

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1341 OF 2003

The State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

Sadashiv Dattu Mahajan)
Age about 42 years, Occ. Driving)
R/at Halondi, Tal. Karvir, Dist.Kolhapur.)....Respondent
(Org.Accused)

Ms.Anamika Malhotra APP for appellant-State.
Mr.Chetan Damne a/w Mr.Sudhakar G.Thorat for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 18.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 5.7.2003 passed by the Judicial Magistrate, First Class, Ichalkaranji acquitting respondent (accused) of offences punishable under Sections 279 (*Rash driving or riding on a public way*), 304-A (*Causing death by negligence*) of the Indian Penal Code and under section 184 1(3) (*Driving dangerously*) and 181 (*Driving vehicles in contravention of section 3 or section 4*) of the Motor Vehicles Act 1988.

2. I have to note that though the charge-sheet also mentioned section 1(3) of Motor Vehicle Act, perhaps it is a typographical error

because it should be section 3(1) because one of the allegation is accused did not possess a driving license and section 3(1) of Motor Vehicles Act says no person shall drive a motor vehicle in any public place unless he holds an effective driving license.

3. It is prosecution's case that on 24.4.2000 at about 6.40 p.m. accused drove a tractor with a trolley attached to it in front of the house of one Ashok Mane in the main road at village Halondi at high speed in rash and negligent manner and that too without proper driving license. At that time, an unfortunate 1½ years old Sandip came under the wheel of the trolley and causing his death.

4. After the investigation, charges were framed. Accused pleaded not guilty and claimed to be tried. Defence of accused is of total denial and his statement under section 313 of Cr.P.C says police has filed a false case. Accused says he never ever drove the tractor with trolley.

5. 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

¹ (2008) 10 SCC 450

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.

6. 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

² (2014) 5 SCC 730

Court.

7. 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.

8. Learned APP Ms.Malhotra says that the prosecution examined in all 8 witnesses. PW-1 Baburao Tayappa Chougule and PW-2 Maruti Dadu Mahajan who were panch witnesses for spot panchanama were declared hostile as they did not support the case of prosecution. PW-3 Pandurang Ganpati Mane in his cross-examination has admitted that he was not an eye witness. PW-4 Alka Appasaheb Mane also has not been an eye witness. Moreover, there are many omissions and contradictions in her evidence. PW-4 has also admitted

³ 1996 SCC (cri) 972

that she has no personal knowledge. PW-5 Sushila Dadasaheb Mane the mother of the unfortunate Sandeep also is a hearsay witness and has no personal knowledge. PW-7 Jayprakash Bapusaheb Patil who was the complainant has been declared hostile and is also not an eye witness. That leaves PW-6 Ankush Sakharam Sakate and PW-8 Dashrath Dattatray Bhoi.

9. PW-6 also appears to have made improvement in his testimony. He has stated that he was going from the road in front of Dadaso Mane's house at which time accused was reversing his tractor and the boy Sandeep came under the back side left wheel of the tractor.

But PW-8 has stated that this has not been stated by PW-6 in his statement under Section 161 of Cr.P.C. PW-6 admits that in his statement recorded by the police it does not mention that he told the tractor driver that boy was coming under the tractor which he has said in his examination-in-chief.

At the same time, it has to be noted that PW-6 admits that accused was handicapped in both his legs. In fact, the complainant PW-7 states in his cross-examination "it is true to say that the accused was handicapped by his both legs and he was not driving since last 15 years".

10. In view of this damaging evidence, learned APP true to her role as an officer of the Court says that the appeal has to be dismissed.

11. Appeal dismissed.

(K.R.SHRIRAM,J)