

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2016

Pronounced on : 21.09.2016

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Criminal Appeal No.762 of 2009

1.Ravishankar
2.Ponni

.... Appellants/A1 & A2

Vs

State represented by
Deputy Superintendent of Police,
Dharmapuri.
(Cr.No.1515/2004 Dharmapuri
Police Station)

.... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C.,
praying to set aside the conviction and sentence imposed on the
Appellants by the learned Additional Sessions Judge/Fast Track
Court, Dharmapuri by Judgment dated 30.10.2009 in S.C.No.12 of
2007 and to acquit them.

For Appellants : Mr.R.Thirugnanam

For M/s.CH.Pandian

For Respondent : Mr.P.Govindarajan

Additional Public Prosecutor

JUDGMENT

The Appellants have focused the present Criminal Appeal
before this Court as against the Judgment dated 30.10.2009 in
S.C.No.12 of 2007 passed by the Learned Additional Sessions
Judge, (Fast Track Court), Dharmapuri.

2.The Learned Additional Sessions Judge, (Fast Track
Court), Dharmapuri, while passing the impugned Judgment in
S.C.No.12 of 2007 on 30.10.2009, had, among other things,
observed that 'on consideration of the pleas of the
Appellants/A1 and A2 to the effect that they were not affluent
and hence, prayed for awarding of lower punishment and further

considering the facts of the case, after rejecting the pleas found the Appellants/ A1 and A2 guilty under Section 498-A of the Indian Penal Code and awarded one year Rigorous imprisonment each, together with an imposition of fine of Rs.1000/-, in default of payment of fine, further imposed simple imprisonment of six months. Likewise, the Appellants/A1 and A2 were found guilty under Section 4 of the Dowry Prohibition Act, 1961 and imposed with punishment of each six months Rigorous imprisonment and awarded a fine of Rs.500/-, in default of payment of fine further imposed one month simple imprisonment. Similarly, in respect of an offence under Section 304-B, the Appellants/A1 and A2 were found guilty and they were awarded with a Rigorous Imprisonment of 7 years each and was directed to pay a sum of Rs.1000/- each as fine, in default of payment of fine, each of them were directed to undergo default sentence of six months simple imprisonment. However, the Accused No.3 was acquitted, since the charges levelled against him were not proved.

3. Assailing the Legality, validity and correctness of the Judgment dated 30.10.2009 in S.C.No.12 of 2007 passed by the trial Court, the Learned Counsel for the Appellants/A1 and A2 submits that the trial Court had committed an error in convicting the Appellants/A1 and A2 and had failed to take into account a prime fact that the Respondent/ Prosecution had failed to establish the case beyond all reasonable doubt.

4. The Learned Counsel for the Appellants/A1 and A2 contends that the trial Court had failed to take into account of yet another fact that apart from the interested testimonies of P.W.1 and P.W.2, no other independent witnesses were examined to corroborate the prosecution case, which goes to the root of the matter.

5. Expatiating his submission, the Learned Counsel for the Appellants proceeds to take a stand that according to the Respondent/ Prosecution, P.W.1 gave a complaint on 28.12.2004 at 2.00 p.m. and that the Ex.P.8-F.I.R. was registered by the Police, but P.W.1 (in cross examination) had categorically deposed that he gave a complaint to the Police on the night of 27.12.2004 and that the Police came to the village at 8.00 a.m. the next day. Therefore, it is the plea that the instant Ex.P.1-Complaint and Ex.P.8-F.I.R. were created by the Respondent/Police for the purpose of this case.

6. Continuing further, it is represented on behalf of the Appellants that P.W.1 is an illiterate and that Ex.P.1-Complaint was a neatly typed one and besides this P.W.1 had categorically deposed that he was not aware of the contents of the Ex.P.1-Complaint and under these circumstances, the trial Court should have rejected the version of the prosecution.

7. That apart, it is the plea of the Appellants that the trial Court had failed to appreciate that P.W.2, who spoke about the alleged demand of dowry by the Appellants and the Panchayat, is a close relative of P.W.1 and since his evidence is interested one, the same should not have been taken into account by the trial Court.

8. The Learned Counsel for the Appellants submits that the trial Court had failed to take into account of the fact that the occurrence took place in a Village and no one from that village was examined to speak about the alleged cruelty and torture of Chitra by the Appellants/A1 and A2 when admittedly there were number of houses nearby Appellants house.

9. Added further, the Learned Counsel for the Appellants brings it to the notice of this Court that there was absolutely no evidence to show that there was a demand of dowry immediately before the occurrence and in such circumstances, the conviction under Section 304-B I.P.C. is unsustainable in the eye of Law.

10. On the side of the Appellants, it is projected by this Court that even though P.W.1 had specifically stated in his evidence that one month prior to the occurrence he gave a complaint before the Mahendramangalam Police about the alleged cruelty and torture of her daughter for dowry by the Appellants, the Respondent/Prosecution had not made any endeavour to verify the said fact and this aspect was fatal to the case of the prosecution.

11. It is the submission of the Learned Counsel for the Appellants that the defence put forth by the Appellants (A1 and A2 before the trial Court) that the deceased was having an affair with another person and that her parents had disowned her and when this was brought to their knowledge and because of that only the deceased had committed suicide, was not taken into account by the trial Court and this had resulted in miscarriage of Justice.

12. The Learned Counsel for the Appellants contends that registration of F.I.R. at 2.00 p.m. is a doubtful one and even before registering the First Information Report, the Police came to the scene of occurrence and in fact, the registration of F.I.R. casts a doubt, besides the same being a fabricated one.

13. The Learned Counsel for the Appellants submits that the ingredients of Section 304-B I.P.C. are not attracted in the facts of the present case. Also that, there was no evidence to show that there was a demand of dowry harassment and cruelty meted out to the deceased by the Appellants.

14.The Learned Counsel for the Appellants also takes a stand that there is no evidence, in the instant case, as to who had caused injuries on the body of the deceased Chitra. As a matter of fact, it is also the plea of the Appellants that there is no evidence in the present case to show that the Appellants/Accused had caused the injuries mentioned in the Postmortem Report - Ex.P.5.

15.The Learned Counsel for the Appellants/A1 and A2 cites the Division Bench decision of this Court R.Baskar V. State by Inspector of Police, Perambalur Police Station, reported in 2013 (3) MWN (Cr.) 16, wherein at paragraph 16-A, it is observed as follows:

"16-A. Yet another serious disturbing feature in this case is that the possibility of the suppression of the earlier report cannot be ruled out. PW1 admitted in his cross examination that the Police station is only 10 feet away from the scene and as such, on hearing the hue and cry, the Police could have very well arrived at the scene immediately. Accordingly, PW1 also admitted that on hearing the hue and cry, the Police arrived at the scene. PW2 categorically admitted in his cross examination that on hearing the hue and cry nearly 40 to 50 persons arrived at the scene and Police constables came from the nearby Police station and chased the accused. It is further admitted that Police recorded his statement at 9.30 a.m. itself whereas the present version of the prosecution is that the F.I.R. itself was registered at 9.45 a.m. PW3 also admitted in his cross examination that the Police came to the scene immediately after the occurrence and chased the accused. PW7, the Secretary of the Moulana School, in which the deceased worked, also stated in his chief examination itself that he rushed to the scene at 9.00 a.m. on hearing the hue and cry and at that time, the Police was also present along with PW1. PW8, the Village Administrative Officer admitted in his cross examination that he went to the scene of occurrence at 9.30 a.m. and at that time itself, 3 to 4 Police officials were present at the scene. All these clear, consistent and categorical version of the above said witnesses makes it crystal clear that the Police could have very well rushed to the scene immediately after the occurrence and

they could have recorded the report either from PW1 or PW2, the eyewitnesses in this case and as such, the possibility of suppression of the earlier report cannot be ruled out. The said factor raises serious doubt about the genuineness of the report Ex.P1 in this case. Therefore, we have no hesitation to hold that the present report Ex.P1 is nothing but a fabricated document. At this juncture, it is relevant to refer a decision of the Hon'ble Apex Court in Marudhanal Augusti v. State of Kerala reported in AIR 1980 SC 638, wherein the Hon'ble Apex Court has held as follows:-

".. the entire fabric of the prosecution case would collapse if the First Information Report is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence...."

The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also, we have already held that there is serious doubt about the genuineness of the report, Ex.P1 and the F.I.R in this case is a fabricated document and as such, the entire prosecution case would collapse."

16.The Learned Counsel for the Appellants relies on the decision of the Hon'ble Supreme Court Major Singh and others V. State of Punjab, reported in 2015(2) MWN (Cr.) 132 (SC), wherein at paragraph 15, it is observed as follows:

"15. To attract conviction under Section 304B IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of Hira Lal & Ors. vs. State(Govt. of NCT) Delhi, (2003) 8 SCC 80, in paragraph (9) it was observed as under:- "9. A conjoint reading of Section 113-B of the Evidence Act and Section 304- B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The

prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [Section 113-B](#) of the Evidence Act. The expression "soon before her death" used in the substantive [Section 304-B](#) IPC and [Section 113-B](#) of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in [Section 114](#) Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to

disturb the mental equilibrium of the woman concerned, it would be of no consequence."

16. Same principle was also expressed in State of A.P. vs. Raj Gopal Asawa & Anr., (2004) 4 SCC 470; Balwant Singh & Anr. vs. State of Punjab, (2004) 7 SCC 724, Kaliyaperumal & Anr. vs. State of Tamil Nadu, (2004) 9 SCC 157; Kamesh Panjiyar @ Kamlesh Panjiyar vs. State of Bihar, (2005) 2 SCC 388; Harjit Singh vs. State of Punjab, (2006) 1 SCC 463; Biswajit Halder @ Babu Halder & Ors. vs. State of West Bengal, (2008) 1 SCC 202 and Narayanamurthy vs. State of Karnataka & Anr, (2008) 16 SCC 512."

17. In response, it is the submission of the Learned Additional Public Prosecutor for the Respondent that the trial Court, on an examination of appreciation of the entire oral evidence of P.W.1 to P.W.9 and documentary evidence viz., Exs.P.1 to P.17, had come to a conclusion that the charges levelled against the A1 and A2 in respect of an offence under Section 498-A, in respect of an offence under Section 4 of the Dowry Prohibition Act, 1961 and the charge in respect of an offence under Section 304-B were proved and after finding them guilty, awarded necessary punishments. In respect of A3, the trial Court had acquitted him in respect of the offences under Section 498-A and Section 4 of the Dowry Prohibition Act, 1961. As such, the Judgment of the trial Court in S.C.No.12 of 2007 dated 30.10.2009 does not suffer from any material irregularity or patent illegality in the eye of Law.

18. At this stage, this Court relevantly points out that to attract an offence under the ingredients of Section 498-A of the Indian Penal Code, the Prosecuting Agency is to establish that a woman was subjected to cruelty as specified in Clause (a) or Clause (b) to Explanation of Section 498-A I.P.C. Furthermore, the woman must be married. That apart, that the cruelty was shown either by her husband or his relatives.

19. It is to be remembered that an offence under Section 498-A I.P.C. should have the prime ingredient that the cruelty/harassment meted out on the victim (woman) was with a view to satisfy the demand for dowry. Also that, the wilful conduct of the husband or relative of the husband of such a nature as is likely to force the woman to commit suicide or to cause grave injury to her life, limb or health. In fact, the afore stated injury may be physical or mental. No doubt, it is a herculean task to determine the term 'Cruelty' by means of a clearcut definition, because of the reason that 'Cruelty' is a

relative term. Besides this, in case of dowry death, the death of the woman should be caused by burns or bodily injuries or otherwise than under normal circumstances.

20. It cannot be gainsaid that 'Mens Rea' is a basic ingredient of the offence under Section 498-A I.P.C. Even a mental torture will give rise to 'Cruelty' in a certain situation. As regards the proving of dowry death, the onus is on the Prosecuting Agency to establish (i) there was an unnatural death of a woman; (ii) that the woman was married within 7 years prior to her unnatural death; (iii) soon before her death she was subjected to cruelty or harassment. In this connection, it is to be pertinently pointed out by this Court that in respect of a 'Dowry Death Case', the presumption under Section 113-B of the Indian Evidence Act, 1872 is a presumption of Law. In so far as the just demand of dowry is concerned, the same is punishable under Section 4 of the Dowry Prohibition Act, 1961 and the existence of element of cruelty is not necessary.

21. In the light of aforesaid ingredients, it is just and proper for this Court to analyse the evidence of prosecution witnesses as well as the defence with care and caution. In the instant case, the first charge levelled against the Appellants/A1, A2 and A3 is that the 1st Appellant/ A1 on 11.04.2001 married Chitra at Dharmapuri Subramania Swamy Temple and was running a family at Door No.39/D Ulavar Street, Kumarasamy Pettai, Dharmapuri along with his mother (A2) and brother (A3) and on various occasions, they demanded a sum of Rs.2000/-, Rs.3000/-, Rs.5000/- as Dowry from Chitra and on refusal to pay the same, she was beaten with hands by causing cruelty and have committed an offence under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961. The second charge levelled against the Appellants/A1, A2 and A3 is that they demanded dowry from Chitra and harassed beating her as a result of which with broken heart on 27.12.2004 at 9.00 a.m. in the morning she consumed 'Monocrotophos' (Pesticide) and committed suicide which is liable to be punishable under Section 304-B I.P.C.

22. Before the trial Court, it is the evidence of P.W.1, (father of deceased Chitra) that her daughter Chitra (deceased) was married on 13.04.2001 to the 1st Appellant/A1 (based on the decision of elders) and that the 1st Appellant/A1 is his son-in-law and the 2nd Appellant/A2 is the mother of the 1st Appellant/A1 and that A3 is the brother of 1st Appellant/A1. P.W.1, proceeds to add in his evidence that the 1st Appellant/A1 was given ½ sovereign ring and he was also given a sum of Rs.25,000/- for purchase of two wheeler and that the marriage took place at Dharmapuri.

23.P.W.1 in his evidence had deposed that his Son-in-Law, the 1st Appellant/A1 and his daughter lived at Dharmapuri happily for a period of one year and thereafter, his daughter and his son-in-law informed that they were proceeding to Hosur for work and they went to Hosur after vacating their family and that for six months, they lived properly and thereafter, he had not known what was the problem between the two and that the 1st Appellant/A1 brought his daughter and left her in their house, at that time, he was not in the house.

24.It is the evidence of P.W.1 that he enquired with the daughter on his return to the house and she informed him that as demanded the dowry money was not given and therefore, she was left by the 1st Appellant/A1 in his house and that on the next day, he went for work and at that time, his son-in-law viz., 1st Appellant/A1 came to his house and created trouble with his daughter which he came to know at the work spot through person. Subsequently, he returned from his working place after two or three days and when he was in the house for two or three days, at that time his son-in-law, 1st Appellant/ A1 had not come to his house. Further, 1st Appellant/A1, his mother and another person came to his house and at that time, he was present and they informed him that a quarrel took place between his daughter and his son-in-law and hence, they were going in for compromise and that he along with 10 elders in his village talked over the issue and in their presence sent his daughter and in the said negotiations, Rajammal, Kathavarayan, Mannan, Chinnasamy, Rajadurai (deceased) took part and apart from these persons also there were four or five persons and he sent his daughter with the 1st Appellant/A1 (son-in-law) along with his mother (A2) and further that they resided at Dharmapuri and later his daughter was 7 months pregnant and he informed them at the 9th month that he would take his daughter to his house and thereafter he went to Bangalore for job and when he was in Bangalore for work, after four days, the 1st Appellant/A1 had beat his daughter and brought her to his village and at that time, the people in the village bus stop asked that whether it was just to leave a pregnant lady at the beginning of the road when there were no persons in her house and again they talked to the 1st Appellant/A1 and asked him to take her back and sent them.

25.Continuing further, it is the evidence of P.W.1 that when he came to his house during evening, he was informed by his village people that his daughter was about to be left in his home and two or three days later, he went his son-in-law's (1st Appellant/A1) house at Dharmapuri and questioned him by stating that already he had left his daughter in his house and why when he was not in the house, his daughter was about to be left at the outside of the house and subsequently, he informed that after four days, he would take a daughter and proceeded from there and when they waited for Wednesday, they received an

information (through some other person) on the evening of Monday that their daughter had consumed poison and when they went to the hospital to see their daughter but she was not there and when he went and saw her, he found her dead and kept in a sleeping posture with garland. He also saw that his daughter had sustained injuries on the left ear side, stomach, back of the head, in two thighs, on her mouth and a contusion on neck portion and when he asked all about these, no one gave a reply and later he went to the Police station and lodged a Complaint-Ex.P.1 stating that there was suspicion in her daughter's death and he gave a complaint by saying that his son-in-law (1st Appellant/A1), his mother (A2) and A3 had demanded dowry with his daughter and they treated her cruel and further that he was examined by the Revenue Divisional Officer and the Deputy Superintendent of Police.

26.P.W.1 had deposed that in his cross examination that he came to Kumarasampettai to the house of the Accused on Monday at 8.00 or 9.00 p.m. along with six others from his village and further on the same night, he went to the Police station and gave a complaint and on the next day morning at 8.00 a.m. the Police came and his daughter's body was taken to the hospital at 5.00 p.m. for conducting postmortem. It is also the evidence of P.W.1 that he does not know to write and he used to affix his signature only and that he narrated the incident to the Communist Women Association and they typed and he presented the paper sent by him to the Police station and he does not know what was written in the complaint. Also, he had stated that except the complaint given by him on that night he had not given anything and that he was enquired by the R.D.O. at his office at 10.30 a.m. on the next day and the Deputy Superintendent of Police examined him at his office at 11.00 a.m. in the morning and after R.D.O. enquiry, he went to the D.S.P. Office.

27.P.W.1 proceeds to state in his evidence that he had lodged a complaint one month prior to the death of his daughter and that the Police had not enquired into the complaint and that he had gave a written complaint and he had not mentioned about the lodging of complaint in his R.D.O. enquiry and the D.S.P. enquiry .

28.P.W.2 in his evidence had deposed that he had attended the marriage of the 1st Appellant/A1 with Chitra (deceased) in the year 2001 and that after marriage, they lived happily for two years and because of frequent quarrel stating that the dowry was not enough, the girl was sent to the mother's house for three times and the girl was sent home after compromise being effected by four or five persons and after completion of 9 months for delivery, it was decided to bring the girl to the mother's house for delivery on Wednesday and on previous day

viz., Tuesday, an information was received that the said girl consumed poison and when they went and seen the body of the girl, they found injury on thigh, neck and hand and that P.W.1 had given a complaint. It is the evidence of P.W.2 (in cross examination) that he along with P.W.1 came on Tuesday and had not arrived on Monday and that P.W.1 was his Nephew and prior to the death of Chitra, they effected compromise and sent her and for what reason the 1st Appellant/A1 sent Chitra to her mother's house, he had not known the same and that she remained in her mother's house for 15 to 20 days thereafter.

29.P.W.3, in her evidence, had deposed that she was informed by two sons on Monday that Chitra had consumed poison and that she was in hospital and her parents were required to come and since her son was wearing a bead, she had sent her husband and that Chitra expired and her body was being brought and the reason for her death was due to demand of dowry and that she was not examined by the Police and the R.D.O. In fact, P.W.3 was treated as hostile witness by the trial Court.

30.It is the evidence of P.W.4 that he was serving as V.A.O., A Jettihalli Village and in the year 2004 he worked as V.A.O., Vellagoundan Palayam and he came to know on 28.12.2004 at Kumarasampettai, there was dead body and he went along with R.D.O., his Assistant-Nanjappan to the said place and the D.S.P. also came to that place and that he inspected the place and prepared the Ex.P.2-Observation Mahazar and in the Kitchen room, the pesticide box was seized and in the Observation Mahazar, he and his Assistant- Nanjappan affixed their signature and likewise, in the Mahazar-Ex.P.3 prepared, he was obtained his signature and M.O.1 was the pesticide box.

31.P.W.5 in his evidence had deposed that at the time of occurrence while he was serving as Head Constable at Dharmapuri Police Station on 28.12.2004 in Police Station Crime No.1515/2004 under Section 174 Cr.P.C. he received his requisition of R.D.O. with a view to ascertain the death of Chitra and took the body of said Chitra to the Dharmapuri Government Hospital and after completion of postmortem handed over the body to the relatives and further that he brought the following articles: M.O.2 - two silver anklet, Mangal Sutra - M.O.3, two Brass Chain - M.O.4 (4 series), silver ring/Metti (on the second toe) - M.O.5 series and broken glass small bangle pieces - M.O.6 series, one saree - M.O.7, one jacket - M.O.8, white colour inscirt - M.O.9 to the station and handed over the same.

32.P.W.6, the Doctor in his evidence had deposed that on 28.12.2004 while he was on duty based on the request of R.D.O., he conducted postmortem on the dead body of Chitra aged about 25 and the letter of requisition is Ex.P.4 and that the postmortem

was carried out on 29.12.2004 from 1.00 p.m. to 2.00 p.m. and on found the following injuries (i) a contusion on the right side thigh at 3 x 2 c.m. Size; (ii) a contusion on the left side cheek; (iii) in the nose whole bleed was oozing out; There was liquid found in the woman's part and there were stools at the mouth of the rectum. The contusion at 18 x 6 c.m. size on the stomach left portion. A contusion 8 x 4 c.m. on the right side forehead and back of the left side of the skull, there was contusion at 10 x 4 c.m.

33.P.W.6 - the Doctor, on internal examination of the dead body, had, inter alia, found that in the uterus, there was dead male child with full growth and that the stomach, liver, kidneys were sent for chemical examination and in the stomach portion, 'Monocrotophos' (poisonous substance) was found and the same was not found in the liver and kidneys. Indeed, the Doctor's Postmortem Report was marked as Ex.P.5 and Viscera Report was marked as Ex.P.6 and Pathology was marked as Ex.P.7. As a matter of fact, P.W.6 - Doctor had opined that because of the consumption of 'Monocrotophos' by Chitra, she would have died prior to his examination 48 to 22 hours before and also was of the view that the injuries sustained by Chitra were caused prior to her death and that there was a possibility for sustaining of those injuries by the beating of stick and hand.

34.P.W.7 in his evidence had stated that on 28.12.2004 while he was serving as Sub Inspector of Police of Mathikonpalayam, he was in-charge of B.1 Police Station and at that time, during afternoon P.W.1 came to the Police Station and gave a typed complaint in writing which he received and registered a case in Crime No.1515/2004 under Section 174 Cr.P.C. (suspicion death) and since the deceased girl was married four years ago, he sent the copy of case enquiry to the R.D.O., Dharmapuri, D.S.P., Dharmapuri and also sent copy of the First Information Report and Ex.P.8 is the F.I.R. prepared by him and that he was examined by the Deputy Superintendent of Police. P.W.7 (in his cross cross examination) had deposed that on 27.12.2004 he was not in-charge of B.1 Police Station and he does not know that a complaint was given earlier and that the complaint given to him for the first time was not a correct one.

35.P.W.8 - R.D.O., in his evidence, had deposed that based on the information he obtained, as per F.I.R. dated 27.12.2004 that at Om Sakthi Street, Kumarasampettai, Dharmapuri District, the 1st Appellant's/A.1's wife Chitra had consumed poison on 27.12.2004, he went to the Kumarasampettai and conducted an inquest report on the body of Chitra and examined the witnesses who were summoned and in the presence of Panchayatdars and prepared a report which is Ex.P.9 and also gave a requisition letter to the Doctor and to the Dharmapuri Sub Inspector with a view to ascertain the case of death and the said requisition was

given to the Constable, Dhanapal along with dead body.

36.It is the evidence of P.W.9 (Investigating Officer) that he received the First Information Report in Dharmapuri Police station in Crime No.1515/2004 under Section 174 Cr.P.C. (suspicion death) and took up the further investigation and that on 28.12.2004 he went to the Kumarasampettai, the place of occurrence at evening 16 hours (the farmers shandy) and inspected the house of Ponni and in the presence of witnesses Nithyanantham, Nanjappan prepared Observation Mahazar, Sketch - Ex.P.12 and examined the witnesses Subramani, Muniammal, Mannan, Chinnasamy, Raja, Kathavarayan, Rajammal, Rajendran, Mallika etc. and recorded their statements individually and took Photo-M.O.10 through witness Maruthu (Photographer) and recorded his statement on the same day. Subsequently, he examined the Doctor-Sivakumar, who conducted postmortem on the dead body and also examined one Giriya and obtained a Postmortem Certificate by recording their statements. Also he enquired Dr.Vallinayagam, who examined the Hyoid bone and obtained a Report - Ex.P.3 and opinion - Ex.P.14 and seized the articles found on the body of the deceased through witness Dhanapal and obtained a special report from him and transmitted the said belongings/articles to the Court under Form 95. He also examined the Sub-Inspector of Police who registered the First Information Report and the R.D.O. had obtained their statements. Further, his predecessor Kuppusamy (D.S.P.) arrested the 1st Appellant/A1, 2nd Appellant/A2 and sent them to Judicial custody and since the said Kuppusamy had expired, he is tendering evidence on his behalf and that based on the report of R.D.O., on 15.02.2005 he altered the case Section from 174 Cr.P.C. to 304 I.P.C. P.W.9 (in his cross examination) had specifically denied that because of the illicit connection of Chitra, her parents isolated her and therefore, she felt heart broken and commit suicide.

37.D.W.1 in her evidence had deposed that she knew the 1st Appellant/A1's wife Chitra (since deceased) and that approximately 4 years before she went to a shop for the purpose of visiting Om Sakthi Temple and that A3 was working at Uthankarai Tailor Shop and he used to stay there and by doing his work and that he used to go to Dharmapuri once in a month or 15 days.

38.It is the further evidence of D.W.1 that A.2's job was to cook for persons who were studying at Nurse Training Hostel and that A2 used to go to the hostel early morning at 5.30 a.m. and used to return to the house at 12.00 noon or 1.00 p.m. Further, it is the evidence of D.W.1 that the 1st Appellant/A1 was working at Dharmapuri Prabhakaran's Match Factory and he used to return at evening 6.00 p.m. when he proceeded for work at morning 6.00 a.m. Also, it is the evidence of D.W.1 that she went to the job and returned at 1.30 p.m. in the afternoon and

she was washing her clothes in the bathroom and at that time A2 returned from work and when A.2 (Ponnammal) went inside the house and Chitra was lying and when she came out shouting stating that foam protruding in Chitra's mouth and they went and saw the same and an auto driver was brought him by A.2 and he informed that Chitra had expired and therefore, there was no necessity to take her to the hospital and immediately Chitra's mother-in-law sent one person to the Chitra's house and the parents of the said Chitra arrived at that night and on the next day some people came and the persons who came had beat the Accused and they ransacked the articles of the house and later a case was filed.

39. Besides the above, it is the clearcut evidence of D.W.1 that the Accused were not responsible in any manner in regard to the death of Chitra and that they had not quarrelled with Chitra and also not cruelly treated her and also not demanded jewels or money and that Chitra was kept properly. D.W.1 (in her cross examination) significantly had deposed that she had not known the details of what was the problem in the Accused.

40. At this juncture, this Court pertinently points out that it is quite evident from the Ex.P.1 - Complaint lodged by P.W.1 that instead of vehicle being given to the son-in-law (1st Appellant/A1), he was given a sum of Rs.25,000/- and further that after marriage of their daughter, her mother-in-law's (A2 - Ponnammal) and her brother-in-law's (A3 - Prabhu) instigation, the 1st Appellant/A1, their son-in-law quite often beat her daughter and sent her to their house by asking her to get more dowry and when her daughter (deceased Chitra) was came to their house every time she was given Rs.1000/-, Rs.500/- respectively. In fact, Ex.P.1 - complaint given by P.W.1 unerringly points out that her daughter, after compromise talk by her husband, mother-in-law, Dharmapuri, was taken to their home along with her husband (1st Appellant/A1), 2nd Appellant/A2 (mother-in-law) and their Dharmapuri relatives. Furthermore, in Ex.P.1- Complaint it was also stated that they came to know that the person sent by son-in-law in the village that her daughter died on 27.12.2004 (Monday) and on coming to know of the same, her daughter had found injury on her face, neck and hands and upon an enquiry made in this regard, there was no proper reply.

41. Really speaking, in Ex.P.1 - Complaint given by P.W.1, he had stated that he had a suspicion that her daughter based on dowry harassment/cruelty of her husband (1st Appellant/A1), mother-in-law (A2 - Ponnammal) and brother-in-law (A3- Prabhu), they had beat her and murdered.

42. As a matter of fact, P.W.1 (Complainant - father of deceased Chitra), in his evidence, had deposed that his son-in-law (1st Appellant /A1) was given a sum of Rs.25,000/- towards

purchase of ½ sovereign ring and a two wheeler. P.W.2 (who had known the deceased Chitra and the Accused) in his evidence had stated that he had attended the marriage of Chitra and they lived well after marriage for two years and three times, the said Chitra was sent to her mother's home stating that the dowry given was not enough and there was frequent quarrel in this regard and that four or five persons (including himself) had compromised and sent Chitra along with her husband (1st Appellant/A1) to her home. Also P.W.2 in evidence had stated that when he went and saw the body of Chitra, he found injuries on her thigh, neck and hands.

43.As regards the aspect of dowry harassment, P.W.1 and P.W.2 had deposed before the trial Court and their evidences in this regard were cogent, coherent and it inspires the confidence of this Court.

44.Coming to the aspect of Ex.P.1-P.8 - F.I.R. wherein it was mentioned that the information was received in writing at the Dharmapuri Police Station on 28.12.2004 at 14 hours. The date of occurrence was mentioned as 'the evening of 27.12.2004' at serial No.8 of Ex.P.8 - F.I.R., the reason for the delay in lodging the complaint was attributed on the complainant's part.

45.In this regard, a mere glance of Ex.P.1 - typed complaint given by P.W.1 (Complainant) - father of deceased Chitra shows that the place and date were mentioned as 'Kumarasampettai, Dharmapuri' and '28.12.2004' in black ink. In fact, the Complainant (P.W.1) had signed the Ex.P.1 - Complaint by affixing his signature in Tamil that too in blue ink. Based on Ex.P.1 (typed complaint) lodged by P.W.1, the Mathikonpalayam Police Station in charge Dharmapuri Town Police Station had registered a case of suspicious death in Dharmapuri Police Station Crime No.1515/2004 under Section 174 Cr.P.C. on 28.12.2004 at 14 hours. In fact, P.W.7 had categorically stated in his evidence that P.W.1 (Complainant) appeared in person before the Police Station and based on his typed complaint, he registered a suspicious death under Section 174 Cr.P.C. in Police Station Crime No.1515/2004 etc. Hence, one can safely conclude that Ex.P.1 (typed complaint) was given by P.W.1 (father of deceased Chitra) only on 28.12.2004 and not on earlier date. Furthermore, it was the evidence of P.W.1 (Complainant) before the trial Court (in cross examination) that he does not know the contents of the complaint that he had submitted this signed paper wherein the contents of the incident were typed in detail by the Communist Women Association with whom he had spoken about the incident/occurrence. As such, the contra plea taken on behalf of the Appellants/A1 and A2 that the Ex.P.8 - F.I.R. is a doubtful and fabricated one, is not

accepted by this Court.

46. Dealing with the aspect of P.W.2 evidence that even before registering the First Information Report, the Police came to the scene of occurrence, at 8.00 a.m. in the morning, it is to be pointed out by this Court that the arrival of the Police at the scene of occurrence prior to registration of F.I.R. does not in any way affect the credibility of the prosecution, in the considered opinion of this Court. Moreover, P.W.2 (in his cross examination) had not crystalline fashion, deposed that on Tuesday he came along with P.W.1 and that they had not come on Monday and further P.W.1 (father of the deceased Chitra) informed him on Tuesday that a complaint would be given at afternoon 3.00 p.m. Therefore, the evidence of P.W.2 more or less synchronizes with the factum of information being received at the Dharmapuri Police Station on 28.12.2004 at 14 hours, as described in Ex.P.8 - F.I.R., in the considered opinion of this Court. Even the evidence of P.W.3, it is evident that she, Mannan, her husband - Kathavarayan and Chinnasamy, all the four persons had sent her daughter for leading a peaceful life. She had also stated that deceased Chitra after marriage lived for 1 ½ years properly and thereafter, Chitra's mother-in-law and Chitra's husband demanded more jewels and picked up a quarrel with them. In short, even the evidence of P.W.3 corroborates the testimonies of P.W.1 and P.W.2 in regard to the demand of dowry.

47. To put it succinctly, in the present case, the evidence of P.W.2 are clearcut pertaining to the demand of dowry although they are relatives of the deceased Chitra and their evidence in this regard cannot be brushed aside in any manner. As regards the non-recovery of stick from the Appellants/A1 and A2 from their possession or otherwise, the same is in immaterial one and relegates to the background considering the facts and circumstances of the present case which float on the surface.

48. P.W.8 (R.D.O.) in his evidence had stated that in the course of enquiry it came to light that the deceased Chitra's husband, mother-in-law and father-in-law frequently demanded monetry from her and caused cruelty/harassment to her. Further, he had stated that based on the report of the postmortem, the reason for the death of Chitra was due to dowry harassment and pursuant thereto she was sent to her mother's residence requiring her to get money. In so far as the R.D.O.'s Report - Ex.P.11 dated 24.01.2005 is concerned, it comes to be known that the 1st Appellant/A1 had stated in his statement that he was on duty on the evening of Monday at 3.15 p.m. and that his maternal uncle came to his company and informed him that his wife (Chitra) had consumed poison etc. In fact, A3 (Prabhu), in his statement before the R.D.O., had stated that his brother 1st Appellant/A1 and his wife Chitra lived together happily and on some occasions, some problems erupted and later they would

compromise themselves and his brother (A1) was lastly working at Prabhakar Match Factory and he used to go for work in the morning 6'o clock and return to work at 1.00 p.m. Also, D.W.1 in her evidence had stated that 1st Appellant/A1 was working at Dharmapuri Prabhakar's Match Fact and he used to go for work at 6'o clock in the morning and return at evening 6.00 p.m. Apart from that, D.W.1 in her evidence, also stated that at about 1.30 p.m. in the afternoon when she returned from the shop to her house and was washing her clothes in the bathroom at that time, the 2nd Appellant/A2 returned from her work. Hence, it is quite clear that the Appellants/A1 and A2 undoubtedly would have known about certain facts/circumstances within their knowledge and it is for them to prove the same which could support in all 'Hypothesis or Theory' compatible with their innocence.

49. In Law, the ingredients of Section 106 of the Indian Evidence Act, 1872, must be confined to a case where the facts are especially within the domain/knowledge of any person and furthermore, when the matter is within the knowledge of the concerned persons, it is their prime duty to expound the facts personally known to them to tender evidence on their behalf and subject themselves for cross examination.

50. In reality, Section 106 of the Indian Evidence Act, is an exception to the General Rule contained in Section 101 of the Evidence Act viz., that the onus is on the person who asserts a fact. Furthermore, the principle enunciated under Section 106 of the Indian Evidence Act, 1872 (which is an exception to the General Rule) governing 'burden of proof' applies only to such matters of defence which are supposed to be within the purview of the concerned individuals. It cannot apply when the said facts are capable of being known also by persons other than the concerned.

51. In so far as the ingredients of Section 113-B of the Indian Evidence Act is concerned, it is obligatory on the part of a Court of Law to raise a presumption that the Accused caused the dowry death, as per decision of the Hon'ble Supreme Court in Rajinder Kumar V. State of Haryana reported in (2015) 4 SCC 215 (para -15). In the case of dowry death, it is held that the actual participation of husband or his relative in the commission of an offence is not required to be established, as per decision Ramarao V. State of Andra Pradesh, 1990 Cr1.L.J. 1666. Once the prosecution is able to prove the ingredients of Section 304-B I.P.C., the presumption against the Accused begins, as per Section 113-B of the Indian Evidence Act, 1872. No doubt, the said presumption is a rebuttable one and it is for the Accused against whom the presumption lies to discharge it, as per decision of the Hon'ble Supreme Court in Satbir Singh V. State of Haryana reported in AIR 2005 SC 3546, 3548 (para 7). In fact, if the harassment or cruelty or demand for dowry is shown

to have continued/persisted, it shall be construed to be 'soon before death'. In short, there must be a nexus between the demand of dowry, cruelty and harassment, resting upon such demand and the date of death, the test of proximity is to be applied, by a Court of Law. In this connection, it is to be pointed out that a reference to the term 'soon before' in Section 114 illustration (a) of Indian Evidence Act is indeed a quite significant one, as opined by this Court. There is no two opinion of the fact that the words 'soon before her death' is a relative term.

52. In a given Criminal Case, it cannot be forgotten that in the evidence of prosecution witnesses certainly there might be some omissions, discrepancies/contradictions and that by itself would not affect/destroy the fabric of the prosecution case. In fact, the said omissions/contradictions would only point out that the prosecution witnesses had deposed in a native and natural manner because of the fact that the memories of the witnesses do have its own limitations.

53. In view of the foregoing and in the light of detailed qualitative and quantitative discussions as afore stated and also this Court, keeping in mind the evidence of P.W.1, P.W.2 and P.W.3 and considering the attendant facts and circumstances of the instant case, comes to a consequent conclusion that the prosecution had made out a case, in proving the proximate and life link between the effect of cruelty based on dowry demand and the consequent death of Chitra, against the Appellants/A1 and A2 in respect of the offences under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act, 1961 and under Section 304-B I.P.C. and that the Appellants/A1 and A2 were rightly found guilty in respect of the aforesaid Sections. However, this Court, taking note of the facts and circumstances of the case, imposes a punishment of Six years Rigorous imprisonment in respect of an offence under Section 304-B I.P.C. (instead of seven years Rigorous imprisonment imposed by the trial Court). However, in respect of imposition of fine of Rs.1000/- each imposed by the trial Court in respect of an offence under Section 304-B I.P.C., this Court sets aside the same, to prevent an aberration of Justice, since the award of punishment of fine is not envisaged as punishment, as per decision of the Hon'ble Supreme Court in Arun Garg V. State of Punjab, 2004 (5) CTC 150. The Appellants are entitled to claim the refund of the fine amount of Rs.1000/- each paid by them in this regard.

54. Inasmuch as this Court has imposed a punishment of Six years Rigorous imprisonment to the Appellants/A1 and A2 (for the major offence under Section 304-B I.P.C.), this Court is not imposing any separate sentence in respect of an offence under Section 498-A I.P.C. because the same merges with the major offence under Section 304-B I.P.C. Hence, this Court directs the

Appellants/A1 and A2 to claim a sum of Rs.1000/- each paid by them towards fine in S.C.No.12 of 2007 in respect of an offence under Section 498-A I.P.C. from the trial Court as per Law. Further, in respect of the imposition of punishment of six months for an offence under Section 4 of the Dowry Prohibition Act, 1961 and the levy of fine of Rs.500/- each on the Appellants is affirmed by this Court.

55.In fine, the Criminal Appeal is allowed in part in above terms. The Learned Additional Sessions Judge, Fast Track Court, Dharmapuri is directed to take steps to secure the presence of Appellants/A1 and A2 and to immure them in Prison for serving the remaining period of sentence.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl

To

- 1.The Deputy Superintendent of Police,
Dharmapuri.
- 2.The Public Prosecutor,
High Court, Madras.
3. The Learned Additional Sessions Judge
Fast Track Court
Dharmapuri

+1 cc to M/s.CH.Pandian Advocate sr 53557/16

aa19/10/2016

Cr1.A.No.762 of 2009

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