

(1992) 08 MAD CK 0062

In the Madras High Court

Case No : Criminal Appeal No's. 729 of 1986 and 800 of 1989 and Cri. Rev.
Case No. 246 of 1987

Rajammal and others etc.

APPELLANT

Vs

State by D.S.P. Cb. C.I.D., Madras and others

RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313, 375, 386
Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 101, 106
Penal Code, 1860 (IPC) — Section 201, 302, 313, 34, 498

Citation : (1993) CriLJ 3029 : (1994) 2 DMC 503

Hon'ble Judges : Thangamani, J; T.S. Arunachalam, J

Bench : Division Bench

Advocate : E. Raja, for P. Rajamanickam, N. Natarajan, for Tamilarasan, R. Karunakaran, K.M. Subramanian and B. Sriramulu, P.P, for the Appellant;

Judgement

1. While the first accused Rajammal and the third accused Murugesan in S.C. No. 2 of 1986 in the file of the District Judge, Chengalapattu are the appellants in C.A. 729 of 1986, the Public Prosecutor has preferred C.A. No. 800 of 1989 to set aside the order of acquittal of second accused Balasubramaniam and fourth accused Asokan and convict them for the offences with which they were charged. Crl.r.C. No. 246 of 1987 is by P.W. 1 Panneer Selvam against the judgment of the trial Court acquitting the accused 2 and 4.

2. Fourth Accused Asokan is the husband of deceased Uma Porkodi. Their marriage took place on 24-3-1985. Third accused Murugesan and first accused Rajammal are the parents of the fourth accused Asokan. Second accused Balasubramaniam is the younger brother of the fourth accused. They were charged before the trial court under four heads. The first charge against accused 1 to 3 under S. 302 read with S. 34, I.P.C. was that on 18-6-1986 at about 10.00 a.m. in furtherance of their common intention they committed the murder of Uma Porkodi by manual strangulation. The second charge against the accused 1

and 3 under S. 4 of the Dowry Prohibitions Act, 1961 was that on 18-6-1985 in the ordered of the same transaction from the date of marriage proposal they demanded directly or indirectly from P.W. 1 Panneer Selvam and P.W. 7 Dharmar, the guardians of the bride, 50 sovereigns of jewels and cash of Rs. 10,000/- as Dowry at the time of marriage as consideration for the same which was particular complied with. The third charge against the accused 1 to 4 under S. 498-A, I.P.C. was that in the course of the same transaction on or about 18-6-1985 they subjected the deceased Uma Porkodi to cruelty and harassment by making unlawful demands of properties from her guardians. The fourth charge against the accused 1 to 3 under S. 201 I.P.C. was that at the same time and place and in the course of the same transaction knowing that murder of Uma Porkodi had been committed, they caused the evidence of the said offences to disappear by attempting to set up the case of suicide by Uma Porkodi with the intention of screening themselves from legal punishment.

3. The case of the prosecution as disclosed from evidence on record is an under :- The family of the accused is put up in the ground floor of No. 40/8, Vasantha Nagar, Tiruvottiyur. P.W. 4 Subramaniam and his wife P.W. 3 Saroja are residing in the upstairs of the same house. Both the third accused Murugesan and his son fourth accused Asokan are employed in stock Leyland near Ennore. P.W. 8 Mani who is a co-worker is a distant relative of P.W. 1 Panneer Selvam. The said Panneer Selvam is the proprietor of Rohini Hotel in T. Nagar. P.W. 7 Dharmar is a first cousin of P.W. 1 Panneer Selvam. Deceased Uma Porkodi is the brother daughter of P.W. 7 Dharmar. The father of the deceased is a deaf and dumb person P.W. 12 Ambujammal is the mother of Porkodi. In the beginning of 1985 Uma Porkodi was studying in the twelfth standard in Radhapuram in Tirunelveli District In February, 1985 P.W. 7 Dharmar brought his niece to Madras to arrange for her marriage. He came to know about the forth accused Asokan P.W. 1 Panneer Selvam and negotiations for marriage took place through P.W. 8 Mani P.W. 8 Mani brought third accused Murugesan and first accused Rajammal to the house of P.W. 1 Panneer Selvam in the first week of March, 1985. The parent of the fourth accused Asokan made a demand of 50 sovereigns of jewels and Rs. 10,000/- in cash besides silver, aversions and brass vessels as dowry as dowry. After some bargain they agreed to receive 25 sovereigns and Rs. 10,000/- cash P.W. 12 Ambujammal handed over to P.W. 7 Dharmar 15 sovereigns of jewels and Rs. 15,000/- cash for the purpose of marking jewels and purchases articles, and on 24-3-1985 marriage between Porkodi and fourth accused. Asokan took Place Ex. P. 6 is the marriage invitation. As undertaken 25 sovereign worth of jewels and Rs. 10,000/- in cash were paid at the time of marriage. P.W. 7 Dharmar and his brother Ganesan met the marriage expenses.

4. Soon after the marriage when, P.W. 8 Mani had been to the house of the accused first accused Rajammal and fourth accused Asokan were scolding Porkodi for not having brought many cot. He contacted P.W. 7 Dharmar and conveyed the grievance entertained by the accused 1 and 4. Thereupon P.W. 7 Dharmar purchased 1 and 4. Thereupon P.W. 7 Dharmar purchased one pair of

the third accused. At that time deceased Porkodi was not even allowed to talk with her uncle P.W. 7 Dharmar.

5. One week after the marriage P.W. 1 Panneer Selvam sent some fruits to Porkodi through P.W. 2 Basha Mohideen, the Manger of Rohini Hotel. P.W. 2 knows all the accused. When he had been to the house of Porkodi, the deceased informed him that her parents-in-law were ill-treating her for not bringing adequate dowry. And the attitude of second accused Balasubramaniam was more overbearing than that of her husband. P.W. 2 Basha Mohideen conveyed the same to P.W. 1 and P.W. 7, P.W. 8 Mani also had been to the house of the accused once in the middle of April 1985. First accused Rajammal was findings faults with Porkodi for not bringing dowry commensurate with her status. Porkodi was crying. This witness met third accused Murugesan and fourth accused Asokan in Leyland Company and requested them not to Scold Porkodi.

6. In May 1985 first accused Rajammal, third accused Murugesam, fourth accused Asokan and deceased Porkodi attended the betrothal ceremony of Nithiyakalyani a other niece of P.W. 7 Dharmar. The bride's party undertook to give 80 sovereigns of jewels and the scooter to bridegroom. Thereupon first accused Rajammal, third accused Murugesan and fourth accused Asokan left the function in anger saying that while fourth accused was also drawing a salary of Rs. 1,500/- as the bridegroom for Nithiyakalyani, he was given not that much of dowry. Five days after betrolthal P.W. 7 Dharmar visited the house of the accused. Porkodi informed him that all the accused were scolding her for not bringing adequate dowry. P.W. 7 pacified her stating that he would make the present in due course. When P.W. 1 Basha Mohideen had been to the house of the accused, Porkodi pleaded with him to inform the father of P.W. 1 Panneer Selvam and get the scooter since the accused 3 and 4 were beating her for not bringing the scooter. P.W. 2 informed P.W. 1 Panneer Selvan what Porkodi told him.

7. On 28-5-1985 P.W. 7 Dharmar received Ex. P. 5 letter written by Porkodi narrating in detail the ill-treatment meted out to her. Thereupon P.W. 7 Dharmar presented a four sovereigns Necklace to Porkodi.

8. On 5-6-1985 P.W. 7 Dharmar and his wife went to the house of the accused and invited fourth accused and Porkodi to the marriage of Nithiyakalyani. On that evening fourth accused took Porkodi to the marriage hall and left her there and went away. The next morning first accused Rajammal and third accused Murugesan attended the marriage in Vijayasesha Mahal. Soon after the function was over first accused and third accused expressed their displeasure to P.W. 7 Dharmar for not performing the marriage of the fourth accused and Porkodi in a grand manner as has been done in the case of Nithiyakalyani. P.W. 7 Dharmar undertook to give the "seer varisai" little by little. After her parents-in-law left the place Porkodi met P.W. 7 Dharmar and P.W. 1 Panneer Selvam in the afternoon and told them that the accused 1 and 3 were feeling sorry for having taken a bride from a poor family, and the fourth accused was beating her often

for not bringing the scooter as dowry. She showed these two persons the injury sustained by her in her cheek and back. She also told them that second accused Balasubramaniam threw coffee on her and she was afraid of going to the house of her husband. However, P.Ws. 1 and 7 sent Porkodi when forth accused Asokan came to the marriage hall on that night. P.W. 8 Mani was also present in the marriage hall when fourth accused Asokan threatened Porkodi from informing her relatives about the happenings in their household. This witness also pacified Porkodi when she feared for her life in accompanying her husband.

9. On 10-6-1985 Porkodi came to the house of P.W. 8 Mani. She told him that she was being pestered to bring scooter and jewels. At her request this witness met fourth accused in the work place and pacified him. First accused Rajammal and third accused Murugesan used to express their grievance against Porkodi for not bringing proper dowry to P.W. 4 Subramaniam who is residing in the upstairs of the house with his wife P.W. 3 Saroja. P.Ws. 3 and 4 know that Porkodi was unhappy. Often they used to hear the cry of Porkodi.

10. P.W. 9 Raja Thevar is a resident of Radhapuram. He knows the family of Porkodi. One week prior to 18-6-1985 he felt for Madras P. W. 12 Ambujammal, mother of Porkodi gave the address of her daughter to this witness and requested him to enquire about her welfare in Madras. Accordingly, on 18-6-1985 at 8.30 a.m. P.W. 9 Raja Thevar had been to the house of the accused. He found the accused 1 to 3 and Porkodi there. He told Porkodi that her mother wanted to enquire about the welfare of Porkodi. Porkodi cried and requested this witness to ask her mother to take her home immediately. Since the accused 1 to 3 did not extend any hospitality, this witness immediately left their house. On 19-6-1985 P.W. 17 the Senior Accountant in Ashok Leyland found that the third accused Murugesan did not turn up for work. The fourth accused Asokan was working from 7.30 a.m. to 11.40 a.m.

11. On the same day at about 10 or 10.30 a.m. P.W. 3 Saroja and P.W. 4 Subramaniam heard the crying noise of Porkodi from the downstairs. They did not take it seriously since it was a regular feature. However, on that day soon after their hearing the crying noise, second accused Balasubramaniam came to their portion and said that this mother wanted them. Thereupon P.W. 3 Saroja and P.W. 4 Subramaniam went to downstairs. They found first accused Rajammal, second Balasubramaniam and third accused Murugesan in the room next to the hall. Porkodi was lying on the ground with face upwards. There were injuries on the neck of Porkodi. First accused Rajammal told them that her daughter-in-law had committed suicide by hanging. Thereupon P.W. 4 Subramaniam questioned them how she could have committed suicide they heard her crying only a short while ago. Thereupon accused 1 to 3 told him as under :

They were repeating their request and pledged to save them. Thereafter P.W. 4 Subramaniam left for his office. In the meanwhile, P.W. 14 Sekar, the opposite neighbours who heard about the death of Porkodi, came outside his house.

Second accused Balasubramaniam conveyed to him in the presence of the accused 1 and 3 that Porkadi had died of heart attack.

12. In the meanwhile P.W. 11 Munidass came to the house of the accused to meet third accused Murugesan in connection with his Real Estate Business. Ten days earlier the third accused had asked him to come to his house expressing his desire to sell a site owned by him P.W. 11 Munidass found the house was locked from inside at about 10.00 a.m. when he knocked the door, second accused Balasubramaniam opened it. First accused Rajammal was also standing near him. Third accused Murugesan asked this witness to come two or three days later and then they closed the door.

13. On that day at 11.30 a.m. third accused Murugesan rang up from security room fourth accused Asokan who was on duty in Ashok Leyland Workshop. P.W. 13 Dhanapandi, Supervisor in that factory attended the phone. He conveyed to the fourth accused Asokan about the call from his father. Within five minutes third accused Murugesan came there. He told this witness that fourth accused Asokan's wife had died of heart attack and went away. Ten minutes later fourth accused also left the factory saying that his father had called him.

14. In the meanwhile, second accused Balasubramaniam came to the house of P.W. 7 Dharmar at about 11.30 a.m. in an excited mood. He told him that Porkodi had heart attack and her condition was serious. This witness passed on the message to P.W. 1 Panneer Selvam and left for the house of Porkodi. On reaching the house P.W. 1 Panneer Selvam, P.W. 2 Basha Mohideen and P.W. 7 Dharmar found Porkodi lying dead. There were contusions on both sides of her neck P.W. 1 Panneer Selvam asked all the four accused what had happened. First accused Rajammal said that Porkodi had committed suicide by hanging. P.W. 1 Panneer Selvam pointed out that second accused Balasubramaniam had told them that Porkodi had heart attack. He also showed first accused Rajammal that there were injuries on the neck of Porkodi. Since P.W. 1 Panneer Selvam entertained suspicion on the death of Porkodi, he went to Thiruvattiyur Police Station along with P.W. 2 Basha Mohideen.

15. At 1.30 p.m. P.W. 22 Sub-Inspector received Ex. P. 1 complaint from P.W. 1 Panneer Selvam and registered it as suspicious death under S. 174, Cr.P.C. in his Station Crime No. 649 of 1985. Exs. P. 14 and P. 15 are printed F.I.R.s prepared by him. After sending intimation to the Tahsildar, P.W. 22 Sub-Inspector came to the scene place, inspected the same and prepared Ex. P. 18 rough sketch and Ex. P. 7 observation mahazar. P.W. 15 Pani alias Burnabas present at that time arrested Ex. P. 7 observation mahazar.

16. At about 4.00 p.m. on the day P.W. 21 Tahsildar arrived there and held inquest till 8.45 p.m. At the time he examined P.W. 2 Basha Mohideen, P.W. 3 Saroja, P.W. 8 Mani, Jabamalai Mary and first accused Rajammal. P.W. 1 Panneer Selvam was also present at that time, Ex. P. 16 is the Inquest Report. Thereafter he sent the body with Ex. P. 2 requisition to Stanley Hospital through P.W. 18

Police Constable for Post-mortem examination.

17. At 9.30 p.m. P.W. 22 Sub-Inspector recovered M.O. 8 nylon saree of deceased Porkodi and M.O. 9 teapoy under Ex. P. 8 mahazar. P.W. 15 has arrested this mahazar also. Then the Sub-Inspector got M.O. 11 series Photographs taken of the dead body by P.W. 19 Photographer.

18. On receiving intimation P.W. 23 Inspector also came to the scene place. He found P.W. 1 Panneer Selvam and P.W. 7 Dharmar there. He examined them. P.W. 7 Dharmar produced M.O. 6 marriage invitation, M.O. 11 series photographs and M.O. 12 photographs. When he checked up observation mahazar, he found that M.O. 9 teapoy was of 50 c.m. height. When he stood on the teapoy and tried to touch the hook in the ceiling, he could do so only with some difficulty. His height was 5' 6".

19. On the same night P.W. 4 Subramaniam returned home from duty at 11.30 p.m. The accused 1 to 3 told him that when Tahsildar came there earlier, they had told him that Porkodi had committed suicide by hanging. They also requested this witness to tell the same thing when questioned.

20. On 19-6-1985 at 10.40 a.m. P.W. 5 Doctor commenced post-mortem in the Stanley Medical College Hospital. Rigor Mortis was present in the lower limb. It was a fairly nourished female body aged about 19 years. The lips and finger nails were cranesed (sic). There was diffused swelling of the neck. The Doctor found the followings injuries :-

(1) A contusion over the left side of neck 1 x 1 cm (? Nail mark)

(2) Contusion just below right mandible 1 x 1 cm (? Nail mark)

There was no evidence of any ligature mark around the neck. Internal examination revealed the following :- Examination of the neck showed congestion of the tissues with tear of the muscle tissues in the neck. Heart : Right side contained blood. Lungs : Cyanosed. There was an inward compression of fracture on the left greater horn of hyoid bone. Stomach contents : Empty. Liver : Congested. Spleen Kidneys : Normal. Uterus : Empty. Brain : Congested. Viscera was preserved for chemical analysis. Chemical Examination Report was received and it is Ex. P. 3. In the opinion of the Doctor, the deceased would have died of asphyxia due to manual strangulation (throttling) and throttling would have taken place between 10.00 a.m. and 10.30 a.m. on 18-6-1985 and death would have been almost instantaneous. Throttling cannot be a suicidal one. Both external and internal injuries noted by the doctor along with complete absence of any evidence of ligature mark in the neck showed that it was a case of throttling homicidal (manual strangulation). At the time of strangulation violence might have been there directly on the hyoid bone as there was a fracture on the hyoid bone. The Doctor ruled out the possibility of hanging with nylon saree. Ex. P. 4 is the post-mortem certificate. After the autopsy was over, P.W. 18 Constable handed over the body to fourth accused

Asokan. This witness took M.O. 1 saree, M.O. 2 jacket and M.O. 10 skirt from the body entrusted the same in the Tiruvettiur Police Station.

21. On 19-6-1985 after receipt of Ex. P. 4 postmortem report, P.W. 21 Tahsildar prepared Ex. P. 17 report and sent the same along with Ex. P. 15 printed F.I.R., Ex. P. 1 complaint, Ex. P. 16 inquest report and the statements of witnesses to the Judicial Second Class Magistrate.

22. On 20-6-1985 P.W. 22 Sub-Inspector altered the crime to one under S. 498-A and S. 302, I.P.C. and prepared Ex. P. 19 Express report. After receipt of the Express report P.W. 25 Inspector examined P.W. 2 Basha Mohideen, P.W. 3 Saroja, P.W. 8 Mani, P.W. 12 Ambujammal and P.W. 14 Sekar. Pursuant to the investigation made till then he arrested all the accused 1 to 4 at 2.15 p.m. and produced them in Court. He examined P.W. 9 Raja, P.W. 18 Constable and P.W. 5 Doctor.

23. On 14-8-1985 the Inspector seized M.O. 3 Record book of Porkodi produced by P.W. 7 Dharmar and sent the same to Court. On his requisition the Judicial Second Class Magistrate sent M.O. 3 and Ex. P. 5 letter to Forensic Science Laboratory under Ex. P. 13 letter for the comparison of the writings. Ex. P. 6 is the report of the Handwriting Expert P.W. 6. He is of the opinion that both the documents are in the handwriting of one and the same person.

24. P.W. 23 Inspector continued his investigation and gave Ex. P. 9 requisition to forward M.O. 1 nylon saree. M.O. 2, Jacket, M.O. 8 nylon saree and M.O. 10 skirt for chemical examination. Under Ex. P. 10 dated 14-8-1985 the Judicial Second Class Magistrate sent the articles for chemical examination. Exs. P. 11 and P. 12 are the reports of the Chemical Examiner and Serologist. On requisition from the Inspector, P.W. 24 District Register granted Ex. P. 20 sanction to prosecute the accused under S. 4 of the Dowry Prohibition Act.

25. Since the crime related to harassment for non-payment of dowry, P.W. 25 Deputy Superintendent of Police took up investigation of the case on 21-8-1985. He checked up the investigation already made. On 6-9-1985 he examined P.W. 21 Tahsildar. On 9-9-1985 he examined P.W. 16 Teacher. He recovered. M.O. 4 answer paper and M.O. 5 Tamil Note Book of Porkodi and sent the same to Handwriting Expert. On 16-9-1985 he examined P.W. 10 Nagarajan. On 19-9-1985 he examined P.W. 13 Dhandapani and P.W. 17 Gnanasambandam. On completion of investigation he laid charge sheet under S. 302 read with S. 34, S. 201, S. 498-A I.P.C. and S. 4 of the Dowry Prohibition Act.

26. When examined under S. 313, Cr.P.C. While denying other allegations first accused Rajammal admitted that P.W. 1 Panneer Selvam and P.W. 7 Dharmar who are the relatives of Porkodi arranged for her marriage and that Porkodi was then studying in Radhapuram. She also admitted that on 24-3-1985 the marriage between fourth accused. Asokan and Porkodi took place. P.W. 7 Dharmar presented a pair of cots to the couple. She and her husband attended the marriage of Nithiyakalyani along with her son and daughter-in-law. P.W. 3 Saroja

and P.W. 4 Subramanian are residing in the upstairs of their house as their tenants. She told P.W. 1 Panneer Selvam that Porkodi had committed suicide by hanging.

27. Second accused Balasubramaniam also admitted that P.W. 1 Panneer Selvam is a relative of Porkodi and P.W. 12 Ambujammal is her mother, that Porkodi was brought to Madras by P.W. 7 Dharmar from Radhapuram to perform her marriage, that Nithiyakalyani's marriage took place at Vadapalani on 6-6-1985, that the first accused Rajammal, third accused Murugesan and fourth accused Asokan attended the marriage and that P.Ws. 3 and 4 are residing in the upstairs portion of their house.

28. Their accused Murugesan also admitted that on 24-3-1985 the marriage between Porkodi and fourth accused Asokan took place, that on 5-6-1985 he attended the marriage of Nithiyakalyani with he accused 1 and 4 and that P.Ws. 3 and 4 are residing in the upstairs portion of their house. He also, conceded that on 18-6-1985 at 10.30 a.m. he met P.W. 13 Dhandapani, in the store of Ashok Leyland Workshop, that on that day he did not go to the workshop and that fourth accused Asokan was working in the factory till 11.30 a.m.

29. Fourth accused Asokan also conceded the relationship of Porkodi with P.W. 1 Panneer Selvam and P.W. 7 Dharmar, that P.W. 7 Dharmar brought Porkodi to Madras to perform her marriage, that he married her on 24-3-1985, that P.W. 7 Dharmar presented a pair of costs to them, that on 5-6-1985 they attended the marriage of Nithiyakalayani and that P.Ws. 3 and 4 are residing in the upstairs portion of their house.

30. On appraisal of the abovesaid materials the learned Sessions Judge has convicted and sentenced accused 1 and 3 to undergo imprisonment for five years under S. 302 read with S. 34, I.P.C. on the first charge,

acquitted second accused of the first charge under S. 302 read with S. 34, I.P.C.

convicted and sentenced accused 1 and 3 to undergo rigorous imprisonment for six months under S. 4 of the Dowry Prohibition Act, 1961 on the Second charge,

convicted and sentenced accused 1 and 3 to undergo rigorous imprisonment for three years under S. 498-A, I.P.C. on the third charge,

acquitted second accused and fourth accused under S. 498-A, I.P.C. on the third charge,

convicted and sentenced accused 1 and 3 to undergo rigorous imprisonment for three years under S. 201, I.P.C. on the fourth charge,

acquitted second accused u/s 201, I.P.C. on the fourth charge, acquitted second accused u/s 201, I.P.C. on the fourth charge.

31. Aggrieved by the abovesaid conviction and sentence and acquittal these appeals and criminal revision have been preferred as indicated earlier.

32. The conviction and sentence on accused 1 and 3 are assailed by Thiru. N. Natarajan, the learned senior counsel for them mainly on the ground that the circumstances herein are not so complete as to establish the guilt and the trial Court has erred in relying on the interested testimony of P.Ws. 1, 2, 7 and 8 who are the close relatives and friends of the deceased family. Whereas the Public Prosecutor and the learned counsel for the Revision Petitioner maintained that the prosecution has brought home the guilt of accused 2 and 4 also beyond the possibility of any doubt.

33. There is no dispute that Porkodi the unfortunate victim in this case met with her death by throttling around 10.00 a.m. on 18-6-1985 nearly three months after he marriage with fourth accused Asokan. P.W. 5 Doctor who conducted the autopsy on the dead body of Porkodi in categorical that the death was only due to manual strangulation (throttling) and it would have been almost instantaneous. The Doctor had ruled out the possibility of suicide in view of the external and internal injuries noted by her along with complete absence of any evidence of ligature mark on the neck.

34. So the main question that arises for consideration is whether accused 1 to 3 or any of them are the culprits who have throttled the neck Porkodi and caused her death around 10.00 a.m. on 18-6-1985 at their residence in ground floor of No. 40/8, Vasanth Nagar, Thiruvattiyur. The other questions relate to the charge under S. 4 of Dowry Prohibition Act and Sections 498-A and 201 of I.P.C.

35. This case of dowry death rests entirely on circumstantial evidence. Since the inference of guilt of the accused persons has to be drawn from circumstantial evidence only, we have to examine whether those circumstances are cogently established and whether they are of a definite tendency pointing towards the guilt of the accused persons. Before these persons can be convicted on the strength of circumstantial evidence, the circumstances in question must be satisfactorily established and the proved circumstances must bring home their offence beyond reasonable doubt. The totality of circumstances must unerringly lead to the conclusion that within all human probability, the offence was committed by these persons alone and none else.

36. The various links relied on by the prosecution in the chain of circumstances to establish the necessary nexus between the accused and the crime may be broadly stated as these :

(1) Harassment of the victim girl and cruelty meted out to her for not bringing adequate dowry by the in-laws which constitute the motive for the crime.

(2) Scene of occurrence is the residence of the accused as well as the victim.

(3) At about 8.30 on that day accused 1 to 3 and deceased Porkodi were available in the house as per P.W. 9 who happened to be there to convey the message sent by P.W. 12 mother.

(4) 3rd accused Murugesan did not go to the factory on that day.

(5) The upstairs neighbours P.W. 3 and P.W. 4 heard the cries of the deceased at about 10.00 or 10.30 a.m. from below.

(6) Soon after that they found accused 1 to 3 in their house with the dead body of Porkodi.

(7) There were injuries on the neck of Porkodi.

(8) Ist accused Rajammal represented to P.Ws. 3 and 4 that Porkodi had committed suicide by hanging.

(9) When P.W. 4 expressed his doubt that it could not be so, accused 1 to 3 confessed to him that they had committed a mistake.

(10) Accused 1 to 3 repeatedly pleaded with P.W. 3 and P.W. 4 to inform others that Porkodi had committed suicide by hanging.

(11) 2nd accused Balasubramaniam told P.W. 14 Sekar the opposite neighbour in the presence of accused 1 and 3 that Porkodi had died of heart attack.

(12) When P.W. 11 Muniadass knocked the door of scene house at about this time as per prior appointment he was asked to come later by 2nd accused Balasubramaniam.

(13) Then both accused 1 and 3 closed the door from inside.

(14) At 11.30 a.m. 3rd accused told P.W. 13 Dhandapani in the factory of 4th accused Asokan that Porkodi had died of heart attack.

(15) At about the same time 2nd accused Balasubramaniam informed P.W. 7 Dharmar that Porkodi had suffered a heart attack and her condition was serious.

(16) P.Ws. 1, 2 and 7 found contusions on both sides of the neck of Porkodi.

(17) Ist accused Rajammal told these three that Porkodi had committed suicide by hanging.

(18) At 1.30 p.m. P.W. 1 Panneer Selvam gave Ex. P. 1 complaint stating that it was a case of suspicious death.

37. Though it was denied on behalf of the appellants that no dowry was ever demanded and Porkodi was not subject to any illtreatment in the hands of her in-laws we find from the evidence of P.W. 1 Panneer Selvam, P.W. 7 Dharmar and P.W. 8 Mani who had arranged for the marriage that even at the time of negotiations 3rd accused Murugesan and Ist accused Rajammal demanded jewels of 50 sovereigns and cash of Rs. 10,000/- besides silver and cash of Rs. 10,000/- besides silver and brass vessels as "Seer". However, they reluctantly received jewels of 25 sovereigns and cash of Rs. 10,000/-. P.W. 2 the Manager of P.W. 1 speaks about Porkodi telling him that she was being harassed by A1, A3 and A4 for not bringing adequate dowry and A2 was commending her more than her husband. P.W. 8 Mani states that when he had been to the house of Porkodi, Ist

accused Rajammal and 4th accused Asokan scolded Porkodi for not bringing even a cot. When P.W. 8 Mani conveyed this message to P.W. 7 Dharmar, he had purchased a pair of cots and delivered them in the house of 3rd accused Murugesan. The presentation of the cot is admitted by A1, A3 and A4 in their statements under S. 313, Cr.P.C. The evidence of P.W. 7 Dharmar also discloses that 1st accused Rajammal expressed her grievance that the marriage of 4th accused Asokan was not performed in such a grand manner as that of Nithiyakalyani another niece of P.W. 7 Dharmar, thought both the bridegrooms were drawing the same salary of Rs. 1,500/-. In fact, according to this witness, on the same day in the marriage house Porkodi complained that 4th accused Asokan beat her saying that not even a scooter was presented to him. She had also shown the injury sustained by her in her cheek and back. She expressed her apprehension to go back to her husband's house stating further that even 2nd accused Balasubramaniam threw coffee on her. It is also the evidence of P.W. 8 Mani that on 10-6-1985 Porkodi came to him and complained that she was being pestered to get a scooter. Thereupon this witness had met 4th accused Asokan in the workshop and pacified him. When P.W. 9 Raja Thevar had been Porkodi in the morning of 18-6-1985, she requested him to inform her mother to take her home immediately. P.W. 3 and P.W. 4 also state that it was a regular feature in the house of Porkodi the in-laws finding fault with her for not bringing adequate dowry. In fact, accused 1 and 3 used to express their displeasure to P.W. 4 subramaniam that adequate dowry was not brought by Porkodi. These are all natural and independent witnesses who have absolutely no animosity against appellants. P.Ws. 1 and 7 are close relations of Porkodi who were interested in her welfare. They were only anxious that Porkodi whose father is a deaf and dumb person must lead a happy married life. The evidence of these witnesses has a ring of truth. And above all we find from Ex. P. 5 the letter written by Porkodi on 28-5-1985 to P.W. 7 Dharmar how her life proved to be a miserable one. The narration as extracted below is tell tale :

So there is positive proof that the deceased Porkodi was subject to cruelty and harassment when the dowry demanded was not forthcoming. From the aforesaid materials it is evident that the learned Sessions Judge has rightly found A. 1 Rajammal and A. 3 Murugesan guilty under S. 4 of the Dowry Prohibition Act, 1961, convicted and sentenced each of them to undergo R.I. for 6 months on the second charge.

38. The third charge u/s 498-A, I.P.C. was against all the four accused. The learned Sessions Judge has convicted and sentenced only A. 1 Rajammal and A. 3 Murugesan under this charge. But he has acquitted A. 2 Balasubramaniam on the ground that he never participated in the ill-treatment meted out to Porkodi and that he never demanded dowry. However a careful scrutiny of the evidence would reveal that on this aspect, there are three pieces of evidence against him. It is the version of P.W. 1 Panneer Selvam that on 6-6-1985 at the time of Nithya Kalyani's marriage, Uma Porkodi told him that A. 2 Balasubramaniam was harassing her more than her husband. It is also the evidence of P.W. 2 Basha

Mohideen that when he had been to the house of Porkodi, she complained to him that A. 2 Balasubramaniam was giving orders to her more than her husband. P.W. 7 Dharmar states that Porkodi told him that one day A. 2 threw coffee at her for bringing it late. Though the last one may be an isolated instance exhibiting lack of culture, in the background of the case we are inclined to view the first two as part of the grand design of the accused to coerce her to bring more "seer." The word cruelty has been explained in Section 313; so also harassment. Harassment is cruelty. Section 313, I.P.C. reads that whoever being the husband or the relative of husband of a woman subjects such woman to cruelty, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. As stated earlier cruelty means harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or on account of a failure by her or any person related to her to meet such demand. Intent to injure is the most important element of cruelty contemplated u/s 313, I.P.C. and that stands established against A. 2 Balasubramaniam. So the stand of the learned Sessions Judge that there is absolutely no evidence to indicate that A. 2 Balasubramaniam harassed Porkodi on that score does not appear to be sound. However, we do not propose to interfere with the order of acquittal of A. 2 Balasubramaniam on the charge u/s 313, I.P.C. even though we are inclined to take a different view of the matter, for on that basis alone, in law, an acquittal cannot be interfered with, so long as the view taken is also plausible.

39. The trial Court has acquitted A. 4 Asokan the husband of the deceased also under S. 498-A, I.P.C. on the third charge. Though he has not participated in the demand of dowry at the time of negotiation for the marriage, as per the evidence of P.W. 2 Basha Mohideen, Porkodi told him that her husband and mother-in-law were beating her for not getting a scooter. In the presence of P.W. 8 Mani, A. 4 Asokan had scolded his wife for not getting him a cot. At the time of Nithiyakalyani's marriage, Porkodi had shown to P.W. 7 Dharmar the injuries sustained by her on her cheek and back. She had complained that A. 4 had inflicted the injuries saying that not even a scooter was presented to him. At the request of Porkodi, P.W. 8 Mani had pacified A. 4 Asokan regarding the gift of scooter. These are all materials sufficient in our view to hold A. 4 Asokan also liable u/s Section 313, I.P.C.

40. The Learned Sessions Judge has observed that since it is not the case of the prosecution that A. 4 Asokan ever demanded any dowry, he could not be held guilty u/s 313, I.P.C. As per this Section subjecting a woman to cruelty with a view to harass her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her, to meet such a demand is an offence. u/s 4 of the Dowry Prohibition Act mere demand of dowry is punishable and the existence of the element of cruelty is not necessary. It may be that A. 4 Asokan cannot be punished under Sec. 4 of the Dowry prohibition Act for there is paucity of evidence of his having made a demand at or before the time of marriage, in connection with the marriage. Maltreatment,

beating etc., to extort more and more money or articles from Porkodi or her relative will certainly fall under cruelty contemplated under S. 498-A, I.P.C. In this case the parents of A. 4 Asokan demanded dowry initially and began to ill-treat the girl with a view to compel her to get scooter, cot and other articles. Only to achieve this object A. 4 had joined his parents is subjecting her to cruelty. In any event there is positive evidence as already referred to that A. 4 Ashokan was also making specific demand for Scooter and other articles even though there is no charge framed against him u/s 4 of the Dowry Prohibition Act. It is therefore evidence that the finding of the trial Court that A. 4 is not guilty u/s 313, I.P.C. is clearly unsustainable.

41. Let us next examine who are the accused persons responsible for the homicidal violence on Porkodi. A. 3 Murugesan admits in his statement under S. 313, Cr.P.C. that on 18-6-1985 he did not go for work whatever be the reason. P.W. 9 Raja Devar had seen A. 1 to A. 3 available in the house along with Porkodi at 8-30 a.m. on that day. He is the former President of Panchayat Board of his village in Tirubelveli District. He had called on Porkodi on that morning at the request of her mother. P.W. 12 Ambujammal. He is a frequent visitor to Madras and his evidence has not been shaken in any manner during his cross-examination.

42. And around 10 a.m. on that day, the upstairs neighbours P.W. 3 Saroja and P.W. 4 Subramaniam had heard the cries of Porkodi from the downstairs. When they came down, they saw A. 1 to A. 3 in the house with the dead body of Porkodi. There were injuries on the neck of Porkodi. When it was represented to them by A. 1 Rajammal that Porkodi had committed suicide, immediately, P.W. 4 Subramaniam pointed out that it could not have been so since they heard her cries only a few minutes back. Thereupon, A. 1, to A. 3 pleaded with them saying that :-

This conduct on the part of the A. 1 to A. 3 expressing an intention to give a twist to the event goes a long way to strengthen the view that their design was to hide the guilt.

43. P.W. 3 Saroja admits that she had told P.W. 21 Tahsildar when he held the inquest at 4.00 p.m. on that day as desired by A. 1 to A. 3 pressed her to say so. What she told the Tahsildar is not the truth and her version in the witness box was the only truth. The learned Senior Counsel for the appellants argued that the testimony of P.W. 3 Saroja was that of a person who was in the nature of an accomplice. The conduct of P.W. 3 Saroja and P.W. 4 Subramaniam in not coming forward with truth till they were examined by the Police on 20-6-1985 would render their evidence unreliable. We have carefully considered this submission. Though we may not attach any importance to the testimony of P.W. 3 Saroja due to her prior statement to the Tahsildar Ex. D. 1. We have no reason not to act on the testimony of P.W. 4 Subramaniam. Since we do not take into consideration the version of P.W. 3 Saroja, the evidence of P.W. 10 Nagarajan her brother that his sister narrated the incident that took place in the morning and that he

advised her to tell the truth is also of little significance. We are unable to comprehend how the prior statements of Jebamalai Mary and her daughter Flora (not witnesses examined in Court) and A. 1 Rajammal, made before the Tahsildar (P.W. 21), would be admissible in evidence to be brought on record as Ex. D. 2 to D. 4, P.W. 23 Inspector of Police, had however examined both Jebamalai Mary and Floraduring investigation. Exs. D. 2 to D. 4 apart from the legal impediment blocking their entry, cannot help the case of the accused. Be it noted that P.W. 4 was in a hurry to leave for his office on that morning. He heard the noise of Porkodi, came down and found her dead. It is true that neither he instructed his wife to speak the truth before he left the house nor he chose to act immediately on learning from her after returning from duty at 11.30 p.m., that she had given a false version at the time of inquest. But this witness is a tenant of A. 1 to A. 3. We cannot expect him to direct his wife when he was in a hurry to go to his Office to speak against his landlords. Only at 11.30 p.m., on that day he came to know that his wife did not tell the truth before the Tahsildar. But on 20-6-1985 when he was examined by the Police, he and his wife had come forward with the true version. So we have no reason to discard the evidence of P.W. 4 Subramaniam.

44. We also find from the evidence of P.W. 11 Munia Doss that even though he had an appointment with A. 3 Murugesan to meet him at his residence when he knocked the door around 10.00 a.m. on 18-6-1985, he was not allowed inside and instead he was asked to come two or three days later by A. 3 Murugesan. This witness had also seen A. 1 Rajammal and A. 2 Balasubramaniam in the house at this time. He is running a pawn broker shop in Washermenpet. His uncle is a real estate agent. He had been to the house of A. 3 Murugesan on that day only in connection with the purchase of a house site from A. 3 Murugesan. He is also an independent witness and it has not been elicited in his cross-examination as to why he has to depose falsely against the accused, confirming their presence at the scene of crime, at or about the time of occurrence.

45. Immediately after the occurrence, P.W. 14, Sekar the opposite neighbour was informed by A. 1 Rajammal and A. 3 Murugesan that Porkodi had died of heart attack. A. 2 Balasubramaniam had conveyed to P.W. 7 Dharmar at about 11.30 a.m. that Porkodi had suffered a serious heart attack. When P.Ws. 1, 2 and 7 came to the house they were informed by A. 1 Rajammal that Porkodi had committed suicide. Around 11.30 a.m. on the same day A. 3 Murugesan had been to the factory of A. 4 Asokan and told P.W. 13 Dhandapani that Porkodi had died of heart attack. The conduct of the accused in giving prevaricating versions regarding the death of Porkodi exposes only the guilty mind. Though P.Ws. 1 and 7 are relatives of Porkodi and P.W. 2 Basha Mohideen is the Manager of P.W. 1, Panneer Selvam's hotel, P.W. 13, Dhandapani and P.W. 14 Sekar are independent witnesses. The evidence of P.Ws. 1, 2 and 7 cannot be rejected merely because they are the well wishers of Porkodi. There is absolutely no reason for these people to falsely implicate A. 1 to A. 3 in a case like this. On a proper consideration of evidence the only reasonable view that can be taken is that the

prosecution has established the complete chain of circumstances so clinchingly connected together without any missing links. The evidence placed indisputably point that Porkodi was put to death by throttling of the neck by the inmates of the house available there between 8.30 a.m. and 10.30 a.m. on that forenoon. They are not capable of being explained away by any other reasonable hypothesis. The presence of A. 1 to A. 3 in the ill-fated house in the company of the deceased between 8.30 a.m. and 10.00 a.m. has thus been cogently established. At 8.30 a.m. deceased Porkodi was seen alive in the company of A. 1 to A. 3, but at or about 10.00 a.m. or shortly thereafter, she was found dead, inside the house of the accused. Mr. N. Natarajan, learned senior counsel conceded that this was a case of homicide and he cannot challenge it. However, he argued that the investigating agency owed a duty to clinchingly fix the presence of A. 1 to A. 3 at the scene at or about the relevant time by unassailable evidence. After careful examination of the whole evidence, we have already held that the prosecution has succeeded in proving it.

46. The next question we have to address ourselves in whether the crime was perpetrated either by one or all the three persons found in the house. The learned Sessions Judge held that only A-1 Rajammal and A-3 Murugesan spread the rumour that Porkodi had committed suicide by hanging and it is they who wanted to make it appear that the death was not due to any homicidal violence. While finding the parents liable for the crime, he had absolved A-2 Balasubramaniam of the charge on the ground that he merely carried out the instructions of his parents and he never had any motive or made any demand of dowry or chose to harass Porkodi. But we have already found that A-2 Balasubramaniam also used to indulge in harassment though we do not propose to interfere with the order of acquittal passed by the trial Court on the charge u/s 313, I.P.C. Since the incident had taken place inside the house of the appellants at a time when these three alone were present, they alone knew what exactly had happened. Section 106 of Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is true that this Section cannot be used to as to shift the onus of proving the offence from the prosecution to the accused. But in the present case there is satisfactory evidence which fastens or conclusively fixes the liability for the death of Porkodi on the inmates of the house present there at the relevant time. So in the absence of any other explanation the only possible inference is that all the three had participated in the act. If any one of them claims contrary u/s 106 of the evidence Act the burden of proving that fact is upon him since that is within his special knowledge. In Shambu Nath Mehra Vs. The State of Ajmer, the scope and object of Section 106 of the Evidence Act came to be considered by the Supreme Court. Held (paras 10 and 11) :

"Section 106 is an exception to Section 101. Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and S. 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate

disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge."

To the same effect, is the law laid down in *State of Karnataka v. Khaja Hussain* 1983 SCC (Cri) 82. Further the conduct of A1 to A3 immediately after occurrence is consistent only with their guilt. If it was a case of suicide the conduct of A1 and A3 would have been different. They would have even set the law in motion, for that would be the normal pattern of human behaviour. If the prosecution witnesses who have spoken about the presence of A1 to A3 at the scene, were procured or otherwise made to depose, they could have spoken about A4 Asokan as well, leaving him to establish his alibi. The prosecution case, to our minds, rings true. While so the finding of the learned Sessions Judge that A2 Balasubramaniam was not guilty under S. 302, r/w S. 34, I.P.C. on the ground that he had no motive and he never demanded dowry is clearly perverse and unsustainable. Motive for a murder may or may not be. But in dowry deaths, it is inherent. In dowry deaths motive is already there and what is required of Courts is to examine as to who translated it into action as motive for it is no individual but of a family. In a case where for the occurrence there is only circumstantial evidence, motive plays a vital role in determining the guilt. It is significant to note that it is A2 Balasubramaniam who brought P.W. 3 Saroja and P.W. 4 Subramaniam to the scene at 10.30 a.m. when Porkodi was found lying dead. He has also given prevaricating versions to others regarding the death of Porkodi. He had joined his parents in pleading with P.W. 3 Saroja and P.W. 4 Subramaniam to tell others the Porkodi had committed suicide by hanging. So there is absolutely no reason to hold that A2 Balasubramaniam had not participated in the crime. Instead we accept the claim of the prosecution without any reservation that all the three are guilty under S. 302 read with S. 34, I.P.C. for having committed the murder of Porkodi by throttling her neck. The learned defence counsel posed a question as to why A1 to A3 should have killed the golden goose which laid eggs, for demands made, were frequently met by P.Ws. 1 and 7. Avariciousness does not appear to have a limit and the provocation in all probability was the grand marriage of Nithyakalyani a few days earlier, whose husband was offered a huge dowry. It depends on the mental make up of the accused and probe into it is not at all relevant or necessary.

47. The fourth charge under S. 201, I.P.C. was against A1 to A3. It is in evidence that all of them had pleaded with P.W. 4 Subramaniam to tell others that Porkodi had committed suicide by hanging. A1 Rajammal had represented to P.Ws. 1, 2, 7 and 14 that Porkodi had died of heart attack. Prior to that A2 Balasubramaniam had informed P.W. 7 Dharmar that Porkodi had suffered a heart attack and her condition was serious though she had died prior to that. A3 Murugesan had also conveyed to P.W. 13 Dhandapani that Porkodi had died of heart attack. So the offence under S. 201, I.P.C. has clearly been made out against A1 Rajammal, A2 Balasubramaniam and A3 Murugesan. The reason given by the learned Sessions

Judge in acquitting A2 Balasubramaniam under S. 201, I.P.C. that he had acted only as per the instructions of his mother is unacceptable.

48. In exercising the powers under S. 375 read with S. 386 of Cr.P.C. in allowing the appeal against the acquittal and convicting the appellant under S. 302, I.P.C. law is well settled. It has been held by the Supreme Court in Ashok Kumar Vs. State of Rajasthan, as follows :-

"While caution is the watchword in appeal against acquittal as the trial Judge has occasion to watch demeanour of witnesses and interference should not be made merely because a different conclusion could have been arrived, the provision does not inhibit any restriction or limitation. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless."

So we have no hesitation in setting aside the orders of acquittal passed by the learned Sessions Judge in respect of A2 Balasubramaniam under S. 302 read with S. 34 and S. 201 I.P.C. and of A4 Asokan under S. 498-A, I.P.C.

49. In the result, Criminal Appeal No. 729 of 1986 is dismissed while Criminal Appeal No. 890 of 1989 is allowed. In view of the allowing of Criminal Appeal No. 800 of 1989, Criminal Revision Case No. 246 of 1987 gets merged into it. No separate orders are necessary.

On the first charge the conviction and sentence of imprisonment for life under S. 302 read with S. 34, I.P.C. against A1 Rajammal and A3 Murugesan are confirmed.

The order of acquittal passed against A2 Balasubramaniam under S. 302 read with S. 34, I.P.C. is set aside. He is found guilty and convicted thereunder.

On the second charge the conviction and sentence passed against A1 Rajammal and A3 Murugesan under S. 4 of the Dowry Prohibition Act are confirmed.

The order of acquittal of A2 Balasubramaniam of the third charge under S. 498, I.P.C. is upheld.

The order of acquittal of A4 Asokan of charge No. 3 under S. 498-A, I.P.C. is set aside. He is found guilty and convicted thereunder.

On the third charge the conviction and sentence passed against A1 Rajammal and A3 Murugesan under S. 498-A, I.P.C. are confirmed.

On the fourth charge the conviction and sentence passed against A1 Rajammal and A3 Murugesan under S. 201, I.P.C. are confirmed.

The order of acquittal of A2 Balasubramaniam of this charge under S. 201, I.P.C. is set aside. He is found guilty and convicted thereunder.

A2 Balasubramaniam and A4 Asokan were summoned and questioned today under S. 313, Cr.P.C. They pleaded that they have got to support their families.

A2 Balasubramaniam stated that he has got no connection with the incident, that he is the sole bread-winner of the family and that his entire family is dependent on him. A4 Asokan stated that he is innocent, that he has got a second wife and two children, aged one-and-a-half years and one-and-a-half months respectively, and that he has got to maintain them apart from his two sisters. Even when repeatedly asked about the sentence to be awarded A2 and A4 stated that they have got nothing further to say.

After considering the representations, A2 Balasubramaniam is sentence to undergo imprisonment for life under S. 302, I.P.C. read with S. 34, I.P.C., and three years rigorous imprisonment under S. 201, I.P.C. and the sentences are to run concurrently.

After considering the representations, A4 Asokan is sentence to undergo rigorous imprisonment for three years under S. 498-A, I.P.C.

The Registry will issue necessary warrants for sending A2 Balasubramaniam and A4 Asokan to the Central Prison, Madras.

50. Order accordingly.