

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.834 OF 2004**

The State of Maharashtra)
Through – P.S.I.)
Malegaon Chavani Police Station,)
Malegaon, District – Nashik)Appellant/Complainant

V/s.

Indrasing Sukalal Rajput,)
Age 35 years, Resident of Modak Lane,)
Malegaon, District – Nashik)Respondent/Accused

Ms. Pallavi Dabholkar, APP for State.

CORAM : K.R.SHRIRAM, J.
DATE : 6th MARCH 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 31st March 2004 passed by the Judicial Magistrate First Class, Malegaon, acquitting accused of offence punishable under Section 451 (*House-trespass in order to commit offence punishable with imprisonment*), Section 325 (*Punishment for voluntarily causing grievous hurt*), Section 504 (*Intentional insult with intent to provoke breach of the peace*) of Indian Penal Code (IPC).

2 It is the case of prosecution that PW-1 – Ravindra Amarchand Jain, complainant, was at home on 2nd December 1988 writing accounts at about 7.45 a.m. At that time, accused entered the house and asked him as to why he was not depositing electricity bill and also abused complainant. Thereafter, accused pulled complainant out of the house, lifted him and threw him to the ground resulting in injuries to the right ear and shoulder of

PW-1. PW-1 says it was also bleeding from the ear and during the incident, the wife of PW-1 – Lata Jain (PW-3) was also present at home. At that time, some persons gathered and PW-1 somehow escaped and went to Chavani Police Station where he lodged a report. Accused has denied the charge and claimed to be tried.

3 I have considered the evidence, the records and proceedings as well as the impugned judgment. I see no reason to interfere.

4 PW-1, who was complainant, in his cross examination to every question asked said he does not know including to a question regarding the date when the incident took place. PW-1 says he has a shop in Tamba Kata area but does not know the house number in which the shop is located. PW-1 does not even have any documentary evidence to show that he had a shop and it is relevant because it is complainant's case that accused came and assaulted him when he was writing accounts. It is the case of complainant that accused came and asked him why he was not depositing the electricity bill and then abused him. PW-1 does not know the meter number or consumer number of which electricity bill was due. PW-1 says he has not even informed the landlord about the incident or informed the landlord about arrears of electric bill. PW-1 also does not know the amount of electric bill that was due. PW-1 does not know when he went to Wadia Hospital or later to Satana road hospital or the date on which he was admitted in Satana road hospital or when he was discharged from the hospital. PW-1 says he was admitted to a third hospital, i.e., Ghati hospital but he does not know

the exact period for which he was admitted in that hospital. In the examination in chief, PW-1 says when the incident happened many people gathered but in the cross examination, PW-1 says he is unable to state the names of the persons who were gathered and further states that he has not disclosed the incident to the persons who had gathered on the spot.

5 PW-2 says on 2nd December 1988 at about 7.30 a.m. to 7.45 a.m. when he was going to fetch milk from the corner of Modak Lane, one person pulled PW-1 and brought him out of the house and then lifted him and threw him to the ground resulting in PW-1 injuring his right hand and right ear. But in his cross examination, PW-2 says he does not know the name of the milk vendor. PW-2 also admits that in his statement recorded by the police he has not mentioned the time of the incident or the date of incident. PW-2 further admits that he has not stated before the police that he was going to fetch milk from the corner of Modak Lane. PW-2 also admits in his cross examination that there are dispensaries on the main road adjacent to Modak Lane but he did not feel that he should take PW-1 to the hospital.

6 PW-3, who is the wife of complainant, says accused caught hold of the collar of PW-1, which is not stated by PW-1 himself. PW-3 also says that she took PW-1 to Wadia Hospital but police did not enquire with her as to what happened. PW-3 admits that there are neighbors around but when she saw the incident, she did not call any neighbor. PW-1 says many people had gathered but his wife PW-3 says nobody was present at the time of incident.

7 PW-4, the Investigating Officer, says on the date of incident, complainant went to him at 8.00 a.m. and at about 8.20 a.m. he recorded the complaint. Complainant says the incident happened at about 7.45 a.m. which makes me wonder whether complainant could have reached the police station at 8.00 a.m. PW-4 admits that there are houses of other persons adjacent to the house of accused and complainant but he did not take the neighbors as panch witnesses and he has no explanation as to why he did not do so. This is very relevant because panch witnesses have not been examined and PW-4, the Investigating Officer, says he does not know the address of the panch witnesses. PW-4 says that complainant sustained injuries on his head and right hand and shoulder but PW-1 (complainant) himself does not say that he sustained injury on his head.

8 PW-5, the Medical Officer, admits that if one is thrown on a hard surface with force, then such type of injuries mentioned in the certificate can be possible. PW-5 says that the injuries sustained by complainant (PW-1) could be sustained if one falls from the staircase on the floor. PW-5 says that bleeding from right ear could happen if one falls on a stone and all injuries were caused by falling on one side.

9 All these raise a question of doubt on the truthfulness of the complaint. The Trial Court after considering the evidence has passed the order of acquittal stating that the prosecution has failed to prove the allegations against accused beyond all reasonable doubts.

10 The Apex Court in *Chandrappa & Ors. V/s. State of Karnataka*¹ 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, reappraise 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.”

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 they are proved guilty by a

1. (2007) 4 SCC 415

competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly 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, need not be interfered with.

13 Appeal dismissed.

(K.R. SHRIRAM, J.)