

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

CRIMINAL APPEAL NO.574 OF 2001

Parasaram s/o Vithal Harde,
Age 54 years, Occupation:
Service, working as a Primary
Teacher, in Zilla Parishad,
Aurangabad, resident of
Galleborgaon, Taluka Khultabad,
District: Aurangabad.

(at present in jail)

**...APPELLANT
(Orig.Appellant No.5)**

VERSUS

1. The State of Maharashtra.
2. Rangnath Hari Jadhav,
Age 50 years, Occupation:
Service, Primary Teacher,
at post Shiur, Taluka Vaijapur,
District Aurangabad.

...RESPONDENTS

...
Mr.N.K.Kakade, Advocate for the appellant.
Mr. S.P.Tiwari, APP for respondent no.1.
Mr. M.P.Kale, Advocate, for respondent no.2.

...

**WITH
CRIMINAL APPEAL NO.580 OF 2001**

1. Karbhari s/o Asaram Bhadait,
Age 31 years, Occ. Service,
R/o. Jalgaon, Tq. Vaijapur,
District : Aurangabad.
- ((2. Asaram s/o Rambhau Bhadait,
Age 65 years, Occ: Agriculture,
R/o as above.

3. Sow. Sumanbai w/o Asaram Bhadait,
Age 59 years, Occ: Household,
R/o as above.))

(APPEAL ABATED AS AGAINST APPELLANT NOS. 2
AND 3 AS PER COURT ORDER DATED 23.2.2016.)

4. Miss Anita D/o Asaram Bhadait,
Age 20 years, Occ: Household,
R/o. as above.

...APPELLANTS

VERSUS

1. The State of Maharashtra.
2. Rangnath s/o Hari Jadhav,
Age major, Occ: Service,
R/o Shivoor, Tq. Vaijapur,
District: Aurangabad.
(Ori.complainant).

...RESPONDENTS

...

Mr. R.N.Dhorde, Senior Advocate, i/b Mr. V.R.Dhorde,
Advocate, for appellants.

Mr. S.P.Tiwari, APP for respondent no.1.

Mr. M.P.Kale, Advocate, for respondent no.2.

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CORAM: P.R. BORA, J.

Date of reserving the judgment: 4/9/2017

Date of pronouncing the judgment: 22/12/2017

JUDGMENT:

1. Both these appeals arise out of the judgment
and order passed by the second Additional Ad hoc
Sessions Judge, Aurangabad, in Sessions Case No.15/2000

decided on 24th of December, 2001.

2. Appellants in both these appeals were prosecuted in the aforesaid Sessions Case for the offenses punishable under Sections 498-A, 306, 323, 504, 506 read with Section 34 of IPC. Appellant nos. 2 and 3 in Criminal Appeal No.580/2001 died during pendency of the present appeal and the appeal, therefore, stood abated against the said appellants. Appellant nos. 1 and 4 in Criminal Appeal No.580/2001 were accused nos. 1 and 4 in the aforesaid Sessions case whereas appellant in Criminal Appeal No.574/2001 was accused no.5 in the aforesaid Sessions case. Appellant nos. 1 and 4 in Criminal Appeal No.580/2001 are hereinafter referred to as accused no.1 and accused no.4 whereas the appellant in Criminal Appeal No.574/2001 is referred to as accused no.5.

3. Learned Sessions Judge has held the appellants guilty for the offenses punishable under Sections 498-A, 306, 504 and 506 read with Section 34 of IPC. Accused no.1 has been sentenced to suffer rigorous imprisonment for ten years and fine of Rs.5,000/-; in default, to suffer

rigorous imprisonment for six months for the offense punishable under Section 306 read with Section 34 of IPC whereas for the offense punishable under Section 498-A read with Section 34 of IPC he has been sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,000/-; in default, rigorous imprisonment for one month. Accused no.1 has also been convicted to pay fine of Rs.500/-; in default to suffer rigorous imprisonment for fifteen days, for each of the offenses punishable under Section 504 and 506 of IPC. The accused no.4 has been given the benefit of the Probation of Offenders Act. The accused no.5 has been imposed with the similar punishment as has been imposed on accused no.1.

4. Accused no.1 had married with deceased Sangita on 9th of May, 1995. Accused no.4 is the real sister of accused no.1 whereas accused no.5 is the maternal uncle of accused no.1. Deceased Sangita suffered an unnatural death on 15.11.1999. As per the prosecution, deceased Sangita committed suicide by consuming poisonous substance at her matrimonial house

at village Jalgaon, taluka Vaijapur, district Aurangabad. It was alleged that the accused persons with common intention subjected deceased Sangita to physical and mental cruelty on account of non fulfillment of their unlawful monetary demands which ultimately drove deceased Sangita to commit suicide by taking poisonous substance. According to the prosecution, the accused in furtherance of their common intention abated the commission of suicide by deceased Sangita by subjecting her to physical and mental harassment.

5. The father of deceased Sangita lodged report of the alleged incident at Police Station, Vaijapur, on 16th of November, 1999. In the report so alleged, it was alleged that there were persistent monetary demands from the accused persons and deceased Sangita was physically and mentally harassed for fulfillment of the said unlawful demands. It was alleged that the accused persons were asking deceased Sangita to bring from her parents a sum of Rs.50,000/- for purchase of a house. Accused no.1 also had demanded an amount of Rs.10,000/- for purchase of motor cycle. Thereafter, one more demand was raised

of Rs.20,000/- for purchase of colour T.V.set, etc. Lastly, the accused had demanded Rs.5,000/- from the father of deceased Sangita. Sangita had communicated the said facts by writing an inland letter to her father prior to six months of the alleged incident. Prior to that also, deceased Sangita had sent one chit informing her father that her husband i.e. accused no.1 was not happy with the clothes presented to him and was expecting a gold ring. Whenever deceased Sangita used to come to her parental house, she used to disclose to her parents about her harassment and tortures by the accused persons. In the circumstances, it was alleged that deceased Sangita committed suicide being fed up with the physical and mental cruelty to which she was subjected by the accused persons.

6. On the report lodged by Shri Rangnath Jadhav, father of deceased Sangita, investigation was set in motion. The Police persons carried out the usual formalities of preparing spot panchnama, inquest panchnama, etc. The post mortem examination of the dead body of Sangita was also got conducted. The

statements of all necessary witnesses were examined by the investigating officers. The articles seized during the course of investigation were sent for their chemical analysis and the report received from the Chemical Analyzer was made part of the chargesheet. After filing of the chargesheet, the case was committed to the Court of Sessions.

7. The learned Sessions Judge framed charge against the accused persons on 26th June 2001. The accused persons denied the charges raised against them and claimed to be tried. In order to prove the guilt of the accused, the prosecution examined as many as eight witnesses. The defense of the accused was of total denial and false implication. Accused no.1 also examined one Dnyaneshwar Sahebrao Jadhav in his defense. Learned Additional Sessions Judge after having assessed the documentary and oral evidence convicted the accused for the offenses charged against them and sentenced them to suffer the punishment as noted hereinabove.

8. Learned Counsel appearing for the accused

assailed the impugned judgment on various grounds. Shri R.N.Dhorde, learned Senior Counsel, criticized the judgment on several grounds. Learned Senior Counsel submitted that the trial Court has failed in appreciating that in the report initially lodged by PW 1 Rangnath, father of the prosecutrix, no allegation was made by him against any of the accused. Learned Senior Counsel submitted that the prosecution has failed in bringing on record the cogent and sufficient evidence to prove the accusations against the accused persons.

9. Learned Senior Counsel further submitted that accused no.1 himself is a teacher and was earning a good salary. As such, according to him, there was no reason for accused no.1 or his parents to make any demand from deceased Sangita or her parents. Learned Senior Counsel further submitted that in so far as the monetary demands allegedly made by the accused persons and their fulfillment by the parents of deceased Sangita is concerned, the evidence on record is inconsistent and unbelievable. Learned Senior Counsel further submitted that accused no.1 was already possessing Hero Honda

Motor Cycle and as such there was no reason for him to demand any amount for purchase of the motor cycle. Learned Counsel further submitted that the inland letter (Exh.26) was not filed along with the chargesheet, and prosecution did not examine the person who reached the chit (Exh.27) and, as such, both the aforesaid documents cannot be relied upon. Learned Senior Counsel, therefore, prayed for setting aside the impugned judgment and acquit the appellants accused from the charges levelled against them.

10. Shri Kakade, learned Counsel appearing for accused no.5, submitted that the allegations made against the said accused by PW 1 Rangnath are afterthought. Learned Counsel submitted that against accused no.5 there is absolutely no evidence. Learned Counsel further submitted that the mother of the deceased Sangita viz. Pushpabai (PW 5) has stated in her cross examination that except accused no.1, no one else has made any demand from them. Learned Counsel submitted that even otherwise, accused no.5 was residing at a different place and no such evidence has come on record to show that he

was the frequent visitor either at village Jalgaon or at village Shivur. Learned Counsel submitted that the trial Court has without any evidence against accused no.5 has held him guilty for the offense under Section 306 as well as Section 498-A of IPC and also under Section 504 and 506 of IPC. Learned Counsel submitted that the judgment of the trial Court, therefore, needs to be set aside and the accused no.5 deserves to be acquitted.

11. Learned A.P.P. Shri S.P. Tiwari supported the impugned judgment and order. Learned A.P.p. submitted that since deceased Sangita suffered unnatural death within seven years of her marriage, presumption under Section 113-A of the Evidence Act was raised against the accused and the accused have utterly failed in rebutting the said presumption. Learned A.P.P. further submitted that though the inland letter was not filed on record previously and was not made part of the chargesheet, if the FIR lodged by PW 1 Rangnath is perused, it contains all that information which is revealing from the said inland letter. Learned A.P.P. submitted that the inland letter was sent by deceased Sangita from Lasur and the same was

received to PW 1 Rangnath at Shivur prior to about six months of the alleged incident. As such, according to the learned A.P.P., the genuineness of the said letter cannot be doubted. Learned A.P.P. submitted that the prosecution witnesses have sufficiently proved the charges levelled against the accused persons. Learned A.P.P. further submitted that the trial Court has passed well reasoned judgment and no interference is required in the impugned order. He, therefore, prayed for dismissal of both the appeals.

12. I have carefully considered the submissions advanced by the learned Senior Counsel appearing for the appellant in Criminal Appeal No.580/2001 and the submissions made by the learned Counsel Shri Kakade appearing for the appellant in Criminal Appeal No.574/2001, and the learned A.P.P. Perused the impugned judgment and the entire evidence on record.

13. It is not in dispute that deceased Sangita died within seven years of her marriage. Marriage of Sangita with accused no.1 was performed on 9th of May, 1995 and

she died on 15.11.1999. It is further not in dispute that Sangita suffered an unnatural death. Section 113-A, Evidence Act, is a presumptive Section which enables a Court to draw a presumption as to abetment of suicide by a married woman (punishable under Section 306 of the IPC) on proof of certain ingredients mentioned therein including proof of cruelty. Explanation to Section 113-A states that, " for the purposes of this Section 'cruelty' shall have same meaning as in Section 498-A of the Indian Penal Code. Thus, on reading Section 113-A and the explanation thereto, it is clear that the meaning of 'cruelty' as defined in Section 498-A has to be imported in Section 113-A, Evidence Act, while deciding whether the victim was subjected to cruelty or not. In other words, cruelty as an ingredient for raising presumption under Section 113, Evidence Act, must necessarily fall within the four corners of the meaning of 'cruelty' as defined in clause (a) or clause (b) of Explanation to Section 498-A of IPC.

14. Section 498-A of the IPC 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."

15. The definition of cruelty, thus, consists of two parts, namely (a) and (b). It is necessary for the prosecution to prove that its case falls under any of the two categories mentioned above though in some cases both the clauses may overlap. In so far as the instant case is concerned, clause (b) would be more material since the harassment of deceased Sangita by the accused persons is alleged on account of non fulfillment of the unlawful monetary demands made by the accused. Perusal of the impugned judgment reveals that the learned Additional Sessions Judge has held that deceased Sangita

was subjected to cruelty by the accused persons for non fulfillment of their monetary demands by deceased Sangita and her parents. From the evidence on record, it has to be, therefore, ascertained whether the conclusion so recorded by the learned Additional Sessions Judge can be sustained.

16. In order to prove that deceased Sangita was subjected to cruelty, the prosecution has relied upon the evidence of PW 1 Rangnath, PW 5 Pushpabai and the documentary evidence in the form of inland letter (Exh.26) and the chit (Exh.27) allegedly written by deceased Sangita to her father.

17. As is revealed through the evidence of PW 1 Rangnath and PW 5 Pushpabai for about one year after marriage, there was no demand and deceased Sangita was treated well by the accused persons. As has further come on record the very first demand made by Accused nos. 1 to 4 was of Rs.50,000/- and accused no.5 was instigating them for making such demand. As stated by PW 1 Rangnath in paragraph no.3 of his examination in chief in

March, 1998, deceased Sangita told him about the said demand of Rs.50,000/-. It is the contention of PW 1 that he withdrew the amount of Rs.20,000/- from his provident fund account in March, 1998, and handed over the said amount to accused no.1 and accused no.5 when they had been to his house.

18. As has been further deposed by PW 1, few days thereafter when deceased Sangita had been to Shivoor she disclosed to PW 1 that her husband and in-laws are making a grievance that they received less dowry in marriage and that they have demanded a sum of Rs.10,000/- so as to enable accused no.1 to purchase Hero Honda Motor cycle. The evidence of PW 1 further reveals that at the relevant time accused no.1 had been to his village to take back deceased Sangita and at that time he paid accused no.1 an amount of Rs.10,000/- to purchase the Hero Honda motor cycle and sent deceased Sangita with accused no.1.

19. As is further revealing from the testimony of PW 1, six months thereafter when deceased Sangita again had

been to shivoor, she told him that the harassment to her by the accused persons was intensified and many times she was kept without food and was also beaten by the accused. It was also disclosed by her that her harassment was for the reason that according to the accused persons, they had received very less dowry in the marriage of accused no.1. As has been deposed by PW 1, at the relevant time, he anyhow pacified deceased Sangita and sent her back to her husband's house.

20. As has been further deposed by PW 1, prior to six months of her death, deceased Sangita had written an inland letter to him which was received to him by post and in the said letter she had complained that the accused and more particularly accused no.1 is giving her mental and physical tortures for not fulfilling the demand of Rs.50,000/- for construction of the house. It was complained in the said letter that accused no.1 assaulted deceased Sangita and did not allow her to sleep. It was also alleged that accused nos. 2 and 3 assisted accused no.1 in beating her when she was residing at Jalgaon. It was also informed by deceased Sangita that accused nos.

2, 3 and 4 were asking her to bring Rs.20,000/- from her parents for buying a colour Television and had threatened her that if she failed to bring that much of the amount, she may not survive. Deceased Sangita had also informed that she was kept without food in the farm house. Sangita had earnestly requested her father in the said letter that he shall anyhow make arrangement of Rs.20,000/- in next two months.

21. Lastly, as has come on record in the evidence of PW 1 Rangnath, deceased Sangita had been to his house for the Diwali festival just few days prior to the alleged incident and at that time had told her father that her husband i.e. accused no.1 had asked her to bring Rs.5,000/- for paying the said amount to accused no.5 since he was intending to start cotton business. As has further come on record through the evidence of PW 1, after Diwali festival was over, accused no.1 had been to Shivur and at that time, P.W.1 gave him Rs.5,000/- and sent deceased Sangita with him.

22. Now, it would be useful to see as to what has

come on record through the evidence of Pushpabai, PW 5 mother of deceased Sangita. Pushpabai has also deposed that for one year after her marriage, deceased Sangita was treated well by her in-laws. As has been further deposed by her, an amount of Rs.50,000/- was demanded by accused from deceased Sangita and it was their contention that when the father of Sangita is in Government service, he can afford to pay such an amount. Pushpabai has also deposed that deceased had disclosed to her that she was being beaten for non fulfillment of the monetary demands made by the accused persons. As has further come on record through her evidence, her husband i.e. PW 1 Rangnath obtained loan of Rs.50,000/- from his Provident fund and gave Rs.20,000/- out of the said amount to accused no.1 and accused no.5. Pushpabai has further deposed that two months thereafter accused no.1 had made a demand of Rs.10,000/- for purchase of motor cycle and accordingly the said amount of Rs.10,000/- was given by her husband to accused no.1.

23. PW 5 Pushpabai has also deposed that six months thereafter when deceased Sangita again had been

to their house, had disclosed to her about the physical and mental harassment to her by the accused on account of non fulfillment of their monetary demands. Pushpabai has also deposed about receipt of the inland letter and the chit written by deceased Sangita to P.W.1 Rangnath. Pushpabai has also deposed that lastly when Sangita had been to their house, there was demand of Rs.5,000/- by accused no.1. It was the contention of accused no.1 as deposed by PW 5 Pushpabai that the said amount was to be given to accused no.5 to start the cotton business. As deposed by Pushpabai, such an amount of Rs.5,000/- was given to accused no.1 when he had been to Shivur to take back Sangita with him.

24. From the facts as were stated by PW 1 Rangnath and PW 5 Pushpabai in their respective testimonies before the Court, it reveals that the very first demand made by accused persons was of Rs.50,000/-. Though nothing has been specifically deposed by both these witnesses as to when such demand was made by the accused, it can be gathered from the facts as are revealing from their evidence that such demand was made in March,

1998. In paragraph No.3 of his examination in chief, it is deposed by PW 1 Rangnath that in March, 1998, it was disclosed to him by deceased Sangita that she was being ill-treated and was being tortured by the accused for bringing the amount of Rs.50,000/-.

25. As deposed by PW 1 Rangnath, after it was disclosed by deceased Sangita to him that she was being tortured for bringing the amount of Rs.50,000/- from her parents, he withdrew the amount of Rs.20,000/- from his provident fund and in March, 1998, when accused no.1 and accused no.5 had been to their house, handed over the said amount of Rs.20,000 to accused no.1. No doubt, PW 5 Pushpabai has corroborated the fact that her husband gave Rs.20,000/- to accused no.1, however, as was pointed out by the learned Senior Counsel, the prosecution has not brought on record any evidence showing that PW 1 Rangnath had, in fact, withdrawn the amount from his provident fund account. Further, there are some inconsistencies as about withdrawal and utilization of the said amount. When, in the examination in chief, PW 1 Rangnath has stated that he withdrew an

amount of Rs.20,000/- from his provident fund account and gave it to accused no.1 in March, 1998, in his cross examination he has stated a different fact that he had taken loan of Rs.52,000/- or Rs.55,000/- from his provident fund account in March, 1998. PW 1 has admitted that the said loan was obtained by him by citing the reason of the marriage of his second daughter. PW 1 has further admitted that at the relevant time the marriage of his second daughter was settled. In his further cross examination, he has stated that the loan amount obtained from the provident fund account was kept by him in Bank of Maharashtra, Shivur branch. PW 1 has further deposed that the amount of Rs.20,000/- allegedly given by him to accused no.1 was possessed by him in cash and while giving the said amount to accused no.1, he did not make any withdrawal from the provident fund amount which was kept in the Bank. PW 1 has then admitted that when he obtained loan from his provident fund, the date of marriage of his second daughter was fixed.

26. In light of the facts which have come on record

through the evidence of PW 1 Rangnath, if the facts as were stated by PW 5 Pushpabai are perused, there appears inconsistency on certain material aspects. Though PW 5 Sushilabai has confirmed that her husband PW 1 Rangnath has obtained loan of Rs.50,000/- from his provident fund, she has contradicted statement of PW 1 Rangnath that he had deposited the said amount in his account in the Bank of Maharashtra. PW 5 Sushilabai has deposed that PW 1 had kept the cash of Rs.50,000/- at home with her and she had not deposited the said amount in any Bank. She has further deposed that the said amount remained with her for five to six months. She has also deposed that PW 1 gave amount of Rs.20,000/- to accused no.1 from the said loan amount of Rs.50,000/-. Even if it is accepted that PW 1 and PW 5 deposed before the Court in the year 2001, i.e. after the period of about three years of the occurrence of the alleged incident and, therefore, possibility of some variance in stating the facts would be quite natural, it is difficult to accept that PW 5 Sushilabai would not be remembering whether the amount of Rs.50,000/- was kept by PW 1 in Bank of Maharashtra or was kept at home. It is significant to note that PW 5

Sushilabai has specifically deposed that her husband had kept the cash of Rs.50,000/- at home with her. She has further clarified that she had not kept the said amount in any Bank. She has further answered that the said amount remained with her for five / six months. Further, when it is the contention of PW 1 Rangnath that he paid the amount of Rs.20,000/- to accused no.1 which he was possessing in cash at home and did not withdrew the said amount from provident fund loan account; contrary to that PW 5 Sushilabai has again made a positive statement that her husband gave the amount of Rs.20,000/- to accused no.1 out of the said loan amount of Rs.50,000/- borrowed by him from the provident fund account. In the circumstances, doubt is certainly created whether, in fact, any amount was borrowed by PW 1 from his P.F. Account. The doubt also arises whether the aforesaid amount was borrowed by P.W. 1 Rangnath to satisfy the demand of the accused or for the purpose of the marriage of his second daughter. As was argued by learned Senior Counsel, it appears more probable that if at all any amount was withdrawn by accused No.1, it was withdrawn for the marriage of his second daughter.

27. In his testimony before the Court PW 1 Rangnath has deposed that accused no.1 had asked deceased Sangita to bring from her parents an amount of Rs.10,000/- for purchase of motor cycle. As has come on record through his evidence at that time, Sangita had been to the house of her parents and disclosed the demand made by her husband of Rs.10,000/- for purchase of motor cycle. PW 1 has deposed that deceased Sangita had disclosed to him at that time that she was driven out of the house by accused no.1 and before that, she was bitterly beaten by him. PW 1 has also deposed that at that time deceased Sangita stayed with them for 2/3 days and, thereafter, accused no.1 had been to his house to take back Sangita with him. PW 1 has further deposed that at that time accused no.1 demanded Rs.10,000/- from him for purchase of motor cycle and, accordingly, he gave him Rs.10,000/- and sent his daughter with accused no.1. The facts so stated as above by PW 1 are not fully corroborated by PW 5 Pushpabai. PW 5 Pushpabai, though, has deposed that accused no.1 had asked Sangita to obtain Rs.10,000/- from her father for buying Hero Honda

motor cycle and, accordingly, PW 1 Rangnath gave Rs.10,000/- to accused no.1. PW 5 Pushpabai has not deposed that anything was disclosed to her by deceased Sangita that she was driven out of her house by accused no.1 and that she was also beaten by accused no.1.

28. Thereafter, as has come on record, deceased Sangita had been to her parental house at the time of Diwali festival just few days prior to the occurrence of the alleged incident. As has further come on record through the evidence of PW 1 Rangnath as well as PW 5 Sushilabai, deceased Sangita at that time, had disclosed to her parents that accused no.1 had asked her to bring Rs.5,000/- which he was intending to pay to accused no.5 for the purposes of his cotton business. PW 1 and PW 5 both have stated that accordingly, an amount of Rs.5,000/- was paid to accused no.1. In so far as the demand of Rs.5,000/- is concerned, it has come on record through the evidence of PW 1 Rangnath, that at the relevant time it was disclosed to him by deceased Sangita that accused no.1 had threatened her that if she does not bring that amount of Rs.5,000/-, he would not allow her to

remain alive. PW 5 Pushpabai, however, has not deposed any such fact in her testimony before the Court. Thus, the facts stated by PW 1 Rangnath in his testimony before the Court that, on both the occasions i.e. when the amount of Rs.10,000/- was demanded by accused no.1 for the purchase of motor cycle and, secondly, when the accused had demanded an amount of Rs.5,000/- for the purposes of giving the said amount to accused no.5 for cotton business, threats were given to deceased Sangita that if she does not bring the amount so demanded, the accused would not allow her to remain alive, are not corroborated by PW 5 Sushilabai. Reasonable doubts are, therefore, created whether, in fact, any such threat was given by accused no.1 to deceased Sangita as has been deposed by PW 1 Rangnath.

29. According to the case of the prosecution, deceased Sangita lastly had been to her parents at village Shiur prior to three days of the incident of the commission of suicide by her. As noted above, in her said last visit it was disclosed by her to her parents that her husband had demanded Rs.5,000/- which he was intending to give to

his maternal uncle i.e. accused no.5 for his cotton business. It has also come on record that at that time deceased Sangita had been to her parental house for Diwali festival and accused no.1, accompanied by accused no.5, had been to Shiur and deceased Sangita was sent back to her matrimonial house along with them. It has also come on record that, at that time, accused no.1 also made a demand towards PW 1 Rangnath to give him Rs.5,000/-. It has also come on record that accordingly PW 1 Rangnath gave the said amount to accused no.1. In sum and substance, the demand which was disclosed by deceased Sangita and which was also directly made by accused no.1 to PW 1 Rangnath, was, thus, satisfied. I reiterate that three days thereafter, deceased Sangita committed suicide at her matrimonial house at village Jalgaon. It is not the case of the prosecution and no such evidence has been brought on record to show that in the said period of three days i.e. after Sangita and accused no.1 returned to matrimonial home from the parental house of deceased Sangita after Diwali festival, deceased Sangita was subjected to any harassment by the accused persons on account of any fresh monetary demand or for

any other reason whatsoever.

30. After having considered the facts as aforesaid, more particularly that though certain demands were made by accused no.1 from deceased Sangita, the said demands were time to time fulfilled by her parents, and when there is no evidence on record to show that at the time when deceased Sangita committed suicide, any demand, allegedly made by accused no.1 or by other accused persons towards Sangita, and her parents, had remained unfulfilled, it appears difficult to accept the case of the prosecution that the act of deceased Sangita to commit suicide was a result of the persistent harassment caused to her by the accused persons for non fulfillment of their unlawful demands.

31. Though it is established that deceased Sangita vide inland letter at Exh.26 had informed her parents about the ill-treatment by the accused persons on account of certain monetary demands, having regard to the subsequent events showing that the said demands were complied with, by parents of deceased Sangita, there appears no nexus in the act of commission of suicide by

deceased Sangita on 15th Nov., 1999 and the complaints made by her in the inland letter written by her to her parents. The inland letter was admittedly written by deceased Sangita prior to six months of her death and, as has come on record, thereafter, an amount of Rs.20,000/- was paid by PW 1 to accused no.1. With the risk of repetition, I state that the last demand was of Rs.5,000/- and that was also complied with by the parents of deceased Sangita. In such circumstances, it is difficult to accept that deceased Sangita would have committed suicide for being harassed by her husband and in laws for non fulfillment of their monetary demands.

32. The chit at Exh.27 was, according to the case of the prosecution itself, was written by deceased Sangita after one year of her marriage i.e. in the year 1996. Moreover, if the contents of the said chit are perused, what transpires is the fact that instead of the clothes, accused no.1 was expecting a Television or a 4 gram gold ring. Further, nothing has come on record to show that on the said account any harassment was caused to deceased Sangita by accused no.1 or by the other

accused. Thus, the said chit also does not have any nexus with the act of commission of suicide by deceased Sangita.

33. It has to be stated that no action was initiated by the parents of deceased after they had received the inland letter (Exh.26) from deceased Sangita. Admittedly, PW 1 Rangnath did not hand over the said inland letter to the Police and produced the same in his evidence before the Court. PW 5 Pushpabai in her cross examination has stated that after reading the said inland letter, she did not get a feeling that she should not keep her daughter with accused no.1. Further, as I have elaborately discussed hereinbefore, twice or thrice thereafter deceased Sangita had been to her parents and in the said visits, another two demands were made; one, for purchase of motor cycle, and the other for giving certain amount to respondent no.5 for his cotton business and both demands were fulfilled. Thus, in no case, it can be said that the complaint as was made by deceased Sangita in the inland letter at Exh.26 was having any nexus with the incident of commission of suicide by deceased Sangita.

34. After having considered the entire evidence on record, it does not appear to me that the evidence brought on record by the prosecution was cogent and sufficient for holding the accused persons guilty for the offenses with which they were charged.

35. Though it was the case of the prosecution that accused no.5 was instigating accused nos. 1 to 4 in making demands from deceased Sangita and her parents and was also involved in harassing deceased Sangita, no dependable evidence has come on record against him. In the letter dated Exh.26 nothing is mentioned by deceased Sangita about any illtreatment or harassment to her by accused no.5. It is further significant to note that in her cross examination, PW 5 Pushpabai has clearly stated that except accused no.1, no other accused had made any monetary demand. It has to be further noted that accused no.5 resides at a different village. Nothing has been brought on record by the prosecution to show that accused no.5 was frequent visitor at the house of accused no.1 at village Jalgaon. In spite of there being cogent and

sufficient evidence against the accused no.5, the learned Sessions Judge has held accused no.5 also guilty for the offenses punishable under Sections 306 and 498-A of IPC. Such an order cannot be sustained.

36. The prosecution has also failed in bringing on record any trustworthy evidence against accused no.4. No specific overt act was attributed against accused no.4. Nothing has come on record showing the complicity of accused no.4 in the act of committing suicide by deceased Sangita.

37. Against accused no.1, what has come on record through the evidence of PW 1 and PW 5 is the fact that he had made certain demands to deceased Sangita and her parents. As has come on record, the amounts were demanded by accused no.1 firstly for purchase of house, then for purchase of motor cycle and lastly, for giving some financial assistance to accused no.5 for his cotton business. It has also come on record, as I have elaborately discussed hereinabove that, all these demands were fulfilled by the parents of deceased Sangita. To

attract an offense under Section 498-A of IPC, mere making of demand of money is not sufficient. It has to be further proved by the prosecution that deceased was illtreated or coerced for non fulfillment of the said demands. Though PW 1 Rangnath has deposed that it was disclosed to him by deceased Sangita that she was being illtreated and harassed by accused persons for bringing certain amounts from her parents, as discussed by me hereinbefore, PW 5 Pushpabai has not corroborated the said evidence. The cross examination of PW 5 Pushpabai shows that the facts stated by her as about illtreatment to deceased Sangita, in the evidence before the Court were not stated by her when her statement was recorded by the Police under Section 161 of the Code of Criminal Procedure.

38. A reasonable nexus has to be established between the cruelty and the suicide in order to constitute an offense under Section 498-A of IPC. Even if suicide is established, it has further to be established that it has occasioned on account of cruelty which was of sufficient gravity as to lead a reasonable person placed in similar

circumstances to commit suicide. To attract Section 498-A, the prosecution has to establish the willful conduct on the part of the accused and that the conduct was of such a nature as was likely to drive wife to commit suicide. It was sought to be canvassed by the learned A.P.P. that the cruelty should be held to be proved from the fact of commission of suicide by deceased Sangita. In other words, it was argued by learned A.P.P. that from the effect (namely, suicide), the cause (namely, cruelty) be presumed. The argument so made by the learned A.P.P. cannot be accepted. No evidence whatsoever on the prosecution side shows any overt act on the part of the accused so proximate in time to show that the act of deceased Sangita of committing suicide had a direct nexus with the said overt act of the accused persons. As stated above, mere making some demands would not be sufficient to level the charge of cruelty within the meaning of Section 498-A and the burden lies on the prosecution to prove that the conduct of the accused was of such a nature that it drove the wife to commit suicide.

39. It is unfortunate that deceased Sangita ended

her life at a young age. However, what was transpiring in her mind at that time has remained undisclosed. Prior to three days of committing suicide by her, she had returned from her parental house. At that time, the demand which was made by accused no.1 was fulfilled by the parents of deceased Sangita. There is no evidence to show as to what happened in the said period of three days which made deceased Sangita to take extreme step of committing suicide. Though it is brought on record and proved by the prosecution that accused no.1 had at least on three occasions made certain monetary demands from the accused, there appears no nexus in the said demands and the act of commission of suicide by deceased Sangita for the reason that all those demands were fulfilled by the parents of deceased Sangita. If the illtreatment to the wife is not on account of failure on the part of the parents of the wife to meet the said demands, requirement of Explanation-b of Section 498-A are not satisfied and hence the accused cannot be held guilty for an offense under Section 498-A of the IPC. In the instant case, the cruelty alleged by the prosecution was as per Explanation-b to Section 498-A of IPC, which cannot be said to have been

proved.

40. After having considered the entire evidence on record, it does not appear to me that the prosecution has brought any such evidence on record on the basis of which the accused could have been held guilty for the offense punishable under Section 498-A of IPC. In order to attract the provision of Section 113-A of the Evidence Act, it must be proved that there was cruelty within the meaning of definition given under Section 498-A of IPC. In the circumstances, the conviction of the accused under Section 306 of IPC also cannot be sustained. Even otherwise, nothing has been brought on record by the prosecution to show that the accused in any manner instigated, incited or encouraged, much less aided, the act of committing suicide by deceased Sangita. In the aforesaid circumstances, the order passed by the learned Sessions Judge cannot be sustained.

41. For the reasons recorded above, I am inclined to allow both these appeals. Hence, the following order:

ORDER

1. The judgment and order dated 24.12.2001, passed by the Second Ad hoc Additional District Judge, Aurangabad, in Sessions Case No.15/2000 is set aside. The appellants in both these appeals i.e. accused nos. 1, 4, and 5 are acquitted of the offenses for which they were charged in the aforesaid Sessions case. Their bail bonds stand cancelled. Fine amount, if any, paid by them, shall be refunded to them.

Both the Criminal Appeals stand allowed in the aforesaid terms. Pending Criminal Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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