

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 5TH DAY OF APRIL 2013

PRESENT

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

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRL.A NO 2861 OF 2011

BETWEEN :

MANJU @ MANJUNATH
HANUMANTAPPA SUNTI (NAIK)
CONVICT NO.19968
CENTRAL PRISON, BELGAUM .. APPELLANT

(SRI.SANTOSH B. MALAGOUDAR - AMICUS CURIAE)

AND :

THE STATE OF KARNATAKA
.. RESPONDENT

(BY SRI.Y.V.RAVIRAJ - AGA)

CRL.A. FILED BY CONVICT/APPELLANT/ACCUSED THROUGH SUPERINTENDENT, CENTRAL PRISON, BELGAUM, AGAINST THE JUDGMENT AND ORDER DATED 21.12.2005 PASSED BY THE SESSIONS JUDGE, FAST TRACK COURT-I, KARWAR IN S.C NO.12/2004 CONVICTING THE CONVICT/APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 498(A) AND 302 OF I.P.C AND 1) HE SHALL UNDERGO R.I. FOR 1 YEAR FOR THE OFFENCE P/U/S.498-A IPC, AND ALSO TO PAY A FINE OF RS.1,000/-, IN DEFAULT OF PAYMENT OF FINE, HE

SHALL UNDERGO S.I FOR 3 MONTHS. 2) HE SHALL UNDERGO IMPRISONMENT FOR LIFE FOR THE OFFENCE PUNISHABLE U/S.302 OF I.P.C.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, H.S.KEMPANNA, J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal preferred by the accused is directed against the judgment and order dated 21.12.2005 passed in S.C.No.12/2004 by the Presiding Officer of FTC-I, Karwar, convicting him for the offences punishable under Sections 498-A, 302 of IPC and sentencing him to undergo R.I. for one year and to pay fine of Rs.1,000/- I.D. to undergo S.I. for three months and to undergo imprisonment for life for the aforementioned offences respectively.

2. The brief facts of the case are :-

The appellant/accused came to be tried on the charges for the offences punishable under Sections 498-A and 302 of IPC. It is alleged that the appellant/accused was subjecting his deceased wife Parvathi to cruelty and harassment on the ground that he would marry another lady in his drunken

state prior to 23.10.2003 and on 23.10.2004 at about 11.00 P.M. in his house situated at Rajeevnagar in Sirsi set fire to her after dousing with kerosene, due to which she sustained severe burn injuries and succumbed to the same while undergoing treatment in the hospital on 9.11.2003 and thereby he has committed the aforementioned offences.

3. It is the case of the prosecution the deceased Parvathi is the daughter of PW4-Bangari Rama Arera. The deceased was initially given in marriage to one Eshwar Naik of Terakanahalli in Sirsi Taluk about 13 years prior to the date of occurrence. She had given birth to PW1 through her first husband. Her first legally wedded husband deserted her about a year of their marriage after the birth of PW1. Thereafter, the deceased came in contact with the present accused. In due course of time she developed illicit connection with him and both of them started living together as husband and wife. They led cordial life together for some time. They were residing in a rented house at Sirsi.

Thereafter, it is the case of the prosecution both of them got married on 29.6.2003 at Raghavendra temple Sirsi and they also got their marriage registered. According to the prosecution PW5 had notarised the affidavit of both the deceased and the accused for getting their marriage registered. The marriage was performed by PW6, the priest.

4. It is further the case of the prosecution thereafter in due course of time the appellant/accused became addicted to alcohol. He also started subjecting the deceased to cruelty and harassment both mentally and physically saying that he would take another lady as his wife. In this connection frequent quarrels were taking place between the two in their house to which PW1 and PW2-lady lady of the house were witnesses.

5. Such being the case, it is the case of the prosecution on 23.10.2003 both the accused and the deceased had gone for their respective coolie work. They returned in the evening after completing their coolie work and according to the

prosecution the appellant/accused had returned fully boozed to his house. Thereafter, the accused picked up quarrel with his wife, started abusing her saying that he would take another lady as his second wife. A wordy dual took place between the two. In the meantime they had their dinner and after the dinner PW1-son of deceased slept in the house. The accused continued abusing the deceased. At about 11.00 p.m. the accused doused the deceased with kerosene and set fire to her. The deceased after she was set fire raised cries. Hearing the same, her son-PW1 woke up. Thereafter both the accused and PW1 put off the fire. Hearing the said commotion, PW2, PW3 and others also came to the house of the accused. Thereafter, the deceased who had sustained burn injuries was removed to P.G.Hospital at Sirsi by the accused and PW1. At P.G.hospital the deceased was first examined by PW19. PW19 after giving initial treatment to the deceased informed the same to Sirsi police, in response to which PW18, PSI came to the hospital. At that point of time, the deceased narrated to him that she had sustained burn

injuries on account of the accidental fire while cooking. She stated so because of the threat held by the accused who was in the hospital at that time.

5. Thereafter it is the case of the prosecution treatment to the deceased was continued in the hospital and the accused was not found either near the hospital or near his house thereafter. It is further the case of the prosecution on 30.10.2003, PW18-PSI recorded Ex.P11, the first information dying declaration of the deceased at the hospital in the presence of PW19. On the basis of Ex.P11 he registered a case in Crime NO.109/2003 for the offences punishable under Sections 498-A and 307 of IPC initially and issued FIR as per Ex.P12 to the jurisdictional Magistrate. Thereafter PW18 proceeded to the scene of occurrence on 31.10.2003 and there he drew up the scene of the offence panchanama as per Ex.P9 in the presence of the pancha PW5. At that time he seized MOs 1 to 3. Thereafter he sent a requisition to the Taluka Executive Magistrate to record the statement of the

deceased who was undergoing treatment in the hospital. In pursuance of the same PW17, the Taluka Executive Magistrate went to P.G hospital at Sirsi and there he recorded Ex.P4- statement (the second dying declaration) of the deceased in the presence of the Medical Officer PW7. PW18 continuing the investigation recorded the statements of PWs 1 to 3. On 1.11.2003 he recorded the statement of PW4 and another. On 4.11.2003 he arrested the accused and on completion of his arrest formalities got him remanded to judicial custody. On 8.11.2003 he forwarded all the seized articles in the case for subjecting to chemical examination. On 9.11.2003 the deceased who was undergoing treatment in the hospital expired. On receipt of the said intimation PW18 sent a requisition to PW17, the Taluka Executive Magistrate, to hold inquest over the body of the deceased. In pursuance of the same, PW17 proceeded to P.G hospital at Sirsi and there he held inquest over the body of the deceased and drew-up the inquest panchanama as per Ex.P10 in the presence of the pancha - PW16. At the time of Ex.P10 he recorded the

statements of the blood relatives of the deceased. Thereafter, he issued a requisition for subjecting the body to postmortem examination. In pursuance of the same PWs 8 and 9 conducted autopsy over the body of the deceased and issued post mortem report as per Ex.P5. In the meantime PW14 had taken up further investigation of the case from PW18. He secured the post mortem report as per Ex.P5 from the hospital and also recorded the further statements of the witnesses which had been recorded earlier by PW18. He also received the sketch Ex.P6 from PW10, the Asst. Engineer. Continuing the investigation he also recorded the statements of the witnesses cited in the charge sheet apart from the one examined before the Court. Thereafter on obtaining the relevant documents from the concerned authorities and on completion of the investigation of the case submitted final report against the accused before the Jurisdictional Magistrate, who in turn committed the case of the accused to the court of Sessions which on receipt of the records secured the presence of the accused, framed charges against him as

aforesaid to which he pleaded not guilty but claimed to be tried.

6. The prosecution in support of its case in all examined PWs 1 to 19 and got marked exhibits P1 to P12 and MOs 1 to 3. The accused during the course of examination of the prosecution witnesses got marked Ex.D1.

After the closure of the prosecution evidence, the accused denied all the incriminating circumstances put to him in his examination u/s.313 Cr.P.C. He also submitted that he has no defence evidence to lead. Total denial of the prosecution case is the defence of the accused.

6. The learned trial Judge on considering the oral and documentary evidence placed on record came to the conclusion that the prosecution has established the charges levelled against the accused and accordingly, by the impugned judgment and order convicted and sentenced him as aforesaid.

The appellant/accused being aggrieved by the judgment and order of conviction and sentence is in appeal before this Court.

7. Sri.Santosh B.Malagoudar, learned counsel appearing as Amicus Curiae for the appellant/accused assailing the impugned judgment and order contended the investigation of the case has commenced with the recording of Ex.P11 of the deceased by PW18-PSI on 30.10.2003. According to the prosecution the occurrence has taken place at about 11.00 p.m. on 23.10.2003 in the house of the accused and the deceased. Though the deceased had stated before the Investigating officer-PW18, who had come to the hospital on being informed on 23.10.2003, that she sustained burn injuries on account of accidental fire and she stated to that effect on account of the threat held by the accused, that explanation cannot be accepted for the reason the threat according to the deceased held by the accused was not there after 24.10.2003 or at least from 25.10.1003 because Ex.P11

itself discloses that the accused was not found either near the hospital or in his house after he admitted the deceased in the hospital. In that view of the matter, the involvement of the accused in Ex.P11 as the culprit cannot be believed. On the other hand, the earliest version of the deceased that she has sustained burn injuries on account of the accidental fire cannot be ruled out. He further contended the evidence on record reveals PW1 is the son of the deceased. He was in the house at the time of occurrence. He has also claimed that on account of the threat held by the accused, he did not reveal the occurrence to anybody. But the evidence of PW4 who is the mother of the deceased reveals that she had come to the hospital on learning about the occurrence on the morning of 24.10.2003. According to PW4 she had learnt about the occurrence through her grand son PW1. Neither PW4 nor PW1 have not taken any steps to inform the police that it was the accused who had set fire to the deceased after dousing her with kerosene as the threat held by the accused was not there as the accused was not present. The evidence of PW1

reveals that he was hostile to the accused. If he was hostile to the accused even accepting that on the night of 23.10.2006 there was threat to him, as Ex.P11 discloses that the accused was nowhere near the hospital from the morning of 24.10.2003, steps should have been taken to inform the police or the concerned authorities that the accused was responsible for causing burn injuries to the deceased. Having not done so, Ex.P11 which came to be recorded after seven days after the occurrence does not inspire any confidence to place any reliance on the same to hold that it is the accused who had set fire to the deceased after dousing with kerosene in his house. He further contended apart from PW1, according to the prosecution PWs 2 and 3, among whom PW2 is the land lady and PW3 is the neighbour, claim that on hearing the commotion they came near the house of the accused. At that time they saw the deceased in flames in front of the house. PW3 has turned hostile. PW2 has not taken any steps to inform the police or anybody else. The evidence of PW2 is falsified in view of the recitals in Ex.P1

which does not disclose that the deceased after she was set fire came out of the house. Therefore, the evidence of PW2 also cannot be believed. Since Ex.P11, the first information in the case has come into existence after due deliberation after a delay of more than 7 days and as no reliance can be placed on the testimonies of PWs 1 and 2 having regard to their conduct, there is no clinching evidence to show that the accused is the culprit in the case. He also further contended the evidence of PW1 who is the son of the deceased reveals that his natural father is alive. He is in constant touch with him. He was in talking terms with him. He is hostile to the accused on account of his illicit association with his mother. In view of this material on record it is not safe to place any reliance on the testimony of PW1. The learned counsel contended admittedly the deceased and the accused had developed intimacy with each other after the legally wedded husband of the deceased had deserted her. They have led a cordial life for some time and thereafter have got married. Their marriage had been performed by PW6 and also it is

registered. The evidence on record reveals that the accused himself had removed the deceased to the hospital after putting off the fire. If he had the real intention to commit murder by setting fire to her, that would not be his conduct. Therefore, in the light of the evidence that is on record which is untrustworthy, the finding of the learned trial Judge that the accused is guilty of the offences with which he is charged is contrary to the evidence on record and perverse, it be set aside and the accused be acquitted of the charges levelled against him.

8. Per contra, Sri.Y.V.Raviraj, learned counsel appearing for the State supporting the impugned judgment and order contended there is no reason whatsoever to discard Exs.P11 and P4, the two dying declarations of the deceased which has been recorded by PW18 and PW17, the PSI and the TEM respectively in the presence of the medical officers PW19 and PW7 who have issued certificate that the deceased was in a fit condition to give her statement. The delay in filing

Ex.P11 has been explained in Ex.P11 itself stating on account of the threat held by the accused she was forced to tell on the day she was admitted to the hospital that she sustained burn injuries on account of accidental fire. Exs.P11 and P4, the two dying declarations are further fortified from the evidence of PWs 1 and 2, who are none other than the son of the deceased whose presence cannot be disputed in the house where the occurrence has taken place and PW2 the land lady where the accused and the deceased were living along with PW1 in her house as tenants. He further submitted the deceased having succumbed to the burn injuries sustained is also amply established from the evidence of PWs 8 and 9 who have conducted autopsy over the body of the deceased. The learned Trial Judge on a consideration of the entire material on record relying on the two dying declarations Exhibits P11 and 4 of the deceased coupled with the evidence of PWs 1 and 2 has come to the right conclusion in holding that the prosecution has established the charge levelled against the accused. The said finding having been based on facts and

evidence on record does not suffer from any infirmity calling for interference in this appeal. Hence, it be dismissed.

9. Taking the rival contentions, the evidence and the documents placed on record, the points that arise for our consideration are :-

- i) *Whether the prosecution has established that the deceased Parvathi has died an homicidal death on account of sustaining burn injuries?*
- ii) *If so, whether the prosecution has established that the accused is responsible for causing burn injuries to the deceased which has resulted in her death and he had also subjected her to cruelty and harassment both mentally and physically?*
- iii) *Whether the impugned judgment and order of the trial Court calls for any interference?*

Re. Points 1 and 2 :-

10. PWs 8 and 9 are the medical officers who have conducted autopsy over the body of the deceased. The

evidence of PW8 reveals that on 9.11.2003 he has conducted autopsy over the body of the deceased along with PW9. He in his evidence has stated that at the time of autopsy they noticed the following injuries :-

1. *Superficial burns seen over the neck, both chests, abdomen grooves, thighs, surface of both legs, upper arm and forearm (both sides) anteriorly and posteriorly buttocks, post surface of lower limbs (both);*
2. *Colour over the front of thigh and legs (both sides) as well as breasts is deep black in colour;*
3. *Adherent to thoracic wall;*

Froth brownish admixed with air oozed out of lungs when cut and pressed. Clotted blood seen on both sides. All the others organs were pale and intact.

He has further stated that death is due to circulatory failure as a result of severe burn injuries and he has issued post mortem report as per Ex.P5 which is also signed by PW9. This evidence of PW8 is corroborated from the evidence of – T.E.M- PW17 who has held inquest over the body. His

evidence reveals that at the time of inquest he and the panchas noticed burn injuries on the body of the deceased as reflected in the post mortem report Ex.P5 issued by PW8. Apart from the same the evidence of PWs 1, 4, 7, 18 and 19 also reveals that the deceased had sustained burn injuries on her person. The deceased having sustained burn injuries is not seriously disputed to in the cross-examination of these witnesses. The evidence of PW8 reveals that the deceased had succumbed to burn injuries. The deceased having died on account of sustaining burn injuries is not disputed before us. Therefore, in the light of the above evidence on record adverted to above, we are of the view that the deceased has died on account of sustaining burn injuries and the prosecution has established the same.

11. The prosecution in order to establish that it is the accused who had set fire to the deceased after dousing with kerosene due to which she sustained burn injuries and succumbed to the same have relied upon the direct testimony

of PW1. Apart from the same, they have also relied upon the evidence of PW2- the land lady, PW4-the mother of the deceased and the two dying declarations exhibits P11 and P4 recorded by PW18, PSI and PW17 the Taluka Executive Magistrate of the deceased at the hospital in the presence of medical officers - PW19 and 7 respectively.

12. It is the case of the prosecution the accused on the night of 23.10.2003 at about 11.00 p.m. in his house situated at Rajeevnagar, Sirsi, had set fire to the deceased after dousing her with Kerosene due to which she sustained burn injuries and succumbed to the same while undergoing treatment in the hospital on 9.11.2003. It is also the case of the prosecution the accused was also subjecting the deceased to cruelty and harassment both mentally and physically much prior to the date of occurrence on the ground that he would take another lady as his wife.

13. PW1 is the son of the deceased through her legally wedded first husband. According to the prosecution PW1

was living with the accused and the deceased in their house where the occurrence had taken place. He claims in his evidence that on the night of the occurrence after his father returned to his house he was boozed fully and in that condition he picked up quarrel with his mother stating that he would take a second wife. Thereafter he had his food and went to sleep. While so sleeping he saw the accused quarrelling with his mother and after sometime the accused poured kerosene on his mother and set her ablaze. Thereafter he and his father put off the fire by pouring water. In the meantime the neighbours, including PWs 2 and 3 also came. Thereafter, his mother was removed to the hospital by the accused accompanied by him. His evidence reveals that since the accused had threatened him and his mother, they did not reveal that accused was responsible for causing burn injuries. On that other hand, his mother revealed that she sustained burn injuries on account of accidental fire. This version of PW1 has seen the light of the day after Ex.P11 was recorded on 30.10.2003 at the hospital by PW18-PSI.

14. The evidence on record reveals PW18 had come to the hospital on the night of 23.10.2003 itself. PW1 has claimed that on account of the threat held by the accused, he did not reveal to him. His evidence reveals thereafter the accused was not found either near the hospital or he has not come to the house. The next day his grand mother-PW4, mother of deceased, on being informed by him has come to the hospital. Before her he has not divulged that it is the accused who has doused with kerosene and set fire to his mother, the deceased. His evidence further reveals that he is hostile to the accused on account of he being in illicit connection with his mother. His evidence further reveals that he is in cordial terms with his natural father and he is in constant touch with him. Since the material on record reveals the threat that was posed by the accused was not there after 24.10.2003 and as the narration in Ex.P11 reveals that this witness got up after hearing the cries of his mother and at which point of time he found the accused putting off the fire by pouring water would go to show that his testimony

that he saw the accused dousing deceased with kerosene and set her ablaze cannot be believed.

15. Insofar as PW2 is concerned she is the land lady of the deceased and the accused. According to her on the night of the occurrence after hearing the commotion she came out of her house and at that time she saw the deceased in flames who had come out of the house i.e. in front of the house of the accused and the deceased. Thereafter the accused and PW1 put off the fire and thereafter the deceased was taken to the hospital by the accused and PW1. This is contrary to what is found in Ex.P11 itself. In Ex.P11 there is no mention that the deceased had come out of the house after she was set ablaze. It also reveals the accused had put off the fire by pouring water on her inside the house. Further, this PW2 has also not taken any steps to inform anybody about the occurrence till 30.3.2003. Therefore, she having come out of the version having witnessed the occurrence by saying that accused had set fire to the deceased after dousing her with kerosene also

does not inspire any confidence to place reliance on her testimony. PW3 another neighbour has not supported the case of the prosecution. He has turned hostile.

15. PW4 is the mother of the deceased. Admittedly she was not in the house where the occurrence has taken place. She was informed of the occurrence by PW1. She has come to the hospital on the morning of 24.10.2003. Her evidence does not reveal at what point of time she made enquiries with the deceased, who is her daughter, and at what point of time she came to know that it was the accused who had set fire to her after dousing with kerosene. She has come out with the said version only after Ex.P11 has come into existence on 30.10.2003 nearly after seven days after the occurrence. Firstly, her evidence being hear-say in respect of the occurrence and nextly having regard to the delay in coming out with the version of prosecution it does not inspire any confidence to place reliance on her testimony.

16. Now coming to Exs.P11 and P4, the two dying declarations of the deceased recorded by PW8 and PW17 the PSI and the Taluka Executive Magistrate respectively on 30.10.2003 and 31.10.2003 at the hospital in the presence of the Medical officers PWs 19 and 7 respectively, a perusal of Ex.P11 discloses since the accused held threat to the deceased, she revealed on 23.10.2003 to the PSI – PW18 that she sustained burn injuries due to accidental fire while cooking. That is the explanation that is given in respect of Ex.P11 for the delay in coming out with the version of the accused having set fire to her after dousing with kerosene. PW19 is the first medical officer who has examined the deceased at P.G.hospital Sirsi on the night of 23.10.2003. A perusal of his evidence reveals the deceased had been brought to the hospital by the accused with burn injuries and after rendering treatment, police were informed. Police came to the hospital i.e. PW18-PSI. Before PW18 the deceased stated that she sustained burn injuries while cooking. That statement given by deceased on 24.10.2003 has not been

produced, but the recitals in Ex.P11 reveals that since the accused had held threat the deceased told PW18 that she sustained burn injuries while cooking which fact according to the prosecution is not true, on the other hand she sustained burn injuries on account of the accused setting fire to her by dousing her with kerosene. This explanation which is offered in Ex.P11 and also Ex.P4 which stands on the same line does not inspire any confidence in the mind of the court. That is because the recitals in Ex.P11 itself discloses the accused after admitting the deceased to the hospital on 23.10.2003 in the night, was not to be seen either in the hospital or near the house thereafter. PW4 is the mother of the deceased. Her evidence reveals that she had come to see her daughter in the hospital on being informed by her grand son PW1 on 24.10.2003. At that point of time the accused was no where in the picture. No steps have been taken to get the statement of the deceased recorded to show that it is the accused who is the culprit in the case. PW2 who admittedly is the land-lady has also not taken any steps to inform any body stating that

the deceased sustained injuries on account of the accused setting fire to her. The version of accused setting fire to the deceased after dousing with kerosene has seen the light of the day on 30.10.2003 nearly about 7 days after the occurrence. In our view having regard to the conduct of PWs 1, 2 and 4 as they were also present in the hospital throughout and as all was not well between PW1 and the accused, and further as the material on record reveals it is the accused who has shifted the deceased to the hospital which would not had been the conduct if he had really set fire to the deceased, the claim of the prosecution to place reliance on Exs.P4 and P11 does not inspire any confidence in our mind. In the light of the delay in recording Exhibits P11 and P4 of the deceased in the hospital and as the testimonies of PWs 1, 2 and 4 also does not inspire any confidence, we are of the clear view that the prosecution has failed to established that it is the accused who is the culprit, inasmuch as he having set fire to the deceased after dousing with kerosene due to which she

sustained burn injuries and succumbed to the same while undergoing treatment in the hospital.

18. Insofar as the deceased being subjected to cruelty and harassment also, for the reasons which we have adverted to above and as the evidence on record reveals that the legally wedded husband of the deceased had deserted her about a year after the marriage and thereafter she was living with the accused cordially for a very long time and their marriage having also been performed in a Kalyana Mantapa and registered would go a long way to hold that the accused was subjecting her to cruelty and harassment both mentally and physically.

19. Taking from any angle we are of the view the evidence and the documents relied upon by the prosecution placed on record does not inspire any confidence to hold that the accused is guilty of the offences with which he is charged. The learned trial Judge in our view without appreciating entire material on record in its right perspective has come to

an erroneous conclusion in holding that the prosecution has proved the guilt of the accused beyond reasonable doubt which finding in our view being contrary to the evidence on record and perverse cannot be sustained. Accordingly, the same is set aside.

20. In the result for the foregoing reasons we proceed to pass the following order :-

- i) The appeal is allowed;
- ii) The Judgment and order dated 21.12.2005 passed in S.C.No 12/2004 by the Sessions Judge, Fast Track Court-I, Karwar, is set aside;
- iii) The appellant/accused is acquitted of the charges levelled against him. He is in custody. He is ordered to be set at liberty forthwith, if not required in any other case.

21. We place on record the valuable assistance rendered by Sri.Santosh B.Malagoudar who had been appointed as Amicus Curiae in this case. We fix his remuneration in this case at Rs.7,000/- which shall be paid by the concerned.

Sd/-
JUDGE

Sd/-
JUDGE

rs