

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1226 OF 2006
ALONGWITH
CRIMINAL REVISION APPLICATION NO.209 OF 2005**

The State of Maharashtra) ..Appellant

V/s.

1 Ajay A. Shirodkar)
R/a 263/13 Kannamwarnagar 2)
Vikhroli (East) Mumbai 400 083)

2 Ashok V. Dhamal)
R/a 263/34 Kannamwarnagar 2)
Vikhroli (East) Mumbai 400 083) ..Respondents
(Ori Accused nos.1 & 2)

Ms. Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 18th DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 22-3-2005 passed by Learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, Mumbai, acquitting the accused (respondents) of offence punishable under Sections 8 and 21 of Maharashtra (Urban Areas) Protection & Preservation of Trees Act.

2 Complainant – Sangita Dere (P.W.-1) is the Horticultural Assistant attached to S-Ward of BMC. P.W.-1 reported that a written complaint was received by her from one Ganesh Ambokar (P.W.-3) that the accused had cut

the branches of some trees in the building that he resides. On the said complaint, PW-1 visited the spot and found that the branches of trees in the premises of building no.263/B where PW-3 was residing, were cut. Hence she filed a complaint accusing accused nos.1 and 2 for cutting trees without permission from the competent authority. On receipt of complaint FIR was lodged and one PSI Kamble filed an application for permission to investigate the case. Accordingly permission was granted under Section 155(2) of Cr.PC. Spot panchnama was prepared, statements of witnesses were recorded and both the accused were arrested. On appearance of the accused in court they were enlarged on bail. The accused pleaded not guilty and claimed to be tried, their defence is of total denial and according to the accused, informant (PW-3) is a defaulter of the society and there are disputes between PW-3 and the society for non payment of society dues and the accused are office bearers of the society. In view thereof, PW-3 has an axe to grind and filed this false case.

3 Prosecution led evidence of 5 witnesses to bring home the charge. PW-1 – complainant Sangita Dere, PW-2 Bhagwan Rao Mundhe is the panch witness, PW-3 Ganesh Ambokar is the original complainant and resident of the building, PW-4 Ashok Chiplunkar is the eye witness and nephew of PW-3 and PW-5 PSI V. A. Rane is the Investigating Officer.

4 At the outset, I have to state that complainant is not an eye witness to the incident because she visited the spot after the happening of the incident. According to PW-1, she came to know that trees were cut with the consent

of chairman and secretary, who are the accused because P.W.-3 informed her so. The moot point in the matter at hand is whether (a) both the accused personally cut the trees or (b) they got it cut and gave consent for the same. P.W.-3 who resides in the same building states that the incident occurred on 6-10-2002 and he actually claims to have seen both the accused cutting the branches of trees, i.e., Suchiparni and Gulmohar. According to P.W.-3, he filed a complaint with BMC on 8-10-2002 and with the police on 7-10-2002. P.W.-1 says that she received an oral complaint from P.W.-3, whereas P.W.-3 states he filed written complaint with BMC .

P.W.-3 states that he saw both the accused cut the trees and he took photographs of the incident and the photographs have been exhibited at Exhibit P-8 colly. Photographs were taken after happening of incident. Of course, photographs shows that some branches are cut and they are kept collected in the premises of society. Photographs, however, do not show that the accused have cut the trees. When the witness P.W.-3 states that he took the photographs personally and he saw the accused while cutting the trees, then I ask myself why did P.W.-3 not take the photographs when the accused were cutting the trees. That raises a doubt on the stand of P.W.-3 that he personally saw both the accused cutting the trees.

One more point which has to be noted is P.W.-3 says he saw the accused personally cutting the trees, whereas P.W.-1 states that she was informed that the trees were trimmed with the consent of the chairman and secretary of the society (the 2 accused). Even in the statement of P.W.-3

before the police he has not stated that he saw the accused cutting the trees. This is a major omission particularly because even the photographs relied upon by the prosecution does not indicate the accused were actually cutting the trees. In his cross-examination, P.W.-3 has admitted that he has received a notice from the society for being defaulter. Prosecution has also not produced any evidence that the accused had given consent to cut the trees. Therefore, the evidence of P.W.-3 is not reliable.

5 P.W.-4, the eye witness says P.W.-3 is his maternal uncle. Therefore, P.W.-4 will be an interested party. P.W.-4 says on the date of the incident, he visited his uncle P.W.-3 and he saw the accused cutting the trees by climbing on the trees. P.W.-3 does not say the accused had climbed the trees. P.W.-4 further says when he asked the accused whether they had permission to cut the trees, the accused asked him as to who was he to ask such question. P.W.-4 thereafter left the spot without replying to the accused and went and reported to P.W.-3 who was present in his house. Later police recorded his statement. In the cross-examination, P.W.-4 says (and P.W.-3 does not) that accused no.2 had climbed on Suchiparni tree and accused no.1 had climbed on Gulmohar tree. But he also admits that he did not state these things to the police. P.W.-4 says in the cross-examination that 'the accused were cutting the trees with Koyta' (kind of chopping implement) but he admits that he did not state this before the police.

Another lacuna in prosecution's case is P.W.-3 has stated he saw the accused while cutting the trees but does not state that P.W.-4 was present at

that time on the spot. P.W.-3 also does not state that P.W.-4 came and reported to him when he was in his house that the accused had climbed the trees and were cutting the trees.

6 The spot panchnama has been prepared on 20-1-2003, whereas the incident occurred on 6-10-2002. There is a considerable delay in preparation of spot panchnama. Further, P.W.-2 the panch witness in his cross-examination states “at the time of panchnama, no cut branches of the trees were found on the spot”.

7 Investigating officer (P.W.-5) says that the complaint was registered on 26-11-2002 for noncognizable offence and hence he sought the permission of the court for investigation and on obtaining permission he commenced investigation. The FIR came to be registered by P.W.-1 on 20-1-2003. It goes to show that investigation started on the basis of FIR filed by P.W.-1 Sangita Dere because the spot panchnama also was done only on 20-1-2003. P.W.-5 says only thereafter he recorded the statements of P.W.-3 and P.W.-4. But P.W.-3 has stated that prior to that on 7-10-2002 he had filed a complaint in writing with the police.

8 In the circumstances, there are far too many lacunae in the prosecution’s case. 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.

9 Appeal dismissed.

10 In view of the dismissal of the appeal, criminal revision application does not survive and accordingly stands dismissed.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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by Meera M.
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