

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

CRIMINAL APPEAL NO.1355 OF 2002

The State of Maharashtra)....Appellant

V/s.

Babaso Yashwant Shelake & Ors.)....Respondents

Ms.Jyoti Lohokare APP for the Appellant-State.
None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 6.5.2019

P.C.:-

1. The State has filed this appeal impugning the judgment and order dated 17.9.2002 whereby the trial Court viz. Judicial Magistrate, First Class, Malkapur, Dist. Kolhapur acquitted the two accused under Section 248(1) of Cr.P.C. for an offences punishable under Sections 324, 504, 506 r/w 34 of IPC. The informant one Mahadev Kadam, who was PW-1, and his mother PW-7 were related to accused nos.1 & 2. Accused no.2 is the sister of accused no.1. There seems to be some family dispute. It appears, on or about 24.11.1997, when PW-1 was having lunch, accused no.1 went over to his house and called him over to the residence of accused no.2. When PW-1 entered the house of accused no.2, the two accused, it seems, started asking PW-1 as to how he could effect a partition in the family and both were so angry

that accused no.1 hit PW-1 with a stick and accused no.2 allegedly hit PW-1 with a stone. It seems that PW-7 who was the mother of PW-1 also went to that house following PW-1 and she was also met with accused no.2 who used abusive language and a stone was flung at her due to which she also got injured. Immediately, on the same day, FIR was lodged against the two accused. Accused pleaded not guilty and claimed to be tried.

2. The trial Court has come to the conclusion that the recovery of the stick with which accused no.1 was supposed to have hit PW-1 itself is doubtful, the spot panchanama prepared is wrong and evidences of panch witnesses have been proved false and acquitted the accused.

3. The prosecution examined totally 8 witnesses. To prove its case, prosecution relied on the evidence of PW-1 and PW-7. The witnesses have reiterated what has been stated above. PW-2 was a panch witness who stated that the house of the accused was facing West but the panchanama states that the house was facing East. The panch witness had also admitted in his cross-examination that he was the relative as well as neighbour of the Complainant. PW-1 and PW-7 stated that accused nos.1 & 2 have beaten them with stick and stone.

There is nothing to indicate that stone has been recovered. There is nothing in the evidence of PW-2 the panch witness that the stick with which accused no.1 is alleged to have beaten PW-1 was found at the spot. PW-3 an independent witness states that the incident took place on 24.11.1997 at 3.00 P.M. when he was going to his house from S.T.Stop. He heard some noise and saw some injury on the head of (PW 1) Mahadeo Kadam. He also states to have seen accused no.1 was holding a stick and accused no.2 was having stone in his hand. He does not say anywhere both of them beat PW-1 and PW-7. None of the evidence indicate that the stick and stone were recovered from the spot or recovered under Section 27 of the Evidence Act at the instance of either of the accused. Even the investigating officer has not been examined to prove the fact of recovery of these two items. PW-3 has stated that at about 3.00 P.M. he saw the incident. Whereas PW-4 stated that the incident took place at about 4.00 P.M. He also states that he cannot say who assaulted whom. He has also stated that though he saw accused no.2 he did not find any stick or stone in the hands of accused no.1 and he had not seen the incident himself.

4. The doctor has been examined as PW-5 who has in his examination-in-chief stated that the nature of the injuries were of simple nature. Sonabai Kadam-PW-7 states the incident happened

between 12.00 to 1.00 noon. In her examination-in-chief PW-7 who is supposed to have been assaulted with stone, does not say how she was assaulted with a stone. She says she was unconscious and hence did not identify the stone. But if she was hit by stone before she was unconscious, she would certainly have seen the stone and who assaulted her with the stone. PW-8 who was the panch witness states that on 3.12.1997 he was called by police for panchanama along with another panch and police prepared attachment of stick and stone after attaching stick of bamboo and one stone in his presence. Therefore, there is no evidence to prove that the stone and the stick which were shown in the Court were the same as were allegedly used by the accused for assault on PW-1 and PW-7.

5. In my view also, prosecution has miserably failed in proving the charge. It is settled law that though the Court has full powers to review, re-appreciate and reconsider the evidence upon which order of acquittal is passed. Criminal Procedure Code puts no limitation or restriction or conditions to exercise of this Court the appellate powers unless there are compelling and substantial reasons or distorted conclusions or glaring mistakes. The appellate Court should not disturb an order of acquittal recorded by the trial Court and appellate Court must bear in mind that in case of acquittal there is double

presumption in favour of the accused. Firstly, the presumption of innocence is 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 accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

6. In the circumstances, the trial court having held that accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Having perused the evidence, in my view, the trial Court was correct in arriving at its conclusion.

7. In the circumstances, the appeal is dismissed. Bail or bond if any, stand cancelled.

(K.R.SHRIRAM,J)