



CNR: KAHC010271692019

NC: 2026:KHC:44711-DB  
CRL.A No. 1604 of 2019

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

**DATED THIS THE 19<sup>TH</sup> DAY OF AUGUST, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ**

**AND**

**THE HON'BLE MR. JUSTICE G BASAVARAJA**

**CRIMINAL APPEAL NO. 1604 OF 2019 (C)**

**BETWEEN:**

SRI KUMAR H R  
AGED ABOUT 29 YEARS,  
S/O RANGAIAH  
R/O HALASINAHALLY VILLAGE,  
SALAGAME HOBLI,  
HASSAN TALUK  
PIN-573 220

...APPELLANT

(BY SRI. PRATHAP S. S., ADV.)

**AND:**

THE STATE OF KARNATAKA  
THROUGH HASSAN RURAL POLICE STATION,  
REP. BY THE STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDINGS,  
BANGALORE-560 001.

...RESPONDENT

(BY SRI. RAHUL RAI K., HCGP.)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET  
ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF  
SENTENCE DATED 23.07.2018 PASSED BY THE III ADDITIONAL  
DISTRICT AND SESSIONS JUDGE, HASSAN IN  
S.C.NO.228/2015 - CONVICTING THE APPELLANT/ACCUSED  
FOR THE OFFENCE P/U/S 302 OF IPC.



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THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ  
and  
HON'BLE MR. JUSTICE G BASAVARAJA

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE G. BASAVARAJA)

This appeal is preferred by the appellant against the judgment of conviction and order on sentence dated 23.07.2018, passed in SC No. 228 of 2015 by the III Additional District and Sessions Judge at Hassan (for short the "trial Court").

2. For the sake of convenience the parties herein are referred to as per their status and rank before the trial Court.

3. Brief facts leading to this appeal are that about nine years back, the marriage of the accused was solemnized with Sunita (now deceased). After the marriage, the accused had led marital life with her only for a few days. Subsequently, the accused was addicted to bad vices and had become spendthrift and started to squander money to quench his bad vices. He neglected his wife and also subjected her to cruelty, both



physically and mentally. On 21.05.2015 at about 11:45 am the accused picked up a quarrel with his wife and with an intention to commit her murder, poured kerosene on her and set her ablaze and fled the scene. Resultantly, Sunita sustained burn injuries and was admitted to Hospital. On 26.05.2015 at about 11.00 am, while she was being taken from Victoria Hospital, Bengaluru to her house at Hassan, she succumbed to the injuries. Thus, the accused committed offence punishable under Section 498A and 302 of Indian Penal Code.

4. After submitting the charge-sheet against the accused, cognizance was taken and case was registered in CC No.6672 of 2015 and after committal of the case to Sessions Court, it was registered as SC No.228 of 2015. Upon hearing on charges, the trial Court framed charges. The same were read over and explained to the accused in the language known to him. Having understood the same, accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, the prosecution has, in all, examined 25 witnesses as PW1 to PW25 and marked 21 documents as Ex.P1 to P21 and eight material objects as MO1 to 8. On closure of prosecution side evidence,



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statement of accused under Section 313 of Code of Criminal Procedure was recorded. The accused has totally denied the incriminating circumstances found against him. However, he did not choose to lead any defence evidence on his behalf. Having heard the arguments on both sides, the trial Court acquitted the accused of the offence under Section 498A of Indian Penal Code and convicted the accused for the offence punishable under Section 302 of Indian Penal Code with payment of fine of Rs.5,000/-, in default of payment of fine, to undergo imprisonment for six months. Being aggrieved by the impugned judgment of conviction and order in sentence, accused has preferred this appeal.

**Submission on behalf of the accused:**

5. Sri Prathap S.S., learned Counsel appearing for the appellant would vehemently submit that the impugned Judgment of conviction and order on sentence is contrary to the evidence on record and is liable to be set aside. He would further submit that the appellant was falsely implicated and the prosecution witnesses are not reliable. The incident took place on 22.05.2015 and the injured died on 26.05.2015, after a



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lapse of four days from the date of the alleged incident. He would submit that initially, the FIR was registered for the offence punishable under Sections 498A and 307 of Indian Penal Code. Thereafter, Section 302 IPC was inserted after the death of Sunita. The alleged death of injured was due to fire engulfing the hut, in which the Sunita was residing. It is further submitted that the accused and Sunita were residing in a hut which had the roof of Coconut fronds and Sunita sustained burn injuries accidentally. The investigating officer has not collected the case sheet maintained by the concerned hospital to show the health condition of the victim at the time of dying declaration said to have been recorded by the Executive Magistrate. The concerned doctor is not cited as witness and examined before the Court to prove the health condition of the deceased as to whether she was physically and mentally in a fit condition to give statement or not. The investigating officer has not explained anything for non-production of case sheet maintained by the concerned hospital from the date of admission to the hospital till her death. The contents of complaint Ex.P1 reveals that the deceased had sustained 70 to



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80% burn injuries and she was not in a position to talk. After the death of the deceased, The investigating officer has recorded the statement of complainant Sarojamma as per Ex.P3 in which also it is stated that her daughter was not able to speak. Even in the dying declaration-Ex.P1, the medical officer has not endorsed that the deceased was able to speak and was physically and mentally in a fit condition to give the statement. The medical officer has casually put signature on the printed Form.

6. The learned Counsel would further submit that Ex.P11-dying declaration reveals that the injured was not in a position to talk, but she was conscious and she answered the questions of the Executive Magistrate, in sign language. But the same is not deposed by Manjunath-Tahsildar examined as PW10. He has deposed in his evidence that the injured was able to speak, which is not consistent with Ex.P11. He would further submit that the oral dying indication said to have been given by the deceased, as alleged by the prosecution before PWs1 to 3 is not believable as the evidence placed before the Court was that the deceased was not in a position to give



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statement. On all these grounds, it is sought to allow the appeal.

7. Per contra, Sri Rahul Rai K., learned HCGP appearing for the respondent-State would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts, and there are no grounds to interfere with the impugned Judgment of conviction and sentence and accordingly, sought for dismissal of the appeal.

8. Having heard on both sides and on perusal of the materials placed before us, the following points would arise for our consideration:

- i) Whether the appellant has made out a ground to interfere with the Judgment of conviction and sentence, passed by the trial Court?
- ii) What order?

9. Our answer to the above points are:

Point No.1: in the affirmative;

Point No.2: as per final order



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**Regarding Point No.1:**

10. We have examined the materials placed before us. It is a case of the prosecution that the marriage of Sunita was solemnized with the accused. After the marriage, the accused was addicted to bad vices and had become spendthrift and started to squander money to quench his bad vices. He neglected the family, and subjected his wife to cruelty, both physically and mentally. It is further alleged that on 21.05.2015 at about 11:45 am, the accused picked up a quarrel with his wife and, with an intention to commit her murder, he has poured kerosene on her and set her ablaze. Thus the accused has committed the alleged offence. To prove the guilt of the accused, the prosecution has examined 25 witnesses as PW1 to 25, marked 21 documents as exhibit P1 to 21 and eight material objects as MO1 to 8.

11. PW1-Sarojamma who is the mother of the deceased, has deposed in her evidence that about seven years ago, her daughter was given in marriage to the accused. The accused, his parents and her daughter were residing in the same house and the accused and her daughter were staying in



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a separate room, i.e. the hut attached to the house. Accused used to leave the house without intimating her daughter and she was not provided with food, clothing, etc. Three months prior to the incident, accused went to Mangalore to work in a Hostel as a cook. Then she advised him to reside with her daughter and warned him that she would give complaint, if he continues the same attitude. However, she did not lodge any complaint. Accused told that he has married another woman at Mangalore and therefore her daughter lodged a complaint with the Police and he was advised and warned to look after her daughter. She has also lodged complaint against the accused. Police took the accused to the Station and the accused stated before the Police that he has not married and police have warned the accused not to repeat such instances. While returning from the station, the accused told that he will die as they have a lodged complaint against him. Then she took the accused along with her daughter to their village. There also accused was telling that he will die. Then she returned to Hassan after dropping her daughter and the accused in their house. At about 12:30 pm, CW3 informed her over phone that



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the accused has poured kerosene on her daughter and set fire. Immediately, she rushed to the village of the accused and shifted the injured to the Hospital in an ambulance. The body of her daughter was burnt completely. On enquiry with her daughter, she told that accused has poured kerosene and set fire and fled from the spot. Her daughter was admitted at Government Hospital, Hassan for two days. She lodged the complaint with the Police as per Ex.P1. Thereafter, police came to the spot and conducted mahazar as per Ex.P2 and seized MO1 to 5. Thereafter, the injured was shifted to Adi Chunchanagiri Hospital and from there she was shifted to Victoria Hospital at Bangalore for higher treatment. For two days, her daughter was in Victoria Hospital and while returning to Hassan, she passed away. Then the body was shifted to Government Hospital. On enquiry, the sister-in-law of her daughter told that accused has poured kerosene on her daughter and set fire.

12. PW2-Chikkamma is known to accused and they are neighbours. About an year and 4 months back, the accused had immolated the deceased by pouring kerosene. She went to



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the spot and the neighbours were trying to put out the fire. The accused who was standing near the incident, fled the spot. The injured had sustained burn injuries. When enquired with her, she told that since there was no boy child to them, her husband had poured kerosene and lit fire.

13. PW3-Suresh, is the brother of the deceased. He has deposed that the relationship between his sister and the accused was not cordial. He has deposed that his sister had informed him that the accused had one more family at Mangalore and also had a boy child. He as further deposed that about a year and four months back, his sister-in-law had informed him over phone that the accused had killed his sister by immolating. Further, he has deposed about his sister being admitted to Government Hospital at Hassan and at Victoria Hospital at Bengaluru.

14. PW4-Shantha Raju has deposed in his evidence as to inquest panchanama conducted by the Police as per Ex.P8.

15. PW5-Kariyaiah has deposed as to the spot panchanama and seizure of MO1 to 5.



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16. PW6-Shobha is the sister of the deceased, she has not supported the case of prosecution. She has been treated as hostile witness and is not examined by the prosecution.

17. PW7-Sumitra has also deposed as to the inquest panchanama conducted by the Police as per Ex.P8.

18. PW8-Venkatesha has deposed as to the seizure of cloth of the deceased as per Ex.P4.

19. PW9-Dr. Vishwanath, has deposed as to the conducting of post-mortem examination and also issuance of Ex.P10-postmortem report.

20. PW10-Manjunatha V, the Executive Magistrate has deposed as to the recording of dying declaration as per exhibit P11.

21. PW11-Chennegowda has deposed as to preparation of rough sketch-Ex.P12 as per request of the police.

22. PW12-Saganaiah said to be the attester to spot mahazar, has not supported the case of prosecution.



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23. PW13-Nataraja, PDO, has deposed as to the issuance of Ex.P13, House Khata extract.

24. PW14-Prathap and PW15-Manjunatha, are the panch witnesses to the spot mahazar as per Ex.P14.

25. PW16-Manjunatha B.R., has deposed as to the apprehension of the accused on 16.07.2015 and produced him before the CPI and gave requisition as per Ex.P15.

26. PW-17-Yathish has deposed as to the submission of FIR to the Court on 22.06.2015, as per Ex.P16.

27. PW8-Rajanna, Head Constable, has deposed as to the registration of FIR.

28. PW19-Keshavaraju has deposed as to the mahazar conducted by the police as per Ex.P4 and seizure of MOs6 to 8.

29. PW20-Kumaramma, Women Police Constable, has deposed as to handing over of the dead body to the Doctor at Government Hospital, Hassan, and also handing over of the corpus to the relatives of the deceased.



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30. PW21-Rukmini, Women Police Constable, has deposed in her evidence as to submission of requisition and producing articles to the FSL, Bangalore.

31. PW22-A.T. Bhanu and PW24-Vasanth Police Inspectors have deposed as to the respective investigation conducted by them.

32. PW23-Dr. Suma has deposed as to the issuance of FSL report Ex.P20 and P21.

33. PW25-Chimmagaiah, the father of deceased, has not deposed anything against the accused.

34. On careful examination of the entire material on record, it is crystal clear that the investigating officer has not produced the case sheet pertaining to the deceased from the Government Hospital, Hassan. According to the case of the prosecution, the injured was admitted to the Government Hospital, Hassan and then to Adichunchanagiri Hospital and later, was shifted to Victoria Hospital at Bangalore. The MLC register maintained by the concerned Hospitals are not produced by the investigating officer. The investigating officer



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has not explained anything as to non-production of these material piece of evidence to show the health condition of the deceased i.e. she was physically and mentally fit to give the dying declaration. The history given by the victim or the relative of the victim are also not collected by the investigating officer. In Ex.P11, the alleged dying declaration said to have been recorded by PW10-Executive Magistrate, there is no endorsement by the Medical Officer or he has not issued separate certificate to the effect that the injured was mentally and physically fit to give statement. One of the medical officers has put signature on Ex.P1, but the name of the medical officer is not disclosed by the investigating officer. The investigating officer has not cited him as witness. The prosecution has also failed to examine him before the Court. The investigating officer has not explained anything as to non-citing him as a witness in the charge-sheet.

35. Additionally, Ex.P11, dying declaration reveals that the PW10 has not put his signature certifying that the victim was conscious and was able to speak. The victim has answered the questions in sign language and on that basis, he has



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recorded the answers of the injured. During the course of his examination-in-chief, he has stated that the injured was in a position to speak, and she was conscious, but he has not deposed in his evidence that he has recorded the alleged answers of the victim on the basis of sign language. Further, he has clearly admitted in the cross-examination that he cannot say in the presence of which medical officer he has recorded the dying declaration of the injured. He has further admitted that he has not recorded as to what are the signs made by the injured and written in Ex.P11. He has also not disclosed as to who wrote the contents of the dying declaration. He has also not disclosed the name of the scribe. He has also not taken the signature of his assistant who wrote the contents of Ex.P11. The investigating officer has not examined the said assistant who has written the contents in Ex.P11.

36. The contents of Ex.P1 and P3 reveals that the injured has sustained burn injuries and she was not in a position to speak. The contents of Ex.P1 to P3 are quite contrary to the evidence of PWs1 to 3. Therefore, the oral evidence of PWs1 to 3 is not reliable and also not supported by



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the medical evidence. The prosecution has failed to place sufficient legal evidence before the Court to prove that the injured/victim was able to give statement at the time of recording the dying declaration. The evidence of PWs1 to 3 and PW11 cannot be accepted.

37. Viewed from any angle, we do not find any cogent, convincing, corroborative evidence to prove that the accused has committed the offence. The trial Court has not properly appreciated the evidence on record in accordance with law and facts. On appreciation, examination and reconsideration of the entire evidence on record, we are of the considered opinion that the prosecution has failed to prove the guilt of the accused. Accordingly, we answer point number one in the affirmative.

38. For the foregoing reasons and discussions, we proceed to pass the following:

### **ORDER**

- i . Appeal is allowed;
- ii. The Judgment of conviction and order on Sentence dated 23.07.2018 passed in SC



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No.228 of 2015 by the III Additional District and Sessions Judge, Hassan is set aside;

- iii. Accused is acquitted of the offence punishable under Section 302 of Indian Penal Code;
- iv. The concerned Jail authority is directed to release the accused forthwith, if he's not involved in any other case;
- v. Registry is directed to communicate this Judgment to the concerned jail authority.

**Sd/-  
(MOHAMMAD NAWAZ)  
JUDGE**

**Sd/-  
(G BASAVARAJA)  
JUDGE**

Inn  
List No.: 1 Sl No.: 9