

Court No. - 42

Case :- GOVERNMENT APPEAL DEFECTIVE No. - 216 of 2025

Appellant :- State of U.P.

Respondent :- Jitendra

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Vivek Kumar Birla,J.

Hon'ble Jitendra Kumar Sinha,J.

Re: Criminal Misc. Delay Condonation Application

1. Vide order dated 07.05.2025 notice was issued to the sole respondent on the delay condonation application. As per office report dated 15.07.2025 notice has been served personally.
2. In such view of the matter, cause shown in filing the appeal is sufficient.
3. Delay is condoned.
4. Application is allowed.
5. Office is directed to allot regular number to this appeal.

Re: Criminal Misc. Application (Leave to Appeal)

1. Heard Shri Rahul Asthana, learned AGA appearing for the appellant-State of UP and perused the record.
2. Present government appeal has been preferred against the judgement and order dated 13.12.2024 passed by the Additional Sessions Judge/Special Judge (POCSO Court), Ghazipur in Special Sessions Trial No.30 of 2017 (State of U.P. Vs. Jitendra), under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Kotwali Ghazipur, District Ghazipur.
3. Prosecution story in brief was that the complainant-Govardhan Bind moved an application under Section 156(3) Cr.P.C. stating therein that Accused-Respondent-Jitendra with the help of his maternal Aunt namely Somari entered in his house and has committed rape upon his daughter-victim, who is aged about 17 years and studying in class 12th, on the pretext of solemnizing marriage and has also given threat for dire consequences. It was further alleged that the Accused-Respondent repeatedly committed rape upon her on the pretext of solemnizing marriage. The Accused-Respondent has also abort

the pregnancy of the victim. On 13.11.2015 at about 12 a.m. the Accused-Respondent alongwith his maternal Aunt Somari and maternal uncle-Sudarshan enticed away the victim and thereafter she was recovered from the house of one Raju Bind. On 15.11.2015 Panchayat had taken place in the house of one Ramvriksh Yadav wherein it was decided that the marriage of the accused and the victim would be solemnized. Thereafter on the occasion of Tilak the Accused-Respondent and his parents demanded Rs. 50,000/-and a motorcycle as dowry, therefore, Tilak was not done and on 13.03.2016 police came and told that Garamdev lodging a first information report and when asked about the case, at about 8 p.m. Garamdev, Sugriv, Sudarshan, Radhey, son in law of Garamdev, Suresh and Jitendra (Accused-Respondent) armed with lathi, danda and spade beaten the complainant and his wife. On the basis of aforesaid the first information report of the present case was registered, in which the investigating officer after due investigation has submitted charge-sheet.

4. In support of prosecution case, PW-1-Goverdhan Bind (complainant), PW-2-Kunti, PW-3 Victim, P.W.4-Prakash Bindh, P.W.5- Dr. Chandra Sinha, PW-6-Dr. Sunil Kumar Kesharwani, PW-7 Umashankar Pandey (retired Sub Inspector) were produced and examined before the Court below.

5. The judgement of acquittal was passed on the ground that although it was claimed that the victim had studied upto Class XII, however, no educational certificate in respect of proof of age was filed, as such medical examination for verification of age of the victim was conducted wherein it was opined that the victim was aged about 18 years at the time of incident. The Trial Court found that as per allegation the prosecution case itself is that for the first time the offence of rape was committed on 23.06.2015 inside the resident of the complainant. Thereafter the victim got pregnant and on 13.11.2015 she was forcibly taken away by the accused alongwith other. On 15.11.2015 one Panchayat had taken place in the house of Ramvriksh Yadav wherein it was decided that their marriage of the victim alongwith accused Jitendra would get solemnized, however, because of demand of dowry the marriage could not take place. Thereafter, an application under section 156(3) Cr.P.C. was filed which was allowed and a case crime no.1498 of 2016 was registered under section 363, 366, 376 323, 504 and 506 IPC read with section 3/4 POCSO Act

and Section 3/4 D.P.Act, however, chargesheet was submitted only under section 363, 366 and 376 IPC readwith Section 3/4 POCSO Act. In the Investigation itself no offence for demand of dowry was found to have been committed. The Trial Court also found that as per medical report victim was above 18 years of age and this was verified by PW-5-Dr. Chandra Sinha, who had also certified that as per medical report of the victim her hymen was old torn and there was no evidence of any sexual assault. The Trial Court found that there was material contradiction in the statement of PW-1, PW-2 and PW3, in respect of the spot of offence. The Trial Court also found that in case family members were present inside the house, where the offence alleged to have been committed, it was not possible for the accused to enter into the house and commit the offence of rape. PW-7 who was the Investigating Officer in the present case had stated that during investigation prosecution witnesses and the victim herself admitted that victim wanted to marry accused Jitendra. PW.2-Kunti in her examination had admitted that she was not the eye witness of any of the offence and victim wanted to marry accused Jitendra and because of the reason no marriage took place, this prosecution has been lodged. On this basis it was found that the statement of victim is not of high quality and reliable on the basis of judgment of Hon'ble Apex Court in the case of ***Santosh Prasad @ Santosh Kumar vs. State of Bihar (2020) 3 SCC 443***. Hence the judgment of acquittal was passed.

6. Challenging the impugned judgment, learned AGA for the appellant submitted that minor discrepancies in the statement of parents and victim have been taken into account for acquitting the accused. He submitted that judgment is against weight and evidence on record and the sole testimony of the prosecutrix was sufficient to convict the accused as such the judgement and order of acquittal passed by the trial Court requires serious consideration and reversal.

7. We have considered the submissions and have perused the record.

8. Before proceeding further, it would be appropriate to take note of law on the appeal against acquittal.

9. In the case of ***Bannareddy and others vs. State of Karnataka and others***, (2018) 5 SCC 790, in paragraph 10, the Hon'ble Apex Court has considered

the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "*the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities*"

10. In **Jayamma vs. State of Karnataka**, 2021 (6) SCC 213, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court in the following words:

"The power of scrutiny exercisable by the High Court under Section 378, CrPC should not be routinely invoked where the view formed by the trial court was a 'possible view'. The judgment of the trial court cannot be set aside merely because the High Court finds its own view more probable, save where the judgment of the trial court suffers from perversity or the conclusions drawn by it were impossible if there was a correct reading and analysis of the evidence on record. To say it differently, unless the High Court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the High Court of its powers to re-appreciate the evidence, including in an appeal against acquittal and arrive at a different firm finding of fact."

11. In a recent judgement of this Court in **Virendra Singh vs. State of UP and others**, 2022 (3) ADJ 354 DB, the law on the issue involved has been considered. For ready reference, paragraphs 10, 11 and 12 are quoted as under:

"10. In the case of Babu vs. State of Kerala (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179, the Hon'ble Apex Court has observed that while dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Paragraphs 12 to 19 of the aforesaid judgment are quoted as under:-

"12. This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a

judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P.* AIR 1974 SC 2165; *Shambhoo Missir & Anr. v. State of Bihar* AIR 1991 SC 315; *Shailendra Pratap & Anr. v. State of U.P.* AIR 2003 SC 1104; *Narendra Singh v. State of M.P.* (2004) 10 SCC 699; *Budh Singh & Ors. v. State of U.P.* AIR 2006 SC 2500; *State of U.P. v. Ramveer Singh* AIR 2007 SC 3075; *S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.* AIR 2008 SC 2066; *Arulvelu & Anr. Vs. State* (2009) 10 SCC 206; *Perla Somasekhara Reddy & Ors. v. State of A.P.* (2009) 16 SCC 98; and *Ram Singh alias Chhaju v. State of Himachal Pradesh* (2010) 2 SCC 445).

13. In *Sheo Swarup and Ors. King Emperor* AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

14. The aforesaid principle of law has consistently been followed by this Court. (See: *Tulsiram Kanu v. The State* AIR 1954 SC 1; *Balbir Singh v. State of Punjab* AIR 1957 SC 216; *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200; *Khedu Mohton & Ors. v. State of Bihar* AIR 1970 SC 66; *Sambasivan and Ors. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M.P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 755).

15. In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him 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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh @ Ram Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that an "order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of Uttar Pradesh v. Banne alias Baijnath & Ors. (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances includes:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in Dhanapal v. State by Public Prosecutor, Madras (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

11. Hon'ble Apex Court in the case of *Ramesh Babulal Doshi vs. State of Gujarat* (1996) 9 SCC 225 : 1996 SCC (Cri) 972 has observed that while deciding appeal against acquittal, the High Court has to first record its conclusion on the question whether the approach of the trial court dealing with the evidence was patently illegal or conclusion arrived by it is wholly untenable which alone will justify interference in an order of acquittal.

12. The aforesaid judgments were taken note of with approval by Supreme Court in the case of *Anwar Ali and another vs. State of Himachal Pradesh* (2020) 10 SCC 166, *Nagabhushan vs. State of Karnataka* (2021) 5 SCC 222, and *Babu (supra)* in *Achhar Singh vs. State of Himachal Pradesh* (2021) 5 SCC 543."

12. Similar view has been reiterated by Hon'ble Apex Court in **Rajesh Prasad vs. State of Bihar and another**, (2022) 3 SCC 471.

13. We have closely gone through the evidence and have perused the record that has already been summoned. We find that admittedly the victim was above 18 years of age and there was deliberate concealment of educational certificate in the shape of High School Certificate/Marksheet and in the medical report itself the age of the victim has been found above 18 years. The medical report itself does not support the prosecution version as Dr. Chandra Sinha, who had appeared as PW.-5, had stated in his cross examination that there was no external or internal injury on the body of the victim. The mother of the victim, who had appeared as PW.2, had also stated that the present criminal prosecution was lodged only for the reason that after the accused and the victim have agreed to marry during Panchayat, a demand of dowry was raised and for this reason the accused refused to marry the victim, therefore, this criminal prosecution was lodged. PW.7 the Investigating Officer, who may be a formal witness, however had stated that the victim herself wanted to marry accused-Jitendra and this fact was also supported by other prosecution witnesses during investigation, therefore, it clearly appears that there seems to be a consented physical relationship between two adults.

14. In such view of the matter, we find that the court below has taken possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court taking a different view as per the law discussed above.

15. Accordingly, it is not a case worth granting leave to appeal. The application for granting leave to appeal is rejected.

Re: Government Appeal

1. Consequently, since the Criminal Misc. Application (Leave to Appeal) is rejected by order of date, the present government appeal is also dismissed.

Order Date :- 16.7.2025
Nitendra