

“CASE COMMENTARY ON MALLIKARJUN KODAGALI V. STATE OF KARNATAKA”

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INTRODUCTION

Victims of the crime must have the right to see if their accused seeks punishment that could explain the current situation. Where many offenders are not punished, victims of the crime feel that they have not received the proper justice that they deserve.¹ Punishment for the accused is demanded for various reasons such as to educate accused, to give them valid punishment so that they know the gravity of the crime and also deter the people who were going to commit such crimes in future. Mostly, punishment goals are given from the perspective of the third party that can be the judges hearing the case or population in general. But the punishment from the perspective of the actual victim of the crime is denied.² The opinion of the judges may differ as the person has the experience of both observers as well as the victim. A victim can ask for retributive punishment for the purpose of just desserts as well as for revenge. Punishment of deterrence can be asked by the victim to protect other victims who might face similar circumstances which will also reduce the fear of the victim to face circumstances again and again.³ This may be done to decrease the frequency of the crime as victims of the crimes have different fear related to the crime compared to mere spectators of the crime. Thus, in case accused does not receive the punishment from the lower court, approaching the higher court with the appeal to ensure that the victim gets psychological satisfaction of rendering the punishment to accused is must. If they are not given the right to appeal it is a violation of the rights of the victim to approach for the punishment for the offender. An offender must get the just dessert to experience the gravity of the crime they have committed which can be warning for the future habitual offenders.

¹ Deigh, J., *On the Right to Be Punished: Some Doubts*, Ethics 94, (1984) 191–211.

² Feinberg, J., *The Expressive Function of Punishment*, The Monist, 49, (1965) 397–423.

³ Whiteley, D., *The Victim and the Justification of Punishment*, Criminal Justice Ethics, 17, (1998) 42–54.

FACTS

Appellant Mallikarjun Kodagali who is now dead through his legal representative filed the First Information Report (FIR) in the police station as the victim was attacked in February 2009. After the necessary investigations and formalities proceeding took place in front of District and Sessions Judge, District Bagalkot against accused under the sections of Indian Penal Code. Accused was acquitted for the crime by judgment and valid order of the court in October 2013. An appeal was filed by the aggrieved party in High Court of Karnataka under Section 372 of Code of Criminal Procedure (CrPC) in 2014, but the case was dismissed by the High Court claiming that case is not maintainable before the High Court. High Court held that as the incident took place before December 2009 and section 372 of CrPC came into effect after the occurrence of the incident, and there is no retrospective effect of the legislation. Thus, the appeal is not maintainable before the court. After that, Kodagali preferred another appeal in the High Court in the form of Criminal Appeal No. 100119 of 2014 which was filed under the provisions of Section 378(4) of the CrPC. The High Court, by a judgment and order dated July 4, 2014, held that the appeal was not maintainable. The view taken by the High Court was on a plain reading of Section 378(4) of the CrPC, namely, that the appeal was not filed in a case instituted upon a complaint before a Magistrate. Mallikarjun Kodagali, after the rejection of 2 appeal petitions in the High Court approached the Supreme Court under special leave petition to challenge the judgment of the High Court of June 2014 and July 2014. According to him, there is no alternative remedy against the acquittal of the accused in the present case. He also contended that as accused is the member of legislative assembly and court denied to challenge the acquittal. The question that needs to be answered is that appeal filed by the appellant under Section 372 of CrPC is maintainable or not.

ISSUES

- Whether special leave could be granted by the honorable Supreme Court?
- Whether appeal filed before the High Court under section 372 of the CrPC was maintainable?

ARGUMENTS

Appellant

Appellant challenged the decision of the High Court which stated that appeal is not maintainable referring to various other High Court judgments. In the case of *Bharuben Dineshbhai Makwana v. State of Gujarat and Ors*,⁴ in which full bench of the High Court of Gujarat observed that the right to appeal is the substantive right and such right cannot be taken away with a judicial pronouncement as it is a substantive and statutory right. Also, in the present case court conferred the right to appeal without imposing the conditions to file leave or special leave before the court and we cannot infer such conditions on the victim. In the subsequent cases, the decision of this case was upheld by a division bench of Calcutta High Court in *Mahafuja Banu v. Md. Asadul Islam & State*,⁵ wherein judgment and order of acquittal were given by the trial court. The decision of the trial court was after December 2009. On this ground, the appeal was considered maintainable before the court. Section 372 of CrPC, gives the right to appeal to the victim in case of certain circumstances as a substantive right. The right of the victim is not dependent on the incident that occurred but on the judgment which was given by the court.⁶ In the case of *Pamerswar Mandal v. State of Bihar*,⁷ the judgment that is given after December 2009 can be challenged despite the date of occurrence of the offence before victim can file the application for an appeal of the case. Counsel Further stated that decision of the case of National Commission of Women was mere obiter and is not binding upon the honorable court. Also, the facts and situation, in that case, were different from the present case. Thus, the present special leave petition is maintainable before the court.

Respondents:

Section 372 of CrPC does give a right to the victim to file the appeal but this cannot be read alone as accused is also given the rights that person is not considered guilty unless he/she is proved guilty. As in the case of *Satya Pal Singh v. State of M.P.*,⁸ the court said that there must be leave application filed before the court under section 378 (3) of CrPC before an appeal is maintained in the high court. It must fulfill the intention with which this right was given by the legislature. The provision does not

⁴ MANU/GJ/1137/2012

⁵ (2013) 1 Cal LT 109

⁶ *T. Balakrishnan Master v. K.M. Ramachandran Master*, MANU/KE/1620/2011.

⁷ 2014 (1) PLJR 377

⁸ (2015) 15 SCC 613

specify the conditions and procedure to file an appeal which must be specified in order to prescribe the limitation. As in the case of *Dr. Subhash Kashinath Mahajan v. State of Maharashtra*,⁹ where the court said that while interpreting any law, the court cannot shut the eyes as many false cases are filed and they will not be filed if there is an acquittal in such cases. Thus, the right to appeal to a victim cannot be given without any reasonable restriction.

JUDGEMENT

The majority opinion (“Madan B. Lokur J., S. Abdul Nazeer J.”)

Under the plain language of the law as well as with the interpretation of section 372 of the CrPC and pronouncements of various high courts, if there is any judgment or order post-December 2009 then victims have right to appeal to a high court. They referred to the case of *Garikapati Veeraya v. N. Subbiah Choudhry*¹⁰ where it was held that right to appeal is not merely a procedural right, but it is also a substantive right. The court is bound by this decision as well as subsequent cases with a similar view. Judges considered the resolution taken in General Assembly of the United Nations for the rights of the victim which was adopted by the United Nations which is called Magna Carta of the rights of victims to ensure that victims are given the proper respect and are treated with compassion and care and are given a fair chance through judicial mechanism. In the present case, the appeal was allowed, and high court decision was set aside, and the case was directed to be reopened in the high court to hear and be decided on the appeal of the appellant.

Minority Opinion (“Deepak Gupta, J.”)

He was in agreement with providing the rights to the victim and give them right to appeal under section 372 of CrPC as it is beneficial for victims, but also stated that, we cannot ignore the rights of the accused as court treats a person not guilty. So, there is a need to follow the rights of accused and follow the procedure to obtain the remedy. Thus, there must be leave petition filed by the appellant before High Court before filing the appeal against an order of acquittal.

ANALYSIS

⁹ (2018) 6 SCC 454

¹⁰ 1957 SCR 488

The particulars discussed above rightly point out the right of victim to file an appeal in case of the acquittal of the accused. Whereas it is necessary to give the right to appeal to the victim, there must be certain limitations provided in order to protect the rights of accused in false cases. Even according to criminal jurisprudence every person is innocent till the time that person is proved guilty of such particular alleged offence. Thus, to protect the rights of accused in the criminal cases especially in the false cases filed against a person, there is a need to formulate and establish certain restrictions on the appeals that can be filed by the victim. No doubt victims must be taken care with compassion and must be given full respect in the society. They must have the right to appeal when they feel that the state is not able to provide them justice. Even the United Nations has acknowledged the rights of the victim. Rights of victims are also needed to be recognized as they faced a threat at the occurrence of the incident as well as during the proceeding. In order to balance the position, there must be certain limitations set in order to ensure the right to appeal of victim.

CONCLUSION

This case dealt with rights of the victim where there was an opinion that right to appeal of the victim must be protected and appeal can be filed against any judgment and order delivered after December 2009 despite the date of occurrence of the event. On the other hand, it could not be denied that section 372 of CrPC, while extending a right to the victim to appeal without any reasonable restriction, can cause the problem in case of fake cases are lodged and acquittal could be of same importance as rights of the victim. Thus, the right of the victim must be protected but it must also be ensured that the rights of the accused are also protected because a person is considered innocent until he is found guilty of the alleged offence. It could also be rightly concluded that there exists the right of the victim to file an appeal in case of the acquittal of the accused, however, it is also equally necessary that while giving the right to appeal to the victim, there must be certain limitations provided in order to protect the rights of accused in false cases. Therefore, rights of the victims can, in reality, be ensured by giving them the proper respect and treatment with compassion and care and by giving a fair chance through a judicial mechanism. However, the same should not be done at the cost of the infringement of the accused's rights considering the celebrated criminal law principle which recognizes that an accused is to be treated innocent until proven guilty. Hence, there shall be balance of both victims' and accused's rights and one should not prejudice the other.