

(2012) 12 AP CK 0035

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 619 of 2012

D. Sudhakar

APPELLANT

Vs

Panapu Sreenivasulu @ Evone Water Sreenivasulu and
Others

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(wa), 372, 377
Hindu Succession Act, 1956 — Section 12, 8, 9
Penal Code, 1860 (IPC) — Section 114, 143, 147, 148, 149

Citation : (2013) 1 ALD(Cri) 366 : (2013) 1 ALT(Cri) 81 : (2013) CriLJ 2764

Hon'ble Judges : P. Durga Prasad, J; N.V. Ramana, J

Bench : Division Bench

Advocate : A. Tulsi Raj Gokul, for the Appellant; M. Rama Rao for the Respondent Nos. 1, 3, 4 and 5, Smt. D. Sangeetha Reddy for Respondent No. 2 and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The appellant, who claims to be the brother of the deceased has filed this criminal appeal against the judgment dated 30.11.2011, passed in S.C. No. 34 of 2009, acquitting the respondents-accused Nos. 1 to 5 for the offence punishable u/s 148 I.P.C. and respondents-accused Nos. 3 to 5 for the offences punishable u/s 302 r/w 149 I.P.C. The learned counsel for the appellant submitted that the appellant is the de facto complainant and he being the brother of the deceased and P.W. 1 in the case, is a victim, and having regard to the definition of the word "victim", as defined in Section 2(wa) Cr. P.C., and the proviso appended to Section 372 Cr. P.C., at his instance, criminal appeal, against the order of a criminal court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, is maintainable.

2. On the other hand, the learned counsel for the respondents-accused submitted that as per the proviso appended to Section 372 Cr. P.C., only the victim has a right to prefer an appeal against the order of a criminal court

acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The appellant being the de facto complainant and brother of the deceased and P.W. 1 in the case, he will not come within the definition of the word "victim", as defined u/s 2(wa) Cr. P.C., at his instance, criminal appeal as provided u/s 372 Cr. P.C., against the order of a criminal court acquitting the accused, is not maintainable. In support of this argument, he placed reliance on the judgment of the Apex Court in John Vs. Shibu Cherian and Others,

3. Heard the learned counsel for the appellant-de facto complainant and the learned counsel for the respondents-accused.

4. In the light of the arguments advanced by them before us, we would like to deal with the amendment to Section 372 Cr. P.C. and the changes that are brought into the Criminal Procedure Code.

5. To answer this question, it would be appropriate to refer to definition of "victim", as defined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations, vide its Resolution No. 40/34, dated 29.11.1985. Under the heading Victims of Crime, the word "victims" is defined as follows:

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim, and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

6. The Law Commission of India, in its 154th report, on the Code of Criminal Procedure, 1973 in Chapter XV dealing with "Victimology", at para 6.2, referred to the definition of "victim" as defined in the above Declaration of the United Nations. While laying special emphasis on the subject of "Victimology", the Law Commission, has observed that right from the ancient Babylonian Code of Hammurahi (about 1775 BC) it has been observed that victim of crime was left with no remedy except to sue for damages in the civil Court. It has also been noted that in Anglo-Saxon legal system an English Magistrate, advocated state compensation to be given to the victims of crime and accordingly programme was set up in Britain in the year 1964. The Law Commission also referred to the Declaration made by the General Assembly of the United Nations in its 96th plenary meeting laying down the basic principles of justice for victims of crime and abuse of power.

7. The Apex Court, in its various judgments, took note of the fact that the accused, who had tremendous influence, both political and financial or otherwise was getting away after committing crime and the victim was very often left without remedy either of filing of appeal or challenging the inadequate compensation which was awarded. The Legislature having taken cognizance of this shortcoming, based on the report of the Law Commission, felt it appropriate and accordingly, by Act 5 of 2009 amended Section 372 Cr. P.C., by adding a proviso. The amendment came into force w.e.f. 31.12.2009. Now after the amendment Section 372 Cr. P.C. reads as follows:

372. No appeal to lie unless otherwise provided. - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Court or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

8. Prior to amendment of Section 372 Cr. P.C. no right has been given in those cases where inadequate sentence is imposed or awarded by the trial Court and the right is retained with the State. Now after addition of the proviso, right is given to the victim to file appeal in cases where the accused is acquitted or is convicted for a lesser offence or where the compensation which is imposed is found to be inadequate.

9. Now the question is who is a "victim"? The word "victim", is defined u/s 2(wa) Cr. P.C., and it reads as follows:

2(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

10. Even though the definition of the word "victim" has been given a wide meaning in the Declaration of the United Nations, but the Legislature has given a very narrow meaning. The word "victim", as defined in Section 2(wa) of Cr. P.C., means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged is treated as victim, which expression, includes his or her guardian or legal heir.

11. In this backdrop the question that arises for consideration before this Court is: Whether the appellant who is the de facto complainant and brother of the deceased, can maintain this appeal against acquittal in view of amendment to Section 372 Cr. P.C. and as per Section 2(wa) of Cr. P.C.?

12. The learned counsel for the respondent relied on the judgment of the National Commission for Women v. State of Delhi. In the said case, the National Commission for Women moved SLP under the inherent powers of the Court, challenging the order of the High Court of Delhi, whereby the accused was

acquitted for the offence u/s 306 I.P.C., while maintaining his conviction for the offence u/s 376 I.P.C. and reducing the sentence to that already undergone. The State represented by the learned Additional Solicitor General reported that the State is not proposing to file any application for leave to appeal against the said judgment. The accused, in spite of service of notice, did not enter his appearance. The counsel for the National Commission for Women submitted that notwithstanding the fact that the State did not file any appeal in the matter, still appeal at the instance of the Commission was maintainable under the inherent powers of the Apex Court, since leave to file SLP was already granted, and at that stage, it was not open to the Apex Court to revoke its earlier order and doubt the maintainability of the SLP.

13. Disagreeing with the stand taken by the counsel for the National Commission for Women, the Apex Court held as follows:

Chapter XXIX of the Code of Criminal Procedure deals with "Appeal(s)". Section 372 specifically provides that no appeal shall lie from a judgment or order of a criminal court except as provided by the Code or by any other law which authorizes an appeal. The proviso inserted by Section 372 (Act 5 of 2009) with effect from 31.12.2009, gives a limited right to the victim to file an appeal in the High Court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, in any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only u/s 377 to the High Court as it is effectively challenging the quantum of sentence.

(emphasis supplied)

14. The learned counsel for the respondents next relied on the judgment of the Kerala High Court in John v. Shibu Cherian. In the said case, the appellant, who is the de facto complainant and C.W. 1, preferred appeal against the order passed by the Magistrate, acquitting the accused of the offences punishable under Sections 114, 143, 147, 148, 443, 427 and 506(ii) read with Section 149 I.P.C. along with application to condone the delay in preferring the appeal. The respondents-accused, entered their appearance upon receipt of notice. After the delay being condoned, the appeal came up for admission, and at that stage, the respondent-accused, raised preliminary objection about maintainability of the appeal itself, having regard to the proviso to Section 372 Cr. P.C. The Kerala High Court having taken notice of the amendment brought to Section 372 Cr. P.C., which came into effect from 31.12.2009, whereby a proviso, as already noticed supra, came to be introduced, held as follows:

... Thus, in the light of the above proviso to Section 372 Cr. P.C., the remedy is available to the victim to file an appeal before the court in which the appeal will ordinarily lie against the order of conviction. Thus, according to me, the present

appeal preferred by the de facto complainant before this Court is not maintainable....

15. The Kerala High Court further noticed that prior to the amendment, the Court used to entertain the revision petition in deserving cases against the order of acquittal at the instance of the de facto complainant, and having regard to the stand taken by the appellant in the affidavit filed in support of the condone delay petition that he preferred revision, but the Registry raised objection that the remedy is to file appeal, and therefore, he preferred the appeal, the Kerala High Court while dismissing the appeal as not maintainable, observed that dismissal of the appeal will not come in the way of the appellant to work out his remedies in accordance with the procedure and law.

16. In view of the above cited judgment, now we have to consider whether the appellant can be considered as a "Victim" within the definition of Section 2(wa) of Cr. P.C. The next issue that falls for consideration is whether insertion of the proviso to Section 372 Cr. P.C. is prospective or retrospective in nature.

17. First we would like to deal with the issue, who is a "heir". The word "heir" has been interpreted by the Supreme Court in several cases which means all persons who are entitled to the property of another under the law of inheritance. In Section 2(wa) of Cr. P.C., since the word heir is preceded by the word "legal", it must be construed in the legal sense as that is the clear intention of the Legislature. The expression "legal heir" in relation to a victim, therefore, clearly refers to a person who is entitled to the property of the victim under the applicable law of inheritance.

18. Whereas in the present case, parties are Hindus and the law of heritance applicable to them is the Hindu Succession Act. Section 8 of the Hindu Succession Act sets out the general rules of succession in case of a male Hindu dying intestate, the property would devolve first up on the heirs specified in Class-I of the schedule and secondly, if there is no heir of Class-I, then up on the heirs specified in Class-II of the schedule; thirdly if there is no heir of any of the classes, then up on the agnates of the deceased and lastly if there are no agnates, then up on the cognates of the deceased. Section 9 of the Hindu Succession Act provides the order of succession amongst heirs in the schedule. Those in Class-I take simultaneously and to the exclusion of all other heirs, there in the first entry in Class-II are preferred to those in the second entry. Section 12 prescribes the order of succession amongst agnates and cognates.

19. In view of the provisions of Sections 8 and 9 of the Hindu Succession Act, the appellant being a Class-II heir would not inherit anything from his deceased brother, as he is survived by his wife. Thus, the appellant is not entitled to the property of the victim under the applicable law of inheritance. Though the appellant falls in one of the category of heirs as per the Hindu Succession Act, but the Legislature deliberately used the word "legal heir", which strictly means a person who is entitled to the property of the victim under the applicable law of

inheritance i.e. Hindu Succession Act. Hence, we are of the considered opinion that when it is the intention of the Legislature to give right of appeal to the legal heir, the appellant will not fall within the definition of "legal heir" and he is not entitled to prefer an appeal to this Court u/s 372 Cr. P.C. against acquittal of the accused.

20. The second issue that falls for our consideration is that the incident has taken place on 07.12.2007 and the amendment to Section 372 Cr. P.C. has come into force w.e.f. 31.12.2009, where the victim can prefer an appeal against acquittal. This issue will not hold us for long, in view of the fact that the Apex Court in National Commission for Women v. State of Delhi, has already held that the amendment is not applicable to cases where the incident has taken place prior to amendment. Therefore, even on this count, the appellant fails, and as such, the appeal is liable to be dismissed as not maintainable. In the result, the criminal appeal is dismissed as not maintainable.