

(2017) 01 KAR CK 0063
In the Karnataka High Court
Case No : 3647 of 2010

The State by Aland Police Station

APPELLANT

Vs

Arjun S/O Manikappa Nagure & Ors.

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 207](#), [Section 357A](#) - Examination of witnesses by police - Power to examine the acc

Citation : (2017) 01 KAR CK 0063

Hon'ble Judges : A.S. Bopanna, B. A. Patil

Bench : DIVISION BENCH

Advocate : Prakash Yeli, Baburao Mangane

Judgement

1. This appeal is preferred by the State assailing the order of acquittal dated 15.2.2010 passed in SC.No.52/199 by the Fast Track Court-I, Gulbarga acquitting accused 1 to 3.

2. The case of the prosecution in brief is that marriage of the deceased Kalavathi with accused No.1 was performed on 19.5.1998. Accused No.1 along with his parents-accused Nos.2 and 3 who were residing together at Kajuri Village of Aland Taluka started harassing the deceased Kalavathi both physically and mentally for demand of additional amount of dowry and gold inspite of parents of the deceased having paid an amount of Rs.21,000/- and five tholas of gold at the time of marriage. Due to the ill-treatment and harassment caused by the accused persons deceased Kalavathi committed suicide by

consuming pesticide in the matrimonial house. On the basis of the complaint lodged by PW.2-father of the deceased, an investigation was done and after completion of investigation, charge sheet came to be filed against the accused persons. After filing of the charge sheet, by following the procedure laid down under Section 207 of Cr.P.C. the committal Court committed the case to the

Sessions Court. After committal, the Sessions Court took the cognizance, secured the presence of the accused and after hearing about the charge, charge came to be framed against accused Nos.1 to 3. Since the accused have pleaded not guilty the trial was fixed.

3. In order to establish its case, the prosecution in all has examined 15 witnesses and got marked the documents at Exs.P1 to P7 and MO.Nos.1 to 4. During the course of examination, defence has got marked Exs.D1 and D2. However, no evidence was led on

behalf of the accused. After closure of the prosecution evidence, statement of the accused came to be recorded under Section 313 of Cr.P.C. and they denied incriminating material against them. After hearing both the sides and on evaluation of the material on record, the trial Court passed the impugned order acquitting the accused persons.

4. It is contended by the learned Additional SPP that the trial Court without assigning the valid reasons has acquitted the accused even though the deceased has died within a short span of 4 to 5 months after her marriage. It is also contended that even though there is corroborative evidence to prove the fact that the death is homicidal due to ill-treatment and harassment caused by accused Nos.1 to 3, the trial Court is not justified in acquitting them. It is his further contention that when death has occurred within seven years after the marriage, the Court below

ought to have drawn the presumption under Section 113B of the Indian Evidence Act ("Act" for short) which is mandatory. He has further contended that once the prosecution discharges its initial burden on preponderance of probabilities, all the ingredients of dowry death as laid under Section 304B of IPC are attracted, then the burden shifts upon the accused to rebut the said presumption. Even though the said presumption has not been rebutted, the trial Court acquitted the accused which is not sustainable in law. He has also contended that in view of undisputed fact of the date of marriage, the Court below ought to have concluded that the death has occurred within seven years of marriage and it ought to have drawn the presumption. In this behalf, he has relied upon various decisions of the Apex Court. On these grounds, he prayed for allowing the appeal by setting aside the impugned order.

5. Per contra, the learned counsel for the respondents-accused has vehemently argued and contended that basic foundation for initiation of the case is the complaint at Ex.P3 which is not proved. He has urged that in Ex.P3 it is nowhere stated as to when the demand and payment of dowry was made. In the absence of such material, no presumption can be drawn. He has also contended that PW.2, the complainant has made major improvements in the evidence about payment of dowry and cruelty. He has further contended that the family of the deceased is not financially sound and therefore the question of payment of dowry does not arise at all. If cumulative effect of all these things are taken into

consideration, then it does not amount to dowry death and the deceased has committed suicide as she was suffering from asthma. He has further contended that the prosecution has not produced corroborative,

convincing and cogent evidence to show the cruelty, harassment and ill-treatment caused by the accused as against the deceased so as to drive her to commit suicide. In the absence of such material, the trial Court has rightly acquitted the accused. He has also contended that the State has not made out any good grounds so as to interfere with the order of acquittal and therefore the same is liable to be confirmed by this Court.

6. The undisputed facts are that the deceased Kalavathi, daughter of PW.1 and younger sister of PW.5 was given in marriage to accused No.1 and the said marriage was performed on 19.5.1998. Deceased Kalavathi was staying in the matrimonial house along with the accused. It is also not in dispute that on 26.9.1998, deceased Kalavathi committed suicide by consuming pesticide and the death was within a period of seven years after her marriage.

7. Before proceeding further, it is beneficial to note the evidence tendered by each of the witnesses in brief.

PW.1 is the doctor who has conducted autopsy over the dead body of the deceased Kalavathi and issued the postmortem report as per Ex.P2.

PW.2 is the father of the deceased who has lodged the complaint as per Ex.P3. He has deposed that the deceased died in the house of the accused after 4 to 5 months of her marriage; prior to the marriage, he along with CWs.2, 4 and 6 had been to the house of the accused and as per their demand, he has given five tholas of gold and cash of Rs.21,000/- at the time of marriage and had also given the utensils. When the deceased had come to her parental house for Nagarapanchami festival, she informed that accused were demanding additional amount of dowry of Rs.30,000/- and five tholas of

gold and they were assaulting and ill-treating her. Along with CWs.2, 4 and 6 the deceased was sent to the house of the accused and eight days thereafter he received the intimation of the death of the deceased. During the course of cross-examination, PW.2 has deposed that the accused has performed the marriage in a temple which is near to the village of the accused. PW.2 has also deposed that willingly he has given five tholas of gold and Rs.21,000/-. He has further deposed that a panchayat was conducted when the deceased had complained against the accused persons in the village. PW.2 has further deposed that Ex.P3 was got written by CW.2 and he was asked to sign and accordingly he signed on Ex.P3. He does not know what is written in Ex.P3. It is further deposed by PW.2 that his daughter was having burning sensation in her chest due to asthma and fever. After her marriage she took treatment from Dr.Desai.

Other suggestions have been denied by PW.2 in his cross-examination.

PWs.3 and 4 are the persons who were present at the time of the first

negotiation of the marriage and they were also present when deceased complained about the ill-treatment and harassment caused by the accused. They had been to the house of the accused for settlement of the disputes.

PW.5 is the brother of the deceased before whom deceased Kalavathi told about demand of Rs.30,000/- and five tholas of gold when she had been to her parents' house for Nagarapanchami festival. PW.5 had also been to the house of the accused along with PW.2 to pacify the disputes.

PW.6 is another witness who was also present at the time of marriage talks.

PW.7 is the Tahsildar who has conducted the inquest over the dead body of deceased Kalavathi as per Ex.P4.

PW.8 is the Police Constable who carried the dead body to the Government Hospital for postmortem and after the postmortem, he handed over the body to the relatives and he collected MOs.1 to 3 (clothes of the deceased) and produced before the Investigating Officer.

PW.9 is the private Doctor. The deceased was taken by the accused persons to the clinic of PW.9 where she was declared as dead by PW.9.

PW.10 is the panch witness for inquest mahazar at Ex.P4 and recovery mahazar at Ex.P5.

PW.11 is also a panch witness for inquest mahazar at Ex.P4.

PW.12 is the Deputy Superintendent of Police who handed over further investigation to COD after collecting certain material.

PW.13 is an independent witness who was present at the time of marriage negotiation and he has also participated to pacify the quarrel along with PWs.2, 5 and other witnesses.

PW.14 is the CPI who registered the case on the basis of Ex.P3 and seized the pesticide can by drawing a mahazar.

PW.15 is the Deputy Superintendent of Police working in CID who took further investigation from PW.12 and after completion of investigation, laid the charge sheet against the accused persons.

8. Learned counsel for the accused-respondents submitted that the complaint at Ex.P3 does not

contain any allegations of torture, cruelty and demand of dowry by the accused. There is no foundation for dowry death. He has contended that Ex.P3 has not been proved. In the case on hand, PW.2, the father of the deceased has deposed about the negotiation and payment of Rs.21,000/- and five tholas of gold at the time of marriage. He has deposed that when his deceased daughter came to his house for Nagarapanchami festival, she informed about the demand of Rs.30,000/- and five tholas of gold by the accused persons. She also informed

about the illtreatment and harassment caused by the accused persons. PW.2 has deposed that along with CWs.2, 4 and 6 he had gone to the house of the accused and informed that he is unable to pay the amount and left his daughter in the house of the accused and after eight days he received the intimation of death of his daughter. Even during the cross-examination, PW.2

has deposed that he does not know what was written in Ex.P3 and Ex.P3 was got written by CW.2. It has been elicited in his cross-examination that PW.2 has paid Rs.21,000/- and five tholas of gold willingly to the accused.

9. If we look into the evidence of PWs.2 to 6 and 13, they have consistently deposed before the trial Court that prior to the marriage there were marriage talks and thereafter during the marriage as per the settlement, an amount of Rs.21,000/- and five tholas of gold was given to the accused. However, there was further demand of money and gold by the accused. It has also consistently come in the evidence that a panchayat was held when the deceased had come to her parents' house for Nagarapanchami festival and informed them about the demand for money and gold by the accused and some of the witnesses had been to the house of the accused and settled the disputes by

leaving the deceased in the matrimonial house. Hence, there is corroboration and consistency with regard to these facts. Even though, PWs.2 to 6 and 13 were cross-examined at length, nothing was elicited so as to discredit the testimony of these witnesses. Leave apart this, another crowning factor is that during the cross-examination of PW.4 it was suggested that an amount of Rs.30,000/- was demanded by accused No.1 for the purpose of his job. Though the said suggestion has been denied, it will point out that there was a demand of Rs.30,000/- from accused No.1. When the records reveal that there was demand of money by the accused, then the accused persons have to establish that the said demand of money was for the purpose of the job of accused No.1 and what was the obligation of the family of the deceased to pay such amount. Neither during the course of cross-examination, nor in the

statement recorded under Section 313 of Cr.P.C. has it been properly explained as to for which job the accused were demanding Rs.30,000/- and as to where exactly he wanted to get an appointment. If they fail to explain the said facts, coupled with the evidence of PWs.2 to 6 and 13, then the presumption under Section 113B of the Act will arise in and the Court is duty bound to draw the presumption that the demand of money is nothing but it is a dowry. At this juncture, it is to be noticed that in case of demand of dowry, it is usually confined within the four walls of house and known only to the members of those two families. Ordinarily, no independent and direct evidence is available to substantiate the said fact. The prosecution has brought the evidence to show that prior to the marriage negotiation took place, in pursuance of the said negotiation, the dowry in the form of money and gold was given and thereafter

when the deceased had come to her parent's house and informed them about

further demand of money and gold as well as the harassment and a panchayat was held.

10. Sections 113A and 113B of the Act are introduced permitting the Court to presume certain things in certain circumstances. Such circumstances are present in the case on hand to draw the presumption on the basis of the evidence led by the prosecution. In that light, we find it appropriate to draw the presumption under Section 113B of the Act in the present facts.

11. If the entire evidence is taken into consideration along with the evidence of PWs.2 to 6 and 13, there is a corroboration to the effect that there was marriage talks and in the said talks it was agreed to give Rs.21,000/- and five tholas of gold and

the same was given to the accused at the time of marriage. Therefore, it is clear that there was a demand of dowry by the accused and as per the said demand, PW.2 has paid the said dowry to the accused at the time of marriage. In that context if the evidence of PW.2 is looked into, an amount of Rs.21,000/- and five tholas of gold is stated to have been paid willingly but it is not shown to be a part of the custom. That apart, in the case on hand, there was further demand to the tune of Rs.30,000/- and five tholas of gold. This chain of events go adverse to the accused instead of helping them.

12. If we carefully peruse the contents of the complaint at Ex.P3, it does not say anything about earlier negotiation, but it discloses that there was subsequent demand for payment of Rs.30,000/- and five tholas of gold and in that context the accused persons used to ill-treat the deceased Kalavathi and

the same was disclosed by her when she had been to her parents' house for Nagarapanchami festival. Even though Ex.P3 does not contain in detail the illtreatment and harassment caused by the accused, it has been mentioned in Ex.P3 about the ill-treatment for demand of further amount of dowry and gold. Complaint is not an encyclopedia so as to contain all the details which the prosecution intends to prove. If broad case of the prosecution is stated in the complaint and on the said basis if the investigation is done and a complaint is lodged within a short span after the death of the deceased, then under such circumstances, no adverse inference can be drawn against Ex.P3. PW.2 has deposed during the course of cross-examination that Ex.P3 was got written by CW.3 and he has only put his signature on it without knowing its contents. The evidence of PW.2 has to be assessed in the backdrop of situation where there was

a loss of the young daughter within a short span of 3 to 4 months after her marriage; he might have been in great mental shock and disturbance and therefore he might not have categorically stated about the illtreatment and torture caused to the deceased in detail. It is well established principles of law that anybody can set the criminal law into motion. In that light, on going through the contents of complaint at Ex.P3, it discloses the fact that soon before her death the deceased was subjected to cruelty and harassment and the death was

due to the illtreatment and harassment caused by the accused persons. The complaint cannot be doubted unless it is proved that the said complaint is a fabrication to involve the accused persons. In the case on hand, nowhere such material has been brought during the course of cross-examination of any of the witnesses. In the absence of such material, Ex.P3 can be relied

upon and therefore the contention of the learned counsel for the accused does not hold any water.

13. Non-mentioning of details of paying amount to the accused, demand of dowry, cruelty and harassment meted out to the deceased in Ex.P3 with greater clarity does not affect the credibility of PW.2 and other witnesses. The evidence of PW.2 has to be assessed taking into consideration that he has lost his young daughter and therefore he will be in agony. That apart the delay would add to the misery. In that light, if the entire evidence is perused, it is clear that there is enough consistency and even during the course of cross-examination, nothing worth was elicited so as to disbelieve the version of these witnesses. On the contrary, during the course of cross-examination of PW.2 it has been elicited that five tholas of gold and Rs.21,000/- has been given willingly. That itself indicates that prior to the

marriage, some negotiation has taken place and as per the negotiation PW.2 might have paid the said amount and gold. In the cross-examination of PW.2, it has been suggested that no cash and gold was paid and there was no further demand of Rs.30,000/- by sending the deceased to her parents house. But, all these suggestions have been denied by PW.2. When the death of the deceased is unnatural, that too in the house of the accused within a period of 3 to 4 months after the marriage, the presumption has to be drawn that it is a dowry death. When once the said presumption has been drawn, the initial burden which is on the prosecution will be discharged and thereafter the accused has to rebut the said presumption. In that light, if we peruse the evidence on record, it is clear that during the cross-examination of PW.2 and other witnesses, it has been elicited that the deceased has taken treatment from Dr.Desai for burning

sensation in her chest, asthma and fever, after her marriage. Even that fact is taken into consideration, it cannot be said that a person will lose his life by consuming the pesticide, that too immediately after 3 to 4 months of marriage only for asthma. Asthma is not a disease which is unbearable and intolerable. It is a common phenomena with many people. In that light, on preponderance of probabilities also the defence taken by the accused is not just and reasonable and therefore it cannot be accepted.

14. Even though it was suggested during the course of cross-examination that deceased was suffering from asthma and burning sensation in her chest, there was nothing supervening to suggest that the deceased did suffer from the said ailment so as to probablise any act of self-elimination. On the other hand, the evidence on record produced by the prosecution demonstrates in emphatic terms

that the

deceased had been complaining against the accused persons and their persistent hurtful demand for dowry for additional amount of Rs.30,000/- and said reason might have put her in pitiable condition and the continuous and ruthless harassment and ill-treatment has resulted in severe and mental torture, which has driven her to take extreme step of self-elimination. If there was any other reason other than the demand of dowry, ill-treatment, cruelty, etc., the accused persons would have definitely brought the same before the Court either during their examination under Section 313 of Cr.P.C. or during the course of cross-examination. In the absence of such material, the theory put forth by the accused about the reasib FIR unnatural death does not appear to be acceptable.

15. During the course of arguments, it is brought to our notice that there are some contradictions during the course of cross-examination of the

witnesses, but however, those contradictions cannot be looked into for any purpose much less to discredit the testimony of the prosecution version because of the reason that in the case on hand such contradictions were not confronted with their statements which have been recorded by the police under Section 161 of Cr.P.C. To prove the contradictions, the statement must be marked and the said marked statement must be read out to the Investigating Officer. In this connection, it is relevant to refer to the decision of the Apex Court in the case of V.K.Mishra & another Vs. State of Uttarakhan & another, reported in (2015)9 SCC 588, wherein the Apex Court in paragraphs 14 to 19 has observed thus:-

"14. Mr.K.T.S. Tulsi, learned Senior Counsel for the appellants submitted that FIR contains only allegations of torture and

cruel behaviour on the part of the appellants towards the deceased and in his statement recorded by the police under Section 161 CrPC, PW 1 had not stated anything about the alleged dowry demand whereas in his statement recorded by the police PW 1 had only stated about many restrictions imposed on his daughter due to which Archana felt suffocated. Contending that there were no allegations of cruelty in connection with dowry demand or any such conduct of the appellants which could have driven Archana to commit suicide either in the FIR or in the statement of PW 1 recorded on the next day by the investigating officer, the learned Senior Counsel urged and tried to persuade us to look into the statement of PW 1 recorded under Section 161 CrPC.

15. Section 161 CrPC titled "Examination of witnesses by police" provides for oral examination of a person by any investigating officer when such

person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 CrPC can be used at any trial are indicated in Section 162 CrPC. Section 162 CrPC reads as under:

"162. Statements to police not to be signed: Use of statements in evidence.-(1)

No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid any part of his statement if duly proved may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation .-An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The Statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i)

of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

17. The Court cannot suo moto make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the

Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under:

"145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for

the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring

to the police statement will depose about the witness having made that statement. The process again involves referring to statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

16. Keeping in view the dictum laid down in the aforesaid decision, the contention of the learned counsel for the accused does not stand to reason and is liable to be rejected.

17. Even though during the course of arguments it is contended by the learned counsel for the accused that accused persons have taken the deceased to doctor and if they have committed the offence, they

could not have taken her to the doctor, this theory also cannot be acceptable inasmuch as the deceased was subjected to cruelty soon before her death for demand of dowry and when it had gone out of the hand, due to fear or some other reason they might have taken her to doctor. Therefore, the said fact also

will not be helpful to the accused to rebut the presumption drawn under Section 113B of the Act. In that light, the said submission of the learned counsel for the accused is not acceptable.

18. When the accused were not successful in rebutting such presumption and they have also not taken any steps to prove that suicide committed by the deceased was other than the dowry death, the only view that can be taken is that the alleged death is due to cruelty, harassment and torture for demand of money and gold by the accused persons. Taking into consideration the above aspects, we are of the

considered view that there is material to draw the presumption and the accused have failed to discharge the burden on them and as such they are liable to be convicted for the charges levelled against them.

19. As could be seen from the order of the trial Court, the trial Court without considering these legal aspects of the matter and without proper appreciation of the evidence, has swayed away by the stray admissions of the witnesses and has wrongly acquitted the accused. It is well established principle of law that the evidence has to be weighed and it has to be appreciated in its entirety and not by taking stray admissions.

20. We are conscious of the settled position of law that this Court would not normally interfere with the order of acquittal passed by the trial Court if the trial Court has taken one of the two possible views

under the facts and circumstances of the case. But in the case on hand, a second view is not possible as against the accused so as to give the benefit of doubt. Having regard to the trustworthy corroborative evidence of all the witnesses and basing upon the presumption drawn by this Court as provided in law that too when the accused have failed to rebut the presumption, the only possible view in the facts and circumstances of the case is that the accused persons have to be convicted for the offences with which they were charged.

Accordingly, we pass the following order:-

Appeal is allowed. The impugned judgment and order of acquittal dated 15.2.2010 passed by the Fast Track Court-I, Gulbarga in SC.No.52/1999 is set aside. Accused Nos.1 to 3-respondents herein, namely, Arjun, Manikappa and Bharatibai @ Bharatamma are convicted for the offences punishable under Sections

498A, 304B, 306 r/w. Section 34 of IPC and Sections 3, 4 and 6 of Dowry Prohibition Act.

Having arrived at the conclusion to convict the accused persons, the matter was relisted for further hearing on the issue relating to sentence. At that time, the learned Additional SPP submitted that the accused persons may be dealt with iron hands and the maximum punishment has to be imposed in accordance with

law. Per contra, the learned counsel for the respondents-accused submitted that keeping in view the pendency of the case for a long period and the accused persons were also in the custody for more than a year, a lenient view may be taken while awarding the sentence.

We have considered the submissions made by the learned Additional SPP and the learned counsel for the respondents-accused. At the time of considering

the imposition of sentence, the Court no doubt has to keep in perspective the fact that sending the accused behind the bars is not the only remedy but reformation has also to be adopted in appropriate cases, but at the same time, the Court has to strike a balance keeping in view the offence committed and the effect of the punishment on the society at large and on the victim. The sentence in a case should send a signal to the society about the guilty being punished. The Court has to strike a balance between the reformative as well as punitive theories as held by the Apex Court in the case of Siddarama & others Vs. State of Karnataka, reported in AIR 2006 SC 3265. Further, it is the duty of the Court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders,

the sentence should be appropriate befitting the crime as held by the Apex Court in the case of Akram Khan Vs. State of West Bengal, reported in 2012(1) Crimes 5 (SC). While awarding sentence, the Court has to bear in mind the nature, the circumstances of the offences and the background of the victim, the social background of the accused, the economic and mental condition, prospects of rehabilitation, absence of mens rea, instigation and influence, delay in disposal of the case, state of health of the accused, gravity of the offence, whether he is habituated, whether the offence has been well-planned and the socio-economic offences. In that light, we impose the following sentence on accused Nos.1 to 3:-

Accused Nos.1 to 3 are sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.25,000/- (Rupees twenty-five thousand only) each for the offence punishable under

Section 498A of IPC. In default of payment of the fine amount, they shall undergo simple imprisonment for a further period of six months.

Accused Nos.1 to 3 shall undergo simple imprisonment for a period of seven years for the offence punishable under Section 304B of IPC. They shall also undergo imprisonment for a period of seven years and to pay a fine of Rs.30,000/- (Rupees thirty thousand only) each for the offence punishable under Section 306 of IPC. In default of payment of the fine amount, they shall undergo simple imprisonment for a further period of one month.

Accused Nos.1 to 3 shall undergo simple imprisonment for a period of five years and to pay a fine of Rs.15,000/- (Rupees fifteen thousand only) each for the offence punishable under Section 3 of the Dowry Prohibition Act. In default of

payment of the

fine amount, they shall undergo simple imprisonment for a further period of one month. Accused Nos.1 to 3 shall undergo simple imprisonment for a period of two years and to pay a fine of Rs.15,000/- (Rupees fifteen thousand only) each for the offence punishable under Section 4 of the Dowry Prohibition Act. In default of payment of the fine amount, they shall undergo simple imprisonment for a further period of one month.

Accused Nos.1 to 3 shall undergo simple imprisonment for a period of two years and to pay a fine of Rs.15,000/- (Rupees fifteen thousand only) each for the offence punishable under Section 6 of the Dowry Prohibition Act. In default of payment of the fine amount, they shall undergo simple imprisonment for a further period of one month.

The aforesaid sentence imposed for each of the offences shall run concurrently. If already the

accused persons have been detained as under trial prisoners in the custody as per Section 428 of Cr.P.C., they shall be given set off the period of detention already undergone as under trial prisoners.

Out of the fine amount deposited by the accused, an amount of Rs.2,00,000/- (Rupees two lakhs only) shall be paid to PW.2-Baburao, S/o.Salbanna Dhudbhate, father of the deceased as compensation under Section 357A of Cr.P.C.

The trial Court is directed to secure the accused persons and issue necessary conviction warrant to undergo the sentence, forthwith.