

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.659 OF 2002**

Shri Prabhakar Digambar Kashikar	)	
Aged about 50 years, Occupation Service	)	
Checking Naka Inspector, Octroi Department	)	
Pune Municipal Corporation, Pune 411 005	)	..Appellant

Versus

Shah Nenmal Visaji	)	
A company through its partners :	)	
1. Nenmal Visaji Oswal	)	
Aged about 60 years (reported to be dead)	)	
2. Otibai Sakalchand Oswal	)	
Aged about 55 years	)	
3. Bhavrilal Nenmal Oswal	)	
Aged about 35 years	)	
4. Heerachand Sakalchand Oswal	)	
Aged about 35 years	)	
The occupation of all is business	)	
All residing at 89, Yerawada Pune – 6	)	
5. State of Maharashtra	)	
(copy to be served upon the learned	)	
Government Pleader)	)	..Respondents

Mr. Abhijeet Kulkarni for Appellant
Ms Anamika Malhotra APP for Respondent No. 5

**CORAM : K.R.SHRIRAM, J.
DATE : 29th JANUARY 2020**

ORAL JUDGMENT :

1 Appellant is impugning an order and judgment dated 2-9-1999 passed by the Judicial Magistrate First Class, Pune, acquitting respondents of offence under Section 398 of Bombay Provincial Municipal Corporation Act (the said Act) and Octroi Rules 4 and 12 of Pune Municipal

Corporation.

2 Section 398 has since been deleted and the levy of Octroi has been abolished, Bombay Provincial Municipal Corporation Act is now renamed as Maharashtra Municipal Corporation Act. Section 398 of the said Act read as under:

“398. Penalty for evasion of octroi or toll -

Where any vehicle, animal or goods imported into the limits of the City are liable to the payment of toll or octroi any person who, with the intention of defrauding the corporation, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the city any such vehicle, animal or goods upon which payment of the toll or octroi due on such introduction has neither been made nor tendered shall, on conviction, be punished with fine which may extend to ten times the amount of such toll or octroi.”

3 When the appeal was filed, there were 4 respondents. Respondent no.1 had already died at the time of filing of appeal. The alleged offence dates back to August 1978, almost 42 years have passed since the alleged offence. The complaint was presented on 18-2-1980, at which time, respondent no.2 was 55 years of age and if, respondent no.2 is alive, would be now over 95 years of age. Respondent nos.3 and 4, if alive, would be 75 plus years of age. Although, age is not a factor to be considered while hearing the criminal appeals, in these matters offence charged are only punishable with fine.

4 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

1 (2008) 10 SCC 450

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 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 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.

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

2 (2014) 5 SCC 730

3 1996 SCC (cri) 972

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 reappraise the evidence and arrive at its own conclusions.

5 I have considered the impugned judgment and also the evidence and I find absolutely nothing wrong with the conclusions arrived at by the Trial Court warranting any interference. The Magistrate has considered all the contradictions and errors in arriving at the conclusions.

6 Moreover, the matter itself is over 42 years old. The offence charged, even if there is a conviction, will result only in fine. Here the amount of Octroi is Rs.888.75/-. Section 398 provides that it may extend to ten times the amount of such toll or Octroi, which means on conviction, it can be anywhere from Rs.888.75 to Rs.8887/-.

7 There is an acquittal and therefore, there is double presumption in favour of respondent. Firstly, the presumption of innocence available to the respondents 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, respondents having secured their acquittal, the presumption of their innocence is further reinforced,

reaffirmed and strengthened by the trial court. For acquitting respondents, the Trial Court rightly observed that the prosecution had failed to prove its case.

8 Appeal dismissed.

(K.R. SHRIRAM, J.)