

MHWR010000492020



Presented On : 08.01.2020

Registered On : 09.01.2020

Decided On : 20.05.2026

Duration - 06Y - 04M - 12D

BEFORE THE COURT OF SESSIONS AT WARDHA.

(Presided over by Shri H.B. Gaikwad, Sessions Judge, Wardha.)

Criminal Appeal No. 01 of 2020**Exh. No.17****Appellant :-**Dinesh @ Tukaram Shymarao Ghodmare,
Aged about 41 Years, Occu.: Cultivator,
R/o Ward No.16, Sindi(Rly.),
Tah. Seloo, District Wardha.**-Versus-****Respondent :-**State of Maharashtra,
Through Police Station Officer,
Police Station, Sindi(Rly.)
Tah. Seloo, District Wardha.**APPEAL UNDER SECTION 374(3) OF THE CODE OF CRIMINAL
PROCEDURE.**-----
Shri H. K. Chandak, the learned Advocate for the appellant.Shri G. V. Takwale, the learned Public Prosecutor for the respondent.
-----**:- JUDGMENT :-****(Delivered on 20.05.2026)**

The appellant has challenged his conviction and sentence for the offences punishable under Section 341, 294 and 506(II) of the Indian Penal Code, recorded in Summary Criminal Case No.221/2016 on 10.12.2019 by the learned Judicial Magistrate, First

Class (2nd Court), Seloo.

2. In nutshell, the case of the prosecution is that the appellant, who resides opposite the house of the victim, had earlier, on 17.12.2015, picked up a quarrel with her over a trivial issue and abused her in filthy, obscene and offensive language. Consequently, she had lodged a report against the appellant at the police station, on the basis of which a criminal case came to be registered against him.

3. On 03.01.2016, which was a Sunday and a school holiday for her husband, she along with her husband and child proceeded towards the market at about 1:30 p.m. While they were passing along the cement road situated in front of her house, which is a public place, the appellant allegedly obstructed their way. He confronted her and questioned, as to why she had lodged a report against him and thereafter, abused her in filthy and obscene language by uttering the words, “Lawdi, Madarchod, Sali, Veshya, Tula Ani Tuzya Patila Mi Aath Diwsat Jiwane Marunch Takto.” After extending such threats and hurling abuses, the appellant left the spot. In this background, the victim lodged the report on the same day at Police Station, Sindi (Rly.) against the appellant.

4. On the basis of that report, Crime No.03/2016 came to be registered against appellant for the offences punishable under Sections 341, 294 and 506 of the Indian Penal Code. The investigation was conducted by Police Hawaldar Manohar Ramrao Chandekar. He prepared the panchanama of the spot of the incident. He arrested the appellant. He recorded the statement of the witnesses. After completion of the investigation, as there was

sufficient evidence to proceed against the appellant for the offences punishable under Sections 341, 294 and 506 of the Indian Penal Code, he filed charge-sheet in the Court of Judicial Magistrate, First Class, Seloo.

5. The learned Magistrate framed particulars of charge against the appellant for the above-mentioned offences vide Exh.5 and explained the contents thereof to him in vernacular. He pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication.

6. The respondent examined five witnesses to establish the guilt of the appellant for the above-mentioned offences. After scrutinizing the evidence, the learned Judicial Magistrate, First Class (Court No.2), Seloo found the appellant guilty of the offences punishable under Sections 341, 294 and 506 of the Indian Penal Code. The learned Judicial Magistrate, First Class, Seloo sentenced the appellant for the above-mentioned offence as under :

Offence Punishable under Section	Punishment
Section 341 of IPC	Simple imprisonment for one month and fine of Rs.500/-, in default simple imprisonment for 15 days.
Section 294 of IPC	Rigorous imprisonment for three months and fine of Rs.1000/-, in default simple imprisonment for 15 days.
Section 506(II) of IPC	Rigorous imprisonment for one year and fine of Rs.1000/-, in default simple imprisonment for 15 days.
	All the sentences shall run concurrently.

7. The appellant has assailed the judgment of conviction and order of sentence on various grounds set out in the memorandum of appeal.

8. The points for determination along with my findings thereon are as under :

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the prosecution has established that the appellant wrongfully restrained the informant and her husband?	:	No
2.	Whether the prosecution has established that the appellant abused the informant in obscene language and thereby caused annoyance to others?		Yes
3.	Whether the respondent has established that the appellant criminally intimidated the informant by threatening to kill her and her husband with intent to cause alarm to her?	:	No
4.	Whether the impugned judgment and order are sustainable ?	:	Partly Yes
5.	What order ?	:	The appeal is Partly Allowed.

= REASONS =

AS TO POINTS NO.1 TO 3 :-

8. The evidence on these points is common and interconnected. Hence, for the sake of convenience and to avoid repetition, all these points are taken together for consideration and determination.

9. The appellant has challenged the legality, correctness and propriety of the judgment of conviction recorded by the learned Judicial Magistrate, First Class, Seloo, mainly on the ground that the prosecution has failed to establish the essential ingredients of the offences punishable under Sections 341, 294 and 506(II) of the Indian Penal Code beyond reasonable doubt. The learned counsel appearing for the appellant submitted that the evidence adduced by the prosecution is interested, inconsistent and unreliable. According to him, though the alleged incident is stated to have occurred on a public road in broad daylight, no independent witness has supported the prosecution case. It is further submitted that the admitted previous enmity between the parties, coupled with the counter complaint lodged by the wife of the appellant against the husband of the informant on the same day, clearly probabalizes false implication of the appellant due to strained neighbourhood relations. It is therefore contended that the learned trial Court failed to properly appreciate the evidence in its correct perspective and erroneously convicted the appellant.

10. As against this, the learned Public Prosecutor supported the impugned judgment and submitted that the testimony of the informant and her husband is natural, cogent and trustworthy. It is argued that merely because the witnesses are related or inimically disposed towards the appellant, their testimony cannot be discarded, if otherwise reliable. According to the prosecution, the evidence on record sufficiently establishes that the appellant wrongfully restrained the informant and her husband on a public road, abused the informant in obscene language and criminally intimidated them

by threatening to kill them. It is therefore submitted that the learned trial Court rightly appreciated the evidence and no interference is warranted.

11. Before advertng to the appreciation of evidence, it is necessary to refer to the legal ingredients of the offences alleged against the appellant. Section 339 of the Indian Penal Code defines “wrongful restraint” as voluntarily obstructing any person so as to prevent that person from proceeding in any direction in which he has a right to proceed. Section 341 provides punishment for such wrongful restraint. Therefore, in order to establish the offence punishable under Section 341 of the Indian Penal Code, the prosecution must prove that :-

- (i) the accused voluntarily obstructed the victim;
- (ii) such obstruction prevented the victim from proceeding in a direction in which he or she had a lawful right to proceed.

12. Similarly, for constituting an offence under Section 294 of the Indian Penal Code, the prosecution must establish :-

- (i) utterance of obscene words or commission of an obscene act;
- (ii) such utterance or act occurred in or near a public place;
- (iii) annoyance was caused to others.

13. So far as Section 506(II) of the Indian Penal Code is concerned, the prosecution must prove :-

- (i) threat of death or grievous injury;
- (ii) intention to cause alarm to the victim;
- (iii) existence of circumstances indicating criminal intimidation of aggravated nature.

14. In view of the aforesaid legal position, the evidence adduced by the prosecution now requires careful scrutiny. The prosecution has principally relied upon the testimony of the informant (PW2). She deposed that the appellant resides opposite her house and prior disputes existed between them. According to her, she had earlier lodged a complaint against the appellant at the police station. She further stated that on 03.01.2016, which was a Sunday, at about 1:30 p.m., she along with her husband and child was proceeding towards the market by the cement road situated in front of her house. According to her, at that time the appellant came there and obstructed their way. She deposed that the appellant questioned her, as to why she had lodged a report against him and thereafter, abused her by uttering filthy and obscene words such as “Nangi, Sali, Madarchod, Veshya, Tu Veshyacha Dhandha Karte”. She further deposed that the appellant threatened that he would kill them. She proved her report at Exh.8 and the printed FIR at Exh.9.

15. The informant appears to support the prosecution case. However, it is an admitted position that previous disputes existed between the parties regarding drainage and discharge of wastewater. During her cross-examination, the informant admitted existence of such disputes. She further admitted that on the same day, the wife of the appellant had lodged a complaint against her husband and a criminal case had been registered on that basis. These admissions are significant because they unmistakably establish previous animosity and strained relations between the parties. Therefore, the testimony of the informant is required to be scrutinized with due caution.

16. It is a settled principle of criminal jurisprudence that

evidence of an interested or inimical witness cannot be rejected merely on that ground. However, where previous hostility admittedly exists, the Court is required to carefully examine, whether the testimony inspires confidence and whether it stands corroborated by surrounding circumstances.

17. The informant deposed that the alleged incident occurred on a cement road and admitted during cross-examination that several persons were present at the spot, at the relevant time. This admission assumes importance while appreciating the prosecution case. According to the prosecution itself, the incident occurred on a public road in broad daylight at about 1:30 p.m. when several persons were present. The prosecution examined Suhas Hariram Kalode (PW3), husband of the informant, as an eyewitness to the incident. His evidence substantially corroborates the version of the informant regarding date, time and place of occurrence. He deposed that while proceeding towards the market along with his wife and child, the appellant obstructed their path and abused them by uttering filthy words such as “Sali”, “Madarchod” and “Lawdi”. He further deposed that the appellant threatened to kill them. He stated that about eight to ten days prior to the incident, his wife had lodged a report against the appellant and therefore, the appellant abused them due to such previous report.

18. During cross-examination, Suhas (PW3) admitted that the incident occurred on the cement road and further admitted that on the same day, the wife of the appellant had lodged a report against him and such criminal case is pending. Thus, Suhas (PW3) also admitted existence of previous hostility and counter litigation

between the parties. Suhas (PW3) is admittedly the husband of the informant. However, relationship by itself is not sufficient to discard his testimony, if otherwise found reliable. Upon careful scrutiny, the testimony of Suhas (PW3) regarding utterance of obscene abuses appears natural and substantially consistent with the testimony of the informant. No material contradiction or omission affecting the core of the prosecution case regarding abusive utterances has been brought on record.

19. The prosecution further examined Nalu Arunrao Bawane (PW1) as an independent witness. However, she completely failed to support the prosecution case. She categorically stated that she did not know anything about the alleged incident and that police never recorded her statement. Even during cross-examination by the prosecution, nothing useful could be elicited from her. Similarly, Ravindra Dnyaneshwar Awachat (PW4), who was examined as panch witness to the spot panchanama, also did not support the prosecution. He admitted only his signature on the panchanama, but specifically stated that he was unaware about its contents and knew nothing about the incident.

20. The prosecution also examined the Investigating Officer, Manohar Ramrao Chandekar (PW5). He deposed regarding registration of crime, preparation of spot panchanama, recording of statements and filing of charge-sheet. During cross-examination, he admitted that prior disputes existed between the parties. This admission corroborates the defence contention regarding strained relations and previous hostility. The evidence of the Investigating Officer essentially establishes procedural aspects of investigation.

21. To establish the charge under Section 341 of the Indian Penal Code, the prosecution was under a legal obligation to establish that the appellant voluntarily obstructed the informant and her husband and thereby prevented them from proceeding in a direction in which they had a lawful right to proceed. The essence of the offence of wrongful restraint lies not merely in the existence of a quarrel or confrontation, but in actual obstruction resulting in prevention of movement. Unless such obstruction and prevention are affirmatively established by cogent and reliable evidence, conviction under Section 341 of the Indian Penal Code cannot be sustained.

22. In the present case, though the informant and Suhas (PW3) have stated in general terms that the appellant obstructed their way, their evidence on this material aspect remains vague, omnibus and lacking in necessary particulars. Neither of the witnesses has explained in what exact manner the obstruction was allegedly caused by the appellant. There is no evidence to show whether the appellant physically blocked their passage, restrained them by force, stood in front of them, so as to prevent further movement, or prevented them from proceeding for any appreciable period of time. The prosecution evidence is conspicuously silent regarding the nature, duration and extent of the alleged obstruction.

23. The evidence of the informant and Suhas (PW3), when carefully scrutinized, merely indicates that the appellant intercepted them on the road, questioned the informant regarding the earlier report lodged against him and thereafter, abused and threatened them. However, mere interception, verbal altercation or quarrel on a public road would not ipso facto constitute wrongful restraint within

the meaning of Sections 339 and 341 of the Indian Penal Code, unless it is further established that the victim was actually prevented from proceeding in a direction in which he or she had a lawful right to proceed. The distinction between a mere confrontation and wrongful restraint is substantial and legally significant. In order to attract Section 341 of the Indian Penal Code, the prosecution must establish actual prevention of movement and not merely a temporary verbal exchange or roadside quarrel.

24. The prosecution has failed to establish beyond reasonable doubt the essential ingredients constituting the offence punishable under Section 341 of the Indian Penal Code. The evidence adduced by the prosecution does not satisfactorily prove actual obstruction resulting in prevention of movement. At the highest, the prosecution evidence indicates that the appellant confronted and quarrelled with the informant and her husband on the public road. Such evidence, in absence of proof of actual restraint or prevention from proceeding further, falls short of the legal requirements necessary to constitute the offence of wrongful restraint. Consequently, the appellant is entitled to benefit of doubt so far as the offence punishable under Section 341 of the Indian Penal Code is concerned.

25. In relation to the offence punishable under Section 294 of the Indian Penal Code, it is necessary to examine whether the prosecution has succeeded in establishing the essential ingredients constituting the said offence beyond reasonable doubt. In order to bring home a charge under Section 294 of the Indian Penal Code, the prosecution is required to prove : (i) utterance of obscene words or commission of an obscene act; (ii) that such utterance or act took

place in or near a public place; and (iii) that the same caused annoyance to others. Unless all these ingredients coexist, conviction under Section 294 of the Indian Penal Code cannot be sustained.

26. In the present case, the prosecution has principally relied upon the testimony of the informant and her husband Suhas (PW3). The informant specifically deposed that the appellant abused her by uttering filthy and obscene words such as “Nangi, Sali, Madarchod, Veshya, Tu Veshyacha Dhanda Karte.” According to her, these abuses were hurled by the appellant when she, along with her husband and child, was proceeding towards the market through the cement road situated in front of her house. Her evidence clearly indicates that the appellant intentionally used vulgar and offensive expressions directed towards her modesty and character.

27. The testimony of the informant on this aspect finds substantial corroboration from the evidence of Suhas (PW3), who was accompanying her at the relevant time. Suhas (PW3) consistently deposed that the appellant abused the informant in filthy language by uttering expressions such as “Sali”, “Madarchod” and “Lawdi”. Though the exact reproduction of every abusive word by both witnesses may not be verbatim identical, the core of the prosecution case remains consistent, namely, that the appellant openly hurled vulgar, filthy and obscene abuses at the informant on the public road. Minor variations in narration are but natural and, in fact, lend assurance to the genuineness of the witnesses, as truthful witnesses are not expected to reproduce every word with photographic precision.

28. The expressions attributed to the appellant are evidently vulgar, indecent and offensive. Words such as “Madarchod”, “Lawdi”, “Veshya” and allegations imputing prostitution to a woman are inherently obscene and derogatory in nature. Such expressions are not merely abusive simpliciter, but are capable of outraging decency and offending moral sensibilities. They squarely fall within the ambit of obscene utterances contemplated under Section 294 of the Indian Penal Code. The tenor, nature and context of the utterances clearly indicate that the appellant intentionally humiliated and insulted the informant in a public setting by using language which any reasonable person would regard as obscene and indecent.

29. The prosecution evidence further establishes that the incident occurred on a cement road situated in front of the house of the informant and leading towards the market. Both the informant and Suhas (PW3) consistently stated that the occurrence took place on the said road while they were proceeding towards the market. During cross-examination, Suhas (PW3) admitted that the place of occurrence was a cement road. The informant stated in her cross-examination that several persons were present at the spot at the relevant time. Thus, the public nature of the place of occurrence stands unequivocally established from the prosecution evidence.

30. The defence sought to rely upon non-examination of independent witnesses in order to challenge the prosecution case. However, the very suggestions and admissions elicited during cross-examination unmistakably establish that the incident occurred at a public place in presence of several persons. Therefore, the public character of the place of occurrence and presence of persons nearby

stand reinforced even from the defence side. In such circumstances, the argument regarding absence of independent corroboration loses much of its force, so far as the ingredients of Section 294 of the Indian Penal Code are concerned.

31. The next ingredient requiring consideration is whether annoyance to others has been established. It is true that no independent person from the locality has entered the witness box to specifically state that he or she felt annoyed by the obscene utterances. However, direct testimony from each and every person present at the spot is not an indispensable requirement for proving annoyance under Section 294 of the Indian Penal Code. Annoyance is a matter which can legitimately be inferred from the attending facts and circumstances of the case. Where obscene abuses are openly hurled on a public road in presence of persons gathered there, annoyance to others is a natural and reasonable inference.

32. In the present case, the evidence of the informant and Suhas (PW3) clearly establishes that the appellant openly abused the informant in filthy and obscene language on a public road where several persons were present. The very nature of the obscene utterances attributed to the appellant is such that annoyance to persons present nearby can safely be inferred. A public road leading towards a market is undoubtedly a place accessible to members of the public, and the use of vulgar and indecent expressions against a woman at such place is bound to cause annoyance to persons witnessing the incident.

33. It is no doubt true that previous hostility admittedly

existed between the parties on account of neighbourhood disputes regarding drainage and wastewater and that counter reports had also been lodged. However, it is equally well settled that merely because a witness is related to the victim or is inimically disposed towards the accused, his or her evidence cannot be discarded outright. The settled principle of criminal law is that the testimony of interested or related witnesses can form the basis of conviction if, upon careful scrutiny, it is found trustworthy, reliable and consistent with probabilities.

34. In the present case, upon careful appreciation of the evidence on record, the testimony of the informant and Suhas (PW3) regarding obscene abuses appears natural, cogent and trustworthy. Their evidence remains substantially consistent on material particulars relating to the utterance of obscene words, the place of occurrence and the surrounding circumstances. No material contradiction, omission or improvement affecting the substratum of the prosecution case has been brought on record in their cross-examination. Their evidence inspires confidence and there is no reason to discard the same merely because previous hostility existed between the parties. The defence has failed to probabalize any circumstance indicating total false implication in respect of the obscene utterances. Though previous enmity may furnish a motive for false implication, it may equally furnish a motive for commission of the offence. Therefore, previous hostility by itself cannot be treated as a ground to completely reject otherwise reliable evidence.

35. The overall evidence on record clearly establishes that the appellant intentionally abused the informant in filthy and

obscene language on a public road in presence of several persons, thereby causing annoyance. The prosecution has thus successfully established all the essential ingredients constituting the offence punishable under Section 294 of the Indian Penal Code beyond reasonable doubt. Consequently, this Court holds that the charge under Section 294 of the Indian Penal Code stands duly proved against the appellant.

36. In order to prove the charge under Section 506(II) of the Indian Penal Code, it is necessary to examine whether the prosecution has succeeded in establishing the essential ingredients constituting the offence of criminal intimidation of aggravated nature. In order to bring home a charge under Section 506(II) of the Indian Penal Code, the prosecution is required to prove not merely utterance of threatening words, but also that such threats were given with intention to cause alarm to the victim and were of such nature as to constitute criminal intimidation within the meaning of Section 503 of the Indian Penal Code. Mere use of threatening language during a quarrel or altercation, without intention to cause alarm, would not by itself attract criminal liability under Section 506 of the Indian Penal Code.

37. The prosecution case on this aspect rests upon the testimony of the informant and her husband Suhas (PW3). The informant deposed that the appellant threatened her and her husband by saying that he would kill them. Suhas (PW3) also referred to the alleged threats extended by the appellant during the incident. Thus, the prosecution evidence does indicate that certain threatening expressions were allegedly uttered by the appellant

during the course of the quarrel. However, while appreciating the offence of criminal intimidation, the Court is required to examine not merely the words used, but the surrounding circumstances, the intention behind such utterances and the effect sought to be created upon the mind of the person threatened. The evidence on record clearly demonstrates that previous hostility and strained neighbourhood relations existed between the parties on account of disputes regarding drainage and wastewater. The informant as well as Suhas (PW3) admitted during cross-examination that prior disputes existed between them and the appellant. They further admitted that, on the very same day, the wife of the appellant had also lodged a complaint against Suhas (PW3), resulting in registration of a criminal case. Thus, the evidence unmistakably reveals existence of ongoing neighbourhood disputes, exchange of allegations and counter litigation between both sides.

38. The alleged threats were admittedly uttered during the course of an altercation arising out of such previous hostility. In such circumstances, the Court is required to carefully scrutinize whether the threatening words were genuinely intended to create alarm in the mind of the informant or whether they were merely expressions uttered in anger during a heated quarrel between inimical neighbours. The prosecution has not produced any convincing material to demonstrate that the informant or her husband were actually put under alarm due to the alleged threats. There is no evidence regarding any subsequent conduct on the part of the informant indicative of fear, panic or apprehension arising from the alleged threats. The prosecution has not brought on record any

circumstance showing that the informant altered her routine, sought protection, avoided the appellant or took any immediate precautionary measures due to apprehension of danger. On the contrary, the evidence rather indicates continuation of neighbourhood hostility and exchange of allegations between both sides.

39. It is a settled principle of criminal law that every threat uttered during a quarrel does not amount to criminal intimidation. Words uttered in heat of anger, during a sudden altercation or as a result of momentary outburst, without intention to cause alarm, would not constitute an offence under Section 506 of the Indian Penal Code. The intention to cause alarm is the gravamen of the offence. Unless the prosecution establishes that the accused intended by such threats to create fear or alarm in the mind of the victim, conviction for criminal intimidation cannot be sustained.

40. In the present case, though the prosecution witnesses stated that threats were uttered, the surrounding circumstances do not satisfactorily establish the essential ingredient of intention to cause alarm. The incident appears to have occurred during continuation of previous disputes between neighbouring parties who were admittedly on inimical terms. The prosecution evidence does not establish that the alleged threats were of such nature and gravity as to create genuine alarm or apprehension in the mind of the informant.

41. The prosecution has failed to establish beyond reasonable doubt that the appellant intentionally threatened the informant with

a view to cause alarm, so as to attract the offence punishable under Section 506(II) of the Indian Penal Code. At the highest, the evidence indicates that certain threatening expressions were uttered during a quarrel arising out of previous hostility between the parties. Such evidence, in absence of satisfactory proof regarding intention to cause alarm, falls short of the legal requirements necessary to constitute criminal intimidation punishable under Section 506(II) of the Indian Penal Code. Consequently, the appellant is entitled to benefit of doubt in respect of the offence punishable under Section 506(II) of the Indian Penal Code and the conviction recorded by the learned trial Court for the said offence cannot be sustained.

42. As a sequel to the above discussion, the testimony of the informant and Suhas (PW3) is cogent, natural, consistent and trustworthy to the extent it relates to the appellant hurling obscene abuses at the informant and causing annoyance in a public place. Their evidence on this aspect inspires confidence and is found believable and acceptable. The prosecution has, therefore, successfully established beyond reasonable doubt the offence punishable under Section 294 of the Indian Penal Code. However, so far as the offences punishable under Sections 341 and 506(II) of the Indian Penal Code are concerned, the prosecution evidence falls short of the standard of proof required in criminal jurisprudence. The evidence relating to wrongful restraint is vague and insufficient to establish actual obstruction preventing the informant and her husband from proceeding in a direction in which they had a lawful right to proceed. Similarly, the evidence regarding criminal intimidation does not satisfactorily establish that the alleged threats

were extended with the requisite intention to cause alarm to the informant so as to attract the offence punishable under Section 506(II) of the Indian Penal Code. Consequently, the prosecution has failed to establish beyond reasonable doubt the offences punishable under Sections 341 and 506(II) of the Indian Penal Code. Consequently, Point No.1 and Point No.3 are answered in the negative, whereas Point No.2 is answered in the affirmative.

AS TO POINT NO.4 :-

43. The learned Magistrate rightly convicted the appellant for the offence punishable under Section 294 of the Indian Penal Code. The conviction of the appellant for the said offence does not call for any interference. The learned Magistrate has meticulously and judiciously appreciated the facts and the evidence on record in their proper perspective to the extent of the charge under Section 294 of the Indian Penal Code. Upon such careful consideration, the learned Magistrate has rightly arrived at the conclusion that the appellant is guilty of the offence punishable under Section 294 of the Indian Penal Code. I do not find any infirmity, illegality, or perversity in the findings so recorded which would warrant interference by this Court in appellate jurisdiction. The conclusions drawn are consistent with the material available on record and the settled principles of law.

44. So far as the conviction of the appellant for the offense punishable under Sections 341 and 506(II) of the Indian Penal Code is concerned, the appeal is liable to be partly allowed. As such, the ingredients of the offences under Section 341 and 506(II) of the

Indian Penal Code, was not proved by the prosecution. Consequently, the impugned judgment of conviction and sentence for the said offences, will have to be set aside.

45. So far as sentence imposed for the offence punishable under Section 294 of the Indian Penal Code is concerned, the incident pertains to the year 2016. The appellant and the informant are neighbours and the occurrence appears to have arisen out of previous neighbourhood disputes regarding drainage and wastewater. The wife of the accused has also lodged the report against the husband of the victim. No aggravating circumstance of serious nature has been brought on record. The prosecution has also not established by oral or documentary evidence that the accused has been convicted in a case initiated on the report of the victim or he is having criminal antecedent, except oral submissions by the learned APP before the Trial Court. He is stated to have wife, old aged mother and two children studying in 12th and 7th standard, respectively, and all are dependant upon him. Considering these factors, I am of the view that the sentence imposed by the learned Magistrate appears somewhat harsh.

46. The learned Advocate for the appellant has prayed for extending the benefit of the Probation of Offenders Act to the appellant. However, I am not inclined to grant such benefit. Granting the benefit of probation in such cases would defeat the very purpose of the Act, as it may dilute the deterrent effect of penal provisions relating to women and send an inappropriate message to society. In these circumstances, I am not inclined to extend the benefit of the Probation of Offenders Act to the appellant.

47. The learned Public Prosecutor, on the other hand, submits that the appellant having contravened the provisions of the Indian Penal Code, it is urged that he be dealt with sternly. He therefore, supports the impugned judgment and prays for maintaining the sentence, so as to set a deterrent example.

48. Considering the above family situation, nature of the offence proved, the circumstances in which the incident occurred, the passage of considerable time since the occurrence and the fact that the parties are neighbours, this Court is of the considered opinion that the substantive sentence imposed for the offence punishable under Section 294 of the Indian Penal Code deserves modification. In my view, if the sentence of imprisonment is reduced to the simple imprisonment till rising of the Court and if the appellant is ordered to pay a fine of Rs.2500/-, in default, to suffer simple imprisonment for 15 days, it would meet the ends of justice. Out of the fine amount, if recovered, some amount will have to be ordered to be paid to the victim as compensation under Section 357(1) of the Code of Criminal Procedure. In the result, I think fit to interfere with the order of sentence passed by the learned Magistrate to this extent. To this limited extent, the order of sentence passed by the learned Magistrate warrants interference. Hence, I answer point No.4 partly in the affirmative.

AS TO POINT NO.5 :-

49. In view of my findings to points No.1 to 4, the appeal deserves to be partly allowed and is accordingly allowed. In the result, in answer to point No.5, I pass the following order.

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The judgment and order dated 10.12.2019 passed by the learned Judicial Magistrate, First Class (Court No.2), Seloo in Summary Criminal Case No.221/2016 is partly modified.
- (iii) The conviction of the appellant for the offence punishable under Section 294 of the Indian Penal Code is maintained.
- iv] The impugned order sentencing the appellant to undergo rigorous imprisonment for the offence punishable under Section 294 of the Indian Penal Code is set aside and instead, following sentence is passed.
 - (a) The appellant to suffer simple imprisonment till rising of the court and to pay a fine of Rs.2500/-, in default, to suffer simple imprisonment for 15 days for the offence punishable under Section 294 of the Indian Penal Code.
- (v) The fine amount already deposited by the appellant, be adjusted towards payment of fine amount inflicted in pursuance of this order.
- (vi) If the entire fine amount of Rs.2500/- is recovered, an amount of Rs.2000/- out of it, be paid to the victim/informant, as compensation.
- (vii) The conviction and sentence of the appellant for the offences punishable under Sections 341 and 506(II) of the Indian Penal Code are hereby quashed and set aside.
- (viii) The appellant is acquitted of the offences punishable under Sections 341 and 506(II) of the Indian Penal Code.
- (ix) The appellant to surrender to his bail bond.
- (x) Copy of this judgement be given to the appellant, free of costs.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word to word, as per the original Judgment.

(G. A. Umate)
Stenographer,