

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 8 OF 2005**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

Rajabhau @ Govind Vinayak Deshpande
Age : 74 years,
R/o. 452/A, Shaniwarpeth, Karad,
District – Satara.

....Respondent
(Orig. Accused)

Ms. PN. Dabholkar, APP for State/Appellant.
Mr. Rahul Kate for Respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 14th DECEMBER 2020.**

ORAL JUDGMENT :

1. This is an appeal against the impugned order and judgment dated 31st August, 2004 passed by the 4th Joint Judicial Magistrate First Class, Karad, District Satara acquitting the accused (Respondent) of offence punishable under Section 353 (*Assault or criminal force to deter public servant from discharge of his duty*), 504 (*Intentional insult with intent to provoke breach of the peace*) and 506 (*Punishment for criminal intimidation*) of the Indian Penal Code.

2. At the outset, I have to note that accused, at the relevant time, i.e., on 15/04/1995 was 74 years of age which means now he would four months short of a century. Mr. Kate has no instructions whether the accused

is alive. Nevertheless, since it is a short matter, I have heard Learned APP and Mr. Kate and decided to dispose the appeal.

3. It is the case of prosecution that complainant Laxman Bapurao Sawant (P.W. 2) was Chief Officer of Karad Nagar Parishad. On 15/04/1995 at about 5.00 p.m. while the complainant P.W. 2 was present in the office and doing official work, accused entered his cabin abusing "*chutmarichya maze panayache nal connection ka todale*" and slapped the complainant on the right cheek. The accused tried to slap him again but head clerk in the office of complainant, one Chandrakant Sitaram Kokane who has not been examined, jumped to his rescue and pulled the accused away from the complainant. At that time, the Councilors of Karad Nagar Parishad, one Advocate Mansingrao Abaso Patil (P.W. 4) and one Gani Yasin Kagadi who has not been examined and Overseer of Karad Nagar Parishad one Manohar Bhalchandra Ruikar (P.W. 3) were present in the office of complainant and witnessed the incident. On the same day, i.e., on 15/04/1995 complaint was lodged and on 19/04/1995 accused was arrested and released by police on furnishing surety. After investigation, charge-sheet came to be filed and charge is framed. In his statement recorded under Section 313 of the Criminal Procedure Code, the accused has stated that it was a false complaint and has been lodged against him out of political rivalry. Apart from three witnesses, spot panch witness Dilip Mukund Dixit (P.W. 1) has been examined. Investigating Officer has not been examined.

4. P.W. 1 Dilip Mukund Dixit's evidence is irrelevant and in any case cannot be relied upon because he was panch witness who was employee of Karad Nagar Parishad since 1985.

5. P.W. 2 Complainant Laxman Baburao Sawant, has deposed that at 5.00 p.m. accused entered his office shouting "*chutmarichya maze panayache nal connection ka todale*" and slapped him on his right cheek and when he was trying to slap him again the clerk Chandrakant Kokane caught hold of accused and dragged him away.

P.W. 3 – Manohar Bhalchandra Ruikar and P.W. 4 - Mansingrao Abaso Patil have also supported the stand taken by P.W. 2. P.W. 2 being complainant and P.W. 3 and P.W. 4 being eye witnesses have supported the prosecution case.

6. P.W. 2 Laxman Baburao Sawant has admitted in his cross-examination that accused was recognised as political opponent opposing policies of one P. D. Patil who was President of Karad Nagar Parishad. P.W. 2 has also admitted in his cross-examination that there was dispute between P.D. Patil and accused due to various problems in the municipality area and P.W. 4 belongs to the political group of P.D. Patil and was Councilor at the time of incident. Political rivalry has also been admitted by P.W. 3 and P.W.4. P.W. 2, P.W. 3 and P.W. 4 stated that incident of accused slapping P.W. 2 was at 5.00 p.m. on 15/04/1995. But all three also state that there was meeting of

Nagar Parishad from 5.00 p.m. to 6.00 p.m. which was attended by the accused. I fail to understand how after getting slapped P.W. 2, P.W. 3 and P.W. 4 attended the meeting in which accused also participated without any further incidence. The incident has also not been recorded in the Minutes of Meeting or the conduct of the accused has been deprecated.

The allegations against accused was he slapped P.W. 2 on his right cheek. Normally when a person slaps another, the slap would be on the left cheek of the recipient and not on the right cheek unless a person is slapping from behind or was left handed. There is no evidence which shows that the accused was left handed or accused slapped P.W. 2 from behind. The stand of the prosecution is also that accused walked into the office of P.W. 2 abusing him and asking him why was his water connection disconnected. There is no evidence produced on record to show that the water connection of accused was disconnected. Moreover P.W. 4 Advocate Mansingrao Abaso Patil in his cross-examination has admitted that before disconnecting water supply municipality issues notice to the concerned person, two or three opportunities are given and then as last step water connection is disconnected. Prosecution, however, has produced no evidence to show that any water taxes was due from accused or Nagar Parishad had issued any such notice to accused.

7. Two other eye witnesses were present namely Gani Yasin Kagadi and Subhash Dubal but they have not been examined. P.W. 1 and

P.W. 3 are the officers of Karad Nagar Parishad, P.W. 2 is the complainant himself and P.W. 4 is the Councilor of Ruling Council Body. Therefore, all the four witnesses examined are either interested or could be influenced by the Ruling Council.

8. Interestingly and which is the main dent in the case of prosecution is that the Investigating Officer was never examined. Illustration (g) of Section 114 of the Indian Evidence Act, 1872 provides the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The fact that the Investigating Officer also has not been examined would show that if examined, his evidence would have been unfavourable to complainant. Non examining the Investigating Officer as a witness in the circumstances of the case would have caused grave prejudice to the accused. The Apex Court in **Habeeb Mohammad V/s. The State of Hyderabad**¹ observed that it was the bounden duty of the prosecution to examine the Investigating Officer, who is a material witness in the case particularly when no allegation was made that if produced, he would not speak the truth and in any case, the Court would have been well advised to exercise its discretionary powers to examine the witness.

1. AIR 1954 SC 51

9. Therefore, adverse inference arises against the prosecution's case from its non production of the Investigating Officer as a witness in view of illustration (g) to Section 114 of the Indian Evidence Act. The Investigating Officer is the principal architect and executor of the entire investigation. He is a crucial witness for purposes of establishing that there are omissions and contradictions but more importantly, it is always open to the defence to question the honesty and caliber of the entire process of investigation. It is well settled law that where an investigation is defective, insufficient or dishonest, those factors prove fatal to the prosecution. In the given instance, the accused was totally precluded from an opportunity of being able to establish the further infirmities in the prosecution's case and on this ground alone, the order of acquittal will have to be confirmed.

10. The Apex Court in ***Ghurey Lal V/s. State of U.P.***² has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. (2008) 10 SCC 450

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;*
- ii) The trial court's decision was based on an erroneous view of law;*
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- v) The trial court's judgment was manifestly unjust and unreasonable;*
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*
- vii) This list is intended to be illustrative, not exhaustive.*

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

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

12. 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.

13. Appeal dismissed.

(K.R. SHRIRAM, J.)