

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 271 OF 2014

Achyut S/o. Bhaskar Kale,
Age -28 years, Occu: Labour,
R/o. Dhanegaon, Tal. Jamkhed,
Dist. Ahmednagar
(At present lodged at Yerawada Central
Prison, Pune, District Pune)

...Appellant
(Original Accused No. 1)

Versus

The State of Maharashtra,
Through Police Station Officer, Police
Station, Jamkhed, Tal. Jamkhed,
Dist - Ahmednagar

...Respondent

Mr Joydeep Chatterji, Advocate holding for
Mr A.R. Devakate, Advocate for Appellant
Mrs Preeti V. Diggikar, A.P.P. for Respondent-State

WITH
CRIMINAL APPEAL NO. 325 OF 2014

The State of Maharashtra, Through
PI Jamkhed Police Station,
Tq. Jamkhed, Dist. Ahmednagar

...Appellant
(Ori. Complainant)

Versus

1. Achyut Bhaskar Kale,
Age 26 years, Occu. Labour,
2. Shakuntala Bhaskar Kale,
Age 42 years, Occu. Household,
3. Bhaskar Laxman Kale,
Age 45 years, Occu. Agri.,
4. Satyashila @ Pinti Bapu Bhosale,
Age 30 years, Occu. Labour,
R/o Dhanegaon, Tq. Jamkhed,
Dist. Ahmednagar

...Respondents
(Ori. Accused)

Mrs Preeti V. Diggikar, A.P.P. for Appellant-State
Mr Joydeep Chatterji, Advocate holding for
Mr A.R. Devakate, Advocate for Respondents

WITH
CRIMINAL APPEAL NO. 683 OF 2014

The State of Maharashtra, Through
PI Jamkhed Police Station,
Tq. Jamkhed, Dist. Ahmednagar

...Appellant
(Ori. Complainant)

Versus

1. Shakuntala Bhaskar Kale,
Age 42 years, Occu. Household,
2. Bhaskar Laxman Kale,
Age 45 years, Occu. Agri.,
3. Satyashila @ Pinti Bapu Bhosale,
Age 30 years, Occu. Labour,
R/o Dhanegaon, Tq. Jamkhed,
Dist. Ahmednagar

...Respondents
(Ori. Accused Nos. 2 to 4)

Mrs Preeti V. Diggikar, A.P.P. for Appellant-State
Mr Joydeep Chatterji, Advocate holding for
Mr A.R. Devakate, Advocate for Respondents

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

RESERVED ON : 10.08.2021

PRONOUNCED ON : 15.09.2021

JUDGMENT : (PER SHRIKANT D. KULKARNI , J.)

1. These appeals are directed against the impugned Judgment and order rendered by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 163 of 2012.

2. Feeling aggrieved and dissatisfied by the impugned Judgment and order of conviction passed by the Additional Sessions Judge, accused No.1 – Achyut Bhaskar Kale has preferred Criminal Appeal No. 271/2014. Whereas, the State of Maharashtra has preferred Criminal Appeal No. 325/2014 against all the accused for enhancement of sentence for the

offence punishable under section 498A read with section 34 of IPC and also preferred another appeal vide Criminal Appeal No. 683/2014 against the acquittal of accused Nos. 2 to 4 at the hands of the Additional Sessions Judge, Ahmednagar from the charge of section 304(B) read with section 34 of IPC. These appeals are heard together and being disposed of by common Judgment and order.

3. Prosecution case in narrow compass is as under :-

(a) The marriage of Sunita (Since deceased) was solemnized with accused – Achyut Bhaskar Kale on 07.03.2010. (As per marriage invitation card on record, date of marriage is 08.03.2010) The parents of deceased had given Rs. 1,00,000/- and two tola gold as a dowry in the marriage to accused No. 1 in addition to valuable household articles. The marriage expenses were borne by the parents of deceased Sunita. Sunita went to matrimonial house at Dhanegaon for co-habitation.

(b) According to the prosecution case, Sunita was subjected to mental and physical cruelty at the hands of her husband and in-laws (accused Nos. 1 to 4). Accused – Satyashila happened to be married sister-in-law of deceased Sunita but she was residing with co-accused as she is widow. In the year 2010, at the time of Gudhi Padva, brother of the deceased, Deepak Madhukar Londhe had been to the matrimonial house of Sunita. The accused made unlawful demand of gold ring and cash amount and they alleged to have abused Sunita in a filthy language in presence of Deepak Londhe. Deepak tried to convince the accused and further assured that after some days, he would make some arrangement

to fulfill their demand. He also requested the accused to stop harassment and cruelty which was being caused to Sunita.

(c) Accused - Achyut shifted to Pune, Kalewadi for some job with wife Sunita and her sister-in-law - Satyashila. Accused – Achyut and Satyashila alleged to have poured kerosene on her person and tried to set her ablaze, but Sunita escaped from the hands of the accused. Sunita and her husband again came back to Dhanegaon. The accused continued their harassment and cruelty to Sunita to meet their unlawful demand. Prior to eight days of the incident, Muktabai Madhukar Londhe (mother of deceased) and Rupesh Londhe (another brother of deceased) had been to Sunita's matrimonial house at Dhanegaon. Accused Shakuntala, Bhaskar and Satyashila alleged to have threatened to mother of the deceased that they would perform another marriage of Achyut with another girl, even if Sunita met with death, they would get handsome amount of dowry. Muktabai apprehended danger to the life of her daughter Sunita and asked Sunita to accompany her, but Sunita refused to accompany her by stating that she is pregnant and after delivery, the things would be alright.

(d) On 03.03.2012 at about 7.30 p.m. Deepak Londhe, first informant received phone call from cousin father-in-law of Sunita to inform that Sunita was no more. The first informant along with his parents rushed to the house of the accused. They noticed that Sunita was lying dead in one room having injuries on her neck. The accused were not present in the house.

(e) On 03.03.2012, Ashok Gokul Chavan, Police Patil of village

Dhanegaon, Tal. Jamkhed, Dist. Ahmednagar after visiting the spot, rushed to the Police Station, Jamkhed and lodged report about death of Sunita by consuming poison.

(f) On the basis of report submitted by Police Patil, A.D. No. 11/2012 came to be registered with Jamkhed Police Station. The Police rushed to the spot. Inquest panchanama came to be prepared and dead body was sent to hospital for post mortem examination.

(g) After cremation, Deepak Londhe (brother of the deceased) lodged F.I.R. with Jamkhed Police Station and on that basis C.R. No. I 23/2012 came to be registered under sections 304B, 498A, 323, 504, 506 read with section 34 of IPC. The investigation was entrusted to API Raghunath Nachan. The Investigating Officer recorded statements of witnesses and accused came to be arrested. The articles seized, were sent for chemical analysis. The viscera was also sent to forensic laboratory. After completion of investigation, API Raghunath Nachan submitted the charge sheet and thereafter, JMFC, Jamkhed committed the case to the Court of Sessions at Ahmednagar.

(h) The learned Additional Sessions Judge has framed the charge against the accused Nos. 1 to 4 under section 498A and 304B read with section 34 of IPC. They were put on trial.

(i) The prosecution machinery as well as defence has examined the respective witnesses in support of their case. The learned Additional Sessions Judge, after appreciating the evidence of prosecution witnesses

and defence and considering the argument advanced by the learned A.P.P. and defence counsel, was pleased to hold accused No. 1/Achyut guilty for the offence punishable under sections 304B and 498A read with section 34 of IPC and sentenced him to undergo life imprisonment for the offence punishable under section 304B and to pay fine of Rs. 5,000/- (Rupees Five Thousand), in default of payment of fine, to suffer rigorous imprisonment for six months and to pay fine of Rs. 2,000/- (Rupees Two Thousand) and also convicted him for the offence punishable under section 498A of IPC and sentenced him to suffer rigorous imprisonment for six months and to pay fine of Rs.2,000/- and in default of payment of fine, to suffer rigorous imprisonment for one month.

(j) Accused Nos. 2 to 4 came to be acquitted of the charge of dowry death punishable under section 304B read with section 34 of IPC. However, learned Additional Sessions Judge convicted them for the offence punishable under section 498A read with section 34 of IPC and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 2,000/- (Rupees Two Thousand) each and in default of payment of fine, to suffer rigorous imprisonment for one month. The sentences were directed to run concurrently.

4. Heard Mr Joydeep Chatterji, learned counsel for the appellant/accused and Mrs Preeti V. Diggikar, learned A.P.P. for the State.

5. Perused the evidence produced by prosecution agency as well as defence with able assistance of learned A.P.P. and learned counsel for the appellant.

Argument of learned counsel for the appellant/accused.

6. Mr Chatterji, learned counsel for the appellant/accused submitted that the prosecution case is based upon circumstantial evidence. There is no direct evidence to prove the alleged charges levelled against the accused. He vehemently submitted that late Sunita was never subjected to harassment and cruelty to satisfy unlawful demand of gold ring and cash amount. It is afterthought story projected by the prosecution by taking undue advantage of unfortunate death of Sunita. No independent witness is coming forth to support case of prosecution that deceased Sunita was subjected to harassment and cruelty at the hands of the accused for the unlawful demand of dowry. He submitted that marriage of Sunita was solemnized against her wish and she was not happy with accused No. 1/Achyut. He submitted that there was delay of one day in lodging of FIR. That itself shows cooked story narrated in the FIR to book the accused.

7. Mr Chatterji, learned counsel submitted that at the time of alleged incident, accused No. 1/Achyut was at work place Thergaon in Pune District. He was not at Dhanegaon. After receiving message on phone, he rushed to village Dhanegaon. Accused No. 1 has been falsely implicated in this case. Accused Nos. 2 to 4 were behaving with Sunita in a very good manner and Sunita never complained against them. So far as alleged unlawful demand of dowry is concerned and fulfillment thereof, no meeting between the families, much less about the alleged harassment

which was caused to Sunita. It speaks that Sunita was never subjected to harassment and cruelty to fulfill unlawful demand of dowry. She was treated nicely by her husband and in-laws.

8. Mr Chatterji, the learned counsel took us through the evidence of P.W. No. 1 - Deepak Madhukar Londhe, Exh. 22, P.W. No. 2 – Muktabai Madhukar Londhe Exh. 23, P.W. No. 4 – Manik Abasaheb Ghadge, Exh. 46 and P.W. No. 6 – Rupesh Madhukar Londhe, Exh. 52.

9. Mr Chatterji, the learned counsel pointed out how the evidence of above said witnesses is felling short to prove the offence of dowry death as well as offence under section 498A of IPC. Mr Chatterji, learned counsel also invited our attention to the evidence of three defence witnesses examined by the accused viz. D.W. No. 1 – Rashid Chand Shaikh, Exh. 79, D.W. No. 2 – Santosh Shahaji Kale, Exh. 80 and D.W. No. 3 – Tarabai Bharat Raut, Exh. 83 who is resident of same locality of Dhanegaon where accused reside. Evidence of D.W. No. 3 - Tarabai Raut, Exh. 83 discloses that marriage of Sunita was solemnized with accused No. 1 against her wish. He further submitted that evidence of D.W. No. 2 – Santosh Kale Exh. 80 discloses that at the time of alleged incident, accused No. 1 – Achyut was at Thergaon and busy in his work. The evidence of D.W. No. 1 – Rashid Chand Shaikh, Exh. 79 speaks that he had heard from Sunita that her marriage was performed with accused No. 1 – Achyut against her will.

10. Mr Chatterji, learned counsel vehemently submitted that the learned trial Judge has committed an error on facts in convicting husband/ Achyut under section 304B of I.P.C. and all accused under section 498A read with section 34 of I.P.C. There is no sufficient evidence to arrive at such positive conclusion. The learned trial Judge has not considered the defence evidence in a proper perspective and not given equal treatment like prosecution witnesses. Mr Chatterji submitted that accused Achyut/husband needs to be free from the charge under section 304B of I.P.C. as well as all the accused persons/in-laws under section 498A read with section 34 of I.P.C. There is no merit in the appeal for enhancement moved by the State as well as appeal against the acquittal of original accused Nos. 2 to 3 from the charge under section 304B of I.P.C. in view of above submissions made by him.

11. Mr Chatterji, learned counsel for the appellants has placed his reliance on the following stock of citations in support of his argument :-

- (i) ***Tomaso Bruno and Another Vs. State of Uttar Pradesh reported in (2015) 7 SCC 178***
- (ii) ***Ashok Kumar Vs. State of Haryana reported in (2010) 12 SCC 350***
- (iii) ***Jumni and others Vs. State of Haryana reported in (2014) 11 SCC 355***
- (iv) ***Arvind Singh Vs. State of Bihar reported in (2001) 6 SCC 407.***

12. Mr Chatterji, learned counsel for the appellant/accused by way of alternative submissions, urged that the sentence awarded against the appellant/accused husband Achyut may be reduced to 10 years for the offence punishable under section 304B of I.P.C. without disturbing the sentence passed against all the accused under section 498A read with section 34 of I.P.C. in view of the peculiar facts of the case on hand by placing his reliance on the judgment of Division Bench of this Court (Criminal Appeal No. 135/2014 with connected appeal) to which one of us was party (V.K. Jadhav, J.).

13. Per contra, Mrs P.V. Diggikar, learned A.P.P. for the State forcefully submitted that death of deceased - Sunita is within seven years of her marriage and soon before her death, she was subjected to harassment and cruelty to meet unlawful demand of dowry and it was unnatural death. Therefore, presumption under section 113-B of the Indian Evidence Act comes into picture. The prosecution has proved the offences against the accused by producing cogent and impeachable piece of evidence. The witnesses have categorically stated in respect of harassment and cruelty to late Sunita to meet unlawful demand of dowry in a cohesive manner. She submitted that the accused were absent from the scene. It is brought on record through the evidence of Doctor that the deceased has resisted the assault, and therefore, her fingers and nails were blueished which speaks that accused had assaulted the deceased. The conduct of the accused needs to be taken into account. They did not inform to the Police and even to the relatives of the deceased soon after the incident. They did not lodge any report. All these facts lead to the

conclusion that death was caused due to throttling when Sunita was in the custody of the accused. She was pregnant and hoping dream of happy life after birth of a child. Her sudden death has caused shock and mental agony to the parents of deceased.

14. Mrs Diggikar, learned A.P.P. submitted that Sunita met with unnatural death in the matrimonial house. No explanation is coming forth from the side of the accused as contemplated under section 106 of the Indian Evidence Act, as to how the incident had occurred. She submitted that even though there are minor inconsistencies in the evidence of related witnesses, not any way fatal to the prosecution. The evidence of prosecution witnesses is consistent, coherent and compact.

15. Mrs P.V. Diggikar, learned counsel submitted that the learned trial Judge has convicted accused/Achyut (husband) of the deceased under section 304B of I.P.C. but acquitted remaining three accused persons/ in-laws without assigning any sufficient reasons. The error on the facts committed by the learned trial Judge needs to be corrected by this court by allowing the appeal preferred by the State against the acquittal of original accused Nos. 2 to 4. It is a case of dowry death under section 304B of I.P.C. The deceased Sunita was residing in the matrimonial house. At the time of incident, accused and her in-laws were present. Sunita was subjected to cruelty and harassment to meet unlawful demand of dowry soon before her death and as such, all of them need to be convicted under section 304B of I.P.C. In view of evidence produced by the prosecution machinery, original accused Nos. 2 to 4 need not be given

different treatment on the same set of evidence and facts.

16. Mrs Diggikar, learned A.P.P. for the State invited our attention to the sentence awarded by the learned trial Judge against all the accused under section 498A read with section 34 of I.P.C. She submitted that the sentence awarded by the learned trial Judge against the accused under section 498A read with section 34 of I.P.C. is very much low having regard to the nature of offence. It is an offence against the society and no leniency should be shown to such culprits by awarding lesser punishment. She urged that the appeal preferred by the State for enhancement of sentence may be allowed and appropriate sentence may be awarded against all the accused under section 498A read with section 34 of I.P.C.

17. To buttress the argument, Mrs Diggikar, learned A.P.P. for the State has placed her reliance on following bunch of citations :-

- (i) ***Trimukh Maroti Kirkan Vs. State of Maharashtra reported in 2006 AIR SCW 5300***
- (ii) ***Davinder Singh Vs. State of Punjab reported in 2014 Cri.L.J. 4065 (SC)***
- (iii) ***Harku Vs. State of Rajasthan reported in 1994 Cr.L.J. 2141 (Rajasthan High Court)***
- (iv) ***Ramesh Vithal Patil Vs. State of Karnataka and others reported in 2014 (2) Crimes 227 (SC)***
- (v) ***M. Narayan Vs. State of Karnataka reported in 2015 Cri.L.J. 3302 (SC)***

18. Before making exercise of appreciating the evidence of prosecution witnesses and witnesses examined by defence side as well, it

would be appropriate to place on record few admitted facts which are material and important.

19. The marriage of accused No.1-Achyut was solemnized with Sunita on 08.03.2010, and after marriage, she went to matrimonial house for cohabitation at Dhanegaon. She was residing in matrimonial house along with her husband and in-laws. Accused No. 4 - Satyashila @ Pinti Bapu Bhosle is a married sister-in-law of deceased Sunita. Satyashila being widow is residing with her parents and brother at Dhanegaon. After some period of cohabitation at Dhanegaon, accused No. 1 along with his wife Sunita and sister Satyashila went to Pune in search of job and started residing there. Again, all of them came back to village Dhanegaon. At the time of incident, deceased Sunita was residing along with her husband and in-laws at village Dhanegaon. Her death took place in the matrimonial house when she was jointly residing with her husband and in-laws. The death of Sunita took place on 03.03.2012. After having necessary calculation from the date of marriage of Sunita and date of her death, it is noticed by us that her death occurred within two years from the date of her marriage.

20. We have considered the submissions of Mr Chatterji, learned counsel for the accused and Mrs Diggikar, learned A.P.P. for the State. We have also gone through the record and proceedings of the trial court as well as perused the evidence of prosecution witnesses and defence witnesses as well with able assistance of defence and the prosecution side.

21. Deepak Londhe happened to be brother of the deceased, who has lodged the FIR with Jamkhed Police Station about unnatural death of his sister Sunita. On that basis, Crime bearing No.23/2012 came to be registered at Jamkhed Police Station for the offences punishable under section 304B, 498A, 323, 504 and 506 read with section 34 of I.P.C. It would be appropriate to reproduce the names of accused with relation to the deceased for convenience.

- (i) Accused No. 1 - Achut Bhaskar Kale - Husband
- (ii) Accused No. 2 - Shakuntala Bhaskar Kale - Mother-in-law
- (iii) Accused No. 3 - Bhaskar Laxman Kale - Father-in-law
- (iv) Accused No. 4 - Satyashila @ Pinti Bapu Bhosle – Sister-in-law (widow)

22. On careful scrutiny of record and proceedings and evidence, it is noticed that the prosecution machinery has examined in all nine witnesses to prove the charges levelled against the accused. Whereas the defence has examined three witnesses in support of defence put forthwith by accused No. 1 regarding his so-called stay at Pune/workplace at the time of death of his wife.

23. Following are the witnesses examined by prosecution machinery -

- (i) P.W. No. 1 - Deepak Madhukar Londhe vide Exh.22 (first informant/ brother of the deceased)
- (ii) P.W. No. 2 - Muktabai Madhukar Londhe vide Exh.29 (mother of the deceased)

- (iii) P.W. No. 3 - Pandurang Sandipan Kokate vide Exh. 43
(Panch witness on inquest and panchnama of scene of evidence)
- (iv) P.W. No. 4 - Manik Abasaheb Ghadge Vide Exh. 46
(relative of accused, who played role for fixing marriage of Sunita with Achyut)
- (v) P.W. No. 5 - Mir Khan Pathan vide Exh. 47
(A.S.I./ Author of AD No.11/2012)
- (vi) P.W. No. 6 -Rupesh Madhukar Londhe vide Exh. 52
(another brother of deceased)
- (vii) P.W. No. 7 - Maruti Jadhav vide Exh. 54
(scribe of FIR)
- (viii) P. W. No. 8 - Dr. Yuraj H. Kharade vide Exh. 57
(Medical Officer, who conducted postmortem examination and issued postmortem report)
- (ix) P.W. No. 9 - Raghunath Nachan vide Exh. 58
(A.P.I./ Investigating Officer)

24. Whereas, the defence has examined following three witnesses :-

- (i) D.W. No. 1 - Rashid Chand Shaikh vide Exh.79
(labour working in the field of accused)
- (ii) D.W. No. 2 - Santosh Shahaji Kale vide Exh. 80
(colleague of accused No.1)
- (iii) D.W. No. 3 - Tarabai Bharat Raut vide Exh. 83
(resident of same locality of Gharkul)

25. It is necessary to look into the medical evidence in order to find out whether Sunita met with unnatural death though not much disputed by the defence side.

26. P.W. No. 8 - Dr. Yuvraj Kharade, vide Exh. 57 is a Medical Officer, who has conducted postmortem examination along with Dr. Sanju

Mundhe on the dead body of Sunita on 04.03.2012. His evidence discloses that he has noticed the injuries as described in column No. 17 of the postmortem report. There were abrasion over inner aspect of tongue, CLW over lower lip 2 X 2 cm inner aspect, finger or thumb nail mark over left and right side of midline of neck 2 X .2 cm., nail mark over hyoid valve vertical line 2 X .02 cm., bruises below left and right eye 2 X .2 cm., bruises over right cheek 3 X 3 cm. He stated that all injuries were antemortem. He further disclosed that when he opened trachea, he noticed echymosis (blood block) over neck muscle due to the throttling the said impact is noticed. Both hands/finger bluish and flexed which indicates that deceased was defending assault before her death. Eyes were closed, pupil semi-dilated fixed and not reacting to light, tongue was present inside mouth. Blood coming through right side of mouth. Reddish is discharged through nostrils. The uterus congested and contents yolk sac and fetal pole and it was 10 weeks pregnancy. There was no smelling to the contents of poison found in the stomach. According to the opinion expressed by Dr. Yuvraj Kharade and agreed by Dr. Sanju Mundhe that death of deceased was due to throttling as per the observations made in the post mortem report and opinion given in the provisional cause of death certificate vide Exh.59 and post mortem report vide Exh. 58.

27. Dr. Yuvraj Kharade has disagreed with the suggestions given by the defence in the cross-examination that a person affected by mental disorder if in the said inflection of throttling himself may result injuries as described in column No. 17 of the post mortem report. As such, that possibility has been ruled out in unambiguous words by Dr. Yuvraj

Kharade. It was attempted by the defence to show that though dead body was brought in the hospital during night by the Police at 12.00 midnight, the post mortem was conducted on next day and there was delay in postmortem examination. The key of the room where the dead body was kept, was with the Police. There is medical protocol for conducting post mortem examination in a medico legal case. The Government doctors need to follow the medical protocol and circulars and the guidelines issued by the Government from time to time. Therefore, we do not find any force in that contentions raised by the defence side.

28. Having regard to the medical evidence discussed above, it is very much clear that Sunita met with unnatural death within two years from the date of her marriage. It is not disputed by the defence that Sunita was found dead in her matrimonial house at Dhanegaon. In that background, it is very much necessary to see the essential ingredients of section 304-B of I.P.C.

29. Section 304B was incorporated in the I.P.C. by the Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). In case of **Preet Pal Singh Vs. State of U.P. and Anr.** reported in **2021 (4) Mh.L.J. Cri. 509**, the Hon'ble Supreme Court has held as under :-

28. Section 304B was incorporated in the Indian Penal Code by the Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). The object of the amendment was to curb dowry death. Section 304B does not categorize death, it covers every kind of death that occurs otherwise than in normal circumstances. Where the other ingredients of Section 304B of the Code are satisfied, the

deeming fiction of Section 304B would be attracted and the husband or the relatives shall be deemed to have caused the death of the bride.

29. The essential ingredients for attraction of Section 304B are:

(i) the death of woman must have been caused in unnatural circumstances.

(ii) the death should have occurred within 7 years of marriage.

(iii) Soon before her death the woman must have been subjected to cruelty or harassment by her husband or his relatives and such cruelty or harassment must be for or in connection with the demand for dowry, and such cruelty or harassment is shown to have been meted out to the woman soon before her death.

30. The legislative intent of incorporating section 304-B was to curb the menace of dowry death with a firm hand. In dealing with the cases under section 304-B, the legislative intent must be kept in mind. Once there is material to show that the victim was subjected to cruelty or harassment before death, there is a presumption of dowry death and the onus is on the accused in-laws to show otherwise.

31. The evidence of P.W. No. 1 - Deepak Madhukar Londhe (brother of the deceased) vide Exh.22, P.W. No. 2 - Muktabai Madhukar Londhe vide Exh. 29 (mother of deceased), P.W. No. 4, Manik Abasaheb Ghadge vide Exh. 54, (relative of accused) and P.W. No. 6 - Rupesh Madhukar Londhe vide Exh.52 (another brother of deceased) are the important witnesses. In order to find out whether the deceased Sunita was

subjected to harassment and cruelty to meet the unlawful demand of dowry soon before her death.

32. On perusing the record and proceedings more particularly, the occurrence report and Khabar vide Exh.48 and 49 and AD report vide Exh. 50, it is noticed that one Mr Ashok Chavan, Police Patil of village Dhanegaon has informed the Police that deceased Sunita died after consuming poison. On that basis, AD report vide Exh. 56 has been registered. However, that reporting by Police Patil about death of Sunita by consuming poison appears to be factually incorrect in view of medical evidence produced by the prosecution agency through P.W. No. 8 Dr. Yuvraj Kharade. P.W. No. 8, Dr. Yuvraj Kharade has stated in unambiguous words that it was not a case of death by poisoning. It was a case of death by throttling. As such, no more weightage can be given to khabar given by village Police Patil.

33. The testimony of P.W. No. 1 - Deepak Londhe (brother of the deceased and first informant) reveals that deceased was cohabiting in house of accused Nos. 1 to 4, who were residing jointly. They had given dowry of Rs. 1,00,000/- and two tola gold to the accused in marriage of Sunita, but they were not satisfied. Accused started demanding cash amount and gold ring. Whenever Sunita used to visit her parents house, she was complaining about the harassment and cruelty, which was being caused to her at the hands of accused to meet their unlawful demand of cash amount and gold. He has further disclosed that after first festival of Gudi Padva, when he visited the house of Sunita, all the accused made

demand of gold ring and also abused Sunita in his presence. He tried to convince to the accused that they have spent huge amount in the marriage and unable to satisfy the demand. However, attitude of the accused was not changed. He also disclosed about one incident when deceased was residing along with her husband and sister-in-law Satyashila at Pune when they tried to set Sunita on fire, but there was no complaint. After that incident, all of them came back to Dhanegaon and started residing there. He has disclosed that accused were giving mental and physical torture to deceased Sunita. It is further evidence of P.W. No. 1 - Deepak Londhe that before 10 to 15 days of the incident, his mother along with another brother (P.W. No. 6 - Rupesh Madhukar Londhe) had been to the matrimonial house of Sunita. He has disclosed that accused Nos. 2 and 4 scolded his mother and stated that what would happen if Sunita would be killed. They would perform second marriage of accused No. 1 Achyut and they would get more amount. As such, mother of Sunita became afraid and requested Sunita to accompany her. But Sunita refused to join her on the pretext that she was pregnant and after her delivery, things would be alright and after 10 to 15 days, death of Sunita had taken place.

34. P.W. No. 1- Deepak Londhe was tried to be questioned on account of not lodging any complaint with the Police about harassment and cruelty which was being extended to the deceased Sunita. We cannot overlook that in matrimonial cases, parties do not want to rush to the Police Station. There is always apprehension that if the matter is reported to the Police, the family relations would be spoiled. As such, the testimony

of P.W. No. 1 - Deepak Londhe cannot be doubted only because, he or his family members did not lodge any complaint against the accused at the relevant point of time though Sunita was subjected to harassment and cruelty to meet the unlawful demand of money and gold ring. The defence has further attempted to establish that the marriage of Sunita was solemnized with accused No.1 against her wish and she was not happy. No such material is coming forth through the cross-examination of P.W.No. 1 - Deepak Londhe to support that line of defence. On careful scrutiny of the evidence of P.W. No. 1 -Deepak, it is found that his evidence is trustworthy and reliable. He has disclosed in clear words that his sister Sunita was subjected to harassment and cruelty at the hands of her husband and in-laws to meet unlawful demand of money and gold ring soon before her death. He has disclosed in detail and supported to the narration given in the FIR which is vide Exh. at 24.

35. Now, coming to P.W. No. 2 - Muktabai Madhukar Londhe (mother of the deceased). Her evidence is supporting to P. W. No. 1 - Deepak. She has corroborated the testimony of her son Deepak by stating all the details as to how her daughter Sunita was subjected to harassment and cruelty at the hands of her husband and in-laws to meet the unlawful demand of money and gold ring. She has disclosed that her daughter Sunita was subjected to beating and harassment for bringing less amount of dowry in the marriage. She has even disclosed about her visit to Sunita's matrimonial house just 8 days prior to the incident. She has disclosed that mother-in-law and sister-in-law of Sunita asked her as to what would happen if they would kill Sunita. They would perform second

marriage of Achyut and may get enough dowry amount. P.W. No. 2 - Muktabai apprehended danger to the life of her daughter Sunita and asked Sunita to accompany her. But Sunita refused to join her as she was pregnant. After 8 days, Sunita met with unnatural death in her matrimonial house. By way of cross-examination, she has admitted that the family of the accused is financially sound whereas economical condition of her family is weak. That admission is not any way helpful to the defence in absence of any further material so as to discard the evidence of P.W. No. 2 - Muktabai, who has stated in detail about harassment and cruelty caused to her daughter Sunita for unlawful demand of money soon before her death at the hands of accused. The testimony of P.W. No. 2 - Muktabai is found consistent with the testimony of P.W. No. 1 - Deepak and goes hand in hand.

36. P.W. No. 4 - Manik Ghadge vide Exh.46 happened to be relative of the accused. He was present at the time of settlement of marriage between Achyut and Sunita as well as present at the time of wedding and at the time of funeral of Sunita. The testimony of P.W. No. 4 - Manik Ghadge is therefore, important and crucial for both the sides. On perusing the testimony of P. W. No. 4 – Manik Ghadge, it is evident that marriage of Sunita was solemnized with accused No. 1 on 08.03.2010 as per tradition. In the said marriage, dowry of Rs.1,00,000/- and two tolas gold was given to the accused. Sunita went to matrimonial house after the marriage and started cohabiting at village Dhanegaon. She was residing with her husband - Achyut, parents, in-laws Shakuntala, Bhaskar and sister in-law Satyashila. He was asking to Muktabai P.W. No. 2 (mother of

the deceased) about the married life of Sunita and came to know that accused were harassing to Sunita and she was subjected to cruelty and ill treatment to meet the demand of money and gold. He was also asking Sunita on phone about her married life and came to know that Sunita was subjected to harassment at the hands of the accused to bring Rs. 1,00,000/- and gold ring. She was subjected to beating at the hands of the accused. He has also disclosed about one incident occurred at Pune when Sunita was residing with her husband and sister-in-law. It was an attempt to set Sunita ablaze after pouring kerosene, but she rescued herself. He has further disclosed that even after returning back to Dhanegaon from Pune, the accused continued their harassment and ill treatment to Sunita to fulfill demand of gold and money. He has also disclosed that he himself with other relatives held meeting with accused and persuaded them to stop such kind of cruelty and harassment to Sunita. He has also disclosed about the incident occurred just 8 days prior to the incident when Sunita's mother - Muktabai had been to her house and also corroborated the version of P.W. No. 2 - Muktabai. He has further disclosed that he came to know from P.W. No. 1 - Deepak Londhe about death of Sunita on 03.03.2012 and he rushed to Dhanegaon with his relatives. He noticed that Sunita was lying dead in the house and there were scratches on her neck, hairs were scattered.

37. While facing cross-examination, P.W. No. 4 - Manik Ghadge has admitted that there was a discussion about the death of Sunita amongsts themselves and they suspected that accused are responsible for death of Sunita and they went to Jamkhed Police Station along with 25

to 50 relatives when Deepak Londhe lodged the FIR. These admissions are not any way sufficient to discard the testimony of P.W. No. 4 – Manik Ghadge. It is obvious that when unnatural death takes place in the family and that too a newly married daughter, the relatives and family members would sit together and discuss. It is natural phenomenon and it cannot be said to be plan to implicate the accused in a case.

38. It was attempted to show P.W. No. 4 - Manik Ghadge could not tell month and year when Sunita disclosed him about her harassment at the hands of the accused. He did not lodge complaint against the accused when he came to know about ill treatment caused to Sunita. Again, these answers are not any way fatal to take doubt on the testimony of P.W. No. 4 – Manik Ghadge. He is a witness right from the settlement of marriage up to the wedding played role. He is relative of both the sides. There is no enmity between the family of accused and this witness P. W. No. 4 – Manik Ghadge. There is no reason for P.W. No. 4 - Manik Ghadge to depose against the accused. The testimony of P.W. No. 4 - Manik Ghadge appears to be trustworthy and reliable.

39. P.W. No. 6 - Rupesh Londhe is another brother of the deceased. He has also corroborated the testimony of P.W. No. 1 - Deepak and PW2 - Muktabai. He is a witness, who accompanied his mother Muktabai, who visited house of Sunita just 8 to 10 days before the death of Sunita. In the earlier part of his testimony, he has also stated that all the accused persons started harassment and ill treatment to his sister Sunita on account of short amount of dowry and gold quantity. So far as the

incident prior to 8 to 10 days of the death of Sunita, he has categorically stated what had happened and narrated by his mother P.W. No. 2 - Muktabai. He has disclosed in the same words as to how accused Shakuntala and accused Satyashila behaved with them and threatened to kill Sunita. He has also disclosed about the incident which had occurred at Pune when Sunita was attempted to set her on fire. The testimony of P.W. No. 6 - Rupesh is put to question that he did not go personally to Pune and his version on the point of incident of setting Sunita on fire appears to be hearsay. Even if we discard that piece of evidence, we cannot discard his entire testimony. His evidence on the point of harassment and cruelty caused by the accused just before 8 to 10 days of the incident is found trustworthy and goes hand in hand with the version of P.W. No. 2 - Muktabai when both of them had been to the house of Sunita.

40. It was attempted by the defence to show that till funeral of Sunita, no complaint was lodged against the accused about ill treatment and cruelty to Sunita to meet unlawful demand. The FIR came to be lodged after one day, and after discussion with the family members. Sunita met with unnatural death on 03.03.2012 and FIR came to be lodged on 04.03.2012 after the funeral. The mental condition of family members need to be considered. They had lost their dear daughter within two years of her marriage. Certainly, they must be under shock and grief. It cannot be any way termed as unnatural conduct on the part of the family of deceased to lodge the FIR after the funeral. There is absolutely no delay in lodging of FIR in the set of facts and circumstances of the case in hand.

41. Upon careful scrutiny of the evidence above referred, four important witnesses examined by the prosecution, it is very much clear that deceased Sunita was subjected to harassment and cruelty at the hands of her husband and in-laws to meet unlawful demand of dowry and gold soon before her death. Sunita met with unnatural death in matrimonial house within two years from the date of her marriage. Certainly, the presumption under section 113-B of the Evidence Act would come into picture. In case of ***Davinder Singh Vs. State of Punjab*** (*supra*), it is held by the Hon'ble Supreme Court that if death of a married woman had taken place within seven years of marriage due to burn injuries and not in normal circumstances, the presumption under section 11-B of the Evidence Act would come into picture.

42. The conjoint reading of section 113-B of the Evidence Act and section 304-B of the I.P.C. shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where section 113-B of the Evidence Act and section 304B of I.P.C. are pressed into service.

43. Having regard to the above provisions, if evidence of above referred four material witnesses is taken into account, the prosecution has been successful in proving that deceased Sunita was subjected to cruelty and harassment at the hands of the accused to meet unlawful demand of

money and gold soon before her death and she met with unnatural death within two years from the date of marriage. Her unnatural death took place in the matrimonial house when she was cohabiting with the husband and in-laws. Therefore, presumption available under section 113-B of the Evidence Act needs to be invoked in this case against the accused.

44. Now coming to evidence of defence witnesses examined by the accused.

45. Mr Chatterji, learned counsel for the appellant/accused submitted that defence witnesses are entitled to get equal treatment with those of the prosecution witnesses by placing reliance in case of ***Jumni and others Vs. State of Haryana*** (*supra*). In case of ***Jumni and others Vs. State of Haryana***, the Hon'ble Supreme Court has held that the approach of the court should not be such as to pick holes in defence case. The defence evidence should be tested like any other testimony, always keeping in mind that a person is presumed innocent until found guilty.

46. The Hon'ble Supreme Court has reiterated its view taken in ***Jayantibhai Bhenkarbhai Vs. State of Gujarat*** reported in **(2002) 8 SCC 165**, wherein it is held as under :-

23. On the standard of proof, it was held in *Mohinder Singh vs. State* that the standard of proof in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. *Dudh Nath Pandey* goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words: (*Dudh Nath case*, SCC p. 173, para 19)

“19....Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts, ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.”

In view of the legal position made clear by the Hon'ble Supreme Court, certainly, we have to give equal treatment to the witnesses examined by the defence by applying reasonable standard.

47 D.W. No. 1 - Rashid Chand Shaikh seems to be an agricultural labour working in the field of accused. He stated that he had an occasion to talk with Sunita. He had heard from Sunita once that her marriage with Accused/Achyut Kale was performed against her will. This piece of evidence of D.W. No. 1 - Rashid Chand Shaikh, if assessed carefully, the first question comes, how Sunita, a lady member of the family could tell such family matters to agricultural labour working in her field. He is that way an outsider for the family. The married lady would tell about her indoor things to a person who could be close to her and not outsider, who is an agricultural labour. By applying reasonable standard and common prudence that piece of evidence of D.W. No.1 – Rashid Chand Shaikh appears to be unworthy of credence.

48. He has further disclosed that on 03.03.2012 at about 2.00 p.m. he had been to the shop of one Kale to purchase bidi when he noticed that Sunita was talking with a person, who came on motorbike. He asked to Sunita, who is that person with whom she is talking. She has replied that said person is from her maternal village. Again the version of D.W. No. 1 –

Rashid Chand Shaikh appears to be unreliable if reasonable standard is applied. D.W. No. 1 Rashid Chand Shaikh is not a family member and as such, he had no reason to ask any question to Sunita in this regard. The testimony of D.W. No. 1 - Rashid Chand Shaikh is also questioned whether he is a resident of Dhanegaon in absence of any documentary evidence. He has also admitted that he has not narrated said fact to her parents that Sunita informed him that her marriage was performed with accused No.1/Achyut against her will. It raises serious doubt about his credibility. We are not convinced to accept the testimony of D.W. No. 1 – Rashid Chand Shaikh.

49. Now coming to evidence of D.W. No. 2 – Santosh Shahaji Kale. He stated that on 03.03.2012 i.e. on the date of incident, he along with accused No. 1/Achyut were installing advertisement board and hoarding at Thergaon. After returning to the home, Achyut received a phone from Laxman Kale of Dhanegaon that his wife Sunita is suffering from illness and he should start immediately. Accordingly, he along with accused No.1/Achyut and other friends left by private vehicle and reached to Dhanegaon at about 5.00 p.m. in the next day morning.

50. It is brought on record through the cross-examination of D.W. No. 2 – Santosh Kale that no documentary evidence is produced by this witness in order to corroborate his version that both of them were working together and on the date of incident, they were at Thergaon and busy in their work. There is no document to show that accused No.1/Achyut was assisting in his work at Pune. In view of that quality of evidence of D.W.

No. 2 – Santosh Kale, it would not be safe to rely upon that kind of evidence.

51. D.W. No. 3 – Tarabai Raut is stated to be neighbour of accused and resident of same Gharkul locality. She has stated that on the last Sankrat festival, Sunita has informed her that her marriage was performed with accused No.1/Achyut against her will. The same question poses, how the married lady could tell her indoor things to an outsider, who has no concern with her family. As such, that piece of evidence of D.W. No. 3 – Tarabai Raut cannot be believable. She has further disclosed that on 03.03.2012 i.e. on the date of incident, she had seen Sunita while talking with a person of about 25-30 years of age and heard that said person was telling Sunita, Chal-chal, and thereafter, they went to Gharkul. This evidence of D.W. No. 3 – Tarabai Raut is found inconsistent with the evidence of D.W. No. 1 – Rashid Chand Shaikh. According to D.W. No.1 – Rashid Chand Shaikh, he noticed Sunita while talking with a person near the shop of one Kale whereas this D.W. No. 3 – Tarabai Raut is stating that she had seen deceased Sunita while talking with a person near her house. There is no connecting evidence that shop of Kale and house of Sunita and this witness Tarabai Raut are close so that they could witness the things. On careful scrutiny of evidence of D.W. No. 3 – Tarabai Raut, her testimony is found unworthy credence. She is found to be a brought up witness.

52. Having regard to the appreciation of above referred three defence witnesses, it is clear that none of the witnesses examined by

defence side are reliable and trustworthy. Their evidence is unworthy of credence and cannot be acted upon.

53. P.W. No. 5 – Mir Khan Pathan vide Exh. 47 is an author of A.D. lodged by village Police Patil Mr Ashok Chavan of Dhanegaon. P.W. No. 9 – Raghunath Nachan vide Exh. 58 is a A.P.I./Investigating Officer. He has stated about his procedural part of investigation and filing of charge sheet in view of the incriminating evidence collected against the accused.

54. In case of ***Tomaso Bruno and Anr. Vs. State of Uttar Pradesh*** (*supra*), it is held by the Hon'ble Supreme Court that the presumption under section 114 of the Evidence Act is only permissible inference and not a necessary inference. In every case based upon circumstantial evidence, the question that needs to be determined whether the circumstances relied upon by the prosecution are proved by reliable and cogent evidence and whether all the links in the chain of circumstance are complete so as to rule out the possibility of innocence of the accused. The conviction can be based solely on the circumstantial evidence, but it should be tested on the touchstone of the law relating to the circumstantial evidence.

55. In the above cited case, the CCTV footage and call records which was the best of piece of evidence was withheld by the prosecution, therefore, the Hon'ble Supreme Court was pleased to draw an adverse inference against prosecution in view of section 114 (g) of the Evidence Act, 1872 and pleased to acquit the accused from the charge of murder under section 302 of I.P.C. The facts of the cited case and the facts of the

case in hand are quite distinguishable.

56. In the case in hand, the prosecution has been successful in proving that the deceased married woman met with unnatural death within two years of her marriage. She was subjected to harassment and cruelty to meet unlawful demand of dowry at the hands of the accused soon before her death. The death of deceased Sunita falling in the category of unnatural death occurred in her matrimonial house when she was cohabiting with her husband and in-laws. No plausible explanation is offered by the accused to explain under what circumstances, Sunita met with that. It is a case of dowry death as defined under section 304B of I.P.C. Such crimes are generally committed in complete secrecy inside house. Nature and amount of evidence required to establish charge cannot be of same degree as required in other cases of circumstantial evidence. Silence of inmates of house about cause of death would become an additional link in chain of circumstances.

57. In case of ***Trimukh Maroti Kirkan Vs. State of Maharashtra*** (supra), the Hon'ble Supreme Court in para No. 11 has observed as under :-

11. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some

assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab Vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads: 2003 AIR SCW 4065

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

58. Having regard to the recent citation of the Hon'ble Supreme Court in case of ***Preet Pal Singh Vs. State of U.P. and Anr.*** (supra), wherein it is held that where the ingredients of section 304B of I.P.C. are satisfied, the deeming fiction of section of 304B would be attracted and the husband or the relatives shall be deemed to have caused the death of the bride/married woman.

59. In the foregoing paras, it is held by us that Sunita met with unnatural death within two years of her marriage. It was a custodial death. Soon before her death, she was subjected to cruelty at the hands of her

husband and in-laws in connection with the demand for dowry. The presumption as provided under section 113-B of the Evidence Act comes into picture.

60. Having regard to the entirety of material and careful scrutiny of the witnesses examined by the prosecution machinery and defence as well, we arrived at conclusion that the prosecution machinery has been successful in proving the guilty of all accused punishable under section 304B and 498A read with section 34 of I.P.C. It is a case of custodial death. She was Ten weeks pregnant and dreaming happy life after having baby, but unfortunately, met with unnatural death in matrimonial house. The accused are responsible for such custodial death in view of section 304B of I.P.C. coupled with provisions of section 113B of the Evidence Act, 1872.

61. On perusing the impugned judgment and order passed by the Additional Sessions Judge, Ahmednagar whereby accused No. 1/Achyut alone came to be convicted under section 304B of I.P.C. The finding recorded by the Additional Sessions Judge to that effect appears to be erroneous on facts in view of the above referred evidence of prosecution witnesses discussed in detail. The learned trial Judge has acquitted accused Nos. 2 to 4 on same set of facts and evidence without assigning sufficient reasons for carving out them from charge under section 304B of I.P.C. On perusal of para No. 34 of the impugned judgment, learned trial Judge after appreciating the evidence of prosecution witnesses and

defence held that case against the accused No.1/Achyut under section 304B of I.P.C. is proved and he alone needs to be convicted. There are no reasons why remaining accused Nos. 2 to 4 are not liable to be convicted on the same set of facts and evidence. It is an error committed by the learned trial Judge while recording the finding against the charge under section 304B of I.P.C. The appeal preferred by the State against the original accused Nos. 2 to 4 for their acquittal out of charge under section 304B of I.P.C. is found worthy and needs to be allowed. Late sunita was cohabiting in the matrimonial house along with the husband and in-laws/ accused Nos. 2 to 4 when she met with unnatural death within two years of her marriage. She was subjected to harassment at their hands to fulfill unlawful demand of dowry. Accused Nos. 2 to 4 are equally liable to hold guilty for the offence punishable under section 304B read with section 34 of I.P.C. They must be dealt with the same way as like accused No.1/Achyut. We find merit in the appeal preferred by the State against the acquittal of original accused Nos. 2 to 4/in-laws whereby they were set at free from the charge under section 304B of I.P.C.

62. Now, coming to the another appeal preferred by State regarding enhancement of sentence awarded against accused Nos. 1 to 4 under section 498A read with section 34 of I.P.C. All the accused have been convicted for the offence punishable under section 498A read with section 34 of I.P.C. and sentenced to suffer rigorous imprisonment for six months and pay fine of Rs. 2,000/- (Rupees Two Thousand) each with default clause.

63. Having regard to the nature of offence and in view of the earlier part of discussion and considering the facts of the case entirety, we are of the considered view to uphold the same. No need to enhance the sentence awarded against all the accused under section 498A read with section 34 of I.P.C. There is no merit in the appeal for enhancement of sentence.

64. Mr Chatterji, learned counsel for the appellant by way of alternative submission has urged to reduce the sentence up to 10 years by placing reliance on the recent judgment of the Division Bench of this Court in Criminal Appeal No. 135/2014 with connected appeal dated 07.07.2021. The Division Bench of this Court by taking into consideration peculiar facts of the case was pleased to reduce the sentence awarded against the accused No.1 and restricted to undergo rigorous imprisonment for 10 years with fine of Rs.5,000/- (Rupees Five Thousand) with default clause. We do not find such circumstances to reduce the sentence awarded against the appellant/accused No.1 under section 304B of I.P.C. to undergo imprisonment for life. However, if sentence of accused Nos. 2 to 4 is restricted for 10 years rigorous imprisonment, it would meet the ends of justice, in view of facts of the case in hand.

65. Having regard to the above reasons and discussion, we arrived at conclusion to dismiss the appeal preferred by accused No. 1- Achyut Bhaskar Kale vide Criminal Appeal No. 271/20214. Whereas, we are convinced to allow the Criminal Appeal No. 683/2014 preferred by the

State against the acquittal of original accused Nos. 2 to 4 from charge of dowry death punishable under section 304B of I.P.C. We are equally convinced to dismiss the appeal preferred by the State for enhancement of sentence awarded against all the accused punishable under section 498A of I.P.C.

ORDER

- (A) The Criminal Appeal No. 271/2014 preferred by the Appellant/ Achyut s/o Bhaskar Kale is dismissed.
- (B) The Criminal Appeal No. 325/2014 preferred by the Appellant/ State of Maharashtra is also dismissed.
- (C) The Criminal Appeal No. 683/2014 preferred by the Appellant/ State of Maharashtra against original accused Nos. 2 to 4 is allowed.
- (D) Resultantly, the impugned Judgment and order of conviction passed in Sessions Case No. 163/2012 by the Additional Sessions Judge, Ahmednagar is modified as under :-
 - (i) Accused Nos. 1 to 4 are convicted for the offence punishable under section 304B read with section 34 of I.P.C.
 - (ii) The sentence awarded against the Appellant/Achyut s/o Bhaskar Kale to undergo imprisonment for life is confirmed.
 - (iii) Accused Nos. 2 to 4 shall undergo rigorous imprisonment for ten years and pay fine of Rs. 1,000/- (Rupees One Thousand) each, and in default, rigorous imprisonment for one month for the offence punishable under section 304B read with section 34 of I.P.C.

- (iv) The sentence awarded by the Additional Sessions Judge, Ahmednagar against all the accused for the offence punishable under section 498-A read with section 34 of I.P.C. is hereby confirmed.
- (v) Accused Nos. 2 to 4 are on bail and they shall surrender before the trial court to undergo the sentence in above terms.
- (vi) The learned trial Judge is directed to issue conviction warrant accordingly.
- (E) The Appeals are disposed of accordingly.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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