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Bhaskar Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jun-09-2016

Judge : S.B. Shukre

Appeal No. : Criminal Revision No. 90 of 2016

Appellant : Bhaskar

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. Issue notice to the respondent-State.

2. Shri S.J. Kadu, learned A.P.P. waives service of notice.

3. Heard. Admit. Heard finally by consent.

4. This revision has been preferred against the judgment and order dated 27/5/2016 delivered in Criminal Appeal No.56 of 2011 thereby dismissing the appeal and confirming the judgment and order passed in Summary Criminal Case No.270 of 2009 by the Judicial Magistrate, First Class, Chandur Bazar, Amravati dated 21/10/2011.

5. By the judgment delivered on 21/10/2011, the learned Magistrate has convicted the revision-applicant of the offence punishable under Section 435 of the Indian

Penal Code while acquitting him of the offences punishable under Sections 294 and 506 of the Indian Penal Code. The allegations made against the revision-applicant were to the effect that on 08/3/2009 at about 5.30 p.m., in the evening, when some persons were working in the field owned by Mohan Nerkar, the applicant, owner of the adjoining field, with a view to cause damage to the standing crops and fruiting trees of Mohan Nerkar, set on fire some dried material present on the dhura or the boundary between the two adjoining fields.

6. Upon consideration of the evidence brought on record by the prosecution, the learned Magistrate found that the offences punishable under Ss.294 and 506 of the Indian Penal Code with which the revision-applicant was charged were not proved while the third offence that was charged against the revision-applicant, which was punishable under Section 435 of the Indian Penal Code, was proved beyond reasonable doubt and accordingly by her judgment and order dated 21/10/2011, convicted the revision-applicant of the same and sentenced him to undergo rigorous imprisonment for the period of one year. Learned Magistrate also imposed compensation of Rs.7,000/- with default sentence of one month imprisonment. In the appeal, that was preferred against this judgment and order by the applicant, the same was confirmed by the appellate Court by its judgment and order dated 27/5/2016. Being aggrieved by the same, the revision-applicant is before this Court in this revision application.

7. In order to constitute the offence punishable under Section 435 of the Indian Penal Code, it is essential that it must be proved that the act is committed by the accused with an intention to cause damage or with the knowledge that the act is most likely to cause damage to the property of another. In the instant case, there has been only one eye witness. This eye witness is P.W.-3 Satyawan Raut. His evidence shows that not a single circumstance has appeared in it enabling this Court to attribute requisite intention or knowledge to the revision-applicant. Therefore, I find that this essential ingredient of the offence of mischief punishable under Section 435 of the Indian Penal Code having not been proved beyond reasonable doubt in this case,the Courts below ought not to have recorded a finding of conviction against the revision-applicant.

8. Then, there is also an issue about the evidence of material witness, P.W.-3 Satywan Raut, being of discrepant nature. According to the complainant, the incident of igniting fire had taken place at about 5.30 p.m. of 08/3/2009. He also mentions that the incident was witnessed by P.W.-3 Satyawan Raut. However, evidence of P.W.3 Satyawan Raut shows that he was present in the field only till 3.00 p.m. to 4.00 p.m. on 08/3/2009. A question then would arise as to how could he witness the alleged act of the applicant setting fire to the dried material. Of course, in the cross-examination taken on behalf of the applicant by the learned Counsel, a suggestion has been given to this witness regarding his presence in the field at the time when the dried material on dhura was set on fire. To this suggestion, P.W.-3 has given an affirmative answer. So, one could say that what was not stated in the examination-in-chief by this witness and which silence had gone in favour of the revision-applicant was undone by what was suggested to this witness in the cross-examination. But, in such an eventuality, there would be two versions before us, the one relating to the absence in the field at the relevant time and the other relating to the presence in the field at the relevant time. Both these versions, I must say, cannot be true at the one and the same time and only one of them would be true. Therefore, in such a case, we would have to look for some other evidence to ascertain which of these versions could be true. Unfortunately, no other evidence in this regard is available and there has been no corroboration to the account stated by the alleged eye witness, P.W.-3 Satyawan Raut. Therefore, a reasonable doubt arises about the reliability of the version of P.W.-3 Satyawan Raut regarding his witnessing the incident. This doubt, having not been cleared by any other evidence, I am of the view that benefit of doubt on this aspect of the case would have to be given to the revision-applicant.

9. Then, there is also another material discrepancy in the evidence of P.W.-3 Satyawan Raut. He says that the fire was ignited on the dhura between two adjoining fields. But, the first information report lodged in this case shows that the fire was set on at some other place in the agricultural field owned by the revision-applicant. No explanation has been given by the prosecution regarding this material inconsistency between what is stated in the FIR about the place where the fire was ignited and what is deposed about in that regard by P.W.-3 Satyawan Raut.

10. Such evidence of the alleged eye witness is not worthy of credence. Therefore, I am of the view that a serious illegality rather, I would say, perversity has been committed by both the Courts below in appreciating the evidence of the prosecution. The settled principles of law have not been followed by both the Courts below in recording their concurrent findings of guilt of the accused for an offence punishable under Section 435 of the Indian Penal Code. Therefore, this is a fit case wherein interference in exercise of revisional powers of this Court is required. In the result, I find that this revision application deserves to be allowed.

I. The revision application is allowed.

II. The impugned judgments and orders are hereby quashed and set aside.

III. The revision-applicant is acquitted of the offence punishable under Section 435 of the Indian Penal Code.

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