CRL.A No. 100191 of 2019
C/W CRL.A No. 100194 of 2019

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IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 4TH DAY OF NOVEMBER, 2022

PRESENT

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 100191 OF 2019 (C-)

C/W

CRIMINAL APPEAL NO. 100194 OF 2019

IN CRL.A. NO.100191/2019

BETWEEN

1. PUNIT

...APPELLANT

(BY SRI.SHAIKH SAOUD, ADVOCATE)

AND

1. STATE OF KARNATAKA
   BY CPI MUDHOL,
   REPRESENTED BY
   STATE PUBLIC PROSECUTOR,
   HIGH COURT BUILDING,
   DHARWAD.

...RESPONDENT

(BY SRI.V.M.BANAKAR, ADDL. SPP)

CRL.A No. 100191 of 2019
C/W CRL.A No. 100194 of 2019

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C. SEEKING TO SET ASIDE THE JUDGEMENT, ORDER OF CONVICTION AND SENTENCE PASSED BY THE COURT OF I-ADDL. DIST. & SESSIONS JUDGE, BAGALKOT TO SIT AT JAMKHANDI, IN S.C.NO.91/2017 DATED 20.03.2019, FOR THE OFFENCES P/U/S 498-A AND 302 OF IPC, INSOFAR AS APPELLANT IS CONCERNED.

IN CRL.A. NO.100194/2019

BETWEEN

1. GODAVARI

...APPELLANT

(BY SRI.SHAIKH SAOUD, ADVOCATE)

AND

1. STATE OF KARNATAKA
   BY CPI MUDHOL,
   REPRESENTED BY
   STATE PUBLIC PROSECUTOR,
   HIGH COURT BUILDING,
   DHARWAD.

...RESPONDENT

(BY SRI.V.M.BANAKAR, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C. SEEKING TO SET ASIDE THE JUDGMENT, ORDER OF CONVICTION AND SENTENCE PASSED BY THE COURT OF I ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOT TO SIT AT JAMKHANDI AT JAMKHANDI IN SESSIONS CASE NO.91/2017 DATED 20.03.2019 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498(A) AND 302 OF INDIAN PENAL CODE.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, **SURAJ GOVINDARAJ J.,** DELIVERED THE FOLLOWING:

COMMON JUDGMENT

1. These are the appeals filed under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), challenging the judgement of conviction and order of sentence passed by the I Additional District and Sessions Judge, Bagalkot sitting at Jamkhandi (for short, 'trial Court') in Sessions Case No.91/2017 dated 20.03.2019.

2. A complaint came to be filed by Vindarsingh on 06.09.2016 at 22.15 hours, alleging that he had been informed by his sister that the accused (her husband and mother-in-law) had ill-treated her and sought to commit her murder. In furtherance of the same, ASI, Mudhol Police had registered a case for the offences under Sections 307, 498-A, 504 read with 34 of IPC. In the meantime, the sister expired,

hence, upon investigation, Circle Inspector of Mudhol Police Station submitted a charge sheet against the accused for the offences punishable under Sections 498-A, 504, 323, 302 read with 34 of IPC.

3. Upon the charge sheet being submitted, since the offence was triable under Section 302 of IPC, the matter came to be committed to the Court of Sessions. Accused No.1 who was in judicial custody was produced before the Court and accused No.2 who was on bail was summoned to appear. On their appearance, accused No.1 was remanded to judicial custody and accused No.2 was enlarged on bail. Charges having been framed for offences under Sections 498-A, 504, 323, 302 read with 34 of IPC, same was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

4. The prosecution examined 14 witnesses and marked 30 documents, 4 material objects were also marked

by the prosecution. Accused No.1 examined himself as DW.1 and marked two documents. Upon evidence being led, the incriminating evidence was put across to the accused in terms of Section 313 of Cr.P.C. and their answers were recorded.

5. After hearing the prosecution and the defence, the trial Court vide its judgement dated 20.03.2019 convicted accused No.1 for the offence under Sections 498-A and 302 of IPC and convicted accused No.2 for the offence under Section 498-A of IPC and acquitted accused No.2 for the offences under Sections 323 and 304 of IPC.

6. On the very same day, the said Court heard the counsels on sentence and passed an order of sentence, sentencing accused No.1 to undergo imprisonment for life for the offence punishable under Section 302 of IPC and to pay a fine of Rs.50,000/- and further to undergo simple

imprisonment for three years for the offence punishable under Section 498-A of IPC as also sentenced to pay a fine of Rs.5,000/-. In default of payment of total fine amount of Rs.55,000/-, to undergo simple imprisonment for six months.

7. Accused No.2 was sentenced to undergo simple imprisonment for three years for the offence punishable under Section 498-A of IPC and sentenced to make payment of a fine of Rs.5,000/-. Failure to make the payment of fine would result in accused No.2 to undergo simple imprisonment for further period of two months. The sentences to run concurrently and set off being provided for the period undergone in judicial custody.

8. It is challenging the said judgement that accused No.1 is before this Court in Criminal Appeal No.100191/2019 and accused No.2 is before this Court in Criminal Appeal No.100194/2019.

9. The case of the prosecution is that

9.1. Accused No.1 was married to the sister of complainant, namely, Ashwini Rajput on 26.11.2015. Accused No.2 is the mother of accused No.1 and mother-in-law of said Ashwini. It is alleged that accused were ill-treating Ashwini both mentally and physically by scolding and assaulting her for not knowing how to cook, prepare food and serve the same.

9.2. It is alleged that on 04.09.2016 at about 4.30 p.m. accused No.1 and Ashwini while at their matrimonial home at Jayanagar, Mudhol, accused No.1 picked up a quarrel with the said Ashwini, brought a can of kerosene, poured on her and set her ablaze.

9.3. Thereafter, Ashwini having been shifted to hospital for treatment, succumbed to burn

injuries caused on 04.09.2016. In order to establish the case of the prosecution, evidence as stated above was led and exhibits as stated above were marked.

10. It is now required for this Court to re-appreciate the evidence based on record before the trial Court to examine and ascertain if the judgement passed by the trial Court is proper and correct. There is no dispute as regards accused No.1 being married to Ashwini or accused No.2 being the mother-in-law of Ashwini.

11. Sri.Shaikh Saoud, learned counsel for the appellants would submit that:

11.1. The trial Court has not appreciated the evidence on record in a proper and required manner.

11.2. The investigation has not been carried out properly, inasmuch as the medical records

indicate that the injury was caused on account of stove burst. However, the investigation does not reflect any aspect of stove burst.

11.3. The dying declaration which has been recorded is not believable, inasmuch as the deceased Ashwini has sought to fix the accused in the said dying declaration. The dying declaration is not corroborated by any other evidence and as such the dying declaration cannot be taken on its face value in a standalone manner.

11.4. The trial Court has convicted accused No.1 solely on account of voluntary statement said to have been made by accused No.1 in terms of Ex.P.25 which has no date, but it is presumably recorded prior to the arrest of accused No.1, who was so arrested on 14.09.2016. The said voluntary statement at Ex.P.25 therefore has no value.

11.5. Second voluntary statement was recorded after the arrest of accused No.1 in the police station and not before the judicial magistrate and as such the same has no evidentiary value.

11.6. Though there are allegations made as regards photographs having been taken of the scene of occurrence, but no such photographs have been exhibited during the course of trial. This he submits on account of the fact that if such photographs had been produced to establish the case of the accused that the injuries occurred on account of accidental stove burst and not as claimed by the prosecution, he submits that the dying declaration was said to have been recorded by the head constable who has not been examined.

11.7. The audio-visual recording of the dying declaration is also not clear as to whether it is

in CD or DVD nor the same has been marked. It could not be marked since no certificate under Section 65B of Indian Evidence Act is produced.

11.8. The Investigating Officer has not enquired into and submitted as regards the first aid treatment which had been obtained by the deceased at Sarvodaya Hospital, since it is only thereafter that she was shifted to Sri.Kumareshwara Hospital and Research Centre, Bagalkot.

11.9. The Investigating Officer has not examined any of the neighbors as regards the incident. This again he submits due to the fact that if they were examined, the truth would have come out indicating the innocence of the accused.

11.10. The trial Court has not taken into account the fact that it was accused No.1 who had saved

the deceased and had taken her to the hospital for treatment. If at all accused No.1 was guilty of the offences as alleged, he would have absconded and not taken the deceased to the hospital. He submits that this aspect has not been taken into consideration by the trial Court.

11.11. On all the above grounds, he submits that the appeals are required to be allowed and the judgement of conviction and order of sentence as passed against accused Nos.1 and 2 are required to be set aside, the accused be acquitted of the offences alleged against them and accused no.1 be released from custody.

12. Per contra, Sri.V.M.Banakar, learned Additional SPP submits that:

12.1. The investigation carried out by the investigating officer is proper and correct.

12.2. The death of the deceased occurred within 10 months of marriage of deceased with accused No.1 and as such the presumption under Section 304-B of IPC would be applicable.

12.3. The investigation has revealed that the scene of occurrence was in the hall, where there was no stove. The Investigating Officer has not mentioned about the stove since there was no stove. If there was a stove, the Investigating Officer would have mentioned about it. The Investigating Officer can only speak about what was in existence and not of what was not in existence. The contention in this regard by the learned counsel for the accused is unsustainable.

12.4. Accused No.1 has given a voluntary statement as regards how the accident has occurred and

the same has been rightly taken into consideration by the trial Court.

12.5. There are in fact three dying declarations which are consistent with each other, inasmuch as Ex.P.4 being the complaint is given by the complainant on the basis of information received from the deceased. Ex.P.7 is a dying declaration which has been recorded by the Tahasildar in the presence of the Chief Medical Officer, Ex.P.14 is the dying declaration recorded by the ASI in the presence of Chief Medical Officer. All these three dying declarations are consistent with each other and allegations have been made in all the three dying declarations as regards how accused No.1 has poured kerosene on the deceased and set her on fire. Therefore, the consistent dying declarations would implicate the accused in the offences.

12.6. The kerosene can and burned matches have been seized from the scene of occurrence which would also indicate their usage in the commission of the offence.

12.7. It is in that background he submits that the judgement of conviction and order of sentence which has been passed by the trial Court is proper and correct and does not require to be interfered by this Court.

13. It is in the background of the above submissions which have been made, this Court would have to ascertain upon re-appreciation of the evidence on record, whether the judgement of conviction and order of sentence passed by the trial Court is proper or not?

14. There is no dispute as regards the deceased being married to accused No.1 or accused No.2 being the

mother-in-law of deceased. There is also no dispute as regards the incident having occurred in the matrimonial home of accused No.1 and deceased. The only disputed issues are relating to whether there is an offence under Section 498-A of IPC committed by accused Nos.1 and 2 as against the deceased and whether offence under Section 302 of IPC has been committed or not. Needless to say that these aspects would have to be established beyond reasonable doubt by the prosecution.

15. Ex.P.4 complaint given by PW.2 on 06.09.2016 is that on 04.09.2016 accused No.1 picked up a quarrel with deceased at 4.30 p.m. and had poured kerosene on the deceased and set her ablaze. This aspect of deceased being on fire is not in dispute. The only dispute is as regards whether the said fire occurred on account of stove burst or on account of accused No.1 pouring kerosene on the deceased and setting her ablaze. In this regard though evidence is led of

various persons, there is nothing on record to indicate the existence or otherwise of stove.

16. PW.3-Vikram Sing who is spot panch has not deposed anything about the stove. PW.4 who is a relative of the complainant has deposed that the complainant had informed him of Ashwini having suffered from burn injuries due to stove burst and he accompanied the complainant to Mudhol. PW.5 is another relative of deceased and complainant who has stated that accused used to torture the deceased which he came to know on the date of phone call received from the deceased relating to her cooking. Though he has spoken about the hospitalization of the deceased and the treatment given to her, he has not spoken of any statement made by the deceased in his presence or otherwise implicating the accused. He has only spoken of the information provided by the deceased as regards the accused ill-treating the

deceased on account of her not being able to cook properly.

17. PW.7 who has conducted postmortem of the deceased has only described that the death is on account of result of burn injuries sustained. On enquiry during the cross-examination, he has stated that injuries sustained by the deceased could be caused due to a stove burst. Neither in the evidence of PW.7 nor in the postmortem, there is anything mentioned about the stove.

18. PW.8 is a Tahasildar who has conducted inquest, and recorded dying declaration at Ex.P.7. He has deposed about the deceased having given a statement that accused No.1 had poured kerosene on her and set her ablaze subsequent to the quarrel between them. He has stated that the deceased was in sound state of mind when dying declaration was recorded by him.

19. PW.9 who is the author of the sketch at Ex.P.11 has stated that he has prepared the sketch. He has not stated anything about existence or otherwise of a stove in Ex.P.11. PW.10 who is a colleague of the complainant has deposed of the deceased having informed him and the complainant about accused No.1 having poured kerosene on her and setting her ablaze, he has further stated that situation of the deceased was perilous.

20. PW.11 is the doctor who has treated the deceased and he has stated that he has given the statement that the deceased was fit enough to give statement to the police and that Ex.P.14 was recorded in his presence by the head constable. He has also deposed that on a similar requisition having been made by Tahasildar, he had endorsed that the deceased was fit enough to give a statement.

21. PW.12 who was initial investigating officer has deposed that on his instruction Ex.P.14 was recorded by the head constable and that he had also videographed the deceased giving her statement on his mobile phone which was taken to a mobile shop of one Anup Shah (PW.6) and transferred into a CD. The written dying declaration was recorded by the head constable on the instructions of PW.12.

22. PW.14 is the investigating officer who has deposed in detail about the actions taken by him. A perusal of his entire evidence and cross-examination, does not indicate any investigation made by him as regards the whether a stove exists or not. Nor does it indicate any details about deceased having been treated at Sarvodaya Hospital. This despite the fact that Ex.P.15 being the medical records was in his possession which categorically indicate that the deceased had been referred by Sarvodaya Hospital to Sri.Kumareshwara Hospital.

23. A perusal of the case sheet also indicates that the deceased had been hospitalized on account of alleged accidental burns when stove exploded. When the Investigating Officer was knowledgeable about this case sheet it was but required of him to investigate whether there was stove or not, whether it had burst or not and whether the injuries caused were relatable to stove burst or only relatable to kerosene being poured on the deceased and she being set ablaze.

24. The Investigating Officer was also required to verify if the deceased had been treated at Sarvodaya Hospital before coming to Kumareshwara Hospital and what was the prognosis by the doctors in Sarvodaya Hospital. Without examining these aspects, the Investigating Officer has only on the basis of so called dying declaration and the statement of interested witnesses, who are family members come to the conclusion that accused Nos.1 and 2 have

caused the death of the deceased and has charge sheeted them.

25. In our considered opinion the Investigating Officer has to investigate any offence without taking any sides in an objective manner so as to place the truth on record. The Investigating Officer is neither prosecuting the accused nor he is aiding the victim. The only job of the Investigating Officer is to ascertain the facts and on that basis place a report either charging the accused of the offences or absolving them of the offences.

26. In the present matter as observed above, the crucial aspect being as regards the injuries having been caused due to the stove burst or otherwise, the Investigating Officer has not even visited the kitchen, no sketch of the kitchen has been prepared nor any photographs of the kitchen have been placed on record (assuming that the stove was kept in the

kitchen). If the stove was not kept in the kitchen and was in the hall, there is no mention of the same in either the sketch or in any of the evidence. Suffice it to say that the entire investigation of the Investigating Officer is suspiciously silent on the existence or otherwise of the stove.

27. Having been put on notice that the deceased was hospitalized on account of burn injuries due to stove burst/explosion, it was but required for the Investigating Officer to have ascertained if at all there was a stove in the house, what kind of stove it was, whether it had exploded or burst or not and in this regard the said stove whether burst or not would have to have been seized and marked as a material object and exhibited before the trial Court. This not having been done, we are of the considered opinion that the investigation which has been carried out is completely lopsided, inadequate and as such could

not have been considered by the trial Court and as such cannot be considered by us.

28. As regards the dying declarations, though it is contended that Ex.P.4 which is a complaint given by PW.2-complainant being on the basis of the information provided by the deceased to the complainant is a dying declaration, we are of the considered opinion that the same is a hearsay evidence and cannot be considered to be a dying declaration by itself when the same has been made by the brother of the deceased, the same would require corroboration.

29. Ex.P.7 being the statement recorded by the Tahasildar which is indicated to be a second dying declaration, makes it clear that the deceased had before her death implicated accused No.1 in her death by stating that he had poured kerosene on her and set her ablaze. Accused No.2 was implicated only

as regards the alleged cruelty meted out by accused No.2 on the deceased as regards her not cooking properly. From the said dying declaration and the endorsement made by the doctor it is not clear as to what her state of mind was. It is however, clear that the relationship between the deceased and the Accused no.1 was strained.

30. Ex.P.14 is the dying declaration recorded by the PW.12-ASI. Though it is stated that PW.12 videographed the statement on his mobile, the said recording was allegedly transferred from his mobile on to a CD in the shop of one Anup Shah, PW.6. There is no certificate in terms of Section 65-B of Indian Evidence Act which is produced and as such said recording was not marked in the evidence.

31. A perusal of the deposition of the other witnesses, namely, PWs.2, 4, 5 and 10, would indicate that all of them have spoken about a rift between accused

Nos.1 and 2 on one hand and deceased on the other. This rift being on account of deceased not cooking properly. It is in that background that in the dying declaration it is alleged that accused No.1 had poured kerosene on the deceased and set her ablaze. There is no statement made by aforesaid witnesses that the deceased knew how to cook well or she cooked well. In such a situation, there is doubt raised in our mind that if the deceased did not know how to cook properly, did not know how to use a stove it could have resulted in the explosion or bursting of stove. It is therefore possible that it is on account of the rift between accused Nos.1 and 2 on the one hand and deceased on the other, there is possibility of the deceased wanting to fix the accused on her deathbed so as to punish them. This aspect of whether the deceased knew how to use the stove or not, not having been deposed by other witnesses and all of them being silent as regards the existence or

otherwise of the stove as aforesaid, gives raise to a doubt in our mind as regards the dying declaration.

32. In the case sheet it is recorded that the deceased was admitted on account of burn injuries caused due to a stove explosion, there is no contra indication in the case sheet indicating otherwise since during the course of treatment of the deceased when she is said to have been conscious it would have but been examined and or enquired by the doctors or nurses as to how her burn injuries are caused. There is no contra statement recorded in the case sheet by any doctor or nurses which is contrary to initial complaint. We are of the considered opinion that the dying declaration is suspect when the said dying declaration came into existence after the relatives of the deceased entered the picture and furthermore so on account of the fact that the complainant even though was informed that to save his sister there would be a requirement of putting her on a

ventilator, refused to do so thereby refusing to try and save his sister.

33. We cannot be oblivious to the fact that there is a possibility of relatives of the deceased holding the accused to blame and wanting to punish them by implicating them in the death of the deceased.

34. The trial Court in the impugned judgement has not considered these aspects but has only considered that there being certain rift and there are certain ill-treatment by the accused and the family members, the ill-treatment has been proved and thereby accused have committed offence under Sections 498-A, 323 and 504 of IPC.

35. In our considered opinion the said ill-treatment which has been adverted to by Sri.V.M.Banakar, learned Additional SPP could only have been in relation to Section 304-B of IPC, where a death is caused within

a period of 7 years of marriage on account of dowry harassment leading to a presumption that the death is caused by the accused husband and or his family members.

36. In the present case, admittedly, there is no demand made for any money or ornaments which has been deposed by the family members PW.2 and PW.5 or for that matter any other witness. There being no such demand for money or ornaments, question of Section 304-B of IPC being attracted would not arise. More so, when the accused have not been charged with offence under Section 304-B of IPC.

37. Section 304-B is reproduced hereunder for easy reference:

> *"**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 har-assment 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 sub-section, "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 imprison-ment for a term which shall not be less than seven years but which may extend to imprisonment for life."

38. PW.2-Vindarsingh has deposed that accused No.1 informed him of the deceased having been injured due to stove burst. PW.4 has also deposed to similar effect. PW.5 has denied that the deceased sustained burn injuries due to accidental stove burst. PW.7 who is a doctor who has conducted postmortem has stated that the injuries caused to the deceased might have been caused due to stove burst. PW.14 on enquiry as to whether a stove had been seized, he has stated that PW.13 has informed him that no such stove has been seized since there was no necessity. PW.13 has denied seizure of any stove by stating that there was no any necessity to seize the stove. He has denied the suggestion that if stove was sized, it would come to light that death was accidental.

39. PW.11 the doctor has stated that ASI has recorded the video during the time the deceased was making her statement. PW.12 the ASI has stated that when he was recording the video he had dictated the statement taken down by the head constable. He has also stated that he had directed the head constable to get him an empty CD and thereafter he went to the shop of PW.6 to transfer the recording of the mobile on to the CD. In the cross-examination he has stated that he does not know whether he has taken CD or DVD. PW.6 the mobile shop owner has stated that he has transferred the recording on the mobile to the CD. He denies that he downloaded the video to his system and thereafter transferred it to the CD.

40. A perusal of the file indicates that CD has been produced in a plain plastic cover stappled to the file.

41. The trial Court has come to the conclusion that the prosecution has proved beyond reasonable doubt

that accused No.1 poured kerosene on the deceased and set her ablaze with an intention to cause her death. This is premised on the statement made by PW.2 in the complaint and PW.5 who are supposed to have stated that accused No.1 was consuming alcohol and poured kerosene on the deceased and set her ablaze.

42. A perusal of the statement of PW.5 does not indicate to be so. What is stated by PW.5 is that a quarrel took place and thereafter accused No.1 had poured kerosene on the deceased and set her ablaze which was informed by the deceased to PW.5, this is again a hearsay evidence. There is no mention of the accused no.1 drinking alcohol or being drunk, be that as it may there is no investigation carried out with regard to the same, there is no blood alcohol analysis which has been made.

43. The trial Court accepted the alleged dying declaration and presumed it to be true by juxtaposing it with the voluntary statement said to be given by accused No.1. The trial Court though while appreciating the evidence of DW.1 (accused No.1) that the stove fell down from the platform, refused to accept the same merely because he was unable to say what was kept on the stove. The trial Court in our considered opinion failed to answer the most pertinent question as to whether there was stove and what happened to the said stove. Nothing has been stated as regards the stove in the investigation as referred to supra.

44. We have also given our considerable thought to the fact that it is accused No.1 who put off the fire, got burnt while doing so and it is he who took the deceased for treatment to the hospital. If indeed accused No.1 wanted to cause a death of the deceased by pouring kerosene on her by setting her blaze, he would not have saved her by putting off the

fire which he is alleged to have started and thereafter taken her to the hospital. Thus, there is no intention which has been established beyond reasonable doubt by the prosecution for causing the death of the deceased. The prosecution has also not examined the auto driver or the neighbors who would have been the better witnesses to say as to what occurred at that time but the only witnesses who been examined are the family members and friends of the family members of the deceased, who are all interested witnesses. The case of the prosecution being that Accused No.1 poured kerosene on the deceased and set her ablaze to cause her death, the said case is negatived by the Accused No.1 himself saving the deceased, though temporarily.

45. Though the trial Court has adverted to the possibility of suicide having been committed by the deceased, there is no finding as such given by the trial Court

nor is there is any evidence on record relating thereto.

46. In the above background, we are of the considered opinion that since the investigation has not been carried out properly, the existence or otherwise of the stove has not been established, it not being established that the burn injuries caused to the deceased is only on account of pouring kerosene and not due to stove burst and dying declaration being suspect and not corroborated by other evidence on record, the finding of the trial Court is not proper and correct and therefore, we are of the considered opinion that the prosecution has not established beyond reasonable doubt the guilt of accused No.1 in the matter.

47. Insofar as accused No.2 is concerned, accused No.2 is only stated to have ill-treated the deceased on account of her not cooking properly. The statements

made in that regard by accused No.2 cannot be said to be ill-treatment so as to result in an offence under Section 498-A of IPC.

48. Section 498-A of IPC is reproduced hereunder for easy reference:

> *"**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 pun-ished 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 wilful 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."*

49. The cruelty under Section 498-A of IPC ought to be but such that it may lead to the death of the wife. The conduct should be of such nature as 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. Here in the present case, there is no allegation that due to the alleged cruelty, the deceased tried to commit suicide or that the conduct of the accused no.2 caused injury or danger to the life, limb or health of the deceased.

50. The allegation is that accused No.1 poured kerosene on the deceased and set her ablaze. This being disbelieved by us earlier, hence we are of the considered opinion that accused No.2 also could not have been convicted for the offence under Section 498-A of IPC.

51. In view of the above we make the following observations:

52. **Investigation**

52.1. While giving our reasons, we have observed that the investigation has not been carried out

properly. This is again not a stray occurrence but a very common occurrence that this Court has been coming across. Hence, it is required of the Director General of Police to make available refresher training from time to time to all the Investigating Officers and have a standard operating procedure to be established for investigation into different crimes, on penalty of disciplinary proceedings if the SOP is not adhered to.

52.2. For ex: In the present case it was required for the Investigating Officer to have verifed the existence or otherwise of the stove which has not been done so. Photographs of the scene of occurrence were to have been obtained which has not been done.

52.3. The dying declaration was required to be videographed. Though there was a videograph

done it was so done on the personal mobile phone of the Investigating Officer, which was thereafter sought to be transferred into a CD in a private mobile shop. Such a situation is not contemplated.

52.4. Any electronic evidence would have to be proved in terms of the Indian Evidence Act and the Information Technology Act and it is required that Section 65-B certificate to be produced therewith. It is on account of not having produced such a certificate, that recording was not exhibited, thus, depriving the trial Court as also this Court the examination of such a valuable piece of evidence.

52.5. It is required for the Investigating Officer to be sensitized and trained as to how to record dying declarations, how to record the audio visual recording, how it has to be captured in a

medium that can be produced before the Court as evidence. The chain of custody be ascertained and demonstrably established, etc.

53. **Digitisation**

53.1. In the present matter, we were also put to great difficulty in going through the documents submitted by the investigation officer, inasmuch as all the documents are handwritten, the handwriting not being good as also there being not much space between each written line.

53.2. When we examined the paperbook filed, many of the documents are blurred on account of multiple photocopies, requiring us to examine the original records. Even the original records due to passage of time in some place have faded, become brittle and are torn.

53.3. It is therefore, required for the Director General of Police to issue necessary instructions to all the Investigating Officers to record the statements not by hand but by digital process by typing in appropriate software.

53.4. Time is not far when any handwritten documents will not be acceptable or accepted by a Court. Production of handwritten documents comes in the way of digitalization of judicial process which is of prime importance today.

53.5. It is rather surprising that the police IT having commenced digitalization in the year 2008, the Court is still receiving handwritten documents in this case in the year 2016.

53.6. It is required that all the entries are made digitaly. The documents to be signed digitally

by providing digital signatures to the Investigating Officers and other persons. When such digital signatures are not available, physical signature of such persons to be obtained scanned and uploaded into the Police IT System and digitally signed by the person uploading.

53.7. The FIR, charge sheet and other documents, etc., to be in digital format to be shared through Interoperable Criminal Judicial System (ICJS) to the Courts.

53.8. CCTNS (Crime and Criminal Tracking Network and Systems) being a portal wherein information of crimes and criminals are maintained by law enforcement/investigative agencies for necessary reference and use as per law and the same being considered to be an authentic source of crime and criminal related

information it is required that such information is available in the Case Information System (CIS) maintained by the courts and the same in integrated to achieve the object of ICJS (Inter-operable Criminal Justice System).

53.9. It is therefore required that First Information Reports, Crime Details Forms, Arrest Memos, Search/Seizure Lists, Mahazars, Statements, Documents obtained during investigation from hospitals, Road Transport Authorities, FSL etc., Final report in the form of Charge Sheets, B reports, C reports etc., are digitally generated, signed and shared with courts handling bail matters, trial matters, appellate matters, revisional matters.

53.10. The case number to be mapped to the FIR number and vice versa so as to make it easier for sharing of data.

53.11. While conducting and recording mahazar, it would also be required that suitable equipment is issued to the concerned Investigating Officer to record a mahazar, etc., in an electronic format by incorporating latitude and longitude of the place where the mahazar is conducted including photographing or videographing of the said location, which could be so done by issuing bodycams to the investigating officers which would be directly uploaded into the server of police IT, thus maintaining integrity and veracity of the same. The said equipment could also be used for recording of dying declarations, which could be uploaded directly in the police IT server. Thus, removing the requirement of third party private services like that obtained by the Investigating Officer in the present matter.

53.12. In the event of any electronic evidence being required, the same to be produced through a

recognized entity like the FSL, RFSL or any mobile unit deputed by the said FSL or a particular unit designated by the Director General of Police.

53.13. Data from Investigating wing, Scientific wing(FSL), Prison wing and any other wing relating thereto to be integrated.

53.14. In this regards a task force would have to be established by the Director General of Police, Government of Karnataka, consisting of the head of the Police IT, Principal Secretary E-Governance Department, Government of Karnataka, nominee of the Director of the National Crime Record Bureau (NCRB), a representative of the Director of the the CCTNS (Crime and Criminal Tracking Network and Systems). This committee to firstly work out the methodology of sharing the existing digital

records with courts and secondly to consider above aspects including digitization of all processes.

54. In the above circumstances we pass the following

ORDER

i. The appeals are allowed.

ii. Judgment of conviction and order of sentence dated 20.03.2019 passed by the I Additional District and Sessions Judge, Bagalkot sitting at Jamkhandi in Sessions Case No.91/2017 as regards accused Nos.1 and 2 are set aside. Accused No.1 is directed to be released from custody forthwith, if his custody is not required in any other case.

iii. Registry is directed to forward the operative portion of this order to Bijapur Central Jail, where accused No.1 is lodged.

iv. The Jail authorities to act on the basis of the operative portion of this order sent by E-mail by the Additional Registrar (Judicial) without insisting on a certified copy.

v. The learned Additional SPP is also directed to inform the jail authorities about the above order and authenticate the same.

vi. Though the above appeals are disposed of, to report compliance of the above directions by the Director General of Police, relist on 5th December, 2022.

Sd/-
JUDGE

Sd/-
JUDGE

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List No.: 1 Sl No.: 3