

Crl. L. P. No. 07/2016
Renu Meena vs. State of Sikkim & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ &
MRS. JUSTICE MEENAKSHI MADAN RAI, J.

01. 16.02.17 Present: Ms. Pritima Sunam, Advocate for the Appellant-
 (Agnihotri, CJ) Petitioner.

Mr. J.B. Pradhan, Public Prosecutor with Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Public Prosecutors for Respondent No. 1.

Mr. Ajay Rathi, Mr. Rahul Rathi, Mr. Aditya Makkhim, Ms. Vhum Devi Pradhan and Mr. Sailesh Rai, Advocates for Respondent No. 2 and 3.

Mr. K.T. Bhutia, Sr. Advocate with Ms. Bandana Pradhan, Ms. Sarita Bhusal and Mr. D.K. Pradhan, Advocates for Respondent No. 4 and 5.

Mr. Tashi Norbu Basi, Advocate for Respondent No. 6

Mr. Jorgay Namka, Ms. Pema Bhutia, Ms. Panila Theengh and Mr. Karma S. Lhendup, Advocates for Respondents No. 7 and 8.

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Respondents /accused Nos. 2 to 6 were charge-sheeted for having committed an offence of murder of one Rakshit Meena under provisions of Sections 302, 323, 325 and 506 read with Section 34 of the IPC, 1860. Respondents No. 7 and 8 namely, Karna Hang Subba and Phurba Tamang were charge-sheeted for an offence punishable under Section 176 read with Section 34 of the IPC, 1860. All the accused were acquitted in the trial holding that the prosecution has not proved the case beyond reasonable doubt. Thus, this appeal filed by the mother of the deceased, Rakshit Meena.

2. The appellant has further filed an application, being Crl. L.P. No. 07 of 2016, under Section 378 sub-section (3) of Cr. P.C. 1973, seeking leave to appeal. The contention of the learned counsel appearing for the appellant is that under proviso to Section 372 of Cr. P.C. the appellant has the right to prefer an appeal as she is a victim, as her son having been murdered by the accused persons.

3. Learned counsel appearing for the respondents submit that no appeal is maintainable without leave of the Court.

4. We have examined the contentions advanced by the learned counsel for the parties. Proviso to Section 372 was introduced by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) with effect from 31.12.2009, which facilitates filing an appeal against the acquittal of the accused by the victim. The word "victim" is defined under Section 2 (wa) of Cr. P.C., which reads as under: -

"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."
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5. Under the definition of "victim", the victim is not only the person who is injured, but includes his or her guardian or legal heir also. The appellant being mother of the

victim is necessarily the guardian as well as legal heir of the deceased. Thus, she is entitled to prefer the appeal against the acquittal of the accused persons.

6. A similar question as to whether the appellant being the father of the deceased was entitled to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr. P.C. without obtaining leave of the High Court, as required under sub-Section (3) of Section 378 Cr. P.C., came up for consideration before the Supreme Court in ***Satya Pal Singh vs. State of Madhya Pradesh and Others : 2015 CRI. L.J. 4929***. The High Court applying the proviso to Section 372 Cr. P.C., held that no leave was necessary and appeal against the order of acquittal was admitted.

7. In appeal, the Supreme Court examined the ambit and scope of proviso to Section 372 Cr. P.C. and held as under:-

"Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Cr. P.C. must be read along with its main enactment i.e. Section 372 itself and together with sub-section (3) to Section 378 of Cr. P.C. otherwise the substantive provision of Section 372 of Cr. P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr. P.C.

13.this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is concerned upon the victim including the legal heir and others, as defined under Section 2 (wa) of Cr. P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) to Section 378 of Cr. P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order."

8. Section 378 deals with an appeal in case of acquittal, wherein no such proviso has been added, prescribing filing of appeal by the victim.

9. In the case in hand, as aforesaid, the private respondents No. 2 to 6 were charge-sheeted for serious offence punishable under Sections 302, 323, 325 and 506 read with Section 34 of the IPC, 1860 and respondents No. 7 and 8 were charge-sheeted for an offence punishable under Section 176 read with Section 34 of the IPC, 1860.

10. Under Section 372 read with Section 378, the State being the prosecutor is competent to prefer an appeal to the High Court from the order of acquittal passed by the trial Court. In the event, the State fails to prefer an appeal, the victim, namely guardian or legal heir, as the case in the present appeal is also conferred with the statutory right to prefer an appeal against the acquittal, with the leave of the Court, as laid down by the Supreme Court.

11. We have examined the impugned judgment, whereunder the accused have been acquitted on the ground that the prosecution has failed to prove the charges beyond reasonable doubt.

12. We are of the considered opinion that a re-look in appeal is necessary. Resultantly, we grant leave to prefer the appeal. It is ordered accordingly.

Sd/-
Judge
16.02.2017

Sd/-
Chief Justice
16.02.2017

jk/ds **Index : Yes / No**
 Internet : Yes / No