



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 6TH DAY OF FEBRUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO.100059 OF 2022 (C)

BETWEEN:

BASANNA S/O. GANGAPPA BELAVIGI
@ BASAVARAJ @ BASAPPA,
AGE: 44 YEARS, OCC. LABOURS,
R/O. MAKANUR, TQ. RANEBENNUR,
DIST. HAVERI.

...APPELLANT

(BY SRI.NAMADEV SEETARAM BADIGER, ADVOCATE)

AND:

STATE OF KARNATAKA
THROUGH KUMARPATTANAM POLICE STATION,
R/BY. STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...RESPONDENT

(BY SRI.M.B. GUNDWADE, ADDITIONAL SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C., PRAYING TO CALL FOR RECORDS AND SET ASIDE THE JUDGMENT DATED 05.09.2019 AND ORDER OF SENTENCE DATED 07.09.2019 PASSED BY 2ND ADDITIONAL DISTRICT AND SESSIONS JUDGE, HAVERI SITTING AT RANEBENNUR IN S.C.NO.72/2017 CONVICTING THE APPELLANT FOR THE OFFENCES 498(A) AND 302 OF IPC THEREBY ACQUIT THE ACCUSED IN S.C.NO.72/2017 FOR THE OFFENCE 498(A) 302 OF IPC AND ETC.





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

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 374(2) of Cr.P.C. by the convicted accused, challenging the Judgment of conviction dated 05.09.2019 and Order of Sentence dated 07.09.2019 in SC No.72/2017 on the file of II Additional District and Sessions Judge, Haveri sitting at Ranebennur, (for short 'Trial Court') convicting the accused for the offences punishable under Section 498-A and 302 IPC, sentencing him to undergo rigorous imprisonment for one year and to pay fine of ₹.5,000/- for the offence punishable under Section 498-A IPC; Life imprisonment and to pay fine of ₹.5,000/- for the offence punishable under Section 302 IPC.



2. Parties would be referred with their ranks as they were before for trial Court for the sake of convenience and clarity.

3. It is the case of prosecution that the marriage of deceased-Sakamma had taken place with accused about ten years prior to the incident. On 27.03.2017, at about 08.00 a.m., when the deceased demanded money with accused to celebrate Ugadi festival, accused abused her in filthy language and told that if she is alive, she would ask money and accused was also suspecting the fidelity of his wife; thus, with an intention to murder her, he poured Kerosene oil on her and set fire, due to which she sustained burn injuries, immediately she was shifted to Government Hospital, Harihar; on the same day at 10.15 p.m., she was shifted to Chigateri General Hospital, Davanagere and then to S.S. Hospital, Davanagere wherein she succumbed to burn injuries on 01.04.2017 at 1.37 p.m.



4. On 29.03.2017, statement of deceased was taken by the police in presence of the doctor and sister of victim- Smt.Basamma from 7.00 p.m. to 8.30 p.m. as per Ex.P.11 and on the same day from 10.55 p.m. to 11.25 p.m. her statement was recorded by the Tahasildar as per Ex.P.36 wherein the deceased told that accused poured kerosene oil upon her and lit fire with matchstick; the investigating officer after completion of investigation came to the conclusion that the death of the deceased was caused due to burn injuries and death is by pouring kerosene oil upon her and litting fire by accused. The inquest report and postmortem report establish that the death was due to septicemia as a result of 45-50% burn injuries.

5. After filing the charge sheet, the learned JMFC has taken cognizance of the offences and committed the case to Sessions Court wherein, the case is numbered as S.C.No.72/2017. Accused was in judicial custody. After hearing both sides, charge was framed for the offences punishable under Sections 498-A and 302 of IPC against



accused. Accused pleaded not guilty and claimed trial when charge is read over and explained to him.

6. On behalf of prosecution, totally 19 witnesses were examined as PWs.1 to 19, got marked Exs.P1 to 45, MOs.1 to 3 and closed their side before the trial Court.

7. After completion of the prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded, wherein accused has denied the case of prosecution in total and has not let in defence evidence before the trial Court.

8. After hearing arguments, the learned Sessions Judge came to the conclusion that accused has committed the offences alleged against him and thus, convicted and sentenced him to undergo imprisonment as narrated above.

9. Aggrieved by the same, the appellant/accused has preferred the present appeal.

10. Heard arguments of both sides.



11. Sri Namadev Seetaram Badiger, learned counsel for the appellant would submit that the prosecution has utterly failed to establish its case. The alleged incident has taken place on 27.03.2017; when the injured was brought to the Hospital by her own sister, the history was given as stove burst and it is only an afterthought that alleged statement was taken before the police and this statement is unbelievable because it was taken in presence of sister of the victim and the dying declaration before the Tahsildar is inadmissible in law because there was no Doctor to certify the state of mind of the victim and hence, both those statements are inadmissible in law. Almost all the private witnesses have not supported the case of prosecution including the sister and brother-in-law of deceased. Mother of deceased has exaggerated the situation. Her evidence is also not believable because even though she had seen the burns on deceased, without making any efforts to put off the fire, she has taken her grandchild and went away from said spot is the evidence of mother of deceased.



12. Learned counsel for the appellant would further submit that charge under Section 498-A of IPC is not at all proved because its ingredients are not at all established. There is no dowry harassment to the victim at any point of time. The other harassment as alleged in the case of prosecution will not attract the first clause of Explanation No.1 of Section 498-A of IPC. The offence under Section 302 of IPC is not established because both dying declarations are not established in accordance with law. Only based on those dying declarations, the entire case is build up. The drawing up of panchnamas is also not established because panch witnesses have not supported the case of prosecution. The evidence of Doctor only reveals that victim died due to septicemia.

13. Learned counsel for the appellant would further submit that the case-sheet reveals that the B.P. of the victim was very low when she was brought to the hospital and there is no improvement in her health conditions and she was drowsy at the time of alleged recording of



statement of victim by police and at the time of alleged recording dying declaration by the Tahasildar and it is established from the cross-examination of P.W.13. However, learned Sessions Judge has not considered any of these aspects and convicted the accused. Hence, prayed for allowing the appeal and to acquit the accused for the offences alleged against him.

14. For the above said reasons, learned counsel for appellant prays for allowing the appeal and to acquit the accused.

15. In this regard, learned counsel for the appellant would rely upon the following citations:

- i. In the case of ***Irfan @ Naka V/s. The State of Uttar Pradesh in Criminal Appeal Nos.825-826/2022.***
- ii. In the case of ***Narayan Yadav V/s. State of Chhattishgarh in Criminal Appeal No.3343/2025 (Arising out SLP (Crl.)No.10595/2025***



- iii. In the case of ***Mahendra S/o Tularam Deshmukh V/s. The State of Maharashtra.***¹
- iv. In the case of ***State of Madhya Pradesh V/s. Ramveer Singh.***²

16. Learned Additional S.P.P would submit that there is proper recording of dying declaration of deceased; she was conscious when recorded by the police officer and also by the Tahasildar. The case-sheet substantiates the prosecution case on this point. It is also clarified in her statement before police that she was panic at the time of admitting to the Hospital and hence, it was stated as stove burst at the time of cooking, but actually accused poured kerosene oil on her and lit fire upon her. Furthermore, the kerosene oil Can was seized at the instance of accused under panchanama in presence of panch witnesses, based

¹ 2014 ALL MR (Cri) 1757

² 2025 SAR (Cri)1147



on the voluntary statement of accused, which is admissible in law as per Section 27 of the Indian Evidence Act.

17. In this regard, he relied on the following citation:

i. In the case of ***Lakhan V/s. State of Madhya Pradesh.***³

18. For the above said reasons, learned Additional S.P.P prays for dismissal of appeal and to confirm judgment of conviction and order of sentence.

19. Having heard arguments of both sides and verifying the appeal papers and trial Court records, the points that arise for consideration are:

i. *Whether the prosecution proves beyond reasonable doubt that accused treated the victim or deceased with cruelty as defined under Section 498A IPC?*

ii. *Whether the prosecution proves beyond reasonable doubt that accused has poured kerosene oil upon the deceased and set fire and it is the cause for her death?*

³ 2010 AIR SCW 5993



REASONS

20. The admitted facts of the case are that deceased Sakamma is the wife of accused. Marriage of accused and wife of accused was solemnized about 10 years prior to the alleged incident.

21. It is the case of prosecution that on 27.03.2017 at about 08.00 p.m., Sakamma demanded some money to celebrate ugadi Festival and accused refused to give said amount; accused was suspecting the fidelity of the deceased and quarrel took place between them and in that quarrel, accused poured kerosene oil upon Sakamma, lit fire by matchstick and thereby caused burn injuries to Sakamma.

22. Afterwards, initially Sakamma was taken to Harihara Govt. Hospital and then to Chigateri Hospital, Davangere and then to S.S. Hospital, Davangere, wherein she succumbed to those burn injuries on 01.04.2017 at 01.37 p.m.



23. It is the case of prosecution that initially at the time of admitting Sakamma to Chigateri Hospital and also to S.S. Hospital, the history of burns was given as accidental burn injuries while cooking and stove burst and she was accompanied by her elder sister-Basamma. Later, on 29.07.2017, the statement of Sakamma was recorded by the PSI of concerned Police Station and it is reduced into writing and marked as Ex.P.11 and it was taken in presence of the doctor and also in presence of the elder sister of deceased Sakamma. This statement can be considered as dying declaration because after giving the said statement and also after recording statement of the victim by Tahasildar on 01.04.2017, Sakamma succumbed to those burn injuries.

24. To attract the offence under Section 498-A IPC, prosecution has to establish that accused, being the husband of deceased, has treated her with cruelty. Cruelty is defined in explanation Nos.1 and 2 of this section. It reads as follows as:-



Explanation.—For the purposes of this section, "cruelty" means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]*

25. Thus, cruelty is defined in Explanation to Section 498-A IPC and either of (a) & (b) to Explanation of Section 498-A IPC is to be established to say that accused has committed the said offence.

26. The meaning of cruelty as per first Explanation to Section 498-A IPC is that a person i.e., husband or his family members have treated the woman with cruelty so as to drive her to commit suicide or to commit grievous injury to her body.



27. In the instant case, it is not the case of prosecution that deceased herself poured kerosene oil upon her and got lit the fire upon her. It is the specific case of prosecution that accused has poured the kerosene oil and lit fire upon her by matching the stick. Under those circumstances, the daily wear and tear of quarrel between husband and wife at any stretch of imagination cannot be called as cruelty as per first Explanation to Section 498-A IPC.

28. As per second Explanation to Section 498-A IPC, there shall be harassment to the woman for demand of dowry. The dowry harassment is not at all alleged in this case. The cruelty as per second Explanation to Section 498-A IPC is not at all the case of prosecution and thus, not proved. Hence, the prosecution utterly failed to prove the offence under Section 498-A IPC.

29. However, learned Sessions Judge has not at all examined any of the ingredients of Section 498-A IPC and



blindly convicted the accused for the aforesaid offence, which is not in accordance with law and requires interference. Accordingly, the point No.1 is answered in ***NEGATIVE.***

30. With this background, the evidence of P.W.13-doctor P.W.14-the scribe, P.W.17-the I.O. and Ex.P.11-the dying declaration before police with the photographs are to be considered.

31. It is the specific case of prosecution that in presence of the sister of deceased i.e. Basamma (P.W.6), the statement of victim as per Ex.P.11 was recorded.

32. In the said statement, it is stated that the husband of victim has looked after her well for sometime after the marriage and afterwards he started suspecting the fidelity and character of Sakamma and was assaulting her and torturing her both physically and mentally, but even then she kept quiet and was leading her life with the accused. On 27.03.2017 at 08.00 p.m. she has demanded



some money with the accused for Ugadi festival and at that time, accused became angry with her and by suspecting her character, abused her in filthy language and told that she was always demanding something and if she is not alive then she cannot demand any money from him and with an intention to kill her, he has poured kerosene oil upon her and lit fire to her nighty by matchstick. Then, her elder sister-Basamma and her husband-Gonappa Nekar came and put off the fire and treated her. She had sustained severe burn injuries on her both hands, face, chest, thighs and back and hence she was taken to hospital at Harihara initially and then to S.S. Hospital.

33. It is also stated in this complaint to take suitable action against her husband and also stated that when she was admitted to the hospital, in the pain, she has stated that the burn injuries were caused at the time of cooking, because at that time she was tensed.



34. This statement was recorded on 29.03.2017 from 07.00 p.m. to 08.30 p.m. by P.W.17 and it was written by P.W.14-the Head Constable No.781. Both P.W.14 and P.W.17 have put their signatures to it. It is also stated that at the time of taking signature of the victim, they have taken the assistance of elder sister of the deceased-Basamma (P.W.6). Below the signatures of P.W.17, P.W.14, LTM of Sakamma and below the signature of Basamma, it is stated that 'before me patient is conscious hence given statement' and it is being signed by the medical officer-P.W.13. Below that signature, P.W.13 has not put date and time of putting the said signature.

35. Ex.P.32 is the requisition given by P.W.17 to the duty doctor at S.S. Hospital. It is not dated. Below the requisition of the PSI, doctor has made an endorsement that '29.03.2017 patient is conscious. Hence is able to give statement'. Below the said endorsement, signature of the doctor is forthcoming. It also does not bear the time in which it was given. At the commencement of Ex.P.11, the



date and time and also the signature of doctor is not forthcoming to say that whether patient was conscious at that point of time.

36. On careful perusal of Ex.P.33-MLC intimation given by the doctor to the Police Circle Inspector, the date and time of examination is mentioned as 28.03.2017 at 07.50 a.m. It is stated that patient by name 'Sakamma aged 35 years, female, wife of Basanna Makanur was brought to the hospital by her sister Smt.Basamma with the alleged history of accidental burns while cooking at her home at 08.00 p.m. on 28.03.2017 at Makanuru, affecting whole body'.

37. The '28.03.2017 at 07.50 a.m.' is the date and time at which this MLC was given and thus it cannot be 28.03.2017 at 08.00 p.m. the incident had taken place. Thus, the date mentioned in this MLC i.e., 28.03.2017 as date of incident might be wrong.

38. Earlier to bringing the victim to S.S. Hospital, initially she was taken and admitted to Damodara



Manjunatha Pai Smaraka Government Hospital, Harihara on 27.03.2017 at 10.15 p.m. as per Ex.P.43; immediately she was shifted to Chigateri Hospital, wherein she was admitted on the same day i.e., 27.03.2017 at 10.49 p.m. as per Ex.P.42. She was brought to the hospital with the alleged history of burns while cooking due to stove burst at 10.00 p.m. on 27.03.2017 at her residence Makanuru. Thus, Ex.P.42, Ex.P.43 and Ex.P.33 categorically establish that initially the history of burns was given by the sister of Sakamma to the hospitals that she has sustained injuries due to stove burst at the time of cooking on 27.03.2017. But it was changed as 'murder by accused' by recording the statement of victim as per Ex.P.11 and 29.03.2017. Hence, heavy burden is on the prosecution to establish that on 29.03.2017 at the time of recording her statement, the patient was conscious, in a fit state of mind to give her statement and it was properly recorded.

39. With this background, the evidence of P.W.13, P.W.14 and P.W.17 and Ex.P.11 is to be examined carefully.



40. Some photographs at the time of taking this statement are produced in this case. They are not accompanied with certificate under Section 65-B of the Evidence Act, 1872. But it is the specific case of prosecution that at the time of recording said statement and also at the time of taking LTM of the victim, her elder sister-Basamma was present. In this regard, P.W.6-Basamma in her evidence has stated that she was not present at the time of recording statement of deceased and she was sent out of the room at that time and only at the time of taking the LTM of victim, she was called back to the ward and her assistance was taken to record the LTM of victim. However, this Basamma has deposed that she does not know why Sakamma has inflicted with burn injuries. She does not know why she herself has done so. She does not know who has put off the fire. But before she reaching the house of victim already fire was put off. The husband of P.W.6 was examined as P.W.7. He also not supported the case of prosecution on this point. But according to the alleged



statement of victim as per Ex.P.11, it is only this P.W.6 and P.W.7 came forward and put off the fire. Thus, there is no corroboration in between the evidence of P.W.6 and P.W.7 and the alleged statement of the deceased.

41. P.W.13 is not the doctor who treated the injured. She has given evidence in her cross-examination that because she is not the treated doctor, she can only say whether the victim or injured was in a position to speak and she cannot say what was the percentage of burn injuries. According to her cross-examination, when she had been near the patient, it was 06.30 p.m. and at that time Basamma and police accompanied her. According to the evidence of P.W.13, except Basamma and police none were there. She examined the patient a day after the patient was admitted to the hospital and after she made an endorsement that the patient is in a position to speak and in a position to give statement police have recorded the statement of injured. However, as discussed above, it is only stated in her endorsement that patient is conscious



hence is able to give statement. She has not stated the mental state of the deceased, whether she was in a fit state of mind or not.

42. In the further cross-examination this doctor P.W.13 specifically admitted that in burn injury cases, generally they would administer IV fluids, antibiotic injections and pain killer injections and at that time patients would be in a drowsy state of mind. She also admitted that if patient is in drowsy state of mind, then her statement cannot be recorded. She volunteered that when she examined the patient, patient was not much drowsy. But that statement itself establishes that patient was a little bit drowsy at that point of time. She has not examined what were the medicines administered to the patient at the time of taking her statement, which was very much relevant to decide whether patient was able to give statement or not. That fact is not at all considered by P.W.13.



43. P.W.14 is the scribe of the statement. He has deposed in his examination-in-chief itself that on 29.03.2017 he visited S.S. Hospital, Davangere along with P.W.17-PSI and at that time Sakamma was admitted to the hospital and PSI has given requisition and doctor certified that she is in a fit state of mind to give statement. Afterwards, they entered the burn wards, wherein the injured was talking in presence of doctor. Her statement was recorded and he has written it and PSI has stated the said statement. As per the say of PSI, he has written the said statement. In the cross-examination, P.W.14 categorically admitted that when they had been to the hospital the injured was in semi-conscious state and was sleeping. He further admitted that if patient is in semi-conscious state (ಅರೆ ಪ್ರಜ್ಞಾವಸ್ಥೆ), then her statement cannot be recorded.

44. P.W.17 is the PSI, who has received MLC requisition from S.S. Hospital, Davangere on 28.03.2017,



but on 29.03.2017 from 07.00 p.m. to 08.30 p.m. he recorded the statement i.e., even though this MLC was issued in the morning hours of 28.03.2017, about one and half days after receipt of MLC on 20.03.2017 in the evening, the statement of patient was recorded through HC-731 (P.W.14). In this regard, in the cross-examination, this witness has deposed that 2 days after the incident he has recorded the statement and on 28.03.2017 he had sent his staff to the hospital, but at that time doctor certified that she was not in a fit state of mind to give statement and hence he has recorded it on 29.03.2017. However, P.W.17 has not produced the earlier endorsement dated 28.03.2017.

45. According to P.W.17 when he had seen the injured, her face, chest, stomach, both hands and legs and lips were burnt. When lips were also burnt, it is very difficult to a patient to give her statement.



46. Not only this statement as per Ex.P.11, on the same day this P.W.17 has given requisition to the Tahasildar to record the statement of victim and accordingly he has recorded the statement of victim from 10.50 p.m. to 11.25 p.m. as per Ex.P.36. The requisition given by P.W.17 was marked as Ex.P.35 and dying declaration recorded by P.W.16-Tahasildar is marked as Ex.P.36.

47. Preferably, the dying declaration should be recorded in question and answer form and not in narrative form. In the instant case, the printed form of questionnaire was filled by the Tahasildar. In this document, the name, husband's name, address of the patient was filled by the Tahasildar and he has stated the place of recording as S.S. Hospital, Davangere on 29.03.2017 from 10.50 p.m. to 11.25 p.m. The name and address of the patient once again is written by him. There are 14 questions in the questionnaire. The first question to be put to the injured is whether she was mentally stable and conscious, for which the answer to be given by the patient is to be recorded and



it should be in first person. But the Tahasildar himself has written it in a narrative state that patient was in a position to talk. The next question is whether she was able to talk and for which he has mentioned as ಹೌದು (Yes). Likewise, he has narrated the facts. Question No.6 is that who caused assault on her, for which she answered 'husband Basavaraju Belavagi'. Question No.7 is what is his name and address, for which 'Basavaraju S/o Gangappa Belavagi, Vambaramatturu' is written. Question No.8 is how the patient could identify him, for which the answer is written as 'by burn injuries'; The question No.9 is that how the injuries were sustained by her, for which she answered that 'burn injuries sustained by her and her husband poured kerosene upon her and lit her fire' and it is also in a narrative state and the 14th question is what was the intention behind the assault, for which it is also in a narrative state that, only by suspecting her character an attempt was made to kill her. Thus, the question and answers in first person are not recorded. The Tahasildar at



his whims and fancies has recorded this dying declaration. Preferably, the dying declaration before commencement and at the end of the recording, there shall be certificate from doctor that the patient is in a fit state of mind to give statement; if the doctor is available. But in this dying declaration, no such endorsement either in the beginning or in the end is forthcoming, even though, the dying declaration is recorded in the hospital.

48. As discussed above, in Ex.P.36, the reason is mentioned that by suspecting the character, an attempt was made to kill the patient. However, in the evidence, this P.W.16 has deposed that her husband lit fire upon her because if she is alive she would always demand money from him and by abusing her, he poured kerosene and lit fire upon her. the above evidence given by the Tahasildar is contrary to question No.14 of Ex.P.36 as discussed above. Only based on some history given by the police to record statement, the Tahasildar has given evidence at his whims and fancies. Even though he was cross-examined on this



point pinpointing the mistake committed by him, the Tahasildar has not stated that such statement was not given before him. He has not deposed that the incident has taken place suspecting victim's character. These facts establish that the Tahasildar has casually recorded the statement of victim without following due procedure to record the dying declaration.

49. It is to be noted here that at the time of recording the dying declaration, except the Tahasildar and if required his assistant, no one shall be present apart from the doctor. However, in the instant case, admittedly the doctor was not at all present at the time of recording this dying declaration by P.W.16. On the other hand, along with this P.W.16, his assistant, the police officer and one more person were present at the spot as clearly identified by him in photographs as per Exs.P.17 and P.18. Even though these photographs are not accompanied with certificate under Section 65-B of the Evidence Act, 1872, they are against the case of prosecution and furthermore he has specifically



deposed about those photographs. Furthermore, the Tahasildar has not at all seen the patient. One curtain was put by the side of patient and after that curtain; this Tahasildar was standing and recorded the statement which is definitely not in accordance with law. The Tahasildar has not examined the hospital records and not consulted the doctor about the mental state of mind of deceased, but casually recorded her statement.

50. The above facts reveal that dying declaration of the victim recorded by the Tahasildar is not at all in accordance with the procedure contemplated under law.

51. Always, dying declaration is to be considered as a piece of evidence and if it is established that it is recorded in accordance with law, then, that can be the sole ground to convict the accused because the general principle is that when the party is at the point of death and when every hope of his world is gone and when every motive to falsehood is silent and the mind is inducted by most



powerful consideration to speak the truth, a situation so solemn and so awful as considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a court of justice.

52. Thus, before recording the dying declaration, there are several principles to safeguard, to see that the dying declaration was recorded in a proper manner and whether really the patient has given such dying declaration is the main fact to be decided. Hence, always several principles are laid down to accept the dying declarations. The first and foremost is, that the person who is recording the dying declaration with doctor alone must be present at the spot and all relatives should be sent out of the situation. But in the instant case, according to the case of prosecution, sister of deceased was all along present at the time of recording the statement of victim by police. The said statement is nothing but in a narrative form and as discussed above P.W.17 has narrated the statement and P.W.14 has written it and according to P.W.14 and P.W.17,



it is the statement given by victim, which is not believable one for the reasons stated above.

53. The second dying declaration is not at all dying declaration in the eye of law. Even though, it is recorded in the question and answer format, the Tahasildar made it a narrative form and furthermore the doctor was not at all present at the time of recording it and there is no endorsement regarding the fit mental state of the patient.

54. In this regard, the Hon'ble Apex Court in the case of **Nallapati Sivaiah vs. Sub-Divisional Officer, Guntur, Andhra Pradesh** reported in **(2007) 15 SCC 465** has laid the following foundations:

"20. There is a historical and a literary basis for recognition of dying declaration as an exception to the hearsay rule. Some authorities suggest the rule is of Shakespearian origin. In The Life and Death of King John, Shakespeare had made Lord Melun utter "Have I met hideous death within my view, retaining but a quantity of life, which bleeds away, ... lose the use of all deceit" and asked, "Why should I then be false, since it is true that I must die here and live hence by truth?" William



*Shakespeare, The Life and Death of King John, Act 5,
Scene 4, lines 22-29.*

Xxx

xxx

xxx

22. *It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth. This Court in more than one decision has cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.*

23. *It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be the last to give untruth as he stands before his creator.*



24. *There is a legal maxim "nemo moriturus praesumitur mentire" meaning, that a man will not meet his Maker with a lie in his mouth. Woodroffe and Amir Ali, in their Treatise on Evidence Act state:*

"when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with".

25. *The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures."*

(Emphasis supplied)

55. The Hon'ble Apex Court in the case of **Bhajju alias Karan Singh vs. State of Madhya Pradesh** reported in **(2012) 4 SCC 327**, has laid down the following principles:

"23. The "dying declaration" essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of



impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.

Xxx

xxx

xxx

26. The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. ..."

56. As discussed above, such due care and caution was not at all taken in this case at the time of recording either Ex.P.11 or Ex.P.36.

57. Learned Additional SPP relied on the following paras of judgment of Hon'ble Apex Court in ***Rakesh and Another vs. State of Haryana*** reported in ***(2013) 4 SCC 69***.

"10. *It is not in dispute that the deceased Kailash sustained burn injuries at the house of the accused Rakesh where they were living for about eight years. The incident*



occurred at 11.00 p.m. on 14-5-1998 and she was admitted in the hospital on 15-5-1998 at about 1.30 a.m. It is also not in dispute that the deceased was under the supervision of the doctors as well as the accused Rakesh till 10.00 a.m. on 16-5-1998.

11. *Now, let us consider the dying declaration, its contents, and the procedure followed while recording the same. It is seen that after knowing the condition of the deceased, the police requested Ms Shalini Nagpal, the Judicial Magistrate, First Class, Rohtak (PW 10) for recording her statement. It is further seen that before recording her statement, the Magistrate (PW 10) asked for the opinion of the duty doctor about her condition whether she was fit to make a statement. The record shows that after obtaining the opinion of the doctor, all the police officials and relatives were directed to leave the ward. Dr Raman Sethi (PW 6) explained to the patient that she is deposing before the Magistrate and apprised that she is free to make her statement voluntarily without any fear or pressure. After satisfying her position to make a statement, the Magistrate (PW 10) recorded the statement of the deceased. It reads as follows:*

"Q: How many years have passed to your marriage?

Ans: 8 years.

Q: How many children have you?

Ans: Four.

Q: On which day the incident took place?

Ans: The quarrel was continuing for the last 15 days.

Q: On the night of last Thursday at 11.00 p.m. what happened with you?



Ans: My husband used to say as to why I did not bring money in the marriage of my sister. He used to demand money from my father. My mother-in-law Ram Piari and father-in-law Siri Ram used to harass/tease me for dowry. It was Thursday, my mother-in-law, devar (husband's younger brother) Lala were at home. My mother-in-law caught hold of my hand and my husband set me on fire with matchstick after sprinkling kerosene oil. My devar came afterwards, when I was set on fire. My husband gave beating to me and set me ablaze. Then my husband put his leg on my neck and I was beaten up mercilessly. After that my father-in-law came, but he did not set me on fire. My husband, mother-in-law and father-in-law brought me to the hospital.

Q: Do you want to say anything else?

Ans: No.

(Right great toe impression of patient) sd/- JMFC (D)

RO&AC.

Patient remained fit and conscious during the statement

*Sd/-in English
Dr. Raman Sethi, PG Surg 5/IV"*

58. In the aforesaid case, due care and caution was taken and the said statement was recorded in a question and answer form and only after knowing the condition of the state of mind of deceased, police requested the Judicial Magistrate of First Class to record the statement and the



Judicial Magistrate of First Class has recorded the statement after obtaining the opinion from doctor about her condition. However, those precautions are absent in this case as discussed above in respect of Ex.P.36. Hence, the principles of recording dying declaration are not at all followed in the present case.

59. Learned Additional SPP would submit that the case-sheet reveals that patient was conscious on 29.03.2017.

60. On perusal of the case sheet, on 29.03.2017 at 08.30 a.m. it is noted that patient was conscious. However, the statement was recorded at 07.00 p.m. and 10.55 p.m. Thus, this case sheet is not sufficient to say that patient was conscious at relevant point of time and was in a fit state of mind to give her statement. Furthermore, her pulse rate and BP was low from the day of admitting to the hospital i.e., 90/60 and she came to the hospital with the history of burn injuries while cooking.



61. Ex.P.33 contains hospital case-sheet records. In the said records, it is stated that BP was not recordable when she was brought to the hospital. On 28.03.2017 and 29.03.2019 the BP was 90/60. Her face was completely burnt. There was history of difficulty in breathing on 28.03.2017. There is no material to show that afterwards the patient recovered and was in a position to give her statement.

62. Under these circumstances, the genuineness of Ex.P.11 and Ex.P.36 is doubtful. Thus, they are not sufficient to hold the accused guilty of the offence under Section 302 IPC.

63. It is the case of prosecution that after pouring kerosene oil and lit fire upon victim/deceased, accused concealed the kerosene oil can in a wooden box in his house. After his arrest, he has given his confession statement that He would produce the same if he is taken to his house. Based on said confession statement,



Investigation Officer has recovered M.O.1-kerosene oil can from the wooden box which was kept in the house of accused. In this regard, there are some photographs and panchanama as per Ex.P.6 in presence of P.W.2 and P.W.3.

64. In this regard P.W.3 in his examination-in-chief has supported the case of prosecution. But, in the cross examination deposed that he does not know anything about the said panchanama and he put his signature to it without knowing its contents. Ex.P.3 to P.5 are the photographs taken at that spot at the time of alleged recovery of can.

65. It is to be noted here that always confession statement of an accused is inadmissible in law as per Section 24 of the Indian Evidence Act, 1872. But, when any recovery is made based on said confession statement, then only that portion is admissible in law under Section 27 of the Indian Evidence Act. Hence, confession statement of the accused of that portion is admissible in law.



66. In this regard, learned counsel for accused, relied on the judgment of Hon'ble Apex Court, in Criminal Appeal No.3343/2005 dated 05.08.2025, wherein their Lordships have relied upon judgment of Hon'ble Apex Court in the case of ***Faddi Vs. State of Madhya Pradesh***, reported in ***1964 SCC Online SC 123***. Paragraph No.21 reads as follows:

21. In Faddi (supra), the issue before this Court was whether the FIR lodged by the accused himself therein was admissible in evidence. In the facts of the said case, this Court held that the objection to the admissibility of the FIR lodged by the appellant was not sound, as the FIR only contained a few admissions, and those admissions did not amount to a confession so as to render the entire FIR inadmissible in evidence. We quote the relevant observations made by this Court in Faddi (supra) as under:

"14. It is contended for the appellant that the first information report was inadmissible in evidence and should not have been therefore taken on the record. In support, reliance is placed on the case reported as Nisar Ali v. State of U.P [AIR 1957 SC 366]. We have considered this contention and do not see any force in it.



15. The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court viz. how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements' of the prosecution witnesses is correct or not. Admissions are admissible in evidence under Section 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.



16. *The Privy Council, in very similar circumstances, held long ago in Dal Singh v. King Emperor [LR 44 IA 137] such first information reports to be admissible in evidence. It was said in that case at p. 142:*

"It is important to compare the story told by Dal Singh when making his statement at the trial with that what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jubbulpur. As such the statement is proper evidence against him....

It will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh."

Learned counsel for the appellant submits that the facts of that case were distinguishable in some respects from the facts of this case. Such a distinction, if any, has no bearing on the question of the admissibility of the report. The report was held admissible because it was not a confession and it



was helpful in determining the matter before the Court.

17. In Nisar Ali case [AIR 1957 SC 366] Kapur, J. who spoke for the Court said, after narrating the facts:

"An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act, or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, not to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression 'it cannot be used as evidence against the maker at the trial if he himself becomes an accused' supports the appellant's contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in



*the nature of a confession by the maker thereof. Of course a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused. Further, the last sentence of the above quoted observation is significant and indicates what the Court meant was that the first information report lodged by Qudratullah, the co-accused, was not evidence against Nisar Ali. This Court did not mean — as it had not to determine in that case — that a first information report which is not a confession cannot be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provisions of that Act. We find also that this observation has been understood in this way by the Rajasthan High Court in *State v. Balchand* [AIR 1960 Raj 101] and in *State of Rajasthan v. Shiv Singh* [AIR 1962 Raj 3] and by the Allahabad High Court in *Allahdia v. State* [1959 All LJ 340] .*

18. We therefore hold that the objection to the admissibility of the first information report lodged by the appellant is not sound and that the Courts below have rightly admitted it in evidence and have made proper use of it.”

(Emphasis supplied)

67. In the same judgment, Judgment of apex court in **A. N. Venkatesh & Anr. v. State of Karnataka**, reported



in **(2005) 7 SCC 714**, was relied at paragraph No.35, which reads as follows:

*"In the aforesaid context, our attention was drawn to a decision of this Court in the case of **A. N. Venkatesh & Anr. v. State of Karnataka**, reported in **(2005) 7 SCC 714**, which states thus:*

"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (UT of Delhi) [Prakash Chand v. State (UT of Delhi), (1979) 3 SCC 90 : 1979 SCC (Cri) 656] . Even if we hold that the disclosure statement made by the appellant-accused (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

(Emphasis supplied)



68. Thus, the confession statement of accused alone cannot be a basis for convicting the accused.

69. As discussed above, the photographs produced in this case are not at all accompanied with certificate as required under Section 65-B of the Indian Evidence Act, 1872 and the CDs are also not produced. Hence, these photographs are not admissible in law. Hence, only based on the evidence of P.W.3 who half heartedly supported the case of prosecution, it cannot be said that accused has shown M.O.1-Can and it is recovered at his instance by the Investigating Officer.

70. In this regard, learned counsel for the accused also relied on the judgment of Hon'ble Supreme Court in the case of ***Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, Andhra Pradesh*** reported in ***(2007) 15 SCC 465*** and ***Bhajju alias Karan Singh V. State of Madhya Pradesh*** reported in ***(2012) 4 SCC 327***.



71. In the instant case also as discussed above, two dying declarations given by the deceased are not at all admissible in law. However, the learned Sessions Judge has not examined these aspects in a proper manner and convicted the accused. The oral evidence of P.W.6 and P.W.7-the sister and brother-in-law of deceased, P.W.9-mother of the deceased, P.Ws.8, 10 to 12, the neighbour's is not sufficient to hold guilt of accused. The mother of deceased P.W.9 has deposed that she was neighbour, she has taken the child from the house without making any efforts to rescue her own daughter by pouring water or doing anything itself creates grave suspicion about her presence at the spot.

72. P.W.9 is the mother of deceased and even though, her priority would be on her grandson, the mother would not go away from the spot without making any efforts to put off the fire or without making any efforts to take the daughter to the hospital. Hence, her evidence is not sufficient to hold the guilt of deceased. As far as P.W.6 and



P.W.7 are concerned, as discussed above, they have not at all supported the case of prosecution.

73. P.W.8, P.W.10, P.W.11 and P.W.12 are neighbours and owner of the house of deceased and accused also not deposed anything about they have seen the accused pouring the kerosene oil or lighting the fire or they putting off the fire. Hence, their evidence is insufficient to prove the guilt against accused.

74. The remaining witnesses-P.W.1 to P.W.5 are spot, panchanama, seizure panchanama and inquest panchanama witnesses. The remaining evidence is the evidence of official witnesses i.e., the doctor, the police officers, Tahsildar and their evidence is already discussed in length.

75. The above discussion clearly and categorically establishes that the dying declaration recorded in this case is not admissible in law.



76. While recording the dying declaration, the police officers or the doctors or the Tahsildar have to take care of several aspects which are not forthcoming in the present case.

77. In paragraph No.62 of the Criminal Appeal No. 825-826/2022, the Hon'ble Apex Court has given the precautions to be followed while accepting or rejecting dying declaration. It reads as follows:-

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:

-

- (i) *Whether the person making the statement was in expectation of death?*
- (ii) *Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"*



- (iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*
- (iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*
- (v) Whether the statement was not recorded properly?*
- (vi) Whether, the dying declarant had opportunity to clearly observe the incident?*
- (vii) Whether, the dying declaration has been consistent throughout?*
- (viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?*
- (ix) Whether, the dying declaration was itself voluntary?*
- (x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*
- (xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

78. It is the duty of prosecution to establish the charge against accused beyond reasonable doubt. Always



the benefit of doubt must go in favour of accused. The dying declaration is a substantive piece of evidence to be relied on, provided it is proved that the same was voluntary and truthful and victim was in a fit state of mind. It is just not enough for the Court to say that the dying declaration is reliable as the accused is named in that dying declaration and to convict him. In cases where the suspicion arises, then, it is not safe to record conviction based on the dying declaration like in the present case.

79. The rule of benefit of doubt does not imply a frail willow bending to a very whiff of hesitancy. Judges are made to sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. By applying this principle, we have a doubt as regards the complicity of the accused-convict in the present case. Hence, we hold that prosecution failed to prove the offence under Section 302 IPC against accused. Thus, the point No.2 is answered in **Negative.**

80. Hence, we proceed to pass the following:



ORDER

Appeal filed under Section 374(2) Cr.P.C. is ***allowed*** by setting aside the judgment and sentence dated, 05.09.2019 and 07.09.2019 passed in S.C. No. 72/2017 On the file of II Additional District and Sessions Judge at Haveri (Sitting At Ranebennur) except confirming the grant of compensation to minor son of deceased.

Accused is acquitted for the offences punishable under Sections 498-A and 302 IPC.

His bail bond shall be in force for 6 months.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

HMB- Upto para 5,
RKM-para 6 to 18
SH-para 19 to 53
HMB-54 to end
CT:PA
LIST NO.: 1 SL NO.: 13