

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.271 OF 2003

The State of Maharashtra
through Police Station Peth Beed
Through Ismile Syed Maheboob,
Age : Major, R/o. Ambikanagar, Talwada,
Tq. Georai, Dist. Beed

.. Appellant
(Ori. Complainant)

Versus

1. Majid s/o. Shahabajkhan Pathan
Age : 24 years, Occu : Driver,
R/o. Islampura, Dist. Beed.
2. Halimabee w/o. Shahabajkhan Pathan
Age : 45 years, Occu : Household,
R/o. Islampura, Dist. Beed.

.. Respondents
(Orig. Accused)

...

Mr K.S. Patil, APP for the Appellant / State
Mr P.P. More, Advocate for the Respondents (appointed)

....

CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.

Reserved on : 07-01-2021
Pronounced on : 30-01-2021

JUDGMENT (PER: B.U. DEBADWAR, J.) :-

1. This appeal has been directed under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the judgment and order dated 13-12-2002 passed by the learned II Additional Sessions Judge, Beed in Sessions

Case No.125 of 1997 whereby it has acquitted the respondents / original accused for the offences punishable under Sections 498-A, 302, 201, 203, 177 r.w. 34 of the Indian Penal Code, 1860 (hereinafter in short 'IPC') .

2. Facts giving rise to the appeal, in nutshell, are as under :-

a) Unfortunate young lady by name Shabana was the daughter of Syed Ismile Syed Mehboob, resident of village Talwada, Tal. Georai, Dist. Beed. She was given in marriage to respondent no.1 Majid Pathan. Their marriage was performed in or about February – 1996. Respondent no.2 - Halimabee Pathan is the mother of respondent no.1 - Majid Pathan and mother-in-law of Shabana. After marriage, Shabana started residing and cohabiting with husband and in-laws at their house situated at Islampura locality of Beed. Matrimonial life of Shabana was normal for few months after the marriage, however, thereafter the respondents started demanding Rs.10,000/- for commencing business and subjected her to cruelty on account of non-fulfillment of the said demand. Meanwhile, Shabana became pregnant.

b) When she was in the 5th month of pregnancy, on 28-10-1996 Syed Ismile Syed Mehboob (father of Shabana) had been to her matrimonial house at Islampur, Dist. Beed to see her. On his visiting the house, Shabana disclosed to him (her father) not only about the demand of Rs.10,000/- being made by the respondents, but also about picking up quarrel by respondent no.2 for the reason of respondent no.1's buying footwear for Shabana alone and not for her daughter and taunting and insulting her (Shabana) on that count continuously. Syed Ismile Syed Mehboob, after hearing about aforesaid conduct of the respondents towards his daughter – Shabana, told Shabana that at present the construction of the house is going on, therefore, he cannot fulfill the demand of Rs.10,000/-, however he will think about the fulfillment of demand of money made by the respondents, when he would take her to his house at Wadala for Diwali festival and left the house of respondents at about 03:00 p.m.

c) Three days thereafter i.e. on 31-10-1996 at about 03:00 a.m. Shabana was burnt extensively and died. Husband Majid Pathan - respondent no.1, at about 04:35 a.m. on 31-10-1996, rushed to the Police Station Peth, Dist. Beed and informed the Station House Officer on duty about suicide committed by Shabana by burning

herself, in a room adjacent to their bed room by closing and bolting the same from inside.

d) Station House Officer on duty recorded aforesaid statement of respondent no.1 in writing, registered A.D. No.16 of 1996 under Section 174 of the CrPC on the basis of said statement and handed over the enquiry of the said A.D. to Mr Kundlik Tathe, Police Inspector attached to said police station. Upon getting the A.D. report, Mr Kundlik Tathe rushed to the house of the respondents, verified the situation at spot, then prepared inquest panchanama of the dead body of Shabana lying in the east-south corner of the house in presence of the panchas, forwarded the dead body of Shabana to the Civil Hospital, Beed for conducting post-mortem along with the report and copy of inquest and thereafter drew the spot panchanama of the spot where Shabana died due to the extensive burns in presence of another two panch witnesses.

e) Meanwhile at about 04:00 p.m. on 31-10-1996, Syed Ismile Syed Mehboob (father of Shabana) rushed to the police station Peth, Dist.Beed and lodged the report against the respondents *inter alia* contending that both the respondents being husband and mother-in-law of Shabana made demand of Rs.10,000/- for

commencing business and subjected her to cruelty for non-fulfillment of the said demand. Shabana being fed up with the physical and mental cruelty meted out by the respondents, committed suicide by setting her ablaze and thus, the respondents are responsible for the death of his daughter Shabana.

f) On the basis of aforesaid report, Station House Officer on duty registered Crime No.123 of 1996 for the offences punishable under Sections 498-A, 306 r.w. 34 of the I.P.C. Investigation of the said crime commenced as expected.

g) During the course of investigation, Mr Kundlik Tathe, Police Inspector recorded the statements of material witnesses, sent articles seized from the spot, at the time of drawing spot panchanama, to the Forensic Lab for examination and report, through Lady Constable Kashyap and collected PM report and CA reports. Meanwhile, his transfer took place. As such, he handed over investigation to Mr Magar Tedhe, PSI attached to the said police station, who looking to the cause of death of Shabana mentioned in post-mortem report and the fact that blood was oozing from her ear and the tongue was protruded from the mouth of Shabana, as was revealing from the Inquest panchanama and the statement of the

witnesses, he arrived at the conclusion that both the respondents, in furtherance of their common intention not only subjected Shabana to cruelty for coercing her to fulfill their demand / dowry of Rs.10,000/-, but also committed murder of Shabana by assaulting and hanging her and then burnt her dead body, for causing disappearance of evidence and gave false information to the police that Shabana committed suicide. Accordingly, with the due permission of Chief Judicial Magistrate, Beed he added Sections 302 and 201 of the I.P.C. in FIR and on completion of investigation, charge-sheeted the respondents before Chief Judicial Magistrate, Beed.

h) After the case was committed from the Court of Chief Judicial Magistrate, Beed, on 20-03-1998 learned 3rd Additional Sessions Judge, Beed vide Exh.5, framed the charge for the offences punishable under Sections 498-A, 302, 201, 203 and 177 r.w. 34 of the I.P.C. So framed charge was read over and explained to the accused in vernacular. They pleaded not guilty and claimed to be tried. Their defence as seen from the trend of cross-examination and their statements recorded under Section 313 (1)(b) of the CrPC, was that of total denial. None was examined in defence.

i) Considering the evidence adduced by the prosecution and on hearing the arguments advanced by the Additional Public Prosecutor and the defence Counsel, learned II Additional Sessions Judge, Beed acquitted both the respondents from all the charges holding that evidence adduced by the prosecution is not at all sufficient to prove beyond doubt that the respondents in furtherance of their common intention subjected Shabana to cruelty on account of non-fulfillment of their demand of Rs.10,000/- and not only committed her murder, but also burnt her dead body, so as to destroy the evidence and screen them from legal punishment, therefore, they are entitled for acquittal.

j) Being aggrieved by the impugned judgment and order acquitting the respondents for all the charges, the State has preferred the present appeal under Section 478 (1) of the CrPC on various factual and legal aspects mentioned in the appeal memo.

3. We have heard Mr K.S. Patil, learned APP for the appellant / State and Mr P.P.More, learned Advocate for the respondents.

4. While taking us through the oral and documentary evidence adduced by the prosecution, Mr K.S. Patil, APP vehemently

argued that, learned II Additional Sessions Judge, Beed completely failed in appreciating the evidence in proper perspective and arrived at a wrong conclusion. The impugned judgment and order of acquittal is not only contrary to the evidence on record but also contrary to the established principles of law. Learned Additional Sessions Court, Beed failed to appreciate that Shabana died within 7 years of marriage while in the custody of respondents, who are her husband and mother-in-law, and autopsy surgeon, who conducted post-mortem on the dead body of Shabana, after having considered histopathology Report opined that, “cardio respiratory failure due to Asphyxia secondary to strangulation” was the cause of death of Shabana. The learned Additional Sessions Judge, Beed should have relied upon the probable cause of death of Shabana deposed by autopsy surgeon, when nothing could be brought on record from his cross-examination which would create doubt about his evidence as to the cause of death of Shabana. After considering the medical evidence, it is clear enough that, both the respondents mercilessly beat Shabana and on realizing that assault committed by them had resulted in death of Shabana, they burnt dead body of Shabana to destroy the evidence and falsely pretended that she has committed suicide by burning herself.

5. Mr K.S. Patil, APP submits that having regard to the fact that Shabana died while in the custody of respondents and post-mortem findings including cause of death of Shabana reported by autopsy surgeon after receiving histopathology report, learned Additional Sessions Judge should not have acquitted the respondents relying on ocular evidence of the witnesses examined by the prosecution, more particularly report lodged by respondent no.1 at Exh.37, though the respondents did not give any explanation about fracture of hyoid bone and ocular evidence is clear enough about the demand of Rs.10,000/- made by the respondents.

6. Thus, having regard to the medical evidence which clearly speaks about physical harassment of Shabana soon before her unnatural death coupled with demand of Rs.10,000/- in the form of dowry, learned II Additional Sessions Judge should have at least held the respondents guilty for the offences punishable under Sections 498-A and 304-B of the IPC. However, the learned II Additional Sessions Judge, without going into the details of circumstances of the case, evidence on record and settled position of law under Sections 498-A, 304-B of IPC wrongly gave clean chit to both the respondents and acquitted them for all the charges. The impugned judgment

being contrary to the facts of the case and legal provisions, the appeal deserves to be allowed.

7. Per contra, Mr P.P. More, learned Advocate for the respondents vehemently argued that, in spite of the fact that the fracture of hyoid bone of Shabana noticed during the post-mortem, autopsy surgeon reserved opinion as to the cause of death of Shabana till receipt of the histopathology report. On the basis of aforesaid finding he could have expressed his opinion. Since the prosecution has failed to prove histopathology report by examining the expert who issued the same, the opinion as to cause of death reported by autopsy surgeon, subsequently on the basis of histopathology report cannot be relied upon. The learned II Additional Sessions Judge considering this aspect and testimony of Shaikh Shabbir Abdul Lateef (PW-7), who is an independent witness rightly held that, charge under Section 302 of IPC is not sustainable against the respondents. Moreover, FIR lodged by Syed Ismile (PW-1) (father of the deceased Shabana) not at all states that accused have committed murder of Shabana, but states that the respondents have subjected Shabana to cruelty on account of demand of Rs.10,000/-, compelled Shabana to commit suicide and in pursuance of their abatement, she has

committed the suicide, therefore, they are responsible for the suicidal death of Shabana.

8. Having considered all these aspects, the learned II Additional Sessions Judge, Beed rightly held that charge under Section 302 of the IPC is not sustainable. Once the prosecution has failed to prove the charge under Section 302 of IPC, question of holding the respondents guilty for the charges under Sections 203, 177 r.w. 34 of the I.P.C. which are based on the charge under Section 302 of IPC holds no water and question of holding the respondents guilty for the said charges does not arise.

9. As far as charge under Section 498-A of the IPC is concerned, Shri P.P. More, learned Advocate argued that, the ocular evidence of father, mother and sisters of Shabana, in respect of demand of money and harassment and ill-treatment meted out to Shabana by the respondents is very much ambiguous and unsustainable. Therefore, on the basis of such evidence the respondents cannot be held guilty for the charge under Section 498-A of I.P.C. only for the reason that Shabana died due to extensive burns within 7 years of marriage. Absolutely, there is no evidence showing that, Shabana was subjected to any kind of physical or mental cruelty

which is sufficient to drive her to commit suicide or to coerce her to fulfill their demand of Rs.10,000/- covered by clauses (a) and (b) of explanation of Section 498-A of IPC. Therefore, the finding of the learned II Additional Sessions Judge regarding charge under Section 498-A of IPC, cannot be said to be incorrect or illegal. As far as offence under Section 304-B of IPC, learned Advocate, Mr P.P. More has submitted that though Shabana died of burns within 7 years of marriage with respondent no.1, since evidence of harassment of Shabana by the respondents in connection with demand of dowry soon before death is lacking, the respondents cannot be held guilty even for the offence under Section 304-B of the IPC, of which, no charge is framed. While concluding his arguments Shri P.P. More, Advocate submitted that, as per the settled law when view taken by the trial Court appears to be probable, then that view cannot be substituted by another view by the Appellate Court, thus, appeal is liable to be dismissed.

10. In support of his submissions, Mr P.P. More has placed his reliance on judgments of the Hon'ble Supreme Court, which would be discussed at relevant places in further part of the Judgment.

- (ii) **Sunil Bajaj Vs. State of MP,**
2001 AIR (SC) 3020
- (iii) **Satvir Singh Vs. State of Punjab,**
2001 (8) SCC 633
- (iv) **Ramdeo s/o Pannalal Kadel Vs. The State of Maharashtra,**
Criminal Appeal No.437 of 2011 with connected matters,
decided by the Division Bench of this Court on 14-08-2015

Whether Shabana died of homicidal death :-

11. To prove the nature of death of Shabana, the prosecution has placed its reliance on the testimony of Dr Syed Abdul Bari, autopsy surgeon, who conducted autopsy on the dead body of Shabana, Post-mortem Report (Exh.28) and Cause of Death Certificate (Exh.32).

12. Vide his deposition at Exh.27 Dr Syed Abdul Bari (PW-10) deposed that, on 31-10-1996 he was working as a Medical Officer, Civil Hospital, Beed. One dead body of Shabana Begum w/o Majid was referred to him on that day for conducting post-mortem examination, by Police Station Officer of Police Station Peth, Beed along with requisition. Accordingly, he along with Dr A.M. Deshpande performed post-mortem on the dead body of Shabana. During the post-mortem, following surface wounds and injuries

mentioned in column no.17 and other injuries mentioned in column no.18 of post-mortem report Exh.28 found on the body of Shabana :-

17)	Surface wounds and injuries their nature position dimensions (measured) and directions to be accurately stated their probable age and causes to be noted if bruises be present what is the condition of the subcutaneous tissues? (N.B.:- When injuries are numerous and cannot be mentioned within the space available they should be mentioned on a separate paper which should be signed)	<u>Burn wounds</u> 1) Head Neck face - 09% 2) Anti trunk - 18% 3) Post trunk - 18% 4) Perineum - 01% 5) Rt Upper Extre - 09% 6) Lt Upper Extre - 09% 7) Rt lower Extre - 18% 8) Lt lower Extre - <u>18%</u> <u>100%</u> Superficial to deep burn.
18)	Other injuries discovered by external examination or palpation as fractures etc. (a) can you say definitely that the injuries showed against serial No.17 and 18 are ante mortem injuries.	Fracture of Hyoid bone +w. Not definite about injuries in column no.17. (fracture) # Hyoid bone is ante-mortem.
II)	Internal Examination	

13. Dr Syed Abdul Bari (PW-10) further deposed that, they were not definite / sure about nature of aforesaid burn injuries mentioned in column no.17, but were definite and sure about fracture of hyoid bone mentioned in column no.18 and it was ante-mortem. They did not find any internal injury to scalp and skull. They found brain, meninges Pleura, Layrenx, Trachea, Bronchi, right and left lung pericardium, Tongue, Pharynex Oesphagus, Pancreas, liver spleen kidney congested. Besides, they found tongue protruding, her left side empty, right side contained dark blood, so

also they found 20 weeks foetus. They had preserved viscera in two bottles. The bottle no.1 contained stomach with its contents, piece of small intestine and its contents. The bottle no.2 contained pieces of lungs, liver, spleen, kidney, heart and brain. The bottle no.3 contained pieces of skin for histopathology examination. Post-mortem notes (Exh.28) were written by Dr A.M. Deshpande and signed by they both. He identified his signature and signature of Dr A.M. Deshpande appearing on Post-mortem report (Exh.28) and stated that contents therein are true and correct.

14. According to Dr Syed Abdul Bari (PW-10), since they were not sure about the nature of burns, to know about the same they preserved viscera in bottle no.3 as referred above. They sent bottle nos.1 and 2 to the Chemical Analyzer at Aurangabad and bottle no.3, which was contained skin pieces, to the Professor and Head of the Department, Pathology for histopathology examination. After perusing CA Report he deposed that death of Shabana due to poisoning was ruled out as no poison is detected in viscera preserved, for chemical analysis, after chemical analysis done by chemical analyzer, whereas after perusing histopathology report filed under the list Exh.31, he deposed that, injuries mentioned in column no.17 of the Post-mortem report seems to be **post-mortem**. Thus, after

perusing the aforesaid CA Reports, he along with Dr A.M. Deshpande formed opinion as to the cause of death and i.e. “cardio respiratory failure due to Asphyxia secondary to strangulation”. Accordingly, he issued Cause of Death Certificate (Exh.32). He has identified his signature appearing on the same and contents therein.

15. In cross-examination, he has stated that hyoid bone could be fractured in hanging or strangulation. The fracture of hyoid bone can be rarely accidental. In Cause of Death Certificate (Exh.32) specific reference of histopathology Report is not made. In further cross-examination he has denied that in case of 100% burns, no other cause of death can be determined. He has also very clearly denied that, fracture of hyoid bone mentioned in column no.18 of the post-mortem report was not ante-mortem.

16. Post-mortem Report (Exh.28) and Cause of Death Report (Exh.32) fully corroborates the evidence of Dr Syed Abdul Bari (PW-10), autopsy surgeon as to the findings of post-mortem, preservation of viscera in 3 bottles and sending the same to Forensic Lab, reserving opinion as to cause of death and forming opinion as to the cause of death after receipt of CA Report and Histopathology Report as referred above.

17. The clear, cogent and consistent evidence of Dr. Syed Abdul Bari as to the probable cause of death of Shabana mentioned in Death Certificate (Exh.32) cannot be discarded, for the reason that histopathology report issued by Professor and Head of the Department of Pathology, Government Medical College, Aurangabad has not been proved by examining Professor, who conducted histopathology test.

18. As per Post-mortem Report (Exh.28) and evidence of Dr Syed Abdul Bari (PW-10), who issued the same, fracture hyoid bone was ante-mortem in nature and there is no evidence of sustaining such fracture accidentally. Therefore, merely on the basis of some stray admissions given by Kundlik Tathe, Investigating Officer that first dead body of Shabana was taken out from the room where she was found dead, kept in *verandah* and from there shifted to the hospital for post-mortem, inference of suffering fracture to the hyoid bone of Shabana after her death cannot be drawn. Thus, even if nature of 100% burn injuries accepted, as post mortem injuries, as opined by Dr Bari, autopsy surgeon is decided to be not considered as histopathology Report Article 'A' is not proved by the examining

medical expert who issued the same, then also it cannot be held that Shabana met with an accidental death.

19. We are not at all in agreement with the finding of the learned Additional Sessions Judge, Beed that fracture of hyoid bone may have been caused while transporting the dead body.

20. The inquest panchanama (Exh.38) proved in the evidence of Shaikh Ishaque Shaikh Hussain (PW-3) and Post-mortem Report (Exh.28) proved in the evidence of Dr Syed Abdul Bari (PW-10), autopsy surgeon, it is clear that Shabana had suffered 100% burns and her body was completely charred. Spot panchanama (Exh.39) proved in the evidence of Kundlik Sampatrao Tathe (PW-12) I.O., demonstrates that, the room where Shabana was found in 100% burnt condition was a small room having roof of 6 corrugated tins with a door of 2 ½ x 5 feet. The bed room of respondent no.1 - Majid and Shabana was situated on western side of the said room. One tin jar having approximately two liters kerosene oil, one wooden plank 1½ feet long burnt on one side, partly burnt hair, partly burnt gunny bag, ash of the burnt clothes, a quilt burnt at various places found lying in the said room, came to be seized. Spot panchanama also indicates that, some clothes which were kept on the

barrel, one winnowing basket kept on the wooden stool, one mirror hanged on the western wall, electric fitting above the door and flooring of the said room found to be hit by burns/flames.

21. Having regard to all these aspects reveal from the spot panchanama, according to us, inference can not be drawn that while burning, Shabana was moving in the room, as such aforesaid articles were burnt. There is difference between getting burnt and hit by the flames. Spot panchanama (Exh.38) not at all suggests that all the aforesaid articles had burnt by coming into contact with burning body of Shabana, but it clearly suggests that they were hit by the burns / flames. Therefore, in no way it can be said that when Shabana suffered burns, she was alive and struggling in room. CA report Exh.29 (C) indicates that liquid in Tin / Jar (Article 'A') was kerosene oil and kerosene residues detected on aforementioned articles seized from spot.

22. Dr. Syed Bari (PW-10), autopsy surgeon, in his cross-examination stated that, hyoid bone could be fractured in hanging and strangulation and rarely in an accident. Absolutely there is no evidence of strangulation. We have already discussed in para supra as to how fracture of the hyoid bone cannot be accidental. In

the case of hanging, one can hang himself or somebody hangs another. In the case at hand, it is not the case of the prosecution that the respondents hanged Shabana. Spot panchanama (Exh.39) also does not say so. Besides, on the basis of evidence on record inference also cannot be drawn that Shabana had hanged herself and therefore her hyoid bone suffered fracture.

23. Thus, having regard to the totality of evidence, clear opinion as to the nature of death of Shabana i.e. homicidal or suicidal cannot be formed, but on the basis of evidence on record, it is clear enough that, Shabana met an unnatural death.

24. Moreover, evidence of Shaikh Shabbir Abdul Lateef (PW-7) rules out possibility of either assaulting or hanging or burning Shabana by the respondents. Sk. Shabbir Abdul Lateef (PW-7) is an independent witness and he being occupant of the room situated near to the room where incident took place, as a tenant of respondents his rushing to the spot on hearing hue and cry, appears to be natural one.

25. Vide his deposition at Exh.23 Sk. Shabbir Abdul Lateef (PW-7) deposed that, he had shifted to the premises of respondents two months prior to the incident. The incident took place at 3

O'clock in night. He heard screams / cries of deceased Shabana and respondents. The room occupied by him as a tenant was only 15 to 20 feet away from the room where incident took place. On his rushing to the room where incident took place he saw respondent no.1 Majid pushing the door of the room as smoke was coming from the said room. Respondent no.1 - Majid was pushing the door of the said room from outside. He also helped respondent no.1 - Majid in pushing the door. Since it did not open, he along with respondent no.1 - Majid brought the grinding stone, hit the same on the door and on hitting by such grinding stone, door of the room was opened, which was chained from inside. After opening the door, he heard the screams of Shabana for some time and then she died. He brought the bedsheet and put the same on the dead body of Shabana. In his cross-examination, he stated that, he saw both the respondents and brother of respondent no.1 standing outside the door of the room where incident took place. Before his coming, respondent no.1 and his brother were trying to open the door by pushing the same forcefully. In further cross-examination, Sk. Shabbir Abdul Lateef (PW-7) very clearly stated that when incident took place Shabana was alone in the room.

26. Evidence of Sk. Shabbir Abdul Lateef (PW-7), as discussed above, clearly shows that deceased Shabana was alone in

the room in question (spot of incident) when incident of her death due to fracture hyoid bone and burning took place and the said room was closed from inside. Therefore, even if on the basis of findings in Post-mortem report (Exh.28) and cause of death of Shabana shown in Cause of Death Certificate (Exh.32) it is accepted that Shabana had met a homicidal death, then also the respondents cannot be connected with the same as the room where the incident took place was closed and chained from inside and the door of the said room was broke open after the incident by respondent no.1 along with his brother and Sk. Shabbir Abdul Lateef (PW -7).

27. It is pertinent to note that in a report (Exh.14) lodged by Syed Ismile Syed Mehboob (PW-1) (father of the Shabana) allegations of demand of money and harassment for coercing to fulfill the said demand have been made against the respondents. Record speaks volumes that after conducting post-mortem on the dead body of Shabana ante-mortem fracture hyoid bone was noticed. However, on the basis of ante-mortem fracture hyoid bone, autopsy surgeons did not form their opinion as to the cause of death and they reserved the same till receipt of the CA report and histopathology report of the viscera preserved at the time of post-mortem and on receiving both the reports they formed their opinion as to the cause of death that

“cardio respiratory failure due to Asphyxia secondary to strangulation”. After receiving Cause of Death Report (Exh.32) supplementary statements of witnesses were recorded and then Section 302 of IPC was added in the charge-sheet. Thus, merely relying on evidence of Syed Ismile Syed Mehboob (PW-1), Mahmooda Ismile (PW-5), Ahmadbee w/o. Shabbir (PW-6) and Ashabee Syed Ismile (PW-8) which is not based on their personal knowledge but on the basis of opinion of cause of death given by autopsy surgeon, case of the prosecution as far as murder of Shabana by the respondents cannot be accepted.

28. Once the charge under Section 302 of IPC fails for the reason referred to above, subsequent charges under Sections 201, 203 and 177 r.w. 34 of the I.P.C. for causing disappearance of the evidence to screen themselves from the legal punishment, giving false information regarding an offence committed and furnishing false information to the public servant though legally bound to furnish true information on the subject which he knows, bear no force and substance. Thus, the only charge under Section 498-A of IPC remains.

29. Having regard to the case made out in the charge-sheet, it was necessary on the part of II Additional Sessions Judge, Beed to

frame charge under Section 304-B r.w. 34 of IPC in addition to Section 498-A r.w. 34 of IPC. Admittedly, charge under Section 304-B r.w. 34 of IPC was not framed, therefore, question arises whether in the absence of charge under Section 304-B IPC the respondents /accused can be held guilty for the said charge, if on the basis of evidence on record case for the said offence is made out. To answer this question, we have to consider Sections 221, 222 and 464 of the CrPC which read as under :

“221. Where it is doubtful what offence has been committed.”-(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.”

222. When offence proved included in offence charged. -

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”

464. Effect of omission to frame, or absence of, or error in, charge.-

(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

30. In the case of **Dinesh Seth Vs. State of NCT of Delhi, (2008) 14 SCC 94**, the Hon’ble Supreme Court having considered the aforesaid provisions of the CrPC and ratio laid down by the larger Bench in **Dalbir Singh Vs. State of UP, 2004 SCC Cri.1592**, in para no.21 of the Judgment held as under :

“21. The ratio of the above noted judgments is that in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate, confirming or revisional Court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned.”

31. In case at hand, though learned II Additional Sessions Judge, Beed framed charge under Section 498-A IPC in addition to Section 302 IPC, but did not frame charge under Section 304-B IPC as alternate charge. However, having regard to the case of the prosecution, evidence adduced by the prosecution and statement of the accused under Section 313 (1)(b) of CrPC, it cannot be said that, error, omission or irregularity in not framing the alternate charge under Section 304-B IPC would cause prejudice to the respondents / accused and failure of justice would occasion, if we consider the case U/Sec.304-B of the IPC. As such, we have no difficulty in assessing the evidence on record, to decide whether charge under Section 304-B r.w. 34 IPC is made out against the respondents / accused when charge under Section 302 r.w. 34 IPC failed.

32. To prove the offences under Sections 498-A and 304-B of IPC, the prosecution has mainly relied on the evidence of Syed Ismile

Syed Mehboob (PW-1), Mahmooda Ismile (PW-5), Ahmadbee w/o. Shabbir (PW-6) and Ashabee Syed Ismile (PW-8), who are father, unmarried sister, married sister and mother of deceased Shabana, respectively.

33. Syed Ismile Syed Mehboob (PW-1) vide his deposition at Exh.13 deposed that, Shabana was one out of his five daughters. Her marriage with respondent no.1 - Majid was solemnized in the year 1995. She died 8 months after the marriage. She was harassed for dowry after about four months of marriage. Shabana told him that her mother-in-law and sister-in-law coerced her to bring amount of Rs.10,000/- from him. He told daughter Shabana that he is poor and cannot fulfill the demand of Rs.10,000/-. He had been to the house of the respondents three days prior to incident to see and meet Shabana. At that time Shabana told him that respondent no.2 abused her for the reason that respondent no.1 bought footwear only for her and not for her daughter, upon which he suggested Shabana to handover the footwear to her sister-in-law and he would bring other footwear for her. Thereafter, he left the house of the respondents and returned back to his village. On Thursday, on receiving the information about burning of Shabana he rushed to Beed and saw the dead body of Shabana lying in the house of the respondents. Her

tongue was protruding and her hair were burnt. Shabana was strangled and burnt by the respondents for non-payment of the amount. After 2 to 3 hours of the incident, he lodged the FIR (Exh.14).

34. In cross-examination, he has admitted portion marked 'A' and 'B' from the complaint (Exh.14), when read over to him. The portion marked 'A' reveals that, after marriage Shabana had been to her paternal house twice and returned back to her matrimonial house living there for 2 to 4 days. He had visited the matrimonial house of Shabana on two occasions. After marriage members from her marital family treated her properly. He had been to the matrimonial house of Shabana at Beed for 10 to 15 times to see and meet her. Portion marked 'B' in the complaint (Exh.14) reveals that, on 31-10-1996 when he was present at his village Talwada one person from Beed came there and informed them that Shabana burnt and died that night. Accordingly, he along with his daughters, wife and relatives rushed to Beed and saw Shabana, who was completely burnt and had died.

35. Thus, aforesaid evidence of Syed Ismile Syed Mehboob (PW-1) establishes following aspects :

- (a) Shabana died only after 8 months of marriage with respondent no.1 – Majid.
- (b) On his visit to the matrimonial house of Shabana at Beed only three days prior to the incident, Shabana told him about demand of Rs.10,000/- made by the respondents and respondent no.2's abusing and harassing her for the reason of her husband's buying footwear only for her and not for her daughter (daughter of respondent no.2).

36. Though the evidence of Syed Ismile Syed Mehboob (PW-1) as far as harassment of Shabana by the respondents after 4 months of marriage is outside the purview of complaint (Exh.14) lodged by him and that omission has been brought on record by the defence through his cross-examination, but failed to prove the same. When Syed Ismile (PW-1) clearly states that he had stated the same while lodging the complaint, but it does not appear in the complaint, it was necessary on the part of accused / defence to get it proved, in the evidence of Kundlik Tathe, I.O. (PW-12) who recorded the same through his writer, but failed to do so.

37. It is true that, in examination-in-chief Syed Ismile Syed Mehboob (PW-1) stated about Shabana's disclosing him about coercing her for bringing amount of Rs.10,000/-, from her father, by

mother-in-law and sister-in-law. When prosecution has not at all come with the case of harassment of Shabana by sister-in-law for coercing her to bring Rs.10,000/- from her father and same is neither covered by the complaint (Exh.14) or statements of material witnesses recorded in the course of investigation, the aforesaid statement of Syed Ismile Syed Mehboob (PW-1) to the extent of “sister-in-law” appears to have been made mistakenly. On considering the totality of his evidence, it becomes quite clear that the aforesaid evidence of Syed Ismile Syed Mehboob (PW-1) is against respondents i.e. husband and mother-in-law of Shabana.

38. The evidence of Syed Ismile Syed Mehboob (PW-1) is silent as to the purpose for which Rs.10,000/- was demanded, though in complaint (Exh.14) lodged by him the same is mentioned. However, from totality of evidence of Syed Ismile Syed Mehboob (PW-1) it can be gathered very well that the demand of Rs.10,000/- was in connection with marriage and the in-laws expected the father (of their daughter-in-law) to fulfill their demand.

39. Mahmooda Ismile (PW-5) was unmarried sister of Shabana. Vide her deposition at Exh.19 she deposed that, Shabana, her elder sister, was given in marriage to respondent no.1. She died

about only 8 months after her marriage. She was treated well for 4 months and thereafter she was harassed and ill-treated. The respondents used to misbehave with Shabana and also used to taunt her. Shabana disclosed her about the same.

40. In cross-examination, Mahmooda Ismile (PW-5) had admitted portion marked 'A' in her statement under Section 161 of CrPC recorded by the police on 31-10-1996, which states that her sister Shabana after marriage had been to Talwada (her paternal village) twice. After staying there for 2 to 4 days, she returned back to her matrimonial home, on both the occasions. Family members of matrimonial family of Shabana used to behave with her properly.

41. In further cross-examination, Mahmooda Ismile (PW-5) stated that, she had told police that Shabana was ill-treated and harassed for about 4 months for fulfilling demand of Rs.10,000/-, she was misbehaved and was taunted and she (Shabana) disclosed the same to her. Though the defence has brought this omission on record through cross-examination of Mahmooda Ismile (PW-5), but failed to prove the same by confronting her previous statement to Magar Tedhe (PW-9), Investigating Officer in his cross-examination. Therefore, omission referred above cannot be considered.

42. Ahmadbee Sk. Shabbir (PW-6), one more married sister of Shabana, vide her deposition at Exh.20 deposed that, Shabana died after about 7 months of marriage with respondent no.1 - Majid. After marriage, Shabana was living with her husband and in-laws at her matrimonial house. She was treated well for about 4 months and ill-treated thereafter. After marriage, Shabana had been to their house at Talwada twice and told that the respondents ill-treat her. Prior to the incident, there was quarrel on account of footwear and father asked Shabana to give footwear to sister-in-law. Demand of Rs.10,000/- was made by the respondents and she heard about the same from Shabana when she was disclosing to mother.

43. In cross-examination, she had stated that she told police while recording her statement that Shabana was well treated for four months and thereafter ill-treated for remaining four months by the respondents. However, the defence has not proved the said omission in the cross-examination of Magar Tedhe, Investigating Officer, who recorded her statement under Section 161 of CrPC on 31-10-1996.

44. Ashabee (PW-8) (mother of Shabana) vide her deposition at Exh.24 deposed that, Shabana was married to

respondent no.1 - Majid Pathan. She died only after 8 months of marriage. Out of 8 months, Shabana's matrimonial life for first four months was normal, however thereafter she was ill-treated. Shabana had come to their house twice. Shabana told her that her in-laws demand Rs.10,000/- and taunted her. Prior to the death of Shabana, her husband Syed Ismile had gone to the house of the respondents to meet daughter Shabana. At that time Shabana complained that respondent no.2 / mother-in-law raised quarrel over the issue of buying footwear for her and not for her daughter (daughter of respondent no.2). Rs.10,000/- was demanded by both the respondents. Her husband asked Shabana to handover the footwear to her sister-in-law and he would buy another footwear for her. Only after two days of such incident, one person from Beed came to their house at 7 O'clock in the morning and informed them about the incident. Upon receiving such information, she along with husband Syed Ismile and other two rushed to Beed at the house of the respondents and saw the dead body of daughter Shabana, which was fully burnt. According to Ashabee (PW-8), her daughter Shabana was strangled and killed and then burnt by the respondents.

45. In cross-examination she has denied portion marked 'A' in her statement under Section 161 of CrPC shown and read over to

her and stated that, she had not stated the same to the police. On the contrary, she had stated to the police that, the respondents treated her daughter Shabana well for four months and thereafter ill-treated her. It is pertinent to note that, though this contradiction was brought on record after confronting her previous police statement, but same was not proved by confronting the same to Kundlik Tathe (PW-12), I.O. in his cross-examination.

46. In further cross-examination, she has stated that, she had stated to the police that when her daughter came to their house, she told them about demand of Rs.10,000/- made by the respondents and ill-treatment meted out by them. Though this omission is brought on record through her cross-examination, but not proved by confronting the same to Kundlik Tathe (PW-12), I.O. in his cross-examination.

47. In the case of **V.K. Mishra and Anr Vs. State of Uttarakhand and Anr and Rahul Mishra Vs. State of Uttarakhand and Anr, AIR 2015 SC 3043**, the Hon'ble Apex Court while dealing with the issue of contradiction vis-a-vis Section 161 of CrPC and Section 145 of the Indian Evidence Act, 1872 (hereinafter, Evidence Act) ruled as under :

“14. Section 161 Cr.P.C. titled “Examination of witnesses by police” provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C. Section 162 Cr.P.C. reads as under:

162. Statements to police not to be signed—Use of statements in evidence. –(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

15. Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161 (1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The

statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

16. Court cannot suo moto make use of statements to police not proved and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.P.C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act that is by drawing attention to the parts intended for contradiction.

17. Section 145 of the Evidence Act reads as under:

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

18. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when

investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.”

48. In the case at hand, as discussed above, the defence has brought on record omissions by confronting the same with their statements recorded under Section 161 of Cr.P.C., but not proved the same in the evidence of Kundlik Sampatrao Tathe (PW-12), I.O. by confronting the statement alleged to be an omission and question about the same. Therefore, in view of aforesaid ratio laid down by the Hon’ble Supreme Court that the alleged omissions brought on record through the evidence of aforesaid three witnesses viz. Mahmooda Ismile (PW-5), Ahmadbee Shabbir (PW-6) and Shaikh Shabbir Abdul Lateef (PW-7) cannot be looked into for any purpose, much less, to discredit their testimonies and version of the prosecution.

49. Thus, on the basis of testimonies of Syed Ismile (PW-1), Mahmooda Ismile (PW-5), Ahmadbee w/o. Shabbir (PW-6) and

Ashabee Syed Ismile (PW-8), discussed above, and law pertaining to contradiction and omission laid down by the Hon'ble Supreme Court, discussed in para supra, it becomes clear that short matrimonial life of Shabana was not peaceful or happy, but she was harassed mentally by abusing and taunting by the respondents for fulfilling their demand of money.

50. In the case of **Bachni Devi and Another Vs. State of Haryana, (2011) 4 SCC 427**, the Hon'ble Supreme Court in paragraph nos.11 to 18 held as under :

"11. Section 304B was inserted in IPC with effect from November 19, 1986 by the Dowry Prohibition (Amendment) Act, 1986 (for short, '(Amendment) Act, 1986'). Thereby substantive offence relating to 'dowry death' was introduced in the IPC. Section 304-B IPC reads as follows :

"304B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub- section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

12. For making out an offence of 'dowry death' under Section 304B, the following ingredients have to be proved by the prosecution:

- (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;
- (b) such death must have occurred within seven years of her marriage;
- (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (d) such cruelty or harassment must be in connection with the demand for dowry.

13. Pertinently, for the purposes of Section 304B IPC, 'dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (for short, '1961 Act'). Section 2 of the 1961 Act defines "dowry" as follows:

"2. Definition of 'dowry'.- "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 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 (*Shariat*) applies.

Explanation I-(Omitted).

Explanation II—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

14. The 1961 Act was enacted to prohibit the giving or taking of 'dowry' and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for 'dowry' before marriage, at the time of marriage or any time after the marriage is an offence. The 1961 Act

has been amended by the Parliament on more than one occasion and by the (Amendment) Act, 1986, Parliament brought in stringent provisions and provided for offence relating to 'dowry death'. The amendments became imperative as the dowry deaths continued to increase to disturbing proportions and the existing provisions in 1961 Act were found inadequate in dealing with the problems of dowry deaths. The definition of 'dowry' reproduced above would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold 'any property or valuable security' given or agreed to be given in connection with marriage either directly or indirectly.

15. In *S. Gopal Reddy v. State of A.P.*², this Court stated as follows : (SCC pp. 605-06, paras 9 & 11)

"9. The definition of the term 'dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "*at or before or after the marriage*" as a "*consideration for the marriage* of the said parties" would become 'dowry' punishable under the Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".

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11. The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security "made at or after the performance of marriage" as is urged by Mr Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, *as a consideration for marriage, "before, at or after"* the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice versa would fall within the mischief of 'dowry' under the Act where such demand is not

properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfillment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the statute wishes to attribute to it.....The definition given in the statute is the determinative factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made *before or at the time or after the marriage* where such demand *is referable to the consideration of marriage*. Dowry as a quid pro quo for marriage is prohibited" (emphasis in original)

16. While dealing with the term 'dowry' in Section 304B IPC, this Court in the case of *Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar* (2005) 2 SCC 388 held as under : (SCC p.395, para 14)

"14. The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties"... As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression 'death of a woman is caused ... or occurs otherwise than under normal circumstances' as expressed in Section 304-B IPC."

17. The learned counsel for the appellants heavily relied upon the following observations made by this Court in the case of *Appasaheb v. State of Maharashtra* (2007) 9 SCC 721: (SCC p. 727, para 11)

"11. 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".

18. The above observations of this Court in *Appasaheb* case must be understood in the context of the case. That was a case wherein

the prosecution evidence did not show 'any demand for dowry' as defined in Section 2 of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. Appasaheb1 cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial."

51. Thus, in **Bachni Devi** (supra) the Hon'ble Supreme Court while discussing the scope and ambit of Section 304-B of the IPC, discussed about not only purpose behind bringing Section 304-B in the statute book, but also about requirements / ingredients of the said provision and ruled that,

'the provision of Section 304B of the IPC makes punishable not only the actual receiving of dowry, but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage.'

It is also held by the Hon'ble Supreme Court that,

'if a demand for property or valuable security, directly or indirectly, has a nexus with marriage, such demand would constitute 'demand for dowry' and the cause or reason for such demand is immaterial.'

52. It is true that, the substantive evidence of all these four witnesses is completely silent as to the purpose for which Rs.10,000/- was demanded by the respondents. Though the purpose of demand of Rs.10,000/- appears in the complaint / FIR (Exh.14) lodged by

Syed Ismile Syed Mehboob (PW-1), but in the absence of substantive evidence of Syed Ismile, it cannot be considered. However without any hesitation, it can be said that, demand of Rs.10,000/- had a nexus with the marriage of Shabana with respondent no.1 – Majid. The respondents have not cross-examined anyone of four material witnesses viz. Syed Ismile (PW-1), Mahmooda Ismile (PW-5), Ahmadbee w/o. Shabbir (PW-6) and Ashabee Syed Ismile (PW-8) on this aspect. It is not their case that, alleged demand of Rs.10,000/- was not on account of dowry and also has no nexus with the marriage of Shabana with respondent no.1. Therefore, it becomes clear that, demand of Rs.10,000/- made by the respondents, for which Shabana was harassed, was referable to the consideration of marriage of Shabana with respondent no.1 – Majid.

53. Thus, in the case at hand, in view of above discussion, we can safely hold that, demand of Rs.10,000/- made by the respondents after the marriage had nexus with the marriage of Shabana with respondent no.1 – Majid.

54. It is pertinent to note that, at the time of tragic death, Shabana was 5 months pregnant. Though this has been mentioned

not only in FIR (Exh.14) lodged by Syed Ismile Syed Mehboob (PW-1), but also depicted in the statements under Section 161 of CrPC of Mahmooda Ismile (PW-5), Ahmadbee w/o. Shabbir (PW-6) and Ashabee Syed Ismile (PW-8), but unfortunately nobody from them deposed the same before the Court. However, medical evidence is clear enough on this aspect. Column no.21 of the Post-mortem Report (Exh.28) clearly states as under :

‘Uterus – Gravid uterus – 20 weeks foetus +ve (Embryo)’

55. Dr Syed Abdul Bari (PW-10), who conducted the post-mortem on the dead body of Shabana along with Dr Deshpande, deposed that, 20 weeks foetus noticed during the post-mortem of Shabana. The respondents / accused have not disputed that Shabana was pregnant when died. During the cross-examination of Dr. Syed Abdul Bari (PW-10), neither anything is asked on this aspect nor suggestion denying the same was given to him. In such circumstances, there is no reason to discard the fact that at the time of unfortunate death, Shabana was carrying 5 months (20 weeks) of pregnancy.

56. In the case of **Rameshwar Dass Vs. State of Punjab and Anr, AIR 2008 SC 890**, the Hon’ble Apex Court while dealing with the

case of dowry death in para – 23 of the judgment held as under :

“A pregnant woman ordinarily would not commit suicide unless relationship with her husband comes to such a pass that she would be compelled to do so.”

In view of aforesaid ratio, it can be very safely held that, the respondents by their conduct harassed and ill-treated Shabana.

57. Thus, having regard to the totality of evidence of four material witnesses viz. Syed Ismile (PW-1), Mahmooda Ismile (PW-5), Ahmadbee w/o. Shabbir (PW-6) and Ashabee Syed Ismile (PW-8), without any hesitation we hold that, prior to the unnatural death of Shabana the respondents had harassed her mentally so as to coerce her to fulfill their demand of Rs.10,000/-.

58. Section 498-A of the IPC reads as under :

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any

property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”

59. Section 304-B of the IPC reads as under:

“[304-B. Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

60. Sections 113-A and 113-B of the Evidence Act run as under:

“[113-A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).]”

“[113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry

death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]”

61. In the case of **S. Anil Kumar @ Anil Kumar Ganna Vs. State of Karnataka, 2013 (7) SCC 219**, the Hon’ble Supreme Court while dealing with the case of dowry death held as under : -

“The evidence of the prosecution witnesses PWs.1, 10 to 16 and 21 relied on by the prosecution are contradictory, which cannot be stated to be minor contradictions. Besides, there is clear improvement in the statements of PW-1 and 12 about allegations of demand of dowry of Rs.1,50,000/- and 800 grams of gold ornaments and harassment and torture made by accused no.1 on the deceased was not disclosed and mentioned in the FIR before the Tahsildar, who recorded initial evidence. In Exh.P2 and complaint Exh.P3 absolutely there is no evidence to show that Rs.25,000/- was demanded and Rs.10,000/- was given to accused no.1 either at Benali or at Mysore. Further payment of Rs.50,000/- and 500 grams of gold to accused no.1 as dowry has not been established beyond reasonable doubt. Once the prosecution failed to prove basic ingredients of harassment or demand of dowry and the evidence brought on record was doubtful by the Trial Court, it was not open to the High Court to convict accused no.1 on presumption referring to Section 113A or 113B of the Evidence Act.”

62. In the case of **Sunil Bajaj Vs. State of MP, 2001 AIR (SC) 3020**, the Hon’ble Supreme Court in para no.5 of the Judgment held as under : -

“In order to convict an accused for an offence under Section 304-B IPC, the following essentials must be satisfied:

- 1) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- 2) Such death must have occurred within 7 years of her marriage;
- 3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- 4) Such cruelty or harassment must be for or in connection with demand of dowry.

6) It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called dowry death and such husband or his relative shall be deemed to have caused her death. It may be noticed that punishment for the offence of dowry death under [Section 304-B](#) is imprisonment of not less than 7 years, which may extend to imprisonment for life. Unlike under [Section 498-A](#) IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three years and shall also be liable to fine. Normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under [Section 304-B](#) IPC an exception is made by deeming provision as to nature of death as dowry death and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution. In the case on hand, the learned counsel for the appellant could not dispute that the first two ingredients mentioned above are satisfied.”

SCC 633 the Hon'ble Supreme Court in para nos.18, 21 and 22 held as under :

“(18) We are, therefore, unable to concur with the contention that if the dowry related death is a case of suicide it would not fall within the purview of Section 304B IPC at all. In Smt. Shanti and anr. vs. State of Haryana {1991(1) SCC 371} and in Kans Raj vs. State of Punjab and ors. {2000(5) SCC 207} this Court has held that suicide is one of the modes of death falling within the ambit of Section 304B IPC.

(21) Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.

(22) It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words soon before her death is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the

infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept soon before her death.”

64. Principles relating to Section 304-B of the IPC and 113B of the Evidence Act summarized by the Hon’ble Supreme Court, in various cases including aforesaid citations, are as under :

“(a) To attract the provisions of section 304B, IPC, 1860, the main ingredient of the offence to be established is that soon before the death of the deceased, she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence.

(h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under section 113B of the Evidence Act, 1872.”

65. According to us, in the case at hand all the aforesaid

ingredients of offence under Section 304-B and Section 498-A of the IPC have been satisfied. It is clear from the evidence on record that, unnatural death of Shabana was caused by bodily injury and burns. Her death was caused only within 8 months of marriage with respondent no.1 – Majid, at her matrimonial house. Shabana was subjected to cruelty by respondents for demand of dowry, after about four months of their marriage, which clearly falls in the expression “soon before death” mentioned in Section 304-B, in view of the Judgment of the Hon’ble Supreme Court in the case of **Satvir Singh Vs. State of Punjab** (cited supra). At the time of death Shabana was pregnant and carrying a 5 months foetus. Therefore, the respondents are liable to be held guilty for the offences punishable under Sections 498-A and 304-B r.w.34 of the IPC.

66. The learned II Additional Sessions Judge, Beed though rightly acquitted respondents / accused under Sections 302, 201, 203 and 177 r.w. 34 of IPC, but wrongly acquitted them for the offences under Section 498-A r.w. 34 of IPC. Thus, for the various reasons stated in para supra, the respondents are liable to be convicted and sentenced for the offences punishable under Sections 498-A and 304-B r.w. 34 of IPC.

67. Since case is established under Sections 498-A and 304-B r.w. 34 of IPC, the respondents/accused are liable to be convicted under both the sections, but no separate sentence would be necessary under Section 498-A IPC in view of the substantive sentence being awarded for the major offence under Section 304-B IPC.

68. Having held both the accused guilty, both being present in the Court, that we have called upon the learned Counsel for the original accused to address us on the quantum of the sentence. The learned Counsel has strenuously contended that, accused no.2, mother-in-law of the deceased is more than 70 years of age and has several ailments. Even when she came to the Court hall, she could not walk without support. Accused no.1, husband of the deceased, is now a married person. He has the responsibility of his wife, three children and an ailing mother. The learned Counsel, therefore, strenuously canvassed that though punishment under Section 304-B of the IPC can be upto life imprisonment, he prays for minimum sentence to be awarded.

69. The learned Prosecutor contends that, the deceased suffered an unnatural death within 8 months of her marriage and she was 5 months pregnant. The deceased was burnt completely and her

body turned into charcoal. He, therefore, prays for a maximum punishment of life imprisonment under Section 304-B, IPC.

70. We have considered the submissions of the learned Counsel for the respective sides. Keeping in view our conclusion that, the offence can be said to be proved only under Sections 498-A and 304-B r/w. Sec.34 of the IPC, we have taken into account the passage of almost 18 years post acquittal, the ailments suffered by accused no.2 and the marital status and responsibilities of accused no.1. In view thereof, it would be appropriate to award sentence of rigorous imprisonment for 7 (Seven) years to respondent no.1 /accused no.1 namely Majid s/o. Shahabajakhan Pathan and simple imprisonment for 7 (Seven) years to respondent no.2 / accused no.2 namely Halimabee w/o. Shahabajkhan Pathan.

71. Accordingly, Criminal Appeal is partly allowed.

(i) The impugned Judgment and order of acquittal as far as Section 498-A r.w. Sec. 34 of the IPC is set aside.

(ii) Respondents / accused Nos.1 & 2 are convicted for the offence under Section 304-B r.w. Sec.34 of the IPC and respondent no.1 / accused no.1 namely Majid s/o. Shahabajakhan Pathan is sentenced to suffer rigorous

imprisonment for 7 (Seven) years and respondent no.2 / accused no.2 namely Halimabee w/o. Shahabajkhan Pathan is sentenced to suffer simple imprisonment for 7 (Seven) years.

(iii) They shall surrender before the learned II Additional Sessions Judge, Beed within 3 (three) weeks from today for undergoing sentence.

72. This Court had appointed learned Counsel Mr P.P. More through the High Court Legal Services Authority, Sub-committee, Aurangabad to represent the respondents in this case. We are, therefore, quantifying his fees at Rs.20,000/- (Rs. Twenty Thousand Only) to be paid by the High Court Legal Services Authority, Sub-committee, Aurangabad.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

Gajanan Punde, PA.