2026 INSC 559

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2863-2864 of 2026
(Arising out of SLP (Crl.) Nos. 8660-61 of 2026)

Mukesh Kumar Yadav … Appellant(s)

Versus

The State (UT of Andaman &
Nicobar Islands) Etc. … Respondent(s)

J U D G M E N T

K. V. Viswanathan, J.

1. Leave granted.

2. The present appeals call in question the correctness of the judgment and order dated 23.04.2026 passed by the High Court at Calcutta (Circuit Bench at Port Blair) in CRA (DB)/6/2024 and CRA (DB)/4/2024.

The appeals before the High Court, one by the State [CRA (DB)/4/2024] and one by the victim Ms. X [CRA

(DB)/6/2024], in turn, challenged the correctness of the judgment of acquittal dated 24.04.2024 passed by the learned Sessions Judge, Andaman and Nicobar Islands at Port Blair in Sessions Case No.32/2015.

4. The appellant stood trial before the learned Sessions Judge, Andaman and Nicobar Islands for offences punishable under Sections 376, 312 and 417 of the Indian Penal Code, 1860 (for short the "IPC"). By the judgment dated 24.04.2024, the learned Sessions Judge acquitted the appellant of all the offences charged.

5. The High Court, hearing the appeal against acquittal, found the appellant guilty of offences punishable under Section 376 and 312 IPC. The High Court recorded the following in para 108 of the judgment:-

> "108. In view of the discussion above, we have come to the conclusion on the basis of testimony of the VL 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 Mukesh knowing fully well that such promise to marry was false from the very beginning of the relevant relationship between him and the victim. The alleged consent of the VL was procured on her misconception of the fact that Mukesh had the intention to

marry her. There is also evidence to the effect that to shield the pregnancy of the VL, Mukesh persuaded her to consume pills for terminating her pregnancy, being fully aware that his promise to marry the VL was false, and as such we have found that Mukesh is guilty of the offence punishable under Section 376 and also under Section 312 IPC. The learned Trial Judge did not analyse the evidence on record in its proper perspective. The impugned judgment has occasioned failure of justice and in view of such palpable error, irregularity and illegality in the judgment, we are inclined to set aside the said judgment of acquittal and accordingly we do so. **As there was a clear failure of justice, we pronounce the judgment of conviction against Mukesh Kumar Yadav and accordingly, we find that Mukesh Kumar Yadav is guilty of offences punishable under Section 376/312 IPC and he is, thus convicted for the offences under section 376/312 IPC. The 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.**"

(Emphasis supplied)

6. 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 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.

7. When this matter first came before us, having noticed the incongruity in the procedure adopted by the High Court, on 12.05.2026, we issued notice to the respondents to hear on the correctness of the procedure adopted.

8. We have heard Mr. Rauf Rahim, learned senior counsel for the appellant, Mr. Kunal Chatterji, learned counsel for the respondent-victim and Mr. Mukesh Kumar Verma, learned counsel for the respondent-State.

9. Chapter XVIII of the Code of Criminal Procedure, 1973 (for short the "Cr.P.C.") deals with the procedure for trial

before a court of session. Section 235, Cr.P.C. [Section 258, Bharatiya Nagarik Suraksha Sanhita, 2023 (for short the "BNSS")] which is important for our discussion is set out hereinbelow:-

> "**235. 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 questions of sentence, and then pass sentence on him according to law."

As would be clear, 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, Cr.P.C. (equivalent to Section 401, BNSS), hear the accused on the question of sentence, and then pass sentence on him according to law. Section 360, Cr.P.C., deals with order to release on probation of good conduct with which we are not concerned herein.

10. Thus, this is a procedure which the trial court will follow in the event of conviction. The rationale behind Section

235(2) was explained in ***Allauddin Mian and Others Sharif Mian and Another v. State of Bihar***[1]. This Court held that the requirement of hearing was intended to satisfy the rule of natural justice. The Court 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. Para 10 of the Judgment is extracted hereunder:-

> "10. Even a casual glance at the provisions of the Penal Code will show that the punishments have been carefully graded corresponding with the gravity of offences; in grave wrongs the punishments prescribed are strict whereas for minor offences leniency is shown. Here again there is considerable room for manoeuvre because the choice of the punishment is left to the discretion of the judge with only the outer limits stated. There are only a few cases where a minimum punishment is prescribed. The question then is what procedure does the judge follow for determining the punishment to be imposed in each case to fit the crime ? The choice has to be made after following the procedure set out in sub-section (2) of Section 235 of the Code. That sub-section reads as under :
>
> If the accused is convicted, the judge shall, unless he proceeds in accordance with the provisions of Section 360,

[1] (1989) 3 SCC 5

hear the accused on the question of sentence, and then pass sentence on him according to law.

The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution 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 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……"

[Emphasis supplied]

11. One more judgment which requires mention in this context is ***Dagdu and Others v. State of Maharashtra***[2], wherein a question arose as to what if the convicting court sentences the accused without hearing him on the sentence. This Court held that the higher court can on confirming the

[2] (1977) 3 SCC 68

conviction, remedy the breach by giving a hearing to the accused on the question of sentence. This Court held that 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 happen where the conviction is recorded for the first time by a higher court. Para 79 reads as follows: -

> "**79.** But we are unable to read the judgment in *Santa Singh* as laying down that the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question us sentence. The Court, on convicting an accused, must unquestionably hear him on the qustion of sentence. **But if, for any reason, it omits to do so and the accused makes a grievance of it in the 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.** That 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. The accused may exercise that right either by instructing his counsel to make oral submisions 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 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 of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court."

[Emphasis supplied]

12. 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. To appreciate this position, a reference needs to be made to Section 386, Cr.P.C. (equivalent to Section 427, BNSS). Section 386(a), Cr.P.C., which is relevant for our purpose reads as under:-

"**386. Powers of the Appellate Court**.—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;

....."

13. It can be seen from Section 386(a), Cr.P.C., 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.

14. In ***Kumar Exports Vs. Sharma Carpets***[3], this Court interpreting Section 386(a), Cr.P.C., while holding that appellate court ought not, after recording conviction, remit the matter to the trial court and that the appellate court is obligated to impose an appropriate sentence, held as under:-

> "**26. 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 Code of Criminal Procedure, 1973. 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**

[3] (2009) 2 SCC 513

order of acquittal and not by any other court. Having regard to the scheme of the Code of Criminal Procedure, 1973 this Court is of the view 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. 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. Therefore, we do not approve or accept the procedure adopted by the High Court. Be that as it may, in this case, we have found that reversal of acquittal itself was not justified."

[Emphasis supplied]

15. Not only should the appellate court not remand the matter to the trial court only for the purpose of imposing a sentence, after it finds accused guilty, it has a bounden duty to hear and impose an appropriate sentence.

16. The appellate court which will include the High Court, in a given scenario, while recording a conviction after reversing the acquittal, should adjourn the matter to a suitable date, hear the convicts, and impose an appropriate sentence itself.

17. In fact even this 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. In ***Suryamoorthi and Another v. Govindaswamy and Others***[4], this Court held as under:-

> "14. 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."

18. In fact, in yet another case, this 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. In ***Kamalakar Nandram Bhavsar and Others v. State of Maharashtra***[5], this Court held as under:-

> "**11.** 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

[4] (1989) 3 SCC 24
[5] (2004) 10 SCC 192

the accused persons of being heard in regard to the quantum of sentence as required under Section 235 of the Code of Criminal Procedure. 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*. 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 Code. 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 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* 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.''

12. 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 Code of Criminal Procedure 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.

13. 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 Code of Criminal Procedure, 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 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. 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.''

19. 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. If it is a trial court then Section 235(2), Cr.P.C., 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 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), Cr.P.C., and the judgments of this Court.

20. In view of the above, we have no hesitation in holding that the High Court committed an error in directing the trial judge to pronounce and impose a proper sentence. The following portion in para 108 of the judgment of the High Court which is impugned herein would stand set aside:-

> "108. …The 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.

21. The matter is remitted to the High Court. For this purpose CRA (DB)/6/2024 and CRA (DB)/4/2024 will stand restored to the file of the High Court.

22. 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 appeals are partly allowed in the above terms.

23. Let a copy of this judgment be sent to the Registrar General of the High Court at Calcutta. The Registrar General on receipt of the judgment shall place the same before Hon'ble Chief Justice of the Calcutta High Court for appropriate action.

.....J.
[**K. V. VISWANATHAN**]

.....J.
[**VIJAY BISHNOI**]

New Delhi;
26th May, 2026