

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 678 OF 2003**

State of Maharashtra	)	Appellant/Complainant
V/s.		
1. Dyandev Tukaram Shevale, 48 yrs	)	
2. Jitendra Dyandev Shevale, 22 yrs	)	
both R/O Bhiwalwadi, Tal. Patan, Dist.	)	
Satara	)	...Respondents/Accused

Ms Pallavi Dabholkar APP for Appellant
Mr. Sumit Kate i/b Mr. Uday Warunjikar for Respondent Nos.1 and 2

**CORAM : K.R.SHRIRAM, J.
DATE : 5th DECEMBER 2019**

ORAL JUDGMENT

1 This is an appeal under Section 378(1) of the Criminal Procedure Code, 1973, impugning an order of acquittal passed by the Learned Judicial Magistrate First Class, Patan, Satara, acquitting accused of charges under Section 325 (*Punishment for voluntarily causing grievous hurt*), Section 504 (*Intentional insult with intent to provoke breach of the peace*) and Section 506(*Punishment for criminal intimidation*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code.

2 It is the case of prosecution that on 22-5-1997, while complainant (PW-2), his wife Shalan (PW.-3) and his father-in-law, were

sitting on the cot in front of the house, they noticed accused ploughing their field and also uprooting the wire fence which separates their respective land. When complainant asked them what they were doing, accused stated that complainant has encroached into their land and they were removing the fence so that they could plough their land. Complainant asked accused not to remove the fence and assured that he will have the land measured by the competent authority. The accused got angry and started assaulting complainant. Accused No.2 first hit complainant with a stick on his back and shoulder. Thereafter, accused no.1 beat P.W.-3-complainant's wife with a stick injuring her on her eye. P.W.-3 fell down and became unconscious. Complainant in his examination in chief stated that his father-in-law, who witnessed the incident, died on the spot due to heart attack, but later clarified that he died a year later. Complainant also says that accused no.2 Jitendra assaulted him with a tubelight. At that time, his daughter and daughter-in-law (P.W.-4) came and they witnessed the incident. The name of the daughter is not given and she has not been called to give evidence for prosecution. Thereafter, the accused ran away and complainant approached Dhebewadi Police Station and reported the incident. Complainant also states that the fact of accused no.2 assaulted him with tube light, has not been recorded by the police.

3 Both accused pleaded not guilty and claimed to be tried. Based on the evidence on record, the Trial Court observed that there are too many

contradictions and loop holes and came to a conclusion that prosecution has failed to prove all charges beyond reasonable doubt and acquitted the accused. This is the order of acquittal which is impugned in this appeal.

4 To prove their case, prosecution led evidence of 6 witnesses. P.W.-1-Laxman alias Krishnaji Vishnu Kumbhar, is a panch witness; P.W.-2-Gangaram Maruti Potekar is complainant; P.W.-3 Shalan Gangaram Potekar is the wife of P.W.-2; P.W.-4-Pravina Prakash Potekar is daughter-in-law of P.W.-2 and P.W.-3; P.W.-5- Vasant Raghunath Karanjawadekar is the medical officer, who issued certificate of injury to complainant (P.W.-2) and P.W.-3; P.W.-6-Ramchandra Shamrao Shevale is the Investigating Officer.

5 For the sake of brevity, I do not wish to go into all the contradictions, which have been listed by the Trial Court. I have perused the papers, records and proceedings and evidence with the assistance of Learned APP Ms Dabholkar. There was no assistance from counsel for Accused/Respondents.

6 Prosecution has relied on the evidence of P.W.-1 read with the evidence of P.W.-6, to prove the charge of recovering the weapons of assault used by the accused. Spot panchnama and seizure panchnama have been signed by P.W.-1 along with another panch witness, who has not been called to give evidence. P.W.-1 in his cross-examination has expressly stated that no panchnama was drawn at Village Talmavale, where the spot is situated and from where weapons, i.e., stick and broken pieces of tubelight, are

supposed to have been recovered. P.W.-1 also states that he does not know the reason why it is mentioned in panchnama that panchnama is recorded at Village Talmavale. According to panch witness, panchnama was recorded in Village Dhumalwadi. P.W.-1 also states that police simply called him while he was going to his jeep and obtained his signature and he does not know the contents of panchnama. Prosecution has not brought the other panch witness to prove that P.W.-1 was wrong and what is recorded in panchnama is correct. On this ground alone, even the evidence of Investigating Officer (P.W.-6) has to be discarded because, he is relying on the panchnama which P.W.-6 is supposed to have recorded himself.

7 In the medical report, there is a reference of injury to the chest of P.W.-3 but P.W.-3 does not say she was hit on the chest. In the evidence of P.W.-3 she says P.W.-2, because of hit by accused also suffered fracture on his back, but P.W.-2 does not say he suffered any fracture. Even in the medical report, it is not mentioned that P.W.-2 suffered any fracture. Further Dr. Vasant Karanjwadekar (P.W.-5) says that the injury caused to P.W.-2 and P.W.-3 could have been caused even by falling to the ground.

P.W.-2 and P.W.-3 state when P.W.-3 was assaulted, she fell down on the ground and became unconscious. They do not say how, when and where, she regained her consciousness.

8 Moreover, P.W.-2 and P.W.-3 say that just before the incident, the accused were ploughing their field. If somebody is ploughing their field, I

cannot imagine the situation that somebody would be ploughing the field with a stick in their hands. P.W.-2 and P.W.-3 state that when complainant asked the accused when they were ploughing, as to why they were also uprooting the fence, they came with sticks and beat them up. Complainant does not say that; a) the accused were carrying the sticks at all time or; b) they went, picked up the sticks and they came and assaulted them.

9 P.W.-4 states that when accused were beating P.W.-2, her mother-in-law (P.W.-3) rushed to rescue P.W.-2. P.W.-2 and P.W.-3 do not say P.W.-3 went to rescue P.W.-2 and got assaulted in the bargain.

10 The daughter of P.W.-2 and P.W.-3 was also present when the incident happened. She is not asked to give evidence. Even in the charge sheet, 9 witnesses are listed but only 5, apart from complainant were called to depose.

11 Admittedly, there are disputes pending between complainant and the accused and that the accused have filed a Civil Suit against complainant and also criminal complaint against complainant. Based on the evidence as noted, it would not be unreasonable to believe the complaint has been lodged only to get even with the accused.

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

¹ (2007) 4 SCC 415

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, reappreciate 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 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 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 they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced,

reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

14 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, need not be interfered with.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)