

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.135 OF 2014

1. Shri Sharad Ashok Thange,
age 25 years, occ. Agril,
R/o. Barhanpur, Tq. Shevgaon,
District Ahmednagar. ..Appellant..
(orig. accused no.1.)

Versus

The State of Maharashtra
Through Police Inspector,
Shevgaon Police Station,
Taluka Shevgaon,
District Ahmednagar. ..Respondent..
(orig complainant)

...

WITH

CRIMINAL APPEAL NO.134 OF 2014

1. Ashok Bhaurao Thange,
age 47 years, Occ. Agril,
R/o Barhanpur, Tq. Shevgaon,
District Ahmednagar.
2. Bhimabai w/o Ashok Thange,
age 40 years, occ. agril,
R/o Barhanpur, Tq. Shevgaon,
District Ahmednagar. ..Appellants...
(orig accused nos.2 & 3)

VERSUS

The State of Maharashtra,
Through Police Inspector,
Shevgaon Police Station,
Taluka Shevgaon,
District Ahmednagar. ...Respondent...
(orig complainant)

...

...
Mr. V D Sapkal Senior Counsel I/b Mr. S R Sapkal
advocate for the appellants in both appeals.
Mr. S D Ghayal APP for the respondent State.

...
CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.

...
Reserved on : 23.6.2021
Pronounced on : 07.07.2021

...
JUDGMENT :- (Per V. K. Jadhav, J.)

1. These two appeals have been preferred against the judgment and order of conviction dated 26.2.2014 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No.384 of 2012.

2. Brief facts of the prosecution case are as follows :-

a] On 15.9.2012 village Police Patil of Aavhane, Tq. Shevgaon, District Ahmednagar has reported to Shevgaon Police Station that one Kalindi Sharad Thange died due to burns in her matrimonial home. On the basis of such information, accidental death bearing A.D. No.70 of 2012 was registered at Shevgaon Police Station and one ASI Shirvam Dhakne was entrusted with the inquiry.

b] On 16.9.2012 at about 3.00 a.m. PW 1-Raosaheb Kondiba Dukale-father of the deceased Kalindi has filed F.I.R at Shevgaon Police Station. It has been stated in the FIR that deceased Kalindi was given in marriage to appellant/accused no.1 Sharad Thange and marriage was performed on 29.1.2012. It has been alleged that Kalindi was treated well for a period of one month and, thereafter subjected to cruelty on account of the non-fulfillment of demand of Rs.50,000/- (Rs. Fifty Thousand) for purchasing a motorcycle. It has also alleged that on 13.9.2012 when the complainant has invited all the accused in his house for Dhonde Feast, appellant/accused no.1 Sharad has made a demand of one Tola Gold Ring, however, due to poor economical condition, complainant PW 1 Raosaheb could not fulfill the said demand. However, he has promised that when he will fetch good yield from his land, said ring will be given. All the accused left the house of the complainant alongwith Kalindi, however, while leaving the house deceased Kalindi was crying. On the very next day, i.e. on 15.9.2012 deceased Kalindi informed to her brother

PW 3 Dada Dukle on phone that as golden ring was not given to her husband appellant/accused, he has severally assaulted her and subjected her to cruelty. On the same day, at about 3.00 p.m. Sarpanch of village Avane informed to PW 3 Dada Dukle on phone that his sister deceased Kalindi died due to burns in the house of the accused. Accordingly, PW 1 Raosaheb, his wife Prayagbai and other relatives rushed to the house of the accused at Barhanpur, Tq. Shevgaon, District Ahmednagar. They have found that deceased Kalindi was totally in burnt condition and her dead body was lying in the house of the accused. They have carried said dead body to the Civil Hospital, Shevgaon. PW 1 Raosaheb has expressed his suspicion that since demands of Rs.50,000/- for purchasing the motorcycle and one Tola gold ring were not satisfied, his daughter was subjected to cruelty on that count, and accordingly, deceased Kalindi had committed suicide by setting herself on fire.

c] On the basis of his complaint crime bearing no.203 of 2012 was registered under section 304-B,

498-A, 323, 504, r/w 34 of IPC with the Shevgaon Police Station, Tq & District Ahmednagar. PW PSI Bhande has investigated the crime. He has taken papers of accidental death. The I.O. has recorded statements of the witnesses. Appellants/accused came to be arrested in connection with the crime, seized articles were sent to the C.A. Thus, on completion of the investigation, PW 5 PSI Bhande submitted the charge-sheet against appellants/accused persons.

3. The learned Additional Sessions Judge, Ahmednagar has framed the charge against appellants/accused under section 498-A, 304-B, 306, 323, 504, 34 of IPC. All the accused have pleaded not guilty to the charges and claimed to be tried. The defence of all the appellants/accused is of total denial. According to them, they have not demanded anything and deceased Kalindi was not subjected to cruelty. According to them, financial condition of deceased Kalindi was sound and, as such, deceased Kalindi was not in a habit of doing work on daily wages basis. Appellant/accused no.1 Sharad is having his own motorcycle and, as such, there

was no reason for him to make a demand for purchasing the motorcycle. Appellant/accused no.1 Sharad has never demanded gold ring. It is further explained that deceased Kalindi died due to accidental burns and PW-1 Raosaheb and his family members have falsely implicated them due to anger and vengeance.

4. Prosecution has examined seven witnesses to substantiate the charges levelled against accused persons. After the prosecution evidence was over, incriminating evidence appearing against appellants/accused was put to them in their examination under section 313 of Cr.P.C.

5. The learned Additional Sessions Judge, Ahmednagar, by judgment and order dated 26.2.2014 in Sessions Case No.384 of 2012 convicted the appellant/accused no.1-Sharad Thange for the offence punishable u/s 304-B of IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.5,000/- (Rs. Five Thousand), in default of payment of fine, to suffer R.I. for six months. The learned

Additional Sessions Judge, Ahmednagar has convicted appellants/accused no.2-Ashok Thange and appellant/accused no.3-Bhimabai Thange for the offence punishable under section 304-B of IPC and sentenced them to suffer R.I. for seven years and to pay a fine of Rs.5,000/- each, in default of payment of fine, to suffer R.I. for six months. The learned Additional Sessions Judge, Ahmednagar has convicted all the appellants/accused for the offence punishable u/s 498-A of IPC and sentenced them to suffer R.I. for three years and to pay fine of Rs.2,000/- each, in default of payment of fine, to suffer R.I. for six months. Both the Sentences are directed to be run concurrently. The Additional Sessions Judge, Ahmednagar has also directed that all the accused are entitled for set off as detailed in the operative part of the order clause no.5 and 6, respectively.

6. Being aggrieved by the same, the appellant/accused Sharad Thange (original accused no.1) has preferred appeal no.135 of 2014 and appellants/accused no.2-Ashok Thange and 3-Bhimabai

Thange (original accused nos. 2 and 3) have preferred criminal appeal no.134 of 2014.

7. The learned Senior counsel Mr. Sapkal submits that the impugned judgment and order of conviction is erroneous, illegal and contrary to the provisions of law. The learned Judge of the trial court has not appreciated the prosecution evidence in its proper perspective. The learned senior Counsel submits that there was no evidence that soon before the death, deceased Kalindi was subjected to cruelty or harassment for or in connection with any demand or dowry. The explanation appended to sub-section (1) of Section 304-B of IPC says that "Dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961. In terms of section 2 of the Dowry Prohibition Act, 1961 "dowry" means 'any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to other party to the marriage; at or before or any time after the marriage in connection with the marriage of the said parties. The demand of a property or valuable security must have some connection with

the marriage of the parties. This being a penal provision, it has to be strictly construed.

8. Learned senior counsel Mr. Sapkal submits that PW 1 Raoshaeb Dukale (father of deceased Kalindi), PW 2 Vishnu Kisan Tekule (friend of PW 1 Raosaheb), PW 3 Dada Raosaheb Dukale (brother of deceased Kalindi) are the material witnesses. These three prosecution witnesses have not given any details of the demands. They have not given the details as to when the accused persons have made a demand of Rs.50,000/- (Rs. Fifty Thousand) for purchasing the motorcycle. Learned senior counsel Mr. Sapkal submits that, at the time of Dhonde Feast, which is usually come in the month of September, as per the evidence of these three witnesses, on 13.9.2012 accused have demanded gold ring of one Tola, however, there is no reference, till the said demand of gold ring was made, about the earlier demand of Rs.50,000/- for purchasing the motorcycle. These prosecution witnesses have not stated anything as to what happened to the said demand of Rs.50,000/- for purchasing the motorcycle and as to whether said

demand was continued. Learned senior counsel Mr. Sapkal submits that as per the evidence of these witnesses, deceased Kalindi had made a phone call to PW-3 Dada on 15.9.2012 and informed to him that accused had beaten and assaulted her for failing to present him a gold ring. Learned senior counsel submits that, in a Dhonde Feast, which is well recognized festival in the region, gold ring and new clothes are offered to the son-in-law. Even assuming that accused persons have demanded gold ring, which is a part of the rituals, said demand cannot be equated with "dowry demand as defined under section 2 of the Dowry Prohibition Act, 1961". There are no allegations of ill-treatment on account of non-fulfillment of the demand of Rs.50,000/- for purchasing the motorcycle. Learned senior counsel Mr. Sapkal submits that evidence is lacking to the extent that deceased Kalindi was subjected to cruelty as defined under section 498-A of Indian Penal Code on account of demand of Rs.50,000/- for purchasing the motorcycle. Learned senior counsel Mr. Sapkal further submits that even

assuming for the sake of discussion that there was a demand of Rs.50,000/- for purchasing a motorcycle, said demand cannot be also equated with the dowry demand as defined under section 2 of the Dowry Prohibition Act, 1961. It has no connection directly or indirectly with the dowry. It is not the prosecution case and none of the prosecution witness has deposed that motorcycle was a part of dowry, and since it was not given at the time of marriage, accused, after marriage, have demanded Rs.50,000/- for purchasing the motorcycle. Learned senior counsel Mr. Sapkal submits that there is no evidence that deceased Kalindi had committed suicide due to the ill-treatment extended to her on account of the non-fulfillment of the said demands. Learned senior counsel Mr. Sapkal submits that, in view of the same, the presumption under section 113-B of the Evidence Act is not attracted. Consequently, dowry death cannot be presumed in the facts and circumstances of the present case.

9. Learned senior counsel Mr. Sapkal in order to substantiate his contentions placed reliance on the following judgments :-

1. Ramu @ Rameshwar s/o Ramkishan Aathave Vs. State of Maharashtra reported in 2017 SCC online Bom.6558.
2. Vijay Purushottam Surushe and anr. Vs. State of Maharashtra reported in 2011 (2) Bom.C.R.120.
3. Appasaheb and anr. Vs. State of Maharashtra reported in AIR 2007 Supreme Court 763.
4. Vipin Jaiswal Vs. State of A.P. reported in 2013 Cri.L.J. 2095.
5. Modinsab Kasimsab Kanchagar Vs. State of Karnataka and another reported in AIR 2013 Supreme Court 1504.
6. Girish Singh Vs. State of Uttarakhand reported in 2019 DGLS (SC) 939.
7. Kanchanben Purshottambhai Bhanderi Vs. State of Gujarat reported in AIR 2015 SC (supp) 315.
8. Durga Prasad and anr. Vs. State of M.P. reported in 2010 AIR SCW 3673.
9. Biswajit Halder alias Babu Halder and ors. Vs. State of W.B. reported in 2007 Cri.L.J. 2300.

10. Learned APP Mr. S D Ghayal submits that the prosecution has proved that the death of deceased Kalindi occurred at her matrimonial home otherwise

than under the normal circumstances. Prosecution has examined PW 4 Dr. Dipak Pardeshi, who has conducted postmortem examination on the dead body of the deceased Kalindi. He has noticed 100% burn injuries on all over the dead body of the deceased Kalindi. Moreover, while examining the stomach and its contents, doctor Pardeshi has recorded about 500 CC of Semi digested liquid with smell of poisonous substance present. According to him, smell of poisonous substance was not due to the event of burning of the victim and injuries all over the body, but it was independent and may be due to poisonous food. He has reserved the viscera for the purpose of analysis through C.A. The C.A report exh.27, 28 and 29 indicates detection of organophosphorous insecticide Dimethoate (Rogar) detected in article no.1. Plastic bottle containing pieces of stomach of small intestine and large intestine. PW 4 Dr. Pardeshi has given final cause of death as “shock due to burn associated with poisoning.” Learned APP submits that prosecution has proved beyond

reasonable doubt that death of Kalindi occurred otherwise than under the normal circumstances.

11. Learned APP submits that the evidence of PW1 Raosaheb, PW 2 Vishnu Tekule and PW 3 Dada is reliable, trust worthy and inspiring the confidence. Learned APP submits that, in case of dowry death, the circumstantial evidence also plays an important role and inference can be drawn on the basis of such evidence. Learned APP submits that PW 3 Dada, who happened to be the brother of deceased Kalindi, has deposed that, deceased Kalindi was treated well for a period of one month after the marriage. Thus, inference can be drawn that demand of Rs.50,000/- for purchasing the motorcycle was made after said period of one month. Thus, considering the short span of cohabitation i.e. total period of eight months, said demand would constitute to be in connection with the marriage, and it would be a case of demand of dowry within the meaning of section 304-B of IPC. Learned APP submits that on the date of the death itself, deceased Kalindi had made a phone call to her brother

PW 3 Dada and informed to him about ill-treatment being extended to her on account of non-fulfillment of the demand of gold ring. Learned APP submits that the ingredients of section 304-B of the Indian Penal Code stand proved by the prosecution. Prosecution has proved death of deceased Kalindi occurred within eight months of her marriage otherwise than under the normal circumstances at her matrimonial home and, also proved the dowry demand, so also the cruelty as defined under section 498-A of the IPC. Learned APP submits that the presumption under section 113-B of the Evidence Act stands attracted. The Court thus shall presume that accused had caused dowry death. The trial court has correctly appreciated the evidence and by applying the presumption under section 113-B of the Evidence Act, rightly convicted the appellants/accused persons.

12. Learned APP submits that the appellants/accused during their examination under section 313 of Cr.P.C. have given false information Exhibit 62. According to the appellants/accused persons, deceased Kalindi had

sustained accidental burns. However, considering the cause of death as 100% burns coupled with the poisonous substance rule out the possibility of accidental burns. Learned A.P.P. submits that death of deceased Kalindi is a custodial death. In terms of provisions of section 106 of the Indian Evidence Act, the burden of proving the fact, which is especially within the knowledge of the accused shifts upon them, accused have miserably failed to discharge the said burden. This is required to be treated as an additional circumstance against appellants/accused persons. Learned APP submits that there is no substance in these criminal appeals and the criminal appeals are liable to be dismissed.

13. Learned APP, in order to substantiate his contentions, placed reliance on a case Pawar Kumar and others Vs. State of Haryana reported in AIR 1998 Supreme Court 958.

14. Prosecution has examined PW 4 Dr. Pardeshi Dipak Harischandra, attached to Rural Hospital,

Shevgaon, District Ahmednagar. On 15.9.2012 at about 09.00 p.m. Dr. Pardeshi has conducted postmortem examination on the dead body of deceased Kalindi. PW Dr. Pardeshi has noticed 100% burn injuries all over the body of deceased Kalindi. He has further noticed redness over right leg lower half. According to PW 4 Dr. Pardeshi it is antemortem and might be occurred at the time of event of burning. He has further explained that said injury indicates that at the time of burning deceased was alive. In addition to the same, he has found 500 CC of semi digested liquid in the stomach with smell of poisonous substance. According to PW 4 Dr. Pardeshi, smell of poisonous substance was not due to event of burning of the victim, but it was independent and might be due to poisonous food. CA report Exh.27, 28 and 29 were also shown to him. CA report indicates detection of organophosphorous insecticide Dimethoate (Rogar) in article no.1. PW 4 Dr. Pardeshi has given final opinion of cause of death as 'Shock due to burn associated with poisoning'. We find it difficult to accept that deceased Kalindi had consumed the poison and

thereafter set herself on fire. PW 4 Dr. Pardeshi has stated in his cross-examination that consumption of poison may be occurred accidentally or administration by any other. However, according to him, so far as burn injuries on the person of the deceased Kalindi are concerned, those are antemortem in nature. PW 4 Dr. Pardeshi has not given clear opinion as to whether death of Kalindi is homicidal or suicidal. However, the prosecution has proved beyond doubt that deceased Kalindi died in her matrimonial home due to burns and otherwise than under the normal circumstances. The learned senior counsel Mr. Sapkal has also not disputed the same.

15. It is the specific case of the prosecution that deceased Kalindi ended her life because of the harassment caused to her by the accused for or in connection with the demand of dowry. It is, therefore, essential to briefly examine the evidence of the prosecution witnesses. PW 1 Raosaheb, PW 2 Vishnu and PW 3 Dada who are the material witnesses on this point. PW 1 Raosaheb (father of the deceased) has

deposed that accused told Kalindi to bring Rs.50,000/- for motorcycle. PW 1 Raosaheb has further deposed that on 13.9.2012 he had called accused and Kalindi for Dhonde Feast. Kalindi's husband Sharad put demand of gold ring of one Tola. He refused to meet the demand due to drought. Accused returned with Kalindi to their home at Barhanpur. On 15.9.2012 at about 10.30 am Kalindi informed on phone that accused started beating, assaulting and harassing her for fulfilling to meet the demand. On 15.9.2012 at about 03.00 p.m. Sarpanch Dada Avhane had informed to Raosaheb on phone that Kalindi died due to burning.

16. PW 2 Vishnu Tekule (family friend) has deposed that after marriage for one month there was a peaceful married life. Accused then started demand of Rs.50,000/- for motorcycle and started pestering in the fulfillment of the said demand. Deceased Kalindi, when came to her maternal home, narrated about the harassment by the accused. Accordingly, he himself, PW 2 Vishnu, one Machindra More and PW 1 Raosaheb went to the house of the accused. They had convinced

the accused that they were unable to meet the demand due to famine. On 13.9.2012 accused were called for Dhonde feast. At the time of leaving, accused no.1 asked the complainant and deceased Kalindi to present gold ring. They have convinced Kalindi and accused. Kalindi was crying as accused abused her in their presence.

17. PW 3 Dada (brother of the deceased) has deposed that marriage of Kalindi was performed gracefully with the present of dowry of Rs.1 Lakh and other gadgets and utensils. Deceased Kalindi started residing with the accused. For one month after marriage, married life was peaceful and her harassment started thereafter. PW 3 Dada deposed that on her visit to their home Kalindi was asking to pay Rs.50,000/-for her husband Sharad. PW 3 Dada (brother of deceased) further deposed that thereafter he alongwith his father, PW 2 Vishnu Tekule, Bhimrao More went to the house of the accused to give him the understanding. He has deposed about the incident of 13.9.2012 when they had invited the accused for Dhonde feast. He has deposed that PW

1 Raosaheb presented clothes to accused and accused no.1 Sharad asked him to present him a gold ring. They have refused the demand due to their inability. Therefore, accused no.1 abused Kalindi and they sent Kalindi with the accused while she was weeping. On 15.9.2012 at about 10.30 a.m. deceased Kalindi talked to him on phone and informed that accused beaten and assaulted her for failing to present gold ring.

18. Though, prosecution witnesses have not given the exact date, time and place as to when the accused demanded an amount of Rs.50,000/- for purchasing the motorcycle, however, deceased Kalindi was treated well for a period of one month after marriage, and that there was a demand of Rs.50,000/- for purchasing motorcycle after said period of one month.

19. There are four essential ingredients of section 304-B of IPC.

- i. Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under the normal circumstances.

- ii. Such death should have occurred within seven years of her marriage.
- iii. She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before death.
- iv. Such cruelty or harassment should be for, or in connection with the demand for dowry.

20. In terms of the explanation to section 304-B, term “Dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961. Section 2 of the Dowry Prohibition Act, 1961 reads as under :-

2. “Dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

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

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

21. It is thus clear that “Dowry” means any property or valuable security given or agreed to be given as directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. It is thus necessary that giving or taking of the property or valuable security must have some connection with the marriage of the parties. It is well settled that being a penal provision, the same has to be strictly construed.

22. In a case **Ashok Kumar Vs. State of Haryana** reported in (2010) 12 SCC 350 in paragraph no.14 and 19 the Supreme Court has made following observations :-

14. The expressions “or any time after marriage” and “in connection with the marriage of the said parties” were introduced by the amending Act 63 of 1984 and Act 43 of 1986 with effect from 2-10-1985 and 19-11-1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression “in connection with the marriage” cannot be given a restricted or a narrower meaning. The expression “in connection with the marriage” even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the

demand of dowry has to be “in connection with the marriage” and not so customary that it would not attract, on the face of it, the provisions of this section.

19. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the section is “soon before her death”. In our view, the expression “soon before her death” cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.

23. It is clear from the observations made by the Supreme Court that expression “in connection with the marriage” cannot be given a restricted or narrower meaning. “In connection with the marriage” even in a common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. before or after the marriage, would be covered under this definition, but the demand of dowry has to be “in connection with the marriage” and not so customary, that it would not attract, on the fact of it, the provisions of this Section.

24. The Hon'ble Supreme Court in the above cited case has referred one case of Ran Singh Vs. State of Haryana reported in (2008) 4 SCC 70 and Satvir Singh Vs. State of Punjab reported in (2001) 8 SCC 633, wherein it is held that customary payments in connection with birth of a child or other ceremonies are not covered within the ambit of "dowry".

25. In a case of **Appasaheb and another Vs. State of Maharashtra** reported in (2007) 9 Supreme Court Cases page 721, it is held that demand of money on account of some financial stringency or to meet some urgent domestic expenses for purchasing manure cannot be termed as demand for dowry as said word is normally understood.

26. In the instant case, merely one month after the marriage, deceased Kalindi had informed to her parents to give Rs.50,000/- to her husband for purchasing a motorcycle. The expression "in connection with the marriage" cannot be given a restricted or narrower meaning. We are aware of the mind set up of the people

of our society, particularly, the husband's side. It is always expected from the wife and her family members, even after the marriage, to present the husband a new motorcycle, luxurious articles like T.V., refrigerator, Washing machine, etc. In the instant case, demand of Rs.50,000/- for purchasing the motorcycle is not for the purpose of business or any other cause. The defence has suggested to the prosecution witnesses and even explanation has also been tendered in the statement under section 313 of Cr.P.C. that the appellant/accused no.1 Sharad was already having a motorcycle even prior to the marriage. This further strengthen the observations made by us that the said demand of Rs.50,000/- for purchasing a motorcycle was in connection with the marriage, even though motorcycle was not required by the appellant/accused no.1-Sharad. If we understood the dowry a well known social custom and practice in India, in the facts of the instant case, since demand of Rs.50,000/- for purchasing a motorcycle was made one month after the marriage, only irresistible inference could be drawn that said

demand is in connection with the marriage and thus constitute a 'dowry demand.' So far as the demand of gold ring at the time of Dhonde Feast is concerned, we are agree with the submissions made by the learned senior Counsel Mr. Sapkal on behalf of the appellants/accused that in Dhonde Feast, generally, gold ring is presented to the husband and, therefore, the same falls under the customary payment and thus does not cover within the ambit of word "dowry".

27. Deceased Kalindi died within eight months and some odd days of the marriage. On the date of the incident, i.e. on 15.9.2012 deceased Kalindi had informed to her brother PW-3 Dada about the assault and beating by accused for non-fulfillment of the demand. It is a proximate link between the cruelty in connection with the demand of dowry and death of deceased Kalindi resulting from it. The demand of said amount of Rs.50,000/- for purchasing a motorcycle and allegations about cruelty, particularly, on the date of incident itself, positively indicates that soon before the death, deceased Kalindi was subjected to cruelty by the

appellant/accused no.1 Sharad in connection with the said demand of dowry. The allegations have been made about the demand of Rs.50,000/- for purchasing a motorcycle only against the appellant/accused no.1-Sharad, and since deceased Kalindi was subjected to cruelty on account of non-fulfillment of the said demand triggered by the subsequent event that at the Dhonde festival appellant/accused no.1 Sharad was not offered a gold ring, allegedly by appellant/accused no.1 Sharad, we extend the benefit of doubt to the appellants/original accused nos.2-Ashok Bhaurao Thange and 3-Bhimabai Ashok Thange in criminal appeal no.134 of 2014.

28. It is well settled that once the three ingredients of section 304-B of IPC i.e. i] death of a woman is caused by any burns or bodily injury or occurs otherwise than under the normal circumstances, ii] within seven years of her marriage and iii]- it is shown that soon before her death she was subjected to cruelty or harassment, the presumption under section 113-B would follow. It is held to be rebuttable presumption and accused by satisfactory evidence can rebut the presumption. In

the instant case, the accused could not rebut the presumption and, even without aid of presumption, the prosecution has proved that the appellant/accused Sharad was responsible for the death of deceased Kalindi. Even, the explanation tendered by the appellant/accused No.1 Sharad about death of deceased Kalindi in her matrimonial home by accidental burns appears to be false. There is no attempt at all to explain as to how the poisonous substance found in the stomach contents of deceased Kalindi and as to how the deceased Kalindi had sustained 100% burns if at all she had sustained burns, accidentally. Even, the tenor of the evidence of PW 4 Dr. Pardeshi indicates that there was no possibility of accidental burns.

29. In a case *Vijay Purushottam Surushe and another Vs. State of Maharashtra* reported in 2011 (2) Bom.C.R. (Cri) 120 relied upon by the learned senior counsel Mr. Sapkal for the appellants, in the facts of the said case, the exact acts of ill-treatment, its nature and its effect namely such ill-treatment would drive victim to commit suicide, are all left to imagination, as no facts have come

forward. However, in the instant case, on the day of the incident itself, deceased Kalindi had informed to her brother PW 3 Dada that she was subjected to assault and beating by the accused persons on account of non-fulfillment of the demand. Deceased Kalindi had made a phone call to her brother PW 3 Dada at about 10.30 am and on the same day she died due to burns in her matrimonial home and also otherwise than under the normal circumstances at about 3.00 p.m. Thus, the facts and circumstances of the case cited are altogether different and cannot be made applicable to the facts of the present case.

30. In a case of Appasaheb and another Vs. State of Maharashtra reported in AIR 2007 Supreme Court 763, relied upon by the learned senior counsel Mr. Sapkal for the appellants, it is held by the Supreme Court that accused demanding money for domestic expenses and for purchase of manure, thus cannot be convicted under section 304-B of IPC. In paragraph no.9 of the judgment the Supreme Court has made following observations :-

“9. Two essential ingredients of Section 304B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to Sub-section (1) of Section 304B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under :

2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly -

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

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. AIR 1996 SC.3509 AND Chemicals and Fibres of India v. Union of India AIR 1997 SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.”

31. The Supreme Court in the above cited case has observed that dowry is a clearly well known social custom or practice in India. It is well settled that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be constructed as having that particular meaning. In the backdrop of these observations, the demand of money for domestic expenses and purchase of manure held to be not a demand of dowry.

32. In a case Vipin Jaiswal Vs. State of A.P. reported in 2013 Cri.L.J.2095 relied upon by the learned Senior counsel for the appellants, in the facts of this case there was a demand for purchase of computer for starting business and the Supreme Court has held that same cannot be said to be a demand in connection with the marriage. It is held that said demand is not dowry, however, the facts of the said case are altogether

different and cannot be made applicable to the facts of the present case.

33. In a case Modinsab Kasimsab Kanchagar Vs. State of Karnataka and another reported in AIR 2013 SC 1504 relied upon by the learned Sr. counsel for the appellants, there was a demand of money for repayment of the loan and the same held to be not a dowry demand.

34. In a cases of Girish Singh Vs. State of Uttarakhand reported in 2019 DGLS (SC) 939, Kanchanben Purshottambhai and others reported in AIR 2015 SC (supp) 315 and Durga Prasad and another Vs. State of M.P. reported in 2010 AIR SCW 3673, relied upon by the learned Senior counsel Mr. Sapkal for appellants, the facts of these case are altogether different and cannot be made applicable to the facts of the present case.

35. In view of the discussion above, we are of the considered opinion that prosecution has proved the case under section 304-B, 498-A of the Indian Penal Code

against the appellant/accused no.1 Sharad Ashok Thange in Criminal Appeal No.135 of 2014 and the appellants/accused no.2-Ashok Bhaurao Thange and 3-Bhimabai Ashok Thange (original accused nos. 2 and 3) in criminal appeal no.134 of 2014 are entitled for the benefit of doubt.

36. So far as the quantum of punishment is concerned, there are few aspects which need to be considered. There is no evidence that at the time of occurrence the appellant/accused no.1 Sharad Thange was present at home and he failed to protect/save the deceased from burning which caused her death. Further, deceased Kalindi died within eight months and some odd days after the marriage, which is very short period. The appellant/accused no.1 Sharad was 25 years of age at the time of the alleged incident. Thus, keeping in view the facts and circumstances of the present case, we are of the considered view that the ends of justice would be met by awarding him a sentence of 10 years of R.I. for the offence punishable

under section 304-B of the Indian Penal Code. Hence,
we proceed to pass the following order :-

ORDER

- i. Criminal Appeal No.135 of 2014 (Sharad Ashok Thange Vs. State of Maharashtra) is hereby partly allowed.
- ii. The impugned judgment and order passed by the learned Additional Sessions Judge, Ahmednagar dated 26.2.2014 in Sessions Case No.384 of 2012 to the extent of appellant/accused Sharad Ashok Thange (original accused no.1) is hereby modified to the extent of sentence as under :-
- iii. The appellant/accused Sharad Ashok Thange (original accused no.1) is hereby convicted for the offence punishable under section 304-B of the Indian Penal Code and sentenced to suffer R.I. for 10 (Ten) years and to pay a fine of Rs.5,000/- (Rs. Five Thousand), in default of payment of fine to suffer R.I. for 6 months, instead of imprisonment for life.
- iv. Conviction of appellant/accused Sharad Ashok Thange (original accused no.1) under section 498-A of the Indian Penal Code and sentencing

him to suffer R.I. for a period of three years and to pay fine of Rs.2,000/-, in default of payment of fine to suffer R.I. for six months stands confirmed.

- v. The appellant/accused no.1 Sharad Ashok Thange is entitled for the set off from the date as directed by the trial court.
- vi. Both the sentences shall run concurrently.
- vii. Criminal Appeal No.134 of 2014 is hereby allowed.
- viii. The impugned judgment and order passed by the learned Additional Sessions Judge, Ahmednagar dated 26.2.2014 in Sessions Case No.384 of 2012 to the extent of appellants/original accused no.2-Ashok Bhaurao Thange and no.3-Bhimabai w/o Ashok Thange is hereby quashed and set aside and the appellants/original accused nos.2-- Ashok Bhaurao Thange and no.3 Bhimabai Ashok Thange are hereby acquitted from all the charges levelled against them.
- ix. Fine amount, if any, paid by them shall be refunded to them.

- x. The appellant/accused-Sharad Ashok Thange in criminal appeal no.135 of 2014 and the appellants/accused no.1-Asok Bhaurao Thange and 2-Bhimabai Ashok Thange shall execute P.B. of Rs.15,000/- each, with one surety of the like amount each to appear before the higher court as and when the notice is issued in respect of any appeal or petition filed against the judgment of this Court. Such bail bonds shall remain in force for a period of six months from the date of its execution.
- xi. Both the criminal appeals are accordingly disposed off.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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AAA/-