

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.2 OF 2003

- 1) Sampat Arjun Dangde,
Age-39 years,
- 2) Tulshiram Arjun Dangde,
Age-52 years,
- 3) Vikram Tulshiram Dangde,
Age-21 years,
- 4) Sakharam Tulshiram Dangde,
Age-19 years,
- 5) Mangal Sampat Dangde,
Age-35 years,

All Occupation: Agriculture,
Resident of-Ghugalwadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

...APPELLANTS
(Orig. Accused)

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon
Advocate for Appellants.
Mr. A.M. Phule, A.P.P. for Respondent.

...

WITH

**CRIMINAL APPLICATION NO.2477 OF 2016
IN
CRIMINAL APPEAL NO.2 OF 2003**

- 1) Sampat Arjun Dangde,
Age-52 years, Occu:Agriculture,
- 2) Tulshiram Arjun Dangde,
Age-65 years, Occu:Agriculture,
- 3) Vikram Tulshiram Dangde,
Age-34 years, Occu:Agriculture,
- 4) Sakharam Tulshiram Dangde,
Age-32 years, Occu:Agriculture,
- 5) Mangal Sampat Dangde,
Age-48 years, Occu:Household,

All R/o-Ghugalwadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

**...APPLICANTS
(Orig. Appellants)**

VERSUS

- 1) The State of Maharashtra,
- 2) Asrabai w/o Subhash Chavan,
Age-Major, Occu:Household,
R/o-Ghulewadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

...RESPONDENTS

...

Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon
Advocate for Applicants.

Mr. A.M. Phule, A.P.P. for Respondent No.1.

Mr.D.B. Rode Advocate for Respondent No.2.

...

WITH

**CRIMINAL APPLICATION NO.2264 OF 2016
IN
CRIMINAL APPEAL NO.2 OF 2003**

Ashabai w/o Subhash Chavan,
Age-Major, Occu:Household,
R/o-Ghugal Wadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

**...APPLICANT/INTERVENOR
(Orig. Appellants)**

VERSUS

- 1) Sampat s/o Arjun Dangde,
- 2) Tulshiram s/o Arjun Dangde,
- 3) Vikram s/o Tulshiram Dangde,
- 4) Sakharam s/o Tulshiram Dangde,
- 5) Mangal Sampat Dangde,

All above Major, Occ:Agriculture,
R/o-Ghugal Wadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

- 6) The State of Maharashtra,
Through the office of Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad.

...RESPONDENTS

...

Mr.D.B. Rode Advocate for Applicant.
Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon
Advocate for Respondent Nos.1 to 5.
Mr. A.M. Phule, A.P.P. for Respondent No.6.

...

WITH

**CRIMINAL APPLICATION NO.2610 OF 2016
AND
CRIMINAL APPLICATION NO.2609 OF 2016
(IN
CRIMINAL APPEAL NO.2 OF 2003)**

Ashabai w/o Subhash Chavan,
Age-40 years, Occu:Household,
R/o-Ghugalwadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

**...APPLICANT
(Orig. Complainant)**

VERSUS

- 1) Sampat Arjun Dangde,
Age-39 years, Occu:Agriculture,
- 2) Tulshiram Arjun Dangde,
Age-52 years, Occu:Agriculture
- 3) Vikram Tulshiram Dangde,
Age-21 years, Occu:Agriculture
- 4) Sakharam Tulshiram Dangde,
Age-19 years, Occu:Agriculture
- 5) Mangal Sampat Dangde,
Age-35 years, Occu:Agriculture,

All R/o--Ghugalwadgaon,
Tq-Shrigonda, Dist-Ahmednagar.

- 6) The State of Maharashtra.

...RESPONDENTS

...
Mr.Babanrao N. Palve Advocate for Applicant
in both the Applications.
Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon
Advocate for Respondent Nos.1 to 5.
Mr. A.M. Phule, A.P.P. for Respondent No.6.
...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 25TH APRIL,2016.

DATE OF PRONOUNCING JUDGMENT: 9TH JUNE, 2016.

JUDGMENT :

1. The Appellants – original accused Nos. 1 to 5 (hereafter referred as “accused”) have been convicted in Sessions Case No.141 of 2002 by First Ad-hoc Additional Sessions Judge, Ahmednagar, on 13th December 2002 for offence punishable under Section 143 read with Section 34 of the Indian Penal Code, 1860 (“IPC” in brief) and sentenced to suffer rigorous imprisonment for two months and fine of Rs.300/- each. In default, they are liable to suffer simple imprisonment for fifteen days each. They have also been convicted for offence

under Section 506 read with 34 of IPC and sentenced to suffer rigorous imprisonment for five months and fine of Rs.300/- each, in default to suffer simple imprisonment for fifteen days each. Under Section 436 read with 34 of IPC, they are convicted and sentenced to suffer rigorous imprisonment for two years with fine of Rs.3000/- each and in default to suffer simple imprisonment for five months each. They came to be acquitted of offence punishable under Section 323, 504 read with 34 of IPC. The sentences were directed to run concurrently. Rs.9000/- from the fine amount, if paid, is to be made over to the complainant Asha Subhash Chavan (PW-1) as compensation. Being aggrieved, the present Appeal is filed.

2. The case of prosecution, in nut-shell, is as follows:

(A). On 24th July 2002 at about 1.35 a.m. Complainant Asha Subhash Chavan, resident of

Ghugalwadgaon Shivar (Tq-Shrigonda, Dist-Ahmednagar) filed First Information Report (FIR) with Shrigonda Police Station and Crime No.193 of 2002 came to be registered. The FIR (Exhibit 31) was to the following effect:

. Complainant reported that she resides at the Shivar mentioned above along with her husband and four children. Nearby her mother-in-law Saibai (PW-4) and her father-in-law Rupchand reside separately. Adjoining nearby there is field of accused No.1 Sampat Arjun Dangde. The FIR refers to an earlier incident in the afternoon of 23rd July 2002 of scraping of common Bandh, which led to quarrel and accused No.5 Mangal assaulted the complainant. Regarding that, the complainant had already filed another FIR (and a separate case was pending at the time of trial).

. Regarding the incident relevant for present matter, FIR states that after report

regarding the afternoon incident was filed, the complainant came back home at about 8.30 p.m. and was talking to her parents-in-law. The husband was watering onion in the field. While they were talking, the complainant heard her dog's barking and coming out she saw that her husband was coming running towards house and he was being followed by the accused persons. FIR names all the five accused. It is stated that her husband called out to her that these people have come to beat them and so she should run. Consequently, she and her husband ran towards the debris of well in the field of one Eknath Pawar and the accused could not find them. The accused consequently returned towards the house of the complainant. In short-while they heard shouts of her parents-in-law and saw their house had been put to fire and the accused were shouting and abusing loudly as to why the complainant and her husband had hidden and they should come out and accused will throw them in the fire. In the light of the fire, the

complainant and her husband saw the accused going towards their own home and thus she and her husband came back near their house. They saw that the residential "*Chapper*" (i.e. thatched hut) of residence and portion where animals are kept had fully burnt. They came to know from their parents-in-law that when they ran and the parents-in-law sat in front of house on the otta, the accused persons came there and beat them by kicks and blows and holding them by feet, they had put them near the sugarcane crop and told them if they shout, they would be killed. The parents-in-law told that accused No.2 Tulshiram and accused No.1 Sampat had put the *Chapper* i.e. thatched hut to fire with the help of match stick and accused No.3 Vikram, accused No.4 Sakharam and accused No.5 Mangal had spread the fire with the help of "*Pacharat*" (i.e. dry leaves of sugarcane). In the said fire, household articles, bags of grains, clothes, Rs.10,000/- and other articles got burnt. Complainant reported that she along with her

husband and parents-in-law had come to the police station and the parents-in-law were required to be sent to the hospital. She thus, accordingly filed the FIR which came to be registered as mentioned above.

(B). The offence was registered by A.S.I. Baburao Jape (PW-7). He had issued Yadi Exhibit 43 to send the parents-in-law to the hospital. The investigation was done by P.S.I. Rajendra Padwal (PW-8). It appears that in the night itself this I.O. went and the accused Nos. 1 to 4 came to be arrested. At dawn he prepared the Spot Panchnama (Exhibit 33). Statements of witnesses were recorded. Accused No.5 had obtained anticipatory bail. The I.O. took steps to get map of scene of offence prepared. The same was prepared by Circle Inspector Ramchandra Vetral (PW-6). Upon investigation, offence came to be registered.

3. Charge was framed against the accused

persons for offences mentioned. They came to be convicted under Section 143, 506, 436 read with 34 of IPC and acquitted of the rest of the Sections.

4. The prosecution brought on record evidence of eight witnesses to prove the charge. The defence of the accused is of total denial. According to them, the complainant had enmity with the accused persons and because of the same, false case has been filed.

5. Against the conviction the present Appeal claims and it has been argued by the learned senior counsel Shri Hon for the accused that evidence shows that there was admitted enmity between accused persons and the complainant and in the earlier part of the day itself the complainant had filed complaint against accused No.5 Mangal regarding another incident. It was dark night and the witnesses could not have seen the accused persons. The cross-examination of witnesses showed

that the witnesses were exaggerating the incident, keeping in view the contradictions and omissions. Although the complainant claims that her mother-in-law Saibai was injured near her nose, PW-4 Saibai did not claim so. The learned senior counsel took me through the cross-examination of witnesses to point out the contradictions and omissions. According to the counsel, at some distance from the spot, other people were also residing and still no independent witness has been examined. There was no direct evidence available regarding who started the fire. There was no medical evidence of injuries of PW-3 and PW-4, although it is stated that the incident went on for 10 – 15 minutes.

6. When this Appeal came up for hearing, Criminal Application No.2477 of 2016 was filed to compound offence. Criminal Application No.2264 of 2016 was filed seeking to add the complainant as party Respondent and requesting to release the

accused on the basis of sentence already undergone. I had passed orders on 25th April 2016 directing the accused and complainant to appear before the Registrar (Judicial) for recording of the alleged compromise and I had made it clear that as far as the question whether or not to allow compounding of non compoundable Sections, this Court would take necessary decision after receiving report of the Registrar. I had directed that in the meanwhile I will proceed to hear the Appeal. The Appeal was accordingly finally heard on 25th April 2016 itself and reserved for Judgment. Subsequently report of Registrar was received regarding recording of the compromise. On 3rd May 2016 the report received was kept on record and as the arguments were already over, the matter was reserved for Judgment. Subsequently, on 6th May 2016, the complainant has filed another Criminal Application No.2610 of 2016 with the assistance of another Advocate resiling from the said compromise giving various reasons and that she was misled.

Criminal Application No.2609 of 2016 was filed by her to engage another Advocate. As the offences under Section 143 and 436 of IPC are even otherwise non-compoundable and as the facts of the matter would show that there were also other persons injured and affected by the incident like PW-3 Subhash Chavan and the parents of PW-3 Subhash, looking to the above developments, I would simply ignore the compromise tendered earlier which was earlier recorded before Registrar but resiled and this Court had yet not accepted it or acted upon it.

7. The learned A.P.P., in reply to the arguments of the learned senior counsel for the accused, submitted that there is evidence of the complainant based on the FIR and she was corroborated by other witnesses. The offence of arson is serious offence and has social impact and looking to the evidence and the reasons recorded by the trial Court, the Appeal deserves to be

rejected. According to the learned A.P.P., the accused deserve to be convicted and have been rightly convicted and sentenced.

8. It would be now appropriate to refer to the evidence available in this matter and considering the law with facts whether the Judgment as passed by the trial Court needs to be maintained or is required to be disturbed.

9. Before discussing the incident, it would be appropriate to keep in view the spot of incident. The evidence shows that the complainant along with her husband and children had made a *Chapper* or thatched hut and was living in the field, which the agriculturist refer as "Vasti". Such "Vasti" in the field is normally single house in the field of the person who has made "Vasti" and is residing there. The Spot Panchnama Exhibit 33 has been proved by PW-2 Janardhan Pawar. No doubt he is father of the complainant Ashabai.

However, there is other evidence available from PW-8 PSI Rajendra who had early morning gone to the spot and prepared this Spot Panchnama. Other than that there is evidence of PW-6 Ramchandra Vetel who also prepared sketch of the spot Exhibit 41, may be after about 3 months, but even at that time he had found that the burnt *Chapper* was there on the spot. Apart from the Spot Panchnama, in the evidence of witnesses also various details about the spot have come on record. Firstly referring to the Spot Panchnama Exhibit 33 what appears is that the *Chapper* was in the filed Gut No.30 at Ghugalwadgaon. It was a hut of 20 ft. X 10 ft. length and width facing North. There were four feet height walls. The thatched roof appears to have been of *Pacharat* i.e. dry leaves of sugarcane. In the burnt *Chapper*, iron cot was found which had bent due to burns. Watch and other household articles were also found to have burnt in the *Chapper*. Part of *Chapper* where animals are tied, was also burnt. Babool tree and Neem tree

along with wheel of the bullock cart was also found to have burnt. Coconut tree in front of the *Chapper* had also burnt. As per the Spot Panchnama, the loss of household articles appeared to be of the extent of Rs.25,000/-.

. The Spot Panchnama shows that on the Eastern side there was field of one Harichandra Gopalrao Chavan. To the West 30 ft. there was field of complainant. On the Northern side there was coconut tree and toilet and there was field of the complainant. From the *Chapper* at 70 ft. there was tamarind tree where there was *Chapper* of Rupchand Chavan (father-in-law of the complainant). To the South of the *Chapper*, there was field of complainant having sugarcane crop.

. In the cross-examination of complainant she was asked and she stated that she does not understand East West etc. but knows sunrise and sunset. She deposed that there is Chari No.12

towards the sunrise side of her house and the said Chari is border of village Andhalgaon. The way to the Vasti of complainant was from Ghugalwadgaon to Andhalgaon road. She stated that she could not say if their land in which her husband was making irrigation at the time of incident was after 3 to 4 survey numbers. She denied that, that field was half furlong away. She accepted that there was a Vasti of one Gorakh Awasar, servant of Sahebrao Lokhande, which was in the adjoining field. However, her cross-examination shows that the said Vasti of said Awasar got burnt after 2-4 days of the present incident and the said person left his Vasti and went away to another place.

. PW-5 Nivrutti Kharade (the grand son of PW-4 Saibai) admitted in cross-examination that the road of Andhalgaon village was situated towards East of the house of his grand father. The Spot Panchnama has already recorded that said Rupchand had *Chapper* at about 70 ft. from the

Chapper of the complainant.

. PW-6 Ramchandra, Circle Inspector prepared the sketch on 24th October 2002. He states that he had gone to the spot and seen at that place the burnt *Chapper*. He says that he prepared the sketch map. No doubt in the cross-examination he accepted that for preparing sketch map, he had taken the help of Spot Panchnama. However, the sketch map shows particulars other than what is mentioned in the Spot Panchnama also, like another tamarind tree at 50 ft. towards North of the present *Chapper*. The *Chapper* of the parents-in-law as per the sketch prepared by PW-6 Ramchandra would be some-what to the North-East side. In the cross-examination PW-6 accepted that to all the four sides of the Vasti of the complainant, there are houses of other people at about 200 ft. - 250 ft.

10. From the above discussion, what emerges

is that in the field the complainant had made Vasti or her residence and she was living with her family in the *Chapper*. The nearest other *Chapper* appears to be of her father-in-law, which is at a distance of about 70 ft. as per the Spot Panchnama. In the cross-examination of witnesses who are basically rustic villagers, the cross examiner at places has taken distances which appear more to be on surmises and estimation of concerned witness. However, looking to the Spot Panchnama and the above discussion, the picture emerges is as above.

11. Keeping the above spot in view, now it would be appropriate to discuss the evidence of the complainant herself. Regarding the present incident, the evidence of the complainant shows that she returned to her house after filing complaint regarding the afternoon incident in the evening. She deposed that she came back at about 8.15 p.m. and was sitting in the house with her

parents-in-law and her husband was irrigating the onion crop. She was talking with her parents-in-law and noticed that dog was barking and so she says that she saw towards the concerned side as to why the dog was barking and found that accused Nos. 1 to 5 were running behind her husband and her husband, while running towards her Vasti, asked her to run as accused had come to beat them. The evidence of complainant is that thereupon she and her husband ran towards the upper side to the debris of well belonging to one Eknath Pawar and hid. She deposed that thereafter they heard noise of shouts of her parents-in-law and so they stood up. She says that she saw fire flames at the side of their house and accused Nos. 1 to 5 were there. She saw them in the light of fire flames. According to her, accused Nos.1 to 5 were shouting and saying as to why complainant and her husband concealed themselves and further said that they should come out so that the accused would throw them in the fire flames. Her evidence is that in

the light of fire flames, she saw the accused had thrown her in-laws holding them by feet, near the sugarcane crop and told them that if they would shout, the accused would throw them in the fire flames. According to her, after this the accused persons left the spot while abusing. She deposed that thereafter she and her husband went near the in-laws.

12. The evidence of the complainant further is that when she and her husband went near the in-laws, they told them that accused Nos. 2 to 5 had set the *Chapper* on fire. The whole *Chapper* had got burnt. Her evidence gives details as to the articles which were there in the house and which got burnt. She further deposed that the coconut tree in front of the house and the Babool tree and Neem trees also suffered burns. The evidence is that she along with her husband and in-laws went to the police station and filed FIR Exhibit 31.

13. I have already in Para 2 (A) reproduced the contents of the FIR Exhibit 31 while referring to the case of the prosecution. If those contents are kept in view and this evidence is seen, the evidence gets support from the FIR which was filed instantly. It was almost immediately filed after the incident took place, considering the fact that some time may have been required to go from Ghugalwadgaon to Shrigonda Police Station. It also appears that the police asked that the old parents-in-law be got first medically examined and then the FIR was registered. The cross-examination of the complainant shows that at the time of incident her children were sleeping in the house of the parents-in-law. This is corroborated by PW-4 Saibai also. It appears that the children would normally sleep there. In evidence complainant gave estimate of that house of her in-laws to be at about 100 ft. To repeat, the Spot Panchnama has stated that the distance was 70 ft. In the cross-examination of the complainant she

accepted that there were lands of Bhausahab Chavan and Haribhau Chavan adjoining to her land. However, she denied that they had made "Vasti" in the field. Even if they would have made "Vasti" in the field and even if their evidence would have been available, the fact remains, and as can be seen from the cross-examination of PW-4 Saibai, the said Haribhau Chavan is also cousin brother of her husband Rupchand. Thus, even if that witness was to be brought and examined, the accused would still have the argument that he is relative. Looking to the evidence, the fact remains that even if Haribhau Chavan had a field nearby, there is no evidence that he had nearby "Vasti" or *Chapper* or that he was residing there.

14. In the cross-examination the accused brought on record the admissions of the complainant that she had filed case against one Sahebrao Lokhande and that she had filed case against one Bhausahab Chavan and Harischandra

Chavan also as she had dispute of way. Even if such cases were required to be filed by her, that by itself would not mean that if her house is burnt down, she should be suspected in her complaint. The complainant fairly admitted in the cross examination regarding her earlier disputes with the accused persons and fairly accepted that she did have inimical relations with accused Nos.1 to 5 since many years. Looking to her evidence, although it can be said that she had strained relations with the accused, however burning down of residential house in which household articles get burnt, where the person has been residing, is serious matter and only because of earlier strained relations, the witness cannot be doubted specially in the background where she immediately went and filed FIR to the police station and when the police also came down in the early morning, and did find the *Chapper* of the complainant burnt with household articles destroyed as per the Spot Panchnama. The Police Official PW-8 Rajendra

Padwal was only discharging his official duty and there is no reason not to believe him that in the morning itself he found that the house has been burnt down. No doubt, it has been tried to suggest to the complainant that there is some Head Constable Popatrao Sudrik in Shrigonda Police Station and that he is related, but there is no admission by anybody accepting existence of any such Head Constable or that he is related to the complainant.

15. In the cross-examination, the complainant admitted that the debris of the well of Eknath Pawar was at a distance of 400 ft. Even if this is so, if the complainant had run up there and hid earlier, does not mean that in the duration of the whole incident she continued to remain there. Her evidence shows she and her husband standing up from place of hiding and witnessing further incident when fire started.

16. In the further cross-examination of the complainant, she was asked and she stated that she had told police while lodging complaint that they heard shouts made by her in-laws and thereafter she herself and her husband stood up and she saw in the light of fire flames that the accused Nos.1 to 5 were present there. In the cross-examination she was asked and she stated that she cannot state the reason as to why the above facts do not occur in her complaint Exhibit 31. The FIR Exhibit 31 bears thumb impression of the complainant. She appears to be illiterate. The cross-examination does not show that the contents of FIR were read over while taking such admission. It appears that the learned Judge of the trial Court was not careful and allowed such cross-examination to come on record. Had he seen the FIR (contents of which I have already reproduced earlier), he would not have allowed such cross-examination to come on record. It may be repeated that the FIR clearly contain wordings that after the complainant and

her husband hid near the debris of the well, the accused went back towards her house and in short-while they heard shouts of her mother-in-law and father-in-law and saw the house on fire and the accused were shouting loudly and abusing as to why complainant and her husband are hiding and they should come in front and the accused would put them in fire. There is repeated sentence that in light of said fire, the complainant saw the accused going towards their house. Had the trial Judge gone into these details in the FIR, such cross-examination as in Para 7 of evidence of PW-1 Ashabai could not have been permitted. In fact the trial Judge, even in the Judgment, did not notice this and wrongly observed in Para 6 of his Judgment that Exhibit 31 nowhere states that complainant saw the accused Nos. 1 to 5 in the light of fire flames. The learned Judge of the trial Court had taken up appreciation of evidence of the complainant and her husband PW-3 Subhash together and in the process appears to have missed

and mixed the facts.

. It is stated that it was dark night. But then evidence shows that before incident started PW-3 Subhash and PW-5 Nivrutti were watering crops in their respective fields which is not in dispute. Naturally, they had trained eyes to identify co-villagers when they come near. Material part of incident took place near *Chapper* and once fire started there was further visibility.

17. Thus keeping in view the cross-examination of the complainant, I do not find that she can be said to be shattered regarding her evidence stated in the examination-in-chief, which is fully supported by the instant FIR which she had filed.

18. To corroborate the complainant, the prosecution examined PW-3 Subhash Chavan, the

husband of the complainant. PW-4 Saibai is the mother-in-law. It appears from the evidence of PW-4 that her grand son Nivrutti Kharade was also residing with her. The evidence of Nivrutti has also been brought on record as PW-5. I have gone through the evidence of these three witnesses. In the cross-examination of these three witnesses, certain contradictions and omissions were brought on record by the accused. Having gone through the cross-examination of these witnesses and the Judgment of the trial Court, I am, while referring to the evidence of these witnesses, ignoring portions which are part of the contradictions or omissions and I am referring to only parts of their evidence without the contradictions and omissions, to see if these witnesses are able to corroborate the complainant in material particulars.

19. The evidence of PW-3 Subhash Chavan, husband of the complainant, shows that he and the

complainant were residing in the Vasti at their land and his parents were residing in separate Vasti near tamarind tree in their land. He deposed that on 23rd July 2002 at about 8.30 p.m. he was irrigating his onion crop in his land and at that time the accused Nos.1 to 5 arrived and came towards his house. His evidence shows that he reached near his house and asked his wife to run and then he and his wife ran towards the well of Eknath Pawar and concealed themselves behind the debris. He deposed that he heard shouts of his parents and saw fire flames. He deposed that the accused left the spot making shouts and he returned back to his house. According to him, his parents told them that accused Nos.2 and accused No.1 had set the *Chapper* on fire with lighted match stick and that accused Nos.3, 4 and 5 had put burning *Pacharat* on the *Chapper*. He deposed that he then went to the police station along with his parents. His evidence is that *Chapper* was completely burnt. He gave details of the loss of

Rs.10,000/- and domestic articles in the fire. According to him, when they reached the police station, the officer was not present and the other police official asked them to first go to the dispensary and so they went to the dispensary and after returning back, complaint was lodged. His cross-examination shows that at the concerned time, he was watering the onion crop in Gut No.35. Reading evidence of the witnesses, what appears is that this Gut No.35 was nearby to the Gut No.30 at some distance where incident took place.

20. Then there is evidence of Saibai, mother-in-law of the complainant, who deposed that the complainant and her husband reside near their house. They have separate houses. According to her, the incident took place in the evening time. Her son (i.e. PW-3) was present in land for supplying water to onion crop. Her evidence shows that the son had asked his wife to run away as accused had come to beat them. Her evidence shows

that the accused did not find complainant or her husband and they came back. According to her, thereafter the accused beat her and her husband. She deposed that they were beaten by kicks and fists and they were thrown in the sugarcane crop. Her evidence shows that accused No.1 Sampat and Accused No.2 Tulshiram set the *Chapper* on fire with lighted match stick. She further deposed that accused Nos.3 to 5 used burning *Pacharat* to add to the fire and the entire *Chapper* containing household articles and the coconut tree were burnt. Her evidence is that thereafter the accused left the spot and the complainant and her husband returned near the spot. She has also deposed that they had then gone to Shrigonda Police Station and as somebody was not present, they were asked to go to dispensary and after the medical officer examined her and her husband, they returned and the complaint came to be lodged. The evidence of this witness regarding the injuries caused to her and her husband is not supported by the medical

evidence which could have been there as they had gone to the medical officer, but the same was not brought on record and thus the offence under Section 323 of IPC was not found to be established. I thus need not dilate on that part of incident regarding causing injuries to this witness. However, when I read the other evidence, there is no reason to discard her evidence regarding the accused persons setting the hut of the complainant on fire. There are no contradictions, omissions in that regard. She corroborates the complainant on this count. She denied the suggestion that her own *Chapper* or house was 500 – 600 ft. away. She accepted that she got terrified due to the beating and could not understand as to what was going on but she denied that they had concealed themselves in the sugarcane crop due to fear of further beating. She denied that her evidence is false that the accused had come running to the house of her son and they had set the *Chapper* of complainant on fire. The

contradictions, omissions in the evidence of this witness relate to periphery details but not with regard to the main incident of the accused putting the house of complainant to fire.

21. Then there is evidence of PW-5 Nivrutti. He is the grand-son of PW-4 and the evidence of PW-4 and PW-5 shows that he is cultivating the land of his grand parents and was residing with them. He has also corroborated the complainant that incident took place on 23rd July 2002 at about 8.30 p.m. He deposed that he was giving water to the onion crop in the land and at that time PW-3 Subhash was also irrigating his own onion crop. He deposed that present accused Nos.1 to 5 came there and ran behind PW-3 Subhash. As the accused chased PW-3, this witness says that PW-3 and his wife went off near the well of Eknath Pawar. His evidence shows that the accused persons had come near the *Chapper* of the complainant and put the same to fire. His evidence shows that after the

accused left the spot, PW-3 Subhash and the complainant came back near the spot and then they had gone to file complaint. In the cross-examination of this witness, he was asked and he stated that his statement was recorded by the police. He accepted that he had stated to police in his police statement that 4-5 persons ran away in the dark. This suggestion was made to the witness without referring to the context. It was not asked "if it happened" that he saw 4-5 persons running away in the dark. What is brought on record is merely that he "stated" to police that 4-5 persons ran away in the dark. Portion 'A' of the concerned statement is before Court. The context would show that this related to he seeing 4-5 persons running after PW-3 and he then going to the spot to see what was happening. Thus such statement without reference to context, cannot be mis-read to give benefit to the accused. In his cross-examination from his statement to the police portion marked 'A' was got proved which was

relating to PW-3 Subhash telling him as to what was the loss he sustained. Regarding that portion, this witness stated that he had not told the same to the police. Thus, what the witness claimed is that he did not tell the police that PW-3 Subhash told him details of the loss he sustained, in the fire.

22. Thus, having gone through the evidence of PW's 3 to 5, ignoring the contradictions and omissions which are regarding periphery details, I find that these witnesses still corroborate the complainant in material particulars regarding the incident of putting the house to fire and criminal intimidation by Accused. The complainant herself cannot be said to be shattered as her evidence remained unshaken in the background of the FIR which she had filed.

23. Looking to the details of the incident, execution of the same may not have lasted for

long. I keep in view the fact that there is no immediate neighbour as such residing there, except the parents-in-law and PW-5, at their *Chapper* at a distance of about 70 ft. Thus, if no other independent witness is available, that by itself is not fatal. No doubt the complainant had enmity with the accused but, as it is said, enmity is double edged weapon. The same enmity could be reason why accused behaved in the manner in which it has been alleged by the complainant. The evidence also shows that in the earlier afternoon there had been incident of quarrel between the complainant and accused No.5, due to which the complainant had gone ahead and filed complaint in the police station. This may have also agitated the accused persons leading to the present incident. Although PW-1 and PW-3 to PW-5 are related witnesses, the fact that in the night itself FIR was filed and in the morning PW-8 Rajendra Padwal (PSI) found the hut burnt with household articles destroyed, lends credence to

the grievance complainant was making.

24. I have gone through the reasons recorded by the trial Court. The trial Court accepted the evidence regarding accused forming an unlawful assembly, the common object of which was to abuse and threaten the complainant and that they did put the house of complainant to fire. Trial Court accepted that the accused did threaten the complainant to kill. Consequently, the accused were convicted under Sections 143, 506, 436 read with 34 of IPC. Looking to the reasons recorded by the trial Court, although I find that it wrongly read the evidence of PW-1 complainant to some extent, the conclusions drawn by the trial Court, however, are correct. The accused persons are rightly convicted of the offence under Sections 143, 436, 506 read with 34 of IPC.

25 (A). There is no substance in the Appeal. The Appeal is dismissed. The accused Nos.1 to 5

shall surrender to their bail bonds. The trial Court shall ensure execution of the sentences.

(B). Criminal Application Nos.2609 of 2016, 2610 of 2016, 2264 of 2016 and 2477 of 2016 do not survive and are disposed of.

[A.I.S. CHEEMA, J.]

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