State Of Maharashtra vs Sujay Mangesh Poyarelar on 19 September, 2008

Equivalent citations: AIR 2008 SC (SUPP) 907, 2008 (9) SCC 475, (2009) 1 BOMCR(CRI) 288, (2009) 1 EASTCRIC 27, (2008) 70 ALLINDCAS 15 (SC), (2008) 4 ALLCRILR 723, 2008 CALCRILR 2 796, (2008) 63 ALLCRIC 106, (2008) 3 ALLCRIR 3223, (2008) 4 CURCRIR 125, 2008 (3) SCC (CRI) 793, (2008) 41 OCR 901, (2008) 2 CRILR(RAJ) 820, (2008) 12 SCALE 779, (2008) 3 MAD LJ(CRI) 1202, 2008 CRILR(SC&MP) 820, 2008 CRILR(SC MAH GUJ) 820, (2008) 2 ALD(CRL) 750

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Bench: D.K. Jain, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1492 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL) NO. 7251 OF 2007

STATE OF MAHARASHTRA ... APPELLANT

VERSUS

SUJAY MANGESH POYAREKAR ... RESPONDENT

J U D G M E N T

C.K. THAKKER, J.

1. Leave granted.

2. The present appeal is filed against the order passed by the High Court of Judicature at Bombay on June 12, 2007 in Criminal Application No. 1390 of 2007. By the said order, the High Court refused to grant leave to appeal to the State against an order of acquittal recorded by III Ad hoc Addl. Sessions Judge, Palghar on January 16, 2007 in Sessions Case No. 148 of 2003.

3. Short facts of the case are that complainant-Rajan Mukund Patil is the resident of Chinchani, Bhandar Ali, Taluka Dahanu, District Palghar, Maharashtra. He is a practising advocate at Dahanu Court. According to the prosecution, on June 07, 2003, complainant had gone to Dahanu Court. In the evening, he went to Vangaon by train and therefrom he was to go to his residence at Chinchani. For that purpose, he went to Dahanu Railway Station at about 6.00 p.m. and boarded Firozpur Janta Train. He reached Vangaon at 6.15 p.m. On platform No.2, he saw Deepa Gajanan Patil who was going to Mumbai. The complainant was knowing her. He, therefore, asked her as to where she was going. She told the complainant that she had come to receive her father. Meanwhile, accused Sujay Mangesh Poyarekar-respondent herein alighted from Virar-Surat shuttle. The accused came near the complainant and asked him why he was standing there and started abusing him. The accused also alleged that the complainant was flirting with his wife. So saying, the accused assaulted the complainant with knife in his stomach, on right shoulder, below left armpit and on back-side. The complainant received injuries. He immediately went to Station Master's cabin. In the meanwhile, his sister Charushila and one Hitendra came there and took complainant to the Vangaon Government Hospital. Later on, police went to the hospital and recorded statement of the complainant.

4. On the basis of the statement, initially C.R. No. 00 of 2003 was registered in Vangaon Police Station. The said complaint was then forwarded to Palghar Railway Police Station where C.R. No. I-9 of 2003 was registered at 23.00 hours vide Station Diary No. 42 of 2003 for offences punishable under Sections 307 and 504 of the Indian Penal Code (IPC). The accused was arrested at about 23.45 hours and was released on bail on June 12, 2003. After usual investigation and recording of statement of witnesses, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Railway, Virar.

5. Since the offence under Section 307, IPC was exclusively triable by a Court of Session, the Judicial Magistrate, by an order dated November 27, 2003 committed the case to Sessions Court, Palghar. It was registered as Sessions Case No. 148 of 2003. Necessary charge was framed against the accused who pleaded not guilty to the charge and claimed to be tried.

6. The prosecution in order to establish the case against the accused, examined 15 witnesses. It mainly relied upon testimony of PW1-Rajan (complainant and victim) and PW2- Charushila (real sister of complainant). Deposition of PW12-Dr. D'Souza was recorded to prove injuries sustained by the victim. After the prosecution evidence, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `the Code') wherein he admitted his presence on the Railway platform on the date of occurrence. He, however, denied to have committed any offence.

7. The learned trial Judge, vide his judgment and order dated January 16, 2007, acquitted the accused for the offences with which he was charged. According to the learned Judge, the prosecution failed to establish the case against the accused beyond reasonable doubt.

8. The State, being aggrieved by the order of acquittal, filed an application, being Criminal Application No. 1390 of 2007 for leave to appeal in the High Court. The High Court, vide the

impugned order dated June 12, 2007, rejected the application observing that the judgment of the trial Court could not be said to be `perverse' and no interference was called for. The State has challenged the said order in this Court.

9. On November 23, 2007 when the Special Leave Petition was placed for admission hearing, notice was issued. It was indicated in the order that the notice will state as to why Special Leave Petition should not be disposed of by setting aside the order passed by the High Court and by remitting the matter to the High Court to be decided in accordance with law. Service of notice had been effected on the accused who appeared through counsel. An affidavit in reply is also filed justifying the order passed by the High Court refusing leave.

10. We have heard learned counsel for the parties.

11. The learned counsel for the State contended that the High Court has committed an error of law in not granting leave to the State to file an appeal against the order of acquittal recorded by the Sessions Court. The counsel submitted that from the material placed before the Court, it is clearly established that PW1-Rajan sustained injuries which were proved from the evidence of Dr. D'Souza-PW12. According to PW1-Rajan, injuries had been caused by the accused. PW2-Charushila real sister of complainant had corroborated the version of PW1-Rajan. The High Court ought to have appreciated the prosecution evidence, ought to have granted leave and decided the appeal on merits.

12. It was also submitted that from the record, it was clearly proved that there was enmity between the parties. It was the allegation of the accused that PW1-Rajan was harassing Deepa. It has also come in evidence that on the date of incident i.e. on June 7, 2003, the complainant was assaulted. Initially, he went to cabin of the Station Master, Dahanu Railway Station where a report was lodged which was subsequently sent to Palghar Railway Police Station where a case was registered for offences punishable under Sections 307 and 504, IPC. The accused was admittedly present at the Railway Station. The High Court has not considered all these facts. It has also not discussed evidence of PW1-Rajan nor of PW2- Charushila. A sweeping statement was made in the order that the trial Court had appreciated the evidence properly by taking into consideration several complaints filed against the complainant who had tendered apology to the President, Bar Association, Dahanu. An action was also taken by the Bar Council. According to the High Court, the judgment of the trial Court could not be said to be `perverse'. It accordingly dismissed the application. It was submitted that keeping in view all these facts, the present appeal deserves to be allowed by remitting the matter to the High Court for fresh disposal in accordance with law.

13. The learned counsel for the accused, on the other hand, supported the order passed by the High Court. In the counter-affidavit, it was said that there was suppression of fact by the State. It was stated that being aggrieved by the order passed by the trial Court acquitting the accused, the complainant filed a revision which was registered as Criminal Revision Application No. 166 of 2007 and a Single Judge of the High Court, vide order dated July 18, 2006, dismissed it. The State was joined as party. The Assistant Public Prosecutor also appeared for the State and the High Court refused to interfere with the order. The fact of filing revision by the complainant and dismissal thereof has not been mentioned in the present proceedings. On this ground alone, the appeal

deserves to be dismissed.

14. Even on merits, the counsel submitted that no error can be said to have been committed by the High Court in refusing leave and in dismissing application filed by the State. The Trial Court considered the prosecution evidence in detail and came to the conclusion that the prosecution was unable to prove case against the accused beyond reasonable doubt and was, therefore, entitled to acquittal. It was not necessary for the High Court when it agreed with the order of acquittal recorded by the trial Court to record reasons again for such acquittal. It was, therefore, submitted that no case has been made out for interference by this Court and the appeal deserves to be dismissed.

15. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed.

16. So far as the preliminary objection raised by the learned counsel for the accused is concerned, we find no substance therein. The case in hand was instituted on the basis of First Information Report. It was thus a Police case. De facto complainant, therefore, has no right to file an appeal. He, therefore, preferred a revision. Now it is well settled that revisional jurisdiction can be exercised sparingly and only in exceptional cases. A revisional Court cannot convert itself into a regular Court of Appeal.

17. Interpreting the provisions of Section 439 of the Code of Criminal Procedure, 1898 (similar to Section 401 of the present Code of 1973), in the leading case of Chinnaswamy Reddy v. State of A.P., (1963) 3 SCR 412, this Court stated;

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of s. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished of produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions

of s. 439(4).

18. Powers of revisional Court are thus limited. Rejection of a revision application, therefore, cannot affect the power of the State in invoking statutory remedy available under Section 378 of the Code. The preliminary objection has, therefore, no force and is hereby rejected.

19. So far as an application for leave to appeal by the State is concerned, the High Court rejected it without considering the evidence of the prosecution. In the impugned order, the High Court noted that it had heard the learned Assistant Public Prosecutor. It went on to state that none of the injuries sustained by the victim was `fatal'. According to the High Court, the cause behind the assault was that the complainant-advocate was teasing the wife of the accused, who was also working in the Court.

20. It then proceeded to observe;

> "The trial Court has appreciated the evidence properly and has also taken into consideration the number of complaints filed against the said advocate complainant including the apology tendered by the complainant to the President, Bar Association, Dahanu and the action taken by the Bar Council. The trial Court found inherent improbabilities in the case of the complainant and therefore acquitted the accused. The judgment of the trial Court cannot be said to be perverse. No interference is called for. Application rejected".

21. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

22. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

23. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial Court must be allowed by the appellate Court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the Court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial Court could not be said to be `perverse' and, hence, no leave should be granted.

24. In Sita Ram & Ors. v. State of Uttar Pradesh, (1979) 2 SCC 656, this Court held that a single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the concept that men are fallible, judges are men and making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re- examination of the facts and the law is made an integral part of fundamental fairness or procedure.

25. We are aware and mindful that the above observations were made in connection with an appeal at the instance of the accused. But the principle underlying the above rule lies in the doctrine of human fallibility that `Men are fallible' and `Judges are also men'. It is keeping in view the said object that the principle has to be understood and applied.

26. Now, every crime is considered as an offence against the Society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is, therefore, the duty of the State to take appropriate steps when an offence has been committed.

27. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate Court against an order of acquittal recorded by the trial Court. We only state that in such cases, the appellate Court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial Court should not be disturbed. Where there is application of mind by the appellate Court and reasons (may be in brief) in support of such view are recorded, the order of the Court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and re-appreciation, review or reconsideration of evidence, the appellate Court must grant leave as sought and decide the appeal on merits.

28. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.

29. We have gone through the judgment and order of acquittal recorded by the trial Court which runs into more than 30 typed pages. It records that 15 witnesses were examined by the prosecution including injured victim PW1-Rajan and PW2-Charushila, real sister of the victim. The trial Court observed that the testimony of PW1-Rajan revealed that the incident occurred on June 7, 2003 at about 6.15 p.m. The injuries sustained by PW1 Rajan were proved from the evidence of Dr. D'Souza, PW12.

30. The trial Court also recorded the following finding in para 15 of the judgment.

> "15. Anyway, the oral testimony of PW1-Rajan, his sister, PW2- Charusheela, PW9-Nareshkumar of Vangaon Railway Station as well as the testimony of Dr. Ravidas Purshottam Patil-PW-15 show that Rajan Mukund Patil sustained bleeding injuries".

31. PW12-Dr. D'souza, Medical Officer of KEM Hospital, Mumbai stated that he had examined victim PW1-Rajan on June 8, 2003 at 4.00 a.m. in the early morning and found following four injuries.

1. C.L.W. right shoulder 3 x 1 x 1 cm anterior aspect, caused by sharp object, age within 24 hrs, nature simple.

2. C.L.W. on 1 x 3 x 6 cms in epigastria (upper part of abdomen) caused by sharp object, grievous injury.

3. C.L.W. 1 x 0.5 x 0.5 cm, left axilla i.e. left arm pit caused by sharp object, injury is simple.

4. C.L.W. 5 x 1 x 1 cm left flank (left side of abdomen) caused by sharp object, grievous.

32. He issued necessary certificate which is at Ext. 34. According to him, injuries could be caused by sharp cutting instrument like knife. Though initially he stated that injuries 2 and 4 were grievous and fatal in nature, thereafter he stated that they were not fatal but could become fatal. The Court also noted that the circumstantial evidence supported the contention of the complainant that he sustained bleeding injuries. Bloodstains were found on the shirt and pant of accused which was of Group `A' i.e. blood group of the complainant.

33. The accused in his statement under Section 313 of the Code admitted that he was present at Vangoan Railway Station on June 07, 2003; that he complained to PW9 Naresh Kumar that one person was flirting with his wife; that he was arrested by PW 13 Dattatraya and was sent for medical examination, that PW11 Dr. Padmaja examined him and issued Medical Certificate (Ex. 32). He stated that his wife and passengers at the Railway Station had severely beaten the complainant. It has also come on record that complaints were made to the Dahanu Bar Association. Certain documents were also produced relating to objectionable behaviour by the complainant, lodging of complaints by the accused and resolution passed by the Dahanu Bar Association.

34. The trial Court also recorded a finding that the defence counsel had successfully established enmity between the complainant and the accused. According to the Court, on the date of incident i.e. on June 7, 2003, around 6.15 p.m., there was a scuffle between the complainant on one hand and the accused on the other hand on account of misbehaviour by the complainant towards the wife of the accused. The trial Court came to the conclusion that from the testimony of PW10- Dr. Padmaja who examined the accused on June 8, 2003, found three injuries on the person of the accused as mentioned in Ext.32. They were on the left shoulder and the right upper limp of the accused. According to the Court, injuries on the person of the accused supported his defence that he was beaten by the complainant and prosecution failed to explain the injuries on the person of the accused.

35. In view of the all these facts, circumstances and findings, in our opinion, the High Court should not have rejected the application for grant of leave by passing a `brief' order. Moreover, the High Court observed in the impugned order that the judgment of the trial Court cannot be said to be

`perverse'.

36. Now, so far as powers of the appellate Court in an appeal against acquittal are concerned, no restrictions have been imposed by the Code on such powers while dealing with an order against acquittal. In an appeal against acquittal, the High Court has full power to re- appreciate, review and reweigh at large the evidence on which the order of acquittal is founded and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate Court.

37. It is no doubt true that in a case of acquittal, there is a double presumption in favour of the respondent-accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed 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 by the trial Court (and certainly not weakened). Nonetheless, it is not correct to say that unless the appellate Court in an appeal against acquittal under challenge is convinced that the finding of acquittal recorded by the trial Court is `perverse', it cannot interfere. If the appellate Court on re-appreciation of evidence and keeping in view well established principles, comes to a contrary conclusion and records conviction, such conviction cannot be said to be contrary to law.

38. Recently, in Chandrappa v. State of Karnataka, (2007) 4 SCC 415, after considering all leading decisions on the point, one of us (C.K. Thakker, J.) laid down the following general principles regarding powers of the appellate Court in dealing with an appeal against an order of acquittal.

(1) An appellate Court has full power to review, reappreciate 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;

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(3)    Various expressions, such as,
      'substantial     and      compelling
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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 emphasize 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 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.

39. The High Court, in our judgment, was not right in rejecting the application for leave on the ground that the judgment of the trial Court could not be termed as `perverse'. If, on the basis of the entire evidence on record, the order of acquittal is illegal, unwarranted or contrary to law, such an order can be set aside by an appellate Court. Various expressions, such as, 'substantial and compelling reasons', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', `judgment being perverse', etc. are more in the nature of 'flourishes of language' than restricting ambit and scope of powers of the appellate Court. They do not curtail the authority of the appellate Court in interfering with an order of acquittal recorded by the trial Court. The Judgment of the High Court, with respect, falls short of the test laid down by this Court in various cases referred to in Chandrappa. The order of the High Court, therefore, cannot stand and must be set aside.

40. For the foregoing reasons, the appeal deserves to be allowed and is allowed accordingly by remitting the matter to the High Court for fresh disposal in accordance with law.

41. Before parting with the case, we may state that we may not be understood to have expressed any opinion one way or the other on the merits of the matter. As and when the High Court will hear the matter, the Court will decide the case without being influenced by any observations made by us in this judgment.

42. Ordered accordingly.

.....J. (C.K. THAKKER) .....J. (D.K. JAIN) NEW DELHI, September 19, 2008.