

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 446 of 2021
(Arising out of SLP (Crl) No 1855 of 2019)

State of Uttar Pradesh

Appellant

Versus

Ambarish

Respondent

ORDER

1 Leave granted.

2 This appeal arises from an order of a Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal No 2518 of 2013. The criminal appeal before the High Court was instituted by the respondent in order to challenge a judgment and order dated 20 May 2013 of the Additional Sessions Judge, Court No 15, Ghaziabad in ST No 9 of 2011, arising out of Case Crime No 132 of 2009 under Section 364A of the Indian Penal Code, registered at Police Station Kotwali, District Ghaziabad. The respondent was convicted of an offence under Section 364A of the Penal Code and was sentenced to undergo imprisonment for life, to a fine of Rs 5,000 and, in default, to undergo imprisonment for a period of one year.

- 3 The State of Uttar Pradesh is in appeal against the judgment of the High Court.
- 4 On 18 February 2019, this Court issued notice while condoning the delay. Thereafter, on 5 April 2019, directions were issued to serve the unserved respondent. On 19 February 2021, this Court noted that the respondent had been served. In view of the above position, a bailable warrant was directed to be issued against the respondent to the satisfaction of Additional Sessions Judge, Ghaziabad, returnable on 19 April 2021. Mr Gaurav Agarwal, learned counsel instructed by Mr Shashank Singh, has appeared on behalf of the respondent.
- 5 The High Court while reversing the judgment of conviction of the Additional Sessions Judge, recorded the submissions of the counsel for the appellant in paragraphs 11, 12, 13, 14, 15, 16, 17 and 18 of the judgment. Having recorded the submissions, the High Court entered its findings in paragraph 19 in the following terms:

“In view of the foregoing discussions, we are of the opinion that the prosecution has miserably failed to prove its case against the appellant and as such the finding of conviction and sentence recorded against the appellant cannot be sustained in the eyes of law and is liable to be set aside by allowing the appeal. The impugned judgment and order 20.05.2013 passed by the trial court is hereby set aside.”

6 *Ex facie*, a reading of the judgment of the High Court indicates that there has been no independent evaluation by the High Court of the evidence or, for that matter, of the submissions which were recorded by the High Court as noted above. While deciding a criminal appeal on merits, the High Court was required to apply its mind to the entirety of the case including the evidence on the record before arriving at its conclusion. This Court has recently in ***State of Gujarat vs Bhalchandra Laxmishankar Dave*** [Criminal Appeal No 99 of 2021] held as follows:

“6. We have gone through the detailed judgment and order of conviction passed by the Learned Trial Court and also the evidence on record laid down by the prosecution as well as the defence. We have perused the impugned judgment and order of acquittal passed by the High Court to ascertain whether the High Court has conformed to the principles while exercising in the criminal appeal against the judgment and order of conviction. We find that the High Court has not strictly proceeded in the manner in which High Court ought to have while dealing with the appeal against the order of conviction. On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that, as such, there is no re-appreciation of the entire evidence on record in detail while acquitting the respondent – accused. The High Court has only made general observations on the depositions of the witnesses examined. However, there is no re-appreciation of the entire evidence on record in detail, which ought to have been done by the High Court while dealing with the judgment and order of conviction passed by the Learned Trial Court.

6.1 The High Court ought to have appreciated that it was dealing with the first appeal against the order of conviction passed by the Learned trial Court. Being First Appellate Court, the High Court was required to re-appreciate the entire evidence on record and also the reasoning given by the Learned trial Court while convicting the accused. Non-re-appreciation of the evidence on record may affect the case of either the prosecution or even the accused. Being the First Appellate Court the High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order

of acquittal passed by the Learned Trial Court.

6.2 An Appellate Court while dealing with an appeal against acquittal passed by the Learned trial Court, is required to 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 6 reinforced, reaffirmed and strengthened by the trial Court. Therefore, while dealing with the cases of acquittal by the trial Court, the Appellate Court would have certain limitations. Even in the case of acquittal passed by the Learned Trial Court, in the case of *Umedbhai Jadavbhai vs. The State of Gujarat*, (1978) 1 SCC 228, it is observed and held by this Court that "Once the appeal is entertained against the order of acquittal, the High Court is entitled to re-appreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. The High Court would be justified against an acquittal passed by the Learned Trial Court even on re-appreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous". However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the Court of appeal has wide powers of appreciation of evidence and the High Court has to re-appreciate the entire evidence on record being a First Appellate Court. Keeping in mind that once the 7 Learned Trial Court has convicted there shall not be presumption of innocence as would be there in the case of acquittal."

- 7 Left with no reasoning by the High Court to support the impugned judgment and order dated 16 May 2018, we are of the view that it would be appropriate to allow the appeal and to remand the proceedings back to the High Court for a decision afresh. In order to facilitate this exercise, we allow the appeal and set aside the impugned judgment and order of the High Court dated 16 May 2018. Criminal Appeal No 2518 of 2013 shall accordingly stand

restored to the file of the High Court for a fresh decision.

8 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

New Delhi;
April 19, 2021
CKB

ITEM NO.29

Court 6 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.1855/2019

(Arising out of impugned final judgment and order dated 16-05-2018 in CRLA No.2518/2013 passed by the High Court of Judicature at Allahabad)

THE STATE OF UTTAR PRADESH

Petitioner(s)

VERSUS

AMBARISH

Respondent(s)

(With appln.(s) for IA No. 26034/2019 - EXEMPTION FROM FILING O.T.)

Date : 19-04-2021 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Sanjay Kumar Tyagi, AOR
Mr. Yashshvi Virendra, Adv.

For Respondent(s) Mr. Gaurav Agarwal, Adv.
Mr. Shashank Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave granted.
- 2 The appeal is allowed in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SANJAY KUMAR-I)
A.R. -cum-P.S.

(Signed order is placed on the file)