

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.162 OF 2008**

The State of Maharashtra

....Appellant/Complainant

V/s.

1. Eknath Chandrakant Shinde
Age – 20 years, Occu: Labour Work,
R/o. Savitribai Phulenagar, Atpadi,
Taluka – Atpadi, District – Sangli

2. Vishnu Shankar Deokar
Age – 30 years, Occu: Labour Work,
R/o. Savitribai Phulenagar, Atpadi,
Taluka – Atpadi, District – Sangli

3. Sau. Meenabai Chandrakant Shinde
Age – 40 years, Occu: Household,
R/o. Savitribai Phulenagar, Atpadi,
Taluka – Atpadi, District – Sangli

4. Sau. Laxmi Vishnu Deokar
Age – 25 years, Occu: Household,
R/o. Savitribai Phulenagar, Atpadi,
Taluka – Atpadi, District – Sangli

.....Respondents/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

Mr. Vikram Parmar i/b. Mr. Sudatta J. Patil for respondents.

CORAM : K.R.SHRIRAM, J.
DATE : 5th JANUARY 2021

ORAL JUDGMENT :

1 At the outset, Mr. Parmar instructed by Mr. Sudatta Patil for respondents seeks an adjournment. Adjournment refused since this is an appeal filed in 2008.

2 This is an appeal impugning an order and judgment dated 16th November 2005 passed by the Judicial Magistrate First Class, Atpadi, acquitting the accused of offences punishable under Sections 325

(Punishment for voluntarily causing grievous hurt), 323 (Punishment for voluntarily causing hurt) and 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 Indian Penal Code (IPC).

3 It is the case of prosecution that on 8th January 2002 when complainant (PW-1) was returning home from work at about 6.00 p.m. and was passing by the house of the accused, accused nos.3 and 4 abused her. Therefore, she went to her house and started abusing accused nos.3 and 4. At that time, accused nos.3 and 4 came to the house of PW-1 and pushed her at which time her son Madhukar (PW-2) came to rescue PW-1. Accused nos.1 and 2 punched and kicked PW-2. PW-2 was also beaten with sticks resulting in he started to bleed from his mouth. At that time, the brother and sister of PW-1, viz., PW-3 and PW-4, intervened and tried to rescue PW-1 and PW-2. At that time, accused nos.1 and 2 beat up PW-3 and PW-4. Thereafter, PW-1, PW-2, PW-3 and PW-4 went to the Police Station at Atpadi and lodged the complaint. Investigation was conducted and chargesheet was filed. The accused pleaded not guilty and claimed to be tried.

4 To drive home the guilt, prosecution examined six witnesses, viz., Janabai Kamble, complainant as PW-1, Madhukar Kamble, son of complainant as PW-2, Chandrakant Charvade, brother of complainant as PW-3, Sindhubai Kamble, sister of complainant as PW-4, Govind Baburao Jawir, panch witness as PW-5, and Dr. Uttam Chandanshive, Medical Officer

as PW-6.

5 I have to note that PW-5, the panch witness, turned hostile and the Investigating Officer has not been examined. Interestingly and which is the main dent in the case of prosecution is that the Investigating Officer was never examined. Illustration (g) of Section 114 of the Indian Evidence Act, 1872 provides the Court may presume that evidence which could be and is not produced would, if produced be, unfavourable to the person who withholds it. The fact that the Investigating Officer also has not been examined would show that if examined, his evidence would have been unfavourable to complainant. Non examining the Investigating Officer as a witness in the circumstances of the case would have caused grave prejudice to accused. The Apex Court in *Habeeb Mohammad V/s. The State of Hyderabad*¹ observed that it was the bounden duty of the prosecution to examine the Investigating Officer, who is a material witness in the case particularly when no allegation was made that if produced, he would not speak the truth and in any case, the Court would have been well advised to exercise its discretionary powers to examine the witness.

6 Therefore, adverse inference arises against the prosecution's case from its non production of the Investigating Officer as a witness in view of illustration (g) to Section 114 of the Indian Evidence Act. The Investigating Officer is the principal architect and executor of the entire investigation. He is a crucial witness for purposes of establishing that there

1. AIR 1954 SC 51

are omissions and contradictions but more importantly, it is always open to the defence to question the honesty and caliber of the entire process of investigation. It is well settled law that where an investigation is defective, insufficient or dishonest, those factors prove fatal to the prosecution. In the given instance, accused was totally precluded from an opportunity of being able to establish the further infirmities in the prosecution's case and on this ground alone, the order of acquittal will have to be confirmed.

7 The panch witness having turned hostile and the Investigating Officer not having examined, the spot panchnama and seizure panchama remained unproved. This itself creates a major dent on the charges framed. When we consider the evidence of PW-1 to PW-4, the question that arises is who reached first on the spot when accused nos.3 and 4 started abusing and beating PW-1. PW-2 states that he came from school and at that time accused were beating PW-1 and he intervened and he was beaten and at that time PW-3 and PW-4 came there. But PW-3 states that when PW-1 was being beaten by accused nos.3 and 4, he intervened and thereafter, PW-2 and PW-4 arrived at the spot. PW-4 states that she intervened in the quarrel and thereafter PW-2 and PW-3 came there. Therefore, the testimony of these witnesses creates doubt about the case of prosecution.

8 Another important aspect is regarding the sticks used by the accused. As noted earlier, the seizure panchnama is not proved. PW-2 states in his cross examination that the sticks were given to Police by them. If that

is the case, then how could the police seize the sticks at the instance of the accused? PW-2 further states that at the time of incident, accused nos.1 and 2 beat him on the chest, neck and head with sticks and his teeth fell down and he became unconscious. PW-1 and PW-3 do not state anything about PW-2 being unconscious. If PW-2 was unconscious on the spot, then how does PW-1 state that all the four (PW-1 to PW-4) went to the Police Station after the incident.

Strangely PW-4 states that PW-2 was unconscious for four days after the incident but PW-6, the Doctor, says on 8th January 2002 PW-2 was conscious and co-operative. PW-2 says there were blood stains found in his clothes after the incident but the clothes were not produced.

9 There are many such contradictions, omissions and lacuna in the evidence, which for the sake of brevity, I am not going into detail. Suffice to say, the observations of the Trial Court has my approval.

10 The Apex Court in ***Ghurey Lal V/s. State of U.P.***² 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. (2008) 10 SCC 450

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.

11 The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***³ 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***⁴ 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.

3. (2014) 5 SCC 730
4. 1996 SCC (cri) 972

12 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.

13 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.

14 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.

15 Appeal dismissed.

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date:
2021.01.07
16:44:39 +0530

(K.R. SHRIRAM, J.)