

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

CRIMINAL APPEAL NO.715 OF 2003

- 1) Bapurao s/o Rambhau Sayamber  
Age 46 years, Occ. Agri.,  
R/o Parodi, Tq. Ashti,  
District Beed.
- 2) Dattu s/o Bhiku Sayamber  
Age 36 years, Occ. Agri.  
R/o Parodi, Tq. Ashti,  
District Beed.
- 3) Arjun s/o Rambhau Sayamber,  
Age 41 years, Occ. Agri.  
R/o Parodi, Tq. Ashti,  
District Beed.

... APPELLANTS  
(Original Accused)

**VERSUS**

The State of Maharashtra  
(Copy to be served on  
Public Prosecutor, High Court  
of Judicature of Bombay,  
Bench at Aurangabad)

... RESPONDENT

.....  
Shri V.R. Dhorde, Advocate holding for  
Shri R.N. Dhorde, Advocate for appellants  
Shriu S.M. Ganachari, A.P.P. for respondent/ State  
.....

CORAM:    A.I.S. CHEEMA, J.

DATED:    8th June, 2016.

Date of reserving judgment : 25th April 2016

Date of pronouncing judgment : 8th June, 2016.

**J U D G M E N T :**

1.            The appellants - original accused Nos.1 to 3 are agitated by the judgment of conviction and sentence passed against them in Sessions Case No.133/2002 by 4th Adhoc Additional Sessions Judge, Beed, which is dated 25.9.2003. They have been convicted of offence punishable under Section 436 read with Section 34 of the Indian Penal Code, 1860 (I.P.C. in brief) and sentenced to suffer rigorous imprisonment for three years and fine and they have also been convicted for offence under Section 506 read with Section 34 of the I.P.C. with sentence of rigorous imprisonment for three months and fine.

2.            In nutshell, the case of prosecution is as follows :

(a) The complainant Manisha Rajendra Sayamber (P.W.1) filed F.I.R. Exh.22 with Police Station, Ambhora on 24.3.2002 and Crime No.15/2002 came to be registered at 2.15 p.m. She reported that, she

resides near village Parodi (Taluka Ashti) at about half Km. from the village by having a thatched roof house on the field. She has a son, daughter and husband living with her. The husband drives tempo. Nearby there is no other residence., She claimed that, she has old strained relations on the count of agricultural field with the accused persons, who have been troubling her and her husband for one or the other reasons. When her husband is not at home, these people come and give trouble. The F.I.R. claims that, on 23.3.2002, Saturday night at about 2.00 a.m. she was sleeping in the house along with her daughter and the accused persons came and called out to her asking her to come out. She did not go out and at that time, they kicked on the door and said that if she does not come out, they will burn the thatched roof. So saying, they put fire to the thatched roof and it started burning. At that time, she came out with daughter and saw these people going in the light of the fire and moonlight. She ran shouting towards the village and the accused persons went away towards their house from behind. All the villagers gathered. By that time, the whole roof had

burnt. There were two bags of jawar, one bag of bajra, one bag of groundnut and empty sacks, beddings, clothes and utensils, which all got burnt. 4 saris, 4 dresses worth Rs.10,000/- were destroyed. Rs.15,131/- kept in plastic box were also burnt. Thus, the complaint.

(b) The complaint was registered by P.W.6 A.S.I. Pandurang Shelke. The investigation was handed over to P.W.7 A.P.I. Shankar. He went to the spot and did panchanama (Exh.34). Statements of witnesses were recorded. Accused came to be arrested. Completing the investigation, charge sheet came to be filed.

3. Prosecution brought on record evidence of the complainant Manisha (P.W.1) supported by P.W.3 Kisan Parakale supporting the complainant that, after the fire was started, she was running towards the village shouting and that he saw the accused going away from near the spot. P.W.4 Ramrao Parakale and P.W.5 Shankar Thorat were examined to prove that, after the fire took place, they had heard the complainant saying that it was the accused persons who had put the house to fire. P.W.4 Ramdas turned hostile, but in cross-examination, supported the

prosecution while P.W.5 Shankar remained hostile as to what the complainant was saying. P.W.2 Ishwar is panch of the spot panchanama Exh.24.

4. The defence of the accused persons is that of denial. According to them, because of the strained relations, false case has been filed against them.

5. Trial Court, after discussing the evidence, concluded that, the complainant was sufficiently corroborated by other witnesses and the spot panchanama and that the offence was established. Consequently, the trial Court convicted the accused persons.

6. Against the conviction, this appeal is filed contending and the learned counsel for accused argued, that the trial Court wrongly observed that, there is no material omission or contradiction. It was wrongly held that, delay in filing of the F.I.R. was satisfactorily explained. P.W.3 Kisan Parakale should have been held to be interested witness. There was complaint against son of P.W.3, filed by the accused No.3 Arjun and the strained relations were not properly appreciated. The appreciation of the evidence of the trial Court was wrong. The

evidence of P.W.4 was wrongly ignored where he deposed that the complainant was heard shouting that "somebody" has burnt the house. According to the learned counsel, the explanation of the delay that the husband was not at home, as given by the complainant, was not stated in the F.I.R. The complainant, after the incident, had stayed in the night at the house of P.W.3 Kisan Parakale. She tried to suppress the fact. Merely because the accused were seen running would not be enough evidence to hold that they had put the house to fire. There was no evidence that the accused actually put the house to fire. The evidence that all the three accused called out and all the three accused threatened and all the three accused put the house to fire was unacceptable as it is vague. Which accused exactly did what has not come on record. While showing the spot, the complainant did not point out as to where the said amount was kept which she claims to have burnt. This, although other things were pointed out.

7. Against this, the learned A.P.P. for State supported reasons recorded by the trial Court. According to the A.P.P., it was not possible for the complainant to see the accused persons before the house was put to fire and thus, if evidence on that count is not available, it is not material. In the incident, the

whole house was burnt. P.W.3 has supported the complainant to depose that he had seen the accused going away from the spot. The learned A.P.P. argued that, the appeal deserves to be dismissed.

8. I have gone through the evidence brought on record by the prosecution and I have also gone through the reasons recorded by the trial Court to convict the accused persons. The Trial Court referred to the evidence of the complainant P.W.1 Manisha and observed that there was no material omission or contradiction in her evidence. Regarding the delay, the trial Court considered the evidence of complainant that she met her husband only at 1.00 p.m. on the next day and then they had filed complaint and so, according to the trial Court, the delay was satisfactorily explained. The admission of the complainant in cross-examination that the complaint was written in the house of P.W.3 Kisan Parakale was passed off by the trial Court saying that it was only a slip of tongue as the P.W.6 A.S.I. had stated that the husband of the complainant wrote the F.I.R. at the police station in his presence. The trial Court referred to the evidence of P.W.3 Kisan Parakale to observe that he corroborated the complainant that he had seen her running away from the burning house and accused were seen on spot. Reference was

made by the trial Court to charge sheet in R.C.C. No.43/2003, in which the accused No.3 Arjun is the complainant and one of the accused is son of P.W.3, with offence of rioting and assault. Trial Court reasoned that, if the accused had enmity with P.W.3, they would have burnt his house and not that of complainant. Trial Court found P.W.4 corroborating the complainant that after the incident she was referring to the names of the accused. Trial Court found that, although P.W.5 was partly hostile, his entire evidence could not be rejected. Trial Court observed that, there is enmity between the complainant and the accused. For such reasons, the trial Court discarded the rulings relied on by the accused and the trial Court accepted the evidence, and convicted the accused for offence of arson and criminal intimidation.

9. Looking to the submissions made and the evidence, and the reasonings recorded by the trial Court, it would be appropriate to see if the evidence is in fact appealing and if the offence is proved beyond reasonable doubts.

10. The evidence of complainant P.W.1 Manisha is that, she resides in the field in grass-made hut (spot panchanama shows it had walls of stone with thatched roof). According to her, she knows accused Nos.1 to 3. She deposed that, she and



her daughter were sleeping in the house in the night concerned. Her evidence is that, accused Nos.1 to 3 came to her house at about 2.00 a.m. in midnight. She claimed that, they asked her to open the door, but due to fear she did not open the same. She claimed, her husband had gone to Ahmednagar on that night. According to her, the accused gave three kicks on the door, but she did not open the same and so, accused said that husband was not in the house and so set fire to the grass-made hut-cum-house. She says, thereafter they set fire to the house. She stated that, when the hut started to burn, she opened the door and came out with her daughter and she saw accused Nos.1 to 3 in the light of fire and moonlight.

Thus, she wants to say that, before she came out of the house, she had not seen the accused. Naturally, she did not see as to who put fire to the house also. Although she claimed that accused Nos.1 to 3 came to her house and called out to her and claims that she was knowing these accused persons, she did not depose as to which accused stated what. She did not even claim that she could identify the voices of the accused persons. The evidence plain and simple is that she was in the hut and the three accused came, they called out to her to open the door and she did not open, and all accused stated that her husband is not

at home and the house should be set to fire and then the fire started. This is like saying that all the acts and talks were committed in unison. She even attributed three kicks on the door (as if one for each accused). The learned counsel for the accused is rightly arguing that such evidence should be treated as vague.

11. The evidence of complainant then is that, when she came out of the house, she saw the accused in the light of fire and moonlight and she claims that thereafter she rushed towards the village shouting and after making reference to the articles and cash burnt, she deposed that, she had lodged complaint to the police station. It has come in her cross-examination that the said hut is between village Parodi and Borowadi. The spot panchanama shows that, road has gone abutting the field where she was staying in the thatched hut. Evidence is that, the village Parodi has a population of about 2000-2500 people and there is also a police patil by name Nivrutti Sayamber. P.W.3 Kisan Parakale gave evidence in support of the complainant claiming that the incident took place at about 12.00 - 1.00 midnight. He claims that, he was at his house and the complainant Manisha came shouting that her house was burning. He deposed that, he went on the road and saw accused Nos.1 to 3 running away

towards village. In the cross-examination, omission was brought regarding the word 'running'. Thus, what remains is that, the P.W.3 claimed that he saw the accused persons going away. This Kisan claimed that he saw the fire and also saw that the complainant was rushing towards the village. He did not speak of complainant coming to him. In the cross-examination, the complainant accepted that, after the said incident, firstly she met this P.W.3 Kisan Parakale. She deposed that, he is her relative. Initially she denied that she stayed at the house of Kisan Parakale and only on next day went to the police station. P.W.3 Kisan also, in his evidence, did not claim that the complainant, after the incident, came shouting to his house. He deposed as if he saw her rushing away towards the village. In the cross-examination, rather he claimed that, after the incident, complainant went running into the village and after that, she did not meet him. In the further cross-examination, the complainant deposed that, at that night her husband was not at home and, therefore, she lodged complaint on next day. She deposed that, the complaint was written in the house of Kisan Parakale. Although the trial Court has passed off this evidence of complainant as a slip of tongue, I do not agree with the trial Court. Rather than slip of tongue it was blurting out of truth. F.I.R. clearly appears to be delayed and filed after deliberation.

If the evidence of P.W.1 complainant and P.W.3 Kisan is read together, there is feeling that, these persons are trying to hide facts. P.W.3 Kisan conveniently claimed lack of knowledge regarding pending case between the accused and his son in Ashti Court. It shows strained relations. The reasoning of the trial Court that if there were strained relations between the accused and P.W.3 Kisan, the accused would have burnt rather house of P.W.3 than that of the complainant is not appealing because there is admitted case of the complainant herself that she and her husband have disputes regarding property with the accused persons. In the F.I.R. Exh.22, the complainant clearly mentioned that, she and her husband have disputes with the accused persons regarding field property. However, in oral evidence, the complainant wanted to avoid these questions. In her evidence regarding the incident, she did not state as to why at such late hours as 2.00 a.m. the accused had come and what were they asking. Why they wanted her to open the door, is not stated. Whether they wanted to talk to her or they were agitated by any incident or what, nothing is there. If the accused wanted to put the hut to fire, it is unreasonable that they would expose their identity and unnecessarily call out to her and bang the door and then say that they will burn the house. The case of the complainant on this count, appears to be not inspiring

confidence. It would be unnatural conduct for the accused to reveal their identity by voice (when parties are known) and risk themselves. The complainant, in cross-examination, stated (in para 7) that, it was not true that there was quarrel between her husband and accused No.2 prior to the incident. She accepted that, accused No.2 is her real brother-in-law. She denied that, there were often quarrels taking place between her husband and the accused. Thus, although in the complaint it was mentioned that there was strained relations on the count of agricultural property, in the evidence complainant denied strained relations and wants the Court to accept her evidence that the accused persons simply came, shouted out, banged door and put the house to fire.

12. Then there is evidence of P.W.4 Ramdas, who, in his examination-in-chief, claimed that, hearing shouts he got up and found fire at the farm house of complainant. He deposed that he saw complainant rushing towards village shouting that her cattle shed was burnt by "somebody". Cross-examination of this witness shows that, the cattle shed of the complainant was 500 ft. away from his cattle shed. In the cross-examination by A.P.P., this witness stated that, the complainant was saying that cattle shed was put to fire by the accused. However, even this

witness admitted that, P.W.3 Kisan Parakale is his uncle. I have already mentioned that, complainant deposed that P.W.3 Kisan Parakale is her relative. Thus, they are all relatives. P.W.4 Ramdas admitted in cross-examination that after the incident quarrel had taken place between the son of P.W.3 Kisan and the accused. Thus, although P.W.4 was accepting the fact regarding quarrel between the accused and son of P.W.3, Kisan Parakale (P.W.3) himself pleaded ignorance to avoid the questions. P.W.5 Shankar was examined to show that the complainant was seen shouting referring to the name of the accused as people who burnt her house. He turned hostile and did not support the prosecution.

13. As regards delay, the incident took place in the night at about 2.00 a.m. and the evidence is that, the complainant had rushed to the village shouting regarding the fire. The F.I.R. Exh.22 claims that, all the villagers of the village assembled in the night itself. Admittedly the village has a police patil, but there is no material to show that the police patil went and reported the matter to the police station. The F.I.R. in this matter was not registered in the manner in which ordinarily police register offences. In this matter, although P.W.3 Kisan kept quiet, the cross-examination of complainant brought on

record the fact that, in the concerned night, the complainant had gone to his house and had stayed there. The complainant accepted that the complaint was written in the house of Kisan Parakale. The evidence of P.W.6 A.S.I. Pandurang in the cross-examination brought on record the fact that the complaint was written by the husband of the complainant. Although A.S.I. claimed that the husband wrote the complaint sitting in the police station, there is no reason coming on record as to why the husband had to write it at Police Station and why the P.S.O. could not have recorded the complaint. The complaint Exh.22 does not even bear endorsement of P.W.6 as "Before" him. Although P.W.6 wanted to say that it was not true that the complaint was already prepared and brought, looking at the complaint, it does appear to be one which was prepared and brought and filed. The thumb impression on the original complaint has endorsement of "Dastur" by some Baban Sonawale. Who is this Baban Sonawale is not clear. If the original document Exh.22 is perused, it contains overwriting regarding the date of document, which was converted from "23.3.2002" to read as "24.3.2002". In the third para also, regarding the date of incident, on time there is change of date which was earlier written as "22.3.2002". It was overwritten to read as "23.3.2002" and the time also has been added

subsequently. This is apparent on bare perusal of the original document.

14. Looking to all this evidence and the admitted strained relations, I find it risky to maintain the conviction. The complainant as well as the other star witness P.W.3 Kisan, I find to be risky to rely on as they appear to be suppressing fact or avoiding uncomfortable questions.

15. There is yet one more aspect. The evidence of the complainant herself shows that, the fields of the accused persons are adjacent to her field. The evidence of P.W.4 Ramdas is that, he was at his cattle shed in the night concerned, which cattle shed is at a distance of 500 ft. from the cattle shed of the complainant. Although P.W.3 Kisan did not state if he was also staying at farm house, his defence is that, he was staying 500-1000 ft. away from the house of complainant. In fact he claims that she is his neighbour. Thus, if the accused persons had field adjacent to the field of complainant, and if these witnesses could be nearby, only because the accused persons were seen in the vicinity would not be enough evidence to jump to the conclusion that the accused persons had put the house to fire. This is specially in the background of the evidence which I have already



discussed that the evidence of complainant as to what happened before start of the fire, is vague.

16. For such reasons, I am unable to agree with the reasons recorded by the trial Court and the conviction awarded.

17. Thus, the appeal is allowed. The conviction and sentence as imposed by the trial Court vide impugned judgment is quashed and set aside. The accused are acquitted of the offences punishable under Sections 436, 506 read with Section 34 of the Indian Penal Code, 1860. Their bail bonds are cancelled. Fine, if paid, be refunded to them.

(A.I.S. CHEEMA, J.)