

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra
Pradesh

Criminal Appeal No.864 of 2010

Between:

Patan Shabbir Khan @ Shabbir Khan

... Appellant

and

–
The State of A.P.,
rep. by its Public Prosecutor,
High Court of Judicature at Hyderabad

...Respondent

Date of Judgment Pronounced: 22-03-2016

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice M.S.K.Jaiswal

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

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

*** The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

and

The Hon'ble Sri Justice M.S.K.Jaiswal

Company Appeal No.864 of 2010

% Date: 22.03.2016

Between:

-
Patan Shabbir Khan @ Shabbir Khan

...Appellant

And

-
The State of Andhra Pradesh
rep. by its Public Prosecutor
High Court of Judicature at Hyderabad

...Respondent

-
! Counsel for the Appellant : Sri Challa Srinivas Reddy

^ Counsel for the respondent: Public Prosecutor (TS)

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> HEAD NOTE:

? Cases cited:

1997 (5) SCC 348
1994 Supp(1) SCC 173
2004 (5) SCC 334
2007 AIR SCW 854

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.S.K.Jaiswal

Criminal Appeal No.864 of 2010

–
Date: 22.03.2016

Between:

Patan Shabbir Khan @ Shabbir Khan

.. Appellant/accused

No.1

and

The State of Andhra Pradesh
rep. by its Public Prosecutor
High Court of Judicature at Hyderabad

.. Respondent

Counsel for the Appellant :

Mr.Challa Srinivas Reddy

Counsel for the respondent:

Public Prosecutor

(TS)

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The Court made the following:

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Judgment : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.1 in Sessions Case No.2 of 2008 on the file of the Court of the learned Special Judge for Trial of Cases under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Khammam filed this Criminal Appeal against his conviction for the offence under Section 302 of the Indian Penal Code, 1860 (IPC) and sentencing him to suffer life imprisonment and to pay a fine of Rs.100/-.

The case of the prosecution as pleaded before the Court below is that the defacto-complainant (PW.1) came to Wyra Police Station on 28-04-2006 at 17:00 hours and gave a report stating that on 19-04-2006, the appellant/A.1 kidnapped his second daughter- Naga Lakshmi by inducing her through deceitful words and wrongfully confined her in his house; that PW.1 searched for his daughter in the houses of his relatives and others, but in vain; that on 26-04-2006 evening, on receipt of information about his daughter, PW.1 accompanied by his neighbours- G.Venkataiah and PW.2 went to the house of A.1; and that on opening the door, PW.1 found his daughter lying on the

ground. On noticing that his daughter had consumed poison, PW.1 took her into his lap and asked her the reason for consuming poison and she told him that A.1 by inducing her through deceitful words that he would marry her, brought her to his house and had sexual intercourse with her several times; that thereafter, due to the pressure of his wife (A.8), he told the deceased that both of them would commit suicide and forcibly gave pesticide to her; and that later, he did not consume the same intentionally and she requested her father- PW.1 to save her life. On the same night, PW.3, his brother-in-law and PW.1 shifted her in an auto to Kalluri Chaitanya Nursing Home belonging to A.9; that A.9 gave first aid to her upto 27-04-2006 evening and later on, advised PW.1 to shift her to Khammam for better treatment; that on his advice, PWs.1 and 3 were shifting her to Khammam Hospital; that on the way at about 9.30 p.m., she died; that later on, the dead body of the deceased was kept in front of the house of PW.1 at K.G.Siripuram Village; and that PW.1 approached the Police with a request to take action against A.1, his wife- A.8 and the other accused.

On 28-04-2006 at 17:00 hours, PW.8 registered the case as Crime No.49 of 2006 for the offences under Sections 366, 376, 302, 109 IPC and Section 3 (1) (xii) and 3 (2) (v) of SC/ST (POA) Act, 1989, and issued express FIRs to all the Officers concerned. On 28-04-2006, PW.10 received the express FIR copy and also the proceedings of the Superintendent of Police, Khammam, through registered post authorizing him to investigate the case. Accordingly, on the same day, PW.10 took up the investigation, visited K.G.Siripuram Village, secured the presence of PWs.1 to 4 and LWs.2, 3 and 7, examined them and recorded their statements, got photographed the dead body of the deceased, recorded the statement of PW.9- photographer, prepared the Crime Details Form duly attested by LW.9 and PW.5, prepared rough sketch of the scene of offence on separate sheets, conducted inquest over the dead body of the deceased before the same panchas and later, sent the dead body to the Government Hospital, Madhira, with a request to conduct postmortem examination and report. On 18-05-2006, PW.6- Mandal Revenue Officer, Wyra, issued caste certificates of PW.1, A.1 and A.8

stating that PW.1 and A.1 belong to Madiga community and A.8 belongs to Dudekula community. PW.10 arrested A.1 to A.8 on 18-05-2006 and A.9 on 19-05-2006 and sent them to judicial remand.

On assuming charge as SDPO, Wyra, LW.15 took up further investigation as per the proceedings of the Superintendent of Police, Khammam. On 18-07-2006, PW.7 conducted autopsy over the dead body of the deceased and gave final opinion to the effect that the death of the deceased was due to 'Cardio Respiratory Failure due to organo phosphorous insecticide poisoning'.

Though the deceased was admitted in the Nursing Home of accused No.9, the latter has not informed the same to the Police knowing fully well that it was a Medico-legal Case, as a result of which dying declaration of the deceased could not be recorded. The chargesheet has, accordingly, charged all the accused for different offences depending upon the role they have allegedly played in the death of the deceased.

In support of its case, the prosecution has examined PWs.1 to 10 and marked Exs.P.1 to P.17. No material objects were marked.

On appreciation of the oral and documentary evidence, the lower Court has acquitted A.2 to A.9 of all the charges and the appellant-A.1 of the offences under Sections 366, 376, 109 IPC and Section 3 (i) (xii) and 3 (2) (v) of the SC/ST (POA) Act, 1989, but, convicted him for the offence under Section 302 IPC and sentenced him to undergo life imprisonment besides payment of fine of Rs.100/-.

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At the hearing, Mr.Challa Srinivas Reddy, learned Counsel for the appellant, submitted that the entire prosecution case is unnatural and that the appellant being a married person residing in a single room portion of a house, it is not possible for him to bring the deceased to his house and live with her for nearly one week in the presence of his wife. Alternatively, he submitted that even if the prosecution case is accepted on its face value, it is clear from the deposition of PW.1 that the appellant has brought the pesticide in two glasses and by stating that both of them will commit suicide by

consuming the same, forcibly gave one glass to the deceased, who thereupon consumed the same. This act, the learned Counsel contended, even if admitted does not constitute an offence under Section 302 IPC and that at the most, the appellant may be liable for the offence under Section 306 IPC.

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The learned Public Prosecutor has fairly accepted this submission of the learned Counsel for the appellant and conceded that since the case is based on circumstantial evidence, even accepting the version of PW.1, it is the case of abetment to commit suicide but the appellant has been charged under Section 302 IPC and held guilty of commission of the offence under the said provision.

Thus, there is a consensus among the learned Counsel for the appellant and the learned Public Prosecutor that the appellant cannot be held guilty of the offence under Section 302 IPC. Therefore, the conviction of the appellant for the offence under Section 302 IPC cannot be sustained.

We shall now consider whether the appellant is liable to be convicted for the offence under Section 306 IPC. For the reasons best known to the investigating agency, it has not alternatively charged the appellant for the offence under Section 306 IPC. If the lower Court has not framed a charge under that provision, Section 222 Cr.P.C. empowers the Court to convict a person, who is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and if such combination is proved, but the remaining particulars are not proved, though he was not charged with such minor offence.

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The issue whether the conviction under Section 302 IPC could be converted into the one under Section 306 IPC in the absence of a charge for the latter offence was subject of a conflicting judgments by the Supreme Court.

In ***Sangaraboina Sreenu v. State of A.P.***^[1]

a two Judge Bench has taken the view that such a conversion is not permissible in the absence of the charge being framed. However, a different view

was expressed by another two Judge Bench in ***Lakjit Singh and another v. State of Punjab***^[2]. In view of these conflicting judgments, the issue was referred to a three Judge Bench in ***Dalbir Singh v. State of U.P.***^[3] wherein it was held that in view of Section 464 Cr.P.C, such a course is permissible and unless the appellate or the revisional Court was satisfied that by such conversion prejudice has been caused to the accused, it shall not interfere with the conviction.

The view expressed in ***Dalbir Singh v. State of U.P*** (3 supra) was followed by a two Judge Bench of the Supreme Court in ***Virendra Kumar v. State of U.P.***^[4]. It was held therein that in view of Section 464 Cr.P.C, it is possible for the appellate or the revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that failure of justice would in fact occasion, and that in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main

facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.

In the present case, the learned Counsel for the appellant fairly conceded that though the appellant was charged for offence under Section 302 IPC, he was made aware of the basic ingredients of the offence under Section 306 IPC. In the light of these facts, we feel that it is a fit case for convicting the appellant for the offence punishable under Section 306 IPC instead of under Section 302 IPC.

Accordingly, the Criminal Appeal is partly allowed. The conviction recorded against the appellant-A.1 in the Judgment, under appeal for the offence punishable under Section 302 IPC is modified to that under Section 306 IPC, and the appellant-A.1 is sentenced to undergo Rigorous Imprisonment for 7 (seven) years. The sentence regarding the fine imposed by the trial Court shall stand confirmed.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 22.03.2016

Note:

**LR copies
(B/o)
lur/dsr**

[\[1\]](#) 1997 (5) SCC 348

[\[2\]](#) 1994 Supp(1) SCC 173

[\[3\]](#) 2004 (5) SCC 334

[\[4\]](#) 2007 AIR SCW 854