

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1386 OF 2004**

The State of Maharashtra)Appellant/Complainant

V/s.

1. Guruvayya Gurupadya Hiremath,)

Age 48 years, R/o. Hitni, Tal. Gadhinglaj)

2. Sou. Shantabai Guruvayya Hiremath,)

Age 35 years, R/o. Hitni, Tal. Gadhinglaj)Respondents/Accused

Mrs. Anamika Malhotra, APP for State – Appellant.

CORAM : K.R.SHRIRAM, J.

DATE : 14th SEPTEMBER 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 4th August 2004 passed by Judicial Magistrate First Class, Gadhinglaj, acquitting respondents (accused) of offences punishable under Section 324 (*Voluntarily causing hurt by dangerous weapons or means*), Section 504 (*Intentional insult with intent to provoke breach of the peace*) 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 though Mrs. Malhotra states they have been served. Considered the impugned judgment and notes of evidence with the assistance of Mrs. Malhotra.

3 It is the case of prosecution that on 21st March 2000 at about 9.30 a.m., both accused were abusing one Maheshwar and when confronted as to why they were abusing him, the accused started punching and kicking Maheshwar. At that point of time, when the complainant (PW-1) intervened

in the quarrel, the accused also abused him. It is further alleged that accused no.1 inflicted blow with a mattock on the back of complainant. Few people gathered on the spot to stop the quarrel. Thereafter the complainant (PW-1) lodged complaint in Gandhinglaj Police Station.

4 On completion of investigation, charge sheet came to be filed and charges came to be framed against both accused under Section 324, 504 read with Section 34 of the IPC.

5 To prove the guilt of the accused, the prosecution has examined 7 witnesses, viz., Revayya Gurupadya Hiramath, complainant as PW-1, Maheshwar Bhupal Hiramath, injured witness as PW-2, Rajaram Jadhav, pancha as PW-3, Bapu Gonda Bal Gonda Patil, panch witness as PW-4, Balaya Chand Assaya Vastrad, eye witness as PW-5, Ganpat Gundo Shinolkar, Investigating Officer as PW-6 and Dr. Mallik Arjun Athani as PW-7.

6 It is an admitted position and a specific defence that there was previous enmity between complainant and the accused persons in respect of property being Gat No.50 of Village Hitni, Tal. – Gandhinglaj. It is a well settled principle of law that enmity can be used as a double edged weapon and keeping that in mind, the evidence needs to be scanned and scrutinized minutely so as to check the veracity of the complaint and also a theory of false implication.

7 The Learned Trial Judge after perusing the injuries and the injury certificate of PW-1 and also evidence of PW-7, Dr. Mallik Arjun Athani,

observed that there is no consistency between the ocular evidence and medical evidence. In the medical evidence, it has come on record that complainant has sustained 4 injuries whereas the case of complainant himself is with respect to one assault on his back without any weapon. So far as injuries on the person of PW-2 is concerned, there is no corroboration to his testimony. Even the injury certificate is not brought on record by the prosecution and even PW-7 is silent on this. As this is a case under Section 324 which talks about voluntarily causing hurt by dangerous weapon or means, the least the prosecution was expected to prove is the nature of injuries in consonance with the allegations of complainant and the injured witnesses. In this case, though the weapon is shown to be recovered at the instance of the accused, the prosecution has failed to prove the injuries as inflicted by the said weapon. This itself creates a doubt about the alleged incident and the Trial Court was right in holding that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt.

8 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.

9 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.

10 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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by Gauri A.
Gaekwad
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