

HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.400 of 2015

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

This Criminal Appeal is preferred by the brother of the deceased Radhaiah (P.W.4) against the judgment dated 14.03.2014 passed in Sessions Case No.198 of 2012 by the learned VI-Additional District and Sessions Judge, SPSR Nellore District, whereby respondents 2, 3 & 4/A-1 (since died), A-2 and A-3 (since died) were acquitted of the offences under Sections 120(B), 364, 302, 201, 109 read with Section 34 I.P.C.

Heard the learned Counsel appearing on either side and perused the material available on record.

Now the question that arises for consideration before this Court is whether the appellant, who is the brother of the deceased, can maintain this appeal against the order of a Criminal Court acquitting the accused, in view of the amendment to Section 372 Cr.P.C.?

In the instant case, the incident has taken place on 20.02.2008 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***, a Division Bench of this Court in ***D.Sudhakar V. Panapu Sreenivasulu***, 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 20.02.2008, 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 dismissed on that sole ground.

Accordingly the Criminal Appeal is dismissed as not maintainable.

G.CHANDRAIAH, J

M.S.K.JAISWAL, J

29.04.2015

Gsn.

