IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.309 OF 2009

The State of Maharashtra ….Appellant/Complainant

V/s.

1. Balasaheb Babasaheb Patil
Age : 29 years, R/o. Village – Halondi,
Taluka – Hatkanangale, District –
Kolhapur

2. Tatyasaheb Babasaheb Patil
Age : 26 years, R/o. Village – Halondi,
Taluka – Hatkanangale, District –
Kolhapur

3. Babasaheb Payagonda Patil
Age : 56 years, R/o. Village – Halondi,
Taluka – Hatkanangale, District –
Kolhapur

4. Pradeep Bhimgonda Patil
Age : 26 years, R/o. Village – Halondi,
Taluka – Hatkanangale, District – …..Respondents/accused
Kolhapur

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

CORAM : K.R.SHRIRAM, J.
DATE : 22nd JANUARY 2021

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 9th May 2008 passed by the Ad-hoc Additional Sessions Judge, Ichalkaranji, acquitting respondents (accused) of offences punishable under Sections 324 (*Voluntarily causing hurt by dangerous weapons or means*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) read with Section 34 (*Acts done by*

several persons in furtherance of common intention) of the Indian Penal Code (IPC).

2 The accused are charged with causing hurt by dangerous weapons which included scythe so also intentional insult. It is alleged that on 1st January 2003 at about 7.30 p.m. in front of the house of one Sunil Patil, who has not been examined, the accused in furtherance of common intention voluntarily caused hurt to complainant Mahavir Shamu Shete (PW-5) and other prosecution witnesses Prakash Shete (PW-3), Babaso Sukumar Patil (PW-4) and Pradeep Shamu Shete (PW-2) with dangerous weapons likely to cause death of complainant and others and also caused simple hurt to these witnesses and intentionally insulted them and provoked them to commit breach of peace.

3 It seems complainant (PW-5) and prosecution witnesses, viz., PW-2 to PW-4, are all residing at Kumbhar Lane, Halondi. The accused also lived in the same village. Complainant (PW-5) had laid down water pipe line from Panchganga river for irrigating their agricultural land and the accused and other villagers were also taking water from the said pipe line and all were paying some charges to PW-5. According to prosecution, an amount of Rs.5,000/- was due from accused no.3. Accused nos.1 and 2 are the sons of accused no.3. As the charges were not being paid, on 31st December 2002, PW-2, who is the nephew of PW-5 complainant, went to the house of the accused and demanded the arrears of water charges. PW-2 was abused and driven away. The accused also denied that they owed any money to

complainant. PW-2 went home and narrated what happened. On 1st January 2003 as the sugarcane cutting was in progress in the land belonging to accused no.3, PW-2 happened to go there at which time accused no.1, accused no.2 and accused no.4 manhandled him. When PW-2 went home and narrated the incident, PW-3, PW-4 and PW-5 went to confront the accused as to why they misbehaved with PW-2. On their way, in front of the house of Sunil Patil, the accused intercepted them. The accused were holding scythe, lathies and stone in their hands and all of a sudden they started assaulting complainant (PW-5) and others. Who hit who with what has been mentioned in the case of prosecution. Complainant (PW-5) lodged a complaint at MIDC Police Station, Shiroli. A.P.I. Arun Waikar (PW-9) took over the investigation. PW-9 was also investigating another case which the accused had filed against complainant and the witnesses where complainant and the witnesses were charged under Section 307 of IPC. Since that case was pending before the Sessions Court, this case also came to be tried by the Sessions Court alongwith the other case.

4 To drive home its charge, prosecution examined nine witnesses. Having considered the evidence with the assistance of the learned APP, one thing is certain that this complaint is a counter blast to the complaint filed by the accused in which the hand of accused no.1 was chopped off below his wrist in the same incident. Even for a moment if we accept the prosecution's case that the accused confronted complainant and the witnesses with scythe or sticks or stones, it is for everyone to see who was attacked with what

weapon. It is accused no.1, who lost a part of limb and is handicapped for life. Moreover, the Medical Officer (PW-7) in his report has described the injuries suffered by PW-2, PW-3, PW-4 and PW-5. All the injuries sustained have been caused by hard and blunt object. In his cross examination, PW-7 admits that all the injuries mentioned could be possible by falling on rough surface. PW-7 has not mentioned anything about anyone suffering any injury causing bleeding. Therefore, the injuries suffered are all simple injuries which could have also been caused in the melee or scuffle. It has also come in evidence of PW-1 and PW-2 that when this scuffle happened, some persons fell down on the ground and there were 10 to 20 people gathered at the place of incident after hearing commotion. Strangely PW-6 denies presence of on-lookers or that they separated them when PW-1 and PW-2 say on-lookers separated them. Infact PW-1, in his cross examination, says that like him many other persons had gathered there after hearing the commotion and he heard someone's shout "*बाळासाहेबाचा हात तुटला* ". Balasaheb is accused no.1. PW-1 further says that Pradeep Shete (PW-2), Mahavir Shete (PW-5) and others were driven away. If it was the accused, who were assaulting complainant, why would the public gathered, drive away complainant and witnesses?

5 It is prosecution's case that they recovered the weapons used in the incident, i.e., article no.1 and article no.2, from the house of accused no.2 and it was accused no.2 who led them to the place where the weapons were hidden and handed it over. According to PW-9, the Investigating

Officer, article no.1 scythe came to be seized at the instance of accused no.2 under Section 27 of the Evidence Act from the house of accused no.2. But PW-2 in his testimony hit a self goal in as much as he says that the weapons (article nos.1 and 2) were thrown by the accused at the spot of the incident and they ran away from there. If according to PW-2, the accused threw away the weapons of assault at the place of incident and ran away to their house, then how does PW-9 says that the weapons were recovered from the house of accused no.2 under Section 27 of the Evidence Act?

PW-2, in his cross examination, has deposed that their clothes were stained with blood and they showed their blood stained clothes to Police but the clothes were not seized by the Police under panchnama.

6 All these point to one direction that this complaint has been filed by complainant only as a counter blast or to dilute the charge under Section 307 pending against complainant and the witnesses. In my view, the appeal requires no interference.

7 The Apex Court in ***Ghurey Lal V/s. State of U.P.***[1] 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 Section 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.*

1. (2008) 10 SCC 450

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:

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***[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, 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.

The Apex Court in ***Ramesh Babulal Doshi V/s. 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 re-appraise the evidence and arrive at its own conclusions.

2. (2014) 5 SCC 730
3. 1996 SCC (cri) 972

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
Digitally signed by Gauri A. Gaekwad
Date: 2021.01.25 17:59:57 +0530