

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.369 of 2010

State rep.by

The Assistant Commissioner of Police,
Ambattur Range, Chennai
(T-1 Ambattur Police Station,
Crime No.211 of 2007)

... Appellant

Vs

1. Udayasankar
2. Mariappan
3. Mallika
4. Jawahar
5. Arunprakash

... Respondents

Prayer:- Criminal Appeal filed under section 378 of the Criminal Procedure Code to allow this appeal and set aside the judgement of acquittal of the respondents/accused (A-1 to A-5) passed by the learned Additional Sessions Judge, (Fast Track Court No.2), Poonamallee, Chennai in S.C.No.9 of 2009, dated 18.08.2009.

For Appellant : Mr.K.Prabakar, APP

For Respondents : Mr.Raj Kumar Pandian for
Mr.Raja Senthoo Pandian

JUDGEMENT

This Criminal Appeal has been filed by the appellant/complainant against the judgement dated 18.08.2009 in S.C.No.9 of 2009, passed by the learned Additional Sessions Judge (Fast Track Court No.2), Poonamallee, Chennai, acquitting the respondents/accused for the offences under Sections 498 (A), 306 & 304 (B) of IPC.

2. The case of the prosecution is that A-1/Udayasankar and the deceased/Suryakala got married on 24.01.2004. Further the accused had demanded dowry in the form of jewels and cash along with car and further harassed the deceased and her father to get job for A-1 also in a big company and also pressured them to secure a college seat for A-6 in a college nearby Chennai and

they have in numerous ways badly treated the deceased due to which the deceased/Suryakala committed suicide by hanging in the matrimonial house itself. The complaint was preferred before the respondent police who registered the case in T-1 Ambattur Police Station Crime No.211/2007 initially under Sec.174 Cr.P.C. During investigation since the witnesses, the relatives of the deceased had stated that there was demand of dowry in the form of cash and jewels and a car and further there was harassment and since the death had happened within seven years of marriage the case was altered and final report was filed for the offences under Sections 498(A), 306 & 304 (B) of IPC .

3. The case was taken on file in S.C.No.9 of 2009, by the learned Additional Sessions Judge (Fast Track Court No.2), Poonamallee, Chennai. The respondents/accused had denied the charges and sought for trial. In order to bring home the charges against the respondents/accused, the prosecution examined PW.1 to PW.14, marked Exs.P1 to P.15, M.O.1 and Exs.D1 to Ex.D8 were marked on the side of the respondents/accused.

4. On completion of the evidence on the side of the prosecution, the respondents/accused were questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses and the respondents/accused have come with the version denying certain allegations and explaining certain circumstances leading to the deceased committing suicide and stated that they have been falsely implicated in this case. The learned Trial Judge after hearing both sides acquitted the respondents by judgement dated 18.08.2009. This appeal has been preferred against the order of acquittal.

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

6. The learned Additional Public Prosecutor appearing for the appellant/complainant would submit that the judgment of the Trial Court is illegal and perverse. He would submit that PW.2 had spoken about the demand made at the time of the marriage and also the deceased having spoken to him about the demand of dowry made soon before her death. Further, PW.2, the father and PW.8, the mother have deposed that the victim had informed them that the father-in-law and mother-in-law have caused cruelty on her. He would further submit that earlier prior to the occurrence the victim had been sent back to her parental home on account of demand of dowry and on the date of occurrence the victim had spoken to PW.2 and PW.8 about the cruelty committed on her with regard to demand of dowry and when there is ample evidence to prove the offence under Section 304(B) IPC, the trial Court had on wrong appreciation of law and facts had acquitted the

respondents/accused. He would further submit that the finding of the trial court is illegal and perverse.

7. The learned counsel appearing for respondents/accused would submit that absolutely there is no evidence that the victim was subjected to cruelty or that there was demand of dowry soon before her death. He would also submit that it is the categorical evidence of PW.5 that the deceased used to come her house to make phone calls and that on the date of occurrence, she had come to the house of PW.5 and that she had stated that she was frightened and afraid and that she wanted to call her husband and that it is the evidence of PW.5 and PW.10 that she had spoken to her husband and other than the oral evidence of PW.2 and PW.8 no evidence has been let in by the prosecution that the victim spoke to them prior to her death regarding demand of dowry. Further PW.2 and PW.8 have not stated that prior to the date of occurrence, the victim had spoken to them and no scientific evidence had been let in by the prosecution to prove that the deceased spoke to PW.2 and PW.8 on the date of occurrence and thereby, the evidence of PW.2 and PW.8 that the deceased spoken to them on the particular day, cannot be believed. He would further submit that it is the admitted case that the other respondents were not residing along with the 1st respondent/accused and the deceased and that they were initially not added as accused during investigation and that only at the time of filing final report they were arrayed as accused.

8. The learned counsel for the respondents/accused would submit that the learned Trial Judge after analyzing the evidence rendered a finding the death of the victim was not due to any harassment due to demand of dowry soon before her death and that the victim had committed suicide due to depression and fear had acquitted the respondents/accused giving benefit of doubt.

9. The learned counsel for the respondents/accused would further submit that in order to bring home the guilt of the respondents/accused for the offence under Section 304 (B) of IPC, the ingredients that have to be proved by the prosecution are that (i) the death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, (ii) it is within seven years of her marriage and (iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand of dowry. He would further submit that the presumption as to dowry death can be activated only upon proof of the fact that the deceased lady had been subjected to cruelty or harassment or in connection with any demand of dowry by the accused and that too in the reasonable contiguity of death and that such a proof is thus the Legislatively mandated pre-requisite to invoke the otherwise

statutorily ordained presumption of commission of the offence. He would further submit that there should be a live link between the cruelty emanating from a dowry demand and the death of a young married woman should first raise a presumption against the woman. He would further submit that since, it is a case of reverse burden, the burden is cast upon the respondents/accused. However, before raising the presumption against the accused, the prosecution should prove the foundational facts.

10. The learned counsel for the respondents/accused would further submit that the demand of dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304 (B) IPC or the suicide under Section 306 of IPC. He would also submit that once the presence of these ingredients are established or shown or proved by the prosecution, even by preponderance of probability, the initial presumption of innocence is replaced by an assumption of guilt of the respondents/accused, thereupon transferring the heavy burden of proof. However, in this case, the prosecution has not let in evidence to show that there was demand of dowry soon before her death or that the deceased was subjected to cruelty on demand of dowry to soon before her death.

11. Admittedly, the deceased and the respondents/accused are close relatives and that the marriage had happened 2-1/2 years prior to the occurrence and all the averments in the evidence of the father, mother, brother and sister-in-law of the deceased are in respect of things which had happened at the time of marriage and absolutely, no evidence is let in by the prosecution that soon before her death, there was demand of dowry, whereas, it is the categoric evidence of PW.3 and PW.5 who are neighbors and P.W.10 who is colleague of A-1/Udhayashankar, who have specifically spoken having known about the depression suffered by the deceased due to fear and it is the specific evidence of PW.5 that soon before the alleged occurrence, the deceased had come to her house and informed her that she was afraid and that it had been informed to the 1st respondent/accused through his colleague PW.10 and their evidence is clear that the reason for the death of the deceased is not due to demand of any dowry or cruelty committed on her. Admittedly, the respondents 2, 3 and 4 were living at Thiruppuvanam, Sivagangai and that there is no allegation against them that they have demanded any dowry or any amount in the recent past and thereby, the learned Trial Judge has rightly acquitted the respondents/accused. He would further submit that PW.2 and PW.8, the father and mother, have not given any statement before the RDO and that PW.6, who is a relative of PW.2 has not spoken anything about any demand being made. Further, the Trial Court had not believed the evidence of the brother and sister-in-law of the deceased, who were examined as

PW.4 and PW.9. He would rely on the judgments in the case of Sher Singh Alias Partapa Vs.State of Haryana reported in (2015) 3 SCC 724, Bhairon Singh Vs.State of Madhya Pradesh reported in (2009) 13 SCC 80, Madivallappa V.Marabad and others Vs.State of Karnataka reported (2014) 12 SCC 448, Major Singh and another Vs.State of Punjab reported in (2015) 5 SCC 201, Sunil kumar sambhudayal gupta and others Vs.State of Maharashtra reported in (2010) 13 SCC 657, Rajinder Singh Vs.State of Punjab reported in (2015) 6 SCC 447, Shindo Alias Sawinder Kaur and another Vs.State of Punjab reported in (2011) 11 SCC 517 and Baijnath and others Vs.State of Madhya Pradesh reported in 2017 (1) MWN (Cr.) 260 (SC).

12. The learned counsel for the respondents/accused would further submit that only when the prosecution is able to establish a case for the offence under Section 304(B) IPC, a presumption can be raised against the respondents/accused under Section 113 (B) of the Indian Evidence Act. He would also submit that the Trial Court having seen the demeanor of the witnesses, has rightly acquitted the respondents/accused and there is no infirmity in the judgment and he would pray that the order of acquittal may be confirmed. He would further submit that the trial Court has taken into consideration the circumstances and relevant facts forming part of the same transaction and that the evidence of PWs.3, 5 and 10 would show that the reason for the death of the deceased was due to fear and depression. He would further submit that the prosecution has failed to prove the case beyond all reasonable doubts and thereby, the trial Court has rightly acquitted the respondents/accused rendering benefit of doubt.

13. In this case while looking into the evidence, the prosecution witnesses can be classified as follows:-

(i) PW.1, PW.3 and PW.5 are the neighbors of the deceased and the 1st respondent/accused. PW.2, PW.4, PW.6, PW.8 and PW.9 are the relatives of the deceased. PW.7 is the witness for the observation mahazar. PW.10 is the colleague of the 1st respondent/accused. PW.11 and PW.14 are official witnesses. Admittedly, the 1st respondent/accused and the deceased were living separately at Ambattur, Chennai-53 where the death of the deceased took place. Respondents 2, 3 and 4 who are respectively the father, mother and brother of the 1st respondent/accused were residing at Chennai and the 5th respondent/accused was studying in a college at Chennai.

(ii) Further, as per the case of the prosecution PW.1/Mugunthan is the neighbour of the deceased and the 1st respondent/accused and that he is doing Real Estate business. On 26.03.2007, while PW.11/Chidambara Bharathi, the Sub Inspector

of Police was on duty, at D.10, Thirumullaivayal Police Station, PW.1 had appeared before him on 26.03.2007 at 8.30 p.m., and given a complaint, which was marked as Ex.P1. Based on which a case in Crime No.211 of 2007 was registered under Section 174 (3) Cr.P.C. F.I.R was marked as Ex.P4. Ex.P4 was sent to the Assistant Commissioner of Police. PW.14/Balasubramaniam, who had taken up the investigation, had immediately, on receipt of the F.I.R, visited the place of occurrence and prepared Rough Sketch, which was marked as Ex.P.10. Further, on the same day at 9.30 p.m., he had prepared an observation mahazar in the presence of witnesses Viz., Sekar and Siva and recovered a black colour shawl under a mahazar which was marked as Ex.P11. The black colour shawl is M.O.1.

(iii) PW.7 had stated that on 26.03.2007, while he was returning home after attending his work, he had heard that the deceased/Suriyakala had committed suicide and that the Police prepared an observation mahazar and that he had attested the same. The observation was marked as Ex.P2. No other materials were recovered from the place. The signature of PW.7 in the observation mahazar, was marked as Ex.P3. Thereafter, PW.14 had examined PW.1/Mugunthan, PW.3/Gopinathan and other witnesses and PW.7/Sekar and recorded their statements. Thereafter, he had sent a requisition to the RDO to conduct an enquiry, since the death of the deceased was within seven years of marriage.

(iv) PW.12/Sangeetha, is the RDO, she had based on the requisition and the F.I.R taken up the case for enquiry and conducted inquest and she had examined the witnesses Viz., Asaithambi and Kanniappan (relatives of the deceased) and recorded their statements separately. The husband, father, mother and brother were enquired and their statements were recorded and that she had sent the report to PW.14 on 19.06.2007, as per the report which was marked as Ex.P5. She had stated that the deceased had committed suicide since the 1st respondent/accused had compelled her to go to shop and had demanded dowry.

(v) PW.14 took up the case for further investigation and examined the witnesses Viz., Asaithambi, Thandiayappan, Kaleeshwaran, Kasthuri, Pappathi and Shobana and altered the case from under Section 174 (3) Cr.P.C to under Sections 304 (B) and 498A of IPC. The alteration report was marked as Ex.P12. Thereafter, the shawl which was used for committing suicide was sent under Form 95 to the Judicial Magistrate's Court. Form 95 was marked as Ex.P13. On 27.03.2007 at 4.00 p.m., PW.14 arrested the 1st respondent/accused and sent him to judicial remand. On 27.04.2007 PW.2 was enquired and recorded his statement. During the examination of PW.2, Exs.D1 to D6 were marked on his admission and during the examination of PW.14, Exs.D7 and D8

were marked. PW.14 had further stated that on 15.05.2007, he examined the witnesses Viz., Meenakshi, Rajalakshmi and further examined Palusami and recorded their statements. Thereafter, he had enquired the Medical Officer, who had conducted the Post mortem. PW.13/Dr.Kuppusamy is the professor of Law Medicine, he had stated that on 27.03.2007, while he was on duty, he had conducted Autopsy of the victim on the requisition of RDO, Ponneri. The requisition letter was marked as Ex.P7. On the same day, he along with Doctor/Udhayasankar had conducted Autopsy and it was completed by at 1.00 p.m., The viscera was sent for analysis. The report of the viscera was marked as Ex.P8. Since there was no evidence of poisoning, he given an opinion stating that the deceased would appear to have died of asphyxia due to hanging. The Post Mortem report was marked as Ex.P9. Thereafter, PW.14, had on 02.05.2007, examined the witnesses Viz., Thuraipandiyan, Ramasami Muthuramalingan and recorded their statements and later on receipt of the report of RDO on 20.06.2007, the case was altered to under Sections 498A, and 304 (B) of IPC. The further alteration report was marked as Ex.P14. The Report of RDO was marked as Ex.P15 (Ex.P15 had been marked as under protest). Thereafter, the 4th respondent/Jawagar was arrested and let out on bail and respondents 2, 3 and 5 were granted anticipatory bail and after obtaining opinion from the Assistant Public Prosecutor, the final report had been filed.

14. When the incriminating materials had been put to the accused and questioned under Section 313 Cr.P.C., the accused had admitted the evidence of PW.1 and had stated that PWs.2, 3, 4, 7 and 8 had given deposed falsely and that they do not know about the evidence of PW.5 and had admitted that PW.10 had informed him over phone call and that PW.12 had given false information and that PW.12 had obtained signatures in blank papers and that PW.14 had foisted the false case on the instigation of PW.2.

15. Respondents 2, 3, 4 and 5 have stated that they were residing at Sivagangh District and that they do not know what transpired at Chennai. Further, they had given a written explanation wherein, the 1st respondent had stated that the deceased was his first cousin being the daughter of his own aunt, who is the elder sister of their father and that there was no demand of dowry and that since they were all relatives, the marriage expenses were shared between them Further, due to close relationship no dowry was taken and further that the deceased while studying school and college she was in the hostel along with co-students and that since she was alone in the house at Chennai and that since they did not have any issues after marriage she was in depression and thereafter, she had studied Library Science from her father's house and thereafter, she had come back to Chennai and that their respective names were

deleted from their family card and transferred to Chennai and that since she was alone at Chennai, she was under the state of depression and fear and that on 26.03.2004, she had gone to the house of the neighbour PW.5/Shobana and informed her and that she was afraid and PW.5/Shobana had called the management staff of PW.10 and that later he consoled the victim to be at home stating that he would come back soon and that when he had come back home, he had seen that the door of the house was locked from inside and that the victim had committed suicide and he had stated that the victim had committed suicide due to depression and since they did not have a child. Whereas, the parents of the victim unable to accept that their daughter had committed suicide due to depression for not having a child had given a false complaint as if there was demand of dowry.

16. The learned Trial Judge, after analyzing the entire evidence and materials on record, has found that there was no demand of dowry soon before the death. The learned Trial Judge, finding that the essential requirements of the charges against the respondents/accused having not been proved had acquitted the respondents/accused.

17. I have carefully analyzed the evidence and materials on record and the judgment of the Trial Court.

18. As stated above PW.1, PW.3 PW.5 and PW.10 are independent witnesses. PW.2, PW.4, PW.6, PW.8 and PW.9 are relatives of the deceased. It is the admitted evidence of PW.14 that the 1st respondent/accused was working in Chennai and the 5th respondent/accused was studying at Chennai and that respondents 2, 3 and 4 were residing at their native place at Thirupuvanam. Likewise, the parents of the deceased and the relatives of the deceased are also residing at Sivagangah District.

19. Excepting an omnibus allegation made against the respondents in general with regard to demand of dowry, no specific evidence had been let in with regard to the demand of dowry. The independent witnesses who are the neighbours of the deceased and the 1st respondent/accused have categorically deposed that there was no problem between them in the matrimonial home. The Investigating Officer/PW.14 has also confirmed the same. PW.1 in his examination in chief had stated that there was no matrimonial issues or problems between the deceased and the 1st respondent/accused. PW.3 is the neighbour, who has also deposed that when he was examined by the Police, he had stated that there was no matrimonial disputes or issues between the 1st respondent/accused and the deceased.

20. PW.14 is the Investigation Officer has also corroborated that when he had examined the witnesses in the neighborhood,

they have also stated that there was no dispute between the deceased and the 1st respondent/accused. There is evidence in the case that prior to the occurrence, the deceased was in disturbed state of mind as she was in the grip of fear. As per the evidence of PW.5, on the date of occurrence i.e., on 26.03.2007 at about 1.00 p.m., the deceased had gone to the house of PW.5 and informed her that she was frightened and was afraid and PW.5 had advised the deceased not to be afraid and PW.5 had, from her phone, made a call to the landline number of the College where the 1st respondent/accused was employed and the said call had been attended by PW.10, the Management Staff of the college and PW.5 had asked PW.10 to inform the 1st respondent/accused about his wife and had asked the 1st respondent/accused to speak to her. PW.10 had informed the said matter to the 1st respondent, who had in turn had spoken to the deceased over phone and advised her not to be afraid and stated that he would manage things, once he reaches home. Further, the 1st respondent/accused had informed about the said conversation to PW.10. The evidence regarding the said incident is very clear and it had been categorically deposed by both PW.5 and PW.10, wherein it is evident that the reason for suicide of the deceased was due to her disturbed state of mind out of fear and depression and that the reason for her to commit suicide was not on account of cruelty or demand of dowry or abetment to commit suicide.

21. The evidence of PW.5 and PW.10 had been corroborated by the evidence of PW.3, husband of PW.5, who had stated that he was informed by his wife that on the date of occurrence, the victim had come to his house and informed about her fear and that his wife had told him that she had contacted the 1st respondent/accused. The evidence of PWs.3, 5 and 10 would suggest that the deceased was in a state of depression and fear. It had also been accepted by PW.14, the Investigating Officer that the deceased was stated to be in a state of fear and depression before the occurrence.

22. Further while analysing the evidence of the relatives of the deceased, the crux of the allegations against the respondents/accused are that the respondents/accused demanded dowry to secure a job for the deceased and that the 1st respondent/accused had an illegal affair with a lady namely Sudha and the respondents demanded to secure admission for the 5th respondent in an Engineering College. However, the allegations are very vague and that no specific evidence has been let in by the witnesses to support the allegations.

23. PW.14, the Investigating Officer had stated that there was no evidence for the alleged illicit affair of the 1st respondent/accused. Further, the allegations of the witnesses regarding demand of dowry are vague and bald without even

referring to the particular date, period or occasion and the versions of the witnesses which had been stated before the Trial Court seem to be exaggerated versions.

24. Further, the parents of the deceased had stated that they have spoken to their daughter, the deceased on the day of occurrence. It is neither been supported by the evidence of PW.5, the neighbour nor by any scientific evidence. No investigation has been done by the respondent police with regard to such telephonic conversation stated to have been made between the deceased and her parents on the date of occurrence. Thereby, the trial Court finding that the respondent police have not proved the case beyond all reasonable doubt, acquitted the respondents/accused.

25. Though several decisions have been relied on by the learned counsel for the respondents/accused it would be appropriate to refer to (2017) 1 SCC 101 in the case of Baijnath and others Vs.State of Madhya Pradesh, wherein the Hon'ble Apex Court has held as follows:-

"24. The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in Sections 304-B and 498-A of the Code, the provisions for reference are extracted hereunder:

"304-B. Dowry death.--(1) 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.

Explanation.--For the purpose of this subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

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 purposes 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."

25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits "cruelty" as:

(i) 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), or

(ii) 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.. The expression "dowry" is or

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry

Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

"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 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 304-B of the Indian Penal Code (45 of 1860)."

29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to

demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative premature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be over eased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty.

32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo v. State of Punjab* [*Shindo v. State of Punjab*, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in *Rajeev Kumar v. State of Haryana* [*Rajeev Kumar v. State of Haryana*, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao* [*K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

26. In this case on hand, the trial Court has held that the evidence on record is not sufficient to prove beyond reasonable doubt that "soon before her death" the victim was subjected to cruelty in connection with any demand for dowry.

27. In the case of Madivallappa V.Marabad and others Vs.State of Karnataka reported in (2014) 12 SCC 448 the Hon'ble Apex Court has held as follows:-

"11. We find that in quite similar facts, this Court has found in Rohtash [Rohtash v. State of Haryana, (2012) 6 SCC 589 : (2012) 3 SCC (Cri) 287] that the deceased Indro committed suicide by taking pills of poison and the trial court disbelieved the prosecution case and acquitted the accused in that case from the charges made under Sections 304-B and 498-A IPC. The High Court, however, reappreciated the evidence and reversed the acquittal and convicted the accused and this Court observed: (SCC pp. 595-96, para 27)

"27. The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide State of Rajasthan v. Talevar [(2011) 11 SCC 666 : (2011) 3 SCC (Cri) 457 : AIR 2011 SC 2271] and Govindaraju v. State [(2012) 4 SCC 722 : (2012) 2 SCC (Cri) 533] .)"

12. In this case also, we find that the trial court had disbelieved the prosecution case and held that in any case, the prosecution has failed to establish beyond reasonable doubt the ingredients of the offences under Sections 498-A and 304-B IPC. In our opinion, the High Court, as the appellate court, could not have reversed the findings of the trial court and held the appellants guilty of the charges under Sections 498-A and 304-B IPC by reappreciating the evidence."

28. The trial Court on careful analysis the evidence on record and after watching the demeanour of the witnesses has found that the prosecution has failed to prove the case beyond reasonable doubt and has acquitted the respondents/accused granting benefit of doubt.

29. This Court having consciously gone through and analysed the evidence on record does not find any manifest illegality, perversity or miscarriage of justice and does not find anything wrong with the view taken by the trial Court in acquitting the respondents/accused.

30. In Madathil Narayanan and others Vs.State of Kerala reported in (2018) 14 SCC 513 the Hon'ble Apex Court has held as follows:-

"8. It is a well-settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court in Arulvelu v. State [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] . In Bindeshwari Prasad Singh v. State of Bihar [Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650 : 2002 SCC (Cri) 1448] , this Court has held that in the absence of any manifest illegality, perversity or miscarriage of justice, the order of acquittal passed by the trial court may not be interfered with by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. Rathinam v. State of T.N. [Rathinam v. State of T.N., (2011) 11 SCC 140 : (2011) 3 SCC (Cri) 111] and Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375].

9. This Court in Narendra Singh v. State of M.P. [Narendra Singh v. State of M.P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893] has recognised the principle that presumption of innocence is a human right and observed that the benefit of doubt belonged to the accused. In State of Rajasthan v. Raja Ram [State of Rajasthan v. Raja Ram, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965] , this Court observed that while considering the appeal against the acquittal where the case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused can be drawn have to be proved beyond reasonable doubt. The cumulative effect of the circumstances must be such

so as to negative the possibility of the innocence of the accused and bring home the guilt of the accused beyond any reasonable doubt. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted. Thus, if the trial court takes the view that the accused deserves to be acquitted on the basis of the evidence on record, the same cannot be reversed unless and until it is found that the same is vitiated on account on some gross perversity and erroneous appreciation of evidence on record".

31. In view of the above discussions, this Court is of the opinion that the judgement of acquittal of the respondents/accused passed by the learned Additional Sessions Judge (Fast Track Court No.2), Poonamallee, Chennai in S.C.No.9 of 2009, dated 18.08.2009 warrants no interference.

32. In the result, the Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge, (Fast Track Court No.2), Poonamallee, Chennai.
2. The Assistant Commissioner of Police, Ambattur Range, Chennai (T-1 Ambattur Police Station)
- 3.The Public Prosecutor, High Court, Madras.

+2 ccs to Mr.Raja Senthoo Pandian, Advocate, S.R.No.24606

RR(CO)
SSM(23/07/2019)

CrI.A.No.369 of 2010