

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

and

* HON' BLE SRI JUSTICE M. GANGA RAO

+CRIMINAL APPEAL No. 745 OF 2013

%23.11.2018

#Between:

Akula Sreenivasulu

...Appellant/ accused

AND

State of AP rep. by Public Prosecutor
Through Inspector of Police, Nallamada,
Anantapur District

... Respondent

!Counsel for the appellant : M/ s. M.Chalapathi Rao

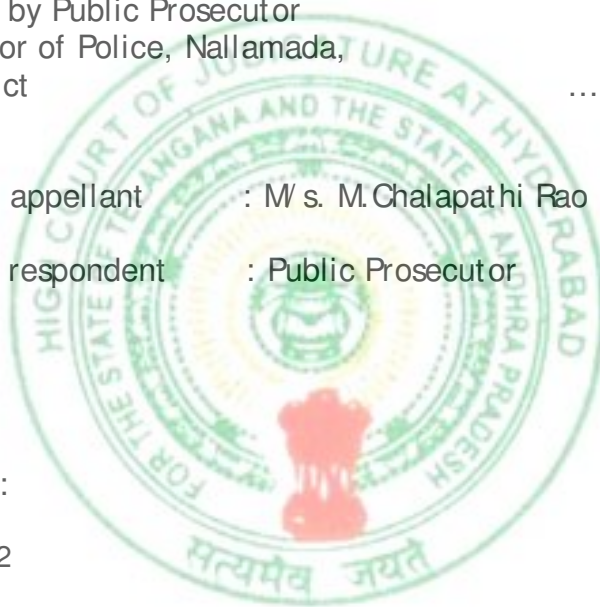
Counsel for the respondent : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

AIR 1984 SC 452



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

And

HONOURABLE SRI JUSTICE M.GANGA RAO

Criminal Appeal No.745 of 2013

JUDGMENT: (per Hon'ble Dr.Justice B.Siva Sankara Rao)

The appellant, being the sole accused in S.C.No.644 of 2012 aggrieved by the conviction judgment of the learned Additional Sessions Judge, Hindupur, Anantapur District, dt.28.06.2013 finding him guilty for the offences punishable under Sections 498-A and 302 IPC respectively in sentencing him to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/- in default to suffer Simple Imprisonment for three months for the offence punishable under Section 498-A IPC and to undergo Rigorous Imprisonment for life and pay a fine of Rs.2,000/- and in default to suffer Simple Imprisonment for six months for the offence u/sec.302IPC, maintained the present appeal.

2. The contentions in the grounds of appeal vis-à-vis the submissions of the learned counsel for the appellant are that the trial Court's conviction judgment is contrary to law, weight of evidence, preponderance of probabilities of the case, the trial Court erroneously relied on the uncorroborated and suspicious dying declaration Ex.P20 recorded by PW12-A.Sai Kumari (AJFCM) and Ex.P12-statement recorded by PW13-M.Narayanaswamy (Head Constable) respectively and convicted the appellant/ accused on insufficient grounds without noticing the admission of Dr. PW14-K.Venkateshwar Rao that the deceased Venkatramanamma who suffered 55% to 65% burns would be in semi unconscious state after the incident. The trial court failed to notice that the deceased Venkatramanamma received burn injuries on 09-04-2012 at 11:30 p.m. and succumbed to injuries much later on 27-04-2012 for which the petitioner might have been convicted for offence u/ sec.304-II IPC only. The trial court failed to notice that most of the prosecution witnesses did not support the

case of the prosecution and were declared hostile and that the father of the deceased, K.Venkatramana stated that his daughter Venkatramanamma (deceased) set fire to herself and died and the trial Court also failed to consider the fact that the deceased once consumed “vasmal” earlier as found from Ex.P20 dying declaration which shows her suicidal tendency, the benefit of doubt to the appellant/ accused should have been given holding that she must have committed suicide by setting fire to herself as stated by her father-PW1-C.Venkataramana. The trial court also failed to consider the inconsistency in the medical evidence with the ocular testimony produced by the prosecution and should have acquitted the appellant on that ground. Thus the trial Court’s conviction judgment supra is thereby unsustainable and liable to be set aside by allowing the appeal acquitting the appellant/ accused.

3. Whereas, the learned Public Prosecutor representing respondent/ State in opposing the same supported the trial Court’s judgment in finding the petitioner guilty for both the offences and also the sentence of imprisonment with fine and further submitted that for this Court while sitting in appeal against the trial Court’s said conviction judgment or on the quantum of sentence, there is nothing to interfere and the trial Court judgment is well considered and supported by reasons having fresh in mind of the facts, merely because of some other view is possible, the Court cannot rightly interfere with the appeal as held in Abdul Razaq Vs. Nanhey and others¹ and sought for dismissal of the appeal.

4. Heard both sides at length and perused the entire material on record.

5. The sum and substance of the accusation against the accused by the prosecution from the police final report taken cognizance as PRC for the offences punishable under Sections 302 and 498-A IPC by the learned

¹ AIR 1984 SC 452

committal Magistrate, Kadiri in allotting PRC No.88 of 2012 which is outcome of Cr.No.24 of 2012 of O.D.Chervu Police Station registered by P.W.15-Venkateswarlu-Asst.Sub Inspector, basing on the Ex.P.12 statement of the deceased, dt.09.04.2012 recorded by PW13-M.Narayanaswamy-Head Constable, in registration of Ex.P.14-First Information Report is that the deceased is the wife of the accused, resident of Mohammadabad cross in O.D.Chervu Mandal of Anantapur district, PW1 Venkataramana is father of the deceased who performed the marriage of the deceased with accused about 12 years prior to her death and out of their wedlock, they were blessed with a child one year prior to the death of the deceased, that the accused shifted his family to Mohammadabad cross and started business of selling plastic items and water pots, that the accused was addicted to vices of consuming alcohol and gambling and was suspecting the fidelity of the deceased and harassed and used to beat her for money for his vices and even on the fateful day till 11.50p.m., he harassed her and it was ultimately with an intention to kill her poured kerosene and set her ablaze due to which she was caught in flames but came out of her house to save herself which was witnessed by PW2-M.Raghunath, PW3-K.Venugopal, PW4-C.B.Krishnamurthy, PW5-M.Kalavathy, PW5-M.Kalavathy and PW6-V.Santhamma who put off the flames and PW6-V.Santhamma shifted the deceased in 108 ambulance to Govt. Hospital, Kadiri and admitted at about 1.10 A.M. on the intervening night of 9/ 10.04.2011. On the requisition of the hospital authorities, at about 2.00A.M. PW12-learned Magistrate, recorded Ex.P.20-dying declaration of the deceased and on receipt of medical intimation from the hospital, PW13-Head Constable, recorded the statement of the deceased supra, on the opinion of P.W.16-Laxmiram Naik-the duty doctor about the patient's condition as fit and sent the statement of the deceased supra and medical intimation to O.D.Chervu Police Station on the point of jurisdiction, where it was registered as Cr.No.24 of 2012

supra for the offences u/ sec.498-A and 307 IPC by PW15 who took up investigation during which he examined and recorded the statements of the witnesses having visited the scene of offence and also seized the M.Os. 1 and 2 (half burnt blouse piece and kerosene tin) found there in the presence of mediators-PW7-M.Maruthi Naidu and PW8-S.Mahaboob Basha, under cover of scene observation mahazar-Ex.P16 and prepared rough sketch-Ex.P15 and on 15.04.2012 he arrested the accused and produced before the Court for judicial remand. On 27.04.2012 at about 6.25A.M., the deceased died while undergoing treatment. On receiving the intimation PW15 re-registered the case altering section of law into 498-A and 302IPC and issued express FIR-ExP18. Then PW17-Inspector of Police, Nallamada, conducted Ex.P.23-inquest proceedings over the body of the deceased in the presence of PW9-B.Sreenivasulu, PW10-C.Pamu and PW11-B.Muniswamy and referred the dead body for autopsy. PW14-Dr.K. Venkataramana, Civil Assistant Surgeon conducted autopsy over the deadbody and issued post mortem certificate-Ex.P13 opining that the deceased died of shock due to the burns. After completion of investigation, the PW17 filed chargesheet.

6. The prosecution during trial before the learned Sessions Judge, examined PWs 1 to 17 viz: PW1-father of the deceased, PWs2 to 6 are the witnesses to speak the facts of accused was harassing the deceased for money and the deceased caught in flames and put off flames and admitted in hospital. Exs.P1 to P5 are Sec.161 CrPC statements of PWs.1 to 5 respectively who did not support the prosecution case supra. Ex.P6 and 7 are the signatures of PWs7 and 8 respectively to the Ex.P.16 scene observation and Exs.P8 to P10 are the signatures of PWs.9 to 11 on the Ex.P.23-inquest report, Ex.P11 is the hospital MLC intimation referred supra. Ex.P.17 is the death intimation. Ex.P18 is the express FIR. Ex.P19-hospital requisition for Dying Declaration given to PW12 who recorded the Ex.P20-dying declaration, Exs.P21 and P22 are endorsements of PW16 on

dying declaration. P.W.17 deposed about his further investigation and filing of the chargesheet. PW-12 is the learned Magistrate who recorded the Ex.P.20-dying declaration of the deceased. PW13 who recorded the Ex.P.12-statement of the deceased. P.W.16 is the duty Doctor certified fit state of mind of the deceased. PW14 conducted autopsy over the deadbody of the deceased and issued Ex.P.13 post mortem report and PW15 who registered and examined witnesses, conducted scene observation and prepared Ex.P.15 rough sketch and re-registered the crime.

7. From the above material, now the points for consideration in deciding the appeal are:-

- i) Whether the deceased met with death due to burn injuries and if so, in the hands of the accused?
- ii) Whether the prosecution proved guilt of the accused for the two charges levelled under Sections 498-A and 302IPC and if not the conviction judgment of the trial Court is unsustainable and requires interference of this Court while sitting in appeal and if so to what extent and with what observations?
and
- iii) To what relief?

8. As the points for consideration can be taken up together to avoid repetition of facts since inter-connected in deciding the appeal by sitting against the correctness of the trial Court's conviction judgment supra, those are taken up together.

Points i to iii:

9. The Ex.P.11-MLC intimation of the Govt. Hospital, kadiri dt.10.04.2011 at 1.10 A.M. speaks of the victim (deceased)-Venkataramanamma w/o Sreenivasulu (accused) of Mahammadabad cross, O.D.Chervu Mandal, was brought in 108 ambulance for sustaining injuries at house found with 55%to 60%superficial, deep burns due to kerosene and was admitted in the burns Ward. It is therefrom P.W.13-HC proceeded to

the hospital and recorded at 4.00 A.M. which describes her name, husband's name and address supra and found and admitted in the Govt. Hospital Kadiri and she gave description in her statement the address and husband's name and her name and her father S Venkata ramana-P.W.1 and about their marriage performed two years back with accused and they were blessed with a daughter by name Anjali in their wedlock and for their survival they shifted their family from Nandivaripalli village to her husband's place Mohammadabad cross where they were making their livelihood as her husband doing a small business and herself cooli work. She stated that her husband for the past one year started suspecting her fidelity and every day used to abuse and beat her including by coming home under intoxicated state having been addicted to vices of playing cards and consuming liquor and became vagabond and whenever he requires money he used to take away the household articles and provisions and sell them away. While so, on the previous day i.e. on 09.04.2012 even at about 6.00 P.M., he started harassing by beating and abusing her and at 11.50 p.m. with an intent to kill her, he took out kerosene tin in the house and poured on her and set her ablaze. She immediately raised cries and on hearing the same the neighbours P.Ws. 2 to 5 including P.W.6-Santhamma-sister of the deceased came and put off the fire and somebody called 108 vehicle and P.W.6-Santhamma admitted her in Kadiri Govt. Hospital where the doctor while treating, the P.W.13-Head Constable came to the hospital and asked as to what happened and she stated what was actually happened and the same was recorded and when read over to her she found it correct. There is a certificate issued by the doctor to the effect that the patient was conscious. Merely because he happened to be the Head Constable of Kadiri town Police Station by then there is nothing to belie from what he stated of the facts in his chief examination as P.W.13 and coming to his cross-examination by the accused, it is only simply the suggestions and nothing to

discredit or to doubt the credibility of the witness and correctness of the statement and what all suggested is denied by him of genuineness of Ex.P.11-Hospital intimation and P.12-statement of the deceased and he deposed about duty doctor was present at the time of his recording Ex.P.12 and what was mentioned in Ex.P.11 of the victim received 55%to 60%burns and denied the suggestion of those are severe burns and from which she was unconscious and could not give any statement or he did not obtain any certificate from the duty doctor and also preparation of Ex.P.12 statement and obtaining her LTI and that he is deposing false.

10. Leave about dying declaration as to cause to her death within the four corners of Section 32 of the Indian Evidence Act (for short, 'the IE Act') admissible and relevant and found true for nothing even to say there is anybody other than the doctor present at the time of her recording much less to tutor but for P.W.6 brought her in 108 ambulance and admitted in the hospital and even coming to the evidence of P.W.6-sister of the deceased, she deposed that she is resident of Mahammadabad cross, ODC Mandal and doing cooli work and knows the accused and the deceased who were having shifted their residence from native place to Mahammadabad cross, residing there for the past 15 months prior to her death. What she deposed was they were neighbours to her. She deposed that 10 months ago, night at about 11 pm, she heard cries from the house of the deceased or the accused and went there and found the deceased in flames and put off the flames on the body of the deceased and later shifted the deceased to Govt. Hospital, Kadiri and admitted where she survived while under treatment for 15 days and later breathed last. What she stated is the accused is not responsible for the burns and she was not examined by police. It is not even suggested of she tutored anything to the deceased or present at the time of recording Ex.P.12 by P.W.13. There is nothing even from the evidence of P.Ws. 1 to 5, father and neighbours of the deceased who did not support

the prosecution case. In her statement recorded by P.W.13 shows the accused poured kerosene and set fire on her on that fateful night after 11.00 P.M., at her house and for the flames she raised cries and neighbours gathered and fire was put off and she was brought and admitted in hospital. What P.W.1 deposed is that about 4 months ago he was informed by somebody that she was set fire to herself and died and on next morning he went to Government hospital, kadiri and saw the deceased who was speaking in low voice and her entire body except head was burnt and he did not enquire with the deceased as to how she was burnt. He deposed that she gave complaint against her husband. What he deposed is since the deceased could not speak, he could not know reason as to why her husband did this and 20 days later while under treatment she died. The witness was confronted with his Ex.P.1 statement during investigation and he denied. Even from this P.W.1 evidence in the chief examination lending a piece of corroboration of deceased gave a complaint against her husband which is Ex.P.12 recorded by the P.W.13 and he did not enquire the deceased and he does not know why her husband/ accused did like that. What he stated of he was informed of deceased poured kerosene and set her ablaze is not even ascertained including by the accused in the cross-examination as to how he came to know and from whom, to give any little credence but for to say he turned hostile.

11. P.Ws.2 to 5 neighbours in their evidence in chief-examination stated that on the fateful day at about 11.00 P.M, in the night on hearing cries of the deceased they woke up and went to the house of the deceased and found her in flames and they put off flames covering a blanket on her and she received severe burn injuries however able to speak and later she was shifted to Govt.Hospital, Kadiri in ambulance and they did not enquire as to how she received those burns and 20 days later while under treatment

she died. They did not support the respective statements during investigation pointing out against the accused as set her ablaze.

12. P.W.12 the learned Magistrate who recorded the Ex.P.20-dying declaration based on the hospital requisition deposed that on 10.04.2012 at about 2.00 A.M. having received the medical requisition from the duty doctor Kadiri, to record dying declaration of Venkataramanamma-the deceased in the hospital, she proceeded to the hospital within 10 minutes and identified said Venkataramanamma through the duty doctor Laxmi Ram Naik-P.W.16 and obtained certificate of said doctor of the patient is conscious coherent and in a fit state of mind to give statement and recorded the same having put preliminary questions and elicited answers from her and what she stated was her husband was beating daily and used to call her bitch and poured kerosene and set ablaze on 09.04.2012 after 11.00 P.M., before midnight and he beat her even three months ago and took her to her parents house, she drank 'Vasmal' and she came back to her husband and wherever she comes he used to quarrel with her and her husband-the accused is responsible for the incident and her husband's name is Akula Srinivasulu s/o Venkataramana, aged about 30 years, doing business of plastic tumblers, resident of mahammadabad Cross, ODC Mandal and she stated that after recording said dying declaration-Ex.P.20 she read over the contents and the patient admitted as treated and obtained her thumb impression of right hand due to the injuries and being illiterate and duty doctor also certified with endorsements referred supra and recording of dying declaration was concluded by 2.38A.M. In the cross-examination by the accused, the learned Magistrate deposed that there was no seal and stamp of the Medical Officer on Ex.P.19-hospital intimation and denied the suggestion of only based on the certifying by the duty doctor-P.W.16 of the patient was in a fit state of mind, she recorded dying declaration and what

she stated is on her satisfying only she recorded the statement and denied the suggestion of not followed due procedure as contemplated.

13. The mere fact that three months prior to the occurrence dt.09.04.2012, the accused when sent her to her parents, she drank 'Vasmal' and again she came back and taken her to his fold does not mean much less appreciate any probability of the deceased committed suicide including to link with any stray sentence from what P.W.1 deposed supra. There is nothing even from the cross-examination of the learned Magistrate-P.W.12 with reference to Exs.P.19 and P.20 to belie said dying declaration of the deceased which corroborates to the dying declaration-Ex.P.20 with all material aspects as to the accused was addicted to vices and was harassing and beating including for money and suspecting her fidelity almost for the last one year and it is he who poured kerosene and set her ablaze and for her cries neighbours came and put off the fire and shifted her in an ambulance to the Government Hospital that is also what P.W.6 deposed about they heard cries and came out and found the victim in flames and put off and shifted in the ambulance to Government hospital and admitted. What P.W.16-Lakshmiram Naik, deposed relevant in this regard also is that it is based on his Ex.P.19 requisition, dt.10.04.2012 at about 1.10 A.M., the learned Magistrate (P.W.12) came to the hospital and on his certifying the patient's condition was fit she recorded dying declaration and he endorsed the same. on the dying declaration to that effect and the two endorsements are Ex.P.21 and P.22. In the cross-examination by the accused, he denied the suggestion of he did not certify the fitness of the deceased to give statement and it is only subsequent to that at the request of police accommodated. He deposed that Ex.P.19 date mentioned as 10.04.2011 for 2012 which is a mistake. Nothing more is elicited in the cross-examination of P.W.16.

14. Now comes to the evidence of P.W.14-Doctor K.Venkateswarlu who conducted autopsy over body of the deceased and issued Ex.P.13 post mortem report. On 27.04.2012 conducted autopsy between 2.30 to 2.45p.m. and opined that the deceased died due to shock and sepsis due to the 55%to 65%as mentioned in Ex.P.13. In the cross-examination by the accused, he deposed that the deceased was admitted on 10.04.2012 and was treated as in-patient till she breathed last on 27.04.2012 and denied the suggestion of the person who receives 55 to 65% burns must be in unconscious state and what he voluntarily states that she must be in semi-unconscious state. He deposed that as per the guidelines given in a book Shenoy Surgical, he gave percentage of burns. He also deposed that the patient died on 27.04.2012 at about 6.25 a.m. while undergoing treatment. The cause of death mentioned in Ex.P.13-post mortem and deposed by him not even disputed by the accused from cross-examination. Thus it is all proved of the deceased met with homicidal death. No doubt she breathed last after 16 days to the date of sustaining of 55 to 65% burn injuries on 09.04.2012 after 11.00 P.M. caused by the accused by pouring kerosene and setting her ablaze clear from her two dying declarations recorded by P.Ws.12 and 13 respectively. It is therefrom the P.W.13 recorded said statement on 10.04.2012 at about 3.30 a.m. forwarded the same on point of jurisdiction to ODC Police Station where the P.W.15-Asst.Sub Inspector on duty registered the FIR as Cr.No.24 of 2012 u/ sec.498-A and 307IPC covered by Ex.P.14 by transmitted original to Court and copies to all the concerned and in the course of investigation proceeded to the Government hospital, Kadiri and examined the deceased. That statement is also admissible as another dying declaration which also contains the cause of her death in the hands of her husband who poured kerosene and set her ablaze. He observed the scene of offence in the presence of P.Ws. 7 and 8 covered by Ex.P.16-scene observation mahazar and prepared Ex.P.15 rough sketch and seized at

the scene of offence M.Os. 1 and 2 as mentioned therein which are kerosene tin and partly burnt blouse. He deposed that during investigation he examined P.Ws. 1 to 6 who deposed as in Ex.P.1 to P.6 and while so he arrested the accused on 15.04.2012 at 6.00A.M. at Mahammadabad cross and after observed formalities submitted to judicial custody. It is subsequently while under investigation of the case by him he received Ex.P.17 death intimation of the said victim women on 27.04.2012 at about 8.30 a.m. and re-registered crime under Section 302 IPC by altering Section 307 and issued Ex.P.18 express FIR from which the P.W.17 taken up further investigation. In the cross-examination by the accused, he denied the suggestion of he did not examine said Venkataramanamma-victim in Govt. Hospital Kadiri and she was not in a position to speak from her 60% burns injuries and that statement was prepared by him in police station. He also denied the suggestion of not visited the scene of offence and not prepared any scene observation and rough sketch and not seized M.Os.1 and 2 or P.Ws. 1 to 6 did not state as in Exs.P.1 to P.6 and was deposing falsehood much less in the presence of 7 and 8 as in Exs.P.1 to P.6. He denied the suggestion of he did not arrest of the accused on 15.04.2012 and arrested only on the surrender of the accused and the investigation done by him is a table made one. P.W.17-Investigating officer who conducted further investigation deposed that after received Ex.P.18-express FIR on 27.04.2012 from PW.15, he took up the investigation having verified the investigation already done and conducted inquest over the body of deceased under Ex.P.23 in the presence of P.Ws. 9 to 11 and issued requisition to Medical Officer to conduct autopsy and after completion of investigation and receiving of post mortem report, filed chargesheet. In the cross-examination, he denied the suggestion of he did not prepare Ex.P.23 inquest report, did not record statements of P.Ws.1 to 5 and deposing false to implicate the accused. When said evidence unerringly and not based on

circumstances, alone from the direct evidence covered by dying declarations of the victim-no other than the wife of the accused for no motive but falsely implicate when unerringly stated of it is her husband who is suspecting her fidelity for the past one year and ill-treating and beating and sent her out to her parents earlier and later came and taken her back and even thereafter did not change including by sale of the household articles and utensils and provisions for his vices and ill-treated under intoxication and on the fateful day on 09.04.2012 also raised galata, beat and harassed and ultimately after 11p.m. before mid night poured kerosene on her and set her ablaze. The trial Court was right from said evidence in finding the accused guilty and convicting for the offence under Section 498-A IPC and also for causing death of the deceased. However coming to the contentions as to the offence under Section 302 IPC not made out, only Section 304IPC at best made out concerned, no doubt as per the prosecution case discussed supra, the deceased sustained 55 to 65% burn injuries which are superficial and severe and she survived while under treatment from the time of occurrence before mid night of 9/ 10.04.2012 till breathed last in the morning of 27.04.2012 to say injuries are not sufficient in the ordinary course of nature to cause her death.

15. On perusal of Section 299© and Section 300(4) speaks of knowledge of probability of the act causing death and the degree of knowledge of the offender as to probability of death of a person being caused is relevant and coming to difference between 299 and Section 300(3) concerned, it is the degree of probability of death which determines whether culpable homicide is of great, medium or low degree likely in clause-b of Section 299 IPC conveys sense of probability as distinguished from mere possibility. Here the pouring of kerosene and setting her ablaze and not putting off fire and not even joining much less accompanying his wife to the hospital by the accused shows the state of mind and the

intention in inflicting the injuries by pouring kerosene and setting her ablaze though she was saved with 55% to 65% burns including some severe or some superficial from the others saved her by putting off fire having rushed to her cries and none stated about the accused attempted to put off fire and also accompanied the victim and the P.W.6 to the hospital. However the fact remains that since evening there were galatas between the accused and the deceased including from her very dying declaration and the accused has not pre-meditated much less any plan to kill the deceased but in that galata and out of the provocation or from any act of her aggravation in his pouring kerosene available in the house by setting her ablaze, he fled away. The accused will not come under any pre-mediated act but out of said grave and sudden provocation within the exception-1 of Section 300 IPC which speaks that *'culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident'* and what the exception subject to the proviso is with 3 clauses (1) the offender himself not voluntarily provoked as an excuse for killing or doing harm to any person and it is not the case here from the fact supra and coming to the second one (2) *'Provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant'* and it is also not the case herein and thirdly (3) *the provocation is not given by anything done in the lawful exercise of the right of private defence'*. It is not even the case on hand. The explanation after the Exception-1 of grave and sudden provocation supra and Section 300 IPC speaks that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. The victim in her two dying declarations including in the statement to the Investigating Officer-P.W.15 as it is not stated that the accused, however

attempted to kill her in any manner in the 12 years of marital life including on that day even there were galatas between them since 6.00 P.M. after came under intoxication to home and beat her. It is in that galata that was continued since 6.00 P.M, it is from any provocation and in the violent rage as per the illustration F to Section 300 Exception-1 the act done which only a culpable homicide not amounting to murder. No doubt accused pouring kerosene and setting her ablaze and not putting off fire and not taking her to hospital with intent to act or mere knowledge even the victim survived later for about 16 days and the fire was put off by the neighbours from her cries, he cannot escape from the liability under Section 304-1 IPC. Thereby the conviction and finding of the trial Court from Section 302 IPC requires to alter and altered the same to Section 304-I IPC.

16. Having regard to the above and in the result, the Criminal Appeal is partly allowed by confirming the sentence imposed under Section 498-A IPC and the accused is sentenced to undergo Rigorous Imprisonment for 9 years with a fine amount of Rs.2000/- and in default to suffer Simple Imprisonment for six months for the offence under Section 304-I IPC as discussed supra. Both the substantive sentences for the offence under Section 498-A IPC of 2 years Rigorous Imprisonment and for the offence under Section 304 part-1 IPC of 9 years Rigorous Imprisonment shall run concurrently. Accused entitled to set off of the period undergone.

Consequently, miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. B.SIVA SANKARA RAO J,

M. GANGA RAO, J

Date: 23.11.2018

Note: L.R. copy to be marked. Yes.

b/o.vvr