

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.209 OF 2004

The State of Maharashtra	)....Appellant
V/s.	
Sahebrao Chindha Ahire	)
Age-35 years, Occ.--- R/o.Haranbari	)
Tal.Satana, Dist. Nashik	)....Respondent (Org.Accused)

Ms.Anamika Malhotra APP for appellant-State.
Ms.Vrishali Raje i/by P.N.Joshi for respondent.
Mr.Jamsheed K.Master-amicus curiae present.

**CORAM : K.R.SHRIRAM,J
DATE : 18.2.2020**

ORAL JUDGMENT:-

1. The State is impugning an order and judgment dated 14.7.2003 passed by the Judicial Magistrate, First Class, Satana, Nashik, acquitting respondent (accused) of offences punishable under section 324 (*Voluntarily causing hurt by dangerous weapons or means*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) and 506 (*Punishment for criminal intimidation*) of the Indian Penal Code (IPC).

2. On 14.2.2020 since nobody was present for accused, this

Court appointed Mr.Jamsheed K.Master as amicus curiae. Today accused was represented by Ms.Vrishali Raje. I must note that the contribution by Mr.Master in writing this order and judgment has to be appreciated.

3. The prosecution's case is that on 24.7.2000 at about 6.00 p.m. accused came in front of the house of complainant Suresh Kedare (PW-1) and his wife Vijaya Kedare (PW-4) and started abusing PW-4. When PW-1 and PW-4 came out of the house to find out what had happened, accused who was holding an iron rod in his hand, hit on the head of PW-1 and fled from the scene. It is stated that PW-2 Nimba Kapdnis, PW-3 Vilas Nandan, PW-5 Pradip Brahmkar, PW-6 Sanjay Kapdnis and PW-7 Mothabhad Hyalij were eye witnesses. PW-3 and PW-5 also were made panch witnesses for spot as well as recovery of weapon.

4. Accused did not plead guilty and claimed to be tried. In his statement under Section 313 of Cr.P.C., he has denied the incident totally.

5. It is settled law that unless the appellate court finds that the impugned judgment is totally erroneous or is so perverse that trial

court could not have arrived at such a conclusion or it is so palpably wrong, the appellate court should not interfere.

Having considered the evidence, I see no reason why the impugned judgment requires to be interfered with.

6. From the 8 witnesses, 2, 6 & 7 who were neighbours and allegedly eye witnesses, were declared hostile. They have denied having seen any incident as alleged. PW-3 Vilas Ramdas Nandan who was a panch witness for the spot of incident and for seizure of the iron bar has stated that he could not tell about the contents of the panchanama and he does not know its contents. When learned APP cross-examined PW-3, he has denied that iron bar was seized in his presence. Similarly, the other panch witness PW-5 Vitthal Bhika Wagh says that he was not read over the panchanama and on the date of his evidence panchanama was read over to him by police. Therefore, even the panch witnesses have not supported the prosecution. That leaves complainant PW-1 Suresh Gaman Kedare and PW-4 Vijay Suresh Kedare, his wife. In their evidence also there are contradictions and omissions.

PW-1 says he was inside the house with his father, mother and children when accused came and started abusing his wife.

PW-4 says that at the time of incident, she and her father-

in-law were present.

PW-1 says when accused hit him with the iron rod, PW-2, PW-7, PW-6 and others gathered and tried to intervene in the quarrel. PW-1 does not say anything about his wife or the father.

But PW-4 says that she (PW-4) herself and her father in law intervened in the quarrel. As noted earlier, PW-5, PW-6 and PW-2 were declared hostile.

7. 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 his acquittal, the presumption of his 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.

8. Appeal dismissed.

(K.R.SHRIRAM,J)