

APHC010616542009



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3369]

FRIDAY, THE THIRTY-FIRST DAY OF OCTOBER
 TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL APPEAL NO: 1798/2009

Between:

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

...APPELLANT

AND

1.Katuri Vinodh Kumar, S/o. Durga Rao, Motorcycle Mechanic R/o.
 Arundhatipeta, Eluru, West Godavari District.

...RESPONDENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C., praying that the High Court may be pleased to present this Memorandum of Criminal Appeal against the Judgment in S.C.No.5/2008 on the file of the Additional Assistant Sessions Judge, Eluru, dated 10.12.2008 and prays that this Hon'ble Court may be pleased to set aside the order of acquittal and convict the accused (Respondent) for the offences with which he was charged.

IA NO: 1 OF 2009 (CRLAMP 2223 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of (156) days in presenting the appeal against the order of acquittal of the accused / respondent in S.C.No.5/2008 on the file of the Additional Assistant Sessions Judge, Eluru, dated 10.12.2008

Counsel for the Appellant:

1.PUBLIC PROSECUTOR (AP)

Counsel for the Respondent:

1.K J V N PUNDAREEKAKSHUDU

The Court made the following JUDGMENT:

1. This appeal is preferred by the Appellant / State against the judgment of acquittal rendered by the Sessions Court in Sessions Case No.5 of 2008 on the file of Additional Assistant Sessions Judge, Eluru (for short, 'the Sessions Court') by its judgment dated 10.12.2008, acquitted the accused for the offences punishable under section 354 of Indian Penal Code, 1860 (for short, 'IPC').

2. Perused the impugned judgment of acquittal rendered by the Sessions Court, which is challenged under this appeal. It consisted of evidence of PWs.1 to 6, documents marked Exs.P.1 to P.5.

3. The facts in a nutshell, which give rise to the present appeal, are as follows:

The accused is a resident of Arundhatipet, Eluru, and is unmarried, working as a motorcycle mechanic. The de facto complainant is an unmarried woman residing with her mother in the same locality. They run a *baddi* shop in front of the Ganganamma Temple in Eluru. On 14.10.2006, at about 10:00 p.m., while the de facto complainant was sitting in her shop, the accused, who was in a drunken state, came there, purchased a cigarette, and sat in front of the shop. When the complainant asked him to leave, the accused abused her in filthy language, caught hold of her hand, dragged her to a dark place, and outraged her modesty by hugging her in a public place. Out of fear, the complainant raised cries for help. On hearing her screams, neighbours rushed to the spot, upon which the accused fled. The complainant and her mother thereafter reported the matter to the village elders, who summoned the accused and his father. While the father of the accused appeared before them and tendered

an apology, the accused himself did not attend. Based on the report lodged by the complainant, the Assistant Sub-Inspector of Police, I Town Police Station, Eluru, registered a case in Cr.No.150/2006 under Section 354 IPC on 06.10.2006 at 2:00 p.m., and took up the investigation. During the investigation, the A.S.I. examined the complainant and her mother, visited the scene of the offence in the presence of mediators, and prepared an observation report. He also examined other witnesses and recorded their statements. On 07.10.2006, at about 9:00 p.m., the accused was arrested at his residence and was remanded to judicial custody.

4. The II Additional Judicial Magistrate of First Class, Eluru, *vide* orders in PRC No.46 of 2005, has committed the accused to the Court of Sessions, Eluru, at West Godavari District, to take up the trial for the offences punishable under Section 354 of the IPC.

5. The learned Sessions Judge of Eluru, West Godavari Division, has taken up the case on file under Section 354 of the IPC against the accused and has referred it to the Court of the Additional Assistant Sessions Judge, Eluru, for disposal according to law. Subsequently, the case in Sessions Case No.5 of 2008 has been numbered. After hearing the Public Prosecutor and the defence counsel, the Sessions court framed a charge against the accused under Section 354 of the IPC, which was read over and explained to him in Telugu, as required under Section 228 of the Cr.P.C. The accused did not plead guilty and claimed to be tried.

6. The learned Sessions Judge examined the accused as required under Section 313 of Cr.P.C., to enable him to consider the evidence led on the part of the prosecution and also against him. However, the accused denied the evidence adduced by the prosecution and reported no defence witnesses on his behalf.

7. After considering the available material on record, the learned Sessions Judge found the accused not guilty of the offences punishable under Section 354 of the IPC and acquitted him.

8. Sir K. Sandeep, learned Assistant Public Prosecutor appearing for the State, contends that the prosecution has established the necessary ingredients to constitute an offence punishable under Section 354 IPC against the accused; the learned Judge failed to properly appreciate the cogent and reliable evidence adduced by the prosecution witnesses; the other reasons assigned by the learned Judge for the acquittal are also unsustainable.

9. On the other hand, the learned counsel appearing for the accused supported the findings and conclusions recorded by the Sessions Court.

10. I have heard learned counsel on either side and perused the material on record, including the oral and documentary evidence produced by the prosecution before the Sessions Court.

11. The point for determination is:

Was the Sessions Court justified in acquitting the accused?

POINT:

12. Before re-appreciation of the evidence on record, it is necessary here to mention the power of the Appellate Court regarding interference. The Hon'ble Supreme Court, in the case of ***A. Shankar V. State of Karnataka***¹, at paragraph 26 of the judgment, has held as follows:

"26. It is settled legal proposition that in exceptional circumstances the appellate Court, under compelling circumstances, should reverse the judgment of acquittal of the Court below if the findings so recorded by the Court below are found to be perverse i.e. the conclusions of the Court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case. While dealing so, the appellate

¹ (2011) 6 SCC 279

Court must bear in mind the presumption of innocence of the accused and further that acquittal by the Court below bolsters the presumption of his innocence."

13. In ***State of Goa V. Sanjay Thakran & Anr.***², the Hon'ble Supreme Court, while considering the power of the appellate Court to interfere in an appeal against acquittal, after advertng to various earlier decisions on this point, has concluded as under:

"16.....while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the view arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to reappraise the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with."

14. With the above principles in mind, this Court analyze the reasoning and ultimate conclusion of the Sessions Court in interfering with the order of acquittal.

15. The de facto complainant/victim was examined as PW.1, and her mother was examined as PW.2. It is evident that PW.2 was not present at the time of the incident in question. PW.1 deposed that the offence occurred approximately two years prior, at around 10:00 p.m., at her wooden bunk where she sells cigarettes and other miscellaneous items. She stated that the accused came to her bunk at that time and purchased cigarettes. When she asked him to pay for them, the accused slapped her on the cheek and abused her in vulgar language. He then pulled her out of the bunk and hugged her. While attempting to drag her towards nearby bushes, she cried out for help. At

² (2007) 3 SCC 755

that moment, a few employees of the Jute Mill were returning home, and upon seeing them, the accused left her and fled the scene. She later informed her mother (PW.2) of the incident. The following morning, they reported the matter to two village elders, namely Tananki Raja Rao and Pushparaju. As the elders assured them that they would settle the issue, she waited for some time. When no action was taken, she finally lodged a written complaint (Ex.P1) with the police, which bears her signature.

16. To establish the lodging of the report, the prosecution examined G.Gangaraju, A.S.I., as PW.6, the Investigating Officer in this case. PW.6 testified that on 06.10.2006 at about 2.00 p.m., PWs.1 and 2 came to the police station and lodged a complaint with him; based on the said complaint, he registered a case in Crime No.150 of 2006 under Section 354 of the IPC, and issued the F.I.R (Ex.P4); he examined PWs.1 and 2 at the police station, recorded their statements, and thereafter visited the scene of offence, where he prepared a rough sketch; on 07.10.2006 at about 9.00 p.m., he arrested the accused at his residence and sent him to judicial custody. However, during cross-examination, PW.6 admitted that in the remand report of the accused, it was mentioned that PW.1 is a resident of Amudalapalli, Appalaswamy Colony. He also admitted that PW.1 did not state before him that the accused had slapped her.

17. Although the prosecution examined PW.3 as an eyewitness to the incident in question, he did not support the prosecution's case. In his testimony, he stated that he had no knowledge of the incident and was consequently declared hostile. Furthermore, nothing material could be elicited from him during cross-examination by the Public Prosecutor in support of the prosecution's case. Therefore, the sole testimony of PW.1 remains uncorroborated by any independent witness.

18. In ***State of Himachal Pradesh V. Raghubir Singh***³, the Hon'ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by the Hon'ble Supreme Court in ***Wahid Khan V. State of Madhya Pradesh***⁴, placing reliance on an earlier judgment in ***Rameshwar V. State of Rajasthan***⁵. Thus the law that emerges on the issue is to the effect that the statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.

19. PW.1, in her evidence, stated that while the accused was attempting to drag her into the nearby bushes, she raised an alarm; at that moment, some jute mill employees were returning home, and upon seeing them, the accused fled the scene. However, PW.1 did not disclose the names of those jute workers, and the prosecution made no effort to identify or examine them as witnesses. Consequently, the PW.1's version remains unsupported by any independent evidence.

20. The prosecution examined PW.4 to establish that PWs.1 and 2 had approached him and informed him of the incident in question. However, the Sessions Court observed a material discrepancy between the testimonies of PWs.1 and 4. PW.1 testified that she informed PW.4 and Pushpa Raj, the village elders, about the incident on the following day. In contrast, PW.4 testified that PWs.1 and 2 approached him on the very day of the incident at around 09:30 or 10:00 p.m., and informed him of the occurrence. In view of this inconsistency, the Sessions Court found that the versions of PWs.1 and 4 were not in consonance with each other.

³ (1993) 2 SCC 622

⁴ (2010) 2 SCC 9

⁵ AIR 1952 SC 54

21. The evidence of PWs.1 and 2 indicates that their house is situated at a distance of about 50 yards from the scene of offence, namely, the bunk belonging to PW.1. Taking note of this fact, the Sessions Court observed that if the incident had occurred in the manner stated by PW.1, and if any altercation had taken place near the bunk, it would have been audible to the persons residing near the house of PWs.1 and 2. The Sessions Court further noted that the mother of PW.1 did not come to the scene of the offence despite the alleged cries of her daughter. The evidence of PW.4 does not advance the prosecution's case, as he is not an eyewitness to the incident. His testimony merely indicates that he acted as an elder to mediate the dispute between the parties. Even according to his own version, he did not convene any panchayat and, instead, advised PWs.1 and 2 to approach one Bhushanam, another elder. However, the said Bhushanam was not examined as a witness by the prosecution.

22. On the other hand, the defence contended that there were financial transactions between PW.2 and the father of the accused, and that the bunk belonging to PW.1 was situated on the site owned by the accused. It was further suggested that disputes had arisen between the parties regarding the said matter. However, PWs.1 and 2 denied these suggestions during their cross-examination. The Sessions Court also observed that there was an unexplained delay of about 36 hours in lodging the report with the police. The explanation offered by PW.1 for such a delay was found to be unsatisfactory.

23. In ***Apren Joseph @ Current Kunjukunju and others vs. State of Kerala***⁶, the Hon'ble Supreme Court held that:

"It is always better that the F.I.R. is rendered before there is time and opportunity to embellish or before the informant's memory fades. Undue or unreasonable delay in lodging the F.I.R., therefore, inevitably gives rise to suspicion which puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. Effect of delay in lodging the F.I.R., would always depend on the facts and circumstances of a given case."

⁶ AIR 1973 SC 1

24. In ***State of M.P. vs. Kriparan***⁷, the Hon'ble Supreme Court held that:

"Inordinate and unexplained delay in lodging the F.I.R. is fatal to the case of the prosecution particularly when the facts and circumstances of the case demonstrate such an inference".

25. The Sessions Court observed that, as the evidence of PW.1 was not corroborated by any independent witness and there was a delay of three days in lodging the report, the benefit of doubt was extended to the accused.

26. It is a settled proposition of law that in a criminal trial, suspicion, however grave, cannot take the place of proof. The prosecution must prove its case and establish the charge by adducing convincing evidence to ward off any reasonable doubt about the accused's complicity.

27. In light of these circumstances, and upon a comprehensive evaluation of the entire evidence, the Sessions Court rightly concluded that the prosecution had failed to prove the guilt of the accused for the offence under section 354 of the IPC beyond a reasonable doubt. Consequently, the Sessions Court acquitted the accused of the said charges.

28. In a criminal case, the degree of proof is the standard that is required in civil proceedings, and if there is the slightest doubt in the mind of the Court regarding the involvement of the accused person, then the Court should not convict the accused person with such a doubt. Instead, it would be proper for the Court to pass a judgment of acquittal in favour of the accused. When Sessions Court after adequate appreciation of the evidence of witnesses passed a judgment of the acquittal, it would not be appropriate for the appellate Court to disturb the said judgment, unless the said judgment of acquittal is unreasonable, even if two views are possible, then also, the appellate Court should not disturb the said judgment, instead, the Court should upheld the view favoured the accused.

⁷ (2003) 12 SCC 675

29. In **Mohan @ Srinivas @ Seena @ Tailor Seena V. State of Karnataka**⁸, the Hon'ble Supreme Court has observed the scope of section 378 of the Code as under:

“Section 378 Cr.P.C. enables the State to prefer an appeal against an order of acquittal. Section 384 Cr.P.C., speaks of the powers that can be exercised by the Appellate Court. When the trial Court renders its decision by acquitting the accused, the presumption of innocence gathers strength before the Appellate Court. Consequently, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of the first instance has its advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it. Still, it is duty bound to satisfy itself whether the decision of the trial Court is both a possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty and the advantage of having seen the witnesses.

30. So far as the main issue is concerned, that scope of acquittal appeal is well defined by now by series of decisions and the same is not to be repeated time and again, however, one of the recent decision in case of **Harbeer Singh V. Sheeshpal**⁹, the Hon'ble Supreme Court laid down that mere fact that another view could also have been possible that cannot be a ground to reverse the acquittal. The powers of High Court are wide enough to turtle the acquittal order, however, some parameters are well defined by series of decisions in which this Court is of the considered opinion that State has not made out any case which would permit this Court to exercise such wide powers. Neither any material irregularity is pointed out nor any perversity is reflecting on the contrary it is reflecting that there is an application of mind on the part of learned Judge as the entire material on record has been dealt with specifically and the principle of appreciation of evidence appears to have been rightly undertaken by the Court below and therefore when such eventuality is reflecting sitting in a jurisdiction dealing with an order of acquittal Court is of the opinion not to interfere with such exercise. The relevant observations of

⁸ 2021 (15) SCALE Pg. 184

⁹ (2017) CriLJ 169

the aforesaid decision in paras: 10 and 11 (Cri.L.J.) are reproduced herein after:

"10. The above principle has been reiterated by this Court in a number of judicial decisions and the position of law that emerges from a comprehensive survey of these cases is that in an appeal under Article 136 of the Constitution of India, this Court will not interfere with the judgment of the High Court unless the same is clearly unreasonable or perverse or manifestly illegal or grossly unjust. The mere fact that another view could also have been taken on the evidence on record is not a ground for reversing an order of acquittal.

11. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. The burden of proving its case beyond a reasonable doubt lies with the prosecution, and it never shifts. Another golden thread that runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view that is favourable to the accused should be adopted.

31. Considering the aforesaid set of circumstances and in view of the conjoint reading of the conclusion arrived at in co-relation with the evidence on record, this Court is of the considered opinion that the prosecution makes out no case to establish the guilt of the respondent / accused.

32. It is a settled principle of law that if the Trial Court takes the view, it should not be reversed, even if another view is possible. The view taken by the Trial Court is a plausible one. Therefore, considering the facts and circumstances of the case, this Court is not inclined to reverse the Trial Court's finding.

33. The Sessions Court rightly reached its conclusion, providing sound and justifiable reasons. Therefore, the appellant's request for interference lacks merit. A re-appreciation of the evidence reveals no misdirection or misinterpretation by the Sessions Court. Upon careful reconsideration, there is no flaw in the findings of fact by the Sessions Court. Therefore, the acquittal of the respondent cannot be interfered with. Accordingly, the appeal against the acquittal is dismissed, and the order of acquittal is confirmed, and there is no

reason to interfere with the judgment of the Sessions Court. Accordingly, the point is answered.

34. In view of the above and for the reasons stated above, the present Criminal Appeal No.1798 of 2009 fails and the same deserves to be dismissed and is ***dismissed***, accordingly. The judgment and order of acquittal passed by the learned Additional Assistant Sessions Judge, Eluru, in Sessions Case No.5 of 2008, dated 10.12.2008, stands confirmed.

Interim orders, if any, granted earlier shall stand vacated, and all pending miscellaneous petitions, if any, shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date: 31.10.2025
SAK

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL APPEAL NO: 1798 of 2009

Date: 31.10.2025

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