

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL APPEAL No. 442 of 2016

JUDGMENT:

-

This Criminal Appeal is filed under Section 378 (3) and (1) Cr.P.C. by the State, challenging the judgment dated 18.05.2006 passed in S.C.No.366 of 2004 on the file of the Assistant Sessions Judge, Ramachandrapuram, wherein the accused were acquitted for the offences punishable under Sections 366 read with 34 IPC.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in S.C.

The facts in issue are as under:

On 17.10.2003 at about 7.00 p.m. while the victim girl was going to tuition, one white colour ambassador car came there; her cousin-accused No.2 asked her to board the car stating that he will drop in the tuition and forcibly made her to board the Car. Accused Nos.3 and 4 were already present in the car. Accused No.2 gave chips and asked her to eat. After some time she became unconscious. When she gained consciousness, she was traveling in the train. Accused Nos.2 to 4 told that accused No.1 loved her and if she refuses to marry him, they will die by jumping from the train. On 18.10.2003 she was taken to the house of accused No.1 at Nacharam. Both of them lived in a separate house for three months. Accused No.1 used to come to the house in late night by consuming

alcohol. When the victim girl was suffering with ill health accused No.1 left the place and the same was informed to her parents through one Kumari. Basing on these allegations a charge sheet came to be filed, which was taken on file as P.R.C.No.31 of 2004 and on committal it was numbered as S.C.No.366 of 2004.

On appearance of the accused, the material was perused and on being satisfied, charges under Section 366 read with 34 IPC was framed, read over and explained to the accused in telugu, to which they pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined PWs.1 to 7 and got marked Exs.P1 to P7. After closure of the prosecution evidence, the accused were examined U/s. 313 Cr.P.C. explaining the incriminating material available on record, but the same was denied by the accused. Neither oral nor documentary evidence was produced on behalf of the accused.

After analyzing the evidence available on record, the trial Court acquitted the accused holding that the ingredients constituting the offence punishable under Section 366 IPC are not made out. Challenging the same the appeal is filed by the State.

PW.1 is the mother of the victim. She deposed that PW.2 (victim) was missing along with gold jewellery and cash from 17.10.2003. She deposed that she gave complaint under Ex.P1 which was registered under the head "girl missing".

PW.2 is the victim. In her evidence, she deposed

that on 17.10.2003 while she was returning along with cash, accused No.2 came in ambassador car; forcibly took her into car and made her to sit. She noticed accused No.3 and 4 in the car, who forcibly caught hold of her and beat her. Accused No.1 took her to Hyderabad, where he used to come in drunken state, beat her, did not allow her to talk on phone and confined her in a house. She informed the same to her parents through one Kumari.

PW.3 is the father of victim. He deposed that the date of birth of the victim is 26.03.2003. PW.4 is the doctor, who examined PW.2 and issued certificate stating that she is aged about 18 years. PW.6 is the head constable, who received the complaint from PW.1 and issued Ex.P.5 F.I.R. PW.7 is the investigating officer, who investigated into the matter and filed the charge sheet.

The prosecution claims that PW.2 was forcibly abducted. In the cross examination, PW.2 admits that there was a love affair between her and accused No.1 and she was not confined in the house for five months. PW.7 the investigating officer also stated that PW.2 was not allowed to talk but not confined. The admission of PW.2 that they witnessed movies, worked in the factory for two months, continued to live for five months clearly shows that there was no force on her and she was not confined. The evidence of PW.2 clearly shows that she voluntarily resided with accused No.1 for five months.

In case of appeal against acquittal the scope of appeal is circumscribed by limitation. Unless the approach of lower Court to the consideration of evidence is vitiated by manifest illegality or conclusion arrived at by the lower Court is perverse, no interference with the order of acquittal is permissible.

In ***Mrinal Das Vs. 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.

In ***Maloth Somaraju Vs. State of Andhra Pradesh*** ^[2] the Apex Court held that there can be no two opinions that merely because 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.

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.

Accordingly, the appeal is dismissed confirming the judgment dated 18.05.2006 passed in S.C.No.366 of 2004 on the file of the Assistant Sessions Judge, Ramachandrapuram.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

04.04.2016
gkv

[\[1\]](#) (2011) 9 SCC 479

[\[2\]](#) (2011) 8 SCC 635