

**State Of Karnataka Vs. Narasimhamurthy @ Murthy**

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**SooperKanoon Citation :** [sooperkanoon.com/1234244](https://sooperkanoon.com/1234244)

**Court :** Karnataka

**Decided On :** Oct-27-2022

**Judge :** K.Somashekar and C M Joshi

**Appeal No. :** CRL.A 1304/2016

**Appellant :** State Of Karnataka

**Respondent :** Narasimhamurthy @ Murthy

**Judgement :**

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE27H DAY OF OCTOBER, 2022 PRESENT THE HON'BLE Mr. JUSTICE K SOMASHEKAR AND THE HON'BLE Mr. JUSTICE C M JOSHI CRIMINAL APPEAL No.1304 OF 2016 BETWEEN: State of Karnataka By Shidlaghatta P.S Rep. by SPP High Court Building, Bangalore - 562 105. ... Appellant (By Sri Abhijith K.S., HCGP) AND: Narasimhamurthy @ Murthy Aged about 25 years R/at Thinakallu village, Chintamani Taluk, Chikkaballapura district - 563 125. . Respondent (By Sri M. Shashidhar, Advocate) \*\*\*\*\* This criminal appeal is filed under section 378(1) and (3) Cr.P.C, by the HCGP for the state/appellant praying that this Hon'ble court may be pleased to grant leave to file the appeal against the order of 2 acquittal passed by the II Addl. District and Sessions Judge, Chikkaballapura, sitting at Chintamani, in S.C.No.48/2014 dated 23.09.2015 for the offence p/u/s 302 of IPC, to set aside the said judgment and award and convict the accused/respondent for the offence punishable under section 302 of IPC and

etc. This criminal appeal coming on for Dictating Judgment this day, K. Somashekar .J, delivered the following:

## **JUDGMENT**

This appeal is directed against the judgment of acquittal rendered by the learned II Additional District and Sessions Judge, Chikkaballapur Sitting at Chintamani, in S.C.No.48/2011 dated 27.09.2015, whereby acquitted the accused for the offences punishable under Section 302 of IPC, 1860.

2. In this appeal, the State is seeking intervention and further seeking setting aside the judgment of acquittal rendered by the Trial Court and consequently, accused be convicted for the offence punishable under Section 302 of IPC, 1860. 3

3. Heard learned HCGP for State and so also, learned counsel Sri Shashidhar, for respondent - Accused and perused the impugned judgment of acquittal rendered by the Trial Court in S.C.No.48/2014 and also the evidence of PWs.1 to 15, inclusive of Exs.P1 to P18 and MOs.1 to 3 and so also the part of statement of Seethamma which is marked as Ex.D1.

4. The factual matrix of the appeal is as under: It is transpired in the case of the prosecution that accused, namely, Narasimhamurthy @ Murthy and deceased Munirathnamma @ Rathnamma were working as Mason since 5 years and deceased was the kept mistress of the accused. Both the deceased and accused were residing in the house of one R. Manjunatha at Kadiripalya of Shidlaghatta since 05 months and they were frequently quarrelling. On 24-12-2013 at about 10.30 p.m. when the deceased Munirathnamma was sleeping in the house, accused went there, picked up quarrell with her, abused her in filthy language by telling that she has cheated him 4 by having illicit relationship with some other person and saying so, accused poured kerosene over her person from the kerosene can and set her ablaze and ran away. As a result of which, she has sustained with the burn injuries. Thereafter, on filing of complaint by PW.1 as per Ex.P1, criminal law was set into motion by registration of crime in Cr.No.128/2013 for the offence punishable under Section 307 of IPC. Subsequent to setting the criminal law into motion by recording the FIR, the investigating officer took up the

case for investigation and recorded the statements. But on 29-12-2013, deceased Munirathnamma @ Rathnamma succumbed to the injuries in Victoria Hospital, Bangalore when she was on treatment. When her brother PW1-Manjunath has filed a complaint relating to the death of his sister and based upon the complaint, offence punishable under Section 302 of IPC has been invoked in the aforesaid FIR registered by the police relating to the offence under Section 307 of IPC against the accused. Subsequently, the Investigation Officer taken up 5 further investigation and investigated the case thoroughly. During the investigation, the Investigation officer has conducted spot mahazar in the presence of panch witnesses, inquest mahazar over the dead body of the deceased and also the doctor has conducted postmortem over the dead body of the deceased and issued PM report.

5. The deceased Munirathnamma @ Rathnamma has given dying declaration and the same has been recorded by PW15- Tahasildar and Taluk Executive Magistrate and so also recorded the statement of witnesses and complied the stipulated condition of Section 173 of Cr.P.C. and laid the charge sheet against the accused person before the committal Court in C.C.No.140/2014. Subsequent to laying of the charge sheet by the investigating officer against the accused person for the offence punishable under Section 302 of IPC, the committal Court passed an order as contemplated under Section 209 of Cr.P.C. and accordingly, the case was committed to the Court of Sessions for trial. Subsequently, the Sessions Court by 6 assigning number to the case in S.C.No.48/2014 secured the accused for facing of trial.

6. Subsequently, the Sessions Court having heard the learned Public Prosecutor and the defence counsel relating to Crime and having found prima-facie that there are certain materials found in the chargesheet laid by the IO to frame charge against the accused, had framed charge against the accused for the aforesaid offence. The charge was read over to the accused in the language known to him whereby the accused did not plead guilty but claimed to be tried. Accordingly, the plea of the accused was recorded separately.

7. Subsequent to framing of charge against the accused person, the prosecution let in evidence to prove the case against the accused and accordingly, examined in all 15 witnesses as PWs.1 to 15 and got marked Exs.P1 to P18 and also MOs.1 to 3 and closed their case. Subsequent to closure of evidence on the part of the 7 prosecution whereby examined the accused as required under Section 313 of Cr.P.C. for enabling him to record the incriminating statement appeared against him. Subsequent to recording the statement regarding declining the evidence of the prosecution witnesses, the accused were called upon to adduce defence evidence as contemplated under Section 233 Cr.P.C. However, the accused was not inclined to lead any defence evidence, but got marked one document as Ex.D1. Accordingly it was recorded.

8. Subsequent to closure of evidence on the part of the prosecution and so also on the part of the defence side as contemplated under the relevant provisions of Cr.P.C., the trial Court heard the arguments advanced by learned Public Prosecutor for State and also the defence counsel for the accused and after going through the entire evidence of the prosecution, mainly, after going through the contents of Ex.P1-Complaint and Ex.P5-statement of the deceased Munirathnamma @ Rathnamma and also her 8 dying declaration at Ex.P10, inclusive of evidence of PW2- Manjunatha s/o Ramakrishna who is the landlord wherein the deceased and accused were staying, the evidence of PW9- Seethamma, mother of the deceased and so also the dying declaration as per Ex.P10 recorded in the presence of PW10-Dr.R.Jagadeesh, evidence of PW12- Purushotham, PSI, who has received the dying declaration recorded by the Tahasildar-Taluk Executive Magistrate who has been examined as PW15, the evidence of PW14, the IO who has conducted the spot mahazar Ex.P3 in the presence of panch witnesses and also drew the inquest over the person of the deceased as per Ex.P4, the P.M. report at Ex.P9 has been got marked by CW8 being the Doctor who has conducted autopsy over the dead body and issued the report indicating the burn injuries inflicted over the person of deceased. That upon consideration of his evidence which is facilitated by the prosecution, he has been subjected to the cross examination and cross examination of both witnesses has been done by the 9 defence counsel relating to two dying declarations at Exs.P5 and P10 so also inclusive of cross examination of PW10-Dr.R. Jagadeesh

whereby in his presence, Ex.P10, dying declaration has been recorded.

9. Further, PW11- Narayanaswamy is an witnesses, and he has given statement during the course of investigation and he did not support the case of the prosecution and consequently, his statement has been got marked at Ex.P11. These are all the evidence which are let in by the prosecution. PW2 is the person who is present and rescued Munirathnamma and he has been examined by the IO. All these circumstances, even it was correct, create doubt in the mind of the court relating to the very absence of the accused in the scene of crime, pouring kerosene and setting ablaze her and causing burn injuries over the person of the deceased as indicated in PM report at Ex.P9. Even all these evidence have been appreciated by the trial Court under the provisions of Cr.P.C. and so also 10 under Section 32 of the Indian Evidence Act, 1872, relating to dying declaration. But the prosecution has failed to prove the guilt of the accused that the accused was present in the scene of crime as on the aforesaid date and also the incident as narrated in the FIR being the circumstances and also based upon the complaint made by the brother of the deceased and even ingredient of Section 302 of IPC has not been established by the prosecution even though several witnesses have been subjected to cross examination to prove the guilt of the accused.

10. It is observed by the trial Court that the prosecution has failed to prove the contents at Ex.P5 the statement made by the deceased and also the dying declaration at Ex.P10 which is recorded by PW15 being the Thasildar and Taluk Executive Magistrate. PW2- Manjunatha S/o Ramakrishna, is the landlord where deceased Munirathnamma @ Rathnamma and also the 11 accused being the person living with her and also in terms of being kept mistress having been residing in the rented house. But the evidence on the part of the prosecution, even the evidence of Seethamma who is the mother of the deceased has not been corroborated with any independent evidence to prove the guilt of the accused and that the accused alone was responsible for infliction of burn injuries over the person of the deceased who died when she was on treatment in Victoria hospital. The doubt, which has been arisen in the evidence of the prosecution and consequently, the benefit of doubt has been accrued to the benefit of the accused and resulted in rendering an acquittal judgment for the offence punishable under

Section 302 of IPC, 1860. This judgment has been called in question in this appeal by the State on various grounds.

11. Learned HCGP appearing for appellant/State has produced the evidence of PW1 who has stated in his 12 evidence relating to inflicting the burn injuries over the person of the deceased and also deceased and accused were living together in the rented house and accused was also a mason by avocation and deceased was also supporting him. His evidence was corroborated with the evidence of PW2-Manjunatha son of Ramakrishna, landlord of the house wherein deceased and accused were living together. When Manjunatha has clearly stated in his evidence that accused and deceased were residing in his house as tenants and he has stated that the quarrel was ensuing between the deceased and the accused, but the same has not been considered by the trial court while rendering acquittal judgment and therefore, in this appeal, requires revisiting the impugned judgment of acquittal rendered by the trial court while re-appreciating the evidence of PW5 and also the evidence of PW10 relating to Ex.P5 and P10. The Ex.P5 is the dying declaration which is made by deceased wife, she has given answer and dying declaration at Ex.P10 has been recorded in the form of 13 question and answer by the Thasildar, Taluka Executive Magistrate who was subjected to examination as PW15.

12. PW14-being the Investigating Officer has given his evidence stating that he has done the investigation thoroughly, conducted the spot mahazar in the presence of panch witnesses and so also done inquest over the dead body of the deceased in the presence of panch witnesses and subsequently, stated about the injuries inflicted over the person of the deceased. But, the trial court has not given more credentiality to the evidence of both these witnesses and it has passed the order in consideration of the evidence of PW5 and the evidence on the part of the prosecution has been cogent, consistent, trustworthy manner and inspires the confidence relating to the case of the prosecution. But the trial Court has lost sight of the same and also appreciation of the evidence and thereby decided at evidence of the prosecution while rendering an acquittal judgment. Therefore in this appeal, it requires to 14 be re-appreciating the evidence and so also revisiting the impugned judgment of acquittal rendered by the trial Court, if not re-

appreciation of the evidence let in by the prosecution as there is some absolute miscarriage of justice. On all these premises, the learned HCGP for State is seeking intervention and also re-appreciation of the evidence that too, the contents of Ex.P10 dying declaration made by the deceased Munirathnamma @ Rathnamma and the evidence of PWs 2 and 11 who are the eye witness to the incident. But PW11Narayanaswamy, turned hostile because of he turning hostile, the entire evidence has to be brushed aside. PW2 Manjunatha is the land lord of the house wherein the deceased and accused were residing, but the said witness has produced Ex.P3. These are all the evidence placed on the part of the prosecution, inclusive of the evidence of PW12- PSI who is an investigating officer in part who has received the information from the hospital, rushed to the spot immediately, recorded the statement of the deceased 15 Munirathnamma @ Rathnamma in the presence of PW5 Dr. Thimmegowda, whereby he has made an endorsement and scribed his signature on the statement recorded by him. These are all the contentions made by learned HCGP for State seeking consideration of the grounds urged in the appeal and consequently, prays for setting aside the acquittal judgment rendered by the trial Court in SC No.48/2014 and consequent upon the same, seeking conviction of the accused under Section 302 IPC, 1860.

13. On prevailing the arguments advanced by the learned HCGP for State, learned counsel, namely, M.Shashidhar appearing for respondent/ accused has given more credentiality for consideration of the evidence of PW15 being the Taluka Executive Magistrate who has recorded statement as per Ex.P10-dying declaration in the presence of PW10 Dr.R. Jagadeesh, who has issued the certificate relating to the status of the deceased Munirathnamma @ Rathnamma whether she was in conscious or whether she was in a good physical and 16 mental condition to give her statement. It is not the case that she was unconscious and she cannot give statement. It is the Doctor who has to give certificate that deceased was in fit mental condition and stable to give her statement that has been recorded by the Taluk Executive Magistrate, who is examined as PW15. The certificate has been issued by the Doctor relating to the mental and physical condition of the deceased to give her statement after sustaining 60% of the burn injuries as indicated in the PM report at Ex.P9.

14. After going through the entire statement of the deceased Munirathnamma @ Rathnamma which is recorded by PW15, which is in the form of question and answers and so also, recorded her statement, PW15 who is responsible Taluk Executive Magistrate has nowhere, specifically mentioned that the dying declaration at Ex.P10 has been recorded and also the very declaration given for the statement in physical and mental fit condition to record her statement in the form of dying declaration. 17

15. PW15 has been subjected to cross examination and in his evidence` that he has given certificate under his signature as Ex.P10(e) is erroneous under the given circumstances as he has nowhere deposed that deceased gave statement by showing signs and he ought to have referred this aspect. But this aspect has not been deposed specifically by PW10 Dr.R.Jagadeesh, who was subjected to examination and also in his presence, Ex.P10 dying declaration has been recorded by PW15 and also by way of giving signs that statement has been recorded.

16. Ex.P10 is the dying declaration whereby the certificate discloses that as per the statement made by the declarant, she has been brought by PW2 Manjunatha securing the ambulance to the hospital for providing treatment. But the evidence of PW2 Manjunatha and the statement of deceased as per Ex.P10 which is in the form of dying declaration are contrary to each other. PW2 never stated that he has accompanied the deceased in the ambulance and taken her to the hospital in order to 18 provide treatment. But he has specifically stated in his evidence that police took the deceased in auto rickshaw to the Shiddlaghatta hospital seeking treatment to her and from there, she has been shifted to Victoria hospital, Bengaluru while on enquiry she has even informed that Murthy who came in a drunken state allegedly poured kerosene over the person and set her ablaze and as a result of which, she has sustained burn injuries which are indicated in Ex.P9-P.M. report issued by the Doctor.

17. No-doubt, PW15 being the Thasildar and Taluka Executive Magistrate has recorded the statement of deceased Munirathnamma @ Rathnamma which is marked at Ex.P10 which is in the presence of PW10-Dr.R. Jagadeesh. No-doubt,

PW10 specifically stated in his evidence that on 25-10-2013 at around 6.10 p.m. the Thasildar Taluka Executive Magistrate enquired him whether the declarant i.e. the injured was in a fit condition to give her statement. PW15 went to the burns ward where the injured was admitted, examined her and even certified 19 that she is in a fit condition to give her statement. But the contents of Ex.P10 which is in Kannada version relating to certification is contrary to the contents of dying declaration which made by her which is marked at Ex.P10. But the evidence of PW15 being the Taluk Executive Magistrate is contrary to the contents of Ex.P10(e) and it is because he has not stated whether she has specifically stated in his evidence on the part of the prosecution that the deceased Munirathnamma @ Rathnamma gave her statement in the form of signs. But it is specifically stated in his evidence that she was not in a fit condition to give her statement. These are all the evidence which are placed on the record on the part of prosecution. That apart, the evidence of PW15 so also the evidence of PW10 who are the material witnesses relating to dying declaration at Ex.P10 create some doubt and do not inspires confidence in the mind of the Court relating to the condition that deceased was in a stable and conscious condition to give her statement which is marked as 20 Ex.P10. PW2 and 11 being the eye witnesses and they have been subjected to examination relating to the material which occurred in the scene of crime and they immediately rushed to the scene of crime in the meanwhile the accused ran away from the seen of incident. This fact has not been specifically stated by PWs 2 and 10. But they have given a clear go bye to their entire statement.

18. Sofar as the statement at Ex.P10, the dying declaration of Munirathnamma @ Rathnamma is concerned, if the dying declaration of the deceased is free from and even there is no ambiguity, it is genuine in nature and also trust worthy and it should be acted upon and no evidence requires. But in the instant case, even on cursory glance of the evidence of the Taluk Executive Magistrate and even the evidence of PW10 being the Doctor in whose presence deceased has given a declaratory statement at Ex.P10, we call it as oral evidence so also the documentary evidence which are not corroborated even 21 the contents of Ex.P10 and P5 and Ex.P15. These are all the inconsistency in the dying declaration made by the deceased. Even if the entire reference of the case it is prima facie when once the evidence of prosecution do not inspires the confidence, the criminal

justice till assessment the benefit even arises, that always accrued to the benefit of the accused. Accordingly, the trial Court had appreciated the evidence in its entirety and arrived at a conclusion that the prosecution do not prove the guilt against the accused beyond all reasonable doubt. Consequently, upon the doubt crept in the mind of the trial court, there is no other option, but to render an acquittal judgment in favour of the accused for the offence punishable under Section 302 of IPC, 1860. But in the instant case, there is no perversity or infirmity in the impugned judgment rendered by the trial court to seek intervention and so also it requires to re-appreciation of evidence and revisiting the impugned judgment of acquittal rendered by the trial court. On these premises, learned 22 counsel for accused is seeking dismissal of this appeal being devoid of merits.

19. In support of his contention, learned counsel for the respondent/accused has placed reliance on the decision in the case of Ramabora Alias Ramaboraiah Vs. State of Karnataka, reported in AIR 2022 SCC1242 wherein, the Hon'ble Supreme Court of India, has extensively considered the scope of Section 302 of IPC, 1860 and even the scope of Section 32 of the Indian evidence Act, 1872 relating to the testimony of eye witnesses and also reliability of the evidence. The prosecution relied on the testimony of the mother of the deceased and also her brother. Even both the witnesses have deposed about the accused relating to done to death of the deceased by pouring kerosene over her person and setting her ablaze and as a result of which, she lost her breath. The contradiction however found in the testimony of the witnesses as regards material objects used and even the role of the accused the very foundation of the 23 prosecution case stood shaken owing to such contradictions and subject to unreliable witnesses and these are exhaustively addressed in the said judgment.

20. Further, in the aforesaid judgment scope of Section 378 of Cr.P.C. i.e. appeal against conviction is also considered. The trial court had disbelieved the evidence of eye witnesses and acquitted the accused person/ appellant. But to overturn such verdict of acquittal, High Court had to come up with more stronger and cogent reasons than reasons already recorded. In the absence of stronger and cogent reasons, order of conviction by High Court cannot be said to be in accordance with law and the appellants are entitled to acquittal. This fact is

addressed exhaustively in para 26 of the said judgment rendered by the Supreme Court and that reliance is squarely applicable to the present case on hand.

21. Further, the learned counsel for accused placed reliance on the decision rendered by the Hon'ble Supreme Court of India, in the case of Mohan Alias Srinivas Vs. 24 State of Karnataka reported in (2022) 85 OCR616 In the said decision, the Hon'ble Supreme Court has extensively addressed the scope of Section 378 and so also Section 384 of Cr.P.C. appeal against acquittal were discussed in detail in foot note B to the effect that appellate court shall remind itself of the role require to play, while dealing with a case of an acquittal. Every case has its own journey towards the truth an it is the court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performances. There is a hierarchy of courts in dealing with the cases. The appellate court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather, it should be appreciated if a trial court decides a case on its own merit despite its sensitivity. Different decisions being made by different courts, namely, trial court on the one hand and the appellate court son the other. If such decisions are made due to institutional constraints, they do not augur 25 well. The District judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform Indictment and condemnation over a decision rendered, on considering all the materials placed before it should be avoided. The appellate court is expected to maintain a degree of caution before making any remarks. Para Nos. 20,21 and 22 of the said judgment has extensively addressed the scope of the said provisions. This reliance is also applicable to the present case on hand where, State has preferred an appeal seeking intervention and revisiting the impugned judgment and order of acquittal, the evidence relied by the prosecution and the same has been appreciated by the trial court itself and observes that there are some contradictions and inconsistency in the statement recorded under Section 161 of Cr.P.C. These are all the contentions made by the learned counsel for the accused and where by seeking 26 dismissal of this appeal being devoid of merits and confirm the acquittal judgment rendered by the trial court.

22. It is in this context of the contentions made by learned HCGP for the State/appellant and so also, the arguments advanced by learned counsel for respondent/accused, it is relevant to note that, deceased Munirathnamma @ Rathnamma was working as a mason and she has some illicit relationship with the accused and it would be termed as kept mistress and both were residing in the house of R. Manjunatha on a rental basis. They were frequently quarelling with each other and they have quarell some nature. On 24-11-2013 at about 10.30 p.m. when deceased was sleeping in the rented house, accused alleged to have abused her in filthy language and telling that she has cheated him by having some illicit relation with some other person and saying so, allegedly accused poured kerosene on her person and set her ablaze and ran away from the scene of crime. Because of setting her ablaze, she sustained some burn injuries which are 27 indicated in Ex.P10- PM report. PW12, PSI who had got information about the injured Munirathnamma @ Rathnamma, got her admitted to Government Hopsital,Shiddlaghatta and in order to provide some better treatment to her she has been shifted to Victoria Hospital, Bangalore. Based upon the complaint made which is in terms of statement, a case in Crime No.128/2013 has been registered by recording FIR initially for an offence punishable under section 307 IPC, 1860 and on 29-12-2012 while she has under treatment at Victoria Hospital has lost her breath in view of sustaining burn injuries. Consequently, PW1. Manjunatha who is none other than the brother of deceased lodged the complaint on 30-12-2012 and based upon his complaint, an offence under section 302 IPC has been invoked in FIR at Ex.P12 by the police.

23. Subsequently, PW15 being the Taluka Executive Magistrate and PW10 being the Doctor have recorded her statement as per Ex.P10 which is in terms of dying 28 declaration. Ex.P10, dying declaration has been recorded by PW15 being Taluk Executive Magistrate and his evidence is contrary to the certification at Ex.P10 and also certificate marked as Ex.P10(f). It is specifically stated in his evidence adduced on behalf of the prosecution that, it is Munirathnamma @ Rathnamma has given her statement by way of showing some signs. But he has nowhere specifically stated that she has given her statement in a mentally and physically fit condition and also she was fit to give her statement. There is no specific endorsement issued by the Doctor independently that she was mentally and

physically fit to give her statement as per Ex.P10.

24. PW5 Doctor who has first received the deceased on 24-12-2013 at about 11.00 p.m. and he has not specifically stated in his evidence even at the time of consideration of evidence inclusive of cross examination and only defence counsel has been noticed that he does not know whether deceased was brought in ambulance or not. According to his evidence, she was brought in auto 29 rickshaw by neighbors and left in the hospital. Again it is specifically stated that neighbors brought her to the hospital, but they were not ready to take deceased to Victoria hospital, Bengaluru, for treatment and even they were not ready to put their signature to the statement and the persons who brought the deceased to the hospital does not disclosed their names and same has been recorded as per Ex.P7 MLC register which is salient about who brought the deceased to the hospital to provide treatment to her.

25. As per Section 32 of the Indian Evidence Act, 1872, there can be no dispute that dying declaration can be the sole basis for conviction, however, such a dying declaration has to be proved to be wholly reliable, voluntary and truthful and further that the maker there of must be in a fit medical condition to make it. This was exhaustively addressed in decision rendered by the Hon'ble Supreme Court in the case of Waikhom Yaima 30 Singh Vs. State of Manipur JT reported in 2011(6) SC355 26. In the decision rendered by the Hon'ble Supreme Court in the case of Nanhar Vs. State of Haryana reported in JT20106) SC196 it is held that, "dying declaration should be such, which should immensely strike to be genuine and stating true story of its maker. It should be free from all doubts and on going through it, an impression has to be registered immediately in mind that it is genuine, true and not tainted with doubts. Further it should not be result of tutoring.

27. Even in the case of Ram Sai Vs. State of Madhya Pradesh reported in 1994 CrLJ138(SC), it is held by the Hon'ble Supreme Court that, "where there were infirmities in declaration regarding state of deceased to make oral dying declaration and unnatural conduct of witness to whom dying declaration was allegedly given by the deceased which was disclosed to the police after two days

31 of death of deceased, accused was entitled to the benefit of doubt.

28. In the instant case, there is no dispute about the dying declaration which is made by the deceased namely Munirathnamma @ Rathnamma. Dying declaration at Ex.P10 was recorded by PW15, Taluk Executive Magistrate in the presence of PW10 Doctor.

29. It is relevant to refer to the decision rendered by the Hon'ble Supreme Court in the case of Suchand Pal Vs. Phani Pal reported in AIR 2004 SC973 wherein it is held that 'the declaration made by the deceased cannot be called dying declaration because it was not voluntary and answered were not given by her, it was her husband who was answering.

30. Further it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of Bhajju Vs. State of Madhya Pradesh reported in (2012) 4 SCC327 wherein, it is held that, " If the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and 32 possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the court and could form the sole piece of evidence resulting in the conviction of the accused.

31. But in the instant case, the trial court has given more appreciation to the contents of Ex.P5. But the contents of Ex.P5 and the same has been held by the trial court and causing some doubt because it discloses some doubt about the evidence of prosecution and when doubt arises, the benefit of doubt must always accrued to the benefit of the accused alone.

32. But in the instant case, there is a dying declaration which is not even required further corroboration. Even on that point also, there was a decision rendered by the Hon'ble Supreme Court in the case of Khushal rao Vs. State of Bombay reported in AIR 1958 SC22 33. These are the decisions which are rendered by the Hon'ble Supreme Court earlier to the dying declaration, 33 scope of Section 32 of the Indian Evidence Act, 1872, relating to the prove and disprove.

34. Insofar as Section 134 of Indian Evidence Act, 1872, is concerned, it is relating to merit of the statement of witnesses. It is well known principle of law that reliance can be based on the solitary statement of a witness if the court come to the conclusion that the said statement is the true and correct version of the case of the prosecution as held by the Hon'ble Supreme Court in the case of Raja Vs. State (1997) 2 Crimes 175 (Delhi).

35. Insofar as the judgment of Laxmibai (dead) through LRs Vs. Bhagwantbura (Dead) through LRs reported in AIR 2013 SC1204 is concerned, under the provision Section 134 of Indian Evidence Act, relating to Plurality of witnesses, it is the matter of appreciation of evidence of witnesses, it is not number of witnesses, but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It 34 is a time honored principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of trust, is cogent credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Act.

36. Whereas in the case of Anwar Ali and Another vs. State of Himachal Pradesh ((2020) 10 SCC166), the Honble Supreme Court has extensively addressed the issues and scope of the charges relating to murder trial. It has held that the High Court, without giving any cogent reasons, reversed the acquittal and interfered with the findings of fact recorded by the Trial Court solely by observing that contradictions were minor contradictions and therefore, the Trial Court was not justified in acquitting the accused solely on the basis of such minor contradictions. It has further held that contradictions 35 considered by the Trial Court cannot be said to be minor contradictions and the Trial Court was justified in not believing the disclosure statements of the appellant / accused. Acquittal of the appellants by the Trial Court was thus directed to be restored by the said order passed by the Honble Apex Court.

37. Further, in the case of State of Odisha vs. Banabihari Mohapatra and Anr. (AIR 2021 SC1375, the Honble Apex Court has discussed the scope of Sections 302, 201 and 34 of the IPC, 1860. It is relevant to extract the headnote of the said judgment which reads thus: Penal Code (45 of 1860), S.302, S.201, S.34 - Constitution of India, Art.136 - Murder - Appeal against acquittal - Accused persons allegedly committed murder of deceased by applying electric shock to him after administering some poisonous substance to him - Post mortem report reveals cause of death was electric shock, suffered by deceased within 24 hours from time of examination - Doctor opined 36 that deceased was intoxicated with alcohol and death was either accidental or homicidal but not suicidal - No conclusive evidence that death was homicidal - Mere fact that deceased was lying dead at room held by accused and that accused had informed complainant that deceased had been lying motionless and still and not responding to shouts and calls, does not establish that accused murdered deceased - Acquittal, proper.

38. Further, in the judgment in the case of Babu vs. State of Kerala ((2010) 9 SCC189 provisions of Sections 378 and 386 of Cr.P.C. - Appeal against acquittal - principles have been reiterated. The relevant portion of Headnote C reads thus: C. Criminal Trial - Circumstantial evidence - Generally - Burden of proof - In case of circumstantial evidence burden on prosecution is always greater. 37 39. The same has been extensively addressed in paragraph 61 of the said judgment. Further, Headnote D reads thus: D. Criminal Trial - Proof - Burden and onus of proof - Reversal of burden of proof - When permissible - Presumptions - Presumption of innocence - Constitution of India - Arts. 21 and 14.

40. It is held therein that every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and 38 Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the

circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact. The same has been addressed in paragraph 27 of the said judgment.

41. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden of proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. The same has been addressed extensively in paragraph 28 of the said judgment. 39

42. Further, in the judgment in the case of Lalit Kumar Sharma and Ors. Vs. Superintendent and Remembrancer (AIR 1989 SC2134, it is held that the power of an Appellate Court to review evidence in appeals against acquittal is as extensive as its powers in appeals against convictions, but that power is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so. This judgment has been rendered by the Apex Court relating to the scope of Section 386 of the Cr.P.C. relating to interference of the acquittal judgment rendered by the Trial Court.

43. Further, as already referred to supra, in another judgment of the Honble Apex Court in the case of Ramabora alias Ramaboraiah vs. State of Karnataka (AIR 2022 SC1242, the Honble Supreme Court has held that, to overturn such verdict of acquittal, High Court should have come up with more stronger and cogent reasons than what has been recorded. The law on the 40 scope of Section 378 Cr.P.C. is also well-settled. Very recently, this Court traced the law in Ravi Sharma vs. State (Government of NCT of Delhi) and Another (Criminal Appeal Nos.410-211/2015 D.D1107.2022). The impugned judgment of the High Court is not in accordance with the law on the point.

44. Further, as referred to supra, the judgment in the case of Mohan @ Srinivas vs. State of Karnataka ((2022) 1 MAD LJ (Cri) 319)) is also referred to. This

judgment has been rendered by the Honble Supreme Court of India by referring to the reliance in the case of Anwar Ali and Anr. Vs. State of Himachal Pradesh (AIR 2020 SC4519). It is held that, this Court, time and again has laid down the law on the scope of inquiry by an Appellate Court while dealing with an appeal against acquittal under Section 378 Cr.P.C. Whereas in the aforesaid reliance in paragraph 24, it is held thus: 24. The Trial Court considered the testimonies of the other witnesses first before 41 embarking upon eye witnesses and the material witness. It gives exhaustive reasoning for its ultimate conclusion. We have already recorded the fact that most of the witnesses turned hostile. PW-16, an independent witness also states that she has not seen the occurrence and she heard that the deceased was dead before taking to the hospital. The Trial Court took enormous pains in considering the evidence of all the witnesses one by one.

45. In the instant case also, we have already recorded the fact that most of the witnesses have given a go-by to the versions of their statements. PW-15 / Taluk Executive Magistrate who recorded the dying declaration of the deceased marked at Exhibit P10 which was recorded in the presence of PW-10 / Doctor, but there was no independent certification issued. Neither the evidence of independent witnesses nor the evidence of PW-1 who is the author of the complaint, is not corroborated with any other independent evidence. Whereas in the instant case, dying declaration at Exhibit P10 has been recorded by PW-15 / 42 Taluk Executive Magistrate in the presence of PW-10 / Doctor. But the dying declaration put forth by the prosecution, and the evidence let in by them was found not to be trustworthy and there cannot be any dying declaration in two terms either in fact or in law. Further, there is inconsistency in the two dying declarations namely Exhibit P5 and P10. Further, the evidence of PW-2 the eye- witness and PW-11 / Narayanaswamy are found to be inconsistent with each other. Further, PW-2 who had told that the accused ran away from the house when he entered, has not stated the same in his evidence. Further, the persons who were present and rescued Munirathanamma have not been examined by the Investigating Officer PW-10. Considering all these inconsistencies and lapses on the part of the prosecution, the Trial Court has proceeded to render an acquittal judgment and it is based upon the evidence facilitated by the prosecution and even based on several documents which were got marked. Hence, the Trial Court had 43 arrived

at a conclusion that the prosecution has failed to prove the guilt against the accused by facilitating cogent, corroborative and positive evidence to probabalise that the accused and accused alone had caused the death of the deceased Munirathnamma @ Rathnamma. Therefore, we find no perversity or absurdity in the reasoned judgment of acquittal rendered by the Trial Court. Therefore, though this appeal has been preferred by the State urging various grounds, we find that the evidence facilitated by the prosecution does not inspire confidence in the mind of the Court to call for interference of the judgment of acquittal rendered by the Trial Court. The Trial Court has rendered a reasoned judgment by referring to the evidence of the prosecution which is stated and also referred to supra. Therefore, the appeal deserves to be rejected being devoid of merits. In view of the aforesaid reasons and findings, we proceed to pass the following:

44.

#### ORDER

The appeal preferred by the appellant / State under Section 378(1) and (3) of the Cr.P.C., is hereby rejected. Consequently, the judgment of acquittal rendered by the Trial Court in S.C.No.48/2014 dated 23.09.2015 acquitting the accused of the offences under Section 302 of the IPC, 1860, is hereby confirmed. Sd/- JUDGE  
\Sd/- JUDGE TSN/KS

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