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Cri. Appeal No-549-2004 .odt

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

CRIMINAL APPEAL NO. 549 OF 2004

The State of Maharashtra,
Through Police Station, Sellu,
Dist. Parbhani

.. Appellant
(Ori. Complainant)

VERSUS

1. Balasaheb S/o Nathoba Kale,
Age : 32 Years, Occ. Agriculture,
2. Subhash S/o Kashinath Kale,
Age : 37 Years, Occ. Agriculture

Both Resident of Narwadi (Bk).
Tq. Sellu, Dist. Parbhani.

.. Respondents
(Ori. Accused)

....

Additional Public Prosecutor for Appellant : Mr. R.D.Raut
Advocate for Respondent Nos. 1 and 2 : Mr. S.J. Salunke

...

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 13th FEBRUARY, 2025

PRONOUNCED ON : 25th APRIL, 2025

JUDGMENT :-

1. The appellant/State has challenged the acquittal recorded against the respondents-accused by the learned Sessions Judge, Parbhani in Criminal Appeal No. 24 of 1998 under the judgment and order dated 22.04.2004. Under the impugned judgment, the learned Sessions Judge i.e. learned Appellate Court has set aside the judgment of conviction

passed by the learned Judicial Magistrate (F.C.) Sellu, District Parbhani against the respondents/accused for the offence punishable under Section 435 read with Section 34 of the Indian Penal Code in Regular Criminal Case No. 53 of 1996.

2. As per the prosecution case, the complainant Shamrao Kale owns a land bearing Gut No. 151 adjoining to the village Nirwadi (BK). In the intervening night of 25 & 26 May, 1996, he along with his servant Limbaji i.e. P.W. No.3 had slept in his field besides his fodder stack. At about 12.00 in the mid night, complainant Shamrao got up and noticed that eastern side of his fodder stack had caught fire. At that time he saw both the respondents/accused running from that place, to whom he identified in the light of that fire. His servant Limbaji i.e. P.W. No.3 has also seen both the accused running from that place. Thereafter, villagers came there and tried to extinguish the fire. Somebody also called fire brigade from Jintur and thereafter the fire was completely extinguished. In the morning, the complainant lodged report against the respondents/accused in the concerned police station. According to him, he had also sustained loss of Rs. 50,000/- on account of mischief played by the accused.

3. The learned trial Court on conducting trial, convicted both the respondents/accused for the offence punishable under Section 435 of the Indian penal Code and they were sentenced to suffer Rigorous Imprisonment for one and half years each and to pay fine of Rs. 300/- each, in default to suffer Simple Imprisonment for one month each. The respondents/accused then preferred appeal before the learned Sessions Judge, Parbhani and the learned appellate Court acquitted both the respondents/accused. Therefore, the appellant/State has filed this appeal.

4. The learned A.P.P. strongly supported the conviction recorded by the learned trial Court against the respondents/accused and submitted that the Sessions Court had in fact ignored the vital evidence on record, which clearly indicated the guilt of the accused. He pointed out that the observation of the learned Sessions Judge, while acquitting respondent/accused was definitely perverse and contrary to the evidence on record. Accordingly, he prayed to confirm the conviction of the respondents/accused recorded by the learned trial Court.

5. On the contrary, the learned counsel for the

respondents/accused supported the impugned judgment of acquittal. According to him, there was no reason mentioned by the complainant as to what caused him to sleep in the field every day. He pointed out material contradictions in the versions of the complainant as well as his servant Limbaji i.e. P.W. No.3. He pointed out that there was rivalry between accused No.1 and the complainant, on account of election and submitted that the complainant must have lodged the report against the respondents/accused to involve them in false crime. He also placed reliance on the judgment in the case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka 2024 C.R.I. L. J. 2021** and prayed for dismissal of the appeal.

6. Heard rival submissions and also perused the record and proceeding of the original case along with the impugned judgment.

7. Admittedly, the learned trial Court has convicted the respondents/accused for the offence punishable under Section 435 of the Indian Penal Code. However, the learned Sessions Judge, Parbhani in appeal thereof, has acquitted the respondents/accused. The learned counsel for the respondents heavily relied on the judgment of the Hon'ble Apex Court

reported in the case of ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka (supra)*** wherein it is observed that in an appeal against the acquittal, scope of interference by the appellate Court is very limited and the judgment of acquittal can be reversed only in case of patent perversity, misreading of material evidence or guilt of accused being only possible view. Therefore, in the light of this observation, the evidence on record is to be scrutinized, to ascertain whether there is any perversity in the judgment of acquittal passed by the learned Sessions Judge, Parbhani and whether it is contrary to the evidence on record.

8. On going through the judgment of learned trial Court, it appears that, the learned trial Court has recorded conviction against the respondents/accused mainly on the basis of evidence led by the complainant and his servant Limbaji i.e. P.W.No.3, who alleged that they had seen the respondents/accused setting on fire the stack of fodder. The learned trial Court also relied on the spot panchnama, wherein it is mentioned that the stack of fodder was found in partially burnt condition. The learned trial Court though observed that there were certain omissions in the evidence of the complainant as well as P.W. No.3, but those were not of serious

nature, which can be considered to have shaken the creditability of the prosecution witnesses.

9. However, on going through the evidence on record, it appears that the prosecution has examined only four witnesses, out of them P.W. No.1 is the complainant Shamrao, whereas P.W. No.2 is the panch witness of spot panchnama, likewise P.W. No.3 Limbaji is the servant of the complainant and lastly P. W. No.4 is the investigating officer. Admittedly, the spot panchnama indicates that the fodder stack of the complainant was burnt. As such, the evidence of P.W. No.1 and P.W. No.3, needs to be scrutinized with utmost care, since both of them have alleged that, they had seen the respondents/accused running away from the place of fodder, which was in burning condition at the relevant time.

10. It is to be noted that the very genesis of the prosecution case indicates that the complainant Shamrao had in fact woke up from sleep at 12.00 in mid night and saw his fodder stake in burning condition and the respondents/accused were also seen running from that place. Further, according to the complainant, after noticing the accused running from that place, he made Limbaji to wake up. However, P. W. No.3

Limbaji has stated differently and according to him, he got up after hearing noise created by walking over the dry leaves by a person and then he noticed the fodder stack in burning condition from both the ends. Thus, the very genesis of the prosecution case appears doubtful, due to this vital contradictions between the versions of the complainant and the P.W. No.3. Further, though both of them have stated that they saw the accused running away from that place in the light of burning fodder, but it is extremely important to note that the villagers had gathered there immediately and it is highly surprising that none out of the complainant and P.W. No.3 Limbaji made disclosure to any of the villagers about the act of respondents/accused at the relevant time.

11. Further, it is also surprising that in the complaint itself, it is mentioned that the fodder stake was burnt with the help of Kerosene. However, the panchnama of the spot of incident nowhere indicates presence of the container of kerosene. Even if it is presumed that the respondents/accused ran away with such kerosene container, but nothing has been stated either by the complainant or P. W. No.3 that while running away from the place of incident, the respondents/accused were having kerosene container. Therefore, the complaint is also doubtful

on that aspect. Further, the complaint does not make any reference that the fodder stake was burning from its both ends as stated by the complainant and P. W. No.3 Limbaji while deposing before the Court. The statement of Limbaji is also silent on this aspect.

12. It is also surprising that it has come on record that other two servants namely Rohidas and Rajabhau were also present at the time of incident with complainant and Limbaji, but the prosecution did not examine them. It is to be noted that the complainant and P. W. No.3 Limbaji are uterine brothers and this fact is not disputed. Therefore, non examination of Rohidas and Rajabhau definitely acquires significance, since Limbaji is bound to support the version of the complainant.

13. Further, the defense of respondents/accused is that they were falsely involved in the crime only because the complainant was having grudge against them on account of local election. It has come on record that son of complainant had contested election against respondent No.1 and had lost the same. Obviously, the possibility of involving the respondents/accused in false crime also cannot be ruled out. Therefore, as per the observations of Hon'ble Apex Court in the case of **Babu**

Sahebagouda Rudragoudar Vs. State of Karnataka (supra),

it cannot be said that guilt of the accused was only possible view in the instant case.

14. Therefore, considering all these aspects, no perversity can be seen in the appreciation of evidence at the hands of the learned Sessions Judge Parbhani, while acquitting the respondents/accused from the offence punishable under Section 435 of the Indian Penal Code. In view of the same, no interference is needed in the impugned judgment and accordingly the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni