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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 01ST DAY OF JULY 2005

PRESENT

THE HON'BLE MR.JUSTICE S.R.BANNURMATH

AND

THE HON'BLE MR.JUSTICE K.BHAKTHAVATSALA

CRIMINAL APPEAL NOs.64/2002 c/w. 63/2002(C)

BETWEEN:

CRL. A. NO.64/2002:

1.B.N.Vijayakumar
S/o.G.Narayanagowda
Aged about 42 years,

2.G.Narayanagowda
S/o.Late Girigowda
Aged about 76 years
Retd., Asst. Director of
Agriculture.

Both are residents of Hosabeedi
T.Narasipura Taluk
Mysore District.

..Appellants

(By Sri A.H.Bhagavan and Sri K.A.Chandrashekar, Advocates)

CRL. A. NO.63/2002:

Lakshamma
W/o.G.Narayanagowda
Aged about 66 years
Resident of Hosabeedi
T.Narasipur Taluk
Mysore District.

... Appellant**(By Sri A.H.Bhagavan and Sri K.A.Chandrashekar, Advocates)****AND:**

State of Karnataka by
Deputy Superintendent of Police
Anti Dowry Cell, C.O.D.
Bangalore.

**... Respondent
(Common in both the appeals)****(By Sri M.V.Devaraju, Spl. SPP)**

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IN CRL. A. NO.64/2002:

This Criminal Appeal is filed under Section 374(2) Cr.P.C. by the Advocate for the appellants against the judgment dated 28-12-2001 passed by the I Addl. S. J. Mysore, in S.C.No.255/1996 convicting the appellants/accused for the offences punishable under Sections 3, 4 and 6 of Dowry Prohibition Act and under Section 498-A and 304-B IPC and sentencing them to undergo R I for 5 years and each of them are directed to pay fine of Rs.1,18,000/- (Dowry amount demanded and accepted by them as held in the judgment) and in default of payment of said fine, to undergo R I for 2 years for the offence under Section 3 of D.P. Act and they are further sentenced to undergo R I for one year and to pay fine of Rs.5000/- each and I.D. of

payment of fine, to undergo R I for 3 months for the offence under Section 4 of D.P. Act and further they are sentenced to undergo R I for the for one year and to pay fine of Rs.5,000/- each and I.D. of payment of fine to undergo R I for 3 months for the offence under Section 6 of D.P. Act and also sentenced to undergo R I for a period of 3 years and are directed to pay fine of Rs.10,000/- each and I.D. of payment of fine to undergo R I for one year for the offence under Section 498-A IPC, they are sentenced to life imprisonment for the offence under Section 304-B IPC and all the above substantive sentences shall run concurrently.

IN CRL. A. NO.63/2002:

This criminal appeal is filed under Section 374(2) Cr.P.C. by the Advocate for the appellant against the judgment dated 28-12-2001 passed by the I Addl. S. J. Mysore, in S.C.No.255/1996 convicting the appellant/accused for the offence punishable under Section 498-A IPC and sentencing her to undergo R I for a period of 3 years and directed to pay fine of Rs.10,000/- and I.D. of payment of fine to undergo R I for one year for the offence under Section 498-A IPC.

The above criminal appeals are coming on for hearing this day, **Bannurmath J.**, delivered the following:-

J U D G M E N T

Aggrieved by the judgment of conviction and sentence dated 28th December 2001 passed by the learned Sessions Judge, Mysore in S.C.No.255/1996 holding the accused No.1 and 2 guilty of the offences under Sections 498-A, 304-B IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act as well as holding the Accused No.3 only guilty of the offence under Section 498-A IPC, the present two appeals are filed.


2. Criminal Appeal No.64/2002 is filed by the Accused No.1 & 2. Criminal Appeal No.63/2005 is filed by the Accused No.3 separately. Since the common judgment and evidence in common is required to be considered or appreciated in both these appeals and counsel for the accused being common, we have taken up both the appeals together for consideration and dispose of the same by this common judgment.

3. This is yet another case of two young lives sacrificed and nipped at bud for the demonic culture of demand of dowry and resultant in cruelty and harassment in our society.



4. The brief facts leading the present case are as follows:

The deceased Vanitha an young girl of 26 years, who was of marriageable age, was proposed for the alliance with Accused No.1 B.N.Vijayakumar, son of Accused No.2 and 3, Narayana Gowda and Laxmamma. As the bride's mother and other relatives were informed that Accused No.1 is a M B A graduate and he is going to get shortly a job in Customs Department, attracted by the same and for the welfare of the deceased Vanitha, marriage was fixed in or around 1991. According to the prosecution, at the time of negotiation, though Accused 1 and 2 demanded a sum of Rs.1,00,000/- along with ornaments like gold chain, watch and ring to the boy and 250 gms. of gold to the girl, the mother of the deceased - P.W.1 and her relatives were reluctant and on their showing inability to pay such a huge sum, ultimately the amount was settled at Rs.25,000/-. They agreed to deposit the amount in the joint name of the accused and the deceased, as well as to give gold ornaments weighing 250 gms. to the girl. The marriage took place on 21-10-1991 and thereafter Vanitha went to live with the accused family at Talakadu in T.Narasipura Taluk from her parental house at Saligrama village.



5. According to the prosecution, almost for a period of two years or so both the deceased and accused No.1 led a happy family life. So also her relationship with her in-laws, Accused Nos. 2 and 3 who were staying together with them was cordial. But, thereafter the trouble for deceased Vanitha started. According to the prosecution, as promised, the accused No.1 did not get any job in the Customs Department and when he was asked as to he being unemployed even after two years, all the accused alleged to have been informed the relatives of the deceased that in order to get job, heavy money has to be give as a bribe and this should be arranged by them. According to the prosecution, in this regard, the accused informed P.W.1 through the deceased that they should arrange and give a sum of Rs.1,00,000/-, if the Accused No.1 was to get any employment. According to the prosecution, even this money was given to the accused, but Accused No.1 remained unemployed. According to the prosecution, during this period, the deceased Vanitha gave birth to a daughter namely Rakshitha (since deceased) who was 2½ years at the time of incident and is also another victim of the dowry lust.

6. According to the prosecution for some time Accused No.1 was working in a Finance Corporation at Mysore and there, he developed



intimacy with one Rupa Jain - P.W:15. It is the case of the prosecution that this intimacy went further and infact it is alleged that accused No.1 married said Rupa Jain even while his marriage with deceased was in subsisting. According to the prosecution, not only P.W.1 and others received a phone call but also anonymous letters regarding the illicit relation or probably the second marriage of accused No.1 with the said Rupa Jain. It is alleged that whenever deceased asked about this, she was also physically assaulted by the husband - accused No.1. When she turned to the in-laws, accused No.2 and 3, seeking some solace, it is alleged that they turned deaf ears and infact accused No.3 the mother-in-law proclaimed that as her son is a male, he can have any number of relations and wife should not bother about it. In this regard when the deceased complained to her mother and other relatives, they approached the accused and it is alleged that rather than settling the matter and bringing the accused No.1 on right path, the accused suggested that they will give some money and the deceased should give in writing that she has no connection with accused No.1 or his family. This was obviously not agreed to by the P.W.1 and her further tortures increased. Ultimately, few days prior to the incident in question she left the house of the accused and went back to the mother's house

and started living there. At the mother's house it is alleged that one fine morning she received a legal notice through an advocate P.W.14 intimating her that her husband is seeking divorce. This act ultimately burst the dam of patience of the deceased Vanitha and she took the extreme step of not only killing herself but also before doing so, kill the child with the intention that child should not suffer the same fate in the cruel society.

7. According to the prosecution in the evening of 25-4-1996 while P.W.1 and other family members intended to enjoy a movie and were about to go there, the deceased refused to go and informed them that she would be at home with the child. In the evening after the movie, when they returned, they saw that the room of the deceased was locked from inside and there was no reply. As it was late night, thinking that the deceased was taking rest, she was not disturbed. However, in the morning when she did not come out as usual, in the morning about 6 O' clock, when the family members went to the room, they saw the deceased hanging herself and the child lying inside on bed without any movements. The door was opened and the family members saw both Vanitha and her daughter Rakshitha dead. After informing the relatives, P.W.1 on 26-4-1996 approached the



jurisdictional Police at Saligrama and gave her written complaint as per Ex.P.1. P.W.18 - the H C and S H O of the Saligrama Police Station on receipt of such information registers a case in Crime No.61/1996 for the offences under Sections 498-A, 306 and 302 IPC against the three accused and investigation is taken up.

8. During the investigation, the usual procedures like holding of various mahazars, inquest proceedings, etc., are carried out. Statements of the relatives, acquaintances, as well as people who could throw light on the incident are recorded. Certain letters written by the deceased as well as suicide note found in the Bed room where she committed suicide are seized. The dead bodies are subjected to autopsy. After receipt of all the necessary reports and completion of the investigation, all the three accused are charged for the offences under Sections 498-A, 304-B IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act.

9. In order to establish the guilt of the accused, the prosecution has relied upon evidence of 20 witnesses, got marked Exs.P1 to P33 and M.Os. 1 to 16. Total denial appears to be the defence version to the incident. No oral evidence is led by the defence. However, Ex. D1



to D5 portions from the statements of the P.Ws 1, 2, 12 and 14 are got marked. As already noted the Trial Court after considering the entire evidence before it and appreciating the same found the accused No.1 and 2 guilty on all counts, however, it found the accused No.3 guilty only for the offence under Section 498-A of IPC thereby acquitting her for the offence under Section 304-B IPC and all the three offences under Dowry Prohibition Act. Hence the present appeals.

10. Sri.A.H.Bhagawan, learned counsel for the appellants taking us through the entire evidence vehemently contended that the judgment of conviction and sentence passed by the Trial Court are contrary to law and evidence on record that the Trial court committed illegality in believing and accepting the evidence of only related witnesses. It is contended that there is no independent evidence led by the prosecution to prove either the dowry demand, acceptance or the alleged harassment and cruelty to the deceased Vanitha. As such, it is submitted that in the absence of independent corroboration, the trial court committed illegality in accepting the prosecution case as it is. It is further submitted that there is no credible evidence against the accused No.2 and 3 specifically regarding the alleged harassment



and cruelty. It is submitted that even if the alleged letters Ex.P.4 and P.7 and the suicide note Ex.P.2 are considered, there is absolutely no mention as to any specific act of harassment or cruelty caused by the accused No.2 and 3. Hence, it is submitted that in the absence of any material evidence, conviction of the accused No.2 and 3 is not only illegal but perverse one.

11. So far as Accused No.1 is concerned, it is submitted that merely because Vanitha has committed suicide that cannot be straight away attributed to the conduct of accused No.1. It is submitted that the prosecution witnesses have repeatedly stated that the deceased was of depressed mind. Even accepting this depression, it is contended that this was not due to any harassment or cruelty, but possibly by the deceased receiving the legal notice regarding divorce issued by the accused No.1. It is submitted that mere issuance of divorce notice would not by any stretch of imagination can be a reason to hold that the accused caused harassment or cruelty. It is submitted that the depressed nature of mind of the deceased even if it is enhanced by the divorce notice that by itself would show that she committed suicide for reason other than the dowry harassment or cruelty. Looking at the entire fact scenario it is



contended that there is absolutely no case made out against the accused by the prosecution by leading any substantive believable evidence and hence the accused are entitled for acquittal.

12. The learned counsel in the alternate contended that even if the conduct of accused No.1 is held against him for the offences taking into consideration the fact that accused No.2 was aged about 70 years and accused No.3 60 years in the year 1996 and as they were in helpless condition as they have no control over the action of their son, at the fag end of their life they should not be subjected to harsh punishment. On the other hand, Sri.M.V.Devaraj, learned Special Public Prosecutor appearing for the State argued in support of the prosecution case.

13. We have heard both the counsels at length and perused the records in detail. At the outset, we would note that there is no much dispute as to Vanitha died on 25-4-1996 by hanging herself and thus it was a suicide by her in her mother's house at Saligrama. Though the death of Rakshitha young daughter of hardly 2½ years age is not part of the crime, we note that as per the autopsy report, she was smothered and this was by the mother deceased Vanitha herself, as



is clear from the suicide note Ex.P.2 left by the deceased. But the moot question to be considered by us is as to who is responsible for this suicidal death of Vanitha and incidentally Rakshitha and more specifically whether the prosecution has succeeded in showing that the suicide by Vanitha was what is called as dowry death, i.e., suicide due to dowry harassment and cruelty.

14. Out of 20 witnesses examined by the prosecution, P.W.1 is the mother of the deceased; P.W.2 - Lakshmegowda is the paternal grandfather; P.W.3 is the Uncle of the deceased; P.W.4 is the Nephew of Accused No.2; P.W.5 is the brother of accused No.1; P.Ws.12 and 13 are the brothers of P.W.1 and thus maternal uncles of the deceased; P.W.7 is the neighbour of the deceased at her mother's house. P.W.15 is the alleged second wife of accused No.1; P.W.14 is the advocate who had issued legal notice of divorce on behalf of the accused No.1 to the deceased Vanitha. P.Ws. 9, 10, 11 and 16 are various mahazar witnesses; P.W.6 Dr.Srinivas Murthy has conducted autopsy over the dead body of Vanitha and Rakshitha and has given his reports as per Exs.P.18 and 19. P.W.19 is the Taluka Executive Magistrate who has held the inquest under Section 174 Cr.P.C. over



the dead bodies and his report is at Ex.P.22. The remaining witnesses are members of the Investigating Team.

15. On assessment of the entire evidence, the circumstances put against the accused and the witnesses speak in this regard are as follows:

(1) dowry demand; harassment and cruelty; P.Ws. 1, 2, 3, 4, 5, 7, 12 and 13;

(2) the immediate cause namely the illicit relationship of accused No.1 with P.W.15 and the alleged second marriage, divorce proceedings, P.W.14 Advocate and P.W.15 second wife of Accused No.1;

16. Apart from these oral evidence, the prosecution has also placed reliance upon the important documentary evidence in the form of Ex.P.2, suicide note, Exs.P.4 to P.8, the letters written by the deceased to her paternal grandfather and the Uncle. Exs.P.9 and 10 are the anonymous letters received regarding the illicit relationship and second marriage of accused No.1 with P.W.15.

17. There is no much dispute that the death of Vanitha took place within seven years of the marriage, since the marriage was in the year 1991 and death was in the year 1996. But, what is to be looked into is whether there was demand for dowry, acceptance and further demand and harassment and cruelty suffered by the deceased. P.W.1, the mother of the deceased and the first informant who set the investigation in motion has narrated in detail as to what happened from the date of marriage negotiations till the deceased breathed her last. According to her the marriage talks took place in the house of her father-in-law (P.W.2) which was attended by the relatives of either side. According to the her, on behalf of the accused, it was informed that the other two daughters-in-law of accused Nos.2 and 3 had brought 1 acre of land, Rs.1,00,000/- in cash and gold ornaments as dowry and same should be the consideration for the present alliance. It is stated that they demanded Rs.1,00,000/- cash with gold ornaments like chain, wristwatch and ring to the bridegroom and 250gms gold to the bride. According to this witness, when she showed her inability to pay such a large sum, ultimately, it was agreed that a sum of Rs.25,000/- was to be deposited in the name of the deceased and gold ornaments worth 250 gms were to be given to the bride. This witness further reveals that while the marriage talks

were going on, when the bride's relatives enquired as to the job or qualification of the bridegroom, they were informed by accused No.2 that his son accused No.1 is an MBA graduate and shortly, going to get a job in customs department. It was also revealed that this sum of Rs.1,00,000/- demanded was towards payment of bribe for getting job for accused No.1. Nevertheless, as already noted, this witness and the relatives agreed to give Rs.25,000/- and gold ornaments and the marriage took place on 21-10-91. Thereafter, the deceased went to Talakad to lead marital life with the accused No.1. This witness states that after sometime of the marriage though initially the deceased and the accused family members had cordial relations, the bickering started over accused No.1 remaining unemployed. According to this witness, whenever enquiry was made as to why accused No.1 was not doing any job and earning livelihood, this witness and others were informed that they were waiting for the money to be collected for the purpose of giving bribe to secure the job. Ultimately, it is stated by this witness that accused demanded a sum of Rs.1,00,000/- on the ground that the accused No.1 is getting a job shortly. This witness states that keeping in mind the welfare of her daughter and son-in-law, she collected a sum of Rs.50,000/- from PW.12, another sum of Rs.25,000/- from PW.3 and Rs.25,000/-



which was with her were paid to the accused. After payment, she was sure that accused No.1 was going to get the job shortly. But when the same did not materialise, it is alleged that the accused went on postponing the discussion on the same. In the meanwhile, the deceased gave birth to Rakshitha and for delivery, went to her mother's house. After the naming ceremony of the child, when she was sent back with the child to the house of the accused, it is alleged that the accused started taunting the deceased to the effect that when the other daughters-in-law who had brought ornaments after the naming ceremony of their children, this deceased has not brought anything. This witness further states that because of the repeated demands and complaints of the deceased, again she gave some gold ornaments to her grand-daughter. But the accused were not satisfied with the same and it is alleged that they have further proceeded to treat the deceased cruelly and harassed for bringing some more money. According to this witness, the accused No.1 had on one or two occasion physically assaulted his wife, the deceased in her presence itself.

18. According to this witness, after some time of these incidents, the accused No.1 got himself employed at Mysore in a Finance

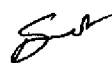


Company and for that also the accused demanded certain amount, which was also paid to the accused No.1. But as the Finance Company closed, the accused No.1 again became unemployed and the torture and harassment for money to the deceased increased. According to this witness, during this period, she also received an anonymous letter intimating that accused No.1 has married one Rupa Jain and when enquired with the parents of the accused, they assured her that the said Rupa Jain was also working in the Finance Corporation and for business purpose accused No.1 and said Rupa Jain are moving together and there is no other relationship between them. But the anonymous letters and the phone calls to PW.1 and the deceased continued. In this regard, it is stated that when PW.3, the uncle of the deceased, contacted the accused, the accused alleged to have tried to settle the dispute by stating that they will deposit some amount towards the probable maintenance of the deceased and her child, subject to the deceased gives a written undertaking that she and her child has no relationship with the accused. This was opposed by the deceased and ultimately, she left the house of the accused, came back to reside with PW.1. This witness further states that after the deceased came to her house, the phone calls continued and they had definite information that accused No.1 had in fact



married PW.15 though the marriage of accused No.1 and the deceased subsisted. Ultimately, on 16-4-96 a legal notice issued by PW.14 on behalf of accused No.1 was received by the deceased making allegations against her conduct and intimating her that accused No.1 intends to divorce the deceased. The receipt of this legal divorce notice ultimately snapped the sanity of the deceased and within short time thereafter, on 25-4-96 she smothered and killed her child Rakshita and hanged herself in the house of PW.1. Before doing the same, she left the suicide note as per Ex.P.2 narrating the mental and physical torture undergone by her at the hands of the accused.

19. This witness has been subjected to searching cross-examination by the accused. Except small or negligible omissions regarding certain dates and mistakes regarding the exact amounts, her testimony as noted above has remained practically unaffected. In the cross-examination, it is elicited that the deceased was a bold woman. On going through her entire evidence and reassessing the same, we find absolutely no grounds to reject it as either concocted or after-thought evidence. The narrations and the chain of events have been further corroborated on all aspects by other two witnesses



namely PW.2-Lakshmegowda, the father-in-law of PW.1/paternal grandfather of the deceased as well as PW.3-Thimmaiah, the uncle of the deceased. Added to the corroboration they have given to the evidence of PW.1, these two witnesses have also further produced the documentary evidence in the form of exhibits P.4 to P.8, the letter written by the deceased Vanitha to them from the house of the accused when she was living there. There is no much dispute as to the genuineness of these letters. All these letters are written on inland letter and bear the postal seals as well as dates as to when they were posted and received. On the face of it and in the absence of any challenge to the genuineness of these letters, they have to be accepted as written by the deceased. Perusal of these letters reveal the torture and harassment undergone by the deceased at the hands of the accused. In Ex.P.4 addressed to PW.3, the deceased has written thus:- " ಅದರೆ ಇಲ್ಲಿ ನನಗೆ ತುಂಬಾ ಕಷ್ಟ ಆಗುತ್ತಾ ಇದೆ. ನನಗೆ ನನ್ನ ಮನೆಯವರು ದುಡ್ಡನ್ನೂ ತೆಗೆದುಕೊಂಡು ಬಾ ಅಂತ ತುಂಬಾ ಒತ್ತಾಯ ಮಾಡುತ್ತಾ ಇದ್ದಾರೆ. ಅವತ್ತು ನಾನು ನಿಮ್ಮ ಮನೆಗೆ ಬಂದು ಬಳಿಗನ್ನೂ ಅಡ ಇಡಿಸಿ ದುಡ್ಡನ್ನೂ ತಂದು ಕೂಟ್ಟೆ. ಅದರ ಇವರು ಬರಿ 15 ಸಾವಿರ ರೂಪಾಯಿ ತೆಗೆದುಕೊಂಡು ಬಂದಿದ್ದೀಯಲ್ಲ, ಅದನ್ನೂ ತೆಗೆದುಕೊಂಡು ನಾನು ವಸನ್ನೂ ಮಾಡಲಿ ಅಂತ ಶೆನ್ನಾಗಿ ಹೂಡದರು. ನಾನು



ಹೇಳಿದುದು 75 ಸಾವಿರ, ಬರಿ 15 ಸಾವಿರ
ತಂದಿದ್ದಿಯಲ್ಲ ನಿನಗೆ ಎಷ್ಟು ಕೊಪ್ಪು
ಅಂತ ಆಗೋ ಅಷ್ಟು ಹೊಡೆದರು.

ಈ ಕಾಗದನ ನಾನು walking ಹೋದಾಗ
ನಾನು post ಮಾಡಿದ್ದಿನಿ. ನನಗೆ ತುಂಬಾ
ಬೇಜಾರಾಗಿದೆ, ಭಯವಾಗಿದೆ. **

This exhibit P.4, and especially the extracted portion shows that the accused were after the deceased for bringing money. So also it reveals the act of accused No.1 in assaulting the deceased and her fear for her life. This letter was written on 28-3-96. In another letter dated 4-4-96 marked as exhibit P.5, the deceased has again complained to PW.3 the harassment received by her at the hands of the accused. In this letter there is also additional information regarding the accused No.1 having some illicit relationship with one Rupa. In exhibit P.6 written to PW.3 dated 8-4-96, she has stated thus: " ನನಗೆ ದುಡ್ಡಿನ ಒತ್ತಾಯ ಜಾಸ್ತಿಯಾಗಿದೆ. ನೀವುಗಳು

ನಾನು letter ಬರೆದರು ಯಾವ action ಕೂಡ
ತೆಗೆದುಕೊಳ್ಳುತ್ತಾ ಇಲ್ಲ. ಇಲ್ಲ ನನ್ನ ಸ್ಥಿತಿ ತುಂಬಾ
ಜಂತಾಜನಕವಾಗಿದೆ. ಮಾನಸಿಕವಾಗಿ, ದೈಹಿಕವಾಗಿ ನನ್ನನ್ನೂ
ಜತ, ಹಿಂಪೆ ಮಾಡಿ ಮೂವರು ಕೂಲುತ್ತಿದ್ದಾರೆ. **



indicating the growing demands of the accused for bringing money as well as both physical and mental torture given to the deceased. The letter dated 12-4-96 addressed to PW.3 as per exhibit P.7 as well as the letter dated 13-3-96 addressed to PW.2, the relevant portions are as follows: “ ಇಲ್ಲ ನಾನು ಇನ್ನೂ ಎಷ್ಟು ದಿನ ಬದುಕಿರುತ್ತೀನಿ

ಅನ್ನುವ ಭಯ ಅಗಿದೆ. ನನ್ನನ್ನು ದುಡ್ಡುಕೊಡು
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ಮಾಡುತ್ತಾರೆ. ಎಲ್ಲ ನನಗೆ ಬಿಂಕಿ ಹಜ್ಜಿ ಬಿಡುತ್ತಾರಾ
ಅಂತ ಭಯವಾಗಿದೆ. ಮನೆಯಲ್ಲ ಸೀಮೆ ಎಣ್ಣೆ ಇದೆ.
ಯಾವ ಸಮಯದಲ್ಲ ಏನು ಮಾಡುತ್ತಾರೋ ಭಯ.
ನನ್ನ ಮಗಳೆ ನನಗೆ ಯೋಜನೆ. -ಈ ದುಡ್ಡಿನ ವಿಷಯ
ದಲ್ಲ ನನ್ನ ಮಾವನವರಿಗೆ ಯಾಕೆ ಹೀಗೆ ಮಾಡುತ್ತೀರಿ
ಅಂತ ಕೇಳಿದರೆ, ಹೌದು ಅವರಿಬ್ಬರೂ ನೂನೆಯಂದಿರು ಒಂದು
ಒಂದು ಎಕ್ಸರೆ ಗಣ್ಡಿ ತಂದಿದ್ದಾರೆ, ನೀನು ಏನು ತಂದಿದ್ದೀಯ
ಅಂತ ನಾವು ನಿನ್ನನ್ನು ಕೇಳಬಾರದು ಅಂತ ಅಂದರು. ಇವರು
ಹಿಕ್ಕಿಬಿಕ್ಕಾಪುರದಲ್ಲ open ಮಾಡಿರುವ financeಗೆ ದುಡ್ಡನ್ನು

St

ಕೊಡು, ಅವಳು ತಂಬಾ ದುಡ್ಡನ್ನೂ ಹಾಕಿದಾಳೆ
 ಅಂತ ಹೇಳುತ್ತಾರೆ. ಇದು ಯಾವ ಕರ್ಮ ನನಗೆ.
 ಮಾದಲು ಗಂಡನ ನನಗೆ ಸರಿ ಇಲ್ಲ. ಜೊತೆಗೆ "ಈ
 ಕೊಟ್ಟ ಬೇರೆ. "

" ನೀವು ಹೇಳಿದ ಹಾಗೆ ನಾನು ನನ್ನ ಅತ್ತೆ ಮಾವನವರನ್ನೂ
 ತುಂಬಾ ಒಳ್ಳೆಯವರು ಎಂದು, ಇವರೇ ನನ್ನ ತಂದೆ ತಾಯಿ
 ಗಳೆಂದು ನಂಬಿದ್ದೆ. ಅದರ ಅದಕ್ಕೆ ಅವರು ನನಗೆ ಕೊಟ್ಟ
 ಬಹುಮಾನವೇನು. ತಮ್ಮ ಮಗ ತಮ್ಮ ಮಾತುಕತೆದಾರ್,
 ಅವರು ಸರಿಯಾದ ದಾರಿಯಲ್ಲ ಹೋಗುತ್ತಿಲ್ಲ ಎಂದು
 ನಾನು ಅವರಿಬ್ಬರಿಗೂ ಪ್ರತಿಸಲಹೆ ಹೇಳಿದಾಗಲೂ ಅವರು ನನ್ನನ್ನೂ
 ಹೊರಿಸಿದರು. ನನ್ನ ಮಗ ಅಂತವನಲ್ಲ ಅಂದರು. "

clearly indicate the mental and physical harassment given by these
 accused over demand of additional money through the deceased to
 her relatives namely, PWs.1 to 3. These undisputed letters, exhibits
 P.4 to P.8 clearly show that the deceased was under constant
 harassment and cruel treatment by the accused. These letters
 corroborate the oral evidence of PWs.1 to 3.

20. It is necessary to note the argument of the learned counsel for
 the appellants in this regard, that these letters, including the suicide
 note at exhibit P.2 show the mental condition of the deceased
 because of the divorce notice issued by accused No.1 to the deceased.

It is to be noted that though the divorce notice is dated 16-4-96 and even assuming the same was received on the same day, exhibits P.4, P.5, P.6, P.7 and P.8 are all written much earlier to this notice. It is also submitted that this vegeanceful attitude of the deceased was only after coming to know of the alleged illicit relationship between accused No.1 and PW.15. It is to be noted that except in exhibit P.5 dated 4-4-96, we do not find any reference to the alleged illicit relationship between accused No.1 and PW.15. All these other letters are only in respect of the harassment and cruelty meted out by the accused over their non-fulfilling of their demands.

21. It is at this stage we would like to refer to the last letter or the suicide note of the deceased as per exhibit P.2. It is to be noted that this exhibit P.2 also is not in dispute as to the genuineness. In this letter again, the conduct of the accused, their behaviour towards the deceased has been explained in detail and the bear reading of the contents are self-revealing. Apart from it, the same also being corroborative it also reveals the mental agony underwent by the deceased and her ultimate step of not only committing suicide but also ending the life of her child Rakshitha. This also reveals her initial strongness of mind, trying to bear all the cruel treatments



given by the accused, but ultimately, having lost the battle in life, her resorting to the extreme step of committing suicide. The reading of this exhibit P.2 clearly shows to us that the deceased was not of a weak mind. In fact, the contents of the letters and the suicidal note exhibit P.2, other letters exhibits P.4 to P.8 show her strong will to face the world, and especially her problems at the hands of the accused. These letters reveal the true nature of Indian women. In India right from Vedic period, woman is described or compared to mother earth and called as 'Kshamaya Dharitri' i.e., to say, she is like the mother earth, who bears all the atrocities committed on her and still pardons. But even as is the case of the mother earth, when the atrocities on her go beyond bearing, the volcanoes explode resulting in the death of such women. This is what exactly happened in the present case. On perusal of the oral evidence of all these related witnesses as well as the documentary evidence in the form of letters-suicide note exhibit P.2, the letters exhibits P.4 to P.8 written by the deceased clearly show that she was harassed and tortured, mentally and physically by the accused, especially accused Nos.1 and 2. No doubt, accused No.3, the mother-in-law has played some role. But that is limited to only not taking proper care by her or mending ways of her son and that is why, in our view, the Trial Court has rightly




found the accused No.3 guilty of the offence under Section 498-A IPC alone. However, so far as accused Nos.1 and 2 are concerned, we find that there is sufficient cogent and consistent evidence as to their repeated demands, acceptance and further demands and torture both physically and mentally to the deceased. Incidentally, so far as accused No.1 assaulting the deceased as spoken to by PW.7-Jayamma is concerned, she is a resident of Saligrama Village itself and according to her, her services were called for after the delivery of the child Rakshitha for the purpose of oil bathing and massages. According to her, immediately after the deceased came from the house of the accused and she was in the process of giving oil massage, she saw contusions on the back of the deceased and when questioned, the deceased revealed that they were as a result of the assaults of accused No.1. It is to be noted that this witness is totally independent witness and there is absolutely no contra-indicative material elicited by the defence to show that she is either speaking falsely and that too, for what reason. This is another piece of evidence to show the cruel attitude of the accused, especially accused No.1 towards the deceased. If one considers this evidence, it is clear that the prosecution has succeeded in showing the demand and acceptance of dowry at the time of marriage and even thereafter,



further demands and receipt of amount, and mental and physical torture given to the deceased over non-meeting of further demands. On going through the entire evidence, especially, the documentary evidence-letters, it reveals that accused Nos.1 and 2 have jointly committed the mental and physical harassment over their demands and even after reappraisal of the entire evidence, we find that the conclusion arrived at by the Trial Court regarding the guilt of accused Nos.1 and 2 for the offences under Sections 498-A, 304-B IPC as well as Sections 3, 4 and 6 of the Dowry Prohibition Act stands proved. We find that the Trial Court has considered the entire evidence in its proper perspective and even otherwise, on reappraisal and reconsideration of the entire material evidence, we hold to the same effect.

22. As such, we do not find any illegality or perversity in the appreciation of evidence by the Trial Court in finding the accused Nos.1 and 2 guilty of the offences under Sections 498-A and 304-B IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. We also find that the Trial Court was justified in giving benefit of doubt to accused No.3 for the offence under Section 304-B IPC and for the offence under the Dowry Prohibition Act and convicting her only for



the offence under Section 498-A IPC. As such, we do not find any merit in the appeal.

23. At this stage, the argument of learned counsel for the appellants regarding harshness of the sentence imposed is required to be considered. The argument of the learned counsel is that though under Section 304-B IPC, the maximum punishment is imprisonment for life, normally, the Courts are not imposing the same and in the absence of any special reasons, is illegal.

24. Time and again, the Apex Court and this Court have considered the relevant factors while imposing the sentence. In the case of SURJIT SINGH v. NAHARA RAM AND ANOTHER reported in 2004 (6) SUPREME COURT CASES 513, the Apex Court has observed thus :

"The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to



new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which much be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system, to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

Friedman: Law in Changing Society, relied on:

"Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows

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some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread."

Similarly, in the case of STATE OF M.P.v. MUNNA CHOUBEY AND ANOTHER reported in 2005 (2) SUPREME COURT CASES 710, the Apex Court has considered the object of function of criminal law jurisprudence and sentencing theory. Keeping in mind these guidelines, in our view also on the face of growing menace of dowry deaths, young brides lose their life, unless severe punishment is given, the law by itself or the penal provision will not serve its



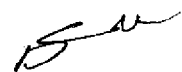
purpose. The object of punishment is not only to punish the culprits but also to make it a deterrent so that, others who are thinking of such acts/offence would also be aware of the severe consequence or punishment. However, these depend on facts and circumstances of each case also. The courts are required to consider the mitigating circumstances if any, and pass the sentences accordingly.

25. In the present case, though the maximum sentence for the offence under Section 304-B IPC is imprisonment for life, in the peculiar facts and circumstances that accused No.1 though an MBA graduate remained unemployed for number of years, as held by the Apex Court in the case of STATE OF KARNATAKA v. M.V.MANJUNATHEGOWDA AND ANOTHER reported in 2003 (2) SUPREME COURT CASES 188, sentence of R.I. for 10 years would meet the ends of justice instead of maximum punishment of imprisonment for life. So far as the offence under Section 498-A IPC is concerned, the punishment of R.I. for 3 years appears to be just and proper. However, the fine of Rs.10,000 is reduced to Rs.1000. So far as the offence under Section 3 of the Dowry Prohibition Act is concerned, the minimum prescribed punishment is imprisonment for 5 years and the fine shall not be less than Rs.15,000 or the amount



of value of dowry whichever is more. The Trial Court has sentenced accused No.1 to undergo R.I. for 5 years which we deem to be proper. So far as the fine amount is concerned, the Trial Court considering the total amount of dowry of Rs.1,18,000 paid by PW.1 to the accused, has imposed a fine of Rs.1,18,000 to be paid by each of the accused. This in our view is slightly excess. There is no doubt in our mind that accused No.1 demanded and accepted a sum of Rs.1,18,000 in all and this amount has to be divided proportionately between accused Nos.1 and 2. As such, we impose a fine of Rs.50,000 along with R.I. for 5 years to accused No.1 for the offence under Section 3 of the Dowry Prohibition Act. So far as sentence of imprisonment of R.I. for 1 year passed by the Trial Court for the offence under Sections 4 and 6 of the Dowry Prohibition Act, same is proper; whereas the fine amount for the said offence, of Rs.5,000, which is little on the higher side, has to be interfered with. Accordingly, the fine amount is reduced to Rs.1,000. All these fine amounts imposed on the aforesaid offences carry a default sentence of R.I. for 1 year individually.

26. So far as the punishment of accused No.2 is concerned, though he is equally guilty along with accused No.1 and probably, has taken



a lead in not only demanding, but also in causing cruelty more mentally to the deceased, taking into consideration he was 70 years when the incident took place and now probably ripe age of around 80 years, in our view, it is a mitigating circumstance. For the offence under Section 304-B IPC is concerned, the sentence of imprisonment for life appears to be harsh. We reduce the same to S.I. for 7 years. So far as the offence under Section 498-A IPC is concerned, accused No.2 is sentenced to S.I. for 3 years with a fine of Rs.1,000. So far as the offence under Section 3 of the Dowry Prohibition Act, we reduce the fine of Rs.1,18,000 to Rs.50,000 carrying default sentence of 1 year S.I. The sentence of R.I. for 5 years for the said offence remains unaltered. So far as the offence under Sections 4 and 6 of the Dowry Prohibition Act are concerned, the sentence of imprisonment is altered to S.I. for 5 years and the fine is reduced to Rs.1,000.

27. So far as the accused No.3 is concerned, again, taking into consideration she was 60 years at the time of the incident and probably now 70 plus years and her limited role in the harassment and cruelty, we deem it proper to sentence her to undergo imprisonment for a period she has already undergone in custody



during the Trial and to pay a fine of Rs.500 instead of 3 years R.I. and a fine of Rs.10,000.

28. There is some dispute regarding amount in deposit in the joint name of the deceased and accused No.1. As is disclosed from the evidence and on reappraisal, this amount was deposited by PW.1 after demands of the accused, subsequent to the marriage itself. As this sum has been undisputedly deposited by PW.1, we direct that the same shall be paid to PW.1. The Trial court is directed to see that this amount being deposited in bank shall be disbursed to PW.1 along with the interest accrued immediately. If the fine amount is realised, out of the same, a sum of Rs.1,00,000 shall be paid to PW.1-Mahalakshmi as compensation under Section 357 Cr.P.C. It is stated by the learned counsel for appellants that accused No.3 has already deposited Rs.5,000 out of the fine amount of Rs.10,000 imposed by the Trial Court. Then if that is so, after deducting the fine of Rs.500 now imposed, the balance amount of Rs.4,500 shall be adjusted with the fine imposed on accused No.2.



The appeals stand disposed of accordingly.

Sd/-
Judge

Mpk/- vrp/-

Sd/-
Judge