HC-KAR
NC: 2026:KHC:59692-DB
CRL.A No. 460 of 2019
CNR: KAHC010071572019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 460 OF 2019 (C-)

BETWEEN:

SANNAPPA
S/O. RAMAPPA @ NIKKAR RAMAPPA
AGED ABOUT 38 YEARS
OCC: LABOURER
R/O. OBALAPURA VILLAGE
BHARAMASAGARA HOBLI
CHITRADURGA-577 522
(IN JUDICIAL CUSTODY)

...APPELLANT

(BY SRI PRASAD B. S., ADVOCATE)

AND:

Digitally signed by SHARADAVANI B
Location: HIGH COURT OF KARNATAKA

STATE OF KARNATAKA
BY BHARAMASAGARA P.S.
REP. BY S.P.P.
HIGH COURT BUILDING
BENGALURU-560 001

...RESPONDENT

(BY SRI SUDHINDRA B. S., H.C.G.P.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 29.12.2018 AND SENTENCE DATED 02.01.2019 PASSED BY THE PRINCIPAL

DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN S.C.NO.28/2016 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498-A, 302, 504, 323, 341, 506 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 13.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE B. PRAMOD)

In the present appeal, the appellant-accused calls in question the judgment of conviction and order of sentence dated 29.12.2018 passed in S.C. No. 28/2016 by the learned Principal District and Sessions Judge, Chitradurga.

2. The accused was sentenced to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code (IPC) and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three months; to undergo simple imprisonment for one year for the offence punishable

under Section 498-A IPC and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two months; to pay a fine of Rs.2,000/- for the offence punishable under Section 323 IPC, in default to undergo simple imprisonment for 20 days; to undergo simple imprisonment for six months for the offence punishable under Section 506 IPC; to undergo simple imprisonment for 20 days for the offence punishable under Section 504 IPC; and to pay fines of Rs.1,000/- and Rs.500/- for the offences punishable under Sections 341 IPC, in default to undergo simple imprisonment for ten days for non-payment of fine.

3. The brief facts of the case are as follows:

a) In the dying declaration marked as Ex.P14, it is stated that, before the statement was recorded, the consent of PW.8-doctor was obtained to the effect that the deceased was in a position to give the declaration. It is also stated that CW.9-Bairathy Siddappa and CW.10-Obalappa were present when the dying declaration was

recorded. According to the declaration, the deceased had married the accused about ten years earlier, and they had two children. The accused allegedly subjected her to physical and mental harassment, following which she left the matrimonial home and went to her parental house. After she returned, the accused continued to harass her during the month preceding the incident. On 22.09.2015, at about 9.30 p.m., the accused allegedly abused her in filthy language, held a knife and prevented her from leaving the house. He threatened to kill her and, while showing the knife, directed her to pour kerosene on herself and set herself on fire. The deceased came out of the house with burn injuries and was taken to the hospital by villagers. Ex.P14 is stated to have been recorded by PW.12-ASI between 12.40 p.m. and 1.40 p.m. on 23.09.2015.

b) Statement was recorded by PW.12 on 23.09.2015 at 3:00 pm, Ex P15. In the statement, the deceased stated that she had married the accused about ten years earlier

and that they had two children, a boy and a girl. The accused quarrelled with her over trivial matters, assaulted her and sent her, along with the children, to her parental home. About three months before the incident, he came to her parents' house, assured her that he would take good care of her and the children, and took her back to his village, Obalapura. During the month preceding the incident, he quarrelled with her daily over trivial issues, assaulted her and subjected her to physical and mental cruelty. On 22.09.2015, at about 9.30 p.m., after the deceased had dinner and gone to sleep, the accused abused her in filthy language. When she attempted to leave the house, he closed the door, prevented her from going out, threatened to kill her while holding a knife, pushed her to the ground, got a kerosene can and forced her to pour kerosene on herself before setting her ablaze. When she ran out of the house engulfed in flames, PWs.3 and 4 and other neighbours extinguished the fire with a blanket and took her to C.G. Hospital, Davanagere. The

statement mentions the physical and mental cruelty, as well as the act of setting her on fire with an intention to kill her.

c) Upon completion of the investigation, the police filed a charge-sheet against the accused for the offences referred to above. The accused denied the charges and claimed to be tried. To prove its case, the prosecution examined 15 witnesses as PWs.1 to 15, marked 23 documents as Exs.P1 to P23, and produced MOs.1 to 4. The accused's statement under Section 313 of the Code of Criminal Procedure,1973 was recorded. He denied the allegations, however, did not lead any defence evidence.

d) Upon consideration of the prosecution evidence, particularly that of PWs.2, 4, 5, 8, 12 and 15, along with the documentary evidence on record, the Trial Court concluded that the accused was guilty of the aforementioned offences and convicted and sentenced him.

4. The learned counsel for the accused-appellant contends as follows:

i) Ex.P14 is the dying declaration, which was recorded in the presence of CWs.9 and 10; however, neither of them was examined by the prosecution. Hence, Ex P14 cannot be relied by the prosecution.

ii) PW.8-doctor issued the consent/fitness endorsement marked as Ex.P6, stating that the deceased was conscious and in a fit state of mind to make a statement. However, PW.8's endorsement /signature does not appear on the dying declaration at Ex.P14.

iii) The dying declaration was recorded on 23.09.2015 between approximately 12.40 p.m. and 1.30 p.m., whereas the statement marked as Ex.P15 was recorded later that day, at about 3.00 p.m. No medical endorsement regarding the deceased's state of mind appears on Ex.P15.

iv) That, the deceased's uncle Sri Nagaraj, a police officer in Harihara was present in the hospital. It is the contention that Exs.P14 and P15 was prepared at his instance as PW 12 I.O admitted this in his testimony.

v) The accused remained at the place of the incident and did not flee, which, according to the defence, indicates that he was not the perpetrator.

vi) The prosecution has not produced the hospital case sheet showing the date and time of the deceased's admission and other details.

vii) The deceased died five days after the incident; statement by magistrate was not recorded though reasonable time was available; according to the defence, she might have survived had proper treatment been provided.

5. Per contra, the learned High Court Government Pleader appearing for the State supports the judgment of conviction and submits as follows:

i) PWs.2 and 4 have stated that the accused habitually consumed alcohol and used to harass the deceased.

ii) Ex.P14, the dying declaration, clearly identifies the accused as the person responsible for the offences.

iii) Ex.P15 discloses the cruelty allegedly inflicted on the deceased by the accused and states that he set her on fire. PWs.3 and 4 have also supported the

prosecution case in this regard. The prosecution proved its case.

6. Having considered the submissions of the parties, the following point arises for consideration:

> *"Whether the judgment of conviction and order of sentence passed by the learned Trial Court against the accused for the offences punishable under Sections 302, 504, 506, 323 and 341 of the Indian Penal Code suffers from any illegality or infirmity warranting interference by this Court?"*

7. PW.10-doctor, the medical officer who conducted the post-mortem examination, issued the post-mortem report marked as Ex.P10. He stated *that "burn injuries were present over the body, with areas spared over the scalp and the front and lower extremities of the legs, and described dark-brown and yellowish patches of burn injuries. He opined that the death was caused by "septicaemia and toxaemia as a result of burn injuries to an extent of 90% to 95%, superficial to deep."* In cross-examination, it was elicited that the thumb ridges of the

deceased were not visible at the time of the post-mortem examination.

8. PW.1, the elder brother of the deceased, testified that the accused was a habitual drinker and treated the deceased badly. He stated that, when he met the deceased in the hospital, she told him that the accused had tortured her, threatened her with a knife, forced her to pour kerosene on herself and set her ablaze. In cross-examination, PW.1 admitted that his uncle, Nagaraj, was a police officer at Harihara and had come to Chigateri Hospital, Davanagere where the deceased was treated.

9. PW.2, the mother of the deceased, testified that the accused consumed alcohol and frequently abused her daughter.

10. PW.3, the sister-in-law of the accused and a neighbour, deposed that the accused consumed alcohol daily. On the date of the incident, she was at home when a quarrel occurred in the deceased’s house. The deceased

came out of the house engulfed in flames. After the villagers extinguished the fire with a blanket, they took her to Bharamasagara Hospital and thereafter to Chigateri Hospital, Davanagere. PW.3 stated that a doctor tried to speak to the deceased, but she did not respond. The doctor at Chigateri Hospital also attempted to speak to her, but she did not respond.

11. PW.4, another neighbour of the deceased, testified that the accused and the deceased frequently quarrelled. When PW.4 asked the deceased about the incident, the deceased stated that the accused had held a knife, threatened her, directed her to pour kerosene on herself and set her ablaze. PW.4 also stated that the accused remained at the scene after the incident. In cross-examination, she stated that the deceased was in a condition to speak.

12. PW.5, a relative of the deceased, stated that the accused was a habitual drunkard, quarrelled with the

deceased and suspected her character. He also stated that an earlier panchayat had been held, in which he participated. He denied having given any statement to the police.

13. PW.6 is a mahazar witness through whom Ex.P3, the spot mahazar, was marked. The evidence regarding the mahazar records the seizure of MO.1, a kerosene can; MO.2, a matchbox; MO.3, a knife; and MO.4, a piece of burnt cloth.

14. PW.7, a relative of the deceased, deposed that, when he spoke to the deceased, she told him that on the date of the incident the accused had shown her a knife, threatened her, forced her to pour kerosene on herself and set her on fire.

15. PW.8-doctor stated that, on 23.09.2015, she was working in the casualty department of Chigateri Hospital, Davanagere. PW.12 approached her seeking her opinion regarding the deceased’s fitness to give a

statement, and she issued Ex.P6. She deposed that she was present when the dying declaration was recorded between 12.40 p.m. and 1.20 p.m. In cross-examination, she admitted that the case sheet had not been produced. It was also elicited that there was no difficulty in obtaining the doctor's signature on the dying declaration. She further stated that, as the deceased was in an isolated burns ward, no one other than PWs.11, 12 and 22 had gone to the ward.

16. PW.10, the medical officer at Chigateri Hospital, reiterated that the deceased had sustained burn injuries over almost the entire body, with certain areas spared, and opined that death was due to septicaemia and toxaemia resulting from 90% to 95% superficial-to-deep burn injuries. In cross-examination, it was elicited that the thumb ridges of the deceased were not discernible at the time of the post-mortem examination. The post-mortem report is marked as Ex.P10.

17. PW.11 was the Head Constable working at Bharamasagara Police Station at the time of the incident. In his testimony he states that he was present during the recording of the statement of the deceased and recorded a video with help of the station camera. After the statement, deceased had affixed her left thumb.

18. PW.12, the Investigating Officer before whom Exs.P14 and P15 were recorded, deposed that he had issued a requisition seeking the doctor's opinion regarding the deceased's fitness to give a statement, and that the doctor had issued the relevant endorsement for Ex P14. He stated that the deceased's declaration recorded that the accused had physically harassed her and caused her mental torture; on the date of the incident, he had abused and assaulted her, shown her a knife, forced her to pour kerosene on herself and set her ablaze. PW.12 stated that the deceased had clearly narrated these facts. He further deposed that an FIR was not registered on the basis of Ex.P14 and that Ex.P15 was recorded subsequently, with

PW.11-Constable acting as the scribe and taking the deceased's left thumb impression on it. Thereafter, the FIR was registered. When the deceased died on 28.09.2015, the police received the information and requested the Magistrate to add Section 302 IPC. In cross-examination, PW.12 admitted that Nagaraj was present along with the doctor and that Exs.P14 and P15 did not bear the doctor's signature. He also admitted that there was no difficulty in obtaining the doctor's signature.

19. PW.13, M.K. Poornachandra, the Police Sub-Inspector, deposed that on 23.09.2015 he went to the scene of the offence and drew the spot mahazar, which was marked as Ex.P3. Under the mahazar, MO.1, a kerosene can; MO.2, a matchbox; MO.3, a knife; and MO.4, a piece of burnt cloth, were recovered. In his deposition, he stated that Exs.P14 and P15 did not bear a doctor's signature.

20. PW.14, D. Nagaraju, the Police Inspector, also deposed that Exs.P14 and P15 did not bear the doctor's

signature. He further stated that he had not obtained a certificate from the doctor to verify whether the deceased was fit to give the statement recorded as a dying declaration.

21. PW.15 was the Head Constable working at Bharamasagara Police Station at the time of the incident. It was elicited from him that the fingers of the deceased's hands and feet had been burnt.

22. The incident occurred on 22.09.2015, and the deceased was initially taken to Bharamasagara Hospital. However, the prosecution has not produced any documents relating to her treatment there. PW.3 clearly testified that the deceased was first taken to Bharamasagara Hospital and thereafter to Chigateri Hospital, Davanagere. The non-production of the medical records from Bharamasagara Hospital raises concern regarding the prosecution case. The case sheet from Chigateri Hospital has also not been produced, though it

could have disclosed the date and time of admission and other relevant details, including the history furnished at the hospital regarding the incident. Ex.P14 is stated to have been recorded in the presence of CW.9-Bairathy Siddappa and CW.10-Obalappa, neither of them was examined by the prosecution.

23. Although the incident occurred on 22.09.2015, the deceased remained in hospital for nearly five days and died on 28.09.2015. Though Exs.P14 and P15 were recorded, the Tahsildar was not summoned to record the statement of the deceased. This omission assumes significance, particularly because Ex.P14 was recorded on 23.09.2015 between 12.40p.m. and 1.20 p.m., while Ex.P15 was recorded at about 3.00 p.m. on the same day. PW.8-doctor issued Ex.P6; however, Ex.P14 does not bear the signature of PW.8. Further, when Ex.P15 was recorded, PW.12 did not obtain the doctor's opinion regarding the deceased's state of mind. Case was registered based on Ex.P15 and ignoring Ex.P14. PW.12-

I.O admitted that Nagaraj, police officer was present along with the doctor during the statement. Nagaraj is the uncle of the deceased which is admitted by P.W -1. These circumstances create doubt in the mind of Court.

24. PW.4 testified that the accused remained at the scene after the incident and did not flee. PW.15 stated that the fingers of the deceased's hands and feet were burnt, raising a question as to the reliability of the thumb impressions appearing on Exs.P14 and P15. The police could have registered an FIR on the basis of Ex.P14; however, for reasons best known to them, a statement was recorded as Ex.P15. Nagaraj, a police officer attached to Harihara Police Station, was present at the hospital, a fact admitted by PW.1 in his testimony. The medical evidence establishes that the deceased sustained 90% to 95% superficial-to-deep burn injuries. PW.3 testified that, when she tried to speak to the deceased, the deceased was not in a condition to converse. She also stated that doctors at Bharamasagara Hospital and Chigateri Hospital

attempted to speak to the deceased but were unable to converse with her. This evidence is in contrast with PW.4's testimony that the deceased was able to speak, and gives rise to doubt. If the deceased was unable to converse with the doctors, the recording of Ex.P14 between 12.40 p.m. and 1.30 p.m. on 23.09.2015, followed by the detailed statement at Ex.P15 at about 3.00 p.m. without a doctor's fitness endorsement raises questions about genuineness of the statement.

25. It is significant that, notwithstanding the availability of sufficient time and opportunity, the Investigating Officer made no endeavor to secure the presence of a Taluka Executive Magistrate for recording the dying declaration of the deceased. The prosecution has failed to offer any plausible or satisfactory explanation for such omission. Though it is well settled that a dying declaration recorded by a police officer is not rendered inadmissible merely for want of its recording by a Magistrate, the unexplained failure of the Investigating

Officer to adopt such a course, despite there being ample opportunity, cannot be lightly brushed aside. In the facts and circumstances of the present case, such omission assumes considerable significance and constitutes a circumstance casting a serious doubt on the credibility and trustworthiness of the dying declaration. When viewed in conjunction with the other infirmities and suspicious circumstances emerging from the evidence on record, the said omission materially undermines the evidentiary worth of the dying declaration. In such circumstances, it would be wholly unsafe to place implicit reliance upon the dying declaration, much less to sustain a conviction solely on its basis, unless its truthfulness and reliability are otherwise established by cogent and convincing evidence.

26. Insofar as Ex.P15 is concerned, it is the statement on the basis of which the FIR was registered. Admittedly, the deceased had sustained 90% to 95% burn injuries. In these circumstances, the prosecution was required to establish that the deceased was in a fit

condition to make the statement. Significantly, the certification given by PW.8 under Ex.P6 relates only to the dying declaration at Ex.P14; no corresponding certification regarding the deceased's fitness is available in respect of Ex.P15. Moreover, despite the claimed presence of PW.8, her signature does not appear on that statement. Although medical certification is not an indispensable legal requirement, its absence, considered alongside the nature and extent of the burn injuries and the other circumstances on record, raises serious doubt as to whether the deceased was fit to make Ex.P15. Accordingly, the evidentiary value of Ex.P15 is doubtful, and it would be unsafe to rely on it without satisfactory evidence establishing its authenticity and reliability.

27. It is well settled that the last-seen theory constitutes an important link in the chain of circumstantial evidence. However, the mere circumstance that the accused and the deceased were last seen together, by itself, is not sufficient to sustain a conviction. The

prosecution is required to establish that the interval between the time when the accused and the deceased were last seen together and the probable time of death was so proximate as to render the possibility of intervention by any other person highly improbable. The said circumstance must also be considered in conjunction with the other incriminating circumstances established by the prosecution. Unless the circumstances so proved form a complete chain pointing unerringly towards the guilt of the accused and excluding every reasonable hypothesis consistent with innocence, conviction cannot be sustained merely on the basis of the last-seen theory.

28. Though PW.11 has deposed that the statement of the deceased was video graphed at the time of its recording and that the CD containing the said recording was marked as Ex.P12 subject to objections, the prosecution has not produced the requisite certificate under Section 65B of the Indian Evidence Act, 1872. Mere marking of the CD as Ex.P12, particularly when it was

marked subject to objections, does not dispense with the statutory requirement of proving its admissibility in accordance with law. In the absence of the requisite certificate, and there being no other legally recognised basis for its admissibility, the contents of Ex.P12 cannot be read in evidence or relied upon to establish the prosecution case. Consequently, Ex.P12 is liable to be excluded from consideration while appreciating the evidence on record.

29. In view of the foregoing discussion and upon independent re-appreciation of the entire evidence on record, we are of the considered opinion that the prosecution has failed to establish the guilt of the accused for the offence punishable under Section 302 of the IPC beyond reasonable doubt. However, the evidence of PWs.2, 4, 5 and 7 establishes the cruelty inflicted upon the deceased by the accused. Consequently, the conviction of the accused for the offence punishable under Section 302

of the IPC cannot be sustained and warrants interference by this Court. Accordingly, we proceed to pass the following:

ORDER

i. The appeal is ***allowed in part***.

ii. The judgment of conviction and order of sentence dated 29.12.2018 passed by the Principal District and Sessions Judge, Chitradurga, in S.C.No.28/2016, insofar as it relates to the conviction and sentence of the appellant-accused for the offence punishable under Section 302 IPC, is hereby ***set aside***.

iii. The judgment of conviction and sentence for the offences punishable under Sections 498-A, 341, 504, 323 and 506 IPC is ***confirmed***. However, since the appellant/accused has already undergone the imprisonment for a period of 12 years which exceeds the sentence imposed for the aforesaid offences, the sentence stands served.

iv. The bail bond executed by the appellant-accused, if any, shall stand cancelled.

v. The appellant-accused shall be released forthwith, if not required in any other case.

vi. The Registry shall communicate this order to the concerned jail authority.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

BSV
List No.: 1 Sl No.: 1