

State Of Karnataka Vs. Bheemraju

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Court : Karnataka

Decided On : May-25-2022

Judge : K.Somashekar and Shivashankar Amarannavar

Appeal No. : CRL.A 308/2015

Appellant : State Of Karnataka

Respondent : Bheemraju

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE25H DAY OF MAY, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR CRIMINAL APPEAL NO.308 OF 2015 BETWEEN: State of Karnataka By Kunigal Police Station-572130. ...Appellant (By Smt. Rashmi Jadhav - HCGP) AND:

1. Bheemraju S/o. Bhhemaiah Age:

28. years Occ: Auto Driver R/o: Uppara Beedhi Kunigal Town-572130.

2. Prema W/o. Srinivasa Aged 34 years Occ: Coolie R/o: Uppara Beedhi Kunigal Town-572130. ...Respondents (By Sri. Vikhyath .B - Advocate for Sri. S. Shankarappa - Advocate for R-1 & R-2) 2 This Criminal Appeal filed under Sec.378(1) and (3) of Criminal Procedure Code, praying to i) grant leave to appeal

against the judgment and order dated 11.09.2014 passed by the Fast Track Judge, Tumkur in Sessions Case No.141 of 2012 acquitting the Respondents for the offence punishable under Sections 498A, 304B, 302 r/w 34 of IPC and under Sections 3 & 4 of D.P. Act r/w Section 34 of IPC; ii) set aside judgment and order dated 11.09.2014 passed by the Fast Track Judge, Tumkur in Sessions Case No.141 of 2012 acquitting the Respondents for the offence punishable under Sections 498A, 304B, 302 r/w 34 of IPC and under Sections 3 & 4 of D.P. Act r/w Section 34 of IPC. This criminal appeal coming on for further argument this day, K. Somashekar .J delivered the following:

JUDGMENT

The State has preferred this appeal challenging the judgment of acquittal rendered by the Trial Court in S.C.No.141/2012 dated 11.09.2014 acquitting the accused for offences punishable under Sections 498-A, 302, 304B read with Section 34 of the IPC, 1860, besides Sections 33 and 4 of the Dowry Prohibition Act, 1961. This appeal is filed by the State seeking to consider the grounds urged and to set aside the judgment of acquittal rendered by the Trial Court and consequently to convict the respondents / accused for the aforesaid offences.

2. Heard the learned HCGP Smt. Rashmi Jadhav for the State / appellant and so also learned counsel Shri Vikhyath B on behalf of learned counsel Shri S. Shankarappa for Respondent Nos.1 and 2. Perused the judgment of acquittal rendered by the Trial Court in S.C.No.141/2012 dated 11.09.2014 and the evidence adduced by the prosecution in respect of PW-1 to PW-15 and documents at Exhibits P1 to P16 inclusive of MO-1 to MO-3.

3. Factual matrix of this appeal is as under: It transpires from the case of the prosecution that Accused No.1 / Bheemraju is none other than the husband of the deceased Rashmi. The marriage of 4 Bheemraju and Rashmi was performed as on 10.04.2006 as per the customs prevailing in their society. During their marriage, Rashmis parents had provided dowry in terms of gold jewellery. Subsequent to their marriage, both of them are said to have led a happy marital life for a period of two years. Accused No.1 / Bheemraju is none other than her husband and Accused No.2 / Prema, W/o. Srinivasa is her sister-in-law. It is stated that both

Accused Nos.1 and 2 had insisted Rashmi to bring dowry in terms of money from her parental home. Also they were ill-treating her on the ground that she did not beget a male child. On both the counts, it is stated that Accused Nos.1 and 2 were extending physical as well as mental harassment to deceased Rashmi. It is stated that as on 19.09.2011 at around 11.00 p.m., when the deceased was staying along with her husband and child in a rented house, accused No.1 had extended physical as well as mental harassment to her on the ground that she did not beget a son and did not fulfill his demand to bring money from her parents' house. Hence, with an intention to take away her life, Accused No.1 / Bheemraju is said to have doused kerosene over her person and lit the fire. As a result, Rashmi sustained burning injuries over her person. Firstly she was admitted to Kunigal Government Hospital and was later shifted to Victoria Hospital, Bengaluru for further treatment. However, while she was under treatment in Victoria Hospital, she had succumbed to the injuries as on 20.09.2011 at around 4.00 a.m. in the wee hours.

4. In pursuance of the complaint filed by the complainant, a case was registered and consequently FIR was recorded as per Exhibit P9 by PW-13 being the Investigating Officer in part. Subsequent to registration of the crime, the I.O. had taken up the case for investigation and thoroughly investigated the case and during the course of investigation, the I.O. recorded the statement of witnesses and also conducted seizure mahazar as well as spot mahazar in the presence of panch witnesses and such 6 other material documents and complied with the provisions of Section 173(2) Cr.P.C. and accordingly laid the charge-sheet against the accused before the Committal Court in C.C.No.1172/2011 for offences punishable under Sections 498-A, 302, 304B read with Section 34 of the IPC, 1860, besides Sections 3 and 4 of the DP Act. Subsequent to committing the case by the Committal Court to the Sessions Court for trial, the case in S.C.No.141/2012 was registered and assigned to the Fast Track Court, Tumkur. The accused was secured by the Trial Court and thereafter heard the arguments of the learned Public Prosecutor and the defence counsel relating to framing of charges whereby on prima facie material being found against accused persons, charges were framed against the accused, whereby the accused did not plead guilty but claimed to be tried. Accordingly, it was also recorded. 7

5. Subsequent to framing of charge by the Trial Court, the prosecution was put on trial by subjecting to examination PW-1 to PW-15 and got marked several documents at Exhibits P1 to P16 and so also got marked material objects, that is MO-1 to MO-3. Subsequent to closure of the evidence of the prosecution, incriminating statements appearing against the accused had been recorded as contemplated under Section 313 Cr.P.C., whereby the accused had denied the truth of the evidence of the prosecution adduced so far. Subsequently, the accused were called upon to adduce the defence evidence as contemplated under Section 233 Cr.P.C. But the accused did not come forward to adduce any defence evidence on their side. Subsequent to closure of the evidence of the part of the prosecution as well as the defence side, the Trial Court heard the arguments advanced by the learned Public Prosecutor and the learned defence counsel. On going through the evidence of PW-6 being the Doctor in whose presence the statement of the deceased Rashmi was recorded as per Exhibit P3 while she was under treatment in Kunigal Government Hospital and subsequent to her death in Victoria Hospital, her statement has been termed as Dying declaration, which is marked as Exhibit P3 and based upon her statement, PW-13 / Channaiah S. Hiremath being the I.O. in part, registered the case by recording the FIR as per Exhibit P9. PW-11 / Arunkumar being the Police Constable had recorded the statements of deceased Rashmi as per Exhibit P3 and subsequent to her death, the said statement has been treated as Dying declaration.

6. PW-14 being an I.O. in part, had conducted investigation thoroughly by recording the statements of witnesses and so also conducted mahazar in the presence of Panch witnesses. Exhibit P1 is the spot panchanama which was conducted by PW-14 in the presence of PW-1 and also PW-2 who have subscribed their signatures. 9 PW-15 being an I.O. had laid the charge-sheet against the accused after completion of the investigation. These are the evidence facilitated by the prosecution in order to prove the guilt of the accused, whereby the Trial Court had appreciated the aforesaid evidence in respect of those material witnesses and rendered an acquittal judgment for the offences under Sections 498A, 304B and 302 read with Section 34 of the IPC and also Sections 3 and 4 of the DP Act, whereby points for consideration have been raised by the Trial Court relating to the aforesaid offences in respect of the death of the Rashmi who had

sustained burning injuries over her person, which is indicated in the P.M report at Exhibit P8 conducted by the Doctor being examined as PW-12. These are all the evidence which have been appreciated by the Trial Court after having gone through the contents in Exhibit P1 of the spot panchanama, contents in Exhibit P2 of the Inquest mahazar drawn in the presence of PW-3 and also the dying declaration at Exhibit P3 signed by deceased Rashmi. Her 10 statement was recorded by PW-11 in the presence of PW-6 being a Doctor and after her death, the same has been treated as Dying Declaration. Whereas in the said Exhibit P3, PW-6 being the Doctor had made an endorsement relating to physical as well as mental status of the victim who had given statement as per Exhibit P3. But the prosecution did not facilitate worthwhile evidence for consideration relating to the ingredients of the offences under Sections 498A, 304B and even alternatively Section 302 read with Section 34 of the IPC inclusive of Sections 3 and 4 of the DP Act that with a common intention, both Accused Nos.1 and 2 had given physical as well as mental harassment to the deceased Rashmi who is none other than the wife of Accused No.1 / Bheemraju. However, prior to her marriage with the accused Bheemraju, that there was love affair in between Rashmi and accused Bheemraju. But subsequently their marriage was got arranged by elders and was performed as per the customs prevailing in their society. Whereas Bheemraju was by 11 avocation an autorickshaw driver to eke out his livelihood. The deceased Rashmi, her husband and child were staying for rent in the house of PW-1 Lokesha. Accused No.2 / Prema was the sister of Accused No.1 and also the sister- in-law of deceased Rashmi. In her statement, the name of Accused No.2 was also stated by the declarant namely Rashmi, in view of which fact the said Prema was also arraigned as the accused. Despite of criminal prosecution being set into motion based upon her statement at Exhibit P3 which is termed as dying declaration and recording FIR at Exhibit P9 and in spite of the contents in the FIR and mahazar at Exhibits P1 and P2, the Trial Court felt that the prosecution had miserably failed to establish the guilt against the accused beyond all reasonable doubt and consequently has rendered an acquittal judgment by assigning sound reasons, which is termed as justifiable reasons in S.C.No.141/2012. It is this judgment which is under challenge in this appeal by the State by urging various grounds. 12

7. Learned HCGP for the State, namely Smt. Rashmi Jadhav has taken us through the evidence of PW-6 being a Doctor and PW-11 being a Police Constable and PW-13 being an Investigating Officer in part who recorded the FIR as per Exhibit P9 who was also present along with PW-11 in Kunigal Government Hospital, when deceased Rashmi was under treatment for having sustained burning injuries as indicated in the PM report. But the deceased had given statement as per Exhibit P3 while she was under treatment in Government Hospital, Kunigal during treatment provided by PW-6 / Doctor. However, she was shifted to Victoria Hospital, Bangalore for further treatment. While she was under treatment in Victoria Hospital, the said Rashmi succumbed to the burn injuries. Subsequent to the death of Rashmi, the statement recorded at Exhibit P3 while she was under treatment in Kunigal Government Hospital, has been termed as dying declaration, since the same had been given by Rashmi in the presence of PW-6 Doctor and also in the presence of PW-13 being an I.O. in part. It is the contention of the learned HCGP that their evidence has not been properly appreciated by the Trial Court and moreover, that the Trial Court has failed to consider the dying declaration contents at Exhibit P3 given by the deceased in the Government Hospital, Kunigal. PW-11 / Police Constable had recorded the said statement at Exhibit P3 which is treated as Dying Declaration after her death. The same was recorded by him in the presence of PW-6 / Doctor who was also examined before the Trial Court to prove the guilt of the accused. More so, speaks about the contents of the dying declaration at Exhibit P3. These are all the evidence which find place on the part of the prosecution. But the Trial Court has failed to consider the contents at Exhibit P3 of the dying declaration. However, the aforesaid evidence finds corroborated with the evidence of PW-9 who is an independent witness and who supports the case of the prosecution. Despite of the material evidence, the same was not considered by the Trial Court which had ultimately rendered an acquittal judgment giving more credentiality upon minor discrepancies, which has resulted in a substantial miscarriage of justice.

8. The second limb of arguments advanced by the learned HCGP for the State is by referring to the evidence of PW-6 Doctor in Kunigal Government Hospital, in whose presence deceased Rashmi, had given statement as per Exhibit P3. Based upon her statement, criminal law was set into motion by recording an FIR as per

Exhibit P9. But her statement has been treated as dying declaration after her death in Victoria Hospital. In respect of offences under Sections 498A, 304B, 302 of the IPC, points have been formulated by the Trial Court based upon the charge-sheeted material and also based upon the evidence facilitated by the Trial Court. But Trial Court had given more credentiality upon minor discrepancies and extended the benefit of doubt in favour of the accused. Deceased was firstly taken to Kunigal Government Hospital and 15 thereafter they had shifted her to Victoria Hospital for further treatment to save her life. These are the evidence which find place on the part of the prosecution. But the Trial Court has misread the evidence and misinterpreted the evidence on the part of the prosecution and has rendered an acquittal judgment, which has resulted in a substantial miscarriage of justice. Therefore, in this appeal, it requires for consideration of the grounds urged in this appeal and also requires for re-appreciation of the evidence. If the same is not interfered, certainly the gravamen of the deceased who had given statement as per Exhibit P3 which has been treated as dying declaration even tested under Section 32 of the Indian Evidence Act, 1872 with the truthful statement which has been given by the deceased Rashmi who is none other than the wife of Accused No.1 / Bheemraju and also sister-in-law of Accused No.2 / Prema. Prema is the sister of the accused No.1. Both these accused had given physical as well as mental harassment to the deceased insisting her to bring 16 additional dowry from her parents house, despite of receipt of gold jewellery during her marriage. These are the contentions made by the learned HCGP for the State in this appeal seeking for intervention by considering the grounds urged and to set aside the judgment of acquittal rendered by the Trial Court and consequently convict the accused for offences punishable under Sections 498A, 304B or alternatively Section 302 read with Section 34 of the IPC and so also for offences under Sections 3 and 4 of the DP Act, 1961.

9. Learned counsel Shri Vikhyath for Respondent Nos.1 and 2, had argued counter to the arguments advanced by the learned HCGP for the State who had referred to the evidence of PW-6 being the Doctor in whose presence, the deceased Rashmi had given statement marked as Exhibit P3 when she was under treatment in Kunigal Government Hospital who was later shifted to Victoria Hospital for further treatment, whereby she had 17 succumbed to the burn injuries

sustained. Even taking into consideration the evidence of PW-1 who had been subjected to examination and taking into consideration the contents of Exhibit P3 of the dying declaration and the scenario mentioned in Exhibit P1 of the spot mahazar, it does not mention anything about food being served. Neither at Exhibit P13 property form or the spot mahazar at Exhibit P1 and even Seizure mahazar it is nowhere mentioned about the food being served and concerned materials or even articles which found place in the scene of crime during conducting the spot mahazar at Exhibit P1 in the presence of PW-1 by the Investigating Agency, when Exhibit P1 was purportedly conducted. It means that the incident had not allegedly taken place as narrated as per the statement given by the deceased Rashmi as per Exhibit P3 which after her death has been termed as dying declaration and even the test under Section 32 of the Indian Evidence Act, but the prosecution did not facilitate 18 worthwhile evidence and even before the Trial Court has facilitated several citations which are referred to as under: i) 2014 (1) Crimes 195 (SC) in the case of Joshinder Yadav vs. State of Bihar ii) (2010) (14) SCC444 in the case of China Shivaraj vs. State of Andhra Pradesh iii) 2012 CrL.J3877(SC) in the case of M. Sarvana @ K.D. Sarvana vs. State of Karnataka. Further, several citations have been referred to by the Trial Court in paragraphs 108 to 116. These citations have been facilitated by the prosecution to support their evidence to prove the guilt of the accused. But the prosecution did not facilitate worthwhile evidence. This contention has been taken by the learned counsel for the respondent / accused. Whereas the prosecution has banked upon the evidence of PW-6 Doctor in whose presence deceased Rashmi had given statement as per Exhibit P3 and subsequent to her death, her statement has been termed as dying declaration and evidence of 19 PW-11 being a Police Constable who recorded the statement even in the presence of PW-13 being a P.S.I. who is an I.O. in part whereby based upon her statement, criminal law was set into motion by recording an FIR as per Exhibit P9. PW-14 being the I.O. had thoroughly investigated the case by recording the statement of witnesses and also conducted the spot mahazar at Exhibit P1 and conducted the inquest over the dead body by responsible Taluk Executive Magistrate as per Exhibit P2 who was examined as PW-10.

10. PW-8 / Kumara and PW-9 / Gangappa have been subjected to examination. But they did not support the case of the prosecution and they have turned hostile

and thereafter have been subjected to cross-examination, which finds place in their evidence itself. More so, their evidence runs contrary to the evidence of PW-11 / Arunkumar who had subscribed his signature to Exhibit P3 who was by avocation as a Police Constable who recorded her statement at Exhibit P3. PW-13 being an I.O. in part who recorded an FIR as per Exhibit P9. But the evidence of PW-11 and PW-13 runs contrary to the contents at Exhibit P3 of the statement initially given by the deceased Rashmi. But dying declaration has to be carefully and meticulously scrutinized whether truthful facts have been narrated. It is the inference under the relevant provisions of the Indian Evidence Act, 1872. But no worthwhile evidence has been facilitated by the prosecution and the evidence of those witnesses have been considered by the Trial Court and rendered an acquittal judgment. Though several witnesses have been subjected to examination on the part of the prosecution, merely because of examination of certain witnesses cited in the charge-sheet, it cannot be said that each and every evidence is gospel truth on the part of the prosecution. But evidence has to be weighed in a golden scale in respect of each of the offences. But in the instant case, Sections 498A of IPC relating to physical as well as mental harassment wherein death had occurred within 7 years from the date of marriage and alternatively Sections 302 and 304B of the IPC and also for offences under Sections 3 and 4 of the DP Act were lugged against the accused. But no ingredients have been established by the prosecution to prove that the deceased Rashmi had been meted with physical as well as mental harassment by her husband Accused No.1 / Bheemaraj and also with the assistance of her sister-in-law Prema who is arraigned as Accused No.2. Subsequent to the marriage of the deceased Rashmi, Bheemraju who is arraigned as Accused No.1 and by avocation an autodriver were residing in the house of PW-1. The said PW-1 being the owner, had entered into the scene of crime, i.e., to their rented house when Rashmi caught fire. At that time Bheemraju also had entered into the house and PW-1 had informed him to go to the police station and give information about the incident. Accordingly, Bheemraju had been to the jurisdictional police to inform the incident. But Accused No.1 22 Bheemraju who is none other than the husband of deceased Rashmi had also sustained burn injuries on his person, which indicates at Exhibit P14 of the Wound Certificate issued by the Doctor. The same is

collected by PW-14 by laying the charge-sheet against the accused. But PW-15 being an I.O. who laid the charge sheet whereby he collected the photographs at Exhibit P15 and marriage invitation card at Exhibit P16. Merely because the aforesaid material documents have been secured by the I.O. during the course of investigation, it cannot be said that the prosecution has proved the guilt of the accused beyond all reasonable doubt. But the Trial Court has rightly come to the conclusion by appreciating the evidence and assessing the entire evidence of the prosecution which are material evidence stated supra, and rightly rendered an acquittal judgment. The grounds urged by the State by preferring an appeal by banking upon the dying declaration at Exhibit P3 recorded in the presence of PW-6 need not be considered unless there is 23 worthwhile evidence. The declaration given by the declarant namely deceased Rashmi cannot be considered to be gospel truth. On all these premise, learned counsel for the respondents / accused emphatically submits that the said grounds urged in this appeal do not have any substance and there is no bone of contention in order to re-visit the impugned judgment of acquittal rendered by the Trial court and thus seeks for dismissal of this appeal as being devoid of merits by confirming the acquittal judgment rendered by the Trial Court. It is also contended that there are no warranting circumstances even in respect of the grounds urged by the learned HCGP for the State who has preferred this appeal. Hence, learned counsel for the respondents / accused seeks for dismissal of this appeal as being devoid of merits.

11. Whereas keeping in view the contention made by the learned HCGP by referring to the aforesaid witnesses such as PWs.6, 11, 13 and 14 but the entire 24 case has been revolving around the evidence of those witnesses. Criminal law was set into motion based upon the statement of deceased - Rashmi as per Ex.P3 and thereafter the crime came to be registered and the investigating officer took up the case for investigation and thoroughly investigation has been done and laid the charge sheet against the accused in C.C.No.1172/2011. Whereas deceased - Radha who died by sustaining burn injuries over her person where accused No.1 Bheemaraju doused kerosene on her person on the fateful day of 19.09.2011 at around 11. p.m. whereby accused No.1 - Bheemaraju alleged to have extended physical as well as mental harassment to the deceased on the ground that she did not beget the male child and she did not fulfill his demand to bring additional dowry

from her parents house. But accused No.1 - Bheemaraju alleged to have doused kerosene on her person and lit fire and as a result of that she had sustained burn injuries over her person. But she initially took treatment in Kunigal Government Hospital 25 and she gave statement as per Ex.P3. The same has been recorded by PW.11 being the police constable in the presence of PW.6 being a Doctor and also even in the presence of PW.13 being the IO in part and whereby recorded the FIR at Ex.P9. But deceased Rashmi was shifted to Victoria Hospital for further treatment and while she was on treatment in the said hospital she succumbed to the injuries on 29.09.2011 at around 4.00 p.m. in the wee hours. The reports of PW.13 has been marked as Ex.P10 dated 12.11.2011 and P11 dated 27.11.2011. PW.14 being the investigating officer who has done the investigation thoroughly and he has secured the report as per Ex.P12 whereby he has subscribed his signature and even PF.No.140/2012 has been got it marked at Ex.P13 whereby PW.14 has subscribed his signature.

12. Ex.P14 is the wound certificate of accused No.1 - Bheemaraju whereby he made an endeavourance to save his wife - Rashmi where she was in fire flames in the scene 26 of crime. PW.1 - Lokesha is the landlord wherein his house was obtained on rental basis whereby deceased - Rashmi and her female child inclusive of her husband - Bheemaraju were residing there. But PW.1 - Lokesha who got information that smoke was coming out from the rented house whereby accused No.1 and his family consisting of his wife and female child were staying. But for the information from the wife of PW.1 - Lokesha and that Lokesha who had been to the house noticed that deceased - Rashmi was on fire flames and he also made endeavourance to put off fire and in the meanwhile, accused No.1 - Bheemaraju who is none other than the husband of deceased - Rashmi had also entered and also made endeavourance to put off the fire frame found on the person of deceased - Rashmi. While at that time, he also sustained injuries as per Ex.P14 injury certificate. PW.15 being the investigating officer who laid the charge sheet against accused by securing photographs at Ex.P15 and marriage invitation card at Ex.P16 relating to marriage of 27 deceased - Rashmi with accused No.1 - Bheemaraju. But accused No.1 and deceased had fallen in love with each other and even that deceased - Rashmi eloped with him but specifically there was some arrangement of their marriage and accordingly their marriage was performed on

10.04.2006 as per the customs prevailing in their society. But during her marriage with him that her parents had provided dowry in terms of golden jewellery such as gold ear studs, hangings and finger ring and subsequent to their marriage that she had been to her husband's house whereby she led happy marital life with him for two years. But subsequently that her husband and also her sister-in-law who is arraigned as accused No.2 has given physical as well as mental harassment on account of the fact that she did not beget a male child and also she did not fulfill their demand relating to additional dowry from her parents' house and accordingly, both accused Nos.1 and 2 had given physical as well as mental harassment to deceased - Rashmi. Accused No.1 by avocation was a Auto driver and 28 they were staying in a rented house of PW.1 - Lokesha at Kunigal. The same finds place in the materials which collected by the investigating officer during the course of investigation and even deceased - Rashmi has given statement as per Ex.P3 while she was under treatment in Kunigal Government Hospital for having suffered with burn injuries over her body. A person who is suffering burn injuries on entire body will not scientifically have stamina or even mentally prepared to give statement as stated to have been recorded as per Ex.P3. Even at a cursory glance of Ex.P3 of the statement given by deceased- Rashmi while she was on treatment in Government Hospital, Kunigal it was recorded by PW.11 - police constable whereby he was accompanied with PW.13. But it appears that she has not been specifically stated or narrated how she sustained burn injuries or even dousing kerosene over her person and fire got lit. Even she has not stated in her statement anything that her husband - Bheemraju who is arraigned as accused No.1 after setting 29 fire on her was running away from the scene of crime. Even after committing such an offence that too dousing kerosene over her person and setting ablaze and she has also stated the presence of accused No.2 who is none other than her sister-in-law. But one can infer that a person who is suffering from burn injuries over the body will not scientifically have stamina or even mentally prepared to give statement continuously as she has stated in her statement at Ex.P3. Even at a cursory glance of statement of deceased - Rashmi which is termed as dying declaration Ex.P3 and even after her death, but it has to be tested as under Section 32 of the Indian Evidence Act where a prudent man can infer that if the statement has been given as per Ex.P3, nothing prevented the police agency from

securing the responsible Taluka Executive Magistrate to record her statement even in the presence of Doctor - PW.6 as expeditiously. Even nothing prevented the police agency from arraigning Bhagya also as a co-accused. These are all the evidence that has been appreciated by the 30 trial Court while rendering the acquittal judgment. But the reasons assigned by the trial Court are sound and also justifiable. Even accused No.2 who is none other than the sister of accused No.1 she was married and she lead her happy marital life with her husband. Even at a cursory glance of the post mortem report at Ex.P8 whereby it indicates there were blue ink marks on both plantar surfaces of big toes. Needle mark on dorsum of right hand. But it does not speak of any ink on the left thumb. If deceased - Rashmi had given a statement as per Ex.P3 in Government Hospital, Kunigal and affixed her LTM as per Ex.P3 and even at the time of post mortem conducted by the Doctor who conducted autopsy over the dead body must have found the blue ink mark on her left thumb. However, her left thumb mark has been got it marked as Ex.P3(c). But there is no mentioning specifically of such blue ink mark on the left thumb at Ex.P8 of the report issued by the Doctor. These are all the material evidence appreciated by the trial Court by considering the evidence 31 of PW.6 being the Doctor and in her presence PW.11 who recorded statement of deceased as per Ex.P3 and subsequent to her death it has been termed as dying declaration.

13. PW.13 being the investigating officer in part who recorded FIR as per Ex.P9 but he has stated in his evidence as good as recorded the statement of Rashmi as per Ex.P3 in the presence of PW.6. But having gone through the evidence of PW.6, 11 and 13 in respect of statement of deceased - Rashmi at Ex.P3 and whereby it has to be termed as dying declaration but the LTM of Rashmi at Ex.P3, it does not appears to be of a highly educative person but below the endorsement of Ex.P3(d) but PW.6 being Doctor who affixed her signature at Ex.P3(b) it is her signature and she has written her name, date and time. However, the entire case has been revolving around the evidence of PW.6 and in her presence deceased - Rashmi has given statement as per Ex.P3 and the same 32 has been recorded by PW.11 being the Police Constable but subsequent to her death it is termed as dying declaration and the same was recorded by PW.11 in the presence of PW.6 - Doctor, PW.13 who had also accompanied PW.11 to the Government Hospital,

Kunigal whereby deceased - Rashmi was got admitted in the hospital by shifting in 108 van secured by PW.1 - Loksha who is the landlord. However, at a cursory glance of evidence of PW.1 in respect of Ex.P1 and even the contents in Ex.P2 - inquest mahazar which is conducted in the presence of PW.3 who is the panch witness but PW.4 - Ramakrishna H.R. is the father of deceased and PW.5 - Renukamma is the mother of the deceased. But at a cursory glance of evidence of PWs.4 and 5 coupled with the evidence of PW.6 in respect of dying declaration at Ex.P3 it founds to be inconsistent and contradictory to each other.

14. PW.10 - S.R.Krishnaiah is the Taluka Executive Magistrate who conducted inquest over the dead body of 33 deceased. But PW.11 is the police constable whereby he subscribed his signature at Ex.P3. But PW.12 being Doctor who conducted autopsy over the dead body and issued post mortem report as per Ex.P8 and indicates the burn injuries inflicted over the person of deceased - Rashmi. Whereas at Ex.P8 - PM report issued by the Doctor who conducted autopsy over the dead body. Though the burn injuries over her person are no doubt said to be first and second degree burns but it is said to present all over the body sparing the soles of the feet. Therefore, a prudent man can infer that it is not the LTM of deceased on Ex.P3. When it is not LTM of deceased on Ex.P3 then it also means that deceased has not given such kind of statement as per Ex.P3 and the same is recorded by PW.11 being the police constable. But subsequent to her death it is termed as dying declaration which has to be tested under Section 32 of the Indian Evidence Act. PW.6 being the Doctor namely Manjula in her presence deceased - Rashmi had given statement as per Ex.P3. She made an 34 endorsement stating that she was in a fit state of affairs to give her statement and based upon questioning the injured Rashmi as she had sustained burn injuries and those witness noted down her statement which has been got it marked at Ex.P3. Even the contents of Ex.P3 has been read over to declarant - Rashmi who affixed her LTM on Ex.P3. PW.11 being the police constable and PW.6 being Doctor and in their presence statement of deceased - Rashmi has been recorded as per Ex.P3 and thereafter, the deceased was shifted to Victoria Hospital for further treatment. The police constable who examined as PW.11 and accompanied by PW.13 being the PSI and in his presence also Ex.P3 has been recorded. But the contents of Ex.P3 are found to be and whereby she sustained

extensive burn injuries where she was not fit physically as well as mentally to give statement by narrating as to how she sustained injuries and how fire flame was found and her husband Bheemaraj who had sustained burn injuries over his body which indicated at Ex.P14. After information 35 of death of Rashmi her statement was termed as dying declaration. Though the aforesaid material witnesses have been subjected to thorough examination on the part of the prosecution relating to elicitation of ingredients of Section 498A in respect of physical as well mental harassment and also dowry death within a span of seven years from the date of marriage with accused No.1 - Bheemaraju. But the same has been raised by the trial Court alternatively for Section 302 of IPC. Even Section 302 is concerned the mensrea and actusrea are required to be acted upon and required to be considered in respect of offence under Section 302 of IPC. It is relevant to refer that credibility of dying declaration that there cannot be no dispute that dying declaration can be the sole basis for conviction, however, such a dying declaration has to be proved wholly reliable, voluntary, and truthful and further that the maker thereof must be in a fit medical condition to make it. The same has been extensively addressed by the Honble Supreme Court in a decision reported in Waikhom 36 Yaima Singh v. State of Manipur, JT2011(6) SC355 equivalent decision reported in 2011 CriLJ.2673.

15. With regard to reliability of dying declaration, if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused. The said issue has been extensively addressed by the Honble Supreme Court reported in Bhajju vs. State of Madhya Pradesh (2012) 4 SCC327 16. Whereas Section 3 of the Indian Evidence Act, 1872 the domain vested with the trial Court relating to appreciation of evidence facilitated by the prosecution and even on the part of the defense side in respect of proved, disproved and not proved. It is well-known principle of law the reliance can be based upon even solitary statement of 37 witness if the Court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. This issue has been extensively addressed by the Honble Supreme Court in the case of Raja v. State (1997) 2 Crimes 175 (Del).

17. Further in the case of *State of Uttar Pradesh v. Kishanpal*, 2008 (8) JT650 it is held that credentiality must be given to the quality of evidence. It is the quality of evidence and not quantity which is required to be judged by the court to place credence on the statement of witnesses. Further regarding plurality of witnesses in the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle, that evidence must be and not counted. The test is whether the evidence has a ring of trust, is cogent, 38 credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Act. The same has been observed by the Honble Supreme Court reported in AIR 2013 SC1204 of *Laxmibai (Dead) through LRs v. Bhagwantbura (Dead) through LRs*.

18. In the instant case, even various grounds has been urged by learned HCGP for State and whereby the State has preferred appeal by challenging the acquittal judgment rendered by the trial Court. Keeping in view the evidence of witnesses such as PWs. 6, 11, 13 and 14, but it is relevant to refer reliance of the Honble Supreme Court reported in *Lalit Kumar Sharma And Ors. vs Superintendent And Remembrancer of Legal affairs, State of West Bengal* (AIR 1989 SC2134. The power of an appellate Court to review evidence in appeal against acquittal is as extensive 39 as its power in appeal against conviction but appellate Court should be slow in interfering with the order of acquittal.

19. It is also relevant to refer the judgment of Honble Supreme Court reported in *Sharad Birdhi Chand Sarda vs State of Maharashtra* reported in (1984) 4 SCC116 wherein it is extensively addressed the issues insofar as Indian Evidence Act, 1872 and so also, circumstantial evidence and even benefit of doubt in detail. In para 162 it is held as under: Moreover, in *M.G.agarwal* case this Court while reiterating the principles enunciated in *Hanumant* case observed thus: If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. In

Shankarlal this Court reiterated the same view thus : [SCC para 31, p.44: SCC (Cri) p. 322]. In para 163, the Honble Supreme Court held as under:

40. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram v. State of Himachal Pradesh*, (I) this Court made the following observations: Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where the guilt of the accused is sought to be established by circumstantial evidence.

20. Therefore, keeping in view the aforesaid reliances and so also, keeping in view the reasons assigned in the acquittal judgment rendered by the trial Court by referring the aforesaid witnesses and also material documents at Ex.P3 which is stated as dying declaration as made by deceased -Rashmi who is no other than the 41 wife of accused No.1 - Bheemaraju, though the prosecution has relied upon several reliances but having gone through the evidence of those material witnesses and whereby the prosecution has given more credentiality and bank upon the evidence of those witnesses but the trial Court has cautiously and meticulously appreciated the evidence and come to the conclusion that there was inconsistencies and contradictions in the theory of prosecution and the prosecution has miserably failed to prove the guilt against the accused with beyond all reasonable doubt that accused No.1 - Bheemaraju doused kerosene over the person of deceased - Rashmi and lit fire by scratching match stick and causing death and it is to be termed as dowry death within a span of seven years and also extending physical as well as mental harassment and also demanding additional dowry from her parents house even after receipt of considerable dowry relating to Sections 3 and 4 of the Dowry Prohibition Act. But in fact, the prosecution has miserably failed to prove the guilt 42 against the accused by facilitating the worthwhile evidence relating to ingredients of the aforesaid offences. Therefore, in

this appeal we are of the opinion that the trial Court has rightly come to the conclusion by appreciating those evidence and also assigning sound reasons and justifiable reasons and rendered the acquittal judgment. In this appeal even it requires revisiting the impugned judgment of acquittal rendered by the trial Court and even for re- appreciation of the evidence but there are no warranting circumstances to interfere with the judgment of acquittal rendered by the trial Court. Consequently, the appeal deserves to be rejected being devoid of merits. Accordingly, we proceed to pass the following:

ORDER

The appeal preferred by the appellant / State under Section 378 (1) and (3) of Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the trial Court in S.C.No.141/2012 dated 11.09.2014 is hereby confirmed. 43 Bail bond, if any, executed by the accused shall stands cancelled. Sd/- JUDGE Sd/- JUDGE KS/DKB

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