

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

CRIMINAL APPEAL NO.489 OF 2021

Vishal Khandu Mahajan

...Appellant

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO.534 OF 2021**

1.Kamalbai Khandu Mahajan

2. Khandu Bhadu Mahajan

...Appellants

Versus

The State of Maharashtra

...Respondent

....

Ms Megha Bajoria for the Appellants.

Mr. S.V. Gavand, APP for Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 29th NOVEMBER, 2021.

ORAL JUDGMENT:-

1. By order dated 20/10/2021 hearing of this appeal was expedited in view of the statement that the Appellant -Vishal (accused No.1), who was the only earning member, is in jail and his aged parents are taking care of his minor children.

2. By these appeals the Appellants, who were accused Nos.1, 2 and 3 have challenged the judgment and order dated 04/05/2021 passed

by the learned Additional Sessions Judge-3, Nashik, in Sessions Case No.123 of 2016.

3. By the impugned judgment the learned Judge held the Appellants guilty of offence under Section 304 B and 498A r/w 34 of the IPC. The Appellant No.1-Vishal has been sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.5,000/- i/d. Simple imprisonment for six months for offence under section 304 B r/w 34 of the IPC whereas Appellants in Criminal Appeal No.534 of 2021 (accused Nos.2 and 3) have been sentenced to undergo rigorous imprisonment for 7 years with fine of Rs.5,000/- i/d. to suffer simple imprisonment of six months in respect of offence under Section 304 B r/w 34 of the IPC. All the Appellants have also been sentenced to suffer rigorous imprisonment for three years with fine of Rs.2,000/- i/d. Simple imprisonment for three months in respect of offence punishable under Section 498 A of the IPC.

4. Briefly stated case of the prosecution is as under:-

The Appellant No.1-Vishal was married to Poonam, daughter of PW1- Ramesh Mane on 30/11/2011. She committed suicide on 21/1/2016. Since the death of Poonam was within 7 years of marriage PW6- PSI Sachin Sadaphule, attached to Upanagar police station conducted the

enquiry under Section 176 of the Code of Criminal Procedure, 1973. He visited the spot of the incident and conducted spot panchanama at Exhibit-23. He seized all the incriminating material from the spot of the incident under panchanama at Exhibit-24. He took photograph of the suicidal note written on the palm of the deceased and sent the body for post mortem. He also prepared an inquest panchanama (at Exhibit-52).

5. On the same day PW1-Ramesh Mali, father of the deceased lodged the FIR (at Exhibit-32) alleging demand of dowry of Rs.2,00,000/- at the time of marriage. He claimed that he had paid an amount of Rs.1,61,000/- at the time of the marriage and balance of Rs.39,000/- was paid thereafter. PW1-Ramesh Mali alleged that the accused No.1 was addicted to liquor and gambling and he was harassing the deceased Poonam and asking her to get more money from her parents. PW1 claimed that in the year 2014 he had transferred Rs.1,00,000/- to accused No.1 Vishal and paid Rs.70,000/- in the year 2015. He claimed that the accused continued ill treating his daughter and that she committed suicide because of the harassment meted out to her. Pursuant to the FIR lodged by PW1-Ramesh Mali, PW6 registered the crime against the accused.

6. In the course of the investigation PW6 seized a notebook with natural hand writing of the deceased and forwarded the photographs of the suicide note and the natural hand writing to the hand writing expert. He recorded the statements of the witnesses and after completing the investigation he submitted the charge sheet at Exhibit-13 against the accused for offences punishable under Sections 304 B and 498A of the IPC

7. Charge was framed and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined six witnesses. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. The defence of the accused was that of total denial. After appreciating and analysing the evidence on record, learned Judge held that the prosecution has proved the factum of demand of dowry. The learned Judge has further held that the evidence of prosecution witnesses amply proves that the deceased was subjected to ill treatment. Learned Judge has also held that death of the deceased was within 7 years from the date of marriage and hence drawing presumption under Section 113 A of the Indian Evidence Act, 1872, learned Judge held that the accused have abetted commission of suicide. Based on these findings learned Judge held the accused guilty and convicted and sentenced them as stated

above. Being aggrieved by the conviction and sentence the accused have filed these appeals under Section 374 of the Cr.P.C.

8. The Appellants were not represented by any Advocate. Hence, Ms Megha Bajoria, an Advocate from Legal Aid Panel was appointed to represent the Appellants in both these appeals.

9. Heard Ms Megha Bajoria, learned counsel for the accused, Mr. S.V. Gavand, learned APP for Respondent -State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

10. It is not in dispute that the deceased Poonam, daughter of PW1 was married to accused Vishal on 30/11/2011. She committed suicide on 22/1/2016, which was within 7 years from the date of her marriage. The question for consideration is whether the prosecution has established that the accused had demanded dowry and had subjected Poonam to cruelty for not fulfilling unlawful demand of dowry or demand for any property or valuable security and have thus established the essential ingredient of Sections 304 B and 498 A of the IPC.

11. Sections 304 B, and Section 498 A of the IPC and Section 113 B of the Indian Evidence Act, 1872, which relate to dowry death, read thus:

“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 purpose of this subsection, “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.]

Section 498A- 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 wilful 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.]

113B. 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 has 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).]

12. In *Rajindersingh v/s. State of Punjab, (2015) 6 SCC 477* the Apex Court has observed as under:

“7. *The primary ingredient to attract the offence under*

Section 304B is that the death of a woman must be a "dowry death". "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

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

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

(b) by the 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.- [***] Explanation II.-The expression "valuable security" has the same meaning as in [Section 30](#) of the Indian Penal Code (45 of 1860)."*

8. A perusal of this Section shows that this definition can be broken into six distinct parts.

1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

2) Such property or security can be given or even agreed

to be given. The actual giving of such property or security is, therefore, not necessary.

- 3) Such property or security can be given or agreed to be given either directly or indirectly.*
 - 4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.*
 - 5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.*
 - 6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".*
- 9. The ingredients of the offence under Section 304 B have been stated and restated in many judgments. There are four such ingredients and they are said to be:*
- (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. The Hon'ble Supreme Court after considering the previous judgment has held that there must be a nexus between demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied but it is not a rigid test. It depends on facts and circumstances of each case and calls for a pragmatic and sensitive approach of the Court within the confines of law. The Hon'ble Supreme Court has further observed that what must be borne in mind is that the word 'soon' does not mean "immediately before". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304 B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under

Section 304 B.

14. In State of *Andhra Pradesh vs. M. Madhusudhan Rao (2008)*

15 SCC 582 the Apex Court has held :-

17. Thus, providing a new dimension to the concept of "cruelty", clause (a) of Explanation to [Section 498-A I.P.C.](#) postulates that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute "cruelty". Such wilful conduct, which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman would also amount to "cruelty". Clause (b) of the Explanation provides that harassment of the woman here 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, would also constitute "cruelty" for the purpose of [Section 498-A I.P.C.](#)

18. It is plain that as per clause (b) of the Explanation, which, according to learned counsel for the State, is attracted in the instant case, every harassment does not amount to "cruelty" within the meaning of Section 498-A I.P.C. The definition stipulates that the harassment has to be with a definite object of coercing the woman or any person related to her to meet an unlawful demand. In

other words, for the purpose of [Section 498-A](#) I.P.C. harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to "cruelty" punishable under Section 498-AI.P.C.

15. Similarly in ***Gurcharan Singh vs. State of Punjab (2017) 1 SCC 433*** the Apex Court has held that “*the first limb of the explanation under Section 498A is otherwise germane, proof of the willful conduct actuating the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, is the sine qua non for entering a finding of cruelty against the person charged*”.

16. In the instant case, the evidence of PW1 reveals that at the time of marriage i.e. in the November-2011, he had agreed pay Rs.2,00,000/- to the accused No.1 as dowry. He has stated that he had paid Rs.1,61,000/- at the time of marriage and subsequently after a year of marriage he had paid Rs. 39,000/-. He has stated that after her marriage, the deceased-Poonam was living in her matrimonial house at Nashik. He has deposed that the husband, father-in-law and mother-in-law of the deceased were demanding money from her and that he had

paid an amount of Rs.39,000/- a year after her marriage.

17. PW1 has deposed that accused Vishal was addicted to liquor and gambling. He was harassing the deceased Poonam and was telling her to bring money from her parents. He has stated that in the year 2014 he transferred Rs.1,00,000/- in the account of accused No.1 and paid Rs.70,000/- in cash. He has deposed that despite giving money, the accused continued ill treating and harassing the deceased Poonam. In his cross examination he has admitted that the marriage was finalised in presence of Kashinath Chaudhari and Ananda Mahajan, who were known to both the parties. He has admitted that the entire talk regarding the marriage took place in presence of said Kashinath Choudhari, Ananda Mahajan and the relatives of the bride and the bridegroom. He has admitted that accused No.4, sister of the accused No.1 was already married and she was residing at Amalner. He has also admitted that the accused No.3, father-in-law of the deceased had paralysis attack. He has admitted that prior to death of Poonam relationship between both the parties was cordial.

18. PW2- Arun Nikam is the husband of the maternal aunt of the deceased. This witness has also deposed that at the time of finalisation of

the marriage proposal, an amount of Rs.2,00,000/- was agreed to be paid to the accused No.1. Out of which Rs.1,67,000/- was paid in cash and remaining amount was to be paid later on. He has deposed that the deceased Poonam was treated well for about 3 to 4 months and thereafter the accused started ill-treating her. They demanded Rs.1.5 lakhs. He has further deposed that accused No.1 was addicted to liquor and gambling and he used to beat her under the influence of alcohol.

19. PW2 has deposed that after the birth of second daughter, the accused started harassing Poonam even more. He has stated that the deceased Poonam had informed that her sister-in-law used to ill-treat her and abuse her. He has deposed that PW1 paid balance amount of Rs.39,000/- in the year 2014 and transferred Rs.1,00,000/- in the account of accused No.1 and paid Rs.70,000/- in the year 2015. He has deposed that accused continued ill treating the deceased. On 21/01/2016 the deceased had visited his house and complained that the accused were demanding money and harassing her continuously. She was reluctant to return to her matrimonial home. He convinced her to return to her matrimonial home. He has stated that on 22/01/2016 Poonam committed suicide and that she had written a note on her palm that she is committing suicide on account of harassment meted out to her by mother-in-law,

sister-in-law and her husband. In the cross examination he has admitted that they used to visit the house of the accused. He has stated that during 5 years of marriage of the accused No.1 and the deceased, he had never lodged a complaint against the accused persons for ill-treating Poonam @ Rupali. He has admitted that one of his close relatives- Pankaj Bhopale is in the Police Department and that he had accompanied them at the time of lodging of the report. He has admitted that he had not mentioned in the statement of the police that Poonam had committed suicide because of the harassment meted out to her by her husband.

20. PW3-Chandrabhan Jadhav is also one of the relatives of the deceased. He has deposed that at the time of fixing of marriage it was decided to give Rs.2 lakhs towards dowry. Out of Rs.2 lakhs, Rs. 1,61,000/- was paid at the time of marriage and balance amount of Rs.39,000/- was paid later. He has stated that the deceased was treated well for about 1 or two months. The accused thereafter started ill-treating her for non-payment of balance amount of Rs.39,000/- and additional Rs.1 lakh to 1.5 lakh. He has deposed that in the year 2014 PW1 transferred an amount of Rs.1 lakh to the account of accused No.1 and in the year 2015 he paid to him Rs.70,000/- in cash. He has stated that despite giving money accused continued harassing the deceased.

21. In his cross examination he has admitted that marriage of Poonam @ Rupali and accused was fixed with the mediation of one of the relatives of accused No.2. Said meeting was held in the house of PW2- his son-in-law, Arun Nikam. He has admitted that whatever gold ornaments and household articles were given, was the part of customs and the same were given voluntarily in the said meeting. He has admitted that no money was given to the accused in the said meeting. He has further admitted that the deceased used to visit her parents during festivals and stay with her parents for 3 to 4 days. He has admitted that he and his son used to visit the matrimonial house of the deceased during festivals and on the occasion of birthday. He has also admitted that accused No.1 and the deceased Poonam @ Rupali visited his house 2/3 times and she had not complained of harassment. He has also admitted that his son-in-law is in the police department and during the period of 5 years of their marriage, he had not complained about the ill-treatment meted out to the deceased.

22. PW4-Sandip Paithankar is the brother-in-law of PW1-Ramesh Mali. This witness has also deposed that prior to the marriage a meeting was held wherein it was decided to give Rs.2 lakhs to accused No.1 dowry.

He states that at the time of marriage Rs.1,61,000/- was paid in cash and that the remaining amount was to be paid later. He has deposed that accused No.1 started abusing the deceased under the influence of alcohol. He has stated that his house was at a distance of about 1 to 1.5 km. And that she used to visit his house. He has deposed that in the year 2014 PW1 has transferred Rs.1 lakh in the account of accused No.1. In his cross examination he has admitted that they used to visit each others house during festivals and on other occasions and that his relationship with the accused was cordial. He has also admitted that whenever he had visited the house of the accused, they had treated him well.

23. PW5- Sagar Ramesh Mali is the brother of the deceased. This witness has also deposed that they had agreed to pay Rs.2 lakhs as dowry. Out of which Rs.1,61,000/- was given at the time of the marriage and balance amount was agreed to be paid later. He has stated that the deceased was treated well for about two months and accused started demanding Rs.39,000/- in addition to Rs.1 lakh to Rs.1.5 lakhs to repay loan. He has deposed that accused No.1 was addicted to liquor. He further states that the accused persons ill treated Poonam and in the year 2014 his father had transferred Rs.1 lakh in the account of the accused and in 2015 cash of Rs.70,000/- was given. He has deposed that despite

giving money, the accused continued ill-treating his sister. In the year 2013 there was a meeting between his relatives and the accused persons. In the said meeting they requested the accused to treat his sister well. On 22/01/2016 they received a phone call informing them that Poonam had committed suicide. He has admitted in his cross examination that he had not disclosed in his statement under Section 161 of the Cr.P.C. that a meeting was held in the year 2013 between both the parties and that the accused were requested not to harass the deceased.

24. Aforesaid evidence indicates that at the time of marriage parents of the deceased had given to the accused sum of Rs.1,61,000/- as dowry. None of these witnesses claimed that accused No.1 had made a demand for dowry. The prosecution has not examined the two witnesses, in whose presence the marriage was finalised. Even otherwise, demand for dowry was at the time of marriage and the same was allegedly paid in the year 2014-2015. There is no evidence on record that the accused No.1 continued their demand for dowry and /or that they had subjected Poonam to ill-treatment for want of payment of dowry. Hence, as rightly submitted by Ms Megha Bajoria, learned counsel for the accused there is no nexus between demand of dowry, cruelty or harassment, based upon such demand and the date of death.

25. Evidence on record also indicates that prosecution witness has made omnibus allegations of harassment and ill-treatment without specifying the act of cruelty meted out to the victim. Though the evidence of PW5-brother of the deceased indicates that meeting was held some time in the year 2013 and that the accused were told not to harass the deceased, no such statements are made by the other witnesses. On the contrary, their evidence indicates that the relationship between both the parties was cordial and they were on visiting terms. Suicide note allegedly written by the deceased on the palm does not indicate that the accused No.1 was involved in harassing her. She has alleged harassment at the hands of mother-in-law and sister-in-law. The sister-in-law has been acquitted. Apart from the omnibus allegations of harassment, there is absolutely no evidence to prove that the accused had subjected the deceased to cruelty to such an extent to drag her to commit suicide.

26. Under the circumstances, in my considered view the prosecution has failed to establish the essential ingredient of Sections 498A and 304 B of the IPC. Consequently, the learned Judge is not justified in holding the accused guilty of the said offence. Consequently, the sentence is not sustained. Accused is acquitted of offence under

Sections 498A and 304 B of the IPC. Accused No.1 be released forthwith, if his custody is not required in any other case. Bonds furnished by accused Nos.2 and 3 shall stand discharged. The accused shall furnish bonds before the Trial Court under section 437(A) of Cr.P.C. within the reasonable time.

27. The appeals stand disposed of in above terms.

28. Ms Megha Bajoria, learned counsel for the Appellants be paid fees as per rules.

(SMT. ANUJA PRABHUDESSAI, J.)

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