

Bail Slip

That the Appellant/Accused, Sridhar (A1) S/o Gunachandran, and Meera (A2) W/o. Gunachandran, and Viji @ Vijaya (A3) w/o. Ramesh was released on bail as per order of this Court dated 06/12/2010 and made in CrI.MP.No.1/2010 in CrI.A748/2010 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2019

PRONOUNCED ON : 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

CrI.A.No.748 of 2010

1. Sridhar

2. Meera

3. Viji @ Vijaya

Appellants/A1, A2 & A3

Vs

State by the Inspector of Police
Thiruvotriyur Police Station, Chennai

Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2) of Cr.PC, against the judgement of conviction and sentence, dated 11.11.2010, made in SC.No.203 of 2008, by the Additional District and Sessions Judge, Fast Track Court No.IV, Ponneri.

For Appellants : Mr.V.Paarthiban

For Respondent : Mr.K.Prabakar, APP

JUDGMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 11.11.2010, made in SC.No.203 of 2008, by the Additional District and Sessions Judge, Fast Track Court No.IV, Ponneri. In and by the impugned judgement, the Trial Court, while acquitting A4, had convicted and sentenced each of the Appellants/A1 to A3, for the offences under Sections 498A of IPC, to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, each, in default, to undergo three months rigorous imprisonment and for the offence under Section

306 of IPC, to undergo three years Rigorous Imprisonment and to pay a fine of Rs.2000/-, in default, to undergo, six months rigorous imprisonment and ordered the sentences to run concurrently.

2. The Appellant/A1 is the husband of the deceased, victim Devi. The Appellants/A2 and A3 are is her mother-in-law and sister-in-law, respectively. A4, Ramesh is the husband of A3.

3. The case of the prosecution has arisen on the basis of the complaint Ex.P1, dated 05.03.2006, preferred by PW.1/Ramathilagam, mother of the victim Devi-PW.1, who is a resident of Perungalathur, Chennai, alleging that her daughter/Devi/deceased was given in marriage to the appellant/A-1 on 27.01.2003 and that the appellant/A-1, was working as a Welder in Saudi Arabia at the relevant point of time. After four months of marriage, the appellant/A-1 had returned back to Saudi Arabia for his employment. Meanwhile, Devi/deceased had delivered a baby and A-1 was working abroad and her daughter was living along with her in laws. During the relevant period A-2/mother of A-1 had harassed her daughter by several means and that it was informed to PW.1 by her daughter. While so, two months prior to the incident, A-1 came back from abroad and was living with the deceased and after two months, he had indented to go back to Saudi Arabia and at the time, the deceased had informed him not to go abroad stating that she was unable to bear the torture made by his mother. While so, there used to be frequent quarrels with regard to A-1 leaving to Saudi Arabia for employment against the wishes of the deceased and that A-2, the mother-in-law had intervened and told the deceased that her son had to go abroad for employment and that if she wants to stay at home, she can stay or she can get away from the home, due to which, her daughter had immolated herself and on information when PW.1 had gone to Kilpauk Medical College Hospital, she had found her daughter with burn injuries and she was unconscious and later at 9.20 p.m., her daughter had succumbed to the injuries. Thereafter, a statement had been given by PW.1 to the RDO stating that there used to be frequent quarrels between the appellants/accused and the deceased with regard to the demand of dowry and that A-1 had not sent money from abroad to his daughter and that the appellants/accused had caused death of her daughter by pouring kerosene and setting her ablaze. Originally, a case was registered under Section 174(3) Cr.P.C and later, after completion of investigation, the final report was filed against the appellants/accused and yet another person (husband of A-3) for the offences under Sections 498-A and 306 of IPC.

4. The case was taken on file in PRC.No.44 of 2007, on the file of the District Munsif-cum-Judicial Magistrate, Tiruvotriyur and subsequently, the case was made over to the

Trial Court, viz., the Additional District and Sessions Court, Fast Track Court No.IV, Ponneri, in SC.No.203 of 2008 and necessary charges were framed. The Appellants/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.16 and also marked Exs.P1 to P12. No oral and documentary evidence was let in on the side of the defence.

5. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of 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.

6. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, acquitted A4 and found the Appellant/A1 to A3 guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

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

8. The learned counsel for the appellants has assailed the impugned judgement of conviction and sentence, on the following grounds:-

(i) The evidence placed by Prosecution has not proved the guilt of the Appellants/ accused beyond reasonable doubt and that the Trial Court ought not to have believed the evidence of PWs.1 to 3, but ought to have appreciated the evidence of PW.10 and 11, come to the conclusion that due to the mental depression suffered in view of her husband going abroad for employment against her wishes, the victim had committed suicide voluntarily and thereby, the ingredients of offences under Sections 498-A and 306 of IPC are not made out against the appellants/accused.

(ii) PW.1, who is the mother of the deceased, at the time of lodging Ex.P1, complaint, the initial document did not mention anything about the demand of dowry or other cruelty for the purpose of demand of dowry and the later statements and evidence before the trial Court are only improved.

(iii) The enquiry conducted by the PW.10, Revenue Divisional Officer will prove that the deceased did not like her husband going for employment abroad, due to which, she committed suicide. The evidence of PW.2 is also on the same lines.

(iv) In the statement by the victim in the form of a dying declaration given before PW.6, Doctor, there is no whisper about the demand of dowry and torture. In Ex.P8, inquest report also, it is recorded that the Panchayatars have not spoken or complained about the demand of dowry and that the deceased did not want her husband to go for employment abroad and that since he wanted to go for his work abroad against her wishes, she committed suicide.

(v) The alleged demand of dowry and harassment by the Appellants/ accused was not proved by valid evidence and that the Trial Court did not consider the statements and arguments placed on the side of the appellants/accused.

9. The learned counsel for the Appellant would ultimately contend that the Prosecution has not proved its case beyond all reasonable doubts, by letting in cogent and convincing evidence and that taking into consideration the overall evidence of the witnesses and the attending circumstances, the impugned judgement of conviction and sentence is not sustainable and therefore, the Appellant are entitled for acquittal. In support of his contention, he would rely on the decision of the Honourable Supreme Court reported in 2014 12 SCC 595 (Mangat Ram Vs. State of Haryana) and would submit that failure to take the wife to the place of employment or posting or going abroad for employment against the wishes of the wife would not amount to cruelty leading to abetment of committing suicide.

10. Per contra, the learned Additional Public Prosecutor for the Respondent, while supporting the impugned judgement of conviction and sentence, would submit that that the Prosecution has proved its case by adducing clear and cogent evidence and that there are no infirmities or discrepancies or inconsistencies in the evidence adduced by the Prosecution and pray for dismissal of this Criminal Appeal.

11. The learned counsel for the appellants/accused would further submit that the entire case of the prosecution is filled with exaggeration and embellishment. He would further submit that none of the independent witnesses have spoken to about the demand of dowry being made or that the appellants abetted the victim to commit suicide and unless ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be committed for offence under Section 306 of IPC and would rely on the judgement reported in (2019) 3 SCC 315 (M.Arjunan Vs.State represented by its Inspector of Police). He would further submit that admittedly, the victim had succumbed to the injuries even before PW.1 would reach the Hospital and that the averments made in the complaint are only hearsay and would have been made only as an afterthought. He would further

submit that as per the evidence of PW.7/Doctor, the victim had stated that she had self immolated her due to a quarrel with her mother-in-law and he would submit that even in Ex.P1, no allegations have been made against the 2nd and 3rd appellants/accused. He would further submit that the 3rd appellant/accused is married and living elsewhere and except the evidence of the interested witnesses, there is absolutely no evidence as if the 2nd and 3rd appellants/accused had harassed her by demanding dowry. He would further submit that it is the admitted evidence of PW.2 that the appellants/accused did not take any dowry at the time of marriage and that the 1st appellant/accused married the victim since she was beautiful and that the victim had committed suicide due to disappointment in her husband going abroad for employment against her wishes and there is absolutely no evidence and that the appellants/accused harassed her.

12. In response, the learned Additional Public Prosecutor would submit that there may not be any allegations against the 2nd and 3rd appellants/accused about causing cruelty to the deceased as per her statement to the Doctor/PW.7 and as per Ex.P1, the initial complaint, whereas, the evidence of PW.1 to PW.3 are cogent with regard to the fact that during the absence of the 1st appellant/accused, the 2nd and 3rd appellants/accused used to harass the victim and there used to be frequent quarrels between them. He would further submit that even in the statement given by the victim to PW.7/Doctor, who had admitted her, which would amount to dying declaration, the victim had told him that she committed self immolation due to a quarrel with her mother-in-law, the 2nd appellant/accused.

13. 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, including the relevant provisions of Law and the decisions relied on by the learned counsel.

14. Now what is to be seen is that whether, the prosecution has proved the charges levelled against the appellants/accused beyond all reasonable doubt and whether the Trial Court is right in convicting the appellants/accused.

15. PW.1 is the mother of the deceased/Devi. She had deposed that her daughter was married to the 1st appellant/accused and that within four months of the marriage, the 1st appellant/accused had gone to Dubai and came back after 2-1/2 years and that the 2nd and 3rd appellants/accused used to quarrel with her daughter saying that no jewels were given to her at the time of marriage and further there used to be disputes with

regard to the 1st appellant/accused/son-in-law going abroad for employment. Further she had stated that her daughter used to tell her about the quarrel and cruelty committed on her and that during the year 2006, she received a phone call that her daughter was admitted in Kilpauk Medical College Hospital and when PW.1 had gone there, her daughter was not alive and that she had given a complaint on the next day, which was marked as Ex.P1 and later she had given a statement to the RDO, which was marked as Ex.P2. In her cross examination, she had deposed that her daughter was living in a joint family with her husband and in laws and that the complaint was written by somebody in the Police Station and that she does not know who wrote the complaint and that she had stated there used to be frequent quarrels between her daughter and mother-in-law and that the 2nd appellant/accused/mother-in-law had told her daughter that if only she dies her son can go abroad. She had further deposed that when her son-in-law, the 1st appellant/accused was working abroad, the 2nd appellant/accused, the mother-in-law used to commit cruelty on her and that her son-in-law had come back from abroad and that after two months, he had decided to go abroad once again and it was objected to by her daughter/deceased and at that time, the mother-in-law/2nd appellant/accused had intervened and told her that if only she dies, her son can go abroad.

16. PW.2, is the father of the deceased. He had deposed that when his son-in-law/1st appellant/accused was working abroad, he will not send any money to his daughter and that he will send the money only to his mother, the 2nd appellant/accused herein and further, the 2nd appellant/accused used to torture by various means and that after coming back from Dubai, the 2nd appellant/accused wanted to go back to Dubai again and that when his daughter is objected, her mother-in-law had intervened and told her, if only she dies her son can go abroad. Further, he had deposed about PW.1 giving a complaint and having given a statement to the RDO. Further, he had deposed that there used to be frequent quarrel between the 2nd appellant/accused and his daughter.

17. PW.3 is the sister of the deceased, she had stated that the 2nd appellant/accused and the 3rd appellant/accused used to commit cruelty stating that the deceased did not bring any jewels and that while they were residing at Thiruvotriyur, the appellants/accused had come and compelled her sister and taken her to the matrimonial home saying that if she does not come to the matrimonial home, the 1st appellant/accused would divorce her and she had further stated that due to demand of dowry, her sister had committed suicide. Whereas, in Ex.P2 it has been stated as if the 2nd accused had poured kerosene on the victim and set her on fire.

18. PW.5 is the witness for attesting the mahazar. PW.6 is the Doctor in the Emergency Ward of Kilpauk Medical College Hospital and that he had admitted the victim in hospital and issued the accident register, which was marked as Ex.P4. Further, he had deposed that the victim was brought on 05.03.2006 at about 5.00 p.m., and when he had examined her, she had told him that she had immolated herself at 4.30 p.m., and thereby, he had given first aid and admitted her as in-patient in the said hospital.

19. PW.7 is the Plastic Surgeon working as Additional Professor in Government General Hospital, Chennai. He had deposed that on 05.03.2006 at 5.30 p.m., when he was working as Assistant Surgeon in the burns ward, the victim was admitted in the Ward for treatment and when he had enquired her, she had told him that she had self immolated herself by 2.00 p.m., due to a quarrel with her mother-in-law and when he had examined her, she was conscious and was capable of answering the questions. He had further deposed that the victim had suffered 96% burn injuries and he gave treatment to her and on intimation, the Sub Inspector of Police/Munusami had come by 8.20 p.m., to the Hospital and by the time he was ready to take her statement, the victim had lost consciousness and she succumbed to the injuries at 9.20 p.m., The death certificate was marked as Ex.P5. In his cross examination, he had stated that at the time of admission, the victim was conscious and that she had stated that she had immolated herself due to the quarrel with her mother-in-law.

20. PW.8 is the Head Constable. He had deposed that on 06.03.2006, he had received as per the order from the Assistant Commissioner of Police, Thiruvotriyur and received the death report from the Tahsildar and served the copies at Kilpauk Medical College Hospital and after completing Post Mortem handed over the body of the victim to her mother/PW.1.

21. PW.9 is the Doctor, who had conducted the Post Mortem. He had opined that the deceased would appear to have died of Hypovolumic Shock due to burns; viscera preserved; he had stated that the death of the victim was due to self immolation.

22. PW.10 is the Tahsildar. He had stated that on the order of the RDO, he had conducted inquest and recorded the statement of the mother of the deceased/PW.1 and since he had stated that the death was due to dowry demand, he had referred the matter to the RDO for further enquiry. The inquest report was marked as Ex.P8. In his cross examination, he had stated that in paragraph 15 of Ex.P8, it had been stated that since her husband wanted to

go back to Dubai for employment against her wishes, she had committed suicide by herself immolation. He had further stated that none of the Panchayatars had told him that the death was due to dowry demand. He had further stated that all the witnesses have stated that the victim committed suicide because her husband wanted to go back to Dubai for employment against her wishes.

23.PW.11 is the RDO. He had stated that the matter was taken for further enquiry since PW.1 had complained that her daughter had committed suicide due to dowry demand. In his cross examination, he had stated that excepting the father and mother of the deceased, all the other witnesses had told him that she had committed suicide since her husband wanted to go back to Dubai for employment against her wishes.

24. PW.12 is an independent witness/the neighbour, who has not supported the case of the prosecution and thereby, he had been treated as hostile. PW.13 is the Inspector of Police. He had stated that on instructions of the Assistant Commissioner of Police, Thiruvotriyur, he had enquired the witnesses and recorded their statements and thereafter, altered the case from Section 174 (3) Cr.P.C to one under Section 306 of IPC. The alteration report was marked as Ex.P10. In his cross examination, he had stated that the Personal Assistant to the Collector has given a report stating that there was no demand of dowry.

25. PW.14 is the Inspector of Police, Thiruvotriyur Police Station, he had deposed that on 05.03.2006 at about 11.30 p.m., while he was on duty a complaint given by PW.1 and PW.2. PW.14 had registered a case in Crime No.250 of 2006 under Section 174 (3) Cr.P.C and that in the complaint PW.1 had stated that her daughter Devi passed away at Kilpauk Medical College Hospital and that since the death of the victim was within three years of the marriage, he had forwarded it for further investigation to the In-charge of Assistant Commissioner Viz., Kannappan/PW.15 and that he was assisting PW.15. F.I.R was marked as Ex.P11. In his cross examination, he had deposed that prior to the occurrence and registration of Ex.P11, he was working as an Inspector of Police in the same Police Station and that he has not received any complaint from PW.1 or anybody about any harassment meted out to the victim. In his cross examination, he had deposed that the victim had objected to her husband going back to Dubai for employment and that the 2nd appellant/accused/mother-in-law had intervened and there occurred a quarrel between them.

26.PW.15 is the Investigating Officer. He had stated that after registering the F.I.R, he had taken up the investigation

and that he had sent requisition to the RDO to conduct an enquiry and thereafter, on the next day went to the place of occurrence, prepared Rough Sketch and observation mahazar Ex.P12 and Ex.P3 in the presence of the witnesses Viz., Murali and Elangovan (PW.9 and PW.10) and thereafter, examined the prosecution witnesses and recorded their statements and during enquiry, he found that the victim died due to the harassment meted out to her and thereafter, handed over the case for further investigation to the regular Assistant Commissioner of Police. In his cross examination, he had deposed that as per Ex.P1 complaint allegations are there only against the 2nd appellant/accused and that the 2nd appellant/accused had told the victim that she should not prevent her son going abroad for employment.

27. PW.16 is the Inspector of Police, who continued further investigation and after obtaining opinion from the Assistant Public Prosecutor, he had filed the final report against the appellants/accused for the offences under Sections 498A and 306 of IPC.

28. Admittedly, the case against the appellants/accused is not for dowry death. As per Ex.P1, the allegations are made only against the 2nd appellant/accused. In Ex.P1, PW.1 had stated that her son-in-law was working as Welder in Saudi Arabia and that he had left to abroad after four months of marriage and meanwhile her daughter delivered a female child and she had stated that since her son-in-law was at abroad, she was living with her mother-in-law and that her mother-in-law used to harass her and her daughter used to inform her and that she had consoled her daughter saying that they are not well off and she has to bear with them that if her husband comes back everything will be alright. Further she had stated that when her son-in-law came back two months prior to the occurrence and that when he wanted to go back abroad for employment again, her daughter had told him that his mother was harassing her and that if he goes abroad, she will not be alive and whenever there had been a discussion with regard to her son-in-law going abroad, her mother-in-law used to intervene and say that her son would go abroad and that if it is her wish she can stay or she can go. Due to that, her daughter had self immolated her and that when she had gone to the hospital she had found her daughter in an unconscious state and that she breathed her last in the same day. Whereas, in Ex.P2 the statement given by PW.1, she had improved the complaint and stated that due to demand of dowry, the appellants/accused had harassed her in several ways and that the appellants/accused had set her ablaze by pouring kerosene on her.

29. As per the evidence of PW.7/Doctor, who had admitted the

victim as an in-patient, he had deposed that when he had enquired the victim, she had told him that she had committed self immolation due to the quarrel with her mother-in-law. Excepting PW.1 to PW.3, all the other witnesses who have been examined by the respondent police and the Executive Magistrate have deposed that the death of the victim was not due to dowry demand. Further, that is the reason why after investigation, the respondents have filed the final report for the offences under Sections 306 and 498A of IPC and not for the offence under Section 304(B) of IPC.

30. Now what is to be decided is that whether the prosecution has proved the charges against the appellants/accused beyond reasonable doubt and whether the trial is right in convicting the appellants/accused.

31. As stated above, admittedly it is not a case of dowry death. The appellants/accused have been charged for the offences under Sections 498A and 306 of IPC. Excepting PW.1 to PW.3, no other independent witnesses have deposed that there was demand of dowry and that the deceased was subjected to cruelty and thereby, she was instigated to commit suicide. It is the categorical evidence of PW.7/Doctor that when he had admitted the victim, she had told him that there was a quarrel between her and her mother-in-law due to which she had immolated herself. Further, as per the evidence of PW.1 and Ex.P1 it is clear that there used to be frequent quarrels between the 2nd appellant/accused and the victim and that the 2nd appellant/accused used to harass her. Though the deposition in the Court with regard to harassment meted out to the victim by the 3rd appellant/accused is an improved version, the prosecution has by the proved that the 2nd appellant/accused has committed cruelty on the victim.

32. In the case of M.Arjunan Vs.State represented by its Inspector of Police reported in (2019) 3 SCC 315 the Hon'ble Apex Court has held as follows:-

"7.The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under

Section 306 IPC."

33. On a perusal of the evidence and materials on record, this Court comes to a conclusion that there is absolutely no material to show that the appellants/accused abetted the deceased to commit suicide and thereby, the prosecution has failed to prove the charge of 306 of IPC against all the appellants/accused.

34. Now coming to the charge of offence under Section 498(A) of IPC, the first document which has come and existence in this case is Ex.P4, the accidental register, as per which, the victim was admitted in the hospital at 5.00 p.m., by Doctor/Natesan/PW.6 and the nature of injury was due to suicidal burns at the residence of the appellants/accused at 4.30 p.m. and the victim was found to be conscious and was oriented.

35. As per the evidence of PW6 /Dr.Natesan, when he had enquired the victim, she had told him that she had self immolated herself and that he had given first aid and admitted her in the Burn Ward. PW.7 is the Doctor, Burns Specialist, who had given treatment to the victim. He had stated that the victim was admitted in the burn ward at 5.10 p.m., and when he had enquired her, the victim had told him that due to quarrel with her mother-in-law, she had immolated herself and that she had sustained 96% burn injuries and that she succumbed to the injuries at 8.20 p.m.

36. As per the statement given to PW.7 in the form a dying declaration, the victim had implicated the 2nd appellant/mother-in-law. Further, as per Ex.P1, the complaint given by PW.1, she had only implicated the 2nd appellant and further it had been stated that the victim used to inform her that the 2nd appellant/accused used to cause cruelty to her. Whereas, in Ex.P2 further statement given to the Revenue Divisional Officer, an improved version had been given implicating the 1st and 3rd appellants/accused.

37. As stated above, it is not a case of dowry death and the finding of the RDO is that there was no harassment on account of dowry and that the victim had committed suicide, since her husband, the 1st appellant intended to go abroad for employment against her wishes. The final report was filed for the offences under Sections 498A and 306 of IPC. Analysing the entire evidence, this Court is able to see that there are no materials against the 1st and 3rd appellants/accused that they have subjected the victim to cruelty. Whereas, the evidence of the prosecution is cogent as against the 2nd appellant/accused for having subjected the victim to cruelty and thereby, driven her to take the extreme step of immolating herself.

38. This Court is of the opinion that the finding of the trial Court in holding the 1st and 3rd appellants/accused guilty for offence under Section 498(A) IPC is not proper, as there are no materials against them. Whereas, there is ample evidence against the 2nd appellant/accused for offence under Section 498A IPC and that the prosecution has proved the same by letting in cogent evidence.

39. In 2001 9 SCC 618 (Ramesh Kumar Vs. State of Chhattisgarh), the three Judges Bench of the Honourable Supreme Court had held as under:-

"This provision was introduced by Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. How-ever still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - 'The other circumstances of the case' used in Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an

irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says-'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'

40. In the case on hand, the deceased victim has stated that there was a quarrel between her and her mother in law/2nd Appellant with regard to the husband of the victim, leaving abroad employment against her wishes. Admittedly, there was no demand for dowry. The evidence on record and the facts and circumstances otherwise on record would suggest that it was not the intention of the 2nd Appellant/mother in law of the victim to abet the victim to commit suicide. However, there is evidence to show that there was harassment meted out to the victim.

41. Further, having come to the conclusion that there are no materials to prove that the Appellants 1 and 3/A1 and A3 have caused cruelty on the victim and that there is no material or evidence available on record to show that the Appellants 1 and 3/A1 and A3 had an intention to abet the victim to commit suicide, the presumption under Section 113A of the Evidence Act being not mandatory, it is only permissive as the employment of expression "may presume" suggests.

42. In the result, this Criminal Appeal is partly allowed. In so far as the offence under Section 306 of IPC is concerned, the impugned judgement of conviction and sentence, dated 11.11.2010 made in SC.No.203 of 2008, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Ponneri, is set aside against all the appellants and accordingly, the appellants/A1 to A3 are acquitted of the charges levelled under Section 306 of IPC.

43. In so far as the offence under Section 498A of IPC is concerned, the impugned judgement is set aside in respect of the appellants/A1 and A3 and accordingly, the appellants/A1 and A3 are acquitted of the offence under Section 498A of IPC and the impugned judgement of conviction and sentence is confirmed in respect of the appellant/A2 for the offence under Section 498A of IPC.

44. The fine amount, if any, paid by appellants/A1 to A3 for the offences under Section 306 of IPC is directed to be refunded to them. The fine amount, if any, paid by the appellants/A1 and A3 for the offences under Section 498A of IPC is directed to be

refunded to them. The bail bonds, if any executed by the appellants/A1 to A3 shall stand canceled. The trial Court shall take steps to secure the presence of the appellant/A2 to undergo the remaining part of the sentence in respect of conviction under Section 498A of IPC alone.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

kv

To:

1. The Additional District and Sessions Judge, Fast Track Court No.IV, Ponneri.
 2. The District Munsif cum, Judicial Magistrate, Thiruvotriyur, Chennai.
 3. The Inspector of Police, Thiruvotriyur Police Station, Chennai.
 4. The Public Prosecutor, High Court, Madras.
 5. The Chief Judicial Magistrate, Chengalpattu (for information)
- +1cc to Mr.V.Paarthiban, Advocate SR.No.42281

CrI.A.No.748 of 2010

AD(CO)
GMY(08/07/2019)

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