



2026:AHC-LKO:44895-DB

Neutral Citation No. - 2026:AHC-LKO:44895-DB
A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 378 No. - 196 of 2019

State of U.P.

.....Applicant(s)

Versus

Babloo @ Ashok Singh and Anr.

.....Opposite Party(s)

Counsel for Applicant(s) : Govt. Advocate,
Counsel for Opposite Party(s) :

Court No. - 11

**HON'BLE ABDUL MOIN, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.**

(Dictated by Pramod Kumar Srivastava,J.)

Re: Criminal Misc. Application (Leave to Appeal)

1. Heard Sri Anurag Verma, learned AGA appearing for the appellant-State of UP and perused the record.

2. The present government appeal has been preferred by the State against the judgment and order dated 23.07.2019 passed by Additional Sessions Judge/Fast Track Court, Court No.1, Gonda in Sessions Trial No. 443 of 2016 arising out of Case Crime No. 87 of 2014 under Sections 376

were convicted for the offence under Section 323 of I.P.C. while the accused Babloo @ Ashok Singh was acquitted of the charge of Sections 376 and 452 of IPC and accused Maksoodan was also acquitted of the charge of Section 452 of IPC.

4. Being aggrieved and dissatisfied by the order of acquittal, the State has filed this appeal along with application under Section 378(3) of Cr.P.C. for grant of leave to appeal against the said judgment.

5. Prosecution story, in brief, is that on 12.04.2014 at about 7.00 p.m. in the evening accused/opposite party No.1-Babloo @ Ashok Singh entered into the house of the informant/victim and caught her hand, pulled her in the “kothri”, where victim was undressed and accused molested her. Upon hue and cry, victim’s husband and father-in-law rushed to save her, then accused/opposite party No.2-Maksoodan started to beat them. Victim’s husband and her father-in-law ran towards the room, then accused entered there and inflicted blows to them.

6. On the basis of written information given by the informant, First Information Report (herein after referred to as ‘FIR’) against accused persons Babloo @ Ashok Singh and Maksoodan had been lodged under Sections 376, 323 and 452 of IPC.

7. During the course of investigation, statement of victim and witnesses were recorded. The victim was medically examined and after concluding the investigation, the Investigating Officer filed the charge-sheet against the accused persons for the aforesaid offences.

8. After compliance of mandatory provision of Section 207 of Code

Maksoodan charge was framed under Sections 452, 323 of the IPC only for which the accused persons denied and claimed to be tried.

9. In order to prove its case, the prosecution has adduced ocular evidence of victim/informant PW-1, Radhe PW-2, Dr. Karuna Gupta PW-3, Investigating Officer Awadesh Singh PW-4, Dr. V.K.Gupta PW-5, Lady Constable Neha Singh PW-6 and Head Constable Sachhidanand Mishra PW-7.

10. After hearing the learned counsel for the parties and perusing the material available on record, the learned trial court found that the charges against the accused, Babloo @ Ashok Singh and Maksoodan for the offence under Section 323 of I.P.C. were proved. Therefore, they were held guilty of the offence under Section 323 of the IPC. Conversely, the charge under Section 376/452 against the accused Babloo @ Ashok Singh, and the charge under Section 452 against Maksoodan, were not proved. Consequently, the court acquitted Babloo @ Ashok Singh for the offences under Sections 376 and 452 of the IPC, and acquitted Maksoodan for the offence, under Section 452 of the IPC.

11. The judgment of acquittal was passed on the ground that prosecution version is not innocent since the alleged incident is stated to be happened in the evening at 7.00 p.m. while all family members of the victim were present there, therefore, it was not possible for accused to drag the victim and commit rape on her. Learned trial Court also observed that victim is a married lady having five children. She has stated that accused thrown her and thereafter dragged and then committed rape on her, but Dr. Karuna Gupta PW-3 did not find any external or internal injury on the person of the victim and no abrasion or

accused persons inflicted blows with a piece of brick on her head and one injury was found on the head of the victim.

12. Learned trial Court also indicated that in the statement given by Dr. Karuna Gupta PW-3, no external or internal injury on the private parts of the victim was found and at the time to alleged incident in the evening all the family members were present on the spot, then it was unbelievable and impossible to commit rape on the victim. Learned trial court further found that there was material contradiction and shifting of stand in the statement of victim, her statement was not worthy belief. Under such circumstances, the trial Court found that the prosecution could not prove its case beyond reasonable doubt and the accused persons were given benefit of doubt and judgment of acquittal was passed.

13. Challenging to this impugned judgment, Sri Anurag Verma, learned AGA submits that the trial Court has erred in appreciating the evidence on record. He further submits that it is very ridiculous that learned trial Court accepts partial evidence of the victim while disbelieved the remaining portion of the testimony of the victim. He also submitted that evidence of the victim must be read in totality and victim has categorically stated that accused Babloo has committed rape on her and both the accused persons after entering into the room made assault also. The victim has supported the prosecution version in her statement recorded under Section 164 of CrPC and testimony given before the trial Court. He further submits that the learned trial Court has given undue weightage to the evidence of defence evidence and has wrongly ignored the prosecution evidence. He further submits that the witnesses are intact and have corroborated the prosecution case and the findings recorded by

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

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

16. 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"

17. 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 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

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."

18. In a judgment 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

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

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

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

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."

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

20. On perusal of record we find that the learned trial Court has thoroughly analyze the testimony of the victim and specifically discussed that the victim was married woman having five children and at the time of alleged incident kids of the victim and her other family member were present in the house, therefore, it was not possible in any manner to pull and drag the victim and thereafter commission of rape. We further find that it is not the statement of the victim that she raised any alarm to attract the attention of the family members and other neighbours. PW-3 Dr. Karuna Gupta has stated that no external or internal injury was found on the private part of the victim. It is noticable that no independent witness has been examined in support of the prosecution case while defence witness Praveen Singh DW-1 and Ram Bahadur DW-2 has stated that due to village rivalry and election enmity accused persons were implicated in this false case while no such type of incident had taken place. On close scrutiny, we also find that there is material discrepancy in the statement of the victim with regard to commission of rape and she is not a sterling witness on this point. In such view of the matter, we, therefore, find that the trail Court has taken possible view of the matter on appreciation of entire evidence on record,

Re: Government Appeal

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

(Pramod Kumar Srivastava,J.) (Abdul Moin,J.)

July 07, 2026

Arvind