

Avula Venkateswarlu Vs. State

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Court : Andhra Pradesh

Decided On : Mar-07-1994

Reported in : 1994(1)ALT726; 1994CriLJ2232

Judge : G. Radhakrishna Rao and ;Ramesh Madhav Bapat, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 297 and 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307

Appeal No. : Criminal Appeal No. 615 of 1993

Appellant : Avula Venkateswarlu

Respondent : State

Advocate for Def. : P.P.

Advocate for Pet/Ap. : K. Sesharajyam, Adv.

Judgement :

Radhakrishna Rao, J.

1. The accused in Sessions Case No. 200/92 on the file of the learned Sessions Judge, Guntur is the appellant herein.

2. The accused was charged under S. 302, I.P.C. for committing the murder of his wife Avula Krishnaveni (the deceased) on 18-9-1991 at about 2.00 p.m. in front of

his house in Rajpalam village. To establish the guilt of the accused the prosecution examined P.Ws. 1 to 9 and marked Exs. P. 1 to P15 and MOs 1 to 9. When examined under section 313, Cr.P.C. the accused denied the offence and got marked Exs. D1 and D2 in his defence. After considering the entire evidence on record the learned Sessions Judge came to the conclusion that the accused alone is responsible for the death of the deceased and convicted the accused under S. 302, I.P.C. and sentenced him to suffer imprisonment for life. Against that the accused preferred the present appeal.

3. The prosecution story as enumerated by the witnesses is that on 18-9-91 a quarrel ensued between the accused and his wife and in that quarrel the accused stabbed the deceased with M.P. 1 and caused two injuries which ultimately resulted in her death while she was being taken to the hospital. P.W. 1 is the direct witness to the occurrence. She is the mother of the deceased. She fostered the accused. She gave Ex. P-1 complaint to the police. P.W. 7 received the same and in turn he registered the same as Crime No. 54/91 under section 307, I.P.C. After receipt of the death intimation, the section was altered into 302, I.P.C. The learned Sessions Judge believed the version of the prosecution. The doctor who conducted autopsy on the deceased was not examined. Normally the documents will be marked through the witnesses. But now it has come to the notice that the defence also has given consent for marking certain documents. Generally it is the duty of the prosecution to examine the doctor to prove cause of the death. If the doctor was examined the possibility of eliciting something by the defence will be there. Section 297, Cr.P.C. provides marking of documents by consent. By giving consent, the court below has taken into consideration what was stated in the documents is correct. The doctor who conducted post-mortem on the deceased found as many as 14 external injuries and opined that the deceased would appear to have died of shock and haemorrhage as a result of multiple injuries and asphyxia due to the injury to the trachea. We find that the prosecution has established its case that the deceased died due to the result of the injuries.

4. P.Ws. 2, 3 and 5 are the witnesses examined to say that after inflicting the injuries the accused ran away. But they did not support the case of prosecution that the accused stabbed the deceased. Hence their evidence is of no value to the

prosecution. P.W. 4 was examined as eye-witness. The fact that the incident took place in the house cannot be disputed. P.W. 1 deposed that she heard the cries of the deceased. She saw the accused stabbing the deceased second time. The motive for the occurrence is that a sum of Rs. 600/- was missing and the deceased asked the accused either to account for the said amount or bring the same from elsewhere. In that aspect some quarrel took place which ultimately resulted causing injuries to the deceased. At the earliest point of time during inquest it was found that the accused was suspecting the character of his wife, the deceased. But there is no evidence on record to that effect. The motive for causing the injuries to the deceased by the accused is only due to suspicion of the fidelity of the deceased, but not to cause her death. The injuries were caused not to cause the death. In these circumstances we hold that the offence committed by the accused falls under S. 304, Part I, I.P.C. but not under S. 302, I.P.C.

5. Therefore we set aside the conviction and sentence passed by the learned Sessions Judge under section 302, I.P.C. Instead we convict the accused under S. 304-I, I.P.C. and sentence him to suffer R.I. for ten years. Subject to this modification, the appeal is dismissed.

6. Order accordingly.