



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

CRIMINAL APPEAL NO.380 OF 2018

1. Madhukar s/o. Sakharam Edke,
Age : 55 years, Occ. Agri.,
r/o. Daregaon, Tq. Mudkhed,
Dist. Nanded
2. Shobhabai w/o. Madhukar Edke,
Age : 50 years, Occ. and Household,
r/o. Daregaon, Tq. Mudkhed,
Dist. Nanded
3. Madhav s/o. Madhukar Edke,
Age : 37 years, Occ. Agri.,
r/o. Daregaon, Tq. Mudkhed,
Dist. Nanded

..Appellants

Vs.

The State of Maharashtra,
Through Police Station, Mudkhed,
Dist. Nanded

..Respondents

Ms.Sunita G. Sonawane, Advocate for appellants
Ms.V.S.Chaudhari, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : JANUARY 01, 2024
PRONOUNCED ON : FEBRUARY 07, 2024

JUDGMENT (PER R.G.AVACHAT, J.) :-

The appellants take exception to the judgment and order dated 26.04.2018, passed by learned Addl. Sessions Judge-2, Nanded,

in Sessions Case No.54 of 2012, whereby, they have been convicted for the offence punishable under Section 307 read with Section 149 of Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- (Rupees Five Thousand) each, in default, to suffer rigorous imprisonment for five months. They have further been convicted for the offence punishable under Section 148 read with Section 149 of Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/- (Rupees Two Thousand) each, in default, to suffer rigorous imprisonment for two months.

2. Appellant no.3 (A3) is son of appellant nos.1 and 2 (A1 and A2). He has three more brothers (juveniles in conflict with law). PW 1 - Baba is the elder brother of A1. They have agricultural land/s at village Daregaon, Tq. Mudkhed, Dist. Nanded. PW 1 - Baba would ply cycle-rickshaw at Nanded to earn his living. He claimed to have three acres of agricultural land at Daregaon. It is his case that on 05.11.2011, he had been to Daregaon, taking along 8-10 farm labourers in tempo/s for harvesting hybrid-crop and transporting it to Nanded. It was about 11.30 a.m., the appellants and co-accused (juveniles in conflict with law) came together. A2 had a pot

containing kerosene. A3 and his brothers were armed with *Kattis*. All of them threatened the tempo driver/s. The tempo driver/s, therefore, went away with the tempo/s. The appellants and juvenile, thereafter, started abusing him. Omprakash (juvenile) and A3 attempted to assault PW 1 - Baba on his head with *Kattis*. PW 1 - Baba did ward off the blow. A blow, however, fell on his hand, resulting into injuries to his right-hand finger. When he attempted to run away, A1 and his two other sons pelted stones at him. He, thereby, fell. A2 poured kerosene on his person. A3 set him ablaze. The labourers brought by PW 1 - Baba, extinguished the fire with soil. PW 1 - Baba was then brought to the civil hospital. He lodged the FIR (Exh.60).

3. The crime vide C.R. No.101 of 2011 was registered for the offences punishable under Sections 307, 324, 147, 148 read with Section 149 of Indian Penal Code. On completion of the investigation, charge sheet was filed against the appellants herein before the court of Judicial Magistrate, First Class, Mudkhed. A separate charge sheet was filed against the co-accused (juveniles in conflict with law) before Juvenile Justice Board (J.J.B.). The case was assigned to the court of Addl. Sessions Judge, Nanded (trial court). Charge (Exh.7) was framed. The appellants pleaded not guilty. Their defence is of

false implication on account of long standing dispute over agricultural lands.

4. The prosecution examined sixteen witnesses and produced in evidence number of documents, to bring home the charge. The trial court, on appreciation of evidence in the case, convicted the appellants herein and consequently sentenced, as stated above.

5. Learned counsel for the appellants would submit that there was a long standing dispute between the two brothers. A civil suit has been pending for long. PW 1 - Baba is an interested witness. He had come with agricultural labourers to take away the crops raised by the appellants in their field. A quarrel, had, therefore, ensued. PW 1 - Baba, in fact, poured kerosene on the person of A2. It was A2, who had lodged report to the police immediately. Same was not taken cognizance of. The Investigating Officer was unfair to the appellants. A1 even did not participate in the incident. The trial court was harsh in imposing life imprisonment against the appellants. According to learned counsel, A3 has been behind the bars for little over seven years. He was just 22 years of age at the relevant time. She, ultimately, urged for allowing the appeal.

6. Learned APP would, on the other hand, submit that the injury certificate of PW 1 - Baba indicates him to have suffered 53% burns. The victim's evidence is corroborated by PW 15 - Arunabai, an independent witness. Learned APP reiterated the reasons given by the trial court in support of the impugned order. She, ultimately, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto.

8. PW 1 - Baba (victim) is elder brother of A1. The family has agricultural land at village Daregaon. It bears gut no.293. A2 claimed to have purchased adjoining land, gut no.294. Admittedly, a civil dispute has been pending between PW 1 - Baba on one hand and the appellants, on the other. PW 1 - Baba admitted that there is no injunction order against A1 - Madhukar. In the light of these facts, we have to appreciate the evidence on record.

9. PW 1 - Baba would ply auto-rickshaw at Nanded to earn his living. His cross-examination suggests that on the given day, he had been to Daregaon along with 8-10 farm-labourers in three tempos. They were engaged in harvesting hybrid-crop. Some of

them were engaged in loading the harvested crop in tempo/s. The appellants and juveniles, allegedly, came together and questioned PW 1 -Baba, as to why did he harvest the crop raised by them. A quarrel, therefore, ensued. The tempo-driver/s went away.

10. It is in the evidence of PW 1 - Baba that A3 and Omprakash (juvenile) attempted to assault on his head with *Kattis*. He did ward off the blows. The assault fell on his finger. His little finger suffered injury. He attempted to take to his heels. A1 - Madhukar pelted stone at him. He was hit thereby and collapsed. A2 was armed with a pot containing kerosene. She threw it on his person. A3 set him ablaze with a *Tembha* (fire-torch). It is further in his evidence that the labourers in his field, extinguished the fire. He was then rushed to the civil hospital, Nanded.

11. PW 15 - Arunatai, one of the labourers engaged by PW 1 - Baba, testified that the juvenile assaulted PW 1 - Baba with *Katti*. PW 1 - Baba suffered injury to his hand. A3 also beat him with *Katti*. He thereby fell on the ground. A2 poured kerosene on his person. A3 set him ablaze. All of them including herself extinguished the fire with soil. Close reading of the evidence of this witness indicates that it did not attribute any overt act to A1 - Madhukar (elder brother of the victim PW 1 - Baba).

12. PW 10 – Dr.Sunil examined PW 1 on 05.11.2011. He noticed following injuries on his person:-

- 1) C.L.W. on right forearm.
- 2) C.L.W. on left ring finger.
- 3) Burn injury on head, neck, chest, cheek, both upper limbs, both lower limbs and abdomen.

The percentage are below:-

Head, neck, face	09%
Chest	16%
Abdomen	04%
Both upper limbs	14%
Both lower limbs	10%
TOTAL	53%

Injury certificate (Exh.89) suggests PW 1 – Baba to have suffered three injuries, two simple and burns, grievous in nature.

13. Setting a person on fire would necessarily attribute an intention to kill. Fortunately, PW 1 – Baba has survived. The other two injuries suffered, as a result of the assault with *Kattis*, were simple in nature. It is not known as to whether the co-accused (juveniles in conflict with law) have been convicted or acquitted by the J.J.B. Be that as it may.

14. The evidence of PW 1 needs to be scrutinised very closely in view of the long standing dispute over the agricultural land and certain admissions given by him in his cross-examination.

The suggestions given to him in the cross-examination, indicate that presence of A2 along with her three children (juveniles) has been admitted. PW 1 – Baba, however, denied to have thrown kerosene on the person of Shobhabai (A2). He also denied that there was scuffle between him and children of Shobhabai. He also denied to have set fodder on fire and suffered injuries accidentally.

15. PW 1 – Baba was, however, categorical to admit that a suit for partition of agricultural land was *sub-judice*. There was no order of injunction against A1. He went on to admit that a criminal case against him and others was registered for preparing forged documents in respect of the land gut no.294. There was a criminal case against A1 for setting the fodder on fire. It was instituted at the instance of PW 1 – Baba. He (PW 1 – Baba) admitted that he gave evidence in the said case. A1 has been acquitted in the said case. The Court issued him (PW 1) notice for giving false evidence in the said case.

16. The other witnesses namely, PW 2 to PW 14, except PW 10 – Doctor and two others namely, Police Constables, who carried Muddemal articles to F.S.L., did not stand by the prosecution. Now-a-days, there is tendency of rope in one and all family members

in a criminal case, when only one or two of them are involved. True, each case has to be decided based on the evidence obtainable therein.

17. The evidence on record indicates that PW 1 - Baba suffered 53% of burns. Those could not be termed to have been suffered accidentally or in an attempt to commit suicide. Presence of A2 with her other three children (juveniles) is an admitted fact. PW 1 - Baba along with 10-12 farm-labourers had gone to Daregaon and were engaged in harvesting ripen crop. There are two agricultural lands namely, gut no.293 and 294. Both lands adjoin each other. A civil suit is pending in respect of one of the lands. As such, there was a dispute between PW 1 - Baba on one hand and the appellants, on the other. PW 1 - Baba visited the lands with farm-labourers in three tempo/s, so as to harvest the riped crop and carry it to Nanded. This triggered the incident. There is no evidence to indicate PW 1 - Baba to be the exclusive owner of those lands nor is there the evidence to infer him to have been in exclusive possession of the said lands and the crop that was being harvested, had, in fact, been raised by him. PW 1 - Baba appears to have deposed only his side of story.

18. PW 16 – Investigating Officer has admitted that A2 had immediately approached the police station and lodged a report, alleging PW 1 – Baba to have douzed her with kerosene. A station diary entry to that effect is placed on record. She was referred for medical examination. It appears that the Investigating Officer made no enquiry/investigation in that regard.

19. The fact remains that the incident is a fall-out of the dispute over agricultural land. Since there is nothing to indicate PW 1 – Baba to have exclusive possession over the lands and the crops that were being harvested were raised by him, it could be said that the incident took place in exercise of right of private defence of property. Moreover, a scuffle had preceded the incident. The same suggests it being an offence under section 308 of Indian Penal Code (attempt to commit culpable homicide) and not under Section 307 (attempt to commit murder)

20. A3 – Madhav, who set PW 1 – Baba ablaze, was behind the bars for little over seven years. He has been released on P.R. bond , on conclusion of hearing of this appeal.

21. Close reading of the FIR and the evidence of PW 1 – Baba indicate that in the incident of setting him ablaze, only A2 and A3

were involved. Although the offence was committed in furtherance of common intention of all of them, A1 was attributed with overt-act of pelting stone. For this evidence of PW 1 - Baba, we do not find corroboration in the evidence of PW 15 - Aruna. We, therefore, propose to give A1 - Madhukar benefit of doubt.

22. In our view, A2 - Shobhabai and A3 - Madhav are proved to have committed offence punishable under Section 308 read with Section 34 of Indian Penal Code. It is reiterated that we could not conclude it to be an unlawful assembly, the common object of which, was attempt to commit murder of PW 1 - Baba. It is further reiterated that it is not known whether the co-accused (juveniles in conflict with law) have been convicted or not.

23. Section 308 of Indian Penal Code reads thus:-

308. Attempt to commit culpable homicide —

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

A3 - Madhav has already suffered imprisonment for the period more than prescribed under Section 308 of Indian Penal Code.

24. A2 – Shobhabai was in jail for 72 days. She is a lady. Considering her gender, we propose to sentence her to suffer rigorous imprisonment for the period, which she has already undergone.

25. In the result, the appeal partly succeeds. Hence, the following order:-

(i) The appeal is partly allowed.

(ii) The order dated 26.04.2018, passed by learned Addl. Sessions Judge-2, Nanded, in Sessions Case No.54 of 2012, convicting the appellants for the offences punishable under Sections 307 and 148 read with Section 149 of Indian Penal Code and consequently, sentencing them to suffer rigorous imprisonment for life and for two years, respectively, is hereby set aside. The appellants are acquitted thereof.

(iii) Instead, appellant nos.2 and 3 stand convicted for the offence punishable under Section 308 read with Section 34 of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for seventy-two days (already undergone by appellant no.2) and seven years, respectively, and to pay a fine of Rs.5,000/- (Five Thousand) each, in default, to suffer rigorous imprisonment for one month.

- (iv) Amount of fine deposited already by appellant nos.2 and 3, if any, be adjusted towards the payment of fine for conviction under Section 308 read with Section 34 of Indian Penal Code.
- (v) Bail bonds of appellant no.1 stands cancelled. Fine amount if paid, be refunded to appellant no.1.
- (vi) Since appellant no.3 was in jail for the period more than the sentence imposed against him, he need not surrender.
- (vii) The Criminal Appeal stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP