

SANGARABOINA SREENU
v.
STATE OF ANDHRA PRADESH

APRIL 23, 1997

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

Criminal Law :

Penal Code, 1860 :

Ss. 302, 306—Accused charged with murder of his wife—Trial Court convicting him for murder—High Court setting aside the conviction u/s 302 but convicting him under s.306—Held, offence under s.306 cannot be said to be a minor offence in relation to an offence under s.302 IPC as these two offences are of distinct and different categories—Hence conviction under s.306 set aside—Code of Criminal Procedure, S.222.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 182 of 1990.

From the Judgment and Order dated 16.8.89 of the Andhra Pradesh High Court in Crl. No. 382 of 1989.

A. Subba Rao for the Appellant.

G. Prabhakar for the Respondent.

The following Order of the Court was delivered :

The appellant was put up for trial before the Sessions Judge, Warangal for uxoricide. The accusation against him was that on May 15, 1987 at or about 9.30 p.m. he poured kerosene oil on the body of his wife and set her on fire. The trial Court convicted the appellant under Section 302 IPC but in the appeal preferred by him the High Court set aside his above conviction and convicted him under Section 306 IPC. The above judgment of the High Court is under challenge in this appeal.

This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC - which was the only charge framed against him - the High Court could not have convicted him

of the offence under Section 306 IPC. It is true that Section 222 Cr.P.C. entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr.P.C. for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death those of Section 306 IPC are suicidal death and abetment thereof.

For the foregoing reason the appeal is allowed and the conviction of the appellant under Section 306 IPC is set aside. The appellant, who is on bail, is discharged from his bail bonds.

Appeal allowed.