

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 15 OF 2015**

1. Mr. Shankar Shetgaonkar, s/o late Namdev Shetgaonkar, major of age, private service, resident of House No.642, Morjim, Pernem, Goa. (in custody and lodged at Central Jail, Aguada and represented by his next friend Mr. Kamlesh Shetgaonkar, major of age, service, r/o House No.642, Morjim, Pernem, Goa.
2. Mrs. Satyawati Shetgaonkar, w/o late Namdev Shetgaonkar, major of age, housewife, resident of House No.642, Morjim, Pernem, Goa. Appellants

Versus

State of Goa, through the Police Inspector,
Pernem Police Station, Pernem, Goa. Respondent

Shri Deepak Girme with Shri Ryan Menezes, Advocates for the Appellants.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondent.

CORAM: C.V. BHADANG &

PRITHVIRAJ K. CHAVAN, JJ.

RESERVED ON: 14th JULY, 2017

PRONOUNCED ON: 3rd AUGUST, 2017

JUDGMENT: (PER C.V. BHADANG, J.)

The challenge in this appeal is to the judgment and order dated 31.03.2015, passed by the learned Sessions Judge

at Panaji in Sessions Case No. 4/2008. By the impugned judgment, the appellants have been convicted for the offence punishable under Section 304-B, read with Section 34 of IPC. The appellant no. 1 has been sentenced to suffer imprisonment for life and to a pay fine of Rs.10,000/- and in default to suffer further imprisonment for a period of six months. The appellant no. 2 was sentenced to suffer imprisonment for seven years and to pay a fine of Rs.5,000/- and in default to suffer simple imprisonment for three months. For the offence punishable under Section 498-A of IPC, the appellant no. 1 is sentenced to suffer imprisonment for one year and to pay fine of Rs.10,000 and in default to suffer simple imprisonment for three months, while the appellant no. 2 was sentenced to suffer imprisonment for a period of six months and to pay fine of Rs.5,000/- and in default to suffer simple imprisonment for two months.

2. The appellant no. 2, who happened to be the mother of the appellant no. 1, has since expired and the appeal abates insofar as appellant no. 2 is concerned.

3. The prosecution case, shorn of minor details, can be stated thus:

That, now deceased Geeta Ramkrishna Naik alias

Pranita Shankar Shetgaonkar, was married to the appellant no. 1 (hereinafter referred to as the appellant) on 02.07.2006. That was an arranged marriage in which, one Rajaram Parab of village Kelim acted as a mediator. After marriage, Geeta started residing with the appellants at their house in Urmalbag, Morjim, Pernem. It appears that till Ganesh Chaturthi of 2006, the parties pulled on well, however, thereafter, the marriage ran into rough weather. According to the prosecution, the appellant no. 2 (hereinafter referred to as the deceased appellant) was harassing and ill treating the deceased on account of the fact that gold ornaments were not given at the time of "ojeh"- a local festival. The gravamen of allegations against the appellant no. 1 is that he was supporting his mother by acquiescing in her acts. There are no other acts of any ill treatment or demand of gold ornaments/valuables specifically made against the appellant no. 1.

4. It is the prosecution case that deceased Geeta was not provided with proper food, was made to work in the house for the entire day and was not allowed to go to the neighbours' house. It appears that an attempt was made to reconcile the matter through a mediator, however, to no avail.

5. In the evening of 26.01.2007 i.e. less than seven months of marriage, Geeta was found having severe burn injuries in the toilet of her matrimonial house. She was shifted to Goa Medical College, where she succumbed to the injuries.

6. Shashikant Naik (PW-7), who is the brother of the deceased, lodged a complaint of the incident on 30.01.2007, on the basis of which, an offence was registered with P.S. Pernem. The investigating officer conducted the investigation in which, he recorded the statements of witnesses, drew panchanama of the spot of occurrence and the inquest panchanama of the dead body. The dead body was sent for post mortem examination, where Dr. Andre Fernandes (PW-9) and Dr. Mandar Kantak (PW-10) conducted the autopsy. It appears that Sabaji Shetye (PW-14), Deputy Collector and SDM, was also witness to the inquest panchanama, on account of the fact that Geeta met with unnatural death. The investigating officer conducted certain seizure and the seized articles were sent for report of the Chemical Analyzer. After completion of the investigation, the charge sheet came to be filed before the learned Judicial Magistrate First Class at Pernem, which was eventually committed to the Court of Sessions.

7. The learned Sessions Judge initially framed a charge (Exhibit-5) for the offence punishable under Section 498-A and Section 304-B read with Section 34 of IPC. The prosecution filed an application (Exhibit-83) for addition of charge under Section 302 of IPC. The learned Sessions Judge allowed the said application by order dated 11.10.2011 and an additional charge (Exhibit-86) was framed on 03.11.2011 for the offence punishable under Section 302 of IPC. The appellants pleaded not guilty and claimed to be tried. The defence of the appellants has been of total denial.

8. At the trial, the prosecution in all examined 18 witnesses and produced the record of investigation. The appellants neither entered into the witness box nor examined any witnesses.

9. The learned Sessions Judge framed the following two points and answered both of them in the affirmative.

<i>S.No.</i>	<i>Issues</i>
1.	<i>Whether prosecution proves that from 2.7.2006 till 26.1.2007 accused no. 1 and 2 with common intention harassed Ms. Geeta and subjected her to cruelty by abusing, not providing with proper diet, not allowing her to mix with neighbours and by</i>

demanding dowry in the form of more gold and thereby committed offence u/s 498A r/w 34 IPC ?

2. *Whether prosecution proves that the accused with common intention caused extensive burn injuries to Ms. Geeta on 26.1.2007 resulting in her death within 7 years of her marriage and since prior to her death, she was subjected to cruelty and harrasment on the aspect of demand of dowry and thereby committed the offence punishable u/s 302, 304B r/w 34 IPC ?*

10. The learned Sessions Judge proceeded to convict and sentence the appellants as set out above. Feeling aggrieved, this appeal is filed.

11. We have heard Shri Girme, the learned Counsel for the appellant and Shri Amonkar, the learned Additional Public Prosecutor for the respondent-State. With the assistance of the learned Counsel for the parties, we have gone through the record and the impugned judgment.

12. It is submitted by Shri Girme, the learned Counsel for the appellant that although, the incident occurred on 26.01.2007, the complaint was lodged belatedly on 30.01.2007 and an FIR came to be registered on 03.02.2007, which is also

belated. The learned Counsel has submitted that there is no explanation for the late lodging of the complaint and the belated registration of the FIR. The learned Counsel has then taken us through the evidence of Govind Ladu Naik (PW-1), Dashrath Naik (PW-2), Shashikant Naik (PW-7), Rajaram Parab (PW-8), Tulshidas Naik (PW-11), Mirabai Naik (PW-13) and Archana Naik (PW-15), in order to submit that the evidence is either silent as to any role attributable to the appellant no. 1 or the allegations are of general or omnibus nature. The learned Counsel was at pains to point out that the prosecution evidence lacks conviction, as there is no evidence about any specific overact attributed to the appellant no. 1, insofar as the alleged ill treatment meted out to the deceased, is concerned. The learned Counsel has then submitted that a letter (Exhibit-32), which is purportedly written by the deceased has not been proved on record and as such, could not have read or relied upon. It is submitted that the prosecution has failed to establish that the letter (Exhibit-32), is written by the deceased. It is submitted that even otherwise, the letter does not contain any allegations worth the name against the appellant. The learned Counsel has placed reliance on the decision in the case of **Vipin Jaiswal Vs. State of A.P., 2013(3) Crimes 229 (SC)**.

13. It is next contended that there is no independent witness examined by the prosecution and whatever witnesses are examined are relatives of the deceased or are the neighbours and as such, are interested witnesses. The learned Counsel strenuously urged that no case of ill treatment as contemplated under Section 498 of IPC or causing "dowry death" by the appellant is made out. The learned Counsel was at pains to point out that the allegation about the deceased not bringing gold ornaments on the occasion of "ojeh", cannot be said to be a demand of dowry, as the demand cannot be said to be in "connection with the marriage". He therefore submits that in the absence of there being any demand established for dowry, the offence under Section 304-B cannot be said to have been made out. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Bhola Ram Vs. State of Punjab, (2013) 16 SCC 421, Durga Prasad & Another Vs. the State of M.P., (2010) 9 SCC 73, Major Singh & Another Vs. State of Punjab, (2015) 5 SCC 201 and Shindo alias Sawinder Kaur & Another Vs. State of Punjab, (2011) 11 SCC 517**. It is submitted that at best, the allegations about ill treatment of Geeta are against the appellant no. 2 (since deceased) and that too, on account of the deceased not being able to do proper cooking and on account of

the fact that she was visiting the neighbours. It is thus submitted that the allegations fall short for bringing home the charge under Section 304-B and for the matter of that under Section 498 of IPC and the appellant is entitled to acquittal.

14. On the contrary, it is submitted by Shri Amonkar, the learned Additional Public Prosecutor that the evidence is sufficient to establish that Geeta was ill treated after the marriage, resulting into her unnatural death within less than seven months of her marriage. It is submitted that there is evidence that there was a demand of gold ornaments, which was not satisfied at the time of “ojeh” festival. As such, a case for dowry death is made out. The learned Additional Public Prosecutor points out that once the deceased has met with an unnatural death, within seven years of her marriage and there is evidence that she was harassed, presumption as to dowry death under Section 113 B of the Evidence Act, would arise. The learned Additional Public Prosecutor points out that it is a statutory presumption, which the Court is required to draw, once the necessary ingredients are established.

15. The learned Additional Public Prosecutor has made an alternate submission. It is submitted that in the event, this

Court is inclined to hold that a demand of dowry as such, is not established (and consequently, the offence under Section 304-B is held not proved), then this Court may convert the conviction to one under Section 306 of IPC. For this purpose, reliance is placed on the decision of the Supreme Court in the case of **K. Prema S. Rao & Another Vs. Yadla Srinivasa Rao & Others, AIR 2003 SC 11; Dalbir Singh Vs. State of U.P., (2004) 5 SCC 334** and **Narwinder Singh Vs. State of Punjab, (2011) 2 SCC 47**, in order to submit that in a case where, the accused is charged under Section 304-B, the Court in a given case can convict the accused under Section 306 of IPC, if, the same is established. The learned Additional Public Prosecutor has pointed out that there was clear abetment by the deceased appellant, within the meaning of Section 107 of IPC. He submits that the conviction be appropriately modified to one under Section 306 of IPC.

16. We have given our anxious consideration to the rival circumstances and the submissions made.

17. At the outset, it is necessary to note that although, an additional charge was framed under Section 302 of IPC, the learned Sessions Judge has convicted the appellants for the

offence punishable under Section 304-B and Section 498-A, read with Section 34 of IPC. In any event, there is no material on record to show that the appellants had intentionally caused the death of Geeta. The State has also not filed any appeal, seeking conviction under Section 302 of IPC.

18. The prosecution case has to be considered only with respect to the offence punishable under Section 304-B and Section 498-A of IPC. Incidentally, in view of the alternate submission on behalf of the respondent, whether the conviction can be altered to one under Section 306 of IPC.

Offence under Section 304-B of IPC:

19. The offence of causing dowry death under Section 304-B of IPC requires the following ingredients to be established by the prosecution:

- (i) That the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;
- (ii) Such death having occurred within seven years of her marriage and
- (iii) It is shown that soon before her death, she was subjected to cruelty or harassment by her

husband or any relative of her husband for, or in connection with any demand for dowry.

20. The explanation to Section 304-B of IPC would show that 'dowry' for the purpose of said section, shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. Section 2 of the Dowry Prohibition Act reads thus:

“In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to marriage to the other party to the marriage, or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

21. The question as to what constitutes dowry fell for the consideration of the Supreme Court in the case of **Satvir Singh Vs. State of Punjab, (2001) 8 SCC 633**. The Supreme Court after considering the definition of 'dowry' as contained in

Section 2 of the Dowry Prohibition Act held thus, in para 21 of the judgment:

“Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.”

22. It can thus be seen that a demand for property or valuable security, can come within the ambit of dowry, provided the same is made in “connection with the marriage” of the parties. The Supreme Court has clearly held that if, such a demand is not made in connection with marriage, the same would not amount to dowry. For example, some customary

payments/gifts made in connection with birth of a child or other ceremonies or local festivals, would not come within the ambit of dowry.

23. Let us now consider the evidence led by the prosecution. Govind Naik (PW-1) states that the deceased was ill treated and she was abused, she was not provided with proper food and was not allowed to meet the neighbours. The evidence of PW-1 clearly shows that deceased Geeta was complaining about the ill treatment meted out by the deceased appellant and not by the appellant no. 1. He also states that Geeta did not tell him the exact mode of harassment meted out by the appellant no. 1.

24. Dashrath Naik (PW-2), who is the cousin brother of Ramkrishna Naik, father of Geeta states that the deceased was abused and was not provided with proper food and was made to work for the entire day and was not allowed to mix with the neighbours. Here again, the allegations of ill treatment are against the deceased appellant. He further states that after the Ganesh Chaturthi festival, the relations between the deceased and her in laws became strained and Geeta had informed that she was harassed for not giving the customary "ojhe", which

was sent by her family on the occasion of Ganesh Chaturthi. This witness has reiterated that the harassment was by the mother-in-law (deceased appellant), while her husband (appellant no. 1) was a “mute spectator” and was not supporting Geeta and was not preventing his mother from continuing with the harassment. This witness has gone to the extent of saying that the deceased had informed him that her husband (appellant no. 1) had not harassed her. In cross examination, it was brought on record that the evidence of this witness, about the alleged assault by the appellant no. 2 and about the deceased being asked to work continuously and she not being allowed to use the phone, is by way of an improvement, as the same was not found in his police statement. Be that as it may, the fact remains that all that this witness has stated is that the ill treatment was on account of the family of the deceased, having failed to give the customary “ojhe” and the allegations of ill treatment are primarily against the deceased appellant. The only allegation against the appellant no. 1 is that he failed to intervene and remained a mute spectator.

25. Shashikant Naik (PW-7), is the brother of the deceased. He states that the deceased had informed him that

she was ill treated and harassed by her mother-in-law, her husband and family members. The deceased had informed her husband about the said harassment by the mother-in-law. However, her husband "did not care about the same". Here again, the allegations primarily and predominantly are against the deceased appellant, about giving abuses and Geeta not being given food and being made to work the whole day. It was PW-7 who lodged the complaint about the incident after about four days i.e. on 30.01.2007. This witness tried to explain the delay by saying that he became sick on hearing the tragic news. It has come in the evidence of this witness that during the Ganesh Chaturthi, they gave "ojhe" to the accused persons and at that time, it was the appellant no. 2, who started complaining that they had brought less eatables in "ojhe" and as to why no gold ornaments were given during naagpanchami in August, 2006, when "ojhe" was given. This witness has further stated that on 09.01.2007, he went to the matrimonial house of his sister to give "ojhe" on account of "makar sankranti" and at that time, Geeta informed him that her in laws were harassing her and she was not provided with proper food and was not allowed to speak to her neighbours and were raising demand for gold ornaments.

26. Except for a general reference of the in laws, if the evidence of this witness is seen as a whole, it unerringly points out that Geeta was mainly complaining about her mother-in-law i.e. the appellant no. 2. A brief reference to the complaint (Exhibit-108) filed by PW-7 may be made at this stage, which clearly shows that the deceased was complaining about her mother-in-law and the only allegation against the appellant no. 1 was that, when Geeta informed him about the ill treatment by his mother, he declined to interfere.

27. Rajaram Parab (PW-8) was instrumental in settling the marriage. He states that Shashikant Naik (PW-7) had informed him that the accused were harassing his sister, as she was visiting the houses of the neighbours. He states that at the time of Ganesh Chaturthi, he had been to the matrimonial house of Geeta, when the appellant no. 2 complained that deceased Geeta used to visit the house of the neighbours and stayed there for long and was not doing household work. In the cross examination, this witness states that Geeta never told him as to why she was harassed, except that once she had told him that she was harassed on the ground that she visits the house of her neighbours. This witness in categorical terms stated that Geeta never told him that she was harassed on account of

demand of gold ornaments. Geeta had once told this witness that the deceased appellant was saying that on naagpanchami day, her brother should have given gold ornaments for “ojhe” and on that account, it was the appellant no. 2, who was harassing her.

28. Tulshidas Naik (PW-11) is a neighbour of the complainant, Shashikant Naik (PW-7). Although, at one place this witness states that Geeta told him that she was being harassed by her mother-in-law, her husband, sister-in-law and other family members, if, the evidence of PW-11 is seen as a whole, it clearly shows that what Geeta was complaining was about the harassment meted out by the appellant no. 2 as she was expecting gold ornaments at the time of “ojhe” and at the time of “other festivals”. Even the statement about the alleged ill treatment is by way of an improvement, over the police statement.

29. Mirabai Naik (PW-13) again is a neighbour of Shashikant Naik (PW-7). She states that two weeks prior to Ganesh Chaturthi as per the prevailing custom, Geeta had come to her parents place when “ojhe” was prepared. As per custom, Geeta and Shashikant went to the matrimonial house

and after three to four days, Geeta made a phone call that the appellant no. 2 was not happy with the quality of the articles given in the “ojhe” as she wanted gold ornaments on which she started taunting the deceased. At the time of naagpanchami, Geeta informed that “the accused wanted gold ring from the mother's side, to be given to the bridegroom”.

30. Lastly, we have the evidence of Archana Naik (PW-15), a close friend of the deceased. Here again, the evidence is that, it was the mother-in-law who wanted the gold ornaments alongwith the other articles in “ojhe”. She further states that Geeta was not allowed to make phone calls and was abused and was not allowed to meet the neighbours and the appellant no. 2 was finding faults with her work.

31. The prosecution evidence thus clearly brings out that, it was the appellant no. 2, who was not satisfied with the articles brought by the deceased at the time of “ojhe” as she was expecting gold ornaments alongwith other articles and it was the appellant no. 2, who was harassing deceased Geeta. Thus, it is clear that the demand of gold ornaments/valuables cannot be said to be a demand for “dowry” as it was not made in connection with marriage. We find that the only allegation

against the appellant no. 1 is that he was a “mute spectator” to the ill treatment meted out to Geeta by the appellant no. 2.

32. As noticed above, in the case of **Satvir Singh** (supra), it has been held that if, such demand is in relation to some custom/ceremonies/festivals as are prevalent in the particular society, it cannot constitute dowry. For this reason alone, we find that the conviction under Section 304-B, cannot be sustained. The presumption under Section 113B of the Evidence Act, can only arise where the foundational facts are properly established. In the present case, although the fact that the deceased met with unnatural death, within seven years of marriage is established, the aspect of ill treatment being on account of non satisfaction of demand of “dowry” in our considered view cannot be said to be proved. Thus, in our view, the conviction under Section 304-B of IPC cannot be sustained.

33. This takes us to the alternate submission made on behalf of the respondent, to convert the conviction to one under Section 306 of IPC. The Supreme Court in the case of **K. Prema Rao** (supra) and other cases on which reliance is placed on behalf of the respondent, has held that, in a case where the accused is charged under Section 304-B of IPC, the Court can in a given

case record a conviction under Section 306 of IPC, although, there is no specific charge framed under that section. As noticed earlier, the entire weight of the evidence suggests that the ill treatment is attributed to the appellant no. 2 (since deceased) and all that is said against the appellant no. 1 is that he was a mute spectator. An offence under Section 306 of IPC requires that the deceased met with a suicidal death and that the accused had abetted the commission of the suicide by the deceased.

34. For establishing the case under Section 306 of IPC, it has first to be established that the deceased met with a suicidal death. In the present case, the learned Sessions Judge has not held that Geeta met with a homicidal death although, a charge under Section 302 of IPC was framed. It is nobody's case nor there is material to show that the death was accidental in nature. Geeta died on account of 95% burn injuries. Thus, the conclusion is inescapable that she met with a suicidal death.

35. Section 107 of IPC, defines "abetment", which reads thus:

"107. Abetment of a thing.—A person abets the doing of a thing, who—

*First— Instigates any person to do that thing; or
Secondly—Engages with one or more other person
or persons in any conspiracy for the doing of that
thing, if an act or illegal omission takes place in
pursuance of that conspiracy, and in order to the
doing of that thing; or
Thirdly— Intentionally aids, by any act or illegal
omission, the doing of that thing.”*

It can thus be seen that under clause thirdly of Section 107 of IPC, a person who intentionally aids, by any act or illegal omission, the doing of that thing, would be covered under the definition. In this regard, a useful reference may be made to the decision of the Supreme Court in the case of **Bhola Ram** (supra). Although, on facts it was found in that case that there was no abetment, the observations in paras 23 and 24 of the judgment are significant, which may be reproduced thus:-

“23. As observed by the Law Commission of India (LCI) in its 91st Report of 10th August, 1983 (in paragraph 1.8) the truth may not come in a dowry death case due to the sequestered nature of the offence. This is what the LCI said:

“Those who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential

house. The criminal is a member of the family; other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family."

24. This passage also clearly brings out that in a case of a dowry death, every member of the family may not be fully and equally guilty. The degree of involvement may differ - as an associate, as a silent witness, as a conniving witness and so on."

36. The offence of the present nature is committed within the "safe precincts of a residential house". The offender/s is/are the member/s of the family, who may have varied involvement in the offence and the ill treatment. The Law Commission in the 91st Report, as set out above, has found that the shackles of the family are so strong that the "truth may not come out of the chain". There would be no other eye witness, except for the members of the family. Thus, in a case of the present nature, the Court is required to consider and appreciate the evidence closely and with great circumspection, in order to find out the role attributed and the one played by the individual family member. The Supreme Court in para 24 of the judgment in the case of **Bhola Ram** (supra) has found that

in a case of dowry death, every member of the family may not be fully or equally guilty. The degree of involvement may differ as an associate, as a “silent witness”, as a conniving witness and so on. The observations in para 24 would apply with equal force to a case where a lady commits suicide and the husband and the in laws, are tried for the offence of abetment of suicide. In our considered view, even where a person is a mute spectator (which may indicate either connivance or acquiescence) to the ill treatment by some other member, can be held guilty of abetment, although, the degree of complicity of such person may vary. This later aspect may have a bearing on the question of sentence, nonetheless, the person can be found guilty of abetment in such a case. On a careful consideration of the prosecution evidence, we are of the considered view, the appellant no. 1, for reasons best known to him, failed to intervene in the bickerings between the deceased and the appellant no. 2. There is a passing reference in the evidence of Shashikant Naik (PW-7), where the witness states that the appellant no. 1 was not interested to live with her and wanted to separate from the deceased. In all probability, this may be the reason why the appellant no. 1 did not intervene and can be said to be a conniving witness, in the ill treatment meted out by the appellant no. 2, to Geeta.

37. Lastly, we may consider the matter in relation to the charge under Section 498-A of IPC. Section 498-A of IPC, punishes the acts, where a married woman is subjected to cruelty. Cruelty as envisaged in the said section means (a) any willful 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 coerce 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.

38. In the present case, there is evidence to show that the deceased appellant was dissatisfied with the articles brought by the deceased as part of "ojhe" and wanted gold ornaments to be the part of the "ojhe". Thus, although, we have held that the said demand may not amount to dowry, within the meaning of Dowry Prohibition Act (as the demand cannot be said to be in connection of marriage), we find that there is evidence that the appellant no. 2 was harassing the deceased, with a view to coerce her or any person relating to her to meet unlawful demand for any property or valuable

security, within the meaning of explanation (b) to Section 498-A of IPC. Explanation (a) to Section 498-A of IPC is distinct and is unrelated to any such demand. Under explanation (a) to Section 498-A of IPC, any willful 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 would come within the ambit of cruelty. We have already found that although, there is no overact attributed to the appellant no. 1, he was a silent/conniving witness and had failed to interfere, so as to prevent the ill treatment of the deceased and thus, had indirectly contributed to the same. Thus, the conviction under Section 498-A of IPC, in our considered view can be affirmed.

39. This takes us to the question of sentence to be awarded under Section 306 of IPC. The offence under Section 306 of IPC is punishable with imprisonment, which may extend to 10 years and fine. As indicated earlier, the allegations about ill treatment meted out to deceased Geeta are primarily against the appellant no. 1. Having regard to the fact that the only allegation against the appellant no. 1 is that he was a mute spectator and was a silent/conniving witness and there are no overacts attributed to him, we find that a sentence of three years rigorous imprisonment with fine of Rs.5,000/- would meet

the ends of justice.

40. In the result, the following order is passed:

(a) The Appeal is partly allowed.

(b) The conviction of the appellant no. 1, for the offence punishable under Section 304-B, read with Section 34 of IPC, is modified to one under Section 306 of IPC.

(c) The appellant no. 1 is sentenced to suffer imprisonment for a period of three years and to pay a fine of Rs.5,000/- and in default to suffer simple imprisonment for one month.

(d) The conviction of the appellant no. 1, under Section 498-A of IPC, is hereby confirmed.

(e) The appellant no. 1 is sentenced to suffer imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default to suffer simple imprisonment for 15 days.

(f) Both the sentences shall run concurrently.

(g) The sentence already undergone shall be set off under Section 428 of Cr.P.C.

(h) The appeal insofar as appellant no. 2 is concerned, stands abated.

(i) The order regarding disposal of the property is hereby maintained.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

EV