

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

**FRIDAY THE FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL NO: 778 OF 2012

Criminal Appeal Under Section 378(1) & (3) of Cr.P.C against the Judgment Dated 25.08.2009 in C.C No. 86 of 2006 on the file of the Court of the X Metropolitan Magistrate, Cyberabad at Malkajgiri.

Between:

The State of Andhra Pradesh, Represented by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad.

...APPELLANT/PETITIONER

AND

1. Nallari Raja Gopal Rao, S/o Ranganatham, Occ: Railway Employee, R/o. Plot No.58/B, Madhavapuri Colony, Sainikpuri, Secunderabad.
2. Nallari Rahool,, S/o Nallari Rama Gopal Rao, Student R/o Plot No.58/B, Madhavapuri Colony, Sainikpuri, Secunderabad.

...RESPONDENTS/ACCUSED

Counsel for the Appellant : Public Prosecutor

Counsel for the Respondents : Sri K. Suresh Reddy

The Court made the following:

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRL.APP.NO.778 of 2012

JUDGMENT:

Being aggrieved by the Judgment dated 25-08-2009 in C.C.No.86 of 2006, where under, the learned X Metropolitan Magistrate, Cyberabad, found the respondents/accused not guilty for the offences under Sections 323, 290 and 506 of Indian Penal Code (for short 'I.P.C.'), the State has preferred this Criminal Appeal under Section 378(1) & (3) of Criminal Procedure Code (for short 'Cr.P.C.') on the following grounds.

2. The Judgment of the trial Court is contrary to law, weight of evidence. The trial Judge ought to have seen that the ingredients to construe the evidence under Section 323, 290, 506 of IPC had been made out by the witnesses examined by the prosecution. The trial Court without properly appreciating the evidence of injured and eye-witnesses, who were examined as PWs.2, 3 and 5 acquitted the accused but did not consider the evidence of prosecution witnesses in a correct perspective, thereby, sought for setting aside the judgment and prayed for conviction of the

respondents/accused. According to the charge sheet filed against the respondents, it is specifically alleged by the prosecution that based on a complaint presented by PW.1 i.e., Mohd. Yousuf, police, Kushaiguda, have registered a case in Crime No.61/2006 for the offences under Sections 323, 290, 506 of IPC.

3. The Investigating Officer without obtaining permission from the concerned, gone to the extent of registering a criminal case in spite of the fact that the alleged offences were under Sections 323, 290 and 506 of IPC which is nothing but a non-cognizable offence. The Investigating Officer for the reasons best known to him, proceeded with the investigation of the said non-cognizable offence and concluded the investigation by filing a charge sheet against the respondents herein for the same offences.

4. The learned trial Court having furnished copy of the charge sheet to the respondents and after examining them under Sections 323, 290 and 506 of IPC and under Section 239 of Cr.P.C., framed charges under Sections 323, 290 and 506 of IPC. However, the respondents have denied the alleged charges and claimed to be tried.

5. During the trial, the prosecution has examined PWs.1 to 6 and marked Exs.P1 to P4. The trial Judge categorically held that the offence against the respondents herein are not cognizable offences and when the Police Officer received a complaint which discloses the said non-cognizable offence failed to follow the procedure under Section 155 of Cr.P.C. and could not have proceeded with the investigation.

6. A part from this lacunae, the other important aspect to be noted is after the evidence of material witnesses, the prosecution filed a recall of PW.2 and tried to explain that A2 slapped her on right cheek and A2 necked her towards back side, the trial Court rightly found that as per the statement made by PWs.1 and 2 before the Investigation Officer under Section 161 Cr.P.C., it is stated that A2 slapped PW.2 on her left cheek. Therefore, the evidence adduced by about two witnesses is contra to their earlier statements.

7. There was no corroboration to the evidence of PWs.1 and 2. Thereby, the trial Court having analysed the evidence of the prosecution witnesses rightly found the respondents as not guilty for the above said offences and rightly acquitted them under Section 255 (1) of Cr.P.C.

Absolutely, there are no grounds to interfere with the said finding. The evidence of PWs.1 to 5 is not corroborated with each other and not supported by their appropriate version of the Investigating Officer. There is no explanation from the prosecution as to how the Investigating Officer can proceed with the investigation. The trial Court by relying on a judgment between '**V.Sudhakar Vs. R.Rammohan Rao and Others**¹', and another Judgment reported in **2006 (2) ALD (CrI.) 634 (A.P.)** find fault with the Investigating Officer to proceed with the investigation and rightly acquitted the respondents herein, thereby, the appeal is liable to be dismissed.

8. In the result, the appeal is dismissed.

Consequently, Miscellaneous Petitions if any, are closed.

SD/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The X Metropolitan Magistrate, Cyberabad at Malkajgiri (With records if any)
2. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
3. One CC to Sri K. Suresh Reddy, Advocate [OPUC]
4. Two CD Copies

DL/JAK 

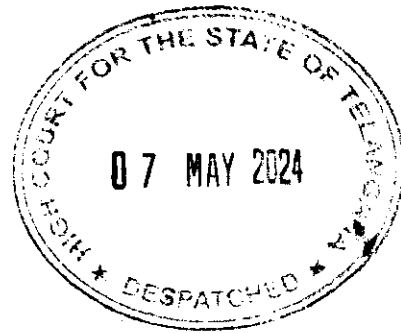
¹ 2006 (1) ALD (CrI.)(NOC)-17 (A.P.)

HIGH COURT

DATED:01/03/2024

ORDER

CRLA.No.778 of 2012



DISMISSING THE APPEAL

(7) Copies

Bm
10/4/24