole incident. Therefore, the submissions of defence on the score of veracity of FIR and its delay are worthy of acceptance. Without any valid explanation, it cast serious doubt on the veracity of the prosecution story.

26- So far as the act of unlawful entry, assault with a view to outrage the modesty of informant is concerned, the informant has stated that at the relevant time the accused namely Sanjay, Vijay, Yashoda, Kavita and Gautam unlawfully entered her house. Not only this but she has indulged the name of one Bhimrao Ramji Bhagat and his father Ramji Bhagat in the act of unlawful entry at her house. If we peruse the FIR (Exh.36) it reveals that the names of Gautam, Bhimrao Ramji Bhagat and Ramji Bhagat, have not been mentioned. Further, no any specific role is attributed to the above mentioned accused in FIR itself. No any explanation came forward from the prosecution about not including their names in the said act, though have played vital role. None of the other prosecution witness has narrated the role of these persons in the act of unlawful entry. Even other prosecution witnesses remained total silent in respect of their role in the alleged offence.







Thus the informant has made clear cut improvement in her statement as against facts recorded and the role prescribed against accused in the FIR. On such count the evidence of informant did not inspire confidence. More importantly, it is to be seen that FIR discloses the act of the unlawful entry of accused Sanjay and Vijay independently and later on the accused namely Yashoda and Kavita entered in the house. However, informant has testified (Exh.35) that the all four accused in furtherance of their common intention entered the house jointly, which is lacking in the FIR itself. As such the role narrated by the informant in her testimony against accused in respect of unlawful entry in her house found unreliable.

27- On the point of outraging modesty informant did not speak in her deposition (Exh.35) about specific role played by each accused. She has not specifically stated by which accused the act of outraging modesty was done. Further she failed to explain that which accused snatched her golden chain from her neck. Furthermore, she has not given specific role of accused played by them at the time of scuffle. More interestingly it is seen that on the count of outraging her modesty, the informant has attributed this role to the other persons i. e. Bhimrao Ramji Bhagat and Ramji Bhagat, whose names are not mentioned in the FIR itself. FIR did not disclose about the factum of her giddiness and fell down on ground in unconscious state. Further nowhere it is





mentioned in FIR that her wearing gown was torn at the hands of accused in the said incident. All these things are material omissions in her evidence. She is deposing such facts for the first time in her testimony. Then definitely these material omissions can be termed as contradictions and resultantly, there are several contradictions in her deposition regarding the true story of incident. Her evidence, therefore, is not safe to be relied upon.

28- If the informant had grudge in her mind against the accused certainly an independent witness is a must. The learned Advocate for defence had pointed out that as per the version of informant Kondubai, Archana, Kamla and Ramesh rushed on the spot and rescued her after pacifying the quarrel. All these witnesses are interested one. Therefore no reliance can be placed on their testimony. It reveals from the record that the informant is a niece of Kondubai. Further the witness Ramesh is her uncle and Kamlabai is her aunt. Whereas, the Archana is her real sister. All witnesses are near relatives of informant. According to the version of informant they are the eye witnesses of the incident, however it appears from the evidence of PW.2 Ramesh that when he reached on the spot the incident was over and he had seen the accused while leaving the place of offence. At the same time, the name of so called eye witness PW.3 Archana, the real sister of informant did not find any place in FIR itself. Though the eye witness Archana has described





specific role of accused in her testimony, her evidence is not trustworthy as her whole version is an improvement. Nothing has been stated before the statement of police. More interestingly, it is also seen that PW.4 Kondabai has also improved her version and tried to indulge the accused in the said offence. Though she has pretended herself as eye witness of incident, the facts told by her about the scuffle and taking away the golden chain by the accused did not find place in the statement recorded by the police. More importantly she had further went ahead to admit in her cross examination that from her house no one can see what is going on in the house of the informant as one another house is situated in between them. If it is a factual situation of prosecution witnesses then how they can be believed.

29- The informant has admitted in her evidence that some other houses are situated near her house. People of village used to reside in that houses. When that is the situation, then though the incident was occurred in a public vicinity and also during at evening session, then why the investigating officer has not recorded the statement of independent witnesses, who might have witnessed the incident. Ultimately, it raises doubt over the veracity of the incident and set challenge to prosecution to prove the allegations by cogent independent witnesses. More importantly it is to be noted that though the prosecution has claimed other witnesses, who have been examined on





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record as a eye witness of the incident, it reveals from their evidence that only after accused left the place of offence they came on the spot. It gives vital blow to the prosecution case. Having considered the enmity between accused and the informant as disclosed by defence, the version of prosecution witnesses smeared with high interest and definitely personal gain would impair prosecution theory.

30- In order to prove the spot of offence, prosecution did not examine panch witness. PW.5 Bhoomiraj, being investigating officer proved the spot panchnama (Exh.46) in his testimony. However, no any incriminating circumstances come forward after perusal of spot panchnama. Further investigating officer has not seized the torn gown from the possession of informant. More importantly spot panchnama did not reflect seizure of golden chain from the spot itself. Further the investigating officer has not seized the broken golden chain from the possession of the accused. These state of things itself douse the credibility of spot panchnama and the entire prosecution theory.

31- After considering all the facts and circumstances on record, it appears that the evidence of informant and other eye witnesses is not consistent, clear and cogent. Their evidence in respect of unlawful entry in the house and outraging modesty of informant appears to be untrustworthy and not materially corroborated with FIR. On both count





the statements of the informant and prosecution witnesses are contrary to each other. The informant went to the extent to indulge the other persons in the said crime, who are not named in FIR itself. Not only this but the informant booked the name of her real sister Archana as a eye witness of the incident, only in order to involve the accused in the said offence. Though she has described the dispute of house and agricultural land as a motive of accused to commit crime, no such any supportive evidence came on record.

32- Further, the informant has not shown due diligence to lodge report promptly. Delay has not been explained properly. None of the independent witness has been examined from the said vicinity in order to corroborate version of the informant, which renders the case against the accused unreliable. The torn gown of informant is not seized. Further neither the broken golden chain found on the spot nor it was seized from the custody of accused. In spot panchnama, broken golden chain did not find any place. The spot panchnama is not supportive to the prosecution story. There are so many contradictions and omissions in the evidence of informant and eye witnesses, due to which defence is able to dislodge prosecution witness from main subtratum of the prosecution case. Prior to incident there had been significant animus between informant and accused persons on the count of filing of criminal case. The defence succeed to impeach the credibility of





informant and eye witnesses.

33- Having regard to the pros and cons of the evidence on record, the version of prosecution witnesses does not qualify the test of proving the case beyond reasonable doubt. The evidence of prosecution is not upto the mark of to establish the charges levelled against the accused. Therefore, in view of above discussion, I, answer as to point No.1 and 2 in the negative.

**As to point Nos.3 and 4:**

34- In order to bring home a charge under Section 504 of the Indian Penal Code, the words used by the accused should not only give insult but also must provoke a man to cause breach of peace or to commit any other offence. It has been mentioned in FIR (Exh.36) that accused used abusive language against the informant. However, the informant has not deposed the exact words of abusive language. Furthermore, the exact words of abusive language are not mentioned in FIR itself. Therefore, when the informant speaks about abuse hurled to her, but does not say that the abuses constituted insults and the insults were of such a nature as to provoke the breach of peace or make her commit any other offence, the charge under Section 504 of Indian Penal Code is not established.







35- In respect of threatening aspect, none of the prosecution witness stated specifically the name of accused who threatened them. Specific role has not been attributed to accused in act of threatening.

36- Hence, so far as the allegations of abusing and threatening are concerned, there is no consistent verbatim of alleged abusing and threatening. Likewise there is no evidence available on record to show that the alleged act of accused caused annoyance is not sufficient to show the criminal intimidation was given with intent to cause alarm to informant as required by the Section 503 of the Indian Penal Code. Hence, I answer point Nos.3 and 4 in the negative.

**As to Point No.5 :**

37- From the aforesaid discussion and findings, the accused deserves to be acquitted of the charges. In sequel, I pass the following order.

**ORDER**

1- Accused No.1 Sanjay s/o Gautam Bhagat, age 35 years occu: Agrist, No.2 Vijay s/o Gautam Bhagat, age 25 years occu: Agrist, No.3 Yashodabai w/o Ramji Bhagat, age 60 years occu: Agrist and No.4 Kavita w/o Bhimrao Bhagat, Age 30 years occu: Agrist, All resident of Kanadkheda (Khurd) Taluka and District Hingoli are hereby acquitted

vide Section 248 (1) of the Code of Criminal Procedure for the offences





punishable under Section 448, 354, 504 and 506 (2) r. w. Section 34 of the Indian Penal Code.

2- Their bail bonds stand cancelled. Their sureties stand discharged.

3- In view of mandate of Section 437-A (1) of the Code of Criminal Procedure, accused Nos.1 to 4 shall execute P. R. bond of Rs.5,000/- each and one surety each in the

**Rahul Manohar Choutre**

Digitally signed by  
Rahul Manohar  
Choutre  
Date: 2019.08.18  
23:36:53 +0530

( R. M. Choutre ),  
Additional Chief Judicial Magistrate,  
Hingoli.

Date: 20-07-2019





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