

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16-02-2017

DELIVERED ON : 12.10.2018

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.607 of 2013

Nagarajan ... Appellant/Sole Accused

Vs.

State rep. by
The Deputy Superintendent of Police,
Vedharanyam, Voimedu Police Station,
Nagapattinam District.
Crime No.107 of 2009 ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C.,
against the judgment passed by the learned District and
Sessions Judge, Nagapattinam in S.C.No.127 of 2009 dated
07.03.2012.

For Appellant : M/s. M.Daniel Manoharan and
S.Mohamed Ansar

For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

The above Criminal Appeal is filed u/s 374 of Cr.P.C.
1973 praying to set aside the conviction and sentences imposed
by the learned District and Sessions Judge, Nagapattinam, made
in Sessions Case No.127 of 2009 dated 07-03-2012 against the
appellant/accused.

1.The case of the prosecution:

1.1 The witnesses who deposed as P.W.1 and P.W.2 is the
mother and father of the deceased Umarani while the grandmother
of the deceased is examined as P.W.3. All of them are residing

at Voimedu village. The deceased Umarani is the second daughter of P.W.1 and 2. The appellant/accused Nagarajan who is a Police constable originally belonged to Thennadavur Village and his first wife is no more. As there was some dispute in his village, in view of the death of his first wife, the accused Nagarajan left Thennadavur Village and settled down in Voimedu village about seven years before the date of occurrence. Subsequently, the appellant/accused fell in love with deceased Umarani which was objected to by the Parents of the said Umarani. In spite of her parents warning, the deceased Umarani married the accused and both of them were living in the house of the accused which is situated just 4 houses away from the house of P.W.1 and 2. After the marriage, the deceased and the appellant/accused lived together happily for 4 to 5 months only. Thereafter, the appellant with the intention of getting the property of P.W.1 and 2, who have no other legal heir except the deceased Umarani started torturing Umadevi insisting her to get the property of her parents. The same was intimated to P.W.4 and 5 who frequently compromised between the accused and the deceased. While the deceased subsequently gave birth to a female child and as things stood like that, on 23.06.2009, the deceased came to her parents house and informed P.W.1 and 2 about the torture of the accused demanding property and motorcycle. The deceased also requested her parents to warn the accused properly. While the deceased was in her parents home, P.W.3 her grandmother was also present. After hearing the deceased plea, her parents and grandmother [P.W.1 to 3] came to the house of the accused in the evening to talk to him. They waited at the house of the accused from 7.00 p.m. and he returned home only at about 9.00 p.m. The accused on seeing P.W.1 to 3, at his house, questioned "as to why you have come; have you come to do obsequies to your daughter". After coming inside the house, the accused caught hold of deceased Umarani and cut her hair by using a blade. When the parents of the deceased viz., P.W.1 and 2 tried to prevent the same, they were threatened by the accused. Immediately P.W.1 and 2 left the accused house to inform the Panchayatdars about the occurrence while P.W.3 stayed back in the house of the accused. At that point of time, the appellant/accused poured kerosene on his wife/deceased Umarani and set her ablaze. On hearing the hue and cry raised by the deceased, her parents P.W.1 and 2 rushed back to the house of the accused and found the deceased lying down with burn injuries in her bed room. On seeing the arrival of P.W.1 and 2, the accused ran away from the place of occurrence.

1.2. P.W.4 Chelladurai who is residing in the same village stated that the accused and the deceased got married after loving each other and were living together happily for six months. Thereafter, the accused started to demand cash and

motorcycle and the deceased told him about the torture of her husband. P.W.4 also stated that he met the accused on several occasions and requested him to wait for some time since no other legal heir is available to P.W.1 and 2 and they would do everything to support the accused. As requested by the deceased, on 23.04.2009, at about 9.30 p.m., when P.W.4 went to the house of the accused to advise him, he found P.W.1 to 3 crying outside the house of the accused. When he stepped into the house of the accused, he saw the deceased burning with flames and on seeing him, the accused ran away from the house.

1.3. P.W.5 who is also residing in the same village, on hearing the hue and cry from the house of the accused, on 23.04.2009, went there and found the deceased lying with burn injuries. P.W.4 called the ambulance and the deceased was taken to hospital at Thiruthuraipoondi, by P.W.1 and 2. On arrival in the hospital, the doctors declared Umarani has already died and asked P.W.1 and 2 to take back the body. Thereafter P.W.1 and 2 brought the dead body to their house at Village and on the next day morning as advised by villagers, took the dead body to Government Hospital, Vedaranyam, at 6.00 a.m. Afterwards, the mother of the deceased who deposed as P.W.1 lodged Ex.P.1-FIR / complaint in the Voimedu Police at about 8.30 a.m.

1.4. The Inspector of Police who deposed as P.W.10 stated that after receiving Ex.P.1 complaint on 24.06.2009, at about 8.30 a.m., he registered a case in Crime No.107/2009 under Section 4(1) of Tamil Nadu Prohibition of Harassment of Women Act, and the said FIR is Ex.P.11. He also forwarded a copy of the FIR to R.D.O., and Deputy Superintendent of Police. After receiving the FIR, P.W.9 Rajendran who was the then R.D.O., went to the Government Hospital, Vedaranyam, conducted inquest over the dead body of Umarani and after recording the statement from the witnesses, concluded that the deceased died only due to dowry harassment. The inquest report by him is Ex.P.9 and after sending the body for Post Mortem, he filed his findings Ex.P.10.

1.5. P.W.8 Doctor attached to Government Hospital, Vedaranyam, conducted Post Mortem on the body of the deceased Umarani and noted the following:-

"Appearances found at the post mortem:

A moderately built 90% burnt female body lies on back, III degree burns involving 90% of body no visible.

External Injury:

No ear and mouth discharge. Frothy fluid discharge seen in Nose. Tongue inside the mouth. Teeth complete.

No fracture of hyoid bone. On opening chest, no rib

fracture. External surface of lungs black in colour, Heart normal. On opening abdomen, stomach empty, liver, kidney normal. Skull no fracture. Brain normal.No long bone fracture.

Following Viscera sent for chemical analysis.

- 1.Stomach and its contents
- 2.Intestine and its contents
- 3.Sample liver
- 4.One kidney
- 5.Preservative-Saturated solution of sodium chloride (Nacl)

Death would have been occurred 12 to 24 hours prior to Post mortem. The deceased would appear to have died of pending chemical analysis."

The said doctor issued Ex.P.5-Post Mortem Certificate and according to him, the deceased died due to burn injuries. P.W.7 Head constable handed over the dead body to her relatives after the Post mortem.

1.6. After receipt of copy of FIR PW-11, the Deputy Superintendent of Police took up the case for investigation and went to the place of occurrence and prepared observation mahazar Ex.P.2 in the presence of witnesses and drawn rough sketch Ex.P.12 and also seized the burnt polyester saree and pieces of hair and blade marked as MOs 1 to 3 under Ex.P.3 Mahazar and thereafter examined the witnesses and record the statement and he altered the crime to Under Section 304(B) under Ex.P.13 alteration report. On the same day at 12.30 hours he arrested the accused at Thagattur Bus stop and recorded his voluntary confession in the presence of PW.4 and 5 and the admissible portion of the said confession is Ex.P.4. In pursuant to the same, he seized plastic can, match box and pant as well as shirt marked as MOs 4 to 6 under Ex.P.5 Mahazer. Thereafter he sent the accused to Judicial custody and material objects to the court, examined the witnesses and recorded their statement and also gave requisition under Ex.P.14 to send the material objects to the Forensic Lab and as per the orders of the Court, Ex.P.15, material objects were sent to Forensic Lab. The Chemical Report received from the Lab is Ex.P.16. After completing the investigation he laid the police final report against the accused Under Sections 498(A) and 304(B) IPC.

1.7. After committal of the case, it was made over to Assistant Sessions Judge cum Chief Judicial Magistrate, Nagapattinam and the said court, after framing charges against the accused U/s 4(A) of Tamil Nadu Prohibition of Harassment of Women Act and U/s 498(A) and 304(B) of IPC and after perusing the statement of witnesses, the said court came to the conclusion that in view of the incriminating evidence against

the appellant/accused for having committed homicidal violence, the same court requested the Sessions Court, Nagapattinam to withdraw the case. Accordingly the case was withdrawn from the Assistant Sessions Judge cum Chief Judicial Magistrate, Nagapattinam, by the Sessions Court, Nagapattinam and after giving opportunity framed charges U/s 498(A), 302 and 304(B) IPC. As the accused pleaded not guilty, he was put on trial.

1.8. On the side of Prosecution, PW1 to PW11 were examined, Ex.P1 to P16 and M.O.1 to M.O.6 were marked and on the side of the appellant/accused no witness was examined and no document is marked. On considering the materials on record, the learned District Judge found that the Appellant was not guilty for the offences u/s 302 IPC and acquitted him of the charge U/s 302 IPC but found him guilty for the offences U/s 498(A) and 304(B) of IPC and convicted and sentenced him to undergo RI for 2 years and to pay a fine of Rs.1,000/- in default to undergo 3 months SI for the offence Under Section 498(A) of IPC and to undergo 10 years RI and to pay a fine of Rs.3,000/- in default to undergo 3 months RI for the offences under Section 304(B) of IPC and both the sentences are to run concurrently and set off is allowed U/s 428 of Cr.P.C.

1.9. Aggrieved over the finding of the guilty, conviction and sentence imposed against him U/s 498(A) and 304(B) of IPC, the appellant/accused has preferred this appeal.

2. Heard both sides and perused the records.

3. The learned counsel for the appellant/accused contended that the court below failed to assess the legal consequences of the material inconsistencies contradictions and omissions in the evidence of P.W.1, 2, 4 and 5 regarding the alleged dowry demand which factually affects the case of the prosecution. Except for bald statement of dowry demand made by the interested witnesses, there is no acceptable evidence to prove demand for dowry made by the accused. As the trial court disbelieved the evidence of P.W.1 to 3, in respect of the offence alleged under Section 302 IPC, it ought not to have accepted the evidence of the said witnesses in respect of dowry demand as the same cannot be separated from other part of evidence which according to the trial court is unbelievable. The trial court also failed to consider the undue delay of 12 hours in lodging the complaint with the Police. Likewise non production of Accident Register copy from G.H., Thiruthuraipoondi and G.H., Vedaranyam was not considered by the trial court. Similarly, the trial court failed to consider that there was no complaint before the Police or Village Panchayatdars about dowry harassment committed by the accused. The evidence of P.W.3 is contrary to evidence of

P.W.8/doctor. The evidence of P.W.1 is contrary to the contents of the FIR and also to the oral evidence of the Investigating Officer who deposed as P.W.10. As the deceased eloped with the accused and married him against the wishes of her family, the parents and grandparents of the victim who deposed as P.W.1 to 3 falsely implicated the accused in this case. As there was no eyewitness to the occurrence and no evidence to prove any motive for the occurrence, the conviction and sentence of trial court is unsustainable and the same is liable to be set aside. Thus, the accused/Appellant seeks to entertain the appeal.

4. Per contra, the learned Additional Public Prosecutor contends that the trial court, after analysing the evidence on record properly, has arrived at just and proper conclusion which does not warrant any interference. The evidence of P.W.1 to 3 who are the parents and grandmother of the victim cannot be brushed aside only because they were opposed to the marriage of the victim with the accused. It is further pointed out that merely because the victim married the accused against the wishes of her parents it cannot be contended that there is no affection between the parents of the victim who deposed as P.W.1 and 2 and their daughter/deceased. As the houses of P.W.1 and 2 and that of the accused is situated in the same street and in between, there are only four houses, will make it clear that the victim and the parents could meet each other every day and there is every possibility of the victim informing her parents about the alleged dowry demand made by the accused. The trial court, after discussing the evidence on record while disbelieving the version of P.W.1 to 3, in respect of the alleged offence under Section 302 IPC has correctly held that their evidence clearly establishes the demand of dowry and consequential happenings. Further, the independent witnesses P.Ws.4 and 5 are respectable citizens of the same area and they have clearly stated about the dispute between the victim and the accused regarding dowry. The evidence of P.W.4 and 5 is natural and nothing was extracted from them to discredit their evidence. As the evidence of P.W.1 to 5 is natural and believable, presumption under Section 113-B of the Indian Evidence Act is available against the appellant and the appellant has not discharged his burden to disprove the said presumption and as such, the trial court has correctly held that the charge against the accused u/s.498(A) and 304(B) IPC alone is proved, convicted and sentenced him as stated earlier. Thus, the prosecution contends that the conclusion of the trial court does not warrant any interference. Hence, the prosecution seeks for dismissal of the appeal.

5. Now points for consideration:

Whether the Judgment, conviction and sentence imposed by the trial court U/s 498(A) and 304(B) IPC is to be set-aside:-
The admitted fact is that the appellant/accused who was working in the police department, after death of his first wife, shifted his residence to Voimedu, where PW1 and 2 are residing and the deceased Uma Rani, the 2nd daughter of PW1 and 2 fell in love with the appellant while she was studying in 8th standard for which PW1 and 2 objected and warned their daughter Uma Rani and inspite of that she married the appellant/accused in the presence of villagers of Voimedu. Out of the said wedlock, the deceased Uma Rani gave birth to a female child. After the marriage the appellant and the deceased were residing in the house belonging to the appellant which is just 4 houses away from the house of PW 1 and 2 who are the parents of the victim. On the fateful day, the deceased succumbed to burn injuries in the house of the appellant and the deceased died within 7 years from the date of her marriage.

6. Since the deceased Uma Rani died unnaturally viz., due to burn injuries within 7 years from the date of her marriage and if the prosecution is able to establish that the deceased was subjected to cruelty by the accused by demanding dowry prior to death of the said Uma Rani, the presumption U/s 113-B of Indian Evidence Act will come into play and the burden will be on the appellant to establish that the death was not due to cruelty committed by him. Section 113-B reads as follows:-

Section 113-B. Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or presume that such person had caused the dowry death.

7. In order to prove the demand of dowry, the prosecution has examined PW 1 to 5 and of them PW 1 to 3 are mother, father and grandmother of the deceased Uma Rani, while PW.4 and 5 are from the same village, in which appellant/accused as well as PW 1 and 2 were residing. As per evidence of PW1 and 2, the appellant and deceased were living cordially for 4 months after their marriage and thereafter the appellant used to cause cruelty to the deceased by demanding dowry and property. Further PW1 and 2 deposed that on the date of occurrence viz., on 23-06-2009, during day time, the deceased came to their house and complained about the torture suffered by her in the hands of her husband in respect of demand of dowry and other properties. On the same day, PW-3 grandmother of the victim also visited the house of PW1 and 2. After hearing the victim in order to advise the accused, PW 1 to 3 went to the house of the appellant/accused at 7. P.M., on the same evening and waited for

him to return home. At about 9 P.M, the appellant returned home and on seeing PWs 1 to 3, shouted at them stating "why you have all come, whether you have come to do the obsequies ceremony of your daughter " and then he went inside his house and caught hold of the deceased, cut her hair by using blade and also kicked her. When PW.1 and 2 tried to intervene, the appellant threatened them that he will beat them also. Immediately PW 1 and 2 went out of the house to bring the neighbours while PW-3 stayed back in front of the appellant's house. Thereafter, as PWs 1, 2, 4 and 5 heard the hue and cry of the deceased, rushed to the appellant's house and found that the deceased has sustained severe burn injuries and on seeing them, the appellant ran away from his house. The same is clear from the evidence of P.W.1, 2, 4 and 5. However, the evidence of P.W-3 said to be the sole eye witness to the alleged occurrence of the accused pouring Kerosene on the deceased and setting fire on her is disbelieved by the trial court on the ground that she could not have seen the occurrence since she was standing in front of the house of appellant and the occurrence took place in the room inside the accused house. Further, P.W.3 who is the grandmother of the victim stated that after all three of them reached the house of the accused at about 7 p.m., on her request, the deceased took food. However, the Medical Officer, who deposed as P.W.8 has clearly stated in his Post Mortem Report that no food particle is found in the stomach of the victim. According to P.W.8, the doctor, who did the Postmortem, the victim's stomach was empty. P.W.1 and 2 did not state anything to support the evidence of P.W.3 about her presence inside the house of the accused at the time of occurrence and that she witnessed the accused putting on fire the deceased and as such, the evidence of P.W.3 is doubtful.

8. Further, it is clear from the evidence of P.W.1 and 2 that they took the victim immediately after the occurrence to the Hospital at Thiruthuraipoondi and as the doctors declared that their daughter has already died they brought the body back home and kept it in the home till 6 a.m., the next day morning. It is clear from the evidence of P.W.10, Sub Inspector of Police that P.Ws 1 to 3 ought to have crossed Voimedu Police Station on their way to Hospital, Thiruthuraipoondi, and also on their way back to their house. However, no complaint was lodged by P.W.1 to 3 in the Voimedu Police Station on the date of occurrence. Further as the independent witness P.W.4 has stated that he is a member of the local Political Party and used to go to Police station in connection with common issues. He also stated that on reaching the occurrence spot, at about 9 p.m., on the occurrence day, he came to know that the victim was put on fire by the accused, but he did not lodge any complaint with the Police. It was only on the next day morning after taking the body of the victim from Vedaranyam Hospital to

their house, P.W.1 lodged Ex.P.1/complaint to the Police at about 8.30 a.m. The failure on the part of P.Ws.1 to 4 to lodge any complaint with the Police immediately after the occurrence, as rightly pointed out by the trial court, creates suspicion about the alleged homicidal violence. If really P.W.3 has witnessed the occurrence, pouring kerosene on the victim and put her on fire, P.Ws.1 to 3, the parents and grandmother of the deceased would not have kept quite without informing the Police or the Hospital authorities immediately after the occurrence.

9. It is a strange case where prosecution has failed to produce the Accident Register of the Hospital at Thiruthuraipoondi or examination of any doctor from the said hospital. As such, the evidence of P.Ws.1 to 3 regarding pouring of kerosene on the deceased by the accused and putting her on fire on the occurrence date is doubtful and the same cannot be relied upon. Since P.Ws.1 and 2 are not eyewitnesses to the occurrence and the alleged eyewitness account given by P.W.3 is doubtful, the trial court correctly found that there is no material to prove that the victim was put on fire by the accused by pouring kerosene and as such, it concluded that the appellant is not guilty of offence under Section 302 IPC since there was no evidence to prove the same. Further, no appeal is preferred by the State against the acquittal of the accused for the alleged offence under Section 302 IPC. In such circumstances, the conclusion of the trial court that the death of the victim is not homicidal death, is appropriate and does not warrant any interference.

10. The trial court has found the accused guilty of causing cruelty to the deceased by making demands of dowry and thereby forcing her to commit suicide and thus found him guilty of the offence under Section 304(B) and 498(A) IPC. However, the learned counsel for the accused contended that there is absolutely no evidence to prove the demand for dowry and as such, the conclusion of the trial court is unsustainable. It is to be seen whether the accused really made the demand for dowry and thereby caused cruelty to the deceased. The deceased and the accused fell in love and subsequently got married against the wishes of their parents. The mother of the deceased who deposed as P.W.1 as well as the father of the victim who deposed as P.W.2 clearly stated in their evidence that inspite of their advise to their daughter to keep away from the accused, she went along with the accused and their marriage was conducted by the Village People. Both P.W.1 and 2 stated that they did not attend their daughter's marriage. P.W.1 also stated that they were angry on the accused since he married their daughter against their wish. It is therefore clear that P.W.1 and 2 were not in good terms with the accused. The

grandmother of the appellant who deposed as P.W.3 stated that she is living in another village which is three (3) miles away from the residence of P.W.1 and 2 and used to come to her daughter P.W.1's house once in 10 days. P.W.3 who is the maternal grand mother of the victim stated that she was informed that the accused was harrassing the deceased. Thus, she did not have any direct personal knowledge about the cruelty done by the accused. P.W.1 who is the mother of the victim has stated that the accused is well placed than themselves. Pointing it out, the learned counsel for the accused contended that the accused being in Police Service and well off than the parents of the deceased, there is no need or necessity for him to demand anything from P.W.1 and 2. It is clear from the evidence of P.W.1, 2 and 4 that the victim was the only surviving daughter of P.W.1 and 2 after the death of their first daughter. The learned counsel for the accused contended that in the absence of any other legal heir, the property of P.W.1 and 2 is bound to come to the victim and on that ground also, there is no need for the accused to demand the property be given to him or for making any demand for dowry. The independent witness who deposed as P.W.4 stated that the accused married the deceased Umarani while she was studying 8th standard and married her on his own and both lived together in their village. After about 6 months of their marriage, the deceased came to P.W.4 and complained that the accused is torturing her by demanding Motorcycle, jewels and money. Thereafter, P.W.4 met the accused and told him that the victim being the only daughter of P.W.1 and 2, they are going to give all the property to him and not to torture her. As per the evidence of P.W.1, the accused and the deceased are having a female child aged about 5 years. P.W.1 stated that after the marriage, the accused lived happily with his wife for 4 or 5 months and thereafter, was continuously abusing and torturing her. The mother of the deceased who deposed as P.W.2 also stated likewise. Thus as per the evidence of P.W.1 and 2, the accused was torturing the victim demanding the dowry for over a length of time. The independent witness P.W.5 stated that he know the accused as well as the deceased and both of them were living happily in their village after their marriage and thereafter due to demand for money and property made by the accused, the victim came to P.W.5 and represented about the torture of her husband. Thus, the accused is stated to have been torturing the victim ever since 6 months after their marriage, but there is no evidence on record to show that any complaint having been made either to the Police or to the Panchayath about the same in writing. Further, there is no evidence to show that any Panchayath was held in the village to enquire about the dowry harassment alleged against the accused. Even though P.W.2 stated that frequently Panchayath was held to settle the dispute between the spouses, he admitted that he

never attended the Panchayat meeting. According to him, P.W.4 and 5 used to attend the Panchayats. However, P.W.4 and 5 has not stated anything specifically about as to when and where Panchayat was held to settle the dispute between the accused and the victim. In such circumstances, it is doubtful as to whether any such complaint was made to the Panchayat and any Panchayat Meeting was held as claimed by the Prosecution.

11. As stated earlier, the victim having married the accused against the advise of her parents who deposed as P.W.1 and 2, they were not in good terms with the accused. In such circumstances, it is not probable for the victim to come and report to her parents regularly about the demand of dowry made by the accused. Even though P.W.4 and 5 are independent witnesses, as they have not stated specifically anything as to when the victim complained about dowry demand made by the accused and nothing is stated in detail about the Panchayat meetings held in that regard, this court is of the view that their evidence regarding the alleged dowry demand made by the accused cannot be relied upon.

12. The learned Additional Public Prosecutor pointed out that the RDO who deposed as P.W.9 has clearly given Ex.P.10 report stating that the victim died only due to dowry harassment. However as stated above, the evidence of P.W.1 to 5 is not inspiring and the same is not acceptable regarding the demand of dowry alleged against the accused. Further P.W.9 RDO himself stated in his evidence that he examined P.W.1 to 3 and independent witnesses Gajendran, Mathiazhagan and also the VAO who have told about the torture done by the accused demanding property and other things. However, in his cross examination, P.W.9 RDO has stated as follows:-

“ என் விசாரணையில் நாகவல்லி சம்பவத்தை பற்றி கண்ணம்மாள் சொல்லி தான் தெரிந்து கொண்டதாக விசாரணையில் கூறியுள்ளார். வரதட்சணை பற்றி என்ன என்ன கேட்டார்கள் என்று குறிப்பாக என் விசாரணையில் சொல்லவில்லை. சண்முகமும் மாமியார் சொன்னதன் பேரில் தான் சம்பவம் பற்றி கேள்விப்பட்டதாக கூறியுள்ளார். அவரும் குறிப்பாக என்ன என்ன பொருட்கள் கேட்கப்பட்டதாக கூறவில்லை. கண்ணம்மாள் என் விசாரணையில் வரதட்சணை எதிரி கேட்டதாக கூறவில்லை. கண்ணம்மாள் கைரேகை போடுபவர்தான். நாகராஜன், நாகவல்லி, கண்ணம்மாள் ஆகியோர் எனது விசாரணையில் சம்பவத்திற்கு முன்பு எதிரிக்கும் அவர் மனைவிக்கும் அடிக்கடி தகராறு நடந்ததாக என் விசாரணையில் கூறவில்லை. மேற்படி 3 சாட்சிகளிடமும் வரதட்சணை கொடுமை ஏதாவது நடந்ததா என்று கேள்வி கேட்டு நான் விசாரிக்கவில்லை. அறிக்கை மற்றும் வாக்குமூலங்கள் எல்லாம் காவல் துறையினர் கேட்டுக்கொண்டதற்கிணங்க நான் தயாரித்துள்ளேன் என்றால் சரியல்ல. நான் சரியாக விசாரணை செய்யவில்லை என்றால் சரியல்ல.”

Thus, it is clear from the admission of P.W.9 that he did not enquire about dowry harassment and nothing was stated by P.W.1 to 3 about frequent quarrel between the deceased and the accused during his enquiry. Further P.W.9 stated that the parents of the victim did not state specifically about the

articles or property demanded by the accused as dowry during his enquiry. As such, the report of RDO, based on evidence of P.Ws 1 to 5 whose evidence before the court is not accepted for the reasons stated above and other persons who are not examined before the court does not inspire confidence and is of no use in proving the alleged dowry demand made by the accused. As such, the conclusion of the trial court that the demand of dowry by the accused is clearly established is unsustainable.

13. Now the next point to be considered is as to whether the victim was subjected to cruelty which consequently led to her death. It is true that P.W.1 to 3 were not in good terms with the accused and the trial court found that they were not eyewitnesses to the alleged occurrence wherein the victim suffered burn injuries. Admittedly the occurrence has taken place inside the house of the accused. The doctor who did the Post Mortem on the body of the deceased while deposing as P.W.8 has categorically stated that the victim suffered 90% burn injuries and died only due to shock and after effect of the burn injuries. Thus, it is apparent that the victim suffered burn injuries inside the house of the accused. P.W.1 to 3 have clearly stated in their evidence that on the occurrence day, the victim came to the parents house which is just 4 houses away from the matrimonial home of the victim and informed her parents that the accused is torturing her seeking property and other things. P.W.1 to 3 clearly stated that they went to the house of the accused at about 7 p.m., waited there till the accused returned home at 9.00 p.m. Further P.W.1 and 2 clearly stated that on seeing them, the accused asked "as to why you have come; have you come to do obsequies to your daughter". Thereafter, the accused entered his house, caught hold of the victim and gave her two blows and cut her hair with blade. The Investigating Officer of the case who deposed as P.W.10 clearly stated that on 24.06.2009, he went to the occurrence spot and prepared Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.12 in the presence of P.W.4 and 5 at about 9.30 a.m. He also stated that he recovered M.Os.1 to 3 viz., burnt rose colour designer Polyester saree, small pieces of cut hair and supermax blade from the occurrence spot under Ex.P.3 Seizure Mahazar in the presence of same witnesses. The same is corroborated by Mahazar Witnesses P.W.4 who clearly stated that the Police came to the occurrence spot and recovered M.O.1 to 3 as per Ex.P.3 Mahazar on the next day morning. He also stated that he signed in the Mahazar and P.W.5 Ganesan was also present. The same is corroborated by P.W.5 also. Thus it is clear from the evidence of P.W.4, 5 and 11 that the small pieces of hair as well as blade marked as M.O.1 and 3 is recovered from the occurrence spot which will clearly go to show that the evidence of P.W.1 to 3 about the accused assaulting the victim and using blade to cut her hair is true.

14. On the other hand, it is contended by the defence that the Prosecution witnesses P.W.1 to 3 are close relatives of the victim and they are interested witnesses. However their evidence cannot be brushed aside on that ground alone. Even though the trial court has not believed the version of homicide as deposed by PW 1 to 3, their evidence cannot be eschewed on the ground that they deposed false in part and then it should be taken as false evidence in whole. It is well established law that 'Falsus in Uno Falsus in Omnibus'. Thus, the false version should be ignored and the true version can be taken into consideration. As such, while the evidence of prosecution has failed to establish homicidal death, the cogent evidence of P.W.1 to 3 which is corroborated by the evidence of PW 4 and 5, clearly establishes the fact of the accused abusing, assaulting and insulting the victim by cutting her hair in the presence of P.W.1 to 3 on the occurrence day and thereby caused mental cruelty to the deceased. Further the victim has died inside the house of her husband/accused. P.W.1 to 3 have clearly stated about the presence of accused and cutting the hair of the victim by the accused in his house. It is also clear from the evidence of P.W.1 to 5 that the victim was found with burn injuries inside the house of the accused and all of them saw the accused going away from the occurrence spot. Nothing is stated by the accused during questioning under Section 313 Cr.P.C., in contrary to what is stated by P.W.1 to 3 about the occurrence in the house of the accused except denying it as false. There is nothing on record to show that any attempt was made by the accused to rescue the victim while she was burning. In such circumstances, the learned Additional Public Prosecutor contended that the presumption under Section 113-A of the Evidence Act will come into play and in the circumstances of this case, presumption has to be drawn against the accused herein. Section 113-A of the Evidence Act reads as follows:-

"Section 113-A. Presumption as to abetment of suicide by a married woman-
When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. "

As such, on the evidence available on record and the above said contention of the prosecution, the presumption as to abetment

of suicide has to be drawn against the accused herein.

15. As stated earlier, P.W.8 doctor has clearly stated that the deceased died due to aftereffects of burn injuries suffered by her. P.W.11 the Investigating Officer of the case has clearly stated that on 24.06.2009, at about 13.20 hours, he secured the accused from Thagattur bus stop and recorded his confession statement in the presence of P.W.4 and 5 and thereafter, he took the accused to his house and recovered M.O.s marked as M.O.4 to 6 viz., Kerosene can, Match box, T-shirt as identified and produced by the accused in the presence of witnesses under Ex.P.5 Mahazar. Thus, the evidence of P.W.1 to 4 that they found the victim with burn injuries in the matrimonial home is corroborated by the MOs recovered from the house of the accused.

16. It is clear from the Explanation to Section 498A that anything done by the husband or relative of the husband to force the woman to commit suicide would amount to cruelty even in the absence of any demand for dowry. Explanation (a) to Section 498-A states as follows:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation- For the purpose of this section, "cruelty" means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; "

17. In the case on hand, apparently the victim was abused by the accused and insulted as her hair was cut by the accused in the presence of P.W.1 to 3. As stated earlier, P.W.1 to 3 have clearly stated that the accused after returning home, assaulted the victim and also cut her hair using blade. Accordingly, the said occurrence caused mental agony to the victim forcing her to burn herself resulting in her death. Thus, it is clear that by his action, the accused forced the victim to commit suicide and thus, the same will make out an offence under Sections 498-A and Section 306 IPC .

18. In the light of the above said discussion, as the demand for dowry is not proved, the accused cannot be held guilty under the provisions of Section 304(B) IPC. However, as stated above, by the physical torture of the victim, the

accused has forced the victim to commit suicide. Thus, his action will amount to cruelty under Section 498(A) and by abetting to suicide, he has committed the offence under Section 306 IPC. Even though no charge is framed under Section 306 IPC, this court has got jurisdiction and power to convict an accused for an offence for which no charge was framed. In the Apex court Ruling reported in 2004 Cr.L.J., 2025 [Dalbir Singh Vs. State of U.P.] , it is held as follows:-

"There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of S.464 Cr.P.C., it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under S.302 IPC., he cannot be convicted for the offence under S.306 IPC. "

19. Following the above said Ruling, in the case on hand, even though no charge was framed under Section 306 IPC, this court is of the view that the accused can be convicted under Section 306 IPC as it is clearly established that he is guilty of abetting the victim to commit suicide. In such circumstances, the conclusion of the trial court that the accused is guilty of offence under Section 304(B) IPC is to be set aside and the accused is found guilty under Section 306 IPC. As far as the finding of the trial court holding the accused guilty under Section 498(A)IPC does not warrant any interference.

20. In the result, the Criminal Appeal is Partly Allowed and the conviction and sentence on the appellant/accused for the offence under Section 498(A) IPC by the trial court is confirmed. While the conviction and sentence passed under Section 304(B) IPC by the trial court in S.C.No.127 of 2009 dated 07.03.2012 is modified and instead the accused/appellant is convicted for the commission of offence under Section 306 IPC and is sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.3000/- in default to undergo Simple Imprisonment for 6 months. The sentence of imprisonment and

fine imposed by the trial court for the offence under Section 498(A) is maintained. Both sentences will run concurrently. The Period of incarceration already undergone by the Appellant/Accused if any, is given set off under Section 428 Cr.P.C. The Trial Court is directed to secure the accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The District and Sessions Judge, Nagapattinam.
2. The Deputy Superintendent of Police,
Vedharanyam
Voimedu Police Station,
Nagapattinam District.
3. The Section Officer,
Criminal Section, High Court, Madras.
4. The Superintendent,
Central Prison, Cuddalore-4.
5. The Superintendent of Police,
Nagapattinam.
6. The Public Prosecutor,
High Court, Madra.

Cr1.A.No.607 of 2013

CP(CO)
CSL/19.11.2018

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