



BAIL SLIP

The Petitioner/Accused No.1, viz, Udaya Kumar S/o.Gurusamy be and hereby is directed to be released on bail as per order of this Court, dated 05.02.2010 and made in Crl.MP.No. 1 of 2010 in Crl.A.No. 84 of 2010.

These Petitioners/Accused Nos.2 & 3 viz, (i) Subbulakshmi, W/o.Gurusamy and (ii) Gurusamy, S/o.Ramasamy be and hereby are directed to be released o bail as per order of this court, dated 17/09/2010 and made in Crl.MP.No. 1 of 2009 in Crl.A.No. 545 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 30.10.2018]

[Pronounced on : 29.04.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.84 of 2010
and
Crl.A.No.545 of 2009

Udhayakumar ... Appellant in Crl.A.No.84/2010/
Accused No.1

1. Subbulakshmi

2. Gurusamy ... Appellants in Crl.A.No.545/2009/
Accused Nos.2 & 3

.. Vs ..

State rep. by:
The Inspector of Police,
B-13, Podanur Police Station,
(Law and Order),
Coimbatore.
(Crime No.1506 of 2007)

... Respondent in both
Crl.As./Complainant

Prayer in both Crl.As.: Criminal Appeals filed under Section 374 (2) of Cr.P.C. against the judgment passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore, in S.C.No.131 of 2007, dated 20.05.2009.



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In both cases
For Appellants : Mr.K.Selvakumaraswami
for Mr.S.Gunalan
For Respondent : Mrs.V.Sarathadevi
Government Advocate (Crl.Side)

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COMMON JUDGMENT

The appellant in Crl.A.No.84 of 2010 is the first accused and the appellants in Crl.A.No.545 of 2009 are accused Nos.2 and 3 in S.C.No.131 of 2007 on the file of the learned Sessions Judge, Magalir Neethimandram, Coimbatore, and they stand convicted for the offence under Section 4 of Dowry Prohibition Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for one year; convicted for the offence under Section 498(A) of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- each, in default to undergo simple imprisonment for one year and also convicted for the offence under Section 304(B) of IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for one year and the above sentences of imprisonment were ordered to run concurrently. Aggrieved by the said conviction and sentence passed by the learned Sessions Judge, accused Nos.1 to 3 have preferred the above two Criminal Appeals before this Court.

2. The respondent police has filed charge sheet against all the three accused alleging that on 09.05.2005 one Ananthi, daughter of Poovathal/de facto complainant fell in love with the first accused namely, Udhayakumar and both of them married without the knowledge of the parents of the said Ananthi and started to live together as husband and wife. During the matrimonial home, the second accused namely, Subbulakshmi and the third accused namely, Gurusamy, who are the parents of the first accused, joined at the hands of A.1, demanded a sum of Rs.1,00,000/- from the parents of the said Ananthi for purchasing of an Auto Rickshaw for the first accused. Since the dowry demand was not meted out, accused Nos.1 to 3 caused unbearable cruelty towards Ananthi and received a sum of Rs.20,000/- from the parents of Ananthi. During the lawful wedlock, Ananthi begotten a child by name Roja and for the first delivery, accused Nos.1 to 3 demanded and accepted articles, silver anklet, silver waist thread and cash as dowry. During the course of the same transaction, accused 1 to 3 forced the said Ananthi to bring Rs.1,00,000/- as dowry from her parents and as the dowry demand was not meted out, accused 1 to 3 joined together caused cruelty towards Ananthi. Due to the cruelty and



harassment, Ananthi fell it difficult to live in the matrimonial home had consumed Auramine poison at the dwelling house and as a result of which, she died on 17.10.2006 at 3.30 A.M. in Coimbatore Medical College Hospital. Since the death of the said Ananthi was occurred within 7 years of the marriage and that the death was otherwise than under normal circumstances, accused 1 to 3 appear to have committed the offence under Section 4 of Dowry Prohibition Act and under Sections 498(A) and 304(B) of IPC. The case was taken on file in P.R.C.No.12 of 2007 by the learned Judicial Magistrate No.VII, Coimbatore and committed to the Court of Sessions and charges were framed against all the accused for the offence under Section 4 of Dowry Prohibition Act and under Sections 498(A) and 304(B) of IPC.

3. In order to prove the case, the prosecution examined P.Ws.1 to 11, marked Exs.P.1 to P.15 and produced M.Os.1 to 7. The accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and they denied their complicity. On the side of the accused, the first accused examined himself as D.W.1 and marked document Ex.D.1.

4. Based upon the oral and documentary evidence adduced on either side, the learned Sessions Judge, Magalir Neethimandram, Coimbatore, has held that the deceased Ananthi, D/o.Poovathal, died due to poisoning and she committed suicide in view of the demand of dowry and cruelty and the said unnatural death has caused within a period of seven years from the date of marriage and accordingly, convicted all the accused 1 to 3 for the offence under Section 4 of Dowry Prohibition Act and under Sections 498(A) and 304(B) of IPC and sentenced them as stated above.

5. Aggrieved by the said conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore, in S.C.No.131 of 2007, dated 20.05.2009, the first accused had preferred Criminal Appeal No.84 of 2010 and accused Nos.2 and 3 have preferred CrI.A.No.545 of 2009.

6. Learned counsel appearing for the appellants would contend that except the relatives viz., P.Ws.1 to 4, no other independent witnesses have been examined by the prosecution in support of the prosecution theory that there was a demand of dowry for purchasing of an Auto rickshaw and further demand of Rs.5,000/- to pay the EMI. It is further contended that except M.O.4-Letters (2 Nos), which are alleged to be projected as if suicide note was prepared by the deceased before committing the unnatural act of suicide and the prosecution has not let in any positive evidence to show that there was a demand of dowry between the accused and the parents of the deceased and much less "soon before the death", there was no demand of dowry by



the accused and the demand of dowry has not been proved by the prosecution and hence, prayed for setting aside the judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore.

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7. Learned Government Advocate (Crl.Side) appearing for the State made her submissions in support of the judgment of the trial Court.

8. Points for consideration:-

(i) Whether the judgment of conviction passed by the trial Court is sustainable in law? and

(ii) Whether the sentence awarded by the trial Court is excessive?

9. The case of the prosecution, in brief, is that on 09.05.2005, Ananthi fell in love with A.1/Udhayakumar and married him without the knowledge of her parents and started to live with him together as husband and wife. In the matrimonial home, A.2-Subbulakshmi and A.3-Gurusamy, who are the parents of A.1, joined at the hands of A.1 demanded Rs.1,00,000/- from the parents of Ananthi to purchase an Auto Rickshaw for A.1. Since the dowry demand was not meted out, accused 1 to 3 caused unbearable cruelty towards Ananthi. Out of the lawful wedlock, Ananthi begotten a child and even for the first delivery, A.1 to A.3 demanded and accepted jewels and cash as dowry from the parents of Ananthi. Due to the cruelty and harassment, Ananthi was put into desperate position and out of dejection, except no other option, consumed Auramine poison at the dwelling house and died on 17.10.2006 at 3.30 A.M. in Coimbatore Medical College Hospital. Since the death of Ananthi was occurred within 7 years of the marriage and that the death was otherwise than under normal circumstances, accused 1 to 3 appear to have committed the offence under Section 4 of Dowry Prohibition Act and under Sections 498(A) and 304(B) of IPC.

10. Accused 1 to 3 joined together caused cruelty to the deceased Ananthi for not bringing dowry and they have also demanded the deceased to bring dowry from her parents and as their demand for dowry was not fulfilled, they put the deceased into desperate situations and which leads to no option to the deceased except to commit suicide, that is why, the deceased Ananthi consumed cow dung powder, a poisonous substance on 16.10.2006 at the dwelling house where the accused 1 to 3 and the deceased Ananthi were ordinarily residing at the house bearing D.No.53A, West Pudur, Nanjundapuram and died on 17.10.2006 at 3.30 a.m. at Government Hospital, Coimbatore.

11. In order to substantiate the charge of dowry death, the



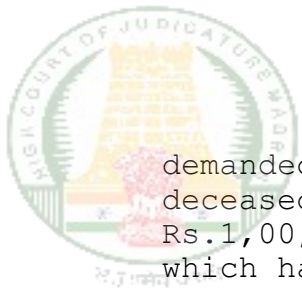
prosecution has relied upon the evidence of P.W.1-Poovathal/mother of the deceased, P.W.2-Praveena/sister of the deceased, P.W.3-Subramaniam under whom the parents of the deceased was working, and P.W.4/maternal uncle of the deceased. P.W.5 and P.W.6 are the attestor of the seizure mahazar for seizing of M.Os.1 to 4 and observation mahazar. P.W.7-Palaniammal, who is the Clerk attached to the Judicial Magistrate Court, deposed regarding the receipt of the case property and forwarding the same to the Forensic Department and placing the Forensic Report and the case bundle. P.Ws.8 and 11 are the police witnesses, who could depose regarding the receipt of the complaint-Ex.P.1 from P.W.1; registration of FIR-Ex.P.4 and further investigation carried on by P.W.11 and filing of the charge sheet after investigation.

12. P.W.9 is the Revenue Divisional Officer and he has conducted inquest on the body of the deceased and filed Inquest report under Ex.P.5. P.W.10-Dr.Menaka Sekaran, Tutor in Forensic Science Medicine, Coimbatore Medical College Hospital deposed regarding the conduct of the Post-mortem and issuance of Ex.P.11-Post-mortem certificate coupled with Ex.P.12-Chemical Analysis Report and Ex.P.13-Final Opinion as to the cause of the death.

13. Ex.P.14-Letters alleged to be written by the deceased appear to be marked through P.W.2 on recall, after completion of the prosecution witnesses and the same was marked as subject to proof. It remains to be stated that the very same letters [two in numbers] were already marked as M.O.4 through P.W.11-Investigating Officer which are being dealt with infra.

14. On a perusal of the evidence of P.W.10,-Dr.Menaka Sekaran, it is seen that P.W.10 had issued Ex.P.11-Post mortem Certificate and after analysing Ex.P.12-Chemical Analyst Report has issued Ex.P.13-Final opinion and based upon the oral evidence of P.W.10 and the documentary evidence of Exs.P.11, P.12 and P.13, the deceased Ananthi, wife of the first accused and daughter of P.W.1 was died due to auramine poison and the death was otherwise on normal circumstances. The date of the marriage between the deceased and the first accused is said to be held on 09.05.2005 and the date of death as per the post mortem certificate is 17.10.2006 at 3.30 a.m. and hence, the deceased Ananthi died within seven years of her marriage.

15. At this juncture, it is the specific case of the prosecution that there was a demand of dowry by accused 1 to 3 and since the deceased Ananthi fell in love with the first accused and got married and the said Ananthi belonged to upper caste and the accused belonged to middle class community, not of the same caste, the parents of the accused namely, A.2 and A.3



demanded dowry and the same was met by the parents of the deceased Ananthi for purchase of an auto rickshaw in a sum of Rs.1,00,000/- and further demand of Rs.5,000/- for being EMI which has led to the commission of suicide by the said Ananthi.

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16. The chief examination of P.Ws.1, 2 and 3 is almost one and the same and the submission of the learned counsel for the appellants that they are in parrot language also assumes significance. During the cross examination of P.W.1/de facto complainant, who is the mother of the deceased, she could depose that since her daughter, the deceased fell in love with the first accused, both her daughter and the first accused got married while the deceased was studying in school and the love affairs of her daughter with A.1 was brought to her knowledge by her younger daughter P.W.2-Praveena. But when they have made arrangements to give their daughter in the marriage, the deceased Ananthi eloped with A.1 and got married without the consent of the parents.

17. It is her further evidence that initially, P.W.1 gave a complaint to the police within 45 days of elopement. The deceased attained 18 years when the police have rescued Ananthi along with A.1. P.W.1 further deposed that when the police advised about the age of the deceased Ananthi, she had refused to go with her and she adamantly told to leave with A.1 alone. It is her evidence that the accused have demanded a sum of Rs.1,00,000/- from her as dowry through her daughter in order to buy an auto rickshaw for the use of A.1 and the accused person sent away her daughter out of the matrimonial home and she paid a sum of Rs.25,000/- with great difficulty.

18. The next limb of the version of P.W.1 in connection with the charges framed in this case is with regard to the demand of dowry by way of jewels. According to the prosecution, P.W.1 has arranged for the bangle wearing ceremony to the deceased during the seventh month of pregnancy. But it was suggested in the cross-examination that the bangle wearing ceremony was arranged by the accused and the same was denied. The further point of cruelty raised by P.W.2 was that when the deceased Ananthi was admitted in hospital for delivery, she and her mother went to see the girl. However, accused 2 and 3, who are present in the hospital, have not allowed them to talk with the deceased. So they left home and after she reached her matrimonial home, they went and saw the daughter. At that time, the deceased Ananthi told that she was not allowed to feed the mother milk to her baby and the accused asked to feed the bottle milk and in this connection, A.2 and A.3 beat the deceased. Further, the evidence of P.W.1 is to the effect that when the deceased Ananthi came to their house and demanded money for



setting up of a separate house, P.W.1 has handed over a sum of Rs.20,000/-. Thereafter, accused demanded and accepted the silver anklet, silver waist thread and cash as dowry. Subsequently, her daughter came and demanded further sum of Rs.5,000/- for paying EMI. When the same was not paid, at the instigation of A.2 and A.3, the deceased was put to miserable cruelty.

19. As discussed supra, the private prosecution witnesses are P.Ws.1 and 2 being the mother and sister of the deceased respectively and P.W.4 is the brother of P.W.1 (Maternal Uncle of the deceased). On a close perusal of the chief and cross-examination of the private prosecution witnesses P.Ws.1 to 4 coupled with the answer elicited from the cross-examination of official witnesses viz., P.W.9-RDO and P.W.11-Investigating Officer, it is seen that P.W.1-Poovathal, mother of the deceased has not whispered anything regarding the alleged payment of either by cash or jewels during the enquiry by P.W.9. Further, P.W.1 has never stated about the alleged payment of Rs.20,000/- to the first accused and it is specifically elicited from the cross-examination of P.W.9 that the parents of the deceased have never deposited anything regarding the payment of dowry and it was only for monthly expenses of the deceased as could be seen from the cross-examination of P.W.9 assumes significance which runs at material contradiction with the version of P.Ws.1, 2 and 4 regarding the various demand alleged to have been made by A.1 which they termed it as a dowry. In this connection, the answer elicited from the Investigating Officer P.W.11 also assumes significance.

20. In the cross-examination, P.W.11, the Investigating Officer has admitted that accused 2 and 3 were residing at No.259/05, Tillai Nagar, Sangampalayam which is far away from the matrimonial home of the first accused and the deceased and thus, this Court finds that the very charge that the parents of the first accused were residing along with the first accused falls to ground. He has categorically admitted that at the time of the marriage, there was no demand of dowry and no dowry was given after the marriage. The parents of the deceased have done seer according to them for setting up of the matrimonial home and it is not by way of any demand by the accused also assumes significance. The Investigating Officer has also admitted that except one Kalaiselvan, independent witness, he has not examined any of the neighbours especially, when the distance between the matrimonial home of the deceased Ananthi and her parents home is 100 feet meters as could be seen from the cross-examination. Taking note of the fact that the house of both the deceased and her parents is hardly 100 meters away, the neighbours could have know about the incident as spoken to by the private prosecution witnesses in the witness box. However, for the reasons best



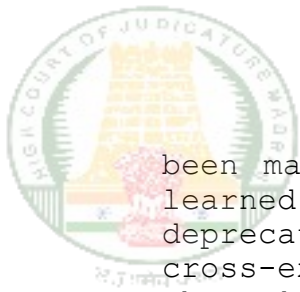
known, the Investigating Officer has not examined any of the neighbours except one Kalaiselvan and even that Kalaiselvan was not examined before the Court as a prosecution witness also cause serious doubt about the prosecution theory.

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21. This Court is conscious about the fact that non-examination of the non relative is not a fatal to the prosecution case of this nature. However, taking into consideration the fact that both the matrimonial home of the deceased Ananthi and her parents home are situated hardly 100 meters away from each other, the residence of the street, since both the houses are closely situated, they might have known about the alleged demand of dowry. The prosecution witnesses have spoken about the demand of dowry in a parrot language which caused serious doubt as observed in the preceding paragraphs and hence, on the above factual background, this Court is of the considered view that non-examination of the non relatives, in view of both the houses being situated in a short distance also causes serious doubt on the prosecution theory and hence, this Court is of the considered view that the version of P.Ws.1 to 4 on the alleged demand of dowry, though they denied in the cross-examination, however, on a perusal of their version coupled with the answer elicited in the cross-examination of P.W.9 and P.W.11, the official witnesses, is found to be suffer from embellishment amounting to material contradiction on the material points touching upon the essential features of the charges with which the accused stand charged.

22. In view of the above said findings, this Court is of the considered view that the version of P.Ws.1, 2 and 4 suffers from embellishment being spoken for the first time in the Court in the witness box touching upon the essential features of charge causes serious doubt and held to be unreliable. Furthermore, it remains to be stated that the attestor of the observation mahazar viz., P.W.5-Selvakumar deposed regarding M.O.4 and the said M.O.4 is projected letters (two numbers) containing a poetic words in Tamil and also overwriting by another person and it appears that after the closure of the prosecution side witnesses, the matter was posted for questioning under Section 313 Cr.P.C. At that stage, it appears that P.W.2-Selvi Praveena, sister of the deceased was recalled by the prosecution on an application and thereafter, in the further chief-examination, Ex.P.14-Letters (2 Nos) seem to have been marked with an objection of the accused also assumes significance.

23. It remains to be stated that that the very same letter, which is projected by the prosecution as if it was recovered from the house of the deceased and which was marked by one of the attestor of the Ex.P.2-Observation Mahazar appears to have



been marked again as Ex.P.14 and such procedure adopted by the learned District Judge (Mahila Judge), Coimbatore, is deprecated. It is seen from the evidence of P.W.2, in her cross-examination after recall, she has categorically admitted that the police has never shown this document before trial (or) during investigation and for the first time, she is seeing the paper in the Court. Even as per the precise reading appears in the Tamil poem does not relate to any demand of dowry assumes significance. In the further chief examination, on recall [after completion of the prosecution witnesses], she has stated that the portion written in pencil appears to be the handwriting of her deceased sister and she has not deposed about anyone who has wrote the poems in Tamil in bold letters).

24. In the decision reported in (2014) 2 MLJ (Cr1.) 401 [Arokiasamy Vs. State], at paragraph Nos.9, 10, 11 and 12, the Madurai Bench of this Court has held as follows:-

"9. Coming to the suicide note (Ex.P.2), according to the police, it was recovered on 30.10.2002 under the cover of Mahazar (Ex.P.6). The Mahazar has gone to the Court only on 20.06.2003 as could be seen from the initials made thereon by the learned Magistrate.

.....

The police did not send the letter to the Handwriting Expert along with the admitted handwritings of Josephine for comparison and report. The authorship of the letter is through the evidence of P.W.1, who says that Ex.P.2 was written by his grand daughter. Apart from this evidence, there is no other material to show that it was Josephine who had written this letter.

.....

10. The alleged suicide note is written in Tamil and the police could have easily examined her school teachers or collected her Tamil note books and sent the same to the Handwriting Expert for comparison.

11. Viewed from any angle, it seems to me that all is not well with the alleged suicide note (Ex.P.2).

12. The law laid down in Pakala Narayana Swami V. Emperor (supra) case has come to stay and going by the standard set therein, Ex.P.2 may be relevant under Section 32(1), when the cause of the death of Josephine is in question. In other words, if the Court has a doubt as to whether the death of Josephine was a natural death or suicidal death or



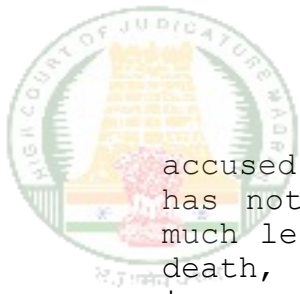
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homicidal death, the suicide note (Ex.P.2) would throw light on this aspect and the Court can place reliance on it to conclude that the death of Josephine was neither a natural death nor homicide, but suicide. Only to that extent the suicide note (Ex.P.2) can be used. Beyond that, we cannot extend the usage of Ex.P.2 to say that the accused had abetted the suicide."

25. It remains to be stated that coming into the existence of Ex.P.14 itself caused very serious suspicion on it. P.W.11, the Investigating Officer also admitted in the cross-examination that he has not carried out any investigation based on Ex.P.14 letters (also marked as M.O.4]. Thus, this Court finds that the police did not send the letter to the Handwriting Expert along with the admitted handwritings of Ananthi for comparison and to get report. The authorship of the letter is through the evidence of P.W.2, who says that Ex.P.14 was written by her sister. Apart from this evidence, there is no other material to show that it was Ananthi, who had written this letter. So also P.W.2 has stated that she has never seen this letters until it was shown to her in the open Court after she was recalled at the instance of the prosecution after completion of the prosecution witnesses also causes serious doubt.

26. On a perusal of the Ex.P.4 [= to M.O.4], this Court is of the considered view that there is no positive evidence to link the accused with the demand of dowry much less handwriting in the said letters is as that of deceased Ananthi, were not proved in the manner known to law and it is only P.W.2, younger sister has spoken about it that too only in the Court for the first time it was shown to her only during the trial but not during investigation and hence, this Court is of the considered view that Ex.P.14 [= M.O.4] appears to be an hand work of the prosecution. Accordingly, this Court has no hesitation to hold that Ex.P.14 = M.O.4 is not proved in the manner known to law and the alleged seizure of the said document also not proved in the manner known to law.

27. In view of the discussion in the preceding paragraphs, this Court is of the considered view that M.O.4 [= Ex.P.14] is to be eschewed from consideration for want of probative value and hence, I am of the considered view that the evidence of prosecution witnesses P.Ws.1 to 4 suffers from embellishment amounting to material contradiction on the material facts touching upon the essential features of the charges and the prosecution did not let in any evidence regarding accused 2 and 3 [parents of the first accused] are living along with the first



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accused during the life time of the deceased and the prosecution has not let in any evidence regarding any demand of dowry and much less there is no positive evidence to show that soon before death, the deceased was subjected to dowry demand which resulted in committing of suicide.

28. In the absence of any positive evidence to show that "soon before death" the deceased was subjected to cruelty or demand of dowry, presumption under Section 113(B) of the Evidence Act does not arise. Though this documents are available before the Sessions Judge, for the reasons best known, except extracting various judgments on the dowry death, there was no discussion as to whether there was any demand of dowry soon before her death so as to invoke presumption under Section 113 (B) of the Indian Evidence Act. Such an attitude of the learned Special Sessions Judge is deprecated and in the absence of any positive evidence, as discussed supra, the trial Court has committed an error in giving a presumption to the case of the prosecution and hence, the same is hereby stands vacated and in the absence of any positive evidence, this Court holds that the prosecution has not proved the charge under Sections 498(A) and 304(B) IPC and Section 4 of Dowry Prohibition Act beyond reasonable doubt for lack of evidence. The charges are held to be not proved in the manner known to law.

29. Accordingly, the conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore, in S.C.No.131 of 2007 dated 20.05.2009 is hereby set aside and both the Criminal Appeals are allowed and the accused 1, 2 and 3, who stand charged for the offences under Sections 498(A) and 304 [B] IPC and Section 4 of Dowry Prohibition Act, are acquitted of the charges. The bail bond executed by the appellants in both the appeals/accused 1, 2 and 3 respectively shall stand cancelled forthwith and the fine amount paid, if any, shall be refunded to them.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jr1

To

1.The Judicial Magistrate No.VII,
Coimbatore.

2.Do Thro the Chief Judicial Magistrate,
Coimbatore.



3. The Sessions Judge,
Magalir Neethimandram,
Coimbatore.

4. The Inspector of Police,
B-13, Podanur Police Station,
(Law and Order),
Coimbatore.

5. The Superintendent,
Central Prison, Vellore.

6. The Superintendent,
Central Prison, Coimbatore.

7. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to Mr.S.Gunalan, Advocate, S.R.No.41821, 41819

Crl.A.No.84 of 2010
and
Crl.A.No.545 of 2009

PA(CO)
GN(05/08/2019)