
(2014) 10 BOM CK 0037

Bombay High Court (Aurangabad Bench)

Case No: Criminal Appeal No. 129 of 2000

Ibrahim Samsheer Pathan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Oct. 27, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 436

Citation: (2015) ALLMR(Cri) 3546 : (2014) 4 BomCR(Cri) 640

Hon'ble Judges: M.T. Joshi, J

Bench: Single Bench

Advocate: N.K. Kakade, Advocate for the Appellant; R.P. Phatke, A.P.P. and A.J. Dale,
Advocate for the Respondent

Judgement

M.T. Joshi, J.

Being aggrieved by the Judgment and Order dated 3rd March, 2000 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 82 Of 1998, convicting the Appellants [original accused G.A. Ghule [P.A.] Nos. 1 and 2] for the offences punishable U/Section 436 read with 34 of the Indian Penal Code and consequent sentence to suffer rigorous imprisonment for three [3] years and to pay fine of Rs.500/- [Rs. Five Hundred Only] each and in default to suffer further rigorous imprisonment for six [6] months, the original accused have preferred present Criminal Appeal.

2. In short, the prosecution case is as under :-

Complainant - Rambhau Piraji Shinde and present Appellants inter se resides in the neighbourhood in a public field reserved for grazing the cattle of the villagers . Earlier there used to quarrel between the two families. In the circumstances, on 5th May, 1998 at about 12.30 a.m. to 1.00 a.m., the complainant noticed that roof of his house had caught fire and got burnt. At the same time, he noticed present Appellants running away towards their house, from the place of incident. After

hearing the shout of the complainant, Lahu Ganpat Sanap i.e. neighbour came at the spot. The fire was extinguished by pouring the water. Certain food grain, clothes, utensils and money total worth Rs.4000/- burnt in the fire. Thereafter, the complainant lodged the complaint on the next day in the morning.

3. During the trial, the accused admitted panchnama of spot of occurrence as well as rough sketch map Exh.No.18 before the learned Sessions Judge. Complainant - Rambhau and his daughter P.W. No. 2 Sindhubai Pisal were examined before the court. Both of them deposed before the court that in the midnight, on the day of incident, when they woke-up due to the fire, they saw both the appellants / accused running away from the spot towards their own house.

4. The defence of the present Appellants was that the family of the Appellants had earlier filed two criminal complaints against the complainant and his family members. As all the neighbourhood resides in a public property, unauthorizedly, all of them, use to get electric supply by putting hook on live electricity wire, therefore, there is possibility of having short- circuit and by taking undue advantage of braking of the fire, due to previous enmity, the complainant has filed false complaint against them.

5. The learned Sessions Judge, observed that both the witnesses are interested witnesses. They had enmity with the Appellants, therefore, corroboration to the prosecution evidence was required. The learned Sessions Judge further found that suggestion was given to these witnesses that there is possibility of having spark while starting electric supply; would mean spark would not occurred after electric supply had started. As the incident had taken place in the midnight, the learned Sessions Judge observed that there was no possibility of taking electric supply in the mid- night. Further braking of the fire during the preparation of the meal also ruled out for the same reasons and in the circumstances taking into consideration the background of the enmity, nearness of the house of the Appellants, the learned Sessions Judge arrived at conclusion that there no reason to disbelieve version of P.W. No. 1 Complainant Rambhau and his daughter P.W. No.2 - Sindhubai. In the circumstances, the conviction and the sentence, as noted supra.

6. Mr. N.K. Kakade, learned counsel appearing for the Appellants submitted before me that it is an admitted fact that, earlier two criminal complaints were filed against the complainant and his family members by the present Appellants. Admittedly, the complainant used to take illegal electricity supply directly by putting hook on the live electricity wire of a pole. The panchnama of the spot of occurrence as well as rough sketch map shows that the house of the present Appellants is just adjacent to the house of the complainant and in between them, there is compound of dried thorny brushes making it more hazardous for the Appellants to set on the fire the house of his neighbour. In the circumstances, according to Mr. N.K. Kakade, the findings recorded by the learned Sessions Judge is wrong.

7. Per contra, the learned A.P.P. for the State submitted that there is nothing on record to disbelieve the versions of the complainant and his daughter, who saw both the Appellants running away from the spot of occurrence, at the time of incident. Therefore, it was submitted that, Criminal Appeal be dismissed.

8. Following points arise for my consideration and I record my findings against each of them, for the reasons stated below :-

POINTS

FINDINGS

1. Whether the prosecution has proved that in the midnight, between on 10th May and 11th May, 1998 at Sonemiya-wasti, Tal. Shevgaon, Dist. Ahmednagar, the Appellants in furtherance of their common intention, committed mischief by fire, intending to cause destruction of dwelling house of the complainant and set the same on fire. ?

Not Proved.

2. What Order.?

As per final Order.

REASONS

9. There is no denial to the fact that some part of the house of the complainant had caught the fire in the said mid-night. According to the complainant and his daughter, immediately after breaking of the fire, they saw both the Appellants running away from the spot of occurrence. During the course of cross-examination, they have admitted that they were already facing two criminal cases, filed by the present Appellants against them. Besides this, obtaining of illegal electric supply directly from live wire of the electricity pole, by them, is an admitted fact. The learned Sessions Judge, technically interpreted the suggestion that spark may occur at the time of taking electricity supply only and not thereafter. It should be noted that when a hook is put on the live electric wire, without any regard to the safety and precaution, possibility of short-circuit always remains there. Besides this, though the learned Sessions Judge has taken into consideration the nearness of the houses of the complainant and the Appellants but, did not attach importance as to the probability of not causing the fire, as the Appellants would also be interested in keeping safe their own house while setting the fire to the house of their neighbour. The learned Sessions Judge though searched for corroboration to the interested

version however, ended in merely articulating the probabilities.

10. In that view of the matter, in my view, the learned Sessions Judge ought to have extended reasonable benefit of doubt in the case. In the circumstances, following order is passed :-

O R D E R

(i) Criminal Appeal is allowed.

(ii) Judgment and Order dated 3rd March, 2000 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 82 Of 1998 convicting and sentencing the present Appellants for the offences punishable U/Section 436 read with 34 of the Indian Penal Code is hereby set aside and instead, the Appellants (original accused Nos. 1 and 2) are acquitted of the said offences.

(iii) Bail bonds of accused shall stand cancelled.

(iv) Fine amount deposited by the Appellants in the Court, be refunded to them.