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# Revisiting Sentence hearing by Appellate Courts: A Case Study

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# Revisiting Sentence hearing by Appellate Courts: A Case Study


## ABSTRACT

*Every criminal trial is a journey to discover who is guilty or innocent. A judge presides over a criminal trial not merely to see that a guilty man does not escape, he also supervises it that no innocent man is punished. At the culmination of a criminal trial the judge shall prepare a judgment, either of acquittal or conviction. Sentence hearing follows an order of conviction. When an unmerited acquittal results from a trial court, the prosecution or the victim of crime is to file an appeal against such order of acquittal. If the appellate court passes a conviction order reversing the acquittal, the appellate court is bound to conduct a sentence hearing. This paper examines a recent case decided by the Supreme Court of India in which the High Court fails to conduct such a hearing.*



## KEYWORDS

*Acquittal, Appeal, Conviction, Criminal Trial, Sentence Hearing.*


## I. INTRODUCTION

The primary goal of a criminal trial is to deliver justice not only to the victim but also to the accused and the society at large. We know that every criminal trial is a journey to discover who is guilty or innocent. A judge presides over a criminal trial not merely to see that a guilty man does not escape, he also supervises it that no innocent man is punished. Every criminal trial reaches to a conclusion with a judgment, either of acquittal or conviction in terms of section 235(1) or 248(1) of the Code of Criminal Procedure, 1973[1] (hereafter CrPC). Further, section 235(2) and section 248(2) obligates the trial courts to hear the accused on the question of sentence. However, issue of miscarriage of justice may arise if unmerited acquittal results from a trial court. In such case the only option available to the prosecution and victim of crime is to file an appeal against such order of unmerited acquittal. The CrPC provides, inter alia, that appeals may be preferred by a victim of the crime under section 372 and state under section 378 against the order of acquittal. This paper revisits the issue of sentence hearing by an appellate court when it, in an appeal from an order of acquittal passed by a trial court, reverses such order and finds the accused guilty. It examines a recent case decided by the Supreme Court of India in which the High Court fails to conduct such

[1] Now replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023.

a hearing.[2]

## II. POWER AND DUTY OF THE APPELLATE COURT

Invariably, a significant objective of the Cr.P.C. is to ensure that justice is delivered efficiently and effectively. As soon as a fair criminal trial is concluded, the trial judge is required to reach to a finality with a judgment, either of acquittal or conviction in terms of section 235(1) or 248(1) of the CrPC. Further, section 235(2) and section 248(2) obligates the trial courts to hear the accused on the question of sentence. Section 235[3] provides: "(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 questions of sentence, and then pass sentence on him according to law." On the other hand, section 386 CrPC[4] deals with powers of the appellate courts in criminal appeals, which reads as: "After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may — (a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;…" Thus, elaborate procedures have been prescribed under section 386 of the CrPC for disposal of the appeal by the appellate court. In the case of State of Karnataka v. K. Gopalkrishna,[5] while dealing with an appeal against acquittal, the Supreme Court observed: "In such an appeal the appellate court does not lightly disturb the findings of fact recorded by the court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the court below, that is sufficient for upholding the order of acquittal. However, if the appellate court comes to the conclusion that the findings of the court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the appellate court will be justified in setting aside such an order of acquittal." Further, in Iqbal Abdul Samiya Malik v. State of Gujarat,[6] the Supreme Court has held that it is the duty of an appellate court to look into the evidence adduced in the

[2] Mukesh Kumar Yadav v. The State (UT of Andaman & Nicobar Islands) Etc., 2026 INSC 559 [Criminal Appeal Nos. 2863-2864 of 2026, K. V. Viswanathan, J delivered the judgment on May 26, 2026].
[3] Section 258, Bharatiya Nagarik Suraksha Sanhita, 2023.
[4] Section 427, BNSS.
[5] (2005) 9 SCC 291.
[6] (2012) 11 SCC 312.

case arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by appellate court in drawing inference from proved and admitted facts. Further appeal cannot be disposed of without examining records/merits.[7]

## III. CONVICTION ORDER OF THE HIGH COURT

In the case in hand, the appellant stood trial before the learned Sessions Judge, Andaman and Nicobar Islands at Port Blair[8] for offences punishable under Sections 376, 312 and 417 of the Indian Penal Code, 1860 (hereafter IPC) and the learned Sessions Judge acquitted the appellant of all the offences charged.[9] The appeals before the High Court, one by the State[10] and one by the victim Ms. X[11], in turn, challenged the correctness of the judgment of acquittal passed by the learned Sessions Judge. The High Court, hearing the appeal against acquittal, found the appellant guilty of offences punishable under sections 376 and 312 IPC.

The High Court recorded the following observations in its judgment[12] that on the basis of testimony of the VL[13] in the relevant sessions trial along with the evidence of supporting vital witnesses, that VL was sexually abused on the pretext of marriage at the instance of appellant knowing fully well that such promise to marry was false from the very beginning of the relevant relationship between him and the victim, and the alleged consent of the VL was procured on her misconception of the fact that the appellant had the intention to marry her. The High Court also observed that there was also evidence to the effect that to shield the pregnancy of the VL, the appellant persuaded her to consume pills for terminating her pregnancy, being fully aware that his promise to marry the VL was false.

Thereafter, the High Court ruled that the appellant was guilty of the offence punishable under Section 376 and also under Section 312 IPC, and the impugned judgment has occasioned failure of justice. Thus, the High Court set aside the said judgment of acquittal and accordingly convicted for the offences under sections 376 and312 IPC. However, the High Court ordered that the appellant to surrender before the trial court

[7] Id.
[8] Sessions Case No.32/2015 corresponding to Sessions Trial No. 16 of October 2015.
[9] Judgment dated 24.04.2024.
[10] CRA (DB)/4/2024.
[11] CRA (DB)/6/2024.
[12] Para 108 of the judgment.
[13] Anonymous name given to protect the identity of the victim lady.

by 22nd May, 2026 and on his surrender the learned Sessions Judge shall take him into custody and shall pronounce and impose the appropriate sentence under sections 376 and 312 of the IPC after hearing on the point of sentence in accordance with law.[14]

## IV. ISSUES AND DELIBERATIONS BEFORE THE SUPREME COURT

At the outset, the two judges of the Supreme Court has found that the said paragraph of the judgment of the High Court contains the main issue to be considered by it and as such, it was observed that what is important to note from the above paragraph is that after convicting the appellant, instead of setting a date for hearing the accused on sentence, the High Court directed the appellant to surrender before the learned trial judge and further directed that on his surrender the learned Sessions Judge shall take him into custody and shall pronounce and impose the proper sentence under sections 376 and 312 IPC, after hearing on the point of sentence in accordance with law.

Having noticed the incongruity in the procedure adopted by the High Court, the Supreme Court issued notice to the respondents to hear on the correctness of the procedure adopted. The Supreme Court evaluates the statutory provisions related to hearing of appeals and powers of the appellate court in such appeals, particularly sections 235 and 386 of the CrPC. The Court clearly stated that under section 235(1), after hearing arguments and points of law (if any), a judge delivers a judgment in the case. Under section 235(2), if the accused is convicted, the judge shall, unless he proceeds in accordance with the provisions of section 360 of the CrPC,[15] hear the accused on the question of sentence, and then pass sentence on him according to law. This is the accurate procedure which the trial court will follow in the event of conviction.

The Bench referred to various landmark precedents passed by the Supreme Court of India and observed that the rationale behind section 235(2) was clearly explained in Allauddin Mian and Others Sharif Mian and Another v. State of Bihar.[16] In this case the Supreme Court held that the requirement of hearing was intended to satisfy the rule of natural justice. It further elaborated by stating that since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing, it is only fair that the accused is asked if he had anything to say on the issue of sentence. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution

[14] Id.
[15] Section 401, BNSS. It deals with order to release on probation of good conduct with which we are not concerned herein.
[16] (1989) 3 SCC 5.

evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence.

This is all the more necessary since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the appropriate sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed.[17]

Another judgment referred to by the Bench was Dagdu and Others v. State of Maharashtra,[18] wherein a question arose as to what if the convicting court sentences the accused without hearing him on the sentence. The Supreme Court held that the appellate court can on confirming the conviction, remedy the breach by giving a hearing to the accused on the question of sentence and the court may, in appropriate cases, adjourn the matter in order to give to the accused sufficient time to produce necessary data and to make his contentions on the question of sentence. The Court went on to add that this procedure must inevitably ensue where the conviction is recorded for the first time by an appellate court and the court, on convicting an accused, must unquestionably hear him on the question of sentence.

But if, for any reason, it omits to do so and the accused makes a grievance of it in the next higher court, it would be open to that court to remedy the breach by giving a hearing to the accused on the question of sentence. The Court also observed that such an opportunity has to be real and effective, which means that the accused must be permitted to adduce before the court all the data which he desires to adduce on the question of sentence. It was also ruled that the accused may exercise that right either by instructing his counsel to make oral submissions to the court or he may, on affidavit or otherwise, place in writing before the court whatever he desires to place before it on the question of sentence.

The Court further ruled that the court may, in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question

[17] Ibid at para 10.
[18] (1977) 3 SCC 68.

of sentence, and that, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court.[19] Equally, situations may arise where the trial court acquits the accused. In an acquittal, the question of hearing on sentence will not arise. On appeal by the State or by the victim/informant, what should be the position if the higher court reverses the acquittal and for the first time convicts the accused.[20] It can be seen from section 386(a) of the CrPC that where in an appeal from an order of acquittal, the court hearing the appeal finds the accused guilty it is required to pass a sentence on him according to law.

The Bench also referred to the judgment delivered in the case of Kumar Exports v. Sharma Carpets,[21] in which while interpreting section 386(a) of the CrPC, the Supreme Court held that after recording conviction, the appellate court ought not remit the matter to the trial court and the appellate court is obligated to impose an appropriate sentence. The Supreme Court held: "This Court has also noticed a strange and very disturbing feature of the case. The High Court, after convicting the appellant under section 138 of the Act, remitted the matter to the learned Magistrate for passing appropriate order of sentence. This course, adopted by the learned Single Judge, is unknown to law. The learned Single Judge was hearing an appeal from an order of acquittal.

The powers of the appellate court, in an appeal from an order of acquittal, are enumerated in section 386(a) of the CrPC. Those powers do not contemplate that an appellate court, after recording conviction, can remit the matter to the trial court for passing appropriate order of sentence. The judicial function of imposing appropriate sentence can be performed only by the appellate court when it reverses the order of acquittal and not by any other court."[22] The Court opined that after finding the appellant guilty under section 138 of the Act, the judicial discretion of imposing appropriate sentence could not have been abdicated by the learned Single Judge in favour of the learned Magistrate and having found the appellant guilty under Section 138 of the Act it was the bounden duty of the High Court to impose appropriate sentence commensurate with the facts of the case. After finding the accused guilty, the appellate court should not remand the matter to the trial court only for the purpose of imposing a sentence, rather it has a bounden duty to hear and impose an appropriate sentence.[23]

The Bench also observed that the appellate court which will include the High Court, in a given scenario, while recording a conviction after

[19] Id at para 79.
[20] Ibid.
[21] (2009) 2 SCC 513.
[22] Id at para 26.
[23] Ibid.

reversing the acquittal, should adjourn the matter to a suitable date, hear the convicts, and impose an appropriate sentence itself. In fact, even the Supreme Court has, while convicting the accused for the first time, after recording the conviction, adjourned the matter to a particular date to hear the accused on the question of sentence. It referred to the case of Suryamoorthi and Another v. Govindaswamy and Others,[24] wherein the Supreme Court held as under: "Since we are convicting Accused 1, 4 and 7 for the first time in this Court we would like to give them an opportunity of being heard on the question of sentence as required by section 235(2) of the CrPC. The case will be put up before us after 10 days for hearing the accused on the question of sentence. The acquittal of the rest of the Accused 2, 3, 5 and 6, is however, confirmed. The sums recovered from the possession of the convicted accused will be made over to PW 2. As regards the amount of Rs 33,600 recovered from PW 2, since the High Court has already given appropriate directions, we need not make further orders."[25]

The Bench also referred to the decision of the Supreme Court in the case of Kamalakar Nandram Bhavsar and Others v. State of Maharashtra.[26] In this case, the Court after finding that the High Court while reversing the acquittal and convicting the accused did not hear the accused on the question of sentence, took upon itself to hear the accused on sentence while confirming the conviction. The Court held as under: "The learned counsel for the appellants then contended that the High Court while reversing the judgment of acquittal by the trial court failed to give an opportunity to the accused persons of being heard in regard to the quantum of sentence as required under section 235 of the CrPC.

In support of this contention, the learned counsel relied on a judgment of this Court in the case of Santa Singh v. State of Punjab.[27] In that case, this Court came to the conclusion that the failure of the court in complying with the requirement of section 235(2) is not merely an irregularity but is an illegality which vitiates the sentence. In that case, the trial court while awarding the sentence of death for an offence punishable under section 302 IPC did not comply with the requirement of section 235(2) of the CrPC. Therefore, this Court came to the conclusion that since there is an illegality which vitiates the sentence, an opportunity should be given to the accused persons of being heard before awarding the sentence, hence, on that ground viz. on the ground of hearing the appellants on the question of sentence alone remanded the matter back to the trial court for giving an opportunity to the accused to make a

[24] (1989) 3 SCC 24.
[25] Id at para 14.
[26] (2004) 10 SCC 192.
[27] AIR 1976 SC 2386.

representation regarding the sentence proposed.

It is on the basis of this judgment, the learned counsel for the appellants contended that the High Court in this case has erred in awarding the sentence to the appellants without affording an opportunity to them to represent against the sentence. Acceptance of the argument of the appellant on this point would only make us remand the matter back to the High Court to award an opportunity to the appellants to represent against the quantum of sentence. But then we find such a remand is not always mandatory.

This Court in the case of Dagdu v. State of Maharashtra,[28] after considering the earlier judgment in the case of Santa Singh held: The fact that the Supreme Court in Santa Singh remanded the matter to the Sessions Court does not spell out the ratio of the judgment to be that in every such case there has to be a remand but the remand is an exception, not the rule and ought, therefore, to be avoided as far as possible in the interest of expeditious, though fair, disposal of cases."[29] It was observed: "We are of the opinion that this law laid down by a three-Judge Bench of this Court applies squarely to the facts of this case. Therefore, having come to the conclusion that the conviction by the High Court of Appellants 1, 3, 4 and 5 is justified, we affirm the same under sections 306 and 498-A of the CrPC but postpone the awarding of sentence to give an opportunity to the learned counsel for the appellants to represent before us in regard to the quantum of sentence.

We, however, allow the appeal of the second appellant Nandram Anand Bhavsar and set aside the conviction and sentence imposed on him by the courts below and acquit him of the charges framed against him. We find Kamalakar Nandram Bhavsar (A-1), Tara Bai Nandram Bhavsar (A-3), Hirabai Satish Bhavsar (A-4) and Mirabai Nandram Bhavsar (A-5) guilty of offences punishable under section 306 read with section 34 and section 498-A read with section 34 IPC and confirm the conviction of the appellants on that score."[30] It was also observed: "Having come to the conclusion that Appellants 1, 3, 4 and 5 have been rightly convicted by the High Court under section 306 read with section 34 and section 498-A read with section 34, with a view to comply with the requirement of section 235(2) of the CrPC, we listed the matter for further arguments in regard to the sentence to be awarded to the convicted appellants since the same was not done by the High Court. The learned counsel for the appellants contended that the appellants come from economically backward community and have not been accused or convicted of any

[28] (1977) 3 SCC 68.
[29] Supra note 27 at para 11.
[30] Id at para 12.

other offence prior to the incident in this case.

He also submitted that the third appellant being an old lady and the fourth appellant being a divorcee and dependent on her parents and the fifth appellant being a young lady recently married having a small child should be dealt with leniently and the sentence awarded by the High Court being far in excess, the same should be reduced considerably in regard to all the convicted appellants, whereas the learned counsel appearing for the State of Maharashtra submitted there is absolutely no reason why any leniency should be shown to these appellants whose cruel behaviour has forced an innocent lady to commit suicide, therefore, the conviction awarded to these appellants by the High Court is appropriate and the same should be maintained. We have noticed that the High Court has sentenced these appellants to undergo three years' imprisonment under section 498-A read with section 34 and to pay a fine of Rs 5000 each, in default to undergo RI for six months.

These appellants have also been sentenced by the High Court for an offence punishable under section 306 read with section 34 IPC and are sentenced to suffer RI for ten years and to pay a fine of Rs 5000 each, in default to undergo RI for one year. All the substantive sentences were directed to run concurrently. The High Court also directed that the fine amount if paid, 80% thereof should be paid to the parents of the victim as compensation."[31]

Finally, the Court ruled as under: "Taking into consideration the individual roles played by these accused persons in abetting the suicide of the victim and the respective age as well as family circumstances, we think it appropriate to modify the sentence awarded by the High Court under section 498-A read with section 34 IPC to the first appellant Kamalakar Nandram Bhavsar to RI for three years and to pay a fine of Rs 5000, in default to undergo further RI for six months. He is also convicted under section 306 read with section 34 IPC, but his sentence is reduced to five years' RI and to pay a fine of Rs 10,000, in default to undergo RI for one year. Substantive sentences to run concurrently."[32]

## V. DECISION OF THE SUPREME COURT

What is clear from the above discussion is that, a court which convicts the accused for the first time has to hear the accused on sentence, the Bench held. If it is a trial court then section 235(2) of the CrPC, will apply. If it is the appellate court which is convicting the accused for the first time after reversing the acquittal, the appellate court has to hear the convict

[31] Id at para 13.
[32] Ibid.

on sentence. The appellate court cannot relegate the matter to the court below only for the purpose of imposing a sentence after the appellate court had recorded a conviction. That will be contrary to section 386(a) of the CrPC, and the judgments of the Supreme Court. Hence, the Bench held that it has no hesitation in holding that the High Court committed an error in directing the trial judge to pronounce and impose a proper sentence.

The Bench set aside the following portion in para 108 of the judgment of the High Court which was impugned before the Bench: "[T]he convict Mukesh is directed to surrender before the learned Trial Judge by 22nd May, 2026 and on his surrender the learned trial judge shall take him into custody and shall pronounce and impose the proper sentence under Sections 376/312 IPC after hearing on the point of sentence in accordance with law. If the convict fails to surrender on or before the appointed day the learned Trial Judge shall issue warrant of arrest against him. However, we make it clear that within 7 days of his surrender on production in execution of warrant or arrest, as the case may be, the learned Trial Judge shall pronounce the sentence after complying with all the legal formalities. The appeals being CRA (DB) 6 of 2024 and CRA (DB) 4 of 2024 are allowed.

The judgment of acquittal dated 24.04.2024 passed by the learned Sessions Judge Andaman and Nicobar Islands at Port Blair in connection with Sessions case no. 32 of 2015 corresponding to Sessions Trial No. 16 of October 2015 is hereby set aside." The rest of the judgment has not been considered at this stage as it is premature, the Bench clarified. Thus, the matter was remitted to the High Court and as such, CRA (DB)/6/2024 and CRA (DB)/4/2024 were restored to the file of the High Court. The bench directed that the High Court shall now fix a date for hearing the convict on the issue of sentence. After hearing the convict, the High Court may impose an appropriate sentence which it deems fit in accordance with law. Post the imposition of sentence, the appellant would be at liberty to challenge the conviction and sentence afresh, the Bench concluded.

## VI. CONCLUSION

It is correct position of law that if an appellate court, while hearing an appeal against an acquittal, finds the accused guilty, then it cannot relegate the matter to the trial court for imposing the sentence. The Appellate court itself has to hear the convict on the quantum of sentence. It is also settled that the order of conviction and imposition of sentence before the Court on the same day is illegal as held in case of Allauddin

Mian v. State of Bihar.[33] It is reiterated that section 235(2) mandates that on an order of judgment of conviction, the Judge, unless proceeds according to the provision of Section 360, is required to hear the accused on the question of sentence and then pass sentence on him according to law. Such function of passing the sentence in accordance with law cannot be delegated to the Trial Court. The accused is required to be given an opportunity on the question of sentence which is a mandatory procedure. If at all on the date of conviction, the accused is not available, the Appellate Court should adjourn the case to a future date and call upon both the prosecution as well as the defence to place relevant material bearing on the question of sentence before it and then sentence could be pronounced to be imposed on the offender.

In exercise of Appellate power under Section 386 CrPC the High Court has full power to reverse an order of acquittal and if the accused are found guilty, they can be sentenced according to law. The above is aptly summed up in the maxim "actus curiae neminem gravabit" which infers that judicial actions should not unfairly harm any party and that courts should act judiciously to prevent errors that could lead to injustice.[34] Further, the Bench has also adopted a fair procedure when it stated that the Court at this stage was not entering into merits of the conviction but is only on the aspect whether the learned Sessions Judge being an Appellate Court was right in sending the record back to the Trial Court for passing order of sentencing the accused.

[33] (1989) 3 SCC 5.

[34] Jang Sing v. Brij Lal and Others, AIR 1966 SC 1631.