

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM
PRASAD**

Crl.A.No.577 of 2011

Date: 23.07.2018

Between:

Kinnera Raju S/o.Sambaiah,
Aged 28 years, Occ: Agriculture,
R/o.Oglapur Village,
Athmakur Mandal,
Warangal district.

...

Appellant

And

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

...

Respondent

Counsel for the Appellant :

Mr.P.Prabhakar Reddy

Counsel for the Respondent:

Public Prosecutor (TS)

The Court made the following:

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

The sole accused in Sessions Case No.404 of 2008 on the file of the II Additional Sessions Judge, Warangal, filed this criminal appeal, aggrieved by his conviction for the offence under Section 302 I.P.C. and sentencing him *inter alia* to imprisonment for life.

2. Having regard to the manner in which we propose to dispose of this case, it is not necessary for us to refer to the facts in detail. It would suffice to note that at the hearing, Mr.P.Prabhakar Reddy, learned counsel for the appellant, submitted that in view of the existence of dying declaration, he is not in a position to argue for complete acquittal. He however, submitted that even going by the contents of the dying declaration, this case would fall under the category of culpable homicide not amounting to murder and that, therefore, the conviction and sentence of imprisonment may be converted for the offence under Section 304 I.P.C.

3. We have heard Mr.C.Prathap Reddy, learned Public Prosecutor for the State of Telangana.

4. A perusal of Ex.P.18 – dying declaration shows that before the appellant has poured kerosene and set the dress worn by the deceased on fire, there was an altercation between the appellant and the deceased, during which the former has snatched and thrown away

the hall ticket of the deceased. Under exception 4 to Section 300 IPC, culpable homicide is not murder, if it is not committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. As could be seen from the dying declaration, the appellant seems to have developed the heat of passion due to the sudden fight and the intention on the spot, to kill the deceased. The fact that the appellant has poured only a part of the kerosene from the bottle and that the doors were kept open, shows that he did not have the pre-meditated intention of killing the deceased. The facts would thus reveal that the appellant has developed the intention to kill the deceased only following the sudden fight. In the dying declaration, the deceased stated that the appellant has poured kerosene on her dress. This also shows that the appellant has not acted in a cruel or unusual manner by pouring kerosene on the face or other parts of the body of the deceased. We are therefore, of the opinion that it is a case where the appellant is guilty of offence falling under Part-I Section 304 I.P.C.

5. Accordingly, the judgment of the II Additional Sessions Judge, Warangal, dated 15.04.2011 in Sessions Case No.404 of 2008 is modified, by altering the conviction into one under Section 304 Part-I I.P.C. As regards the sentence, considering the gravity of the offence, we feel that rigorous imprisonment for 10 years, with the

provision to set-off under Section 428 Cr.P.C., would meet the ends of justice. The sentence imposed by the lower court is accordingly modified, while confirming the sentence of fine imposed by the lower Court. The appellant shall surrender himself before the Superintendent, Central Prison, Warangal, within two weeks from today, for serving the remainder of the sentence.

6. The appeal is, accordingly, partly allowed to the extent indicated above.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 23rd July, 2018

msb



