

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.150 OF 2019

BETWEEN:

NAGARAJA U D
S/O DYAVAPPA GOWDA
AGED ABOUT 35 YEARS
R/AT UTTAHOLALU VILLAGE
AREHALLI HOBLI, BELUR TALUK,
HASSAN DISTRICT-573 101

...APPELLANT

(BY SRI. SURESH H S., ADV.)

AND:

STATE OF KARNATAKA
THROUGH AREHALLI POLICE STATION,
HASSAN.

REPT. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001

...RESPONDENT

(BY SRI. RAHUL RAI K., HCGP.)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 01.03.2018 AND SENTENCE DATED 05.03.2018, PASSED BY THE 5TH ADDITIONAL DISTRICT AND SESSIONS COURT AT HASSAN IN S.C.NO.87/2015, CONVICTING THE APPELLANT FOR THE OFFENCE P/U/S 498A,302,304B OF IPC AND SECTION 3 OF D.P ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.06.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE G BASAVARAJA)

1. Appellant has preferred this appeal against judgment of conviction dated 01st March, 2018 and order on sentence dated 05th March, 2018 passed by V Additional District & Sessions Judge, Hassan (for short "the trial Court").

2. For the sake of convenience, the parties herein are referred to as per their status and rank before the trial Court.

3. Brief facts leading to this appeal are:

The Circle Inspector of Police, Arehalli Police Station filed charge-sheet against the accused for the offence punishable under Sections 498A, 302, 304-B of Indian Penal Code and Sections 3, 4 and 6 of Dowry Prohibition Act. It is alleged by the prosecution that on 30th April,

2008, Sarita (now deceased) was married to the accused. At the time of her marriage, accused had obtained dowry of ₹25,000/- in cash and 30 grams of gold ornaments towards himself and Sarita. In spite of the same, he was continuously harassing and ill-treating her to bring additional dowry. The accused was addicted to alcohol and was pestering the deceased to give her income to meet his ill-deeds. On 29th January 2015, accused picked up a quarrel with the deceased since she refused to give him the money, thereafter he doused her with kerosene and lit fire. Immediately, she was admitted to Government Hospital at Hassan, and in spite of treatment given, she succumbed to burn injuries on 5th February 2015 at about 1:15 am. Accordingly, complaint was registered against the accused. After investigation, investigating officer submitted charge-sheet against the accused for commission of alleged offence. After filing of charge-sheet, case came to be registered in CC No.250 of 2015, and thereafter, the case was committed to the Court of Sessions which came to be registered as SC No.87 of 2015.

4. Upon hearing on charges, the trial Court framed charges against the accused for the offence punishable under Sections 498-A, 304-B, 302 of Indian Penal Code and Sections 3, 4 and 6 of Dowry Prohibition Act. The same were read over and explained to the accused in the language known to him. The accused having understood the same, pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, 14 witnesses were examined as PWs1 to 14, 23 documents were marked as per Exhibits P1 to P23, and 4 material objects were marked as MOs1 to 4. On closure of prosecution side evidence, statement of the accused under Section 313 of Code of Criminal Procedure was recorded. Accused has denied the incriminating evidence appeared against him, however has not chosen to lead any defence evidence on his behalf. Having heard the arguments on both sides, the trial Court convicted the accused for offences punishable under Sections 498A, 302 and 304-B of Indian Penal Code and Section 3 of Dowry Prohibition Act and passed a sentence to undergo rigorous imprisonment for a period of

three years and to pay a fine of ₹5,000/- for offence under Section 498A of Indian Penal Code, in default of payment of fine to undergo simple imprisonment for a period of six months. Further, accused is sentenced to undergo life imprisonment for offence punishable under Section 302 of Indian Penal Code and to pay a fine of ₹15,000/-. Accused is also sentenced with life imprisonment for offence punishable under Section 304-B of Indian Penal Code and to pay a fine of ₹10,000/-. Accused is sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹3,000/- for offence punishable under Section 3 of Dowry Prohibition Act. Out of the fine amount, the trial Court has awarded compensation of ₹30,000/- to the grandfather of children of deceased-Sarita. Being aggrieved by the Judgment of conviction and order on sentence, the accused-appellant has preferred this appeal.

6. Learned Counsel Sri H.S. Suresh, who is appointed by the High Court Legal Services Committee to represent the appellant, would submit that the judgment

of conviction and order on sentence passed by the trial Court is contrary to law and facts of the case. He would submit that the trial Court has erred in believing the dying declaration of the deceased, even though it was belatedly sent to the jurisdictional Magistrate and also because PW10-Dr. Krishnamurthy has stated in his evidence that he was not present at the end of the recording of statement of deceased. The trial Court has committed an error in not scrutinising evidence in proper perspective. The trial Court has erred in relying upon the evidence of interested witnesses and has not considered the fact that one of the independent witnesses has not supported the case of the prosecution. He would submit that, contradiction and improvements in the evidence of the prosecution witnesses throw a strong doubt on the case of the prosecution. He would further submit that the trial Court has failed to properly appreciate the evidence on record and has also failed to draw proper inference from the proved and admitted facts. Learned counsel would submit that the accused is in judicial custody from the

date of arrest. There is no evidence with regard to demand of dowry.

7. The learned counsel contended that the alleged incident took place on 28th January, 2015 at 10:30 am. Exhibit P14 is the complaint of the deceased recorded by PW12-Tahsildar on 29th January 2015 at 8:30 pm. The date and time of dispatch of FIR to the Court is 30th January, 2015 at 6:40 am, through Sri Uthappa-HC495. Whereas, the FIR reached the Court on 30th January, 2015 at 11:55 am, as endorsed by the learned JMFC. The dying declaration was recorded by the PW10-Tahsildar at 8:20 pm on 29th January 2015.

8. The learned counsel further contended that it has come in the evidence of PW1 that the injured was admitted to Government Hospital, Belur. PW1 has deposed that the injured had given statement before the Tahsildar at Government Hospital, Belur, then injured was shifted to KR-Hassan Institute of Medical Sciences, Hassan. The Investigating Officer has not produced any document to show the injured was admitted to Government Hospital,

Belur. He has not explained anything as to non-production of case sheet/out-patient slip or any other document. Medical officer who has treated the injured in the Government Hospital, Belur is not examined by the Investigating Officer or before the Court. The history of burn injuries, at the first instance, before the Government Hospital Belur, has not been disclosed by the prosecution. Exhibit P15 is the certificate issued by the KR-HIMS, Hassan, in which, the Medical Officer has not disclosed the history of burn injury. The case sheet maintained by concerned Hospitals is not produced by the prosecution.

9. It is further contended by the learned counsel that, Exhibit P13 is the alleged dying declaration recorded by PW12-Tahsildar. But, PW10-Dr. Krishnamurthy has not endorsed on the dying declaration as to the mental and physical condition of the victim at the time of recording the dying declaration. Blood pressure, pulse rate, SpO2 are also not shown in any of the documents. During the course of cross-examination, PW10 has admitted that when Sarita was brought to the

hospital, she had sustained burn injuries to an extent of 90-95%. Post-mortem report also reveals that the injured sustained 90-97% burn injuries. The particulars of treatment given to the injured is also not disclosed. However, PW10 has denied in his cross-examination that Sarita was not in a position to give any statement before her death. The alleged injury on the head of the victim has also not been disclosed in any of the document. Even in the post-mortem report there is no mention about the same. Absolutely, there are no consistent, corroborative, cogent and trustworthy evidence before the Court to come to the conclusion that the accused has committed the alleged offence. However, the trial Court has convicted the accused, which is not sustainable under law. On all these grounds, learned Counsel sought to allow the appeal.

10. As against this, Sri Rahul Rai K., learned High Court Government Pleader appearing for the respondent-State, would submit that the trial Court has appreciated the materials on record in its proper perspective and has

passed the judgment and sentence which cannot be found fault with and accordingly, sought for dismissal of the appeal.

11. Having heard the arguments on both sides and on perusal of materials placed before us, the following points would arise for our consideration:

1. Whether the appellant has made out grounds to interfere with the impugned Judgment of conviction and Order on sentence passed by the trial court?
2. What order?

12. Our answer to the above points are:

Point No.1: In the affirmative;

Point No.2: as per final order.

Regarding Point No.1:

13. We have carefully examined the material placed before us. The Investigating Officer submitted charge-sheet against the accused for commission of offence under

Sections 498-A, 302, 304-B of Indian Penal Code and Sections 3, 4 and 6 of Dowry Prohibition Act. It is the case of the prosecution that Circle Inspector of Police, Arehalli Police Station filed charge-sheet against the accused for the offence punishable under Sections 498-A, 302, 304-B of Indian Penal Code and Sections 3, 4 and 6 of Dowry Prohibition Act. It is alleged by the prosecution that on 30th April, 2008, Sarita was married to the accused and at the time of marriage, accused had obtained cash of Rs.25,000/- as dowry and gold ornaments worth 30 grams towards himself and Sarita. In spite of the same, he was continuously harassing and ill-treating her to bring additional dowry. The accused was addicted to alcohol and was pestering the deceased to give him money to meet his ill-deeds. On 29th January 2015, accused picked up a quarrel with the deceased and demanded money. Since she refused to give him the money, he doused her with kerosene and lit fire. Immediately, she was admitted to Government Hospital at Hassan, and in spite of treatment given, she succumbed to burn injuries on 5th

February 2015 at about 1:15 am. Thus, the accused has committed the offence.

14. To prove the guilt of the accused, the prosecution has examined 14 witnesses as PWs1 to PW14, marked 23 documents as per Exhibits P1 to P23 and four material objects as MOs1 to 4. This case arises out of complaint Exhibit P14 filed by deceased-Sarita, wife of accused U.D. Nagaraja. In the complaint, it is stated as under:

"ನಾನು ಈ ಮೇಲ್ಕಂಡ ವಿಚಾರದಲ್ಲಿ ನನ್ನ ಗಂಡ ಯು. ಡಿ. ನಾಗರಾಜನೊಂದಿಗೆ ವಾಸವಾಗಿರುತ್ತೇನೆ. ನನ್ನನ್ನು ನನ್ನ ಸ್ವಂತ ಊರಾದ ಮೂಡಿಗೆರೆ ತಾಲ್ಲೂಕಿನ ಬಣಕಲ್ ಹೋಬ್ಬಳಿ ಕೂಡಲೆ ಗ್ರಾಮದಿಂದ ಕಳೆದ 7 ವರ್ಷಗಳ ಹಿಂದೆ ಬೇಲೂರು ತಾಲ್ಲೂಕು ಅರೇಹಳ್ಳಿ ಹೋಬ್ಬಳಿ ಉತ್ತೇಜಕಲು ಗ್ರಾಮದ ದ್ರಾವಿಡರ ಮಗನಾದ ಯು. ಡಿ. ನಾಗರಾಜನಿಗೆ ಕೊಟ್ಟು ಮದುವೆ ಮಾಡಲಾಗಿತ್ತು. ನನ್ನ ಗಂಡ ಸುಮಾರು 2 ವರ್ಷಗಳ ಕಾಲ ನನ್ನನ್ನು ಅನ್ಯೋನ್ಯವಾಗಿ ಜಿನ್ನಾಯೇ ನೋಡಿಕೊಂಡಿದ್ದರು. ಆ ನಂತರದ ದಿನಗಳಲ್ಲಿ ನಾಗರಾಜ ಹೆಚ್ಚು ಹೆಚ್ಚು ಕುಡಿಯುವ ಹವ್ಯಾಸ ಬೆಳೆಸಿಕೊಂಡು ನನಗೆ ಆಗಾಗ್ಗೆ ತವರು ಮನೆಗೆ ಹೋಗಿ ಹಣ ತೆಗೆದುಕೊಂಡು ಬರುವಂತೆ ಮಾನಸಿಕವಾಗಿ ಮತ್ತು ಭೌತಿಕವಾಗಿ ಹಿಂಸೆ ನೀಡುತ್ತಿದ್ದ. ನಮಗೆ 5 ವರ್ಷ ವಯಸ್ಸಿನ ಅವಳಿ ಜವಳಿ ಶ್ರೀಯಾ ಎಂಬ ಹೆಣ್ಣು ಮಗು, ಶ್ರೀಯಾ ಎಂಬ ಗಂಡು ಮಗು ಹಾಗೂ 3 ವರ್ಷದ ಶಮಂತ್ ಎಂಬ ಗಂಡು ಮಗು ಒಟ್ಟು 1 ಹೆಣ್ಣು 2 ಗಂಡು ಮಕ್ಕಳಿದ್ದು ಅವರುಗಳನ್ನು ನಾಗರಾಜನ ತಿರುಕುಟ ತಾಳಲಾರದೇ ನನ್ನ ಚಿಕ್ಕಪ್ಪ K S ದೇವಣ್ಣರವರ ಮನೆಯಲ್ಲಿ ಕೂಡಹಳ್ಳಿಯಲ್ಲಿ ಬಿಟ್ಟಿರುತ್ತೇನೆ. ಹೀಗಿರುವಾಗ ನನ್ನ ಗಂಡ ಮನೆಯಲ್ಲಿ ಬೆಳೆದಿದ್ದ ಭತ್ತವನ್ನು ಮಾರಾಟ ಮಾಡಿ ಕುಡಿಯುತ್ತಾನೆಂದು ಹೆದರಿ ಈಗ 4 ದಿನಗಳ ಹಿಂದೆ ನಮ್ಮ ಮನೆಯಲ್ಲಿದ್ದ ಭತ್ತದ ಜೀಲಗಳನ್ನು ಅರೇಹಳ್ಳಿಯ ಮಾಡ್ರನ್ ರೈಸ್ ಮಿಲ್ ಗೆ ಹಾಕಿ ಬಂದಿದ್ದೆ ಇದೇ ವಿಚಾರವಾಗಿ ದಿನಾಂಕ 28.01.2015 ರಂದು ರಾತ್ರಿ

ಸುಮಾರು 7.30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಜಗಳ ತೆಗೆದು ನನಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ಗಲಾಟೆ ಮಾಡಿದ್ದ ನಾನು ಸಮಾಧಾನ ಪಟ್ಟುಕೊಂಡು ರಾತ್ರಿ ಮಲಗಿದ್ದೆ. ದಿನಾಂಕ 29.01.2015 ರಂದು ಇದೇ ವಿಚಾರವಾಗಿ ಪುನಃ ಗಲಾಟೆ ತೆಗೆದು ಸೂಕಿಮುಂಡೆ ಭತ್ತ ಮೂಲ ಹಣ ಕೊಡದೇ ಇದ್ದರೆ ನಿನ್ನನ್ನು ಕೊಲೆ ಮಾಡಿಯೇ ತೀರುತ್ತೇನೆಂದು ಕುಳಿತುಕೊಳ್ಳುವ ಮನೆಯಿಂದ ಹೊಡೆದು ನನ್ನ ತಲೆಗೆ ಹೆಚ್ಚು ಮಾಡಿದ ನಂತರ ಸುಮಾರು ಬೆಳಿಗ್ಗೆ 10.30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ನನ್ನ ಎಡಗೈಯನ್ನು ಆತನ ಕೈಯಲ್ಲಿ ಹಿಡಿದುಕೊಂಡು ಮನೆಯಲ್ಲಿದ್ದ ಸುಮಾರು 3 ಅಟರ್ ಸೀಮೆಎಣ್ಣೆಯನ್ನು ನನ್ನ ತಲೆಯ ಮೇಲೆ ಮತ್ತು ಮೈಮೇಲೆ ಸುಲಿದು ನನ್ನನ್ನು ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ಜಡದಂತೆ ಬೆಂಕಿಕಡ್ಡಿ ಊರಿ ಬೆಂಕಿ ಹಚ್ಚಿದ ನನ್ನನ್ನು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದಲೇ ನಾಗರಾಜ ನನ್ನ ಮೇಲೆ ಸೀಮೆಎಣ್ಣೆ ಸುಲಿದು ಬೆಂಕಿಹಚ್ಚಿ ನನ್ನ ಮೈಯನ್ನು ಸುಟ್ಟು ಹಾಕಿರುತ್ತಾನೆ. ನಾಗರಾಜ ನನಗೆ ಬೆಂಕಿ ಹಚ್ಚಿದಾಗ ನನಗೆ ಮೈಕೈ ಉರಿ ತಾಳಲಾರದೆ ಕೂಗಿಕೊಂಡೆ ಆಗ ನಮ್ಮ ಭಾವ ಬಸವರಾಜ ಜನ್ ದ್ರಾವಪ್ಪಗೌಡ & ನಮ್ಮ ಗ್ರಾಮದ ಮಂಜುನಾಥ ಜನ್ ಲೇಟ್ ದ್ರಾವಪ್ಪಗೌಡ ಓಡಿ ಬಂದು ಬೆಂಕಿ ಹಾಲಿಸಿ ನನ್ನನ್ನು 108 ಅಂಬುಲೆನ್ಸ್ ವಾಹನದಲ್ಲಿ ಹಾಕಿಕೊಂಡು ಹಾಸನದ ಸರ್ಕಾರಿ S.C. ಆಸ್ಪತ್ರೆಗೆ ತಂದು ನೋರಿಸಿ ಚಿಕಿತ್ಸೆ ಕೊಡಿಸುತ್ತಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ನನಗೆ ಮಾನಸಿಕವಾಗಿ, ದೈಹಿಕವಾಗಿ, ಹಿಂಸೆ ನೀಡಿ ನನ್ನನ್ನು ಕೊಲೆ ಮಾಡುವ ಪ್ರಯತ್ನದಿಂದ ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ನನ್ನ ಮೈಮೇಲೆ ಸೀಮೆಎಣ್ಣೆ ಸುಲಿದು ಬೆಂಕಿ ಹಚ್ಚಿ ನನ್ನ ಶರೀರಕ್ಕೆ ಸುಟ್ಟುಗಾಯ ಮಾಡಿದ ನನ್ನ ಗಂಡ ನಾಗರಾಜನ ಮೇಲೆ ಕಾನೂನು ಲೀತಿ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಹಾಸನದ S.C. ಆಸ್ಪತ್ರೆಯ ಸುಟ್ಟ ಗಾಯಗಳ ವಾರ್ಡನ್‌ನಲ್ಲಿ ಹೇಳಿಕೆ ನೀಡಿರುತ್ತೇನೆ."

15. Deceased Sarita has put her LTM on the complaint. The complaint was recorded by PW11-Prahlada. On the basis of this complaint-Exhibit P14, Arehalli Police registered case in Crime No.6 of 2015 against the accused for commission of offence punishable under Sections 498-A, 504, 324 and 307 of Indian Penal Code as per Exhibit P1. First Information Report reveals that the time and date

of dispatch of the same is on 30th January, 2015 at 6:40 am. The learned Magistrate has endorsed that Exhibit P16 was received at 11:55 am on 30th January, 2015. The prosecution has not explained anything as to delay in despatching the First Information Report to the Court. It is the case of the prosecution that injured Sarita was able to give statement on 29th January, 2015. But in this regard, Exhibit P14 does not reveal as to the certificate issued by the Medical Officer Dr. Krishnamurthy, who is said to have been present at the time of recording the statement. Simply, he has affixed his signature on Exhibit P14, but he has not endorsed on Exhibit P14 that the injured is able to give her statement. He is examined before the court as PW10. He has deposed in his evidence that on 29th January, 2015, deceased Sarita was admitted to their hospital with the history of burn injuries at about 1:50 pm. He had treated her for the burn injuries and on the same day at about 8:20 pm, the Taluk Executive Magistrate had visited their hospital and requested to give opinion with respect to the physical condition of the injured to tender her statement. He had given his opinion,

stating that she was capable of giving her statement. Accordingly, the statement of the injured was recorded in his presence as per Exhibit P13, and he has endorsed on the same, which is marked as Exhibit P13(a). On the same day, the Casualty Medical Officer had sent intimation to the concerned Police with respect to the burn injury sustained by the Sarita and accordingly Police visited the hospital and recorded the statement of Sarita in his presence. However, at the end of recording the statement, he had left for emergency treatment, and the said statement was endorsed by Junior Resident Medical Officer on his behalf as per Exhibit P14. PW10-Dr. Krishnamurthy has not whispered anything as to the physical and mental condition of the injured Sarita at the time of recording the statement by PW11 as per Exhibit P14. He has also not endorsed on Exhibit P14 that the injured is physically and mentally fit to give statement.

16. The Investigating Officer has not collected the case sheet of the injured maintained by the Hospital. He has also not collected any materials with regard to blood

pressure, pulse rate and SpO2 as also the medicines administered by the doctor to the injured at the time of recording the statement Exhibit P14. Even PW10-Dr. Krishnamurthy has not whispered anything in this regard. In the absence of these material piece of evidences, it is difficult to accept the contents of Exhibit P14 said to have been recorded by PW14 on 29th January, 2015. Accordingly, the prosecution has failed to prove that the victim/injured has given statement as per Exhibit P14 on 29th January 2015.

17. Another vital document relied upon by the prosecution is the dying declaration marked as Exhibit P13 said to have been recorded by PW12-Manjunath, the Taluk Executive Magistrate. PW12 has deposed in his evidence that on 29th January, 2015, he has received the intimation from the concerned Police with respect to admission of Sarita, wife of Nagaraja, with history of burn injuries. Accordingly, he has visited the hospital at about 8:20 pm on the same day and had sought the opinion of Medical Officer with respect to the condition of the injured to give

statement. On the positive opinion given by the Medical Officer, he went to the Burns Ward to record the statement of the injured. He has further deposed that, Sarita has stated before him that her husband was addicted to consuming alcohol, and used to harass her every day for money and on 28th January, 2015, again, he had come to the house in an inebriated condition and picked up a quarrel with her and demanded money. On 29th January, 2015 at about 10:30 am, he had picked up quarrel with her and had assaulted her with wooden plank on her head and had brought about 3 litres of kerosene from the Kitchen had doused her with the same and lit fire. Her husband Nagaraj was responsible for the said injuries. PW12 has stated that he has recorded the statement in Form No.3 as per Exhibit P13. He has further deposed that on 5th February, 2025, Police had intimated him about the death of the injured Sarita, and accordingly, he had conducted the inquest at the mortuary of the Government Hospital in the presence of panch witnesses between 1.30 and 3.30 pm as per Exhibit P21.

18. On perusal of Exhibit P13, it is noted that PW12 has recorded the dying declaration of the injured on 29th January, 2015, which is as under:

"ನನ್ನ ಗಂಡ ದಿನಂಪ್ರತಿ ಕುಡಿದು ಬಂದು ಮಾನಸಿಕ ಹಾಗೂ ದೈಹಿಕವಾಗಿ ಹಿಂಸೆ ನೀಡುತ್ತಿದ್ದ. ಅದರಂತೆ ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಇದ್ದ ಭತ್ತವನ್ನು ಮಲಿ ಕುಡಿಯುತ್ತಾನೆ ಎಂಬ ಉದ್ದೇಶದಿಂದ ಈ ನಾಲ್ಕು ದಿನದ ಹಿಂದೆಯೇ ಮನೆಯಲ್ಲಿ ಬೆಳೆದಿದ್ದ ಭತ್ತವನ್ನು ಅರೇಹಟ್ಟಿ ರೈಸ್ ಮಿಲ್ ಗೆ ಅಕ್ಕಿ ಮಾಡಿಸಲೆಂದು ಇಟ್ಟುಬಂದಿದ್ದೆ. ಈ ವಿಚಾರವಾಗಿ ಕುಡಿಯಲು ದುಡ್ಡು ಕೊಡು ಎಂದು ದಿ: 28/1/15 ರಂದು ನನ್ನ ಗಂಡ ಕುಡಿದುಬಂದು ಮನೆಯಲ್ಲಿ ಇದ್ದ ಭತ್ತವನ್ನು ಏಕೆ ಇಟ್ಟು ಬಂದೇ ಎಂದು ತುಂಬಾ ಜಗಳ ಮಾಡಿ ತದನಂತರದಲ್ಲಿ ದಿ: 29/1/15 ರಂದು ಜಗಳ ವಿಶೇಷಕ್ಕೆ ಹೋಗಿ ಬೆಳಗ್ಗೆ 10-30ರ ನಮಯದಲ್ಲಿ ತಲೆಗೆ ಮರದ ಮಣಿಯಿಂದ ಬಡೆದು ನನ್ನ ಗಂಡ ನನ್ನನ್ನು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಬಲವಂತವಾಗಿ ನನ್ನ ಗಂಡ ಅಡಿಗೆ ಮನೆಗೆ ಕರೆದು ಕೊಂಡು ಹೋಗಿ ಮೈಮೆಲೆ ಮನೆಯಲ್ಲಿ ಇದ್ದ 3 ಅಟರ್ ನೇಮೆಂಟ್ನೆಯನ್ನು ಸುಲಿದು ನನ್ನ ಗಂಡ U D ನಾಗರಾಜನು ಬೆಂಕಿ ಹಚ್ಚಿದನು."

19. This document does not reveal as to the physical and mental condition of the injured at the time of recording the dying declaration. This is in a printed form, in which at paragraph No.4, it is certified as under:

"ನಾನು ಪ್ರಮಾಣೀಕರಿಸುವುದೇನೆಂದರೆ, ಹೇಳಿಕೆ ನೀಡಿದ ವ್ಯಕ್ತಿಯು ಪ್ರಜ್ಞಾವಸ್ಥೆಯಲ್ಲಿದ್ದಳು. ಆದರೆ ಮಾತನಾಡುವ ಸ್ಥಿತಿಯಲ್ಲಿರಲಿಲ್ಲ. ಕಾರಣ ಅವಳು ಸಂಜ್ಞೆಗಲ ಮೂಲಕ ಉತ್ತರಿಸಿದಳು. ಆ ಸಂಜ್ಞೆಗಲ ಪ್ರಾಮುಖ್ಯತೆಯನ್ನು ಖಾತ್ರಿಪಡಿಸಿಕೊಂಡು ಶ್ರದ್ಧಾಪೂರ್ವಕವಾಗಿ ದಾಖಲಿಸಲಾಗಿದೆ."

20. This certificate recorded by PW12 is contrary to his own evidence. PW12 has not whispered anything as to

the condition of the injured to speak, and has stated that she could express things only through sign language. The Medical Officer has also not certified that the injured was physically and mentally fit to give statement. PW12 has not recorded this dying declaration in accordance with law. The alleged dying declaration said to have been recorded by PW12 is not consistent to contents of Exhibit P13 and evidence of PW 12.

21. The Investigating Officer-PW13 Police Sub-Inspector, has deposed that on 30th January, 2015, he has received the dying declaration said to have been recorded by PW12-Taluk Executive Magistrate. PW13 has not produced the same before the Court at the earliest point of time. Prosecution papers reveal that he has produced the alleged declaration only at the time of filing charge sheet, that is on 15th April, 2015. The Investigating Officer has not explained anything as to delay in submitting the alleged dying declaration before the Court. The investigating officer has not collected any material to show that injured was in a fit condition to give statement at the

time of recording the dying declaration. Therefore, the inconsistent averments made in Exhibit P13 and the evidence of PW12 will create doubt as to the alleged dying declaration said to have been recorded by Tahsildar-PW12.

22. Exhibit P15 is the endorsement given by KR-HIMS, Hassan to the Sub-Inspector of East Police Station Hassan dated 29th January, 2015. The same reveals that on 29th January 2015, Sarita, aged 28 years, wife of Nagaraju, admitted to the Hospital with history of burn injuries. The name of the accused is not forthcoming in Exhibit P15. In inquest report-Exhibit P21, at column 10(h) it is stated "ಮೈ ಪೂರ್ಣ ಸುಟ್ಟಿರುವುದರಿಂದ ರಕ್ತದ ಕಲಿ ಇರುವ ಗಾಯಗಳಾಗಿರುತ್ತವೆ.". Post-mortem report Exhibit P18 reveals that deceased died due to Septaemic shock as a complication of burn injuries (90-95%) sustained.

23. PW10-Dr Krishnamurthy has admitted in his cross-examination that when the deceased Sarita was brought to their hospital, she had sustained burn injuries to an extent of 90-95%. Further, he admits that when a person sustain burn injuries to an extent of 90-95%, they

will not be in a position to give any statement. When PW10-Dr. Krishnamurthy himself admitted in his evidence that the injured sustained burn injuries to an extent of 90-95% and she is unable to give any statement. The evidence of prosecution will falsify the evidence of Tahsildar, who has put a signature on Exhibits P13 and P14. The injured was not in a position to give statement to the Police or to the Tahsildar. Mechanically, the concerned police have recorded the alleged statement of the victim and registered the case against the accused which is not sustainable in law.

24. It has come in the evidence of PW1-Manjunath that the injured was admitted to the Government Hospital, Belur wherein, she had given statement before the Tahsildar and thereafter, she was shifted to Government Hospital, Hassan. The Investigating Officer has not collected any material to show that the deceased was admitted to Government Hospital, Belur prior to shifting her to KR-HIMS, Hassan. The case sheet maintained by the Government Hospital, Belur or KR-HIMS, Hassan has

not been collected by the Investigating Officer. He has not explained anything for non-production of these material piece of evidence to show that the injured was admitted to the Government Hospital, Belur.

25. Exhibit P13 reveals that PW12-Tahsildar has recorded dying declaration on 29th January, 2015 at KR-HIMS, Hassan. The same is not consistent to the evidence of PW1 as PW1 has stated that the Tahsildar has visited the Government Hospital, Belur. This inconsistent statement will also create doubt as to the place of recording Exhibit P13-alleged dying declaration.

26. Viewed from any angle, we do not find any cogent, corroborative or consistent legal evidence to show that the deceased was mentally and physically fit to give statement to the Police, as well as to the Taluk Executive Magistrate.

27. PW1-Manjunath, who is the relative of the accused, has deposed that about nine years back accused married the deceased and out of their wedlock they have begotten three children, and for about seven years they

were living cordially. He has deposed that accused was addicted to alcohol and used to harass the deceased to give him money for fulfilling his vices. Whenever she refused to give him money, he used to assault her.

28. PW2-Basavaraju, who is the younger brother of the deceased has also deposed that accused was addicted to consuming alcohol and in order to meet his bad vices, the accused used to pester his wife to give him money, and in that regard, he used to harass her. Further, he has deposed that about two years back deceased had kept the paddy grown in the Rice Mill at Arehalli Village for sale, and the accused was demanding the sale proceeds quenching his thirst of consuming alcohol.

29. PW3-Gayathri, PW4-Nanjamma, PW5-Kumar Vasanthe Gowda and PW6-Devanna, who are relatives of deceased Sarita, have also deposed as to the same.

30. PW14-Nikhat Fathima has not supported the case of prosecution.

31. A perusal of statement of these witnesses makes it crystal clear that the accused was addicted to consuming alcohol and used to demand money from his wife the sale proceeds of paddy kept in the Rice Mill by his wife. Except this evidence, none of the witnesses have deposed that accused has doused his wife with kerosene and lit fire. Hence, the evidence placed before this court reveals that there are no eye-witnesses to the alleged incident. The entire case rests on Exhibits P13 and P14 said to have been made by the deceased. We have discussed in length that the injured was not in a position to give statement to the Police or to the Taluk Executive Magistrate, as she has sustained burn injuries in an extent of 90-97% and admittedly, she was not in a position to give any statement as admitted by PW10-Dr. Krishnamurthy.

32. Regarding demand of dowry also, absolutely there is no evidence before the Court.

33. Viewed from any angle, we do not find any cogent, corroborative or clinching evidence to convict the

accused for the alleged offences. The Sessions Judge has not properly appreciated evidence on record. Upon re-appreciation, re-consideration and re-examination of the entire evidence on record, we are of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Accordingly, we answer Point No.1 in the affirmative.

Regarding Point No.2:

34. For the aforesaid reasons and discussions, we proceed to pass the following:

ORDER

1. Appeal is allowed;
2. The judgment of conviction dated 1st March, 2018, and order on Sentence dated 5th March, 2018, passed in SC No.87 of 2015 by the V Additional District & Sessions Judge, Hassan, is set aside;
3. Accused is acquitted of the offences punishable under Sections 498-A, 302, 304-B

of Indian Penal Code and Section 3 of Dowry Prohibition Act;

4. Registry is directed to communicate the judgment to the concerned Jail Authority to release the accused forthwith, if he is not required in any other case;
5. Registry to send a copy of this judgment along the trial Court records to the concerned Court;
6. The Secretary to High Court Legal Services Committee is directed to pay the requisite fee as per rules to Sri H.S. Suresh, learned Counsel, who has assisted the court.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn