

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 6 OF 2015

State of Goa, Through P.I. (Major),
Ponda Police Station, Ponda, Goa. Appellant
V/s
Govind Gaude (major), s/o late Shepu
Gaude, R/o H. No. 144-C, Dhonshi,
Nagueshi, Bandore, Ponda, Goa. Respondent

Shri Mahesh Amonkar, Additional Public Prosecutor for the
Appellant.

Shri S.D. Lotlikar, Senior Advocate with Shri Prasheen Lotlikar,
Advocate for the Respondent.

CORAM : M. S. JAWALKAR, J.

RESERVED DATE : 11th AUGUST 2021

PRONOUNCED ON : 12th AUGUST 2021

JUDGMENT

The present Appeal is filed against the order of acquittal passed by the Judicial Magistrate First Class, 'A' Court, Ponda in Criminal Case No. 37/S/2009/A (hereinafter referred as impugned judgment).

2. The case of the prosecution in nutshell is that, on 11.10.2008 at 11:30 hours, the respondent/accused, criminally trespassed and abused in the office of the Hon'ble Transport

Minister, Shri Sudin Madhav Dhavalikar (PW-2) at Maharashtra Gomantak Party's office, near Mahalaxmi Temple, Bandora, Ponda with filthy language and threatened him with dire consequence to kill him and thereby, the accused committed an offence under Section 448, 504 and 506(ii) of IPC.

3. Based upon the complaint filed by Shri Gopi Puno Naik dated 11.10.2008, FIR was registered under No. 175/2008 and chargesheet came to be filed on 09.04.2009. Charges came to be framed and prosecution examined 11 witness to prove its case.

4. The learned JMFC, Ponda vide judgment dated 15.05.2014 acquitted the respondent and being aggrieved thereby, the present Appeal is preferred by the appellant-State.

5. I have heard Shri Mahesh Amonkar, the learned Additional Public Prosecutor for the appellant-State and Shri S.D. Lotlikar, the learned Senior Counsel, who appears along with Shri Prasheen Lotlikar, the learned Counsel for the respondent.

6. Before I proceed further, it needs to be noted that the present Appeal being Appeal against acquittal, while deciding the same, the principles laid down in **Chandrappa & Others Vs. State of Karnataka, (2007) 4 SCC 415** needs to be borne in mind.

7. The Hon'ble Apex Court held that when there is Appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the Trial Court. In the very said judgment, general principles regarding powers of an Appellate Court while dealing with the Appeal against an order of acquittal are laid down as under:

(1) An Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts 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 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 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.

8. Keeping in view the above principles, I proceed to decide the matter.

9. The main grounds raised by the learned Additional Public Prosecutor Shri Mahesh Amonkar for challenging the impugned judgment/order are that the learned Trial Court erred in rejecting the deposition of materiel witnesses merely on the ground that they were supporters of the local MLA who is aggrieved and therefore, interested witnesses, discarding the fact that they were present at that time and witnessed the incident. The learned Trial Court also erred in holding that there was delay in lodging the complaint as the incident took place at 11:30 a.m. and the complaint was lodged at 2:30 p.m. The learned Trial Court also erred in holding that the complaint is not filed by the aggrieved person i.e. by the MLA (PW-2), but by one Shri Gopi Naik (PW-1), who has nothing to do with the

abuses given by the accused person. The learned Trial Court further erred in holding that the prosecution has not proved the ownership of premises where the incident took place. It is further submitted that the Trial Court gave undue importance to the fact that the prosecution has not proved the function of distributing cheques under the Government Scheme was going on. The learned Trial Court erred in holding that the witnesses examined were interested witnesses of MG party and inspite of there being other persons present, none of these independent witnesses are examined. On these grounds, the appellant-State prayed for quashing and setting aside the impugned order.

10. The learned Senior Advocate Shri Lotlikar submitted that the incident is of 2008. It is submitted that there is no illegality, perversity in the order passed by the learned JMFC and hence, needs no interference. It is submitted that otherwise also, the scope for Appeal against acquittal is limited. None of the ingredients of Section 441, 448, 506(ii) of IPC have been established by the prosecution. In absence of any documents with regard to property where office of PW-2 is situated and in the absence of any independent witness, though

available on the spot of incident, charges levelled cannot be proved. Thus, the prosecution miserably failed to establish its case.

11. With the assistance of the learned Additional Public Prosecutor, I have gone through the evidence placed on record.

12. I have gone through the judgment passed by the learned JMFC. The learned Trial Court has rightly appreciated the fact that there is not even a single document placed on record to show the existence of the alleged premises and the functioning of the office of MG party in the said premises. There is also no material except oral evidence that there was any distribution of cheques under "Rajiv Awaz Yojana" being carried on. Though it is a Government function, as claimed, however, no any photographs or news items/publicity or any document to that effect is placed on record. The witnesses examined are all supporters of MG party. The learned JMFC rightly appreciated this fact that all the witnesses are either supporters or working for PW-2. Merely because these witnesses are either supporters or working for PW-2, may not be the reason for discarding their evidence but certainly it

creates doubt when many other persons admittedly claim to be present on the spot, neither their statements were recorded by I.O. nor were they examined by the prosecution.

13. It is also a fact that complaint is not filed by PW-2 to whom alleged abuses were made by the accused. To attract ingredients of Section 441 of IPC, the prosecution has to prove first that there was property in the possession of the said person, then only question of punishment under Section 448 of IPC will arise. So also to attract Section 504 of IPC, there has to be sufficient evidence on record to establish the case of prosecution. It appears that there is no independent witness who was interrogated by the I.O. or examined by the prosecution in support of the case of prosecution about the use of filthy and abusive language. The persons examined as witnesses are supporters of MG party or working under PW-2. Some of the witnesses also admitted that the cheque amount was also received by pancha members to plaster their houses. Certain contradictions observed by the learned JMFC certainly led the learned JMFC to pass the order of acquittal.

14. It is also a matter of record that aggrieved person did not lodge the complaint but some other person, who is not aggrieved, lodged the complaint, specifically when aggrieved person was very much present and in a position to lodge a complaint. The I.O. deposed that PW-1 lodged the complaint as per the instructions of PW-2. However, PW-2 has denied the same. The I.O. also admitted that he has not filed any FIR alongwith the chargesheet, which creates doubt whether such incident really took place. The possibility of filing a false complaint on account of political rivalry cannot be ruled out as evidence shows that accused was in strong opposition with PW-2. The statement of PW-2 came to be recorded after ten days of the incident and the reason given by the I.O. is that he could not record the statement of PW-2 when he tried to meet him at his residence and office and his statement came to be recorded at Secretariat, Porvorim, whereas witness Chandan Fadte, PSO deposed that within 15 minutes, police arrived in the office. Thus, the evidence of the I.O. cannot be believed.

15. I do not see any reason to interfere with the finding recorded by the learned JMFC that in view of the evidence on record, the prosecution miserably failed to establish the offence

of which the accused is charged with. The view taken by the learned JMFC is quite plausible. Accordingly, I proceed to pass the following order:

ORDER

The Appeal is dismissed.

M. S. JAWALKAR, J.

Esha

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ESHA SAINATH

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