

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2026

R

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.740 OF 2018

C/W

CRIMINAL APPEAL NO.450 OF 2018

CRIMINAL REVISION PETITION NO.83 OF 2013

IN CRL.A NO.740/2018:

BETWEEN:

1. STATE OF KARNATAKA
BY POLICE INSPECTOR
ANIT DOWRY CELL, C.O.D., BENGALURU
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SRI. SUHAS GOWDA M., HCGP)

AND:

1. K. NAGARAJA
S/O KEMPANKE KARIGOWDA
AGED ABOUT 52 YEARS
2. PUTTAMMA
W/O KEMPANKE KARIGOWDA
AGED ABOUT 77 YEARS
3. SHRIMAN
S/O LATE KEMPANKE KARIGOWDA
AGED ABOUT 44 YEARS



CRL.A No. 740 of 2018
C/W CRL.A No. 450 of 2018
CRL.RP No. 83 of 2013

ALL ARE
R/AT DODDAMALUR GRAMA
CHANNAPATNA TALUK
RAMANAGARA DISTRICT-571501.

...RESPONDENTS

(BY SRI. P. PRASANNA KUMAR, ADVOCATE FOR R1 AND R3;
VIDE ORDER DATED 18.02.2026,
APPEAL AGAINST R2 STANDS ABATED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT AND ORDER DATED 28.10.2017 PASSED IN S.C.NO.131/2006 ON THE FILE OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, ACQUITTING THE RESPONDENT/ACCUSED NO.1 TO 3 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498(A), 304(b) AND 306 R/W 34 OF IPC AND SECTIONS 3, 4 AND 6 OF DOWRY PROHIBITION ACT AND ETC.

IN CRL.A NO.450/2018:

BETWEEN:

1. SRI. SHIVANNA
S/O LATE SIDDAIAH
AGED ABOUT 74 YEARS
OCC: AGRICULTURE
R/O SATHANUR VILLAGE
KASABA HOBLI
MANDYA TALUK AND DISTRICT.

...APPELLANT

(BY SRI. G.B. SHARATH GOWDA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY ANTI DOWRY CELL
COD, BENGALURU
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560001.

2. K.NAGARAJA
S/O LATE KEMPANKE KARIGOWDA
AGED ABOUT 54 YEARS
3. PUTTAMMA
W/O LATE KEMPANKE KARIGOWDA
AGED ABOUT 79 YEARS
4. SHRIMAN
S/O LATE KEMPANKE KARIGOWDA
AGED ABOUT 46 YEARS

ALL ARE R/AT DODDAMALUR VILLAGE
CHANNAPATNA TALUK
RAMANAGARA DISTRICT.

...RESPONDENTS

(BY SRI. SUHAS GOWDA M., HCGP FOR R1;
SRI. P. PRASANNA KUMAR, ADVOCATE FOR R2 AND R4;
VIDE ORDER DATED 18.02.2026,
APPEAL AGAINST R3 STANDS ABATED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372
OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND
ORDER OF ACQUITTAL DATED 28.10.2017 PASSED BY THE I
ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA
IN S.C.NO.131/2006 ACQUITTING THE RESPONDENTS/
ACCUSED NO.1 TO 3 FOR THE OFFENCES PUNISHABLE UNDER
SECTIONS 498(A), 304(B) AND 306 R/W 34 OF IPC AND
SECTIONS 3, 4 AND 6 OF DOWRY PROHIBITION ACT AND ETC.

IN CRL.RP NO.83/2013:

BETWEEN:

1. MR. SHIVANNA
AGED ABOUT 66 YEARS
S/O LATE SIDDIAIAH
RESIDING AT SATHANURU VILLAGE
MANDYA TALUK AND DISTRICT-571401

...PETITIONER

(BY SRI. P.B. AJIT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY THE INSPECTOR OF POLICE/STATION
HOUSE OFFICER,
CHANNAPATNA RURAL POLICE STATION
RAMANAGARAR DISTRICT-562138
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR.
2. MR. K. NAGARAJU
S/O LATE KEMPANKE KARIGOWDA
AGED ABOUT 47 YEARS
RESIDING AT DODDAMALURU VILLAGE
CHANNAPATNA TALUK
RAMANAGARA DISTRICT-562138.
3. MRS. PUTTAMMA
W/O LATE KEMPEMKE KARI GWODA
AGED ABOUT 72 YEARS
RESIDING AT DODDAMALURU VILLAGE
CHANNAPATNA TALUK
RAMANAGARA DISTRICT-562138
4. MR. SRIMAN
S/O LATE KEMPEMKE KARI GOWDA
AGED ABOUT 39 YEARS
RESIDING AT DODDAMALURU VILLAGE
CHANNAPATNA TALUK
RAMANAGARA DISTRICT-562138.

...RESPONDENTS

(BY SRI. SUHAS GOWDA M., HCGP FOR R1;
SRI. P. PRASANNA KUMAR, ADVOCATE FOR R2 AND R4;
VIDE ORDER DATED 18.02.2023,
PETITION AGAINST R3 STANDS ABATED)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF
CR.P.C PRAYING TO SET ASIDE THE ORDER DATED
25.09.2012 IN S.C.NO.107/10 ON THE FILE OF THE FTC,
RAMANAGARA AND DIRECT THE CONTINUATION OF THE TRIAL
AGAINST THE 2ND TO 4TH RESPONDENTS IN ACCORDANCE
WITH LAW AND ETC.

THESE CRIMINAL APPEALS AND CRL.RP HAVING BEEN
HEARD AND RESERVED FOR JUDGMENT ON 14.08.2026, THIS
DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard the counsel appearing for the revision petitioner
and also the counsel for defacto complainant and State on
behalf of the appellant in both the appeals and counsel for the
respondent in revision and also the respondent in appeal.

2. The CrI.R.P.No.83/2013 is filed by the complainant
against the order dated 25.09.2012 passed in S.C.No.107/2010
on the file of the Fast Track Court, Ramanagara in discharging
the accused persons for the offence punishable under Section
302 of IPC and prayed this Court to direct the Trial Court to
continue the proceedings against accused Nos.2 to 4.

3. The CrI.A.No.450/2018 is filed by the complainant
against the judgment and order of acquittal dated 28.10.2017
passed in S.C.No.131/2006 by the 1st Additional District and
Sessions Judge, Ramangara for the offences punishable under

Sections 498A, 304B and 306 read with Section 34 of IPC and under Sections 3, 4 and 6 of Dowry Prohibition Act (for short 'DP Act') and prayed this Court to convict the accused persons for the said offences.

4. The Crl.A.No.740/2018 is filed by the State against the judgment and order dated 28.10.2017 passed in S.C.No.131/2006 by the 1st Additional District and Sessions Judge, Ramanagara for the offences punishable under Sections 498A, 304B and 306 read with Section 34 of IPC and under Sections 3, 4 and 6 of the DP Act and prayed this Court to convict the accused persons for the said offences.

5. The complainant/appellant before the Trial Court in PCR No.60/2005 made an allegation that the police have not properly conducted the investigation and failed to invoke the offence under Section 302 of IPC and only filed the charge sheet against the accused persons for the offences punishable under Sections 498A, 306, 304B read with Section 34 of IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. In the private complaint filed under Section 200 of Cr.P.C, the complainant prayed the Court to take cognizance for the offence punishable under Section 302 of IPC, since there is a

specific allegation against the accused persons, apart from dowry harassment and subjecting her for harassment and cruelty. In page No.3 of the complaint, specific allegation is made that on 07.10.2004, the accused persons have committed the murder of the daughter of complainant and grandson. It is alleged that when he went to the spot, he found both the dead bodies with injuries. The Tahsildar has conducted the inquest on both the dead bodies and found the injuries over the dead body of Madhu near the left ear the pressing wound and near the eye and the same is also mentioned in the inquest and injuries found on the chest of his daughter, which is red in colour and in the grandson's dead body also, injuries were found near the neck and chin. The doctor who conducted the post mortem given the opinion in the report that cause of death of the daughter of the complainant is on account of suicidal hanging and it is a case of murder of his grandson by throttling. Hence, it is very clear that the death of his grandson is a murder. But police did not invoke the offence punishable under Section 302 of IPC in respect of the grandson and not conducted the proper investigation by the Channapatna Rural Police and case was also entrusted to the COD. While conducting the mahazar also taken note of height of place

where bodies were hanging with the sarees which were used to hang them and clear distance is also mentioned and sarees which were used to hang them was also seized. Even COD Police also not properly conducted the investigation and only invoked the offences punishable under Sections 498A, 304B, 306 and other offences.

6. It is contended in the complaint that when his grandson was murdered by throttling, what was the need to hang him and there was a injury on the back side of his neck measuring 6 inches x 1 inch. It appears that a club was kept on the back side of the neck and pressed the neck from front side. If the child is hanged, there would be a ligature mark surrounding the neck. When post mortem was conducted, there was no such ligature mark was found around the neck. Hence, to this effect also, not conducted proper investigation. Even if it is the case of investigation that mother had committed the murder of her son, ought to have invoked Section 302 of IPC and filed the charge sheet and the said offence become abated consequent upon committing of suicide by the mother. The lady-Rekha who went to the matrimonial home at around 03.15 p.m., found that door was opened. If, mother committed the murder of her son and she has committed the suicide, she

would have locked the door from inside. What was the need of keeping open the room. But when said Rekha came out, she says that she found accused No.2 mother-in-law. How a mother can hang her child to the tube light hook. There was a chance of child escaping from the clutches of the mother if she made an attempt to murder of her son and the neighbours would have heard the screaming sound. It is alleged in the complaint that death of both is on account of accused persons' involvement and these are the circumstances which circumvent the role of the accused persons. The injuries found on the daughter of the complainant also very clear that she has sustained injuries on the cheek, near the eye, near the ear and also on the chest and those injuries are ante-mortem in nature. The theory of death note is found after 13 days and the same is doubtful. It cannot be assumed that for a period of 13 days, they did not clean the house. The very seizure of death note is nothing but creation of the same and shows involvement of the IO as well as the accused persons since the same is not in the handwriting of the deceased and she has studied upto II PUC and she was having good handwriting. On comparison of earlier handwriting of the deceased and the handwriting in the alleged recovered death note, it discloses that both are different and

not belongs to the deceased. Hence, it is clear that prompt investigation is not conducted. Hence, complaint was given to DIG making specific allegation that the IO - Smt. Andamma has not properly conducted the investigation and created the story of the case of suicidal and real facts were not considered by the Investigating Officer. Even though, COD conducted the further investigation in the matter, they have also not properly conducted the investigation and carried away with the earlier investigation conducted by the Rural police and committed an error in not invoking the offence of Section 302 of IPC.

7. Having filed the private complaint, the Court of JMFC recorded the sworn statement and taken the cognizance and committed the matter to the Sessions Court and the same is numbered as S.C.No.107/2010. Accused persons have filed an application under Section 227 of Cr.P.C paying the Court to discharge them for the offences punishable under Section 302 of IPC. The Trial Court who considered the application committed an error by considering the Order dated 22.08.2009 wherein, a discussion was made that the lady Rekha who found the dead bodies at the first instance which was hanging to the hook where the place for hanging fan and coupled with that of

statement, the statement of other independent witnesses, Mahendra, Naveen, Channegowda, Srinivas and Mamata and inquest and also considering the death note of the deceased which was left by her would indicates the allegation of theft against her and the expert certified that the writing made in the death note is that of the deceased. An observation is made that the Court can alter the charge invoking Section 302 of IPC during the trial if sufficient material is placed for the offence under Section 302 of IPC and Court could exercise the discretion to frame the charge for the said offence in S.C.No.131/2006 and discharged the accused persons. The said order is challenged before this Court in Crl.R.P.No.83/2013.

8. This Court issued the notice against the respondents and admitted the revision petition on 28.06.2013 and posted the matter for hearing. But the same is pending. Even trial was conducted in S.C.No.131/2006 and acquitted the accused. Hence, filed other two appeals by the complainant and the State respectively against the judgment of acquittal.

9. This Court clubbed all the matters for common consideration.

10. This Court would like to refer the grounds urged in the revision petition wherein Sri P.B. Ajith, learned counsel would contend that the impugned order dated 25.09.2012 is solely on the ground that investigation for the offences under Sections 498A, 304B and Section 34 of IPC is pending adjudication in S.C.No.131/2006 and taken note of the order dated 22.08.2009 which discloses that at the time of framing charges, declined to frame charge for the offence punishable under Section 302 of IPC observing that if sufficient materials were placed on record during the trial, appropriate charge can be framed against respondent Nos.2 to 4 for the offence punishable under Section 302 of IPC and allowed the discharge application.

11. The counsel further contend that the learned Judge failed to appreciate the material evidence upon which cognizance was taken by the learned Magistrate for the offence punishable under Section 302 of IPC stating that the same was not part of the charge sheet material in S.C.No.131/2006, inasmuch as the police have not recorded the material statements which established the fact that respondent Nos.2 to 4 were responsible for the homicidal death of the petitioner's

daughter and grandson and the Assistant Professor of Forensic Medicine, Medical college, Mandya was not cited as a witness in S.C.No.131/2006. The learned Judge has ignored the fact that prosecution has filed an application under Section 210(2) of Cr.P.C requesting the learned Judge to try both the cases i.e., in S.C. No.131/2006 and present case in S.C.No.107/2010 together as contemplated under the said provisions as both the proceedings are out of the same set of facts but for different offenses. It is contended that without following the procedure as contemplated under Section 210(2) of Cr.P.C, discharge application was considered without considering the cognizance which was taken for the offence invoking Section 302 of IPC and committed serious irregularity in ignoring the mandate that the court shall try together the complainant case and also the case arising out of the police report as both the cases arise out of the police report. Hence, prayed the Court to set aside the order of discharge.

12. In Crl.A.No.450/2018, Sri G.B.Sharath Gowda, learned counsel appearing for complainant mainly contend that the Trial Court dwelling on hyper-technicalities ignoring the statutory presumption available under Section 113A and 113B

and mechanically acquitted the accused persons and the same is not sustainable in law. It is contended that the Trial Court while passing the impugned order has elaborately discussed the evidence on record appreciating the evidence of witnesses - PW1, PW2, PW3 and PW7, PW8, PW9, PW10, who are the deceased relatives and also coordinated in getting the jewelry for the marriage made and who was instrumental in booking the motorcycle in the name of the first respondent herein and PW12 who has deposed about the pre-marriage talks and also the fact that deceased-Madhu had informed him about the harassment she is facing in the matrimonial home. Such appreciation of evidence gives conclusion that there was a dowry demand at the time of marriage and there was demand and harassment for further dowry and comes to the conclusion that material available before the Court corroborates with the case of the prosecution. But in the instant case, notwithstanding the fact that there is no delay, even presuming that there is some lapse of time in lodging the complaint, the same becomes totally irrelevant as the evidence of persecution witnesses points only towards the guilt of the accused persons. The Trial Court committed an error in acquitting the accused only on the ground that there was a delay. The Trial Court has

grossly erred in acquitting the accused persons ignoring the fact that the death of Madhu and Likhith Gowda has come to light on 06.10.2004 at about 03.15 p.m., when PW4 first saw the dead bodies of both of them and both of them were in hanging posture from the ceiling of matrimonial house of the deceased-Madhu. The Trial Court has erroneously brushed aside the evidence of PW1 who has categorically stated that on 06.10.2004 he had been to Bengaluru on account of some work and returned to his village only during the late hours of the night at 01.00 a.m. and he went to matrimonial house of deceased Madhu on the next day morning on 07.10.2004. The piece of evidence of PW1 has not been discredited in the cross examination. The FIR is registered on 07.10.2004 at 10.15 a.m. It is only after the complaint was lodged by the complainant herein, the Tahsildar was intimidated for conducting the inquest of the dead bodies and police came to the spot, inquest proceedings were conducted and thereafter, bodies were sent for post mortem. In this scenario, it cannot be said that there is delay in lodging the complaint as the sequence of events has been well explained by the prosecution. There was no room for any deliberation, manipulation or improvements enlarged in the complaint.

13. It is also contended that the appellant being the eldest male member in the family came to know about the death of his daughter and grandson only in the midnight at about 01.00 a.m. on 07.10.2004 and he has gone to the matrimonial house of the deceased-Madhu in the morning and case was registered thereafter. There is no material to show that he was aware of the same earlier to that and with deliberation, complaint was filed. It is also contended that injury marks were present over the dead bodies of both of them and said injuries are antemortem in nature and same is also not in dispute. The Post Mortem report at Ex.P21 and 22 clearly reveals that there were injuries present on the dead bodies and there is no explanation whatsoever has been offered by the accused persons. It is also contended that Trial Court has grossly erred in acquitting the accused persons ignoring the presumption available under Section 113A and 113B of the Indian Evidence Act when the death was taken within a period of 7 years from the date of her marriage and presumption would have been drawn in favour of the prosecution that deceased-Madhu was subjected to cruelty by the accused persons and also have abetted even for assuming it is a

commission of suicide as contained under Section 113A of the Indian Evidence Act. When the records clearly establish that deceased-Madhu had been subjected to cruelty by the accused persons in connection with the demand of dowry, presumption would have been drawn under Section 113B. So also under Section 106 of the Indian Evidence Act, a burden is cast upon the person, who have the knowledge of the fact, when the death was taken place within the premises of the matrimonial home.

14. It is also contended that Trial Court has lost sight of the fact that accused persons have not reported the unnatural death of deceased-Madhu and Likhith Gowda to the police and have been absconding ever since the fact of the unnatural death of Madhu and Likhith Gowda came to light. The fact of death has come to the knowledge of the police only when the appellant/complainant lodged the complaint on 07.10.2004. This conduct clearly establishes that respondent Nos.2 to 4 are responsible for the death of the deceased-Madhu and Likhith Gowda. It is also contended that the post mortem report and inquest report is very clear that there were injuries on the face and eyes of Madhu that too measuring 6x4 cm, over cheeks

4x4 cm. The face was congested and cyanosed. Dissection of her neck found bruising of subcutaneous tissue and neck muscle seen. Likewise, the post mortem report of Likhith Gowda at Ex.P22 reveals the injuries on his body of contusion, brown in colour, running horizontally measuring 6x1 cm seen over nape of neck. The victim had injury on the back of his neck. The injuries found on the dead bodies are not taken note of by the Trial Court while passing the judgment. This circumstance weighs against the accused persons as they have not discharged their burden in terms of Section 106 of the Indian Evidence Act. The only defence which was taken that family members have demanded a sum of Rs.10,00,000/- and though examined two witnesses as DW1 and DW2, their evidence is very clear that DW1 admitted that he has not participated in the said panchayat and the evidence of DW2 also not inspires the confidence with regard to the defence is concerned. It is not considered by the Trial Court while passing the judgment of acquittal.

15. Sri Suhas Gowda, the learned High Court Government Pleader for the State in CrI.A.No.740/2018 contended that the PW1 is the father of the deceased-Madhu

and grandfather of deceased - Likhith Gowda and complainant who lodge the complaint as per Ex.P1 and he categorically stated regarding demand and acceptance of the dowry during the marriage and additional dowry was also demanded. He categorically stated that his daughter deceased Madhu has complained about giving physical and mental harassment to her. He further stated that accused were also making false allegation that deceased Madhu was a thief and she had committed theft of money. The accused have demanded and accepted the additional dowry and ill-treated her but nothing is elicited from the mouth of PW1 to disbelieve his evidence. So also, the evidence of PW2, PW3, PW7, PW8 to PW10 and PW12 corroborates the evidence of PW1.

16. Though Trial Court comes to the conclusion that the material available on record clearly discloses the demand and acceptance of dowry and additional demand of dowry and evidence of these witnesses corroborates with each other, but fails to draw the presumption under Sections 113A and 113B of Indian Evidence Act. Apart from that a flimsy reason is given to acquit the accused that there was a delay. The material is very clear that PW1 is the elder member of the family and he has to

take a decision to give a complaint to the police. Having come to know about the said incident, PW1 immediately lodged the complaint i.e., when he came to know about the said incident in the late night, in the early morning, he has given the complaint and police came to the spot and investigated the matter. The counsel would contend that Trial Court failed to take note of the medical evidence available on record.

17. The counsel appearing for the complainant in Crl.R.P.No.83/2013 in his arguments would vehemently contend that marriage of deceased Madhu was taken place on 29.11.1998 and child was born in the year 1999. The bodies were found on 06.10.2004 that too in the matrimonial home when the same was seen by the neighbour at 03.15 p.m. in the hanging posture. All accused persons are living in the same house, but they did not bring to the notice of anyone and they left the house. The counsel also vehemently contend that police did not conduct proper investigation. Hence, private complaint was filed and cognizance was taken. When the case was pending before the Fast Track Court, the accused were discharged since the Trial Court failed to consider the material with regard to Section 302 of IPC. Hence, the revision petition

is filed before this Court challenging that the Trial Court ought not to have discharged the accused and would have invoked Section 210(2) of Cr.P.C to consider the matter together. Hence, the counsel prayed this Court to set aside the order passed in S.C.No.107/2010 in discharging the accused.

18. The counsel appearing for the respondents would submit that in view of disposal of the case on merits, the question of entertaining the revision petition does not arise and the same become infructuous since trial has been completed and material available on record has been considered and passed the order of acquittal.

19. The counsel appearing for the appellant/complainant in Crl.A.No.450/2018 also reiterates with regard to the date of marriage and child was born within one year of the marriage. The counsel brought to notice of this Court that both the dead bodies were found in a hanging posture. The fact that all the accused persons are living in the same house and the same is not in dispute. The counsel mainly contend that when the P.M. was conducted, the doctors have not given opinion regarding time of death. Hence, IO wrote a letter to clarify the same and the same was clarified by the

doctor that death has occurred prior to 24 to 48 hours. The counsel brought to notice of this Court the Ex.P21-PM report of the Madhu and also the reply at Ex.P23. Ex.P22 is the PM report of the child, who was aged about 4½ years. The counsel vehemently contend that when there is an ante-mortem injuries on both the dead bodies, the Trial Court fails to consider the same while passing the order and erroneously proceeded only to consider the charges levelled against the accused and ought to have taken note of both medical evidence as well as ante-mortem injuries found on both dead bodies. The counsel would vehemently contend that when the complainant came to know about the incident in the midnight of the previous day at around 01.00 a.m., he went to matrimonial home of his daughter on the next day and immediately lodged the complaint on 07.10.2004 at 10.15 a.m. and no delay. The police came to the spot only based on the complaint of PW1 and thereafter secured the Tahsildar. Tahsildar conducted the inquest and found the injuries all over the body i.e., on the chest, cheek and near the neck and ear and no dispute that post mortem report also discloses the same.

20. The counsel would vehemently contend that as the investigation was not properly conducted, the private complaint was filed and cognizance was taken and matter was committed to the Sessions Court. But the Sessions Judge committed an error in discharging the accused for the offence under Section 302 of IPC. The Sessions Judge ought not to have relied upon the death note which came into existence after 13 days of the incident and the said reason is given for discharge. The counsel also vehemently contend that when the specific allegations are made that it is a case of murder, ought to have invoked Section 302 of IPC but not done the same. The very IO who conducted the investigation had indulged in creation of document of death note and the same is disputed in the private complaint filed by the complainant. The counsel would contend that even the Trial Judge also not accepted the said document as believable one, but committed an error in acquitting the accused only on the ground of delay. Even though the Trial Court comes to the conclusion that all the materials available on record corroborates the case of prosecution, but carried away only the aspect of delay is concerned but there was no such delay since when the elder member of the family i.e., complainant came to know about the incident, immediately lodged the complaint.

The counsel would contend that Ex.P8 to P10 discloses having purchased the bike and jewels to give dowry prior to the marriage. The Ex.P11-Inquest is very clear that rigor mortis on the dead body was disappeared at the time of conducting Post Mortem. The counsel would contend that when the doctors have not given proper opinion, clarification was also sought in terms of Ex.P23. PW1 and PW2 are the parents; PW3 is the brother and PW4 is the neighbour who found the dead bodies in the matrimonial house and PW5 has turned hostel. However, PW9 and PW10 who are brother and sister have also supported the case of prosecution and independent witness PW12 who participated in the marriage talk also supported the case of prosecution. But PW13 has not supported the case of the prosecution. But PW14 who is the relative of the family of the victims, supported the case of the prosecution. But only a stray admission of PW14 that PW1 was present in the previous day and the Trial Court committed an error in relying upon the evidence of PW14 and there is no any positive evidence that PW1 was very much present in the previous day. The counsel would vehemently contend that delay cannot be attributed.

21. Sri G.B. Sharath Gowda, learned counsel appearing for the appellant in Criminal Appeal No.450/2018, in support of his arguments relied upon the judgment of the Apex Court reported in **(2015) 3 SCC 724** in the case of **SHER SINGH ALIAS PARTAPA vs STATE OF HARYANA** wherein the Apex Court held that after the prosecution establishes the foundational circumstances of the offence, the burden is then placed on the accused to prove their innocence and the counsel brought to notice of this Court paragraphs 16 to 19 wherein discussion was made with regard to Section 113B of the Evidence Act and Section 304B of IPC and Apex Court held that it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304-B to distinguish this provision from the others. It is also the acceptable meaning to these provisions, unless the word "shown" is used in synonymous to "prove" and the word "presume" as freely interchangeable with the word "deemed". In criminal legislation, however, it is unpalatable to adopt this approach by toto and also the death of a woman has been caused in abnormal circumstances and if it is within 7 years of marriage and she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any

demand for dowry and that cruelty or harassment meted out to her continued to have a casual connection or a live link with the demand of dowry. The word "soon" finds place in Section 304-B. The counsel brought to notice of this Court paragraph 17 wherein discussion was made with regard to the width and amplitude of a provision deeming the guilt of a person in a legal system founded on a Constitution needs to be briefly reflected on. If the Constitution expressly affirms or prohibits a particular state of affairs, all the statutory provisions which are incongruent thereto must be held as ultra vires and, Article 20 of our Constitution while not affirming the presumption of innocence does not prohibit it, thereby, leaving it to Parliament to ignore it whenever found by it to be necessary or expedient. The counsel also brought to notice of this Court paragraphs 18 and 19 wherein discussion was made with regard to invoking of Section 303 of IPC.

22. The counsel also rely upon the judgment of the Apex Court reported in **(2016) 12 SCC 759** in the case of **SATISH SHETTY vs STATE OF KARNATAKA** wherein it is held that delay must be assessed with sensitivity, including the family's possible involvement in the treatment, death

formalities, inquest and funeral arrangements and brought to notice of this Court paragraph 13 wherein it is held that the court should not be hypertechnical approach in blaming the mother of the deceased for lodging a delayed complaint. It will be useful to remember that delay in lodging the FIR or complaint is not fatal in all cases. The Court must show some sensitivity in cases of the present nature where the victim's closest relation – mother is a poor helpless lady. The prosecution in such cases is likely to be delayed further if the deceased has left behind children.

23. The counsel also relied upon the judgment of the Apex Court reported in **(1973) 3 SCC 114** in the case of **APREN JOSEPH @ KUNJUKUNJU AND OTHERS vs THE STATE OF KERALA** wherein the Apex Court held that no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the Court in each case and brought to notice of this Court paragraph 11 wherein discussion was made with regard to the giving of information and recording of information by the police is not a condition precedent to the setting in motion of a criminal

investigation. Nor does the statute provide that such information report can only be made by an eyewitness. First information report under Section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue unreasonable delay in lodging the F.I.R, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

24. Per contra, the counsel appearing for the respondents/accused would vehemently contend that the Court has to take note of the charge number 2, 3 and 4 and having perused the charge number 2, 3 and 4, it is very clear that it is a case of suicide and before committing the suicide by the mother, committed the murder of her child. When such being the case, burden of proving the same is on the prosecution. The counsel also would vehemently contend that Court has to take note of Q1 and S1 document of death note. The death

note is very clear that she was blamed as thief and hence, she took the extreme step of committing suicide and the same is also taken note of by the Trial Court. The counsel also would vehemently contend that accused No.2 was not at the spot when PW4 having gone to the house of the deceased and found the dead bodies in a hanging posture. The counsel contend that the Trial Court has taken note of Ex.P11-Inquest and so also Ex.P21 and P22-PM reports of the mother and the child. The counsel would vehemently contend that PW2, PW3, PW7, PW8, PW10, PW12, PW14, PW15, PW16 were present having come to know about the death of the mother and child. When those persons were present, they ought to have given the complaint but not given complaint. Even material discloses that PW1 also very much present in the previous date and there is contradictions in the contents of the complaint at Ex.P1 as well as the evidence of PW1 with regard to that he came to know about the death of his daughter and grandson. When all these materials were available on record, the Trial Court rightly considered the same and comes to the conclusion that there was a delay in lodging the complaint.

25. The defence of the accused also very clear that on the previous day of incident, negotiated for compensation. When the accused family did not agree for the same, an after thought, a complaint was lodged on the next day. The same was taken note of by the Trial Court. The evidence of DW1 and DW2 is very clear that there was a Panchayath held on the previous day and they were aware of the same. All these factors were taken note of by the Trial Court. Though the Trial Court taken note of the evidence with regard to the marriage and demand of dowry and acceptance and comes to the conclusion that there was a material, but it is elicited from the mouth of witnesses that there is a practice in the said community for performing of marriage and giving the same. Thus, the same will not amounts to a dowry. The counsel would vehemently contend that when the Trial Court rightly considered the material on record, the question of reversing the findings of Trial Court does not arise. Only in an exceptional circumstances, this Court can interfere with findings and the said circumstances is not warranted. The counsel also would vehemently contend that the investigation is properly conducted and even Investigating Officer has got it clarified the time since death though it is not mentioned in the PM report at

Ex.P21 and P22 and there are no materials to come to other conclusions to exercise the appellate jurisdiction. The counsel also would vehemently contend that the evidence of the prosecution witnesses are properly appreciated by the Trial Court, hence, question of reversing the finding of Trial Court does not arise and it is not a case for reversing the same.

26. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, the Points that would arise for the consideration of these matters before the Court are :

1. Whether the Trial Court committed an error in discharging the accused persons for the offence punishable under Section 302 of IPC in S.C.No.107/2010 and whether it requires interference of this Court?
2. Whether the Trial Court committed an error in acquitting the accused persons without invoking the offence punishable under Section 302 of IPC even though an observation was made while discharging the accused that if materials are found to invoke Section 302 of IPC would be invoked?

3. Whether the approach of the Trial Court is erroneous in not properly appreciating the medical evidence available on record and whether there is any defect in the investigation conducted by the Investigating Officer as alleged in the private complaint filed by the family of the victims and whether the findings of the Trial Court amounts to a miscarriage of justice in not considering the material on record and whether this Court can exercise the appellate jurisdiction having re-appreciated the material on record?
4. What order?

Point No.1:

27. Now the first question before this Court is whether the Trial Court committed an error in discharging the accused persons for the offence punishable under Section 302 of IPC and whether it requires interference of this Court? S.C.No.107/2010 arise out of the private complaint filed in PCR No.60/2005. Having perused the contents of the complaint, a specific allegation is made in the complaint that the Investigation Officer has not conducted proper investigation

and failed to invoke Section 302 of IPC while filing the charge sheet, except invoking the IPC offence of Section 498A, 304B and 306 and Sections 3, 4 and 6 of Dowry Prohibition Act. The specific grounds are urged in the PCR from page No.3 onwards in detail. It is stated in the complaint that the injuries found on the body of Smt. Madhu and the child Likith Gowda are ante mortem in nature. The report of the doctor, who conducted the post mortem, is clear that it is a case of murder of Likith Gowda i.e., case of throttling. It is contended that though Channapatna Rural Police conducted the investigation, thereafter, the matter was referred to the COD and both failed to take note of that the body of Likith Gowda was in a hanging posture even though it is a case of throttling and what made the mother to hang him if allegedly the mother had taken the life of the son. When the case of taking away the life of the child was invoked, ought to have invoked the offence under Section 302 of IPC. Whether it is by the mother or by anybody else, the police cannot decide the same. Even if the police had come to the conclusion that the mother had killed the child, ought to have invoked Section 302 of IPC and filed the abated charge-sheet. But the same is not done and that is one of the contentions. When the ante-mortem injuries are found on the

neck of the child, that too on the back side of the neck, if it is throttling, there is no explanation by the Medical Officer. It is also an allegation that there are several injuries on the deceased Smt. Madhu, that too on the left side near the ear and also the eye, cheek and chest. If it is death by suicidal hanging, there is no any reasoning given by the Investigation Officer as well as the doctor and the inquest discloses injury on the chest. But post mortem report does not disclose injury on the chest and hence, the very report of the Medical Officer and also the Investigating Officer is not consistent. There was no any ligature mark over the surrounding of neck. The photographs of the deceased are produced before the Court, which discloses not in the nature of upward shape in a case of suicidal hanging as "v" shape, but it was horizontal in nature as depicts in photo. All these questions were raised and even complaint runs from page Nos.3 to 17 for invoking Section 302 of IPC and the Magistrate took cognizance considering the pleadings and grounds.

28. It is also important to note that the Trial Court having considered the material on record, has taken the cognizance in a private complaint and matter was referred to

the Sessions Court and the same is numbered as S.C.107/2010. Having perused the order dated 25.09.2012, passed by the Presiding Officer, Fast Track Court at Ramanagara, while discharging the accused, failed to take note of the fact that S.C.No.131/2006 was pending before the First Additional District and Sessions Judge, Ramanagara. An observation is made in paragraph No.9 that the prosecution has argued and urged to frame charge for the offence punishable under Section 302 of IPC in S.C.No.131/2006. It appears this Court by its order dated 22.08.2009 has made an observation that one Rekha - P.W.4 has first seen the deceased's dead body hanging to the hook placed for hanging fan. The said statement was taken note of, but failed to take note of the ante-mortem injuries. An observation is also made that much before the death, a death note of the deceased was left, which indicates the allegation of theft was made against her and the expert certified that the writing made in the death note is that of the deceased. The Trial Court failed to take note of that the very death note is disputed, which came to light under suspicious circumstances after 13 days of the incident, that too while cleaning the matrimonial home of the deceased. These reasons would not have been given while discharging the

accused when a serious allegation is made against the accused persons. The Trial Court while taking the cognizance, taken note of the grounds which have been urged in the PCR. The other observation is made that this Court has already declined to frame the alternative charge for Section 302 of IPC and kept open the objection that during the trial if sufficient material is placed for charge of Section 302 of IPC, then also the Court could exercise the discretion to frame charge for the said offence in S.C.No.131/2006. The very approach of the Trial Court in discharging the accused persons is erroneous. It has to be noted that when the police report was filed, S.C.No.131/2006 is registered and when a separate private complaint was filed and cognizance was taken, S.C.No.107/2010 was registered based on reference was made for consideration.

29. This Court would like to extract Section 210 of Cr.P.C, which reads as under:

"210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) Where in a case instituted otherwise than on a police report (hereinafter referred to as a

complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such enquiry or trial and call for the report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and no such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

30. Having read the provisions of Section 210 of Cr.P.C, it is the procedure to be followed when there is a complaint case and police investigation in respect of the same offence i.e., where in a case instituted otherwise than on a police

report, it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for the report on the matter from the police officer conducting the investigation. Sub-section (2) is very clear that if a report is made by the investigating police officer under Section 173 and no such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. The judge who discharged the accused failed to take note of sub-section (2) of Section 210 of Cr.P.C. Based on the police report, the trial judge in S.C.No.131/2006 has not taken the cognizance in respect of the offence punishable under Section 302 of IPC. Even though charge was not alleged against the accused under Section 302 of IPC, but he shall proceed with the inquiry or trial. Sub-section (3) of Section 210 of Cr.P.C also contemplates the same.

31. This Court would like to rely upon the judgment of the Apex Court in the case of **SANKARAN MOITRA v. SADANA DAS AND ANOTHER** reported in **(2006) 4 SCC 58**. Paragraph Nos.75 to 81 of the said judgment reads as follows:

"75. In my view, even Section 210 of the Code has no application to the facts of the case on hand. Section 210 requires procedure to be followed when there is a complaint case and police investigation in respect of the same offence and reads thus:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.– (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and no such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provision of this code.

76. A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation.

77. The object of enacting Section 210 of the Code is three fold:

(i) it is intended to ensure that private complaints do not interfere with the course of justice;

*(ii) it prevents harassment to the accused twice;
and*

(iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once.

78. The Joint Committee of Parliament observed:

"It has been brought to the notice of the Committee that sometimes when serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under Section 173) is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such case is received the Magistrate would be free to dispose of the complaint case. This new provision is intended to secure that private complainants do not interfere with the course of justice.

79. It is thus clear that before Section 210 can be invoked, the following conditions must be satisfied.

(i) There must be a complaint pending for inquiry or trial;

(ii) Investigation by the police must be in progress in relation to the same offence;

(iii) A report must have been made by the police officer under Section 173; and

(iv) The magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.

80. In the impugned order passed by the High Court, no such contention appears to have been raised by the appellant. On the basis of the complaint filed by the complainant and on being satisfied on the material placed on record, the learned Chief Judicial Magistrate, Alipore had proceeded with the case which cannot be said to be illegal.

81. It may also be stated here that the High Court in its order, dated June 20, 2003 considered this contention and observed that Section 210 of the Code could not arrest the proceedings initiated by the complainant, since the 'basic tenor of the two cases were different.' Relying on the decision of this Court in Harjinder Singh v. State of Punjab, (AIR 1985 SC 404), it was submitted that both the cases could not be clubbed together since the prosecution version was quite different in those cases. It may be stated that Special Leave Petition against the order of the High Court was dismissed by this Court on July 28, 2003. Even this ground,

therefore, cannot take the case of the appellant anywhere."

32. This Court also would like to rely upon the judgment of the Apex Court in the case of **DILAWAR SINGH v. STATE OF DELHI** reported in **(2007) 12 SCC 641**. This Court would like to extract paragraph Nos.13 and 14 of the said judgment, which reads as follows:

"13. The principle has been statutorily recognised in Section 210 of the Cr.P.C. which enjoins upon the Magistrate, when it is made to appear before him either during the inquiry or the trial of a complaint, that a complaint before the police is pending investigation in the same matter, he is to stop the proceeding in the complaint case and is to call for a report from the police. After the report is received from the police, he is to take up the matter together and if cognizance has been taken on the police report, he is to try the complaint case along with the G.R. Case as if both the cases are instituted upon police report. The aim of the provision is to safeguard the interest of the accused from unnecessary harassment.

14. The provisions of Section 210, Cr.P.C, are mandatory in nature. It may be true that non-compliance of the provisions of Section 210, Cr.P.C., is not ipso facto fatal to the prosecution

because of the provision of Section 465 Cr. P.C., unless error, omission or irregularity has also caused the failure of justice and in determining the fact whether there is a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. But even applying the very same principles it is seen that in fact the appellant was in fact prejudiced because of the non-production of the records from the police.”

33. Having considered Section 210 of Cr.P.C as well as the principles laid down in the judgments referred supra, it is very clear that merely because on the same set of facts with the same allegations and averments, earlier the complaint is filed, there is no bar to lodge the FIR with police station with the same allegations and averments. The Trial Court while discharging the accused failed to take note of Section 210 of Cr.P.C. The provisions of Section 210 of Cr.P.C can be invoked when there is a complaint case pending enquiry or trial and the investigation by the police is in progress in relation to the same offence in other case. Having taken note of Section 210 of Cr.P.C as well as the principles laid down in the judgments referred supra, the Trial Court instead of discharging the accused, ought to have taken up both the matters together for

consideration in order to invoke Section 302 of IPC i.e., S.C.No.107/2010 arising out of private complaint and police report in S.C.No.131/2006 and the same are in respect of the same set of facts and same incident and specific case is that it is a case for invoking of Section 302 of IPC apart from Section 304B of IPC and other offences and the reasons given for discharge is erroneous. The Trial Court before discharging accused ought to have taken note of the averments made in the complaint and also the cognizance taken considering the grounds urged in the private complaint as specific contention was taken that Investigating Officer has not investigated the matter properly for the offence under Section 302 of IPC. The each averments made in the complaint suggests the very commission of offence under Section 302 of IPC and failed to consider the error on the part of Investigating Officer and also the medical evidence as per the post mortem report. Hence, this Court would like to set aside the order passed by the Trial Court in S.C.No.107/2010 in discharging accused Nos.1 to 3 for the offence punishable under Section 302 read with Section 34 of IPC and hence, we answer the point accordingly.

Point Nos.2 and 3:

34. This Court also framed the point for consideration whether the Trial Court committed an error in acquitting the accused persons without invoking the offence punishable under Section 302 of IPC even though an observation was made while discharging the accused that if materials are found to invoke Section 302 of IPC it could be invoked. Whether the approach of the Trial Court is erroneous in not properly appreciating the medical evidence available on record and whether there is any defect in the investigation conducted by the Investigating Officer as alleged in the private complaint filed by the complainant i.e., father of the deceased Smt. Madhu and whether the findings of the Trial Court amounts to miscarriage of justice in not considering the material on record and whether this Court can exercise the appellate jurisdiction as contended by the counsel appearing for the defacto complainant appellant and also the advocate appearing for the State. The common grounds are urged in both the appeals.

35. Having considered the reasons assigned by the Trial Court in acquitting the accused for the offences punishable under Sections 498A, 304B and 306 of IPC, the Trial Court

comes to the conclusion on appreciation of evidence of the prosecution witnesses that case of the prosecution corroborates, but only reason assigned by the Trial Court is that there was a delay in lodging the complaint. The Court has to take note of the fact that it is the specific case of the prosecution witnesses that the father of the deceased Madhu had come to the village in the late night. It is also the evidence of the father, who has been examined before the Trial Court as P.W.1 that he went to Bangalore and came back to his house in the late night at around 1.00 a.m. and he went in the early morning and taken note of the dead body of daughter and grandson and had lodged the complaint at 10.15 a.m. No doubt, one minor discrepancy is found that he came in the late night at 1.00 a.m. and informed the same to his labourers. But in the complaint at Ex.P.1 he says that he came to know about the incident in the early morning at 5.30 a.m. But throughout the witnesses were cross-examined with regard to the very arrival of the complainant in the previous day itself and P.W.2, P.W.3 and other witnesses have categorically denied the same. But the Trial Court taken note of the evidence of P.W.14, wherein P.W.14 says that P.W.1 was also present and this answer is elicited in cross examination. No doubt, P.W.14 is

also a close relative. P.W.14 says that Shivanna i.e., P.W.1 and his two sons were also present when he himself and his sister had come to Doddamaluru. But that is not the statement of P.W.14 made before the police under Section 161 that he was there. But only in the cross-examination of P.W.14, he deposes the same and not in the chief evidence, since he has not made any statement before the police that he saw Shivanna on the previous day. But only in the cross-examination, this answer is elicited. This stray admission of P.W.14 was relied upon by the Trial Court in order to come to a conclusion with regard to the delay is concerned. It has to be noted that the complaint Ex.P.1 was given by the complainant and there is an endorsement in Ex.P.1 that this complaint was given on 07.10.2004 at 10.15 a.m. and case was registered in Crime No.240/2004 for the offences punishable under Sections 498A, 304B read with Section 34 of IPC. An allegation of murder of his daughter and grandson was stated in the complaint, but not invoked Section 302 of IPC while registering the case itself at the first instance.

36. It is also important to note that the police official who has been examined as P.W.25 before the Trial Court, in his

evidence he says that he was in-charge of the SHO on 07.10.2004 at about 10.15 a.m. He categorically says that the complainant came and lodged the written complaint and hence, he registered Crime No.240/2004 and issued the FIR in terms of Ex.P.27. The other police witness, who has been examined as P.W.21 speaks about he took over the further investigation from PSI and went through the papers. He visited the spot and conducted panchanama and also he secured the Tahsildar and requested him to conduct an inquest. He has also taken the photographs at the spot by securing the photographer. The other police witness, who conducted the further investigation on 15.10.2004 was also examined as P.W.24. Nothing is suggested to these witnesses that during the course of investigation, they came to know about the complainant was very much present in the previous date. When there is no effective cross-examination with regard to the presence of the complainant P.W.1 in the previous day, by considering only the stray admission of P.W.14, the Trial Court comes to the erroneous stray conclusion that there was a delay in lodging the complaint and accepted the theory of the defence.

37. It is also important to note that D.W.1, who has been examined on behalf of the accused, though he says that panchayath was held in the previous day and the family of the deceased demanded an amount of Rs.10,00,000/- as compensation for the pain and agony, but in the cross-examination, he categorically admits that he cannot say who was the yajaman of the panchayath and also he did not participate in the said panchayath. But he volunteers that he was also present in the gathering. It is not his evidence that he was also the part of panchayath. He categorically admits that even though he stayed there during the night, he did not attempt to lodge any complaint and even he did not intimate the police about the death. When such evidence is placed before the Court, the evidence of D.W.1 cannot be accepted. He deposes that the parents of the deceased and others came there, who were 100 in number and that accused Nos.1 to 3 were present at the spot. But none of the witnesses speaks about the very presence of accused Nos.1 to 3 when they went to the matrimonial home of the deceased.

38. The other witness D.W.2 also reiterates in the line of the evidence of D.W.1 that around 4.30 p.m. or 5.00 p.m.,

the parents of the deceased and others came there, who were 100 in number and after sometime, panchayath was convened near the house of the accused persons and village elders and others gathered and he was also present. He deposes that the family members of the deceased demanded around Rs.10,00,000/- as compensation for the pain and agony. But not stated that P.W.1 demanded the amount and no specific evidence in the chief evidence that P.W.1 was very much present at the time of panchayath. In the cross-examination, he says that he did not observe any injuries and worms over the dead body of Smt. Madhu and baby. He says that he came to know that Smt.Madhu committed suicide by hanging. He does not know where the hanging happened and also he does not know who intimated the family members of the deceased Madhu. But only says that when he went to the spot, her family members were present, but not stated that P.W.1 was present. He admits that in the panchayath the leading persons were Sri Thotanna and Chairman Sri Ramasidda. He says that one Shivanna belonging to the family of the deceased demanded Rs.10,00,000/-. It is suggested that the said Shivanna at the time of panchayath was in Bengaluru and he

came to the place of incident during night and the said suggestion was denied.

39. Throughout the evidence of the prosecution witnesses, except P.W.14, all witnesses depose that P.W.1 was not present in the previous day. This Court also found that P.W.14 only in the cross-examination says that P.W.1 was present in the previous day and the same is a stray admission. If really panchayath was held and the same was led by Sri Thotanna and Chairman Sri Ramasidda, they would have examined them. The evidence of P.W.1 Shivanna is very clear that he came to know about the incident only in the previous night at 1.00 a.m. and he went to the matrimonial home of the deceased where death was taken place in the next day morning. This Court also pointed out that while cross-examining the prosecution witnesses nothing is elicited that P.W.1 Shivanna was very much present in the previous day itself. When such being the case, the Trial Court ought not to have acquitted the accused only on the ground of delay and the reason assigned by the Trial Court that there was a delay in lodging the complaint cannot be the ground to acquit the accused persons. The son of P.W.1 categorically deposed that

father is the person who has to take the decision for lodging the complaint. The incident was taken place in the previous day and incident came to light at 3.15 p.m. in the previous day to the neighbour and it is emerged during the course of the evidence that police station is nearby i.e., three and a half kilometers. It is evident that no one, either D.W.1 or D.W.2 or any villagers of the said village have lodged the complaint or intimated to police and material is clear that the relatives of the deceased waited till the arrival of P.W.1, who has to take the decision to lodge the complaint as senior member of the family i.e., father of the victim. When such material is found, the Trial Court proceeded in acquitting the accused on the ground that there was a delay in lodging the complaint and no effective cross-examination to that effect. Merely because other family members rushed to the village along with their relatives, it cannot be a ground. It is not the case of the police also that they came to know about the incident in the previous day itself. It is a cognizable offence and only the Investigation Officer could act on the information and FIR Ex.P.27 is very clear that information was received at 10.15 a.m. on 07.10.2004 that too based on the complaint of P.W.1. The further statement of P.W.1 was recorded on 16.10.2004. When such being the

case, the Trial Court in a case of heinous offence of losing of two lives i.e., daughter and grandson of P.W.1, ought not to have proceeded on the ground of delay and hence, the very appreciation of evidence by the Trial Court on the ground of delay is nothing but perverse and fails to consider the intrinsic evidence available before the Court.

40. Now the question before this Court is with regard to not invoking of Section 302 of IPC. Having perused the complaint Ex.P.1, it is very clear that specific allegation was made in the complaint that the accused persons have killed the daughter and also the grandson. But it is unfortunate that the Investigation Officer registered the case only for the offences punishable under Sections 498A and 304B read with Section 306 r/w Section 34 of IPC. It is also important to note that other material is also placed before the Court with regard to Section 498A of IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act and the same is accepted by the Trial Court that the same corroborates with the case of the prosecution considering the documents of Exs.P.8, 9 and 10. But while considering the case with regard to Section 302 of IPC, admittedly when the application was filed to frame the charge

for Section 302 of IPC, the same was dismissed and while discharging also made an observation that if sufficient material is placed during the course of evidence, going to frame the charge. But P.W.1, P.W.2 and other relative witnesses as well as P.W.12 spoken with regard to the taking the life by the accused persons.

41. Now the Court has to consider the document of Ex.P.11 inquest report of Madhu, which came into existence on the very day of registration of the case. Inquest was conducted by the Tahsildar. In column No.7, the Tahsildar noted the injuries near the left ear i.e., pressed wound and also found ligature mark measuring 8 x 1 inch near the left ear and the same is not around the neck as per the inquest. It is also important to note that there was an injury in between both the breast on the chest and the same is also a reddish injury and rigor mortis was not there. Hence, the Court has to take note of the ligature mark only on the back side of left ear and the same is also 8 x 1 inch and if it is caused from using the saree, it should not have been 1 inch in size, unless the same is in the nature of rope. It is also important to note that in Ex.P.21 post mortem report of Madhu, in respect of external injuries, it is

mentioned parchment like membrane over right side of the face and eye 6 x 4 cm. and over the cheek 4 x 4 cm. While considering the more detailed description of injury of the deceased, it is stated that ligature mark over the neck was obliquely situated, right side 6 cm. from the midline from 1 cm. below the mandible and extend 6 cm. below the mandible on left side and size is around 8 x 1 inch. But the same is not found in the inquest, which is marked as Ex.P.11. It is also important to note that the doctor who conducted the post mortem, did not mention anything about the injury found in between the breast on the chest of the deceased. The doctor ought to have been intensive while conducting the post mortem, since the same is done by an expert and inquest is not by an expert. The doctor could have mentioned the nature of injuries found on the chest of the deceased in his post mortem report and the same is missing. It is also important to note that cause of death mentioned in Ex.P.21 is due to asphyxia due to suicidal hanging.

42. Having perused the photographs, which are produced before the Court, the photographs are very clear that ligature mark is not in the upward shape, if it is a case of

suicidal hanging. The ligature mark is in the nature of horizontal, not oblique, as stated by the doctor and photo depicts it is horizontal. In respect of Ex.P.22 post mortem report of the boy, there was an injury on the back side of the neck. If it is a case of throttling as per Ex.P.22, what made an injury behind the neck is not explained by the doctor and the Investigation Officer has not obtained further report from the doctor. The photographs which are found, is very clear that the mother had sustained the injury near the ear and no explanation on the part of the Investigation Officer as well as the doctor who have been examined before the Court with regard to the ante-mortem injuries found on the body of both. The photographs also clearly discloses that there was an injury on the chest so also on the left side of the ear, cheek and near the eye. There is no proper consideration of evidence by the Trial Court with regard to these documents which have been marked. It is the duty of the doctor to give the opinion with regard to the time since death when the post mortem was conducted and when the same was not found, the Investigation Officer sought for clarification and the same was given in terms of Ex.P.23. It is stated that time since death is 24 hours to 48 hours. It is important to note that rigor mortis was not found as

per the inquest. But rigor mortis disappears after 36 to 48 hours and the same is also not considered by the Trial Court and no question was put to the Doctor either by the prosecutor or by the Court. It is also important to note that the Trial Court proceeded in an erroneous approach and when all these materials were found, ought to have framed the charge for the offence under Section 302 of IPC as observed earlier when I.A. is rejected and also while discharging. When the private complaint was filed and cognizance was taken and when the discharge was made, the Trial Court made an observation that if sufficient material is placed during the course of evidence, going to consider Section 302 of IPC, but not considered the same and got carried away with regard to the charges which have been framed only for the offences punishable under Sections 498A, 304B and 306 of IPC and not taken note of the evidence available on record. It appears that the doctor has not properly conducted the post mortem of both the deceased as per Exs.P.21 and 22 and no reasons are given with regard to the nature of injuries which are ante-mortem and whether such injuries could be caused in a case of suicidal hanging or involvement of third parties. It is evident that both the child as well as the mother have sustained the injuries and particularly

with regard to the child in terms of Ex.P.22, he has sustained the injury on the back of the neck. If the cause of death is on account of throttling, how he can sustain injury on the backside of the neck, there is no explanation. The Investigation Officer also has not properly conducted the investigation when specific accusation is also made that the Investigation Officer has not conducted the proper investigation in the private complaint and the Court also taken cognizance with regard to no proper investigation. Having found the material on record, the Trial Judge ought not to have been a mute spectator and should involve in conducting the Trial. It is the duty of the Presiding Officer to look into all the material available on record and to apply his judicious mind while considering the matter and even Court can put Court questions. The duty of the Court is to quest for the truth.

43. This Court would like to rely upon the judgment of the Apex Court in the case of **STATE OF RAJASTHAN v. ANI ALIAS HANIF AND OTHERS** reported in **(1997) 6 SCC 162**.

Paragraph Nos.12 and 13 of the judgment reads as follows:

"12. Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may

be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised.

13. In this context it is apposite to quote the observations of Chinnappa Reddy, J. in Ram Chander v. The State of Haryana (AIR 1981 SC 1036):

"The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

We respectfully concur with the aforesaid observations. We find no wrong in the trial court interjecting during cross-examination of PW-3 with a view to ascertain the correct position."

44. This Court would also like to rely upon the judgment of the Apex Court in the case of **BABLU KUMAR AND OTHERS v. STATE OF BIHAR AND ANOTHER** reported in **(2015) 8 SCC 787**. Paragraph No.22 of the said judgment reads as follows:

"22. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the Court to see that

neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a "mock trial". It is a serious concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The Court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The Court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the Court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the Court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the

prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

45. This Court would like to rely upon the judgment of the Apex Court in the case of **DINESH KUMAR v. STATE OF HARYANA** reported in **(2023) 20 SCC 49**. The Apex Court in this judgment referring Sections 165 and 45 of the Evidence Act, 1872, held that, it is the duty of trial Judge to ask pertinent questions. Paragraph Nos.22, 23, 24 and 25 of the said judgment reads as follows:

"22. We are afraid that by pointing out the weakness in the cross-examination of the defence the Presiding Judge indirectly admits to the weakness in the trial itself. We say this for the reasons that under Section 165 of the Act, a trial Judge has tremendous powers to "ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant". It is in fact the duty of the Trial Judge to do so if it is felt that some important and crucial question was left from being asked from a witness. The purpose of the trial is after all to reach to the truth of the matter.

23. Section 165 of the Act reads as under:

"165. Judge's power to put questions or order production.– The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

24. *The powers of a Presiding Judge in a criminal trial and his duty to get to the truth of the matter have been laid down in a seminal judgement of this Court authored by O. Chinnappa Reddy, J. which is Ram Chander v. State of Haryana. O. Chinnappa Reddy, J. in the said judgment refers to his earlier Judgment given by him as a Judge of the Andhra Pradesh High Court, where it was said : (Intha Ramana Reddy case, SCC Online AP para 2)*

"2.Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a Presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

25. *The duty of the Presiding Judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial "by evincing intelligent active*

interest by putting questions to witnesses in order to ascertain the truth.” While referring to a decision of Lord Denning in Jones v. National Coal Board (1957) 2 WLR 760 (CA) the learned Judge had said that it is the duty of the Judge to ask questions to the witnesses when it becomes necessary to clear up any point that has been overlooked or left obscure, then he goes on to say as under: (Ram Chander v. State of Haryana (1981) 3 SCC 191) Scc p.194, para 3)

“3.We may go further than Lord Denning and say that it is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165, Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'.”

46. This Court only given glimpses of defective investigation and role of the doctor without expressing any opinion on merits, since no charge of Section 302 of IPC is framed even when material found during the course of evidence.

47. The Doctors examined as P.W.22 and P.W.23, who have conducted the post-mortem together speak about the nature of injuries found on the dead body of both the victims and have given the opinion that death is due to asphyxia, suicidal hanging in respect of Madhu and as a result of homicidal throttling in respect of child. The age of injuries are not mentioned. But, their evidence is very clear that all the injuries were ante-mortem and they have not mentioned the time since death but clarified as query of Investigating Officer that it might have happened 24 to 48 hours but failed to take note of rigor mortis disappeared. But, ligature mark is shown as 1 inch. If the saree is used, ligature size would be more than 1 inch and if rope is used, then it would be 1 inch. In the cross-examination also stated that homicidal throttling means physically with hands, strangulation is done in respect of the child is concerned, the death is due to throttling. But, answer is

very clear that death of Likith Gowda is not due to hanging and the same is due to throttling and answer is elicited that cannot mention the difference of time between death of Likith Gowda and death of Madhu. This is the crux of the issue whether death of Likith Gowda has happened subsequent to the death of Madhu or prior to death of Madhu is the clinching issue and the evidence of Investigating Officer and Doctor on record not gives any answer to the issue involved in the matter. The Court also to take note of that if mother committed the murder of her son by throttling what made her to once again hang her son and the same is doubtful and this aspect has not been taken note of by the Court as well as Investigating Officer and the Doctor.

48. The evidence of P.W.23 is that she was along with P.W.22 and conducted the post-mortem. This witness also clearly says that she cannot mention the difference of time between death of Likith Gowda and death of Madhu and both the Doctors, who have examined before the Trial Court have not given proper answer with regard to time since death of both Likith Gowda as well as death of Madhu considering the injuries found on both the bodies. The time since death of both Likith Gowda and Madhu is very crucial to come to a definite

conclusion whether both homicidal or suicidal. Hence, further examination of both the Doctors is very much necessary and they have not spoken and given any opinion with regard to ante-mortem injuries found on the dead body of both Likith Gowda and Madhu when it occurred i.e., the age of the injuries. Even if it is not possible to come to such a conclusion, even the Court can get opinion from the Medical Board to come to such a conclusion, if need arises, while conducting further trial in the matter and also can get further opinion from Forensic Expert.

49. This Court has already noted the timings of setting of rigor mortis and if it is between the timings of 24 to 48 hours as opined and as deposed by the Doctors, visible signs also to be taken note of. The first visible external indicator appears as a greenish discoloration of the skin, typically starting in the lower right abdomen (right iliac fossa) over the cecum, where intestinal bacteria are concentrated and advanced decay starts within 3 to 10 days. But, this time frame is heavily dependent on external conditions. It is also very clear that rigor mortis commences within 1 to 4 hours of death of a person. But, no doubt, it changes from person to person and rigor mortis will be 24 to 36 hours depending upon the weather. However, in the

case on hand, it has to be noted that when the inquest was conducted by the Tahasildar, the rigor mortis was already released. This issue also to be considered while considering the matter during further trial, keeping in view the ligature mark size over the neck as the case of police is that saree was used for committing suicide. The points raised regarding width of the ligature mark of the unexplained external facial marks are vital. They highlight notable gaps and medial inconsistencies in the post-mortem report. The width paradox and contradiction in the report regarding ligature mark. The flaw in the report without clarifying whether these are ante-mortem abrasions, post-mortem desiccation or post mortem damage, neither the material object nor the Investigating Officer provided a mechanism for how these large lesions occurred. Though, it was obliquely situated according to post-mortem report, as per the photographs which are available before the Court, this Court already pointed out that it was horizontal, not in 'V' shape in the cause of death of Madhu and cause of death is given as suicidal hanging, it should be in 'V' shape and the same is not depicted in the photographs which are available on record before the Court and so also, the nature of injuries parchment-like membrane over right side of the face which is

mentioned in the post-mortem report unexplained facial abrasions/bruises are classic signs of a physical struggle prior to asphyxiation (e.g., smothering attempts, pinning the victim down, or forcibly tightening ligature). The absence of histopathological evaluation of these facial injuries to confirm whether they are ante-mortem (shading tissue reaction/blood extravasations) leaves a major gap in providing a disproving homicidal violence before hanging. Unexplained facial injury, Hyoid bone fracture, the ligature width discrepancy are key evidence supporting homicidal suspicion. The forensic important point also to be considered to distinguish hanging from ligature strangulation whether the ligature mark is complete or incomplete, exact level of ligature mark in relation to thyroid cartilage and hyoid bone, the direction and obliquity of the mark, whether there is an area of spared skin between portions of the mark, whether there is subcutaneous hemorrhage beneath the ligature mark. These are the important forensic points which have to be considered while considering the matter, whether it is a case of throttling, strangulation or suicidal hanging and there is no effort made by the Investigating Officer as well as the Doctors with regard to whether the injuries are ante-mortem or post-mortem injuries and how

those ante-mortem injuries have occurred prior to death, whether while causing those injuries struggle was made and whether the same was defensive injuries. It is important to note that multiple bruises/contusions of the neck may potentially indicate application of external force to neck; gripping or pressure; an attempt to strangle the deceased; impact against another object; or injuries associated with the process of hanging.

50. The Court has to take note that mark extends from 1 cm. below the mandible and the right side (6 cm. from the midline) to 6 cm. below the mandible on the left side, measuring approximately 8 cm. x 1 cm. The forensic significance is also necessary that a ligature mark runs obliquely. Though, it is stated by the Doctor that it is oblique, but the photographs which are available before the Court is different and there is no oblique shape and the same is horizontal. This is a hallmark feature commonly seen in hanging (suicidal or accidental) and dimensions 8 cm. x 1 cm. reflects a relatively narrow ligature material (such as a cord, thin rope, or belt) that exerted focus pressure on the neck tissues. But, in the case of hand, saree was used for hanging

and the size of the same would be more than 1 inch and it has to be ascertained on further examining the Doctors before the Court and no dispute with regard to cause of death in respect of the child is concerned. But, serious dispute is with regard to cause of death in respect of deceased Madhu. The Investigating Officer also did not clarify all these while filing the charge sheet and simply filed charge sheet for other offences. The question before the Court is also whether mother committed murder of child or accused persons committed murder and hanged him also.

51. The Court has to take note of ligature dimension which is mentioned as 8 cm. x 1 cm. and material used is saree according to the prosecution and suicidal hanging typically produces an inverted 'V' shaped mark that fades toward the nape where the knot or point of suspension sits. Extensive parchmentation of the face and eye is mentioned in the post-mortem report (6 cm. x 4 cm. and 4 cm. x 4 cm.): while parchmentation indicates epidermal damage, extensive drying on the side of the face and eye often occurs when a body has been dragged, face down on a rough surface, or subjected to post-mortem handling/staging. If the Doctors, who have been

examined as P.W.22 and P.W.23 were not able to clarify the same during the course of further cross-examination, clarification also can be obtained from the Medical Board and also an opinion can be obtained from the Forensic Expert as to whether multiple anterior contusions and 1 cm. ligature width are consistent with a saree hanging or suggest ante-mortem homicidal violence/strangulation prior to suspension and it requires re-examination of Doctors and if required, seek re-examination from Forensic Panel and if discrepancies remain, seek a opinion from the Board of Forensic Medicine Experts reviewing the autopsy, scene photos and post- mortem report together and both prosecutor as well Court involve in quest for truth.

52. Having taken note of these are the materials available before the Court and discrepancies in the evidence of the Doctors as well as the Investigating Officer, it requires clarification while considering the issue by framing a charge for the offence under Section 302 of IPC and a definite finding has to be given whether it is a suicidal hanging, strangulation or throttling of deceased Madhu and for the limited purpose of considering the offence under Section 302 of IPC and to give a

definite finding, this matter requires reconsideration by remanding the matter to the Trial Court.

53. This Court would like to consider the principles laid down in several judgments of the Apex Court with regard to invoking of offence under Section 302 of IPC. This Court would like to rely upon the judgment of the Apex Court in **MULAKH RAJ AND OTHERS v. SATISH KUMAR AND OTHERS** reported in **(1992) 3 SCC 43** and while considering whether it is a homicide or suicide, it is held that all post-mortem symptoms found on the dead body consistent with the medical jurisprudence view that death was due to constriction or pressure on the neck (asphyxia). Post-mortem report as well as evidence of the doctor conducting the post-mortem examination and Doctor's opinion whether it is reliable or acceptable to be taken note of. The Apex Court also discussed with regard to asphyxia, ante-mortem and post-mortem injuries, since the case rests upon circumstantial evidence. In paragraph No.4, it is observed that the Court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime,

the charge must be held proved and conviction and sentence would follow.

54. This Court would like to rely upon judgment of the Apex Court in **MANDHARI v. STATE OF CHATTISGARH** reported in **(2002) 4 SCC 308**, wherein also discussion was made with regard to circumstantial evidence whether death was caused by strangulation, when defence was taken that wife committed suicide by hanging herself. The post-mortem report shows that there was ligature mark on the neck of the deceased which was ante-mortem. The opinion of the doctor is clear and definite that such ligature mark cannot be caused by hanging but could have been caused by strangulation. In the case on hand, whether it is a suicidal hanging, strangulation or throttling is to be considered by examining medical report available on record by examining the medical expert as observed above.

55. This Court also would like to rely upon judgment of the Apex Court in **RADHA MOHAN SINGH ALIAS LAL SAHEB AND OTHERS v. STATE OF U.P.** reported in **(2006) 2 SCC 450**, wherein discussion was made with regard to Section 174 of Cr.P.C. with regard to investigation, scope and necessary

contents of inquest report and it is held that the said investigation is limited in scope and is confined to ascertainment of apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. In this judgment, in paragraph No.15, it is held that, it is well settled by a catena of decisions of this Court that purpose of holding an inquest is very limited viz., to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident. But, in the case on hand, in the inquest, it is specifically mentioned that there was an injury on the portion of the chest between the breast. However, the post-mortem report is very silent and the nature of injury is mentioned as reddish in the inquest. But, the Doctor, who conduct post-mortem failed to notice the same.

56. This Court would like to rely upon the judgment of Apex Court in **RAJBIR ALIAS RAJU AND ANOTHER v. STATE OF HARYANA** reported in **(2010) 15 SCC 116**, wherein also discussion was made with regard to Sections 302 and 304-B. In

this judgment, the Apex Court directed all trial courts in India, to ordinarily add Section 302 to charge of Section 304-B, so that death sentences can be imposed in such heinous and barbaric crimes against women. But, in the case on hand, there was a specific allegation in the private complaint that Investigating Officer intentionally left out the offence under Section 302 of IPC and private complaint was filed and cognizance was taken. But, unfortunately, accused was discharged for the offence under Section 302 of IPC.

57. This Court also would like to rely upon the judgment of Apex Court in **BABUBHAI v. STATE OF GUJARAT AND OTHERS** reported in **(2010) 12 SCC 254**, wherein also discussion was made with regard to registration of second FIR and scope of second FIR. But, in paragraph No.45, it is held that not only fair trial, but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. In the case on hand, specific allegations are made against the Investigating Officer that they have conducted defective investigation.

58. No doubt, the Apex Court in the judgment in **JASVINDER SAINI AND OTHERS v. STATE (GOVERNMENT**

OF NCT OF DELHI) reported in **(2013) 7 SCC 256**, taken note of principles laid down in the judgment of **Rajbir's** case and held that even the Court can alter the charge in a case of 304-B and 302 and detailed discussion was made and observed that there is unrestricted power to add or alter any charge, whenever Court finds that defective charge has been made or addition of new charge becomes necessary after commencement of trial, for such addition or alteration has to be made before pronouncement of the judgment. But, in the case on hand, when the serious evidence is found with regard to allegation for the offence under Section 302 of IPC, even though an observation was made earlier by discharging the accused for the offence under Section 302 of IPC and when the prosecution witnesses were examined, the Trial Judge did not apply his mind. The Apex Court in this judgment in paragraph No.15 held that the question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC, the trial court can and indeed ought to frame a charge punishable under Section 302 IPC, which would then be the

main charge and not an alternative charge as is erroneously assumed in some quarters.

59. This Court also would like to reply upon judgment of the Apex Court in **RAVIRALA LAXMAIAH v. STATE OF ANDHRA PRADESH** reported in **(2013) 9 SCC 283**, wherein also discussion was made with regard to circumstantial evidence. The accused claim of commission of suicide (by hanging) by deceased falsified by evidence and homicidal death established. In this judgment, the Apex Court held that medical jurisprudence, whether it is suicide or not and whether circumstances disclose the same, ought to have been considered while considering the material on record whether it is a case of homicide by strangulation or by hanging. When the prosecution witnesses categorically depose before the Court that it is a case of murder having found the nature of injuries on the dead body and the same are ante-mortem, ought to have been considered by the Trial Court, even though earlier rejected the application to invoke Section 302 of IPC when the material available before the Court suggests matter requires reconsideration, ought to have framed the charge.

60. This Court would like to rely upon the judgment of the Apex Court in **VIJAY PAL SINGH AND OTHERS v. STATE OF UTTARKHAND** reported in **(2014) 15 SCC 163**, wherein also discussion was made with regard to Section 302 or Section 304-B - Murder or dowry death - Proper approach for making out a case of culpable homicide or dowry death and role and duty of Investigating Officer, prosecution and Court highlighted that it is not only the duty of Investigating Officer, even also the prosecution as well as duty of the Judge and the Judge should not be a mute spectator and consider overall material available on record while considering the case. In paragraph No.16, it is held that Section 304-B IPC is not a substitute for Section 302 IPC and both are independent offences and independent ingredients. In paragraph No.18, it is held that in cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial court should frame the charge under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) of the Cr.P.C. Section 304-B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable

doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304-B of IPC are available, the trial court should proceed under the said provision. The Apex Court also discussed the judgment of **Jasvinder Saini's** case in paragraph No.19 of the judgment.

61. This Court also would like to rely upon judgment of the Apex Court in **STATE OF GUJARAT v. KISHANBHAI AND OTHERS** reported in **(2014) 5 SCC 108**, wherein the Apex Court in paragraph Nos.19 to 25 discussed in detail with regard to defective or illegal investigation, a very heinous case, ended in acquittal due to lapses committed by the investigating and prosecuting agencies in the process of establishing the guilt of the accused before the Trial Court and strict directions are issued to conduct a periodical training and the defective investigation cannot be a ground to acquit the accused. The duty of prosecutor to cure the effective investigation by placing material on record.

62. This Court also would like to rely upon judgment of the Apex Court in **STATE OF RAJASTHAN v. RAMESH** reported in **(2015) 17 SCC 673**, wherein also discussion was

made with regard to suicide by hanging or homicide by strangulation, abrasion marks on neck and face suggesting struggle before death. Medical opinion that injuries were ante-mortem. But, autopsy report indicated that there were as many as 12 abrasive marks on neck and face and medical report concluded that all injuries were ante-mortem and death was due to asphyxia. On a query made by Police, doctor further clarified in writing that there was no ligature mark and death occurred due to pressure put on neck, rather than by hanging. In the case on hand also, when there were ante-mortem injuries on both the victims and the same is not properly investigated by the Investigating Officer and so also the Doctors, who conducted post-mortem have not given definite opinion with regard to time since death of both the victims i.e., son as well as mother and the same ought to have been considered by the Trial Court and would have framed the charge for the offence under Section 302 of IPC considering whether there is material for offence under Section 302 of IPC or not and i.e., the duty of the Court to consider the same.

63. This Court would like to rely upon judgment of the Apex Court in **JAVED ABDUL RAJJAQ SHAIKH v. STATE OF**

MAHARASHTRA reported in **(2019) 10 SCC 778**, wherein also when the offences were invoked under Sections 498-A, 304-B and also 302, medical evidence of homicide by throttling by appellant, clearly ruling out the suicide and acquittal of co-accused, the Court has to consider the material on record, particularly to keep the legislature tight after which insensibility supervenes. The Apex Court also discussed the distinction between throttling and strangulation, so also the distinction between hanging and strangulation. It is held that in case of hanging, fracture of larynx and trachea is very rare and that too it may be found in judicial hanging. On the other hand, fracture on larynx, trachea and hyoid bone indicates strangulation. As far as injuries in the inquest report not being noticed in the post-mortem report is concerned, there can be no doubt that the medical doctor knows exactly what medical injuries are and ordinarily in case of inconsistency, the medical report of the doctor should prevail.

64. This Court also would like to rely upon judgment of the Apex Court in **SHIVAJI CHINTAPPA PATIL v. STATE OF MAHARASHTRA** reported in **(2021) 5 SCC 626**, wherein the post-mortem report shows that cause of death was "asphyxia

due to hanging” as given in the report, wherein also it is observed that in a case of homicidal strangulation, bodily resistance could have been reflected and observed that admittedly, there are no marks on the body which would suggest violence or struggle. But, in the case on hand, there are number of ante-mortem injuries found near ear, face, cheek and also the chest portion and the same has to be examined.

65. This Court would like to rely upon judgment of the Apex Court in **GOUR ACHARJEE v. STATE OF TRIPURA AND OTHERS** reported in **2026 SCC ONLINE SC 931**, wherein also homicidal nature of death is discussed in paragraph No.7, so also in paragraph No.8 with regard to literature on medical jurisprudence and also discussed Modi’s Medical Jurisprudence in paragraph No.9, one can safely say that death was due to hanging, if, in addition to the cord mark, there was dribbling of saliva from the angle of mouth, ecchymoses and slight abrasions around the ligature-mark, laceration of the intima of the carotid arteries with extravasation of blood within their walls and the post-mortem signs of asphyxia, besides if there are no evidence of a struggle, scratches and nail marks, fatal

injuries or poisoning. But in the case on hand, there are multiple number of external injuries all over the body, including chest, face and neck. The Trial Court while considering the charge for the offence under Section 302 of IPC to take note of the principles laid down in the above judgments.

66. This Court also would like to rely upon judgment of the Apex Court in **GAJOO v. STATE OF UTTARAKHAND** reported in **(2012) 9 SCC 532**, wherein discussion was made with regard to defective or illegal investigation and dereliction of duty of Investigating Officer and even DG Police directed to initiate disciplinary action against Investigating Officer concerned and if he had since retired, to take action for reduction/stoppage of pension in accordance with service rules and limitation bar also to be waived.

67. This Court also would like to rely upon judgment of the Apex Court in **DAYAL SINGH & ORS. v. STATE OF UTTARANCHAL** reported in **AIR 2012 SUPREME COURT 3046**, wherein it is held with regard to methodology of Investigating Officer to follow police manual and Doctor connected to follow known canons of medical practice, both are obliged to be diligent, truthful and fair in their approach to

investigation and the same is discussed with regard to misconduct and dereliction of duty in paragraph Nos.16 and 21. It is also the duty of the Court to look upon Expert evidence with greater sense of acceptability, but are not absolutely guided by such evidence.

"16. With some vehemence, it has then been contended on behalf of the appellant that the post-mortem report and the statement of PW 3 Dr C.N. Tewari, specifically state that no external or internal injuries were found on the body of the deceased. In other words, no injury was either inflicted by the accused or suffered by the deceased. In the face of this expert medical evidence, the statement of the eyewitnesses cannot be believed. The expert evidence should be given precedence and the accused persons are entitled to acquittal. This argument is liable to be rejected at the very outset despite the fact that it sounds attractive at first blush.

21. The investigating officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the Police Manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An investigating officer is completely responsible and answerable for the manner and

methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free. We may illustrate such kind of investigation with an example where a huge recovery of opium or poppy husk is made from a vehicle and the investigating officer does not even investigate or make an attempt to find out as to who is the registered owner of the vehicle and whether such owner was involved in the commission of the crime or not. Instead, he merely apprehends a cleaner and projects him as the principal offender without even reference to the registered owner. Apparently, it would prima facie be difficult to believe that a cleaner of a truck would have the capacity to buy and be the owner, in possession of such a huge quantity i.e. hundreds of bags of poppy husk. The investigation projects the poor cleaner as the principal offender in the case without even reference to the registered owner.”

68. In the case on hand, not only the investigation is not proper, but also the medical evidence is very poor having

discussed the same above. Apart from that the Judge, who conducted the case also failed to take note of material on record and failed to frame a charge for the offence under Section 302 of IPC. Hence, the judgment of the Trial Court requires to be set aside for the limited purpose to frame a charge under Section 302 and consider the material on record and also re-examine the Investigating Officer and the Doctors in view of framing of additional charge under Section 302 of IPC and if need be, secure further opinion from Forensic Expert and also from the Medical Board, in order to arrive at a definite conclusion, keeping in mind the principles laid down in the judgments of the Apex Court referred supra. Having concluded the trial, if Court comes to the conclusion that there is laxity and misconduct on the part of the Investigating Officer and the Doctors, who gave the opinion, order for disciplinary action against both of them in respect of dereliction of their duty keeping in view the principles laid down in the judgments in **Gajoo's** case and **Dayal Singh's** case. Hence, we answer point Nos.2 and 3 'accordingly, remanding the matter to the Trial Court for reconsideration to frame charge for the offence under Section 302 and give finding, in view of the observations made hereinabove.

Point No.4:

69. In view of the discussion made above, we pass the following:

ORDER

- (i) The Crl.R.P.No.83/2013 is allowed by setting aside the order of discharge for the offence punishable under Section 302 of IPC dated 25.09.2012 passed in S.C.No.107/2010 and the Trial Judge is directed to club both S.C.Nos.107/2010 and 131/2006 and consider the matter for the offence under Section 302 of IPC.
- (ii) The judgment of acquittal passed by the Trial Court dated **28.10.2017** in **S.C.No.131/2006** is set aside by allowing Criminal Appeal No.740/2018 and Criminal Appeal No.450/2018 and matter is remanded to the Trial Court for the limited purpose to frame a charge for the offence under Section 302 of IPC and give a definite finding to that effect, keeping in view the observations made by this Court and there is no need to re-examine the material in respect of other offences as already finding is given that evidence corroborates with regard to other offences.

- (iii) The State as well as the respondent/accused are directed to appear voluntarily before the Trial Court on **17.09.2026**, without fail and not to expect any notice.
- (iv) The Trial Court is directed to dispose of the matter within a period of 4 months from **17.09.2026**, since incident took place in the year 2004.
- (v) The Registry is directed to communicate this order forthwith to the concerned Court and transmit the file to the concerned Court forthwith to enable the Trial Court to take up the matter on **17.09.2026** without fail.
- (vi) The State as well as learned counsel for respondent/accused are directed to assist the Trial Court in disposal of the case within a time bound period of four months by taking up the matter on day-to-day basis.
- (vii) The observations made hereinabove shall not influence the Trial Court while considering matter on merits invoking the offence under Section 302 of IPC.
- (viii) The Registrar General is directed to communicate this judgment to the Director General of Police and Inspector General of

Police of the State to sensitize the Investigating Officers of the State, who are conducting investigation for serious offences in the State and the present judgment educates the role of the Investigating Officers and make use of this judgment as a part of training as already directed by this Court to provide training to them in the earlier Criminal Appeal No.232/2025 dated 16.02.2026, since lapses are noticed by this Court on the part of the Investigating Officers.

- (ix) The Registrar General is also directed to communicate this judgment to the Principal Secretary to Health Department and sensitize the Doctors, who conduct Post-mortem in the State, since this judgment educates them to conduct post-mortem, since lapses are noticed by this Court on the part of the Doctors in conducting post-mortem and organize training programme to them forthwith.
- (x) The Registry is directed to send a copy of this judgment, forthwith to the Director General of Police and Inspector General of Police as well as Principal Secretary to the Health

Department, to enable them to comply with directions of this Court.

- (xi) The Director General of Police and Inspector General of Police and Principal Secretary to the Health Department are directed to comply with the direction by communicating this judgment within one month and report to this Court within 45 days from the date of pronouncement of this judgment and the Registry is directed to list this matter before this Court on **04.11.2026** regarding compliance.
- (xii) The State Public Prosecutor is directed to see that this direction is complied within the time stipulated above by both the departments.
- (xiii) The Trial Judge is also directed to consider the judgment of Apex Court **GAJOO v. STATE OF UTTARAKHAND** reported in **(2012) 9 SCC 532** with regard to lapses on the part of Investing Officer and so also the judgment of the Apex Court in **DAYAL SINGH & ORS. v. STATE OF UTTARANCHAL** reported in **AIR 2012 SUPREME COURT 3046** with regard to methodology of Investigating Officer to follow the police manual and doctor connected to follow known canons of medical practice and

pass appropriate order keeping in view the principles laid down in the above judgments with respect to the lapses on the part of the Investigating Officer as well as the Doctors, in view of the discussion made in the judgments and also keeping in view the observations made by this Court while disposing of the case on merits and direct the competent authority to initiate action against both of them.

List these matters on **04.11.2026** to report compliance.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

SN/MD/ST