



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 1229 OF 2019

BETWEEN:

1. Ninganna
s/o Late Somappa,
Aged about 47 years,
Muddahalli Village,
Nanjanagud Taluk,
Mysuru - 571 302
2. Nagamma,
W/o Ninganna,
Aged about 42 years,
Muddahalli Village,
Nanjanagud Taluk,
Mysuru - 571 302
3. M.N.Prasada @ Parasi
S/o Ninganna,
Aged about 23 years,
Muddahalli Village,
Nanjanagud Taluk,
Mysuru - 571 302

...Appellants

(BY Sri. B.V. Pinto, Advocate for Sri. C.N. Raju, Advocate)

AND:

State by Nanjangud Rural Police,
Mysore, represented by SPP,
High Court of Karnataka at
Bangalore - 560 001

...Respondent

(By Sri: Vijaykumar Majage, SPP - II)





This Criminal Appeal is filed u/s.374(2) of Cr.P.C praying to set aside the judgment of conviction and order of sentence dated 05.04.2019 passed by the VII Additional Sessions Judge, Mysuru, in S.C.No.105/2017 - convicting the appellant/accused Nos.1 to 3 for the offence p/u/s 302 r/w 34 of IPC.

This Criminal Appeal coming on for final hearing this day, **Sreenivas Harish Kumar J.**, delivered the following:

JUDGMENT

The accused 1 to 3 who faced trial in S.C.105/2017 on the file of VII Additional Sessions Judge, Mysuru, for the offence under section 302 read with section 34 of IPC and have stood sentenced to life imprisonment and fine of Rs.15,000/- each, have preferred this appeal.

2. The incident that led to accused being prosecuted took place on 04.01.2016 around 5.30 p.m. The prosecution case is that Manjula, the wife of PW1, was suspected of having an affair with accused No.3, the son of accused 1 and 2. Accused 1 and 2 brought this to the notice of PW1 and asked him to advise his wife to discontinue the relationship with their son. Accused 1 and 2 appears to have quarreled with Manjula also. In this background all the three accused asked Manjula to come



to their house and when she went there, she was set on fire by the accused by pouring kerosene on her body. Manjula sustained 90 to 95% burn injuries. She died in the hospital on 11.01.2016.

3. The trial court found that the evidence brought on record by the prosecution proved the prosecution case beyond reasonable doubt. In spite of hostile evidence given by the eye witnesses, the trial court found that the circumstances pointed to the involvement of the accused and thus convicted and sentenced them.

4. We have heard the argument of Sri B.V.Pinto, learned advocate who argued on behalf of Sri C.N.Raju, learned advocate for the appellants and Sri Vijaykumar Majage, learned SPP-II, for the State.

5. It was the argument of Sri B.V.Pinto that the trial court has erred in holding the accused guilty of the offence under section 302 of IPC despite the fact that none of the eye witnesses supported the prosecution. PW1 was not an eye witness. Though the prosecution failed to prove its



case, the trial court proceeded to hold that defence failed to establish its case and drew adverse inference against the accused for not giving explanation when they were examined under section 313 of Cr.P.C. There was nothing to explain by the accused in as much as no incriminating evidence was brought on record. It is the clear evidence of the doctor that the deceased was not able to speak. For this reason her dying declaration was not obtained. History was given by somebody else. In Ex.P14 five names are written, but the doctor encircled all the five names and put a 'x' mark. The doctor has not given explanation for this. In a situation like this there was no scope for recording conviction. The impugned judgment is indicative of total non-application of mind by the trial court. In this view, the appeal deserves to be allowed and the accused, acquitted.

6. Sri Vijaykumar Majage highlighted the points that the prosecution was able to bring on record the reason for eye witnesses turning hostile. A panchayat had taken



place in the village and the accused agreed for paying money to PW1 and providing education to his son. This was the reason for hostility of the witnesses. It was not a case of suicide. The incident occurred in the house of the accused. Ex.P14 contains the history that the deceased was set ablaze by the accused. The accused should have explained as to how death of a person not belonging to their family took place in their house. In this view, if they did not offer any explanation, the only inference to be drawn is that they killed the deceased. Appeal is therefore devoid of merits and it is to be dismissed.

7. Now if we assess the entire evidence what we notice is – PW1, the husband of deceased Manjula, was not an eye witness. He has stated that one Madhu met him at 6.00 p.m and took him to the house of the accused where he saw his wife lying having sustained burn injuries. He found his wife not being able to speak. She was taken to Nanjangudu Hospital. He has stated that his left thumb impression was taken in the police station on a complaint.



Since he did not speak with regard to suspected illicit relationship between his wife and accused No.3, he was treated hostile partly and questioned by the public prosecutor. Even then he did not speak in favour of the prosecution and denied the suggestion that he suppressed the truth because of assurance given by the accused to look after the entire expenses of his son.

8. PW2, PW3 and PW4 are said to be the eye witnesses, but they did not support. The prosecution sought to prove from them that on 04.01.2016 they heard a yelling sound from the house of the accused and as they went to that place, saw the third accused holding the deceased, second accused pouring kerosene and the first accused lighting fire. Then they rushed to her rescue. These witnesses did not establish this aspect and in their cross-examination by the public prosecutor they also refuted the suggestion about a panchayat or a settlement to the effect that the accused should look after the entire educational expenses of the son of the deceased.



9. PW5 and PW6 are not the eye witnesses, what the prosecution tried to prove from them was that they heard shouting coming from the house of the accused and when they immediately rushed to that place they saw the body of the deceased completely burnt. When they enquired one Rajamma-CW10, they came to know that the accused set fire to the deceased suspecting the illicit relationship of the deceased with accused No.3. But they did not establish this aspect and just stated in the examination-in-chief that they saw the deceased being shifted to the hospital.

10. It was PW11-Dr.Vijaya Narasimha who examined the deceased first when she was taken to the hospital. He has stated that Nanjundaswamy, the brother-in-law of the deceased brought her to the hospital. He observed 90% burns all over the body. Then he sent MLC to the police station as per Ex.P14. The learned Judge of the trial court put court questions to this witness to ascertain the reason for putting cross mark after rounding of the names of



Nagamma, Ninganna, Parashi, Naveen and Nagendra. Doctor's answer is that he cannot remember the reason for putting cross mark.

11. PW7 is Nanjundaswamy whose name is mentioned by PW11 as the one who brought the deceased to the hospital. But the evidence of PW7 shows that he did not secure ambulance and he did not take the deceased to the hospital. Of course the evidence of investigating officer implicates the accused.

12. Now if the evidence is assessed, the eye witnesses have not at all supported the prosecution case. PW1 being the husband of the deceased also does not inculcate the accused and all that he has stated is when he went to the house of the accused he saw his wife having sustained burn injuries. The public prosecutor made a vain attempt to discredit the witnesses by giving a suggestion to them that they had been won over by the accused by giving an assurance that they would look after all the educational expenses of the son of the deceased and PW1.



In effect none of the prosecution witnesses has supported. There remains the evidence of PW11-the doctor who examined the deceased when she was brought to the hospital. The prosecution case itself is that deceased was not able to speak. According to PW11, the history was given by PW7, but the latter has not supported. Moreover in Ex.P14 five names are written and all these names are encircled and a cross mark is put. PW11 is unable to give any explanation for this. This being the situation there is no evidence staring at the accused.

13. The trial court has held that the accused should have given explanation to the incriminating materials brought on record against them. It is wondering as to what kind of incriminating materials are there on record to be explained by the accused. If section 313 statements of the accused are perused, the trial court has framed questions based on the evidence given by PW1, PW5, PW8, PW13 and PW14. It is already held that PW1 and PW5 have not supported. PW13 has stated that when he was



PSI of Nanjangudu Police Station he received first information and sent a requisition to the Tahsildar to record dying declaration, and conducted mahazar to seize certain articles. Question No.1 relates to registration of FIR. Mere registration of FIR does not result in conviction. The incriminating materials must appear in the substantive evidence brought before the court. In regard to the evidence of PW13 if the accused took a denial stand, no adverse inference can be drawn against them. The testimonies of the doctors are not incriminating, they have only spoken with regard to conducting of post mortem report and condition of the patient at the time of admission to the hospital. The trial court has placed reliance on many a case law on the concept of statement under section 313 of Cr.P.C, but it has failed to grasp the real object of section 313 of Cr.P.C. Though it observes that the prosecution witnesses have not supported, it has proceeded to hold that the defence ought to have proved its case which is against the principles of criminal



jurisprudence. It appears that the trial court has morally convicted the accused in the absence of legal proof.

14. Therefore from the above discussion we find that the impugned judgment cannot be sustained. Hence, the appeal is allowed. The impugned judgment dated 05.04.2019 passed by the VII Additional Sessions Judge, Mysuru, in S.C.105/2017 is set aside and the accused are acquitted of the offences charged against them. Accused 1 and 3 shall be set at liberty forthwith if they are not required in any other case. The bail bonds of accused No.2 shall stand cancelled.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

CKL
List No.: 1 Sl No.: 9