

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No. 552 OF 2015

Between:

Koppula Rama Krishna

... Appellant/Accused

And

State of Telangana,
Rep. by its Public Prosecutor.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 25.07.2024

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE J.SRINIVAS RAO**

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

J.SRINIVAS RAO, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**
AND
THE HONOURABLE SRI JUSTICE J.SRINIVAS RAO

+ CRL.A. No. 552 OF 2015

% Dated 25.07.2024

Koppula Rama Krishna

... Appellant/
Accused

And

\$ State of Telangana,
Rep. by its Public Prosecutor.

... Respondent/
Complainant

! Counsel for the Appellant: Ms.Padmalatha Yadav

^ Counsel for the Respondents: Sri V.Jitender Rao
Additional Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2021) 10 Supreme Court Cases 706

THE HONOURABLE SRI JUSTICE K.SURENDER

AND

THE HONOURABLE SRI JUSTICE J.SRINIVAS RAO

CRIMINAL APPEAL No.552 OF 2015

JUDGMENT: (per The Hon'ble Sri Justice K.SURENDER)

The appellant/accused was convicted by the Additional Sessions Judge, for the offence of murder for throwing his daughter into the well. Aggrieved by the same, present appeal is filed.

2. Heard Ms.Padmalatha Yadav, learned counsel for the appellant and Sri V.Jitender Rao, learned Additional Public Prosecutor for the respondent-State.

3. According to the case of the prosecution, the marriage of the appellant was performed eight years prior to the incident. The appellant was addicted to Alcohol and was beating his wife, for which reason she lodged a complaint with the Police. Thereafter, unable to bear the harassment, she went away and started staying with her parents. On the basis of complaint given by the wife, the accused was sent to jail and later released on bail. The appellant bore grudge against his wife for sending him to jail. One and half

months prior to the incident, the appellant took his deceased daughter to his village without intimating to his wife and in-laws.

4. The case of the prosecution, further, is that on 23.04.2013, he took the girl and threw her in a well in Korakal village with an intention to kill her, since he had grudge towards his wife and in-laws.

5. PW1 is the complainant and father-in-law of the appellant. He lodged a complaint on 24.04.2013 at 7.30 a.m.. According to PW.1, there were differences in between the appellant and his wife and he had forcibly taken the deceased along with him while, his daughter i.e. appellant's wife was staying at his village along with him. On 23.04.2013, around 11.45 p.m., appellant took the girl to the government well at Korakal village and threw her into the well and went away.

6. The said complaint-Ex.P1 was filed on the basis of suspicion that it was the appellant who had thrown the deceased into the well. However, during the course of investigation, the police examined PW.4 and PW10 who were the persons whose houses were located near the well. However, their names were not mentioned in the complaint-Ex.P1. The evidence of PW.4 and PW.10 in the Court is that on the night of 23.04.2013, they saw

that the appellant was carrying the deceased and the deceased was crying. PW.4 brought the deceased and the accused to his house to save her, however, while PW.4 sat there due to leg pain, the appellant took her and threw her into the well and went away. PW.10 also stated that he saw PW.4 talking to appellant and thereafter the appellant threw the deceased in the well.

7. The only evidence to support the prosecution case is that of PW.4 and PW.10.

8. Learned Counsel appearing for the appellant would submit that the names of PW.4 and PW.10 are not mentioned in the complaint. If at all, in the night, if PW.4 and PW.10 had seen the accused throwing the deceased in the well, they would have informed the other villagers. For the said reason, only on the basis of suspicion, complaint was filed by PW.1 and the accused was charge sheeted.

9. On the other hand, learned Additional Public Prosecutor would submit that admittedly, the deceased was taken by the appellant from his in-laws house and both were living together 1 ½ months prior to the incident. It is not the case of the appellant that someone else has thrown the girl into the well and

caused her death. In the said circumstances, the Court below has rightly concluded regarding the complicity of the accused.

10. Having gone through the record, there is no reason as to why PW.4 and PW.10 would speak false against the appellant. They are independent witnesses. Though the names of PW.4 and PW.10 are not mentioned in the complaint, their evidence cannot be rejected only for the said reason.

11. No antimortem injuries were found on the body of the girl. She died due to asphyxia and drowning. According to PW.4 and PW.10 the appellant went near the well, threw her in well and went away from there.

12. It is not the case of the prosecution that the appellant had caused any harm before the girl being thrown in the well or ensured that the girl died after throwing her into the well. The case would fall under Section 304-I of IPC and not 302 of IPC.

13. The Honourable Supreme Court in ***Mohd.Rafiq Alias Kallu v. State of Madhya Pradesh***¹ held as follows;

“Held: The question of whether in a given case, a homicide is murder, punishable under Section 302 IPC or culpable homicide of either description, punishable under Section

¹ (2021) 10 Supreme Court Cases 706

304 IPC, has engaged the attention of courts in India for over one-and-a-half century, since the enactment of the IPC. A welter of case law, on the aforesaid aspect exists, including perhaps several hundred rulings by the Supreme Court. The use of the term “likely” in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines “murder”, however refrains from the use of the term ‘likely’, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. Such difference lies in the degree of the act. There is very wide variance of degree of intention and knowledge among both the crimes.”

14. Following the aforesaid observations of the Honourable Supreme Court that conviction under Section 302 of IPC can only be inflicted if the intent of accused to cause death is of a definitive character. In the present case, the appellant had knowledge that it is likely to cause death if the girl was thrown in the well, accordingly, the conviction under Section 302 of IPC is set aside and appellant is convicted under Section 304 part I of IPC.

15. The appellant is in jail from March, 2015 onwards and since 9 years have passed by, the sentence of imprisonment of the appellant is reduced to the period already undergone. Since the appellant is in jail, he is directed to be released forthwith, if he is not required in any other case.

16. Accordingly, Criminal appeal is partly allowed.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

K.SURENDER, J

J.SRINIVAS RAO, J

Date: 25.07.2024
tk