

A

STATE OF A.P.
v.
P. KHAJA HUSSAIN
(Criminal Appeal No. 1389 of 2004)

B

APRIL 15, 2009
[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

C

PENAL CODE, 1860:

D

s.302 – Death of wife of accused by burn injuries – conviction by trial court on the basis of two dying declarations – High Court noticing variation in the dying declarations and acquitting the accused – Held: There is no explanation as to why the second dying declaration was recorded by police soon after the one recorded by the Magistrate – Variations in the dying declarations are not trivial in nature – Conclusions of High court do not suffer from any infirmity warranting interference – Constitution of India, 1950 – Article 136.

E

The appellant was prosecuted for commission of the offence punishable u/s 302 IPC, on the allegation that he poured kerosene over his wife and set her on fire. The trial court believed the dying declarations and convicted the appellant of the offence charged. On appeal, the High

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Court noticed variations in the two dying declarations and ordered appellant's acquittal.

G

In the instant appeal filed by the State Government, it was contended for the appellant that variations in the two dying declarations were not very significant and the High Court should not have interfered with the findings of the trial court.

Dismissing the appeals, the Court

H

HELD: There is no explanation as to why the second dying declaration was recorded by the Head Constable of Police shortly after the one recorded by the Magistrate. It is not a case where variations between the two dying declarations were trivial in nature. The scenario was described in substantially different manner. The High Court noted that the improvements were made to rationalise with the injuries sustained by the deceased. The conclusion of the High Court do not have any infirmity which warrant interference. [Para 5] [662-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1389 of 2004.

From the Judgment & Order dated 27.8.2003 of the High Court of Andhra Pradesh at Hyderabad in Crl. Appeal No. 1511 of 2001.

D. Bharathi Reddy for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Challenge in this appeal is to the judgment of Division Bench of Andhra Pradesh High Court directing acquittal of the respondent who faced trial for alleged commission of offences punishable under Section 302 of the Indian Penal Code, 1860 (in short IPC). The learned II Additional Sessions Judge, Kurnool had found the accused guilty and sentenced him to undergo imprisonment for life.

2. According to the prosecution version on 2/8/1999 the accused poured kerosene over his wife Pinjari Hussain Bee (hereinafer referred to as the deceased) and set her on fire. The prosecution version primarily restrained on two dying declarations purported to have been recorded by the Magistrate and by a police official. First dying declaration was recorded by the Magistrate on 2/8/1999 on 11.30 a.m. which is Ex. P. 15. Later on another dying declaration Ex. P. 20 was

A recorded by the Head Constable PW.12 after about one hour of the first dying declaration. The High Court noticed that there was variation between the two dying declarations about the manner in which the deceased was set on fire. In fact that the two dying declarations can be reconciled with each other and since no other evidence was available to connect accused with crime the conviction as recorded was held to be not sustainable. Accordingly acquittal was directed.

3. Learned counsel for the appellant – State submitted that the variation between the two dying declarations was not very significant and the High Court should not have discarded the subsequent dying declaration on the ground that it was at variance with the first dying declaration.

4. There is no appearance on behalf of the respondent in spite of service of notice.

5. There is no explanation as to why the second dying declaration was recorded by the Head Constable of Police shortly after such a statement was recorded when the dying declaration have already been recorded by the Magistrate. It is not a case where the variation between the two dying declarations is of trivial in nature. The scenario was described in substantially different manner. The High Court noted that the improvements were made to rationalise with the injuries sustained by the deceased. Conclusions of the High Court do not have any infirmity which warrant any interference.

6. The appeals stands dismissed.

R.P.

Appeals dismissed.