



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

961 CRIMINAL APPEAL NO. 637 OF 2005

The State of Maharashtra,
Through Police Station,
Osmanabad Rural, District
Osmanabad.

..Appellant
(Ori. Complainant)

VERSUS

1. Hanmant Alias Aba Babusha
Magar, Age : 20 Years, Occ. Agri,
R/o. Wagholi, Tq. & Dist.
Osmanabad.
2. Babusha Sopan Magar
Appeal is abated
3. Pandurang alias Tatya Babusha
Magar, Age : 22 Years, Occ. Agriculture,
R/o. Wagholi, Tq. & Dist.
Osmanabad.
4. Rupabai Sopan Magar,
Age : 55 Years, Occ. Household,
R/o. As above.

.. Respondents
(Ori. Accused)

....
Mr. Rajdeep D. Raut, Additional Public Prosecutor the
appellant.
Adv. Varsha M. Kolpe h/g M. B. Kolpe, Advocate for
Respondent Nos. 1 to 4
Appeal is abated against Respondent No.2.

...

CORAM : SANDIPKUMAR C. MORE, J.
DATED : FEBRUARY 25, 2025

JUDGMENT:-

1. Heard rival submissions.

2. The appellant/State has filed this appeal challenging the judgment and order of learned Judicial Magistrate, (First Class), Osmanabad, in Regular Criminal Case No. 123 of 2003, dated 22.06.2005. Though the learned Judicial Magistrate has convicted the respondents/accused for the charge under Sections 323 read with Section 34 of the Indian Penal Code and sentenced them to pay a fine of Rs. 400/- each in default of payment of fine, to suffer simple imprisonment for three days each, but acquitted them from the charge under Sections 324, 504, 506 read with Section 34 of the Indian Penal Code. Against the said acquittal, the present appeal is filed by the appellant/State.

3. The occurrence of incident as per the prosecution story, is not disputed. Further, the learned Judicial Magistrate in his impugned judgment has also observed that the prosecution successfully established the incriminating act of all the respondents/accused. Admittedly, respondent Nos. 2 Babusha Sopan Magar died during the pendency of this appeal and therefore, proceeding against him stood abated. It is significant to note that, the learned Judicial Magistrate acquitted the respondents/accused from the charge under Sections 324, 504, 506 read with Section 34 of the Indian

Penal Code mainly on the ground that the prosecution did not produce on record the medical certificate in respect of injury sustained by the informant Balaji. Moreover, the prosecution also did not examine Medical Officer. As such, in absence of such vital evidence, which is required to establish the ingredients of Section 324 of the Indian Penal Code, the acquittal recorded by the learned Judicial Magistrate against the respondents/accused is quite justified. Further, there are also no ingredients for the charge under Sections 504 and 506 read with Section 34 of the Indian Penal Code, available on record. Further, it is extremely important to note that the appellant/State had also preferred separate Criminal Appeal No. 638 of 2005 for enhancement of sentence recorded by the learned Judicial Magistrate against the respondents/accused under Sections 323 read with Section 34 of the Indian Penal Code, but under order dated 16.01.2025, this Court has disposed off the said appeal being infructuous.

4. Further, it is also important to note that, the learned Appellate Court I.e Ad-hoc Additional Sessions Judge, Osmanabad, in Criminal Appeal No. 21 of 2005, filed by the present respondents/accused challenging their conviction under Section 323 read with Section 34 of the Indian Penal

Code, has acquitted them from the said charge. Be that as it may, no ingredients of section 324, 504 and 506 of the Indian Penal Code are established by the prosecution, in the instant matter, and therefore, the learned J.M.F.C. has rightly acquitted the respondents/accused from the charge under the aforesaid sections. As such, no interference is required in the impugned judgment and the appeal is accordingly dismissed and disposed off.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni