

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.583 OF 1996**

The State of Maharashtra)....Appellant

V/s.

1 Aba Hari Chavan, age 39 yrs.)
Occ. Cultivation)

2 Sanjay Aba Chavan, age 19 yrs)

3 Suman Aba Chavan, age 33 yrs)

All resident of Tilwani)
Taluka Hatkanangale, Dist Kolhapur)....Respondents

Ms Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 11th SEPTEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment passed by Learned Judicial Magistrate First Class, Ichalkaranji, on 6-2-1996, acquitting three accused, who are respondents to the appeal of charges under Section 324 read with Section 34 of Indian Penal Code.

The case of the prosecution is that complainant (P.W.-1) had purchased a field by name Barabaichi Kod from one Chimaso Mulik for cutting the grass growing in that field. On 17-10-1986, when servant- Shiva (P.W.-3) of complainant went to cut the grass, accused no.1 slapped him and stopped him from cutting the grass. When Shiva came and narrated the incident to P.W-1, P.W.-1 sent one of his sons Jangonda Patil (P.W.-4)

alongwith Shiva (PW.-3) to inquire with accused as to why they beat Shiva and why they have stopped him from cutting the grass. It seems the other son of PW.-1, one Mr. Popat Patil, also followed PW-4 and PW.-3 because he feared that the accused might harm PW.-3 and PW.-4. According to the prosecution, when the trio reached the field, accused no.3 first put chilly powder in their eyes and others assaulted with a sickle and also with the sticks. The injured were taken to the hospital of Dr. Pathan at Ichalkaranji, after which a report was lodged in the police station at Hatkanagle. An offence came to be registered and after investigating the spot a panchnama was prepared, statements were recorded and collecting evidence etc., charge was filed for the offence punishable under Section 324 read with Section 34 of Indian Penal Code. The statement of the accused is of total denial and it seems the complainant and others set fire to the house of the accused in order to grab their land. According to the accused the case is of false prosecution.

2 Prosecution, in the charge sheet listed 9 witnesses but examined only 4 witnesses namely, Surgonda Patil (PW.-1)., who was the complainant and his two sons Jangonda Patil (PW.-4) and Popat Patil (PW.-5) and their servant Shiva Kharose (PW.-3), who were eye witnesses to the incident. PW.-4 and PW.-5 were also injured. Dr. Toshniwal (PW.-7) had issued the medical certificates and PW-9 is the retired PSI, Ishwara Patil who was the Investigating Officer.

3 I have considered with the assistance of Ms Malhotra, the evidence,

impugned judgment and order and also the documents and I find no cause to interfere in the impugned judgment. The evidence has too many contradictions. The evidence of each witnesses differed about the actual spot of the incident. P.W.-1 and P.W.-3 state that the incident happened in the field Barabaichi Kod, whereas P.W.-4 states it happened in the field of Vithu Koli. P.W.-5 states that the incident happened near the field Barabaichi Kod.

The evidence of P.W.-4 discloses that accused nos.1 and 3 had hit him and his brother Popat with the sickle and sticks, whereas the evidence of P.W.-3 and P.W.-5 discloses that only accused no.3 hit P.W.-5 and one Yashwant Mulik the adjoining cultivator, with a stick. The evidence of P.W.-1 does not disclose that accused no.3 hit Yeshwant Mulik with stick. P.W.-3 Shiva, who was alleged to be present near Jangonda (P.W.-4) has not received any blows nor the chilly powder thrown by accused no.3 has gone into his eyes. As per his admission, he had not at all tried to rescue any of the injured.

The basis of the whole case is the complainant has purchased the land for cutting the grass from one Chimaso Mulik, i.e., field of Barabaichi Kod. However, no document is produced to prove about the purchasing of the grass belt from Chimaso Mulik.

4 P.W.-1 in his cross-examination admitted that the sickle which is used as a weapon of offence belonged to him. In order to show possession with the accused while assaulting the complainant, improvements have been made in the evidence of P.W.-3 and P.W.-5. For the first time in the evidence

both the witnesses came with a case that after slapping Shiva (PW.-3), accused no.1 snatched the sickle from his hands and used the same sickle to assault. The possession of sickle with the accused itself raises a doubt.

It is also prosecution's case that accused no.3 threw chilly powder when Shiva, Popat and Jangonda came in the field, but the medical reports do not mention about any eye burning or injury to the eyes. PW-4 states that two blows were given to him on his hands and one near his right side of his neck, but the medical certificate Exhibit 55 mentions only injury on the left side of the neck. PW-5 states that PW-4 received injury only on his wrist.

5 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, reappreciate 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'

1. (2007) 4 SCC 415

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 the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

6 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, need not be interfered with.

7 Appeal dismissed.

(K.R. SHRIRAM, J.)

Meera M. Jadhav

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