

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 2ND DAY OF JULY, 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL APPEAL NO.573 OF 2013

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY POLICE SUB INSPECTOR
MANGALURU EAST POLICE STATION. ... APPELLANT

(BY SRI. I.S. PRAMOD CHANDRA, SPECIAL PUBLIC
PROSECUTOR-2)

AND:

BASAPPA
SON OF KARIYAPPA
AGED ABOUT 40 YEARS
RESIDING AT GARAGADAR HOUSE
NEAR KARISIDDAPPA TEMPLE
MATHIKATTE
KUNDUGOLA TALUK
DHARWAD DISTRICT-581 113. ... RESPONDENT

(BY SRI. P. KARUNAKAR, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
378(1) AND (3) CRIMINAL PROCEDURE CODE PRAYING TO
GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT

DATED 03.01.2013 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAKSHINA KANNADA, MANGALURU IN SESSIONS CASE NO.35 OF 2011 - ACQUITTING THE RESPONDENT-ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 498A AND 302 OF INDIAN PENAL CODE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.06.2019 COMING ON THIS DAY, H.P. SANDESH J., PRONOUNCED THE FOLLOWING:-

JUDGMENT

This appeal is filed by the State against the judgment dated 03.01.2013 passed in Sessions Case No.35 of 2011 on the file of I Additional District and Sessions Judge, Dakshina Kannada, Mangaluru.

2. The factual matrix of the case is that the accused being the husband of deceased subjected his wife to cruelty and committed the murder. Hence, the offences are punishable under Sections 498-A and 302 of Indian Penal Code.

3. The nutshell of the case of the prosecution is that the marriage between the accused and deceased took place 12 years ago and both of them were living with their

two children in the ground floor room which was provided to them in the apartment by P.W.23. On the previous day of the incident i.e., on 08.11.2010, the accused left the house to go to his native place Konnuru leaving his wife and children and brought his mother-in-law (P.W.4) to his house and he left the house at 6 O' clock in the evening on 08.11.2010 and he came back early in the morning at 6 O' clock on the next day. On 09.11.2010 he came and told that he did not go to his village and he came back from Sirsi and told his wife and children to get ready to go to Mangaladevi Temple. It is the further case of the prosecution that the accused took his wife to the terrace in the lift, abused her that since she is not having good character, it is better to die and saying so, he forcibly pushed the deceased from the third floor of the terrace. As a result of the same, the deceased-Hanumavva fell on the ground and sustained grievous injuries on the forehead, both hands and other parts of the body. The injured was taken to the Unity Hospital, which is located near the apartment. Since there was no response, she was shifted

to KIMS Hospital, Hubli where the injured died on 12.11.2010.

4. The Police have registered the case based on the complaint of P.W.4 at the first instance for the offences punishable under Sections 498-A and 307 of Indian Penal Code and when the injured succumbed to the injuries, the offence under Section 302 of Indian Penal Code was invoked instead of Section 307 of Indian Penal Code. Thereafter investigation was taken up and charge sheet was filed against the accused under Sections 498-A and 302 of Indian Penal Code.

5. The prosecution, in order to prove the case examined P.Ws.1 to 25 and got marked the documents Exs.P1 to P18(a) and so also produced the material objects which were marked as M.Os.1 to 7. The accused did not lead any defence evidence. The Court below recorded 313 statement of the accused and after hearing both the State Public Prosecutor for the appellant-State and learned counsel for respondent-accused, acquitted the accused

under Sections 498-A and 302 of Indian Penal Code. Being aggrieved by the judgment of acquittal, the State has preferred the present appeal.

6. In the appeal, the main contention of the State is that the learned trial Judge did not appreciate the evidence of prosecution in the right perspective and the very finding of the trial Court is perverse. The State in the appeal would also contend that the learned Session Judge gave much importance to minor discrepancies in the evidence of the prosecution witnesses which would only go to show that the witnesses have deposed naturally and are not tutored. The learned trial Judge has failed to take note of the evidence of P.Ws.1 to 23 who are independent witnesses and they have no reason to depose against the respondent-accused. Though their evidence is consistent and convincing, the learned trial Judge has discarded the same. P.Ws.2 and 3 are chain witnesses. Though they have supported the case of the prosecution, the learned trial Judge has failed to consider their evidence. P.W.4, the

mother of the deceased has fully supported the case of the prosecution.

7. Though learned counsel for the respondent-accused has argued that deceased sustained injuries, when she fell down in the bathroom, the same has not been substantiated by producing reliable evidence and the injuries sustained by the deceased are not possible to sustain, if she has fell down in the bathroom. The Doctor, who has been examined before the Court has stated that the nature of injuries sustained by the deceased and the medical evidence speaks to the effect that the said injuries could be caused only when there is a fall from a distance of more than 20 feet and the learned trial Judge only gave much importance to minor discrepancies.

8. The mother of the deceased and her children have deposed before the Court that accused used to frequently quarrel with the deceased. The trial Court has failed to take note of the fact that the accused was last seen in the company of the deceased and witnesses have

seen the accused taking the deceased to the third floor. Hence, the burden is cast on the accused to give explanation for the death of the deceased and the same has not been done. Hence, it is a fit case to reverse the findings of the trial Court and convict the accused for the offences alleged against him.

9. Sri Pramod Chandra, learned State Public Prosecutor appearing for the State in his argument would contend that the learned trial Judge has given much importance to discrepancies found in the evidence of P.Ws.2 and 4, but it has not taken into consideration the evidence of P.Ws.1 to 4 and 23 who have supported the case of the prosecution. Out of the witnesses P.Ws.1 to 4 and 23, P.W.1 is the resident of first floor of the very same apartment and P.W.23 is the resident of third floor of the apartment. They are independent witnesses and they are not having any animosity against the accused to depose against him. The other witnesses viz., P.Ws.2 to 4 are minor children and mother of the deceased. Though they

are interested witnesses, their evidence cannot be discarded on the ground that they are relatives of the accused. The same has to be weighed taking into account the circumstances of the case. The prosecution has also examined the other witnesses, particularly, P.W.21-Doctor who conducted the post mortem and gave the post mortem report as at Ex-P17. He has categorically stated that the nature of injuries sustained by the deceased could be caused only if she has fallen from the height and no chances of sustaining injuries if any person falls down in the bathroom and the evidence of P.W.7 and other Doctor also discloses with regard to the nature of injuries which are found in Ex.P5. Hence, it is a fit case to re-appreciate the evidence and convict the accused for the offences alleged against him.

10. Per contra, learned counsel appearing for the accused would contend that the learned trial Judge while considering both oral and documentary evidence meticulously examined the incriminating evidence against

the accused and disbelieved the version of P.Ws.2 to 4, who are the related witnesses and also the eye witnesses to the incident. None of the witnesses have spoken that the deceased was taken by the accused to the third floor. The learned trial Judge while giving reasons has observed that it is highly impossible to see what is going on in the third floor terrace since, there was a Parapet wall to the extent of 3 feet surrounding the area and the place wherein it is alleged that the deceased was pushed, there is a 5 feet Parapet wall. Considering the material available on record, including the evidence of P.W.1, who is the hearsay witness and also the evidence of P.W.23, who did not witness the incident of pushing the deceased from the terrace and did not support the case of the prosecution, in order to arrive at a conclusion that the accused only committed the murder by pushing his wife from the terrace, the Court below has also taken note of the fact with regard to the discrepancy in taking the injured to hospital since some of the witnesses say that injured was taken to the hospital by the accused himself and some of

the witnesses say that the accused did not accompany the injured. So also with regard to apprehending of the accused, it is the case of the prosecution that the accused was apprehended in the apartment wherein, the accused was staying but some of the witnesses say that accused was apprehended in the hospital itself. Hence, the Court below has considered the material discrepancies and major contradictions in the evidence of prosecution and rightly acquitted the accused since, there was no incriminating evidence against the accused. No doubt, while cross-examining the witnesses, defence was taken that she fell down and sustained injuries in the bathroom and further she accidentally fell down from the terrace, this contra-defence will not come to the aid of the prosecution and the burden is highly on the prosecution to prove that the accused only pushed the deceased from the terrace. Since there are no clinching evidence to prove the same, the trial Court has given the benefit of doubt in favour of the accused and there are no grounds to interfere with the

judgment of acquittal to come to the other conclusion. Hence, he prayed this Court to dismiss the appeal.

11. Having heard the arguments of the learned Additional State Public Prosecutor appearing for the appellant-State and also the learned counsel appearing for the respondent-accused, this Court has to examine the material available on record and re-appreciate the same. In order to re-appreciate the same, the points that arise for consideration before us is:

"Whether the Court below has committed an error in acquitting the accused for the offences punishable under Sections 498-A and 302 of Indian Penal Code."

12. We would like to mention in brief the witnesses, who have been examined by the prosecution, in order to prove the case of the prosecution. As already pointed out, P.Ws.1 and 23 are the residents of the same apartment and P.Ws.2 and 3 are minor children of the deceased and the accused. P.W.4 is the mother of the deceased. The

prosecution mainly relies upon the evidence of these witnesses in order to prove the case of the prosecution. The other witnesses viz., P.W.5 and P.W.18 are the panch witnesses in respect of Ex.P2 with regard to the seizing of the articles M.Os.3 to 6. P.W.25 has also drawn the sketch of the scene of offence in terms of Ex.P18 and also recorded the statement of P.Ws.1 and 25.

13. P.W.25 also visited the Unity Hospital and recovered the belongings of the deceased by drawing mahazar in terms of Ex.P.3 i.e., in respect of MOs.1 and 2 in the presence of P.Ws.10 and 11. P.W.25 also recorded the statement of P.Ws.5 and 18. It is also the case of the prosecution that P.W.25 has received the credible information that accused is near the said apartment. Along with his staff, he proceeded to the said spot and apprehended the accused. He gave voluntary statement and he was subjected to the medical examination and thereafter, he handed over the accused to P.W.24 who conducted the further investigation and filed the charge

sheet. The other witnesses are police witnesses, who carried the FIR and also sent requisition to the Court for converting the offence from Section 307 of Indian Penal Code to Section 302 of Indian Penal Code.

14. Keeping in view the contentions urged by both learned counsel for appellant as well as learned counsel for respondent, in order to prove whether offences under Sections 498-A and 302 of Indian Penal Code has been committed, we have to consider the evidence of main witnesses of the prosecution i.e., particularly the evidence of P.Ws.1, 2, 4 and 23, since the case of the prosecution depends on their evidence. The other witnesses are only the formal witnesses, since they are the witnesses for seizure of MOs and no incriminating evidence is available against of the accused.

15. Now, let us notice the evidence of P.W.1. P.W.1 in her evidence says that she is staying in G-2 flat of the same apartment in the ground floor and very next to her flat, a room is provided to the watchman, wherein the

accused and deceased were living along with their two children. The accused was doing the job of watchman and deceased was doing vegetable vending business. P.W.1 says that 1 year 11 months ago, at around 7.30 a.m., she heard the screaming sound of the children of the deceased and accused. Immediately she did not come out. While sending the children to school, she came out. At that time, she came to know through P.W.23 that the accused pushed his wife from the terrace of the third floor. By that time, injured had already been taken to hospital by her husband and found the blood stains at the spot. It is also her evidence that in the third floor of terrace, there is a parapet wall and no chances of accidentally falling from the terrace unless to climb the parapet wall and fall down. The police have recorded her statement. While making the statement, she says that both husband and wife were quarrelling with each other and assaulting children. P.W.1 was subjected to cross-examination. In the cross-examination, it is elicited that she came to know about the incident through P.W.23 and key of the terrace was with

the watchman. A suggestion was made that if there was any galata in the house of watchman, the same cannot be heard, the said suggestion was denied. She also claims that P.W.23 told her that accused himself took the injured to the hospital. She admits that she did not make any statement before the police that accused was beating his children and for the first time, she was deposing the same before the Court. P.W.1 further admits that she did not make any statement that parapet wall is there. But, she voluntarily states that police did not ask her and hence, she did not tell the same.

16. P.W.2 is the son of the deceased. Since P.W.2 is aged about 11 years, formal questions were put to him. After convincing that the witness is capable of understanding the questions, the Court below has recorded the evidence. P.W.2, in his evidence, says that two years ago, his father i.e., accused left the house after collecting the amount from his mother that he will visit to his village and brought P.W.4, who is the grandmother, to the house.

On that day, his mother and grandmother were also there in the house and on the next day morning at about 6.00 a.m., his father returned to house. His father told that he did not go to his village. He went up to Sirsi and came back to the house. He told them to take bath to visit temple and hence, all of them had bath. Thereafter, his father took the mother in the lift. He also deposed that he told his grandmother that father took the mother to terrace. Thereafter father assaulted the mother and pushed her from terrace. As a result, mother fell down and sustained injuries. He further says that he and his grandmother had gone to the 2nd floor. At that time, they heard screaming sound on the terrace and pushed the mother and immediately, they came down and shifted the mother to hospital. In the cross-examination of P.W.2, it is elicited that while going to his village, his father himself brought the grandmother and when he came back, he told to visit Kadri Temple. When he took the bath, at that time, the grandmother was in the room. He admits that if any person talks in the terrace, same cannot be heard in

the ground floor. Further, he admits that if a person stands in the second floor, he cannot see the persons in the third floor. When they were in the second floor, P.W.1 came out. He admits that he himself, his sister and grand mother did not go to terrace and after hearing the sound of his mother screaming, they came back to ground floor where the mother had fallen on the ground. They rushed to the spot. But, he says that some people who came to the spot, shifted the injured to the hospital and thereafter, his father came to hospital and police arrested his father at the hospital.

17. P.W.3 is the daughter of the deceased and accused, who is aged about 13 years. The Court below after convincing with regard to the capacity to understand the questions, recorded the evidence. P.W.3, in her evidence, repeats the evidence of P.W.2 regarding going to village, coming back on the next day morning and instructing to get ready to go to the temple and mother also went to take bath and also taking the mother to

terrace in a lift. However, the further evidence of P.W.2 is that her father was scolding her mother with whom she went and thereafter, heard the screaming sound. Herself, her brother and grandmother were watching the same standing in the ground floor. In the meanwhile, her father pushed the mother, as a result she fell down and sustained injuries. Immediately her mother was taken to Unity hospital. Grandmother gave a complaint against her father. Thereafter, she was shifted to KIMS Hospital, where she breathed her last. In the cross-examination of P.W.3, she says that she was studying in the 5th standard and at that time, both parents were taking care of her education. There are three floors in the said apartment. P.W.3 claims that the father used to scold her mother that she would go in the early morning and she was not having any manners. So saying he used to assault his mother. But, there was no galata with regard to money matters. In the cross-examination, she says that when her father was assaulting her mother in the terrace, they were able to hear and they were standing outside the house and they were about to

go to 1st floor. By that time, her mother fell down and immediately, they rushed to the spot and mother was taken to hospital and father did not accompany her. P.W.3 claims that the police arrested her father when he was in the third floor of the very same apartment. It is suggested that if a person stands in the first floor, the same cannot be viewed what is happening in the third floor and the said suggestion was denied.

18. P.W.4 is the mother of the deceased and in her evidence, she says that she performed the marriage of the deceased and the accused. Both of them were living in the apartment at Mangalore and further, she says that she used to visit the said house once in a week. It is further deposed in her evidence that accused was suspecting about fidelity of her daughter. The accused brought her to his house and he left the house in order to go to his village. On the very next day, he came back at 6.00 a.m. When she was questioned him, he told that he came back in order to take the family members to Kadari Temple. At

that time, she told to take the children also along with them. Hence the accused instructed his wife to take bath. They took bath. Thereafter P.W.2 came and told that accused was beating his wife, took her in the lift and she heard screaming sound. Hence she went outside and shouted not to push his daughter. In the meanwhile accused pushed her. As a result, her daughter sustained injuries. Immediately people gathered near the spot. P.W.4 further says that her daughter was taken to the hospital in an autorickshaw wherein Police came and recorded her statement. She gave the statement in terms of Ex.P1. She identifies her left thumb impression. Police also came to spot and conducted mahazar in terms of Ex.P2 and she attested the same by Left Thumb Impression. The Police also seized broken bangles, chappal in terms of mahazar and she identifies the Mahazar as Ex.P3 and also M.O.Nos.3 and 4. P.W.4 further says that her daughter was taken to KIMS Hospital for further treatment where she succumbed to the injuries. The doctor conducted postmortem report and handed over

the body. It is her further evidence that there is a parapet wall in the terrace to the extent of 3 ft and there are no chances of accidentally falling down from the terrace. She says that her grand daughter is staying along with her and grand son is staying along with the sister of the deceased. P.W.4 was subjected to cross examination. In the cross examination a suggestion was made that her daughter was short tempered which was denied. Further a suggestion was made that she used to make galata for trivial issues with her husband. The said suggestion is also denied. It is stated that earlier she used to do vegetable vending business. She told her daughter to do vegetable vending business. The accused gave money to her daughter to do the said business. It is elicited that no panchayat was conducted. When the accused bet her daughter, she used to advise him. It is also her evidence that she brought the fact of causing harassment to her daughter to the notice of brothers of accused and no complaint was given against him to the Police or to the owner of the apartment. It is also elicited that accused was cordial with her. It is further

elicited that she did not witness the accused taking her daughter in the lift, but the same was witnessed by her grand son. It is elicited that if a person stands in the ground floor, he can see what is happening in the terrace and when her daughter was screaming, she did not call the residents of neighbouring house. It is further elicited that she did not take her grand children to the terrace. Either herself or her grand children did not observe what is happening in the upstairs. When her daughter fell down from the terrace at that time both the grand children were along with her. Suggestion was made that it is not possible to see what is happening on the terrace by standing in the ground floor and the said suggestion was denied. P.W.4 further says that accused did not accompany her daughter. She did not go to Kadri Police station. The Police took her Left Thumb Impression to Exs.P1 to P2 and she does not know the contents of Exhs.P1 and P2.

19. The other material witness is P.W.23 who is also the occupant of the very same apartment. P.W.23 who is

the owner of the apartment also in her evidence says that the accused was working as watchman and she gave accommodation to him and his family. It is the evidence of P.W.23 that the accused whenever drunk, under the influence of liquor used to quarrel with his wife. It is further evident that on 09.11.2010 at about 7.30 a.m. she was in the flat and heard a loud noise of somebody screaming. Immediately, she came out of the flat and noticed that the accused was coming down from the terrace of the third floor after locking the door leading to terrace. When she asked the accused as to what happened, he immediately ran to ground floor and she followed him to notice that the wife of accused had fallen down from the terrace and there was bleeding from nose and ears. The mother of the deceased and two children were screaming. When enquired, the mother of the deceased was informed that accused pushed her from the terrace and immediately the injured was taken to the hospital and she also rushed to the hospital and Police came and took the accused to their custody. She collected

the key from the accused in respect of the terrace. It is also her case that on the terrace all around there is a 3 ft wall where the accused pushed his wife there is a 5 ft wall and there is sloping. Further it is her evidence that she can make out sloping on the roof and from there the accused No.1 pushed his wife. Since there is 3ft wall around the terrace, one cannot fall accidentally by slippery. When the Police enquired her, she has narrated in detail. P.W.23 was subjected to cross examination and in the cross examination she admits that she cannot say whether the accused and his wife are cordial or not. She says that the accused took his injured wife to the hospital. It is elicited that by standing in the third floor, one cannot see the terrace and also elicited that she has stated before the Police that the mother of the deceased had informed about the incident.

20. The other prosecution witness P.W.21 who conducted the autopsy on the dead body, noticed 16 injuries and all the injuries are antemortem in nature and on dissection of the brain and spinal cord, the brain was

covered with sub-arachnoid and subdural haemorrhage all over the brain and the death was due to respiratory failure consequent upon the injury to the brain. P.M report is marked as Ex.P17 and the evidence of witness P.W.21 is not challenged. P.W.7 the doctor who gave the treatment at the first instance noticed the injuries and opined that injury No.1 is simple in nature and rest of the injuries are grievous in nature. The doctor opined that the injured might have fallen on the ground from the height of 20 ft. Since the medical expenses in Unity Hospital was expensive, the injured was shifted to KIMS Hospital. P.W.7 doctor has issued Ex.P5. The doctor was subjected to cross examination and says that when he examined the injured, she was incapable of speaking. The history given to him was that the injured had fallen from the top of the building. It is his evidence that if a person slips from the height of 5 feet and falls on the ground, in such event, the injuries recorded by him in the wound certificate Ex.P5 cannot be caused.

21. The prosecution also relied on the evidence of other witnesses who are panch witnesses i.e., recovery of belongings of the deceased. P.W.6 is none other than the brother in law of the accused and he came to know of the incident through his mother. He has not spoken anything about the harassment or cruelty meted out to his sister. P.W.8 is the brother in law of the deceased. He also did not speak about the harassment or cruelty meted out to the deceased by the accused. He was not subjected to any cross examination. The prosecution relies upon the evidence of the Police witnesses i.e., PWs.24 and 25.

22. P.W.12 received the complaint from P.W.1 and registered the FIR and send the same to the Court in terms of Ex.P10. P.W.25 went to spot, drew the mahazar in terms of Ex.P2, recorded the statement of some of the witnesses and prepared the sketch, in terms of Ex.P18. He also recorded the statement of P.W.23 and P.W.4, seized M.O.Nos.3 to 6, drew the mahazar in terms of Ex.P3 and thereby he entrusted the further investigation to P.W.24. In the cross examination, it is elicited that the apartment

consists of three floors and he also admits that if any person standing in the second or first floor cannot see who are all standing in the third floor. P.W.24 in his evidence says that after collecting the investigation material from P.W.25 continued the investigation, collected the PM report, secured the records, obtained the report from the forensic lab which is marked as Ex.P13 and 14 and filed charge sheet. In the cross examination of P.W.24 he admits that no complaint is received about the physical and mental harassment given to the deceased. It is suggested that she fell down and sustained injuries in the bathroom and a false case has been registered for an offence punishable under Section 302 of Indian Penal Code and the said suggestion is denied.

23. Now let us consider the material available on record keeping in view the contentions urged by both the learned counsel for the appellant and the learned counsel for the respondent-accused i.e., whether the Court below has committed an error in appreciating the evidence available on record ?

24. Firstly, we would like to decide the issue with regard to the cause of death of the deceased. The injured was taken to Unity Hospital at the first instance where P.W.7 – Dr.Mahabalesh Shetty, examined the injured and found 11 injuries. He deposed that injury No.1 is simple in nature and rest of the injuries 2 to 11 are grievous in nature and also his evidence is specific that the injured might have fallen on the ground from the height of more than 20 feet and sustained the injuries. In the cross-examination of this witness, it is elicited that a person may die at the spot, if he falls from the height of 40 feet and the said person may also sustain fracture to the entire body. It is suggested that Injury No.2 may be caused if a person falls on a rough surface from the height of five feet and the said suggestion was denied and also denied the suggestion that if a person slips from the height of five feet and falls on the ground and the same also categorically denied. The Doctor who conducted the post mortem i.e., P.W.21 – Dr.Sunil Kumar S.Biradar has

deposed that the death is due to respiration failure consequent upon to the injury to the brain. Hence, it is clear that the death is on account of the deceased sustaining injuries as a result of falling on the ground from the height of more than 20 feet.

25. Now, the question before us is, whether the prosecution was able to prove that the accused has committed the murder by pushing the deceased from the terrace to the ground. The prosecution relies upon the evidence of P.W.1, who is the resident of the first floor of the very same apartment and she did not witness the incident and she came to know about the incident through P.W.23. Hence, the evidence of P.W.1 will not come to the aid of the prosecution. The other witnesses P.Ws.2 to 4 are minor son, daughter and the mother of the deceased. Merely because they are relative witnesses, the same cannot be a ground to discard the evidence of the prosecution. At the same time, it has to be noted that

P.Ws.2 and 3 are the son and daughter of the accused also.

26. Now, the question before us is, whether the evidence of P.Ws.2 to 4 inspires the confidence of the Court that accused committed the murder of his wife by pushing her from terrace. In order to substantiate the case of the prosecution, the prosecution mainly relies upon the evidence of P.W.4. P.W.4 in her evidence says that P.W.2 came and told her that the accused bet his wife and took her in the lift and thereafter she heard the screaming sound. Then, P.W.4 went some distance from the house, saw the accused and deceased and requested the accused not to push her daughter. In spite of she requesting, he pushed her and as a result, she sustained injuries. In the cross-examination, P.W.4 admits that she did not witness the accused dragging the deceased in the lift. But, she claims that grand son i.e., P.W.2 told her. But, she claims that if a person stands in the ground floor, one can see the persons standing in the terrace. It is important to note

that she categorically admits that when she heard the screaming sound, she did not call upon any of the residents of the apartment. Further, she admits that she did not make any efforts to take the grand children to the terrace and either P.W.4 or grand children did not go to see, what is happening in the terrace.

27. It is pertinent to note that P.W.2, in his evidence says that he had informed the grandmother that his father took his mother and he claims that he witnessed pushing of his mother by his father. He admits in the cross-examination that he took P.W.4 to the second floor and when they were in the second floor, they heard the screaming sound of his mother. Hence, it is clear that according to P.W.2, both P.W.4 and himself were in the second floor. In the cross-examination, he categorically admits that if any person falls from the terrace, the same cannot be heard in the ground floor and also he admits that if a person stands in the second floor, he cannot see the persons in the third floor.

28. The other material witness of the prosecution is P.W.3, who is the daughter of the deceased. In her cross-examination, she claims that when the father was assaulting his mother on the terrace, the same was audible and at that time, they were standing outside the house i.e., herself and her brother and her grandmother. But, she claims that when they were climbing the first floor, at that time, mother had fallen on the ground.

29. In order to bring the accused within the purview of Section 302 of Indian Penal Code, the evidence must be consistent. The evidence of P.Ws.1, 2, 3 and 4 are contrary to each other. P.W.2 claims that he himself and grandmother were in the second floor and P.W.4 claims that they were in the ground floor. P.W.4 further claims that she saw the accused pushing her daughter whereas P.W.3 daughter claims that when they were climbing the first floor along with her brother and grandmother, mother was pushed from the terrace and the evidence of the prosecution does not inspire the confidence of this Court

that the accused only pushed her from the terrace. No doubt, she has fallen down from the terrace. There is no concrete evidence before the Court as to whether it is an accidental fall or pushed by accused.

30. The main case of the prosecution is that the accused was suspecting the fidelity of his wife. Hence he came back without reaching his village in the early morning at 6.00 clock. Further, it is important to note that when he came back, he had instructed his wife and family members to take bath to go to Kadri temple and the same is also spoken by P.W.4. It is further important to note that P.Ws.2 to 4 who are the inmates of the said house did not speak anything about the quarrel that has taken place between the deceased and the accused and only P.Ws.2 and 3 say that the accused took the deceased in the lift.

31. It is pertinent to note that if really the accused intended to take away the life of his wife, he would not have brought P.W.4 to his house and P.W.4 categorically says that accused in order to go to native place – Konnur,

he brought P.W.4 to his house. If really, his intention was to take away the life of his wife, he ought not to have brought P.W.4 to his house. It is further important to note that the prosecution relies upon the evidence of P.W.23 and no doubt, P.W.23 says that she heard the noise in the terrace and when she came out, at that time, accused was coming from terrace locking the door. When she asked, what happened, he did not reply. He suddenly rushed to the spot. It is important to note that P.W.23 in her evidence says that the accused himself took the injured to the hospital on her instructions and in the cross-examination, she categorically admits that she made the accused to take his injured wife to the hospital. P.W.23 is a hearsay witness. During cross-examination, she categorically admits that mother of the deceased informed her about the incident and also she admits that she cannot say whether accused and his wife were cordial or not? In her chief evidence, she says that whenever accused was under the influence of liquor, he was quarrelling with his wife.

32. Having taken note of the evidence available before the Court particularly the evidence of P.Ws.1 to 4 and P.W.23 who are the star witnesses to the prosecution, no incriminating evidence is available against the accused that he only pushed her from the terrace and the evidence of P.W.23 suggests that he was running towards the ground without replying to the questions asked by P.W.23, went to the spot and took the injured to the hospital. P.W.23 also categorically says that she also went to the hospital and some of the witnesses say that the accused was apprehended in the hospital itself. Having taken note of these evidence, the benefit of doubt goes in favour of the accused and the deceased might have fallen from the terrace and no incriminating evidence is available before the Court that this accused only pushed her from the terrace. Under the circumstances, we are of the opinion that there are no clinching and credible evidence before the Court in order to arrive at a conclusion that the accused has committed the murder of his wife.

33. The other charges leveled against the accused is that he was beating and harassing his wife. In the case on hand, except the evidence of P.W.23 that whenever he was under the influence of liquor, he was quarrelling with his wife. But, in the cross-examination, categorically admits that she cannot say whether the accused and his wife were cordial or not? It is further important to note that P.W.4 in her evidence claims that accused was harassing his daughter suspecting the fidelity of her daughter. In the cross-examination of P.W.4, she categorically admitted that accused was very cordial with her but sometimes he used to make galata and there is no concrete evidence before the Court with regard to the accused suspecting the fidelity of his wife.

34. The material witness is P.W.6 who is also the brother of the deceased and in his evidence, he has not spoken anything about the accused harassing his sister. The prosecution also examined the witness - P.W.8

brother-in-law of the deceased and he also not spoken anything about the harassment meted out to the deceased by the accused. The other witnesses P.W.2 and 3 as already pointed out, have not spoken anything about the quarrel that had taken place between husband and wife in their presence. Hence, we are of the opinion that it is not a fit case to reverse the finding of the trial Court.

35. The trial Court meticulously examined both oral and documentary evidence available before the Court after considering the evidence of each of the witnesses. The trial Judge did not find any material to connect the accused with the death of deceased by giving anxious consideration to the material available on record. Therefore the learned trial Judge rightly comes to the conclusion that the evidence available on record does not inspire the confidence of the Court to convict the accused.

36. In view of the discussions made above and considering all the material available on record, we are of the opinion that this Court did not find any reasons to

reverse the finding of the trial Court to come to other conclusion. Accordingly, the Criminal appeal is ***dismissed.***

Sd/-
JUDGE

Sd/-
JUDGE

ST/AKC/NBM