

**HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL**

CRIMINAL APPEAL No.1269 of 2014

JUDGMENT: (per Hon'ble Sri Justice G.Chandraiah)

This Criminal Appeal is preferred by the complainant (P.W.1), who is the daughter of the deceased Sarada, against the judgment dated 18.04.2011 passed in Sessions Case No.537 of 2010 by the learned V-Additional District and Sessions Judge, Fast Tack Court, Ongole, Prakasam District, whereby the 1st respondent/Accused was acquitted of the offence under Section 302 I.P.C.

Learned Counsel for the appellant submitted that the appellant is the de facto complainant and she being the daughter of the deceased and P.W.1 in the case, is a victim, and therefore, she has a right to prefer an appeal against the order of a Criminal Court acquitting the accused.

There is no representation on behalf of the 1st respondent/Accused, even though Mr.G.L.Ramesh entered appearance in the matter on his behalf.

From the record, it could be seen that when the appeal was returned with certain office objections, the appellant represented the same with a delay of 1249 days and, however, that was condoned by order dated 01.12.2014 passed in CrI.A.M.P.No.1845 of 2014.

Now the question that arises for consideration before this Court is whether the appellant, who is the de facto complainant and daughter of the deceased, can maintain this appeal against the order of a Criminal Court acquitting the 1st respondent/Accused, in

view of the amendment to Section 372 Cr.P.C. and the changes that are brought into the Criminal Procedure Code?

In the instant case, the incident has taken place on 10.09.2009 and the amendment to Section 372 Cr.P.C. has come into force with effect from 31.12.2009 by virtue of Act 5 of 2009, where the victim can prefer an appeal against acquittal.

Following the judgment of the Apex Court in ***National Commission for Women V. State of Delhi***^[1], a Division Bench of this Court in ***D.Sudhakar V. Panapu Sreenivasulu***^[2], held as follows:

“This issue will not hold us for long, in view of the fact that the apex Court in *National Commission for Women V. State of Delhi (supra)*, has already held that the amendment is not applicable to cases where the incident has taken place prior to amendment. Therefore, even on this count, the appellant fails, and as such, the appeal is liable to be dismissed as not maintainable.”

As the incident in the present case happened allegedly on 10.9.2009, no right has accrued to the victim of the deceased to file an appeal against the acquittal of the accused in terms of amended provisions of Section 372 Cr.P.C. and as per its amended provisions, a victim has right to file an appeal against the acquittal of accused after 31.12.2009. Admittedly the incident allegedly happened prior to the amendment of the said provision, no appeal can be maintained by the victim and hence it is liable to be rejected on that sole ground, irrespective of holding whether the appellant is a victim or not in terms of Section 2 (wa) Cr.P.C.

Accordingly the Criminal Appeal is dismissed as not

maintainable.

G.CHANDRAIAH, J

M.S.K.JAISWAL, J

24.02.2015
Gsn.

[\[1\]](#) 2010 (1) SCALE 17

[\[2\]](#) 2013 (1) ALD (CrI.) 366 (AP)