

Madras High Court

N.Dhamodharasamy vs E.Chandrasekaran on 28 October, 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/10/2009

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Crl.R.C.No.1535 of 2005

N.Dhamodharasamy

Petitioner

Vs

1.E.Chandrasekaran  
2.Prabavathy  
3.Sridevi  
4.Hemalatha  
5.Ragupathy  
6.Raja  
7.Kuppammal  
8.The Inspector of Police  
All Women Police Station  
Coimbatore East

Respondents

Prayer: Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. against the judgment

For Petitioner : Mr.L.Mahendran

For Respondents : Mr.C.S.Dhanasekaran (R1 to R7)

Mr.R.Muniapparaj, (R8)

Govt. Advocate (Crl.Side)

O R D E R

This criminal revision case has been filed by the de-facto complainant, who was examined as P.W.1 in the trial court, against the judgment of acquittal pronounced by the Sessions Judge, Magalir Neethimandram, Coimbatore in S.C.No.102/2005 on the file of the said court acquitting the respondents 1 to 7 herein (A1 to A7) in respect of the offences under Sections 498-A, 304-B and 306 IPC and Section 4 of Dowry Prohibition Act, for which they were prosecuted.

2. The facts leading to the filing of the present criminal revision case, can be briefly stated as follows:-

i) The first respondent (A1) is the husband of the deceased Kausalya. Second respondent (A2) is the mother of the first respondent. Third and fourth respondents (A3 and A4) are the sisters of the first respondent. R5 and R6 are the husband of R3 and R4 respectively. R7-Kuppammal (A7) is the grandmother of the first respondent.

ii) The marriage between the first respondent and Kausalya (deceased) was solemnised according to Hindu rites and customs on 23.05.2002 at Marundeeswarar Temple, Thiruvannamiyur, Chennai. The matrimonial life of the first respondent and the deceased Kausalya was not happy, which led to the filing of a HMOP by the first respondent in HMOP No.223/2003 on the file of the Family Court, Coimbatore for dissolution of marriage. However, later on there was a patch up and they started living together, as a result of which they were gifted with a male child. The said child was born on 16.08.2004 at Kuppusamy Naidu Memorial Hospital, Coimbatore. Thereafter, the deceased Kausalya, along with her child, was living in her matrimonial home at door No.M-17, Nethajipuram, Hudco Colony, Neelikonampalayam (Post), Coimbatore-641 033 with her husband (the first respondent herein) and her mother-in-law, the second respondent herein. About 45 days after the birth of the child, i.e. on 28.09.2004 at about 6.25 a.m, the deceased was taken to Kuppusamy Naidu Memorial Hospital, Coimbatore in an unconscious stage. P.W.5-Dr.Jayanthi Pradeep, the Medical Officer on duty in the said hospital examined her and found her death and issued a death report to the effect that she was brought dead under Ex.D3.

iii) P.W.1-Damodarasamy (the petitioner in the criminal revision case) is the father of the deceased Kausalya. P.W.2-Viswanathan is the brother of deceased Kausalya. P.W.3.-Jahan Ara is the wife of P.W.2. P.W.7-Pushpaveni is another daughter of P.W.1. P.Ws.1 to 3 and P.W.7, on information that Kausalya had been admitted in the hospital in a serious condition, went to the said hospital to meet Kausalya, but they were informed that she had died. Her body was buried in the burial ground at Singanallur, Coimbatore after the arrival of P.W.1 and other relatives of the deceased. Till the funeral ceremony was over, none of them entertained any suspicion regarding the death of Kausalya and they were under the impression that the death was natural. However, after the funeral ceremony was over, based on some information furnished by the neighbours, the petitioner herein/P.W.1 lodged a complaint on 29.09.2004 under Ex.P1 on the file of All Women Police Station, Coimbatore North expressing suspicion over the death of Kausalya and praying for proceeding against the persons responsible for her death.

iv) Based on the said complaint, P.W.14, the then Inspector of Police attached to the said police station, prepared Ex.P11-First Information Report and registered a case in Cr.No.30/2004 on the file of the said police station for an offence punishable under Section 304-B IPC. Pursuant to the registration of the case, the body was exhumed and P.W.13-Selvi.Karthika, the then Revenue Divisional Officer conducted inquest and prepared Ex.P8-Inquest Report. As per orders of P.W.13, the said body was sent to Coimbatore Medical College Hospital along with Ex.P10-Requisition for autopsy. P.W.6-Dr.Menaka Sekhar and one Savior Selva Suresh, as a team, conducted autopsy on 30.09.2004 at about 10.15 a.m and issued Ex.P2-Post-mortem certificate reserving opinion

regarding cause of death pending receipt of chemical analysis report of viscera and histopathological report relating to the vocal chord. However, before the receipt of histopathological report relating to the vocal chord, based on viscera report (Ex.P3) negating presence of poison, the doctors issued a final report opining that the deceased Kausalya appeared to have died due to head injury. The case was investigated by P.W.15-Mr.Murugasamy, the then Assistant Commissioner of Police and after completion of investigation, he submitted a final report alleging commission of offences punishable under Sections 498-A, 304-B, 306 and Section 4 of Dowry Prohibition Act by the respondents 1 to 7 herein.

v) The case was initially taken on file by the Judicial Magistrate, Coimbatore as P.R.C.No.14/2004 and after following the procedure for committing the case for trial, the same was committed to the Principal Sessions Judge, Coimbatore for trial. The learned Principal Sessions Judge took it on file as S.C.No.102/2005 and made it over to Magalir Neethimandram, Coimbatore for disposal according to law. Upon considering the records and after hearing the submissions made on the side of the prosecution and also on behalf of the accused, charges were framed for offences under Section 498-A, 304-B, 306 and 406 IPC and also under Section 4 of Dowry Prohibition Act against all the accused persons, namely A1 to A7 (respondents 1 to 7 in this criminal revision case). The accused denied the charges and pleaded not guilty, pursuant to which trial was conducted by the trial court. 16 witnesses were examined as P.W.1 to P.W.16 and thirteen documents were marked as Ex.P1 to Ex.P13 and one material object was produced as M.O.1 on the side of the prosecution.

vi) After the completion of the evidence on the side of the prosecution, the incriminating materials found in the evidence of the prosecution were culled out and the accused were examined under Section 313(1)(b) of Cr.P.C regarding the same. They denied such evidence to be false and reiterated their stand they were not guilty of any offence. One witness was examined as D.W.1, three documents were marked as Ex.D1 to Ex.D3 and six material objects were marked as defence side material objects D.M.O.1 to D.M.O.6 on the side of the accused persons.

vii) The learned trial judge, thereafter heard the arguments advanced on either side and considered the evidence in the light of such arguments. Upon such a consideration, the learned trial judge came to the conclusion that none of the charges with which the respondents 1 to 7/A1 to A7 stood charged was proved beyond reasonable doubt and acquitted all of them by judgment of the trial court dated 31.08.2005.

3. Aggrieved by and challenging the legality of the said judgment of acquittal, the de-facto complainant who deposed as P.W.1 before the trial court, has brought-forth this criminal revision case on various grounds set out in the grounds of criminal revision case.

4. The point that arises for consideration in this criminal revision case is as follows:-

"Whether the judgment of the trial court acquitting the respondents 1 to 7 herein (A1 to A7) suffers from any defect or illegality, capable of being interfered with in exercise of the powers of revision of this court?"

5. The submissions made by Mr.L.Mahendran, learned counsel for the petitioner, by Mr.C.S.Dhanasekaran, learned counsel for the respondents 1 to 7 and by Mr.R.Muniapparaj, learned Government Advocate (Crl.Side) representing the eighth respondent were heard. The materials available on record were also perused.

6. The cardinal principle of criminal jurisprudence is that every person should be presumed to be innocent till he is found to be guilty by a competent court, except in cases wherein the law prescribes that one shall be presumed to be guilty under given circumstances and in such cases, the burden shall be on the accused to rebut such presumption. Even in such cases, the proof required on the part of the accused is not one beyond reasonable doubt and it shall be one based on the preponderance of probabilities. In cases of appeals against acquittal, the appellate court, while dealing with the appeal, shall keep in mind that the initial presumption of innocence is doubly strengthened by the judgment of acquittal. Similar is the case of a revision preferred by an individual against the acquittal, in which case, unless there is illegality or perversity in finding, the appellate court or the revisional court shall not interfere with the judgment of acquittal pronounced by the trial court. The Hon'ble Supreme Court has held in *Chandrappa & Ors. vs. State of Karnataka* reported in (2007) 4 SCC 415 as follows:-

"it cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by trial court. If two reasonable contractions are possible on the basis of evidence on record, the appellate court shall not disturb the finding of acquittal recorded by the trial court."

Keeping the above said legal principle in mind, the problem in this case can be approached.

7. The respondents 1 to 7/accused 1 to 7 were prosecuted for offences punishable under Sections 498-A, 304-B, 306 and 406 IPC and also for an offence punishable under Section 4 of the Dowry Prohibition Act. The deceased Kausalya is none other than the wife of the first respondent (A1). Admittedly their marriage took place on 23.05.2002 and the same was solemnised at Marundeeswarar Temple, Thiruvannamiyur, Chennai. Though the marriage was said to be registered on the same day, certificate of registration of marriage has not been produced. It is the case of the prosecution that at the time of marriage, P.W.1, the father of deceased Kausalya gave 35 sovereigns of gold jewels and Rs.20,000/- as dowry to the first respondent as demanded by him and his family members. It is the further case of the prosecution that, not satisfied with the said jewels and amount given as dowry, they started treating Kausalya with cruelty, directing her to get 40 sovereigns of gold jewels and Rs.1,00,000/- cash and the title deed of her share of the house property of her father.

8. It is the further case of the prosecution that apart from the said cruelty and harassment demanding dowry, the first respondent (A1) who had an illicit intimacy with one Mahalakshmi continued the said relationship even after marriage, which created a rift in the matrimonial relationship of the first respondent and Kausalya, as a result of which Kausalya frequently took

asylum in the house of her father and the same happened at least 6 to 7 times within a period of one year. According to the further case of the prosecution, Kausalya who faced such cruelty and harassment in the hands of the respondents 1 to 7, at one point of time, lodged a complaint with police under Ex.P6 dated 06.05.2003 which was treated by the police as a petition without registering a case and thereafter, the first respondent agreed for setting up a separate residence for himself and Kausalya, if she would withdraw the complaint. It is the case of prosecution that pursuant to the said representation made by the first respondent, Kausalya gave a letter to the police on 11.06.2003 under Ex.P7 withdrawing her complaint dated 06.05.2003 and that thereafter the first respondent went back from his promise and filed divorce petition in HMOP No.223/2003 on the file of Family Court, Coimbatore. It is the further case of the prosecution that thereafter at the intervention of elders and well-wishers, the first respondent and Kausalya were re-united and consequently the first respondent left the HMOP to be dismissed for non-prosecution. Thereafter, according to the further case of the prosecution, Kausalya conceived and during the seventh month of pregnancy after valaikappu she was taken to her father's house and after some time the first respondent took her to his house in the guise of taking her to their kulatheivam temple. The deceased Kausalya had her delivery at Kuppusamy Naidu Memorial Hospital, Coimbatore on 16.08.2004. Even after the birth of the child, deceased Kausalya was not allowed to go to her parent's house and the cruelty and harassment demanding dowry continued unabated.

9. The said case of the prosecution that there was demand of dowry at the time of marriage and also subsequently and that the deceased Kausalya was treated with cruelty in order to see that demand of the accused persons for dowry was met with, has been emphatically denied by the respondents 1 to 7/accused 1 to 7. The learned counsel for the respondents 1 to 7 pointed out the fact that the prosecution has roped in the married sisters of the first respondent and their husbands and also the grandmother of the first respondent, an old lady aged about 78 years, as if all of them treated Kausalya with cruelty demanding dowry and contended that the fact that the respondents 3 to 6 who were living separately and the 7th respondent was also implicated as accused by the prosecution would show the malice on the part of P.W.1 and the other relatives and friends of P.W.1 in falsely implicating them.

10. The learned counsel for the respondents 2 to 7 also pointed out a number of discrepancies found in the evidence of prosecution witnesses regarding the alleged demand of dowry at the time of marriage. In the complaint marked as Ex.P1, P.W.1 has stated that he gave 35 sovereigns of jewels to Kausalya and a cash of Rs.20,000/- and other household articles as dowry. Except a bald allegation that Kausalya was frequently chased out of her matrimonial home with the direction to get more jewels, there is no specific allegation in the complaint to the effect that the accused persons demanded 40 sovereigns of gold and a cash of Rs.1,00,000/- and also the title deed of her share in the property of her father over and above what was given at the time of marriage. Only a general allegation has been made in Ex.P1 which was given after the death of Kausalya. The same is the tenor of the evidence of P.W.1.

11. P.W.2, who is none other than the son of P.W.1 does not support the evidence of P.W.1 that a sum of Rs.20,000/- was given as dowry along with the jewels at the time of marriage. As against the evidence of P.W.1 that Rs.20,000/- was given as dowry, P.W.2 would say that they gave only a sum

of Rs.10,000/-, that too, for purchasing a suit for the first accused to be worn at the time of Reception. The evidence of P.W.3, the wife of P.W.2 is also in line with evidence of her husband. In this regard, P.W.7-Pushpaveni, the sister of the deceased Kausalya also does not support the testimony of P.W.1 that a sum of Rs.20,000/- was given as dowry at the time of marriage. P.W.8-Kuppusamy, the elderly person who is said to have arranged the marriage of Kausalya with the first respondent, has not corroborated the evidence of P.W.1 that 35 sovereigns of gold jewels and Rs.20,000/- were given as dowry at the time of marriage. In his evidence he has not stated anything about the demand of dowry and compliance with such demand. On the other hand, he would simply state that the accused persons demanded Rs.10,000/- for stitching the suit for the first respondent and the same was paid. There is no other independent witness examined on the side of the prosecution to corroborate the testimony of P.W.1 regarding payment of Rs.20,000/- as dowry at the time of marriage. Therefore, the prosecution version that there was a demand of Rs.20,000/- as dowry at the time of marriage has got to be disbelieved in the light of the above said contradictions.

12. Ex.P6 has been produced as a complaint lodged by Kausalya herself while she was alive. In the said complaint (in Ex.P6) recital has been made to the effect that the family members of her husband demanded 30 sovereign of jewels and Rs.15,000/- besides the household articles like bureau, cot, mattress, pillows etc., and that the members of her parent's family, amidst much hardship, met with the demand. As per the evidence of P.W.1, 35 sovereign of gold jewels were given at the time of marriage. Of course the same was corroborated by P.W.2 and his wife P.W.3. As pointed out supra, the same was not corroborated by P.W.8. What are all the jewels they had given at the time of marriage? - has not been detailed by any one of the witnesses. Furthermore, a close consideration of the evidence of the prosecution witnesses will make it obvious that the customary practice of giving jewels to the daughter at the time of marriage is sought to be projected as dowry.

13. It is the admission made by the above said prosecution witnesses that the jewels were given to Kausalya at the time of her marriage and not to any one of the accused persons. In the light of the contradictory evidence regarding the amount allegedly paid as dowry at the time of marriage, the evidence of P.Ws.1 to 3 and 7, who are the members of one and the same family and thus interested witnesses, seem to be quite artificial when P.W.8 has not chosen to corroborate the said evidence in material particulars. It should also be noted that admittedly, P.W.3 is a muslim and she married P.W.2 after having a love affair with him and that she did not attend the marriage of Kausalya with the first respondent. P.W.1 admits that P.W.3 did not attend the marriage of Kausalya. There is no evidence to show that P.W.3 participated in any of the discussions the parties to the marriage had prior to the marriage or at the time of marriage. Therefore she could not have any personal knowledge regarding the quantity of jewels given to Kausalya at the time of marriage. If the evidence of P.W.3 is omitted from consideration as not reliable as she would not have personal knowledge, the remaining evidence are the testimonies of the interested witnesses, namely P.Ws.1, 2 and 7.

14. So far as the evidence of P.W.7 is concerned, there are many distortions and imponderables. It is not the case of any one of the other witnesses that P.W.1 spent any amount for the reception arranged at Coimbatore, especially it is not the evidence of P.W.1. P.W.2 also has not stated that the expenditure for the reception held at Coimbatore was met by P.W.1. On the other hand, it is the

evidence of P.W.2 and P.W.8 that a sum of Rs.10,000/- was paid to the first respondent for stitching a suit for the first respondent for the Reception. Quite contra to the evidence of the above said witnesses, P.W.7 has ventured to state that the expenditure for the Reception held at Coimbatore was also borne by P.W.1. The same will show how P.W.7 was motivated to speak against the respondents 1 to 7. The demand of Rs.10,000/- assuming it to be true for stitching a suit for the bridegroom to be worn at the time of Reception, cannot be construed to be a dowry, as it is customary to offer the same voluntarily without there being any demand.

15. In this case, P.W.1 does not say anything about the demand of Rs.10,000/- for stitching a suit. P.W.2 would simply state that they paid a sum of Rs.10,000/- for that purpose and he has not stated that there was any such demand for the same. As pointed out supra, P.W.3's evidence has to be eschewed as she would have no personal knowledge. P.W.7 has not stated anything about the demand of Rs.10,000/- for stitching a suit for the first respondent. Therefore, it shall be unsafe to conclude that there was a demand of Rs.10,000/- for stitching suit. There is yet another contradiction in the evidence of P.W.1 and 7 compared with the evidence of P.W.2. Though P.W.1 seems to have corroborated the evidence of P.Ws.1 and 7 to the effect that they gave household articles like cot, bureau, mattress etc. at the time of marriage, during cross-examination, P.W.2 has stated that they did not give any cot or bureau and on the other hand they provided the couple with other household articles. When such a comparison is made, then we have to accept the contention of the learned counsel for the respondents 1 to 7 that the same would show the absence of personal knowledge of P.W.2 regarding what were the articles given at the time of marriage of Kausalya to Kausalya and her husband. Therefore, the evidence of P.W.2 to prove the case of the prosecution that there was a demand of 35 sovereigns of jewels and Rs.20,000/- cash as dowry at the time of marriage has to be rejected as unreliable. Under such circumstances, the contention of the learned counsel for the respondents 1 to 7 that the voluntary offerings made at the time of marriage to the bride by her father as 'shreethana' is sought to be projected as dowry and that hence the prosecution case that there was demand of dowry at the time of marriage has got to be discountenanced.

16. So far as the other contention of the prosecution that there was further demand of 40 sovereign of jewels and Rs.1,00,000/- after the marriage is concerned, the evidence of the prosecution witnesses are not free from discrepancies and improbabilities. It is the evidence of P.W.1 that the respondents 1 to 4 demanded 40 sovereigns along with a sum of Rs.1,00,000/- besides directing the deceased Kausalya to claim her share from the properties of her father (P.W.1). It is the evidence of P.W.2 that the accused persons claimed 40 sovereigns and Rs.1,00,000/-. He has not stated anything about the alleged direction to Kausalya to get a share from her father's property. The evidence of P.W.3 in this regard does not completely corroborate the evidence of P.W.1. She would simply state that the first respondent gave trouble to Kausalya asking her to get jewels, cash and properties from her parent's family. The quantity of jewels and quantum of cash demanded by the first respondent/A1 have not been furnished by her. As against the evidence of P.W.1 to the effect that, Kausalya had been directed to claim a share in her father's property, P.W.3 would simply state that the husband of Kausalya (first respondent/A1) asked her to get property from her parents.

17. P.W.7, the sister of deceased Kausalya has not stated anything in her evidence regarding the alleged demand of 40 sovereigns of jewels and Rs.1,00,000/-. On the other hand, she would simply

state that two months after the marriage, the accused persons caused trouble to Kausalya asking her to get properties from her parents. P.W.8 did not corroborate the evidence of P.W.1 regarding the alleged demand of 40 sovereigns of jewels and Rs.1,00,000/- subsequent to the marriage. Therefore, the only available evidence regarding the alleged demand of 40 sovereigns of jewels and Rs.1,00,000/- are the testimonies of P.Ws.1 and 2. Even among the evidence of P.Ws.1 and 2, there are contradictions as pointed out supra, besides the said persons being closely related to each other and interested witnesses. Therefore, their evidence in this regard should also be eschewed as unreliable as their evidence do not withstand the test of careful scrutiny. In addition to that, the evidence of the witnesses regarding the said demand and cruelty are not direct evidence of the witnesses concerned. P.Ws.1 to 3, 7 and 8 would say that they had no direct knowledge of such demand and that they came to know the same through the deceased. That is why, as rightly contended by the learned counsel for the respondents 1 to 7, the prosecution chosen to introduce Ex.P6 and P7.

18. Ex.P6 has been projected as a complaint lodged by the deceased Kausalya on 06.05.2003. Ex.P7 is projected as the letter addressed by Kausalya to the Inspector of Police, All Women Police Station, Coimbatore to temporarily defer from taking any action based on Ex.P6 complaint. Ex.P7 is the letter dated 11.06.2003. The case of the prosecution revealed from the evidence of the prosecution witnesses that the first respondent who expressed his willingness to take back Kausalya and live with her, based on which the complaint was withdrawn, later on went back from his commitment, sent divorce notice and thereafter initiated divorce proceedings. The certified copies of the petition and order in HMOP No.223/2003 on the file of the Family Court, Coimbatore has been produced and marked as Ex.P13 on the side of the prosecution. It is obvious from Ex.P13 that the divorce notice was issued long prior to the dates of Ex.P6 and P7. The legal notice was dated 23.09.2002 and the acknowledgment card signed by Kausalya for the receipt of the legal notice was dated 26.09.2002. The HMOP itself was presented initially on 03.10.2002. Therefore, the case of the prosecution that after Ex.P6 complaint the first respondent expressed his willingness to take Kausalya back provided she withdrew the said complaint; that pursuant to the said commitment Kausalya withdrew the complaint by submitting Ex.P7-letter on 11.06.2003 and that thereafter only the first respondent issued a divorce notice and filed a divorce case before the Family Court, is highly improbable. Therefore, the contention of the learned counsel for the respondents 1 to 7 that the documents Ex.P6 and P7 are created and fabricated for the purpose of this case, has got to be countenanced.

19. It has been stoutly denied by the accused persons that the signatures found in the said documents are not that of Kausalya and that the said documents were created to strengthen the case of the prosecution. In this regard, one Mahalingam, examined as D.W.1, the sole defence witness, deposed in clear terms that the signatures found in Ex.P6 and P7 were not that of Kausalya. When such an emphatic denial is made and evidence has also been adduced through D.W.1, the prosecution should have taken steps to get the signatures found in the said documents compared with the admitted signatures with the help of a hand writing expert. But the prosecution has failed to do so. Yet another factor that may be cited in support of the decision that Ex.P6 and P7 are not reliable is the evidence regarding the circumstances under which the said complaint happened to be lodged. According to the prosecution case, on 26.04.2003, all the accused persons ill treated



Kausalya and caused intimidation by causing a threat to kill Kausalya and throw the dead body on the railway track to make it appear as a suicide as their demand for getting 40 sovereigns of jewels and a cash of Rs.1,00,000/- and for claiming a share in the property was not heeded to. As per the contents of Ex.P6, the said occurrence took place on 26.04.2003. It is also the case of the prosecution that P.Ws.1 to 3 and 7 on information had gone to the residence of first respondent and they took Kausalya to the house of P.W.1 and that only thereafter the said complaint was given. The complaint is not a hand written one. It is one typed in Tamil. Originally it was dated 02.05.2003 and the same was subsequently corrected to 06.05.2003. If at all such an occurrence took place on 26.04.2003, why there was a delay in lodging such a complaint? - has not been explained.

20. It is the case projected by the prosecution that no one made an attempt to conciliate before P.W.8 came forward to do so after he came to know that such a complaint had been lodged. In this regard, P.W.1 does not say anything about the alleged occurrence that took place on 26.04.2003. It is also not his case that he had gone to the residence of the accused persons on 26.04.2003 and because of the problem she faced with the accused persons, he took Kausalya to his house. His evidence is to the effect that Kausalya herself left her matrimonial home and came to her father's house. On the other hand, the evidence of P.W.2 in this regard is contra to the evidence of other witnesses and the particulars found in Ex.P6. According to the evidence of P.Ws.3 and 7, the above said incident took place on 26.04.2003. The date of such occurrence mentioned in Ex.P6 is also 26.04.2003. But P.W.2 would say that on 23.04.2003 he got a phone call from the neighbours of Kausalya that there was problem in the house of Kausalya pursuant to which he, along with P.W.1 and P.W.7, went there; that they were barred entry into the house and hence they took Kausalya to the house of P.W.1. The date of such occurrence furnished by P.W.2 is contra to the evidence of P.W.3 and 7. The presence of P.W.3 at that time was also not spoken to by P.W.2. According to his evidence, P.W.1, 2 and 7 alone had gone there. If at all the evidence of P.W.2 is to be accepted, then the evidence of other witnesses, namely P.W.3 and 7 and Ex.P6 regarding the occurrence dated 26.04.2003 should be disbelieved.

21. The evidence of P.W.3 is that all the four witnesses P.Ws.1 to 3 and 7 went to the residence of Kausalya on 26.04.2003, witnessed the intimidation caused by the accused persons and took Kausalya to her father's house. This is contra to P.W.2's evidence and also the evidence of P.W.1 whose evidence is to the effect that Kausalya herself came to the house of P.W.1 and informed others of the cruelty caused to her. P.W.3 has named one Dhanalakshmi as the person who gave information regarding the problem on 26.04.2003, based on which they went to the place of occurrence. But the said Dhanalakshmi has not been examined. Except P.W.7, no other witness deposed to the effect that Kausalya was either kicked or beaten in their presence. P.W.7 alone deposed to the effect that accused persons were causing threat by proclaiming that they would kill her and throw the dead body on the railway track to make it appear as a suicide. The presence of P.W.7 on the date of the said alleged occurrence, namely 26.04.2003, at the place of occurrence is highly doubtful. In this regard, she has been successfully contradicted with reference to her statement recorded under Section 161 Cr.P.C. In such statement, she has stated that only P.Ws.1 to 3 went to the house of Kausalya's husband on 26.04.2003 and took Kausalya to the house of P.W.1. Quite contra to the said statement she has claimed to have gone to the place of occurrence on 26.04.2003. All these aspects will go to show that there are reasonable doubts regarding the alleged

occurrence dated 26.04.2003 and the genuineness of Ex.P6 and P7. There is a reasonable suspicion that Ex.P6 and Ex.P7 could have been created for the purpose of the case.

22. The learned trial judge, on a proper appreciation of evidence in this regard has come to a correct conclusion that the prosecution has failed to prove either the alleged demand of 40 sovereigns of jewels, Rs.1,00,000/- and a share in the property of P.W.1 to Kausalya or the alleged occurrence on 26.04.2003. The said finding of the trial court cannot be held infirm or erroneous much less perverse. Therefore, the conclusion of the trial court that the prosecution failed to prove beyond reasonable doubt the offence of demand of dowry punishable under Section 4 of Dowry Prohibition Act and the offence of causing cruelty to a married woman punishable under Section 498-A IPC has got to be confirmed as there is no ground for interference with the same has been made out by the petitioner.

23. Let us now take up the charge of dowry death punishable under Section 304-B IPC. Section 304-B IPC reads as follows:

**304-B Dowry Death** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

To substantiate a charge under Section 304-B IPC, the prosecution must prove: i) that the death should have taken place within seven years after the marriage; ii) that the death was an unnatural one; iii) that soon prior to her death she was subjected to cruelty or harassment by her husband or any relative of her husband and iv) such cruelty or harassment should be for or in connection with any demand for dowry.

24. Admittedly, the marriage of the deceased with the first respondent took place on 23.05.2002 and she died on 28.09.2004. Therefore, it is obvious that the first requirement that the death should have occurred within seven years has been proved to exist. The first requirement of the section is found to exist, because the death had occurred within 7 years after marriage. So far as the second requirement is concerned, it is the case of the prosecution that the deceased Kausalya died due to head injuries caused by the respondents 1 to 7. But there is no direct evidence to show that the respondents 1 to 7 or any one of them caused injuries to Kausalya leading to her death. The complaint given by P.W.1 marked as Ex.P1 simply states that he suspects that the accused persons would have beaten up Kausalya and caused her death. From the evidence, it is obvious that on 28.09.2004 at about 6.25 a.m Kausalya was taken to Kuppusamy Naidu Memorial Hospital, Coimabtoe in an unconscious condition and P.W.5-Dr.Jayanthi Pradeep, who examined her in the said hospital found her dead and issued Ex.D3-Death report to the effect that she was brought dead. Before ever she was declared dead, P.Ws.1 to 3 and 7 were informed that Kausalya had taken to

Kuppusamy Naidu Memorial Hospital in a serious condition. On their arrival they came to know that Kausalya had died. Out of the above said witnesses, P.W.1 alone saw the dead body of Kausalya when the same was in the hospital. The other witnesses saw the dead body of Kausalya only after the same had been taken to the house of the first respondent/A1. Admittedly, no external injury was found and none of them suspected the death of Kausalya to be unnatural till the funeral ceremony was over.

25. P.Ws.1 to 3 and 7 had attended the funeral ceremony and they were present throughout the ceremony till the burial was over. If at all the respondents 1 to 7 had got any guilty mind over the death of Kausalya, they would have not chosen to bury the dead body and they would have preferred cremation rather than burial. The prosecution witnesses admitted that it was their usual practice to cremate, but, however, the respondents 1 to 7 chose to bury the dead body of Kausalya, as the burial ground was nearer to the place of their residence.

26. The death had occurred within 45 days after Kausalya gave birth to a male child. It is the case of the respondents 1 to 7 that Kausalya was found breast feeding the child at about 4.30 a.m on 28.09.2004 and later on they found her fallen unconscious when they heard the cry of the child pursuant to which they took her to the hospital. After burial, based on Ex.P1 complaint lodged by P.W.1, the body was exhumed and autopsy was conducted not at the burial ground but at the hospital after the exhumed body was transported to the hospital. A team of two Medical Officers conducted autopsy and out of the two Medical Officers, one alone has been examined on the side of the prosecution. She is none other than Dr.Menaka Sekhar examined as P.W.6. Ex.P10 is the requisition for conducting autopsy. Ex.P2 is the Postmortem certificate. It has been observed therein as follows:- "on dissection of scalp, subscalp haematoma was seen over right parietal and both occipital regions of the scalp; subarachnoid hemorrhage was seen over the posterior parietal region, both occipital and right temporal regions of the cerebral hemispheres; no fracture in the skull was found; hyoid bone was found in tact; there was early stages of decomposition of the body. Congestion in the inner wall of larynx and trachea was found. Pulmonary oedema with early decomposition was found in both the lungs." Unable to fix the cause of death immediately, the Medical Officers chose to defer their final opinion till the receipt of toxicological analysis report of viscera and histopathological examination report of lung and trachea. But, it seems soon after the receipt of the Chemical analysis report of viscera-Ex.P3, without waiting for the result of histopathological examination of lung and trachea, a final opinion was given to the effect that the deceased appeared to have died of head injuries. There is no clear cut evidence as to the probable time at which the haematoma found under the scalp could have been caused. Even regarding the subarachnoid haemorrhage on the cerebral hemisphere, there is no clear-cut evidence as to what would be the actual cause. P.W.6, in her evidence, has stated that the injuries could have been caused by a blunt weapon. But no such weapon was recovered and produced. It is also her evidence that the said injuries could have been caused even even due to a fall on the ground. It is surprising to note that the prosecution has not chosen to produce the histopathological examination report of lung and trachea. From Ex.P2-postmortem certificate it is obvious that the doctors, who conducted autopsy, were of the view that they had to await the report of histopathological examination of lung and trachea to form their final opinion regarding the cause of death. As per evidence, the histopathological examination report was received on 19.10.2004 and even before the receipt of the

histopathological examination report of lung and trachea the medical officers who conducted autopsy as a team gave a final opinion under Ex.P4. But it is surprising to hear from the prosecution witnesses, especially P.W.6-Dr.Menakasekhar and P.W.15-Investigating officer that they were not aware of whether the other doctor who conducted autopsy along with P.W.6-Dr.Menakasekhar was alive or not when the said witnesses were examined in the court. The histopathological examination report of lung and trachea has not been produced by the prosecution. As the prosecution has burked such an important document which will have a bearing on the cause of death, as contended by the learned counsel for the respondents 1 to 7 an adverse inference should be drawn against the prosecution that the production of the same will destroy the case of the prosecution.

27. The deceased had a prior history of ulcer in vocal chord for which she had been provided with medical treatment. Prosecution witnesses have admitted that she did have such a vocal chord problem. It is also admitted that after marriage P.W.1 or other members of his family did not take care to see that the deceased was provided with proper treatment for the ulcer in the vocal chord. On the other hand, admittedly it was her husband, the first respondent herein, who gave treatment for such vocal chord ulcer. In this regard evidence of P.W.8 play a vital role. According to the evidence of P.W.8, the deceased Kausalya had such a problem and because of such problem he was informed by the first respondent on 23.09.2004 that the condition of Kausalya was serious and P.W.8 advised him to take her to an ENT specialist. Dr.Subramaniam is the doctor referred to in the evidence of P.W.8. The evidence of P.W.8 will show that the deceased Kausalya had a problem in her throat and he advised for surgical intervention. According to his evidence, as she was pregnant, he advised that the surgery could be conducted after six months and such advice was rendered in November 2003. It is the evidence of P.W.8 that the first respondent informed him over phone on 23.09.2004 that Kausalya had got pain in the throat and the same was serious. It is his further evidence that when he informed him to take her to one Dr.Balasubramaniam, ENT Specialist, the first respondent informed him that there was no name board of the said doctor and that there after, on ascertaining the particulars from a medical shop, P.W.8 informed the first respondent that the doctor was very much available there and his name board had been removed for effecting repairs. From the said evidence of P.W.8, it is quite obvious that the deceased Kausalya had a previous medical history of throat ulcer affecting trachea and that the pain in the throat even on 23.09.2004 was reported to be acute and her condition was also referred to be serious. Under such circumstances alone, nearly five days after the said date, the deceased was found unconscious and taken to Kuppusamy Naidu Memorial Hospital, Coimbatore where she was declared dead. Therefore, it is quite obvious that the prosecution has not adduced sufficient evidence to rule out possibility of the said problem in the throat affecting trachea leading to her death. Even assuming that the internal head injuries found could have been the cause of death, when were such injuries caused and who caused such injuries? - have not been proved.

28. It is not the case of the prosecution that any of the accused persons hit the deceased on the date of death or dashed her head against the wall on the date of her death or the previous night. It is the case of the accused that the husband of P.W.7 used to misbehave with deceased Kausalya, which was not properly handled by P.W.1 and his family members and that the same caused a rift in the relationship of deceased Kausalya and her sister P.W.7. They have also taken a stand that at one point of time, the husband of P.W.7 dashed the head of the deceased towards the wall. Though there

is no direct evidence regarding the same, there are materials found in the testimonies of the prosecution witnesses, during their cross-examination that while her stay in the house of her father after leaving her matrimonial home, the deceased was preparing food separately for her and that whenever the husband of P.W.7 was found in the room she would avoid going in that way. If all these aspects are taken into consideration, one has to necessarily come to the conclusion that the prosecution has failed to prove that the head injuries found on the deceased resulted in her death and that the head injuries were caused by the accused persons. A reasonable suspicion regarding the cause of death has arisen. The very fact of suppression of histopathological report of lung and trachea will support the conclusion that there is a reasonable suspicion regarding the cause of death. In this case, we have already seen that the charges leveled against the accused persons for committing cruelty on the deceased Kausalya punishable under Section 498-A IPC and the offence of demanding dowry punishable under Section 4 of the Dowry Prohibition Act have not been proved beyond reasonable doubt. Therefore, the third and fourth requirements of a charge under Section 304-B are to be held not established by the prosecution.

29. In this regard, the conduct of P.W.1 and other prosecution witnesses before and after the death shall also have a bearing on the decision to be made. Though P.W.1 claims to have borne the hospital charges for delivery, his evidence in this regard seems to be unreliable. Though, it is claimed that the receipt was taken by P.W.1, the same has not been produced. P.W.1 has also stated in his evidence that he got a letter written by Kausalya in which she had informed him of the cruelty caused to her by her husband and the members of his family and that he handed over the same to the police. Subsequently, he changed his version and stated that he gave a xerox copy of such letter and the original was available with him. But the original has not been produced. The Investigating Officer refuted the said contention of P.W.1 by stating that no copy of such letter was given to him. It is also the evidence of P.W.1 that during her life time Kausalya gave a lawyer's notice to her husband alleging cruelty and that such a notice was handed over to the police. But no copy of such notice was produced in this case. The Investigating Officer has negated the production of copy of any such notice to him during investigation. Kausalya had died leaving the child aged 45 days. Admittedly, immediately after Ex.P1-complaint was lodged, Respondents 1 to 7 were taken into custody. Neither P.W.1 nor any of his relatives took care of the child. The evidence of P.W.7 in this regard is that they asked for the custody of the child and the police did not hand over the custody of the child. The same cannot be believed in the light of the admission made by the other witnesses including P.W.1 that they did not ask for the custody of the child. On the other hand D.W.1 has given clear evidence to the effect that his wife and another relative of P.W.1 took care of the child when the respondents 1 to 7 were in the police custody. Even before the investigation was over, P.W.1 chose to issue a notice under Ex.D1 claiming the jewels of the deceased Kausalya for which Ex.D2 - Reply notice was given. P.W.1 was bent upon recovering the property rather than protecting the child. The same will also go to show that having participated in the funeral ceremony without any criticism, later on P.W.1 gave a complaint on suspicion and thereafter concocted evidence in support of the prosecution case. All these aspects will go to show the conclusion of the trial that the charge of dowry death punishable under Section 304-B was not proved beyond reasonable doubt and that the accused persons were to be acquitted of the said offence giving benefit of doubt, to be based on sound reasons. The same does not warrant any interference, that too, in exercise of the revisional powers of this court.

30. It is not the case of the prosecution that the death of Kausalya was suicide. Therefore, Section 306 IPC is not attracted. Hence the finding of the trial court that the accused are not guilty of the said offence deserves no interference.

31. The other charge - criminal breach of trust punishable under Section 406 IPC is concerned, according to the prosecution case, all the jewels and other articles belonging to the deceased Kausalya were available with the first respondent and he failed to return the same after the death of Kausalya. It has been pointed out supra that whatever jewels or house hold articles that might have been given to Kausalya at the time of marriage would not amount to dowry and that hence there is no justification on the part of P.W.1 claiming it in the criminal case. The properties of Kausalya, if she had got them from her parents, would go to her parents or parents' relatives only in case she had no issues. In this case there is a male child of Kausalya. As such, succession to her property is in accordance with the rule of succession provided in the personal law applicable to her, namely Hindu Succession Act. Even assuming that the first respondent may not claim any share in her property, he is no doubt the guardian of the child. Therefore, the mere fact that the jewels and other articles belonging to Kausalya are held by the first respondent, shall not amount to breach of trust. The finding of the trial court in the negative in respect of the said charge also deserves no interference.

32. For all the reasons stated above, this court comes to the conclusion that there is no merit in the criminal revision case and the same deserves to be dismissed. Accordingly, the criminal revision case is dismissed.

. .2009 asr Index : Yes Internet : Yes To

1. The Additional Sessions Judge (Fast Track Court No.2), Gobichettipalayam
2. The Inspector of Police Kadathur Police Station Erode District
3. The Public Prosecutor, High Court, Madras P.R.SHIVAKUMAR, J.

[asr]

PRE-DELIVERY JUDGMENT  
in CrI.R.C.No.1535/2005

Dated : . .2009