



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 2297 OF 2018

Between:

Devaraju
S/o Late Eraiah,
Aged about 48 years,
R/at Lower Primary School,
Doddabyadarahalli,
Hoovina Beedi, II Cross,
Pandavapura, Pandavapura Taluk,
Mandya District - 571426.

...Appellant

(By Sri Pratheep K.C., Advocate)

And:

State of Karnataka
By Pandavapura Police Station,
Rep By Public Prosecutor,
High Court Complex,
Bengaluru-560 001.

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

This Criminal Appeal is filed u/s.374(2) Cr.P.C praying to set aside the judgment and order of conviction and sentence dated 04.09.2018 passed by the III Additional District and Sessions Judge, Mandya (sitting at Srirangapattana) in S.C.No.5006/2017- convicting the appellant/accused for the offence p/u/s 498A and 302 of IPC.

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Location: HIGH
COURT OF
KARNATAKA



This Criminal 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 by the accused who has stood convicted and sentenced for the offences under Sections 498A and 302 of IPC.

2. The accused is the husband of the deceased namely Rajamma, their marriage having taken place about 20 years prior to 31.1.2016, the date of incident. PW3-Shalini is their daughter. They had a son, but he died when he was a child of 3 ½ years old. It is alleged that the accused was addicted to liquor, and wanted to contract second marriage to beget a male child. Therefore in this regard there used to take place quarrels between them very often. It is alleged that the accused was harassing his wife physically and mentally. On 29.1.2016,



deceased went to Pandavapura police station and made a complaint against the accused being unable to bear the torture. Her relatives advised the accused not to harass like that. The accused having thought that his wife maligned his reputation in front of her relatives and keeping in mind the enmity against her due to frequent quarrels, again got into altercation with her at 5.00 p.m on 31.1.2016, poured kerosene on her and set her ablaze. She succumbed to injuries in the hospital at 6.45 p.m. on 1.2.2016. The deceased made a dying declaration as per Ex.P14 in between 3.20 and 3.45 p.m on 1.2.2016. Based on this, FIR was registered in the first instance for the offences under Sections 307 and 498A of IPC. After her death, the offence under Section 302 of IPC was invoked in the FIR in the place of Section 307 of IPC. He faced trial for these two offences.

3. The prosecution examined 17 witnesses to establish its case. Exhibits P1 to P27 are the documents and MOs 1 to 13 are the material objects marked during



trial. For convicting the accused, the trial court has recorded reasons that the dying declaration as per Ex.P14 is fully believable. The doctor examined as PW14 certified that deceased was in a fit condition to give statement before the Tahsildar-PW13 to record the dying declaration. In the dying declaration it is clearly stated that her husband poured kerosene and lit fire to her. She has given the reason for that incident to take place. In addition the evidence of PW-3, the daughter clearly shows that the accused was harassing the deceased in drunken state. She has also stated that the accused was suspecting the fidelity of her mother. She was very much present when the accused set fire to the deceased. There are no reasons to discard her testimony. The defence has made an attempt that she spoke against her father deliberately as the latter did not provide her with a smart phone. The defence cannot be accepted at all. PW4 is the mother and PW5 is the brother of the deceased. Though they were not present at the time of incident, their evidence as regards ill-treatment by the accused to the



deceased cannot be discarded. Their evidence finds support from PW10, PW11 and PW12. In this view the prosecution has been able to prove its case beyond reasonable doubt.

4. Assailing the findings recorded by the trial court, Sri K.C.Pratheep, learned counsel for the accused, argued that the dying declaration should not have been acted upon by the trial court in as much as by the time statement was recorded, the close relatives of the deceased were very much present in the hospital and they might have influenced her to make a statement against the accused. He argued that this inference is possible to be drawn because when the deceased was admitted to hospital soon after the incident on 31.1.2016, the doctor sent an MLC note to the police as per Ex.P20 in which the history is clearly written as attempt to commit suicide. This history was given by PW3. Of course the accused also gave the history that his wife caught fire due to stove burst. Whatever may be the history given by the accused,



one thing becomes clear that the history recorded in Ex.P20 leads to doubt the veracity in Ex.P14. Another reason to disbelieve Ex.P14 is that the death occurred at 6.45 p.m on 1.2.2016. She did not live long after giving dying declaration. This indicates that her health condition was deteriorating. The doctor-PW14 has clearly admitted that the health condition of the deceased was not mentioned in the case sheet at the time when the declaration was recorded and she was deteriorating physically and mentally. PW10 has stated that when he went to the hospital deceased was not able to speak. In this view of the matter it is highly impossible that deceased was able to give a statement as per Ex.P14.

4.1. Sri Pratheep put forth another point of argument that as soon as MLC was forwarded to the police as per Ex.P20, an FIR should have been registered as it was the first information about a cognizable offence having taken place. PW3 has stated that on 1.2.2016, the police recorded a statement at 2.00 p.m. This statement is not



forthcoming and if she had given a statement, FIR could have been registered based on it. Instead Ex.P14 was based to register FIR. By that time there was a gathering of the close relatives of the deceased and for this reason there were chances that they might have given a distorted version to the police for registration of FIR against the accused. There is no explanation for delay in registration of FIR and this itself is enough to reject the entire prosecution case.

4.2. The third point of argument of Sri K.C.Pratheep was that the motive projected by the prosecution cannot be accepted at all. The main allegation is that the accused wanted to marry again to beget a male child. This cannot be believed because his son died at the age of 3 ½ years. If really he wanted to have a male child and the deceased was an obstruction for the second marriage, he would not have waited for twenty long years, either he would have married or taken a decision to eliminate his wife from his way some time long back. If he was still insisting for the



second marriage, it is something highly impossible to be believed and therefore the motive is weak. The accused might be taking liquor and there might have taken place some quarrels between the couples. The deceased had lodged a complaint against the accused about two days before the incident occurred and the accused was summoned to the police station. While returning from police station, he brought chicken and asked his wife to cook it. The police have mentioned in the spot mahazar that they found chicken in the kitchen. If this is seen, it is not possible to arrive at a conclusion that the accused had an intention to kill her. These are all the circumstances that stare at the prosecution case to make it not believable. The trial court has ignored all these vital aspects of the matter. There is no proof beyond reasonable doubt and therefore appeal deserves to be allowed.

5. Sri Vijaykumar Majage, learned SPP-II, argued that complaint as per Ex.P6 was made by the deceased



against the accused two days before the incident. In that complaint it is clearly narrated the way in which deceased was being ill-treated. There is an allegation that the accused had illicit relationship with another woman. It is also written that the accused had put a threat to the deceased that he would kill her in case she went to police station. Intention to kill her becomes writ large from Ex.P6. In this view, the contents of dying declaration cannot be disbelieved. The doctor has clearly endorsed that the deceased was able to speak and in a fit condition to make statement. It is only after this certification the Tahsildar recorded the dying declaration. There was no reason for the deceased to unnecessarily implicate the accused. The trial court has rightly appreciated the evidence and therefore appeal deserves to be dismissed.

6. We have considered the points of arguments. At the outset it may be stated that the trial court appears to have ignored certain vital evidence while appreciating evidence. It is true that a greater weight is attached to



the dying declaration on the assumption that a person anticipating death does not lie. But whenever absolute reliance is to be placed on the dying declaration, all other attending circumstances must appear to be free from suspicion.

7. In this case, PW3 is the main witness. In her examination-in-chief she has stated that her father was suspecting her mother's fidelity and scolding her. He used to come home late night in drunken state and shout at her mother. Therefore her mother gave a complaint to the police on 29.1.2016. In regard to incident her evidence is that since 10.O' clock in the morning of 31.1.2016, he was quarrelling having consumed liquor and by taking objection that her mother called her brother and others for giving advise to him and thereby he felt insulted. That day afternoon around 12 O' clock he received a call from the police to come to police station for enquiry in relation to her mother's complaint. For this reason he got enraged and went to police station. Around 5.O' clock he returned



home and then set fire to her mother who was in the kitchen. She and the neighbours put off the fire and then shifted her mother to the hospital. She also gave information to her grand mother and uncles. She has spoken about the mahazar in connection with seizure of a kerosene pump stove, broken bangle pieces, burnt hair, burnt pieces of saree and other clothes. If her cross-examination is seen, it appears that an effort was made to discredit her testimony in examination-in-chief from the angle of a kind of hatred she had developed against her father for the reason that he did not provide her a smart mobile phone and that he was insisting her to study science discipline in the college. She has denied these suggestions, but she admitted one suggestion that she herself told the doctor at Government Hospital, Pandavapura, that her mother committed suicide. She also stated that the police obtained her statement at about 2.0' clock on 1.2.2016. The effect of these answers would be discussed later.



8. PW4 is the mother of the deceased. Her testimony shows that the accused was unhappy that he had no male issue and therefore wanted to contract second marriage. For this reason quarrel used to take place between him and the deceased and she (PW4) used to advise both of them. As regards incident she stated that when she and others went to K.R.Hospital, Mysuru, she came to know that accused had set fire to her daughter. PW5 is the brother of the deceased and he has also stated almost on lines with PW4. The neighbours of the accused and the deceased did not implicate the accused in particular, but they stated that deceased caught fire and died.

9. Exhibit P14 is the dying declaration in which it is recorded that accused started scolding and beating the deceased after death of male child, and that from there onwards he was desirous of having a male child. He was also suspecting the character of the deceased and that she came to know from others that accused was having



relationship with another woman. Being unable to bear the torture, first she made a complaint with Mahila Sahaya Kendra and when she did not find reformation in her husband, she went to police station on 29.1.2016 and gave a complaint against her husband. The police summoned him for enquiry. He became angry and started harassing her and then at about 5.00 p.m he poured kerosene and lit fire. This statement was recorded on 1.2.2016 around 3.50 p.m. FIR was registered based on this statement. Though the argument of Sri K.C.Pratheep that the Tahsildar-PW13 did not obtain certification from the doctor about fitness of the deceased to make a statement, cannot be accepted as Ex.P14 shows certification by the doctor that the deceased was conscious and mentally fit to make a statement, the reason why the police did not register FIR soon after obtaining MLC report as per Ex.P20 has not been explained. If Ex.P20 is seen, at 5.40 p.m. on 31.1.2016 itself the doctor who examined the deceased sent information to police. This was the first information and since a cognizable offence was brought to



the notice of the police nothing prevented them from registering an FIR. As is forthcoming from the evidence of PW3, the police obtained her statement on 1.2.2016 at 2.00 p.m. If PW3 had given such a statement that could have been at least based to register an FIR. There is no explanation by the investigating officer or the police officer who registered the FIR. This delay assumes importance in the sense that it gives scope for doubting the veracity of the statement of the deceased in Ex.P14. To make it more clear, Ex.P20 which is the earliest document contains two histories. If the accused stated that deceased caught fire due to stove blast, PW3 stated that her mother attempted to commit suicide. PW3 admitted in the cross-examination that she informed the doctor in the hospital that her mother tried to commit suicide. It is also very pertinent to mention here that by the time Ex.P14 was recorded, the mother and the brother of the deceased were all present in the hospital. Because of delay in registration of FIR and a different history given by PW3 in the hospital, a doubt



arises whether the deceased came up with true version or not.

10. As regards motive, the prosecution version is that accused wanted to have a male child and in that connection he was ill-treating his wife. But this appears to be a very weak motive for the reason that the male child of the accused died at the age of 3 ½ years, nearly twenty years before date of occurrence. It is highly impossible and improbable to believe that since then accused was harassing his wife for this reason. There is no nexus between the alleged motive and the occurrence. All the above aspects put together weaken the prosecution case as regards the offence under Section 302 of IPC.

11. However, there is ample material for sustaining the conviction for the offence under Section 498A of IPC. PW3 has given a clear account of the manner in which her mother was being ill-treated by the accused. Though the neighbours of the accused have not supported, the complaint made by the deceased to Mahila Sahaya Kendra



as per Ex.P5 and another complaint given by her to Pandavapura police as per Ex.P6 indicate that the accused was ill-treating not only his wife but also the daughter. The deceased also suspected that the accused had relationship with another woman and probably this was the reason for frequent quarrels and the deceased being harassed. It is to be stated here that accused was summoned to police station after the deceased made a complaint to the police as per Ex.P6. After return of the accused from police station a quarrel again erupted between them. There are allegations that accused was scolding and beating the deceased. This shows the cruel conduct of the accused. All these circumstances are sufficient to infer that the deceased was being harassed by the accused. Explanation (a) to Section 498A of IPC states that wilful conduct of the husband or the relative of the husband driving a woman to commit suicide is one kind of cruelty amongst others. On account of this kind of harassment, if she committed suicide by burning herself



an offence under Section 306 of IPC can be said to have been proved.

12. From the above discussion we come to a conclusion that the accused cannot be punished for the offence under Section 302 of IPC and therefore the findings of the trial court as regards this offence cannot be sustained. Instead the accused can be punished for offences under Sections 498A and 306 of IPC.

13. The records show that the accused has spent 5 years 10 months in the jail. He was in custody for a period of 2 years 7 months during trial and for a period of 3 years 3 months after conviction was recorded and till he was released on bail by this court on 04.12.2021. Therefore the period of 5 years 10 months can be set off for the sentence to be imposed on the accused for the offence under Section 306 of IPC. However, the sentence imposed by the trial court under Section 498A of IPC can be sustained. Now the following :



ORDER

- (a) Appeal is partly allowed.
- (b) Conviction of the accused for the offence under Section 302 of IPC is set aside, instead he is convicted for the offence under Section 306 of IPC and sentenced to imprisonment for the period he has already spent in the jail. He is also directed to pay fine of Rs.10,000/-, in default of which he shall undergo simple imprisonment for three months.
- (c) Conviction and sentence imposed on the accused by the trial court under Section 498A of IPC is sustained.
- (d) Sentence for the offences under Sections 306 and 498A of IPC shall run concurrently.

For the offence under Section 302 of IPC the trial court imposed a fine of Rs.40,000/-. Since the fine amount has been reduced for the offence under Section 306 of IPC, the balance has to be refunded to the accused.



The trial court is directed to refund the balance if the accused has deposited the fine amount.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 7