

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI***

CRIMINAL APPEAL No.1480 of 2010

JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti)

This appeal by the State is directed against the judgment dated 24.03.2009 of the learned II Additional Sessions Judge, West Godavari, Eluru, passed in Sessions Case No.223 of 2008, whereby the learned Sessions Judge found the respondent/accused not guilty of the offence punishable under Section 302 of the Indian Penal Code, 1860, and acquitted him of the said charge.

The appeal was instituted after the time allowed under law and therefore, CrI.A.M.P.No.786 of 2010 was filed for condonation of the delay of 212 days. On the note of the registry that the notice was duly served on the respondent/accused, this Court by order dated 10.11.2010 condoned the delay, and thereafter, the appeal was registered.

When the appeal came up for hearing on 23.08.2016, this Court noticed that the service of notice is not properly effected on the respondent/accused in the light of the fact that the served copy of notice contained the thumb impression of the person, who had received it, whereas the respondent/accused affixed his signature in the statement recorded by the trial Court at the time of his examination under Section 313 of the Code of Criminal Procedure,

1973. Therefore, a fresh notice was ordered to the respondent/accused in this appeal.

The Sub-Inspector of Police, Devarapalli Police Station, West Godavari District, filed an affidavit stating, *inter alia*, that on account of mistaken identity, the notice in the miscellaneous petition for condonation of delay was served on a person with the same name but not on the respondent/accused and that for service of notice in the appeal as directed by this Court, when enquiries were made, it was revealed that he was not residing in the village since three years and his whereabouts were also not known to his family members and neighbours, and even the Village Revenue Officer and the Revenue Assistant of the Village, and therefore, the notice could not be served. Along with the affidavit, the statements of the persons recorded during the course of enquiry regarding the whereabouts of the respondent/accused, are filed.

Since the notice could not be served on the respondent/accused as his whereabouts are not known and the State is not in a position to secure the presence of the respondent/accused, we have heard the submissions of the learned Public Prosecutor.

Submissions of the learned Public Prosecutor and the material on record reflect that the alleged offence was committed on 06/07.03.1994 and the charge sheet was filed on 13.09.1994 showing the respondent/accused as absconding and that later, the

respondent/accused was arrested on 22.04.2008 and that thereafter, a PRC was taken on file and a committal order was passed on 29.04.2008 by the learned Magistrate and that the trial before the learned Sessions Judge was commenced on 18.02.2009 and culminated on 19.03.2009 and finally the judgment acquitting the respondent/accused was pronounced on 24.03.2009 by the learned II Additional Sessions Judge, West Godavari, Eluru.

Since the State is not in a position to secure the presence of the respondent/accused and as it is stated that there is no prospect of finding out the whereabouts of the respondent/accused and as the application for condonation of delay was allowed without service of notice on the respondent/accused, we see no reason to keep the criminal appeal pending any longer for adjudication, as we are of the opinion that no useful purpose would be served.

The criminal appeal is accordingly dismissed confirming the judgment dated 24.03.2009 of the learned II Additional Sessions Judge, West Godavari, Eluru, passed in Sessions Case No.223 of 2008.

Pending miscellaneous petitions, if any, shall also stand dismissed.

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

Date:20.09.2016

GJ

