

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.24 OF 2004

The State of Maharashtra	)....Appellant (Org.Complainant)
V/s.	
1) Shivaji Daji Khatkar	)
55 years, Occ.Aгри., R/o Pimpalgaon,	)
Tal.Bhudargad	)
2) Sou.Shevanta Shivaji Khatkar	)
Age-50 years, Occ.Aгри & Household	)
R/o. as above	)....Respondents (Org.Accused nos.1 & 2)

Ms.Pallavi Dabholkar APP for appellant-State.
Mr.Shekhar A.Ingawale for respondent nos.1 & 2.

CORAM : K.R.SHRIRAM,J
DATE : 13.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 25.6.2003 under which the respondents (accused) were acquitted of offences punishable under sections 325 (*Punishment for voluntarily causing grievous 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 prosecution's case is that on 18.5.1996 at about 12.00 noon Akkatai Shankar Khatkar-complainant (PW-1) was present in her field which was called 'Khatkaracha Mal' at village Pimpalgaon. She was there to collect stumps of harvested paddy crops. At that time, both the accused went to the field and started abusing PW-1. They also threatened of dire consequences if she entered the field again. Thereafter accused no.1 hit PW-1 with a stick on her head & back and accused no.2 punched and kicked PW-1. The incident allegedly was witnessed by one Krishna Raut, Maruti Toraskar (PW-4) and Balu Khatkar (PW-3). PW-1 approached Bhudargad police station on 18.5.1996 and filed a complaint. Police registered a non cognizable crime. Police also gave necessary advise to PW-1 to approach the Court for necessary reliefs. Thereafter, a month later, on 13.6.1996, police registered a crime no.43 of 1996. According to police, they lodged the crime because on 13.6.1996 they were handed over a copy of the X-ray of PW-1 which shows a fracture.

3. Charge-sheet was filed and accused pleaded not guilty and claimed to be tried. According to the accused there are several disputes and pending court proceedings between the complainant and her family and the accused and this complaint has been lodged only to

harass the accused.

4. The trial court after considering the evidence of 6 witnesses, acquitted the accused. Prosecution led evidence of only 6 witnesses as against 14 listed in the charge-sheet which are Akkatai Shankar Khatkar, complainant as (PW-1); Rajaram Bacharam Patil, who prepared spot panchanama as (PW-2); Balkrishna Ramchandra Khatkar, neighbour as (PW-3); Maruti Krishna Toraskar, neighbour as (PW-4); Dr.Mangala Umesh Chavan, doctor as (PW-5); and Ramrao S.Jagtap, Investigating officer as (PW-6).

5. The Apex Court in ***Ghurey Lal Vs. State of U.P.***¹ 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.

¹ (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.

6. The Apex Court in many other judgments including ***Murlidhar Vs. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

7. The Apex Court in ***Ramesh Babulal Doshi Vs. State of Gujarat***³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even reappraise the evidence and arrive at its own conclusions.

8. I have perused the impugned judgment, considered the evidence and also heard the learned APP Ms.Dabholkar and Mr.Ingawale for respondent nos.1 & 2. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. All allegations are very vague and general in nature.

9. Section 325 provides for punishment for voluntarily causing grievous hurt. Section 320 lists the kinds of hurt which are designated as grievous and the same read as under :-

First- Emasculation

Secondly- Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear.

Fourthly- Privation of any member or joint.

Fifthly- Destruction or permanent impairing of the powers of any member or joint.

Sixthly- Permanent disfiguration of the head or face.

Seventhly- Fracture or dislocation of a bone or tooth.

Eighthly- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

10. It is prosecution's case that PW-1 suffered fracture and therefore, suffered grievous hurt. PW-5 the Doctor who was examined, says that the injuries listed by her in her examination-in-chief, except injury no.3, were simple in nature. Injury no.3- swelling on left forearm radius ulna was a suspected fracture and hence she referred PW-1 to CPR hospital Kolhapur for taking X-ray. The X-ray has been produced. Investigating officer Ramrao Subrao Jagtap (PW-6) has produced the X-ray which has not been received in evidence and exhibited. It is marked Article-B. Prosecution did not produce any witness from CPR hospital to prove the X-ray. Therefore, the prosecution's case that PW-1 suffered a fracture has not been proved in accordance with law. It is not the case of prosecution that PW-1 suffered any of the other hurts listed in section 320 of IPC. Therefore, charge under Section 325 of IPC has to fail.

11. As regards charge under Sections 504 and 506 of the IPC, PW-3 admits in his cross-examination that besides him other adjoining field owners were present at the time of incident. PW-3 appears to be an interested person because he belongs to the family of complainant. Therefore, it was necessary for prosecution to examine an independent person in support of its case.

12. PW-4 is not an interested witness. There is no evidence that he was present at the time of the incident because PW-4 does not own any land adjoining the property of PW-1 and PW-3. PW-4 in any event has admitted in his cross-examination that adjoining field owners at the spot of incident were present in the respective field. None of them have come forward to fortify the prosecution's case. Strangely, PW-3 in his cross-examination states that at the time of incident, no adjoining land owner at the spot of incident was present. Therefore, it is a clear contradiction between PW-3 and PW-4 creating a doubt on the veracity of their statements.

13. Moreover, the non cognizable crime was lodged on 18.5.1996. Whereas the complaint came to be recorded on 13.6.1996 after a lapse of 25 days and thereafter statement has been recorded. 25 days are enough for any party to manipulate evidence. Even if

PW-1 has suffered a fracture, how can we say that fracture was the result of the hurt by accused nos.1 & 2.

14. It is also settled law that when two views are possible, the appellate court should not interfere with the view taken by the trial Court.

15. 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 they are 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 which rightly observed that the prosecution had failed to prove its case. The order of the trial Court of acquittal, in my view, need not be interfered with.

16. Appeal dismissed.

(K.R.SHRIRAM,J)