

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

DATED THIS THE 11<sup>TH</sup> DAY OF JANUARY, 2022

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE Mrs. JUSTICE M.G. UMA

**CRIMINAL APPEAL NO.2181/2016**

**BETWEEN:**

1 . MANJUNATH  
S/O SHIVAPPA  
AGE 34 YEARS  
COOLIE  
R/O. T. NULENUR VILLAGE  
HOLALKERE TALUK  
CHITRADURGA DISTRICT - 577 557  
(PROCEEDINGS AGAINST APPELLANT NO.1  
IS ABATED V/O. DT: 11.07.18)

2 . RANGAPPA ALIAS RANGASWAMY  
S/O SHIVAPPA  
AGE 42 YEARS  
COOLIE  
R/O. T. NULENUR VILLAGE  
HOLALKERE TALUK  
CHITRADURGA DISTRICT - 577 557

... APPELLANTS

(BY SRI: SESHADRI, ADVOCATE FOR  
SRI: M.R.HARISH KUMAR, ADVOCATE FOR APPELLANT NO.2.  
V/O. DTD. 11.07.2018 PROCEEDINGS AGAINST APPELLANT  
NO.1. - ABATED)

**AND:**

THE STATE OF KARNATAKA  
BY HOLALKERE POLICE STATION  
CHITRADURGA DISTRICT - 577 526.  
REPRESENTED BY ITS SPP

HIGH COURT OF KARNATAKA  
BENGALURU

... RESPONDENT

(BY SRI: VIJAYAKUMAR MAJAGE, ADDL. SPP FOR  
STATE/RESPONDENT)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 21.09.2016 AND SENTENCE DATED 22.09.2016 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN S.C.NO.117/2012 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498A, 302 READ WITH 34 OF IPC; THE APPELLANTS/ACCUSED ARE SENTENCED TO UNDERGO IMPRISONMENT FOR LIFE AND TO PAY FINE OF RS.10,000/- EACH, IN DEFAULT TO PAY FINE, THEY SHALL FURTHER UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF 3 MONTHS FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 READ WITH 34 OF IPC; THE APPELLANTS/ACCUSED ARE SENTENCED TO UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF ONE YEAR AND TO PAY FINE OF RS.2,000/- EACH, IN DEFAULT TO PAY FINE, THEY SHALL FURTHER UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF 15 DAYS FOR THE OFFENCE PUNISHABLE UNDER SECTION 498A READ WITH 34 OF IPC. THE APPELLANTS/ACCUSED PRAYS THAT THEY BE ACQUITTED.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, THROUGH VIDEO CONFERENCE, **B.VEERAPPA J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

The appeal preferred by accused No.1 came to be dismissed as abated vide order dated 11.07.2018, on his death.

2. The present appeal is filed by accused No.2 - the husband of the deceased against the impugned judgment of conviction dated 21.09.2016 and the order of sentence dated

22.09.2016 made in S.C.No.117 of 2012 on the file of Principal District and Sessions Judge, Chitradurga (hereinafter referred to as 'the Trial Court' for brevity), convicting appellant-accused No.2 - the husband of the deceased under the provisions of Sections 498A and 302 read with Section 34 of Indian Penal Code (for short 'the IPC') and sentencing him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default to pay the fine amount, to undergo simple imprisonment for a period of 15 days for the offence punishable under Section 498A of IPC and to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default to pay the fine amount, to undergo simple imprisonment for a period of three months for the offence punishable under Section 302 of IPC.

3. It is the case of prosecution that the deceased Thippamma is the wife of accused No.2 and their marriage was solemnized about 8 years prior to the date of incident as per the custom and tradition and out of the wedlock, the deceased begotten two children. It is further case of the prosecution that while leading the marital life, accused No.1 being the brother of accused No.2 and accused No.2 being the

husband of the deceased, used to cause physical and mental harassment to the deceased to bring money from her parents and hand over the jewels/golden ornaments so as to fulfill their demands and to discharge their debt. When the things stood thus, on 01.05.2012, at about 10.00 p.m. when the deceased Thippamma was sleeping along with accused No.2 - Rangappa @ Rangaswamy being the husband, in her marital home situated at T.Nulenuru Village, Holalkere Taluk, accused No.1 being the brother of accused No.2 knocked the door. Accordingly, accused No.2 opened the door with an intention to co-operate with accused No.1 to commit the murder of the deceased. Accordingly, accused No.1 barged into the house and both the accused demanded the deceased to get money from her parents and to hand over the gold ornaments. When she protested, accused No.1 poured kerosene on her body and lit fire. Accused No.2 - the husband pretended to extinguish the fire from outside the house. The deceased sustained severe burn injuries and she was shifted to District Hospital, Chitradurga, later she has been shifted to Chigateri General Hospital, Davangere, but she succumbed to the burn injuries on 06.05.2012.

4. On the basis of Ex.P4 - statement of the injured recorded on 04.05.2012, which subsequently became dying declaration, the jurisdictional police registered the case on 04.05.2012 at about 11.40 a.m. in Crime No.192 of 2012 for the offences punishable under Sections 498A and 307 read with Section 34 of IPC against both the accused. After investigation, the Investigating Officer filed the charge sheet against accused Nos.1 and 2 for the offence punishable under Sections 498A and 302 read with Section 34 of IPC. After committal of the matter, the learned Sessions Judge secured the presence of the accused and framed charge and read over and explained to the accused in the language known to them. They pleaded not guilty and claimed to be tried.

5. In order to establish the case, the prosecution has examined as many as 10 witnesses as PWs.1 to 10, marked the documents Exs.P1 to P15 and the material object MO1 - kerosene can. After completion of evidence of the prosecution witnesses, the statement of the accused as contemplated under the provisions of Section 313 of Cr.P.C, was recorded and explained the circumstances against them. Both the accused denied all the incriminating materials available on

record, but have not led any evidence in support of their defence. Based on the aforesaid pleadings, the learned Sessions Judge framed two points for consideration.

6. Considering the oral and documentary evidence on record, the learned Sessions Judge recorded a finding that the prosecution has proved beyond reasonable doubt that accused No.2 being the husband of the deceased having married about 8 years back and accused No.1 being the brother of accused No.2, in furtherance of their common intention, caused physical and mental harassment to the deceased with a demand to bring cash and gold ornaments from her parents, while she was residing in the house of accused No.2 at T.Nulenuru Village, Holalkere Taluk and thereby committed the offences punishable under Section 498A read with Section 34 of IPC. The learned Sessions Judge further recorded a finding that the prosecution has proved beyond reasonable doubt that at about 10.00 p.m. in the house of accused No.2, accused Nos.1 and 2 in furtherance of their common intention to kill the deceased, poured kerosene and set her ablaze, as a result of which, she sustained severe burn injuries and died at Chigateri General

Hospital, Davangere on 06.05.2012. Thereby, the accused persons committed the offence punishable under Section 302 read with 34 of IPC. Thus, the learned Sessions Judge convicted both the accused under the provisions of Sections 498A and 302 read with Section 34 of IPC and sentenced them as stated above. Hence, the present appeal is filed. As already stated above, the appeal filed by accused No.1 came to be dismissed as abated by order dated 11.07.2018, on his death.

7. We have heard the learned counsel for the parties.

8. Sri.Seshadri, learned counsel for Sri.M R Harish Kumar, learned counsel for accused No.2 contended with vehemence that the impugned judgment of conviction and order of sentence passed by the Trial Court convicting accused No.2 - the husband of the deceased is erroneous, contrary to the material on record and cannot be sustained. He would further contend that there are no eye witnesses to the incident and no separate complaint was filed from 01.05.2012 to 04.05.2012 till the statement of the deceased

was recorded by the jurisdictional police on 04.05.2012. Based on the statement of the injured, which subsequently became dying declaration, the jurisdictional police registered the case against accused Nos.1 and 2, hence, the same cannot be sustained. He would further contend that accused No.2 being the husband of the deceased has got admitted her to the hospital as admitted by PW5 - Dr.Sali Manjappa who has stated that the deceased had sustained 90% burns by the incident. The Trial Court was not justified in convicting the accused for the offence punishable under Section 302 of IPC, when he himself has tried to protect his wife by taking her to the hospital immediately. The said material aspect has not been considered by the learned Sessions Judge while passing the impugned judgment of conviction and order of sentence. Hence, the same cannot be sustained. He would further contend that Ex.P4 - dying declaration of the deceased clearly depicts that there is no *overt act* alleged against accused No.2. Accused No.1 died during the pendency of the appeal and the appeal came to be abated. Therefore, sentencing accused No.2 to undergo imprisonment for life cannot be sustainable.

9. He would further contend that the Trial Court has erroneously held that the jurisdictional Magistrate was present at the time of recording the dying declaration, but it was recorded by PW9 - Manjanna, Sub Inspector of Police in the presence of PW6 - Dr.Rangaswamy, when there is no enmity between PW6 and PW9 and the accused persons, naturally the Court has to believe the version of these official witnesses and the version of PW6 as trustworthy, thereby the Trial Court ought to have acquitted accused No.2 for the offence punishable under Sections 498A and 302 of IPC.

10. He would further contend that the Trial Court ought to have disbelieved the evidence of the doctor on the ground that it is artificial, unnatural, full of exaggeration and concocted to involve the accused persons in a false case. He would further contend that the Trial Court erred in holding that Ex.P4 - dying declaration came into existence in the presence of PW6 at Chigateri General Hospital during her lifetime and did not find any reason to disbelieve the evidence of PW9 - PSI, so the fact of burn injury and the fact of pouring kerosene and setting fire by the accused persons on the person of the deceased as the same has not been proved by

the prosecution. The Trial Court has erroneously convicted the accused and the same cannot be sustained. Further, the Trial Court erred in relying on Ex.P4 - dying declaration as there is serious doubt about affixing her LTM on Ex.P4 when she has sustained 90 to 95% burns. It is not explained by the prosecution as to whether she could give such a long statement giving full details of her marriage, children etc., while she was in such condition.

11. He would further contend that the Trial Court has not considered the manner in which Ex.P4 - dying declaration was recorded. The alleged incident took place on 01.05.2012 at 10.00 p.m. PW5 - Dr.Sali Manjappa has stated that on 02.05.2012 at 12.15 hours, the injured was brought with a history of accidental burns at 8.30 p.m. on 01.05.2012 with 90% burns and non examination of doctors who treated her at Chigateri General Hospital for 2 days prior to recording of alleged Ex.P4 and why there is delay of 3 days in informing the same to the police. The delay alleged in recording of Ex.P4 is not explained by the prosecution. Admittedly, what happened between 02.05.2012 at 12.15 hours till recording of Ex.P4 on 04.05.2012 at 10.45 a.m. is not explained by the

prosecution, which creates a serious doubt on the entire prosecution case itself. Therefore, he sought to allow the appeal.

12. *Per Contra*, Sri.Vijaykumar Majage, learned Additional State Public Prosecutor for the State, while justifying the impugned judgment of conviction and order of sentence contended that as per Ex.P4 - dying declaration, the deceased has given her statement in the presence of PW6 - Dr.Rangaswamy and PW9 - Manjanna, the Sub Inspector of Police, stating that on 01.05.2012 at about 10.00 p.m., while she was sleeping along with her husband, accused No.1 knocked the door and accused No.2 opened the door and allowed him to enter the house. Both of them demanded dowry and when she refused, accused No.1 sent accused No.2 out of the house for watch and ward and poured kerosene on the deceased and set her on fire. Thereby, both the accused persons committed the murder of the deceased as rightly held by the learned Sessions Judge.

13. He would further contend that the doctor who recorded the statement of the deceased has categorically

stated on oath that when the statement of the injured was recorded, she was fully conscious to give her statement and able to understand all the questions put to her and the injured was well conversant to the time, place and identifying the persons. Accordingly, he has issued fitness certificate as per Ex.P3 and has signed Ex.P4 - statement of the deceased (dying declaration). In the cross examination, nothing has been elicited in the evidence of PW6, thereby, the prosecution has proved the guilt of the accused beyond reasonable doubt. He would further contend that though it is alleged by the learned counsel for the appellant that there is delay of 4 days in filing the complaint, it is submitted that the incident had occurred on 01.05.2012. She was shifted to the District Hospital, Chitradurga on 02.05.2012 and thereafter she was shifted to Chigateri General Hospital, Davangere and on 04.05.2012 at 11.45 a.m., the doctor examined the deceased and confirmed that she was conscious and was able to understand the questions put to her and she was in sound mental condition to give cogent answers to the questions put to her. Accordingly, PW9 - the Sub Inspector of Police recorded the statement of deceased. Thereby, the

prosecution has proved beyond reasonable doubt about the involvement of accused Nos.1 and 2 in the homicidal death of the deceased. The Trial Court is justified in convicting the accused for the offence punishable under Section 302 read with Section 34 of IPC sentencing them to undergo imprisonment for life and to pay fine of Rs.10,000/- with default sentences. Therefore, he sought for dismissal of the appeal.

14. In view of the rival contentions urged by the learned counsel for the parties, the only point that would arise for our consideration is:

*"Whether accused No.2 has made out any grounds for interference with the impugned judgment of conviction and order of sentence imposed by the learned Sessions Judge under the provisions of Section 302 read with Section 34 of IPC sentencing him to undergo imprisonment for life and to pay fine of Rs.10,000/- with default sentences, in the facts and circumstances of the case?"*

15. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties

and perused the entire material on record including the original records carefully.

16. It is an undisputed fact that on 04.05.2012 at about 11.45 a.m., the jurisdictional police recorded the statement of the injured as per Ex.P4. The doctor in whose presence the statement of the deceased was recorded has issued the fitness certificate - Ex.P3 stating that the condition of the patient at the time of recording the declaration was good and she was fully conscious and was able to fully understand the questions put to her. He has further stated that the deceased was in sound mental condition giving cogent answers to the questions put to her. It was recorded at 11.45 a.m. and thereafter, on the death of the deceased, her statement was treated as dying declaration. The same was recorded by PW9 - Manjanna, the Sub Inspector of Police in the presence of PW6 - Dr.Rangaswamy. It is stated in Ex.P4 - dying declaration that on 01.05.2012 when the deceased and accused No.2 were sleeping in the matrimonial home at about 10.00 p.m., accused No.1 being the brother of accused No.2 knocked the door and accordingly, accused No.2 opened the door and thereby both the accused demanded the

deceased to get money from her parents house and hand over the gold ornaments. When she protested, accused No.1 poured kerosene on her body and lit fire. Though accused No.2 was standing outside the house, he pretended to shout and extinguish the fire. She sustained burn injuries and thereafter accused No.2 shifted the deceased to District Hospital, Chitradurga and from there, she was shifted to Chigateri General Hospital, Davangere for further treatment, thereby, both the accused are involved in the said incident. Accordingly, the jurisdictional police registered the case on 04.05.2012 at about 11.45 a.m. in Crime No.192 of 2012 under the provisions of Sections 498A and 307 of IPC read with Section 34 of IPC. After the death of the deceased on 06.05.2012, the Investigating Officer filed the charge sheet under Section 302 of IPC.

17. This Court being the Appellate Court in order to re-appreciate the entire oral and documentary evidence on record, it is relevant to consider the evidence of prosecution witnesses and the material documents relied upon.

- (i) PW1 - Siddappa, being the witness to Ex.P1 - spot mahazar deposed that he know the deceased and

accused No.2. He is the permanent resident of T.Nulenuru Village, Holalkere Taluk. Accused No.1 is the brother of accused No.2. About 2 years back, the police came to the spot i.e., to the house of accused No.2 and drew Ex.P1 - Spot Mahazar and recovered MO1 - kerosene can in his presence. He has signed the mahazar and supported the case of prosecution.

- (ii) PW2 - Thimmanna, being the witness to Ex.P2 - inquest mahazar deposes that he know accused Nos.1 and 2 and the deceased. He is the brother of the deceased. He has stated that the marriage of the deceased was solemnized with accused No.2 about 8 years back and the incident took place about 2 years back in the house of accused No.2. She was taken to Chigateri General Hospital, Davangere with a history of burn injuries. Later, she died in the hospital. He has supported the case of prosecution. Though lengthy cross examination was conducted, nothing has been elicited to disbelieve the evidence of PW2. In fact, he has stated in the cross examination that he heard about the incident from his aunt. Later, he went to the hospital and saw burn injuries on the body of deceased.
- (iii) PW3 - Thippeswamy, being the elder brother of deceased has deposed that he know accused Nos.1 and 2 and the marriage of his sister was solemnized

about 8 years back prior to the date of incident. On hearing the phone message, he went to Chigateri General Hospital, Davangere, wherein his sister had died at the Hospital. Ex.P2 - inquest mahazar was drawn in his presence. He was also cross examined by the advocate for accused, but nothing has been elicited to disbelieve the evidence of PW3. In the cross examination, he has stated that the police has recorded the statement and that he has attested his signature on Ex.P2 - inquest mahazar. He has supported the case of the prosecution.

- (iv) PW4 - Thippeswamy, being the father of deceased has deposed that the marriage of the deceased was solemnized with accused No.2 and in the wedlock, she has given birth to two children; a male and female respectively. He further deposed that while the deceased was leading marital life, accused Nos.1 and 2 used to pick up quarrel with the deceased demanding money. Whenever he visits the house of accused persons, he used to advise the accused persons, but in spite of that, they continued to give torture, harassment to the deceased. On the date of incident, on hearing the news, he had been to District Hospital, Chitradurga and found the burn injuries on the body of deceased. As she had sustained burn injuries, she was shifted to Chigateri General Hospital, Davangere. The doctor provided treatment for

more than 3 days, but she succumbed to the injuries on 06.05.2012. He was cross examined at length by the counsel for accused. In the cross examination, the advocate for accused has taken a new contention that accused No.1 was residing separately and he was not present at the house when the incident took place. In order to prove the said fact, defence has not produced any substantiate document to prove that accused No.1 was residing separately. The witness stated that in fact, on the date of incident, accused No.1 knocked the door and accused No.2 opened the door allowing his brother to pour kerosene and set fire on the body of deceased. It was both accused Nos.1 and 2 had common intention to kill the deceased and accused No.2 has very much co-operated accused No.1. When the death has taken place in the house of accused No.2, the male members of the family has to explain as to how the incident has taken place. Instead of explaining the said fact, the accused persons tried to conceal the fact of murder by setting fire on the body of the deceased. Thereby, he supports the case of prosecution.

- (v) PW5 - Dr.Sali Manjappa has stated in his examination in chief that on 02.05.2012, the injured was brought to the hospital at 12.15 hours in the night to District Hospital, Chitradurga with a

history of accidental burns at about 8.30 p.m. on 01.05.2012. The injured was brought by her husband to the hospital for treatment and he noticed that the injured had sustained 90% burn injuries. Accordingly, he gave first aid treatment to her and thereafter she has been shifted to Chigateri General Hospital, Davangere for further treatment. In the cross examination, he admitted that the deceased was in semi-drowsy condition but was able to speak. He denied the suggestion that he has not given treatment to the deceased on 02.05.2012.

- (vi) PW6 - Dr.Rangaswamy, has deposed that he has been working as Senior Surgeon, Chigateri General Hospital, Davangere. He has further deposed that on 04.05.2012 he has been called by Holalkere Police and in his presence, the police have recorded the dying declaration of injured Thippamma - the wife of accused No.2. The injured was fully conscious to give her statement. The injured mother and brother were also present. The injured was able to understand all the questions put by him. The injured was well oriented to place, time and the identification of the persons. He has issued Ex.P3 - fitness certificate and has marked his signature which is marked as Ex.P3(a). He has also seen the statement given by the victim and it is marked as Ex.P4 and his signature is marked as per

Ex.P4(a). Though in the cross examination, it is admitted that at the time of recording the statement, which became dying declaration later, Tahsildar was not present, but it was recorded by PW9 - the Sub Inspector of Police. He came to know that she has suffered burn injuries to the extent of 60 to 70%. He denied the suggestion that because of the burn injuries, the deceased was unconscious and she was unable to give the statement as stated by him. She was able to speak and disclose the facts. Accordingly, her statement has been recorded. He denied the suggestion that she was unable to affix LTM. He further denied the suggestion that because of sedative injection, she was drowsy and unable to speak. He also denied the suggestion that Ex.P3 - fitness certificate was issued at the instance of police and Ex.P4 dying declaration has been made recorded by the police. He also denied that it is false to suggest that she was not in a fit condition at the time of giving statement. He supported the case of prosecution.

- (vii) PW7 - Dr.Bharathi who conducted the post mortem examination of the deceased has deposed that as per the requisition of Holalkere police, she has conducted post mortem over the body between 5.00 to 8.30 p.m. She noticed the findings of the dead body, a female dead body lying in supine position, aged 30 years, moderately built and

nourished. She further deposed that on dissection of the dead body, she noticed that skull, head, brain are intact. Lungs are intact, cut section of lungs purelent discharge present, stomach contains 200 ml of liquid food, large intestine contains fecal matters and gas. Liver intact and cut section shows purelent and discharge. Both the kidney intact and cut section purelent and discharge. Urinary bladder intact and empty. Uterus female reproductive organs intact and normal. She has opined that the cause of death was due to septicaemia shock as a result of superficial to deep burns sustained during her life time. Accordingly, she issued post mortem report as per Ex.P5. Nothing has been elicited in the cross examination to disprove the post mortem report issued by her. Thereby, she has supported the case of prosecution.

- (viii) PW8 - Thippeswamy is the brother of the deceased. He is a formal witness. He has stated about the ill-treatment caused by accused Nos.1 and 2 and he came to know that the deceased died in Chigateri General Hospital. He has supported the case of prosecution.
- (ix) PW9 - Manjanna is the Sub Inspector of Police. He has deposed that on 04.05.2012 while he was on duty at Chigateri General Hospital, Davangere, he came to know that Smt.Thippamma was admitted to the hospital. Accordingly, he visited the hospital

and met the deceased at that time, PW6 - Dr.Rangaswamy was present. He has granted permission and issued Ex.P3 - fitness certificate. Accordingly, in his presence, the statement of the deceased was recorded as per Ex.P4, which later became dying declaration. He also video recorded the statement as per Ex.P6 - CD and based on the statement of the deceased, he registered FIR as per Ex.P7 in Crime No.192 of 2012. He inspected the spot on 05.05.2012 and drawn spot mahazar as per Ex.P1 and recovered the kerosene can - MO1 and marked it as PF No.67/2012 as per Ex.P8. He also drew the sketch of scene of occurrence as per Ex.P9. After the deceased died on 06.05.2012, he inserted Section 302 of IPC in Crime No.192 of 2012 and sent requisition to the Court which is marked as per Ex.P10 and also marked the intimation sent by Davangere Police Station as per Ex.P11 and also the photos of the deceased is marked as per Exs.P12 to 15. Nothing has been elicited in the cross examination to disbelieve that he has not recorded any statement.

- (x) PW10 - Sreedhara is the Circle Inspector of Police. He has deposed that he is working as Circle Inspector of Police from 2011 to 2013 and on 06.05.2012, he has taken further investigation in Crime No.192 of 2012 from PW9 - Manjanna. He further deposed that he has been to Chigateri

General Hospital and found the dead body of deceased and drawn mahazar as per Ex.P2 in the presence of witnesses. He also recorded the statement of PW4 and CW8 and forwarded the requisition to the concerned Medical Officer to conduct post mortem. Accordingly, PW7 - Dr.Bharathi, conducted the post mortem and gave report as per Ex.P5. He also recorded the statement of other witnesses. After completion of investigation, he filed charge sheet against the accused. Nothing has been denied in the cross examination to disbelieve the statement of Investigating Officer.

Based on the aforesaid oral and documentary evidence on record, the learned Sessions Judge proceeded to convict and sentence accused Nos.1 and 2 for the offences punishable under Sections 498A and 302 read with 34 of IPC.

18. On meticulous consideration of the evidence of the prosecution witnesses, it clearly establishes that the evidence of PW4 - father of the deceased and the evidence of PWs.5, 6 and 7 - the doctors who treated the deceased and conducted post mortem examination, clearly depicts that Ex.P4 - dying declaration was recorded when the deceased was in a sound

mental state of mind. As could be seen from Ex.P3 - fitness certificate issued by PW6 - Dr.Rangaswamy, the condition of the patient was good and she was fully conscious and was able to speak, understand and give cogent answers to the questions put to her. The certificate was issued at 11.45 a.m. and the declaration was recorded by PW9 - Manjanna, the Sub Inspector of Police at 11.45 a.m. only and registered the case against the accused.

19. A careful perusal of Ex.P4 - dying declaration, which is the basis for registration of FIR by the jurisdictional police, clearly depicts that when accused No.2 and deceased were sleeping on 01.05.2012 at about 10.00 p.m., accused No.1 knocked the door and thereby, accused No.2 opened the door. Both of them have demanded money and to hand over the gold ornaments and when she refused, accused No.1 instructed accused No.2 to stand outside the house, to keep watch and pretend to extinguish the fire. Thereafter, accused No.1 poured kerosene and lit fire on her. Due to the burns, the deceased tried to remove her clothes. At that time, accused No.2 pretended to rescue her and thereafter somebody brought ambulance 108 and she was shifted to the

hospital. She has also stated to take action against accused Nos.1 and 2 who poured kerosene and lit fire on her.

20. Though the contention was raised by learned counsel for the appellant that since accused No.1 against whom the *overt act* alleged is died, the fact remains that accused No.2 and deceased had married about 8 years back and out of the wedlock, two children were born. It is the specific case of the prosecution that the deceased herself has given statement on 04.05.2012 as per Ex.P4, which later became dying declaration stating that accused No.2 being the husband of the deceased has facilitated accused No.1 to pour kerosene and lit fire. Thereby, both the accused have acted in a cruel manner and caused fatal injuries, with a common intention to murder, which attracts the provision of Section 302 read with 34 of IPC. The evidence of PWs.4, 5, 6 and 9 have not been shaken during the cross examination and nothing has been elicited to disbelieve the version of PW6 - doctor as well as PW9 - Sub Inspector of Police, who acted while discharging their duty in their official capacity.

21. It is also not in dispute that though the learned counsel for the appellant contended that there are no eye witnesses to the incident and no separate complaint was filed from 01.05.2012 to 04.05.2012 till the dying declaration, on which basis, the case was registered, the fact remains that on the date of incident at about 10.00 p.m., accused No.2 who is the husband was present with her. The initial burden is on him to explain as to what happened to his wife on the date of incident. Accused No.2 has not lodged the complaint with the jurisdictional police. It is also not in dispute that she was shifted to District Hospital, Chitradurga on 02.05.2012 and after taking treatment from PW5 - Dr.Sali Manjappa, she was referred to Chigateri General Hospital, Davangere on the same day and thereafter she has taken treatment and on 04.05.2012, she has given statement as per Ex.P4. She died on 06.05.2012.

22. PW4 - Thippeswamy, the father of the deceased has stated that he came to know about the incident and came to the District Hospital, Chitradurga. At that time, she was referred and shifted to Chigateri General Hospital, Davanagere. When the deceased was in her death bed,

naturally PW4 - being the father will always take initiative to ensure the protection of his daughter for giving proper treatment. Accused No.2 - being the husband who was with the deceased should have lodged the complaint to the jurisdictional police and he cannot take advantage of his own wrong and blame the prosecution. It is accused Nos.1 and 2 who conspired and demanded money and jewels and made her to death on the unfortunate day by pouring kerosene and lighting fire. Thereby, both the accused had common intention to cause the murder of the deceased.

23. Though the learned counsel for the accused contended that she has sustained 90% burn injuries, therefore, she was not in a position to give declaration, the same cannot be accepted, in view of the categorical evidence deposed by PW6 - Dr.Rangaswamy that the injured was conscious to give her statement and she was able to understand all the questions put by him. The injured was well oriented about the place, time and identifying the persons and accordingly issued Ex.P3 - fitness certificate, which clearly depicts that she was in sound mental state of mind. Thereafter, at his instance, PW9 - Manjanna, the Sub

Inspector of Police has recorded the statement of the deceased as per Ex.P4, which later became dying declaration. Nothing has been elicited in the cross examination of the doctor to disbelieve his version. There was no impediment to record the statement of the deceased by PW9 in the presence of PW6. As per the post mortem report, the cause of death was due to septicaemia shock as a result of superficial to deep burns which are ante-mortem in nature. There are absolutely no reasons to reject Ex.P4 - the dying declaration, which can base the conviction of the accused as it is supported by strong circumstances as discussed above, including the unexplained conduct of the appellant.

24. Our view is fortified by the dictum of Hon'ble Supreme Court in the case of ***Purshottam Chopra and another Vs State (Govt. of NCT Delhi)***<sup>1</sup>, wherein, at para 21 and 23.2 has specifically held under:

*"21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:—*

---

<sup>1</sup> AIR 2020 SC 476

*i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.*

*ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.*

*iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.*

*iv) When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.*

*v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement*

*vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.*

*vii) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.*

*viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration."*

*"23.2. It is also noteworthy that in Ex.PW-8/A, the doctor PW-8 Sushma mentioned all other features relating to the medical condition of the patient and recorded that he had suffered 'burn injuries involving whole of the body surface area-*

*100% deep burn'. However and even while mentioning that the general condition of the patient was 'critical', it was also recorded in Ex.PW-8/A that the patient was 'conscious, oriented'. It is but clear from the contents of Ex.PW-8/A about the condition of the victim Sher Singh that though the doctor found him to be in critical condition with 100% deep burns yet, he was conscious and oriented. In other words, he was neither unconscious nor disoriented. In yet other words, he was neither insensate nor confused. Such significant noting about the mental faculties of the victim at the time of giving out the narratives to the doctor makes it clear that even when he was suffering from the agony of 100% deep burns, he was not in an unfit state of mind; and there appears no reason to disbelieve his first version as recorded in Ex. PW-8/A."*

The Hon'ble Supreme Court after holding the contention that the deceased has sustained 100% burns, yet she was conscious and mentally fit. Admittedly, in the present case, the evidence of PW9 - Manjanna, the Sub Inspector of Police and PW6 - Dr.Rangaswamy, have specifically stated on oath that she was in fit state of mind and fully conscious and the

same is supported by Ex.P3. Nothing has been elicited in the cross examination. Therefore, the contention of learned counsel for the appellant that she was not conscious as she had sustained 90% burn injuries cannot be accepted.

25. It is also relevant to state at this stage that though accused No.2 being the husband of deceased was present in the house at the time of incident, has not discharged the burden as contemplated under Section 106 of the Evidence Act. Apart from that, it is the duty of the husband to explain the circumstances as to how she sustained burn injuries. Therefore, adverse inference has to be drawn against accused No.2.

26. Our view is fortified by the dictum of Hon'ble Supreme Court in the case of ***Kalu Alias Laxminarayan Vs State of Madhya Pradesh***<sup>2</sup>, wherein, at paras 11 and 13 held as under:

*"11. The aforesaid factors leave us satisfied that the prosecution has been able to successfully establish a case for a homicidal death inside the house where the deceased resided with the*

---

<sup>2</sup> (2019) 10 SCC 211

*appellant alone. The conduct of the appellant, in the aforesaid background, now becomes important. If the deceased had committed suicide, we find it strange that the appellant laid her body on the floor after bringing her down but did not bother to inform anyone living near him much less the parents of the deceased. There is no evidence that the information was conveyed to the family members of the deceased by the appellant or at the behest of the appellant. The appellant was also not found to be at home when her family members came the next morning. The appellant offered no defence whatsoever with regard to his absence the whole night and on the contrary PW3 attempted to build up a case of alibi on behalf of the appellant, when he himself had taken no such defence under Section 313, Cr.P.C.*

*13. In the circumstances, the onus clearly shifted on the appellant to explain the circumstances and the manner in which the deceased met a homicidal death in the matrimonial home as it was a fact specifically and exclusive to his knowledge. It is not the case of the appellant that there had been an intruder in the house at night. In Hanumant and Ors. vs. State of Madhya Pradesh, it was observed:*

*"10. ....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused...."*

27. While recording the statement of accused under Section 313 of Cr.P.C., he has not offered any explanation except stating that he has also sustained injuries. In the absence of any explanation as to what happened on the date of incident to his wife, adverse inference has to be drawn against the accused. Our view is fortified by the dictum of

Hon'ble Supreme Court in the case of ***Prahlad Vs State of Rajasthan***<sup>3</sup>, wherein, at para 11 held as under:

*"11. No explanation is forthcoming from the statement of the accused under Section 313 Cr.P.C. as to when he parted the company of the victim. Also, no explanation is there as to what happened after getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused."*

28. On re-appreciation of the entire materials on record, it clearly depicts that accused Nos.1 and 2 with a common intention demanded the jewelry from the deceased and when she denied, they hatched conspiracy and on the fateful day on 01.05.2012, accused Nos.1 and 2 have caused the death of deceased. It is a well-settled proposition of law that based on the dying declaration as contemplated under Section 32 of the Evidence Act, which is of sterling quality and when it inspires confidence in the mind of the Court, even without any corroboration, conviction can be made based on the sole declaration. In the present case, apart from dying

---

<sup>3</sup> (2019) 14 SCC 438

declaration, the evidence of PWs.4, 6 and 9 supports the case of prosecution. Apart from Ex.P4 - dying declaration, the other material evidence clearly proves the involvement of accused Nos.1 and 2 in the homicidal death of the deceased. Thereby, the prosecution has proved beyond reasonable doubt that accused No.2 has treated the deceased with cruelty by demanding cash and jewelry and in furtherance of common intention with accused No.1 to kill the deceased, poured kerosene and set her ablaze. Thereby, she has suffered severe burn injuries and died so as to attract Sections 498A and 302 read with 34 of IPC.

29. For the reasons stated above, the point raised in the present appeal is answered in Negative holding that the appellant has not made out any ground to interfere with the impugned judgment of conviction and order of sentence passed by the Trial Court in a proper perspective in exercise of appellate powers of this Court under section 374(2) of Cr.P.C. and the Trial Court is justified in convicting the accused for the offence punishable under Sections 498A and 302 read with 34 of IPC, sentencing him to undergo

imprisonment for life and to pay a fine of Rs.10,000 with default sentences. The same is in accordance with law.

30. In view of the above, we pass the following:

**ORDER**

- (i) Criminal Appeal filed by accused No.2 is hereby ***dismissed*** as devoid of merits.
- (ii) The impugned judgment of conviction dated 21.09.2016 and the order of sentence dated 22.09.2016 made in S.C.No.117 of 2012 on the file of Principal District and Sessions Judge, Chitradurga, convicting and sentencing appellant-accused No.2 - the husband of the deceased under the provisions of Sections 498A and 302 read with Section 34 of IPC, is hereby confirmed.
- (iii) Both the sentences shall run concurrently.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

\*bgn/-