

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1338 OF 2004**

The State of Maharashtra)Appellant/Complainant

V/s.

1. Gavadu Ganesh Hajagolkar	)
Age – 40 yrs., Occu.: Service,	)
R/o. Dhamane, Taluka – Belgaum,	)
District - Belgaum	)
2. Chaloba Ramachandra Hajagolkar	)
Age – 37 yrs., Occu.: Agri.,	)
R/o. Dhamane, Taluka – Belgaum,	)
District - Belgaum	)Respondents/Accused

Mrs. Anamika Malhotra, APP for State – Appellant.
None for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 21st SEPTEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 6th August 2004 passed by Judicial Magistrate First Class, Chandgad, acquitting respondents (accused) of offences punishable under Section 353 (*Assault or criminal force to deter public servant from discharge of his duty*), Section 506 (*Punishment for criminal intimidation*) read with Section 34 of the Indian Penal Code (IPC).

2 Heard Mrs. Malhotra, for State in support of the appeal. None present for respondents. Considered the impugned judgment and notes of evidence with the assistance of Mrs. Malhotra.

3 It is the case of the prosecution that on 22nd September 2002 at about 8.45 a.m., while the complainant, PW-1 - Shivaji Talasu Gawde, was traveling in ST Bus proceeding from Chandgad to Belgaum, in between

village Bandrai Dhangarwara to Nagargaon, both the accused entered the bus and used criminal force against the complainant, a public servant, who works as a forest labourer, while he was discharging his official duty and thereby, committed an offence under Section 353 of IPC and also threatened him with intention to cause harm thereby committing an offence under Section 506 of IPC. 10-12 passengers were present in the said bus at the time of the incident. Thereafter, the said complaint came to be registered vide C.R. No.71 of 2002 with Chandgad Police Station.

4 After completion of investigation, the chargesheet came to be filed and the charges came to be framed under Section 353, Section 506, read with Section 34 of IPC against both the accused.

5 In order to prove the case of the prosecution, the prosecution examined 8 witnesses, viz., Shivaji Tulasu Gawde, Complainant as PW-1, Subhash Sakharam Lambar, panch witness as PW-2, Rajendra Sadoba Parit, eye witness as PW-3, Vasant Bharmu Gawde, eye witness as PW-4, Kaddappa Annapa Shiru, driver of the ST Bus as PW-5, Parsharam Maruti Bhanyalkar, conductor of the ST Bus as PW-6, Rajaram Subrao Patil, Range Forest Officer as PW-7 and Jaysingh Dttatray Patankar, Investigating Officer as PW-8.

6 The case of the complainant, Shivaji Tulasu Gawde, PW-1 as in his examination-in-chief is that while he was travelling in ST Bus, both the accused entered the bus near village Nagargaon and accused no.1 holding a gun in his hand came near his seat and threatened him as “Tula Sampavto” and also abused him. Other passengers sitting nearby caught hold of accused

no.1 and thereafter, the driver and the conductor forced both the accused to get down from the bus.

7 To prove a case under Section 353 of IPC, what is required to be proved by the prosecution is that whether the accused person, assaulted or used criminal force against the informant being a public servant and deterred him of his official duty and thereby, committing an offence under Section 353 of IPC. At first to attract the offence under Section 353 of IPC, the test is whether the public servant at the time of assault was lawfully discharging a duty imposed on him by law as such.

8 In the instant case, taking the case of the prosecution as it is and without disputing the fact that the complainant is a public servant, I do not find any ingredient of Section 353 of IPC in the said offence in question as the complainant failed to prove that he was discharging his official duty when the incident so happened. It is the case of the complainant itself that the said incident happened while he was traveling in a bus, meaning thereby that the complainant was not discharging his official duty. Therefore, the question of deterring him by the accused persons from discharging his official duty does not arise. The Kerala High Court in ***Mohammad Kutty V/s. State of Kerala***¹ has held that even though a person is going from his residence to the place of work to discharge his official duty still cannot be said to be on duty. The Court further held that he can be said to be in execution of public duty only when he reached the place where he has to perform his duties and he engages himself in discharge of his public duties. It

1. 2004 Cri.L.J. Page 1603 (Kerala)

is not prosecution's case that the forest labourer is supposed to be on duty 24X7. The prosecution has not shown any judgment contrary to this view.

9 I do not find any reason to interfere in the order of acquittal passed by the Trial Court from the offence under Section 353 of IPC. So also from section 506, as the prosecution has miserably failed to prove that the accused committed criminal intimidation by threatening the complainant with intent to cause harm to him.

10 The Apex Court in *Ghurey Lal V/s. State of U.P.*² has formulated 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.

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

2. (2008) 10 SCC 450

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. V/s. State of Karnataka***³ 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

3. (2014) 5 SCC 730

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 V/s. State of Gujarat*⁴ 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.

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, the accused having secured their 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.

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

4. 1996 SCC (cri) 972

acquittal, in my view, need not be interfered with.

13 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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by Gauri A.
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2020.09.22
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