

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1060 OF 2007**

The State of Maharashtra	)	Appellant/Complainant
V/s.		
Appaji Jakkana Patil	)	
Age : 37 years,	)	
R/o. Jattewadi, Taluka – Chandgad,	)	
District - Kolhapur	)	Respondent/accused

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

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

ORAL JUDGMENT :

1 This is an appeal impugning an order of acquittal passed on 29th March 2005 by the Additional Sessions Judge, Gadhinglaj, who had set aside an order passed by the Learned Judicial Magistrate First Class, Chandgad, District - Kolhapur. The Trial Court had convicted respondent in this appeal for an offence under Section 324 (*Voluntarily causing hurt by dangerous weapons or means*) and Section 325 (*Punishment for voluntarily causing grievous hurt*) of the Indian Penal Code (IPC).

2 Though the learned APP made valiant efforts to convince the Court, in fairness agreed that PW-2, PW-3, PW-4, PW-6 and PW-7 have turned hostile. Out of nine witnesses, five who are independent witnesses, have turned hostile. Other four witnesses are complainant, his wife, Medical Officer and Investigating Officer.

3 PW-6 and PW-7 were star witnesses for the prosecution. Both denied any knowledge about the incident. PW-2 and PW-3 were witnesses for spot panchnama and they turned hostile. PW-4 was the seizure panch witness and it is prosecution's case that accused on his own appeared before the Investigation Agency and produced the stick, which he had used to assault complainant. PW-4 had infact denied that he was ever present at the police station or even the other panch witness was present or that accused produced the stick, which has been seized in connection with the crime. Case of complainant (PW-1) and his wife (PW-5) is that the incident happened in the presence of PW-6 and PW-7 but both of them even denied any knowledge. PW-5 in her cross examination has admitted that last five or six years they have not been in talking terms with accused who was her neighbour. Therefore, admittedly the relationship between the parties involved is strained. PW-1 has also stated that he lodged a written report which has been received by the police in the hospital but the same has not been produced in the trial. PW-1 and PW-5 both state that it was dark at the time of incident and when we consider the evidence in totality, PW-5 also cannot be accepted as an eye witness to the incident. This is because PW-1 has stated that nobody was present at the time of assault. Therefore, having perused the evidence and the impugned judgment with the assistance of the learned APP, I find no infirmity in the impugned judgment.

4 The Apex Court in ***Ghurey Lal V/s. State of U.P¹*** 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;

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

1. (2008) 10 SCC 450

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. 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.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of***

2. (2014) 5 SCC 730

Gujarat³ 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.

6 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 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, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Sessions Court. For acquitting accused, the Sessions Court observed that the prosecution had failed to prove its case.

8 In the circumstances, in my view, the opinion of the Sessions

3. 1996 SCC (cri) 972

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 Sessions Court.

9 Appeal dismissed.

(K.R. SHRIRAM, J.)