

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1359 OF 2004

The State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

1) Balaso Gulab Pendhari)
Age-42 years, Occ. Agri)
R/o. Mudshingi, Hatkanangale)

2) Shahajan Mehbub Sheikh)
Age-42 years, Occ. Agri)
R/o. Mudshingi, Hatkanangale)....Respondents
(Org.Accused Nos.1 & 2)

Ms.Anamika Malhotra APP for appellant.
Ms.Apurva Gupte for respondent nos.1 & 2.

CORAM : K.R.SHRIRAM,J

DATE : 5.3.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 28.7.2004 passed by the 4th Adhoc Assistant Sessions Judge acquitting the respondents (accused) of offences punishable under Section 3(1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC & ST Act), section 7(1)(d) of Protection of Civil Rights Act and sections 143, 147 (*Punishment for rioting*), 149 (*Every member of unlawful assembly guilty of offence committed in*

prosecution of common object) read with section 323 (*Punishment for voluntarily causing hurt*), 149 read with section 427 (*Mischief causing damage to the amount of fifty rupees*) and 504 (*Intentional insult with intent to provoke breach of the peace*) of the Indian Penal Code vide section 232 of Criminal Procedure Code.

2. As nobody was representing the original complainant as well as the accused, this Court by an order dated 3.3.2020 appointed Ms.Apurva Gupte as counsel to represent the respondents. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms.Apurva Gupte.

3. It is prosecution's case that both the accused along with other accused in connected Session Case No.34 of 2004 formed unlawful assembly and committed riot and in furtherance of common object of unlawful assembly punched and kicked complainant Prakash Baburao Narandekar (PW-5) resulting in multiple injuries to PW-5. It is also alleged that at that time accused also intentionally insulted PW-5 a member of the scheduled caste (Hindu Mahar) in public view.

4. PW-5 is a resident of Hatkanangala and runs a weekly newspaper 'Dadaplela Nara'. He had published in the newspaper an

article alleging that the local politicians in connivance with Excise officials and police are selling country and foreign liquor in their houses and also running gambling den. Article also says two people had died after consuming liquor. The local residents of Mudshingi took cognizance of the article and at about 1 to 1.30 p.m. on 27.6.2003 when PW-5 was present near the Tahsildar office, accosted him and assaulted him. It seems when PW-5 was waiting to buy some stamps from the stamp vendor outside the Tahsildar office, Padmabai Chougule, Gulabai Chougule and Sangeeta Chougule asked him about the contents of the article and abused him. The accused in the case at hand and accused in S.C.No.34 of 2004 then came there and said "Mhardyala mara re mara." On their instigation accused in Session Case No.34 of 2004 started punching and kicking PW-5 and the accused in the case at hand also joined in the assault. This incident was seen by Prabhakar Kamble (PW-3), Ananda Bandu Kashid (PW-6), one Shrikant Chavan (who was not examined) and others. PW-3 and PW-5 filed complaint in the police station. On receipt of complaint, spot panchanama was drawn and Dy.S.P Deepak Sakore (PW-7) started investigation on 28.6.2003. After completing investigation, a separate charge-sheet was filed against accused in Session Case no.34 of 2004. Judicial Magistrate First Class, Ichalkaranji finding that case against the two accused in the case at hand being under section 3 of

SC & ST Act and under section 7 of Civil Rights Act and other sections of the IPC, some of which are exclusively triable by the Sessions Court, committed the matter to the Sessions Court.

5. Charge-sheet was filed and the accused pleaded not guilty and claimed to be tried.

6. Sessions Case No.34 of 2004, which was filed separately in the Court of JMFC, Ichalkaranji was also committed to the sessions court since section 149 of the IPC was also applied. Since the offences charged under both the cases arose out of the same incident and evidence and witnesses also would be common, the trial in both the cases were held simultaneously.

7. To prove its case, prosecution led evidence of 7 witnesses which are: Rajaram Maruti Ghorpade-Stamp vendor as (PW-1); Suresh Shamrao Khot,Bond Writer as (PW-2); Prabhakar Kamble,brother of complainant as (PW-3); Shrikant Pandurang Chavan, stamp vendor, bond writer as (PW-4); Prakash Baburao Narandekar, complainant as (PW-5); Ananda Bandu Kashid, Jurnalist and Photographer as (PW-6); and Deepak Krushnaji Sakore, Investigating officer-Dy.S.P.Ichalkaranji as (PW-7).

8. The fact that the incident occurred on 27.6.2003, the fact that PW-5 was beaten up, the fact that there were many people who had collected and some of them were women are not disputed. Therefore, injuries to complainant-Prakash, PW-5, presence of Padmabai Chougule, change of surname of PW-5 from Kamble to Narandekar, publishing of the controversial article by PW-5 are also not challenged on behalf of the accused. The defence's case is PW-5 had outraged modesty of one Padmabai who was also accused in Sessions Case no.34 of 2004 and therefore, people had gathered from all over taluka, were angry and beat up PW-5.

9. PW-1 and PW-2 were declared hostile. PW-4 is not an eye witness to the incident. On the allegation under SC & ST Act, the only witnesses who have deposed as eye witnesses are PW-3, PW-6 and the complainant PW-5.

10. PW-5, PW-3 and PW-6 have attempted to corroborate each others' version. It will have to be seen whether evidence of these 3 witnesses can be termed as reliable and trustworthy and inspire confidence.

11. At the outset, I have to note that the insulting words used to trigger an offence under SC & ST Act have 3 versions in the evidence. PW-5 complainant says words used were “Mhardyala Mara Re Mara”. PW-3 says “Ya Mhardyala Hana, Mara Yala Theu Naka”. PW-6 used a different version and he says the words used were “Hana Re Hana, Odha Tya Mhardyala”. Therefore, the 3 witnesses are not consistent as regards the alleged utterances referring to the caste of PW-5 by the accused.

12. PW-3 says that accused punched, kicked and also beat up PW-5 with chappal. The other witnesses only mentioned about punching and kicking and no chappal is mentioned. Ms.Gupte for respondent nos.1 & 2 submitted even though this might be a minor omission, the Court should keep in mind that the offence charged is under the provisions of SC & ST Act where an accused will not even get anticipatory bail in view of the provisions of section 18 of the Act.

PW-3 says about 25 to 30 women and 125 males were in the mob. PW-3 initially states that only women started assaulting PW-5.

PW-5 says that Padmabai, Gulabai and Sangita were arguing with him and these women were followed by some other women.

PW-6 says 7 to 8 women were arguing with PW-5 and thereafter all the people in the mob started attacking.

PW-6 states nearly 100 people were beating complainant- (PW-5) but PW-5 himself says only 10 to 12 people were beating him. Regarding the number of men and all women attacking complainant, noted in the FIR, PW-5 only mentioned women accused abusing PW-5 and some men in the mob actually beating PW-5.

13. There are also inconsistencies about the time when PW-3 and PW-6 went to the police station.

14. PW-5 says one LCB Constable looking at the incident rushed and rescued him and on the other hand denies police coming to the place of incident at all. PW-5 says police did not come at all to the place of incident till he went to the police station for filing the complaint.

PW-3 Prabhakar who is the brother of complainant states police sent PW-5 to Rural hospital Hatkalangale along with PW-5's wife. Wife of PW-5 was not present at the time of actual incident. Who informed complainant's wife is not clear.

PW-3 who is the brother of complainant has not informed complainant's wife. PW-3 also says PW-6 was with him and they were

watching the incident for 15-20 minutes but never gathered the courage to go and rescue his own brother PW-5. Therefore, the presence of PW-3 or PW-6 at the place of incident itself raises a doubt. PW-3 also admits about omissions.

15. It is very relevant to point out that some of the accused in Sessions case no.34 of 2004 also belonged to Mahar caste and some accused belonged to backward class or other scheduled tribe. Only 2 accused in Sessions case no.34 of 2004 were of Maratha caste, while one accused in that case was a Muslim, while the accused in the case at hand, are both Muslims. It seems doubtful therefore, that accused would have uttered words referring to caste of PW-5 complainant when the mob had more people from Scheduled Caste or Scheduled Tribe or backward classes or other backward classes.

16. The trial court has listed various other factors in the judgment impugned which for the sake of brevity, I am not reproducing. I would add that those observations have the approval of this Court.

17. In view of the above, as the evidence of PW-3, PW-5 and PW-6 is found to be not reliable, I see no reason why the other charges

also should not fail.

18. 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 reappraise 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 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:

¹ (2008) 10 SCC 450

- 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.*

19. 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,

² (2014) 5 SCC 730

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.

20. 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 reappraise the evidence and arrive at its own conclusions.

21. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***⁴ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal

³ 1996 SCC (cri) 972

⁴ (2007) 4 SCC 415

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, reappreciate 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.”

22. 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 acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Sessions Court rightly observed that the prosecution had failed to prove its case.

23. Appeal dismissed.

(K.R.SHRIRAM,J)