

(2022) 07 KAR CK 0038

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1612, 1613 Of 2016

Dr. Shashidhar Subbanna

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 498A
Dowry Prohibition Act, 1961 — Section 2, 3, 4
Code Of Criminal Procedure, 1973 — Section 482
Evidence Act, 1872 — Section 65, 65B, 65B(4)

Citation : (2022) 07 KAR CK 0038

Hon'ble Judges : H.B. Prabhakara Sastry, J

Bench : Single Bench

Advocate : Dr. Shashidhar Subbanna, K.Nageshwarappa, Veena Maravanthe

Final Decision : Allowed

Judgement

Dr. Justice H.B.Prabhakara Sastry, J

1. The petitioner in Criminal Revision Petition No.1612/2016 was accused No.1 and petitioner in Criminal Revision Petition No.1613/2016 was accused No.2 in C.C.No.17019/2011, in the Court of the learned II Addl.Chief Metropolitan Magistrate, Bengaluru, (hereinafter for brevity referred to as 'trial Court'), wherein respondent No.2 in both the Criminal Revision Petitions was the complainant. Along with present petitioners, one Sri Subbanna, who is said to be the husband of accused No.2 and father of accused No.1 was also arraigned as accused No.3, however, his pendency before the trial Court, accused No.3 having reported to be demised, the case against him stood abated. The accused Nos.1 and 2 were tried by the trial Court for the offences punishable under Section 498-A read with Section 34 of Indian Penal Code, 1860 (hereinafter for brevity referred to as 'IPC') and Sections 3 and 4 of Dowry Prohibition Act, 1961 (hereinafter for brevity referred to as 'D.P.Act'). By its impugned judgment dated 05.09.2013, the trial Court convicted accused Nos.1 and 2 for the offences

punishable under Section 498-A read with Section 34 of IPC and Sections 3 and 4 of D.P.Act. On 07.09.2013, the trial Court pronounced the order on sentence.

2. Aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused Nos.1 and 2 preferred an appeal in Criminal Appeal No.503/2013, before the learned LI Addl.City Civil and Sessions Judge, at Bengaluru City, (hereinafter for brevity referred to as the 'Sessions Judge's Court'), which after hearing both side, dismissed the appeal filed by the accused by its judgment dated 01.12.2016. Being aggrieved by the same, accused Nos.1 and 2 have preferred the present revision petition.

3. The respondent No.1-State is being represented by learned High Court Government Pleader in both the matters.

4. The petitioner in Criminal Revision Petition No.1612/2016 is appearing as party-in-person both for himself and also for the petitioner in Criminal Revision Petition No.1613/2016.

5. During the pendency of these revision petitions, the complainant was got impleaded as respondent No.2 in Criminal Revision Petition No.1612/2016, vide order dated 11.10.2018 and in Criminal Revision Petition No.1613/2016, vide order dated 15.02.2022 and she is also appearing as party-in-person.

6. Records from the trial Court and Sessions Judge's Court pertaining to the matter were called for and the same are placed before the Court.

7. During the pendency of these revision petition, the petitioner in Criminal Revision Petition No.1612/2016 filed IA.No.1/2020, under Section 482 of Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as 'Cr.P.C.'), seeking permission to produce few documents. This Court by its observation dated 15.02.2022, observed that in revision, receiving of additional evidence is not permitted, however, whether the said application was maintainable or not would be considered at the time when this revision petition is heard on merits.

8. Heard the arguments of the petitioner – party-in-person in Criminal Revision Petition No.1612/2016, who is also appearing for petitioner in Criminal Revision Petition No.1613/2016 and the learned High Court Government Pleader for the respondent. Perused the materials placed before this Court.

9. After hearing both side, the points that arise for my consideration in this revision petition are:

(i) Whether the concurrent finding recorded by the trial Court, as well as the Sessions Judge's Court that the accused committed the alleged offences punishable under Section 498-A read with Section 34 of Indian Penal Code, 1860 and Sections 3 and 4 of Dowry Prohibition Act, 1961, warrants any interference at the hands of this Court?

(ii) Whether IA.No.1/2020 deserves to be allowed?

10. The petitioner in Criminal Revision Petition No.1612/2016 as party-in-person in both the petitions in his argument submitted that PW-1 to PW-4 are all family members of respondent No.2, as such, they are related and interested witnesses, hence, their evidence ought not to have been admitted by the trial Court. He further submitted that the reliance placed on the E-mail correspondences was also against Section 65-B of the Indian Evidence Act, 1872 (hereinafter for brevity referred to as 'Evidence Act'). Further stating that there is faulty appreciation of evidence by the trial Court and the Sessions Judge's Court, the petitioner prayed to allow the petitions as prayed.

11. Learned High Court Government Pleader in his brief argument submitted that evidence of PW-1 to PW-4 establishes beyond reasonable doubt that cruelty was practiced upon the complainant. Merely because PW-1 to PW-4 said to be the family members of the complainant, that itself is not a criteria to disbelieve their evidence. He further stated that when the E-mail correspondences were marked as exhibits, there was no objection from the accused, as such, now they cannot raise such an objection for appreciating those documents. However, he fairly concedes that the evidence of none of the prosecution witnesses speaks about the date of the alleged demand and alleged payment of dowry and who are all present at the time of the alleged demand for and payment of dowry. He also submitted that the evidence is also bereft of the details as to when and in what manner the cruelty was practiced upon the complainant. Still, he submitted that the conviction against the present petitioners is maintainable.

12. Though respondent No.2 in Criminal Revision Petition No.1612/2016 was the complainant in the trial Court was permitted to come on record as respondent No.2, however, by the order dated 15.02.2022, it was made clear that respondent No.2 Smt.Veena Maravanthe can assist learned High Court Government Pleader while he addressing his arguments on the merits of the case, but, she cannot argue independently in both the revision petitions. However, at the specific request of said respondent No.2 and with no objection from the petitioners in both the revision petitions, the respondent No.2 was also permitted to address her arguments, wherein she only submitted that Exs.P-5 to P-19 which are the E-mails are still in the Inbox of her Computer system. Citing the judgment of Hon'ble Apex Court in Sonu alias Amar -vs-State of Haryana, reported in (2017) 8 SCC 570, she submitted that since the accused did not object for producing those E-mails and marking them as Exs.P-5 to P-19 in the trial Court, now at a belated stage, they cannot raise any objection with respect to those documents.

13. The summary of the case of the prosecution in the trial Court was that on the date 23.04.2008, the marriage between CW-1 Smt.Veena Maravanthe and accused No.1 Dr.Shashidhar Subbanna was performed in Chandrashekar Bharathi Kalyan Mantap, Shankar Mutt Road, Bengaluru, according to the Hindu rites and customs. It was an arranged marriage. At the time of marriage, accused No.1 was given with a golden ring, silver articles and a sum of Rs. 50,000/- as dowry.

The marriage was celebrated in a grand manner. After marriage, the complainant – Smt.Veena Maravanthe was residing with accused No.1 in her matrimonial home. At that time, the accused No.1 started pressurising the complainant stating that she should pursue M.S. studies and take care of the maintenance of the house. He also started saying that he does not want to have any children for two years. He also asked her to get money from her parents to go to United States of America. After accused No.1 left for America, accused Nos.2 and 3 took the complainant with them and left for United States of America and leaving her there, accused Nos.2 and 3 returned to India. However, during her stay in United States of America, all the accused used to harass the complainant mentally on several trivial issues and accused Nos.2 and 3 used to demand a baby immediately and telling the complainant that since she is getting old, it would be too late for her to get a child, however, accused No.1 was not interested to have children. The accused No.1 deliberately neglected to get continued or renewed the VISA of the complainant and kept her application for Green Card also pending. On the other hand, he sent the complainant back to Bengaluru, India. When the complainant returned to the house of accused Nos.2 and 3 in Bengaluru after her return from United States of America, the accused Nos.2 and 3 started subjecting her again to mental harassment and started telling her that accused No.1, who is their son, being a doctor with three Degrees, would have fetched more dowry had he married any other girl. As such, they started demanding from her the additional dowry to be brought by her from her parental house. Thus, all the accused Nos.1 to 3 have subjected the complainant to cruelty and also have demanded and accepted the dowry and were putting further demand for additional dowry. The said complaint given by the informant (CW-1) Smt.Veena Maravanthe was registered for the offences punishable under Sections 498-A read with Section 34 of IPC and Sections 3 and 4 of D.P. Act.

14. Seven witnesses were examined on behalf of the prosecution to prove the alleged guilt against the accused. Among them, PW-1 (CW-1) Smt.Veena Maravanthe is the complainant, who is admittedly the wife of accused No.1, which accused is the petitioner in Criminal Revision Petition No.1612/2016. PW-2 (CW-2) – Sridhar M., and PW-3 (CW-3) – Ramakrishna are admittedly the elder brothers of PW-1. PW-4 (CW-4) Asha Venkatesh is the elder sister of PW-1. PW-7 (CW-8) S. Radha, the then Police Sub-Inspector of the complainant Police Station, who has received the complaint given by the complainant and registered as per Ex.P-1 and after registering in their station Crime No.52/2010 against the accused, has submitted FIR to the Court as per Ex.P-20 and drew a scene of offence panchanama as per Ex.P-2, seized the photographs of the marriage, Wedding Invitation card and Marriage Certificate and recorded the statement of few witnesses in the matter.

15. PW-5 (CW-9) Naveen Kulkarni, the then Police Sub-Inspector of the complainant police station has stated about taking up further investigation in the matter and after accused Nos.2 and 3 appeared before him with the anticipatory bail, he enlarged them on bail and handed over further investigation to CW-10.

16. PW-6 (CW-10) Govindaraju has stated that by the time he took up further investigation in the matter from PW-5, the investigation was already completed, as such, being then Police Inspector of complainant-Police Station, he has filed charge sheet in the matter.

17. The evidence of PWs.1, 2, 3 and 4 that marriage of PW-1 with accused No.1 was performed in Chandrashekar Bharathi Kalyan Mantap, at Chamarajpet, Bengaluru, on 23.04.2008 is not in dispute. The evidence of these witnesses that accused No.1 was a medical doctor by profession and at that time was working in United States of America, is also not in dispute. Their further evidence that accused Nos.2 and 3 are the parents of accused No.1 is also not in dispute. Thus, it is an admitted fact that the complainant Smt.Veena Maravante (PW-1) was married to accused No.1 on 23.04.2008.

18. PW-1 (CW-1) Smt.Veena Maravante in her evidence has stated that the marriage talks were taken in the house of accused No.1 in November, 2007. At that time accused No.1 since was at United States of America did not attend to it. The accused Nos.2 and 3 and their elder brother, sister-in-law, maternal uncle and aunt were present. From her side, her two brothers with their wives, her sister, brother-in-law and herself were present. She further stated that marriage engagement ceremony was held in December, 2007. A sum of Rs. 50,000/- towards marriage expenses, a golden ring, Sherwani for the groom and silver articles for the bride were asked. The marriage was held for two days, that was on 22.04.2008 and 23.04.2008. All the expenses of the marriage were borne by these people only (the family members of this witness). Even the hotel charges of a sum of Rs. 20,000/- for the first night after the marriage was also borne by her brothers and herself.

One week after the marriage i.e., on 02.05.2008, she joined by accused Nos.2 and 3 went to United States of America. Immediately after going there, accused No.1 asked her to continue higher education, join a job and bear some of the household expenses like electricity bill, water bill and grocery bill. She also stated that, in case if she is not ready to study further and to work, she would be sent back to India. She further stated that all the accused jointly were telling her that their elder daughter-in-law got a diamond ear-stud set. Though accused No.1 has completed three Degrees, but, he was not given anything properly. With this, they were subjecting her to both physical and mental cruelty. She also stated that after accused No.1 going to job, accused No.2 used to tell her to get a child and it was already late. However, accused No.1 was not agreeable to have a child for at least three years.

In that regard, there was some exchange of words between accused No.1 and accused No.2.

She further stated that she was made to take her in-laws i.e., accused Nos.2 and 3 for daily morning and evening walk and was required to play cards and shuttle with them. She was also forced to learn Tamil language. She stated that, one day

when she was not keeping well, still they insisted her to take for walk. They did not accede to her request for the day. She also stated that she was not given an opportunity to make telephone calls to her maternal home. She further stated that her husband i.e., accused No.1 intentionally delayed applying for her VISA, which resulted in she returning to India in March 2009.

She further stated that even after she coming to India, her husband i.e., accused No.1 asked her to take GRE and TOEFL examinations. She further stated that, at one time she was suffering with urinary infection, still her husband, though he was a doctor, did not get her medical treatment and thus she had to suffer for a month with the pain, it is thereafter he got her the treatment. Thus, she was put to lot of tension and lost her weight.

She further stated that, even during her pregnancy, she was forced to attend classes by covering a distance of 30 KM. everyday. She further stated that, after return of her husband from America on 26.07.2009, the accused started demanding her to get diamond ear-stud and a sum of Rs. 10 lakhs. They were also used to make unnecessary comments about her duty. She stated that in December, 2009 when she went to the house of her in-laws (accused Nos.2 and 3) with her child, they did not allow her inside. Later on 03.03.2010, accused No.1 filed a divorce petition and notice about the same was served to her. It is only after all these ordinals, she was constrained to file a complaint with the respondent – Police. She has identified her complaint at Ex.P-1.

Stating that after her complaint, the police drew a scene of offence panchanama near the house of her mother-in-law, she identified it as Ex.P-2. She got produced and marked Marriage Certificate at Ex.P-3, Marriage Invitation card at Ex.P-4 and thirteen E-mails said to have been sent by her to her sister from Exs.P-5 to P-19.

She was subjected to a detailed cross-examination from the accused side, wherein denial suggestions were made to the witness denying the contents of her examination-in-chief regarding the alleged cruelty and demand for dowry, which were not admitted as true by the witness.

In her cross-examination, she admitted a suggestion as true that in order to secure an employment in America, one has to complete GRE, TOEFL examinations, otherwise, they do not get a professional job in America. She also admitted that prior to her marriage, both herself and accused No.1 had discussed about her education and employment. Several E-mail correspondences had also taken place in that regard. She admitted that she was not forced to marry accused No.1. Few admissions were also elicited in the cross-examination of PW-1 that some of the expenses towards marriage, including honorarium payable to the Pandit (priest) was paid by the accused. She also admitted that after marriage, in United States of America her husband has taken her to Disney Land for honeymoon. Even the travelling ticket from India to America was booked by accused No.1.

In her further cross-examination, she stated that after expiry of VISA, for its renewal, when she had engaged the services of a Lawyer by name Smt. Sheela Murthy, the expenses towards legal fees was borne by her husband i.e., accused No.1. She admitted that her husband had taken her to different places in America including Atlanta, Georgia Stone Mountain, Hardy Museum, Chattanooga, Washington, etc. Though she denied that during her pregnancy the accused had given her a golden necklace, but, herself stated that they had given an ordinary silk saree. She denied a suggestion that she was subjecting accused Nos.2 and 3 to mental cruelty, due to which accused No.3 i.e., her father-in-law was admitted in ICU in Sagar hospital and her mother-in-law (accused No.2) was stuck with paralysis and is bed-ridden. She denied a suggestion that somehow to get a Crore rupee from the accused, she has filed a false case against him. She denied a suggestion that in order to help her family in maternal side and to do business in stocks and shares, she has filed a false complaint. She denied that she was told in their first night by her husband that for three years he does not want a child for them. Several attempts were made in further cross-examination of PW-1 to prove lot of improvements and contradictions in her evidence.

19. PW-2 (CW-2) Sridhar M., and PW-3 (CW-3) Ramakrishna, both are the elder brothers of the complainant (PW-1) and PW-4 (CW-4) Asha Venkatesh, the elder sister of the complainant (PW-1), in their examination-in-chief have supported the case of their sister i.e., PW-1 by deposing mainly on the lines of the evidence of PW-1. These three witnesses have also stated that at the time of marriage, the accused was given with golden ring, Rs. 50,000/- cash, Sherwani and other articles, including the silver articles. PW-1 was given with four golden bangles, two golden chains, two rings and silver articles. They further stated that the hotel expenses for stay for a night after the marriage of PW-1 and accused No.1 were also borne by them.

These three witnesses further stated that while their sister was in America, accused No.1 was pestering her to pursue higher studies and join a job and to earn. Accused Nos.2 and 3 were subjecting her to mental cruelty and demanding that she should give birth to a child at the earliest and to play cards and shuttle with them and take them to walk. The witnesses have stated that even after the return of their sister (PW-1), accused Nos.2 and 3, were subjecting their sister to mental harassment and was not allowing her to stay with them. They have stated that they were demanding for valuables to be brought by her from her parental house, which valuables includes diamond ear-stud and a huge amount of cash, etc.

All these three witnesses were subjected to a detailed cross-examination from the accused side, wherein apart from eliciting several other details, denial suggestions were also made to these witnesses, however, the witnesses did not admit the denial suggestions made to them.

20. As analysed above, among the seven witnesses examined by the prosecution, it is PW-1 to PW-4 alone who have spoken about the alleged

allegations against the accused. The remaining witnesses are the official witnesses of investigating authority. Even if the evidence of PW-1 to PW-4 are taken on their face value, the same would not go to show that for giving a cash of Rs. 50,000/- to the accused No.1 and a golden ring and Sherwani, there was any demand from the accused side. Even according to PW-1, the accused No.1 was not present at the time of marriage negotiations. Though accused Nos.2 and 3 are said to have present for marriage negotiations held in November 2007, but, her evidence does not speak whether there was any demand in the marriage negotiation for valuables, which can be called as dowry. Though she stated that accused Nos.2 and 3 were present in the marriage negotiation, but, none of the witnesses have specifically stated that they demanded for any valuables from the complainant side to be given to them as a part of dowry or towards the marriage. Though PW-1 has stated that accused No.1 making a telephone call, requested for a grand marriage at Bengaluru, by that itself, it cannot be inferred that it was an unnatural demand or a demand for a dowry.

21. Though PW-1 to PW-4 have stated that a sum of Rs. 50,000/- was given to the accused in cash, however, except their self-serving statement, there is nothing on record to show that either the said cash or any other valuables were given to the accused in connection with the marriage. Even according to the complainant (PW-1) in the alleged marriage negotiation, apart from her family members, including her elder brothers, sister-in-laws, there were few more relatives from her side, including her paternal aunt, maternal uncle and uncles. However, for the reasons best known to them, the prosecution did not choose to examine any one of them. Thus, even though a good number of alleged qualitative witnesses were available with it, the prosecution did not made use of the same and did not examine them.

22. PW-2 and PW-3 are none else than the elder brothers of PW-1, who in their cross-examination have stated that, according to their custom, there will be some exchange of valuables, including golden ornaments, pooja materials, clothes and other items between the families of bride and groom. PW-2 has also stated that those exchange of valuables would be depending upon the capacity of each side. In such circumstances, it makes further difficult to believe that the alleged delivery of a cash of Rs. 50,000/-, a golden ring and a Sherwani (a dress) to the accused No.1 from the complainant side was a part of dowry.

23. Section 2 of D.P.Act defines 'dowry' as below :

" Section 2. Definition of 'dowry'.- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person.

At or before or any time after the marriage in connection with the marriage of

the said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

A reading of the said Section would go to show that the definition of 'dowry' has been defined as any property, including properties of all sorts as it takes within its fold (any property or valuable security) given or agreed to be given in connection with marriage either directly or indirectly.

24. Our Hon'ble Apex Court in *Ran Singh and another -vs- State of Haryana and another*, reported in (2008) 4 SCC 70, was pleased to hold that payments which are customary, example, given at the time of birth of a child or other ceremonies as are prevalent in different societies, are not covered by the expression 'dowry'.

25. In *Koppiseti Subbharao Alias Subramaniam -vs- State of Andhra Pradesh*, reported in (2009) 12 SCC 331, which judgment was relied upon by the petitioner in his argument, with respect to the definition of 'demand of dowry', giving or taking dowry under Sections 3 and 4 of D.P.Act, was pleased to observe in Para-16 of its judgment as below :

" Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Dowry Act."

In the instant case, as observed above, none of the prosecution witnesses have stated in specific and clear terms that demand for the alleged valuables in the form of cash, clothes and gold was made by the accused. Their only allegation, which is also their evidence through PW-1 to PW-4, was that accused No.1 was given with a cash of Rs. 50,000/-, a golden ring and a Sherwani. However, as observed above, both PW-2 and PW-3, who are the elder brothers of PW-1/complainant, have stated that it is their custom for exchanging the valuables, including cash and golden ornaments between the families of bride and bridegroom. In such circumstances, when there is no specific statement about the alleged demand or proof that the valuables even if it taken as given to the accused, was on demand on the other hand, when the statement of PW-2 and PW-3 itself shows that it is their part of custom, then, even after taking that alleged valuables were given to the accused, the same cannot be considered as a dowry given to the accused from the complainant side.

26. It is also the case of the prosecution that even after marriage, the accused continued their demand for dowry in the form of valuables. PW-1 has stated that accused were asked her to get a diamond ear-stud and a cash of Rs. 10 lakhs. PW-2, PW-3 and PW-4 have stated that PW-1 was telling that the accused were making such a demand. However, it is not the case of PW-2, PW-3 and PW-4 that for what purpose the accused had approached them and demanded for any such

valuables subsequent to marriage of PW-1 with accused No.1 Even the evidence of PW-1 that accused were demanding her to get those valuables from her parents house is also a mere statement made by her without any further corroboration. Her said statements have been specifically and categorically denied from the accused side in her cross-examination. Further, the prosecution has not placed any other evidence, except the oral evidence of PW-1 to PW-4 to prove the alleged demand said to have been made by the accused. When undisputedly PW-1 was a Master Graduate in Science and having worldly knowledge and also accessible to Computer and E-mail, somewhere and in some form she could have maintained some records with respect to the alleged demand for additional dowry said to have been made by the accused. The prosecution through PW-1 has got marked some of the E-mails from Exs.P-5 to P-19. But, the petitioner in this revision petition has seriously disputed for taking into consideration those E-mails as evidence by invoking Section 65 of the Evidence Act. He contended that the documents does not comply the requirement of Section 65-B of the Evidence Act.

27. In his support, he also relied upon the judgment of Hon'ble Apex Court Anvar P.V. -vs- P.K.Basheer and others, reported in (2014) 10 SCC 473. In the said case, with respect to admissibility of electronic record as primary and secondary evidence, the Hon'ble Apex Court was pleased to hold that admissibility of secondary evidence and electronic record depends upon satisfaction of conditions under Section 65-B of the Evidence Act, which inter alia requires electronic record or document being accompanied by a Certificate as specified in Section 65-B(4) of the Evidence Act. In the absence of such Certificate as enumerated in Section 65-B (4) of the Evidence Act, it was held that secondary evidence of electronic record cannot be admitted in evidence.

28. Admittedly, in the instant case, except production of print-outs of alleged E-mails said to have been exchanged between PW-1 with her younger sister by name one Smt.Susheela, no other documents, including the Certificate under Section 65-B(4) of the Evidence Act has been produced by the prosecution. Undisputedly those E-mails print-outs are secondary in nature, as such, requires a Certificate under Section 65-B(4) of the Evidence Act. However, respondent No.2 relied upon a subsequent judgment of Hon'ble Apex Court, which was in Sonu Alias Amar's case (supra), wherein the Hon'ble Apex Court with respect to Section 65-B of the Evidence Act, made distinctions between objections regarding admissibility of the document which is inherently inadmissible and mode or method of proof which was required to be raised at the time of marking of a document as an exhibit. It observed that, objection regarding admissibility of the document which are per se inadmissible can be taken at appellate stage, because, it is a fundamental issue. However, mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. It is because, if the objections are taken at the trial, the other side would have an opportunity of rectifying the deficiencies. If it is taken at an appellate stage, the other side would not have such an opportunity.

29. In the instant case, it is not the contention of the petitioners that Exs.P-5 to P-19 were per se inadmissible. His only contention is that a procedural requirement by production of Certificate under Section 65-B(4) of the Evidence Act was not accompanying the document at the time of its marking. Admittedly, such an objection was not taken from the accused side at the time of marking of those documents in the trial Court. Had such an objection was raised at the trial Court, the party producing those documents i.e., the prosecution, could have rectified the deficiencies. As such, the petitioner cannot take such a contention at this stage in the matter.

30. A perusal of Exs.P-5 to P-19 also no where mentions about the alleged demand for valuables, including the diamond ear-stud and a cash of Rs. 10 lakhs said to have been made by the accused with the complainant (PW-1). Those E-mail correspondences which mainly includes the E-mails written by PW-1 to her younger sister by name Susheela, gives the details of every trivial matters and trivial allegations, including the one that PW-1 (complainant) was forced to eat with particular breakfast or lunch which was not tasty to her irrespective of the fact of she getting any vomiting. The E-mails also go to show that she was asked to play cards and sit with her mother-in-law for time-pass in the evening outside their house. In such an event, had there really been a demand for valuables like diamond ear-stud and a cash of Rs. 10 lakhs, any of the E-mails should have definitely mentioned about the same. However, as observed above, none of the E-mails whispers anything about the same.

31. In addition to the above, it is also to be noticed that, according to the accused, the income of accused No.1 while he was staying in United States of America along with PW-1 and his parents was not less than a sum of Rs. 10 lakhs. Though PW-1 has not admitted the same in her cross-examination, but, PW-2 has stated that, subsequently they came to know that he had such a huge income. Thus, a super-specialist medical doctor, with a huge income, if was demanding for valuables like diamond ear-stud or cash of Rs. 10 lakhs, then, definitely in any of the E-mails, there should have been a mention with respect to the same and few corroborating evidence should have been necessarily available with the complainant or could have been gathered by the prosecution during the investigation. However, the absence of any of the corroborative evidence and a very weak and self-serving oral evidence of PWs.1 to 4, which too have been denied in their cross-examination, would fail to establish that there was any demand from the accused for dowry or that they have accepted or taken any dowry.

32. Regarding the alleged cruelty said to have been meted by the accused against the complainant, all the four witnesses i.e., PW-1, PW-2, PW-3 and PW-4 have given their evidence on the similar lines. As observed above, PW-1 has stated that, on the very first night of their marriage, her husband i.e., accused No.1 told her that he does not want to have a child for about three years, and that he would think about the same after completion of M.S.Degree. A talk

between husband and wife as to when they should have a child or what is the view of a spouse about they having a child and what would be the right time for them is a common talk between the spouses to have a good planning about their family. As such, merely because the husband expresses his view, the same cannot be considered either as harassment or as a cruelty.

33. PW-1 has also stated that after she went to United States of America with accused Nos.2 and 3 and joined her husband, the accused No.1 asked her to continue her further studies and to find out a job, so that, it helps in maintaining the family and in meeting monthly expenses. He also suggested her to take GRE and TOEFL examinations. All the four witnesses i.e., PWs.1 to 4 have depicted the same also as one of the instance of alleged cruelty.

34. It cannot be understood as to how come the husband making a suggestion to his wife to acquire more knowledge and to pursue higher studies would amount to cruelty. PW-1 herself in her cross-examination has stated that prior to the marriage, she had a discussion with her would-be husband i.e., accused No.1. The said discussion with her would-be husband was about her further education, employment etc., When PW-1 herself has stated that prior to the marriage, they had such a discussion, it is obvious that she was aware that, after joining her husband at United States of America, she may have to pursue higher studies and find some employment to meet the expenses of the family. It is not their case that without any prior discussion, her husband all of a sudden forced her that she should find out an employment, otherwise, the consequences would be serious.

Since both the complainant and accused No.1 being highly educated and had good interaction prior to their marriage and more particularly, discussed about their future course of life, including further education of the complainant and her job opportunities, the accused No.1 either suggesting her or asking her to pursue her education further, cannot be considered as cruelty.

35. Further, the allegation of PW-1, which is also corroborated by the evidence of PWs.2, 3 and 4, is that PW-1 was asked to learn Tamil and she was also asked to play shuttle and cards with her in-laws. She has also stated that, she had to accompany her mother-in-law for a walk while they were in United States of America.

It is not in dispute that the language of communication among the accused in their family was Tamil as they were Iyers with Tamil as their language of communication. It is not that accused No.1 was not knowing Kannada, which was the mother-tongue of the complainant. However, it cannot be called as unnatural because, when a new member, though as a daughter-in-law, enters the family of her husband, the members of the husband's family expects that the new member mingles among them even culturally also, for which purpose, effective communication would be through the language which all the members in the family would understand in a proper and uniform manner. If the new member fails to understand the language in which the other members of the family in her

matrimonial home communicate, then, this new member i.e., daughter-in-law may feel isolated or singled-out. As such, the suggestion given by the accused to the complainant to learn Tamil, which even according to PWs.1 to 4, was not a coercive act of the accused, cannot be treated as a cruelty meted to complainant.

36. The contention of the complainant (PW-1), corroborated by PWs. 2 to 4, that PW-1 was asked to take her mother-in-law for walking while they were in United States of America and join them in playing shuttle, though has not been admitted from the accused side, rather, they denied the same by subjecting PWs.1 to 4 to detailed cross-examination and making denial suggestions, still, assuming that such a request was made by the accused, that would be only in the best interest of all the members in the family and of their health. Therefore, the allegation of PW-1 that she was once forced to accompany her mother-in-law for a walk even if she was not keeping well, appears to be a trivial matter which cannot be called as a cruelty leading to attract Section 498-A of IPC.

37. Further the allegation of PW-1 that accused No.1 intentionally delayed in applying for extension of her VISA, has remained only as a sheer allegation without any corroborative evidence. On the other hand, PW-1 herself has admitted in her cross-examination as true that when the matter regarding application for extension of VISA had to be contested by using the services of an Attorney by name Ms.Sheela Murthy, it was the accused No.1 himself who had borne the professional charges of the Attorney. Had accused No.1 was not willing and interested in getting the VISA of his wife extended, then, there was no necessity for him to engage the services of an Attorney and to bear the legal expenses by himself.

38. Therefore, all the allegations made by the complainant against the accused are too trivial in their nature and which are nothing, but, some minor differences between the parties in the process of adjustment between them. It cannot be ignored of the fact that, admittedly PW-1 was belonging to Kanva Brahmins Smartha group, as such, she was brought up in the said custom and was following the rituals of the said sect, whereas, the accused were belonging to Sanketi sect of Brahmin community. PW-1 herself has shown that there would be some differences in the customs and rituals between these two sects though both of them belong to Brahmin caste. Under such circumstances, the minor differences in rituals either in performance of marriage or in the post-marital life of the spouses are quite, but, natural and they cannot fall under the definition of 'cruelty' under Section 498-A of IPC.

39. It is also the complaint of the complainant and her siblings that accused were preventing PW-1 from making telephone calls to her parental home and to talk with them. The same was denied in the cross-examination of these witnesses. Still, the very statement of PW-1 that she was being prevented from talking to her parents creates a doubt and the same cannot be believed, for the reason that, the very same PW-1 has stated that she was in constant touch with her younger sister by name Susheela and was sending E-mails to her. Thus, when

PW-1, whether in India or in America, could able to have an access to a Computer system and send E-mails to her sister, it is hard to believe that she was being prevented by the accused from contacting her parental family members.

40. Lastly, the prosecution through PW-1 has stated that all the details of the cruelty meted to PW-1 in her matrimonial home was being revealed by her to her younger sister by name Susheela, in which regard, several E-mails were sent to Susheela by her. Those E-mails were marked at Exs.P-5 to P-19. A perusal of those documents would go to show that they are the E-mails sent by PW-1 to her younger sister Ms.Susheela, addressing her as 'Sushee'. In Ex.P-5, she has stated that she had been to Orlando (Disney World) and everything was going smooth. She has also stated that she could not able to reach her (Susheela) all through from her mobile.

The said statement itself go to show that everything was smooth at United States of America in the matrimonial home of PW-1 and that she was even taken to tourist places like Orlando (Disney World). It also shows that PW-1 had a mobile, but, there was some communication problem, as such, in the very same E-mail, she had asked her sister about any chances of activating her cell phone from there for a year.

41. In subsequent E-mail also, several details of day-today affairs appears to have been written to her sister by the complainant. She has also stated in the E-mail dated 09.06.2008 that there was big fire between her mother-in-law and Shashi (accused No.1) regarding the child issue. He (Shashi) clearly told that he does not want child for three years and after that, he thinks of it. This go to show that the issue as to having a child was more at discussion between mother and son (accused No.2 and accused No.1) than between accused No.1 and the complainant. Even her mother-in-law was also aware that her daughter-in-law (PW-1) was not at fault, but, it was the decision of her son (accused No.1) that he should not have child until he is established in United States of America, which according to him, would have taken about three years. The said E-mail itself would go to show that the difference of opinion was between accused No.1 and accused No.2 and accused No.2 (mother-in-law) had all concern about her daughter-in-law (PW-1). Thus, the allegation of the complainant that the said act of alleged insisting to have a child was a cruelty, is not acceptable.

42. In another E-mail dated 11.08.2008, the complainant has written to her sister Susheela stating that her mother-in-law is giving too much food which she had to eat, otherwise, she would be on fasting. After stating it, the complainant has also stated that her mother-in-law is fighting every day and she is not able to eat properly and breathe. In this way, the complainant (PW-1) has considered that her mother-in-law asking to eat well and eat more is also a cruelty meted to her . This is nothing, but, an instance of too much sensitiveness with a person, which is unwarranted. In such an event, every positive acts and love and affection have been given a different colour and said that the recipient of love

and affection is being subjected to harassment or put to inconvenience.

43. In one more E-mail, the complainant has written to her sister that her mother-in-law (accused No.2) has stopped doing everything and even pooja and she says that the complainant has to do that. By writing the same to the other person, may be to her sister, the complainant herself has shown that what her line of thinking was and that she was not even ready and prepared to do pooja in a traditional family and that she expected that doing pooja in the house was the duty of her mother-in-law, but, not hers.

44. Thus, the entire E-mails in the series from Exs.P-5 to P-19 are full with these kind of trivial matters which in a normal and happy family would had to be just ignored and proceeded to keep intact the good relationship among the members in the family. On the other hand, the complainant herein appears to have taken every small thing in a different angle and appears to have been showing that entire family should have been continued and acted in a manner which she was feeling and liking personally and individually.

45. Both the complainant and accused No.1 appears to have given undue importance for their living in abroad.

It also appears that the sole aim in his life of accused No.1, was living in United States of America and earning money, in which regard, it appears that he was demanding the complainant to secure a job and acquire H1 VISA, so that, in case of expiry/lapse or non renewal of his VISA, he could have still continued to stay in the United States of America upon his wife's VISA. However, as analysed above, the same can not be considered as a cruelty attracting Section 498-A of IPC.

Thus, both the complainant and accused No.1 appears to have forgotten that the family is a unique unit in a society and mutual understanding among the members in a family would not only help in achieving their goals and purpose, but, also would help in having happiness in the family, thus building a healthy society. The small and minor likes and dislikes, differences, would be common in most of the families, which the family members are required to cope-up with, adjust, tolerate, enjoy and maintain good atmosphere relationship of love, affection, mutual respect and good health in the family. However, the complainant appears to be too sensitive in magnifying several trivial aspects into big issue which has ultimately resulted in the present case.

46. Both the trial Court and the Sessions Judge's Court appears to have carried away with the self-serving testimony of the complainant by ignoring the fact that all those statements of not only the complainant, but, also of PW-2, PW-3 and PW-4, remained very bald, vague, without any clear details of the alleged several incidents. The trial Court also did not notice the fact that, even according to PW-1, if she was unable to contact her family members and could only communicate with her younger sister Susheela through E-mails, then the competent witness to speak about those details was said Susheela, who for the

reasons best known to the prosecution, was not examined. Further, even the E-mails from Exs.P-5 to P-19 also, as analysed above, could not able to show that the acts alleged therein would attract cruelty as mentioned in Section 498-A of IPC. Thus, the impugned judgments warrants interference and the prosecution case would not sustain.

47. Accordingly, I proceed to pass the following:

ORDER

[i] The Criminal Revision Petition No.1612/2016 and Criminal Revision Petition No.1613/2016 are allowed.

[ii] The impugned judgment of conviction dated 05.09.2013 and order on sentence dated 07.09.2013, passed by the learned II Addl.Chief Metropolitan Magistrate, Bengaluru, in C.C.No.17019/2011, which was further confirmed by the judgment and order dated 01.12.2016, passed by the learned LI Addl.City Civil and Sessions Judge, Bengaluru City, in Criminal Appeal No.503/2013, are hereby set aside;

[iii] The revision petitioner (accused No.1) in Criminal Revision Petition No.1612/2016 – Dr.Shashidhar Subbanna, son of late Subbanna, residing at No.174/5A, 10th Cross, 3rd Block, Tyagarajanagar, Bengaluru-560028, and the revision petitioner (accused No.2) in Criminal Revision Petition No.1613/2016 – Smt.Saraswathi, wife of late Subbanna, residing at No.174/5A, 10th Cross, 3rd Block, Tyagarajanagar, Bengaluru-560028, stand acquitted of the offences punishable under Section 498-A read with Section 34 of Indian Penal Code, 1860 and Sections 3 and 4 of Dowry Prohibition Act, 1961.

In view of disposal of the main petitions, the pending I.A.No.1/2020 does not survive for consideration.

Registry to transmit a copy of this order to both the trial Court and also to the Sessions Judge's Court along with their respective records immediately.