

Bombay High Court

Mr. Subhash Panjabrao Raut And 2 ... vs The State Of Mahy. Thr. Pso ... on 11 September, 2017

Bench: Swapna Joshi

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

Criminal Appeal No.526 of 2003

- 1] Subhash Panjabrao Raut,
Aged about 50 years, Occ.- Agriculturist,
R/o.-Wani (Belkhed),
Tq. Chandur Bazar, Distt. Amravati.
- 2] Shridhar Ramchandra Kothale,
Aged about 45, Occ.- Agriculturist,
R/o.-Wani (Belkhed),
Tq. Chandur Bazar, Distt. Amravati.
- 3] Shaligram Rajaramji Kothale,
Aged about 59 years,
Occ.- Retired/ Ex-Serviceman,
R/o.- Chandur Bazar,
Tq. Chandur Bazar, Distt. Amravati.

.... Appella

-Versus-

The State of Maharashtra,
through Police Station Officer Chandur Bazar,
Police Station Chandur Bazar, Tq. Chandur Bazar,
Distt. Amravati.

None for the appellants.

Mrs. Shamsi Haider, Additional Public Prosecutor for State.

Coram : Mrs. Swapna Joshi, J.

th Dated : 11 September, 2017.

ORAL JUDGMENT

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This appeal has been preferred by the appellants (hereinafter will be referred as 'the accused')

against the judgment and order passed by the learned IInd Adhoc Additional Sessions Judge, Achalpur in Sessions Trial No.20 of 2002 delivered on 19-08-2003, thereby the learned trial Judge convicted Subhash (accused no.1), Shridhar (accused no.2) and Shalikram (accused no.3) for the offence punishable under Section 436 r/w 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years each and to pay a fine of Rs.1000/- each, in default, to suffer rigorous imprisonment for three months each.

2] The learned trial Judge further convicted Subhash (accused no.1), Shridhar (accused no.2) and Shalikram (accused no.3) for the offence punishable under Section 39 of the Indian Electricity Act and were sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs.1000/- each, in default, to suffer rigorous imprisonment for three months each.

3] The learned trial Judge further convicted Shaligram (accused no.3) for the offence punishable under Section 39-A of the Indian Electricity Act and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to suffer rigorous imprisonment for three months.

4] I have heard Mrs. Shamsi Haider, the learned Additional Public Prosecutor for the State. The appellants and their Counsel remained absent. With the assistance of the learned APP, I have gone 3 Judg 110917 appeal 526.03.odt through the record of the Case.

5] The facts leading to prefer this appeal can be summarised as under :-

Shalikram (accused no.3) owned a field at village Wani (Belkheda), Taluka Chandur Bazar. Subhash (accused No.1) brought thresher in the field of Shalikram (accused no.3) on 23-03-2001, for extracting wheat from the crops. They clubbed the cable wire of thresher and connected it with the electric pole, which caused sparking of the electricity on the electric pole and its spark fell on the houses. House of Devidas (complainant), Baswant, Pramod, Gunwant, Ramchandra and Dipak were burnt into ashes. Due to which, they sustained loss of Rs. 1,50,000/-. Hence, the complainant lodged the complaint against the accused persons in the Police Station (Exhibit-29). On receipt of the said complaint, PI- Subhash (PW-11) registered the offence, on the basis of the complaint lodged by PW-1. PW-11 visited the place of incident and recorded the statements of the witnesses. He arrested the accused persons. PSI-Mohd Sheikh recorded the spot panchanama. He seized the thresher machine from accused no.1 under seizure panchanama. He also recorded the statements of witnesses. After completion of investigation, he submitted the charge sheet in the Court of JMFC. The learned JMFC committed the case to the Court of Sessions. The trial Judge framed the charge and on conducting the evidence and on hearing both the sides, the learned trial Judge convicted the accused persons as aforesaid. Hence, this appeal.

learned trial Judge has rightly convicted the accused persons after believing the testimony of the prosecution witnesses. 7] I have gone through the evidence of all the witnesses. The prosecution has heavily relied upon the testimony of complainant Devidas (PW-1) who lodged the complaint against the accused persons. The house of PW-1 is situated at Wani (Belkheda) and behind his house, the land of Shalikgram (accused no.3) is situated. According to PW-1, one electric motor was installed on the well in the field of Shalikgram (accused no.3) and there is electric pole. On 23-03-2001, at 5 pm to 5. 30 pm, when PW-1 was present in his house, he heard the shouts & saw fire. After hearing the shouts, he rushed to that place and saw that the houses of Pandit and Gunwantrao were in flames. Similarly, the houses of Vasantrao and Pramod were also set on fire. PW-1 stated that three wires of thresher cable had hung to the electric wire. The thresher machine was at a distance of 200 ft. away from the electric pole of that field. The thresher machine was thrashing wheat. The thresher machine was owned by Subhash (accused no.1). Shridhar (accused no.2) was working with Shalikgram (accused no.3). PW-1 stated that Subhash (accused no.1) and Shridhar (accused no.2) were near the thresher machine. Thereafter, people gathered and extinguished the fire. After some time the van of Fire Brigade arrived at the spot and extinguished the fire. On the next day PW-1 lodged the complaint (Exhibit-28).

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PW-1 stated that, on the day of incident he had gone to the

field of Bansilal at about 12.20 pm, for answering the nature's call. At that time he witnessed, accused nos. 1 to 3 were connecting the thresher machine wire to the electric wire of light. After setting ablaze, the accused persons removed the wire of thresher from the electric wire line and ran away along with thresher machine and due to which he himself, Pandit, Gunwantrao, Vasantrao and Ramchandra caused loss of Rs. 1,50,000/-. During the cross examination it was pointed out that, PW-1 made an improvement in regard to the fact that he heard shouts of setting of fire due to sparkles from the electric pole, he came out of the house and went behind his house and saw the houses of Gunwant, Pandit and Vasantrao in flames. He also further made an improvement with regard to the fact that the wires of thresher machine were connected to the electric wire and the thresher machine was owned by Subhash (accused no.1) and accused no.1 was working with thresher machine. Further PW-1 has made an improvement with regard to the fact that the accused persons were connecting the thresher machine wire to the electric wire line. After setting ablaze the accused removed the wire of thresher from the electric wire line and ran away along with thresher machine. It is also an improvement in the testimony of PW-1 that, the accused started threshing machine at 4.30 pm. On careful scrutiny of the testimony of PW-1 it is found that there are various improvements made in his testimony before the Court and his testimony creates a doubt about the prosecution case.

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It is also noticed that in the First Informati

(Exhibit-29) a totally different complaint is lodged by the complainant. In the complaint, it is stated that, at about 5.30 pm the accused persons hooked the cable wires on the electric pole. Witnesses Anil (PW-5), Prakash (PW-6), Nita, Nazir Khan, Bebibai, Sau.Shobha, Bhulabai Jyoti and Rangrao (not examined) were present at the place of incident and they restrained the accused persons from connecting the wire on the electric pole. However, the accused persons did not pay any heed to them and hooked the cable wires to the live electric wire on the pole and as soon as they did it, due to the sparks of the electric wire, the houses caught fire. Thus, the total new different case has been introduced before the Court and the testimony of PW-1 is not found in consonance with the FIR (Exhibit-29), which is a contemporaneous document. 10] So far as the testimony of Anil (PW-5) is concerned, PW-5 was playing cricket in the field of Devidas (PW-1) at 5.30 pm with Ashish Patil, Satish and Sujit. He noticed sparking of light on the cattle shed of Dilip. He noticed accused nos.1 and 3 had brought the thresher in the field of Shaligram (accused no.3) for thrashing wheat crop. The accused nos. 1 to 3 connected the hook to the direct electric line for taking the electric energy to the thresher. Due to the said connectivity, there were spark on the cattle shed of Devidas. At that time, Shridhar (accused no.2) and Subhash (accused no.1) were also present. Significantly, in the cross examination of PW-5 certain improvements are noticed with regard to the presence of accused nos. 1 to 3 at the place of incident and 7 Judg 110917 apeal 526.03.odt connecting the hooks to the direct electric line for taking electric energy to the thresher. In view thereof, it is doubtful, whether Subhash (accused no.1) connected the thresher with the electric pole to carry out the threshing process. PW-5 is not found to be a trustworthy witness. 11] Prakash (PW-6) stated that, on 23-03-2001, at about 2.30 pm, he was filling the sink of Gram Panchayat pipeline of Gram Panchayat. Shalikgram (accused no.3) and Subhash (accused no.1) throwing the hooks on the main line of electricity. Shaligram (accused no.3) left the place while Subhash (accused no.1) and Shridhar (accused no.2) were present there. Both the accused started thresher at about 2 pm. As a result of which, there was sparking in the cattle shed of Deepak and the cattle shed caught fire. PW-6 rushed from the back side of the cattle shed and he tried to extinguish the fire. In the cross examination PW-6 stated that he had stated the Police that accused nos. 1 to 3 had thrown the hooks on the main line of electric wire. This version is not found in the statement recorded by the Police. Significantly, the statement of PW-6 was not recorded on the date of incident, although according to him, the Police visited the place of incident at about 5.00 pm. From the testimony of PW-6 it is noticed that, he made an improvement with regard to the fact that accused nos. 1 to 3 throwing the hooks on the main line of electric wire. From the testimony of PW-6 it is noticed that, the incident had taken place at 2.30 pm and Police visited the said spot at about 5.00 pm. The presence of PW-6 at the place of incident on the spot is doubtful. The testimony of PW-6 does not inspire any confidence 8 Judg 110917 apeal 526.03.odt and he is not find to be a reliable witness. No doubt, from the testimony of prosecution witnesses, it is noticed that there was some sparking of electric pole, due to which the cattle shed and the houses caught fire. It is, however, not clear from the testimony of witnesses that accused nos. 1 to 3 were responsible for the said fire.

12] Significantly, Devidas (PW-9) who is Junior Engineer working in MSEB, visited the place of incident and submitted his report (Exhibit-46). According to him, the incident had taken place on 23-03-2001. He visited the place of incident on 24-03-2001. He found some huts burnt partly. On enquiry he came to know that, illegal energy was taken from the electric wire and therefore the sparking had taken place. He came to know one Subhash had taken the illegal energy for thresher in

the field of Shaligram (accused no.3). He assessed how much loss was caused and accordingly submitted his report. 13] The testimony of PW-9 does not through any light on the aspect about the passing of electric current from the electric pole and due to which there was a fire caught to the nearby houses. He has specifically admitted in his cross examination that if there is overload on DP or loose connection, there can be sparking. For the moment though it is assumed that, as there was overload on the DP or there must be some loose connection and there must be sparking, in this regard, there is no convincing evidence on record to show that accused nos. 1 to 3 while threshing the crops in the field of Shaliagram (accused no.3), connected the said threshing machine with the electric pole, committed theft of 9 Judg 110917 apeal 526.03.odt electricity and caught fire nearby the houses of the people which caused loss of Rs.1,50,000/-. The prosecution has miserably failed to bring on record the convincing and cogent evidence. The learned trial Judge has not considered the said aspect and illegally passed the order of conviction. 14] In view of above, it is held that the prosecution has failed to prove its case beyond reasonable doubt. In these circumstances, the benefit of doubt is to be given to the appellants. The learned trial Court has not properly evaluated the evidence led by the prosecution. In view thereof, the judgment and order passed by the learned trial Judge, needs to be set aside. Hence, the following order:-

O r d e r

(a) Criminal Appeal No.526 of 2003 is allowed.

(b) The judgment and order dated 19-08-2003 delivered by the IInd Adhoc Additional Sessions Judge, Achalpur in Sessions Trial No.20 of 2002 is quashed and set aside.

(c) The appellants are acquitted of the offences under Sections 436 r/w 34 of I.P.C and Sections 39 and 39-A of the Indian Electricity Act.

(d) The bail bonds furnished by the appellants stand cancelled.

(e) The fine amount, if any, deposited by the appellants be refunded to them, if not withdrawn.

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(f) Muddemal property be dealt with as directed by Trial Court after the appeal period is over.

JUDGE

Deshmukh