

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 555 OF 2024

ABC,
Age-33 Years, Occ – Household,
Through Police Station Chhavani,
Tal.-Malegaon, Dist. - Nashik

... Appellant
(Ori. Complainant)

Versus

1. The State of Maharashtra
(At the instance of Chhavani Police
Station, Tal.-Malegaon, Dist.-Nashik)

2. Raosaheb Baburao Mali,
Age – 46 years,
R/o. Pimpalas Road, Rahata,
Tal.-Rahata, Dist.-Ahmednagar

... Respondents
(Ori. Accused)

Mr. Sagar Tambe i/b Ms. Rajani Tribhuvan for the Appellant

Ms. K. T. Hiwrale, A.P.P for the Respondent No.1-State

None for the Respondent No. 2

**CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.
MONDAY, 10th JUNE 2024**

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 By this appeal preferred under Section 372 of the Code of Criminal Procedure, the appellant has impugned the judgment and order dated 2nd May 2024 passed by the learned Additional Sessions Judge, Malegaon, in Sessions Case No.152/2018, by which the learned Sessions Judge acquitted the respondent No. 2 of the offences punishable under Sections 376, 420, 465, 468, 323, 504, 506 and 494 of the Indian Penal Code.

3 Being aggrieved by the said judgment and order of acquittal of the respondent No. 2, the appellant has filed the aforesaid appeal.

4 Perused the papers as well as the evidence, with the assistance of the learned counsel for the petitioner and the learned A.P.P.

5 The appellant/complainant is a married lady, aged 33 years. According to the appellant, the respondent No. 2 had

physical relations with her, on the pretext of marriage and promise to give her a job. Accordingly, the appellant lodged an FIR as against the respondent No. 2 alleging various offences.

6 After investigation, charge-sheet was filed in the said case. Since the offences were triable by the Court of Sessions, the case came to be transferred to the Court of Sessions for trial.

7 The prosecution essentially relied on the evidence of PW1 i.e. the appellant; PW2-Kishore Dange, Medical Officer, Civil Hospital, Malegaon, who examined PW1 after FIR was registered; PW3-Kishore Kadam, the landlord of the premises, where the appellant and respondent No.2 were staying; PW4-Yuvraj More, a neighbour, where the appellant and respondent No.2 were residing; PW5-Sandip Gaikwad (hostile); PW6-Anil Jain, a neighbour of the appellant and respondent No.2; PW7-Vinod Sonawane, also a neighbour of the appellant and respondent No.2 and PW8-Rahul Patil, the Investigating Officer.

8 The learned trial Judge, after considering the evidence
on record, acquitted the respondent No. 2 of all the offences with
which he was charged.

9 Learned counsel for the appellant submitted that the
acquittal was perverse and not in consonance with the evidence
led by the prosecution and as such warranted interference.

10 At the outset, we may note that the scope of appeal
against acquittal is narrow. The law with regard to the scope of
interference by the Appellate Court in an appeal against acquittal,
is no longer *res integra*.

11 In *Sheo Swarup v. King Emperor*¹, one of the earliest
case dealing with the scope of the Appellate Court against an
order of acquittal, the Privy Council held as under on page 404:

*“Sections 417, 418 and 423 of the Code give to the High
Court full power to review at large the evidence upon which
the order of acquittal was founded, and to reach the
conclusion that upon that evidence the order of acquittal*

1 1934 SCC OnLine PC 42

should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, 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. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice.”

12 The Supreme Court in ***M.G.Agarwal v. State of Maharashtra***², in paras 16 and 17 has observed as under:

“16. Section 423(1) prescribes the powers of the appellate court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and

2 AIR 1963 SC 200

cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial court and so, the fact that the accused person is entitled for the benefit of a reasonable doubts will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate court the High Court is generally slow in disturbing the finding of fact recorded by the trial court particularly when the said finding is based on an appreciation of oral evidence because the trial court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasised, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. King Emperor 61 IA 398 and Nur Mohammad v. Emperor AIR 1945 PC 151.

17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, “the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons” : vide Surajpal Singh v. State 1952 SCR 193 at p. 201. Similarly in Ajmer Singh v. State Of Punjab 1953 SCR 418 it was observed that the interference of the High Court in

an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan AIR 1961 SC 715 and Harbans Singh v. State of Punjab AIR 1962 SC 439 and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial court was erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the findings of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.”

13 In *Chandrappa v. State of Karnataka*³, the Apex Court

reiterated the legal position as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise 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

3 2007 (4) SCC 415

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.”

14 In ***Ghurey Lal v. State of U.P.***⁴, the Apex Court after reviewing the previous decisions, laid down the correct approach that an Appellate Court should adopt in dealing with such cases.

Para 70 of the said judgment is as under:

“70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised 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

4 (2008) 10 SCC 450

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 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.”

(emphasis supplied)

15 Similarly in *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*⁵, the Apex Court in para 27 has laid down the principles to be borne in mind by the Appellate Court while dealing with appeals, in particular, against the orders of acquittal.

Para 27 reads thus:

“27. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the

5 2010 (6) SCC 1

question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.”
(emphasis supplied)

16 In para 303(1), the Apex Court has held that the Appellate Court has all necessary powers to re-evaluate the evidence led before the trial Court as well as the conclusions arrived at and that it is the duty of the Court to specify the compelling and substantial reasons for reversing the order of acquittal passed by the trial Court. The reasons or reversal have to be cogent and adequate.

17 Thus, the law on the issue i.e. scope for interference in an appeal against acquittal can very broadly be summarized as follows; that in exceptional cases where there are compelling and substantial reasons; and where the judgment under appeal is found to be perverse, clearly unreasonable, manifestly erroneous, contrary to the evidence on record, or contrary to law, and the findings have been arrived at, by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material or is 'against the weight of evidence' or if the finding so outrageously defies logic as to suffer from the vice of irrationality, the Appellate Court can interfere with the order of acquittal. However, whilst doing so, the Court has to bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence; and that interference in a routine manner, only because another view is possible should be avoided.

18 Infact, while dealing with the 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 view of the trial Court was perverse or otherwise unsustainable, warranting interference.

19 Keeping in mind the aforesaid parameters and the scope of an appeal against acquittal, we have perused the impugned judgment and order of acquittal. We do not find that there is any perversity in the said judgment nor any compelling and substantial reasons to interfere in the said judgment of acquittal. The learned Judge has marshalled the evidence and after considering the evidence adduced by the prosecution, rightly acquitted the respondent No. 2 under all the sections. The evidence of PW1 i.e. of the prosecutrix (appellant), a married lady, would reveal that the relationship between her and the respondent No. 2 was consensual. Infact, according to PW1, her first marriage was solemnized with one 'X', however, due to

differences, they got divorced on 28th November 2011. According to the appellant, she met the respondent No. 2 in 2015, when she was travelling in a bus; that during the travel, they got acquainted, pursuant to which, the respondent No. 2 took her mobile number and told her that he would look for a job for her; that after 2-4 days, the respondent No. 2 called her and told her to come to Malegaon, as he had searched a job for her; that when she reached Malegaon, the respondent No. 2 took her to his residential house and disclosed his love for her and asked her to stay with him and that he would get her a job. She has stated that on the pretext of getting a job, the respondent No. 2 established physical relations with her against her wish and without her consent. The appellant has further in her evidence disclosed that after one year, she asked the respondent No. 2 whether he wanted to marry her, pursuant to which, he professed her love for her and told her that he wanted to marry her; that pursuant thereto, she got married to the respondent No. 2 on 19th February 2016 at Nashik as per Hindu customs and traditions.

The appellant had relied upon the Marriage Registration Certificate. According to the appellant, pursuant to their marriage, they started staying in a rental apartment at Malegaon; and that she got pregnant twice. The appellant has further alleged that after marriage, the respondent No.2 would consume liquor and that sometime in 2017, the respondent No. 2 came home late after consuming liquor and when she questioned him, he assaulted her and told her that she was married; that he had a wife and a son and that he did not want to live with her. The appellant has further alleged that when she learnt that the respondent No. 2 was married and had a child, she lodged an FIR as against the respondent No. 2 alleging the aforesaid offences. Infact, it is the appellant's case that she got married to the respondent No. 2 as per Hindu rites and customs. The evidence of the neighbours also does not, in any way, further the prosecution case. Paras 22, 29, 38 and 39 of the said judgment are reproduced hereinunder :

“[22] In the present matter, from the facts and circumstances it is established that the prosecutrix was

divorcee. She is matured lady having understanding sexual relations with a man, who is not her husband. As per the evidence of prosecution, she was having sexual relations with the accused for about two years and they were residing together in rented rooms as husband and wife. During the period of said two years, she never made any complaint against the accused that he was committing rape on her for continuous period of two years. In the circumstances, it is not acceptable that the accused established sexual relations with her without her consent.”

“[29] Taken into consideration the ingredients of Section 375, 420 of the IPC, considering the evidence available on the record and the observations made by the Hon'ble Supreme Court and High Court in the above case laws, I can conclude that the material placed on the record by the prosecution is not sufficient and cogent to attract ingredients of section 375 and 420 of the IPC. I, therefore, hold that the prosecution has failed to establish the guilt of the accused for the offence punishable under section 376 and 420 of the IPC. I, therefore, answer Point Nos. 1 and 2 in the negative.”

“[38] It is alleged by the prosecution that when the prosecutrix (PW1) and the accused were residing jointly and when about one year's period of their company was over, once the accused came back on the room at late night. At that time, he was in drunken condition. Therefore, she asked him as to why he drunk liquor. Therefore, the accused beat her by fist and kick blow and also abused and threatened her. Hence, he has been charged for the offences punishable under sections 323, 504 and 506 of the IPC.”

“[39] However, considering the evidence of the prosecutrix (PW1) and other material placed on the record, it appears that so far as the offences punishable under sections 323, 504 and 506 of the IPC, are concerned, she had made vague allegations. She has not stated any particular date and time of the said incident/s. Similarly, she has not stated in her evidence any particular of the wordings used by the accused while she was allegedly threatened or abused. Therefore, on the basis of such vague and incomplete evidence, it cannot be said that the accused has committed offence under sections 323, 504 and 506 of the IPC. I, therefore, answer Point Nos. 5 to 7 in the negative.”

20 The learned Judge has recorded the aforesaid finding, keeping in mind all the sections alleged as against the respondent No.2. In the facts, we do not find any infirmity in the said judgment and as such, no interference is warranted.

21 Appeal is accordingly dismissed.

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.