

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 705 of 1998**

1. Nandkishor Trimbak Kushare
Aged – 24 years.
2. Trimbak Baburao Kushare,
Aged – 55 years.
3. Sitabai Trimbak Kushare

All R/o. Nandur (Kd), Tal. Niphad.
District- Nashik.

... Appellants

versus

The State of Maharashtra through P.S.I.
Niphad Police Station,
Niphad, Dist-Nashik.

.... Respondent/s

Mr. Sushant Mhatre, Appointed Advocate for the Appellants.
Mr. C. D. Mali, APP for Respondent-State.

**CORAM : R. M. JOSHI, J.
RESERVED ON : 14th NOVEMBER, 2025.
PRONOUNCED ON : 19th NOVEMBER, 2025.**

Judgment :

1. Appellants/original accused being aggrieved by the judgment and order dated 4th September 1998 passed in Session Case 178 of 1997, whereby they are convicted for the offences punishable under Section 306 and 304-B read with Section 34 of the Indian Penal Code 1860 (for short "IPC") and sentenced to suffer rigorous imprisonment for seven(7) years with fine of Rs.1,000/-. The appellants/accused are however, acquitted for the offences punishable under Sections 498-A with Section 34 of the IPC.

2. Dattu, brother of Jijabai, deceased, lodged FIR stating that marriage of his sister Jijabai was performed with accused No.1 on 30th April 1997. It is his contention that at the time of marriage, there was demand of dowry of Rs.21,000/- and owing to the disputes with regard to the quantum of dowry, the marriage was cancelled. The said marriage, however, was refixed after mediation. It is his further contention that at the time of engagement ceremony, he had paid Rs.21,000/- as dowry to the accused persons. He has further stated before the police that after the marriage Jijabai started residing in her matrimonial home along with her husband, parents- in- law and two brothers-in-law. He has further stated that on 2-4 occasions after marriage, Jijabai had told her father about accused demanding Rs.25,000/- for the purpose of digging bore well in their agricultural field and father told her about the said payment being made after Diwali. He further claimed occurrence of an incident at the time of Satyanarayan Puja wherein accused No.1 had refused to accept the cap and uparna offered to him and left the house angrily.

3. According to him, on 9th September 1997, Bhimrao came to the home of the informant intimating about the incident of snake bite to Jijabai having been caused and that she was taken to Vavi (Thushi) Village for the treatment of snake bite. When the informant along with others went to the said village, they found that Jijabai being already shifted to firstly to P.H.C. Palkhed and thereafter to the civil hospital at Niphad. It is his

further statement that when they went to the hospital-Jijabai was not in a position to speak. She died on 11th September 1997 and offence came to be registered against the accused person vide Crime No.97 of 1997. The investigation into the said crime was conducted and on conclusion of investigation, charge-sheet was filed against the accused.

4. Charge was framed against the accused vide Exhibit-11.. Since, the accused denied the charges against them, the prosecution led evidence of 10 witnesses in order to bring home guilt of the accused. The prosecution examined Dattu (PW1), brother of the deceased and informant. His testimony is sought to be corroborated by evidence of Rayaji (PW3), father of the deceased. In order to prove the recoveries, prosecution examined Raosaheb, (PW2), panch witness. Latabai (PW6) was examined in order to prove the ill-treatment caused by the accused to deceased prior to her act of commission of suicide. Apart from this, prosecution led evidence of Manik (PW4), the relative of the father of the accused, who turned hostile. Witness-Shivpuri Baba (PW5) was examined at Exhibit-31. This witness also did not support the case of prosecution. Prosecution led evidence of police Head Constable – Jadhav in order to prove the recovery of pesticides from the stable in the house of the deceased. Investigation Officer was examined as PW-9. Prosecution has led stress on the evidence of Medical Officer-Dr. Gajaria who was examined before the Trial Court. According to him, when Jijabai was brought to the hospital, initially she gave history of snake bite. He,

however, claims that since the symptoms of snake bite were not found, he persuaded her to give the correct history. Thereupon, she gave history of consumption of poison. It is opinion of the Medical Officer that the deceased died due to organophosphorus poison consumption.

5. Learned Trial Court found the evidence led by the prosecution sufficient to bring home the guilt of the accused Nos.1 to 3. Accused Nos.4 and 5 were acquitted from all the charges. Whereas, accused No.1 to 3 though were acquitted for the offence punishable under 498-A read with Section 34 of the IPC but were convicted for the offences punishable under Section 306 and 304-B of IPC.

6. At the outset, learned counsel for the appellants submits that at all time, the burden to prove the guilt of the accused beyond shadow of reasonable doubt, lies upon the prosecution. It is his submission that on the basis of evidence on record, it cannot be said that the prosecution has succeeded in proving the guilt of the accused. It is his submission that the testimony of the relatives of the deceased i.e. Dattu (PW1) and Rayaji (PW3) is not consistent and in order to prove the allegations with regard to the harassment caused to the deceased before her death, there ought to have been consistent testimony of these two witnesses. According to him, the entire case of the prosecution rests upon the alleged demand of Rs.25,000/- by the accused for the purpose of digging a bore-well in their agricultural field and by drawing attention of the Court to the evidence of Dattu (PW1) and Rayaji (PW3), he contends that there existed a well in

the agricultural field of the accused with standing crop therein. It is thus his submission that unless the prosecution proves that the well had no water, through independent evidence, the said testimony of these two witnesses cannot become basis for the conviction of the accused. It is his further submission that though allegations are made with regard to the demand of dowry at the time of the marriage, the findings recorded by the Trial Court, records that the said allegations have no relevance. It is his submission that even otherwise the evidence of Dattu (PW1) and Rayaji (PW3) differs on material aspect of payment of Rs.21,000/- at the time of engagement ceremony.

7. It is his further submission that the evidence of prosecution does not prove conclusively that this is a case of conscious consumption of any poisonous substance in order to commit suicide. According to him, this could even be a case of accidental consumption of poison which would not be sufficient to prove offence under Section 306 of IPC. It is his submission that in any case, the evidence on record clearly indicates that this could be a case of death of the deceased on account of a snake bite and once such possibility is created, the benefit thereof must go to accused. In this regard, he drew attention of the Court to the evidence of Shivpuri Baba (PW5), who has stated about deceased disclosing him about snake bite. It is his submission that though this witness is declared hostile and was cross-examined by the prosecution, the evidence of this witness to the extend of the history being given by the deceased with

regard to the snake bite cannot be discarded. It is his further submission that the said testimony gets further support from the evidence on record, more particularly, evidence of doctor(PW8). It is his submission that the doctor has also accepted the fact that the deceased herself gave history to the doctor referring to the snake bite. He argued that though the doctor claims that on his persuasion, she gave history of consumption of poison substance, he is not in a position to say as to when such history was given and as to when the new/fresh treatment started. In this regard, he drew attention of the Court to the cross-examination of the doctor on the point of conducting of postmortem notes by two doctors and except for the witness, the other doctor not signing the same. He further drew attention of the Court to the suggestion made to the witness that since the doctor was not agreeable to the finding, he did not sign the same. It is further suggested that since there was negligence in the treatment of the patient, opinion was expressed with regard to the death of the deceased on account of consumption of poisonous substance. According to his, the administration of the anti-venom is not in dispute, which could result into indicating the death on account of poisonous substance being consumed. It is his submission that in any case, it was the burden upon the prosecution to show that the deceased consumed the poisonous substance in order to commit suicide. It is his submission that even from the conduct of the deceased herself while disclosing the history to Shivpuri Baba (PW5) as well as the Medical Officer, it cannot be said that

it is a case of consumption of a poisonous substance. He drew attention of the Court to the evidence of the panch witness who does not support recovery of the bottles containing pesticides. It is his submission that though police head constable – Jadhav is examined in order to prove the said recovery, in the cross-examination, he admits there being no reference in the panchanama regarding sealing of the said bottle. He drew attention of the Court to the evidence of carrier of muddemal, who in no uncertain terms, states about he carrying no other muddemal or articles except four bottles into boxes.

8. To support his submissions, he placed reliance on following judgments :

- 1. Charan Singh alias Charanjit Singh versus State of Uttarakhand (2024) 13 SCC 649.**
- 2. Karan Singh versus State of Haryana 2025 SCC OnLine SC 214.**

Relying upon these judgments, it is sought to be argued that for the purpose of convicting an accused for an offence punishable under Section 304-B of the IPC, the prosecution must prove that just before the unnatural death, deceased is subjected to harassment/cruelty and then only the presumption under Section 304-B would get attracted. It is his submission that there is complete absence of evidence with regard to the harassment caused to the deceased just before the death. It is his submission that the evidence of Latabai-PW6 is not reliable as she does

not intimate about the disclosure made to the deceased to her parents. It is his submission that even otherwise the testimony of this witness is not relevant since it is hearsay evidence. On these amongst other submissions, he claims that guilt of the accused is not proved beyond doubt and hence, they be acquitted.

9. Learned APP, on the other hand, supported the impugned judgment and order. It is his submission that the prosecution was required to prove that the accused had caused harassment to the deceased on account of illegal demand and that there is evidence to indicate that even before the actual performance of marriage, there was dispute between the parties with regard to the payment of amount of dowry. It is his submission that the evidence of Dattu (PW1) and Rayaji (PW3) proves these facts. It is further argued that evidence of Shivpuri Baba (PW5) indicates that the deceased was not able to speak when she was brought to him and hence, the question of she making any statement with regard to the snake bite does not arise and it must be held that history of snake bite is given by the accused. According to him, evidence of Dr. Gujariya (PW8) is more than sufficient to conclusively prove that this is a case of consumption of poisonous substance and not death on account of snake bite. He further argued that the medical officer had no reason to make any statement to the effect that the deceased gave history of consumption of poisonous substance. It is his submission that the said evidence of Medical Officer gets corroborated by CA Report which

indicates that the death is on account of consumption of organophosphorus which is a poisonous substance/pesticide. He further claimed that the evidence of Latabai supports the case sought to be made out by Dattu (PW1) and Rayaji (PW3) with regard to the harassment caused by the accused to the deceased prior to her death. It is his submission that on the basis of evidence on record, the learned Trial Court has rightly recorded conviction against the accused and this is not a fit case to acquit them.

10. At the outset, it needs to be recorded that there is no dispute between the parties with regard to the fact that Jijabai married to the accused No. on 30th April 1997. Further there is no denial of the fact that on 9th September 1997, the deceased was taken to Shivpuri Baba(PW5) for the sake of treatment of snake bite. She was thereafter taken to Palkhed and since the medical treatment was not available there, she was admitted in civil hospital at Niphad. She was in hospital from 9th September 1997 till her death at about 3.00 p.m. on 11th September 1997. There is further no dispute about the fact that initially deceased gave history even to the doctor about snake bite and that she was treated for the same.

11. Since the prosecution has sought to make out the case against the accused that due to the harassment caused by them to the deceased, she consumed pesticide/poisonous substance in order to commit suicide, the burden to prove the same would solely rest upon the prosecution. In

this regard, evidence of Dattu (PW1) and Rayaji (PW3). who are brother and father respectively of the deceased assumes importance. Both these witnesses claim about the dispute occurred prior to the marriage on account of demand of dowry by the accused. In this regard, however, it is pertinent to note that though Dattu (PW1) claims that at the time of engagement ceremony, he paid Rs.21,000/- to the accused, Rayaji (PW3) on the other hand does not state anything to that effect. On the contrary, during the cross-examination, he specifically admits that except for exchange of clothes, nothing was given by either side on that occasion. With regard to the said incident, the testimony of Manik (PW4) cannot be ignored. Though, this witness was declared as hostile, it is settled position of law that the entire testimony of such hostile witness need not be discarded. This witness claims to be the mediator at the time of marriage and having know to both sides. He, however, does not support the allegations of Dattu and Rayaji with regard to any dispute about the marriage and demand of dowry prior to the marriage. Moreover, the learned Trial Court has also discarded the said evidence to be relevant for the decision of the present case. This Court, on the basis of evidence on record, has no hesitation to hold that the prosecution has failed to prove any dispute prior to the marriage, particularly the demand of dowry.

12. Both Dattu (PW1) as well as Rayaji (PW3) claimed that the deceased had informed them about the demand made by the accused of Rs.25,000/- for the purpose of digging a bore-well in their agricultural field.

The cross-examination of these two witnesses, however, indicates that there exists a well in the agricultural field of the accused and there is a electric water pump fixed thereon. They also admit to have seen standing crop in the agricultural field of the accused. This cross-examination clearly indicates that there was a well in the agricultural field and the accused were in the position to take the crops therein. Learned Trial Court, in this regard, recorded a finding that though there exists a well in the field of the accused, it cannot be accepted that they had not proposed to prepare bore-well. It is pertinent to note that there is absolutely no evidence on record to indicate that there was any such proposal of the accused for digging a bore-well in their agricultural field. The findings recorded by the Trial Court are nothing but surmises and conjectures which is not permissible in law. It also needs to be remembered that there is no burden upon the accused to prove their innocence. What is expected from the accused is to explain the incriminating circumstances against them. In this regard, if the evidence on record clearly suggests that there exists well in the field of the accused and that they were cultivating the agricultural filed. There was no incriminating circumstance against the accused in order to make them to explain the same. This Court, therefore, finds no reason to hold that the prosecution has proved the demand of Rs.25,000/- for the purpose of digging bore-well. It was always open for the prosecution to examine the adjoining field owner or cultivators in order to show existence of the well in the agricultural field of

the accused was without any water. In absence of any such evidence, it cannot be assumed that the well had no water and, therefore, the accused were intending to dig a bore-well and for that purpose demand of Rs.25,000/- is made.

13. Most importantly, the Trial Court has acquitted all the accused including the present appellants for the offence punishable under Section 498-A read with 34 of the IPC. There is no challenge to the said acquittal on the part of the State. The acquittal recorded by the Trial Court indicates that there was no harassment caused to the deceased for meeting any illegal demand of dowry.

14. It would be relevant at this stage to take note of Section 304-B of the IPC, which reads thus :

304-B. 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.*

(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.*

In order to convict the accused under Section 304-B raising presumption regarding dowry death within seven years of marriage, there has to be evidence indicating that soon before her death such a woman had been

subjected by the accused to cruelty or harassment for/or in connection with any demand for dowry and in such circumstances only, the presumption as contemplated by Section 113-B of the Indian Evidence Act, 1872 would attract. Relevant provisions of the IPC and Dowry Prohibition Act, 1961 indicate that cruelty or harassment of a lady by her husband or his relative for or in connection with any demand for property or valuable security as a demand for dowry or in connection therewith. Thus, these essential ingredients would constitute both offences under Section 304-B and Section 498A of the IPC. Since, the Trial Court has acquitted the accused persons for the offense punishable under Section 498A, question of accepting the case of the prosecution for convicting the accused under Section 304-B of the IPC does not arise.

15. Even otherwise, perusal of the evidence on record as indicated above, does not show that the prosecution has succeeded in proving the demand of Rs.25,000/- for the digging the bore-well in the agricultural field by the accused persons. The only evidence remains then, is the incident occurred at the time of satyanarayan puja. Evidence of Dattu (PW1) and Rayaji (PW3) indicates that the accused was annoyed and has refused to accept the cap and uparne offered to him and this according to the prosecution indicates the state of mind of the accused and is sufficient to draw inference with regard to the harassment caused by the accused to the deceased. There cannot be any presumption with regard to the harassment caused by the accused to the deceased and it

must be proved by leading cogent evidence. It is pertinent to note that there is discrepancy in the evidence of Dattu (PW1) and Rayaji (PW3) as compared to the testimony of Latabai (PW6). On one hand, Dattu (PW1) and Rayaji (PW3) claimed that accused No.1 did not accept the offerings of cap and uparne and left the house angrily, however, Latabai (PW6) claims that accused No.1 left the house angrily as no new clothes were offered to him. This is a material discrepancy in the testimony of these three witnesses and it creates doubt as to whether any such incident had occurred or not. Even if it is accepted for the sake of argument that such incident did occur and the accused No.1 refused to accept the cap and uparne offered to him, that does not lead to the conclusion that the accused were harassing the deceased. There has to be specific evidence led by the prosecution in this regard. It is impermissible in law to draw any presumption of the guilt of the accused sans evidence of record.

16. Coming to the factum of the death of the deceased, a serious doubt is created from the evidence on record as to whether the deceased died on account of snake bite or she consumed pesticide/poisonous substance. It is sought to be argued on behalf of the prosecution by learned APP that the possibility of the accused persons pressurizing the deceased to disclose the snake bite to Shivpuri Baba (PW5) or the Medical Officer is not ruled out. In the beginning itself, it needs to be clarified that there cannot be any such assumption that on account of pressurizing done by the accused persons, the deceased gave wrong

history to the Medical Officer or Shivpuri Baba (PW5). There has to be evidence on record to conclude so. Though there is evidence of Dattu (PW1) to indicate that accused No.5 i.e. the younger brother of accused No.1 disclosed to Dattu (PW1) of snake bite having caused to deceased. The evidence on record, however, more particularly testimony of Manik (PW4), indicates that he along with Kaluram i.e. his cousin brother took deceased to Shivpuri Baba (PW5) at Vavi (Thushi). There is no further dispute about the fact that Shivpuri Baba (PW5) used to give medicine on snake bite. This witness also claims that deceased told about the snake bite on her left hand. There is no cross-examination conducted by the prosecution after the defence has brought the said facts on record. The deceased was taken to the hospital at Niphad. As admitted by the Medical Officer (PW8) in his testimony that the deceased gave history of snake bite and that she was initially treated therefor by giving anti-venom injection. Though the Medical Officer claimed that subsequently on his persuasion, the victim has given history about consumption of poisonous substance i.e. pesticide, there is no evidence on record to support the said claim of the medical officer. During the cross-examination also, Medical Officer (PW8) showed his inability to indicate at what point the treatment for poison was started.

17. It is claimed by the learned prosecutor that there would be no reason for the medical officer to depose falsely with regard to the history given by the patient. The reliability or otherwise testimony of any witness

including a medical officer would be decided on the basis of his entire testimony and on the basis as to how he could withstand the cross-examination conducted by defence. Medical Officer is not only unable to state as to the time from which the treatment for poison started on the patient but there is cross-examination conducted of this witness to suggest that since no proper treatment was given to the patient, the record has been created with regard to death on account of consumption of poisonous substance. A suggestion is made to this witness that though the post-mortem is conducted by two doctors, only one doctor signed the same i.e. witness and Dr.Shinde who was also present at the time of conducting post-mortem has not signed it. Perusal of post-mortem note – Exhibit-36, indicates that post-mortem notes are not signed by Dr. Shinde. Non-signing of post-mortem notes by him is not explained by prosecution.

18. It is pertinent to note that the Medical Officers have recorded findings even without waiting for C.A. Report to the effect that the death is occurred due to consumption of organophosphorus poison i.e. pesticide. Needless to say that such finding is on purported history given by patient. It would therefore be necessary to see as to whether any connecting evidence to indicate the death of the deceased on that count. The CA Report, no doubt, supports the finding recorded by the medical officer. However, it is pertinent to note that the evidence of the prosecution in this regard, more particularly with regard to the seizure of the poisonous substance is not free from doubt. It is relevant to note that police head

constable-Jadhav though claims to have visited the spot and seized the poisonous substance/pesticide from a cattle-shed, the said seizure has been done even before the registration of crime. It is relevant to take note of the fact that the panch witness has turned hostile and he denied seizure of any poisonous substance/bottles in his presence. Though second panch witness was available, for the reason best known to prosecution, the said witness was not examined. Now, therefore, there remains testimony of Head Constable – Jadhav to prove the recovery. Though he claims to have recovered the said muddemal in presence of the panch witness, during the cross-examination, it is brought on record that panchanama – Exhibit 23 does not indicate sealing of the muddemal. This becomes major drawback to the case of the prosecution. This needs to be considered in the light of the evidence of the carrier. Prabhakar – (PW7), Police Naik, who carried the muddemal has admitted in the cross-examination that except for four bottles in two boxes, no other article was given to him. Learned Trial Court has recorded a finding that acknowledgment of CA is sufficient to indicate that the muddemal was in sealed condition and, therefore, accepted the evidence. There cannot be any presumption in this regard and more particularly, when the panchanama of seizure of the poisonous substance is prior to the registration of FIR and which does not show the sealing of the muddemal at the relevant time. In such circumstances, the possibility of tampering of evidence is not completely ruled out.

19. It needs to be recorded that there cannot be any presumption that the deceased consciously consumed the poisonous substance in order to end her life. In order to prove the charge under Section 306 of IPC, the burden would certainly be on the prosecution to prove such conscious consumption in order to commit suicide. The evidence on record does not indicate so. Moreover, the evidence led by the prosecution is not sufficient to hold that just before the act in question, the deceased was harassed by the accused persons for illegal demand. Having regard to all these facts, this Court finds no justification to sustain the conviction recorded against the accused persons. Since the prosecution has failed to bring home guilt of the accused beyond shadow of reasonable doubt, they deserve to be acquitted.

20. Hence, the following order :

ORDER

1. The appeal is allowed.
 2. The judgment and order dated 4th September 1998 passed in Sessions Case No. 178 of 1997 by the IV Additional Sessions Judge, Nashik, is quashed and set-aside.
 3. The appellants/accused stands acquitted of all the charges.
 4. The bail bonds of the appellant stands cancelled.
 5. Fine, if any paid, be refunded to the accused.
 6. Record and proceedings be returned to the learned Trial Court.
- The appeal stands disposed of.

(R. M. JOSHI, J.)