

(2020) 12 BOM CK 0034

In the Bombay High Court

Case No : Criminal Appeal No. 1014 Of 2014, 40 Of 2015

Rajesh Jagan Karote And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304(B), 306, 406, 498(A), 506(ii)
Code Of Criminal Procedure, 1973 — Section 173(8), 174, 294, 313, 498, 498(A)
Evidence Act, 1872 — Section 113(B)
Constitution Of India, 1950 — Article 20

Citation : (2020) 12 BOM CK 0034

Hon'ble Judges : Sadhana S. Jadhav, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Rajiv Patil, Gautam T. Kanchanpurkar, Rahul S. Kate, Abhijeet Joshi,
Varsha Sawant, Swapnil Jadhav, P.P. Shinde

Final Decision : Disposed Of

Judgement

Sadhana S. Jadhav, J

1. The appellants herein being aggrieved by the Judgment and Order dated 9/12/2014 passed by the Addl. Sessions Judge, City Civil & Sessions Court,

Gr. Mumbai in Sessions Case No. 621 of 2011 along with Sessions Case No. 853 of 2011 have filed these appeals. All the appellants are convicted of

the offence punishable under section 498-A read with section 34 of the Indian Penal Code and are sentenced to suffer R.I. for 3 years each and to

pay fine in the sum of Rs. 1,000/-each, in default, they shall undergo further R.I. for 2 months. The appellants in Criminal Appeal No. 40 of 2015 are

convicted of the offence punishable under section 304-B of the Indian Penal Code and sentenced to suffer R.I. for life, each and to pay fine in the

sum of Rs. 1,000/- each, in default, they shall undergo further R.I. for two

months.

2. Such of the facts necessary for the decision of this appeal are as follows :

On 17/4/2011 Khushalrao Babuji Bhavare(P.W.1) the unfortunate father of deceased Renuka lodged a report at Wadala T.T. Police Station alleging

therein as follows :

(i) That his daughter Renuka was married to Rajesh Karote on 12/12/2008. He had gifted jewellery and valuables to her at the time of marriage. The

couple was residing in joint family, consisting of mother-in-law, the sisters of Rajesh and their spouses and her younger brother-in-law. She has given

birth to a baby girl on 29/11/2009. That since January, 2010 her husband and his relatives were coercing her to fetch Rs. 5 Lakhs from her parents.

They could not fulfill the demand and on that count, she was being harassed and ill-treated. That six months prior to 17/4/2011 his daughter had

informed him telephonically that her husband and sister-in-law Savita had scorched her on her hands with an iron rod and further threatened her not to

report the incident to the police. He therefore, visited Mumbai and had seen the burn injuries on both her hands. On 12/4/2011, they had poured

kerosene on her person and attempted to set her on fire. On 16/4/2011 he had received a message from Yashodeep, husband of her sister-in-law that

his daughter Renuka is admitted in hospital. That on account of his failure to fulfill the demand, she has been killed and her death is being posed as a

suicidal death, but in fact, she has met a homicidal death. On 16/4/2011 he alongwith his wife, son and other relatives reached Mumbai. They were

informed that their daughter Renuka is dead. He saw dead body in the morgue and noticed injuries on her chest, ligature marks on her neck and

abrasion on her forehead. None of the accused were present in the hospital. Therefore, he reached their house. The house was locked. On the basis

of the said report Crime No. 87 of 2011 is registered at Wadala T.T. Police Station against the accused for offence punishable under section 302,

498A, 406, 306, 506(ii) read with 34 of the Indian Penal Code. FIR is at Exh. 21. Charge-sheet was filed on 3/10/2011.

3. It was noticed by the complainant that investigation was not proceeding in proper direction and therefore on 10th October, 2011 the complainant

filed an application to the Home Ministry and other authorities seeking transfer of investigation in Crime No. 87/2011 to C.I.D. The said application

was allowed. On 1/12/2011, the investigation was handed over to C.I.D. On 12/1/2012 application for further investigation was allowed under section 173(8) of the Code of Criminal Procedure, 1973 and supplementary charge-sheet was filed on 13/7/2012.

4. At the trial, prosecution examined as many as 10 witnesses to bring home the guilt of the accused. The accused also examined one defence witness namely, Sushila Kuril, neighbour of the accused persons.

5. To prove the factum of dowry death, the prosecution has placed reliance upon the evidence of P.W. 1 father of the deceased, P.W. 2 mother of the deceased, P.W. 3 brother of the deceased, P.W. 4 maternal uncle of the deceased and P.W. 5 sister of the deceased. They have all narrated specific incidents, when the deceased had disclosed to them the harassment and cruelty meted out to her at the hands of the accused in pursuance of their demand of dowry.

6. P.W. 1 Khushalrao Babuji Bhavare has deposed before the Court in consonance with the recitals of the FIR. P.W. 1 has deposed that his daughter

Renuka had completed a course in shorthand writing in English and she had received a call from BMC at his address at Paithan. According to him,

after marriage, Renuka was residing along with her husband, mother-in-law, two married sisters-in-law and their spouses and brother-in-law. It was

the contention of the accused persons that the said house is too small to be occupied by 8 members and therefore, they had applied for another flat in

MHADA scheme and they required Rs. 5 Lakhs, which they expected Renuka to bring from her father. It was on this count that Renuka was being

harassed by the family members since January, 2010. She stayed with her parents for 2 months at the time of delivery. Thereafter, P.W. 1 along with

his daughter and the new born child had been to Mumbai, after giving prior intimation, about their arrival. He was told by Accused No. 1 that he could

bring his daughter and granddaughter to Mumbai only if he brings money along with him. P.W. 1 could not arrange for money, but he reached Mumbai

along with Renuka and Chaitrali, only to find the house of the accused in a locked condition. He was then telephonically asked to reach Devalali. The

accused were annoyed with P.W. 1, as he had not brought money. P.W. 1 and his wife had then left their daughter with the accused and returned to

Paithan. On several occasions Renuka had requested her father to make

arrangement for the money to save her from being subjected to cruelty.

7. On 26/10/2010 P.W. 1 had attended the marriage of Savita accused no. 2 at Nashik when, accused No. 1 had raised a quarrel with P.W. 1 on

account of his failure to fulfill his demand. Gifts given by P.W. 1 were not accepted, instead Renuka was assaulted with shoe and fists in the presence

of P.W.1. At that juncture P.W. 1 had decided to approach Devalali Police Station. However, the relatives of the accused had constrained him from

approaching police with an assurance that Renuka would not be subjected to ill-treatment in future. That on 12/4/2011 deceased had informed him

telephonically that she was confined in a room by all the accused and they had poured kerosene on her and her daughter. He requested Renuka to

hand over phone to Rajesh, who candidly stated that Renuka would be subjected to cruelty till the demand is fulfilled. She was also scorched with an

iron rod on her hands. P.W. 1 and his wife had then visited the house of the accused and requested them not to harass his daughter. P.W. 1 had

realized gravity of cruelty meted out to his daughter and had started making arrangement to fulfill the demand.

8. On 15/4/2011 he received phone call from accused No. 1 asking him to arrange for money immediately, as he wanted to buy a separate

accommodation to accommodate all the family members. P.W. 1 had assured that he will try his best to arrange for money. In the meanwhile, he was

informed by accused No. 3 that Renuka is admitted in Sion Hospital. On 18/4/2011 the dead body of Renuka was given in the custody of P.W. 1. The

accused had not attended the last rites of Renuka.

9. Testimony of P.W. 1 could not be shattered despite lengthy cross-examination. It is elicited in the cross examination that P.W. 1 had attended the

birthday celebration of Chaitrali at Mumbai and that all family members of both the families were seen happy on that occasion. That he had not

produced the receipts of articles, which were allegedly gifted to his daughter at the time of marriage. According to him, he had given photo copies to

the police subsequently, but the police had not prepared the panchanama.

10. The suggestions in the cross-examination were as follows :

(a) that a similar incident had occurred in the house of Sagarbai Dongre, sister of P.W. 1 and the family members were arrested in Crime No. 2 of

2011 at CIDCO Police station, Aurangabad in connection with the allegation of

assault on their daughter-in-law.

(b) That P.W. 1 had borrowed an amount of Rs. 1 lakh from accused No. 1 in order to help his sister Sagarbai and that he was pressurising his

daughter Renuka to fetch more money from the accused and therefore, she committed suicide.

(c) that Renuka was not well-versed with domestic chores, she was short-tempered and raised quarrels with neighbours on petty issues.

(d) that P.W. 1 used to pressurise her to fetch money from her husband and due to his pressure, Renuka had committed suicide in her matrimonial

home.

All the suggestions are denied.

11. P.W. 2 Mrs. Dashma Khushalrao Bhavare, who happens to be the mother of deceased Renuka has deposed before the Court that just 3 months

after the marriage, she had come to stay with the daughter for two days, as her daughter was to appear for the examination. When she and accused

No. 6 returned from Siddhi Vinayak Temple, she saw that accused No. 1 was assaulting her daughter with leather belt. Accused No. 6 in response to

her objection, had told P.W. 2 not to interfere with their family matters. She has reiterated all the material particulars including the fact that the burn

injuries were caused to her daughter by all the accused. The suggestion that the police officer had informed the complainant and P.W. 2 that no

offence of murder as alleged by them is made out is denied by P.W. 2.

12. P.W. 3 Mangalsingh Bhavare is the elder brother of deceased Renuka. According to him, they had fulfilled all the demands made by the accused

at the time of marriage including Rs. 45,000/- for fare of 3 buses to visit Paithan at the time of marriage. He has also supported P.W. 1 and P.W. 2 in

all material aspects. He was confronted with his previous statement to prove the omissions. However, there are none. It was suggested that since the

house was small, Renuka felt suffocated and therefore, he alongwith his parents, were insisting upon accused No. 1 to stay separately with Renuka.

13. P.W.4 Mr. Babulal Bhagirath Shingare happens to be the maternal uncle of the deceased Renuka. He has stated before the Court that he was

engaged in the business of selling footwear and therefore, used to visit Mumbai quite often. Six months after the marriage of Renuka, when he visited

her house, he found her nervous and unhappy. He had also visited the house of

accused in the absence of Renuka when she was at Paithan for her delivery. At that time, accused No. 6 Narmada and her daughters had told him that they desire to buy another house so as to accommodate all the family members, for which P.W. 1 should pay Rs. 5 Lakhs. He had conveyed the message to P.W. 1 only to learn that the demand was already made to him earlier. He has denied the suggestion that the accused persons were present when he alongwith P.W.1 had visited Sion Hospital on 16/4/2011 and that accused No. 1 had disclosed that Renuka had committed suicide by hanging.

14. P.W. 5 Ratna Bhavare happens to be the younger sister of Renuka. Her evidence is consistent with P.W. 1, P.W. 2 and P.W. 3. She has further stated that during the life time of Renuka she had visited the house of accused on 2 occasions, the first being the birthday celebration of Chaitrali, daughter of Renuka and second, in January, 2011. That on 13/1/2011 the deceased had called upon P.W. 5 on her cell phone and asked her to visit her matrimonial house immediately, as she is being assaulted with fists and kick blows by all the family members. P.W. 5 had obliged and reached Mumbai on 14/1/2011 along with her aunt and her son. The family members had told P.W. 5 that they would continue to ill-treat Renuka until demands are fulfilled. That a further threat was given by mother-in-law that they would twist the neck of Renuka like a chicken and then dispose of the body in such a way that no one would find any part of her body. The suggestion that a similar case was registered against the family of paternal aunt i.e. Sagarbai Dongre, and therefore, P.W. 1 has filed the present complaint, is denied.

15. P.W. 6 Dr. Rajesh Chandrakant Dere had performed autopsy on the dead body of Renuka. He has deposed as follows :

- (i) Rigor mortis well marked and generalised.
- (ii) Old burn scar over dorsum of both hands near base of thumbs of size 1.5 x 1.5 cm. on right side and 2.5 x 2 cm. on left side.
- (iii) Ligature marks present over neck above thyroid cartilage, oblique, grooved, dark brown from 7 c.m. below left mastoid running backwards towards, right side 5.5 c.m. below right mastoid, over neck on right side 4.5 c.m. below right angle of mandible towards front of neck situated 6 c.m. below chin and 9 c.m. above suprasternal notch. Length of ligature mark absent on left side of neck

(iv) Abrasion 2 x 2 c.m. dark brown, hard below middle of ramous of mandible on left side present (site of ligature knot).

All injuries were ante-mortem and the cause of death is asphyxia due to hanging (Unnatural).

16. The post mortem notes are at Exh. 34A. Probable cause of death is stated in the post mortem notes dated 18/4/2011 in the following terms:

â??Asphyxia due to ligature compression around neck (unnatural)â??

On the same page there is a remark dated 26/10/11 as follows: â??Final opinion as to cause of death - â??Asphyxia due to hanging (Unnatural).â??

Post mortem notes are admitted by the accused under section 294 of the Code of Criminal Procedure, 1973. It is apparent on the face of the record

that there is tampering of the post mortem notes. The investigating agency had made queries with Dr. Dere regarding the variance in the opinion

regarding cause of death seen in the post mortem notes dated 18/4/2011. Dr. Dere had answered the queries as follows :

â??1. Injuries mentioned in column no. 17, page no. 94 of Postmortem report No. FM/711/11 dated 18/04/2011 can be caused by soft ligature material

like dhoti, saree, dupatta etc..

2. Above mentioned injury was fresh injury (within 12 to 24 hours of death).

3. Time since death within 08-14 hours of dead body being kept in cold storage (17/04/2011 at 3.30 am.).

4. No injury present over chest externally and internally.

5. No injury present over external surface of legs or on internal examination of legs or on internal examination of legs. Old burn scars over dorsum of

both hands near base of both thumbs (Right & Left) on posterior aspect, age of these scars is more than 21 days.

6. Considering the postmortem findings, crime scene examination, deceased Renuka Rajesh Karote died of hanging. The scientific features of the

ligature mark (Hanging) are consistent with suicidal nature of death.â??

17. Dishonesty in medical profession cannot be comprehended as it includes fraud, cheating, lying, shirking responsibilities, alteration of medical

records, forgery, knowingly assisting another person in dishonest act and hence, the same needs to be deprecated. The reason for assigning a different

opinion about the cause of death after 6 months is not assigned by Dr. Dere. When he performed autopsy the opinion regarding cause of death was

â??due to compression of neckâ? which was subsequently shown as â??Asphyxia due to hanging (unnatural).â? On 26/10/2011 the opinion given by

Dr. Dere was â??asphyxia due to hanging (unnatural)â?.

18 At this juncture, it would be necessary to refer to the inquest panchanama dated 16/4/2011, which is at Exh. 50. That ligature mark was complete.

There were abrasions on her neck. Burn injuries on her hand and the froth was oozing from her mouth. P.W. 1 has specifically stated that when he

saw the dead body in the morgue, he had noticed injuries on her chest and abrasions on her forehead, which would naturally show either signs of

resistance or physical assault before her death. P.W.6 has failed to give any plausible explanation for the change in opinion.

19 The accused has admitted the post mortem notes under section 294 of the Cr. P.C. and has made a frail attempt to substantiate their case that

Renuka had committed suicide by hanging in her matrimonial home by placing implicit reliance upon the subsequent opinion of Dr. Dere. However, the

post mortem notes dated 18/4/2011 cannot be overlooked. That the autopsy was not video recorded in order to show that there could be a change of

opinion after 6 months.

20. In similar facts of the case, the Apex Court in the case of Kalu v/s State of M.P. reported in (2019) 10 SCC 211 has held as follows :

â??The injuries on the person of the deceased, as noticed in the inquest report as also in the post mortem report, are clearly indicative of a struggle or

resistance put up by the deceased in the last hour. It is unusual that if the deceased had committed suicide by hanging herself, her right hand would be

lying on the stomach and the left hand would be on the ground with both fists half open. This is more of a probability if the deceased was strangled

when life ebbed out of her slowly. The fact that the neck of the deceased was not found stretched and elongated, considering that the body was still

fresh, rules out any possibility of suicide by the deceased. The tongue was not protruding. Scratches and abrasions would not be present in case of a

suicide. There is no fracture or dislocation of the bones in the neck area. The saliva was not running down the face or chest of the deceased but had

flowed out at the left of the mouth.â?

In the present case also, Column No. 20 shows that dark fluid blood was present in heart and weight and large vessels. It therefore, can be safely

presumed that she had met a homicidal death, which was caused either by strangulation or compression of neck.

21. P.W. 7 Vishal Popatrao Deshmukh was working as a Deputy Chief Officer in MHADA. According to him, in the year 2010 accused no. 7 had

deposited an amount of Rs. 50,000/- with Saraswat Bank and accused No. 1 had deposited Rs. 25,000/- in pursuance to the advertising for drawing of

lottery of tenements. Advertisement was given in April, 2010 and lottery was drawn in May, 2010. The prices of the tenements depended upon the

economic category of the applicants. The accused No. 7 was falling in a higher category whereas the accused No. 1 was falling in the lower income

group that the person having income of Rs. 20,000/- to 40,000/- per month. According to P.W. 7, records are maintained, but taking into consideration

the number of applications they are dumped in a godown. He has issued certificate at Exh. 44, which shows that the accused No. 1 had issued a draft

drawn on Union Bank, Sion Branch whereas the accused No. 7 had issued draft drawn on Axis Bank, Ghatkoper branch. The address of both the

accused is shown as Koliwada, Mumbai. The suggestion that the certificate at Exh. 44 was issued on the basis of his memory is denied. As against

this, P.W.7 has stated that both the appellants had deposited the amount with Saraswat bank. No allotment was made to the appellants. According to

him, the certificate was prepared on the basis of the record. However, the record was neither before the Court nor it was brought by the witness at

the time of recording his substantial evidence. The records also show that demand drafts were annexed alongwith applications.

22. P.W. 8 Ganpatrao Appasaheb Ghatage was attached to Wadala T.T. Police Station as PI. According to him, FIR in Crime No. 87 of 2011 was

registered by PSI Modak. But since he was suffering from kidney failure, the investigation in Crime No. 87 of 2011 was handed over to P.W. 8 on

4/5/2011. He had taken further steps in the course of investigation. According to him, scene of offence panchnama was conducted on 17/4/2011 at

about midnight between 12.30 to 1.15 a.m. the scene of offence panchanama is at Exh. 51. The recitals of scene of offence panchanama show that

Renuka had committed suicide in the hall admeasuring 10 x 8 sq.ft. There was a hole to the main door of the house. There was a piece of saree

hanging to the ceiling fan and said piece of saree was seized by the police.

23. In fact, A.D. No. 38 of 2011 was registered on 16/4/2011 and the scene of offence panchanama is in fact recorded in A.D. Enquiry on 17/4/2011

between 12.30 p.m. to 1.15 a.m. FIR is lodged at 9 p.m. In further investigation, scene of offence panchanama seems to have been subsequently recorded on 26/6/2011.

24. According to P.W. 8, Accused No. 6 has informed Mr. Modak that Renuka had committed suicide. And therefore, he was not convinced that a cognizable offence was committed and hence, no offence was registered.

25. It is admitted that the complainant had made an application seeking transfer of investigation. That the custody of Chaitrali was with accused and hence the complainant had filed a habeas corpus petition before the High Court seeking custody of Chaitrali. The said petition was allowed.

26. P.W. 9 Rakhsul Riyaz Khan has proved the inquest panchanama, which is at Exh. 50, which shows the ligature marks as well as scratch marks on her neck and the marks of calding on dorsum. That the inquest panchanama was conducted on 16/4/2011 i.e. prior to filing of the FIR during the course of inquiry in A.D. No. 38 of 2011 recorded under section 174 of the Cr. P.C. Hence, the contention of P.W. 9 that the accused were in police custody at the time of conducting inquest panchanama cannot be comprehended.

27. P.W. 10 Haribhau Dnyanoba Jadhav was attached to State-CID, Mumbai as PI. He received the order dated 1/12/2011 to conduct further investigation in Crime No. 87 of 2011. The Sessions Court had granted permission for further investigation on 3/1/2012. He claims to have enquired with neighbours of the accused. He had also recorded the statement of the doctor who had treated Renuka for the burn injuries. It had transpired that the accused Nos. 1 and 7 had applied for a house in MHADA scheme and therefore, he collected Exh. 44 from the Deputy Chief Executive Officer, MHADA.

28. P.W. 10 had collected information regarding the criminal antecedents of the accused persons from Antop Hill Police Station. It had transpired that Crime No. 77/1986, 142/1986, 187/1987, 182/1990, 28/1991, 9/1996 and 15/1997 were registered against accused No. 6 for the offences punishable under section Bombay Prohibition Act. P.W. 10 asserted that he had recorded the statement of neighbours of the deceased, but has denied the suggestion that nothing incriminating was found in their statements. Daughters

of accused No. 6 Savita was also accused in Crime No. 283 of 2003 registered at Antop Hill Police Station.

29. The accused have examined defence witness Sushila Kuril, the neighbour of the accused. She was also neighbor of accused No. 6 at Kolari Agar

Zopadpatti and therefore, they had cordial relations. She had led the police to the house of the accused for conducting scene of offence panchanama

on 17/4/2011. According to her, Renuka was an educated girl and was not talking to anybody. According to her, on 16/4/2011 at about 5 to 5.30 p.m.

the daughter of Renuka was playing outside the house with another neighbor. The girl from neighborhood was knocking on the door of the house of

the accused, the door was not opened and therefore, they all had gathered in front of the house. When she peeped from the window, she heard the

sound of the utensils falling. Therefore, she called upon Renuka, but to no avail. That accused No.6 had also arrived from outside. They broke open

the door with a stone. They saw Renuka hanging to the fan. They cut the sari with which she had hanged herself. She was breathing at that time and

therefore, she was taken to Sion Hospital, where she was declared dead. Accused No. 6 had then informed other family members. The relatives of

Renuka had reached hospital. They raised quarrel with the accused. In the said altercation, sister of Narmada had sustained injuries.

30. In the cross-examination, D.W.1 has admitted that she is engaged in selling onions and potatoes in the market. That on 16/4/2011 her son Ajay and

her sister Shobha had been to her shop and informed her that door of the house of accused was not being opened. She therefore, rushed to the spot

and thereafter, accused No. 6 had arrived.

31. The learned Senior Counsel for the appellants in Criminal Appeal No. 40 of 2015 has vehemently submitted as follows :

(i) There is no previous police complaint against the accused by the prosecution witnesses although they have stated that the deceased was physically

assaulted on several occasions on account of demand of dowry.

(ii) That they had celebrated the first birthday of Chaitrali on large scale and the prosecution witnesses were present. No untoward incident had

occurred at that time, the prosecution witnesses had noticed that deceased was leading a happy family life.

(iii) That, they had applied for a house in MHADA scheme and that they had not

succeeded in the lottery scheme and therefore, there was no reason for them to demand Rs. 5 Lakhs from P.W.1 to buy a new house.

(iv) That, the indictment of demand of dowry and harassment are concocted.

(v) That, the deceased was hot-tempered and used to get irked on trifling issues. That on 16/4/2011 when she was alone at home, she committed

suicide in the hall by hanging herself to the ceiling fan. That initially, the police were of the opinion that no cognizable offence was made out and hence

A.D. NO. 38 of 2011 was registered however, a case of dowry death was subsequently concocted against the accused.

32. The learned Senior Counsel has also drawn attention of this Court to the scene of offence panchanama which is at Exh. 51, which indicates that

there was a hole of 7 x 7 inch, which was made by the neighbors of the accused to open the door which was bolted from inside. The door latch was

damaged. That a cut piece of cloth was hanging from the ceiling fan. That the defence witness has testified that the deceased was seen hanging to

the ceiling fan. In these circumstances, it is clear that the deceased has committed suicide for reasons unknown to the accused.

33. Per contra, learned APP has submitted as follows :

(i) That the evidence of prosecution witnesses that the deceased was given burn injuries on the dorsum of her both hands by the accused is

substantiated in the post mortem notes.

(ii) That an application was filed to MHADA in the year 2010 and thereafter, the accused had started harassing the deceased.

(iii) That D.W. 1 is falsified on various counts;

(a) Since she was in the market, she could not have seen the neighbor knocking the door of the house of the accused.

(b) She had learnt about the incident from her son.

(c) That, the fact that Renuka had already committed suicide, the noise of utensils falling could not have been heard by anybody as according to the

accused, the deceased was alone at home.

(d) That the deceased was breathing when she was lowered from the ceiling fan cannot be believed;

(e) That there were fresh ante mortem injuries on her chest and neck. That the cause of death was ligature mark due to compression of neck which

was subsequently, shown as death by hanging.

(f) That the post-mortem note has been admitted by the accused. P.W. 9 panch for inquest panchanama is acquainted to the accused.

(g) The suggestion to P.W. 9 that the accused were in police custody at the time of inquest panchanama is contrary to the facts on record, as the

inquest panchanama was conducted during the night intervening 16th and 17th of April, 2011 and the FIR was filed on 17/4/2011.

(h) That the deceased was qualified and had got a call letter from BMC for the post of stenographer.

(i) That the autopsy note dated 18/4/2011 shows asphyxia due to ligature compression around neck. That the ligature encircling the neck is a clear

indication of strangulation and compression of neck and hence, homicidal death is proved.

34. Upon evaluation of the evidence adduced by the prosecution and considering the rival submissions of the Learned Senior Counsel and the learned

Prosecutor, it is an admitted position that the deceased was married to accused No. 1 on 12/12/2008. The evidence of all the witnesses is consistent

about harassment, ill-treatment and physical assault meted out to the deceased at the hands of the accused. That on 15/4/2011 the accused No. 1 had

called upon P.W. 1 and demanded money and the said contention is not denied by the accused by way of any suggestion. That she died an unnatural

death in her matrimonial house within seven years.

35. Section 304-B of the Indian Penal Code reads as follows :

â??[304B. Dowry death.â?"(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 â??dowry deathâ?, and such

husband or relative shall be deemed to have caused her death.â??

Dowry death is a social evil. In order to protect woman from menace of this social evil, the legislature has inserted section 113B of Indian Evidence

Act by Act 43 of 1986 by the Dowry Prohibition (Amendment) Act, 1986. Section 113B of the Indian Evidence Act carries a mandatory presumption

of law. The language of section 113B of the Indian Evidence Act contemplates

that the Court shall presume. In the present case, there is cogent, convincing and consistent evidence which indicates that the victim was subjected to cruelty and harassment at the hands of the accused in connection with demand of dowry.

36. The deceased had died within 7 years of her marriage in her matrimonial home in suspicious circumstances and therefore, a presumption under section 113 B of the Indian Evidence Act needs to be drawn. The main ingredient of the offence under Section 304B of the Indian Penal Code is that the prosecution has to establish that the deceased was subjected to cruelty and harassment in connection with demand of dowry soon before her death. P.W.1, 2 and 3 have specifically stated that on 15/4/2011 Renuka had called upon them when she was being assaulted by A-1 and at that time, P.W. 1 had spoken to A-1 who had boldly stated that Renuka would be subjected to cruelty till the demand was fulfilled and on the very next day P.W. 1 had received a phone call from Yashodeep accused No. 3 informing that there was a quarrel between accused No. 1 and Renuka and that on 16/4/2011 she was taken to hospital, where she was declared dead. Thus, the element of cruelty and harassment in connection with the demand of dowry soon before her death is established beyond reasonable doubt. There is a close proximity between the demand of dowry and death of Renuka and this is a clear indication that this is a case of Dowry death.

37. In the case of *Kashmir Kaur and another vs. State of Punjab* reported in (2012) 13 SCC 627, after considering the previous judgments the Supreme Court while considering the necessary requisite to prove the ingredients of section 304B which need to be established by the prosecution has held as follows :

16. From the above decisions the following principles can be culled out:

- a) To attract the provisions of Section 304B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.
- b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.
- c) Such death occurs within seven years from the date of her marriage.

d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

e) Such cruelty or harassment should be for or in connection with demand of dowry.

f) It should be established that such cruelty and harassment was made soon before her death.

g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid

down as to what would constitute a period of soon before the occurrence.

h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry

death as well as for raising a presumption under Section 113B of the Evidence Act.

i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or

harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and

the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions

of the Act and should not lead to absurd results.

k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of

Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal

jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section

304B.

l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their

defence prove that the ingredients of Section 304B were not satisfied.

m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her

death and whether the alleged demand of dowry was in connection with the

marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.â??

The prosecution has established all the above elements culled out by the Apex court in the case of Kashmir Kaur (Supra).

38. The witnesses may lie but in a case of circumstantial evidence the circumstances speak for themselves. The further investigation carried out under section 173(8) of the Code of Criminal Procedure, 1973 would show that there is discrepancy in the scene of offence panchanama dated 17/4/2011

and 26/6/2011. That a window is shown on the southern side of the room in the panchanama dated 26/6/2011, which is missing in the panchanama

dated 17/4/2011. The scene of offence panchanama dated 26/6/2011 was shown by none other than accused No. 6. It was seen that within 2 months

from the date of incident, the room was given on rent to one Anil Chavan, who was residing in that room on 26/6/2011. This has to be read in

consonance with the fact that according to the defence witness No. 1 Sushila when the neighbors were trying to break open the door of the house

they had heard the noise of the utensils falling down. The possibility that the said window was used for egress from the room upon hearing the noise of

breaking the door cannot be ruled out. And it becomes more suspicious when the said window was deliberately not mentioned in the scene of offence

panchanama dated 17/4/2011. The scene of offence panchanma dt. 26/6/2011 authenticates the correct state of affairs and therefore, it can be safely

presumed that the accused has misled the investigating agency on 17/4/2011.

39. The accused No. 1 has neither taken a plea of alibi nor explained his absentia from home, when his wife was brought down from the fan and

taken to Sion hospital. The accused No. 1 has neither given a plausible explanation about the cause for his wife to take an extreme step of committing

suicide especially after there is persuasive evidence on record which would evince that the deceased was assaulted on account of demand of dowry

and the said allegation is fortified by the testimony of P.W. 1, 2, 3, and 5. The prelude to the incident is not put forth by the accused persons in their

statements under section 313 Code of Criminal Procedure, 1973. In case, Renuka had committed suicide, it was obligatory on the part of the accused

to explain the circumstances and substantiate that Renuka had actually

committed suicide. There is no explanation coming forth from the accused about the identity of the person who had brought her down from the ceiling fan. According to the defence witness, Renuka was breathing when she was brought down from the fan and taken to hospital. It cannot be believed by any stretch of imagination that she was breathing at the time when she was brought down from the ceiling fan. The death of Renuka was within the special knowledge of the accused and in the absence of any explanation by the accused under sec, 106 of the Indian Evidence Act, the conviction of the accused No. 1 for the offence punishable under section 304B of Indian Penal Code deserves to be upheld.

40. The testimony of the prosecution witness No. 1 to 5 is of decisive relevance that the deceased was subjected to cruelty soon before her death.

The medical evidence has convincingly proved that the cause of death was asphyxia due to compression around neck. The indisputable fact is that the victim had died an unnatural death within 7 years of marriage in her matrimonial death under suspicious circumstances.

41. There are specific allegations against accused No. 2 Savita that she had given burn injuries on the hands of the deceased. That she was present in

the house when P.W. 2 had visited and she had also supported the demand of Rs. 5 Lakhs along with her mother to the maternal uncle of the

deceased. The evidence on record shows that on 16/4/2011 accused No. 3 Yashodeep had informed P.W. 1 that deceased Renuka was taken to Sion

Hospital as there was a quarrel between the husband and wife on the previous night. There are no specific allegations against accused No. 4 and 5.

The accused No. 5 had got married to accused No. 4 much before the marriage of the accused No. 1 with the deceased. And they were residing at

Pimpari Chindwade, Pune. Whereas Savita had got married on 26/10/2010 and P.W.1 had attended the marriage of Savita at Nashik. Hence, accused

Nos. 4 and 5 deserves to be acquitted of the offence punishable under section 498A of the Indian Penal Code.

42. In view of the specific material evidence against the accused No. 2, 3, 6 and 7 in respect of subjecting the deceased to harassment and cruelty on

account of demand of dowry till her last breath would make them liable for an offence punishable under section 498A of the Indian Penal Code.

43. In view of the above discussion, evidence on record, the conviction of the

accused No. 1 for offence punishable under section 304B and 498A of the Indian Penal Code deserves to be upheld. And the conviction of the accused No. 6 for offence punishable under section 304B of Indian Penal Code deserves to be set aside and her conviction for offence punishable under section 498A of the Indian Penal Code would meet the ends of justice.

44. Hence following order is passed :

ORDER

(i) Criminal Appeal No. 40 of 2015 is partly allowed.

(ii) The Judgment and Order of conviction and sentence passed by the Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay in Sessions

Case No. 621 of 2011 along with 853 of 2011 dated 9/12/2014 against accused No. 6 i.e. appellant No. 2 for the offence punishable under section

304B of Indian Penal Code is hereby quashed and set aside

(iii) The Judgment and Order of conviction and sentence passed by the Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay in Sessions

Case No. 621 of 2011 along with 853 of 2011 dated 9/12/2014 against accused No. 6 i.e. appellant No. 2 for offence punishable under sections 498A

of the Indian Penal Code is upheld and she is sentenced to the period already undergone. The appellant No. 2/accused No. 6 be released forthwith, if

not required in any other offence.

(iv) The Judgment and Order of conviction and sentence passed by the Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay in Sessions

Case No. 621 of 2011 along with 853 of 2011 dated 9/12/2014 against accused No. 1 for offences punishable under section 304B and 498 A of Indian

Penal Code is upheld.

(v) The Criminal Appeal No. 1014 of 2014 is partly allowed.

(vi) The Judgment and Order of conviction and sentence passed by the Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay in Sessions

Case No. 621 of 2011 along with 853 of 2011 dated 9/12/2014 against accused Nos 2, 3 and 7 for offence punishable under section 498 A of the

Indian Penal Code is hereby upheld. However, they are sentenced to the period already undergone. The sentence of fine is maintained.

(vii) The Judgment and Order of conviction and sentence passed by the Addl. Sessions Judge, City Civil & Sessions Court, Gr. Bombay in Sessions

Case No. 621 of 2011 along with 853 of 2011 dated 9/12/2014 against the accused Nos. 4 and 5 for offence punishable under section 498A of Indian

Penal Code is hereby set aside. The accused No. 4 and 5 are acquitted of the charges levelled against them. Bail bonds stand cancelled. Fine, if paid,

be refunded.

45. Both the appeals are disposed of accordingly.

46. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.