

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 594 OF 2003

STATE OF A.P. Appellant (s)

VERSUS

Y. SANKARAPPA Respondent(s)

Date: 18/08/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. Anoop G. Choudhari, Sr. Adv.
Mrs. C. K. Sucharita, Adv.
Ms. Nirada Das, Adv

For Respondent(s) Mrs.K. Sarada Devi,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

(Deepak Joshi) (Indu Satija)
Sr. P.A. Court Master
(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 594 OF 2003

STATE OF A. P.Appellant

Versus

Y. SANKARAPPARespondent

O R D E R

Heard learned counsel for the parties.

This appeal has been filed against Judgment and order dated 15.04.2002 of the High Court of Andhra Pradesh at Hyderabad in Crl. Appeal 740 of 2000.

The facts of the case have been set out in the impugned judgment of the High Court, hence we are not repeating the same here.

The Trial Court convicted the respondent under Section 302 for having killed his wife by pouring kerosine over her and setting her on fire.

In appeal the High Court acquitted the respondent holding that the dying declaration made to the Magistrate could not be believed because it has not been stated therein that the deceased was in a fit medical condition to make the statement. Hence this appeal.

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We have carefully perused the dying declaration made before the Magistrate. It has been stated at the end that the patient was conscious while recording the dying declaration.

It is well known that even if the victim has more than 50 to 60 per cent burns on his/her body the victim may still survive for about two weeks and will be in a fit mental state for giving statement and will be able to speak coherently during this period. However he/she will ordinarily die after two weeks because of septicemia.

Hence, we are of the opinion that the High Court was not correct in saying that merely because the Doctor has not

stated that the respondent was in a fit mental condition, the dying declaration should be disbelieved. Hence we set aside the judgment of acquittal given by the High Court and convict the respondent under Section 304 part II of the IPC (since evidently, the respondent was in a drunken state and later on he tried to save his wife by pouring water on her).

Hence, we set aside the the judgment of acquittal of the High Court and convict the respondent under Section 304 part II IPC.

We are informed that the respondent has served 4 & = year in jail. To do substantial justice between the parties, we are of the opinion that the ends of justice will be sub-served if, while maintaining the conviction of the appellant, CRIMINAL APPEAL NO. 594 OF 2003

we alter the sentence to the period already undergone by the appellant. We order accordingly.

The appeal is dispose of.

.....J.
(MARKANDEY KATJU)

.....J.
(T. S. THAKUR)

NEW DELHI
AUGUST 18, 2010.