Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.719 OF 2010

STATE OF MAHARASHTRA … APPELLANT

VERSUS

RAJENDRA & ORS. … RESPONDENTS

With

Criminal Appeal No.720 of 2010
(Chandrakanta vs. State of Maharashtra & Ors.)

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals are directed against the judgment dated 18th August, 2005 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No.388 of 2005. By the impugned judgment the High Court held that unless the prosecution proves that death was suicidal and that the deceased was treated with cruelty and was harassed by direct evidence, the presumption under Section 113-A does not apply in the case and acquitted all the accused-respondents from the charges under Section 498-A, Section 304-B and Section 306 IPC all read with Section 34 IPC, thereby reversing the finding of the Trial Court.

2. Respondents – accused No.1, Shivpujan and accused No.3, Malti Devi are husband and wife. Accused No.2, Rajendra, accused No.5, Surendra and accused No.6, Virendra are their

sons. Accused No.4, Anita is the daughter of accused Nos.1 and 3 and is married to one Satyam Mishra who is in Police service. Accused Nos.1 and 5 are also in Police service. Accused Nos. 1 to 3, 5 and 6 reside together in Plot No.96, Adarsha Colony, behind Police Line Takli at Nagpur. Accused No.4 resides in Police Line, Pathrigad Quarter, Sadar at Nagpur. Accused No.2-Rajendra is the youngest son of accused Nos.1 and 3. Deceased Ranjana was the wife of accused No.2-Rajendra.

3. Marriage of deceased took place with accused No.2-Rajendra on 19th April, 1998. She was the daughter of Ranchhod Prasad Pande (PW-11) and Chandrakanta (PW-8)-the complainant. The deceased was the younger sister of Ranjit (PW-9). Parents and brothers of the deceased reside at Gandhi Nagar, Surendergarh, Nagpur. The distance between the house of the accused and the parental house of the deceased is about 1 km.

4. The deceased sustained 98% burn injuries in the early morning of 8th April, 1999, in her matrimonial house i.e. the house of the accused Nos.1, 2, 3, 5 and 6. She was taken to Mayo Hospital, but before treatment could commence, she died at 9.30 a.m. on the same day itself and at that time the deceased was in the 7th month of her first pregnancy.

5. The prosecution case is that the husband and the mother-in-law i.e. accused Nos.2 and 3 used to beat the deceased whereas other accused together with accused Nos.2 and 3 used to mentally and physically ill-treat the deceased on account of dowry demand. Accused No.2-Rajendra wanted Hero Honda Motor

Cycle from the parents of the deceased. He always used to press his demand. The deceased had informed her parents that she was being subjected to cruelty and that her in-laws behaved with her like animals. Many a times father of the deceased went to fetch the deceased but accused used to ask him that he should first bring money for Hero Honda Motorcycle and then only he can take the deceased along with him. Since 7th month of the pregnancy of the deceased was to begin, on 8th April, 1999 at 6 a.m. her father had been to her matrimonial house to fetch her. Accused insulted him on account of dowry demands and refused to send the deceased with him. At 9 a.m. accused No.5-Surendra i.e. elder brother-in-law (jeth) of the deceased came to the house of parents of the deceased and told them that their daughter had sustained burns and that she was admitted in Mayo Hospital. The parents of the deceased immediately rushed to Mayo Hospital. It was found that their daughter was already dead.

6. A.D. No.28/99 under Section 174 Cr.P.C. was registered at 10.50 a.m. on 8th April, 1999 on the basis of report of Police Head Constable Diwakar from Mayo Hospital Police Booth. The PSI-S.R. Parvekar thereafter visited the spot of occurrence, prepared spot panchanama (Ext.40) and then proceeded to Mayo Hospital and prepared inquest panchanama (Ext.43) and sent the dead body for its postmortem. Postmortem was conducted by Dr. Ashish Wankhede (PW-10) and report is Ext.62. Thereafter, the report (Ext.54) was lodged by PW.8, mother of the deceased with the Police Head Constable Girish Pande (PW-14) upon which FIR

(Ext.55) was registered at 7.10 p.m. on 8th April, 1999 for the offence punishable under Sections 498-A, 306 r/w 34 IPC. Further investigation was carried out by Police Sub-Inspector, Parvekar. He recorded the statement of the father of deceased and arrested accused No.2-Rajendra i.e. husband of the deceased on 8th April, 1999 itself. The further investigation was carried out by Police Inspector Ravindra Relgudwar (PW.12) and then Police Sub-Inspector, Dadasaheb Khade (PW.13). In the statements of witnesses i.e. neighbours of the complainant, brother of the deceased, supplementary statement of the complainant were recorded. Viscera of the deceased that was preserved at the time of the postmortem examination, pieces of saree, match box and a piece of burnt plastic which were seized at the time of drawing the panchanama were forwarded to the Chemical Analyser for examination. The marriage ceremony of the deceased and accused No.2-Rajendra was shot by a video shooting. Its video cassette was produced by the complainant before the Investigating Officer. It was seized (Ext.45). Pursuant to a direction in Criminal Writ Petition No.168/99 filed by the complainant, offence punishable under Section 304-B IPC was also added. Other accused were arrested and on completion of investigation, charge-sheet was sent up to the Court of CJM, Nagpur who committed the case to the Court of Sessions. Charges for offence punishable under Sections 498-A, 304-B, 306 r/w 34 IPC were framed to which the accused pleaded not guilty. The prosecution produced altogether 14 witnesses. The witnesses against the accused made their statements under

Section 313 Cr. P.C. (Ext.91 to 96) and submitted their written statement (Ext.97). Four defence witnesses viz. DW.1-Mohd Asgar, DW.2-A.S.I., Chandrabhan Osare, DW.3-ASI Pralhad Kaware and DW.4-Rajesh Soni were also examined. The defence, as how it appears from the cross-examination of the witnesses etc. is that of total denial with regard to the alleged cruelty. The stand was that the accused always gave good treatment to the deceased. They gave jewellery to the deceased and also invested money in her name in the post office. It was denied that they ever demanded any dowry from her parents. It is their case that the deceased was under pressure from her mother. They were disowned knowledge as to how the deceased died.

7. The Trial Court, as noticed above on appreciation of evidence, statements of witnesses and exhibits, held the accused guilty for the offences under Sections 498-A, 304-B, 306 r/w Section 34 IPC. However, the said finding was reversed by the Appellate Court for the reasons mentioned in the preceding paragraphs.

8. The appellant has challenged the impugned judgment mainly on the following grounds:

> (a) The High Court in the impugned judgment, while quoting some portions of the evidence of the prosecution witnesses has not given any cogent reason for disbelieving the evidence of those witnesses.
>
> (b) The impugned judgment is cryptic, unreasoned and order of acquittal was passed without discussion and appreciation of evidence.

(c) The High Court recorded completely erroneous finding that prosecution has not proved suicidal death of Ranjana. In fact, the defence itself came with the story of suicidal death of Ranjana.

(d) The prosecution has proved the demand of dowry and cruelty for the said demand. All ingredients for conviction under Sections 498-A and 304-B IPC were present. It was presumed that the case was that of a dowry death.

9. The stand of the respondents is that the deposition of prosecution witnesses after five years was improved version from their version made during the investigation. They added allegation to attract Section 304B IPC. Chandra Kanta (PW-8), mother of the deceased and Ranjit (PW-9), brother of the deceased both improved their version from the version made during the investigation on material aspect. Same is the situation of Ranchhod Prasad Pande (PW-1), father of the deceased. All were related to the deceased. Thus they were interested witnesses and their credibility is considerably in question.

10. Chandrakanta (PW-8), mother of the deceased is the complainant. In her statement she stated that Ranjana (deceased) was married with accused No.2- Rajendra on 19th April, 1998. At the time of marriage it was decided that Rs.25,000/- was to be paid, which was given apart from another sum of Rs.25,000/- given for scooter and Rs.5,000/- in addition to that, a total amount of Rs.56,000/- was given when the marriage was settled. Prior to 2-4 days of the marriage, accused No.1 and accused No.2 asked for Hero Honda Motorcycle although the amount of Rs.25,000/- was paid for scooter:

Deceased's family informed that they are unable to pay more than what was already agreed. The marriage was thereafter performed. At the time of Barat (procession) the accused had also created chaos when the bridegroom was about to enter the pandal of the marriage hall and the golden ring was given to him. In the marriage, religious rites were going on throughout the night. The accused No1 did not take any meals or food. During the marriage a golden chain of about 12 gms. was presented to accused No.2. Accused No.2 was refusing to accept the said chain and wanted the chain of 2 tolas (20 gms.) and the golden stick. However, at that time they were convinced. The deceased had to come back to her parents house after 8-10 days of the marriage. She disclosed that her in-laws were torturing her throughout the day for not giving the T.V. set, Cooler, Almirah and Hero Honda Motorcycle. She asked the deceased to convey the accused No.2 that she would somehow arrange for the motorcycle. After 3-4 months of the marriage they had given an amount of Rs.20,000/- to accused No.2 for Almirah, Cooler and T.V., still the torture was continued. The deceased-Ranjana used to come to her. The deceased was not sent whenever called by her parents. Accused No.2-Rajendra used to take the deceased to the house of her parents at an interval of 3-4 days on some pretext or other. Initially, the deceased was not disclosing freely even accused No.2 used to bring the deceased. He used to torture the deceased by forcing her to demand for the things and used to shout at her.

11, She further stated that Ranjana had stayed with her for a span of 3-4 days when she had come after 8-10 days of marriage. Thereafter she was not sent for residing, however, she was sent in January for 2-3 days. At that time on enquiry the deceased disclosed that her in-laws are torturing and harassing her very much. She further disclosed that she was also not provided food properly and she was treated like an animal. The mother enquired from the deceased as to who had harassed her to which she disclosed that her father in-law, husband, brother of husband, sister of husband and the husband of sister of accused No.2 vexed her.

12. Chandrakanta (PW-8) further stated that her husband (PW-11) had been to her daughter's materimonial house to bring her on the day of incident i.e. 8th April, 1999 at 6.30 a.m. Some religious rites were to be performed but she did not come out. After one hour accused No.5, Surendra came and inform about the burning incident happened with the deceased and took PW-11 to mortuary. She entered the mortuary and noticed the dead body of Ranjana.

During the cross-examination she accepted that she has not assigned any reason as to why she has not stated about giving an amount of Rs.20,000/- after 3-4 months of the marriage for Almirah, T.V. and Cooler and still the torture continued.

13. Ranjit (PW-9) is the brother of the deceased. In his statement he stated that at the time of Rakhi (probably in August, 1998) he had been to the house of accused and

disclosed to accused No.1 that he had come to call his sister Ranjana. Accused No.1 refused to send Ranjana and commented that he did not want to send beggar's daughter. At that time accused No.2 also came and started abusing and caught hold of his collar. He further stated that 10-15 days thereafter accused No.2 had come to their house along with the deceased Ranjana. At that time his sister disclosed him that her in-laws were demanding Hero Honda Motorcycle, Cooler, Almirah and she was harassed for non-satisfying the demands. He convinced her to the effect that she will have to pull and there was no purpose in disturbing the family life.

In the cross-examination, he specifically stated that he made statement before the Police that after 10-15 days after accused No.2 had come to their house along with Ranjana, his sister disclosed him that her in-laws were demanding a motorcycle Hero Honda, Cooler, Almirah and she was vexed for non-satisfying the demands.

14. Ranchhod Prasad Pande (PW-11) is the father of the deceased. In his statement he stated that her daughter disclosed that the accused and his family members ill-treated her. Accused No.2 was asking for Hero Honda Motorcycle. She was physically abused on account of dowry. The accused were also demanding and asking for refrigerator. He further stated that on 8th April, 1999 he had been to the house of accused to bring Ranjana for some religious rites, as she was pregnant of 7 months. He reached the house of the accused at 6.00-6.30 a.m. All the accused were present in the house. Accused Nos.1 and 2

enquired from him as to whether he had brought the amount for Hero Honda Motorcycle. He told that he had not brought the amount. Thereafter, he wanted to meet Ranjana in case if the accused were not ready to send Ranjana. At that time accused No.2 had slapped Ranjana. Thereafter, he returned back. Ranjana was not sent along with him. At about 8.30 a.m. accused No.5-Surendra Shukla came and disclosed that Ranjana had poured kerosene oil on her and set herself ablaze. During the cross-examination he accepted that he has not stated before the Police that accused No.1 and accused No.2-Rajendra were asking him whether he brought the amount for Hero Honda and he replied that he had not brought the amount.

15. Rajmani (PW-5) stated that at the time of marriage dowry of Rs.25,000/-, one golden ring and watch was demanded. At the time of bethrotal ceremony (Tilak) the accused had also insisted for a scooter and the total amount of Rs.56,000/- was given to the accused.

16. Santoshbai (PW-6), a neighbour, stated that after the marriage when Ranjana had come at the time of Kajaltiz in her parents' house, she went there. At that time there a telephone call came, Rajana attended the said call and started weeping. She enquired from her (deceased) as to the cause of her weeping. She stated that her in-laws were harassing her. So also her other in-laws were vexing her. She stated that the incident of the telephone message received by the deceased Ranjana had occurred 2-3 months prior to her death.

17. Geeta (PW-7), another neighbor, stated that Ranjana when met her at the time of Kajaltiz after 2-3 months of her marriage she was not appearing to be happy. At that time, she enquired from Ranjana the cause of unhappiness, she told that her in-laws were getting the complete work done from her but murmuring at the time of meals. They used to ask for dowry. Ranjana had also stated that in case she watched T.V. her-in-laws used to say that she should have brought the T.V. from her parents.

18. The statement of Chandrakanta(PW-8) that Ranjana had come to him after 8-10 days of marriage and told that the members of her in-laws were torturing her throughout the day for T.V., Cooler, Almirah and Hero Honda Motorcycle, is consistent with the FIR. Omission of certain facts does not make any difference as the same is corroborated by PW-12. Similarly omission of statement that Rs.20,000/- was given to the accused for almirah, cooler and TV is corroborated by PW.6. Therefore the said omission is not fatal to the prosecution.

19. Chandrakanta(PW-8) categorically stated on her examination that the deceased disclosed that her in-laws were harassing her very much; she was not provided with food properly. This evidence is un-shattered in the cross-examination and it is stated in the FIR itself.

20. There is un-shattered evidence of Santoshbai (PW-6) about the dowry demand and cruelty. That is when she enquired her as to cause for her weeping she stated that her mother-in-law and the brother of her husband were very much harassing

her. So also her other in-laws were vexing her. This evidence also corroborates the complainant Chandrakanta(PW-8) about the payment of money to accused No.2 for purchasing of the house hold articles.

21. Geeta (PW-7) categorically stated that the deceased told that her in-laws were getting the complete work done from her. The verbal abuse was stated to be on account of dowry. She also stated that in case she watched TV her in-laws said that she should bring TV from her parents.

Prior to one month of her death, she stated that there was no certainty of her life, this evidence is not shaken in the cross-examination and there are no improvements in the evidence of PW-6 & PW-7.

22. Ranjit (PW-9) categorically stated in his evidence that after 2-4 days they had received telephonic message from the nurse of the Hospital of Dr. Kunda Tayade regarding hospitalization of Ranjana. Thereafter, he, his mother (PW-8) and father (PW-11) had been to Hospital of Dr. Kunda Tayade and he noticed that his sister Ranjana was lying on the bed and that too alone. Ranjana at that time disclosed that since last 2 days she was not provided food and as such she became weak. At that time they came to know that Ranjana was pregnant. He further stated that by that time they were talking with Ranjana, accused Nos.2, 3 and 6 came to the same room and abused them and enquired as to who provided the address of the Hospital and thereafter his mother and father went and he waited in the hospital. He had also a talk with accused No.3.

He himself paid the amount of Rs.2,000/- towards the fees of hospitalization of Ranjana.

23. From the above mentioned facts, it is clear that there was a demand of dowry for purchasing Hero Honda Motorcycle and other house hold articles. The evidence of torture is also clear from the fact that the deceased was not provided food and as such she had become weak that too at the time when she was in the 7th month of pregnancy.

24. Section 304-B IPC relates to dowry death, which reads as follows:

> ***304B. 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.*
>
> *Explanation.-For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*
>
> *(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."*

The expression "soon before her death" is used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act. No definite period has been indicated and the expression "soon before her death" is not defined. The determination of period which can come within the term "soon before" is left to

be determined by the Court depending upon the facts and circumstances of each case. In this connection one may refer the case of ***Yashoda and another vs. State of M.P., 2004 (3) SCC 98.***

25. The presumption under Section 113-B of the Evidence Act with respect to dowry death can be raised only on the proof of the following four essential conditions:

1) The woman was subjected to cruelty or harassment,
2) by the husband or his relatives;
3) For or in connection with any demand for dowry;
4) soon before her death.

Refer ***Kaliyaperumal vs. State of Tamil Nadu, 2004 (9) SCC 157 [AIR 2003 SC 3828].***

26. Section 113-B of the Evidence Act reads as under:

> ***113B. Presumption as to dowry death****.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*
>
> *Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).*

27. In dowry death cases direct evidence may not be available. Such cases may be proved by circumstantial evidence. Section 304-B IPC read with 113-B of the Evidence Act indicates the rule of presumption of dowry death. If an unnatural death of a married woman occurs within 7 years of marriage in suspicious circumstances, like due to burns or any other bodily

injury and there is cruelty or harassment by her husband or relatives for or in connection with any demand for dowry soon before her death then it shall be dowry death.

28. Section 306 IPC relates to abetment to suicide as follows:

> ***"306. Abetment of suicide.—****If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

29. Section 113-A of the Evidence Act deals with presumption as to the abetment to suicide by a married woman, read as follows:

> ***"113A. Presumption as to abetment of suicide by a married woman.—****When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*
>
> *Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).]"*

30. For the purpose of Section 113-A IPC cruelty shall have the same meaning as in Section 498-A IPC which reads as follows:

> ***"498A. Husband or relative of husband of a woman subjecting her to cruelty.—****Whoever, being the husband or the relative of the*

> *husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*
>
> *Explanation.—For the purpose of this section, "cruelty" means—*
> *(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
>
> *(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

31. In the present case from the evidence of prosecution witnesses particularly of Santoshbai (PW-6), Geeta (PW-7), Chandrakanta (PW-8), Ranjit (PW-9) and Ranchhod Prasad Pande (PW-11), we find that the harassment of the deceased was with a view to coerce her to convince her parents to meet demand of dowry. The said willful conduct has driven the deceased to commit the suicide or not is a matter of doubt, in absence of specific evidence. Therefore, in the light of Clause (b) of Section 498-A IPC, when we hold all the accused Nos.1 to 6 guilty for the offence under Section 498-A IPC, we hold that the prosecution failed to prove that the deceased committed suicide. The accused are, therefore, acquitted for the offence under Section 306 r/w 34 IPC. This part of the judgment passed by the Trial Court thus cannot be upheld.

32. The prosecution on the basis of evidence has successfully proved that the deceased died within 7 years of her marriage; the death of the deceased is caused by burns i.e. nor under

normal circumstances. It has also been proved that soon before her death, during her pregnancy the deceased was subjected to cruelty and harassment by her husband and relatives of accused that is accused No.1-Shivpujan, accused No.2-Rajendra, accused No.3-Malti Devi, accused No.4-Anita, accused No.5-Surendra and accused No.6-Virendra in connection with demand of dowry. Therefore, we hold that the prosecution successfully proved with beyond reasonable doubt that accused Nos.1 to 6 are guilty for the offence under Section 304-B, r/w 34 IPC.

33. For the reasons aforesaid, we set aside the major part of the judgment dated 18th August, 2005 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal NO.388 of 2005 except the part relating to offence under Section 306 r/w 34 IPC. The judgment dated 20th July, 2005 passed by the Trial Court in Sessions Case No.447 of 2000 holding accused Nos.1 to 6 guilty for the offence u/s 498A and 304B IPC. is upheld but the part of the judgment relating to offence under Section 306 r/w 34 IPC against the accused Nos.1 to 6 stands set aside by the judgment passed by the High Court. The respondents- accused No.1-Shivpujan, accused No.2-Rajendra, accused No.3-Malti Devi, accused No.4-Anita, accused No.5-Surendra and accused No.6-Virendra be taken into custody forthwith to undergo the remainder period of sentence for offence under Section 498-A and 304-B read with 34 IPC.

34. The appeals are allowed to the extent above.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.

NEW DELHI, **(V. GOPALA GOWDA)**
JULY 8, 2014.

ITEM NO.IA **COURT NO.6** **SECTION IIA**
(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 719/2010

STATE OF MAHARASHTRA **Appellant(s)**

VERSUS

RAJENDRA & ORS. **Respondent(s)**

WITH

Criminal Appeal No. 720 of 2010

Date : 08/07/2014 These appeals were called on for judgment today.

For Appellant(s)
Mr. Aniruddha P. Mayee ,Adv.

For Respondent(s)
Mr. K.L. Taneja, Adv.
Mr. Sanjay Jain,Adv.
Ms. Asha Gopalan Nair, Adv.

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice V. Gopala Gowda.

The appeals are allowed to the extent indicated in the signed judgment.

(Sukhbir Paul Kaur)
Court Master

(Usha Sharma)
Court Master

(Signed reportable judgment is placed on the file)