

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.428 OF 2007**

The State of Maharashtra)Appellant/Complainant

V/s.

1) Dattatray Bajrang Choughule)
Age : 60 years, Occu. : Agri)
R/o. Gardi, Tal. Pandharpur,)
District - Solapur)
2) Pradeep Dattatray Choughule)
Age : 30 years, Occu. : Agri)
R/o. Gardi, Tal. Pandharpur,)
District - Solapur)Respondents/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
None for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 7th MAY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 3rd September 2005 passed by the IVth Joint Judicial Magistrate, First Class, Pandharpur, acquitting respondents (accused) of offences punishable under Section 323 (*Punishment for voluntarily causing hurt*), Section 325 (*Punishment for voluntarily causing grievous hurt*), Section 504 (*Intentional insult with intent to provoke breach of the peace*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2 Learned APP in fairness submitted that there are inconsistencies in the evidence of the eye witnesses.

3 PW-4, who is supposed to have been assaulted by the accused, has deposed that he sustained bleeding injuries and there were blood stains on his clothes. PW-4 has also deposed that he did not go to the police station with his clothes and the Investigating Officer (PW-8) also confirms that it was necessary to have seized those clothes. This creates a doubt as to whether PW-4 really sustained injuries as alleged.

4 PW-5, who is the wife of PW-4, states that she also sustained injuries. PW-5 has deposed that her husband, i.e., PW-4, fell down then accused no.2 Pradeep Choughule assaulted on the leg of PW-4 with a spade and accused no.2 also assaulted PW-5 on her leg with a spade and one Ajinath Pawar, Dattu Jadhav, Raghunath Pawar and Shahajan intervened. But these things are not found in the statement of PW-5 to the police.

5 In the complaint, PW-4 has stated that he was present at his vasti but in the cross examination, PW-4 states that he was not present at the vasti. The Investigating Officer has not recorded the statements of other eye witnesses. Police has not recorded the statement of PW-6 under Section 161 of Code of Criminal Procedure which also deprived the prosecution of effectively cross examining PW-6. The evidence also indicates that there were disputes between PW-4 and PW-6 on the one side and the accused. PW-3 has deposed that he rushed to the spot after hearing the noise of quarrel but the evidence indicates that the distance where PW-3 was from the spot of incident was about five minutes walk away. The Trial Court,

therefore, has doubted the version of PW-3 that he was present at the time of incident. Even the medical certificates has various corrections which have not been proved. Based on these factors and many other, the Trial Court acquitted the accused.

6 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 :

1. (2008) 10 SCC 450

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.

7 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.

2. (2014) 5 SCC 730

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.

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.

8 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.

9 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 he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal,

3. 1996 SCC (cri) 972

the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

10 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.

11 Appeal dismissed.

(K.R. SHRIRAM, J.)