Supreme Court of India
Satish Chandra & Anr vs State Of M.P on 6 May, 1947
Author: A Sikri
Bench: Sudhansu Jyoti Mukhopadhaya, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 211 OF 2010

Satish Chandra & Anr. ….....Appellant(s)

Versus

State of M.P. ….....Respondent(s)

J U D G M E N T

A.K. SIKRI, J.

1. The two appellants before us are the son and the mother. Appellant No. 1 was the husband and Appellant No. 2 was the mother-in-law, respectively, of the deceased Smt. Sunita. Marriage between Appellant No. 1 and Smt. Sunita was solemnised in April, 1988. Smt. Sunita committed suicide on 14.1.1991 i.e. within three years of the marriage. This led to the prosecution of the two appellants as well as father and sister of Appellant No. 1 under Sections 304-B and 498-A of Indian Penal Code (IPC).

2. We may mention that as per the prosecution, just before her death, she even gave a statement which was recorded as Ex. P.9. After her death, it was treated as dying declaration and case was registered against the accused persons. After the completion of the investigation they were all committed to their trial. The accused persons did not admit to the charge and abjured their guilt. As per them they were falsely implicated in the matter. The trial proceeded. Various prosecution witnesses were examined. On the basis of the oral and documentary evidence brought on record, the Sessions Court returned the verdict of guilty qua the appellants herein, as well as sister of Appellant no.1.

3. The Trial Court sentenced both the appellants as well as Sunita, sister of Appellant no.1 to undergo one year rigorous imprisonment (R.I.) for offence under Section 498 A of IPC. A fine of Rs. 1,000/- on each of the appellants was also imposed and in default the appellants were to undergo an additional R.I. for six months. For offence under Section 304-B, both the appellants were sentenced to 10 years rigorous imprisonment with Rs. 1,000/- as fine with similar default clause.

4. The appellants filed the appeal before the High Court against the said conviction and sentence. By the impugned judgment dated 21.10.2008 the High Court of Madhya Pradesh has affirmed the conviction and sentence, thereby dismissing the appeal qua these two Appellants. However, Sunita has been acquitted. Special Leave Petition was filed questioning the validity of the said verdict of the High Court in which leave was granted. This is how the present appeal has been heard finally by this Court.

5. A perusal of the judgment of the High Court would demonstrate that the High Court has primarily relied upon the dying declaration (Exhibit P9) which according to the High Court is a strong iron clad testimony from the clutches of which the appellants cannot escape. It has found that the said dying declaration is worthy of credence which was recorded in the presence of the Magistrate (P.W.2) that too with certification from the Doctor (P.W.5) to the effect that Sunita was in a fit state of mind to give the statement, notwithstanding the fact that she has suffered 92 percent burns. In so far as charge under Section 498A is concerned, the High Court has found that this was proved on the basis of Ex. P8, which was a letter written by the deceased stating she was being treated with cruelty. The High Court also recorded that the dying declaration as well as allegations in letter (Ex. P.8) were duly supported by the testimony of the father (P.W.1), the brother (P.W.7) and the uncle (P.W.4) of the deceased. It is observed that even when they are interested witnesses being close relation of the deceased, there was no reason to discard their testimony. More so, when their testimony was supported by written documents namely letters written by the deceased which were Exhibit P1, P3, P4 and P5.

6. Mr. Sushil Kumar Jain, learned Senior Counsel appearing for the appellants endeavoured to find loopholes in the depositions of various witnesses. Thrust of his argument was that their testimonies could not have been relied upon to record the guilt of the appellants for both the charges i.e. under Section 498A as well as 304B of I.P.C. In this attempt, he referred to various portions of the testimonies of these witnesses with the purpose to show that there was an acceptance on their part that no dowry was taken at the time of Marriage; there was no demand of dowry even thereafter and the deceased was not treated with cruelty at all. His further endeavour was to show that the deceased had committed suicide because of her own reasons and frustrations which could not be attributed to the appellants and for which appellants could not be held responsible in any manner in as much as she was not happy with her marriage with Appellant No. 1. which was her creation with no blemish on the part of the appellants. Before we take note of these arguments in detail and deal with them, it would be apposite to take note of the testimonies of material witnesses as well as documentary evidence produced. It is only thereafter the arguments of Mr. Jain would be better discernible and appreciated for our analysis/ discussion.

7. As per Rameshwar Dayal (P.W.1), whenever his daughter Sunita used to come to Guna she would say that her parents in law had persistent demand for gold chain. In the month of Shravan in the year 1989, they had come to Jaora to take the daughter then her mother-in-law had beaten her in his presence. Rameshwar Dayal has also said that it was guessed from the letters of the girl that her husband and parents in law were harassing her.

8. Ashok Sharma (PW. 7) stated that he was sent a letter Ex. P.5 by his sister to him. Rameshwar Dayal has also stated letters Ex. P.3 and P4 to have been written by Sunita. It is revealed from the statement of Ashok Sharma that Sunita had told him in Guna and Sagar that in laws had demanded gold chain and money. Also, she was troubled in her in-laws house. Ashok Sharma had met Sunita about one and half months before death when she had gone to Sagar.

9. Ram Behari Lal Sharma (P.W.4) is the mousa of deceased Sunita.The police had prepared the map of the place of occurrence in his presence. The police had seized letters Ex. P3, P4 and P5 from Ram Behali Lal Sharma. Ram Behari Lal Sharma had got the information of burning of Sunita when he was in school. Thereupon, he reached the spot and later on he had gone to Sunita in the Hospital.

10. Naib Tehsildar SPS Chauhan (P.W.2) had recorded the statement (Ex. P.9) of Sunita, before her death. This witness has proved the statement from B to B in Ex. P.9 by Sunita. Before taking statement, the certificate of the doctor was taken. Dr. S.K. Jain (PW. 5) had examined Sunita and had advised to take her statement. Report relating to it is Ex. P.15. After death Dr. Chandelkar (P.W.6) had performed postmortem of Sunita. Dr. Jain has mentioned about the smell of kerosene from Sunita's body and that she had suffered 92% burns. As per him, the cause of death is the burning, flowing of water from the body and the state of shock arising from loss of chemicals. Dr. Chandelkar has also mentioned about kerosene smell from the body. The postmortem report given by him is Ex. P.16.

11. The defence side produced one witness viz. Pravin Dixit, brother-in-

law of Appellant No. 1 who is the husband of his sister Sunita.

12. Perusal of the judgment of the Trial Court shows that detailed submissions were made by the defence questioning the trustworthiness of the prosecution case. It was argued that deceased was not treated with cruelty, much less on the ground of dowry. The defence also attacked the dying declaration of the deceased – Sunita, on the plea that it was unreliable because of many loopholes therein. The Trial Court stated that there were two decisive questions which were to be determined and they were: “(i) Whether the accused used to behave with cruelty with Sunita wife of Satish Chandra Trivedi for illegal object of getting more dowry.

(ii) Whether the accused tortured Sunita on the night of 14.1.1991 in fulfilment of the illegal object of getting more dowry and Sunita died in the manner different from natural death?”

13. While answering the aforesaid questions, apart from relying on oral testimonies of the witnesses, the trial court referred to Ex. P- 3, which is a letter written by Sunita to her aunt (Mausi) stating that

she would do nothing except but to give up her life. Mention was also made to Ex. P-8 which Satish had written to his father-in-law as well as Ex. P-1 which was a letter written by deceased Sunita to her parents 15 days before her death, mentioning that there was no change in the atmosphere and she was not happy in her matrimonial house. From these letters coupled with oral testimonies, the Trial Court concluded that there was a demand of dowry because of which the deceased was harassed.

14. The Trial Court also discussed Ex. P-9, namely, the dying statement and returned the finding that since the statement was taken only after certifying the state of health of Sunita by the doctor that she was in a proper state of mind to make such a statement. The Trial Court also discarded the theory of the defence that Sunita was tutored by her Mausa in giving the statement. From the reading of this dying statement, the trial court came to the conclusion that there was in fact a quarrel which took place on the date of occurrence immediately before she put herself on fire. On the basis of such discussion, the Trial Court returned the verdict of the guilty against the appellants and sister of Appellant no.1 in the manner mentioned in the beginning of this judgment.

15. The High Court went through the gamut of all the issues and upheld the judgment qua these two appellants recording the following reasons:

> "(i) On considering the above submissions, I find that there is no merit in the appeal, primarily, on the ground that because evidence of the prosecution is supported and corroborated by the documentary evidence available on record, the dying declaration Ex. - P/9 is a strong iron clad testimony from the clutches of which the accused cannot escape. Ex. P/9 is recorded and proved in accordance with law. Dr. S.K. Jain PW-5 has certified that although deceased Sunita had recorded 92% burn, she was in a fit state of mind. The dying declaration of the deceased has been recorded in presence of the Magistrate Shri S.P.S. Chauhan PW-2 and no fault can be found in the same. The letter Ex. P/8 available on record also amply proved that the deceased was being treated with cruelty.
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> (ii) It would be profitable to rely on the decision of the Supreme Court in the matter of Muthu Kutty and another v. State of T.N. (2005) 9 SCC 113 whereby the Apex Court has held that conviction can be accorded solely on the basis of dying declaration, if it is worthy and reliable and there is no infirmity in it reinforcing the maxim 'Nemo Moriturus praesumitur', which means that a person will not meet his maker with a lie in his mouth.
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> (iii) Then, in this light it is important to consider the fact that the dying declaration is duly supported by the testimony of Rameshwar Dayal PW-1; Ashok Sharma PW-7 and Rambiharilal Sharma P4-4 the father, the brother and uncle of the deceased and although they are interested witnesses being related to the deceased. It is only natural in the circumstances since the offence under Section 498-A pertains to cruelty being meted out to the deceased soon before her death and she was bound to report the same to these persons only. Besides their testimony is duly supported by written

> documents, letters Ex. P1, P3, P4 and P5 by the deceased Sunita. The fact that Rameshwar Dayal PW- 1 has stated in his deposition that accused Sohanbai had slapped his daughter in his presence is corroborated by letter Ex. P5 to the brother that she (deceased Sunita) was aboused in front of her father who had watched helplessly and the situation could never be rectified."

16. However, in so far as sister of Appellant No. 1 is concerned, benefit of doubt was given as after the marriage she had been living separately at Indore.

17. We now proceed to take note of the detailed submissions of Mr. Jain, learned Senior Counsel for the appellants. He began his submission by arguing that at the time of marriage the father of the deceased did not consider the fact that Appellant No. 1 was not in service. He was under the wrong impression that boy's father was a wealthy person and his daughter would be happy in the matrimonial house even if Appellant No. 1 was earning his livelihood only by running a small shop i.e. namkeen selling business. He further submitted that there was no question of demanding any dowry as marriage between the parties was a part of group marriage solemnised on that day.

18. According to him, reading of the letters as well as testimonies of the prosecution witnesses would bring out that the real problem was the unemployment of Appellant No. 1 which became the villain of the peace. Thus, he tried to weave the story in his own way, presenting the events in the following manner:-

> Appellant No. 1 was continuing his studies (he was doing LLB) which is clear from the letter dated 29.1.1998 written by the brother of the deceased. In this letter Shri Ashok, brother of the deceased also wrote that deceased was kept with affection. The deceased Sunita was a graduate. She did not like the business of Namkeen being run by Appellant No. 1 in a small shop. She forced Appellant No. 1 to close the said business. The fact that the said business was closed at the instance of the deceased and/or her brother is clear from the letter dated 29.1.1989 written by Ashok Kumar Sharma, the brother of the deceased to Appellant No. 1's family, wherein he wrote:-

"Ch. Satish ji how your business is going on. You had told to close the shop. How it is going on? LL.B result would have not been out yet." In another letter dated 22.9.1989 the deceased brother Ashok Kumar Sharma had written to the deceased -

"How the shop is functioning. The shop must have been closed." After closing of the shop, Appellant No. 1 and the deceased, who was a graduate, took job as teachers in private school as is evident from the statement of Rameshwar Dayal Sharma P.W.1, the father of the deceased, himself. Further at the instance of the deceased, Appellant No. 1 started living separately from his parents. This was done at the advice of the deceased brother Ashok Kumar Sharma, who has admitted this in his statement.

The deceased lost her job. This is evident from Ex. D-6 wherein P.W. 7 Ashok Kumar Sharma, brother of deceased had asked Sunita to prepare a certificate of domicile of any district of Madhya Pradesh and send the same to him. Mr. Jain argued that this letter also shows that deceased's

brother was also trying to find a job for the deceased. On account of losing the job by the deceased, Appellant No. 1 and the deceased trapped in a financial crisis. With the meager income as primary school teacher in private school, it was difficult for Appellant No. 1 to carry on the family. On account of financial crisis Appellant No. 1 again came back to his parents, as is evident from the testimony of P.W.1 Rameshwar Dayal Sharma, father of the deceased. He thus, argued that it is this financial crisis which led the deceased go into depression. Otherwise, various letters written by the relatives show their cordial relations.

19. Coming specifically to charge under Section 498A of I.P.C. namely that of harassment, Mr. Jain submitted that even P.W.1 in his cross-examination had stated:

> "11. Ex. P-8 letter was written by my son-in-law Satish Chandra before the death of my daughter. It is correct that my daughter Sunita did not make any complaint to me with regard to the behaviour of her husband i.e. accused Satish or any other complainant whatsoever." P.W.7 Ashok Kumar Sharma, brother of the deceased Sunita also admitted:
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> "6.....My sister never told or complained me about her husband i.e, accused Satish Chandra that he ever tortured her or ever demanded dowry or torment her. She has certainly said that her husband does not say anything when her mother-in-law does such things." Mr. Jain submitted that in view of the aforesaid statements of none else than the father and brother of the deceased, the conviction of Appellant No. 1 under Section 498A and thereby under Section 304-B I.P.C. is ex-facie untenable.

For this he placed reliance on the judgment of this Court in the case of Satkar Singh and Ors. v. State of Haryana reported in (2004) 11 SCC 291 wherein it is, inter alia, held:-

> "23. It is based on these erroneous inference drawn on unproved facts and placing reliance on statements of interested witnesses whose evidence has not stood the test of cross- examination, the trial court came to a wrong conclusion as to the guilt of the accused persons. It is to be noted that 3 letters, Exts. P-28, DA and DB which though not very proximate in time clearly show that there was no demand as has been alleged by the prosecution by the accused and the contents of the said letter clearly show that the allegation made after the death of Devinder Kaur of dowry demand or harassment leading to cruelty is unsubstantiated. For all these reasons we are of the opinion that the trial Court committee serious error in coming to the conclusion that the prosecution had established its case against the appellants."

20. It was argued by Mr. Jain that the learned Trial Court has not found Appellant No. 1 ever made any demand of dowry. The High Court has further acquitted Sunita (sister) and, therefore, so far as Appellant No. 1 (husband) is concerned, neither there is any evidence nor any finding by the learned trial court or the High Court that he ever demanded dowry. In the absence of any evidence with regard to dowry, the conviction of Appellant No. 1 (husband) under Section 304 (B) IPC is ex-facie untenable in as much as Section 304 (B) IPC envisages "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."

21. Questioning the veracity of the dying declaration, Mr. Jain argued that it was tutored one in as much as the same was recorded in the presence of family members of the deceased and when Appellant No. 2 was sitting outside. More over, in this very statement the deceased had stated about Appellant No. 1 that "he is innocent". He also argued that this dying declaration was not recorded in a proper manner namely in the form of questions and answers.

22. Mr. Jain concluded his submission by arguing that the aforesaid facts amply prove that this is not a case of demand of dowry but is a case where on account of family circumstances the deceased did not adjust herself and placed herself in a situation where first she forced her husband to close his business of Namkeen, forced her husband to separate from his parents and to take up a job in a private school and she also joined service in a private school. On account of the fact that when the deceased became unemployed and it was difficult for the couple to bear the expenses, this resulted in financial problem and forced the Appellant No. 1 to go back to the house of parents, which he left before marriage of his sister. In the present matter it is also borne out from the record that the deceased tried to take away all the ornaments of the family resulting in some altercation between Appellant No. 2 and the deceased which was the solitary incident where allegation of physical assault was made. He submitted that under the circumstances no case under Section 498A or 304-B was made out. He referred to the decision in the case of Mahendra Singh reported in 1005 Supp. (3) SCC 371 wherein the Court has observed as under:-

> "Abetment has been defined in Section 107 IPC to mean that a person abets the doing of a thing who firstly instigates any person to do a thing, or secondly, engages with one or more persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Neither of the ingredients of abetment are under Section 306 IPC merely on the allegation of harassment to the deceased is not sustainable. The appellants deserve to be acquitted of the charge."

23. He also drew sustenance from another judgment of the case of Kishori Lal vs. State of M.P. reported in 2007 (10) SCC 797 observing as under:

> "7. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased wife with cruelty is not enough. Merely on the allegation of harassment conviction in terms of Section 306 IPC is not sustainable. There is ample evidence on record that the deceased was disturbed because she had not given birth to any child. Pws 8, 10 and 11 have categorically stated that the deceased was disappointed due to the said fact that her failure to beget a child and she was upset due to this." If the background facts analysed it is crystal clear that the prosecution has failed to establish its case. That being so, the appeal deserves to be allowed, which

we direct."

24. The learned Counsel for the State, countered the aforesaid submissions by arguing that there was clinching evidence against both the appellants, thereby proving the charges of commission of offences under Sections 304 B and 498 A of I.P.C., beyond any reasonable doubt. He referred to the testimony of P.W.1, P.W.3 and P.W.7 in support of the charges of demand of dowry and harassment on that account. He also read out from the letters Exhibits P1, P3, P4 and P5 of the deceased and her relatives, which according to him, proved that the deceased was living in a miserable condition because of the harassment meted out at her at the hands of the appellants. He further submitted that there was no reason to disbelieve the dying declaration of the deceased which was rightly acted upon by the Courts below. He also referred to the reasons advanced by the Trial Court as well as High Court in holding the appellants guilty of the aforesaid offences. He further submitted that the truthfulness of the aforesaid prosecution witnesses namely P.W.1, P.W.3 and P.W.7 could be gauged from the fact that they never indulged in over stating the events and fairly accepted some of the suggestions put forth in cross-examination to them truthfully. His submission was that the entire statement of these witnesses was to be read to arrive at correct conclusion which was done by the Courts below.

25. We have given our due consideration to the aforesaid submissions of the Counsel for the parties with reference to the record. It is now time to have analytical critique of these submissions to find out as to whether the conviction and sentence as recorded by the Trial Court and affirmed by the High Court for these appellants is sustainable or not.

26. There is no dispute about the fact that Smt. Sunita committed suicide on 14.1.1991 by pouring kerosene on her person and then putting herself on fire. Marriage between her and Appellant No. 1 was solemnised sometime in April 1988. Thus, this incident had occurred within a period of 3 years from the date of marriage. Since it is within 7 years of the marriage, presumption under Section 304 B of I.P.C. will stand attracted if the ingredients of the said Section are established.

27. In the statement, the deceased had given the description of the incident namely the manner in which she committed suicide. She has also given the reason for taking such a step and described the behaviour of her in laws towards her. There is a specific allegation that her mother-in-law (Appellant No. 2) and Sister-in-law used to tease her on the ground that her parents had not given gold chain and they used to fight on account of dowry. This fact was known to her father. She had stated that she was putting an end to her life on account of continuous fight. She has also stated that her husband (Appellant No. 1) has come under the influence of her mother-in-law because of which he would beat her up, but otherwise he was innocent.

28. In view of the above disclosure in the said dying declaration, according to us starting point should be to decide as to whether deceased had made such a statement and it is believable or not.

29. The said statement is recorded by the Executive Magistrate, Jawra. As per this document at the time when the statement was recorded, no police officer was present. Before the Executive Magistrate started recording the statement of Sunita, Dr. S.K. Jain certified that she was fully

conscious and was in a position to give her statement. It is again testified by the doctor that while recording of her statement, she remained fully conscious. Primarily, two objections are raised questioning the veracity of this dying declaration. It is stated that Sunita was tutored before she made the statement as it was made in the presence of the family members of the deceased and Appellant No. 2 was made to sit outside when the statement was being recorded. Secondly, it is not recorded in the form of questions and answers. On the facts of this case both these contentions are to be rejected. It is clear that the Executive Magistrate took due precautions and even obtained the certificate about the state of health of Sunita before recording her statement. He has entered the witness box as P.W.2 and deposed to this effect. There is nothing on record which would indicate that Sunita may have been tutored by her Mausa. Nothing could be pointed out to show that after reaching hospital, she had occasion to meet her Mausa and he got an opportunity to tutor her. It is also to be borne in mind that in some of her letters written to her relatives prior to the date of occurrence, she had categorically stated that she was not happy with her matrimonial life and may put end to same. There is a different slant which is sought to be given by the defence, to these letters. We will revert to that aspect at the appropriate stage. At this juncture we are only highlighting that Sunita was not happy with her matrimonial life and she had expressed so on earlier occasions as well. This fact has now surfaced in her statement. It is also pertinent to point out that she has primarily blamed her mother-in- law and sister-in-law. There is no accusation against her husband to the effect that he was also demanding dowry. She is forthright in stating that whatever her husband did was under the influence of her mother-in-law, and he was even beating her occasionally. Otherwise, she has categorically stated that her husband is innocent. Had there been any tutoring, it would not have come in such a form which appears to be more natural and voluntary. For all these reasons we do not agree with the contention of Mr. Jain that Sunita was tutored before she made the statement.

30. Simply because the statement is not recorded in the form of questions and answers, is no reason to discard it once. It is otherwise found to be trustworthy and can be treated as the dying declaration admissible under Section 32 of the Evidence Act. No doubt, it is emphasised by this Court that recording of such a statement in the form of question and answer is more appropriate method which should generally be resorted to. However, that would not mean that if such a statement otherwise meets all the requirements of Section 32 and is found to be worthy of credence, it is to be rejected only on the ground that it was not recorded in the form of questions and answers. As pointed out above, all the requisite precautions were taken before recording the statement by the Executive Magistrate (P.W.2). It has come on record that Sunita remained conscious even after concluding her statement and during the period when her statement was being recorded, Certificate to this effect was also obtained by P.W.2.

31. Having held that the aforesaid statement of the deceased was rightly accepted as admissible under Section 32 of the Evidence Act treating the same as the dying declaration, we proceed further to find out as to whether conviction of the appellants under Section 498A and 304B of IPC is rightly recorded by the Courts below. From the tenor of the letters, reference to which have been made above, there may be a possibility that deceased was not happy with her matrimonial life also because of the reason that her husband was not well off and settled in life. Possibility also cannot be ruled out that she was not happy with the small business of Namkeen which was being carried on by

Appellant No. 1 in a small shop and her aspirations were much higher. She made him wind up that business and both of them viz. the husband and the deceased had started joined service as teachers in a private school. Later she even lost that job of hers. But the question is as to whether this was the reason for her to commit suicide? This question has to be answered in the negative having regard to her statement made in the dying declaration. She has very categorically stated that her mother-in-law used to fight with her regularly on account of demand of gold chain which her parents could not fulfill. She had fight on that day also and being tired of such regular fights she poured kerosene oil on her and set herself on fire. It is thus, clear that immediate cause of committing suicide was regular fights with mother-in-law on account of dowry demand. It, thus, stands established that there was continuous dowry demand by Appellant No. 2, mother-in-law of the deceased and Appellant No. 2 was even treating her with cruelty for not fulfilling this demand.

32. Section 498A IPC reads as under:-

> "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 purposes 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 demand." We find that ingredients of the aforesaid Section stand satisfied qua Appellant No. 2 as deceased was subject to cruelty on account of unlawful demand for property viz. gold chain in the instant case and failure on her part to meet that demand. So much so, it ultimately had driven Sunita to commit suicide.

33. In so far as Appellant No. 1 is concerned it is difficult to sustain his conviction under Section 498A. The deceased in her statement has accused only her mother-in-law and sister-in-law for this demand. She has not blamed her husband at all. On the contrary, she has categorically stated that her husband is innocent. May be at times Appellant No. 1 had beaten his wife on the saying of her mother- in-law but the deceased had not connected this with demand of dowry. Therefore, it is not conclusively proved that there was any "cruelty" on his part. Here, reading the statement of the deceased along with various letters becomes somewhat important. Tenor of those letters, in so far as they relate to Appellant No. 1, indicates that as far as Appellant No. 1 is concerned, he is not to be blamed. In fact, in order to please and satisfy his wife, Appellant No. 1 was making all efforts to become something in life and was struggling for that. We thus, are persuaded to give benefit of doubt to Appellant No. 1 for change under Section 498A. As a consequence while upholding the conviction of Appellant No. 2 under Section 498A of IPC, we acquit Appellant No. 1 from this

charge.

34. With this, we come to the question of conviction under Section 304B of IPC. It is couched in the following language:- “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.

35. Undoubtedly, death of Sunita is caused by burns and has occurred otherwise than under normal circumstances. It has happened within 7 years of her marriage. Further, the trigger point for committing suicide was the quarrel between her and her mother-in-law on the fateful day. At the same time it is also to be borne in mind that it is not a case where appellants have poured kerosene and put her on fire. That is the act of deceased herself and thus it is a case of suicide. The question is whether the quarrel between the deceased and her mother-in-law can be treated as satisfying the condition that “soon before her death she was subjected to cruelty or harassment for, or in connection with, in demand for dowry”. On the reading the statement in totality, it becomes clear that cause/ reason for regular fights was dowry. One can clearly find out from the statement that on that day also Appellant No. 2 fought with her for that reason. We are, therefore, of the opinion that commission of offence under Section 304B against Appellant No. 2 stands conclusively proved in view of iron clad dying declaration. Here again, for the reason stated by us while discussing the accusation against Appellant No. 1 under Section 498A of IPC, it cannot be said that he had committed any act of “cruelty” soon before her death which forced the deceased to take such a step. She has nowhere stated that on that date when her mother-in-law had quarreled with her, Appellant No. 1 was associated or even responsible for that. We thus acquit Appellant No. 1 of charge under Section 304B as well.

36. Coming to the sentence of Appellant No. 2 in respect of the aforesaid offences, we maintain the sentence of one year rigorous imprisonment (R.I.) for offence under Section 498A of IPC. However, in so far as Section 304B of IPC is concerned we are of the opinion that there are certain extenuating and mitigating circumstances which persuade us to reduce the sentence of 10 years R.I. as awarded to Appellant No. 2. First of all, even when the immediate cause to commit suicide was the fight, at the same time it has to be kept in mind that deceased was not happy with her matrimonial life for other reasons as well. In fact, she was not happy with this marriage at all which she stated in some of the letters to her mausi or mausa. We are of the view that ends of justice would be sub served by reducing the sentence from 10 years to 7 years Rigorous Imprisonment. The appeals are partly allowed in the aforesaid terms. The Appellant no.2 shall be taken into custody to serve remaining sentence.

.....J.

[SUDHANSU JYOTI MUKHOPADHAYA] .....J.

[A.K. SIKRI] New Delhi May 6, 2014