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STATE OF GUJARAT & ANR.

v.

HON'BLE MR. JUSTICE (RETD) RAMESH AMRITLAL MEHTA & ORS.

B (Review Petition (c) No(s). 362-363 of 2013)

in

(Civil Appeal No(s). 8814-8815 of 2012)

MARCH 14, 2013

C **[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]**

Constitution of India, 1950:

Art. 137 – Review Petition – On the ground of difference D *of opinion in the judgment under renew and a subsequent judgment – Held: In the light of distinctive features in Gujarat Act and in Karnataka Act which have been clearly spelt out in the judgment under review and in the subsequent judgment and the grounds raised in the review petitions having been* E *dealt with in detail in the judgment under review and concluded by adducing adequate reasons, no case for review is made out and there is no apparent error in the impugned judgment – Review petitions are dismissed – Gujarat Lokayukta Act, 1986 – s.3(1), proviso – Karnataka Lokayukta* F *Act, 1984 – s. 3(2)(a).*

Justice K.P. Mohapatra v. Sri Ram Chandra Nayak and Ors. **- 2002 (3) Suppl. SCR 166 = (2002) 8 SCC 1 – relied on**

Mr. Justice Chandrashekaraiah (Retd.) v. Janekere C. G *Krishna & Ors.* **2013 (3) SCC 117 - distinguished**

State of Gujarat v. Hon'ble Mr. Justice R.A. Mehta (Retd.) **- 2013 (1) SCR 1 = 2013 (1) SCALE 7 – referred to.**

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Case Law Reference:

(2013) 3 SCC 117	**distinguished**	**para 2**
2013 (1) SCR 1	**referred to**	**para 2**
2002 (3) Suppl. SCR 166	**relied on**	**para 14**

CIVIL APPELLATE JURISDICTION : Review Petition (Civil) Nos. 362-363 of 2013.

In

Civil Appeal Nos. 8814-8815 of 2012.

From the Judgment & Order dated 10.10.2011 and 18.01.2012 of the High Court of Gujarat at Ahmedabad in Sepcial Civil Application No. 12632 of 2011.

The following Order of the Court was delivered

ORDER

1. The original appellants in Civil Appeal Nos.8814-8815/ 2012 have filed the present review petitions seeking review of our judgment dated 02.01.2013.

2. We bestowed our serious consideration to the various grounds raised in the review petition. On a detailed reading of the grounds, it is quite apparent that the provocation for filing these review petitions is mainly the subsequent decision of this Court in the case of *Mr. Justice Chandrashekaraiah (Retd.) v. Janekere C. Krishna & Ors.* dated **11.01.2013** in **Civil Appeal Nos.197-199 of 2013 @ SLP (C) Nos.15658-15660 of 2012** which related to appointment of Upa-Lokayukta under Section 3 of the Karnataka Lokayukta Act, 1984. In the said judgment, the judgment under review reported as *State of Gujarat v. Hon'ble Mr. Justice R.A. Mehta (Retd.)* - **2013 (1) SCALE 7** was also noted and the clear distinction as between Section 3 of the Karnataka Lokayukta Act and Section 3(1) of Gujarat Lokayukta Act, 1986 was spelt out.

3. By referring to the above later decision in the forefront, the sum and substance of the grounds raised for review herein is three-fold, namely,

A (1) there is divergence of views taken by this Court in the impugned judgment and in the later judgment as regards the interpretation of language of Section 3 in both the legislations,

(2) the role of the constitutional authorities involved in
B the consultation process and;

(3) regarding primacy of the opinion of the Chief Justice vis-à-vis the Chief Minister of the concerned State.

C 4. At the very outset we find that none of the above grounds have any substance. Since, we find the whole basis for the review by relying upon the later judgment of this Court, it will be necessary to highlight the clear distinction as between the judgment under review and the said later decision of this
D Court.

5. The later decision of this Court considered the question about the primacy of the views expressed by the Chief Justice of the High Court of Karnataka in making appointment to the post of Lokayukta and Upa-Lokayukta by the Governor of
E Karnataka in exercise of power conferred on him under Section 3(2)(a) and (b) of the Karnataka Lokayukta Act, 1984 (hereinafter called as "Karnataka Act"). Section 3 of the Karnataka Act reads as under:

"3. Appointment of Lokayukta and Upa-Lokayukta

F (1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upa-lokayukta or Upa-lokayuktas.

G "2(a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High

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Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.

(b) A person to be appointed as an Upa-Lokayukta shall be a person who has held the office of the Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the opposition in the Karnataka Legislative Council and the Leader of the opposition in the Karnataka Legislative Assembly.

(Emphasis added)

(3)xxxxxxxxxx

6. A reading of the sub-clauses 2(a)&(b) disclose that it is for the Chief Minister to advise the Governor for appointment of a Lokayukta after consultation with the Chief Justice of the High Court of Karnataka, the Chairman of Karnataka Legislative Council, the Speaker of Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. While, as per the provision itself, it is for the Chief Minister to advice the Governor, the collegium for consultation consists of as many as five other members, including the Chief Justice of the High Court. The same is the procedure for appointment of Upa-Lokayukta under Section 3(2)(b) of the Karnataka Act.

7. In the later judgment of this Court, the above statutory stipulation, about the primary role to be played by the Chief Minister in advising the Governor and the collegium of consultation to be made, has been specifically discussed and concluded to the following effect in paragraph 37:

".....Therefore, for the purpose of appointment of

A Lokayukta or Upa Lokayukta all the five consultees are common. The appointment has to be made by the Governor on the advice tendered by the Chief Minister in consultation with those five dignitaries."

8. As far as the Gujarat Lokayukta Act is concerned, the B proviso to Section 3(1) of the Gujarat Lokayukta Act is relevant which is to the following effect:

"3(1) For the purpose of conducting investigations in accordance with provisions of this Act, the Governor shall, by warrant under his hand and seal, appoint a person to C be known as the Lokayukta.

Provided that the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court and except where such appointment is to be made at a time D when the Legislative Assembly of the State of Gujarat has been dissolved or a Proclamation under Articles 356 of the Constitution is in operation in the State of Gujarat, after consultation also with the Leader of the Opposition in the Legislative Assembly, or if, there be no such Leader, a E person elected in this behalf by the members of the Opposition in that House in such manner as the Speaker may direct."

(Emphasis added)

9. In the light of the specific stipulations contained in the F proviso, it was held in the impugned judgment that Section 3(1) read along with proviso envisages the appointment of Lokayukta by the Governor based on the aid and advice of the Council of Ministers after consultation with the Chief Justice of the High Court of Gujarat who in turn to consult with the Leader G of Opposition, if the Assembly is in position and in its absence even such consultation by the Chief Justice with the Leader of Opposition is also dispensed with.

10. This distinction, as between the Karnataka Act and Gujarat Act, was specifically noted in the later judgment in H paragraph 48, which is to the following effect:

".....Recently, this Court had an occasion to consider the scope of Section 3(1) of the Gujarat Lokayukta Act, 1986 in *State of Gujarat v. Hon'ble Mr. Justice R.A. Mehta (Retd.)* reported in 2013 (1) SCALE 7. Interpreting that provision this Court held that the views of the Chief Justice have primacy in the matter of appointment of Lokayukta in the State of Gujarat. Every Statute has, therefore, to be construed in the context of the scheme of the Statute as a whole, consideration of context, it is trite, is to give meaning to the legislative intention according to the terms in which it has been expressed." A B C

11. The later judgment has also considered similar such provisions contained in Andhra Pradesh Lokayukta Act, 1983, Assam Lokayukta and Upalokayukta Act 1985, Bihar Lokayukta Act 1973, Chhattisgarh Lok Aayog Adhyadesh, 2002, Delhi Lokayukta and Upa-Lokayukta Act 1995, Gujarat Lokayukta Act 1986, Jharkhand Lokayukta Act, 2001, Haryana Lokayukta Act, 2002 and Kerala Lokayukta Act, 1999 and held that each State has adopted different eligibility criteria, method of selection, consultative procedures etc., in the matter of appointment of Lokayuktas and Upa-Lokayuktas in their respective States. D E

12. Apart from referring to the similar provisions relating to appointment of Lokayukta in the above referred to enactments, the later judgment also noted that in the States of Assam, Delhi and in particular Gujarat, the Chief Ministers can participate in the process and could express their views and that the Chief Justices of the respective High Courts alone have PRIMACY in the matter of appointment of Lokayukta and Upa-Lokayukta. It was further noted that while in the States of Chhattisgarh, Haryana etc., the appointment is made by the Governor on the advice of the Chief Minister while in the State of Kerala under the Act the Chief Justice is not even a consultee at all. It, therefore, concluded as under in paragraph 48: F G

".....Legislatures of the various States, in their wisdom, have, therefore, adopted different sources, eligibility H

A criteria, methods of appointment etc. in the matter of appointment of Lokayukta and Upa-Lokayuktas."

13. As regards the process of consultation, it was again held in the later judgment that consultation is not a formality but should be meaningful, effective and primacy of opinion is B always vested with the High Court or the Chief Justice of the State High Court or the collegium of the Supreme Court or the Chief Justice of India, as the case may be, when a person has to hold a judicial office and discharge functions akin to judicial functions.

C 14. After holding so, by referring to Section 3(1) of the Orissa Lokpal and Lokayuktas Act which is in *pari materia* with the Gujarat Act, this Court by making specific reference to the decision which came up to this Court in *Justice K.P. Mohapatra v. Sri Ram Chandra Nayak and Ors.* - (2002) 8 D SCC 1 has held as under in paragraph 57:

"57. The High Court, in the instant case has, placed considerable reliance on the Judgment of this Court in **K.P. Mohapatra** (supra) and took the view that consultation with the Chief Justice is mandatory and his opinion will have E primacy. Above Judgment has been rendered in the context of the appointment of Orissa Lokpal under Section 3 of the Orissa Lokpal and Lokayuktas Act. The proviso to Section 3(1) of the Act says that the Lokpal shall be appointed on the advice of the Chief Justice of the High F Court of Orissa and the Leader of the Opposition, if there is any. Consultation with the Chief Justice assumes importance in view of the proviso. The Leader of the Opposition need be consulted, if there is one. In the absence of the Leader of the Opposition, only the Chief G Justice remains as the sole consultee. In that context and in view of the specific statutory provision, it has been held that the consultation with the Chief Justice assumes importance and his views has primacy."

(Emphasis added)

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15. In the light of the clear distinction in Section 3(2)(a) and (b) of the Karnataka Act and the Orissa Act, it was held that the judgment of this Court in *K.P. Mohapatra* (supra) was inapplicable while construing the provisions of the Karnataka Act, since, the language employed are not *pari materia*. It will be appropriate to state that the provisions of the Gujarat Act and the Orissa Act are identical in so far as it related to the consultation process is concerned and, therefore, it was categorically held that the role of the Chief Justice was primary by virtue of the specific provision contained in the Act. In the light of specific provision contained in Section 3(2)(a) and (b) of the Karnataka Act in the later judgment, it was held as under in paragraph 62:

> "Section 3(2)(a) and (b) when read literally and contextually admits of no doubt that the Governor of the State can appoint Lokayukta or Upa Lokayukta only on the advice tendered by the Chief Minister and that the Chief Justice of the High Court is only one of the consultees and his views have no primacy. The Governor, as per the statute, can appoint only on the advice tendered by the Chief Minister and not on the opinion expressed by the Chief Justice or any of the consultees."

16. In the light of the above distinctive features in the Karnataka Act and in the Gujarat Act which have been clearly spelt out in the impugned judgment under review and in the judgment of **Mr. Justice Chandrashekaraiah (Retd.)** (supra), the ground raised in these review petitions which have been dealt with in detail in the judgment under review and concluded by adducing adequate reasons, we are convinced that no case for review is made out and there is no apparent error in the impugned judgment. These review petitions are, therefore, dismissed.

R.P. Review Petitions dismissed.

A VAJRESH VENKATRAY ANVEKAR

v.

STATE OF KARNATAKA

(Criminal Appeal No. 12 of 2013)

JANUARY 3, 2013

B

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Penal Code, 1860 – ss. 498A & 306 – Married woman committed suicide by consuming poison within seven years C *of marriage – Acquittal of accused-husband by trial court – Reversal of acquittal by High Court – Justification – Held: Justified –Medical evidence and the evidence of PWs revealed that the victim was beaten up prior to the death and she received eye injury and injury on her cheek – The injuries* D *were certainly not self-inflicted – Victim committed suicide within seven years from the date of her marriage in her matrimonial home – Impact of this circumstance was clearly missed by the trial court – Evidence on record established that the victim was subjected to mental and physical cruelty* E *by the appellant in their matrimonial home which drove her to commit suicide – Explanation offered by appellant in his statement u/s.313 CrPC confirms that appellant is not innocent – Circumstances on record clearly establish that the victim received the eye injury in the matrimonial home and* F *the appellant was responsible for it – Appellant unable to rebut presumption u/s.113A of the Evidence Act – Evidence Act, 1872 – s.113A.*

Witness – Interested witnesses – Evidence of – Suicide by married woman – Dowry death case – Trial court refused G *to rely upon the evidence of the parents, brother and brothers-in-law of the victim primarily on the ground that they were interested witnesses – Held: The approach of the trial court was very unfortunate – When a woman is subjected to ill-treatment within the four walls of her matrimonial house, ill-*

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treatment is witnessed only by the perpetrators of the crime – They would certainly not depose about it – It is common knowledge that independent witnesses like servants or neighbours do not want to get involved – On facts, a maid employed in the matrimonial house of the victim who was examined by the prosecution turned hostile – It is true that chances of exaggeration by the interested witnesses cannot be ruled out and witnesses are prone to exaggeration – However, if the exaggeration is of such nature as to make the witness wholly unreliable, the court would not rely on him – If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable – In this case, no such exaggeration was found qua the accused-husband (appellant) – The witnesses stood the test of cross-examination very well – Injuries suffered by the victim prior to the suicide could not be ignored – The pathetic story of the victim's woes disclosed by her parents, her brother and her brothers-in-law deserved to be accepted and was rightly accepted by the High Court.

FIR – Delay – Suicide committed by married woman by consuming poison – FIR lodged by victim's father after six hours – Effect – Held: When a man looses his daughter due to cyanide poisoning, he is bound to break down – He would take time to recover from the shock – Six hours delay cannot make his case untrue.

Crime against Women – Phenomenal rise in crime – Observation made by Supreme Court that Judges have to be sensitive to women's problems – Protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems.

The prosecution case was that the daughter of PW1 committed suicide in her matrimonial home by

A consuming poison because the victim's husband (A2), father-in-law (A1) and mother-in-law (A3) tortured her. The death took place within seven years of marriage. The said three accused were tried for offences punishable under Sections 498-A, 304-B and 306 read with Section 34 IPC B and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. The trial court acquitted all the accused. In appeal, High Court confirmed the acquittal of A1 and A3, but reversed the acquittal of A2 and convicted him under Sections 498-A and 306 IPC. Aggrieved, A2 filed the C present appeal.

The appellant *inter alia* raised the following contentions before this Court: 1) that the view taken by the trial court while acquitting the accused was a reasonably possible view which ought not to have been D interfered with by the High Court; 2) that the High Court erred in relying on the evidence of interested witnesses; 3) that though, evidence shows that several police officers were there at the scene of offence, PW1 did not lodge the complaint immediately and lodged the E complaint at 2215 hours, though he got to know about his daughter's death at 2.30 p.m, and the complaint was, therefore, doctored; 4) that demand of dowry was not proved; 5) that there was no credible evidence on the basis of which the appellant could be held guilty of the F said offences and further 5) that the explanation offered by the appellant in his statement recorded under Section 313 CrPC established his innocence.

Dismissing the appeal, the Court

G HELD:1. Two most vital circumstances which must be kept in mind while dealing with this case are that 'G', the daughter of PW1, had committed suicide in the matrimonial home and her death took place within seven years of her marriage. Presumption under Section 113A H of the Indian Evidence Act, 1872 springs into action

which says that when the question is whether the commission of suicide by a woman had been abetted by her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. The question is whether the appellant has been able to rebut this presumption. [Para 6] [92-G-H; 93-A-B]

2. Medical evidence is of great importance in this case. PW7 doctor had done G's post-mortem. She found number of injuries on 'G'. PW7 opined that cyanide poisoning was the cause of death and all the external wounds were caused prior to post-mortem. According to her, the wounds on the right side of head can be sustained if a person is beaten with hands. According to her report, they could be caused by hard and blunt object when the deceased was alive. In the cross-examination, it was suggested to her that if the dead body falls on rough surface, the wounds, which she had seen, could be caused. She denied the suggestion. Thus, it is clear that 'G' was beaten up prior to the death. In the facts of this case, it is difficult and absurd to come to a conclusion that the injuries were self-inflicted. Pertinently, 'G' died in her matrimonial home. It is, therefore, clear that prior to taking cyanide, 'G' was assaulted in her matrimonial home. PW6, the then Tahsildar and Taluka Magistrate who drew the inquest panchnama also referred to blackening of the skin at the wrist and on the left and right side of the cheeks of the dead body. He denied the suggestion that because of the pressure exerted by PW1, it was so stated in the inquest panchnama. [Para 7] [93-C-G-H; 94-A-D]

3. PW20 stated that on 30/5/2002 (about two weeks

A prior to the incident) 'G' had visited his nursing home for treatment with her brother. He found number of injuries on her body. 'G' told him that she sustained those injuries because her husband had beaten her. PW20 stated that those injuries were caused within 24 hours and they B could be caused due to beating by sticks and pinching. PW20 identified his signature on the injury certificate (Ex. P66). Strangely, the trial court has given no importance to this evidence and has observed that from the evidence of this witness one can only conclude that on 30/5/2002 C when 'G' visited him, she had three injuries on her body which were caused 24 hours prior to the treatment and it is for the prosecution to prove that the accused had caused those injuries. The trial court has not disbelieved PW20. 'G' was brought to him by her brother. She told him that her husband had caused those injuries. One fails to D understand what more evidence the prosecution could have adduced to prove that those injuries were caused by the appellant. In the peculiar circumstances of the case, only this conclusion can be drawn from PW20's evidence. It is pertinent to note that PW3, a friend of 'G', E has supported the case of PW20 that the deceased had visited him in May, 2002. PW3 stated that she met 'G' at PW20's nursing home in May, 2002. 'G' appeared to be disturbed and she complained of body ache. According to PW3, she told her that the appellant and members of F his family were beating her and that she was fed up. The trial court discarded the evidence of this witness on the ground that there is a delay in recording her statement. So far as delay is concerned, one cannot lose sight of the fact that the investigation of this case was entrusted to G PW24, Deputy Superintendent of Police in COD in Dowry Prohibition Cell on 21/06/2002. Thereafter, she appears to have recorded certain vital statements. In the peculiar facts of this case, delay in recording statements of witnesses cannot be taken against the prosecution. So H far as PW3 is concerned, despite the delay in recording

her statement, she is found to be a reliable witness. The High Court rightly relied upon her evidence. [Para 8] [94-E-G-H; 95-A-F]

4. The trial court refused to rely upon the evidence of the parents, brother and brothers-in-law of 'G' primarily on the ground that they are interested witnesses. This approach is very unfortunate. When a woman is subjected to ill-treatment within the four walls of her matrimonial house, ill-treatment is witnessed only by the perpetrators of the crime. They would certainly not depose about it. It is common knowledge that independent witnesses like servants or neighbours do not want to get involved. In fact, in this case, a maid employed in the house of the appellant who was examined by the prosecution turned hostile. It is true that chances of exaggeration by the interested witnesses cannot be ruled out. Witnesses are prone to exaggeration. It is for the trained judicial mind to find out the truth. If the exaggeration is of such nature as to make the witness wholly unreliable, the court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be disbelieved because of some exaggeration, if his evidence is otherwise reliable. In this case, no such exaggeration was found *qua* the appellant. The witnesses have stood the test of cross-examination very well. The injuries suffered by 'G' prior to the suicide cannot be ignored. The pathetic story of G's woes disclosed by her parents, her brother and her brothers-in-law deserves to be accepted and has rightly been accepted by the High Court. This Court is not happy with the manner in which trial court has ignored vital evidence. [Para 9] [95-G-H; 96-A-E]

5. PW1 stated how 'G' was harassed mentally and physically. The trial court has recorded a finding that 'G'

A did not receive eye injury prior to marriage. PW1 stated that the appellant assaulted 'G' on her face and she received eye injury. This evidence inspires confidence. The story that the appellant had taken her to Dr. Kumta, an eye specialist, appears to have been created to get
B over PW1's version. In any event, taking 'G' to a doctor after assaulting her does not absolve the appellant of the crime. PW11, brother-in-law of 'G' resides in Bombay. He stated that when 'G' had come to his house along with the appellant she appeared to be frightened. She was not able to talk properly. When she came alone she told him
C that she was scared of living in the appellant's house. He noticed that her left cheek had become red and the right portion of her face had become dark. PW17, another brother-in-law of 'G' spoke about the ill-treatment meted out to 'G', the eye injury received by her and the assault
D on her left cheek. PW19, brother of 'G' also deposed as to how 'G' was ill-treated. Despite all this the trial court acquitted the appellant. Surprisingly, six hours delay in lodging the F.I.R. is taken against the prosecution.When a man looses his daughter due to cyanide poisoning, he
E is bound to break down. He would take time to recover from the shock. Six hours delay cannot make his case untrue. It is also not proper to expect him to give all minute details at that stage. The F.I.R. contains sufficient details. It is not expected to be a treatise. The comments
F on alleged delay in lodging the F.I.R. and its contents are totally unwarranted. For the same reasons, the submission of the appellant that because PW1 did not tell the police officers who were present at the scene of offence that the appellant was responsible for the suicide
G his FIR lodged after six hours is suspect, is also rejected. [Para 10] [96-F-H; 97-A-C-F-H; 98-A]

6. The explanation offered by the appellant in his statement recorded under Section 313 CrPC confirms
H that the appellant is not innocent. After denying the

allegations of ill-treatment, cruelty and demand of dowry, the appellant goes on to paint a rosy picture of his married life. He refers to certain photographs and a Valentine day's card sent by 'G' to him in 2002. Valentine day's card sent by 'G' to the appellant does not help him to probablise his alleged good conduct. In the facts of this case it appears to be an effort made by 'G' to please the appellant. The photographs were produced in the court to show that 'G' was taken to religious places and hill stations. Trial court has rightly not placed reliance on them. As regard the photographs it has observed that in the photographs 'G' is seen standing alone and, therefore, on the basis of these photographs it cannot be said that the appellant had taken her to religious places or for honeymoon. Perhaps to create an impression that 'G' was suffering from depression, the appellant comes out with a story that 'G' used to consume pills everyday and when he enquired about it she used to give evasive answers. According to him she used to lead a life of an introvert and she preferred loneliness. She never watched T.V., she never read any newspapers or books. When he asked her about it she stated that she had an eye problem. He has further gone on to say that he blamed G's parents that they had suppressed her eye trouble from him and got her married to him. He further goes on to say that for this reason she was not willing to give birth to a child. This story is palpably false and is a crude attempt to create an impression that 'G' was mentally unstable. No such evidence is brought on record. In this connection, it must be stated that the trial court has rejected the defence of the appellant that 'G' had lost her eye sight even before her marriage and that this fact was concealed from him. The trial court has observed that 'G' was a graduate. If she had really lost eye sight, the appellant and his parents would have noticed the defect earlier. Further part of the explanation which refers to the appellant's

A alleged conduct of getting 'G' examined by Dr. Kumta and allegedly giving her money for operation will have to be understood against the background of above facts. This Court is not inclined to believe that the appellant took 'G' to an eye specialist and if he did take 'G' to an B eye specialist there is no doubt that it was too late in the day. The evidence on record clearly indicates that 'G' received injury on her cheek and to her eye after marriage. She had no eye trouble before marriage. The injury was certainly not self-inflicted. Circumstances on record C clearly establish that 'G' received the eye injury in the matrimonial home and the appellant was responsible for it. [Para 11] [98-B-H; 99-A-C]

7. Though this Court is wary of passing comments against the subordinate courts because such comments D tend to demoralize them, but, in this case, the insensitivity shown by the trial court to a serious crime committed against a hapless woman, cannot be ignored. The tenor of the judgment passed by the trial court suggests that wife beating is a normal facet of married life. It is one thing E to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. Perhaps the trial court wanted to F convey that the circumstances on record were not strong enough to drive 'G' to commit suicide. But to make light of slaps given to 'G' which resulted in loss of her eyesight is to show extreme insensitivity. Assault on a woman offends her dignity. What effect it will have on a G woman depends on facts and circumstances of each case. There cannot be any generalization on this issue. However, this observation must not be understood to mean that in all cases of assault suicide must follow. The objection is to the tenor of trial court's observations. The

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trial court's judgment show a mindset which needs to change. There is a phenomenal rise in crime against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems. [Paras 12, 14] [99-D-E; 101-C-H; 102-A-B]

8. In the ultimate analysis, it is clear that the appellant has not been able to rebut presumption under Section 113A of the Evidence Act. 'G' committed suicide within seven years from the date of her marriage in her matrimonial home. Impact of this circumstance was clearly missed by the trial court. The evidence on record establishes that 'G' was subjected to mental and physical cruelty by the appellant in their matrimonial home which drove her to commit suicide. The appellant is guilty of abetment of suicide. The High Court rightly reversed the judgment of the trial court acquitting the appellant. [Para 15] [102-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 12 of 2013

From the Judgment & Order dated 09.11.2011 of the High Court of Karnataka Circuit Bench at Dharwad in Criminal Appeal No. 1567 of 2007.

Kiran Suri, Aparna Matto, S.J. Amit, Nakibur Rahman for the Appellant.

V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

2. The appellant (original accused 2 – A2) was tried along

A with his father Venkatray Narayan Anvekar (original accused 1 – A1) and his mother Smt. Vidyabai Venkatray Anvekar (original accused 3 – A3) for offences punishable under Sections 498-A, 304-B and 306 read with Section 34 of the Indian Penal Code (for short **'the IPC'**) and Sections 3, 4 and B 6 of the Dowry Prohibition Act, 1961 by the Sessions Judge, Fast Track Court-II at Karwar in Sessions Case No.59/02. By his judgment dated 30/03/2007 learned Sessions Judge acquitted all the accused. The State of Karnataka carried an appeal to the High Court of Karnataka, Circuit Bench at C Dharwad from the said judgment. The High Court by the impugned judgment confirmed the acquittal of A1 and A3. The High Court, however, reversed the acquittal of the appellant and convicted him for the offences punishable under Sections 498-A and 306 of the IPC. For offence punishable under Section 306 of the IPC, the appellant was sentenced to imprisonment D for five years and to pay fine of Rs.1,00,000/- and in default of payment of fine, to undergo further imprisonment for one year. For offence punishable under Section 498-A the appellant was sentenced to imprisonment for three years and to pay fine of Rs.10,000/- and in default of payment of fine, to undergo further E imprisonment for six months. The substantive sentences were ordered to run concurrently. Fine amount was directed to be paid to the parents of deceased Girija. The appellant was acquitted of the other charges. Being aggrieved by the said judgment, the appellant has filed the present appeal.

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3. Admittedly, PW1-Suresh father of Girija stays at Nandangad Karwar. The appellant's family stays at Habbuwada Karwar. Girija was married to the appellant on 17/12/2001 at Karwar. The gist of the prosecution case can be G gathered from the F.I.R. lodged by PW1-Suresh. It is stated in the F.I.R. that one month after the marriage the appellant went to Mumbai where he has a jewellery shop along with Girija. About two months prior to the date of the F.I.R. Girija had developed eye problem. Instead of taking her to a doctor the H appellant took her to one Swamiji. When the eye ailment could

not be cured, she was brought to Karwar for check-up. When she came to Karwar she told PW1-Suresh that the appellant, her sister-in-law and A1 used to torture her and her sister-in-law used to assault her. They used to wake her up at 5 a.m. and pressurize her to work. At the instigation of her sister-in-law and A1, the appellant used to assault her. They used to ask her to get money from her parents. On 11/06/2002, PW1-Suresh, his son, Girija and the appellant went to Hubli and got Girija's eyes checked from eye specialist Dr. Anant Revankar. On 12/06/2002, Girija informed them that she was being tortured. She stated that when she requested the appellant to take her for honeymoon, he refused and told her that if she continues with the demand, she will have to go to her parent's house. She stated that the appellant tortures her mentally and when she visits Karwar the torture increases. On 12/06/2002, at 4.00 p.m., PW1-Suresh, his son and wife took Girija to the appellant's house at Hubbuwada and informed them that they would take her back next day evening. On 13/06/2002, at 12 noon, he called-up Girija and told her that he would visit her matrimonial home and speak to A1 about the harassment and torture meted out to her. Girija told him that if he visits her house, her in-laws would torture her more and, therefore, he should not come. On 13/06/2002, at 2.30 p.m, the appellant phoned and told him that Girija was not speaking anything. He went to the appellant's house along with his wife and sons. His son Sandeep saw Girija in the bedroom situated on the upper floor. She was not able to speak. Sandeep lifted her and brought her downstairs in order to show her to the doctor. The moment the doctor checked her, he pronounced her dead. PW1-Suresh stated that Girija had committed suicide by consuming poison or some tablets because the appellant, A1 and A3 tortured her. The complaint was lodged at 2215 hours. PW1-Suresh stated that because he had gone to inform about the death of Girija to his relatives there was some delay in lodging the complaint.

A B C D E F G

4. In support of its case the prosecution examined 24 H

witnesses. Prominent amongst them are PW1-Suresh and PW18-Anuradha, the parents of the deceased, PW19- Jayant the brother of the deceased, PW2-Manjunath and PW12-Sripad Anvekar who attended appellant's marriage, PW11-Digvijay, PW16-Prasanna Revankar and PW17-Dr. Raj Kumar, the sons-in-law of PW1-Suresh and PW3-Shruti, friend of Girija. The appellant denied the prosecution case and submitted a written explanation. We shall soon advert to it.

5. Assailing the impugned judgment of the High Court Smt. Suri, learned counsel for the appellant, contended that the view taken by the trial court while acquitting the accused was a reasonably possible view which ought not to have been interfered with by the High Court. Counsel submitted that the High Court erred in relying on the evidence of interested witnesses. Counsel submitted that though, evidence shows that several police officers were there at the scene of offence, PW1 did not lodge the complaint immediately. He lodged the complaint at 2215 hours, though he got to know about Girija's death at 2.30 p.m. The complaint is, therefore, doctored. Counsel submitted that the High Court has held that demand of dowry is not proved. The High Court, therefore, could not have proceeded to convict the appellant under Sections 498A and 306 of the IPC by reversing the order of acquittal. There was no credible evidence on the basis of which the appellant could be held guilty of the said offences. Counsel requested us to go through the explanation offered by the appellant in his statement recorded under Section 313 of the Criminal Procedure Code, 1973 (for short '**the Code**') which according to her establishes his innocence. Learned counsel for the State strenuously supported the impugned order.

6. Two most vital circumstances which must be kept in mind while dealing with this case are that Girija had committed suicide in the matrimonial home and her death took place within seven years of her marriage. Presumption under Section 113A of the Indian Evidence Act, 1872 springs into action which says

that when the question is whether the commission of suicide by a woman had been abetted by her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. The question is whether the appellant has been able to rebut this presumption.

7. Medical evidence is of great importance in this case. PW7-Dr. Sailaja had done Girija's post-mortem. She found the following injuries on Girija:

> "1. On right side of head there was little swelling and wound on the forehead.
>
> 2. On the right eye lower eyelid and on the neck there was weal's of specific area and the eye was bleeded.
>
> 3. There was swelling on the right side of neck.
>
> 4. On the right hand thumb bottom there was blue mark having an area 3'x2 ½'.
>
> 5. To the inner side of the arm the blood was clotted having an area of 2' x 1'.
>
> 6. To the inner side of the wrist the skin was blackened having an area 1' x ½'.
>
> 7. Below the thumb the blood was clotted covering an area 2' x 1'."

Dr. Sailaja opined that cyanide poisoning was the cause of death. She stated that all the external wounds were caused prior to post-mortem. According to her, the wounds on the right side of head can be sustained if a person is beaten with hands. According to her report, they could be caused by hard and blunt

A object when the deceased was alive. In the cross-examination, it was suggested to her that if the dead body falls on rough surface, the wounds, which she had seen, could be caused. She denied the suggestion. Thus, it is clear that Girija was beaten up prior to the death. In the facts of this case, it is difficult
B and absurd to come to a conclusion that the injuries were self-inflicted. Pertinently, Girija died in her matrimonial home. We have no hesitation, therefore, in concluding that prior to taking cyanide, Girija was assaulted in her matrimonial home. PW6-Laxman Kudani, the then Tahsildar and Taluka Magistrate
C Karwar who drew the inquest panchnama also referred to blackening of the skin at the wrist and on the left and right side of the cheeks of the dead body. He denied the suggestion that because of the pressure exerted by PW1-Suresh, it was so stated in the inquest panchnama.

D 8. It would be appropriate at this stage to go to the evidence of PW20-Dr. Anil Kolvekar. This evidence takes us little backwards. Dr. Kolvekar stated that on 30/5/2002 Girija had visited his nursing home for treatment with her brother. He found following injuries on her body:

E

"(1) Contusion on right inner thigh aspect and 1/3rd circular – 3 cm in diameter;

(2) Contusion of left inner thigh aspect and 1/3rd circular zoom diameter;

F

(3) Contusion over back right side 6 cm injuries. "

She told him that she sustained those injuries because her husband had beaten her. Dr. Kolvekar stated that those injuries
G were caused within 24 hours and they could be caused due to beating by sticks and pinching. Dr. Kolvekar identified his signature on the injury certificate (Ex. P66). Strangely, learned Sessions Judge has given no importance to this evidence and has observed that from the evidence of this witness one can
H only conclude that on 30/5/2002 when Girija visited him, she

had three injuries on her body which were caused 24 hours prior to the treatment and it is for the prosecution to prove that the accused had caused those injuries. Learned Sessions Judge has not disbelieved Dr. Kolvekar. Girija was brought to him by her brother. She told him that her husband had caused those injuries. We fail to understand what more evidence the prosecution could have adduced to prove that those injuries were caused by the appellant. In the peculiar circumstances of the case, only this conclusion can be drawn from Dr. Kolvekar's evidence. It is pertinent to note that PW3-Shruti Vernekar, a friend of Girija, has supported the case of PW20-Dr. Kolvekar that the deceased had visited him in May, 2002. PW3-Shruti stated that she met Girija at Dr. Kolvekar's nursing home in May, 2002. Girija appeared to be disturbed and she complained of body ache. According to PW3-Shruti, she told her that the appellant and members of his family were beating her and that she was fed up. Learned Sessions Judge discarded the evidence of this witness on the ground that there is a delay in recording her statement. So far as delay is concerned, we cannot lose sight of the fact that the investigation of this case was entrusted to PW24-A.K. Sidamma, Deputy Superintendent of Police in COD in Dowry Prohibition Cell on 21/06/2002. Thereafter, she appears to have recorded certain vital statements. In the peculiar facts of this case delay in recording statements of witnesses cannot be taken against the prosecution. So far as PW3-Shruti is concerned, despite the delay in recording her statement we find her to be a reliable witness. The High Court has rightly relied upon her evidence.

9. Learned Sessions Judge has refused to rely upon the evidence of the parents, brother and brothers-in-law of Girija primarily on the ground that they are interested witnesses. We find this approach to be very unfortunate. When a woman is subjected to ill-treatment within the four walls of her matrimonial house, ill-treatment is witnessed only by the perpetrators of the crime. They would certainly not depose about it. It is common knowledge that independent witnesses like servants or

A neighbours do not want to get involved. In fact, in this case, a maid employed in the house of the appellant who was examined by the prosecution turned hostile. It is true that chances of exaggeration by the interested witnesses cannot be ruled out. Witnesses are prone to exaggeration. It is for the trained judicial B mind to find out the truth. If the exaggeration is of such nature as to make the witness wholly unreliable, the court would obviously not rely on him. If attendant circumstances and evidence on record clearly support and corroborate the witness, then merely because he is interested witness he cannot be C disbelieved because of some exaggeration, if his evidence is otherwise reliable. In this case, we do not find any such exaggeration qua the appellant. The witnesses have stood the test of cross-examination very well. There are telltale circumstances which speak volumes. Injuries suffered by Girija D prior to the suicide cannot be ignored. The pathetic story of Girija's woes disclosed by her parents, her brother and her brothers-in-law deserves to be accepted and has rightly been accepted by the High Court. A1 and A3 have been acquitted by the Sessions Court. That acquittal has been confirmed by the High Court. The State has not appealed against that order. E We do not want to therefore go into that aspect. But, we must record that we are not happy with the manner in which learned Sessions Judge has ignored vital evidence.

10. PW1-Suresh the father of Girija stated how Girija was F harassed mentally and physically. Learned Sessions Judge has recorded a finding that Girija did not receive eye injury prior to marriage. PW1-Suresh stated that the appellant assaulted Girija on her face and she received eye injury. This evidence inspires confidence. The story that the appellant had taken her G to Dr. Kumta appears to have been created to get over PW1-Suresh's version. In any event, taking Girija to a doctor after assaulting her does not absolve the appellant of the crime. PW11-Digvijay Kudtarkar, brother-in-law of Girija resides in Bombay. He stated that when Girija had come to his house H along with the appellant she appeared to be frightened. She

was not able to talk properly. When she came alone she told him that she was scared of living in the appellant's house. He noticed that her left cheek had become red and the right portion of her face had become dark. PW17-Rajkumar Diwakar, another brother-in-law of Girija spoke about the ill-treatment meted out to Girija, the eye injury received by her and the assault on her left cheek. PW19-Jayant, brother of Girija also deposed as to how Girija was ill-treated. Despite all this learned Sessions Judge acquitted the appellant. Surprisingly, six hours delay in lodging the F.I.R. is taken against the prosecution. Learned Sessions Judge also finds the F.I.R. cryptic. Learned Sessions Judge's observation need to be quoted:

> *"... ... ...When the death of the deceased had come to the knowledge of P.W.1, it was around 2.30 p.m. and that house of the accused in which deceased committed suicide was hardly 2 K.Ms. away from the P.S. I feel that P.W.1, reaching the police station as late at 22.15 hours., is a delay and this delay is not explained. The possibility of P.W.1Suresh discussing with his relatives also to net in the in-laws as A-1 and 3 with oblique motive cannot be ruled out. Therefore this delay of 5 to 6 hours which is un-explained is a fatal to the case of prosecution. ... ..."*

We are amazed at this observation. When a man looses his daughter due to cyanide poisoning, he is bound to break down. He would take time to recover from the shock. Six hours delay cannot make his case untrue. It is also not proper to expect him to give all minute details at that stage. The F.I.R. contains sufficient details. It is not expected to be a treatise. We feel that the comments on alleged delay in lodging the F.I.R. and its contents are totally unwarranted. For the same reasons, we also reject the submission of counsel for the appellant that because PW1-Suresh did not tell the police officers who were present at the scene of offence that the appellant was

A responsible for the suicide his FIR lodged after six hours is suspect.

11. We have carefully gone through the explanation offered by the appellant in his statement recorded under Section 313 of the Code as requested by his counsel. It confirms our view B that the appellant is not innocent. After denying the allegations of ill-treatment, cruelty and demand of dowry, the appellant goes on to paint a rosy picture of his married life. He refers to certain photographs and a Valentine day's card sent by Girija to him in 2002. Valentine day's card sent by Girija to the appellant C does not help him to probablise his alleged good conduct. In the facts of this case it appears to us to be an effort made by Girija to please the appellant. The photographs were produced in the court to show that Girija was taken to religious places and hill stations. Trial court has rightly not placed reliance on D them. As regard the photographs it has observed that in the photographs Girija is seen standing alone and, therefore, on the basis of these photographs it cannot be said that the appellant had taken her to religious places or for honeymoon. Perhaps to create an impression that Girija was suffering from E depression, the appellant comes out with a story that Girija used to consume pills everyday and when he enquired about it she used to give evasive answers. According to him she used to lead a life of an introvert and she preferred loneliness. She never watched T.V., she never read any newspapers or books. F When he asked her about it she stated that she had an eye problem. He has further gone on to say that he blamed Girija's parents that they had suppressed her eye trouble from him and got her married to him. He further goes on to say that for this reason she was not willing to give birth to a child. This story is G palpably false and is a crude attempt to create an impression that Girija was mentally unstable. No such evidence is brought on record. In this connection, at the cost of repetition, it must be stated that the trial court has rejected the defence of the appellant that Girija had lost her eye sight even before her H marriage and that this fact was concealed from him. The trial

court has observed that Girija was a graduate. If she had really lost eye sight, the appellant and his parents would have noticed the defect earlier. Further part of the explanation which refers to the appellant's alleged conduct of getting Girija examined by Dr. Kumta, an eye specialist and allegedly giving her money for operation will have to be understood against the background of above facts. We are not inclined to believe that the appellant took Girija to an eye specialist and if he did take Girija to an eye specialist we have no manner of doubt that it was too late in the day. The evidence on record clearly indicates that Girija received injury on her cheek and to her eye after marriage. She had no eye trouble before marriage. The injury was certainly not self-inflicted. Circumstances on record clearly establish that Girija received the eye injury in the matrimonial home and the appellant was responsible for it.

12. We are wary of passing comments against the subordinate courts because such comments tend to demoralize them. But, in this case, we will be failing in our duty if we ignore the insensitivity shown by learned Sessions Judge to a serious crime committed against a hapless woman. We need to quote certain extracts from learned Sessions Judge's judgment which will show why we are so anguished.

> *"The other allegations in Ex-P1 complaint is that the deceased was asked to get up at 5.00 a.m. early in the morning and she was asked to attend to house-hold work. Even the accused had asked the deceased to attend to house hold chorus, that is not the act of cruelty, so as to drive the deceased to commit suicide..... .....Conduct of the accused in reprimanding the deceased for her lethargic habits, strongly advising her to be more compatible with members of the family and to evince interest in the domestic shores cannot be considered as acts of cruelty."*

It is pertinent to note that even in this case Girija was asked

A to wake-up at 5.00 a.m. and start work. This kind of orders may not always be innocuous.

13. Learned Sessions Judge further observes as under:

B *"In 1995, Cri. L.J. Page -2472, (Neelakanth Patil vs. State of Orissa), it is held that; mere statement that the deceased wife was not happy with the husband-accused, is not sufficient. Particularly in the absence of any direct evidence, oral or documentary about ill treatment one or two incident of assault by the accused-husband is not*
C *likely to drive the wife to commit suicide. Therefore, the Hon'ble High Court held the conviction of the husband was not proper."* (emphasis supplied)

Reproduction of Orissa High Court's judgment does not
D appear to be accurate. Learned Sessions Judge further observes as under:

"PW-11 has not stated the particular day of the noticing face of the deceased turning brownish and right eye upper portion blackening. He has not stated particular day
E *on which he found deceased to be panic. He has not stated particular day on which he found the deceased physically weak. Therefore, again these imputations are all general allegations. As I said earlier even if upper eye portion or face of Girija had changed their colour because*
F *of A-2 giving beatings, that alone as I said earlier is not the act of cruelty driving the deceased to commit suicide."* (emphasis supplied)

"As I said earlier A-1 and 3 are the ordinary residents of
G *Karwar. In between the date of the marriage and the death of the deceased on 13.6.2002 she was very much staying with her husband A-2 in Bombay. Therefore, giving one or two beating is not cruelty to drive the deceased to commit suicide."* (emphasis supplied)

H

"The learned Public Prosecutor has argued that blackening of skin on various parts of the body of the deceased is proved. Therefore, court has to believe those injuries to hold the accused responsible for the sake of argument, it is assumed that those injuries were inflicted by the accused, they are not sufficient to bring death in the ordinary course. One or two beats are not sufficient in the ordinary course of woman to commit suicide." (emphasis supplied)

14. The tenor of the judgment suggests that wife beating is a normal facet of married life. Does that mean giving one or two slaps to a wife by a husband just does not matter? We do not think that that can be a right approach. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. Perhaps learned Sessions Judge wanted to convey that the circumstances on record were not strong enough to drive Girija to commit suicide. But to make light of slaps given to Girija which resulted in loss of her eyesight is to show extreme insensitivity. Assault on a woman offends her dignity. What effect it will have on a woman depends on facts and circumstances of each case. There cannot be any generalization on this issue. Our observation, however, must not be understood to mean that in all cases of assault suicide must follow. Our objection is to the tenor of learned Sessions Judge's observations. We do not suggest that where there is no evidence the court should go out of its way, ferret out evidence and convict the accused in such cases. It is of course the duty of the court to see that an innocent person is not convicted. But it is equally the duty of the court to see that perpetrators of heinous crimes are brought to book. The above quoted extracts add to the reasons why learned Sessions Judge's judgment can be characterized as perverse. They

A show a mindset which needs to change. There is a phenomenal rise in crime against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems.

B

15. In the ultimate analysis we are of the opinion that the appellant has not been able to rebut presumption under Section 113A of the Evidence Act. Girija committed suicide within seven years from the date of her marriage in her matrimonial home. Impact of this circumstance was clearly missed by the C trial court. The evidence on record establishes that Girija was subjected to mental and physical cruelty by the appellant in their matrimonial home which drove her to commit suicide. The appellant is guilty of abetment of suicide. The High Court has rightly reversed the judgment of the trial court acquitting the D appellant. Appeal is, therefore, dismissed.

B.B.B. Appeal dismissed.