2025 INSC 802

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.2892-2893 OF 2025
(ARISING OUT OF SLP (CRL.) NOS.621-622 OF 2024)

NAGARAJAN ... **APPELLANT**

VERSUS

STATE OF TAMIL NADU ... **RESPONDENT**

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. Being aggrieved by the common impugned order dated 29.11.2021 passed by the High Court of Judicature at Madras Bench at Madurai dismissing the Criminal Appeal preferred by the appellant being Crl. A. (MD) No. 137/2015 and allowing the *suo motu* revision being Crl. R.C. (MD) No. 248/2015 thereby convicting the appellant under Sections 306 and 448 of the Indian Penal Code, 1860 (hereinafter

referred to as "IPC"), the present Criminal Appeals have been filed by the appellant (accused).

3. Briefly stated, the facts of the case are that the appellant was the neighbour of the deceased Smt. Mariammal. On the night of 11.07.2003, the appellant entered the room of the deceased and while hugging her, attempted to outrage her modesty. Upon hearing the disturbance, the mother-in-law of the deceased intervened and scolded the appellant, who then fled from the premises. The next day i.e., on 12.07.2003, at around 5:00 A.M., the mother-in-law of the deceased found the deceased and her infant daughter missing from the house. Thereafter, she searched for them and enquired about their whereabouts from the deceased's father. It was later revealed that in the morning, the deceased had visited the school where her elder daughter was studying in Class III and attempted to take her away. However, due to the absence of the warden, the teachers did not allow the child to leave. The deceased thereafter went to a nearby field with her infant of one and half years and committed suicide by consuming oleander seeds and also

administered poison to her child. Both the deceased and her child were later discovered by a passerby who was grazing cattle nearby, who then alerted the village watchman. Although the child was still alive when found, she was declared dead when she was taken to the hospital.

4. Based on the complaint lodged by the watchman, FIR No. 239/2003 was registered with Kannivadi Police Station under Section 306 of IPC against the appellant. Upon completion of the investigation, a charge-sheet was filed on 30.10.2003 against the appellant under Section 306 of IPC. The case was committed to the Mahila Court, Fast Track Court, Dindigul as S.C. No. 54 of 2007. The Trial Court altered the charges to Sections 354 and 448 of IPC and on 29.05.2015, the Trial Court acquitted the appellant of the charge under Section 306 of IPC. The appellant was convicted under Sections 354 and 448 of IPC and sentenced to undergo simple imprisonment for three years and one month and to pay a fine of Rs. 25,000/- and in default whereof to undergo simple imprisonment for three months for the offence under Section 354 of IPC and a further

sentence simple imprisonment for three months for the offence under Section 448 of IPC. The Trial Court observed that the evidence on record reveals that the appellant trespassed into the house of deceased at midnight and hugged her. Accordingly, the Trial Court convicted the appellant under Sections 354 and 448 of IPC. Insofar as Section 306 of IPC was concerned, the Trial Court observed that the actions of the appellant did not constitute abetment of suicide as the appellant did not instigate the deceased to commit suicide. Hence, the Trial Court acquitted the appellant under Section 306 of IPC.

5. Being aggrieved by the conviction under Sections 354 and 448 of IPC, the appellant filed Criminal Appeal before the High Court being Crl. A. (MD) No. 137/2015. While admitting the appeal and entertaining the appellant's application for suspension of sentence, the High Court, upon a *prima facie* appraisal of the Trial Court's reasoning, formed the view that the appellant's acquittal under Section 306 of IPC may require further examination. Observing that the evidence relating to abetment of suicide was not duly

appreciated and noting that the State had not filed an appeal against the acquittal, the High Court by order dated 08.06.2015, *suo motu* directed the registration of a criminal revision case to examine the propriety of the acquittal. This came to be registered as Crl. R.C.(MD) No. 248 of 2015. This was during the pendency of accused appeal before the High Court.

6. In order to exercise of *suo motu* revisional powers of the High Court, appointed an Amicus Curiae to assist the Court. The Amicus was further tasked to examine the Trial Court's findings in acquitting the Appellant accused under Section 306 of IPC.

7. By common impugned judgment dated 29.11.2021, the High Court asserted that it has the inherent power to initiate *suo motu* revision under Section 401 of the Code of Criminal Procedure, 1973 (for short, "CrPC"). The High Court dismissed the Criminal Appeal filed by the appellant and allowed the *suo motu* Criminal Revision Petition, thereby convicting the appellant under Sections 306 and 448 of IPC and sentenced him to undergo rigorous imprisonment for

five years and to pay a fine of Rs. 5,000/- and in default, to undergo simple imprisonment for three months for the offence under Section 306 of IPC and sentenced him to undergo simple imprisonment for three months for the offence committed under Section 448 of IPC. The High Court observed that the appellant has played an active role in tarnishing the self-esteem of the deceased by outraging her modesty and thereby instigated her to commit suicide. Hence, the offence under Section 306 of IPC was made out.

8. Being aggrieved, the appellant has filed the present Criminal Appeals.

9. We have heard learned counsel for the respective parties and perused the material on record. This appeal is being disposed of by following the judgment of this Court in ***Sachin vs. State of Maharashtra, Criminal Appeal Nos.2073-2075 of 2025*** dated 21.04.2025. The relevant paragraphs of the said judgment read as under:

> "23. The question for consideration in this case is, whether, in an appeal against conviction, the appellate court could have directed enhancement of the sentence in an appeal filed by the accused. Under clause (b) of Section 386 CrPC, firstly, the appellate court can no

doubt alter the findings and sentence and acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction subordinate to such appellate court or committed for trial. Secondly, the appellate court can also alter the findings but maintain the sentence. Thirdly, the appellate court can, in an appeal from a conviction, with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence but not so as to enhance the same. A plain reading of this would imply that in an appeal against conviction which is obviously filed by the accused, the challenge could be two-fold: *firstly,* it could be against the conviction itself in which case there is a challenge to the sentence also; and *secondly,* the challenge could be only to the sentence while accepting the conviction. In other words, the challenge would also be only for reduction of the sentence. The question is, whether, in an appeal challenging the conviction and sentence, the appellate court could, while affirming the conviction enhance the sentence imposed by the trial court by directing that the same had to be with reference to other statutory provisions. There is no doubt that the appellate court while maintaining the conviction can reduce the sentence and grant partial relief to an accused but in an appeal filed by the appellant-accused, can the appellate court not only affirm the conviction but go a step further and seek to enhance the sentence than what has been imposed by the Trial Court. It cannot be lost sight of that in an appeal filed by the accused, the appellant-accused is, at best, seeking a reversal of the conviction as well as setting aside of the sentence and the least that the appellant-accused can expect is even while the conviction is affirmed, the sentence could be maintained, if not reduced.

24. Thus, in an appeal filed by the appellant-accused against the judgment of the conviction and sentence, can the accused be left worse-off while the conviction is affirmed by the appellate court exercising appellate jurisdiction by enhancing the sentence? In such an

> event, the appellant-accused would be better off, if he either withdraws his appeal or, not to file an appeal at all. But an appeal is not only a valuable statutory right but also a constitutional right in criminal cases."

10. That a right of appeal is an invaluable right, particularly for an accused who cannot be condemned eternally by a trial judge, without having a right to seek a re-look of the Trial Court's judgment by a superior or appellate court. The right to prefer an appeal is not only a statutory right but also a constitutional right in the case of an accused. This is because an accused has a right to not only challenge a judgment on its merits, namely, with respect to the conviction and sentence being imposed on him, but also on the procedural aspects of the trial. An accused can question procedural flaws, impropriety and lapses that may have been committed by the Trial Court in arriving at the judgment of conviction and imposition of sentence in an appeal filed against the same. It then becomes the duty of the appellate court to consider the appeal from the perspective of the accused-appellant therein to see if he has a good case on merits, and to set aside the judgment of the Trial Court and acquit the accused, or to remand the matter for a re-trial in accordance with law, or to reduce the

sentence while maintaining the conviction or, in the alternative, to dismiss the appeal. In our considered view, the appellate court in an appeal filed by the accused cannot while maintaining the conviction enhance the sentence. While exercising its appellate jurisdiction, the High Court cannot act as a revisional court, particularly, when no appeal or revision has been filed either by the State, victim or complainant for seeking enhancement of sentence against accused. In the aforesaid judgement, we have analysed Section 386 of CrPC which deals with the right of a party including an accused to file an appeal, we may peruse Section 401 of CrPC which deals with the revisional powers of the High Court and which is extracted as under:

> "**401. High Court's powers of revision.—**(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
>
> (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.
>
> (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
>
> (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

11. Sub-section (4) of Section 401 of CrPC states that where under the CrPC an appeal could have been filed and has not been filed, then no proceeding by way of revision could be entertained at the instance of the party who could have appealed. This means if a State, complainant or the victim who have the right to file an appeal do not opt to do so, then the High Court cannot entertain a revision at its behest. Also, if an appeal lies under the CrPC but an application for revision has been made to the High Court by any person under an erroneous belief, then the High Court can treat the application for revision as petition of appeal and deal with the same accordingly. What is pertinent is that under

Section 401 of CrPC, the High Court is not authorised to convert the findings of acquittal into one of conviction by exercise of revisional jurisdiction. This salutary principle can be extended to also mean that the High Court cannot enhance the sentence imposed by a Trial Court on conviction in an appeal filed by the accused/convict. Thus, in sum and substance, it can be observed that in an appeal filed by the accused seeking setting aside of the conviction of sentence, the High Court cannot exercise its revisional powers and while affirming the conviction direct for enhancement of sentence, when actually appeal could have been filed by the State, complainant or the victim and has not been filed. Therefore, where an appeal has been filed by the accused challenging the conviction and the sentence, the revisional jurisdiction cannot be exercised by the High Court so as to remand the matter to the Trial Court for the purpose of enhancement of the sentence. However, in this case, our focus of attention is whether, in the absence of any appeal or revision filed by the State, a complainant or a victim in a particular case and when the appeal has been filed only by the accused/ convict assailing the judgment of conviction and sentence, the High Court

can exercise its revisional jurisdiction to enhance the sentence. In other words, when an accused is seeking setting-aside of a judgment of conviction and sentence, can the High Court, in the absence of there being any challenge to the same from any other quarter, *suo motu* exercise its revisional power and thereby condemn the accused by awarding an enhancement in his sentence. Even if an opportunity of hearing is given to such an accused/convict, we do not think that the High Court can exercise its revisional jurisdiction under Section 401 of CrPC while exercising its appellate jurisdiction in an appeal filed by the accused/convict in the High Court. All that the High Court can do is to set-aside the judgment of conviction and sentence and acquit the accused, or while doing so, order for a retrial, or in the alternative, while maintaining the conviction, reduce the sentence. In other words, in an appeal filed only by the accused/convict, the High Court cannot *suo motu* exercise its revisional jurisdiction and enhance the sentence against the accused while maintaining the conviction. In this regard, we find that the expression "but not so as to enhance the same" in sub-clause (iii) of clause (b) of

Section 386 of CrPC throws some light on the view we have taken, which reads as under:

> **"386. Powers of the Appellate Court.—**
>
> xxx
>
> (b) in an appeal from a conviction—
>
> xxx
>
> (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same"

Although the said expression "but not so as to enhance the same" is in the context of sub-clause (iii) of clause (b) of Section 386 of CrPC, the spirit of the said provision must be understood, inasmuch as while maintaining the finding of conviction, the High Court cannot exercise its revisional jurisdiction under Section 401 of CrPC and enhance sentence awarded to the accused/appellant.

12. In this context, we also observe that the Trial Court should also be very careful while passing an order of sentence inasmuch as the sentence imposed must be concomitant with the charge(s) framed and the findings arrived at while arriving at a judgment of conviction. If the charges are proved beyond reasonable doubt against an accused, then the sentence following a finding and

judgment of conviction must be appropriate to the nature of the charge(s) which are proved by the prosecution.

13. In this regard, it must be noted that for exercise of powers of the appellate court for enhancement of sentence in an appeal filed either by the State or the complainant or the victim, the CrPC provides that the appellate court can reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court competent to try the offence, or alter the finding by maintaining the sentence, or with or without altering the finding, alter the nature or the extent, of the sentence so as to enhance or reduce the same. Thus, the power to enhance the sentence can be exercised by the appellate court only in an appeal filed by the State, victim or complainant, provided the accused has had an opportunity of showing cause against such enhancement. It is further provided that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order of sentence under appeal. Therefore, in an appeal for enhancement of sentence filed by the State etc., unless the conditions prescribed in the form of

provisos to Section 386 of CrPC are complied with by the appellate court, there cannot be an enhancement of sentence. Obviously in such an appeal for enhancement of sentence, the convict or the accused is the respondent and therefore there cannot be enhancement of sentence unless the accused or convict has been heard. However, under the scheme of Section 386 of CrPC *vis-à-vis* in an appeal for enhancement of sentence, there can also be an acquittal of the accused as per sub-clause (i) of clause (c) of Section 386 of CrPC. But, on the other hand, in an appeal from a conviction, it has been expressly stated that there cannot be enhancement of the sentence. Therefore, while in an appeal for enhancement of sentence filed by the State, the accused can make out a case for acquittal or discharge or retrial, in the case of an appeal from conviction, the respondent in such an appeal, namely the State or the victim or the complainant, cannot seek enhancement of the sentence than what has been awarded by the Trial Court in the absence of filing any appeal or revision. The above distinction can be explained by way of a latin maxim which has been discussed by Ujjal Bhuyan, J., while in Bombay High

Court, in ***Jyoti Plastic Works Pvt. Ltd. vs. Union of India and Ors., 2020 OnLine Bom 2276***, in the following words:

> "40. In this connection we may refer to the maxim *reformatio in peius*. It is a latin phrase meaning a change towards the worse i.e., a change for the worse. As a legal expression it means that a lower court judgment is amended by a higher court into a worse one for those appealing it. In many jurisdictions, this practice is forbidden ensuring that an appellant cannot be placed in a worse position as a result of filing an appeal. When the above phrase is prefixed by the words 'no' or 'prohibition', which would render the maxim as no reformatio in peius or prohibition of *reformatio in peius*, it would denote a principle of procedure as per which using a remedy available in law should not aggravate the situation of the person who avails the remedy. In other words, a person should not be placed in a worse position as a result of filing an appeal. No reformatio in peius or prohibition of reformatio in peius is a part of fair procedure and thus by extension can also be construed as part of natural justice. It is not only a procedural guarantee but is also a principle of equity."
>
> (underlining by us)

14. The rationale of the above can be explained in simple language by stating that no appellant by filing an appeal can be worse-off than what he was. That is exactly what we are seeking to reiterate in our judgment having regard to the facts of the present case.

15. In the instant case, we find that the appellant/accused herein had filed the appeal against the conviction and sentence

imposed by the Trial Court for the offences punishable under Sections 354 and 448 of IPC. Insofar as Section 306 of IPC is concerned, the Trial Court had acquitted the appellant. Being aggrieved by the said conviction under Sections 354 and 448 of IPC, the appellant had filed the appeal before the High Court. Neither the State, nor the victim or complainant had sought for enhancement of sentence, or sought for conviction and sentence under Section 306 of IPC before the High Court when the appellant had filed his appeal seeking setting aside of his conviction and sentence. The High Court, instead of considering the said appeal filed by the appellant on merits, sought to exercise *suo motu* revisional powers for convicting the appellant under Section 306 of IPC also and thereby sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000/- and in default, to undergo simple imprisonment for three months. The sentences were to run concurrently. Thus, a conviction awarded for offences under Sections 354 and 448 of IPC has also resulted in a conviction under Section 306 of IPC and an enhanced sentence, that too, in an appeal filed by none other than the appellant.

16. We are of the view that in an appeal filed by the accused/convict and in the absence of any appeal filed by the victim, complainant or the State, the High Court cannot exercise *suo motu* revision either to enhance the sentence or to convict the appellant on any other charge. The reasons for coming to such a conclusion have been discussed above.

17. In the circumstances, we set-aside the conviction and sentence of the appellant under Section 306 of IPC and confirm the judgment of the Sessions Court as affirmed by the High Court qua the offences punishable under Sections 354 and 448 IPC. Consequently, the appellant is directed to undergo the sentence and to pay the fine as imposed by the Sessions Court.

In the event the accused has not yet completed the sentence imposed by the Trial Court, he is directed to surrender before the jurisdictional Chief Judicial Magistrate or before the concerned Police Station for being lodged in the jail to suffer the remainder of the sentence. In case of failure on the part of the accused to surrender, appropriate action shall be taken up by the concerned Police Station to arrest the accused for being lodged in the jail.

The appeals are allowed in part in the aforesaid terms.

.....J.
(B.V. NAGARATHNA)

.....J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
JUNE 04, 2025.