

STATE OF KARNATAKA
v.
KHATU @ HANUMANTHARAYA

JULY 9, 2007

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Penal Code, 1860; Ss. 302 and 304 Part-II:

Murder—Accused setting his brother-in-law on fire causing his death—Dying declaration—Trial Court found him guilty of committing the crime u/s. 302 IPC and sentenced him accordingly—Conviction of the accused altered to S.304 Part-II by the High Court—On appeal, Held: High Court found that the accused had knowledge that by setting the deceased on fire, he had committed the crime that would result in the death of the deceased—Under the circumstances, High Court was not justified in altering the conviction of the accused from s.302 IPC to s.304 Part-II IPC without assigning any reasons therefor—Hence, order of the High Court unsustainable, thus, set aside.

The question which arose for consideration in these appeals was that in the facts and circumstances of the case, after believing the dying declaration and statements of the witnesses, whether the High Court was right in altering conviction of the accused from s.302 IPC to s. 304 Part-II IPC.

Allowing the appeals, the Court

HELD: 1.1. The dying declaration goes to show that the accused got wild when the deceased questioned his wife who is the sister of the accused. The High Court found that there was no pre meditation to kill the accused and on seeing the admonition the accused lost control and chased the deceased and set him on fire by pouring kerosene on him; and that the accused had knowledge that his action would definitely end up in the death of the deceased. On these observations the High Court held that the case was covered under Section 304 Part-II IPC and not under Section 302 IPC.

[Para 4] [191-B, C]

1.2. The order impugned is very confusing, does not disclose application

A of mind and it is not clear as to why the High Court felt that the case is covered under Section 304 Part II IPC and not under Section 302 IPC. Since practically no reason has been indicated to justify the conclusion, the order of the High Court is clearly unsustainable and, thus, set aside. The respondent is convicted and sentenced to rigorous imprisonment for life.

[Para 5] [191-D, E]

B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 995-996 of 2002.

C

From the Judgment & Order dated 20.3.2001 of the High Court of Karnataka, Bangalore, in Criminal Appeal Nos. 544/1998 & 330/1998.

Sanjay R. Hedge, Anil K. Mishra and Amit K. Chawla for the Appellant.

K. Sarada Devi for the Respondent.

D

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment rendered by a Division Bench of the Karnataka High Court. By the impugned judgment while believing the evidence of witnesses and the dying declaration recorded, the High Court was of the view that the conviction of the accused respondent was one punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') and not under Section 302 IPC. Since the evidence of the witnesses and the dying declaration have been accepted the only question that remains to be considered is whether the High Court was justified in holding that the case related to Section 304 Part II and not Section 302 IPC.

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2. The State of Karnataka questions correctness of the judgment. Learned counsel for the respondent supported the impugned judgment.

3. The only reason indicated by the High Court is as under:

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"The entire narration at Ex.P.10 would point out that the accused got wild when the deceased questioned his wife, who is the sister of the accused. This shows that there is no pre-mediation or a motive for the accused to kill the deceased. On seeing the admonition the accused lost control and chased his brother-in-law. But by doing this, he had the knowledge that this action would definitely end up in the death of his brother in law. The knowledge of his action is clearly established

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from the material on record. Therefore, the offence do not fall under Section 304 IPC i.e. culpable homicide amounting to murder, but it is an offence falling under Section 304 Part II IPC.” A

4. The reasoning of the High Court is patently erroneous and does not disclose the application of mind. It is not conceivable as to why the person would chase another who had not committed any wrong to him and then set him on fire. The dying declaration goes to show that the accused got wild when the deceased questioned his wife who is the sister of the accused. The High Court found that there was no pre meditation to kill the accused and on seeing the admonition the accused lost control and chased the deceased and set him to fire by pouring kerosene on him. The High Court was of the view that the accused had knowledge that his action would definitely end up in the death of the deceased. On these observations the High Court held that the case was covered under Section 304 Part II IPC and not under Section 302 IPC. B C

5. The order impugned is very confusing, does not disclose application of mind and it is not clear as to why the High Court felt that the case is covered under Section 304 Part II IPC and not under Section 302. Since practically no reason has been indicated to justify the conclusion the order of the High Court is clearly unsustainable. We set aside the order of the High Court. The appeals are allowed and the respondent is convicted and sentenced for rigorous imprisonment for life. D E

S.K.S.

Appeals allowed.