

**REPORTABLE**

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 2432 OF 2010

SUBRAMANI**... APPELLANT****VERSUS****STATE OF KARNATAKA****... RESPONDENT****J U D G M E N T****PANKAJ MITHAL, J.**

1. The appellant - Subramani and the deceased Chennamma were husband and wife. They were married for seventeen years before the date of the incident. They had two daughters and two sons. The eldest daughter was aged about sixteen years at the relevant time. They had lived a happy married life for about three years. Thereafter, their relations became strained, and it

is alleged that the appellant started ill-treating the deceased and kept on raising demands for money, which the father of the deceased fulfilled most of the time. The appellant had even started treating her with cruelty.

- 2.** On the night of 20.07.2000, the appellant and the deceased as usual again picked up a quarrel. The appellant, in anger, went out and fetched some kerosene. The kerosene was poured on the deceased in a bathroom, the appellant lit a candle and threw it upon her, causing serious burn injuries. The appellant, after burning her, left the house. On the alarm raised by the deceased, the neighbours came and tried to save her. They doused the fire by pouring water. The deceased was taken to the Victoria Hospital by the neighbours and the mother of the appellant. She was admitted at around midnight and died after three days on 24.07.2000 in the hospital due to severe burn injuries received by her.
- 3.** An FIR No. 194 of 2000 under Section 302 and Section 498A of the Indian Penal Code¹ was lodged by the father of the deceased

¹ For short, 'IPC'

on 24.07.2000 after she had died. The police inspector Shiva Murthy, upon investigation submitted a chargesheet against the appellant for committing offences punishable under Section 498A and 302 IPC.

4. The appellant was put to trial. The Trial Court acquitted him primarily on the ground that the bathroom where the incident took place was very small where two persons could not have been accommodated. The testimonies of the family witnesses were inconsistent and unreliable. The medical evidence suggested that deceased had received more than 80 to 90 percent burn injuries and as such she may not be in a mental state to depose or state anything either to the doctor or the police. The dying declaration, if any, was therefore unreliable.
5. On an appeal by the State to the High Court, the Division Bench reversed the judgment and order of the Trial Court. The acquittal was set aside, and the appellant was convicted under both the above provisions. He was sentenced to two years of simple imprisonment along with fine of Rs.2,000/- and in default in payment of the same, with a further three months of

simple imprisonment under Section 498A. He was also convicted under Section 302 IPC for killing the deceased and was sentenced to life imprisonment and a fine of Rs.10,000/-, and in default, to undergo a further one month of simple imprisonment.

6. Aggrieved by the aforesaid conviction and sentence, the appellant preferred a Criminal Appeal under Section 379 of Cr.P.C which was admitted on 13.12.2010 after the delay in filing the same was condoned. Thus, the appeal is before us for consideration as to whether the appellant is guilty of the offences under Section 302 and 498A of IPC and whether the sentence awarded to him is justified.
7. We have heard Shri Shekhar G. Devasa, learned senior counsel for the appellant-Subramani and Shri Sanchit Garga, Advocate on record for the respondent-State of Karnataka.
8. Learned senior counsel for the appellant argued that the High Court was not justified in interfering with the order of acquittal passed by the Trial Court, more particularly when the acquittal had been recorded on cogent and valid reasons after considering

every piece of the evidence on record. It was submitted that apart from the inconsistencies in the statements of the material witnesses, particularly PW-7 and PW-16, who categorically stated that the deceased was unconscious and not in a position to speak, there was no credible evidence to prove that the appellant had committed the offence as alleged. It was also submitted that the prosecution failed to prove any motive for homicidal death. It was inherently improbable that the offence could have been committed inside the small bathroom, and that no independent neighbour was examined to prove the commission of the offence. The alleged dying declaration was unreliable, as it was unsupported by any medical certificate and stood contradicted by hospital documents, which record a history of self-inflicted burns. Furthermore, the deceased had admittedly received more than 80 to 90 percent burn injuries and was under heavy sedation. She was not in a position to make any statement. Therefore, the conviction based upon the alleged dying declaration of the deceased was wholly illegal.

- 9.** There is no dispute as to the fact that the parties were married 17 years prior to the date of the incident and that there used to be frequent quarrels between them with regard to money. It has also come on record through evidence that the appellant used to beat and treat the deceased with cruelty. There were regular demands for money by him. The aforesaid facts and the evidence clearly establish that the appellant was not a satisfied man who suffered from frustration and as such had a motive to kill the deceased.
- 10.** The testimony of PW-3, Niresha, the eldest daughter of the appellant and the deceased who was aged about 16 year is very crucial and material. She had clearly deposed that on the fateful night, she, her mother, sister and brothers were in their house. Her father came and questioned the mother that when he had sent her to her paternal home to get money, why she had sent her father to counsel and advise him. Thus, they picked up a quarrel and her father threatened her mother to wait and see what he was going to do. He went out and brought kerosene, poured it on her mother and set her on fire. This was done at

around 11:00 p.m. in the night and thereafter, he ran away from the house. On the screams of her mother, the neighbours came and extinguished the fire. Her grandmother and one another person took her mother to the hospital in the burnt state. Her mother remained in the hospital for three days, undergoing treatment, and thereafter, she died.

- 11.** The aforesaid witness PW-3 is an eyewitness. She has narrated the incident as was seen by her. There is no inconsistency in her statement and there is no reason to disbelieve her. There is no material on record to show as to why she would falsely depose against her father. Her evidence clinchingly proves that the appellant brought kerosene, poured it on her mother and lit the fire.
- 12.** The other crucial witness in the case is PW-4, Dr. S. Rudramurthy who had conducted the post-mortem upon the deceased. He categorically stated that the death occurred due to septicaemia as a result of burn injuries sustained by her. He proved the postmortem report 'Exhibit P-2' and his signatures on it. He further stated that the burn injuries were antemortem

and were to the extent of 85 to 90 percent. He reported that septicaemia naturally occurs with such high burn injuries. He opined that the burn injuries received by the deceased were superficial in nature. He further opined that even if the deceased was given proper and best treatment, her chances of survival were minimal. Hence, the postmortem report and the statement of PW-4 as such establish that the deceased died of septicaemia as a result of 80-90% burn injuries which were superficial.

- 13.** There is another witness named Dr. Gurumurthy, whose statement was recorded as PW-10. He was the doctor who had treated the deceased after she was admitted in the Victoria Hospital, Bangalore. He stated that he was the in-charge of burns ward of the hospital. The deceased was brought to the hospital on 20.07.2000 at around 11.15 p.m. with a history of burns. She was admitted in the hospital at 12:00 midnight. According to the deceased, as informed to him, her husband used to quarrel with her frequently. On 20.07.2000, he came home at around 11.00 p.m., assaulted her and then poured

diesel over her, set her on fire and ran away. He stated that there is a note to the above effect in the case sheet as well. He had examined the deceased on 23.07.2000 and she made the said statement at around 12.30 p.m. on the same day. He even proved 'Exhibit P-11', the statement of the deceased and his signatures upon it. He further stated that the deceased was in hospital up to 24.07.2000 and expired at 9.35 a.m. on the said date.

- 14.** One doctor named Dr. HC Ramanna, PW-11, also treated the deceased when she was admitted to the Victoria Hospital. He stated that on 20.07.2000 while he was working in the aforesaid hospital, a patient by name Chennamma was brought to the hospital in a burnt state. He had examined the patient and had noticed that she had 9 per cent burns on the face and neck, 18 per cent burns on the chest and abdomen, 9 per cent on the upper right and left limbs, 10 per cent on the lower right and left limbs and that the total burns received by her were to the extent of 80 per cent. The patient was conscious when he had examined her. She was admitted by him to the burns ward. On

the morning of 21.07.2000 at about 02:45 am (i.e. in the night itself), the police of S.R. Nagar came to the hospital and requested him to give permission to record the statement of the patient. Since the patient was conscious and in a position to give the statement, he gave permission to the police to record her statement. The statement was recorded as Exhibit P-12 and he had made an endorsement on it under his signatures that the patient was in a fit condition to give a statement. He even proved the endorsement and his signatures on Exhibit P-12. In his cross-examination, nothing material turned up except that he admitted that in the OPD slip, it is mentioned that she herself had poured kerosene and had set fire to herself, but he does not know who recorded the said statement on the OPD slip/case sheet (Exhibit P-11). He further admitted that though according to his examination the burns were to the extent of 80 per cent but he does not know why the burns were recorded to be 98 per cent. He denied the suggestion that the endorsement on Exhibit P-12 was made by him to support the prosecution under any pressure.

- 15.** The aforesaid evidence of the two doctors who examined the deceased clearly proves that the deceased was admitted to the hospital as alleged on 20.07.2000 and that despite serious injuries, she was in a conscious state. The attending doctors have certified that she was in a fit position to make a statement and, therefore, permission was granted to the police to record her statement which is Exhibit P-12 which bear the endorsement and signature of the doctor. We see no reason to disbelieve the evidence of PW-4, PW-10 and PW-11.
- 16.** The dying declaration of the deceased was recorded by the Head Constable working in the SR Nagar Police Station. His statement was recorded as PW-15. He categorically stated that he had remained posted in the aforesaid police station from 1997 to May, 2003 meaning thereby that he was posted at the aforesaid police station at the time the alleged incident took place and the deceased was taken and admitted to the hospital. He further stated that on the said date he was on night duty and at about 01:30 am, the Station House Officer having received information of the deceased being admitted in the hospital, had asked him

to go and record her statement. He as such reached the hospital at 02:00 am and met the doctor of the burns ward of the hospital. He informed him that he had come to record the statement of the deceased. The doctor after talking to the deceased for about two minutes informed him that the patient was in a position to give the statement. He permitted him to record the statement, whereupon he recorded her statement for about half an hour. The deceased put her thumb (LTI) on the statement recorded by him as she was not in a position to put her signatures. The statement was endorsed by the doctor who certified the condition of the deceased and signed the statement. He proved the statement Exhibit P-12, the endorsement and the certificate of the doctor and his signatures upon it.

- 17.** The translated copy of the statement (Exhibit P-12) was not placed before us, though the original in vernacular language exists in the record. The same was proved by PW-15, as stated earlier. He stated that the deceased told him that she was married to the appellant and had lived happily with him for about 2-3 years but thereafter the appellant had started

quarrelling with her demanding her to bring more money from her parents. He started treating her cruelly by abusing and beating her. On 20.07.2000, he quarrelled with her and forced her to get more money from her parents. In the night, he again picked up a quarrel with her and assaulted her. He then abused her and even threatened to kill her. He poured kerosene on her body and set her on fire. At that time her four children were sleeping in the house and on hearing her cries, they went to their grandmother's house and called her.

- 18.** Considering the circumstances and the evidence of PW-3, PW-4, PW-10 and PW-11 coupled with the fact that there is no adverse material to doubt the above dying declaration or to suggest that it was not actually or properly recorded or that the deceased was not in a state to make such a statement, there is no reason to disbelieve the dying declaration.
- 19.** The fact that the aforesaid PW-15 admitted that there was no nurse present at the hospital when he recorded the statement, is not enough to belie the above dying declaration. The same was recorded in the night at about 02:00-02:30 am with the

permission of the doctor who has accepted having granted the permission on being satisfied that the deceased was in a fit state to make the statement. In the light of the above statements of the doctors and the police officer, the oral evidence of PW-7 and PW-16 that she was not conscious to give any statement, is not reliable. The deceased, may have been momentarily in an unconscious state due to the effect of sedatives, however, by and large, as the burn injuries were superficial, though to great extent, she was conscious most of the time and was in a fit state of mind to get her dying declaration recorded.

- 20.** This apart, the police had recovered a matchbox, a kerosene tin and burnt cloth pieces from the site of the incident immediately. The Recovery Memo was duly prepared in the form of Exhibit P-1. The said exhibit was proved by the PW-6, D. Rangaswamy, one of the neighbours who had visited the house of the deceased immediately on the occurrence of the incident. He has stated that the matchbox, kerosene tin and burnt cloths were lying at the scene, a *mahazar* was prepared on the spot and the aforesaid items were collected and seized by the police. He had

signed the *mahazar* prepared by the police which is before him as Exhibit P-1 and bears his signatures. He denied the suggestion that he was making a false statement.

- 21.** The fact of recovery of the kerosene tin, matchbox and burnt cloth pieces from the scene of the incident, the deposition of PW-3, the daughter of the appellant and the deceased that she had seen her father bringing kerosene tin, pouring it on her mother and putting her on fire, coupled with the dying declaration and the statements of the doctors PW-10, PW-11 who examined and treated the deceased and PW-4 who conducted the post-mortem, in unequivocal terms prove that the appellant alone is responsible for the commission of the aforesaid offences. He is the person who picked up quarrel with his deceased wife, poured kerosene and burnt her and that his wife died due to the burn injuries after consciously making a dying declaration and naming the appellant as the main culprit.
- 22.** In view of the above clinching pieces of evidence, there is hardly any scope for the acquittal of the appellant.

- 23.** The Trial Court was not justified in acquitting the appellant on slight discrepancies in the statements of some of the witnesses, particularly PW-7 and PW-16. PW-7 is a person who carried the deceased to the hospital and his statement is not very trustworthy. He has not deposed about her condition in the hospital. PW-16 is the police inspector who conducted the investigation. He might have deposed that the deceased was not in a conscious state of mind but that would not override the statement of the doctors who treated the deceased, especially the one who was on duty and had permitted the police to record the statement of the deceased on being satisfied that she was in a fit condition to make a statement.
- 24.** In view of the aforesaid facts and circumstances, we are of the opinion that the High Court is perfectly justified in the facts and circumstances of the case that the appellant is guilty of commission of offences both under Sections 498A and 302 IPC and has rightly been convicted and sentenced to the imprisonment awarded.

- 25.** The appeal, as such, is devoid of merit and is dismissed. The appellant is on bail. He is directed to surrender forthwith to undergo the remaining part of the sentence.
- 26.** Pending application(s), if any, stands disposed of.

.....**J.**
[PANKAJ MITHAL]

.....**J.**
[S.V.N. BHATTI]

NEW DELHI;
MARCH 17, 2026.