

State Of Karnataka Vs. Prashanth

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Court : Karnataka

Decided On : Nov-14-2022

Judge : K.Somashekar and C M Joshi

Appeal No. : CRL.A 1091/2016

Appellant : State Of Karnataka

Respondent : Prashanth

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF NOVEMBER, 2022 PRESENT THE HONBLE MR. JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE C.M.JOSHI CRIMINAL APPEAL NO.1091/2016 BETWEEN: STATE OF KARNATAKA BY CHIKKAMAGALURU RURAL POLICE STATION, REPRESENTED BY SPP HIGH COURT OF KARNATAKA BANGALORE. ...APPELLANT (BY SRI. ABHIJIT K.S., HCGP) AND:

1. PRASHANTH @ PRASHANTHA RAJ URS S/O JAVARAJA URS AGED ABOUT41YEARS DRIVER, R/O MIG-1 HOUSE NO.157, 3RD STAGE NEAR REMAND HOME HOUSING BOARD CHIKKAMAGALUR.

2. KAMALAMMA W/O JAVARAJA URS AGED ABOUT62YEARS R/O MIG-1, HOUSE NO.157 3RD STAGE, NEAR REMAND HOME HOUSING BOARD CHIKKAMAGALUR. 2

3. JAVARAJA URS S/O THIRUMALA URS AGED ABOUT 72 YEARS R/O MIG-1, HOUSE NO.157 3RD STAGE, NEAR REMAND HOME HOUSING BOARD CHIKKAMAGALUR.

4. KAVYA D/O VENKATACHALA URS AGED ABOUT 22 YEARS STUDENT R/AT KARTHIKERE VILLAGE CHIKKAMAGALUR TALUK. RESPONDENTS (BY SRI. P.P. HEGDE, SENIOR COUNSEL FOR SRI. VENKATESH SOMAREDDI, ADVOCATE FOR R1, R2 AND R4; VIDE

ORDER

DATED 15.07.2021, APPEAL AGAINST R3 ABATED) --- THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) & (3) OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE

JUDGMENT

AND

ORDER

OF ACQUITTAL DATED 13.01.2016 PASSED BY THE I-ADDL. S.J., CHIKKAMAGALURU IN S.C.NO.19/2014 THEREBY ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCE P/U/S498, 304B, 306 R/W 34 OF IPC AND SEC. 3, 4 OF D.P. ACT AND ETC., THIS CRIMINAL APPEAL COMING ON FOR DICTATING

JUDGMENT

THIS DAY, K.SOMASHEKAR J., DELIVERED THE FOLLOWING:- 3

JUDGMENT

This appeal is directed against the judgment of acquittal rendered by the Court of the I Additional Sessions Judge, Chikkamagaluru, in S.C.No.19/2014 dated 13.01.2016 acquitting the accused of the offences punishable under sections 498-A, 306, 304-B read with section 34 of IPC, 1860 and under sections 3 and 4 of Dowry Prohibition Act. Whereas in this appeal, the appellant/State is seeking intervention of this Court to consider the grounds urged in the appeal and consequently, set aside the acquittal judgment rendered by the trial Court and

convict the respondents/accused for the offences alleged against them.

2. Heard learned HCGP Shri Abhijith.K.S. for the appellant/State and so also learned Senior Counsel Shri P.P.Hegde for learned counsel Shri Venkatesh Somareddi who is on record for respondents / accused Nos.1, 2 and 4. So far as the case against respondent No.3 / accused No.3 is abated in pursuance of order dated 15.07.2021 in view of the death of accused No.3 during the course of this appeal. 4 Perused the impugned judgment of acquittal rendered by the trial Court in S.C.No.19/2014 dated 13.01.2016.

3. The factual matrix of this appeal are as under:- It has transpired in the case of the prosecution that, accused No.1 is the husband of Smt.Pushpa @ Pushpalatha. Her marriage was performed with accused No.1 on 12.02.2009 as per the customs prevailing in their society. Accused Nos.2 to 4 being the mother, father and sisters daughter of accused No.1 respectively, in furtherance of their common intention, since sometime after the marriage, were subjecting Smt. Pushpa @ Pushpalatha to cruelty by harassing her and also ill-treating her physically and mentally, as it likely to drive her to commit suicide. In furtherance of their common intention and in the course of the same transaction, received cash of Rs.35,000/- and gold ornaments weighing 35 grams in all as dowry from the parents of the deceased. Despite receiving dowry in terms of cash and gold items from the parents of the deceased, the accused had extended physical as well as mental harassment, driving the deceased to commit suicide. 5

4. It further reveals that accused Nos.1 to 4, in furtherance of their common intention and in the course of the same transaction, demanded cash from the parents of the accused and were subjecting her to cruelty by harassing and ill-treating her physically and mentally to meet their demand for dowry. On 30.9.2013 at about 11.30 a.m., Smt. Pushpa @ Pushpalatha, wife of accused No.1 committed suicide by hanging herself by using the veil to an iron rod in the bathroom of her matrimonial house at Housing Board, Chikkamagaluru. It has further transpired that immediately prior thereto accused Nos.1 to 4, in furtherance of their common intention to eliminate the deceased Pushpa @ Pushpalatha, had subjected her to cruelty and harassment which drove her to commit suicide and

thereby they had abetted her to commit suicide and were responsible for her death.

5. It is in pursuance of the said act of the accused, on filing of the complaint by the complainant, criminal law was set into motion by recording F.I.R. as per Ex.P18 for the 6 offences stated supra. Subsequent to registration of the crime and also setting the criminal law into motion, the I.O. has conducted the investigation thoroughly and during investigation recorded the statement of the witnesses, conducted spot mahazar at.P3 and also got prepared from PW.12 - Tahsildar the inquest mahazar at Ex.P8 over the dead body of the deceased in the presence of the elderly persons and so also secured the post-mortem report - Ex.P15 from the Doctor who had conducted autopsy over the dead body and so also secured other materials in compliance with section 173(2) Cr.P.C. and thereafter laid the charge sheet against the accused before the committal court. Subsequent to filing of the charge sheet by the Investigating Officer, the case was committed by the trial Court by passing an order as contemplated under section 209 of Cr.P.C., and committed the case to the Court of Sessions for trial. Subsequent to committing the case to the Court of Sessions for trial and whereby the case in S.C.No.19/2014 has been registered and the accused have been secured for facing trial. The accused having engaged the services of a counsel, 7 the trial Court heard the learned Public Prosecutor for the State and the defence counsel for the accused relating to framing of charges and whereby found that there are prima facie materials and accordingly, charges were framed against the accused for the offences under sections 498-A, 306, 304- B read with 34 of IPC, 1860 and under sections 3 and 4 of Dowry Prohibition Act. The charges were read over to the accused in the language known to them and the accused pleaded not guilty and claimed to be tried. Plea of the accused was recorded separately. Subsequently, the prosecution has let in evidence by subjecting PW.1 to PW.20 to examination and got marked the documents at Exs.P1 to P23 and so also got marked M.Os.1 to 7. Exs.D1 to D15 and Ex.D1(a) were also marked.

6. Subsequent to closure of the evidence of the prosecution, the accused were subjected to examination as contemplated under section 313 of Cr.P.C., for enabling them to rebut incriminating evidence / statement against them, whereby

the accused have denied the testimony of the prosecution witnesses, but no defence evidence has been let in by them as contemplated under section 233 of Cr.P.C. Accordingly it was recorded.

7. Subsequently, the trial Court heard the arguments advanced by the learned Public Prosecutor and also the defence counsel. The trial Court considered the evidence of PW.1 being the mother of the deceased, PW.4 being the father of the deceased, PW.6 who is no other than the brother of the deceased, PW.7, PW.8 and PW.9 who are the relatives of the deceased. The Investigating Officer has recorded the statements of all the above witnesses. PWs.1, 4, 6 to 9 were subjected to examination and they also stood for cross-examination. All these witnesses have given evidence by supporting the case of the prosecution.

8. PW.1 - Kamamma in her cross-examination has stated that she has given a written complaint which is marked at Ex.P1. She has specifically stated that the Tahsildar has written the complaint. But again she has stated in her evidence that Ex.P1 was written on her instruction. But she did not read what was written in Ex.P1. 9 She says that when she saw her daughters dead body, it was 2.00 p.m. and the police had come to the scene of crime. Further she has stated in her evidence that the police did not enquire her about the incident relating to the death of her daughter.

9. These are all the evidence let in on the part of the prosecution and PW.1 who is the author of the complaint at Ex.P1 and she is no other than the mother of the deceased and she has stood for cross-examination. Her evidence has been analyzed by the trial Court along with the evidence of PW.4 - father of the deceased inclusive of evidence of PW.7, PW.8 and PW.9. But material witnesses are PW.1 and PW.4 being the parents of the deceased, PW.6 being the brother of the deceased. On behalf of defence, photographs were got marked at Ex.D1 to D15 and even one CD was got marked at Ex.D1(a) pertaining to Exs.D1 to D15. PW.1, who is the author of the complaint at Ex.P1, has admitted in her evidence that the aforesaid 15 photographs pertain to the house of accused No.1 - husband of the deceased. These are 10 all the evidence which find place on the part of the prosecution.

10. P.W.4 - Manjunatha Urs being the father of the deceased was subjected to examination-in-chief and also stood for cross-examination. But in his cross-examination he has specifically stated that according to the tradition in their religion, the bride and bridegroom will not speak with each other. He has further stated in the cross-examination that according to the custom prevailed, the elders decided that they should give 35 grams of gold jewelry and Rs.35,000/- cash. He further says that no photographs were taken when they paid the amount and the gold ornaments during the course of marriage of his daughter with accused No.1. PW.4 who is no other than the father of the deceased and he has specifically stated and also stood for cross-examination that he cannot say specifically as to how much of amount they gave for purchasing 35 gms., of gold which they gave to their daughter during her marriage with accused No.1. They had spent Rs.3,00,000/- for celebrating the marriage of their daughter. He says that they had subscribed in a chit of Rs.2,00,000/- conducted by one Kasthuramma. These are all the evidence let in on the part of the prosecution. PW.4 has specifically stated that he has not enquired her daughter as to why accused No.1 was not coming to their house. He further states that they have not enquired with the deceased when she came to his house one year after the marriage stating that the accused persons are harassing her, both physically as well as mentally by demanding her to fulfill their demand for dowry from her parents house.

11. PW.4 is a vital witness on the part of the prosecution inclusive of PW.1 who is the author of the complaint at Ex.P1. PW.4 has specifically stated that no documents in writing were prepared whenever they had conducted the panchayath and the parents of accused No.1, who were arrayed as accused Nos.2 and 3, were not called for Panchayath. PW.4 has specifically stated that he does not know about the harassment given by accused No.1 - husband of the deceased. He states that he is deposing for the first time before the court about the demand of 12 Rs.15,000/- and admits in his evidence that he is deposing before the court for the first time about the accused persons asking the deceased to die. These are all the evidence that have been let in on the part of the prosecution. PW.4 further states that accused No.4 is no other than the daughter of the sister of the accused No.1 and grand- daughter of accused Nos.2 and 3. Accused No.4 was studying in A.V.T. Engineering College, Karthikere. He states that he does not know that on

29.9.2013 accused No.4 had been to Davanagere. He says that his daughter was under depression over trivial matters namely family dispute perhaps raised in between her and her husband while accused No.4 was living in the house of her grandparents who are arrayed as accused Nos.2 and 3.

12. PW.7 - Ramesh Raj was also subjected to cross- examination and he stood for incisive cross-examination. He has stated he has informed the accused persons that demanding dowry and taking dowry is a crime. He admits that the parents of the deceased live by doing coolie work. He admits that the deceased was also going to coolie work 13 after she came of age. He does not know from where 35 grams of gold jewelry was brought by the parents of the deceased for performing the marriage of the deceased with accused No.1.

13. PW.8 - Honnaraju in his cross-examination has stated that he did not oppose when the accused persons demanded dowry. Since the alliance of the accused persons was good, he suggested C.W.1 to give her daughter in marriage with accused No.1. PW.8 has admitted in his evidence that he does not know in whose jewelry shop, the gold ornaments were purchased for the marriage of deceased with accused No.1.

14. These are all the evidence let in by the prosecution. The evidence has been analyzed by the trial Court and even the evidence of PW.2 relating to Ex.P3 - spot mahazar conducted by the Investigating Officer in the presence of the panch witnesses. PW.2 has identified M.O.1 - knob and M.O.2 - green colour plastic stool. PW.2 who is a panch witness has been treated as hostile. He has not given 14 any statement to the police to the effect that because of the harassment extended by the accused persons to the deceased demanding her to bring dowry from her parents house, she committed suicide.

15. PW.3 - Premkumar who is also a panch witness has been secured in respect of spot panchanama at Ex.P3 and inquest mahazar at Ex.P8. Even PW.2 and PW.3 are said to have acted as panch witnesses relating to the spot panchanama. Inquest mahazar at Ex.P8 has been conducted by PW.12 - Tahsildar. Merely because they have stood for the contents of Ex.P3 - spot panchanama and Ex.P8 - inquest mahazar and their evidence has been closely scrutinized by the trial

Court keeping in view the arguments advanced by the learned Public Prosecutor and so also learned defence counsel which is in respect of incisive cross-examination.

16. Apart from that, the trial Court has considered the evidence of PW.13 - Doctor who conducted autopsy over the dead body and issued post-mortem report as per Ex.P15. 15

17. PW.16 - G.L.Natesha is the police constable who arrested accused No.1 and produced him before the Investigating Officer - PW.17.

18. PW.17 - S.L.Nayak being the Investigating Officer who conducted a part of the investigation.

19. PW.18 - Purushotham is the A.S.I. He has seized the mangalya chain, a pair of ear stud, a pair of silver leg chain, a pair of silver toe ring from the hospital under Ex.P9 and produced before the Investigating Officer.

20. PW.19 - Manjeshwara, being the P.S.I., has registered the case after recording the F.I.R., and also conducted the spot mahazar as per Ex.P.3. Apart from that he has seized M.Os.1 and 2.

21. PW.20 - H.K.Ramesh Kumar is the Investigating Officer, who has investigated the matter and filed the charge sheet. In the cross-examination, all the omissions in the evidence of the prosecution witnesses were brought to his notice and he has admitted that the witnesses have not given 16 such kind of statements before him during the course of investigation.

22. Ex.P1 is the complaint and PW.1 is the author of the complaint. PW.2 and PW.3 are the panch witnesses to the spot mahazar at Ex.P3. This mahazar has been drawn by the Investigating Officer in between 4.30 p.m. to 5.00 p.m. on 30.09.2013. In overall evidence of PW.1, PW.4, PW.6, PW.7, PW.8 and PW.9 who are the parents and brother and relatives of the deceased, it is deposed that parents of the deceased and deceased were doing coolie work to eke out their livelihood, but PW.1 and PW.4 and PW.6 have specifically stated in their evidence that accused No.1 who is no other than the husband of the deceased has got two

cars and he lives by plying them on rent.

23. Accused No.2 is an activist of Swa-Sahaya- Sangha. Accused No.3 is a retired government employee. Accused No.4, who is no other than the daughter of sister of accused No.1 and grand-daughter of accused Nos.2 and 3, is an engineering student. The accused have an own house in 17 Housing Board Colony, Chikkamagaluru. Accused No.4 is the resident of Karthikere village as per the charge sheet laid by the Investigating Officer. PW.1 is the mother of the deceased and PW.4 is the father of the deceased. The parents of deceased had no financial potentiality to buy the Mangalya chain and a ring. Even if it is believed that the parents of the deceased paid Rs.10,000/- as dowry after the marriage, they had agreed to pay the same in few installments, this aspect also shows that the parents of the deceased are financially weak. The prosecution has not produced any documentary evidence indicating the payment of cash and gold as dowry before the marriage. No documents are produced to show that Panchayaths were held in Bolarameshwara temple and I.B., Chikkamagaluru.

24. The prosecution has facilitated plethora of citations, in all 26 in number, which citations relating to the observations made therein have been referred by the trial Court and even citation Nos.4, 6, 7, 8, 10, 11, 13, 15, 18 and 19 all these citations relate to the presumption that is to be raised under section 113-B of the Evidence Act. But the first 18 decision which is stated in para No.47 is not applicable to the present case on hand. This was also an observation made by the trial Court. On contrary, the defence counsel has facilitated nine citations which are indicated in para No.54. Even all these citations on the part of the prosecution and so also on the part of the defence counsel was gone through by the trial Court and the trial Court has arrived at a conclusion that there is no dispute about the fact that accused No.2 is the mother-in-law of the deceased and also is a member of Swa-Sahaya-Sangha. Further there is no dispute about the fact that accused No.4, who is the daughter of sister of accused No.1 and granddaughter of accused Nos.2 and 3, was an engineering student. These are all the observations made by the trial Court, but the trial Court has arrived at a conclusion that the prosecution has failed to prove the guilt against the accused persons by facilitating the worthwhile evidence and the ingredients of all the offences alleged against the accused are

not proved by the prosecution. In view of the above, the trial Court has arrived at a conclusion by recording the reasons and has rendered the acquittal judgment for the offences under sections 498-A, 306, 304-B read with section 34 of IPC, 1860 and under sections 3 and 4 of the Dowry Prohibition Act. It is this judgment which is challenged in this appeal by urging various grounds.

25. Learned HCGP for the State has taken us through the evidence of PW.1 and PW.4, who are the parents of the deceased and PW.6 being the brother of the deceased, who have categorically deposed on the part of the prosecution about the harassment, in terms of both physical as well as mental harassment, extended by the accused persons to the deceased by insisting her to bring additional dowry from her parents house and the parents of the deceased could not fulfill the demand made by the accused persons. Because of the physical as well as mental harassment, she was suffering from depression and committed suicide at the matrimonial house by hanging. These are all the evidence let in by the prosecution, despite of which the trial court has arrived at a conclusion erroneously and rendered acquittal judgment which is also improper and therefore, it requires in this appeal to revisit the impugned judgment rendered by the trial Court and also re-appreciate the evidence such as evidence of PW.1 and PW.4 and so also PW.6 who are the parents and brother of the deceased, and PW.7 to PW.9 who are the relatives of the deceased and they have supported the case of the prosecution relating to the death of the deceased and whereby the deceased was meted out physical and mental harassment in the hands of accused No.1, who is her husband and also in the hands of accused No.2 and 3, who are her in-laws and their granddaughter accused No.4. Despite substantial evidence has been facilitated by the prosecution, the trial Court did not appreciate the evidence in proper perspective and has erroneously come to the conclusion that the prosecution did not facilitate worthwhile evidence in securing conviction. On all these premises, learned HCGP for the State vehemently contended that the impugned judgment of acquittal requires intervention, if not intervened with the impugned judgment of acquittal, certainly there would be miscarriage of justice. On this premise, learned HCGP for the State seeks for consideration of the grounds as urged in the appeal seeking for setting aside the judgment of acquittal in S.C.No.19/2014 dated 13.01.2016 and consequent upon setting aside the

same, seeking conviction of the accused for the offences under sections 498-A, 304-B, 306 read with section 34 of IPC, 1860 and sections 3 and 4 of the Dowry Prohibition Act.

26. Per contra, learned Senior Counsel Shri P.P.Hegde for respondents / accused Nos.1, 2 and 4 has stated that the family of the deceased consisted the members namely the deceased inclusive of her husband, who is arrayed as accused No.1 and so also her parents-in-law namely accused Nos.2 and 3, inclusive of daughter of her sister-in-law namely accused No.4. Subsequent to her marriage with accused No.1, she was blessed with a male child. But allegation is that the deceased was subjected to cruelty, both physically and mentally, at the hands of her husband who is arrayed as accused No.1 and so also her parents-in-law namely accused Nos.2 and 3, inclusive of daughter of her sister-in-law namely accused No.4, which 22 drove her to commit suicide. Learned Senior Counsel submits that no written documents or materials were facilitated by the prosecution relating to accused receiving cash of Rs.35,000/- and gold jewelry worth 35 gms., in terms of dowry during her marriage with accused No.1 and further insisting her to bring additional dowry from her parents, but her parents failed to pay the same. But there is no worthwhile evidence in that regard.

27. But PW.1, who is the mother of the deceased and also being the author of the complaint at Ex.P1, in her cross-examination has specifically stated in her evidence that she has two children namely Vasantharaj Urs and Pushpa who is no other than the wife of accused No.1 and her marriage was performed with accused No.1 about five years back. Subsequent to her marriage with accused No.1, she was blessed with a son who is aged about four years. Accused Nos.1 and 2 were sending their daughter-in-law to her parents house demanding to bring additional cash in terms of dowry. PW.1 and also her husband PW.4 were doing coolie to eke out their livelihood, and accused No.1, 23 who is no other than the son-in-law of PW.1 and PW.4, was not coming to their house,. But there is no specific evidence let in by the prosecution relating to the accused quarrelling with the deceased whereby she has committed suicide by hanging on 30.09.2013 at about 11.30 a.m. at her matrimonial house. Soon after getting information, PW.1 and PW.4 and also their relatives went to the house of accused persons and found the

dead body of Pushpa @ Pushpalatha which was hanging in the bathroom. PW.1 has specifically stated and also admitted in her evidence that Ex.D1 to Ex.D15 are the photographs which pertain to the house of accused No.1 and one CD pertaining to Ex.D1 to Ex.D15 was also marked at Ex.D1(a). PW.1 has also admitted that after giving the complaint, the dead body was brought to the hospital on 30.09.2013 at around 3.30 p.m. - 4.00 p.m.

28. PW.4 being the father of the deceased has specifically stated that according to the tradition in their religion, the bride and bridegroom will not speak with each other. He has further stated in the cross-examination that 24 according to the custom prevailed, the elders decided that they should give 35 grams of gold jewelry and Rs.35,000/- cash, but no photographs were taken when they paid the amount and the gold ornaments during the course of marriage of his daughter with accused No.1. That the entire evidence even at a cursory glance even the evidence of PW.2 and PW.3 in respect of spot mahazar at Ex.P3 and inquest mahazar at Ex.P8 conducted by the Investigating Officer in the presence of panch witness PW.3, but the evidence does not find corroboration with the evidence of PW.13 being the Doctor who conducted autopsy over the dead body and also verified the dead body during autopsy and conducted the post-mortem examination. But in the cross-examination, PW.13 has stated that she cannot say that the death was due to suicide. PW.18 conducted part of the investigation, collected the mangalya chain, a pair of ear stud, a pair of silver leg chain, a pair of silver toe ring from the hospital and produced them before the Investigating Officer and the same were seized by drawing seizure mahazar at Ex.P9 in the presence of panch witnesses. But PW.1 being the 25 complainant and also the author of the complaint at Ex.P1 even extracted the contents of the complaint, even in the earlier part of the complaint what is absolutely non- mentioning of payment of dowry in terms of cash at the time of marriage of the deceased with accused No.1 and even subsequent to her marriage, as stated by the witnesses on the part of the prosecution namely PW.1 and PW.4 who are the parents and PW.2 and PW.3 being the panch witnesses in respect of spot mahazar - Ex.P3. PW.20 being the Investigating Officer who laid the charge sheet against the accused and even conducted the spot mahazar, he stood for cross-examination.

29. On cursory glance of evidence of PW.1, PW.4 and PW.6 wherein they have stated in their evidence that they are the parents and brother of the deceased. PW.5 to PW.9 who are the relatives of the deceased have specifically stated in their evidence they do not know PW.1 and PW.4, being parents of the deceased, arranged to pay the dowry of Rs.35,000/- in cash and 35 gms., of gold jewelry to accused No.1. PW.7 who has stood for cross-examination has stated 26 that since the parents of the deceased had no financial capacity to bring even mangalya chain for their daughter, accused had brought mangalya as per the customs at the time of marriage of the deceased with accused No.1. The parents of the deceased are living in a rented house. Therefore their potentiality or financial stability to provide dowry in terms of cash of Rs.35,000/- and 35 gms. of gold jewelry are found to be camouflaged.

30. On cursory glance of evidence of PW.1, PW.4 and PW.6, they have merely given an admission that accused No.1, who is no other than the husband of the deceased, has got two cars and he is living by plying those cars for rent. Accused No.2, who is no other than the mother-in-law of the deceased, is an activist of Swa-Sahaya-Sangha. Accused No.3 is a retired Government employee and accused No.4 is an engineering student and she was staying in the house of her grand-parents namely accused Nos.2 and 3. Merely because accused No.4 is said to have been staying in the house, it cannot be said that she was also involved in causing mental and physical harassment of the deceased 27 which led her to commit suicide. Even the ingredients of section 304-B of IPC, 1860 relating to causing of dowry death within seven years from the date of marriage, even though prosecution has let in evidence, but prosecution has failed to adduce worthwhile evidence in terms of oral and documentary evidence showing that the deceased was meted out physical and mental harassment in the hands of her husband - accused No.1 and also through her parents-in-law namely accused Nos.2 and 3 inclusive of accused No.4 who is no other than the daughter of sister of accused No.1. The prosecution has failed to show the evidence regarding harassment and cruelty soon before the death of the deceased.

31. PW.2 and PW.11 have been subjected to examination relating to the ingredient that the deceased was abused even soon before her death. But these

witnesses have not supported the case of the prosecution and turned around their statements and they have even stood for cross-examination, but nothing worthwhile has been elicited by the prosecution in securing the conviction. The omissions brought out in the evidence of the witnesses have been brought to the notice of the Investigating Officer -PW.20 which clearly indicate that witnesses have given crude version before the Court and the same has been observed by the trial Court. The prosecution has not proved the fact that soon before her death, the deceased Pushpa @ Pushpalatha was subjected to physical as well as mental harassment meted out at the hands of the accused persons.

32. Learned Senior Counsel further submits that in the judgment of acquittal rendered by the trial Court, the trial Court has referred to plethora of citations facilitated by the prosecution and so also the defence counsel. All the evidence has been gone through by the trial Court and the trial Court has given finding while rendering an acquittal judgment that the prosecution has failed to prove the guilt against the accused persons and so also failed to prove the ingredients on each count of offence. Therefore in this appeal, it does not call for interference even on any ground urged by the State, particularly submitting that it requires for reconsideration of the evidence. On this premise, learned Senior Counsel for respondents / accused Nos.1, 2 and 4 has sought for dismissal of this appeal being devoid of merits.

33. In support of his contentions learned Senior Counsel Shri P.P.Hegde has relied on the following judgments:- (i) In S.Anil Kumar v. State of Karnataka¹, the Honble Supreme Court while referring to presumption under sections 113-A and 113-B of Evidence Act, 1872, has held that, Once the prosecution failed to prove the basic ingredients of harassment or demand for dowry and the evidence brought on record was doubted by the trial Court, it was not open to the High Court to interfere with judgment of acquittal by trial court in a routine manner - Evidence Act, 1872 - Ss. 113-B/113 A - Crimes Against Women and Children -m Dowry Prohibition Act, 1961, Ss, 3 and 4 - Criminal Procedure Code, 1973,S.378 B. Evidence Act, 1872 - Ss. 113-B and 113-A - Presumptions under - When invocable - Held, where 1 (2013) 7 SCC21930 basic ingredients of harassment or demand for dowry are not made out, presumption under Ss. 113-B/113- A that

accused is guilty cannot be drawn - Criminal Trial - Prof - Presumptions. (ii) The Honble Supreme Court in *Sher Singh v. State of Haryana*², has observed, in para 9, that, the words soon before her death there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words "soon before her death", to bring Section 304B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time. (iii) In *Shindo Alias Sawinder Kaur and Another v. State of Punjab*³, the Honble Supreme Court dealt with section 113-B of the Evidence Act, 1872. The relevant portion reads as under: (para

9) 9. We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly in a case of a dowry death under 2 (2015) 3 SCC42131 Section 304-B, a presumption of Sec.113-B does arise against the accused. However, the presumption is relatable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredient that any demand for dowry had been made soon before the death has not been proved. In this view of the matter the presumption under Section. 113-B of the evidence cannot be raised. (iv) While dealing with sections 304-B and 498-A of IPC, 1860, the Honble Supreme Court in the case of *Bhola Ram v. State of Punjab*⁴, in para 25, held as follows:

25. Merely making a demand for dowry is not enough to bring about a conviction under Section 304-B of the IPC. As held in *Kans Raj* a dowry death victim should also have been treated with cruelty or harassed for dowry either by her husband or a relative. In this case, even assuming the silent or conniving participation of *Bhola Ram* in the demands for dowry, there is absolutely no evidence on record to suggest that he actively or passively treated *Janki Devi* with cruelty or harassed her in 3 (2011) 11 SCC5174 (2013) 16 SCC42132 connection with, or for, dowry. The High Court has, unfortunately, not adverted to this ingredient of an offence punishable under Section 304-B of the IPC or even considered it. (v) The law is well settled that unless the prosecution proves the ingredients of Section 304B of

the Indian Penal Code. The presumption under Section 113B of the evidence Act would not come into play. The Honble Supreme Court in *Baijnath And Others v. State of Madhya Pradesh*⁵, in para 29, has observed as follows: (29) Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of 5 (2017) 1 SCC10133 commission of the offence of dowry death by the person charged therewith. (vi) Further the Honble Supreme Court in the case of *State of Rajasthan v. Teg Bahadur And Others*⁶, in similar facts and circumstances of involving the offences under Sections 498-A and 304-B of IPC were pleased to make interpretation regarding the expression used in the said sections soon before and it is worthwhile to extract paragraph 18 as below :-

18. Our attention was drawn to Section 113B of the Evidence Act and Section 304B of the Indian Penal Code by the learned counsel appearing for the accused. A conjoint reading of Section 113B of the Indian Evidence Act and Section 304B of the Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances."

For the above proposition, learned counsel appearing for the accused, cited the judgment of this Court in the case of 6 (2004) 13 SCC30034 *Hira Lal & Ors. vs. State (Govt.of NCT), Delhi*. In that case this Court observed thus:

"The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to

what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 35 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

36 (vii) The relevant portion of the judgment of the Honble Supreme Court, in para 24, in the case of *Mangat Ram v. State of Haryana*⁷, reads thus: 24. We find it difficult to comprehend the reasoning of the High Court that no prudent man is to commit suicide unless abetted to do so. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.

(viii) The Honble Supreme Court in the case of *Girish Singh v. State of Uttarakhand*⁸, has observed, in para 27, thus: 27. We have referred to the entire evidence. The Trial court acquitted the accused. The jurisdiction of the Appellant Court, when it deals with such an order, is no longer *res integra* and is subject matter of catena of decisions of this Court. 7 (2014) 12 SCC59537 34. It is in this

context, the contentions made by learned HCGP for the State and also counter arguments of the learned Senior Counsel Shri P.P.Hegde for respondents / accused Nos.1, 2 and 4 are considered. PW.1 - Kamalamma, who is no other than the mother of the deceased and she being the author of the complaint at Ex.P1 and based upon her complaint, criminal law was set into motion by recording F.I.R. as per Ex.P18. But the substances in the FIR and the contents in the complaint at Ex.P1 run contrary to each other. PW.4 - Manjunatha Urs, who is no other than the father of the deceased and PW.6 - Vasanthraj Urs being the brother of the deceased and they were also subjected to examination and also stood for cross-examination, and they are the prime witnesses and also material witnesses who deposed against the accused insofar as offence under section 498-A of IPC relating to physical as well as mental harassment meted out to the deceased in the hands of the accused No.1 who is the husband and accused Nos.2 and 3 who are the parents-in-law. PW.13 - Doctor who conducted autopsy over the dead body, but PW.12 being the responsible 8 2019 SCC Online SC89738 Tahsildar who prepared the inquest mahazar in the presence of the panch witnesses. PW.17 being the Investigating Officer conducted a part of the investigation. PW.18 has been deputed for taking the dead body of the deceased for post-mortem examination to be done by the Doctor. PW.20 being the Investigating Officer who completed the investigation and laid charge sheet against the accused persons. PW.2 - panch witness being secured to conduct spot mahazar as per Ex.P3. PW.11 is the neighbour. These witnesses have turned around. The version of contents of Ex.P3 and also the statement which was recorded by the Investigating Officer during the course of investigation and filing of charge sheet against the accused persons.

35. It is relevant to refer section 304-B of IPC, 1860 in respect of what are the essential ingredients that must be satisfied and also to be produced by the prosecution to prove the guilt. Firstly the death of a woman must have been caused by any burns or bodily injury or occurs otherwise than under normal circumstances and secondly, such death must have occurred within seven years of her marriage, and 39 thirdly, soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. To prove ingredient of to section 304-B of

IPC, 1860 relating to soon before her death, the woman must have been subjected to cruelty or even physical or mental harassment by her husband or his relative, but no evidence is forthcoming on the part of the prosecution to prove the guilt against the accused persons. In the case on hand, there is no dispute about the death of the deceased has occurred within seven years from the date of marriage. But there is no evidence forthcoming on the part of the prosecution to prove the guilt against the accused persons in securing conviction.

36. Keeping in view the evidence of PW.1, PW.4 to PW.6 who are material witnesses on the part of the prosecution, but there is no evidence on the part of the prosecution relating to dowry harassment resulting in deceased committing suicide as stated in the theory of the prosecution. But it is relevant to refer the entire case based 40 upon the circumstantial evidence even soon before her death which is the very ingredient of section 304-B of IPC, 1860 and section 306 of IPC, 1860 relating to commitment of suicide. Every aspect is based upon the materials facilitated by the prosecution. But it is relevant to refer to the judgment in *Ram Niwas v. State of Haryana* in Crl.A.No.25/2012, whereas in this judgment, the Honble Supreme Court has referred to the judgment of *Sharad Birdhichand Sarda v. State of Maharashtra*⁹. In this judgment in para No.152, Honble Supreme Court has made observation that, Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* reported in AIR 1952 SC343 This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* reported in (1969) 3 SCC198 and *Ramgopal v. State of Maharashtra* reported in AIR9(1984) 4 SCC11641 1972 SC656 It may be useful to extract what Mahajan, J.

has laid down in *Hanumant* case reported in AIR 1952 SC343 It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances

should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In the same judgment, in para No.153, it is observed as follows:

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case 42 against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned must or should and not may be established. There is not only a grammatical but a legal distinction between may be proved and must be or should be proved as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra reported in (1973) 2 SCC793 where the observations were made: Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between may be and must be is long and divides vague conjectures from sure conclusions. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and 43 (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

37. This Court has held that there has to be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. The circumstances should be of a conclusive

nature and tendency and they should exclude every possible hypothesis except the one to be proved. It has been held that the act must be proved and not merely made guilty before a court of law. Whereas in the same reliance, an observation is made, it is settled law that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt and the accused cannot be convicted on the ground of suspicion, 44 no matter how strong it is. Accused to be presumed innocent unless proved otherwise beyond reasonable doubt.

38. In the instant case, there is no dispute about the death of the deceased Pushpa @ Pushpalatha, being wife of accused No.1 and there is no dispute that her marriage was performed with accused No.1 and they had a male child out the wed-lock and even no dispute about accused Nos.2 and 3 being the in-laws of the deceased Pushpa @ Pushpalatha. On the fateful day, accused No.2, who is no other than the mother-in-law of the deceased and who is an activist in Swa-Sahaya-Sangha, had been for attending some social work and accused No.3, who is no other than the father-in-law of the deceased and he had been to school for bringing back his grandson to home and accused No.4, who is no other than the daughter of sister of accused No.1 and granddaughter of accused Nos.2 and 3, had been to college. Merely because she was residing in the house of her grandparents, accused No.4 cannot be blamed for the death of deceased Pushpa @ Pushpalatha. Merely because she was also one of the family members in the house of her 45 grandparents, it cannot be said that she was also a party for the death of deceased Pushpa @ Pushpalatha who meted out physical as well as mental harassment to the deceased who was undergoing depression and due to that depression, she has committed suicide by hanging with means of veil to a iron rod in the bathroom of her matrimonial house. On carefully going through the evidence of the prosecution and on close scrutiny of the ingredients of each count of offences under section 498-A of IPC, 1860 relating to physical and mental harassment, under section 306 of IPC, 1860 relating to abetment of suicide and even section 304-B of IPC, 1860 relating to causing the death of the deceased within a span of seven years from the date of the marriage, even though the prosecution has let in evidence by subjecting to examination all witnesses which are stated supra, the prosecution has failed to prove the guilt against the accused that the accused alone had abetted for causing the death of the deceased who

committed suicide, as narrated in the theory of the prosecution. 46

39. Whereas at a cursory glance of the evidence of those witnesses i.e., PW.1, PW.4, PW.6 to PW.9 who are the relatives of the deceased, but the trial Court has not believed the evidence of those witnesses and has also arrived at the right conclusion. In totality of the evidence of the prosecution and also on re-appreciation of the evidence and so also revisiting the impugned judgment of acquittal rendered by the trial Court, we are of the opinion that there is no perversity, absurdity or illegality committed by the trial Court in arriving at the conclusion and rendering acquittal judgment and therefore, the same does not call for interference in this appeal. For the aforesaid reasons and findings, we are of the considered opinion that the prosecution has failed to prove the guilt against the accused. The appeal deserves to be rejected as being devoid of merits. Accordingly, we proceed to pass the following:

ORDER

(i) The appeal filed by the appellant / State under section 378(1) and (3) of Cr.P.C., is hereby rejected. 47 (ii) Consequently, the judgment of acquittal rendered by the trial Court in S.C.No.19/2014 dated 13.01.2016 is hereby confirmed. Sd/- JUDGE Sd/- JUDGE Bss.

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