

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 262 OF 2004**

The State of Maharashtra) ..Appellant
(Orig. Complainant)

Versus

Sandip Dattatraya Jangam)
Age 18 years, Occu:)
R/o Kondgewadi, Lonavala)
Tal: Maval, Dist: Pune) ..Respondent
(Orig. Accused)

Ms Pallavi Dabholkar APP for Appellant
Mr. Rushikesh Kale i/b Mr. Viresh V. Purwant for Respondent
Mr. Sandip Jangam – Respondent present

**CORAM : K.R.SHRIRAM, J.
DATE : 28th FEBRUARY 2020**

ORAL JUDGMENT. :

1 This is an appeal impugning an order and judgment dated 29-10-2003 passed by Judicial Magistrate First Class, Vadgaon, Maval, acquitting respondent (accused) for the offence punishable under Sections 323 (*Punishment for voluntarily causing hurt*) and 504 (*Intentional insult with intent to provoke breach of the peace*) of Indian Penal Code.

2 I have heard the Learned APP Ms Dabholkar and Mr. Rushikesh Kale appearing for respondent, who undertakes to file vakalatnama during the course of today. Undertaking accepted.

3 Admittedly, there has been previous enmity between accused as

well as complainant's family. Complainant states that he was stabbed, whereas his brother (PW-5) says chilly powder was thrown into his eyes. Seizure of weapon also has not been proved because panch witness has turned hostile and also the Investigating Officer has not testified. There are no independent witnesses examined, particularly in view of the admitted previous enmity between the parties. It is settled law that, if the evidence is of only interested witness, it cannot be discarded but the court must exercise care and caution while considering the same. The presence of PW-3 has not been acknowledged by PW-2. There is variance between timings of the occurrence of incidence stated by all witnesses. The medical certificate indicates the examination of the victim at 5.10 a.m. much prior to the timings of the incident stated by all witnesses.

4 With this background, the conclusions arrived at by the Trial Court cannot be faulted with.

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, reappraise and

1. (2007) 4 SCC 415

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' 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 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 their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court rightly 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, need not be interfered with.

8 Appeal dismissed.

(K.R.SHRIRAM, J.)