

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Cr1.A.No. 504/99

Akanti Gopala Rao

Appellant

VERSUS

State of A.P.

Respondent

Date :12.12.2000. This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T.THOMAS
HON'BLE MR. JUSTICE R.P.SETHI

For Appellant (s) Mr. Ranjit Kumar,Sr.Adv.
Mr. N.N.Popli,adv.
Mrs. B.Sunita Rao,adv.

For Respondent (s) Mr. G.Prabhakar.adv.
Ms. T.Anamika,adv.

UPON hearing counsel Court made the following
ORDER

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.SP2

The appeal is disposed of.

.SP1

(Suman Wadhwa) (H.K.Bhatia)
PA to Addl.Regr. Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 504 OF 1999@@
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Akanti Gopala Rao ... Appellant

vs.

State of A.P. ... Respondent

ORDER@@
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In a double murder case appellant was arraigned alongwith twenty others. But the Sessions Court convicted only three out of them including the appellant who was ranked in the array of the accused as A.1. The conviction was for the offence under Sec.302 read with Sec.34 of the Indian Penal Code. All the convicted persons were sentenced to imprisonment for life. Each of them filed appeal before the High Court. The State of Andhra Pradesh also filed an appeal against the acquittal of some of the remaining accused. All the appeals were heard together and they were disposed of by the common judgment dismissing all the appeals.

It is unnecessary for us to narrate the facts of the case in detail as we propose to remit the case back to the High Court in respect of this appellant alone. This is because the other convicted persons have not chosen to challenge the judgment of the High Court. So far as they are concerned the judgment has become final.

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The defence strategy adopted by the appellant in the trial court was that on the date of occurrence he was actually undergoing treatment in a hospital for amoebic hepatitis. The occurrence was at 7.00 p.m. on 15.11.1990. Appellant adopted the defence of alibi that he was admitted in the University General Hospital at Mangla Giri (District Guntur) on 8th November, 1990 where he remained under treatment till 16th December, 1990. In support of the said plea of alibi appellant examined one Doctor K.Satyanarain Rao, Civil Assistant Surgeon of the said hospital as DW.2 and one Victoria Rani who claimed to be the co-patient in the same hospital as DW.3.

The above plea of alibi has not been considered at all by the High court in the appeal filed by the appellant. It is not a case where the High Court was not aware that appellant had taken up the plea of alibi because that fact had been noted by the High Court in the narration of the facts. We do not know why the crucial plea raised by the appellant escaped the discussion and a finding by the final fact finding court. It is difficult for us to consider the correctness of the said plea in this appeal filed under

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Art.136 without the same being considered and a finding being arrived at by the High Court in the first appeal preferred by the appellant as a matter of right under the Code of Criminal Procedure.

We, therefore, set aside the judgment of the High Court in so far as the appellant is concerned and remit the case back to the High Court for disposal of the appeal afresh, after affording a reasonable opportunity to the appellant and the Public Prosecutor for being heard in the matter.

Mr. Ranjit Kumar, learned senior counsel who argued for the appellant requested that High Court may be directed to hear this appeal as expeditiously as possible because the appellant is continuing in jail since the date of his arrest in connection with this case. We permit the counsel for the appellant in the High Court to bring that fact to the notice of the High

Court. We have no manner of doubt that High Court will take urgent steps for early disposal of the appeal.

This appeal is disposed of accordingly.

.SP1

.....J.
(K.T. Thomas)

New Delhi;
December 12, 2000.

.....J.
(R.P.Sethi)