

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.93 OF 2006**

The State of Maharashtra)
(Through Mr. Shankar Ramu Nagargoje)
R/o. Sanap Vasti, Bedag, Taluka – Miraj)Appellant/Complainant

V/s.

1. Shashikant Mahadeo Sanap)
Age : 30 years)
R/o. Bedag, Taluka – Miraj)
2. Vishnu Mahadeo Sanap)
Age : 44 years)
R/o. Bedag, Taluka – Miraj)
3. Mahadeo Natha Sanap)
Age : 58 years)
R/o. Bedag, Taluka – Miraj)
4. Narmada Mahadeo Sanap)
Age : 55 years)
R/o. Bedag, Taluka – Miraj)Respondents/Accused

Ms. Pallavi Dabholkar, APP for State – Appellant.

Mr. Shekhar Jagtap a/w. Adv. Sairuchita Chowdhary and Mr. Ninad Naik i/b.
J. Shekhar and Company 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 May 2005 passed by the Judicial Magistrate First Class, Miraj, acquitting four accused of offences punishable under Sections 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*), 506 (*Punishment for criminal intimidation*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian

Penal Code (IPC).

2 The counsel for respondents stated that they have not received any instructions and they have returned the papers long ago. At the outset, I have to note that there is no evidence whatsoever regarding Sections 504 and 506 of IPC of any intentional insult with intent to provoke breach of the peace or criminal intimidation.

3 It is the case of prosecution that on 7th December 2001 at about 7.00 a.m. quarrel took place between Akkatai, i.e., PW-3, wife of complainant (PW-1) and accused nos.1 and 2, who are also related to complainant. At that time, complainant (PW-1), who was working in the field about 100 feet away, rushed to intervene and stopped the quarrel. At that time, accused nos.1 and 2 abused complainant and accused no.1 hit complainant with a neem stick on his head and accused no.2 with another stick also beat up PW-1, PW-3 and their daughter Rajshri (PW-5), who happened to be there. Accused nos.3 and 4, who were also present, abused complainant and threatened them. Thereafter, PW-1, PW-3 and PW-5 went to the hospital, got treatment and on the next day lodged a complaint. After due investigation chargesheet was filed, charges were framed and the accused pleaded not guilty and claimed to be tried.

4 To prove its case, prosecution led evidence of six witnesses as against 15 witnesses listed. Shankar Nagargoje, complainant as PW-1; Pandurang Nagargoje, brother of complainant as PW-2; Akkatai Shankar

Nagargoje, wife of complainant as PW-3; Dr. Rajaram Raosaheb Patil, the doctor who examined PW-1, PW-3 and PW-5 as PW-4; Rajshri Shankar Nagargoje, daughter of complainant as PW-5; and Arun Lohar, the Investigating Officer as PW-6.

5 The spot panchnama and the seizure panchnama has been proved through PW-2. The other panch witness for the spot panchnama was Balaso Shivaji Nagargoje and for the seizure panchnama was Bhaskar Sonappa More. Both of them have been listed as witnesses but were not examined. Though it is settled law that both panch witnesses need not be examined, in the present case, I would opine that it was necessary that they were called to prove the two panchnamas because the other panch witness is the brother of complainant, brother-in-law of PW-3 and uncle of PW-5 and therefore, an interested witness. There is also no explanation from the prosecution as to why these two independent witnesses, i.e., Balaso Shivaji Nagargoje and Bhaskar Sonappa More were not examined. The learned APP states that since the panchnama was admitted as exhibit and the defence did not try to pick holes in the panchnama in the cross examination of PW-2, prosecution did not consider it necessary to examine the other two panch witnesses. The reason why I feel that even otherwise those two witnesses should have been examined because the sticks allegedly used in the offence were produced by PW-3, the wife of complainant and not seized through any independent panch witness. The prosecution has to prove beyond reasonable doubt the involvement of the accused whereas the defence has to only show

the balance of probability.

6 During the cross examination it has come on record that on the day prior to the incident the son of PW-1 had entered the field of the accused and there was an altercation with the accused. Complainant and the accused are also related to each other and it appears to be a family fight. PW-3 in her evidence has stated that her relationship with the accused are not cordial since beginning. PW-6, the Investigating Officer, through whom the statement of PW-2 has been produced, states that PW-2 has stated before the police that on the day before the incident, i.e., 6th December 2001, there was an altercation between PW-1 and PW-3 on the one part and the four accused as the son of PW-1 Arun had gone to the field of accused to take away fodder from the sugarcane field. PW-2 says that he never stated so to the police and he does not know how it came to be recorded in his statement. It is not the case of prosecution that PW-2 was illiterate and could not read the statement.

7 The Trial Court has come to a conclusion that the exact spot where the seen of offence was took place has not been proved. The learned APP states that the Trial Court's finding is incorrect because the FIR states "gharachya samor". I read the words "gharachya samor" and the learned APP states that "gharachya samor" means in front of the house. PW-3 and PW-5 state that the accused persons came to their house and the incident took place there. But the spot panchnama (Exhibit 28) says that it happened

15 feet away to the west of the house in front of the wheat fields and moreover, an independent witness was present while preparing the spot panchnama but the prosecution chose to examine an interested witness and not the independent witness. Similarly, for the seizure of the sticks, it was PW-3 who produced the sticks. But once again I fail to understand why the other independent panch witness - More was not examined. PW-2 in his evidence has not stated what role was played by each of the accused and therefore, his evidence is not helpful to prove the guilt of the accused.

8 In the FIR and the evidence given before the Court, PW-1 has deposed that he received injury on his head but the injury certificate shows multiple injuries were found on person of complainant. Same is the case with the others. Prosecution should have explained these things in the FIR and in their deposition. One more point which has to be noted is PW-4 in his examination in chief though he says that age of injury is within six hours in the cross examination admits that the age of injury cannot be determined actually.

9 As noted earlier, the accused and complainant were related to each other and their relationship has not been cordial since beginning. It has also come on record on the day prior to the incident there was an altercation between the accused and complainant's family. Complainant and the accused are related to each other. They are not criminals. They are all resident of the same village. The incident happened on 7th December 2001, 19 years ago. It

is not anybody's case that the accused and complainant do not live in the same locality or community. In my considered opinion, even for a moment I accept the stand of the learned APP that the Trial Court was not correct in picking holes in the prosecution's case regarding the spot of the incident, still reversing the order of acquittal would further worsen the relationship and the same will carry forward to the next generation also.

10 The Apex Court in ***Ghurey Lal V/s. State of U.P¹*** 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.

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.

1. (2008) 10 SCC 450

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.

11 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

2. (2014) 5 SCC 730

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 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.

12 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.

13 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

3. 1996 SCC (cri) 972

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.

14 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.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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by Gauri A.
Gaekwad
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