

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.605 OF 2003

Nana Bhima Chavan)
 Age-28 years, R/o. Terwad, Tal.Shirol)
 Dist.Kolhapur)....Appellant

V/s.

1) The State of Maharashtra)
 2) Motiram Dattu Chavan, age-40 years)
 3) Vimal Motiram Chavan, age-35 years)
 4) Santosh Motiram Chavan, age-20 years)
 All residents of Terwad, Tal. Shirol)
 Dist. Kolhapur)....Respondents

Mr.G.S.Hiranandani i/by C.G.Gavnekar for appellant.
 Ms.Pallavi Dabholkar APP for respondent no.1-State.

CORAM : K.R.SHRIRAM,J

DATE : 28.11.2019

ORAL JUDGMENT :-

1. This is an appeal challenging an order of acquittal passed by the Judicial Magistrate, First Class, Kurundwad acquitting respondent nos.1 to 3 who are accused nos.1 to 3 of the charges under sections 323, 504 read with 34 of the Indian Penal Code.

2. It is the case of the prosecution that Complainant Nana Bhima Chavan (complainant) and accused who hailed from the same

village had land adjacent to each other. There were some disputes between two regarding the line of division between the two lands. It is stated that on 7.2.1998 at about 6.00 p.m. when complainant was watering his land, accused came and objected and the objection was complainant taking water from the common pine line. When complainant refused to pay heed to the objection, it resulted in an altercation between complainant and accused and accused no.1 caught hold of complainant and also gave fist blows. It is stated that accused no.2 also pushed and abused complainant and accused no.3 hit complainant with a spade. Due to beating by accused, complainant suffered injuries on his head, back, hands and legs. Upon hearing the commotion, one Pundalik Bapu Gaikwad, Ashok Kallappa Khilare (PW-3) and Annasaheb Balkrishna Rajmane came to the spot and separated complainant and accused nos.1, 2 & 3. It seems accused at that stage threatened to break legs of complainant. Complainant had approached Kurundwad police station and lodged the complaint. Kurundwad police station referred complainant for medical examination. Complainant went to the dispensary and got treated. Despite his complaint, police did not take any action and hence complainant filed this private complaint. The three accused pleaded not guilty and claimed to be tried.

3. Complainant led evidence of himself as (PW1), PW-2 Dr.Jalendhar Daji Rokade and PW-3 Ashok Kallappa Khilare one of those who separated the parties during the fight on 7.2.1998. After considering the evidence and in view of the contradictions as recorded in the impugned judgment, the trial Court gave benefit of doubt to accused and all accused were acquitted. It is that order which is impugned in this appeal.

4. I have also perused the complaint, the evidence recorded and the impugned judgment with the assistance of Mr.Hiranandani for appellant and learned APP Ms.Dabholkar for State and have come to the conclusion that the impugned order and judgment requires no interference.

5. In the complaint, complainant states that accused no.1 had come rushing to him when he was drawing water from the common pipe line and told him not to take water and started abusing him. Hearing that, accused no.2 & 3 came rushing to the spot and the spot is the land belonging to complainant and joined accused no.1 in attacking complainant. In the examination-in-chief complainant stated that when he was drawing water and watering his land, accused came into his land and they stated that they would not allow

him to take the water. He does not say that accused no.1 came first, abused him and later accused nos.2 & 3 came. This is one contradiction.

6. In the complaint, complainant does not say that he told accused that he has been drawing water from 8 to 10 years and that he will take water, which is found in his testimony. Complainant states when the incident happened, witnesses came on the spot and separated him. He does not say who are those witnesses, whereas, in the complaint he has named 3 persons viz. Pundlik Bapu Gaikwad, Ashok Kallappa Khilare and Annasaheb Balkrishna Rajmane. He has also listed them as the 3 witnesses out of six but leads evidence only of Ashok Kallappa Khilare. Moreover, Kurundwad police station is also listed as a witness. Complainant in the complaint states he went to the police station and lodged a complaint but the police did not take any action. Even in evidence he says he went to the Kurundwad police station and lodged a complaint. But that complaint is not produced. No police officer has been examined. Even if I assume for a moment that complaint was only oral and not in writing since complaint does not mention who was the police officer to whom he lodged the complaint, with the aid of the Court he could have had that police officer summoned as witness.

7. If material witnesses are not examined, it would lead to miscarriage of justice. The Court can presume that complainant failed to produce those witnesses as they might have given evidence which will be prejudicial to complainant.

8. PW-3 Ashok Khilare does not say why he was going towards Kurundwad. He also does not say that Pundlik Gaikwad and Annasaheb Rajmane went with him to separate the fighting parties. In fact, PW-3 states that he cannot tell how many people were present at the time of incident. Crucially, PW-3 in his examination-in-chief says “ at about 6.00 p.m. to 7.00 p.m. some dispute was going on in the land of Motiram Chavan” and Motiram Chavan is accused no.1. Per contra, complainant says that the dispute happened in his land. Complainant says “*at that time the accused came into my land Thereafter the accused no.1 caught hold of my shirt, abused and started bearing me by kick and fist blows..... The witnesses came on the spot and separated me*”. This itself makes me doubt the veracity of the evidence given by PW-3 particularly because the other two being Pundlik Bapu Gaikwad and Annasaheb Balkrishna Rajmane who were also neighbours of complainant and who were allegedly present at the time of the dispute, have not been summoned as witnesses.

9. PW-1 Nana Bhima Chavan-complainant states that he was hit by accused no.3 with a plough, whereas PW-3 Ashok Khilare states that accused were beating complainant with stick and fist blows. PW-3 does not say which accused hit complainant with stick. Further no spot panchanama has been done and no plough or stick used to assault complainant has been recovered. In fact, there is no charge under section 324 of the Indian Penal Code i.e., (*voluntarily causing hurt by dangerous weapons or means*).

10. PW-2 Doctor though he has described the injury suffered by complainant, has, in his cross-examination said that the injury could be caused even if the head of a person hits a stone.

11. The incident, in my view, has really happened because there has been some dispute between the parties due to alleged encroachment by accused into the land of complainant. In the statement recorded under Section 313 of Cr.P.C., accused has stated that this was false case filed due to civil suit about land and in the cross examination of PW-1 he has stated, though he denies that he knew previously there was dispute between him and accused on boundary of the land, in 1988 when the land of accused was measured it was found that accused no.1 had encroached upon land of

complainant to the extent of 1.5 gunthas which is about 1500 sq. ft.

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

¹ (2007) 4 SCC 415

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 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.

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.

15. Appeal dismissed.

(K.R.SHRIRAM,J)