



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 150 OF 2016

Vithal S/o. Baliram Shendge,
Age : 56 years, Occu. : Agriculture,
R/o. Telgaon (Khu.),
Tq. Majalgaon, Dist. Beed.

... Applicant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

...
Mr. K. R. Yadav h/f. Mr. S. J. Salunke, Advocate for Applicant
Mr. D. R. Korade, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 DECEMBER, 2024

PRONOUNCED ON : 13 DECEMBER, 2024

JUDGMENT :

1. Instant revision is offshoot of judgment and order passed by Additional Sessions Judge, Majalgaon, District Beed dated 20.06.2016 in Criminal Appeal No. 27 of 2012 arising out of judgment and order dated 01.09.2012 passed by learned J.M.F.C., Majalgaon in R.C.C. No. 209 of 2010 for offence punishable under section 435 of Indian Penal Code (IPC).

BRIEF BACKGROUND OF THE CASE

2. Present revisionist was booked and charge-sheeted for offence punishable under sections 435, 504 and 427 of IPC on report lodged by one Namdeo Tandale with Majalgaon Rural Police

Station on 16.11.2010, informing that, present revisionist set the shed full of fodder belonging to complainant to fire and even abused and threatened him. In consequence to above report, police registered crime bearing No. 69 of 2010 and after completion of investigation, he was charge-sheeted and tried before learned J.M.F.C. Majalgaon vide R.C.C. No. 209 of 2010. Learned trial Judge framed and explained charge (Exh.19), and on its denial, conducted trial in which prosecution adduced evidence of in all five witnesses i.e. complainant, two eye witnesses, one pancha, and Investigating Officer.

On appreciating the oral and documentary evidence, learned J.M.F.C. accepted the prosecution version and returning the guilt of appellant for offence punishable under section 435 of IPC and sentenced him to suffer one month imprisonment and to pay fine of Rs.5,000/- with further directions that the same should pay to complainant.

3. The above judgment and order of conviction was questioned by accused by filing appeal bearing Criminal Appeal No.27 of 2012 before Additional Sessions Judge, Majalgaon, who after hearing both sides and on appreciating the evidence, dismissed the appeal by judgment and order dated 20.06.2016.

It is the above judgment and order, which is now assailed by filing instant revision.

SUBMISSIONS

On behalf of Appellant :

4. Learned counsel pleading innocence and claiming false implication, would submit that, prosecution had miserably failed to establish the charges beyond reasonable doubt. According to learned counsel, there is no independent eye witness. That, on account of previous enmity and on hearsay information, crime has been registered. Learned counsel submitted that, eye witness account has been rendered doubtful in cross-examination. He further submitted that, important witness, namely Gorakh and Limbaji have not been examined. Complainant and other witnesses are not consistent and not lending support to each other. That, their testimonies are full of material omissions.

5. Learned counsel further pointed out that, Investigating Officer has not gathered material to show that there was real episode of fire. That, ash and remains are not collected and brought before the court. That, in fact, the property said to be set on fire, did not belong to complainant and it was property of Gram Panchayat and very Investigating Officer admitted to that extent in cross-examination. That, the case put up by accused in trial court

as well as in appellate court, has not been correctly appreciated and hence learned counsel prays to allow the revision.

On behalf of Respondent – State :

6. Per contra, learned APP took this court through the evidence of PW1 Namdeo complainant, PW3 Gangaram and PW4 Rangnath and would submit that, occurrence is not getting unfolded, but is consistently stated by above witnesses including independent witnesses. That, their evidence has remained unshaken. That, prosecution proved the charges. That, trial court correctly appreciated the evidence and accepted the prosecution version. That, there is no infirmity or perversity in the same so as to interference. Hence, learned APP prays to dismiss the revision.

7. In the backdrop of above submissions and on going through the record, it is emerging that, occurrence under question took place on 16.11.2010. Evidence of complainant **PW1** Namdeo is at Exh.25, wherein he deposed that, on 16.11.2010 at 1:00 p.m., he learnt from his nephew Rangnath that accused came and set cattle shed to fire. He accordingly visited the spot and then lodged report (Exh.26).

In initial cross, surroundings and locations are questioned. Subsequently, questions are put about civil suit filed

by son of accused against appellant and his brother through Gram panchayat. Mere suggestion that, there was no occurrence, nothing concrete has been brought to disbelieve complainant's version.

8. **PW3** Gangaram seems to be an independent witness and he in his evidence at Exh.29/C claims to have seen the episode in which Vitthal arrived there and saying that complainant has made encroachment and ignited the shed with match stick and so he raised alarm.

While under cross, omission is brought to the extent of utterance that shed should be burnt. Except this, there is virtually no cross on the episode of igniting shed with fodder to fire.

9. **PW4** Rangnath, also an independent witness, has supported about hearing from Gangaram regarding shed being set to fire and he further going and informing to Namdeo.

In his cross political rivalry is sought to be brought.

10. As pointed out, **PW5** P.S.I. Gayke, Investigating Officer, admitted that, shed was on encroached part of Gram panchayat, proceedings regarding its ownership are pending.

Case of prosecution is that, the cattle shed was erected by complainant and the fodder therein belongs to him, has not been questioned. Here, there is eye witness account, which is in the form

of independent witness. Essential ingredients for attracting the offence under section 435 of IPC are available on record and therefore on giving anxious consideration to the available material and on hearing learned counsel for revisionist, there does not seem to be any merit in the revision. Both, trial court and first appellate court, have correctly appreciated the evidence in its entirety and only on getting convinced about availability of material, case of prosecution has been accepted. Thus there are concurrent findings.

11. Learned counsel would submit that, episode is of a decade back. Appeal is finally heard now, and therefore, he prays for setting appellant at liberty on sentence already undergone or to reduce the sentence already undergone.

12. Record shows that, incident is of 16.11.2010. Trial court rendered conviction on 01.09.2012. Appeal was heard and decided by learned Additional Sessions Judge on 20.06.2016. Revision is finally heard in December 2024. Therefore, taking such long laps of period, and as applicant revisionist was taken in custody on 20.06.2016 and was imprisoned till being set at liberty by this court by order dated 23.06.2016, in the considered opinion of this court, taking the severity of the charges and that fine amount already been paid, which was to be further directed to be

paid to the complainant, sentence for the period already undergone would subserve the purpose of justice. Consequently, the judgment and order of trial court is required to be modified to that extent only. Hence, the following order :-

ORDER

- (i) The conviction awarded to the applicant Vithal S/o. Baliram Shendge for offence punishable under section 435 of Indian Penal Code by the learned Judicial Magistrate First Class, Majalgaon vide judgment and order dated 01.09.2012 in R.C.C. No. 209 of 2010 and as confirmed by the learned Additional Sessions Judge, Majalgaon, District Beed in Criminal Appeal No. 27 of 2012, dated 20.06.2016 is hereby maintained and kept intact.

HOWEVER

- (ii) The jail sentence is reduced to already undergone.
- (iii) Bail bonds of applicant stand cancelled.
- (iv) It is clarified that rest of the operative order passed by the trial court is maintained.
- (v) The revision is disposed of in the above terms.

(ABHAY S. WAGHWASE, J.)