

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.147 OF 2006**

The State of Maharashtra)
(Through Mr. Mallappe Chokake)
R/o. Waddi, Taluka – Miraj)Appellant/Complainant

V/s.

Chandrakant Kallappa Chokake)
Age : 25 years)
R/o. Waddi, Taluka – Miraj)Respondent/Accused

Ms. Pallavi Dabholkar, APP for State – Appellant.
None for respondent.

**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 respondent (accused) of offences punishable under Section 325 (*Punishment for voluntarily causing grievous hurt*) of Indian Penal Code (IPC).

2 It is the prosecution's case that complainant Shrikant Chokake (PW-1), who is the uncle of accused, was going to his field on 31st May 2001 at about 7.30 a.m. At that time, an altercation took place between complainant and accused because some trees were being cut. Accused took an axe from his father's hand and caused injuries to complainant. An FIR came to be registered, investigation commenced and charges were framed. The defence is of total denial.

3 To prove the guilt of accused, six witnesses have been examined, viz., Shrikant Mallappa Chokake, complainant as PW-1; Baban Basappa

Sane, servant of PW-1 as PW-2; Balu Laxman Kalgutgi, spot panch witness as PW-3; Dr. Gurunath Sadashiv Modak, who examined PW-1 and issued injury certificate as PW-4; Kumar Appaso Kurale, seizure panch witness as PW-5; and Rajshri Krishna Sadamate, the Investigating Officer as PW-6.

4 The FIR reveals that it was recorded on 31st May 2001 at 4.50 p.m. whereas PW-1, complainant in his cross examination states that on the next day at noon police had come to the hospital and reduced his complaint in writing. PW-1 says he had become unconscious till noon the next day of incident. This means it is the case of PW-1 that he was unconscious till noon of 1st June 2001 whereas the FIR says it was lodged on 31st May 2001. PW-1 also admits in his cross examination that he was cutting the branches that belonged to accused and PW-2 was working as his servant. PW-2 says that he was cutting the branches of the tree on instructions of PW-1 complainant. PW-2 says he went with complainant to the hospital and thereafter, he left the hospital. PW-2 does not mention anything about complainant becoming unconscious. Even the doctor's certificate is silent about complainant falling unconscious.

5 PW-3, the panch witness for spot panchnama says that PW-2 showed the spot and police obtained his signature on the panchnama. PW-3 does not say that the panchnama was written in his presence. PW-3 further states that the village where the incident happened was 4 km from where he was living and it was PW-1 who had called him. In his cross examination PW-

3 says that police told him that they prepared panchnama in respect of the spot of incident and they asked him to put his signature on it. The examination in chief of doctor (PW-4) is contradictory in as much as he says probable weapon is hard and blunt object and also says injury is possible due to blow of an axe which is a sharp object. The injuries show that the injury happened on the back side of the head whereas, PW-1 says that accused removed the axe from the hand of Kallappa (father of accused) and dealt a blow on his head because of which complainant suffered bleeding injury. PW-2 also says the same thing.

6 PW-5, the panch witness for seizure of the axe, in the examination in chief says that on 31st May 2001 police called him to Miraj Rural Police Station. PW-5 also says he is a resident of Narwad and in the cross examination admits that Narwad is 15 kms from Miraj where the incident took place. It is not his case that he was in Miraj near the police station and police asked him to come in. PW-5 says police called him in Miraj Rural Police Station. I wonder why should a panch witness be called from a distance of 15 kms to corroborate seizure of the weapon. PW-5 also says that accused produced one axe before police which was seized under panchnama. PW-5 also says before the panchnama he did not know who the accused was but then why should police call someone from a distance of 15 kms to be a panch witness. It is not the case of prosecution that the place, where the weapon was seized, was so deserted that in a radius of 15 km no human being was available to act as panch witness. PW-5 also says he was called by

the police at 6.00 p.m. on 31st May 2001, whereas PW-1 says that the FIR was recorded on the next day, i.e., 1st June 2001. It makes me wonder how can the seizure panchnama take place before the FIR is lodged. In any event, the FIR states that it was given at 4.50 p.m. on 31st May 2001, whereas PW-5 is called from a distance of 15 kms and he arrived at 6.00 p.m.

7 PW-6, the Investigating Officer says she arrested accused and also seized one axe produced by him under panchnama but the panch witness says the axe was produced by complainant. Again the same point as to when the FIR came to be lodged also is an issue here. PW-6 says that she did not send the seized axe for chemical analysis or prepare the arrest panchnama. PW-6 says that she referred complainant to Civil Hospital but she did not make any entry in respect of the information given by complainant in the station diary though they were supposed to take entry in the station diary if the information of cognizable or non-cognizable offence is given. Based on these points and other points, the Trial Court acquitted accused.

8 Complainant and accused are related to each other and it appears to be a family fight. They are not criminals. They are all resident of the same village. The incident happened on 31st May 2001, 19 years ago. It is not anybody's case that accused and complainant do not live in the same locality or community. In my considered opinion, reversing the order of acquittal would further worsen the relationship and the same will carry

forward to the next generation also.

9 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.

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

1. (2008) 10 SCC 450

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.

10 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.

2. (2014) 5 SCC 730

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.

11 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.

12 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 acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

3. 1996 SCC (cri) 972

13 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.

14 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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