

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 73 OF 2004

The State of Maharashtra)
...Appellant
(Orig. Complainant)

VERSUS

Balu Sahebrao Mane,)
Aged 32, Occu. Agri,)
R/o. Mhasurne, Ta. Khatav,)
District Satara.)
...Respondent
(Orig Accused)

Mr V.B. Konde - Deshmukh, APP for the Appellant – State.
Ms. Shraddha Pawar, i/by Mr. Dilip Bodake for the Respondent.

CORAM : PRASANNA B. VARALE &
V.G. BISHT, JJ.

RESERVED ON : DECEMBER 17, 2020.
PRONOUNCED ON : JANUARY 28, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the II Additional Sessions Judge, Sangli in Sessions Case No. 131/2002 dated 15th October, 2003, whereby respondent herein (Original Accused) was acquitted of the charges for committing offences punishable under Sections 436 and 429 of the IPC (for short “IPC”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. Heard learned APP, Mr V.B. Konde - Deshmukh, for the Appellant – State and Ms. Shraddha Pawar for the Respondent.

3. The case of the prosecution can be summarized as follows:

It is the case of the prosecution that Akaram Dnyanu Madane (PW 1) was residing with his wife, daughters, son-in-laws and grand children in his farm house at village Kanarwadi. One Balu Salunkhe is also residing in the vicinity and the accused – Balu Mane is his nephew and he is staying with said Balu Salunkhe. As Akaram (PW 1) was facing some financial difficulties he had borrowed an amount of Rs. 1,000/- from accused – Balu Mane. Akaram (PW 1) repaid an amount of Rs. 800/- to accused Balu and there was a demand from accused for repayment of remaining amount of Rs. 200/-. On two occasions such demand was raised and Akaram (PW 1) expressed his inability due to shortage of funds. On 26.06.2001 at about 07.00 pm accused Balu reached the house of Akaram (PW 1) and demanded the amount of Rs. 200/-, at that time also Akaram (PW 1) expressed his inability as he was not having Rs. 200/- with him so he told accused that he would repay the amount after sometime. Accused was enraged on the denial of Akaram (PW 1) and left the house by giving threats and by

uttering words that he would recover his amount. After sometime Akaram (PW 1) and his family members took dinner and went to sleep. In the late hours i.e. at about 02.00 in the night daughter of Akaram (PW 1) Jagubai (PW 2) was shouting and due to her shouts Akaram (PW 1) woke up and came out of his house. He saw that the roof of residential house of his daughter Jagubai (PW 2) was set on fire. In the light of fire he could see accused Balu and one unknown person running away from the spot towards western side. People from the vicinity gathered on the spot. Till that time the neighbouring field house of Martand Patole and Bhagvan Madane also caught fire. The fire resulted not only destroying property but also resulted in death of two she-buffaloes of Akaram (PW 1) and 7 she-goats of his daughter Jagubai (PW 2). Certain domestic luggage were kept there was also burned. Akaram (PW 1) thus suffered loss to the extent of Rs. 45,000/-.

4. The report was submitted to Kadegaon Police Station on 27.06.2001 at 11.35 hours. On receipt of the report Crime was registered and Anil Belekar (PW 3) who was attached to Kadegaon police station registered C.R. No. 48/2001 and handed over the investigation to ASI-Nikam (PW 4). Nikam (PW 4) in the process of investigation recorded

statement of witnesses as the she-buffaloes and she-goats died due to fire, drew spot panchanama, he sought for the report from veterinary officer.

On completion of the investigation, charge-sheet was filed in the Court of JMFC, Vita. The offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions and learned II Additional Sessions Judge, Sangli framed the charges against the Accused. Accused pleaded not guilty and his defence was of total denial and false implication. Accused was subjected to statement under Section 313 of the Cr.P.C. and in his statement the defence of false implication is reflecting.

Learned II Additional Sessions Judge on appreciation of evidence found that the version of witnesses is not trustworthy. Learned Trial Judge also found material discrepancies in the testimonies of these witnesses. Learned Trial Judge was of the opinion that merely on suspicion the accused was implicated in the crime, thus, on appreciation of evidence learned Additional Sessions Judge, Sangli recorded the judgment and order of acquittal.

5. Learned APP vehemently submitted before the Court that Akaram (PW 1) and Jagubai (PW 2) were eye witnesses to the incident

and their version ought not to have been rejected by the learned Trial Court. Learned APP further submitted that the prosecution brought on record motive, namely, non payment of amount of Rs. 200/-. Learned APP then submitted that the certificate issued by the veterinary officer also supports the case of prosecution, thus it is the submissions of learned APP that learned Trial Court failed to appreciate the evidence in proper perspective and arrived at an erroneous conclusion and prayed for allowing the appeal.

6. Per contra, learned Counsel appearing for the Respondents supported judgment and order passed by the learned Trial Court. Learned Counsel submitted that no error is committed by the Trial Court in appreciation of evidence. Learned Counsel further submitted that though prosecution claims that the informant i.e. Akaram (PW 1) is an eye witness and the evidence brought before the Court clearly show that in fact the evidence of Akaram (PW 1) is hearsay evidence. Learned Counsel submitted that no error is committed by the learned Trial Court and prayed that appeal needs to be dismissed.

7. With the assistance of learned Counsel appearing for the

respective parties, we have gone through the entire record as there are only four witnesses examined by the prosecution.

8. It may not be out of place to state that other material in the form of spot panchnama and certificate issued by the veterinary officer is admitted by the defence.

9. Akaram (PW 1) deposed before the Court that he was residing in the farm house at village Kanarwadi along with his wife, daughters, son-in-laws and grand children. Then he deposed that accused was residing along with one Balu Salunkhe who was his nephew. Then he deposed about the financial transaction between accused and him, namely, he had borrowed an amount of Rs. 1,000/- and he had repaid an amount of Rs. 800/- and was to repay Rs. 200/-. Then he deposed about the demands at the instance of accused and inability expressed by him to repay the amount. Then he deposed about the incident of earlier day, namely, accused asking for the money, inability expressed by Akaram (PW 1) and Akaram (PW 1) told accused that he would repay amount after sometime. Then he deposed about the threats given by the accused. Akaram (PW 1) then deposed that the incident occurred at about 02.00

am. Accused put fire on the western side of the hut which was in occupation of Jagubai (PW 2). He further deposed before the Court that he could see the accused in the light of burning hut. Then he followed accused up to road to catch up accused but he was not successful and returned back to his hut. Then he deposed that in the process of removing she-buffaloes and she-goats he received burn injuries. Then he deposed that he was taken out by one Martand and in that attempt he himself as well as Martand received burn injuries. Then he deposed that two she-buffaloes and seven she-goats were burned and died. He further deposed about fire affecting the domestic articles such as, utensils and clothes amount of Rs. 4,000/-. He further deposed that on next day morning he went to Kadegaon police station and gave information to police. It would be interesting to note that material admissions and omissions of this witness i.e. informant reflected in the cross-examination. Akaram (PW 1) in the cross-examination stated that huts of Dhondiram and Hariba Madane are situated at a distance of about 100 feet. Then he admits in the cross-examination that there was a fire place for the purpose of cooking in the huts of Jagubai and Ushabai. He further admits that these huts of Jagubai and Ushabai were consisted of ched

leaves walls with grassy roofs. He further admits that lantern was used for the purpose of lighting. He also admits that one can go to Kadegaon within half an hour by motorcycle. It would be interesting to note that in the report filed at the instance of Akaram (PW 1), PW 1 states that on hearing shouts of his daughter Jagubai he woke and came out of his house. He further stated in the report that his daughter Jagubai told him that she came out of her house due to barking of dogs. In the report he further stated that in the flames of fire he saw accused and one unknown person along with him. It is interesting to note that in his deposition before the Court that Akaram (PW 1) states that he saw only accused in the light of burning of huts.

10. Now coming to the evidence of Jagubai (PW 2). Perusal of her evidence shows that Jagubai (PW 2) stated before the Court about relationship, her residence, cattle in her possession. She further deposed about the identify of accused and then also states about financial transactions between the accused and her father. Then she states about the incident of 26th i.e. accused approached to her father's house demanding amount, denial of her father and accused leaving the place by giving abuses and threats to her father. She further deposed before the

Court that at about 02.00 am she woke up due to barking of dogs. She further deposed that she found that accused was igniting matchstick towards western side. She further deposed that she started raising shouts and on her shouts her father rushed to the spot. She then stated that the accused escaped from western side though her father made an attempt to follow and catch him up, he was unable to catch accused. Then she deposed that in the incident of fire two she-buffaloes and seven she-goats were burned and died. She further deposed that her father and Martand received burn injuries in attempt to rescue cattle. Then she deposed about damage caused due to fire, namely, clothes, utensils and ornaments were subjected to fire and she also quantified the loss to the tune of Rs. 4,000/-.

It would be also interesting to note the admissions reflected in the cross-examination. She stated in the cross-examination that her family was possessing hunting dogs. Then she stated that the dogs ran towards accused however, the dogs could not catch him as he escaped. Then her version that her father reached the spot on hearing the shouts and chased the accused is brought on record by omission. An omission was also brought on record to the effect that Jagubai (PW 2) in her

statement before the police referred to two person i.e. accused and another unknown person setting hut on fire and running from the spot.

11. Anil Belekar (PW 3) was attached to Kadegaon police station. Anil Belekar (PW 3) deposed before the Court that on 27.06.2001 he was discharging his duty as police station officer at Kadegaon police station. Akaram (PW 1) reached the police station and gave him information and the same was reduced into writing and on the basis of the report crime bearing C.R. No. 48/2001 for the offence punishable under Section 436 read with 34 of the IPC was registered. Then he further stated that the investigation was then handed over to ASI – Nikam (PW 4).

12. Baburao Nikam (PW 4) states before the Court that on entrusting of investigation to him he proceeded to spot and prepared spot panchanama. Then he states that he recorded statement of Jagubai and other 4-5 persons. Now though statement of 4-5 persons were recorded, the prosecution as stated above chosen to examine only two witnesses i.e. Akaram (PW 1) and Jagubai (PW 2).

In the cross-examination he admits that one can reach from

the scene of offence within half hour by motorcycle to Kadegaon police station. As stated above, the omission in respect of reference to two person being the accused of setting the hut on fire in the version of Jagubai was proved through this witness.

13. Now considering the above referred evidence, it is clear that there are material discrepancies in the version of witnesses, namely, Akaram (PW 1) and Jagubai (PW 2). Both these witnesses in the report and the statement before the police respectively made reference to two person, but in their deposition before the Court they are alleging commission of offence only by the accused. Learned Trial Judge was justified in observing that Jagubai (PW 2) stated before the Court that family was possessing hunting dogs and the dogs chased accused while accused had run away from the spot, it was then rightly observed by the learned Trial Judge that in that case it is difficult to accept that the dogs would not be in a position to catch the accused persons considering the normal tendency of hunting dogs. The evidence brought before the Court below further show that Akaram (PW 1) is not an eye witness to the incident of setting hut on fire. Akaram (PW 1) reached on the spot on hearing the shouts of the Jagubai (PW 2) whereas his version that the

accused was there on the spot setting hut on fire till arrival of Akaram (PW 1) is an exaggerated and unacceptable version. As stated above it has come in the evidence that from the place of incident one can reach to the Police Station within 15 minutes on motorcycle and motorcycles were available where the Akaram (PW 1) – informant was residing. On the backdrop of these fact, the unexplained delay in lodging the report of the incident at 11.35 am creates serious doubt over the truthfulness of the report.

14. The defence has admitted spot panchanama and certificate issued by veterinary officer thus, the learned Judge was justified in observing that though the incident of setting huts on fire and causing damage to the property as well as death of the cattle though is proved and established by the prosecution, but the prosecution failed to establish that it is the accused and accused only who is culprit.

15. Learned Trial Judge thus on appreciation of evidence on record was unable to hold accused guilty of the offence charged against him and resultantly recorded the judgment and order of acquittal. On appreciation of evidence, we find that there is considerable merit in the

submissions of learned Counsel for Respondents that the respondent accused was implicated in crime merely on the basis of suspicion without there being any positive and legal evidence against the accused.

16. We are unable to find any illegality or perversity in the judgment and order of acquittal passed by the Court below. Appeal, thus, being devoid of any merit deserves to be dismissed. Accordingly, Criminal appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)