



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

28 CRIMINAL APPEAL NO. 361 OF 2017

1. Pradeep S/o. Gangadhar Nagargoje
Age: 36 years, Occu.: Service,
R/o. Nanded, Tal.Nanded.
District Nanded.
2. Gangadhar S/o Pundlik Nagargoje
Age: 57 years, Occu.: Service,
R/o. Mukhed.
Tal.Mukhed, District : Nanded.
3. Jankabai W/o Gangadhar Nagargoje
Age: 53 years, Occu.: Household,
R/o. Mukhed, Tal. Mukhed,
District Nanded.

....Appellants
(Original Accused)

Versus

- . The State of Maharashtra
(Through PSO Police Station Jalkot),
Tal.Jalkot, District Latur.

.....Respondent

.....

Shri P.R.Katneshwarkar, Senior Counsel i/b. Shri Shrikrishna B.
Solanke, Advocate for Appellants.
Shri V.V.Jahagirdar, APP for Respondent.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12-10-2026

Pronounced on : 13-10-2026

JUDGMENT :

1. Appellants, who are convicted by learned Additional Sessions
Judge, Udgir in Sessions Case No.50 of 2009 for offence under

Sections 498-A, 306, 304-B read with Section 34 of the Indian Penal Code (IPC) and under Sections 3 and 4 of the Dowry Prohibition Act, hereby take exception to the said Judgment and order dated 19-07-2017.

BRIEF FACTS OF PROSECUTION CASE

2. In brief, case of prosecution in Trial Court was that, deceased Vijayshri was married to accused No.1 on 25-04-2008. After few months of marriage, there was demand of Rs.5,00,000/- for purchasing a car. On account of non-fulfillment of said demand, deceased was mal-treated and kept starved. Getting fed up of the same, she jumped in the well on 25-09-2008 and ended her life.

On report of PW1 father of deceased, Police official at Jalkot Police Station registered Crime bearing No.62 of 2008 for above offences and accused husband and parents-in-law came to be tried vide above sessions case and ultimately stood convicted. Hence, the instant appeal.

SUBMISSIONS

On behalf of Appellants/Accused :

3. Shri Katneshwarkar, learned Senior Counsel for appellants submits that, there is false implication. According to him, case of prosecution is not proved beyond reasonable doubt. According to him,

necessary ingredients for attracting charges of Sections 498-A, 304-B and 306 of the IPC are patently missing in the prosecution evidence. That, there is incorrect appreciation at the hands of learned trial Court and failure to apply settled law. Taking this Court through the evidence, he submitted that, case of prosecution is based on evidence of as many as eight witnesses, but crucial evidence of parents is at variance on material counts. That, there are material omissions in the evidence of parents, which goes to the root of prosecution case rendering it doubtful. He pointed out that, allegations of ill treatment are general, omnibus and non-specific. He would submit that sweeping allegations are levelled about demand and ill treatment.

4. As regards to charge of Section 304-B of the IPC is concerned, he would emphasize that, though death of Vijayshri is shown to be on account of drowning, he submits that, it is not proved beyond reasonable doubt that said fall was suicidal or accidental. He would further submit that, there was no allegation of dowry demand and for said reason also, charge of Section 304-B ought not to have been applied. He would submit that, informant father has admitted that stay of deceased with accused was merely for two months and for rest of the period, she was at her parents' place. He would point out that, to prove charge of Section 304-B of the IPC, it is incumbent upon

prosecution to prove that, soon prior to the death, there was ill treatment for dowry demand, but, according to him, this essential ingredient is patently missing from prosecution evidence. On this point, he took this Court through cross-examination faced by parents of deceased.

5. As regards to charge of Section 306 of the IPC is concerned, he would strenuously submit that, evidence of prosecution is conspicuously silent about instigation, inducement and abetment. That, under such circumstances, learned trial Court ought not to have held appellants guilty. He pointed out that, admittedly deceased died while she was put up with her parents and there is nothing to link or connect appellants, who were miles away, with alleged episode of drowning death of deceased.

6. Lastly, he submitted that, even there is no cogent and reliable evidence to attract Sections 3 and 4 of the Dowry Prohibition Act and resultant, he questions Judgment and order of conviction by relying on decision of Hon'ble Apex Court in the cases of *Amalendu Pal v. State of West Bengal*, MANU/SC/1808/2009, *State of West Bengal v. Orilal Jaiswal and Ors.*, MANU/SC/0321/1994 and Judgment of this Court in the case of *Abdul Jabbar and Ors. v. The State of*

Maharashtra, MANU/MH/0139/2011.

For above reasons, he urges to set aside impugned judgment of conviction by allowing the appeal.

On behalf of Respondent State :

7. Learned APP, while justifying the Judgment of conviction, would submit that there is convincing and cogent evidence of father and mother as well as sister of deceased. According to him, there is support from independent witness PW2. That, all these witnesses, who have heard from the victim, have accordingly deposed. That, they all are consistent about demand of Rs.5,00,000/- and ill treatment being inflicted in such backdrop. That, their evidence has remained intact. According to him, instead of the demand and ill-treatment, there was no reason for deceased to commit suicide by jumping. That, there is prompt lodgment of complaint. That, learned trial Court has rightly found sufficient material to convict the accused. According to him, findings of learned trial Court in its judgment paragraph No.14 onwards comprises of discussion on the evidence adduced by prosecution. As case of prosecution proved beyond reasonable doubt, according to him, learned trial Court committed no error in convicting the accused and for want of merits, he prays to dismiss the appeal.

BRIEF ACCOUNT OF EVIDENCE

8. Re-appreciated the evidence adduced by prosecution in trial Court. Eight witnesses seem to have been examined by prosecution in trial Court i.e. **PW1** Madhav Gopinath Chole is father of deceased, **PW2** Parshuram Eknath Chole is villager and acquaintance of PW1, **PW3** Vijaykumar Chole is spot pancha, **PW4** Vijay Devidas Panchal is villager and pancha to inquest, **PW5** Shobhabai Madhavrao Chole is mother of deceased, **PW6** Rajashri Bhagwanrao Kendre is sister of deceased, **PW7** Shaikh and **PW8** Pandit Trimbakrao Mundhe are Investigating Officers, who have carried out investigation.

9. Here, evidence of **PW1** father, **PW5** mother, **PW6** sister of deceased and **PW2** villager and acquaintance of PW1 is crucial.

10. On analyzing evidence of **PW1** Madhav, father of deceased and informant, which is at Exhibit 43, it appears that, after giving date of marriage, he deposed that, initially for one month, there was better treatment to his daughter and thereafter, according to him, in-laws started demanding Rs.5,00,000/- for purchasing Indica car. That, his daughter reported about it on phone. That, he went to convince accused and therefore, demand was paused for 8-10 days, and there was no ill treatment, but again ill treatment began and this was also

informed to him on phone. He claims that, when he went to meet her, his son-in-law picked up quarrel with his daughter and broke the mobile handset and after paying Rs.1,500/- he came back. Then he claims to have received complaint from his daughter on phone and so again he went on 21-09-2008 to her place. He stated that, his daughter started crying. That, he stayed there for a day and he brought his daughter with him. He deposed that, that time, accused persons said that unless she brings Rs.5,00,000/-, do not return. He claims that, on 11-09-2008 he tried to convince his daughter. That, on 25-09-2008, his daughter jumped in the well. According to him, because of ill treatment at the hands of accused persons, his daughter committed suicide. He identified complaint Exhibit 44 and his supplementary statement dated 12-10-2008.

While under **cross-examination**, he admitted that all of them discussed how the incident occurred and he said to Police Patil to report incident to Police and accordingly, Police Patil went to report the incident to Police. He admitted that, subject was discussed at the well and Police arrived at the well, done inquest in his presence, Police made enquiry with them about how incident took place. He admitted that, his daughter was studying in D.Ed, but she had failed in second year. He admitted that she did internship at Wardha. He admitted that, accused had double storeyed house. He expressed

ignorance about accused purchasing clothes for his son during Raksha Bandhan. He admitted that, Sahebrao Gutte was neighbour of accused and he was a Police officer and he was mediator. He admitted about giving his daughter in marriage after due enquiry about assets and liabilities of accused and salaries of husband and father-in-law. He admitted that they had 37 acres of irrigated agricultural land and also admitted that they have a two wheeler, but denied whether there was a four wheeler in the name of accused no.3.

Omission is brought to the extent of he going to visit his daughter on 11-09-2008 during which husband picked up quarrel with his daughter and broke phone and he paid Rs.1,500/-. Omission is also brought to the extent of giving 11 tola gold and Rs.2,00,000/- in cash to accused. He admitted that, he did not lodge complaint at the spot or when Police had made enquiry with him. He also admitted that, in complaint, he has not specified names of accused and that they asked him to not to come without Rs.5,00,000/- i.e. it to be missing in the complaint.

11. **PW5** Shobhabai, mother of deceased and wife of PW1 also stated that, there was proper treatment for one month but thereafter ill treatment began. Even according to her, there was taunting and ill

treatment by not giving food. She also deposed about learning of ill treatment from her daughter on phone. She deposed that, the accused used to say that, deceased could not stay in the matrimonial house unless and until a vehicle of Rs. 5,00,000/- was brought. According to her, because of harassment and ill treatment, her daughter jumped in the well and committed suicide.

While under **cross-examination**, she admitted that, there used to be occasional talks. To all suggestions, she pleaded ignorance in paragraph 5. She denied raising private loan for marriage of her daughter and also in paragraph 6, she denied Police Patil being informed by her husband to go and report to police. Omission is brought to the extent of husband going to convince accused persons and about accused saying that her daughter can cohabit only if vehicle is brought.

12. **PW6** Rajashri Bhagwanrao Kendre, sister of deceased stated that, everything was proper for 3-4 months According to her, deceased narrated about demand of Rs.5,00,000/- when she came for Rakhi Pournima festival. She in examination-in-chief itself stated that her father knew about ill treatment on 21-09-2008. She deposed that when they visited house of her sister, accused said that, they will allow her to cohabit only if Rs.5,00,000/- for car are paid to them.

Even according to her, her sister jumped into well due to ill-treatment by accused persons and ended up her life.

In **cross-examination** she admitted that, accused has double storeyed building. She expressed ignorance about her sister failing in D.Ed. second year. Rest is all denial.

13. **PW2** Parshuram Eknath Chole, villager and acquaintance of PW1, at Exhibit 49 deposed that deceased used to come to his house and talk with him and he found her to be disturbed and she told that parents of husband demanding Rs.5,00,000/- for car and that she was ill treated by not providing sufficient food, and hence, she committed suicide.

While under **cross-examination** he admitted that there were no talks between him and her parents at well about how incident took place. He admitted that, he did not inform Police whatever he deposed in examination-in-chief and he also admitted that, there were no talks between he and informant about married life of deceased. He also admitted that, he used to occasionally meet deceased.

ANALYSIS

14. Here, there are charges for offence under Sections 498-A, 306, 304-B read with Section 34 of the IPC and under Sections 3, 4 of the

Dowry Prohibition Act.

Charge under Section 498-A :

15. The essential ingredients of offence under Section 498-A of IPC are as follows:

- (1) A woman was married,
- (2) She was subjected to cruelty,
- (3) Such cruelty consisted in -
 - (i) Any willful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life,
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the unlawful demand;
 - (iii) the woman was subjected to such cruelty by her husband or any relation or her husband

Judicial Precedent :

16. There are series of judgments wherein Hon'ble Apex Court has repeatedly observed and held that in case of general, vague and omnibus allegations without specifying role or giving specific instances of cruelty, charge of Section 498-A would not automatically get attracted. Such observations are reflected in *Kans Raj v. State of Punjab and others* [Appeal (crl.) 688-90 of 1993 decided by the Hon'ble Apex Court on 26-04-2000]; *State of Andhra Pradesh v. M.*

Madhusudhan Rao (2008) 15 SCC 582; *Neelu Chopra and another v. Bharti* (2009) 10 SCC 184; *Geeta Mehrotra Vs. State of U.P.* (2012) 10 SCC 741; *Bhaskar Lal Sharma and Anr. v. Monica and Ors* AIR 2014 SC (Supp) 1310; *K. Subba Rao v. The State of Telangana* ; (2018) 14 SCC 452 wherein, as to what constitutes offence under Section 498-A and when it can be said to be made out has been dealt and discussed.

Even the Hon'ble Apex Court, in the case of *Naresh Kumar v. State of Haryana* (2024) 3 SCC 573 observed that, to constitute offence of cruelty, there has to be incessant or continuous form of cruelty.

In the case of *Yashodeep Bisanrao Vadode v. State of Maharashtra* (2024) SCC Online SC 2989, the Hon'ble Apex Court observed that, by way of evidence, specific acts and role of accused has to be demonstrated for attracting Section 498-A IPC.

Very recently in *Rajesh Chaddha v. State of Uttar Pradesh* [2025 SCC OnLine SC 1094], the Hon'ble Apex Court has observed in para 14 as under :

"The term "cruelty" is subject to rather cruel misuse by the parties, and cannot be established simpliciter without specific instances, to say the least. The tendency of roping these sections, without mentioning any specific dates, time or incident, weakens the case of the prosecutions,

and casts serious suspicion on the viability of the version of a Complainant.”

17. On carefully going through above discussed evidence, it is noticed that PW1 and PW5 parents of deceased, who are family members, speak about proper treatment to deceased for one month, however, their own daughter PW6 stated that there was proper treatment for 3-4 months. Consequently, family members are not consistent. It is further noticed that, parents of deceased speak about ill treatment and about not providing food. However, when it has happened and at the hands of which of the accused has not been stated. Therefore, on the points of cruelty and ill treatment there are general and omnibus allegations.

Settled law as discussed above about there has to be continuous harassment or ill treatment and some instances are required to be quoted to attract charge of Section 498-A of the IPC, but the same is not stated here by either PW1 father or PW5 mother of deceased.

18. Another feature of this case is that, these witnesses claim that deceased used to inform them on telephone. When the phone calls were made is not stated by any of the witnesses. PW8 Investigating Officer has not gathered CDR to substantiate such telephonic conversations. From cross-examination of PW1 father of deceased, it

is evident that after due deliberation, complaint has been lodged and moreover, it is not prompt as immediately on information about finding dead body in well, Police had arrived and he also admitted that Police made enquiry, but no prompt report was lodged.

Charge of Section 304-B :

19. Here, there is also charge for offence under Section 304-B of the IPC. In order to attract above charge, it is incumbent upon prosecution to prove that within seven years of marriage, accused subjected deceased to cruelty and harassment in the backdrop of dowry demand by husband and his relatives.

Again a brief snapshot of settled legal position on the point as to when charge under Section 304-B would get gravitated, needs to be stated and the same is as under:

Judicial Precedent :

“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.

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.”

20. In ***Bansi Lal v. State of Haryana***, (2011) 11 SCC 359, the Hon’ble Apex Court has held that, while considering case under Section 304-B, cruelty has to be proved during close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by accused, should make life of deceased miserable, which may force her to commit suicide.

21. In ***State of Rajasthan v. Girdhari Lal***, (2013) 15 SCC 269, the Hon’ble Apex Court has observed that, the period which can come within the term “soon before” cannot be put within the four corners of time-frame. It is left to the Court for its determination depending upon the facts and circumstances of each case. On facts, though in the past there was cruelty and harassment in connection with dowry demand, yet there was no evidence on record to come to a definite conclusion that soon before her death the cruelty and harassment

which the deceased suffered was for or in connection with any demand of dowry, in such situation the presumption under Section 113-B of the Evidence Act also cannot be drawn.

22. Likewise, in ***Manohar Lal v. State of Haryana***, (2014) 9 SCC 645, the Hon'ble Apex Court has observed that, as per definition of "dowry death" in S. 304-B IPC and wording in presumptive S.113-B, Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". The Hon'ble Apex Court further observed that the proximity test has to be applied keeping in view the facts and circumstances of each case and the facts must show existence of a proximate live link between effect of cruelty based on dowry demand and death of the victim.

23. Similarly, in ***Sher Singh v. State of Haryana***, (2015) 3 SCC 724, the Hon'ble Apex Court held that, there must be live link and proximity between cruelty emanating from dowry demand and death of woman. The words "soon before her death" indicate that there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be

indicated by the words “soon before her death”, to bring Section 304-B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time. The demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC.

The germane of above provision is that soon before death, deceased must have been shown to be subjected to cruelty in the backdrop of dowry demand and consequently, death must have been unnatural one.

24. Thus, for attracting charge of **Section 304-B** of the IPC, it is incumbent upon prosecution to prove two essentials i.e. firstly unnatural death taken place within 7 years of marriage and secondly, soon before her death, it has to be demonstrated that there was harassment or cruelty by husband or his relatives with connection of any demand of dowry.

25. Here, in the light of above requirements, prosecution evidence is put to scrutiny. It is clear that marriage is of 25-04-2008. Informant had admitted that stay of his daughter with accused was

barely for 2 months. At the time of incident, she was with him i.e. at parents' place. There is nothing to show that, immediately prior to jumping in the well and committing suicide, there was harassment in the backdrop of any dowry demand. Infact deceased was very much in the company of mother PW5, but what happened that day is not clear as it is merely stated that, that day deceased went missing and was searched and later on found in the well. What above provision requires is that there has to be harassment and cruelty in the backdrop of dowry demand soon before death. Evidence on the point of cruelty and harassment in the backdrop of dowry is patently missing. Hence, this charge fails.

Charge of Section 306 :

26. Accused are also tried for offence under Section 306 of the IPC which requires prosecution to demonstrate instigation, abetment, inducement to commit suicide. Unless there is positive act or role played by accused in alleged suicide, they cannot be held guilty. Admittedly, accused were not around deceased at the time of incident and they were at miles away while deceased was put up with parents. There is no live link on the point of inducement, abetment or instigation to commit suicide. Hence, even this charge fails.

Charge of Section 3 and 4 of the Dowry Prohibition Act :

27. There is little or no evidence on the point of charge under these Sections.

CONCLUSION

28. Perused the judgment under challenge. Learned trial Court has apparently, in its judgment, not considered the aspect of cogent and reliable evidence about ill treatment reported by deceased to prosecution witnesses. Rather it has come on record that there used to be occasional talks. As stated above, CDR details are not on record to substantiate the same. Therefore, when essential ingredients for attracting Section 498-A of the IPC are missing, the observations and findings of trial Court cannot be allowed to be sustained.

Likewise, as regards to other charges of Section 306 and Section 304-B of the IPC are concerned, learned trial Court appears to have erred in shifting burden on accused to prove that death was accidental one and that they have admitted post mortem report. Resultantly, the observations in paragraph No.21 of the Judgment also cannot be allowed to be sustained. Apart from this, the charge under Sections 3 and 4 of the Dowry Prohibition Act is also not proved. Therefore, appeal deserves to be allowed. Accordingly, following order is passed:

ORDER

- I. The Criminal Appeal is allowed.
- II. The conviction awarded to the appellant Nos.(1) Pradeep S/o. Gangadhar Nagargoje, (2) Gangadhar S/o Pundlik Nagargoje and (3) Jankabai W/o Gangadhar Nagargoje by learned Additional Sessions Judge, Udgir in Sessions Case No.50 of 2009 under Sections 498-A, 306, 304-B read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, on 19-07-2017, stands quashed and set aside.
- III. The appellant Nos.(1) Pradeep S/o. Gangadhar Nagargoje, (2) Gangadhar S/o Pundlik Nagargoje and (3) Jankabai W/o Gangadhar Nagargoje stand acquitted of the offence punishable under Sections 498-A, 306, 304-B read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]