

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.573 OF 2003**

The State of Maharashtra	)	Appellant/Complainant
V/s.		
1. Uttam Laxman Katekar,	)	
Age 38 years, R/o. Shelkewadi (Yewati),	)	
Tal. Karad, Dist. Satara		
2. Dilip Laxman Katekar,	)	
Age 43 years, R/o. Shelkewadi (Yewati),	)	
Tal. Karad, Dist. Satara		
3. Vimal Dilip Katekar,	)	
Age 28 years, R/o. Shelkewadi (Yewati),	)	
Tal. Karad, Dist. Satara		
4. Sonabai Laxman Katekar,	)	
Age 64 years, R/o. Shelkewadi (Yewati),	)	Respondents/Accused
Tal. Karad, Dist. Satara		

Ms. Anamika Malhotra, APP for State - appellant.

**CORAM : K.R.SHRIRAM, J.
DATE : 4th DECEMBER 2019**

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 12th August 2002 passed by Judicial Magistrate F.C., Court No.4, Karad acquitting four accused, i.e., respondent nos.1 to 4 of charges under Section 325 (*Punishment for voluntarily causing grievous hurt*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*), 506 (*Punishment for criminal intimidation*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code.

2 The facts in brief are that the complainant Kisan Bhau Katekar (PW-1), who was residing at Shelkewadi village, Taluka – Karad, owned a

house and some landed property in the village. PW-1 was residing there with wife Anusaya (PW-3), sons Ashok and Santosh, daughter Sangita and daughter-in-law Vandana.

3 On 4th April 1999 at about 6.15 a.m. when complainant went to the public borewell, which was about 40 feet from his house, to fetch water, at that time the accused were present at the borewell armed with sticks. All the four accused came towards complainant, questioned him by saying why he was not giving them their share of an ancestral property and also threatened him that they will kill him if he did not give. It seems the accused also abused complainant and started hitting him with sticks. Accused no.1 dealt a blow on the right hand of complainant with a stick due to which there was a fracture near the right hand thumb. Accused no.1 also hit complainant on the head with stick. Accused no.2 hit complainant with stick on his back and head resulting in bleeding from his head. Accused no.1 and accused no.2 also hit complainant on his legs and hands. Accused nos.3 and 4 also hit complainant with sticks. At that time, Maruti Shelake (PW-5), Shankar Ingale (PW-2) and the wife of complainant Anusaya Katekar (PW-3) were present at the spot. They jumped to his rescue and rescued complainant. After that complainant was referred to hospital at Undale where complainant was treated and later he lodged a complaint at Undale Police Station. This is what I find in the examination in chief of PW-1. The complaint was registered by the police for the offences mentioned above. Subsequently, investigation was set into motion and Police Head Constable

Phadatare (PW-7) visited the spot of the incident on 5th April 1999 and prepared spot panchnama. On the same day, he seized the sticks used by accused from accused no.3 and accordingly seizure panchnama (Exhibit 36) was prepared. The Police Head Constable (PW-7) also recorded the statements of Maruti Shelake (PW-5), Shankar Ingale (PW-2) and Anusaya Katekar (PW-3), who were eye witnesses. Statements of one Dattu Katekar, Sangita Katekar and Ashok Katekar were also recorded but they were, however, not called to depose. Sangita Katekar appears to be the daughter of complainant, Ashok Katekar appears to be the son and Dattu Katekar, as stated in the cross examination, is the brother of PW-1 complainant. The Doctor who examined complainant issued the certificate at Exhibit 44. The accused were arrested and after completion of investigation, a chargesheet was filed. Charges were framed and the accused pleaded not guilty and claimed to be tried. Their defence is of total denial. The accused also submitted that there was a dispute regarding land with complainant and hence, false complaint has been filed against them.

4 The Trial Court has noted innumerable contradictions and omissions and based on which all the four accused were acquitted. Against that order and judgment, this appeal has been preferred. At the outset, I have to note that I am in agreement with the findings of the Trial Court and I see no reason to interfere.

5 To bring home the guilt of the accused, prosecution has examined in all 10 witnesses. PW-1, Kisan Katekar, is the complainant.

PW-2, Shankar Ingale, is an eye witness and is the co-brother of the complainant having married the sister of PW-3, complainant's wife Anusaya Katekar. PW-4, Balu Shelake, is the panch witness in whose presence spot panchnama and seizure panchnama was prepared. PW-5, Maruti Shelake, is an eye witness. PW-6, Dr. Rajaram Katkar, is the Doctor from Primary Health Center of Undale. PW-7, Ashok Phadatare, is the Head Constable. PW-8, Dr. Ram Jetmalani, is the medical witness running the accident hospital at Karad where complainant took treatment. PW-9, Sambhaji Patil, is an x-ray technician from Cottage Hospital, Karad. PW-10, Dr. Smita Kasar, is the medical officer attached to Cottage Hospital, Karad. The accused also led evidence of one witness DW-1, Dr. Sanjay Gajanan Chivathe, of Cottage Hospital, Karad.

6 It is the case of the complainant that on 4th April 1999 at about 6.15 a.m. when he went to fetch water from the public borewell, the accused abused him and beat him with sticks, punched him and kicked him. The accused also threatened to kill him. The prosecution has to prove that the complainant received grievous hurt due to the assault by the accused. In that respect, PW-1, who is the complainant and the injured, has stated that when he reached the borewell to fetch water, all the accused were present on the spot armed with sticks and accused questioned him as to why he was not giving them their share. By saying so, the accused started hitting complainant with stick on his right hand and back. Accused no.1 is supposed to have hit him on the right hand resulting in complainant sustaining a

fracture near the thumb and accused no.1 also hit complainant on his head and back resulting in complainant sustained bleeding injuries on his head. PW-1 also claims to have been hit on his legs with sticks and accused nos.3 and 4 also joined in hitting complainant with sticks. According to complainant, at that time, PW-2, PW-5 and PW-3 jumped to his rescue and rescued him. The complainant was then referred to Hospital at Undale and later he lodged the complaint. The Complainant in his complaint has stated that when he reached the borewell to fetch water, all the accused came there armed with sticks and stated that the complainant assaulted them on the earlier date regarding the dispute relating to property and by saying so, they abused and threatened him. According to complainant, his nephew, accused no.1, hit him on his right hand with a stick resulting in him falling on the ground and thereafter, all the accused assaulted him with blows and sticks. In the complaint, which was filed by complainant at the Cottage Hospital, Karad, complainant does not state that the accused were present near the borewell armed with sticks when he reached, which indicates that there is improvement in his testimony. In his cross examination, PW-1 admits that there was a dispute between him and the accused on account of partition of property. Complainant also admits that on the previous day, i.e., 3rd April 1999, his son had met the accused, invited accused nos.1 and 2 to his house for discussion and the accused had filed a complaint against him at Undale Police Station. PW-1 also admits that he was called by the police for inquiry, accused nos.1 and 2 were treated medically by Doctors and that

Police informed him that the accused were filling a case against him and his son. PW-1 also states that he, his son and other family members were afraid that police might arrest them. PW-1, however, denies that he or his son assaulted accused nos.1 and 2 with sticks when they went to his house at his invitation to talk settlement. These things have been suppressed by complainant in his complaint and his testimony before the Court.

Further, complainant, in his cross examination has stated that for two days he was treated at Undale Hospital and thereafter he was referred to Cottage Hospital, Karad. However, from the complaint it seems that the complaint has been filed on the very day of happening of the incident at Cottage Hospital, Karad. Complainant also states that he was unconscious at the time of recording his statement and the complaint was not read over to him and his thumb impression was taken on the complaint by the police. Complainant has also admitted that he cannot read or write Marathi. What baffles this Court is if the complainant was treated at Undale Hospital for two days, then how the complaint was recorded at Cottage Hospital, Karad. PW-1 also states that the complaint was not read over to him and he cannot read or write Marathi, which raises a doubt on the contents of the complaint. Complainant also states that on the previous day he, his son and his family members were afraid that the accused might file a complaint against them and police will arrest them. Complainant also has not stated in his complaint as well as testimony that at the time of incident, he raised a commotion as a result of which his wife (PW-3) and Shankar

Ingale (PW-2), who is relative came to the spot after hearing the commotion. Therefore, in view of what is stated above, the evidence of PW-1 is not very reliable.

7 PW-2 Shankar Ingale, who is relative of complainant, has stated that he was in the house of complainant, he heard the commotion from near the borewell and therefore, he went there and saw that the accused were beating complainant with sticks. PW-2 has further stated that he, Anusaya Katekar (PW-3) and Maruti Shelake (PW-5) rescued PW-1 from the assault. PW-2 says that complainant has sustained injuries on hands, legs, head and back and there was bleeding from the head. We have to keep in mind that PW-2 is a relative of PW-1, the complainant. PW-2 has also made a general statement that the accused were beating the complainant when he reached the borewell and he saw complainant sustained injuries on various parts of his body. The complainant has not stated in his testimony that when he raised a commotion, PW-2 and PW-3 came on the spot. PW-2 also does not give detailed account as to which accused assaulted the complainant on which part of the body. Further if PW-2 rescued the complainant while he was being assaulted, I am sure PW-2 also would have received one or two blows with sticks. PW-2 does not say anywhere that he suffered any injury or he was beaten. Therefore, it is quite possible that he did not see complainant being beaten and being relative of complainant, there is a possibility that he is a got up witness. I have my own doubts whether PW-2 was present at the spot. Further, PW-2 states there were five to ten persons

present at the spot from nearby houses. He does not name them. The complainant is silent about that. The police has also not recorded the statements of any persons who are residing nearby the borewell. Therefore, this evidence of PW-2 is not reliable.

8 PW-3 is the wife of complainant. PW-3 has stated at the time of incident she was present in the courtyard of the house and sweeping the premises. According to PW-3, she heard the commotion made by her husband and went to the spot and when she reached, she saw that her husband was lying on the ground and accused were beating him with sticks. PW-3 also states that alongwith PW-2 and Maruti Shelake (PW-5) she rescued her husband. PW-3 has also stated that PW-1 sustained injury on his head, back and both the hands. PW-3 does not, however, state that PW-2 also reached the spot with her on hearing the commotion. PW-3 has also admitted in the cross examination that at the time of incident, her son, daughter and daughter-in-law were present in the house and similarly Shankar Ingale was also present. Strangely Shankar Ingale (PW-2) reaches the spot but the son, daughter or daughter-in-law do not reach the spot. Prosecution has also not examined the son and daughter or daughter-in-law of complainant. Therefore, it is doubtful whether complainant raised the commotion and after hearing the commotion, PW-3 went to the spot. PW-2 has stated, as noted earlier, that there were five to ten persons present at the spot from nearby houses. PW-3 does not say anything about five to ten persons being present. Infact PW-3 is mentioning only about Shankar Ingale

(PW-2) and Maruti Shelake (PW-5) being present at the spot. PW-3 has also made a general statement that her husband was lying on the floor and all the accused were assaulting him. Complainant does not say anywhere that he was lying on the floor and all the accused were assaulting him with sticks. PW-3 also states that when she saw her husband was lying on the ground and all the accused were assaulting complainant, she jumped to his rescue and saved her husband from being beaten further. Naturally in such a situation PW-3 also would have got one or two hits or atleast kicks or blows. PW-3 does not say anywhere that she was beaten. Therefore, the presence of PW-3 at the spot also is of doubtful nature.

PW-3 has stated that the articles 2 to 4, which are sticks, are not the same that were used by the accused though she admits article 1 to be the same. If PW-3 could state which of the stick which was used and which were not, certainly she should have been able to state which was the accused that used article 1. Considering the entire evidence of PW-3, the same is also not reliable.

9 PW-4 Balu Shelake, the panch witness, who was called on 5th April 1999, one day after the incident, is the signatory to the spot panchnama and seizure panchnama. According to PW-4 the spot was shown by PW-5. PW-4 admits that there were no blood stains or any mark on the spot of incident. As per the evidence of PW-4, after the spot panchnama was completed, accused no.3 produced four sticks. Out of them, three were of shevri bush and one was of kalak and the police seized those sticks in his

presence and sticks were labeled with his signature and that of the other panch. In his cross examination, PW-4 states that there were no lady constable when the spot panchnama or seizure panchnama was prepared. PW-4 has also stated that when accused no.3 Vimal Katekar was called by the police, she came out of the house without any stick and PW-7 Ashok Phadatare told her to go and bring the sticks, which are articles 1 to 4. PW-4 has also stated that those sticks were not shown to the complainant or his wife. Admittedly, complainant and his wife have denied articles 2 to 4 were used by the accused. Prosecution ought to have shown those sticks to the complainant and his wife before the seizure panchnama was finalised. Therefore, I cannot accept the seizure panchnama. This evidence of this witness also is not acceptable.

10 PW-5 Maruti Shelake, who is an eye witness, says he was at the spot at 6.15 a.m. also to fetch water. According to PW-5 at that time PW-1 came there. Thereafter, accused no.1 came armed with stick of kalak and hit on the right hand of PW-1 because of which PW-1 suffered a fracture on his hand. As per the evidence of PW-5, accused nos.2, 3 and 4 later came there armed with sticks shevri sticks and hit PW-1 on his head and legs. PW-5 also states PW-2 and PW-3 rescued the complainant. It is important to note that the complainant has stated that all the accused were already present at the spot armed with sticks when he went to the borewell to fetch water. Per contra, PW-5 states that accused Uttam Katekar came first armed with stick and later accused nos.2, 3 and 4 came armed with sticks. PW-5 also does not

state what were the words exchanged between the complainant and the accused that resulted in the fight. If PW-5 had also gone to fetch water at the borewell and he was present when the alleged assault of PW-1 took place, why did he not try to rescue PW-1 or try to stop the accused from assaulting PW-1. PW-5 certainly could have stopped accused nos.2, 3 and 4 from assaulting PW-1 once he noticed that accused no.1 had hit PW-1 with a stick. PW-5 has admitted that a niece of PW-1 has been given in marriage to him and he had a cordial relationship with complainant. This witness does not say anywhere that he also joined PW-2 and PW-3 in rescuing PW-1. Whereas PW-1, PW-2 and PW-3 state that PW-5 joined PW-2 and PW-3 in rescuing PW-1. If we have to accept the testimony of PW-5, it would look like he was just a bystander who was enjoying two others quarreling and one being assaulted. I am unable to believe the testimony of PW-5 because he also states that he is the relative of complainant and there has been dispute between him and accused regarding the boundaries of their respective agricultural lands. Admittedly, the agricultural land of PW-5 is adjacent to the agricultural land of accused. There is every possibility that because of this dispute with the accused and his cordial relations with complainant, PW-5 might be taking sides with complainant. PW-5 also states that when he was shown articles 1 to 4, he agreed that they were the same sticks that were used by the accused, whereas the complainant has denied that articles 2 to 4 were used by the accused. This witness, therefore, also is not reliable.

11 The incident took place near a public borewell which was situated near the school, residential houses and it was a fine morning. Strangely there are no other witnesses, though PW-2 said there were other five to ten persons who were present. There are many other contradictions listed in the impugned judgment, which for the sake of brevity, I am not reproducing.

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 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;

(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

1. (2007) 4 SCC 415

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 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, accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)