


MHNS130006392016 	Received on -	18/06/2016		
	Registered on -	18/06/2016		
	Decided on -	04/04/2026		
	Duration -	09	09	17
		Years	Months	Day

Regular Criminal Case No. 83/2016

Exhibit -44

J U D G M E N T

Part "A"

	<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, PIMPALGAON (B), DIST. NASHIK.</u> Presided over by A. J. Patil.
Prosecution	State of Maharashtra, Through Officer in charge of Police Station, Ozhar Tq.Niphad, Dist.Nashik. (Crime No.01/2015)
Represented by	Ld. A.PP. Smt. A.A. Shaikh
Accused	1] Narayan Yadav Jivrak, Age - 45 yrs, Occ.- Agri. 2] Yogita Narayan Jivrak, Age - 40 yrs, Occ.- Agri. R/o. Shirasgaon, Tq.Niphad, Dist.Nashik.
Represented by	Ld. advocate Shri.S.C.Aher

Part "B"

Date of offence	03/02/2014
Date of FIR	01/01/2015
Date of Charge-sheet	15/06/2016
Date of framing Charge	05/12/2016
Date of commencement of evidence	22/05/2023
Date on which judgment is reserved	04/04/2026
Date of the Judgment	04/04/2026
Date of the Sentencing Order, if any	--

Accused Details

Rank of the accused	Name of Accused	Date of Arrest	Date of Released on Bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 CrPC.
1	Narayan Yadav Jivrak	17/05/2016	17/05/2016	Section 392, 323, 504, 506 and 427 read with section 34 of the Indian Penal Code,1860.	Acquitted	--	--
2	Yogita Narayan Jivrak	17/05/2016	17/05/2016	Section 392, 323, 504, 506 and 427 read with section 34 of the Indian Penal Code,1860.	Acquitted	--	--

Part "C"**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A- Prosecution**

Rank	Name	Nature of Evidence	Exhibit
PW-1	Bhagyashri Subhash Jivrak	Informant	19

PW-2	Prabhakar Laxman Gaikwad	Panch	23
PW-3	Subhash Yadavrao Jivrak	Witness/ husband of informant	25
PW-4	Narmadabai Yadav Jivrak	Witness/informant's mother-in-law	31
PW-5	Jija Walu Jivrak	Witness/ wife of informant's elder brother-in-law	37
PW-6	Dr.Vaibhav Yashwant Patil	Medical Officer	40

B- Defence Witnesses, if any :

Rank	Name	Nature of Evidence
Nil		

C - Court Witnesses, if any :

Rank	Name	Nature of Evidence
Nil		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A - Prosecution :**

Sr.No.	Exhibit Number	Description
1	20	N.C. report dated 03/02/2014
2	21	N.C. report dated 18/02/2014
3	22	Complaint
4	24	Panchnama
5	41	Reference Letter of Medical Officer

B - Defence :

Sr.No.	Exhibit Number	Description
Nil		

C- Court Exhibits :

Sr.No.	Exhibit Number	Description
	Nil	

D. Material Objects :

Sr.No.	Material Object Number	Description
1.	--	--

JUDGMENT

(Delivered on the day of 04th April, 2026)

01] The accused have been tried for offences punishable under Section 392, 323, 504, 506 and 427 read with Section 34 of the Indian Penal Code,1860 (for short "IPC").

Case of the prosecution, in short, is as follows :-

02] Accused No.1 is brother-in-law of the informant. Accused No.2 is wife of accused No.1. The informant and the accused persons are neighbours and reside at their farm. On 03/02/2014, the accused hurled abuses to the informant without any reason. The informant lodged report to Ozhar Police Station. But, no action was taken against the accused. Again 4 to 5 days after the said incident, the accused hurled abuses and beat the informant because of lodging report to the police. Thereafter, on 18/02/2014, while the informant was talking with her nephew, Vitthal, the accused started hurling abuses to the informant. Accused No.1 pulled informant's hairs. He attempted to press her neck. Accused No.2 beat the informant on her chest and stomach by means of kicks and fist blows. Accused No.2 attempted to press informant's neck. She snatched informant's chain without her consent. Jijabai, wife of informant's elder brother-in-law intervened and escaped the informant. The informant lodged police

report to Ozhar Police Station. She was referred to Government Hospital by the police for medical treatment. She was referred to the Civil Hospital, Nashik for sonography. Again on 19/02/2014, when informant and her relatives went to the accused, the accused pelted stones.

REPORT, INVESTIGATION AND COGNIZANCE-

03] Non-cognizable report (for short “N.C.”) No.64/2014 came to be registered at Ozhar P.S. in respect of incident dated 18/02/2014. But no action was taken against the accused persons. Therefore, the informant filed an application in this Court for directing investigation under Section 156 (3) of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) vide Criminal M.A. No.122/2014.

04] In pursuance of order of this Court upon the said application investigation was followed. P.H.C. V.D. Deshmukh prepared spot panchnama. He recorded statements of witnesses. He collected receipt of informant’s chain, referral slip and sonography report. He arrested accused persons. Officer-in-charge of police station forwarded charge-sheet.

05] Cognizance of the above mentioned offences were taken by this Court on police report.

CHARGE AND PLEA-

06] Charges (Exh.15) for above mentioned offences were read over and explained to the accused persons. The accused persons pleaded not guilty and claimed to be tried.

EXAMINATION OF ACCUSED-

07] Statement of accused (Exh.42 and 43) under Section 313(1)(b) of Cr.P.C. were recorded. The defence of the accused was total denied and false implication. The accused did not produce evidence in their defence.

08] Following points arise for my determination. I have recorded my findings thereon for the reasons given below:-

Sr. No.	Points	Findings
1]	Whether the prosecution proved that on 18/02/2015 at about 09:00a.m. in front of informant's house, the accused, in furtherance of their common intention, committed theft of golden chain of the informant by putting her in fear of instant death and induced to the informant to deliver said chain and, thereby committed offence punishable under Section 392 of the IPC ?No.
2]	Whether the prosecution proved that during the above period and place, the accused, in furtherance of their common intention, voluntarily caused hurt to the informant by pulling her hair and attempting to press her neck and, thereby committed offence punishable under Section 323 of the IPC ?No.
3]	Whether the prosecution proved that during the above period and place, the accused, in furtherance of their common intention, voluntarily caused hurt to the informant's stomach and chest by means of fist blows and kicks and, thereby committed offence punishable under Section 323 of the IPC ?No.
4]	Whether the prosecution proved that during the above period and place, the accused, in	

	furtherance of their common intention, insulted the informant and, thereby gave provocation to her intending that such provocation would cause her to commit breach of public peace and, thereby committed offence punishable under Section 504 of the IPC ?No.
5]	Whether the prosecution proved that during the above period and place, the accused, in furtherance of their common intention, threatened the informant and her husband with dire consequences with injury to their person and, thereby committed offence punishable under Section 506 of the IPC ?No.
6]	Whether the prosecution proved that during the above period and place, the accused, in furtherance of their common intention, committed mischief by causing wrongful loss of golden chain of the informant and, thereby committed offence punishable under Section 427 of the IPC ?No.
7]	What order ? As per final order.

REASONS

DIRECT EVIDENCE-

09] The prosecution examined the informant, Subhash (PW-3), Narmdabai (PW-4) and Jija (PW-5) as eye witnesses.

10] The informant first deposed the incident dated 03/02/2014. On said day, the accused persons hurled her abuses while she was on her way to the home. The accused persons also threatened to kill her by means of axe. She lodged N.C. report (Exh.20).

11] She further deposed that on 18/02/2014, while she was talking with her nephew, Vitthal, the accused started hurling abuses to her. Accused No.1 pulled her hairs and attempted to press her neck. Accused No.2 sat on her chest and started beating her on her stomach by means of kicks and fist blows. Accused No.2 snatched her chain from her neck. N.C. report (Exh.21) came to be recorded at Ozhar P.S. on her information. She underwent medical treatment at Primary Health Care Centre, Ozhar. She was referred to Civil Hospital, Nashik for further treatment. Police did not take action. Therefore, she filed complaint (Exh.22) to this Court.

12] Subhash (PW-3) also deposed about incident dated 03/02/2014. But he deposed that he came to know about the said incident from the informant. He deposed in respect of incident dated 18/02/2014 that accused hurled abuses to the informant, they beat her by pulling her hair and snatched her chain. The accused also threatened to kill him and his sons by means of axe. On the next day, he and his relatives went to house of the accused, however they pelted stones.

13] Narmadabai (PW-4) deposed that she came out of house after hearing quarrel of the informant and accused. She intervened and resolved the quarrel. She could not state anything further.

14] Jija (PW-5) deposed that she was in farm at the time of incident. She came to know about the incident from Narmadabai (PW-4). The incident was completed when she reached the spot.

INDIRECT EVIDENCE-

15] Prabhakar (PW-2) deposed that on 02/01/2015, he was called by police at Shirasgaon. Another panch Balasaheb was present. PHC Deshmukh prepared panchnama (Exh.24). The place was bandh between Subhash (PW-3) and his brother. There is factory road in front of their house.

16] P.H.C. V.D. Deshmukh was reported to be dead. Therefore, his evidence was not available.

ARGUMENT-

17] Learned APP argued that evidence of the informant is cogent, reliable and believable. No material contradiction or omission was proved in her cross-examination. Her testimony is corroborated by N.C. report (Exh.21) and complaint (Exh.22). Her evidence is corroborated by Subhash (PW-3). Though, Narmadabai (PW-4) and Jija (PW-5) have not corroborated her in material particulars, they have corroborated that quarrel took place between the informant and accused No.2.

18] It was further argued that evidence of the informant in respect of her injury is also corroborated by medical evidence. There were no independent witnesses available at the spot. Therefore, non examination of independent witnesses is not fatal prosecution case. Other witnesses are natural witnesses present at the spot, therefore, they cannot be termed as interested witnesses *per se*, only because they are relatives of the informant. The same witnesses are relatives of accused as well. Therefore, they cannot be termed as interested witnesses.

19] It was further argued that no reason came on record to disbelieve evidence of the informant. No cross-examination was conducted to disprove ingredients of offences charged. Specifically there was no cross-examination on the point of beating and theft of chain. The sole testimony of the informant is sufficient to prove charges against the accused persons beyond reasonable doubt.

20] On the other hand, learned advocate for the accused argued that accused No.1 is physically disabled person. Accused No.2 is a woman. The informant and her family are more stronger than the accused persons. It was not possible to cause them hurt by the accused persons.

21] It was further argued that the accused have been falsely implicated because of civil dispute between them. Subhash (PW-3) was not present at the time of incident. His evidence is hearsay. Other witnesses have not corroborated evidence of the informant. No independent witness has been examined by the prosecution. There is no medical report on record. Injuries caused to the informant have not been proved. The report (Exh.21) was lodged belatedly. Therefore, evidence of the prosecution is not sufficient to prove charges leveled against the accused persons.

APPRECIATION-

AS TO POINTS NO.1 TO 6-

22] All these points are interlinked, arising out of same transaction and evidence is common between them, therefore, they are taken together for discussion.

23] Before appreciation of evidence, I find it necessary to refer definitions of offences charged.

24] **Section 321 of the IPC** provide that *whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.*

25] **Section 319 of the IPC** provide that *whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*

26] **Section 392 of the IPC** provides punishment for robbery.

27] **Section 390 of the IPC** provide definition of robbery as follows-

Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause any person death or hurt or wrongful restrain, or fear of instant death or instant hurt, or instant wrongful restraint.

Extortion is “robbery” if the offender at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or instant hurt, or instant wrongful restrain to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

28] Section 425 of the IPC provides definition of mischief that *whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects in injuriously, commits mischief.*

29] Section 504 of the IPC comprises of following ingredients, viz., (a) intention insult, (b) the insult must be such has to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence.

30] Section 506 of the IPC provide punishment for criminal intimidation. One of the essential ingredients of criminal intimidation has defined in Section 503 of the IPC is threatening another with any injury to his person, reputation or property.

31] Evidence of the informant, Subhash (PW-3), Narmadabai (PW-4) and Jija (PW-5) is direct. Therefore, their evidence is material. The informant deposed about the incident dated 18/02/2014. She deposed that while she was talking with his nephew, Vitthal, accused started hurling abuses, accused No.1 pulled her hair and accused No.2 to beat her by means of kicks and fist blows. The informant has also narrated previous incident dated 03/02/2014 wherein the accused persons hurled her abuses, while she was on her way to the home. The informant has lodged reports (Exh.21 and 20) in respect of both the incidents.

32] On perusal of her cross-examination, it came on record that accused No.1 is in born physically handicapped. House of the informant and accused is in the same gat number. Narmdabai (PW-4) and Vitthal were present at the time of incident dated 18/02/2014. Jija (PW-5) reached to the spot after the incident. Except those facts, there was no cross-examination on the credibility of informant testimony or the facts which constitute alleged offences.

33] The defence urged this Court to disbelieve prosecution's case on the grounds that no independent witnesses were examined, injuries were not proved and sole testimony of the informant is not sufficient to prove charges.

34] **Section 134 of the Indian Evidence Act, 1872,** (for short "The Evidence Act") provides that *no particular number of witnesses shall in any case be required for the proof of any fact.*

35] It is settled principle of law that even the sole testimony of the witness is sufficient to prove a charge and secure conviction if it is found to be "wholly reliable", "credible" and inspires confidence, even without corroboration. Courts focus on the quality, rather than the quantity, of evidence.

36] I find it useful to rely upon judgment of **Narayan Kanu Datavale -vs- State of Maharashtra (1997 CR.L.J.1788)**. It has been held that "there is no immutable rule of appreciation of evidence that the evidence of injured witnesses should be mechanically accepted as gospel truth for injuries may only at the best ensure presence of the

witness, but are no guarantee of his credibility and truthfulness.”

37] In case of **Sujit Gulab Sohatre -vs- State of Maharashtra (1997 CR.L.J.454)** it has been held that “if a witness is injured, then his presence on the spot at the time and place of occurrence is prima facie established but for basing conviction solely on the evidence of an injured witness, it is necessary that the injured witness must be held to be wholly reliable witness. Where in a case there is the sole evidence of the injured witness against the accused and if it is shown that there is material infirmity and falsity in some part of his evidence, then it will not be at all safe to convict the accused solely on the evidence of the injured witness relying upon the eye-witness’s accounts given by him without independent corroboration by material evidence.”

38] In this background, it is necessary to appreciate evidence of the informant. It appears from evidence of the informant that prior to the incident also the informant lodged report against the accused in respect of similar incident. She has also deposed about the prior incident. It shows that there was prior enmity between the parties. The defence also sought to bring on record fact that there was dispute between the parties because of partition of the properties. However, the witnesses refused such dispute. Be that as may be, the evidence of the informant is sufficient to hold that there was prior enmity between the parties.

39] It is trite that previous enmity is a double edged weapon. It may be used as motive behind the crime as well as ground for false

implication. In this case, the informant has not stated on what reason the accused used to abuse her. She has stated that the accused used to abuse her without any reason. However, her statement is corroborated by N.C. report (Exh.20).

40] The informant has not stated that where the incident dated 18/02/2014 took place. She stated that while she was talking with her nephew, Vitthal, the incident took place. Vitthal was reported to be dead. Therefore, his evidence was not available. Subhash (PW-3) deposed the incident, however, the informant herself has not stated about presence of Subhash (PW-3) at the time of incident. On close scrutiny of evidence of Subhash (PW-3) it appears that he himself has not deposed that he was present at the time of incident. He deposed that the accused threatened to kill him and his son. However, he has not stated that the said threatening was in their presence. Therefore, evidence of the prosecution is not sufficient to prove presence of Subhash (PW-3) at the time of incident. His evidence appears to be hearsay.

41] Narmadabai (PW-4) and Jija (PW-5) have not corroborated evidence of the informant in material particulars. However, they have simply stated that there was quarrel between the informant and accused No.2. The defence has also brought on record presence of Narmadabai (PW-4) at the time of incident and arrival of Jija (PW-5) immediately after the incident.

42] Evidence of the informant was materially lacking in respect of place of the incident. The said evidence was necessary in

order to examine whether independent witnesses were available or not. However, presence of Narmadabai (PW-4) was brought on record by defence itself through cross-examination.

43] Prabhakar (PW-2) deposed that he was present at the time of preparation of panchnama (Exh.24). The spot of incident was a *bandh* between house of Subhash (PW-3) and his brother. However, he has not stated who showed the spot of incident. Panchnama (Exh.24) is only corroborative evidence. It is not substantial piece evidence. In absence of evidence who showed the place of incident, evidence of Prabhakar (PW-2), has very little evidential value. None of the direct witnesses have stated about place of the incident.

44] Non examination of independent witness is fatal only when injured witnesses are not wholly reliable and independent witnesses were present but not examined. In this case, nothing came on record to show that independent witnesses were present at the spot. Therefore, only on the ground of non examination of independent witness, theory of prosecution cannot be disbelieved.

45] Though, Narmadabai (PW-4) has not corroborated evidence of the informant in material particulars, she has deposed that there was quarrel between the informant and accused No.2. Jija (PW-5) also deposed that she came to the spot immediately after the incident and came to know about the incident from Narmadabai (PW-4). There was no cross-examination so as to rule out presence of Narmadabai (PW-4) and Jija (PW-5). On the other hand, the defence itself brought on record their presence. Evidence of Jija (PW-5) is

relevant for farming part of the same transaction and sufficient to the extent of proving presence of informant and accused No.2 and quarrel between them.

46] Now question remains that whether the sole testimony of the informant is sufficient to prove ingredient of alleged offence.

47] The informant deposed that accused No.1 pulled her hairs and attempted to press her neck. She further deposed that accused No.2 sat on her chest and beat on her stomach by means of fist blows and kicks. Accused No.2 snatched her gold chain from her neck. Fact of causing hurt by accused No.1 and snatching chain is not corroborated by contents of N.C. report (Exh.21). Narmadabai (PW-4) and Jija (PW-5) have also not corroborated those facts in their evidence.

48] N.C.report (Exh.21) shows that incident took place at about 9:00a.m. and report was lodged at about 8:00p.m. on the date of incident. It appears that there is delay of around 11 hours in lodging report. The informant has not explained the said delay in her evidence.

49] As per evidence of Dr.Patil (PW-6), he medically examined the informant on 18/02/2014. She was referred by police. She also narrated history of assault. Dr.Patil (PW-6) found blunt trauma on abdominal of the informant. He referred the informant to the Civil Hospital, Nashik. However, no original medical record was produced on record by Medical Officer or Investigation Officer. Only referral slip

(Exh.41) was proved in evidence of Dr.Patil (PW-6). No history has been mentioned on the said referral slip. There is nothing on record to show that on what basis the Medical Officer deposed about history narrated by the informant. Neither original record nor any certificate of examination of person of the informant is produced on record. In absence of such record, it cannot be gathered how the Medical Officer deposed those facts. Therefore, his evidence does not appear to be corroborative to the evidence of informant in respect of injury.

50] In view of above discussion, it is clear that there was previous enmity between the informant and accused persons, there is unexplained delay in lodging report of the incident and omission of the informant to state material fact about place of incident, evidence of the informant is not wholly reliable without corroboration.

51] As noted above, evidence of the informant in respect of hurt caused to her is not corroborated in material terms by available witnesses and medical evidence.

52] Her evidence in respect of snatching chain is also not corroborated by any witnesses. The said chain has not been recovered during the investigation. Though non recovery of stolen article itself not sufficient to disbelieve prosecution case, oral evidence of the informant is not sufficient to prove the fact of stealing the chain.

53] It is pertinent to note that offence of theft is material ingredient of offence of robbery, as per alleged story of the prosecution. Dishonest intention is one of the material ingredients of

offence of theft. When *mens rea* forms part of the offence, it has to be proved like any other facts. Intention can be gathered through circumstances of the case. As incident narrated by the informant, the alleged incident took place in sequel of prior incident of abuse. The informant and accused No.2 are close relatives. They are neighbours as well. As per informant's version, nephew of the informant was also present at the time of incident. In such situation, it does not appears to be natural that accused No.2 had dishonest intention of committing theft.

54] Evidence of the informant and surrounding circumstances also lacks sufficient material to draw an inference beyond reasonable doubt that accused No.2 had intention or knowledge to cause damage to the informant by snatching her *Mangalsutra*.

55] For the purpose of proving insult punishable under Section 504 of IPC and threatening under Section 503 of the IPC, it necessary to prove utterance of words used for insult or threat. In respect of the incident dated 18/02/2014, the informant's evidence is vague and omnibus against both the accused persons. She has not specifically stated in the evidence words used by the accused at the time of incident. Narmadabai (PW-4) and Jija (PW-5) have also not corroborated use of any insulting or threatening words by the accused persons. Therefore, evidence of the prosecution is not sufficient to prove those offences.

56] In view of above discussion, I hold that evidence of the prosecution is not sufficient, believable and cogent to prove material

ingredients of alleged offences. Hence, I answered points No.1 to 6 into negative.

AS TO POINT NO.7-

57] The prosecution failed to prove alleged offences against the accused persons. Therefore, the accused are entitled to be acquitted. Accordingly, following order is passed-

ORDER

I.	Accused No.1 and 2 are acquitted of the offences punishable under Section 392, 323, 504, 504 and 427 read with Section 34 of the I.P.C. vide Section 248(1) of the Cr.P.C.
II.	The bail bonds of accused are cancelled. They are set at liberty.
III.	Accused persons shall execute personal bond of Rs.15,000/- (Rs. Fifteen Thousand only) <u>each</u> and furnish solvent sureties of like amount, vide under Section 437A of Cr.P.C.
Pronounced and dictated in open Court.	

Place : Pimpalgaon
Date : 04/04/2026

Sd/-
(A. J. Patil)
Judicial Magistrate, First Class,
Pimpalgaon (B)

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