

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 54 OF 2019

The State of Maharashtra,
Through Police Inspector,
Nagar Taluka Police Station,
Ahmednagar [C.R. No. I-154/2015]

... Applicant
(Orig. Informant)

Versus

1. Mohan Popat Sathe,
Age 27 years,
2. Popat Yashwant Sathe,
Age 54 years,
3. Anjana Popat Sathe,
Age 50 years,
4. Vrushali Mohan Sathe,
Age 21 years,

All R/o Field Gat No. 114,
Shivacha Mala, Narayan-Doh,
Tq. & Dist. Ahmednagar.

... Respondents.
(Orig. Accused)

...
Mr. A. M. Phule, APP for Applicant - State
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 22nd JUNE, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Instant application arises out of judgment and order passed by the learned Additional Sessions Judge-5, Ahmednagar in Sessions Case No. 4 of 2016, dated 11.12.2018, thereby acquitting

respondents from charges under sections 436, 429, 504 read with section 34 of Indian Penal Code (IPC).

2. Learned APP took us through the FIR dated 12.03.2015 and pointed out that complainant had categorically stated that, on 11.03.2015, i.e. one day before the FIR, there was quarrel between his widowed daughter-in-law Kanchan and accused Mohan and Anjana, in the backdrop of some incidents between children. That time, informant had categorically stated that his widowed daughter-in-law had informed police by lodging complaint against accused. That, precisely getting annoyed by it, accused persons came the house of informant getting equipped with kerosene. In the backdrop of previous days quarrel and for lodging complaint accused Mohan threw kerosene on their house, whereas accused Popat ignited it and thereby burnt their house and their belongings in the fire. Hence, the complaint was promptly lodged.

Learned APP would further point out that statement of daughter-in-law Kanchan was also recorded. Prosecution had proved scene of occurrence panchanama. There is recovery and discovery at the instance of accused under section 27 of the Indian Evidence Act about discovery of kerosene bottle and matchbox. Seizure was subjected to scientific analysis and results are positive.

Therefore, it is pointed out that there was cogent and sufficient evidence against accused persons, however learned trial Judge failed to consider and appreciate such quality of evidence and erred by them acquitting accused. Therefore, State intends to challenge the said judgment and order and hence the leave application.

3. We have gone through the papers on record. It seems that informant and accused are residents of Shivacha Mala Narayan-Doh, Taluka and District Ahmednagar. It is emerging from the report that on 11.03.2015, there was some quarrel between children, i.e. granddaughter of informant on one hand and children of accused person. In that backdrop, there was some quarrel between daughter-in-law as well as Mohan and Anjana and report to that extent was lodged by daughter-in-law of informant.

4. It seems that on 12.03.2015, accused Mohan, Popat, Anjana and Vrushali came to the house of informant and started abusing her. According to informant, Mohan was equipped with kerosene bottle, whereas Popat was having matchbox. It is alleged that they both used the articles in their hands and set house of informant to fire. Informant claims that articles of Rs. 67,000/- were gutted in the fire. On next day, supplementary statement was

given, by which additional information was given that apart from above loss, cash of Rs. 25,000/- borrowed by informant also got gutted in the fire. Statement of daughter-in-law is not recorded on same day, it is recorded on the next day i.e. 13.03.2015. Scene of occurrence panchanama shows that said house is admeasuring 20 x 10 built in raw bricks and sand having tin shed.

5. We have carefully visited the substantive evidence of informant (PW-2), his widowed daughter-in law Kanchan (PW-3). Rest of the witnesses are panchas and Investigation Officer. Material evidence is of Arjun and Kanchan. It has come in the evidence of accused Arjun that accused are his relatives, they resides 50-60 feet away. However in cross, It has brought that there was some dispute between informant and accused on account of boundary marks and there were reports against each other and thereforem *prima facie* it is seen that, informant and accused are already on inimical terms.

6. If we visit testimony of PW-3 Kanchan, we find her deposing about incident taking place in the evening of 11.03.2015 regarding quarrel between children and she lodging report. But, in cross she has admitted that, police did not entertain her report. Name of one Sitabai Sathe has also emerged in her testimony. The

said Sitabai is not examined, who could have been the best witness.

7. PW-3 Kanchan stated that accused Mohan was having bislery bottle and Popat was having matchbox. However, alleged incident has taken place at around 2:00 p.m. and she had admitted in cross that she did not disclose about the incident to anyone still informant Arjun returned. Such answers shows that informant Arjun was not present at the time of occurrence. No independent witness or neighbour is also examined by prosecution. It was expected of investigating machinery to examine independent witness, more particularly in the light of previous enmity between accused party and informant party.

8. Evidence of Investigating Officer shows that spot is situated in the property of one Asaram Bapu Sathe. He was also crucial witness, but he is not examined. Documents of ownership of dwelling house are also not made part of investigation. Report also does not seem to have been lodged promptly. Therefore, there are several factors and aspects which creates doubt about actual incident. In the light of previous enmity, false implication cannot be ruled out. Such aspects have been properly considered by the learned trial Judge while deciding the case. Required ingredients for attracting the charges were not available on record. Therefore,

the view taken by trial Judge cannot be faulted with. No case being made out for grant of leave, hence we proceed to pass following order :-

ORDER

Application for Leave to Appeal by State stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)