

Manjunatha Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Feb-28-2020

Judge : K.Somashekar

Appeal No. : CRL.A 561/2011

Appellant : Manjunatha

Respondent : The State Of Karnataka

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE28H DAY OF FEBRUARY, 2020 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL APPEAL No.561 OF 2011 BETWEEN Manjunatha S/o Veeranna, Aged about 30 years, Occ: Coolie R/o Madalagere Village, Harapanahalli Taluk, Davanagere District. ... Appellant (By Sri. S.G.Rajendra Reddy, Advocate) AND The State of Karnataka, By Harapanahalli Police Station, Rep. by State Public Prosecutor, High Court, Bangalore ... Respondent (By Sri. Renukaradhya R.D., HCGP) This criminal appeal filed u/s 374(2) of Cr.P.C praying to set aside the judgment of conviction and order of sentence dated 07.05.2011 passed by the Prl.District and Sessions Judge at Davanagere in S.C.No.11/2009 convicting the appellant/accused for the offence punishable under Sections 498-A, 306 of IPC and etc., This Criminal Appeal coming on for dictating judgment, this day, the Court delivered the following: :

2. :

JUDGMENT

This appeal is directed against the judgment of conviction and order of sentence passed by the Court of Principal District and Sessions Judge, Davangere in Sessions Case No.11/2009 dated 7th May 2011, whereby the accused was convicted for the offences punishable under Sections 498A and 306 of IPC.

2. The appellant/accused was sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.2,500/-, in default to pay fine amount, he shall undergo simple imprisonment for a period of six months for the offence punishable under Section 498A of IPC. He was further sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.2,000/-, in default to pay fine amount, he shall further undergo simple imprisonment for a period of five months for the offence punishable under Section 306 of IPC.

3. Factual matrix of the appeal as per the theory of the prosecution is as under: :

3. : It is stated in the complaint that the accused is the husband of the deceased Shailaja. Subsequent to her marriage, she had been to her husband's house to lead marital life. While she was residing in the house of her husband, he used to give physical and mental harassment by abusing her in a filthy language and also used to beat her, apart from was suspecting her fidelity. Due to that, she committed suicide by consuming poison on 30th August 2007 at around 6.00 p.m. near Thavarekoppa Lion Safari said to be in the limit of Shimoga, in pursuance of the act of the accused. On filing of a complaint by the complainant, a case came to be registered by the Kumsi Police Station for the offences punishable under Sections 498A and 306 of IPC by recording an FIR as per Ex.P8 in Crime No.128/2007. Subsequently on jurisdiction point the case was transferred to Harapanahalli Police Station in Crime No.194/2007 by recording an FIR as per Ex.P10. Subsequent to recording of FIR in Crime No.194/2007, the Investigating Officer took up the case for investigation and laid the charge sheet against the accused before the jurisdictional court for the aforesaid offences. :

4. :

4. Subsequently, the trial court framed charges for the offences punishable under Sections 498A and 306 of IPC, whereby the accused did not plead guilty but claimed to be tried.

5. Subsequently, the prosecution in order to substantiate its case, in all examined PW-1 to PW-10, got marked several documents as per Exs.P1 to P14, the contradictory statement of PW-6 was got marked as per Ex.D1, but no material objects were marked on the part of the prosecution.

6. Subsequent to closure of evidence of the prosecution witnesses, the accused was examined as required under Section 313 of Cr.P.C. for enabling the incriminating statement appeared against him, but he declined the truth of the evidence of the prosecution witnesses and subsequently the accused did not come forward to adduce any defence evidence as contemplated under Section 233 of Cr.P.C.

7. Subsequently, the trial court after hearing the arguments advanced by the prosecution and the defence counsel and on appreciation of oral and documentary evidence :

5. : available on record, found that the prosecution has proved the guilt of the accused. Consequently the trial court held conviction against the accused for the offences under Sections 498A and 306 of IPC. It is this judgment which is under challenge in this appeal by urging various grounds.

8. It is contended by the learned Counsel for the appellant by referring to the evidence of PW-2 Shankamma, who is no other than the mother of the deceased Shailaja and also the author of the complaint given by her as per Ex.P2, that based on her complaint, the case in Crime No.128/2007 came to be registered by the Kumsi Police; subsequently on jurisdiction point, the said case was transferred to Harapanahalli Police Station. Accordingly, the case in Crime No.194/2007 came to be registered for the offences punishable under Sections 498A and 306 of IPC. In order to substantiate the case against the accused, the

prosecution relied upon the evidence of PW-1 Mehaboob Ali, who was secured as a panch witness in respect of spot mahazar as per Ex.P1.

9. PW-3 Malleshappa was also secured to act as a panch witness in respect of inquest proceedings held over the dead :

6. : body of Shailaja as per Ex.P3. But the trial court has considered the narration of the prosecution story by referring to the examination-in-chief on the part of the prosecution witnesses. But the evaluation of evidence so also on analysis or scrutiny of the evidence in a proper perspective, the trial Court has erroneously given a finding by holding conviction against the accused, merely because Shailaja is said to be the wife of the accused and also she committed suicide by consuming poison as per the chemical analysis report issued by the concerned FSL authority as per Ex.P5.

10. It is further contended that there is a delay in lodging the complaint as per Ex.P2. The delay has been conveniently made use by the complainant regarding deliberation and discussion to initiate the complaint against the accused to suit their purpose, but the delay in lodging the complaint has not been properly appreciated by the trial Court in order to prove the guilt of the accused that the accused is responsible for his wife Shailaja committing suicide by consuming poison as per FSL report at Ex.P5. :

7. :

11. It is further contended that there are no eye-witnesses on the part of the prosecution in respect of the alleged incident but the entire case of the prosecution is based upon circumstantial evidence. But the evidence, which has been facilitated by the prosecution, is required to be appreciated in a proper perspective and if not, certainly it would lead to greater injustice to the accused merely because he is a husband of the deceased Shailaja.

12. The trial court has failed to prove even a single circumstance for appreciation by producing the cogent and consistent evidence against the accused in respect of an allegation made in the complaint at Ex.P2 by PW-2 Shankamma, who is no

other than the mother of the deceased Shailaja, so also being mother-in-law of the accused Manjunatha.

13. The second limb of the argument advanced by the learned counsel for the appellant is that, there is no cogent and consistent evidence in respect of evidence of PWs-2, 4, 6 and 8. Based on the complaint of PW-2 Shankaramma, the law was set into motion by recording FIR relating to the case in Crime :

8. : No.128/2007 so also the case in Crime No.194/2007 of Harapanahalli Police Station. There is no statement of Shankaramma at Ex.P2 in respect of the case earlier registered in UDR No.17/2007 by Sub-Inspector of Police in respect of the death of deceased Shailaja. 14. Further it is contended that there is an improvement in the evidence of PW-2, Shankaramma regarding her statement recorded by the Taluka Executive Magistrate. But the fact of suspecting the fidelity of the deceased by the accused Manjunatha is disclosed by her prior to her death. But in fact, it is only a general allegation made against the accused that the accused had suspected her fidelity, due to which she committed suicide by consuming poison as per the FSL report at Ex.P5. But the evidence of PW-2, PW-4, PW-6 and PW-8 on the part of the prosecution makes it clear that there was a panchayat convened regarding differences in the family affairs of accused Manjunatha and deceased Shailaja regarding harassment and so also ill-treatment rendered by the accused to her. But none of the elderly members who were present in the Panchayat were :

9. : got examined on the part of the prosecution in order to prove the guilt of the accused.

15. The evidence of PW-2- Shankaramma, who is no other than the mother of the deceased Shailaja, runs contrary to the evidence of PW-6 said to be the relative of the deceased and PW- 8 being a neighbour of the accused, who have stated that there was a demand for money and also there was only an altercation took in between the deceased Shailaja and accused, whereas PW-2 Shankaramma and also her sister have stated in their evidence that the accused was suspecting the fidelity of the deceased Shailaja. But no evidence on the part of the prosecution is forthcoming to substantiate the allegation made against the accused that the

accused had extended physical and mental harassment by suspecting her fidelity and due to that harassment, she has committed suicide by consuming poison. Prior to the death of deceased Shailaja there was no complaint or any allegation made against the accused in respect of harassment or that the cruelty is meted out by the deceased in the hands of the accused. But the complaint statement as filed by PW-2 Shankaramma, is only a due deliberation and :

10. : discussion to implicate the accused that he was the cause for the death of the deceased who consumed poison as indicated at Ex.P5 FSL report.

16. The entire testimony of the prosecution witnesses viz., PWs-2, 4, 6 and 8 reveals that there is no specific evidence on the part of the prosecution that the accused had extended physical as well as mental harassment to the deceased in order to make her to commit suicide by consuming poison as narrated in the theory of the prosecution. The Trial court has erroneously come to the conclusion that the prosecution had proved the guilt of the accused beyond all reasonable doubt. Without appreciating the attendant circumstances as to whether deceased Shailaja committed suicide by consuming poison, though the circumstances are strong enough to render the prosecution version, the accused has been implicated in the alleged theory of prosecution merely because the accused said to be the husband of the deceased Shailaja, but it is natural to believe the version of the prosecution that the accused is the cause for the death of the deceased, which led her to commit suicide by consuming poison. :

11. :

17. Lastly, learned Counsel submitted that the trial court has overlooked the material evidence, so also the circumstances in respect of cause for the death of deceased, which are found to be inconsistent. Therefore, in this appeal, the entire evidence of the prosecution is required to be re-appreciated, so also the allegation made in the complaint statement at Ex.P2 and so also the mahazar at Ex.P1 as well as the inquest held over the dead body of the deceased Shailaja as per Ex.P3 in the presence of PW-3 Malleshappa, who has been secured as panch witness has to re-appreciated. Whereas the trial court has held conviction against the accused stating that he had given physical as well as mental harassment and led

the deceased Shailaja to commit suicide by consuming poison. But the evidence which is facilitated by the prosecution is found to be with certain infirmities. When there is no specific evidence put forth by the prosecution to establish the guilt of the accused beyond all reasonable doubt and, if a doubt arise in the case of the prosecution, the benefit of such doubt is always to be extended to the accused alone. :

12. :

18. In support of his contention, the Counsel has placed reliance on Criminal Appeal Nos.539-540/2008 rendered by the Apex Court in Jagdishraj Khatta -vs- State of Himachal Pradesh. In the said judgment, the Honble Supreme Court has addressed extensively in respect of the scope and object of Sections 498A and 306 of IPC inclusive of Section 30 of the Indian Arms Act wherein the appellant said to be arraigned as an accused came to be acquitted.

19. In this judgment, mainly relying on the testimonies of the relatives of the deceased to the effect that accused acted in a cruel manner against the deceased in front of her relatives, but the allegation made in the FIR said to be recorded by the Police based upon the statement of complaint filed by PW-2 as per Ex.P2, it is extremely general in nature. But the same was never raised by the family of the deceased when they were present at the time of inquest held over the dead body or the Investigating Officers.

20. In the instant case, based upon the statement given by the informer, the case in UDR No.17/2007 came to be registered under Section 174 clause (iii) of Cr.P.C. to proceed in :

13. : respect of the death of the deceased. In fact, the allegation of cruelty is meted out by the accused Manjunatha said to be the husband of the deceased Shailaja. But there is a delay in launching the prosecution by recording FIR in order to file a complaint in respect of the accused giving physical as well as mental harassment to the deceased Shailaja. The prosecution did not even examine any elderly persons said to have participated in the Panchayat convened in respect of the harassment meted out by the deceased in the hands of the accused to

substantiate the allegation that the accused had given ill-treatment to the deceased. But the trial court held conviction against the accused without appreciation of the evidence on record, where the case of the prosecution is based upon the circumstances, but relying on the general oral testimonies of the prosecution witnesses that too be the evidence of PW-1 Shankaramma, so also the evidence of PW-6 Veerappa, relative of the deceased and evidence of PW-4 Girijamma said to be the sister of the deceased. But their evidence is not supported by any other independent witnesses that the accused had given physical as well as mental harassment to the deceased, which led her to commit suicide by :

14. : consuming poison as narrated in the complaint filed by PW-2 Shankaramma, mother of the deceased. The evidence of aforesaid witnesses are found to be contradictory. Reliance on the instances testified by the witnesses could not be appropriate as the said incident had taken place as stated in the spot panchanama, so also inquest held over the dead body. The totality of the circumstances cannot be arisen for the accused that he is the cause for the death of the deceased to commit suicide by consuming poison. Therefore, this reliance is applicable to the facts and circumstances of the present case.

21. In Bhagwan Das -vs- Kartar Singh and Others reported in (2007) 11 SCC205 the Honble Supreme Court has dealt extensively with the scope of Sections 306 and 107 of IPC regarding abetment to commit suicide - applicability - mere harassment of wife by her husband or in-laws, due to disputes or differences, without anything more, pursuant to which if wife commits suicide, held that it will not attract Section 306 read with Section 107 of IPC, 1860. In the said case, reliance is placed on para-11 of the judgment, wherein referring to a case in Netaji Dutta -vs- State of West Bengal reported in (2005) 2 :

15. : SCC659 where a suicide note was involved, this Court came to the conclusion that in the suicide note there was no reference of any act or incident whereby the appellant was alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to have committed suicide. Hence, it was held that there was no abetment to suicide.

22. At para-12 similarly referring to a judgment in Mahendra Singh -vs- State of M.P. reported in 1995 SCC (Cri) 1157 it was observed by the Honble Apex court that it is common knowledge that the words uttered in a quarrel or in the spur of the moment or in anger cannot be treated as constituting mens rea. In that case, the appellant said to the deceased to go and die. As a result of such utterance, the deceased went and committed suicide. However, the Honble Supreme Court observed that no offence under Section 306 of IPC read with Section 107 of IPC was made out because there was no element of mens rea.

23. Whereas in the instant case, the deceased Shailaja committed suicide by consuming poison, but she did not file any complaint prior to the occurrence of the incident. The :

16. : deceased did not make any specific complaint against her husband in respect of accused suspecting her fidelity and also regarding physical as well as mental harassment to her and due to such harassment, she committed suicide by consuming poison. But in the instant case, PW-2 Shankamma who has given the statement of complaint as per Ex.P2, stating that the marriage of her daughter Shailaja was performed with the accused about five years back and at the time of her marriage, they had given 3 tolas of gold items and cash of Rs.30,000/- in terms of dowry. Subsequent to her marriage, she had been to her husbands house to lead a happy marital life, but she had led happy married life only for a period of three months. Subsequently, the accused had given her physical and mental harassment by suspecting her fidelity. Therefore, she took Shailaja to her house for eight months. Even thereafter ill- treatment was extended by the accused to the deceased. Therefore, Panchayat was constituted to advise him. But no evidence on the part of the prosecution is forthcoming to believe the theory of the prosecution that the accused had given physical as well as mental harassment to the deceased which led her to commit suicide by consuming poison as indicated in :

17. : Ex.P5 FSL report said to have been issued by the Chemical Analyst.

24. PW-2 Shankamma has stated in her evidence that the accused had given information over telephone that the condition of Shailaja is serious and she has

been admitted to McGann Hospital at Shimoga. At around 10.00 p.m. the Kumsi Police called PW-2 over phone and informed that her daughter Shailaja is dead. Subsequent to getting information about the death of Shailaja, PW-2 rushed to McGann Hospital along with her another daughter PW-4 Girijamma, Eligar Panchappa and Akki Mallappa and they saw the dead body of Shailaja. Only on information given by PW-2, who is no other than the mother of deceased, an initial case in UDR No.17/2007 came to be registered and thereafter proceeded with the case for investigation as contemplated under Section 174 clause (iii) of Cr.P.C.

25. PW-2 was subjected to cross-examination wherein she has specifically stated that she had taken the accused to her house subsequent to the marriage. During Ashadha period, she had brought her daughter to her house for a period of one :

18. : month and again her daughter went back to her husbands house. After about 4-5 months, her daughter became pregnant. After two months, she took her daughter to her house. This is the evidence that has been elicited by the prosecution. Though she was cross-examined, nothing is forthcoming that the accused had insulted the deceased and led her to commit suicide by consuming poison and so also the accused had insisted the deceased to bring an amount of Rs.15,000/- and also received a dowry in the form of cash of Rs.15,000/- during the marriage of the deceased Shailaja. But the allegation made against the accused is that he had suspected the fidelity of her daughter, therefore, she committed suicide by consuming poison.

26. PW-5 Halappa has stated in his evidence that after the marriage, accused and deceased were in good terms. Deceased Shailaja was staying at Madalagere and she used to go to her parental house and she was not sent to her husbands house. In that regard, himself, Naganna and other had gone to the house of PW-2 Shankamma. There he came to know that due to harassment of the accused, PW-2 did not send her daughter :

19. : to the house of accused. After 4-6 days of the said incident, he came to know that Shailaja died by consuming poison. But he does not know the reason for the death of Shailaja. This witness has been treated as hostile. Therefore, his evidence runs contrary to the evidence of PW-2 Shankamma and PW-4

Girijamma, who are mother and sister of deceased Shailaja. But this evidence has not been considered by the trial court in a proper perspective and moreover Ex.P4 the statement runs contrary to the evidence of PW-2 Shankamma and PW-4 Girijamma.

27. PW-7 being the Doctor who conducted autopsy over the dead body and issued Postmortem report as per Ex.P6. During autopsy over the dead body he noticed smell of kerosene from the stomach and he had collected viscera and forwarded it to the FSL for examination. Accordingly, viscera was examined and FSL report was issued and based upon that, he opined that the death of the deceased was due to consumption of poison and asphyxia. But it is not the case of the prosecution that the accused was mainly the cause for the death of deceased Shailaja, who consumed poison as per the FSL report at Ex.P5. :

20. :

28. PW-9 H.E.Manjappa being a Police Inspector stated in his evidence that he received the case file in UDR No.17/2007 from the ASI Omkarnaika and on 7.9.2007 he received report from the Tahsildar, Shimoga, where the investigation was conducted over the dead body of deceased Shailaja. On the basis of the said report, he registered a suo motu case by recording an FIR in Crime No.128/2007 as per Ex.P8. Subsequent to registration of the crime, it is based on the jurisdiction point, the case was transferred to Harapanahalli Police Station. Accordingly, FIR was recorded by registering the case in Crime No.194/2007 as per Ex.P10.

29. PW-10 PSI has stated in his evidence that he visited the scene of crime and conducted spot mahazar as per Ex.P11 and recorded the statements of one Gudi Halappa, Halesha and Nagappa. But PW-5 is said to have been examined on behalf of prosecution but the remaining persons viz., Halesha and Nagappa were not examined on behalf of the prosecution to substantiate the case against the accused that he had given physical as well as mental harassment to the deceased which :

21. : lead her to commit suicide by consuming poison as per the report at Ex.P5 issued by the Chemical Examiner.

30. The trial court did not appreciate the evidence of the prosecution in a proper perspective whether the accused was the main cause for the death of the deceased Shailaja. But the evidence of PW-2 Shankamma and PW-4 Girijamma and the Investigating Officer are found to be inconsistent and improbable to believe the version of the prosecution that the accused was the cause for the death of the deceased Shailaja. Merely because the accused is the husband of the deceased Shailaja who said to have subjected her to both physical and mental cruelty and unable to bear the same, she committed suicide by consuming poison. But there are no specific materials on the part of the prosecution to prove the guilt of the accused. Therefore, in this appeal, the entire evidence on record requires to be re-appreciated, if not, certainly it would cause greater injustice to the accused. These are all the contentions taken up by the learned Counsel for the appellant seeking to allow the appeal by setting aside the judgment of :

22. : conviction and order of sentence rendered by the trial court for the offence under Sections 498A and 306 of IPC.

31. However, in this case, the prosecution has given much credence to the evidence of PW-2 Shankamma and PW-4 Girijamma, who are the mother and sister of the deceased Shailaja. But their evidence runs contrary to the evidence of PW-5 and PW-6 and so also the evidence of PW-8 Anantharaju whose house was situated at a distance of 50 feet from the house of the accused. Hence, the evidence of these witnesses requires to be re-appreciated by re-visiting the judgment of conviction and order of sentence rendered by the trial court as these witnesses have been subjected to examination on the part of the prosecution in respect of the fact that the accused used to beat the deceased by suspecting her fidelity and also had given physical and mental harassment. But the prosecution did not put forth the evidence by cogent and consistent evidence that accused had given physical as well as mental harassment to the deceased Shailaja and led her to commit suicide by consuming poison. Gudi Halappa, Halesha and Nagappa, who are said to be the elderly persons, also advised the accused regarding physical as well as mental harassment extended by :

23. : him to his wife Shailaja and that there was an improvement in the attitude of the accused as it is found in the evidence of PW- 2 Shankamma. But Shailaja had returned to her house at Shimoga after the incident. It is also required to be elicited through the evidence of Halappa and Nagappa, who had intervened in respect of certain differences arisen between the accused and his wife Shailaja. But the trial court did not give any credence to the cross-examination done in respect of these witnesses, but only believed the evidence of PWs-2 and 4, so also the evidence of PW-8, who was the neighbour whose house was situated at a distance of 50 feet and held conviction.

32. These are all the contentions taken by the learned Counsel for the appellant while seeking for allowing the appeal by setting aside the judgment of conviction and order of sentence passed against the accused for the offences punishable under Sections 498A and 306 of IPC, since the prosecution has failed to prove the ingredients of the aforesaid offences.

33. On the other hand, learned HCGP for the State has taken me through the complaint as per Ex.P2 filed by P.W.2 :

24. : who is none other than the mother of the deceased Shailaja and in the complaint she has stated that the marriage of her daughter Shailaja was performed with the accused by name Manjunatha about five years ago by giving three thola gold ornaments and cash of Rs.30,000/- as dowry. After the marriage deceased Shailaja was residing in the house of her husband situated at Mudalageri, Harapanahalli Taluk and she led a happy marital life only for a period of three months. Thereafter, the accused started to harass and ill treat her both mentally and physically suspecting her fidelity. Hence, P.W.2 had taken deceased Shailaja to her house for a period of eight months. Thereafter, accused came to her house and took back her to his house after convening panchayath. Further, P.W.2 has specifically stated that when her daughter Shailaja was residing in the house of her husband, he used to give physical and mental harassment to the deceased. Therefore, panchayath was convened and accused was advised not to ill-treat deceased Shailaja and mend his character. Even after the panchayath also, the accused continued to harass and ill treat the deceased Shailaja and the

same was informed to P.W.2 by deceased Shailaja over phone. Hence, P.W.2 brought her daughter and :

25. : accused to her house for a period of twenty days. Thereafter, the accused took her wife to his house. One day, accused had called P.W.2 over phone and informed that the condition of Shailaja is serious and she has been admitted to Mc.Gann Hospital, Shimoga. At about 10.00 p.m. Kumsi police called her over phone and informed that Shailaja is dead. Immediately, she along with P.W.4-Girijamma, Eligara Panchappa, Akki Mallappa rushed to Mc.Gann Hospital, Shimoga and saw the dead body. Thereafter P.W.2 filed complaint statement as per Ex.P2. Based upon the information given by her, the case in UDR No.17/2017 came to be registered. Based upon the report of Tahsildar, Shimoga, the case in Cr. No.128/2007 came to be registered by Kumsi Police. Subsequently, on jurisdiction point, the case in Cr.No.194/2007 of Harapanahalli Police Station came to be registered.

34. P.W.4-Girijamma is none other than the sister of the deceased Shailaja who has deposed that her sister died about three years ago. The accused used to assault her sister suspecting her fidelity and same was informed to her by the deceased Shailaja when she had come to her parental house. In :

26. : this regard panchayath was convened. After the panchayath, the accused took her to his house. Despite convening panchayath, accused continued to assault Shailaja. Hence, she had come to her parental house and stayed there for one month. Thereafter, accused took her back to his house.

35. P.W.7-Dr.Veeresh, is the doctor who conducted autopsy over the dead body of the deceased Shailaja and issued post mortem report as per Ex.P6. He has deposed that there was 150 ML white liquid and kerosene smell from the stomach. He had sent viscera to FSL. On the basis of the FSL report- Ex.P5, he opined that the death of the deceased Shailaja was due to consumption of poison and asphyxia.

36. P.W.8-Anantharaju being the neighbour of the deceased Shailaja subjected to cross examination on the part of the prosecution and he had deposed that

altercation took place between the accused and deceased Shailaja. This evidence is in corroboration and fortified by the prosecution evidence to prove the guilt of the accused for the offence under Sections 498-A, 306 of IPC is the submission on behalf of the respondent. :

27. :

37. P.W.10-K.R.Chandrashekar said to be the I.O. deposed that on 04.10.2007, he received case papers in Cr.No.128/2007 from Kumsi Police Station and on the basis of the same, he registered a case in Cr.No.194/2007 and issued FIR as per Ex.P10. Later he visited the spot of crime and conducted spot mahazar as per Ex.P11 and recorded statements of Gudi Halappa, Halesh and Nagappa, Veerappa, Jagadeesh and Anantaraju. He obtained records pertaining to the marriage of the accused and the deceased from the Teggina Matha, Harapanahalli as per Ex.P12. On 05.11.2007, he arrested the accused and produced him before the Court. After completing the investigation, he laid charge sheet against the accused for the offences punishable under Sections 498-A and 306 of IPC.

38. The trial Court has appreciated the evidence of all these witnesses and came to the conclusion that there was no dispute that the deceased Shailaja being wife of the accused- Manjunatha consumed poison and died within seven years from the date of marriage with the accused. But the trial Court had appreciated the evidence of P.W.2-Shankamma, P.W.4- :

28. : Girijamma, P.W.5-Halappa, P.W.6-Veerappa and P.W.8- Anantaraj and they have stated in their evidence that accused used to harass the deceased, due to which, she committed suicide by consuming poison. The trial Court further held that though, these witnesses have been subjected to cross examination, nothing worthwhile has been elicited to disbelieve their evidence. It is their evidence to the fact that Shailaja was in the house of her mother and they had not sent her to her husbands house, since he used to harass and ill-treat her and panchayath was convened in this regard and same is corroborated by the evidence of P.W.5 and P.W.6. If really, there was no quarrel between the accused and deceased Shailaja, there is no reason for the above witnesses to depose falsehood against the accused. On such circumstances, the trial Court arrived at a right conclusion that

the accused is the cause for the death of the deceased and in this regard unequivocal evidence has been adduced to the fact that the accused used to quarrel with the deceased and suspected her fidelity which lead deceased to commit suicide. Hence, learned HCGP seeks for dismissal of the appeal preferred by the :

29. : appellant as being devoid of merits and the judgment of the trial Court needs no interference.

39. Having regard to these strenuous contentions taken by the learned counsel for the appellant and learned HCGP, it is relevant to take note of the evidence of P.W.2 - Shankamma who is none other than the mother of the deceased. Based upon her information, the case in UDR No.17/2007 came to be registered under Section 174(iii) of Cr.P.C. Subsequent to initiation of the proceedings that the concerned Tahsildar who held the proceedings as contemplated under Section 174(iii) of Cr.P.C. gave the report. Based upon the report given by the Tahsildar, the case in Cr.No.128/2007 came to be registered. Subsequent to registration of the crime the law was set into motion. On the basis of the jurisdictional point, the case was transferred to Harapanahalli P.S. Accordingly, the case in Cr.No.194/2007 came to be registered for the offence punishable under Section 498-A and 306 of IPC.

40. It is relevant to refer that, the marriage of the deceased Shailaja was performed with accused-Manjunath. After her marriage, she had been to her matrimonial house to :

30. : lead happy marital life. Accordingly, she led happy marital life only for a period of three months. Thereafter, the accused started to give physical and mental harassment by abusing and assaulting her, suspecting her fidelity so as to drive her to commit suicide by consuming poison on 30.08.2007 at about 6.00 p.m. near Thavarekoppa Lion Safari, Shimoga.

41. P.W.1-Mahboob Ali is the panch witness to Ex.P1.Mahazar drawn by the I.O. He deposed that in the year 2007, police conducted spot mahazar as per Ex.P.1 in respect of death of Shailaja.

42. P.W.2-Shankamma is the mother of the deceased who has deposed that the marriage of her daughter was performed with the accused by name Manjunatha about five years ago giving three thola gold ornaments and cash of Rs.30,000/- as dowry. But she had given Rs.15,000/- in terms of dowry. After the marriage, deceased Shailaja was residing in the house of her husband situated at Mudalageri, Harapanahalli Taluk and she led a happy marital life only for a period of three months. Thereafter, the accused started to harass and ill treat her both mentally and physically suspecting :

31. : her fidelity. Hence, P.W.2 had taken deceased Shailaja to her house for a period of eight months. Thereafter, accused came to her house and took back her wife Shailaja to his house after convening a panchayath. P.W.2 has specifically deposed that when deceased Shailaja was residing in the house of her husband, her husband used to give physical and mental harassment to the deceased. Therefore, panchayath was convened and accused was advised not to ill-treat deceased Shailaja. Even after the panchayath, the accused continued to harass and ill treat the deceased Shailaja and she had informed the same to P.W.2 over phone. Hence, P.W.2 brought her daughter and accused to her house for a period of twenty days. Thereafter, the accused took her wife to his house. One day, accused had called P.W.2 over phone and informed that the condition of Shailaja is serious and she has been admitted to Mc.Gann Hospital, Shimoga. At about 10.00 p.m. Kumsi police called her over phone and informed that Shailaja is dead. Immediately, she along with P.W.4-Girijamma, Eligara Panchappa, Akki Mallappa rushed to Mc.Gann Hospital, Shimoga and saw the dead body. When P.W.2 asked about the death of the deceased, accused briefed her that he and shailaja :

32. : had been to Lion Safari at Tavarekoppa, Shimoga and there, she consumed poison. In the complaint, P.W.2 alleged that her daughter Shailaja consumed poison due to the physical and mental harassment given by her husband. But in the cross examination she has specifically stated that when the accused came to their house, they have insulted the accused as the accused had insulted them earlier. She denied that because of their attitude, the accused had become mental patient. But she again stated that the accused was mentally ill. Prior to one month of the death of her daughter, accused was brought to Shimoga for his treatment.

She further deposed that during Ashada, she brought her daughter to her house for one month and send her back to her matrimonial home. After four to five months her daughter had conceived, at that time she had taken her daughter to her house for two months. But she has specifically stated in a statement given before the Tahsildar that she did not give any statement in respect of giving cash of Rs.15,000/- towards dowry. She neither gave any complaint nor any statement before the Tahsildar against the accused regarding suspecting fidelity of her daughter by the accused. :

33. :

43. P.W.4-Girijamma who is none other than the sister of the deceased Shailaja deposed that her sister died about three years ago. The accused used to assault her sister suspecting her fidelity and the said fact was informed to P.W.4 by her sister when her sister had come to her parental house. Therefore, they had brought Shailaja to her parental house. In this regard panchayath was convened. After the panchayath, the accused took her to his house. Despite convening the panchayath, the accused continued to harass the deceased Shailaja. In the cross examination, she denied the suggestion that they insulted the accused when he had come to their house. During sankramana, deceased Shailaja stayed in her parental house for fifteen days and at that time, the deceased Shailaja was pregnant, hence, she did not send her to matrimonial home. However, the evidence of P.W.2 so also the evidence of P.W.4 are found to be inconsistent and contradictory to each other but the same has not been appreciated by the trial Court. There is no dispute about the death of the deceased Shailaja. On 31.08.2007, P.W.7- Dr.Veeresh, conducted post mortem over the body of deceased Shailaja and during autopsy over the dead body, noticed smell :

34. : of kerosene from the stomach and he had collected viscera and forwarded it to the FSL for chemical examination. Accordingly, viscera has been examined and FSL report was issued and based upon that, he opined that death of the deceased was due to consumption of poison and asphyxia. There is no dispute about the cause of death of the deceased Shailaja but it is required to be considered with reference to the evidence of prosecution. When the accused had stayed in the

house of his in-laws, he had been insulted by them. Therefore, he had suffered mental illness and same has been mentioned in the evidence of P.W.2 and P.W.4 who are the material witnesses to the case of prosecution. But the mental harassment revolved around these two witnesses and so also circumstantial witnesses that accused is the cause for the death of the deceased Shailaja who committed suicide by consuming poison. It is alleged that the accused suspected her fidelity, but in this regard, no complaint came to be registered prior to her death as narrated in the Ex.P2-complaint.

44. P.W.9-H.E.Manjappa, Police Inspector deposed that on 05.09.2007, he received UDR No.17/2007 from ASI and on :

35. :

07. 09.2007, he received report from Tahsildar, Shimoga. On the basis of said report, he registered suo-moto case under Cr.No.128/2007 and submitted FIR as per Ex.P.8. Since, the case related to Harapanahalli Taluk, he sent the case file to Harapanahalli P.S. The report of transfer is at Ex.P9.

45. P.W.10-K.R.Chandrashekara, I.O. deposed that on 04.10.2007, he received Cr.No.128/2007 from Kumsi Police Station and on the basis of the same, he registered a case in Cr.No.194/2007 and issued FIR as per Ex.P10. Subsequently, he visited the spot of crime and conducted spot mahazar as per Ex.P11 and recorded statements of Gudi Halappa, Halesh and Nagappa. He obtained records pertaining to the marriage of the accused and the deceased as per Ex.P12 and the same reveals that the marriage of the deceased Shailaja was performed in the mass marriage. On 05.11.2007, he arrested the accused and produced him before the Court. After completing the investigation, he laid charge sheet. P.W.10 did not make an enquiry of P.W.2 and senior aunt of deceased Shailaja. But he has proceeded with investigation based upon the FIR as per Ex.P10 in Cr.No.194/2007 of Harapanahalli police station. In :

36. : the statement of C.W.17-Anantharaju, C.W.18-Veerappa, C.W.19-Jagadeesha who had pointed out the scene of crime and on the said basis, he drew spot mahazar as per Ex.P11. But Ex.P3-Inquest Report held over the dead

body of the deceased as contemplated under Section 174(iii) of Cr.P.C.

46. P.W.2 mother of the deceased had given statement during the inquest proceedings that, in the panchayath accused was advised not to ill-treat her daughter and send her daughter to the matrimonial house. But since one year prior to her death, accused was suffering from mental illness and he was required to take treatment in Shivamogga. Therefore, she had given certain amount to him. When she enquired about his health, accused told her that he was suffering with some sexual disease. Herself and her daughter took him to Manasa Hospital, Shimoga and after treatment, he stayed for twenty days in her house. Thereafter, her daughter and accused returned to their home. The accused did not recover from the illness. Therefore, it is said that, due to suffering from mental illness, accused undergone some mental depression. The same can be inferred from the statement of P.W.2 during inquest over the dead body. :

37. : This statement was recorded by the Taluk Executive Magistrate, Shimoga where the case in UDR No.17/2007 came to be registered.

47. But in Ex.P2, statement given by the P.W.2 discloses that on 30.08.2007 during evening hours, her son-in-law had given information through telephone that himself and his wife Shailaja were in Shimoga and her daughter is serious, therefore he got her admitted to the hospital. Therefore, she along with elderly persons of her village rushed to the Mcgann hospital, Shimogga and saw the dead body of Shailaja in autopsy. When P.W.2 enquired about the death of the deceased Shailaja, accused told her that two days ago, he brought his wife to Manasa Hospital, Shimogga and on 29.08.2007, they had been to Lion Safari situated at Thavarekoppa and stayed nearby the bus stand. On 30.08.2007, deceased Shailaja went outside by informing him, but she did not return. When he went in search of her, deceased Shailaja was struggling and poisonous smell was emanating and she died at the spot itself. By observing the said scene, a doubt arises about the death of her daughter. Hence, she lodged complaint as per Ex.P2. Based upon the said :

38. : statement, P.W.9 registered a case in UDR No.17/2007 as contemplated under Section 174(iii) of Cr.P.C. Subsequently, Tahsildar of Shimogga held the

proceedings over the dead body of the deceased as contemplated under Section 174(iii) of Cr.P.C. The entire case revolves around evidence of PWs-2 and 4 and the trial Court had given much credence to evidence of PWs.2 and 4 who are none other than the mother and sister of the deceased Shailaja. But their evidence runs contrary to the evidence of P.Ws. 5 and 6 and so also, the evidence of P.W.8 whose house was situated at a distance of 50 feet from the house of the accused. Hence, the evidence of these witnesses requires be re-appreciated by re-visiting the judgment of conviction and order of sentence rendered by the trial Court.

48. Moreover, there is no cogent and consistent evidence adduced by P.Ws.2, 4, 6 and 8. There is no statement of Shankaramma as per Ex.P2 based upon which UDR case came to be registered. There is an improvement in the evidence of P.W.2 regarding her statement before the Taluk Executive Magistrate and her evidence before the Court. The fact of suspecting fidelity of the deceased by the accused is disclosed :

39. : by her before the Court only. According to P.Ws.2, 4, 6 and 8 there was a panchayath convened regarding harassment and ill-treatment by the accused to the deceased but none of the persons to the panchayath were examined. Prior to the death of the deceased Shailaja, no complaint was registered by deceased Shailaja against her husband, but the deceased had led her happy marital life for a period of three months and during her marriage, her parents had given dowry in terms of Rs.15,000/- and also gold items weighing one and half tholas. But there is no specific evidence as such in this regard. The entire case of the prosecution is based upon the circumstances, but reliance is on the general oral testimonies of the prosecution witnesses which is required to be re-appreciated i.e., the evidence of P.W.2 and so also, P.W.4. On the part of the prosecution there is no evidence to support the allegation made in the complaint in respect of suo-moto case registered under Cr.No.128/2007. Without there being any supporting evidence on the part of the prosecution the trial Court has erroneously come to the conclusion that the prosecution had proved the guilt of the accused beyond all reasonable doubts. :

40. :

49. The ingredients of Section 498-A of IPC requires to be established by the prosecution to prove the guilt of the accused that he had given physical and mental harassment to the deceased Shailaja to drive her to commit suicide by consuming poison as per Ex.P5-FSL Report. Based upon the FSL report, P.W.7-Dr.Veeresh conducted autopsy and opined that the death of the deceased was due to consumption of poison and asphyxia. But there is no dispute about the death of deceased Shailaja. The prosecution is required to establish the guilt of the accused by putting forth cogent and consistent evidence that the accused is the cause for the death of the deceased Shailaja and also led her to commit suicide by consuming poison, as indicated in the FSL report. But during the course of conducting autopsy over the dead body, it is noticed that kerosene smell was emanating from the stomach of the deceased Shailaja but nothing was whispered even in the inquest proceedings whether the clothes worn by the deceased Shailaja smelt kerosene. But same is only found in the evidence of P.W.7-Dr.Veeresh, but this vital evidence had to be appreciated by the trial Court to arrive at a conclusion in so far as Section 306 of IPC which is related to Section 107 of IPC that :

41. : the person said to be accused caused abatement to death of the deceased. In the instant case, the allegation against the accused is that he being the husband of deceased Shailaja, after their marriage, subjected her to cruelty by abusing and assaulting her, suspecting her fidelity so as to drive her to commit suicide and in consequence of subjecting the deceased Shailaja to cruelty by the accused, unable to bear the same, on 30.08.2007 at about 6.00 p.m. near Thavarekoppa Lion Safari, Shimoga committed suicide by consuming organo phosphorus insecticide. But there is no specific evidence elicited by the prosecution to prove the guilt of the accused even though, subjected to cross examination the material witnesses i.e., PW2 and PW4. Hence, this Court is of the opinion that prosecution has failed to prove the guilt of the accused beyond all reasonable doubts.

50. Therefore, it is stated that there are grave infirmities found in the order of the trial Court and moreover, the trial Court has misdirected and misinterpreted the evidence of the prosecution witnesses in respect of the allegation made against

the accused that he had extended physical and mental :

42. : harassment to the deceased and that led her to commit suicide by consuming poison. Therefore, in terms of the aforesaid reasons and findings, I am of the opinion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Therefore, the accused deserves to be acquitted of the charges made against him. Accordingly, I pass the following: :

ORDER

: i) The appeal is allowed. ii) The judgment of conviction and order of sentence dated 07.05.2011 passed by the Prl. District and Sessions Judge, Davangere, in S.C. No.11/2009 is hereby set-aside. Accordingly, accused is acquitted of the offences punishable under Sections 498-A and 306 of IPC. If, the accused has executed bail bond, the same shall be cancelled and if any fine amount is paid by the accused, it shall be returned to him on proper identification. Sd/- JUDGE
KNM/JS

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