

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.1258 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This is an appeal under the proviso to Section 372 CrPC by the father of the deceased, Jala Ramu, aggrieved by the acquittal of A3 and A4 by the learned V Additional Sessions Judge (III Fast Track Court), Nalgonda at Miryalguda, *vide* judgment dated 28.01.2011 in Sessions Case No.544 of 2009.

The appeal was admitted by this Court on 24.10.2011.

It is however relevant to note that the alleged offence in relation to which A3 and A4 were acquitted by the Sessions Court happened on 04.03.2009 at 0030 hours. The proviso to Section 372 CrPC was inserted by the Code of Criminal Procedure (Amendment) Act, 2008 with effect from 31.12.2009. The proviso reads as under:

‘Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.’

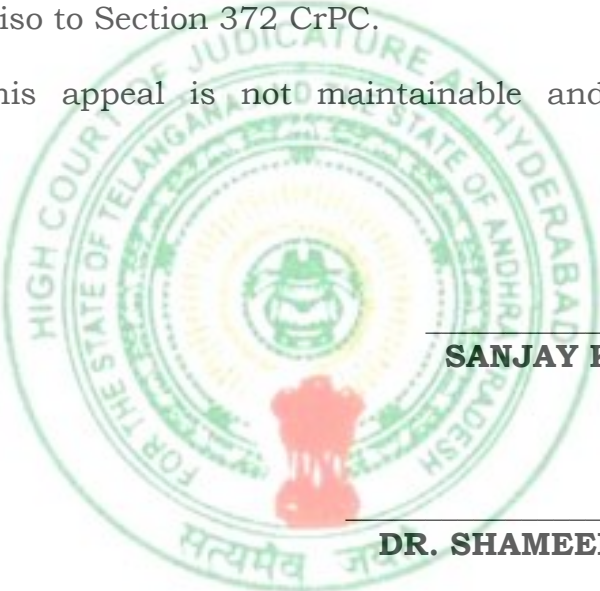
It is settled law that a right of appeal is not automatic and must be specifically conferred. As the proviso to Section 372 CrPC was inserted in the statute book only from 31.12.2009 and would be prospective in its application, it cannot vest a ‘victim’ with the right of an appeal in relation to an offence which occurred prior to its insertion. In effect, the father of the deceased, Jala Ramu, in the

present case is not covered by this proviso as the offence in relation to which A3 and A4 were acquitted took place before its insertion.

In any event, the issue is no longer *res integra*.

In ***D.SUDHAKAR V/s. PANAPU SREENIVASULU @ EVONE WATER SREENIVASULU***¹, a Division Bench of this Court dealt with this aspect. Relying upon the observations made by the Supreme Court in ***NATIONAL COMMISSION FOR WOMEN V/s. STATE OF DELHI***², the Division Bench observed that as the incident in that case took place long prior to the amendment to Section 372 CrPC, with effect from 31.12.2009, the right of appeal would not enure under the proviso to Section 372 CrPC.

Thus, this appeal is not maintainable and is accordingly dismissed.



SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

1st SEPTEMBER, 2017

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¹ 2013 (1) ALD (CrI.) 366 (AP)

² 2010 (1) SCALE 17