

SLCU JUDGMENT WRITING COMPETITION 2017

Frame the charge(s) and write a judgment on the basis of the allegations and evidence given here under by analysing the evidence, keeping in mind the relevant provisions of the concerned law.

EVIDENCE FOR PROSECUTION:

PW-1: Murari

Murari has deposed that he knows the accused and deceased Sudha. The deceased was staying with the accused in Shyamgarh village. The accused had kept her as his mistress in his house. The deceased and accused were often quarrelling with each other under the influence of alcohol.

That on the day of incident, at about 19:00 hours, when he was in his house, his neighbours informed that the house of the accused was under flames. Immediately, he rushed to the house of the accused. He noticed the burnt body of Sudha. According to him the Police visited the village on the next day at about 8.00 hours and obtained his signature on the First Information Report. He was declared a hostile witness by the prosecution during the course of chief examination.

On further examination by the Public Prosecutor, he deposed that on 09.03.2004, accused and deceased were quarrelling with each other since morning. At about 19.00 hours, the villagers heard hue and cry of deceased from the house of the accused. Immediately the house of the accused caught fire. The accused ran out of his house. By the time he reached the place of occurrence, the body of the deceased was burnt.

In cross examination by defence, the witness deposed that he does not know whether accused had assaulted the deceased with a knife and had doused kerosene oil on the deceased and set her on fire.

PW-2: Ramanna

Ramanna, on 17.07.2006, deposed that he knows the accused and the deceased. After the first wife died, the accused had brought the deceased to his house in Shyamgarh village and

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had started living with her. In his opinion, both of them were living as husband and wife. The accused and deceased were often quarrelling under the influence of alcohol. On the day of the incident, at about 17:00 hours, he had seen the accused quarrelling with the deceased.

At around 19:00 hours, he rushed to the house of the accused after coming to know about the incident. He saw the flames arising from the house of accused. The accused opened the front door and ran away from the place. He could not speak to the accused. He saw that the body of deceased was burnt.

He further deposed that after two months from the date of incident, police had brought the accused to Shyamgarh village. The accused led the police to the particular spot and removed a knife. The police seized the knife under a seizure memo marked as MO. 1.

During cross-examination by defence, PW.2 deposed that the distance between his house and that of accused is about 20 ft. On the date of incident, he saw the accused, and the deceased quarrelling with each other. He was not aware of the reasons as to why the accused and deceased were quarrelling. When he was returning from his shop, he saw the house of accused was under flames. He denied the suggestion that accused had brought the police to the village. He denied the suggestion that accused had not shown the knife kept in the particular spot to the investigating officer.

PW-3: Parvatamma

Parvatamma has deposed that she is the neighbour of the accused. She knows the accused and she knew the deceased Sudha also. After the death of first wife of accused, he had brought Sudha as his wife to his house. The accused and deceased were frequently quarrelling with each other under the influence of alcohol. On the date of incident, she returned home at about 19:00 hours, she saw the house of accused was set ablaze. The accused was not present at the place of occurrence.

This witness was declared hostile by the prosecution as she departed away from part of the statement recorded under Sec. 161 CrPC.

In her further examination by the prosecution, it was extracted that she only saw the house set ablaze.

Cross Examination by the defence: nil

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PW-4: Nataraj

Nataraj's evidence was recorded by the Court after a period of 2 years from the date of incident. He deposed that about 15 days after the incident, the police had brought the accused to his village. The accused led the police to a particular spot, and removed the knife from there which was seized and marked as M.O 1. PW4 also identified the knife before the Court

In cross examination by the defence, it was extracted that he is unable to recollect and explain to the Court as to what had exactly happened 2 years back.

PW-5: Shivaiah

Shivaiah has deposed regarding recovery of blood stained clothes of the accused and of the knife from the particular spot as pointed out by the accused. PW.5 stated that the police had brought the accused to his village on 27.12.2004. This witness also identified the knife and blood stained clothes seized and marked as MO. 1 and MO. 2 respectively before the Court.

In the cross examination by the defence, he denied the suggestion that he was not there at the time of recovery of blood stained clothes of the deceased and of the knife from the particular spot.

PW-6: Dr. G.N Padma

Dr. G.N Padma had conducted the post-mortem examination of the deceased on 10-03-2004. On examination of the deceased, she noticed the following injuries on the body of the deceased-

- . Incised wound over the Occipital Region measuring 1 x1 inches.
- i. Incised wound over the Temporal Region measuring 1 x 1 inches.

PW-6 has deposed that the death of the deceased was due to head injuries. Death of Sudha was homicidal in nature. She has deposed that the injuries on Sudha may be caused by the knife marked as MO.1. The viscera of the deceased had smell of alcohol.

In the cross examination by the defence, she stated that the time of death was within 24 hours from the time of autopsy conducted by her.

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PW-7: Nanda Kumar

Nanda Kumar was working as an Assistant Director, F.S.L, Madivala. He has stated that bloodstains were detected on the clothes of the accused (MO. 2) and also on knife (MO. 1). He has also deposed that the bloodstains found on the clothes of the accused and the knife belonged to the same blood group.

Cross examination by the defence: nil.

DEFENCE PLEA:

It was submitted by the Defence that the accused in private defence in a manner so as to protect his own life from imminent danger shown by the deceased. The Defence also contends that the act of the accused was proportional to the harm that was intended. It is also contended that the accused is unaware as to who set his house on fire.

EVIDENCE FOR DEFENCE:

DW-1: Malliah

Accused Malliah examined himself on oath before the Hon'ble Court that on the day of the incident the deceased had started a quarrel, as usual, with him regarding his affair with another lady who kept calling him frequently. The accused claimed that he tried avoiding the quarrels but the deceased picked up the same issue time and again. At this point the accused claimed that, during the heated argument the deceased picked up the kitchen knife and tried to attack him. The accused tried to push her away but she kept charging forward with the knife in a really threatening manner. At this point the accused claimed that in order to protect himself he grabbed and twisted her hand and while trying to push her away the knife hit the back of her head. At this point, the accused panicked and ran out of the house. The accused claims that he is unaware as to who set his house on fire.

During the cross examination of the accused it was extracted by the prosecution that the

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accused was under the influence of alcohol at the time of the incident. The accused has denied the suggestion that he himself set his house on fire. The accused admits that the wounds on the head were caused when he pushed her. However, he denies the suggestion that he hit her intentionally. The accused admits that he ran out of the house because he panicked and thought everyone would blame him for the crime. He could not recollect as to whether anyone else was present at the scene of the crime.

DW-2: Mala

Mala, the domestic servant of the accused and the deceased, deposed before this Court that deceased had an aggressive behaviour and often physically assaulted the accused at times. Once, during a heated argument she had grabbed the knife and threatened the accused of dire consequences. On the day of the incident she was doing her household chores till 4:30pm, during which she has seen that the accused returned from the job and that both the accused and deceased had engaged in another such quarrel. The witness claims that she heard about the offence only the next day as she resides in the neighbouring village.

During cross examination of DW 2 by the prosecution it was placed on record that the accused was also behaving in a very violent manner during the quarrel between the two on the day of the crime. The witness denies the suggestion that she saw either of them attacking each other with a knife on the date of incident. The witness denies the suggestion that the deceased had not threatened him before.

DW- 3: Dr. Ashank Gowda

The defence witness DW3 has been brought forward in the capacity of the doctor who examined the accused after the arrest. The witness claims that the accused had several wound marks on his body when he brought for examination. The wound certificate herein placed and marked as Exhibit 1 has been attached as Annexure III

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ANNEXURE 1

FIRST INFORMATION REPORT

1. General:

- a) FIR Number: 58/2004
- b) Police Station: Madivala PS
- c) District and State: Bengaluru, Karnataka
- d) FIR Date: 10/03/2004
- e) Information received at police station: 6:00 hours, 10/03/2004
- f) General diary reference entry number: 5825/2004
- g) Direction and Distance from Police Station: 2 km East of the PS

2. Occurrence of Crime:

- a) Date of Occurrence: 09/03/ 2004
- b) Time of occurrence: Around 19.00 hours.

3. Place of occurrence:

Shyamgarh village.

4. Complainant/Informant:

- a) Name: Murari
- b) Father's Name: Venkatesha
- c) DOB: 5/08/1965
- d) Nationality: Indian
- e) Passport Number: N/A
- f) Occupation: Farmer.

5. Reasons for delay in reporting by the complainant/informant: N/A

6. Details of the accused:

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- (a) Name of the accused: Malliah
- (b) Father's name: Rachiah
- (c) DOB: 25/01/1970
- (d) Nationality: Indian
- (e) Passport Number: N/A
- (f) Occupation: Farmer.

7. Complaint given by the Complainant/Informant:

I reside in the village Shyamgarh in the same ward where Sudha and Malliah were living. Yesterday at about 7 pm when he was in his house, his neighbour came to him shouting "run-run " Malliah's house is burning. I immediately rushed to the house of Malliah and found that flames were coming out from the house of Malliah. I entered the house along with some neighbours and found blood near Sudha's burnt body. I enquired about Malliah but he was missing from the house. Malliah's first wife had expired. Malliah had kept Sudha as his mistress. Malliah is an alcoholic. I have often seen them quarrelling.

R.O.A.C

Name: Anish Chandra

Rank: Station House officer(SHO)

Police Station: Madivala PS

Signature of the Officer-in-charge: Sd/-

8. Signature/Thumb Impression of the complainant/ Informant: Sd/-

ANNEXURE II

RELEVANT EXTRACTS FROM THE POLICE CASE DIARY:

Since the above information reveals commission of offence under Sections 304, 352 r/w 326 and 201 of the Indian Penal Code, 1860. The investigation has been taken over by Sub Inspector Ranjeet Jacob. The accused was arrested on 11.03.2004. On the information given

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by him a knife and his blood-stained clothes were recovered and marked as MO. 1 and MO. 2 respectively.

ANNEXURE III

Medical Examination report of Accused

- 1) An incised cut, on the right arm measuring 4 cm in length and about half cm in depth. The wound is still healing and seems to have been inflicted only in the past 48 hours.
- 2) A cut on the chest measuring 6 cm in length but is superficial in nature. This wound has also been caused within 48 hours from the date on which the accused was brought for examination.
- 3) A scar on the left thigh of the accused was observed on examination. The wound seems to be a few months old.
- 4) No burn marks were observed on the body of the accused when he was examined.

During cross examination of the doctor it was established by the prosecution that the wounds were not fatal in nature and could not have possibly caused any sort of serious injuries to the accused.

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ARGUMENTS ON BEHALF OF PROSECUTION:

Though PW.1 Murari was declared hostile witness, his evidence can not be disbelieved in toto. It establishes that the accused and deceased were living as husband and wife and that the deceased died a homicidal death in the house of accused and the fact that he fled from the scene of the crime supports the case of the prosecution. It was submitted that PW 1 could recollect the fact that the accused was at the scene of the crime and was seen running away by PW1. It was accused who was last seen with the deceased and burden was on the accused to explain the cause of death of the deceased.

P.W.2 Ramanna is an immediate neighbour of the accused and he has no motive to falsely implicate the accused. This witness had seen the accused and deceased at 17:00 hours. PW 2 further corroborates the evidence which has been given by PW1. He affirms that the accused was seen fleeing from the scene of the crime. The Public Prosecutor further states that this fact was not challenged by the defence and that therefore this witness becomes a key witness in this case.

Though PW3 Parvatamma is declared a hostile, her evidence about the relationship of accused and deceased Sudha and the deceased was living in the house of accused supports the case of prosecution. Her evidence that accused and deceased were only inmates of the house and they were frequently quarrelling with each other under the influence of alcohol has not been controverted. Her evidence that when she came near the house of accused, the accused was not there and the fact that the house was set ablaze has also not been controverted.

During the examination of the doctor PW-6 it has been clearly established that the death was clearly due to the nature of injuries which were present on the head of the deceased. The fact that the accused set the house ablaze can be seen as an aggravating act which was done in order to destroy the evidence. The wounds which have been inflicted are clearly fatal

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wounds delivered on the head of the deceased which would have resulted in the immediate death. The defence has not controverted the fact that death of Sudha was homicidal in nature.

Further, the public Prosecutor has argued that the knowledge of the accused with respect to which both the material objects were seized clearly indicates that the accused was the only person aware of its location. The mere fact that he has tried to hide it clearly reflects the intention of the accused. Both the Material objects have been stained with blood which belongs to the accused. The prosecution therefore pleads before the court to convict the accused for offences made under s. 304, 352 r/w 326 and 201 of the Indian Penal Code.

ARGUMENTS ON BEHALF OF DEFENCE :

The Defence counsel has submitted before Court that the accused is not liable to be convicted for the offences that have been alleged by the Prosecution. In light of this, the Defence counsel has placed before this Court evidence which has been marked as exhibit 1 and argues that the said case falls under the General Exceptions laid down under the IPC.

The Defence further places reliance on the testimonies of the Prosecution witness. It has been brought forward that the accused and deceased both were under the influence of alcohol. It has also been submitted before this Court that Exhibit 1 is indicative of the fact that the accused was also harmed by the deceased. The wounds have been inflicted on the accused as well.

The testimony of the accused has been clearly stressed upon by the Defence counsel who further argues that the prosecution has been unable to show or produce evidence which could prove that the accused had set the house ablaze. The Defence has argued by relying on the statements of the accused that stated that the accused had run away because he was under the fear of being arrested.

Statements made by DW 2 also is indicative of the fact that the deceased had threatened the accused on several instances prior to the date of offence.

The Defence counsel has therefore argued that the accused is innocent acted in private defence and therefore cannot be convicted for the offences alleged by the prosecution.