



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.289 OF 2005

Santram s/o Dhondiram Kawade,
Aged about 45 years, Occ. Agriculture,
R/o Khamgaon, Tq. Kannad, Dist. Aurangabad.

...APPLICANT
(orig. complainant)

-VERSUS-

1. The State of Maharashtra
through the Police station,
Shivoor, Tq. Vaijapur,
Dist. Aurangabad.
2. Dnyaneshwar s/o Baburao Jadhav,
Age: 37 Years, Occ: Agriculture,
R/o: Shivoor, Tq. Vaijapur,
Dist. Aurangabad.
3. Baburao s/o Sakharam Jadhav,
Age: 75 Years, Occ: Agriculture,
R/o: Shivoor, Tq. Vaijapur,
Dist. Aurangabad.
4. Asarabai w/o Baburao Jadhav,
Age: 70 Years, Occ: Agriculture,
R/o: Shivoor, Tq. Vaijapur,
Dist. Aurangabad.
5. Latabai w/o Devidas Salpure,
Age: 26 Years, Occ: Agriculture,
R/o: Jawli, Tq. Kannad,
Dist. Aurangabad.
6. Sindhubai w/o Narayan Salunke,

Aged: 28 Years, Occ : Agri,
R/o: Kavtkheda, Tq. Vaijapur,
Dist. Aurangabad.

...RESPONDENTS
(nos.2 to 6 : orig. accused Nos.1 to 5)

...
Shri A.A. Mukhedkar, Advocate for the applicant/ complainant.
Shri M.A. Aher, APP for respondent No.1/ State.
Shri Shrikant Sali, advocate h/f Shri Nilesh S. Ghanekar,
advocate for respondent Nos.2 to 6/ accused.
...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 28 August 2026

Pronounced on : 04 September 2026

JUDGMENT :-

1. This Criminal Revision Application has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the original complainant (PW-1), being the father of the deceased Kavita, challenging the Judgment and Order dated 19.07.2005 passed by the learned IVth Ad-hoc Assistant Sessions Judge, Aurangabad, in Sessions Case No. 72 of 2005, whereby respondent Nos. 2 to 6 (original accused) came to be acquitted of the offences punishable under Sections 498-A and 304-B read with Section 34

of the Indian Penal Code, 1860 (for short, 'the IPC') and under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. It is not in dispute that respondent No. 1 /State has not preferred any appeal against the said acquittal, hence, the present revision is at the instance of the private complainant.

3. The prosecution story is that the deceased Kavita was married to accused No. 1 (Dnyaneshwar) on 21.05.2004. A sum of Rs. 60,000/- was agreed towards dowry of which Rs. 50,000/- was paid at the time of marriage and the remaining Rs. 10,000/- was payable within a year thereof. It was alleged that after about two months of the marriage, Kavita was subjected to ill-treatment and beating at the hands of accused Nos.1 to 3 on account of the demand for the balance dowry amount. Kavita was further charged by accused No.3 (mother-in-law) with having developed illicit relations with accused No. 2 (father-in-law). On 31.01.2005, the complainant (P.W.1) received telephonic information that Kavita had died during treatment at Ghati Hospital, Aurangabad, upon consuming Endosulfan poison. Initially, the case was registered as an Accidental Death Case and upon lodging of complaint Exhibit 18 by P.W.1, Crime No. 06 of

2005 was registered against the accused persons.

4. Criminal law was set into motion. During the course of investigation, Chemical Analyser's reports (Exhs. 31 and 32) confirmed the presence of Organochloro insecticide Endosulfan (Thiodan) in quantities consistent with fatal poisoning. The prosecution examined five witnesses, namely, P.W.1 Santram (father and complainant), P.W.2 Gangadhar (brother of P.W.1), P.W.3 Balu Vitthal Singare (mediator), P.W.4 Kusumbai (mother), and P.W.5 API Surendra Sirsath (Investigating Officer), and additionally relied upon two post-cards marked as articles 'A' and 'B' said to have been sent from jail by the accused persons. After completion of investigation, the charge sheet came to be filed. The charge was framed. The accused persons pleaded not guilty and claimed to be tried.

5. By the impugned judgment, the Trial Court answered the point of suicidal death in the affirmative, but held that the prosecution failed to prove cruelty within the meaning of Section 498-A IPC and dowry death within the meaning of Section 304-B IPC, consequently acquitted all the accused for the aforesaid offences.

6. Learned advocate for the applicant/ complainant has raised preliminary issue that the trial of accused Nos.1 to 5 by the IVth Ad-hoc Assistant Sessions Judge, Aurangabad, for an offence punishable under Section 304-B of the IPC was without jurisdiction, having regard to Section 28(3) of the CrPC. In this regard, learned counsel for the applicant relied upon the Division Bench decision of this Court in ***Prabhakar L. Pawar v. State of Maharashtra [2012 Cri. L.J. 4726]***, wherein it was observed that Section 28(3) CrPC operates as a threshold bar and that a Sessions Judge cannot assign a case involving a potential sentence exceeding ten years to an Assistant Sessions Judge.

7. This argument is countered by the learned counsel for the accused persons by relying upon the decision of this Court in ***Jabbar Kasamali Sheikh v. State of Maharashtra [2010(3) Bom. C.R. (Cri.) 96]*** and the judgment of the Madras High Court in ***Santhanasamy & Ors. v. Felix Adaikalaraj & Ors. [2026 Supreme(Mad) 324]*** by contending that the restriction under Section 28(3) CrPC relates strictly to the sentencing power and does not take away the competence to try the case once assigned under Section 194 CrPC.

8. Having considered the above arguments on preliminary issue, this Court finds the reasoning adopted in *Santhanasamy and Jabbar Kasamali Sheikh (supra)* is more persuasive. The quantum of punishment prescribed for an offence is not determinative of the court's competence to try it under Section 194 CrPC. Once a case is validly made over, the Assistant Sessions Judge derives jurisdiction to try the same, and the limitation under Section 28(3) CrPC operates exclusively at the stage of sentencing. In the present case, the trial culminated in an acquittal and no sentence was ever passed. Therefore, the trial cannot be branded as a nullity or without jurisdiction.

9. On merits of the impugned judgment of acquittal, learned counsel for the applicant/ complainant submitted that the Trial Court failed to properly appreciate the evidence of P.W.1 to P.W.4 establishing persistent cruelty on account of the unpaid balance of Rs. 10,000/-. All four witnesses deposed that after about two months of marriage, deceased Kavita was subjected to ill-treatment, beating and false allegations of illicit relations, all linked to the demand for the balance dowry. At Diwali, she narrated these facts while weeping. The Trial Court relied on the

presumption under Section 113-B of the Indian Evidence Act by first holding that the accused, being financially stronger, would not have raised the demand.

10. Learned advocate for the complainant further submitted that the post-cards Articles 'A' and 'B' containing the extra-judicial confession of the accused were wrongly discarded by the Trial Court. The mere absence of the accused from the house at the precise time of consumption of poison cannot negate the charge of dowry death when the foundational facts of demand and continuous harassment stand established. Reliance was placed on *Pawan Kumar v. State of Haryana, (1998) 3 SCC 309*, to contend that even a quarrel one day before death, coupled with earlier demands, is sufficient to attract the presumption under Section 113-B. As such, learned advocate has strenuously submitted that the learned Trial Judge has committed error while passing the impugned judgment of acquittal and therefore, the impugned order needs to be quashed and set aside.

11. The learned APP adopted the submissions of the learned advocate for the complainant and submitted that the impugned judgment requires interference at the hands of this

Court.

12. On the other hand, learned counsel for the accused persons submitted that the present revision filed by a private complainant against an acquittal invokes jurisdiction that is extremely narrow. Reliance is placed on *Mallappa v. State of Karnataka, 2024 INSC 104 (decided 12.02.2024)* to contend that if two views are possible, the view favourable to the accused must be preferred, and that mere possibility of contrary view is not a ground for interference.

13. Learned advocate for the accused further submitted that the essential ingredients of Section 304-B IPC as restated in *Shoor Singh v. State of Uttarakhand, (2025) 2 SCC 815*, have not been proved. While unnatural death within seven years is admitted, however, there is no evidence of cruelty or harassment soon before death. The only disclosure is the Diwali narration, which occurred several months before 31.01.2005. There is no dying declaration. P.W.5 confirmed that none of the material witnesses stated any proximate disclosure during investigation. Applying the proximity test as discussed by the Chhatisgarh High Court in *Bandhan Dubey vs. Saroj and others, 2017 (5) CGLJ*

530 : MANU/CG/0058, a remote disclosure cannot satisfy the “soon before” requirement.

14. Learned advocate for the accused further submitted that the allegation of physical cruelty is unsupported by medical evidence. The inquest panchnama and post-mortem reports record no external injuries consistent with stick beating. P.W.4’s claim stands contradicted by official documents. The post-cards remain unproved in authorship. All four family witnesses speak only of hear-say evidence and suffer from material improvements.

15. On the presumption under Section 113-B of the Evidence Act, it was submitted by the learned advocate for the accused that the presumption arises only after the foundational facts are proved beyond reasonable doubt. The Trial Court correctly held that the presumption could be attracted only when the factum of cruelty is first established. Once the foundational facts are missing, the presumption never arises. The observation regarding the relative financial position of the parties is at best an additional reason and does not invert the statutory scheme. In view of these submissions, learned advocate for the accused

strongly supported the impugned judgment of acquittal.

16. After hearing the learned advocates for the respective parties and with their assistance, after perusing the record available, this Court finds that the essential ingredients of Section 304-B IPC, as restated in *Shoor Singh v. State of Uttarakhand [AIR 2024 SC 4551]*, namely cruelty or harassment “soon before” death in connection with a demand for dowry, have not been established in this case. As rightly observed by the Trial Court, the evidence regarding dowry demand and continuous ill-treatment suffers from material improvements and omissions, and the alleged disclosures made during visits or festivals are too remote to satisfy the proximity test. Furthermore, the allegation of physical cruelty is completely unsupported by medical evidence, as the post-mortem report (Exh. 21) and inquest panchnama (Exh. 11) reveal no external injuries. The post-cards (articles ‘A’ and ‘B’) remained unproved regarding authorship and proper custody, and the ocular testimony of the family members suffers from material contradictions and hearsay.

17. On the basis of evidence produced by the prosecution, the Trial Court committed no error in holding that

the statutory presumption under Section 113-B of the Indian Evidence Act, 1872, does not arise until the foundational facts of cruelty “soon before death” are independently proved beyond reasonable doubt. The Trial Court has also noted the probable alternate defence that the deceased consumed poison in a fit of anger/passion after being asked to complete cotton plucking work in the field before visiting her parental house to see her brother's newly born child. The appreciation of evidence by the Trial Court is balanced and plausible. The applicant/ complainant has failed to make out any case of perversity or illegality.

18. It is well-established that the revisional jurisdiction under Sections 397/401 CrPC against an order of acquittal, especially at the instance of a private complainant, is extremely narrow and circumspect. This Court does not sit as a second appellate court to re-weigh evidence. As held by the Hon'ble Supreme Court in *Mallappa v. State of Karnataka (supra)*, if two views are possible, the view favourable to the accused must be preferred, and mere possibility of a contrary view does not warrant interference unless the findings are perverse, based on no evidence, or vitiated by a manifest error of law.

19. Resultantly, the Criminal Revision Application being devoid of merit stands dismissed.

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(SUSHIL M. GHODESWAR, J.)