Sri Thimmaiah vs State Of Karnataka By on 6 March, 2023

Author: B.Veerappa

Bench: B.Veerappa

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH, 2023

PRESENT
THE HON'BLE MR JUSTICE B.VEERAPPA
AND
THE HON'BLE MR JUSTICE VENKATESH NAIK T
CRIMINAL APPEAL NO. 1673 OF 2016
C/W
CRIMINAL APPEAL NO.691 OF 2016

BETWEEN:

STATE OF KARNATAKA
BY MIDIGESHI P.S.
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 01.

...APPELLANT

(BY SRI. K.S. ABHIJITH, HCGP, ADVOCATE)

AND:

1. THIPPESWAMY,
S/o NARASIMHAIAH,
AGED ABOUT 30 YEARS,
R/at GAMPLAHALLI VILLAGE,
MIDIGESHI HOBLI, MADHUGIRI TALUK,
TUMKUR DISTRICT - 572 132.

2. LAKSHMAMMA
W/o NARASIMHAIAH,
AGED ABOUT 55 YEARS,
R/at GAMPLAHALLI VILLAGE,
MIDIGESHI HOBLI, MADHUGIRI TALUK,
TUMKUR DISTRICT - 572 132.

3. LAKSHMINARASAMMA
W/o SHIVASHANKARAPPA,
BEHIND KEB OFFICE,

HINDUPURA ROAD,
MADAKASHIRA TOWN - 515 301.

...RESPONDENTS

(BY SRI. BHARATH KUMAR.V FOR R1 TO R3, ADVOCATE)

CRL.A. FILED UNDER SECTION 378(1) & (3) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MADHUGIRI IN S.C. NO.241/2011 DATED 22ND DECEMBER 2015 FOR THE OFFENCE PUNISHABLE U/S 498 (A), 304 (B) R/W 34 IPC AND 3 AND 4 OF THE DOWRY PROVISION ACT AND ETC.

IN CRIMINAL APPEAL NO. 691 OF 2016.
BETWEEN:

SRI. THIMMAIAH,
S/o.LATE.KADIRAPPA,
AGED ABOUT 52 YEARS,
NO.191, 17TH CROSS,
B.R.I. COLONY, MAGADI ROAD,
DASARAHALLI,
BENGALURU - 560 079.

...APPELLANT

(BY SRI. KALEEMULLAH SHARIFF ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
MIDIGESHI POLICE STATION,
MADHUGIRI TALUK.

2. SRI. THIPPESWAMY,
AGED ABOUT 26 YEARS,
R/at GAMPALAHALLY VILLAGE,
MEDIGESHI HOBLI, MADHUGIRI TALUK,
TUMKUR DISTRICT - 572 133.

3. SMT. LAKSHMAMMA
W/o.NARASIMHAIAH,

AGED ABOUT 50 YEARS,
R/at GAMPALAHALLY VILLAGE,
MEDIGESHI HOBLI, MADHUGIRI TALUK,
TUMKUR DISTRICT - 572 133.

4. SMT. LAKSHMINARASAMMA
W/o.SHIVASHANKARAPPA,
AGED MAJOR,
BEHIND K.E.B. OFFICE,
HINDUPURA ROAD,
MADAKASIRA TOWN - 515 301.
ANDHRA PRADESH STATE.

...RESPONDENTS

(BY SRI.K.S.ABHIJITH, HCGP FOR R1
SRI. BHARATH KUMAR V,. FOR R2 TO R4 ADVOCATES)

CRL.A. FILED UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER OF ACQUITTAL DATED 22.12.2011 PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MADHUGIRI, IN S.C.NO.241/2011 FOR OFFENCES PUNISHABLE UNDER SECTION 498(A),304 READ WITH SECTION 34 OF THE IPC AND SECTION 3 AND 4 OF THE DOWRY PROVISION ACT AND ETC.

THESE APPEALS, COMING ON FOR HEARING, THIS DAY VENKATESH NAIK T. J., DELIVERED THE FOLLOWING:

COMMON JUDGMENT

1. Criminal Appeal No.1673/2016 is preferred by the State assailing the impugned judgment dated 22.12.2015 passed in

S.C.No.241/11 on the file of IV Additional District and Sessions Judge, Tumkuru District, to sit at Madhugiri, acquitting Accused Nos.1 to 3 for the offences punishable under Sections 498A, 304B r/w.34 of IPC and Section 3 and 4 of the DP Act.

Criminal Appeal No.691/16 is preferred by PW2-Sri Thimmaiah, father of the deceased-Smt Rukmini assailing the impugned judgment dated 22.12.2015 passed in S.C.No.241/11 on the file of IV Additional District and Sessions Judge, Tumkuru District, to sit at Madhugiri, acquitting Accused No.1 to 3 for the offences punishable under Sections 498A, 304B r/w.34 of IPC and Sections 3 and 4 of the DP Act. Since these criminal appeals are arising out of the same impugned judgment passed by the Trial Court and that the parties are one and the same, both these criminal appeals are heard together and disposed of by this common judgment.

2. Brief facts of the prosecution case is that :

Accused No.1-Thippeswamy is the husband of the deceased-Rukmini (CW.1), Accused No.2-Smt.Lakshmamma and accused No.3-Smt.Lakshmi Narasamma are mother-in-law and sister-in-law of the deceased respectively. The marriage of accused No.1 and deceased Rukmini was solemnised on 7.5.2009 and during the marriage, accused were demanded one gold finger ring, one gold chain and Rs.30,000/- cash and the parents of

the deceased fulfilled the demand. But prior to the date of marriage, twice the marriage was postponed, as the accused were demanding additional dowry amount of Rs.15,000/- from the parents of deceased. After the marriage, deceased Rukmini started to live in matrimonial house at Gampalahalli village, Midigeshi Hobli, Madhugiri Taluk and she lived only for a period of two years. During her stay at Gampalahalli village, she was tortured for and in connection with the demand of dowry from her in-laws and her husband. Further, accused persons were harassing the deceased physically and mentally for want of more dowry and the deceased, unable to bear the harassment, on 10.6.2011 at 6.00 a.m., committed suicide by drowsing kerosene on her and set herself ablaze. Immediately

she was shifted to Hospital and admitted on 10.6.2021, where she gave her statement before the Tahsildar Sri B. Ahobalaiah (PW11) as per Ex.P8. Hence, PW16-Manjunath U.R., the then PSI of Midigeshi Police station registered the case in Crime No.44/2011 for the offence under Section 498A r/w.34 of IPC and Section 3 and 4 of the DP Act on the basis of Ex.P-8. CW.1-Smt.Rukmini did not respond to the treatment and succumbed to the injuries on 16.6.2011 at 9.00 p.m. Hence, the Midigeshi police registered the case against the accused for the offences punishable under Section 498A, 304B r/w.34 IPC and Sections 3 and 4 of the DP Act.

3. On 17.6.2011, the Tahsildar - PW11 visited the hospital and conducted Inquest Panchanama as per Ex.P2. The body was sent for post mortem examination and report was made as per Ex.P5 by Dr.Rudramurthy (PW7), wherein, it was opined that death is due to septicaemia as a result of burn injuries sustained. Thereafter, the police visited the spot, drew the mahazar as per Ex.P6 and made certain seizures in the presence of PW8-Lingappa and PW9-Aswathappa. Further, during the course of investigation, PW14-Chandrashekar and PW15-Retired Deputy Superintendent of Police-Pradeep Kumar

recorded the statements of the witnesses, arrested the accused persons, completed the Investigation and filed charge sheet against accused persons.

4. After the completion of investigation and filing of charge sheet, the case was committed to the Court of IV Additional District and Sessions Judge, Tumkuru, to sit at Madhugiri and the learned Sessions Judge framed charges against accused No.1 to 3 for the offences punishable under Sections 498A, 304B r/w.34 of IPC and Sections 3 and 4 of the DP Act and explained the same to accused persons; they pleaded not guilty to the charges and they claimed to be tried.

5. In order to prove the charges against the accused,

the prosecution, in all, examined 16 witnesses as per PWs.1 to 16, got marked 22 documents as per Exs.P.1 to P.22 and the material objects as per MOs.1 to 5.

6. After completion of the evidence on behalf of the prosecution, the statements of the accused persons as contemplated under Section 313 of Cr.P.C were recorded by the trial court. The accused persons denied all the incriminating

evidence against them, but did not lead any defence evidence.

7. Based on the aforesaid pleadings, the learned Sessions Judge, framed the following points for consideration (in fact, wrongly framed as under)

> (1) Whether the prosecution has proved beyond all reasonable doubt that there was illicit relationship between the accused and juvenile offender for the past one year and there was trouble from son of CW1 and accused No.2 i.e. present accused by name Harish to the said relationship, on 24.2.2012 at 6.30 p.m. the accused person with the help of juvenile offender, son of CW1 and accused No.2 i.e. present accused was taken to the bund of naalku kannina tore halla situated near the land of Banadarangaiah of Jayanagar village situated at A M Kaval and as per the instructions of present accused, the juvenile offender forcibly strangled the neck of Harish causing his death and thereby the accused has committed the offence punishable under Section 302 of IPC?
>
> (2) Whether the prosecution had proved beyond all reasonable doubt that at the time, date and place mentioned above, after committing the murder of her son with the help of the juvenile offender, at her instructions, the body of her son was burnt by pouring kerosene on it and setting it afire with an intention to conceal the crime

and thus the accused committed the offence punishable under Section 201 of IPC ?

8. As the trial Court had wrongly framed the points for consideration, we have framed the same as under:

1. Whether the prosecution proved its case beyond all reasonable doubt that Accused Nos.1 to 3 were harassing CW1-Rukmini, while she was alive, in connection with demand of dowry, thereby committed an offence punishable under Section 498A of IPC?

2. Whether the prosecution further proved that Accused Nos.1 to 3 demanded one gold chain, one gold finger ring and cash of Rs.30,000/- from PW2-Thimmaiah and received the same, after sometime before the performance of marriage, again accused persons were demanded additional dowry amount of Rs.15,000/- from parents of CW1-Rukmini and received the same, in spite of it, soon before the death of Rukmini, Accused Nos.1 to 3, were harassed CW1 physically and mentally in connection with demand of dowry, thus, CW1 committed suicide, hence, accused have committed an offence punishable under Section 304B R/w. 34 of IPC and Sections 3 and 4 of the DP Act ?

9. The Trial Court after considering the entire evidence on record, has recorded a finding that, the prosecution has failed

to prove that, Accused No.1-Sri Thippeswamy, husband of the deceased-Rukmini (CW1) married her and prior to marriage, there was marriage talks, wherein accused No.1 and 2 had

demanded PW2-father of the deceased a dowry of one gold finger ring, one gold chain and Rs.30,000/- cash and PW2 had agreed for the same and on 23.4.2009, marriage was fixed and marriage invitation was also printed, but accused persons refused to go ahead with the marriage on the ground that dowry given was insufficient and again talks were held and accused persons demanded one gold chain, one gold finger ring and Rs.45,000/- cash as dowry and PW2 agreed for the same and accused persons received the same from parents of CW1 and ultimately marriage took place and in spite of it, accused persons were harassing the deceased physically and mentally for want of more dowry.

10. The Trial Court further held that, the prosecution failed to prove that accused have harassed CW1-Rukmini both physically and mentally in connection with demand of dowry, thus, CW1 poured kerosene on herself, set fire, sustained burn injuries and hence was shifted to Govt. Hospital, Tumkuru, for treatment and on 16.6.2011, CW1 succumbed to the injuries,

there by death of CW1-Rukmini occurred within 7 years of her marriage, in connection with demand of dowry and soon before her death, accused persons have harassed her physically and mentally.

11. Hence, the Trial Court acquitted the accused persons for

the alleged offences, holding that, prosecution failed to prove its case beyond all reasonable doubt.

12. Aggrieved by the judgment of acquittal passed by the Trial Court, State has preferred Criminal Appeal No.1673/2016 and father of deceased-Sri Thimmaiah-PW2, has filed Criminal Appeal No.691/2016.

13. We have heard learned counsels for the parties to the lis, who have taken us through the material evidence placed on record.

14. In support of the appeal-Crl.A.1673/2016, learned HCGP for the State vehemently argued and submitted that the impugned judgment and order of acquittal recorded by the learned Session Judge is contrary to law, facts of the case and the evidence on record. The reasons assigned by the learned

Session Judge while passing the impugned judgment and order of acquittal are erroneous and hence reached to a wrong conclusion resulting in substantial miscarriage of justice. The learned HCGP further submits that, PW2-father of the deceased, PW3-mother of the deceased and PW4-brother of the deceased, all are consistent in their evidence about the demand of dowry and cruelty that the deceased was subjected to at the hands of the accused. The independent witnesses i.e., PWs 5 and 6 have also supported the demand of dowry at the time of

marriage, but these points have not been considered by the Trial Court. The learned Trial Judge ought to have drawn presumption as the deceased died an unnatural death within seven years from the date of marriage in connection with the demand of dowry and hence, failure to draw the presumption, would lead to miscarriage of justice. Though the prosecution has proved its case, the Trial Court has acquitted the accused. The learned HCGP further submits that, the Tahsildar is examined as PW11 and through him Ex.P8-dying declaration was got marked and it is very clear from the evidence of PW11 that the deceased poured kerosene herself and set ablaze on 10.06.2011 and died on 16.06.2011 and thereafter

the deceased, has also given her statement as to how she was subjected to cruelty prior to her death, but however, the Trial Court, ignoring to consider the dying declaration, has acquitted the accused which has resulted in miscarriage of justice. The learned HCGP would further submit that based on the dying declaration alone, the Trial Court ought to have convicted the accused, but it has acquitted the accused. The learned HCGP further submits that the Court cannot search for an independent witness in matrimonial cases as the cruelty and demand of dowry would be subjected and demanded within the four corners of the house. In this regard, parents are the proper persons to state about the cruelty, harassment and also

regarding any demand of dowry etc., but the Trial Court has failed to appreciate this aspect. The learned HCGP in support of his contentions, has relied upon the judgment of the Hon'ble Apex Court in Ashok kumar V/s State of Rajasthana reported in 1991(1) SCC 166, wherein the Hon'ble Apex court has held that, dowry death is a crime of its own kind, where the elimination of daughter-in-law becomes immediate necessary if she or her parents are no more able to satisfy the greed of the husband or in-laws and make the boy available

once again in the money market. The learned HCGP further relied upon the judgment of the Hon'ble Apex Court in Rajkumar V/s State of M.P. reported in 2005 Crl. L.J 1037, wherein the Hon'ble Apex Court has held that, in case of dowry death, the family members of the victim are the best witnesses and only they can depose what the treatment was given to the victim. However, in the instant case, the deceased herself made complaint to police, therefore, absence of supporting evidence of any independent witness will not cause any dent to the prosecution case and the prosecution need not prove the case beyond all reasonable doubt as the statutory presumption is readily available in this case. In fact, the accused ought to have rebutted the presumption by giving strong and cogent evidence, failure to rebut the same, would cause serious infirmity and though the Prosecution has proved

the case beyond all reasonable doubt, Trial Court failed to appreciate it and has wrongly acquitted the accused. Therefore, the impugned judgment calls for interference by this Court by re-assessing the evidence and to convict the accused.

15. The learned counsel for the appellant (PW2) in Crl.A.No.691/2016 submitted that the Trial Court has failed to see that, in order to prove the aspect of demand of dowry made by the accused and its acceptance, prosecution has examined PWs 2 to 6, who have categorically spoken to the aspect of demand made by accused Nos. 1 and 2, demand being met by PW2 and also the aspect of acceptance of amount and jewelries by accused. However, though there are minor discrepancies in the testimony of PWs 2 to 6, by no stretch of imagination, will go to the root of the matter and therefore, these witnesses examined by the prosecution have supported the prosecution version. Further, the Trial Court has failed to appreciate the evidence of PWs 5 & 6, who are the independent witnesses, present during the marriage talks and also had spoken about convening of panchayath. The said witnesses have categorically spoken about the aspect of harassment being met to the deceased at the hands of accused Nos.1 to 3 after the marriage by demanding additional dowry. The learned counsel would further submit that the Trial Court has misled itself in appreciating the evidence on record and failed to

appreciate the oral testimony of PWs 1 to 6, who have

categorically spoken on the aspect of demand, acceptance and harassment meted out to the deceased at the hands of accused Nos.1 to 3 and the Trial Court has not given cogent reasons for disbelieving their evidence and therefore, the reasoning assigned by the Trial Court in acquitting the accused are not proper and it requires reconsideration.

Further, the reasons assigned by the Trial Court to disbelieve Ex.P8-complaint is not proper as the defence has not elicited any material to disbelieve the contents of Ex.P8 either from the mouth of PW11 or PW7 or PW13. On the other hand, PW7 and PW11 have categorically spoken on the aspect of the victim narrating the facts and affixing her LTM on Ex.P8. Therefore, the evidence led by the prosecution on the aspect of recording of dying declaration is consistent but the Trial Court has assigned reasons on a flimsy ground. The learned counsel further submits that the Trial Court has not given proper finding with regard to presumption as to the death of deceased, which took place within 7 years of her marriage in the house of accused under suspicious circumstances with regard to demand of dowry even when the prosecution was able to prove its case beyond reasonable doubt. But the Trial Court has not

considered the presumption available under Section 113B of the Indian Evidence Act, though the prosecution has discharged its initial burden. Further, the Trial Court ought to have shifted the burden on accused to explain the death of deceased, as the death took place in the house of the accused when all the accused were present at the time of incident. The learned counsel further submits that the accused have not furnished their explanation under Section 313 of Cr.P.C. Further, the Trial Court has failed to see that as some witnesses are relatives of the victim and some minor discrepancies have crept in their evidence and that cannot be ground to reject their evidence as untrustworthy and the Trial Court ought to have analyzed and scrutinized the same with due care and caution before accepting or acting upon the same. Further, the Trial Court has failed to consider the fact that, as death occurred in the house of the accused, the accused are under the obligation to explain about the manner of incident as it resulted in death as contemplated under Section 106 of the Indian Evidence Act. The counsel further submits that the investigation officer recovered the material objects from the house and at the instance of accused vide M.Os 1 to 5; though PWs 8 to 10 have

not supported the case of prosecution, the contents of Ex.P21-FSL report clearly speaks of the presence of kerosene in M.Os 1

to 4, which were seized from the place of incident. Further, the reasoning assigned by the Trial court are not well founded in the circumstances of the case and therefore, viewed from any angle, the judgment and order of acquittal passed by the trial Court is quite contrary to the material on record. On all these grounds, Appellant, PW2-Thimmaiah prays to allow the appeal and convict the accused for the offences punishable under Sections 498A, 304B r/w.34 of IPC and Sections 3 and 4 of the DP Act.

16. The learned counsel for accused submitted that the judgment and order of acquittal passed by the trial Court is in accordance with law and prays to dismiss the appeals.

17. In view of the rival contentions urged by the learned counsel for the parties, the points that would arise for consideration in the present appeals are :

> "1. Whether the prosecution as well as PW2 proved their case beyond all reasonable doubt that, Accused No.1 and 2 demanded dowry of one gold finger ring, one gold chain and Rs.30,000/- cash and PW2 had agreed for the same

> and on 23.4.2009 marriage was fixed and again the accused demanded more dowry and hence, PW2 again paid Rs.15,000/- as additional amount (in all rupees 45,000/-) in the form of dowry and even after marriage, Accused No.1 and 2 harassed CW1-deceased Rukmini physically and mentally in connection with demand of dowry?
>
> 2. Whether the prosecution and PW2 further proved that

on 10.6.2011 at 6.00 a.m., CW1 poured kerosene and set herself on fire in her husband's house, due to which she has sustained burn injuries and thereafter, succumbed to the injuries on 16.6.2011 at 9.00 P.M., as Accused No.1 and 2 harassed her mentally and physically and therefore, she committed suicide within seven years from the date of marriage?"

3. Whether the prosecution and PW2 proved that the judgment of acquittal passed by the Trial Court requires interference by this Court ?

18. We have given our anxious consideration to the arguments advanced by the learned counsels for the parties and perused the entire material including the original records carefully.

19. The substance of the prosecution case is that, marriage of accused No.1-Thippeswamy was performed with deceased-Rukmini and during marriage, Accused Nos.1 and 2 had demanded PW2 one gold chain, one gold finger ring and

Rs.45,000/- cash. After the marriage, their relationship was cordial and thereafter, accused started to harass CW1 physically and mentally and therefore, CW1 committed suicide on 10.6.2011.

20. In order to re-appreciate the material on record, including the oral and documentary evidence, it is relevant to consider the sum and substance of evidence of the prosecution witnesses.

21. PW.1 - B.M. Sathyendra Rao, Assistant Engineer in his

evidence has deposed to the fact that on 14.6.2011, the investigating officer requested him to visit the spot and prepare the sketch of the scene of offence. Accordingly, he visited the spot and prepared the sketch as per Ex.P1.

22. PW.2 - Thimmaiah, the father of the deceased, deposed that during the year 2009, there were marriage talks between the family of accused persons and family of PW2 and marriage of Accused No.1 and his daughter-CW1 Rukmini was fixed on 23.4.2009. During that period, Accused No.1 and 2 were demanded one gold finger ring, one gold chain and Rs.30,000/- cash in the form of dowry and PW2 agreed the same. In spite

of that, the accused persons were harassing his daughter physically and mentally. Thus, unable to bear the harassment, she committed suicide. He further deposed that soon after the death of his daughter, case has been registered, police visited the spot, conducted spot Panchanama and they also collected marriage invitation card as per Exs.P3 and P4. PW2 has undergone intensive cross examination by the counsel for accused, in the cross examination, he admitted that, PW3-Shusheelamma and PW4-Shiva are his wife and son respectively. Accused persons are their distant relatives and he has been residing in Bangalore since 25 years and accused No.1 was working as Electrician in Bangalore, CW1-Rukmini

completed PUC. He categorically admitted that, he is not aware of the date of marriage talks held, he does not have the documents to show that he purchased 8 grams of gold neck chain and 6 grams of gold finger ring, he does not have documents to show that he paid cash to accused no.1 and he does not have documents to show that, he incurred marriage expenses for a tune of rupees 1.5 lakh, he further admitted that, during the life time of Rukmini, he has not lodged any

complaint to the police to substantiate that, accused persons were demanding dowry amount.

23. PW3-Smt Shusheelamma, mother of the deceased, in her evidence, reiterated the averments made in the deposition of PW.2. She further deposed that as Accused Nos.1 and 2 harassed her daughter, they paid Rs.60,000/- for starting a textile shop at Hosakere village and after a couple of days, again Accused No.1 started harassing her daughter and therefore, they financed to set-up a chicken stall in the name of Accused No.1 at their village. PW3 further deposed to the fact that Accused No.1 further demanded to pay additional dowry or else, demanded the deceased to get divorce from the Court. In this regard, PW3 and her husband-PW2 had gone to the house of CW1, advised their daughter and Accused No.1. But accused continued to harass her daughter. She further deposed that soon after receipt of information, herself and her husband came

to the hospital and saw her daughter, her body was almost burnt, thus she enquired with CW1, thus she revealed that, accused No.3-Lakshminarasamma had caught hold of her hands, accused No.2-Lakshmamma poured kerosene on her and accused No.1 set fire on her and after 6 days of the

incident, Rukmini died. PW3 has undergone cross examination, in the cross examination, she had admitted that, accused No.1 informed her about the incident, accused No.1 and 2 brought CW1 Rukmini from Gampalahalli village, got admitted her in the hospital. She further admits that, after the marriage, the relationship of accused No.1 and Rukmini was cordial for one year. She has not lodged any complaint against accused persons regarding the alleged harassment made by them. Further she has not placed any documents to show that, herself and her husband paid amount to accused No.1 for running chicken stall.

24. PW4-Shiva, younger brother of the deceased and son of PW2 and 3, has deposed in line of PWs. 2 and 3, by reiterating the averments made in the depositions of PWs 2 and 3 and corroborates their oral testimony.

25. PW5-Narasimha Murthy, independent witness, in his evidence deposed to the fact that, he attended the marriage talks, he observed that accused persons were demanding one

gold finger ring, one gold chain and Rs.30,000/- cash, again accused were demanding dowry for a sum of Rs.15,000/-.

Though PWs 2 and 3 paid cash of Rs.45,000/- and met out their demands, however, accused did not stop harassing the deceased physically or mentally and thus, daughter of PWs 2 and 3 committed suicide.

26. PW.6-Smt. Rathnamma, relative of deceased has deposed in line of PW.5.

27. PW.7-Dr.S. Rudramurthy who conducted autopsy on the dead body of deceased- Rukmini and has issued Ex.P5-Post Mortem report. He has deposed that there were burn injuries on various parts of the body of the deceased to an extent of 40% to 60% and has opined that, the death might have occurred due to infection caused on account of the burn injuries.

28. PW.8- Lingappa is a pancha for the spot mahazar-Ex.P6 and though he identifies his signature on it, has deposed that he does not know the contents of it and the said witness is treated as hostile.

29. PW.9-Ashwathappa, spot mahazar (Ex.P6) witness has turned hostile to the case of the prosecution.

30. PW.10-Guddirappa, seizure mahazar (Ex.P7) witness has turned hostile to the case of the prosecution.

31. PW.11- B.Ahobalaiah, Retired Tahsildar, in his evidence, deposed to the fact that, as per the request of I.O, he recorded the dying declaration of deceased-Rukmini as per Ex.P8 in the presence of the duty doctor, after he certified that Rukmini was capable of giving declaration. He further deposed to the fact, on 16.06.2011, as per the request of I.O, he visited the hospital and conducted inquest Panchanama as per Ex.P2. PW11 has been cross examined, in the cross examination, he admits that he cannot remember the date of request made by police for recording the statement of victim and he is not aware as to the medical officer, who was present on the day of recording statement of victim, the Tahsildar has not personally recorded statement of victim, but his staff recorded, however his staff was neither examined before Trial court nor cited as witness in the charge sheet, he further admitted that, in Ex.P8 there is no reference about date of recording statement of victim, further LTM of victim not marked and identified by Tahsildar.

32. PW.12-Chandrashekhara. A, witness to Ex.P7-Mahazar, has turned hostile to the case of the prosecution.

33. PW.13- L.N. Charan, ASI of Midigeshi police station, in his evidence deposed that, as per the instructions of his higher authorities, he had gone to Tumkuru District Hospital, to ascertain whether the injured-Rukmini was fit to give statement or not, accordingly, he requested the medical officer, as to whether injured-victim was fit to give statement or not, and he also requested the Taluka Executive Magistrate, Tumkuru, for recording the statement of the victim. Accordingly, on the same day, at 2.00 P.M., the Tahsildar recorded the statement of the victim in the presence of the doctor.

34. PW.14-K.R. Chandrashekar, Police Inspector, partly investigated the case.

35. PW.15- B.Pradeep Kumar, Deputy Superintendent of Police, investigated the matter and filed charge sheet against accused persons.

36. PW.16-Manjunatha V.R, Sub Inspector of Police, received the statement of victim Rukmini from PW13 and registered the case.

37. Based on the aforesaid oral and documentary evidence on record, accused No.1 to 3 is acquitted for the offences punishable under Sections 498A, 304 r/w. 34 of IPC and Sections 3 and 4 of DP Act.

38. Under such circumstances, we examined the provisions of Section 304(B) of IPC, the basic ingredients to attract the provisions of Section 304-B IPC are as follows:

(1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;

(2) such death occurs within 7 years from the date of her marriage;

(3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death.

39. In view of the fact, circumstances and evidence led by the prosecution, it is just and necessary to analyze Section 304-B IPC, which deals with "dowry death", which reads as follows:

"304-B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that 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, (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death."

40. Further, Section 113-B of the Evidence Act is also relevant

for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act has to be looked into for drawing presumption.

> "113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.
>
> Explanation.-For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Penal Code, 1860."

41. In the instant case, the counsel for the appellant mainly relied upon the oral testimony of PWs 2 to 5. PW2 Thimmahaiah, who is none other than the father of deceased, PW3-Shusheelamma is mother of deceased and PW4- Shiva is brother of the deceased and PW5 and 6 are the relatives of the deceased. As per the prosecution case, PW5-Narasimhamurthi, attended the marriage talks held between the family of accused and deceased, he observed that accused persons were demanded one gold finger ring, one gold chain and Rs.30,000/- cash, again accused were demanded additional dowry for a sum of Rs.15,000/- and received the same from parents of deceased. Though PWs 2 and 3 paid cash of Rs.45,000/- and met out demands of accused, however, accused did not stop harassing the deceased physically or mentally and thus,

daughter of PWs 2 and 3 committed suicide, but, in the cross examination, he pleads that he cannot say the date of marriage talks, he cannot say the persons who were attended the marriage talks and he is unable to say, where panchayaths were held. Therefore, his evidence cannot support the prosecution case rather his evidence diluted the version of

prosecution case. PW6-Rathnamma is none other than sister in-law of PW3. Hence, she appears to be an interested witness.

42. It is well settled law that, the evidence of interested witnesses requires careful scrutiny to discover falsehood, embellishment or exaggeration, which must be eschewed. The Hon'ble Apex Court in the case of Dalbir Kaur vs. State of Punjab reported in AIR 1977 SC 472, interested witnesses means, it postulates that the person concerned must have some direct interest in seeing that, the accused person is somehow or other convicted because he has some animus against the accused or for some other reason. A witness is independent, unless he springs from a source likely to be tainted.

43. In fact, the case of prosecution is that, deceased-Rukmini was tortured for and in connection with the demand of dowry from her in-laws and her husband, further, accused persons were harassing the deceased physically and mentally for want

of more dowry and the deceased unable to bear the harassment, on 10.6.2011 at 6.00 a.m., committed suicide by pouring kerosene on her and set herself ablaze. But on

perusal of evidence of PWs 2 to 4, they have completely changed the story and deposed that CW1 Rukmini told them that she did not commit suicide whereas, the accused persons have poured kerosene on her and set fire. According to PW2, accused No.2- Lakshmamma caught hold of hands of deceased Rukmini, accused No.3-Lakshminarasamma poured kerosene on the deceased-Rukmini and accused No.1-Thippeswamy set fire on her. But, according to PW3-Smt Susheelamma and PW4-Shiva, accused No.3-Lakshminarasamma caught hold of hands of deceased Rukmini, accused No.2-Lakshmamma poured kerosene on the deceased-Rukmini and accused No.1-Thippeswamy set fire on her. Therefore, this is completely a different version which is contradictory to prosecution version. There is no consistency in the testimony of PWs 2 to 4 as to the role played by accused Nos.1 to 3. Further, the oral testimony of PWs 2 to 4 contradicts the oral testimony of PW11-Ahobaliah, the Tahsildar who recorded the statement of CW1-Rukmini and evidence of IO.

44. Further, on perusal of evidence of PW11, it appears that , PW11 who recorded statement of Rukmini as per Ex.P8 and

also conducted inquest as per Ex.P2. On perusal of Ex.P8-dying declaration, the contents of Ex.P8 transpires that, "on 9.6.2011 at 10.00 a.m, mother-in-law of Rukmini i.e., accused No.2 abused Rukmini saying that "Go and die else where" and on further perusal of Ex.P8, it appears that, on 10.6.2011 at 6.00 a.m., deceased Rukimini told her mother-in-law (accused no.2) that, she would quit matrimonial house and would go to her village, then, accused No.2 told her that, "It does not matter, if she remain in the house or quit the house, thus, deceased Rukmini poured kerosene on her body, set fire." This is the sum and substance of the dying declaration. But, the contents of dying declaration or the allegations made by CW1-Rukmini in her statement (Ex.P8) has not been deposed to by PW11-Tahsildar on oath before the Court. But, on perusal of Ex.P9, the letter of I.O addressed to Medical Officer, District Hospital, Tumkur, requesting him to give opinion as to condition of victim and whether she was in a fit condition to give statement and in the history, it is clearly mentioned as, when CW1-Rukmini was about to lit the kerosene oil stove, she sustained burn injuries. Hence, there is material contradictions

in the contents of Ex.P8-dying declaration and Ex.P9-the requisition of police addressed to the medical officer.

45. The counsel for respondents No.1 to 3 (Accused Nos.1 to 3) vehemently argued that, in the facts and circumstances of the case, exhibit P8, the purported dying declaration cannot form the sole basis to convict the respondents, as Ex.P8 is surrounded with doubtful circumstances, the same cannot be acted upon to be the solitary basis for conviction in the absence of any corroboration. The counsel further submits that in the absence of a medical certificate attesting to mental fitness of the deceased before recording of the dying declaration, Ex.P8-dying declaration cannot be relied upon as the person who recorded dying declaration i.e. scribe has not been examined nor cited him as witness. According to PW11, Ex.P8 was recorded in his presence and he has not stated that Ex.P8 was recorded by him. Therefore, there is contradiction in the version of PW11 and the contents of Ex.P8. Further, the doctor who certified the mental condition of deceased-Rukmini has not been cited as witness nor he has been examined, in order to corroborate the contents of Ex.P8.

46. In the instant case, the prosecution case revolves around the evidentiary value of purported dying declaration (Ex.P8) dated 10.6.2011. But, PWs 2 to 4, parents of Rukmini, completely changed the case of prosecution and deposed contrary evidence to the dying declaration. Now, the evidence of PW11 is available, who was present at the time of recording

the dying declaration. But the evidence of PW11 also does not inspire the confidence of the Court to believe his version.

47. Section 32 of the Indian Evidence Act contemplates for dying declaration i.e., Section 32 deals with previous statement made by persons falling under (a) deceased person, as to cause of his or her death. In case of Jayamma and another vs. State of Karnataka reported in (2021) 6 SCC 213, the Hon'ble Apex Court has held in paragraphs 14 to 17 as under :

> 14. Before we advert to the actual admissibility and credibility of the dying declaration (Ext. P-5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.
>
>

14.1. In P.V. Radhakrishna v. State of Karnataka12, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard-and-fast rule of universal application in this regard and much would depend upon the nature of the burns, part of the body affected, impact of burns on the faculties to think and other relevant factor.

14.2. In Chacko v. State of Kerala13, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of

course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient conscious, talking" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

14.3. In Sham Shankar Kankaria v. State of Maharashtra14, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in Paniben v. State of Gujarat15, wherein this Court (at SCC pp. 480-81, para 18) summed up several previous judgments governing dying declaration,

the Court in Sham Shankar Kankaria14,reiterated: (Sham Shankar Kankaria14, SCC pp. 172-73, para 11)

"11. ... (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [Munnu Raja v. State of M.P.16);

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [State of U.P. v. Ram Sagar Yadav17 and Ramawati Devi v. State of Bihar18.);

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor19.);

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P.20);

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P.21);

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P.22);

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v.Krishnamurti Laxmipati 23 Naidu .);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar24.);

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying

declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. 25);

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan26.);

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra27.)"

15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such

statement, classified as a "dying declaration" is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.

16. We may also take note of the decision of this Court in Surinder Kumar9. In the said case, the victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression

on the purported dying declaration when she had suffered 95-97% burn injuries. Thereafter, it was noted that "at the time of recording the statement of the deceased ... no endorsement of the doctor was made about her position to make such statement", and only after the recording of the statement did the doctor state that the patient was conscious while answering the questions, and was "fit to give statement". This Court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, the Court must nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.

17. Consistent with the cited principles, this Court refused to uphold the conviction in Sampat Babso Kale v. State of Maharashtra28. The dying declaration in that case was made by a victim who had suffered 98% burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the

victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that: (SCC p. 744, para 14)

"14. ... the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way around."
(emphasis supplied)

48. Admittedly, present case is based on dying declaration and as per the dying declaration, accused No.2 abetted the deceased , hence, deceased poured kerosene and lit fire on her person. Whereas, in the instant case, father, mother and brother of the deceased (PWs 2 to 4), have resiled and clearly stated that accused poured kerosene on the deceased Rukmini and set fire and hence she sustained burn injuries and thereby not supported the prosecution case in line of Ex.P8, purported dying declaration and thereby, completely repudiated the prosecution case and their version runs contrary to the evidence of PW11-Tahsildar and the Police Officer-PW15, Pradeep Kumar.

49. The litmus test, therefore, is, whether the victim has made the statement as per Ex.P8 and if so, whether such statement can be the solitary foundation for conviction of the respondents?

50. Admittedly, the narration of events in the dying declaration is so accurate that, even a witness in the normal state of mind

cannot be expected to depose with such precision. Further, the purported dying declaration is not in a question and answer

format. There is sufficient evidence on record that victim had been administered sedative pain killers as she sustained 40% to 60% burn injuries on all vital parts of her body, it cannot be legitimately inferred that she was reeling in pain and was in great agony and possibility of her being in a state of delusion and hallucination cannot be completely ruled out.

51. In the backdrop of the above said contentions of the learned counsels for the parties and the evidence placed on record, we may refer to a few decisions of Hon'ble Apex Court in regard to the jurisdiction and limitations of the Appellate Court while considering the appeal against an order of acquittal.

52. In Tota Singh v. State of Punjab reported in (1987) 2 SCC 529, the Hon'ble Apex Court in para 6 has held as under :)

> "6. ... The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably

and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

53. In State of Rajasthan v. Raja Ram reported in [(2003)

8 SCC 180, the Hon'ble Apex Court has held that :

"7. ... The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. [Further, it is held that] in a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only where there are

compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference."

54. In Surajpal Singh v. State reported in 1951 SCC

1207, the Honble Apex court has held as under :

> "7. It is well established that in an appeal under Section 417 CrPC [old], the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

55. In Aher Raja Khima v. State of Saurashtra reported in AIR 1956 SC 217, the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an

order of acquittal, Bose, J. speaking for the majority, the Hon'ble Apex court has held as under :

> "1. ... It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong."

56. In the case of unnatural death of a married woman, as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before Hon'ble Apex Court in Satvir Singh v.

State of Punjab reported in (2001) 8 SCC 633 as follows :

> "21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving

property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasize the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the

facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'."

57. In Hira Lal v. State (Govt. of NCT of Delhi) reported in (2003) 8 SCC 80 the Hon'ble Apex Court observed thus :

"9. ... The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B 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 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."

58. In view of the above proposition of law and decisions cited supra, in the present case, we have independently analyzed

and scrutinized the evidence of the material witnesses and found that there is practically no evidence to show that there was any cruelty or harassment meted out against the deceased for or in connection with the demand of dowry.

59. The learned Trial Judge has appreciated the evidence of PWs 1 to PW16 in its right perspective and concluded that the evidence of these witnesses has not been established that deceased-Rukmini was ever being harassed or ill-treated by the accused for bringing inadequate and insufficient dowry at the time of her marriage with accused No.1 or that the accused ever demanded dowry articles from the parents of the deceased before she committed suicide.

60. It is also to be noticed that the Trial Court on the basis of evidence has chosen to acquit all accused persons on the ground that, the prosecution has failed to prove the allegations of ill-treatment, harassment and demand for dowry, the

evidence against all accused is insufficient and inconsistent with each other. This deficiency in the evidence proves fatal to the prosecution case. In the aforementioned situation, the provisions of Section 304-B IPC and Section 113-B of the Evidence Act could not be attracted to hold accused persons guilty of the offence of dowry death and/or cruelty in terms of Section 498-A IPC. The prosecution, therefore, must be held to

have failed to establish any case against accused persons. Further, the appellant in Crl.A.691/2016 also has failed to establish any case against the accused persons, as alleged by him in the appeal.

61. The Hon'ble Apex Court in the case of HARENDRA NARAIN SINGH vs. STATE OF BIHAR reported in AIR 1991 SC 1842, has held that if there are two views possible from the evidence on record, one pointing to the guilt of accused and another to the innocence of accused, then, the view, which is favourable to the accused, is to be accepted and benefit of doubt shall be given to the accused. The Learned Sessions Judge placing reliance on the aforesaid judgment of the Hon'ble Apex Court, has given benefit of doubt to respondents/accused Nos. 1 to 3.

62. There is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of the Justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of

the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. This ratio is laid down in the case of RAMANAND YADAV vs. PRABHUNAT JHA and in the case of C.K. DASE GOWDA AND OTHERS vs. STATE OF KARNATAKA, reported in (2003) 12 SCC 606.

63. Having given our careful consideration to the above stated submissions made by the learned counsel for the parties and in the backdrop of the evidence discussed hereinabove and tested in the light of the principles of law highlighted above, it must be

held that the evaluation of the findings recorded by the Trial Court do not suffers from any manifest error and improper appreciation of the evidence on record. Therefore, the judgment of the Trial Court, acquitting the accused persons is sustainable in law.

64. For the reasons stated above, we are of the considered opinion that, the evidence led by the prosecution, in regard to, the involvement of accused persons, in the death of Rukmini is not proved beyond reasonable doubt by the prosecution. Further, the State as well as PW2 have also consequently failed to establish the guilt of accused persons. Considering all these above aspects, we are of the considered opinion that the

learned Sessions Judge has rightly held that the prosecution has failed to prove the guilt of respondents No.1 to 3 beyond all reasonable doubt and rightly extended the benefit of acquittal to respondents No.1 to 3. We do not find any grounds to interfere with the well crafted judgment passed by the Trial Court.

65. In the result, we pass the following order:

ORDER

i) The appeals are dismissed;

ii) The judgment of acquittal passed by the IV Additional District and Sessions Judge, Tumkuru, to sit at Madhugiri in S.C.No.241/2011 dated 22.12.2015, acquitting respondents 1 to 3 for the offence punishable under Sections 498A, 304B r/w 34 of IPC and Section 3 and 4 of Dowry Prohibition Act is, confirmed.

Sd/-

JUDGE Sd/-

JUDGE rs