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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 1891 OF 2019

Between:

Sri Annappa Bhandary
Aged about 45 years
S/o Sheena Bhandary
R/at Handakeri
Behind Sri Kundeshwara Temple
Kundapura Taluk
Udupi District Pin - 573220.

...Appellant

(By Sri D.Nagaraja Reddy, Advocate)

And:

The State of Karnataka
Through Circle Inspector of Police
Kundapur Circle,
Represented by The State Public Prosecutor
High Court Buildings, Bengaluru - 560001.

...Respondent

(By Smt. R.Sowmya, HCGP)

This Criminal Appeal is filed u/s 374(2) of Cr.P.C. praying to set aside the judgment of conviction dated 22.06.2019 and order of sentence dated 28.06.2019 passed by the Additional District and Sessions Judge, Udupi (sitting at Kundapura), Kundapura, in S.C.No.29/2018 - convicting the appellant/accused for the offence p/u/s 448 and 302 of IPC.

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KARNATAKA



Date on which the appeal was reserved for judgment	27.02.2025
Date on which the judgment was pronounced	21.03.2025

This Criminal Appeal, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

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

CAV JUDGMENT

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

This appeal is against the judgment of the Sessions Judge, Udupi (sitting at Kundapura) in S.C.No.29/2018, convicting the accused for the offences punishable under Sections 448 and 302 of IPC. Consequent to this conviction, he was sentenced to life imprisonment and fine of Rs.40,000/- for the offence under Section 302 of IPC and simple imprisonment for one year for the offence under Section 448 of IPC.



2. The prosecution case is like this:

The name of the deceased is Vijaya Bhandary, the elder sister of the accused. The accused was running a salon, but he was irregularly attending the shop being a wayward. He had the habit of pestering his sisters for money and demanding them to attend to his household work as he was living separately. On 22.07.2018 about 08.30pm accused entered the house of Vijaya Bhandary, started scolding her and demanded for money, and in that course he inflicted injury on the left shoulder and right side of the back with a knife. In order to escape from him she ran out of the house and fell down. This incident was seen by Vimala and when she shouted loudly the accused ran away from that place. The injured was taken to Kundapura Government Hospital for treatment. On the advice of the doctor at Kundapura hospital she was taken to KMC Hospital, Manipal. While



taking treatment at KMC Hospital she gave a statement before the police based on which FIR was registered in the first instance for the offences punishable under Sections 448, 504, 324 and 506 of IPC. The injured died on 28.07.2018. Thereafter Section 302 of IPC was invoked.

3. The Sessions Judge charged the accused for the offences punishable under Sections 302, 504, 506 and 448 of IPC, but recorded conviction only for the offences punishable under Sections 448 and 302 of IPC after appreciating the oral evidence of 17 witnesses and, the exhibited documents and material objects.

4. PW1-Sushseela and PW2-Kamalaksha, the sister and nephew of deceased Vijaya Bhandary respectively are the eye witnesses to the incident. PW3-Sudheer is the son of PW1, he was not an eye witness; he went to KMC Hospital after coming to know of the incident from his mother. The learned



Sessions Judge accepted the oral testimonies of PW1 and PW2 as believable as regards being eye witnesses to the incident.

5. Sri D.Nagaraja Reddy, learned counsel for the appellant, argued that the Sessions Judge should not have accepted the testimonies of PW1 and PW2 as they were planted witnesses. In Ex.P6, the statement given by the deceased before the police, she took the name of Vimala to be an eye witness but the prosecution did not examine her. This was fatal to the prosecution.

6. It is true that Vimala was not examined though her name was taken by the deceased in her statement, Ex.P6. But it is difficult to concur with the argument of Sri D.Nagaraja Reddy that PW1 and PW2 were not eye witnesses. Giving a reading to testimonies of these two witnesses, it is found that they were eye witnesses. PW1 being another sister of the accused stated that the accused being



quarrelsome and drunkard, used to altercate in the house for money. Once, about 20 years ago the accused had inflicted injury to their father with an iron rod while quarreling in relation to a property dispute. As regards the incident in question, she stated that on that day around 8.00pm, when she was in her house she heard a cry from the house of her sister Vijaya Bhandary, which was situate very near to her house. Immediately she went there and saw her sister having sustained injury on the left side of her neck and shoulder on account of inflictions caused by the accused. She stated that her sister started running out of the house and fell down. She gave information to her son immediately over the phone. After the arrival of her son, Vijaya Bhandary was shifted to Kundapura government hospital. On the advice of doctor there, Vijaya Bhandary was taken to KMC hospital, Manipal. She was able to speak for about three days during which time the police came and



recorded the statement of her sister. She showed the scene of occurrence to the police to draw the panchanama. She also gave her statement before the Magistrate under Section 164 of Cr.P.C., as per Ex.P5.

7. The evidence of PW2 is also to the effect that he heard a cry from the house of his aunt i.e., Vijaya Bhandary around 8.00pm on 22.07.2018. When he went to that place he saw his aunt coming out of the house by keeping hand on her bleeding neck. At that time he saw the accused chasing Vijaya Bhandary with a knife in his hand and the latter falling down while running. He also stated that he saw PW1 and Vimala being there at that time. When he enquired PW1, he came to know that the accused inflicted injuries to Vijaya Bhandary with a knife while quarrelling with her for money.



8. In the cross examination of these two witnesses, an effort is made to establish that they could not have seen the accused inflicting injuries to Vijaya Bhandary as they were in their respective houses at the time when the incident occurred and by the time they came to that place nobody was there. But the witnesses have refuted the suggestions that they did not see the accused. Even though they admitted the suggestion that they were in their respective houses when they heard the cry of Vijaya Bhandary, they also made it very clear that by the time they came to the spot they saw the accused. In fact PW1 has stated in the cross examination that accused inflicted injuries to Vijaya Bhandary after she went there. Another effort is also made to falsify their evidence by giving suggestions that they did not like the accused because of enmity between them. To this suggestion PW1 answered that she did not have any sort of enmity and that she was offering



coffee or tea to him because of love and affection. PW2 also did not admit suggestion that there was enmity. The conclusion is that these two witnesses have not been discredited in the cross examination. Even if we hold that PW2 was not an eye witness, his testimony assumes relevancy at least to the extent that he saw the accused running away from the spot with a knife in his hand. So there are no reasons to discard the evidence of PW1 and PW2.

9. Above all Ex.P6 is the statement of Vijaya Bhandary herself. It is nothing but a dying declaration implicating the accused. Since this statement was recorded in the hospital, the prosecution must establish the circumstance that she was quite fit to make a statement. This proof is made available by the prosecution.

10. PW8-Dr. Chandrashekar was the first doctor who examined Vijaya Bhandary at the



Government Hospital, Kundapura, soon after the incident. He has given evidence that when he examined Vijaya Bhandary at 10.30pm on 22.07.2018, she had consciousness and was in a condition to make statement. However her statement was not recorded at Kundapura hospital. She was shifted to KMC Hospital, Manipal.

11. PW12-Smt. Jyothi M, a woman head constable recorded the statement of Vijaya Bhandary on 23.07.2018. Her evidence indicates that the Assistant Sub-Inspector of police contacted the doctor at KMC Hospital, Manipal to ascertain whether Vijaya Bhandary was able to speak and give statement. After obtaining the permission from the doctor she went inside the intensive care unit (ICU) in the hospital along with ASI, spoke to Vijaya Bhandary and reduced her statement to writing as per Ex.P6. PW12 stated that when Vijaya Bhandary gave statement before



her, she inculpated her brother i.e., the accused to be responsible for her sustaining two injuries. PW12 has also stated that Vijaya Bhandary put her signature on Ex.P6 and at that time, PW3-Sudheer was also present and his signature was also taken on the statement. Only relevant question put to PW12 in the cross examination is that Ex.P6 does not contain certification by the doctor about fitness of Vijaya Bhandary to make a statement. She said that the doctor orally permitted her to record the statement. It is true that Ex.P6 does not contain certification of the doctor. For this reason alone evidence of PW12 cannot be discarded because PW3 has corroborated the testimony of PW12 by giving evidence that on 23.07.2018 at 03.00pm he was very much present in the hospital attending on Vijaya Bhandary who was his aunt, and at that time the police came to hospital. A lady police constable obtained permission of the doctor to record the statement of his aunt who was able to



speak and then recorded her aunt's statement. He also stated that Vijaya Bhandary took the name of the accused for the injuries suffered by her and put her signature on the statement. The evidence of PW11, a doctor at KMC Hospital may be incidentally referred to here as he examined Vijaya Bhandary on 24.07.2018 and 25.07.2018. It is his clear statement that she was able to speak till she suffered a heart attack at 04.20pm on 25.07.2018. That means on the day when she made statement as per Ex.P6 she was fit enough to give statement. Therefore Ex.P6 is a reliable document which inculcates the accused. The ultimate conclusion to be drawn is that the testimonies of PW1 and PW2 supported by Ex.P6 are sufficient enough to hold that it was the accused who inflicted injuries to Vijaya Bhandary.

12. Although the incident is proved, the begging question is, 'Whether the findings of the



trial court that an offence punishable under Section 302 of IPC has been proved', can be sustained. The specific findings of the trial court are that the prosecution has been able to establish that Vijaya Bhandary sustained grievous injuries on her neck owing to assault by the accused with a knife. Though the death occurred due to heart attack, according to the opinion given by the doctor who conducted post mortem examination heart attack was attributable to the grievous injury suffered by Vijaya Bhandary. And it cannot be said that cardiac arrest was not due to the injury and there is no ambiguity of any kind in it. Attacking this finding Sri Nagaraja Reddy argued that at the initial stage FIR was registered for the offence under Section 324 of IPC, and after the death occurred Section 302 of IPC was invoked. It is no doubt true that according to the opinions given by the doctors Vijaya Bhandary suffered two heart attacks one on 25.07.2018 and the other on



28.07.2018. The evidence of PW10 does not indicate any treatment being given to heart related diseases. Another doctor PW11 has very well stated in the cross examination that it was not possible for him to give a definite opinion that the cardiac arrest was on account of the injury sustained by Vijaya Bhandary. Quite contrary to the evidence of PW10 and PW11, PW17 the doctor who conducted post mortem examination stated that Vijaya Bhandary died due to assault on her. And the investigating officer has admitted that he did not come to know about the heart attack. Therefore the cause for death is not clear. In the wound certificate Ex.P15, two injuries one on the neck and the other on the right scapular region are noted. The depth of the first injury is not mentioned, that means the weapon did not penetrate deep into body cutting the blood vessels. There was no chance of occurrence of death due to these injuries. If for any reason involvement of



accused in the crime is acceptable, at the best he could be convicted under Section 324 of IPC, and not the offence under Section 302 of IPC. This is how Sri Nagaraja Reddy argued.

13. Smt. R.Sowmya, learned HCJP, refuted the argument of Sri Nagaraja Reddy by submitting that when the three doctors have consistently deposed that the cardiac arrest was on account of the injuries, there is a direct nexus between the injury and the death and hence conviction for the offence under Section 302 of IPC is justifiable.

14. The oral and documentary evidence made available for the cause of death is in this way. Ex.P15 is a wound certificate issued by the General Hospital, Kundapura where Vijaya Bhandary was taken for treatment soon after the occurrence of the incident on 22.07.2018. The doctor i.e., PW18 noted the following two injuries.



- i. Incised wound 4.5 x 1 cm on the lower part of the neck on the left side. Fresh bleeding is present. Blood clot present. Depth of the wound could not be made out.*
- ii. Incised wound 4 x 1.5 cm x muscle deep on the supra scapular region of the chest on right side. Fresh bleeding and blood clot seen.*

15. It is relevant to mention here that PW18 noticed the pulse rate being 114 per minute and blood pressure 140/90.

16. In Ex.P17, the death summary issued by KMC Hospital, Manipal, it is noted that there was undisplaced fracture of little 1/3rd of left clavicle and CT of brain showed diffused subarachnoid hemorrhage. It is also written that on 25.07.2018 the patient had a cardiac arrest, CPR was started and revived in one cycle. Again there was a cardiac arrest on 28.07.2018, resuscitation was attempted, not able to revive hence declared dead



at 04.00pm. Ex.P21 is the post mortem report in which final opinion for the cause of death is written as deceased died due to complications of multiple sharp force injuries to the neck and shoulder consistent with the history.

17. PW11 was the first doctor who examined Vijaya Bhandary on 24.07.2018 and he stated that the patient suffered heart attack at 04.20pm on 25.07.2018 and that was due to assault on her. PW9, another doctor at KMC hospital examined Vijaya Bhandary on 26.07.2018 and he too stated that she had suffered a cardiac arrest on 25.07.2018 on account of injury to the neck. PW10, lady doctor at KMC hospital stated that Vijaya Bhandary was brought to intensive care unit on 26.07.2018 at 05.00pm because of cardiac arrest. She was in the team which attempted to resuscitate Vijaya Bhandary.



18. Even though the doctors have stated that cardiac arrest was due to the injury, especially on the neck, it is not possible to find the nexus between the injuries and cardiac arrest. If this opinion is expressed, it does not mean that expert's opinion can be rejected, but because of certain doubts that arise from the answers given by the doctors an inference can be drawn that the cardiac arrest leading to death cannot be linked to the injuries. Vijaya Bhandary might have suffered cardiac arrest and that could be the cause for her death and this is acceptable. The opinion given by the doctors that cardiac arrest was due to injuries does not appear to be convincing from the perception of a common man. These inferences are possible to be drawn because in the wound certificate, it is clearly written that the depth of the first injury cannot be made out. Pressure bandage was put to stop bleeding. Conspicuously damage to blood vessels on the neck region is not



mentioned. Even in Ex.P17, the death summary, there is no indication of damage caused to the blood vessels. Very importantly in the post mortem report, the walls of the heart are shown to be intact and the valves were found competent. Large vessels were also intact. PW17 who conducted post mortem examination has answered in the cross examination that if a person dies of heart attack, it will not be mentioned in the post mortem report. His opinion is that he did not find any reason other than the injuries for the cause of death. This is quite contrary to the opinion given by other two doctors PW9 and PW11. The answers of these two doctors in the cross examination assume significance in the sense that if there was profuse bleeding, the injury needed to be sutured to stop bleeding. In this case as mentioned in the wound certificate, Ex.P15, suturing was not done and instead pressure bandage was put. That means there was no profuse bleeding. In all



probability the neck injury was superficial because its depth is not mentioned. PW9 has also stated that when he gave report he did not mention the reason for the heart attack. Essentially it should have been mentioned. PW11 has also answered in the cross examination that he was unable to say that the cardiac arrest occurred due to the injury and it could be ascertained only after conducting post mortem examination. If PW11 stated so, PW17 who conducted post mortem examination stated that cardiac arrest will not be mentioned in the post mortem examination. Therefore the overall inference that can be drawn is that the neck injury appeared to be superficial without causing damage to the blood vessels in the neck region. The pulse rate and the BP noted in the initial stage were not abnormally high to expect any heart related issue or ailment. In this view it is impossible to accept the opinions of the doctors



that the cardiac arrest was due to injuries suffered by Vijaya Bhandary.

19. The facts disclose that the accused had no intention to kill. The prosecution case is that accused resorted to inflicting injuries because his sister Vijaya Bhandary refused to give him money. To record conviction for the offence under Section 302 of IPC, the injuries inflicted by the accused must fall within the ambit of secondly or thirdly of Section 300 of IPC. And if the accused is to be convicted for the offence under Section 304 Part-I IPC, the injuries must satisfy the requirement of occurrence of such kind of bodily injury as is likely to cause death as envisaged under Section 299 of IPC. Absent these requirements, no conviction can be recorded either for the offence under Section 304 Part-I or 302 of IPC, as the injuries noted in the wound certificate and the post mortem report were unlikely to cause death.



20. However in Ex.P17, the death summary there is a clear note that there was undisplaced fracture of middle 1/3rd of the left clavicle which satisfies the ingredients of Section 326 of IPC relating to voluntarily causing grievous hurt by dangerous weapon. MO2 seized at the instance of accused and identified by the prominent witnesses is a knife which is a dangerous weapon. Therefore the accused can be convicted for the offence under Section 326 of IPC. He has been in custody since 26.07.2018 i.e., from the date of his arrest. He has spent more than 6 years in the jail. The sentence of imprisonment can be set off for this period, and of course he should be directed to pay fine in view of the sentencing structure envisaged in Section 326 of IPC. In our opinion fine of Rs.10,000/- can be imposed. Conviction for the offence under Section 448 of IPC can be retained as the facts indicate that he trespassed into the house of Vijaya Bhandary before committing the



offence. The sentence imposed by the trial court for this offence can be retained. And now the following:

ORDER

- i. The appeal is **partly allowed and impugned judgment is modified.***
- ii. Conviction and sentence imposed by the trial court for the offence under Section 448 of IPC is confirmed.*
- iii. Conviction of the accused for the offence under Section 302 of IPC is set-aside and consequently sentence of life imprisonment is also set-aside.*
- iv. The accused is held guilty of the offence under Section 326 of IPC and sentenced to imprisonment for the period he has already spent in jail and fine of Rs.10,000/-, in default of payment of*



which he shall further undergo simple imprisonment for one month.

v. The accused shall be released from jail if his presence is not required in any other case.

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

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

KMV
List No.: 1 Sl No.: 2