

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4<sup>TH</sup> DAY OF SEPTEMBER, , 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL APPEAL No.1541/2018

**BETWEEN:**

Asif Hussain @ Zabi @ Zabi Tiger @ Mohammed Asif  
S/o Mohammed Hussain @ Adil Hussain  
Aged about 32 years  
R/a No.71/2, Rajenahalli Main Road,  
Saraipalya, Tharisandra,  
Bengaluru-560 077.

...Appellant

(By Sri Sirajuddin Ahmed, Advocate)

**AND:**

The State  
by Ashoknagara Police Station,  
Represented by the State Pubic Prosecutor  
High Court of Karnataka  
Bengaluru-560 001.

...Respondent

(By Sri M.Divakar Maddur, HCGP)

This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the judgment and order of conviction dated 24.07.2018 and sentence dated 27.07.2018 passed by the LXIX Additional City Civil and Sessions Judge, Bengaluru (CCH-70) in S.C.No.545/2014 convicting the appellant/accused for the offence punishable under Section 397 of Indian Penal Code.

This Criminal Appeal coming on for Orders, this day the Court delivered the following:-

**J U D G M E N T**

The present appeal has been preferred by the appellant/accused challenging the judgment of conviction and order of sentence passed by LXIX Additional City Civil and Sessions Judge, Bengaluru City, (CCH-70) in Sessions Case No.545/2014 dated 24.7.2018 whereunder the accused was convicted and sentenced for the offence punishable under Section 397 of IPC.

2. I have heard the learned counsel appearing for the appellant/accused as well as the learned High Court Government Pleader for the respondent/State.

3. Though several grounds have been urged by the learned counsel for the appellant, without expressing anything on merits of the case, I feel that the main ground urged by the learned counsel for the appellant is that the trial Court has not given full opportunity to the accused to cross-examine all the witnesses and has passed the

impugned order erroneously. Even the learned High Court Government Pleader submitted that the evidence of PW7 has not been fully examined in chief and no reasons have been assigned in this behalf.

4. I have carefully and cautiously gone through the evidence produced before the Court below.

PWs.1, 2, 3, 4 have been examined on 5.2.2016. After examination in chief by the learned Public Prosecutor, the learned counsel appearing on behalf of the accused has sought for time, as he has not prepared. The Court below by observing that no justifiable reasons have been stated, rejected the prayer and took that there is no cross-examination.

5. As could be seen from the evidence of PW7, the said witness has been examined in chief in part and the learned public prosecutor has sought for time for further examination, but subsequently why the said witness has not been examined has also not been stated. The

examination-in-chief of PWs.9 and 10 has been conducted and the learned counsel for the accused prayed for time, time has been granted and subsequently the cross-examination of these two witnesses has not been recorded. All the materials clearly indicate the fact that the material witnesses who have been examined before the Court have not been cross-examined and the principles of natural justice has not been followed.

6. When once the cross-examination of the witnesses has been deferred, the Court has to record the reasons for non-cross examination of the said witnesses. But even in the order sheet also nothing has been mentioned with regard to the said aspect is concerned.

7. The non cross-examination of the material witnesses goes to the root of the matter and it is against the principles of *audi alteram partem*, i.e., 'no man can be convicted unheard'.

8. Without expressing anything on the other grounds, I feel that if the said judgment is set aside and matter has been remitted back to the trial Court with a direction to recall the witnesses who have not been cross-examined and after giving full opportunity to the accused either by the counsel who has been engaged by the accused or appointing an *Amicus-Curiae* on behalf of the accused, after full cross-examination thereafter the case has to be disposed of in accordance with law.

Accordingly, the appeal is allowed and the judgment is set aside.

Since the said Sessions Case is of the year 2014, the trial Court is directed to expeditiously dispose of the case within an outer limit of four months from the date of receipt of copy this judgment, without further extension.

IA No.3/2018 does not survive for consideration, same is disposed.

**Sd/-  
JUDGE**

\*AP/-