



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF APRIL, 2018

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL APPEAL NO. 521 OF 2010

BETWEEN

H.N. PARAMESH, ®
S/O NARAYAN SHETTY,
AGED ABOUT 25 YEARS,
R/AT HALDIMANE ROAD,
1ST CROSS, SHIVAJOTHI NAGAR,
HASSAN.

... APPELLANT

(BY SRI. GIREESHA J.T., ADVOCATE)

AND

STATE BY HASSAN PENSION MOHALLA POLICE,
REP. BY S.P.P., HIGH COURT BUILDING,
BENGALURU.

... RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374(2) CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT IN S.C.NO.
115/2007 DATED 27/28.04.2010 ON THE FILE OF THE
PRESIDING OFFICER AND ADDITIONAL SESSIONS JUDGE,
FAST TRACK COURT, HASSAN - CONVICTING THE
APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE
UNDER SECTION 304(B), 498(A) OF IPC AND SEC. 3, 4 AND 6
OF THE D.P. ACT. AND APPELLANT/ACCUSED NO.1 SHALL
UNDER GO RIGOROUS IMPRISONMENT FOR 7 YEARS FOR
THE OFFENCE PUNISHABLE UNDER SECTION 304(B) OF IPC
AND THE APPELLANT/ACCUSED NO.1 SHALL UNDERGO
SIMPLE IMPRISONMENT FOR A PERIOD OF ONE YEAR AND
TO PAY A FINE OF RS. 1,000/- IN DEFAULT TO PAY A FINE
AMOUNT HE SHALL UNDERGO SIMPLE IMPRISONMENT FOR
A PERIOD OF ONE MONTH AND THE APPELLANT/ACCUSED

NO.1 SHALL UNDERGO SIMPLE IMPRISONMENT FOR 5 YEARS AND TO PAY A FINE OF RS. 15,000/- IN DEFAULT TO PAY A FINE AMOUNT HE SHALL UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF SIX MONTHS, FOR THE OFFENCE PUNISHABLE UNDER SECTION 3 OF D.P. ACT AND THE APPELLANT/ACCUSED NO.1 SHALL UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF SIX MONTHS AND TO PAY A FINE OF RS. 2,000/- AND IN DEFAULT TO PAY A FINE AMOUNT HE SHALL UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF ONE MONTH AND APPELLANT/ACCUSED NO.1 SHALL UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF 6 MONTHS, FOR THE OFFENCE PUNISHABLE UNDER SECTION 6 OF D.P.ACT. ALL THE ABOVE SENTENCES SHALL RUN CONCURRENTLY.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.04.2018 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been preferred against the judgment passed by the Presiding Officer and Additional Sessions Judge, Fast Track Court, Hassan in S.C.No.115/2007 dated 27/28.04.2010 convicting the appellant/accused for the offence punishable under Section 304(B), 498(A) of IPC and Sec. 3, 4 and 6 of the Dowry Prohibition Act thereby sentencing the accused to undergo rigorous imprisonment for 7 years for the offence punishable under section 304(B) of IPC, further he shall undergo simple imprisonment for a period of one year and to pay a fine of Rs. 1,000/- in default to pay a fine amount he shall undergo simple imprisonment for a period of one month

for the offence punishable under section 498A of IPC, further the accused shall undergo simple imprisonment for 5 years and to pay a fine of Rs. 15,000/- in default to pay a fine amount he shall undergo simple imprisonment for a period of six months, for the offence punishable under section 3 of D.P. Act, further he shall undergo simple imprisonment for a period of six months and to pay a fine of Rs. 2,000/- and in default to pay a fine amount he shall undergo simple imprisonment for a period of one month and further he shall undergo simple imprisonment for a period of 6 months, for the offence punishable under section 6 of D.P. Act.

2. The brief facts of the case are as under:

On a complaint lodged by H.L. Prakash, S/o Late Lakkashetty, before the Hassan Pension Mohalla Police Station alleging that her daughter Ashwini was given in a marriage with the accused H.N.Paramesh. Their marriage was performed on 14/08/2005 as per the customs prevailing in their community. It is further alleged that at the time of marriage the accused was given a sum of Rs. 40,000/- cash, one TVS Super XL Moped and 90 Grams of gold item as dowry. Subsequent to their marriage, appellant was also given one Mangalore roof tiles house. After their marriage, they lived

happily for six months. Thereafter accused started harassing the complainant's daughter Ashwini by insisting her to bring additional dowry of Rs. 50,000/- from her parental house and it is further alleged that the appellant's parents also demanded to bring the dowry from her parents' house. The demand made by the accused was intimated to the complainant being her father. Due to the demand made by the accused, Panchayath was constituted in his house and complainant requested some more time to arrange the dowry amount to the appellant and even thereafter, the appellant and his parents were demanding dowry amount from deceased Ashwini to open tailor shop. It was further alleged that on 24/02/2007 at about 2 p.m. while the complainant was at home, his brother by name H.L. Yogesh informed him that his daughter committed suicide by hanging. Subsequently, he intimated the same to his wife and relatives and all of them rushed to the house of the deceased and saw the dead body of his daughter which was lying on the diwan cot and on the enquiry his brother, H.L. Yogesh informed that about 1:45 p.m. her body was removed from the place of hanging. It is further alleged that suicide committed by his daughter was due to the harassment given by the appellant and his parents as they were demanding additional dowry of

Rs. 50,000/- and appellant and his parents were responsible for the death of his daughter. Thereafter, complainant lodged a complaint against appellant and his parents to take appropriate legal action. In turn crime came to be registered in crime No. 17/2007. Subsequently the case was taken up for investigation by the IO and charge sheet was laid against the accused for the offences punishable under Section 498A, 304B, 306 R/w Sec. 34 of IPC, beside Sec. 3, 4 and 6 of D.P. Act. Subsequently, the Trial Court framed the charges against the accused for the aforesaid offences, as the accused did not plead guilty but claimed to be tried.

3. In order to substantiate the case against the accused, the prosecution in all examined P.W.1 to P.W.26. Further got marked Ex.P.1 to Ex.P.23. M.O.1 to M.O.14 were marked. Subsequently, the incriminating statement as contemplated under Sec. 313 of Cr.P.C. was recorded, wherein accused denied the truth of the prosecution evidence adduced so far. Thereafter, the accused did not come forward to adduce the defence evidence. But their contradictory statement was marked as Ex.D1 to D3.

4. The Trial Court heard the arguments advanced by the learned PP for the State and defence counsel for the accused

and thereafter, held conviction against the accused for the offence punishable under Section 498(A), 304(B) IPC besides Section 3, 4 and 6 of DP Act. It is this judgment which is under challenge in this appeal by urging various grounds.

5. Heard the learned counsel for appellant and learned HCGP for the State. The point that arises for consideration in this appeal is

“whether the judgment of conviction and sentence held against the accused in S.C.No.115/2007 dated 27.04.2010 is justified under law?”

6. The learned counsel for the appellant has taken me through the evidence adduced by the prosecution in order to establish the guilt of the accused, as wherein the accused being the husband of the deceased Ashwini subsequent to the marriage she was residing in the house of accused and that she was alleged to have meted dowry harassment at the hands of the accused as well as parent in-laws. P.W.1 said to be the complainant and so also being the father of the deceased Ashwini, has filed complaint as per Ex.P.1. He did not produce any documents relating to gold items as well as cash for having paid a sum of Rs. 40,000/- in terms of dowry extended by him

to the accused Paramesh said to be the husband of deceased Ashwini. There is no direct overt act attributed against the accused relating to causing death of deceased Ashwini who committed suicide by hanging in the house of her husband but only general allegations are made in the complaint filed by the complainant. Admittedly, the appellant was not in the house on 24/02/2007 at the time when deceased Ashwini committed suicide by hanging to a wooden rafter. At the said time he was doing his tailoring business in his shop. The same is required to be appreciated in this appeal in a proper perspective but the Trial Court has gravely erred in coming to the conclusion that this accused is cause for the death of the deceased by insisting her to bring dowry in terms of cash of Rs.50,000/- from her parents. The concept of soon before her death relating to the offence punishable under Section 304B IPC has not been established by the prosecution. Despite of it, the Trial court has erroneously held conviction against this accused including other offences. Due to the harassment given by the accused, one month prior to committing suicide her child got aborted and she was taking treatment for the same. As such she had gone into depression due to the abortion, therefore, she committed suicide by hanging and the accused is not

responsible for the alleged incident as narrated in the complaint Ex.P1. It is further contended that at no point of time the accused had demanded to bring additional dowry from her parents house and they had admitted in the evidence of PW.1, 7 and 8 that the deceased was residing in the house of her husband and led a happy marital life for a period of six months. The same has not been appreciated by the Trial Court in a proper perspective. The accused was not the cause for the death of the deceased who has committed suicide by hanging. Prior to her suicide, the deceased had stayed for one month in her parental house and after that she was forcibly sent to the house of the accused. The accused at no point of time had given any sort of harassment to the deceased. There was no independent witness examined for the prosecution in order to prove the guilt against the accused that he demanded dowry in terms of cash from her parents house through the deceased Ashwini.

7. P.W.1 has stated in his evidence that the marriage of the deceased was performed with this accused on 14.08.2005. During the marriage talk this accused as well as his parents also participated. As similarly on the part of the bride one Pandu Shetty, Keshava, Meena, Krishna shetty,

Murthy were also present as the marriage talk was held in his house. The accused demanded dowry in terms of Rs.80,000/- in cash, 130 grams of gold jewellery apart from demanding one Hero Honda motor cycle. But in the marriage talk it was scaled down to Rs.40,000/- in terms of cash, 90 gms gold jewellery and one Super XL Motor cycle. During her marriage, the dowry in terms of Rs.40,000/- and the said Super XL motor cycle, 90 gms gold items had been provided. Subsequent to her marriage, deceased Ashwini had been to her marital house to lead her marital life. She led a happy marital life for a period of six months, but subsequently the accused were insisting her to bring additional dowry in terms of cash of Rs.50,000/- from her parental house and also used to abuse her. Therefore, PW.1 and Pandu shetty, Yogesha and Keshava had been to the house of the accused and consoled them. After eight months of her marriage with the accused that while Ashwini had come to her matrimonial house as her husband Paramesha who insisted her to bring additional dowry in terms of Rs.50,000/- to establish a tailoring shop. The same is informed by her to him. Therefore, in the name of his daughter Ashwini PW.1 has maintained RD for Rs.200/- in the post office and also Rs.200/- was being credited monthly to her savings account.

Subsequently, for a period of 1½ months she led a happy marital life in the house of her husband. Again the accused insisted her to bring additional dowry by giving physical and mental harassment to the deceased by abusing her. On 24.2.2007 at about 2.00 p.m. his brother Yogesha had telephoned saying that Ashwini was hanging in the house of the accused, according to the information received by him. PW.1 had then been to the house of the accused and saw that the body of Ashwini was lying on the Diwan cot. On that day at about 4.30 p.m. he went to Pension Mohalla Police Station, Hassan and gave complaint as per Ex.P1.

8. In the cross-examination he has stated that prior to the death of his daughter, she had undergone miscarriage, for which she took treatment in the Sanjeevini Hospital, Hassan. After that she came to his house for rest and was staying there for one month. The amount in a sum of Rs.40,000/- was given in terms of dowry to the accused Paramesha, but no document was maintained by him but he has given a statement before the COD Police that he lost the receipt relating to the gold items.

9. PW.7, is said to be the brother of the deceased Ashwini wherein he has stated in his evidence that PW.1

Prakash and CW.2 Kamalamma said to be his parents. The marriage of deceased Ashwini was performed with the accused Paramesh on 14.08.2005 at Shiva Jyothi Choultry, Hassan. The marriage talks were held in his parents house. On the part of the Bride, CW.4 to CW.7 as well as his parents participated. Similarly on the part of the bride groom the accused, sisters and brother in laws participated. As per the marriage talk it was decided to provide dowry in terms of cash of Rs.40,000/-, 90 gms gold jewellery and a TVS Moped. During marriage talk his father Prakash had given a sum of Rs.10,000/- to the parents of this accused Paramesha. The remaining dowry in cash was provided by his parents as well as CW.4 who took the dowry after one month. Subsequent to her marriage his sister deceased Ashwini had been to her house wherein she led happy marital life with her husband consisting his parents also. The deceased had come to her parents house and informed that he wants to run cloth shop for that he requires Rs.50,000/- and the same was informed by her sister deceased Ashwini. His father told that 15 days time is required to adjust the said amount. While he or his relative had been to the house of her husband for the purpose of seeing Ashwini that they alleging that she had some relationship with

them saying so, they were extending harassment to her and the same was narrated by his sister Ashwini when she had come to her parents house. In the month of 4th and 5th of February, 2006 that his marriage was also performed. To his marriage accused Paramesha and also Ashwini being his sister and so also third accused Narayana shetty said to be the father of this accused said to be present as on 4.2.2006. During that night while his sister Ashwini was talking with him, the accused picked up a quarrel with her and had not allowed her to have meals and he took her from there. Subsequent to three months the accused Paramesha brought his wife Ashwini to his house, as she was not keeping well. By the time, she has narrated that her husband was insisting her to bring Rs.50,000/- for establishing one mobile shop as well as tailoring shop the same was narrated before her father, who told that he did not have money and would arrange the same after 15 days. But on 24.02.2007 at about 1.45 pm that his uncle CW.7 Yogesha gave telephone message that Ashwini had committed suicide by hanging. On receipt of information about committing suicide they went to the house of accused and saw the dead body of deceased which was lying on diwan cot. There is a passage consisting of verandah in between the verandah and kitchen

room, the veil it was found to be in the position of hanging to the wooden rafter. He noticed that there were nail marks around the neck of Ashwini. As on the same day his father filed a complaint to the police. In the cross examination he had denied the suggestion put forth that there was custom in their community that during the marriage gold items were provided to the bride. He has denied the suggestion that he did not give statement before the COD that during the course of marriage talk his father had given Rs.10,000/- to Accused no.1 and 2. After six months of marriage of Ashwini with accused Paramesha she came to his house saying that accused is insisting for Rs.50,000/- be provided for establishing cloth shop. He further denied that he did not give statement before the COD police saying that his father has provided a house to his sister deceased Ashwini and the same fetched a rent of Rs.400/- and the said amount has been maintained in her name in the Post Office.

10. PW.7 is said to be the brother of the deceased Ashwini, PW.8, 11 and 13 said to be the relatives of deceased Ashwini their evidence are contrary to the evidence of PW.1 who is the complainant said to have given a complaint as per Ex.P1 and further contradictory to the evidence of PW.7 being

the brother of deceased Ashwini. Their evidence is required to be appreciated in a proper perspective, but the same has not been done by the Trial court, as their evidence is contradictory to the evidence of PW.22 said to be the IO in part, PW.24 who laid the charge sheet against the accused. Therefore, the evidence of these witnesses for the prosecution is required to be appreciated in a proper perspective as regards the allegation made in the complaint at Ex.P1 said to be given by the father of the deceased. But the Trial Court has misread the entire evidence and so also misdirected the evidence placed by the prosecution that the accused has given harassment to the deceased Ashwini by insisting her to bring additional dowry in terms of cash of Rs.50,000/- for establishing tailoring shop and cloth shop. The allegation that he had caused the death of deceased Ashwini who hanged herself by means of a veil in the scene of crime and so also the accused insisting considerable dowry during her marriage in terms of gold items as well as cash as narrated in the complaint Ex.P1 was an exaggeration. Therefore, in this appeal it requires re-appreciation of the entire evidence on record by revisiting the impugned judgment and seeking allowing of the appeal by setting aside the impugned judgment rendered by the Trial Court in

S.C.No.115/2007 in its order dated 27.4.2010 against this appellant/accused H.N.Paramesha.

11. In support of his contention the counsel has placed reliance of judgment of Hon'ble Supreme Court in Subhash v. State of Haryana (2011) 2 SCC 715 where in it is held as under:

Criminal Trial – Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Material contradictions – PWs 2 and 10, father and brother of deceased, claimed that oral dying declarations made to them by deceased – This significant fact had been omitted in their statements under S.161 Cr.PC – No explanation for omission – Held, if a significant omission is made in statement of a witness recorded under S.161 Cr.P.C., same may amount to a contradiction – Whether it so amounts is a question of fact in each case – Statements of PWs 2 and 10, inspire no confidence – Possibility that deceased had been burnt in an accident cannot be ruled out – Conviction of appellant set aside – Criminal Procedure Code, 1973, Ss. 161 and 162.

In this case PW.1 being the father of the deceased and PW.7 being the brother of deceased have stated in their evidence relating to the averments made in the complaint at Ex.P1. But on a bare reading of their statement it shows that the entire theory put forth by the prosecution with regard the factum of cruelty and so also the accused insisting her to bring additional dowry in terms of Rs.50,000/- to establish a

tailoring shop is not forthcoming in the case of the prosecution in order to prove the offence under Section 304B of IPC and so also the harassment as extended by this accused relating to offence under Section 498A of IPC. Therefore, the ratio laid down in this judgment is squarely applicable to the facts and circumstances of the case on hand.

Further in the case of Dhanna vs. State of M.P., AIR 1996 SC 2478, it is held as under:

(C) Penal Code (45 of 1860), S.300 – Murder – Proof – Prosecution witness did not refer to any role played by accused when he gave statement to police investigation – accused cannot be convicted for murder on basis of improvement made by said witness as trial.

The Trial Court placed much reliance on the evidence of PW.1 and PW.7 in order to prove the guilt against the accused holding that the accused had extended cruelty to the deceased Ashwini and also demanding additional dowry from her parent's house. The Trial Court should have assigned sound reasons in order to hold that the accused has committed alleged offence and he is the cause for the death of deceased. Therefore, on scrutiny of their evidence it is found that their evidence is contrary to the evidence of PW.24 being the IO, regarding to the improved version in their evidence before the Trial court for the alleged offence. This reliance placed by the

learned counsel for the appellant is also applicable to the present case on hand.

In (2001) 10 SCC 754 between Tarun Alias Gautam Mukherjee vs. State of W.B. it is held as under:

“Penal Code, 1860 – S.498-A – Appreciation of evidence – Death of housewife due to burn injuries – Medical Officer attached to the hospital where deceased had been taken first deposed that the patient herself had stated that she received the injuries due to bursting of stove- Maidservant deposed in her evidence-in-chief that appellant husband of the deceased used to assault deceased almost daily on instigation of his sister, but in cross-examination it was elicited that she had not stated so in her statement to the police recorded under S.161 Cr.PC – Held, such material omission would discredit her version in court – Evidence of other PWs being not of such nature which would establish the cruelty on the part of the husband, appellant cannot be convicted under S.498-A.

In the case on hand to appreciate the contention as taken by the learned counsel by the appellant, it is akin to the evidence of PW.1 and PW.7 coupled with the evidence of PW.24 being the IO who has laid charge sheet against the accused and the evidence of PW.8, PW.9, PW.11 and PW.15. However, on scrutiny of entire evidence of these witnesses and so also the cross-examination as done by the defence counsel, it is elicited that the evidence of PW.1 and PW.7 being the material witnesses is not in conformity with the version of the complaint

as per Ex.P1 coupled with the evidence of PW.24 and the same is contradictory. Therefore, the material omission would discredit their version in the said case. Therefore, if their evidence is taken out from the purview of consideration then the evidence cannot be held to be of such nature which would establish the cruelty on the part of the husband to bring home the guilt of the accused for the offence under Section 498A of IPC. The Trial Court has erred in holding that the prosecution has proved the guilt against the accused under Section 498A of IPC. The ratio laid down in this case also squarely applicable to the present case on hand.

In the case of Appasaheb and another vs. State of Maharashtra (2007) 9 SCC 721 it is held as under:

A. Penal Code, 1860 – S.304-B r/w S.34 – Demand for dowry – Requisites for – Demand made by accused-appellants from parents of deceased to meet domestic expenses and for purchasing manure – Held, cannot be said to be a demand for dowry – Hence, since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained – Dowry Prohibition Act, 1961, S.2

The specific case of the prosecution is that the deceased Ashwini ended her life by committing suicide by hanging with means of M.O.1 – veil at the scene of crime as her husband had caused her death by insisting her to bring dowry in terms

of Rs.50,000/- from her parents house. PW.1 is the father of the deceased who had filed complaint as per Ex.P1 and PW.7 is the brother of the deceased and their evidence runs contrary to the facts of Ex.P1- complaint relating to the averments made against the accused that he has given harassment to the deceased in order to establish tailoring shop. But the same has not been established by the prosecution by placing concrete evidence. Therefore, the ratio laid down in this case squarely applies to the present case on hand.

In Sunil Bajaj vs. State of M.P. AIR 2001 SC 3020 it is held as under:

S.304B – Dowry Death – Proof – No evidence of demand of dowry or subjecting deceased to cruelty for or in connection with dowry-Only vague and inconsistent statements of interest witnesses being parents and brother of deceased - No evidence of any relative or neighbour of parties about cruelty to deceased by accused in relation to demand of dowry-No demand of dowry at time of marriage-No mention of demand of dowry in her letter by deceased to her parents written soon before her death-Material contradictions and serious omissions in prosecution witnesses-No evidence that mental cruelty to which deceased was subjected to by accused was in relation to dowry-Order confirming conviction and sentence is illegal.

In the instant case, the Trial Court did not appreciate the evidence on record in a proper perspective and objectively consider the evidence to reach a conclusion that the appellant

was guilty of the offence and he had caused the death of deceased Ashwini. PW.1 and PW.7 are the material witnesses for the prosecution. The Trial Court has committed an error in concluding that the accused was guilty of the offence as he had given harassment to the deceased. But the ingredients relating to offence under Section 304-B of IPC and so also Section 498-A of IPC subjecting to cruelty and harassment by him soon before her death for or in connection with demand of dowry was not established and the same has been seen in their evidence and also the circumstances cumulatively. Therefore, the entire evidence is required to be reappreciated. This reliance placed by the learned counsel for the appellant also squarely applies to the case on hand.

In Tirath Kumari and another vs. State of Haryana, AIR 2005 SC 4429 it is held as under:

“Penal Code (45 of 1860) S.304B –Dowry death - No evidence to show that soon before the death of deceased was subjected to cruelty by husband or in-laws in connection with demand of dowry – Accused persons entitled to benefit of doubt.”

In the case on hand it is not disputed that the incident had taken place within seven years of marriage of deceased Ashwini with the accused. Section 304B of IPC requires the

following ingredients to be established before the presumption can be drawn under Section 113-B of the Indian Evidence Act:

(a) the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of the marriage;

(b) It must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative;

(c) such cruelty or harassment must be in connection with the demand of dowry.

The aforesaid ingredients are necessary in order to establish the guilt of the accused. Though the prosecution has examined several witnesses that too material witnesses PW.1, PW.7, PW.8, PW.9 and PW.15, the prosecution did not place cogent and acceptable evidence to probabalise that this accused is the cause of death of deceased Ashwini. Therefore, the ratio laid down in this case is applicable to the case on hand relating to the ingredients of Section 304-B and 498-A of IPC. The other offences framed against the accused by the prosecution has not been established that the accused had caused for the death of the deceased Ashwini.

12. The next limb of argument advanced by the learned counsel for the appellant is that the deceased Ashwini and accused led a happy marital life for a period of six months in his house. At that time, accused nos.2 and 3 said to be the parents of this appellant/accused Paramesha were also residing with them. The Trial Court had acquitted accused nos.2 and 3 who were also in the same footing as that of the accused as regards the same allegation in the complaint filed by PW.1 the father of deceased Ashwini that they had demanded additional dowry in a sum of Rs.50,000/- after the marriage and due to the physical and mental harassment meted to Ashwini, she had committed suicide.

13. The evidence of PW.1, the father of the deceased and so also the evidence of PW.7, said to be the brother of deceased Ashwini is found to be contradictory and inconsistent. Moreover, both their statements are an exaggeration relating to the accused who is alleged to have meted out harassment to the deceased and led her to commit suicide on 24.2.2007. It is to be seen that the accused was not present in the house at the time when Ashwini committed suicide by hanging. The veil used by deceased for committing suicide is said to be seized by the IO during the course of investigation by conducting a

mahazar. The same was marked as M.O.1. There are material contradictions in the evidence of PW.1. No documents have been produced in order to prove the guilt of the accused relating to the receipt of dowry in terms of gold items and cash in a sum of Rs.40,000/-.

14. PW.19 is the Taluka Executive Magistrate said to have conducted inquest over the dead body of Ashwini and issued inquest report as per Ex.P11 which bears his signature as per Ex.P11-B. Ex.P12 is the spot mahazar conducted by the IO during the course of investigation which bears the signature of PW.11 said to be the uncle of deceased. Ex.P13 is the seizure mahazar conducted by the IO during the course of investigation in the presence of PW.11 being uncle of deceased Ashwini.

15. PW.24 is the IO who has laid the charge sheet against the accused. The contradictory statement is got marked as per Ex.D1 and D2 which is noticed in the evidence of PW.1 and so also the contradictory statement of Ex.D3 in the evidence of PW.7. As PW.1 and PW.7 are the material witnesses for the prosecution, but their evidence runs contrary to the evidence of PW.22 being the IO who conducted the spot mahazar in part as per Ex.P11 for having seized M.O.1, veil

said to be used by the deceased Ashwini who had committed suicide by hanging to a wooden rafter on 24.2.2007. So also he conducted the spot mahazar in the presence of PW.11. He conducted another seizure mahazar as per Ex.P.9 for having seized TVS XL Moped KA-13-Q-9169. The same has been produced by accused No.1 in the presence of panch witnesses. P.W.26 being the PSI has stated in his evidence that on 24.02.2007 at about 4.30 p.m. P.W.1 Prakash came to the police station and gave a written complaint as per Ex.P.1. Based upon that complaint, he recorded an FIR as per Ex.P.23 and the same was forwarded to the concerned DYSP for further investigation. In the cross-examination he has specifically stated that P.W.1 came to the police station with the written complaint as per Ex.P.1. P.W.22, 24 and 26 are said to be the IOs who conducted the investigation. But the entire investigation is done by P.W. 24 who has laid the charge sheet against the accused. But their evidence runs contrary to the evidence of P.W.1 being the author of the complaint and P.W.7 said to be the brother of deceased Ashwini. They are the material witnesses to the case of the prosecution, but their evidence runs contrary to each other. Therefore, in this appeal it requires to be considered by re-visiting the impugned

judgment and also re-appreciation of the entire evidence on record for the offence levelled against the accused. There is significant omission in the statement of witnesses which has been recorded U/S 161 of Cr.P.C., that too in the evidence of PW-1 and PW-7. The same amounts to contradiction as could be seen in the evidence of P.W.24 being the IO. Ex.D1, D2 and D3 have been got marked in the evidence of P.W.1 and P.W.7 as they are material witnesses.

16. The allegation made in the complaint and so also the theory projected by the prosecution against this accused that he being the husband of the deceased Ashwini and he is the cause for the death of deceased by committing suicide by means of M.O.1 veil as the accused demanded additional dowry of Rs. 50,000/- from her parents house for the purpose of establishing tailoring shop and so also cloth shop for roping the accused in the alleged crime. Therefore, essential ingredients relating to 304(B) IPC i.e., demand for dowry is not established for conviction of the accused as projected by the prosecution by placing the evidence soon before her death and it has not been established by the prosecution. Therefore, it is required to consider the evidence on record and also re-appreciation of evidence in a proper perspective, for the reason

that this accused had caused the death of deceased Ashwini that too soon before her death accused had extended harassment to the deceased, though it has not been established.

17. The prosecution did not place cogent evidence of demand of dowry subject to deceased Ashwini to cruelty or in connection with the dowry harassment there shall be inconsistent statement of P.W.1 and 7 as they were father and brother of the deceased. There shall be some material contradiction and serious omission in the prosecution witnesses which is relating to state that Ex.D1, D2 and D3 which is got marked in the evidence of P.W.1 & P.W.7 and is contradictory to the evidence of P.W.24, the IO who has laid the charge sheet. Therefore, no mental cruelty was subjected to the deceased by the accused being her husband was in relation to dowry harassment. On all these contentions urged by the learned counsel for the appellant and seeking to allow the appeal by setting aside the judgment in S.C.No. 115/2007 passed by the Trial Court.

18. Contrary to the arguments advanced by the learned counsel for the appellant, learned HCGP for the state supported the impugned judgment of conviction and sentence

held by the Trial Court against the appellant / accused in S.C.No.115/2007 dated 27.04.2010 held that this accused extended dowry harassment to the deceased Ashwini by insisting her to bring additional dowry in terms of Rs. 50,000/- in cash from her parents house for the purpose of establishing tailoring shop as well as cloth shop and the same has been reflected in the complaint Ex.P.1 filed by her father P.W.1 which is in conformity in the averments made in the complaint. Similarly, the evidence of P.W.7 said to be the brother of the deceased and driven her out to commit suicide by hanging with means of M.O.1 veil, the same has been seen in their evidence itself. Deceased committed the suicide by means of veil hanging to the wooden rafter in the scene of crime in the house of accused. The dead body was lying on the diwan cot and as P.W.1 and 7 and other relatives went to the house of accused they noticed that M.O.1 was found to be in position of hanging at a wooden rafter, as where the dead body of the Ashwini found on the diwan cot.

19. P.W. 19 being the Taluka Executive Magistrate who conducted inquest over the dead body and issued inquest report as per Ex.P11 which bears the signature of PW.8 and PW.9. P.W.8, P.W.11 and P.W.13 said to be the relatives of

deceased Ashwini they have stated in the evidence which is in conformity with the evidence of PW.1 and PW.7 that the accused had given dowry harassment to the deceased and the accused caused for her death.

20. PW.22 and 25 were the I.O in part. P.W.24 is the I.O who laid the charge sheet against the accused. Learned Trial Judge has appreciated entire evidence for the prosecution as where the deceased committed suicide with means of M.O.1, veil in the house of the accused. PW.7, Ashwath said to be the brother of deceased has stated in his evidence that during his marriage on previous date when deceased Ashwini was speaking with him, that her husband had picked up quarrel with her and not allowed her to have meals and that itself is indicative of the harassment given to her. PW.1 being the father of the deceased Ashwini who had given dowry in terms of gold items during her marriage with the accused. It is further revealed in his evidence that the accused was demanding dowry during the marriage talk held, despite of receipt of considerable dowry in terms of gold jewellery and cash of Rs.40,000/- that the accused was demanding the deceased to bring the additional dowry of Rs.50,000/- from her parents house. The same reveals in the evidence of PW.1 and

PW.7 as they being the material witnesses of the prosecution and their evidence is not been dismantled by the defence counsel, despite of cross examination nothing worthwhile has been elicited to disbelieve their evidence. This is the contention of learned HCGP during the course of the arguments and he further contends that the Trial Court has appreciated the entire evidence of PW.1, PW.4 and PW.7 to PW.11 as they have given evidence for the prosecution, as accused has harassed the deceased physically as well as mentally and caused for her death. The Trial Court has considered all the aspect by assigning sound reason relating to the accused giving harassment to the deceased to bring additional dowry in terms of cash in a sum of Rs.50,000/- despite of giving considerable dowry during her marriage. The deceased has lost her breath within a span of seven years of her marriage. All this evidence has been considered by the Trial Court and had come to the conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt. Therefore, in this appeal it does not call for interference of the impugned judgment and conviction held by the Trial Court in S.C.No.115/2007 and he prays that the appeal may be dismissed by confirming the impugned judgment passed by the Trial Court.

21. In this appeal, the specific case of the prosecution is that the deceased Ashwini committed suicide by hanging with means of M.O.1, veil to the wooden rafter in the house of the accused as where the accused was said to have given harassment to her in order to bring additional dowry from her parents house. The harassment meted by her is briefed to her father-PW.1. On 24.2.2007 at about 2.00 p.m. one Yogesh said to be the brother of PW.1 Prakash informed on phone that Ashwini died by hanging in her husband's house. Accordingly, PW.1 went to the house of the accused with his relatives and saw that the dead body of her daughter was lying on a diwan cot. Ex.P1- complaint said to be received by PW.26 and based upon that complaint he recorded FIR as per Ex.P23. PW.1 went to the police station with a written complaint as per Ex.P1. Subsequent, to recording of FIR, the case has been taken up for investigation by PW.22 being the IO in part who visited the scene of crime on 24.2.2007. PW.11 shown the scene of crime. Accordingly, he has verified the scene of crime, noticed that a veil was found to be in hanging position in the house of the accused to the wooden rafter. The same has been seized by conducting mahazar as per Ex.P12 in the presence of panch witnesses. PW.1 Prakash has produced the marriage

photos of the deceased with the accused and so also the marriage invitation card. The same has been seized in the presence of the panch witnesses by conducting mahazar as per Ex.P8. As the accused who led him to the house along with the panch witnesses wherein he has produced TVS XL KA-13 Q-9169 and the same was seized under Ex.P9 in the presence of panch witnesses. In the cross examination he has specifically stated that on 24.2.2007 he has taken up the investigation since 6.30 p.m. he did not record the statements of neighboring witnesses wherein he visited the house of the accused. The reason was that they did not come forward to give their statement. He did not record the statement of PW.1. PW.9, Pandu has given statement saying that himself and his brother-in-law had been to the house of the accused and gave a sum of Rs.30,000/-. Similarly, he stated that PW.9 has not given statement saying that the accused had given harassment to the deceased Ashwini to bring additional dowry of Rs.50,000/- for the purpose of establishing Tailor shop and mobile shop. He has further deposed that PW.13, Lokesh has not said that PW.1 had given a sum of Rs.10,000/- to accused no.2 said to be the mother of accused no.1. Similarly they have not stated before him that himself and CW.2 Kamalamma

had gone to the house of accused 1 ½ month prior to the date of incident. PW.13 also has not stated before him in his statement that they advised accused no.1 and 2 and they had asked 120gms gold as dowry. Similarly PW.13 has not stated before him that if the deceased speaks with any person, they suspect her as such she did not go out from the house. PW.11, Yogesha has not stated before him that as on the date of marriage PW.1 had given Rs.10,000/- to the first accused Paramesh and in turn he handed over the same to accused no.2 and 3 being his parents.

22. PW.24 being the IO has done the entire investigation and laid the charge sheet against the accused. On 01/03/20017 he took over the case for further investigation from CW.35, DySP on the same day he visited the house of the accused and also verified the same as he was recording the statement of CW.11, Lalitha, CW.14, Rekha, CW.12 Pushpa, CW.8, Mangala on the same day he recorded supplementary statement of PW.1, Prakash. So also he recorded the statement of CW.2, Kamalamma, PW.7, Ashwatha, PW.11, Yogesha, PW.9, H.K.Pandu, PW.15, Keshavamurthy, PW.8- Sujatha, PW.13, Lokesha and PW.17- Vasanta. On the same day he secured post mortem report as per Ex.P4. He has stated in his

evidence that CW.11, Lalitha has not given statement before him that on 24.2.2007 at about 12.00 p.m. she was present near by the door of the house of accused. CW.11, 12 and 14 are the neighborers of house of the accused and also they are the independent witnesses. But the said witnesses have not stated in their statement before him that the accused gave dowry harassment to the deceased. PW.1 gave statement as per Ex.D1 and D2, PW.7 gave statement as per Ex.D3. PW.1 has not stated in his statement said to be given before him as on the date of incident that he had given dowry in terms of Rs.40,000/- and so also he has stated in his statement that himself or his son or his relatives when they suppose to go to the house of the accused they would create relationship of her daughter Ashwini with some persons on suspicion. PW.1 has not stated before him in his statement that accused Paramesh was insisting his daughter Ashwini to bring an amount of Rs.50,000/- for the purpose of establishment of tailoring shop. PW.7, Ashwath has also not given statement that his father had given Rs.10,000/- to the accused Paramesha and the same has been given to accused no.2 Gowramma. He has also not stated in his evidence that before 2 to 3 days of death of Ashwini, she was about to speak with him that accused picked

up quarrel with her and also he has also not stated that there was nailing and scratching marks on the neck of the deceased.

23. PW.8, Sujatha has not stated in her statement before him saying that as deceased Ashwini had come to her house 1½ months prior to the date of incident and on the same day the accused had come to their house and took the deceased. P.W.9, Pandu has not stated in his statement said to be given that after six months of the marriage, accused no.1 had harassed the deceased to bring additional dowry of Rs.50,000/- from her parents house for establishing tailoring shop and mobile shop.

24. PW.15, Cheluva Shetty has not given statement before him saying that PW.1, Prakash was said to be informed to him that his daughter Ashwini has come to his house and her husband was insisting her to bring Rs.50,000/- for improving cloth shop. He did not stated in his statement before him said to be given that himself and PW.1, Prakash and PW.9, Sujatha saying that he did not have money and the same will be adjusted after 15 days and saying so they have left deceased Ashwini in the house of the accused. The evidence of PW.1 and PW.7 coupled with the evidence of PW.8, 9, 15 is said to be contradictory to each other relating to the

dowry harassment given by this accused to the deceased Ashwini who had driven her out to commit suicide by means of M.O.1, veil in his house on 24.2.2007. There are omission and commission which are elicited by the defence counsel in the evidence of PW.24 who has laid the charge sheet against the accused.

It is relevant to extract Section 304B and 498A of IPC which reads as thus:

304B. 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, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.]

Explanation.—For the purpose of this subsection, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

25. Section 304-B of IPC is a dowry death. Soon before the death relating to the dowry harassment of the deceased said to have been established by the prosecution by placing cogent evidence relating to the ingredients of Section 304-B IPC and also the ingredients of Section 498A of IPC that the husband of deceased said to have given harassment to her as inclusive of his relatives as the deceased was residing in the same house. But in the present case, accused no.2 and 3

being the parent-in-laws of deceased Ashwini they were also residing in the house of her husband H.N.Paramesh. But on 24.02.2007, this accused was not present in his house as wherein the deceased Ashwini committed suicide by hanging with means of M.O.1, veil to a wooden rafter. Her marriage was performed with the accused on 14.8.2005 at Shivajyothi Choultry, Hassan. During the marriage talk held that on the part of bride and so also on the part of bride groom said to be present as wherein the accused was demanding dowry in terms of gold jewellery weighing 120 gms and cash in a sum of Rs.80,000/- apart from demanding Motor cycle. But the demand made by the accused was scaled down in a sum of Rs.40,000/- cash and 90 gms jewellery and one TVS XL. The same was determined in a marriage talk held in the house of PW.1 said to be the father of the deceased. Subsequent to her marriage with accused no.1 Paramesh, she had been to her matrimonial house as wherein she led a happy marital life of six months but after six months the accused began to insist her to bring additional dowry in terms of Rs.50,000/- from her parents house for the purpose of establishing tailoring shop and also a cloth shop. PW.1 has not produced any receipt for having purchased the gold jewellery due to the marriage of the

deceased Ashwini with this accused. The ingredients relating to Section 304B IPC i.e., dowry death within span of seven years from the marriage of the deceased Ashwini with the accused and also meted dowry harassment both physically as well as mentally and the same is required to be satisfied by the prosecution to place cogent evidence. Therefore, in this appeal it requires to be evaluated the entire evidence on record as well as scrutinizing the evidence for reappraisal as the material witnesses i.e., PW.1 and PW.7 said to be the father and brother of deceased Ashwini. Their evidence needs to be re-appreciated in this appeal. However, the evidence of these witnesses runs contrary to the evidence of PW.24 being an IO who laid the charge sheet against the accused. Based upon the complaint given by PW.1, the case in crime No.17/07 came to be registered for the offence punishable under Sections 498A, 304B read with Section 34 of IPC and Sections 3, 4 and 6 of Dowry Prohibition Act. In the charge sheet laid by PW.24, CW.11, 12 and 14 said to be the neighbourers of the accused also being the independent witnesses have not given any statement before him that the accused had given dowry harassment to the deceased. Deceased Ashwini was given in marriage with this accused and their marriage was performed

on 14.08.2005. While she was pregnant she had a miscarriage and thereafter she had come to the house of her parents for taking rest for about one month. PW.1 has given statement before the COD police that he has not stated before the IO saying that his daughter had miscarriage. She had miscarriage one month prior to the date of incident and her husband was providing treatment by admitting her to Sanjeevini hospital, Hassan. PW.1 has specifically stated in his evidence that in their community whenever their daughters attain age of majority and also prior to the age of marriage they would prepare some ornaments for their daughter or during the time of marriage they would prepare. As per the customs prevailing in their community, during the marriage of their daughter they provide ear studs, nose studs, silver anklet. As he gave dowry in terms of Rs.40,000/- to the accused Paramesh, he did not possess any document to that effect. While he was giving statement before the COD police that he had stated that the receipt relating to the gold items was lost.

26. In this appeal at a cursory glance of entire evidence of prosecution, more particularly evidence of PW.1 and PW.7, there is no specific evidence as to how PW.1 arranged money in a sum of Rs.40,000/- said to be given as dowry during the

marriage of his daughter with this accused. There are material contradictions and so also serious omission found in the statement said to be given by PW.1, 7, 8, 9 and 15. The same could be seen in their evidence itself which is contrary to the evidence of PW.24. Though the theory put forth by the prosecution that accused is the cause for the death of deceased Ashwini committing suicide with means of M.O.1, veil in the house of the accused on 24.2.2007 at about 2.00 p.m. from the evidence brought on record, the prosecution has not established the case against the accused by placing cogent evidence.

27. The concept of dowry has to be defined with the provisions of the Act including Section 3 and Section 4 of the Dowry Prohibition Act, 1961. The consistent demand of dowry is required to be established by the prosecution regarding the deceased committing suicide by hanging herself with means of M.O.1, veil said to be used by her within a span of 7 years of her marriage. Whereas in the present case the marriage of the deceased Ashwini was performed with the appellant/accused on 14.8.2005. Subsequent to the marriage with him that she had been to her husband's house to lead a happy marital life. Accordingly, she led a happy marital life for six months. But

subsequently, alleging that the appellant/accused being her husband said to be insisting her to bring additional dowry in a sum of Rs.50,000/- for the purpose of establishing a tailoring shop and so also mobile shop. The same is required to be established by the prosecution relating to the dowry death of the deceased. No doubt within a span of seven years she had committed suicide by hanging with means of M.O.1, veil but no concrete evidence has been placed by the prosecution relating to the said offences alleged by the prosecution against this accused. The same has been seen in the evidence of PW.1 and PW.7. They are the father and brother of deceased Ashwini. In so far as Section 113-B of the Evidence Act, it raises a presumption in respect of abatement of suicide in case two conditions are fulfilled. But in the present case, deceased Ashwini had committed suicide with means of M.O.1, veil. The first condition that the woman who has married within the period of seven years immediately preceding the commission of suicide, there is no dispute she lost her breath by hanging to the wooden rafter at the scene of crime on 24.02.2007, but no concrete evidence has been placed by the prosecution that the accused was cause to her death. As mere because the accused is the husband, it cannot be said that he was pestering her to

commit suicide. On 24.02.2007 that the deceased Ashwini committed suicide at about 2.00 p.m. but this accused was not present in the house as he was present in the tailoring shop. PW.1 is the author of complaint at Ex.P1 and PW.7 being the brother of the deceased Ashwini are the vital witnesses for the prosecution, but their evidence is contradictory to the evidence of PW.24, IO.

28. The accused was charged for the offence punishable under Section 498A including 304B of IPC as relating to harassment to her so also dowry harassment. But they are not mutually exclusive. These provisions deals with two distinct offences. Section 498A relating to harassment to deceased Ashwini and Section 304B is also subjected to dowry harassment to her. Therefore, the prosecution is required to establish the case against the accused by placing cogent evidence for harassment relating to offence punishable under Section 498A of IPC and also dowry death as Section 304B of IPC within a span of seven years from the date of her marriage by placing consistent evidence and probabalise that this accused is caused for the death of deceased for torturing his wife for not meeting the demand of dowry as he was insisting her in order to establish tailoring shop in a sum of Rs.50,000/-

from her parents house. However, there was no convincing evidence placed by the prosecution relating to the harassment extended by the accused or even with connection with dowry. It was held that offence under Section 304B of IPC was not made out that this accused is the sole cause for the death of deceased Ashwini. Even there is no specific evidence as placed by the prosecution relating to that the deceased was meted harassment since from the date of her marriage with the accused. She committed suicide on 24.02.2007. As analysed the entire evidence of prosecution relating to the demand of dowry made by this accused subsequent to her marriage with him was not proved and also the accused has given harassment to the deceased and so also the accused had taken considerable dowry in terms of gold jewellery and so also cash in a sum of Rs.40,000/- during the marriage of the deceased Ashwini. Therefore, in this appeal, the entire evidence placed by the prosecution have been re-appreciated and come to the conclusion that the prosecution has not proved the guilt of the accused beyond all reasonable doubt for securing conviction against the accused for the offence punishable under Section 304B, 498A of IPC besides Sections 3, 4 and 6 of D.P.Act.

29. The deceased committed suicide within a span of 7 years. It is unfortunate that the Trial Court did not appreciate the evidence in a proper perspective to reach to the conclusion that the accused had given harassment to the deceased and driven her out to commit suicide by means of M.O.1, veil to a wooden rafter in the house of the accused on 24.2.2007 at about 2.00 p.m. Accused no.2 and 3 being parents-in-law of the deceased Ashwini were acquitted for the same offences. The crucial evidence of the prosecution relating to the necessary ingredients that the deceased Ashwini was subjected to harassment by the accused soon before her death or in connection with demand of dowry was not established.

30. In this appeal, the evidence placed by the prosecution is not sufficient in order to establish the guilt against the accused. On a careful scrutiny of the evidence of PW.1, being the father of the deceased Ashwini and so also the author of the complaint at Ex.P1 and the evidence of PW.7, Ashwath being the brother of deceased, does not repose confidence in any event, regarding the factum of cruelty as regards the manner in which the deceased was dealt with insisting her to bring additional dowry in terms of Rs.50,000/- for establishing a tailoring shop and so also a mobile shop.

However, there is glaring omission made by them, as indicated in their evidence coupled with the evidence of PW.24, being an I.O. In spite of the same, the Trial Court has placed reliance on their evidence to convict the accused. Therefore, reappraisal of the entire evidence meticulously, does not inspire confidence in the mind of this court. Accordingly, the point raised in this appeal is answered in the negative. The accused was in judicial custody for a period of three years three months, which would suffice and would meet the ends of justice. Consequently, considering the grounds as urged in this appeal by the learned counsel for the appellant and in view of the reliance placed in support of his contention, the appeal is allowed and the judgment of conviction held by the Trial Court in S.C.No.115/2007 dated 27/28.04.2010 is hereby set-aside. The accused is acquitted of the charges levelled against him. The bail bond stands cancelled. The fine amount if any deposited by the accused shall be refunded to him on proper identification.

**Sd/-
JUDGE**

DKB