

NAVAL KISHORE MISHRA

A

v.

STATE OF U.P. & ORS.

(Criminal Appeal No. 979 of 2019)

JULY 05, 2019

B

**[SANJAY KISHAN KAUL AND K.M. JOSEPH, JJ.]**

*Code of Criminal Procedure, 1973: ss. 372 proviso and 378 – Appeal against acquittal – Right of victim to file the appeal against the acquittal of accused without seeking leave to appeal – Held: Victim has a right to file the appeal and no leave has to be sought in such a situation – Appeal has to be dealt as a regular appeal – It is different from the appeal filed by the State seeking leave to appeal – Appeal filed by the victim ought not to have been dismissed at the threshold only on the ground that no leave was granted to the State to appeal against the order of acquittal.*

C

D

*Mallikarjun Kodagalli (D) through legal representatives v. State of Karnataka & Ors. (2019) 2 SCC 752 – relied on.*

**Case Law Reference**

E

**(2019) 2 SCC 752                      relied on                      Para 14**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 979 of 2019

From the Judgment and Order dated 23.11.2017 of the High Court of Judicature at Allahabad in Criminal Misc. Application Defective u/s 372 Cr.P.C. (leave to appeal) No. 61 of 2017

F

M.Z.Choudhary, Aftab Ali Khan, Syed Imtiyaz Ali, Syed Mohammed Aatif, Ms. Afreen Fatima, Advs. for the Appellant.

Ms. Ruchira Goel, Adv. for the Respondents.

G

The following Order of the Court was passed :

**ORDER**

1. Leave granted.

H

A           2. We have heard learned counsel for the respondent-State and learned counsel for the appellant. The other respondents have been served but none has entered appearance.

3. The accused-respondents were put to trial in Sessions trial No.80 of 2014 *titled* State Vs. Brindavan & Ors. arising out of criminal case  
B   No.53 of 2014 under Sections 452, 302/34 of the Indian Penal Code.

4. The accused were acquitted by the trial Court in terms of the Judgment dated 19.12.2016.

5. The State aggrieved by the said order sought leave to appeal in Government Appeal No.1947 of 2017. In terms of Section 372 read  
C   with Section 378 of the Code of Criminal Procedure, 1973 (“CrPC” for short) such leave was declined vide order dated 18.04.2017.

6. The appeal filed by the victim, however, came up before the Court after the aforesaid transpired and vide impugned order dated  
D   23.11.2017 has been dismissed on the following ground:

*Since another Bench of this Court has already refused to grant leave and the government appeal itself stood dismissed in reference to the refusal to grant leave, it will not be congruous to unfold another course keeping pending to this appeal.”*

7. Learned counsel for the State has contended that the rights of  
E   the victim have been enlarged in terms of the amendment carried out by insertion of proviso to Section 372 of the CrPC by Amendment Act 5 of 2009 with effect from 31.12.2009. The provision reads as under :

*“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.*

F

8. We may notice that Section 2(wa) defines victim as under:

G           **“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 him or her guardian or legal heir.**

H

9. In the present case the victim, thus, includes him or her guardians or legal heirs. The deceased was unmarried and the victim is the real brother and, thus, would fall under the category of legal heir of the deceased. A

10. It is, however, submitted by her that the question whether the victim would also have to seek leave as would be a situation envisaged under Section 378 of the Cr.P.C as in the case of the State has been considered and is no more *res integra* in view of the recent Judgment of this Court in Mallikarjun Kodagalli (d) through legal representatives Vs. State of Karnataka & Ors.<sup>1</sup> where this Court opined that there is no need for a victim to apply leave to appeal against the order of acquittal while preferring an appeal under Section 372 proviso to CrPC. B C

11. In the aforesaid circumstances, it is contended that since the right to appeal would be available, it is different from the appeal filed by the State seeking leave to appeal and, thus, the appeal filed by the victim in the present case ought not to have been dismissed at the threshold only on the ground that no leave has been granted to the State to appeal against the order of acquittal. D

12. The aforesaid plea is naturally supported by learned counsel appearing for the appellant.

13. We are in agreement with the aforesaid plea since the extracted portion of the impugned order shows that the only reason recorded for dismissing the appeal of the victim (in fact styled as leave to appeal) was on the ground that leave had not been granted to the Government to file the appeal. E

14. The legal position enunciated in *Mallikarjun Kodagalli (d) through legal representatives(supra)* would show that the appellant had a right to file the appeal and in fact no leave has to be sought in such a situation. Thus, the appeal has to be dealt as a regular appeal. F

15. In view of the aforesaid, we set aside the order of the High Court and allow the appeal remitting the appeal to be considered by the High Court on merits. G

---

<sup>1</sup>2019(2) SCC 752