

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 667 OF 2004**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Bhika s/o Narhari Jadhav
Aged : 56 years
2. Vijay s/o Narhari Jadhav
Aged 44 years
3. Neetin s/o Bhikaji Jadhav
Aged 26 years
4. Anil s/o Kashinath Jadhav
All Agriculturist
R/at : Aagarmatha, Kadus,
Tal. Khed, District – Pune.

....Respondents
(Orig. Accused Nos.1 to 4)

Ms. Anamika Malhotra, APP for State.

Ms. Mrunmayi Khambete i/b Mr. Vilas B. Tapkir for Respondent Nos. 1 to 4.

**CORAM : K.R.SHRIRAM, J.
DATED : 15th JANUARY, 2021.**

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 31st January, 2004 passed by the Judicial Magistrate, First Class, Rajgurunagar, Khed, Pune acquitting the respondents (hereinafter referred as accused) of offence punishable under Section 325 (*Punishment for voluntarily causing grievous hurt*) and 323 (*Punishment for voluntarily causing hurt*) r/w 34 of the Indian Penal Code.

2. I am in agreement with the findings of the trial court. First of all there was considerable delay in lodging the report. The incident happened on 19th May, 2002 and the report was lodged on 22nd June, 2002, after a delay of 33 days. There is no explanation for the delay. The report indicates that P.W. 1 – Shashikant Raghunath Bankar had gone to the police station on 19th May, 2002 and on his report non-cognizable crime for offence under Section 323, 504, 506 r/w 34 of the Indian Penal Code was registered. But the said report dated 19th May, 2002 nor copy of non-cognizable offence is not brought on record. Moreover, if on 19th May, 2002, the offence was non-cognizable, I wonder how after 33 days the same offence becomes cognizable offence.

The prosecution has not even filed the medical certificate along with the charge-sheet. Even spot panchanama has been prepared on 22nd June, 2002 after a period of 33 days. Statement of witnesses is also recorded after a long time and no explanation is given for the delay in recording statement of material witnesses.

Even the medical report issued by Dr. Pedgaonkar (P.W. 7) states that all the injuries sustained by P.W. 1 are simple in nature. Even if we consider the evidence of various witnesses, there are many omissions and contradictions.

The trial court has taken into considerations all these omissions and contradictions in the judgment. I agree with these observations of the trial court.

3. The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has formulated 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 Section 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

¹ (2008) 10 SCC 450

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.

4. 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.

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.

5. 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

² (2014) 5 SCC 730

³ 1996 SCC (Cri) 972

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.

6. I have perused the impugned judgment, considered the evidence, also heard Ms. Malhotra, learned APP. 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 accused.

7. 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 Trial Court rightly observed that the prosecution had failed to prove its case.

8. 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.

9. Appeal dismissed.

(K.R. SHRIRAM, J.)