

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.538 OF 2004**

The State of Maharashtra)Appellant/Complainant

V/s.

Mahadeo Siddhappa Ghali,)
Occ.: S.T. Driver,)
R/o. Kamatenatti, Tal.: Chikodi,)
Dist.: Belgaum, Karnataka State)Respondent/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

Mr. C.M. Lokesh i/b. G.S. Hegde and Associates for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 21st FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 27th January 2004 passed by the Judicial Magistrate First Class, Miraj, acquitting respondent (accused) of offences punishable under Section 279 (*Rash driving or riding on a public way*), Section 304-A (*Causing death by negligence*), Section 338 (*Causing grievous hurt by act endangering life or personal safety of others*) of Indian Penal Code (IPC) and Section 184 (*Driving dangerously*) of Motor Vehicles Act, 1988.

2 It is prosecution's case that accused on 23rd March 1999, at about 11.30 a.m., was driving a bus on Miraj to Mhaisal road. Near Malati Tapovan, he collided against a truck which was being driven by PW-3. In the collision, one person died and three others were injured. Deceased was the cleaner of the bus and the injured included PW-1 and PW-2. According to prosecution, accused was driving his bus rashly and negligently so as to

endanger human life or personal safety of others and thereby caused death not amounting to murder or culpable homicide.

3 The Apex Court in ***Ghurey Lal Vs. State of U.P¹*** 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.

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

2. (2014) 5 SCC 730

the order of acquittal passed in his favour by the Trial Court.

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.

4 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Lokesh, counsel for respondent. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

5 It is settled law as held by the Apex Court in *State of Karnataka V/s. Satish*⁴ that merely because the vehicle was being driven at a "high speed" does not bespeak of either "negligence" or "rashness" by itself. "High speed" is a relative term. It is for prosecution to bring on record material to establish as to what it meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused

3. 1996 SCC (cri) 972

4. (1998) 8 SCC 493

until the contrary is proved. In the absence of any material on record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "*res ipsa loquitur*".

6 Considering the entire evidence, none of the witnesses examined by prosecution could give any indication as to what they meant by "high speed". The spot panchnama indicates that the bus was going from south to north and the truck was coming from north to south. The width of the tar road may be 23 feet and on either side, there was untarred patch of 5 feet. The alleged incident happened at a point of 12 feet from the western edge of the tar road. The median would be 11.5 feet on a road that was 23 feet wide. PW-3, who was the driver of the truck, in his evidence has stated that he saw accused over taking a motor cycle. That itself is not sufficient to prove that accused was driving negligently and rashly at a high speed. After the impact, the truck has gone off the road and dashed against a tree.

7 No Motor Vehicle Inspector appeared to have examined the bus to ascertain the speed at which accused was driving. No expert has been examined to opine looking at the impact at what speed somebody was driving and who could be labeled as negligent. Just because a person has died and 3-4 others have got injured would not automatically qualify to charge somebody of offences under Section 279, 304-A, 338 of IPC and Section 184 of Motor Vehicles Act.

8 PW-4, the Investigating Officer, says that he got examined both the vehicles by R.T.O. but no report of the R.T.O. is filed. PW-4 also says that he did not even prepare sketch map. Most importantly, PW-4 did not record the statements of the bus passengers because they could have probably given evidence as to how accused was driving his bus. PW-4 says that before even he drew the panchnama, both the vehicles were removed from the road to ease the traffic congestion. No photographs of the incident are also filed.

9 There are various other points raised by the Trial Court for passing its order of acquittal, which for the sake of brevity, I am not reproducing. Suffice to say, I concur with those observations.

10 There is an acquittal and therefore, there is double presumption in favour of 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, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

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.

13 The Government/Appropriate Authority shall pay over to respondent, within a period of 60 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 60 days.

 After 60 days interest at 12% p.a. will have to be paid by Government/ Appropriate Authority to respondent.

 No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

(K.R. SHRIRAM, J.)