

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 299 OF 2004**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Ramgouda Malgouda Patil
2. Shamgouda Malgouda Patil
3. Malgouda Raghunath Patil

All r/o. Dorli, Tal. Tasgaon,
Dist. Sangli.

....Respondents
(Orig. Accused)

Ms. M.M. Deshmukh, Addl. PP for State.

CORAM : K.R.SHRIRAM, J.
DATED : 30th JUNE, 2021.

ORAL JUDGMENT :

1. Though the matter is listed for orders today, learned Additional PP states that as the appeal is against acquittal for an offence charged under Section 324 of the Indian Penal Code, the Court may finally dispose the appeal subject to convenience of the Court. Hence, taken up for hearing.

2. I have considered the impugned judgment and evidence with the assistance of Ms. Deshmukh. Ms. Deshmukh in fairness states that prosecution's case is that two persons got injured but the doctor's evidence shows that one person had simple injury and there is no evidence about injury to the other person. Further, the panch witness Subhash Kore (PW. 7) for recovery panchanama has stated that police obtained his signature upon

ready made panchanama. So also the spot panch witness Vilas Patil (P.W. 1) has also turned hostile and has stated that police obtained his signature upon ready made panchanama. Sambhaji Patil (P.W. 8) says that he does not know the cause of injury and he has not seen accused assaulting Vishwas (P.W. 3). P.W. 4 Nagesh Patil admits in his cross-examination that there were quarrels about boundary with accused.

3. The Trial Court has considered all these points and acquitted accused.

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 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

1 (2008) 10 SCC 450

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.

5. The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. State of Karnataka***² has held that unless, the conclusions reached

2 (2014) 5 SCC 730

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.

6. 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.

7. Having perused the impugned judgment and considered the evidence, I do not find anything palpably wrong, manifestly erroneous or

3 1996 SCC (cri) 972

demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

8. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused 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, 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 rightly observed that the prosecution had failed to prove its case.

9. In the circumstances, in my view, the opinion of the Sessions 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.)