

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
AURANGABAD BENCH, AT AURANGABAD.**

**Criminal Revision Application No. 143 of 2004**

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| District : Nanded |
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1. Maroti s/o. Baba Wad,  
Age : 36 years,  
Occupation : Labour,  
R/o. Kerur,  
Taluka Mukhed,  
District Nanded.
  2. Malu s/o. Baba Totre,  
Age : 60 years,  
Occupation : Labour,  
R/o. as above.
  3. Yeshwant s/o. Malu Totre,  
Age : 22 years,  
Occupation : Labour,  
R/o. as above.
- .. Applicants  
(Original accused  
nos.1 to 3)

**versus**

The State of Maharashtra,  
Through Public Prosecutor,  
High Court Bench at Aurangabad.    .. Non-applicant.

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*Mr. Pratap P. Mandlik, Advocate, holding  
for Mr. P.V. Mandlik, Senior Advocate, for the  
applicants.*

*Mr. K.N. Lokhande, Addl. Public Prosecutor, for  
the non-applicant.*

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**CORAM : Z.A. HAQ, J.**

**DATE : 23RD NOVEMBER 2016**

**ORAL JUDGMENT :**

Heard Mr. P.P. Mandlik, learned Advocate for the applicants, and Mr. K.N. Lokhande, learned Addl. Public Prosecutor, for the non-applicant - State of Maharashtra.

02. The applicants have challenged the judgment passed by the learned Addl. Sessions Judge upholding the conviction of the applicants for offence punishable under Section 452 read with Section 34 of Indian Penal Code and for offence punishable under Section 324 read with Section 34 of Indian Penal Code.

03. One Kum. Shahen d/o. Sk. Imamsab lodged complaint alleging that the present applicants - accused forcefully entered her house, abused her, criminally intimidated and caused grievous hurt to her by means of Katti. On report of the complainant, Crime No. 53/1997 was registered against the accused for offences punishable under Sections 452, 324, read with Section 34 of Indian Penal Code.

The Investigating Officer conducted the investigation and filed charge-sheet in the Court of Magistrate. The learned Magistrate framed charges against the accused. The accused did not accept the guilt. The learned Magistrate conducted trial and by the judgment delivered on 06th February 2003, held

that the prosecution proved that the accused, in furtherance of their common intention, committed house trespass by entering into the house of complainant, having made preparation for causing hurt to the complainant. The learned Magistrate held that the prosecution proved that the accused in furtherance of their common intention, voluntarily caused grievous hurt to the complainant by means of Katti. The learned Magistrate concluded that the accused had committed offence punishable under Section 452 read with Section 34 of Indian Penal Code and under Section 324 read with Section 34 of Indian Penal Code, and sentenced them to suffer imprisonment and to pay fine as directed by the learned Magistrate.

Being aggrieved by the judgment passed by the learned Magistrate, the accused had filed appeal before the Sessions Court. By the impugned judgment, the Sessions Court maintained the conviction of the accused, however, sentenced the accused to undergo imprisonment for lesser period.

The applicants have challenged the judgment passed by the Sessions Court in this Revision Application.

04. The learned Advocate for the applicants has submitted that the story put forth by the prosecution and the evidence of complainant - Kum. Shahan d/o. Sk. Imamsab and her brother PW 3 - Habib s/o. Imamsab

cannot be accepted. It is submitted that according to the complainant, the accused forcefully entered the house of the complainant and at that time, four brothers of complainant and father of complainant rushed into a room and locked themselves from inside and the complainant was left to tackle the accused, and this cannot be accepted by any prudent person that five members of family on seeing intrusion by three persons will lock themselves inside the room and leave the complainant (teen aged girl) to tackle the intruders. It is submitted that the case tried to be made out by the prosecution that PW 3 - Habib s/o. Imamsab has witnessed the attack by the accused on the complainant through the split of door which was closed from inside, has been falsified by the evidence of PW 2 - Baburao Shinde (Panch witness), who has stated that the doors were of wood and it was not true to say that one could see outside from the room after closing the door and it was not true to say that door was having small split.

It is further argued by the learned Advocate for the applicants that the prosecution has not examined the Investigating Officer and Police Patil who, according to the prosecution, came to the spot at the time of the incident. The learned Advocate has submitted that undisputedly there was rivalry between the families of complainant and accused because of an affair of complainant with Satwa (cousin brother of

applicant no.1) and the applicants are falsely implicated by the complainant. It is argued that the conviction of the applicants for offence punishable under Section 324 of Indian Penal Code is unsustainable in view of the evidence of PW 4 - Dr. Dilip Punde, who has stated that the injuries suffered by the complainant were possible by the blade also and the prosecution has not recovered and produced any weapon (Katti) by which, according to the complainant, injuries were inflicted.

The learned Advocate has made an alternate submission that, in case, the Court is not convinced that the applicants are required to be acquitted, then considering the earlier and subsequent record of the applicants and the fact that there has not been any complaint against the applicants, after they are released on bail, a liberal view may be taken and the sentence may be ordered for the period for which the applicants had been in jail.

05. The learned Addl. Public Prosecutor has supported the impugned judgments.

06. With the assistance of the learned Advocate for the applicants and the learned Addl. Public Prosecutor, I have examined the record. The submission made on behalf of the applicants that the story put forth by the complainant is false, cannot be

accepted. The evidence brought on record by the prosecution about the incident cannot be discarded only because, according to the complainant, the father and four brothers of complainant rushed into a room and locked themselves from inside on seeing the accused (three persons) by barging into the house. The conduct and reaction of individuals depends on various factors and the situation prevailing at the time of the incident. The evidence on record establishes that the accused entered the house of the complainant. The subordinate Courts have considered the evidence on record exhaustively and have concurrently recorded that the accused came to the house of the complainant. After examining the evidence on record, I find that the conclusions of the subordinate Courts that the applicants - accused have committed offence punishable under Section 452 read with Section 34 of Indian Penal Code cannot be faulted with.

07. However, I find that the evidence on record is not sufficient to convict the applicants - accused for offence punishable under Section 324 read with Section 34 of Indian Penal Code. Apart from the fact that the prosecution has failed to recover and produce the weapon (Katti), by which injuries are inflicted on the complainant, the complainant has admitted that in the report (Exhibit No.40) given by her, she had not stated the name of the person who inflicted injuries

by Katti. According to the prosecution, the complainant had been knowing the accused. There is no explanation for the omission on the part of the complainant to state the name of the accused who had inflicted injury on her throat by Katti. In my view, the conviction of the applicants - accused for the offence punishable under Section 324 read with Section 34 of Indian Penal Code cannot be sustained.

08. As per the record, the applicants - accused have not been prosecuted for any other crime before the prosecution in the present case. The applicants - accused are on bail since more than 12 years and there is no complaint against them in respect of any crime or illegal activity. The applicant No.2 was aged about 60 years in 2004 when this Revision Application was filed and might be about 72 years at present. Considering all these aspects, in my view, the sentence inflicted on the applicants for the offence punishable under Section 452 read with Section 34 of Indian Penal code is required to be modified.

09. Hence, the following order :-

(a) The conviction of the applicants - accused for offence punishable under Section 324 read with Section 34 of Indian Penal Code is set aside.

(b) The conviction of the applicants - accused for

offence punishable under Section 452 read with Section 34 of Indian Penal Code is maintained. The order passed by the Sessions Court imposing fine on the applicants for the offence punishable under Section 452 read with Section 34 of Indian Penal Code is maintained. However, it is directed that the applicants - accused are sentenced to undergo imprisonment for the period for which they had been in jail.

(c) The impugned order is modified accordingly.

(d) The Criminal Revision Application is partly allowed in the above terms.

( Z.A. HAQ )  
JUDGE

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