



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH 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.1566 OF 2017

BETWEEN:

STATE OF KARNATAKA,
BY BHARAMASAGARA POLICE
BANGALORE,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

... APPELLANT

(BY SRI VIJAYAKUMAR MAJAGE, SPP-II)

AND:

1. VENKATESH
S/O. PAMPAPATHI,
AGE 24 YEARS,
2. PAMPAPATHI
S/O. LATE SANNABHIMAPPA,
AGE 54 YEARS,
3. NAGAMMA
W/O. PAMPAVATHI,
AGE 51 YEARS,

ALL ARE AGRICULTURISTS
AND R/AT KAKABALU VILLAGE,
CHITRADURGA TALUK-577501.

... RESPONDENTS

(BY SRI SHEKAR BADIGER, ADVOCATE FOR R-1 TO R-3)

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Location: HIGH
COURT OF
KARNATAKA



THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL PASSED BY THE LEARNED II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, CHITRADUGRA IN S.C.NO.27/2016 DATED 24.03.2017 THEREBY ACQUITTING THE ACCUSED/RESPONDENTS OF THE OFFENCE PUNISHABLE UNDER SECTIONS 302, 323, 498A, 504 OF IPC READ WITH SECTION 34 OF IPC.

THIS 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 MRS JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

Against the judgment of acquittal dated 24.03.2017 on the file of the II Additional District and Sessions and Special Judge, Chitradurga in SC No.27/2016 thereby acquitting the accused for the offences punishable under Sections 302, 323, 498A, 504 read with Section 34 of Indian Penal Code, the State is before this Court in this criminal appeal.

2. The case of the prosecution is that the youngest daughter (deceased) of the complainant (PW.15) was given in marriage to the accused No.1 around nine months prior to the date of incident. They lived happily for about three to



four months. Thereafter, the accused picked up quarrel with the deceased for minor and silly reasons causing physical and mental harassment. That on 28.06.2015 around 6.00 p.m., when the deceased was in her matrimonial home, accused No.1 abused her verbally by using unparliamentary words, assaulted her with hands and legs and with an intention to commit murder, poured kerosene and lit fire. The deceased sustained injuries and was shifted to Davanagere CG Hospital. On 06.07.2015 at about 9.30 a.m. the deceased succumbed to the injuries. The accused was charged for the offences punishable under Sections 302, 323, 498A, 504 read with Section 34 of Indian Penal Code.

3. The prosecution, in order to substantiate their case, examined PWs.1 to 22, got marked Exs.P1 to P31 and M.Os.1 and 2. The trial court found that the testimony of PW.15 was not convincing. Additionally, the trial court concluded that the evidence of the witnesses-PWs.2 to 8, 13, 19 and 20 did not support the prosecution. Therefore, the benefit of doubt was given to the accused, observing that it



was difficult to establish the guilt of the accused based on all the witnesses' testimonies.

4. Heard Sri Vijayakumar Majage, learned SPP-II for the State and Sri Shekar Badiger, learned counsel for the respondents.

5. Learned counsel appearing for the State submits that the death had taken place within one year from the date of marriage in the house of the accused, the burden is on the accused to explain as to how the incident occurred. If the evidence of the witnesses and the contents of the dying declaration-Ex.P23 are perused, the accused has to be convicted for the offences charged. The death notes at Ex.P2 and Ex.P23 tally with each other and corroborate the expert's opinion-PW.22. Given the circumstances, the prosecution has proved beyond reasonable doubt the guilt of the accused, the said aspect is not appreciated by the trial Court.



6. *Per contra*, learned counsel appearing for the respondents-accused argues that finding the testimony of PW.15 contradictory and inconsistent, the trial Court rightly observed that the prosecution has failed to bring home the guilt of the accused. Ex.P2, a handwritten letter from the deceased, contradicts the prosecution's case. Furthermore, the testimonies of the witnesses do not find support from the medical opinion. The deceased was not in a sound state of mind when the statement was recorded at Ex.P23, as deposed by PW.18, which aspect has been rightly considered by the trial court to acquit the accused. It is submitted that statement at Ex.P23 is a result of tutoring, prompting and contrary to the statement at Ex.P2.

7. We have considered the contentions urged by the learned counsel for the parties and perused the material on record.

8. Under Ex.P20, PW.15 lodged a complaint stating that the accused had married the deceased nine months prior to the date of her death. The couple lived happily for



about 3 months, later the deceased was subjected to mental and physical torture. She was sent back home. The elders of the village intervened and sent back the deceased to her matrimonial house. On 28.06.2015 at around 6.00 p.m. when he and his wife were at home, the people from their village came and informed them that his daughter had been burnt at her husband's house. On hearing, they immediately rushed to their daughter's house, found burn injuries on her leg, waist and lower abdomen. When enquired with her, she informed PW.15 that her husband had used abusive language, assaulted her, and he poured kerosene, which was near 'wali' (firewood oven) and lit fire and that her husband had sustained burn injuries on his hands. She further informed that her neighbors came to rescue her by trying to extinguish the fire and provided first aid. PW.15 called the ambulance and took her to Davanagere CG Hospital accompanied by his wife and son. While the testimony of PW.15 is that when he and his wife were at home, deceased's neighbors came and informed them that the deceased caught fire while cooking and when he reached the



house of the deceased, accused Nos.2 and 3 had already taken the deceased to CG Hospital, Davanagere. There is total contradiction in the complaint and the testimony of PW.15.

9. PWs.2, 3 and 4 are Venkatesh, Babu and Gangamma, who are mentioned as eyewitnesses in the complaint. The testimony of the said witnesses is that they do not know as to how the deceased caught fire, nor did they come to know as to who took the deceased to the hospital. The eyewitnesses PWs.2, 3 and 4 have turned hostile to the case of the prosecution.

10. PW.18 is the doctor who treated the deceased. In his chief examination, he deposed that Ex.P23 is the statement of the deceased, who was in a sound condition to give the statement. While in his cross-examination, he categorically deposed that the deceased was not in a proper state of mind to give a statement. Ex.P23 is the dying declaration made in the presence of PW.18-the doctor, which states that on 28.06.2015, at around 6.00 p.m. at her



matrimonial house, her husband-accused No.1 used abusive language, beat her with hands and feet, poured kerosene on her and set her on fire. When she screamed, her neighbors came to her aid and her parents also reached in the meanwhile and they took her to Davanagere CG Hospital for treatment. She gave the statement under Ex.P23 that her husband, mother-in-law and father-in-law tortured her mentally and physically. Her husband poured kerosene on her and set her on fire with the intention of killing her. Deceased stated in her statement that the statement given by her on 29.06.2015 is false and it was at the instance of her husband. There appears to be a plural dying declarations. The earlier statement given by her on 29.06.2015 differs from the statement recorded under Ex.P23.

11. Ex.P23, though made before the doctor-PW.18, has to be read in the context of Ex.P2 and the statement given by the deceased on 29.06.2015. Ex.P2 is a key piece of evidence, specifically a handwritten letter from the deceased. Ex.P2 refers to the deceased going through a



difficult time, possibly feeling down or overwhelmed. From reading of Ex.P2, we can infer that the deceased was struggling emotionally. It does not indicate any abuse, violence, insults or any form of mistreatment by her husband. She generally speaks about being unhappy, struggling, and it is not enough to conclude that there was harassment in any manner by the husband. There has to be clear and specific evidence of cruelty or any type of harassment to draw a conclusion against her husband.

12. There are three statements of the deceased. Ex.P2 is the handwritten letter by the deceased expressing emotional hardship, no direct or indirect reference to cruelty by husband. Secondly, the statement before the police recorded on 29.06.2015 where she states that 'she caught fire while cooking'. Thirdly, the statement before the doctor contradicts the earlier version and accuses the husband of setting fire to her. Ex.P2 and the statement recorded on 29.06.2015 are early statements, especially spontaneous ones, which carry more weight. Since Ex.P2 is written by the deceased and does not mention any specific cruelty by her



husband, it weakens the prosecution's case and we can draw the inference that there was no prior cruelty as alleged by the prosecution. What we can infer is that Ex.P23 is an afterthought or made under emotional / physical distress. The statement dated 29.06.2015 and Ex.P23 can be taken as multiple dying declarations, and they are totally inconsistent and contradictory. The prosecution does not offer a satisfactory explanation for the inconsistency, in such circumstances, it is not safe to base the conviction solely on the dying declaration. The statement to the police and the testimony of PW.15 support accidental fire. In Ex.P2 no cruelty or harassment is mentioned. The statement to the doctor is not reliable, as there is a contradiction. There is no strong evidence for cruelty or motive to convict the accused.

13. The dying declaration under Ex.P23 contradicts the core of the prosecution's case and the dying declaration does not inspire the confidence of the Court about the truthfulness of such a declaration. After careful evaluation of the entire evidence of PWs.2 to 4 and 15, Exs.P2, P23 and the statement dated 29.06.2015, what can be gathered is that



the pouring of kerosene, lighting of fire by accused No.1 appears like a story that cannot be believed and there is a total contradiction and inconsistency in the evidence of PW.15-the first informant. The trial court has taken the possible view and we find no reason to overturn the order of acquittal and we pass the following:

ORDER

Criminal appeal is hereby ***dismissed***.

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

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