

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 12 OF 2004

State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

1. Vishnu Dagadu Gaikwad,
53 years

2. Balu Vishnu Gaikwad,
25 years.

Both R/o. Girnare, Tal. & Dist. Nashik. ...Respondents
(Orig. Accused Nos. 1 & 2)

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Mr.V.B.Konde-Deshmukh, APP for the Appellant-State.
None for the Respondents.

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**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 5TH JANUARY, 2021

JUDGMENT : (PER : V. G. BISHT, J.)

1. This appeal has been preferred by the State challenging the judgment and order of acquittal dated 17th May, 2003 passed in Sessions Case No. 35 of 2002 by learned Sessions Judge, Nashik for the offences punishable under Sections 302 and 451 read with 34 of the Indian Penal Code, 1860 (for short "IPC").

2. The prosecution case in short is that, on 13th April, 2002 the informant had been to Trimbakeshwar in order to fetch his daughter. At about 6.45 p.m. in the evening, one Vishnu More of informant's village informed the elder brother of the informant that his sister-in-law i.e. wife of informant had sustained burn injuries. Therefore, all of them rushed to Civil Hospital, Nashik. The informant found that his wife, namely, Ramabai (since deceased) was totally burnt. At about 11.05 p.m. in the night she succumbed to burn injuries.

3. On 14th April, 2002 after performing the last rites, the informant and others enquired with informant's sons, namely, Mohan (PW-4) and Chandrakant (PW-2) as to how it had happened. Chandrakant (PW-2) then informed that his brother Mohan (PW-4) had gone to village and at the relevant time, he and deceased were in the house. On 13th April, 2002 at about 6.00 p.m., the villagers, namely, Balu Vishnu Gaikwad (A-2) and Vishnu Dagadu Gaikwad (A-1) visited their house and demanded contribution to celebrate Ambedkar Jayanti. As the deceased expressed inability, the accused got annoyed. A-2 then got

caught hold of the deceased by her saree and A-1 after catching out her both hands poured kerosene and set her ablaze.

4. Later on, the informant and others visited Nashik Taluka Police Station and accordingly lodged the report. On the basis of which Crime No. 27 of 2002 for the offences punishable under Sections 302, 451 read with 34 of IPC came to be registered against all the accused.

5. It appears from the record that PW-6 Investigating Officer on being asked visited the place of occurrence and prepared spot panchnama (Exh. 23) and also recorded the statements of informant and his sons. It further appears from the record that thereafter PW-7 Investigating Officer took over investigation and also recorded the statements of two witnesses, forwarded seized articles to Chemical Analyzer and after completion of investigation, submitted the chargesheet against the accused.

6. In order to bring home the charge, the prosecution examined in all 7 witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of

the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”) about the incriminating evidence and the circumstances and they denied all of them as false. According to them, the deceased herself poured kerosene on her person and set her ablaze due to domestic problems. They further submitted that a false case is filed against them.

7. Mr.Konde-Deshkukh, learned APP representing the State, submitted that the learned trial Judge erred in not believing the version of PW-2- son, who had witnessed the whole incident. Moreover, the evidence of PW-2 has not been shattered in any manner in the cross-examination and therefore, the learned trial Judge ought to have convicted the accused. As the learned trial Judge has failed to appreciate the case in proper perspective, the impugned judgment and order of acquittal deserves to be set aside, argued learned APP.

8. None appeared for the respondents-accused.

9. First, we shall refer the postmortem report prepared by PW-3.

10. PW-3 Dr. Yuvraj Hari Pawar states in his evidence (Exh. 25) that on 14th April, 2002 he conducted postmortem on the dead body of Ramabai Bhika Gaikwad. The deceased had sustained 94% burn injuries. According to him, the cause of death was shock due to 94% injuries. He then proved the postmortem report at Exh. 26.

11. There is no dispute from the side of defence that the deceased died due to burn injuries. The only question which is to be determined in the light of accusations made by prosecution is whether it were accused who had set deceased ablaze.

12. PW-1 Bhika Valu Gaikwad, informant, states in his evidence (Exh. 20) that the deceased was his wife. The incident occurred before one year. He had gone to Trimbakeshwar to bring his daughter Kavita. He does not know what happened in his village Girnare. On having received telephonic message from one Vasant More that his wife had been burnt, he, his brothers and sisters rushed to Civil Hospital, Nashik. The deceased did not speak and died thereafter. It is his further evidence that his son

Chandrakant (PW-2) was present in the house at the time of incident but he did not speak with him.

13. Since the informant himself was not supporting his case, he came to be treated hostile by the prosecution. He was cross-examined by the learned APP but learned APP could not elicit anything from the mouth of this witness. Even learned APP failed to gather from this witness as to why he became hostile. We also do not find any suggestion given at the instance of learned APP to informant suggesting any particular reason to his hostility. Therefore, the evidence of informant read as a whole does not take the case of prosecution anywhere.

14. According to prosecution, Chandrakant Bhika Gaikwad (PW-2) is a star witness of the prosecution. It is also relevant to note from the evidence of this witness that at the relevant time, he was only 10 years of age. Thus, the evidence of this witness needs to be scrutinized and assessed cautiously and carefully.

15. PW-2 Chandrakant Bhika Gaikwad states in his evidence (Exh.22) that the incident occurred at about 7.00 pm. He was in

his house. The accused came to his house for contribution (Ambedkar Jayanti). They both entered into the house. Vishnu (A-1) picked up container of rokel and poured kerosene on the body of deceased. Balu (A-2) lighted a match stick and set deceased on fire. It is his further evidence that he got scared and hid himself in bathroom.

16. If the evidence of this material witness is read vis-a-vis FIR, it would be seen that as per FIR when accused demanded contribution, the deceased expressed her inability and because of this accused got annoyed and then incident in question took place. Whereas the evidence of PW- 2 nowhere shows as to the reason behind the incident. Similarly, FIR also does not show that as this witness had got scared, he hid himself in the bathroom.

17. The Cross-examination, if read carefully, in our considered opinion presents an altogether a different story as to the incident in question. As per cross-examination of this witness, nearly 5 to 6 persons had visited his house to collect contribution before the incident and a dispute had taken place between her mother and

them. This goes to show that prior to the arrival of the accused, some 5 to 6 persons had already approached the deceased so as to collect contribution for Ambedkar Jayanti and a quarrel had also taken place between them and deceased.

18. In this backdrop, the defence suggested this witness that at that time the deceased had told those persons that she would set her ablaze if they insisted on contribution which is denied by this witness. This witness was further suggested that pursuant to that threat, the deceased indeed and actually poured kerosene on her person but then again this is denied by this witness.

19. This witness was further suggested that it is only thereafter i.e. after deceased had poured kerosene on her person, the accused appeared in the scene but then this suggestion is also denied by this witness. However, this witness admits that the present accused told his mother to remove saree as it had become wet with kerosene and that thereafter they went away and stood outside.

20. This last piece of suggestion is very self explanatory, loud and clear. Needless to say, this admission on the part of this witness unequivocally goes to show that pursuant to the threat given by deceased to those persons who had come earlier for contribution, the deceased indeed got herself drenched with kerosene. Thus, this negates the theory of prosecution that it were accused who had poured kerosene on the person of deceased. Similarly, another positive inference from the said admission is that the accused not only advised the deceased to remove her saree as saree had become wet with kerosene but they stood outside her house, clearly goes to show that the deceased materialized her threat by setting herself ablaze on her own.

21. The above being the nature of evidence adduced by star witness, we have our own reservation as to the credibility of this witness and having regard to clear admission given in the cross-examination, we are not prepared to believe the version of this witness.

22. PW-4 Mohan Bhika Gaikwad, another son of deceased, states in his evidence (Exh. 27) that at the relevant time he was in village Girnare. When he reached home, he saw his mother lying with a quilt. Chandrakant (PW-2) was in bathroom. Vishnu (A-1) and Balu (A-2) ran away. It is his further evidence that he did not enquire with anyone as to what had happened. Further, according to him, nothing had happened in his presence.

23. The evidence of this witness gives a semblance that when he reached his house, he found his mother in a burnt condition. He also saw both accused running away from the spot. Interestingly, the presence of this witness is nowhere revealed in the FIR. Rather, the FIR shows that on the day of incident, this witness had gone out of the house in the village premises and was not present. Therefore, his version showing that he had seen the accused running from the spot needs to be outrightly rejected.

24. There is one more reason and that is his cross-examination. According to him, he was not enquired with by the police. In our

considered opinion, rightly so, because he was not present in the house at the time of incident. This becomes further clear from the cross-examination that for the first time he stated that Chandrakant (PW-2) had hidden himself in bathroom and he had seen accused running away from the spot. Therefore, we hold that this witness is of no assistance to prosecution.

25. From the above discussion, it is more than clear that there is no satisfactory evidence at all to prove that it were accused who after dousing deceased with kerosene set her ablaze. Rather, in the light of cross-examination of PW-2 -son, who was very much present at the time of incident, a possible inference can be drawn that as the deceased had got frustrated and irritated because of continuous demand of contribution and she had threatened to douse herself with kerosene, a possible conclusion may be drawn here that she on her own after drenching herself with kerosene set her ablaze.

26. In our considered opinion, the learned trial Judge rightly appreciated the evidence on record and further rightly acquitted the accused on proper appreciation of material on record. No

fault can be found in the findings of acquittal as the same are neither perverse nor illegal.

27 For the aforesaid reasons, we find no merits in the appeal and dismiss the appeal accordingly.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)