

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

Criminal Appeal No.754 of 2006

* The State of Maharashtra. .. **Appellant.**

Versus

- 1) Baban Sawanji Palve,
 Age 35 years,
 Occupation : Agriculture,
- 2) Asaram Sawanji Palve,
 Age 25 years,
 Occupation : Agriculture.
 Both R/o Nimbe Nandur,
 Taluka Shirgonda,
 District Ahmednagar.
- 3) Uttam Mahadeo Pote,
 Age 31 years,
 Occupation : Labour,
 R/o Bardari, Taluka Nagar,
 District Ahmednagar. .. **Respondents.**

Shri. P.G. Borade, Additional Public Prosecutor, for
appellant.

Shri. S.S. Wagh, Advocate, for respondent Nos.1 and 2.

Shri. A.B. Gatne, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
 SUNIL K. KOTWAL, JJ.**

Date: 2 APRIL 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) The appeal is filed to challenge the decision of Criminal Appeal Nos.28 and 29 of 2004 which were pending in the Court of Additional Sessions Judge Ahmednagar. Both the appeals had arisen out of Sessions Case No.43/2003. The learned Assistant Sessions Judge had convicted the present respondents for offences punishable under sections 436, 304 read with 34 of Indian Penal Code and maximum sentence of rigorous imprisonment of seven years was given by the trial Court. The Appellate Court has set aside the decision of the trial Court. Both the sides are heard.

2) Respondents are brothers-in-law of one Abhiman Andhale. The first informant Babrudhan is real brother of Abhiman and witness Babasaheb is other brother of Babrudhan. They are living separate from each other.

3) The first informant deposed that on 4-2-2003 when the cattle of the first informant Babrudhan entered

the gram crop of Abhiman there was quarrel between the issues of Babrudhan and Abhiman and Abhiman was injured in the quarrel and he gave report against the family of Babrudhan to police on 4-2-2003. On 5-2-2003, according to the first informant, present respondents came to his house, *Vasti* and picked up quarrel as Abhiman was injured in the previous incident. There are allegations that the respondents assaulted parents of Babrudhan by fist blows and kick blows and they gave threats to kill all of them by setting fire to their house.

4) On 5-2-2003 in the evening after taking dinner Babrudhan was sleeping at some distance from his house with his wife and children and only his mother was sleeping inside of the house, hut. At about 9.00 p.m. they noticed that their hut was on fire and in the light of fire they also noticed that the respondents were present in the vicinity of the hut. They approached Pathardi Police Station on 5-2-2003 itself and gave information to police. First Informant Babrudhan expressed suspicion against the present respondents. As the dead body of mother of Babrudhan was found in the hut and everything was found

in burnt condition, initially Accidental Death was registered in respect of death of mother of Babrudhan.

5) On 7-2-2003 Babrudhan gave first information in respect of the incident and he made specific allegations against present respondents. On that basis crime was registered and investigation was made. Charge sheet was filed for the aforesaid offences. Before the trial Court the prosecution examined in all 7 witnesses. The so called three eye witnesses gave evidence against the respondents and on that basis the trial Court gave conviction. The first appellate Court, Sessions Court, has held that there were only interested witnesses and there was previous enmity between the two families. The appellate Court has further held that no explanation is given as to why the FIR was not given immediately after the incident and only suspicion was expressed against the respondents by Babrudhan. The appellate Court has also observed that the version given by the eye witnesses is not probable in nature and in ordinary course Babrudhan and Babasaheb would have made attempt to save mother if they were present in the vicinity and they had reached

the spot immediately after starting of the fire.

6) The evidence of Babrudhan (PW 1) shows that even when police had arrived to the spot he did not report against the accused and he waited till 7-2-2003. The incident took place in village Akole, Tahsil Pathardi. The respondents are residents of village Bardari, Tahsil Nagar and Nimbe-Nandur, Tahsil Shrigonda, Dist. Ahmednagar. In view of these circumstances it was necessary for the prosecution to give some independent evidence to the effect that the independent witnesses had seen the accused persons at least in village Akole or in the vicinity of village Akole on 5-2-2003. There is no such evidence.

7) The evidence of Babasaheb (PW 3), brother of the first informant is similar in nature. He deposed that he is having separate hut. He has deposed that at about 8.30 p.m. he noticed that there was fire and he rushed to the hut. Draupadabai (PW 4), sister of the first informant, is a widow, and she has deposed that in her presence threats were given by accused of dire consequences when Abhiman was beaten in the first incident. She has tried to

say that her father was also beaten by other side and in respect of that assault report was given to police. On the incident she has deposed that her attention was drawn when fire had started and then in the light of fire she had seen all the three accused persons in the vicinity of the hut.

8) The first report given by Babrudhan (PW 1) was very vague and in this report he had not mentioned the name of his sister as a probable witness. He had tried to inform that he was living in joint family with the brothers when they were separate from each other. In the first information report he contended that everybody was having separate hut and he was also living separate from them. He has mentioned that his father and mother were living separate near his Vasti. Thus in ordinary course there was no reason for the mother of Babrudhan to sleep in the house of Babrudhan on that night.

9) The evidence on spot panchanama shows that no article which was burnt in the incident was taken over. In the first information report given by Abhiman he had

not mentioned the amount but subsequently he contended that he had kept cash of Rs.11,000/-. Comparison of two informations shows that he exaggerated everything when he gave first information report after 2 days of the incident. Map of the spot of offence was not prepared during investigation. Due to all these circumstances and the main circumstance that nobody had made attempt to save the old lady who was found inside of the hut has created probability that everybody reached the spot when almost everything was burnt. As there is such probability and there is only interested version on the record and as there was no independent corroboration and as the respondents were residents of other places this Court holds that the appellate Court has not committed any error in giving benefit of doubt to the respondents. This Court holds that there is no error in the decision given by the appellate Court. In the result, appeal stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)