

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.9 OF 2005**

The State of Maharashtra	)Appellant/Complainant
V/s.	
1) Jalindar Janardan Vir	)
Age : 42 yrs., Occu.: Agri	)
R/o. Shelgaon-Kadawale,	)
Tal.: Karmala, Dist.: Solapur	)
2) Rajaram Janardan Vir	)
Age : 35 yrs., Occu.: Agri	)
R/o. Shelgaon-Kadawale,	)
Tal.: Karmala, Dist.: Solapur	)
3) Atmaram Janardan Vir	)
Age : 27 yrs., Occu.: Agri	)
R/o. Shelgaon-Kadawale,	)
Tal.: Karmala, Dist.: Solapur	)Respondents/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
Mr. Ujwal R. Agandsurve for respondents.

CORAM : K.R.SHRIRAM, J.
DATE : 26th FEBRUARY 2021

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 16th September 2004 passed by the Judicial Magistrate, First Class, Karmala, acquitting respondents (accused) of offences punishable under Section 323 (*Punishment for voluntarily causing hurt*), Section 325 (*Punishment for voluntarily causing grievous hurt*), Section 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 It is prosecution's case that on 1st March 2001 at about 4.00 p.m. when complainant (PW-4) and his father (PW-6) were collecting fodder in their field, an ox owned by accused no.1, entered the field and started eating their crop of onion. PW-6 informed accused no.1 that the ox was destroying his crop at which time accused no.1 assaulted PW-6 with a whip which resulted in PW-6 falling down. At that time, accused no.2 came there and hit PW-6 on his back with the blunt side of spade. Accused no.3 also assaulted PW-6 with a stone thrown at his back. PW-4, therefore, rushed to the spot to rescue his father (PW-6). It is prosecution's case that the three accused also abused PW-4, punched him and also kicked him. In this melee, PW-6 sustained injury to his left hand thumb. Complainant (PW-4) and PW-6 went to Karmala Police Station and lodged a complaint, which was registered as non cognizable offence. The injured were referred for medical treatment. PW-6 went to Cottage Hospital at Karmala and from there he was referred to Civil Hospital, Solapur where his supplementary statement came to be recorded. Based on that statement, the offence was converted into a cognizable offence by Police Station at Karmala.

3 Investigation commenced, chargesheet came to be filed and charges were framed. Based on the evidence presented, the Trial Court acquitted the accused of offences charged by an order and judgment dated 16th September 2004 which is impugned in this appeal. The incident is over 20 years old. The accused have pleaded not guilty and claimed to be tried.

The stand of the accused is that it is a political fight between the two families, who are neighbours. The wife of accused no.1 was elected in the Gram Panchayat election and in that election, it was relative of PW-6 who got defeated and hence, the two families are on inimical terms.

4 To drive home the charge, prosecution led evidence of eight witnesses, viz., Abhiman Sukhdev Jagtap, eye witness as PW-1; Mahadev Sukhadev Jagtap, eye witness as PW-2; Sunil Zumber Payaghan, panch witness as PW-3; Sarjerao Bajirao Mane, complainant as PW-4; Rambhau Nagnath Gholap, panch witness as PW-5; Bajirao Nivritti Mane, father of complainant as PW-6; Arvind Lokhande as PW-7, Investigating Officer; and Dr. Dodmani, Medical Officer as PW-8.

5 PW-5, the panch witness for recovery of whip and spade turned hostile. No corroborative evidence has been led to prove the recovery of these weapons. I have, with the assistance of the learned APP Mrs. Malhotra, considered the evidence and the impugned judgment. The prime witnesses are PW-4 and PW-6. PW-6 is the father of PW-4 as noted earlier. PW-6 only talks about the role of accused nos.1 and 2 in the assault and does not attribute any role of accused no.3. PW-6 also does not mention about any assault by spade and according to PW-6, accused no.1 hit him with a whip and accused no.2 hit him with a stone. PW-4, complainant states that all the three accused assaulted PW-6. PW-4 says accused no.1 hit PW-6 with a whip on his hand and back, accused no.2 hit with the blunt side

of the spade and accused no.3 with stone. PW-4 states that he was also assaulted but there is no medical certificate produced to that effect and PW-4 does not say in his testimony that he was given any medical treatment. PW-4 says that Police referred the injured alongwith yadi to hospital whereas, the Doctor PW-8 does not say so.

6 PW-2, who is an eye witness, does not mention about any assault on PW-4 but says all the accused assaulted PW-6 with a whip and spade. PW-2 in his cross examination admits that his statement recorded by Police does not mention that accused no.1 assaulted PW-6 with a whip. PW-4 and PW-6 state that the incident occurred due to the ox of accused no.1 entering their field and damaging their crop but PW-2 states that the incident occurred on disputes over the bund. PW-7 has confirmed the omissions. Therefore, the evidence of PW-4 and PW-6 does not tally. PW-4 has lodged the complaint (Exhibit 24) but that does not disclose anywhere that PW-1 and PW-2 came to the spot and rescued them. Even their names do not appear in the F.I.R. PW-6, in his evidence, states that PW-1 and PW-2 arrived and rescued them but this has not been stated in the statement of PW-6 recorded by Police. PW-6 specifically states that he sustained injuries on his left hand thumb but PW-4 does not state that. PW-4 states that when he was assaulted by accused nos.1 and 3, he cried and shouted for help and hearing him PW-1 and PW-2 came to their rescue. But PW-6 does not mention that PW-4 shouted and cried for help. PW-6, in his cross

examination, states that his statement was recorded on the date of incident, i.e., 1st March 2001 but the statement recorded by the Police shows the date as 4th March 2001. Even the Investigating Officer (PW-7) states that he has not recorded the statement of PW-6 on the date of incident. Investigating Officer (PW-7) also states that PW-6 never stated before him that PW-1 and PW-2 had rescued him or that PW-6 was taken to village Gulaali in a bullock-cart and was brought to Karmala in an auto rickshaw.

7 Therefore, from the evidence of PW-4 and PW-6, I find that they have made material improvements in their case and actually exaggerated the event. There are many other contradictions and points raised in the impugned judgment, which for the sake of brevity I am not reproducing. Suffice to say, I agree with the conclusions arrived at by the Trial Court.

8 The Apex Court in ***Ghurey Lal V/s. 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.

1. (2008) 10 SCC 450

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.

9 The Apex Court in many other judgments including ***Murlidhar***

& Ors. V/s. State of Karnataka² has held that unless, the conclusions

2. (2014) 5 SCC 730

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.

10 I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence

3. 1996 SCC (cri) 972

available on record, there is nothing to substantiate the charge leveled against the accused.

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

12 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

13 Appeal dismissed.

Gauri A.
Gaekwad

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(K.R. SHRIRAM, J.)