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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.47 OF 2007**

The State of Maharashtra)
(through Mangalwedha Police)
Station) ..Appellant

V/s.

1 Pandurang Dhondiba Sule)
Age 58 yrs.)

2 Shivaji Vithoba Keshave)
Age 65 yrs.)

3 Sambhaji Pandurang Sule)
Age 25 yrs.)

4 Amogsidha Shivaji Keshave)
Age 25 yrs.)

5 Nilabai Pandurang Sule)
Age 49 yrs.)

6 Rakhamabai Shivaji Keshave)
Age 29 yrs.)

7 Chalaknanda Shivaji Keshave)
Age 48 yrs.) ..Respondents

Mrs. Anamika Malhotra, APP for State
Mr. Chaitnya Mulawkar i/b Mr. Sandeep Salunkhe for Respondents

**CORAM : K.R.SHRIRAM, J.
DATED : 5th MARCH 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 9th

December 2005 passed by the First Ad-hoc Additional Sessions Judge, Pandharpur, acquitting the accused of charges under Section 147 (*Punishment of rioting*), 148 (*Rioting, armed with deadly weapon*) and 324 (*Vounltarily causing hurt by dangerous weapons or means*) read with Section 149 (*Every member of unlawful assembly guilty of offence committed in prosecution of common object*) of the Indian Penal Code.

2 Originally, the accused were charged with offences under Sections 147, 148, 324, 504 , 506 read with 149 of IPC read with Section 135 of Bombay Police Act. Trial Court, i.e., Court of JMFC, Mangalwedha acquitted the accused of the charges under Section 504 and 506 read with Section 149 of IPC and Section 135 of Bombay Police Act, but convicted the accused under Section 147, 148 read with section 149 of IPC, pursuant to a judgment decided on 8th September 2003. Against this order and judgment of JMFC, an appeal had been preferred by the accused and the Sessions court reversed the order of JMFC and acquitted all the accused. That order of acquittal is impugned in this appeal.

3 I have perused the evidence as well as the impugned judgment and I would agree with the judgment passed by the Sessions Court acquitting the accused.

4 It is prosecution's case that P.W.-1 and P.W-3, who were married to each other and living as husband and wife, were residents of Nandur. P.W.5 was the son of P.W.-1 and P.W-3. P.W.10 was the sister of P.W.-3 and was living very close to the residence of P.W.-1 and P.W-3.

5 On 30th May 2000, at about 7.00 a.m., P.W.-3 and P.W.-5 went to their plot of land on a bullock cart with fertilizers. After the fertilizers were dumped and on the way back the incident took place. When P.W.-3 and P.W.-5 had gone to dump the fertilizers, P.W.-1 and P.W.-10 were at their house. P.W.-1 and P.W.-10 heard some commotion and, therefore, stepped out of the house and found that P.W.-3 and P.W.-5 were being assaulted by the accused in front of the house of the accused and accused no.3 assaulting P.W.-3 and P.W.-5 saying “Amche Shetaton To Khatachi Bailgadi Bharoon Kaa Gelas?”. The other accused were also around and they were abusing P.W.-3 and P.W.-5 and assaulting with a spade, axe and pickaxe. P.W.-1 and P.W.-10, who went to save P.W.-3 and P.W.-5 also got assaulted in the melee. At that time, P.W.-4 and one Pandurang Yenpe (who has not been examined) arrived at the spot and separated P.W.-1, P.W.-3 and P.W.-5 from the accused. One Rajkumar D. Waghmode, who has not been examined, came on the spot and he also sustained injuries. Thereafter, P.W.-1, P.W.-3, P.W.-5 and P.W.-10 went to village Nandur, they were brought at Mangalwedha Police Station and police referred them to the hospital for treatment. From that place they went to Solapur Hospital for further treatment.

6 On 31st May 2000, P.W.-1 lodged the complaint against the accused that the accused assaulted P.W.-1, P.W.-3, P.W.-5 and P.W.-10 with spade, axe and pickaxe and also rained punches and kicks on them. A report was registered and spot panchnama was prepared, weapons were seized, the accused were arrested and charge sheet came to be filed. Charges were also

framed. The accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and that due to the previous dispute and pending litigation between two families, complainant has filed false complaint against them.

7 What we have to note is P.W.-1, P.W.-3, P.W.-5 and P.W.-10 are interested witnesses and also material witnesses. P.W.-4 is an eye witness. P.W.-2 and P.W.-9 are panch witnesses for seizure of weapons and both have turned hostile. P.W.-7 and P.W.-8 are police witnesses and P.W.-6 is a medical officer.

8 P.W.-1, P.W.-3, P.W.-5 and P.W.-10 have maintained that they were assaulted by the accused, which caused them injuries and also have mentioned about the means used for the assault. P.W.-4 has supported the case of P.W.-1, P.W.-3, P.W.-5 and P.W.-10. It is also come on record that the accused and P.W.-3 own adjacent properties and there has been long drawn dispute going on between the two and there are litigation pending in court between the two. In view of this background, the evidence of P.W.-1, P.W.-3, P.W.-5 and P.W.-10 have to be very carefully scrutinized.

9 One of the inconsistencies, I find, is the spot of the incident. The FIR Exhibit 37 does not disclose that the incident happened in the property of P.W.-3. P.W.-1 says that when P.W.-3 and P.W.-5 were returning after dumping the fertilizers the incident took place in front of the farm house of accused no.2. P.W.-1 further says the incident took place in the landed property of P.W.-3. P.W.-3 himself does not say that it happened in his land as deposed

by P.W.-1. P.W.-5 says that when he and his father (P.W.-3) had gone to their land with the bullock cart loaded with fertilizers and on their way back accused no.3 Sambhaji came across the cart. But does not state that the incident happened in the land of P.W.-3. P.W.-10 says when she alongwith P.W.-1 came to the field and saw all the accused were beating P.W.-3. But does not say that the incident took place in front of the farm house of accused no.2 and in the land of P.W.-3. But the evidence concluded that there is a Government road on the Northern side of the land and there is no cart road through the lands of the accused. The evidence also shows the farm house of accused no.2 was at distance of 500 ft. from the road. Therefore, it is difficult to accept that the incident happened in front of the farm house of accused no.2 or that P.W.-3 or P.W.-5 had any occasion to pass in front of the house of accused no.3.

10 On the point of incident of assault, according to P.W.-1, at the relevant time, the accused were abusing P.W.-3 and, therefore, she rushed there. P.W.-10 also says that after hearing noise, she reached the spot alongwith P.W.-1 but P.W.-5 does not corroborate this version of P.W.-1 and P.W.-10. P.W.-5 says that from the spot of incident he rushed to the house and informed P.W.-1 and P.W.-10 about the incident and thereafter, reached on the spot alongwith P.W.-1 and P.W.-10.

P.W.-4 has not deposed about the presence of P.W.-1 and P.W.-10 or they being assaulted. Therefore, there is no uniformity in the evidence of P.W.-1, P.W.-3, P.W.-5 and P.W.-10 on the point of incident of assault and also the

weapons used by the specific accused.

11 As regards seizure of the weapons, i.e., spade, axe and pickaxe, both panch witnesses P.W.-2 and P.W.-9 have turned hostile and they denied the seizure of weapons from accused no.1. When both panch witnesses have turned hostile and in view of the inconsistencies on the point of assault as noted above, I cannot gather myself to accept the version of I.O. – P.W.-7. Strangely, I.O. P.W.7 says accused no.1 was not arrested when the weapons were seized from him.

12 Even in the medical evidence for the injuries sustained by P.W.-1, P.W.-3 and P.W.-10, P.W.-6 the Medical officer of Solapur Hospital specifically states that these three were not referred to him by the police. P.W.-6 also says he has not given any treatment to P.W.-1, P.W.-3 and P.W.-10 and they had already taken treatment previously before he even examined them. Prosecution has also not produced any documentary evidence in respect of examination of P.W.-1, P.W.-3 and P.W.-10 and the treatment given to them before they were examined by P.W.-6. These create a doubt about the injuries as noticed on P.W.-1, P.W.-3 and P.W.-10.

13 As against this, the accused have come with a specific case of previous enmity and that there are disputes between the two families over the land and litigation are pending. Prosecution has to prove beyond reasonable doubt whereas the stand of defence can be considered on preponderance of probabilities.

The fact that the seizure of weapons itself has not been proved, the

charges under Sections 148 and 324 also has to fail in view of the inconsistency in the testimony of P.W.-1, P.W.-3, P.W.-5 and P.W.-10. As noted earlier, even the charge under Section 147 cannot be stated to have been proved.

14 The Apex Court in ***Ghurey Lal Vs. 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 reappreciate 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.

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

¹(2008) 10 SCC 450

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.

15 There is an acquittal and therefore, there is double presumption in favour of 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, accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

16 Moreover, the incident happened almost 21 years ago and the sentence, which was awarded by the Trial Court was also only 6 months.

After perusing the order, I must keep in mind the large consideration of the jurisdiction like, the incident being over 21 years ago and the sentence which could be awarded, even if convicted, I am of the view in addition to the reasons expressed earlier, no case for interference is made out with the impugned order.

17 Appeal dismissed.

(K.R. SHRIRAM, J.)