IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30TH DAY OF SEPTEMBER 2011

PRESENT

THE HON'BLE MR. JUSTICE SUBHASH B. ADI

AND

THE HON'BLE MR.JUSTICE K. N. KESHAVANARAYANA

CRIMINAL APPEAL NO.516/2007

BETWEEN:

State of Karnataka
By the Police Inspector
Old Hubli P.S.

... APPELLANT

[By Sri. V. M. Banakar, Addl. SPP)

AND:

1. Rudrappa, S/o. Irappa Gooli
   R/o. Rayanal, Tq. Hubli

2. Smt. Shantavva
   W/o. Veerappa Gooli
   R/o. Rayanal, Tq. Hubli

3. Smt. Girijavva
   W/o. Shankarappa
   Kusugal, R/o. Dyamawwa Gudi Street
   Rayapur, Tq: Hubli

... RESPONDENTS

[By Sri. Kiran Angadi, Adv. for Sri. Vidyashankar A. Dalawai & R. C. Matti, Adv.)

This Criminal Appeal is filed u/s. 378(1) and (3) Cr.P.C by the State P.P. for the State praying to grant leave to file an appeal against the judgment dt.21.11.2006 passed by the I Addl. SJ., Dharwad siting at Hubli in S.C.No.87/2005 – acquitting the respondents/accused for the offence p/u/s. 498(A) R/w. 34 of IPC and further acquitting the accused Nos. 1 and 2 for the offence p/u/s. 302 R/w. 34 of IPC and set aside the aforesaid judgment and order of acquittal.

This Appeal coming on for final hearing this day, Subhash B. Adi J. delivered the following:

JUDGMENT

This appeal by the State is against the judgment of acquittal dated 21.11.2006 passed in S.C.No.87/2005 on the file of I Addl. Sessions Judge, Dharwad sitting at Hubli.

2. The 1st accused Rudrappa, S/o. Irappa Gooli, 2nd accused Smt. Shantavva, W/o. Veerappa Gooli, 3rd accused Smt. Girijavva, W/o. Shankarappa were charge-sheeted and tried for the offences punishable under Sections 498A and 302 read with Section 34 of IPC.

3. The accused No.1 is the husband, accused No.2 is the mother-in-law and accused No.3 is the sister-in-law of the deceased. PWs 11 and 16 are the parents of the deceased. PWs. 1, 6 to 9 are the neighbors of the deceased. PWs.2, 12 to 15 and 24 were the relatives of the deceased.

4. The case of the prosecution in brief was that the marriage of the deceased with accused No.1 was performed about four years prior to the date of incident (10.05.2001). She had two female children, born out of the said wedlock by name Gayatri and Rajeshwari. The accused No.1 use to assault and harass the deceased for not bearing a male child. There used to be quarrels between the accused and the deceased. On 09.05.2005, PW11, the father of the deceased had advised the accused No.1 and 2 to treat his daughter properly and on 10.05.2005 at about 5.00 am, when the deceased Annapurna had gone to kitchen to cook food, accused No.1, the husband, accused No.2, the mother-in-law raised objection as to why the deceased has

gone to the kitchen against their advise to prepare food. Accused No.2, mother-in-law took up the kerosene can and doused the body of the deceased with kerosene, accused No.1 lit fire with the matchstick. The deceased Annapurna raised hue and cry and on hearing the screaming, the neighbors came and extinguished the fire and she was admitted to the KIMS Hospital, Hubli, where she breathed her last at 9.30 pm.

5. At about 10.00 am, the police were informed about the incident and the police went to the hospital, and on getting the information that the patient is in fit condition to give statement, police recorded the statement of the deceased as per Ex.P20 at about 1.20 pm and registered the case in Crime No.87/2005. On completion of investigation, the police filed charge sheet against the accused Nos. 1 to 3.

6. On committal, the trial Court framed the following two charges for the offences punishable under Section 498A and 302 read with Section 34 of IPC:

> *"1. That you accused No.1 being the husband, you accused No.2 being the mother-in-law and your accused No.3 being the sister-in-law of deceased Annapurna, in furtherance of your common intention, ever since her date of marriage, you all the accused, subjected the deceased Annapurna to cruelty by willful conduct by torturing her physically and mentally at your residential house at Rayanal Village within the jurisdiction of Old Hubli P.S., and caused grave injury to her life and thereby you have committed an offence punishable under Section 498(A) r/w Section 34 of IPC and within my cognizance.*
>
> *2. That, on 10.5.2005 at about 5 O'clock in the morning at your residential house at Rayanal village, you accused No.2 poured kerosene oil on the person of deceased and you accused No.1 lit her on fire and did commit her murder by intentionally causing the death of deceased and thereby committed an offence*

punishable u/Sec. 302 R/w. 34 of IPC and within my cognizance."

7. Before the trial Court, PWs. 1 to 35 were examined and documents at Exs.P1 to P38 were marked in the evidence. M.O.1 – blue colour plastic can, M.O.2 – match box used, M.O. 3 – burnt pieces of the clothes of the deceased were marked as material Objects.

8. Before the trial Court, from amongst the 35 witnesses examined, none of the witnesses, including the parents of the deceased. PWs. 11 and 16, neighbors PWs. 1, 6 to 9, relatives PWs.2, 12 to 15 and 24 have supported the case of the prosecution. The witnesses who have supported the case of the prosecution are mainly PWs 19, 20, 30, 35, 28, 26 and the Investigating Officers PWs. 32 and 34 i.e., all the officials witnesses.

9. The material evidences before the trial Court was the dying declarations of the deceased Exs. P20 and P31.

Ex.P20 was recorded at 12.35 to 1.00 pm and Ex.P31 was recorded at 4.20 to 4.30 pm. The trial Court disbelieved both the dying declarations on the ground that there is contradiction in the history of the injury recorded by PW 35 at the first instance in Ex.P18, wherein he has mentioned that the deceased sustained the burn injury due to pouring of kerosene by accused No.1 and litting fire by accused No.1 while the deceased was sleeping, whereas Ex.P20 discloses that while she went to kitchen to prepare food, accused Nos.1 and 2 took objection and accused No.2 poured kerosene and accused No.1 lit fire. Before the Tahasildar as per Ex.P31, the deceased alleged that her husband, her mother-in-law poured kerosene on her and lit fire.

10. The learned trial Judge has also disbelieved the dying declarations, as the patient was admitted at 6.50 am on 10.05.2005 with 90 to 95% burn injuries. On Ex.P20, though the doctor has signed stating that the statement is

taken before him, but has not endorsed the said statement by stating the condition of the patient to give the statement. The learned Judge also observed that no sedative medicine was administered on the deceased, as the deceased was admitted to the hospital with 90-95% burn injuries. The post-mortem report Ex.P27 discloses 98% superficial and deep burn injuries ante-mortem. It is under these circumstances, the trial Court observes that it is doubtful as to whether the deceased could have given a dying declaration with 98% of burn injuries. He has also found that at the earliest point of time i.e., at 6.55 am itself, an endorsement is made by the hospital for arranging for recording the dying declaration of the deceased. At 10.20 am, the police came to the hospital and the summery sheet Ex.P18 discloses that the mother of the deceased was present and the doctor explained to her that there is poor prognosis that is, the condition of the patient is not likely to improve. Neither the Investigating Officer nor any other

witnesses have explained as to why there was delay in recording the dying declaration from 6.55 pm till 1.00 O'clock and the dying declaration recorded by the Tahasildar is between 4.20 to 4.30 pm. The summary sheet of the deceased in Ex.P18 shows that, when she was admitted to the hospital, with the homicidal burns on 10.05.2005 at 5.30 am at her husband's home at Rayanal "the patient was sleeping when her husband and mother-in-law poured kerosene over her and burnt her". In the injury certificate, history of the injury is mentioned by PW35, the doctor who had taken the thumb impression of the husband of the deceased who brought the deceased to the hospital and he had taken the right toe impression of the deceased. The injury sketch shows that the deceased had sustained 95% burn injuries including her hand. In the Ex.P31, dying declaration recorded by the Tahasildar-PW27, it is stated that he had taken the right hand thumb impression of the deceased, even on Ex.P20 also the left

hand thumb impression is taken. When the doctor - PW35 first saw the patient, he was of the opinion that the right or left hand thumb impression could not be taken and he has taken the impression of right greater toe. When at the earlier statement the deceased could not have put her right hand thumb impression, how could she affix her right hand thumb impression at 4.20 to 4.30 pm on the later part of the day i.e., just before she died.

11. PWs. 11 and 16 being the parents of the deceased have also not supported the case of the prosecution, they have not alleged any harassment, even in the dying declaration, there is any reference regarding the previous instances of harassment and in reply to the 313 questions, the accused No.1 has filed written statement stating that he was sleeping outside and he heard the screaming of his wife, immediately he went to the rescue of the deceased and had sustained burn injuries. To support the same, Ex.P21, the injury certificate of the accused No.1

is produced. No doubt, the injuries mentioned in Ex.P21 are simple injuries. It is also clear from Ex.P18 that the husband of the deceased himself had brought the deceased to the hospital, which also creates doubt as to whether the accused Nos. 1 and 2 against whom serious allegations are made of setting the deceased on fire could have brought her to the hospital to save her life.

12. The trial Court considering these evidence and the material contradiction and also observing that when the post-mortem report shows 98% burn injuries ante-mortal and in such circumstances recording of the dying declaration nearly after seven hours of the admission of the patient and thereafter at 4.20 pm creates doubt as to whether the deceased was really in fit condition to give her statement.

13. This appeal being against the judgment of acquittal, the trial Court on proper appreciation of the

evidence has already acquitted the accused. While we could appreciate the entire evidence, great care is required to be taken while scrutinizing the evidence. Even in our opinion if two possible views are possible, we lean towards the view that is favorable to the accused. It is under these circumstances, we find that the judgment of acquittal does not call for interference.

Accordingly, we find that there is no merit in the appeal and the appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

gab/-