



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF MARCH, 2025**

**PRESENT**

**THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR**

**AND**

**THE HON'BLE MRS JUSTICE K.S. HEMALEKHA**

**CRIMINAL APPEAL NO. 830 OF 2018**

**Between:**

The State of Karnataka  
By H.D.Kote Police Station,  
H.D.Kote Taluk, Mysuru District,  
Represented by  
State Public Prosecutor,  
Bengaluru-560001.

...Appellant

(By Sri Harish Ganapathi, HCGP)

**And:**

1. N.Kittu  
S/o Late Nagaiah,  
Aged about 47 years,
2. N.Nagamma  
W/o Late Nagaiah,  
Aged about 72 years,
3. Geetha  
W/o N.Kittu,  
Aged about 33 years,

Respondents No.1 to 3 are  
R/at Vishvanathaiah Colony,  
H.D.Kote Town-571114.

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



4. Thulasi  
W/o Gopal,  
Aged about 47 years,  
R/o Harangi Project,  
Kushalanagara,  
Kodagu District-571234.
5. Nagendrakumar @ Kumar  
S/o Late Nagaiah,  
Aged about 39 years,  
R/o Vinoba Colony,  
Hunsur Taluk-571105.

...Respondents

(By Sri T.S.Gurunath, Advocate for R1 to R5; Vide order dated 26.09.2018, the appeal against accused Nos.2, 3, 5 and 6 i.e., respondents No.2 to 5 stood dismissed)

This Criminal Appeal is filed u/s. 378(1) and (3) Cr.P.C., praying to grant leave to file an appeal against the judgment and order dated 27.09.2017 passed in S.C.No.241/2011 on the file of V Additional District and Sessions Judge, Mysuru acquitting the accused/respondents for the offences p/u/s 498(A), 302 and 201 r/w 34 of IPC and sections 3, 4 and 6 of Dowry Prohibition Act.

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 MRS JUSTICE K.S. HEMALEKHA



**ORAL JUDGMENT**

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

This is an appeal against acquittal judgment. Accused Nos.1, 2, 3, 5 and 6 faced trial for the offences punishable under Sections 498A, 302 and 201 read with Section 34 of IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act, because of death of a woman by name Padma wife of first accused. Case against accused No.4 abated due to her death.

2. Accused No.2 is the mother and accused No.3 is the second wife of first accused, accused Nos.4 and 5 are the sisters-in-law and accused No.6 is the brother of accused No.1. Deceased did not conceive for quite a long time after her marriage with first accused and therefore the latter married the third accused. After the second marriage deceased conceived and gave birth to a male baby. On 04.08.2009 at 05.00am, deceased



caught fire. The allegation was that the first accused set fire to his wife by pouring kerosene and before that all the accused used to harass the deceased for the sake of money to purchase a vehicle. In fact about two years before the incident occurred, deceased had initiated criminal action against first accused alleging harassment. There was a compromise between the couple and the case ended in acquittal of the first accused. Thereafter accused No.1 who was a taxi driver took a house on rent and lodged the deceased and the child there. The incident occurred in the rented house.

3. The Sessions Court assessed the oral testimonies of 29 prosecution witnesses, the documents and the material objects, and ultimately drew up a conclusion that the prosecution failed to prove its case and therefore acquitted the accused.



4. We have heard the argument of Sri Harish Ganapathi, learned High Court Government Pleader for the appellant/State and Sri T.S.Gurunath, learned counsel for the respondents/accused Nos.1, 2, 3, 5 and 6.

5. Sri Harish Ganapathy argued that the evidence clearly discloses that the first accused poured kerosene and set fire to his first wife(deceased). Though there were no eye witnesses to the incident, PW2, PW3, PW8, PW9 and PW10 have clearly stated about the harassment meted out to the deceased by the accused for the sake of money. Their consistent evidence is that the first accused set fire to the deceased. The defence theory is that there was a stove burst which cannot be accepted because the deceased was using gas stove for cooking purpose. The deceased gave a dying declaration stating that she caught fire due to stove burst, but it has come



in evidence that she had to give statement like that because the first accused had threatened the deceased that he would harm the child in case she disclosed the truth. This was the reason for suppressing the actual reason for catching fire. The prominent witnesses may be related to the deceased but their evidence does not disclose interestedness in any manner. In this view the trial court should not have brushed aside the incredible evidence. The prosecution has been able to prove its case beyond reasonable doubt and hence the accused should be convicted and punished appropriately.

6. Sri Gurunath learned counsel for the respondents argued that the trial court has given justifiable reasons for recording acquittal. Report of incident was made to the police by PW3-the brother of the deceased after 12 days. The evidence actually shows that the deceased and the



first accused were cordial. Deceased caught fire accidentally and in the spot mahazar it is clearly written that a kerosene pump stove was found in the kitchen. Its lid was open and some parts of the stove were also lying at some distance. Ex.P14 is the dying declaration which the deceased made while she was in a fit and conscious state. This statement clearly states that she caught fire while lighting the stove. This being the earliest version of the deceased herself, it should be believed. The report by PW3 subsequently indicates embellishments and after thoughts only to implicate all the accused. It is not in dispute that only the first accused and the deceased were living separately with their child and the other accused were not living with them. Unnecessarily all the family members were roped in though they were not present at the time when deceased caught fire. The evidence clearly shows that the first accused doused the fire and took her to the



hospital. He was also attending on her in the hospital. He suffered injuries while trying to put off the fire. If he intended to kill his wife, his conduct was something otherwise. Noticing the circumstances like this if the trial court arrived at conclusions to acquit the accused, there cannot be interference with a well reasoned judgment.

7. We have perused the entire evidence and also the reasons given by the learned trial court for recording acquittal.

8. The prosecution has alleged that the first accused put forth a demand for Rs.25,000/- for getting his jeep repaired and he was insisting his wife to bring that money from her parents house. The other accused were also harassing the deceased for the same reason. In the background of this harassment at about 5.00am on 04.08.2009, the first accused poured kerosene and set fire to the deceased. In order to screen



himself from punishment he created a situation as if he tried to put off the fire with a woolen rug and he himself took the deceased to hospital.

9. The prominent witnesses are PW2, PW3, PW6, PW7, PW8 and PW10, all being relatives of the deceased.

10. It was at the instance of PW3 that an FIR was registered. He was not present when his sister caught fire and his evidence is that there was a demand for dowry by accused No.1 at the time of marriage and even after the marriage. His sister did not conceive for about 2 years after the marriage and therefore his sister was driven out of the house and accused No.1 married the third accused. As his sister made a complaint against accused No.1, the latter settled the issue with an assurance to look after his wife well, and then set up a separate residence for her. Thereafter his sister gave birth to a baby. After some time the



first accused started harassing his sister for the sake of Rs.25,000/- as he wanted to get his jeep repaired. Giving this background he stated that he went to K.R.Hospital after coming to know that his sister had been hospitalized due to burn injuries and there his sister herself told him that accused No.1 set fire to her. Ex.P2 is the report given by him to the police. He was also present when spot panchanama as per Ex.P3 was drawn by the police and the articles, namely, kerosene stove and a burnt rug were seized.

11. There is no dispute as to the fact that there were differences between the first accused and the deceased and that the deceased had initiated criminal action which subsequently resulted in both the parties settling the dispute. It is also stated the first accused was acquitted. Then the first accused rented a house for the purpose of the residence of the deceased. And the



allegation of harassment on the deceased relating to this case was in the rented house. To prove harassment, the prosecution examined PWs 11 to 16, but they have not supported. Then there remains the evidence of PW2, PW3, PW8, PW9 and PW10 who are related to the deceased. Their evidence in regard to harassment by all the accused for the sake of money, and accused No.1 setting fire requires examination with greater circumspection. Indeed it is not a rule of appreciation of evidence that oral testimonies of related witnesses is to be rejected; but it requires a strict scrutiny, chances of exaggeration of events and false implications are not uncommon because of fellow feeling and sympathy towards deceased. This is a rule of caution. If the case is further examined bearing in mind the rule of caution, it can very well be said that the testimonies of PW2, PW3, PW8, PW9 and PW10 have to be looked with suspicion in as much as the earliest version given



by the deceased depicts altogether a different picture. Ex.P14 is the statement given by the deceased while she was fit enough to give statement as certified by the doctor. The incident occurred on 04.08.2009 at 7.15am and her statement was recorded on the same day in between 2 and 3 pm. The statement shows that the deceased was preparing coffee for her husband on a pump stove; that when she was pumping the burning stove, the lid of the pumping knob came off and when the kerosene spilled out, she caught fire. As a corroboration to this statement, Ex.P3 the spot mahazar may be referred to. Therein it is mentioned that a pump stove and a separated pumping gripper were found in the kitchen. MO2 is the gripper and MO4 is the pump stove. Added to this Ex.P14 also shows that the first accused was very much present in the house and his version is that he put off the fire and took the deceased to hospital. In Ex.P3 it is clearly mentioned that



there was a woolen rug which was burnt at its one end. MO1 is the woolen rug. It is not denied even by main witnesses that the first accused doused the fire. They may have stated that he did so to pretend innocence, but the conduct of the first accused does not appear to be pretention in order to escape from clutches of law. Ex.P13 can be incidentally referred here. It is MLC register extract wherein the history given by the deceased herself is recorded. What was recorded is that stove burst occurred when the deceased was pumping already lighted stove. This history was recorded soon after the deceased was taken to hospital, it was even before she made a dying declaration as per Ex.P14. The prosecution contends that the deceased had to give statement like that because the first accused had threatened the deceased to harm the child if she disclosed the truth. This is again not believable because if really there was continuous harassment on the



deceased by all the accused, and its aftermath was burning her, nothing prevented the brother, the mother and other relatives of the deceased from making efforts to pacify the situation. But no such effort was made. The prominent witnesses do not speak about it. PW3, the brother of the deceased came to hospital at 1.00pm on 04.08.2009 and at that time the first accused was also present in the hospital. He stated that the deceased told him that she was set on fire by all the accused, but till 16.08.2009 he did not think of lodging FIR. If the deceased knew that she was put ablaze by the accused, she would not have given different statement as per Ex.P14 on the same day. So on collation of all these circumstances, a clear inference can be drawn that the contents of Ex.P2 as also the testimonies of PW2, PW3, PW8, PW9 and PW10 may be bereft of truth. They are untrustworthy witnesses. The investigation also appears to be tainted. Therefore the conclusions



to be drawn are not different from the findings recorded by the trial court. For these reasons the appeal has to fail and it is ***dismissed***.

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

**Sd/-  
(K.S. HEMALEKHA)  
JUDGE**

KMV  
List No.: 1 Sl No.: 13