And Two Other Accused Persons And The ... vs No.1 And Consequently on 31 January, 2018

IN THE COURT OF XLV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU CITY (CCH-46)

DATED THIS THE 31st DAY OF JANUARY, 2018

PRESENT
Sri. T.N. INAVALLY, B.A.L., LL.B.,
XLV Addl. City Civil & Sessions Judge, Bengaluru.

CRL.A.No.782/2017
C/w
Crl.A.No.1210/2017

In CRL.A.No.782/2012

BETWEEN

Sri. V. Arun, S/o T.S. Vijayakumar,
Aged about 34 years,
R/at No.261, Behind Rebok Showroom,
BSK III Stage, 5th Phase, 5th Block,
Katriguppe, Bengaluru. .. APPELLANT

(By Smt. Jayashree B.S., Advocate)

AND

The State of Karnataka
By C.K. Acchukattu Police Station,
Bengaluru. .. RESPONDENT

(By the learned Prosecutor)

In Crl.A.No.412/2015

The State of Karnataka
By C.K. Achukattu Police Station,
Bengaluru. .. APPELLANT

(By the learned Prosecutor)

AND

1. V. Arun S/o T.S. Vijay Kumar,
Aged about 34 years,

2. T. S. Vijay Kumar, S/o late Srinivas,

Aged about 63 years,

3. Vijayalakshmi, W/o T.S. Vijaya Kumar,
Aged about 61 years,

All are R/at Door No.138, 4th Cross,
Katriguppe, 5th Block,
Banashankari 3rd Stage, Bengaluru. .. RESPONDENT

(By Smt. Jayashree B.S., Advocate)

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COMMON JUDGMENT

The appeal in Crl.A.No.782/2017 is filed by the appellant under Section 374 of Cr.P.C. praying for an order to call for the records in C.C.No.24115/2012 on the file of II Additional Chief Metropolitan Magistrate, Bengaluru city ('the learned Magistrate' for short) and thereby to set aside the judgment dated 06.05.2017 regarding the order of conviction and sentence passed against him for the offence punishable under Section 498-A of IPC and thereby to acquit him of the said offence by allowing this appeal in the interest of justice.

2. The case in C.C.No.24115/2012 was registered against the appellant and two other accused persons and the learned Magistrate, as per the said judgment convicted the appellant for the offence punishable under Section 498-A of IPC, he being the accused No.1 and acquitted the accused No.2 and 3. Hence, the learned Prosecutor has

filed the appeal in Crl.A.No.1210/2017 under Section 378(1)(a) and Sec.377(1)(a) of Cr.P.C. (initially the appeal was filed only under Section 378(1)(a) of Cr.P.C., but, subsequently by filing memo the learned Prosecutor has sought for treating the appeal under Section

377(1)(a) of Cr.P.C. also) praying for an order to modify the judgment dated 06.05.2017 regarding conviction and sentence praying for to enhance the sentence of accused No.1 and to set aside the judgment of acquittal of the accused No.2 and 3 and convict them for the offence charged by modifying the said judgment in the interest of justice.

3. The respondent in the appeal in Crl.A.No.782/2017 and the appellant in the appeal in Crl.A.No.1210/2017 is complainant Police. The appellant in the appeal in Crl.A.No.782/2017 is accused No.1 and the respondents in the appeal in Crl.A.No.1210/2017 are accused No.1 to 3 in the criminal case before the trial Court. Hence, the parties to both the appeals are herein after referred to in their ranks before the trial Court for the purpose of convenience.

4. Both these appeals have arisen from the same judgment of the learned Magistrate and hence, both the appeals are clubbed together for consideration and for disposal of the same with common judgment.

5. The prosecution was set into motion against the accused persons on the information of C.W.1 Smt. N.J. Archana, the wife of accused No.1 and consequently, the complainant police registered the case against the accused persons as per their crime No. 183/2012 and took up investigation of the case. After completion of the investigation, the complainant police filed charge sheet against the accused No.1 to 3 for the offence punishable under Section 498-A of IPC. It is not in

dispute that the accused No.2 and 3 are parents-in-law of informant/ victim. The case alleged against the accused persons is that the informant/ victim married accused No.1 on 27.05.2011 as per Hindu rites and customs. All the marriage expenses were borne by the father of victim. After the marriage, the victim started to reside with the accused No.1 to 3 in the matrimonial house at Banashankari within the jurisdiction of complainant police station. During the said period, the accused No.1 along with accused No.2 and 3 intentionally ill-treated the victim due to her speaking problem, as victim was stammering. The accused persons used to quarrel with the victim regularly for silly reasons. The accused persons used to leave the victim in the house alone and the accused No.1 was not taking the victim anywhere outside the house. The accused persons also restricted the victim from watching television and they regularly used to abuse the victim stating that the accused No.1 married her by force. The accused No.1 also

used to tell the victim that she would give divorce to him and he would pay her Rs.10,00,000/-. Further, at the instigation of accused No.2 and 3, the accused No.1 was tried to strangulate the victim by pressing neck and hence, thereafter the complainant went to her parents' house. The accused persons never allowed the victim to enter into the matrimonial house. Hence, the victim was constrained to give complaint to the police. Accordingly, the case was registered against the accused persons as per the Cr.No.183/2012 for the offence punishable under Section 498-A of IPC.

6. After completion of investigation, the complainant police filed charge sheet against the accused persons for the said offence before the learned Magistrate. Hence, the case was registered against the accused persons in C.C.No.24115/2012 by the learned Magistrate. In pursuance of service of summons, all the accused No.1 to 3 appeared through counsel. The accused were on bail. After hearing both the parties and on considering the relevant materials on record, the learned Magistrate framed charge against the accused persons for the offence punishable under Section 498-A of IPOC to which the accused persons pleaded not guilty and thereby they claimed to be tried of the said offence.

7. In support of the case of prosecution, 10 witnesses were examined as P.Ws.1 to 10. The prosecution produced documents at Exs.P.1 to P.10 on its behalf. After closing of the evidence of prosecution the learned Magistrate recorded the statement of the accused persons under Section 313 of Cr.P.C., in which the accused persons denied the incriminating materials forthcoming against them in the evidence of prosecution evidence as false, but they did not choose to adduce any defence evidence.

8. After hearing the argument of both the parties and on considering the relevant materials on record, the learned Magistrate as per the judgment dated 06.05.2017 has convicted the accused No.1 for the offence punishable under Section 498-A of IPC and sentenced him to undergo simple imprisonment for one year and also to pay fine of Rs.10,000/-, in default to undergo further simple imprisonment for 4

months. The accused No. 1 is also directed to pay compensation of Rs.25,000/- to the victim. However, the learned Magistrate has acquitted the accused No.2 and 3.

9. Being aggrieved by the said judgment regarding order of conviction and sentence passed against accused No.1, he has come up with the appeal in Crl.A.No.782/2017 on the following among other grounds that the impugned judgment regarding order of conviction

and sentence passed against the accused No.1 is illegal, erroneous and against to the principle of natural justice. The learned Magistrate has failed to appreciate the lacunas forthcoming in the prosecution case. Without appreciating such lacunas, the learned Magistrate has come to the wrong conclusion holding that the prosecution has proved guilt of the accused No.1 for the offence punishable under Section 498-A and sentenced him to undergo simple imprisonment for one year and to pay fine of Rs.10,000/-, in default to undergo further imprisonment for 4 months. The impugned judgment regarding order for payment of compensation of Rs.25,000/- to the victim is also illegal and against the principles of natural justice. The learned Magistrate has failed to consider that the ingredients of Sec.498-A of IPC are not at all attracted, as there is no specific allegation by the victim that there was any danger to her life, limb or health. Without considering such valid point the learned Magistrate has wrongly come to the conclusion that the prosecution proved guilt of accused No.1 and therefore, the impugned judgment is liable to be set aside. The allegations made by

the victim against the accused No.1 are all false. The learned Magistrate has failed to consider that both the complaints filed in two police stations are typed copies, which are prepared after heavy thought and hence, they are manipulated without any tenable reason. The complainant police did not seize any CD produced at Ex.P.9 at the

time of investigation. But during the evidence without any application for permission to produce such CD at Ex.P.9, the learned Magistrate has marked the said CD, which is not tenable. There is no corroborative evidence to prove the said CD. There are discrepancies in the evidence of prosecution witnesses regarding CD at Ex.P.9. Therefore, the learned Magistrate has committed error in considering CD at Ex.P.9 in the impugned judgment. There are glaring differences in the evidence of all the witnesses and there are total improvements made in the chief-examination of those witnesses. The victim has given two different versions regarding spot mahazar. The learned Magistrate has failed to appreciate the evidence of victim in cross-examination regarding CD. The learned Magistrate has not noticed the fact that the victim stayed in the house of accused No.1 just for the period of 1½ months and after such short span of time she continuously lodged two complaints in two different police stations. The learned Magistrate showed undue sympathy regarding the victim in the impugned judgment. The learned Magistrate has failed to appreciate that the complainant police unscrupulously fixed the accused No.1 in a false case on the basis of false complaint without any justification. There is delay in filing the complaint at Ex.P.1. But

the learned Magistrate has failed to consider the said point. Hence on such ground itself, the impugned judgment is liable to be set aside.

The learned Magistrate has failed to consider that the victim resided with the accused No.1 only for 1½ months and without any attempt to get reunited, she filed petition for divorce in MC No.961/2013. But the learned Magistrate showed undue sympathy on the complainant and relied on those documents and held the accused No.1 is guilty of the offence charged. It is pertinent to note that the victim did not willing to live with her in-laws and she wanted to set up separate house and isolate accused No.1 from his parents. The victim used to assault the accused No.1 holding his collar and used to abuse him with filthy language and it was the accused No.1 used to console himself as everything would be set right in future. When such being the case, the learned Magistrate came to the conclusion in favour of the complainant. Therefore, on this ground itself, the impugned judgment is liable to be set aside. The learned Magistrate has failed to consider that the materials placed before the Court are not cogent and acceptable and they are not convincing. The P.W.4, one of the witnesses of prosecution has clearly admitted in his cross-examination the story created by the victim and her father against the accused. But such evidence is not considered by the learned Magistrate. The investigating officer in his evidence did not give any authentication regarding CD at Ex.P.9 and hence, the learned Magistrate has committed error in relying on such CD in the impugned judgment.

Viewed from any angle, the impugned judgment regarding order of conviction and sentence passed against accused No.1 is liable to be set aside. The sentence passed against accused No.1 by the learned Magistrate is not sustainable under law and also on the facts of the case. The order of conviction was by the learned Magistrate is based on inferences and presumptions. Therefore, the accused No.1 has prayed for allowing his appeal and thereby to set aside the impugned judgment regarding order of conviction and sentence passed against him in the interest of justice.

10. The learned Prosecutor has filed appeal in Crl.A.No.1210/2017 on the following amongst other grounds that the impugned judgment to the extent of acquitting accused No.2 and 3 is not tenable. The learned Magistrate has committed error in acquitting accused No.2 and 3 of the offence charged even though there are sufficient materials against the accused No.2 and 3 for the offence punishable under Section 498-A of IPC. The witnesses examined on behalf prosecution have clearly deposed the facts against accused No.2 and 3 also to show that they subjected the victim to mental and physical cruelty and harassment. The contents of CD are reduced into writing and same is marked as exhibit. The accused have not denied the contents of said CD at Ex.P.9. There is sufficient materials against accused No.2 and 3 also for the offence charged in the CD at Ex.P.9.

Further, if the evidence forthcoming on record is taken into consideration, the accused No.1 is liable for enhanced sentence for the

offence convicted. Therefore, the impugned judgment is liable to be set aside to the extent of acquitting the accused No.2 and 3 and for enhanced quantum of sentence passed against accused No.1. Therefore, the learned prosecution has prayed for allowing the appeal filed by him accordingly in the interest of justice.

11. As stated herein above, both the appeals have arisen from the same judgment of the learned prosecution and therefore, both these appeals are clubbed together for consideration and also for disposal of the same with common judgment.

12. Heard the argument of the counsel for accused persons and also the learned Prosecutor on both the appeals. The counsel for the accused and also the learned Prosecutor have filed written argument on their behalf. Perused the oral and documentary evidence on record. Now the points that arise for my consideration are:

1. Whether the accused No.1 show that the learned Magistrate has committed error in appreciating the oral and documentary evidence forthcoming on record in proper prospective under impugned judgment?

2. Whether the accused No.1 show that the learned Magistrate has committed error in convicting him for the offence punishable under Section 498-A of IPC and sentencing him under impugned judgment for the said offence?

3. Whether the learned Prosecutor has made out any ground to show that the learned Magistrate has committed error in acquitting accused No.2 and 3 for the offence punishable under Section 498-A of IPC under the impugned judgment?

4. Whether the learned Prosecutor has made out any

ground to sow that the order of sentence passed against accused No.1 by the learned Magistrate under the impugned order is insufficient and it is liable to be enhanced as sought for in the appeal filed by him?

5. Whether the accused No.1 has made out any ground to interfere with the impugned judgment of the learned Magistrate regarding his conviction at the hands of this Court in his appeal as sought for?

6. Whether the learned Prosecutor has made out any ground for convicting the accused No.2 and 3 for the offence charged and for enhancement of sentence passed against accused No.1 as sought for in the appeal filed by him?

7. What order?

13. After hearing the argument of both the parties and on considering oral and documentary evidence and also necessary materials available on record, my findings on the above points are as hereunder:

Point No.1: In the affirmative;
Point No.2: In the affirmative;
Point No.3: In the negative;
Point No.4: In the negative;
Point No.5: In the affirmative;
Point No.6: In the negative;
Point No.7: As per final order

For the following:

REASONS

14. Points No.1 to 4: All these points are taken up for consideration together for avoiding repetition of discussion on the facts of the case and also regarding point of law.

15. As discussed herein above, the fact that the accused No.1 is husband and the accused No.2 and 3 are parents-in-law of the victim

is not in dispute. The date and place of marriage of victim with accused No.1 is also not in dispute. Further, the fact that after the marriage the victim started to reside with the accused No.1 to 3 in the matrimonial house stands undisputed. The prosecution was set into motion against the accused persons on the complaint of victim for the offence punishable under Section 498-A of IPC.

16. The victim is C.W.1 and she has examined as P.W.1 before the learned Magistrate in the criminal case. In the evidence in chief-examination, the victim has reiterated the facts averred in the complaint, which is marked at Ex.P.1. At this stage, as submitted by the counsel for accused persons, it is pertinent to refer to the relevant portions in the complaint which according to the prosecution is made out case of harassment and cruelty allegedly meted out by the accused No.1 to the victim.

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17. The relevant portion in the complaint at Ex.P.1 reads thus:

"ªÀÄzÀÄªÉAiÀiÁzÀ ¢£ÀªÉÃ £À£Àß UÀAqÀ CgÀÄuï «. EªÀgÄÀ £Á«§âgÆ À ªÀiÁvÀ£ÁqÀ£À£ÀßÀ£ÀÄß CªÀgÀ vÀAzÉ vÁ¬ÄAiÀÄ §®ªÀAvÀPÌÉ ªÀÄzÀÄªÉ DVzÉÝÃ£É JAzÀÄ ºÉÃ½zÀgÄÀ . F ªÀPÉÃ½ £À£ÀUÉ DWÁvÀªÁ¬ÄvÀÄ. DzÀgÀÆ PÀÆqÀ ¸À»¹PÉÆAqÉ. £Á£ÀÄ £À£ßÀ UÀAqÀ£À ªÀÄ£ÉAiÀÄ°è EgÀÄªÀ ¸ÀªÀÄÄAiÀÄzÀ°è £À£Àß UÀAqÀ ªÀÄzÀÄªÉAiÀÄ £ÀAvÀgÀ £À£ßÀ Äß ºÉÆgÀUÀqÉ J°èUÆ À ºÉÆÃUÀ°®è. £Á£ÀÄ ªÀÄzÀÄªÉAiÀÄ £ÀAvÀgÀ £À£ßÀ UÀAqÀ£À eÉÆvÉ MAzÉgÀqÀÄ ¢£À ¥ÀæªÁ¸À ªzÉÃªÀ¸ÁÝ£ÀUÀ¼ÀÄß £ÉÆÃr §gÀÄªÀ D¸É ElÄÖPÉÆArzÉÝ. DzÀgÉ D D¸É ¤gÁ¸ÉAiÀÄ°è CAwªÀÄUÉÆArvÀÄ. £À£Àß UÀAqÀ ¥Àæw ¢£À PÉ®¸À¢AzÀ gÁwæ 10.30 UÀAmÉUÉ ªÀÄ£ÉUÉ §AzÀÄ £eÉÆvÉ C£ÉÆåÃ£Àåª ÁV ªÀiÁvÀ£ÁqÀÄwÛgÀ°®è. ªÀÄ£ÉUÉ §AzÀÄ £À£ßÀ ªÉÄÃ¯É PÉÆUÁqÀÄªÀÅzÄÀ ªÀiÁrPÉÆ¼ÀÄîªÀÅzÀÄ, ¸ÀtÚ¥ÀÅlÖ «ZÁgÀUÀ½UÉ ¨ÉÊAiÀÄÄåªÀÅzÄÀ ªÀiÁqÀÄwÛzÝÀgÄÀ ."

It is also averred in the complaint at Ex.P.1 that:

"dÆ£ï 18 gÀAzÀÄ £À£Àß UÀAqÀ vÀ£Àß ¸ÀßÃ»vÀgÀ eÉÆvÉ ±ÀÈAUÉÃjUÉ ºÉÆÃzÀgÄÀ ..... ªÀÄ£ÉAiÀÄ°è n.«. £ÉÆÃqÀÄªÀÅzÀ£ÀÆß PÀÆqÀ £À£ßÀ CvÉÛ ªÀÄvÀÄÛ UÀAqÀ ¸À»¸ÀÄwÛgÀ°®è. D ¸ÀjAiÀiÁV ªÀiÁqÀÄªÀÅ¢®è JAzÀÄ »ÃAiÀiÁ½¹ ªÀiÁvÀ£ÁqÀÄwÛzÝÀgÄÀ . MAzÀÄ ¸À® £À£ßÀ UÀA¹nÖ¤AzÀ £À£Àß PÉ£ÉßAiÀÄ ªÉÄÃ¯É ¨Áj¹zÀÆÝ PÀÆqÀ GAlÄ. £À£ßÀ CvÉÛ £À£ßÀ ªÀÄUÀ¤UÉ qÉÊPÉÆlÄÖ ºÉÆÃUÀÄ JAzÀÄ ¨ÉÊAiÀÄÄwÛzÀÝgÀÄ× £À£ßÀ UÀAqÀ £Á£ÀÄ K£É¯Áè MqÀªÉ ªÀ¸ÛÀçUÀ¼À£CzÀ£Éß¯Áè ¥ÀnÖ ªÀiÁqÀÄ. CªÀÅUÀ¼À ¸ÀªÄÉ ÃvÀ 10 ®PÀë gÀÆ¥Á¬Ä ªÀÄzÀÄªÉ RZÀð£ÀÄß PÉÆq

vÉUÉzÀÄPÉÆAqÀÄ ºÉÆgÀlÄ ºÉÆÃUÀÄ JAzÀÄ ºÉÃ¼ÀÄwÛzÀÝgÄÀ ."

Further, as per the complaint averments, on 04.07.2011 the accused No.1 quarreled with the victim and strangulated her neck.

18. The relevant portion regarding the said incident as per the complaint averments reads thus:

"¢B 04-07-2011 gÀAzÀÄ £À£Àß UÀAqÀ ¸ÀtÚ «ZÁgÀPÌÉ PÉÆÃ¥ÀUÆ
É AqÀÄ £À£ßÀ PÀvÀÛ£ÄÀ ß »r
»¸ÀÄQzÀgÀÄ. £À£ÀUÉ G¹gÁl vÉÆAzÀgÉ DV ¥ÀæYÉÕ vÀ¦àzÀAvÁ¬ÄvÀÄ. £ÀAvÀgÀ ¸ÀºÁAiÀÄPÁÌV
PÀÆVPÉÆAqÉ£ÀÄ. £À£Àß CvÉÛ §AzÀÄ ¨ÁV®Ä vÀnÖ «µÀAiÀÄ w½zÄÄ £Á£ÀÄ ªÄÄ£É¬ÄAzÀ DZÉ
ºÉÆÃUÀzÀAvÉ ªÀÄ£ÉUÀ ©ÃUÀ ºÁQ PÀÆr ºÁQzÀÝgÄÀ ."

It is also averred in the complaint that after the alleged incident on 04.07.2011 the victim was made to sleep alone in the room and thereafter on 13.07.2011 she went to her parents house for Aashada

month. The complaint averments regarding the incident after the victim went to her parents house reads thus:

"£Á£ÀÄ £À£Àß vÀAzÉAiÀÄ ªÀÄ£ÉUÉ §AzÀ PÉ®ªÀÅ ¢£ÀUÀ¼À £ÀAvÀgÀ UÀAqÀ£À ªÀÄ£ÉUÉ ºÉÆÃUÀÄ
¥ÀæAiÀÄvÀß ªÀiÁrzÉÝÃ£É. £À£ßÀ UÀAqÀ ¥sÉÆÃ¤£À°è PÉ®¸ÀPÌÉ ¸ÉÃjPÉÆÃ E®è¢zÀÝgÉ £À£ÀUÉ
PÉÆqÀÄ JAzÀÄ ºÉÃ¼ÀÄwÛzÝÀgÄÀ . PÀÈµÀÚd£ÁäµÀÖ«Ä ªÀÄvÀÄÛ UÀuÉÃ±À ZÀvÄÀ yðAiÀÄ ºÀ§âzÀA
ªÀÄ£ÉUÉ ºÉÆÃUÀÄªÀ ¥ÀæAiÀÄvÀß ªÀiÁrzÁUÀ £À£ßÀ UÀAqÀ ªÀÄvÀÄÛ CvÉÛ £À£ßÀ £ÀÄß §gÀ®Ä ©
vÀAzÉ vÁ¬Ä CªÀgÀ ªÀÄ£ÉUÉ ºÉÆÃV ¢Ã¥ÁªÀ½UÉ CgÀÄuï ªÀÄvÀÄÛ CªÀgÀ vÀAzÉ vÁ¬ÄAiÀÄ£ÀÄß
PÀgÉzÀÄPÉÆAqÀÄ §AzÀgÄÀ . DzÀgÆ À £À£ßÀ UÀAqÀ CgÀÄuï ¢Ã¥ÀÁªÀ½ ºÀ§âPÌÉ £ÀªÄÀ ä ªÀÄ£
¢B 01-01-2012 gÀAzÀÄ £À£ßÀ UÀAqÀ¤UÉ ºÉÆ¸À ªÀµÀðzÀ ±ÀÄ¨sÁµÀAiÀÄUÀ¼À£ÄÀ ß ºÉÃ¼À®Ä ¥À
£À£Àß UÀAqÀ ¥sÉÆÃ£À£ÀÄß vÉUÉzÄÀ PÉÆ¼Àî®è. £Á£ÀÄ PÉ®¸ÀPÌÉ ¸ÉÃjPÉÆArzÉÝÃ£ÉAzÀÄ «µÀA

PÀÆqÀ CªÀgÀÄ CzÀPÉÌ ªÀiÁ£ÀåvÉ PÉÆqÀ°®è."

It is further averred that:

"PÉ®¸À ¹QÌzÉ ªÀÄ£ÉUÉ §gÀÄvÉÛÃ£ÉAzÀÄ ºÉÃ½zÁUÀ CzÀPÌÉ ªÁ¬ÄzÉ PÉÃ½zÀgÄÀ . £À£ßÀ UÀAqÀ
ºÀÄlÄºÀ§âzÀ ±ÀÄ¨sÁµÀAiÀÄ w½¸À®Ä ¥sÉÆÃ£ï ªÀiÁrzÀgÆ À ¸ÀºÀ CªÀgÄÀ ¥sÆÉ Ã£ï vÉUÉzÄÀ
£À£Àß UÀAqÀ FUÀ J°èzÁÝgÉ JAzÀÄ PÉÃ½zÀgÉ AiÀiÁgÀÆ ºÉÃ¼ÀÄªÀÅ¢®è. £À£ßÀ £ÀÄß UÀAqÀ£À
¸ÉÃj¸ÀÄªÀ ¥ÀæAiÀÄvÀßzÀ°è ¥ÀAZÁ¬Äw ªÀiÁrzÁU, £À£ßÀ ªÀiÁªÀ £ÀªÄÀ ä ªÀÄ£ÉAiÀÄ°è ¤ªÀÄä
CZÀð£ÁUÉ K£ÁzÀgÀÆ DzÀgÉ CzÀPÌÉ £ÁªÉÃ dªÁ§ÁÝgÀgÄÀ JAzÀÄ §gÉzÄÀ PÉÆr JAzÀÄ ¤§AzÀs£É
MrØgÀÄvÁÛgÉ. £À£Àß ªÉÄÃ¯É ¸ÀÄ¼ÀÄî C¥ÀªÁzÀ ºÉÆj¹gÀÄvÁÛgÉ."

These averments made in the complaint according to the victim are the physical and mental harassment to her by the accused persons.

19. At the very outset, it is pertinent to note that there is absolutely no averment against the accused No.2, who is father-in-law of the victim, in respect of any of the incidents. However, in the last para of the complaint the omnibus statement is made by the victim as hereunder:

> "£À£Àß UÀAqÀ, CvÉÛ, ªÀiÁªÀ EªÀgÉ®ègÀÆ MnÖUÉ ¸ÉÃjPÉÆAqÀÄ, £Á£ÀÄ ªÀÄzÀÄªÉAiÀiÁzÀ ¢£À
> E°èAiÀÄ vÀ£ÀPÀ £À£ÀUÉ zÉÊ»PÀ ªÀÄvÀÄÛ ªÀiÁ£À¹PÀ »A¸É PÉÆlÄÖ FUÀ®Æ PÀÆqÀ £À£ßÀ £ÀÄß
> eÉÆvÉ ¸ÀA¸ÁgÀ ªÀiÁqÀ®Ä ©qÀzÉ £Á£ÀÄ PÉ®¸ÀPÌÉ ¸ÉÃjzÀgÉ ªÀiÁvÀæ ªÀÄ£ÉUÉ ¸ÉÃj¸ÀÄvÉÛÃªÉ
> £É¥ÀªÀÇrØ £À£Àß£ÀÄß ªÀÄ£É¬ÄAzÀ DZÉUÉ Nr¹ C¥ÀgÁzÀsªÉ¸ÀVzÁÝgÉ."

If the complaint averments referred herein above are taken into consideration, it is clear that from the next date of marriage of victim, the accused No.1 started to give ill-treatment and harassment to the victim. But the alleged incident regarding the quarrel made by the accused No.1 with the victim was on 04.07.2011. Thereafter, according to complaint averments, on 13.07.2011 the victim came to her parents house for observing Aashada month and thereafter, she did not return to the house of accused persons. Hence, as submitted by the counsel for accused persons, if the complaint averments are considered, it is clear that the victim resided with the accused persons in the matrimonial house only for the period of about 45 days from the date of her marriage.

20. The complaint at Ex.P.1 is dated 02.06.2012 i.e., after about 11 months from the date of alleged incident occurred on 04.07.2011

the complaint at Ex.1 was given to the police. Further, even though the complaint at Ex.P.1 is dated 02.06.2012, it was given to the police on 07.06.2012 i.e. after 5 days of drafting of the complaint at Ex.P.1. As argued by the counsel for accused persons, there is absolutely no explanation forthcoming from the prosecution for the delay of about 5 days from the date of drafting of the complaint and also delay of more than 11 months after the alleged incident. Hence, doubt arises

17 Crl

Crl

regarding complaint averments in respect of the alleged harassment and ill-treatment by the accused person to the victim.

21. It is not in dispute that the victim was having speech problem i.e. she was stammering when she speaks and she took treatment at Mysore and at the time of her marriage with accused No.1, her problem was cured. One document issued by Indian Institute of Speech and Hearing Management, Mysore in respect of therapy given to the victim is produced as per Ex.P.10. As per the complaint averments the accused No.1 married the victim due to pressure of his parents and the said fact was allegedly told by the accused No.1 with the victim on the next date of her marriage.

22. However, in the chief-examination itself, the evidence of victim as P.W.1 reads thus:

> "£À£ÀUÉ aPÀÌ ªÀAiÀÄ¹ì¤AzÀ ªÀiÁvÀ£ÁqÀ®Ä ¸ÀªÄÀ ¸Éå¬ÄzÀÄÝ D §UÉÎ £Á£ÀÄ aQvÉìAiÀÄ£ÀÄ vÉUÉzÀÄPÉÆArzÉÝ£ÀÄ. ¸ÀzÀj «µÀAiÀÄªÀ£ÀÄß ªÀÄzÀÄªÉUÆÀ ªÀÄÄAZÉ DgÉÆÃ¦vÀjUÉ ºÉÃ½zÀÄÝ UÉÆvÁÛzÀ £ÀAvÀgÀªÉÃ ªÀÄzÀÄªÉ ªÀiÁrPÉÆArgÀÄvÁÛgÉ."

Further, the P.W.1 in her evidence in cross-examination has deposed that:

"£Á£ÀÄ ªÀÄzÀÄªÉ ¸ÀAzÀ¨sÀðzÀ°è £À£ÀUÉ EzÀÝ ªÀiÁvÀ£ÁqÀÄªÀ vÉÆAzÀgÉUÉ ªÉÊzÀågÀ §½ a
¥ÀqÉzÀÄ UÀÄtªÀÄÄRªÁVzÉÝ JAzÀÄ ºÉÃ½zÉÝ JAzÀgÉ ¸Àj."

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Therefore, the contention of the victim that the accused No.1 was not willing to marry her, as she had speech impairment is proved to be not believable.

23. The C.W.2 Jayaram is father of the victim. He has been examined as P.W.2. In the evidence in chief-examination, the P.W.2 has reiterated the fact averred by the P.W.1 in her chief-examination. However, as submitted by the counsel for accused persons, in the chief-examination itself the P.W.2 has deposed that:

"CªÀgÀ ªÀÄ£ÉAiÀÄ°è ¸ÀºÀ ªÀÄvÉÛ DgÉÆÃ¦vÀgÄÀ £À£ßÀ ªÀÄUÀ¼À ªÀiÁvÀ£ÁqÀÄªÀ ¸ÀªÄÀ ¸ÉåA
PÉÃ½zÀgÀÄ ¸ÀÄªÀiÁgÀÄ JgÀqÀÄ UÀAmÉ PÁ® D §UÉÎ ªÀiÁvÀÄPÀvÉAiÀiÁVgÀÄvÀÛzÉ. £ÁªÀÅ £À£
aQvÉÛAiÀÄ£ÀÄß PÉÆr¹zÀ §UÉÎ w½¹gÀÄvÉÛÃªÉ ºÁUÀÆ CzÀÄ PÁ¬Ä¯É EgÀÄªÀÅ¢®è ªÀiÁvÀ£ÁqÀ®Ä
¥ÁæQÖÃ¸ï ªÀiÁqÀ¨ÉÃPÁUÀÄvÀÛzÉ CªÀ¼ÀÄ ªÀiÁqÀÄwÛzÝÀÁ¼É JAzÀÄ ºÉÃ½zÉ£ÄÀ . D ¸ÀªÄÀ AiÀ
DgÉÆÃ¦AiÀÄ vÀAzÉ ¤ÃªÀÅ ªÀÄzÀÄªÉ vÀAiÀiÁj £ÀqÉ¹ JAzÀÄ ºÉÃ½zÀgÄÀ ."

The C.W.3 Jayanthi Jayaram is mother of the victim. According to her evidence in chief-examination also, the relevant portion reads thus:

"CªÀgÀ ªÀÄ£ÉAiÀÄ°è ¸ÀºÀ ªÀÄvÉÛ DgÉÆÃ¦vÀgÄÀ £À£ßÀ ªÀÄUÀ¼À ªÀiÁvÀ£ÁqÀÄªÀ ¸ÀªÄÀ ¸ÉåA
PÉÃ½zÀgÀÄ ¸ÀÄªÀiÁgÀÄ JgÀqÀÄ UÀAmÉ PÁ® D §UÉÎ ªÀiÁvÀÄPÀvÉAiÀiÁVgÀÄvÀÛzÉ. £ÁªÀÅ £À£
aQvÉÛAiÀÄ£ÀÄß PÉÆr¹zÀ §UÉÎ w½¹gÀÄvÉÛÃªÉ ºÁUÀÆ CzÀÄ PÁ¬Ä¯É EgÀÄªÀÅ¢®è ªÀiÁvÀ£ÁqÀ®Ä
¥ÁæQÖÃ¸ï ªÀiÁqÀ¨ÉÃPÁUÀÄvÀÛzÉ CªÀ¼ÀÄ ªÀiÁqÀÄwÛzÝÀÁ¼É JAzÀÄ ºÉÃ½zÉ£ÄÀ . D ¸ÀªÄÀ AiÀ
DgÉÆÃ¦AiÀÄ vÀAzÉ ¤ÃªÀÅ ªÀÄzÀÄªÉ vÀAiÀiÁj £ÀqÉ¹ JAzÀÄ ºÉÃ½zÀgÄÀ ."

The said evidence of P.W.3 also clearly goes to show that the accused persons knew regarding speech impairment of the victim at the time of marriage and in spite of such speech impairment, the accused persons agreed to take the victim in marriage to the accused No.1. Therefore, the evidence of P.W.1 to P.W.3 that the accused No.1 had no intention

of marrying the victim and he married the victim on the pressure of his parents when the accused No.2 and 3 is proved to be most improbable.

24. The evidence of P.W.2 and 3 in the chief-examination is in accordance with the evidence of P.W.1 in chief-examination. However, if the entire evidence of P.W.1 to P.W.3 is taken into consideration, it is clear that there are improvements in their evidence from the averments made in the complaint at Ex.P.1.

25. The P.W.4 Vijaya Srinivas is elder sister of P.W.3, who is mother of the victim. Hence, it is not in dispute that the P.W.4 is elder maternal aunt of the victim. The P.W.4 has deposed regarding the alleged ill-treatment by the accused persons to the victim. As per the evidence of P.W.4, the victim and P.W.3 told her regarding the alleged ill-treatment by the accused persons to the victim. The P.W.4 has also deposed that there was Panchayath held on 25.03.2012 in the parents' house of accused No.1 and at that time accused No.1 was not present. But in the evidence in chief-examination of P.W.4, the relevant portion reads thus:

"¸ÀvÀå£ÁgÁAiÀÄt ¥ÀÇeÉ £ÀAvÀgÀ £Á£ÀÄ »AwgÀÄV ¥ÀÇ£ÀPÌÉ ºÉÆÃzÉ£ÄÀ . ¥ÀÇ£ÁPÉÌ ºÉÆÃzÀ £
¨ÉAUÀ¼ÀÆj£À°è £ÀqÉzÀ Wl£É PÀÄjvÀÄ £À£ßÀ vÀAV £À£ÀUÉ zÀÆgÀªÁtô ªÀÄÆ®PÀ ºÉÃ½zÀ¼ÄÀ CA
¸Àj EzÉ. £À£Àß vÀAV ºÉÃ½zÀÝ£ÄÀ ß ºÉÆgÀvÄÀ ¥Àr¹ ¨ÉÃgÉ «µÀAiÀÄzÀ PÀÄjvÀÄ £À£ÀUÉ ªÀiÁ

This evidence clearly goes to show that the evidence of P.W.4 is hearsay evidence based on the version given to her by her younger sister P.W.3 over phone.

26. The P.W.5 J.N. Srinath is younger brother of P.W.3. Hence, it is not in dispute that the P.W.5 is maternal uncle of the victim. The P.W.5 has also deposed regarding the alleged ill-treatment and the alleged Panchayath conveyed on 25.03.2012. If the cumulative effect of P.W.5 is taken into consideration, it is clear that his version regarding the alleged ill-treatment by the accused persons to P.W.1 is hear say evidence.

27. The P.W.6 Abhinav Jayaram is younger brother of the victim. The evidence of P.W.6 is also similar to the evidence of P.W.1 to P.W.3 regarding the alleged ill-treatment. However, in the evidence in cross-examination of P.W.6 the relevant portion reads thus:

> "£À£Àß CPÀÌ£À ªÀÄzÀÄªÉ ¤²ÑvÁxÀðªÀ£ÀÄß DgÉÆÃ¦UÀ¼ÄÀ ªÀiÁrPÉÆArzÀÝgÄÀ JAzÀgÉ ¸Àj ªÀÄv RZÀð£ÀÄß DgÉÆÃ¦UÀ¼ÀÄ ªÀiÁrPÀÆArzÀÝgÄÀ JAzÀgÉ ¸Àj..... DgÉÆÃ¦UÀ¼ÄÀ ¸Àé®à ºÀt PÉÆqÀÄvÉÛÃªÉ ªÀÄvÀÄÛ «ZÉÒÃzÀ£Á PÉÆqÀÄ CAvÀ £À£ßÀ vÀAzÉUÉ ºÉÃ½zÀÝgÄÀ J£ÀÄßªÀ «ZÁgÀ C£ÀÄPÀÆ®ªÁUÀÄªÀ ¸ÀÈ¶Ö¥Àr¹zÉ JAzÀgÉ ¸Àj. £ÀAvÀgÀ E®è CAvÀ GvÀÛj¸ÀÄvÁÛgÉ. ªÀÄzÀÄªÉ ¸ÀªÀÄÄAiÀÄzÀ°è £À£Àß CPÀÌ¤UÉ AiÀiÁªÀ MqÀªÉUÀ¼À£ÄÀ ß PÉÆnÖvÀÄÛ J£ÀÄßªÀ «µÀAiÀÄªÀ£ÄÀ ªÀÄÄAzÉ ºÉÃ½®è JAzÀgÉ ¸Àj."

If the above referred evidence of P.W.6 is considered, it is clear that there are discrepancies in his evidence.

28. Further, the P.W.6 in his evidence in cross-examination has also deposed that:

> "ªÀÄzÀÄªÉAiÀiÁzÀ £ÀAvÀgÀ £À£ßÀ CPÀÌ DgÉÆÃ¦UÀ¼À ªÀÄ£ÉAiÀÄ°è ¸ÀÄªÀiÁgÀÄ 45 ¢£À ªÁ¸À« ¢£ÀUÀ¼À £ÀAvÀgÀ DµÁqÀ ªÀiÁ¸ÀPÌÉ £À£ßÀ CPÀÌ ªÀÄ£ÉUÉ §AzÀ¼ÄÀ JAzÀgÉ ¸Àj. £À£ßÀ CPÀÌ ªÀÄvÀÄÛ 7 gÀAzÀÄ £ÀªÄÀ ä ªÀÄ£ÉUÉ §AzÁUÀ DgÉÆÃ¦ §AzÀÄ CªÀ¼À PÀÄwÛUÉAiÀÄ£ÀÄß »¸ÀÄPÀ® ¥ÀæAiÀÄvÀß¥ÀlÖ «ZÁgÀ UÉÆvÁÛ¬ÄvÀÄ. F «µÀAiÀÄªÀ£ÄÀ ß £Á£ÀÄ ¥ÉÇÃ°¸ÀgÀ ªÀÄÄAzÉ ºÉÃ½zÀ £É£À¦®è."

This evidence of P.W.6 clearly goes to show that his evidence regarding the alleged incident is not direct evidence and he is not the

eye witness to any such alleged incident. Except the father, mother, maternal elder aunt, maternal uncle and brother of the victim, who are examined as P.W.2 to P.W.6 respectively, there is absolutely no independent oral evidence forthcoming from the prosecution to prove any incident to prove that the accused persons subjected the victim to any kind of mental and physical harassment.

29. Moreover, if at all the accused No.1 tried to strangulate P.W.1 by pressing her neck on 04.07.2011, the P.W.1 should have taken treatment regarding any such injury. As stated herein above, the complaint at Ex.P.1 was given after more than 11 months of the date of alleged incident. There is absolutely no material forthcoming from the prosecution to show that the P.W.1 gave any complaint against the accused persons earlier to the complaint at Ex.P.1.

30. It is true that the learned Magistrate has referred to the provision of Sec.498-A of IPC in the impugned judgment. Now it is also pertinent to refer to Sec.498-A of IPC which reads thus:

> "Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation.- For the purpose of this section, "cruelty" means -
>
> (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet

such demand."

As pointed out by the counsel for accused persons, the cruelty under Section 498-A IPC arises only if there is any willful conduct on the part of accused persons which is of such a nature as is likely to drive the victim to commit suicide or to cause grave injury or danger to her life, limb or health (whether mentally or physically) or the harassment of the victim where such harassment is with a view of coercing the victim or any person related to her to meet any lawful demand for any properly or valuable security or is on account of failure by her or any person related to her to meet such demand.

31. In the case on hand, there is absolutely no averment in the complaint at Ex.P.1 and also in evidence of P.W.1 to show that any of the accused persons unlawfully demanded any property or valuable security from the victim and thereby when the victim failed to comply with such demand, the accused persons subjected her to any ill-treatment or harassment.

32. Further, as pointed out herein above, if the complaint averments are meticulously considered, there is absolutely no material to show that any such allegation is of such a nature of cruelty which caused grave injury or danger to the life, limb or health of the victim or any such alleged cruelty had driven the victim to commit suicide. Hence, as submitted by the counsel for accused persons, even though the learned Magistrate has referred to Sec.498-A of IPC in the impugned judgment, the learned Prosecutor has utterly failed to come

to the conclusion that the accused persons subjected the victim to any cruelty within the meaning of Sec.498-A of IPC. Therefore, it is pertinent to note that the learned Magistrate has failed to appreciate the evidence available on record in proper prospective and thereby he has failed to come to the conclusion that the accused No.1 subjected the victim to any kind of cruelty.

33. Moreover, the counsel for accused persons has relied on the decision of Hon'ble Supreme Court of India reported in 2010(2) G.L.H. 640 SC (Bhaskar Lal Sharma and Anr. Vs Monica) in which regarding quashing of the FIR in the case for the offence punishable under Section 204, 281, 498-A of IPC it is held that:

> "The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498-A of the IPC. Allegations that appellant No.2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498-A. Similarly her allegations that the appellant No.2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498-A."

The counsel for accused persons has also relied on another decision of Hon'ble Supreme Court of India reported in (2010) 7 SCC 667 (Preeti Gupta & Another Vs State of Jharkhand & Another) in which for the offence punishable under Section 498-A of IPC it is held that:

> "It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including the Supreme Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of society. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. It is seen that a large number of such complaints are

not even bonafide and are fled with oblique motive."

As pointed out by the counsel for accused persons, the meticulous consideration of principles of law laid down in the above referred decisions clearly go to show that Hon'ble Supreme Court of India has come down heavily regarding trivial allegations made against the

husband and his family members in the case for the offence under Section 498-A of IPC.

34. As discussed herein above, the entire averments in the complaint do not make out any case to show that the victim was subjected to any kind of cruelty by the accused persons. Moreover, even for the sake of argument, the allegations made in the complaint are considered as true, if the provision of Sec.498-A of IPC is taken into consideration, any such allegations do not make out a case against the accused persons of any cruelty. Further, it is very pertinent to note that the learned Magistrate has acquitted the accused No.2 and 3 under the impugned judgment. But, in spite of acquittal of accused No.2 and 3, the learned Magistrate has committed error in convicting the accused No.1, even though there are no ingredients made out against the accused No.1 also, for the offence punishable under Section 498-A of IPC.

35. As pointed out herein above earlier, the counsel for accused persons has submitted that there are improvements in the evidence of P.W.1 to P.W.6 regarding the case alleged against the accused persons. As against this contention, the learned Prosecutor has drawn

the attention of this Court to the decision of our Hon'ble High Court of

Karnataka reported in 2004 (5) Kar.L.J. 269 (DB) (Karbasappa and

others Vs State through Narona Police Station), in which referring to the

provision of Sec.3 of Evidence Act, it is held that:

> "Some inconsistence of a minor nature in the evidence of the witness can be regarded as natural giving more details while deposing before the Court are not to be treated as improvements of such a nature as would create any doubt regarding the trustworthiness of a witness."

There is absolutely no dispute regarding the principle of law laid down in the above said decision. But as submitted by the counsel for accused persons, in the case on hand it is not minor inconsistencies and improvements in the evidence of P.W.1 to P.W.6 to the complaint averments.

36. As argued by the counsel for accused persons, in the evidence the P.W.1 and also the P.W.2 to P.W.6 have tried to make out entirely different case regarding the cruelty allegedly meted out by the accused persons to the victim. Therefore, even though there is no dispute regarding principle of law laid down in the above referred decisions, the said decision does not help the learned Prosecutor to discard the argument put forth by the counsel for accused persons that there are improvements in the evidence of prosecution witnesses and hence, such evidence is not trustworthy for consideration.

37. The P.W.7 B.R. Harish and P.W.8 Raghuveer are alleged to be the attesters to the spot mahazar at Ex.P.7. They have deposed

that the police drew mahazar in the house of accused persons on 08.06.2012 and they put their signatures to the said mahazar. The signatures of P.W.7 and P.W.8 in Ex.P.7 are marked at Ex.P.7(b) and Ex.P.7(c) respectively. However, as submitted by the counsel for accused persons, the victim as P.W.1 in her evidence in chief-examination itself has deposed that she put the signature to the mahazar in the police station and she does not remember when she put her signature to the said mahazar and she also does not know the contents of the said mahazar.

38. The further evidence in chief-examination of P.W.1 is deferred by the Sr.A.P.P. and after about 6 days again the P.W.1 was subjected to further chief-examination, wherein she has deposed that the police drew spot mahazar and took her signature. The said mahazar is at Ex.P.7. Hence, there are discrepancies in the evidence of P.W.1 regarding spot mahazar at Ex.P.7. Moreover, even though the evidence of P.W.1, P.W.7 and P.W.8 are considered in proof of the mahazar at Ex.P.7, that itself does not make out any case against the accused persons for the offence charged against them, unless the prosecution proves beyond all reasonable doubt that the accused persons subjected the victim to physical and mental cruelty as contended.

39. As discussed herein above, there are discrepancies and inconsistencies in the evidence of P.W.1 to P.W.6 regarding the case

put forth by the prosecution against the accused persons. Hence, even if the evidence of P.W.1, P.W.7 and P.W.8 are considered regarding spot mahazar at Ex.P.7, such evidence and the document at Ex.P.7 do not help the prosecution to prove the case charged against the accused persons beyond all reasonable doubt.

40. The P.W.9 Sheshadri Iyengar is the then Head Constable of complainant police station. The P.W.9 is alleged to have apprehended accused No.1 and produced him before the I.O. Hence, his evidence does not merit consideration.

41. The P.W.10 Vijayendra is the then Head Constable of complainant police station. According to the evidence of P.W.10, he registered the case on the complaint of P.W.1. as per Ex.P.1 and took up investigation. He also recorded statement of concerned witnesses and after completion of investigation he filed charge sheet against the accused persons. But unless there is cogent evidence forthcoming from the independent witnesses, the evidence of P.W.10 regarding investigation of the case does not stand for consideration.

42. Moreover, as discussed herein above, there are improvements and inconsistencies in the evidence of P.W.1 and other

materials witnesses. It is true that the photos and invitation of marriage of victim with accused No.1 are produced and marked as Exs.P.2 to P.6 and P.8 respectively. But, as stated herein above, there is no dispute regarding the marriage of accused No.1 with the victim. Therefore, the photos at Ex.P.2 to Ex.P.6 and the marriage invitation

at Ex.P.8 do not arise for consideration in the case on hand.

43. However, the main contention of the counsel for accused persons is regarding C.D. at Ex.P.9. The counsel for accused persons has argued that the prosecution has tried to mislead this Court by saying that the CD at Ex.P.9 was already proved by the prosecution. But, on the contrary, the said CD at Ex.P.9 was not the document produced along with the charge sheet. As pointed out by the counsel for accused persons, the C.W.10 Vijayendra, the then Head Constable, who conducted investigation of the case has deposed in his cross-examination that he did not verify as to what is the contents of CD at Ex.P.9. Further, the evidence on record clearly goes to show that the CD at Ex.P.9 is not a part of the prosecution papers collected at the time of investigation of the case.

44. Moreover, it is very interesting to note that the victim-P.W.1 in her evidence has deposed that the CD at Ex.P.9 is regarding the video recorded during her marriage. On the other hand, the P.W.2 has

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deposed that it was the CD regarding recording of Panchayath held on 25.03.2012. At this stage, it is relevant to refer the relevant portion in the complaint at Ex.P.1 which reads thus:

> "£À£Àß£ÀÄß UÀAqÀ£À ªÀÄ£ÉUÉ ¸ÉÃj¸ÀÄªÀ ¥ÀæAiÀÄvÀßzÀ°è ¥ÀAZÁ¬Äw ªÀiÁrzÁUÀ, £À£ßÀ ªÀi ªÀÄ£ÉAiÀÄ°è ¤ªÀÄä ªÀÄUÀ¼ÀÄ CZÀð£ÁUÉ K£ÁzÀgÆ À DzÀgÉ CzÀPÌÉ £ÁªÉÃ dªÁ¨ÁÝgÀgÄ §gÉzÀÄPÉÆr JAzÀÄ ¤§AzÀs£É MrØgÀÄvÁÛgÉ."

It is true that there is reference to convening of Panchayath in the complaint at Ex.P.1. But there is absolutely no mention of the date of

any such Panchayath. There is also no mention in the complaint that any voice recording was done regarding any such Panchayath.

45. As pointed out by the counsel for accused persons, in the document at Ex.P.9(a), which is the writing version of CD at Ex.P.9 the case number is mentioned as C.C.No.24115/2012. As per the evidence of prosecution, the Ex.P.9(a) is written by the complainant herself. Hence, mentioning of case number in the document at Ex.P.9 clearly goes to show that the said document and the CD at Ex.P.9 was came to existence after filing of charge sheet that too at the time of evidence of prosecution witnesses before the learned Magistrate. Hence, without there being any basis for the CD at Ex.P.9 in the investigation of the case, the learned Magistrate has committed error in relying on such CD to come to the conclusion that the prosecution

has proved beyond all reasonable doubt the offence charged against the accused No.1.

46. Further, the submission of the learned Prosecutor is that the learned Magistrate has committed error in not convicting the accused No.2 and 3 and hence, the learned Magistrate has not considered the CD at Ex.P.9. As per the case of prosecution itself, the accused No.1 was not present at the time of alleged Panchayath held on 25.03.2012. Therefore, the CD at Ex.P.9 along with the document at Ex.P.9(a) does not stand for consideration to make out any case against the accused No.1 and also against the accused No.2 and 3.

47. As submitted by the counsel for accused persons, the

prosecution has not produced relevant document in the form of concerned certificate in accordance with Sec.65-B of Indian Evidence Act regarding admissibility of CD at Ex.P.9 in the evidence. Further, the CD at Ex.P.9 was not subjected to any chemical or scientific examination to prove its authenticity. Hence, the learned Magistrate has committed error in taking into consideration that CD at Ex.P.9 as evidence to prove the case alleged by the prosecution against the accused persons.

48. The learned Magistrate has discussed in the impugned judgment that the learned Senior Assistant Public Prosecutor has

submitted in his written argument that the victim filed divorce petition against accused No.1 in M.C.No.961/2013 and the said petition was disposed of on 13.02.2017 granting divorce on the ground of cruelty. On the basis of such fact, the learned Magistrate has come to the conclusion that the prosecution has proved the offence punishable under Section 498-A of IPC against the accused No.1 beyond all reasonable doubt. But it is very pertinent to note that the learned Magistrate has lost sight of the fact that he cannot consider any such divorce petition as any of the papers of the said petition, either the judgment or the deposition of the concerned witnesses of the said case, is evidence before him in the criminal case.

49. Unless the learned Magistrate comes to the conclusion as to why the Family Court granted divorce in favour of the victim in the said case, mere submission of the learned Sr. APP that the MC petition

filed by the victim against accused No.1 before the Family Court was allowed and the divorce was granted in favour of the victim and against the accused No.1 on the ground of cruelty cannot be a ground to come to the conclusion that the accused No.1 has committed offence punishable under Section 498-A of IPC.

50. As stated herein above, neither the copy of judgment nor copy of any of the depositions of the concerned M.C. petition is not the

evidence before the learned Magistrate in the case on hand. Therefore, merely on the basis of argument put forth by the learned Sr. APP, the learned Magistrate should not have come to the conclusion that the accused No.1 has committed Act of cruelty against the victim on the basis that the divorce petition filed by the victim against accused No.1 was allowed in the Family Court.

51. Moreover, the learned Magistrate has failed to consider the fact that the said divorce petition was filed in the year 2013 i.e. during the pendency of criminal case and the said petition was also disposed of during the pendency of criminal case, i.e. on 13.02.2017. The impugned judgment was passed on 06.05.2017. Therefore, the divorce petition filed by the victim against accused No.1 does not merit consideration to prove the cruelty alleged against the accused persons as on the date of the complaint at Ex.P.1 or earlier thereto. Hence, the reasoning of the learned Magistrate in the impugned judgment clearly goes to show that he has decided the case against accused No.1 coming to the conclusion that accused No.1 has committed the offence

charged against him on the basis of extraneous materials than the oral and documentary evidence before him in the case. Hence, on this ground also, it is clear that the learned Magistrate has committed error in convicting the accused No.1 for the offence charged.

52. Further, the reasoning of the learned Magistrate in the impugned judgment that the accused No.1 has failed to take steps for restitution of conjugal rights before the Family Court by filing necessary petition also does not stand for consideration, as it is not based on the evidence available on record. It is the case of the victim that the accused persons has thrown her out of matrimonial house. Hence, if at all the victim was willing to join matrimonial house to lead marital life with accused No.1, she could have taken necessary steps than filing petition for divorce. Hence, even if it is accepted that the petition for divorce filed by the victim against the accused No.1 is allowed in the Family Court cannot be a ground to come to the conclusion that the accused persons subjected the victim to any kind of cruelty.

53. The learned Prosecutor has challenged the impugned judgment on the ground that the learned Magistrate has committed error in acquitting the accused No.2 and 3 and also in imposing lesser punishment to the accused No.1. However, as discussed herein above, there is absolutely no material against accused No.2 and 3 to come to conclusion that those accused persons committed any offence punishable under Section 498-A of IPC. Therefore, the learned

Magistrate has not committed any error in acquitting accused No.2 and 3 in the case on hand. When the CD at Ex.P.9 is not admissible in

evidence before the learned Magistrate without there being proper authentication in respect of the said CD, only on the basis of said CD the Court cannot come to the conclusion that the accused No.2 and 3 have committed any offence punishable under Section 498-A of IPC.

54. Moreover, as pointed out by the counsel for accused persons, as per the complaint averments when the victim was in her parents house she contacted accused No.1 over phone for wishing him on his birthday. If at all the accused persons committed any cruelty against the victim to make out offence under Section 498-A of IPC, the question of victim contacting accused No.1 over phone to wish him on his birthday should not have arisen. Therefore, the complaint averments of the evidence of P.W.1 create doubt regarding the case alleged against the accused persons.

55. Further, as discussed herein above at the initial stage, the contents of complaint at Ex.P.1 do not make out any case of cruelty as per provision of Sec.498-A of IPC. Therefore, the learned Magistrate has committed error in convicting accused No.1 and imposing sentence on him for the offence punishable under Section 498-A of IPC under the impugned judgment.

56. As discussed herein above, the contention of the learned Prosecutor regarding Panchayath allegedly held on 25.03.2012 does

not merit consideration as CD at Ex.P.9 does not arise for consideration on the facts of the case and also in law. Further, as submitted by the learned Prosecutor in the written argument, it is an undisputed fact that there is no dowry issue involved in the case. Hence, on this ground also, it is clear that the prosecution has failed to make out any case for the offence punishable under Section 498-A of IPC against accused No.1 also beyond all reasonable doubt.

57. Moreover, the points urged by the learned Prosecutor that the accused persons made delay tactics to prolong the case before the learned Magistrate and the accused No.1 did not comply with the stay order cannot be a ground to come to the conclusion that the accused No.1 has committed offence punishable under Section 498-A of IPC. Even if it is accepted that due to delay tactics of the accused persons the proceedings before the learned Magistrate was prolonged, cannot be a ground to convict the accused persons in the case. Therefore, any of the points urged by the learned Prosecutor in his written argument is not a ground to come to conclusion that the accused persons have committed offence charged against them beyond all reasonable doubt.

58. From the discussions made herein above, it is clear that the accused No.1 has clearly proved that the learned Magistrate has failed to appreciate the oral and documentary evidence forthcoming on

record in proper prospective and thereby the learned Magistrate has committed error in convicting him for the offence punishable under

Section 498-A of IPC under the impugned judgment. Therefore, the impugned judgment calls for interference at the hands of this Court in this appeal filed by the accused No.1 as sought for.

59. On the other hand, there is no error committed by the learned Magistrate in acquitting accused No.2 and 3. Moreover, when the accused No.1 is liable to be acquitted, the question of enhancement of sentence imposed on him by the learned Magistrate under the impugned judgment does not arise. Therefore, the learned Prosecutor has failed to make out any ground to show that the learned Magistrate has committed any error in acquitting accused No.2 and 3 for the offence charged under the impugned judgment. The learned Prosecutor has also failed to make out any ground to enhance the sentence imposed on the accused No.1 as sought for in his appeal. Therefore, the points No.1 and 2 are answered in the affirmative and the points No.3 and 4 are answered in the negative.

60. Points No.5 and 6: From the discussions made herein above, it is clear that the prosecution has failed to prove beyond all reasonable doubt that the accused persons committed offence punishable under Section 498-A of IPC as alleged against them. Hence,

as submitted by the counsel for accused persons, the learned Magistrate has committed error in convicting the accused No.1 for the offence punishable under Section 498-A of IPC under impugned judgment.

61. The meticulous consideration of the reasoning of learned

Magistrate in the impugned judgment clearly goes to show that the learned Magistrate has given much importance to extraneous things without considering the oral and documentary evidence forthcoming on record in proper prospective. The learned Magistrate has committed error under the impugned judgment shifting burden on the accused persons to prove their case instead of putting burden on the prosecution to prove their case beyond all reasonable doubt.

62. As discussed herein above, there is absolutely no independent oral and documentary evidence forthcoming from the prosecution to prove that the accused persons subjected the victim-P.W.1 to any kind of mental and physical harassment and ill-treatment as contended by the P.W.1 in her complaint at Ex.P.1. On the other hand, the oral evidence of prosecution witnesses and the documents produced by the prosecution makes the case of prosecution most improbable. Hence, doubt arises regarding the case put forth by the prosecution against the accused persons.

63. It is well settled principle of law that the accused persons are entitled to such benefit of doubt. Hence, as submitted by the counsel for accused persons, the accused persons deserve to be acquitted of the offences charged against them in the case. Therefore, the learned Magistrate has committed error in convicting the accused No.1 and sentencing him for the concerned offence under impugned judgment. Hence, the accused No.1 has made out sufficient ground to interfere with the impugned judgment of the learned Magistrate

regarding order of conviction and sentence passed against him at the hands of this Court as sought for in their appeal. On the other hand, the learned Prosecutor has failed to make out any ground to allow his appeal. Therefore, the points No.5 is answered in the affirmative and the point No.6 is answered in the negative.

64. Point No.7: From the discussions made herein above, it is clear that the appeal filed by the accused No.1 in Crl.A.No.782/2017 deserves to be allowed and the appeal filed by the learned Prosecutor in Crl.A.No.1210/2017 is liable to be dismissed. In the result, therefore, I proceed to pass the following:

ORDER

The appeal in Crl.A.No.782/2017 filed by the accused No.1/ appellant under Section 374 of Cr.P.C. is hereby allowed.

C/w Crl.A.No.1210/2017 The appeal in Crl.A.No.1210/2017 filed by the learned Prosecutor under Section 378(1)(a) and Sec.377(1)(a) of Cr.P.C. is dismissed.

Hence, the judgment dated 06.05.2017 of the learned II Addl. Chief Metropolitan Magistrate, Benglauru in C.C.No.24115/2012 regarding order of conviction and sentence passed against the accused No.1 is set aside.

Consequently, the accused No.1 is acquitted of the offence punishable under Section 498-A of IPC.

The impugned judgment regarding acquittal of the accused No.2 and 3 of the offence punishable under Section 498-A of IPC shall stand confirmed.

The LCR shall be returned to the concerned Magistrate Court along with copy of this judgment forthwith.

The judgment is prepared in duplicate. The original copy shall be kept in the file in Crl.A.No.728/2017 and the copy thereof shall be kept in the file in Crl.A.No.1210/2017.

(Dictated to the Stenographer, transcript corrected by me and then pronounced in open Court on this the 31st day of January, 2018) (T.N. INAVALLY) XLV Addl. City Civil & Sessions Judge Bengaluru