THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

CRIMINAL APPEAL No.300 of 2025

Mr. P. Krishna Prakash, learned counsel appearing for the appellant.

Sri M.Ramchandra Reddy, the learned Additional Public Prosecutor appearing for the respondent-State.

JUDGMENT: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Appeal arises out of a judgment dated 28.01.2025 passed by the Principal District and Sessions Judge, Sangareddy in S.C.No.182 of 2012 sentencing the appellant to life imprisonment for an offence punishable under section 302 of The Indian Penal Code, 1860 ('IPC') and rigorous imprisonment for 6 months for the offence under section 379 of the IPC. The appellant was the Accused No.2 before the Trial Court.

2. The Appeal was admitted on 06.03.2025. The Trial Court Records were called for and are before us.

3. Learned counsel appearing for the appellant/A.2 prays for setting aside of the impugned judgment on a preliminary ground that the impugned judgment warrants interference.

4. We have heard learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor on the

preliminary issue of whether the impugned judgment warrants interference.

5. It is necessary to set out the factual background of the matter to appreciate the preliminary issue.

Background

6. The appellant/A.2 along with A.1 were earlier tried by the learned Principal Sessions Judge, Medak at Sangareddy in Sessions Case No.182 of 2012, for offences under sections 302 and 379 of the I.P.C. By a judgment dated 16.07.2012, the appellant/A.2 was acquitted of both the charges under sections 302 and 379 of the I.P.C but was convicted for the offence under section 411 I.P.C. for dishonestly receiving stolen property. The appellant was accordingly sentenced to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.5,000/- and to undergo simple imprisonment for three months in default of payment of fine. The judgment dated 16.07.2012 forms part of the Records.

7. The appellant/A.2 preferred Criminal Appeal No.737 of 2012 aggrieved by the judgment dated 16.07.2012. The Criminal Appeal was heard by a learned Single Judge of this Court and by a

judgment dated 28.06.2024 the matter was remanded to the Trial Court for deciding the matter afresh with regard to the offences under sections 302 and 379 of the I.P.C. The appellant was directed to be put on notice.

8. On remand, the Trial Court, by the impugned judgment dated 28.01.2025 convicted the appellant/A.2 and A.1 for the offences under sections 302 and 379 of the I.P.C. based on the same evidence which was led in 2012. The judgment dated 28.01.2025 forms the subject matter of the present Appeal. A.2 is the appellant before us.

Decision

9. The issue before us is whether the decision of the learned Single Judge attracts section 300 (1) of The Code of Criminal Procedure, 1973, or in the alternative, section 337(1) of The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) i.e., the bar on trying a person two times for the same offence after the person is either convicted or acquitted of such offence.

10. Section 300(1) of the Cr.P.C, section 337(1) of the BNSS and Article 20(2) of the Constitution of India are set out below:

Section 300(1) of the Cr.P.C:

"300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made, against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

Section 337 (1) of the BNSS:

"337. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 244, or for which he might have been convicted under sub-section (2) thereof."

Article 20(2) of the Constitution of India:

"(2) No person shall be prosecuted and punished for the same offence more than once."

11. The statutory embargo on a second trial of a person for the same offence, while the first conviction or acquittal remains in force, is also one of the fundamental rights protected under Article 20(2) of the Constitution of India, which prohibits a person from being prosecuted and punished for the same offence more than once. The Constitutional guarantee in Article 20(2) finds echoes across the world. The Fifth Amendment of the American Constitution enunciates the principle that no person shall be twice put in jeopardy of life or limb. The principle is also part of the Rule of English Law that a person must not be put in jeopardy twice for the same offence.

The Judgment dated 28.06.2024

12. The judgment dated 28.06.2024 passed by the learned Single Judge in Criminal Appeal No.737 of 2012 warrants interference despite the fact that the said judgment is not the subject matter of the present Appeal. The judgment dated 28.06.2024 raises questions which are worthy of adjudication.

13. The Appeal before the learned Single Judge related only to the conviction of the appellant/A.2 for the offence under section 411 of the I.P.C. The earlier judgment of the Trial Court dated 16.07.2012 (which was challenged by the appellant before the

learned Single Judge) records that the appellant/A.2 was acquitted of the offences under sections 302 and 379 of the I.P.C. but was convicted for the offence under section 411 of the I.P.C and was sentenced to rigorous imprisonment for 3 years. The learned Single Judge framed an issue as to whether the impugned judgment convicting the appellant for dishonestly receiving stolen property was liable to be set aside. The learned Single Judge proceeded to engage in an elaborate discussion of the facts before the Trial Court and directed the Trial Court to reconsider the matter afresh with regard to the appellant's acquittal of the offences under sections 302 and 379 of the I.P.C. The Trial Court was however advised to remain uninfluenced by the Court's observations notwithstanding the detailed discussion in the judgment given by the learned Single Judge on the issue of acquittal of the offences under sections 302 and 379 of the I.P.C.

14. The last paragraph of the judgment dated 28.06.2024 is set out below:

> "39. Accordingly, this Criminal Appeal is disposed of directing the learned trial Court to reconsider the matter afresh with regard to offences under Sections 302 and 379 of IPC, independently, by duly putting both accused on notice, in accordance with law, within three months from the date of receipt of copy of this Judgment. It is made clear that the learned trial Court shall not be influenced in any manner by the observations made in this Judgment."

15. It is of crucial importance that the learned Single Judge remanded the matter to the Trial Court without setting aside the judgment dated 16.07.2012. Therefore, the appellant's conviction and sentence, as imposed in the judgment dated 16.07.2012, remained in force as of 28.06.2024 (the date of the judgment of the learned Single Judge) and continued to remain in force till the impugned judgment dated 28.01.2025, which forms the subject matter of the present Appeal. The fact that the judgment dated 16.07.2012, which was the subject matter of Criminal Appeal No.737 of 2012, was not set aside and the matter was simply remanded to the Trial Court for reconsideration is germane for the purposes of section 300(1) of the Cr.P.C and section 337(1) of the BNSS.

The Statutory Implications of the Judgment dated 28.06.2024

16. Although the relevant provisions have already been extracted above, the statutory import thereof is reiterated for convenience. Both sections 300(1) of the Cr.P.C and 337(1) of the BNSS prohibit a person from being tried twice for an offence where the person has either been convicted or acquitted, while such conviction/acquittal remains in force. (Underlined for emphasis).

17. The said provisions apply to the facts of the present case with full force. First, the appellant was acquitted of the offences of sections 302 and 379 of the IPC. Therefore, remanding the matter to the Trial Court for a re-trial of the offences for which the appellant was acquitted, is directly hit by section 300(1) Cr.P.C and 337(1) of the BNSS. Second, in the absence of the judgment of conviction or acquittal being set aside, the acquittal remained in force as on the date of the impugned judgment dated 28.01.2025, which forms the subject matter of the present Appeal. Therefore, the impugned judgment dated 28.01.2025 falls foul of section 300(1) of the Cr.P.C/section 337(1) of the BNSS and is also contrary to Article 20(2) of the Constitution, which preserves the fundamental right of a person from being prosecuted and punished for the same offence more than once.

18. We accordingly find that the appellant has made out a strong case for interference with the impugned judgment, by which the appellant was convicted of the offences sections 302 and 379 of the IPC. The appellant had earlier been acquitted of both these offences by the Trial Court on 16.07.2012.

19. We are not inclined to accept the argument that the judgment of the learned Single Judge was passed in exercise of the

power of revision under section 397 read with section 401 of the Cr.P.C. Section 397 of the Cr.P.C authorises the High Court to call for and examine the record of any proceeding before any inferior Criminal Court situated within the jurisdiction of the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, or to the regularity of the proceedings of the inferior Court. Section 401 of the Cr.P.C crystallises the High Court's powers of revision where the High Court may exercise the discretion conferred on a Court of Appeal by sections 386, 389, 390 and 391 of the Cr.P.C.

20. Section 386 of the Cr.P.C delineates the powers of the Appellate Court and clause (b)(i) thereof authorizes the High Court, in an appeal from a conviction, to order the accused to be re-tried by a Court of competent jurisdiction subordinate to the Appellate Court. Section 389 of the Cr.P.C provides for suspension of sentence pending the Appeal. Section 390 of the Cr.P.C deals with the arrest of the accused in an appeal from acquittal and section 391 authorises the Appellate Court to take further evidence. None of the aforesaid provisions were relevant to the proceedings before the learned Single Judge in Criminal Appeal No.737 of 2012 for remanding the matter to the Trial Court.

21. It is also significant that the re-trial directed by the learned Single Judge was not related to the conviction of the appellant under section 411 of the IPC but was against the acquittal of the accused under sections 302 and 379 of the IPC. Moreover, section 401(2) of the Cr.P.C mandates that no order under section 401 shall be made to the prejudice of the accused unless the accused was given an opportunity of being heard, either personally or through a pleader, in his/her defence. Section 401(3) contains an embargo on the High Court to convert a finding of acquittal into one of conviction.

22. Even though the learned Single Judge directed the Trial Court to reconsider the matter with regard to the offences under sections 302 and 379 of the IPC, the judgment is replete with observations and findings against the appellant for having wrongly been acquitted of the charges under sections 302 and 379 of the IPC. These findings and observations impinge on the protection granted under section 401 (3) of the Cr.P.C to a person who has already been acquitted by the Trial Court, safeguarding him/her from being convicted of the same offence by the High Court.

Power of the Appellate Court to direct Re-trial

23. The power of the Appellate Court to direct a re-trial in a criminal case is ordinarily exercised only in exceptional circumstances unless the Appellate Court is satisfied that the Court which conducted the trial lacked jurisdiction or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings: In effect, that there had not been any real trial at all. The justification of exceptional circumstances arises from the fact that an acquitted person is exposed to a second trial which affords the prosecutor another opportunity to rectify the infirmities disclosed in the first trial: *Ukha Kolhe Vs. State of Maharashtra*[1].

24. In other words, a *de novo* trial should be ordered by the Appellate Court only in rare cases, when in the opinion of the Appellate Court, it is the only indispensible recourse to avert failure of justice: *Mohd. Hussain Vs. State (Govt. of NCT of Delhi)*[2]. Needless to say, a conclusion that an investigation or trial was shoddy or lacked precision must be based on a thorough examination of the evidence.

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[1] AIR 1963 SC 1531
[2] (2012) 9 SCC 408

The Underlying Constitutional and Statutory Mandate

25. The maxim "*nemo debet bis vexari pro eadem causa*" (no person should be vexed twice for the same offence) embodies the Rule of common law that no one should be put to peril twice for the same offence. The position of law, as enunciated by the Courts, is as under:

(i) There must be a previous proceeding before a Court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted;

(ii) The conviction/acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and the same set of facts for which the person was prosecuted and punished in the first proceeding;

(iii) The subsequent proceeding must be a fresh proceeding where the person is sought to be prosecuted and punished for the same offence and on the same set of facts for the second time: *T.P. Gopalakrishnan V. State of Kerala*[3].

26. The Supreme Court considered the implications of a *de novo* trial in *P. Manikandan Vs. Central Bureau of Investigation*[4] where the High Court had acquitted the appellant and directed the CBI to conduct a *de novo* investigation on the same facts for the same

[3] (2022) 14 SCC 323
[4] 2024 SCC OnLIne SC 3808

offence and to proceed against the appellant in accordance with law. The Supreme Court held that the right enshrined in Article 20(2) of the Constitution was violated and set aside the decision of the High Court.

27. We also find certain other factors to be of significance impacting the legality of the judgment dated 28.06.2024.

The Un-answered Questions

28. First, there was no challenge by the State to the judgment passed by the Trial Court on 16.07.2012 acquitting the appellant of the offences under sections 302 and 379 of the IPC. Second, the Appeal before the learned Single Judge (Crl.A.No.737 of 2012) was confined to the appellant's conviction under section 411 of the IPC. Third, there is no reference to the fate of the conviction under section 411 of the IPC in the order passed by the learned Single Judge on 28.06.2024. In fact, the concluding part of the judgment dated 28.06.2024 simply directs the Trial Court to hear the matter afresh with regard to the acquittal of the appellant in relation to the offences under sections 302 and 379 of the IPC.

29. The absence of any reference to the appellant's conviction under section 411 of the IPC creates ambiguity and leaves room

for inference as to the effect of the conviction. We may add that the order passed by the learned Single Judge amounts to a partial remand leaving the aforesaid questions unanswered.

30. The absence of any conclusion or reference to the conclusion under section 411 of the I.P.C hence amounts to the obliteration of that conclusion. It is well settled that the evidence and record of the previous trial is completely wiped out if a matter is directed for re-trial: *Nasib Singh v. State of Punjab*[5].

31. We are unable to agree with the contention of the learned Additional Public Prosecutor that the learned Single Judge was entitled to question the acquittal of the appellant by exercising the revisional powers under sections 397 and 401 of the Cr.P.C. The order of remand does not reflect the accused being put on notice before the acquittal was called to question and the remand for a retrial was ordered for a greater offence. The appellant/A.2 being put on notice for the re-trial in the Trial Court is not the same as being put on notice of the abrupt change of direction of the appeal before the learned Single Judge.

32. It is clear from section 401(2) of the Cr.P.C that no order under this section shall be made to the prejudice of the accused or

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[55] (2022) 2 SCC 89

other person unless he/she has had an opportunity of being heard either personally or by pleader in his/her own defence.

33. The contention of the Additional Public Prosecutor that the appellant could have challenged the judgment of the learned Single Judge is also of little consequence since there can be no estoppel against law. The issue of the law being overridden can be taken up at any point of time particularly when the aggrieved party urges violation of the constitutional mandate.

34. The facts in *The State of A.P. v. Thadi Narayana* [6] substantially fits with the facts of the present case. The Supreme Court opined that the learned Single Judge of the Andhra Pradesh High Court acted without jurisdiction in altering the order of acquittal passed in favour of the respondent in respect of the offences under sections 302 and 392 when the learned Single Judge was dealing with the appeal preferred by the respondent against her conviction under section 411.

Conclusion

35. An order passed in violation of a constitutional guarantee and fundamental right along with the law of the land on the

[6] AIR 1962 Supreme Court 240

prohibition of a person being tried twice for the same offence while the conviction or acquittal remains in force, would upend all that follows after passing of the order. Therefore, the re-trial of the appellant for a charge for which the appellant was acquitted by the first judgment dated 16.07.2012 while the appellant's acquittal for the offences under sections 302 and 379 of the IPC remained in force, would be hit by section 300(1) of the Cr.P.C and section 337(1) of the BNSS. The fundamental right of the appellant under Article 20(2) of the Constitution would also be irrevocably impacted. The domino-effect of all subsequent proceedings being nullified would include the impugned judgment dated 28.01.2025 by which the appellant was convicted of the offences under sections 302 and 379 of the IPC.

36. The appellant cannot be made to suffer the consequences of a decision which falls foul of the Constitution and the law of the land.

37. We are hence persuaded to hold that the impugned judgment, being in violation of the constitutional guarantee enshrined in Article 20(2) of the Constitution, should be set aside. The appellant being re-tried upon a fresh hearing of the matter goes against all principles of law, justice and equity.

38. Criminal Appeal No.300 of 2025 is allowed by setting aside the judgment dated 28.01.2025 passed by the Principal District and Sessions Judge, Sangareddy, in S.C.No.182 of 2012.

39. The appellant/A.2 shall be set at liberty forthwith. The fine amount paid by the appellant/A.2 shall be refunded within 7 days from the date of this judgment.

40. Pending miscellaneous petitions, if any, shall stand closed.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

Date: 25.04.2025.
VA/BMS