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IN THE HIGH COURT OF KARNATAKA

AT CIRCUIT BENCH, DHARWAD

DATED THIS THE 30TH DAY OF NOVEMBER, 2010

PRESENT

THE HON'BLE MR.JUSTICE V.G.SABHAHIT

AND

THE HON'BLE MR.JUSTICE B.V.PINTO

CRL.A.NO.1729/2007

BETWEEN:

BASAVARAJ
S/O HULUGAPPA
AGED ABOUT 47 YEARS,
VADDARA CASTE,
R/O NEAR RODDAPPA MATH,
SIRUGUPPA, BELLARY DISTRICT. APPELLANT

(BY SRI.H.R.HOOLI (AMICUS CURIAE), ADV)

AND:

THE STATE THROUGH
SIRUGUPPA POLICE STATION,
SIRUGUPPA. ... RESPONDENT

(BY SRI.A.R.PATIL, ADDL. SPP)

THIS JAIL APPEAL IS FILED BY THE ACCUSED/APPELLANT
HEREIN PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED
TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT
DT.25.08.2007 PASSED BY THE FAST TRACK-I, BELLARY, IN
S.C.NO.191/2006 CONVICTING HIM FOR THE OFFENCE P/U/S
504 AND 302 OF IPC.

THIS APPEAL COMING ON FOR HEARING, THIS DAY,
V.G.SABHAHIT.J., DELIVERED THE FOLLOWING:

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JUDGMENT

This appeal is filed by the accused in S.C.No.191/2006 on the file of the Presiding Officer, Fast Track Court-I, Bellary, dated 25.08.2007 wherein the accused-appellant herein is convicted of having committed the offences punishable u/ss.504 and 302 IPC and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default to pay the fine to suffer further rigorous imprisonment for one month for the offence punishable u/s 504 of IPC. Further, he was punished to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, the accused shall suffer further rigorous imprisonment for one year for the offence punishable under Section 302 of IPC. The period of detention undergone by the accused person during the enquiry and trial is ordered to be set off against the substantial sentence imposed on the accused person as per Section 428 of Cr.P.C.

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2. The material facts of the case leading up to this appeal with reference to the ranks of the parties before the sessions court are as follows:

The accused/appellant herein stood charged before the trial court on the accusation that on 28.10.2001 at 2.30 p.m. in the house of the accused which is near Roddappa Math at Siruguppa, demanded the amount from his wife Hussainamma for consuming liquor by abusing her in filthy language using the words 'Le Middaraguttida Sule' and insulted and provoked her to commit the breach of peace and thereby the accused committed the offence punishable u/ss.504 of IPC and that the accused on the above said date, time and place demanded the amount from his wife namely Hussainamma for consuming the liquor and when she did not fulfill his demand, with an intention to kill her poured kerosene on her and set her on fire and due to the burns she succumbed to the injuries on 29.10.2001 at 6.00 a.m.

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in VIMS hospital, Bellary and thereby he committed an offence punishable u/s. 302 of IPC.

3. It is the case of the prosecution that Hussainamma was the wife of the accused and they have two children namely PW-1 Hulgemma and PW-4 Dodda Basavaraja. It is the case of the prosecution that the accused was addicted to consumption of alcohol and was demanding money from his wife for gratifying his need to consume liquor and abusing and threatening his wife. It is the further case of the prosecution that on 28.10.2001 at about 2.45 p.m. when Dr.Mahantappa Shabadi was on duty in the hospital, the injured by name Hussainamma and her daughter Hulgemma were brought to the hospital for examination and treatment. Emergent treatment was given to the injured Hussainamma and immediately thereafter at about 2.45 p.m., intimation was sent to the PSI as per Ex.P.10. The PSI, Sri.G.Harisha on receiving the intimation as per Ex.P.10, went to the hospital and

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saw both the injured and inquired PW-8 whether Hussainamma was in a position to give statement and since the Medical Officer who attended to the injured said that the statement of Hussainamma could be recorded, he recorded her statement/complaint in the presence of Dr.Mahantappa Shabadi. Hussainamma has stated in her statement that she was married to the accused about 20 years ago and that they have got four children. Since 4 to 5 years, her husband was living on the income earned by her children and he was addicted to drink alcohol and demanding them to pay money. On the date of incident at about 2.30 p.m., while herself, her husband and Hulgemma were in the house, her husband started quarrelling for payment of the coolie amount for consuming liquor, but she expressed her inability to pay the said amount since she had no money even to spend for the household expenses. The accused abused her saying that she was staying as a kept mistress and poured kerosene on her by taking the kerosene can containing

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kerosene oil and lit fire to her and she started burning. She came out of the house and asked PW-1 Hulgemma to extinguish fire. In that process, PW-1 also sustained burn injuries on her hands and right side of her neck. Thereafter, Hussainamma was shifted to the hospital along with Hulgemma. Thereafter, PSI came to the hospital and she gave her statement as per Ex.P.10. On the basis of the said complaint, PW-16 returned to the police station and registered the case in Cr.No.195/2001 for the offences punishable u/ss. 307 and 504 of IPC and sent the FIR as per Ex.P.19 to the jurisdictional court and copy of the same to his superiors. On the same day, he gave a requisition to Taluka Executive Magistrate for recording the dying declaration of Hussainamma. On receipt of the requisition, the Taluka Executive Magistrate-PW-10 went to the hospital and again made enquiry with PW-8 as to whether Hussainamma was in a position to give the statement and when the doctor said that Hussainamma was in a position to give statement, he

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recorded the statement of Hussainamma in the form of question and answer wherein she has clearly stated that her husband poured kerosene on her and lit fire to her and that her husband was demanding money for drinking liquor and since amount was not paid, he poured kerosene and lit fire. The said statement was recorded as per Ex.P.13 in the presence of Dr.Mahantappa Shabadi Math. In the said statement, the doctor has certified that Hussainamma was in a fit condition to give the statement and certified the same under his signature. Thereafter, PW-16 secured the presence of panchas and PW-1 Hulgemma and in their presence conducted the Spot Panchanama and during the panchanama he seized the articles M.Os.1 to 4 being half burnt match stick, half burnt match box, plastic can and half burnt piece of saree under Ex.P.8. On the same day, recorded the statement of PWs-2, 3 and 11. He along with his subordinates searched for the accused. But could not trace the accused. On 29.10.2001, they received a wireless

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message stating that Smt.Hussainamma who was undergoing treatment in the VIMS hospital died at about 6.00 a.m. The wireless message received from the PSI is marked as Ex.P.20. Thereafter, he submitted a requisition to the court for alteration of the charge from Section 307 to 302 IPC and sent the modified FIR. On the same day, he conducted inquest panchanama over the dead body of Hussainamma in the presence of PWs-7 and 14 as per Ex.P.9. He got the post mortem examination of Hussainamma conducted through PW-9 as per Ex.P.14. However, the investigation was handed over to Sri.Chinnappa, Dy.S.P.-PW-17. PW-17 verified the investigation already conducted. He sent the seized articles to FSL. He received the FSL report as per Ex.P.22. After completing the investigation, he filed the charge sheet against the accused showing him as absconding. On 20.11.2006 the accused was arrested by CPI by name Maligi and produced him before the court. Charges were framed against the accused for having committed offences

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punishable u/ss.504 and 302 IPC. The accused pleaded not guilty and claimed to be tried. The prosecution in all examined PWs-1 to 17 and got marked Ex.P.1 to Ex.P.22 and the articles seized were marked M.Os.1 to 4. Statement of the accused u/s 313 of the Code of Criminal Procedure was recorded. On behalf of the accused, no oral or documentary evidence was produced and the defence of the accused was that Hussainamma suffered accidental death and that a false case has been filed against him. The trial court after considering the contentions of the learned counsel appearing of the parties and appreciating the oral and documentary evidence on record by order dated 25.08.2007 convicted the accused of having committed offences punishable u/ss.504 and 302 IPC and sentenced the accused as aforesaid. Being aggrieved by the said judgment and conviction, the accused has preferred this appeal.



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4. Amicus Curiae was appointed for presenting the case of the appellant. We have heard learned counsel appearing for the appellant and the learned Additional State Public Prosecutor.

5. The learned counsel appearing for the appellant-accused has taken us through the evidence of PWs-1 to 17 and the contents of the documents Ex.P.1 to Ex.P.22 and submitted that the panchas and all witnesses except police officials have turned hostile to the prosecution. Even the daughter of the accused has not supported the prosecution and that even Hussainamma was not in a position to give her statement when the complaint was recorded as per Ex.P.11 and therefore the trial court ought to have acquitted the appellant by holding that the prosecution has failed to prove the guilt of the accused and the material on record has not been properly appreciated and therefore the appellant may be acquitted by setting aside the judgment passed by the trial court.

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6. Learned Addl. SPP submitted that admittedly PW-1 is not an eye witness to the incident and that she has come to the spot after Hussainamma caught fire which was lit by the accused after pouring kerosene and that the dying declaration is recorded not only by the Investigation Officer but also by the Taluka Executive Magistrate which is trivial and voluntary and therefore the same has been made basis for convicting the accused. The order passed by the trial court is justified and does not suffer from any illegality and the sentence passed is also justified.

7. Having regard to the above contentions of the learned counsel appearing for the parties, the points that arise for our consideration in this appeal are:

"i) Whether the judgment and sentence and the finding of the trial court that the prosecution has proved the guilt of the accused and sentence passed thereon justified or calls for interference?

ii) What order?"

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Point No.i) ~~We answer that~~ the finding of the trial court is justified,

Point No.ii) In view of our answer to Point No.i), the appeal is liable to be dismissed as per the final order.

8. We have given our careful consideration to the contention of the learned counsel appearing for the parties and scrutinized the material on record. The prosecution is relying upon the evidence of PWs-1 to 17 and also the documentary evidence Ex.P.1 to Ex.P.22 and M.Os.1 to 4 to bring home the guilt of the accused.

9. PW-1 is the daughter of Hussainamma. She has deposed in her examination-in-chief that the accused is her father and Hussainamma is her mother. Doddabasavaraj CW-6/PW-4 is her elder brother and Parushuram CW-7/PW-5 is her uncle and she knows CWs-3 to 5 who are her neighbours. Her marriage has taken place about 6 years back. Before her marriage, she was residing with her parents and three brothers. While

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her mother was doing coolie work, her elder brother was doing masonry work and that about six years back (witness examined on 25.06.2007) her mother died at Bellary Hospital due to burn injuries sustained by her in their house. On the date of the incident, her father had returned back to the house at about 12 noon and she had gone to watch T.V. in her neighbours house. And that her mother was preparing food and her brothers had gone for their work. After hearing the noise from her house, she hurriedly returned back and saw her mother caught fire and she extinguished fire and in that process she also sustained burn injuries on her hands and neck. At the relevant point of time her father had gone out of the house in order to bring amount from others. Thereafter, herself and her mother were shifted to the hospital by their neighbours. She does not know in which manner and how her mother caught fire since she was in the house of her neighbours. The witness has turned hostile in support of the case of the prosecution about the presence

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of her father and nothing has been elicited in her cross-examination to support the case of the prosecution. However, the evidence of PW-1 would show that Hussainamma was her mother and on the date of the incident the accused and Hussainamma were in the house and her father had gone to bring money would support the case of the prosecution.

10. PW-2 is the neighbour to the accused and he has stated that himself and accused are neighbours. About six years back Hussainamma was shifted to the Government Hospital, Bellary for treatment and on the next day she died. And that he did not know how and in which manner Hussainamma had sustained burns. He has stated that neither he witnessed the incident nor gave the statement before the police. Hence, he has turned hostile and permitted to be cross-examined by SPP. Nothing has been elicited in his cross-examination to support the case of the prosecution and therefore his

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evidence is not helpful to prove the case of the prosecution.

11. PW-3 is also the neighbour of the accused and deceased Hussainamma and he has stated in his evidence that he came to know that Hussainamma sustained burns at the time of preparing food and that he has neither witnessed any incident nor gave the statement before the police and permitted to be cross-examined by the SPP. Nothing has been elicited in his cross-examination to support the case of the prosecution.

12. PW-4 is the son of accused and Hussainamma. He has stated that his mother was doing coolie work and that his father was in the habit of consuming liquor. About six years back, her mother Hussainamma died due to burn injuries. On the date of the incident at about 6.00 or 6.30 p.m. after coming to know that his mother sustained burn injuries and was admitted in the hospital, he went to the hospital to see her. His sister PW-1 had

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also sustained injuries and she was present in the hospital. His mother has not stated anything before him in which manner and how she sustained the injuries. This witness has also turned hostile and nothing has been elicited in the cross-examination to support the case of the prosecution. However, his evidence shows that he is not an eye witness and he was not present at the time of the incident.

13. PW-5 is the brother of the accused and naturally he has not supported the case of the prosecution. He has stated that about 5 or 6 years back Hussainamma died on account of the burns sustained by her and that Hussainamma did not tell him in which manner and how she caught fire and sustained burns. He has also turned hostile and nothing has been elicited in his cross-examination to support the case of the prosecution. Therefore, his evidence is also not helpful to prove the case of the prosecution.

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14. PW-6 is the panch for the Spot Mahazar. PW-7 is the panch for inquest panchanama. Both have not supported the case of the prosecution but were true as nothing has been elicited in their cross-examination to prove the case of the prosecution.

15. PW-8 is the Medical Officer who was present at the time of recording the statement as per Ex.P.11 and Ex.P.13. PW-8 has clearly deposed in his evidence about the fact that PWs-10 and 16 recorded the statement of Hussainamma in his presence and that Hussainamma was in a position to give statement.

16. PW-9 is the Medical Officer who conducted the post mortem examination over the dead body of Hussainamma between 3.05 p.m. and 4.00 p.m. on 29.10.2001 and he has spoken to about the external injuries sustained on the body of Hussainamma and has stated that he noticed all internal organs intact and congested. He has stated that the death was due to



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hypovolumic shock resulting from burn injuries sustained over 95% to 98% of body surface. Accordingly, he has issued the post mortem report. In his cross-examination he has stated that if accidentally kerosene falls on a lady while preparing the food and she comes into contact with fire, can cause the injuries noticed and mentioned in Ex.P.14 .

17. PW-10 is the Taluka Executive Magistrate who has recorded the statement of Hussainamma as per Ex.P.13.

18. PW-11 is the neighbour of the accused and he was panch for the inquest. He has not supported the case of the prosecution and therefore he was treated as hostile.

19. PW-12 who was working as ASI has stated that as per the direction of PSI, he and a Police Constable had gone in search of the accused but could not trace out. Accordingly, on 31.10.2001, he gave the report to the PSI



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and he has identified his signature as per Ex.P.17 (a) on the report and he has denied the suggestion that he has filed a false report as per the instructions of his Superior Officers.

20. PW-13 is the neighbour of accused who has turned hostile and has not support the case of the prosecution. She has been examined as a panch to the inquest and her evidence is not helpful to the case of the prosecution.

21. PW-14 is also panch for Ex.P.9 inquest. He has also not supported the case of the prosecution and he has turned hostile.

22. PW-15 is the Medical Officer who examined Hulgemma and noticed that the injuries were simple in nature. He has issued the wound certificate as per Ex.P.18. The evidence of PW-15 would clearly support the evidence of PW-1 that she extinguished fire from the body

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of her mother Hussainamma and in the meanwhile she also sustained some injuries which is corroborated by the evidence of PW-15 and Ex.P.18, the certificate issued by him.

23. PW-16 is the PSI and PW-17 is the CPI who have narrated the facts of the case.

24. It is clear from the above said material on record, the prosecution is left with the statement of Hussainamma as per Ex.P.11 and Ex.P.13 to bring home the guilt of the accused. It is well settled principle that dying declaration which is admissible u/s 32 can form the basis for conviction, if, it is found to be truthful and reliable and injured was in a position to give statement. It is clear from the evidence of PW-16 that he has clearly deposed in his evidence that on receiving intimation from PW-8 as per Ex.P.10, he went to the hospital and recorded the statement of Hussainamma as per Ex.P.11. Nothing has been elicited in his cross-examination to disbelieve his

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evidence. On perusal of Ex.P.11, it is clear that Hussainamma has narrated the incident that the accused poured kerosene and set fire to her and she came out of the house and her daughter Hulgemma extinguished fire and thereafter she was shifted to the hospital. PW-8 who was a Medical officer and who was present at the time of recording the statement of Hussainamma as per Ex.P.11 has clearly deposed in the cross-examination that he sent intimation as per Ex.P.10, PSI came to the hospital and the deceased was in a position to give statement and he examined her and said that she was in a position to give statement and therefore her statement was recorded. Nothing has been elicited in the cross-examination of PW-8 to disbelieve his evidence that Ex.P.11 was recorded in his presence or to show that Hussainamma was not in a position to give her statement. There is no merit in the contention of the learned counsel for the appellant that Hussainamma was not in a position to give statement having regard to the fact that she had sustained 95% to

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98% injuries. It is clear from the contents of Post Mortem report and evidence of PW-9 that the deceased had sustained 95% to 98% burn injuries on the body surface and nothing has been elicited in the cross-examination of PW-8 to disbelieve his evidence that Hussainamma was in a position to give statement and his certificate Ex.P.12 is wrong and therefore the statement of Hussainamma which has to be treated as dying declaration as per Ex.P.11 is true and the same is shown to be truthful and reliable. However, in addition to Ex.P.11, PW-16 sent a requisition to PW-10 Taluka Executive Magistrate and he has also recorded the statement of Hussainamma after ascertaining from PW-8 as to whether she was in a position to give statement as per Ex.P.13 which is in the form of question and answer wherein she has implicated her husband as the person who poured kerosene and set fire on her. She has stated that since she did not give the amount for drinking alcohol, her husband poured kerosene and set fire which is clear from Ex.P.13 which

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bears the signature of the Medical Officer as per Ex.P.13 (a) and PW-8 has clearly corroborated the same and has stated that Taluka Executive Magistrate enquired him as to whether Hussainamma was in a position to give statement and he found her fit and thereafter the Taluka Executive Magistrate recorded the statement as per Ex.P.13 and he has endorsed about the fact which bears the signature as per Ex.P.13 (b) on Ex.P.13 and nothing has been elicited in the cross-examination of PW-8 to disbelieve that Hussainamma was in a position to give evidence and certificate given by PW-8 is wrong. Both the statements of Hussainamma as per Ex.P.11 and Ex.P.13 are cogent and consistent as they have implicated her husband as the person who poured kerosene and set fire and Ex.P.13 is also proved by the evidence of PW-10 and PW-8 as referred to above and therefore we hold that both Ex.P.11 and Ex.P.13 being dying declaration given by Hussainamma stating that her husband poured kerosene on her and set fire as the basis for convicting the accused

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for having committed the offence punishable u/ss.504 and 302 IPC. Accordingly, on re-appreciation of the evidence as referred to above, we find that the finding of the trial court that the prosecution has proved the guilt of the accused of having committed offences punishable u/ss.504 and 302 is justified and the sentence imposed on the accused is also justified and accordingly we answer the points for consideration and pass the following order:

The appeal is dismissed. The judgment and sentence passed by the Fast Track Court-I in S.C.No.191/2006 dated 25.08.2007 is confirmed.

The assistance rendered by Sri.H.R.Hooli, learned counsel is placed on record and his fee is fixed at Rs.5,000/-.

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