

K V Ravi Kumar Vs. B.I.chandrakala

K V Ravi Kumar Vs. B.I.chandrakala

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Court : Karnataka

Decided On : Feb-06-2021

Judge : K.S.Mudagal

Appeal No. : CRL.RP 1299/2016

Appellant : K V Ravi Kumar

Respondent : B.I.chandrakala

Judgement :

Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016
Crl.R.P.Nos.401/2017, 747/2017 1 R IN THE HIGH COURT OF KARNATAKA AT
BENGALURU DATED THIS THE6H DAY OF FEBRUARY 2021 BEFORE THE
HONBLE MRS. JUSTICE K.S.MUDAGAL CRIMINAL REVISION PETITION
No.702/2015 C/W CRIMINAL REVISION PETITION Nos.1296/2016, 1297/2016,
1298/2016, 1299/2016, 401/2017 & 747/2017 Crl.R.P.No.702/2015: BETWEEN:
SMT.B.L.CHANDRAKALA W/O K.V. RAVI KUMAR AGED ABOUT35YEARS R/AT
KOTE NEAR KANYAKAPARAMESHWARI TEMPLE GAURIBIDANUR
CHIKKABALLAPURA DISTRICT-561 208 ...PETITIONER (BY SRI
B.C.VENKATESH, ADVOCATE) AND: SRI K.N.RAVI KUMAR S/O.VEMANNA
AGED ABOUT37YEARS WORKING AS BMTC CONDUCTOR NO.973, 11TH
DEPOT BMTC, PUTTENAHALLI YELAHANKA DEPOT BANGALORE CITY - 560
064 R/AT MITTEMARI VILLAGE BAGEPALLI TALUK CHICKBALLAPUR
DISTRICT-561 207 RESPONDENT (BY SRI H.P.LEELADHAR, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S.397 OF CR.P.C PRAYING TO SET ASIDE THE

ORDER

DATED 06.02.2014 CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 2 PASSED BY THE ADDITIONAL CIVIL JUDGE, GOWRIBIDANUR IN DVA.NO.4/2010 AND THE

ORDER

DATED 23.10.2014 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA IN CRIMINAL APPEAL NO.32/2014. CrI.R.P.No.1296/2016: BETWEEN: SMT.K.V.ARUNA KUMARI W/O.T.GOVINDAPPA AGED ABOUT 38 YEARS R/AT 1T WARD, BAGEPALLI BAGEPALLI TALUK CHIKKABALLAPUR DISTRICT-562 101 ...PETITIONER (BY SRI H.P.LEELADHAR, ADVOCATE) AND: STATE OF KARNATAKA BY GOWRIBIDANUR TOWN POLICE STATION CHICKBALLAPUR DISTRICT REPRESENTED BY SPP HIGH COURT BUILDINGS BANGALORE - 560 001 RESPONDENT (BY SRI H.R.SHOWRI, HCGP) THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W401CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT

AND

ORDER

CONVICTION AND SENTENCE DATED 15.10.2015 PASSED BY THE PRINCIPAL CIVIL JUDGE AND J.M.F.C., GOWRIBIDANUR IN C.C.NO.496/2009 AGAINST THE PETITIONER AND TO SET ASIDE THE

JUDGMENT

AND

ORDER

OF CONVICTION AND SENTENCE DATED 22.09.2016 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPUR IN CRIMINAL APPEAL NO.89/2015. CrI.R.P.No.1297/2016: BETWEEN:

1. K.V.RAVI KUMAR S/O LATE VEMANNA AGED ABOUT 38 YEARS
Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016
Crl.R.P.Nos.401/2017, 747/2017 3 2 INDUMATI W/O LATE VEMANNA AGED
ABOUT 74 YEARS BOTH ARE R/AT MITTEMARI VILLAGE BAGEPALLI TALUK
CHIKKABALLAPUR DISTRICT-562 101 ...PETITIONERS (BY SRI
H.P.LEELADHAR, ADVOCATE) AND: STATE BY GOWRIBIDANUR TOWN
POLICE STATION CHICKBALLAPUR DISTRICT REPRESENTED BY SPP HIGH
COURT BUILDINGS BANGALORE - 560 001 RESPONDENT (BY SRI
H.R.SHOWRI, HC GP) THIS CRIMINAL REVISION PETITION IS FILED U/S.397
R/W401CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
AND

ORDER
OF CONVICTION AND SENTENCE DATED 15.10.2015 PASSED BY THE
PRINCIPAL CIVIL JUDGE AND JMFC, GOWRIBIDANUR IN C.C.NO.496/2009
AGAINST THE PETITIONERS AND TO SET ASIDE THE

JUDGMENT
AND

ORDER
OF CONVICTION AND SENTENCE DATED 22.09.2016 PASSED BY THE I
ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPUR, IN
CRIMINAL APPEAL NO.88/2015. Crl.R.P.No.1298/2016: BETWEEN:

1. K.V.RAVI KUMAR S/O LATE VEMANNA AGED ABOUT 33 YEARS 2 INDUMATI
W/O LATE VEMANNA AGED ABOUT 74 YEARS BOTH ARE R/AT MITTEMARI
VILLAGE BAGEPALLI TALUK CHIKKABALLAPUR DISTRICT-562 101
Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016
Crl.R.P.Nos.401/2017, 747/2017 4 3 SMT. K.V.ARUNA KUMARI W/O
T.GOVINDAPPA AGED ABOUT 38 YEARS R/AT 1T WARD, BAGEPALLI
BAGEPALLI TALUK CHIKKABALLAPUR DISTRICT-562 101 ...PETITIONERS
(BY SRI H.P.LEELADHAR, ADVOCATE) AND: STATE BY GOWRIBIDANUR

TOWN POLICE STATION CHICKBALLAPUR DISTRICT REPRESENTED BY
SPP HIGH COURT BUILDINGS BANGALORE - 560 001 RESPONDENT (BY SRI
H.R.SHOWRI, HCGP) THIS CRIMINAL REVISION PETITION IS FILED U/S.397
R/W401CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
AND

ORDER

OF CONVICTION AND SENTENCE DATED1510.2015 PASSED BY THE
PRINCIPAL CIVIL JUDGE AND JMFC, GOWRIBIDANUR IN C.C.NO.496/2009
AGAINST THE PETITIONERS HEREIN AND SET ASIDE THE

JUDGMENT
AND

ORDER

OF CONVICTION AND SENTENCE DATED2209.2016 PASSED BY THE I
ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPUR, IN
CRIMINAL APPEAL NO.41/2016. CrI.R.P.No.1299/2016: BETWEEN:

1. K.V.RAVI KUMAR S/O LATE VEMANNA AGED ABOUT33YEARS DRIVER
CUM CONDUCTOR NO.973 11TH DEPOT, BMTC PUTTENAHALLI
YALAHANKA DEPOT, BANGALORE CITY R/AT MITTEMARI VILLAGE
BAGEPALLI TALUK CHIKKABALLAPUR DISTRICT-562 101 2 INDUMATI W/O
LATE K.L.VEMANNA AGED ABOUT75YEARS CrI.R.P.No.702/2015 C/w
CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 5 HOTEL
WORKER MITTEMARI, BAGEPALLI TALUK CHIKKABALLAPUR DISTRICT-562
101 3 SMT.K.V.ARUNA KUMARI W/O T.GOVINDAPPA AGED ABOUT35YEARS
HOUSE WIFE, MITTEMARI BAGEPALLI TALUK CHIKKABALLAPUR DISTRICT-
562 101 ...PETITIONERS (BY SRI H.P.LEELADHAR. ADVOCATE) AND:

1. B.L.CHANDRAKALA W/O K.V.RAVIKUMAR AGED ABOUT37YEARS R/AT
GOWRIBIDANUR TOWN CHIKKABALLAPUR DISTRICT-562 103 2 STATE BY
GOWRIBIDANUR POLICE GOWRIBIDANURU CHIKKABALLAPURA DISTRICT-

562 103 RESPONDENTS (BY SRI H.R.SHOWRI, HCGP FOR R2 R1 SERVED AND UNREPRESENTED) THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W401CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
AND

ORDER

OF CONVICTION AND SENTENCE DATED 15.10.2015 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, GOWRIBIDANURU IN C.C.NO.496/2009 AGAINST THE PETITIONERS HEREIN AND TO SET ASIDE THE

JUDGMENT
AND

ORDER

OF CONVICTION AND SENTENCE DATED 22.09.2016 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA IN CRIMINAL APPEAL NO.87/2015. CrI.R.P.No.401/2017: BETWEEN: SMT.CHANDRAKALA W/O K.V.RAVI KUMAR AGED ABOUT 36 YEARS CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 6 R/AT KOTE, GOWRIBIDANUR CHIKKABALLAPURA DISTRICT - 561 208 ...PETITIONER (BY SRI ARAVIND REDDY.H, ADVOCATE) AND:

1. STATE BY GOWRIBIDANUR TOWN POLICE CHIKKABALLAPURA DISTRICT-561 208 2 T. GOVINDAPPA S/O LATE THAYAPPA AGED ABOUT 48 YEARS DRIVER KSRTC BUS CHIKKABALLAPURA DEPOT CHIKKABALLAPURA CHIKKABALLAPURA DISTRICT-561 201 RESPONDENTS (BY SRI H.R.SHOWRI, HCGP FOR R1; SRI H.P.LEELADHAR, ADVOCATE FOR R2) THIS CRIMINAL REVISION PETITION IS FILED U/S.397(1) R/W401CR.P.C PRAYING TO SET ASIDE THE

ORDER

OF ACQUITTAL DATED 22.09.2016 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA IN CRL.A.NO.89/2015 AND TO CONFIRM THE

JUDGMENT
AND

ORDER

OF CONVICTION AND SENTENCE DATED 15.10.2015 PASSED BY THE PRINCIPAL CIVIL JUDGE AND J.M.F.C., GOWRIBIDANUR IN C.C.NO.496/2009. CrI.R.P.No.747/2017: BETWEEN: THE STATE OF KARNATAKA REPRESENTED BY SHO GAURIBIDANUR TOWN POLICE STATION GAURIBIDANUR REP. BY STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BENGALURU - 560 001 ...PETITIONER (BY SRI H.R.SHOWRI, HCGP) CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 7 AND:

1. K.V.RAVI KUMAR AGED ABOUT 33 YEARS R/AT MITTEMARI VILLAGE BAGEPALLI TALUK CHIKKABALLAPURA DISTRICT-561 207 2 INDUMATHI W/O LATE K.L.VEMANNA AGED ABOUT 69 YEARS R/AT MITTEMARI VILLAGE BAGEPALLI TALUK CHIKKABALLAPURA DISTRICT-561 207 3 SMT. K.V.ARUNA KUMARI W/O K.T.GOVINDAPPA AGED ABOUT 69 YEARS R/AT MITTEMARI VILLAGE BAGEPALLI TALUK CHIKKABALLAPURA DISTRICT-561 207 ..RESPONDENTS (BY SRI H.P.LEELADHAR, ADVOCATE) THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W401CR.P.C PRAYING TO MODIFY THE

ORDER

OF SENTENCE DATED 22.09.2016 PASSED BY I ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA IN CRIMINAL APPEAL 412/2016 AND TO MODIFY THE

ORDER

OF SENTENCE DATED 15.10.2015 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, GOWRIBIDANUR FOR THE OFFENCES PUNISHABLE UNDER SECTION 498 OF IPC AND SEC.3, 4 OF D.P ACT IN C.C.NO.496/2009. THESE

CRIMINAL REVISION PETITIONS COMING ON FOR FURTHER HEARING THIS DAY, THE COURT THROUGH PHYSICAL HEARING MADE THE FOLLOWING:

ORDER

These revision petitions arise out of two sets of litigation between the parties. Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 8 2. Crl.R.P.No.702/2015 arises out of the proceedings in DVA No.4/2010 on the file of the Additional Civil Judge & J.M.F.C., Gowribidanur. The said case was filed by the petitioner against her husband and in-laws under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the D.V.Act for short) seeking protection order, monetary reliefs, right of residence etc.

3. The petitioners in Crl.R.P.Nos.1296/2016 to 1299/2016, respondent No.2 in Crl.R.P.No.401/2017 and the respondents in Crl.R.P.No.747/2017 were prosecuted in C.C.No.496/2009 on the file of the Principal Civil Judge & J.M.F.C., Gowribidanur for the offences punishable under Sections 143, 323, 504, 506, 498A read with Section 149 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (D.P.Act for short) on the basis of the charge sheet filed by Gowribidanur Town Police in Crime No.16/2008 of their police station. Crime No.16/2008 was registered on the basis of the complaint filed by the petitioner in Crl.R.P.No.702/2015. In the said case, accused No.1 was the husband, accused Nos.2 and 3 were father-in-law and mother-in-law, accused No.4 Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 9 was sister-in-law of the complainant and accused No.5 was the husband of accused No.4.

4. This Court by order dated 18.01.2019 and 05.08.2020 connected all the aforesaid revision petitions. Since the proceedings in C.C.No.496/2009 and the revision petitions arising out of the said case are the prime matters and they have some bearing on the proceedings filed by the wife under the D.V. Act, first those revision petitions will be dealt with. For the purpose of convenience, the parties will be referred to henceforth with their ranks before the trial Court in C.C.No.496/2009.

5. The marriage of the complainant and accused No.1 was celebrated on 18.06.2006 in Sumangali Kalyana Mantapa, Gowribidanaur. Out of the said marriage, the couple begot a son. The complainant filed the complaint as per Ex.P1 on 18.02.2008 alleging that the accused received gold jewellery mentioned in the complaint and cash of Rs.1,50,000/- etc. as dowry at the time of marriage. After marriage they subjected her to physical and mental cruelty in connection with their demands for additional dowry. On such CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 10 complaint, Gowribidanur Town Police investigated the case and filed the charge sheet against accused Nos.1 to 5.

6. The trial Court on taking cognizance, summoned the accused. Even before the trial Court framing the charges, accused No.2 the father-in-law died. Therefore, case against him abated. The trial Court framed the charges for the offences punishable under Sections 498A, 143, 323, 504, 506 read with Section 149 of IPC and Sections 3 and 4 of the D.P. Act against accused Nos.1, 3 to 5 and tried them.

7. On trial, the Magistrate convicted and sentenced accused Nos.1 and 3 to 5 as follows: Sl. Offences Sentence No.1. 143 read with Fine of Rs.1,000/- with Section 149 of IPC default sentence 2. 323 of IPC Fine of Rs.1,000/- with default sentence 3. 498A of IPC Simple imprisonment of 3 years 4. 504 of IPC Fine of Rs.2,000/- with default sentence 5. 506 of IPC Fine of Rs.2,000/- with default sentence 6. 3 of the D.P. Act Simple imprisonment of five years 7. 4 of the D.P. Act Simple imprisonment of six months CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 11 Further the trial Court acting under Section 357(3) of Cr.P.C. awarded compensation of Rs.50,000/- to the complainant/PW.1 in default to pay compensation, accused Nos.1, 3 to 5 were directed to undergo rigorous imprisonment for three months.

8. The accused, the State and the complainant challenging the order of conviction and sentence, adequacy of sentence preferred the following appeals before the I Additional District & Sessions Judge, Chikkaballapur: Sl. Appellants Appeal No.No.1. Accused Nos.1 & 3 CrI.A.No.88/2015 2. Accused Nos.4 & 5 CrI.A.No.89/2015 3. Complainant CrI.A.No.87/2015 4. State CrI.A.No.41/2016 9.

The First Appellate Court by the impugned order partly allowed the appeals and acquitted accused No.5 of all the charges, accused Nos.1, 3 and 4 of the charge under Section 504 of IPC. Further the First Appellate Court modified the order of sentence against accused Nos.1, 3 and 4 for the CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 12 offences punishable under Section 498A of IPC read with Sections 3 and 4 of the DP Act. In addition to the sentence of imprisonment awarded by the trial Court, the First Appellate Court imposed the following sentence of fine: Sl. Offence Additional Sentence No.imposed 1. 498A of IPC Fine of Rs.5,000/- in default to undergo simple imprisonment of three months 2. 3 of the D.P. Act Fine of Rs.5,000/- in default to undergo simple imprisonment of three months 3. 4 of the D.P. Act Fine of Rs.5,000/- in default to undergo simple imprisonment of three months 10. Aggrieved by the said order of the First Appellate Court, the petitioners have preferred the following revision petitions: Revision Appeal No.before Petition Sl. Appeal Order the First Appellate before this No.preferred by challenged Court Court CrI.R.P.Nos. 1 A4 CrI.A.No.89/2015 1296/2016 Conviction and sentence 2. A1 & A3 CrI.A.No.88/2015 1297/2016 Conviction and sentence 3. A1, A3 & A4 CrI.A.No.41/2016 1298/2016 Conviction and sentence CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 13 4. A1, A3 & A4 CrI.A.No.87/2015 1299/2016 Conviction and sentence 5. Complainant CrI.A.No.89/2015 401/2017 Acquittal of accused No.5

6. State CrI.A.No.41/2016 747/2017 Adequacy of sentence for the offences punishable under Section 498A of IPC and 3 & 4 of D.P. Act 11. Pending the proceedings in C.C.No.496/2006, the complainant filed the petition in DVA No.4/2010 before the Additional Civil Judge & J.M.F.C., Gowribidanur against accused No.1/husband for protection order, monetary reliefs, right of residence etc. She alleged that he subjected her to domestic violence. Though he filed his statement of objections in DVA No.4/2010, did not lead his evidence.

12. The trial Court by order dated 06.02.2014 partly allowed DVA No.4/2010 restraining accused No.1 from inflicting domestic violence and from obstructing the complainant and her son from entering their shared house. The trial Court awarded maintenance of Rs.2,500/- per month to the complainant and her son.

Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 14 13. Challenging the adequacy of the maintenance awarded to her in DVA No.4/2010, the complainant filed Crl.A.No.32/2014 before the Additional District & Sessions Judge, Chikkaballapura. The First Appellate Court by the impugned judgment and order dated 23.10.2014 dismissed Crl.A.No.32/2014. Challenging that order, she has filed Crl.R.P.No.702/2015. Reg. Crl.R.P.Nos.1296/2016 to 1299/2016, Crl.R.P.Nos.401/2017 and 747/2017 arising out of C.C.No.496/2009:

14. The case of the prosecution in C.C.No.496/2009 in brief was as follows: (i) At the time of marriage, accused demanded and received one bracelet, two finger rings, one neck chain, cash of Rs.1,50,000/- and Rs.20,000/ for purchase of clothes and watch for accused No.1 as dowry; (ii) Further on demand of the accused, PW.2 the complainants father gave two necklaces, one pair of bangles, six finger rings, five pairs of ear studs in all gold jewelleries weighing 300 grams, 10 silk sarees, 85 other sarees, one cot, one godrej almariah to the complainant as dowry; Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 15 (iii) Three months after the marriage, accused being the members of unlawful assembly with common object of committing offence started harassing the complainant in connection with their demand for additional dowry; (iv) When the complainant was three months pregnant, the accused drove her out of matrimonial home demanding additional dowry and threatened that she should not enter the matrimonial home without such additional dowry; (v) When PW.3 mother of the complainant came to the house of the accused to drop the complainant, accused abused them in foul language and drove them out of the house. Therefore she was compelled to take shelter with her child in her parental house. Accused No.1 himself used to visit them in her parental house; (vi) Accused were threatening the complainant that if she fails to satisfy their demand, they will poison her and kill her. During his visits accused No.1 used to harass the complainant to get additional dowry from her parents; (vii) On 18.02.2008 at about 11.00 a.m. accused No.1 in his in-laws house at Gowribidanur insisted the complainant Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 16 to get more money from her father and when she declined to ask her father, he

assaulted her and caused neck pain to her. Her mother and paternal uncle intervened and pacified the quarrel; (viii) PW.2/her father was informed about the said incident. He then took her to the hospital in Gowribidanur. PW.13 the Medical Officer in the General Hospital, Gowribidanur examined the complainant and issued wound certificate as per Ex.P15; (ix) After taking treatment, the complainant filed the complaint as per Ex.P1 before PW.12. On the basis of the said complaint, he registered first information report as per Ex.P14 and handed over the further investigation to PW.14; (x) PW.14 conducted the spot mahazar, recovered some of the dowry articles under the mahazar Ex.P13, recorded the statements of the witnesses, collected the CDs, photographs and the other materials and filed the charge sheet.

15. The case of the prosecution was based on: (i) The evidence of PW.1 victim/complainant; (ii) PWs.2 and 3 father and mother of PW.1; Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 17 (iii) PWs.4 to 6 alleged eyewitnesses to the crime; (iv) PWs.7 to 10 panchayathdars; (v) PW.11 photographer; (vi) PW.13 the doctor who treated the complainant; & (vii) The police witnesses.

16. The defence of the accused was that PW.1 herself was reluctant to live in the matrimonial home and she wanted accused No.1 to separate from his parents and set up a separate house for her, therefore she filed false complaint.

17. The trial Court on completion of the trial and on hearing the parties convicted and sentenced the accused as aforesaid on the following grounds: (i) Charges were proved by the evidence of PW.1 victim/complainant; (ii) The evidence of PW.1 was corroborated by the evidence of PWs.2 and 3 who gave dowry on demand of the accused and witnessed the harassment; and (iii) The evidence of PWs.1 to 3 was further corroborated by the evidence of PWs.4 to 6 and PWs.7 to 10 and the evidence of PW.13 the doctor who treated the complainant and the wound certificate etc. Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 18 18. The First Appellate Court by the impugned order partly allowed the appeals of the accused, prosecution and the complainant and modified the sentence as aforesaid on the following grounds:

(i) The demand and acceptance of the dowry by accused Nos.1 to 4 was proved by the evidence of PWs.1 to 6 and 7 to 10; (ii) The charges under Section 498A, 323, and 506 of IPC against accused Nos. 1 to 4 were proved by the evidence of PWs.1, 4 to 10 and 13; (iii) Since the alleged annoyance and insult to PW.1 was not in public place, the charge under Section 504 of IPC does not sustain; & (iv) The residence certificate of accused No.5 proved that he was residing in Bagepalli and not in the house of accused Nos.1 to 3. Therefore the conviction against him is unsustainable.

19. Aggrieved by the said order, accused Nos.1, 3 and 4, prosecution and the complainant have preferred the above petitions. Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 19 20. Sri H.P.Leeladhar, learned Counsel for accused Nos.1, 3 and 4 reiterating the grounds of the petitions seeks to assail the impugned order of conviction and sentence passed against accused Nos.1, 3 and 4 on the following grounds: (i) Crl.R.P.No.401/2017 complainants revision petition is not maintainable as the same is filed without leave of this Court as required under Section 374 of Cr.P.C. read with Section 378(4) of Cr.P.C; (ii) There was 14 months delay in filing the complaint; (iii) There were no specific allegations in the complaint with reference to the date, time and place of the alleged cruelty to the complainant in connection with demand for dowry; (iv) PWs.1 to 3 were interested witnesses and their evidence was full of inconsistencies, omissions, commissions and improvements; (v) The evidence of PWs.1 to 4 the alleged eyewitnesses, PWs.7 to 10 panchayathdars were not consistent with the evidence of PWs.1 to 3; Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 20 (vi) One Sri Venugopal figured in the complaint as eyewitness was not examined. There was no explanation for such lapses in the complaint. There were no allegations of ill-treatment to the complainant by accused Nos.2 to 5; (vii) Ex.P11 alleged undertaking was got up document. The tenor of the said document itself shows that the complainant was reluctant to stay in the matrimonial home and the intention of the complainant and her parents were to separate him from his parents and to keep him in their house as illatom son-in-law; (viii) Being unable to withstand the harassment of the complainant, accused No.1 filed M.C.No.21/2008 on 05.07.2008 for restitution of

conjugal rights which came to be allowed; (ix) The statements of PWs.2 to 6 were recorded after eight months of filing of M.C.No.21/2008. That itself shows that the investigation and the prosecution of the accused was counterblast to M.C.No.21/2008; (x) The complainant contested M.C.No.21/2008 on the same allegations of cruelty, desertion and dowry harassment. The Court rejecting such defence decreed Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 21 M.C.No.21/2008 for restitution of conjugal rights. She did not comply the said decree. In the light of that judgment, the charges in criminal case do not sustain; (xi) There was no consistency in the evidence of PWs.1 to 3 regarding date, time and place of giving of dowry and the articles as dowry; (xii) No person participated in the marriage talks from the accused side were examined by the investigating officer; (xiii) The evidence of PW.6 that both parties agreed for dowry contradicts the evidence of PWs.1 to 5 and creates doubt about their evidence; (xiv) Though it was contended that the accused had sold jewellery given as dowry, they were not recovered. Non recovery of the jewellery was fatal to the prosecution; (xv) The Courts below failed to appreciate delay in recording the statements of the witnesses under Section 161 of Cr.P.C.; (xvi) PWs.1 to 3 in their evidence did not speak about giving any cot, almariah etc. But the investigating officer has seized them; Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 22 (xvii) Routine quarrels are normal wear and tear of the family life and they do not amount to cruelty; (xviii) According to the complainant herself, she lived in the matrimonial home hardly for about 4 months after marriage. The complaint was filed on 18.02.2008. Thus it is clear that the theory of accused Nos.2 to 5 harassing her in connection with dowry were all false; (xix) Under Ex.P11, PWs.1 to 3 themselves sought re-union of PW.1 with accused No.1, therefore cruelty if any by accused No.1 stood condoned; and (xx) Sections 504 and 506 of IPC both were not applicable as there was no intimidation or annoyance to break the public peace.

21. In support of his contentions, he relies upon the following judgments:

1. State of Maharashtra v. Ashok Chotelal Shukla¹ 2. Preeti Gupta v. State of Jharkhand² 3. Sonu Kumar & Ors. v. State of Delhi³ 4. Rohtash v. State of

Haryana⁴ 5. Poonam Rani v. State of Haryana⁵ 1 AIR 1997 SC31112 (2010) 7 SCC6673 2016(1) Crimes 402 (Del.) 4 (2012) 6 SCC5895 (2012) 6 SCC596Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 23 6. Nachhattar Singh v. State of Punjab⁶ 7. Mangat Ram v. State of Haryana⁷ 8. Arnesh Kumar v. State of Bihar & Anr.⁸

9. K.V.Prakash Babu vs. State of Karnataka⁹ 10. Appanna @ Laxmaiah vs. The State of Karnataka¹⁰ 11. Dr.Seetharamaiah v. State of Karnataka¹¹ 12. Satish Mehra vs. Delhi Administration & Anr.¹²

13. Roopendra Singh vs. State of Tripura¹³ 14. State of Karnataka vs. Ramesh¹⁴ 15. Parvinder Kansal vs. The State of NCT of Delhi¹⁵ 16. K.V.Prakash Babu vs. State of Karnataka¹⁶ 17. State of Karnataka Vs. Dattaraj¹⁷ 18. V.T.Murthy vs. V.S.Shivappa Gowda¹⁸ 19. Madeva v. The State of Karnataka¹⁹ 22. Per contra, Sri H.R.Showri, learned HCGP and Sri Aravind Reddy, learned Counsel for the complainant seek to support the impugned order of the First Appellate Court convicting the accused, assail adequacy of the sentence under Sections 3 and 4 of the D.P. Act and acquittal of accused No.5 6 (2011) 11 SCC5427 2014 Cri.L.J.2425 8 Crl.A.No.1277 of 2014 D.D. 02.07.2014 9 2017(1) KCCR673(SC) 10 Crl.A.No.824/2005 (C), D.D.12.09.2012 11 2010 (5) KCCR342112 1996 (3) Crimes 85 (SC) 13 2017 (2) Crimes 314 (SC) 14 2017 (1) Crimes 289 (Karn.) 15 Crl.A.No.555/2020 DD2808.2020 16 2016 (5) KCCR SN86(DB) 17 2016 (2) KCCR1121(SC) 18 2015 (4) KCCR3156(DB) 19 Crl.A.No.993/2012 DD0912.2017 Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 24 and others for the charge under Section 504 of IPC on the following grounds: (i) Both the Courts on appreciation and re-appreciation of the evidence have held that the charges against accused Nos.1, 3 and 4 for the offences under Sections 498A, 143, 323, 506 read with Section 149 of IPC and Sections 3 and 4 of the D.P. Act were proved. This Court in revisional jurisdiction cannot interfere with such concurrent findings of facts; (ii) As rightly held by both Courts in domestic matters the victims do not at once rush to the police station. Therefore, delay of 14 months in filing the complaint cannot be blown out of proportion; (iii) In domestic violence cases the victim and her relatives are natural and probable witnesses. Therefore, PWs.1 to 3 cannot be branded as

interested witnesses; (iv) Non recovery of the dowry was immaterial having regard to the suggestion of the accused themselves to PW.1 that cash and jewellerys were given as customary gifts; (v) The delay on part of the investigating officer in recording the statements of the witnesses was not the fault of Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 25 the complainant. On that ground the complainant cannot be disbelieved; (vi) All the material witnesses supported the charges. The contradictions in the evidence of the witnesses were not going to the root of the matter; (vii) Ex.P11 shows that accused No.1 admitted cruelty by him; (viii) The acquittal of accused No.5 was unjustifiable. The sentence passed by the Courts below with regard to demand and acceptance of dowry was contrary to Sections 3 and 4 of the D.P. Act; and (ix) Accused No.1 filed the matrimonial case subsequent to registration of the first information report as a counter blast to the same.

23. In support of their arguments, they rely upon the following judgments:

1. State of W.B. v. Orilal Jaiswal²⁰ 2. Vajresh Venkatray Anvekar v. State of Karnataka²¹ 24. Having regard to the rival contentions, the questions that arise for consideration of this Court in 20 AIR 1994 SC1418²¹ AIR 2013 SC329 Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 26 Crl.R.P.Nos.1296 to 1299 of 2016, Crl.R.P.No.401/2016 and Crl.R.P.No.747/2017 are: (i) Whether the impugned order of conviction and sentence passed against accused Nos.1, 3 and 4 for the offence punishable under Section 498A of IPC and Sections 3 and 4 of the D.P Act suffers any illegality, impropriety or incorrectness?. (ii) Whether acquittal of accused No.5 by the First Appellate Court is sustainable in law?. (iii) Whether the order of sentence passed by the First Appellate Court for the offences punishable under Section 498A of IPC and Sections 3 and 4 of the D.P Act is inadequate?. (iv) Whether the order of acquittal of the accused by the First Appellate Court for the offences punishable under Sections 504 and 506 of IPC is sustainable in law?.

25. There is no dispute that the marriage of the complainant and accused No.1 was solemnized on 18.06.2006 at Sumangali Kalyana Mantapa, Gowribidanur.

The complaint as per Ex.P1 was filed on 18.02.2008 alleging that at the time of marriage, the accused demanded and received dowry in the form of cash of Rs.1,50,000/-, gold jewellery weighing 300 grams and cash of Rs.20,000/- for purchasing watch and Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 27 clothes to accused No.1. They also received gold jewellery for the complainant as mentioned in the complaint.

26. In the complaint, it was alleged that for three months she was looked after well in the matrimonial home, thereafter the accused started to harass her demanding additional dowry. The accused denied the allegations of demand and acceptance of dowry and cruelty. They contended that the complainant and her parents did not like the complainant to stay in the house of the accused in the village and they wanted accused No.1 to stay in the house of the parents of the complainant as illatom son-in-law. It was further contended that as a counter blast to the notice issued by accused No.1 seeking restitution of conjugal rights and to pressurize him to stay in her parental house, she filed false complaint against accused No.1.

27. Admittedly, there was delay of 14 months in filing the complaint. There was no plausible explanation for that. The trial Court and the First Appellate Court proceeded on the premise that in matrimonial disputes to save the marriage, the victim does not at once rush to the police station. But Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 28 there was no such explanation in the complaint or in the evidence of the witnesses. According to the complaint, the charge and the evidence of PWs.1 to 3, the complainant was looked after well in the matrimonial home for about three months.

28. According to PWs.1 to 3 when PW.1 was three months pregnant, the accused demanded additional dowry and drove her to her parental house and when PW.3 took her back, the accused abused and humiliated both of them and drove them away. Regarding the said incident, no complaint was filed.

29. Admittedly, out of the said marriage, the couple begot a child. As per the recitals in the complaint, while filing the complaint the said child was 9 months old. According to her only she left the house of the accused when she was three months pregnant. Considering the said period of 9 months and pre-natal period of

six months, the complainant had left the house about 15 months prior to filing of the complaint.

30. According to the complainant herself, her stay in the house of the accused was hardly for four months. CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 29 Thereafter till filing the complaint, she did not make any allegations of demand or acceptance of dowry or cruelty to her in connection with demand for dowry or any allegations of criminal intimidations, annoyance or insult.

31. Admittedly, on 13.02.2008 accused No.1 got issued notice seeking restitution of conjugal rights and that was served on her. Within five days of issuance of the notice, the complaint alleging cruelty was filed. When the criminal case was pending, accused No.1 filed M.C.No.21/2008 before the Senior Civil Judge, Bagepalli alleging that his wife (complainant) deserted him without any just excuse and sought decree for restitution of conjugal rights.

32. The copy of the judgment in M.C.No.21/2008 shows that the said petition was decreed on 20.07.2019. The copy of the said judgment shows that the wife (complainant) contested M.C.No.21/2008 on the same grounds of cruelty in connection with demand for dowry by all the accused. There she also contended that her mother-in-law and sister-in-law subjected her to cruelty/teasing that she was not good looking, not brought sufficient dowry etc. The said judgment further shows that she also alleged in the petition that on CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 30 18.02.2008 at 11.00 a.m. her husband came to her parental house abused her in foul language and subjected her to mental and physical cruelty. She also stated about she filing the complaint which is the subject matter of the aforesaid revision petitions.

33. The judgment in M.C.No.21/2008 shows that she also claimed that her husband has executed an undertaking letter that he will not ill-treat and harass her. Ex.P11 in C.C.No.496/2009 is the said undertaking letter. Thus it becomes clear that the allegation or the charge in C.C.No.496/2009 was the defence of the complainant/wife in M.C.No.21/2008. On appreciating the evidence placed before

it and rejecting the defence of the wife/complainant, on 20.07.2019 the Court granted decree for restitution of conjugal rights. Admittedly the said order has attained finality.

34. As per Section 41 of the Indian Evidence Act, 1872 (the Evidence Act for short) the final judgment or the order or decree of the competent Court is relevant and conclusive proof of findings on any such judgment and the judgment in matrimonial case operates as judgment in rem. Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 31 Therefore, the said judgment binds the parties to these proceedings. By virtue of Section 41 of the Evidence Act and the findings of the Court in M.C.No.21/2008, the allegations of cruelty of the accused in connection with demand for additional dowry etc., stand negated.

35. It is also to be noted that accused No.4 was married sister of accused No.1 and accused No.5 was her husband. Admittedly, accused No.5 was working as KSRTC driver in Bagepalli bus depot. The complainant admittedly lived in the house of accused Nos.1 to 3 in Mittemari village. The First Appellate Court relied upon the residence certificate produced by accused No.5 in the proceedings under the Domestic Violence Act. Since these matters are connected to each other, at the request of the parties only, this Court can look into the said document.

36. The said residence certificate was issued by the Officer Town Municipal Council, Bagepalli on 12.06.2009 stating that accused No.5 was residing in Bagepalli since six years and five months prior thereto. The prosecution did not produce anything to show that he was residing in Mittemari village. It was not the case of the prosecution that accused Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 32 No.4 was not residing with accused No.5 in her matrimonial home. Under the circumstances, accused Nos.4 and 5 residing in Mittemari village itself becomes doubtful. It is settled proposition of law that it is the burden of the prosecution to prove the charges against the accused beyond reasonable doubt.

37. When the complainant lived hardly for four months in the matrimonial home and out of that according to the charge itself, she was looked after well for three

months, the contention that she was subjected to cruelty by all the accused in connection with demand for additional dowry becomes doubtful. Such doubt became conclusive proof by the judgment of the Court in M.C.No.21/2008 by rejection of the defence of the complainant in the said case. Therefore the order of conviction and sentence passed by the Courts below do not sustain.

38. Apart from that, the trial Court and the First Appellate Court ignoring delay in filing the complaint, short period of stay of the complainant in the house of the accused, admission of the complainant that she was looked after well Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 33 for three months, based on the oral evidence of PWs.1 to 3, PWs.4 to 6 and PWs.7 to 10 the alleged panchayathdars held that the accused subjected the complainant to cruelty. In fact the evidence of PWs.4 to 10 was only to the effect that PW.2 told that the accused was ill-treating PW.1.

39. So far as the evidence of PWs.1 to 3, the trial Court and the First Appellate Court say that they are natural witnesses in such family matters. But the trial Court and the First Appellate Court ignored the other circumstances which were creating doubt about the allegations of cruelty.

40. So far as the charge under Section 323 of IPC, the trial Court and the First Appellate Court again relied on the evidence of PWs.1 to 3, PW.13 the doctor and Ex.P15. To constitute an offence under Section 323 of IPC, there should be hurt as defined under Section 319 of IPC.

41. The hurt is defined in Section 319 of IPC as bodily pain, disease or infirmity to any person. According to PW.1, the accused assaulted her on her neck and she suffered the injury. The evidence of PW.13 is to the effect that PW.1 was brought to the hospital at Gowribidanur on 18.02.2008 with Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 34 history of assault by accused No.1 by manhandling. The injury found on PW.1 is mentioned as complains of pain over back of neck and generalized myalgia

42. The evidence of PW.13 and Ex.P15 show that there was no visible injury on the person of PW.1. PW.13 in his evidence states that he issued Ex.P15 since

PW.1 stated that she has pain in the neck. Thus it was clear that there was not even clinical appearance of the injury on PW.1. Section 44 of IPC defines injury as any harm illegally caused to any person on body, mind, reputation or property. The evidence of PW.13 and Ex.P15 show that no harm was found on the body of PW.1.

43. So far as the charge under Section 498A of IPC, the person cannot be convicted for the said charge unless there was cruelty to the married woman as contemplated in the said Section. In Explanation (a) to Section 498A of IPC cruelty is defined as willful conduct which is likely to drive the woman to commit suicide or cause grave injury or danger to life, limb or health of the woman. The evidence discussed above shows that there was no grave injury so as to cause any danger to life, limb or health of PW.1. CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 35 44. Explanation (b) to Section 498A of IPC defines cruelty to woman in connection with unlawful demand for the property or valuable security. The alleged demand or acceptance of dowry or cruelty in connection with demand for additional dowry stood disproved conclusively by the judgment in M.C.No.21/2008 and the circumstances discussed above.

45. To hold that accused No.1 had conceded the cruelty inflicted by him and the other accused on the complainant, the trial Court relied on Ex.P11 alleged undertaking of accused No.1. The case was registered on 18.02.2008. PW.2 states that the Investigating Officer seized Ex.P11 under mahazar Ex.P12. Ex.P12 is purportedly drawn on 07.05.2009 that is after one year two months of filing of the complaint. In fact PW.14 the Investigating Officer himself does not speak about he seizing Ex.P11 or the proceedings under Ex.P12.

46. The records show that though the complaint was purportedly filed on 18.02.2008 that was kept in cold storage. Though the investigation was commenced by PW.14 in the CrI.R.P.No.702/2015 C/w CrI.R.P.Nos.1296/2016 to 1299/2016 CrI.R.P.Nos.401/2017, 747/2017 36 year 2008, mahazar Ex.P12 is purportedly drawn on 07.05.2009. The statements of the witnesses were purportedly recorded on 12.09.2009. That substantiates the contentions of the

accused that only after the service of notice in M.C.No.21/2008 at the behest of PW.2 the police took up the matter.

47. The trial Court and the First Appellate Court by simply reproducing the depositions of PWs.1 to 10 went on saying that the evidence of all of them corroborate each other. Thus, it is clear that the Courts below were swayed away by the quantity of evidence and not quality of evidence. In the light of the discussions above, the accused were entitled to acquittal of all the charges. Therefore, Crl.R.P.Nos.1296 to 1299 of 2016 shall have to be allowed. Crl.R.P.No.401/2017 and Crl.R.P.No.747/2017 shall have to be dismissed. Reg. Crl.R.P.No.702/2015:

48. The wife who was the complainant in criminal proceedings has preferred Crl.R.P.No.702/2015 challenging quantum of maintenance awarded to her by the trial Court in DVA No.4/2010 and confirmed by the First Appellate Court in Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 37 Crl.A.No.32/2014. She filed DVA No.4/2010 alleging domestic violence on the same set of facts which were the subject matter of the criminal case.

49. As per Ex.P4 the salary certificate produced by the wife herself, the gross salary of the husband was Rs.9,535/- and net salary was Rs.8,417/-. Though she claimed that other than that he has income from the family lands, both the Courts below observed that the lands were standing in the name of her father-in-law and later they are transferred to her sister-in-law. The Courts below held that even assuming that the husband has share in that, his share would be very minimal and there was nothing to show that the said land was fetching any income much less substantial income to the husband.

50. The husband had dependant parents. Out of them father died during the pendency of these unfortunate proceedings. Out of Rs.8,417/- he had to maintain himself and his mother after paying the maintenance to the wife and child. The petition for restitution of conjugal rights is decreed, but the wife/complainant has not complied that decree. Under the circumstances, this Court does not find any illegality or Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016

Crl.R.P.Nos.401/2017, 747/2017 38 perversity in the order impugned in Crl.R.P.No.702/2015. In the light of the above facts and circumstances, the judgments relied on by the learned Counsel for the complainant cannot be justifiably applied to the facts of the case.

51. For the aforesaid reasons, Crl.R.P.Nos.1296 to 1299 of 2016 are hereby allowed. Crl.R.P.No.401/2017, Crl.R.P.No.747/2017 and Crl.R.P.No.702/2015 are hereby dismissed. The impugned order of acquittal of accused No.5 of all the charges, acquittal of accused Nos.1, 3 and 4 of the charge for the offence punishable under Section 504 of IPC is hereby confirmed. The impugned order of conviction and sentence passed by the trial Court and confirmed by the First Appellate Court for the offences punishable under Sections 498A, 506 and 323 of IPC and Sections 3 and 4 of the Dowry Prohibition Act is hereby set aside. Accused Nos.1, 3 and 4 are hereby acquitted of the charges brought against them. Crl.R.P.No.702/2015 C/w Crl.R.P.Nos.1296/2016 to 1299/2016 Crl.R.P.Nos.401/2017, 747/2017 39 Fine amount deposited, if any, shall be refunded to accused Nos.1, 3 and 4. Sd/- JUDGE KSR/akc

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