

**IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 5<sup>TH</sup> DAY OF APRIL 2013

:PRESENT:

**THE HON'BLE MR.JUSTICE B.V.PINTO**

AND

**THE HON'BLE MR.JUSTICE H.S.KEMPANNA**

CRIMINAL APPEAL NO.2848/2011

**BETWEEN:**

PANDURANGA B.  
S/O. MAHADEVAPPA,  
AGED ABOUT 24 YEARS,  
R/O. MAGIMAVINAHALLI,  
TQ. H.B. HALLI,  
DIST. BELLARY.

... APPELLANT

(BY SRI.K.L. PATIL, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA,  
BY HOSPET BADAVANE POLICE,  
REP. BY SPP.

... RESPONDENT

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

THIS CRIMINAL APPEAL IS FILED U/S 374  
OF CR.P.C. SEEKING TO SET ASIDE THE  
JUDGEMENT AND ORDER OF CONVICTION &  
SENTENCE DATED 27.08.2011 BY THE  
SESSIONS JUDGE (FAST TRACK COURT-III)  
HOSPET, IN S.C.NO.145/2008, THEREBY

CONVICTING THE APPELLANT FOR THE OFFENCES P/U/S 302, 201 OF IPC & ACQUIT THE APPELLANT FORTH WITH.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, **B.V.PINTO, J.**, DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal is filed challenging the Judgment dated 27.08.2011 passed by the Fast Track Court-III at Hospet in SC No.145/2008 convicting the appellant for the offences under Section 498-A, 302 and 201 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.3,000/-, in default to pay fine, to suffer simple imprisonment for six months for the offence under Section 302 of IPC and further sentencing him to undergo simple imprisonment for five years and to pay fine of Rs.2,000/-, in default to pay the fine, to suffer simple imprisonment for a period of six months

for the offence punishable under Section 201 of IPC, while no separate sentence is imposed for the offence under Section 498-A of IPC, in view of imprisonment for life imposed for the offence under Section 302 of IPC.

2. It is the case of the prosecution that, the appellant had married the deceased Renuka after the prolonged love affair between him and the deceased and since the parents of the deceased were against the said marriage, as they were belonging to different caste both of them got their marriage registered before the Registrar of Marriages at Hospet on 08.03.2007.

3. It is the case of the prosecution that, the deceased was appointed as a teacher about a month prior to the marriage and as soon as she secured employment, they decided to live together. Thereafter, they contacted PW.1, who

was the owner of the premises to secure the house for their living. The house was secured in the first floor of the building of PW.1, in which it is alleged that, the appellant and one Sunil were residing.

4. It is the case of the prosecution that, about 15 days prior to 02.09.2007, the appellant/accused and the said Sunil had secured possession of the house and they were living in the said house. In view of the fact that, the appellant had married recently, the said Sunil had agreed to live along with his relatives whenever the deceased and accused came to live in the said house. On 02.09.2007, since accused No.1 had promised to pay rent for 15 days and also the security deposit to PW.1, the latter had come to the residence of the appellant. At that time, the door of the house was partially opened.

PW.1 along with an agent PW.4 waited for some time outside the house, since one pair of ladies chappal was found in front of the house but since nobody came out of the house, PWs.1 and 4 went back. On 03.09.2007, again in the morning, PW.1 came to the house. He waited for some time and since the door of the house was in the same condition as it was on the previous day evening and the chappals were found in the same place, he is alleged to have entered into the house and found the dead body of the deceased lying inside the house. Immediately he contacted the Extension Police Station of Hospet and the Officer in charge of the police station sent a constable along with PW.1. When the said police along with PW.1 entered the house it was found that the deceased Renuka had died and that there were marks of violence on her body. A death note was alleged to have been kept at the

“Katte” of the house, which states that, she herself is responsible for her death, with her signature. The police constable thereafter, informed his superiors and PW.14-Sub Inspector of Police came to the scene of occurrence and after observing the dead body received complaint given by PW.1 which is registered as UDR No.6/2007 under Section 174 of Cr.P.C. Thereafter, he requested the Taluka Executive Magistrate-PW.15 to conduct the inquest proceedings on the dead body of the deceased, since it was found that the deceased was a newly married woman and the inquest was conducted by PW.15. During the inquest proceedings, it was found that the deceased was a married woman and that she was subjected to ill-treatment by her husband or her relatives. In the meantime, PW.2-Girija who is the relative of the deceased filed a written complaint before the Station

House Officer, Hospet which was registered in Crime No.50/2007 for the offences under Section 306, 109 r/w Sec 34 of IPC and FIR was issued as per Ex.P26 to the Court. The inquest proceeding is marked as Ex.P5. Thereafter, the dead body was subjected to postmortem examination through PWs.11 and 12 who are the Medical Officers at Government Hospital, who issued the postmortem report as per Ex.P20, stating that the cause of the death of the deceased is due to asphyxia as a result of strangulation. Accused had filed an application before the Court on the basis of the anticipatory bail obtained by them from the District Court, Bellary and in the meantime, accused No.1 was arrested by PW.14 and he was subjected to interrogation. On the basis of the information furnished by accused No.1, recovery of certain articles namely MO.10-gold chain and MO.19-

knife was effected at his instance as per Exs.P17 and 18. The death note alleged to have been seized from the scene of occurrence was sent for hand writing opinion to the Forensic Science Laboratory at Bangalore. On the arrest of accused, sample hand writing of accused No.1 was taken and since one Sunil was also suspected to be involved in the case, he was also detained and his sample hand writing was also taken by the Investigating Officer and the same was sent to the Forensic Science Laboratory, Bangalore for comparison.

5. PW.16 is the Scientific Officer of Forensic Science Laboratory, Bangalore who has given his opinion regarding the hand writing found in the alleged death note saying that, the same is compared and tallied with the hand writing of accused No.1/appellant. Based on the



said certificate from PW.16 and the postmortem report and other documents and also the statement of other witnesses PW.17- L.Y.Shirkol, Inspector of Police has filed the charge sheet against the accused.

6. After appearance of accused before the Court who were by then released on bail, the prosecution in order to prove the case has examined in all 17 witnesses and got marked Exs.P1 to P40 and produced MOs. 1 to 20. The defence of the accused was one of total denial and accused had got examined two witnesses namely DWs.1 and 2 and contended that during the period from 02.09.2007 to 03.09.2007, they had not come near the scene of occurrence and that they were available in some other places. The learned Sessions Judge after appreciating the evidence on record came to the conclusion

that the prosecution has proved the case against accused No.1/appellant beyond all reasonable doubt, while acquitting accused No.2 who is father-in-law of the deceased of the offences leveled against him. The convicted appellant/accused No.1 has filed this appeal challenging his conviction.

7. The prosecution in this case commenced with PW.1-J.Ramu appearing before the police station on 03.09.2007. In his complaint, which is marked as Ex.P.1, he has stated that, he is a retired person and that he has one male child who is married. Since, he was residing at Amaravathi on a monthly rent of Rs.350/- and his own house at Chapparadahalli behind Anjaneya Temple was vacant, which was measuring 15 x 40 feet comprising of ground floor and first floor, the ground floor has been

rented out to one Sri.Kumarswamy, who is working in CTO Office. In the first floor, there are two rooms and one of the said room was rented out to the appellant on a monthly rent of Rs.1,500/- about 15 days prior to the date of the incident namely on 17.08.2007 on a security advance deposit of Rs.5,000/-. He had also handed over the key of the said house to accused and accused had promised to give the balance deposit of Rs.4,500/- and he had come along with one Sunil. The said Sunil was introduced to him as his friend. One Gani @ Abdul Gani had acted as an agent for the said transactions, who has informed PW.1 that, the appellant Panduranga was from Magimavinahalli. Hence, he has given the house on rent. It was informed to him that, the appellant had married about five months back. On 01.09.2007, the appellant had not paid the rent for 15 days and also the

advance amount of Rs.4,500/-. Hence, on 02.09.2007 at about 7.30 p.m., he had gone along with the agent Gani @ Abdul Gani-PW.4 near the said house. There was light in the veranda and the door was partially opened and he called accused-Panduranga twice and waited but, since there was no response from inside the house, both of them went away. Again on 03.09.2007, at about 8.00 a.m, both of them came there and waited near the house and the light was still burning and chappals were in the same position as it were on the previous night. There was no response from inside the house. Hence, they went inside the room and the dead body of a woman was found and white froth was found on her nose. There was a chit on the "Katte" in which it was written that, she herself was responsible for her death. Three golden bangles, one Mangalya chain and another chain,

two mangalya drops and one watch was there in the person of the dead body and the age of the woman was about 25 years. Accused was not inside the house. Thinking that the woman is the wife of accused, they made an enquiry and found that the name of deceased was Renuka. Hence, he requested for necessary action. The Sub-Inspector of Police of Extension Police Station registered the said complaint in UDR No.6/2007 and thereafter, he commenced the investigation. PW.1 in the Court has stated these facts while he was in the witness box. PW.1 has been cross-examined by the defence suggesting that, the accused was not at all present near the scene of occurrence during the intervening period of 02.09.2007 and 03.09.2007.

8. PW.2-Girija is a relative of the deceased. She has stated that the deceased is the daughter

of her father's sister. It is in the evidence of PW.2 that, the deceased had studied in Bangalore and obtained a TCH Certificate. Thereafter, she was studying B.A Degree in Vijayanager College at Hospet. Accused Panduranga was known to her. She has stated that, he had completed degree and was studying in Hospet and was also residing in a hostel. The deceased belongs to Valmiki community whereas the accused belongs to Kabbera community. In the month of February 2007, Renuka was appointed as a teacher and was working in Uppara Hosahalli at Siruguppa Taluk as a teacher. On 08.03.2007, first accused Pandurana and the deceased Renuka married before the Registrar of Marriages since, they both were liking each other. It was informed by accused that he was working as a Second Division Assistant in the Income Tax Department. However, no one had attended the

said marriage. It is stated in the evidence of PW.2 that, after the marriage the deceased was not communicating with PW.2 and the deceased found that the accused had cheated her by saying that, he is working as a Second Division Assistant, which fact was false. Thereafter, it is stated that, first accused carried on some business and was ill-treating the deceased Renuka for money and asked for a sum of Rs.1,00,000/- from the deceased to be secured from her brother who is an Engineer. In this connection, accused was ill-treating the deceased. It is also stated by PW.2 that, accused No.2 is the father of accused No.1 and he was insisting that, accused No.1 should leave the deceased Renuka and that he would get accused No.1 married to some other person. Even accused No.1 was declaring that, if the deceased did not give any money, he would leave her. This

information was given to PW.2 by the deceased over phone.

9. It is stated by PW.2 that, on 01.09.2007, the deceased had informed that, she had gone to Hospet and on 02.09.2007, again she had phoned up stating that, accused is harassing her, since she has not brought any money to open a medical shop. On the same day, at about 6.30 p.m., accused No.1 had phoned her up and informed that Renuka had written a chit stating that, she would commit suicide and that he would also commit suicide. By saying so, he kept the phone. Thereafter, there was no communication with the first accused or the deceased. It is in the evidence of PW.2 that, she thereafter came to know that, the deceased has committed suicide. Hence, she approached the concerned police to give complaint as per Ex.P.2.



It is also stated in the complaint that, on observation of the dead body of the deceased, it was found that, there were marks of violence on her neck and also on her legs. On 04.09.2007, PW.2 had visited the scene of occurrence and she was present when the mahazar was conducted by the police. Certain articles were seized from the premises. In the cross-examination, accused suggested that all that has been stated by this witness is false and that no such demand for money was made by either accused No.1 or accused No.2 from the deceased or her parents.

10. Based on the above information given by PW2, the Extension Police, Hospet, registered a case in Crime No.50/2007 for the offences under Sections 306 and 109 read with Section 34 of IPC on 03.09.2007 at about 6:30 p.m. PW2 has been cross-examined by the defence in respect of the

allegations made by her regarding the demand of dowry alleged to have been made by the accused. It is elicited from PW2 that after her marriage, the deceased was not in talking terms with her parents and that she has never gone to her parents' house thereafter. PW2 has admitted this fact in the cross-examination. It is also elicited from PW2 that the deceased was aggrieved about this fact and she has not come to her parents' house after her marriage.

11. PW3-P.Prakash is the brother of the deceased. He has stated that the deceased had married accused No.1 on 08.03.2007 in Hospet. However, he has not attended the said marriage, but he came to know through some other person. It is also elicited from PW3 that after the marriage, the communication between him and the deceased-Renuka had decreased, but she was

in contact with PW2. The deceased was in love with accused No.1 and had proposed to marry him. Since, they had opposed the said marriage, without their knowledge, the deceased had married accused No.1. Two months thereafter, his sister had phoned up, informing him that her husband is working and that they are carrying on well in life. However, he had cut the telephone of his sister without continuing much talk. It is in the evidence of PW3 that about three to four days prior to the date of death, the deceased had phoned up and told him that the accused No.1 is not doing any work and that he had falsely informed her that he is working in Income Tax Office. Hence, she has stated that she was aggrieved by such conduct of her husband. It is also in the evidence of PW3 that since her (deceased) husband was not doing any employment, he had asked one of his friends to

open a medical shop and in that connection he was demanding money, PW3 had replied that he would make an enquiry about this when the deceased had come to the village. Thereafter, he came to know about the death of the deceased. It is suggested to PW3 that since, she had married against the wishes of her parents and that there was no communication between them and since she had not come to the obsequies ceremony of their grand father, the deceased was aggrieved and therefore, she had committed suicide, but the said suggestion has been denied by PW3.

12. PW4-Gani @ Abdul Gani is an agent, who had assisted the accused No.1 in securing a rented house in the premises of PW1. However, he has been treated hostile by the prosecution.

13. PW5-K.Nagarathnamma was an acquaintance of the deceased-Renuka, she has

stated that on 03.09.2007, she had observed the dead body of the deceased lying in the Government Hospital and she is the signatory to the inquest proceedings as per Ex.P5.

14. PW6-Vijayalaxmi is the Sub-Registrar, before whom the deceased had married accused No.1.

15. PW7-Hosamani Abul Razak is the Engineer, who has drawn the sketch of the scene of occurrence as per Ex.P15.

16. PW8-K.Somanath is the signatory to the seizure mahazar, in which the personal belonging of the deceased is seized by the Police as per Ex.P16. He is also the witness to the seizure of a gold chain by the Police in pursuance of the information given by the accused from the shop of one goldsmith, the said document is marked as per Ex.P17. He is also the signatory to the

mahazar, in which the Police have recovered the knife at the instance of the accused as per Ex.P19.

17. PW9-G.Somanath is an another signatory to Ex.P16, who has identified the articles seized from the dead body of the deceased as per MOs.15 to 18. However, this witness has been treated hostile by the prosecution.

18. PW.10-D.Virupakshi is the signatory to Ex.P3, the panchanama of the scene of offence.

19. PW.11 is Dr.Shailaja Patil, had conducted the postmortem examination on the dead body of the deceased and found the following injuries on the dead body.

- i) Contusion below the chin 1" horizontally placed in front of neck size 3 cms x 1.5 cms;

- ii) Contusion present over left side of place and mandible. 3" away from chin. 1 cm x 1 cm.
- iii) Contusion over upper part of back of neck horizontally placed 6 x 1.5 cms.
- iv) Abrasion over the left groin 9 cm x 1 cm.
- v) Abrasion over the right groin 6 cm x 1 cm.

She has issued postmortem report as per Ex.P20 and has stated that the cause of death is due to strangulation blocking the air passage.

20. PW12-Perumal Swamy is an another doctor, who was also present when the postmortem was conducted on the dead body of the deceased.

21. PW13-Shekar is the constable, who carried the FIR to the Court.

22. PW14-Baburaj is the PSI of Extension Police Station at Hospet, who has registered the

complaint of PW1 as UDR No.6/2007 under Section 174 of Cr.P.C. and thereafter requested the Tahsildar to conduct inquest proceedings on the dead body of the deceased. He has also received the complaint from PW2-Girija, on the basis of which, he registered a case in Crime No.50/2007 for the offences under Sections 306 and 109 read with Section 34 of IPC as per Ex.P2 and transmitted the FIR to the Court as per Ex.P24. After receipt of the inquest proceedings from the Tahsildar, Hospet as per Ex.P5, he has also taken the possession of the articles found on the dead body including the white chit, which contained the writing stating that she herself is responsible for her death. He has further conducted the investigation in this case and subsequently handed over further investigation to CW37 (PW17).



23. PW15-Smt.Prajna Ammembal was the Tahsildar, Hospet during the relevant time, who visited the Hospital and conducted mahazar in the presence of PW5 and had drawn the inquest panchanama as per Ex.P5. Since, during the enquiry at the inquest proceedings, she observed that a cognizable offence has been committed in respect of the deceased, she addressed a letter to the Inspector of Police to register a case and to investigate into the matter. The said intimation is as per Ex.P25.

24. PW16-M.Shankrappa is the Scientific Officer of the FSL, Bagnalore. He is a scientist, working in the Documents Division in the FSL, Bangalore. He has deposed before the Court that he has examined the disputed handwriting found on the chit by the side of the dead body and compared the same with the handwriting of the

accused and has given an opinion that the person who wrote the questioned handwriting and the note seized from the scene of occurrence is the same person indicating that the handwriting found in the chit is that of the accused No.1, the appellant herein.

25. PW17-L.Y.Shirkol is the Investigating Officer, who continued the investigation from PW14 and after obtaining the documents, filed the charge sheet in this case.

26. The accused has been questioned regarding his involvement in the case in the statement under Section 313 of Cr.P.C. and the accused has denied his involvement in the case. He has stated that he was not present at the scene of occurrence on the date of incident and that there were two keys to the said house, one was with the deceased and another was with him,

which he had produced before the Court, on the date of his examination under Section 313 of Cr.P.C., The accused has thereafter got examined DW1-Nagaraj, in whose evidence it is stated that on 01.09.2007, the accused had come to Hagaribommanahalli between 11:30 and 12:00 noon for obtaining the income certificate of the deceased from the Taluka office. He has stated that he was in the Taluka Office along with the accused till 3:30 p.m. on that day on 03.09.2007, they again visited the Taluk Office and at that time accused Panduranga received a telephone call that his wife has died and that he should come to the Police Station. The Public Prosecutor has cross-examined this DW1, suggesting that he is deposing falsely in order to help the accused.

27. DW2 is one Udachappa, who has stated that he is the resident of Magimavinahalli and

that the accused No.1 had come to their village between, 6:00 p.m. and 7:00 p.m. about 3½ to 4 years back which was a Saturday, he went towards the fields and both of them were working in their fields till 6:30 p.m. He also met the accused between 7:30 and 8:00 p.m. It is suggested by the public prosecutor that he is deposing falsely in order to help the accused.

28. Sri.K.L.Patil, learned advocate appearing for the appellant submits that the learned Sessions Judge has erroneously convicted the accused on the basis of the report of PW16, the handwriting Expert and presuming that the accused had come to the scene of occurrence on the date of incident namely on 02.09.2007. He submits that except the evidence of PW16, there is absolutely no material in the prosecution case to show that the accused had

come to the scene of occurrence on the date of incident, either in the form of eyewitnesses account or otherwise. Therefore, it is his submission that the prosecution has not at all proved that the accused had come to the place where the dead body was lying and hence, the learned Sessions Judge could not have convicted the accused holding that he is responsible for the death of the deceased. It is further submitted by him that so far as the demand of dowry is concerned, the evidence of PW2-Girija is in the form of hearsay evidence and that there is no direct evidence to hold that the deceased was harassed or ill-treated by the accused to bring any amount for the purpose of opening a medical shop. The evidence of PW3-Prakash is also in the form of hearsay evidence, he having heard the same from PW2, as reported to her by the deceased. Apart from the evidence of PW2 and

PW3 there is absolutely no material to hold that the relationship between the deceased and the accused No.1 was strained or that there was any need for the accused No.1 to open a medical shop and consequently demand for bringing money from the parents' house of the deceased. It is submitted by him that admittedly the marriage between the deceased and the accused No.1 was a love marriage and that it is in the evidence of PW2 that both the deceased and the accused No.1 were knowing each other since 2001 i.e., for almost 7 years and therefore, the evidence of PW2 that the accused No.1 had falsely stated that he was an employee in the Income Tax Department and that the deceased had believed this statement of accused cannot be believed in the normal course of things. Since for the seven years prior to the date of incident the deceased was knowing the accused No.1 very well. Under

the circumstances, the evidence of PW2 and also PW3 that the accused No.1 had cheated the deceased in respect of his employment cannot be believed at all. It is his further submission that the deceased was an educated person and she was employed as a teacher. On 02.09.2007, she would have got her first salary and therefore, there could have been no reason for her to quarrel with her husband-accused so as to encourage him to commit the murder of the deceased. Therefore, he submits that the prosecution has not proved the ingredients under Section 498-A of IPC nor the prosecution has established motive on the part of the accused to commit the murder of the deceased. It is therefore submitted by him that except the evidence of PW16, the Scientific Officer and the opinion given by him, there is no material to connect the crime with the accused. It is further

submitted by him that the suspicion regarding the involvement of the accused in the crime cannot take the place of the truth and therefore, having regard to the principles of law that the experts evidence is only an opinion evidence the same, cannot replace the facts in a case, which can lead to conviction of the accused. Under the circumstances, he submits that the accused is entitled for an order of acquittal

29. Sri.V.M.Banakar, learned Additional State Public Prosecutor on the other hand submits that the death note was found near the dead body and the same was lying in the katte of the house, which is inside the house, where the dead body was observed by the Police as well as PW1 at the first instance and the said death note has been seized by the Police. The same has been sent for examination to the FSL, Bangalore along



with the admitted handwriting of the accused and also the handwriting of one Sunil Kumar, who is suspected to be the friend of the accused and would have been possibly present at the time when the incident happened. The FSL report in the form of opinion of PW16, the Scientific Officer clearly establishes that the hand writing found in the death note-Ex.P29, does not belong to the deceased, but it belongs to the accused. It is also stated by the Scientific Officer that the handwriting also does not belong to Sunil Kumar, whose sample handwriting was also put to test by the Scientific Officer. Under the circumstance, the very presence of the death note which is in the hand writing of the accused clearly establishes that it is the accused and the accused alone, who had come to the scene of occurrence and had committed the murder of the deceased. Further it is nobody's case that the

deceased had committed the suicide since, no one has seen the deceased hanging herself. It is the case of PW1 that when he entered first inside the room along with the Police, the dead body of the deceased was found lying. If the deceased had hanged herself, then the dead body ought to have been in the hanging position, which is not the case. On the arrest of the accused, the knife used by the accused to cut the veil by means of which the accused had strangled the deceased, has been seized by the Police. The postmortem report issued by PW11-Dr.Shailaja Patil clearly indicates that the deceased had been done to death by pressing her neck and therefore, the death is due to strangulation. It is to be seen that the accused had taken the room from PW1 only a few days prior to the date of incident and that the possibility of any other person intruding except the accused and the said

Sunil Kumar is completely ruled out. Having found scientifically that the said Sunil Kumar is not at all involved in the incident, the guilt fairly and squarely falls on the accused and therefore, the prosecution has proved that the accused and the accused himself is responsible for the death of the deceased by strangulation. Hence, he submits that the learned Sessions Judge has rightly convicted the accused and submits that the appellant has not made out any grounds for allowing this appeal. Hence, he submits that the appeal may be dismissed.

30. On a careful consideration of the entire material on record, the case rests mainly on the death note said to have been recovered from the place where the dead body was found. It is seen that though PW1 along with Police had gone to the scene of occurrence in the morning of

03.09.2007, the evidence regarding the seizure and safe custody of the death note is not properly brought out in the evidence. It is only on 15.02.2008 that for the first time, the death note was sent to the Scientific Officer, FSL, Bangalore. Unfortunately, the prosecution is silent as to the safety and the originality of the death note, which is said to have been found at the place where the dead body was found, as the evidence on record does not indicate that the said death note was seized and sealed. It is to be noted that in the intervening time between the date of offence and the date of sending of the death note to the FSL, Bangalore, the accused was secured before the Police Station and his sample handwriting was also obtained by the Police. Unless, the original death note was seized and sealed in accordance with law in the presence of the witnesses, there is possibility of

embellishment of the said death note and therefore, there is a reasonable doubt that the death note, which was sent to the Scientific Officer, Forensic Science Laboratory, Bangalore may not be the original one, even if PW1's evidence is to be believed that there was a death note by the side of the dead body. Apart from the evidence, which emanates from the death note, there is absolutely no evidence to show that the accused has come to the scene of occurrence either on 02.09.2007 in the evening or during the night hours. It is an admitted fact that PW1 has allotted the house to the accused about 10 to 15 days prior to 01.09.2007 and that nobody else is stated to have come to the said place and, therefore, there is a strong suspicion that it is the accused and accused only who could have come to the scene of occurrence. However, any suspicion, however grave, shall not take place of

proof and, therefore, it cannot be said, in the absence of any cogent and clear evidence that someone has seen the accused near the vicinity of scene of occurrence on the date of occurrence, that the accused had come near the scene of occurrence and has taken part in the crime. The evidence so far as this fact is concerned is wholly lacking. This being a case resting on circumstantial evidence, all the links in the chain of circumstances should be clearly and independently established by the prosecution and any single missing link would lead to the benefit of the accused and not to the prosecution. In that view of the matter, we are of the considered opinion that the prosecution has not established all the links in the chain of circumstances leading to the guilt of the accused and accused alone and that prosecution has also not proved that the possibility of some other

person involving himself in the case is totally ruled out. That being so, the only inevitable result would be to hold that the prosecution has not proved the case against the accused beyond reasonable doubt and he is entitled for an order of acquittal.

31. In that view of the matter, we hold that the prosecution has failed to prove that the accused has committed the offence of murder of the deceased and therefore, he is entitled to an order of acquittal for the offence under Section 302 IPC.

32. So far as the offence under Section 498A IPC is concerned, the evidence of PW2 and PW3 - the cousin sister and brother of the deceased is only hearsay and in the circumstances in which the deceased had married the accused, the possibility of her

revealing all these facts does not appear to be the normal course of conduct of an human being. According to the prosecution, it is accused No.2, who is the father of accused No.1, who had pressurized accused No.1 to force the deceased to bring the money and that he had threatened that if the deceased did not get money, then he would celebrate marriage of his son with another women. It is not stated anywhere that accused No.2 was either living with the deceased or was in conversation with the deceased after the marriage. Therefore, involvement of accused No.2, as rightly held by the learned Sessions Judge, has not been proved at all by the prosecution. The case against accused No.1 as spoken to by PW2 and 3 is not believable in the circumstances of the case as it was a love affair and that the deceased and the accused No.1 had married against the wishes of the parents of the



deceased. The evidence of PW2 and PW3 clearly establishes that there was absolutely no connection between the parents of the deceased and the deceased after the marriage and that she was working and living independently and nobody has even attended the marriage of the accused with the deceased. Under the circumstances, the finding of the learned Sessions Judge, insofar as offence under Section 498A IPC is concerned, is not based on the evidence on record and, therefore, the same is liable to be set aside.

33. Since we have held that accused is not liable to be convicted for the offences under Sections 302 and 498A IPC, conviction of the accused for the offence under Section 201 IPC is also not sustainable.

34. In the result, the following order is passed:-

**ORDER**

- (i) The appeal is allowed.
- (ii) The impugned judgment and order of conviction and sentence dated 27th August 2011 passed in S.C.No.145/2008 by the Additional Sessions Judge & Presiding Officer, Fast Track Court-III, Hospet, is hereby set aside.
- (iii) The appellant/accused is acquitted of the offences under Sections 302, 201 and 498A of Indian Penal Code. Appellant is in judicial custody. He shall be set at liberty forthwith, if not required in any other case.

- (iv) Fine amount, if paid, is ordered to be refunded to the appellant/accused.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

KSR/Vnp\*/KMS