

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.77 OF 2020

Between:

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad.

.... Appellant.

AND

Dasari Murali.

... Respondent.

DATE OF JUDGMENT PRONOUNCED: 17.06.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.77 of 2020

% Dated 17.06.2022

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad.

... Appellant

And

\$ Dasari Murali

..Respondent.

! **Counsel for the Appellant:** Learned Public Prosecutor

^ **Counsel for the Respondent:**

> **HEAD NOTE:**

? **Cases referred**

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.77 OF 2020****JUDGMENT:**

1. State is the appellant herein questioning the acquittal recorded vide judgment dated 07.06.2019 in S.C.No.209 of 2012 acquitting the respondent/accused for the alleged offences under Section 417, 376 and 506 of IPC by the Special Sessions Judge for Trial of Cases relating to Atrocities Against Women, Khammam (for short 'the Sessions Court')

2. Briefly, the case of the prosecution is that the *defacto* complainant/P.W.1 filed a complaint on 11.10.2009 stating that she was married to one Nagaraju seven years prior to the complaint. After one year, they got separated before the village elders due to marital discord. Eight months prior to complaint, she got acquainted with the respondent and developed physical intimacy on the belief that he would marry her. P.W.1 also provided Rs.10,000/- to the respondent/accused. She was carrying 4th month pregnancy and when asked to marry, the respondent/accused refused, for which reason complaint/Ex.P1 was filed.

3. The Sessions Court, during the course of trial, examined P.Ws.1 to 10 and marked Exs.P1 to P9 produced by the prosecution in support of its case.

4. Learned Assistant Public Prosecutor submits that Sessions Court committed an error in ordering acquittal of the respondent/accused when there is substantive and convincing evidence to convict the accused for the offence of cheating Pw1 on the promise of marriage. No reasons are given to discredit the evidence of victim/PW1. For the said reason, the judgment of the Sessions Court has to be reversed and the respondent/accused convicted for the offences under Sections 417, 376 and 506 of IPC.

5. Learned Sessions Judge acquitted the respondent/accused on the following grounds; i) the marriage with the husband of P.W.1 was existing and not terminated under law; ii) the accused did not dispute acquaintance with PW1, however accused case is that since she was already married, he informed that he would marry P.W.1 when she gets a valid divorce from her husband; iii) The breach of promise by the respondent/accused subsequently not marrying P.W.1 in the back ground of

P.W.1 not been divorced, would not attract an offence of cheating.

6. As seen from the record, P.W.1 and the respondent/accused have consented for physical relation and accordingly, there is no force of any kind by the respondent/accused. However PW1 says she consented on the belief that Respondent/Accused would marry.

7. In the facts of the present case, the marriage of P.W.1 with her husband did not terminate either by way of any order of the Court or by way of any custom prevailing in their community. The question of respondent marrying P.W.1, whose marriage was subsisting, does not arise. It is for the prosecution to prove that there is any accepted custom in the community of P.W.1 to say that such information to elders in their community would suffice to say that is a valid divorce. There is no such evidence forthcoming to prove that P.W.1 was divorced and the respondent/accused could marry her. When there is a subsisting marriage, the question of respondent/accused marrying P.W.1 would not arise for the reason of such marriage being an offence punishable for bigamy and invalid

as per law. It is the specific case of the respondent/accused that though he consented for marriage, P.W.1 failed to produce any evidence or proof to substantiate her divorce as such he could not marry.

8. Admittedly, P.W.1 cohabited with the respondent/accused on the belief that he would marry. When that is the case, the factum of any false statements or subsequent inducement by the respondent/accused does not arise. The physical relation amongst P.W.1 and the respondent/accused being one of consent, the question of rape does not arise.

9. In the said facts and circumstances, the prosecution has failed to make out a case either of cheating or of rape, for which reason the present appeal filed by the State fails.

10. Accordingly, the appeal is dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand dismissed.

K.SURENDER, J

Date: 17.06.2022
kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.77 OF 2020

Date: 17.06.2022

kvs