

**State Vs. Udayakumar and ors.**

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**Court :** Chennai

**Decided On :** Mar-08-2004

**Reported in :** 2004CriLJ2758

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 498; [Dowry Prohibition Act, 1961](#) - Sections 4; [Medical Termination of Pregnancy Act, 1971](#) - Sections 3(4); [Hindu Minority and Guardianship Act, 1956](#) - Sections 6

**Appeal No. :** Crl. Appeal No. 363 of 1997 and Crl. Revn. Petn. No. 582 of 1997

**Appellant :** State

**Respondent :** Udayakumar and ors.

**Advocate for Def. :** N. Mohideen Basha, Adv. for ;K. Venkataraman, Adv. (for Nos. 1 and 2) and ;D. Krishnan, Adv. (for No. 3)

**Advocate for Pet/Ap. :** A.N. Thambidurai, Govt. Adv. (Crl. Side) and ;P. Mathivanan, Adv. (in Cr.R.C. No. 582/97)

**Disposition :** Appeal dismissed

**Judgement :**

1. Crl. Appeal No. 363/ 1997 : State has come forward with this Appeal against the Order of Acquittal in S.C. 231/1992 on the file of Principal Assistant Sessions Court, Cuddalore. By the Judgment dated 3-9-1996, the learned Principal

Assistant Sessions Judge, Cuddalore has acquitted A1 to A3 for various offences.

2. CrI. Revision Case No. 582/1997; This Revision is preferred by P.W. 1 -- Sudha/ Complainant against the Order of Acquittal by the trial Court acquitting A1 to A3.

3. Common points for determination arise in both Appeal and Revision and hence both were heard together and disposed of by this common Judgment.

4. Details of the charges framed against the accused and the findings of the trial Court are as noted below :--

Charge

Number

Gist of the offence

Against which accused

Finding of Trial Court

1

Under Section 4 of Dowry Prohibition Act

and

Under Section 498-A r/w 109, IPC -- Instigation for cruelty in demand of dowry A2  
Acquitted.

2

Under Section 498-A, IPC -- Demand of dowry and dowry harassment A1  
Acquitted.

3

Under Section 313 r/w, 109, IPC -- Instigation for causing miscarriage of pregnancy without woman's consent.

A1 Acquitted.

4

Under Section 313, IPC -- Causing miscarriage without woman's consent.

A3.

Acquitted

5. Case of the Prosecution could briefly be stated thus :--

First accused was working as Police Constable in Armed Reserve Police, Cuddalore (Batch No. 245). He is a resident of Alakudi Village in Sirkali Taluk. The Complainant Sudha was his neighbour and residing in the same village. Both of them loved each other. Love marriage of the Complainant and the first accused was solemnized in Ippasi 1990- October, 1990. After marriage, A1 and P.W. 1 Sudha were living in Anaikuppam, Cuddalore.

6. Occurrence : A2 is the brother of A1 and working as Teacher. A2 was frequently visiting the house of A1 in Anaikuppam. At the instigation of A2, A1 was demanding 10 sovereigns of jewels and cash of Rs. 10,000/-. He was also demanding cot, bed and money to be brought from her parents. The parents of P.W. 1 could not immediately afford to meet the demand.

7. P.W. 1 Sudha was in the family way about three months. At the instigation of A2, A1 had violently beaten P.W. 1 Sudha and she was suffering from headache. For treatment of her headache, P.W. 1 was taken to Chidambaram to the Hospital of A3 -- Dr. Thiripurasundari. In the hospital, she was injected and put on sedatives and the pregnancy was aborted. According to P.W. 1 the abortion was forcibly done by A3 at the instance of A1 and A2 without her knowledge.

8. A1 brought her back to the house in Anaikuppam and left her there. He is employed in Armed Reserve Police. He applied for leave and did not return back to the house. P.W. 1 waited in vain for A1 to return. Her efforts to re-join A1 also ended in vain.

9. Complaint and Registration of the case : On 30-3-1991 P.W. 1 lodged Ex.P. 1 -- Complaint before Pudhu Nagar Station at 1.45 p.m. P.W, 4 Sub Inspector of Police received Ex. P.1. On the basis of Ex.P. 1, case was registered in Crime No. 229/1991 under Section 498-A and 313, IPC under Ex. P2 -- First Information Report.

10. Complaint : P.W. 5 -- Inspector of Police had taken up the investigation. As per the direction of the higher officials, the case was handed over to CB, CID. P.W. 6 -- Inspector of Police, CB, CID had taken up the investigation. He examined the witnesses and recorded their statements. The accused surrendered before the Court. On completion of Investigation, charge-sheet was filed against the accused on 26-11-1991 under Sections 498-A read with 109 and 313, IPC.

11. To substantiate the charges against the accused, in the trial Court, P.Ws. 1 to 7 were examined. Exs. P-1 to P4 were marked. On behalf of the accused, Exs. D-1 to D-7 were marked. Accused 1 to 3 were questioned about the incriminating circumstances and evidence under Section 313, CrI. P.C. A1 filed the Statement in writing denying the allegations that a false case is foisted against him.

12. Upon consideration of the evidence, the trial Court contended that the spouses are entangled in several disputes. In view of number of cases between the parties, the trial Court disbelieved the evidence of P.W. 1 as to the demand of dowry by way of jewels and cash. In its view, demand of dowry is highly improbable as the marriage was not an arranged marriage but a love marriage and they lived together for a short while only for four months. The charge-sheet was originally filed against Dr. Shanthi and later Thiripurasundari was shown as the 3rd accused. Pointing out the same, the trial Court expressed doubts as to who has actually done the abortion to P.W. 1 and on that finding acquitted A3.

13. Assailing the reasonings and findings, the learned Government Advocate (Criminal Side) submitted that there are sufficient materials showing cruelty and dowry harassment and that at the Instigation of A2, A1 has subjected P.W. 1 to cruelty. Taking me through the evidence of P.Ws. 1 and 2, the learned Government Advocate further submitted that there is ample evidence proving the dowry harassment and cruelty, which was not properly appreciated by the trial

Court. Referring to the initial filing of charge-sheet against one Dr. Shanthy and later altering the same against Dr. Thiripurasundari (A3), the learned Government Advocate conceded that there is lacuna in the investigation. However, the learned Government Advocate added that lacuna in the Investigation as against A3 would not in anyway undermine the prosecution case setforth against A1 and A2. It is contended that the reasonings and findings of the trial Court for acquitting A1 and A3 suffer from serious and substantial error warranting interference,

14. Adopting the arguments of the learned Government Advocate, the learned counsel appearing for de facto Complainant/ P.W. 1-- Sudha submitted that at the time of abortion, P.W. 1 was only 16 years and was a minor and that any termination of pregnancy without obtaining the consent of her guardian is punishable for violation of Section 3(4)(a) of Medical Termination of Pregnancy Act. Findings of the trial Court is attacked that the trial Court erred in disbelieving the consistent evidence of P.Ws. 1 and 2 on the dowry harassment and cruelty by A1 and instigation by A2.

15. Contending that the evidence for demand of dowry is found to be wanting, the learned counsel for A1 and A2 referring to Ex.P1 -- Complainant submitted that the tenor of Ex.P1 would only suggest that P.W. 1 was seeking redressal against A1, whom she was aggrieved, and insisting to make provision for food and shelter. Much arguments are advanced drawing the attention of the Court to the evidence of P.Ws. 1 and 2 that it suffers from inconsistencies and contradictions and the order of acquittal is based upon the materials on record, warranting no interference.

16. Submitting that absolutely there is no evidence to forcible abortion, learned counsel for A3, Mr. D. Krishnan submitted that the trial Court had rightly taken note of Ex.D4 -- a consent letter given by P.W. 1, where she has reported to the hospital for Dilatation and Curettage and absolutely no material showing forcible abortion. Laying emphasis upon the lack of thoroughness in the investigation, the learned counsel has drawn the attention of the Court that originally the charge-sheet was filed against one Dr. Shanthy, who is settled in America, and on Application filed by A1 and A2, present A3 -- Dr. Thiripurasundari was shown as 3rd

accused, which shows that no proper investigation was done on the allegation of miscarriage under Section 313, IPC.

17. Upon consideration of the evidence, impugned judgment, other materials on record and submissions of all the counsel, the following common points arise for de termination consideration in this Appeal and Revision :--

(1) Whether the dowry harassment and cruelty to P.W. 1 within the meaning of Section 498-A, IPC to P.W. 1 Suguna is proved ?

(ii) Whether essential ingredients of the forcible miscarriage of Pregnancy within the meaning of Section 313, IPC is proved ?

(iii) Whether the reasonings for acquittal suffer from any serious and substantial error warranting interference in the Order of acquittal ?

18. Like in other cases, initial burden to prove the dowry harassment and cruelty rests upon the Prosecution. Of course offences relating to cruelty to women are of serious nature. But on that score, the initial burden cast upon the Prosecution to prove the cruelty is no way lessened. Courts are to be weary of exaggerated version of complaints of dowry demand, to settle scores with the husband or relatives on account of other differences or disputes.

19. Cruelty or harassment in demand of dowry are not related to a particular instance; but spread over a period of time. It normally refers to a course of conduct. In the case in hand, evidence and points urged by the Prosecution are to be analysed bearing in mind that marriage of P.W. 1 and A1 was not an arranged marriage. A1 was working as Police Constable in Armed Reserve Police. Cuddalore (Battalion No. 245) is the resident of Alakudi. Complainant/Revision Petitioner -- Sudha is a neighbour. They developed love and friendship and the same was known to her parents and other villagers. Since A2 and other family members of A1 were opposed to the marriage, a Panchayat was convened in the Village and in that Panchayat, A1 promised to marry P.W. 1. Accordingly, the marriage was solemnized on 22-10-1990 in Chidambaram Natrajar Temple. Relations of A1 did not attend. After the marriage, the couple were living in

Anaikuppam in the house of P.W. 2 on rent.

20. Charge Nos. 1 and 2 relate to Section 4 of the Dowry Prohibition Act.

To make it an offence under Section 4 of Dowry Prohibition Act, dowry should have been given or agreed to be given at or before or after the marriage in connection with the marriage. Since the marriage was not an arranged marriage but a love marriage, there is no possibility of giving dowry or agreed to be given in connection with the marriage. Absolutely, there is no evidence in respect of charge under Section 4 of Dowry Prohibition Act.

21. After the marriage, A1 and P.W. 1 lived together only for a short while. The marriage was in Oct. 1990. Differences arose between them even in January 1991. P.W. 1 is alleged to have given the complaint against A1 even in Feb. 1991. In March 1991, both of them were separated . While so, there are only remote possibilities of demand of dowry and harassment and cruelty during that short interval of cohabitation.

22. Before elaborating upon the evidence of P.Ws. 1 and 2, it is relevant to refer to the other matrimonial disputes between the parties.

23. HMOP No 11/1991 : Alleging that P.W. 1 Sudha has treated him cruelly and that marriage between A1 and Sudha has been broken down, irrevocably, A1 had filed HMOP No. 11/91 under Sections 10 and 13(i)(a) of Hindu Marriage Act for Judicial separation and to relieve him from the obligation of cohabiting with P.W. 1 Sudha, this Matrimonial Petition was filed on 4-3-1991. On that date, notice was ordered for the hearing on 4-4-1991. Respondent/Sudha was not served and notice returned as 'No residence', and fresh notice was ordered through Court and post for the hearing by 3-5-1991.

24. O.S. 129/1991 : A1 Udayakumar had also filed O.S. 129/1991 -- Suit for Permanent Injunction on the file of District Munsif Court, Chidambaram restraining P.W. 1 Sudha and her relatives from forcing A1 to stay or cohabit with her, otherwise than through the procedure established by law. That Suit was filed on 25-3-1991. In the Suit also, summons was ordered for the hearing 'on 16-4-1991.

25. Earlier Complaint in Feb. 1991 : Due to differences between A1 and P.W. 1 and P.W. 1 had earlier preferred complaint before the Superintendent of Police . Chidambaram In Feb. 1991. In connection with that complaint, without mentioning the Crime Number, A1 had obtained anticipatory bail in C.M.P. No. 622/1991 and on the file of Sessions Court, Cuddalore (20-2-1991). Thus the suit and the matrimonial petitions were filed by the parties and were pending. At that stage, P.W. 1 preferred the present Complaint (Ex.P1) on 30-3-1991 before Superintendent of Police alleging dowry harassment and cruelty. She has also alleged that there was forcible termination of pregnancy. On the basis of Ex. P1, a case was registered in Crime No. 229/1991 on 30-3-1991 under Ex.P.2-- First Information Report. In Ex. P1 Complaint also, P.W. 1 has not narrated about the specific instances and date of demand of dowry and harassment. It is thus clear that Ex.P1 -- Complaint is neither earliest one nor a contemporaneous one. There is inordinate delay in lodging Ex.P1 -- Complaint. Ex.P1 -- Complaint was preferred before the Superintendent of Police only after the matrimonial disputes started between the parties. Due to other differences between the couple, there is every possibility of coloured version and exaggerations in Ex.P. 1 to force A1 to fall in line with P.W. 1 in settling the differences. This puts the Court on guard to scrutinise the evidence of P.W. 1 and the case of the Prosecution with much care and caution.

26. It is to be pointed out that general tenor of Ex.P1 is only to request the Superintendent of Police to persuade A1 to live with her and to make provision for her food and shelter. It was merely a complaint preferred before the higher officer against her husband, who was working as Police Constable, Armed Reserve Police in Cuddalore District. Nowhere in Ex.P1, P.W. 1 has requested to register any case or set the criminal law in motion.

27. It is in the above backdrop, evidence of P.Ws. 1 and 2 on the alleged dowry harassment and cruelty is to be carefully analysed. In her evidence, P.W. 1 has generally stated that she was subjected to harassment by A1 demanding for Rs. 10,000/- and 10 sovereigns of gold jewellery. She has not elaborated upon the details. In her evidence; she has stated that A1 used to cause burn injuries with cigarette butts. But this mode of cruelty is not alleged in Ex. P. 1 -- Complaint.

28. Evidence of P.W. 1 on the demand of dowry of Rs. 10,000/- and 10 sovereigns of gold Jewels remains uncorroborated. As noted earlier, only after Panchayat, marriage was held much to the disliking of A1's family. Had there been any demand of dowry she would have informed the same to her parents. To substantiate demand of dowry and cruelty, during investigation parents of P.W. 1 -- Chinnapillai and Suseela were examined and cited as witnesses in the charge-sheet. But they were not examined as witnesses during the trial. Non-examination of parents of P.W. 1 throws serious doubts on the alleged demand of dowry by A1.

29. On account of various disputes between the parties and their separation, it is quite natural that P.W. 1 would have developed psychological hatred towards her husband -- A1. For demand of dowry and cruelty, it would not be reasonable to expect corroboration from independent source. But the case in hand stands slightly on a different footing. Parties are entangled in more than one dispute. There is every possibility of improved versions and the evidence of P.W. 1 is to be viewed carefully.

30. Prosecution has examined P.W. 2 --house owner in Analkuppam where P.W. 1 and A1 were residing for the short time. P.W. 2 was also the owner of the shop, who was supplying the provisions to the couple. P.W. 2 has stated that for the first one month they were living happily and thereafter A1 asked P.W. 2 not to give any provisions to P.W. 1 without his consent. According to P.W. 2, P.W. 1 told him about the demand of dowry and that A1 had burnt P.W. 1 with cigarette butts and is not making provision for the food. Evidence of P.W. 2 is unsupported by any contemporaneous material or of the parties. Admittedly, the plan of the house where P.W. 1 was residing has not been produced to show the position of the house and the bunk shop of P.W. 2. In his cross-examination, P.W. 2 has admitted that he cannot hear the voice from the house of P.W. 1 Sudha. While so. It is quite unbelievable that he heard A2 visiting the house of A1 and instigating A1 for demand of dowry. Likewise, the statement of P.W. 2 that P. W. 1 told him that A1 is causing injury with cigarette butts was not stated before the Police in the statement under Section 161(3) of Crl. P.C. No reason is forthcoming for not examining the other tenants. Evidence of P.W. 2 might be relating to a particular instance but may not prove a course of conduct amounting to harassment and

cruelty. After considering his evidence, the trial Court found unreliable for his improved version. This approach and finding does not suffer from any infirmity, warranting Interference.

31. Evidence of P.Ws. 1 and 2 does not sufficiently establish that there was demand of dowry and that P.W. 1 was subjected to dowry harassment and cruelty. P.W. 1 and A1 lived together only for a short while nearly two months. Differences have arisen between them and they have separated. Finding of the trial Court that the demand of dowry and dowry harassment is an afterthought is neither perverse nor unreasonable.

32. Charge Nos. 4 and 3 -- Under Sec. 313, IPC against A3 :

Under Sec. 313 read with 109 against A1:

P.W. 1 was in the family way -- three months. She was taken to Chidambaram by A1, where she was aborted on 20-12-1990. A3 --Thiripurasundari faces charge for forcible abortion without consent of P.W. 1 --Sudha. Case of A3 is that P.W. 1 -- Sudha reported to her with bleeding complaint. On her request with complaint of bleeding, upon examination it was noted that the pregnancy was partially aborted. On request by P.W. 1, the uterus was cleaned by Dilatation and Curettage. Ex. D-4 is produced to show that Dilatation and Curettage was done with the consent of P.W. 1.

33. Serious doubts arise on the complaint of P.W. 1 that there was forcible abortion without her consent. As noted earlier, in February 1991, she has preferred Complaint against A1. For that complaint -- for the offence under Section 498-A, IPC, without mentioning the Crime Number A1 Udayakumar had obtained anticipatory bail from the Sessions Court, Cuddalore in CMP No. 622/1991. Had there been forcible miscarriage of pregnancy, P.W. 1 would have definitely stated in her earlier complaint. But that was not to be so. While so, allegations of forcible miscarriage of pregnancy against A3 is clearly an afterthought.

34. According to P.W. 1, there was forcible abortion without her knowledge. In her evidence, she has stated that she reported to A3 complaining headache and that

A3 had injected her putting her on sedatives and that P.W. 1 regained consciousness only on the next day and the whole body was paining. When questioned, A3 informed her that on the direction of A1, her pregnancy was aborted. Even at the outset. It is to be pointed out that evidence of P.W. 1 is quite unnatural. Even if sedatives had been administered, during the process of abortion P.W. 1 would have been conscious about what is happening around. She would not have been fully unconscious as stated by her. Her evidence is to be viewed in the light of Ex. D-4, where she had reported before A3 with bleeding complaint. When bleeding of the uterus was reported, it is quite natural for A3 to have the full cleaning of the uterus to do Dilatation and Curettage. Having consented by Ex. D-4 for 'D and C' and not raised any complaint about the same at the earliest point of time, it is not open to P.W. 1 later to turn round and say that forcible abortion was done at the instance of A1. Rejection of evidence by P.W. 1 by the trial Court on this score is neither unsound nor unreasonable.

35. Lack of thoroughness in investigation on A3 also need to be pointed out. On 26-11-1991, charge-sheet was filed against A1 and A2 and Dr. Shanthi. Dr. Shanthi was then shown to be absconding accused. Perhaps going by the name of Clinic (Shanthi Clinic), A1 and A2 filed Application before the trial Court stating that Dr. Shanthi had gone and settled in abroad. After further investigation, P.W. 6 had filed the amended charge-sheet on 22-4-1992 deleting the name of Dr. Shanthi and requesting the Court to implead the name of third accused -- Dr. Thiripurasundari. Such lapse on the part of the Investigating Agency in not filing the proper charge-sheet in not impleading the proper person shows that there was no proper Investigation on the charge under Section 313, IPC.

36. Yet another lapse in the investigation on this score need to be pointed out. P.W. 6 -- Investigating Officer had stated that he had examined Dr. Shanthi on 4-4-1991, on which date Dr. Shanthi was not at all available in India. In all probability, P.W. 6 would not have examined Dr. Shanthi as alleged by him. The lack of thorough investigation under Section 313, IPC has been elaborately pointed out by the trial Court also.

37. Date of birth of P.W. 1 is stated as 15-5-1974 in Ex. P-3, Record Sheet of P.W. 1 -- Sudha. Her date of birth being 15-5-1974, she was only a minor in 1990. On this aspect, the learned counsel for the revision petitioner/P.W. 1 has drawn the attention of the Court to Section 3(4)(a) of Medical Termination of Pregnancy Act and contended that no pregnancy of a minor or lunatic could be terminated excepting with the consent of the guardian. It is further contended that the consent of A1 would clearly show that there was no forcible abortion. As per Section 6 of the Hindu Marriage Act, in the case of a minor married girl, the husband is the guardian of the minor married girl. Even according to P.W. 1, her husband A1 accompanies her to Chidambaram to the hospital. When A1 had consented for abortion, there cannot be any complaint against violation of Section 3(4)(a) of Medical Termination of Pregnancy Act. In any event, this aspect was not urged before the Court so as to enable A3 to put forth her appropriate defence on this aspect. While so, it is not open to P.W. 1/de facto complainant to urge this point in this Appellate Court.

38. There is nothing to show that there was forcible abortion. Ex. D-4 only shows that P.W. 1 willingly submitted herself for Dilatation and Curettage where she reported with complaints of bleeding. There is no material against A3 to implicate her under Section 313, IPC. Acquittal of A3 does not suffer from any infirmity.

39. Upon careful reassessment of the evidence, facts and circumstances, this Court finds that the trial Court was right in raising doubt on Ex. P-1. Findings of the trial Court that there is no sufficient evidence showing demand of dowry and dowry harassment and forcible abortion are well in conformity with the evidence. There is no misappreciation of evidence. Reasonings and findings of acquittal do not suffer from any serious or substantial error warranting interference. The Appeal preferred by the State and the Revision filed by P.W. 1 against the acquittal of the accused are bereft of merits and are bound to fall.

40. Crl. Appeal No. 363/1997 : For the reasons stated above, this Criminal Appeal is dismissed.

41. Crl. R. C. No. 582/1997: This Revision preferred by P.W. 1 -- Sudha against acquittal of the accused is dismissed.

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