

Harshad Gupta

v.

The State of Chhattisgarh

(Criminal Appeal No. 4080 of 2024)

01 October 2024

[Surya Kant and Ujjal Bhuyan, JJ.]

Issue for Consideration

The Judge who had convicted the appellant was transferred post conviction, before the appellant could be heard on the quantum of sentence and a new Judge was posted in his place. Appellant relying on Sections 353 and 354, Cr.P.C sought direction from the High Court to the new Presiding Officer to re-hear the case, including on the question of conviction. High Court whether justified in dismissing the petition filed by the appellant and directing the new Presiding Officer to hear the appellant on the question of sentence and pass an appropriate order in terms of Section 235(2) of the Cr.P.C.

Headnotes[†]

Code of Criminal Procedure, 1973 – ss.235(1), (2) – Operation – Transfer of the Presiding Officer post conviction, the new Presiding Officer if obligated to hear the matter afresh including on the question of conviction:

Held: No – Post the judgment of conviction, the accused has a right to be heard on the quantum of the sentence – Complying with s.235(1), the appellant was duly heard and a judgment of conviction was recorded and pronounced on 30.04.2015 whereafter, the appellant was entitled to be heard on the question of sentence – However, since the appellant himself sought adjournments and exemption from personal appearance on the ground of his accident, meanwhile the Presiding Officer was transferred, and the new Presiding Officer was required to hear the appellant on the quantum of the sentence for compliance with s.235(2) and pass an appropriate order of sentence – The process and procedure contemplated u/s.235(2) cannot annul the judgment of conviction recorded u/sub-section (1) thereof – Both clauses operate in their respective fields, though sub-section (2) is contingent upon the outcome under sub-section (1) of s.235 – The occasion to comply

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with sub-section (2) of s.235 arises only when there is a judgment of conviction passed u/s.235(1) – Thus, once the judgment dated 30.04.2015 was pronounced, the conviction of the appellant stood finalized within the meaning of s.235(1), whereupon the Trial Court became functus officio for the purpose of sub-section (1) of s.235 – The only issue that survived thereafter was of the quantum of sentence for which, the procedure contemplated under sub-section (2) was to be complied with – No infirmity in the impugned order passed by the High Court holding that the new Presiding Officer would hear the appellant on the question of sentence and pass an appropriate order. [Paras 14-16]

Code of Criminal Procedure, 1973 – ss.353, 354 – Compliance with – Plea of the appellant that the judgment of conviction against him did not satisfy the ingredients of s.353 r/w s.354, Cr.P.C. and hence, there was no ‘judgment’ within the meaning of sub-section (1) of s.235:

Held: Rejected – Judgment of conviction passed by the Trial Court satisfied s.354(1) – The said judgment was read out by the Presiding Officer in open court, in the presence of the appellant’s counsel and it was well understood by his pleader – Thus, the Presiding Officer followed the procedure envisaged under sub-section (1) of s.353 – The Presiding Officer then listed the case to accord a hearing to the appellant on the quantum of sentence – There is no violation of ss.353 or 354. [Para 18]

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Judgment of conviction; Transfer of the Presiding Officer post conviction, New Presiding Officer; Quantum of the sentence; Right to be heard on the quantum of the sentence; Order of sentence; ‘judgment’; Functus officio.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4080 of 2024

From the Judgment and Order dated 13.05.2019 of the High Court of Chhattisgarh at Bilaspur in CRLMP No. 444 of 2015

Harshad Gupta v. The State of Chhattisgarh**Appearances for Parties**

Dr. Rajesh Pandey, Sr. Adv., Prashant Kumar Umrao, Ms. Nishi Prabha Singh, Advs. for the Appellant.

Arjun D Singh, Ms. Ankita Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

Leave granted.

2. The appellant's grievance is against the Judgment dated 13.05.2019 passed by the High Court of Chhattisgarh at Bilaspur, whereby his prayer to re-open the judgment of his conviction, hear the arguments afresh by the new Presiding Officer, and then deliver a judgment of conviction or acquittal, has been turned down. The facts may be noticed briefly:
3. FIR No. 03/13 was registered on 28.05.2013 at Police Station Jashpur under Sections 376 and 506 of the Indian Penal Code, 1860 (in short, the "IPC"). The appellant is the principal accused. His father was also named as accused of threatening the victim with dire consequences if she would not withdraw the complaint. The Trial Court framed charges under Sections 376(1) and 506 of the IPC against the appellant, in 2013. The Sessions trial was conducted and the final hearing was also concluded. The learned Additional Session's Judge, vide order dated 28.04.2015, adjourned the case for 30.04.2015 for pronouncement of judgment. The appellant was held guilty and convicted vide judgment pronounced on 30.04.2015.
4. Before he could be heard on the quantum of the sentence, the appellant moved an application on 30.04.2015 under Section 317 of the Code of Criminal Procedure, 1973 (in short, the "Cr.P.C.") to exempt him from personal appearance on the ground that he had met with an accident. In view of that application, the matter was adjourned on a few occasions to enable the appellant to recover from the accident.
5. In the meanwhile, the Presiding Officer of the Court, namely, Mr. J. R. Banjara, who had convicted the appellant, was transferred between 04.05.2015 and 15.05.2015. A new Presiding Officer, namely, Mr. Mohammad Rizwan Khan was posted in his place.

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6. After that, the appellant approached the High Court seeking a direction to the new Presiding Officer to re-hear the case, including on the question of conviction. He relied upon Sections 353 and 354 of the Cr.P.C. It was contended that the new Presiding Officer was obligated not only to hear the appellant on the question of sentence but also on the point of conviction in terms of the above-mentioned provisions. The High Court, vide interim order dated 19.06.2015, stayed the proceedings before the Trial Court. Finally, vide the impugned order dated 13.05.2019, the petition filed by the appellant was dismissed, having found that:
 - (i) the judgment of conviction was duly pronounced by learned Additional Sessions Judge, Mr. J.R. Banjara; and
 - (ii) there was no illegality in the successor-in-office of the Court of Additional Sessions Judge to hear and determine the quantum of the sentence, even in a case where the judgment of conviction was pronounced by his predecessor-in-office.
7. The High Court, consequently, directed the new Presiding Officer to hear the appellant on the question of sentence and pass an appropriate order in terms of Section 235(2) of the Cr.P.C.
8. The aggrieved appellant is before us.
9. We have heard learned Senior Counsel/counsel for the parties and perused the record.
10. Section 235 of the Cr.P.C. reads as follows:

“Judgment of acquittal or conviction

 1. After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.
 2. If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.”
11. A plain reading of the provision leaves no room to doubt that a judgment of conviction shall have two components; namely,
 - (i) Judgment on the point of conviction; and

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- (ii) Where the accused is convicted, a separate order of sentence to be passed according to law, after hearing the accused on the question of sentence.
12. The aforesaid provision mandates that once the judgment of conviction is delivered, the accused has a right to be heard on the quantum of the sentence. This is so, in view of the well-established principle of law that various relevant factors, including mitigating circumstances, if any, are to be kept in mind by the Court while awarding an adequate and proportionate sentence.
13. It is not in dispute that in deference to Section 235(1) of the Cr.P.C., the appellant was duly heard and a judgment of conviction was recorded and pronounced on 30.04.2015.
14. Consequential thereto, the appellant was entitled to be heard on the question of sentence. Since the appellant himself had been seeking adjournments and exemption from personal appearance due to the injuries suffered by him in a road accident and meanwhile the Presiding Officer had been transferred, it was but natural that the new Presiding Officer was required to hear the appellant on the quantum of the sentence, for faithful compliance with Section 235(2) of the Cr.P.C. and then, to pass an appropriate order of sentence.
15. The process and procedure contemplated under Section 235(2) of the Cr.P.C. cannot annul the judgment of conviction recorded under sub-section (1) thereof. Both clauses operate in their respective fields, though sub-section (2) is contingent upon the outcome under sub-section (1) of Section 235 of the Cr.P.C. The occasion to comply with sub-section (2) of Section 235, thus, arises only when there is a judgment of conviction passed under Section 235(1) of the Cr.P.C.
16. The contention of the appellant, that with the transfer of the Presiding Officer post his conviction, the new Presiding Officer was obligated to hear him afresh even on the question of conviction, is wholly misconceived and misdirected. Once the judgment dated 30.04.2015 was pronounced, the conviction of the appellant stood finalized within the meaning of Section 235(1) of the Cr.P.C., whereupon the Trial Court became *functus officio* for the purpose of sub-section (1) of Section 235 of the Cr.P.C. The only issue that survived thereafter was of the quantum of sentence for which, the

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procedure contemplated under sub-section (2) was to be complied with. The High Court has, thus, rightly held that the successor officer would hear the appellant on the question of sentence and pass an appropriate order. We see no legal infirmity in the impugned order passed by the High Court.

17. Learned senior counsel for the appellant vehemently urges that the judgment of conviction, granted against the appellant, does not satisfy the ingredients of Section 353 read with Section 354 of the Cr.P.C. and hence, there is no 'judgment' rendered in the eyes of law within the meaning of sub-section (1) of Section 235 of the Cr.P.C.
18. We are, however, not impressed by the submission. We say so for the reason that the Trial Court delivered a self-speaking judgment of conviction which satisfies all the constituents illustrated in Section 354(1) of the Cr.P.C. Further, the operative part of the Judgment as well as the order passed on that very date for granting exemption from personal appearance to the appellant, reveal that the said judgment of conviction was read out by the Presiding Officer in open court, in the presence of the appellant's counsel, and it was well understood by his pleader. The Presiding Officer thus, followed the procedure envisaged under sub-section (1) of Section 353 of the Cr.P.C. The next step to be taken by the Presiding Officer, was to list the case to accord a hearing to the appellant on the quantum of sentence. That is precisely what has been done in the instant case. We are, thus, of the view that there is not even a fragment of violation of Sections 353 or 354 of the Cr.P.C., as claimed on behalf of the appellant.
19. There is thus no merit in this appeal which is consequently dismissed.
20. The Presiding Officer, presently posted in the concerned trial Court, is directed to hear the appellant on the question of sentence as early as possible but not later than one month from the date of receipt of a copy of this Order. The necessary consequences will follow.
21. The appellant is directed to surrender before the Trial Court on 04.11.2024 at 10.00 a.m. for being taken into judicial custody. He shall be produced before the Trial Court on the date of hearing on the quantum of sentence as also the date of pronouncement of the order on sentence. In case he absents or absconds, the law must

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take its own course. The Police Authorities are directed to ensure that the appellant remains present before the Court to meet the necessary consequences.

22. Ordered accordingly.

Result of the Case: Appeal dismissed.

[†]Headnotes prepared by: Divya Pandey