

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

CRIMINAL APPEAL NO. 557 OF 2003

[1] Datta S/o Santoba Kamble,
Age : 25 years, Occ. Labour,
R/o. Gawali Pimpri, Tq. Sonpeth,
Dist. Parbhani.

[2] Godavaribai W/o Santoba Kamble,
Age : 46 years, Occ. Household,
R/o. Gawali Pimpri, Tq. Sonpeth,
Dist. Parbhani.

[3] Santoba S/o Ganpat Kamble,
Age : 51 years, Occ. Labour,
R/o. Gawali Pimpri, Tq. Sonpeth,
Dist. Parbhani. (Appeal Abated).

.. **Appellants**

Versus

The State of Maharashtra

.. **Respondent**

.....
Mr A. P. Bhandari, Advocate for the appellants
Ms Priti Diggikar, APP for respondent/State
.....

**CORAM : V. L. ACHLIYA, J.
DATED : 13TH OCTOBER, 2016.**

ORAL JUDGMENT : -

. Being aggrieved by judgment and order dt. 08.07.2006 passed in Sessions Case No. 22/2000 by Id. Ad-hoc Addl. Sessions Judge, Parbhani, the appellants have preferred this Appeal. The appellant Nos. 1 and 2 along with

appellant No. 3 were tried for offence u/s 498A, 306 r/w Section 34 of the IPC. On conclusion of trial, they were acquitted for offence u/s 306 r/w Section 34 of the IPC. However, they were convicted for offence u/s 498A r/w Section 34 of the IPC. The appellant No. 1 sentenced to undergo RI for three years and to pay fine of Rs. 1,000/- and in default, to undergo RI for three months. The appellant No. 2 sentenced to suffer RI for two years and pay fine of Rs. 500/- and in default, to undergo SI for one month. The appellant No. 3 also convicted u/s 498A of the IPC. During the pendency of appeal, the appellant No. 3 died on 31.08.2009 and hence, the appeal stands abated to the extent of appellant No. 3. For the sake of convenience, the appellants are described as they were referred in the impugned judgment.

2. Briefly stated the facts of the prosecution case are as under:-

- (a) Prosecution has approached with a case that, the marriage between the accused No. 1 and Pratibha (hereinafter referred to as "Deceased") was solemnized on 09.03.1999 and after the marriage, she started to cohabit with the accused No. 1 at her matrimonial house at village Gawali Pimpri. For the period of one month, she was treated properly. Thereafter, she was subjected to ill-treatment and harassment by the accused persons on account of non-fulfillment of their demands of Rs. 10,000/- to purchase motor bike and to secure job for accused No. 1 and payment of Rs. 4,000/- which remained to be payable by accused No. 1 to his creditor on account of purchase of clothes on the credit of father of deceased. Whenever the deceased used to visit

her parents, she used to disclose about the ill-treatment and harassment meted out to her by the accused persons. Few days prior to the incident i.e. on 02.09.1999, the deceased was sent to her matrimonial house by her parents after convincing her and her father-in-law i.e. accused No. 3 that they will try to fulfill their demands to the extent possible for them.

- (b) On 11.09.1999, deceased Pratibha was admitted in SRTM Medical College & Hospital at Ambajogai in a burn condition. On receipt of M.L.C. Papers from the Medical Officer attached to said Hospital, Police Constable – Sambhaji Gajkosh (PW2) posted on duty with Police Chowki/Outpost of Police Station Ambajogai, visited the burn ward and found Pratibha Datta Kamble (deceased) r/o. Gawali Pimpri, lying admitted in burn condition. He therefore met Dr. Pote (PW6), the Medical Officer on duty and I/c of the Burn Ward and disclosed his intention to record the statement of Pratibha (deceased). He enquired from the Doctor as to whether she was in conscious state of mind to give the statement. After examination, the said Medical Officer told him that, she was in proper state of mind and he can record her statement. He therefore recorded her statement. In her statement, the deceased disclosed that she was harassed by accused persons on account of demand of Rs. 10,000/- for purchasing motorcycle as well as payment of Rs. 4,000/- which the accused were insisting to be paid by her father towards the clothes purchased in

the marriage on credit of her father. She was kept without food for three days and also assaulted by the accused. Due to continuous ill-treatment and harassment, she poured kerosene on her person and set her ablaze. On the basis of this complaint, the offence u/s 498A, 323 of the IPC came to be registered vide C.R. No. 0/1999 with Police Station, Ambajogai and subsequently, the complaint was forwarded to Police Station, Sonpeth as the incident in question was occurred within the jurisdiction of Police Station Sonpeth. On receipt of copy of the complaint at Police Station, Sonpeth the crime came to be registered as C. R. No. 59/1999 and further investigation was conducted. On 16.09.1999, the deceased succumbed to burn injuries. Inquest panchanama of her dead body was prepared. Later on the dead body was referred for post-mortem. Dr. Kachare (PW1) conducted the post-mortem. PSI- Hanmant Gaikwad (PW5) conducted the further investigation. During the course of investigation, the offence u/s 306 of the IPC added and further investigation was conducted. On 17.09.1999 the statement of the parents of the deceased Pundlik (PW3) and Meena (PW4) were recorded. On 18.09.199, the accused were arrested. On completion of the investigation, the charge-sheet was prepared and filed in the Court of J.M.F.C. Gangakhed, Dist. Parbhani. In the due course, the case was committed to Sessions Court. On 16.08.2002, the charge was framed u/s 306, 498A r/w Section 34 of the IPC. The accused pleaded not guilty and claimed to be

tried.

- (c) In order to prove guilt against the accused, the prosecution examined six witnesses. The accused also examined one witness in defence. The accused has taken defence of total denial and false implication at the instance of the parents of the deceased. According to accused, the deceased sustained burn injuries accidentally while cooking food.
- (d) On conclusion of the trial, the ld. Ad-hoc Addl. Sessions Judge has acquitted the appellants/accused u/s 306 r/w 34 of the IPC. However, they were convicted for commuting offence u/s 498A r/w 34 of the IPC and awarded sentence as stated above. Being aggrieved, the appellants have preferred this appeal. During the pendency of appeal, the appellant No. 3 expired and hence, appeal stands abated as against him. Now the present appeal is prosecuted by appellants No. 1 and 2/original accused No. 1 & 2.

3. Mr. Bhandari, learned counsel for the appellants strongly assailed the reasons and findings recorded by the trial Court with contention that same are self-contradictory and based upon improper appreciation of evidence. He has pointed out that, the ld. Judge of the trial Court has disbelieved and discarded the dying-declaration Exh. 36 by observing same as not truthful and can not form basis to convict the appellants. Not only this, the ld. Judge of the trial Court on consideration of the evidence adduced by the prosecution as

well as the defence witness, has observed that the prosecution has failed to prove that the deceased has died on account of suicide. He has further pointed out that, on due consideration of evidence of the defence witness Dr. Pote, the Id. Judge has observed that the possibility of the deceased sustained the burn injuries accidentally and died due to accidental injuries cannot be ruled out. He has further contended that, though the Id. Addl. Sessions Judge has disbelieved testimony of PW3 and PW4 so far as offence u/s 306 of IPC, the conviction u/s 498A of IPC has been awarded on the basis of same witnesses. He has further submitted that, PW3 and PW4 are the parents of the deceased and closely related persons. There is no corroboration to the testimony of PW3 and PW4 from any of the independent witness. In absence of corroboration from any independent witness, it is highly unsafe to base the conviction on their testimony. He has further submitted that the over all evidence on record noway justify conviction of appellants u/s 498A of IPC and urged to acquit them. In support of the submissions advanced, the learned counsel for the appellant has referred and relied upon decisions of the Hon'ble Apex Court in the cases of **Girdhar Shankar Tawade v. State of Maharashtra** reported in AIR 2002 SC 2078, **Ghusabhai Raisangbhai Chorasiya & Ors. Versus State of Gujarat** reported in AIR 2015 SC 2670, **Gananath Pattnaik Versus State of Orissa** reported in (2002) 2 SCC 619 & **Pinakin Mahipatray Rawal Versus State of Gujarat** reported in AIR 2014 SC 331.

4. On the other hand, learned APP has strenuously contended that the prosecution has proved its case beyond reasonable doubt. She has

submitted that, charge u/s 306 and 498A of the IPC are altogether different and independent from each other. The acquittal of accused u/s 306 of the IPC would not entail acquittal u/s 498A of the IPC. In support of this submission, the learned APP has relied upon the decision of the Hon'ble Apex Court in the case of **Girdhar Shankar Tawade v. State of Maharashtra** reported in **AIR. 2002 SC 2078**. She has submitted that, the testimony of PW3 & PW4 is quite sufficient to prove the charge u/s 498A of the IPC. She has further submitted that the testimony of PW3 & PW4 cannot be discarded solely for the reason that there is no corroboration to their testimony from independent witness. She has further submitted that, it is not a mandatory requirement of law that in each and every case, the prosecution must examine independent witness. It depends on the facts of each case to decide whether the non-examination of independent witness affects the over all credibility of witnesses examined by the prosecution. Testimony of closely related persons can be safely relied if such testimony are otherwise found to be reliable. Only precaution requires to be taken that the testimony of such related witnesses needs be scrutinized with greater caution and if requires court may seek corroboration from independent evidence. She therefore submits that the testimony of said witnesses can be safely relied without corroboration. She has supported the reasons and findings recorded by the trial Court & submitted that the judgment and order of trial Court calls for no interference.

5. I have carefully considered the submissions advanced in the light of oral and documentary evidence on record. The prosecution case entirely based upon the dying declaration of the deceased made to Sambhaji (PW2)

and oral testimony of Pundlik (PW3) & Meena (PW4) i.e. father and mother of the deceased. On due consideration of the evidence, the trial Court discarded the dying declaration as same found to be not truthful. The trial Court has also observed that the prosecution has failed to prove that the deceased died Suicidal Death. Considering the evidence in depth which includes the testimony of defence witness Dr. Shete (DW1), the learned Addl. Sessions Judge has acquitted the accused u/s 306 r/w 34 of the IPC. The acquittal of the accused u/s 306 of the IPC is not challenged by the State. In this view, the only question which falls for consideration in this appeal is whether the prosecution has proved its case beyond reasonable doubt to prove the charge u/s 498A r/w 34 of the IPC against the accused.

6. In order to appreciate the submissions advanced, it is necessary to consider the purport of Section 498A of the IPC, which reads as under :-

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

. Thus, if we consider the over all case of the prosecution in the light of reasons and findings recorded by the trial Court to acquit accused u/s 306 of the IPC and held that the prosecution has failed to prove that the

deceased has died a suicidal death, no case stands against the accused to attract the offence u/s 498A of the IPC so far as the act of cruelty defined as per clause (a) of Section 498A of the IPC. Therefore, the further question falls for consideration is; whether the prosecution has proved the cruelty as defined under clause (b) of Section 498A of IPC. It is therefore necessary to examine the case from the view point that prosecution has adduced sufficient evidence to establish that the deceased was subjected to such harassment by an accused with a view to coerce her or any person related to her to meet any unlawful demand for property or valuable security or is on account of failure by her or any person related to her to meet such unlawful demand.

7. In order to prove the charge u/s 498A r/w 34 of the IPC, the prosecution has mainly relied upon the testimony of PW3 and PW4 i.e. the parents of the deceased. Pundlik (PW3) has testified before the Court vide Exh.40. In nutshell, PW3 has deposed that, the marriage of his daughter was performed on 9.3.1999 with Datta i.e. accused No. 1. In the marriage, Rs. 7051/- together with household articles provided to accused No. 1 and the marriage expenses were borne by him. Initially for the period of 1 ½ month, there was no ill-treatment and harassment to her and she was living happy marital life. However, during the summer season, when Pratibha visited her house, she disclosed that her in-laws, husband and his younger brother are telling her to ask him to provide employment to Datta and further provide Rs. 10,000/- for purchasing motor bike. She further told that amount of Rs. 4,000/- which was spent by accused in marriage for purchasing clothes & purchased on his credit shall also be paid by him. The accused were beating

and abusing her in order to bring those things from him. He convinced his daughter and sent back to her matrimonial house. Later on at the time of Panchami, Pratibha was brought to his house by her father and at that time, she disclosed that she being kept on starvation by accused and also assaulted for non-fulfillment of said demands. After Rakhi Pournima, father of accused No. 1 came to fetch Pratibha. At that time, he and his father told accused No. 3 that no ill-treatment be given to Pratibha and he had no means to satisfy their demands, but they will try to satisfy their demand to some extent. On 02.09.1999, Pratibha sent to her matrimonial house with accused No. 3. He further deposed that, on 11.09.1999, the accused No. 1 came to him and informed that Pratibha is admitted in burn condition in the Hospital at Ambajogai. He, therefore, went to Ambajogai along with his brother, wife and others and met Pratibha in Hospital. She told him that, there was severe ill-treatment to her from her in-laws, husband and younger brother of husband and so also there was beating to her due to failure on their part to fulfill their demands. She further told that, she was not provided with food and put to starvation and, therefore, she burnt herself. In the cross-examination, PW3 has admitted that the accused owns no agricultural lands and they work as agricultural labourer. He further admitted that, he owns six acres of land and served in Defence Service for 15 years. He also admitted that, Godavari, sister of his father related with accused and residing at Gawali Pimpri. He has not disclosed about the ill-treatment and demand of money to Godavari and other relatives. He admitted that, he has not lodged complaint after he met Pratibha in hospital. He admitted that due to burn injuries, he was annoyed and met Dy.S.P.

8. In order to prove the charge u/s 498A of the IPC, the prosecution has further examined Meena (PW4), mother of the victim. She has testified before the Court vide Exh. 44. She has deposed that, initially for a period of 1 ½ months, Pratibha was treated properly. After a period of two months of her marriage, she was brought to home by her grandfather. At that time, she told her that, there was ill-treatment to her at the hands of her in-laws, husband and his brother. She deposed on same lines as that of PW3. She deposed that, after Rakhi Pournima, father-in-law of the Pratibha came to their house in order to fetch Pratibha and during his visit, her father convinced Santoba not to cause ill-treatment to Pratibha in future and something will be provided to them. Thereafter, Pratibha went to her matrimonial house. About 9-10 days thereafter, her husband came and informed them that Pratibha lying admitted in Hospital in burn condition. She visited Pratibha along with her husband and other relatives. Pratibha told her that accused demanded Rs. 10,000/-. As the said demand of accused was not fulfilled, she was not provided food for three days and she was abused and beaten during said period. She committed suicide as it become unbearable for her to sustain such ill-treatment and harassment. In the cross-examination, PW4 has deposed that during first visit, Pratibha has not disclosed about demand of money as well as payment of Rs. 4,000/- towards the clothes purchased on credit. She deposed that, she has not disclosed the fact about the demand and ill-treatment subjected to Pratibha to any other person. She has further deposed that, she is deposing first time before the Court about the ill-treatment meted out to Pratibha.

9. Thus, in the light of the testimony of PW3 and PW4, then in nutshell they have deposed that the deceased was harassed to meet the following demands from her father i.e. PW3.

- (a) To bring Rs. 10,000/- to purchase motorcycle.
- (b) To secure job for accused No. 1 (Datta).
- (c) To pay Rs. 4,000/- towards the clothes purchased in marriage by accused on the credit of PW3.

10. Out of the three demands, the demand to secure employment cannot fall within the scope of clause (b) of Section 498A of IPC to attract the offence of cruelty. So also the insistence to pay Rs. 4,000/- to the person from whom the clothes purchased on the credit by PW3 can also not be termed as a demand within the ambit of clause (b) of Section 498A of the IPC. Therefore, the only demand which can be termed on the part of accused which leads to harassment can be said to be non-fulfillment of demand to pay Rs. 10,000/- to purchase motor-bike. In this view, it is necessary to consider whether the prosecution has proved cogent, convincing evidence to establish the charge u/s 498A of the IPC. The only evidence adduced by the prosecution to establish cruelty is the oral testimony of PW3 and PW4. There is no independent witness examined by the prosecution either independently establish the offence as well as to provide corroboration to the oral testimony of PW3 and PW4. Therefore, the entire case rests upon the oral testimony of PW3 and PW4.

11. On analyzing the testimony of PW3 & PW4, I am of the view that there is no cogent, convincing evidence to sustain the charge u/s 498A of the IPC. If we consider the testimony of PW3 and PW4 on the point of demand made by accused through Pratibha and she being subjected to harassment to meet such demands then there is no consistency amongst the material facts deposed by them. As discussed, PW3 has deposed that initially for a period of the month the deceased had no ill-treatment and she was living happy marital life. PW4 has deposed that, for initial period of 1½ months, the deceased was maintained properly by the accused persons. PW3 has deposed that, after two months of marriage, at the first time when Pratibha came to house she disclosed about the alleged demand and ill-treatment. PW4 though stated in her examination-in-chief that after two months when she was brought to her house by her grand-father she disclosed about the demand of Rs. 10,000/- and payment of Rs. 4,000/- but she has not said anything about the demand made to secure employment to accused. In the cross-examination, Meena (PW4) the mother of deceased has stated in equivocal terms that on first return the deceased Pratibha did not disclose demand of money or payment of Rs. 4,000/-. Thus, there is material variance in the testimony of PW3 and PW4 about the alleged demands made on behalf of the accused through Pratibha. The entire allegations are made without any specification. PW3 has admitted in his cross-examination that, his statement was recorded before Juvenile Court where co-accused Janardhan Santoba Kamble, aged 12 years, the younger brother of the accused No. 1 and son of accused No. 3 tried separately for offence u/s 306 & 498A of IPC as J.C. Case No. 49/1999. When attention of PW3 was invited to his previous statement made vide Exh. 43

before the Juvenile Court, PW3 disputed the correctness of the statement and went to the extent of stating that his statement was not correctly recorded before the Juvenile Court. Perusal of the certified copy of the deposition placed on record shows that, PW3 has given altogether different story about ill-treatment and harassment meted out to the deceased. The fact regarding demand of Rs. 10,000/- for purchase of motor-bike and payment towards clothes purchased on credit is even not whispered in his testimony recorded before the Juvenile Court. The facts narrated before the Juvenile Court about the alleged ill-treatment and harassment reads as under: -

“Deceased Pratibha was my daughter. Her marriage with Datta Kamble, R/o. Pimpro, Tq. Sonpeth took place on 9th March, 1999. After the marriage my daughter went to the house of her husband for resident. My daughter Pratibha was residing with Juvenile who is her brother in law, her father in law, mother in law and her husband. After one month from the marriage, Datta Kamble started to saying that, I should manager for his Govt. job or establish business at Sonpeth. After 2 to 3 months from the marriage of Pratibha there was a festival of Panchami. I brought Pratibha for the festival of Panchami at my house. At that time, Pratibha informed me about the above demand of her husband, mother in law and father in law. I told my daughter that, at present due to expenses of marriage, I am not in financial position to set up a business for her husband, it is not possible to provide Govt. job immediately. After Panchami, father in law of my daughter – Santoba Kamble came to my house to take back my daughter. After having dinner father in law raised a topic for discussion that, I should start business for Datta but I told that now it is not possible. He also asked me to see any Govt. job for Datta, but I told that, it is not possible, I persuade the father in law of the complainant, and thereafter, send Pratibha and her father in law to their house.

2) *Thereafter, Pratibha was subjected to ill-treatment. Father in law, mother in law, and husband of Pratibha were keeping her on starvation. Pratibha was confined for 3 days without any food. She was not allowed to keep contact with any one. Whenever, father in law, mother in law and husband of Pratibha required to put of house, juvenile used to keep watch on Pratibha and was not allowing her to take food. ON 4th day due to hunger when Pratibha took a bread (Bhakari) for eating juvenile snatched that bread from the hands of Pratibha and slapped on her cheek. He did not allow Pratibha to eat that bread. Juvenile threatened Pratibha that, she*

should see what will happen after one hour, kerosene is brought in the house. Thereafter, father in law, mother in law and husband of Pratibha returned to house. They removed ornaments from the person of Pratibha, juvenile snatched the "Nath" of Pratibha. Juvenile and other members kept kerosene can in front of Pratibha and thereafter, they asked Pratibha that, she should set on fire herself by pouring kerosene on her person and they will not allow her to live. Thereafter, juvenile gave match box to the Pratibha and then Pratibha set herself on fire, due to ill-treatment. When Pratibha could not bear the pains after caughting fire, she came out of the house. Outsiders gathered and tried to extinguish her fire. When outsiders gathered there, juvenile and other family members ran away. They did not took the Pratibha to the hospital. Cousine brother of juvenile – Ganesh Shankar Kamble and some other 10 to 15 villagers brought Pratibha to the hospital at Sonpeth but Pratibha was referred to Govt. hospital, Ambejogai.

. Thus, the facts relating to the incident deposed by PW3 before the trial Court are altogether different than the facts regarding the same incident deposed before the Juvenile Court in a proceeding arising out of same incident but tried separately.

12. If we examine the testimony of PW3 and PW4 in the light of the facts deposed by PW3 before the Juvenile Court, then there is no whisper of demand of Rs. 10,000/- to purchase motor-bike as well as demand to make payment of Rs. 4,000/- towards the clothes purchased on credit. In the cross-examination before the Juvenile Court, PW3 has categorically deposed that prior to arrival of Pratibha i.e. deceased to his house she had no knowledge about the demand of her husband and in-laws. He has further deposed that, after the marriage of Pratibha he had gone to village Pimpri for two times. First time, he had gone to village Pimpri for bringing Pratibha for 'Yeti-Jati' and for the second time for bringing Pratibha for festival of Panchami. At the time of second visit, he stayed at the house of Pratibha for 2-3 hours. At that time, in-laws of Pratibha never raised topic of Govt. job or establishing the

business for Datta. Thus, it is highly unsafe to place reliance upon the testimony of such highly interested witnesses to sustain the conviction who has given two different version of ill-treatment & harassment to deceased before two different Courts. In the light of over all evidence on record, PW3 and PW4 cannot be treated as reliable witness to base the conviction.

13. It is pertinent to note that, as per the testimony of PW3 and PW4 they met the deceased in hospital on 11.09.1999 and the deceased disclosed the reason for setting herself on fire but they have not lodged any complaint. The deceased succumbed to the injuries on 16.09.1999. Thereafter, PW3 and PW4 have given statement against the accused. PW3 has admitted in cross-examination that, due to death of deceased he was annoyed. In fact, in such circumstances, the natural conduct of PW3 & PW4 should have been immediately visited the Police Station and lodge complaint against the accused. It is also pertinent to note that, statement of witnesses were not recorded till the death of deceased though it is claimed that the offence was registered on 13.09.1999. PSI – Gaikwad (PW5) has admitted in his cross-examination that he had not made any attempt to record the statements of persons residing at village Gawali Pimpri where the incident was occurred. He has also not recorded the statement of person who extinguished the flames on the body of the deceased. Thus the investigation of the case has been conducted in a most casual manner.

14. In support of their defence, the accused have examined Dr. Prem Sadashiv Shete (DW1), Medical Officer attached to Rural Hospital at Sonpeth

who has testified before the Court vide Exh. 61. He has categorically stated that, on 11.09.1999 at about 2.45 p.m. the deceased was brought to Primary Health Centre at Sonpeth while he was present on duty as a Medical Officer. She was having burn injuries on her person. He had taken entry about her admission in the MLC Register & also recorded the history of the burn injuries on her person. He has categorically deposed that, he had obtained the history of the burn injuries from Pratibha herself. In the history given, the deceased has stated that due to accident by stove, she sustained burn injuries at about 2.00 p.m. He further deposed that, he recorded the same in the MLC register and also obtained her thumb impression in that register. The extract of admission register duly verified from the original which was admitted in evidence is at Exh. 62, the contents of which read as under:-

Medico Legal Case Register

Sr. No.	Name of injured person	Identification Marks	Date, time of Exam.	Site of Injury	Remarks
1.	Pratibha w/o. Datta Kamble, 20 Yrs. Female, R/o. Gavli Pimpri	Old Scar Ltd. Cheek	11.9.1999 11.45 nn	Burn over body except face below knee & Rt. Arm.	H/o Accidental burn by stove at 14 hrs. accidentally.

. In the cross-examination of DW1, nothing has been elicited to discard the oral testimony of DW1 duly corroborated by the documentary evidence. It is quite pertinent to note that, the trial Court though believed the testimony of DW1 in reaching to the conclusion that the prosecution has failed to prove that the deceased died a suicidal death, the testimony of DW1 has not been taken into account while convicting the appellants for offence u/s 498A of the IPC.

15. It has been brought on record that, the accused belongs to labour class. They were earning their livelihood by doing labour work. The deceased was quite educated girl and studied upto 12th std. She was coming from comparatively well to do family. PW3 has deposed in his cross-examination that he has passed HSC examination and doing agricultural work. He has further deposed that, he owns six acres of land and served in Defence Service for 15 years. He has admitted in his cross-examination that, all the accused works on wages and the father of accused No. 1 owns no land. In these circumstances, the possibility cannot be ruled out that the deceased may not be happy with her marriage and more particularly, due to her marriage with a boy from such a poor family. Therefore, the possibility of suicide being committed by her own for the reasons other than alleged harassment cannot be ruled out in the facts and circumstances of the case.

16. If we consider the over all evidence, it is nowhere the case of the prosecution that prior to incident the deceased has left the matrimonial house on account of ill-treatment and harassment. On the contrary, it has come on record that for every festival, the deceased was coming to her parents house. It is nowhere the case that the deceased has refused to go to her matrimonial house on account of ill-treatment and harassment on the part of the accused. In the light of the evidence on record, it is difficult to believe that the deceased was subjected to harassment to fulfill the demand to purchase the motor bike. If we consider the testimony of PW1, then in the marriage itself the articles worth Rs. 7,000/- were given to deceased. It is nowhere the case that, in the marriage it was agreed to provide motor cycle to accused No. 1. It

is, therefore, difficult to believe that the deceased was subjected to harassment in order to meet the demands as deposed by PW3 and PW4. It is well settled position in law that, while dealing with testimony of closely related witnesses, the Court must scrutinize their evidence with utmost caution and if required must insist for corroboration. In the case in hand, there is no such corroboration to the testimony of PW3 & PW4, who are closely related to deceased and highly interested to see the accused being convicted. It is, therefore, unsafe to base the conviction on oral testimony of such highly interested persons. In this context, Mr. Bhandari, learned counsel for the appellant has rightly placed reliance upon the decision of the Apex Court in the case of **Gananath Pattnaik Versus State of Orissa** reported in **(2002) 2 SCC 619**, wherein the Apex Court has observed that, the concept of cruelty and its effect varies from individual to individual, also depend upon the social and economic status to which such person belongs. As discussed, the accused belongs to the poor strata of the family and working as Labourer. It is, therefore, difficult to believe that they were demanding Rs. 10,000/- for purchase of the motor-bike and for that purpose, deceased was subjected to harassment. It is nowhere the case of prosecution that the person from whom the clothes were purchased on credit was making demand of money to accused and due to this reason, the accused were insisting father of the deceased to clear dues on account of purchase of the clothes in the marriage.

17. Mrs Diggikar, learned APP has referred and relied upon the decision of the Hon'ble Apex Court in the case of **Girdhar Shankar Tawade Vs. State of Maharashtra** (supra) in support of the submission that the

acquittal of the accused u/s 306 of the IPC would not automatically entail acquittal of the accused u/s 498A of the IPC. There is absolutely no dispute as to the legal proposition laid down in the case cited as the offence u/s 498A and Section 306 of the IPC are altogether independent offences and acquittal of accused u/s 306 of IPC itself cannot result in acquittal u/s 498A of the IPC. In fact, the ld. Counsel for the appellants has also placed reliance on same decision in support of the submission that in order to prove the guilt u/s 498A of the IPC, it is incumbent upon the prosecution to prove the cruelty on the part of the accused as defined either under clause (a) or clause (b) of Section 498A of the IPC. In para 3, the Apex Court has discussed the purport of Section 498A and observed as under:-

“The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A.”

18. In the light of discussion made in foregoing para, I am of the view that, the reasons and findings recorded by the trial Court are not sustainable in law as same are based upon improper appreciation of evidence and settled

position in law. The sole testimony of PW3 & PW4 cannot form basis to convict the appellants u/s 498A of IPC. In absence of independent evidence to corroborate the testimony of PW3 and PW4, it is highly unsafe to base the conviction. As discussed, the testimony of the PW3 & PW4 are found to be not convincing and reliable to base the conviction. In absence of cogent & convincing evidence to establish that the deceased was subjected to harassment to meet the unlawful demands, the conviction of the appellants u/s 498A of IPC is not sustainable in law. In fact, there is no cogent & convincing evidence to prove that deceased was subjected to harassment to coerce her or her parents to meet the unlawful demand on the part of the accused. On due consideration of the evidence, I am of the view that the accused deserves to be given benefit of doubt. In this view, I am inclined to allow the appeal and set aside the impugned judgment and order. Hence, the following order.

ORDER

The Criminal Appeal No. 557 of 2003 is allowed in terms of prayer clause [B]. The conviction of appellants No. 1 and 2 under Section 498-A r/w Section 34 of the Indian Penal Code is set aside. They be set at liberty if not required in any other case. Fine amount, if any deposited by the appellants, same be refunded to them.

[V. L. ACHLIYA]
JUDGE