



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CRIMINAL APPEAL No. 480 OF 2019

BETWEEN:

KUMARA,
S/O LATE RAMAIAH,
AGED ABOUT 40 YEARS,
R/O SANTHEKEREHALLI VILLAGE,
SINGATAGERE HOBLI,
KADUR TALUK-577548.

...APPELLANT

(BY SRI N.R. KRISHNAPPA, ADVOCATE)

AND:

STATE OF KARNATAKA,
BY KADUR POLICE,
REP. BY SPL. PP
HIGH COURT BUILDING,
BANGALORE-560001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF
CONVICTION AND SENTENCE DATED 20.04.2018, PASSED BY
THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



CHIKKAMAGALURU IN S.C.NO.12/2017, CONVICTING THE APPELLANT FOR THE OFFENCE P/U/S 302 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is preferred by the accused in SC No.12/2017 on the file of II Additional District & Sessions Judge, Chikkamagaluru convicting the accused for the offence under Section 302 of IPC and sentencing him for life imprisonment besides fine of Rs.10,000/- with default imprisonment for six months.

2. The prosecution case is that, on 17.10.2016 at about 6.00 p.m., the accused caused the death of his wife Chandramma by assaulting her with a chopper. The accused was suspecting the fidelity of his wife and this was the motive projected for the incident to take place. Report



about the incident was given by PW1- the brother of the deceased as per Ex.P1. Investigation resulted in accused being charge sheeted and tried.

3. Out of 24 witnesses examined by the prosecution, the material witnesses are PWs.1, 3, 4, 5, 6 and 7. The trial court believed the testimony of the sole eye witness - PW5 and also referred to the incidental aspects deposed by PWs.3, 4, 6 and 7 besides considering the seizure of a chopper under mahazar marked Ex.P13 to record conviction against the accused.

4. We have heard the arguments of Sri N.R.Krishnappa, learned counsel for the appellant and Sri Vijayakumar Majage, learned SPP-II for the respondent-State.

5. It is the argument of Sri N.R.Krishnappa, learned counsel for the appellant that as per the version given by PW1 in Ex.P1, there was a quarrel between the accused and the deceased on 17.10.2016. This clearly indicates



that in the course of quarrel, the accused might have assaulted his wife in a state of anger as he was suspecting the character of his wife and was also unhappy about the conduct of his wife in going to her maternal house very frequently. His further argument is that the sole testimony of PW5 cannot be believed, because he was a child witness and in that view, it was necessary that his evidence would have been corroborated by other witnesses. If the evidence had been properly appreciated, it would have been possible to hold that the offence that would get established is one punishable under Section 304 of IPC. Therefore conviction for 302 IPC is to be set aside and the sentence reduced to one under Section 304 of IPC.

6. Sri Vijay Kumar Majage, learned SPP-II submits that the sole testimony of PW5 cannot be discarded. He was inside the house when the incident took place. There are no traces of tutoring in his evidence. Added to this, evidence of PWs.4, 6 and 7 is relevant to some extent in



the sense that they all saw the accused leaving the house immediately after the incident took place. All these witnesses saw the dead body very soon after the incident. In this view, the case of the prosecution would get established. He further argues that there was recovery of chopper, MO6, at the instance of the accused. No case under Section 304 of IPC is made out because as per the prosecution case, no quarrel had taken place at the time when the incident broke out. The deceased was cooking food. The accused came from outside, closed the door and resorted to assaulting her with a chopper. All these instances would clearly establish his clear intention to cause the death of his wife and therefore conviction for the offence under Section 302 IPC is to be sustained.

7. We have perused the entire records. Re-assessment of evidence gives the picture like this : PW1 is the brother of deceased. He was not an eye witness and all that can be gathered from his evidence is that at about 7 a.m. on 17.10.2016 he received a telephone call from



his brother Prasannakumar-PW3 and came to know that his sister Chandramma had been killed by the accused. He went to the Mc.Gann Hospital, Shivamogga and saw the injuries that the deceased had sustained. After the death of the deceased, he went to police station and gave a complaint as per Ex.P1.

8. PW3 - Prasanna Kumar is the brother of the deceased. His evidence shows that relationship between the accused and his sister was good till the accused became addicted to liquor. He has stated that the accused started suspecting the fidelity of his sister and therefore used to assault her always and in this regard there had taken place a panchayat. With regard to the incident, his evidence is that at about 6.30 p.m. on 17.10.2016, he had been to Kadur Hospital as his daughter was ill and at that time he saw four persons viz., Gangakka, Ashokanna, Devarajanna and Shivamma, who brought his sister to Kadur hospital. He saw injuries on her head, neck, cheeks back of ears and back of the head. The injuries appeared



to have been inflicted with a weapon. On the advice of the doctors at Kadur hospital, the deceased was taken to Mc.Gann Hospital, Shivamogga, where she died on the next day. He was a witness to the inquest drawn as per Ex.P.10. His evidence is that he came to know that the accused attacked his sister in a drunken condition and also came to know that at the time of incident. Ganesh-PW5 was inside the house and another son of the deceased viz., Darshan had been to milk dairy.

9. PW5, the sole witness has stated that on 17.10.2016, his father inflicted injuries to his mother with a chopper (machete). Then the time was 6.30 p.m. Seeing this incident he came out of the house screaming loudly. His further evidence is that when this incident took place, his mother was cooking food. The father i.e., the accused had sent his brother Darshan to a shop. Hearing his yelling voice, immediately Chaithra, Shivamma, Gangakka, Ashokanna and Devarajanna came to that place and they all took his mother to the hospital in an



ambulance. He has stated that his mother died because of the injuries inflicted by his father. PW4 - Darshan has stated that on 17.10.2016, his mother had gone out of the house in connection with her work and in the evening at about 6.00 p.m. when she was cooking food, he and his brother i.e., PW5 were watching television. He has stated that his father sent him to a shop and then his father locked the door from inside and caused the death of his mother by assaulting with a chopper. He has stated that by the time he returned to the house, he saw his father throwing away the chopper and going away from that place. He saw his brother coming out of his house screaming loudly. Then he went inside the house and saw his mother being injured severely.

10. PW6 Chaitra is the sister of the accused. Her house was situate nearby the house of the accused. Her evidence shows that his brother used to quarrel with this wife, if the latter would speak to somebody else. He was also quarrelling with her in a drunken condition. Her



specific evidence is that about ten months prior to 17.10.2016 at about 6.30 p.m. she heard the screaming voice of PW5. Hearing this, she and Gangakka came out of the house. They saw Ganesh - PW5 opening the door of his house; he was unable to speak. He made a gesture with his hands and asked her to come near the house. They all went near the house of the accused and at that time they saw accused coming out of the house. When they went inside the house, they saw the deceased having fallen down on the floor with bleeding injuries. By that time Devaraja and Ashoka also came to that place. Thereafter they all shifted the deceased to hospital. PW7 has almost corroborated the testimony of PW6.

11. Ex.P24 is the post-mortem report testified by PW17. Before dissecting the dead body, he noticed presence of 16 injuries, many injuries on the back of the neck and some abrasions on the back. He gave opinion that those injuries were possible to occur if MO6 - chopper was used for assaulting. PW18 is another doctor, who



examined the deceased for the first time at Kadur hospital on 17.10.2016. His evidence shows that some villagers had brought the deceased for treatment to the hospital and gave the history that she had been assaulted. He gave first aid and referred the patient to the Mc. Gann Hopsital, Shivamogga.

12. The accused was arrested on 19.10.2016. The other police officers have deposed about the investigation part.

13. If the entire testimony is assessed, an inference may be drawn that the involvement of the accused in the commission of crime is forthcoming from the testimony of PW5, the son of the accused and the deceased. He has not been discredited in the cross examination. Though an effort was made to elicit from him that the accused was unhappy with the conduct of the deceased as she was going to her parental home very frequently, he denied that suggestion. He also denied the suggestion that deceased was addicted to liquor. Same type of suggestions were



given to other prominent witnesses also. Though PW4 has stated that his mother had attempted to commit suicide, that answer does not probabalize the prosecution case. The testimony of PW5 that his father sent his brother Darshan-PW4 to a shop finds corroboration from the testimony of PW4 itself. PW4 is not an eye witness, but he saw his father running away from his house when he returned from the shop. PW6 is the sister of the accused, she too implicates the accused. She was not an eye witness, but she heard the shouting voice of PW5 and rushed to the place of incident. She saw the accused running away from the house. Her testimony is not discredited in the cross-examination. PW7 has corroborated the testimony of PW6 and he too has not been impeached in the cross examination. Just because PW1 has stated in Ex.P.1, the report made to the police for registration of FIR that on the date of incident, the accused and the deceased have quarreled, it does not indicate that at the time when the incident occurred, there was a quarrel between the accused and the deceased, and



it gave rise to a provocation to the accused to lose control over himself and assaulted his wife. Such inference cannot be drawn. As has been testified by PW4 and PW5, the deceased was cooking food and there was no quarrel between the deceased and the accused at that time. The accused came to the house, closed the door, took a chopper and started assaulting his wife. These circumstances and numerous injuries noticed by the doctor, who conducted post-mortem examination are sufficient enough to draw conclusion that accused had clear intention to cause the death of his wife with a chopper. Though there is evidence that the accused threw away the chopper in the house itself, the investigating officer has come up with a version that the chopper MO6 was seized on the disclosure made by the accused in his voluntary statement. This may be a minor discrepancy which does not shake the prosecution case. What is important is the testimony of PW5. So we do not find any mitigating circumstances. The trial court has discussed the evidence in detail. We do not find any good ground to



interfere with the reasoned judgment of the trial court.
Therefore the conviction is justified. Appeal is devoid of
merits and it is dismissed.

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

**Sd/-
(K. V. ARAVIND)
JUDGE**

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List No.: 1 SI No.: 27