

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 409 OF 2007

1 Amol Moreshwar Achrekar.
Aged about 35 years, Occ:Agri.
2 Sou. Chandrabhaga Moreshwar
Achrekar, age about 65 years, Occ: Agri. ... Appellant.
Both residing at Plot No. 74,
Taradatta Park, Saswad,
Tal. Purandar, Dist. Pune.

V/s.

State of Maharashtra.
(Through Saswad Police Station) ... Respondents.

Mr. Vikas B. Shivarkar, advocate for appellant.

Ms. P.P. Shinde, APP for respondent/State.

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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CRIMINAL APPEAL NO. 676 OF 2007

State of Maharashtra.
(Through Saswad Police Station) ... Appellant.

V/s.

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Ms. P.P. Shinde, APP for appellant/State.

Mr. Vikas B. Shivarkar, advocate for respondents.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

RESERVED ON : SEPTEMBER 8, 2020.

PRONOUNCED ON : SEPTEMBER 22, 2020

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

CRIMINAL APPEAL NO. 409 OF 2007

. The appellants herein impugn the Judgment and Order dated 29th March, 2007 passed by the Second Ad-hoc Additional Sessions Judge, Pune, thereby convicting them for an offence punishable under section 498A read with section 34 and 306 read with 34 of the Indian Penal Code in Sessions Case No. 507 of 2005. The appellants have been sentenced for the offence punishable under section 498A read with section 34 to undergo R.I. for one year and to

pay fine of Rs. 500/- each, in default, they have to suffer S.I. for one month. The appellants have been sentenced for the offence punishable under section 306 read with section 34 of the Indian Penal Code to undergo R.I. for two years and to pay fine of Rs. 1,000/- each, in default, they have to suffer S.I. for 2 months.

2 Such of the facts necessary for the decision of this appeal are as follows:

(i) Shweta Deshmukh was studying in Wagire College at Saswad. She had got acquainted with Amol Acharekar (hereinafter referred as appellant No. 1). Their acquaintance had developed into intimacy. They got married at Kolhapur on 14th July, 2004. They had informed their respective parents about the said marriage. They had been to Jejuri to meet the parents and grand-parents of Shweta. She returned to her maternal home in January, 2005 as she was pregnant. On 6th March, 2005 she gave birth to baby boy.

(ii) That she had complained to her parents during every visit that her husband and mother-in-law are demanding Rs. 2 Lakhs to open a medical store. Her parents could not afford. She had even attempted to approach her grand-parents and had informed them that

she is being ill-treated and harassed on account of their failure to pay Rs. 2 Lakhs to her husband.

(iii) On 5/6/2005 she had made telephonic call to Shilpa Peshwe(P.W. 2), who resides adjacent to her grand-father's house and informed her to further convey it to her grand-father that she is being severely harassed by the present appellants on account of failure to fulfill their demands.

(iv) On 10/6/2005 Shweta had made a telephonic call to her parents and informed her mother to provide money at the earliest as she is unable to bear the ill-treatment meted out to her at the hands of the appellants.

(v) On 12/6/2005 one Dr. Hole had called upon the parents of Shweta and informed them, that their daughter Shweta was admitted in Usha Kiran Hospital at Hadapsar. The mother of Shweta had been to the hospital. However, she learnt that Shweta was shifted to Jehangir Hospital.

(vi) Her parents and relatives went to Jehangir Hospital.

Shweta was admitted in ICU. She was not able to talk. The doctor had explained poor prognosis and had informed that it was a delayed admission and that her condition is serious.

(vii) Upon enquiry with the present appellant No. 1, he had informed that on 10/6/2006 she had consumed poison. He was questioned about delayed information. His silence was loud enough to convey the background.

(viii) On 13/6/2005 in the early hours Shweta had succumbed to the poison, in Jehangir Hospital.

(ix) On the basis of the intimation given by the Jehangir Hospital to Bundgarden Police Station, A.D. No. 24 of 2005 was registered at Saswad on 17/6/2005. Scene of offence panchanama was drawn and it had transpired that Shweta had consumed phenol. Certificate issued by department of forensic medicine dated 25/8/2005 is at Ex. 35, which indicates as follows : Clinical and post mortem findings consistent with death due to phenol poison with diabetic ketoacidosis.

(x) On 23/6/2005 unfortunate father Satish Deshmukh had lodged report under section 154 of the Code of Criminal Procedure, 1973 with Saswad Police Station and narrated the entire background. He has specifically stated that the appellant No. 1 had demanded Rs. 2 Lakhs as a capital for starting medical shop. The father had expressed his inability to pay Rs. 2 Lakhs. That Appellant No. 2 had even visited their house and demanded Rs. 2 Lakhs. She had raised a quarrel. That on 5/6/2005 and 10/6/2005 Shweta called upon her parents, grand-parents and conveyed that she is being harassed and ill-treated on account of non-fulfilment of demand of Rs. 2 Lakhs. It is further stated that on 12/6/2005 Dr. Hole from Saswad had informed that Shweta was admitted in Ushakiran Hospital. The first informant has specifically stated that the present appellants are responsible for the death of his daughter Shweta. On the basis of the said report, Crime No. 56 of 2005 was registered at Saswad Police Station.

(xi) After completion of investigation, charge-sheet was filed for offence punishable under section 304B, 306 read with section 34 of the Indian Penal Code. The case was committed to the Court of Sessions and registered as Sessions Case No. 507 of 2005

3 The prosecution has examined as many as 9 witnesses to bring home the guilt of the accused. The material witnesses are P.W. 1 Satish Deshmukh, P.W. 2 Shilpa Peshwe, P.W. 4 Shobha and Investigating Officers P.W. 8 and P.W. 9. The accused had filed their statements under section 313 of the Code of Criminal Procedure, 1973.

4 P.W. 1 Satish Deshmukh is the complainant. He is father of Shweta. He has deposed in consonance with FIR, which is at Exh. 24. He was working in PDCC Bank at Walha Taluka as branch manager. That soonafter marriage, Appellant No. 1 had been to his cabin and had demanded Rs. 10,000/-. P.W. 1 had borrowed it from his father and handed over the same to his son-in-law in the presence of his colleagues Mr. S.N. Jagtap and Mr. Maruti Pawar. Thereafter, there was a perpetual demand of Rs. 2 Lakhs for starting medical store. That appellant No. 2 Chandrabhaga had been to his house and demanded Rs. 2 Lakhs in the presence of Houshiram Sagar and Shantabai Shinde. He has substantiated that Shweta had called Mrs. Shilpa Peshwe, one door neighbour of his father and informed about the ill-treatment meted out to her. He stated that on 10/6/2005 in the morning at 11 a.m. Shweta had informed her mother about ill-

treatment meted out to her on account of failure to fulfill the demand. He has further stated that his son-in-law had refused to pay hospital bill of Rs. 27,400/- and therefore, he had paid the same.

5 It is suggested in the cross-examination that FIR was lodged at the instance of Subhan Jagtap-Deshmukh, uncle of P.W. 1, who is retired police personnel and his son-in-law who is working in the police department. It is suggested that the accused No. 1 is running a medical store as he has completed D-pharmacy.

6 It is pertinent to note that there is a specific suggestion in the cross-examination that Sanjivani Medical and General store is in the name of Jayashree Sandip Hole, wife of Dr. Hole and that the hospital of Dr. Hole is on upper floor of the medical store. It is specific suggestion that the deceased was suffering from diabetes, since she was 6 years old and she was taking treatment at Pune in KEM Hospital. P.W. 1 has admitted that accused No. 1 was present at the funeral.

7 It was also suggested that the accused No. 1 is drawing salary of Rs. 23,000/- per month. He was confronted with his

statement before Bundgarden police station, as it lacks all the details that are mentioned in Exh. 24/2. However, P.W. 1 has categorically stated that at the time when the police had enquired with him soon after the demise of Shweta, he was directed by the police to be brief and not to give a detailed narration. The defence has also made an attempt to bring on record that the witness has failed to disclose all facts to the police, although he had met him during 13th and 23rd June, 2005. According to P.W. 1, he had informed the police that he would contact the police after the 10th day rituals, as he and his wife were in a state of “shock”.

8 Exh. 23, which is the first statement of P.W. 1 on 13/6/2005 would clearly indicate that he had disclosed to the police that he has learnt from accused No. 1 that on 10/6/2005 Shweta had consumed some poisonous substance.

9 P.W.2 Mrs. Shilpa Peshwe is on a limited point that she happens to be next door neighbour of Sarjerao Deshmukh, who happens to be the grand-father of Shweta. That Mr. Sarjerao Deshmukh had no telephone connection in his house and therefore, Shweta used to talk to P.W. 2 whenever she wanted to give any

message to her grand-father. On 5/6/2005 she had received the phone call of Shweta. Shweta had informed her telephonically that she is being severely harassed for non-fulfillment of demand of Rs. 2 Lakhs and that the said message be given to her grand-father. On 12/6/2005 P.W. 1 had called to P.W. 2 to inform that they had received message that Shweta was admitted in Jehangir Hospital as she was serious. Therefore, P.W. 2 alongwith her husband had been to Jehangir Hospital. That accused No. 1 was silent upon being enquired as to why the information was given after two days. In the cross-examination, P.W. 2 has admitted that her family has cordial relations with Mr. Deshmukh. She has also admitted that Shweta was suffering from diabetes.

10 P.W. 3 is on the limited point that Sarjerao Deshmukh, father of P.W. 1 had paid Rs. 10,000/- to accused no. 1 in his presence.

11 P.W. 4 Shobha Deshmukh is the mother of Shweta. She has proved that on 10/6/2005 she had received phone call from Shweta informing her about ill-treatment and requesting her to arrange funds as soon as possible. On 12/6/2005 she had received phone call from

Dr. Hole, who had informed her that Shweta had consumed some poisonous substance and is serious. In the cross-examination, the P.W. 4 has admitted that dispensary of Dr. Hole is on the first floor and medical store of his wife is on the ground floor of the same building. She has feigned ignorance as to whether wife of Dr. Hole had started medical store 2 and half years ago. It is also admitted that the child of Shweta was admitted in Mangeshkar Hospital during 6/3/2005 to 11/3/2005.

12 PW.5 Shantabai Shinde is a chance witness to the quarrel between P.W. 4 and accused No. 2, when accused No. 2 had visited the house of P.W. 1 and 4 for demanding Rs. 2 Lakhs.

13 PW. 6 Dr. Chandekar has performed autopsy on the dead body of Shweta. According to him, he could not smell phenol while performing autopsy. P.W. 6 has denied the suggestion that Shweta has died due to Pneumonia and Pneumothorax.

14 PW. 7 Mr. Nazir Makandar was attached to Saswad Police Station. He had received papers from Bundgarden police station pertaining to death of Shweta on 13/6/2005. He had also received

the statement of Satish Deshmukh. Accordingly, he had registered A.D. No. 24 of 2005. On 17/6/2005 he had conducted scene of offence panchanama and had found an empty broken bottle of phenol in the lane adjacent to the house of accused. He had also called upon P.W. 1 for recording statement, however, P.W. 1 had specifically stated that he was in a shock due to death of his daughter and therefore, he was not in a position to make any statement and that he would approach police station after 10th day rituals. Accordingly, on 23/6/2005 he had approached P.W. 7 and lodged FIR and on the basis of the same Crime No. 56 of 2005 was registered.

15 P.W. 8 Mr. Vitthal P. Zurunge is the Investigating Officer, who had been to Jehangir Hospital on 13/6/2005. According to him, nurse Ms. Gawade from Jehangir Hospital had telephonically informed that Shweta was admitted on 12/6/2005, as she had consumed poison and has expired on 13/6/2005. He had conducted A.D. Enquiry which is at Exh. 50. He had recorded the statement of P.W. 1 at Exh. 23. He has also denied suggestion that information received from Ms. Gawade was to the extent that Shweta has died with Pneumonia.

16 P.W. 9 Mr. Dattatray M. Lokhande was attached to Bundgarden Police Station. On 10/6/2005, he had received information from Dr. Vijaya Patil that Shweta had consumed poison as stated by accused No. 1 and that Shweta was admitted to Jehangir Hospital on 12/6/2005. It is admitted in the cross-examination that he was acquainted with Dr. Vijaya Patil.

17 Learned APP for State vehemently submits that charge was framed against the accused under section 304B of the Indian Penal Code and therefore, it was incumbent upon the learned Judge to draw presumption under section 113 B of the Indian Evidence Act. However, learned Judge has come to a conclusion that it cannot be a case of dowry death, since the demand, even if proved may not amount to dowry under section 3 and 4 of the Dowry Prohibition Act and therefore, conviction is recorded under section 306, 498A of the Indian Penal Code.

18 According to the learned Counsel for the appellants, prosecution has failed to prove the following :

(i) that death of Shweta is due to consumption of phenol or any other poisonous substance.

(ii) The statement of P.W. 1 at Exh. 23 is silent about any demand made by the accused.

(iii) That a payment of Rs. 10,000/- and Rs. 5,000/- was made on two occasions in favour of Appellant No. 1 soon after marriage at Jejuri.

(iv) The medical papers of Jehangir Hospital are not on record.

19 It is the specific defence of the accused that the accused was running a medical store before 5/6/2005. Secondly that Shweta was a known diabetic since her age of 6 years. She had given birth to child in March, 2005. The child was admitted in Dinanath Mangeshkar Hospital. She was depressed and therefore, she might have committed suicide and that the accused cannot be blamed for the same. That she was passing through a stage of post-partum and therefore, she was depressed and caused harm to herself. Hence, the accused cannot be blamed for the suicidal death of Shweta.

20 Learned APP submits that all the submissions are unfounded and unsubstantiated and that the statement under section 313 of the Code of Criminal Procedure, 1973 is nothing, but denial of charges. It is submitted that lacunas in investigation cannot be fatal to

the prosecution, since P.W. 1 had substantially given a plausible explanation for the delay in lodging FIR.

21 Upon considering the rival submissions and after perusing the records and proceedings, it is established that firstly, Shweta had died an unnatural death within one year of her marriage in her matrimonial home. The onus would lie upon the accused to explain the circumstances, in which she committed suicide, since it is within the special knowledge of the accused persons. Section 106 of the Indian Evidence Act contemplates as follows :

“106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

22 In the present case, the defence of the accused is spelt out in the cross-examination of the witnesses. Suggestion was put to P.W. 1 that accused No. 1 is running a medical store prior to 5/6/2005. However, in the very next breath, it is suggested that the said medical store is in the name of Jayashri Sandip Hole and it is a part and parcel of Sanjeevan Hospital run by doctor Mr. and Mrs. Hole. It is also suggested that the accused No. 1 was drawing salary of Rs. 23,000/-.

The very suggestion would belie their defence theory, that no demand could have been made for starting a medical store and that he was running medical store prior to 5/6/2005 and as such, there was no reason to demand Rs. 2 Lakhs from PW. 1 and PW. 4.

23 The submission that Shweta was depressed because of her diabetes also does not inspire confidence for the simple reason that it was a love marriage. The accused No. 1 and the deceased were known to each other for quite some time before marriage. And that in the eventuality that she was regularly taking insulin was within the knowledg of the accused No. 1. Moreover, she was carrying on her life smoothly with diabetes since the age of 6 years. The diabetic state had not caused any impediment during her delivery and maternity. It is not specifically spelt out by the accused that she was passing through depressed state of mind because of her illness or her postpartum state of mind. On the contrary, theory of defence is that she had died due to pneumonia and pneumothorax. Hence, the said submission deserves no consideration. It therefore, needs to be held that the accused have not discharged the onus cast upon them under section 106 of the Indian Evidence Act.

24 Hon'ble Apex Court in the case of **Ramesh Vitthal Patil v/s. State of Karnataka** (2013) 11 SCC 5... has held that -

It is submitted that the appellant is a rich merchant and, therefore, he could not have made any demand for money. It is not possible for us to accept this submission. It would be wrong to say that the poor are avaricious and not the rich. Many a murder are committed by the rich out of greed for money.

25 In the present case, section 106 of the Evidence Act will have to be read in consonance with section 8 of the Indian Evidence Act to appreciate the conduct of the accused soonafter the incident. Section 8 of the Indian Evidence Act reads as under :

Section 8. Motive, preparation and previous or subsequent conduct.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

26 In fact the accused person soonafter the incident i.e. on 10/6/2005 had initially taken her to Sanjivan Clinic run by Dr. Hole

since Dr. Hole was acquainted with the accused persons and that there were cordial relations with Dr. Hole. Moreover, there was something suspicious and therefore, the accused persons had not informed her parents about the same. It was Dr. Hole who had informed the parents and had referred the case to Ushakiran Hospital.

27 Papers of Sanjivan Hospital and Maternity Home show the history as follows :-

“patient came here with complaint of fever with chills, nausea, malaise with mild dypnoea. No previous history of major illness: Known case of IDDM, not taking regular insulin.”

Then, patient was referred to Dr. Poman Sandeep and on 12/6/2005 patient was shifted to Ushakiran Hospital for further examination. It appears from record that Ushakiran Hospital had refused to admit her since it was a medico-legal case.

28 The investigating agency had not collected the treatment papers from Jehangir Hospital and it is stated by P.W. 8 and P.W. 9 that Dr. Vijaya Patil was transferred and therefore, they had not collected papers. Jehangir Hospital had issued a receipt of Rs. 27340/-, which was placed on record by P.W. 1 at Exh. 35 and proved by P.W. 6.

29 The conduct of the person would reflect the truthfulness of the defence taken by him in case there was no foul play. In case, Shweta was taking insulin regularly or that she had fever with chills, nausea etc. the accused No. 1 would have immediately informed her parents. Moreover, Shweta had called her mother on 10/6/2005 and disclosed that she could not bear ill-treatment any more. Moreover, in connivance with Dr. Hole, documents were prepared to show that she had fever and Dypnoia. A lie is always short lived and that is precisely the reason why the said defence was not taken by the accused at the time of trial stating categorically that she was suffering from fever or that she was not taking insulin regularly. The conduct is an expression of that inward emotions. Conduct which destroys presumption of innocence can be considered as material evidence against the accused. Falsity of defence would constrain us to draw an inference against the accused persons. The accused had prepared a good ground while admitting her in Jehangir Hospital and given a false explanation or concocted a new story at the threshold even prior to investigation and therefore, their conduct indicates the act of a guilty mind.

30 In the case of **Anant Chintaman Lagu v/s. State of Bombay**

in AIR 1960 SC page 500, poison was not detected. The Hon'ble Apex Court had then held as follows :

“A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material. The contention of the appellant, briefly, is that the medical evidence is inconclusive, and that his-conduct is explainable on hypotheses other than his guilt.”

The Hon'ble Apex Court in the case of **Karnel Singh vs. State of M.P.** reported in 1995 AIR 2472 has observed thus :

“In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

In **Paras Yadav and ors. vs. State of Bihar** reported in 1999 Cri. L.J. 1122, the Hon'ble Apex Court has observed that the contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be

perpetuated and justice would be denied to the complainant party. In these circumstances, no adverse inference can be drawn against the prosecution for certain lacunas in the investigation.

33 It is unfortunate that although the charge was framed under section 304B of the Indian Penal Code, conviction is recorded under section 306 of the Indian Penal Code. It pains us to observe that the State has not filed any appeal against the acquittal for offence under section 304B of the Indian Penal Code. In fact, learned Sessions Judge ought to have drawn presumption under section 113-B of the Indian Evidence Act. Moreover in the present case, test of proximity would clearly establish that a phone call by Shweta demanding Rs. 2 Lakhs to rescue her from harassment and ill-treatment meted out to her soon before her death, i.e. on 5/6/2005 and 10/6/2005 would clearly establish proximity of the demand of dowry and the suicide committed by Shweta.

34 In the case of **Hira Lal v/s. State(Govt. Of NCT) Delhi, reported in (2003) 8 SCC page 80**, the Hon'ble Apex Court has observed that -

A conjoint reading of [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC shows that there must be material to show

that soon before her death the victim was subjected to cruelty or harassment. 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'.

35 In the present case, all the witnesses have substantiated that it was accused No. 1 who had disclosed to them that Shweta had consumed some poisonous substance on 10/6/2005. The silence to answer the circumstances is loud enough to point towards guilt of the accused. The suggestion given by the defence at the time of trial would disclose the defence of the accused. It is their own case that the accused No. 1 was drawing salary of Rs. 23,000/-. He was holder of degree of D-Pharmacy and therefore, it is clear that he was employed or had rather lent his certificate to run medical store owned by Dr. Hole and that it was in the name of Dr. Jayashri Hole.

36 The defence has failed to impeach solemn testimony of the prosecution witness Nos. 1, 2, 4 and 6. P.W. 1 has also substantiated that while explaining poor prognosis of the patient, the doctor at Jehangir had informed him that there was a delay in providing medical treatment to the patient and that has been fatal.

37 Statement of the accused under section 313 of the Code of Criminal Procedure, 1973 is nothing but denial of allegations and the lacuna in investigation, coupled with the delay in lodging FIR. Plausible explanation given for the delay speaks for itself and the state of mind of the parents of a girl who had died within one year of marriage needs to be taken into consideration.

38 The fact that it was a love marriage, cannot be overlooked. It was the duty of the accused /appellant No. 1 to take care of his wife. It was his responsibility to make the circumstances in the house worth-living.

39 The only role ascribed to appellant No. 2 is that on one occasion she had been to house of PW. 1 and PW. 4 and had demanded Rs. 2 Lakhs for her son. Besides that, she has no role to play as far as an offence under section 306 of the Indian Penal Code is carved out. The conduct of the appellant No. 1 soon after the incident is shrouded with unwarranted secrecy and it is apparent that he had failed in his duty to look after his wife even after she had attempted to commit suicide. It was incumbent upon him to give her medical aid forthwith,

atleast for the child, who was a live testimony of their love. At that stage, appellant/accused No. 2 had no role to play and it is in these circumstances, appellant No. 2 deserves to be acquitted for the offence punishable under section 306 of the Indian Penal Code.

40 The appellant No. 2 was 65 years old at the time of filing of the appeal. Since it is observed by this Court that the Appellant No. 1 had failed in his duty/moral obligations to take care of his wife, the appellant No. 2 cannot be said to have abetted commission of suicide of her daughter in law. In view of this, the appellant No. 2 deserves to be convicted under section 498A of the Indian Penal Code. However, taking into consideration the facts of the case and the age of the appellant No. 2, the sentence imposed upon her deserves to be modified to the extent of period already undergone.

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41 The State of Maharashtra being aggrieved by the Judgment and Order dated 29th March, 2007 passed by the Second Ad-hoc Additional Sessions Judge, Pune thereby convicting them for an offence punishable under section 498A read with section 34 and 306 read

with 34 of the Indian Penal Code in Sessions Case No. 507 of 2005, seeks enhancement of the sentence imposed upon the respondents/accused on the ground that the sentence imposed upon the respondents is not proportionate to the offence for which they have been convicted. It is submitted that the sentence contemplated for the offence punishable under section 306 of the Indian Penal Code is up to 10 years imprisonment.

42 It is submitted that the learned Sessions Judge has placed implicit reliance upon the Judgment in the case of **Appasaheb and another v/s. State of Maharashtra reported in (2007) DMC 143 (SC)** and has arrived at a conclusion that demand of money on account of some financial stringency cannot be termed as demand of dowry and taking into consideration the view of the Apex court, learned Sessions Judge has held that in the present case also demand of money on account of some financial stringency cannot be termed as demand of dowry and that the accused were demanding Rs. 2 Lakhs for starting medical shop cannot be construed as dowry.

43 It is also observed by the learned Sessions Judge that there is no doubt that marriage of Shweta was performed in the month July, 2004

and she had died due to poisoning of 13/6/2005 i.e. within a period of one year of her marriage. According to the learned Sessions Judge, offence under section 304B was not made out, although she had died an unnatural death within one year of her marriage.

44 Learned Sessions Judge has also observed that the entire evidence brought on record by the prosecution would indicate that it is proved that the accused persons have demanded an amount of Rs. 2 Lakhs from the parents of deceased and as the same was not paid, they had meted out ill-treatment to Shweta. Shweta had died in her matrimonial home within one year of marriage. There was demand of Rs. 2 Lakhs from her parents soon before her death. She had died an unnatural death. In view of this, it was incumbent upon learned Sessions Judge to draw a presumption under section 113 B of the Indian Evidence Act.

45 In so far as the Judgment in the case of Appasaheb (cited Supra) relied upon by the learned Sessions Judge would be misplaced in view of the evidence adduced by the prosecution and is not controverted. Neither it is the case of the accused that he had

demanded the money out of need. Instead, it is a specific case that there was no demand at all.

46 Following are admitted facts :

(i) On the day of the incident i.e. on 10/6/2005, she had made a telephonic call to her mother and informed her that she is being severely ill-treated on account of failure of her parents' to pay Rs. 2 Lakhs to the accused presence.

(ii) On 12/6/2005 Dr. Hole informed her parents that Shweta is admitted in Jehangir Hospital. That she was initially admitted in Hole Hospital but she was then taken to Ushakiran Hospital and from there to Jehangir Hospital. The parents had learnt about it only after she was admitted in Jehangir Hospital.

(iii) Upon enquiry accused No. 1 had disclosed that she had consumed some poisonous substance on 10/6/2005.

(iv) That he had no explanation for the delay in passing on the information to her parents.

(v) On 13/6/2005 A.D. No. 24 of 2005 was registered upon information received from Jehangir Hospital by the Bundgarden Police station.

(vi) The parents of Shweta were in deep grief and were in no state of mind to lodge a report and on 23/6/2005 the series of transaction which led to her death were disclosed by the unfortunate father to the police, on the basis of which Crime No. 56 of 2005 was registered against accused persons.

47 The learned Counsel for the appellant vehemently demonstrated lacunas in investigation, delayed FIR and failure upon P.W. 1 to level any allegations against the appellant on 13/6/2005 in A.D. Enquiry.

48 It was therefore, necessary to draw presumption under section 113-B of the Indian Evidence Act without presuming that the demand was made on account of financial stringency. In fact, the accused have never pleaded that they were passing through financial stringency. Instead, an inconsistent case was pleaded by the accused No. 1 that he was running a medical store and drawing salary of Rs.

23,000/- per month.

49 It is further unfortunate to see that the state of Maharashtra has not filed an appeal challenging the acquittal of the accused under section 304-B of the Indian Penal Code, but has filed an appeal seeking enhancement of sentence for the conviction under section 306 of the Indian Penal Code. It is apparent on the face of the record that there is a proximate and live link between the effect of cruelty and harassment meted out to the deceased Shweta till the moment, she had consumed poisonous substance and she was probably left with no other alternative, but to end her life leaving behind her 3 months' old child.

50 At the cost of repetition and reiteration, it would be clear that the cruelty that was meted out to the deceased was a form of abetment to commission of suicide. In the present case, it would be apposite to read section 306 with section 112 of the Indian Penal Code.

“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.”

“112. Abettor when liable to cumulative punishment for act abetted and for act done.—If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.”

51 Learned Counsel for the respondents submits that the respondents had no motive to eliminate Shweta. That, it was a love marriage. That the accused are acquitted of the charge under section 304-B of the Indian Penal Code and Shweta consumed poisonous substance because of diabetes. And that it cannot be said the accused had abetted the commission of suicide. Learned Counsel submits that therefore, the appeal filed by the State seeking enhancement must necessarily fail. It is also pleaded that the incident is more than 15 years old and it would not be proper to enhance the sentence as pleaded for.

52 Passage of time will not be a justifiable reason to take lenient view. The death of a woman within one year of marriage needs to be viewed with sensitivity and the conviction needs to be necessarily

followed with a stringent punishment. Besides, we have recorded reasons for dismissal of the appeal filed by the accused.

53 The only role ascribed to respondent No. 2 is that on one occasion she had been to house of PW. 1 and PW. 4 and had demanded Rs. 2 Lakhs for her son. Besides that, she has no role to play as far as an offence under section 306 of the Indian Penal Code is concerned.

54 As far as the conduct of the respondent No. 1 soon after the incident is unnatural, unexplained and unjustified and it is apparent that he he had failed in his duty to look after his wife even after she had attempted to commit suicide. It was incumbent upon him to give her medical aid forthwith, atleast for the child who was live symbol of their love. At that stage, accused No. 2 had no role to play and it is in these circumstances, respondent No. 2 deserves to be acquitted for the offence punishable under section 306 of the Indian Penal Code.

55 The Hon'ble Apex Court in the case of **K. Prema Rao & anr. v/s. Yadla Shrinivasa Rao and ors. 2002 Supp(3) SCR 339**, has observed as follows :

““Frailty thy name is woman”, that is how in one of his plays Shakespeare described one of the female characters in his play. This description is more and more in evidence particularly in rural Indian society where married women, who are unable to muster courage to fight against cruelty and harassment meted out to them by their spouses and family members, find no escape other than ending their own life.”

“The same facts found in evidence, which justify conviction of the appellant under section 498A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife.”

“same facts and evidence on which accused No. 1 was charged under section 498A and 304B, the accused can be convicted and sentenced under section 306 IPC. We have no legal or procedural impediment in doing so.”

56 In the present case, the facts and evidence adduced by the prosecution would clearly indicate that charge under section 304B of the Indian Penal Code was established by the prosecution. However, learned Sessions Judge had taken a different view in respect of dowry and therefore, had recorded conviction under section 306 of the Indian Penal Code. The penalty contemplated for the offence punishable under section 306 of the Indian Penal Code, if proved, would be “upto 10 years”. In view of this, we are inclined to allow the appeal filed by

State for enhancement of sentence for an offence punishable under section 306 of the Indian Penal Code as far as Respondent No. 1 is concerned.

57 As far as the conviction of respondent No. 2 for the offence under section 498A of the Indian Penal Code is concerned, there was a demand of Rs. 2 Lakhs on one occasion. However, the continuous allegation by the deceased to her parents as well as P.W. 2 is sufficient to infer that the deceased was being harassed by the respondent No. 2 on account of failure on the part of her parents to pay Rs. 2 Lakhs. Hence, offence under section 498A of the Indian Penal Code is established beyond reasonable doubt. However, she is acquitted of the offence punishable under section 306 of the Indian Penal Code. For the offence punishable under section 498A of the Indian Penal Code, she is sentenced to the period already undergone.

58 In view of the above observations and observations of the Hon'ble Apex Court in the case of **K. Prema Rao & anr.(cited supra)**, following common order is passed in both the appeals.

ORDER

(i) Both the appeals are partly allowed.

(ii) The order of conviction and sentence under section 498 A of the Indian Penal Code imposed upon accused Amol Moreshwar Achrekar by the Learned 2nd Ad hoc Addl. Sessions Judge, Pune vide Judgment and Order dated 29/3/2007 is hereby confirmed.

(iii) The order of conviction under section 306 of the Indian Penal Code imposed upon accused Amol Moreshwar Achrekar by the learned 2nd Ad hoc Addl. Sessions Judge, Pune vide Judgment and Order dated 29/3/2007 is hereby confirmed. However, the order of sentence under section 306 of the Indian Penal Code imposed upon the Accused Amol Moreshwar Achrekar by the learned 2nd Ad hoc Addl. Sessions Judge, Pune vide Judgment and Order dated 29/3/2007 is hereby quashed and set aside. The sentence imposed upon the accused Amol Moreshwar Achrekar is enhanced. The accused Amol Moreshwar Achrekar is sentenced to suffer R.I. for 5 years and to pay fine of Rs. 25,000/- I.d. to suffer further S.I. for three months under section 306 of the Indian Penal Code.

(iv) Both the sentences shall run concurrently. The accused shall be entitled to set off under section 428 of Code of Criminal Procedure, 1973.

(v) The accused Amol Moreshwar Achrekar shall surrender before the Second Additional Sessions Judge, Pune within four weeks from the date of the Judgment.

(vi) The order of conviction under section 498A of the Indian Penal Code imposed on the accused Chandrabhaga Moreshwar Achrekar by the learned 2nd Ad hoc Addl. Sessions Judge, Pune vide Judgment and Order dated 29/3/2007 is confirmed. However, sentence imposed under section 498A of the Indian Penal Code is modified. The accused Chandrabhaga Moreshwar Achrekar is sentenced to the period already undergone.

(vi) The order of conviction and sentence of the accused Chandrabhaga Moreshwar Achrekar under section 306 of the Indian Penal Code imposed by the Learned 2nd Ad hoc Addl. Sessions Judge, Pune vide Judgment and Order dated 29/3/2007 is hereby quashed and set aside. The accused Chandrabhaga Moreshwar Achrekar is acquitted of the said charge. Bail bond of the accused shall stand cancelled.

59 The appeals are disposed of accordingly.

60 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J)

(SMT. SADHANA S. JADHAV, J)