

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Appeal No. 15 of 2015

**(Mitaram s/o Chimnaji Sursawat .vs. The State of Maharashtra through PSO
Dawaniwada, Gondia and others.)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. Mahesh Rai, Advocate for Appellant.
Mr. Vishal Gangane, APP for Respondent No.1.
Mr. D.V. Mahajan, Advocate for Respondent No.3.

CORAM : Manish Pitale, J.

DATED : June 20, 2018.

This is an appeal filed by the original complainant challenging judgment and order dated 21.06.2014 passed by the Court of District Judge-2 and Assistant Sessions Judge, Gondia (trial Court) in Sessions Trial Case No. 63 of 2008, whereby the accused were acquitted of the charge under Section 436 read with 34 of the Indian Penal Code (IPC) levelled against them. Since respondent no.2 (original accused no.1) died during the pendency of the appeal, the appeal abated as against him. Respondent no.3 was the original accused no.2.

2. The accused in the present case were charged with having committed offence under Section 436 read with 34 of the IPC on a report lodged by the appellant claiming that the accused had burnt his hut existing on Gat no.31/1 at mouza Mendha. It was his case that a lineman from the Electricity Department had come for installation of meter on 27.12.2007 when the accused

persons raised a dispute. It was further claimed that in the night on 31.08.2008, three persons named Mahadeo Bisen, Ravindra Tembhare and Narendra Patle informed the appellant that his hut had been set on fire and that the accused persons were seen running away from the said hut. On this basis, the appellant lodged report in the Police Station leading to registration of offence and prosecution of the accused.

3. In order to prove its case, the prosecution examined six witnesses. PW1 was the complainant (appellant) himself, PW2 Bhaulal claimed to be an eyewitness, PW3 was a panch witness, PW4 was one Revatlal, elder brother of the complainant, PW5 Namdeo was the lineman from the Electricity Department and PW6 was the investigating officer.

4. As per the prosecution story, PW1 complainant was not an eyewitness to the incident. In cross-examination, this witness has admitted that the aforesaid Gat No.31/1 at mouza Mendha was owned by the accused. It has come on record that there was Civil Suit No. 27/2006 filed in the Court at Tirora, where an order of temporary injunction had been passed against the complainant PW1 restraining him from disturbing the possession of the deceased accused no.1 in Gat no.31/1. The appeal filed against the said order was also dismissed. It was also admitted by the complainant PW1 that he claimed ownership only on the basis of an agreement. PW2 Bhaulal claims to be an eyewitness to the incident and a perusal of his evidence shows that he

saw the hut on fire and further saw the accused running with 5-6 other persons. But, in cross-examination this witness states that he did not inform the complainant immediately about the incident and that he stated the said facts for the first time when his statement was recorded by the Police about 2 ½ months after the incident. Therefore, the evidence of this witness does not seem to be reliable. PW4 Revatlal is the elder brother of the complainant who also stated that he saw that the accused had run away and that the hut was on fire. This witness also admitted that there was no registered sale deed executed in favour of the complainant in respect of the aforesaid piece of land. The evidence of this witness is also vague and not specific at all. The evidence of the investigating officer PW6 shows that he had recorded the statement of PW4 Revatlal who had stated that he was not suspecting anybody.

5. Apart from this, it is strange that three persons Mahadeo Bisen, Ravindra Tembhare and Narendra Patle who had allegedly informed the complainant about his hut having been set on fire, were not examined by the prosecution at all. This was the nature of the evidence produced by the prosecution in respect of its case.

6. By the impugned judgment and order, the trial Court has examined the evidence of the witnesses in details and it has found that there is no convincing evidence to support the case of the prosecution. It is

found that the evidence adduced by the prosecution witnesses is weak, insufficient and doubtful. A perusal of the evidence of the aforesaid prosecution witnesses does show that the findings rendered by the trial Court are justified and that in any case it is the possible view taken by the trial Court in the facts and circumstances of the present case. Hence no error can be attributed to the trial Court in passing the impugned judgment and order, thereby acquitting the accused in the present case.

7. In view of the above, the instant appeal is dismissed and the impugned judgment and order stands confirmed.

JUDGE

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