

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1975/2019

C/W.

CRIMINAL APPEAL NO.1870/2019

IN CRIMINAL APPEAL NO.1975/2019:

BETWEEN:

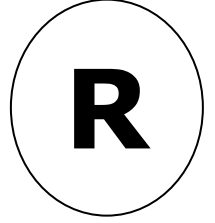
1 . VENKATESHA @ VENKATGOWDA
S/O RANGEGOWDA
AGED ABOUT 30 YEARS
R/O K.HOSAHALLI VILLAGE,
KUNDRU HOBLI, ALURU TALUK
HASSAN DISTRICT-573214. ... APPELLANT

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

AND:

1 . STATE OF KARNATAKA
BY ALURU P.S
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU-560001. ... RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)



THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 22.08.2019 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN S.C.NO.80/2015 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498-A, 302 AND 304-B OF IPC AND SECTIONS 3 AND 4 OF DOWRY PROHIBITION ACT.

IN CRIMINAL APPEAL NO.1870/2019:

BETWEEN:

1 . JAYAMMA
W/O. RANGE Gowda
AGED ABOUT 63 YEARS
R/O. K. HOSAAHALLI VILLAGE
KUNDURU HOBLI, ALURU TALUK
HASSAN DISTRICT-573214. ... APPELLANT

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

AND:

1 . STATE OF KARNATAKA
BY ALURU P.S.,
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU-560 001. ... RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE DATED 22.08.2019, PASSED BY THE 5TH ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN S.C.NO.80/2015 (WITH CLUBBED S.C.NO.149/2015) CONVICTING THE APPELLANT/ACCUSED NO.2 FOR THE OFFENCE PUNISHABLE UNDER SECTION 498A R/W SECTION 109 OF IPC AND SECTIONS 3 AND 4 OF DOWRY PROHIBITION ACT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.02.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

1. These two appeals are filed by accused No.1 and
2. Accused No.1 in CrI.A.No.1975/2019 has questioned the conviction and sentence for the offence punishable under Section 498-A, 302, 304-B of Indian Penal Code (hereinafter referred to as 'IPC') and Section 3 and 4 of the Dowry Prohibition Act (hereinafter referred to as DP Act). The accused No.2 in CrI.A.No.1870/2019 questioned the

conviction and sentence for the offence punishable under Section 498-A r/w Section 109 of IPC and Section 3 and 4 of DP Act.

2. The factual matrix of case of prosecution is that accused No.1 is the husband of the deceased Vani @ Puttalakshmi and accused No.2 is the mother of accused No.1. Marriage of accused No.1 with the deceased took place on 13.12.2009 and at the time of marriage, it was agreed to pay Rs.40,000/- cash and 8 tholas of gold to be given and given Rs.40,000/- cash and 6 tholas of gold at the time of marriage. There was a balance of 2 tholas of gold to be given. After marriage, accused No.1 and the deceased lived happily for about 1 year and thereafter, accused No.1 and 2 have started giving ill-treatment and giving her physical and mental torture. On coming to know about this, father of the deceased spoke to accused No.1 and 2 and also panchayaths were held and inspite of it, continued the harassment. The deceased had gone to her

parents house and about one week back, she came back to the house of the accused. The accused No.1 and 2 have committed the offences of taking away the life under Section 302 of IPC and other offences and hence, case was registered by recording dying declaration and Police have investigated the matter and filed the charge sheet. The accused persons were secured and they did not plead guilty and claims trial. Hence, prosecution examined P.W.1 to P.W.35 and also got marked Ex.P.1 to Ex.P.56 and MO.1 to MO.19. The trial judge after closure of the evidence of the prosecution, recorded 313 statement of the accused and denied the incriminating evidence and accused did not choose to lead any evidence. The trial judge having considered both oral and documentary evidence convicted the accused No.1 for all the charges levelled against him and the accused No.2 is convicted only for the offence of Section 498A r/w Section 109 of IPC and Section 3 and 4 of

DP Act. Hence, these two appeals are filed before this Court.

3. The main contention of the counsel appearing for the appellant/accused No.1 in Crl.A.No.1975/2019 that the Trial Court committed an error in appreciating the evidence and fails to take note of admissions on the part of P.W.1 during the course of cross-examination that the marriage was done according to customs and further there is no specific allegation with regard to who demanded dowry or who received the dowry amount. The P.W.2 and P.W.3 who are mother and sister also admitted with regard to performing of marriage as per the customs. There are contradictions in the evidence of P.W.1 to P.W.3 and P.W.11 regarding demand of dowry and payment of dowry. The witnesses P.W.4 to P.W.6 and PW9 who are the neighbors and eyewitnesses to the incident have not supported the case of prosecution. The witness P.W.5 himself had been to the farmland to get accused No.1 to his

house, informing him about the incident and hence, the presence of accused No.1 at the spot is doubtful.

4. The witnesses P.W.7 and P.W.8 are the villagers of the complainant and they have not supported the case of the prosecution. It is contended that there is no allegation in Ex.P.45 and Ex.P.48 which are dying declaration and Ex.P.45 is allegedly recorded by Tahasildar and no allegation is made against this appellant. Further Ex.P.48 is recorded by the Police and the same is inconsistent with Ex.P.45. The trial judge has committed an error in relying upon Ex.P.45 and Ex.P.48. The counsel also would submit that Ex.P.47-PM report reflects that burns more than 90%. The witness P.W.31 who conducted autopsy, during the course of examination, admitted that eyes, face, hands, fingers, toes and palms were fully burnt. Further, the sole and palms of the deceased were fully burnt. There is no endorsement regarding the fitness of the deceased to give statement in Ex.P.45 and Ex.P.48. The counsel also would

contend that accused No.2 has been falsely implicated in the case and ought not to have invoked the offence under Section 498-A r/w Section 109 of IPC and Section 3 and 4 of DP Act when the demand and acceptance is not proved and with regard to subjecting her for cruelty also, no evidence before the Court.

5. The counsel also reiterated the grounds which have been urged in the connected appeal. The counsel would vehemently contend that when there is no independent evidence before the Court regarding alleged demand and acceptance and the admissions on the part of witnesses is very clear that marriage was performed as per the financial capacity of the parents of the deceased and hence, there was no demand and acceptance and also subjecting her for cruelty and the deceased came back one week prior to the incident that too after giving birth to a child and when such being the case, ought not to have convicted the appellant No.2.

6. Per contra, the counsel appearing for the State would contend that the victim made the statement before the Police as well as before the Tahasildar in terms of Ex.P.45 and Ex.P.48 and the statement is consistent and Doctor evidence is also very clear that cause of death on account of severe burn injury and burn injuries which led to the death. The counsel also submits that though the other witnesses have turned hostile, but the evidence available on record, particularly the evidence of P.W.1 to P.W.3, P.W.10, P.W.11, P.W.12, P.W.17 and P.W.19 is very clear to prove the charges and the same has been considered by the Trial Court and properly appreciated the evidence available on record and hence, it does not require interference.

7. Having heard the learned counsel for the appellant and also the learned counsel for the respondent-State and considering the oral and documentary evidence, the points that would arise for the consideration of this Court are:

- (1) Whether the Trial Court committed an error in convicting the accused for the charges levelled against him and sentencing and it requires interference of this Court?
- (2) Whether the accused No.2 made out the ground that Trial Court committed an error in convicting the accused for the offence punishable under Section 498A r/w Section 109 of IPC and Section 3 and 4 of DP Act and whether it requires interference of this Court?
- (3) What order?

Point Nos.(1) and (2):

8. Both the points were taken together for consideration and similar charges are framed against accused No.1 and 2 and we have given our anxious consideration to both oral and documentary evidence available on record. Having perused the material available on record, it is not in dispute that marriage was held in the year 2009 and incident was taken place on 17.12.2014 and

that too in the matrimonial house of the deceased, but whether the prosecution proved the charges levelled against the accused to be re-considered by this Court by appreciating the evidence available on record. The charge against both accused No.1 and 2 that marriage was performed on 13.12.2009 and demand of dowry was made to Rs.60,000/- and 100 grams of gold and after the negotiation, it was agreed to give Rs.40,000/- cash and 8 tholas of gold and after the marriage, they were cordial for sometime, but later on, at the instance of the accused No.2, deceased was subjected to cruelty and also accused No.1 and 2 have taken the life of the deceased by pouring kerosene and setting the fire at the instigation of accused No.2 and so also committed the offence of dowry death and having accepted the dowry before marriage and subsequent to the marriage and hence, the accused persons were registered for the above offences.

9. The prosecution mainly relies upon the evidence of P.W.1 to P.W.35. The witnesses P.W.4 to P.W.9 have completely turned hostile and so also P.W.6 to P.W.7, P.W.13 to P.W.15 have also turned hostile and they categorically says that they do not know anything about the harassment or ill-treatment given by the accused persons with respect to the demand for remaining dowry.

10.The other witness is P.W.16 - goldsmith who prepared the gold at the time of marriage and his evidence is not necessary since who had prepared the gold ornament at the time of marriage is not relevant.

11.The other witness is P.W.18 also turned hostile and she do not know anything about the harassment or ill treatment.

12.The witness P.W.21 who is the inquest mahazar witness drawing of mahazar in terms of Ex.P.41 and this witness turned hostile except admitting the signature in the

mahazar and so also P.W.22 seizure witness and drawn the seizure mahazar in terms of Ex.P.2, but this witness is hearsay witness and says that accused No.1 had doused the kerosene on the deceased and lit her with fire and thereby killing her but in the cross-examination, he admits that concerned Police had not called him to witness as a panch witness. The witness volunteers that he was along with the complainant. So also P.W.23 is seizure mahazar witness of Ex.P.2 i.e., seizure of half burnt nighty, saree, petticoat, kerosene can and this witness in the cross-examination says that he do not remember the date on which the said mahazar was drawn, but had visited the hospital.

13.The witness P.W.24 is the Taluk Executive Magistrate who had called for conducting the inquest mahazar and says that he came to know that the deceased died due to dousing of kerosene and litting fire on the victim by accused No.1 and 2 and he is hearsay witness.

14. The witnesses P.W.25 and P.W.26 who are witnesses who seized cloth and gold and they have turned hostile and the witness P.W.27 also turned hostile in respect of Ex.P.42 and Ex.P.43 respectively.

15. Having considered these witnesses who have not supported the case of prosecution and turns hostile and they are also the hearsay witnesses, this Court has to consider the remaining evidence before the Court.

16. The witnesses P.W.1 to P.W.3 who are father, mother and sister of the deceased. The witness P.W.12 is the brother of the deceased. The evidence of P.W.1 to P.W.3 is similar with regard to the demand and acceptance before the marriage and also deposes that panchayath was held in view of harassment, but says that daughter was provided with medical treatment and came to know about the incident, but P.W.1 says that both the accused tied her legs and lit the fire and the same was revealed by the victim herself and she died at around 10:30 and identify the

signature in Ex.P.14 and Ex.P.15 and so also identifies MO.1 to MO.4 and MO.10 to MO.13 and also identifies the photographs and Ex.P.16 to Ex.P.22. This witness in the cross-examination admitted that the accused persons at the time of marriage, requested that to perform the marriage as per the customs and as per the customs, performed the marriage. However, volunteers that they demanded dowry and categorically admits that he was the only earning member in the family and he has to maintain entire family and categorically admits that he was not in a position to give dowry and also categorically admits that accused persons are well of that financially sound and they are landlord.

17. The witness P.W.2- mother in her chief evidence she re-iterated the evidence of P.W.1, but in the cross-examination, she also admits that in the year 2013, her daughter came to their house for delivery of second child and also admits that 10 days back she went to the house of

accused and also categorically admits that she was also present at the time of marriage talk and directly came and gave the proposal and also categorically admits that they requested to perform the marriage as per the customs. She also admits that her husband is the only earning member in the family and very difficult to manage the family out of his income and categorically admits that due to the above reasons, they have agreed to perform the marriage and they were unable to perform the marriage in choultry and the said talks were held during the time of the negotiation and also given admission that as per their version, date was fixed and performed the marriage. She admits that father of the accused having two wives and both the wives have children.

18. The evidence of P.W.3-sister though reiterates the evidence of P.W.1 and P.W.2 in her chief evidence and categorically admits in the cross-examination that they performed the marriage of the deceased as per their

financial capacity and accused persons are also agreed for the same. Though denied that they have not demanded the dowry, she also categorically admits that father is the only earning member in the family and not having financial sound condition and difficult to save the money. It is also elicited that as per Hindu customs, at the time of marriage, even though no demand of dowry, provide chain, ear ring and other gold ornaments as per their financial condition and also admits that they gave gift at the time of marriage. She categorically admits that they were not affordable to perform the marriage in Choutri. They performed the marriage in their house itself. She also admits that accused persons are well of. The P.W.3 also admits that prior to this incident, they have not given any complaint with the Police for harassment.

19. The other witness is P.W.10 and though this witness says that accused persons had demanded 120 gram of gold and Rs.40,000/- cash as dowry at the time of

marriage negotiations, finally it was agreed to Rs.40,000/- cash and 10 grams of gold, but the evidence of P.W.10 is contrary to the evidence of P.W.1 to P.W.3. This witness says that demand is 120 grams of gold, but P.W.1 to P.W.3 says that demand was 100 grams of gold and agreed to give 100 grams of gold, but P.W.1 to P.W.3 says 8 tholas of gold. In the cross-examination, though he says that he was present at the time of negotiation before the marriage, but he do not remember the date on which the said negotiations had taken place. This witness is the relative of the deceased that is deceased was daughter of his aunt. But, in the cross-examination, he says that at the time of negotiation, his father, mother and elder uncle and aunt were present. He also categorically admits that accused persons had requested the parents of the deceased to celebrate the marriage in accordance with their traditions and customs and accordingly the marriage was celebrated.

20. The other witness P.W.11 knows the complainant and the deceased and he also reiterates in the line of evidence of P.W.10 and he says that 60 grams of gold was agreed, not as 8 tholas of gold, but he says that Rs.40,000/- cash, but he says that the deceased was subjected for physical and mental harassment to bring the balance dowry of 20 grams of gold, but he says that he came to know that deceased had poured kerosene on herself and had got lit the fire on herself. But, in the cross-examination, though he says that complainant is not related to him, he was not present at the time of marriage negotiation in the house of the complainant and do not know personally about the deliberations that had taken place with respect to the marriage and hence, this evidence is also not helpful to the prosecution since he was not present though he deposes with regard to demand of dowry.

21. The P.W.12 who is the brother and he also reiterates the evidence of P.W.1 to P.W.3 like father, mother and sister regarding demand and the balance of giving of dowry of 20 grams of gold, but in the cross examination, he categorically admits that at the time of marriage negotiation he was residing in Mysore and he do not know anything about the marriage negotiation that had taken place prior to the marriage since he was residing at Mysore and he do not know who were present at the time of marriage negotiation and also he has not attended any panchayath conveyed regarding harassment. This evidence also not helpful to the prosecution.

22. The other evidence available before the Court is evidence of P.W.17. This witness says that negotiations had taken place about 3 years back and the marriage was celebrated after 1 month from the date of negotiation and he reiterates the evidence of accepting to pay the Rs.40,000/- cash and 8 tholas of gold and paid the

Rs.40,000/- in cash and 6 tholas of gold. This witness says that an attempt was made to kill the deceased by pouring kerosene on her and came to know about the same. But, in cross examination, he admits that complainant is his uncle. He do not remember the date on which the marriage negotiation had taken place. He further admits that he was not called for the marriage negotiation that had taken place at the house of the complainant and also admits that since he had not attended the marriage negotiation, he do not know anything about the incident. This evidence also will not comes to the aid of the prosecution to prove the charges levelled against the accused.

23. The other witness P.W.19 says that during the time of negotiation, accused No.1 and 2, his father and other persons were present from their side and settled for Rs.40,000/- cash and 60 grams of gold and also speaks about the incident and deceased died due to burn injury which she had sustained due to the act of accused No.1 and

came to know that accused No.2 was not in her house and she was present at the Hospital. This witness also subjected to cross-examination and in the cross-examination, he says that he cannot remember the date when the marriage negotiations had taken place and further admits that accused persons had requested the complainant and his family members to get the marriage celebrated in accordance with their financial capacity and further admitted that at the time of marriage deliberations as per the traditions and customs prevailing in the Hindu community, the bride will be gifted with gold ornaments even though demand is not made. Further, he admits that complainant and his family members have celebrated the marriage in accordance with their financial conditions and hence, this evidence also very clear that marriage was performed as per Hindu customs. He categorically says that he had not participated in any of the Panchayaths conveyed

by the complainant with accused persons. He do not know about the incident.

24. Now, the evidence remains before the Court is P.W.29-Tahasildar who had visited the hospital at about 7:30 p.m., and in the presence of the Doctor, recorded the statement of the victim and medical officer had examined the victim and certified that she was in a condition to give her statement. At the time of recording the statement, put the questions and satisfied with regard to the condition of the victim and she was in a position to give her statement. The statement of the victim was recorded from 7:30 p.m., and in the form of questionnaire till 9:00 p.m., and also put preliminary questions to the victim in order to satisfy himself. However, he had noticed that the face of the victim and her hands and the body was burnt, even then she was conscious and was attentive to his questions and given the statement. It is also the evidence that both the hands of her were burnt and she was unable to affix her signature to

the same and obtained the thumb impression of her left foot to the said dying declaration and identified Ex.P.45 – dying declaration. This witness was subjected to cross-examination and it is suggested that victim was unconscious when she had visited the hospital and the same was denied. When she had visited the ward, she was sleeping, but however, she was in a condition to give the statement. In the cross-examination, it is elicited that when he had enquired her, who was responsible for her condition and who had brought her to the hospital, she had stated that she was brought in an ambulance to the hospital by her husband himself.

25. The other witness is P.W.31-Doctor who conducted autopsy and taken note of injuries and sustained the injuries to the extent of 90%. He opined that the death was caused due to neurogenic shock and as a result of burn injuries and issued the certificate in terms of Ex.P.47. In the evidence of P.W.31, when the suggestion was made that if

a person douses with kerosene and lits fire with an intention to kill, there is a chances of sustaining the abovementioned injuries and it is likely that death may be caused due to the said burn injuries. This witness was subjected to cross-examination. In the cross-examination, suggestion was made that she had suffered 100% burns and the same was denied. But he says that sustained more than 90% burn injuries in his autopsy report and admits that generally if a person sustained more than 90% burns, then the chances of sustaining complete burn injuries on his eyes, face, hands, fingers, toes and palm is correct. It is also suggested that there would be chances of sustaining the above mentioned burn injuries as mentioned by him in the autopsy report that if a person catches accidental fire by bursting of kerosene stove and the same was denied.

26.The other witness is P.W.32 who was present in the Hospital and request was made to him to state about the victim's condition to give statement. He examined her

at 6:25 p.m., and endorsed on the said requisition that patient was capable of giving her statement and also affixed his signature to the said letter, after that the concerned PSI had recorded the statement of the injured in his presence along with the staff, he identified Ex.P.48 and signature as Ex.P.48(a). It is also his evidence that after the intimation sent to the Executive Magistrate, she had visited the concerned ward at 7:30 p.m., and once again Executive Magistrate had enquired about him with regard to the condition of the injured and on examination and confirmation that she was able to give statement. The Executive Magistrate also recorded the statement of the injured as per Ex.P.45. In the cross-examination, he admits that when the information was received, he was in the casualty department and received the intimation at 6:25 p.m., and within a span of 2 or 3 minutes after receiving the intimation, he had examined the victim in burns ward and he doesn't remember who exactly were present along

with the injured, but there were 2 to 3 persons and sent them outside while recording the statement. The Police started recording the statement within 5 to 10 minutes after issuing the intimation at 6:25 p.m., the statement was recorded for 15 minutes. It is elicited that injured has sustained burn injuries on her face, mouth, eyes and other parts of the body and it was burnt completely. The suggestion was made that she was not in a condition to give any statement due to the severe burn injury and the same was denied. It is suggested that if a person sustained burn injuries to an extent of 50%, he cannot be in a position to speak and give statement and the same was denied. But witness says that he was present when the Executive Magistrate had visited the hospital and recorded the statement. But, Executive Magistrate has not given any requisition to record the statement of the injured, likewise he has not issued any certificate about the physical condition and fitness of the injured to give statement.

However, he has certified in the printed format on which the Executive Magistrate had recorded the statement of injured.

27. The other witnesses is P.W.33 who had conducted the inquest mahazar in the presence of witnesses and recorded the statement of Smt.Rathnamma, Mohankumari, Smt.Sannamma, Devaraju and Swamy at the time of inquest and inquest is marked as Ex.P.41. In the cross-examination, it is elicited that at the time of conducting the inquest mahazar, the eyes, face, Head, mouth, hands and legs including fingers and toes of the deceased were burnt.

28. The other witness is P.W.34-PSI. In his evidence, he says that he had received the requisition from the Hassan Govt. Hospital at 5:30 p.m., and visited the hospital at 6:30 p.m., and collected the intimation. Intimation is marked as Ex.P.30. It is his evidence that immediately he had visited the burn spot and injured was admitted and

requested the duty Doctor by name Prashanth to give his opinion about the injured and being capable of giving her statement, Doctor certified the same, then sent a requisition to the Executive Magistrate to record the dying declaration of the injured. He had recorded the statement of injured in the presence of medical officer Dr.Prashanth between 7:50 p.m., to 8:20 p.m., and he identifies Ex.P.48 and signature of this witness is marked as Ex.P.48(b) and also it is his evidence that he was directed by the DYSP to apprehend the accused persons and accused No.1 was arrested and produced before him. This witness was subjected to cross examination and in the cross examination, he admits that injured had sustained burn injuries on her body and deposes that he cannot say whether she had sustained burn injury all over the body and all other suggestions made that she was not in a position to give any statement was denied.

29. The other witness is P.W.35-Police Superintendent. In his evidence, he says that he had received the intimation of death of the injured at about 10.30 a.m., and immediately sent the requisition to the Executive Magistrate to conduct the inquest and also visited the place of incident and conducted the mahazar at the place of incident as per Ex.P.2 in the presence of panch witnesses and identifies the signature in Ex.P.2 and also seized the MO.1 to MO.4 and rough sketch is also prepared as per Ex.P.54 and signature of this witness is marked as Ex.P.54(a) and also photographs were taken in terms of Ex.P.16 to Ex.P.22 and mahazar was conducted regarding seizure of the cloth and also identifies MO.10 to MO.16 and also enquired the accused person and had recovered one shirt, pant and one match box from the accused person by drawing the mahazar as per Ex.P.43 and also gold ornaments and cash as per Ex.P.46 by drawing the mahazar in the house of the accused when the complainant

had taken them and identifies MO.5 to MO.9 and also says that statements of witnesses are recorded on different dates and also requested to prepare the sketch and also received the FSL as per Ex.P.55 and autopsy document and after completion of investigation, filed the charges sheet. This witness was subjected to cross-examination. In the cross-examination, he admits that he mentioned the date on the document in which he affixed his signature. Further admits that he affixed his signature to the document along with date on the date of preparing the said document. He issued the notice to the panch witnesses at the time of conducting the mahazar at Ex.P.2 and visited the place of incident. It is suggested that he did not visit the place of incident nor he had drawn any mahazar as per Ex.P.2 and neither he had recovered MO.1 to MO.4. In the cross-examination suggestions are made that he has not done Ex.P.2, Ex.P.54 and not collected MOs and also the photographs and also not drawn the mahazar in terms of

Ex.P.43 and the said suggestions are denied. However, he admits that he had not mentioned the denomination of the currency notes which he had recovered under the mahazar Ex.P.46 and all other suggestions are denied.

30. Having considered both oral and documentary evidence in detail, this Court has to examine whether the Trial Court has rightly appreciated the evidence available on record in convicting and sentencing accused Nos.1 and 2.

31. The law was set in motion by recording the statement of injured victim and this Court has to consider the evidence of P.W.34, who recorded the statement. The P.W.34 says that he received a requisition from the Hassan Government Hospital at about 5.30 p.m. through wireless message, wherein he was intimated that a person was admitted to the hospital with the history of burn injury. He had visited the hospital at about 6.00 p.m. and had collected the intimation in the police outpost at the hospital which is marked as Ex.P50. It is his evidence that he had

visited the Burns Ward where the injured was admitted and had requested the duty doctor P.W.32 to give his opinion about the injured being capable of giving her statement. The duty doctor certifies that she is in fit condition to give statement. At the same time, he also sent a requisition to the Executive Magistrate to record the dying declaration of the injured. Since, the doctor had given the opinion that injured is capable to give statement and recorded the statement of the injured in the presence of Medical Officer P.W.32 between 7.50 p.m. to 8.20 p.m. and the same is marked as Ex.P48 and identified his signature as Ex.P48(a). Thereafter, issued FIR and sent the same to the Court and on account of death of the injured invoked Sections 302 and 304(B) of IPC sending the requisition Ex.P52 and thereafter accused No.1 was arrested and produced before the Deputy Superintendent of Police. In the cross-examination, P.W.34 says that having received the intimation, reached the Burns Ward and when he visited the

Burns Ward, the Medical Officer was very much present and hospital staff and his staff were also present while getting the permission from the doctor. But, it is an admitted fact that injured had sustained burn injuries on her body. The witness deposes that he cannot say whether she had sustained burn injuries all over the body. Hence, this Court has to take note of the evidence of P.W.32.

32. P.W.32-Doctor says that he had examined the patient at 6.25 p.m. having received the letter from the PSI and endorsed on the said requisition that patient is capable to give statement and PSI recorded the statement in his presence. But, the evidence of P.W.34 is that the doctor was present when he had visited the Burns Ward. But, P.W.32 says that when he received the information from the concerned police, he was in the Casualty Department and was not in the Burns Ward. It has to be noted that P.W.32 says that he received requisition at 6.25 p.m. and police started recording the statement of the injured within

5 to 10 minutes after receiving the intimation at 6.25 p.m., then it would be around 6.30 to 6.40 p.m. But, the evidence of P.W.32 is that he recorded the statement of the injured in the presence of Medical Officer at 7.50 to 8.20 p.m. Hence, very recording of statement of the injured itself is doubtful and it ought to have been only before 7.00 p.m. as per the evidence of the Doctor.

33. It also important to note that P.W.34 says that he sent a requisition to the Magistrate at 6.30 p.m. and this Court has to peruse the evidence of P.W.29-Magistrate i.e. Tahsildar, who recorded the statement of the injured from 7.30 p.m. onwards having visited the hospital at 7.30 p.m. The evidence of P.W.29 is that he recorded the statement from 7.30. p.m., that too in the form of a questionnaires till 9.00 p.m. i.e., from 7.30 to 9.00 p.m. Hence, it creates doubt in the mind of the Court with regard to recording the statement by PSI in between 7.50 p.m. to 8.20 p.m. and the timings of recording the statement of injured overlaps

with each other. No doubt, the second dying declaration was recorded by P.W.29 is from 7.30 to 9.00 p.m., there is no endorsement for having certified the same. P.W.32-Doctor in his evidence regarding recording of dying declaration by the Magistrate categorically admits that Executive Magistrate had not given any requisition to record the statement of the injured. Likewise, he has not issued any certificate about the physical condition and fitness of the injured to give her statement. However, claims that certified in the printed format on which the Executive Magistrate had recorded the statement of the injured.

34. It has to be noted that on perusal of Ex.P45, except making the signature, there is no such endorsement and only says that her statement was recorded at 7.30 p.m. and there is no endorsement that she is fit to give statement and not certified the document at Ex.P48. But, on perusal of Ex.P45-second dying declaration, she only says that husband made galata in respect of the morning

breakfast that she has put more salt and also says that quarrel had taken place regarding demand of dowry. The first dying declaration was recorded by P.W.34-PSI, wherein detailed statement was made regarding her marriage was solemnized 6 years ago and her parents gave 6 tholas of gold and not given 2 tholas of gold and when she came back, objected that she came late and continuously made galata and on that day also, he abused regarding breakfast and also she did not bring dowry amount and questioned why she did not bring the bed. But, the fact is that in the very statement it is made clear that marriage was solemnized 6 years ago and question of bringing the bed after 6 years is also doubtful.

35. It is also important to note that specific statement is made that husband poured the kerosene which was lying in the kitchen and set fire and mother-in-law came and extinguished the fire by pouring water. But, the P.W.1 in his chief evidence regarding the statement made

by the victim says that accused Nos.1 and 2 i.e., husband and mother-in-law quarreled with the victim and tied her legs and both of them poured kerosene and set the fire. P.W.1 says that on enquiry, her daughter revealed the same. There are material contradictions with regard to making such statement before the Tahsildar, PSI as well as before the father and these material contradictions were not taken note of by the Trial Court while appreciating the evidence. The timings mentioned by P.W.33, P.W.29 and P.W.32-Doctor overlaps with each other. P.W.32-Doctor says that he was in Casualty Department when he received the intimation and requisition and P.W.33 says that he directly went to Burns Ward, wherein doctor was present and recorded the dying declaration. Hence, it is very clear that the case of the prosecution is not definite and trustworthy with regard to recording of dying declaration.

36. No doubt, if any statement is recorded by the police under Section 161 of Cr.P.C and based on that

statement, FIR is registered, the Court can look into the same as held by the Division Bench judgment of Allahabad High Court in **GULAB SINGH vs. STATE Of U.P.** reported in **2003 (47) ACC 161 (ALL) (DB)**. But, the Court has to only see the statements of victim under Section 161 of Cr.P.C was found worthy to be relied upon as dying declaration. The Court also taken note of dying declaration recorded by police in the presence of other prosecution witnesses is valid and the same is reliable and cannot be doubted on the ground that the statement is not produced to police, but produced before the Court directly in the judgment in **DORYODHAN vs. STATE OF MAHARASHTRA** reported in **2003 (1) JIC 184 (SC)**.

37. It is also to be noted that when there are multiple dying declarations, the Court has to see the evidentiary value of the same and the duty of Court is that each dying declaration should be considered independently on its own merits. One cannot be rejected because of

contents of other in cases where there is more than one dying declarations, it is the duty of the Court to consider each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs as held in the three Judge Bench judgment of the Apex Court in **MUKESH vs. STATE FOR NCT OF DELHI & OTHERS** reported in **AIR 2017 SC 2161**.

38. In the judgment of the Apex Court in **RAJU DEVADE VS. STATE OF MAHARASHTRA** reported in **AIR 2016 SC 3209**, the Apex Court held with regard to successive dying declaration and their appreciation where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred and also held that, of course, if the plurality of dying declaration could be held to be trustworthy and reliable and then only, it has to be accepted as held in the judgment in **MUKESH vs. STATE FOR NCT OF DELHI & OTHERS** reported in **AIR 2017 SC 2161** as well as **MOHANLAL GANGARAM**

GEHANI vs. STATE OF MAHARASHTRA reported in
(1982) 1 SCC 700.

39. In the case on hand, it has to be noted that foot print was taken and evidence also emerges that all over the body, there were burn injuries and entire body was burnt including foot of the victim as admitted by P.W.33. The PM report also discloses burn injuries to the extent of 90% and external injury is also very clear that there were number of injuries i.e., six in number and entire body was burnt and PM report is also clear that injuries are ante mortem and surface area burn injuries sustained more than 90%. When such being the evidence before the Court and entire body was burnt, again it creates doubt in the mind of the Court whether the injured can make such statement. The opinion of the doctor for cause of death was due to neurogenic shock, as a result of burn injuries sustained. When the death is due to neurogenic shock as a result of burn injuries all over the body and having taken note of material

contradictions available on record, the very presence of the doctor and recording of statement of the injured-victim is doubtful and timings of recording the evidence of the victim also overlaps with each other of two statements and the same not inspires the confidence of the Court and the Trial Court has not considered the dying declaration which is not reliable having noted the material contradictions.

40. Now coming to the aspect of harassment and demand of dowry is concerned, the Court has to take note of evidence available on record, particularly father, who has been examined as P.W.1, mother who has been examined as P.W.2, sister who has been examined as P.W.3 and brother of the deceased was examined as P.W.12. Admittedly, at the time of marriage talk, brother was not present and his evidence cannot be relied upon and he also categorically admits that he is the resident of Mysuru and he was not present at the time of negotiation. But, in the cross-examination of P.W.1 to P.W.3, though they have

deposed with regard to demand and acceptance of dowry of Rs.40,000/- and 6 thola of gold, P.W.1-father categorically admitted in the cross-examination that family members of the accused requested to perform the marriage as per Hindu customs and the witness also volunteers to state that accused demanded dowry. But, the admission is very clear that he was the only earning member in the family and he was having the responsibility to maintain the family. Further, he admits that he was not in a position to give dowry and accused persons were well-off and they are the landlords. It is also admitted that while performing the marriage, usually both the families will put gold i.e., bride's side and also bridegroom. But, he claims that dowry amount was given 2 days earlier and no complaint was given prior to this incident. He also admits that in the said wedlock, there were two children, one is aged about 4 years and another one is 2 years. He also admits that husband is taking care of one child and he is taking care of another

child. It is elicited that she went to matrimonial home 1 month earlier. Though it is suggested that she went ten days earlier and no doubt, the amount of Rs.40,000/- was recovered from the house of accused, but the same is not the dowry amount which they have allegedly given 6 years ago.

41. The evidence of P.W.2 is also in line of P.W.1 that usually both families will put gold ornaments at the time of marriage and she also admits that her husband was the only earning member taking the responsibility of the family and he was a coolie. It is categorically admitted that they were in poor condition and at the time of marriage talk, they told the accused that they are going to perform the marriage as per their financial capacity and they also agreed to perform the marriage and even they were not capable to perform the marriage in choultry and hence, marriage was performed in the residence itself. She also admits that in the year 2013, the daughter came to her

house for delivery of second child and she says that she went ten days prior to this alleged incident.

42. The admission on the part of sister of victim P.W.3 is also in line with the admissions given by P.W.1 and P.W.2 that they had told the accused that they are going to perform the marriage as per their financial capacity and accused persons had also agreed for the same. She also admits that her father is the only earning member and the accused persons are well-off and they were having difficulty to save money and also admits that while performing marriage, both the families will put gold arguments. She also admits that marriage was performed in the house, since they were not able to perform the same in the choultry and accused are well-off. She also categorically admits that they have not given any complaint about the harassment against the family of the accused.

43. No doubt, the prosecution relies upon the evidence of P.W.10 regarding negotiation. But, his evidence

is that agreed to give 100 grams. But, others say that it was 80 grams and reiterates with regard to harassment is concerned. But, in the cross-examination, categorically admits that at the time of negotiation, his father, mother and elder uncle were present and also admits about performing the marriage in accordance with their traditions and customs.

44. The other witness is P.W.11, who says about demand of dowry of Rs.40,000/- and agreed to give Rs.40,000/-. But, others say that accused demanded Rs.60,000/- and agreed to give Rs.40,000/-. This witness also say that agreed to give 60 grams of gold and his evidence is also contradictory and it is very clear that he was not present at the time of marriage negotiation. Hence, the evidence of P.W.11 also cannot be relied upon.

45. No doubt, P.W.16-Goldsmith says about preparation of gold at the time of marriage and the same

will not come to the aid of prosecution to prove the cruelty and harassment.

46. P.W.17 says marriage negotiation had taken place about 3 years back and the marriage was celebrated. But, marriage was held 6 years ago. Admittedly, this witness says that dowry was given. But, in the cross-examination admits that complainant is her uncle and she does not remember the date on which the negotiation had taken place and she was not called for the marriage negotiation and the marriage had taken place at the house of the complainant and she had not attended the marriage negotiations and she does not know anything. This admission takes away the case of prosecution.

47. The other witness is P.W.19, who also says that she does not know how many months prior to the marriage the marriage negotiations had taken place. At the time of negotiation, accused Nos.1 and 2, his father and mother were present from their side. But, in the cross-examination,

this witness also cannot say the date when the marriage negotiation had taken place and admits that accused persons had requested the complainant and his family members to get the marriage celebrated in accordance with their financial capacity. She further admits that at the time of marriage celebrations as per the traditions and customs prevailing in Hindu community, the bride will be gifted with gold ornaments, even though no demand is made and the complainant's family celebrated the marriage in accordance with their financial conditions. This witness also states that she had not participated in any of the panchayath convened by the complainant with the accused persons.

48. Having reassessed both oral and documentary evidence available on record, it is very clear with regard to demand of dowry is concerned and no independent witnesses support the case of the prosecution and even the evidence of related witnesses' also not inspires the confidence of the Court that the accused demanded dowry

and dowry was given and none of the witnesses say that in their presence dowry was given. The Trial Court failed to take note of all these evidence available before the Court with regard to demand and acceptance of dowry and even subsequent demand of dowry and harassment is concerned. Having reassessed both oral and documentary evidence, we do not find any ground to accept the reasoning of the Trial Court having considered the admission of P.W.1 to P.W.3 with regard to their capacity and marriage was performed as per their financial capacity and the same is agreed by the witnesses and Trial Court committed an error and lost sight of all these evidence available on record while appreciating the evidence. While convicting the accused, prosecution must prove the case beyond reasonable doubt and the same is not proved.

49. The other circumstance relied upon by the prosecution is seizure of cloth of the accused and there is an acknowledgement in terms of Ex.P55 and also FSL

report in terms of Ex.P56. If really, the accused had poured kerosene and set fire, there would have been kerosene smell in the cloth belonging to accused and item Nos.10 and 11 i.e., shirt and pant of the accused is very clear that it was not burnt, no specific smell observed, packed in a plastic cover and FSL report also not supports the case of the prosecution and this report is also not properly taken note of by the Trial Court, while appreciating the evidence available on record. No doubt, PM report Ex.P47 is very clear that cause of death is an account of neurogenic shock, but none of the witnesses say that accused himself poured kerosene.

50. This Court has already taken note of the fact that evidence of P.W.1 is contrary and Ex.P45 and Ex.P48 only points out the role of the accused pouring kerosene and setting the fire. The very case of the prosecution is that mother-in-law extinguished the fire by pouring water. But, there is an improvement in the case of the prosecution as

per the evidence of P.W.1 and there are material contradictions and the same was not taken note of and also the dying declarations Ex.P45 and Ex.P48 cannot be believed in view of 90% burn injuries and PM report also discloses 90% burn injuries all over the body. Though, it is categorically suggested to the witnesses that no such dying declaration was recorded and though the same was denied, but having considered factual aspects and circumstances under which both the documents came into existence, the same cannot be reliable.

51. This Court has also taken note of the principles laid down in the judgment of the Apex Court referred (supra) when there are suspicious dying declarations. The Apex Court in the judgment in **RASHEED BEG vs. STATE OF M.P.** reported in **(1974) 4 SCC 264** held that when dying declaration is suspicious, it should not be acted upon without corroborative evidence. In the case on hand, there is no corroborative evidence.

52. The Apex Court also in the judgment in **KAKE SINGH vs. State of M.P.** reported in **1981 Supp SCC 25** held that when maker of dying declaration is unconscious, where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. Though, P.W.32 says that he was conscious and capable, but no certificate is given. When the dying declaration was recorded by P.W.29-Tahsildar and there is no such endorsement, except made the signature and with regard to injured was conscious, nothing is placed on record that injured was capable to make such statement and no such separate certificate is issued.

53. Even having perused the document of dying declaration also, except the doctor making counter signature, nowhere he has certified that able to make statement. Though P.W.32 says that gave the separate certificate before recording of statement by PSI, no such separate certificate is also placed before the Court. When

such being the case, the case of prosecution even in respect of dying declaration cannot be accepted.

54. No doubt, the Apex Court in Five Judge Bench judgment in **LAXMAN vs. STATE OF MAHARASHTRA** reported in **(2002) 6 SCC 710** held that presence of Magistrate at the time of recording the dying declaration is also not necessary, although to assure authenticity it is usual to call a Magistrate, if available to record dying declaration. Person who records dying declaration must essentially be satisfied that the deceased was in a fit state of mind and the same is not found in the case on hand. Even in the very same judgment, the Apex Court held that no statutory form for recording dying declaration is necessary. Though, P.W.29 records the dying declaration in a questionnaire form and the same is not warranted, a dying declaration can be made verbally or in writing and by any method of communication like signs, words or otherwise provided the indication is positive and definite.

Even verbal dying declaration also could be made reducing the dying declaration to writing is not mandatory. In the very same judgment, the Apex Court discussed in detail with regard to validity of dying declaration. The Apex Court in the very same judgment held that certificate by the doctor regarding mental fitness of the deceased is not necessary because certificate by doctor is only a rule of caution and voluntary and truthful nature of the declaration can be established otherwise also. But, the fact is that the very recording of dying declaration in the case on hand is contrary to each other as well as timing of recording the statement of victim overlaps with each other and there cannot be two dying declaration in the very same time between 7.30 to 9.00 p.m. by PSI as well as by Tahsildar.

55. The Apex Court also in the judgment in **RAJU DEVADE vs. STATE OF MAHARASHTRA** reported in **AIR 2016 SC 3209** held that mere absence of a certificate of doctor would not render the dying declaration unreliable

particularly, when the doctor was not present in the hospital at the relevant time. But, the Court has to take note of contradictory dying declaration and their appreciation as held in the judgment in **SANJAY vs. STATE OF MAHARASHTRA** reported in **AIR 2007 SC 1368**, where there are different contradictory dying declarations, the accused is entitled to benefit of doubt and acquittal. In the case on hand, it has to be noted that when PSI has recorded dying declaration in detail, but in the second dying declaration, statement was made with regard to dowry harassment. It has to be noted that specific case of the defence is that accused was not present at the time of the incident and he was in the garden land. But, witnesses categorically admit that accused himself admitted her to the hospital along with her brother and there are material contradictions and the same goes to the very root of the case of the prosecution. When such being the case, we are of the opinion that the Trial Court committed an error in

relying upon the dying declaration as well as oral evidence of interested witnesses and failed to take note of material contradictions which creates doubt in the mind of the Court and the evidence of prosecution is not reliable and there are inconsistencies and infirmities in the order of the Trial Court while appreciating the evidence and the Trial Court not considered the legal evidence while convicting the accused. Hence, we answer point Nos.(1) and (2) as 'affirmative'.

Point No.(3):

56. In view of the discussion made above, we pass the following:

ORDER

- (i) The criminal appeals are allowed.
- (ii) The judgment of conviction and sentence passed in S.C.No.80/2015 dated 22.08.2019 is set aside. Consequently, the accused No.1 is acquitted for the offence punishable under Sections 498-A, 302 and

304-B of IPC and Sections 3 and 4 of the DP Act and accused No.2 is acquitted for the offence punishable under Section 498-A read with Section 109 of IPC and Sections 3 and 4 of the DP Act.

- (iii) If any bail bond is executed by the appellants, the same shall stand cancelled.
- (iv) If appellants/accused have deposited any fine amount, the same shall be refunded to the appellants/accused on proper identification.
- (v) If the appellants are undergoing sentence, the jail authorities are directed to set at liberty, forthwith, if they are not required in any other case.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

RHS/ST