



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.690/2024 IN
CRIMINAL APPEAL (ST)NO.5934/2024

with

CRIMINAL APPLICATION (APPA) NO.1088/2022 IN
CRIMINAL APPEAL (ST)NO.9547/2022

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CRIMINAL APPLICATION (APPA) NO.690/2024 IN
CRIMINAL APPEAL (ST)NO.5934/2024

The State of Maharashtra
Through P.S.O., Police Station
Dhad, Tq & District: Buldana.

...APPLICANT/
APPELLANT

VERSUS

1. Nasirkhan Jiyaullakhan,
Aged about 47 years,
Occupation: Agriculturist,
2. Muntajirkhan Jiyaullakhan,
Aged about 23 years,

Both R/o Chandol, Tq. & Dist. Buldana.

...NON-APPLICANTS/
RESPONDENTS

Mr. Ambrish Joshi, Addl. Public prosecutor for applicant/appellant.
Mr. N.R. Raut, Advocate for respondent/Non-applicant Nos. 1 & 2.

with

CRIMINAL APPLICATION (APPA) NO.1088/2022 IN
CRIMINAL APPEAL (ST)NO.9547/2022

1. Hafiz Khan Ajizullakhan,
Aged about 50 yrs, Occ:-Agriculturist,
R/o. Chandol, District Buldhana.

**...APPLICANT/
APPELLANT
(Ori.Informant)**

VERSUS

1. State of Maharashtra,
Through Police Station Officer,
Dhad, Tal. & Dist. Buldhana,

2. Nasirkhan Jiyaullakhan,
Aged about 25 years,
Occ:- agriculturist

(Ori.accused No.1)

3. Muntajirkyhan Jiyallkhan,
Aged about 40 years,
Occ:- agriculturist

(Ori.accused No.2.)

Respondent Nos. 2 & 3 R/o. Chandol (Dhad)
Tal. & Dist. Buldhana.

**...NON-APPLICANTS/
RESPONDENTS**

Mr. A. S. Dhore, Advocate for applicant/appellant.

Mr. Ambrish Joshi, Addl. Public prosecutor for respondent/non-ap-
plicant No1.

Mr. N.R. Raut, Advocate for respondent/non-applicant Nos. 1 & 2.

CORAM : M. M. NERLIKAR, J.

DATE : 16.10.2025

ORAL JUDGMENT :

Heard.

2. Being aggrieved by the judgment and order dated 12/02/2020 delivered by the learned Chief Judicial Magistrate, Buldhana in Regular Criminal Case No. 65/2018, whereby the respondent Nos. 1 and 2 accused persons in crime no. 43/2018 registered by the Police Station Dhad, Tal. and Dist. Buldhana for the offence punishable under section 435 of Indian Penal Code are acquitted. Against the said judgment and order of acquittal, the State as well as informant have approached this Hon'ble Court by challenging the impugned judgment and order of acquittal by filing present applications seeking leave to file an appeal.

3. Brief facts of the case:-

The informant – Hafiz Khan Ajizullakhan is an agriculturist, who along with his family is residing in Village Chandol, Tal. and Dist. Buldhana. He is owner of 5 acres of

land in the said village, wherein he had sowed gram nut in the relevant session of agricultural operation of the year 2018.

4. On 22.02.2018 at about 08:00 p.m. a fire incident took place in the field where he had harvested Gram-Nut crop, a heap of crop was kept in his field, i.e. Gat No.586, and despite attempts to extinguish the fire, about 70% - 80% of crop was burnt, causing loss of about 3 to 3.5 lakhs to the informant - Hafiz Khan Ajizullakhan. While informant was in search of a reason for the fire, he was informed by some person that, Nasirkhan and Muntajirkhan have set fire to the said crop with a common intention to cause loss to the informant. On this hearsay information, informant lodged a report against Nasirkhan and Muntajirkhan and two more unknown persons vide Crime No.43/2018.

5. During the course of the investigation of the crime, Investigating Officer prepared the spot panchanama in presence of panchas and statement of witnesses were recorded. After completion of the investigation, the charge-sheet against the

accused for the offence punishable under Section 435 read with Section 34 of Indian Penal Code was filed.

6. After completion of the trial, the learned Chief Judicial Magistrate, Buldana passed the impugned Judgment and Order dated 12.02.2020, whereby the accused/respondents were acquitted. Being aggrieved by the same, the State as well as informant have preferred two separate applications for seeking leave to file an appeal.

7. In order to prove the guilt of the accused, the prosecution has examined as many as nine witnesses. These are PW-1 Hafizkhan Ajijullakhan (informant), PW-2 Dongarshing Kalusing Pakal (spot panch), PW-3 Satpal Mohansing Pakal, PW-4 Sanjay Dongarshing Pakal, PW-5 Suresh Natthusing Bhusare, PW-6 Vijaysing Kalusing Pakal, PW-7 Sk. Maksood Sk. Aamad, PW-8 Sk. Sadik Sk. Maksood and PW-9 Anil Baburao Ghate. Whereas the defence has examined two witnesses, these are D.W.1 Mohd. Shiddique Ahamad Masjid and D.W.2 Syd. Shahid Syd. Mukram. The learned APP as well

as the learned counsel for informant submits that the Trial Court have not given due consideration to the evidence of eye-witnesses i.e. PW-3 Satpal Mohansing Pakal and PW-8 Sk. Sadik Sk. Maksood. The aforesaid eye-witnesses have witness the incident and accordingly has deposed before the Court and the presence of the accused has been marked by these two witnesses on the spot of the incident. However, the learned Trial Court declined to rely on the depositions of these two eye-witnesses. The learned APP and the learned counsel for informant also submitted that there is no dispute so far as the fire to the crop of gram nut and presence of the accused persons on that spot are concerned. Not only that even prosecution has duly proved the facts by adducing evidence of the witnesses and therefore, the Trial Court ought to have convicted the accused persons.

8. On the other hand, the learned counsel for respondents/accused submitted that the prosecution has miserably failed to establish a case beyond reasonable doubt. He further submits that the testimonies of PW-3 and PW-8 do

not inspire confidence and that they are brought up witnesses. There are several contradictions and omissions in the evidence of the prosecution witnesses. There exists an enmity between the informant and the accused which was brought on record and therefore, the informant has falsely implicated the accused. He further submits that the FIR was lodged at a belated stage i.e. after six days of the incident. Accordingly, he prays that, there is no merit in the appeal and the Trial Court has appropriately appreciated the case of the prosecution and therefore, passed the judgment and order of the acquittal.

9. It is necessary to mention at this juncture that, while dealing with the appeal against acquittal, the fundamental principle is reinforced which is presumption of innocence of the accused and thus, the Court shall be reluctant to interfere with the trial Court findings, unless they are found to be perverse or clearly erroneous. Keeping in mind, the fundamental principles while dealing with the appeal against acquittal and while re-appreciating the evidence, it is necessary to take great care and exercise caution while re-appreciating the evidence.

10. The prosecution has led the evidence of nine witnesses. Much emphasize was placed by the learned APP as well as the learned counsel for the appellant on the evidence of PW-3 and PW-8, claiming to be eye-witnesses. PW-3 deposed that while returning from work on 22.02.2018 in the evening at about 07.00 - 07.30 p.m., both the accused persons were present near the heap of crop of gram nut which was lying on the land of PW-1. Both had match-sticks in their hands and suddenly heap caught fire. Upon seeing the fire, he made hue and cry and because of which accused ran away. Even people from nearby places gathered there. He tried to extinguish the fire but failed. It was brought on record that he has seen the accused in the light of motorcycle. During the cross-examination, he has stated that the informant PW-1 is known to them. It was further brought on record that there is a field of Maksood Aamad in between the road and the land of PW-1 and it was admitted that while going from the road from east to west and west to east, the land of the PW-1 is not there. It is admitted by PW-3 that from the road till the heap, the distance

is about 400 to 500 ft. and while travelling through the said road, the heap cannot be seen in the light of a motorcycle. He further admits that after making hue and cry, PW-1 along with his family members and other people gathered on the spot and details as to how the incident occurred was narrated by him to PW-1. He further admits that he was not aware whether the report was given by PW-1 against unknown person or not. Further an omission was brought on record that the heap was at 20-25 ft. and the accused was having matchstick box in their hands. It was further brought on record and admitted by PW-1 that his statement by Police was taken on 02.03.2018 i.e. after 13 days from the date of registration of FIR.

11. So far as the other eye-witness PW-8 is concerned, he has deposed that on 22.02.2018, at about 06.30 to 06.45 p.m, he had been to the agricultural land of the PW-1 for getting fodder for she-goat. At that time, he climbed on tree to get the fodder and he saw two persons coming near the heap and setting the heap on fire. He states that at that time PW-3 was going on his motorcycle. He states that he has seen the said

accused persons while he was on top of the tree. When after three months, he met PW-1, on inquiry by informant whether he has seen anyone setting heap on fire, he narrated about the incident to the informant. After learning the same, informant had requested him to become witness and give evidence and accordingly, he has deposed before the Court. In the cross-examination, he admits that he has not taken any steps either to inform about the incident to the Police nor has he made any application to the Court. He further admits that while witnessing the incident, he has not seen anybody else for about five minutes, however after that he left the spot, he has not disclosed this fact to anybody. He further admits that he knew who the owner of the heap is however he has not disclosed immediately to the PW-1 about the incident.

12. So far as PW-1 who is the informant and the owner of the agricultural field is concerned, he deposed that his evidence is hearsay as he has been informed by one Vijaysing Kalusing Pakal who is PW-6. He states that he has lodged a complaint against unknown persons on the information given by PW-6.

Later on, he has received the information that the accused has set the heap on fire. He also states that the accused are his near relatives. They have enmity due to an agricultural land. He further states that, the accused has helped a village boy in eloping with his daughter a year ago. Further, in cross-examination, it was brought on record that some persons who had gathered on the spot tried to extinguish the fire. He admits that he has given the report, however that report dated 22.02.2018 is not on record.

13. Upon scanning the evidence of all these three witnesses, one important fact that can be gathered is that PW-1 reached the spot of the incident immediately, however he has not stated that PW-3 was present on the spot. Further, PW-3 stated that he has informed PW-1 about who has committed the offence, but this fact is not present in the evidence of PW-1. Not only that, the evidence of PW-8 if compared with the evidence of both these witnesses i.e. PW-1 and PW-3, there is no reference in the evidence of PW-8 that PW-3 had made hue and cry, whereas PW-3 in his testimony stated that he has made

a hue and cry and accordingly the people gathered on the spot. It is further to be noted that if the incident was disclosed by PW-3 to PW-1 then there was no reason for the informant to question PW-8. These contradictions, omissions and discrepancies create a doubt about veracity of the evidence of PW-3 and PW-8. Therefore, in my opinion both these witnesses who claim to be eye-witnesses are planted and brought up witnesses. Had it been the case that PW-3 narrated the incident to PW-1, under such circumstances, PW-1 would have registered an offence immediately against the accused persons. And therefore, considering the evidence of all these witnesses, they do not inspire confidence, so also they are not trustworthy witnesses.

14. It is an admitted fact that there was a fire to the heap, but no trustworthy evidence has been brought in respect of who has caused the fire to the heap. Even evidence of other witnesses are not helpful to the case of the prosecution. Not only that the delay in lodging of FIR under such circumstances also create a serious doubt about involvement of the accused

persons in the crime and therefore, the prosecution has utterly failed to prove the case against the accused beyond reasonable doubt.

15. After considering the argument of learned APP and learned counsel for the informant and after going through the entire record as well as the judgment and order passed by the Trial court, I do not find any infirmity, illegality or perversity in the findings. Further, on revaluation of the entire evidence, there is no sufficient evidence to interfere with the acquittal of the accused persons. Hence, the following order:-

(I). Both the applications to leave to file appeals are hereby refused.

(M. M. NERLIKAR , J.)