

Ranganathan Vs. Veerapandian and Others

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Court : Chennai

Decided On : Sep-13-1995

Reported in : 1996CriLJ540

Judge : N. Arumugham, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B, 309 and 498A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313(1); Evidence Act - Sections 113 and 113B

Appeal No. : Criminal Revision Case No. 200 of 1991, CRL Rev. Petn No. 198 of 1991

Appellant : Ranganathan

Respondent : Veerapandian and Others

Advocate for Def. : Mr. V. Gopinath, Adv. and ;Mr. A.N. Rajan, Government Adv.

Advocate for Pet/Ap. : Mr. S. Ashok Kumar, Adv.

Judgement :

ORDER

1. Petitioner Ranganathan, examined P. W. 15 before the learned Principal Assistant Sessions Judge, Chengalput, in Sessions Case No. 225 of 1988, father of deceased by name Mandothari, has come forward with this revision, challenging

the propriety and legality of the Judgment rendered by the learned Sessions Judge, Chengalput, in C.A. No. 11 of 1990 on 25-1-1991, setting aside the judgment of conviction and sentence recorded by the learned Principal Assistant Sessions Judge, Chengalput, and acquitting the respondents 1 to 3 herein of all the charges. Respondents 1 to 3 herein were tried for the offences punishable under Sections 498(A) and 304(B) I.P.C. before the trial Court. On finding the respondents 1 to 3 accused guilty of the charges, the learned Principal Assistant Sessions Judge, convicted and sentenced them to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 100/- in default to undergo rigorous imprisonment for a period of three months for the offence under Section 498(A) I.P.C. and to undergo rigorous imprisonment for a period of seven years for the offence under section 304(B) I.P.C. and ordered the sentence to run concurrently.

2. The first respondent herein is the son of the second and third respondents and he was employed as a constable in the Railway Protection Force. The marriage of the first respondent with one girl by name Mandodhari, the daughter of the revision petitioner, was performed in Thiruverkadu Karumarimaman temple in the presence of P. W. 3 Gowri Ammal, her mother. Thiru Ramamoorthi P. W. 12 and P. W. 14 Pugalendhi. Following this, both the spouses were living happily and out of their happy living, a female child was born to them. For the delivery of the above said child, it was alleged that none of the respondents/accused went and saw the mother and child. However, respondents 2 and 3 demanded a dowry of Rs. 15,000/- from the said Mandodhari and imposed the same as a condition for her coming and living with her husband.

However, the presentation, namely, the Seervarisai' asked for by the respondents 2 and 3 were provided and with the same, the first respondent/accused with his wife settled his family at Changalput and both of them were living there. At about 12.30 P.M. on 14-4-1987, on the Tamil New Year's Day, the wife of the first respondent/accused poured kerosene upon her body and set fire to herself and came out of the house and rolled in the drainage water. On seeing this, a neighbour by name Neelakandan, P. W. 1 took her to the Government Hospital. This was also witnessed by P. W. 2, another neighbour at Chengalput. P. W. 17

Sub-Inspector of Police, on receipt of intimation proceeded to Chengalput Government Hospital at 1.30 P.M. and recorded statement from Mandodhari Ex. P. 22, obtained her left thumb impression, in the presence of the Medical Officer. On the basis of the statement, he registered a case in Cr.No. 189 of 1987 under Section 309, I. P. C. P. Ws. 8 to 10 are the doctors who speak about the examination of the deceased, death intimation, post mortem examination and so on. P. W. 7 is the Tahsildar, who conducted the inquest by examining he witnesses as contemplated by law. Other witnesses were examined by the police. The case originally registered under Section 309 I. P. C., was altered into the offences above referred, P. W. 17 and P. W. 18 are the investigating officers, who examined several witnesses. From this, as it was revealed that the said Mandodhari immolated herself by setting fire in a condition that she was not able to hear the cruelty perpetrated upon her demanding the dowry by all the accused though she was married already to one Anbazhagan and the said marriage was dissolved, after examination of all the witnesses and recorded the statement and completed the investigation, final report was filed. Respondent 1 to 3/accused were tried before the trial Court, for the offences above referred to.

3. When the respondents 1 to 3/accused were examined with regard to the incriminating circumstances appearing against them in evidence under Section 313(1)(b) of the Code of Criminal Procedure, they have denied their complicity in the crime as a whole but however, they did not choose to examine any witness on their behalf.

4. After having considered the entire oral evidence adduced by the prosecution through P. Ws. 1 to 18 and the documentary evidence Exhibit P. 1 to Exhibit P.24 and Ex. D. 1, the learned trial Judge found all the accused guilty of both the charges under Sections 498(A) and 304(B) I.P.C. and accordingly convicted and sentenced them accordingly. Aggrieved at this, the appeal in C. A. No. 11 of 1990 was preferred. On the reappraisal of the whole matter and case records, the learned appellate Judge has set aside the findings and observations of the trial Judge and consequently set aside the conviction and sentence by allowing the appeal. Aggrieved, petitioner Ranganathan, examined as P. W. 15 before the trial Court and father of the deceased girl, has come forward with this revision as noted

supra.

5. I have heard the Bar for the respective parties for and against the impugned judgment made by the learned appellate Judge. Mr. Ashok Kumar, learned counsel appearing on behalf of the revision petitioner contended that the lower appellate Judge has failed to note that it was clinchingly established before trial Court that the first respondent/accused had married the deceased Mandodhari at Thiruverkadu Temple in the presence of witnesses as per the cast custom and religious rituals and subsequently both of them lived together as husband and wife in Villiwakkan and then at Chengalput with all the presentations made by P. W. 3 and that the first respondent/accused with the actual aid and instigation of respondents 2 and 3 began to ill-treat his wife by demanding the dowry and money with jewels after having taken the jewellery presented by her parents and physically ill-treated her as spoken to by the prosecution witnesses, with the result, Mandodhari, wife of the first respondent set fire to herself on the relevant day and succumbed due to the burn injuries and thus the accused have committed the offences for all the charges framed and tried. He would contend further that accepting the oral evidence of P. Ws. 1 to 18 and the documentary evidence adduced on behalf of the prosecution Exhibit P. 1 to Exhibit P.24, the trial Court has rightly found all the accused/respondents guilty and convicted them accordingly. While submitting so, learned counsel took me through the evidence of almost all the prosecution witnesses and documentary evidence relied on behalf of the prosecution and thus assailed the very finding and conclusion of the learned appellate Judge.

6. On the other hand, Mr. Gopinath, learned senior counsel appearing on behalf of the respondents/accused would make his contentions supporting and justifying the verdict of acquittal recorded by the learned appellate Judge by almost reiterating the same view held by the learned appellate Judge. He also took me through the oral evidence and documentary evidence, which, according to him proved only the inter se bickerings between the first accused and the deceased Mandodhari and certainly not projected anything towards the ingredients of Section 498(A) or 304(B) I. P. C.

7. In the context of the above rival position, the only point that arises for consideration is whether the judgment of acquittal rendered by the learned appellate Judge is vitiated with any illegality or impropriety or misconception of any adduced legal evidence warranting the interference by this Court in this revision.

8. The trial Court upon the pleadings and evidence, has framed the following, points for consideration; and discussion :

1. Whether the deceased Mandodhari married the first accused/respondent

2. Whether the accused 1 to 3/respondent demanded dowry

3. While demanding the dowry, whether the first accused ill-treated the deceased

4. Whether the deceased Mandodhari committed suicide on being unable to bear the ill-treatment of her husband

9. On a consideration of the entire adduced legal evidence and the circumstances spoken to, the trial Court has given finding that the first accused/respondent has married the deceased Mandodhari and that all the accused demanded dowry and that as a result of which, the first accused, ill-treated his wife and not being able to bear with such ill-treatment, she has committed suicide by setting fire upon herself and answered all the points in favour of the prosecution and consequently convicted and sentenced the accused/respondents accordingly for the offences. The conclusion and findings of the learned trial Judge as a whole was reversed by the learned appellate Judge on the ground that the marriage by the first accused with the deceased was not at all proved, and further, he has held in the impugned judgment that there was no adequate proof showing the dissolution of the marriage of the deceased with her former husband by name Anbazhagan. With regard to the other points, after reassessing the adduced legal evidence, the learned appellate Judge has held that there was no demand of dowry by the first accused/respondent and the ill-treatment of deceased girl by the first accused/respondent has not been proved while demanding the dowry and consequently, the learned appellate Judge has answered the points in the negative. This was perhaps the reason why the Bar on behalf of the revision

petitioner took me to the entire oral evidence of the prosecution witnesses 18 in numbers, that is P. Ws. 1 to 18. Of the said witnesses examined orally, P. Ws. 1 and 2 happen to be the neighbours of the deceased and the first accused/respondent during the time of occurrence at Chengalput, that was on a Tamil New Year's Day. When the Deceased was seen for the first time by P. W. 1 by coming out and rolling in the drainage with the flames of fire upon her body, it was only he who took her to the hospital in his vehicle for treatment. P. W. 2 has also claimed the same extent in his oral testimony. P. W. 3 is the mother of the deceased. P. Ws. 4, 5 and 6 are the persons from the Village of Gowri Ammal P. W. 3, would speak to the instances happened prior to the occurrence at their village inter se between the deceased and her parents with the first accused P. W. 7, is the Tahsildar who conducted the inquest over the dead body and reported the investigating agency. P. Ws. 8, 9 and 10 are the doctors attached to the Government Hospital, Chengalput, who admitted the deceased with burn injuries on the relevant day, conducted autopsy, sent death intimation and so on P. Ws. 11, 13 are the neighbouring Villagers and supposed to be the mediators speak about the marriage of the first accused and the deceased P. W. 14 is the brother of the deceased and P.W. 15 is the father of the deceased and P.W. 17 and 18 are the Investigating Officer.

10. Of all the documentary evidence marked under Exhibit P. 1 to Exhibit P. 24, Exhibit 22 the statement claimed to have been given by deceased Mandodhari on 14-4-1987 at the Government Hospital, Exhibit P. 10 dated 21-7-1984 the divorce muchalika and Exhibit P. 1 letter dated 3-4-1987 written by the deceased Mandodhari to her parents, assume much significance in this case. A careful perusal of the judgment rendered by the trial Court clinches the fact that the deceased Mandodhari was given in marriage to one Anbazhagan earlier and since the life with him was not possible, she came out of his home and through a panchayat, it appears the marriage tie between the two was dissolved as per the religious caste custom as evident from Exhibit P. 10, a dissolution muchalika signed by the parties and attestors on 21-7-1984. The contents of this document was corroborated by P. W. 3 Gowri animal, mother of deceased and other witnesses. P. W. 15, the revision petitioner has also admitted this fact during his testimony before the trial Court. P. W. 13 by name Mohammed Ibrahim has also

supported the marriage of the deceased with Anbazhagan and the divorce effected thereupon. In fact, he was the attester of Exhibit P. 10. The contents of Exhibit P. 10 would reveal that the marriage between the deceased Anbazhagan was held on 18-2-1982 and subsequently there was no under-standing between them and as advised by the elders and relatives, by executing this muchalika and as per caste custom, they had effected divorce. Since this document was attested by the Panchayatdars and the said aspect has been clearly seen from the document itself with the support of the evidence of P. Ws. 3, 13, 15 and other witnesses, it is noted that the prosecution has established the fact that the first marriage of the deceased Mandodhari was dissolved in accordance with the caste custom but however, she remarried the first accused at Thiruverkadu.

11. It was the claim for the prosecution, particularly, through P. W. 3, the mother of the deceased that after the dissolution of the first marriage, intimacy of the first accused with her daughter Mandodhari developed and since it was continued, it necessitated P. Ws. 3, 15 along with other witnesses to perform the marriage of the deceased Mandodhari with the first accused and accordingly it was so done at Thiruverkadu Mari Amman Temple, and this aspect has been corroborated through the evidence of P. Ws. 12, 14 and 15. It was also in evidence of P. W. 3, mother of the deceased Mandodhari, that she was pregnant by two months when her marriage with the first accused was performed at the Thiruverkadu temple. The marriage was conducted, according to P. W. 3 in the said temple in the presence of P. W. 12. Mr. Ramamoorthi, Srinivasan and Nataraja Pillai and after the marriage both the couples were settled at Villivakkan in a separate residence, and that they were living together and as a result of which, P. W. 3 claims that she brought her daughter when she was in the advanced stage of pregnancy by 9 months for performing the function for the pregnant ladies for their conceivment and accordingly conducted the function also and on 16-5-1985 a female child, was born to her. It is also seen that the first accused was employed as a constable in the Railway Protection Force. It was the claim of P. W. 11. Mr. Panner Selvam, a respectable witness according to the trial Judge, that the marriage of the deceased Mandodhari and the first accused was not done with the consent and willingness of the accused 2 and 3/respondents, the parents of the first accused. P. W. 12, also corroborated and thus all the prosecution witnesses were unanimous in

claiming that the marriage of Mandodhari with the first accused was conducted against the will and consent of the accused 2 and 3 at Thiruverkadu temple.

12. From the above aspect of the Consistent case spoken to by almost all the witnesses of the prosecution, it is deducible that even prior to the marriage, the first accused, Veera Pandian had developed intimacy with the deceased Mandodhari and made her to conceive by two months of pregnancy at the time of marriage, which alone necessitated the parents of the girl to perform the marriage at Thiruverkadu temple, in a far away place from their residential locality and the said marriage was performed against the will and without the consent of the parents of the first accused, namely, accused 2 and 3. It is therefore clear from the said circumstances that the first marriage of the deceased girl was dissolved in accordance with the caste custom as evidence from Exhibit P. 10 and consequently, since she became pregnant, her marriage with the first accused, who was responsible for it, was performed and accordingly, they were living as husband and wife originally at Villivakkan and then at Chengalput and out of their wedlock a female child was born after a period of nine months.

13. The learned appellate Judge has given his finding that in the context of the admission of the first marriage, the dissolution of such marriage has not been proved and no caste custom has been spoken to by either of the witnesses. With all respects, I may observe, that while giving such a finding, the learned appellate Judge has not adhered nor adverted to the oral and documentary evidence adduced in this case in its proper perspective. Exhibit P. 10 was so clear that in accordance with the caste custom, the dissolution of the marriage was effected and that too was in pursuance of the decision of the Panchayatdars and the elders. It has been duly and amply proved that the first marriage has been duly dissolved. 'Caste customs' had been specifically spelt out in Exhibit P. 10 besides the claim of the witnesses above referred.

14. Coming to the second marriage with the first accused, there is some force in the finding of the learned appellate Judge that the validity of the Second marriage has not been proved but however, the various circumstances spoken to and claimed by almost all the witnesses with the documentary evidence, particularly,

the letters written by the deceased, clearly demonstrates that the second marriage of the deceased girl with the first accused was conducted at the Thiruverkadu temple and since then onwards, they were living as husband and wife initially at Villivakkam and then at Chengalput and that a female child was born out of their wedlock. It is therefore, under the circumstances, I am able to see that there is enormous and overwhelming evidence which establish the fact that the first marriage of the deceased was duly dissolved as per caste custom and subsequently her marriage with the first custom and subsequently her marriage with the first accused was performed at Thiruverkadu temple in accordance with the caste custom. However, except the oral claim of the prosecution witnesses above referred, there is no documentary proof that they had conducted the marriage at Thiruverkadu temple. But their living as husband and wife at Villivakkan and Chengalput not only with the villagers of the deceased girl but also with the neighbours of their family at Chengalput goes to show that the deceased girl and the first accused were living as husband and wife at Chengalput till the date of occurrence. Therefore, under the circumstances, it can safely be held that their marriage has been duly proved and that the lower appellate Judge is not correct in holding that the prosecution has failed to prove the above said aspects. It has also to be held upon the above said reasoning that the first marriage of the deceased Mandodhari with one Anbazhagan was dissolved, as proved by ample evidence, as per the caste custom, which would mean further that, consequent to the legal marriage both the deceased and the first accused/respondent were living as husband and wife initially at Villivakkan and then subsequently at Chengalput as the first accused/respondent was employed as a constable in the Railway Protection Force. This was proved amply by the evidence. P.W. 16, the Inspector of Railway Protection Force, barring the oral testimony by almost all the prosecution witnesses, the letter more than one in number by the deceased to her parents coupled with the letters written by the second accused to his son.

15. Then the question that remains to be seen, is as to whether the first accused demanded any dowry from the deceased, and if so, consequent to the said demand, whether he has ill-treated the deceased with the object of getting the dowry. Section 304-B I.P.C. was inserted by the Dowry Prohibition (Amendment) Act, 1986. The essential ingredients spelt out in the above Section are extracted as

hereunder :-

1. The death should have been caused within several years of the marriage of the deceased.
2. The death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances.
3. The deceased should have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death.
4. The cruelty and harassment so subjected shall be for, or in connection with any demand or dowry.

From the above, it follows that there should have been a death caused to the deceased within a period of seven years from the date of marriage due to the bodily injury or under other abnormal circumstances subject to the condition that the said abnormal circumstances must be due to the cruelty or harassment perpetrated by her husband or his relative immediately earlier or soon before her death and that too, in connection with any demand of dowry. The first two conditions above referred is seen to have been available in the facts of the instant case, but with regard to the latter two, the prosecution case claims so, but however, it has denied and controverted in toto by and on behalf of the accused.

16. Section 113-B of the Evidence Act was also inserted by the aforesaid Amendment Act. The said provision provides a presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

17. The word 'cruelty' has not been defined under Section 304-B of the Indian Penal Code but however the same is made available in the explanation to Section 498-A of the Indian Penal Code, which are as follows :

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or cause grave injury or danger to life, limb or health (whether mental or physical) of the woman : or

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

18. From the explanations referred to above, it is made clear that any conduct on the part of the husband or relative of the husband subjecting the woman to commit suicide or to cause grave injury etc, to the woman with a view to coerce her any person related to her to meet the unlawful demand for any property or valuable security or any person related to her to meet such demands amounts to cruelty. Thus, it is noticed that the definition of 'cruelty' adumbrated in the explanation to Section 498(A) I. P. C., runs in conjunction with Section 304-B I. P. C., Keeping the above legal aspects in view, and applying it to the facts of the instant case, in the context of the reversal judgment made by the lower appellate Court, it is possible for holding, that on and prior to the marriage of the first accused with the deceased, the first accused never had demanded any dowry or any money either from the deceased or her parents or the prosecution witnesses. The evidence of P. W. 3, none other than the mother of the deceased, with P.W. 15, her father, are very conspicuous. As I have already adverted to, it was the admitted case of the parents of the deceased that for the marriage of their daughter with the first accused performed at Thiruverkadu temple, the second and third accused, namely, the father and mother of the first accused, had not come as they were opposed to the said marriage. They did not speak a word about the fact that the first accused had demanded any dowry or any presentation from the deceased or from her parents to marry the deceased. It was also the admitted case, that subsequent to the marriage both the first accused and the deceased were allowed to live in a house at Villivakkan, accordingly, they had been so and subsequently at Chengalput and during the said period as a whole the first accused was employed as a Constable in the Railway Protection Force. P. Ws. 1 and 2, the neighbours of the first accused at Chengalput, did not spell out a single word

about the ill-treatment of the deceased by the first accused at any point of time nor to any respect that they had any disruption in the conjugal life of the family. It was not the case of the prosecution that the parents of the first accused, namely, the second and third accused used to come and visit the house of the first accused with the deceased during their married life nor used to come and often demand the dowry from the deceased or her parents either directly or indirectly. From the above evidence made available, it has to be noted, that if the first accused married the deceased without the consent and against the will of his parents, namely, the second and third accused, and without their knowledge, even then, it is for the prosecution, to prove that there was any agreement or demand to pay the dowry as provided by the above section of law. Of course, it was true, a letter was claimed to have been written by the second accused. It seems the prosecution has relied on a letter alleged to have been written by the second accused to P. W. 15, the father of the deceased girl, which has been marked as Exhibit P. 14 in this case. This letter was seen to have been written on 18-9-1984. The alleged marriage performed at Thiruverkadu temple was on 1-10-1984. But the fact that the said marriage was admittedly performed without the presence of the second and third accused and against their consent in the context of no evidence or scrap of paper to show that the first accused had demanded any money or dowry and the evidence of P.Ws. 3, 15 and other witnesses that the first accused had developed intimacy with the deceased even prior to the marriage, cannot at all go to show that there was demand of dowry or money or other property from the deceased or the parents of the deceased by the first accused. Exhibit P. 14 had no connection whatsoever with the case of the prosecution. Exhibit P. 1 to Exhibit P. 12 are the letters written by the deceased Mandodhari to P.W. 3 and Exhibit P. 22 is her statement given at the hospital, deemed to be the dying declaration. On a careful look at the dying declaration Exhibit P. 22 it is seen that it does not contain any words or iota of dowry harassment or ill-treatment by the first accused to the deceased. Regarding the genuineness of Exhibit P. 22, though it is claimed to have been written to the narration of the deceased at the hospital, since it was not appended with the due certificate by the doctor, in the context of the denial of the same, it gives rise to a doubt and for the said reason, I am also to hold that it is quite unsafe to place reliance upon the document Exhibit P. 22. However, it seems

from this document, even assuming it to be true, the deceased would have been frustrated terribly in her life with the first accused due to family bickerings and certainly not due to cruelty perpetrated or in demanding the dowry. The lower Appellate Court has also adverted to the said observation. Exhibit P. 1, the letter alleged to have been written by the deceased Mandodhari on 3-4-1987 to her parents was also seems to have been relied on much by the prosecution. A reading of this letter shows that it has some reference to the evidence of P.W. 16, the Inspector of Railway Protection Force by name Danial Johnsondass. The contents of the letter wholly seems to project the family quarrels among the first accused and deceased in connection with her visit to P.W. 16's house and her handing over the custody of the female child. As was rightly observed by the learned lower appellate Judge, it was alleged by the deceased that her life with the first accused became frustrated not certainly on account of demand of dowry but due to some other internal reasons existed among the husband and wife in the conjugal life. Exhibit P. 12 another letter said to have been written by the deceased Mandodhari to her mother P.W. 3 on 2-6-1986 though was relied upon, it did not have any reference to the alleged cruelty or demand of dowry either by the first accused or his parents but however had only revealed that the third accused had asked verification of the jewellery presented by his mother in law and nothing about the reference to demand of dowry or ill-treatment. Exhibit P. 14 and Exhibit P. 16 claimed to have been written by the second accused to P.W. 15, as was rightly observed by the learned appellate Judge would reveal only the frustrated mental faculty of the parents of the first accused and not the demand of dowry. Even assuming so without any basis for a parents, that since the marriage of the first accused with Mandodhari was conducted and performed at Thiruverkadu on 1-10-1984 without the knowledge and consent and presence of A2 and A3, in the context that there was no evidence at all adduced by the prosecution that the second and third accused had come and lived with the first accused and Mandodhari or used to come to their house, then it is very difficult to believe the evidence of the prosecution that there was a demand of dowry and consequent/-ill-treatment either physical or mental at any point of time and due to which, the deceased had decided her destiny by herself. Even the inquest report Exhibit P. 3 prepared by P. W. 7, the Tahsildar and perusal of Exhibit P. 4 and

Exhibit P. 7 the proceedings, do not show anything about the demand of dowry and the ill-treatment, due to which the girl had finished her life. Column number 15 of the inquest report, clearly spelt out that the death was not due to any demand of dowry or ill-treatment. The conclusion of the Panchayatdars recorded in column number 15 of the inquest report reveals different reasons and does not tally with the claim of the prosecution. This aspect while being considered with that of the testimony of P.Ws. 1 and 2 the independent witnesses, who are from the place where the first accused and the deceased lastly lived, assumes every significance and importance and in any way, remains as totally acceptable and convincing for the reason that they are total strangers and neighbours of the locality where the occurrence had taken place on the relevant day and it was only they who helped the deceased to go to the hospital for treatment.

19. The testimony of P.Ws. 4, 5, 6, 11 to 15 though seems to be unanimous almost in nature, it cannot overweigh the circumstances above referred, spoken to by P.Ws. 1 and 2 emerged out from the documentary evidence but clinches the fact that certain family bickerings that existed among the deceased and the first accused long prior to the occurrence had been taken as undue advantage of by P. W. 15 and P. W. 3 under the pretext of Ss. 304-B and 498(A) I. P. C. I have come to this conclusion because, as was rightly observed by the learned appellate Judge, that though several witnesses claim the ill-treatment by the first accused to the deceased girl on the more than number of occasions prior to her death, even during the advanced stage of her pregnancy, demanding the dowry or jewellery or money and his physical overt act for the said cause happened in their presence, no attempt was made by anyone to report the matter to the police or the elders of the locality. What P. W. 11, 12, and 13 claim is that they were told about the bickerings of the first accused and that they had no personal knowledge. If their oral testimony is viewed as per the provisions of the Indian Evidence Act, I can say without hesitation, that it is only hearsay, not even deserving to be admissible in evidence. Similar value can be placed for the evidence of P. Ws. 14 and 15 brother and father of the deceased as they were of belated and afterthought. The alleged marriage seems to have been performed on 1-10-1984. The suicide of the wife was on the Tamil New Year's Day in the year 1987. Thus the spouses lived together for nearly three years and out of their wedlock, a female child was born

and as seen from the contents of Exhibit P. 12, it is also possible to presume that the quarrel among themselves had emerged out due to the child also but however, it is not known the exact reason forming the very foundation for the serious bickerings between the spouses. It is therefore, under the circumstances. I feel that the evidence of P. Ws. 4 to 9, 11 to 15 are highly interested and belated, even must have been schemed out to rope in the accused for the end voluntarily opted by the deceased. Even the evidence of P. W. 16 does not disclose any dowry demand or consequential ill-treatment but certainly speaks about the serious bickerings between the first accused and his wife the deceased Mandodhari. There is no dispute over the evidence of the doctors P. Ws. 8 to 10 and the investigating Officers P. W. 17 and P. W. 18 as well as P. W. 7, the Tahsildar, who conducted the inquest. The very inaction on the part of P. Ws. 3 and 15 on the one hand, P. Ws. 4 to 7 or P. Ws. 11 to 15 on the other hand, in not making a complaint, or not even convening a panchayat or accosting the accused for their excessive and unlawful demand, leads to the one and only conclusion that the alleged claim now made that of demanding dowry the deceased girl was ill-treated merely cannot be believed but deserves to be rejected for the reason of total inaction, belated and highly partisan attitude and character. A mere circumstance or suspicion however may not be sufficient or adequate to mulct a husband or his parents with criminality and consequently make them liable to be punished. Prosecution must prove firstly that there was a demand of dowry and while doing so, if there was any demand, then the presumption provided under Section 113 of the Indian Evidence Act will arise towards the ingredients of Section 304-B along with S. 498(A) I. P. C. The basic element of 'demand or dowry' is absent totally, in other words to say, has not all been established, the consequence is that no such presumption would arise as provided therefor. Having thus gone through the entire adduced legal evidence and circumstances spoken to in the instant case. I am constrained to endorse my view with the various observations and findings given by the learned Sessions Judge in the impugned judgment and consequently, I am to hold that the prosecution had virtually failed to prove the guilt of the accused for the offences charged and tried. Though several case laws have been cited on behalf of the respondents, I feel that there exists no need to refer to all of them in view of the above reasonings and findings. No other points were projected before

so for either of the parts.

20. In the result, the revision fails and accordingly it is dismissed. Consequently, the Judgment of acquittal rendered by the learned Sessions Judge in C. A. No. 11 of 1990 on 25-1-1991 is hereby confirmed and maintained.

21. Revision dismissed.

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