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Crl.A.No. 1000 OF 1998

ITEM No.105 Court No. 8 SECTION II

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. 1000 of 1998

Gudivada VenkatarathnamAppellant (s)

Versus

Public Prosecutor High Court of Andhra Pradesh, HyderabadRespondent (s)

(With office report)

Date : 11-08-2004 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. G.N. Reddy, Adv.]
Ms. Fathima, Adv.
for Mr. D. Mahesh Babu, Adv.

For Respondent (s)Ms. D. Bharathi Reddy, Adv.
Mr. G. Venugopal, Adv.
Mr. B. Vikas, Adv.

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

Heard learned counsel for the parties.

The appeal is dismissed. Bail bonds of the appellant, who is on bail, are cancelled and he i s directed to be taken into custody forthwith.

[Alka Dudeja] [Om Prakash]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1000 OF 1998

Gudivada Venkatarathnam...Appellant (s)

Versus

Public Prosecutor, High Court of Andhra Pradesh, Hyderabad...Respondent(s)

O R D E R

Heard learned counsel for the parties.

Three accused, including the appellant, were tried for the charges under Sections 302 and 498A of the Indian Penal Code [for short 'I.P.C.'] and the Trial Court acquitted all the accused persons of both the charges. On appeal being preferred by the State of Andhra Pradesh, the High Court, while upholding the order of acquittal of accused No. 3, convicted accused No. 2 under Section 498A and sentenced her to imprisonment for the period already undergone and to pay fine of Rs.1,000/-; in default to undergo further imprisonment for a period of three months. So far as accused No. 1 (appellant herein) is concerned, he has been convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-; in default to undergo further imprisonment for three months. He has been further convicted under Section 498A I.P.C. and sentenced to undergo imprisonment for a period of two years and to pay fine of Rs.1,000/-; in default to undergo simple imprisonment for three months. Both the sentences, however, have been ordered to run concurrently. Hence this appeal.

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Learned counsel appearing on behalf of the appellant in support of the appeal firstly submitted that Exhibit P-3 is the dying declaration recorded by Head Constable, P.W.19, in presence of doctor, P.W.10, wherein it was stated that the appellant had poured kerosene oil on his wife and set her on fire but the same was not put to the accused when he was examined under Section 313 of the Code of Criminal Procedure, 1973 [in short 'the Code']. In our view, the High Court was not justified in rejecting the submission by observing that accused has not been prejudice by not putting this circumstance to him when he was being examined under Section 313 of the Code. Therefore, dying declaration, Exhibit P-3, is excluded from consideration. Next circumstance against the accused is oral dying declaration said to have been made by the victim before P.Ws. 1 to 4 and 6. These witnesses have consistently supported the victim's oral dying declaration and no infirmity could be pointed out in their evidence to disbelieve the same on the point of oral dying declaration.

Apart from oral dying declaration, five witnesses, namely, P.Ws. 1 to 4 and 6, examined by the prosecution, claimed to be eye witnesses of the incident. P.W.1 was brother of the deceased; whereas P.W.2 was nobody else but her mother and P.Ws 3, 4 and 6 are independent persons. All these witnesses have supported the prosecution case disclosed in the First Information Report and their evidence in court is consistent with the First Information Report as well as their statements made before the Police. No infirmity could be pointed out in their evidence. Merely because P.Ws 1 and 2 are close relations of the deceased, on this ground alone, their evidence cannot be thrown out as the same has been otherwise found to be trustworthy. So far

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as P.Ws. 3, 4 and 6 are concerned, though no infirmity could be pointed out in their evidence, but it has been submitted that they were neighbours of the deceased and, therefore, deposed in favour of the prosecution. There is nothing to show otherwise to disbelieve their evidence. Moreover, as these witnesses were neighbours, they were natural witnesses and independent persons and their presence cannot be doubted. Further, P.W.5, who was brother of the deceased, stated that when he arrived at the place of occurrence, he had seen that the accused was fleeing away. No infirmity could be pointed out in his evidence as well. Besides ocular version, the prosecution case, has been supported by medical evidence, as the doctor has clearly found that the deceased received 94% burn injuries. In view of the foregoing discussions, we are of the view that prosecution has succeeded in proving its case beyond reasonable doubts and the High Court was quite justified in reversing the order of acquittal, which was perverse. This being the position, we do not find any ground to interfere with the impugned order.

The appeal, accordingly, fails and the same is dismissed. Bail bonds of the appellant, who is on bail, are cancelled and he is directed to be taken into custody forthwith.

.....J.
(B.N. Agrawal)

.....J.

(H.K. Sema)

New Delhi,
August 11, 2004.