

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.530 OF 1998**

The State of Maharashtra)Appellant

V/s.

1. Michael Bastu D'Cunha)
residing at Merses Cowlar, Taluka Vasai,)
District – Thane – 201 401)
2. George Simon D'Cunha)
residing at Merses Cowlar, Taluka Vasai,)
District – Thane – 201 401)Respondents

Ms. Anamika Malhotra, APP for State.

Mr. A.N. Garje, Probationary PSI, Vasai Police Station.

Mr. George S. D'Cunha, accused no.2 present.

**CORAM : K.R.SHRIRAM, J.
DATE : 11th NOVEMBER 2019**

ORAL JUDGMENT :

1 Original accused no.1 and accused no.2 were chargesheeted for having allegedly committed offences under Section 324, 504, 506 read with Section 34 of the Indian Penal Code.

2 It is the case of the prosecution that on 27th April 1990 a cricket match was being played between various teams at Victor Dabre playground, Vasai. At about 3.30 p.m. in the afternoon, original complainant William Gonsalvis came to bat on the playground. While original complainant was about to bat, it is alleged that original accused no.1 and accused no.2 came alongwith live snake and left live snake in front of original complainant. It seems William Gonsalvis asked original accused no.1 and accused no.2 not to do such thing and asked them to remove the snake, which started a

quarrel between them. Original accused no.1 is alleged to have assaulted William Gonsalvis with a cricket bat on the back of his head and William Gonsalvis started bleeding. It is alleged that subsequently accused no.2 went to the house of William Gonsalvis and abused and threatened him by wielding knife.

3 Statements were recorded and charge sheet was filed. Charge came to be framed and the contents of the charge were read over to accused in Marathi. Both pleaded not guilty and claimed to be tried. The stand of the defence was of total denial.

4 If one examines the entire evidence and the complaint, the whole allegation is only against original accused no.1 for having assaulted complainant William Gonsalvis with a cricket bat. First of all, the said cricket bat is never recovered, which means the weapon of offence was never recovered. Moreover, original accused no.1 has since died in 2005 and the appeal against him is abated. Accused no.2, based on court's orders, has been produced by the Vasai Police Station today.

5 In the entire complaint and in the evidence, there is nothing alleged, as noted earlier, against accused no.2 for having used any weapon against original complainant. Accused no.2 is supposed to have, in the complaint, gone to the house of original complainant, abused him and threatened him with knife. In the examination in chief, original complainant actually stated that one accused had a knife but does not indicate which

accused.

6 No evidence of independent witness also is led by accused. There is no evidence to show that any seizure from accused no.1 of any weapon also has been made. The alleged weapon, as noted above, has also not been produced.

7 The medical reports do not really help the prosecution because even assuming that original complainant was attacked with a blunt object, like a cricket bat, the prosecution has to prove beyond reasonable doubt that it was original accused no.1 who really assaulted complainant for which, in the facts and circumstances of this case, independent witnesses have to be produced to corroborate what complainant states and the cricket bat should have been actually seized.

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;

(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;

1. (2007) 4 SCC 415

(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."

9 There is an acquittal and therefore, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to the 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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the the accused, the Trial Court observed that the prosecution had failed to prove its case.

10 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. This Court cannot hold the

surviving accused - George Simon D'Cunha guilty.

11 Appeal dismissed.

(K.R. SHRIRAM, J.)