



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 2ND DAY OF FEBRUARY 2026

PRESENT

**THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.**

CRIMINAL APPEAL NO. 100135 OF 2023 (C)

BETWEEN:

SRI. MUSTAFA @ MOHAMMED MUSTAFA
S/O. SAJJADSAB KAVALOOR,
AGE: 38 YEARS, OCC: CARPENTER,
R/O. PALTAN ONI, TAL AND DIST: KOPPAL-583231.
...APPELLANT
(BY SRI. SRINAND A. PACHHAPURE, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH KOPPAL TOWN POLICE STATION,
NOW REP. BY SPP,
HIGH COURT OF KARNATAKA, DHARWAD,
BENCH AT DHARWAD.
...RESPONDENT
(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP)

SAROJA
HANGARAKI



Digitally signed by
SAROJA HANGARAKI
Location: HIGHCOURT
OF KARNATAKA
DHARWAD BENCH
DHARWAD

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 OF CR.P.C. SEEKING TO CALL FOR THE RECORDS IN S.C. NO.71/2015 AND SET ASIDE THE JUDGMENT OF CONVICTION DATED 15.02.2023 AND ORDER OF SENTENCE DATED 16.02.2023 PASSED BY THE COURT OF PRL. DISTRICT AND SESSIONS JUDGE, KOPPAL FOR THE OFFENCE PUNISHABLE UNDER SECTION 498A, 304B AND 302 OF IPC AND SECTION 4 OF DOWRY PROHIBITION ACT, IN THE INTEREST OF JUSTICE.



THIS CRIMINAL APPEAL COMING ON FOR FURTHER
DICTATION, THIS DAY, JUDGMENT WAS DELIVERED
THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

This appeal is preferred by accused No.1 in
S.C.No.71/2015 on the file of the Court of the learned
Principal District and Sessions Judge at Koppal, wherein
the learned Sessions Judge vide judgment dated
15.02.2023 has convicted him for the offences
punishable under Sections 498(A), 304(B), 302 IPC and
Section 4 of the Dowry Prohibition Act, 1961 (for short,
hereinafter referred to as 'D.P. Act') and vide order
dated 16.02.2023 passed the following:-

"SENTENCE

*The accused No.1 is sentenced to undergo
Rigorous Imprisonment for **3** years and to pay fine of
Rs.5,000/- for the offence punishable under section
498(A) of IPC. In default to pay fine, to undergo
Simple Imprisonment for one month.*



The accused No.1 is sentenced to undergo Rigorous Imprisonment for 7 years and to pay fine of Rs.10,000/- for the offence punishable under section 304(B) of IPC. In default to pay fine, to undergo Simple Imprisonment for three months.

*The accused No.1 is sentenced to undergo **life imprisonment** and to pay fine of Rs.25,000/-for the offence punishable under section 302 of IPC. In default to pay fine amount, to undergo S.I., for six months.*

The accused No.1 is sentenced to undergo Rigorous Imprisonment for 6 months and to pay fine of Rs.1,000/- for the offence punishable under section 4 of D.P Act. In default to pay fine, to undergo Simple Imprisonment for 10 days.

The period undergone in Judicial Custody is set off.

The substantive sentences imposed against A-1, shall run concurrently."

2. We have heard the learned counsel Sri.Srinand A. Pachchapur for the appellant and learned Additional S.P.P. Sri.M.B.Gundawade for the State. Perused the evidence and material on record.



3. Charge sheet was filed against accused Nos.1 to 4. However since accused Nos.2 to 4 were not available to face trial along with accused No.1, charge was framed against the appellant/accused No. 1 for the aforementioned offences, who pleaded not guilty and claimed to be tried. Insofar as accused Nos.2 to 4 are concerned, the case against them was split up.

4. It is the case of the prosecution that deceased Chandini is the sister of the first informant Mahiboobkhan/PW.1. Her marriage was performed with the appellant/accused No.1 on 11.04.2010. Accused Nos.2 to 4 are the parents and brother of accused No.1. At the time of marriage, the accused demanded and accepted ₹.10,000/- in cash and four tholas of gold as dowry. After the marriage, for about two years the deceased was looked after properly. Thereafter, the accused started subjecting her to cruelty on the ground that she had not begotten any child and started demanding her to bring additional dowry in the form of



gold and land. In spite of payment of ₹.1,40,000/- as additional dowry, the accused continued to subject the deceased to cruelty.

5. It is the further case of the prosecution that on 23.07.2015 at about 01.30 p.m. to 02.00 p.m. in the house of the accused situated in Paltan Oni, Koppal, all the accused subjected the deceased to cruelty, demanding additional dowry and with an intention to do away with her life, poured kerosene and set her on fire. On account of which, the victim sustained severe burn injuries and initially shifted to Government Hospital, Koppal and from there to KIMS Hospital, Hubballi, wherein, she succumbed to the burn injuries in the early hours of 26.07.2015.

6. The Trial Court framed charges under Sections 3 and 4 of the Dowry Prohibition Act, Sections 498(A) and 304(B) of IPC and in the alternative Section 302 R/w 34 of IPC.



7. At the outset, it is pertinent to mention that the Trial Court committed an error in convicting the appellant/accused No.1 for both the offences under Section 304(B) IPC as well as Section 302 of IPC. If the Trial Court was of the opinion that, it was a case of 302 IPC, based on the evidence and material on the record, then question of convicting the accused again for the offence punishable under Section 304(B) of IPC would not arise. Similarly, if there is no evidence to establish the charge under Section 302 IPC, and if there was evidence to show that the deceased was subjected to cruelty for the purpose of dowry soon before her death, the Trial Court would be justified in convicting the accused for the offence under Section 304(B) of IPC.

8. We are mindful to the fact that the case against accused Nos.2 to 4 has been split up and they are not sent for trial along with the appellant/accused No.1. However, the evidence adduced by the prosecution being one and the same against all the



accused, we may have to refer to the testimony of the prosecution witnesses, insofar as the appellant, i.e., accused No.1 is concerned. Hence, we are making it clear that we are not expressing any opinion, insofar as the evidence as against accused Nos.2 to 4 are concerned.

9. It is the specific case of the prosecution that the marriage of deceased Chandini was performed with accused No.1 on 11.04.2010 and she died an unnatural death on 26.07.2015, which is within 7 years from the date of her marriage. The defence has not seriously disputed the relationship or the date of death. However, the prime contention raised by the learned counsel for the appellant is that the deceased died on account of stove burst and not on account of any act committed by the accused. To buttress the said argument, the learned counsel would draw the attention of the Court to Ex.P.2 i.e., the complaint lodged by the brother of the deceased/PW.1. He would contend that as per Ex.P.2,



one Khaja Pasha Kavaluru (PW.9) informed the complainant over the phone that his sister Chandini has sustained burn injuries due to stove burst and admitted to the District Hospital for treatment. He would therefore contend that, as per the earliest information received by PW.2, it is evident that the victim sustained burn injuries on account of stove burst and therefore, the case of the prosecution that it was the accused who set her on fire after pouring kerosene or she died on account of cruelty meted to her soon before her death, consequent to the demand of dowry by the accused etc. are false.

10. Insofar as the deceased succumbing to the burn injuries is concerned, the prosecution has relied on the post-mortem report/Ex.P.11 as well as the inquest report/Ex.P.6. The first informant i.e., PW.1, is a resident of Kukanur. The deceased was residing along with the accused in her matrimonial home situated in Koppal. In Ex.P.2 it is stated that on 23.07.2015 at



about 01.30 p.m. to 02.00 p.m., Khaja Pasha Kavaluru (PW.9) informed over phone that the victim has sustained burn injuries due to stove burst and admitted to District Hospital. Immediately, the first informant-PW.2 went to the District Hospital, but the victim was referred to KIMS Hospital, Hubballi. Hence, he went to KIMS Hospital, Hubballi and even his mother Mahiboobi (PW.6) and brother Akbar Khan also came to KIMS Hospital. He has stated that the victim was not in a position to speak and she had sustained about 75% burn injuries. He has further stated that when he enquired with Khaja Pasha of Koppal, he informed him that on 23.07.2015 at about 01.30 p.m., all the accused poured kerosene on the deceased and set her on fire. Thereafter he informed the matter to the elder of the village by name Chand Mulla (CW.13) and went to the police station along with Khajasab (PW.9) and lodged the complaint.



11. PW.13 who was working as the S.H.O., on receiving the complaint, registered the case and issued the FIR to the Jurisdictional Court. He conducted the spot mahazar/Ex.P.3 and handed over the investigation to PW.20, who has deposed that he received the M.L.C. from KIMS, Hubballi regarding the death of Chandini on 26.07.2015 at about 12.30 a.m. and on the same day, he requested the Tahasildar to conduct the inquest panchanama. After the inquest pancharama, the dead body was subjected to post-mortem examination. PW.20 has thereafter handed over the investigation to the D.Y.S.P.-PW.19, who completed the investigation and filed charge sheet.

12. The prosecution has examined the doctor who conducted autopsy, as PW.15. The P. M. report is marked as Ex.P.15. PW.15 has deposed that he conducted the autopsy on 26.07.2015 between 07.30 and 08.30 p.m. He noticed burn injuries all over the body except the stomach, private part and on back of



the head and on both the feet. He has stated that the deceased had sustained about 85% burn injuries, and the death is due to toxemia shock as a result of burn injuries sustained.

13. PW.11 is the Tahasildar who conducted the inquest panchanamma marked as Ex.P.6. He has deposed about conducting the inquest panchanama and also recording the statement of the mother of the victim, who has stated that her daughter died due to the harassment meted to her by the accused. From the post-mortem report/Ex.P.11 and the inquest report/Ex.P.6 and the evidence of PW.12 and PW.15, we have no hesitation to hold that the prosecution has established that the deceased sustained burn injuries on account of which she died.

14. However, the contention of the learned counsel for the appellant is that the deceased sustained burn injuries on account of stove burst. Admittedly, there are no eye witnesses to the incident in question.



The deceased was residing in her matrimonial home at Koppal. In Ex.P.2 it is stated that Khaja Pasha Kavaluru, uncle of PW.2 informed him over phone that the deceased died due to stove burst. It is not in dispute that the said Khaja Pasha Kavalur is also not an eye witness to the incident. He has been examined as PW.9. He is a resident of Koppal. He has deposed that PW.1 is his nephew and even accused is related to him. A careful perusal of his evidence goes to show that on 23.07.2015 at about 03.00 p.m. when he was in his house, he was informed by one Khadar Pasha over phone that due to stove bust, Chandini sustained burn injuries and admitted at Koppal Hospital and in turn, he informed it to the complainant/PW.1.

15. The learned counsel for the appellant contended that since the said Khadar Pasha is not examined by the prosecution, an adverse inference has to be drawn that the prosecution has intentionally withheld the said witness. However, what is relevant to



be seen is that the incident has taken place inside the four walls of the house i.e. the matrimonial home of the deceased, wherein the evidence adduced by the prosecution goes to show that the accused was also residing. While conducting spot mahazar, no evidence was found to show that there was either a stove or it was a case of stove burst. PW.9 in his chief examination has stated that, when he went to the house of the accused where the incident took place, he did not find the match box, Kerosene Oil etc., and the entire house was cleaned. PW.13-The W.P.S.I. who conducted the spot mahazar/Ex.P.3 has also clearly stated that when the mahazar was conducted, there was no stove found at the spot, however there was kerosene smell.

16. The contention of the learned counsel for the appellant that the prosecution has tried to suppress the fact of stove bust and non-examination of Khadar Pasha (CW.18) is fatal to the prosecution case cannot be accepted. It is not the case of the defence that the said



Khadar Pasha was present in the house when the incident took place. On the other hand there is ample material on record to show that accused No.1 i.e. the appellant herein was very much present at the house as he too sustained burn injuries to his hand. As it is not elicited from any of the witnesses that Khadar Pasha was also present at the scene of occurrence, it cannot be said that non-examination of Khadar Pasha is fatal to the prosecution case.

17. Even according to the defence, the accused/appellant sustained burn injuries to his hands. The defence has tried to contend that the said burn injuries were sustained by him while he was trying to save the victim, when she sustained burns due to stove burst. As we have already held that there was no evidence of stove burst and the contention of the learned counsel for the appellant cannot be accepted, at the same time, the fact of accused sustaining burn



injuries would go to show that, he was present in the house at the time of incident.

18. PW.15 is the doctor who has treated the accused at District Hospital, KIMS, Koppal on 26.07.2015. Ex.P.15 is the wound certificate. A perusal of the evidence of PW.15 and Ex.P.15 goes to show that the accused sustained burn injuries on his face, neck and hands and right leg. PW.15 has stated that accused has sustained about 30 to 40% burn injuries and the said burn injuries could be caused within a period of 3 days. In the cross-examination, it is elicited from PW.15 that the injuries noticed in Ex.P.15 could be caused, when a person tries to save someone who has suffered burns.

19. In the case on hand, accused while recording his statement under Section 313 Cr.P.C. has denied all the incriminating evidence appeared against him, except admitting taking treatment from the doctor for the burn injury sustained by him. He has not stated that the



deceased sustained burn injuries due to stove burst and he sustained injuries while trying to save the deceased. He being present in the house, no efforts were made to explain the fact which was within his special knowledge. As we see from the evidence and material on record, the case of the defence that the deceased sustained burn injuries on account of stove burst is not supported by any convincing evidence. From the evidence of P.W.6, it can be gathered that the story of stove burst was introduced by accused themselves. She has stated that she was informed by Khaja Pasha that when he went to the hospital, Sajjad Sab i.e., the father in law of the deceased told him that the deceased sustained burn injuries due to stove burst. However, there is no evidence to show that the deceased caught fire and sustained burn injuries due to stove burst. On the other hand, P.W.13, who conducted the spot mahazar has categorically stated that there was no stove or any such evidence available when the mahazar was conducted.



Hence, we are of the firm view that the deceased sustained burn injuries not accidentally and not on account of stove burst.

20. Having held that it is not a case of stove burst and deceased has not sustained accidental burn injuries, the next question that would arise is as to 'whether the prosecution has proved the charge under Section 302 of IPC'?

21. The learned Additional SPP contended that the deceased and accused No.1 were residing in the same house. The deceased sustained burn injuries under suspicious circumstances and the fact that the accused also sustained burn injuries and his abscondence would establish the charge against him under Section 302 of IPC.

22. He further contended that the accused has not given any explanation about him sustaining injuries and also as to what happened on the date of incident



and how the deceased sustained burn injuries. He further contended that P.W.6 has categorically stated that when she went to the Hospital, the deceased was in a condition to speak and she informed her that the accused has poured kerosene and set fire, for not bringing additional dowry. He has therefore, contended that the prosecution has proved the charge framed against the accused under Section 302 of IPC.

23. The incident took place on 23.07.2015 between 01.30 to 01.40 p.m. As per prosecution, the victim was immediately shifted to Koppal Government Hospital and from there, she was shifted to KIMS Hospital, Hubballi. She succumbed to the injuries after three days i.e., on 26.07.2015 in the early hours. The prosecution has not marked any documents relating to Koppal Government Hospital, to show that the victim was in a condition to speak. Further, as could be seen from the medical evidence of P.W.16 and P.W.17, the doctors working at KIMS, Hubballi, the victim was not in



a fit condition to give any statement. Both P.W.16 and P.W.17 have stated that they have examined the victim after she was brought to the Hospital and at that time, she was in an unconscious state of mind and not responding.

24. P.W.18 is the Police constable, who went to KIMS Hospital, Hubballi on 01.10.2015 on the direction of the Dy.S.P., Koppal to verify the condition of the victim. He has stated that when he met the doctors and enquired about the condition of the patient, he was informed that she is not in a fit condition to give any statement.

25. Coming to the evidence of P.W.6, mother of the victim, her deposition that, when she enquired, victim informed that the accused has poured kerosene and set fire on her is not corroborated by any other evidence including evidence of the first informant, brother of the deceased. On the other hand, there is sufficient material to show that the victim was



unconscious at the time of admission at KIMS Hospital, Hubballi and she was not in a position to give any statement. The evidence of P.W.6, creates doubt in the mind of the Court and does not inspire the confidence of the Court, hence, cannot be accepted without any corroboration.

26. The accused and the deceased were alone living in the house where the incident took place. The accused also sustained burn injuries, which confirms about his presence in the house. Accused took treatment for the burn injuries from P.W.15, who issued the wound certificate marked as Ex.P15. He has stated that accused was brought by his brother on 26.07.2015 at about 12.05 noon. However, merely because he has also sustained burn injuries, it will not lead to draw an inference that he, poured kerosene on the deceased and set fire to her, without any other convincing evidence placed on record.



27. Learned Additional S.P.P would contend that P.W.8, a resident of Koppal, a neighbour has deposed that accused was always quarreling with the deceased and he has stated that it is the accused who have poured kerosene and set fire to her. He contended that the said witness has seen appellant holding the deceased and at that time, the accused had sustained burn injuries.

28. A perusal of the evidence of P.W.8 does not indicate that, he was an eye witness to the incident. He has spoken about the earlier quarrel and according to him, a quarrel took place in the house of the accused. By the time he saw, the deceased had already sustained burn injuries. Accused No.1 was holding the hand of the victim and he had also sustained burn injuries.

29. Evidence of P.W.8 is not helpful to the prosecution to prove the charge under Section 302 of IPC. Further, merely because the accused was absconding from the spot after the incident will also not



lead to draw an inference that he has committed the murder. The suspicion cannot take the place of proof, however grave.

30. To prove the charge under Section 4 of D.P. Act, 498(A) and 304(B) of IPC, the prosecution is mainly relying on the evidence of P.Ws.1, 5 to 10. In Ex.P2, it is stated that at the time of marriage, cash of Rs.10,000/- and 4 tolas of gold was given to the accused and the couple have resided together happily for about two years. Even from the evidence of P.W.1, P.W.5 and P.W.6, we find that a cash of Rs.10,000/- and 4 tolas of gold was given to the accused. However, it is not stated that the said cash and gold was demanded by the accused. Insofar as the payment made subsequently to the tune of Rs.40,000/- to Rs.50,000/-, there is no mention about the said demand in Ex.P2. The trial Court has found inconsistency about the said additional dowry given to the accused, after the marriage. Even



otherwise, the trial Court has acquitted the accused of the charge framed under Section 3 of the D.P. Act.

31. P.W.1 in his evidence has stated that in the year 2013, he got married and at that time, they had been to Koppal to call his sister for the marriage. However, the accused refused to send her, telling that they will send her, only if gold was given. At that time, they expressed that they are not able to give gold, but they will give 2 acres of land. Accused No.1 demanded that the land should be registered in his name. The said demand made particularly by accused No.1 is also spoken by other witnesses-PWs.5, 6 and 7. The witnesses have even spoken about an earlier incident, wherein the accused caused burn injuries to the leg of the deceased. The cruelty meted to the deceased is consistently spoken by the witnesses.

32. Even though there was no complaint or case registered for causing burn injuries to the leg of deceased, the said fact has been spoken by the



witnesses including P.W.7, the Jamath President. There is nothing elicited in the cross-examination of the witnesses to disbelieve the same. From the evidence of the above witnesses, we have no hesitation to hold that the appellant/accused No.1, two years after the marriage, was harassing the deceased and subjecting her to cruelty making unlawful demand in connection with the marriage, which attracts the ingredients of Section 498(A) of IPC and Section 4 of the D.P Act.

33. The death of Chandini has taken place within 7 years from the date of marriage, under suspicious circumstances. There is ample evidence to show that appellant/accused No.1 was very much present in the house when the incident took place. P.W.8, neighbour has stated that the accused oftenly used to quarrel with the deceased and even on the date of incident, there was a quarrel. We are convinced that the appellant i.e., accused No.1 was demanding that two acres land should be registered in his name. There is no other reason



forthcoming to hold that the deceased sustained burn injuries for any other reason. There is absolutely no explanation given by the accused as to how the incident took place or for what reason and how the deceased sustained burn injuries.

34. On the other hand, the evidence on record would clearly establish that the accused was demanding dowry and subjecting the deceased to cruelty and even on the date of incident, he quarreled with the deceased. Hence, presumption under Section 113(B) of the Evidence Act is applicable to the facts of the present case. The reasons assigned by the trial Court for holding the accused guilty for the offence punishable under Section 498(A), 304(B) of IPC and Section 4 of the D.P., cannot be found fault with. However, the reasons assigned by the trial Court for convicting and sentencing the accused for the offence punishable under Section 302 of IPC is liable to be set aside.



35. At this stage, the learned counsel for the appellant submitted that, accused No.2 to 4 were tried in Sessions case No.53/2019 and after a full-fledged trial, the learned Sessions Judge has acquitted them of the charges leveled against them, vide judgment dated 15.02.2023. The said judgment has become final, as there is no challenge to the same, as on today. However, the evidence against the appellant/accused No.1 has been independently assessed by us and we have come to the above conclusion.

36. The trial Court has sentenced the appellant/accused No.1 to undergo rigorous imprisonment for 3 years, for the offence punishable under Section 498(A), to undergo rigorous imprisonment for 7 years, for the offence punishable under Section 304(B) and rigorous imprisonment for 6 months for the offence punishable under Section 4 of the D.P Act, along with fine and default sentence.



37. It is submitted, the accused was in custody, as an under trial prisoner from 14.08.2015 to 20.07.2020. Thereafter, he was taken into custody on the date of judgment i.e., on 15.02.2023. The sentence imposed against him was suspended on 11.05.2023. In all, he was in custody for a period of just over 5 years. The trial Court has imposed minimum sentence for the offence punishable under Section 304(B) of IPC. The sentence imposed against the accused for the offence punishable under Section 304(B), 498(A) and Section 4 of the D.P Act is in accordance with law and does not call for interference.

38. For the aforesaid reasons, we proceed to pass the following:

ORDER

- i. The appeal is ***allowed in part.***
- ii. The judgment dated 15.02.2023 and order on sentence dated 16.02.2023 passed in



S.C.No.71/2015 by the Court of the Principal District and Sessions Judge at Koppal, insofar as convicting and sentencing the appellant/accused No.1 for the offence punishable under Section 302 of IPC is hereby set aside.

- iii. The conviction and sentence passed for the offence punishable under Section 498(A), 304(B) and Section 4 of the D.P Act is hereby confirmed.
- iv. The accused is entitled to set off for the period of imprisonment already undergone by him.
- v. All the substantive sentences shall run concurrently.
- vi. The accused shall surrender before the trial Court within a period of 30 days to undergo remaining sentence.



vii. Registry shall forward a copy of the judgment to the trial Court.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

SSP-1 to 19
SH-20-23
RKM-24 to end
CT-MCK
LIST NO.: 1 SL NO.: 12