

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL APPEAL No. 1360 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 22.07.2009 passed in S.C.No.34 of 2008 on the file of the Special Judge for Trial of Cases under SCs/STs (POA) Act-cum-VIII Additional Sessions Judge at Nizamabad, wherein the accused was acquitted for the offence punishable under Section 353 of I.P.C. and Section 3 (i) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in S.C.No.34 of 2008.

The case of the prosecution is as under:

On 04.03.2008 at 12.30 P.M., P.W.1, who was working as M.P.D.O., Kammarpally, went for inspection to look into the progress of the construction of the houses pertaining to the beneficiaries under Indiramma Housing Scheme in Gandhinagar Colony, Kammarpally and when he was inspecting the progress of the houses of P.Ws.2 and 3, who are the beneficiaries under the scheme, the accused came and questioned P.W.1 about his authority for sanctioning the houses to the said beneficiaries alleging that the site on which the construction was going on, belongs to him and then abused in the name of his caste. Basing on these allegations, a

report came to be filed, which was registered as a case in Crime No.19 of 2008 of Kammarpally Police Station. After due investigation, police filed charge sheet, and the same was numbered as S.C.No.34 of 2008.

On appearance of the accused, the material on record was perused and on being satisfied, charges under Section 353 of I.P.C. and Section 3 (i) (x) of the Scheduled Caste and Scheduled Tribe (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 10 and got marked Exs.P1 to P8 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. No oral evidence was adduced on behalf of the accused, but Exs.D1-Portion of 161 Cr.P.C. Statement of P.W.3, Ex.D2-location map and Ex.D3-Memo dated 01.01.2008 were marked.

After analyzing the evidence available on record, the trial Court acquitted the accused holding that the prosecution failed to establish that on the date of incident the accused used criminal force against P.W.1; prevented him in discharging his duties and abused him in the name of his caste. Challenging the same the present appeal is filed by the State.

Heard learned Additional Public Prosecutor for the appellant/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 offence are made out against the accused as the accused had threatened and obstructed P.W.1 while he was discharging his legitimate duties.

Per contra, learned Counsel for the respondent/accused, while referring to the limitations on the powers of this Court to entertain an appeal against acquittal, submits that this Court has to interfere only when there are compelling and substantial reasons for doing so. 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*¹ 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 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

¹ (2011) 9 SCC 479

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*² 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 10. P.W.1 is the victim, PWs.2 to 7 said to be the eyewitnesses to the incident and PWs.8 to 10 are the official witnesses. Out of them, PWs.4 to 7 did not support the case of the prosecution. A perusal of the evidence of P.Ws.1 to 3 would show that the accused abused P.W.1 by referring his caste in the presence of P.Ws.4 to 7, but P.Ws.4 to 7 did not support the case of the prosecution and in their cross examination nothing has been elicited to show that the accused committed the aforesaid offence. Since P.Ws.4 to 7 did not support the case of the prosecution and turned hostile and as there is no corroboration to the version of P.Ws.1 to 3, the trial Court finds that

² (2011) 8 SCC 635

the evidence of P.Ws.1 to 3 is only artificial but not natural and it does not inspire confidence to place reliance that the accused abused P.W.1 by referring his caste name. That apart, 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 view of the Judgments referred to above and having regard to the facts and circumstances of the case, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed confirming the judgment dated 22.07.2009 passed in S.C.No.34 of 2008 on the file of the Special Judge for Trial of Cases under SCs/STs (POA) Act-cum-VIII Additional Sessions Judge at Nizamabad.

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

JUSTICE G. SRI DEVI

21.01.2020
gkv/Gsn