

GOPAL  
v.  
STATE OF KARNATAKA  
(Criminal Appeal No. 29 of 2006)

APRIL 19, 2011

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

*Penal Code, 1860: s.302 – Conviction under – Allegation that accused-husband poured kerosene on the body of his wife and set her on fire – Dying declaration recorded by police officer and endorsed by the doctor to the effect that victim was in a fit mental condition to depose before the police – Conviction by courts below, on the basis of dying declaration – Justification of – Held: Justified – The dying declaration was rightly made the sole basis for the conviction of accused – There was no explanation by the accused anywhere as to how the presence of kerosene was found on the inner and outer garments of his wife – FSL Report endorsed the said fact – It was not the defence of the accused that the death was suicidal or accidental – The circumstances clinched the proof that it was the accused alone who committed this offence – Evidence – Dying declaration.*

**The prosecution case was that the appellant poured kerosene on the body of his wife and set her on fire. The victim was rushed to hospital. The doctor, PW-5 intimated the police station. The police officer, PW-13 recorded the statement of the victim. After few days, the victim succumbed to the burn injuries. The trial court convicted the appellant under Section 302 IPC. The High Court upheld the same. The instant appeal was filed challenging the conviction.**

**Dismissing the appeal, the Court**

**A HELD: 1. The findings of the trial court as well as of the High Court that the dying declaration can be made the sole basis for the conviction of accused is a correct inference. There was no explanation by the accused anywhere as to how the presence of kerosene was found**

**B on the brassiere, saree and peti-coat of the unfortunate lady. The FSL Report endorsed this fact. It was not the defence of the accused that the death was suicidal or accidental. There was nothing on record even to entertain such doubt. The presence of kerosene residue**

**C on the inner and outer garments provided strong corroboration of the version in the dying declaration. 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**

**D may lie but the circumstances do not. The circumstances in this case clinches the proof that it is the accused and accused alone who committed this offence. The investigating officer did not make any attempt to get recorded the second dying declaration of the deceased by a Magistrate. It would have been better if the**

**E investigating officer had made an attempt to get recorded the second dying declaration of the victim by a Magistrate. But, the dying declaration recorded by PW-13 and supported by PW-5 and the endorsement made by him to the effect that the victim was in a fit mental**

**F condition to depose before the police convinces that the dying declaration itself was a good dying declaration and could have been acted upon. [Paras 3 to 6] [503-G-H; 504-A-F]**

**G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 29 of 2006.**

From the Judgment & Order dated 03.11.2003 of the High Court of Karnataka (DB) in Criminal Appeal No. 460 of 2000.

**H Ram Lal Roy for the Appellant.**

Gurudatta Ankolekar, Azeem Kalebudde, V.N. Raghupathy for the Respondent. A

The Judgment of the Court was delivered by

**SIRPURKAR, J.** 1. The appellant - Gopal challenges his conviction under Section 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/-. B  
C  
D

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. E  
F

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

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. H

A 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-  
B 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  
C 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  
D 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  
E 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  
F 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.

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

D.G.

Appeal dismissed.