



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO. 7 OF 2022

State
(Through P. I. Pernem PS)

... Applicant/
Appellant

Versus

1. Shri. Allaudin @ Bhyaah Aga,
S/o Daud Aga, Indian National,
R/o H. No. 72, Nr. Sebastian Chapel,
Khorlim, Mapusa, Goa.

2. Shri. Nazir Aminbhai,
S/o Ahmad Aminbhai,
Major, Indian National,
R/o H. No. 140C,
Behind Vrundavan Hospital,
Karaswada, Mapusa, Goa.

3. Shri. Gudusab Shaikh,
S/o Dadabhai Shaikh,
Major, Indian National,
R/o H. No. C-21,
Ektanagar Housing Board,
Mapusa, Goa.

4. Shri. Firoz Khan,
Indian National,
R/o H. No. 22,
Duler, Mapusa, Goa.

5. Shri. Mittu Mehaboob Majawar,

Major, Indian National,
R/o Saraswati Complex, Gaude wadi,
Dodamarg, Maharashtra and
F-3, Flower Nest Apartments,
Khorlim, Mapusa, Goa.

...Respondents

Mr. Nikhil Vaze, Advocate for the Applicant.

CORAM : VALMIKI MENEZES, J.

PRONOUNCED ON : 1ST APRIL, 2025.

ORAL ORDER:

1. This is an appeal against a judgment and order dated 30.04.2022 passed by the Judicial Magistrate First Class, Pernem, acquitting the Respondents herein for allegedly committing criminal trespass, punishable under section 447 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

BRIEF BACKGROUND

2. The events leading to the filing of this appeal are as delineated below:

- (i) A complaint came to be filed by Mrs. Teotonia Gracia Pereira e Thali through her power of attorney, Yvette Pereira e Souza at the Pernem Police Station on 01.05.2016, reporting a total of ten persons for having allegedly trespassed in their properties bearing survey

nos. 173/3 and 173/5 situated at Angodwada, Ibrampur village, Pernem, Goa, on the night of 30.05.2016 and 01.05.2016.

- (ii) Pursuant to the complaint, an FIR bearing No. 46/16 came to be registered on 02.05.2016 for the offence of criminal trespass punishable under Section 447 read with Section 34, IPC. Subsequently, a chargesheet bearing number 90/2016 came to be filed on 15.09.2016.
- (iii) Consequently, a criminal case bearing no. IPC/170/2016 was instituted against the Respondents herein before the Court of Judicial Magistrate First Class, Pernem. Vide Judgment and Order dated 30.04.2022 in the said case, the Respondents were acquitted, primarily on the following grounds:
 - a. The prosecution failed to prove that the Respondents harboured the requisite intention to commit the offence as defined under Section 441 of the IPC.
 - b. The evidence on record was insufficient to establish the allegations made against the accused persons.

c. The prosecution failed to established the commission of the alleged crime beyond a reasonable doubt.

3. The aforementioned order of acquittal has been challenged in an appeal before me. I have heard Shri Nikhil Vaze, the learned Assistant Public Prosecutor representing the State on grant of leave to Appeal against the impugned Judgment.

4. The learned APP has made the following submissions in support of seeking leave to Appeal:

(i) That the Trial Court failed to appreciate the evidence presented by the prosecution holistically.

(ii) That the disputed structure on the said property has been incorrectly associated with the Muslim community, without adequately considering the deposition of PW-1 (the complainant), who categorically states that the structure on property bearing Survey No. 173/3 is a dilapidated mundkarial house, while the structure on property bearing Survey No. 173/5 is a chapel.

(iii) That the respondents, having failed to prove their right to worship at the disputed structure, could not be acquitted of the offence of criminal trespass. The Trial

court erroneously acknowledged the respondents' right to worship the disputed structure.

(iv) That the Trial Court erred in concluding that, on the fateful day, the informant was not in exclusive possession of the property in question.

SCOPE OF APPEALS AGAINST ACQUITTALS

5. Before addressing the above contentions, it is important to discuss the legal position regarding the scope of appeals against acquittals under Section 378 of the Code of Criminal Procedure and the extent of interference that may be exercised by the Appellate Court in relation to the views taken by the Trial Court. The principles governing the scope of appeals against acquittal, as well as the parameters that warrant interference by the Appellate Court and the degree of such interference, have been clarified by the Supreme Court in a catena of judgments.

6. In *Sheo Swarup & Ors. v. King-Emperor* (1934 SCC OnLine PC 42), the Privy Council outlined the fundamental principles to be followed when considering an appeal against acquittal. The relevant portion states thus:

“9....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 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.”

(Emphasis Supplied)

7. The view taken in ***Sheo Swarup*** (supra) has since been referenced in numerous judgments over the years. In ***Muralidhar alias Gidda & Anr. v. State of Karnataka***, reported in (2014) 5 SCC 730, in paragraph 12, the Hon’ble Supreme Court culled out the following principles pertaining to appeals from an order of acquittal:

“12. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(1) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the Trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the Trial court. It is so because the Trial court had an advantage of seeing the demeanour of the witnesses. If the Trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the Trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the Trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the Trial court.”

8. Interpreting the law on Appeals against acquittals and referencing the precedents on the subject, very recently the Hon’ble Supreme Court in ***Mallappa & Ors. v. State of Karnataka*** (2024 SCC OnLine SC 130), observed thus:

“42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the

jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

(i) Appreciation of evidence is the core element of a criminal Trial and such appreciation must be comprehensive or documentary: inclusive of all evidence, oral

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial court.”

(Emphasis Supplied)

9. Accordingly, my considerations in this matter will be strictly based on the legal parameters governing the scope of appeal against acquittal and the principles established by the precedents discussed hereinabove.

10. For the sake of brevity, the parameters governing appeals against acquittal discussed in the above precedents are summarised below:

- (i) An order acquitting the accused reinforces the presumption of innocence in their favour.
- (ii) The evidence presented must be assessed holistically in an appeal against acquittal to determine whether the view taken by the Trial Court was possible or plausible.
- (iii) After evaluating the evidence, if it is so determined that the Trial Court's order of acquittal is based on a possible or plausible conclusion, the order shall not be interfered with on appeal merely because an alternative view exists that contradicts the one taken by the Trial Court.
- (iv) Similarly, if it is found that two distinct views are possible upon considering the evidence, the view favouring the acquittal of the accused shall prevail.
- (v) In the event of a reversal from acquittal to conviction, the Appellate Court must demonstrate illegality, perversity, or an error

of law or fact in the Trial Court's decision and must address every reason provided by the Trial Court for the acquittal.

ESSENTIALS OF SECTION 441, IPC

11. The Respondents had been charged with the offence of criminal trespass, as defined under Section 441, IPC. The said section reads thus:

“441. Criminal trespass.—

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.”

12. From a plain reading of the said section, it can be envisaged that an act of unauthorisedly entering into a property that is in the possession of another or having entered the property lawfully but having remained there unlawfully would qualify as criminal trespass solely when such an act is committed in furtherance of an intention to intimidate, insult or annoy the person in possession of such property. Merely entering a property that is under the possession of another unlawfully/unauthorisedly would not attract conviction in

terms of Section 441, IPC in the absence of the intent to cause intimidation, insult or annoyance to such person.

13. Discussing the prerequisites for the offence of criminal trespass to be constituted, the Supreme Court in ***Rajinder & Ors. v. State of Haryana***, reported in (1995) 5 SCC 187, observed as follows:

“21. It is evident from the above provision that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case.”

(Emphasis Supplied)

Applying the aforesaid view to the facts of the case therein, the Supreme Court held thus:

“Judged in the light of the above principles it cannot be said that the complainant party committed the offence of "criminal trespass" for they had unauthorisedly entered into the disputed land, which was in possession of the accused party, only to persuade the latter to withdraw thereupon and not with any intention to commit any offence or to insult, intimidate or annoy them. Indeed there is not an iota of material on records to infer any such intention.”

14. It is therefore necessary to establish the intent of the accused charged of having committed a crime under Section 441 of the IPC for their actions to constitute criminal trespass, which is punishable under Section 447 of the IPC.

FINDINGS

15. I will now proceed to consider the submissions made by the learned APP in support of grant of leave. The depositions of the witness will have to be examined in light of the principles governing appeals against acquittals, as outlined in the preceding paragraphs, as well as the law on criminal trespass.

WITNESS DEPOSITIONS

16. Approximately ten witnesses have deposed in the matter. The main witnesses are PW1/Complainant Ms. Yvette Pereira and PW2 Goretti Barros. What comes out of these depositions is that on the two properties bearing survey nos. 173/3 and 173/5, which belong to the mother of PW1, there exists a structure on the land under Survey No. 173/5. PW1 admitted that her mother had filed a suit against the Accused, which was pending in the Mapusa Court, and she further admitted that the Accused No.5 had filed an application before the Mamlatdar of Pernem claiming the existence of a Dargah/Religious structure in Survey No. 173/5. She also stated that the suit was filed

because the Accused were trying to perform some religious activities in the property.

17. PW2/Goreitti Baros claimed that on the relevant day, around 200 people had come to the property and were cooking food thereon. She also admitted that there was a structure in Survey No. 173/3 and to visit this structure, one has to pass through Survey No. 173/5. It can be seen from the evidence of the Investigating Officer, that the photographs, which were produced in evidence, establish the presence of Dargah at the site. So also, the panch witness has deposed seeing a Dargah at the spot, and this is corroborated by the statement of PW8/Umika, who was on bandobust duty on 30.04.2016 and had observed that some Muslim people were cleaning the area around a dilapidated structure at the spot and were performing Urus celebrations. It is therefore well established, through the evidence of PW1 and PW2 and the other eye witnesses, that the Accused and a large gathering, on the relevant day had come to worship at this Dargah, without any intent to annoy or insult or intimidate anyone.

18. The plaint in the civil suit No. 30/2017/A was produced in evidence and discloses that the

defendants/Accused herein had been gathered on the property in question to purportedly worship a structure of religious significance to them. A permanent injunction against the defendants has been sought in the said suit restraining them from conducting acts of worship, festivities, and/or rituals in any form on the property. This indicates that the accused entered the property solely to worship the disputed structure.

19. Whilst determining whether the offence of criminal trespass was committed by the accused, the Trial Court has taken a view, based upon the very same findings referred to by me above, and has held that there was no intention to annoy, insult or intimidate the complainant; the Trial Court has further held that the Accused, amongst the larger gathering, only had intention of worshiping at the structure in question and has therefore held that the ingredient of an offence under Section 441 IPC was not made out. The conclusions of the Trial Court are based on the evidence on record and the view taken is plausible and based on such evidence. In my opinion, the view taken by the Trial Court is not only plausible but appears to be the only reasonable conclusion which could be drawn from the evidence before it.

20. The Judgment of the Trial Court does not warrant interference by this Court. The order of acquittal reinforces the presumption of innocence in favour of the accused and can only be challenged if it is completely perverse, illegal, or based on an error of law or fact, which is not the case here.

21. For the reasons stated above, the leave to appeal against the order of acquittal dated 30.04.2022 stands rejected. The Judgment of the Trial Court stands confirmed, and the appeal stands dismissed.

VALMIKI MENEZES, J.