

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.147 OF 2008**

The State of Maharashtra  
(Through Samarth Police Station, Pune) ....Appellant/Complainant  
V/s.

1. Suresh Baburao Mahadik  
Age : 52 years, Occu.: Service  
R/o. Prathamesh Society, Market Yard,  
Pune Plot No.6, Pune

2. Sou. Jyoti Suresh Mahadik  
Age : 47 years, Occu.:Household work,  
R/o. Prathamesh Society, Market Yard,  
Pune Plot No.6, Pune

3. Sumit Suresh Mahadik  
Age : 20 years, Occu.: Education  
R/o. Prathamesh Society, Market Yard,  
Pune Plot No.6, Pune

4. Rahul Ramesh Mahadik  
Age : 18 years, Occu.: Education  
R/o. 35/4, Kamal Vihar,  
Mohannagar Dhankwadi, Pune

.....Respondents/Accused

-----  
Ms. Anamika Malhotra, APP for State – Appellant.  
None for respondents.

-----  
**CORAM : K.R.SHRIRAM, J.  
DATE : 5<sup>th</sup> JANUARY 2021**

**ORAL JUDGMENT :**

1            This is an appeal impugning an order and judgment dated  
4<sup>th</sup> August 2005 passed by the Judicial Magistrate First Class, Pune,  
acquitting the accused of offences punishable under Sections 452 (*House-  
trespass after preparation for hurt, assault or wrongful restraint*),  
448 (*Punishment for house-trespass*), 323 (*Punishment for voluntarily  
causing hurt*), 427 (*Mischief causing damage to the amount of fifty rupees*)

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

2 According to informant Milind Kashinath Mahadik (PW-1) on 21<sup>st</sup> October 2002 at about 10.30 p.m. the accused came to the house of PW-1 and assaulted PW-1 and his sister Sulabha (PW-3) by punching and kicking them due to some dispute over money transaction. At that time, when Vishwanath Mahadik, the uncle of PW-1, who has not been examined and Nirmala, the mother of PW-1, who also has not been examined, intervened to separate the accused and PW-1, they also suffered injuries. According to prosecution, house article worth of Rs.2,000/- belonging to PW-1 were also damaged in the incident. After the incident, Arti (PW-2), the wife of PW-1, went to Sant Kabir Police Chowky and brought the police to the spot. Police issued a yadi for medical examination of PW-1 and PW-3. Accordingly, PW-1 and PW-3 were sent to Sassoon Hospital and after medical examination, went again to Sant Kabir Police Chowky.

3 On 22<sup>nd</sup> October 2002, police recorded the information given by PW-1 as a non-cognizable case. On 23<sup>rd</sup> October 2002, PW-1 went to the office of Assistant Commissioner of Police, Pune and on whose instructions, FIR came to be registered on 1<sup>st</sup> November 2002. Investigation was given to PW-6, who collected injury certificates, prepared spot panchnama, arrest panchnama and recorded statement of witnesses. After investigation, chargesheet was filed and charges were framed. The accused pleaded not

guilty and claimed to be tried. The defence of the accused was there were some disputes regarding loan taken by PW-1 and the change of name in the rent receipt and to derail those disputes, this false complaint has been filed.

4 To drive home its charge, prosecution has examined six witnesses, viz., Informant Milind Kashinath Mahadik as PW-1, Arti Milind Mahadik, wife of PW-1 as PW-2, Sulbha Kashinath Mahadik, sister of PW-1 as PW-3, Rajesh Khatri, panch witness as PW-4, Dr. P.R. Raidasani, Medical Officer as PW-5 and H.B. Patel, Investigating Officer as PW-6.

5 Prosecution mainly relied on three eye witnesses, i.e., PW1, PW-2 and PW-3. PW-1 in his deposition states that the accused without saying anything started throwing household articles randomly but that is not mentioned in the FIR. It is prosecution's case that all the four accused assaulted PW-1, PW-3, Nirmala, mother of PW-1 and Vishwanath, uncle of PW-1. But PW-1 in his testimony has only deposed about injury sustained by him during the incident. The evidence of PW-1 is silent about accused assaulting PW-3, mother Nirmala and uncle Vishwanath.

6 PW-2 has deposed that on 21<sup>st</sup> October 2002 at about 10.30 p.m. accused nos.1 to 4 entered the house and started a scuffle and thereby punched and kicked PW-1. PW-3, Nirmala and Vishwanath tried to intervene. But the fact that the accused punched and kicked PW-1 and also PW-3 is not found in the statement given by PW-2 to the police. PW-6, the Investigating Officer, admits in his cross examination that PW-2 did not tell him that the

accused assaulted PW-1 by kicking and punching or that they assaulted PW-3. This is a material omission.

PW-3, in her deposition, has stated that when she tried to intervene the incident of beating, she sustained injury on her teeth and gums due to an assault by accused no.3 and she was bleeding from her mouth. PW-6, the Investigating Officer, in his cross examination, states that PW-3 never mentioned that accused no.3 assaulted her and due to which she was bleeding from her mouth. PW-1 and PW-2 also do not mention anything about PW-3 getting a blow on her mouth and bleeding from her mouth.

PW-5, the Medical Officer, curiously states that except the cause of the injuries, other things are correct in the injury certificate and the injury certificate does not disclose cause of injuries as well as age of injuries.

7 PW-1, PW-2 and PW-3 are interested witnesses. Though that cannot be a reason to discard their testimony, the evidence has to be scrutinized closely. There are material omissions in the evidence of PW-2 and PW-3 as noted earlier. Even the testimony of PW-1, PW-2 and PW-3 is not consistent on the incident of beating.

8 PW-3, in her cross examination, states that in the area, where this incident happened, there are about 70 families. PW-3 has also stated that people, who are residing nearby, had gathered on the spot at the time of incident. But there are no independent witnesses. There is no explanation from prosecution as to why none of them were called to give evidence.

Therefore, in my view, adverse inference under Section 114 illustration (g) of the India Evidence Act has to be drawn.

9           For house trespass, one of the point which requires to be kept in mind is that the accused should have nothing to do with that house. But admittedly in this case, rent receipt in respect of the house, in which PW-1 resides and the incident happened, is in the name of the father of accused no.1. Under such circumstances, how can someone infer that the entry of the accused into the house of PW-1 was with an intention to commit an offence or to intimidate insult or annoy PW-1 and his family. There is also no evidence to prove that the accused committed house trespass and it was committed after making preparation for causing hurt or assaulting or for wrongful restraining some person or for putting some person in fear of hurt, assault or wrongful restrain.

10           It is the case of the defence in the form of suggestion made in the cross examination that PW-1 had taken a loan of Rs.50,000/- from Sholapur Janta Sahkari Bank with the help of accused no.1. But PW-1 was not paying the loan installments. It is also the case of defence that the house, in which PW-1 resides, is in the name of the father of accused no.1 as tenant and PW-1 was trying to have his name entered in the rent receipt which strained the relationship between the accused and PW-1. PW-1 admits that the rent receipt of the house stood in the name of the father of accused no.1. PW-1, however, denied that he had taken a loan of Rs.50,000/- with the

assistance of accused no.1 from Sholapur Janta Sahkari Bank and also denied that he was not repaying the loan installments. PW-1 had made a false statement in evidence and that is evident from the testimony of PW-6, the Investigating Officer, who states that PW-1 had taken a loan of Rs.50,000/- from Sholapur Janta Sahkari Bank and during the investigation, it was revealed that PW-1 was not paying installments to repay the loan.

11           The spot panchnama was also prepared 10 days after the alleged incident and it is written in the spot panchnama that broken articles were kept adjacent to the wall. First of all, it is difficult to believe that for 10 days, after the alleged incident, the articles remained here and there but the panch witness has deposed that the articles were thrown here and there randomly and not kept adjacent to the wall. Therefore, I cannot find fault with the conclusion arrived at by the Trial Court to acquit the accused.

12           The Apex Court in ***Ghurey Lal V/s. State of U.P.***<sup>1</sup> 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*

---

1. (2008) 10 SCC 450

*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.*

13           The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***<sup>2</sup> 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***<sup>3</sup> 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

14 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, 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.

15 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.

16 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.

17 Appeal dismissed.

**(K.R. SHRIRAM, J.)**

Gauri A.  
Gaekwad  
Digitally signed  
by Gauri A.  
Gaekwad  
Date:  
2021.01.07  
16:57:58 +0530