

THE HON'BLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.80 of 2010

JUDGMENT :

This Criminal Appeal is filed by the State under Section 378 (1)&(3) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), against the Judgment, dated 11.03.2008, in Sessions Case No.618 of 2005 passed by the Assistant Sessions Judge, Miryalguda, whereby, respondents/accused Nos.1 and 2 were acquitted of the charges under Sections 498-A and 306 IPC.

2. Heard learned Public Prosecutor appearing for the State, learned counsel appearing for the respondents/accused Nos.1 and 2 and perused the record.

3. The case of the prosecution was that the Officer-in-charge of the Huzurnagar Police Station filed charge sheet against the respondents/accused Nos.1 and 2 for the offences punishable under Sections 498-A and 306 of IPC alleging that on 28.07.2005 at 8:30 p.m., the *de facto* complainant came to the Police Station and lodged a complaint stating that his second daughter by name N. Uma (hereinafter referred to as 'the deceased') was given in marriage to Accused No.1 about 13 months prior to lodging of the complaint and since the date of marriage, accused No.1 harassed the deceased and that on 28.07.2005, he received a telephonic information that the deceased committed suicide by pouring kerosene on her body and on receiving such information, immediately he along with his family members went to Huzurnagar

and found the deceased died. He came to know that A-2, who is the mother-in-law of the deceased, abused the deceased about commission of theft and asked to put an end to her life and feeling ashamed, she committed suicide and hence, requested to take legal action. Basing on the said complaint, PW.11 registered Crime No.117 of 2005 and on completion of investigation, filed charge sheet against A-1 and A-2 for the aforesaid offences.

4. In order to bring home the guilt of accused Nos.1 and 2, the prosecution examined PWs.1 to 12 and got marked Exs.P.1 to P.14. On behalf of defence, no oral or documentary evidence was adduced.

5. The Court below, after considering the oral and documentary evidence on record, found the respondents/accused Nos.1 and 2 not guilty of the charges 498-A and 306 IPC and accordingly, acquitted them for the said charges. Aggrieved by the said Judgment, the present appeal is filed by the State.

6. Learned Additional Public Prosecutor appearing for the State would submit that the material on record establishes the ingredients of offences punishable under Sections 498-A and 306 IPC and though the prosecution witnesses did not support the prosecution case, Ex.P.9-Dying Declaration is strong piece of evidence to establish the case and hence, prayed to allow the appeal.

7. On the other hand, learned counsel for the respondents/accused Nos.1 and 2 submits that the trial Court after proper appreciation of evidence and material on record, rightly acquitted the accused and the judgment of the trial Court needs no interference.

8. P.W.1 is father and P.W.2 is mother of the deceased. P.Ws.3 and 4 are brothers of P.W.2. P.W.1 gave Ex.P.1 report to the police, wherein it is stated since the date of marriage, A.1 is harassing the deceased for one reason or the other. A.2, who is mother of A.1, abused the deceased about commission of the theft and abused her to put an end to her life and feeling ashamed the deceased committed suicide. But, at the time of giving evidence before the Court, P.W.1 deposed that the deceased committed suicide due to unbearable stomach-ache. He further stated that the accused never treated the deceased with cruelty and they never abetted her to commit suicide. He also further stated that Ex.P.1, report contains his signature, but the contents are not furnished by him and did not support the case of the prosecution and declared as hostile. P.W.2, who is mother of the deceased, stated the same facts as stated by P.W.1 and declared as hostile. P.Ws.3 and 4 are brothers of P.W.2 and P.Ws.5 to 7 are neighbours of P.W.1. They did not support of the case of the prosecution and declared as hostile.

9. P.Ws.8 to 12 are the official witnesses. PW.8 is Judicial Magistrate of First Class, Huzurnagar, who recorded the statement

of the deceased under Ex.P.9, wherein on one hand the deceased stated that accused No.2 abetted the deceased to pour kerosene and set fire and on the other hand, she stated that accused No.2 abused her that some amount was missing from the house and bolted her in the house, and due to that, she poured kerosene and committed suicide. Except Ex.P.9, dying declaration of the deceased, there is no other material to support the case of the prosecution and so also in Ex.P.9, the ingredients of abetment or instigation, aid or conspiracy, as required under Section 107 of the I.P.C. are not established. PWs.1 and 2, who are parents of the deceased also did not support the case of the prosecution and moreover, they stated that accused never ill-treated the deceased and she committed suicide due to stomach-ache. Therefore, in the absence of any surrounding circumstances supporting the evidence of Ex.P.9 to attract the ingredients of Section 498-A or 306 I.P.C., the accused are entitled for benefit of doubt. The trial Court after appreciating the evidence in proper perspective, extended the benefit of doubt to the respondents/accused Nos.1 and 2.

10. 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.

11. 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 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

¹ (2011) 9 SCC 479

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."

12. 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.

13. Therefore, this Court is of the view that there is no infirmity or illegality in the Judgment of the trial Court and the trial Court after considering all the aspects, acquitted the respondents/accused Nos.1 and 2 and the finding of the trial Court requires no interference by this Court.

² (2011) 8 SCC 635

14. Accordingly, the Criminal Appeal is dismissed confirming the Judgment, dated 11.03.2008, passed in Sessions Case No.618 of 2005 by the Assistant Sessions Judge, Miryalguda.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. SRI DEVI, J

4th February 2021

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THE HON'BLE JUSTICE G. SRI DEVI



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Date:04.02.2021

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