

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.404 OF 2003**

Kum. Shobha Baban Londhe	)	
Age about 26 years	)	
Occupation –	)	
R/o Bhalawadi, Tal-Man. Dist Satara	)	Appellant/Complainant

V/s.

1. Dinkar Malhari Madane	)
Age about – 57 years	)
Occupation – Agriculture	)
2. Bapu Malhari Madane	)
Age about – 47 years	)
Occupation – Service	)
3. Mahadeo Gangaram Madane	)
Age about – 35 years	)
Occupation – Painter	)
4. Anusaya Bapu Madane	)
Age about – 37 years	)
Occupation – Service	)
5. Kum Sima Bapu Madane	)
Age about – 24 years	)
Occupation – Tailor	)
6. Sou Ramabai Dinkar Madane	)
Age about – 28 years	)
Occupation – Household	)
7. Kantabai Gangaram Madane	)
Age about – 38 years (absconded)	)
Occupation – Tailor	)
8. Shrimant Namdeo Madane	)
Age about – 38 years	)
Occupation – Agriculture	)
9. Namdeo Uttam Madane (Absconded)	)
Age about – 33 years	)
Occupation – Agriculture	)
All R/o Bhalawadi, Tal-Man. Dist-Satara	)

10. The State of Maharashtra)
 (Notice to be served on the APP, High)
 Court Mumbai)Respondents/Accused

None for Appellant.

Ms. Pallavi Dabholkar, APP for Respondent No.10.

CORAM : K.R.SHRIRAM, J.

DATE : 27th NOVEMBER 2019

ORAL JUDGMENT :

1 This appeal is filed under Section 378 (4) of the Code of Criminal Procedure impugning an order of acquittal passed on 4-9-2002 by the Judicial Magistrate First Class, Dahiwadi. There are 9 accused who were charged with the offence punishable under Sections 143 (*Punishment*), 144 (*Joining unlawful assembly armed with deadly weapon*) , 147 (*Punishment for rioting*), 323 (*Punishment for voluntarily causing hurt*), 427 (*Mischief causing damage to the amount of fifty rupees*), 452 (*House trespass after preparation for hurt, assault or wrongful restraint*), 504 (*Intentional insult with intent to provoke breach of the peace*), 506 (*Punishment for criminal intimidation*), of the Indian Penal Code. Accused nos.7 and 9 were absconding and their case was separated. Even though their case was separated, my observations will enure to their benefit as well since I am not inclined to interfere with the impugned judgment.

2 Shobha Baban Londhe, appellant, had filed one private complaint in the Trial Court under Sections 143, 144 , 147, 323, 504, 506,

452, 427 of the Indian Penal Code. The said complaint was sent to Mhaswad Police Station for further investigation under Section 156(3) of the Criminal Procedure Code. Police investigated and accordingly filed charge sheet against the accused. Accused nos.1 to 6 & 8 appeared and were released on bail. Police recorded the statements of witnesses and prepared the panchnama during the course of investigation.

3 It is the case of complainant (PW-1), that on 21-5-1999 at about 5.30 p.m., when the construction of her house was going on and she was working there with other family members the accused arrived at her house armed with sticks, axes and hoes. Accused pulled down the house under construction and demolished all the walls by using those sticks, axes and hoes. It is stated that the accused also abused complainant and her parents and threatened to kill them. Complainant went to the police at 7.30 p.m. on the same day when the incident has taken place, for lodging the complaint, but the police refused to receive the complaint. Complainant then waited for one day and filed the complaint in the Trial Court. This is what is stated in the examination in chief. Prosecution led evidence of four witnesses namely; complainant Shobha Baban Londhe (PW-1), Sunil G. Bansode (PW-2), Dada Krishna Bansode (PW-3) who is also a Panch Witness and Anandrao Ishwara Sawant, Investigating Officer (PW-4).

4 In the examination in chief P.W.-1 agrees that P.W.-1 has not stated in her verification dated 2-6-1999 before the Trial Court that the accused had come to her property armed with sticks, axes and hoes etc. P.W.-1 also agrees that accused no.1 had filed a Civil Suit No.121 of 1999 against complainant, in which an injunction order was passed against complainant. Complainant also states that she has filed Misc Appeal against the said injunction order, which is pending. Complainant has relied upon the photographs of status of her demolished house. The photographer is not examined. Even if one looks at the photographs, it is not enough to prove that the accused demolished the house which was under construction. Complainant has stated in the examination in chief that her other family members were also present at the time of incident, but only two of them, i.e., P.W.-2 and P.W.-3 have been examined.

5 P.W.-2 is the uncle of P.W.-1. Therefore, he is an interested witness. P.W.-3 who was called as Panch Witness is also uncle of P.W.-1. P.W.-3 states that when he arrived at the spot, he saw bricks were lying on the spot and the work of panchnama was going on and accordingly he signed the panchnama. P.W.-3 is not an eye witness to the incident. Panchnama does not mention about the recovery of any weapon. P.W.-3 also admitted in his cross-examination he has no knowledge of spot of incident. Hence the panchnama is unreliable. So also the evidence of P.W.-3. Investigating

Officer P.W.-4 has admitted that complainant never filed any complaint to police prior to filing her private complaint about the incident. On the other hand, complainant states that she went to the police at about 7.30 p.m. on the date of the incident, but the police refused to receive her complaint. Complainant does not state which is the police officer, who refused to receive the complaint. There is no evidence as to which accused was carrying which weapon. There is also no evidence to prove recovery of any weapons. P.W.-4 Investigating Officer states even though there were houses near the place of incident, he has not interrogated any of the neighbours or residents. P.W.-4 also states that he was not aware of any civil suit between accused and complainant. Complainant does not say that only P.W.-2 and P.W.-3 were working with her at the house. P.W.-2 says that he was working as assistant to the mason but the mason is neither named nor his statement recorded or called to give evidence.

6 The statements of P.W.-2 and P.W.-3 and also that of complainant seems to be rather general in nature. The prosecution has to prove which of the accused was holding which weapon, recover those weapons and if the accused have abused, spell out the word used in the abuses. In the absence of these details, it is not possible to convict. Added to that, there is also a civil dispute between the accused and complainant and in that the accused have obtained an order of injunction against complainant and against that

order an appeal filed by complainant, is pending. All these creates a suspicion that this is a got up case.

7 In these facts and circumstances, the Trial Court has held that no offence is proved against the accused and acquitted the accused.

8 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;

.....

(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 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.”

8 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused 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, the accused having secured their

1 (2007) 4 SCC 415

acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

9 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

10 Appeal dismissed.

(K.R. SHRIRAM, J.)