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

CRIMINAL REVISION APPLICATION NO. 326 OF 2003

1. Balu Shivram Adsul,
Age: 25 years, Occ: Agri.,
2. Shivram Appaji Adsul,
Age: 57 years, Occ: Agri.,
3. Sindhubai Shivram Adsul,
Age: 49 years, Occ: Household work,
4. Daulat Shivram Adsul,
Age: 20 years, Occ: Education,
5. Santosh Shivram Adsul,
Age: 23 years, Occ: Service,

All are R/o Kalkup, Tal.Parner,
District Ahmednagar. ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr N.C. Garud, Advocate for applicant;
Mr K.D. Munde, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 27th OCTOBER, 2016

ORAL JUDGMENT :

Present applicants-accused are convicted
by learned 3rd Adhoc Assistant Sessions Judge,

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Ahmednagar, in Sessions Case No. 141 of 2000, for the offence punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code and are ordered to suffer sentence of rigorous imprisonment for five years with fine of Rs.500/-, in default to suffer rigorous imprisonment for one month for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code and rigorous imprisonment for one year with fine of Rs.500/-, in default to suffer rigorous imprisonment for one month for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, which was further confirmed in appeal being Criminal Appeal No. 36 of 2001 to the extent of punishment under Section 498-A and 306 of the Indian Penal Code.

2. The facts as are necessary for deciding the present criminal revision application are as under :-

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Complainant Baban having three brothers, of which, one was residing at village Jamgaon and other brother Rangnath was residing with him in their vasti after partition.

3. Savita was daughter of Rangnath and wife of accused Balu were residing at village Kalkup Taluka Parner, District Ahmednagar. Deceased Savita and accused Balu were married on 17th April, 2000.

4. It is the case of prosecution that since the dowry amount of Rs.10,000/- was not paid, deceased Savita was subjected to cruelty at the hands of present accused persons. It is then claimed that on 8th August, 2000 Savita committed suicide by jumping in the well, which was abetted by present applicants, resulting into registration of Crime No. I-185 of 2000 for the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code.

5. The applicants were convicted for an

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offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code by learned Assistant Sessions Judge, Ahmednagar in Sessions Case No. 141 of 2000 on 29th June, 2001, which was confirmed in appeal vide order dated 5th September, 2003 in Criminal Appeal No. 36 of 2001. As such, present criminal revision.

6. So as to prove prosecution case, the prosecution has examined in all eight witnesses. PW-1 Dr. Krishna Raut at Exhibit-35, who carried post mortem with the help of Dr. Gadre, who has proved post mortem report at Exhibit-36, PW-2 Baban Ghavate at Exhibit-37, paternal uncle of deceased Savita, PW-3 Baban Dhurpate at Exhibit-39, panch witness on inquest panchnama at Exhibit-40, PW-4 Sidheshwar Shinde at Exhibit-41, panch on spot panchnama at Exhibit-42, PW-5 Rangnath Ghavate, father of deceased Savita at Exhibit-43, PW-6 Chhabubai, paternal aunt of deceased Savita at Exhibit-44, PW-7 R.M. Thorat, Police Station Officer of Parner police station at Exhibit-45, who

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has proved first information report at Exhibit-38, PW-8 C.D. Dhakrao, P.S.I. at Exhibit-47, who has investigated the crime in question. C.A. report at Exhibit-27 is not in dispute.

7. While questioning the conviction and trying to make out a case for acquittal, Mr. Garud, learned Counsel for the applicants would submit that the case of the prosecution as that of involvement of the applicants in the matter of practising cruelty on deceased Savita and abetting her suicide is not proved beyond reasonable doubt. According to him, cruelty as has been claimed is not proved as he has relied upon the contents of the first information report in paragraph-1 to that effect. While pointing out the defence of the accused, he would invite attention of this Court to question No. 24 in the statement recorded under Section 313 of the Code of Criminal Procedure. He would then urge that from the evidence, it could be gathered that in the marriage, there was no difference or complaint. According to him, when

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the deceased died, nail polish and Mehendi was noted on the part of her body, which speaks freedom enjoyed by the deceased. He would then urge that having regard to the sound financial position of the applicants, house was already constructed by the applicants and there was no necessity to demand any dowry. According to him, Chhabubai, one of the witness is owner of the adjoining land of the land owned by the applicants, which was purchased by them by passing the claim of Chhabubai as she wanted to purchase the said land, resulting into dispute between two families, which according to him is a cause for false implication. Based on the same, he has tried to make out case for grant of acquittal. He would then urge that what could be inferred from the contents of first information report and other material on record is, there are sweeping allegations against the accused persons, which can not be substantiated. According to him, no reasonable nexus between the alleged cruelty and suicide is proved and prayed for acquittal of the applicants.

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While resisting the claim for acquittal, learned A.P.P. would urge that both the Courts below have convicted the accused, hence, this Court should be slow in interfering with the order of conviction. According to him, P.W.2, P.W.5 and P.W.6 — Rangnath, Baban and Chhabubai, in categorical terms had stated about the ill-treatment and cruelty meted out to deceased Savita. The prosecution has proved the case beyond reasonable doubt.

From the rival submission and the original record, what can be observed is PW-7 Thorat, who was working as Police Station Officer at Parner Police Station received the complaint from complainant Baban Ghavate on 8th August, 2000 and proved the same at Exhibit-38. He stated that he registered Crime No. 185 of 2000 for the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code and handed over the investigation to P.S.I. Dhakrao, who is

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examined as PW-8 at Exhibit-47.

8. PW-8 P.S.I. Dhakrao has deposed in favour of drawing of spot panchnama, inquest panchnama. He denied the suggestion that he noticed pots lying on the bank of well, in which, Savita was died of drowning. He stated that he could gather from the statement of witness Rangnath that Savita was illtreated. He admits that he has prepared spot panchnama on the next day morning because of darkness. He denied the suggestion that deceased died of being slipping in the well.

9. PW-2 Baban Ghavate in his cross examination has denied the suggestion that from Chhabubai, his real sister, there was opposition for marriage of Savita with accused Balu, however, in his examination, he has spoken about the demand of Rs.10,000/- by accused Balu and other accused persons for buying centering plates used in construction work for business purpose. He admits that accused Shivram, after retirement, might have

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received Rs.4,00,000/- and improved his agricultural land and house. He admits in his examination in chief that Chhabubai, PW-6 was mediator for the marriage of deceased Savita and accused Balu. He admits that the accused purchased land from Gangubai, which was adjoining to the land of Chhabubai, PW-6, brother of this witness and complainant. He also admits that during marriage, people from both sides were happy as Savita was married in reputed family. He claims that Savita visited only once to the place of her paternal house. He was unable to explain why in the police statement recorded under Section 162 of the Code of Criminal Procedure, portion mark "A" that Savita in the month of Ashad was brought to his place by her father in law – accused. He admits that prior to marriage of accused, his house was properly constructed. He is unable to explain as to why it is mentioned in the first information report that his daughter stayed for the period of three days in Ashad month. As such, contradictions could be noticed as regards satisfaction of this witness and

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his family members over the marriage.

10. PW-5 Rangnath narrated about the illtreatment and demand of dowry of Rs.10,000/-. He speaks about omission about mentioning visit of deceased Savita to his house at the time of Panchami festival, so also in Ashad month. He claims that Savita visited his house three times after the marriage. He admits that accused Shivram was serving at Mumbai. He then admits that he being father of deceased Savita, he came to know that accused were holding 8 to 10 acres land. He admits that he has not stated about any illtreatment to his daughter in the statement given to the police. He admits that adjoining land of Chhabubai, there is land of accused persons and he was unable to tell whether witness PW-6 Chhabubai was interested in purchase of the said land. He specifically admits that in the marriage, there was no dispute. He admits that deceased Savita along with her husband used to stay with him whenever they used to visit together.

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11. PW-6 Chhabubai, who is examined at Exhibit-44, has narrated about demand of dowry of Rs.10,000/-. She admits that house of Shaila, who has seen Savita after she felled in the well, is at the distance of 10 feet from the mouth of the well. She admits that land of accused is adjoining to her land, however, denied the suggestion that she was intending to purchase land, which was purchased by the accused. She denied that people used to draw water from the well in question and states that well is situated about 50 feet away from the house of accused. She admits that Savita visited four to five times after the marriage, to her parent's house. She stated that Savita narrated about harassment and illtreatment after about fortnight of her date of marriage.

12. From the above narrations, what could be noticed is that all the witnesses i.e. PW-2, uncle, PW-5, father and PW-6 paternal aunt, in categorical terms stated about the illegal demand of

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Rs.10,000/-, however, all the witnesses in their evidence have failed to bring on record the exact illtreatment meted out to deceased Savita. Rather from the evidence, it could be noticed that after marriage, deceased Savita visited her parent's house along with accused Balu for about five times and stayed together with her husband at her parent's place. It is also not part of evidence of any of the witness that whenever Savita visited to her parent's house, she renewed request for demand of Rs.10,000/-. Rather it is brought on record in the evidence of witnesses that particularly, complainant PW-5, that after retirement, the accused constructed their house before the marriage of daughter Savita. It has also come in the evidence of PW-2 that accused Shivram has received Rs.4,00,000/- after retirement and said amount was spent on the improvement to the house and land. The accused persons were holding about 8 to 10 acres of land.

13. It is also brought on record in the

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evidence of PW-6 Chhabubai, sister of PW-2 and PW-5 that the land of accused persons is adjoining to the land of Chhabubai, which was purchased by them after marriage. All these factual matrix on record depict that the accused were in sound financial position and so far as, the demand as is stated by the witnesses is not justified. In the back ground of fact that there are no allegations of particular nature of illtreatment meted out to Savita, it is difficult to infer that Savita was subjected to cruelty. In the above referred back ground, in my opinion, the findings of Court below, particularly as regards cruelty meted to deceased Savita and as such, offence punishable under Section 498-A of the Indian Penal Code is not sustainable.

14. This takes me to the next issue as to whether deceased Savita has died of homicidal or suicidal death.

15. The evidence of PW-1 Dr.Raut speaks that on 9th August, 2000 he conducted post mortem after

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receiving body and opined that death is due to asphyxia i.e. due to drowning. He then stated that C.A. report confirms his opinion. In his cross examination, he stated that deceased might have taken food prior to about eight hours of her death. As some semi digested food found in her stomach, which speaks that deceased Savita was not subjected to starvation. Apart from above, post mortem report which is at Exhibit-36 does not speak of any external injuries on the body of deceased Savita.

16. Upon testing the evidence of PW-1 with that of evidence of PW-2, PW-5 complainant and PW-6 Chhabubai, it is required to be noted that the applicants are charged with offence punishable under Section 306 of the Indian Penal Code i.e. abetment to suicide. Rather it is brought on record and finding is recorded that the deceased Savita was not subjected to illtreatment, the prosecution, in my opinion, has also failed to bring on record sufficient evidence to infer that the present applicants-accused have abetted the

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suicide by deceased Savita.

17. The law contemplates and presupposes innocence of the accused and on going through the evidence as is brought on record, the fact that deceased Savita might have slipped in the well, as she was trying to fetch water from the same, cannot be ruled out, as mouth of well was not constructed or no such evidence is brought on record. There is no evidence on record to infer that deceased Savita apart from PW-2, PW-5 and PW-6 has narrated about any type of illtreatment, much less about the demand of dowry to any other person. Even the statement of the neighbour is recorded, however, the said lady is not examined as witness of the prosecution. No doubt, the evidence of PW-2 and PW-6 cannot be straightway discarded being close relatives, however, the said evidence is required to be analyzed with great care and caution. As it is already observed herein that the nature of illtreatment meted out is not brought on record, in my opinion, there is hardly any material on record

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to infer that present applicants have abetted suicidal death of Savita.

18. It is required to be noted that harassment of wife by husband or in laws would not attract the provisions of Section 306 of the Indian Penal Code. It is also required to be noted that the presumption cannot be given rise to, just because there is case of suicide within period of seven years from the date of marriage or such lady was subjected to cruelty by her husband or relatives. Prima facie what is required to be evaluated is, whether the ingredients of offence punishable under Section 107 of the Indian Penal Code are made out so as to speak of abetment.

19. Appropriate support can be drawn from the judgment of the Apex Court in the matter of **Bhagwan Das vs Kartar Singh & Ors** reported in **A.I.R. 2007 SC 2045** and in the matter of **Sanjay vs. State of Madhya Pradesh** reported in **A.I.R. 2002 SC 1998**.

20. In the light of observations, in my opinion, both the Courts below have committed an error in convicting the accused persons based on insufficient evidence. As such, present revision application against conviction is liable to be allowed. Hence, the following order :-

: O R D E R :

(a) The judgment and order passed by learned 2nd Additional Sessions Judge, Ahmednagar on 5th September, 2003 in Criminal Appeal No. 36 of 2001, confirming the judgment and order passed by learned 3rd Adhoc Assistant Sessions Judge, Ahmednagar, in Sessions Case No. 141 of 2000 on 29th June, 2001 is quashed and set aside.

(b) The applicants are acquitted from the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code.

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(c) Their bail bonds are cancelled.

(d) The applicants are set at liberty forthwith, if not required, in any other offence.

(d) Fine amount, if paid, be refunded to the applicants.

21. Criminal Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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