

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

APPLN. FOR LEAVE TO APPEAL BY STATE NO.184 OF 2018

**THE STATE OF MAHARASHTRA
VERSUS
TRIMBAK HIRU AADE AND ANR**

....
Mr. R. D. Sanap, APP for applicant - State
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**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 20.04.2023.

PER COURT :-

The present application has been filed seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure by the prosecution to challenge the judgment and order dated 16.02.2018 passed by the learned Additional Sessions Judge-1, Latur in Sessions Case No.38/2016, thereby acquitting respondents/original accused persons from the offence punishable under Sections 307, 511, 506 of Indian Penal Code.

2. Heard the learned APP Mr. Sanap. With his able assistance we have gone through the record which was before the learned trial Judge.

3. The prosecution story, as is emerging from the record, is that the informant Parubai is the mother of accused No.1 Trimbak. Trikbak was married to PW-3 Jayashree and Trimbak and Jayashree have children. However, accused No.1 was residing with accused No.2. PW-5 Hiru is the father of accused No.1. Hiru had agricultural land and out of the same he had given 3 Acres 30 Gunthas land in the name of Jayashree. Hiru and Parubai were having five sons including Trimbak and two married daughters. All of them were residing separately. Jayashree was also residing in adjacent house of the informant along with her two daughters and one son. It is further prosecution story that Jayashree was in the house of her parents-in-law along with her children at about 3.00 p.m. on 12.02.2016. Both the accused entered the same house. They had brought one Can with them. Trimbak started asking as to why the land has been transferred in the name of Jayashree instead of transferring it in his name. He threatened that he will allow them to live as he would be living his

life with accused No.2. He pulled the Mangalsutra from the neck of Jayashree, at that time, the informant tried to intervene. Trimbak took out the Can which was containing kerosene, from a bag and poured it on the person of the informant and Jayashree. Accused No.2 was holding Jayashree tightly. Hiru had tried to intervene, but he was pushed. In the meantime, the informant and Jayashree rescued themselves and shouted for help. The nearby residents came from the Tanda. Informant's another son Dhondiram also reached there. Both the accused had opened the cupboard and took out some clothes, put the same to fire. When Dhondiram tried to resque, the others, Trimbak had pelted piece of brick towards him, which caused injury to the right leg of Dhondiram. After the people started gathering, both the accused fled away. The informant and Jayashree went to the Police Station and then the informant lodged the First Information Report (F.I.R.). On the basis of said report, offence vide C.R. No.22/2016 was registered with Police Station AUSA and investigation was carried out.

4. After completion of the investigation, charge-sheet was filed and after the necessary compliances, the case was committed to the Court of Session. Charge was framed against both the accused.

The prosecution examined in all ten (10) witnesses to bring home guilt of the accused persons and after considering the evidence on record and hearing both the sides, the learned trial Judge has acquitted both the accused of all the charges. Hence, this application to challenge the said acquittal.

5. In order to prove the incident in question, the prosecution has examined PW-2 Parubai – the informant, PW-3 Jayashree - wife of accused No.1, PW-5 Hiru - father of accused No.1, PW-7 Shobha – grand-daughter of informant (niece of accused No.1) as well as PW-8 Dhondiram, the injured. At the outset, we would like to say that the testimony of these witnesses are full of contradictions and omissions. The apparent corroboration is not necessary, but the corroboration should be in material particulars. PW-2 Parubai has stated that after the threat was given, Trimbak had poured kerosene on the person of herself as well as Jayashree, then she shouted. Her husband PW-5 Hiru tried to rescue them, but he was pushed by accused No.1. Then Hiru fainted. Jayashree as well as herself shouted and on hearing of the same, the other people came and in the meantime when Dhondiram had come, Trimbak had pelted a brick towards him causing him injury to the leg. Both the accused had broken the

cupboard and thrown the clothes and then set the clothes to fire. This gives an impression that all the clothes from the cupboard were set to fire. However, the testimony of PW-3 Jayashree gives different version. PW-3 has corroborated till pouring of kerosene by accused No.1 on herself and mother-in-law. But, then she says that when father-in-law i.e. PW-5 Hiru tried to rescue, accused No.2 had pushed, whereas PW-2 had stated that accused No.1 had pushed and then Hiru fainted. As per PW-3 Jayashree Hiru had not fainted. PW-3 says that Sheetal had scattered the articles and set the clothes to fire. She does not say about broking of the cupboard and it is by both the accused as per PW-2 Parubai. PW-5 Hiru says that both the accused had poured kerosene on the person of Jayashree and made attempt to pour kerosene on the person of Parubai. This happened without any dialog and immediately after the accused alleged to have entered the house of PW-2 Parubai. PW-5 Hiru then states that accused No.1 was asking him as to why he has transferred the property in the name of Jayashree. He had tried to set Jayashree and Parubai on fire, which is not the case/story put forward by PW-2 and PW-3. PW-5 Hiru does not say that he was pushed by any of the accused and then he had fainted. PW-7 Shobha says that after she heard shouts of Jayashree, she went towards her house and then she had seen all those activities

alleged to have been committed by both the accused as told by PW-2, PW-3 and PW-5.

6. Important point to be noted that as per the testimony of PW-2, 3 and 5, the incident had taken place in the house of PW-2 Parubai and not in the house of Jayashree. They all are consistent in saying that Jayashree is separately residing with her children in different house than the house of her parents-in-law. PW-7 Shobha says that she had gone to the house of Jayashree where she had seen all the incident. PW-8 Dhondiram has not supported the prosecution, though he has stated that at the time of incident when he was on the road in front of his house, he found that quarrel was going on. Accused No.1 was quarreling with his parents and when he asked him as to why he is quarreling with them, accused No.1 told him that they always quarrel like that. He has stated that Jayashree was present. The questions in the nature of cross have been put to this witness by the prosecution after seeking permission of the Court, however, nothing favorable has been transpired. Thus, it is to be noted that the evidence in respect of incident i.e. happenings adduced by the prosecution is not consistent and corroborative to each other.

7. The prosecution has also examined the panch witness and the Investigating Officer to prove that accused No.1 has discovered the kerosene Can. However, it is to be noted that the alleged discovery is from the house of Jayashree and not from the house of PW-2 Parubai. It is not the case of informant, PW-3, PW-5, that while fleeing away, accused No.1 had taken the Can with him. Unless he would have taken the Can with him and placed it in the house of Jayashree, it could not have been discovered by him from her house. The observations by the learned trial Judge that the entire panchanama of seizure of articles, discovery, appeared to be suspicious, are correct.

8. PW-9 Dr. Kiran has examined PW-3 Jayashree as well as PS-2 Parubai. No external injury was seen on the person of Jayashree. However, he found a contusion on the head of Parubai. Then he had also examined Dhondiram and found one contusion over back side of knee joint of right leg. It is to be noted that he has not given the age of the injury and therefore, we cannot co-relate that those injuries would have been caused on the day of incident. Therefore, taking into consideration the evidence of the prosecution, no other inference than

holding that prosecution has failed to prove the guilt of the accused can be arrived at.

9. The cross examination of PW-3 Jayashree would show that the dispute between herself and accused No.1 is going on since 5 to 6 years prior to the F.I.R. She had lodged a case against her husband prior to the incident and accused No.1 was acquitted from the said case. PW-2 Parubai and PW-5 Hiru though would not have in normal circumstance, deposed against son; have stated in the cross examination that whenever there used to be dispute between Jayashree and accused No.1, they used to take side of Jayashree. They wanted that accused No.1 should save his relationship with accused No.2. PW-5 Hiru in his cross-examination has admitted that there was fear in his mind that the piece of land if given to accused No.1, he would transfer it in the name of accused No.2. Therefore, with the malafide intention it appears that the F.I.R. came to be lodged. In other words, there was reason to implicate the accused persons for those prosecution witnesses.

10. The impugned judgment and order of acquittal of the respondents does not suffer from any illegality and cannot be said to be perverse taking into consideration the evidence that is adduced by

the prosecution. No case is made out to grant leave. The application stands rejected.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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