

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.429 OF 2015**

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|--------------------------|-----------------|
| Bhimrao Jagannath Koli   | .... Appellant  |
| Versus                   |                 |
| The State of Maharashtra | .... Respondent |

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Mr. Ratnesh Dube, Advocate (appointed) for the Appellant.  
Mr. S.R. Agarkar, APP, for the Respondent-State.

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**CORAM : SARANG V. KOTWAL, J.**

**DATE : 29<sup>th</sup> NOVEMBER, 2022**

**ORAL JUDGMENT :**

1. The appellant has challenged the judgment and order dated 17.3.2015 passed by the Additional Sessions Judge, Pune in Sessions Case No.380/2009. The appellant was convicted for commission of offence punishable under Section 307 of the Indian Penal Code and was sentenced to suffer RI for seven years and to pay fine of Rs.3,000/- and in default of payment of fine to suffer SI for three months. He was also convicted for commission of offence punishable under Section 506 of IPC and was sentenced to suffer three years and to pay fine of Rs.1,000/- and in default to

suffer SI for one month. He was acquitted from the charge of commission of offences punishable under Section 504 of IPC. The substantive sentences were directed to run concurrently. He was granted set-off under Section 428 of Cr.PC..

2. The prosecution case is that the appellant was married to his wife Laxmi Koli and they were staying together with their daughter. On 28.10.2008 at about 4.00 p.m. under the influence of liquor the appellant poured kerosene on his wife and set her on fire. He had bolted the room from inside. The neighbours came to help the victim. He then opened the door and ran away. In the process, he banged his head against the wall and suffered injury. The victim was taken to hospital by her neighbours. She gave her statement to police. It was treated as FIR. The investigation was carried out. The appellant was arrested. Statements of witnesses were recorded. The spot panchnama was conducted. In the meantime, the parents of the victim who were residing at about 1 km away from their house were also informed. They came to see her. She narrated the same incident to them. The clothes and

other articles were sent for chemical analysis. However, the report is not on record. At the conclusion of investigation, the charge-sheet was filed and the case was committed to the Court of Session.

3. During trial, the prosecution examined eight witnesses including the victim, her parents, a neighbour who took her to hospital and who informed her parents, two panchas, the Medical Officer and the investigating officer. Learned trial Judge believed the prosecution evidence. The defence of the appellant was of total denial. That defence was not believed and ultimately the appellant was convicted and sentenced.

4. Heard Shri Ratnesh Dube, learned appointed counsel for the appellant and Shri S.R. Agarkar, learned APP for the Respondent-State.

5. The prosecution story unfolds through the evidence of PW-1 Laxmi Koli. She has deposed that she was residing in a colony at Talegaon with the appellant and their daughter. She had got married with the appellant about nine years before the

incident. The appellant was having a business of hotel at Talegaon Station. He was addicted to liquor. He used to suspect her character. The incident took place on 28.10.2008 at about 4.00 p.m.. At that time, the appellant came to his house under the influence of liquor and started abusing PW-1. The appellant threatened to kill their daughter by banging her on floor. He then picked her up. Therefore, PW-1 caught their daughter. The appellant then picked up the stove and poured kerosene on PW-1's person and then he set her on fire by lighting a matchstick. The appellant told her that he would kill her. She raised shouts for help. The neighbours came there and extinguished the fire. The appellant ran away in the meantime. He banged his head against the wall and sustained injuries to his head. After that she was taken to Talegaon General Hospital and was admitted there. At about 8.00 p.m. the police came there and recorded her statement. It was treated as FIR which is produced on record at Exhibit-33. Her father produced her clothes before the police.

In the cross-examination, she deposed that their

marriage was result of a love affair. Her parents had opposed their marriage. They did not like her decision to marry the appellant. They had not attended their marriage. She has given very important admission that the appellant was handicapped by both hands since his birth. She has deposed that on many occasions, she had lodged complaint with the police regarding the appellant suspecting her character. She had given copies of those complaints to the police. She deposed that they had a gas-connection in the kitchen. She also admitted that in the incident their daughter did not suffer any injury. She denied the suggestion that she discussed the incident with her parents and thereafter this complaint was filed. She was given a suggestion that while cooking food on gas-stove because of the flames, her clothes caught fire and she received burn injuries. She also denied the suggestion that she had grudge against the appellant as he did not give money for household expenses.

The FIR is produced on record at Exhibit-33. It was registered at 8.15 p.m. at Talegaon Dabhade police station vide

C.R. No.216/2008. It is in consonance with her deposition.

6. PW-2 Sahebrao Lokhande is father of PW-1. He has deposed that PW-1 had love affair with the appellant and she had performed marriage with the appellant and had given birth to her daughter. He has deposed that when PW-1 used to visit their house, she used to disclose that the appellant used to consume liquor and used to suspect her character. He used to abuse and beat her. On 28.10.2008, he returned home at 4.30 p.m.. At that time, PW-1's neighbour Duryodhan Pawar came to him in a rickshaw and told him that PW-1 was admitted in General Hospital. PW-2 told this fact to his wife, who in turn told him that at 3.30 p.m. the appellant had gone to their house and had threatened to kill their daughter on that day itself. After that PW-2, his wife and Duryodhan Pawar went to General Hospital, Talegaon. PW-1 was admitted there. She had suffered injuries on her neck, chest and both hands. She told him about the incident of the appellant causing those burn injuries.

In the cross-examination, he could not tell the specific

dates on which his daughter had complained to him about the appellant's conduct. He stated that the appellant's house was at a distance of 1 km from his own house. He denied the suggestion that the complaint was lodged after their discussion amongst themselves.

7. PW-5 Alka Lokhande was mother of PW-1. She has deposed in the same manner as deposed by PW-2. She has deposed about the incident when the appellant had allegedly gone to their house at about 3.30 p.m. and had issued threats on 28.10.2008, but, this witness had not paid attention to his threats. At about 4.00 p.m., Duryodhan Pawar came to their house and informed about the incident. Then they went to the hospital where PW-1 was admitted.

In her cross-examination, she admitted that in this case the appellant was initially arrested but was subsequently released on bail and after that he had taken PW-1 for co-habitation. They were residing at Talegaon. Even PW-5 herself had consented for their cohabitation. PW-1 stayed with the appellant

till 2012.

8. PW-4 Duryodhan Pawar is an important witness. He has deposed that he knew the appellant who was residing with his wife and daughter. There used to be frequent quarrels between the appellant and his wife PW-1 and on a couple of occasions PW-4 had intervened. On 28.10.2008, it was a Diwali Day. At about 3.30 p.m. he was washing his auto-rickshaw near his house. He heard shouts from the house of the appellant. He went there. The door was closed from inside. Smoke was coming out from the window. PW-4 then called the appellant. He came out. He was having bleeding injury to his head. Then the appellant ran away. PW-4 then entered the house and saw that PW-1's clothes had got fired. He extinguished the fire by pouring water. PW-1 had sustained injuries. The neighbours Ravindra Aware and Gulab Raut were with him. They took her to General Hospital, Talegaon and admitted her there. In his presence PW-1 narrated the incident to the doctor. After that the the doctor called the police. The police recorded her statement. PW-4 went to the house of the

PW-1's parents and told them about the incident.

In the cross-examination, he deposed that he was in the house of the appellant at the time of incident for about 10 to 15 minutes. He could not describe the clothes worn by the accused at the time of incident. PW-1 was trying to extinguish the fire by her hands. She had not poured water on her person. The neighbour Vaikole gave water for extinguishing the fire. The General Hospital was about one and half kilometers from the appellant's house. At about 4.25 p.m., they reached the General Hospital. The doctor made enquiries with her. The complaint was lodged by PW-1 in his presence in the hospital. According to him, at that time, her parents were not present. He stated that before he brought PW-2 and PW-5 to the hospital, her complaint was lodged by PW-1. By the time, he went to call PW-2 and PW-5, the police had not reached the hospital.

9. PW-6 Milind Sasane was a pancha in whose presence clothes of PW-1 were produced by PW-2 in Talegaon Dabhade police chowki on 29.10.2008. The panchnama is produced on

record at Exhibit-47. However, in absence of any CA report this seizure of clothes of PW-1 is hardly of any significance. The fact that they were in burnt condition is not disputed.

10. PW-7 Manohar Dabhade was landlord of PW-2 who had acted as a pancha for spot panchnama, which is produced on record at Exhibit-49. The spot panchnama mentions that the stove, the matchbox and the scarf was seized from the spot.

11. PW-3 Dr. Umakant Kokane's evidence is important. He has deposed that on that day he was attached to Talegaon Rural Hospital. At about 6.00 p.m., PW-1 was brought to their hospital. He examined her and she was admitted to the hospital for the period of twelve days. There were superficial to deep burns over left hand, chest, neck and upper abdomen. She had suffered about 12% to 15% burn injuries. The medical certificate is produced on record at Exhibit-41. On the same day, he had examined the appellant. He had sustained deep abrasion over left parietal region of the size 3 cm and deep abrasion over left parietal region about 3 cm. There was abrasion over right hand

and wrist. His medical treatment papers are produced at Exhibit-42. The medical certificate also mentions that the appellant was handicapped. The history mentioned in that medical certificate as assault by hard and blunt object over head and right hand.

In the cross-examination, he has stated that PW-1 was brought to the hospital by her husband that means the appellant had brought her to the hospital. He admitted that the burn injuries could be self-inflicted, accidental or homicidal.

12. PW-8 PSI Kadam was the investigating officer. He has deposed that he conducted the investigation. He visited the spot and carried out the spot panchnama. He arrested the appellant on 29.10.2008. His clothes were seized. PW-1's clothes were seized. He collected the injury certificates. The articles were sent for chemical analysis. After completion of the investigation, the charge-sheet was filed.

13. Learned counsel for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. The most important factor in this case is that the appellant was

handicapped by both hands and it was not possible for him to commit the act as is alleged by PW-1.

**14.** He submitted that the evidence of PWs-1, 2, 4 & 5 is not reliable, and in particular PW-4 is unreliable witness. The timings mentioned by him do not match. The police had come to the hospital at about 8.00 p.m. PW-4 has deposed that the victim was immediately taken to hospital at about 4.30 p.m. and he had gone to call the parents of PW-1 i.e. PW-2 & PW-5 after the first informant had given a complaint. These timings do not match. He has also not given clear answers regarding the actual incident.

**15.** He further submitted that the doctor himself has deposed that the appellant had admitted PW-1 to the hospital. This story is contradictory to PW-4's version.

**16.** Learned counsel further emphasized the fact that the PW-1 was residing with the appellant even after the incident till the year 2012. According to learned counsel, all these infirmities show that the prosecution has failed to prove its case beyond reasonable doubt. He also referred to the unexplained injuries on

the head and hand of the appellant.

17. Learned APP opposed these submissions. According to him, the evidence of PW-1 itself was sufficient to prove the case against the appellant. Her evidence is supported by the medical evidence as well as evidence of PWs-2, 4 and 5. He submitted that PW-5 has deposed that the appellant had gone to their house about half an hour before the incident and had threatened PW-5 that he would commit murder of PW-1. This is an important circumstance.

18. I have considered these submissions. As rightly submitted by learned counsel for the appellant, the most important factor in this case is that the appellant is handicapped by both his hands and from his birth. It is mentioned so in the arrest panchnama as well as in the medical papers showing treatment given to him by PW-3. Because of his infirmity, it is very difficult to believe that he could overpower PW-1 and commit all these acts attributed to him within a short span of time without PW-1 resisting him. The appellant first picked-up the stove,

opened the lid, poured the kerosene on PW-1 and then picked up a matchstick and then lighted it setting her on fire. During all this period, PW-1 could have easily resisted him because of his infirmity and could have easily run away or at least could have tried to seek help from the neighbours. Therefore, considering his physical infirmity, it is difficult to believe that he could commit all these acts without PW-1 protecting herself. The doctor's evidence shows that the husband i.e. the appellant had taken her to the hospital. Therefore, through the evidence of the doctor, the evidence of PW-4 Duryodhan Pawar is falsified.

**19.** As rightly submitted by learned counsel for the appellant, the timings mentioned by PW-4 do not match. The hospital was at a short distance. According to the prosecution case, the incident had taken place at about 4.00 p.m. but according to the Medical Officer PW-3 she was brought to the hospital at 6.00 p.m.. The gap of two hours is unexplained. Even PW-1 has stated that the incident had taken place at 4.00 p.m.. This raises doubt about the actual occurrence. PW-1's evidence

shows that the police had come to the hospital at 8.00 p.m. and had recorded her statement. The police station was not at a very far distance and yet, the statement was recorded at 8.00 p.m..

**20.** PWs-2 & 5 have deposed that PW-4 Duryodhan Pawar had come to their house at about 4.00 p.m. and had told them about the incident. This also does not appear to be true considering all these timings. According to PW-5 after the police had recorded her statement, he had gone to call them and her statement was recorded after 8.00 p.m.. All these timings are irreconcilable and, therefore, sufficient doubt is created about the genuineness of the prosecution case.

**21.** In addition, there is a circumstance of unexplained injuries to the appellant. There were two deep injuries on the head and one injury on the hand. These injuries are not explained by any of the witnesses. The Medical Officer has not deposed that those injuries are possible by banging head on wall. In fact the history shows that those injuries were caused by hard and blunt object.

22. Thus, taking overall view of the matter based on above discussion, sufficient doubt is created regarding truthfulness of the prosecution case. With the result, the prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt must go to the appellant and, therefore, he deserves to be acquitted. Hence, the following order :

**:: O R D E R ::**

- i. The appeal is allowed.
- ii. The impugned judgment and order 17.3.2015 passed by the Additional Sessions Judge, Pune in Sessions Case No.380/2009 is set aside.
- iii. The appellant is acquitted of all the charges levelled against him.
- iv. The appellant is in custody. He shall be released forthwith unless is required in some other case.
- v. Criminal Appeal is disposed of accordingly.

**(SARANG V. KOTWAL, J.)**

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