Balram Prasad Agrawal vs The State Of Bihar & Ors on 10 December, 1996

Equivalent citations: AIR 1997 SUPREME COURT 1830, 1997 (9) SCC 338, 1997 AIR SCW 1271, 1997 CRILR(SC&MP) 192, 1997 CRILR(SC MAH GUJ) 192, 1997 SCC(CRI) 612, 1997 CRIAPPR(SC) 49, 1997 (2) BLJR 1741, 1997 BLJR 2 1741, (1997) 3 RECCRIR 442, (1997) 1 SUPREME 35, (1997) 2 BLJ 304, (1997) 1 DMC 161, (1997) 1 EASTCRIC 702, (1997) MATLR 132, (1996) 4 SCJ 292, (1997) 2 CURCRIR 86, (1998) 36 ALLCRIC 109, (1997) 1 ALLCRILR 519, (1997) 1 CRIMES 10

Author: S.B. Majmudar

Bench: G.N. Ray, S.B. Majmudar

PETITIONER:
BALRAM PRASAD AGRAWAL

Vs.

RESPONDENT:
THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 10/12/1996

BENCH:
G.N. RAY, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF DECEMBER, 1996 Present:

Hon'ble Mr. Justice G.N. Ray Hon'ble Mr. Justice S.B. Majmudar S.B. Sanyal, Sr. Adv., Gopal Prasad and K. Pandeya, Advs. with him for the appellant B.B. Singh, Adv. (NP), and Anjani Kumar Jha, Adv. for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered:

S.B. Majmudar, J.

In this appeal by special leave under Article 136 of the Constitution of India the appellant-original complainant has brought in challenge the order of acquittal rendered by the Additional Judicial Commissioner, Lohardagga in Sessions Trial case against the respondent-accused and as confirmed in Criminal Revision Application No.10 of 1992 by the High Court of Patna, Ranchi Banch. While granting special leave to appeal a Bench of two learned judges of this Court by order dated 25th March 1996 rejected special leave petition against respondent no.4-original accused no.2 Smt. Jhalo Devi, mother-in-law of the deceased while special leave was granted only against respondent nos.1, 2 and 3 who are the State of Bihar and original accused nos.1 and 3 respectively of the deceased Kiran Devi.

In this case a tragic fate visited a young married woman aged 28 years named Kiran Devi, daughter of the appellant-complainant, who is alleged to have been murdered by the respondent-accused or to have been forced to commit suicide by falling in a well situated on the back side of the house of the accused.

A few facts leading to these proceedings deserve to be noted at the outset. Deceased Kiran Devi was married to respondent no.2 Paran Prasad Agrawal in the year 1977. It is the case of the prosecution that even after five to six years of her marriage as no child was born respondent no.4, the mother-in-law of the deceased against whose acquittal the present proceedings do not survive, and respondent no.3, the elder brother of the husband of the deceased wanted accused no.1-respondent no.2 to marry some other girl by killing Kiran Devi. It is the further case of the complainant father of the deceased that he got her treated by a gynaeoologist and subsequently she gave birth to two sons. It is alleged that despite the aforesaid events the cruelty meted put to Kiran Devi did not stop. They persisted in demanding dowry and as Kiran Devi did not fulfil their requirement the accused started beating her physically and used to torture her causing danger to her life. That being tired to the torture meted out to her she had earlier tried to jump in the same well about four years ago. But she was saved by the neighbours. In this regard Kiran Devi herself had made a report before the concerned Police Station against her husband and in-laws. Thereafter Kiran Devi started living at her paternal home. However at the instance of her father, a compromise was made with her husband and in-laws and she was brought to the house of her in-laws in the year 1988 where she started to reside till the date of her tragio death. It is the prosecution case that on the fateful night intervening 30th and 31st October 1988 at about 9.00 a.m. Kiran Devi fall in the wall situated in the backyard of the house of her in-laws which was occupied by all the three accused along with her. That on 31st October 1988 at about 10.00 a.m. her husband respondent no.2 informed the appellant that his daughter Kiran Devi had died after falling in the well. Thereupon the appellant want to the house of her

in-laws where he found the dead body of his daughter lying near the well. That he got shock of his life. Thereafter he visited the house of the accused on 12th November 1988 in order to meet his grandson. At that time he was informed by the neighbours that on the previous night of the date of the occurrence there was quarrel in the house of the accused and they had heard the crying and weeping of Kiran Devi and she was being assaulted by her in-laws. Smelling a rat, on this information the appellant lodged written report/First Information Report on 12th November 1988 about murder of his daughter Kiran Devi by the accused. it is his case that no case was registered by the police against the accused as approval of the Superintendent of Police had to be obtained. Ultimately on the complaint of the appellant before the Superintendent of Police the case was ordered to be registered on 18th January 1989. After investigation the police submitted chargesheet under Sections 498-A, 302 and 120-B of the Indian Penal Code (`IPC' for short) against the respondent-accused and the acquitted accused mother-in-law of the deceased before the learned Chief Judicial Magistrate, Lohardagga. Ultimately the pass was committed to the Court of Sessions, namely, the Additional Judicial Commissioner, Lohardagga. The learned Trial Judge framed charges against the accused under Section 302 read with Section 34, IPC. On the completion of the trial the learned Judge came to the conclusion that the prosecution had not made out any base under Section 302 read with Section 34, IPC against the accused. The learned Judge in terms held that there was evidence on record that the members of the family of the accused Paran Prasad Agrawal used to assault the victim lady Kiran Devi and they also used to demand dowry from her and there had also been threat given by these accused persons to the victim, that they would kill the victim lady and would get Paran Prasad Agrawal married to another lady. But as the marriage of Kiran Devi took place in the year 1977 and murder took place in the year 1988, and thus more than seven years had elapsed, the presumption that Kiran Devi might have been killed for the sake of dowry cannot be raised. The learned Judge further held that he had no doubt in this mind that these accused persons committed murder of Kiran Devi because of the threat being extended by them but in view of the fact that there was no legal evidence he was helpless and he could not convict these accused persons and the charges fell to the ground. The appellant carried the matter in revision before the High Court. A learned Single Judge of the High Court who decided the Revision Application came to the conclusion that no case was made out for him to interfere of ravisional proceedings against the accused as there was no evidence to show that the accused were responsible for the murder of Kiran Devi.

Learned senior counsel for the appellant Shri Banyal vehemently contended that both the courts below had failed to appreciate the well established fact on the record that deceased Kiran Devi had suffered a consistent course of cruel conduct on the park of the accused. That she had earlier tried to commit suicide by jumping in the same well but she was saved by the neighbours. That the accused were torturing her and treating her with extreme cruelty. Under these circumstances even though there may not be any clear evidence against the accused regarding their overt act of throwing her in the well on that fateful night, it can easily be seen that at least she was forced to commit suicide

because of the cruelty meted out to her by the accused and evidence of the appellant in this behalf relying upon what the neighbours told him as to what transpired in the household of the accused on that fateful night as corroborated by the evidence of investigating officer clearly established the lessar charge against the accused under Section 498-a of the IPC and even though the police had charge sheeted the accused also under Section 498-A the learned Sessions Judge had wrongly failed to frame this alternative charge against the accused. He, therefore, submitted that either the matter be remanded for fresh trial or this Court in exercise of its powers under Article 142 of the Constitution of India may go into the evidence on record and take appropriate decision about the culpability of the respondent-accused for the offence under Section 498-A, IPC.

Learned counsel for the respondents on the other hand submitted that though there was no charge framed under Section 498-A, IPC and as the prosecution evidence fell short of bringing home the charge under Section 302 read with Section 34, IPC against the accused the order of acquittal as rendered by the Trial Court and as confirmed in revision by the High Court deserves to be upheld. He however, fairly stated that if this Court comes to the conclusion that the accused are required to be called upon to meet the lesser charge under Section 498-A, IPC then the accused may be charged accordingly. He also submitted that if this Court is inclined to appreciate the evidence on record and take decision on merits on the culpability of the accused so far as offence under Section 498-A is concerned, then according to him the evidence does not connect the accused with the said offence. That there was nothing on record to show that the complainant was informed about what happened on the fateful night by the neighbours as the neighbours who were examined in the case as prosecution witnesses had turned hostile and did not support the prosecution regarding what they were alleged to have stated in their police statements and to the complainant about the incident of quarrel that took place on the fateful night. He submitted that what the complainant deposed about the information gathered by him from the neighbours was purely hearsay evidence and could not be legally relied upon. It was contended by him that once that evidence is ruled out nothing remains on the record to show as to what actually happened on the night of the incident which resulted in the drowning of deceased Kiran Devi in the well and that it could be a case of sheer accident or even assuming that she had committed suicide there was nothing to show that the accused were responsible for the said suicide or had by their willful conduct driven Kiran Devi to commit suicide on that fateful night. He, therefore, contended that in the light of the evidence available on record even charge under Section 498-A is not brought home to the accused.

Having given our anxious consideration to these rival contentions we have reached the conclusion that the prosecution has not been able to make out any case against the respondent-accused under Section 302 read with Section 34, IPC. There is no evidence to show that on that fateful night the accused or anyone of them had pushed or thrown Kiran Devi in the well. But that is not the end of the matter. As rightly contended by learned senior counsel for the appellant the evidence on record clearly indicated that a case was made out against the accused under Section 498-A, IPC. The said provision reads as under:

> "498-A. Husband or relative of husband of a woman subjection 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 purposes of this section. "cruelty" means-

(a) any willful 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."

Now it is of course true that though police had chargesheet the accused also alternatively under Section 498-A the Trial Court framed charge under Section 302 which is obviously for a graver offence and did not think it fit to frame any charge under Section 498-A, IPC. But the evidence on record, as we will presently point out, clearly attracted the said charge. Under these circumstances we would have been required to remand these proceedings for re- trial on the available evidence after framing a charge under Section 499-A against the respondent-accused but that exercise is not required in view of the fact that this Court in exercise of powers under Article 142 of the Constitution of India may itself examine the question of culpability of the accused for the offence under the said Section in the light of the evidence on record so as to obviate protraction of trial and multiplicity of proceedings against the accused.

We have, therefore, though it fit to consider the question of the culpability of the respondent-accused for offence under Section 498-A of IPC. It is now well settled that in exercise of powers under Article 142, appropriate orders can be passed in the interest of justice in cases which are brought before this Court [See E.K. Chandrasenan v. State of Kerala (1995) 2 SCC 99]. We have accordingly heard the learned counsel for the parties on this question. We have been taken thought the relevant evidence on the record. Having carefully gone through the evidence on record we find that the prosecution has been able to bring home the guilt of the accused under Section 498-A, IPC.

In this connection we may refer to relevant evidence on record. The appellant as P.W.S. had stated on path that on 31st October 1988 at 10.00 a.m. he was informed by his son- in-law Paran Prasad Agrawal that his daughter had died after falling into the well and he accordingly went on the site and saw her dead body. He had further deposed that on 12th November 1988 he went again to the house of the accused son- in-law to see his youngest grandson and at that time he enquired of the incident from the neighbors residing in the Mohalla and his neighbors told him that on previous night of the incident Kiran Devi was beaten by her mother-in-law Jhala Devi, Paran Prasad and the elder brother of Paran Prasad and Kiran Devi was shouting `Bachao Bachao' `save save' and they also told that the mother-in-law, husband and elder brother of the husband of Kiran Devi, Girbar Prasad were telling that they would perform the second marriage of Paran Prasad after killing her and were threatening to kill her and this fact was told to him by the neighbours, namely, Shiv Nath, P.W.4, Laxmi Mahto, P.W.3 and others, namely, Birendra Prasad etc. He also stated that in his police

complaint he had also given the names of these witnesses who informed him accordingly, namely, Ajay Mittal, Avdhesh Prasad, Shiv Nath Mahto, Laxmi Mahto and Birendra Prasad. He had also deposed about the suffering undergone by his daughter at the hands of the accused in past after her marriage. That his daughter Kiran Devi and informed him that her husband used to ask her to bring money from him and on this he replied that he had already given Rs. 10,000/-. She also used to say that her husband Paran Prasad, Cirbar Prasad and mother-in-law Jhalo Devi used to beat her. The marriage of his daughter was soiamnized in the year 1977. For 5-6 years there was no issue from her and hence her in- laws started abusing her and wanted to make a second marriage of Paran Prasad. He got Kiran Devi treated at Ranchi and consequently she gave birth to two sons. About four years prior to this incident his daughter Kiran Devi due to the atrocities of her in-laws had jumped into the same well. However the neighbours had saved her. That after birth of her youngest son she started living at his house as his son-in-law was not taking her back. That he sent his daughter to her in-laws' house after convincing his son-in- law. In cross examination he stood by his version that the people of the Mohalla told him that on the fateful night they had personally heard the sound of quarrel and that threat to kill her. He also reiterated what he stated before the police in this connection. He proved two post cards which he had received when his daughter was pregnant and in these post cards he was informed that his son-in-law was trying to get married to one Lalo Devi. Nothing substantial could be brought out in his cross examination to discredit his aforesaid version. This version is fully corroborated by the evidence of P.W.8 Kedar Nath Pathak, the investigating Officer. The aforesaid evidence of the appellant clearly established the sufferings undergone by his daughter deceased Kiran Devi at the hands of the accused and the situation had so worsened that she had tried to commit suicide even earlier and was saved by the neighbours. His evidence about what his deceased daughter told him earlier about her sufferings at the hands of the accused was clearly admissible under Section 22 of the Evidence Act. His evidence further shows that the cruel conduct of the respondent-accused did not abate and appeared to have continued till the fateful night when the situation became unbearable to the deceased which resulted in her unfortunate death by drowning in the well in the courtyard of the house of the accused. it is necessary to appreciate that on that fateful night apart from the victim only the accused ware in the house. Thus what happened on that night and what led to the deceased failing in the well would be wholly within the personal and special knowledge of the accused. But they kept mum on this aspect. It is of course true that burden is on the prosecution to prove the case beyond reasonable doubt. But also the prosecution is found to have shown that the accused were guilty of persistent conduct of cruelty qus the deceased spreed over years as is well established from the unshaken testimony of P.W.6, father of the deceased girl, the facts which were in the personal knowledge of the accused who were present in the house on that fateful night could have been revealed by them to disprove the prosecution case. This burden under Section 109 of the Indian Evidence Act is not discharged by them. In this connection we may usefully refer to some of the decisions of this Court on the point. In the case of Shambhu Nath Mehra v. The State of Ajmer AIR 1956 SC 404 Bose, J. speaking for a two member Bench referring to the applicability to Section 106 of the Evidence Act to criminal prosecutions laid down in paragraphs 10 and 11 of the Report as under:

> "(10) Section 106 is an exception to S.101. Section 101 lays down the general rule about the burden of proof.

`Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist'.

Illustration (a) says-

`A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime'.

(11) This 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."

In the case of Collector of Customs, Madras & Ors. v. D. Bhoormull AIR 1974 SC 850 another Bench of two learned judges of this Court while considering the offence under Sea Customs Act, 1878 earmarked the scope of Section 106 of the Evidence Act in the following terms in paragraphs 31 and 32 of the Report:

> "31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered - to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp 63 at p.65 `according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted. Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.
>
> 32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned and if he fails to establish or explain those facts, an adverse inference of facts may arise against him which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in `Law of Evidence' (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, presumption juris`: but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from recent (unexplained) possession of stolen property", though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be

> considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department all together of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice."

On the other hand the evidence of the appellant- complainant which had stood the test of cross-examination has clearly established the culpability of the accused so far as their wilful conduct of cruelty against the deceased is concerned. it is true that what happened on the fateful night was said to have been conveyed to the complainant by witness Shiv Nath Mahto, P.W.4, Laxmi Mahto, P.W.3 and others who have all turned hostile.

It was submitted by learned senior counsel for the appellant that what was deposed to by the witness P.W.6 would not remain in the realm of hearsay evidence as these informants have been examined as witnesses. It was contended by him that before any oral version of a witness can be said to be hearsay it mus amount to statement of oral version of the witness based on what he heard from others who are not before the court. In other words the witness says about what he heard from outsiders. Section 60 of the Indian Evidence Act lays down that oral evidence must be direct. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. The evidence before the court can be divided into original and unoriginal. The original is that which a witness reports himself to have seen or heard through the medium of his own senses. Unoriginal, also called derivative, transmitted, secondhand or hearsay, is that which a witness is merely reporting not what he himself saw or heard, not what has come under the immediate observation of his own bodily senses, but what he had learnt respecting the fact through the medium of a third person. Hearsay, therefore, properly speaking is secondary evidence of any oral statement. Learned senior counsel for the appellant submitted that if the informants are examined as witnesses as in the present case, the objection to hearsay disappears as then it becomes the original evidence of the informant who can be cross- examined about the truth of his information conveyed to P.W.6 and in such an eventuality the versions deposed to by P.W.6 and the informants will fall for scrutiny and will have to be weighed by the court with a view to ascertaining as to which of the versions on bath is a correct one. In this connection we were referred to a decision of this Court in the case of Bhugdomal Gangaram & Ors. etc. v. The State of Gujarat AIR 1993 SC 906 wherein at page Q10 Varadarajan, J. speaking for a two member Bench dealing with evidence of P.W.12 about what was informed to him made the following pertinent observations in paragraph 13 of the Report:

> "Accused Nos. 3 and 5 have been convicted by the learned single Judge under Section 66(1)(b) of the Act. The prosecution relies on the evidence of P.W.12 to show that the had received information in the evening of 12-9-1970 that from Baroda the truck GTD 4098 would be carrying liquor to Ahmedabad and that accused Nos. 3 and 4 and some other persons would be coming in a taxi behind the truck. But since the informant has not been examined as a witness the evidence of P.W.12 that he was informed that accused Nos.3 and 4 would be coming behind the truck in a taxi is not admissible."

It was, therefore, submitted that what is deposed to by a witness about the information conveyed to him by another would remain hearsay unless the author of this information also is examined in the case and is subjected to cross examination. In the latter contingency the objection of hearsay would disappear and the court will have to weigh the relative merits and demerits of the respective versions deposed to by the concerned witnesses, one affirming an information and another denying the same. On the other hand it was submitted on behalf of respondent-accused that as informants P.W.3 and P.W.4 had turned hostile, version of their alleged information to P.W.S and the details thereof, will remain in the realm of hearsay evidence as they had not asserted about such information in their examinations-in- chief. We find prima facie some force in what learned senior counsel for the appellant submitted in this connection. However on the facts of the present case it is not necessary to dilate on this aspect and to decide whether the details of the information said to have been conveyed to the appellant P.W.S by these hostile witnesses remained in realm of hearsay evidence or not. We will assume that contents of this information represented. Still as will be seen presently, their are clinching circumstances well established on the record by the prosecution which clearly bring home the charge under Section 498-A, IPC to the respondent-accused.

We now proceed to narrate these circumstances. It is now well settled that even evidence of hostile witness also to the extent it corroborates the prosecution version can be relled upon (Khujji alias Surendra Tiwari v. State of Madhya Pradesh AIR 1991 SC 1853 and Sat Paul v. Delhi Administration AIR 1976 SC 2941. Witness Laxmi Mahto, P.W.3 in his chief examination before the court stated that he heard in the night of the incident sound of quarrel from the house of Paran Prasad Agrawal (accused-husband of the deceased). A fight was going on inside the house and the said hullah was of the same. At around 1.00-1.30 a.m. in the night he heard the said hullah. That was a sound of a woman but he could not say whose voice was that. This version of his in the examination-in-chief lands predance to the version deposed to by the complainant P.W.6 and fully supports his case about what the witness is said to have conveyed to the complainant when he met him on 12th November 1988. So far as the evidence of hostile witnesses Shiv Nath Mahto, P.W.4, Laxmi Mahto, P.W.3 as well as Ajay Mittal, P.W.2 is concerned it becomes clear that they have reslled from their original versions before the Investigating Officer with a view to help their neighbours the present accused and their contrary versions on oath before the court were clearly unreliable and false ones. We would, therefore, reject their versions and on the contrary rely upon the natural version of P.W.6, complainant whose evidence appears to be more reliable and creditworthy and which gets corroborated even by the evidence of hostile witness P.W.3. We may also note that even if the nature of information alleged to be conveyed to P.W.6 the father of the deceased by the neighbours about what was actually heard by them on that fateful night may be ruled out as hearsay, the fact that some information was conveyed to him by the neighbours on 12th November 1988 which prompted him to rush to police as he entertained grave doubt on the basis of what was conveyed to him by neighbours about the conduct of the accused on that night and which made him apprehend about their culpability in connection with unnatural death of his daughter, would remain admissible in evidence as the conduct of this witness P.W.6 propelled by the fact of such information by neighbours about what the witness did on 12th November 1988 and not earlier by approaching police. That part of his evidence was not shaken in cross examination. Not only that but even the hostile witnesses P.W.3 and 4 who are alleged to have given some information to the witness P.W.6 on 12th November 1988 had not even whispered either in their chief examination or cross

examination about their not having conveyed any information or not having met P.W.6 on 12th November 1988 as deposed to by P.W.6 in his evidence. This part of the evidence of P.W.6 would not be hit by the rule of exclusion of hearsay evidence. A decision of this Court deserves to be noted on this aspect. In the case of J.D. Jain v. The Management of State Bank of India & Anr. AIR 1982 SC 673 a Bench of three learned Judges speaking through Baharul Islam, J. in paragraph 10 of the Report has made the following pertinent observations:

> "The word `hearsay' is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. (See Stephen of Law of Evidence).
>
> The Privy Council in the case of Subramaniam v. Public Prosecutor, (1958) 1 WLR <??> observed:
>
> `Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness on some other persons in whose presence these statements are made'."

It is also to be appreciated that evidence of father of the deceased P.W.6 shows that his daughter's married life in the household of the accused had undergone rough weather all throughout. She was illtreated both for not bringing dowry amount to the satisfaction of the accused and also for not giving birth to children. Accused no.1, her husband, also was contemplating to remarry one Lalo Devi as letters Ex.4 and 4/1 showed. Complainant's evidence further showed that his deceased daughter had earlier tried to commit suicide but was saved in the nick of time by neighbours. Even after birth of two sons ill-treatment of his deceased daughter and quarrels with her continued till the fateful night as deposed to by complainant P.W.6 and as corroborated by even hostile witness P.W.3 as seen earlier. It can, therefore, safely be presumed under Section 114 of the Evidence Act that the cruel treatment meted out to the deceased by the accused earlier had continued unabated till the very last when she was forced to commit suicide on that fateful night. Such a presumption of continuanos of cruel treatment which is established on record necessarily points an accusing finger to the accused. Such presumption under Section 114 of the Evidence Act has remained unrebutted on record. This is another clinching circumstance well established against the accused. In this connection we may refer to what this Court said in two of its judgments. In Ambika Prasad Thakur & Ors. etc. v. Ram Ekbal Rai (Dead) by his L.Rs. and Ors. etc. AIR 1988 BC 906 a three member Bench of this Court referring to illustration (d) of Section 114 of the Evidence Act has made the following pertinent observations in para 15 of the Report:

> "If a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may sometimes be drawn.

The presumption of future continuance is noticed in illus.(d) to S.114. In appropriate cases, an inference of the continuity of a thing or state of things backwards may be drawn under this section, though on this point the section does not give a separate illustration. The rule that the presumption of continuance may operate retorspectively has been recognised both in India. This is rule of evidence by which one can presume the continuity of things backwards. The presumption of continuity weakens with the passage of time. How far the presumption may be drawn both backwards and forwards depends upon the nature of the thing and the surrounding circumstances."

Another three member Bench of this Bench of this Court in the case of Kali Ram v. State of Himachal Pradesh AIR 1979 SC 2773 speaking through Khanna, J. has made the following pertinent observations in paragraph 24 of the Report:

"Leaving aside the cases of statutory presumption, the onus is upon the prosecution to prove the different ingredients of the offence and unless it discharges that onus, the prosecution cannot succeed. The court may, of course, presume, as mentioned in Section 114 of the Indian Evidence Act, the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The illustration mentioned in that section, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in a similar circumstances can be made under the provisions of the section itself. Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and confine human behaviour within straitjackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake."

It must, therefore, be held that the prosecution had fully established its case against the accused that on the fateful night between 30th October and 31st October 1988 deceased Kiran Devi was subjected to cruelty by her mother- in-law, her husband accused no.1 and his elder brother accused no.3 which forced her to commit suicide. It is easy to visualize the unbearable state of affairs on that night when a young housewife having two minor children, the younger only four and a half years of age, had to jump in the well to end her miserable existence in the house of the accused. Unless the torture to her had become unbearable in the common course of human conduct such a young housewife having commitments to life could not have taken the drastic step to end her life, leaving her infant sons in the lurch and at the mercy of the accused especially when her husband accused no.1 was contemplating a re-marriage. As the Special Leave Petition of accused no.2. mother-in-law of deceased Kiran Devi has been dismissed we need not say anything about her culpability. However

the aforesaid evidence clinchingly established beyond of reasonable doubt that respondents, original accused nos.1 and 3, by their wilful and parslatent conduct of cruelty on Kiran Devi had driven her to commit suicide by jumping in the well in the compound of their house. It is not possible to agree with the contention of learned counsel for the respondents that she might have accidentally fallen in the well. It has to be kept in view that at 3.00 O'clock in winter night while the deceased would be sleeping in the house there would have been no occasion for her to go in the back verandah and fall accidentally in the well which was 25 ft. away from the back door of the house as seen from the evidence of P.W.8 the Investigating Officer. On the contrary the prosecution evidence clearly indicates beyond shadow of reasonable doubt that because of the mistreatment by the accused and the consistant course of cruelty perpetrated on her, she had on the fateful night suffered from the last straw that broke the camel's back. Earlier she had jumped in the same well to put and end to her miserable existence but was saved by the neighbours. Yet the life for her in the household of the accused did not improve subsequently. She was, therefore, driven to once again try to commit suicide by failing in the very same well in which she had earlier fallen. But on the second occasion on that fateful night when she jumped in the well there was no neighbour to save her and her life got extinguished. Under these circumstances it cannot be said that the accused were not responsible for bringing to a tragic and the life of this young housewife aged 28 years, mother of two children, who having suffered in such a drastic manner at the hands of the accused was driven to take the extreme step of committing suicide. This is neither the case of murder nor the case of accident. But it is only the case of suicide for which the persistent hostile conduct of the accused over years as deposed to by P.W.6 complainant and also the act of cruelty perpetrated on her on the fateful night as revealed by the aforesaid wall established clinching circumstances, were directly responsible. It is also pertinent to note that the learned Trial Judge reached that conclusion in para 8 of the judgment. However in his view this was no a dowry death as contemplated by Section 304-B, IPC as the deceased had died more than seven years after her marriage. But unfortunately the learned Trial Judge failed to examine alternative case under Section 498-A which got squarely attracted on the facts of the present case. It must, therefore, he held that on the facts of the present case the prosecution has been able to bring home to the accused beyond shadow of reasonable doubt offence under Section 498-A, IPC read with Explanation (a). When she was driven to take such a drastic step all the accused including acquitted accused mother-in-law were in the house and along with them rasided the victim and her two minor children. Hence the accused alone must be held responsible for driving her to commit suicide by their misconduct which had led to a quarrel and shouting revealing the voice of a woman as admitted even by the hostile witness P.W.3 who actually heard the same being the next door neighbour. All the circumstances proved by the prosecution clinchingly establish the culpability of the accused themselves and no one else. These established circumstances wholly rule out any reasonable possibility of innocence of the accused from any viewpoint. In other words the chain in the circumstantial evidence is so complete against the accused as to rule out any other hypothesis about their innocence. We accordingly convict respondent no.2 Paran Prasad Agrawal and respondent no.3 Girbar Prasad Agrawal of offences punishable under Section 498-A, IPC.

In view of our aforesaid finding of guilt of the concerned respondent-accused it will now be necessary to hear them on the question of appropriate sentence to be imposed on them. We, therefore, give an opportunity to the learned counsel for the respondent to have his say on the

question of appropriate sentence to be imposed on these accused after taking instructions from them. It will be open to the learned counsel for the respondent-accused to furnish material on this aspect by way of affidavits of the concerned accused if thought fit. Accordingly the matter stands adjourned to 17-1-97 for hearing the accused on the question of sentence.