



Crl.A.No.9 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.05.2024

CORAM :

HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.9 of 2017

Sathiyamurthy

... Appellant

Versus

State by Assistant Commissioner of Police,
Pulianthope Range,
Chennai – 600 012.
(Crime No.1116 of 2006)

... Respondent

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, to set aside the Judgment dated 27.12.2016 made in S.C.No.159 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Chennai, and allow the above Criminal Appeal.

For Appellant

: Mr.N.Sankaravadivel

For Respondent

: Mr.S.Sugendran

Additional Public Prosecutor

J U D G M E N T

The Appellant had been arrayed as Accused No.1 in S.C.No.159 of 2015 on the file of the learned Sessions Judge, Fast Track Mahila Court, Chennai.

The Appellant/Accused-1 stood charged for the offences under Sections 498A and 304B of IPC and convicted for the altered charges under Sections 498A

and 306 of IPC.



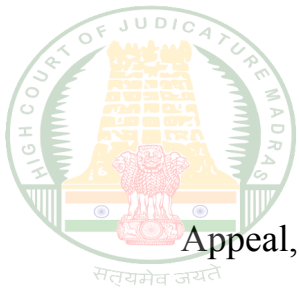
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WEB COPY2. The Appellant/Accused-1 was convicted and sentenced by the learned Sessions Judge, Fast Track Mahila Court, Chennai, as follows:

Accused	Conviction under section	Sentence awarded
Accused-1	498A IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months.
Accused-1	306 IPC	To undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months.

Accused No.2 was not found guilty for the offences under Sections 498A and 306 of IPC and was acquitted under Section 235(1) of Cr.P.C. The Trial Court ordered the sentences to run concurrently and had also granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by Accused-1 during investigation/trial.

3. The challenge in this Appeal is to the above said judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai, in S.C.No.159 of 2015 dated 27.12.2016.



Appeal, are as follows:-

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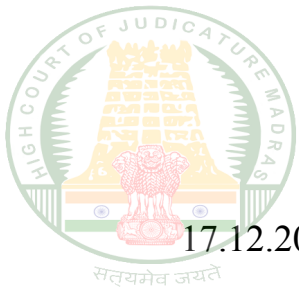
4.1. The deceased Usha was married to the Appellant on 30.06.2002.

Usha (deceased) is a graduate holding B.C.A., degree. The Appellant herein is a graduate holding B.A., B.Ed., degrees, who runs a private School by name, Jupiter Nursery and Primary School, Pulianthope, Chennai. He was the Correspondent and Proprietor of the School, which had around ten teachers. The deceased Usha also, after marriage, served as a teacher in the very same School. As per the case of the Prosecution, during the time of marriage, the parents of the deceased Usha gave 25 sovereigns of jewels and Rs.1 lakh as dowry to the Appellant herein.

4.2. P.W-1 Munirathinam is the father of the deceased Usha. He was working as a Junior Assistant in the office of the Thirumala Tirupathi Devasthanam Board in Bengaluru, and retired in the year 2007 after attaining superannuation.

4.3. P.W-2 Valliammal is the mother of the deceased Usha.

4.4. The deceased Usha in this case was married on 30.06.2002. At the time of her marriage, Rs.1 lakh and 25 sovereigns of jewellery were given as dowry to Accused-1/Appellant herein. After marriage, the Appellant and the deceased Usha were living along with the parents of the Appellant in the house in Pulianthope. In the course of their marital life, the Appellant herein and the deceased Usha had given birth to a child. After 4 ½ years of marriage on



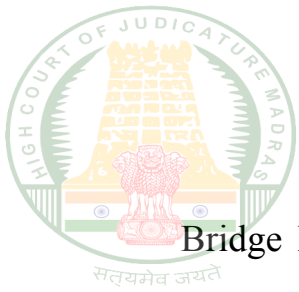
17.12.2006, the deceased Usha, wife of the Appellant, set herself on fire.

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4.5. P.W-1 and P.W-2 had four children. All their four children were married. The eldest is Indirani, married and lives at Varaja, Tamil Nadu. The second is P.W-3- Loganathan, who is also married and employed as a Software Engineer working at IBM, Bengaluru, and living in Bengaluru. The third is Usha (deceased), and the fourth is Krishnaya.

4.6. P.W-4 Ramudev, is P.W-1's son-in-law.

4.7. P.W-5 Mohana is residing in the very same street, is known to the family of both the Appellant as well as the parents of the deceased Usha, P.W-1 and P.W-2. On hearing about the same, she came to the house of the Appellant and took Usha to the Kilpauk Government Hospital. By around 10.30 p.m on 17.12.2006, the Medical Officer in the casualty ward, P.W-8- Dr.Thamarai Selvan, examined Usha. As per P.W-8- Dr.Thamarai Selvan, Usha was conscious. In her statement, she had stated that she set herself on fire by around 9.45 p.m. in her residence. He had recorded the statement and injuries under Ex.P-7 and sent her to the burns ward. After first aid, he had admitted her to the burns ward of Kilpauk Government Medical College Hospital, where P.W-9- Dr.Nirmala Ponnambalam, treated her. As per the report of P.W-9- Dr.Nirmala Ponnambalam under Ex.P-8, Usha had suffered 93% burns and she reported the same to the Police attached to Kilpauk Government Medical College Hospital, from where it was sent to the P4 Basin



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Bridge Police Station, Chennai, under whose jurisdiction the deceased Usha and Appellant were residing. The deceased Usha, succumbed to injuries caused by the burns. On 18.12.2006, at around 5.30 a.m., the husband of Indirani, eldest daughter of P.W-1 and P.W-2, informed P.W-1 and P.W-2 that their daughter Usha had been admitted in Kilpauk Government Medical College Hospital due to some serious condition.

4.8. On hearing the news, P.W-1, P.W-2 and P.W-3 rushed to Chennai to the residence of the Appellant. There were relatives of the Appellant, but the Appellant or his parents were not available. They informed P.W-1 to P.W-3 that their daughter Usha was admitted in the Kilpauk Government Medical College Hospital. Therefore, they proceeded to the Kilpauk Government Medical College Hospital. On reaching the hospital, they came to know that Usha had died. Therefore, they came to P4 Basin Bridge Police Station, Chennai, and preferred a complaint.

4.9. P.W-1 had given a complaint, which was recorded by the constable on duty at P4 Basin Bridge Police Station, Chennai. It was recorded by P.W-12- Thiru.Dakshinamurthi, who was the then Inspector of Police of P4 Basin Bridge Police Station, Chennai. Based on the oral complaint of P.W-1, P.W-12 had registered FIR in Crime No.1116 of 2006 under Sections 498(A) and 304(B) of IPC under Ex.P-12. He had sent the original FIR to the Court of the learned X Metropolitan Magistrate, Egmore, Chennai, and copy of the



same was forwarded to P.W-13- Thiru.R.Chandran- Assistant Commissioner

of Police, Pulianthope Range, Chennai, and copy of the same was also sent to

P.W-11-Thiru.David Prabu Kumar, the then Tahsildar, Purasaiwalkam-Perambur Taluk, as the death had occurred within seven years of marriage.

4.10. P.W-11- the then Tahsildar as Executive Magistrate, had conducted inquest over the dead body of the deceased Usha and issued Ex.P-10. He had conducted enquiry and examined the parents, brother of the deceased Usha, P.W-1 to P.W-3, and the Appellant regarding the cause of the death. On the basis of the statements recorded from the parents and brother of the deceased Usha, the then Tahsildar Purasaiwalkam-Perambur Taluk, had issued Ex.P-11, stating that the deceased Usha had set herself on fire due to dowry harassment and had directed detailed investigation by the Police.

4.11. P.W-13, Thiru.R.Chandran, the then Assistant Commissioner of Police, Pulianthope Range, Chennai, had issued requisition for conducting inquest to the Tahsildar, Purasaiwalkam-Perambur Taluk, to conduct inquest over the body of the deceased, Usha. P.W-13 had visited the residence of the Appellant, wherein the deceased Usha committed self-immolation. He had prepared the Observation Mahazar under Ex.P-14 and Seizure Mahazar under Ex.P-15, under which he had seized Material Objects, which are as follows:

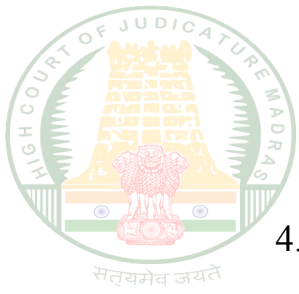


M.O.1	Plastic Bottle containing (2 lit) with 300 ml. Kerosene
M.O.2	Match Box – 1 No.
M.O.3	Pillow half burnt below (Red and Green Colour- 1 No. and also prepared Rough Sketch under Ex.P-13 in the presence of P.W-6, Murthy and P.W-7, Rajammal. He had issued requisition letter to the Professor of Forensic Medicine at Kilpauk Medical College.

4.12. Also, P.W-13, Investigation Officer, the Assistant Commissioner of Police, Pulianthope Range, Chennai, had recorded the statements of P.W-1- Munirathinam, P.W-2- Valliammal, P.W-3- Loganathan, P.W-4- Ramudev, P.W-5- Mohana, P.W-6- Murthy, P.W-7- Raja, P.W-8- Dr.Thamarai Selvan, P.W-9- Dr.Nirmala Ponnambalam, P.W-10- Dr.Kuppusamy and P.W-12- Tr.Dakshinamurthi and reports issued by P.W-11.

4.13. After completion of the investigation, he laid the final report before the learned X Metropolitan Magistrate, Egmore, Chennai.

4.14. On taking cognizance of the final report for the offences under Sections 498A and 304B of IPC, the learned X Metropolitan Magistrate, Egmore, Chennai, had issued summons to the Accused. As per the final report of P.W-13, the Appellant herein and his parents were arrayed as Accused Nos.1 and 2. The learned X Metropolitan Magistrate, Egmore, Chennai, issued summons to the Accused Nos.1 and 2.



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4.15. On their appearance before the learned X Metropolitan Magistrate, Egmore, Chennai, had issued copy of the final report under Section 207 of Cr.P.C and committed the Accused Nos.1 and 2 to the Court of the learned Sessions Judge, Fast Track Mahila Court, Chennai.

4.16. On receipt of the case records in P.R.C.No.79 of 2018 from the Court of the learned X Metropolitan Magistrate, Egmore, Chennai, and on the appearance of the Accused-1 and Accused-2, the learned Sessions Judge, Fast Track Mahila Court, Egmore, Chennai, had taken cognizance of the offences and numbered the case as S.C.No.159 of 2015.

4.17. After hearing the Prosecution and the Defence, the learned Sessions Judge, Fast Track Mahila Court, Egmore, Chennai, framed charges against Accused Nos.1 and 2 for the offences under Sections 498A and 304-B IPC or in the alternative 306 IPC and dropped the charge under Section 304-B of IPC. The Accused-1 and Accused-2 pleaded not guilty and claimed to be tried. Therefore, trial was ordered.

4.18. In the course of the trial, P.W-1 and P.W-2, parents of the deceased Usha. P.W-3- Loganathan, brother of the deceased. P.W-4- Ramudev, the husband of the elder sister of the deceased Usha, P.W-5- Mohana, neighbour of the deceased Usha and acquaintance to the family of Accused-1 to A3 as well as the Prosecution Witness, who had taken the injured Usha to the hospital. P.W-6- Murthy and P.W-7- Rajammal were the Mahazar



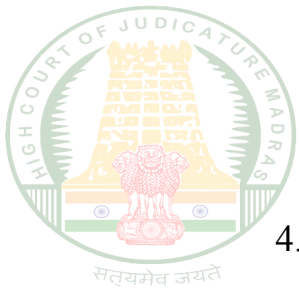
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witnesses, P.W-8- Dr.Thamarai Selvan, who saw the injured Usha in the casualty ward and had issued wound certificate under Ex.P-7 and had admitted the injured in the burns ward of Kilpauk Medical College. Dr.Nirmala Ponnambalam was examined as P.W-9 and the death report issued by P.W-9 was marked as Ex.P-8. The Doctor who conducted autopsy on the body of the deceased Usha was examined as P.W-10- Dr.Kuppusamy since it was a death before the expiry of seven years from the date of marriage. P.W-11- Thiru.David Prabu Kumar, the then Tahsildar, Purasaiwalkam-Perambur Taluk, who is also an Executive Magistrate had conducted enquiry as well as inquest over the body of the deceased Usha on request from P.W-13- Thiru.R.Chandran, Assistant Commissioner of Police, Pulianthope Range, Chennai. Also, he prepared inquest report under Ex.P-10 and had issued enquiry report under the Dowry Prohibition Act under Ex.P-11. P.W-12- Thiru.Dakshinamurthi, the then Inspector of Police of P4 Basin Bridge Police Station, Chennai, who had received the oral complaint from P.W-1 Munirathinam, who had registered FIR under Ex.P-12 and had sent original FIR to the Court of the learned X Metropolitan Magistrate, Egmore, Chennai, and forwarded the copy to P.W-13-Thiru.R.Chandran, Assistant Commissioner Pulianthope Range, Chennai.

4.19. During pendency of the trial, A-3 the father of Accused-1, died.

Accused-1 and his mother, Accused-2 stood trial.



4.20. On appreciation of the evidence of the Prosecution Witnesses, P.W-1 to P.W-13, the documents under Ex.P-1 to Ex.P-16 and the Material Objects, M.O-1 to M.O-3 marked in the evidence of P.W-13, Investigation Officer, the learned Sessions Judge, Fast Track Mahila Court, Chennai, by judgment dated 27.12.2016 acquitted the Accused-2-Rukmani the mother of the Accused-1 from the charges under Sections 306 and 498A and convicted the Accused-1, the husband of the deceased Usha for the offences under Sections 498A and 306 of IPC.

4.21. Aggrieved by the judgment of conviction and sentence of imprisonment imposed by the learned Sessions Judge, Fast Track Mahila Court, Chennai, for the offence under Section 498A of IPC and Section 306 of IPC, the husband of the deceased Usha, who had suffered conviction, had preferred this Appeal.

5. The learned Counsel for the Appellant submitted his arguments. As per the submission of the learned Counsel for the Appellant, the Prosecution failed to prove the charges against Accused-1, the husband of the deceased Usha under Sections 498A and 306 of IPC.

6. The learned Counsel for the Appellant contended that after the marriage, the deceased Usha and the Appellant were living happily as husband



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and wife. On the date of the death, on 16.12.2006, the Appellant and the

deceased Usha had been blessed with a male child who was 3 ½ years old. The

Appellant was suffering from Epilepsy. Except this medical condition, there

was no complaint against Accused-1. The deceased had committed self-

immolation as she was frustrated with the medical condition of Accused-1.

Except that there was nothing between the husband and wife that made the

wife to commit self-immolation. After the death of the wife of the Accused-1,

P.W-1 and P.W-2, the parents of the deceased Usha had given a complaint as

though it was a dowry harassment case. They had given a complaint to the

Pulianthope Police as though the husband and his parents caused physical and

mental torture on the deceased Usha during her life time, which culminated in

the wife committing self- immolation. In their complaint, they stated that the

husband of the deceased Usha demanded Rs.1 lakh for the improvement of the

School run by Accused-1. P.W-1, father of the deceased Usha and P.W-3,

brother of the deceased Usha, had come down to the place of the residence of

Accused-1 and handed over Rs.1 lakh within two or three months. After

handing over the money of Rs.1 lakh to Accused-1, the wife of Accused-1, the

daughter of P.W-1 and P.W-2, Usha once again contacted P.W-1 and P.W-2

and sought further Rs.50,000/-. P.W-1 consoled her that they will arrange the

money. But before arranging the money, they received the message that their

daughter (deceased Usha) was admitted in the Hospital. Only on reaching the



hospital, they came to know she had died. Having come to know that the fact of the death of their daughter, they had created a complaint as though there was dowry harassment, but it was not so.

7. The learned Counsel for the Appellant invited the attention of this Court to the portions of the complaint which was reduced in writing and based on which FIR was registered under Ex.P-12. In the FIR and in the complaint under Ex.P-1, it is stated that their daughter was murdered by Accused-1 and his parents. In the course of the evidence, P.W-5- Mohana, who had taken the injured Usha to the hospital and P.W-8- Dr.Thamarai Selvan, who had seen the injured Usha at the earliest point of time alive and conscious, recorded that she herself stated that she set herself on fire. It is a case of self-immolation. Therefore, the complaint given by P.W-1 orally to the Police under Ex.P-1, wherein it is stated that she was tortured physically and set on fire is not true. The fact of Accused-1 demanded Rs.1 lakh and P.W-1, father of the deceased Usha and P.W-3, brother of the deceased Usha, came down to Chennai and handed over Rs.1 lakh had not been proved in her evidence.

8. In the course of the cross-examination of P.W-1, father of the deceased Usha would state as follows:



எதிரிகள் தரப்பில் குறக்கு விசாரணை.

திருமணம் ஆனதிலிருந்து எனது மகள் இறக்கும்வரை எதிரியும் என் மகனும் சந்தோஷமாகத் தான் இருந்தார்கள் என்றால் ஆம். முதல் எதிரிக்கு வலிப்பு நோய் வரும் என்றால் தெரியும். எனது மகள் தனது கணவருக்கு வலிப்பு நோய் வருகிறது என்று என்னிடம் மிகவும் மன வருத்தப்பட்டார். எனது மகள் திருமணம் ஆகி அவர் கணவர் வீட்டில் நான் இரண்டு முறை தான் சென்று பார்த்துள்ளேன் என்றால் அவர்கள் நன்றாக இருந்ததால் போய் பார்க்க வேண்டிய அவசியம் இல்லை. முன்றவதாக எனது மகள் இறந்து போன பிறகு தான் சென்னைக்கு வந்தேன் என்றால் ஆம். எனது மகள் இறப்பதற்கு இரண்டு வாரத்திற்கு முன் நான் சென்னைக்கு வரவில்லை என்றால் சரிதான்.

மறுவிசாரணை - இல்லை”

9. In the course of cross-examination, P.W-1, father of the deceased, would admit that after her marriage, he had visited the house of Accused-1 only at the time of the first Diwali and subsequently for handing over Rs.1 lakh. There were only two instances where he had visited his daughter and son-in-law.

10. P.W-2, mother of the deceased Usha, in the cross-examination had stated that she visited her daughter and son-in-law only once. After hearing about the death of her daughter, she suffered paralytic stroke. In the cross-examination, she had stated only that at the time when her daughter delivered a child, she came to visit her daughter in the house of Accused-1 and stayed for four days. Except that she had not visited her daughter. Except P.W-1 to P.W-

3, there are no witnesses regarding the demand of dowry. The fact of Rs.1 lakh



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given to Accused-1 is an afterthought by P.W-1 to P.W-3. It was made only for the purpose of invoking dowry harassment as the cause of the death of their dear daughter, Usha. P.W-2, mother of the deceased Usha, had not properly answered suggestions put to her. She had ignored the cognizance when the amount paid was not clearly stated by P.W-1 and P.W-3. The father and brother of the deceased Usha had not actually handed over any money. It was made only to invoke dowry harassment in this case. P.W-1 and P.W-3, in their cross-examination, clearly indicated that during the life time of Usha, there was no complaint given to the police regarding dowry harassment. P.W-4- Ramudev / husband of the elder sister of Usha, had clearly stated that Accused-1 was relative to him. He had arranged the marriage of Usha with Accused-1. There had been complaints from the deceased Usha against her husband, but there were minor complaints. He had advised her to adjust. P.W-1 and P.W-4 had in their cross-examination admitted that Accused-1/Appellant herein is suffering from fits, with the suggestion that the wife of the Appellant committed self-immolation only on the ground that she was unable to bear her husband suffering from fits. They claimed ignorance. After the wife of Accused-1 had committed self-immolation, the parents and brother of the deceased Usha had given a false complaint, as though the husband and parents of the husband had caused physical and mental torture, murdered Usha, and set her on fire. There is sufficient evidence. From the evidence of the Doctor, who



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had seen her alive and conscious before her death. She herself, had stated to the Doctor that she committed self-immolation. What was the ground under which she committed self-immolation is not available. Only to invoke the dowry provision offence, the parents of the deceased Usha had invoked a theory whereby their daughter sought Rs.1 lakh given to Accused-1. But the date on which it was given or the period of exactly from the date of death, how many days before it was given, was not stated clearly by P.W-1 and P.W-3. Rs.1 lakh was given as a theory. It cannot be accepted when details are not given in the deposition. When was it handed over? To whom it was handed over? The father of the deceased Usha had clearly stated that he had visited only once after the marriage of her daughter for the first Diwali. The mother of the deceased Usha, P.W-2, had stated that she had visited only once after the delivery of her daughter and stayed for four days. Therefore, the theory of Rs.1 lakh given is a fictitious theory. Therefore, the offence under Section 498A is not at all attracted. Even without admitting for the sake of arguments, if the claims of P.W-1, P.W-2, and P.W-3 are considered, it does not attract dowry. P.W-1 had stated that his daughter sought Rs.1 lakh to improve the School run by Accused-1. That cannot be treated as dowry. Under what circumstances, the deceased Usha committed self-immolation? This is not known to her parents. Just because the daughter committed self-immolation, they had suspected it to be murder for dowry harassment. They had stated that she was



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tortured physically for dowry and she was burnt by her husband and his parents. Whereas, P.W-8 Dr.Thamarai Selvan who had seen the injured Usha at the first instance in the Hospital in the casualty ward, had clearly stated that the patient was conscious. She herself admitted that she committed self immolation. Therefore, the offence under Section 306 of IPC is not attracted. Immediate to the time of self-immolation there should have been some provocation from the husband to attract 306 of IPC. Here, those things are not available.

11. Under those circumstances, the learned Sessions Judge, Fast Track Mahila Court, Chennai, convicting Accused-1 as though he had abetted suicide is perverse. The finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai, against Accused-1 is perverse and is to be set aside.

12. In support of his contention, the learned Counsel for the Appellant relied on the following rulings:-

12.1. The Hon'ble Punjab and Haryana High Court in the case of ***Tarsem Singh and Others Vs. V.Amrit Kaur*** reported in ***1995 CRI. L.J. 3560*** has held as follows:



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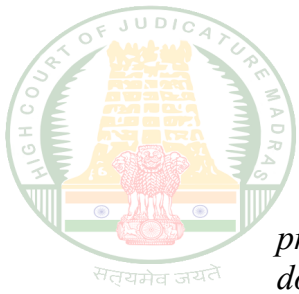
complaint- Complaint filed for offence under Section 498-A/34, Penal Code – Non-mentioning of specific dates as to when alleged illegal demand was made – Allegations in complaint vague without any details – Complaint quashed.”

12.2. The Hon'ble Supreme Court in the case of ***Appasaheb and Another Vs. State of Maharashtra in Criminal Appeal No.1613 of 2005*** dated **05.01.2007** had observed as under:

“9. ... A demand for money on account of some financial stringency or for meeting some urgent domestic expenses of for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in [Section 2](#) of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of [Section 304-B](#) PC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.”

12.3. The Hon'ble Division Bench of this Court in the case of ***Veerasa Vs. Inspector of Police, Gomangalam Police Station, Coimbatore*** in ***Criminal Appeal No.598 of 2009*** dated **16.12.2009** had observed as under:

“9. ... The Court has also examined one neighbour of the deceased, C.W.1. He has categorically stated that he knew the deceased and the accused family very well; that from the time of marriage, they were living together; that the deceased was found mentally depressed; that she used to go out of the house often due to mental illness and her husband/accused would go in search of her and bring her home. All the above circumstances would indicate that due to mental depressing and mental illness, the deceased has committed suicide and the appellants cannot be called upon to answer how she has committed suicide. Therefore, the cause for committing suicide need not be search for from any other sources. The stand taken by the prosecution before the trial Court that the deceased committed suicide due to cruel treatment meted out on her and due to abetment of the accused/appellants, were not proved by proper evidence. Under such circumstances, the Court is of the opinion that it would be unsafe to record the finding that the appellants are responsible for the death of the deceased. The



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prosecution has miserably failed to prove the case beyond reasonable doubt. Hence, the judgment of the trial Court has got to be made undone by upsetting the same and the appellants are entitled for acquittal."

12.4. The Hon'ble Himachal Pradesh High Court in the case ***State of***

H.P. Vs. Rakesh Sharma and Ors. reported in ***2013 (1) Acquittal 354 (H.P.)***

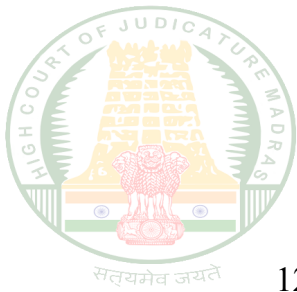
had held as follows:

"Indian Penal Code, 1860 – Sections 498A and 306 – Acquittal of Respondents of offences by Trial Court – Appeal – Deceased was married to Respondent in December, 1997 and she committed suicide in January, 2002 in matrimonial home – Presumption under Section 113(A) of Evidence Act could only be drawn when it was proved that suicide was committed within seven years and husband and relative of husband must have committed cruelty within meaning of Section 498A IPC– Presumption was rebuttable – Defence plea that deceased was suffering from hysteria and was not mentally stable was supported by medical reports – There were exaggerations and inconsistencies in evidence with regard to cruelty meted out to deceased – Cruelty was to be determined/inferred by considering conduct of man, weighing gravity or seriousness of his act and to find out if it was likely to drive woman to commit suicide etc – Acquittal called for no interference"

12.5. In the case of ***State of Orissa Vs. Ketuka Sethi and Others***

reported in ***2015 Crl.L.J. (NOC) 161 (ORI.)*** the High Court of Orissa had observed as under:

"Penal Code (45 of 1860), Ss. 304-B, 498-A – Cruelty and dowry death – Appeal against acquittal – Wife allegedly committed suicide due to cruelty by her husband and his relatives on account of non-fulfillment of dowry demand within seven years of marriage – Medical evidence showing that her death had taken place otherwise than under normal circumstances – Witnesses stated that Accused asked Rs.15,000/- from parents of deceased after three years of marriage for purpose for getting a service – Such demand has no connection with marriage or dowry demand – No evidence showing that deceased was subjected to cruelty by Accused persons in connection with dowry demand soon before her death – Acquittal of



Accused persons, proper – No interference.”

12.6. In the case of **Jodhan Singh Vs. The State of Madhya Pradesh**

(Now Chattisgarh) reported in **2015 CRI.L.J.(NOC)224(CHH.)** the High

Court of Chattisgarh had held as under:

“Penal Code (45 of 1860), Ss.304B, 306 – Dowry death – Proof – Accused husband allegedly harassed his wife for dowry as a result she committed suicide – Informant – father of deceased informed police after 15 days of incident – Not a single incident cited by witnesses for harassment or cruelty or torture for demand of dowry – Even if on one occasion Accused had made demand for Rs.5,000/- to open a cycle store, it would not amount to cruelty of a nature which drove deceased to commit suicide – Accused cannot be convicted under Section 304B or Section 306 r/w Section 113A of Evidence Act.”

12.7. The Hon'ble Supreme Court in the case of **Mariano Anto Bruno & Anr. Vs. The Inspector of Police** reported in **2022 LiveLaw (SC) 834** had held as follows:

“Indian Penal Code, 1860; Section 306 – In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the Accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

Indian Penal Code, 1860; Section 306 – Each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the Court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record.”

13. In the light of the ruling of the Hon'ble Supreme Court relied on by the learned Counsel for the Appellant reported in **2022 LiveLaw (SC) 834**

(Mariano Anto Bruno & Anr. Vs. The Inspector of Police), to convict the



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Accused under Section 306 of IPC there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the Accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. The Court of law while adjudicating is not to be guided by emotions of sentiments, but the dictum is required to be based on analysis of facts and evidence on record.

14. Except the fact that Rs.1 lakh was sought for the development of the School run by the Appellant. Though there is no evidence that prior to the self-immolation there was abetment of suicide, the evidence of P.W-1, P.W-2, P.W-3, and P.W-4, who are all relatives of the deceased Usha, had not corroborated the case against the Accused regarding the demand for dowry. Only after the death of their dear ones they were forced to make such a complaint with the purpose of attracting the Dowry Prohibition Act with a fertile imaginary case of Accused-1 having tortured and harassed the deceased Usha repeatedly, based on which Accused-1 had caused physical torture and murdered her. Instead, the evidence of P.W-8 Dr.Thamarai Selvan stated that the earliest opportunity that the Doctor at the casualty ward enquired the victim, the injured, who was alive at the time of admission to casualty ward,



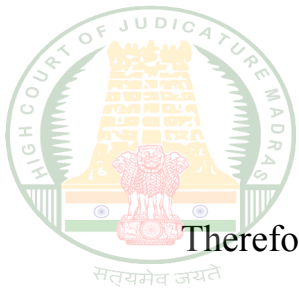
was that she committed self-immolation. Just because the wife committed self-immolation, the husband cannot be found guilty as though he had caused abetment. Therefore, the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai, is against this reported ruling. Therefore, the learned Counsel for the Appellant sought to set aside the judgment of conviction and sentence of imprisonment imposed against the Appellant herein.

15. The learned Additional Public Prosecutor by way of reply, had vehemently objected the submission of the learned Counsel for the Appellant, stating that this is the case where Accused-1 was convicted based on the evidence of the Prosecution Witnesses.

16. The learned Additional Public Prosecutor invited the attention of this Court to Section 113A of the Indian Evidence Act, which reads as follows:

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

As per Section 113A of the Indian Evidence Act, the Accused has to depose rebuttal evidence. Here, the Accused had not deposed rebuttal evidence.



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Therefore, the Accused has to suffer the presumption that is available to the Court in the light of the Prosecution evidence. Therefore, the judgment of conviction and sentence of imprisonment recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai, is a well-reasoned order in the light of Section 113 of the Indian Evidence Act that does not warrant any interference by this Court. This Appeal lacks merit and is to be dismissed.

Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai, in S.C.No.159 of 2015 dated 27.12.2016 is to be set aside as perverse?

17. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State.

18. Perused the evidence of Prosecution Witnesses, P.W-1 to P.W-13. Perused the documents under Ex.P-1 to Ex.P-16 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai.

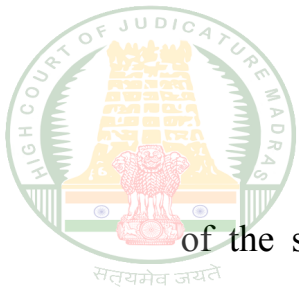
19. On perusal of the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai, and on perusal of the evidence of P.W-1 to P.W-5, and the Doctors' evidence, particularly P.W-8, Dr.Thamarai Selvan,



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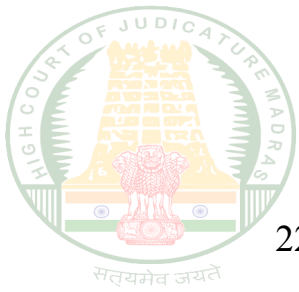
who had seen the victim at the earliest point of time, she herself had stated that she committed self-immolation. The fact that P.W-1, father of the deceased Usha, had stated in the complaint that they suspect the husband and parents of the husband have caused physical torture for dowry and murdered their daughter is found to be contrary to the evidence of P.W-8. The Doctor who had seen the victim alive and conscious on admission of the casualty ward had recorded the statement of the victim under Ex.P-7. Therefore, the complaint stating that Accused-1 demanded money from the parents of the deceased for the improvement of his School, which cannot be treated as dowry as per the rulings cited by the learned Counsel for the Appellant in the notes of the cases of *Jodhan Singh Vs. The State of Madhya Pradesh (Now Chattisgarh)* reported in *2015 CRI.L.J.(NOC)224(CHH.)* and *State of Orissa Vs. Ketuka Sethi and Others* reported in *Crl.L.J. (NOC) 161 (ORI.)*

20. Further as observed in the ruling of the Hon'ble Supreme Court in the case of *Mariano Anto Bruno & Anr. Vs. The Inspector of Police* reported in *2022 LiveLaw (SC) 834*, the husband cannot be held guilty merely because the wife committed suicide. Proximity to the date and time of the suicide that the Accused could have meted out the torture should be proved as per the above-reported ruling. The Prosecution had not proved such allegation through any evidence regarding abetment to the suicide, proximity to the date and time



of the suicide. On 16.12.2006 by 9.45 p.m., the deceased Usha committed suicide. There is no evidence that the in-laws received phone call from the daughter of P.W-1 and P.W-2. P.W-1 and P.W-2 received phone call from the daughter, deceased Usha on 16.12.2006, saying that the husband and in-laws had tortured her for dowry. There is no evidence available before the Trial Court.

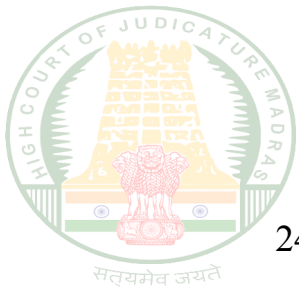
21. On perusal of the evidence of P.W-1, father of the deceased Usha, P.W-2, mother of the deceased Usha, P.W-3- brother of the deceased Usha, P.W.4- brother-in-law of the deceased Usha, P.W.5- Mohana, who is also the acquaintance of both the families and is living on the very same street, in the absence of such evidence, merely because the Court has to draw presumption under Section 113A of the Indian Evidence Act for the death of her wife within seven years of her marriage, the husband cannot be convicted. The argument of the learned Additional Public Prosecutor that the presumption under Section 113A of the Indian Evidence Act is against the husband in this case. The husband had not given rebuttal evidence, which will not help the Prosecution's case. As per the evidence of P.W-1, P.W-2 and P.W-3, the daughter had sought financial assistance on behalf of the Accused for improving the School, which cannot be treated as dowry harassment.



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22. As per the notes of case reported in **2015 Crl.L.J.(NOC) 224** in the case of **Jodhan Singh Vs. The State of Madhya Pradesh (Now Chattisgarh)**, it is seen that from the date of marriage till the date of death of the deceased, there had not been any complaint of dowry harassment before the police. Had there been any such dowry harassment complaint either by the deceased or by her parents or brother, then the presumption under Section 113A of the Indian Evidence Act can be invoked. In the facts and circumstances of this case, either on the date of death or two or three days prior to the date of death, there had not been any complaint by the deceased, either by P.W-5, who was residing in the very same street, who is known to the family of the deceased, and to the Accused. P.W-4 who had been residing in Tamil Nadu in the neighbouring district, who is the elder sister's husband, or any mobile contact from P.W-1 to P.W-3 either on the date of death or few days immediately prior to the date of death.

23. Under those circumstances, the presumption under Section 113A of the Indian Evidence Act cannot be invoked against the husband for the mere fact that the deceased committed suicide immediately, four years after the date of marriage. Just because within the expiry of seven years from the date of marriage, the deceased committed suicide.



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24. Under those circumstances in the light of the reported ruling of the Hon'ble Supreme Court in the case of *Mariano Anto Bruno & Anr. Vs. The Inspector of Police* reported in *2022 LiveLaw (SC) 834*, the recording of conviction against the husband/Accused-1 for the offence under Sections 498A and 306 of IPC is found to be perverse in the light of the above ruling. Therefore, the said conviction of Accused-1 under Sections 498A and 306 of IPC is set aside. The Appellant is acquitted under Section 235 of Cr.P.C.

25. The learned Additional Public Prosecutor appearing for the Respondent relied on the reported ruling of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh Vs. Subhash Alias Pappu* reported in *(2022) 6 SCC 508*.

26. On consideration of the rival submissions and on perusal of the evidence of the mother of the deceased/P.W-1, in her cross-examination, she had clearly stated that during the life time of the deceased, she had not preferred any complaint for dowry harassment against the husband and in-laws of the husband. The evidence of P.W-8-Doctor at the Causality Ward who had sent the deceased when she was alive at the time of admission before the Government hospital stating that she had not incriminated her husband or in-laws. She herself had stated that she committed self-immolation. What was



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the reason for self-immolation was not stated by the deceased. As per the evidence before this Court, the husband wanted to have the second child.

Therefore, there was a depression in the mind of the deceased. Therefore, she committed self-immolation. Just because, the newly married wife committed self-immolation, the in-laws cannot be held liable. Just because, the newly married woman committed suicide within seven years of the marriage, P.W-2-sister of deceased also stated in the cross-examination that during the lifetime of the deceased, neither the deceased nor the parents or sister of the deceased had given Police Complaint against the husband and in-laws for dowry harassment. Therefore, as submitted by the learned Counsel for the Appellant had relied on the ruling of the Hon'ble Supreme Court in the case of ***Mariano Anto Bruno & Anr. Vs. The Inspector of Police*** reported in ***2022 LiveLaw (SC) 834***. The observation of the Hon'ble Supreme Court is applicable to the facts and circumstances of this case. Just because, a newly married woman committed self-immolation within 4 ½ years of marriage does not mean that the husband and in-laws were responsible for committing self-immolation. P.W-8-Doctor had also in his deposition when he enquired, the deceased was brought to the Hospital, she was alive and stated that she committed self-immolation on her own. Therefore, the evidence of the Prosecution Witnesses particularly, the sisters, sisters' husbands and parents of the deceased that the conduct of the husband alone had caused mental agony resulting in her



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committing self-immolation cannot at all be accepted.

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27. In the light of the ruling cited by the learned Counsel for the Appellant reported in **2022 LiveLaw (SC) 834** in the case of ***Mariano Anto Bruno & Anr. Vs. The Inspector of Police***, the point for consideration is answered in favour of the Appellant and against the Prosecution. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.159 of 2015, dated 27.12.2016 is to be set aside.

In the result, this ***Criminal Appeal is allowed***. The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.159 of 2015, dated 27.12.2016 is set aside. The Appellant/Accused No.1 is acquitted from the charges. The bail Bond executed by Accused-1 is ordered to be cancelled. The fine amount paid, if any, by the Appellant/Accused-1 is to be refunded.

29.05.2024

cda/dh

Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The Sessions Judge,
Fast Track Mahila Court, Chennai.
- 2.The Assistant Commissioner of Police,
Pulianthope Range,
Chennai – 600 012.
- 3.The Public Prosecutor,
High Court, Madras.

<https://www.mhc.tn.gov.in/judis>



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4. The Section Officer, VR Records,
High Court Chennai.

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SATHI KUMAR SUKUMARA KURUP, J.,

cda/dh

Judgment in
Crl.A.No.9 of 2017

29.05.2024