

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

**CRIMINAL APPEAL NO. 285 OF 2019
WITH
CRIMINAL APPLICATION NO. 1495 OF 2020**

1. Sau. Kanchan alias Hirabai
w/o Sanjay Sarode,
Age: 31 years,
Occupation : Household,
R/o Ambedkarnagar, Lane No.3,
Near Sant Eknath School, Aurangabad
 2. Sanjay s/o Damodhar Sathe
Age : 34 years, Occupation : Private Service
R/o. Ambedkarnagar, Lane No.3,
Near Sant Eknath School, Aurangabad
 3. Ashok s/o Damodhar Sathe
Age : 37 years, Occupation : Labour,
R/o : Ambedkarnagar, Lane No.3,
Near Sant Eknath School, Aurangabad
- ... APPELLANTS
Original accused

Versus

The State of Maharashtra,
Through the Police Station Officer,
N-7, CIDCO Police Station, Aurangabad

... RESPONDENT

....

Mr. S. G. Ladda, Advocate for Appellant No.1
Mr. N. S. Ghanekar, Advocate for Appellant Nos. 2 and 3
Mr. S. P. Sonpawale, APP for respondent No.1 - State

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 03rd JULY, 2021
PRONOUNCED ON : 02nd AUGUST, 2021**

JUDGMENT:-

. This appeal is filed against the judgment and order dated 28.02.2019 passed by the learned Additional Sessions Judge-2, Aurangabad in Sessions Case No. 34 of 2016. By the impugned judgment and order, the appellants have been convicted and sentenced as mentioned below:-

<i>Name of the appellants</i>	<i>Offence for which convicted</i>	<i>Sentence awarded</i>
(1) Kanchan alias Hirabai w/o Sanjay Sarode	Under Sections 307, 323 and 504 r/w 34 of IPC	Under Section 307 IPC – rigorous imprisonment for ten years and pay fine of Rs.1,000/-, in default to suffer simple imprisonment for six months.
(2) Sanjay s/o Damodhar Sathe		Under Section 323 IPC – rigorous imprisonment for six months
(3) Ashok s/o Damodhar Sathe		Under Section 504 IPC – rigorous imprisonment for six months
		All sentences shall run concurrently.

2. The facts giving rise to the present appeal are as under:-

Sanjay (PW1)/victim is the husband of Kanchan(A1). Sanjay and Ashok (A2 and A3) are the real brothers of Kanchan. Sanjay(PW1) and Kanchan were blessed with a son, Jai. The incident took place on 04.10.2015 between 4.30 p.m. and 5.00 p.m. Sanjay(PW1) and Kanchan were residing in a room on the second floor of two storey premises (Ground+2). The ground floor premises has been occupied by the parents of Sanjay (PW1), two brothers, their wives and children. First floor premises were occupied by two tenants. On the second floor i.e. terrace, there is one room with tin roof. Sanjay and his wife Kanchan and their son, would reside in the said room.

3. It was the birthday of Om, nephew of Sanjay(PW1) (brother's son). Preparation for celebration of Om's birthday were going on in the ground floor premises. A quarrel ensued between Sanjay(PW1) and Kanchan over a petty issue in the afternoon. Sanjay(PW1) thereafter went to sleep on the floor of his room. Sanjay and Ashok (A2 and A3) along with their parents (since acquitted), came all of a sudden. Ashok kicked on the stomach of

Sanjay and abused him in foul language. They questioned Sanjay (victim), whether he was able to maintain their sister, well. All of them beat up Sanjay(PW1). Kancan fetched a jar, containing kerosene and gave it to Sanjay (A2). Sanjay slapped on his face and doused kerosene. Kanchan, then fetched a match box and gave it to Sanjay(A2). He (Sanjay A2), then set him afire. Sanjay raised hue and cry. All of his in-laws fled. Sanjay's(PW1) brother and others rushed upstairs. They first took Sanjay(PW1) to CIDCO Police Station. He was then admitted to GHATI Hospital. The police recorded Sanjay's (PW1) statement-cum-First Information Report (FIR) in the hospital. Based on the FIR, Crime No.590 of 2015 for the offence punishable under Sections 307, 323, 504 r/w 34 of the Indian Penal Code, came to be registered with CIDCO Police Station.

4. Rajkumar (PW9), Police Sub-Inspector, serving with Cidco Police Station, did investigation of the crime. He visited the scene of offence and drew panchanama (Exh-40) of scene of offence in the presence of two panchs witnesses. He, then, seized the clothes which were on the person of Sanjay(PW1) when he was set ablaze. The Executive Magistrate, recorded Sanjay's statement in the hospital. The appellants and their parents were arrested. Statements

of persons, acquainted with the facts and circumstances of the case, were recorded. On completion of the investigation, the police report under Section 173 of the Code of Criminal Procedure was submitted to the Court of Judicial Magistrate, First Class (J.M.F.C.), Aurangabad. The J.M.F.C., in-turn, committed the case to the Court of Sessions. The learned Additional Sessions Judge framed the charge (Exh-6) against the appellants and their parents. All of them pleaded not guilty.

5. To establish the charge, prosecution examined nine witnesses and produced in evidence some documents. Defence of the appellants was of total denial. On appreciating the evidence adduced in the case, the learned Additional Sessions Judge, convicted the appellants and sentenced them as stated above. Their parents were acquitted. The State did not prefer appeal against their acquittal.

6. Pending the appeal, Sanjay (PW1) filed his affidavit, stating therein to have amicably settled the issues between him and the appellants and decided to lead peaceful life along with his wife (A1) and her brothers, as well. Be that as it may, let's appreciate the evidence in the case.

7. Sanjay (PW1) deposed that on 04.10.2015, in the afternoon, there was a quarrel between him and his wife Kanchan (A1) over a petty issue. Their son Jai had been to the house of maternal grand-parents. It was the birthday of Om, the son of Sanjay's (PW1) brother. Preparation to celebrate the birthday were afoot in the ground floor premises. After the quarrel, he went to sleep on the floor of his room. Sanjay, Ashok (A2 and A3) and their parents (In-laws of Sanjay), came all of a sudden. Sanjay (A2) kicked on his stomach and abused him. All of them gave threats to his life. Kanchan fetched a jar, containing kerosene and gave it to her brother Sanjay (A2). He doused kerosene on Sanjay's person. Kanchan, then brought a match box and gave it to Sanjay (A2). He questioned Sanjay (PW1), whether he should set him ablaze. Sanjay (PW1) responded him, saying if he was really son of his father, he would set him ablaze. Sanjay (A2), thereafter, set him afire. It is further in his evidence that no sooner he caught the fire, he raised hue and cry. Sanjay, Ashok (A2, A3) and their parents, immediately fled. His mother, brother and the tenant residing on the first floor, came upstairs. He was, then taken first to CIDCO Police Station and then admitted to GHATI Hospital. He gave FIR (Exh-23) to the Police

in the hospital. It is further in his evidence that thereafter his statement was recorded by the Executive Magistrate.

8. In the cross examination, Sanjay (PW1) stated that prior to the incident, there was a Court matter between him and his wife Kanchan. The said matter was over a petty quarrel. There is only one staircase to negotiate with his room on the second floor of the premises. It is a residential locality wherein he was residing.

9. Vyankat (PW2) was examined in proof of scene of offence panchanama (Exh-40). Based on his testimony, the panchanama came to be admitted in evidence. From the scene of offence, a half burnt shirt, match box and half burnt three match sticks were seized.

10. Vilas (PW3) is the real brother of Sanjay (PW1). It is in his evidence that preparation for birthday celebrations of his nephew, were afoot in the ground floor premises. He suddenly heard shouts and alarm. He, therefore, immediately rushed upstairs. He saw Sanjay to have caught fire. Kanchan was present there with a kerosene jar in her hand. He doused water on the person of Sanjay and brought him downstairs. It is further in his evidence that Sanjay

had told him that his in-laws had come to his home.

11. Vilas (PW3) did not depose to have seen anyone running downstairs.

12. Rajesh (PW4) was residing as a tenant on the first floor premises. It is in his evidence that on hearing hue and cry, he came out of his house. He saw 2 – 3 peoples were running away. He further saw that mother and brother of Sanjay, were bringing him (Sanjay) downstairs. Sanjay was, then, taken to the hospital in rickshaw.

13. Rahul (PW5) is a panch witness, in whose presence a shirt and pant of Sanjay (PW1) came to be seized under panchanama Exh-51. It is in evidence of this witness that after the incident, he heard from the boys in the vicinity that Sanjay was burnt by his wife, Kanchan.

14. Swapnil (PW6) was residing in the neighborhood of Sanjay (PW1). It is in his evidence that on hearing hue and cry, he came out of the room. He saw Sanjay engulfed in fire. His wife (Kanchan) followed him.

15. Dr. Avinash (PW7) is a Medical Practitioner. He is expert in plastic surgery. Post Sanjay's discharge from Ghati Hospital, he was admitted to PW7's hospital for plastic surgery. He tendered in evidence, the certificate (Exh-61), wherein the history was given as burns due to pouring kerosene by relatives (wife and her brothers).

16. Dr. Adeeb Hussain (PW8) had attended Sanjay (PW1) on his immediate admission to the hospital, post incident.

17. The Medico-legal case (MLC) certificate (Exh-65), records history as burns on 04.10.2015 at 4.50 p.m. at home.

18. Rajkumar (PW9) is the Investigating Officer.

19. If we appreciate the evidence of the aforesaid witnesses, it could be concluded that Sanjay suffered burns in his room (second floor premises), late afternoon on 04.10.2015. Admittedly, it is a two storeyed premises (ground+2). The ground floor was occupied by the parents and brothers of Sanjay. First floor premises was in possession of two tenants. Sanjay would reside in the terrace room. The couple had a quarrel over a petty issue in the afternoon. Preparation of celebration of birthday of Sanjay's nephew, were afoot in the ground floor premises. There is only one staircase to negotiate

Sanjay's room from the ground floor. Sanjay(PW1) and his wife Kanchan (A1), were admittedly in the room while the incident took place. It is Sanjay's case that all his in-laws (A2, A3 and their parents) had come there. The appellants and their parents caught hold of him and A2 doused him with kerosene and set ablaze. Kerosene and match box was provided by Kanchan. This is the case averred in the FIR. Whereas, before the trial Court, murderous assault, namely, dousing kerosene and setting ablaze is attributed to Kanchan and Sanjay (A1 and A2), respectively.

20. If we accept Sanjay's case as it is, there is nothing to suggest Ashok (A3) to have committed any overt act and shared common intention, if any, with A1 and A2 to set Sanjay ablaze.

21. In my view, the trial Court erred in convicting Ashok (A3) for the offence punishable under Section 307 read with 34 of the Indian Penal Code.

22. It is the only evidence of Sanjay (PW1), which attributes involvement of A2 and A3 in the alleged offence. It is his case that soon after he was set ablaze Sanjay, Ashok and their parents fled. Admittedly, soon after hearing Sanjay's cries, his brother Vilas (PW3)

rushed upstairs. On his reaching the scene of offence, he only noticed the presence of Kanchan besides Sanjay (PW1). It is just difficult, though not impossible for A2, A3 and their parents to run away without having been noticed by anyone. One of those four, was the mother-in-law of Sanjay. A lady clad in sari, may not be so quick on her feet.

23. Vilas (PW3) did not see any of in-laws of Sanjay, running downstairs since he was the one who immediately rushed upstairs on hearing the cries of Sanjay.

24. Rajesh (PW4), occupant of the second floor premises, though claimed to have seen 2 – 3 people running, does not say who were they. He, even did not state that those 2 – 3 persons ran downstairs. It is he, who had also come out of his room soon after hearing the hue and cry. He claimed to have seen the brother and mother of Sanjay bringing him downstairs. Sanjay's brother, however, does not claim to have seen A2, A3 and their parents going downstairs.

25. Rahul (PW5), a panch witness, was resident of the very vicinity. In his examination-in-chief itself, he stated to have heard

from the people that it was Kanchan who set her husband Sanjay, on fire.

26. True, the FIR and the Sanjay's previous statement recorded by the Executive Magistrate may corroborate Sanjay's testimony before the Court, whereas, the history given in the certificate (Exh-61) would be of no much avail, since it was given on 17.10.2015 i.e. 13 days after the incident.

27. It is reiterated that it was just difficult for Sanjay, Ashok (A2 and A3) and their parents to flee away. First coming downstairs from so to say third floor premises and disappear unnoticed. One of them was the mother-in-law of Sanjay. Vilas (PW3) Sanjay's real brother and Rajesh (PW4), the tenant, did not claim to have come across A2, A3 and/or their parents. Since both of them had admittedly rushed upstairs on hearing hue and cry.

28. Kanchan, being the wife of Sanjay, bound to be present at the scene of offence, since she was admittedly there. It is in the evidence, she was in advanced stage of pregnancy (7th month). True, she was seen holding kerosene jar when PW3 Vilas reached the scene of offence. Admittedly, the incident had a prelude of quarrel between

the couple. There had also been a Court case between the two. Since none of the independent witnesses have seen A2 and A3 running away from the scene of offence, it is difficult to believe Sanjay's sole testimony to uphold the conviction of the appellants. As such, it is a case where the prosecution has failed to bring home the guilt of the appellants beyond reasonable doubt. Sanjay does not claim his wife Kanchan to have set him ablaze. Moreover, he has filed an affidavit, stating therein to have cleared misunderstanding between him and the appellants. He claims to have forgiven them. He is desirous of leading a peaceful marital life with Kanchan. Interference is, therefore, called for with the impugned judgment of conviction.

29. In the result, the appeal succeeds. Hence, following order:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment and order dated 28.02.2019, passed by the learned Additional Sessions Judge-2, Aurangabad in Sessions Case No. 34 of 2016, convicting the appellants/accused under Sections 307, 323 and 504 read with 34 of the Indian Penal Code, is hereby quashed and set aside.

- (iii) The appellants/accused are acquitted of the offences punishable under Sections 307, 323 and 504 read with 34 of the Indian Penal Code.
- (iv) The applicants are reported to be on Corona parole. Since they have been acquitted, they need not return to the jail, so far as in connection with this crime.
- (v) Fine amount if paid, be returned to the appellants.
- (vi) The appeal and Criminal Application No.1495 of 2020, are disposed of accordingly.

[R. G. AVACHAT, J.]

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