

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.838 OF 2004**

Navi Mumbai Municipal Corporation)
through its Assistant Horticulture Officer,)
1st Floor, Belapur Bhavan, C.B.D. Navi)Appellant/Complainant
Mumbai

V/s.

1. Shri Pille,)
R/at NL-6, Type Building No.19/11,)
Sector – 9, Nerul, Navi Mumbai)
2. Shri T.P.G. Krishnan (Kannan))
R/at NL-6, Type Building No.19/11,)
Sector – 9, Nerul, Navi Mumbai)
3. Shri B. Shashidharan Nair,)
R/at NL-6, Type Building No.19/11,)
Sector – 9, Nerul, Navi Mumbai)
4. Shri Vinod Kumar,)
R/at NL-6, Type Building No.19/11,)
Sector – 9, Nerul, Navi Mumbai)
5. The State of Maharashtra)Respondents/Accused

Mr. Pritish Oak i/b. Mr. A.A. Garge for appellant.
Ms. Shweta Sangtani, Advocate appointed as Amicus Curiae.
Ms. Pallavi Dabholkar, APP for State, respondent no.5.

**CORAM : K.R.SHRIRAM, J.
DATE : 26th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 20th September 2003 passed by the Joint Judicial Magistrate, First Class, Vashi, acquitting four respondents (the accused) of offences punishable under Section 21 of the Maharashtra (Urban Areas) Preservation of Trees Act, 1975 (the said Act).

2 On 24th February 2020 since nobody was present in Court representing respondents, the Court appointed Ms. Shweta Sangtani, an Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms. Shweta Sangtani, learned Amicus Curiae.

3 The accused are alleged to have felled 26 ashoka trees. The accused reside in Shantiniketan Apartments complex at Section 9, Nerul, Navi Mumbai (the complex). The complex comprised of 7 buildings, with each building having 12 apartments. Therefore, there are 84 apartments in the complex. It is the case of prosecution that between 20th June 1999 to 23rd June 1999, 26 ashoka trees were cut by accused without prior permission of the concerned authority as required under Section 21 of the said Act. PW-3 one Narayan Datta Bandekar, who resides in the complex, filed a complaint to the concerned authority, i.e., PW-1, Tree Officer of Navi Mumbai Municipal Corporation, about the cutting of trees based on which PW-1 directed PW-2, the Ward Officer, to investigate. PW-2, the Ward Officer, submitted a report stating that trees have been cut and also with the report, submitted photographs. Based on the report and photographs, PW-1 commenced prosecution.

4 The accused pleaded not guilty and claimed to be tried. To prove its case, prosecution examined five witnesses, viz., Laxman Mukund Markey, Tree Officer of Navi Mumbai Municipal Corporation as PW-1; Balkrishna

Patil, a Ward Officer of Navi Mumbai Municipal Corporation as PW-2; Narayan Bandekar, complainant as PW-3; Arun Bandekar, son of complainant as PW-4 and Soheli Khan, Secretary of the society as PW-5.

5 PW-1, PW-2 and PW-5 are not eye witnesses. They have categorically stated that they have not seen the accused cut the trees. PW-3 and PW-4 state that the accused cut the trees. PW-4 is the son of PW-3. PW-4 admits that he has problems with the children of the members of the society and of the accused since the children play in the compound and that disturbs the tuition classes which PW-4 used to conduct. Though PW-3 says he saw the accused cut the trees, PW-4 admits that on the day when the trees were being cut, no complaint was lodged. The date of the incident is supposed to be 20th June 1999 to 23rd June 1999 but the complaint has been lodged on 2nd July 1999, a delay of 10 days, which has not been explained. PW-4 also admits that he did not lodge any complaint on the day when he supposed to have seen the trees being cut and there has been a delay of about 10 days with no explanation. It is settled law that delay in lodging the complaint cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the complaint. At the same time, delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory. If the prosecution fails to satisfactorily explain the delay, the delay could be fatal to the prosecution.

6 There is no evidence on record that accused nos.1,2,3 and 4 personally were cutting down the trees and it is not prosecution's case that the accused were causing the trees to be cut. Therefore, except the statement of PW-3 and PW-4 that they saw the accused cutting down the trees, there is no other independent witness to corroborate what PW-3 and PW-4 have stated. In this case, because of the admission of PW-4 that he had problem with the children of the accused because they play and make noise in the compound which disturbs his conducting tuition classes, it would be necessary to have got some independent witnesses. The prosecution got PW-5 as an independent witness but PW-5 also says he never saw the accused cutting the trees. There are 84 members in the society and except the father (PW-3) and son (PW-4), who had an axe to grind with the accused, nobody else has come forward to give evidence.

7 Learned Amicus and so also Mr. Oak, counsel for appellant submitted that in the reply to the show cause notice (Exhibit 50), the Association of the complex has admitted that they had undertaken the project of trimming trees and therefore, there is an admission of guilt. Similarly, counsel for appellant relied upon a circular dated 8th July 1999 of the Association, which has been signed by the then Honorary Secretary. Ms. Sangtani submitted, relying upon *Ajay Singh V/s. State of Maharashtra*¹, that here there is an extra judicial confession and the Court has to only satisfy that the same was voluntary and without any coercion and

1. (2007) 12 SCC 341

undue influence. Ms. Sangtani submitted that in this case, the reply to the show cause notice (Exhibit 50) and the circular dated 8th July 1999 can be considered to have been made without any coercion or undue influence. The prosecuting authority cannot be considered to be biased and even remotely inimical to the accused.

Though there can be no dispute on the proposition of law submitted by Ms. Sangtani, it will depend on facts and circumstances of every case. Can the reply to the show cause notice (Exhibit 50) and the circular dated 8th July 1999 be termed extra judicial confession by each of the accused? My answer is no. The reply at Exhibit 50 has been issued by the Association and signed by the General Secretary because only an office bearer, who is authorised, can sign a letter for an Association. That does not mean each of the accused has admitted that each one of them has personally cut the trees. Similarly the circular dated 8th July 1999 has also been signed by the then Honorary Secretary on behalf of the Association. Both the documents do not say that each of the accused are accepting responsibility for having cut the trees.

8 Therefore, based on the evidence available in Court, I feel that the prosecution has not proved beyond reasonable doubt the guilt of the accused. Therefore, I see no reason to interfere in the impugned judgment.

9 Moreover, this is relating to an incident that happened 21 years ago. From the evidence, it does not appear that 26 trees have been felled.

The photographs (Exhibit 35) produced by prosecution only shows that some of the trees only have been trimmed.

10 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, the 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 rightly observed that the prosecution had failed to prove its case.

11 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.

12 Appeal dismissed.

13 At the same time, the fact is there are trees which have been trimmed in the complex. The Association of the complex is directed to ensure that in future they do not cut or trim trees without prior permission from the concerned authority.

14 High Court Legal Services Committee to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.

(K.R. SHRIRAM, J.)