

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI

CRIMINAL APPEAL NO.5 of 2011

DATED:12-06-2017

Between:

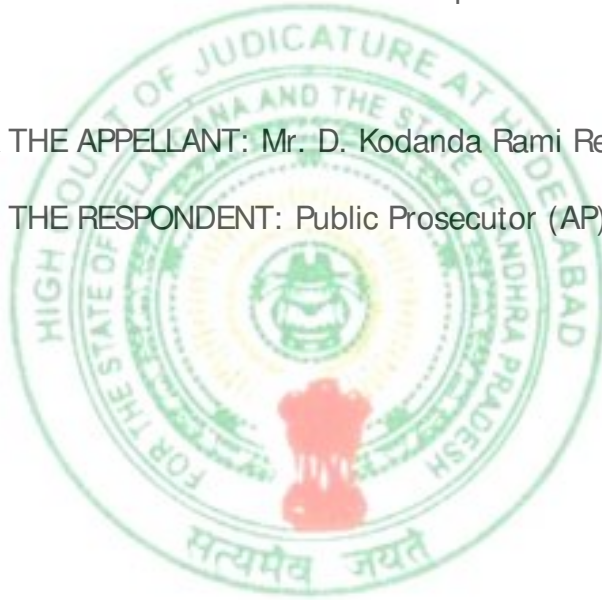
Aravadasara Venkatramana ... Appellant

And

The State of Andhra Pradesh
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. D. Kodanda Rami Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)



THE COURT DELIVERED THE FOLLOWING:

JUDGMENT: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The sole accused in Sessions Case No.291 of 2009 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalli, filed this criminal appeal against judgment dt.21.12.2010 whereby he was convicted for the offence under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life and also to pay a fine of Rs.500/- and in default, to suffer simple imprisonment for three months.

2. The case of the prosecution in brief is that one Manjula, native of Velavani Village, Chittoor District (hereinafter referred to as 'the deceased'), married one Mohan, resident of Chittoor, in the year 1991, that they were blessed with one daughter Chandana – P.W.1 and one son Cherian and that the said Mohan died in the year 2001. That later the deceased came to her brother's house at 5th Mile, Stones Colony, hamlet of Kothavaripalle, and was living with her children by doing coolie works. That she developed contract with the appellant, who was working as a painter, and both of them got married six years prior to the date of the incident, i.e., 03.04.2008. That they lived happily for some time and later the appellant used to quarrel and beat the deceased suspecting her fidelity. That on 03.4.2008 at about 8.00 p.m., the appellant came to the house in an intoxicated condition, gave meat to the deceased and instructed her to cook the same. That a quarrel took place between them, upon which the appellant sprinkled kerosene on her from a plastic can, that due to fear she went out of the house and the accused followed her and set her on fire with a match stick. That the deceased raised cries, upon which, her paternal uncle – K. Kotappa (L.W.5), her aunt Janasamma (L.W.7), Gentimi Kumari – P.W.2, and Maddula Srinivasulu –

P.W.3 put off the flames, and that her sister-in-law – Saginala Vanajakshi (L.W.4), her uncle (L.W.5) and her daughter - P.W.1 shifted her to the Government Hospital, Madanapalle in '108' Ambulance.

3. That on 03.4.2008 at 10.20 p.m. P.W.11 - the Sub-Inspector of Police, Taluk Police Station, Madanapalle, received Ex.P.8 hospital intimation about the injuries sustained by the deceased, he went to the Hospital and recorded the Ex.P.9 statement of the deceased. That P.W.11 registered Crime No.33 of 2008 under Section 307 IPC, examined the children of the deceased and recorded their statements. That on the next day, P.W.11 visited the scene of offence, secured the presence of David Swamy (L.W.3), Vanajakshi (L.W.4), Kotappa (L.W.5) and P.W.2 and recorded their statements. That he seized M.O.1 - plastic can, M.O.2 - match box and M.O.3 - half-burnt nighty under Ex.P.2 - observation-cum-seizure mahazar and prepared Ex.P.11 - rough sketch of the scene of offence. That P.W.11 secured the presence of P.W.3, a resident of the locality, and recorded his statement and also examined Premamma (L.W.9) - mother of the deceased. That on 03.4.2008 at about 10.50 p.m., P.W.13 - II Additional Judicial Magistrate of First Class, Madanapalle received intimation to record dying declaration of the deceased and she recorded the same under Ex.P.17 at the Government Area Hospital, Madanapalle. That on 06.4.2008 at 7.45 a.m. P.W.11 arrested the appellant at the Hospital. That P.W.6, Dr. M. Sridevi, Civil Assistant Surgeon, Area Hospital, Madanapalle, examined the appellant and issued Ex.P.4 wound certificate.

4. That on 01.05.2008, P.W.4, the brother of the deceased, informed P.W.11 under Ex.P.3 - report that his sister was discharged from the Hospital on 18.4.2008 and she died on 30.4.2008 at 7.00 p.m. That on

01.05.2008 P.W.12, the Inspector of Police, Madanapalle Urban Circle, received the death intimation of the deceased, shifted the dead body to the Hospital and registered Ex.P.13 – altered First Information Report (FIR). That P.W.12 conducted inquest over the dead body of the deceased in the presence of P.Ws.8 and 9 and another and prepared Ex.P.7 - inquest report. That P.W.7, Dr. Jhaneswar, Civil Assistant Surgeon, Area Hospital, Madanapalle, conducted autopsy over the dead body of the deceased and he opined that the deceased died due to extensive burns (70 – 80%) that led to shock, and issued Ex.P.5 – post-mortem certificate. That after completing the investigation, P.W.12 filed the charge sheet.

5. As the plea of the accused was one of denial, he was made to stand trial, during which the prosecution examined P.Ws.1 to 13, got Exs.P.1 to P.17 marked and produced M.Os.1 to 3. On behalf of the accused, D.Ws.1 and 2 were examined. On appreciation of the evidence on record, the Court below has held that the prosecution was able to prove the guilt of the accused for the offence punishable under Section 302 IPC beyond all reasonable doubt and accordingly it has convicted and sentenced him as stated supra. Feeling aggrieved thereby, the accused preferred this appeal.

6. Mr. D. Kodanda Rami Reddy, learned counsel for the appellant, while fairly conceding that Exs.P.9 and P.17, the two dying declarations of the deceased, establish the case of the prosecution that the appellant has caused burns to the deceased, he, however, pleaded that the fact that the appellant is in an inebriated condition, is reflected from the contents of Ex.P.9 and that he was not in his senses when the offence was committed. He has further argued that while the incident has taken place

on 03.4.2008, the deceased was discharged from the hospital on 18.4.2008 and she died on 30.4.2008, twenty seven days after the deceased suffered the burns. He has placed reliance on the judgment of this Court in *Kothala Srinu v. State of Andhra Pradesh*¹ to buttress his submission that in the facts and circumstances of the case the conviction of the appellant may be altered for the offence under Section 304 Part II IPC.

7. After hearing the learned Public Prosecutor for the State of Andhra Pradesh, we find merit in the submissions of the learned counsel for the appellant. Though inebriation cannot be an excuse to let off a person who is guilty of causing murder, the fact that the deceased survived for twenty seven days after she suffered the burns would indicate that the appellant might not have the intention of causing death, but surely he had knowledge that the burns would in ordinary course of circumstances cause her death. Further, the death was not a direct result of the burns, but it has occurred due to shock, as could be seen from the medical evidence. Considering the long time lag between the date of the offence and that of the death of the deceased, we are of the opinion that it is a fit case where the appellant can be convicted for the offence under Section 304 Part II IPC, instead of under Section 302 IPC. As regards the sentence of imprisonment to be imposed on the appellant, in the facts and circumstances of the case, we feel that rigorous imprisonment for a period of seven years would meet the ends of justice, while maintaining the sentence of fine imposed against him.

8. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant in the impugned judgment is altered from

¹ 2016 (2) ALD (Crl.) 413

the offence under Section 302 IPC to that of the offence under Section 304 Part-II IPC. The appellant is accordingly convicted and sentenced to suffer seven years rigorous imprisonment. The sentence of fine imposed against the appellant is, however, confirmed.

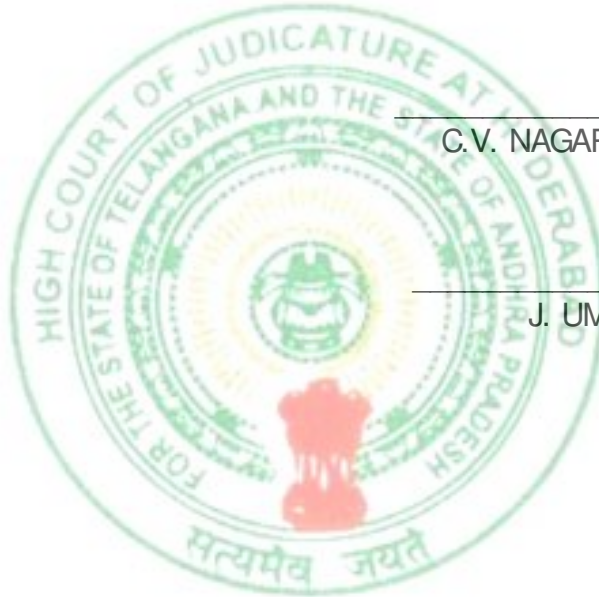
A perusal of the record shows that by order dt.29.11.2016 this Court has granted bail to the appellant as he has served more than five years of the sentence, following the order of this Court in *Batchu Ranga Rao v. State of A.P.*² Therefore, the appellant shall surrender himself before the Superintendent, Central Jail, Kadapa, within one week from today to serve the balance sentence.

C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

12-06-2017

bnr



² 2016 (3) ALT (Crl.) 505 (DB)(AP)