

MHNG160010042017



Received on : 23.11.2017.
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Decided on : 12.03.2026.
Duration : Y. M. D.
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**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MOUDA,
AT MOUDA**

(Presided over by L.M.Pathan)

Sum. Cri. Case. No. 551/2017.

(CNR No.MHNG160010042017)

Exh. 25 /

[FIR No. 138/17.

Aroli Police Station,

Dist. Nagpur]

COMPLAINANT	STATE OF MAHARASHTRA THROUGH P.S.O. AROLI POLICE STATION
REPRESENTED BY	Shri. B.M. Bhagat Ld. A.P.P
ACCUSED	1. Ramdas Shalikram Karkade, Age – 30 years, Occ. - Labor, 2. Sadashiv Puralal Mule, (Dead) Age – 30 years, Occ, - Nil, both R/o. Dholmara, Tah. Mouda, Dist. Nagpur
REPRESENTED BY	Ld. Adv. Shri. M.H. Rahangdale.

Date of Offence	09.09.2017.
Date of FIR	09.09.2017.
Date of Charge-sheet	23.11.2017.
Date of Framing of Charges	07.01.2020.
Date of commencement of evidence	25.08.2025.
Date on which judgment is reserved	12.03.2026.
Date of Judgment	12.03.2026.
Date of the Sentencing Order, if any	–

Accused Details

Rank of the 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 Cr.PC.
1.	Ramdas Shalikram Kakade	11.09.2017	11.09.2017	448 and 323 r/w section 34 of I.P.C.	Acquitted of the offences punishable under section 448, 323 r/w 34 of I.P.C.	–	0
2.	Sadashiv Puranlal Mule	11.09.2017	11.09.2017	448 and 323 r/w section 34 of I.P.C.	Abated	–	0

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	EXH. NO.	NATURE OF EVIDENCE
PW1	Sangita Shivshankar Mule	09	Complainant.
PW2	Rajesh Dasaram Chaudhary	12	Spot Panch.
PW3	Dr. Zafar Abbas Ali	18	M.O.
PW4	Shivshankar Puranlal Mule	21	Witness.

B. Defence Witnesses, if any : Nil

C. Court Witnesses, if any : Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1.	10	Complaint.
2.	11	F.I.R.
3.	13	Spot Panchnama.
4.	19	MLC.
5.	20	Referral Certificate.

B. Defence : Nil

C. Court : Nil

D. Material Objects : Nil

-: JUDGMENT :-

(Delivered on 12th of March 2026.)

01. The accused namely Ramdas Shalikram Karkade and Sadashiv Puranlal Mule, are facing trial for the offences punishable

under section 448, 323 r/w sec. 34 of the Indian Penal Code (in short I.P.C.)

Prosecution's case in nutshell is as under -

02. It is the story of the prosecution that, informant is resident of Village Dholmara, Tq. Mouda, Dist. Nagpur. Deceased accused no.2 Sadashiv Puranlal Mule, was her brother-in-law. Both accused are adjacent neighbor to her home. Since long time on the point of a plot dispute was going on between her husband and accused no.2 Sadashiv Mule. On 08.09.2018 at about 09.00 a.m. she went to field. After coming back to the home, from the villagers she came to know that, dispute was took place between her husband and accused. Police arrested her husband and took him to Aroli Police Station. On 09.09.2018 at about 05.30 a.m. she wake up and started to do her domestic work. She told to accused that, he illegally constructed a hut on her land and he lodged a false report against her husband. By annoying the same both accused started a quarrel with informant. Accused rushed on the person of informant and assaulted her with fist blows. Accused assault on her left ear. So, she suffering pain on her left ear. Informant approached to the Aroli Police Station to inform them about the incident.

03. On the basis of the report lodged, crime bearing No. 138/2017, came to be registered at Aroli Police Station against the accused of offences punishable under Sections 448, 323 r/w. Section 34 of I.P.C. Investigation of the crime was handed over to A.S.I Shri. Shankarrao Tarale B.No.617, Aroli Police Station. Investigating Officer

during investigation, visited to the spot of incident, prepared the spot panchnama, recorded statements of witnesses, seized the muddemal in question and after completion of investigation submitted the charge-sheet against accused.

04. My Ld. Predecessor framed charge against accused vide **Exh.02** of offences punishable under Sections 448, 323 r/w. Sec.34 of the I.P.C. The contents of the said charge were read over and explained to the accused in his vernacular to which he pleaded not guilty and claimed for the trial.

05. Prosecution in order to bring home the guilt of accused, examined total four witnesses. Prosecution opened it's case by examining complainant – Sangita Shivshankar Mule (PW1) – at **Exh.09**, Spot Panch –Rajesh Dasaram Chaudhary (PW2) at **Exh.12**, M.O. – Dr. Zafar Abbas Ali (PW3) at **Exh.18**, Witness – Shivshankar Puralal Mule (PW4) at **Exh.21**. Prosecution also relied upon complaint (Exh.10), FIR (Exh.11), Spot Panchnama (Exh.13), MLC (Exh.19), Referral Certificate (Exh.20), etc.

06. After completion of prosecution evidence, Ld.APP filed evidence close pursis vide **Exh.22/d**. I recorded the statement of accused, as per Section 313 of Code of Criminal Procedure, 1973 (hereinafter it is referred in short as "Cr.PC.") vide **Exh.23**. Accused raised the plea of false implication.

07. Heard, Shri. B.M. Bhagat, learned A.PP for the State and Ld. Adv. Shri. M.H. Rahangdale for the accused. Learned A.PP vehemently argued that, prosecution proved it's case beyond all reasonable doubts. Evidence of prosecution is cogent and reliable. On the contrary, learned advocate appearing on behalf of the accused has submitted that, the testimony of informant suffers from contradictions, omissions and material infirmity and the same is not reliable. Learned advocate appearing on behalf of the accused submitted that, accused is being falsely implicated in the present crime. Finally, learned advocate for the accused prayed to acquit accused, of all offences raised against him.

08. Considering charges leveled against the accused, evidence on record, defense set up by the accused and argument advanced on behalf of both parties, following points arose for my discussion and determination and my findings against each of them along with it's reasons are as follows-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does the prosecution prove that, both accused in furtherance of their common intention constructed a hut on the land of informant and thereby committed house trace pass and thereby committed an offence punishable under section 448 r/w sec. 34 of	In the Negative.

	IPC ?	
2.	Does the prosecution prove that, on the aforesaid date, time and place, both accused in furtherance of their common intention assaulted to the informant and thereby caused a voluntarily hurt to the informant and thereby committed an offence punishable under section 323 r/w sec. 34 of IPC ?	In the Negative.
3.	What order ?	As per Final Order.

REASONS.

AS TO POINTS NO. 1 :

09. It is the story of the Prosecution that, both accused in furtherance of their common intention constructed a hut on the land of informant and thereby committed house trace pass.

10. It is in the evidence of informant (PW1) that, dispute on the point of plot was pending between her husband and accused. On the other hand, it is in the evidence of Shivshankar Mule (PW4) that, prior to 7 to 8 years to the incident in question, a plot was allotted to him. On the said plot the present offence was committed. He and his wife i.e. informant went to Gujrat for Labor work. After 3 to 4 months they came back to their native place. When they came back they found

that, accused no.1 possessed his plot and constructed a hut on it.

11. During the cross-examination Shivshakar Mule (PW4) specifically denied the suggestion that, accused did not take possession of his plot and constructed a hut on it.

12. As both accused are facing the trial for the offence punishable under section 448 of IPC so it is necessary to take here the recourse of section 442 of IPC which laid down about the trace pass. On bare perusal section 442 of IPC, it is seen that, to bring the guilt of accused to home prosecution has to prove that, accused committed criminal trace pass by entering into or remaining in any building, tent or vessel which is used as a human dwelling or as a place for worship or as a place to keep property.

13. In the present case in my hand, on perusing the entire oral testimony of informant (PW1) and her husband Shivshankar (PW4) it is nowhere seen that, the plot on which accused alleged to be committed house trace pass, was in their possession, when the offence took place. Prosecution did not bring on record any documentary proof to prove the possession of informant or her husband over the plot alleged to be grabbed at the hands of accused. It is not also in the evidence of prosecution's witnesses that, the plot on which accused committed trace pass, was being used for human dwelling or as a place of worship or as a place of to keep property. So, considering above discussion, I am of the opinion that, prosecution's evidence fail

short to prove that, accused in furtherance of their common intention committed house trace pass on the land being possessed by informant or her husband. Hence, I come to conclusion that, prosecution fail to prove beyond reasonable doubt that, accused persons committed an offence punishable under section 448 read with section 34 of IPC. Hence, I answer point no.1 in negative.

AS TO POINT NO. 2 :-

14. As per the story of the prosecution both accused in furtherance of their common intention assaulted to informant with fist blows on her left ear and voluntarily caused hurt to the informant. To prove this fact, prosecution relied upon oral testimony of informant (PW1), Dr. Zafar Ali (PW3) and Shivshankar (PW4).

15. It is in the evidence of informant (PW1) that, both accused known to her. The incident was took place prior to 5 to 6 years at about 06.00 p.m. in front of her home. On that day both accused quarreled with her on the point of plot. Both accused assaulted her on her ear. So, she lost her hearing power. Informant (PW1) admitted the contents of written complaint and FIR as true and correct and it bears her signature. During the cross-examination she deposed that, she could not read. She admitted the suggestion that, as she could not read she did not know what was written in her complaint. She also admitted the suggestion that, Police did not read over and explain contents of FIR to her. She also admitted the suggestion that, only as per say of Police she put her sign on FIR. She denied all other

suggestion put to her during her cross-examination.

16. It is in the evidence of Dr. Zafar Ali (PW3) that, on 09.09.2017 he was working as Medical Officer at Primary Health Center Kodamendhi. On that day he examined to informant. He further deposed that, he did not found any external injury on the person of informant. Informant complaining that, her hearing power of left ear was lost. So, he referred to the informant to ENT expert. He issued MLC in the name of informant. Dr. Zafar Ali admitted the contents of MLC as true and correct and it bears his signature. The MLC is at Exh.19.

17. It is in the evidence of Shivshankar that, his wife i.e. informant told to him that, accused assaulted on her left ear. During the cross-examination he denied the suggestion that, informant did not tell him that, both accused assaulted on her left ear.

18. By considering above prosecution's evidence now let us proceed to evaluate prosecution's evidence to come to conclusion whether or not prosecution succeeded to prove beyond reasonable doubt that, accused assaulted on informant's left ear and caused hurt to her.

19. On minutely perusing the contents of FIR lodged on the basis of information given by informant (PW1) it is seen that, while lodging the FIR informant specifically deposed that, the incident was

took place on 09.09.2017 at about 05.30 a.m. but informant deposed in her oral testimony that, incident was took place at about 06.00 p.m. no doubt there may be some variation on the point of time due to illiteracy on the point of rustic witness. But that variation must be of few hours then it will be acceptable. But in the present case in my hand, the variation on the point of actual happening the incident is almost more than 13 hrs. as per prosecution's story incident took place in the early morning. On the other hand, as per evidence of the informant evidence took place in the early evening. This is contrary evidence of the informant to the story of prosecution's. It means informant's evidence is contrary to her previous statement.

20. Informant (PW1) specifically admitted in her cross-examination that, she did not know about the contents of FIR. She also admitted that, police did not read over and explain contents of FIR to her. By considering this evidence of informant, I am of the opinion that, informant herself not aware about the prosecution's case. So, only FIR exhibited through the evidence of informant is not sufficient to come to conclusion that, prosecution succeeded to prove the contents of FIR by leading cogent and reliable evidence.

21. It is also pertinent to note here that, informant (PW1) nowhere deposed the name of the accused who assaulted on her left ear. There is also no other witness who could have deposed the name of accused who actually assaulted on informant's left ear. On perusing the oral testimony of Shivshankar (PW4) i.e. husband of the

informant, it is seen that, he was a hearsay witness. But he also not deposing that, his wife told to him the name of accused who actually assaulted on her left ear. So, considering this fact, I am of the opinion that, prosecution's evidence is also not sufficient to establish the identity of the accused who actually assaulted to the informant.

22. On perusing the evidence of Dr. Zafar Ali (PW3) it is seen that, he only gave a primary treatment to the informant. After that, he referred to the informant at ENT surgeon. But informant did not depose in her oral testimony that, she approached to any expert ENT surgeon to get medical assistance. As well as prosecution also did not bring on record any documentary evidence to show that, any ENT expert examine to informant and come to conclusion that, informant sustained any internal injury which caused to loose hearing power of her left ear. So, the evidence of Dr. Zafar Ali is also not sufficient to form the opinion that, informant lost hearing power of her left ear.

23. Prosecution in order to prove panchnama examine to Panch witness Rajesh Chaudhary as PW2. It is in the evidence of Rajesh PW2 that, on 11.09.2017 Police called him at the home of informant. On that day police prepared spot panchnama in his presence. He admitted the suggestion that, police did not prepare any panchnama in his presence. He also admitted the suggestion that, police did not read over the contents and explain the contents of spot panchnama to him.

24. Considering the oral testimony of Panch witness of PW2 it is seen that, he has no any personal knowledge about the contents of spot panchnama. So, his evidence is not worthy to trust. In the present trial I.O. Shankar Tarale was demised. So, prosecution has no any other witness to prove the contents of spot panchnama. In result, prosecution failed to bring on record the spot of incident.

25. By considering above discussion, I am of the opinion that, prosecution has no sufficient evidence to prove the fact that, on 09.09.2017 at about 05.00 a.m. both accused in furtherance of their common intention assaulted to the informant and thereby caused a voluntarily hurt to the informant. Hence, I am of the opinion that, prosecution failed to prove beyond reasonable doubt that, accused committed an offence punishable under section 342 r/w sec. 34 of IPC. Hence, I answer point no.2 in negative.

AS TO POINT NO. 3 :-

26. As prosecution failed to prove beyond reasonable doubt that accused committed an offence punishable under section 448 and 323 read with section 34 of IPC, so accused is entitled to be acquitted off the offences punishable under section 448 and 323 r/w sec. 34 of IPC. Hence, to answer point no.3, I proceed to pass following order :-

ORDER.

1. **Accused no.1 Ramdas Shalikram Karkade**, is hereby acquitted of the offences punishable under Sections 448 and 323 r/w section 34 of Indian Penal Code-1860, vide Section 255(1) of

the Code of Criminal Procedure, 1973.

2. Bail bond of accused shall stands canceled and his surety stand discharged.
3. The accused shall furnish PB and SB of Rs.15,000/- vide Section 437-A of the Code of Criminal Procedure, 1973.
4. Coy of the judgment be given to all accused.

(Judgment dictated and pronounced in open Court.)

Date :- 12.03.2026.

(L.M.Pathan)
Judicial Magistrate First Class,
Mouda.

ENDORSEMENT

Case argued on	:	09.02.2026
Order dictated on	:	12.03.2026
Transcription ready on	:	12.03.2026
Order checked and signed on	:	12.03.2026

CERTIFICATE

I affirm that the contents of this P.D.F. File are same word to word as per original judgment.

Name of Steno :- Ms. R. S. Nale(Gr.III)