

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.977 OF 2003**

State of Maharashtra	)Appellant/Complainant
V/s.	
1. Gopal Mahadev Godkar	)
Age : 35 yrs.,	)
R/o. Aravali Tank, Taluka – Vengurla,	)
District – Sindhudurg	)
2. Gitanjali Gopal Godkar	)
Age : 28 yrs.,	)
R/o. Aravali Tank, Taluka – Vengurla,	)
District – Sindhudurg	)
3. Yogita Ladoba Godkar	)
Age : 19 yrs.,	)
R/o. Aravali Tank, Taluka – Vengurla,	)
District – Sindhudurg	)Respondents/accused

Mrs. M.M. Deshmukh, APP for State – Appellant.

Ms. Yashaswita Apte i/b. Mr. Harshad Bhadbhade for respondent nos.1 to 3.

**CORAM : K.R.SHRIRAM, J.
DATE : 25th JUNE 2021**

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 8th May 2003 passed by Judicial Magistrate First Class, Vengurla, acquitting respondents (accused) of offences punishable under Sections 323 (*Punishment for voluntarily causing hurt*), 324 (*Voluntarily causing hurt by dangerous weapons or means*), 325 (*Punishment for voluntarily causing grievous 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 According to prosecution, complainant who was the owner of land survey no.291 at village Aravali, Taluka Vengurla, where he was growing cashew nuts and surangi flowers, on 19th March 1997 early morning, when his first wife and son went to the land for maintenance of the cashew nuts and flower plants, complainant heard accused no.1's voice abusing somebody. Complainant (PW-1) got concerned so he rushed to the spot from where the voice was emanating and he was accompanied by his second wife. When complainant reached the spot, he saw accused no.1, his wife, accused no.2 and his niece - accused no.3, were beating his first wife and her son with weapons, namely, accused no.1 had stick in his hand and accused nos.2 and 3 had iron bars in their hand. On seeing complainant, accused no.1 rushed with the stick in his hand towards complainant and hit complainant with the stick. Complainant blocked the stick with his forearms resulting in serious injuries to his forearms. At that time, accused also assaulted second wife of complainant and then went away. Thereafter, Complainant and all other injured persons went in an auto rickshaw to the Rural Health Centere, Shiroda for medical treatment. From the Hospital, PW-3 called the police over telephone. The police arrived at the hospital and recorded complaint/ report of PW-1. Statements of other injured were also recorded. Next day with the police they all visited the sport of offence and in the presence of panch witness spot panchnama was carried out.

3 In the course of investigation, accused were arrested and the sticks and two iron bars, which were used for the attack, were recovered from the possession of accused no.3. After completion of investigation, chargesheet was filed. The accused pleaded not guilty and claimed to be tried.

4 It is the case of the accused that admittedly, there were a scuffle that took place in the land bearing survey no.290 that was belonging to accused and not in survey no.291 as alleged by complainant and it was the prosecution's witness who had assaulted the accused and caused serious injuries. According to the accused, injuries were sustained by the prosecution's witness when they fell down during the scuffle. The accused have also filed complaint against prosecution's witness and this was a counter blast.

5 To drive home the charge, prosecution has examined 9 witnesses. PW-5 and PW-6, who are panch witnesses for seizure of the weapons used in the offence, have turned hostile. Attempt to prove the seizure was made through the investigating officer that is PW-9. Trial Court has rightly come to the conclusion that P.W.-9 has carried out a biased investigation in favour of complainant. P.W.-9 in his cross examination admits that he was aware that the witnesses in the present case were the accused in the counter criminal case filed by the present accused and that the witnesses have also admitted the fact. P.W.-9 also admits that at the time of arrest, panchnama of accused no.1 was prepared on 19th March 1997.

P.W.-9 found marks of beating on the body of accused no.1 and there was also swelling on his hand but P.W.-9 did not bother to enquire further. PW- 9 investigating officer also admits that the arrest panchnama of accused nos.2 and 3 also shows that at the time of arrest there were injuries on the head, knee, hands and legs of accused no.3 and there were injuries on right hand and stomach of accused no.2. P.W.-9 does not seek explanation for these injuries from the prosecution's witnesses at that stage. P.W.-9 also has not investigated about the injuries sustained by the accused because it is the case of the accused that these injuries were caused by prosecution's witnesses, therefore, the trial court was correct in concluding that the prosecution has suppressed material facts from the court and P.W.-9 has carried out a biased investigation in favour of complainant.

6 Further, there were many houses near the place of incidence but no independent witness has been examined. P.W.-4, who is the panch witness for the spot, in his examination has admitted that P.W.-1 complainant is his brother-in-law, i.e, husband of his sister. P.W.-4 says that he lives 3-4 km away from the place of incident and on the day of panchnama he had gone to his sister's house at which time, police called him to act as Panch witness. P.W.-4 admits in his cross examination that he did inform the police that complainant was married to his sister. Notwithstanding that, the prosecution did not call an independent panch witness which is very relevant from what I have observed earlier that the investigating officer has carried out a biased investigation. Investigating

officer also has admitted that land bearing survey no.290 and survey no.291 are adjacent to each other and there is a dispute going on between the family of complainant and the family of accused.

7 Trial Court, therefore, was right in concluding that the prosecution has not proved its case beyond reasonable doubt. P.W.-1 has also admitted that Vengurla police have a summary criminal case against him, his son and two wives on the allegations that on 19th March 1997, that is the same day of the incident, between 7.30 a.m. to 8:30 a.m. they assaulted accused no.1 and accused no.3 with sticks and stones and caused injuries to them. P.W.1 also admits that a year later another complaint has been filed by accused no.1 against complainant, his son, P.W.2 and some other persons for attempt to commit murder of accused no.1 and his brother and P.W.-1 was arrested. P.W.-1 admits that there is a dispute between his family and family of accused with respect to land bearing survey no.290 and the accused have filed complaint against him in the police station relating to the land dispute.

8 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

1. (2008) 10 SCC 450

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.

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

9 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.

10 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.

11 Appeal dismissed.

(K.R. SHRIRAM, J.)