

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1090 OF 2003

Municipal Corporation of Greater Bombay)
through Shri P.P.Dhawade, Legal Assistant)
of R/Central Ward, Municipal Corporation)
of Gr.Mumbai, Having office at Mahapalika)
Marg, Fort, Mumbai-400 001)Appellant
(Org.Complainant)

V/s.

- 1) Shri Mehul Gopaldas Shah)
Gala No.52, Indraprastha Shopping)
Center, Basement, S.V.Road, Borivali(W))
Mumbai)
- 2) The State of Maharashtra)....Respondents
(Org.Accused)

Mr.Kunal Waghmare for appellant-MCGM.
Ms.Pallavi Dabholkar APP for respondent no.2.

CORAM: K.R.SHRIRAM,J
DATE : 5.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 11.1.2001 passed by the Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai.

2. 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 reappraise 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.

3. 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

² (2014) 5 SCC 730

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.

4. 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 reappraise the evidence and arrive at its own conclusions.

5. I find nothing wrong in the impugned judgment. There are various grounds raised by the trial court and one of the main ground for acquitting accused is ground of limitation.

³ 1996 SCC (cri) 972

6. The notice issued under Section 351 of the Mumbai Municipal Corporation Act (the Act) was served on the respondents on 19.5.1999 and the complaint was filed on 20.7.2000, that is much after the 90 days provided as per the provisions of law.

7. The case of prosecution is respondents failed to comply with the notice under Section 351 of the Act and as per amended provisions of the Act under Section 475 A. The law is very clear that the respondents are liable to be prosecuted for the offence under Section 475-A on their failure to comply with the notice under section 351 of the Act. The period of limitation which is prescribed in the Act of 3 months from the date of notice, cannot be extended. The prosecution ought to have been launched within 90 days beginning from 19.5.1999. The same has not been done. Obviously the complaint is barred by limitation and the learned Magistrate was therefore, right in recording acquittal of respondent no.1.

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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

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, need not be interfered with.

10. Appeal dismissed.

(K.R.SHRIRAM,J)