

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.540 OF 2004**

The State of Maharashtra)Appellant/Complainant

V/s.

Bhanudas Nivrutti Lande,)

Age about 21 yrs., Occ.: Agri.,)

R/o. Shel Pimpalgaon, Tal.: Khed, District :)

Pune)Respondent/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

Mr. Vilas B. Tapkir for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 21st FEBRUARY 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 17th December 2003 passed by the Judicial Magistrate First Class, Khed, acquitting respondent (accused) of offences punishable under Section 429 (*Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.*) of Indian Penal Code (IPC).

2 It is prosecution's case that on 22nd August 2000, Ramdas Baban Lande (PW-4) cut grass standing over bund of Gat No.359 and brought it home. Half of the grass was fed to the animals including bullocks Babdya, Subhanya and Tomboy. At about 9.00 p.m., complainant (PW-1) - Balasaheb Bandu Lande, went inside the cattle shed and found four bullocks were shivering. Even Tomboy, which I am told was the name of a horse, also was shivering and none of them could stand on their legs. PW-1 immediately told PW-5 – Sitaram Bandu Lande to call veterinary doctor. PW-5 went and

brought veterinary doctor Dr. Ladkat, who after examining the bullocks, opined that they were suffering from poisoning. Thereafter, PW-1 made enquiry and found his nephew (PW-4) had brought grass standing over bund of Gat No.359. Abutting that, there was a crop of brinjal on which accused had sprayed pesticide two or three days earlier. According to prosecution, accused has sprayed excessive quantity of pesticide even on the grass standing over the bund which grass came to be cut by Ramdas (PW-4) and provided to the animals. Two of the bullocks Babdya and Subhanya died and consequently, PW-1 suffered loss of Rs.25,000/-. Accordingly, PW-1 lodged a complaint on 23rd August 2000. Police took cognizance of the same and commenced investigation.

3 PW-7, the Investigating Officer – Kisan Baban Bhogade, prepared panchnama of the spot from where grass was cut and also of the spot, i.e., cattle shed, where bullocks have died. PW-7 also seized bottles of pesticide from accused and entered into correspondence with the veterinarian. Thereafter, PW-6, Medical Officer, Dr. Vasant Ingale, conducted postmortem on the two bullocks. PW-7 then sent materials collected by PW-6 of the bullocks and bottles seized under panchnama to Chemical Analyzer Office. On completion of investigation, PW-7 filed chargesheet in Court and later on, after receipt of chemical analyzer's report, PW-7 submitted the same to the Court. Accused pleaded not guilty and claimed to be tried. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded and the defence is of total denial and that he was being falsely implicated on

account of some old disputes.

4 To prove its case, prosecution examined 7 witnesses, viz., Balu Bandu Lande, complainant as PW-1; Kaluram Bhiku Daundkar, complainant's sister's husband as PW-2; Gokul Pandharinath Daundkar, panch witness for spot panchnama and seizure panchnama as PW-3; Ramdas Baban Lande, nephew of complainant as PW-4; Sitaram Bandu Lande, brother of complainant as PW-5; Dr. Vasant Gangaram Ingale, Medical Officer (veterinary doctor) as PW-6; and Kisan Baban Bhogade, Investigating Officer as PW-7.

5 The Apex Court in ***Ghurey Lal Vs. 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 different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

1. (2008) 10 SCC 450

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.

The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. 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

2. (2014) 5 SCC 730

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 Vs. 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.

6 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Tapkir, counsel for respondent. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

3. 1996 SCC (cri) 972

7 Section 429 of IPC reads as under :

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief is defined under Section 425 and it reads as under :

425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

The primary ingredient under Section 425 is the person accused of mischief must have (a) an intention to cause or must know that he is likely to cause wrongful loss or damage to the public or to any person and (b) causes the destruction of any property or any such damage in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously.

Therefore, unless these ingredients are met, Section 429 of IPC will have no application.

Mischief must be coupled with intention to cause wrongful loss or cause damage. Mischief involves mental act, destruction animus. Section 429 of IPC is applicable where injury is caused by offence of misconduct and therefore, all the allegation of offence of mischief as defined in Section 425 of IPC must be established for convicting the accused person under this Section. Chargesheet, FIR, statement of witnesses including eye-witnesses etc. if taken on their face value, they do not establish that accused had any intention of either killing or poisoning or maiming or rendering useless the two bullocks. This charge is nothing but source of harassment to complainant, due to previous enmity.

8 The prosecution has to prove that (a) PW-4 cut the grass from the bund of Gat No.359, (b) the same grass was fed to the animals, (c) nothing else was fed to the animals, (d) the grass had excess pesticide/chemical that was spread or sprinkled on the grass by accused which caused poisoning to the animals, and (e) accused sprinkled those pesticides with an intention to cause or knowing he is likely to cause wrongful loss or damage to the public or to any person. None of this has been proved.

9 Prosecution says that two days before they saw accused sprinkling excessive pesticide on the bund/grass. I ask myself why did they then cut that grass and feed it to their animals. Prosecution has also not explained as to why the other animals survived and only bullocks Babdya

and Subhanya died. More importantly, the veterinary doctor Dr. Ladkat, who opined that the animals were suffering from poisoning, has not been examined.

10 There are various other points raised by the Trial Court for passing its order of acquittal, which for the sake of brevity, I am not reproducing. Suffice to say, I concur with those observations.

11 There is an acquittal and therefore, there is double presumption in favour of 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 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.

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.)