



CNR No.: GANG060011942015

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Duration: Years/Months/Days

5 4 23

IN THE COURT OF THE JUDICIAL MAGISTRATE, FIRST CLASS
AT PERNEM.

(Before Smt. Manisha M. S. Parkar @ Narvekar, J.M.F.C.,
Pernem)

Criminal Case No. IPC.80/2015

S T A T E

[Through Pernem Police Station]

... Prosecution

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V e r s u s

1. Mrs. Reshma Aroskar,
Wife of Shri Kirankumar Aroskar,
34 years of age, Indian National
r/o H. No.141, Dandoswada,
Mandrem, Pernem-Goa

2. Mrs. Satyabhama Aroskar,
Wife of Shri Dattaram Aroskar,
39 years of age, Indian National
r/o H. No.141, Dandoswada,
Mandrem, Pernem-Goa

3. Mr. Kirankumar Aroskar,
Son of Madhu Aroskar,
38 years of age, Indian National
r/o H. No.141, Dandoswada,
Mandrem, Pernem-Goa

4. Mr. Dattaram Aroskar,
Son of Madhu Aroskar,
43 years of age, Indian National
r/o H. No.141, Dandoswada,
Mandrem, Pernem-Goa

... Accused.

Learned APP Mr. D. Gawas for the Prosecution.
Learned Advocate P. Shahapurkar assisting the Prosecution.

Learned Advocate P. Narulkar for the accused.

J U D G E M E N T

(Delivered on this 9th day of the month of April of the year 2021)

The accused persons are charge sheeted under section 324, 354, 447, 509, 504 r/w 34 of The Indian Penal Code (hereinafter referred to as IPC).

2. The case of the prosecution, in brief, is that on 25.07.2015 at around 09.00 hrs at Dandoswada, Mandrem, Pernem all the accused with their common intention trespassed in the courtyard of the complainant house and accused no.1 and 2 abused the complainants sister in law Mrs. Sunita w/o Laxman Aroskar such as "Chedye, nagon ded lakh chorun Mangalsutra ghatle", "Kutri" and accused no.3 and 4 caught hold of complainant and Mrs. Sunita Aroskar thereby insulted and outrages their modesty and further all the accused assaulted the complainant, Mrs. Sunita Aroskar (sister in law of the complainant) Mrs. Chandravati Aroskar (mother in law of the complainant) with bamboo danda causing them simple bodily injuries.

3. Later, the HC on complaint of Smt. Usha Aroskar, registered a crime against the accused under section 324, 354, 447, 509, 504 r/w 34 IPC and subsequently conducted investigation and filed charge sheet under section 324, 354, 447, 509, 504 r/w 34 of IPC.

4. Upon the appearance of the accused, my predecessor framed charge, marked at (Exh-4) for offences punishable under section 324, 447, 509, 504 r/w 34 of IPC. The accused pleaded non guilty and claimed to be tried. Under section 313(1)(b) of The Criminal Procedural Code, statement of the accused persons were recorded. The accused person through their 313 statement

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at Exh-47, Exh-48, Exh-49 and Exh-50 has taken a defence that the complainant's sister in law Sunita provoked them and that a false complaint is been filed against them. As to accused no.3 has taken a specific plea of alibi and that false complaint been filed against him.

5. Heard arguments for the accused and the prosecution and formed points for determination with my findings and reasons herein to follows:

Points for determination	Findings
1. Whether the prosecution proves that on 25.07.2015 at around 09.00 hrs at Dandoswada, Mandrem, Pernem-Goa all the accused persons with their common intention trespassed in the Courtyard of the Complaint/Mrs. Usha Vijay Aroskar house and thereby committed offence has committed an offence under section 447 r/w 34 of the Indian Penal Code?	In the affirmative.
2. Whether the prosecution proves that the accused no.1 and 2 with their common intention alongwith the other accused abused the complainant's sister in law namely Mrs. Sunita Aroskar with filthy words such as "Chedye, Nagon ded lakh chorun Mangalsutra ghatle, Kutri", thereby gave provocation intending that such provocation would cause the complainant to break public peace and/or to commit	In the affirmative.

any other offence and thereby committed an offence punishable under section 504 r/w 34 of IPC?	
3. Whether the prosecution proves that accused nos.1 and 2 with their common intention alongwith the other accused abused the complainant's sister in law namely Mrs. Sunita Aroskar with filthy words such as "Chedye, Nagon ded lakh chorun Mangalsutra ghatle, Kutri" and accused no.3 and 4 with their common intention caught hold of the complainant and said Sunita Aroskar and thereby committed an offence punishable under section 509 r/w 34 of IPC?	In affirmative.
4. Whether the prosecution proves that all the accused with their common intention voluntarily caused hurt to the complainant, said Sunita Aroskar and Mrs. Chandravati Aroskar, mother in law of the complainant by assaulting them with bamboo danda and thereby all have committed offence punishable under section 324 r/w 34 of Indian Penal Code?	In affirmative.
What Order?	As per the Final order.

REASONS

6. The prosecution examined 7 witnesses, the complainant/Victim, Usha Aroskar, (PW-1), injured Sunita Aroskar, (PW-2), eye witness Chandrawati Aroskar, (PW-4), Govind Ajgaonkar (Panch witness) (PW-5), Babli Naik (attachment Panch) (PW-6), Dr. Pallavi Kolwalkar (Doctor) (PW-7).

3) and IO Santoah Parab (PW-7). The prosecution relied upon the complaint of the complainant at (Exh-11), scene of offence panchanama (Exh- 27 colly), recovery panchanama (exh-30) hurt certificates of Usha Aroskar, Sunita Aroskar and Chandravati Aroskar (Exh-36colly), X-Ray Report of Sunita and Usha Aroskar (Exh-21 colly), Attachment panchanama of Xylo Car (Exh-37), Certificate under section 65 B of Indian Evidence Act (Exh-40) CD comprising of audio and video clips.

7. **Evidence on record: (PW-1)** The complainant/Usha Aroskar, deposed that on 25.7.2015 at around 9:00 am while she was in the Varanda of her house and her sister in law Mrs. Sunita Aroskar/PW-2 was sweeping the Courtyard at which time accused no.2 who is the cousin sister in law of the complainant came and started abusing Sunita/PW2 by uttering words like "Chedye, Nagon ded lakh chorun mangalsutra ghatale" "kutre" and thereafter accused no.1 came and started abusing them. Upon which the Sunita/PW-2 replied saying "Dukra tumi", upon which accused no.1 and 2 came with danda in their hands and assaulted Sunita/Pw-2 with bamboo danda on her nose and head and when complainant Usha/PW-1 went to rescue Sunita/Pw-2 accused no.2 assaulted the complainant with wooden danda on her both hands and in the meantime accused no.3 and 4 came and accused no.4 caught hold of complainant's hand and

accused no.3 caught hold the hands of Sunita/Pw-2 and accused no.2 assaulted the complainant and accused no.1 assaulted Sunita/Pw-2 and upon seeing this when the mother in law of complainant Chandravati/PW-4 came to their rescue, the above accused also assaulted her with danda.

8. The complainant also deposed that in the said scuffle the nighty of complainant tore and the saree of Sunita/Pw-2 also tore. Due to said assault Sunita/Pw-2 started bleeding from her nose and they both fell on the ground and in the mean time all accused fled from the spot in their Xylo Car.

9. The complainant thereafter called 108 ambulance which shifted them to hospital. She also deposed that family of accused no.3 are not in good terms with the complainant's family as PW-4 acted as witness in RCS/7/2015 filed by the cousin brother in law Kishor Aroskar in respect to property bearing survey no.12/43 of Mandrem Village.

10. Hence based on above facts the complaint came to be lodged against all the accused persons. The complainant identifies the wooden danda and broken red and green colour bangles attached from the spot of incident. The complainant deposed that she had given CD to the police containing video shoot and audio recording in which the accused are seen assaulting and giving abusive words.

11. In chief the complainant had initially deposed that the lady in white/blue sari is accused no.2 and other lady seen wearing red sari is PW-2. Further she also deposed that the sound "Yo himmat asa jalyar yo" chedye yo" is her sound and that she was recording the said incident and when the accused no.2 assaulted her the phone fell down. The said complainant in her further chief clarified that lady wearing white blouse and white blue saree is accused no.2 and other lady in red blouse and blue saree is PW-2 and whatever stated in chief earlier was due to mistake. She further stated that lady in red blouse and blue saree was seen throwing stones on lady wearing white blouse and white /blue saree.

12. In cross examination it has come on record that the distance between the house of complainant and accused is 3 to 4 meters, it is also come on record that there is no fencing of whatsoever nature but that front courtyard is separated by the side courtyard by small stones kept. The complainant in cross examination denied that the accused are tenants of survey no.12/43. Complainant again admits that there was disputed between Kishor Aroskar and the accused family and that the mother in law of complainant i.e. PW-4 had deposed in favour of Kishor in civil suit against the father/father in law of accused persons. Complainant also admits that the relationship of the

complainant family and accused person are not cordial due to said civil suit in which the mother in law of complainant had acted as witness.

13. The complainant clearly denied that the PW-2 without any reason started abusing accused no.1 who was washing clothes in her back courtyard. The complainant also denied that PW-2 was throwing stones on accused no.1. Here, the complainant admits that she was with danda and had also challenged the accused because accused first challenged her and had danda in her hand.

14. Here, the accused person tried to put up the defence that the complainant first abused the accused and they were carrying the danda and that complainant are in habit of filing false case as against the accused no.3 to suspending him from his service as he is police constable. It is also the defence of accused that injuries sustained was due to fall of complainant and PW-2 which suggestions are clearly denied by the complainant.

15. **PW**-2/Sunita Aroskar, is the second injured in the present case she stated that on 25.7.2015 at around 9:00 am she was sweeping the courtyard when accused no.1 abused her by uttering filthy words "ded lakh chorun chedye mangalsutra galyan ghatla, Kutri" to which she replied by calling her "dukri". Then accused no.1 and 2 came with danda and assaulted her on

her head and nose due to which she started bleeding from the nose. When complainant came for her rescue the accused no.1 and 2 also assaulted said complainant with danda and when their mother in law came for their rescue she was also assaulted .she stated that in said scuffle her saree tore and nighty of complainant and thereafter they fell down. Later 108 ambulance was called till then accused person fled from the place. The said Sunita/PW-2 also stated that as their mother in law stood witness in Civil suit against the father/father in law of accused the relationship between the accused and complainant family turned strained. The said injured identified the dandas and bangle pieces.

16. In the cross examination, the accused person had put forth their same defence as put forth to the complainant which was clearly denied by said Sunita/PW-2 and she was firm to her deposition. Except as to the only omission of accused no.3 catching her both hands.

17. **PW-3/** Dr. Pallavi Kolwalkar, being medical witness deposed that she had examined both Usha/PW-1 and Sunita/PW-2 who were examined as to their injuries for which X-ray were taken which are at Exh-21 colly. Here, the said witness deposed that both report were normal as there were no fractures reported.

18. **PW**-4/Chandrawati Aroskar is the eye witness also a victim of the alleged incident who deposed in same line as that of complainant and Sunita/PW-3. who in her deposition also identifies the MO properties i.e. both the dandas and broken pieces of the bangles. She deposed that she was also assaulted and she had sustained injuries to her left face.

19. **In the cross**-examination said witness admitted that the relationship between their family and accused were cordial earlier but turned strained when she stood witness in favour of Kishore Aroskar in a civil suit and further denied the defence put up by the accused in form of suggestion and stood firm to the prosecution case.

20. **PW**-5 Govind Ajgonakar/Panch witness for the scene of offence Panchanama wherein the dandas and broken bangle pieces were attached. Here, the said witness deposed that spot was shown by the complainant where they notice 4 dandas and pieces of bangles which were seen near the Vrindavan which vrindavan was in front of complainant's house. The witness identifies his signature on the MO properties and the sketch.

21. Here in cross- examination the said panch witness states that the husband of PW-2/Sunita is his employee but denies the suggest that the husband of Sunita/PW-2 had requested him to

act as panch witness and denies the other suggestion put forth to him.

22. **Pw-6**/Babli Naik, the said witness acted as panch witness to the Panchanama wherein the complainant handed over the 2 DVD's containing video and audition recording. Here, the said witness deposed as per the procedure followed while handing over the said DVD's and manner in which they were sealed packed. The witness also identifies his signature on the MO property.

23. Cross-examination- The said witness admits that he is the nephew of accused no.3 and that their relation with accused family is not cordial. Further the said witness was questioned as to some construction and their business. Further during the cross examination when questioned as to his presence at that relevant time, the said witness justified that he had some official work for which reason he had visited the Police Station and denies that he acted as a panch witness at the request of the complainant.

24. **PW-7**/ Santosh Parab/ IO deposed as to his investigation and also confirmed the omission marked in evidence of PW-2/Sunita.

25. With the above evidence, I proceed dealing with all the

points for determination.

POINTS NO 1. Whether the prosecution proves that on 25.07.2015 at around 09.00 hrs at Dandoswada, Mandrem, Pernem-Goa all the accused persons with their common intention trespassed in the Courtyard of the Complaint/Mrs. Usha Vijay Aroskar house and thereby committed offence has committed an offence under section 447 r/w 34 of the Indian Penal Code?

26. To start with section 447 of IPC which reads as follows: "Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both". But to get home the offence under section 447 of IPC, section 441 of IPC has to be considered which speaks of Criminal trespass "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

27. Thus going to the said sections, the prosecution had to prove that the complainant or her family members were in

possession of the said property. Now on going through the deposition of complainant and other witnesses more specifically Sunita/PW-2 and Chandrawati/PW-4 it is observed that the place where the incident occurred was the front courtyard of the complainant where they were carrying out their routine household chore. So also the accused has failed to bring on record any such evidence that there is any dispute as to said property where the incident occurred or more specifically the Courtyard of the complainant's house. So also it also proved in the evidence that the complainant's sister was sweeping the said Courtyard when the alleged incident occurred. Hence, in absence of any contrary evidence that the said courtyard belonged to any other person or it being in civil dispute, it is proved that the said front Court yard was in possession of the complainant when the alleged incident occurred and having proved the same the accused having entered the said courtyard the prosecution proves the said basic ingredient that the said accused persons by entering the Courtyard without permission of complainant and of having committed the act of criminal trespass as evidence on record and thus proves that the property was in possession of the complainants family.

28. Hence, for above reason I answer the said point in the **affirmative.**

POINT NO.2 Whether the prosecution proves that the accused no.1 and 2 with their common intention along with other accused you both abused the complainant's sister in law namely sunita with filthy words such as "Chedye, nagon ded lakh chorun mangalsutra ghatle, Kuti" thereby gave provocation intending that such provocation would cause the complainant to break public peace and/or to commit any other offence and thus committed offence punishable under section 504 r/w 34 of Indian Penal Code?

29. Section 504 of IPC reads as follows, "Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

30. Thus, the prosecution had to prove that accused person intentionally uttered such words which gave provocation to complainant which would break the public peace.

31. In the present case Usha/PW-1 deposed that the accused person uttered such filthy words such as "Chedye, nagon ded lakh chorun mangalsutra ghatle, Kutri" to her sister in law Sunita/Pw-2. Further, Sunita/PW-2 and Chandravati/PW-4 also deposed in

the same line and stated that the accused uttered fitly words Like "Chedye, nagon ded lakh chorun mangalsutra ghatle, Kutri". Ld. Advocate for the accused even in the cross examination of said witnesses was unable to shake the credibility of the said witness thus proving that the accused person had utters the said fitly words and thus committed an offence under section 504 of IPC.

32. Here, during the arguments the accused have not denied the incident but tried to take benefit of section 334 of IPC which is an exception to section 324 of IPC. As it is the case of the accused persons that Sunita/Pw-2 initially started abusing the accused no.1 and thus started the quarrel. However the same was specifically denied by the complainant and all the prosecution witnesses.

33. In respect to said incident it was vehemently argued by the Ld. Advocate for the accused that all witnesses are interested witnesses including the panch witness.

34. To the said arguments it has to be considered that it is an admitted fact that some incident occurred on the alleged date and time between the accused persons, the complainant and her family member which is also accepted by the accused but takes a specific defence under section 334 of IPC. In such situation the

occurrence of incident is not vehemently denied but recourse are been taken of there being no independent witness which in my view is not justified.

35. Here, no doubt the prosecution case has to be proved beyond doubt but in the present case considering the specific defence the evidence has to evaluated on the said defence taken.

36. As the very fact the accused seeks for exception provided under section 324 is of IPC the burden is shifted on the accused persons.

37. Hence, keeping the said issue for further discussion under issue no. 4 I proceed to answer the above said point in **affirmative.**

POINT NO.3: Whether the prosecution proves that the accused no.1 and 2 with their common intention along with other accused you both abused the complainant's sister in law namely Sunita with filthy words such as "Chedye, nagon ded lakh chorun mangalsutra ghatle, Kuti" and accused no.3 and 4 with their common intention caught hold of complainant and said Sunita Aroskar and thereby commit any other offence and thus committed offence punishable under section 509 r/w 34 of Indian Penal Code?

38. Now, section 509 of IPC reads as under “Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

39. Here, it is the case of the prosecution that the accused no.1 and 2 abuse Sunita/Pw-2 as “Chedye” and accused no.3 and 4 caught hold of the hands of the complainant’s and Sunita/PW-2 while the accused no.1 and 2 assaulted them with wooden danda.

40. Here, before going through the said provision it is pertinent to evaluate the meaning of the term “Modesty” as according to the Oxford Dictionary modesty is “womanly propriety of behavior” wherein any acts done affecting any women modesty would definitely be covered under section 509 of IPC.

41. In the backdrop of facts and circumstances of the prosecution case it is observed that accused no. 1 and 2 abused

Sunita/PW-2 as "Chedye" which means "prostitute" and accused no.3 and 4 caught hold of hands of complainant and Sunita/Pw-2.

42. Now, going through the scope of offence under section 509 of IPC it is observed that 509 of IPC talks of Word, gesture or act with intension to outrage modesty.

43. On going through the evidence that is come on record the accused no.1 and 2 with common intention uttered the word "Chedye" which amounts to outraging modesty of women and the holding of hand by accused no.3 and 4 amount to intruding into the privacy of women. Thus, holding hand during alleged incident proves the intention of the accused insulting the modesty of women.

44. Hence, the said point is answered in the **affirmative**.

POINT No.4 Whether the prosecution proves that all the accused with their common intention voluntarily caused hurt to the complainant, said Sunita Aroskar and Mrs. Chandravati Aroskar, mother in law of the complainant by assaulting them with bamboo danda and thereby all have committed offence punishable under section 324 r/w 34 of Indian Penal Code?

45. To start with section 324 of IPC which reads as follows,
"Voluntarily causing hurt by dangerous weapons or means.—
Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both." Thus to attract the said offence the prosecution had to prove that there was hurt and that the same was caused by dangerous weapon.

46. After going through the evidence of the complainant Usha/PW-1, she has deposed that the accused no.2 voluntarily came in their courtyard and started abusing her sister in law Sunita/PW-2 and thereafter followed by accused no.1 and then both accused no.1 and 2 came with danda in their respective hands accused no.1 assaulted Sunita/Pw-2 on her head and nose and when complainant went to rescue accused no.2 assaulted complainant with the danda on both the hands of complainant

and in mean time accused no.3 and 4 reached and caught hand of the complainant and Sunita and accused no.1 and 2 further assaulted due to which they fell on the ground. The said evidence of the complainant corroborates with that of the injured Smt. Sunita/PW-2 and their mother in law Chandravati/PW-4 who have deposed in same line as that of the complainant and were also firm to their case during their cross examination.

47. Thus, as the accused failed to shake the testimony of the said Usha/PW-1, Sunita/Pw-2 and Chandravati/PW-4 in their cross-examination the version of the prosecution case stands proved. The only question which arises for my further consideration is whether the said act of accused constitutes an offence under section 324 of IPC.

48. Therefore, now firstly coming to the injuries sustained by the injured. Here, as per the hurt certificates which are at Exh-36 colly of Usha/PW-1, mentions of swelling on left hand, right elbow and abrasions on right hand. In the said Hurt certificate the nature of injuries mentioned are as simple injuries. As to Sunita/PW-2, the hurt certificate mentions injuries to her nose, forehead and hand thus mentioning the nature of all injuries to be simple in nature. Lastly, as Chandravati/PW-4 the hurt certificate mentions injuries to her left cheek thus mentioning the nature of all injuries to be simple in nature. The accused

persons though had not disputed the genuineness of the said hurt certificate for which reason the same were taken on record under section 294 of Criminal Procedure Code during the examination of the IO S. Parab /PW-7. But the Ld. Advocate for accused during his arguments submitted that he was not afforded opportunity to cross-examination the Medical witness.

49. On the said aspect the very fact when any document is exhibited under section 294 of Criminal Procedure Code then it is proved that the genuineness of the same is not doubted thus having accepting the contents of the same and having accepted under section 294 of Criminal Procedure Code the arguments of the Ld. advocate for the accused as to not afforded with opportunity is not justified under law.

50. Hence, in my view no weightage needs to given to the said arguments.

51. On further perusing the said hurt certificates which are at Exh-36 colly makes mention of history, the injuries sustained and observation and nature of injuries. Considering the said history which was given at the earliest opportunity corroborates with the complainant case. So also the injuries observed also tally with the injuries inflicted by the accused and the nature as submitted or reported by the doctor brings the said offence under section 324 of IPC.

52. Thus, in my view after going through the evidence of the complainant/PW1, injured Sunita/PW-2, Chandravati/PW-4 and the medical evidence it can be safely said that there is sufficient evidence to prove that the injuries caused to complainant/Pw-1, Sunita/PW-2 and Chandravati were simple in nature thus proving one ingredient of section 324 of IPC.

53. Therefore, now coming to second ingredients i.e. dangerous weapon. Based on the evidence that is come on record that the wooden dandas were used to assault the complainant/Pw-1, Sunita/PW-2 and Chandravati/Pw-4 is to be considered as weapon.

54. Now, the said wooden danda being weapon of assault was attached from the scene of offence vide panchanama at Exh-27 colly/Pw-5. Now, it also vehemently argued that the said panch witness was not an independent witness but was the employer of Sunita's/PW-2 husband and being so it was argued that he had interest in the case.

55. Now, the prosecution countered the said arguments that the said panch witness was the boss of Sunita's husband and in such relationship could not have brought pressure or influence to act as per the will and whims of the employee and in such

circumstances as such I don't find any reason for disbelieving the evidence of said panch witness.

56. So also the said panch was firm to the case of prosecution thus identifying the wooden danda, broken bangles and the spot of incident and also confirms the sketch to be drawn correctly.

57. Hence, by the identification done by the complainant, Sunita/Pw-2, Chandravati/PW-4 and the panch witness Mr. Govind Asgaonkar it is proved that the wooden dandas were used to assault the complainant and her family.

58. In such situation wherein the evidence of complainant corroborates with that of the injured and medical evidence thus corroborating with the scene of offence and weapon attached along with other articles attached showing connections as to circumstantial evidence prove that the accused had assaulted the complainant and her family members with wooden danda.

59. Now, coming to defence taken by the accused person. Here, the accused person have taken two fold defense first that the complainant had instigated or provoked them, secondly that the complainant are in habit of filing false case in order to remove the accused no.3 from his government job.

60. Here, the accused has opted to take benefit under the exception stated in provision of section 324 of IPC which speaks

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of section 334 of IPC which reads as follows: "Voluntarily causing hurt on provocation.—Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

61. Thus, when the accused has taken the said specific defence of the exception provided in said section the burden stands shifted on the accused to prove his innocence.

62. Here, to start with the accused besides their statement in 313 statements and defence but forth during the cross examination none of the accused have stepped into the witness box. As to accused no.3 though has stated in his 313 statement that he was not present when the alleged incident occurred thus taking plea of alibi has failed to show his presence at some other place than the scene of offence.

63. Further, when the accused takes the defence of being provoked the accused has failed to show the motive or reason which had lead to such provocation. On the contrary the prosecution has proved that there was an axe to grind as against

the complainant. But to the defence the accused failed to prove the reason of provocation.

64. Here, the accused in one breath have disputed the genuineness of the CD and DVD produced as the Certificate under 65 B of IEA was not by the person who copied the said CD and DVD and in other breath argues that the complainant is seen abusing the accused and throwing stones.

65. Here, it has to be appreciated that the complainant has filed her certificate under section 65 B of Indian Evidence Act.

66. After going through the said CD and DVD and also considering the admission of complainant as to abusing the accused in my view the same is nothing but a reaction to the action of the accused which can be considered as based of Newton's third law that "every action has an equal and opposite reaction" and the complainant are not an exception to the same of which they have genuinely accepted.

67. Now, the question which remained unexplained was that inspite of the fact that accused no.3 is serving in the Police department even after having been provoked by the complainant files no complaint as against the complainant and further though makes mention of some NC complaint of being registered makes no effort to bring the same on record. So also the accused takes

no step to register private complaint as against the complainant if there was a genuine provocation by the complainant which thus force me to take an adverse inference as against the accused persons.

68. Thus, accused though having taken the defence of section 334 of IPC has failed to prove their defence or to prove the burden casted on them.

69. Hence, I don't find any benefit of doubt is required to be given to the accused person.

70. As the evidence which is come on record has proved that the accused person assaulted the complainant and her family with wooden danda causing them simple injuries respectively. Thus, in my view considering the ingredients of section 324 of IPC, stand proved.

71. So also as it is proved that Sunita/PW-2 and Chandravati/PW-4 were present at the time of incident the credibility of said witness cannot be doubted only because they are related to each other and above all when the version of the complainant corroborates with that of the injured and the eyewitness and also with the medical reports.

72. So also it was argued that panch witness was a interested witness as he was known to Sunita's husband but the relation

between them was not of one where the said husband of Sunita could influence him to act as witness above all the accused was unable to shake the credibility of said panch witness as to panchanama in which he acted as panch witness nor has shown any adverse interest of panch witness in respect to the said case.

73. Thus, in such circumstance non examination of any independent witness in my view has again not turn fatal to the prosecution case when there is ample evidence which corroborate with each other thus proving the guilt of the accused persons.

74. Hence, for reasons stated above the said point is answered in **affirmative**.

75. Now, coming to the omission which is marked in the evidence of Sunita/PW-3 wherein the said witness deposed that accused no.3 had caught her both hand. Considering the said omission in my view the same is not a material omission but it is to be appreciated that the said witness deposes in the present case after one years of occurrence of the said incident. Further also considering that the said omission is as to catching of both hands but in my view if the said witness never stated that no hand was caught would have been material omission but same

not being the case the said omission being not material omission for which the benefit can be given to the accused person.

76. Finally coming to section 34 of IPC, as said section speaks of prearranged plan and acting in concert pursuant to the plan. To constitute common intention, it is necessary that the intention of each one of them be known to the rest of them and shared by them.

77. In the present case it is proved that accused no.2 started with quarrel by abusing Sunita/Pw-2 which followed with assault to complainant and the Victims. Here, it has to be seen that though accused no.3 and 4 came later and joined the accused no.1 and 2 in assaulting the complainant and the victim proves that there was an earlier meeting of mind under which the accused no.2 first arrived to pick up quarrel followed by the accused no.1, 3 and 4.

78. Here the Ld. Advocate for the accused relied upon the Judgment of Sursh Nangare v/d State of Mah, [2012 Bom CR (Cri) 472] in which it was held that there should be prior meeting of minds and in absence of common intention even an active participation by accused does not prove common intention.

79. To counter the said proposition the Ld. APP relied upon the case of Hemchand Jha v/s State of Bihar, 2008 ALL MR (Cri) 3243 (SC), wherein it is held that direct proof of common intention seldom available. Therefore such an intention can only be inferred from circumstances appearing from the true facts of the case and proved circumstances.

80. Besides the above judgments the prosecution also relied on the following judgments: Ashruba s/o Govindrao Solunke & Ors. V/s. State of Maharashtra [2009 ALL MR (Cri) 3334, Sonelpal V/s. State of M. P. [2008 ALL MR (Cri) 3239 (S.C.), Kilari Malakondiaah @ Malayadri & Ors V/s. State of A. P. [2008 ALL MR (Cri) 3536 (S.C.)], State of Maharashtra V/s. Bhausahab Eknath Pawar & Ors. [2008 ALL MR (Cri) 2856], Sheshrao s/o Nana Dhawale & Ors. V/s. State of Maharashtra & Anr. [2008 ALL MR (Cri) 2818], Pratap Nathuji Dhikhe V/s. State of Maharashtra [2011 ALL MR (Cri) 3172], Sheesh Ram & Ors. V/s. The State of Rajasthan [2014 ALL MR (Cri) 791 (S. C.)] which are based on settled proposition of law.

81. Hence for reasons stated above I proceed to pass the following:

ORDER

The accused no.1, 2, 3 and 4 are convicted for the offence under section 324, 447, 509, 504 r/w 34 of IPC. The accused persons shall now be heard on the point of sentence.

(Ms. Manisha M. S. Parkar @ Narvekar)
Judicial Magistrate, First Class,
Pernem.

J U D G M E N T C O N T I N U E D

(Delivered on this 20th day of the month of May, of the year 2021)

82. The accused is convicted for offences punishable under section 324, 447, 504 and 509 r/w 34 of IPC.

83. The punishment for the section 324 of IPC is imprisonment for 3 years or fine or both, for section 447 of IPC is imprisonment for 3 months or fine of Rs.500, or both, for section 504 of IPC is imprisonment for two year or fine or with both, for section 509 of IPC is imprisonment for 3 years and with fine.

84. It was argued by the Ld. APP that no leniency be showed to the accused considering the injuries suffered by the injured and considering the other pending criminal cases as against accused no.3 and also prayed that compensation be also granted and thus prays that maximum punishment be given to the accused.

85. However, the Ld. Advocate for the accused no.1 to 4 filed his say on point of sentence and argued that the relationship prior to the civil dispute was cordial and that accused no.1 to 4 have family with minor children and punishment of imprisonment would affect them adversely. It was also submitted that they have no adverse antecedent, casting any cloud on their

character or conduct. Further, the accused no. 1 and 2 being housewives, mother of minor children and also as ladies some leniency was sought for while sentencing the accused persons.

86. Heard Ld. APP and Ld. Adv. for the accused. Perused the records of the file.

87. It is observed that though there are other pending criminal matters as against accused no.3 but the same are pending hearing and besides the same there is no record showing that the said accused was convicted earlier. As to the other accused there is no record of the said accused persons are habitual offenders thus showing they are first time offenders, at the same time considering the nature of offence and the nature of injuries inflicted which are simple in nature and when the incident occurred due to civil dispute any sentence of imprisonment would be too harsh thus I am inclined to show some leniency to accused persons further also considering that the accused have family with minor children so also some leniency can be shown.

88. Hence, I proceed to pass the following sentence:

ORDER

The accused no. 1 to 4 are sentenced to pay a fine of Rs.500/- (Rupees Five hundred only) each for the offence punishable under section 324 of IPC and

in default to pay fine, is directed to undergo simple imprisonment for 4 days.

The accused no.1 to 4 are also sentence to pay fine of Rs.500/- (Rupees five hundred only) each for the offence punishable under section 447 of IPC and in default to pay fine, is directed to undergo simple imprisonment for 4 days.

The accused no.1 to 4 are also sentence to pay fine of Rs.500/- (Rupees five hundred only) each for the offence punishable under section 504 of IPC and in default to pay fine, is directed to undergo simple imprisonment for 4 days.

The accused no.1 to 4 are sentence to undergo simple imprisonment till rising of the Court and to pay fine of Rs.500/- (Rupees five hundred only) each for the offence punishable under section 509 of IPC and in default to pay fine, is directed to undergo simple imprisonment for 4 days.

All the above sentences shall run concurrently and the period of imprisonment if undergone shall be set off against previous imprisonment already undergone by the said accused persons.

The accused persons are also directed to pay jointly compensation of Rs.2,000/-under section 357 of Criminal Procedure Code to the complainant and the injured and in default to pay compensation, is directed to undergo simple imprisonment for 4 days.

The Total fine of Rs.8,000/- (Rupees Eight thousand only) if paid shall be paid to the complainant and the injured and in default to pay fine, is directed to undergo simple imprisonment for 4 days.

The fine and compensation totally amounting to Rs.10,000/-(Rupees Ten thousand only) shall be paid within a period of one month.

The accused to comply with section 437-A of Criminal Procedure Code, by furnishing bond of Rs.5000/-.

The substantive sentence shall go concurrently.

Copy of this Judgment be given free of cost to the said accused persons and to Pernem Police station for necessary action.

Issue necessary letter to the complainant and the injured persons in respect to fine and compensation awarded to them.

Proceeding closed.

Pronounced in open court.

(Ms. Manisha M. S. Parkar @ Narvekar)
Judicial Magistrate, First Class,
Pernem.

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