

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.405 OF 2003**

Sou. Kusum Baban Londhe	)	
Age about 40 years	)	
Occupation – Household	)	
R/o Bhalawadi, Tal-Man. Dist Satara	)	Appellant/Complainant

V/s.

1. Shivaji Namdeo Madane	)
Age about – 43 years	)
Occupation – Agriculture	)
2. Sopan Raghunath Madane	)
Age about – 38 years	)
Occupation –	)
3. Shrimant Namdeo Madane	)
Age about – 38 years	)
Occupation –	)
4. Bapu Malhari Madane	)
Age about – 48 years	)
Occupation –	)
5. Shankar Namdeo Madane	)
Age about – 36 years	)
Occupation –	)
6. Anant Shivaji Madane	)
Age about – 33 years	)
Occupation –	)
7. Mahadeo Gangaram Madane	)
Age about – 36 years	)
Occupation –	)
8. Rajendra Dinkar Madane	)
Age about – 21 years	)
Occupation –	)
9. Popat Bapu Madane	)
Age about – 25 years	)
Occupation –	)
10. Sau Seema Bapu Madane	)
Age about – 24 years	)

Occupation –	)	
11.Sou. Ramabai Dinkar Madane	)	
Age about – 27 years	)	
Occupation –	)	
All R/o Bhalawadi, Tal-Man. Dist-Satara	)	
12. 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.12.

CORAM : K.R.SHRIRAM, J.

DATE : 27th NOVEMBER 2019

ORAL JUDGMENT :

1 By a judgment dated 4-9-2002 of JMFC Dahiwali, Satara, 11 accused were acquitted of charge for offences punishable under Sections 427, 447, 452, 504, 506 read with 34 of Indian Penal Code. Aggrieved by this judgment, the present appeal impugning the said judgment is filed.

2 Before we proceed further, it will be useful to reproduce Sections 427, 447, 452, 504, 506 and the same read as under:

Section 427:- *Whoever commit mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

Section 447:- *Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.*

Section 452:- *Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any*

person or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 504:- *Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.*

Section 506:- *Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.*

3 Originally one Kusum Baban Londhe, had filed a private complaint in the Trial Court under Sections 427, 447, 452, 504, 506 read with 34 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. It was the case of prosecution that complainant Kusum Baban Londhe (PW.-1) had purchased certain land from one Dinkar Mmalhari Madane in respect of which, there was a civil dispute pending between PW.-1 and the accused. It seems on 22-7-1999 at about 5.30 p.m., the accused, alongwith police patil, and few others came near the house of complainant and asked her to vacate the house. PW.-1 refused to vacate the

house. Thereafter, at about 9.30 p.m. on 22-7-1999, accused no.1 came to the house of P.W.-1 and threatened to kill her. Again on 23-7-1999, at about 9.00 a.m. accused nos.1 to 11 came near the house of complainant and abused her and family members, forcibly entered the house of P.W.-1 and threw away all the household material, destroyed it and caused damage to it. Accused also beat complainant and threatened to kill her. All the accused appeared and were released on bail. Charges were framed. All accused pleaded not guilty and claimed to be tried. Prosecution led evidence of four witnesses namely; complainant Kusum Baban Londhe (P.W.-1), Shobha Baban Londhe (P.W.-2), Nandkumar Gulab Bansode (P.W.-3) and Anandrao Ishwara Sawant, Investigating Officer (P.W.-4). P.W.-2 is the daughter of P.W.-1 and P.W.-3 is the brother of P.W.-1.

4 Having considered the evidence, I find there are too many contradictions and grey areas, which prompts me not to interfere with the impugned judgment. No specific averment of abuses, i.e., what were the words used and there are no specification of criminal trespass.

5 P.W.-1 is complainant, who states that accused no.1 came to her house at 9.00 p.m. on 22-7-1999 and abused her in filthy language. On the next day, i.e. 23-7-1999 accused no.1 came back with 11 others, who are all accused in this matter, and threw away all the house hold material including

food and bangles of her business. P.W.-1 states that the accused then removed and threw the tin sheets of roof of her house and damaged the house severely.

6 P.W.-2 who is the daughter of P.W.-1 and who claims to have been present when the incident took place, states that when the incident took place, she was cooking food in a tin shed adjoining to the house and her mother P.W.-1, sister and brother were with her at that time. All the accused came there and started abusing them. P.W.-2 states that the accused were having sticks and axes in their hands and also gave them fist blows and pushed them. P.W.-2 states that the accused also threatened to throw away her household material and also abused in the same filthy language as stated by P.W.-1. I have to note that, P.W.-1 says it was accused no.1, who came and abused, whereas P.W.-2 says all the accused came. P.W.-2 states that the accused were armed with sticks and axes in their hands and also give fist blows to them. P.W.-1 does not say anything about the accused being armed or physically assaulting them. The other daughter and son of P.W.-1 were also present at the time of the incident, but they are not called to depose. P.W.-2 states that the accused cut babhul trees and put their thorns on the spot where the shed was situated. P.W.-1 is totally silent about the babhul tree.

7 P.W.-1 says that on the next day they went to police at Mhaswad Police Station to report the incident. The police came on the spot, prepared spot panchnama, but refused to register the complaint because of which, P.W.-1 had to file this private complaint. P.W.-1 does not state which was the police officer, who refused to take the complaint and that spot panchnama is not produced. I do not understand, how spot panchnama would be prepared without the police even receiving the complaint.

8 P.W.-2 states that her maternal Uncle Sunil and Nandkumar were present at the time of the alleged incident and there were 7/8 persons (names not disclosed) other than her family members who were present at the spot of the incident. P.W.-1 does not say anything about the presence of her brother Sunil and Nandkumar at the time of incident. P.W.-1 is also silent about the presence of 7/8 persons other than her family members, who are present at the time of the incident. Moreover, except Nandkumar, none of the others have been called to give evidence.

9 P.W.-3 in his examination in chief does not state anywhere that he was present at the time of incident. P.W.-3 also does not identify any of the accused. P.W.-3 also says that the accused put thorns of babhul trees on the place where the shed was situated, but the P.W.-1 is silent about that. P.W.-3 also states that complainant and her family members were present

there but does not say; a) who were those family members and b) that he was personally present at the time of incident. Therefore, the evidence of this witness also is not reliable.

10 PW.-4 Investigating Officer has produced spot panchnama. But none of the panchas have been called to lead evidence, though, one of the panchas is from Bhalavadi, the same place where the other witnesses reside. Therefore, there is no evidence on record to prove the damage done to the property as alleged by P.W.-1 or P.W.-2 or P.W.-3. In his cross examination, P.W.-4 admits that he has not investigated the matter by inquiring the people living in the vicinity. P.W.-4 also states “It is not true to say that I have prepared panchnama on spot of incident” but in the evidence, he says he visited the spot of incident and prepared spot panchnama.

11 PW.-1 and P.W.-2 have also stated that the abuses specifically mentioned by them in the examination in chief, are not appearing in the private complaint.

12 The onus is on prosecution to prove beyond reasonable doubt. The prosecution has not proved, which were the household items that were thrown away and what was the value thereof. Therefore, Section 427

cannot stick. The prosecution has also not proved the cause for discrepancies and contractions between the evidence of each of the witnesses that the accused have committed criminal trespass. Therefore, Section 447 also cannot stick. There is no evidence to speak of or made to prove offence under Sections 504 or 506.

13 In the circumstances, having considered the evidence on record and records and proceedings, I am also satisfied that no case has been made out. 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.”

14 There is an acquittal and therefore, there is double presumption

1 (2007) 4 SCC 415

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 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.

15 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.

16 Appeal dismissed.

(K.R. SHRIRAM, J.)