

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 186 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
CHANDRAKANT S/O SHRIPATI INGALE AND ANOTHER

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APP for Applicant : Mr. S.D. Kaldate

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: March 12, 2015

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PER COURT :-

Heard.

2. Perused the findings recorded by the trial Court in the light of the notes of evidence. It appears that, there was inordinate delay in filing the First Information Report. The prosecution has not placed on record the satisfactory explanation for delay in lodging the First Information Report. Apart from that, it appears that, the trial Court has considered the fact that, the accused is handicapped and also weak as compared to the prosecutrix. Apart from that, the defence counsel raised contentions that, the accused has lost his sex powers since he has met with an electric shock accident. If the findings recorded by the trial Court are considered in its entirety in the light of evidence on record, we are of the considered view that, the view taken by the trial Court is plausible. Though it is possible to have another view on the basis of evidence on record but in view of the judgment of the Supreme Court in the case of **Nepal**

Singh V/s State of Haryana in Criminal Appeal No. 383 of 2002 decided on 24.04.2009, held that, in case of acquittal, there is a double presumption in favour of the accused- firstly, the presumption of innocence is available to him- secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court.

Yet in another judgment in the case of **State of A.P. V/s M. Madhusudhan Rao**¹ the Supreme Court in para 13 held thus :-

“13. There is no embargo on the appellate court to review, reappreciate or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed.

¹. 2009 All MR(Cri) 547 (S.C.)

Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere.”

Yet in another judgment in the case of **Muralidhar alias Gidda and another Vs. State of Karnataka**² the Supreme Court in para 12 held thus:-

12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu Vs.State, AIR 1954 SC 1, Madan Mohan Singh Vs. Stte of U.P., AIR 1954 SC 637, Atley Vs. State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs. State of Punjab, AIR 1957 SC 216, M.G.Agarwal Vs. State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs. State of Bihar, [1970] 2 SCC 450, Shivaji

2. 2014 [4] Mh.L.J.[Cri.] 353

Sahabrao Bobade Vs. State of Maharashtra, [1973] 2 SCC 793, Lekha Yadav Vs. State of Bihar, [1973] 2 SCC 424, Khem Karan Vs. State of U.P., [1974] 4 SCC 603, Bishan Singh Vs. State of Punjab, [1974] 3 SCC 288, Umedbhai Jadavbhai Vs. State of Gujarat, [1978] 1 SCC 228, K.Gopal Reddy Vs. State of A.P., [1979] 1 SCC 355, Tota Singh Vs. State of Punjab, [1987] 2 SCC 529, Ram Kumar Vs. State of Haryana, 1995 Supp [1] SCC 248, Madan Lal Vs. State of J & K, [1997] 7 SCC 677, Sambasivan Vs. State of Kerala, [1998] 5 SCC 412, Bhagwan Singh Vs. State of M.P. [2002] 4 SCC 85, Harijana Thirupala Vs. Public Prosecutor, High Court of A.P., [2002] 6 SCC 470, C. Antony Vs. K.G.Raghavan Nair, [2003] 1 SCC 1, State of Karnataka Vs. K.Gopalakrishna, [2005] 9 SCC 291, State of Goa Vs. Sanjay Thakran, [2007] 3 SCC 755 and Chandrappa, Chandrappa Vs. State of Karnataka, [2007] 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal.

(iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are 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, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) 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. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court.

[Underlines supplied]

3. In that view of the matter, the prayer for leave to file appeal stands rejected. Consequently, the application

stands rejected.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

sga/-

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