

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2062 OF 2009
(Arising out of SLP(Crl.) No. 9091/2008)

MUMMIDI DURGAIAH

APPELLANT(S)

:VERSUS:

STATE OF ANDHRA PRADESH

RESPONDENT(S)

O R D E R

Leave granted.

We have heard the learned counsel for the parties and perused the impugned judgment and other documents.

The allegation against the appellant is that he was spreading rumours that PW-6 (Kapu Usha) was having illicit intimacy with one painter and at the time of commission of the crime, he also instigated the main accused for commission of the crime.

It may be pertinent to mention that three other co-accused A-2, A-3 and A-6 had also filed a separate special leave petition and this Court after granting leave, in Criminal Appeal No. 359/2007, converted their conviction from Section 302 I.P.C. to one under Section

304 Part-II of the I.P.C. and they were sentenced to eight years' imprisonment. In the facts and circumstances of this case, we are of the considered view that the appellant also deserves the same treatment.

Admittedly, the appellant was not having any arm at the time of the incident. Looking to the role of the appellant, in our considered view, the ends of justice would be met if his conviction is converted from Section 302/149 I.P.C. to one under Section 304 Part-II read with Section 149 I.P.C.

Accordingly the conviction of the appellant under Section 302 I.P.C. is set aside and the appellant is convicted under Section 304 Part II read with Section 149 I.P.C. and sentenced to undergo imprisonment for a period of eight years.

The appeal is partly allowed and disposed of accordingly.

.....J
(DALVEER BHANDARI)

.....J
(DR. MUKUNDKAM SHARMA)

New Delhi;
November 9, 2009.