
(1979) 11 SC CK 0007

Supreme Court of India

Case No: Criminal Appeal No. 260 of 1976

Mannam Balaswamy

APPELLANT

Vs

State of Andhra
Pradesh

RESPONDENT

Date of Decision: Nov. 19, 1979

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304(1)

Citation: AIR 1980 SC 448 : (1980) CriLJ 1098 : (1980) 1 SCC 680 : (1980) SCC(Cri) 313 : (1980) 1 SCR 148 : (1980) ShimLC 93 : (1980) 12 UJ 121

Hon'ble Judges: S. Murtaza Fazal Ali, J; P. S. Kailasam, J; A. D. Koshal, J

Bench: Full Bench

Final Decision: dismissed

Judgement

S. Murtaza Fazal Ali, J.

The appeal by special leave is directed against the judgment of the Andhra Pradesh by which it set aside the acquittal of the appellant u/s 302 and convicted the appellant under the said section to imprisonment for life. The trial Court had convicted the accused u/s 304(1) of I.P.C. and sentenced him to 5 years" R.I. on the ground that as the assault to the deceased was caused by the appellants due to sudden and grave provocation his case fell within the ambit of Section 304(1) of I.P.C.

2. We have heard Counsel for the parties and have also gone through the judgement 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 quarrelling 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 the trial Court took the view that the case of the appellant fully within the

preview of Section 304(1) of I.P.C. There was no question of any sudden and grave provocation at all. In fact the appellant tried to assault the innocent intervenor 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 as innocent intervenor. 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 u/s 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.