

**Nagaraj Vs. The State Of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/1234012](http://sooperkanoon.com/1234012)

**Court :** Karnataka

**Decided On :** Jun-09-2022

**Judge :** K.Somashekar and Shivashankar Amarannavar

**Appeal No. :** CRL.A 632/2017

**Appellant :** Nagaraj

**Respondent :** The State Of Karnataka

**Advocate for Pet/Ap. :** Sri. Gopalakrishna Murthy C

**Judgement :**

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE9H DAY OF JUNE, 2022 PRESENT THE HON'BLE MR. JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR CRIMINAL APPEAL No.632/2017 BETWEEN: NAGARAJ S/O. NAGAPPA AGED ABOUT32YEARS OCC: AGRICULTURIST R/O. THRUMALAPURA @ EMMEHATTI VILLAGE HOLALKERE TALUK CHITRADURGA DISTRICT - 577 526. ...APPELLANT (BY SRI GOPALAKRISHNA MURHTY C., ADVOCATE) AND: THE STATE OF KARNATAKA BY HOLALKERE POLICE STATION CHITRADURGA DISTRICT - 577 526. RESPONDENT (BY SRI VIJAYAKUMAR MAJAGE, ADDL.SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE CONVICTION AND

SENTENCE DATED 06.10.02.2017, PASSED BY THE I ADDL. DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN SESSIONS CASE NO.35/2016 (CONVICTED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 IPC) ACQUIT THE APPELLANT OF THE CHARGES LEVELLED AGAINST HIM. THIS CRIMINAL APPEAL IS COMING ON FOR DICTATING

JUDGMENT

THIS DAY, K.SOMASHEKAR J., DELIVERED THE FOLLOWING:

## **JUDGMENT**

This appeal is directed against the judgment of conviction and order of sentence rendered by the Court of I-Additional District and Sessions Judge, Chitradurga in S.C.No.35/2016 dated 06.02.2017, whereby convicted the accused for the offence punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as IPC for short) and acquitted the accused for the offences punishable under Sections 498-A and 304-B of IPC and so also under Sections 3, 4 and 6 of Dowry Prohibition Act, 1961 (hereinafter referred to as DP Act for short). Whereas in this appeal, learned counsel seeking intervention of the judgment of conviction rendered by the trial Court insofar as offence under Section 302 IPC by considering the grounds urged in this appeal and to set aside the judgment of conviction and order of sentence rendered by the trial Court in 3 S.C.No.35/2016 and acquit the accused for the aforesaid offence charged against him.

2. Heard Sri Gopalakrishna Murthy C., learned counsel for the appellant/accused, so also Sri Vijayakumar Majage, learned Additional State Public Prosecutor for the respondent-State and perused the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.35/2016.

3. Factual matrix of the appeal is as under: It is transpired in the case of the prosecution that on 01.01.2016, the marriage of the deceased-Laxmi was performed with the accused - Nagaraj as per the customs prevailed in their society, but on 02.01.2016 at around 10.30 p.m., at Chitrahalli Village, wherein the accused was given some sort of torture to the deceased-Lakshmi by insisting her to provide a motorcycle through her parents. On the aforesaid date at Chitrahalli

Village while deceased-Laxmi D/o.PW3-Veerabhadrapa and her husband-Nagaraj were present on the terrace of the house of the father of the deceased and whereby, the accused strangulated her neck 4 with means of towel and also with black bead row containing mangalasuthra, which was found around her neck, which is tied by the accused on the previous day of marriage of the deceased, which were marked as MOs-1 and 11 as a result, the deceased lost her breath. It is further stated in the complaint that the accused strangulated her neck with means of towel and made her to die and also given physical as well as mental harassment by insisting her to bring additional dowry from her parents house to get a motorcycle and also caused for death of deceased-Lakshmi within a span of 36 hours from the date of her marriage.

4. In pursuance of the act of the accused, on filing of the complaint by PW3-Veerabhadrapa, criminal law was set into motion by recording FIR as per Ex.P7 but this FIR has been recorded based upon the complaint as per Ex.P8 filed by PW.3-Veerabhadrapa. Subsequent to recording of FIR, criminal prosecution was initiated against the person being arraigned as accused and criminal law was set into motion whereby the Investigating Officer has taken up the 5 case for investigation and thoroughly investigated the matter and laid charge sheet against the accused for the aforesaid offences before the committal Court. Subsequent to laying of charge sheet against the accused, the Committal Court passed an order as contemplated under Section 209 of Cr.P.C. by committing the case to the Court of Sessions for trial whereby the case in S.C.No.35/2016 came to be registered and the trial Court framed charges against the accused for the aforesaid offences. The trial Court heard the arguments advanced by the learned Public Prosecutor and learned defence counsel. On prima facie case against the accused, the trial Court framed the charges against the accused for the aforesaid offences and accused did not plead guilty and claimed to be tried. Accordingly, the plea of the accused was recorded separately.

5. Subsequent to framing of charge against the accused for the aforesaid offences, the prosecution had put on trial and subjected to examination of PW.1 to PW.16 and got marked several documents as per Exs.P1 to P32 and so also, got marked M.Os.1 to 11. Subsequent to closure of 6 evidence on the part of the

prosecution whereby recording the incriminating statement as contemplated under Section 313 of Cr.P.C. for enabling him to answer to the questions in respect of incriminating evidence appeared against him whereby the accused declined the truth of the evidence of the prosecution witnesses appeared against him. Subsequent to recording the incriminating statement as contemplated under the aforesaid provision of law whereby the accused was called upon to adduce the defence evidence as contemplated under Section 233 Cr.P.C. but the accused did not choose to lead defence evidence on his behalf. Accordingly, the statement recorded on the part of the accused, a separate statement has been filed along with production of six documents.

6. Subsequent to closure of evidence on the part of the prosecution as well as the defence side, the trial Court heard the arguments advanced by the learned Public Prosecutor and also arguments of the learned defence counsel. On perusal of the entire evidence on record, the trial Court considered the evidence of PW.3-Veerabhadrapa who is an author of the complaint at Ex.P8 and so also, the evidence of PW.5-Shivamurthy, who is none other than the brother of the deceased-Laxmi. PW.2-Dr.M.G.Nagaraju, being a Medical Officer, who conducted the autopsy over the dead body and issued Post Mortem Report at Ex.P5. PW.7-Somashekhar being the Tahsildar, who conducted the inquest of the dead body of deceased-Laxmi at Ex.P2 whereby one Rangappa subscribed his signature and PW.2 being a doctor, whereby he has conducted autopsy of the dead body and FSL Report marked at Ex.P3 and Pathology Report at Ex.P4 and also Medico Legal Cases (MLC) slips, which marked at Ex.P6. PW.2, being a doctor, who subscribed his signature at Ex.P5. The complaint filed by PW3-Veerabhadrapa and in mahazar at Ex.P9, another mahazar at Ex.P15 and so also, the mahazars at Exs.P26 and Ex.P28 has subscribed the signature by PW.13-Thippeswamy and PW.14-Rangappa was also subscribed his signature at Ex.P28 mahazer and marked his signature at Ex.P28. These are all the evidences that have been let in by the prosecution to prove the guilt of the accused and more so, the accused-Nagaraj is causes for death of deceased-Laxmi within a span of 36 hours from the date of her marriage with him as per the customs prevail in their society. The trial Court had appreciated the evidence of PW.3-Veerabhadrapa in respect of complaint at Ex.P8 and evidence of PW.5-Shivamurthy, who is none other than

the brother of the deceased-Laxmi and PW.7 being the Tahsildar, who conducted inquest over the dead body and also the evidence of PW.15-D.K.Kavalappa. These are all the evidence on the part of the prosecution which are vital in nature relating to the death of deceased-Laxmi as narrated in a complaint at Ex.P8 and also substances at Ex.P7, but the trial Court had appreciated the evidence of those witnesses and held conviction against the accused for the offence punishable under Section 302 of IPC, 1860 but rendered acquittal judgment for the offences punishable under Sections 498-A and 304-B IPC, 1860 and also for the offences punishable under Sections 3, 4 and 6 of the DP Act. It is this judgment, which is challenged under this appeal by urging the various grounds. 9

7. Whereas, learned counsel for the appellant namely Sri Gopalakrishna Murthy C., who has taken us through the evidence of PWs-3, 5 and 10 but they are all close relatives of the deceased-Laxmi but there is some serious error in respect of evidence of those witnesses and more so, they are interested witnesses and their evidence is not corroborated with the evidence of any other independent witnesses on the part of the prosecution despite of some contradiction and so also inconsistencies among the evidence of those witnesses but the trial Court had held conviction against the accused for the offence punishable under Section 302 of IPC without appreciating the evidence in a proper perspective manner. The prosecution is guilty of suppression of material evidence and has not come forward with true version of the evidence even narrated in the complaint at Ex.P8 and also substances at Ex.P7 FIR said to have been recorded by the Investigating Agency.

8. The trial Judge ought to have acquitted the accused on the grounds that there is a delay in filing the complaint before the Police. Even the death occurred within a 10 short span of 36 hours i.e., on 01.01.2016, her marriage was performed with the accused and on 02.01.2016 after the dinner coupled with the relatives went to the house of one Rangappa i.e., situated at Chitrahalli at around 10.30 p.m., on the terrace of the house of father of the deceased PW3-Veerabhadrapa and whereby alleging that the accused has murdered his wife Laxmi by strangulating her neck with means of towel due to reason of non providing of motorcycle to him in terms of additional dowry. As there is a delay in filing the complaint, criminal law

was set into motion and further, that delay has been conveniently used by the complainant, who examined as PW.3 and also other witnesses to register the crime against the accused and also securing for conviction. But the prosecution has not let in worthwhile evidence to prove the guilt of the accused beyond all reasonable doubt.

9. PWs.3, 4, 5 and 9 inclusive of PW.10, who are the material witnesses and they have been subjected to examination on the part of the prosecution to prove the guilt of the accused relating to their statement that it is full of 11 material omission so also, full of contradictions and also sufferance from legal infirmity and even no cogent and reliable evidence has been facilitated by the prosecution. Despite of it, the trial Court has erroneously rendered a conviction judgment against the accused. The marriage of the deceased-Laxmi was performed with the accused on 01.01.2016 according to the customs prevailing in their society but within a span of 36 hours, she last her breath on the terrace of his fathers house i.e. PW.3 that ground has deliberately discussed and consultation to initiate the criminal prosecution, accused had extended some sort of a dowry harassment to her and causing her death, but the trial Court had erroneously convicted the accused only based upon the medical evidence rendered by the prosecution subjected to examination of PW.2-doctor, who conducted autopsy over the dead body and issued Post Mortem Report at Ex.P5, wherein oral evidence of PW.2 and also other medical reports as well as Post Mortem Report at Ex.P5 are totally found on the part of the prosecution were inconsistent with respect to the homicidal death. Despite of it, the trial Court rendered conviction judgment and even at a cursory glance of that 12 evidence, it ought to have extended the benefit of doubt to the appellant/accused and rendering acquittal judgment relating to the offence under Section 302 of IPC.

10. Though the trial Court had rendered the impugned judgment but acquitted the accused for the offences punishable under Sections 498A and 304B of IPC relating to accused had given physical as well as mental harassment within a span of 36 hours as her marriage was performed on 01.01.2016. After the marriage ceremony, accused and the deceased-Laxmi had been to her parents house, whereby the deceased and the accused were present on the terrace of the house

of PW.3-Veerabhadrapa and alleging that he had extended physical and mental harassment in order to fulfill his demands by providing a motorcycle to him and also strangulated her neck with means of towel along with black bead row containing mangalasuthra, which was found around her neck but at a cursory glance of the evidence of those witnesses the trial Court erroneously held conviction against the accused. 13

11. It is further contended that even incriminating statement has been recorded under Section 313 Cr.P.C., whereby the accused has clearly stated the facts and circumstances of the case along with production of certain documents. Under such circumstances, even taking advantage of the alleged incident in which there is no direct nexus between the alleged incident and also alleged offences against the accused but the complainant and other interested persons have set up a case against the accused and resultantly, the trial Court has rendered a conviction judgment for the offence punishable under Section 302 of IPC without giving any credentiality to the cross examination of PWs.3, 5, 9 and 10 who are the interested witnesses and also they have been subjected to examination even proving guilt of the accused. But their evidence is full of contradictions and inconsistencies and even the ingredients of Section 302 of IPC has not been completed by the prosecution for having subjected to examination of those witnesses and even there is no cogent and reliable evidence relating to the death of the deceased-Laxmi within a span of 14 36 hours from the date of her marriage with the accused- Nagaraj.

12. The trial Court has rendered the conviction judgment erroneously only on the evidence of PW.2-doctor, who conducted the autopsy over the dead body of the deceased-Laxmi and issued Post Mortem Report at Ex.P5 but the medical evidence, which is inconsistent with the evidence of PW.3-Veerabhadrapa, who is the author of complaint at Ex.P8 and also substances stated in the FIR at Ex.P7, whereas the defence of accused clearly reveal that due to some frustration, deceased-Laxmi has attempted to commit suicide at her parents house. Therefore, under these circumstances, presumption of Section 113B of Indian Evidence Act (hereinafter referred to as IE Act for short) will not arise in the case of the prosecution and in the absence of cogent and reliable evidence, the trial Court has

erroneously rendered conviction judgment against the accused for the offence punishable under Section 302 IPC but held acquittal of the offences under Sections 498-A and 304-B IPC relating to physical as well as mental harassment which led to last 15 her breath within a span of 36 hours which have been ingredients to Section 304-B of IPC. But in the instant case, the death occurred within a span of 36 hours. Therefore, there are some inconsistencies and also contradictions. It would be sufficient in their evidence and more so, serious offence under Section 302 IPC is not attracted against the accused and the accused caused for death of deceased-Laxmi as alleged, despite of it, the trial Court has rendered a conviction judgment for the offence under Section 302 of IPC. Therefore, in this appeal it requires for intervention of this Court, if not, certainly there shall be substantial miscarriage of justice in respect of accused who is the gravamen of the accusation.

13. Lastly, learned counsel submitted that the trial court acquitted the accused for the offence under Sections 498A, 304B IPC and also Sections 3, 4 and 6 of DP Act, even based upon the evidence of those offences it only rely on the decision rendered by the prosecution based on the presumption which are not at all applicable to the given facts and circumstances of the case but the trial Court ought to have acquitted the accused upon the fact that the deceased- Laxmi might have committed suicide but not on account as alleged by the prosecution by filing of charge sheet and also securing certain material documents only to complete the provisions of Section 173(2) of Cr.P.C. On all these premises, the learned counsel for the appellant/accused seeking for consideration of the grounds urged in this appeal and to set aside the judgment of conviction and order of sentence rendered by the trial Court and to acquit the accused for the offence under Section 302 of IPC.

14. In support of his contention, learned counsel has facilitated reliance of 1995 SCC Online Kar (1995)2 Kant L J100(DB) State of Karnataka Vs. Mahadeva and others, whereby in this case, the Division Bench of this Court considered the scope of Sections 143, 147, 148 and 302 read with Section 149 IPC contending that there are infirmities in prosecution case and also full of contradictions between medical evidence and ocular evidence - held, when the medical evidence

contradicts the direct testimony of the witnesses, it would be difficult to convict the accused on the 17 basis of such evidence - motive factor insofar as prosecution witness contradicted the motive projected by the prosecution - the prosecution has failed to explain the inordinate delay in filing the complaint in respect of evidence that has been adduced and even facilitated by subjected to examination of PW.3-Veerabhadrapa and his son PW.5-Shivamurthy. However, the evidence of prosecution witnesses even though they are unnatural and improbable and full of inconsistencies but in the instant case, the conviction has been held by the trial Court for the offence under Section 302 of IPC.

15. In this reliance, the Division Bench of this Court had consciously referred the case of Maniram v. State of Uttar Pradesh, the Honble Supreme Court reiterated the position in law as follows: It is well settled that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and 18 unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case.

16. In the instant case, the marriage of deceased- Laxmi was performed with the accused-Nagaraj then within a span of 36 hours, she last her breath alleging that the accused had strangled her neck with means of towel on the terrace of the house of PW.3 only on the premise that the accused had insisted her to bring additional dowry and also to provide a motorcycle to him through her parents. This contention has taken by the learned counsel for the appellant/accused and emphasizing to consider the ratio of this reliance in a given peculiar facts and circumstances of the case.

17. In the reliance of AIR 1996 SC3345of State of M.P. vs. Surbhan, whereby the Honble Supreme Court has been addressed the scope of Section 300 of IPC relating to murder - medical evidence indicating incise injuries. Even in the instant case, it was found around her neck according to the autopsy report at Ex.P5 but

injuries of different dimensions around the neck of the deceased-Laxmi but the 19 evidence of eye witness however, showing that accused had inflicted injury around her neck by strangulating her neck with means of towel along with black bead row containing mangalasuthra found around her neck, which was tied by the accused on the previous day but PW.3-Veerabhadrapa, who is the father of deceased-Laxmi and is the author of complaint at Ex.P8 and based upon his complaint, criminal law was set into motion by recording FIR at Ex.P7 and evidence of other witnesses also has not established the offence from their statement. Therefore, Section 3 of IE Act, it is a domain vested with the trial Court to appreciate the evidence relating to the offence alleged against the accused.

18. In the aforesaid reliance, Section 154 of Cr.P.C. has been addressed. Issue relating to Section 154 - it cannot be used as substantive evidence or for corroborating statement of third party - it can be used either to corroborate or for contradiction of its maker. In the instant case, there is some delay even though it is not an abnormal delay but it would doubt theory of prosecution that to pay serious offence of Section 302 IPC. This contention made by 20 the learned counsel for the appellant seeking intervention in judgment of conviction and order of sentence rendered by the trial Court.

19. Whereas, in the judgment of Kalyan and others v. State of U.P., reported in 2001 CRI.L.J.

SC4677 whereby the Honble Supreme Court held the scope of Section 300 of IPC in respect of murder and also proof - variance between FIR and deposition made in court - conflict between statements of eye-witnesses and medical witnesses - major improvements in depositions of eye-witnesses then trial Court itself domain to appreciate the evidence -acquittal of accused by trial Court by giving benefit of doubt. This issue has been addressed by the Honble Supreme Court in the aforesaid reliance.

20. Insofar as reliance of 2012 CRI.L.J.

SC1050of Gour and others Vs. State of Assam, whereby the Honble Supreme Court held the scope of Sections 300 IPC so also Section 154 of Cr.P.C., in case

of murder - delay in lodging FIR - murder alleged to have taken place in incident of attack by mob on house of deceased in disturbed area - 21 Police though reaching on spot immediately neither recording statement of witnesses nor recording FIR - no explanation given for delay in recording FIR - evidence of solitary eye witness that he had seen murders in moon light doubtful due to presence of fog - medical evidence not supporting prosecution case - motive of crime alleged to be demolition of mosque also doubtful as witness, owner of house had land dispute with some accused - held accused entitled to benefit of doubt.

21. In the instant case, PW.3-Veerabhadrapa, who is none other than the father of the deceased - Laxmi and PW.5-Shivamurthy, who is none other than the brother of the deceased, who had been on the terrace of their house having seen that accused having been strangulated the neck of the deceased with means of towel and also with means of black beads row containing mangalasuthra around the neck, which was tied by him on the marriage solemnized on the previous day during her marriage as per the customs prevailed in their society but prosecution did not facilitate worth while evidence for conviction. 22

22. Insofar as reliance of 2014 CRI.L.J.

Patna High Court 4663 of Lallan Pathak Vs. State of Bihar even the concept of Section 300 of IPC relating to murder - evidence of eye witness - wife of deceased claimed that she saw three accused firing shots at her husband she and her son chased them, but they fled away - conviction completely based on her evidence - her evidence not supported by independent witnesses as well as her own son - her evidence appeared self contradictory, inconsistent and incoherent - conviction based on evidence of such infirmed witness, not proper - accused entitled to benefit of doubt.

23. In the instant case, the criminal law was set into motion on receipt of complaint at Ex.P8 filed by PW.3-Veerabhadrapa and based upon the complaint, criminal law was set into motion by recording FIR at Ex.P7 but at a cursory glance of the evidence of PWs.3, 5, 9 and 10 and their evidence is full of contradictions and inconsistencies and whereas PWs.3 and 5 being the interested witnesses and also none other than the father and brother of the deceased- Laxmi but their evidence

did not support to the case of the 23 prosecution by supporting any independent witnesses even though PW.2-doctor, who conducted autopsy over the dead body but their evidence is not inconsistent and contradictory to each other, as undisputed evidence available on record even though it shows that on 01.01.2016 i.e., on the Friday since 9.30 am to 10.30 a.m., her marriage was solemnized with the accused in a marriage Hall at Holalkere, which was scheduled on the aforesaid date and their marriage ceremony was completed but at around 10.30 p.m., on 02.01.2016 in the house of PW.3-Veerabhadrappe, who is the father of the deceased-Laxmi suffered some ligature strangulation. Therefore, she last her breath within a span of 36 hours as her marriage was performed with accused. But there is no evidence to show that subsistence of any type of dispute in between the family of PW.3-Veerabhadrappe and accused prior to that on 02.01.2016 and filed complaint at Ex.P8 on 03.01.2016. There is only allegation that for non-providing a motorcycle to the accused-Nagaraj, as a result of which, the accused alleged to have killed his wife-Laxmi by strangulating her neck with means of towel along with black bead row containing mangalasuthra. Whereas PWs.3 and 5 24 have been subjected to examination on the part of the prosecution and even though evidence of PWs.3, 5, 8 to 10 are contradictory to each other in respect of the contents of the complaint and initially PW.3 in his statement stated whereas the evidence of PWs.3, 5, 8 to 10 when there is prohibition to take money in terms of dowry or even tendering an article during the marriage of bride groom for what reasons PW.3-Veerabhadrappe to tender the dowry in terms or given any articles to accused as dowry. Therefore, the oral evidence of PWs.3, 5, 8 to 10 in respect of payment made of Rs.1,00,000/- and handing over golden bracelet, golden ring, chain to the accused as a dowry and demand made by the accused for additional dowry of Rs.1,60,000/- are not believable. This observation has been made in the impugned judgment of conviction insofar as offence under Section 302 IPC has been rendered and also in detail analyzed the evidence of prosecution even Para no.93 of the impugned judgment has been observed and consequently, acquitted the accused for the offences punishable under Sections 498A and 304B IPC and Sections 3, 4 and 6 of Dowry Prohibition Act. 25

24. So far as evidence of PWs.3, 5, 8 to 10 on the part of prosecution it reveals that after 10.00 p.m., on the terrace of house of PW.3-Veerabhadrappe, when

accused and deceased-Laxmi only present and about 10.30 p.m., PW.3-Veerabhadrappe went to the terrace and having been seen that his son-in-law, who is arraigned as accused having been strangulated the neck of his wife-Laxmi with means of towel along with black bead row containing mangalasuthra but in the instant case there is no explanation by the accused that in the house of PW.3-Veerabhadrappe is in which particular deceased- Lakshmi committed suicide given in a theory set up by self-hanging. Evidence on record shows on the terrace when Laxmi suffered a ligature injury to the neck only accused was with her. These are all contentions it is only taken by the prosecution only to set up a theory and also to prove the guilt of the accused even though there is no cogent evidence has been facilitated by the prosecution to prove the guilt of the accused not securing the conviction but more credentiality has been given to PWs.1, 3, 5, 8 to 14 but they are all relatives of the deceased-Lakshmi but PW.3- Veerabhadrappe, who has admitted that in his evidence even 26 in the presence of Police have not prepared the sketch and even further admitted that he did not hand over marriage invitation card, marriage photos or marriage CD to the investigating agency but considering the time factor, date of marriage of the deceased - Laxmi, the death of Laxmi, it all even indicates in the evidence of PW.3-Veerabhadrappe as he being an eye witness and also vital witness on the part of the prosecution but relationship between the PW.3- Veerabhadrappe and accused and so also the victim then the trial Court had erroneously taken into consideration the relationship between PWs.1, 3 to 5 and 8 to 14 even though it is not in corroboration with the evidence of PW.3 with PW.15 about the preparation of the map of seen of crime and handing over the marriage invitation card so also marriage photos and CD. Even it is not sufficient to discard and disbelieve the evidence the only witness PW.3. At a cursory glance of evidence of those witnesses inclusive of evidence of PW.15 being the Investigating Agency but the prosecution did not facilitate any worthwhile evidence but it is only surmises and conjectures that evidence has been believed by the trial Court and rendered conviction judgment for the 27 offence punishable under Section 302 IPC but acquitted for the offences punishable under Sections 498A, 304B of IPC so also Sections 3, 4 and 6 of DP Act. When the offence was ended in acquittal on 498A relating to physical as well as mental harassment and within span of 36 hours from the date of marriage and

even demanding of additional dowry despite receipt of dowry during her marriage i.e., marriage of Laxmi but no ingredients has been constituted for the alleged offences and no worthwhile evidence has been facilitated by the prosecution that entire evidence of the prosecution are found full of infirmities and there is some clouds of doubt. When the clouds of doubt has been arise in theory of prosecution, in a criminal justice system, the doubt should be always in favour of the accused. Consequently, the benefit of doubt in this matter also, it was not extended by the trial Court but rendered a conviction judgment for the offence punishable under Section 302 IPC but unfortunately the trial Court has given more credentiality to the evidence of PWs.3, 5, 8 to 10 and believing their evidence on the part of the prosecution and rendering conviction judgment for the offence punishable under Section 302 IPC whereby in this 28 appeal, it requires for intervention and re-appreciation of evidence and also re-visiting of the evidence which is found to be perverse, illegal and arbitrary. If the impugned judgment of conviction and order of sentence is not revisited, certainly the gravamen of accusation would be the suffer. On all these premises, learned counsel for the appellant seeks intervention and consideration of the grounds urged in this appeal and also keeping in view of the ratio of reliances and to set aside the judgment of conviction rendered by the trial Court in S.C.No.35/2016 and consequently, prays for acquitting the accused for the offence punishable under Section 302 IPC.

25. On the other hand, learned Additional State Public Prosecutor for State, who has taken us through the evidence of PW.3-Veerabhadrapa and equally the evidence of PW.5-Shivamurthy and so also, the PW.2-doctor, who conducted autopsy over the dead body and issued PM report as per Ex.P5 and whereby the cause of death has been indicated the injuries around the neck of the deceased, strangulating her neck and suffocating to the deceased. 29 These are all the evidence on the part of the prosecution which are vital in nature. Therefore, the prosecution has proved the guilt of the accused and rendered conviction judgment for the offence punishable under Section 302 IPC, whereby, accused who committed murder of the deceased- Laxmi by strangulating her neck with means of MO.1-towel and also with means of MO.11-black bead row containing mangalasuthra, which was found around her neck and also previous day that her marriage was performed with the accused but on fateful day when she was

present in the house of her father PW.3-Veerabhadrapa at around 10.00 p.m., the accused went there by holding a cell phone and he did not return for the purpose of dinner in his house. Therefore, PW.3-Veerabhadrapa, who had been to the terrace and having seen that accused - Nagaraj said to have been strangulating the neck of the deceased - Laxmi with means of M.Os.1 and 11, which found around her neck and seeing that incident relating to strangulating by his son-in-law, who is arraigned as accused namely Nagaraj, he was shouting and immediately, PW.5 and others have been rushed to the spot and they have been brought down the 30 dead body of Laxmi and make arrangements to secure car and shifted to the Government Hospital, Chitradurga and whereby the doctor after seeing body of Lakshmi declared as brought dead. In premises of the General Hospital, Chitradurga, villagers of PW.3-Veerabhadrapa had also come to the Hospital and the Police also came there and took the accused into their custody and registered a case against him by recording FIR as Ex.P7, which is based upon the complaint at Ex.P8 and whereby in his complaint, PW.3- Veerabhadrapa narrated the incident in detail and based upon his complaint, criminal law was set into motion and whereby the Investigating Officer has investigated the matter thoroughly and laid charge sheet against the accused and accused was facing of trial and in the trial, the main witnesses are PWs.3, 5, 8 to 10 and their evidence has been adduced by the prosecution relating to the murder of the deceased-Laxmi by accused-Nagaraj and whereby he strangulated her neck with means of MO.1 and MO.11, which were found around her neck. As a result of strangulation, there was some ligature mark around her neck which indicates at Ex.P5 - Post Mortem Report issued by PW.2 31 being a doctor. The aforesaid witnesses having been subjected to the cross examination at length and they have been incisively cross examined and nothing worthwhile has been explained by the defence counsel to disbelieve the theory of the prosecution and even disbelieve the allegations made against the accused relating to the nexus in between the accused-Nagaraj and death of his wife-Laxmi. These are all the evidence that has been facilitated by the prosecution and rendered conviction for the offence punishable under Section 302 IPC. Therefore, in this appeal, it does not call for any interference and there is no perversity or illegality or absurdity warranting interference. On all these premises learned Addl. SPP for State sought for

dismissal of the appeal being devoid of merits.

26. It is in this backdrop of the contention as taken by the learned counsel for the appellant/accused and so also counter made by learned Addl. SPP for State relating to the death of deceased-Lakshmi and also accused who caused her death by extending physical as well as mental harassment and also causing for death which occurred within a span of 32-36 hours from the date of marriage. But in the case of *Sharad Birdhichand Sarada vs. State of Maharashtra* reported in (1984) 4 SCC116 the Honble Supreme Court at para 163 has observed as under: 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*, (1) 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.

27. The manner of proof of status of a murder, the question arises in such cases did deceased die due to strangulation; it is the question before in this matter had 33 accused causing for the death of deceased-Laxmi. Insofar as the matter is concerned, in such cases, the domain is always vested with the trial Court and must carefully scan the evidence and determine the important factor relating to the allegations made against the accused and so also whether the accused is causing for death of deceased and that circumstance alone can justify the conviction. In the instant case, within a span of 36 hours i.e., presiding day, the marriage was performed in between accused and deceased - Laxmi but on the fateful day, while she was present with her husband on the terrace of the house of PW.3- Veerabhadrapappa that there were some allegations made against accused that he had insisted her to bring additional dowry to get provide a motorcycle from her father and because of that reason, the accused alleged to have strangled

her neck with means of MO.1-towel and MO.11- black bead row containing mangalasuthra, which was tied by him to her neck on the presiding day and also causing for some ligature mark around her neck but accused Mother-Thimmamma, who had sufferance with some sort of a epilepsy and she had taken treatment in Manasa Nursing 34 Home at Shimoga and she was on treatment but on the fateful day of the marriage ceremony, there was some incident was created that she was due to sufferance of mental ill health and whereby the members of the Laxmis side were present when there was some causing some directly or indirectly teasing to that Laxmi as having such kind of mother-in-law i.e., Thimmamma, we cant inference whether it would cause her mind or in a disturbance to lead to either to led happy marital life with her husband, who arraigned as accused or she was under depression to take away her life herself by committing suicide. But in the instant case, the ingredients it requires to be proved by the prosecution even for the offence under Section 302 IPC but in the first place even on the close scrutiny of the evidence of PWs.3, 5, 8 to 10 who are all the relatives of the deceased- Laxmi and based upon their evidence, the case against the accused relating to offence punishable under Sections 498A and 304B IPC and also Sections 3, 4 and 6 of DP Act ended in acquittal but held conviction against the accused for the offence under Section 302 IPC. It is no doubt that the death of Laxmi occurred within a span of 36 hours as wherein this 35 accused who is a bridegroom who tied mangalasuthra to her neck on the previous day but on the fateful day, he was present with the deceased on the terrace of her father's house. But in the instant case there was no proper appreciation of the evidence and the same can be seen in evidence of the prosecution witnesses who were subjected to thorough cross-examination. But the trial Court has given credentiality to the interested as well as related witnesses of the deceased. It is true that there is no direct evidence on these points since the prosecution was not able to lead evidence to show that accused caused the death of the deceased-Laxmi and so also, there is no direct evidence to prove that accused had causing for the death of the deceased by strangulating her neck on the fateful day that he was accompanying with PW.3-Veerabhadrapa and also his brother-in-law PW.5-Shivamurthy at Government Hospital, Chitradurga but in the premises of hospital only, accused- Nagaraj alleged to have taken to the custody of Police and criminal

law was set into motion for the offences punishable under Sections 498A, 304B and 302 IPC inclusive of offences punishable under Sections 3, 4 and 6 of DP Act.  
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28. It is relevant to refer Section 3 of the Indian Evidence Act, 1872, whereby proved, disproved and not proved but even the theory has to be set up by the prosecution even for a direct evidence has been facilitated to subject to examination of PW.3-Veerabhadrapa and PW.5- Shivamurthy and they are none other than the father and brother of the deceased-Laxmi. As per the theory put forth by the prosecution the accused person cannot be convicted solely on the evidence of PWs.3 and 5 having seen the deceased-Laxmi with her husband-Nagaraj on fateful day on the terrace of house of PW.3-Veerabhadrapa even taken into consideration of that in a circumstantial evidence in nature. In case of circumstantial evidence, the onus relies upon prosecution to complete chain of prosecution, which undoubtedly points towards guilt of the accused. The principle for making conviction on the basis of even circumstantial evidence is that each and every incriminating circumstances must be clearly established by reliable and clinching evidence and circumstance so proved, it must form a chain of event from which only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis of guilt is possible. These are the vital aspects that were addressed by the Honble Supreme Court in the case of 2011 CRI.L J1639of Wakkar vs. State of Uttar Pradesh and even the case of AIR 2018 SC207of Navneet Krishnan vs. State of Inspector of Police.

29. As already been stated that the prosecution let in evidence of PW.3-Veerabhadrapa in respect of complaint at Ex.P8 and based upon the complaint, criminal law was set in to motion by recording FIR at Ex.P7 and so also, evidence of PW.5-Shivamurthy, who is none other than the brother of the deceased Laxmi but in the criminal justice delivery system, we should give more credentiality to the quality of evidence and not quantity of the evidence which is required to be judged by the Court to place credence on the statement of the witnesses. Even the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony of a single witness into three categories,

namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly 38 unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The Court has to circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness as addressed by the Supreme Court in the case of Lallu Manji vs. State of Jharkhand AIR 2003 SC854 30. Whereas in the instant case it requires for re- appreciation of the evidence and even for revisiting the impugned judgment of conviction and the contentions as taken by the learned counsel for the appellant by urging various grounds and also placing certain reliances. Therefore, it is deemed appropriate and we are of the considered opinion that if the impugned judgment of conviction is not intervened, certainly the accused being the gravamen of accusation would be the sufferer and also there shall be some substantial miscarriage of justice. Accordingly, in this appeal, it requires for intervention and consequently, the 39 appeal deserves for consideration. In view of the aforesaid reasons and findings, we proceed to pass the following:

#### ORDER

(i) The criminal Appeal filed by the appellant/accused under Section 374(2) is hereby allowed. (ii) Consequently, the impugned judgment of conviction and order of sentence dated 06.02.2017 made in S.C.No.35/2016 on the file of I Additional District & Sessions Judge, Chitradurga, is hereby set-aside. (iii) The accused/appellant is hereby acquitted for the offences punishable under Section 302 of IPC for which he was held charge. The accused is said to be lodged in Ballary Prison. Therefore, Superintendent of Jail Authority, Ballary is directed to release him forthwith, if he is not required in any other case. 40 (iv) Accordingly, the Registry of this Court is directed to communicate the operative portion of this judgment to the concerned Jail Superintendent, for compliance. Sd/- JUDGE Sd/- JUDGE KA\*