

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.79 OF 2007**

The State of Maharashtra)
At the instance of Sonu Dagdu)
Jorkar, Age 55, Occ: Agriculture)
R/o Nigde, Tal. Mahad)
District Raigad) ..Appellant

V/s.

1 Krishna Ganpat Jorkar)
Age 37 years)

2 Ramchandra Anaji More)
Age 35 years)

3 Vishnu Babaji More)
Age 35 years)

All R/o Nigde, Tal . Mahad)
District Raigad) ..Respondents
(Ori. Accused nos.1 to 3)

Mrs. Anamika Malhotra, APP for State
None for Respondents

**CORAM : K.R.SHRIRAM, J.
DATED : 4th JANUARY 2021**

ORAL JUDGMENT

1 This is an appeal impugning an order and judgment dated 29-1-2005 passed by Learned JMFC, Mahad, acquitting the accused for the offence punishable under Section 379 (*punishment for theft*), Section 447 (*punishment of criminal trespass*), Section 504 (*Intentional insult with intent to provoke breach of the peace*), Section 506 (*punishment for*

criminal intimidation) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code.

2 It is prosecution's case that the accused in furtherance of their common intention committed theft of teak trees and for that committed criminal trespass and intentionally insulted complainant and witnesses and also committed criminal intimidation. Admittedly, there have been fights between complainant and the accused and admittedly suit has been filed by the accused against complainant. According to prosecution, complainant and the accused all reside in the same village and owned adjacent fields. It is prosecution's case that on 6-5-2000, accused no.1 entered in complainant's field and illegally felled one teak tree and when complainant obstructed, P.W.-1 abused complainant and threatened that all the other teak trees would also be cut. Therefore, complainant lodged the complaint with MIDC Police Station and Forest Office but police only registered chapter case against accused no.1 and took no action. It is prosecution's case that all the accused together with one Adivasi person entered the field belonging to complainant and cut four more teak trees and it was witnessed by complainant Nana Jarkar and Dagdu Jarkar. At that time, the accused were holding an axe, while said Adivasi person was holding a sickle. During the melee, accused no.3 abused P.W.-2 Dagdu Jarkar. Complainant then made complaint to the village Police Patil and he witnessed the whole situation and took the axe and sickle into his custody. Accused are supposed to have felled, therefore, five teak trees and took away four out of five teak trees.

Hence, complainant lodged private complaint on 10-5-2000 and after obtaining sanction under Section 156(3) of Cr.PC, MIDC police commenced investigation. Crime was registered, spot panchnama was made, instruments used for cutting the trees were recovered from the Police Patil, statements of witnesses were recorded and as sufficient evidence was found, charge sheet was submitted. Accused pleaded not guilty and claimed to be tried. It is the defence of accused that it is a case of false implication in view of previous enmity and civil suit filed by the accused against complainant.

3 To drive home the charge, prosecution led evidence of 4 witnesses namely; complainant as P.W.-1, Nana Jarkar as P.W.-2, Subhash More as P.W.-3 and Investigating Officer as P.W.-4. P.W.-2 and P.W.-3 are eye witnesses. Strangely, the Police Patil, who had seized the weapons has not been examined and the spot panch witness has also not been examined.

4 Having considered the evidence I am not satisfied that P.W.-2 and P.W.-3 actually witnessed the incident. P.W.-1 – complainant does not state that on 6-5-2000, when the accused cut one teak tree, P.W.-3 was present but P.W.-3 in his evidence says that on 6-5-2000 he witnessed accused nos.2 and 3 cutting the trees and accused no.1 was present. But P.W.-1 says that accused nos.2 and 3 were present with Adivasi person on 7-5-2000. P.W.-3 does not mention anything about Adivasi person being present and that Adivasi person has not been made an accused. P.W.-1 admits that prior to this complaint, accused no.1 had filed a civil suit against him. P.W.-1 also admits that in the complaint the time of incident of 6-5-2000 is not given

and in the complaint of 7-5-2000 also time of lodging of complaint on 6-5-2000 is not given. P.W.-1 says that on 7-5-2000 in all five teak trees felled were lying in field but on 8-5-2000 only one teak tree was lying and rest of the trees were taken away. Who took the trees ? and whether those stolen trees were recovered ? what happened ? there is no evidence.

P.W.-2 says at the time of incident he and P.W.-1 were going to wada, at that time they heard noise in the field belonging to complainant. P.W.-1 does not say that. P.W.-2 says at that time all the accused and Adivasi person were present in the field and they had cut teak trees and they were present till the police did the panchnama. None of these are stated by P.W.-1-complainant. P.W.-2 also admits that since long there has been a dispute between complainant and the accused with regard to the field. P.W.-2 states that he never informed the police that in the land "Kumbhyacha tep", which is spot of the incident, the construction of his wada was going on but he cannot assign any reason why it is appearing in the statement before police. P.W.-2 also says that he cannot assign any reason why in his statement to the police it is appearing that all the four trees were on the bund of the field whereas the teak trees were lying on the field. According to P.W.-2 when he went to the field, at that time all four teak trees had been cut and complainant was present there which means he has not witnessed the accused cutting the trees. P.W.-2 also is unable to explain why in his statement to the police it is recorded that five teak trees were cut when actually only four trees were cut.

5 P.W.-3 also admits about the civil dispute between complainant and accused no.1. P.W.-3 admits that in his police statement, it appears that the land “Kumbhyacha tep”, which is the spot of the dispute, is situated in jungle area. P.W.-3 admits in his cross-examination that at the time of incident he was repairing the roof tiles of wada of P.W.-2, is not found in the statement recorded by the police.

P.W.-4 says that at the time of spot panchnama, he found five felled teak trees. P.W.-1 and P.W.-2 says only four trees were felled. P.W.-4 also admits that he has not seized three trees which were missing. Strangely, cutting instruments have been received from Police Patil but Police Patil is not examined and that also has been seized one year after the order issued by the court under Section 156(3) of Cr.P.C. P.W.-4 also admits that there has been dispute between accused no.1 and complainant.

6 The onus is on the prosecution to prove beyond reasonable doubt the offence charged against the accused. Whereas the defence only has to prove preponderance of probabilities.

There is no evidence regarding taking away the said teak trees dishonestly by the accused and the accused cannot held guilty of the crime of theft of teak trees. I have to note that strangely, P.W.-4 has not applied his mind and done his work judiciously and, therefore, the recording of evidence of panch witness was very necessary. Considering the evidence of P.W.-4, it is very difficult to say that panchnama of spot as well as recovery of instruments used for cutting the trees having duly proved by the

prosecution. There is no explanation also as to why panch witness and the Police Patil could not be called to give evidence. P.W.-1 to P.W.-3 though are mentioning about the felling of trees, do not speak about the accused taking away the trees. Merely proving that the land belonged to complainant or the accused felled the trees, would not be enough to show that the ingredients of Section 379 of IPC have been met. P.W.-4 does not seem to have made any investigation regarding the trees or seized the trees.

7 So far as offence of intentional insult and criminal intimidation is concerned, P.W.-2 and P.W.-3 according to prosecution have also been abused and threatened by the accused but both do not ever make a whisper in their testimonies that they were abused and threatened by the accused. This also raises a question on the truthfulness of the testimony given by the witnesses. P.W.-1's evidence is vague and contrary and without corroboration it will not be possible to believe P.W.-1.

8 Similarly, for criminal trespass, the evidence of P.W.-2 and P.W.-3 is also silent about the Gat Number and in view of the fact that the testimony of witnesses are not reliable, it cannot be said with certainty that the accused are also guilty of criminal trespass.

9 The Apex Court in ***Ghurey Lal V/s. State of U.P¹*** 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 :

1. (2008) 10 SCC 450

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 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.

10 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 respondents and such presumption is strengthened by the order of acquittal passed in their 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

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

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.

11 I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against the accused.

12 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.

13 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.

14 Appeal dismissed.

Meera
M.
Jadhav

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by Meera M.
Jadhav
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(K.R. SHRIRAM, J.)