

Mannam Balaswamy

Vs

State of Andhra Pradesh

Criminal Appeal No. 260 of 1976

(Syed M. Fazal Ali, P.S. Kailasam, A.D. Koshal JJ)

19.11.1979

JUDGMENT

FAZAL ALI, J. –

1. The appeal by special leave is directed against the judgment of the Andhra Pradesh High Court by which it set aside the acquittal of the appellant under Section 302 and convicted the appellant under the said section to imprisonment for life. The trial Court had Convicted the accused under Section 304 (1) of IPC and sentenced him to 5 years' R.I. on the ground that as the assault on the deceased was caused by the appellant due to sudden and grave provocation his case fell within the ambit of section 304(1) of IPC.
2. We have heard counsel for the parties and have also gone through the judgment of the courts below. According to the prosecution, there was some dispute between the deceased and his father and on the date of occurrence, the appellant was quarreling with his father when the deceased came there and intervened in the struggle and pushed aside the appellant. Thereafter the appellant went into his room and came with a knife and inflicted two stab injuries, one on the chest and the other on the left side of the abdomen of the deceased. As a result of these injuries the deceased died. We are rather surprised how trial Court took the view that the case of the appellant was fully within the purview of section 304(I) of IPC. There was no question of any sudden and grave provocation at all. In fact the appellant tried to assault the innocent intervener in the quarrel between him and his father. Secondly, the act of the appellant was a cruel act and he took undue advantage of the situation because instead of keeping quiet he went to the room and brought a knife in order to cause the death of the deceased who was an innocent intervener. We are, therefore, satisfied that the view taken by the trial Court on the question of law was absolutely wrong and High Court was, therefore, right in setting aside the acquittal of the appellant under Section 302. On the facts proved in the case, in our opinion no other view was possible. We, therefore, affirm the judgment of the High Court and dismiss the appeal.

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