

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2018

PRESENT

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

AND

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL APPEAL NO.911 OF 2014

BETWEEN:

SOMASHEKAR
S/O. ERANNA,
AGED ABOUT 34 YEARS,
OCC: MASON WORK,
RESIDING AT BEHIND AKASHAWANI
AMBEDKAR NAGAR,
KELAGOTE,
CHITRADURGA.

... APPELLANT

(BY SRI DINESHKUMAR K. RAO, ADV.)

AND:

THE STATE OF KARNATAKA
BY CHITRADURGA TOWN POLICE,
CHITRADURGA.

... RESPONDENT

(BY SRI VIJAYAKUMAR MAJAGE, ADDL. S.P.P.)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE CONVICTION ORDER DATED 11-2-2014 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA, IN S.C. NO.34 OF 2013 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/S.498A, 302 AND 201 OF THE I.P.C.

THIS CRIMINAL APPEAL IS COMING ON FOR HEARING, THIS DAY, *K.N. PHANEENDRA, J.*, DELIVERED THE FOLLOWING:

J U D G M E N T

The sole accused in S.C. No.34 of 2013 on the file of the Additional District and Sessions Judge, Chitradurga, preferred this appeal challenging the judgment of conviction and sentence passed in the said case convicting and sentencing the accused for an offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life and to pay a fine of Rs.3,000/- and also imposing rigorous imprisonment for a period of *seven* years for an offence punishable under Section 201 of the Indian Penal Code and also sentenced him to undergo rigorous imprisonment for a period of *three* years for an offence punishable under

Section 498A of the Indian Penal Code with a fine of Rs.3,000/-.

2. We have heard the arguments of the learned counsel, Sri Dineshkumar K. Rao, who is appointed by the Legal Services Authority and the learned Additional Special Public Prosecutor for the respondent - State. We have carefully reevaluated the material on record and also carefully perused the judgment of the trial Court before adverting to the grounds urged by the learned counsel for the appellant before this Court.

3. The brief factual matrix of the case are that a person, by name R. Thippeswamy, who is none other than the brother of deceased Smt. Bhagyamma, lodged a complaint before the Police on 9-12-2012 at about 11:15 a.m., alleging offences punishable under Sections 498A, 302 and 201 of the Indian Penal Code. Same was registered in Crime No.349 of 2012. The allegations made against the accused are that, the said deceased was given

in marriage to the accused about *six* years prior to the incident and they were blessed with *three* children. For about a year, they lived happily with each other, thereafter, the accused started suspecting the fidelity of his wife, alleging that, she has illicit intimacy with others and also he was suspecting the paternity of the children. In this context, it is alleged that, he was assaulting, ill-treating and harassing the deceased. The complainant and his mother used to advise the accused in this regard, but in spite of this, he did not desist himself from ill-treating and harassing the deceased.

4. In the above said background, it is further alleged that, on 9-12-2012, the complainant received information from the brother of the accused, by name, Mr. Arun Kumar, that deceased poured kerosene and lighting fire herself has committed suicide. Immediately, he came to the place of incident and found that door was bolted from inside and thereafter, examined the roof of the

house, *two* asbestos sheets were removed in the top roof of the house and they found the dead body of deceased inside the house, with severe burn injuries and thereafter, they suspected the conduct of the accused and lodged the complaint.

5. Police after receiving the F.I.R., thoroughly investigated the matter and submitted the charge-sheet for the above said offences. Accused was arrested on 9-12-2012. The trial Court, after securing the presence of the accused, framed charges against him, for the aforesaid offences and put him on the trial. The prosecution, in order to prove its case against the accused, examined 13 witnesses as P.Ws.1 to 13 and got marked 28 documents as Ex.Ps.1 to 28 and also material objects, i.e. M.Os.1 to 13. After hearing the arguments on both sides, the trial Court has rendered the judgment, which is under challenge before this Court.

6. The learned counsel for the appellant seriously contends before this Court that there are series of doubtful circumstances with regard to incident being happened. It is the case of the prosecution that, accused has first assaulted the deceased with the help of a *club* and thereafter, poured kerosene and lit fire and bolted the house from inside and removed the asbestos sheets in the roof of the house and escaped from the house. In this context, the learned counsel takes us through the evidence of all the witnesses and submits that, there is series of doubts created with regard to removal of the asbestos sheets in the roof, whether it was actually removed or broken? Whether it was broken in the morning, after Police came to the spot? He relies upon the Doctor's evidence and submits that, injuries sustained by the deceased was because of litting fire herself and while struggling and moving forward, she might had come in contact with wall or any other objects, therefore, there are chances of sustaining such type of injuries. Therefore, it

is argued that, all these circumstances should have been properly weighed and appreciated by the trial Court. There is no merit in the evidence of other witnesses that, there was any ill-treatment or harassment to the deceased, which was sufficient to drive a woman to commit suicide. Therefore, the learned counsel submits that accused is entitled for an acquittal and benefit of the above said doubt should be given in favour of the appellant when *two* inferences are possible.

7. Per contra, the learned Additional Special Public Prosecutor submits before this Court that, the evidence of the prosecution clearly discloses that, the prosecution has proved beyond all reasonable doubt that, accused and deceased along with children were residing together on particular date of the incident and it is also established that death was taken due to burn injuries inside the house. Except accused and children, no other persons were available. Therefore, when the prosecution has

shown to the Court that accused is the only perpetrator of crime, then the onus shifts on to the accused to explain as to what exactly happened on that particular date and how asbestos sheets of the roof were missing. In the absence of any explanation by the accused, Section 106 of the Evidence Act comes into play. Therefore, non-explanation by the accused and on the other hand, specific proof given by the prosecution by way circumstances show that, prosecution has proved the guilt of the accused beyond all reasonable doubts. Therefore, for all these reasons, the learned Additional Special Public Prosecutor submits that there is no necessity for this Court to interfere with the judgment and sentence passed by the trial Court.

8. After hearing both the learned counsel, the points that arise for consideration are:

- i. Whether the prosecution has proved beyond all reasonable doubt a case projected by it?*

- ii. *Whether the sentence passed by the trial Court is appropriate under the facts and circumstances of the case?*

9. In order to appreciate the evidence on record, once again, we have to look into briefly the evidence placed before this Court. There is absolutely no dispute with regard to relationship between the witnesses, accused as well as the deceased in this case.

10. P.W.1, Mr. R. Thippeswamy, has reiterated in his evidence the averments made in the F.I.R. He further stated that, accused and deceased as well as their children were all residing in the house of the accused where the incident happened, on the relevant date. He has further stated that, accused always suspected the fidelity and conduct of the deceased and *two* panchayats were held in this regard and in spite of that, he did not desist himself from ill-treating the deceased. On 9-12-2012 at 4:00 a.m., he received information from the brother of the accused, i.e., P.W.6, Mr. Arun Kumar, to the

effect that, deceased has committed suicide. Then, he immediately, rushed to the spot i.e, the house of the accused and observed that house was bolted from inside and other neighbours were there. These witnesses came to know that accused has assaulted the deceased, thereafter, he sent the children out from the house and the children further stated as to what happened later. It is too much to expect from the children because they are of too tender age, i.e. elder child was aged *four* years and remaining children were of *two* years and *one* year respectively. Perhaps, the Investigating Officer must have made some efforts to ascertain from the child aged *four* years, but we do not find any infirmity in not examining the said child because of the tender age of the child. On the above suspicious circumstances, P.W.1 has suspected that, the accused might have committed the murder of the deceased and ran away, after removing the asbestos sheets from the roof of the house. Therefore, he lodged a complaint. He has also stated that Police came to the

spot and got opened the doors from inside and collected material from the spot. He identified the dead body and also photographs taken out at the time of drawing up of the mahazar by the Police. In the course of cross-examination, it is elicited from the mouth of the witness that deceased was of suicidal tendency. Even earlier, she had consumed poison due to some dispute in the family and she was admitted to the hospital and she underwent operation to her throat. Except this, nothing has been elicited as to why this witness has to be disbelieved. In the cross-examination, it is only the defense that, because of the earlier suicidal tendency and also the deceased had suffered paralytic stroke and her throat was operated, therefore, she must have committed suicide in her house. Defense has been denied by this witness. Now, we have to ascertain from other witnesses, whether the prosecution case as stated by the witness before this Court is substantiated and corroborated by other materials on record.

11. P.W.2, Mr. C.H. Manjanna, is a pancha witness, who came to the place of incident, after Police came there and the Police have conducted spot mahazar as per Ex-P.10. He was very much present at that time. He has deposed during cross-examination that, he knew the deceased and the accused, who were residing in the vicinity of his house. He has further stated that, accused was addicted to alcohol and quarrelling with the deceased, but he does not know for what reason, he used to quarrel with the deceased. After showing the photographs and the house of the accused that, there were *two* asbestos sheets were broken in the roof of the said house, he only suspected the accused only on the ground that accused was residing with the deceased. So, therefore, P.W.2 has corroborated the factum of removal of asbestos sheets from the roof of the house and collection of some material i.e., M.Os. 1 to 8 drawn up by the Police. M.Os.1 to 8 are the batter stick, kerosene can, plastic bag, plastic tin,

blood collected with the help of cotton, charred clothes, charred mat pieces and some hair particles of the deceased. These are relevant to be considered, while considering the material said to have been recovered from the accused.

12. P.W.3, Mr. K.B. Ravi Kumar, is another witness, examined for the purpose of recovery of a shirt and pant at the instance of the accused. After arrest of the accused, the accused took them near the Government Higher Primary School near a house of one Ravi, son of Eranna, and took a bloodstained pant and shirt and handed over the same to the Police. In the examination-in-chief, he has stated that Police have taken the signature, but he has not fully supported the case of the prosecution. However, in the cross-examination, he has admitted his presence at the time of recovery of the said articles i.e., M.Os.11 and 12 and he has stated that, the accused has hidden M.Os.11 and 12 near the house of

Ravi in a bush and Police have recovered the same. Therefore, evidence of this witness and another witness P.W.5, Mr. Srinivas Naik, who has fully supported the case of the prosecution can be safely accepted so far as Ex.P.14 is concerned, under which the Police have recovered M.Os.11 and 12 at the instance of the accused. Therefore, the prosecution has established the recovery of the said clothes at the instance of the accused though there are some discrepancies, but how it relates to the offence, we will consider later while considering F.S.L. Report.

13. P.W.6, Mr. Arun Kumar, is another important witness, who is none other than the brother of the accused. He deposed before the Court that accused and deceased were residing together in the house where the incident happened on the date of the incident. He received some information from the people in the locality that deceased has committed suicide. Immediately, he

telephoned to other relatives and came near by the house and climbed the house and broke open the asbestos sheets and saw the dead body of the deceased with burn injuries. Other aspects are concerned, with regard to ill-treatment and harassment, he turned hostile to the prosecution. He further deposed that on the intervening night i.e., on 8-12-2012 and 9-12-2012 at about 1.30 a.m., accused came to this witness, but the accused was disturbed and he told that he do not know what exactly happened.

14. During cross-examination, he has stated that, on the particular date, accused came to this witness and told that there was some quarrel between the accused and the deceased, and due to which, the deceased bolted from inside and pored kerosene on herself and committed suicide. Thereafter, the accused took pant and shirt of this witness, removed his pant and shirt and went away. Thereafter, this witness at about 2.15 a.m. saw the dead

body of the deceased. He has denied with reference to the statement made before the Police as per Ex.P.17. Even during the course of cross-examination, he reiterates that, the deceased had throat operation about *three* years ago and once, she had consumed poison.

15. Looking to the evidence of this witness it is also clear that asbestos sheets of the house of the accused were broken. Whether he has broken the asbestos sheets on the roof of the house or it was broken or opened earlier to be considered by this Court. But, from the above evidence, it is clear that accused, deceased and their children were there in the house of the accused at 1.30 a.m. on that day and accused himself disclosed death of the deceased to this witness, but how and what manner the death occurred is not forthcoming as per the evidence of this witness. Perhaps, he being the brother of the accused do not want his brother to suffer and his intention is to save him as far as possible, therefore, he

has not fully supported the case of the prosecution. Nevertheless, this witness has depicted strong circumstances against the accused regarding breakage of the asbestos sheets and that the incident has occurred in the odd hours on that night.

16. P.W.7, Smt. Hanumakka, is also another witness, who is none other than the step-mother of the deceased. Her evidence plays a very dominant role in this case. She deposed that, on the date of the incident, she came to know about the death of the deceased and P.W.1 and P.W.4 came to the house of the accused, they observed main door was latched from inside. They peeped from the window and saw the dead body of the deceased, thereafter, P.W.1 lodged a complaint and Police came to the spot and seized some articles from the spot. She also admitted in the cross-examination with regard to the deceased got her throat operated about *two* years ago and the deceased also sustained paralytic stroke, etc.

17. What could be observed from the evidence of this witness is that, this witness or anybody could see the dead body through the window. It is, therefore, what was the necessity for the Police to get the latch opened from inside the house by sending a person to enter the house from the top, if at all there was no removal of the asbestos sheets in the roof of the said house. They would have definitely broke open the main door. Though these witnesses have seen the dead body from the window, it goes to show from other witness that, asbestos sheets were not intact and were already removed. It clearly indicates that somebody must have gone out of the house by opening the roof.

18. P.W.8, Mr. J. Nagaraj, is one of the relatives of the deceased and the accused. He has categorically stated that the accused was ill-treating and harassing the deceased and suspecting the fidelity of the deceased. On the one or two instances, he has advised the accused not

to ill-treat the deceased. It is stated that, after coming to know about the incident, he also came to the spot and also peeped through window and saw the dead body of the deceased and thereafter, Police came to the spot and asked a person to get into the house through the roof and open the latch from inside the house. Thereafter, Police investigated the spot and collected material.

19. Therefore, this witness also supports the evidence of P.W.1 as well as P.W.7 that asbestos sheets of the roof of the house were removed and door was latched from inside and accused, deceased and their children were all earlier residing in the said house, particularly, on the intervening night of the day of the incident. In the course of cross-examination, nothing has been elicited. Therefore, there is no reason to disbelieve this witness because he is nowhere interested either in the prosecution or in the case of the accused, because he is the relative to the deceased as well to the accused.

20. Before adverting to the evidence of the Doctor, we will consider other formal witness, P.W.10, Narendrababu, Police Constable, who states that he only apprehended the accused and there is no dispute with regard to this aspect is concerned.

21. P.W.11, Mr. Gangadhar Naik L., in his evidence, has an important piece of material with regard to the existence of the asbestos sheets at what time the witness has observed the same. He says that he was working in Chitradurga Police station as Head Constable. On 8-12-2012, when he was on the beat in the night hours, a person by name, Rudrappa called him at about 2.30 a.m., and asked him to come to Ambedkar Nagar and accordingly, he went there and noticed that, a lady was dead in a cement sheet house. With the help of ladder, he and another Police Constable examined the roof of the house and found two asbestos sheets were already broken and removed, he saw a electric bulb was burning inside

the house and also saw the dead body of the deceased with burn injuries. During cross-examination, so far as this particular aspect is concerned, nothing has been disturbed. Therefore, the evidence of this witness can be taken into consideration to draw an inference that, the asbestos sheets in the roof of that house were already removed. In view of the evidence of this witness, the evidence of P.W.6 is to be disbelieved to the effect that, he actually climbed the roof of the house on that night and broke open the asbestos sheets and saw the dead body. The evidence of P.W.11 has to be believed as he is uninterested witness and a public servant; there is no reason for him to lie before this Court. On the other hand, P.W.6 is none other than the brother of the accused, who has turned hostile. Therefore, interestedness on the part of P.W.6 is apparent as he has stated that, on 8-12-2012, at 1:30 a.m., the accused had come to his house, but he has suppressed the material before this Court as to what exactly transpired between himself and his brother,

regarding the removal of asbestos sheets are concerned, therefore, we prefer to rely upon P.W.11.

22. P.W.12, Mr. Yekantharaju, Junior Engineer, who has drawn the rough sketch as per Ex.P.23, which is not disputed.

23. P.W.13, Mr. Sridharashastry, is the Investigating Officer and he has committed a series of error. Though he has drawn the spot mahazar, he has admitted that he has not seized any asbestos sheets which were removed from the said house. It is established that from other material witness available on record, that on particular date, after the incident, when the Police came to the spot, *two* asbestos sheets were already removed from the roof.

24. Who actually removed these asbestos sheets and how the incident had happened is the mystery, this Court has to crack. Before advertng to above said aspect,

we would like to rely on the evidence of Doctor. Doctor has deposed about the cause of death of the deceased, how it must have occurred.

25. P.W.9, Dr. Y.C. Rudresh, has stated in his evidence that he conducted Post-Mortem on the dead body of the deceased and he found lacerated wound measuring 4 cms x 1 cms x muscle deep present over the mid part of frontal region of the head. He also found *second* and *third* degree burn injuries present over the head, whole of face, whole of neck, front and back of chest, front and back of abdomen, both upper limbs and lower limbs with *fifth* and *sixth* degree burn injuries present over lower abdomen and front and both hips. He categorically answered that death was due to burn injuries. While examining him, the Court put a question to the Doctor, whether the injuries found on the dead body was fatal? He categorically answered that, injury sustained on the head was not fatal to cause death, but the burn injuries on the

body were fatal. Due to burn injuries, the deceased succumbed to death.

26. In his cross-examination, while answering question No.7, the Doctor has ultimately stated, initially the deceased was assaulted on the head and made her to fall on the ground and thereafter caused burn injuries. This information in our opinion is astonishing. Doctor should give only his opinion with regard to nature of the injuries and cause of death and not his opinion, as to how the incident must have taken place. In the cross-examination, regarding the defense taken by the accused, it is stated that, there are chances of deceased pored kerosene on herself and while struggling for existence, she might had come in contact with any wall or other objects and there were chances that, she might had sustained head injury. Though these suggestions have been made to the Doctor, but no material has been placed why only in that manner the incident might had happened. The

defence taken was well within the knowledge of the accused, otherwise without there being such instructions from the accused, counsel could not have made such suggestions. Therefore, it is clear from the above said evidence that accused, deceased and children were very much present in the house on the particular date and how the incident took place must be within the knowledge of *three* children, accused and the deceased. Deceased is not available to the Court to explain how the incident has happened. It is only the accused, who has to explain how the incident has happened on the particular date. Defence story has not been elucidated or explained in 313 Cr.P.C. examination of the accused for the reasons best known to him as to how the incident has taken place.

27. From reading of entire material on record, it is very much clear that incident has happened within *four* walls of the house of the accused and the children informing P.W.1 that quarrel between the husband and

the wife taken place and accused assaulted the deceased and thereafter, children do not know what happened. Therefore, the onus of proof is strong on the accused to explain what actually happened on that particular date. It is clear from the evidence that asbestos sheets were removed from top of the house. Defence of the accused is that after quarrel, he went out along with the children and the deceased bolted the house from inside and committed suicide. In that event, who actually removed the asbestos sheets from the roof remains mystery and it is to be answered only by the accused because he knew particularly what happened. Other material on record clearly goes to show even at 2:30 a.m., when P.W.6 came to the house of the accused, he broke open the asbestos sheets, peeped and saw the dead body of the deceased. P.W.11 who came much earlier to P.W.6 to the incident spot, in his evidence, he clearly states that the asbestos sheets were already removed. Therefore, it fully probabalises that, who was inside the house must have

removed the asbestos sheets for the purpose of going out from the house. Though there are some discrepancies here and there in the evidence of P.W.6 and P.W.11 and also lapses on the part of the Investigating Officer in not seizing the asbestos sheets, but the prosecution is able to prove the presence of the accused and deceased within *four* walls of the house and also regarding the happening of the incident and the asbestos sheets were removed from the said house, all these circumstances are sufficient to draw inference on the accused that, he must be the perpetrator, who committed the murder of the deceased, but to show to the world that she might have committed suicide, he escaped from the roof of the house by removing the asbestos sheets on the top and thereafter, taken such a defence before the Court that his wife has committed suicide. The said defence is not even on preponderance of probabilities established. We cannot draw any inference against the prosecution.

28. Therefore, looking to the above facts and circumstances, we do not find any strong reason to interfere with the judgment of conviction and sentence passed by the trial Court. Therefore, the appeal being devoid of merit is liable to be dismissed. Accordingly, the appeal is ***dismissed***.

Further, we do find some exorbitant sentence has been passed while imposing sentence under Section 302 of the Indian Penal Code. The trial Court has clarified what is meant by 'Imprisonment for life' and it means 'imprisonment till end of his life'. Under the circumstances of the case, such a harsh sentence is imposed to see that the accused languish in jail till his death. Therefore, we leave to the discretion of the Government to exercise its power while releasing the accused, after stipulated period considering the relevant Rules. Therefore, we modify the sentence imposed under Section 302 of the Indian Penal Code that the accused is

sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- (Rupees *five* thousand only) and the words used by the trial Court that accused shall undergo '*imprisonment till end of his life*' is expunged.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

kvk