



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1762 OF 2018 (374(Cr.PC) /
415(BNSS))

BETWEEN:

SMT. SHARADHA BAI @ SHARADA
W/O K.T. VENKATAREDDY,
AGED ABOUT 25 YEARS,
OCCUPATION - COOLIE,
R/AT VEERADIMMANAHALLI VILLAGE,
CHALLAKERE TALUK,
CHITRADURGA DISTRICT
PIN-577 522

...APPELLANT

(BY SRI. N.S. SAMPANGI RAMAIAH, ADV.)

AND:

STATE BY CHALLAKERE POLICE
POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BANGALORE-560 001.

...RESPONDENT

(BY SRI. VIJAY KUMAR MAJAGE, SPP-II.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO
SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION
DATED 08.08.2018 AND SENTENCE DATED 10.08.2018 PASSED
BY THE II ADDITIONAL DISTRICT AND SESSIONS SPECIAL
JUDGE, CHITRADURGA IN SPL.C.NO.28/2017- CONVICTING
THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 OF
IPC.



THIS APPEAL, COMING ON FOR FURTHER 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)

1. Accused has preferred this appeal against the Judgment of conviction dated 8th August 2018 and order of sentence dated 10th August 2018 passed in SC No.28 of 2017 by the Special II Additional District & Sessions Judge, Chitradurga (for short, hereinafter referred to as the 'trial Court'.)

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

3. Brief facts leading to this appeal are that, the Circle Inspector of Police, Challakere submitted charge-sheet against the accused for commission of offence under Section 302 of Indian Penal Code. It is alleged by the prosecution that accused-Sharada Bai and Venkatesh



Reddy K.T., were in love with each other and got married about seven years ago. The deceased-Venkatesh Reddy was addicted to drinks and neglected his wife and children and also suspected the fidelity of his wife/accused and used to assault her. Being unable to tolerate the torture meted out by her husband, the accused decided to eliminate her husband with an intention to live peacefully. Accordingly, on 18th January, 2017 at 2.00 am in the hut situated in Veeradimmanahalli, Challakere Taluk, when the deceased was sleeping, she poured kerosene on him and lit fire with a matchstick. As a result, the deceased's clothes, body and hut were burnt. Immediately, deceased started screaming and he himself poured water on his body and rushed to Government Hospital, Challekere and then he was shifted to District Hospital, Chitradurga. During the course of treatment, he succumbed to the burn injuries on 22nd January, 2017 at 3.47 am. Thus, the accused committed the aforesaid offence.



4. After filing charge-sheet, cognizance was taken against the accused and case was registered in CC No.218 of 2017 on the file of Principal Civil Judge & JMFC, Challakere and after the case was committed to the Court of Sessions, it was registered as SC No.28 of 2017. Accused was arrested on 18th January 2017 and was in judicial custody during trial from the date of her arrest. Upon hearing on charges, the trial Court framed charges against the accused for the offence punishable under Section 302 of Indian Penal Code and the same were read over and explained to accused. Having understood the same, accused pleaded not guilty and claimed to be tried. To prove the guilt of the accused, in all, eighteen witnesses were examined as PWs1 to PW18, 27 documents were marked as Exhibits P1 to P27 and four material objects were marked as MOs1 to 4. On closure of prosecution side evidence, statement of accused under Section 313 of Cr.PC. was recorded. Accused has totally denied the incriminating evidence of prosecution witnesses



appearing against her and she has stated in her statement as under:

"ನನ್ನ ಗಂಡ ಕೆಲಸಕ್ಕೆ ಹೋಗುತ್ತಿರಲಿಲ್ಲ. ಹಿಂಸೆ ಕೊಡುತ್ತಿದ್ದ. ಸುಟ್ಟ
ಗಾಯಗಳು ಆದ ನನ್ನ ಗಂಡನನ್ನು ನಾನು ಮತ್ತು ನನ್ನ ತಾಯಿ ಸೇರಿ
ಅಸ್ಥತ್ರಿಗೆ ಸೇರಿಸಿರುತ್ತೇವೆ."

5. Having heard the arguments on both sides, the trial court has convicted the accused for offence punishable under Section 302 of Indian Penal Code and sentenced to undergo simple imprisonment for life and also to pay fine of ₹20,000/-. Being aggrieved by the impugned judgment of conviction and order on sentence, the accused has preferred this appeal.

Submissions advanced by the learned Counsel for the appellant:

6. Sri N.S. Sampangi Ramaiah, learned Counsel appearing on behalf of the appellant would submit that the impugned Judgment passed by the trial Court is contrary to the facts and circumstance of the case. He submits that the Judgment assign certain reasons which are erroneous, illegal and improper and hence it has reached to a wrong



conclusion. The court below gravely erred in convicting the appellant for the charged offence holding that there is a corroborative evidence of witnesses, but there is no corroborative evidence and there is no independent corroboration to the evidence of witnesses. During the course of trial, in order to bring home the guilt of the accused, the prosecution examined witnesses PW1 to 18 and marked Exhibits P1 to P27 and material objects MOs1 to 4, but the accused did not lead any defence evidence. All the witnesses have not supported the case of the prosecution. Only on the basis of sole dying declaration and complaint, the trial court has convicted the accused which is not sustainable in the eyes of law. There is no endorsement on Exhibit P13 to the effect that the injured was mentally and physically fit to give dying declaration. The investigating officer has not collected the case-sheet maintained by the concerned Hospital. The investigating officer has not explained anything as to non-production of case sheet so as to show that the injured's pulse rate, SpO2 and BP was normal and the deceased was able to



give statement. The deceased himself got admitted to the hospital at 2.00 am on 18th January 2017, and he was shifted to Chitradurga Hospital at 5.40 am in the ambulance. The condition of the patient from 5:45 am to 1:40 pm, was not disclosed by the concerned medical officer. The Tahasildar has not handed over the dying declaration soon after recording the same. He has not whispered anything for retaining the same with him till handing over the copy to the investigating officer. The investigating officer has also deposed that he has received the dying declaration on 1st February 2017. He has not whispered anything as to why he has not collected the dying declaration from the Tahasildar on the date of recording, till 01st February, 2017. The Doctor has not disclosed the name of the accused when the injured got admitted to the hospital for treatment on 18th January 2017. Learned Counsel for the appellant submitted that viewed from any angle, the entire evidence of the prosecution witnesses will create reasonable doubt as to the act of the accused. The trial court has convicted the



accused only on the basis of presumptions, assumptions and surmises, which is not sustainable under law. The trial court has failed to appreciate evidence and record in proper perspective. On all these grounds the learned counsel sought to allow the appeal.

Submissions advanced on behalf of the respondent:

7. On the other hand, Sri Vijay Kumar Majage, learned SPP-II for respondent, would submit that the trial Court has properly appreciated the evidence on record. Absolutely, there are no grounds to interfere with impugned Judgment of conviction and order on sentence passed by the trial court below, accordingly sought for dismissal of the appeal.

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

1. Whether the appellant has made out ground to interfere with impugned judgment of conviction and order on sentence?



2. What order?

9. Our answer to above points are:

Point no.1: In the affirmative;

Point no.2: As per the final order

REASONS:

10. We have examined the material placed before the court. It is the case of the prosecution that the accused-Sharada Bai and Venkatesh Reddy K.T., were in love with each other and got married about seven years back. The deceased-Venkatesh Reddy got addicted to drinks and neglected his wife and children and also suspected the fidelity of his wife/accused and used to assault her. Being unable to tolerate the torture meted out by her husband, she decided to eliminate him with an intention to live peacefully. Accordingly, on 18th January 2017 at 2.00 am in the hut situated in Veeradimmanahalli, Challakere Taluk, when the deceased was sleeping, accused poured kerosene on him and lit fire with a matchstick. As a result, his clothes, body and hut were



burnt. He started screaming and he himself poured water on his body and rushed to Government Hospital, Challekere and then he was shifted to District Hospital Chitradurga. During the course of treatment, he succumbed to the burn injuries on 22nd January, 2017 at 3.47 am. Thus, accused committed the offence.

11. To prove the guilt of the accused, the prosecution has examined 29 witnesses as PWs1 to 29, marked 27 documents as Exhibits P1 to P27 and four material objects as MOs1 to 4. On the basis of statement of deceased recorded by the police in the hospital on 18th January 2017, case was registered against accused in Crime No.22 of 2017 for commission of offence under Section 307 of Indian Penal Code and submitted FIR to the Court on 18th January 2017 at 7:30 pm. The Tahsildar, Chitradurga has recorded the dying declaration of the injured Venkatesh Reddy on the same day, i.e. on 18th January 2017, in the presence of Doctor as per Exhibit P13. According to the case of the prosecution, CWs9, 10



and 11 are eye-witnesses to the incident. CW9-Ramesh, CW10-Kumar Naika and CW11-Kamala Naika are examined as PWs 6, 14 and 15 respectively. All these witnesses have not supported the case of the prosecution and were treated as hostile witnesses with the permission of the court. During their cross-examination also they have categorically denied as to the statement said to have been recorded under Section 161 of Indian Penal Code marked as Exhibits P7, 17 and 18.

12. PW15-Kamala Naika has not supported the case of the prosecution. However, the Prosecutor has not treated him as hostile witness or cross-examined him, for the reasons best known to prosecution.

13. PW1-Zameer Ahmed has deposed as to conducting of Spot Panchanama as per Exhibit P1 and taking of photos at the spot as per Exhibits P2 and P3 and seizure of material objects MOs1 to 4. This witness has partly supported the case of the prosecution.



14. PW2-Dr Sali Manjappa has deposed that on 18th January 2017, Venkatesh Reddy came to the hospital with burn injuries and he has given treatment to him and informed him to go to Davanagere for higher treatment. However, the deceased did not go to Davanagere for treatment but went to Chitradurga on 22nd January, 2017 and died in the District Hospital, Chitradurga at 3:47 pm. Hence he has intimated to the police for post-mortem examination as per Exhibit P4.

15. PW3-Donappa Reddy, has deposed in his evidence as to panchanama conducted as per Exhibit P1.

16. PW4-Rama Reddy and PW5-Ramesh Reddy have deposed in their evidence as to inquest Panchanama conducted by the Police as per Exhibit P6.

17. PW6-Ramesh Naika and PW7-Lokesh said to be the witnesses to the incident, have not supported the case of the prosecution. They have deposed in their evidence that they know deceased Venkatesh Reddy. He is the



brother-in-law of Venkatesh Reddy. He died about an year back. He was loving Sharda Bai and married her.

18. PW8-Venkatesh Reddy is a hearsay witness.

19. PW9-Dr.Shobha, Psychiatrist working in Chitradurga District Hospital, has deposed in her evidence that on 18th January, 2017 at 1:30 pm, when she was working in Casualty, Police sub Inspector Challakere Police Station has submitted requisition to record the dying declaration of Venkatesh Reddy son of Thimma Reddy. Since she was in Casualty. She visited the respective ward at 1:40 PM and visited the patient Venkatesh Reddy and examined him. He was suffering with burn injuries and was under treatment for the same. She has stated that the said Venkatesh Reddy was conscious oriented, co-operative, and is in good condition to give statement. She has also obtained the RTM of Venkatesh Reddy as per Exhibit P9 and also that she took signature of M Lokesh as per Exhibit P9(a).



20. PW10-Dr. Suhana, working as Medical Officer at Government Hospital, Challekere has deposed that on 18th January 2017 at 4.05 am Venkatesh Reddy son of Thimma Reddy aged 24 years, came with the history of burn injuries. On enquiry he informed about some one pouring kerosene and lighting with a matchstick. On examination, she found that there were 70% burn injuries and there was emittance of kerosene smell. She stated that she has given first aid treatment and sent the patient to District Hospital, Chitradurga. She has also stated that she has informed the police about the same and the MLC is marked as Exhibit P10.

21. PW11-M. Mallikarjuna, Tahsildar, Chitradurga Taluk has deposed in his evidence that on 18th January 2017 at about 4:50 pm he received requisition from Challakere Police to record the dying declaration of the injured Venkatesh Reddy who was taking treatment in the District Hospital at Chitradurga. Accordingly, at about 5:30 pm, he went to District Hospital, Chitradurga and



requested Dr. Nagaraj who was giving treatment to Venkatesh Reddy as to whether injured Venkatesh Reddy is fit to give statement or not. Dr Nagaraj has given his opinion in writing as per Exhibit P2 that the injured is fit to give statement. Then he recorded the statement of injured Venkatesh Reddy in the presence of Dr Nagaraja as per Exhibit P13.

22. PW12-Dr. Basavarajappa H.J., Senior Specialist District Hospital, Chitradurga has deposed that on 18th January, 2017 Venkatesh Reddy son of Thimma Reddy came to the District Hospital for further treatment with the history of burn injuries and he was referred by Government Hospital at Challekere. Upon examination, he found 70% burn injuries on Venkatesh Reddy and he admitted the injured as an inpatient.

23. PW13-Dr. Nagaraja M.G., Forensic Expert, Chitradurga District Hospital, has deposed that on 18th January, 2017 when he was working in Casualty, Tahasildar addressed a letter No.25/16-17 to him to give



the opinion about the condition of the injured Venkatesh Reddy to give statement and on examination, he has given his opinion as per Exhibit P12 that the injured was able to give statement. Then the Tahsildar has recorded the statement of Venkatesh Reddy in his presence as per Exhibit P13 and he has put his signature as per Ex.P13(b). Further, he has deposed as to the inquest panchanama conducted by him on 22nd January, 2017 as per Exhibit P16.

24. PW17-Thimmanna, CPI and PW18-Satish Naika, PSI, have deposited as to their respective investigation.

25. A careful examination of the entire material on record placed before us makes it crystal clear that the material witnesses have not supported the case of the prosecution. Even in their cross-examination, the prosecution has failed to elicit any favourable answers from them to substantiate its case. The trial court has convicted the accused solely on the basis of the dying declaration Exhibit P13 and complaint Exhibit P19.



26. Whether the judgment of conviction and order on sentence is sustainable on the basis of Exhibit P13 Dying declaration and Exhibit P19 complaint, is to be examined.

27. On perusal of Exhibit P19 complaint, it is seen that the Police Inspector has recorded the statement of the injured on 18th January, 2017 at 1:45 pm. According to him, the injured has put RTM on Exhibit P1. On the basis of this complaint, he has registered a case in Crime No.22 of 2017 against the accused for commission of offence under Section 307 of Indian Penal Code and submitted FIR to the court on 18th January, 2017 at 2:30 pm. Admittedly, the injured had suffered 80% burn injuries as per the statement of PW9-Dr. Shobha.

28. Whether the injured was fit to give statement or not, has not been endorsed on Exhibit P19. However, PW9-Dr. Shobha has deposed that the PSI has submitted requisition to give the opinion as to whether injured is fit to give statement or not. On examination, she has issued



endorsement on the letter-Ex.P9 addressed by the PSI to CMO, Casualty Department, Chitradurga dated 18th January, 2017 as under:

"As I am in casualty duty, I can give statement whether the patient is in a condition to give statement physically and mentally. But I cannot stay for longer time as emergency cases comes in lot as I am in that duty."

29. Further on the same day at 1:40 pm, she has endorsed as under:

"Patient is conscious oriented for cooperation at present. Patient is in a condition to give statement."

30. Dr. Shobha, who has given her opinion as per Exhibit P9, has not endorsed on Complaint-Exhibit P19 which was forwarded to the jurisdictional Magistrate along with the First Information Report. The letter is produced before the Court only at the time of filing charge sheet. If really, PW9 had issued endorsement as to the condition of the patient as shown in Exhibit P9, the investigating officer



who has recorded the statement of the injured, i.e. the Sub-inspector of Police, would have submitted the same along with complaint when he has dispatched FIR to the Court, but he has not done so. Even in Exhibit P19 also, the name of the doctor is not disclosed. Exhibit P9 also does not disclose as to "to and fro" numbers. For all these reasons, the contents of Exhibit P9 will create doubt as to whether PW9 Dr. Shobha has given her opinion as to the mental and physical condition of the injured. Additionally, Dr. Shobha has not maintained any case sheet as to the treatment given to the injured at the time of recording the statement of injured as per Exhibit P19.

31. The Investigating Officer has not collected that material piece of evidence, i.e. the case sheet, pertaining to the injured to show the BP, SpO2, pulse rate and the condition of the injured, so also, the treatment given to him. The investigating officer has not explained anything as to the non-production of the Case sheet pertaining to the injured. On the contrary, PW9 Dr. Shobha has clearly



admitted that Venkatesh Reddy was suffering with 80% burn injuries and he was administered with TT injection and painkillers. Further, she has admitted that she cannot say as to the injuries caused i.e. facial burns, superficial burns and deep burns, all over the body.

32. When the Doctor has given sedation to the injured with burn injuries, without the material particulars that is BP, pulse rate, SpO2, it is not possible to ensure that the injured was conscious oriented and was mentally and physically in fit condition to give statement. Hence, it is not safe to rely on the alleged statement said to have been recorded by the PSI without proper certification from the medical officer and production of the case sheet.

33. With regard to Exhibit P13 alleged dying declaration is concerned, it is the case of the prosecution that PW11-Tahsildar has received requisition from Challekere Police on 18th January, 2017 at 4:50 pm to record the dying declaration of the injured Venkatesh Reddy who was taking treatment in the District Hospital,



Chitradurga. Accordingly, he went to District Hospital at about 5:30 pm and he has requested Dr. Nagaraj to give his opinion as to mental and physical condition of the injured Venkatesh Reddy to record the dying declaration. The said Dr. Nagaraju has been examined as PW13. He has deposed in his evidence that he has given his opinion as per Exhibit P12. Exhibit P13 is the letter addressed by Taluk Executive Magistrate, Chitradurga to the Medical Officer, District Hospital, Chitradurga dated 18th January, 2017 in which PW13 Dr. Nagaraju has endorsed on Exhibit P12 that patient is conscious and fit enough to give statement. He has examined the injured at 5:30 pm. PW13 has not whispered anything as to the case sheet maintained by the concerned Hospital. However, PW13-Doctor, has orally stated before the Court that pulse rate and BP of the injured-Venkatesh Reddy were normal and the injured was able to give statement. PW13 has not disclosed anything in Exhibit P12 or before the court as to BP, pulse-rate, SpO2 of the injured. As already discussed above, the investigating officer has not produced the case



sheet pertaining to the injured. The investigating officer has also not explained anything as to non-production of case sheet pertaining to the injured. Even in Exhibit P13, the Medical Officer PW13-Nagaraj, has not endorsed on the dying declaration of the patient that the patient is mentally and physically fit to give statement.

34. Additionally, according to PW11-Tahsildar, he has recorded the declaration of the injured on 18th January, 2017 at 5:30 pm. The investigating officer, i.e. PW17-Thammanna, the Circle Inspector of Police, has deposed in his evidence that on 1st February 2017, he has received the Xerox copy of the declaration from M Mallikarjuna, Tahsildar, Chitradurga Taluk.

35. PW11-Tahsildar has not whispered anything as to on which date he has handed over the declaration. Exhibit P13 said to have been recorded by him on 18th January, 2017. There is a delay of thirteen days in collecting the Xerox copy of the dying declaration by the investigating officer from the Tahsildar. The index of the



charge-sheet reveals that the original dying declaration was produced before the court only at the time of filing the Charge sheet. The investigating officer has not whispered anything as to on which date he has received the original dying declaration Exhibit P13 from PW11-Tahsildar. If PW11-Taluk Executive Magistrate had recorded the dying declaration on 18th January 2017 at 5:30 pm, he would have submitted the same to the Court or to the investigating officer on the same day, or at least, on the next day. Investigating officer has also not taken any steps to receive the dying declaration Exhibit P13 said to have been recorded by PW11-Tahsildar at the earliest point of time. The investigating officer has not stated anything as to why he has not received the original dying declaration from the custody of the Tahsildar at the earliest point of time and submitted the same to the Court. This lapse will create doubt about the genuineness of Exhibit P13.



36. Further, it is the case of prosecution that deceased himself got admitted to the Government Hospital Challakere on 18th January, 2017 at 2.00 am and from there he was shifted to District Hospital, Chitradurga at 5:40 am in an ambulance. The Medical Officer has not stated anything as to the cause of burn injuries or as to who has inflicted the burn injuries. The condition of the patient between 02.00 am till 5.40 pm on 18th January, 2017 is also not known. The investigating officer has not collected any material from the Government Hospital Challekere, where the injured was admitted on 18th January, 2017 at 2.00 am. Viewed from any angle, we do not find any legal evidence to show that the injured was mentally and physically fit to give statement to the police as per Exhibit P19 and also to the Taluk Executive Magistrate as per Exhibit P13.

37. On independent examination of the entire evidence and record, we do not find any cogent, convincing, corroborative, legal and trustworthy evidence



before the court to convict the accused for alleged offence. The trial Court has not properly appreciated the evidence on record in its proper perspective. The evidence placed before this Court will create reasonable doubt as to the act of the accused as alleged by the prosecution. Accordingly, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Hence, we answer the point that arose for consideration in the affirmative. In the result, we proceed to pass the following:

ORDER

1. Appeal is allowed;
2. The judgment of conviction and order on sentence dated 8th August 2018, passed in SC No.28 of 2017 by the Special II Additional District & Sessions Judge, Chitradurga is set aside;



3. Accused is acquitted of the offence punishable under Section 302 of Indian Penal Code;
4. The fine amount, if any, deposited by the accused shall be refunded to her in accordance with law.

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

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