

# SUPREME COURT OF INDIA

State of Karnataka

Vs.

Khatu @ Hanumantharaya

Special Leave Petition (civil) 5753 of 2006

(Dr. Arijit Pasayat and P.P. Naolekar)

09/07/2007

## JUDGEMENT

**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.

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: "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 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."

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 is 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.

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.