

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.544 OF 2003**

Ajmuddin Ahmed Attar,)
aged 54 years, occ. Agriculturist)
residing at Ankalkhop, Taluka Tasgaon)
(now Palus), District Sangali)Appellant/Complainant

V/s.

1. Sadashiv Vithal Pawar)
aged 59 years, Occ Agri.,)

2. Hanmant Vitthal Pawar)
aged 46 years, occ agri.,)
both residing at village Audumbar,)
Mali-Bhag, Taluka Tasgaon (now Palus))
District Sangali)

3. The State of Maharashtra)
(through P.S.O. Tasgaon District Sangali)Respondents/Accused

Mr. D. N. Kulkarni i/b Mr. S. D. Dharmadhikari for Appellant.
Ms. Pallavi Dabholkar, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 27th NOVEMBER 2019**

ORAL JUDGMENT :

1 This appeal is filed under Section 378 (4) of the Code of Criminal Procedure impugning an order dated 31-1-2003 passed by Learned Judicial Magistrate F. C., Tasgaon, acquitting respondent nos.1 and 2 for the offence punishable under Sections 341 (Punishment for wrongful restraint), 447 (punishment for criminal trespass), 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 After the process was issued and charge sheet filed, respondent nos. 1 and 2 denied all allegations and claimed to be tried. Only complainant deposed and nobody else. Even in the examination in chief, complainant has not made out any offence, so also in the original complaint. Complainant states that he was residing at Ankalkhop, District Sangli and he owns an agricultural land bearing Gat No.1867. Respondent nos.1 and 2 own an adjacent land bearing Gat No.1866. Both are cultivating either banana or sugarcane in their respective lands. According to complainant (PW.-1), respondent nos.1 and 2 grew crop in such a way that he was unable to access his land with his tractor or bullock cart. Therefore, complainant filed a Civil Suit before the Learned Civil Judge, Tasgaon, who granted an injunction in favour of complainant. A certified copy of the decree dated 1-2-1993 is at Exhibit 50. According to complainant, despite the decree, respondent nos.1 and 2 grew crops in his access way and, therefore, he lodged a complaint at Tahsildar office, but no action was taken. Tahsildar, thereafter issued notice to circle office on 17-1-1996 but still no action was taken. Later, according to complainant, respondent nos.1 and 2 told him not to enter from their side and thereby obstructed him and also threatened him that they would kill him if he dared to use the way. Complainant, therefore states that he is unable to enter his field even on

foot and hence the complaint.

3 None of the ingredients required under Sections 341, 447, 504 and 506 have been fulfilled. If complainant has a decree of injunction in his favour and that order is being breached by respondent nos.1 and 2, he has to take such steps as advised, in the Civil Court, from which he had obtained the decree. Complainant does not say how on 7-4-1996 he was restrained. Complainant does not say now he was threatened, orally or with weapon and what were the threats given to him.

4 The Learned APP Ms Dabholkar, interpreted the injunction order of the Civil Court (In Marathi) for the benefit of this court. Ms Dabholkar states that order was only to injunct respondent nos.1 and 2 from restraining complainant from entering his own land. Even in the complaint, which I have read with the assistance of Learned APP and Mr. Kulkarni for appellant, complainant only says while he was going to his land and he was near by the access way of the land, respondent nos.1 and 2 told him that this route is theirs, they have sown seeds and can't complainant see, that the land belongs to them, and complainant should not step on the land of respondent nos.1 and 2. I fail to understand how this would amount to wrongful restraint or criminal trespass or intentional insult with intent to provoke breach of the peace or criminal intimidation. For criminal trespass, somebody has to enter into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy

any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate insult or annoy any such person or with intent to commit an offence. It is nobody's case that respondent nos.1 and 2 entered the property in possession of complainant or that respondent nos.1 and 2 were in lawful possession of the property of complainant. For Section 504, somebody must intentionally insult and thereby provoke another person intending or knowing to be likely that such provocation will cause him the other person to break public peace or to commit any other offence. One of the primary ingredient must be that the person insulting must intend or know it to be likely that such provocation will cause him to break the public peace or to commit any other offence. None of these ingredients of criminal intimidation under Section 504 has been fulfilled and consequently, Section 506 also cannot stick.

5 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

1 (2007) 4 SCC 415

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.”

6 There is an acquittal and therefore, there is double presumption in favour of 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 their 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.

7 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.

8 Appeal dismissed.

(K.R. SHRIRAM, J.)