

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.A.No.958 of 2011

Date:03.07.2018

Between.

Shaik Jani Basha @ Basha @ Jani

.....Appellant

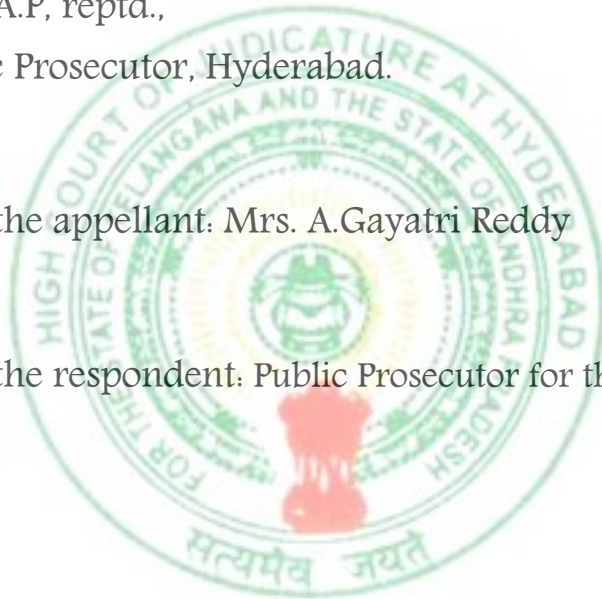
And.

The State of A.P, reptd.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mrs. A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor for the State of AP



The Court made the following:

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

This is a case of murder of one Shaik Nagur Bee (hereinafter referred as "the deceased") by her husband for her alleged infidelity. The Additional Sessions Judge-cum-Judge, Family Court, Guntur, *vide* judgment, dated 16.8.2011, in Sessions Case No.711 of 2010 found the appellant guilty of murder under Section-302 IPC and also for the offence under Section-307 IPC as he attempted to commit the murder of P.W-5, the alleged paramour of the deceased, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- for the offence under Section-302 IPC and to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,500/- for the offence under Section-307 IPC. Both the sentences were directed to run concurrently.

Apart from P.W-5 being an injured witness, P.W-2, who is no other than the daughter of the accused and the deceased, is an eye-witness to the incident. Unable to overcome the unimpeachable evidence of these two witness, Mrs. A.Gayatri Reddy, learned counsel for the appellant, has argued that this is not a case of pre-meditated murder and that, on the contrary, even according to the prosecution, the deceased has had illicit relationship with P.W-5 and therefore, unable to bear the same, the appellant in a grave and sudden provocation has committed the offence attracting Section-302 IPC. We are afraid, we

cannot accept this submission of the learned counsel for the appellant. It is not the case of the defence that the appellant has picked up some object available around him when he saw the deceased and P.W-5 together in the former's bedroom and hit the deceased with it. There is no dispute about the fact that the appellant who was staying away from his wife, at Tenali came to the latter's house and saw her in the company of P.W-5 in the bedroom. He attacked the deceased and P.W-5 with an axe which he carried with him with a view to do away with the life of the deceased and her paramour, P.W-5, and caused injuries to both of them, due to which, the deceased succumbed while P.W-5 survived. These proven facts clearly bring the case within the definition of 'murder' under Section-3002 IPC and take the case out of the ambit of Section-304 IPC.

In the light of the above, we cannot accept the submission of the learned counsel for the appellant to convert the offence into the one under Section-304 IPC.

The appeal is, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

03rd July, 2018

DR