

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1028 OF 2003**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Anjum Husen Kudache
17 years,
R/o. Ghosarwad, Tal. Shirol,
District Kolhapur.

2. Rajaram Bapu Gaikwad
38 years,
R/o. Terwad, Tal. Shirol,
District Kolhapur.

....Respondents
(Orig. Accused Nos.1 & 2)

Mrs. Anamika Malhotra, APP for State.
Mr. Amey Patil i/b Mr. N.J. Patil for Respondent No.1.

**CORAM : K.R.SHRIRAM, J.
DATED : 27th NOVEMBER 2020.**

ORAL JUDGMENT :

1. This is an appeal against the impugned order and judgment dated 6th March, 2003 passed by the Judicial Magistrate, First Class, Kurundwad acquitting the accused of offence punishable under Section 7 of the Maharashtra Prevention of Malpractices at University Board and Special Examination Act, 1982 and under Section 34 of the Indian Penal Code.

2. Section 7 of the Maharashtra Prevention of Malpractices at University Board and Special Examination Act, 1982 reads as under ;

Whoever is found in or near an examination hall by the invigilator or any other person appointed to supervise the conduct of the examination, copying answers to the question paper set at the examination, from any book, notes or answer papers of other candidates, or appearing at the examination for any other candidate or using any other unfair means, shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

3. It is the prosecution's case that Accused No.1 was caught writing examination as a dummy candidate on behalf of Accused No.2 on 20th March, 1999. Accused No.1 who was 17 years of age is found to have been writing Geometry examination on behalf of Accused No.2 who was 38 years of age in the 10th standard examination held on 20th March, 1999. It is the prosecution's case that when the Chief Conductor Mr. M.N. Sutar (P.W. 4) was taking round and inspecting hall tickets of students, he noticed that Accused No.1 was appearing as candidate for Accused No.2 and therefore action was taken against the accused as per above said act and the complaint was filed with the police.

4. The accused pleaded not guilty. To prove the charge, prosecution lead evidence of four witnesses namely P.W. 1 – Dhanpal Borgave, P.W. 2 – Umesh Gaikwad, P.W. 3 – Suresh Joshi and P.W. 4 – Murlidhar Sutar.

5. P.W. 1 – Dhanpal Borgave was Supervisor. Hall Ticket No.98501 was of Accused No.2. P.W. Nos. 1, 3 and 4 admitted in their cross-examination that they have not given proof of their designation to the

police. P.W. 2 who was a student present at the time of alleged incident and who was allegedly an eye witness states in his cross-examination that he had no knowledge who was the student who appeared for the examination on the date of the incident. He also states that he had not seen the receipt or hall ticket of the student who sat before him. He also states in his cross-examination that he was not aware that the student who sat before him was dummy or not as he has not seen his receipt. He also admits that he had not gone to the office along with dummy student and he does not know what happened there. P.W. 2 states that only on the next date when he came for the second paper he came to know that there was dummy student.

6. P.W. 1 – Dhanpal Borgave who was serving at the relevant time as Assistant Teacher states that the hall ticket indicated name of the student as Rajaram Gaikwad. But on inquiry the student told his name as Anjum Husen Kudache. But in the cross-examination he admits that he has not seen the hall tickets of the candidates present in the examination hall and he has not seen the hall tickets with the block conductor and chief conductor. P.W. 1 in his cross-examination further states that he has no personal knowledge that the hall tickets with the supervisors and in possession of the candidates were same or different. In his cross-examination P.W. 1 admits that in the capacity as supervisor he has signed the answer sheets of each student and at the time of signature of the answer sheet, hall ticket of each student is also required to be checked and he has

no knowledge that the candidate who appeared for the examination was Rajaram Bapu Gaikwad or not. He also admits that the application that he has sent to Kurundwad Police Station did not bear his signature.

7. P.W. 3 - Suresh Joshi who at the relevant time was Headmaster of the school in which the incident happened. He admits in his cross-examination that he has no personal knowledge whether the student who sat in the said Seat No.98501 was either Gaikwad or Kudache and he also was not aware that in case of dummy students two forms are required to be filled. He also states that he had no knowledge that the forms signed be sent to whom.

8. P.W. 4 – Murlidhar Sutar who was Chief Conductor for the S.S.C. examination conducted at S.P. High School admits that Accused No.2 was the student of the school and he knew him well. He also admits that he has to report the incident in the required form to S.S.C. Board and the form is sent with the signature of the Chief Conductor i.e. himself. He also admits that the form that was shown as Exh.29 does not bear signature of the Chief Conductor. All these points have weighed in the mind of the Trial Court while passing the order of acquittal.

9. The Apex Court in *Chandrappa & Ors. V/s. State of Karnataka* 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' 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.”

10. 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.

11. Appeal dismissed.

(K.R. SHRIRAM, J.)