

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.146 OF 2006**

The State of Maharashtra) ..Appellant

V/s.

Uday Baburao Salgar)
Aged 33 yrs., Occupation Construction)
R/o Meerswami Chawl,)
Murarji Peth, Solapur) ..Respondent

Ms. P. N. Dabholkar, APP for State
Mr. I. M. Khairdi for Respondent No.1

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

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 29th January 2005 passed by Learned Chief Judicial Magistrate, Solapur, acquitting respondent (accused) of offence punishable under Sections 504 (*Intentional insult with intent to provoke breach of the peace*) and 506 (part II) (*Punishment*) of the Indian Penal Code.

2 It is prosecution's case that complainant -Manjusha Nilkanth Kulkarni (PW-2) was residing with her family at 114/6, Murarji Peth at Solapur. PW-1 was a maid working in her house. On 17th May 2003, at about 4.30 p.m., PW-1 was washing utensils in the house of PW-2, at which time, PW-2

heard P.W.-1 shouting. When P.W.-2 came out of the house to see what was the commotion, she saw P.W.-1 was covered in dirty water. When inquired, P.W.-1 informed P.W.-2 that one Mrs. Pawar who resides on the 1st floor threw dirty water on P.W.-1. When P.W.-2 confronted the said Mrs. Pawar, accused came there and told that he told Mrs. Pawar to throw dirty water on P.W.-1. Accused then went to his house and brought a sword and rushed towards P.W.-2 and threatened to kill her husband. P.W.-1 and P.W.-4 are eye witnesses of the incident. Thereafter, FIR came to be lodged and investigation was entrusted to P.W.-3, spot panchnama was drawn, accused was arrested and released on bail. After completion of investigation, charge sheet came to be filed. Accused pleaded not guilty and claimed to be tried. According to accused, witnesses are tenants and, therefore, deposed against him.

3 According to P.W.-2, accused abused P.W.-2 at the time of incident but that has not come in the evidence of P.W.-1. The version of P.W.-2 that accused went into his house and brought the sword and rushed towards P.W.-2 with the sword is also not corroborated by P.W.-1. P.W.-1 does not mention in her evidence about accused bringing the sword and rushing towards P.W.-2. Strangely, P.W.-1 in her cross-examination admits that she has no personal knowledge of the incident. P.W.-1 also admits in her cross-examination that as P.W.-2 supports her, she gave a statement in favour of P.W.-2 before the police. On the abusive words used by accused, P.W.-2 and

P.W.-4 state two different things. P.W.-2 says “हरामखोर साली मादरचोद.” whereas, P.W.-4 says “नवऱ्याच्या रक्ताचा सडा टाकेन” . P.W.-4 also does not corroborate the statement of P.W.-2 that accused went inside the house and came out with a sword in his hands and rushed towards P.W.-2

What is also to be noted is that I. O. has not recovered the sword alleged to have been used by accused at the time of incident. There are various such grounds raised by the Trial Court for acquitting accused. In my attempt to keep the judgment short, I am not reproducing or dealing with all such grounds. Suffice to say, I agree with it.

4 I have perused the impugned judgment, considered the evidence and also heard Ms Dabholkar, learned APP. 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 accused.

5 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 their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court

rightly observed that the prosecution had failed to prove its case.

6 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.

7 Appeal dismissed.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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by Meera M.
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