

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

CRIMINAL APPEAL NO. 218 OF 2013

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| 1. | Shankar s/o Satwaji Harale
Age 65 years, Occu: Agri. | ... | Applicants |
| 2. | Vivek s/o Shankar Harale
Age 41 years, Occu: Agri. | | |
| 3. | Parvatibai w/o Shankar Harale
Age 61 years, Occu: Agri. | | |

All R/o Shivni (Ja), Tq. Loha,
At present Shobha Nagar, Nanded

VERSUS

State of Maharashtra
Through Police Station Loha,
Tq. Loha, Dist. Hingoli

Mr. Sachin S. Deshmukh, Advocate for the applicants

Mr. K. D. Mundhe, APP for the State.

CORAM : K. L. WADANE, J.
RESERVED ON : 28th August, 2018
PRONOUNCED ON : 3rd September, 2018

JUDGMENT:

1. This Appeal is preferred by the Appellants- original accused Nos. 1, 3 and 4 challenging the judgment and order dated 10.05.2013, passed by the learned Additional Sessions Judge, Kandhar, in Sessions Case No. 24 of 2010, thereby convicting original accused/Appellants for

the offence punishable under sections 436 read with 34 of the Indian Penal Code and sentencing to suffer R. I. for five years each and to pay fine of Rs.5000/- each. They are further convicted for the offence punishable under section 323 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/- each.

2. Brief facts of the case may be stated as follows:

- i. Accused No.1 Shankar Harale and Complainant PW-1 Namdeo Harale are the real brothers. They were residing separately. Their agricultural lands are adjacent to each other at village Shivni and there was dispute between them on account of boundaries of their respective land and cultivation of their shares. On 21.05.2009 PW-1 Namdeo, along with his two sons, went to Tahsil Office, Loha to attend the proceeding instituted against him. His wife PW-3 Dhondubai and daughter-in-law PW-4 Kanupatra were present in the hut situated in their land. At about 05.00 p.m. all the accused entered into the land of the complainant Namdeo and because of the old dispute, they started to abuse PW-3 Dhondubai and assaulted her by giving kick and first blows and pushed her,

due to which Dhondabai sustained injuries on her forehead. Accused persons set fire to the hut of the complainant. One Jaywant Harale (PW-7) and Shaikh Osman Maheboob(PW-5) separated the quarrel. Then, at about 10.00 p.m. the complainant and his sons returned back to their hut and found that it was burnt. Dhondubai has narrated the incident to her husband. On 22.05.2009, the complainant, alongwith his wife Dhondubai, went to the Police Station, Loha for lodging the complaint. Police Station officer referred the PW-3 to Medical Officer for her medical examination.

- ii. On 25.05.2009, on the basis of the complaint lodged by the complainant PW-1 Nandeo, offence came to be registered against the appellants and other accused person. During investigation, the Investigating Officer PW-09 Mr. Kolekar, P.I. recorded the statements of witnesses and visited the the spot and prepared spot panchanama after carrying out as usual investigation and submitted the charge sheet.
- iii. In order to establish the charges levelled against the appellants, the prosecution has examined in all nine witness as under:

- 1) PW-1 Namdeo Satwaji Harale complainant
 - 2) PW-2 Shaikh Mainu Shaik Ibrahim, Panch witness of spot panchanama,
 - 3) PW-3 Dhondubai w/o Namdeo Harale, eye witness and injured wife of the complainant,
 - 4) PW-4 Kanopatra wife of Narayan Harale, eye witness and daughter-in-law of the complainant,
 - 5) PW-5 Shaikh Osman Shaikh Maheboob,
 - 6) PW-6 Raghunath Rathod, PSO who has referred Dhondubai for medical examination,
 - 7) PW-7 Jaywant Harale, brother of complainant as well as accused No.1 and the eye witness,
 - 8) PW-8 Dr. Dattarao Mirzapure who examined PW-3 Dhondubai,
 - 9) PW-9 Govardhan Kolekar, P.I. and the Investigating Officer. No defence evidence is adduced on behalf of the appellants accused.
- iv. After recording the evidence and conducting full fledged trial, the trial Court convicted and sentenced the accused for the offence as aforestated. Hence this Appeal by the accused persons.
3. I have heard arguments of Mr. Sachin Deshmukh, learned

counsel for the appellants and Mr. K. D.Munde, learned APP for the State.

4. Mr. Deshmukh, during his argument, submitted that there was dispute between the parties in respect of landed property and because of that, the accused persons are implicated in the false case. Secondly, he argued that there is inordinate delay caused in filing of the complaint which has not been at all explained by the prosecution. As against this, learned APP submits that there are eye witnesses to the incident. Besides the oral evidence of PW-3 Dhondubai and PW-4 Kanupatra, there is evidence of independent witnesses namely Shaikh Osman Mahboob PW-5. According to the learned APP, from the record it appears that the complainant and his wife went to the Police station, immediately on the next day in the morning and the police has referred injured Dhondubai for medical examination as per letter Exh. 43. So, according to the learned APP, the delay is self-explanatory which can be seen from the evidence on record. Considering the rival submissions of both the parties, it is necessary to go through the evidence of each of the witness.

5. PW-1 Namdeo has no direct knowledge about the incident. He

and his two sons, on the day of incident, went to Tahsil Office at Ioha and returned to their Hut at 10.00 pm. At that time they came to know about the burning of their Hut. Looking to the evidence of PW-3 Dhondubai, she deposed that, she and Kanupatra were in the hut. Accused No.3 Vivek pelted stone towards her prior to sunset. It hit on her head and she sustained injury. Shankar and Parvati (Accused Nos. 1 and 4) were with him. Parvati also pelted stone towards her daughter-in-law and it hit her thigh. Shankar stated to others to set fire to their hut. Then Parvati accused No.4 set fire to the hut. Household articles were burnt in the fire. She further stated that one Shaikh Osman Maheboob (PW-5) saw the incident. Thereafter, on the next day, they went to the Police Station, on which the Police sent her to the Doctor for medical treatment. Doctor examined her and gave treatment.

6. Evidence of PW-4 Kanupatra Harale is consistent with the oral evidence of PW-3 Dhondubai. She also deposed that the accused came there and accused Shankar stated others to set fire to their Hut, Vivek pelted stone towards her mother-in-law which hit on her head and accused no.4 Parvati set their hut on fire.

7. On minute scrutiny of evidence of PW-3 and PW-4, it appears

that it is consistent with each of the aspects of particular acts committed by the accused persons i.e. accused nos. 1, 3 and 4. Witness Jaywanta Satwa Harale (PW-7) is also examined on the same point, who deposed that accused no.1 and his wife set fire the hut and Shankar's son pelted stone towards Namdeo's wife whereby she sustained injury on her head. Evidence of PW-7 appears to be in the form of improvement to some extent and during the cross examination, he has admitted about certain omissions that he stated before the police that Shankar's son threw stones towards Parvati and she sustained injury on her head. But it is not written accordingly in his statement. So, there is some improvement and some omissions in the evidence of PW-7 Jaywant Harale. However, looking to the evidence of PW-3 and PW-4, it is crystal clear that evidence of PW4 is in the form of corroboration to the evidence of PW-3. Besides that, witness to the incident is examined on behalf of prosecution i.e. Shaikh Osman Maheboob (PW5) who deposed that he was collecting waste fodder at about 5.00 p.m. near soil embankment (*dhura*) of Namdeo. He saw that Namdeo's hut was burning and his family members were weeping and shouting. He saw three men and one woman near Namdeo's hut. They were going away from Namdeo's hut. Namdeo's wife Dhondaubai was weeping.

Namdeo's daughter-in-law and other members in his family too were weeping. He also deposed about the presence of Jaywant PW-7 at the relevant time at the spot of incident. This witness has not named the persons who were seen going away from Namdeo's hut. However, the fact remains that he witnessed the incident of burning of the hut.

8. Furthermore, from the evidence of Panch witness PW-2 Shaikh Mainu Shaikh Ibrahimsab, it appears the spot panchanama was prepared on 26th May, 2009 and this witness found that hut was totally burnt. Contents of spot panchanama Exh.26 are proved by the oral evidence of PW-2. From the contents of spot panchanama, it appears that hut was totally burnt and household articles were lying scattered there and some of the articles were half burnt. This evidence, if read with evidence of PW-3 and PW-4, is sufficient to show that accused persons have burnt the hut in furtherance of their common intention and committed offence. Particularly accused No.1 Shankar instigated the other accused to set fire the hut and accordingly accused No.4 Parvati set fire the hut and Vivek accused No.3 assaulted PW-3 Dhondubai. There is corroborative evidence in the form of medical evidence and it is seen from the oral evidence of Dr. Dattaram Mirzapure. Police referred PW-3 Dhondubai to him by letter Exh. 43 for medical

examination. He examined Dhondabai and found following injuries.

- (1) CLW over left left side of forehead size 3 x 1 cm
- (2) Contusion on lower 1/3d of left leg size 4x 2 cm.
- (3) Contusion on left side of back size 3 x 2 cm
- (4) Contusion on right maxillary area size 2 x 1 cm

Witness Dhondabai was examined on 22.05.2009 at about 10.30 a.m. and the incident took place at about 6 to 7 p.m. of 21.05.2009 and age of injuries is mentioned as caused within 24 hours. Medical examination exactly supports the case of the prosecution that PW-3 received injuries due to assault by the accused No.3.

9. Mr. Deshmukh, the learned counsel for the appellants was repeatedly harping on the point of delay in filing the first information report or the complaint. From the record, it appears that the complainant as well as his wife PW-3 Dhondubai are illiterate persons. From the oral evidence of PW-6 Rathunath Rathod, PSO, it appears that he recorded the complaint of PW-1 on 25/05/2009 and in the cross examination, he has admitted that complainant and his wife had been to the Police Station on 22.05.2009 and he sent PW-3 Dhondabai to the Hospital for medical examination. He further stated in the cross examination that he did not record her complaint as she did not came

back to the Police Station. So, from the record Exhibit 43 i.e. letter referring PW-3 to the Hospital coupled with admission given by PW-6 Rathunath Rathod, it reveals that the complainant as well as injured Dhondubai went to the Police Station in the morning and PW-6 Rathunath Rathod referred her for medical examination to Dr. Mirzapure. From the contents of letter Exh. 43, it appears that PW-3 Dhondubai informed to the PSO that she was beaten on her forehead and therefore PW-6 has referred PW-3 for medical examination. PW-3 is an illiterate lady. However, there was total negligence on the part of PW-6- Rathod, PSO to take the complaint into writing but simply he has referred referred the injured for medical examination and waited for arrival of complainant and injured to the Police station for the purpose of recording complaint.

10. Looking to the above aspects it appears that there was total negligence on the part of police officer who was incharge P.S.O. at the relevant time. From the record, it appears that some information was also given by PW-3 to the PSO, however, he has not taken care to record the statement either of the complainant or injured PW-3 Dhondubai. From the record, it appears that complaint was registered on 25.05.2009 after medical treatment is over. So, looking to this

aspect, I do not think that practically there was delay in filing the first information report. In view of the above aspects, I do not think that the accused persons are falsely implicated because there is sufficient evidence to show that hut was burnt and the PW-3 was injured in the incident. Oral evidence of PW-3 and PW-4 is supported with the oral evidence of panch witness as well as evidence of Medical Officer Dr. Mirzapure.

11. I have gone through the reasons recorded by the trial court and found that he has correctly assessed the evidence on record and has rightly convicted the accused persons.

12. In the light of above discussion, I am of the opinion that there is no merit in the Appeal. The Criminal Appeal stands dismissed.

13. Bail Bonds of the Appellant stands cancelled. The appellants shall forthwith surrender before the trial Court to undergo remaining sentence. The Appellants accused be given set-off, if any, vide section 428 of the Criminal Procedure Code.

(K. L. WADANE, J.)

JPC