

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1348 OF 2003**

The State of Maharashtra)Appellant/Complainant

V/s.

1. Appa Trymbak Borase,	)
Age about : 37 years	)
R/o. Pimpalkothe, Taluka – Satana,	)
District – Nashik	)
2. Bhila Shivram Borase,	)
Age about : 24 years	)
R/o. Pimpalkothe, Taluka – Satana,	)
District – Nashik	)
3. Smt. Babybai Appa Borase,	)
Age about : 32 years	)
R/o. Pimpalkothe, Taluka – Satana,	)
District – Nashik	)
4. Trymbak Wadu Borase,	)
Age about : 72 years	)
R/o. Pimpalkothe, Taluka – Satana,	)
District – Nashik	)Respondents/Accused

Ms. Pallavi Dabholkar, APP for State – Appellant.

CORAM : K.R.SHRIRAM, J.
DATE : 12th FEBRUARY 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 13th August 2003 passed by the Judicial Magistrate, First Class, Satana, acquitting the accused of offences punishable under Section 447 (*Punishment for criminal trespass*), 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 It is prosecution's case that on 16th June 1999 at about 7.00 a.m. in land bearing Gat No.115 belonging to Nathu Ambar Ahire (PW-4), all the accused in furtherance of their common intention, committed criminal trespass and assaulted complainant – Shravan Sitaram Deore (PW-1) and his father-in-law Nathu Ambar Ahire (PW-4) with the handle of an axe and sticks and thereby, voluntarily caused hurt and also abused and threatened them. On the date of incident, it seems, complainant (PW-1), PW-4 and Bhamini Shrawan (PW-6) were working in the land Gat No.115. There were some 15 to 20 trees in the common bandh and the accused came there and started cutting those trees. When PW-1 and PW-4 asked them as to why they were cutting the trees, the accused started abusing them and accused no.1 with the handle of an axe hit complainant on his head and complainant started bleeding. At that time, accused nos.1 to 4 also assaulted PW-4 with sticks and also kicked him. It seems the accused also threatened to kill them. At that time, one Kailas Bhamare, who is PW-2 and one Vilas Pawar, who is PW-7, intervened and saved PW-1 and PW-4 from the clutches of the accused. Thereafter, the complaint came to be filed by PW-1. After completion of investigation, chargesheet was filed. Accused pleaded not guilty and claimed to be tried. The stand of the accused is of total denial and also that there are some civil disputes between complainant's family and the accused because of which this wrongful complaint has been filed. During the

pendency of trial, accused no.4 died and the complaint itself abated against him.

3 To prove its case, prosecution led evidence of 8 witnesses, viz., Shravan Sitaram Deore, complainant as PW-1, Kailas Tulashiram Bhamare, a passerby as PW-2, Nanaji Dattu Bhamre, a panch witness, who turned hostile as PW-3, Nathu Ambar Ahire, father-in-law of PW-1, who also got injured as PW-4, Ashok Bapu Bhamre, a panch witness, who turned hostile as PW-5, Bhamini Shrawan, the wife of PW-1 as PW-6, Vilas Dayaram Pawar, a passerby, who intervened as PW-7 and Ramesh Kashinath Deore, A.S.I., Investigating Officer as PW-8.

4 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 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

1. (2008) 10 SCC 450

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.

5 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

2. (2014) 5 SCC 730

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.

6 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.

7 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.

3. 1996 SCC (cri) 972

8 There are lot of contradictions in the evidence of PW-1 and PW-4 all of which have been listed in the impugned judgment, which for the sake of brevity, I am not reproducing. I would hasten to add that I concur with the observations of the Trial Court. PW-3 - Nanaji Dattu Bhamre and PW-5 - Ashok Bapu Bhamre, who were panch witnesses, turned hostile. PW-3 says he has signed the panchnama without knowing the contents. PW-5 says the panchnama was already prepared and he does not have any knowledge about its contents.

9 Further in support of injuries on PW-1 and PW-4, prosecution has not examined the Medical Officer and hence, failed to prove the medical certificate. From the cross examination of PW-1, it appears that the land, that belonged to an uncle of PW-4, was in possession of the accused. It is the case of defence that when PW-4 was cutting the trees and PW-1 was separating the same, PW-4 fell from the tree and both PW-1 and PW-4 sustained injuries. According to defence taken by the accused, this complaint has been filed due to the dispute relating to land between the uncle of PW-4 and the accused. As noted earlier, the panchnamas have not been proved and therefore, prosecution has not proved the seizure of blood stained clothes. There is also no evidence about abuses and threats to PW-1 and PW-4. Importantly, no evidence has come on record that PW-4 was owning land bearing Gat No.115 in which the alleged incident took place.

10 Therefore, I am not satisfied that prosecution has proved its case beyond reasonable doubt.

11 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, 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.

12 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.

13 Appeal dismissed.

(K.R. SHRIRAM, J.)