

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.280 OF 2004**

The State of Maharashtra (Through Samarth Police Station)	))	Appellant/Complainant
V/s.		
Prayag Prabhakar Thanekar, Age about 20 years, Occupation : Labourer R/at. 81/B, Somwar Peth, Pune	))))	Respondent/Accused

Mrs. Anamika Malhotra, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 19th November 2003 passed by Judicial Magistrate First Class, Court No.1, Pune, acquitting accused of offences punishable under Section 324 (*Voluntarily causing hurt by dangerous weapons or means*) of the Indian Penal Code (IPC) read with Section 3 (*Licence for acquisition and possession of firearms and ammunition*) and Section 25 (*Punishment for certain offences*) of the Arms Act, 1959.

2 It is the prosecution's case that on 5th April 2001 at about 12.00 p.m. to 12.15 p.m. in front of Ganesh Temple of Somwar Peth, Pune, accused went with a weapon towards PW-4 which was like a knife and stabbed PW-4 in his stomach, back and hands resulting in PW-4 bleeding from the injuries. This was because in the month of February 2001, accused had sprinkled colour on PW-4 during Holi and there was a quarrel because

of that.

3 Soon after the incident, PW-4 went to his friend Jagtap's house and narrated the incident and thereafter, went to Somwar Peth Police Chowky and Police sent him for medical treatment at Sassoon Hospital. Incidentally this Jagtap is not a witness. An offence was registered, charge was framed and witnesses were examined. The Trial Court acquitted the accused.

4 To prove its case, prosecution led evidence of four witnesses. Apart from that Jagtap, who has not been examined, the prosecution has not examined the Investigating Officer and no Doctor, who has examined the victim (PW-4), has been examined. Moreover, PW-2, who was a panch witness for seizure of clothes on the victim, has stated that the pant of the victim was also seized but the panchnama is silent about that. The evidence says that the article shown in the Court was a sando baniyan (sleeveless) whereas the panchnama says half sleeves baniyan was seized. PW-2 says in the seizure panchnama it is mentioned that the baniyan had a hole due to knife cut but he has no personal knowledge and Police had also not told him about it. PW-3, another prosecution witness and panch for seizure of weapon, admits that he has remained panch for many times in the cases of Somwar Peth Police Station. PW-1, who is complainant, is a hearsay witness. All these points, apart from many other, has weighed in the mind of the Trial Court.

5 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;

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";

1. (2008) 10 SCC 450

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.

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

2. (2014) 5 SCC 730

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.

7 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 the accused.

8 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to 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.

3. 1996 SCC (cri) 972

9 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.

10 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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