

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO. 76 OF 2019

Prashant alias Pintu S/o Ramlal Paradhi
Aged 35 years, Occ: Labour,
R/o Neharu Ward, Mohadi,
Tah. Mohadi, Distt. Bhandara

...APPLICANT

---VERSUS---

State of Maharashtra,
Through Police Station Officer,
Police Station, Mohadi, Tah. Mohadi,
Dist. Bhandara

...NON-APPLICANT

Shri A.A. Dhawas, Advocate for applicant.
Ms S.S. Jachak, APP for non-applicant/State.

CORAM : G.A. SANAP, J.
DATE : NOVEMBER 28, 2022.

ORAL JUDGMENT :

. In this revision, the applicant challenges the judgment and order dated 29.09.2018 passed in Criminal Appeal No.14 of 2017 by the learned Sessions Judge, Bhandara, whereby the learned Sessions Judge dismissed the appeal filed by the applicant against his conviction and sentence for the offence punishable under Section 435 of the Indian Penal Code (for short, 'IPC') passed in Regular Criminal Case No.96 of 2015 by the learned Judicial Magistrate

First Class, Mohadi, District Bhandara. The learned Judicial Magistrate First Class had convicted and sentenced the applicant to undergo rigorous imprisonment for one year and to pay fine of ₹1,000/-. The learned Sessions Judge however modified the judgment and order on the point of sentence and in place of one year awarded substantive sentence of rigorous imprisonment for one month.

2. PW1-Panchfulla Mehar is the informant. In the report lodged by the informant, she alleged that on 02.07.2015 at about 9:30 am she had kept firewood in front of her house. The accused objected to the same on the ground that he is the owner of the said place. The hot exchange of the words took place between them. The accused sprinkled kerosene on the firewood and set the same on fire. The firewood was burnt. She sustained the loss of ₹2,000/-. In the report, she further stated that the accused quarreled with her and threatened to kill her.

3. On this report, the crime was registered against the applicant-accused for the offences punishable under Sections 435, 504 and 506 of the IPC. The investigation conducted in the crime led to the filing of the charge-sheet in the Court of Judicial

Magistrate First Class, Mohadi. The learned Magistrate found the applicant guilty of the offence punishable under Section 435 and as such convicted and sentenced him as above.

4. The applicant preferred a statutory appeal against the judgment and order. The learned Sessions Judge confirmed the order of conviction but, modified the substantive sentence as stated above. Against this judgment and order, the applicant-accused has come before this Court in revision. The grounds of challenge to the impugned judgment and order have been set out in the revision application.

5. I have heard Shri A.A. Dhawas, learned advocate for the applicant and Ms S.S. Jachak, learned Additional Public Prosecutor for the non-applicant. Perused the record and proceedings.

6. The learned advocate for the applicant-accused submitted that the evidence adduced by the prosecution has not properly been appreciated. Without appreciating the evidence in a proper perspective a patent illegality has been committed by the Courts below. He submitted that there was enmity between the informant and the applicant-accused and the report in question was lodged to

settle the score against the applicant. He further submitted that the evidence of the informant and the eye-witnesses is inconsistent with the facts recorded in panchanama. It is pointed out that as per the informant and witnesses, the firewood was completely burnt to ashes. However, the panchanama would indicate that the firewood was partly burnt and two pieces of the partly burnt firewood were collected as a sample. He submitted that in order to establish whether kerosene was sprinkled by the applicant-accused over the firewood, the sample was sent to CA. The CA report was not on record. He further submitted that the applicant-accused is handicapped and therefore the learned Judge was not right in rejecting his prayer for extending him benefits of the Probation Offenders Act. The learned advocate submitted that the PW2 and PW3, who according to the prosecution are the eye-witnesses, are the relatives of the informant and as such interested witnesses. The learned advocate further submitted that perusal of their evidence would show that they were not present on the spot at the time of the alleged incident. The learned advocate, therefore, submitted that the patent illegality committed by Courts below needs to be rectified.

7. The learned Additional Public Prosecutor submitted that

the evidence on record has been found sufficient by the learned Judicial Magistrate First Class, Mohadi as well as by the learned Sessions Judge, Bhandara to prove the charge under Section 435 of the IPC. She submitted that no error has been committed while appreciating the evidence on record by the Courts below. She further submitted that the spot panchanama and sketch recorded in the spot panchanama have been proved by examining the panch witnesses. She further submitted that in view of the oral evidence about the incident of the informant, PW2 and PW3, failure on the part of the prosecution to place on record the CA report would not make a case of the prosecution doubtful. In short, the learned Additional Public Prosecutor supported the judgment and order passed by the learned Magistrate as well as the learned Sessions Judge.

8. The learned advocate in order to point out the patent illegality has taken me through the evidence on record. It is undisputed that the CA report has not been placed on record. The kerosene Can was not produced before the Court. Undisputedly, two pieces of the partly burnt firewood had been collected as a sample. The Investigating Officer (PW5) is silent about the steps

taken to procure the CA report. It is therefore seen that there is no concrete evidence to show that the kerosene was sprinkled over the firewood and the same thereafter was set on fire. It can be therefore seen on perusal of the panchanama that the partly burnt firewood found on the spot.

9. In my view, therefore, the CA report would have been the clinching evidence in favour of the prosecution. It is further pertinent to note that the facts recorded in the panchanama *vis-a-vis* partly burnt firewood indicate that the same is not supporting the oral testimony of PW1, PW2 and PW3. It is not the case of PW1, PW2 and PW3 that the firewood was partly burnt. Perusal of the evidence of PW1, PW2 and PW3 would reveal that the firewood was burnt to ashes. In my view, this inconsistency noticed in the oral evidence and the facts recorded in the panchanama have not been at all considered. In my view, the same would go to the root of the case of prosecution. There is enmity between the informant and the applicant-accused. Perusal of the judgment and order passed by the learned Sessions Judge would show that this aspect has not been dealt with properly. PW1 has admitted in her evidence that the place where the firewood was stored is the subject matter of dispute

between the informant and the accused. They are claiming their right over the said place. It has come on record that in the said open place near the heap of the firewood there is a hearth (*chulla*) of the accused. It has come on record that at the relevant time the hearth was burning for heating the water. It is seen on perusal of the sketch of the spot from panchanama that the Investigating Officer has conveniently avoided depict the hearth in the said sketch. PW1 has admitted that the accused was using the hearth for heating the water. It appears that this cannot be said to be a mistake on the part of the Investigating Officer but an attempt to suppress a material fact. If the distance between the hearth and the firewood had been shown then the same would have gone against the prosecution. If the hearth was burning then obviously the sprinkled kerosene in the reckless manner suggested by the witnesses would have fallen on the fire. In my view, this is a very important aspect, which has not been taken into consideration. This would reflect upon the case of the prosecution in entirety.

10. As stated above, PW1 has stated that the entire heap of firewood was burnt. This is not supported by the panchanama. PW1 has admitted that there is a dispute between the informant and the

applicant-accused in respect of the open space, where allegedly firewood was stored. She has admitted that her father-in-law had filed a civil suit against the accused and in the said civil suit his application seeking temporary injunction against the accused was rejected. It is therefore seen that there is a dispute and as such enmity between the parties. In my view, while appreciating the evidence of PW1, PW2 and PW3 this important fact ought to have been taken into consideration and properly appreciated. The evidence on record in view of this enmity required strict scrutiny. PW2 and PW3 as can be seen from the admissions given by them are the relatives of the informant. They are interested witnesses. No independent witness has been examined by the prosecution. Perusal of their cross-examinations in entirety would indicate that they have come forward to support the case of the informant. The evidence of the PW3 is silent about the alleged allegations and the threats extended by the applicant-accused to the informant. Perusal of the evidence of PW2 and PW3 would show that considering the distance between their houses and the house of the informant, they had no reason to come to the spot. Therefore, in my view, the evidence on minute scrutiny and appreciation reveals that they being interested witnesses have come forward to support the case of

the informant.

11. Perusal of the evidence of the informant would show that in her report she has stated about abuses hurled at her by the applicant-accused. In her report, she has stated that the applicant-accused quarreled and extended threats to kill her. In her evidence, she is silent about it. It is to be noted that if the incident, as stated in the FIR, of quarrel and threat to the informant, had occurred then she would not have missed this important aspect while giving the evidence. This, in my view, indicates that in order to settle the score of the civil dispute the report was lodged.

12. While appreciating the evidence of PW1 on the occurrence of the incident, one cannot ignore the location of her house and the house of the applicant accused. It is seen on perusal of the sketch that the house of the applicant is situated on the northern side of the house of the informant. There is a dispute between the parties with regard to the open space adjoining the house of the accused on the southern side. It is seen on perusal of the sketch that on the northern side of the house of the informant there is ample space. It is therefore unbelievable that the informant would store the firewood on the extreme northern side of her open

compound and that too near the hearth of the accused. In view of this, on the basis of the available evidence, serious doubt is created about the credibility of the evidence. All these facts have not been gone into in detailed and therefore the conviction and sentence need to be interfered with. Therefore, the revision application deserves to be allowed. Accordingly, the following order:

ORDER

- i. The Criminal Revision Application is allowed.
- ii. The order of conviction and sentence passed by the learned Sessions Judge and the learned Judicial Magistrate First Class is set aside.
- iii. The applicant-accused is acquitted of the offence punishable under Section 435 of the IPC.
- iv. The application stands disposed of.

JUDGE

Wagh