

SUPREME COURT OF INDIA

Gurram Chakravarthy

Vs.

State of A.P.

Crl.A.No.133 of 2002

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

28.11.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. This appeal is directed against the judgment of a learned Single Judge of the Andhra Pradesh High Court upholding conviction of the appellant for the offence punishable under Section 304(B) of the *Indian Penal Code, 1860* (in short the 'IPC'). The accused appellant faced trial for the alleged commission of the aforesaid offence. The learned Sessions Judge, Srikakulam convicted the appellant as aforesaid and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/- with default stipulation. By judgment dated 22.12.1998 the appeal filed before the High Court was dismissed. The matter was carried before this Court in Criminal Appeal No. 593 of 2000 which was disposed of by order dated 31st July, 2000. This court found that the manner of disposal of the appeal left much to be desired. It was pointed out by this court that four defence witnesses were examined to rebut the presumption created under Section 113(B) of the *Indian Evidence Act, 1872* (in short the 'Evidence Act'). This Court noted that there was no discussion of the various aspects including the acceptability of the evidence of the DWs. That being so, the matter was remitted to the High Court. It was clearly stated that the High Court cannot sideline the defence version and the same has to be considered to see whether the presumption has been rebutted by the appellant. By the impugned judgment the High Court has again upheld the conviction and the sentence imposed. Strangely, the High Court has not discussed the evidence in detail. It has merely referred to the evidence of the defence witnesses and come to the conclusion that the appeal was without merit. Certainly it was not in the manner of disposal of the appeal which this court had desired. We are conscious that the matter is pending since long and it would not be in the interest of the party if the matter is remitted to the High Court. But at the same time the inappropriate way of disposing the appeal leading to the impugned judgment cannot be lost sight of and the same cannot be maintained.

2. Above being the position, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration. As the matter is pending since long, we request

the High Court to dispose of the appeal as early as practicable, preferably within six months from the date of receipt of the order.