



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

CRIMINAL APPEAL NO. 2150 OF 2017 (A)

BETWEEN:

STATE OF KARNATAKA BY
CIRCLE INSPECTOR OF POLICE,
BELATHANGADY CIRCLE,
(BELTHANGDY POLICE STATION)
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADVOCATE)

AND:

ANTONY M.P. @ TOMY,
AGED ABOUT 46 YEARS,
S/O LATE VARKY,
R/AT MULANGOTHTRA HOUSE,
NERIYA VILLAGE,
GANDIBAGILU POST,
BELTHANGADY TALUK - 574 214.

...RESPONDENT

(BY SRI. RAKSHITH KUMAR., ADVOCATE)

THIS CRIMINAL APPEAL IS FILED U/S. 378(1) AND (3) CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT AND ORDER OF ACQUITTAL DATED 19.06.2017 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.103/2015 IN ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 4989A) AND 302 OF IPC.

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THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 10.09.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **UMESH M. ADIGA J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This is an appeal by the State against judgment dated 19.06.2017 passed in Sessions Case No.103/2015 the learned III Additional District and Sessions Judge, Dakshina Kannada, Mangaluru (for short, `trial Court').

2. It was the case of the prosecution that accused was husband of deceased Mary. From their wedlock they had three sons i.e. PWs-1 to 3. Accused was residing in his house at the Neriya village of Belthangady taluk. Deceased Mary was residing with one of her sons i.e. PW-2 – George at Moodabidri. She was visiting the house of the accused during festivals and family functions and staying



in his house for few days and thereafter return to Moodabidri. She was working as a coolie at Moodabidri.

3. It is further case of the prosecution that on the eve of Christmas during December 24th 2014, she came to her husband's house and was staying in his house. On 29th December, 2014, after attending reception ceremony accused returned home around 2.00 p.m. There was a quarrel between accused and deceased Mary; during altercation, he flared up and with an intention to kill her, tried to assault her with a sickle. His wife raised her hands to protect herself and sickle hit against her left wrist and caused cut injuries. In the meanwhile, PW.1 and 2 rescued her and snatched the sickle from the accused. Thereafter, accused went inside the kitchen, brought kerosene can (M.O.1) poured the kerosene on his wife and lit fire, as a result of which, she sustained burn injuries to an extent of 70% to 80%. PWs-1 and 2 extinguished fire and took her to Father Muller hospital at Mangaluru for treatment. She was admitted to the hospital. It appears



that PW-1 informed the facts to the neighbors and sought their help.

4. It is the further case of the prosecution that the concerned police got information about the incident from the hospital. They went to Father Muller hospital and recorded the statement of PW-1, as per Ex-P1 and on that basis registered a case in Crime No.479/2014 under Sections 498A and 307 of IPC. While undergoing treatment, injured gave statement about the incident and she died on 03.01.2015 around 1.45 am. The said fact was intimated to the Police. The case was investigated by the Police and laid charge sheet against the accused for the offences punishable under Sections 498A and 307 of IPC before the jurisdictional Magistrate Court.

5. The learned Magistrate committed the case to court of Sessions for trial. The III Additional Sessions Judge, Dakshina Kannada, Mangaluru, held trial. The accused pleaded not guilty and claimed to be tried.



6. The prosecution, to prove its case examined PWs-1 to PW30 and got marked documents at Exs.P1 to P31 and material objects at M.Os-1 to 9. Thereafter, the learned trial Judge examined the accused under Section 313 of Cr.P.C. The accused did not lead any defense evidence.

7. On perusal of the evidence, the defense of the accused was total denial and he also contended that on 29.12.2014 deceased Mary herself poured kerosene on her and lit fire with an intention to commit suicide. While recording the statement of accused under section 313 of Cr.P.C., he stated that he was not present at home at the time of incident.

8. Learned Sessions Judge after hearing the arguments of both sides and on appreciating the evidence available on record, by impugned judgment dated 19.06.2017 acquitted the accused for the said offences.

9. We have heard the arguments.



10. The learned Additional State Public Prosecutor vehemently contended that the death of deceased Mary was caused due to burn injuries, is not in dispute. The relationship between accused and deceased is also not in dispute. PWs-1 to 3, who are the material witnesses have turned hostile. The statement of PWs-1 and 2 was recorded by the police. It supports the case of the prosecution and there were no reasons to discard their previous statement recorded by the learned Magistrate under Section 164 of Cr.P.C. To prove the same, learned Magistrate was also examined. The deceased had given statement before the Investigating Officer regarding the incident in the presence of Medical Officer and PW-15. It was supported by the evidence of PWs-5 and 26. Nothing was brought out in the cross-examination of the said witnesses to discard the same. Even in the cross-examination of Investigating Officer, nothing was brought out by the accused to show that he was falsely implicated by the police out of enmity. Victim died after two days from the date of incident.



11. The learned Additional SPP further submitted that the Investigating Officer tried to record the statement of deceased through Taluk Executive Magistrate and requisition was sent to him; however, the learned Taluk Executive Magistrate did not record the same on the guise of pressure of work. Due to negligence of the concerned officer, the case of prosecution cannot be thrown out of Court. A poor lady died due to the cruel act of her husband. The Post Mortem report reveals that the cut injuries found on the dead body was due to assault by a sharp edged weapon. PW-16 agreed that it was not a suicidal death; someone must have poured kerosene on her and lit her on fire. If she herself had done that then there would be chances of complete burning of hair and severe injuries to the body. But there were no such severe injuries on the head. All these circumstances show that it was not an attempt to commit suicide by the deceased. In the cross-examination of PW-16, nothing was brought out to show that it was a suicidal death. In view of these reasons, the prosecution had proved its case beyond



reasonable doubt. But the learned trial Judge did not appreciate the evidence properly and erroneously acquitted the accused. With these reasons prayed to reverse the said findings.

12. The learned counsel for respondent – accused filed written arguments in addition to the oral arguments. The learned counsel for respondent submits that no eye witnesses were examined by the prosecution to prove the guilt of accused. The learned Sessions Judge in the impugned judgment discussed in detail the evidence of witnesses and held that PWs.1 to 3 were not the eye witnesses to the incident. There are no reasons to hold that the said finding of the trial court is incorrect. According to the contention of the accused, it was an suicidal attempt by deceased herself. For the reasons best known to her, she herself poured kerosene and lit fire. This fact was stated by PWs.1 and 2 in their evidence. The other facts and circumstances also corroborate with the said facts.



13. The learned counsel for respondent further submits that recording of the statement of the injured is under Section 161 of Cr.P.C. and it cannot be considered as evidence. Moreover there are no sufficient materials to show that dying declaration was voluntarily given with conscious mind; it is replica of Ex.P-1 complaint. The dying declaration has to be recorded by the Taluk Executive Magistrate. But in this case, it was recorded by the Investigating Officer. It is not supported by the certificate of doctor that at that time deceased was mentally fit to give such statement. There are serious lapses while recording the said statement. Therefore, the said evidence is not believable.

14. The learned counsel for respondent further submits that in the evidence of PW-16 - doctor stated his opinion on the basis of injuries. He was not an eye-witness. Hence, it was his presumption or assumption. Therefore, whatever he has stated in the evidence is not reliable. Otherwise he cannot determine as to whether it



was a suicidal death or homicidal death. Evidence of other witnesses are not material in this case. In view of these reasons, there is no legal evidence to reverse the findings of the trial Court. He also relied on some of the judgments and stated that the learned trial Judge considered the facts and circumstances in detail and came to a right conclusion and said findings does not call for any interference by this Court.

15. The learned advocate for respondent further submitted that to reverse the acquittal judgment, prosecution has to demonstrate that the appreciation of evidence is perverse and material evidence were not properly appreciated. If two views are possible then views expressed by the trial Court has to be accepted. In this case, there is no possibility of two views. For these reasons, prayed for dismissing the appeal.

16. From the above facts, following questions arise for our determination:



- i. Whether the learned trial Judge erred in holding that accused was not responsible for burn injuries sustained by deceased Mary, and it was caused by deceased herself?*
- ii. Whether finding of trial Court is perverse and interference is required?*

Our answer to the above questions are in the affirmative for the following reasons:

16. Most of the facts of the case are not in serious dispute. It is not in dispute that incident had taken place on 29.12.2014 in the house of accused around 2.00 p.m. It is also not in dispute that deceased Mary sustained burn injuries and succumbed to the same on 03.01.2015 while undergoing treatment. It is also not in dispute that kerosene was used to cause such injuries.

17. PW-16 – Dr. Varun Pai conducted autopsy on the dead body on 03.01.2015 and gave report as per Ex.P-10. In Ex.P-10 it is mentioned that deceased has incised wound with sharp margins measuring 4cm x 0.5 cm x muscle depth seen on the outer aspect of the left forearm



2xcm from the elbow. It is also stated that "all the said injuries mentioned in the post mortem report are antermortem in nature". PW.16 also answered some of the queries of the Investigating Officer in his reply as well as in Ex.P-10, which are as under:

Queries by the I.O in the form No.146(II)

1. *What is the blood group of the deceased?*

Ans: The blood group of the deceased is A positive as per the hospital records.

2. *Can the injury of the left forearm(ref: external injury No.1 as mentioned in the post mortem report) be caused by a sharp weapon? can it be caused by burns or any other means?*

Ans: The external injury No.1 as mentioned in the post mortem report, can be caused only by an impact with a sharp weapon. The said injury cannot be caused by burns or any other means.

18. In the column of opinion regarding cause of death, PW-16 has stated as under:

OPINION TO CAUSE OF DEATH



Death is due to septicaemia consequent upon 70 to 80 percent burns sustained.

The injury No.1 mentioned in Post Mortem can be caused by the MO-4 now shown to me. If any person intend to commit suicide by way of setting fire on the body, then he or she will pour the kerosene on the head and injury will be on the head only and the entire hair in the head and face will be burned. I have noticed only minor injuries on the dead body of deceased and the hair and face has not been burnt. If any adults set fire on the legs it will cause minor injuries on the face due to flame. According to my opinion somebody has poured Kerosene on her and set fire. Therefore it is not the case of suicide.

19. In the cross-examination of PW-16, the above said facts are not controverted. Nothing was brought out in his cross-examination to show that the views expressed by PW-16 regarding the burns sustained by deceased are incorrect. The said view expressed by PW-16 during evidence is unrebutted except denial. In Ex.P-10 also PW-16 mentioned all these facts in detail. The above said opinion are given by PW-16 though not conclusive but



could be considered since there are no materials to disbelieve the said opinion.

20. The next material evidence connecting the accused with the guilt is Ex.P-9 dying declaration.

It was recorded on 29.12.2014 between 10.00 p.m to 11.00 p.m., in Father Muller hospital at Mangaluru. In the said statement, she had narrated the facts of the case. According to the said statement, her husband came home from the reception function and started to quarrel with her. He assaulted her with sickle; before he could repeat, her sons intervened and stopped hitting her further by the sickle. Thereafter, accused went inside the kitchen and brought a can containing kerosene and poured on her and lit fire. She raised hue and cry and thereafter both her sons poured water on her to extinguish fire and rescued her. She was shifted to hospital. She repeatedly stated that "her husband with an intention to kill her put kerosene and lit fire". She died within two days after giving said statement.



21. PW-29 is the Investigating Officer. In his evidence, he stated that after registering the FIR, he went to the hospital to record the statement of the victim. He gave requisition to the medical officer in this regard. After taking opinion of doctor, in his presence, with the help of PW-25 - PSI- Madhav Kudlu, he recorded the statement of victim as per Ex.P-9. PW-29 further stated that victim gave statement in Malayalam. PSI - Madhav Kudlu knew Kannada and Malayalam. He translated the statement given by victim in Kannada language and it was reduced into writing by PW-26. He also stated that he gave requisition to Taluk Executive Magistrate as per Ex.P-30 to record the statements of victim since she had sustained severe burn injuries. However, the Taluk Executive Magistrate did not record the statement due to pressure of his office work. In the cross-examination of PW-29, nothing was brought out to disbelieve the said investigation made by PW-29 regarding the recording of statement of deceased Mary. Mere denial of the said



statement are not sufficient to discard the evidence given by PW-29.

22. PW-15 was the duty medical officer at the time of recording the dying declaration of deceased Mary. In his evidence, he stated that as per the request of police, he was present while recording the statement of victim. He clinically examined the victim and found that she was fit to give statement. The concerned Investigating Officer enquired the victim and she was giving the statement in Malayalam language. The PSI - Madhav translated it to Kannada and at his dictation, the police constable wrote statement of victim. In his cross-examination, he stated that when victim was brought to the hospital, her mental condition was sound and stable. He could understand what the lady was telling but he could not reproduce the same. He also denied the suggestions that he was unable to understand the statement given by the victim. As per the evidence of PW-15, the injured victim was mentally



sound and capable of giving statement before the Investigating Officer.

23. PW-25 was Sub-Inspector of police of Belthangady police station. In his evidence, he stated that on 29.12.2014 as requested by PW-29, he went to Father Muller hospital. One Mary was admitted as in-patient. Medical Officer was present. PW-29 enquired victim and she was giving statement in Malayalam. He translated the same into Kannada language; as per his dictation, police constable wrote the said statement. The said statement was recorded between 10.00 p.m. to 11.00 p.m. The said statement was read over to the victim in the presence of the medical officer. The victim sustained burn injuries on her hands and cut injuries on left hand due to assault with the sickle. Therefore, she was unable to sign on Ex.P-9. In his cross-examination, he denied suggestion that the victim was not in a condition to give the statement. In the thorough cross-examination, nothing was brought out to disbelieve or discard his



evidence. He denied the suggestion that Ex.P-1 - complaint was reproduced in Ex.P-9.

24. PW-26 – Sandeep S, the police constable who wrote Ex.P9 corroborated the evidence of PW-25, PW-29 and 15. Evidence of PWs-29, 15, 25 and 26 fully supports the case of the prosecution regarding recording of statement of the victim. There are no materials to show that at the time of giving the said statement she was unconscious or semi-conscious or she was unable to understand what she was stating before the police. No such suggestions were made to PW-15 in his cross examination. It was not brought out in the evidence of PWs-1 to 3, or brother and sisters of accused and deceased who were examined as witnesses to show that deceased had any enmity against the accused to falsely implicate him in this case.

25. The learned counsel for accused submits that Ex.P-9 is a statement of witness recorded under Section 161 of Cr.P.C and it cannot be considered as substantial



evidence to convict the accused. The said contention is not tenable.

26. Section 32 of the Indian Evidence Act 1872 deals with dying declaration. it reads as under:

Section 32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases.-

(1) When it relates to cause of death- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.

Example : 1(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished.

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.



27. If we peruse Ex.P-9, it is the statement given by victim regarding cause for burn injuries sustained by her. She died within 2 days from the date of incident. Hence, said statement has to be considered as dying declaration under Section 32 of the Indian Evidence Act. If she had survived during the trial then Ex.P-9 would remain as statement under Section 161 of Cr.P.C and the said statement could not be considered as evidence as it is hit by Section 162 of Cr.P.C.

28. There are no reasons to disbelieve Ex.P-9. It also does not appear that to falsely implicate her husband and to take revenge against him she gave such a statement to police. In the cross-examination of the Investigating Officers, no suggestions was given stating that at the instance of someone, police created Ex.P-9 to falsely implicate him. The learned trial Judge completely ignored Ex.P-9 on the ground that it was not recorded by Executive Magistrate. The said reason is not tenable. Law does not prescribe any format to record such statement



and as to who should record the same. PW-29 issued a requisition to Tahsildar as per Ex.30 on 30.12.2014 i.e. after recording of Ex.P9. According to evidence of PW-29, the learned Executive Magistrate did not record the statement of deceased Mary on the ground of pressure of office work. PW-29 made his efforts to record the statement of victim by the Executive Magistrate but the Executive Magistrate carelessly not recorded the same. Hence, it was not the fault of the Investigating Officers. Normally dying declaration would be recorded through Executive Magistrate for the reasons that, if it is recorded by independent person, it is more reliable. Reposing trust on him, such a responsible work is entrusted to Executive Magistrate. However, the Executive Magistrate in this case failed to do said responsible task on the ground that he had no time and due to pressure of office work. The law mandates that it should be recorded at the earliest without wastage of time. Unfortunately, the Executive Magistrate neglected his responsibility in recording such statement and allowed material evidence to disappear.



Even he failed to persuade his superior officer to make some arrangements to record statement of the victim, who is expecting her death. It is nothing but dereliction of duty. It is high time the Government shall take serious note of the same and frame the guidelines in respect of recording the statement of the victim of a crime, who is expecting death. Any default to record the same may help the accused to get acquittal easily.

In the present case, the incident had taken place inside the house, where presence of other persons is difficult. The sons of accused as well as deceased did not support the case of the prosecution, but it appears they did not support the case of prosecution may be with an intention to save accused from conviction by the Court. If Executive Magistrate had recorded the statement of the victim, then it could have strengthened the evidence of the prosecution.

29. Merely for the reasons that the Executive Magistrate did not comply the request of the police, that



does not mean that the case of prosecution should be discarded or disbelieved. The accused contends that Ex.P9 was not proved and it was recorded by an incompetent person. Prior to recording the statement of victim, PW-29 had issued notice to PW-15 as per Ex.P28, enquiring about the mental and physical condition of the victim and her capacity to give the statement. On Ex.P28, PW-15 made an endorsement that "she is fit to give the statement." The said fact was not denied in the cross-examination of PW-15 or PW-29. Prosecution is able to prove that Ex.P9 was the statement given by victim about incident and the manner in which the incident had taken place. It helps the prosecution to prove its case. PW-29 had taken all measures while recording of dying declaration. If it was not recorded by the Executive Magistrate, said statement cannot be doubted. Hence, said contention of defense is not acceptable.



30. The Hon'ble Supreme Court of India in the case of **Gopal -vs- State of Karnataka**¹ held that, dying declaration recorded by police could be accepted without corroboration of its trustworthiness.

ii) The Hon'ble Supreme Court of India in the case of **Rajendra vs. State of Karnataka**² held that:

" The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction."

(iii) The Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh vs. Ram Sagar Yadav and others**³ held that:

" It is well-settled that, as a matter of law, a dying declaration can be acted upon without corroboration. (See Khushal Rao v. State of Bombay⁴; Harbans Singh V. State of Punjab⁵; Gopalsingh vs. State of

¹ (2011) 14 SCC 396

² 2024 SCC Online SC 941

³ (1985) 1 SCC 552

⁴ 1958 SCR 552; AIR 1958 SC 22.1958 CrL LJ 106

⁵ 1962 Supp 1 SCR 104; AIR 1962 SC 439; (1962) 1 CrL LJ479



M.P.⁶) . There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the court may, for its assurance, look for corroboration to the dying declaration".

The law laid down in the above judgments are aptly applicable to the facts of the present case.

In the judgments of Hon'ble Apex Court in ***Rajendra vs. State of Karnataka*** and ***State of Uttar Pradesh vs. Ram Sagar Yadav and others (referred supra)***, it is held that, if the dying declaration is reliable and there are no suspicious circumstances surrounding the dying declaration then it could be accepted without corroboration. In the present case, as already discussed in the above paragraphs, there was no enmity between the deceased and the accused and as they were husband and wife, the false implication is ruled out. Immediately after the incident, she was taken to hospital and admitted

⁶ (1972) SCC 268: 1972 SCC (Cri) 513:1972 Cri LJ 1045



as in-patient. Anybody did not contact or tutored her. The medical evidence says that she was conscious and fit to give the statement. She survived for two days after giving dying declaration. All these circumstances, conclusively prove that Ex.P9 was the statement given by her voluntarily without intervention of others and not out of enmity to falsely implicate accused. Hence, it is believable and no corroboration is required looking to the facts of the present case.

31. The next question is whether prosecution is able to show that the deceased was subjected to ill-treatment by accused. As already stated above, the evidence of PWs-1 and 2 is not of much help to the case of prosecution. PW-3 is the elder son of accused and deceased. In his evidence he says that "when all of them were residing together, his father was ill-treating and cruelly treating his mother and harassing her mentally and physically. On 29.12.2014, his brother Sebastian (PW-1) telephoned him and told that his father assaulted on his



mother with sickle thereafter poured kerosene on her and lit fire. His mother sustained burn injuries and they took her to Father Muller Hospital. He came to Mangaluru and met his mother and enquired with her. She told the manner in which incident had taken place to him. PW-3 got information of incident both from PW-1 and the victim. PW-3 is the competent witness to depose these facts.

32. PW-4 is elder brother of accused and in his evidence he stated that "accused was ill treating deceased Mary. On 29.12.2014, PW-1 telephoned and narrated him facts of the case. According to PW-4, he got information from PW-1 that the accused, with an intention to murder the deceased, assaulted her with a sickle, thereafter poured kerosene on her and lit fire and caused burn injuries.

33. PW-5 initially turned hostile to the case of the prosecution. However, in the cross-examination by the prosecution, he admitted that on 29.12.2014 around 2.15 p.m. he got information from PW-1 that accused had



poured kerosene on Mary and lit fire. They were not cross-examined by learned counsel for the accused.

34. PW-6 is also a hearsay witness, who came to know from his wife that accused poured kerosene on Mary and lit fire. Similarly, PW-7 is also a hearsay witness. According to him he came to know that accused poured kerosene on his wife and lit fire. Evidence of above said witnesses are relevant in this case since PW-1, who shared the information has turned hostile. It is not the defence of accused that PW-3, PW-4, PW-5, PW-6 and PW-7 had any enmity in this regard against him and they were not cross examined. Hence, the said evidence was not denied. If they had not heard the said information from PW-1 there was no need for them to give evidence before the court that PW-1 told them that accused poured kerosene on his wife and lit fire. The said evidence is corroborated by dying declaration of the deceased.

35. PWs-1 and 2 are the sons of accused as well as deceased. PW1 is the complainant and he is said to have



witnessed the incident as per Ex.P9. PWs-1 and 2 had seen the incident, they were present at the time of the incident. Both of them have not deposed in their evidence that they were present and witnessed the incident. They have given statement to police and PW-1 has given statement before the Magistrate Court supporting the case of prosecution. The submission of the learned Addl. SPP, that with an intention to save accused he has not deposed true facts before the court cannot be ruled out. PWs-1 and 2 were said to have given statement before Magistrate as per Ex.P3 and P5 since they turned hostile, prosecution examined learned Magistrate as PW-22. During evidence, PW-22 stated that he recorded the statements of both the witnesses under Section 164 of Cr.P.C in his chamber. Except Court staff and PW-1 and 2 nobody else was present. He examined both the witnesses and recorded the statements. Both of them stated before the Magistrate that more or less they had seen the incident. They have stated that at the time of incident they were in the kitchen and when her mother raised hue and cry they came out of



the kitchen and found that their father had poured kerosene and lit fire to her. During trial PWs-1 and 2 tried to make out a case that they gave statement before the learned Magistrate as per Ex.P3 and 5 at the instigation of police. The said contention is not believable. Any prudent person can infer that to save their father PW1 and 2 have not deposed truth before court during evidence.

36. Section 164 statement recorded by the Magistrate under Section 164 of Cr.P.C cannot be so lightly discarded on the ground that said witnesses have turned hostile before the Court during trial. The Hon'ble Supreme Court in the case of ***Vijaya Singh and another vs. State of Uttarakhand***⁷ held that:

" Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility

⁷ Crl.A.No.122 of 2013 dated 25.11.2024



is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence, Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.

Para 31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below.



In view of the above said reasons, statement given by PWs-3 and 4 before Magistrate under Section 164 of Cr.P.C is believable.

37. On plain reading of Ex.P-1 any prudent man could infer that such particulars could be given by an eye witness. Undisputedly incident had taken place inside the house of accused and hence outsiders cannot see the same. According to PWs-1 and 2, both of them including accused were not inside the house and were working in garden. Accused or PWs-1 and 2 have not explained about cut injury at the left hand wrist of deceased by sickle. The explanation given by accused that his wife attempted to commit suicide by pouring kerosene on herself and lit fire is not probable due to not explaining the reasons for taking such extreme steps by the deceased. Moreover by the evidence of PW-16 such possibilities are ruled out. As discussed above, accused was cruelly treating her on trivial issues. All these facts undoubtedly prove that accused was responsible for her death.



38. The Investigating Officers in their evidence have stated in detail the manner in which they have investigated. The learned trial Judge discussed the evidence of Investigating Officer in detail. In their cross examination, nothing was brought out to discard their evidence or brought out any material lapses in the investigation that creates doubt in the case of prosecution.

39. On re-appreciating the evidence of other witnesses discussed above, whenever accused was consuming liquor, he used to quarrel with his wife on trivial issues. It is alleged that on the date of incident, accused had attended marriage reception party and after returning home quarrel started. In the background of the said allegation, it appears accused might have consumed liquor at the function and after returning home started to quarrel. During altercation with deceased he might have flared up and tried to assault her with sickle and when his sons and wife snatched sickle he brought kerosene from kitchen and poured on her and lit fire. From these facts



one can infer that accused lost control over himself due to anger and committed the incident. He might not have intended to kill her or cause such a bodily injury which may lead to her death. Therefore, the crime committed by the accused would not amount to murder, it amounts to culpable homicide not amounting to murder and punishable under Section 304 of IPC and it comes under the exception No.1 of Section 300 of I.P.C which reads as under:

*" Exception 1.— **When culpable homicide is not murder.**— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:—

(First)— That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly)— That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."



40. The learned counsel for the respondent relied on the following judgments;

- i) State of Gujarat Vs. Jayrajbhai Punjabhai varu; Supreme Court (Criminal Appeal 1236/2010).
- ii) Basavaraj S/o Kempuguddayya @ Annayya Vs. The State of Karnataka in Crl.A.No.100089/2014
- iii) Fayaz Ahammad Vs. State of Karnataka in Crl.A.No.2609/2013 dated 08.02.2017.

The facts of that cases are different from the facts of the present case. In this case, the incident had taken place inside the house of the accused. The accused or PWs-1 to 2 have not explained the reason for depression of deceased to commit suicide. PW-1 appears to be the eye witness and narrated the facts of the incident to other witnesses and police by giving first information and deposed the same before the Court, while recording statement under Section 164 Cr.PC. The deceased gave statement before the Police officer in the presence of the Medical officer and they have supported the case of the prosecution. It appears at that point of time, she might



not had any idea that she would die. After two days from giving of the statement, she succumbed to the burn injuries. There are strong evidence in the present case in favour of the prosecution to prove the guilt of the accused. Therefore, the law laid down in the said judgments is not applicable to the facts of the present case.

41. The learned trial Judge relied on the evidence of PWs.1, PW-2, PW-22 and opined that PW-1 and 2 are not eye witnesses to the incident. The said view is incorrect. Ex.P-1 was given within the short period from the time of incident i.e. within 5 to 6 hours, in the hospital. PW-1 stated that he and his younger brother as well as his parents were inside the house at the time of the incident. He also stated that accused once assaulted the deceased with sickle and caused cut injuries near left wrist. He and his brother snatched the said sickle, thereafter, the accused went to the kitchen and brought kerosene, poured over her and lit fire. The statements of PWs-1 and 2 was recorded by PW-22 under Section 164 of Cr.P.C.



The said statement also reveal that they were inside the house and witnessed the incident. Ex.P9 also reveals that PWs-1 and 2 were in the house and tried to rescue her. These facts were not properly appreciated by the trial Court. The accused is the father of PWs.1 and 2. Both the sons were residing with him. It is the case of prosecution that to save their father from conviction, both of them turned hostile and not supported the case of prosecution. The said contention of prosecution cannot be ruled out. Looking to facts and circumstances of present case, the evidence of such witnesses are not reliable. The learned trial Judge erroneously believed these evidence and discarded other materials produced before the Court, which is erroneous and perverse findings.

42. The learned trial Judge has much commented on Ex.P-9 and the evidence of PW-15. The learned trial Judge disbelieved Ex.P-9 on the basis of evidence of PW-15 and also on the ground that it was not recorded by Executive Magistrate. In this regard we have discussed in



above paragraphs and no need to repeat the same. PW-15 was examined to prove the fitness of victim to give statement since victim sustained burn injuries. He has not played role of translator. If he was not understanding Malayalam, in which language victim had given statement cannot be ground to disbelieve evidence of PW-15. PW-15 was called upon to reveal the status of victim and her fitness to give statement to the police. Other facts are immaterial to him. At the cost of repetition PW-15 has stated that victim was physically and mentally fit to give statement and he certified accordingly in the requisition letter and in his presence her statement was recorded by the Police. The said evidence is reliable. The trial Court without considering the same disbThe said finding is erroneous.

43. PW-29, PW-25, PW-26 have stated the manner in which they recorded the statement of the deceased. PW-25 was specially called to the hospital to translate statement given by the victim in Malayalam Language. It



is pertinent to note that PW-1 was said to be eye witness and deceased was victim. Hence facts narrated by PW-1 in EX.P-1 and victim in Ex.P-9 might be similar, that do not create any doubt in the case of prosecution. More over PW-1 did not support EX.P-1 and according to him police prepared statement and obtained his signature. If his evidence is accepted then police must have got information about the incident from victim as per Ex.P-9 that would further strengthen the case of prosecution. Endorsement in Ex.P-1 shows that it was recorded in the hospital which appears to be probable. Therefore, merely the Ex.P1 and P9 are more or less similar cannot be a ground to discard or disbelieve Ex.P-9.

44. PW-29 in his evidence has stated that he made a request to Tahsildar to record the dying declaration of the victim. However, Tahsildar did not record the same due to pressure of work. He cannot give any other explanation as to why Tahsildar did not record statement of victim. There is no question of delay in recording the



statement of the deceased since the Tahsildar did not record the statement of the victim at all. Therefore, the said reasons noted by the learned trial Judge for acquitting the accused is also not tenable.

45. Looking to the burn injuries mentioned in Ex.P-10 as well as evidence of PW-16 it does not appear that they were suicidal injuries. On the contrary, they were homicidal injuries. Normally, if a person trying to pour kerosene on himself and set him on ablaze in that circumstances, most of the injuries could be at both side of the body. As rightly stated by the expert witness i.e. PW-16, in that circumstances, injuries could be possible on the head, face etc. In this case, most of the injuries found on chest, abdomen and all over the body except scalp, entire back of the chest and abdomen and the pelvic area. It appears since the victim was sitting on the ground at the time of the alleged incident, there were no burn injuries to the other parts. It appears that accused splashed the kerosene from front side and lit fire. Hence,



most of the injuries were found on the front portion of the body. These circumstances also indicates that it is homicide injuries caused by the accused. These facts were not properly appreciated by the learned trial Judge.

46. The learned trial judge accepted the evidence given by PWs-1 to 3. It is worth to note that PWs-1 to 3 are none other then sons of accused as well as victim. If they give real evidence then there would be fair chances of conviction of the accused. It appears to save the accused from conviction they might not have given true facts before the court. On that basis the accused cannot be acquitted. The learned trial Judge has not considered the same. Therefore the findings of the trial Judge is perverse, arbitrary and interference by this court is required.

47. We are aware that while reversing the judgment of acquittal, the appellate court has to take proper care and caution. If the trial court has committed any grave error, then only appellate court can interfere in



such findings of acquittal. If two views are possible, then, the view taken by the trial court or the view which is favourable to the accused, is to be accepted. In this case, as discussed above, only one view is probable and that is accused committed the offence. Appreciation of evidence by the trial court as erroneous. The reasons assigned by the trial court to acquit the accused are not in accordance with law. The Hon'ble Apex Court time and again held that in appropriate cases where injustice or miscarriage of justice appears to have occurred to the victims, or the findings of the trial judges is against the provision of law and perverse, the appellate court shall interfere and reverse the said findings of acquittal.

48. In the case of **Guru Dutt Pathak –vs- State of Uttar Pradesh⁸**, the Hon'ble Apex Court has held that:

"Each and every ground on which trial court acquitted accused was elaborately dealt with by High Court. On reappreciation of entire evidence on record, High Court specifically concluded that findings recorded by trial court were perverse. Therefore, High Court was right in interfering with judgment and order of acquittal passed by trial court and convicting accused under Ss. 302/34

⁸ (2021) 6 SCC 116



IPC. No interference with impugned judgment and order passed by High Court is warranted herein. Hence, conviction of accused under Ss. 302/34 IPC, stands confirmed".

In the case of ***Siju Kurian –vs- State of Karnataka***⁹, it is held that (we quote):

"16. It need not be restated that it would be open for the High Court to re-appraise the evidence and conclusions drawn by the Trial Court and in the case of the judgment of the trial court being perverse that is contrary to the evidence on record, then in such circumstances the High Court would be justified in interfering with the findings of the Trial Court and/or reversing the finding of the Trial Court. In Gamini Bala Koteswara Rao v. State of Andhra Pradesh, (2009) 10 SCC 636, it has been held by this Court as under:

"14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr.Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

17. The Appellate court may reverse the order of acquittal in the exercise of its powers and there is no indication in the Code of any limitation or restriction having placed on the High Court in exercise of its power as an Appellate court. No distinction can be drawn as regards the power of the High Court in dealing with an appeal, between an appeal from an order of acquittal and an appeal from a conviction. The Code of Criminal Procedure does not place any fetter on exercise

⁹ 2023 SCC Online SC 429



of the power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed.

18. In the case of Sheo Swarup v. King Emperor, AIR 1934 PC 227, the Privy Council held as under:

"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:

a) The views/opinion of the trial judge as to the credibility of the witnesses;

b) The presumption of innocence in favour of the accused;

c) The right of the accused to the benefit of any doubt; and

d) The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

49. In the case of **Chandrappa and others –vs- State of Karnataka**¹⁰ reiterated the legal position as under:

'42.... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

¹⁰ (2007) 4 SCC 415; (2007) 2 SCC (Cri) 325



(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

The principle of law laid down in the above said judgments is applicable to the facts of the present case. We have kept in mind the law laid down in this regard before reversing the judgment.

50. For the above said discussions, we pass the following:



ORDER

The appeal is ***allowed in part.***

The impugned judgment passed by the III Additional District and Sessions Judge, D.K., Mangaluru in Sessions Case No.103/2015 dated 19.06.2017 is reversed.

The accused is convicted of the charges punishable under Sections 498A and 304 Part-II IPC.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

AG



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[STATE OF KARNATAKA BY VS. ANTONY M P @ TOMY]

07.01.2025

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL ORDER ON IA NO.1/2025

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

Heard the learned counsel for appellant and learned
Additional SPP.

Accused voluntarily appeared before the Court and
when enquired with the accused, he submits that he is
aged about 55 years and he is coolie and earning meager
income. He is suffering from heart ailment. He was in
custody for more than 2½ years. He is poor. Therefore, he
prays to take lenient view, while imposing sentence.

The learned counsel appearing for the accused-
respondent also submits that looking to the social
economic and educational background of the respondent –



accused, lenient view may be taken while imposing sentence.

The learned Addl. SPP submits that maximum permissible sentence may be imposed on the accused.

The accused is convicted of the charges punishable under Section 498A and 304 Part-II of IPC. Considering the submission of the respondent-accused, lenient view needs to be taken while imposing the sentence. Lenient view does not mean that sentence shall be nominal. Therefore, to strike balance between both, the following sentences are imposed:-

- i) The accused is sentenced to undergo rigorous imprisonment for a period of four years and pay a fine of Rs.5,000/-, in default of payment of fine, he shall undergo further imprisonment for a period of three months for the offence punishable under Section 304 Part-II of IPC.
- ii) The accused is sentenced to undergo imprisonment for a period of six months and shall pay fine of Rs.2,000/-, in default of



payment of fine, he shall undergo imprisonment for a period of one month for the offence punishable under Section 498A of IPC.

iii) The substantial sentence of imprisonment shall run concurrently.

iv) The period of detention undergone by the accused during investigation and trial shall be set off, as provided under Section 428 of Cr.P.C.

vi) Copy of the Judgment shall be served on the accused for free of cost.

The learned counsel for the respondent-accused submitted an application under Section 389 of Cr.P.C. to suspend the sentence. Since this Court has sentenced the accused with imprisonment for a period of 4 years, under Section 389(3) of Cr.P.C., this Court cannot suspend the sentence of imprisonment. In view of the said reason, the application filed under Section 389(3) of Cr.P.C. is rejected.

Sri.Balakrishna, ASI, Dharmasthal Police Station is present before the Principal Bench and he is directed to



take the accused to the custody and commit him to prison.

Registrar Judicial is directed to issue conviction
warrant.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

HMB
List No.: 19 Sl No.: 1