

(2011) 04 SC CK 0141
In the Supreme Court Of India
Case No : Criminal Appeal No. 29 of 2006

Gopal	Vs	APPELLANT
State of Karnataka		RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2011) AIRSCW 2684 : (2011) CriLJ 2894 : (2011) 4 KCCR 2781 SN : (2011) 3 KLJ 15 : (2011) 2 RCR(Criminal) 838 : (2011) 5 SCALE 119 : (2011) 5 SCR 501

Hon'ble Judges : V. S. Sirpurkar, J;T. S. Thakur, J

Bench : Division Bench

Advocate : Ram Lal Roy, for the Appellant; Gurudatta Ankolekar, Azeem Kalebudde and V.N. Raghupathy, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The Appellant - Gopal challenges his conviction u/s 302 I.P.C. in this appeal. The allegation against the Appellant-accused are that on 29.12.1998 at about 5 p.m., he poured kerosene on the body of his wife Mallavva and set her on fire. It has come in the evidence that Mallavva was immediately taken to the hospital by PW-8 Nagavva and PW-15 Sushila and she was treated by PW-5 - Dr. Noor Ahmed. PW-5 is said to have intimated to the police station on which PW-13 PSI Ravi came there and recorded her dying declaration. In that dying declaration, the deceased has clearly alleged that the accused used to drink liquor and quarrel with her. He also used to assault the deceased in a drunken state. On 29.12.1998, accused had given Rs. 200/- to her for purchase of ration. He immediately took back Rs. 100 out of Rs. 200/-. She purchased the ration of the remaining amount of Rs. 100/-. At about 5 p.m., on the same day, accused returned to the house and demanded Rs. 100/- from her. Thereupon, the deceased told the accused that she had already purchased the ration but the accused asked her to return the ration and get him Rs. 100/- back. On her refusal, the accused became angry and tied her hands and poured kerosene on

her body and set her ablaze. On 19.1.1999, Mallavva succumbed to the injuries.

2. We have heard learned Counsel appearing for the parties and gone through the record and judgments of the courts below.

3. We are convinced that the findings of the trial court as well as of the High Court that this dying declaration can be made the sole basis for the conviction of accused is a correct inference drawn by the courts below.

4. We have ourselves examined the dying declaration. What impresses us is that there is solely no explanation by the accused anywhere as to how the presence of kerosene has been found on the brassiere, saree and petti-coat of the unfortunate lady. We have seen the FSL Report - Exhibit P-25 for that purpose which endorses this fact. It is not the defence of the accused that the death was suicidal or accidental. There is nothing on record even to entertain such doubt. The presence of kerosene residue on the inner and outer garments provides strong corroboration of the version in the dying declaration.

5. It is true that the witnesses, who carried the deceased to the hospital, turned hostile during their examinations but that may not be an escape route for the accused because the man may lie but the circumstances do not. The circumstances in this case clinches the proof that it is the accused and accused alone who has committed this offence.

6. Mr. Ram Lal Roy, learned Counsel appearing for the accused pointed out that the investigating officer did not make any attempt to get recorded the second dying declaration of the deceased by a Magistrate. It is really true. It would have been better if the investigating officer had made an attempt to get recorded the second dying declaration of the deceased by a Magistrate. But, in our opinion, the dying declaration recorded by PW-13 and supported by PW-5 Dr. Noor Ahmed and the endorsement made by him to the effect that the deceased was in a fit mental condition to depose before the police convinces us that the dying declaration itself was a good dying declaration and could have been acted upon.

7. We find no merit in this appeal. It is, accordingly, dismissed.