

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1279 OF 2019

Shivraj Annarao Biradar

...Appellant

vs.

Sharnappa Chandurao Apchande and Ors.

...Respondents

None for the Appellant.

Mr.Mahesh Rawool i/b. Mr.Avinash B. Avhad – Advocate for
Respondent Nos.1 to 3.

Mr.H.J.Dedhia – APP for Respondent No.4 – State.

CORAM : S. M. MODAK, J.

DATE : 26th FEBRUARY 2024

P. C. :-

1. On earlier dates, no one was present on behalf of the Appellant - First Informant who is uncle of the deceased. Today also, no one is present on his behalf. On the last date, i.e. on 6th February, 2024, certain legal provisions were quoted. The issue was about the maintainability of the Appeal before this Court.

2. It is for the reason that the judgment of acquittal was passed by the Court of Assistant Sessions Judge – Pune on 17th May, 2019 in Sessions Case No. 691 of 2017. It was the prosecution launched by the

Police for the offences punishable under Sections 498-A, 306, 323, 504 read with 34 of Indian Penal Code, 1860 [“IPC”]. The present Respondents are the relatives of the deceased. No doubt, it is true that as per the proviso to Section 372 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”] which was inserted by way of Act No.5 of 2009, a remedy of an Appeal is made available to the victim. It is in the following contingencies :-

- (a) In case of judgment of acquittal
- (b) When there is conviction but for lesser offence (e.g., instead of 326, it is under 324 of IPC)
- And
- (c) If compensation is inadequate.

Forum for an Appeal by the victim.

3. However, proviso does not specifically mention about the forum just like it is provided under Section 374 of the Code (Appeal against conviction) and under Section 378 (Appeal against acquittal). But, what the proviso provides is, such Appeal lies before the Court :-

- (a) against whom ordinarily,
- (b) an Appeal against the judgment of conviction lies.

4. If we apply this test to the present facts, what we can gather is, if

Respondents might have been convicted by the Court of Assistant Sessions Judge, what will be the forum prescribed is important and the present Appeal against acquittal lies before that forum.

5. For ascertaining that forum, when we have perused the provisions of Section 374 and more specifically, Sub-section 3, what we find is, if the Assistant Sessions Judge could have convicted the present Respondents, they ought to have preferred an Appeal before the Court of Session (Not necessarily before this Court).

Meaning of terminology Court of Session

6. In the Code of Criminal Procedure, the terminology ‘Court of Session’, ‘Court of Assistant Sessions Judge’, ‘Court of Additional Sessions Judge’ have been used. Section 9 of Cr.P.C., empowers the State Government to establish Court of Session for every Session Division. High Court has to appoint a Judge who will preside over that Court of Session. There may be Additional Sessions Judges and Assistant Sessions Judges to be appointed by High Court to exercise jurisdiction of Court of Session. The provisions of Section 10 prescribes ‘to whom the Assistant Sessions Judge will be subordinate’. He will be subordinate to the Sessions Judge and the Sessions Judge

has to make rules for the distribution of business amongst the Assistant Sessions Judges.

7. In this case, if we consider the arrangement made in Section 9 and Section 10 and if we apply it to the present question, even though the Assistant Sessions Judge is included within the meaning of the Court of Session, necessarily as contemplated under Section 374(3) of Cr.P.C., an Appeal against the judgment of conviction passed by the Court of Assistant Sessions Judge will never lie before the Court of Assistant Sessions Judge. So, such an Appeal has to be entertained by Sessions Judge only. Because, the Assistant Sessions Judge is subordinate to Sessions Judge. In his administrative capacity, he may assign that Appeal to Additional Sessions Judge. In view of that, Appeal will certainly not maintainable before this Court.

8. This is not an Appeal against the judgment of acquittal instituted on behalf of the State because an Appeal at the instance of State lies before this Court as contemplated under Section 378(1)(b) of Cr.P.C. So, in any eventuality, the Appeal will not be maintainable before this Court. Hence, Appeal will have to be dismissed. If the Complainant wants, he can prefer an Appeal before the Court of Session.

9. In view of that, following order :-

O R D E R

- (i) Appeal is dismissed as not maintainable.
- (ii) If he wants, he can take appropriate steps.
- (iii) If he chooses to prefer an Appeal before Court of Session, there will be an issue of condonation of delay and in that eventuality, he will have to satisfy the Court that he has filed this Appeal diligently and satisfy about absence before this Court.

[S. M. MODAK, J.]