

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.90 OF 2006**

The State of Maharashtra)
(Through the P.S.O. Khandala Police)
Station)Appellant/Complainant

V/s.

1. Baban Genba Raut)
Age : 52 years, Occ.: Agri)
R/o. New Colony, Shirwal,)
Taluka – Khandala)
2. Namdev Baburao Raut)
Age : 30 years, Occ.: Agri)
R/o. New Colony, Shirwal,)
Taluka – Khandala)
3. Tukaram Baburao Raut)
Age : 21 years, Occ.: Service)
R/o. New Colony, Shirwal,)
Taluka – Khandala)
4. Sunil Baban Raut)
Age : 19 years, Occ.: Education)
R/o. New Colony, Shirwal,)Respondents/Accused
Taluka – Khandala)

Ms. Pallavi Dabholkar, APP for State – Appellant.
Mr. Dilip Bodake for respondent nos.1 to 4.

**CORAM : K.R.SHRIRAM, J.
DATE : 16th DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 9th June 2005 passed by the Judicial Magistrate First Class, Khandala, acquitting four accused of offences punishable under Sections 325 (*Punishment for voluntarily causing grievous hurt*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) read with Section 34 (*Acts done by several persons in*

furtherance of common intention) of Indian Penal Code (IPC).

2 At the outset, the counsel for respondents sought an adjournment because he received the papers only yesterday. The counsel had no explanation when the Court asked as to why for 14 years respondents' advocate did not ask for a copy of the paper book. Therefore, with the help of the learned APP, the Court considered the records and proceedings, the evidence and also the impugned judgment particularly because this is an appeal of the year 2006 and the incident happened sometime in January 2001. The impugned judgment is of 9th June 2005.

3 It is prosecution's case that on 19th January 2001, at about 8.00 a.m. the accused in furtherance of their common intention voluntarily caused grievous hurt to complainant by assaulting him with stick on his left hand and also caused voluntarily simple hurt to witnesses. At the same time, the accused also intentionally insulted complainant and witnesses with intent to provoke breach of the peace. The police started investigation after receiving complaint from PW-2. Chargesheet was filed, charges were framed and the accused pleaded not guilty and claimed to be tried. The defence of accused is of total denial.

4 To prove the guilt, prosecution examined in all 10 witnesses, viz., Sanjay Rajaram Raut, son of PW-2 as PW-1; Rajaram Shankar Raut, complainant as PW-2; Laxman Sopan Chavan, panch witness for the spot of the incident as PW-3, who turned hostile; Keshav Anandrao Sanas, eye

witness as PW-4; Sanjay Balasaheb Kawle, eye witness as PW-5, who turned hostile; Dr. Dattatraya Baburao Bamne, who examined the injured as PW-6; Rekha Sanjay Raut, wife of PW-1 as PW-7; Sitabai Rajaram Raut, wife of PW-2 as PW-8; Mahadev Kisan Raut, who was a spot panch witness, as PW-9; and Balekhan Gulab Mulani, the Investigating Officer as PW-10.

5 PW-1 had deposed that on 19th January 2001 at about 8.00 a.m. accused no.1 called PW-4 to his house. Then accused no.1 called PW-1, PW-2, PW-8 and PW-4 asked them about the excreta of a child thrown in front of his house in the drainage. PW-1 then told PW-4 that his children were sleeping. Accused no.1 then went into his house and came out with a stick. Accused no.2 and accused no.3 also came on the spot armed with sticks and assaulted PW-2 and PW-8. The finger of PW-2 was fractured. PW-4 and PW-5 intervened and stopped the fight. PW-2 thereafter, lodged the complaint and police referred them to Public Health Centre, Shirwal, where the doctor gave medical treatment.

6 PW-2 has deposed that the incident took place in front of his house at 7.30 a.m. to 8.00 a.m. PW-4 called PW-2 by his name and when he came out of the house, accused no.1 was standing on the road. Then PW-4 enquired with PW-2 as to who threw the human waste in a paper in front of the house of accused no.1. PW-2 replied that they did not do it as his children were sleeping. PW-2 then enquired with PW-4 as to who did that and accused no.1 asked PW-2 to swear that he did not do it. PW-2 was ready

to swear but by then accused no.1 caught hold of PW-2. Then accused no.2, accused no.3 and accused no.4 came there, started abusing PW-2 and they also pushed PW-2. At that time, PW-1 came out of the house. Thereafter, accused nos.2, 3 and 4 caught hold of PW-1 while accused no.1 was holding on to PW-2. Then accused nos.2, 3 and 4 went inside the house, brought four sticks and started beating PW-1. After hearing the shout, PW-8 came out of the house and separated PW-2 from the clutches of accused no.1. When PW-2 went to save PW-1, accused no.1 assaulted PW-8, the wife of PW-2, with a stick. When PW-2 went to protect his wife, accused no.2 hit PW-2 with a stick on his finger of left hand due to which there was a fracture between the second and third finger. Blood was also oozing. At that time, PW-4 and PW-5 came there and separated everybody and they were eye witnesses. Seeing the blood, all the accused ran away. Then they went to police station and then Public Health Centre and after medical treatment, lodged the complaint.

7 PW-3, the panch witness, who turned hostile says that he never went to act as panch witness to the spot of incident and his signature was obtained in the panchnama in the police station and he does not know anything about the panchnama. This is the seizure panchnama of the stick. What has been seized is only one stick.

8 According to PW-4 on 19th January 2001 accused no.1 came to his house and asked him as to why human waste wrapped in paper lying in

front of his house. PW-4, therefore, called PW-2 and asked him as to why it was kept there. At that time, accused no.1 abused PW-2. Then PW-1 came there. Thereafter, accused no.2 came out and started the quarrel. PW-1 then assaulted accused no.2 with a stick. PW-4 tried to separate PW-1 and accused no.2. By then accused no.1 was holding a stick in his hand and he assaulted PW-2 with a stick. Villagers gathered. Then PW-8 also came there to stop the fight but in the bargain got hit with a stick by accused no.2. Then PW-4 and PW-5 separated everybody and they went to police station to lodge the complaint. PW-1, PW-2 and PW-4 have stated PW-5 was an eye witness and PW-5 and PW-4 separated the quarrel.

But PW-5 has deposed that on the day of incident, when he was going to the bus stand, he heard some noise at the door of accused but he did not stop there and went away from the spot and he knows nothing about the incident. PW-5 was declared hostile.

PW-6, the doctor has deposed that at about 11.45 a.m. police came to the Public Health Centre with three injured persons, he examined them and found injuries on the person of PW-2, PW-1 and PW-8.

PW-7, who is the wife of PW-1, says she could not tell the date of incident or year of incident. PW-8, the wife of PW-2, also says the same thing. PW-9 is the spot panch witness who proved the panchnama. PW-10 is the Investigating Officer.

9 The Trial Court after considering the entire evidence came to a conclusion that prosecution has not proved beyond reasonable doubt the

charge against the accused. I cannot find fault with the conclusion arrived at by the Trial Court. This is because if we see deposition of PW-4, who was an eye witness, he has deposed that it was PW-1 who assaulted accused no.2 with a stick. This would mean that it was PW-1 who brought the stick and not accused no.2. Further, witnesses have deposed about four sticks in the hands of the accused but only one stick is seized by police as per the seizure panchnama. This would mean at the time of incident there was only one stick and that would only mean it was the stick which PW-1 used to assault accused no.2 as per the deposition of PW-4, an independent witness. Ofcourse, the seizure panchnama of the stick has not been proved by the panch witness PW-3, who turned hostile.

PW-4 has further deposed that accused no.2 assaulted PW-8 with a stick but PW-8 herself has denied about assault on her person with a stick.

PW-5, another independent witness, has not supported the case of prosecution.

10 PW-1, PW-2, PW-7 and PW-8 are interested witnesses from one family. Though their evidence cannot be discarded because they are interested witnesses, the Trial Court has disbelieved because of the contradictions in their testimony. PW-9, who is the panch witness for spot panchnama, admittedly is related to complainant (PW-2). As regards the contradictions in the testimony of PW-1, PW-2, PW-7 and PW-8, PW-2 told the police that accused have beaten PW-1 but PW-1 does not say that. In his deposition PW-1 has not deposed that accused have beaten him with sticks

but PW-1 has deposed that accused assaulted his father and mother, i.e., PW-2 and PW-8, respectively. As per the FIR, PW-8 was pushed but PW-2 deposes that accused no.1 had beaten his wife PW-8 with sticks. PW-2 has deposed that accused no.1 and the other three accused went to their house and brought sticks whereas, PW-1 says accused no.1 went to his house and came out with stick. PW-8 also says accused no.1 brought the stick but does not say about sticks in the hands of accused nos.2, 3 and 4. According to PW-8, accused no.1 brought the stick and assaulted her husband and son, i.e., PW-2 and PW-1, respectively, scuffle took place and PW-8 fell down and became unconscious.

11 As noted earlier, only one stick has been seized even though panch witness has turned hostile and that stick was, as per the evidence of PW-4, brought by PW-1. The Investigating Officer (PW-10) states that the seizure panchnama was prepared on the next day, i.e., 20th January 2001 but the panchnama has the date of 19th January 2001. PW-1 has deposed that PW-4 enquired with him about the human waste thrown in front of his house but as per the deposition of PW-2, PW-1 came out from his house later hearing the quarrel. PW-7 has deposed about the involvement of brother of accused no.1 but he is not shown as accused. PW-9 has admitted in his cross examination that he was having a xerox copy of the panchnama at the time of deposition and complainant (PW-2) was his relative. PW-9 has further admitted that police have not seized anything in his presence. Exhibit 41, the panchnama mentions about seizure of sand with blood stains but PW-10

Investigating Officer has denied about seizure of sand with blood stains. PW-6, Medical Officer, has denied that injury caused to PW-8 was possible if she had fallen to the ground, whereas PW-8 says she fell on the ground and got the injury. PW-8 in her cross examination states that police did not enquire with her anything as she was unconscious and she regained consciousness only after two to four days. Defence has also produced the certificate from the college in which accused no.4 was studying (Exhibit 53) to prove that accused no.4, at the time of the incident, was present in his college and he was a 12th standard student.

12 There were many such contradictions mentioned in the impugned judgment which, for the sake of brevity I am not reproducing. Suffice to say, the findings of the Trial Court has the approval of this Court.

13 In my view, on the day of incident, there seems to have been some serious heated discussion on the point of human waste being thrown outside the house of the accused but it is difficult to accept that the accused in furtherance of their common intention voluntarily caused grievous hurt to complainant (PW-2) by hitting him with stick on his left hand or caused voluntarily hurt to PW-1. Likewise, it is not possible to accept that the accused in furtherance of their common intention intentionally insulted PW-2 and the witnesses to provoke breach of the peace.

14 The Apex Court in *Ghurey Lal V/s. State of U.P.*¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal

1. (2008) 10 SCC 450

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.

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.

15 The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. 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.

The Apex Court in ***Ramesh Babulal Doshi V/s. 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

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can 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 re-appraise the evidence and arrive at its own conclusions.

16 I have perused the impugned judgment, considered the evidence and also heard Ms. Dabholkar, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

17 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 he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

18 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.

19 Appeal dismissed.

Gauri A.
Gaekwad

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(K.R. SHRIRAM, J.)