NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1738 OF 2007

BABU @ BALASUBRAMANIAM AND ANR. ...Appellants

Versus

THE STATE OF TAMIL NADU ...Respondent

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellants (A1-Babu and A2-Pappathi respectively, for convenience) were tried by the Principal Sessions Court, Coimbatore in Sessions Case No.141 of 2000 for offences punishable under Section 498A and Section 302 read with Section 34 of the IPC. A1-Babu was convicted under Section 498A of the IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default, to undergo further rigorous imprisonment for two months. A1-Babu was also convicted for offence punishable

under Section 304 Part I of the IPC and sentenced to suffer rigorous imprisonment for seven years for the same. A2-Pappathi was convicted for offence punishable under Section 498A of the IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default, to undergo further rigorous imprisonment for two months. A2-Pappathi was also convicted for offence punishable under Section 304 Part I read with Section 109 of the IPC and sentenced to suffer rigorous imprisonment for seven years for the same. On appeal, the Madras High Court confirmed the conviction and sentence. Hence, this appeal, by special leave.

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2. Gist of the prosecution case needs to be stated.

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A1-Babu was married to deceased-Indirani (“**the deceased**”) on 11/4/1994. The couple resided in the house of A2-Pappathi, who is the younger sister of A1-Babu. At the time of marriage, 25 gold sovereigns were demanded by A1-Babu and his family, but the parents of the deceased could only give 20 gold sovereigns. After six months of marriage,

they demanded dowry for which Panchayat meeting was held by the elders in the house of the deceased. The members of the panchayat went to the house of the accused and requested them not to threaten the deceased. After one year, the deceased gave birth to a male child. The accused demanded 10 gold sovereigns and cash of Rs.10,000/-. Parents of the deceased could give only 3 gold sovereigns. Thereafter, the couple was blessed with a daughter. This time also, the accused demanded 10 gold sovereigns and cash of Rs.10,000/- to purchase manure, but the parents of the deceased could not fulfill this demand due to their financial difficulties. A1-Babu and A2-Pappathi started harassing the deceased. On 15/11/1998 the deceased informed PW-2 Nataraj, her brother about the dowry demand made by her husband and the cruelty meted out to her. The prosecution story further goes on to say that on 16/11/1998, PW-3 Ponnusamy, the grandfather of the deceased, visited the house of the accused. When he reached near the house of the accused, he heard the voice of the accused asking the deceased as to why sum of Rs.10,000/- was not brought by

her. PW-3 Ponnusamy peeped through the window and saw A1-Babu, who had caught hold of the deceased, dashing the back of her head against a pillar. At that time, A2-Pappathi intervened and said that the deceased should not die like this. She asked him to pour poison in her mouth. Upon this, A1-Babu brought poison and gave it to A2-Pappathi. A1-Babu caught hold of the deceased and A2-Pappathi poured the poison in the mouth of the deceased. PW-3 Ponnusamy went inside the house and questioned them. The accused started pacifying him and told him that they would save her life. They asked him to remain in the house and they took the deceased in a van to Udumalpet Government Hospital. PW-4 Dr. Shanmugham examined the deceased and declared her dead. He sent a report to the Udumalpet Police Station, pursuant to which PW-11 SI Lakshmanan came to the hospital and recorded the statement of PW-1 Subramaniya, the father of the deceased, which is treated as FIR. On the basis of the FIR, investigation was started. After completion of investigation, the accused came to be charged as aforesaid. In support of its case, the prosecution

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examined 14 witnesses. Out of them, PW-1 Subramaniya, PW-2 Nataraj and PW-5 Dr. Rajabalan, who conducted the post-mortem of the deceased are crucial to the prosecution. The accused denied the prosecution case and contended that they were falsely implicated. Learned Sessions Judge convicted the accused as aforesaid.

3. We have heard Mr. Ratnakar Dash, senior advocate, appearing for the appellants and Mr. M. Yogesh Khanna, counsel appearing for the respondent-State. Mr. Ratnakar Dash submitted that the prosecution has failed to prove its case beyond reasonable doubt. He submitted that learned Sessions Judge ought to have appreciated that the evidence on record clearly establishes that the deceased had committed suicide. The Forensic Science Laboratory Report (Ex-P6) is a pointer to this. It is also clear that the deceased had consumed poison first and had suffered head injury because of the fall sustained by her due to consumption of poison. Counsel pointed out that the suicide note (Ex-P1) supports the case of the accused that the deceased

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committed suicide. Counsel submitted that the evidence of PW-3 Ponnusamy has rightly been rejected by the trial court and the High Court and that has made the prosecution case suspect. Counsel submitted that it is the accused, who took the deceased to the hospital. The conduct of the accused belies the prosecution case. According to the counsel, since the prosecution has failed to prove its case beyond reasonable doubt, the conviction of the accused deserves to be set aside. Counsel submitted that in any case the involvement of A2-Pappathi, the sister, who is a widow, is not proved at all. Besides, she could not have been convicted under Section 302 read with Section 109 of the IPC in the absence of a charge being framed under Section 109 of the IPC. In support of this submission, counsel relied on the judgment of this Court in ***Wakil Yadav & Anr. v. State of Bihar***[1]. Shri M. Yogesh Khanna, learned counsel for the State submitted that the impugned judgment deserves no interference.

[1] (2000) 10 SCC 500

4. We shall first deal with charge under Section 498A of the IPC. In our opinion, the trial court as well as the High Court have rightly held that charge under Section 498A of the IPC is proved. PW-1 Subramaniya, the father of the deceased has stated how the deceased was ill-treated in her matrimonial house. It appears from his evidence that the accused constantly harassed the deceased and asked her to bring gold sovereigns and money from her parents. On account of his strained financial condition, he could not fulfill those demands. He stated that at the time of marriage, a demand of 25 gold sovereigns and a sum of Rs.50,000/- was made. He could only give 20 gold sovereigns. He stated that A1-Babu and the deceased lived in the house of A2-Pappathi. He has described how A1-Babu used to threaten and beat the deceased stating that what she had brought was less as compared to his wealth and that she should bring more from her parents. On several occasions, the deceased had communicated this to him. He used to give some money to the deceased as and when she came to his house. Because of the persistence of the accused, a

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meeting of the Panchayat was held. The members of the Panchayat went to the house of the accused and told them not to threaten the deceased. However, she was again beaten up. When the first baby was born, A2-Pappathi came to their house and demanded a gold chain for the baby. They accordingly gifted a gold chain and anklet to the newly born. When the second child was born, PW-2 Nataraj, brother of the deceased went to the house of the accused and informed them. After 2 to 3 days, the accused came to the hospital and again demanded gold jewellery. He then made a gold chain and anklet for the baby and took the deceased to the house of the accused. According to him, A1-Babu shouted at him and asked him as to why he had brought her. The deceased stayed there for a month and came back to his house. They consoled her and told her that they would pay the money as and when they can arrange for it. Thereafter, the deceased went to her matrimonial house with the child. When PW-2 Nataraj went to see the deceased, she told him that A1-Babu had demanded a sum of Rs.10,000/- to buy fertilizers. She expressed a fear that he

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would kill her if she failed to fulfill the demand. PW-1 Subramaniya then went to the matrimonial house of the deceased and told her that he will arrange for the money at any cost and she should bear with the situation for a while. According to him, this talk took place just one week before the incident in question. He has been cross-examined at some length. In the cross-examination, he has not deviated from the story narrated by him in the examination-in-chief. This witness comes across as a very honest and reliable witness. It may be stated here that he is a coolie. Obviously, therefore, he could not have fulfilled the extra-ordinary demands of money and jewellery made by the accused. His evidence is consistent with the FIR lodged by him. There are no material omissions or contradictions in his evidence. We, therefore, find no difficulty in placing reliance on his evidence. PW-2 Nataraj has corroborated the evidence of PW-1 Subramaniya in all respects.

5. It appears that while the inquest of the dead-body was being conducted Ex-P2, a letter tied in the skirt (petticoat) of

the deceased was recovered by PW-6 Ganesan, the Revenue Divisional Officer, who conducted the inquest. The accused have placed heavy reliance on this letter which they describe as a suicide note. It is contended that this note and the poison found in the stomach and intestine of the deceased suggest that the deceased had committed suicide. We have carefully gone through the letter (Ex-P2). In our opinion, Ex-P2 completely supports the prosecution case that the deceased was harassed and ill-treated by the accused for money and jewellery. This letter bears out the version of the prosecution story given by PW-1 Subramaniya and PW-2 Nataraj. However, in this letter, the deceased has nowhere expressed any desire to commit suicide. It is, therefore, not possible to treat this letter as a suicide note. In view of the above, we have no hesitation in concurring with the trial court and the High Court that A1-Babu and A2-Pappathi treated the deceased with cruelty and are guilty of offence punishable under Section 498A of the IPC and their conviction on that count is perfectly justified.

6. We must now turn to the conviction of the appellants under Section 304 Part I of the IPC. We are of the confirmed opinion that this charge is made out only against A1-Babu and not against A2-Pappathi. A2-Pappathi's involvement in this offence could be held to be proved only if PW-3 Ponnusamy's evidence is believed. PW-3 Ponnusamy has been disbelieved by the trial court as well as the High Court and, in our opinion, rightly so. This witness claimed that when he visited the house of the accused, he heard the accused asking the deceased as to why the sum of Rs.10,000/- was not brought by her. He claimed that he peeped through the window and saw A1-Babu catching hold of the deceased and dashing her head against a pillar. According to him, at that time, A2-Pappathi intervened and asked A1-Babu to pour poison in her mouth. A1-Babu accordingly brought poison. According to this witness, further, A1-Babu gave poison to A2-Pappathi, who poured it in the mouth of the deceased. It is at that time that he went inside the house and questioned them. Thereupon, they took the deceased to the hospital telling him that they would

save her life. This entire story is inherently improbable and totally unbelievable. If this witness has seen A2-Pappathi pouring poison in the mouth of the deceased, he should have screamed and called people. He should have tried to prevent A2-Pappathi from pouring poison in the mouth of the deceased. He should have rushed to the police station rather than waiting in the house. The exaggerated evidence of this witness must, therefore, be kept out of consideration. If this witness is disbelieved, A2-Pappathi cannot be said to be involved in offence punishable under Section 304 Part I of the IPC. In our opinion, her conviction for the said offence must be set aside.

7. There is yet one other strong reason why we cannot confirm the conviction of A2-Pappathi for offence punishable under Section 304 Part I read with Section 109 of the IPC. Though she has been convicted as aforesaid, she was charged for offence punishable under Section 302 read with Section 34 of the IPC. There was no charge under Section 109 of the IPC. Section 109 of the IPC by itself is an

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independent offence though punishable in the context of other offences. A2-Pappathi has faced trial for offence punishable under Section 302 read with Section 34 of the IPC i.e. for murdering the deceased by sharing common intention with A1-Babu. She cannot therefore be convicted for offence punishable under Section 304 Part I of the IPC with the aid of Section 109 of the IPC in the absence of a charge under Section 109 of the IPC. In this connection, we may usefully refer to ***Wakil Yadav*** where the appellant therein had faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased. No charge was framed for offence punishable under Section 302 read with Section 109 of the IPC. However, the appellant was convicted for offence punishable under Section 302 read with Section 109 of the IPC and sentenced to life imprisonment. This Court held that the appellant therein having faced trial for being a member of an unlawful assembly which achieved the common object of killing the deceased, could in no event be substitutedly convicted for offence under Section 302 of the IPC with the

aid of Section 109 of the IPC. This Court observed that there was not only a legal flaw but also a great prejudice to the appellant therein in projecting his defence. Drawing a parallel from this decision, we hold that A2-Pappathi could not have been convicted for offence punishable under Section 304 Part I of the IPC read with Section 109 of the IPC and sentenced for the same. On this count also, A2-Pappathi's conviction and sentence under Section 304 Part I read with Section 109 of the IPC will have to be set aside.

8. Now the question is whether if PW-3 Ponnusamy is disbelieved, the entire prosecution story becomes suspect and deserves to be disbelieved. In our opinion, even if PW-3 Ponnusamy's evidence is obliterated, the prosecution case can be held proved on the basis of other evidence on record. Witnesses do exaggerate. They have a tendency to improve upon the prosecution case. If one of the witnesses is found to be prone to exaggeration and, hence, not reliable, the other evidence on record, if it is cogent and reliable, can be relied upon. The entire prosecution evidence does not

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necessarily become tainted thereby. In this connection we may usefully refer to the observations of this Court in ***Sucha Singh & Anr. v. State of Punjab***[2], which read thus:

> *"The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. This maxim has not received general acceptance nor has it come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". The doctrine is a dangerous one, especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for replacing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. Falsity of a particular material witness or a material particular would not ruin it from the beginning to end. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence*

[2] (2003) 7 SCC 643

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does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment."

9. We can, therefore, analyze the other evidence and circumstances on record and see whether they support the conviction of A1-Babu for offence punishable under Section 304 Part I of the IPC. In this connection, the medical evidence is of great importance. PW-5 Dr. Rajabalan conducted the post-mortem on 16/11/1998 at 5.00 p.m. Ex-P5 is the post-mortem certificate. The external and internal injuries are described in the certificate as under:

"External Injuries:- Contusion over the right occipital area close to the midline 2 cm x 3 cm. General appearances do tally with police report. Eyelids closed. Frothy discharge from the mouth and nostrils present. Tongue inside the mouth. Jaws clenched. Teath 8/7-8/7. Hands empty. No fracture ribs. Hart 200gm congested. Chambers empty. Hyoid bone intact. Lungs left 400gm. Right 450 gm congested. Stomach contain 200 ml of white coloured fluid with irritant smell. Liver 1000 gm congested. Spleen 10 gm congested. Kidney 100 gm each contested. Intestines distended with gas. Uterus normal. Cavity empty. Pelvis normal.

On opening the head: Extravasation of blood from the contused area on the right parietal area and occipital area close to the midline. Fracture

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right parietal bone. Membranes torn on the occipital and parietal area on the right side brain. wt. of 1000 gms pale. 200 ml of fluid blood found on the base of the skull".

10. PW-5 Dr. Rajabalan opined that the death was due to shock and hemorrhage due to the head injury sustained by the deceased which could have occurred 10 to 12 hours prior to post-mortem. As noted above, on opening the head, extravasation of blood from the contused area on the right parietal area and occipital area close to the midline was found. There was also a fracture on the right parietal bone. The membranes were torn on the occipital and parietal area on the right side brain and 20 ml. of blood was found on the base of the skull. This head injury, according to PW-5 Dr. Rajabalan, was the cause of death. The nature of head injury belies the defence case that the deceased suffered it due to a fall on account of consumption of poison. In our opinion, such injury cannot be caused by a mere fall. It can be caused only if some external force is applied. This conclusion of ours is supported by the evidence of PW-5 Dr. Rajabalan, who stated that the injuries were caused before

death and they could not be caused due to fall of the deceased in a conscious state.

11. It is also pertinent to note that PW-5 Dr. Rajabalan stated that the injuries sustained by the deceased could have been caused 10 to 12 hours prior to the post-mortem. We have already stated that the post-mortem was conducted at 5.00 p.m. Thus, the death occurred around 6.00 a.m. The death occurred in the house where the deceased resided with A1-Babu. Presence of the accused at 6.00 a.m. in the house is natural. Besides, it is not contended by A1-Babu that he was not present in the house when the incident occurred. To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased received injuries to her head and how she died must be within the exclusive personal knowledge of A1-Babu. It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly

present in the house at the material time. This circumstance must be kept in mind while dealing with this case. We are mindful of the fact that this would not relieve the prosecution of its burden of proving its case. But, it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference. In this case, in our opinion, the prosecution has succeeded in proving facts from which reasonable inference can be drawn that the death of the deceased was homicidal and A1-Babu was responsible for it. A1-Babu could have by virtue of his special knowledge regarding the said facts offered an explanation from which a different inference could have been drawn. Since he has not done so, this circumstance adds up to other circumstances which substantiate the prosecution case. In ***Tulshiram Sahadu Suryawanshi & Anr. v. State of Maharashtra***[3],

[3] (2012) 10 SCC 373

while dealing with Section 106 of the Evidence Act, this Court observed as under:

> *"A fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as to the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. Section 106 however is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference."*

The above observation is attracted to this case.

12. We must now go to the FSL report (Ex-P-6). A perusal of the same discloses that the stomach and intestine of the

deceased were found to contain the poisonous substance viz. Metasystox but the liver and kidney did not contain the said substance. PW-5 Dr. Rajabalan has stated that if poison had been consumed prior to the head injury, it would have reached the liver and kidney. He has added that if poison is administered to a person when he is in an unconscious state there is a possibility that it would reach the stomach and intestine. Considering the medical evidence, particularly the evidence of PW-5 Dr. Rajabalan that the head injury was anti-mortem and must have been inflicted prior to the consumption of poison and considering the other circumstances of the case, we concur with the High Court that A1-Babu first caused the head injury to the deceased and when she became unconscious in order to create evidence to suggest that the deceased committed suicide, he administered poison to her. It reached her stomach and intestine but before it could reach the kidney and liver she died. When she succumbed to the head injury, the poison did not pass on to the liver and kidney. The High Court has rightly observed that this is the reason why there is no

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evidence of any resistance being offered by the deceased and no bruises were found on her lips.

13. The trial court has convicted A1-Babu for offence punishable under Section 304 Part I of the IPC and not for offence punishable under Section 302 of the IPC on the ground that the deceased had suffered only one head injury. The High Court has concurred with the trial court. We see no reason to interfere with the impugned order.

14. In the circumstances, we confirm the conviction of A1-Babu and A2-Pappathi for offence punishable under Section 498A of the IPC. We confirm the sentence imposed on A1-Babu for the offence under Section 498A of the IPC. We find from the letter dated 17/5/2013 sent by the Principal District and Sessions Judge, Coimbatore that A2-Pappathi has already undergone one year and four months sentence. In the peculiar facts of the case we direct that the sentence already undergone by A2-Pappathi be treated as sentence for the offence under Section 498A of the IPC. We confirm the conviction and sentence of A1-Babu for offence

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punishable under Section 304 Part I of the IPC. However, we quash and set aside the conviction and sentence of A2-Pappathi for offence punishable under Section 304 Part I read with Section 109 of the IPC. There is, therefore, no question of her surrendering to the Court. As per order passed by this Court on 8/10/2007, she is on bail. Her bail bond shall stand discharged. As per the order of this Court dated 8/10/2007, A1-Babu is also on bail. Since we have confirmed his conviction and sentence, we direct that he should surrender before the Principal Sessions Judge, Coimbatore to serve out the remaining sentence. His bail bond shall stand cancelled. Needless to say that A1-Babu's sentence for offences punishable under Sections 498A and 304 Part I of the IPC shall run concurrently.

15. The appeal is disposed of in the aforestated terms.

……………………………..J.
(A.K. Patnaik)

……………………………..J.

(Ranjana Prakash Desai)

New Delhi
July 02, 2013.

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