

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1491 OF 2003**

The State of Maharashtra)
through Wagale Estate, Police Station,) Thane) ..Appellant
(Org. Complainant)

V/s.

Manohar Panduran Gorude)
Police Constable 1142)
Wagale Estate Police Station)
Thane, Dist. Thane) ..Respondent
(Org. Accused)

Ms Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATE : 11th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order of acquittal passed by III JMFC, Thane, acquitting the original accused no.3 of offences punishable under section 325 (*punishment for voluntarily causing grievous hurt*) read with Section 34 (*Acts done by several person in furtherance of common intention*) of Indian Penal Code.

2 During the trial, accused no.1 and accused no.2 died. This appeal is filed only against original accused no.3.

3 Section 325 of IPC reads as under:

“325. Punishment for voluntarily causing grievous hurt. —Whoever,

except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

What is grievous hurt is defined under Section 320 and the same reads as under:

“320. Grievous hurt - The following kinds of hurt only are designated as “grievous”—

First - Emasculation;

Secondly - Permanent privation of the sight of either eye;

Thirdly - Permanent privation of the hearing of either ear;

Fourthly - Privation of any member or joint;

Fifthly - Destruction or permanent impairing of the powers of any member or joint;

Sixthly - Permanent disfiguration of the head or face;

Seventhly - Fracture or dislocation of a bone or tooth;

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

4 The Doctor, who examined the original complainant is witness no.10- Dr. Ghansham Namdevrao Gaikwad. In his evidence, P.W.-10 says there were no fractures and the nature of all the injuries were simple. There is no evidence that any other kind of hurt listed under Section 320 was caused to original complainant.

Therefore, none of the ingredients required to qualify the hurt as grievous hurt, have been met.

5 Secondly, the incident is of 5-6-1994, whereas the written complaint was given to the Police Commissioner on 28-6-1994, that is after a delay of 23 days. The delay has not been explained in the prosecution.

6 I have to also note that the police had also filed a cross

complaint against the original complainant (PW-1) under Sections 353, 427 and 34 of IPC. That complaint, Learned APP states, was dismissed as withdrawn on 26-8-1996.

7 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 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

1 (2008) 10 SCC 450

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.

8 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

2 (2014) 5 SCC 730

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.

9 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.

10 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. Hence, there is no need to even reappraise the evidence.

11 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

3 1996 SCC (cri) 972

every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court has rightly observed that the prosecution had failed to prove its case.

12 The order of acquittal, in my view, need not be interfered with. Appeal dismissed.

(K.R. SHRIRAM, J.)