A GURRAM CHAKRAVARTHY

v.

STATE OF A.P.

(Criminal Appeal No. 133 of 2002)

B NOVEMBER 28, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Appeal: Criminal appeal – Manner of disposal – C *Conviction by Trial Court – Affirmed by High Court – On appeal, Supreme Court remitted the matter to High Court observing that the defence witnesses were examined but no discussion on various aspects including the acceptability of their evidence was recorded – High Court again upheld the* D *conviction without discussing the evidence in detail – On appeal, held: The disposal of the appeal by High Court was not in the desirable manner – Inappropriate way of disposing of the appeal leading to impugned judgment cannot be lost sight of and same cannot be maintained – Matter remitted to* E *High Court.*

The appellant was convicted under s.304B IPC. On appeal, High Court upheld the conviction. When the matter came before this Court, it was remitted to High Court with the observation that four defence witnesses F **were examined to rebut the presumption under s.113B of the Evidence Act, 1872, but there was no discussion on various aspects including the acceptability of evidence of those witnesses. It was clearly stated that the High Court could not sideline the defence version.**

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The High Court again upheld the conviction and the sentence imposed without discussing the evidence in detail. It merely referred to the evidence of defence witnesses and came to conclusion that the appeal was

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without merit. Hence the instant appeal. A

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: The disposal of the appeal was not in the manner which this court had desired. The inappropriate way of disposing of the appeal leading to the impugned judgment cannot be lost sight of and the same cannot be maintained. As the matter is pending for long, the High Court is requested to dispose of the appeal as early as practicable preferably within six months of receipt of the order. [Paras 1 and 2] [734-E-F] B C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 133 of 2002.

From the final Judgment dated 23.2.2001 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 11 of 1996. D

Y. Raja Gopala Rao, Y. Ramesh and Y. Vismai for the Appellant. E

The Judgment of the Court was delivered by

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 aforenoted 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 F G H

A 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 B 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 side line the defence version and the same has to be considered to see whether the presumption has been C 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 D 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 E 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 F the High Court to dispose of the appeal as early as practicable, preferably within six months from the date of receipt of the order.

D.G. Appeal disposed of.