

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 1234 OF 2005

MOHAMMED ASHFAK SYED KHALANDER

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With appln(s) for c/delay in filing SLP and exemption from filing O.T. and permission to file additional documents and with office report)

Date: 15/02/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s) Ms. Subhadra Chaturvedi(A.C.)(N.P.)

For Respondent(s) Mr. Gurudatta Ankolekar, Adv.
Mr. V.N. Raghupathy, Av.
Mr. Sanjay R. Hegde,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal fails and it accordingly stands dismissed in terms of the signed order.

(DEEPAK MANSUKHANI)
Court Master

(RENUKA SADANA)
Court Master

(The signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1234 OF 2005

MOHAMMED ASHFAK SYED KHALANDER

Appellant (s)

VERSUS

STATE OF KARNATAKA

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O R D E R

The sole appellant in this appeal alongwith two others were tried for the offence punishable under Section 302 IPC for committing the murder of deceased Tabassum who was none other than the wife of the appellant. The incident happened at about 9.00 a.m. on 1.3.1999 when the victim Tabassum was preparing tea in the kitchen. The appellant addicted to bad habits picked up a quarrel with the deceased and after abusing her, poured kerosene and set her on fire. The dress of the deceased (M.Os 1 to 3) caught fire and consequently the deceased suffered 35% burn injuries over her body. She was shifted to the nearest nursing home and admitted therein by PW 13 Doctor who was a family Doctor of the appellant and the deceased. At that time, the appellant was not in a position to state anything about the incident. On the next day, i.e. on 2.3.1999 at about 12.00 noon, the victim regained her consciousness. In the meanwhile, after the admission of the victim in the hospital, the accused no. 2 informed PW 1 and 2 over the phone about the incident. Thereafter,

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PW 1 and 2 rushed to the hospital where the victim was admitted and found the burn injuries on the body of the victim. On regaining her consciousness, she told PW 1 and 2 that the appellant poured kerosene on her and set her on fire.

On receiving information over the telephone, PW 10 PSI came to the nursing home at about 6.00 p.m. on 2.3.1999 and recorded the statement of injured victim as Exhibit P-12. PW 10 PSI before commencing the recording of the statement gave requisition to PW 13 the Doctor to get opinion as to whether the victim was in a fit condition to give the statement. On the very same requisition, the Doctor PW 13 has made an endorsement that the victim Tabassum was in a fit condition to give her statement. Another dying declaration was also recorded as per Exhibit P-10 but the prosecution did not place any reliance upon the same.

The Trial Court as well as the Appellate Court relying upon the dying declaration of the victim under Exhibit P-12 found the

appellant guilty for the offence punishable under Section 302 IPC and accordingly convicted him and sentenced him to undergo R.I. for life for the said offence.

The only question that arise for our consideration is whether

the Courts below committed any error in relying upon the dying declaration Exhibit P-12 and other attending circumstances which

corroborate the dying declaration.

It is clear from the record that

the dying declaration-Exh. P-12 was recorded by PW 10 PSI as the

complaint of the victim.

It is on the basis of the said statement

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that the case was registered. Before recording the dying

declaration, PW 10 PSI gave written requisition to the Doctor PW 13

and sought the opinion as to whether the victim was in a fit

condition to make the statement. The Doctor PW 13 made an

endorsement vide Exhibit P-11(a) that the victim was in a fit

condition to make the statement.

It is only thereafter PW 10 PSI

recorded the dying declaration.

The evidence on the record suggests

that there was no time gap between the regaining of the consciousness

of the victim and recording of the dying declaration. In the s

aid

dying declaration, the victim in categorical terms stated that it is

the appellant who poured the kerosene, on that fateful day, on her

and set her on fire.

The Trial Court upon appreciation of the evidence and the High

Court upon re-appreciaton of evidence available on record came to the

right conclusion that there is no valid and justified reason to

disbelieve Exhibit P-12 Dying Declaration.

The dying declaration

itself contains the statement of the victim that the appellant used

to frequently quarrel with her and the victim had informed her

parents about the same.

It is in the evidence of PW 1 that the

appellant and his brother and mother assured them and the victim that the appellant will not indulge in such harassment of the victim.

It is in the dying declaration that, on the fateful day, at about 9.00 a.m. when the victim was preparing tea the appellant came to the kitchen and started abusing her. Thereafter, by saying that she will be burnt to death, he poured the kerosene on her and set her on fire. He appears to have made an attempt to extinguish the fire but by the time, the victim received serious burn injuries on both the legs and

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hands. This dying declaration Exhibit P-12 was recorded by PSI PW 10 right in the presence of Doctor PW 13. PW 10 PSI in his evidence clearly stated that the victim was in a perfect mental condition to make the statement. This fact is corroborated by the endorsement made by the Doctor PW 13.

There is no dispute whatsoever that the victim died on account of burn injuries and it is clear from the post mortem report and the evidence of the Doctor PW 12. The post mortem report and the evidence of PW 12 and 13 the Doctors, suggests that the victim received injuries mostly on the legs arms and the upper portion of the body. The head, face and other vital parts of the body remained untouched by fire and in the circumstances, it cannot be said that the victim was not in a fit condition to make the dying declaration.

In our considered opinion, the Trial Court and the Appellate Court upon proper appreciation and reappraisal of the evidence came to the right conclusion and found the appellant herein to be guilty of the charge framed against the offence punishable under Section 302 IPC. We find no error to have been committed by the courts below requiring our interference.

The appeal fails and it accordingly stands dismissed.

.....J.
(B. Sudeshan Reddy)

.....J.
(Surinder Singh Nijjar)

NEW DELHI
FEBRUARY 15, 2011