

MHGO080007622018 	Received On 10/08/2018 Registered On 10/08/2018 Decided On 13/07/2026 Duration 07Y. 11M. 03D.
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(PART - "A")

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,TIRORA, DIST. GONDIA(Present :- Presided over by Amit S. Agrawal)

R.C.C. No. 81/2018

Exhibit No. 29

FIR No. 176/2017

Tirora Police Station,

Taluka -Tirora, District- Gondia,

Prosecution

- State of Maharashtra

Tirora,

Police Station, Gondia

Represented by

- Assistant Public Prosecutor

Shri. O .K. Mendhe

-VERSUS-

Accused

- Ashish Vijay Mutkure,

Age-23 years, Occu:- Labor,

R/o- Mandavi, Tah. Tirora, Dist-Gondia.

(Judgment)

2

RCC NO. 81/2018

Represented by

- Advocate Shri. P. R. Bhandarkar

(PART – "B")

Date of Offence	22.04.2017
Date of F.I.R.	24.04.2017
Date of Charge-sheet	10.08.2018
Date of Framing of Charges	25.06.2024
Date of commencement of evidence	24.07.2024
Date on which judgment is reserved	-----
Date of the Judgment	13.07.2026
Date of the Sentencing Order, if any	Nil

(Accused Details)

Rank of accused	Name of accused	Date of Arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during trial for purpose of Section 428 of Cr. P.C.
1.	Ashish Vijay Mutkure	Nil	Nil	U/s 211 of IPC.	Acquitted	Nil	Nil

J U D G M E N T

(Delivered on 13.07.2026)

1. The accused faced trial for the offence punishable **under Section 211 of Indian Penal Code** (In short **I.P.C**) .

Facts emerging from record are as under.

2. The accused Ashish Mutkure is the original informant. On 24.04.2017 the accused (informant) lodged report inter-alia alleging that, since 2012 he is having love affair with Shital Kshirsagar and they used to meet with each other. Thereafter, she went to Wardha for residing at the house of her maternal uncle- Sudhakar Dalvi. Therefore, they used to talk telephonically and he used to visit Wardha to meet her. Their family members were not aware of their relationship. He continued to talk with her till 14.03.2017 on her mobile. However, on 15.03.2017 her maternal uncle Sudhakar Dalvi called him and asked whether he is ready to marry with Shital, to which he replied that he will marry after one year. Thereafter, said Sudhakar Dalvi asked him to come his house with his parents. Accordingly, on 17.03.2017 informant alone went to his house. At that time the parents and maternal uncle of Shital were present there and they gave him an understanding that they should not continue their relationship. The accused (informant) and Shital agreed for the same and gave written promise.

3. It is further alleged that, on 20.04.2017 at about 09.30 a.m. the accused/informant's father received one letter wherein some unknown person threatened that, "तु वर्धा में झगडा करणे के बाद भी तु क्यू नही समझ रहा है, तु उसे छोड दे और तेरे घरवालों को उडा डालूंगा, तुझे चार दिन की महलौत दे रहा हूँ". It is alleged that, the said letter might have been sent by relatives of Shital. Thereafter, on 22.04.2017 at about 10.00 p.m. accused (informant) had been to his farm for watering the crops

and while he was returning four person ran towards him. Thereafter, two persons have caught his hand back side. At that time they were having iron knife in their hands. Thereafter, one of them have taken mobile from accused's (informant) pant and asked him to give phone number of Shital house, to which he replied that he does not know said number. Thereafter, said unknown person called maternal uncle of Shital from mobile of accused (informant) but same was not picked up. Thereafter, said unknown person called on mobile number of Shital's maternal aunt and talked for two -three minutes. Thereafter, said unknown persons unrobed him and and strikes on both sides of his stomach by the weapon like of iron knife and then they all fled away. It is further alleged that said unknown persons told him that he did not listened even after giving letter and he shall not keep any relation with Shital. It is further alleged that, Shital's maternal uncle Sudhakar Dalvi, brother Aman Kshirsagar and father Ramesh Kshirsagar might have send said four unknown person for killing him. Therefore, he lodged report against said unknown person

4. On the basis of aforesaid report, an offence came to be registered against unknown persons vide C.R. No. 176/2017 for the offence punishable under Section 307 r/w 34 of IPC. During investigation the investigating officer has recorded statement of relevant witnesses and obtained medical documents. It is significant to note that vide letter O.W.No. 978/2017 dated 02.05.2017, the investigating officer requested for recording statement of original informant (now accused). Accordingly, on 04.05.2017 my Ld. Predecessor in office was pleased to record his statement U/s 164 of

Criminal Procedure Code (Cr.PC.). Interestingly, while giving said statement accused (informant) stated that, he was having love affair with Shital and therefore, on 24.03.2017 some relatives of Shital abused him and threatened to kill him. Therefore, he was confused and accordingly on 22.04.2017 he has himself wrote one letter mentioning that “तु शितलला सोडून दे, नाही तर तुला व तुझ्या आईवडिलांना सुद्धा मारून टाकू, चार दिवसांच्या आत मारणार आहोत”. He further stated that on the same night he went to his farm. At that time, he was in mental agony and therefore he himself inflicted two injuries on each side of his stomach by using one iron bar kept near borewell. Thereafter, he informed telephonically his uncle and one Mukesh Walde that he was murdered. Thereafter, they all came in farm and brought him to the hospital at Tirora. Thereafter, he was referred to hospital at Gondia. However, in that hospital also he was not treated and he was further referred to medical college at Nagpur. Thereafter, he was discharge on 23.04.2017. He further stated that, he was fearing to informed real fact to his parents, therefore he lodged false report against maternal uncle of Shital and two unknown persons.

5. The record depicts that after completion of evidence the Investigating Officer has produced final report under “B” summary, on the ground that during aforesaid statement accused (informant) has admitted that he has himself written said letter and inflicted injuries on own body. Considering said report, my Ld. Predecessor in office was pleased to accept said “B” final summary vide order dated 07.08.2018. However, in said order it is observed that the accused (informant) has set criminal law in motion by lodging false police report and knowing

that there is no just lawful ground on the same, therefore he is liable for prosecution u/s 211 of IPC. Accordingly, the Assistant Superintendent was directed to registered said case as Regular Criminal Case. Thereafter vide order dated 10.09.2018, the Police Station Tirora was directed to carry out inquiry u/s 202 of Cr.PC. Accordingly the said report was submitted vide letter dated 28.03.2019 (Exh.2). The record further shows that considering said report, vide order dated 25.06.2021 my Ld. Predecessor in office was pleased to issue process against accused (informant) for the offence punishable u/s 211 of IPC.

6. Thereafter, my Ld Predecessor in office framed charge against accused below Exh. 17 for the aforesaid offences. The accused (informant) denied the same and claimed to be tried. After recording evidence of prosecution, the statement of accused (informant) under section 313 of Cr.PC came to be recorded at Exh. 28. The defense of the accused (informant) as appearing from her statement and line of cross examination is that the unknown accused were not traced out, therefore he compromised the matter as per say of Police.

7. Perused record of case. Heard Learned A.P.P. Shri. O. K. Mendhe and Learned Advocate Shri. P. R. Bhandarkar for the accused. Following points arises for my determination to which I have recorded my findings with reasons as under:-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
(1)	Whether it is proved by the prosecution that, on 24/04/2017 at about 20.40 hours	In Negative.

	at Mauza Tirora, Tah. Tirora, Dist- Gondia, accused with intend to cause injury instituted criminal proceeding knowing that there is no just or lawful ground for such a proceeding and thereby committed an offence punishable under Section 211 of IPC ?	
(2)	What Order ?	As per final order.

REASONS

8. Ld. APP argued that, from the statement of accused U/s 164 of Cr.P.C. and evidence on record, it is clear that the accused has lodged false report knowingly that he was not having just and lawful ground for the same. Thus, the prosecution has proved aforesaid offence and the accused be convicted and sentenced accordingly.

9. Per contra, Ld. Counsel for accused submitted that, the accused has specifically stated that, the relatives of Shital have threatened him to kill and therefore accused was under mental agony. Moreover, the report was lodged against unknown person therefore there is no question of causing injury to any person. Hence, accused is entitled to be acquitted from charge leveled against them.

AS TO POINTS NO. 1 :-

10. Before discussing evidence, it would be apt to refer the ingredients of section 211 of IPC, which are as under :-

- a. The accused have caused to start false criminal proceeding.
- b. The said proceeding was started without any just and lawful ground.
- c. The said proceeding was initiated with intent to cause injury to any person.

11. In order to prove aforesaid ingredients, the prosecution has examined Roshanlal Lilhare (PW-1). He deposed that accused (informant) is his brother in law. The incident occurred prior 5 to 6 years. On said day, the his another brother in law informed him telephonically that accused (informant) has been assaulted and he was carrying him to the hospital. However, he further deposed that, he do not know as to how said injuries were caused to the accused(informant). The police have not recorded his statement. Since, the aforesaid witness was not supporting to the prosecution, he was cross-examined with permission of Court. During said cross-examination he denied that accused (informant) has inflicted injuries on own body and then lodged false report. He denied that portion mark "A" in his statement to police was stated by him.

12. The prosecution has also examined Investigating officer PI- Sandip Koli (PW-2). He deposed that the investigation of Crime No. 176/2017 was handed over to him along with copy of report, FIR and MLC. Thereafter, he conducted spot panchnama and during further investigation, it reveals that the accused (informant) has lodged false report. Therefore, he caused his

statement to be recorded u/s 164 of Cr.PC and then filed “B” final summary.

13. Having regard to oral and documentary evidence on record, it is clear that in order to prove offence U/s 211 of IPC against accused, the prosecution has relied upon the statement of accused recorded U/s 164 of Cr.PC and evidence of Investigating Officer (PW-2). No doubt, perusal said statement would clearly shows that the accused (informant) has made **self inculpatory statement** that he has himself written letter dated 20.04.2017 and he himself had caused injuries on his stomach and then lodged false report. However, before relying on said statement it is necessary to consider the evidentiary value of said statement. It is well settled that the statement u/s 164 of Cr.PC. is not substantive piece of evidence, rather it can be used as corroborative evidence and for purpose of supporting or contradicting the statement of witnesses during the trial. In this context, it would be just and proper to refer the following precedents :-

a) In case of **Ram Kishan Singh Vs. Harmit Kaur AIR 1972 SC 468**, Hon’ble Supreme Court was pleased to observed that, “**A statement under Section 164 of the Cr.P.C is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness**”.

b) In case of **Brij Bhushan Singh Vs. Emperor (1946) 48 BOMLR 288**, Hon’ble Bombay High Court was pleased to

observed that, the statement under section 164 cannot be used as substantive piece of evidence. A statement under section 164 can be used to cross-examine the person who made it, and the result may be to show that the evidence of witness is false but, that does not established that what he stated out out of the Court under section 164 is true.

c) Recently in case of **Vijaya Singh Vs. State of Uttarakhand 2024 Supreme(SC) 1096** Hon'ble Supreme Court was pleased to held that statements under section 164 of Cr. PC are corroborative tools and not substantive evidence.

14. Perusal of aforesaid case laws, it is clear that the statement under section 164 can be used to contradict or corroborate the witness testimony during the trial, however it cannot be used as primarily evidence as a standalone to convict any person. In case in hand, the entire case rests solely on accused's admission made at the time of recording statement U/s 164 of Cr.PC and evidence of investigating officer. However, considering aforesaid settled position of law, it is clear that in present case said statement u/s 164 of Cr.PC. cannot be used as substantive evidence to prove charge leveled against accused (informant) and there is need of independent and corroborative evidence. Even the testimony of Investigating Officer (PW-2) was based upon aforesaid statement and there is no any other material evidence on record to prove that the accused (informant) has

lodged false report without any just and lawful ground with intent to cause injury to any person. The prosecution has failed to produce any independent and cogent evidence to establish that initial report made by accused (informant) was false.

15. On the contrary, while confronting the incriminating evidence u/s 313 of Cr.PC, the accused has answered that the matter was compromised and therefore he had given such self incriminating statement while recording statement u/s 164 of Cr.PC. The said defence appears to be probable and considering the previous history of matter i.e., love affair, its possibility cannot be denied. Even the Investigating Officer (PW-2) has admitted during cross-examination that he has not obtained any opinion of Medical Officer on the point whether the alleged injury can be inflicted by accused on his own body. Thus, there is nothing on record to show that the said injuries were inflicted by accused himself and then he lodged false report.

16. One more aspect needs to be considered is that, in order to attract penalty u/s 211 of IPC, the false charge must be instituted with specific intention to cause injury to any person. However, perusal of initial report dated 17.04.2017 lodged by accused (informant) clearly suggest that notwithstanding the suspicion on maternal uncle, brother and father of Shital, the informant(accused) has explicitly lodged report only against four unknown persons and the crime was registered against said four unknown persons. Thus, it is clear that no any individual person was named in report and no any innocent person was arrested

leading to mental and physical harassment. Therefore, there is nothing on record to suggest that the said report was lodged by accused **with intent to cause injury** to any specific person, else he would have lodged report and crime would have registered against any relatives of Shital. Therefore, the requisite ingredient of intention to cause injury to any person is missing in present case to constitute offence u/s 211 of IPC.

17. It is foundational tenet of law that criminal guilt must be proved beyond reasonable doubt. However, in light of aforesaid facts, evidence on record and discussion thereon, I am of the opinion that the evidence on record is not sufficient to made out offence against accused. Even, it is proved that the core ingredients of section 211 of IPC are not made out. **Resultantly, for want of substantive evidence and due to legal defects, I proceed to answer point no. 1 in negative.**

AS TO POINTS NO. 2 :-

18. In view of negative findings as to point no. 1, the accused (informant) is entitled to be acquitted. Accordingly, I proceed to pass following order.-

ORDER

1.	The accused Ashish Vijay Mutkure is hereby acquitted for the offence punishable under Section 211 of Indian Penal Code vide Section 248 (1) of Criminal Procedure Code.
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2.	Bail bonds of accused stands cancelled.
3.	Accused shall furnished bail bond of Rs. 50,000/- (Fifty thousand only) under section 437-A of Criminal Procedure Code, which shall remain in force for six months.
	(Judgment dictated and pronounced in open court).

(A. S. Agrawal)

Date : 13/07/2026

Judicial Magistrate First Class,
Tirora

(PART – "C")

List of Prosecution/Defence/Court exhibitsA. Prosecution :

Rank	Name	Name of Evidence
PW-1	Roshanlal Rekhilal Lilhare	Witness
PW-2	Sandeep Rangrao Koli	Investigating Officer

B. Defence Witnesses, if any :- NILC. Court Witnesses, if any :- NILList of Prosecution/Defence/Court exhibitsA. Prosecution :-

Sr. No.	Exhibit Number	Description
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B. Defence :- NIL

C. Court Exhibits :- NIL

D. Material Objects :-

Sr. No.	Exhibit Number	Description
1.	NIL	NIL

Date : 13/07/2026

(A. S. Agrawal)
Judicial Magistrate First Class,
Tirora