

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.148 OF 2008**

The State of Maharashtra

....Appellant/Complainant

V/s.

1. Bhimrama Sidhagonda Jawalgi
Age – 35 years, Occu.: Agriculture,
R/o. Jamapur Shirval, Taluka - Akkalkot

2. Sidhagonda Bhimrama Jawalgi
Age – 65 years, Occu.: Agriculture,
R/o. Jamapur Shirval, Taluka - Akkalkot

3. Shivanand Sidhagonda Jawalgi
Age – 20 years, Occu.: Unemployed,
R/o. Jamapur Shirval, Taluka - Akkalkot

.....Respondents/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

Mr. Sameer Kumbhakoni for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 5th JANUARY 2021

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 1st October 2005 passed by the Judicial Magistrate First Class, Akkalkot, acquitting four accused of offences punishable under Sections 325 (*Punishment for voluntarily causing grievous hurt*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) and 506 (*Punishment for criminal intimidation*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code (IPC).

2 Complainant (PW-2) was residing in South Solapur alongwith her sister and children near Jeur village. According to prosecution, PW-2 and

her relatives were having land admeasuring 4 H and 13 guntas and they were cultivating the same. PW-2 had purchased land from one Sidhagonda Bhimrama Jawalgi in the year 1988 and some time in March 2003, 15 years later, the name of the purchaser was noted in the 7/12 extract. Therefore, on 28th May 2003 at about 9.00 a.m., PW-2 and her sister (PW-4) went to the said land to worship the plough. At that time, the adjacent land holder, i.e., the accused, who are also related to complainant, objected to PW-2 worshipping the plough and started abusing them and beating them with sticks. PW-2 and PW-4 sustained injury. The accused allegedly protested to PW-2 and PW-4 doing the puja to the plough because according to accused the land belonged to accused. When PW-2 tried to explain that she has purchased the land but the accused denied that she could have purchased the land and continued with the assault. Thereafter, the accused left the place. There were no eye witnesses. PW-2 went and narrated the incident to the Valsang police, who referred PW-2 and PW-4 for medical treatment to Civil Hospital, Solapur. After treatment, they went back to Valsang police. At that time, they were informed that the jurisdiction is of Akkalkot South Police Station and therefore, they lodged the complaint in Akkalkot Police Station on 6th June 2003. FIR was registered, investigation commenced, spot panchnama etc. was prepared and after receiving the medical certificate etc. chargesheet was filed and charges were framed. The accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and false implication. After considering the evidence, the Trial Court was

pleased to acquit the accused. I concur with the conclusions arrived at by the Trial Court.

3 There are no eye witnesses. Therefore, the only evidence that would be material is of PW-2 and PW-4. In the cross examination, PW-2 admits that her husband and accused no.1 are brothers and PW-2 was the daughter of the sister of mother of accused no.1, which means PW-2, complainant and accused no.1 were cousins. In the cross examination, PW-2 admits that in the complaint she has not mentioned about worshipping the plough but only says was worshipping the field. In the complaint PW-2 is also silent about accused no.2 and accused no.3 assaulting her. PW-4, the sister of PW-2, in her cross examination admits that they are close relatives of the accused and upto 2003 the name of the purchaser was not recorded for land Gat No.27/1, which is the land on which the incident happened, though it was purchased almost 16 years prior thereto. PW-4 also admits the dispute between the accused and PW-2 and PW-4 about mutating their name on the land records. PW-5, the Doctor, in his cross examination, states that he examined PW-2 Kantabai at about 4.30 p.m. and thereafter, examined another injured. But in the medical report, it is mentioned that both were examined at the same time at 4.30 p.m. I wonder how that was possible to examine two witnesses simultaneously. PW-4 in her evidence states that accused abused in filthy language but in the statement before police there is no mention specifically about filthy language being used by the accused.

4 PW-6, the panch witness who turned hostile, states that police did not prepare the spot panchnama in his presence and he has signed the panchnama in the police station.

5 The incident occurred on 28th May 2003 but complaint is filed on 7th June 2003. PW-2, in her evidence, states that she lodged the complaint before Valsang police on 28th May 2003 and later she was told that the jurisdiction was with Akkalkot South Police Station and hence, she filed complained with Akkalkot South Police Station on 7th June 2003. But the complaint filed before Valsang Police Station is not proved. The defence has taken a stand that though PW-2 and PW-4 state that their family members purchased the said land 20 years ago, the possession has always been with the accused and after passing of order by Tahsildar on 5th March 2003, PW-2 and PW-4 illegally attempted to take possession to which the accused objected. The order passed by the Tahsildar has been set aside by the Sub Divisional Officer and a certified copy has also been produced. The 7/12 extract shows the name of accused no.1.

6 The fact that in the evidence of PW-2 and PW-4 and even in the complaint, there is no mention of assault by accused nos. 2 and 3 but they having dragged them in the entire case also shows that the complainant with the aide of the State machinery, prosecution, just wanted to involve the family and harass the accused. There are various other points also raised by the Trial Court to justify the order of acquittal with which I concur.

7 The Apex Court in ***Ghurey Lal V/s. 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 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";

1. (2008) 10 SCC 450

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.

8 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.

2. (2014) 5 SCC 730

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.

9 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.

10 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.

3. 1996 SCC (cri) 972

11 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.

12 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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