

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.498 OF 2020
WITH
CRIMINAL APPLICATION NO.1638 of 2020

- 1 Vishal Indrajit Bobade,
Age 25 yrs., Occ. Agri.,
- 2 Tanaji @ Bablu Indrajit Bobade,
Age 22 yrs., Occ. Agri.,
- 3 Indrajit Ravan Bobade,
Age 51 yrs., Occ. Agri.,

All are r/o Tapse Chincholi,
Tq. Ausa, Dist. Latur.

... Appellants

... **Versus** ...

The State of Maharashtra
Through Police Sub Inspector,
Police Station, Killari,
Dist. Latur.

... Respondent

...

Mr. S.A. Wakure, Advocate for appellants

Mrs. R.P Gaur, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 07th OCTOBER, 2020

JUDGMENT :

1 Appeal is admitted on 23.09.2020.

2 Criminal Application No.1638 of 2020 is filed for suspension of sentence, however, at the time of submissions when it was found that the matter can be finally disposed of at the time of admission, the Record and Proceedings has been called. Printing of paper book was dispensed with. With the consent of both the parties, final hearing has been taken at the time of admission.

3 The present appellants are the original accused, who faced trial in Sessions Case No.21/2019 for the offence punishable under Section 498-A, 306, 323 read with Section 34 of the Indian Penal Code. They have been convicted by learned Additional Sessions Judge-5, Latur on 07.09.2020. The appellants (accused Nos.1, 2 and 4) have been held guilty of committing the offence punishable under Section 306 of the Indian Penal Code and to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/- each, in default to suffer imprisonment of six months. They have been further held guilty of committing offence punishable under Section 498-A of the Indian Penal Code and have been sentenced to suffer rigorous imprisonment for one year. Further, they have been held guilty of committing offence punishable

under Section 323 of the Indian Penal Code and sentenced to suffer simple imprisonment for three months. All the substantive sentences have been directed to run concurrently.

4 Appellant No.1/accused No.1 is the husband of deceased Vaishali, appellant No.2/accused No.2 is the brother of appellant No.1 and appellant No.3/original accused No.4 is the father of appellant Nos.1 and 2. It is not in dispute that deceased Vaishali got married to accused No.1 about five years prior to First Information Report dated 11.11.2018. Original accused Nos.1 to 4 are resident of Tapse Chincholi, Tq. Ausa, Dist. Latur and original accused No.5 Manisha - sister-in-law of deceased is resident of village Panchgavan, Tq. & Dist. Osmanabad.

5 The prosecution had come with a case, that at the time of marriage informant Anna Kisan Bite, who is the father of deceased Vaishali had given Rs.50,000/- as dowry and half tola gold as well as domestic articles. Vaishali was treated properly by the accused persons for about six months, but thereafter all the accused persons (present appellants and original accused No. 3 - Nanda [mother-in-law] and accused No. 5 - Manisha) were ill-treating Vaishali. They used to insist Vaishali, that she should bring two tolas of gold and cash of Rs.1,00,000/- for boar to be dug in their agricultural land. They used to assault her, keep her starving and insult

her, thereby harassing her mentally as well as physically. Vaishali used to communicate the behaviour of the accused persons to her parents whenever she used to visit her parental home. She was advised to bear the behaviour under the pretext that if she begets any child then it may make difference and whenever the father would get amount he would fulfill the demand. Daughter was born to Vaishali about a year prior to First Information Report. However, it had not make any difference in the behaviour of the accused persons. Husband, brother-in-law and father-in-law used to assault her by consuming liquor and thereby insisting her to bring gold and cash. The father/ informant and his two brother-in-laws had tried to advise the accused persons but they flatly told that unless he gives cash and gold, they will not treat Vaishali properly. Informant had gone to the matrimonial home of Vaishali on 01.11.2018 to bring her to house for celebration of Diwali, at that time, husband, brother-in-law and parents-in-law told that unless he gives gold and cash, Vaishali will not be sent to his house. Threat was given, that if amount is not given immediately, then they will harass her intensely. Informant then received phone call from accused No.4 at about 3.00 p.m. on 02.11.2018, that Vaishali had consumed poison and they she is under treatment at Government Hospital, Latur. He and his wife reached hospital at about 11.00 p.m.. Vishali was not in a position to speak, but then she expired at about 2.00 to 2.30 a.m. on the same day. Thus, the FIR came to be

lodged on 11.11.2018.

6 It appears that the fact of death was reported to Latur police and then Inquest Panchnama was prepared and dead body was sent for post mortem. After the post mortem was done, the dead body was handed over to accused. Inquiry under Section 174 of Cr.PC. was undertaken. Panchnama of the spot came to be executed on 09.11.2018 and a bottle, on which 'BRUT' as well as 'Poison' was written, was seized from the spot. Statements of witnesses have been recorded, accused came to be arrested. It appears that the viscera was preserved and sent for chemical analysis. P.M. Report was collected and after completion of the investigation charge sheet was filed.

7 Charge has been framed at Exh.17 against all the accused persons for the offence punishable under Section 498-A, 306, 323 read with Section 34 of the Indian Penal Code. All the accused persons claimed innocence, trial has been conducted. Prosecution has examined in all 8 witnesses to bring home the guilt of the accused. After considering the evidence on record, statement of the accused persons under Section 313 of Cr.PC., the learned Trial Judge has convicted accused Nos.1, 2 and 4 only. Accused Nos.3 and 5 i.e. mother-in-law and sister-in-law of deceased Vaishali have been acquitted. Appellants have challenged their aforesaid conviction in this appeal.

8 Heard learned Advocate Mr. S.A. Wakure for appellants and learned APP Mrs. R.P. Gaur for State.

9 It has been vehemently submitted on behalf of the appellants that the learned Trial Judge has not appreciated the evidence properly. He has taken whatever has been stated by the witnesses as gospel truth. Perusal of the testimony of the informant would show, that the marriage has taken place five years ago and according to him, the alleged ill-treatment started after six months of marriage. He states that deceased Vaishali was harassed for two tolas of gold and Rs.1,00,000/- for digging boar in the land. In his cross-examination the witness has stated that he had seen well in the land of accused. Under such circumstance, it is hard to believe that for boar there would have been a demand. If the alleged ill-treatment was going on since about 4 ½ years, then he has done nothing to resolve the same. He claimed ignorance of the fact that the accused No.1 had given a complaint with Women Counselling Centre, Ausa, which he had filed against the deceased. He has denied that deceased was residing with him since 26.02.2015 without any reasonable cause by leaving the company of her husband. He has also denied that a notice was sent by accused No.1 through his Advocate to deceased on 10.06.2015 calling upon her to join his company. He has also denied that there was compromise between accused No.1 and deceased in

that Counselling Centre and thereafter the husband and wife started residing separately from the other accused persons. However, he admits that his daughter used to say always to the accused No.1 that they should reside at Pune. The testimony of the informant would also show, that he has made material improvements and thereby tried to give a colour that he had tried to resolve the dispute with the help of his relatives. Though the testimony of the sister of the deceased would give a picture that she tried to support her father; yet, the fact cannot be denied, that she is the married sister of deceased and she used to reside at her matrimonial home. Therefore, whatever has been stated by her appears to be hearsay. Her testimony is vague and the alleged acts of cruelty told by PW 2 and PW 4 are different. She resides at Pune and the possibility cannot be ruled out that because she was residing at Pune even the deceased had desire to stay at Pune along with accused No.1, to which accused No.1 did not agree. Further, it can be seen, that the mother of the deceased PW 5 Sunita has tried to corroborate with PW 4 Sangita, but she is not corroborating to the testimony of PW 2 Anna, the father of the deceased. PW 4 and 5 have levelled allegations that the mother-in-law used to insult deceased, father-in-law used to assault the deceased under the influence of liquor and the brother-in-law used to abuse by saying that 'Vaishali cannot cook food properly'. All these facts are absent in the testimony of PW 2 Anna and his FIR. Only the interested witnesses

have been examined. Further, the learned Trial Judge has failed to consider that in the Post Mortem Report final opinion has not been given and the Chemical Analyzer's Report of testing viscera does not reveal any poisonous substance found in the sample. Therefore, the exact cause of the death was not at all proved by the prosecution; yet, the learned Trial Judge concluded that it was suicidal death. The findings are perverse, and therefore, deserve to be set aside.

10 Per contra, the learned APP strongly supported the reasons given by the Trial Court while convicting the present appellants. It was submitted that the marriage of the deceased was performed with accused No.1 only five years ago and the death has taken place, which was unnatural, within seven years. The informant says that he had given amount of Rs.50,000/- and five grams of gold at the time of marriage, and thereafter the ill-treatment was on the count of illegal demand of two tolas of gold and Rs.1,00,000/- for digging boar. Even if the informant has admitted that he had seen well in the agricultural land of the accused, yet, possibility of need to have a boar connection for sufficiency of water to take cash crops cannot be ruled out. The testimony of PW 2 Anna regarding the harassment given to deceased is supported by his wife PW 5 Sunita and daughter PW 4 Sangita. They are the near relatives. The married lady can share her agony only with the parents,

sister and brother. She may not disclose those facts to a third person, and therefore, the near relatives cannot be branded as interested witnesses. Their testimony cannot be discarded only on that count. Even if there is mental or physical harassment, a married lady would be reluctant to approach to police as she would be having hopes for reconciliation and better treatment by the husband and his relatives. Though no complaint was filed either by the deceased or by the informant against the accused persons prior to the incident, that does not mean that the deceased was not subjected to cruelty. PW 2 Anna has specifically stated that phone call was given at about 3.00 p.m. on 02.11.2018 by the father-in-law of Vaishali and he had told that Vaishali consumed poison, and therefore, she has been admitted to hospital. The testimony of the Medical Officer would show, that he has specifically mentioned in P.M. report (Exh.74), that the death has occurred because of poisoning. Therefore, it was a suicide and because of the acts of the cruelty given by the accused persons Vaishali had no option but to commit suicide, and therefore, the present appellants have been rightly convicted by the learned Trial Judge.

11 The testimony of the father, who is the informant, PW 2 Anna would show, that after six months of marriage the accused persons started illegal demand of two tolas of gold and Rs.1,00,000/- for digging boar in the

agricultural land. According to him, all the accused persons used to assault Vaishali, abuse her and keep her starving. Vaishali used to give the facts to him whenever she used to go to her parental house for festivals. Each time he used to suggest that she should bear the treatment and after the birth of a child their behaviour may change. Testimony of PW 4 Sangita and PW 5 Sunita would show that apart from the alleged demand, dispute, starving and abuses; the mother-in-law used to insult, accused No. 2 used to assault under the influence of liquor and brother-in-law used to abuse by saying that she cannot cook food. The sister-in-law used to instigate mother-in-law and thereafter there used to be quarrels between mother-in-law and Vaishali. The husband also used to ill-treat Vaishali. PW 4 Sangita has not stated which acts accused No.1 used to do with Vaishali, but PW 5 Sunita says that he used to abuse and assault Vaishali after being instigated by accused persons. It will have to be mentioned here that mother-in-law and sister-in-law have been acquitted by the learned Trial Judge and the State has not filed any appeal challenging their acquittal. Therefore, we are required to confine ourselves to the alleged acts of husband, father-in-law and brother-in-law. Again, at the costs of repetition, if we go back to the testimony of PW 2 Anna, then he has not given acts of each of the accused and in general he has made statement, whereas PW 4 Sangita and PW 5 Sunita have tried to assign a particular act to the present appellants. Therefore, at the outset, when all

these facts regarding particular act of the accused-appellants are not mentioned in the FIR, so also, in the testimony of PW 2 Anna; this glaring contradiction in the testimonies of these witnesses ought to have been taken note of by the learned Trial Judge.

12 As regards the testimony of PW 4 Sangita and PW 5 Sunita though they are corroborating with each other, yet, taking into consideration that they have assigned role to each accused it can be seen that the particulars of acts of ill-treatment by accused No.1 have not been stated by them. There is contradiction amongst these two witnesses also on that count. PW 4 Sangita uses only the word 'ill-treatment', whereas PW 5 Sunita says that accused No.1 used to abuse and assault Vaishali at the instigation of other accused persons, but she has not stated as to on what count there used to be an instigation. As regards the father-in-law is concerned, both of them have stated that he used to abuse Vaishali under the influence of liquor. Mere abuses, without specifying them, do not amount to subjecting any person to cruelty, much less the cruelty as contemplated under Section 498-A of the Indian Penal Code. The abuses have not been given and the testimony of these two witnesses is not sufficient to infer that those abuses were in connection with the alleged illegal demand by the accused persons. Same is the case with the allegations against brother-in-law. It is stated that he used

to abuse Vaishali on the count that she was not able to cook food. These two witnesses also say, that all the accused persons used to ask Vishali to bring two tolas of gold and Rs.1,00,000/- for boar since six months after the marriage and on that count they used to pick up quarrel with her, starve her and ill-treat her. These are the vague allegations. If she would have been kept starved for about 4 ½ years then the situation would have been different. None of these witnesses have come with a case that her health has deteriorated and they had consulted any medical practitioner for the same. It is hard to believe that parents would allow their child to starve. The words used by all the three witnesses are “तिला जेवन देत नव्हते”. Whether they had the intention to say, that absolutely no food was provided to her, is a question, and the prosecution has not got any clarification on the same. It is to be noted that as per the FIR, Vaishali had begotten a daughter by name Vaishnavi and her age on the date of FIR was one year. In the FIR he tries to say, that inspite of birth of the daughter there was no change in the behaviour of the accused persons and the same demand continued. However, his examination-in-chief is silent on the said fact. If the child born to Vaishali was healthy, there appears to be no substance in the allegations made by these witnesses that she was kept starved. Though suggestions have been given regarding complaint made by accused No.1 against Vaishali in Counselling Centre at Ausa, no evidence has been led by the accused persons

in defence, and therefore, those aspects cannot be considered here. The only admission, that has been, given by PW 2 Anna that Vaishali used to insist the accused No.1 that she along with accused No.1 should reside at Pune. Further, he admits that the agricultural land of the accused was seen by him at the time of settlement of marriage and he had noticed the well. If well is already in existence, it is less likely that any such demand for a boar would be there. Prosecution has not tried to extract as to how much was the agricultural land of the accused persons and which kind of crop they used to take earlier. Unless it would have been brought on record that there was in fact need for more water to the land of the accused, the alleged demand stated by the prosecution witnesses cannot be appreciated. The informant has made material improvement by saying that he had gone to the house of the accused 15 days prior to the incident along with his brother-in-laws. The father-in-law of Vaishali refused to behave properly and specifically told that unless the amount is given they will not stop giving harassment to Vaishali. If such statement was made, then it is hard to believe that he would have left his daughter for suffering miseries. In his cross-examination he has admitted that he has made that improvement. Therefore, that part of his testimony is required to be ignored. Taking into consideration all these three relatives, it can be seen, that the ingredients of offence under Section 498-A of the Indian Penal Code are not at all attracted. It is not necessary to reproduce Section

498-A of the Indian Penal Code here, however, certain pronouncements by Hon'ble Apex Court would support the observation that the ingredients of the offence are not made out. In **Girdhar Shankar Tawade vs. State of Maharashtra, AIR 2002 SC 2018** it has been held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498-A of the Indian Penal Code and there should be a case of continuous state of affairs of torture by one to another. In **Manju Ram Kalita vs. State of Assam, (2009) 13 Supreme Court Cases 330**, it has been observed -

"Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc.. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

Thus, after taking note of these pronouncements if we consider the alleged act of ill-treatment, then the testimony reveals that it was not so continuous or persistent. Those acts are vague and in ordinary parlance will not drive a woman to commit suicide or in other words, those acts cannot be

stated to be such acts, which had left no other alternative to the deceased but to commit suicide. The learned Trial Judge has not considered the concept of 'cruelty' as contemplated under Section 498-A of the Indian Penal Code and has not tested the alleged acts of accused on the said touchstone. Therefore, finding of the learned Trial Judge, that offence under Section 498-A of the Indian Penal Code has proved against the present appellants is wrong and deserves to be set aside.

13 Now, turning to Section 306 of the Indian Penal Code, prosecution should prove the 'abetment'. In **S.S. Chheena vs. Vijay Kumar Mahajan and another, (2010) 12 SCC 190** scope and ambit of Section 306 was thus considered -

16 In order to properly comprehend the scope and ambit of Section 306 IPC, it is important to carefully examine the basic ingredients of Section 306 IPC. The said section is reproduced as under :-

"306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

17 The word "suicide" in itself is nowhere defined in the Penal Code, however its meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide

must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

18 Suicide by itself is not an offence under either English or Indian criminal law, though at one time it was a felony in England. In England, the former law was of the nature of being a deterrent to people as it provided penalties of two types:

1 Degradation of corpse of the deceased by burying it on the highway with a stake through its chest.

2 Forfeiture of property of the deceased by the State.

19 This penalty was later distilled down to merely not providing a full Christian burial, unless the deceased could be proved to be of unsound mind. However, currently there is no punishment for suicide after the enactment of the Suicide Act, 1961 which proclaims that the rule of law whereby it was a crime for a person to commit suicide has been abrogated.

20 In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under Section 309 IPC.

21 "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which reads as under :

"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."

Explanation 2 which has been inserted along with Section 107 reads as under :

"Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

14 Further, in **Thanu Ram vs. State of M.P., (2010) 10 SCC 353**, note has been taken of the observations in **Randhir Singh and another vs. State of Punjab, (2004) 13 SCC 129**, wherein it was observed that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing without the positive act on the part of the accused to instigate.

15 In **Thanu Ram's** case it has been observed -

"In our view, the element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Indian Evidence Act, 1872, which provides for a presumption to be arrived at regarding abetment of suicide by a married woman and certain criteria are also laid down therein. The first criterion is that such suicide must have been committed within 7 years from the date of the victim's marriage. Since

Hirabai committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the Court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. In the explanation to Section 113-A it has also been indicated that for the purpose of the said Section, the expression “cruelty” would have the same meaning as in Section 498-A IPC. Accordingly, if the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC.”

It will not be out of place to mention here, that in **Thanu Ram’s** case, relying on the decision in **Sushil Kumar Sharma vs. Union of India and others, (2005) 6 SCC 281** the conviction was confirmed. However, difference between **Sushil Kumar’s** case and present case is, that charge under Section 304-B of the Indian Penal Code has not been framed in present case, though the marriage of accused No.1 with deceased Vaishali was also within 7 years of the date of the incident. The question, that arises is, whether the presumption under Section 113-A of the Indian Evidence Act can be invoked ? The above said portion from **Thanu Ram’s** case clarifies that the degree of cruelty would be required to be considered for invoking the presumption and also the offence under Section 498-A of the Indian Penal

Code and further to connect it with the alleged instigation or abetment as contemplated under Section 306 of the Indian Penal Code. On the basis of facts before the case in **Thanu Ram's** case Hon'ble Apex Court held that, that link is established. However, here in this case the said link is missing. There is absolutely no evidence adduced by the prosecution, as to what was the state of mind of the deceased just prior to 02.11.2018. No witness has been examined to state about the activities done by Vaishali either on 02.11.2018 or about two days prior to that. None of the neighbour has been examined to bring it on record as to what had happened in the house of accused on that day, which would have promoted Vaishali to commit suicide. At the costs of repetition, it can be said, that the deposition of PW 2 Anna regarding his visits to matrimonial home of Vaishali about 15 days prior to her death and also on 01.11.2018 are the piece of improvement. Another important fact to be noted is that the prosecution has not ruled out accidental death of Vaishali. Here, though the prosecution has come with the case that Vaishali died due to consumption of poisonous substance and PW 7 Dr. Ranjit, who carried out the Post Mortem has been examined, yet, he had preserved viscera for analysis. The P.M. report (Exh.74) states that the Post Mortem findings are consistent with death due to poisoning, however, viscera is preserved. If the P.M. report (Exh.74) is perused, then it can be seen that PW 7 Dr. Ranjit had found that there was failure of kidney and acute pulmonary

edema (accumulation of water in lungs). In cross-examination he has admitted that before performing post mortem they discussed with the relatives of the deceased regarding cause of death. He had not found any injury on the body of deceased. The question, that arises is, how the kidney could have been affected or failed without damaging internal organs of body ? Further, how it would have affected the lungs, is a question and we cannot find any answer to the same in the testimony of PW 7 Dr. Ranjit. Vaishali had expired on 03.11.2018 at about 3.00 a.m.. Prior to that she was admitted in the hospital and treating Doctor was not examined by the prosecution for the reasons best known to it. What kind of treatment was given has not come on record. Whether stomach wash was given and if there was vomiting after stomach wash, whether that liquid was preserved and sent for C.A. is not explained. The concerned Medical Officer from Government Medical College and Hospital, Latur was one of the important witnesses, who has been withheld for no reason at all by the prosecution. Taking into consideration the fact that Vaishali died at about 3.00 a.m. and the post mortem has been done between 9.30 a.m. to 10.30 a.m. and then her viscera was preserved. It was necessary to see, what the C.A. report says. C.A. report (Exh.5) states, that three items were sent for chemical analysis, one was viscera of stomach intestine with its contents in one plastic jar, in another plastic jar viscera of pieces of liver, spleen and kidney were sent. Third was

blood in a small glass bottle. In **Bhupendra vs. State of Madhya Pradesh, (2014) 2 SCC 106**, it has been observed -

“Normally, the viscera are preserved and submitted for chemical analysis under the following circumstances : (1) When the investigating officer requests for such an examination; (2) When the medical officer suspects the presence of poison by smell or some other evidence while conducting an autopsy on injury cases; (3) To exclude poisoning, in instances where the cause of death could not be arrived at on post mortem examination and there is no natural disease or injury to account for it, and (4) In decomposed bodies.”

Therefore, when in this case the Medical Officer had taken the decision to preserve the viscera then either it was requested by investigating officer or he had only suspected presence of poison. He has not specifically stated that there was smell of poison or other such circumstance which prompted him to preserve it. This gives impression that he was not sure about his own conclusion. The result of the analysis has been given, “General and specific chemical testing does not reveal any poison in exhibit Nos.(1), (2) and (3)”. That means, no poison was found in the viscera. Prosecution had not shown the report Ex.5 to him and has not taken any explanation from him as to whether inspite of such report whether he would stick to his own conclusion. Another fact, that on which aspect there ought to have been investigation and nexus ought to have been established by the prosecution

that the bottle, which was seized from the spot, ought to have been sent for chemical analysis to reveal as to which kind of poison it was. If we consider Exh.60, the letter given by the Investigating Officer to the Forensic Laboratory that the viscera was already sent for chemical analysis and by this letter Exh.60 dated 27.01.2019 the bottle, which was seized from the spot, was sent for analysis. The Chemical Analyzer's report of the said bottle has not been produced and it has been withheld by the prosecution. The connection between the said bottle and the viscera has not been established. When there is withholding of vital evidence by the prosecution for no reason at all, then benefit of such lapses should go to the accused.

16 Though there appears to be unnatural death of deceased Vaishali, yet, from the evidence, that has been adduced by the prosecution, many loopholes have been left, which are making the case short of proving the offence "beyond reasonable doubt". The learned Trial Judge had not taken pains to study the case properly, since the date of framing charge, as he failed to frame charge under Section 304-B of the Indian Penal Code, when he could notice that the death is within seven years of marriage. The police might not have added Section 304-B of the Indian Penal Code when charge sheet is filed, that does not stop the Courts from framing appropriate charge including the charge under an offence of which ingredients are prima facie

made out. In **Bhupendra** (supra) after taking note of earlier pronouncements of the Apex Court, the Apex Court held that -

“These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B of the IPC or under Section 306 of the IPC takes place; in a case of an unnatural death inviting Section 304-B of the IPC (read with the presumption under Section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary.”

Here, in this case the viscera report has been received and it negatives poisoning; though the death of Vaishali is unnatural; yet, other circumstances brought on record are not sufficient to prove that she was subjected to cruelty and the alleged acts of ill-treatment drove her to commit suicide. Prosecution had failed to prove that Vaishali's death was due to consumption of poisonous substance. Even if we accept for the sake of arguments that she died due to consumption of such substance yet; when the prosecution has failed to rule out the possibility of accidental consumption of poisonous substance, we can not readily infer that Vaishali has committed suicide. There is no need to discuss evidence of other witnesses as they are formal witnesses, examined to prove various panchmanas and the investigating officer.

17 The above discussion prompts this Court to come to a conclusion that the case has not been made out to invoke the presumption under Section 113-A of The Indian Evidence Act, and therefore, conclusion is drawn taking into consideration the entire evidence, ingredients of the offences, under which the charge is framed, that prosecution has failed to prove the charge levelled against the appellants. Learned Trial Judge erred in convicting the appellants. Appellants deserve to be acquitted. Appeal, therefore, deserves to be allowed. Hence, following order.

ORDER

1 The Criminal Appeal is hereby allowed.

2 The impugned Judgment and order dated 07th September, 2020 passed by Additional Sessions Judge-5, Latur in Sessions Case No.21/2019, in so far as it imposes conviction upon the present appellants for the offences punishable under Sections 306, 498-A and 323 of Indian Penal Code, is hereby quashed and set aside.

3 The appellants - 1) Vishal Indrajit Bobade, 2) Tanaji @ Bablu Indrajit Bobade and 3) Indrajit Ravan Bobade, are hereby acquitted of the aforesaid offences.

4 Fine amount, if any, be refunded.

5 In view of the order, allowing the Criminal Appeal, the Criminal Application for suspension of the Sentences and grant of bail, does not survive and it stands disposed of.

6 It is clarified that there is no change in the order of disposal of muddemal property.

(Smt. Vibha Kankanwadi, J.)

Donge