

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.07.2019

PRONOUNCED ON: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.140 of 2009

1.Abdul Javeeth
2.Hasina Jaanu

Appellants/A1 and A2

Vs

State by Inspector of Police
All Women Police Station, Thudiyalur ..Respondent/Complainant
Crime No.4 of 2006 Coimbatore District

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 30.12.2008, made in SC.No.128 of 2006, by the Sessions Court-Mahalir Neethimandaram, Coimbatore.

For Appellant : Mr.John Sathyan

For Respondent : Mr.K.Prabakaran, APP

JUDGEMENT

- 1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 30.12.2008, made in SC.No.128 of 2006, by the Sessions Court-Mahalir Neethimandaram, Coimbatore, finding the Appellants/A1 and A2, for the offence under Sections 498A and 304(B) of IPC and Section 4 of the Dowry Prohibition Act and convicting and sentencing them for the offence under Section 4 of the Dowry Prohibition Act to undergo Simple Imprisonment for one year and to pay a fine of Rs.1000/- each, in default, to undergo Simple Imprisonment for three months and for the offence under Section 498A of IPC to undergo Simple Imprisonment for two years and to pay a fine of Rs.1000/- each, in default to undergo Simple Imprisonment for one year and for the offence under Section 304B of IPC to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5000/- each, in default, to undergo Simple Imprisonment for two years and ordering the sentences to run concurrently.
- 2.The facts, in a nutshell, leading to filing of the Final Report against the Appellants/A1 and A2 for the offence under

Section 4 of the Dowry Prohibition Act and Sections 304B and 498A of IPC are as follows:-

- a) The Appellant/A1 is the husband of the deceased Shabana Banu @ Rizwana Begam and the Appellant/A2 is the mother in law of the deceased. The Appellants/A1 and A2 had demanded 15 sovereigns of gold jewels and a cash of Rs.75,000/- as dowry and consideration for the marriage to be held on 11.12.2005 from PW.1 and PW.2, the parents of the deceased. The parents of the deceased had agreed to pay a cash of Rs.60,000/- and 10 sovereigns of gold jewels as dowry. However, due to financial crisis, the parents of the deceased, at the time of marriage, had given a cash of Rs.55,000/- and 5 sovereigns of gold jewels and undertook to pay the balance of 5 sovereigns of gold jewels and a sum of Rs.5000/- during the month of May 2006.
 - b) The Appellants/A1 and A2 started to demand the balance of dowry, on the very next day of the marriage and by demanding the balance of dowry, the Appellants/A1 and A2 humiliated and ill-treated the deceased at the matrimonial home and caused cruelty to the deceased, by abusing the deceased for the wrinkle skin on her face and for her appearance as male and thereby caused mental agony to her. On 14.1.2006, the Appellants/A1 and A2 had caused mental agony to the deceased, by abusing the deceased for not bringing four grams of gold ring for the Appellant/A1 on the eve of Bakrid Festival from the parents. Due to the torture and harassment by the Appellants/A1 and A2, by demanding unlawful dowry, the deceased committed suicide, by hanging herself, at her matrimonial home on 19.01.2006 at 16.30 hours. Hence, the Appellants/A1 and A2 were charge sheeted for the offences under Section 4 of the Dowry Prohibition Act and Sections 304B and 498A of IPC.
3. The case was taken on file in PRC.No.5 of 2006, by the Judicial Magistrate I, Coimbatore, and committed to the Sessions Court, by order dated, 10.04.2006 and the Sessions Court, by its order dated, 21.04.2007, had made over the case to the Trial Court, namely, Sessions Court-Mahalir Neethimandaram, Coimbatore. Upon summoning and on appearance of the Appellants/A1 and A2, copies were given to the Appellants/A1 and A2 under Section 207 of Cr.PC and necessary charges were framed under Section 4 of the Dowry Prohibition Act and Sections 304B and 498A of IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.12 and also marked Exs.P1 to P17 and Mos.1 and 2.
4. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely

implicated in this case. On the side of the defence, DW.1 was examined and Ex.D1 was marked. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellants guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

5.This court heard the submissions of the learned counsel on either side.

6.The learned counsel for the Appellants has assailed the impugned judgement on the following grounds:-

- a) The impugned judgement of conviction and sentence is against facts and weight of evidence, contrary to law and probabilities of the case. PW.1 to PW.4, being family members, viz. mother, father and brothers of the deceased, respectively, their evidence should be discarded.
- b) Though the Prosecution had an independent witness for corroboration, the Prosecution had deliberately omitted to examine the person. In other words, there is no independent witness examined in Court to speak and corroborate about the alleged demand and harassment. The alleged reason for the suicide is not believable and is not corroborated through independent witness. As per Ex.P12, inquest report, the Panchayatars were not in a position to state the reason for the suicide.
- c) It is the admitted case of PW.1 that the deceased made calls from the phone of one Kannan, who was residing at the house of the accused, to her, but strangely, the said phone was not produced and marked before the Trial Court and the said Kannan was not examined as a witness on the side of the Prosecution.
- d) The marriage took place between the deceased and the Appellant/A1 on 11.12.2005. The balance of dowry was assured to be given before the month of May 2006. Under such circumstances, the allegation of demand of dowry on the next day of the marriage is a cooked up version.
- e) There was no demand or harassment by the Appellants/A1 and A2 from 11.1.2006 till 18.01.2006. There is no material to show that there was any dowry demand and consequently harassment soon before the death of the deceased. There was deliberate suppression of material particulars by the Prosecution, throwing serious doubts on the case of the Prosecution.
- f) Though there was an allegation of demand of dowry, none of the witnesses have spoken about the nature of cruelty and harassment, caused to the deceased.

7.On the other hand, the learned Additional Public Prosecutor for the Respondent, while supporting the impugned judgement of conviction and sentence, would submit that no woman would take an extreme step of committing suicide unless there are compelling circumstances and that since the death of the

deceased had occurred within 38 days of the marriage and the same is unnatural death, the presumption under Section 113B of the Indian Evidence Act is to be drawn that the suicide is solely on account of demand of dowry and harassment and that though such a presumption is a rebuttable one, the Appellants/A1 and A2 had failed to rebut the presumption under Section 113B of the Indian Evidence Act, by valid materials and as such, the Appellants/A1 and A2 are bound to be convicted for the offence under Sections 304B of IPC, that too when evidence adduced by the Prosecution is cogent and clinching and though PW.1 and PW.4 are interested witnesses, their evidence is sufficient to base conviction.

8. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.
9. According to the Prosecution, the Appellants/A1 and A2 had tortured and harassed the deceased and caused cruelty, for not bringing the dowry demanded from 14.01.2006 to 19.01.2006. Because of the intolerable cruelty caused by the Appellants/A1 and A2 to meet their unlawful demand for the dowry and by the serious acts and conducts of the Appellants/A2, the deceased was put into hostile environment, which forced her to commit suicide, by hanging herself at the matrimonial home on 19.01.2006 at 16.30 hours, within seven years from the date of her marriage on 11.12.2005. Hence, the Appellants/A1 and A2 are liable to be punished under Sections 4 of the Dowry Prohibition Act and Sections 304B and 498A of IPC.
10. According to the Appellants/A1 and A2, the evidence of the interested witnesses, PW.1 to PW.4 are not trustworthy. There is no independent witness for corroboration. As per Ex.P12, inquest report, the Panchayatars were not in a position to state the reason for the suicide. It is the admitted case of PW.1 that the deceased made calls from the phone of one Kannan, who was residing at the house of the accused, to her, but strangely, the said phone was not produced and marked before the Trial Court and the said Kannan was not examined as a witness on the side of the Prosecution. There is no material to show that there was any dowry demand and consequently harassment soon before the death of the deceased.
11. From a perusal of the entire evidence on record, the case of the Prosecution mainly rests on the evidence of PW.1 to PW.4, who are the mother, father and brothers of the deceased and PW.11, Revenue Divisional Officer, who conducted inquest. It is no doubt true that the deceased committed suicide, by hanging herself.
12. Now the questions that arise for consideration is as to whether the Prosecution had proved the guilt of the Appellants/A1 and A2 beyond all reasonable doubts for the offences under Section 4 of the Dowry Prohibition Act and

Sections 304B and 498A of IPC and whether the Appellants/A1 and A2 have rebutted the presumption under Section 113B of the Indian Evidence Act to quash the impugned judgement of conviction and sentence.

13. Before further advert to analysis of the entire evidence, it is apposite to quote the provisions of law, under which, the Appellants/A1 and A2 were charge sheeted, as under:-

14. Section 4 of the Dowry Prohibition Act reads as under:-

"4. Penalty for demanding dowry.-If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months.

15. Section 304B of IPC reads as under:-

"304B. Dowry Death:-"Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death."

16. Section 498A of IPC reads as under:-

"498A. 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

17. Section 113B of the Indian Evidence Act reads as under:-

"113B:- 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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. For the purposes of this section "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code (45 of 1860)".

18. Now coming to the evidence, the Prosecution, in order to prove the guilt of the Appellants/A1 and A2, had examined 12 witnesses, as PW.1 to PW.12 and marked Ex.P1 to Ex.P17. PW.1 to PW.4 are the mother, father and brothers of the deceased. PW.5 is the Photographer, who took photographs of the dead body of the deceased. PW.6 is a witness for Ex.P15, observation mahazar and the investigation. PW.7 is the owner of the house, where the Appellants/ accused are residing and he informed about the suicide committed by the deceased. PW.8, who is the Woman Police Constable, in her evidence, had deposed about her assistance for inquest and for post-mortem. PW.9 is the Sub Inspector of Police, who registered the First Information Report, Ex.P4. PW.12, Deputy Superintendent of Police, had conducted the entire investigation and filed the final report and deposed to that effect.

19. Ex.P1 is the complaint, dated 19.01.2006, given by PW.1. Ex.P2 and Ex.P3 (series) are photographs taken by PW.5 and negatives. Ex.P4, dated 19.1.2006 is the printed First Information Report. Ex.P5, dated 20.01.2006, is the post-mortem certificate. Ex.P6, dated 7.2.2006, is the chemical analysis report. Ex.P7, dated 7.2.2006, is the final opinion. Ex.P8 to Ex.P11, dated 20.01.2006, are statements of the witnesses and mediators, recorded by the Revenue Divisional Officer, PW.11. Ex.P12, dated 20.1.2006 is the inquest report. Ex.P14, dated 25.01.2006 is the report of the Revenue Divisional Officer. Ex.P15 and Ex.P16, dated 20.01.2006, are observation mahazar and rough sketch. Ex.P17, dated 20.01.2006, is the alteration report. Ex.D1 is list Sridhana.

20. To recapitulate, PW.1 to PW.4 are the mother, father and brothers of the deceased. The marriage between the Appellant/A1 and the deceased took place on 11.12.2005. At the time of the marriage, the Appellants/ accused demanded 15 sovereigns of gold jewels and a cash of Rs.75,000/- as dowry, from PW.1 and PW.2, who agreed to pay Rs.60,000/- and to give 10 sovereigns of gold jewels. However, 5 sovereigns of gold jewels and a cash of Rs.55,000/- were given at the time of marriage, with an assurance that the remaining 5 sovereigns of gold jewel and a

cash of Rs.5000/- would be given within May 2006. Therefore, the Appellants/A1 and A2 had harassed and caused humiliation and cruelty to the deceased, by demanding the remaining amount and jewels. Unable to tolerate with the harassment, due to mental agony, the deceased committed suicide, by hanging herself, on 19.01.2006 at about 16.30 hours. On hearing about the death of the deceased over phone, PW.1 gave the complaint Ex.P1 to PW.9, Sub Inspector of Police, All Women Police Station, at 19.1.2006 at 20.30 hours and Ex.P4 First Information Report was registered in Cr.No.4 of 2006 under Section 174 of Cr.PC. On receipt of Ex.P4, PW.11, Revenue Divisional Officer, Coimbatore, went to the scene of occurrence and conducted inquest, in the presence of PW.6, and other witnesses and recorded their statements, under Ex.P8 to Ex.P10. Ex.P11 is the consolidated statement of the mediators. During the enquiry, PW.11 found that the death of the deceased was due to dowry harassment and prepared Ex.P12, inquest report to that effect. PW.10 Doctor and Dr.Mansoor had conducted autopsy on the body of the deceased on 20.01.2006 and as per Ex.P7, the death was due to hanging. PW.11 had sent Ex.P14 enquiry report to the Deputy Superintendent of Police with a requisition to conduct investigation to find out the real cause for the death. PW.12 took up the case for further investigation and after completing investigation, had filed the final report.

21.Now, it is to be seen as to whether the evidence of PW.1 to PW.4 and PW.11 inspires confidence to base conviction under Section 4 of the Dowry Prohibition Act and Sections 304B and 498A of IPC.

22.PW.1, who is the mother of the deceased, in her evidence had deposed that the marriage took place between the Appellant/A1 and the deceased on 11.12.2005 and that at the time of marriage, the Appellant/ accused demanded a cash of Rs.75,000/- and 15 sovereigns of gold jewels as dowry, however, taking into consideration their family status, it was agreed to give a cash of Rs.60,000/- and 10 sovereigns of gold jewels as dowry. She had further deposed that at the time of marriage, a cash of Rs.55,000/- and 5 sovereigns of gold jewels were given to the Appellants/ accused, assuring to give the balance of 5 sovereigns of jewels and a cash of Rs.5000/- in the month of May 2006 and that the deceased lived happily in the matrimonial home just for two days only and that afterwards, her daughter informed to her through phone, stating that the Appellants/ accused had ill-treated her and demanded as to when the remaining dowry of 5 sovereigns of gold jewels and a cash of Rs.5000/- would be paid and that her daughter, deceased had told that the Appellants/ accused were frequently insulting her in the presence of others and scolding in a filthy language, in connection with her appearance as a male person and wrinkle skin over the face.

23.PW.1 had further deposed that she had told that the balance

of dowry would be paid as soon as she gets the money from where she was expecting and requested her daughter to bear up the troubles for some time and that on one occasion, she along with other daughters and sons, went to the house of the Appellants/ accused to meet her daughter, they were prevented. She had further deposed that again when on 11.1.2006, she went to the house of the Appellants/ accused to invite her daughter to attend Bakrid Festival, the deceased was not in the house, and the Appellants/ accused had accepted her festival invitation, with a condition to give 4 grams of gold rings to A1 as gift for the Bakrid Festival and that on 14.1.2006, A1 and the deceased came to her house and stayed for two days and they had gone to their home on 16.1.2006. She had further deposed that her daughter contacted her through phone and told that A2 is going to come to the house on 18.01.2006 and she would ask why she could not bring the balance money and the jewels and expressed her difficulties and that on 19.1.2006, when she was in the house at 4.30 p.m., the house owner of the accused contacted over phone and informed that the deceased was in a serious condition and when she went to the house of the accused, her daughter was laid on the floor and that the accused replied about her daughter hanging herself. PW.1, during the cross examination, had deposed that her daughter used to talk with her over phone several times and used to tell her difficulties experienced by her daughter at the matrimonial home.

24. The evidence of PW.1 would show that the Appellants/ accused had demanded dowry, by way of gold jewels and cash, at the time of marriage and caused cruelty to the deceased. Since the parents of the deceased, viz. PW.1 and PW.2 were not able to meet the demand in full, the Appellants/ accused started to humiliate the deceased for bringing insufficient dowry and also caused cruelty for not bringing the dowry demanded by them and also subjected the deceased to cruelty and that from 14.1.2006 to 19.1.2006, the Appellants/ accused had caused unbearable troubles to the deceased to meet their unlawful demand for the dowry and thereby, the deceased was forced to commit suicide, by hanging herself, on 19.01.2006 at 16.30 hours, at the dwelling house where the Appellants/ accused and the deceased were ordinarily residing.

25. Further, the suggestions put forth by the Appellants/ accused were denied by the witnesses. PW.2, PW.3 and PW.4 who are the father and brothers of the deceased and they had deposed in similar lines to that of PW.1, corroborating the demand of dowry by the Appellants/A1 and A2 and the harassment and cruelty meted out to the deceased. The evidence of PW.1 is in conformity with Ex.P1 complaint. The evidence of PW.1 is clear about the demand of dowry and it is also corroborated by the evidence of PW.2 to PW.4. The evidence of PW.2 to PW.4 was found to be consistent with their statements made before the

- Police and also found to be corroborating with the evidence of PW.1 in all material aspects.
26. The evidences of PW.1 to PW.4 are cogent and credible and clearly and consistently proves that the marriage took place on 11.12.2006 and the death of the deceased had occurred on 19.01.2006, other than under normal circumstances within 7 years of the marriage. The effect of evidence of PW.1 to PW.4 was that the demand of dowry was made just before the deceased committed suicide.
27. As stated above, PW.1 to PW.4 are the mother, father and brothers of the deceased. It is well settled proposition of law that merely because a witness happened to be the close relation of the deceased, the evidence of such witness cannot be discarded. It is true that the learned counsel for the Appellant has brought to the notice of the Court, certain discrepancies available in their evidence, but these discrepancies are minor and trivial in character, which in the considered opinion of this Court will not tilt the truth or rigour of the prosecution case.
28. Apart from the reliable and clinching evidence of PW.1 to PW.4, the evidence of PW.11, Revenue Divisional Officer also assumes significance and importance, in order to substantiate the case of the Prosecution and to find out the apparent cause for the death of the deceased and the inquest report, Ex.P12 as well.
29. PW.11, Revenue Divisional Officer had deposed in his evidence that he conducted inquest over the dead body of the deceased, in the presence of mediators and examined the witnesses, PW.1 to PW.4 and recorded Ex.P8 to Ex.P10 statements and also recorded Ex.P11, consolidated statement of the mediators for the inquest. As per Ex.P12, inquest report, the deceased died due to the harassment and torture by the Appellants/A1 and A2, by demanding the money and also due to absuving by the Appellants/A1 and A2 for her ugly face. The oral evidence of PW.11 and the documentary evidence in Ex.P12 and Ex.P14 clearly establishes that the deceased was driven to commit suicide, because of the inhuman attitude and behaviour of the Appellants/A1 and A2, which caused dejection and created a difficult and hostile environment to the deceased, which compelled the deceased to commit suicide. The conducts of the Appellants/A1 and A2 would certainly amount to cruelty.
30. The evidence of the witnesses remains unimpeached and there are no discrepancies in their evidence and as such, the evidence let in by the Prosecution inspires confidence.
31. Now coming the provisions of Law, Section 304B of IPC has been inserted in the Indian Penal Code, by the Dowry Prohibition Act, with a view to combat the increasing menace of dowry deaths. There may be different facts and circumstances of each case. There may be death of woman within two months of her marriage or within seven years of her marriage. There may be

death of woman in an advanced stage of pregnancy. There may be death of a woman where demand of dowry is made, with some more cruelty or regular harassment by her husband or any relative of her husband. But, the primary ingredient to attract the offence under Section 304B of IPC, which is required to be established, is that soon before her death, the deceased wife was subjected to cruelty and harassment in connection with the demand for dowry and the death of a woman must be a 'dowry death'.

32.If all the other ingredients of Section 304B of IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise other than under normal circumstances shall, as per the legislative mandate, be called a 'dowry death' and the woman's husband or his relative "shall be deemed to have caused her death".

33.To sustain the conviction under Section 304B of IPC against an accused, for the offence of dowry death, the Prosecution must prove the following ingredients, stated and restated in many judgements:-

- a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances,
- b) such death should have occurred within 7 years of her marriage,
- c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband,
- d) such cruelty or harassment should be for or in connection with the demand of dowry and
- e) to such cruelty or harassment the deceased should have been subjected soon before her death.

34.This has been the law stated in 2010 12 SCC 350 (Ashok Kumar Vs. State of Haryana), 2011 4 SCC 427 (Bachni Devi Vs. State of Haryana), 2012 8 SCC 594 (Pathan Hussain Basha Vs. State of AP) and 2013 4 SCC 177 (Kulwant Singh Vs. State of Punjab).

35.According to the Appellants/A1 and A2, Section 304B of IPC has no application, since there was no evidence to show that soon before the deceased committed suicide, there was any cruelty or torture.

36.A reading of Section 304B of IPC along with Section 113B of the Evidence Act would contemplate that once the Prosecution proves that soon before the death of the wife, she had been subjected to cruelty or harassment for or in connection with any demand for dowry, the Court shall presume that such person caused the dowry death within the meaning of Section 304B IPC. The words "shall presume" in Section 113B of the Evidence Act, while it mandates that the Court is duty bound to proceed on

the basis that the person has caused the dowry death, the presumption is rebuttable and it is open to the Appellants to prove that the ingredients of Section 304B IPC are not satisfied.

37. In this regard, this Court finds materials, within the meaning of Section 113B of the Indian Evidence Act, in form of oral evidence of PW.1 to PW.4 and PW.11 and the documentary evidence of Ex.P12, inquest report and Ex.P11, consolidated statement of the mediators, to conclude that soon before the death, the deceased was treated with cruelty or harassed for or in connection with demand for dowry.

38. The marriage between the Appellant/A1 and the deceased took place on 11.12.2005 and the deceased died on 19.01.2006 at 16.30 hours. Thus, the matrimonial life survived only for 38 days. PW.1 to PW.4 have spoken about the maltreating and taunting the deceased by the Appellants/A1 and A2, by demanding balance of jewels and cash. Thus, the law enjoins under Section 113B of the Indian Evidence Act, drawing presumption that the Appellants/A1 and A2 had committed the dowry death.

39. Indisputably, the presumption under Section 113B is rebuttable at the hands of the Appellants/A1 and A2, by adducing evidence and discharging the reverse burden. Hence, it is to be seen as to whether any such evidence in discharge with reverse burden has been adduced by the Appellants/ A1 and A2.

40. On the side of the defence, DW.1 was examined and Ex.D1 was marked. DW.1 is a close relative of the Appellants/ accused and he is a resident of Salem. DW.1 had categorically deposed that he did not know as to what had transpired in the house of the Appellants/A1 and A2. Naturally, a defence witness, staying outside and away from the matrimonial home, cannot be expected to speak about the happenings inside the matrimonial home of the deceased. It is a common knowledge that a defence witness would not be directly aware of what exactly transpired between the deceased and her husband and her in laws. The occurrence having happened within 38 days of her marriage and thereby, it cannot be expected that the bride who has come for few days, could have spoken to the relative of her husband and mother in law with regard to the torture and harassment. Ex.D1 is the list of Sridhana. Another defence of the Appellants/A1 and A2 that since the deceased did not like the marriage, she committed suicide, is also not supported by any oral or documentary evidence. Except the oral evidence of DW.1 and Ex.D1, there is no evidence let in by the Appellants/A1 and A2 to rebut the presumption under Section 113B and in discharge of reverse burden and thereby, the defence of the Appellants/A1

and A2 fails.

41. In 2015 4 SCC 452 (Amrutlal Liladharbhai Kotak and others Vs. State of Gujarat), while considering the applicability of Section 113B of the Indian Evidence Act, the Honourable Supreme Court has held as under:-

"16. With regard to whether any direct link has been shown between dowry demand and death, in Dinesh v. State of Haryana [(2014) 12 SCC 532 : (2014) 6 SCC (Cri) 839] , the accused has been convicted under Sections 113-B and 304-B IPC, on the basis of presumption, since certain foundational facts were established. In the present case, it has been established from the versions of PW 1, PW 7, PW 8 and PW 9 that there was a demand for dowry and the deceased was being mentally harassed.

17. In Thanu Ram v. State of M.P. [(2010) 10 SCC 353 : (2010) 3 SCC (Cri) 1502] this Court has observed certain criteria with regard to establishment of guilt in the cases of dowry death. The first criterion being that the suicide must have been committed within seven years of marriage. The second criterion is that the husband or some relative of the husband had subjected the victim to cruelty, which led to the commission of suicide by the victim. This is when Section 113-A of the Evidence Act indicates that in such circumstances, the Court may presume, having regard to all the circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. In the present case that we are dealing with, both the above mentioned criteria have been satisfied, since the deceased died within seven years of marriage and with the version of the witnesses, it has been further proved that there was cruelty meted out to the deceased immediately before her unfortunate death.

18. We, therefore, see no reason to interfere with the impugned judgement [Amrutlal Liladharbhai Kotak v. State of Gujarat, 2009 SCC OnLine Guj 4202] passed by the High Court or the trial court. The appeal is accordingly dismissed."

42. In 1991 3 SCC 1 (State of Punjab v. Iqbal Singh), the Honourable Supreme Court had observed that the legislative intent is clear to curb the menace of dowry deaths, etc. with a firm hand. It must be remembered that since crimes are generally committed in the privacy of residential homes, it is not easy to gather direct evidence in such cases. That is why the legislature has, by introducing Section 113B of the Evidence Act, tried to strengthen the prosecution hands by

permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within a period of seven years.

43. In so far as the important ingredient of Section 304B of IPC, "soon before death", is concerned, the Honourable Supreme Court, in 2018 10 SCC 593 (Jagjit Singh Vs. State of Punjab), relying on its earlier decisions, reported in 2000 5 SCC 207 (Kans Raj Vs. State of Punjab) and 2015 3 SCC 724 (Sher Singh Vs. State of Haryana), has held as under:-

"14. We need only to advert to a recent judgement rendered by a Bench consisting of three learned Judges in Rajinder Singh v. State of Punjab [Rajinder Singh v. State of Punjab, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] only for the purpose of appreciating the words "soon before" occurring in Section 304-B IPC. This is what the Court has to see (SCC p. 493, para 24)

24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B."

44. In this case, the Prosecution witnesses, namely, PW.1 to PW.4, in categorical terms had deposed about the harassment and cruelty, caused by the persons and that the deceased had been subjected to cruelty for bringing insufficient dowry and also caused all sort of troubles to the deceased for not bringing the dowry demanded by them. They had further stated in their evidence that on 18.01.2006, the deceased contacted PW.1 over phone and expressed her apprehension to face the cruelty going to be caused by the accused persons. In such view of the evidence, this Court finds that the Prosecution has clearly proved that soon before the death, the deceased was subjected to cruelty for the demand for dowry.

45. In this case, in so far as the contentions of the learned counsel for the Appellants that PW.1 to PW.4 being family members and not independent witnesses, their evidence should be discarded and that non examination of independent witnesses is fatal, is concerned, it has no substance. In this regard, it is relevant to refer to the decision of the Honourable Supreme

Court reported in 2008 14 SCC 692 (Sone Lal Vs. State of MP), wherein the Honourable Supreme Court had held, quoting its earlier decisions, as under:-

"12. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version.

13. "5. ... Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

6. In Dalip Singh v. State of Punjab [AIR 1953 SC 364] it has been laid down as under: (AIR p. 366, para 26)

'26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.'

7. The above decision has since been followed in Guli Chand v. State of Rajasthan[(1974) 3 SCC 698 : 1974 SCC (Cri) 222] in which Vadivelu Thevar v. State of Madras [AIR 1957 SC 614] was also relied upon.

8. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh case [AIR 1953 SC 364] in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses.

9. Again in Masalti v. State of U.P. [AIR 1965 SC 202] this Court observed: (AIR pp. 209-10, para 14)

'14. ... But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.'

46. The sum and substance of the above reasonings and discussions is that the evidence let in by the Prosecution has clearly proved that there was harassment for dowry soon before the death of the deceased and that on account of the said harassment only, the deceased had taken the extreme step of hanging herself and thus committed suicide. Thus, the Prosecution is entitled to the presumption contemplated under Section 113B of the Indian Evidence Act. Since the Appellants/A1 and A2 had miserably failed to rebut the presumption, this Court finds that the death of the deceased is because of the dowry harassment, since the foundational facts were established from the versions of PW 1 to PW.4 and PW.11 that there was a demand for dowry and that the deceased was being mentally harassed and that such cruelty and harassment was for or in connection with the demand for dowry.

47. For the foregoing reasons, discussions and the decisions cited supra, this Court is of the firm opinion that the Prosecution has proved the guilt of the Appellants/A1 and A2 beyond all reasonable doubts, by letting in cogent and legally acceptable evidence.

48. In the result, these Criminal Appeal is dismissed. However, considering the fact that the Appellants/A1 and A2 have prayed for a lenient view, the sentence of Rigorous Imprisonment for ten years for the offence under Section 304B of IPC is reduced

to seven years and in all other respects, the impugned judgement of conviction and sentence is confirmed. The Trial Court shall take steps to secure the presence of the Appellants/A1 and A2 to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Sessions Court-Mahalir Neethimandaram, Coimbatore.
- 2.The Principal District and Sessions Judge Coimbatore.
- 3.The Judicial Magistrate No I, Coimbatore
- 4.Thro The Chief Judicial Magistrate, Coimbatore.
- 5.The Inspector of Police, All Women Police Station, Thudiyalur
- 6.The Public Prosecutor, High Court, Madras

NRJK (CO)
CB (25/09/2019)

Crl.A.No.140 of 2009

सत्यमेव जयते

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