

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.50 OF 2003

1) Vaijinath s/o Baliram Avhad,
Age-22 years, Occu:Agril.,

2) Sow. Gayabai w/o Baliram Avhad,
Age-55 years, Occu:Household,

Both R/o-Daithana,
Tq. & Dist-Parbhani

...APPELLANTS

VERSUS

The State of Maharashtra

...RESPONDENTS

...
Mr.S.J. Salunke Advocate for Appellants.
Mr.S.J. Salgare, A.P.P. for Respondent.
...

WITH

CRIMINAL APPEAL NO.326 OF 2003

The State of Maharashtra,
(Through, Police Station Daithana
Dist-Parbhani

...APPELLANT

VERSUS

- 1) Baliram Mahadu Avhad,
Age-65 years, Occu:Agril.,
R/o-Dasithana, Tq. & Dist-Parbhani,
- 2) Bhagwan Baliram Avhad,
Age-27 years, Occu:Agril.,
R/o-As Above,
- 3) Meerabai Bhagwan Avhad,
Age-22 years, Occu:Household,
R/o-As Above.

...RESPONDENTS

...
Mr. S.J. Salgare, A.P.P. for Appellant.
Mr.A.S. Deshmukh Advocate for Respondent
Nos.1 to 3 (**Absent**).
...

WITH

CRIMINAL APPEAL NO.329 OF 2003

The State of Maharashtra,
(Through, Police Station Daithana
Dist-Parbhani

...APPELLANT

VERSUS

- 1) Vaijnath s/o Baliram Avhad,
Age-22 years, Occu:Agril.,
R/o-Daithana, Tq. & Dist-Parbhani,
- 2) Sow. Gayabai w/o Baliram Avhad,
Age-55 years, Occu:Agril.,
R/o-As Above

...RESPONDENTS

...
Mr. S.J. Salgare, A.P.P. for Appellant.
Mr.A.S. Deshmukh Advocate for Respondent
Nos.1 and 2 (**Absent**).
...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 19TH APRIL, 2018.

DATE OF PRONOUNCING JUDGMENT: 26TH APRIL, 2018.

JUDGMENT [PER S.S. SHINDE, J.]:

1. As all these three Criminal Appeals are arising out of one and the same Judgment and order passed by the trial Court, all these Appeals are being decided by this common Judgment.

2. In Sessions Trial No.121 of 2001 there were in all five accused, namely, accused No.1- Baliram s/o Mahadu Avhad, accused No.2- Vaijinath s/o Baliram Avhad, accused No.3 - Bhagwan s/o Baliram Avhad, accused No.4 - Sow. Gayabai w/o

Baliram Avhad and accused No.5 - Meerabai w/o Bhagwan Avhad.

3. By Judgment and Order dated 7th January, 2003 in Sessions Trial No.121 of 2001, 4th Additional Sessions Judge, Parbhani convicted accused No.2 - Vaijinath Avhad and accused No.4 Gayabai Avhad for the offence punishable under Section 498-A and 304-B of the Indian Penal Code (for short "I.P. Code"). For the offence under Section 498-A of the I.P. Code, accused No.2-Vaijinath is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.300/-, in default, to suffer rigorous imprisonment for one month. For the offence under Section 304-B of the I.P. Code accused No.2 - Vaijinath is sentenced to suffer rigorous imprisonment for seven years. For the offence under Section 498-A read with 34 of the I.P. Code, accused No.4- Gayabai is sentenced to suffer simple imprisonment for three months and to pay fine of Rs.100/-, in default, to suffer simple

imprisonment for fifteen days. For the offence punishable under Section 304-B read with 34 of the I.P. Code, accused No.4 Gayabai is sentenced to suffer rigorous imprisonment for seven years. It is directed that both the sentences shall run concurrently. The trial Court acquitted accused Nos.2 Vaijinath and accused No.4 Gayabai for the offence punishable under Section 306 read with 34 of the I.P. Code. The trial Court acquitted accused No.1 - Baliram Avhad, accused No.3 - Bhagwan and accused No.5- Meerabai for the offence punishable under Section 498-A, 306 and 304-B read with 34 of the I.P. Code.

4. Criminal Appeal No.50 of 2003 is filed by original accused No.2- Vaijinath and accused No.4- Gayabai, challenging their conviction and sentence for the offence punishable under Sections 498-A and 304-B read with 34 of the I.P. Code.

5. Criminal Appeal No.326 of 2003 is filed by the State challenging the acquittal of original

accused No.1 - Baliram Avhad, accused No.3- Bhagwan Avhad and accused No.5- Meerabai Avhad for the offence punishable under Section 498-A, 304 and 306 read with 34 of the I.P. Code.

6. Criminal Appeal No.329 of 2003 is filed by the State for enhancement of the sentence awarded by the trial Court to original accused No.2 - Vaijinath Avhad and accused No.4 - Gayabai Avhad.

7. The prosecution case, in brief, is as under:

A) Ashamati was married with accused No.2 - Vaijinath about two years prior to her death which occurred on 29th April, 2001. Accused No.1 - Baliram is father, accused No.3- Bhagwan is the brother and accused No.4 - Gayabai is the mother of accused No.2 -Vaijinath. Accused No.5 - Meerabai is the wife of accused No.3 Bhagwan.

B) At the time of marriage, parents of Ashamati had agreed to pay an amount of Rs.20,000/- and a golden ring weighing 5 grams towards dowry. Parents of Ashamati paid Rs.10,000/- and golden ring weighing 5 grams at the time of marriage. They had promised to pay balance dowry amount of Rs.10,000/- subsequently.

C) About one month after marriage accused persons started subjecting Ashamati to cruel treatment on account of balance dowry amount of Rs.10,000/-. Whenever Ashamati was visiting her parents house, she used to inform about cruel treatment at the hands of accused to her family members. The father and brother of Ashamati had attempted to convince accused persons. As there was no improvement in the behaviour of accused, Ashamati stayed with her parents for about 4 to 5 months. Thereafter Pandharinath, brother of deceased Ashamati, Balasaheb Wamanrao, maternal uncle of Ashamati alongwith some other persons, had been to house of accused. Pandharinath and

others requested accused persons to maintain Ashamati properly with a promise to pay balance dowry amount at the earliest. Accused No.4 Gayabai gave threat that in case of failure to pay balance dowry amount, Pandharinath and his family members could not see Ashamati.

D) Subsequently, on 28th March, 2001, on account of marriage of younger brother, Ashamati had been to her parental house. On that occasion also she informed about cruel treatment at the hands of accused persons. Soon after marriage, Pandharinath had gone to the house of accused alongwith Ashamati. None of the accused had attended the marriage, A table fan of "Cinny" make was given to accused No.2 Vaijinath by way of traditional present. All accused demanded balance amount of dowry and accused No.4 Gayabai gave threat of causing death of Ashamati on failure to pay balance dowry amount of Rs.10,000/-.

E) On 21st April, 2001 Pandharinath, brother

of Ashamati, had gone to Pokharni. All accused persons and Ashamati were found in the temple at Pokharni. Accused persons had arranged "Abhishek" to Lord "Narsinha" and hosted meals for about 500 to 1000 people from village Pokharni. Pandharinath had attempted to talk with Ashamati, but accused persons had not permitted Ashamati to talk with him.

F) On 29th April, 2001, Pandharinath and his family members received a message from one Ananta Manjulnath, that Ashamati was missing from the house of accused since early morning. Immediately, Pandharinath and others went to village Daithana. In spite of extensive search, Ashamati was not found. At about 4.30 p.m., Pandharinath returned back to his village Narsapur.

G) On 30th April, 2001, one Limbaji Rambhau informed Pandharinath and his family members that the dead body of Ashamati was found floating in the well situate in the land of Eknath Sopan

Avhad. At about 4.00 p.m. after receiving this message, Pandharinath and other family members went to Daithana. The dead body of Ashamati was found in the well situate in the land of Eknath Avhad.

H) On the very day, i.e. on 30th April, 2001, Pandharinath, elder brother of Ashamati, filed First Information Report in Daithana police station on the allegation that accused persons subjected Ashamati to cruel treatment on account of demand for balance dowry amount and because of such cruel treatment, Ashamati committed suicide. Crime No.26 of 2001 under Sections 498-A, 304-B and 306 read with 34 of the I.P. Code was registered in Daithana police station.

I) Investigation was entrusted to P.S.I. Sampate. The dead body of Ashamati was referred for post-mortem after inquest panchnama was drawn. The panchnama of scene of offence was drawn. Statements of witnesses were recorded. Viscera was

forwarded to C.A. After receipt of post-mortem report and report of C.A., charge-sheet came to be filed against accused persons. Learned Magistrate has committed the case to the Court of Sessions, Parbhani in due course.

8. A charge for an offence punishable under Sections 498-A, 304-B and 306 of the I.P. Code was framed against all the accused persons and the same was read over and explained to them. All accused persons pleaded not guilty and claimed to be tried. As per the statements under Section 313 of the Code of Criminal Procedure, it is the defence of the accused that they never subjected Ashamati to cruel treatment. They had received entire dowry amount at the time of marriage. Ashamati died accidentally due to fall in the well when she had gone for attending nature's call. Ashamati had not committed suicide. On account of untimely death of Ashamati, accused are falsely involved.

9. After recording the evidence and conducting full fledged trial, the trial Court convicted accused No.2 - Vaijinath and accused No.4 - Gayabai for the offence punishable under Sections 498-A and 304-B of the I.P. Code and sentenced them to suffer imprisonment and to pay fine, as afore-stated. Hence Criminal Appeal No.50 of 2003 is filed by accused Nos.2 and 4. The trial Court has acquitted accused Nos.1, 3 and 5 from all the charges with which they were charged. Hence Criminal Appeal No.326 of 2003 is filed by the State challenging the acquittal of accused Nos.1, 3 and 5, as afore-stated. Criminal Appeal No.329 of 2003 is filed by the State for enhancement of sentence imposed by the trial Court on accused Nos.2 and 4, as afore-stated.

10. Learned counsel appearing for original accused Nos.2 and 4 - Appellants in Criminal Appeal No.50 of 2003 submits that accused Nos.2 and 4 have been falsely implicated in the present case. They never subjected to any cruelty to

Ashamati. He submits that it is not the case of the prosecution that Ashamati died homicidal death, but it is the case of the prosecution that Ashamati committed suicide. Referring to the evidence of PW-1 Dr. Muna Afreen, who conducted post-mortem on the dead body of Ashamati, learned counsel submits that PW-1 Dr. Muna Afreen specifically stated in her cross-examination that, in such cases it cannot be ascertained whether the death caused is accidental or suicidal. Learned counsel therefore submits that the prosecution has failed to establish conclusively that Ashamati had committed suicide. Learned counsel further submits that Ashamati died accidentally due to fall in the well when, early in the morning, she had gone for attending nature's call. Learned counsel further submits that accused Nos.2 and 4, both are innocent and they have not at all committed any offence. It is therefore submitted that Criminal Appeal No.50 of 2003 deserves to be allowed.

11. As against this, learned A.P.P. appearing

for the State submits that while settling the marriage, it was decided that parents of Ashamati would pay an amount of Rs.20,000/- towards dowry. However, due to financial difficulties, father of Ashamati had paid only Rs.10,000/- and it was stated that remaining dowry amount would be paid subsequently. Referring to the evidence of PW-2 Pandharinath, PW-3 Balasaheb and PW-4 Bhaurao, learned A.G.P. submits that due to non payment of dowry amount, the accused persons subjected Ashamati to the ill-treatment and therefore she committed suicide. He further submits that the prosecution has proved beyond reasonable doubt that due to the ill-treatment at the hands of all the accused persons, Ashamati committed suicide and therefore the trial Court should not have acquitted the accused Nos.1, 3 and 5. He further submits that though the trial Court has held accused Nos.2 and 4 guilty for the offence punishable under Sections 498-A and 304-B of the I.P. Code, the sentence awarded to them is very less and therefore it is submitted that Appeal for

enhancement of sentence deserves to be allowed. Learned A.P.P. therefore prays that Criminal Appeal No.50 of 2003, filed by the accused Nos.2 and 4 may be rejected, and Criminal Appeal Nos.326 of 2003 filed against acquittal of accused Nos. 1, 3 and 5, and Criminal Appeal No.329 of 2003 filed for enhancement of sentence imposed on accused Nos.2 and 4 may be allowed.

12. We have considered the submissions of the learned counsel appearing for the Appellants and learned A.P.P. appearing for the State. We have carefully perused the entire original record. To prove its case, the prosecution has examined five witnesses.

13. The prosecution has examined PW-1 Dr. Muna Afreen d/o Abdul Gaffar. She deposed that on 1st May, 2001 she was serving as medical officer in the Primary Health Centre, at Daithana. The dead body of Ashamati w/o Vaijinath Avhad was referred for post-mortem on 1st May, 2001. PW-1

and Dr. Devale conducted post-mortem on the dead body of Ashamati. Accordingly, they prepared post-mortem report. She deposed that post-mortem report Exhibit 19 bears her signature and the contents of the same are correct. She further deposed that as per their opinion, the cause of death of Ashamati was due to asphyxia due to drowning. Viscera was preserved and forwarded to C.A. In the viscera, poison was not revealed as per report of C.A.

. During the course of cross-examination, PW-1 Dr. Muna Afreen stated that, in such cases it cannot be ascertained whether the death caused is accidental or suicidal.

14. It is the case of the prosecution that death of Ashamati was suicidal, as against this, it is the case of the accused that death of Ashamati was accidental. It is clear from the evidence of the medical officer who has conducted post-mortem on the dead body of Ashamati, that she was not sure whether the death of Ashamati was

accidental or suicidal.

15. The prosecution has examined PW-2 Pandharinath Gangadhar Jamare, who is an informant in this case. He deposed that the deceased Ashamati was his real sister. About two years prior to her death, Ashamati was married with accused No.2 Vaijinath. Accused No.1 Baliram is the father, accused No.4 Gayabai is mother, accused No.3 Bhagwan is brother of accused and accused No.4 Meerabai is the wife of accused No.3 Bhagwan.

. PW-2 Pandharinath further deposed in his examination-in-chief that, at the time of marriage, they had agreed to pay dowry amount of Rs.20,000/- and the golden ring weighing 5 grams. At the time of marriage, they paid Rs.10,000/- and golden ring of 5 grams. It was agreed that the balance amount shall be paid after harvesting season. Soon after marriage, Ashamati started to reside with accused at village Daithana. Within

about one month soon after marriage, all accused persons started insisting Ashamati for bringing balance amount of dowry of Rs.10,000/- from her parents. All the accused were subjecting Ashamati to cruel treatment. Whenever Ashamati used to visit their house on the occasions of festivals, she was informing about cruel treatment at the hands of the accused persons. Pandharinath himself and his father used to convince the accused persons that the balance amount shall be paid after harvesting season. At the time of Panchami festival, they had brought Ashamati to their house. Ashamati stayed with them from Panchami festival upto Makar Sankranti festival. Then she went back to her matrimonial house along with maternal uncle Balasaheb Wamanrao Punjare, Bhaurao Shesherao and Devidas Marotirao Jambre. Pandharinath had also gone to Daithana along with Ashamati and other persons. On that occasion, all the accused persons demanded balance amount of Rs.10,000/-. Particularly accused No.4 gave threat that if the balance amount of Rs.10,000/- is not

paid, they shall not be able to see even the nail of Ashamati.

. PW-2 Pandharinath further deposed that, subsequently, on 28th March, 2001, marriage of his younger brother was solemnized and on that occasion, they had brought Ashamati to their house. Ashamati informed them that accused persons were subjecting her to cruel treatment because of non-payment of balance amount of Rs.10,000/-. Accused No.2 - Vaijinath used to beat Ashamati on and often, whereas the remaining accused were insisting Ashamati to bring balance amount of Rs.10,000/-. PW-2 Pandharinath further deposed that soon after the marriage of his younger brother, he had gone to the house of accused along with Ashamati, and they had given a table fan to the accused. On that occasion, all the accused persons were asking him about the balance dowry amount of Rs.10,000/-. The accused had given threat to end the life of Ashamati, if the balance amount is not paid at the earliest.

. PW-2 Pandharinath further deposed that on 21st April, 2001 he had gone to Pokharni for offering his prayer to the temple situate at Pokharni. There he met with Ashamati at Pokharni. Ashamati attempted to talk with him but the accused persons had not allowed Ashamati to talk with her brother Pandharinath. He further deposed that on 29th April, 2001 a person by name Ananda from village Daithana had come to their village and informed that Ashamati was missing from the house of accused. Pandharinath himself, his parents, younger brother went to village Daithana and searched for Ashamati, but she was not found. On 30th April, 2001 one Limbaji Rambhau Lokhande informed that the dead body of Ashamati was found in the well situate in the land of Eknath Sopanrao Avhad. Immediately they went to the land of Eknath Avhad. They found the dead body of Ashamati in the well. On the same day, Pandharinath filed F.I.R. in Daithana police station. He further deposed that Ashamati committed suicide only because of

the cruel treatment given by the accused persons, as their demand for balance dowry amount was not fulfilled.

16. During the course of cross-examination, PW-2 Pandharinath has stated that, the marriage of Ashamati was settled after Ashamati and accused No.2 had approved each other. After the marriage was settled, Pandharinath and his family members had gone to the house of the accused for "Tila" ceremony, and after said ceremony, the accused persons came to his house for "Kunku" ceremony. After these ceremonies, marriage was performed. About 8 to 10 days after marriage, for the first time Ashamati came to their house, she stayed with them for about eight days. By that time the accused persons had not started demanding balance dowry amount. He further stated that they had not filed any complaint even when Ashamati was informing them repeatedly at the time of her every visit that she was subjected to cruel treatment. He further stated that his family owns about 15

acres land. The accused persons own about 10 acres land. In the land of accused well is not situate. When he had seen the well situate in the land of Eknath Sopanrao, the water was at a level of about 5 feet from ground level and there were three steps upto the water level. He further stated that, after going to the house of accused, accused No.4 had informed that during morning hours Ashamati had gone for attending nature's call at about 5.00 a.m. and since then she had not returned back to the house. On the next day Limbaji Rambhau had come to their village and informed that the dead body of Ashamati was found in the well. He further stated that prior to the incident, at Pokharni village, accused No.2 and Ashamati had offered "Abhishek" to Lord Narsinha; and they had hosted meals to entire village. The further suggestions put to PW-2 Pandharinath, were denied by him.

17. Thus, from careful perusal of the evidence of the informant Pandharinath, it appears

that he has not specifically stated the date and time when alleged ill-treatment was given to Ashamati by the accused persons. He has made general allegations that for the non-payment of balance amount of dowry all the accused were subjecting Ashamati to cruel treatment.

18. The prosecution has examined PW-3 Balasaheb Wamanrao Punjare. He deposed that deceased was his sister's daughter. She was married with accused No.2 about two years prior to her death. At the time when the marriage was settled, parents of Ashamati had agreed to pay dowry amount of Rs.20,000/- and golden ring weighing 5 grams. About three months soon after marriage, Ashamati had come to her parent's house. When he had been to the house of parents of Ashamati, she informed him that because of non-payment of balance dowry amount of Rs.10,000/- accused were subjecting her to cruel treatment. PW-3 Balasaheb, informant Pandharinath and others had gone to the house of accused along with

Ashamati. On that occasion all the accused insisted for payment of balance dowry amount and on failure, they gave threat of causing death of Ashamati.

19. During the course of cross-examination, PW-3 Balasaheb stated that his village is at a distance of about 15 Kms. from Parbhani town. Village Daithana is at a distance of about 22 Kms. from Parbhani town on opposite side. His statement was not recorded by police. He had not stated before the police that Ashamati had informed him that the accused persons subjected her to cruel treatment on account of balance dowry amount of Rs.10,000/-. About 8 to 10 days after Makar Sankrant, he had gone to village Daithana with deceased Ashamati and others. Thereafter, he never met Ashamati. He does not remember whether the accused persons had come to the house of informant prior to the marriage of Ashamati for "Kunku" ceremony. He had not gone to the house of accused at the time of "Tila" ceremony. As PW-3 Balasaheb

was not present, he does not know as to how much amount was given at the time of "Tila" ceremony to the accused. PW-3 Balasaheb has further denied the suggestion put to him by the counsel appearing for the accused.

20. Thus, from careful perusal of the evidence of PW-3 Balasaheb, it is clear that his statement was not recorded by the police, nor he himself has stated before the Police that Ashamati had informed him that the accused persons subjected her to cruel treatment on account of non-payment of balance amount of dowry. For the first time, PW-3 Balasaheb has deposed before the Court that accused persons were ill-treating Ashamati on account of alleged non-payment of balance dowry amount. PW-3 Balasaheb was not present either for "Kunku" ceremony or "Tila" ceremony and therefore he had no personal knowledge about exact amount which was agreed to be given as dowry and how much amount of dowry was paid and how much was remained to be paid.

Therefore, in our opinion, the evidence of PW-3 Balasaheb is not trustworthy and reliable.

21. The prosecution has examined PW-4 Bhaurao Sheserao Shinde. In his examination-in-chief PW-4 Bhaurao deposed that Ashamati was married with accused No.2 about two years prior to her death. At the time of marriage, an amount of Rs.20,000/- was settled as dowry amount and a golden ring. Out of the agreed amount, at the time of marriage Rs.10,000/- were paid and golden ring was given. The remaining amount of Rs.10,000/- was agreed to be paid after one year. About three months after marriage Ashamati returned to her parent's house. Ashamati informed him that the accused persons subjected her to cruel treatment because of non-payment of balance amount of Rs.10,000/-. Gangadhar, father of Ashamati had convinced her. At the time of Panchami festival again Ashamati came to her parent's house. Ashamati stayed at the house her parents up-to Makar Sankarant. On that occasion, Ashamati informed that the accused

persons had directed her not to return to their house unless and untill balance dowry amount of Rs.10,000/- was paid. PW-4 Bhaurao further deposed that his land and land of father of Ashamati are adjacent to each other and so they are having cordial relations. He further deposed that he himself, Dasu, maternal uncle of Ashamati and Pandharinath had gone to the house of accused along with Ashamati. They tried to convince the accused persons that the balance amount of Rs.10,000/- shall be paid to them. However, accused No.4 Gayabai gave threats that if the balance amount of Rs.10,000/- is not paid, they shall not be in a position to see even the nail of Ashamati.

. PW-4 Bhaurao further deposed that, subsequently, at the time of marriage of her brother, Ashamati had come to her parent's house. On that occasion also Ashamati informed that the accused persons were subjecting her to cruel treatment because of non-payment of balance dowry

of Rs.10,000/-. About fifteen days thereafter he came to know that Ashamati was missing from the house of the accused after she had gone for attending nature's call. Thereafter he came to know that the dead body of Ashamati was found in a well. He further deposed that he himself, Pandhari and other villagers went to Daithana. The dead body of Ashamati was found in the well.

22. During the course of cross-examination, PW-4 Bhaurao has stated that informant or his family members are not his relatives. The house of informant is away from his house and it is situate in Dhangar Galli. He is the member of village Gram Panchayat. Bhanudas is the Sarpanch and they belong to same party. Informant Pandhari and his family members are the members of opposition party, still their relations are cordial. He further stated that police had recorded his statement. He stated that contents of his statement that Gangadhar, father of Ashamati had informed him about the cruel treatment given to

Ashamati by the accused, are correct. He was unable to assign any reason as to why in his statement before the Police it is not mentioned that Ashamati had informed him about her cruel treatment at the hands of the accused. He does not remember the day or the date of marriage of Ashamati. He also does not remember the year when marriage was performed. He was present in the meeting when the marriage was settled, the meeting was held in the house of Gangadhar. But he does not remember the date of meeting. The meeting was held about one month prior to the marriage. He does not remember the name of maternal uncle of Ashamati. They had been to the house of the accused along with Ashamati one day prior to Makar Sankrant. He was unable to tell the year when he had been to the house of the accused at the time of Makar Sankrant, but he had gone about one and half months back. PW-4 Bhaurao further denied the suggestions put to him by the counsel appearing for the accused.

23. Thus, it is clear that the prosecution has brought on record the contradictions, omissions and improvements in the evidence of PW-4 Bhaurao. Though in his examination-in-chief he has specifically stated that Ashamati had informed him that the accused persons subjected her to cruel treatment, in his cross-examination, he has specifically admitted that it is recorded in his police statement that Gangadhar, father of Ashamati had informed him about the cruel treatment given to Ashamati by the accused. Thus, it is clear that the evidence of PW-4 Bhaurao is hear say, regarding the alleged ill-treatment given to Ashamati by the accused persons. PW-4 Bhaurao had further admitted that contents in his police statement were correct. PW-4 Bhaurao was unable to tell the day and date of the marriage of Ashamati. He further stated that though he was present in the meeting when the marriage was settled, however he was unable to state the date of such meeting. Thus, oral testimony of PW-4 Bhaurao is not at all inspiring confidence.

24. The prosecution has examined PW-5 Prashant Pandurang Sampate, A.P.I., who was the investigating officer in this case. He has deposed about the manner in which he has carried out the investigation.

25. We have discussed the evidence of all the witnesses, in detail. It is the case of the prosecution that at the time of settlement of the marriage, it was agreed that father of Ashamati would pay an amount of Rs.20,000/- as a dowry. It is further the case of the prosecution that out of the said amount of dowry, only an amount of Rs.10,000/- was paid at the time of marriage and an amount of Rs.10,000/- was remained to be paid, and on account of non-payment of the said amount, the accused had given ill-treatment to Ashamati. However, the prosecution has failed to prove that due to non-payment of the dowry amount, the accused persons had ill-treated to Ashamati. In this regard, we have carefully perused the

evidence of PW-2 Pandharinath who is informant and real brother of the deceased, PW-3 Balasaheb, who is the maternal uncle of deceased and PW-4 Bhaurao who is the friend of father of deceased Ashamati. All these three witnesses have made general statements that, due to non-payment of dowry amount all the accused persons were subjecting Ashamati to cruel treatment. However, these witnesses have not given any details or particulars as to on which date and at which time such ill-treatment was given to Ashamati. No specific instances are quoted and only general and vague statements are made. Further, regarding the ill-treatment given to Ashamati by the accused persons, the oral testimony of all these prosecution witnesses i.e. PW-2 Pandharinath, PW-3 Balasaheb and PW-4 Bhaurao, is same, similar and stereo-type. All these witnesses have stated that, all the accused were subjecting Ashamati to cruel treatment, and nothing more than that is deposed by these witnesses. Therefore, we are of the considered opinion that the prosecution has

failed to establish that accused persons have committed an offence punishable under Section 498-A of the I.P. Code.

26. It is true that in the facts of the present case, death of Ashamati occurred within seven years from the date of marriage. However, upon careful perusal of the evidence of PW-1 Dr. Muna Afreen, the medical officer who has conducted post-mortem on the dead body of Ashamati, she has, in clear terms, stated in her cross-examination that she was not sure whether the death of Ashamati was accidental or suicidal. Thus the prosecution has failed to establish that Ashamati had committed suicide. As against this, it is the defence of the accused that on the day of incident, early in the morning Ashamati went to the field, to attend nature's call and accidentally she fell in the well. Thus, it appears that the accused have taken a probable defence. Therefore, the possibility of accidental death of Ashamati cannot be ruled out.

27. As observed earlier, there are various contradictions, omissions and improvements in the oral evidence of PW-3 Balasaheb and PW-4 Bhaurao. We have carefully perused the findings recorded by the trial Court. The trial Court, in Para 29 of the Judgment, referred to the contradictions in the evidence of PW-3 and PW-4 Bhaurao. Thereafter in Para 30 of the Judgment, the trial Court has observed as under:

"In view of these contradictions appearing in the statements of PW.3 Balasaheb and PW.4 Bhaurao at the most it can be said that these witnesses have improved their versions to the effect that Ashamati had informed them about her cruel treatment at the hands of accused persons. However, because of these contradictions in the statements of PW.3 Balasaheb and PW.4 Bhaurao remaining part of their statements can not be disbelieved."

28. The afore-said findings recorded by the

trial Court are perverse. When the trial Court has concluded that there were contradictions and improvements in the oral testimony of PW-3 Balasaheb and PW-4 Bhaurao, the trial Court ought to have discarded such untrustworthy and unreliable evidence.

29. In Para 37 of the Judgment, the trial Court has observed that, there is no convincing evidence to prove beyond reasonable doubt that Ashamati committed suicide and under such circumstances, benefit of doubt must go to accused. The trial Court has further observed that prosecution has failed to prove that Ashamati committed suicide. Thus, the trial Court has concluded that Ashamati had not committed suicide. Further, in Para 38 of the Judgment, the trial Court has observed that, as prosecution has failed to prove beyond reasonable doubt that Ashamati committed suicide, consequently it cannot be said that accused persons or any of them abetted commission of suicide by Ashamati. The trial Court

has further observed that, even otherwise there is no cogent and reliable evidence to prove abetment by instigation or intentional aiding. It is further observed that, no cogent and reliable evidence is adduced to show that accused persons or any of them instigated Ashamati to commit suicide or that they intentionally aided her to commit suicide. Thus, the trial Court has concluded that, the prosecution has failed to prove that accused persons or any one of them abetted in commission of suicide by Ashamati.

30. We have perused the First Information Report Exhibit-24. The informant Pandharinath has specifically stated in the First Information Report that due to the ill-treatment given by the accused persons, his sister Ashamati had committed suicide by jumping in the well. However, as observed earlier, the trial Court has concluded that deceased Ashamati had not committed suicide. The trial Court has further held that the prosecution has failed to prove that accused

persons or any one of them abetted in commission of suicide by Ashamati. However, on the same set of evidence, the trial Court has held that accused No.2 - Vaijinath and accused No.4 - Gayabai have committed the offence punishable under Section 498-A and 304-B of the I.P. Code. On the same set of evidence, the trial Court has acquitted original accused Nos.1, 3 and 5 from all the offences with which they were charged.

31. Learned counsel appearing for original accused Nos.2 and 4, has rightly placed reliance upon the exposition of law by the Supreme Court in the case of Bakshish Ram and another vs. State of Punjab¹, in Para 13 of the Judgment, held as under:

"13. As discussed above, a perusal of Section 113B of the Evidence Act and Section 304B, I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the

¹ A.I.R. 2013 S.C. 1484

prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the prosecution heavily relied on the only evidence of Sibbo (PW-2)-mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions. In such circumstances, as argued by the learned counsel for the appellants, accidental death cannot be ruled out."

32. In the present case in hand, the prosecution failed to establish that soon before the death of Ashamati, she was subjected to cruelty or harassment by the accused persons in connection with any demand for dowry. Further, so

far as the ill-treatment is concerned, the prosecution witnesses have made general and vague statements which are not sufficient to attract the provisions of Section 304-B of the I.P. Code.

33. Thus, we are of the considered view that the findings recorded by the trial Court so far as convicting and sentencing accused Nos.2 and 4 for the offence punishable under Section 498-A and 304-B read with 34 of the Indian Penal Code are perverse and the same are liable to be quashed and set aside.

34. So far as the findings recorded by the trial Court thereby acquitting accused No.1 - Baliram, accused No.3- Bhagwan and accused No.5 - Meerabai from all the offences with which they were charged are concerned, the same are in accordance with the evidence brought on record. The prosecution has failed to establish that accused Nos.1, 3 and 5 have committed any of the offences with which they were charged.

35. For the reasons afore-stated we are of the opinion that Criminal Appeal No.50 of 2003 filed by original accused No.2 - Vaijinath Avhad and accused No.4 - Gayabai Avhad, deserves to be allowed.

36. For the reasons afore-stated Criminal Appeal No.326 of 2003 filed by the State challenging the acquittal of original accused No.1 - Baliram Avhad, accused No.3- Bhagwan Avhad and accused No.5- Meerabai Avhad for the offences with which they were charged is liable to be dismissed. So also Criminal Appeal No.329 of 2003 filed by the State for enhancement of the sentence awarded by the trial Court to original accused No.2 - Vaijinath Avhad and accused No.4 - Gayabai Avhad also deserves to be dismissed.

37. In the light of discussion in foregoing paragraphs, we pass the following order:

O R D E R

(I) Criminal Appeal No.50 of 2003 is allowed.

(II) The impugned Judgment and order dated 7th January, 2003, in Sessions Trial No.121 of 2001, passed by 4th Additional Sessions Judge, Parbhani thereby convicting and sentencing accused No.2 - Vaijinath Avhad and accused No.4 Gayabai Avhad for the offence punishable under Section 498-A and 304-B of the Indian Penal Code, is quashed and set aside.

(III) Appellants in Criminal Appeal No.50 of 2003 i.e. original accused No.2 - Vaijinath Avhad and accused No.4 Gayabai Avhad are acquitted of the offence punishable under Sections 498-A and 304-B of the Indian Penal Code.

(IV) The impugned Judgment and order dated 7th January, 2003 in Sessions Trial No.121 of 2001, passed by 4th Additional Sessions Judge, Parbhani thereby acquitting original accused No.2 Vaijinath Avhad and accused No.4-Gayabai Avhad of the offence punishable under Section 306 read with 34 of the Indian Penal Code, is hereby confirmed.

(V) The bail bonds of both the Appellants i.e. Vaijinath Avhad and Gayabai Avhad shall stand cancelled.

(VI) The Appellants - Vaijinath Avhad and Gayabai Avhad shall furnish the Personal Bonds of Rs.15,000/- each and surety of like amount each, under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Parbhani.

(VII) The impugned Judgment and order dated 7th January, 2003 in Sessions Trial No.121 of 2001, passed by 4th Additional Sessions Judge, Parbhani, thereby acquitting original accused No.1 - Baliram Avhad, accused No.3 - Bhagwan Avhad and accused No.5- Meerabai Avhad of the offences punishable under Sections 498-A, 306 and 304-B read with 34 of the Indian Penal Code is also confirmed.

(VIII) Criminal Appeal No.326 of 2003 and Criminal Appeal No.329 of 2003 are hereby dismissed.

[S.M. GAVHANE, J.]

asb/APR18

[S.S. SHINDE, J.]