

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

**WEDNESDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

CRIMINAL APPEAL NO: 793 OF 2024

Appeal filed under Section 419 of BNSS against the Order dated 15.02.2024 passed in S.C. No. 526 of 2017 on the file of the Court of the Special Judge for Trial of Offences Under the SCs and STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad.

Between:

The State of Telangana, rep. by The Public Prosecutor, High Court for the State of Telangana, Hyderabad - 500066.

...Appellant/Complainant

AND

1. Komirelly Pradeep Reddy, S/o. K.Ram Reddy, Aged about 30 years, Occ. Free Lancer, R/o. H.No.12-1-1509/1, 3rd Floor, Shanti Nagar, Lalapet, Secunderabad, N/o. Dasireddygudem (V), Valigonda (m), Nalgonda District.
2. Kunapuri Nageshwara Rao, S/o. T.Laxmaiah, Aged about 36 years, Occ. Agriculture, N/o. Dasireddygudem (V), Valigonda (m), Nalgonda District.

...Respondents/Accused

**Counsel for the Appellant : Mr. M. Ramachandra Reddy Additional Public
Prosecutor**

Counsel for the Respondent No. 1: Mr. Praveen Kumar Challa

**Counsel for the Respondent No. 2 : Mr. T. Dhanalakshmi representing
Mr. A. Chandra Shaker**

The Court delivered the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

CRIMINAL APPEAL No.793 of 2024

JUDGMENT: *(per Hon'ble Sri Justice P.SAM KOSHY)*

The present is an appeal filed under Section 419 of Bharatia Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') by the State challenging the judgment of acquittal, dated 15.02.2024 in S.C.No.526 of 2017 by the Special Judge for Trial of Offences Under the S.Cs and STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad (for short 'the trial court').

2. Heard Mr.M.Ramachandra Reddy, learned Additional Public Prosecutor appearing of the appellant/State, Mr.Praveen Kumar Challa, learned counsel appearing for respondent No.1 and Mr.T.Dhanalakshmi, learned counsel appearing on behalf of Mr.A.Chandra Shaker, learned counsel for the respondent No.2. Perused the material available on record.

3. The two accused persons the respondents herein were prosecuted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code (for short 'IPC'). Finally, after the evidence was concluded, the trial court has vide the impugned judgment acquitted the two accused persons holding the respondents/accused not guilty of the said offence.

4. Learned Additional Public Prosecutor appearing for the appellant/State contended that the trial court has committed an error of facts as also on law while passing the impugned judgment. According to the learned counsel for the appellant it is a case where the two respondent/accused after committing the offence on 19.01.2016 assaulting and murdering the deceased Uday Kiran had telephoned the PW-10 confessed to him about the commission of offence. Thereafter, the two accused persons is said to have reached the police station Lalaguda, surrendered themselves and based on the confessional statement, the F.I.R. was lodged and investigation commenced. This evidence of PW-10 before whom the confession was made has not been properly appreciated by the trial court. According to the learned counsel for the appellant the trial court also failed in not relying upon the official witnesses all of whom have deposed supporting the case of the prosecution and prayed for the setting aside of the impugned judgment.

5. However, upon perusal of the materials available on record and also upon going through the depositions of the witnesses, certain facts which needs consideration is the so called confession based upon which the entire prosecution started was infact made in the police station and in the presence of the police officials. The admissibility of such a confession made within the premises of the police station and in the presence of the police officials itself gives rise to great element of doubt. The independent witness PW-6

before whom it is said to have been recorded also has not supported the case of the prosecution and he has gone to the extent of deposing before the trial court, after the two accused persons having reached the police station and have confessed before the police authorities, PW-6 was called and made to sign certain documents prepared by the police authorities. He has further gone to state that since he intended to oblige the police authorities he has not refused in signing the confessional statement given by the two accused persons. In the process, the very recording of the confession cannot be accepted and is hit by the provisions of Section 25 of the Indian Evidence Act. So far as recording made at the instance of respondent/accused. Again none of these materials, the investigating agencies to collect the finger prints of the respondents/accused so as to reach to the conclusion of the respondents/accused having used the objects seized from the scene of offence or from the custody of the accused persons or to have been used for the commission of the offence. Even the so called FSL report also only proves the case to the extent of blood stains like marks or human blood found on the object, but, it was not matched with the blood group of the deceased. Neither would there be any other materials collected during the course of the seizer linked enough to conclusively reach to the conclusion of the offence to have been committed by none other than the two respondents/accused persons. In the absence of the aforementioned

materials in the investigation as also in the course of the evidence being recorded by the trial court, we are of the considered opinion that the judgment of acquittal passed by the trial court cannot be found fault with nor can it be said to have been an erroneous conclusion arrived at.

6. So far as interfering with the judgment of acquittal in an appeal by the trial Court, it has been held by the Hon'ble Supreme Court in a catena of decisions that unless there is substantial strong evidence which is not been appreciated by the trial Court and where the commission of offence by the accused is glaringly established, the judgment of acquittal is not be interfered as a matter of routine. The Hon'ble Supreme Court in the case of **Ballu and Another v. State of Madhya Pradesh**¹ in paragraph Nos.6 to 9 observed as under:

"6. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**², wherein this Court held thus:

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is **Hanumant v. State of Madhya Pradesh** [(1952) 2 SCC

¹2024 SCC ONLINE SC 481

² (1984) 4 SCC 116 = 1984 INSC 121

71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

7. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so

established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

8. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

“13. In case of *Sadhu Saran Singh v. State of U.P.* (2016) 4 SCC 357, the Supreme Court has held that:—

“In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of

an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."

14. Similar. In case of Harlan Bhala Teja v. State of Gujarat (2016) 12 SCC 665, the Supreme Court has held that:—

"No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence. If the charge is proved beyond reasonable doubt on record, and convict the accused."

7. In the light of the judicial precedents referred to in the precedent paragraph and also taking note of nature of evidence collected during the course of the trial, we are of the considered opinion that the prosecution has not been able to make out a case for interfering with the judgment of acquittal. The appeal fails and is, accordingly, rejected. As a sequel, miscellaneous applications pending, if any, shall stand closed. No order as to costs.

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Sd/- K. SAILESHI
DEPUTY REGISTRAR


SECTION OFFICER

To,

1. The Special Judge for Trial of Offences Under the SCs and STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad. (With records)
 2. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
 3. One CC to Mr. Praveen Kumar Challa, Advocate [OPUC]
 4. One CC to Mr. A. Chandra Shaker, Advocate [OPUC]
 5. Two CD Copies
- DL/gh 

HIGH COURT

DATED:18/12/2024



JUDGMENT

CRLA.No.793 of 2024

REJECTING THE CRIMINAL APPEAL

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