

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE EIGHTH DAY OF MARCH
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE JUSTICE G SRI DEVI

CRIMINAL APPEAL NO: 1259 OF 2009

Criminal Appeal filed Under Section 378 (3) and (1) of Cr.P.C (Leave and Appeal) against the Judgment dated, 24.03.2008 made in C.C.No.56 of 2005 on the file of the Court of the Judicial First Class Magistrate, Boath.

Between:

The State of Andhra Pradesh, represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad.

...Appellant/Petitioner

AND

1. A.1 Munde Ambaji, S/o. Raghunath, Aged 38 years.
2. A.2. Munde Narayana, S/o. Raghunath, Aged 42 years.
3. A.3 Mudne Ganapathi, S/o. Raghunath, Aged 40 years.
4. A.5 Munde Pandurang, S/o. Raghunath, Aged 38 years, R/o. Navegaon.
5. A.6 Githe Gangu Bai, W/o. Satwaji, Aged 35 years,

(All are of caste: Vanjari, Occ.Agriculture, R/o.Chinchli Adilabad District)

...Respondent/Accused

Counsel for the Appellant: PUBLIC PROSECUTOR (TG)

Counsel for the Respondents: SRI LAKKADI DAYAKER REDDY

The Court made the following: JUDGMENT

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.1259 of 2009

JUDGMENT:

The appellant-State filed the present appeal by invoking the provision under Section 378(1) and (3) of the Code of Criminal Procedure, challenging the judgment dated 24.03.2008 in C.C.No.56 of 2005 on the file of the Judicial First Class Magistrate, Boath, wherein and whereby the learned Magistrate acquitted the respondents/A1 to A3, A5 and A6 for the offence punishable under Section 324 read with Section 34 IPC.

2. The case of the prosecution, in brief, is that on 24.11.2004 at 9000 hours, the de-facto complainant lodged a report stating that himself and his wife Gangubai were cultivating the crops in their fields and that when the crops came to his hand, his wife with the help of her brothers quarreled with him and sent away from his house, due to which, he spent in Lalda Village for one month, and that after knowing about the sale of crop i.e., Soyabeen, by his wife and her brothers, he went to Chincholi and that on 24.11.2004 at 7000 hours., when the de-facto complainant went to his house, his wife-A6 poured chilli powder on his eyes and A1 to A5 beat him with sticks indiscriminately and caused injuries over his nose, right hand, and when he made hue and cry, the neighbors came and rescued him from the hands of the accused. Based on the said complaint, a case in Cr.No.151 of 2004 was registered for the offences under Sections 324, 147 read with Section 149 IPC against the accused.

3. Heard learned Assistant Public Prosecutor for the appellant-State, Sri L. Dayaker Reddy, learned counsel for the respondents/A1 to A3, A5 and A6 and perused the record.

4. A perusal of the impugned judgment and after re-appraisal of the evidence of prosecution witnesses, it is found that there are material contradictions in the evidence of those witnesses. Hence, it is doubtful as to whether the prosecution witnesses were present at the time of the alleged occurrence and that the said material contradictions have been rightly pointed out by the trial Court observing that P.W.10-Doctor, who treated the injured-P.W.1, found injuries on his right ear, a rash laceration over both sides of the neck and an abrasion over the left side nose and further, the patient made complaint of blood vomiting and bleeding from the nose. However, P.W.1 has not specifically stated in his statement that he sustained injuries over his neck, ear and nose, but stated that he sustained injuries over the face, legs and hands. Hence, the injury certificate-Ex.P.3 does not support the case of the prosecution. Further, the ocular evidence also does not support the medical evidence. Thus, after evaluating the ocular evidence with medical evidence, the trial Court has rightly given the finding that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and accordingly, acquitted the accused. Therefore, I do not find any illegality or perversity in the findings of the trial Court.

5. 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 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."

6. In ***Maloth Somaraju v. State of Andhra Pradesh***² the Apex Court held that there can be no two opinions that merely because

¹ (2011) 9 SCC 479

² (2011) 8 SCC 635

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.

7. 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.

8. Hence, the Criminal Appeal is dismissed confirming the judgment dated 24.03.2008 in C.C.No.56 of 2005 on the file of the Judicial First Class Magistrate, Boath.

9. Miscellaneous applications, if any pending in this appeal, shall stand dismissed.

Sd/-CH.VENKATESHWARLU
DEPUTY REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Judicial First Class Magistrate, Boath, Adilabad District. (with records)
2. The Station House Officer, Echoda Police Station, Adilabad District.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad [OUT]
4. One CC to Sri Lakkadi Dayaker Reddy, Advocate [OPUC]
5. Two CD Copies
MMK

MMK

HIGH COURT

GSDJ

DATED:08/03/2021

JUDGMENT

CRLA.No.1259 of 2009



DISMISSING THE CRIMINAL APPEAL

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22/3/21
HJ