



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY, 2025**

**PRESENT**

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR**

**AND**

**THE HON'BLE MR. JUSTICE K. V. ARAVIND**

**CRIMINAL APPEAL No. 1626 OF 2018 (C)**

**BETWEEN:**

1. SHIVAPPA,  
S/O LOKAPPA @ LOKESHAPPA,  
AGED ABOUT 46 YEARS,  
OCC - COOLIE,  
R/O GANGANARASI VILLAGE - 577 601,  
TALUKA HARIHARA,  
DISTRICT DAVANAGERE.

...APPELLANT

(BY SRI J. S. HALASHETTI, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA,  
R/BY CPI, HARIHARA RURAL POLICE STATION,  
NOW R/BY STATE SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BENGALURU - 560 001.

...RESPONDENT

(BY SMT. K. SOWMYA, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C  
BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET  
ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND  
SENTENCE DATED 29.01.2018 PASSED BY THE PRINCIPAL

Digitally signed  
by VALLI  
MARIMUTHU  
Location: High  
Court of  
Karnataka



DISTRICT AND SESSIONS JUDGE, DAVANAGERE IN  
S.C.No.72/2017 - CONVICTING THE APPELLANT/ACCUSED FOR  
THE OFFENCE P/U/S 302, 506 OF IPC.

THIS APPEAL COMING ON FOR HEARING THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR  
and  
HON'BLE MR JUSTICE K. V. ARAVIND

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

The accused in S.C. No.72/2017 has preferred this appeal challenging the judgment of conviction and order on sentence dated 29.01.2018, passed by the Principal District and Sessions Judge, Davanagere. He is sentenced to life imprisonment and fine of Rs.5,000/- for the offence under Section 302 of IPC, and term sentence for six months with fine of Rs.1,000/- for the offence under Section 506 of IPC.

2. As per the case of the prosecution, the accused and the deceased were husband and wife. On 04.01.2017, at approximately 4:00 p.m., a quarrel ensued between them, during which the accused sat on the deceased and pressed



her neck. The relative of complainant intervened, rescued the deceased and offered her water. However, as the relative of complainant was taking the deceased out of the house, the accused inflicted an injury on her neck with an axe, causing her to collapse. Thereafter, the accused further assaulted the deceased with a crowbar, inflicting injuries on her head. When the relatives of complainant, Latha and Hemakshi, attempted to intervene, the accused chased them away. Hemakshi managed to escape to her house, but the accused followed and damaged her door using the crowbar. As per the complaint, the accused had sustained injuries in an accident and had received compensation. He was demanding the said compensation amount for the purchase of alcohol. Upon the refusal by the deceased to provide the money for this purpose, the accused inflicted grievous injuries upon her, resulting in her death.

3. The police registered the complaint as per Ex.P1 and charge sheet was filed against the accused for offences



punishable under Sections 302 and 307 of IPC. Upon considering the testimonies of eyewitnesses PWs.6, 8, and 9, the complainant (PW.1) who is the son of the accused, PW.2, the brother of the deceased, PW.10, the brother of the accused, PW.4, the daughter of the accused, along with other circumstantial evidence, the trial court held that the prosecution had established that the accused killed his wife using M.Os.1 and 4. As a result, the trial court convicted the accused under Section 302 of the IPC. Furthermore, the accused was convicted under Section 506 of the IPC for the attack and threats to the lives of PWs.6 and 8.

4. Heard Shri J.S.Halashetti, learned Counsel appearing for the appellant-accused and Smt.K.Sowmya, learned HCGP appearing for the respondent-State.

5. Shri J.S. Halashetti, learned Counsel appearing for the appellant, contends that the conviction recorded by the trial court is primarily based on the testimonies of eyewitnesses PWs.6, 8, and 9. He argues that their



testimonies do not find corroboration from any other evidence. The learned Counsel further submits that the accused did not intend to kill his wife. The quarrel began with the accused manhandling the deceased while demanding money that he had received as compensation for the accident that the accused had been involved in. The actions of accused were driven by anger and frustration when the deceased refused to share the compensation amount. The death of the deceased, according to the learned Counsel, was unfortunate and unintentional. He asserts that the case falls under exceptions to Section 300 of the IPC, and thus, the appropriate punishment should be under Section 304 Part II of the IPC. The learned Counsel concludes that the trial court erred in imposing a sentence under Section 302 of the IPC.

5.1. It is submitted that the oral evidence is not corroborated, except for the testimonies of PWs.6, 8, and 9 concerning the alleged threat made to them. The testimonies of PWs.6, 8, and 9 are inconsistent and



contain contradictions. As such, the conviction under Section 506 of the IPC for the offence of criminal intimidation is without foundation and cannot be sustained.

5.2. Smt. K. Sowmya, learned HCGP appearing for the respondent-State, submits that the homicidal death of the deceased, caused by the injuries inflicted by the accused with M.Os.1 and 4, has been proved by the prosecution through the testimonies of eyewitnesses PWs.6, 8, and 9. Their testimony is corroborated by supporting evidence from other witnesses, including PWs.11 and 16, the expert witnesses.

5.3. The learned HCGP opposes the submission to modify the punishment from Section 302 to Section 304 Part II of the IPC, asserting that none of the exceptions to Section 300 of IPC is applicable in this case. It is argued that the killing did not result from sudden provocation or a spontaneous fight. The repeated attacks on the deceased, along with the threats made to PWs.6, 8, and 9,



demonstrate the cruel conduct of the accused. Accordingly, the conviction recorded by trial court under Section 302 IPC is justified. Furthermore, the conviction under Section 506 IPC is supported by the testimonies of eyewitnesses PWs.6, 8, and 9, and corroborated by Exhibits P17 and P18, which show the damage to PW.8 house.

6. We have considered the submissions and perused the record.

7. The material witnesses are PWs.1, 6, 8, 9, 11 & 16. The other evidence is Exs.P21, 27 and material objects.

7.1. The prosecution has established the recovery of the blood-stained clothes of the deceased and the accused, as well as the recovery of M.Os.1 and 4, through Exs.P2, P11, and P13. This evidence has not been seriously disputed or contested by the appellant.

7.2. PWs.6, 8, and 9 are eyewitnesses to the incident. PW.6 testified that the accused was sitting on the



deceased and pressing her neck. She intervened and rescued the deceased, but while taking deceased to her house, the accused inflicted a head injury on the deceased with an axe. Subsequently, the accused attacked the deceased with a crowbar. PW.6 stated that PWs.8 and 9 were with her and attempted to save the deceased, but the accused attacked and chased them. PW.8 locked herself inside her house, but the accused chased her and attempted to break open the door using a sickle. The testimonies of PWs.8 and 9 are consistent with that of PW.6. The defence cross-examined all three witnesses extensively, but all three remained consistent in their statements.

7.3. PW.1, the son of the deceased, reported the incident as per Ex.P1. Although PW.1 was not home at the time of the incident, he filed Ex.P1 based on the information provided by PW.6, an eyewitness. PW.6 is the co-sister of the deceased. PW.1 testified that his father was demanding money from his mother. The defence



attempted to disprove the contents of Ex.P1, but no contradictions were elicited during the cross-examination.

7.4. PW.11, who conducted the autopsy on the deceased, noted six injuries. The blood group of the deceased was identified as 'AB+'. The cause of death was determined to be hemorrhagic shock resulting from a head injury. According to Ex.P23, PW.11 certified that the injuries found on the deceased could have been caused by M.Os.1 and 4.

7.5. The prosecution sent M.Os.1 and 4 for forensic analysis, which confirmed that the blood stains found on these articles were of human blood with 'AB' group. The corroborative evidence from Exs.P21 and P27 further establishes the presence of blood stains on M.Os.1 and 4. The testimony of PW.16, the FSL expert, verifies the presence of blood stains on the clothes of both the deceased and the accused, with human blood of the 'AB' group.



8. The overall assessment of both oral and documentary evidence establishes the guilt of the accused. PWs.6, 8, and 9 were eyewitnesses to the incident. The evidence of PW.1 corroborates the testimonies of PWs.6, 8, and 9. Additionally, the evidence of PW.1, PW.16, and the documentary evidence in Exs.P21 and P27 further support the testimonies of PWs.6, 8, and 9, proving that the accused inflicted grievous injuries on the deceased with M.Os.1 and 4. These injuries ultimately led to the death of the deceased.

9. In light of the above discussions, the trial court correctly concluded that the death of the deceased was homicidal and was caused by the grievous injuries inflicted by the accused with M.Os.1 and 4. The testimonies of PWs.6, 8 and 9 are found credible by the trial court. Moreover, their testimonies are further supported by the corroborative evidence provided by PWs.11 and 16, along with Exs.P21 and P27.



10. There are no infirmities in the order of the trial court.

The trial court rightly concluded that the accused committed the murder of the deceased and recorded conviction for offence under Section 302 of IPC.

11. The contention of appellant's counsel is that life imprisonment imposed is incorrect and that the punishment should be under Section 304 Part II of the IPC. This was not the line of argument before the trial court and this point is urged for the first time before us. However, we have carefully considered the submissions in the light of the evidence available on record. According to the learned counsel for the appellant, exceptions (1) and (4) would apply to the present case.

12. To invoke exception (1), the culpable homicide must occur while the accused was deprived of the power of self-control due to grave and sudden provocation, and such provocation must have been instigated by the deceased. The evidence of eyewitnesses PWs.6, 8, and 9, along with testimony of PW.1, establishes that the accused



was in a continuous quarrel with the deceased regarding compensation money for his vices. The accused was home when the deceased returned from work and according to the testimony of eye witnesses, it was the accused who initiated the quarrel. Therefore, this is a case of provocation caused by the accused himself, and exception (1) does not apply.

12.1. Exception (4) is also not applicable to the facts and evidence of the present case. The culpable homicide should occur without premeditation, in the heat of passion, and as a result of a sudden quarrel. There is no evidence to conclude that the accused acted in a manner consistent with this exception. In fact, the accused took undue advantage of the deceased. The evidence shows that the accused attacked the deceased three times. First, he sat on her and pressed her neck. When PW.8 intervened and rescued the deceased, the accused then attacked her with an axe, causing her to fall. As she lay bleeding on the ground, the accused attacked her again with a crowbar,



inflicting further injuries. In addition to these brutal attacks on the deceased, the accused also threatened to kill PWs.6, 8, and 9 and chased them. When they escaped and locked themselves in their houses, the accused attempted to break the door of the house of PW.8. These repeated attempts are indicative of actions carried out in a cruel and unusual manner. The sequence of events where the accused inflicted severe injuries on the deceased and pursued PWs.6, 8, and 9 while threatening to kill them, demonstrates the conduct that is both cruel and unusual. Therefore, exception (4) to Section 300 of the IPC does not apply.

12.2. Unless exceptions to culpable homicide are applicable, Section 304 of the IPC cannot be invoked. Therefore, the contention to modify the conviction from Section 302 to Section 304 Part II of the IPC is rejected.

13. In the light of the aforesaid reasons, the judgment recording conviction and imposing sentence to undergo life imprisonment by the trial court does not suffer from any



infirmity. The conclusion of the trial court is based on the established evidence by the prosecution.

14. Hence, the appeal is meritless and it is accordingly dismissed.

**Sd/-  
(SREENIVAS HARISH KUMAR)  
JUDGE**

**Sd/-  
(K. V. ARAVIND)  
JUDGE**

Yn.  
List No.: 1 Sl No.: 7