

How to Argue Criminal Appeal Filed Against Conviction

*(Online lecture for lawyers organized by
Parbhani Bar Association, Maharashtra)*

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An advocate engaged to argue a criminal appeal preferred against judgment of conviction and sentence should articulate his arguments on following lines:

- 1) First appellate court: powers and functions: It acts both as trial court as well as appellate court.
- 2) Appellate Court to appreciate entire evidence afresh like trial court.
- 3) Appellate Court cannot mere agree or disagree with the findings of trial court.
- 4) Start your argument by pointing out in brief the allegations in FIR, case diary of police that led to framing of charges by the trial court.
- 5) Point out number and names of PWs of fact and formal/official witnesses examined by prosecution at trial.
- 6) Point out documents produced by both sides before the court.
- 7) Presence of PW on spot: evidence and finding in judgment.
- 8) PW had seen the incident: evidence and finding in judgment.
- 9) Credibility of individual PWs: finding in judgment or they were outright believed by trial judge.
- 10) Take up the testimony of each PW one by one and point out why his testimony was not reliable.
- 11) Contradictions, exaggerations, embellishments, inconsistencies.
- 12) Identify and point out the major contradictions etc in the testimony of each PW shaking his credibility on any fact and whether that fact was then proved by any other PW or not.
- 13) Whether major contradictions etc not discussed in judgment?
- 14) Hearsay evidence and finding thereon.
- 15) Cite reasons to the court why particular PW should not have been believed by the trial court. Point out the weaknesses in the testimony of the PW.
- 16) Perverse finding.
- 17) Finding based on evidence not on record.
- 18) Whether two views were/are possible on the testimony of the PWs.

- 19) Conduct of PW.
- 20) Benefit of doubt.
- 21) Sec. 161,164 CrPC : Whether finding has been based by trial judge by mere relying on the statements of any PW u/s Sec.161 or 164 CrPC as substantive evidence.
- 22) Sec. 145,157, Evidence Act: Whether correctly applied by trial judge in respect of contradictions, exaggerations, embellishments, inconsistencies.
- 23) Whether major contradictions etc not discussed in judgment?
- 24) Whether corroboration of any PW on any particular fact was required but not done by prosecution.
- 25) Sec. 313 CrPC: Whether explanation from accused has been sought on all incriminating evidence or has been used by trial judge out right.
- 26) Whether the trial judge had applied the same standard of evaluation of the prosecution and defence evidence. If not, point out the erroneous approach of the trial court by pointing out its findings on the evidence led by defence.
- 27) Whether charges and ingredients of offences were proved by evidence led by prosecution.
- 28) Wounds and weapons: injuries recorded by Doctor.
- 29) Whether medical and ocular evidence are contrary to each other on wounds and weapon.
- 30) Documents exhibited and read in evidence without their execution being proved.
- 31) Sec. 59, Evidence Act: oral evidence on contents of documents.
- 32) Photostat/Xerox copies read without proving foundation of original.
- 33) Sec. 114 (g), Evidence Act: adverse inference for withholding material evidence.
- 34) Case based on circumstantial evidence:
 - (i) Chain and its parts: point out to the court from case diary of police
 - (ii) See whether trial court has recorded its findings on all parts of the chain by appreciating admissible evidence
 - (ii) Whether trial court had failed to identify and mention in its judgment all the parts of the chain
 - (iv) Whether trial court had failed to record its finding on any part of the chain of the circumstances of the crime and still recorded conviction
- 35) Do not skip the queries of the court during your arguments. Anticipate the possible queries of the court in advance.
- 36) Identify the weaknesses of your case and then build up your response on those weaknesses.
- 37) Cite relevant and latest rulings, if you can, in support of your submissions.
- 38) Quantum of sentence: Reasons in judgment of the trial court on quantum of sentence.
- 39) Request the appellate court to award probation to the convict/ appellant if the appellate court appears to be not convinced and decides to dismiss the appeal.
- 40) You can also request for awarding lesser sentence than the one awarded by the trial court.
- 41) You can also submit your written argument to the court.

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