

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 426 OF 2008**

The State of Maharashtra
(Through Satara City Police Station)

....Appellant
(Orig. Complainant)

V/s.

Pralhad Shankar Sankpal
Age : Adult,
Occu.: Service in S.T. Dept.,
R/o. Satara.

....Respondent
(Orig. Accused)

Ms. Anamika Malhotra, APP for State.
None for Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : 6th JANUARY, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 19th April, 2005 passed by the II Ad-hoc Assistant Sessions Judge, Satara acquitting respondent (hereinafter referred as accused) of offence punishable under Section 3 (1) (10) (*intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view*) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 7 (1) (D) (*insults or attempts to insult, on the ground of "untouchability", a member of a Scheduled Caste*) of The Protection Of Civil Rights Act, 1955 and Section 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional*

insult with intent to provoke breach of the peace), 506 (*Punishment for criminal intimidation*) and 384 (*Punishment for extortion*) of the Indian Penal Code.

2. Despite notice nobody appears for the original complainant.

3. At the outset, I have to note that the incident is alleged to have happened on 02/05/2004 whereas the complaint was lodged on 12/07/2004, more than two months later. The delay has not been explained anywhere.

4. Complainant is P.W. 3 and P.W. 1 and P.W. 4 were the eye witnesses. P.W. 4 the eye witness has turned hostile. He has denied that accused abused complainant on his caste.

5. It is also to be noted that P.W. 1, the eye witness, states that accused stated that “Mangtyano, tumhi evhada dhanda kartay, tumchya jawal paise dyayala nahit?”. Whereas, complainant P.W. 3 states accused abused him by caste by saying “Mangatya, masti aali aahe ka?”. This itself raises a huge doubt on prosecution’s case.

6. P.W. 1 says after accused abused complainant, he slapped complainant whereas P.W. 3 complainant himself does not say about any slapping by accused.

7. Moreover, P.W. 1 says that he disclosed above incident to other hawkers but no other hawker has come forward to give evidence.

8. Based on these and among other things, trial court acquitted accused. Of course, trial court held that complainant has not proved that he belongs to Mang community or accused being Maratha community. The trial court has observed that even though there was no cross-examination on the statement made by P.W. 3 complainant that he belongs to Mang community and accused belongs to Maratha community, still there was nothing to prove that they belonged to the community as stated. To that extent I do not agree with the trial court because if P.W. 3 was not challenged in his cross-examination to prove the statement made by him in the examination-in-chief, I would accept the statement made by P.W.3. Even in the statement under Section 313 of Cr. P.C. accused has stated that complainant, by taking advantage of his caste, has filed this false case against him and he never abused him on his caste with intention to humiliate him in public place.

9. 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. (2008) 10 SCC 450

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.

10. 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 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.

11. 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

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

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.

12. I have considered the evidence and after hearing the learned APP Ms. Malhotra for appellant, I do not find any reason to interfere in the impugned judgment.

13. In the circumstances, I cannot conclude that there was anything palpably wrong with the impugned judgment. 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 acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case. The order of acquittal, in my view, cannot be interfered with.

Appeal dismissed.

(K.R. SHRIRAM, J.)