

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1058 OF 2007**

The State of Maharashtra)
(Through Yerwada Police Station, Pune))Appellant/Complainant

V/s.

1. Ramesh Shivdas Katkar)
Age – Adult, Occu. Service,)
R/at – 123, Masjid Galli, Yerwada, Pune)
2. Dipak Shivdas Katkar)
Age – 36 years, Occu. Service)
R/at – Shubham Society, Samnath Nagar,)
Vadagaon Sheri, Pune)
3. Raju Shivdas Katkar)
Age – 34 years, Occu. Service)
R/at – 67/17, Range Hills,)
Khadki, Pune – 3)
4. Prahlad Ramchandra Katkar)
Age – 40 years, Occu. Service)
R/at – Masjid Lane, Katkarwada,)
Yerwada, Pune)Respondent/accused

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

**CORAM : K.R.SHRIRAM, J.
DATED : 21st JUNE 2021**

ORAL JUDGMENT :

1 Though this appeal is listed for orders, with the consent of the learned APP, the matter is taken up for hearing.

2 This is an appeal filed by the State impugning an order and judgment dated 20th May 2005 passed by Judicial Magistrate First Class, Pune, acquitting respondents (accused) of offences punishable under Section 324 (*Voluntarily causing hurt by dangerous weapons or means*),

323 (*Punishment for voluntarily causing hurt*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

3 The office report says respondent no.3 has not been served as he is not found at the address given in the cause title. Though the State is appellant, the onus would be on the concerned Police Station to serve respondent no.3. 16 years have passed since the appeal was filed and 19 years have passed since the impugned judgment was delivered.

4 Therefore, appeal against respondent no.3 is dismissed.

5 As against other respondents, learned APP in fairness submitted that the Trial Court has observed notable contradictions in the testimony of PW-1 and PW-2, PW-3 and PW-1. PW-4 also admits in her cross examination that she only came alongwith PW-1 but she did not know the cause of injury. PW-5, who has issued the medical certificate, says the nature of weapon of assault is iron rod, whereas PW-1 to PW4 says iron hammer. Admittedly, there are civil disputes between the parties. Learned APP states that she has also considered the evidence and agrees with the Court in fairness when the Court pointed out that the Trial Court has given due and proper weight and consideration to the evidence and the observations of the Trial Court cannot be faulted with. To a query posed by the Court, the learned APP also had to agree that it is difficult to say that the conclusions arrived at by the Trial Court is palpably wrong or the decision was based on an erroneous view of

law or that the judgment was manifestly unjust and unreasonable.

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 :

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;

1. (2008) 10 SCC 450

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.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by

2. (2014) 5 SCC 730

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 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, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court

3. 1996 SCC (cri) 972

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.)