

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1152 of 2009

JUDGMENT:

1. The State filed the present appeal questioning the acquittal of the respondent/accused for the offence under Sections 354 and 306 of IPC vide judgment in SC No.361 of 2006 dated 12.10.2007 passed by the Assistant Sessions Judge at Sangareddy.

2. The case of prosecution is that the respondent on 03.05.2006 made an attempt to outrage the modesty of the deceased namely Chakali Bichamma while she was in the outskirts of the village washing clothes. When the deceased shouted for help, P.W.1 rushed to the spot and respondent ran away from there. The deceased felt insulted and poured kerosene on herself and set fire. She was taken to the hospital and her statement was recorded while she was taking treatment. On the basis of the said statement, a case was registered and the Magistrate was also called for recording of Dying Declaration of the victim. After conclusion of investigation, the police filed charge sheet for the said offences.

3. The learned Assistant Sessions Judge acquitted the respondent on the ground that; i) there are no independent witnesses to the alleged assault on the deceased trying to outrage her modesty; ii) The Dying Declaration recorded by the Magistrate and Sub-Inspector did not have the endorsement that the deceased was in a fit state of mind and that she could make a statement.

4. Admittedly, the deceased died while undergoing treatment for burn injuries. When the statement was recorded, the Doctor did not endorse that the deceased was conscious, coherent and in fit state of mind to give statement. In the absence of any such certification by the Doctor, the statement of the deceased cannot be relied upon. However, the prosecution can seek corroboration to the statement made by the deceased. In the present case, P.W.1 was the only person who had rushed on hearing the cries of the deceased and found the respondent fleeing from the place. P.W.1 did not support the case of the prosecution about seeing the respondent molesting the deceased but stated that he was found running away from scene. Further PW1 did not state about any narration by the deceased regarding the incident.

5. The Hon'ble Supreme Court in the case of **Radhakrishna Nagesh v. State of Andhra Pradesh**¹ held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of acquittal enhances the presumption of innocence of the accused and in some cases, it may even indicate a false implication. But then, this has to be established on record of the Court.

6. In the said circumstances, there are no grounds to interfere with the well reasoned judgment of the trial Court to reverse the finding of acquittal of the accused.

7. For the aforementioned reasons, the Criminal Appeal is liable to be dismissed and accordingly dismissed.

K.SURENDER, J

Date: 28.09.2022
kvs

¹ (2013) 11 supreme court Cases 688

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