

**(2009) 09 AP CK 0012**

**In the Andhra Pradesh High Court**

**Case No : Criminal Revision Case No. 2223 of 2009**

Sama Subhash Reddy

APPELLANT

Vs

S. Lalitha @ Lalithamma, S. Srinivas Reddy, S. Venkat Reddy  
and State of A.P.

RESPONDENT

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**Date of Decision : 11-09-2009**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 190(1), 378(1), 386, 397  
Evidence Act, 1872 — Section 106, 113(A), 113(B), 32  
Penal Code, 1860 (IPC) — Section 302, 498A

**Citation : (2010) 2 ALD(Cri) 779**

**Hon'ble Judges : R. Kantha Rao, J**

**Bench : Single Bench**

**Advocate :** M.V. Durga Prasad, for the Appellant; C. Praveen Kumar, for the Respondent Nos. 1 to 3 and The Public Prosecutor for the Respondent No. 4, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

R. Kantha Rao, J.—This criminal appeal is filed by the de facto complainant against the order of acquittal, dated 14.11.2002 passed by the V. Additional Sessions Judge (Fast Track Court), Ranga Reddy at L.B. Nagar in S.C. No. 110 of 2001.

2. The de facto complainant is the elder brother of the deceased-Rani. The first respondent is the mother-in-law, second respondent is the husband and the third respondent is the father-in-law of the deceased. They were tried by the learned Additional Sessions Judge for the charges under Sections 302 and 498-A of IPC and were acquitted of the said charges by judgment, dated 14.11.2000 in S.C. No. 110 of 2001. The State did not prefer any appeal, but the de facto complainant preferred the appeal against the order of the acquittal passed by the learned Additional Sessions Judge.

3. A preliminary objection has been raised by the learned Counsel appearing for

the respondents that against the order of acquittal passed by the learned trial Court in a case which was instituted upon a police report there is no provision in the Criminal Procedure Code enabling the de facto complainant to prefer an appeal against the said acquittal.

4. According to the learned Counsel appearing for the respondents, the appeal being not maintainable, is liable to be dismissed at the threshold without going into merits of the case.

5. As Against this, the learned Counsel appearing for the appellant/de facto complainant contended that the de facto complainant can also prefer an appeal and in the alternative his submission is that even if the de facto complainant prefers an appeal out of mistake, the same cannot be rejected in limine, but this Court can treat the said appeal as revision as having been filed under Sections 397 and 401 of Cr.P.C. and the same can be disposed of as Criminal Revision Case on merits.

6. The legal position on the issue is no longer *res Integra*. In a case instituted upon a police report, the State alone can file an appeal to the High Court against the order of acquittal passed by the Sessions Judge and not the de facto complainant.

7. In *Jagbir and Another Vs. State of Punjab*, , the Apex Court held as follows:

When the cognizance of the case was taken upon a police report u/s 190(1)(b) Cr.P.C. it is the State alone which could file an appeal in the Court against the order of acquittal u/s 378(1) of Cr.P.C. after obtaining leave under Sub-section 3 thereof and not the complainant who could only file an application u/s 401 of Cr.P.C. for revision of that order. The High Court therefore, was not at all justified in entertaining the appeal of the complainant and disposing the same in the manner aforesaid. On this score alone, we allow the appeal and restore the order of the trial Court. The High Court will now treat the memorandum of appeal filed by the complainant as an application for revision of the order of the Sessions Judge, qua the two appellants only, and dispose of the same in accordance with law.

8. Therefore, though the appellant in the present case who is the de facto complainant and the brother of the deceased cannot file an appeal against the order of acquittal passed by the learned Sessions Judge, he can certainly file a revision u/s 401 of Cr.P.C. In the present case, however, the appellant/de facto complainant filed an appeal by mistake of understanding of the relevant legal provisions instead of filing revision, which Section 401 Cr.P.C. enables him in view of the judgment above referred, though wrongly an appeal has been filed by the de facto complainant, it cannot be rejected outright but this Court can treat the same as revision filed u/s 401 of Cr.P.C. and dispose of the same on merits.

9. Nevertheless, the petition challenging the order of acquittal filed by the de

facto complainant is registered as an appeal, it will hereinafter will be referred as "revision" since it has been treated so by this Court and the parties will be referred as "revision petitioner" and the "respondents".

10. The brief facts relevant for considering the revision petition, which sprang out from Ex.P-1 report lodged by PW-1 may be stated as follows:

About 14 years prior to lodging of the F.I.R. by the de facto complainant (PW-1), his father died and thereafter, PW-1 took over the responsibilities of joint family including the marriage of the deceased who is his younger sister. The first respondent (A-1) is no other than the paternal aunt of PW-1 and the deceased. In the year 1998, the marriage of the deceased was performed with the second respondent (A-2), out of the agreed amount of dowry of Rs. 3,50,000/-, PW-1 paid an amount of Rs. 1,00,000/- and gave 20 tolas of gold and household articles worth Rs. 80,000/-, after the marriage, all the respondents (accused) started harassing the deceased to pay the remaining amount of dowry, whereupon PW-1 paid an amount of Rs. 1,50,000/- to the respondents, but they made a further demand of dowry of Rs. 50,000/- and tortured the deceased mentally and physically. Thereafter the deceased was blessed with a male child and subsequent to the birth of the male child, the respondents again resorted to subjecting the deceased to maltreatment with a demand to get a further sum of Rs. 50,000/- as additional dowry from PW-1. When PW-1 went to the in-laws' house of the deceased to invite her for the festivals of Dasara as well as Deepavali, the respondents 1 and 2 refused to send her with PW-1 to her parental home. From the beginning, the deceased used to tell PW-1 about the harassment and cruelty caused by the respondents demanding her to get the balance of dowry amount and additional dowry and on 22.11.1999 at about 1.00 p.m. while PW-1 was at his house, PW-5 informed him over phone that his younger sister (the deceased) died of burn injuries. Subsequently PW-1, his younger brother and other relatives rushed to the house of the respondents and found the dead body of the deceased, which was fully burnt lying at the house of the respondents. He also found the tongue of the deceased protruded. Thereafter PW-1 lodged a report with the Shamshabad police on the same day at about 2.45 p.m. stating that all the respondents caused the death of the deceased and thereafter poured kerosene over her body and set the dead body on fire.

11. On the strength of the report lodged by PW-1, the police Shamshabad registered a case in Crime No. 304 of 1999 under Sections 302 and 498-A of IPC. The Inspector of Police (PW-13) who investigated into the offence, filed the charge sheet against the respondents after completing investigation.

12. While the matter was pending before the learned trial Court, respondent No. 3 died and the case against him was abated by order dated 14.06.2001, but subsequently the learned Additional Sessions Judge framed a charge u/s 302 of IPC against A-1 and also framed another charge u/s 498-A of IPC against A-1 and A-2.

13. The prosecution in order to establish the guilt of the respondents 1 and 2 for the above mentioned charges, examined PWs.1 to 15, marked Exs.P-1 to P-8 and M.Os.1 to 5. PW.1 is the brother of the deceased and PW.2 is the wife of PW.1. PWs.3 to 8 are circumstantial witnesses. PW.9 is a photographer who photographed the dead body under Exs.P.7 to P.11 and negative sheet Ex.P.12. PW.10 is the panch for the panchanama of scene of incident under Ex.P.13 and preparation of sketch map Ex.P.14. PW.11 is the panch for inquest under Ex.P.15 conducted by Mandal Revenue Officer (PW.14). PW.15 is the Medical Officer who conducted postmortem and gave opinion that the death of the deceased was on account of burn injuries and PWs.12 and 13 are the Investigating Officers.

14. The respondents 1 and 2 did not propose to examine any witnesses nor did they mark any documents on their behalf. On a consideration of the entire evidence on record, the trial Court acquitted the first respondent of the charge u/s 302 of IPC and also acquitted respondents 1 and 2 of the charge u/s 498-A of IPC.

15. Now the question requires determination in this revision is as to the powers of this Court while exercising it's jurisdiction u/s 401 of Cr.P.C. and the order which it supposed to pass, having regard to the facts and circumstances of the case.

16. The learned Counsel appearing for the respondents submitted the following judgments to appraise the Court on the aspect that while exercising powers u/s 401 of Cr.P.C., this Court cannot convert the finding of the acquittal into one of conviction and that only in exceptional circumstances this Court can set aside the order of acquittal.

- 1) Logendra Nath Jha and Others Vs. Shri Polailal Biswas, .
- 2) Mahendra Pratap Singh Vs. Sarju Singh and Another,
- 3) Pakalapati Narayana Gajapathi Raju and Others Vs. Bonapalli Peda Appadu and Another,
- 4) K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, .

17. There is no dispute about the said proposition laid down in the judgments relied upon by the learned Counsel and the decisions do not lay down any proposition that this Court under no circumstances can set aside the order of acquittal. The legal impediment is only that this Court cannot convert a finding of the acquittal into one of conviction, which has been specifically provided in Sub-section 3 of Section 401 of Cr.P.C.

18. In Gurshinder Singh v. Joga Singh and Anr. 1999 SCC 1311 the Apex Court dealing with a summary dismissal of revision by a private party against acquittal passed by the High Court held that the revision was disposed of by the High Court through a cryptic order "No ground to interfere. Dismissed", in a case requiring a detailed scrutiny and evaluation of evidence, particularly because no

appeal against acquittal was filed by the State, the Apex Court remitted the matter back to the High Court for disposal of revision afresh after considering the merits of the case.

19. In *Ram Briksh Singh and Others Vs. Ambika Yadav and Another*, the Apex Court referring to its earlier decisions relating to the power of the High Court u/s 401 of Cr.P.C. held that the High Court can set aside the order of acquittal and remit the case for retrial where material evidence is overlooked by the trial Court.

20. Not only in the judgments above referred, the Apex Court in a catena of decisions held that the revisional Court can set aside the order of acquittal passed by the trial Court and remit the case for retrial. However, the Court of revision cannot set aside the order of acquittal passed by the trial Court on the mere ground that the trial Court has not appreciated the evidence in a proper way. The revisional powers setting aside the order of acquittal have to be sparingly and exceptionally exercised when there is a manifest error of law and procedure and only to prevent the gross miscarriage of justice. If the material evidence available on record is totally overlooked by the trial Court or when the findings of the trial Court are perverse, the revisional Court can set aside the order of acquittal and order for retrial. Therefore, this Court cannot exercise the powers of Court of appeal u/s 386 of Cr.P.C. and convert an order of acquittal into conviction, it can certainly set aside the order of conviction and order retrial, when the public justice demands such a course.

21. I have perused the material papers, depositions of the witnesses and the judgment of the trial Court, which is the subject matter of the challenge in this revision. This Court is not supposed to express an opinion that the trial Court ought to have appreciated the evidence in a particular way. This Court can only examine as to whether the appreciation of evidence is totally perverse in clear disregard of all the material facts borne out from the testimony of the witnesses, non-application of mind to the relevant provisions of law as well as evidence forthcoming in the case, and ultimately as to whether the judgment was rendered in a way resulting in totally miscarriage of justice.

22. It is true that PWs.3 to 8 who are the independent witnesses did not state about the respondents subjecting the deceased to cruelty and harassment in connection with demand of dowry and they were treated hostile by the prosecution. But, there is evidence of PW-1, the elder brother of the deceased and PW-2, the wife of PW-1. They have categorically spoken to the fact of the respondents harassing the deceased and subjecting her to cruelty with a demand of additional dowry in detail, which is obvious from their depositions. The medical evidence discloses that there was bleeding from the nostrils and mouth of the deceased and the tongue was protruded, there was also mild bleeding from vagina, and in the opinion of the autopsy surgeon, the death was due to deep burns. Therefore, the death of the deceased was undoubtedly otherwise than under normal circumstances and within four years of her marriage.

23. The learned trial Judge stated in para 14 of the impugned judgment that as per the version of PW-1, his evidence relating to the harassment caused by the respondents to the deceased is based on the information he had from the deceased and also that PW-1 did not mention either in Ex.P-1 or in 161 Cr.P.C. statement that the accused demanded money either when he visited their house or when they visited his house. The learned trial Judge went on to state that PW-2 stated that the deceased informed her over telephone about the respondents demanding dowry but he did not state before the police about the harassment caused by the respondents in connection with dowry. Perusal of Ex.P-1 as well as the police statements of PWs.1 and 2 clearly indicates that they spoke about the respondents harassing the deceased with a demand to get the balance of dowry amount and also additional dowry. Therefore, the finding of the learned trial Judge on this aspect is factually incorrect.

24. The evidence of PW-2 regarding the respondents subjecting the deceased to cruelty with a demand for dowry may be based on the information furnished by the deceased to them. But the learned trial Court did not examine the evidentiary value of the testimony of PWs.1 and 2 with reference to Section 32 of the Evidence Act. The impugned judgment also does not refer to the presumptions available under Sections 106, 113-A and 113-B of the Evidence Act. The judgment was rendered by the learned trial Judge in a casual and mechanical way without discussing the evidence on record and without examining the evidence in accordance with law. In my view, the learned trial Judge rendered the judgment in utter disregard of the material evidence before him and also in utter ignorance of the relevant provisions of law which have to be applied having regard to the facts and circumstances of the case. The trial Court also did not frame the appropriate charges. The impugned judgment, therefore, resulted in a flagrant miscarriage of justice as rightly contended by the learned Counsel appearing for the revision petitioner (the appellant) and is liable to be set aside in this revision.

25. Consequently, the judgment passed by the learned trial Judge acquitting the respondents 1 and 2 for the offences under Sections 302 and 498-A of IPC is set aside and the matter is remitted back to the trial Court for retrial. The trial Court is directed to frame appropriate charges, conduct the trial afresh and render the judgment considering the material evidence available on record in the light of the provisions of law applicable to the fact situation emerging from the evidence on record. The trial Court has to keep in mind that conducting retrial does not mean that the entire evidence, which is already brought on record will be erased. The trial Court has to reassess the evidence, which is already on record and also receive any evidence oral and documentary adduced by both parties and render the judgment afresh by assigning convincing reasons for the conclusions reached by it. The trial Court has to dispose of the case within four months from the date of receipt of copy of the order in this revision. The revision, therefore, succeeds and the same is allowed.