



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24<sup>TH</sup> DAY OF APRIL, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO.106/2018 (A)

**BETWEEN:**

THE STATE OF KARNATAKA  
BY CIRCLE INSPECTOR OF POLICE  
MADIKERI RURAL CIRCLE  
REP. BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
BENGALURU-560 001

...APPELLANT

(BY SRI. THEJAS P. HCGP)

**AND:**

ANIL N. B  
S/O BOJAPPA  
AGED ABOUT 31 YEARS  
COOLIE, CHADAV VILLAGE  
SAMPAJE POST  
MADIKERI TALUK - 571 201

...RESPONDENT

(BY SMT. PADMAVATHI N., ADV.)

THIS CRIMINAL APPEAL FILED UNDER SECTION 378(1) AND (3) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 02.03.2017 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU, MADIKERI IN S.C.NO.65/2015 FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, **K.S.MUDAGAL J.**, DELIVERED THE FOLLOWING:





**JUDGMENT**

Heard both sides.

2. Challenging the order of acquittal passed in S.C.No.65/2015 by the I-Additional District and Sessions Judge, Kodagu at Madikeri, the State has preferred this appeal.

3. The respondent was tried in S.C.No.65/2015 for the charge for the offence punishable under Section 302 IPC on the basis of the chargesheet filed by Circle Inspector of Police, Madikeri Rural Circle in Crime No.101/2015 of their police station. Crime No.101/2015 was registered against the respondent on the basis of Ex.P.16 the statement/dying declaration of his mother Gangamma. For the purpose of convenience, the parties are referred to henceforth according to the ranks before the Trial Court.

4. The accused is the second son of deceased Gangamma and PW.1. PW.10 is the daughter of deceased Gangamma and PW.1. PW.2 is the sister-in-law of deceased Gangamma. PW.3 is the neighbor of deceased Gangamma.

5. The case of the prosecution in brief is as follows:

That the accused due to his addiction to alcohol was not working and had become burden to his parents. Gangamma was



insisting him to go to work. Being enraged by that on 04.04.2015 at 11 a.m, when Gangamma admonished the accused for his waywardness, accused assaulted her with club MO.4 and kicked her causing her grievous injuries. Listening to the commotion, PWs.2 and 3 rushed to the spot and rescued her from the hands of the accused. PW.2 shifted the victim in the ambulance to Sampaje Primary Health Centre. From there, she was referred to Sullia Community Health Centre. There, PW.15 treated her and issued medico legal intimation. Based on such information, PW.14 the Head Constable of Sampaje Out-post Station visited the hospital and recorded the statement of the victim as per Ex.P16. Then the victim was shifted to Wenlock Hospital, Mangaluru. She breathed her last in the said hospital on 05.04.2015 at 4.45 a.m.

6. On the basis of the dying declaration Ex.P16, PW.11 registered FIR as per Ex.P17 for the offences punishable under Sections 341, 323, 324 IPC. On receiving information of death of Gangamma, he gave requisition to the Magistrate to incorporate Section 302 IPC in the case and handed over the further investigation to PW.16 the CPI of Madikeri Rural police station. PW.16 conducted the investigation and filed chargesheet against the accused.



7. The Trial Court on hearing the parties framed the charge against the accused for the offence punishable under Section 302 IPC. The accused denied the charge and claimed trial. Therefore trial was conducted. In support of the case of the prosecution PWs.1 to 17 were examined, Ex.P1 to P28 and MOs.1 to 4 were marked.

8. The Trial Court on hearing the parties by the impugned judgment and order acquitted the accused holding that the eyewitnesses and other independent witnesses did not support the prosecution case. The Trial Court further held that the prosecution has failed to prove that the victim was in fit condition to give statement, the charge against the accused was not proved beyond reasonable doubt.

9. The State has preferred the above appeal challenging the said judgment. Learned HCGP and respondent's Counsel have filed their written submissions.

10. Reiterating the grounds of appeal and written submissions, learned HCGP submits that dying declaration of the victim was proved by cogent and consistent evidence. Mere failure of the doctor to certify fitness in dying declaration is not ground to disbelieve the same. The evidence on record shows



that the victim was fit to give statement. Since the eyewitnesses and other independent witnesses are the close relatives of the accused and they have turned hostile to save him, Official witnesses had no ill-will against the accused. Therefore, there is no reason to disbelieve their evidence. Dying declaration was corroborated by their evidence. The Trial Court committed error in acquitting the accused on such ground.

11. In support of her submission she relies on the following judgments:

- (i) ***Laxman Vs. State of Maharashtra***<sup>1</sup>
- (ii) ***Ravi Sharma Vs. State (Government of NCT of Delhi) and Another***<sup>2</sup>
- (iii) ***Rizwan Khan Vs. State of Chhattisgarh***<sup>3</sup>
- (iv) ***Surendra Bangali alias Surendra Singh Routele Vs. State of Jharkhand***<sup>4</sup>
- (v) ***Mallikarjun and Others Vs. State of Karnataka***<sup>5</sup>

12. Per contra, Smt. Padmavathi. N, learned Counsel for the respondent/accused, reiterating the written submission submits that the prosecution is required to prove the charge beyond reasonable doubt. Except official witnesses, none of the

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1 (2002) 6 SCC 710

2 (2022) 8 SCC 536

3 (2020) 9 SCC 627

4 2021 SCC Online SC 3538

5 (2019)8 SCC 359



other witnesses supported the prosecution version. There was nothing to show that they had any reason to turn hostile. In dying declaration, fitness of the victim to give statement was not certified. The injuries spoken by PW.15 did not correspond to the narration of the assault. Recovery of club MO.4 was not proved. The Court cannot convict the accused solely based on dying declaration. Since this is an appeal against acquittal, the judgment of the Trial Court cannot be reversed merely on the ground that another view is possible.

13. In support of her submission, she relies on the following judgments:

- (i) ***ATBIR Vs. Government of NCT, Delhi***<sup>6</sup>
- (ii) ***Jafarudheen and others Vs. State of Kerala***<sup>7</sup>
- (iii) ***Ravi Sharma Vs. State (Government of NCT of Delhi) and Another (referred to supra)***
- (iv) ***Roopwanti Vs State of Haryana and others***<sup>8</sup>

14. Considering the submissions of both sides and on examination of the materials on record, the question that arises for determination of the Court is, ***"Whether the impugned judgment and order of acquittal suffers patent illegality or perversity?"***

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<sup>6</sup> 2010 (9) SCC1

<sup>7</sup> (2022) 8 SCC 440

<sup>8</sup> 2023 SCC Online 179



### Analysis

15. The case of the prosecution is that the accused was roaming without doing work. Therefore, his mother/victim was admonishing him. In the similar way on 04.04.2015 at 11 a.m. when she questioned him in the house, being enraged by that he kicked her on stomach and assaulted her with MO.4 club and caused her injuries which led to her death on 05.04.2015 at 4.45 a.m.

16. The Court has acquitted the accused on the ground that the eyewitnesses, witnesses to the recovery of MOs.1 to 4 have not supported the prosecution case and fitness of the victim to give statement as per Ex.P16 was not proved. The Trial Court further held that dying declaration was not corroborated by other evidence.

17. The judgments in the cases **Jafarudheen**, **Ravi Sharma** and **Roopwanti** referred to *supra* were relied on by the learned Counsel for the respondent to contend that in an appeal against the judgment of acquittal, the scope of interference by the appellate Court is limited. In those judgments it was held that in such cases the accused has double benefit of presumption of innocence. The first one being



presumption of innocence available during the trial which is reinforced by the judgment of acquittal. But that does not mean that the appellate Court is totally divested of the power of reversal of acquittal judgment. If it is shown that the judgment of acquittal suffers patent illegality or perversity, the judgment of the Trial Court can be reversed. This view of this Court is supported by the judgment of the Hon'ble Supreme Court in ***Prem Singh Vs State of Haryana***<sup>9</sup>. This Court has to examine whether the impugned judgment and order of the Trial Court suffers patent illegality or perversity.

18. The case of the prosecution was based on :
- (i) Ex.P16 dying declaration of the victim;
  - (ii) The evidence of eyewitnesses PWs.2, 3 and 5;
  - (iii) Circumstance of Motive;
  - (iv) Circumstances of recovery of MO.4 the club on the basis of the voluntary statement of accused;
  - (v) The evidence of PWs.1 and 10 husband and daughter of the deceased;
  - (vi) Medical evidence; and
  - (vii) The evidence of official witnesses.

**Reg. Dying declaration:**

19. PW.14 the Head Constable of Sampaje Out-post station deposed that, on the basis of Ex.P20 the medico legal

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<sup>9</sup>2013(14) SCC 88





intimation received by Sullia police from C.H.C, Sullia, he visited the said hospital and found injured Gangamma taking treatment. He further deposed that he recorded her statement as per Ex.P16 in the presence of PW.15 Dr. K. V. Karunakara. He deposed that the victim was in fit condition to give her statement.

20. PW.15 the then Medical Officer of Community Health Centre, Sullia deposed that, on 04.04.2015 at 5.30 p.m. he examined Gangamma who was brought with a history of assault on the same day at 11 a.m. He further deposed that the victim was brought by PW.2. According to him the victim had suffered the following injuries:

- (i) Contusion over right angle of mouth 6 x 3 x 3 cms.
- (ii) Contusions over the back 3 in number – 12 x 3 x 2 cms., 5 x 3 x 2 c.m and 3 x 2 x 1 c.m
- (iii) Contusion over left calf 5 x 2 x 1 c.m
- (iv) Abrasion over right leg 3 x 1 c.m.
- (v) Contusion over right leg 3 x 2 x 1 c.m
- (vi) Contusion over right shoulder 3 x 3 x 2 c.m
- (vii) Tenderness over the abdomen.

21. He further deposed that he gave her treatment to increase her blood pressure and referred her to Wenlock



Hospital for further treatment. In the meantime, he sent MLC intimation to the Sullia police station at 5.45 p.m. as per Ex.P20. He further deposed that at 10.40 p.m. on the same day, the police visited the hospital and recorded the statement of the victim as per Ex.P16 in his presence.

22. On the application of the prosecution, medical records relating to the victim were summoned by the Trial Court and they were earlier marked as Ex.P17 to P20 and later renumbered as Ex.P25 to P28. Dying declaration was sought to be challenged on the ground that the same does not bear the certification of PW.15, regarding her fitness to give statement. It is no doubt true that in Ex.P16, PW.15 has not certified that the victim is in a condition to give statement. But he has endorsed that the statement is recorded in his presence. Therefore, the question is whether it is mandatory that the statement shall bear such certification.

23. The judgment in **Laxman**'s case referred to supra relied on by learned Counsel for respondent/accused herself, the larger bench of the Hon'ble Supreme Court on reference in para No.5 of the judgment held that, to rely on the dying declaration in the absence of medical certification that the injured was in a



fit state of mind at the time of making declaration is risky, is not the correct enunciation of law. It was further held that such view is hypertechnical. The Hon'ble Supreme Court while upholding the law stated in the judgment in ***Koli Chunilal Savji Vs. State of Gujarat***<sup>10</sup>, in para 5 of the judgment held as follows:

"5. The Court also in the aforesaid case relied upon the decision of this Court in Harjit Kaur v. State of Punjab [(1999) 6 SCC 545] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in **Paparambaka Rosamma v. State of A.P.**[(1999) 7 SCC 695] (at SCC p. 701, para 8) to the effect that

"in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration"

**has been too broadly stated and is not the correct enunciation of law.** It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification

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<sup>10</sup> (1999) 9 SCC 562



that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the ***judgment of this Court in Paparambaka Rosamma v. State of A.P. must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji v. State of Gujarat.***"

**(Emphasis supplied)**

The Hon'ble Supreme Court upheld the view that, if the evidence on record satisfies that the victim was conscious and fit at the time of making the declaration, the medical certification with regard to the fitness shall not be insisted, though the Court has to be on guard in relying solely on such dying declaration. It was further held that dying declaration can be the sole basis of conviction, provided that inspires the confidence of the Court. The same view was reiterated in ***Laxman***'s case referred to *supra*.

24. Therefore, the Court has to examine the evidence of PWs.14 and 15 to find out whether the victim was in a condition to give statement. The incident had taken place on 04.04.2015 at 11:00 am. The victim was taken first to Sampaje Primary Health Centre and from there to Sullia Community Health Centre



on 04.04.2015 at 05:30 pm. Her statement was recorded between 10:10 pm and 10:40 pm. The victim died on 05.04.2015 at 04:45 am. She was brought to the hospital by Ambulance. At the time of admission in the hospital itself, the Doctor had issued the M.L.C. intimation as per Ex.P20. The same was received in the Police Station on 04.04.2015 at 07:30 pm. Ex.P25, the M.L.C. Register extract coupled with the evidence of PW-15 the Doctor shows that the victim was brought to the hospital by PW-2 with the history of assault by the accused on the same day at 11:00 a.m. by wooden club and foot. Within such short time there was no scope for concoction or deliberation to implicate the accused falsely.

25. Ex.P28 the case sheet shows that the victim was admitted into the Sullia C.H.C. on 04.04.2015 at 06:20 p.m. with the history of assault. PW-15 was an independent witness and he had no motive to falsely implicate the accused. In his evidence, he stated that the victim gave statement in his presence. In his entire cross-examination, except suggesting that he has not certified the findings of the victim on Ex.P16, there was no suggestion that the victim was not in a position to speak or she was not in a condition to give statement. The suggestion in his cross-examination to the effect that the victim



was brought to the hospital due to alcoholic ulcers which was burst in her body, was denied. The next suggestion was that he has issued those records at the instance of the Police and Gangamma did not give any statement in his presence, that also was denied by him. Absolutely there was no suggestion to PW-15 that the victim was not in a condition to give statement or she was smelling alcohol. The Trial Court committed error in disbelieving Ex.P16 only on the ground that the fitness of the victim was not certified in Ex.P16. Such view is contrary to the judgment of the Hon'ble Supreme Court in **Laxman's** case referred to *supra*. When it was suggested to PW-15 that he has not certified the fitness of the victim on Ex.P16, he has specifically stated that since the patient was speaking, he did not certify her fitness. There were no suggestions either to PWs-15 or 14 that while giving statement at Ex.P16, the victim was tutored. Contrary to his own defence, the accused suggested in the cross-examination of PW-15 that Police have recorded the statement of Gangamma and subsequently obtained the signature of PW-15 on the same, which he denied. Such suggestion indirectly implies the admission of recording of statement of Gangamma by the Police.



26. The other contention was that Ex.P16 was not corroborated by the other evidence viz., PW-2 who accompanied the victim to the hospital and the other eyewitnesses PWs-3 and 5. It was contended that neither the eyewitnesses nor the husband and daughter of Gangamma supported the version of assault by the accused. Therefore, dying declaration becomes doubtful. Apparently, PWs-1, 2 and 10 are closely related both to the accused and the deceased. The Hon'ble Supreme Court taking the judicial notice of the relatives, family members and neighbours turning hostile in such cases, in ***Trimukh Maroti Kirkan Vs. State of Maharashtra***<sup>11</sup> in para Nos.13 to 15, held as follows:

"13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. ***No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family.*** The parents or

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<sup>11</sup> (2006) 10 SCC 681



other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a ***crime committed in secrecy or inside the house should go unpunished.***

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. ***A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.*** (See *Stirland v. Director of Public Prosecutions* — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh.*) ***The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led.*** The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. ***Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*** Illustration (b) appended to this section throws some





light on the content and scope of this provision and it reads:

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. ***Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character.*** In view of Section 106 of the Evidence Act there will be a corresponding burden on the ***inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution*** and there is no duty at all on an accused to offer any explanation."

The above judgment goes to show that when an assault or death takes place in four walls of the house, the inmates of the house have the duty to explain the same. It was also observed that no member of the family, even if the witness to the crime, would depose against another family member and the neighbours are also reluctant to give evidence in such cases. In the present case also, at the time of the incident, PW-1 the



husband was not in the house. The only persons living in the house were PW-1, the accused, the other son of the deceased and the deceased. As per the evidence of PW-1 itself, at the time of the incident, he was in Mangalore on his work. His another son Sunil had also gone for work. Therefore, it was only the accused and the deceased who were in the house.

27. The defence of the accused was that the victim suffered injuries due to alcoholic ulcers. PWs-1 and 2 fell in line with the accused in setting up the case of alcoholic ulcers, whereas PW-10 in the chief examination, did not whisper anything about her mother dying due to such alcoholic ulcers, but when the defence counsel suggested such theory, she admitted the same. If the victim suffered injuries due to over-consumption of alcohol, then PWs-1, 2, 10 and the accused himself should have given such history in the hospital. They should have got her treated in the hospital, that would have been the natural conduct. There was no suggestion to PW15 that when victim was brought to hospital she had consumed alcohol. Whereas, she was admitted by PW-2 in the hospital with the history of assault by the accused. The accused did not explain such conduct which he was required as per Section 106



of the Indian Evidence Act, 1872. Therefore, the aforesaid witnesses turning hostile did not bring any dent on the dying declaration. The Trial Court was in grave error in disbelieving the dying declaration on the ground that the same did not bear fitness certificate and the same was not supported by the eyewitnesses and the other family members of the victim.

28. The deceased is none else but the mother of the accused. She had no reason to falsely implicate him in the case. As held by the Hon'ble Supreme Court in **Laxman's** judgment, if the dying declaration is found acceptable, the Court can place conviction solely based on such evidence.

29. The other contention was that, if the victim was assaulted with MO-4, there should have been external injuries. It was the case of the prosecution that the accused had kicked the victim on her stomach. If the victim was assaulted with MO-4 as alleged, then there should have been corresponding external injuries. As per the evidence of PW-17 who conducted the post-mortem examination on the dead body of the victim and produced report as per Ex.P23, the following external and internal injuries are found on the dead body of the victim:



#### EXTERNAL INJURIES

- i) Contusion measuring 2 x 1 cm on the outer aspect of right abdomen; 2 cm above anterosuperior illiac spine region. Abdomen appears tense and distended.
- ii) Abrasion measuring 1 x 0.5 cm on the front of left knee.

#### INTERNAL INJURIES

- i) Fracture of 2<sup>nd</sup> to 6<sup>th</sup> ribs on left side in midclavicular line. Corresponding chest wall muscle contusions and contusions of posterior chest wall muscles are present.
- ii) Intestinal tear measuring 1.5 cm along the mesenteric border is present. Diffuse mesenteric contusions are present around the tear and all over at places.
- iii) Patchy contusions at places.

30. The prosecution's case that the victim was aged 60 years was not disputed. If she suffered alcoholic ulcers, then why such external injuries and fractures were found in her body was not explained. Secondly, the accused had kicked her and also assaulted her with the wooden club. She was a woman aged 60 years who had delivered and breast fed 2 children. Generally in such women bone density would be poor. In cases



of such assaults, even without the external injuries, there is possibility of such persons suffering fractures. But, in this case, the corresponding external injuries were found. Moreover, the cause of death was due to complications of abdominal injuries. The theory of she suffering such abdominal injuries due to over-consumption of alcohol was not probabilized by the accused. The accused has not taken up such stand in his examination under Section 313 of Cr.P.C., nor offered any explanation for such injuries. Therefore, the said contention deserves no merit.

31. It is no doubt true that the witnesses to the recovery of MOs-1 to 4 did not support the prosecution version. Even otherwise, the only incriminating object was MO-4 the club. On the basis of the voluntary statement of the accused, MO-4 the club said to be recovered under the Mahazar at Ex.P5 from the front yard of the house of the accused and the deceased on 06.04.2015, between 12:30 and 01:30 p.m. The said place was accessible to the others. Therefore, the fact of recovery of the same from the front yard of the house of the accused and the deceased does not amount to discovery, however that does not demolish the entire case of the prosecution as Ex.P16 the dying declaration is found acceptable.



32. The evidence on record shows that soon after receipt of MLC intimidation, PW.14 visited the hospital and recorded Ex.P16 the statement of the victim. That was corroborated by the evidence of PW.15 the Doctor. The evidence of PW.2 shows that the victim was taken from Sampaje hospital and from there to Sulia Hospital by her and soon after the incident, the history of assault by the accused was given.

33. PWs.2 and 3 admit that they and the villagers had advised the accused on many occasions. PW.4 does not deny the suggestion that he and others were advising the accused, but he pleads ignorance. If the victim herself advised and all was well with the accused, they had no reason for them to advise the accused. There was ring of truth in the evidence of the official witnesses though independent witnesses did not support the prosecution case. The larger Bench of the Hon'ble Supreme Court in **Rizwan Khan's** case referred to *supra* held that when the testimonies of police officials are found trustworthy, no enmity is found between the police witnesses and the accused and if no such defence is taken in the statement under Section 313 of Cr.P.C. of the accused, the testimonies of police witnesses cannot be rejected on the ground of no corroboration by independent witnesses. It was held that



failure of the independent witnesses to support the police witnesses was not fatal.

34. The holistic appreciation of the evidence shows that the prosecution discharged its burden of proving that the victim suffered injuries due to the assault by the accused which led to her death. The appreciation of the evidence by the Trial Court is contrary to the material on record, circumstances of the case and the judgments of the Hon'ble Supreme Court referred to *supra*. Hence the same is perverse or patently illegal.

35. The next question is whether the accused assaulted the victim with an intention to cause her death. According to the prosecution itself, the accused was addicted to alcohol and had become wayward. On the date of incident also, the deceased admonished him not to come home drunk and that led to the incident. Therefore, the evidence on record goes to show that the accused had no intention to commit the murder of his mother. But, he indulged into an imprudent act of assault on his own mother aged 60 years in such a fatal manner causing intestinal tear which led to her death. There were contusions in her large intestine also. Such acts of the accused attract the offence prescribed in the Second part of Section 304 I.P.C. and not Section 302 I.P.C. Therefore, the impugned judgment and



order of total acquittal suffers patent illegality and perversity. The appeal deserves to be allowed in part. Hence, the following:

**ORDER**

- i) The appeal is partly allowed.
- ii) The impugned judgment and order of acquittal is hereby set aside.
- iii) The respondent/accused is convicted for the offence punishable under Second Part of Section 304 IPC.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

PKN, PA  
CT:HS  
List No.: 1 SI No.: 8