

**HONOURABLE JUSTICE G.SRI DEVI**

**CRIMINAL APPEAL No. 1361 of 2011**

**JUDGMENT:**

This Criminal Appeal is filed under Section 378 (1) and (3) of Cr.P.C. by the State, challenging the judgment, dated 12.07.2010 passed in S.S.C.No.58 of 2006 on the file of the Special Judge for SC/ST (POA) Cases-cum-VII Additional District Judge at Warangal, wherein the accused was acquitted for the offences punishable under Section 417 of I.P.C. and Section 3 (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in S.S.C.No.58 of 2006.

The case of the prosecution, in brief, is that the accused Chidurala Ramesh developed intimacy and friendship with Bhukya Bharathi, who belongs to Lambada (ST) caste, by making false promises to marry her and believing the same, she allowed the accused to have cohabitation with her and the affair was continued for a period of four years. In view of such cohabitation, she became pregnant and the accused terminated the pregnancy in the month of April, 2001 in Rohini Hospital, Hanamkonda and promised that he would marry her after she attains the majority and continued his affair with Bhukya Bharathi. In the month of January, 2005, when the victim asked the accused to marry her, but he refused to marry her. The victim held a panchayat before Mannuru Krishna Murthy

@ Poosala Krishna Murthy, Hechu Yakaiah and Dopati Ram Reddy and others and in the said panchayat the accused alleged to have confessed that he has committed the offence and expressed that he is not willing to marry her since she is a Tribal Woman and was ready to pay compensation. Hence, the victim lodged a report before the Police, Thorrur, which was registered as a case in Crime No.60 of 2005 of Thorrur Police Station for the offences punishable under Section 417 of I.P.C. and Section 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After due investigation, police filed charge sheet, and the same was numbered as S.S.C.No.58 of 2006.

On appearance of the accused, charges under Section 417 of I.P.C. and Section 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were framed, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined P.Ws.1 to 15 and got marked Exs.P1 to P9 and after closure of the prosecution evidence, the accused was examined U/s. 313 Cr.P.C. explaining the incriminating material available on record, but the same was denied by the accused. Neither oral nor documentary evidence was adduced on behalf of the accused.

After analyzing the evidence available on record, the trial Court acquitted the accused. Challenging the same the appeal is filed by the State.

Heard learned Additional Public Prosecutor for the State and learned Counsel appearing for the respondent/accused.

Learned Additional Public Prosecutor would submit that the judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case and the trial Court ought to have seen that the ingredients to constitute the aforesaid offences are made out against the accused; that the trial Judge ignored the fact that the victim hails from a Scheduled Tribe (Lambada) caste with rural background and in such cases it cannot be expected that aforesaid illicit acts of the accused are to be informed by P.W.1 to her mother and the trial Judge also failed to appreciate all these factors in proper perspective and came to an erroneous conclusion in acquitting the accused.

Per contra, learned Counsel for the respondent/accused would submit that the Trial Court has minutely considered the testimony of all the prosecution witnesses and also took into consideration the defence raised by the accused and then acquitted the respondent/ accused which does not suffer from any infirmity as such the appeal is liable to be dismissed.

In case of appeal against acquittal, the scope of appeal is circumscribed by limitation. Unless the approach of lower Court to the consideration of evidence is vitiated by manifest illegality or

conclusion arrived at by the lower Court is perverse, no interference with the order of acquittal is permissible.

In *Mrinal Das Vs. State of Tripura*<sup>1</sup> the Apex Court held as under:

“It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re- appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of

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<sup>1</sup> (2011) 9 SCC 479

the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

In *Maloth Somaraju Vs. State of Andhra Pradesh*<sup>2</sup> the Apex Court held that there can be no two opinions that merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. The appellate Court has more and serious responsibility while dealing with the judgment of acquittal and unless the acquittal is found to be perverse or not at all supportable and where the appellate Court comes to the conclusion that conviction is a must, the judgment of acquittal cannot be upset. The appellate Court has to examine as to whether the trial Court, while upsetting the acquittal, has taken such care.

As seen from the record, it is clear that to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 15. P.W.1 is the victim, P.W.2 is the mother of P.W.1, P.W.3 is the elder sister of P.W.2 and P.W.4 is the brother-in-law of P.W.2, P.Ws.5, 6, 11, 13 and

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<sup>2</sup> (2011) 8 SCC 635

14 are the elders, who conducted panchayat, P.Ws.7, 8 and 9 are the doctors, P.W.10 is the M.R.O., who issued the caste certificate, P.W.12 is the Sub-Inspector of Police, who registered the F.I.R. and P.W.15 is the Investigating Officer. Out of them, PWs.5 and 6 turned hostile and did not support the case of the prosecution.

A perusal of the evidence of P.W.1-victim would show that the accused had sexual intercourse with her on a false promise that he would marry her. She also deposed that when she became pregnant, the accused brought her to Rohini Hospital and got aborted her pregnancy, but there is no documentary evidence with regard to said abortion. The person by name Mohan Rao, who accompanied them to the hospital was neither examined nor cited as a witness. P.W.8-Doctor, who examined the victim, stated that the victim told her that she had been cheated by a known person and made her pregnant but she has not stated the name of the said person. In the cross-examination P.W.1-victim has categorically stated that she went to Dr.Dattu for abortion along with Balakrishna, but the said Dattu was not examined. She further stated that a panchayat was held in the presence of Poosala Krishna Murthy (P.W.5), Durgaiah (P.W.14) and Yakaiah (P.W.11), but P.W.5 turned hostile and did not support the case of prosecution. PW.11, one of the elder, deposed that the panchayat was not decided finally as both the parties have not attended the panchayat. When the panchayat was not decided, the question of preparing an agreement

would not arise. Moreover, in the cross-examination, he categorically stated that he has not put any signature on the Xerox copy of the agreement. P.Ws.13 and 14, who are said to be the elders conducted panchayat, were not examined by the prosecution during the course of investigation. They deposed that they conducted panchayat along with P.Ws.5 and 11, but P.W.5 did not support the case of prosecution, where as P.W.11 stated that the panchayat was not decided finally.

P.W.2, who is the mother of the victim, categorically stated that she performed the marriage of her daughter with the accused in her village, but where as P.W.1 stated that their marriage took place at Bhadrakali temple and her mother was not aware about her acquaintance with the accused. Apart from that in the cross-examination, PW.2 categorically admitted that she does not know the date when her daughter conceived.

P.W.3, who is the elder sister of P.W.2, deposed that P.W.1 informed to her that while she was studying 7<sup>th</sup> class, the accused developed illicit intimacy with her on the promise of marriage. In her cross-examination, she categorically stated that she did not state to the police that the accused has got illegal contact with P.W.1 from her 7<sup>th</sup> class and she cannot say in which year the abortion of P.W.1 was done.

P.W.4, who is the brother-in-law of P.W.2, stated that panchayat was conducted twice and the matter was not settled.

Except that he has not stated anything with regard to the said panchayat. He further stated that in the said panchayat the accused stated that he does not want to marry P.W.1 as she belongs to lower caste. A perusal of the evidence of P.Ws.1 to 4, would reveal that their statements have been contradicting with each other. P.W.1 stated that they executed an agreement for decision by the panchayat elders, where as P.Ws.4 and 11 stated that the matter was not settled, as such question of execution of agreement is doubtful.

A perusal of the entire evidence would show that P.W.1-victim is a consenting party, as such she kept quiet from 2001-2004 and even she did not inform the same to her mother (P.W.2) and she did not disclose the name of the accused before P.W.8-Doctor, who got aborted her twice in the year 2001 and in the year 2004. Since P.W.5, who is one of the panchayatdars, did not support the case of prosecution; P.W.11 has stated that the matter was not decided finally and the original agreement was not produced by the prosecution. There is no evidence whether the accused has illicit intimacy with P.W.1 by making false promise to marry her.

Apart from that the Apex Court in catena of decisions held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

In the light of the above, I am of the view that the trial Court has given sufficient and cogent reasons in acquitting the

respondent/accused. I see no reason or justification to interfere with the finding of the trial Court.

Accordingly, the appeal is dismissed confirming the judgment dated 12.07.2010 passed in S.S.C.No.58 of 2006 on the file of the Special Judge for SC/ST (POA) Cases-cum-VII Additional District Judge, Warangal.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

03.02.2020  
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JUSTICE G. SRI DEVI

