



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

Criminal Appeal No.13 of 1999

1. Shivpal s/o Rajpal Thakur.
aged about 28 years.
2. Madhao s/o Narayan Bakal,
aged about 25 years.
3. Gajanan s/o Manikrao Bakal,
aged about 21 years.
4. Santosh Manikrao Baka,
aged about 18 years.
5. Anil s/o Maluram Katode,
aged 28 years.
6. Maluram Hiralal Katode,
aged about 60 years.
7. Pramod Narayan Pachkare,
aged about 22 years.
8. Kishore Ramkrishna Waghmare,
aged 20 years.
9. Wasudeo Govind Unhene

aged about 30 years.

... **Appellants**

Versus

The State of Maharashtra through
the P.S.O. Police Station,
Dahihanda, Distt. Akola.

... **Respondent**

Shri Mishra, Advocate for the appellants.

Shri J.B. Jaiswal, APP for respondent/State.

Coram : R.C. Chavan, J.

Dated : 22nd September, 2006

Oral Judgment

Taking exception to their conviction for the offences punishable
under Sections 143, 147, 452, 436 and 323 read with Section 149 of Indian

Penal Code and the resultant sentence imposed upon them, the appellants, who constitute 9 out of 10 accused in Sessions Trial No. 223/1997 before the Second Additional Sessions Judge, Akola, have preferred this appeal. The facts which led to their prosecution are as under:

2. On 9.9.1997 complainant's son, Sanjay Parode, was arrested for a double murder which had taken place in the village. Sanjay Parode was alleged to have murdered Khannu Kathole and Rajesh Kathole, their own neighbour. On 10.9.1997 the dead bodies of the victims were brought to the village and their funeral took place. Thereafter a mob of people, which according to the prosecution, comprised of the appellants and original accused no. 10 Santosh Balabhau Shivarkar (who has been acquitted), attacked the house of Sanjay Parode, where his mother Kausalya Parode and sister Sarla Parode were present. The accused persons pelted stones at them, tried to push them in the burning fire, pulled down the ballis (beams) and bamboos of the roof of the house, threw them in the burning fire and also

burnt the household articles. This resulted in injury being caused to Kausalya Parode. On a report by Shaligram, Police Patil of the village, an offence was registered. Police party immediately reached the spot, extinguished the fire, performed necessary Panchanama, recorded statements of witnesses and on completion of investigation, charge-sheeted nine appellants and Santosh Balabhau Shivarkar for mentioned above offences.

3. Upon commitment to the Court of Session, the learned Additional Sessions Judge charged the accused of the aforementioned offences and since the accused pleaded not guilty put them on trial. The prosecution examined in all 7 witnesses to bring home the guilt of the accused. After considering the prosecution evidence in light of the defence raised, the learned Additional Sessions Judge convicted the appellants and sentenced them to suffer RI for 2 months and fine of Rs.50/- each and in default of payment of fine to undergo RI for 15 days under Section 143 of the Penal Code, RI for 6 months and fine of Rs.100/- each and in default of payment RI for one month for offence

under Section 147 of the Penal Code, RI for 3 years and fine of Rs.1000/- each and in default of payment RI for three months for offence punishable under Section 452 read read with Section 149 of the I.P.C., RI for 3 years and fine of Rs.2,000/- each and in default of payment RI for 6 months for offence punishable under Section 436 read with Section 149 of I.P.C., RI for 6 months and fine of Rs.500/- and in default of payment RI for 2 months for offence punishable under Section 323 read with 149 of I.P.C. The learned Judge directed that the substantive sentence shall run concurrently and also granted set off admissible under Section 428 of the Code of Criminal Procedure. Aggrieved thereby the appellants have preferred this appeal.

4. I have heard Advocate Mishra, the learned counsel for the appellants and Shri J.B. Jaiswal, the Additional Public Prosecutor for the State. With the help of both the learned counsel, I have gone through the record of the case. The learned counsel for the appellants submitted that the appellants were falsely implicated in the incident because they were either

witness in the double murder case or were distant relation of the victim. He submitted that the evidence on record is grossly inadequate to connect the appellants to various crimes for which they have been convicted. According to the learned counsel for the appellants the testimony of PW-1 Kausalya Parode mother of Sanjay Parode, who was guilty of double murder, was unreliable. Kausalya Parode claimed to have been undergoing the treatment in Ayurvedik Hospital, Akola where she was informed at 8.30 a.m. on 10.9.1997 about the death of Khannu Kathole and Rajesh Kathole. She stated that her daughter Savita had been taken to Savita's matrimonial house by her husband and when the incident took place only wife of Sanjay Parode, daughter Sarla Parode and herself were present in the house. She stated that she returned to her house at 2 p.m. and saw crowd in front of house of Kathode which was near their own house. Her house has a compound wall as well as a door. Inside the compound, there are two houses with open space between them. She stated that appellant no. 1 Shivpal Thakur came inside

the compound wall first, followed by the persons whom she described as son of Narayan Bakal, (i.e. accused no. 2 Madhao Narayan Bakal). He was followed by accused no. 4 Santosh Manikrao Bakal, possibly, accused no. 10 Santosh Balabhau Shivarkar, accused no. 9 Wasudeo Govind Unhone, accused no. 6 Maluram Hiralal Katode and his son accused no. 5 Anil Maluram Katode. She stated that Shivpal Thakur climbed on her house and started taking out bamboos of roof of the house and throwing them on the road. He also removed the tiles of the roof and ballis (beams) and threw them out. Other accused persons took out cup board from the house and threw it out. All these articles were put on fire. Utensils were thrown in fire. She stated that Shivpal Thakur struck her with a bamboo and was threatening them and asked them to go out. She further stated that all the accused beat them and took them out of the house. She claims to have sustained injuries on legs and right hand. Accused no. 2 Madhao Narayan Bakal and accused no. 4 Santosh Manikrao Bakal pelted stones at her. She states that she could

not walk beyond four to five house from her house and fell down. Police van came there and took her to the hospital where she was treated. She identified accused no. 1 Shivpal Rajpal Thakur, accused no. 2 Madhao Narayan Bakal, accused no. 3 Gajanan Manikrao Bakal, accused no. 9 Wasudeo Govind Unhone, accused no. 10 Santosh Balabhau Shivarkar, accused no. 6 Maluram Hiralal Katode and accused no. 5 Anil Maluram Katode as the persons who had damaged her house and household articles by setting them on fire.

5. In her cross-examination she admitted that all the accused persons are resident of her own village. While house of Kathole is on one side of her house, house of accused no. 6 Maluram Hiralal is on the other side. She admitted that there were certain omissions in her statement, like accused Shivpal Thakur asking them to go out of house, accused no. 6 Maluram Hiralal Katode pelting stones at her and about her falling down after walking short distance. It was suggested to her that her daughter in fact come to see

her in the hospital at Akola at 1 p.m. on the day of the incident. She was discharged from the hospital at 4 p.m. and when she reached to her house it was evening and the incident was already over and police were present. It was suggested that after seeing the damage of the house in the incident, in conspiracy with other relatives, she made a false statement before police against the accused.

6. The learned Additional Public Prosecutor submitted that these suggestions would show that the accused admitted that an incident did take place wherein complainant's house was damaged. This can also be seen from the Panchanama Ex.51. Though the panchas PW-2 Gajanan Ramdas Ahde PW-3 Himmat Trambak Gawande had turned hostile, and denied that the panchanama was made in his presence, Investigating Officer PW-7 P.S.I. Badre proved panchanama Ex.51 and lists of articles Ex. 52, 53 and 54.

7. PW-7 P.S.I. Ramesh Badre stated that on 10.7.1997 when he was attached to police station Dahihanda and he had obtained the police custody

remand of accused in crime no. 88/97, he received wireless message that house of accused Sanjay Parode had been put on fire. He therefore, took police staff and rushed to the spot and found that all articles of the house had been on fire and they were burning. He also found some accused persons seeing the police jeep coming to the spot, ran away from the spot. P.S.I. Ramesh Badre states that he saw mother of Sanjay Parode PW-1 Kausalya Parode lying on the road in an injured state. He therefore, sent her to the hospital for treatment with policemen. He claims to have extinguished the fire with the help of neighbours, prepared spot panchanama and list of half burnt articles at Ex. 51 to 54. He stated that Police Patil had also lodged a report whereupon a crime had been registered and he took up investigation of the said crime.

8. The author of FIR Shaligram, Police Patil, had not been examined. The learned counsel for the appellants submitted that in the absence of evidence of Shaligram it would be improper to read the contents of FIR. He

submitted that no explanation has been given by the prosecution for non-examination of Police Patil Shaligram. The learned Additional Public Prosecutor submitted that Shaligram had not stated in his report that he had witnessed any incident. Shaligram is a Police Patil of village Jaulkhed and was only incidentally holding the charge of Keliveli, whose Police Patil had retired from service. Shaligram stated in the report that he received information about the incident from one Ramdas Bhatkar of village Keliveli, and that Kotwal had also come to his house and informed him that 8 to 10 persons had thrown away the articles from the house of Sanjay Parode and set them on fire. Hence, he went to the spot observed the situation and made a report to the police. He specifically stated in the report that he had seen household utensils, cupboard, bamboos of the roof of the house and poles were roof burning on the road and also saw PW-1 Kausalya Parode lying in an injured state and went to the police station to lodge the report. In view of this, non-examination of Shaligram is not material, since he had only

conveyed to the police what he had learnt second hand. As regards his observation of the spot, which he has narrated in the report, the same have been observed even by PW-7 P.S.I. Ramesh Badre.

9. PW-4 Sarla Parode is daughter of PW-1 Kausalya Parode. She stated that her mother was in the hospital. She went to the hospital at 8 or 8.30 a.m. and informed the mother about the murders. Her mother took discharge at 11.30 a.m. and by bus they reached their village at 2 p.m. She stated that when they reached their house, they found a crowd in front of their house. She states that at that time she, her mother and sister-in-law were alone in the house. At about 3 p.m., at once some people entered their house, including accused no. 1 Shivpal Rajpal Thakur, accused no. 2 Madhao Narayan Bakal, accused no. 4 Santosh Manikrao Bakal, accused no. 3 Gajanan Manikrao Bakal, accused no. 5 Anil Maluram Katode, accused no. 9 Wasudeo Govind Unhone, accused no. 8 Kishor Ramkrishna Waghmare, accused no. 7 Pramod Narayan Pachkor, accused no. 6 Maluram Hiralal

Katode and Prakash @ Pintya Shivalkar. She identified all the accused before the Court. As regards Santosh, she stated that he was Prakash @ Pintya. Possibly because of this, the learned trial Judge gave benefit to accused no. 10 Santosh Balabhau Shivarkar and has acquitted him. PW-4 Sarla Parode stated that Shivpal Thakur climbed on roof of the house and took out bamboos and balis of the house and threw them. The other accused also took out household articles, cloths, utensils tin box and threw them in fire, which had been stated in front of the house. She states that the accused pushed them and tried to push them in the fire. According to her she took her mother for going away, but her mother fell in front of house of one Ghoderao. As the accused chased her, she ran away and concealed herself and thereafter, proceeded to village Nimbhora, where she met a person, to whom she narrated the incident. The said person gave her meals as well as Rs.30/- and then she proceeded her sister's house at Akot where she reached at 11 p.m.

10. The witness was cross examined at length. She admitted that she was serving with Maharashtra State Electricity Board and her Office timing was 10 to 5 p.m. for which she had to leave the home at 8 a.m. She also admitted that her sister was in police department and working as a constable. She stated that on the incidental day her office was closed on account of holiday for 'Mahalaxmi'. She admitted that on the day of incident, dead bodies of two persons killed on previous day, had been brought in the village but denied the presence of police staff in the village for maintaining law and order. She stated that funeral of killed persons had been taken out at about 2 to 2.30 p.m. on that day, but denied that to attend the funeral about 600 to 700 persons had been gathered in the village. She denied the knowledge whether the accused persons are relatives of victims or witnesses in the trial of her brother. She denied that the story was concocted, and also denied that after meeting her brother in the Court at Akot, they decided to include the names of all the accused in the police statement.

11. According to the learned counsel for the appellants, the evidence of Sarla Parode does not corroborate the evidence of PW-1 Kausalya Parode, in the sense that Sarla does not state that any accused person had caused injury to Kausalya either by stick or by pelting stones. The learned Additional Public Prosecutor submitted that in an incident when several persons attack three helpless females in a house and when the house is being set on fire, it cannot be expected that each one of them would communicate all the details in a proper chronological order. He submitted that the fact that Kausalya Parode had sustained injuries is duly established by the evidence of PW-5 Dr. Bhalchandra Deshmukh, who examined Kausalya Parode at 8 p.m. on 10.9.97. Dr. Deshmukh found lacerated wound with contusion on right forearm, contusion on right hand, contusion on right leg anterior aspect, contusion on left thumb, all of which were caused by hard and blunt object. Dr. Deshmukh stated that all these injuries would have healed within 5 days in certificate Ex.60. The injuries could have been caused by pelting of

stones. It was curiously suggested to Dr. Deshmukh that the injuries which were observed by him could have been caused while cleaning utensils or while working in the field, if witness came in contact with hard surface etc. This would establish that PW-1 Kausalya Parode had indeed suffered injuries at the time of incident. There are no suggestion to Kausalya about the cause of injuries like the ones given to Dr. Deshmukh. It may be recalled that it was suggested to Kausalya that after her discharge at 4 p.m., she reached her house in the evening. If this is so, does not clear where is the question of Kausalya having cleaning utensils or working in the field or came in contact with hard surface to sustain such injuries. Therefore, the prosecution must be held to have proved that the Kausalya was injured in the incident which took place in the afternoon.

12. PW-6 Omprakash Kokate had accompanied PW-7 P.S.I. Ramesh Badre to the village after receipt of wireless message. He too had seen household articles of the complainant on fire and he too observed PW-1 Kausalya

Parode with injuries.

13. Kausalya's daughter-in-law Vanita wife of Sanjay Parode was curiously examined as a defence witness. She stated that the incident took place on 10.9.1997 after her marriage on 23.6.1997. She claimed to have been alone at her house. Since many people came and made noise, she came out of the house and stated that she does not know what happened thereafter. She came to Akola by bus and proceeded to Yavatmal. She stated that she knew the people of her village, but the people who came in front of her house were not of her village and were talking different language. In course of her cross-examination she admitted that she had married just two months prior to incident, and out of two months, she was with her parents for about 15 days. It is therefore, difficult for this witness to know the villagers. She admitted that the whole house was gutted in fire on the incidental day. She also admitted that she did not know what happened to her parents-in-law and sisters-in-law after the incident since she never came back or kept contact

with the husband's family. She stated that she did not file any divorce proceeding but intended to file divorce proceeding. Though in examination-in-chief she has stated that she was alone in the house, in cross examination she admitted that her sister-in-law Sarla was also in the house. She stated that her mother-in-law was in the hospital at Akola and did not know when her mother was discharged. It is clear that this witness is lying about presence of her mother-in-law since her husband has been convicted and her marriage has been rocked. The attempt of the defence to examine Vanita does not in any manner help their cause, but rather establishes that the house was gutted in fire and that a mob had charged at her house.

14. The learned counsel for the appellants submitted that though PW-1 Kausalya Parode and PW-4 Sarla Parode has stated that many persons had gathered there, police have not examined any independent witness. When Kausalya's son had committed two murder on the previous day, it would have been futile to expect the villagers to provide any independent evidence of the

mob fury which was unleashed on Kausalya's house on the incidental day. Absence of independent corroboration, therefore, cannot be decisive of the matter and cannot lead to rejection of testimony of Kausalya and Sarla. It has to be noted that Kausalya and Sarla would have had no motive to shield the real culprits and implicate the appellants, since there was no enmity with the appellants, except that the appellants are suggested to be the witnesses in the murder case. The unease of the defence in first trying to suggest that the Kausalya was not present at all at the spot, then trying to suggest cause for having suffered injuries to the medical officer rather than herself, and attempting to rely on the fact that none of the two witnesses had stated as to who actually lit the fire, itself lends a ring of truth to evidence of the two witnesses. There is absolutely no reason why PW-1 Kausalya Parode or PW-4 Sarla Parode would give false account of the incident. The motive for setting the house on fire or causing injury to Kausalya in the process is provided by the defence itself, by stating that the appellants are either the

witnesses or relatives of the deceased who was murdered by her son Sanjay. In view of this it cannot be said that the learned trial Judge was in any manner in error in holding that the accused persons formed an unlawful assembly, that they indulged in rioting as members of such unlawful assembly, that they voluntarily caused hurt Kausalya in prosecution of common object of such assembly, that they committed mischief by causing wrongful loss to the property of Kausalya's household to the tune of Rs. 18,000/- as evidenced by Ex.51 to 54, as members of such unlawful member, that they committed criminal trespass by entering into a house of Kausalya in order to commit a cognizable offence namely that of causing mischief by fire as members of such unlawful assembly. Therefore, conviction of the appellants would have to be upheld. As regards sentences, the learned counsel for the appellants submitted that appellants no. 1, 2, 3, 4, 5, 7 and 8 are below the age of 30 years. When the incident took place appellant no.-9 was just 30 years old and appellant no.-6 was 60 years old. He submitted that

none of these persons have any criminal antecedents. The circumstances in which the offence was committed, namely that the son of PW-1 Kausalya Parode had committed double murder in the village would also have to be considered and, therefore, the appellants should be shown further leniency. He submitted that the incident took place in the year 1997 i.e. almost 10 years ago. It would therefore, be inappropriate to sentence them to jail terms and to ask them to go back to the jail 10 years after the incident. The learned Additional Public Prosecutor rightly pointed out that offence of mischief by fire punishable under Section 436 of the Penal Code attracts the punishment of imprisonment for life or imprisonment which may extend to 10 years. He submitted that considering the facts and circumstances in which the offence has been committed, the learned trial Judge has shown sufficient leniency towards the appellants and the sentence imposed cannot be called harsh by any standard. Indeed, even after finding the appellants guilty of rioting voluntarily causing hurt, or mischief, including mischief by fire, the learned

trial Judge has not been very harsh. Further, since all the sentences are directed to run concurrently, the total sentence would be only 3 years and effectively after remission etc., the appellants may not be required to be imprisoned even for that period. Hence, the sentences imposed do not call for any interference.

The following order is therefore passed:

The appeal is dismissed.

The appellants shall surrender to their bail before the Trial Court within one month from today to suffer the sentence”

If the appellants do not surrender within the stipulated period, the learned Trial Judge shall take steps to have the sentence executed.”

JUDGE

SM.