

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2022

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE S. RACHAIAH

CRIMINAL APPEAL No. 981/2019

BETWEEN:

SURESH,

... APPELLANT

(BY SRI NAGARAJA REDDY D., ADVOCATE)

AND:

STATE OF KARNATAKA,
BY HD KOTE POLICE STATION,
H.D. KOTE,
REP. BY SPECIAL PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560 001.

...RESPONDENT

(BY SRI VIJAYAKUMAR MAJAGE, SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 13.12.2018 AND ORDER OF SENTENCE DATED 17.12.2018 PASSED BY THE V ADDITIONAL SESSIONS JUDGE, MYSURU IN S.C.NO.174/2013 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR

THE OFFENCE PUNISHABLE UNDER SECTIONS 498-A AND 302 OF IPC & ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 22.03.2022, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **S.RACHAIAH J.**, DELIVERED THE FOLLOWING:-

JUDGMENT

The appellant has preferred this appeal against the impugned judgment of conviction dated 13.12.2018 and order of sentence dated 17.12.2018, passed by the V Addl. Sessions Judge, Mysuru, in S.C.No.174/2013, wherein the Trial Court convicted accused No.1 of the offence under section 498A of IPC and sentenced him to undergo rigorous imprisonment for one year and shall also pay a fine of Rs.5,000/- and in default of payment of fine, he shall undergo simple imprisonment for two months.

Further, the accused No.1 is convicted for the offence under section 302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/-, and in default of payment of fine, he shall undergo simple imprisonment for one year.

2. Brief facts of the case are as follows:-

It is the case of the prosecution that, the complainant has lodged a complaint stating that the accused No.1 and his daughter were husband and wife. At the time of marriage, there was a demand by the accused to pay Rs.50,000/- and gold chain. The complainant however has paid only Rs.20,000/- and a gold chain. But, he was unable to pay the balance. The accused persons were demanding the balance amount from the deceased. she was being subjected to cruelty and harassment for not having paid the amount of balance dowry. Besides the demand of dowry, the accused No.1 was suspecting the fidelity of the deceased and used to assault her. The complainant was told about the facts of harassment, cruelty and suspecting character of the accused No.1 towards the deceased. Hence, the complainant and other elders convened a panchayath and advised the accused No.1 to adjust with the deceased in the family life and lead happy life. In the panchayath, a decision was taken by the elders that a separate house is required for them to make them to be happy and also have a better understanding. The complainant had constructed a separate

house for the sake of his daughter and accused No.1, to make them live happily. However, accused No.1 did not change his suspecting character. Such being the fact, on 14.12.2012, at about 6.00 a.m., Mr.Ningaiah informed the complainant over the phone that the doors of the house of the daughter were not opened and he suspect the foul play might have taken place and requested the complainant to come immediately to the spot. Accordingly, the complainant went to the place and noticed that his daughter was lying on the floor and she was dead. After having noticed that his daughter was dead, he decided to lodge a complaint.

3. Accordingly, the complainant has complained to the police on 15.12.2012. Based upon the complaint, a case came to be registered in Crime No.456/2012 for the offence under section 302 of IPC. After the investigation, the police filed a charge sheet.

4. Since the matter is exclusively triable by the Sessions Court, the Magistrate has committed the case to the

Court of Sessions. The Sessions Court has framed the charges against the accused persons for the offences under sections 498A, 302, 304B r/w section 34 of IPC and also sections 3, 4, and 6 of the Dowry Prohibition Act. Read over and explained the charges to the accused in the language known to them. The accused have pleaded not guilty and claim to be tried.

5. After having considered both the oral and documentary evidence and also the arguments advanced by the learned counsel for the respective parties, the trial Court has held the accused No.1 guilty of the offence under sections 498A, 302 of IPC and whereas Accused No.1 has been acquitted for the offence under sections 3 and 4 of the Dowry Prohibition Act. On the other hand the accused Nos.3 and 4 have been acquitted for the offences under sections 302, 498- A of IPC and sections 3 and 4 of the Dowry Prohibition Act. Being aggrieved by the said judgment and order of sentence passed by the trial Court, the accused No.1 has preferred this appeal.

6. Heard the learned counsel for the parties.

7. Sri. Nagaraja Reddy D., learned counsel for the appellant contended that the entire case is based on circumstantial evidence. The trial Court has erroneously read the evidence on record and concluded that the Appellant has committed an offence which is against to the evidence on record and hence, the impugned judgment is liable to be set-aside.

8. Learned counsel further contended that most of the witnesses have turned hostile, except the relatives and interested witnesses. The prosecution mainly relied on the evidence of PW.10 and PW.11, who are the extra-judicial confessional witnesses; they have turned hostile, and not supported the case. Such being the fact, a conviction based on assumption and presumption is alien to the criminal jurisprudence.

9. Learned counsel further contended that the prosecution has failed to establish the presence of the accused either on the previous day or at the time of the incident. As the

prosecution has not established the presence of the accused, the accused need not answer in the statement recorded under section 313 of Cr.P.C. since the prosecution has not discharged the initial burden the question of invoking section 106 of the Indian Evidence Act would not arise. Hence, the learned counsel for the appellant sought to allow the appeal.

10. Per contra, Sri.Viajayakumar Majage, learned Addl. SPP while justifying the judgment of conviction passed by the trial Court against accused No.1, contended, that the trial Court has rightly convicted the accused No.1 and acquitted accused Nos.3 and 4, after having gone through both oral and documentary evidence on record, which requires no interference by this Court. The learned Addl. SPP further contended that the evidence of the father, mother, and elders of the village is consistent with the suspecting character of accused No.1 towards the deceased and also for demanding of additional dowry. In that regard there were several panchayaths held and Panchayathdars have advised the accused No.1, 3 and 4 and made separate house to stay. Even then, the accused No.1 used

to quarrel with the deceased by suspecting her fidelity. Since there is motive for murder and trial court rightly convicted the accused No.1 interference to the well reasoned judgment is uncalled for. Hence, he sought to dismiss the appeal.

11. Having heard learned counsel for the respective parties, and perused both oral and documentary evidence on record, the points would arise for our consideration are:-

1) Whether the trial Court is justified in convicting the Appellant for the offences under sections 302 & 498A of IPC?

2) Whether the appellant / accused No.1 has made out any ground to interfere with the judgment of conviction dated 13.12.2018 and order of sentence dated 17.12.2018 in S.C.No.174/2013 passed by the V Addl. Sessions Judge, Mysuru?

12. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and

perused the entire material including the original records carefully.

13. This Court being the First Appellate Court, to re-appreciate the entire evidence on record, it is necessary to have a cursory look at the evidence of all the witnesses and documents relied upon for better understanding.

a) PW.1 – Thangavelu, is the witness of Ex.P1 – seizure mahazar, under which, M.O.1 – nighty, M.O.2 – innerwear are said to have been recovered. He has turned hostile.

b) PW 2 – Kalaiah, is the witness to the engagement and marriage, which was performed in the house of PW.3, father of the deceased, and has deposed about the harassment and suspecting character of the accused, but he has turned hostile regarding demand of dowry. Partly supported the case of the prosecution.

c) PW.3 – Raju is the father of the deceased and he has lodged a complaint which is marked as Ex.P3, is also a witness to Ex.P4 – spot mahazar, Ex.P5 – inquest, Ex.P6 –

seizure mahazar. He has identified the photos as Ex.P9 and Ex.P10. He has supported the case of the prosecution.

d) PW.4 – Mahadevaiah is the witness to Ex.P4 – spot mahazar. Supported the case of the prosecution.

e) PW.5 – Jayamma is the mother of the deceased and she has supported the evidence of PW.2 who is her husband and father of the deceased. She has supported the case of the prosecution.

f) PW.6 – Puttaraju, inquest witness – Ex.P5. He has deposed that, he has affixed his signature in the Government Hospital, H.D.Kote. However, he is not aware of the cause of death. Partly supported the case of the prosecution.

g) PW.7 – Jagadeesha is the witness to Ex.P1 – seizure mahazar. Turned hostile, not supported.

h) PW.8 – Mallesha is an independent witness, deposed that he had participated in the engagement and also the marriage ceremony of the deceased and accused No.1. He further states that, he was also a party to the panchayath which was held to advise the accused No.1 to mend his

suspecting character towards the deceased and also deposed that he advised accused No.1 not to assault the deceased. He has supported the case of the prosecution.

i) PW.9 – Nagaraju D, is an independent witness, belonging to the village of PW.3. He has deposed that, he was present at the time of engagement and also marriage negotiations. He deposed, there was a constant demand for dowry. The accused persons used to harass the deceased and cruelty for having suspected the fidelity of deceased. Partly supported the case of the prosecution.

j) PW.10 – Gopalaiah is a circumstantial witness. He has turned hostile, not supported the case.

k) PW.11 – Nagaiah, is a circumstantial witness. He is supposed to depose about the extra-judicial confession made by the accused No.1 with him. He has turned hostile.

l) PW.12 – Shivanna, is a circumstantial witness. Turned hostile.

m) PW.13 – Chinnaswamy is a circumstantial witness. Turned hostile.

n) PW.14 – Raju is a circumstantial witness. Turned hostile.

o) PW.15 – Mayigaiah is a circumstantial witness. Turned hostile.

p) PW.16 – D.S.Shivakumaraswamy, Retired Tahsildar, he has deposed that, on requisition made by the police, he has conducted inquest and submitted report, which is marked as Ex.P5. Supported the case of the prosecution.

q) PW.17 – S.R.Ramesh, PDO, says that, on requisition made by the police, he has issued assessment extract of the house of the accused, which is marked as Ex.P18. Supported the case of the prosecution.

r) PW.18 – Mahadevaiah, Retired ASI, says that he has registered a case based on the complaint by PW.3 in Crime No.456/2012 and FIR as per Ex.P19. Supported the case of the prosecution.

s) PW.19 – Dr.Dinakar says that he has conducted a postmortem over the dead body of the deceased and issued a postmortem report as per Ex.P20. Supported the case of the prosecution.

t) PW.20 – Singaiah, a circumstantial witness, says that he has informed PW.2 about the incident. Partly supported the case.

u) PW.21 – Smt.Gowry, is a witness to the inquest – Ex.P5. She has supported the case of the prosecution.

v) PW.22 – Muddaiah is a circumstantial witness. He has deposed about the incident and he says that he is the resident of village of the deceased. Supported the case.

w) PW.23 – H.Govindaraju, Investigation Officer, who conducted investigation and submitted chargesheet.

x) PW.24 – M.Shivamadaiah, PSI, says that he has conducted partial investigation and handed over the further investigation to PW.23.

14. On careful reading of the entire evidence of all the witnesses, it appears that some of the witnesses have supported the case and some of the witnesses have turned hostile. Those who have supported the case of the prosecution are relatives and interested witnesses and also other witnesses are official witnesses. To appreciate the evidence of these

witnesses, it is necessary to rely on the judgment of the Hon'ble Supreme Court in the case of **MANOJ KUMAR ROOP SINGH vs. STATE OF HIMACHAL PRADESH** reported in **2016 CRIMINAL LAW JOURNAL 5015**, wherein Their Lordships have observed that, "*Generally, a married woman used to disclose facts of cruelty upon her in the matrimonial house to her relatives only.*" On going through the judgment of the Hon'ble Supreme Court, it appears that the evidence of related witnesses cannot be discarded by the relationship existing between the deceased and the relatives. Keeping these observations, it is relevant to analyze the evidence.

15. It is the case of the prosecution, that the marriage of the deceased and accused was performed on 24.05.2006 at Hebbalaguppe village. At the time of marriage accused Nos.1 to 3 demanded dowry of Rs.50,000/- and 30 gms., gold neck chain. However, the complainant has paid Rs.20000/- and 10 gms., of gold and the accused demanded the deceased to bring the additional dowry of Rs.30,000/- and started harassing the deceased even for petty reasons and the accused No.1 was

suspecting the fidelity of the deceased. The harassment and cruelty in connection with the demand for dowry were informed to the complainant by the deceased before her death. The complainant, however, has managed to make a separate house for the deceased daughter and her husband i.e. accused No.1 hoping that their family would be set right. But the accused No.1 had never mended his ways and again started harassing the deceased and suspecting her fidelity and quarreling with her. On 14.12.2012, the complainant received the message at about 6.00 a.m. that, something went wrong in the house of accused No.1 and the deceased where they were residing. The complainant had gone to the place of occurrence and complained against the accused.

16. Now, the evidence of PW.2 who is an independent witness, required to be seen. He deposes that, he along with other elders are the panchathdars. All of them have advised the accused No.1, whenever, he had quarreled with the deceased by suspecting her fidelity and drove her to her parents' house. This

version of PW.2 indicates that the accused No.1 was in the habit of quarreling with the deceased by suspecting her fidelity.

17. Similarly, PW.3-the father of the deceased- Mangala, has deposed about the cruelty and harassment meted out by his daughter in connection with the demand of dowry. He is an illiterate person and rustic villager, unable to understand how to depose before the court, however, though the defence tried to impeach the trustworthiness of this witness, he has withstood and consistently deposed all the details about the demand of additional dowry, cruelty meted out by his daughter and the accused No.1 suspecting the fidelity of his deceased daughter. Hence, the trial Court has rightly considered his evidence. His evidence is relevant and relied upon.

18. PW.5 – Jayamma, who is the mother of deceased - Mangalamma, supported the evidence of PW.3. She has deposed in support of her husband i.e.P.W.3. supported the case. The defence has confronted the statement recorded by the Police under section 161 of Cr.P.C to this witness and got it

marked as Ex.D7. Nothing is elicited to discredit the incident, cruelty, and suspecting the fidelity of the deceased by the accused No.1.

19. The evidence of PW.8 and PW.9 are consistent about the Panchayath said to have been held, for advising the accused No.1 for suspecting the fidelity of the deceased and also demanding additional dowry. These witnesses have not told about the exact date and timings of the panchayath, however, their evidence cannot be brushed aside with regard to panchayath held to advise the accused No.1 and the relatives of the accused No.1.

20. P.W.22 is another witness who deposed that, he and other members of the Hyrige village had been to Hebbalaguppe village and they have conducted the panchayath on several times, relating to the demand of additional dowry and suspecting character of the accused No.1 over the fidelity of the deceased etc. These witnesses are consistent in their evidence about the demand of dowry, harassment and cruelty, in addition to that, the suspecting character of the accused No.1 towards fidelity of

the deceased. It is also relevant to note that, accused No.1 and the deceased were living together in the house, which P.W.3 had got constructed for them, away from accused No.3 and accused No.4.

21. Now, as regards the evidence of the Doctor is concerned, it is necessary to aware about the death. Whether it is homicidal or suicidal. PW.19, the Doctor who conducted postmortem of the deceased, has noticed three injuries and issued a report and the same is marked as Ex.P20, wherein it is mentioned that "*I am of the opinion that, the death is due vagal inhibition, as a result of violent attack on the neck, accentuated by contusion of the brain*". It depicts that the death is homicidal.

22. Admittedly, the entire case is based on circumstantial evidence. It is the settled principle of law that when the case is based on the circumstantial evidence, the changed circumstances has to be proved by the prosecution without leaving any missing link to form the chain. In other

words, the Court must satisfy itself that various circumstances in a chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

23. In order to sustain the conviction, on the basis of circumstantial evidence, the following three conditions must be satisfied:-

- (i) The circumstances from which an inference of guilt is said to be drawn, must be cogently and firmly established.
- (ii) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, and
- (iii) The circumstances, taken cumulatively should form a chain so as to complete that there is no escape from the conclusion that within all human probabilities, the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

It is also necessary to hold that suspicion however strong it may be, but it is not the substitute for proof. The prosecution has to prove the case beyond all reasonable doubt to base a conviction. There is a long distance between "may be true" and "must be true" and the prosecution has to travel all the way to prove the case beyond all reasonable doubt.

24. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Sujith Biswas vs. State of Assam*** reported in **(2013) 12 SCC 406**, wherein their Lordship have held that the distinction between "proof beyond reasonable doubt" and "suspicion" as held as under :

"Para 13 – Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has

a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

25. The circumstances to the guilt are, that accused No.1 to 3 were demanding additional dowry from the deceased. Accused No.1 was suspecting the fidelity of the deceased. In that regard, there were frequent quarrels between accused No.1

and the deceased. Several panchayaths were held to pacify the quarrel. In pursuance of the said panchayath, PW.3 made a separate house for accused No.1 and the deceased. As per the evidence of PW.3 and PW.5, only the accused No.1 and deceased were living in the house. No witnesses have deposed about the presence of the accused, at the place of occurrence. Since the prosecution has failed to prove the presence of the accused, as on the date of incident, it would not be appropriate to draw the adverse inference as per the provision under section 114 of the Indian Evidence Act and the Court cannot invoke the provision under section 106 of Indian Evidence Act and ask the appellant to say the reasons for murder of his wife. Initially, the prosecution has to discharge the initial burden that as on the alleged date of incident, the accused alone was present along with the deceased. In this case, as stated above, no witnesses have supported or deposed that the appellant was present along with his wife. Hence, the trial Court could not have concluded that the accused is the only person who killed his wife in the alleged incident. Since the trial Court has arrived at the conclusion erroneously, interference by this Court with regard to

the murder of deceased by the appellant is essential and required for the purpose of analyzing and re-appreciating the entire evidence.

26. After having analysed the oral and documentary evidence available on record, we are of the opinion that the trial Court committed a grave error in convicting the accused / appellant for the offence under section 302 of IPC. Hence, the conviction for the said offence is liable to be set aside.

27. However, it is proven fact from the evidence of the witnesses that, the harassment and cruelty in connection with the demand of additional dowry and accused No.1 suspecting the fidelity of the deceased. The same fact has been proved by the panchayatdars who are examined in this case as witnesses. However, the prosecution has failed to prove that the accused has committed murder of his wife. The presence of the accused is sine-qua-non to draw the adverse inference against the accused. To invoke the adverse inference as envisaged

under section 114 r/w section 106 of the Indian Evidence Act, the presence of the accused either before death or immediately after death is essential.

28. In the light of the observations made above, point No.1 arose in the present appeal is answered in the "**Negative**" by holding that, the trial court is not justified in convicting Appellant for the offence under sections 302 of IPC. However, the conviction of the Appellant with respect to the offence under Section 498-A is "**Affirmative**". As regards the Point No.2 is concerned, we answered "**partly negative and partly affirmative**" by holding that the appellant / accused No.1 has made out the grounds to interfere with the impugned judgment of conviction and order of sentence with respect to the conviction of the offence under Section 302 of IPC and not made out grounds to interfere with the conviction for the offence under section 498-A of IPC.

29. In view of the above, we pass the following:-

ORDER

(i) The appeal filed by the appellant / accused No.1 is **allowed in part.**

(ii) The impugned judgment of conviction dated 13.12.2018 and order of sentence dated 17.12.2018, passed by the V Addl. Sessions Judge, Mysuru, in S.C.No.174/2013 convicting the appellant/accused No.1 for the offence punishable under Section 302 of IPC is set-aside.

(iii) The appellant / accused No.1 is acquitted for the offence punishable under Section 302 of IPC.

(iv) The impugned judgment of conviction dated 13.12.2018 and order of sentence dated 17.12.2018, passed by the V Addl. Sessions Judge, Mysuru, in S.C.No.174/2013 convicting the appellant/accused No.1 for the offence punishable under Section 498-A of IPC is hereby confirmed.

(v) The appellant / accused No.1 is entitled for the benefit of set-off as contemplated under the provisions of section 428 of Cr.P.C.

(vi) The jurisdictional jail authorities shall release appellant / accused No.1, if he has already completed the punishment imposed by this Court stated supra and if he is not required in any other case.

(vii) The Registry is directed to transmit the record along with the judgment to the trial court for necessary compliance, forthwith.

**Sd/-
JUDGE**

**Sd/-
JUDGE**