

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.802 OF 2004

The State of Maharashtra)
 (Through P.S.O. Mahatma Phule Chowk)
 Police Station, Kalyan, Dist. Thane)....Appellant
 (Org.Complainant)

V/s.

1) Bhika Rambhau Ekaankar)
 Age-20 years, R/at Manamanind Society)
 House No.9, Back side of Subhash Nagar)
 Rajshree Nagar, Near Lal Chowki, Kalyan)

2) Pradip Pralhad Jadhav)
 Age-20 years, R/at Back side of Subhash)
 Nagar, Manamanind Society, Rajshree)
 Nagar, Kalyan)

3) Rajesh Sudam Jadhav)
 Age-22 years, R/at Ismail Phalke Chawl)
 Rambaug, Kalyan)

4) Dattatraya Saadu Bagul)
 Age-39 years, R/at Nivas, Bhise Wada)
 Rambaug Lane No.3, Kalyan)Respondents
 (Org.Accused)

Ms.Anamika Malhotra APP for appellant-State.
 None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 24.2.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 16.3.2004 passed by the Judicial Magistrate First Class, I Court, Kalyan, acquitting the respondents (accused) of offences punishable under sections 341 (*Punishment for wrongful restraint*), 324 (*Voluntarily causing hurt by dangerous weapons or means*), 394 (*Voluntarily causing hurt in committing robbery*) read with section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2. It is the case of prosecution that the original complainant Raghunath Surendra Salunke (PW-1) who was a builder purchased building by name Bhisewada at Kalyan. Bhisewada had 21 rooms which were occupied by various tenants. The building was in dilapidated condition and even Kalyan Dombivali Municipal Corporation (KDMC) has inspected the building and issued notice. PW-1 gave alternative accommodation to 9 tenants out of 21 and those 9 tenants were not residing in Bhisewada. Of the remaining 12 rooms, in 7 rooms tenants were residing and in 5 rooms, nobody were residing but the rooms were kept locked by the tenants. Accused no.4 is one of the 5 tenants who was not residing in Bhisewada but kept his room locked.

3. Against the notice issued by the KDMC, accused no.4 and other tenants obtained stay order against eviction. In Bhisewada there was a drumstick tree. It is alleged that the nephew of accused no.4 was seen removing drumsticks and when complainant inquired as to with whose permission he was doing, he said that he was told by one Krishna Mandle, who was not an accused, who had asked him to remove drumsticks. Therefore, nephew of accused no.4 was brought to police, complaints were filed. Further disputes happened, there were complaints filed against complainant by accused no.4 and other tenants and complainant also has filed various complaints. There were civil proceedings also pending.

4. It is alleged that the accused nos.1 and 4 accosted complainant when he was going home from a friend's house and assaulted with chain and stones. During the fight, sum of Rs.1500/- which was in the pocket of complainant also went missing. Complainant suffered various injuries on his back, head and limbs. Hence, this complaint came to be filed.

5. All the accused pleaded not guilty. To prove their case, prosecution led evidence of 7 witnesses viz. Raghunath Surendranath

Salunke, Complainant (PW-1); Vijay Raghunath Umawane, eye witness as (PW-2); Zuber Mohammad Shaikh, Rickshaw driver as (PW-3); Dr.Ashok Narayan Bhide, Medical officer as (PW-4); Mahesh Tarde, Police witness as (PW-5); Dilip Khanderao Pandse, Investigating officer as (PW-6); and Abbas Ahmed Shaikh, Panch witness as (PW-7).

6. Reading evidence of PW-1 complainant, it is quite obvious that there has been previous enmity between complainant and accused no.4. In his complaint, PW-1 does not state that he made an application to KDMC to inspect Bhisewada. In his cross-examination PW-1 says that on the date of alleged incident, he had gone to Ghatkopar to his friend's house but he does not say why he had gone to Ghatkopar and he also does not mention the name of his friend to whose house he had gone. PW-1 also deposes that at the particular time at 11.45 p.m. nobody from Rambaug locality was with complainant and nobody was around him either. In the complaint PW-1 does not mention that there was any manhandling by the accused or that accused no.1 and accused no.4 assaulted him on his head and legs with chain. PW-1 in his deposition says that accused no.2 pelted stones towards him and one of stone hit on his right leg below knee. But that is not mentioned in the complaint. PW-1 in his

complaint has not given any physical description of the accused because he says an unknown person but then how does he say PW-4 was one of the accused.

7. As regards the amount of Rs.1500/- which was lost, there is no evidence to show that complainant had withdrawn that money from any bank or he was carrying that amount in his pocket. PW-2 who claims to have been a watchman in the building near the place of incident ; (a) has no documents to show that he was actually working as a watchman in the building; and (b) he says he heard complainant and accused talking in loud voice but he does not know what happened thereafter.

8. PW-3 claims to be a rickshaw driver who was proceeding near Rambaug lane no.5 but when he was passing by, he saw quarrel was going on the road. PW-3 is however, unable to identify the assailants.

9. As regards PW-4 who is the Medical Practitioner has not seen the incident and does not say that the injuries caused to PW-1 were caused by bicycle chain or caused by sharp and blunt object. PW-4 in his cross-examination admits that injuries mentioned in the

certificate are possible if somebody falls on rough surface and also admits that in the certificate that he has issued, time of examination and identification of the injured is not mentioned.

10. Similarly there are various other contradictions and omissions listed in the order and judgment which is impugned in this appeal and for the sake of brevity, I do not wish to reproduce the same. The observations have my approval.

11. Considering the case in its entirety, it appears to be an outcome of previous enmity and frustration of PW-1 in his inability to get the stay order against eviction vacated and thereby speed up the re-development of Bhisewada.

12. 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

¹ (2008) 10 SCC 450

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 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.

13. The Apex Court in many other judgments including ***Murlidhar 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 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.

14. The Apex Court in ***Ramesh Babulal Doshi Vs. State of Gujarat***³ has held that if the Appellate Court holds, for reasons to be

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

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 reappraise the evidence and arrive at its own conclusions.

15. 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 they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court which rightly observed that the prosecution had failed to prove its case. The order of the trial Court of acquittal, in my view need not be interfered with.

16. Appeal dismissed.

(K.R.SHRIRAM,J)