



2025:AHC:174762-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 542 of 2025

Smt. Gudiya

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Manish, Shyam Narayan
Counsel for Respondent(s)	:	G.A.

Reserved on 24.09.2025

Delivered on 26.09.2025

Court No. - 42

HON'BLE J.J. MUNIR, J.

HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

(Delivered by: Hon'ble Pramod Kumar Srivastava, J.)

Heard Sri M.N. Pathak, learned Counsel for the appellant and Mr. Anil Kumar Mishra, learned A.G.A. on behalf of the State.

Present criminal appeal has been preferred against the judgement and order dated 13.08.2025 passed by the Additional Sessions Judge/F.T.C. Court No.2, Prayagraj in Sessions Trial No.1404 of 2023, arising out of Complaint Case No.287 of 2019, under Section 376 IPC, Police Station Manda, District Prayagraj.

Factual matrix in brief is that on 23.03.2019 at about 06:30 PM. when the appellant/informant was going to defecate herself then respondent- Arun Kumar suddenly came from behind and forcibly caught her and threw her on the ground, opened her *saree* and committed rape with her. When victim resisted then respondent threatened her for life. On her screaming, her father-in-law Lala Ram, husband Sanjay and others, including one Sahab Lal rushed towards the spot. On seeing them, respondent fled away from there. Thereafter, appellant/victim has moved an application to the Police Station in the same night but that was not entertained by the Police concerned. Thereafter, she moved an application before the Senior Superintendent of Police, Prayagraj on 25.02.2019 but no action was

taken. Ultimately, she filed a complaint before the Magistrate, who after recording statement under Section 200 Cr.P.C. and 202 Cr.P.C. summoned the respondent under Section 376 IPC. After finding the case exclusively triable by the Court of Sessions. The Magistrate concerned committed the case to the Sessions Court, wherein, the charges were framed against the respondent under Section 376 IPC. The respondent denied the charges and claimed to be tried.

In support of prosecution case, PW-1 appellant/victim, PW-2 Sanjay and PW-3 Sahab Lal were produced and examined before the Court below.

The judgement of acquittal was passed on the ground that, as per First Information Report, the alleged incident occurred in the month of February at about 06:30 pm. and according to the statement given by the appellant/victim, the respondent had thrown her on the field and when she screamed then his father-in-law, husband and elder brother of her husband reached there but none of the other villagers came there. The distance between place of occurrence and appellant/victim's house is 150 meter. The trial court also found that only interested witnesses were examined. No independent public witness was produced, while in the evening villagers oftenly present in their fields with regard to agricultural work. Another fact was also taken into consideration by the trial court that there is no toilet constructed in the appellant/victim and respondent's house. On that basis, trial court ascertained that other villagers also used to defecate themselves in their fields.

In such circumstance, if the appellant/victim had made hue and cry, then certainly after hearing the noise, villagers had arrived there. Trial court also indicated that contradiction occurred in the statement of appellant/victim as she had stated before the Magistrate that her blouse and *peticoat* were torn by the respondent and, thereafter, respondent committed rape on her. While, during the trial she has stated that respondent threw her on the field and, thereafter, committed rape on her. Trial court also found that other witnesses have not given their statements as eye-witnesses. PW-2 Sanjay, who is the husband of appellant/victim has stated that he has not seen the incident, whatever he has stated her wife has told him. PW-3 Sahab Lal, who is the elder brother of

appellant/victim's husband also stated that when he was rushing towards the place of occurrence then respondent had fled away. Apart from that, trial court also noticed that earlier an FIR with respect to *maar-peet* was lodged by the appellant/victim's side against the respondent's side but, appellant/victim refused to acknowledge this fact.

Trial court also gathers that on the totality of the prosecution case and evidence, earlier there was dispute between parties regarding electric wiring and only on the basis of testimony of sole witness, which is not of sterling quality, respondent cannot be held guilty. Under such circumstances, the trial court found that the prosecution could not prove his case beyond doubt and the accused was given benefit of doubt and judgment of acquittal was passed.

Challenging the impugned judgment, Sri Anil Kumar Mishra, learned AGA submits that the trial Court has erred in appreciating the evidence on record. He further submits that victim had clearly narrated that accused used criminal force and threw her in the filed of *Arhar* and committed rape on her. He further submits that there was no reasons to disbelieve the prosecution story. He further submits that this is the offence of sexual assault, where it is not necessary for the prosecution to procure the independent public witness and it would not have adverse effect on the prosecution case. He further submits that trial court has given undue weightage to the minor contradictions occurred in the testimony of victim and has wrongly ignored the prosecution case in totality. He further submits that the witnesses are intact and have supported the prosecution case and the findings recorded by the trial Court is not one of the possible view. Submission, therefore, is that the judgment and order of acquittal passed by the trial court requires serious consideration and reversal and the accused herein is liable to be convicted.

We have considered the submissions and have perused the record.

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

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*"

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."

In a 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 re-iterated 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."

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

On perusal of record, we find that appellant/victim has filed complaint after seven days of the alleged incident. Although, she explained under what circumstances she has not lodged the FIR. As per the appellant/victim's testimony who has examined as PW-1, she was forcibly caught hold by the respondent when she was going towards field on the natural call and, thereafter, accused threw her in the field of *Arhar* and after lifting her *saree* committed rape on her. The appellant/victim did not go for medical examination. At the time of occurrence, she has stated that on her screaming her father-in-law, husband and elder brother of his husband reached there, while her husband Sanjay PW-2 and Sahab Lal PW-3 have not witnessed the incident through their naked eye, when they were on the way to place of occurrence, respondent fled away from the

spot.

Apart from that, the appellant/victim has given her statement in very casual manner and there are major contradictions occurred, as she has stated that her blouse and *saree* were torn by the respondent, whereas, during trial, she deviated from this statement. There was enmity between family of appellant/victim and respondent. It is also notable that this is a case of heinous offence and in such type of matter quality of evidence must be very sterling, which inspires confidence. In such view of the matter, we, therefore, 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.

Accordingly, the appeal is **rejected**.

(Pramod Kumar Srivastava,J.) (J.J. Munir,J.)

September 26, 2025
S.A.