

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

Criminal Appeal No.1227 of 2004

Smt Leelabai Ramkrishna Kuber
Age: 70 yrs, Occ: Retired teacher,
R/at : 169, Anand Nagar, Sangvi,
Post : Aundh, Pune-27.

... Appellant.

Vs.

1. Manohar Gangadhar Adkar
2. Smt Pratibha Manohar Adkar
3. Smt Smita Satish Joshi
4. Smt Sukhada Dhananjay Sane
All Adults, R/at : Amruta Auto Garage,
near Kirloskar Compound,
Kothrud, Pune -29
5. State of Maharashtra

... Respondents.

Mr KK Malpathak for the appellant.
Mr Arfan Sait, APP for the respondent / State.
Mr V Pethe, for respondents No.3 and 4.

Coram : R.N.Laddha, J.
Date : 4 March 2026.

Judgment :

Heard Mr KK Malpathak, the learned Counsel
appearing on behalf of the appellant/ the complainant; Mr
V Pethe, the learned Counsel appearing on behalf of

respondents No.3 and 4/ accused; and Mr Arfan Sait, the learned Additional Public Prosecutor representing respondent No.5/ State.

2. At the outset, the learned Counsel for the appellant seeks leave to amend the cause title of the appeal memo to rectify the name of respondent No.3. Leave granted as prayed for. The necessary amendment shall be carried out forthwith. It is further submitted that respondents No.1 and 2 have expired during the pendency of the appeal. As a result, the appeal abates and is dismissed against respondents No.1 and 2.

3. The legality, propriety and correctness of the judgment and order dated 15 May 2003 passed by the learned Judicial Magistrate First Class, Pimpri, in Criminal Case No.2118 of 1998, whereby respondents No.1 to 4/ accused were acquitted of the offences punishable under Sections 452, 341, 323, 504, 506(2) read with 34 of the Indian Penal Code ('IPC'), is assailed in this Appeal.

4. The gravamen of the prosecution's case is that the complainant claimed ownership of land admeasuring 1.5

Gunthas out of Survey No.169, upon which she constructed a residential building. Being a widow, she permitted accused No.1, her younger brother, along with accused No.2, his wife, and accused Nos.3 and 4, their daughters, to reside with her on the ground floor. Disputes subsequently arose regarding possession, and it was alleged that accused No.1 attempted to secure mutation of the property in his favour after obtaining the complainant's signatures on certain documents. The complainant instituted a civil suit for declaration and possession, which was decreed *ex parte* in her favour. Execution proceedings followed and, according to the prosecution, possession of the ground floor was delivered to the complainant through the Court Bailiff on 27 April 1998, after the removal of a lock allegedly placed by accused No.1. The prosecution further alleges that on 13 May 1998, the accused forcibly removed the lock, entered the premises, abused and threatened the complainant and prevented her from accessing the ground floor. On the basis of a complaint dated 15 May 1998 and a private complaint dated 20 May 1998, prosecution was initiated.

5. During trial, to substantiate the indictment against the accused, the trial Court recorded the evidence of five

witnesses, namely, Leela Ramkrishna Kuber (PW-1), the complainant; Bhagwan Gangaram Kshirsagar (PW-2), the complainant's neighbour and eyewitness; Vishakha Manjunath Kulkarni (PW-3), the complainant's niece; Shrikrishna Pralhad Deshpande (PW-4), the Court Ballif; and Sampatrao Dadabhau Potghan (PW-5), the Investigating Officer. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, were recorded, consisting of a denial and false allegations of implication in order to grab property. The accused did not adduce any evidence in defence but relied upon documentary evidence. Upon appraisal of the evidence, the trial Court acquitted the accused. Being aggrieved and dissatisfied, the complainant filed the present Appeal.

6. This Court has given anxious consideration to the rival contentions canvassed across the Bar and perused the impugned judgment, grounds in the appeal memo, evidence and material on record.

7. The prosecution case, though founded upon allegations of criminal trespass, wrongful restraint, assault, insult and criminal intimidation arising out of an alleged

incident dated 13 May 1998, is inseparably intertwined with an admittedly long-standing civil dispute relating to possession and title over immovable property between closely related family members. The evidence led by the prosecution fails to travel beyond the realm of a civil discord and does not attain the degree of certainty required to sustain criminal culpability.

8. PW-1, the complainant, in her examination-in-chief, asserted that after execution of a civil decree, possession of the ground floor premises was delivered to her through the Court Bailiff on 27 April 1998 and that, thereafter, the accused forcibly broke open several locks and entered the premises against her will. However, her cross-examination reveals material admissions and inconsistencies which substantially impair the reliability of her version.

9. PW-1 candidly admitted that accused No.1 is her younger brother, whom she herself had invited to reside with her in the premises, and that the parties had lived jointly for several years. She further acknowledged the existence of long-standing civil litigation between them concerning the very same property, including execution

proceedings, appeals and miscellaneous applications pending before competent civil courts. Significantly, she admitted execution of documents bearing her signature, including correspondence addressed to the Municipal Corporation during the period of joint residence, which formed the basis for mutation entries in favour of accused No.1. Though she attempted to attribute such execution to compulsion, no contemporaneous complaint was ever lodged alleging coercion. The absence of any challenge to those documents for several years materially weakens the prosecution's assertion that the accused were strangers or unlawful entrants.

10. Equally relevant is PW-1's admission that she had not produced documentary proof, such as revenue extracts or ownership records, establishing exclusive possession of the premises. The civil decree relied upon by her was admittedly passed *ex parte*, and proceedings seeking to set it aside, as well as orders relating to *status quo*, were pending at the relevant time. The evidence thus discloses that the question of possession remained *sub judice* and unsettled. In such circumstances, the prosecution was required to establish clear and settled possession in favour of the

complainant before criminal liability for trespass could arise, which burden has not been satisfactorily discharged.

11. The evidence of PW-2, projected as an independent eyewitness, also fails to materially corroborate the prosecution narrative. His testimony shows that he merely heard a quarrel from the complainant's premises and reached the spot after the lock had already been opened. He expressly admitted that he had not witnessed who broke the lock or how entry was effected. More importantly, he conceded that several facts deposed before the Court, including the alleged earlier delivery of possession through Bailiffs, were being stated by him for the first time during the trial and were not part of any prior police statement. The investigating officer, PW-5, confirmed these omissions. Such improvements render his testimony unreliable as corroborative evidence of unlawful entry or criminal conduct.

12. PW-3, the complainant's niece, attempted to support the prosecution by stating that the accused demanded keys, broke open the lock with instruments and threatened the complainant. Nevertheless, her cross-examination reveals

substantial omissions in her police statement relating to the very core of the prosecution story, including the alleged visit to the bank, demand for keys, breaking of locks and threats attributed to the accused. She admitted inability to explain why these material particulars were absent from her earlier statement. Her admitted lack of knowledge regarding the civil proceedings governing possession further detracts from the evidentiary weight of her testimony. Being a close relative who stayed with the complainant during the relevant period, her evidence required careful scrutiny, and the learned trial Court rightly treated it as interested testimony suffering from subsequent embellishment.

13. The prosecution sought to establish lawful delivery of possession through PW-4, the Court Bailiff. While PW-4 stated that possession was handed over pursuant to a possession warrant, his cross-examination exposes significant deficiencies. He admitted that he had not verified whether any appellate stay order was operating prior to execution of the warrant and that several execution documents and reports did not bear his signature, having been prepared by another Bailiff who was not examined. He was also unable to furnish material particulars, such as the

identity of the lock-breaker or independent verification of procedural compliance during execution. In the absence of examination of the author of the crucial execution documents and production of complete original records, the prosecution has failed to conclusively establish lawful and effective transfer of possession to the complainant on 27 April 1998.

14. The evidence of PW-5, the Investigating Officer, further exposes gaps in the prosecution case. He admitted that the complaint reached the police station for the first time on 15 May 1998, notwithstanding the complainant's assertion of earlier approaches. He also conceded that during investigation neither the witnesses nor the complainant attributed specific roles to accused Nos.2 to 4. Material facts later introduced by PW-2 and PW-3 during the trial were not found in their police statements. PW-5 further acknowledged that no documentary material, such as electricity bills, ration cards or other records, was collected to verify actual possession of the premises, nor was any spot panchnama prepared. These omissions assume importance in a prosecution fundamentally dependent upon proof of possession.

15. The delay of two days in lodging the complaint, coupled with admitted consultation with legal counsel prior to its filing, assumes significance in the factual background of ongoing civil litigation. The omission to mention alleged earlier police approaches in the complaint creates reasonable doubt regarding spontaneity and authenticity of the prosecution version.

16. Additionally, there is no material to substantiate the allegations pertaining to the offence under Section 323 of the IPC. The accusations under Sections 504 and 506(2) of the IPC are similarly general in nature, devoid of specific words or acts attributable to any accused individually, so as to constitute intentional insult or criminal intimidation within the meaning of the law.

17. The cumulative effect of the evidence demonstrates that accused No.1 had a long-standing residence in the premises and asserted possessory rights recognised in municipal and civil proceedings. Where possession itself is disputed before civil courts and competing claims subsist, entry into such property cannot *ipso facto* assume the character of criminal trespass unless unlawful intent and

exclusive possession are proved with certainty. The prosecution evidence, riddled with omissions, improvements and investigative deficiencies, falls short of this standard.

18. The learned Magistrate, upon appreciation of the oral and documentary evidence, has assigned cogent reasons for extending the benefit of doubt to the accused. It is a settled position of law that once an order of acquittal is recorded, the presumption of innocence stands strengthened, and interference is justified only when findings are perverse or wholly unreasonable.

19. Given the above, in the considered opinion of this Court, the trial Court has rightly acquitted the accused, and there exists no compelling reason to warrant interference. As a result, this appeal fails and is hereby dismissed.

[R. N. Laddha, J.]