

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.422 OF 2008**

The State of Maharashtra

....Appellant/Complainant

V/s.

1. Sou. Vimal Dattajirao Jadhav
Age : 61 years, Occ.: Household work
R/o. Umbraj, Taluka – Karad, District -
Satara

2. Jayawant Dattajirao Jadhav
Age : 30 years, Occ.: Service
R/o. Umbraj, Taluka – Karad, District -
Satara

3. Madhav Dattajirao Jadhav
Age : 35 years, Occ.: Service
R/o. Umbraj, Taluka – Karad, District -
Satara

.....Respondents/Accused

Mrs. Anamika Malhotra, APP for State – Appellant.

Mr. Milind Deshmukh for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 22nd JANUARY 2021

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 13th September 2006 passed by the Additional Sessions Judge, Karad, Satara, by which the Sessions Court reversed the order of conviction passed by the Judicial Magistrate First Class, Karad and acquitted the accused of offences punishable under Section 324 (*Voluntarily causing hurt by dangerous weapons or means*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code (IPC).

2 This is a case where two brothers, who were neighbours, were fighting with each other over ancestral property and partition of land and

house properties. Accused no.1 was married to the brother of complainant (PW-1). Accused nos.2 and 3 are the sons of accused no.1 and their father Dattajirao was the brother of PW-1 Pandurang. Accused had filed a suit in which accused had obtained injunction order against complainant by which complainant was restrained from obstructing the construction of a latrine/ toilet and bathroom by the accused in the house. On 26th October 1992, accused no.2 and accused no.3 started digging the ground for laying a foundation for construction of a latrine and bathroom at which stage, complainant and his mother, who is the mother-in-law of accused no.1 and grand mother of accused no.2 and accused no.3, had raised obstruction for the construction. That resulted in a scuffle. It is alleged that accused pushed the mother and she suffered injuries. The defence is of denial and that in any event, accused have acted for their protection of their person and property and in self defence. According to defence, it comes under the exception of private defence under Section 96 of the Indian Penal Code.

3 Admittedly there is a dispute between the accused and complainant. Admittedly an injunction order has been obtained by the accused against complainant restraining complainant from obstructing the construction of a latrine/toilet.

4 As per the evidence of PW-1, accused had assaulted the mother of PW-1 an old lady by pushing the old lady and the old lady fell in a ditch and the accused had also assaulted her. However, the medical certificate of the old lady has not been produced on record. Moreover, PW-1 has not stated

what were the injuries that the old lady suffered. Therefore, it raises a doubt whether the accused had really pushed the old lady in the ditch. Moreover, the old lady was 90 years old at the time of the incident. It was also suggested in the cross examination that she was bedridden and she was not in a position even to move. I have my own doubts whether the old lady was present at the spot because PW-3, the wife of complainant (PW-1), has admitted that they had not taken the old lady to the police station. If the accused had infact assaulted the old lady, I would assume that complainant would have taken the old lady to the police station and then to the Doctor for treatment. From this circumstance, it does look like that the prosecution to make the incident grievous included the old lady Housabai in the FIR.

5 PW-1 has stated that police has not recorded his FIR but he was only referred to hospital and he was in the hospital for 8 days. The medical reports, however, do not show that PW-1 was admitted in the hospital for 8 days. Complainant had also lodged a private complaint. But there are contradictions in the contents of the private complaint and according to PW-1 because the police did not lodge the FIR, he made a representation to the Superintendent of Police, Satara, after which the FIR was recorded on 23rd June 1993, i.e., almost 8 months after the incident. The Trial Court has recorded that there are contradictions in the private complaint, application made to the Superintendent of Police, Satara and the FIR recorded. In the deposition, PW-1 states that accused had uttered the words as mentioned in his evidence but the FIR dated 23rd June 1993 does not disclose that accused

no.1 had uttered those words that they would kill the old lady.

6 To explain the delay, PW-1 states that the police told him that he should submit medical certificate before them and then they will take cognizance of his allegations. The medical certificate is dated 30th October 1992 but still PW-1 has approached the police only on 23rd June 1993. The medical certificate also shows the injured were treated as outdoor patients. It does appear that accused had lodged the complaint against complainant which has been registered as NC and the complaint of complainant also was recorded as NC. Therefore, it does appear that to give more teeth to his complaint, complainant, almost one month after the incident, sent the representation to the Superintendent of Police, Satara on 14th November 1992 and then filed a private complaint on 24th April 1993 and then the FIR on 23rd June 1993. Therefore, there is a serious delay in lodging the FIR and I concur with the view of the Sessions Court that the same is damaging to the prosecution's case.

7 Even PW-2, who claims to be an eye witness, has not been mentioned in the FIR. On the contrary, the FIR mentions name of someone else as present at the spot of incidence. PW-2 also admits in the cross examination that there is a civil dispute between him and the accused which was pending. PW-3 is the wife of complainant (PW-1) and PW-4 and PW-5 are the sons of PW-1 and PW-3. They are also interested witnesses. What is more surprising is PW-4 and PW-5 were aged 25 years and 30 years and it is unbelievable that when they were present at the time of the incident,

accused no.2 and accused no.3 would have assaulted PW-1 and PW-4 and PW-5 would be mere spectators. There are many such points raised which raises a doubt on the testimony given by the witnesses.

8 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;

1. (2008) 10 SCC 450

- 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.*

9 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

2. (2014) 5 SCC 730

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.

10 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.

11 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

3. 1996 SCC (cri) 972

observed that the prosecution had failed to prove its case.

12 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.

13 Appeal dismissed.

Gauri A.
Gaekwad

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by Gauri A.
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(K.R. SHRIRAM, J.)