

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE Dr. JUSTICE K.BHAKTHAVATSALA

AND

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

CRIMINAL APPEAL No.903/2011 (C)

BETWEEN:

T. Basavarajappa,
Aged 42 years,
S/o. Siddavvanahalli Tippanna,
Basavanashivanakere,
Chitradurga Taluk & District. ... Appellant

[By Sri.C.V.Sheelvant, Advocate]

AND:

State of Karnataka,
By Bharamasagara Police,
Represented by State Public Prosecutor,
High Court of Karnataka,
Bangalore. ...Respondent

[By Sri.K.R.Keshavamurthy, Addl. State Public Prosecutor]

This Criminal Appeal is filed under Section 374 (2) of the Cr.P.C. praying to set aside the order dated 18.08.2010 passed by the Principal District and Sessions Judge, Chitradurga in S.C.No.99/2009, convicting the

appellant/accused for the offences punishable under Sections 498-A and 302 of IPC etc.

This Criminal Appeal coming on for hearing this day, *Dr.K.Bhakthavatsala. J.*, delivered the following:

J U D G M E N T

Appellant who is accused in S.C.No.99/2009 on the file of the Principal Sessions Judge at Chitradurga has filed the present appeal under Section 374 (2) of Code of Criminal Procedure, challenging the judgment of conviction and order of sentence dated 18.08.2010 for the offences punishable under Sections 498-A & 302 of Indian Penal Code.

2. Brief facts of the case leading to the filing of the appeal may be stated as under:

The deceased Bhagyamma is the wife of the present appellant/accused. Their marriage was performed about 15 years prior to her death. It is stated that on 30.03.2009 at about 2.30 p.m., the deceased Bhagyamma returned home after evacuating her bowel, the accused with an intention to commit her murder, poured kerosene on her

and set her ablaze, she made hue and cry, which attracted PW.2 and PW.3. It is stated that the accused ran away from the scene of incident. PW.7-Hanumakka, resident of Basavanashivanakere village, went and saw the victim in the house and with the help of PW.8-Hanumathappa she took her to the hospital for treatment. After the Bharamasagara police received information about admitting the victim to the hospital, PW.19-Rajashekar, PSI of the police station directed PW.18-Rajanna, Head Constable to record statement of the victim. Accordingly, PW.18-Rajanna went to the hospital and after the Doctor certified that the victim was in a fit condition to give statement, he recorded the statement of the victim as per Ex.P9 and the same was registered in Crime No.64/2009 against the accused for the offences punishable under Sections 498-A and 307 of IPC. On 24.04.2009, the victim died in the District Hospital at Chitradurga. After the receipt of death report (Ex.P1), the Investigating Officer issued Additional FIR adding Section 302 of IPC. The appellant/accused was apprehended by PW.17-

Anandachari and produced before the Investigating Officer, who arrested him on 01.04.2009. Since then he has been in judicial custody. The Investigating Officer laid charge sheet against the accused for the offences punishable under Sections 498-A and 302 of IPC. The accused faced trial for the aforesaid offences before the Court of Session. In support of the case of the prosecution, it has got examined as many as 19 witnesses, got marked Exs.P1 to P16 and got exhibited the material objects-MOs. 1 to 7. After the evidence on the side of prosecution was over, statement of the accused under Section 313 of Code of Criminal Procedure was recorded. The accused has denied all the incriminating circumstances appearing in the evidence of the prosecution witnesses and he has made a statement before the trial court stating that on the date of incident he had gone away for mason work and when he returned home in the evening, he came to know that his wife had sustained burn injuries and immediately he went to the hospital and saw her. Thus, the case of the appellant/accused is of total denial and pleaded innocence

of the offences alleged against him. He has not adduced any defence evidence.

3. The Trial Court after hearing arguments, perusing the oral and documentary evidence on record came to a conclusion that the prosecution brought home the guilt of the accused for the charges levelled against him and passed the impugned judgment of conviction and order of sentence. This is impugned in this appeal.

4. The appellant/accused has filed the present appeal taking the legal assistance from the High Court Legal Service Committee. He is defended by Sri. C.V. Sheelavanth. Learned counsel for the appellant submits that the trial court has not properly appreciated the evidence available on record and erred in convicting the accused on the basis of the evidence of the blood relatives of the deceased, namely, parents and brother, though the alleged eye-witness:Bheemajji (PW.2), the neighbour of the accused, has not supported the case of the prosecution. He further submits that the trial court has convicted the

accused on the circumstantial evidence and the Dying Declaration alleged to be recorded by PW.18-Rajanna, Head Constable of Bharamasagara Police Station and Taluka Executive Magistrate: PW.14-Subhash Mota Nayak and prays that the impugned judgment of conviction and order of sentence may be set aside and the accused may be acquitted.

5. Learned Additional State Public Prosecutor submits that the trial court is justified in passing the order of conviction on the basis of the statement of the victim as per Ex.P9 recorded by PW.18-Rajanna, Head Constable of the Bharamasagara Police Station is identical to that of the statement of the deceased (Ex.P10) made before the Taluka Executive Magistrate/PW.14 and there is no good ground to interfere with the impugned judgment of conviction and order of sentence.

6. In the light of the arguments addressed by the learned counsel for the parties, the only point that arises for our consideration is,-

Whether the impugned judgment of conviction and order of sentence call for our interference?

7. Our answer to the above point is in the affirmative for the following reasons:

We have perused the trial court records. The first MLC report submitted by the District Hospital at Chitradurga to the Town Police, Chitradurga, on 30.03.2009 is available in the records, but it is not marked. Though it is not marked in evidence neither by the prosecution nor by the defence, as the document is useful for taking a proper decision in the case, we refer to the same. According to first MLC report sent by Dr. Krishna Murthy, (CW.18), the victim was admitted to District Hospital, Chitradurga on 30.03.2009 at about 3.30 p.m. in the burns ward with the history of burn injuries sustained by her in house. The said MLC report was received by Town Police on the same day and it was forwarded to PSI, Bharamasagara Police Station, which was received by PW.18-Rajanna on 30.03.2009 at about 6.30 p.m.

According to MLC report itself, it was a case of accidental burns. According to the prosecution, PW.7 and PW.8 took the victim to the hospital but they have not stated that the accused was in the house at that point of time. Under such circumstances, the statement as to the cause of burn injuries mentioned in the first MLC report that it was a case of accident cannot be lightly viewed and ignored. There is no direct evidence to connect the accused with the alleged offences. According to the prosecution, the accused married the deceased about 15 years prior to the date of incident and they have children out of their wedlock. Under such circumstances, the contention of the prosecution that the accused was ill-treating the deceased on the ground of suspicion of fidelity and therefore the accused poured kerosene on her and set her ablaze cannot be accepted and acted upon in the absence of cogent and satisfactory evidence. PW.2-Bheemajji, the star witness of the prosecution has turned hostile. None of the witnesses have stated that they have seen the accused on the date of incident either in the house or in the village. Under such

circumstances, heavy burden lies on the prosecution to prove that the accused was present in the house/village on the date of incident. It is pertinent to note that the evidence of PW.3-Siddappa, who was residing in the opposite house of the accused, PW.7-Hanumakka, PW.8-Hanumanthappa, residents of the same village do not connect the accused with the alleged offences. The trial court has not properly appreciated the evidence on record. As urged by the learned counsel for the appellant there is a contradiction with reference to the place where the statement of the victim was recorded by PW.18-Rajanna/ Head Constable of Bharamasagara Police Station. Further in the Dying Declaration of the deceased said to be recorded by PW.14, in Column No.6, it is mentioned as 'nobody' meaning thereby there was none in the house at the time of incident. For the foregoing reasons, we hold that the impugned judgment is not sustainable in the eye of law and the impugned judgment of conviction and order of sentence call for our interference.

8. In the result, we pass the following order:

- i) Appeal is allowed and the impugned judgment of conviction dated 18.08.2010 convicting the accused for the offences punishable under Sections 302 and 498-A of IPC and the sentence awarded therefore are set aside. The accused is acquitted of the charges levelled against him.
- ii) The appellant/accused, who is undergoing sentence shall be set at liberty, if he is not required in any other case.
- III) The Registry to communicate the operative portion of the judgment to the concerned Jail Authorities, where the accused is undergoing sentence.

SD/-

JUDGE

SD/-

JUDGE

KGR*