

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1249 OF 2007**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Rajaram Maruti Gaikwad
Age : 52 years,

2. Namdeo Rajaram Gaikwad
Age : 26 years
Both R/o. Kadlas, Tal. Sangola

....Respondents
(Orig. Accused)

Ms. M.M. Deshmukh, Addl. PP for State.
None for Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : 23rd JUNE, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 26th December, 2005 passed by the Judicial Magistrate First Class, Sangola, At Sangola, District Solapur acquitting the respondents (hereinafter referred as accused) of offence punishable under Section 324 (*Voluntarily causing hurt by dangerous weapons or means*), 504 (*Intentional insult with intent to provoke breach of the peace*) r/w 34 of the Indian Penal Code.

2. Accused No.1 has died since filing of appeal and appeal stands abated against Accused No.1. Accused No.2 is son of Accused No.1.

3. It is the case of prosecution that on 06/10/2002 at about 8.45 p.m., P.W. 1 Balasaheb Bhanudas Gaikwad was proceeding on motorcycle

near the house of accused who are also related to complainant. Near the house of accused he saw in the light of motorcycle that Accused No.1 was sitting on the road side. P.W. 1 stopped his motorcycle and asked Accused No.1 why he was sitting in the dark to which Accused No.1 replied that he was waiting for him. Accused No.1 then went near P.W. 1 and started abusing him in filthy language. At that time, one Sukhdeo Dnyanu Lendave (who has not been examined though listed as Witness No.5) appeared and pacified both of them and went away. Thereafter, brother of P.W. 1 (P.W. 2) and son Dilip (P.W. 5) came to the spot. P.W. 5 took the motorcycle and went home and P.W. 1 and P.W. 2 started walking towards their house. At that time, Accused No.1 and 2 came with iron rods and Accused No.1 assaulted P.W. 1 on his forehead resulted in bleeding injury. Accused No.2 assaulted P.W. 2 on the head, lips and on knee. Thereafter, wife of P.W. 1 Padmini and son came there running and intervened in the dispute. Then they went to the police station and police referred them to Rural Hospital on 07/10/2002. On 08/10/2002 P.W. 1 lodged report against accused and based on that offence came to be registered.

4. Investigation commenced and P.W. 7 was the Investigating Officer. Spot panchanama and Seizure panchanama was prepared, accused arrested and witnesses statement were recorded.

5. Charges were framed against accused. Accused pleaded not guilty and claimed to be tried. Their defence is of total denial and in the

statement under Section 313 of The Code Of Criminal Procedure, 1973, it is the case of the defence that P.W. 1 and P.W. 2 were coming on motorcycle after consuming liquor and both fell from the motorcycle and sustained injuries.

6. To bring home the charge, prosecution has examined seven witness viz., Balasaheb Bhanudas Gaikwad, Complainant as P.W. 1, Baban Bhanudas Gaikwad, Brother of complainant as P.W. 2, Mahadeo Sopan Gaikwad, Spot Panch as P.W. 3, Mahadeo Ramchandra Pawar, Seizure Panch as P.W. 4, Dilip Balaso Gaikwad, Son of complainant as P.W. 5, Shobha Jivan Waidande, Medical Officer attached to Cottage Hospital, Pandharpur as P.W. 6 and Balasaheb Krishnath Shinde, Investigating Officer as P.W. 7.

7. I have considered the evidence with the assistance of Addl. PP. No where in the evidence, the cause for accused to assault P.W. 1 and P.W. 2 has been mentioned. P.W. 1 complainant has admitted in his cross-examination that there has been dispute between him and accused on account of family issues and village politics. It is well settled principle of law that disputes or enmity can be used as double edged weapon and keeping that in mind, evidence needs to be scanned and scrutinized minutely so as to check the veracity of the complaint and theory of false implication.

8. PW. 5 in his cross-examination admits that PW. 1 was in the habit of consuming liquor and it is true that at the time of incident PW. 1, i.e., his father was proceeding towards the house on motorcycle after consuming liquor. PW. 5 also says that it is true to say that PW. 1 used to drive motorcycle after consuming liquor.

9. Prosecution says that it was Sukhdeo Dnyanu Lendave who come to the spot and sorted out problem between accused and PW. 1. Whereas, PW. 1 in his cross-examination states that it is not true that Sukhdeo Dnyanu Lendave came to the spot at the time of alleged incident. He says "Sukhdeo Dnyanu Lendave had no talk with us". However, in the complaint Exh. 13, PW. 1 says Sukhdeo Dnyanu Lendave had come at that spot.

10. PW. 2 says that Sukhdeo Dnyanu Lendave informed him that dispute between PW. 1 and Accused No.1 was going on, on the road. Therefore, PW. 2, PW. 5 Dilip and wife of PW. 1 went to the spot. PW. 1 does not mention anything about his wife appearing at the spot and wife of PW. 1 also has not been examined. PW. 2 admits that thereafter PW. 5 took motorcycle towards the house whereas he and PW. 1 walked towards the house. I ask myself if PW. 1 was riding motorcycle why did he have to walk with PW. 2 and PW. 5 took the motorcycle home. The only possible reason would be that they were too drunk to ride the motorcycle and PW. 5, hence

took it home. I am saying this because P.W. 5 in his cross-examination has admitted that P.W. 1 was proceeding towards the house on motorcycle after consuming liquor. P.W. 2 says that police did not even inquire regarding incident with him. P.W. 2 says that when he reached the spot after Sukhdeo Dnyanu Lendave told him about altercation between P.W. 1 and Accused No.1, he found the motorcycle was parked on the west side of the highway and P.W. 1 was lying near the motorcycle. It is not the prosecution's case that at that time P.W. 1 had been assaulted. It is prosecution's case that when P.W. 1 and P.W. 2 were walking towards home, accused came from behind and assaulted them with iron rod. P.W. 5 says that he with his mother and uncle proceeded to the spot and they saw quarrel was going on between accused and P.W. 1. P.W. 2 does not say that when he reached the spot, he saw accused and P.W. 1 were quarreling. P.W. 1 as stated earlier is silent about his wife reaching the spot. P.W. 5 says that he took the motorcycle and went away whereas his mother, father and uncle were walking towards the home and at that time Accused No.1 gave blow with iron rod on P.W. 1 and Accused No.2 gave blow with iron rod on head, chin and knee of P.W. 2. If P.W. 5 had already left the place and proceeded towards his house, how could he have even seen the incidence because it is not the prosecution's case that he was going on motorcycle along side these people who were walking at which stage the incident happens. P.W. 5 admits that he has not informed the police that he resolved the dispute between Accused No.1 and P.W. 1 which is an omission. He also admits that

he has not mentioned in his statement to the police that they thereafter proceeded to Rural Hospital for medical treatment. In fact, in his cross-examination, P.W. 5 says “it is not true to say that I personally saw quarrel between accused and my father and it is not true to say that Accused No.1 gave 10 to 15 blows with iron rod on P.W. 1.” Strangely P.W. 5 says that P.W. 1 and 2 were unconscious on the spot and P.W. 1 and P.W. 2 regained consciousness in the hospital. None of the other witnesses have said this. Even doctor P.W. 6 does not state that P.W. 1 and P.W. 2 were brought in an unconscious state. P.W. 5 says that P.W. 1 was admitted in hospital for one day and P.W. 2 was admitted for two to three days in the hospital. Again none of the other witnesses mention about this including P.W. 6.

11. P.W. 6 doctor also submits that one of the injuries sustained by P.W. 2 could be due to falling from motorcycle. The medical report states that nature of injuries is simple with hard and sharp object whereas in her cross-examination P.W. 6 states that articles shown to her are not sharp. The last nail in the coffin of the prosecution’s case is that the seizure panch witness P.W. 4 though he identifies two iron rods, in his cross-examination admits that he was in hurry and police told him to sign and therefore he signed on panchanama. P.W. 4 further states that it is true to say that police had prepared panchanama and he only signed on panchanama.

12. In the circumstances, conclusion arrived at by the Trial Court cannot be faulted and no interference is called for.

13. The Apex Court in *Ghurey Lal Vs. 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

¹ (2008) 10 SCC 450

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.

14. The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. 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

15. The Apex Court in *Ramesh Babulal Doshi Vs. 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.

16. I have perused the impugned judgment, considered the evidence and also heard Ms. Deshmukh, 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.

17. 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 they are proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and

3 1996 SCC (cri) 972

strengthened by the trial court. For acquitting accused, the Sessions Court rightly observed that the prosecution had failed to prove its case.

18. In the circumstances, in my view, the opinion of the Sessions 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.

19. Appeal dismissed.

(K.R. SHRIRAM, J.)