

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL NO.710 OF 2009

JUDGMENT:

Appellant-State filed the present Criminal Appeal by invoking the provision under Section 378(1) and (3) of the Code of Criminal Procedure (Cr.P.C.) challenging the judgment dated 20.10.2004 rendered in S.C.No.378 of 2004 wherein and whereby the II Additional Metropolitan Sessions Judge, Hyderabad, acquitted the accused for the offences punishable under Sections 307, 436 and 448 of the Indian Penal Code (IPC) and Section 7 of the Criminal Law Amendment Act, 1992 and Section 27 of the Indian Arms Act.

The case of the prosecution, in brief, is that on 27.02.2004 at about 4.00 pm, the accused went to the Kharkana of P.W.1 situated at Mir Ka Diara and attempted to commit murder of P.W.1, stabbed P.W.1 with the knife on his backside of the waist and also burnt the wooden door of the Kharkana of P.W.1.

This Court perused the entire impugned judgment and also heard the arguments.

In view of the fact that the prosecution has not placed any material to show that the accused prevented the *de facto* complainant from doing his business of making chappals and used violence by attacking the *de facto* complainant with the knife and caused injuries to him and not placed any evidence to show that they seized the knife, M.O.1, from the possession of the accused and that the prosecution has also not established that the accused was in possession of illegal arms in the notified area, the learned trial Judge acquitted the accused. The reasons assigned by the

learned trial Judge are well in accordance with law and the trial Court has appreciated the entire evidence in proper perspective.

Further, in an appeal against acquittal, the scope of this Court is very limited and if any perversity or illegality appears on the face of the record, then only this Court can interfere with the finding of the lower Court. It is well settled that in an appeal against acquittal, the Appellate Court can interfere only when there is possibility of one view, which is pointing towards the guilt of the accused. When there is possibility of two views and one view, which is in favour of the accused, is taken into account and the accused is acquitted by the competent Court, there is no need to interfere with the order passed by the trial Court.

In ***Mrinal Das v. 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

¹ (2011) 9 SCC 479

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 v. 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.

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.

² (2011) 8 SCC 635

Hence, the Criminal Appeal is dismissed confirming the judgment dated 20.10.2004 passed in S.C.No.378 of 2004 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad.

Miscellaneous applications, if any, pending shall stand dismissed.

(G. SRI DEVI, J)

25th February 2021
RRB

