

A YERUVA SAYIREDDY

v.

THE STATE OF ANDHRA PRADESH & ANR.

(Criminal Appeal No. 233 of 2016)

B MARCH 07, 2022

[VINEET SARAN AND ANIRUDDHA BOSE, JJ.]

- Code of Criminal Procedure, 1973: s. 394 – Abatement of appeals – Appeal against conviction and sentence of death or of imprisonment – Death of appellant/convict during the pendency of the appeal – Amicus curiae, if a near relative of deceased to apply for continuance of appeal – Held: Counsel appearing as an Amicus Curiae, cannot be treated as a near relative of the deceased appellant/convict – On facts, application for continuance of the appeal having not been made within 30 days or even thereafter by any near relative, as per the provision of s. 394, the instant appeal would abate.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 233 of 2016.

- E From the Judgment and Order dated 11.08.2011 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No.1678 of 2007.

Shikhil Suri, Ms. Madhu Suri, Ms. Jyoti Suri, Ms. Nikita Thapar, Ms. Vinishma Kaul, Ms. Komal Gupta, Ms. Mahima Aggarwal, Ms. Nidhi, Advs. for the Appellant.

- F Mahfooz A. Nazki, Polanki Gowtham, Shaik Mohamad Haneef, T. Vijaya Bhaskar Reddy, K. V. Girish Chowdary, Ms. Rajeswari Mukherjee, D. Mahesh Babu, Advs. for the Respondents.

The following Order of the Court was passed :

G **ORDER**

1. The appellant in this case was an accused who was convicted by the Trial Court under Section 302 of the Indian Penal Code, 1860 (IPC) for murder of his daughter-in-law. The sentence was confirmed by the High Court and hence, this appeal has been filed.

2. Admittedly, the appellant has died after being in jail for about 12 years. As per Section 394 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on the death of the appellant/convict the appeal is to abate. The proviso thereof carries an exception to the effect that a near relative may, within thirty days of the death of the appellant/convict, apply to the Appellate Court for leave to continue the appeal. The explanation to the said proviso defines ‘near relative’ to mean a parent, spouse, lineal descendant, brother or sister. In the present case, there is no application for leave to continue the appeal after the death of the appellant/convict.

3. Mr. Shikhil Suri, learned counsel appearing as an Amicus Curiae appointed by this Court on behalf of the deceased appellant/convict has submitted that this is a very good case where there is every chance of the appellant being acquitted and considering the intention of the legislature in providing an appeal not abating even after the death of the appellant/convict, his oral prayer as an Amicus Curiae be considered as an application for continuance of this appeal and appeal be not abated.

4. The appeal is governed by the substantive provision of law. Section 394 of the Cr.P.C. reads as under:

“394. Abatement of appeals. - 1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.”

5. The counsel, as an Amicus, cannot be treated as a near relative of the deceased appellant/convict. The application for continuance of the appeal having not been made within 30 days or even thereafter by any near relative, in our opinion, as per the provision of Section 394 of the Cr.P.C., this appeal would abate. Accordingly, the appeal stands disposed of as having abated.