
(2014) 07 BOM CK 0016
In the Bombay High Court
Case No : Criminal Appeal No. 585 of 1993

The State of Maharashtra

APPELLANT

Vs

Kisan Mahadeo Khupkar

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 436, 504

Citation : (2014) ALLMR(Cri) 3907

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : V.R. Bhonsale, A.P.P, Advocate for the Appellant; S.V. Kotwal i/b M.S. Mohite, Advocate for the Respondent

Judgement

V.K. Tahilramani, J.—The appellant-State of Maharashtra has preferred this appeal against acquittal which is directed against the judgment and order dated 29.6.1993 passed by the Assistant Sessions Judge, Satara in Sessions Case No. 196 of 1991. By the said judgment and order, the learned Sessions Judge acquitted the respondents-original accused Nos. 1 to 4 of the offence under Sections 436 read with Section 34 of IPC and under Section 504 read with Section 34 of IPC. The prosecution case, briefly stated, is as under:

PW-2 Mukabai is the first informant in the present case. Mukabai along with her son Madhukar, her daughter in law Nanda and their children were residing in a shed near village Palasavade. The said house is constructed with stones and had thatched roof cover which was supported by wooden logs. The said shed was situated at some distance from the village and was not located in the village itself.

The incident occurred on 28.9.1989 at about 8.00 p.m. PW-2 Mukabai along with her daughter in law PW-4 Nanda and their children were present in the shed. At that time, the respondents-accused came to her house and asked them to get out of the house. They asked Mukabai where her son Madhukar was, because, he had committed theft of their she-goats. Mukabai, Nanda and others got out of their house. Thereafter respondent No. 3 Gopal sprinkled kerosene oil from the

tin on the house of Mukabai and respondent No. 1 Kisan lit a match stick and set the house on fire. Mukabai and Nanda raised hue and cry, due to which, neighbours PW-5 Mahadeo and PW-6 Laxman came to the spot. The house was completely gutted and according to Mukabai, she sustained a loss of Rs. 100/-. On the following day, Mukabai lodged F.I.R. at about 12.00 noon. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed against the accused.

2. We have heard the learned A.P.P. for the Appellant-State and the learned advocate for the Respondents-accused. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that there is no merit in the appeal and the appeal deserves to be dismissed.

3. According to the prosecution, there are four eye witnesses i.e. PW-2 Mukabai, PW-4 Nanda, PW-5 Mahadeo and PW-6 Laxman. According to Mukabai, on 28.9.1989 at about 8 p.m. all the respondents-accused came to her house and asked the inmates to go out. At that time, the respondents-accused asked Mukabai where her son Madhukar was, because, he had committed theft of their she-goats. Accordingly, she, her daughter in law Nanda and the children came out of their house. Thereafter, respondent No. 3 sprinkled kerosene on the house and respondent No. 1 set her house on fire.

4. We do not find the evidence of Mukabai believable because according to Mukabai, her son Madhukar had come home one hour after the incident. On the next day in the morning, her son Madhukar went to the Police Station to inform the police about the incident. Mukabai has stated that she did not tell her son Madhukar the names of the four accused as culprits when he went to the Police Station. This fact is very unnatural. When Mukabai knew that her son Madhukar was going to Police Station to inform the police about the incident, she would definitely inform her son about the names of the culprits. In fact, when her son had come home one hour after the incident, in natural course, Mukabai would inform her son about the names of the culprits and the role played by them. But Mukabai has not done so. Even till the next day morning when her son Madhukar went to the Police Station, she had not informed him about the names of the culprits. The fact that Mukabai did not disclose the names of the accused persons to her son Madhukar till next day afternoon, affects the reliability of her evidence. Moreover, it is seen that F.I.R. has been lodged belatedly i.e. next day after 12.00 noon. No explanation has been given for the delay in lodging F.I.R. This again raises a cloud of doubt about the prosecution case.

5. Though Nanda claims to be an eye witness and has deposed on similar lines as that of Mukabai, she has not informed her husband Madhukar the names of the culprits. Thus when Madhukar left for the police station on the morning of the next day, he did not know the names of the culprits. This again seriously affects

the credibility of the evidence of Nanda. It is an admitted fact that there were strained relations between the respondents and Mukabai and her family because Nanda has admitted that on 28.9.1989 that is on the day of the incident the respondents had lodged complaint against her husband Madhukar stating that he had committed theft of their she-goats. Thereafter, the accused persons came to the house of Mukabai to enquire about the whereabouts of Madhukar. It appears that on account of this complaint being lodged by the accused persons against Madhukar just prior to the incident, Mukabai and her family decided to falsely implicate the respondents.

6. The learned A.P.P. has placed reliance on the evidence of PW-5 Mahadeo who also claims to be an eye witness. He has stated that he heard shouts, therefore he rushed to the house of Mukabai. He saw that four accused persons were abusing Madhukar alleging that Madhukar had committed theft of their she-goats. Mahadeo has stated that accused No. 3 sprinkled kerosene on the house of Mukabai and accused No. 1 set the house on fire with match stick as a result of which, the house was completely burnt. Mahadeo claims that he is a fisherman and he daily goes to catch fish in the Irrigation Project of Rajewadi which is at a distance of one mile from his village. According to Mahadeo, he leaves his house at 3.00 p.m. and after fixing net in the day time, he used to wait till 9.00 to 10.00 p.m. on the site i.e. at Rajewadi. It is pertinent to note that the incident occurred at about 8.00 p.m. Thus, it was not possible that Madhukar would have been present near his house at 8.00 p.m. when he usually used to wait at Rajewadi Irrigation Project till 9.00 p.m. to 10.00 p.m. The conduct of PW-5 Mahadeo is also seen to be rather unnatural. He has admitted that he did not question any of the accused about why they were burning the shed. He has also admitted that he did not make any attempt to extinguish the fire and instead, he straightway went to his house. Due to all these facts, his version does not appear to be believable.

7. The last eye witness according to the prosecution is PW-6 Laxman. Laxman has stated that at about 8.00 p.m. on the day of incident he saw all the accused persons coming to the house of Mukabai. The accused persons were enquiring about the whereabouts of her son Madhukar. They were alleging that Madhukar had stolen she-goats of their relative. Then the accused asked Mukabai and others to come out of the house and thereafter accused No. 3 poured kerosene on the house and accused No. 1 set the house on fire. The conduct of this witness is also unnatural. He has stated that he waited for 5 to 10 minutes at the scene of offence. Thereafter, he returned to his house, took his meals and went to sleep. On the next day morning, he got up and he did not know what happened thereafter. The behavior of this witness seems to be very unnatural because a person who is a neighbor, would not have acted only as a spectator without helping the inmates of the house. In natural course, he being a neighbour, would have helped the inmates of the house as far as possible. He would not just go away from the spot without any attempt to help the inmates of the house. He has also not made any attempt to extinguish the fire but he

straightway returned to his house without talking to anybody, had his food and went to sleep. All this shows that either he was not present at the scene of offence or he seems to be a got up witness. All the more we find Laxman to be a got up witness because one very interesting admission has emerged in his evidence. Laxman has admitted that a meeting had taken place about the shed (house) being burnt. In the said meeting, this witness told that accused Nos. 1 to 4 did not set on fire the house of Madhukar, but in fact, Madhukar had himself set his house on fire. This is a very damaging admission which raises doubt about the veracity of the evidence of this witness where he has stated that respondents had set the house of Mukabai on fire.

8. It is also interesting to note that Mukabai and Nanda have stated that the shed was being used as residence by them. However, hardly any household articles or other property was found in the house. According to Mukabai, she sustained loss of Rs. 100/-. Obviously in a dwelling house, the property therein would be worth more than Rs. 100/-. This also raises doubt about the prosecution case that the house was being used as a dwelling house or being used to store any property. Looking to all the facts especially the fact that there is delay of more than 16 hours in lodging F.I.R. for which, no plausible explanation has been given by the prosecution, we are of the opinion that the view of acquittal taken by the learned Sessions Judge is a reasonable and possible view. Thus, we find no merit in the appeal. Appeal is dismissed.