R

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF APRIL 2025

BEFORE

THE HON'BLE MR JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 100325 OF 2017

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY THE
CIRCLE POLICE INSPECTOR
HIREKERUR POLICE STATION,
HIREKERUR, HAVERI DISTRICT
THROUGH THE ADDL.
STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDL. S.P.P.)

AND:

1. SRI. RAMAPPA
   S/O. BASAPPA PUJAR
   AGE: 74 YEARS,
   R/O: HIREKABBAR,
   TQ: HIREKERUR, DIST: HAVERI.

2. SURESH
   S/O. BASAPPA PUJAR
   AGE: 35 YEARS,
   R/O: HIREKABBAR,
   TQ: HIREKERUR, DIST: HAVERI.

3. SWAROOPAVVA
W/O. SURESH PUJAR
AGE: 30 YEARS,
R/O: HIREKABBAR,
TQ: HIREKERUR, DIST: HAVERI.

…RESPONDENTS

(BY SRI. MANJUNATH HANCHATE, ADVOCATE FOR
SRI. GURUDEV GACHCHINAMATH, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTIONS 378(1) AND 378(3) OF CR.P.C., PRAYING TO, GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 22.07.2017 PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE AT HAVERI (SITTING AT RANEBENNUR) IN SESSIONS CASE NO.23/2014, TO SET ASIDE THE JUDGMENT AND ORDER ACQUITTAL DATED 22.07.2017 PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE AT HAVERI (SITTING AT RANEBENNUR) IN SESSIONS CASE NO.23/2014 AND TO CONVICT THE RESPONDENTS/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 323, 354, 306 AND 504 R/W. SECTION 34 OF CPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 18.03.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CAV JUDGMENT

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

The State has preferred this appeal against the judgment of acquittal passed by the II Additional District and Sessions Judge, Haveri [sitting at Ranebennur] in S.C. No.23/2014 dated 22.07.2017 [for short, *'the Sessions Court'*].

2. The parties are referred to as per their rank before the Sessions Court.

3. The brief facts leading to this appeal are that the Circle Inspector of Police, Hirekerur Circle submitted the charge sheet against the accused Nos.1 to 3 for the commission of offences punishable under Sections 323, 354, 306 and 504 read with Section 34 of the Indian Penal Code, 1860 [for short, *'IPC'*]. It is alleged that the accused have informed the complainant to vacate the house, as the house belongs to him. Then the complainant questioned as "where they should go by vacating the same?" and the accused had told the complainant that you go somewhere and die. Further it is alleged that on 08.01.2014 at 07:30 a.m., when the complainant was roaming in-front of her house, all the accused Nos.1 to 3 having common object, abused the complainant in filthy language and

told her to vacate the house, to which the complainant replied by stating that as to why they should vacate the house and they are residing in the house which belongs to the grandfather of her husband. Again the accused abused the complainant in filthy language, assaulted her and abetted her to commit suicide, ill-treated her both physically and mentally, outraged her modesty by pulling her saree in front of the locality people. In this regard, the complainant out of frustration without tolerating the ill-treatment of accused Nos.1 to 3, on 08.01.2014 at 08:00 a.m. in her residential house poured kerosene on herself and lit fire. Though she was admitted to CJ Hospital, Davanagere for treatment, she died in the hospital because of burn injuries on 09.01.2014 at 06:30 a.m while she was under treatment.

4. After investigation, the Investigating Officer submitted the charge sheet against the accused for the commission of offences punishable under Sections 323, 354, 306 and 504 read with Section 34 of IPC and case was registered in C.C. No.86/2014 and thereafter, the case was committed to the Court of Sessions and registered in S.C. No.23/2014. The accused appeared before the Sessions Court and enlarged on bail. On hearing the parties, the Sessions

Court framed the charges for the alleged commission of offences. Same was read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claim to be tried.

5. To prove the case of the prosecution, in all, 23 witnesses were examined as PWs.1 to 23, 22 documents were marked as Exs.P1 to P22 and 4 material objects were marked as MOs.1 to 4. On closure of prosecution side evidence, statement under Section 313 of the Criminal Procedure Code was recorded. The accused totally denied the evidence of prosecution witnesses, but they have not chosen to lead any defence evidence on their behalf.

6. Having heard the arguments on both sides, the Sessions Court has acquitted the accused. Being aggrieved by the judgment of acquittal, the State has preferred this appeal.

7. The learned Additional S.P.P. Sri. M.B. Gundawade, would submit that the judgment and order of acquittal passed by the Sessions Court is contrary to law, facts and evidence on record and is not sustainable in the eye of law. PWs.3 and 5 are the parents of the deceased. Both these witnesses have specifically stated before the Sessions Court regarding the

harassment meted out by the accused to the deceased regarding eviction of the premises. Further they have deposed that the deceased has narrated the cause of injuries and the persons responsible for injuries and the deceased has orally stated before them regarding the assault made by the accused and also pulling the saree of the deceased in the presence of locality people and because of the insult and abetment made by the accused, the deceased herself poured kerosene and lit fire and sustained injuries. This aspect of the evidence has not been properly read and appreciated by the Sessions Court and thereby erred in acquitting the accused.

8. The PWs.6 and 7 are the neighbours of the deceased and they are the eyewitnesses to the incident. They have also specifically stated before the Sessions Court regarding the physical and mental torture and assault and abetment made to the deceased by the accused. The evidence of these two witnesses is fully corroborated with Ex.P5, the statement of the deceased *i.e.* the complaint. The said evidence also not been properly read and appreciated by the Sessions Court.

9. PW16 is the Medical Officer who was present at the time of recording the statement of victim by PW22 through

PW31 and he has certified on Ex.P5 regarding orientation and fit condition to give statement by the victim. Further the evidence of the Doctor is corroborated by the evidence of PW22 and the Investigating Officer and PW21–scribe of Ex.P5. The Sessions Court has not read the evidence of these witnesses on its proper perspective and thereby erred in acquitting the accused. The same is not sustainable in the eye of law. The Sessions Court has not assigned any proper and acceptable reasons for acquittal of the accused. The reasons assigned by the Sessions Court for acquittal of the accused are not sustainable. The Sessions Court has acquitted the accused on the ground that the Taluk Executive Magistrate has not recorded the statement of the victim and also the Investigating Officer himself recorded the statement of the victim and investigated the case. Further on the ground that PW8, being the husband of the victim, has not filed any complaint immediately after the incident and also on the ground that the case sheet has not been produced before the Sessions Court for ascertaining the health condition of the victim at the time of giving the statement before PW22. bThe reasons assigned by the Sessions Court are also not sustainable on the ground that recording of the statement of the victim by the Investigating Officer and investigating the case by himself is not fatal to the

case of the prosecution since the animosity has not been established by the defence while cross-examining the Investigating Officer. Therefore, the judgment and order of acquittal passed by the Sessions Court is contrary to law and liable to be set aside. The Sessions Court ought to have convicted the accused by taking into consideration of the evidence of PWs.3, 5 to 7 and also the official witnesses, PWs.16, 21 and 22. Failure to consider the same would result in miscarriage of justice and it would also prejudice the interest of the prosecution. The reasons assigned by the Sessions Court for acquittal of the accused are not just and proper. The proper presumption has not been made and drawn while appreciating the evidence on record. On all these grounds, the learned Additional SPP sought for allowing this appeal.

10. As against this, Sri Manjunath Hanchate, learned counsel for the respondents submits that the Sessions Court has properly appreciated the evidence on record in accordance with law and facts and submitted that absolutely there are no materials to interfere with the impugned judgment of acquittal and sought for dismissal of this appeal.

11. Having heard the arguments on both sides and perusal of materials placed before me, the following points that would arise for my consideration is:

i. Whether the State has made out grounds to interfere with the impugned judgment of acquittal?

ii. What order?

12. My answer to the above points is:

Point No.i – in the Negative.

Point No.ii – As per final order.

13. Before adverting to the actual facts of the case and appreciation of evidence, it is necessary to refer the dictum of Hon'ble Supreme Court regarding scope and power of Appellate Court in appeal against the order of acquittal.

14. In the case of ***Motiram Padu Joshi & Others v. State of Maharashtra*** reported in ***2018 SCC ONLINE SC 676***, at paragraph 23 of the judgment, it is held thus:

> *"23. While considering the scope of power of the appellate court in an appeal against the order of acquittal, after referring to various judgments, in Chandrappa v. State of Karnataka (2007)4 SCC 415, this Court summarised the principle as under:-*
>
> > *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while*

dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not

disturb the finding of acquittal recorded by the trial court."

15. In the case of ***Munishamappa & others v. State of Karnataka & Connected Appeals*** reported in ***2019 SCC ONLINE 69***, at paragraph 16 of the judgment it is held as under:

"16. The High Court in the present case was dealing with an appeal against acquittal. In such a case, it is well settled that the High Court will not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. The High Court, in other words, should not interfere with an order of acquittal merely because two views are possible. The interference of the High Court in such cases is governed by well-established principles. According to these principles, it is only where the appreciation of evidence by the trial court is capricious or its conclusions are without evidence that the High Court may reverse an order of acquittal. The High Court may be justified in interfering where it finds that the order of acquittal is not in accordance with law and that the approach of the trial court has led to a miscarriage of justice. …"

16. In the case of ***Hari Ram & others v. State of Rajasthan*** reported in ***2000 SCC ONLINE 933***, at paragraph 4 of the judgment, it is observed thus:

"4. Mr. Sushil Kumar Jain, the learned Additional Advocate General for the State of Rajasthan on the other hand contended that the power of the High

Court while hearing an appeal against an order of acquittal is in no way different from the power while hearing an appeal against conviction and the Court, therefore was fully justified in re-appreciating the entire evidence, upon which the order of acquittal was based. The High Court having examined the reasons of the learned Sessions Judge for discarding the testimony of PWs 6 & 7 and having arrived at the conclusion, that those reasons are in the realm of conjectures and there has been gross miscarriage of justice and the mis-appreciation of the evidence on record is the basis for acquittal, was fully entitled to set aside an order of acquittal and no error can be said to have been committed. It is too well settled that the power of the High Court, while hearing an appeal against an acquittal is as wide and comprehensive as in an appeal against a conviction and it had full power to re- appreciate the entire evidence, but if two views on the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, then the High Court would not be justified in interfering with the acquittal, merely because it feels that it would sitting as a trial court, have taken the other view. While re- appreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the learned trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.…"

17. In the case of ***State of Rajasthan v. Kistoora Ram*** reported in ***2022 SCC ONLINE 684***, at paragraph 8 of the judgment it is held as under:

> *"8. The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all."*

18. In the case of ***Mahavir Singh v. State of Madhya Pradesh*** reported in ***(2016)10 SCC 220***, at paragraph 12 of the judgment, it is observed thus:

> "*12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent court after a full-fledged trial, and once the trial court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate court to review, reappreciate and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate court*

while passing an order has to give clear reasoning for such a conclusion."

19. I have carefully examined the materials placed before me. The Investigating Officer has cited 28 witnesses in the charge sheet. Out of them, the prosecution has examined 23 witnesses as PWs.1 to 23.

20. CW3 – Parameshwarappa Choudannanavar said to be the attester to the spot mahazar – Ex.P1, examined as PW1. He has supported the case of the prosecution.

21. CW4 – Adiveppa Shankharappa said to be the attester to the inquest panchanama, examined as PW2. He has deposed regarding the inquest panchanama of the deceased conducted by the Police on 09.01.2014 as per Ex.P4. He has deposed that the deceased has sustained 90% burn injuries.

22. CW7 – Kengahanamantappa Mundalamani, the father of the deceased, examined as PW3. He has deposed in the evidence that the complainant Sudha is his second daughter and Nagaraj is his son-in-law. The accused and the son-in-law, both are residing in the same house. The accused No.1 is the grandfather of his son-in-law – Nagaraj. The second accused is the son of the first accused. The third accused is the

wife of second accused. The accused and his son-in-law – Nagaraj Hirekabbur residing in the same house but in different portions at Hirekabbur Village. The said house is standing in the name of Basappa Pujar. The accused always used to tell his son-in-law and daughter to vacate the house by saying that the said house belongs to his father and also used to abuse them in filthy language and also used to tell his daughter to go somewhere and die. He has advised the accused but they have not changed their attitude. Further he has deposed that on 08.01.2014 at 09:00 a.m. he came to know from one Parameshwarappa over phone that his daughter poured kerosene and lit fire and also stated with regard to shifting of the injured to Honnali Government Hospital and from there to CJ Hospital at Davanagere. Then he went to CJ Hospital at 11:00 a.m. and noticed the burn injuries all over the body of his daughter. vWhen he enquired his daughter, he came to know from his daughter that when she was roaming in-front of her house at 07:00 a.m., the accused abused his daughter in filthy language as she has not vacated the house and also abused her in filthy language and outraged her modesty by pulling her saree. Same has been witnessed by the people residing in the said locality. They have also stated that on account of the same, out of frustration, she poured kerosene on

herself and lit fire and on the same day at 07:00 p.m., his daughter herself has filed a complaint to the Police. By that time, she was present and she has put her LTM on Ex.P5. On the next day, at 06:00 a.m., his daughter died. They have also deposed as to the inquest mahazar. Further he has deposed that since all the accused ill-treated his daughter and told his daughter to go somewhere and die, not tolerating the same, his daughter committed suicide.

23. CW5 – Somalingappa Basappa Nagavvar examined as PW4. He has deposed in his evidence that he has seen the dead body in the Government Hospital at Davanagere and the Police have examined the dead body in his presence and then shifted the dead body for postmortem and he has put his signature on Ex.P4 – case diary.

24. CW8 – Kenchavva Kengahanumantappa, the mother of the deceased examined as PW5. She has also deposed on the similar lines spoken by her husband PW3.

25. CW19 – Manjavva Bharamappa Kabbar examined as PW6 who is the sister of deceased Sudha and CW13 – Choudappa Kenchappa Katagannanavar, who is husband of the elder sister of his wife. CW9 – Nagaraj Hanumantappa Pujar,

the husband of the deceased Sudha, who are examined as PWs.6 to 8 respectively. All these witnesses have deposed on the lines as deposed by PW3.

26. CW10–Hemaraj Nagaraj Pujara, the son of the deceased Sudha. CW12–Parameshappa Rangappa Kabbar, CW14–Parameshappa Shivannanavar, both are the neighbours of the accused and CW15–Narasimhappa Katagannavar, who is residing near the house of the accused. CW16–Kariyamma Choudannanavar and CW17–Parusharama Katagannavar, CW18–Sharadamma Kariyannanavar who are said to be the eye-witnesses are examined as PWs.9 to 15. None of these witnesses have not supported to the case of the prosecution.

27. CW23–Dr. D.Tulasinaik, who has recorded the dying declaration of the deceased injured Sudha examined as PW16. He has deposed that on 08.01.2014 he has examined the injured and whether the injured Sudha was fit to give statement at the request of Rattihalli Police and he has given his statement that the injured was in a fit condition to give statement. Police have recorded the statement between 07:00 and 07:30 p.m. and by that time, PSI Shilpa and CPC 1039 were present.

28. CW22–Surayanarayana Pawar, the Assistant Engineer, Minor Irrigation Department, Shivamogga has deposed in his evidence as to the sketch prepared by him as per Ex.P14 at the instance of Rattihalli Police.

29. CW24–Dr. Mamata Patil has deposed as to the postmortem examination of the deceased and also issuance of postmortem report as per Ex.P15.

30. CW25–Veeranagouda Yattinamani, PDO Village Panchayat Channalli has deposed as to the issuance of Ex.P16 – the assessment extract pertaining to the house of Basappa Pujar.

31. CW26–Hanumareddi Melagiri, the PSI has deposed as to the inquest panchanama conducted by him as per Ex.P4.

32. CW28–Police Constable, who has not cited in the charge sheet, examined as PW21. He has deposed in his evidence that on 08.01.2014 when he was in Police Station, the PSI has informed him that he has received MLC. Hence, he went to the Government Hospital, Honnalli. The injured was not there and he came to know that the injured was shifted to Davanagere for higher treatment. On the same day, he has submitted a requisition to the Medial Officer, CJ Hospital to

examine the injured whether she is in fit condition to give statement. The Medical Officer has given statement that injured is fit to give statement. The PSI has recorded the statement of the injured thereafter read over the same to the injured and the injured has accepted the statement and put her LTM. He has also endorsed his signature on the statement. The Medical Officer has also endorsed his signature on the statement Ex.P5.

33. CW27–Shilpa, PSI, who is examined as PW22 has deposed in her evidence that on 08.01.2014 when she was in Police Station, she has received the intimation from the Government Hospital, Honnalli as to the burn injures of the wife of Nagaraj Pujar. Accordingly, she and her staff CW28-Ashok Barki proceeded to the Government Hospital, Honnalli, then they came to know that the injured Sudha had taken first aid and shifted to CJ Hospital, Davanagere for treatment. On the same day, she visited to the CJ Hospital, Davanagere along with the staff. The injured Sudha was taking treatment in burn-ward in CJ Hospital and she submitted a requisition to the Medial Officer to examine the injured whether she is fit to give statement. Accordingly, she has enquired the injured and as per the statement of injured, she has dictated the same to

Ashok Barki and he has reduced the same in writing as per Ex.P5. The injured has put her LTM on the statement as per Ex.P5(a). The Medical Officer also put his signature as per Ex.P5(c). She has also deposed as to the contents of Ex.P5. Further he has deposed as to the contents of Ex.P5. She has also deposed as to receiving of postmortem report of the deceased and also she has deposed further investigation conducted by her. Further, she has also deposed that on 09.01.2024 she has received e-mail from the Extension Police, Davanagere as to the death of the Sudha at 06:30 a.m. and she has sent intimation to the ASI Melagiri and PC No.1208 to conduct panchanama of the deceased in CJ Hospital, Davanagere and on the same day, she visited to the spot and conducted mahazar in the presence of panchas as per Ex.P1 and snapped photos as per Ex.P2 and 3 and she has recorded the statement of witnesses CWs.11 to 19. On the same day she has handed over the dead body to the legal heirs of the deceased CJ Hospital, Davanagere. She has deputed to the staff to secure the accused as he was absconding and that on 12.01.2014 she has submitted a requisition to the Tahasildar, Davanagere to send the dying declaration to the JMFC Court, Hirekerur. On 12.01.2024 she has submitted a requisition to PWD Engineer to prepare sketch on spot of crime and also

request to the PDO, Hirekabbar to issue assessment extract as to the scene of occurrence. Further she has deposed that on 30.01.2014, the ASI Kadagani and PC 1374 produced the accused. She interrogated him and arrested the accused and produced them before the Court. On 09.01.2014 after the death of the deceased, she has submitted a requisition to the Court to insert addition offence under Section 306 of IPC. She has obtained postmortem report-Ex.P15 on 22.01.2014 and that on 25.01.2014, she has sent the seized properties to the Medical Officer for their opinion. She has also send Material objects on 13.01.2014 to FSL, Bengaluru. That on 19.02.2014 accused Nos.2 and 3 obtained anticipatory bail and she has arrested the accused and released on bail. That on 22.02.2014 she has submitted the charge sheet before receiving the FSL report.

34. CW23–Dr. Vani, the Scientific Officer, FSL Bengaluru, has deposed as to the issuance of FSL report as per Ex.P21 and sample seal Ex.P22.

35. On careful scrutiny of the entire evidence placed on record, the genesis in this case arises on the basis of the statement of the deceased Sudha which is recorded by PW21 – Ashok Barki, as per the dictation of Shilpa, PSI [PW22], as per

Ex.P5, the same is also endorsed by CW16–Dr. D.Tulasinaik. On the basis of this statement which is called as dying declaration, the PSI have registered the case in Crime No.5/2014 for the commission of offences punishable under Sections 323, 354, 306 and 504 read with Section 34 of IPC against the accused persons and submitted the FIR to the Court on 09.01.2024 at 10:20 a.m. as per Ex.P20.

36. At this stage, it is relevant to mention as to the decision of the Hon'ble Apex Court as to the dying declaration in the case of ***Uttam v. State of Maharashtra*** reported in ***(2022) 8 SCC 576***. In the said judgment, at paragraphs 11 to 15, the Hon'ble Apex Court has observed as under:

> "*11. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival. On an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. Section 32 of the Indian Evidence Act, 1872 states that when a statement is made by a person as to the cause of death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is*

admissible in evidence. It is noteworthy that the said provision is an exception to the general rule contained in Section 60 of the Evidence Act that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy.

12. In Kundula Bala Subrahmanyam and Another V. State of Andhra Pradesh, this Court had highlighted the significance of a dying declaration in the following words :

> *"18. Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for*

recording conviction even without looking for any corroboration……."

13. In Shudhakar V. State of Madhya Predesh (2012)7 SC 569, this Court had opined that once a dying declaration is found to be reliable, it can form the basis of conviction and made the following observations :

> *"20. The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration."*

14. In Paniben (Smt.) v. State of Gujarat (1976)3 SCC 618, on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus:

> *"18. …….. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P.)*
>
> *(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav; Ramawati Devi v. State of Bihar)*
>
> *(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the*

declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy V. Public Prosecutor).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (rasheed Beg v. State of M.P.)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh V. State of M.P.)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath V. State of U.P.)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krisbnamurti Laxmipati Naidu)

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar).

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P.)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan)

15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the Court and what would be the

guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the Court would be expected to carefully scrutinize the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the Court in exercise of its discretion."

37. It is also relevant to mention that the Hon'ble Apex Court in the case of ***Suresh v. State by Inspector of Police*** rendered in ***Criminal Appeal No.540/2013 decided on 04.03.2025*** has held that "*there is no doubt regarding the well-settled position of law that a dying declaration is an important piece of evidence and a conviction can be made by relying solely on a dying declaration alone as it holds immense importance in criminal law. However, such reliance should be placed after ascertaining the quality of dying declaration and considering the entire facts of a given case."* Further, it is observed that, if a dying declaration is surrounded by doubt or there are inconsistent dying declarations by the

deceased, then Courts must look for a corroborative evidence to find out which dying declaration is to be believed and the same will depend upon the facts of the case and courts are required to act cautiously in such case.

38. Considering the facts and circumstances of the case, it is necessary to mention here as to the importance of dying declaration. In Points 1267 to 1277 of Karnataka Police Manual, it is mentioned as to recording of dying declaration. The same reads as under:

> "*1267. The statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, is admissible in evidence under Clause (1) of Section 32 of the Indian Evidence Act. Such statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.*
>
> *1268. The dying declaration should ordinarily be got recorded by the Executive Magistrate; when however an Executive Magistrate is not readily available for one reason or the other, a Police Officer may get the dying declaration recorded by the Judicial Magistrate.*
>
> *1269. Such person shall, if possible, be examined by a Medical Officer, with a view to ascertaining that he is in a sufficiently fit condition to make his statement.*

Where for any reason, the presence of a Medical Officer cannot be procured without delay, the Magistrate or the Officer recording the dying declaration should satisfy himself that the declarant is in a sufficiently fit condition to make a statement and record the fact.

1270. If no Magistrate can be secured, such statement shall be recorded by the Investigating Officer in the presence of two or more witnesses.

1271. If no such witnesses can be obtained without risk of such person's death before his statement can be recorded, it shall be recorded by the Investigating Officer in the presence of one or more Police Officers.

1272. The declaration may be recorded by any person. Even if the declaration is made to a Police Officer, it is admissible in evidence and its use is not barred by Section 162, Cr.PC. Even if it has been made orally in the presence of any per person, it may be proved in court by the oral evidence of that person. The declaration becomes admissible, if the declarant subsequently dies. If he survives, it will be useful, if made before a Magistrate, or any one other than a Police Officer, to corroborate his oral evidence as a witness in court. If it was made before a Police Officer, it will be treated as a statement under Section 162. Cr.PC.

1273. The declaration must, as far as possible, be complete by itself, the person making the declaration must be speaking from personal knowledge of the facts. If reduced to writing by the police, the declaration should, as far as possible, be in the form of questions and answers and in the very words of the declarant. The signature of the declarant should invariably be taken on

the dying declaration; but if the declarant is an illiterate or is incapaciated from signing for any reason, such as his hand being maimed, his thumb impression should be taken. A note should be made in the dying declaration giving reasons why the signature of the declarant was not taken.

1274. If any person is accused by the person whose statement is to be recorded, of having been concerned in the transaction which threatens to result in his death, the accused person should be invited to be present while the statement is being taken down, or if he is already in custody, should be taken to the spot and allowed to cross-examine or question the declarant, the questions and answers being recorded in full. The Police Officer recording a dying declaration shall secure the signature or thumb mark of the declarant and also of the accused, if present.

1275. When the declarant, being in a serious condition and unable to speak makes signs by hand or head, the person recording the dying declaration must record the precise nature of the signs which the declarant made.

1276. When the dying declaration is recorded by a person other than a Magistrate, it should be forwarded forthwith retaining a copy, to the court having jurisdiction to inquire into or try the case under investigation. If the dying declaration is recorded by a Magistrate, a copy thereof should be obtained for purposes of further investigation.

1277. Incomplete dying declarations are not by themselves inadmissible in law. Though a dying

declaration is incomplete by reason of the deceased not being able to answer further questions in his then condition, yet the statement, so far as it goes to implicate the accused, could be relied upon by the prosecution, provided it is quite categoric in character and complete by itself so far as the implication of the accused is concerned. If there is corroboration for the dying declaration, it is so much the better, as the incomplete dying declaration would then be invested with the stamp of truth."

39. To constitute abetment, the following ingredients have to be proved by the prosecution:

(i) that the accused aided, abetted, counselled or procured the commission of the principal offence;

(ii) that the principal offence was in fact committed; and

(iii) that the had the intent to aid or encourage its commission.

40. To constitute the offences under Sections 306 and 107 of IPC, the following ingredients have to be proved by the prosecution which are as under:

(i) the decease committed suicide;

(ii) the accused instigated or abetted for committing suicide (committing suicide by itself is a crime);

(iii) direct involvement by the accused in such abetment or instigation is necessary.

41. In the case on hand, on the basis of Ex.P5, the statement said to have been recorded by PW21–Ashok Barki as per the dictation of PW22–Shilpa, PSI, on 08.01.2014 at 07:00 p.m., the FIR came to be lodged. At column No.15 of the FIR – Ex.P20 reveals the date and time of dispatch of the FIR to the Court shown as 08.01.2014 at 22:30 hours through P.C. No.877. The said PC No.877 has not been cited as a witness. Though the date and time of dispatch to the Court is shown as 08.01.2014 at 22:30 hours, the endorsement made by the learned Magistrate on Ex.P20 reveals that he has received the FIR at 10:20 a.m. on 09.01.2014 by P.C. No.877. In view of Section 157 of Cr.P.C., the FIR shall be submitted to the Magistrate forthwith and if there is any delay that should be clarified by the Investigating Officer. But in the case on hand, the Investigating Officer has not complied with the mandatory provisions of Section 157 of Cr.P.C. and he has not assigned any reasons for the delay in dispatching the FIR to the Court. Apart from this, the prosecution papers, postmortem report –

Ex.P15 and other evidence reveals that the deceased died on 09.01.2014 at 06:30 a.m. Only after the death of the deceased, the Investigating Officer has submitted the FIR to the Court as per Ex.P20 on the next day of recording the statement of the victim which was registered for the commission of the offences punishable under Sections 323, 354, 504 read with Section 34 of IPC.

42. Dr. D.Tulasinaik–PW16 has endorsed at Ex.P5 and has deposed that the injured Sudha was in a condition to give statement but whereas in Ex.P5 he has endorsed that *"statement is completed at 07:30 p.m., patient is conscious throughout giving the statement"*, but he has not endorsed on Ex.P5 that whether the injured was in a fit condition to give statement or not. The postmortem report reveals that the injured has sustained injuries from 90-95%. The Investigating Officer has not produced the case sheet of the injured maintained by the hospital.

43. PW18–Dr. Mamata Patil has deposed that on 09.01.2014 at 06:30 a.m. injured Sudha passed away. On examination of the dead body, she found the burn injuries on head, face, chest, neck, both hands and legs, abdomen and back. Ex.P15–postmortem report also reveals the same. This

medical evidence clearly goes to show that the injured was not in a position to put her LTM as her both hands were burnt.

44. The criminal jurisprudence believes in best evidence rule *"in our adversial judicial system an accused is considered to be an innocent until proved guilty and the guilt of the accused has to be proved beyond reasonable doubt and not on a mere preponderance of probabilities"*. Thus, imposing upon prosecution the obligation to adduce the best possible evidence to prove the guilt of the accused, the rule has been defined to mean *"so long as the higher or superior evidence within your possession or may be reached by you, you shall give no inferior proof in relation to it."* In this regard, in the case of ***Mohanlal Shamji Soni v. Union of India and another*** reported in ***1991 Crl.L.J. 1521*** has been held by the Supreme Court that *"it is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue."*

45. The Investigating Officer has not examined anything as to non-production of the case sheet maintained by the concerned hospital. If the case sheet is produced, the truth will come out as to the health condition of the injured. The respiratory system of the injured and the injuries on the body

of the injured, whether the patient was oriented, conscious, blood pressure, SpO2 will be mentioned in the case sheet and treatment extended to the injured. In the absence of case sheet, it is not possible to say as to whether the injured was in a fit condition to give statement or not. The Trial Court has rightly observed that the Investigating Officer has not explained anything as to non-production of case sheet. Even the prosecution has not made any efforts to secure the case sheet pertaining to the injured. The case sheet of the injured is vital and material document and the same has been withheld by the prosecution. Under the circumstances, an adverse inference may have to be drawn as contemplated under Section 114(g) of the Indian Evidence Act that the evidence which could be and is not produced would, is produced be unfavourable to the person who withholds it.

46. The non-production of the case sheet pertaining to the injured, delay in dispatching the FIR to the Court only after the death of the deceased and burn injuries caused to the injured to the extent of 90-95% all over the body, will create reasonable doubt as to whether the injured was in a fit condition to give statement. Additionally, the Investigating Officer has not taken any steps to record the dying declaration

through the Tahasildar / Taluka Executive Magistrate before the death of the injured. Though the Investigating Officer PW22– Shilpa has not submitted any requisition to the Tahasildar / Taluka Executive Magistrate to record the dying declaration of the injured before her death, she has deposed in her examination-in-chief that on 12.01.2014 she has submitted a requisition to the Tahasildar, Davanagere to send the dying declaration recorded by the Tahasildar to the JMFC Court, Hirekerur. This evidence of PW22 is contrary to the materials placed by the prosecution. The Investigating Officer has not properly investigated the case and mechanically she has stated before the Court that she has given requisition to the Tahasildar for recording the dying declaration of the injured though she has not submitted any requisition to the Tahasildar, Davanagere and the Investigating Officer has not explained anything as to delay in dispatching the FIR to the Court. All these circumstances will create doubt about the alleged incident said to have been committed by the accused.

47. With regard to the offence under Section 306 of IPC is concerned, Ex.P5 said to have been the statement of the injured recorded by the Police officials does not reveal as to the abetment of suicide committed by the accused, as required

under Sections 107 and 306 of IPC. Though there is no reference as to the abetment of suicide in Ex.P5, the interested prosecution witnesses have deposed in their evidence that the deceased and her husband Nagaraj both residing in same house but in different portion at Hirekabbur Village and house is in the name of one Basappa Pujar. The accused used to tell his son-in-law and daughter to vacate the house by saying that the said house belongs to his father and accordingly he used to abuse his son-in-law and used to tell his daughter to go somewhere and die. This evidence placed by the prosecution is not consistent to the contents of Ex.P5. Apart from this, the husband of the deceased Nagaraj, who is examined before the Court as PW8 has not supported to the case of the prosecution. He has not whispered anything as to the abusive words used by the accused and also abetment of the suicide. This witness is treated as partly hostile witness. Even in the cross-examination made by the Public Prosecutor, he has categorically denied the statement said to have been recorded by the Investigating Officer under Section 161 of Cr.P.C. marked as Ex.P17.

48. PW9, the son of the deceased, has also not whispered anything to the abetment of suicide and also alleged

abusive words said to have been hurled by the accused on the deceased. Even they have not deposed as to the alleged assault or outrage of modesty and insult, said to have been caused by the accused.

49. Even if we accept the prosecution story that the accused did tell the deceased to go and die, that itself does not constitute the ingredients of instigation. The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or insight. The presence of *mens rea*, therefore, is the necessary concomitant of investigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment, cannot be taken to be uttered with *mens rea* and is only in a fit of anger and emotion. In this regard, it is necessary to refer to the decision of the Hon'ble Apex Court in the case of ***Sanju alias Sanjay Singh Sengar v. State of M.P.*** reported in ***(2002) 5 SCC 371.***

50. The entire case of the prosecution is based on Ex.P5 which is doubtful and not in accordance with law and the procedure prescribed for recording the dying declaration. The statement of all interested witnesses as per abetment of suicide by the accused is also subsequent improvement and same is not consistent to the contents of Ex.P5.

51. Law is also well-settled that when the statute provides for a particular procedure, the authority has to follow the same and is not permitted to act in contravention of the prescribed provisions. Other methods or modes of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusion alteris*", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. The Investigating Officer has failed to comply with the mandatory provisions of Section 157 of Code of Criminal Procedure, 1973 an also the guidelines issued by the Hon'ble Apex Court and the Guidelines issued by the concerned authorities in Karnataka Police Manual.

52. On re-consideration, re-examination and re-appreciation of the entire evidence on record and keeping in mind the aforesaid decisions, I do not find any error or illegalities / infirmities in the impugned judgment of acquittal. Hence, I answer the point No.1 in the negative.

Regarding Point No.2:

For the aforestated reasons and discussions, I proceed to pass the following:

ORDER

i) Appeal is dismissed;

ii) Judgment of acquittal passed by the II Additional District and Sessions Judge, Haveri [sitting at Ranebennur] in S.C. No.23/2014 dated 22.07.2017 is confirmed.

iii) Registry to send the trial court records along with the copy of this Judgment to the concerned Court.

Sd/-
(G BASAVARAJA)
JUDGE

Rsh / Ct-cmu