



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100219 OF 2023 (C)

BETWEEN:

BALAPPA S/O GOVINDAPPA
AGE: 49 YEARS, OCC: HAMALI,
R/O: 2ND WARD SANGAPUR,
TQ: GANGAVATI, DIST: KOPPAL.

...APPELLANT

(BY SRI. S.S. YADRAMI, SENIOR COUNSEL FOR
SRI. GIRISH V. BHAT, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY GANGAVATI RURAL POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH 580011.

...RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP.)

THIS CRIMINAL APPEAL IS FILED U/SEC. 374(2) OF CR.P.C.
PRAYING TO, CALL FOR THE RECORDS AND SET ASIDE THE
JUDGMENT AND ORDER OF CONVICTION DATED 02.07.2022, AND
SENTENCE DATED 05.07.2022 PASSED BY IST ADDL. DISTRICT AND
SESSIONS JUDGE, KOPPAL (SITTING AT GANGAVATI) IN SC NO.
03/2016 FOR THE OFFENCE P/U/SEC. 448 AND 302 OF IPC AND
ACQUIT HIM OF ALL THE CHRGES LEVELED, IN THE INTEREST OF
JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

Digitally signed by
VISHAL
NINGAPPA
PATTIHAL
Location: HIGH
COURT OF
KARNATAKA
Date: 2024.12.10
12:50:50 +0530



CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, the accused has challenged the judgment dated 02.07.2022 passed in S.C.No.3/2016 by the I Addl. District and Sessions Judge, Koppal sitting at Gangavathi (for short, 'Trial Court').

2. The accused faced trial for the offence punishable under Sections 448 and 302 of IPC. By the impugned judgment, the Trial Court held that the accused found guilty of the charged offences, convicted and sentenced him to undergo imprisonment for a period of one year and pay a fine of Rs.1,000/- in default to undergo simple imprisonment for the offence punishable under Section 448 of IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.10,000/- in default, simple imprisonment for a period of six months for the offence punishable under Section 302 of IPC.



3. Brief facts of the case of the prosecution that the complainant/victim Sujata was a widow, coolie by profession and residing along with her son PW-9/Bhargavram at Sangapur village. The accused was residing in the neighbouring house of the victim. On 27.07.2015 at 2.00 a.m., while the victim and her son were sleeping inside their house, accused knocked the door of their house. The victim waked up, opened the door and the accused pushed the door and came inside the house. He persisted and insisted her to have intercourse with him. She refused for the said demand and she shouted at him. For the refusal by the victim, with an intention to cause her murder, accused took kerosene can kept inside the house and doused on her body and set her ablaze. Due to which, she sustained burn injuries. On arrival of neighbours, accused ran away from the spot and she was shifted to Government Hospital, Gangavathi and then to KIMS Hospital, Hubballi but the treatment was failed and she succumbed to the injuries on 01.08.2015 at 8.30 a.m. When the victim was in the



hospital, the police visited the Government Hospital, Gangavathi and recorded her statement as per Ex.P-15 and set the law into motion by registering FIR. On the request of the Investigating Officer, the Taluka Executive Magistrate, Gangavathi visited the Government Hospital, Gangavathi on 27.07.2015 and recorded dying declaration of the victim as per Ex.P-17. After investigation, the charge sheet was laid against the accused. Accused pleaded not guilty of the offences punishable under Sections 448 and 302 of IPC.

4. During the trial, prosecution examined 22 witnesses as PW-1 to PW-22 and got marked 32 documents as per Exs.P-1 to P-32. M.Os. 1 to 4 were the material objects marked by the prosecution. The accused did not lead any defence evidence and Exs.D-1 and D-2 are the documents marked on behalf of the defence.

5. After examination of the accused, on hearing both sides and on appreciation of the material evidence, the Trial Court has recorded conviction recording the



reason that the dying declaration is supported by the evidence of other witnesses and also supported by the eyewitness that the accused was the person who doused kerosene and put the victim to ablaze and accordingly sentence was passed as referred supra. Aggrieved by the same, the accused is before this Court.

6. We have heard the arguments of Sri Girish V. Bhat, learned counsel for appellant and Sri M.B. Gundawade, learned Addl. SPP for the respondent-State.

7. Learned counsel for appellant has contended that there is inconsistency in the dying declaration. The evidence of child witness is not inspiring the confidence. There are no eyewitnesses to the incident and so called witnesses who rushed to the spot have turned hostile and not supported the prosecution and there is no recovery at the instance of the accused. Omissions and contradictions have been elicited in the evidence of prosecution. There is inconsistency in the evidence of the witnesses regarding shifting of the deceased to hospital and the Trial Court did



not consider the omissions and contradictions as there are two views are possible, one is beneficial to the accused. Trial Court ought to have extended the benefit of doubt in favour of the accused and he argued for the acquittal.

8. *Per contra*, learned Addl. SPP has contended that the accused and the victim are the neighbours and the victim was a widow living with her minor son. At 2.00 a.m. in the early hours of the day of 27.07.2015, the accused had no reason to knock the door of the house of the victim. He ventured inside the house forcefully and demanded the victim to give consent for sexual intercourse. When she shouted and refused such demand, accused took kerosene can kept inside the victim's house, doused on her body, lit the fire and escaped from the spot. It has been witnessed by the minor child who supported the case of the prosecution and also the accused fleeing away from the house of the victim has been witnessed by PW-2 and PW-15. Though PW-2 turned hostile, PW-15 supported the case of the prosecution. The



cause of death has been explained and the accused was the person solely responsible for causing burn injuries to the victim. The prosecution has placed the qualitative evidence which has been rightly accepted by the Trial Court and order of conviction and sentence is proper and he argued in support of the impugned judgment.

9. We have perused the entire evidence and also the statement of the accused recorded under Section 313 of Cr.P.C. Whatever incriminating circumstances that have been put to the mouth of the accused were denied and no explanation is offered for such circumstances. Accused has also not led any defence evidence. As we noticed from the material on record, that on 27.07.2015, the victim was brought to the Government Hospital, Gangavathi with a history of burn injuries. Gangavathi Police have been informed and in the presence of Medical Officer, Ex.P-15 statement of the victim was recorded at 3.30 a.m. on 27.07.2015. Again at about 8.30 a.m. on 27.07.2015, the Executive Magistrate of Gangavathi



visited the Government Hospital, Gangavathi and recorded the statement of the victim after obtaining the certificate from the Medical Officer that the victim is in a fit condition to give statement and accordingly she gave the statement in the presence of Medical Officer who was treating her.

10. Much has been argued by the counsel for appellant relying on Ex.P-11 the inpatient record of the Government Hospital, Gangavathi that the victim was brought to the hospital by 108 ambulance wherein witnesses have given statement that the victim was shifted in TATA Ace vehicle which is found in 161 statement of the son of the victim. Such argument cannot be supported with as the said statement has not been brought before the Court in the form of evidence. What has been marked in the statement of the minor son of the victim is Ex.D-2 with reference to the time of alleged incident i.e., 2.00 a.m. in the early morning. Even Ex.D-1 is marked through him with reference to the accused



entering into the house of the accused and was quarreling with her demanding her to sleep with him.

11. It is not disputed that the victim was brought to the Government Hospital, Gangavathi and then shifted to KIMS Hospital, Hubballi. There may be a small variation as to the transportation of the victim to the Government Hospital, Gangavathi in 108 ambulance and also shifting her to KIMS Hospital.

12. We have carefully scrutinized the testimony of PW-11 Dr.Juber Ahmed whose testimony explains that at 3.10 a.m. on 27.07.2015, the victim was brought to the Government Hospital, Gangavathi with burn injuries, she was admitted and treated and MLC intimation as per Ex.P-13 was sent to the Rural Police Station of Gangavathi. His testimony also points out the visit of Rural Police of Gangavathi asking him to confirm fitness of the victim to give the statement under requisition as per Ex.P-14. As victim was in a sound state of mind, fit to give statement, he endorsed on Ex.P-14. The police recorded the



statement of the victim as per Ex.P-15. According to him, the victim had sustained 87-90% burn injuries. Her mouth and lips were not burnt and she was in a sound state of mind to give the statement to the police. His cross-examination brought out nothing and nothing is elicited that who brought the victim to the hospital rather his cross-examination brought out that the police station is just 5 minutes walk from the hospital and for this reason the police rushed to the hospital immediately.

13. PW-13 Dr.Sujata is the Medical Officer of Government Hospital, Gangavathi. On 27.07.2015 at 8.15 a.m. to 8.20 a.m., the Executive Magistrate of Gangavathi approached her that he wants to record dying declaration of the victim was good asked about her fitness for giving statement. As the physical and mental condition of the victim was good, she certified that the victim is fit to give statement. The learned Executive Magistrate, in her presence, questioned the victim and recorded her statement as per Ex.P-17 and the victim fixed her right



thumb impression on the said statement as it was not burnt. Her cross-examination brought out nothing in support of the defence.

14. The evidence of PW-11 and PW-13 clearly points out that the victim was treated at Government Hospital, Gangavathi for the burn injuries and in their presence, the police as well as Executive Magistrate have recorded the statement of the victim.

15. We have carefully analyzed the evidence of PW-12 Dr.Sunil Kumar, Medical Officer, KIMS Hospital, Hubballi. His testimony goes to show that on 01.08.2015 between 4.00 to 5.00 p.m., he has conducted autopsy on the body of the victim as per Ex.P-16 and issued Ex.P-16 postmortem report. According to him, the victim had sustained 90% to 95% burns and she died on account of septicemia as a result of burn injuries. In his cross-examination defence tried to elicit that the person who sustains 90% to 95% burns will not be in a position to give any statement but PW-12 asserted that even if the



person with 90% to 95% burn injuries he or she provided treatment, they will be able to give statement. So PW-12 stands in support of PW-11 and PW-13. The cross-examination did not dispute that the deceased was not sustained any burn injuries nor she died on account of said injuries. Thus, there is no secondary hypothesis that the deceased died other than the burn injuries. Hence, the opinion of the Medical Officer and report of the postmortem examination clearly points out that the deceased died on account of burn injuries and therefore we persuaded to accept that the deceased succumbed to homicidal death.

16. The star witness to the prosecution case is PW9/Bhargavram the son of the victim. He has been testified before the Trial Court. Learned Presiding Officer has verified the capacity of the victim to give his statement. The child witness stated that he is studying in 7th standard and to a question posed to him that whether truth to be said or lie in the Court, he answered truth to be



said and he explained his residence with his mother after the death of his father. So evidence of PW-9 is very relevant to the case.

17. We have carefully analyzed his testimony with reference to defence cross-examination. On analyzing the evidence of these witnesses, it is noticed that at about 2.00 a.m. on the date of incident, he and his mother were sleeping inside the house, at 12.00 to 1.00 a.m. he heard knocking of the door, his mother went and opened the door. The accused came inside the house and asked his mother to come and sleep with him, his mother refused to sleep with him and accused threatened that if she did not sleep with him he will finish off her. His mother raised hue and cry and at that time the accused poured kerosene on the body of his mother and lit fire. By hearing hue and cry, PW-3 Hanumanthappa, PW-15 Nagamma, PW-4 Mansoor rushed to their house. They tried to rescue his mother from the accused but the accused threatened them that he will pour kerosene on them also and ran away



from the spot. His mother sustained burn injuries. PW-2 also came to their house and took their mother to the Government Hospital, Gangavathi thereafter to KIMS. His mother died on account of burn injuries and he identified plastic can at M.O.1 in which kerosene was kept in his house and M.O.4 match box which was kept in their house. Defence cross-examination elicited the arrival of PW-3, PW-4 and PW-15 to the house of the victim, after hearing hue and cry of his mother and others were not present. The prosecution has relied on the evidence of these witnesses and PW-2 Krishna, brother-in-law of the victim did not support and he turned hostile so also PW-3 Hanumanthappa and PW-4 Mansoor. Even ignoring their evidence, the prosecution is banking on the evidence of PW-15 Nagamma.

18. We have carefully perused the evidence of Nagamma with reference to the defence cross-examination. Her evidence clearly points out that after the death of her husband, the victim and PW-9 were



residing in their house and accused being visiting the house of the victim and insisting for the relationship with her which was not accepted by the victim. On the date of incident between 1.00 to 2.00 a.m., she heard hue and cry from the house of the victim, along with her husband PW-3 she rushed to the spot and went near the house of the victim. People from that line also rushed to the house of the victim. She went near the house of the victim. As the house was locked from inside, they knocked the door. At that time, PW-9 came and opened the lock, they found the presence of accused as well as victim was suffering from burn injuries. They were informed that the accused was insisting the victim to sleep with him and on refusal, quarrel took place, accused doused kerosene on her and lit the fire. The accused ran away from the house after seeing the arrival of the neighbours and with the assistance of others the victim was shifted to the hospital. The cross-examination brought out that the accused has lent a loan of Rs.25,000/- to the victim. Except this, nothing is brought out to doubt the veracity of PW-15. She



resides in a house near to the house victim. She heard the hue and cry of the victim, she went near her the house and found the presence of accused and also burn injuries sustained by the victim.

19. The defence argument that the victim was sleeping out side the house along with son wherein incident said to have taken place inside the house that too when PW-15 went near the house of the victim, door was locked, it was PW-9 who opened the door. The same was not stated in the dying declaration marked at Exs.P-15 and P-17. Such manner of argument will not go to the root of the evidence as the accused was present when the victim sustained burn injuries. Person who was accompanying the victim was a minor boy aged 9 years. The cross-examination did not bring any reason for the victim to sustain burn injuries. In the absence of bringing any secondary hypothesis, it is the accused who required to explain that at an odd hour his presence in the house of victim being a widow was sleeping with her minor son.



20. The important aspect which stood in support of the prosecution is Ex.P-32 FSL report. The evidence clearly points out that the Medical Officer has perused Ex.P-32 before issuing final opinion regarding the cause of death. On perusal of the said report, it is pertinent to note that the presence of kerosene in the plastic container and also saree and blouse of the victim which confirms the cause of death was on account of kerosene. When the accused was present in the house of the victim, where he was not expected at 2.00 a.m. in the early morning and in his presence victim sustained burn injuries is required to be explained by him. We do not find any explanation either in cross-examination or in the course of his examination under Section 313 of Cr.P.C. The evidence of PW-9 and PW-15 is qualitative and inspires confidence of the Court which points out towards the accused and accused alone.

21. In the absence of secondary hypothesis being demonstrated, we carefully perused the judgment of the Trial Court. The Trial Judge has rightly appreciated the



evidence of all relevant witnesses and observed that the victim sustained homicidal death, she sustained burns in the hands of the accused and the presence of accused in the house of the victim at 2.00 a.m. has not been explained. There is no explanation why the neighbours falsely implicate the accused if there is no ill-will between them. Nothing brought out about the interestedness of PW-15 or ill-will. Hence, we do not find any error or any illegality in the judgment of the Trial Court in appreciating the prosecution evidence and holding that the ingredients of the offence is explained and there are no reasons to interfere with the well reasoned judgment of the Trial Court.

22. The accused is charged with offence punishable under Sections 448 and 302 of IPC. As we noticed from the evidence on record that the accused was found inside the house of the victim and evidence clearly explains that he ventured inside the house without the permission of the



victim. Hence, the ingredients of Section 448 of IPC can be inferred.

23. As regarding the ingredients of offence under Section 302 of IPC, the prosecution is required to explain the motive and intention of the accused to commit murder of the victim but no motive is elicited. At 2.00 a.m., the accused visited the house of the victim, on opening the door, he ventured inside the house, insisted the victim to have sexual intercourse with him, the victim refused to entertain the said request, a quarrel took place between the accused and victim, for the reason not giving consent, accused in a fit of anger, doused kerosene on the body of the victim and lit fire. Consequent to the burn injuries, caused death of the victim. Hence, the conduct and act of the accused falls within Explanation (iv) of Section 300 of IPC. Hence, the ingredient of offence under Section 302 of IPC is not made out but the ingredient of offence under Section 304 Part-I of IPC is made out. Hence, the order of conviction under Section 448 of IPC though needs



confirmation the order of conviction under Section 302 of IPC needs modification. Accused is to be convicted for the offence under Section 304 Part-I of IPC instead of under Section 302 of IPC. Accordingly, the order of conviction and also sentence needs modification. In the result, we pass the following:

ORDER

- (i) Appeal is allowed in part;
- (ii) The impugned judgment convicting the accused and imposing sentence for the offence punishable under Section 448 of IPC is confirmed;
- (iii) Accused is convicted for the offence punishable under Section 304 Part-I instead of 302 of IPC;
- (iv) Order of sentence imposed against the accused for the offence punishable under Section 302 of IPC is modified and accused is sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-. In default to pay the fine, he shall further undergo imprisonment for a period of six months;



- (v) Both the sentences shall run concurrently;
- (vi) The accused is entitled to set off under Section 428 of Cr.P.C. for the period already undergone.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE

NAA
LIST NO.: 1 SL NO.: 59