

HON'BLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No. 109 of 2010

JUDGMENT:

This Criminal Appeal is filed under Section 378 (3) and (1) Cr.P.C. by the State, challenging the judgment, dated 11.09.2008 passed in C.C.No.219 of 2004 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, wherein the accused were acquitted for the offences punishable under Sections 498-A of I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, 1961.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in C.C.

The case of the prosecution is that the marriage of P.W.3 was performed with A-1 on 27.03.2002 as per hindu rites and customs at Hyderabad. At the time of marriage, P.W.1, who is the father of P.W.3, gave cash of Rs.40,000/-, diamond ring and other silver articles and clothes worth Rs.1.50 lakhs. Immediately after the marriage, P.W.3 joined A-1 and they lived together for about 23 days. During that period, all the accused harassed P.W.3 both physically and mentally to get her share in her father's property and to bring the sale proceeds by disposing of it. When the same was informed, P.W.1 promised to fulfil their demand after his retirement from the service. A-1 and P.W.3 went for honeymoon, there also A-1 harassed P.W.3 on one pretext or the other and also beat her and he also threatened that if she becomes handicap, he

would get pension of 600 dollars in Australia for handicap wife, so P.W.3 got frightened. Subsequently, A-1 left for U.S.A. promising to get a Visa to her but he failed to do the same and he also used to abuse her in filthy language on phone and also threatened her to give divorce. On 10.10.2002, all of a sudden, she received a petition for dissolution of the marriage filed by A-1 from the Superior Court of California and when A-1 was trying for his second marriage at the instigation of A-2 and A-3. Basing on these allegations a charge sheet came to be filed, which was taken on file as C.C.No.219 of 2004.

On appearance of the accused, the material was perused and on being satisfied, charges under Section 498-A of I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, 1961 were framed, read over and explained to the accused in telugu, to which they pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 5 and got marked Exs.P1 to P3. After closure of the prosecution evidence, the accused were 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 produced 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 both sides and perused the record.

Learned Assistant Public Prosecutor appearing for the appellant-State contended that the judgment of the trial Court is against law, weight of evidence and probabilities of the case and that the trial Judge failed to appreciate the evidence in proper perspective.

Sri G.Vasantha Rayudu, learned Counsel appearing for the respondents/accused would submit that the prosecution failed to establish the guilt of the accused beyond reasonable doubt, therefore the accused were rightly acquitted by the trial Court.

The point that arises for consideration in this appeal is whether the judgment of acquittal recorded by the trial Court is sustainable in law?

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,

¹ (2011) 9 SCC 479

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 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

² (2011) 8 SCC 635

to whether the trial Court, while upsetting the acquittal, has taken such care.

To prove its case, the prosecution has examined as many as five witnesses and among them, the evidence of P.Ws.1 and 3 is identical, P.W.2 is the brother of P.W.3 and son of P.W.1 and P.Ws.4 and 5 are the Investigating Officers.

A perusal of the evidence on record would show that the marriage between P.W.3 and A-1 was taken place on 27.03.2002 and subsequently on 23.04.2002 itself A-1 left for U.S.A. and P.W.3 left for Australia, therefore, it is clear that A-1 and P.W.3 lived together for less than a month. P.W.3 admitted in her cross-examination that even she obtained divorce against her second husband, so it is clear that she married for second time after her marriage with A-1 and also obtained divorce from her second husband. The evidence further discloses that A-1 obtained divorce in U.S.A. against P.W.3, so the marital tie between P.W.3 and A-1 came to an end even prior to P.W.1 lodging Ex.P2 report. P.Ws.4 and 5 are the Investigating Officers, who deposed only with regard to the registration of F.I.R. basing on the report under Ex.P1, examining the witnesses and filing charge sheet etc. There is no independent corroboration to the evidence of P.Ws.1 and 3 to establish the guilt of the accused for the offences with which they are charged. The trial Court has given cogent and convincing reasons for not accepting the evidence of P.Ws.1 to 3. I do not

find any valid ground to interfere with the reasons assigned by the trial Court in discarding the evidence of P.W.1 to P.W.3.

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 11.09.2008 passed in C.C.No.219 of 2004 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court) at Hyderabad.

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

JUSTICE G. SRI DEVI

08.02.2021
gkv

