



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH 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. 265 OF 2018 (C)

BETWEEN:

1. VIJAYA,
S/O LATE CHOMA,
AGE: 37 YEARS,
R/AT BAIRA GURI HOUSE,
SERVE VILLAGE,
PUTTUR TALUK,
D.K. DISTRICT.

...APPELLANT

(BY SRI N.R. KRISHNAPPA, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY PUTTUR RURAL POLICE STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C
BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET
ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED

Digitally signed
by VALLI
MARIMUTHU
Location: High
Court of
Karnataka



16.10.2017 AND SENTENCE DATED 21.10.2017 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU, SITTING AT PUTTUR, D.K. IN S.C.No.5009/2016 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 OF IPC.

THIS CRIMINAL APPEAL, COMING ON FOR FINAL 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)

The accused in Sessions Case No.5009/2016 on the file of V Additional District and Sessions Judge, D.K., Mangaluru, sitting at Puttur, D.K., has preferred this appeal questioning the correctness of his conviction for the offence under Section 302 of IPC and consequent order on sentence imposing life imprisonment with fine of Rs.10,000/-.

2. The prosecution case is that the accused and his wife namely Bhagya @ Bhagirathi were alcoholics. Whenever the accused wanted money to buy liquor, he used to ask his wife. Since the accused was too much



addicted to liquor there used to take place quarrels between the accused and his wife. On 11.04.2016 around 12.30 p.m., the accused asked his wife for money to buy liquor. As she refused, there arose quarrel between them and in that course, the accused assaulted her with a sickle, which resulted in her death. Thereafter, he wanted to destroy the evidence by trying to dump the dead body into a pit but as he failed, he left the dead body inside the house and left the place. After one or two days, the dead body started emitting bad smell. PW.2 and PW.3 noticed the foul smell coming from the house of the accused. Both of them went inside the house and saw the dead body and gave information about the death of Bhagya to the relatives of the deceased. Thereafter PW.1 came and saw the dead body, went to police station and gave report as per Ex.P1. Investigation resulted in accused being charge sheeted for the offences punishable under Sections 498A, 302 and 201 of IPC. But the trial court arrived at a conclusion that the offences punishable under Sections 498A and 201 of IPC would not get established however,



the trial court convicted the accused for the offence under Section 302 of IPC and sentenced the accused to life imprisonment besides fine.

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

4. The argument of Sri N.R.Krishnappa, learned counsel for the appellant is that, the accused and the deceased were drunkards. They were quarrelling whenever they were drunk and prosecution case discloses very well that when the accused asked his wife to give him money to buy liquor, the latter refused and this resulted in quarrel between them. The death appears to have taken place in this background. There was no motive and there was no intention to cause the death of the deceased. There is some discrepancy in the evidence with regard to recovering the weapons said to have been used for causing the death. Therefore, for all these reasons, the offence under Section 302 of IPC would not get



established. His another limb of argument was that, even if prosecution has been able to prove its case, the offence that get established is one punishable under Section 304 Part-II of IPC. The accused is in custody since 14.04.2016. Therefore, he prays for allowing the appeal and to record conviction for offence under Section 304 Part-II of IPC, and set the accused free by setting off the period he has already spent in jail for the sentence to be imposed for the offence under Section 304 Part-II of IPC.

5. Sri Vijaykumar Majage, learned SPP-II for the respondent submits that the incident took place inside the house of the accused. Though there are no eyewitnesses, it is for the accused to explain what happened inside the house. Since there is no explanation by the accused, the circumstances stare at him. Though there appears to be some discrepancies in the evidence with regard to recovering the weapons, one sickle marked as 'K' by the investigating officer answered for the presence of 'AB' group human blood and on the other sickle blood was not



detected. It appears that only one sickle was used while committing the crime. Thus looked, there is no discrepancy in the evidence. The trial court has properly discussed the evidence. There are no grounds to interfere with the trial court judgment and the appeal is to be dismissed.

6. Points of arguments are considered. Though trial court has come to a conclusion that the offence under Section 302 of IPC would get established, re-assessing the evidence leads us to conclude that there are no grounds to record conviction for the offence under Section 302 of IPC. There are no eyewitnesses to this incident. The dead body was found inside the house of the accused. The evidence of PW.2 shows that on 11.04.2016, he saw the accused and the deceased being inside the house and he also heard the quarrelling voice. He did not go to the house of the accused thinking that it was just a usual quarrel between them. But, for about two days, the deceased was not seen. Wife of PW.2 told him about bad smell emitting



from the house of the accused and nobody was seen inside the house. Then he gave this information to the sister of the accused. The relatives of the deceased also came to that place, all of them went inside the house and saw the dead body. They also noticed the injury on the neck. Therefore they thought that the accused might have killed his wife. The evidence of PW.1 shows that he came to know about the quarrel between the deceased and the accused from PW.2. He also came to know that his sister was not seen in the house. Thereafter he went to the house of the accused and saw the dead body. There was an injury on the neck therefore, he went to police station and gave report as per Ex.P1. The cross-examination of PWs.1 and 2 shows that the deceased was also addicted to liquor.

7. It is true that there was recovery at the instance of the accused. MO.3 was seized by the police at the instance of the accused. The prosecution case shows the presence of two sickles as per MO.3 and MO.6. PWs.1



and 2 have stated to have seen one sickle lying beside the dead body and the other recovered was at some distance from the house of the accused which he had kept near a tree. Both sickles were sent to FSL for detection of blood. Out of two, only one answered for the presence of 'AB' group human blood. For what reason another sickle was kept at a distance is not known, however, this sickle contained bloodstain and recovery was at the instance of the accused. Evidence to this effect has not been assailed. Since the death occurred inside the house, it is for the accused to explain the reasons for the death of his wife because only they were living together inside the house and his children were residing in the house of brother of the deceased. Failure to give proper explanation is one of the circumstances that can be used to suspect his involvement in the crime. Evidence of PW.2 shows that he saw the accused and the deceased entering the house in the forenoon on the day of the incident. PW.2 heard both of them quarrelling, and then accused was not seen. Accused also failed to give explanation for the death of the



deceased inside his house. These circumstances are enough to fix the accused with the crime.

8. Though the death was homicidal in nature, Sri N.R.Krishnappa, learned counsel for the appellant stated that there was no intention to kill. The accused had no specific motive to cause death of his wife. It was only in the course of the quarrel that erupted when the deceased refused to give money to the accused for buying liquor, he might have resorted to assaulting his wife with the sickle. Therefore, this kind of a situation cannot be brought within the scope of Section 300 of IPC punishable under Section 302 of IPC. These circumstances clearly indicate that it was a clear case of the offence punishable under Section 304 Part-II of IPC. Therefore, it is to be stated that the trial court is not justified in recording conviction for the offence under Section 302 of IPC.

9. The accused is in custody since the date of his arrest on 14.04.2016. That means he has spent nearly 9 years in jail. We are of the opinion that the sentence to



be imposed on him for the offence under Section 304 Part-II of IPC can be set off for the period he has already spent in jail.

10. With these discussions, we pass the following,

ORDER

- (i) The appeal is ***partly allowed***.
- (ii) The judgment dated 16.10.2017 in S.C.No.5009/2016 passed by the trial court convicting the accused for the offence under Section 302 of IPC is set aside and consequently the sentence imposed on him for that offence is also set aside. Instead, accused is found guilty of the offence under Section 304 Part-II of IPC and he is sentenced to imprisonment for the period he has already spent in jail. The accused is also directed to pay fine of Rs.10,000/-, in default of which, he shall undergo imprisonment for a period of three months.



- (iii) The appellant-accused is entitled to set off for the period he has already spent in jail.
- (iv) The accused shall be set at liberty forthwith, if his presence is not required in any other case/s.

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

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