



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

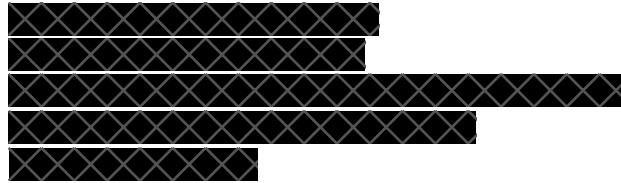
AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.2072 OF 2023 (C)

BETWEEN:

ASIF



...APPELLANT

(BY SRI SPARSH SHETTY, ADVOCATE)

AND:

STATE OF KARNATAKA
BY KADUGONDANAHALLI POLICE STATION
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001.

...RESPONDENT

(BY SMT. RASHMI PATEL, H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT DATED 1-10-2022 IN SESSIONS CASE NO.162 OF 2020 PASSED BY THE COURT OF THE XXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, CCH-20, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

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





CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard Sri Sparsh Shetty, learned counsel for the appellant-accused, Smt. Rashmi Patel, learned High Court Government Pleader for the respondent-State, and perused the material available on record.

2. This appeal is filed by the appellant-accused against the judgment of conviction dated 01.10.2022 and order on sentence dated 07.10.2022 in Sessions Case No.162 of 2020 passed by the XXVI Additional City Civil and Sessions Judge, Mayo Hall, Bengaluru, (CCH-20), for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC) and sentencing him for life imprisonment with fine of Rs.5,000/-.

3. The factual matrix of the case of the prosecution is that Smt. Shaheda Khanam, wife of the accused, was working with Sri Imran Ali (hereinafter referred to as 'deceased') as Interior Decorate Entrepreneur. The accused suspected his wife



and the deceased were having illicit relationship and in that connection, the accused had posed threat to the deceased about a month ago before the alleged incident. It is also the case of the prosecution that, out of the said ill-will, on 20.10.2019 at about 9.30 a.m., in front of Ameen Ambur Dam Biriyani (Ameen Tea Stall), Bharat Petrol Bunk on Nagavara Main Road, within the jurisdiction of Kagugondanahali Police Station, when the deceased was standing near the said tea stall, the accused came with petrol in a plastic can, poured it over the deceased and set him on fire, as a result, he succumbed to burn injuries on 24.10.2019 at 7.00 a.m. Hence, the Police based on the statement of the injured in terms of Ex.P6, set the law in motion, recorded the statement of eyewitnesses as well as other witnesses and after completion of investigation, filed the charge-sheet. The accused did not plead guilty and claims trial. Hence, the prosecution examined PWs.1 to 16, got marked Exs.P1 to P16 and MOs.1 to 3.

4. The trial Court, having considered the oral and documentary evidence, particularly, the evidence of PWs.1 to 4 and 15, who are eyewitnesses, and the evidence of PWs.5 to 8,



who speaks about the motive for committing the murder and also considering the FSL report in terms of Ex.P13, came to the conclusion that the accused committed the murder of the deceased and sentenced him, as aforesaid.

5. Learned counsel for the appellant-accused mainly contended that very approach of the trial Court in appreciating the evidence available on record is erroneous. Though the prosecution claims that eyewitnesses have witnessed the incident, but fails to take note of the fact that PWs.1 to 3 and 15 are the relatives of the deceased and they are interested witnesses. He would submit that only PW4 is the independent witness and his evidence is also not consistent along with the evidence of other eyewitnesses and there are material contradictions. He would submit that the Investigating Officer has not collected any direct evidence, such as, CCTV footage from the place of the incident in order to link the accused to the alleged crime. In view of several direct eyewitnesses having witnessed the incident, the collection of evidence by way of advanced technology would have been telling the truth, the same is not collected. He further submits that the death of the



deceased as per the Post-Mortem examination report-Ex.P7 was caused due to septicaemia, as a result of burn injuries sustained, however, the same was due to dousing of the water on the victim, epidermis of the skin of the victim was blistered and due to water coming in contact with the human skin, blisters were formed and devastating effect has taken place. He submits that the evidence of eyewitnesses account as well as the motive for committing the murder though not proved, but the trial Court erroneously came to the conclusion that there was a motive of illicit relationship. The Investigating Officer also not dealt with the motorcycle in which the accused came, even the same is not seized and it indicates as a weak piece of investigation done by the Investigating Officer. He submits that the prosecution has not placed any material to show that the accused had knowledge that the deceased was in the place, where the incident had taken place. He also submits that when the accused did not had knowledge that the deceased was at the incident, the point coming to the conclusion by the trial Court that there was intention to take away the life of the deceased does not arise. Hence, he prays for allowing the appeal.



6. *Per contra*, the learned counsel for the respondent-State would submit that the statement of the injured was recorded in terms of Ex.P6 and the same was recorded by PW13-Investigating Officer in the presence of PW10-Doctor. The Doctor deposed before the Court that the deceased was competent to give a statement and the same is treated as dying declaration. She would submit that Ex.P13-FSL report is also very clear that the petrol can (bottle), which was sent for examination, tested positive for petrol residue. She submits that with regard to motive is concerned, the wife of the accused, who has been examined as PW8, categorically deposed that he was suspecting her fidelity and making allegations that the deceased was having illicit relationship with her. Further, PW7, wife of the deceased, reiterated the same, and PWs.5 and 6, brothers of the deceased, have also spoken about the accused suspecting illicit relationship between PW8 and the deceased and therefore, the motive is proved that the accused was suspecting illicit relationship between his wife and the deceased. She submits that PWs.1 to 3 and 5, who are eyewitnesses, are not the relatives of the deceased as contended by the learned counsel for the appellant. The



prosecution also relies on the evidence of PW2, who is also an eyewitness, but he was not cross-examined. She further submit that the evidence of eyewitnesses were not disputed that they were not present at the spot during the course of cross-examination and on the other hand, the very presence of eyewitnesses and also the accused was admitted while cross-examining the prosecution witnesses. The cause of death is on account of burn injuries to an extent of 45% and due to infection, the injuries were not cured which resulted in septicaemia and the Doctor also deposed before the Court that the deceased died on account of septicaemia, that too, after four days. The incident had taken place on 20.10.2019 and immediately, the injured was shifted by eyewitnesses, who were present at the spot and the statement-Ex.P6 of the deceased was recorded. Hence, the trial Court has rightly convicted the accused. She also submit that with regard to the sentence is concerned, it is a case of committing the murder with intention to take away the life since the accused came with petrol, match box and after pouring petrol, set the deceased on fire and ran away from the spot and the same clearly discloses that it was a case of homicidal with intention and hence,



question of interfering with the sentence imposed by the trial Court also does not arise.

7. Having heard the learned counsel for the appellant-accused, the learned High Court Government Pleader for the respondent-State and the material available on record, the point that arises for consideration of this Court is:

"Whether the trial Court committed error in convicting the accused for the offence punishable under Section 302 of IPC and imposing life sentence?"

8. We have given our anxious consideration to the evidence available on record and the prosecution mainly relies on eyewitnesses' evidence, i.e. PWs.1 to 4 and 15 and the evidence of PWs.5 to 8, who speaks with regard to the motive for committing the murder. The law was set in motion after recording the statement of the injured-Ex.P6 by PW13-Investigating Officer in the presence of PW10-Doctor. The evidence of the Doctor is also very clear that the deceased was conscious and in fit state of mind to give statement. Based on the statement, F.I.R. was registered.



9. While considering the dying declaration also, the Courts have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. The same has to be taken note of and the Courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or other respect and therefore, a mechanical approach to the law of dying declaration has to be shunned in view of the judgment of the Hon'ble Apex Court in the case of ***State of Gujarat v. Jayrajbhai Punjabhai Varu*** reported in ***(2016) 14 SCC 151***, particularly, at Paragraph Nos.15 and 18.



10. Now, the question before this Court is with regard to the validity of Section 161 of Cr.P.C. under which the law was set in motion. In the case of ***Gulab Singh v. State of U.P. reported in 2004 Cri LJ 946***, the Allahabad High Court held that a dying declaration recorded by a Police Officer is admissible and can be relied upon if it is consistent, voluntary, and truthful, even if recorded as an F.I.R. or under Section 161 of Cr.P.C. The Court found the victim's statement to the Investigating Officer reliable as a dying declaration, supported by the evidence like eyewitness testimony and the Post-Mortem examination report.

11. In the case on hand, Ex.P6 was recorded by the PW13-Investigating Officer in the presence of PW10-Doctor and the evidence of the Doctor is also very clear that the injured/victim was conscious and in fit state of mind to give statement. It is also emerged that the injured had sustained injuries up to 40 to 45% and the injured died, after four days of the alleged incident. Further, nothing is elicited from PW10-Doctor that the injured was not in a position to give statement and a suggestion was also not made to him and to PW13-



Investigating Officer denying the same. When such being the case, this Court cannot doubt the statement of the deceased recorded by the Investigating Officer in the presence of the Doctor. Hence, this Court can rely on Ex.P6 as a dying declaration made by the deceased and the same was considered by the trial Court.

12. Now, with regard to eyewitnesses account is concerned, the Court has to examine the ocular evidence available before the Court. There is no dispute with regard to the evidence of PWs.1 to 4 and 15, eyewitnesses. They have clearly stated about their presence at the spot, the accused pouring petrol and setting fire on the deceased. Even during their cross-examinations, nothing is elicited from these eyewitnesses. When eyewitnesses' evidence available before the Court, the very contention of the learned counsel for the appellant that the CCTV footage was not recovered or was not seized cannot be a ground and the same will not go to the very root of the case of the prosecution as these eyewitnesses have supported the case of the prosecution and they have withstood in the cross-examinations.



13. The other contention of the learned counsel for the appellant is that the motorcycle in which the accused came was not seized. Learned High Court Government Pleader brought to the notice of this Court that PW15 categorically deposed that the accused came in the motorcycle along with a pillion rider. When PW15 speaks clearly about the accused coming in the motorcycle along with the pillion rider, question of seizing the motorcycle also does not arise. Further, the learned counsel for the appellant contended that the Investigating Officer has not collected the material as to where the accused purchased petrol. The said contention also cannot be accepted because if it is a case of circumstantial evidence, then the Court has to look into the said contention, however, the case on hand is based on eyewitnesses account.

14. Now, the question before this Court is with regard to motive is concerned. The case of the prosecution is that the accused suspected the fidelity of his wife, PW8, stating that the deceased is having illicit relationship with her. On perusal of the evidence of PW8, wife of the accused, she categorically deposed that the deceased was working under her for the last



ten months and the accused was suspecting her fidelity. Further, when the accused started suspecting the fidelity of PW8, panchayat was conducted and the same is spoken by PWs.5 and 6 and even PW7, wife of the deceased. Nothing is suggested to these witnesses with regard to the accused suspecting the fidelity of his wife. When these witnesses have categorically deposed before the Court the reason for the accused committing the murder that he was having suspicion about the fidelity of his wife, the trial Court accepted the reason of motive.

15. The other contention relied on by the learned counsel for the appellant is that though PWs.1 to 4 claims that they are eyewitnesses, but their evidence are not consistent. Having re-assessed the material available on record, these witnesses have not disputed their presence at the spot, the accused pouring petrol and setting fire on the deceased. Their evidence is very credible and nothing is elicited contrary to each other. It is settled law that if material contradiction is found in eyewitnesses' account, then the Court can doubt the same, but no such circumstances warranted in the case on hand. Hence,



we do not find any grounds to ignore the evidence of eyewitnesses account.

16. The other material available before the Court is FSL report which is marked at Ex.P13. The petrol can (bottle) was seized and sent to the FSL for examination. On examination, the petrol can (bottle) tested positive for petrol residue. The cause of death is spoken by PW11-Doctor, who conducted the post-mortem on the dead body of the deceased. He issued Post-Mortem examination report-Ex.P7 and opined that the death is due to septicaemia as a result of burn injuries sustained. In the cross-examination, nothing is elicited with regard to homicidal death of the deceased. When the death was on account of homicidal and all material available before the Court point out the guilt against the accused, we do not find any errors on the part of the trial Court in convicting the accused.

17. Alternatively, the learned counsel for the appellant contended that the accused did not have any intention to take away the life of the deceased and hence, prays for reduction of sentence. On perusal of the material available before the Court,



it is very clear that the accused went to the spot with petrol can (bottle), match box, poured petrol and set fire on the deceased. Further, the deceased had knowledge that the burn injuries would cause death of a person. When such material is found, the argument of the learned counsel for the appellant that there was no intention to take away the life of the deceased cannot be accepted. Hence, we do not find any errors on the part of the trial Court imposing the sentence of life imprisonment and fine. Further, the Courts have to take note of with regard to the sentencing policy and the sentence must commensurate with the gravity of the offence. Having considered the gravity of the offence that the accused taken away the life of the deceased when he was alive, the very argument of the learned counsel for the appellant cannot be accepted even for reducing the sentence. Hence, even in respect of sentence is concerned, the trial Court has rightly sentenced the accused for life imprisonment and only imposed fine of Rs.5,000/-, which does not require any interference of this Court and we answered the point accordingly. In view of the discussions made above, we passed the following



ORDER

Criminal appeal is ***dismissed***.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

KVK
List No.: 1 Sl No.: 16