

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No.57 of 2017

JUDGMENT:

This criminal appeal, under Section 378(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C. '), is filed by the petitioners against the conviction and sentence dated 27.12.2016 passed by the Special Judge for Protection of Children from Sexual Offences-cum-Additional Metropolitan Sessions Judge, Vijayawada, in S.T.C. No.6 of 2016 for the offence punishable under Sections 342, 376(2)(i) of Indian Penal Code, 1860 (for short 'I.P.C.').

The case of the prosecution, in brief, is that the appellants, being the parents of the victim girl, were examined as P.Ws.1 and 2 in S.C. No.44 of 2014, They deposed in the evidence inconsistently before the Sessions Court, thereupon the learned Sessions Judge initiated the proceedings under Section 193 I.P.C. read with 344 Cr.P.C., issued show cause notice to both the appellants pointing out their complicity in commission of perjury. Thereafter they appeared and submitted their explanation, but dissatisfied with the explanation, the learned Sessions Judge registered the case in S.T.C. No.6 of 2016 for the above offence.

After considering the entire material on record, the learned Sessions Judge following the principle laid down by the Apex Court in **PUBI SATYANARAYANA v. STATE OF ANDHRA PRADESH¹**, **MANILA VINOD KUMARI v. STATE OF MADHYA PRADESH²** and in **RE: SUO MOTO PROCEEDINGS AGAINST Mr.R.KARUPPAN**

¹ (1995) Cri.L.J. 1738

² (2008) 8 SCC 34

ADVOCATE³ wherein it was observed that the evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done and that on account of such perjury most of the accused, who committed serious offences, are not allowed to Scott free and found them guilty for the offence punishable under Section 193 I.P.C. and Section 344 of Cr.P.C.

Aggrieved by the order, dated 27.12.2016 passed by the learned Sessions Judge in Calender and Judgment in STC No.6 of 2016, the present appeal is filed on various grounds.

The main ground raised by the appellants is that they are the bread winners and keeping in mind the marriage proposals of their daughter, there is some inconsistency in the evidence of the witnesses, but not an intentional perjury and prayed to set aside the same.

Sri K.B.Ramanna Dora, learned counsel for the appellants, would contend that if both the appellants are kept in jail, it is difficult for the children to survive, who attained the age of marriage, and requested to take lenient view without any specific contention.

No doubt, both the appellants, at one stage, supported the case and at later stage, turned hostile obviously for different reasons and did not support the case of the prosecution, but the learned Sessions Judge found the accused guilty, and convicted and sentenced to undergo RI for 10 years for the offence punishable under Section 376 I.P.C. and Section 12 of POCSO Act, in S.C. No.44 of 2014. Thus, on

³ (2001) 5 SCC 289

account of the alleged perjury, the accused was not allowed to scott free and still recorded the conviction in the sessions case.

Therefore, keeping in mind the fate of children, who attained marriageable age, I deem it appropriate to set aside the substantive sentence of imprisonment imposed against the first appellant, who is a woman, while confirming the fine amount of Rs.500/- and the substantive sentence of imprisonment imposed against the second appellant is reduced to 15 days, while confirming the fine amount of Rs.500/- as the alleged perjury appears to be intentional but to protect the children's future to wipe out the stigma on the chastity of daughter.

With the above modification, the criminal appeal is disposed of.

Miscellaneous petitions, if any, pending in this criminal appeal is closed.

M.SATYANARAYANA MURTHY, J

08.02.2017
BV

