

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.343 OF 2003**

The State of Maharashtra	)Appellant/Complainant
V/s.	
Pramod Sahadeo Kasavkar,	)
Age about : 34 years, Occ.: Agri,	)
R/o. Chendvan (Thumrewadi),	)
Tal.: Kudal, Dist. : Sindhudurg	)Respondent/Accused

Ms. Anamika Malhotra, APP for State.
Mr. Sudhir Prabhu for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 26th NOVEMBER 2019

ORAL JUDGMENT :

1 This is an appeal impugning a judgment dated 5th December 2002 passed by the Sessions Judge, Sindhudurg setting aside an order of conviction passed by the Judicial Magistrate, F.C., Kudal on 13th July 2001. The Trial Court had convicted respondent under Section 324 (Voluntarily causing hurt by dangerous weapons or means) of the Indian Penal Code and sentenced respondent to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.1000/-, in default simple imprisonment for one month. Respondent was also convicted under Section 447 (Punishment for criminal trespass) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 months and to pay a fine of Rs.300/-, in default simple imprisonment for 15 days.

2 It is the case of prosecution that one Raghunath was residing at a place called Chendvan. On 21st August 2000, at about 12 noon when

Raghunath was sitting on the steps of his house, respondent, who was passing by the road, entered the house and hit Raghunath on his head and left hand with a spade. Raghunath started bleeding and he started shouting at that stage. It is Raghunath's case that he was hit with the sharp side of the spade. Thereafter, respondent dropped the spade in the courtyard and tried to run away but hearing Raghunath shouting, his uncle Mohan came out of the house, chased respondent and caught him. Mahadeo, Sugandhi and others, viz., father of Raghunath, aunt of Raghunath and others also came out of the house to the spot in the courtyard. The Police Patil was summoned and respondent was handed over to the custody of Police Patil. Raghunath was taken by his father Mahadeo to Kudal Police Station where the complaint of Mahadeo was recorded and thereafter, Raghunath was sent to Rural Hospital, Kudal for treatment. Raghunath was admitted to the said hospital and treatment was given. The complaint of Mahadeo was also registered after which the Police went to Chendvan and arrested respondent. On the next date, panchnama of the scene of offence was prepared. The spade and blood stained shirt of Raghunath were seized under the same panchnama. Statement of witnesses were recorded and chargesheet was submitted after due investigation. The charge was framed by the Learned Magistrate and respondent pleaded not guilty and claimed to be tried. The defence of respondent was of total denial.

3 The statement of respondent also has been recorded under Section 313 of the Code of Criminal Procedure. The Magistrate, after hearing the defence and the P.P., concluded that offence under Section 324 and Section 447 of the India Penal Code is proved against respondent and was pleased to convict respondent and passed the sentence as mentioned earlier.

4 Against that order of conviction, an appeal was filed in which the judgment impugned was passed by the Sessions Judge. Having perused the records and proceedings, evidence and the impugned judgment, I find no infirmity in the order of acquittal passed by the Sessions Judge. There are innumerable contradictions in the evidence recorded. The Medical Officer has admitted that the injuries could be caused by accidental fall or hitting the head on the threshold of the house. Admittedly there was enmity between Raghunath and respondent. There are no independent witnesses. Though most of the witnesses were family members of Raghunath and have given evidence on the basis of being eye witnesses, none of them were eye witnesses. The only person who was present at the time of alleged assault is the victim (PW-2) Raghunath. The Sessions Judge, therefore, rightly concluded that the prosecution has not established the case against respondent and set aside the conviction and sentence passed by the Trial Court.

5 Let us consider the evidence of Raghunath, who was PW-2. According to Raghunath, the incident took place at the courtyard when he was sitting on the steps of his house. Respondent is supposed to have been passing by, he entered the house and hit Raghunath with the sharp side of a spade on his head and left hand. Due to this attack, Raghunath sustained injuries on his head and after attacking, respondent started running. Raghunath started shouting and on hearing, his mother Parvati, his uncle Mohan (PW-3), father Mahadeo (PW-5) and aunt Sugandha (PW-9) came to the courtyard near him and Mohan (PW-3) his uncle, caught hold of respondent while respondent was trying to run away. Raghunath also claims to have been alone at the time of incident and all the witnesses stated by him came later on, means after the assault. Therefore, regarding the assault by respondent, the sole testimony is that of Raghunath.

6 Mohan, who is PW-3, has stated that the assault was given from the sharp edge of the spade due to which Raghunath sustained injury on his head. He says at 12 noon on 21st August 2000 he was cooking meal inside his house and he and Mahadeo, who is PW-1 and father of Raghunath, were taking meals, his brother's son Raghunath was standing on the Ota (verandah) of the house and on hearing the shout of Raghunath, he went out to see. Though he has said that respondent was passing by the road, he went near Raghunath and assaulted him etc., he is not an eye witness to the assault. PW-3 says on hearing the shouting he went to see Raghunath and

when he reached there, he saw respondent running away from that place by dropping the spade on the spot of incident. PW-3 says he caught hold of respondent when he was running away, the Police Patil was brought and respondent was handed over to Police Patil. PW-3 then took Raghunath to Kudal Police Station and then to Doctor at Gramin Rugnalaya Kudal.

7 Mahadeo, who is PW-5 and the father of Raghunath, also has given evidence as if he was an eye witness to the assault. PW-5 says he and his brother were taking meals in the house when Raghunath was standing on the steps of the house at which time respondent came near Raghunath with a spade in his hand and hit him on his head and left hand. Therefore, Raghunath shouted and on hearing his shout, PW-5 came out of the house alongwith his brother Mohan (PW-3) and saw respondent was running away by dropping the spade from his hand on the ground. Interestingly he says that respondent was caught by him and his brother Mohan while he was running away. PW-3 Mohan says only he ran and he caught respondent. PW-3 Mohan also states in his cross examination that until he heard Raghunath shouting he had no knowledge as to what had happened to Raghunath. Both these witnesses cannot be trusted because in the examination in chief and the statement recorded by Police they spoke like they were eye witnesses to the assault, when they were, in reality, not eye witnesses.

8 Likewise PW-4 Asha, who is a niece of PW-3 and PW-5 and the cousin of Raghunath, states that when the incident happened she was inside the house but when she came on the ota (verandah) she saw that Raghunath had sustained injury on his head and right hand and he was bleeding and weeping. She confessed in the cross examination on coming out of the house she did not ask Raghunath how he sustained injury nor did Raghunath tell her how he sustained injury. This means the witness has no personal knowledge of the incident despite which the prosecution has claimed that the incident took place in the presence of PW-4. PW-5 Mahadeo, as noted earlier, has also proceeded to give evidence/statement on the basis that he was an eye witness when in reality he was not. PW-5 also had deposed that on hearing Raghunath shouting he came out of the house, which means he has no personal knowledge as to how Raghunath sustained the injuries. After the incident, Raghunath was taken to Kudal Police Station and complaint of PW-5 was recorded by the Police. In the complaint, it is noted that the offence has been registered at 7.45 p.m. on 21st August 2000, when the incident took place at 12.00 noon at Chendvan. It is prosecution's case that immediately after lodging the complaint, Raghunath was sent to the Medical Officer.

 The Medical Officer - Dr. Suryavanshi, who is PW-6, says that on 21st August 2000 at about 4.00 p.m. he had examined Raghunath and noticed the injuries. PW-6 has stated that the injuries were caused by hard and blunt object and the age of the injuries was fresh. What is to be noted is

that the Medical Officer says he examined the injuries at 4.00 p.m., when the offence was registered at 7.45 p.m. and prosecution says soon after registering the offence, Raghunath was sent for medical treatment. The Medical Certificate (Exhibit 20) says that the injury was caused by hard and blunt weapon, injuries were simple and age of the injury was within six hours. As against this opinion of the Doctor (PW-6), the other witnesses of the prosecution, including Raghunath, has stated that the injury was caused by sharp side of the spade. PW-1 has stated that the roof of the house of Raghunath is low. There is a possibility as per the suggestion made by the defence to all the witnesses that Raghunath hit his head while entering the house and probably fell down and sustained the injuries.

9 Police Patil – PW-8 has stated that he was working in his land on 21st August 2000. At about 12.30 p.m. Mohan (PW-3) came to him and told him that Raghunath was assaulted on his head with spade by respondent. Therefore, this witness has not seen the assault and the fact that Raghunath was assaulted by respondent is hearsay. PW-8 says he was Police Patil and as soon as he became aware of any such incident, he has to enter the same in a diary and prepare the occurrence report. PW-8 says that he did not prepare any occurrence report or noted any such incident in the diary which he was supposed to maintain. PW-8 interestingly states he has written down the said information that he received from Mohan (PW-3) on a piece of paper. The said piece of paper is not produced by him before the Police

nor the prosecution claimed to have received any such paper. PW-8 refers to an extra judicial confession by respondent in his examination in chief. He says respondent told him that he assaulted Raghunath and he identified respondent in Court. In the cross examination, he agrees that in the statement that was recorded by the Police the alleged extra judicial confession is not mentioned. But certainly he would have read the statement before he signed it and if such a relevant confession has not been recorded in the statement, I would have expected the "Police Patil" to have brought that to the notice of the policeman recording his statement. Therefore, the evidence of PW-8 also does not enthuse any confidence.

10 PW-1 is the panch witness. The panchnama is prepared on 22nd August 2000 between 10.35 a.m. to 11.50 a.m., which means the day after the incident. This panchnama is the spot panchnama as well as seizure panchnama and what has been seized are the spade and blood stained shirt of Raghunath. Raghunath claims that he was in the hospital on 22nd August 2000 also and he was hospitalised for three days and he returned home at night of 23rd August 2000. The panch witness says (I have taken assistance of A.P.P. because panchnama is in Marathi language) the spade was found in the courtyard of the house while the blood stained shirt was produced by the father of Raghunath (PW-5). That would still not confirm that it was respondent who assaulted Raghunath. The prosecution has not made any attempt to get the finger prints of respondent on the spade. There are many

other such contradictions or holes in prosecution's case noted by the Sessions Judge in the impugned judgment that is impugned before this Court. It is an admitted fact that Raghunath was involved in a theft case in which he has stated that respondent was also involved. That has led to an enmity between Raghunath and respondent. The enmity is admitted and the learned A.P.P. in fairness agrees.

11 With this background and considering the holes in the evidence, I see no reason why this Court should interfere in the impugned judgment.

12 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person

1. (2007) 4 SCC 415

shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

13 There is an acquittal and therefore, there is double presumption in favour of respondent. Firstly, the presumption of innocence available to respondent under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, respondent having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Sessions Court. For acquitting respondent, the Sessions Court observed that the prosecution had failed to prove its case.

14 In the circumstances, in my view, the opinion of the Sessions Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Sessions Court.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)