

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.938 OF 2022

Mangal w/o Subhash Thombre
Age: 38 years, Occu.: Agri.,
R/o. Devgaon, Tq. Newasa,
Dist. Ahmednagar

.. Appellant

Versus

1. Narayan Sukhadeo Thombre
Age: 30 years, Occu.: Agri.,
2. Kavita Narayan Thombre
Age: 23 years, Occu.: Household,
3. Sukhadeo Kisan Thombre,
Age: 65 years, Occu.: Agri.,

All R/o. Devgaon, Tq. Newasa,
Dist. Ahmednagar

4. The State of Maharashtra

.. Respondents

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Mr. Ambar S. Barlota, Advocate for the appellant.
Mr. S. J. Salgare, APP for respondent No.4 – State.

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

DATE : 3rd November, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present appeal has been filed under Section 372 of the Code of Criminal Procedure by the victim as defined under Section 2(wa) of the Code of Criminal Procedure to challenge the acquittal of respondent Nos.1

to 3 by learned Additional Sessions Judge, Newasa in Sessions Case No.9 of 2019 on 12.07.2022 from the offences punishable under Sections 436, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. Ambar S. Barlota for the appellant and learned APP Mr. S. J. Salgare for respondent No.4 - State at the stage of admission. We have gone through the material which was before the learned Trial Judge.

3. The prosecution case was that the informant is having shed made up of Sugarcane leaves in Gat No.474. There was an incident around 2.30 p.m. on 17.05.2017 when there was quarrel between the informant and the accused, however, on the next day i.e. on 18.05.2017 when informant was in the said shed around 8.00 p.m., accused Sukhadeo came and asked as to what will happen, if he would drop Agave plant in her farm. Then other accused persons abused her and assaulted. Thereafter, accused Sukhadeo by lighting a match stick set the shed to fire. She has sustained loss around Rs.50,000/- and, therefore, she went to police station and lodge the FIR vide Crime No.243 of 2017.

4. After the committal of the case, prosecution has examined in all five witnesses to bring home the guilt of the accused. P.W.1 Mangal is the informant, P.W.3 Subhash and P.W.4 Akshay are her husband and son and

PW.2 Prakash is their relative. PW.5 Ganesh is the investigating officer.

5. It has been vehemently submitted on behalf of the appellant that there was ample evidence against the accused persons as the testimony of all the prosecution witnesses stood corroborated with each other. Spot panchanama in respect of loss caused to the informant due to the act of setting shed to fire has come on record. The matter needs re-appreciation of evidence as the appreciation by the learned Trial Judge is wrong and illegal.

6. At the outset, we would like to say that apparent corroboration is absolutely not a criteria to arrive at a conclusion that offence is proved beyond reasonable doubt. It is required to be tested on various yardsticks. PW.1 Mangal has stated about the incident which had earlier taken place, but on the date of incident, she says that around 8.00 p.m., all the accused came, they started assaulting and abusing her and then accused Sukhadeo put the shed which was made up of leaves to fire. Important point to be noted is that though the similar statements have been made by PW.3 and PW.4, none of them have stated as to why they had not tried to extinguish the fire. If we consider the spot panchanama, we could get that there is a water storage (शेत तळे) just within the reach of the shed, still there appears to be no attempt on the part of the witnesses to extinguish the fire.

Further, PW.3 and PW.4 do not say that they had tried to intervene and save PW.1 Mangal. It has also been demonstrated through the cross-examination that the statement of informant, that the accused has land adjacent to the land of informant and there is common bandh in between, is false. The admissions those have been extracted would show that in between the piece of land of informant and Sukhadeo, there is field of one Changdev. Other possibilities have also been brought on record, as to how much time it would take to get the fire broke, when there was five bags of wheat, five bags of Bajra, three bycycles and a plastic pipe. In fact, the spot panchanama says that there was nothing at the spot, which can be seized. Though the spot panchanama also shows that there were 100 bags of onions, in the substantive evidence of PW.1 Mangal, she has not stated that there were 100 bags of onions. Therefore, taking into consideration these aspects, we found that the impugned judgment by the learned Trial Judge is legal, logical and reasoned. Under the said circumstance, the said decision does not require re-appreciation. The appeal therefore stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm