

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 7 OF 2000

The State of Maharashtra	]..... Appellate (Orig.Complainant)
versus	
1] Laxman Kashinath Ghuge, 27 yrs.	]
	]
2] Thakubai Kashinath Ghuge, 42 yrs.	]
	]
3] Rajendra Kashinath Ghuge, 24 yrs.	]
	]
All R/o. Rajapur, Tal. : Yeola	]..... Respondents.
Dist : Nashik	] (Orig. Accused)

Mrs. M M Deshmukh, APP, for the Appellant/State.
None for the Respondents.

CORAM : S. S. SHINDE, J
N. B. SURYAWANSHI, JJ
DATE : 31st January 2020

JUDGMENT : [PER S S SHINDE, J.]

1 This Appeal has been filed by the Appellant/State praying therein to quash and set aside the judgment and order of acquittal passed by learned Additional Sessions Judge, Niphad, Nashik dated 08/07/1999 in Sessions Case No.25/99 (Old Case No.22/99).

2 The prosecution story, in brief, can be stated thus :-

Alka (the deceased) was married to Accused No. 1 Laxman on

08/05/1997. Accused No. 2 Thakubai is the mother of Accused No. 1 Laxman and Accused No. 3 Rajendra. All Accused 1 to 3 reside jointly. At the time of settlement of marriage of deceased Alka with Accused Laxman, Father of Alka agreed to give a half tola gold ring and also to pay dowry of Rs. 41,000/-. It was further agreed that dowry amount of Rs. 30,000/- would be at the time of marriage for purchasing clothes (Basta) and balance dowry amount of Rs. 11,000/- would be paid after the marriage. Accordingly, at the time of engagement (Sakharpuda) ceremony, which took place about 4-5 days prior to the marriage, a gold ring was given to Accused No. 1 Laxman. Further at the time of purchasing marriage clothes at Yeola, complainant Shivaji Nagre (PW 2), who is father of deceased Alka, paid dowry amount of Rs. 30,000/- to Accused Laxman. After the marriage initially for about 2-3 months deceased Alka was properly treated by Accused nos. 1 to 3. But, thereafter, they started giving her ill treatment and harassment asking her to bring balance dowry amount of Rs. 11,000/- from her parents. She was also sent to her parental house for 7-8 times to bring the balance dowry amount. But, due to financial difficulty, her father Shivaji could not pay any amount. At every-time he used to convince his daughter Alka that he would pay the amount after selling agriculture produce. As her parents could not pay the amount, Alka was subjected to ill treatment by all Accused Nos. 1 to 3 abusing and insulting her. Accused No. 1 Laxman also used to man-handle her. Lastly, on 29/11/1998 she was sent to her parental house to bring balance dowry amount. Alka was

directed by her husband Accused Laxman to bring amount on or before Tuesday i.e. on 01/12/1998. That time also complainant Shivaji could not arrange the amount.

3 On 02/12/1998 Shivaji sent back his daughter deceased Alka with his nephew Somnath (PW 4) to her matrimonial house giving understanding to her that he would pay the money after harvesting and selling agricultural produce and accordingly she should convince her husband. He also asked his nephew Somnath (PW 4) to convince his son-in-law Accused Laxman accordingly. That day in the noon at about 3.30 p.m. Alka (deceased) with her cousin brother Somnath reached at her matrimonial house. Accused Laxman, who was present at the house, asked his wife Alka (deceased) as to why she did not return back on Tuesday as directed and whether she has brought the amount. When she told Accused Laxman that, her father could not arrange for the amount, he started abusing her. When Accused Laxman was abusing to his wife Alka, Somnath (PW 4) left the house of Accused for village Panhal-Sathe to see his sister.

Thereafter, on the same day at 7.00 pm, a person from village Rajapur went to village Panhal Sathe and informed to Somnath (PW 4) that, Alka died due to falling down in the well. In the same night two persons from village Rajapur went to village Javur by jeep and informed the parents of Alka

about her death due to falling down in the well. On receiving information, complainant Shivaji and his other relatives including his another son in law Ravindra (PW 3) went to the house of Accused and saw the dead body of Alka which was kept in the hut. Before they reached there, Somnath (PW 4) had arrived there from village Panhal-Sathe. That time Accused and their relatives were making preparation for performing last ceremonies on the dead body. They asked the Accused not to perform last ceremonies and carried the dead body to the house of complainant Shivaji at village Jevur, Tal. Malegaon.

4 In the meanwhile, police patil of village Rajapur gave information report Exh. 52 to police station Yeola. On its basis police head constable Zalte who was on duty as P.S.O. registered A.D. Case No. 69/98 and directed PHC Bhadange (PW 7) for inquiry. In the same night OHC Bhadange (PW 7) went to the village Rajapur, but by that time the dead body of Alka was already shifted to Jevur. Therefore, in the same night he went to village Jevur, Tal. Malegaon, and found the dead body of Alka at the house of her father. Then he gave wireless message to police station, Malegaon. Thereafter, in the very next day morning at about 9 to 9.30 am, PSI Medhe from Malegaon Taluka police station went there and made inquest over the dead body of Alka. He prepared inquest panchnama Exh.32, in presence of panchas and sent the dead body for post mortem to Wadiya Hospital, Malegaon. Medical Officer, Malegaon did autopsy over the dead body of Alka, and issued post mortem notes Exh. 37

showing cause of death as asphyxial death due to drowning. He preserved viscera and sent it to chemical analyzer, Aurangabad through concerned police. C.A. report (Exh. 31) is also received. No poison is detected. After post mortem complainant Shivaji received the dead body and after taking it back to his house Jevur, cremated it by performing last ceremonies.

5 Thereafter, in the night of 03/12/1998 at about 11.00 pm complainant Shivaji (PW 2) went to police station Yeola and made complaint against Accused No. 1 to 3. PHC Bhadange (PW 7) got recorded his complaint Exh. 45 in writing as per his say. On the basis of said complaint, an offence vide Crime No. 124/1998 under sections 498-A, 304-B and 306 read with Section 34 of I.P. Code came to be registered. Thereafter, he handed over the case papers to API Ithape (PW 8) for investigation. In the next day morning i.e. 04/12/1998, API (Now CPI) Ithape visited village Rajapur and after making inquiry with witnesses Ravindra (PW 3) and others recorded their statements. On the same day he arrested Accused Laxman and Thakubai. On 05/12/1998 he inquired with other witnesses and recorded their statements and further arrested Accused No. 3 Rajendra. He also sent viscera bottle to C.A., Aurangabad. On completion of investigation, he submitted charge sheet in the court of JMFC, Yeola. As the offences under section 304-B and 306 IPC, are exclusively triable by the court of Sessions, Ld. Judicial Magistrate First Class, Yeola committed the case to the court of Sessions.

6 The learned Additional Sessions Judge, Nashik framed charge at Exh. 8 against the Accused. The charge was explained and read over to Accused Nos. 1 to 3 in Marathi. The Accused pleaded not guilty to the charges and claimed to be tried. Their defence is of total denial. According to them, death of Alka is accidental and not suicidal. None of them were present at their house at the time of incident. According to them, they are falsely involved in this case on the instigation of PSI Devidas Mahale. It is the defence of the Accused that in the year 1997 Accused Laxman was Press Reportor. At that time, when Accused Laxman had been to Yeola Police Station to collect news about one incident, PSI Mahale, who was in charge of the police station, abused and ousted him from the police station. Therefore, Accused Laxman had made complaint against PSI Mahale and other police staff. The association of the press reporters had also called strike against PSI Mahale. On their complaint, PSI Mahale was transferred from police station Yeola Taluka. Therefore, PSI Mahale and other policemen had grudge against Accused Laxman. Moreover, when in the year 1991-92 the daughter of Shivaji Wagh of Rajapur died at Kalyan, Accused No. 1 Laxman had accompanied with Shivaji Wagh for giving complaint against his cousin brother-in-law. Therefore, his father-in-law Shivaji and Ravindra (PW 3) had also grudge against him. Accordingly, Accused No. 1 Laxman had taken the aforesaid defence in his statement recorded under section 313 of Code of Criminal Procedure.

7 To bring home the guilt of the accused, during the trial, the prosecution has examined in all eight witnesses in support of its case. As stated herein above, the Trial Court has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Additional Sessions Judge, after considering the evidence adduced by the prosecution and the documents on record, as well as the defence taken by the Accused, has observed that it may be either due to ill treatment at the hands of accused or some other reason or due to illness, Alka committed suicide. The learned Additional Sessions Judge recorded a finding that the prosecution failed to bring home the guilt of accused beyond reasonable doubt, and therefore, as stated herein above, the learned Additional Sessions Judge, giving benefit of doubt to the accused, by the impugned judgment and order, acquitted the Respondent – accused for the offences punishable under Sections 304-B, 498-A and 306 r/w 34 of the IPC. Hence this Criminal Appeal filed by the State against the said order of acquittal.

8 We have heard the learned APP for the Appellant – State. None appeared for the Respondents/Accused, though Advocate Mr. Ashok D Avhad caused his appearance on their behalf. With the able assistance of the learned APP, we perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the documents produced on record, and the reasons recorded

by the learned Additional Sessions Judge in the impugned judgment.

9 It is submitted by the learned APP that, the learned Additional Sessions Judge has erred in acquitting the accused and not taking into consideration the material on record, and in discarding the evidence led on behalf of the prosecution. She submits that the learned Additional Sessions Judge has not applied his mind in appreciating the oral as well as documentary evidence on record. The learned APP further submits that from the evidence of witnesses, the prosecution has proved the demand of dowry amount from the accused and the ill-treatment, harassment, mental agony and cruelty given by the Accused to Alka on account of non-fulfillment of the said unlawful demand of dowry by the father of deceased Alka. It is submitted that the death of Alka had taken place within 7 years of her marriage i.e. just after 1 ½ years of her marriage. She further submits that from the material on record it is clear that Alka was subjected to cruelty and/or harassment at the hands of accused persons as her father showed his inability to pay the balance dowry amount. It is also submitted that the prosecution has examined independent witnesses to prove its case to the extent of dowry amount agreed to be paid. She submits that from the material on record, it is proved that the death of Alka is a dowry death. It is also submitted that the accused abetted Alka to commit suicide. The learned APP therefore submits that, the view taken by the learned Additional Sessions Judge is not a plausible view, and the impugned judgment

and order passed by the learned Additional Sessions Judge in Sessions Case No.25/99 (old Case No.22/99) acquitting the Respondents – Accused from the offence punishable under Sections 304-B, 498-A and 306 r/w 34 of the IPC is erroneous and is liable to be quashed and set aside. She further submits that the Appeal filed by the Appellant/State against the acquittal of the Respondents/Accused may be allowed.

10 Before scrutinizing the evidence adduced by the prosecution, it is necessary to record the admitted facts which have been brought on record during the course of trial. It is an admitted position that Alka married to Accused No.1 Laxman on 08/05/1997. Their Engagement Invitation Card (38-A) and Wedding Card (Exh.39) are not in dispute. Alka died on 02/12/1998 within seven years from the date of her marriage due to falling down in the well which is situated in the field of Accused. The house of accused is situated near the said well and field. On the information about the death of Alka being received, her father and other relatives visited the house of accused, and had carried the dead body of Alka to her father's house. Thereafter the dead body of Alka was referred to the hospital for post mortem. The PM Notes and the Certificate showing the cause of death as Asphyxia due to drowning are also not in dispute. After the Post Mortem, the dead body of Alka was cremated by performing last ceremonies at Jevur.

11 According to the prosecution the death of Alka is suicidal, whereas according to the defence, the death of Alka is accidental. In order to find out, whether Alka had fallen into well accidentally or she herself jumped into the well and committed suicide on account of the cruelty, ill-treatment and harassment at the hands of accused, it is necessary to discuss the evidence of Shivaji (PW-2), Ravindra (PW-3) and Somnath (PW-4). It is also necessary to consider the aforesaid facts, evidence of other prosecution witnesses adduced by prosecution, medical evidence, the documents on record, defence taken by the Accused,

12 Now coming to the evidence adduced by the prosecution. The prosecution has examined Chindu s/o Kisan Bhabad (PW 1) to prove the spot panchanama. In his examination in chief he stated that he was called by the police on 03/12/1998 at the well in the field of Kashinath patil of his village Rajapur. Kacharu was another panch. Police prepared the panchanama of that well in their presence. They both signed the panchanama. In his cross examination he stated that there is horticulture i.e. pomegranates plants in the field of accused. He stated that there is a slope at the ground level at well and grass were grown around the well. The village police patil Kashinath Darade showed the well i.e. spot of incident to police and the panchas. The well is not constructed and the upper portion of the well is slippery having earth. There are some other lemon trees at some distance from the well.

PW-1 Chindu stated that the accused are having newspaper agency and they sell newspapers in their shop. Accused No.3 Rajendra is Chairman of Milk Co-op Society (Dairy). The accused grow sugarcane in their field. There are fields of others adjoining to the field of accused. He stated that there is a heap of rock in between the house of accused and the well, and that heap is about 10 ft in height and the slope of that heap ends at the ground level of that well. The way to the well from the house of accused is through that rock heap. He stated that on the day of incident the rock heap was slippery ground around the well. However, he did not recollect whether there were some utensils and clothes at the bank of the well.

From the perusal of the evidence of PW-1, particularly cross examination, shows that the defence has tried to bring on record the condition and situation of the well, so also the sound financial condition of the accused to prove the possibility of Alka falling down in the well accidentally because of slippery. The spot panchanama and the photograph of well shown to PW-1 have not been disputed by the prosecution or defence.

The next witness examined by the prosecution is Shivaji Karbhari Nagre (PW-2) who is the father of deceased Alka. He stated that Alka married to Accused Laxman on 08/05/1997. He further stated that it was agreed to

pay to accused Laxman amount of Rs.41,000/- as dowry in her marriage and also a ring of half tola gold. About 4-5 days prior to the marriage at the time of purchasing marriage clothes, he paid Rs.30,000/- to accused Laxman and at the time of Sakharpuda Ceremony he gave half tola gold ring to accused Laxman. He further stated that it was agreed to pay dowry of Rs.11,000/- after the marriage, but due to his financial difficulty, he could not pay the balance dowry amount of Rs.11,000/- to the accused. Initially after the marriage, accused treated his daughter Alka properly for 2-3 months and thereafter all accused 1 to 3 started giving ill-treatment to Alka asking to her to bring balance amount of dowry Rs.11,000/- The accused used to send his daughter to his house asking her to bring amount. At every time, she used to tell him that her husband, mother in law and brother of her husband tease her asking her to bring amount of dowry and also used to abuse her etc. PW-2 used to ask his daughter that he has no money and he would pay the amount after receiving agriculture produce. On 29/11/1998 his daughter had been to his house for demanding amount from him. She told him that accused asked her that she should bring amount from her parents as they have started milk dairy and wanted to purchase jercy cow. PW-2 has shown his inability to pay the amount at that time. Lastly on 02/12/1998 her nephew Somnath carried and reached his daughter Alka to the house of accused. His nephew Somnath and his daughter Alka had left his house for Rajapur that day in the noon at 12-30 noon. On the said day in the night about 9 pm two persons from Rajapur

came to his house by jeep and informed him that Alka died due to falling down the well. He himself and his relatives went to village Rajapur by jeep. They saw the dead body of Alka which was kept in the hut. His nephew Somnath was present there. PW-2 made inquiry with Somnath as to how the incident took place. Somnath told PW-2 that as soon as Somnath reached to the house of accused, accused Laxman asked Alka as to whether she brought the amount and, that accused Laxman started abusing Alka, at that time he left the house of accused and went to Panhalpati village to see his sister. PW-2 stated that he carried the dead body of his daughter to his house at Jevur. In the same night at about 2 a.m. police from Yeola Police station came to his house and sent the dead body of his daughter to the hospital at Malegaon for Postmortem. After post mortem he again carried the dead body of his daughter to his house and after performing last ceremony and cremation of the dead body, he went to police station Yeola on the same day and lodged complaint.

In his cross examination, PW-2 stated that, he was serving as a police head constable. He cannot assign any reason as to why police have not recorded in his complaint that, at the time of settlement of marriage, it was agreed that, an amount of Rs.11,000/- would be paid to the accused after the marriage. He had purchased ornaments about 10-15 days prior to the marriage of Alka. However, he has not given any receipt to police. The suggestions were given to PW 2 that prior to the marriage of his daughter Alka, medical

treatment was being given to Alka at Malegaon as his daughter Alka was ailing and she used to feel giddiness. After the marriage of his daughter Alka, she used to visit his house for going to Malegaon. However, the said suggestions were denied by PW-2. This witness (PW-2) admitted that Dr. Bafna of Malegaon was treating his daughter Alka. The blood and urine tests of his daughter Alka were carried out by Dr. Jaju of Malegaon. He admitted that he has not informed to the police immediately when he saw the dead body of his daughter. He did not ask anybody to inform the police station at Yeola. He has not gone to police station Malegaon for giving information to police. He stated that PSI Medhe made inquest over the dead body and prepared inquest panchanama at his house. Accused 1 to 3 attended the funeral of his daughter at his village. He cannot assign any reason as to, why police did not mention in his complaint that he had asked his daughter Alka that, he would arrange to pay the amount after selling agricultural produce. He also cannot assign any reason as to why police did not mention/write the following facts in his complaint; 1]after last Diwali festival he had carried his daughter Alka to reach to the house of accused and that time he asked the accused persons that they should not give ill-treatment to his daughter, and he would pay the amount after selling agricultural produced etc; 2] when he reached to the field of accused and saw the dead body of his daughter in the hut, his nephew Somnath told him that when accused Laxman was abusing Alka, he left the house of accused for village Panhal-Sathe.

The next witness is Ravindra Baburao Ghuge (PW-3). He stated that complainant Shivaji is his maternal uncle. Deceased Alka was the sister of his wife. He himself, his maternal uncle Shivaji, Babu Motiram, Vithal Karbhari Darade from the side of complainant Shivaji Karbhari were present for the settlement of marriage. It was agreed to pay amount of Rs.41,000/- as dowry and a gold ring of half tola to be given to accused Laxman in his marriage. Thereafter they purchased marriage cloths at Yeola. After purchasing clothes they went to a hotel for a cup of tea, and in the said hotel complainant Shivaji paid Rs.30,000/-as dowry to accused Laxman. After the marriage initially for about 2 to 3 months accused treated Alka properly. She met him at the house of her parents and on inquiry with her as to how she is, she told him that her husband, mother in law and husband's brother are demanding the balance dowry of Rs.11,000/-. He told her that, her father had recently spent amount for marriage and, he is not in a position to pay any amount. He would pay the balance dowry amount after getting agriculture produce, and accordingly she should convince to her husband and his family members.

On 01/12/1998 Alka's parents sent her back to her house with Somnath. Thereafter on the same day in the night at 9 pm two persons from village Rajapur came thereby jeep and informed to his maternal uncle that his daughter Alka died due to falling down in the well situated in the field of

accused Laxman. Thereater his maternal uncle, he himself and other 7/8 persons went to village Rajapur by jeep. They saw dead body of Alka lying in the hut. He asked accused Laxman that no funeral should be performed on the dead body, and they wanted to make police complaint.

In his cross examination, PW-3 stated that, the details of the agreement or settlement of marriage were not reduced into writing, and he has also not made any note of it. He has not stated before police at the time of recording his statement that at Yeola after purchasing wedding clothes, they all went to hotel for a tea and there Shivaji paid amount of Rs.30,000/- to accused Laxman in the hotel. He has also not stated before the police that he asked Alka at the time of Diwali festival that, her father would pay the amount after getting agriculture produce and she should convince her husband and other members of the family. They had not gone to police station Yeola on the day of incident after, when they saw the dead body of Alka in the house of accused. He himself as well as his father in law did not inform the incident to the police at Nandgaon. They have not informed the incident to Manmad as well as Malegaon police. He did not know as to who gave information to the police at Yeola. That night he has not asked his father in law to make complaint either with Yeola Police or Malegaon Police. No complaint was made with Malegaon Police in the morning of next day of incident.

The prosecution has examined Somnath Kacharu Nagre as PW-4. He stated that Alka was his cousin sister. Thereafter on Wednesday i.e. on 02/12/1998 his uncle Shivaji called him to his house and asked him to reach Alka to her house. He also asked him that he should tell the husband of Alka, that he could not arrange the amount and he would see to arrange amount. Thereafter at 12 noon that day, he himself and Alka left the house of his uncle for village Rajapur. They reached to the house of accused in the noon at 3 pm. After when they reached to the house of accused, accused Laxman asked her sister Alka, whether she has brought the amount. Then accused Laxman started abusing his cousin sister Alka. He stayed there for about fifteen minutes and left the house of accused for village Panhalsathe at about 5 pm. Thereafter at 7 pm two persons from village Rajapur came there by motorcycle and informed him that his sister Alka died due to falling down in the well.

In his cross examination, PW-4 stated that police recorded his statement on 04/12/1998. He further stated that on 03/12/1998 he has not informed police anything though police were present there. After funeral on 03/12/1998 police inquired with him. He cannot assign any reason as to why following facts were not mentioned by police in his statement; 1] that on 30/11/1998 Alka told to his father with weeping that her husband, mother in law and husband's brother are giving ill-treatment on account of non-payment of dowry amount. 2] that on 03/12/1998 his uncle Shivaji called him to his

house and asked him to reach Alka to her house and to inform the husband of Alka that he could not arrange amount that day and he would see later on. 3] that after receiving information of the death of Alka, when he went there to the house of accused, fuel and flowers were brought there for the funeral of Alaka. He stated that he has not informed anything to his sister Sunita about abusing to his sister Alka by her husband Laxman when he reached to her house.

Next witness is Anil Namdeo Ghodke (PW-5). He stated that complainant Shivaji is the son of the paternal aunt of his father. On 30/11/1998 complainant Shivaji had come to his house and demanded from him Rs.11,000/- as he was in need of money to pay dowry amount to son in law Laxman. He demanded me hand loan and was saying that he would repay it after selling onions. PW-5 shown his inability to pay any amount to Shivaji as he was not having any amount with him.

In his cross examination PW-5 stated that police never came to him and inquired with him. He never approached the police voluntarily and gave a statement. He never visited village Rajapur He had not gone to village Rajapur after funeral on dead body of Alka. To the Court's question, whether police inquired with him and recorded his statement about this case, this witness (PW-5) replied in affirmative that, "Yes, police recorded his statement on 04/12/1998".

The prosecution has also examined Ukha Bodke (PW-6) to prove that at the time of settlement of marriage it was agreed to pay Rs.41,000/- to the accused as dowry and out of the said amount of Rs.41,000/-, amount of Rs.30,000/- was paid to accused at Yeola after purchasing wedding clothes. Ukha PW-6 was the Sarpanch of village Jevur. He deposed that he was present in the meeting about the settlement of marriage of Alka. It was agreed to pay dowry amount of Rs.40,000/- by the complainant to the accused, and except this amount nothing was agreed to be given. This witness had also accompanied with both the parties at Yeola for purchasing wedding clothes. However, he does not know if any gold ring is given to accused Laxman by his father in law Shivaji at the time of Sakharpuda ceremony. PW 6 also deposed that in a hotel at Yeola, the complainant Shivaji paid dowry Rs.30,000/- to the accused in his presence. This witness (PW-6) has turned hostile. However nothing fruitful has been brought on record in his cross examination by the defence. This witness (PW-5) and the complainant is from the same village. In his cross examination, he further stated that an amount of Rs.30,000/-, as deposed by PW-2 and PW-3, was not paid in his presence at Yeola after purchasing clothes. There is no reason for this witness (PW-6) to help the accused person instead of the complainant who is from his village.

13 It is revealed from the cross examination of the PW-1 Chindu that,

the well in the field of accused is slippery. The well is not constructed and the upper portion of the well is also slippery. There is a heap of rock in between the house of the accused and well and there is a way passing through the said heap from the house of accused to the well. There is a slope at the ground level of the well and grass was also grown there. It was the defence of the accused before the Trial Court that Alka might have fallen in the well accidentally while plucking lemons from the lemon tree. However, the Trial Court discarded the said defence by observing that there could be no reason for Alka to go to the well for collecting lemons immediately after reaching the matrimonial house from her parental house, and secondly nobody has seen deceased Alka while plucking lemons from the lemon tree. It is important to note that it has not come on record that who took out the dead body of Alka from the well. Though from the cross examination of PW-1 the defence tried to bring on record that Alka had been to the well for cleaning utensils and clothes. However, neither PW-1 recollected the said fact, nor the spot panchanama (Exh.40) reflects that any clothes or utensils were there at the bank of the well. Therefore, the Trial Court has also discarded the defence of accused that Alka had been to the well for washing utensils and clothes, and it is observed by the Trial Court that when the well was full of water and slippery at the ground level having grass, Alka would not have dared to go to the well for washing clothes and utensils. The Trial Court also observed that if Alka fell into the well accidentally, then she would have sustained some injuries at least some

abrasions. However, no injury was found on the person of Alka at the time autopsy. Therefore, the Trial Court has come to a conclusion that considering all these facts and circumstances, there cannot be any other inference except that Alka committed suicide by jumping into the well.

14 The question therefore remains that, whether Accused Nos.1 to 3 in furtherance of their common intention abetted the commission of suicide of Alka? and secondly Accused Nos.1 to 3 in furtherance of their common intention committed dowry death of Alka and subjected Alka to cruelty? It is an admitted position that Alka died within seven years of her marriage. The learned APP therefore submitted that the death of Alka occurred otherwise than under normal circumstances and hence there is strong presumption that accused abetted deceased Alka to commit suicide as they demanded dowry amount from her parents.

15 Whether the death of Alka is a dowry death, and the accused subjected her to cruelty, in this respect the evidence of prosecution witnesses would have to be scrutinized properly. The complainant Shivaji (PW-2) and Ravindra Ghuge (PW-3) deposed in support of the complaint. According to these witnesses, it was agreed by Shivaji (PW-2) to pay Rs.41,000/- and half tola gold ring to accused Laxman as dowry at the time of settlement of marriage of Alka with Laxman. They have deposed that out of Rs.41,000/-,

Shivaji (PW-2) paid Rs.30,000/- at the time of purchasing marriage clothes and half tola gold ring was given to accused Laxman at the time of engagement. PW-2 deposed that it was agreed to pay balance dowry of Rs.11,000/- after the marriage. It has come in their evidence that initially for 2-3 months of marriage, the accused treated Alka properly but thereafter they started giving ill-treatment asking her to bring the balance dowry of Rs.11,000/- from her parents. The complainant Shivaji (PW-2) is the father of Alka, and Ravindra Ghuge (PW-3) is the brother-in-law of Alka. Therefore these two witnesses of prosecution are the interested witnesses. It is required to be noted that except the evidence of these two witnesses (PW-2) and (PW-3), there is no evidence of independent witness to show that there was agreement to pay dowry amount of Rs.41,000/- at the time of settlement of marriage of Alka with accused Laxman. PW-2 Shivaji deposed that the clothes of bride and bridegroom were jointly purchased and at that time he paid amount of Rs.30,000/- to accused. Though he deposed that some of the purchase receipts are with him, neither he has produced any receipt nor he has given any receipt to police. One more aspect which is important to note at this stage is that though, according to PW-2, he has stated the police that amount of Rs.11,000/- was agreed to be paid after marriage, the said portion does not appear in his complaint. He deposed that he has stated before police while giving complaint that when he reached to the field of accused and saw the dead body of his daughter in the hut, and his nephew Somnath told him that when accused Laxman was abusing Alka, he

left the house of accused for village Panhalsathe, however, this portion also does not appear in his complaint and he cannot assign any reason for that. PW-2 at one place in his deposition denied the suggestion of the defence that after the marriage of his daughter Alka, she used to visit his house for going to Malegaon for medical treatment, however, in the next breath he admitted that Dr. Bafna of Malegaon was treating his daughter, and the blood and urine tests of his daughter Alka were conducted by Dr. jaju of Malegaon. In his cross examination, PW-2 at one place admitted that PSI Devidas Mahale had visited his house, however, in the next breath he stated that PSI Mahale did not visit his house.

PW-3 Ravindra in his cross examination has categorically admitted that, the details of the agreement or settlement of marriage were not reduced into writing, and he has also not made any note of it. At the time of recording the statement by police, this Witness (PW-3) did not state to the police that after purchasing wedding clothes at Yeola, they all went to hotel for a tea and there Shivaji paid amount of Rs.30,000/- to accused Laxman. He has also not stated to police at the time of recording to his statement that he asked Alka at the time of Diwali Festival that her father would pay the amount after getting agricultural produce and she should convince her husband and other member of her family.

The evidence of PW-4 Somnath is also not helpful to the prosecution. He deposed that on the request being made by the complainant Shivaji (PW-2), who is his uncle, that he should go along with Alka to her matrimonial house, he went for village Rajapur. When they reached to the house of accused, accused Laxman asked Alka whether she brought the amount and then accused Laxman started abusing his sister Alka. He stayed there about fifteen minutes, and left the house of accused for village Panhalsathe to see his sister. He stated that the police were present in their house till the completion of funeral of Alka. However, he did not inform the police anything though police was present there. He also deposed that he did not inform anything to his sister Sunita about abusing to Alka by her husband Laxman when he reached her house. If according to PW-2 Shivaji and PW-3 Ravindra, this witness (PW-4) informed them about the aforesaid fact to PW-2 and other relatives at the time when they went to the house of accused after receiving information about the death of Alka, then what prevented Shivaji (PW-2) from lodging a complaint against the accused immediately. Not lodging a complaint immediately also creates doubt about the authenticity of the evidence of PW-2 to 4.

16 Considering the aforesaid evidence of these three witnesses, who are interested witnesses and related to each other, there are material contradictions and omissions in their evidence, and therefore, their evidence is

not convincing and probable at all to convict the accused for the aforesaid offences. The evidence of PW-2 to PW-4 is not sufficient to inspire confidence to hold that the accused were repeatedly demanding alleged balance amount towards dowry, and were compelling Alka to bring the said amount from her parents. As stated herein above there is no independent witness examined by the prosecution in support of its case that, there was agreement to pay dowry amount of Rs.41,000/- to accused, out of which Rs.30,000/- was paid at Yeola after purchasing wedding clothes and balance of Rs.11,000/- was to be paid after marriage. The prosecution has made an attempt to prove the fact of paying balance dowry amount of Rs.11,000/- which was allegedly agreed to be paid to the accused after marriage by examining PW-5 Anil Ghodke, who deposed that on 30/11/1998 complainant Shivaji had come to his house and demanded Rs.11,000/- from him, as Shivaji was in need of money to pay dowry amount to son in law, however, this witness (PW-5) shown inability to pay the amount to Shivaji. PW-3 Ravindra, who is the son in law of the complainant Shivaji (PW-2), deposed that his father in law did not demand any amount to him for paying it to the accused neither he offered amount of Rs.11,000/- to his father in law. There is no material or plausible explanation on the part of the prosecution as to why the complainant Shivaji (PW-2) went to Anil Ghodke (PW-5) for demanding amount of Rs.11,000/-, instead of asking his close relative i.e. son in law Ravindra (PW-3). Neither the complainant Shivaji (PW-2) nor his son in law Ravindra (PW-3) deposed that

as to how many days after the marriage the balance amount of Rs.11,000/- was agreed to be paid. Therefore the evidence of PW-2 and PW-3 about the agreement to pay the balance amount of Rs.11,000/- to the accused after the marriage appears to be afterthought.

17 It is clear from the evidence of PW-1 Chindhu Bhabad that the financial position of the accused was sound. He stated that there is horticulture i.e. pomegranate plants in the field of accused. There are two shops belonging to the accused, in one shop there is milk diary co-operative society's office and in another shop the accused are doing business of fertilizers and other articles. Accused No.3 Rajendra is chairman of Milk. Co-op Society (Dairy). The accused grow sugarcane in their field. Even PW-2 Shivaji has also admitted that since prior to the marriage of his daughter Alka, the accused were having three jersey cows. Therefore the accused were financially sound.

18 It is clear from the evidence on record that the complainant has not produced any extract of bank accounts to show that he was in a position to pay such a huge amount of Rs.30,000/- or there is not evidence on record to show that really the complainant paid Rs.30,000/- to accused Laxman and balance amount Rs.11,000/- was to be paid after the marriage. On any count the evidence of complainant Shivaji (PW-2) and his son in law Ravindra (PW-3) about the agreement to pay dowry of Rs.41,000/- cannot be accepted. It

may be that complainant Shivaji would have agreed to spend amount of Rs.40,000/- for performing marriage as stated by Ukha (PW-6). Perusal of the testimonies of PW-2, PW-3 and PW-4, who are relatives, would show that there are material omissions and contradictions in their evidence. There is nothing on record to indicate that the accused had harassed and ill-treated Alka which could drive Alka to commit suicide.

19 There is no satisfactory and sufficient evidence brought on record by the prosecution so as to conclude that, there was illegal or unlawful demand by the accused. On the contrary the accused attended the funeral of Alka at her parents house at Jevur. In the present case, in first place there was no sufficient or cogent evidence adduced by the prosecution to prove that there was harassment of such a nature coercing Alka to meet any unlawful demand. The prosecution has not proved beyond reasonable doubt that, there was any unlawful demand for any property or valuable security. Therefore, the prosecution has not proved beyond reasonable doubt that, the accused has committed offence punishable under Section 498A of IPC or under Section 304-B or 306 of the IPC.

20 Now coming to lodging FIR. As stated herein above, on receiving information about the death of Alka, her father and other relatives went to the house of accused in the night of 02/12/1998 at about 11 pm and carried the

dead body of Alka to their house. It is an admitted position that Police Patil of village Rajapur and Yeola Police went to the house of complainant, but no complaint was made by complainant on the said night. Even though PSI Medhe asked Shivaji (PW-2) whether he wanted to lodge complaint, he did not lodge any complaint. No complaint was made either to Yeola police or Malegaon Police when Shivaji was accompanied with the dead body to Malegaon for post mortem. Complainant Shivaji (PW-2) made a complaint on next day night after cremation of dead body at his village Jevur. Therefore there is more than 24 hours delay in lodging FIR, and no plausible explanation was given on behalf of prosecution for such a delay, therefore, as rightly held by the Trial Court that, possibility of concocted story in consultation with other relatives or somebody-else cannot be ruled out. When complainant Shivaji himself was serving in police department as PHC and he knew about the consequences of delay in registering the complaint against the accused, possibility of falsely implicating the accused in this case cannot be ruled out.

21 Considering the facts of the present case and the evidence brought on record, there is no nexus between so called suicide and any of the alleged acts on the part of the respondents. There is no proximity either. Even if the evidence on record is read in its entirety, the same would not even remotely suggest that, the respondents abetted in the commission of alleged suicide by Alka. Therefore, in the present case in absence of any material/evidence

suggesting that the accused intentionally aided or instigated or abetted in commission of suicide by Alka, it will have to be held that the alleged offences are not disclosed qua the Respondents/Accused.

22 It is important to note that in so far as Respondent/Accused Nos.2 and 3 are concerned, there is no iota of evidence and/or material against them, none of the prosecution witnesses has attributed any role and deposed against them, and merely because they are mother and brother of Accused No.1 Laxman respectively, they have been unnecessarily implicated in the alleged offence.

23 The Trial Court has rightly come to a conclusion that the prosecution has failed to bring home the guilt of accused beyond reasonable doubt and therefore they deserve to be acquitted giving benefit of doubt, and as stated herein above rightly acquitted the accused. We are of the considered view that the finding of acquittal recorded by the trial Court is in consonance with the evidence brought on record and there is no perversity as such. The prosecution has utterly failed to prove the case against the Respondents/Accused. The view taken by the trial Court is plausible and therefore there is no reason to cause interference in the order of acquittal. Even if for a moment it is assumed that, an another view is possible, on the strength of evidence brought on record by the prosecution, that is not a ground

to interfere with the order of acquittal.

24 In the light of discussion in forgoing paragraphs, an inevitable conclusion is that, the Appeal filed by the Appellant/State shall fail. There is no merit in the Appeal. Accordingly, the Criminal Appeal stands dismissed. Bail bonds, if any, shall stand cancelled.

[N. B. SURYAWANSHI, J]

[S. S. SHINDE , J]

Laxmikant
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