

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

**CRIMINAL APPEAL NO. 725 OF 2002**

01 Machinder Vithal Lande,  
age: 31 years, Occ: Agri.,  
R/o Ambad, District Jalna.

02 Vithal Satvaji Lande,  
age: 56 years, Occ. and  
R/o as above.

03 Bhagubai w/o Vithal Lande,  
age: 46 years, Occ. and  
R/o as above.

Appellants

Versus

The State of Maharashtra

Respondent

Mr. Joydeep Chatterji, advocate for the Appellants  
Mr. R. D. Sanap, APP for the Respondent-State

**CORAM : SANDIPKUMAR C. MORE, J.**  
**Reserved on : 03<sup>rd</sup> OCTOBER, 2023.**  
**Pronounced on : 09<sup>th</sup> NOVEMBER, 2023.**

**JUDGMENT :**

1           The appellants-accused, by way of this appeal, have challenged the judgment and order dated 03.12.2002, passed by the Sessions Judge, Jalna (hereinafter referred to as the “learned trial Court”) in Sessions Case No. 109 of 1999. Vide

the impugned judgment and order, the learned trial Court has convicted the appellants-accused for the offences punishable under Sections 498A, 304B and 306 read with Section 34 of the Indian Penal Code. The appellants are sentenced to suffer rigorous imprisonment for one year each and fine of Rs.1000/- each, in default, rigorous imprisonment for one month each for the offence punishable under Section 498A of the Indian Penal Code. The appellants-accused are also sentenced to suffer rigorous imprisonment for seven years each for the offence punishable under Section 304B read with Section 34 of the Indian Penal Code. No separate sentence is awarded to them for the offence punishable under Section 306 of the Indian Penal Code.

2           The story of the prosecution can be summarised as under:

          The daughter of informant Sheshrao, by name Satyabhama, got married with appellant-accused no.1 in the month of May 1997. The appellants-accused nos. 2 and 3 are in-laws of Satyabhama. At the time of marriage of Satyabhama with appellant-accused no.1, a dowry of

Rs.5000/- was fixed and it was also agreed that the informant would give a cot and mattress to appellant no.1. However, the informant, though paid amount of Rs.5000/-, but was unable to give cot and mattress to appellant no.1. The appellants-accused started illtreating Satyabhama just after two months of the marriage on account of demand of cot and mattress. They illtreated Satyabhama mentally as well as physically by beating her. In addition to the said demand, appellant no.3 was abusing Satyabhama on account of not doing household work in proper manner.

3            P.W.1- Informant, at the time of Diwali, had gone to the house of appellants-accused for bringing Satyabhama, but at that time also, the appellants-accused quarreled with him on account of failure to give cot and mattress, as agreed. Thereafter also, when the informant took Satyabhama to the house of appellants after Diwali, all the appellants scolded Satyabhama in his presence & also abused and threatened him that if he fails to give cot and mattress, they would show him the result of the same within 2/3 months.

4           Thereafter on 09.01.1998 at about 11.00 p.m., P.W.-  
3 Mahatarba, who acted as mediator in the marriage of  
Satyabhama and appellant no.1, came to the house of P.W.1  
and told them that Satyabhama was missing from noon.  
Accordingly, Mhatarba brought one jeep and in the said jeep,  
informant-P.W.1, his brother and other relatives went in search  
of Satyabhama. Thereafter they, along with appellants, took  
search of Satyabhama but could not find her during the night.  
In the morning, they saw one piece of cloth lying near the well  
and also noticed dead body of Satyabhama in the said well.  
Appellant no.2, accordingly informed the Police that deceased  
fell down in the well. On that basis, A. D. was registered and  
the dead body of Satyabhama was taken out and inquest  
*panchanama* was prepared over the same.

5           During the course of inquiry, the informant lodged  
report against the appellants-accused alleging that  
Satyabhama was treated by the appellants-accused with  
cruelty on account of demand of dowry. He expressed before  
the police that Satyabhama might have committed suicide or  
the appellants-accused might have killed her and threw her

dead body into the well. As per the said complaint Exhibit-33, the police registered the crime and after completion of the same, charge sheet was filed against all the appellants. The learned trial Court conducted the trial and convicted the appellants, as mentioned above.

6           The learned Counsel for the appellants-accused vehemently argued that A. D. at Exhibit-41 was, in fact, registered on the instructions of appellant no.2 only. He pointed out that despite examination of six witnesses, the prosecution could not adduce trustworthy and reliable evidence so as to convict the appellants under Sections 498A, 304B & 306 read with Section 34 of the IPC. He pointed out that P.W.3 -Mhatarba, who had acted as mediator in the marriage of Satyabhama with appellant no.1, has not supported the prosecution and there are so many contradictions and discrepancies in the evidence of father, mother and uncle of the deceased. He pointed out that there were no external injuries found on the person of deceased in the *post mortem*, which suggested that soon before the death of Satyabhama, there was no illtreatment to her at the hands

of the appellants-accused. He relied on the following judgments:

{i} In the case of **Charan Singh @ Charanjit Singh Vs. The State of Uttrakhand**; 2023 ALL MR (Cri) 2698 (S.C.); and

{ii} In the case of **Devidas Dhansing Mali Vs. The State of Maharashtra**; (Criminal Appeal No.730 of 2002), decided on 15.09.2023.

7 On the contrary, the learned APP supported the impugned judgment and submitted that P.W.1-informant has deposed as per the prosecution story and he also lodged the First Information Report promptly on the same date at about 6.30 p.m. He pointed out that P.W. 3 – Mhatarba, though did not support the prosecution, but that was obvious since he is relative of the appellants-accused. According to the learned APP, the defence raised by the appellants-accused is not probable one and since unnatural death of Satyabhama took place within just one year of her marriage, the trial Court has rightly appreciated the same and convicted the appellants-accused in appropriate manner. He, thus, prayed for dismissal of the appeal.

8           Heard rival submissions and also perused the entire oral and documentary evidence on record.

9           It is significant to note that the learned trial Court has made observation on the basis of circumstances on record that death of Satyabhama was suicidal and not homicidal. Moreover, though the learned Counsel appearing for the appellants-accused in the trial Court, had pointed out the contradictions in the evidence of P. W. 1, P. W. 2 and P. W. 4, especially in respect of demand of cot and mattress, but the learned trial Court ignored the same while convicting the appellants-accused. It is to be noted here that no independent witness has been examined by the prosecution and the evidence, which is relied upon by the learned trial Court for conviction of the appellants is of only close relatives of the deceased.

10          On going through the evidence of P. W. 1, it appears that he has stated about only one incident when Satyabhama had come to his house at the time of Diwali. It is his say that

Satyabhama told him that all the accused were illtreating her on account of not giving bed and mattress. In the Complaint Exhibit-33 also, he has stated about the only one incident of Satyabhama's visit to his house. Though he deposed as per the prosecution story but in the cross examination, he has admitted that he did not know if his daughter met his brother Jalinder – P. W. 2 when she had come to his house for Diwali. He has also admitted that he did not lodge any report to the police despite having knowledge from his daughter about the alleged illtreatment and assault on her by the appellants-accused. He has also accepted that he did not even inform the police when the appellants-accused had allegedly threatened him at the time when he went to their house for bringing his daughter. He has accepted that he had not told the police while recording his complaint that he agreed to give cot and mattress in the marriage. Moreover, he also did not inform the police that he was threatened by the appellants that he would realise after 3/4 months if he did not pay for cot and mattress. Thus, from the evidence of P. W. 1 i.e. father of deceased, it appears that he has made improvement in the story.

11           From the evidence of P. W. 2 – Jalindar i.e. uncle of the deceased, it appears that dowry was fixed at Rs.5000/- and it was also agreed to give cot and mattress in the marriage. Though he has specifically stated that his brother informed him that accused threatened him and also abused him, however, this fact is not stated by P. W. 1 in his evidence. Moreover, this witness has deposed that when P. W. 1 had taken Satyabhama to the house of appellants, he informed him that he was abused and threatened by accused nos. 1 to 3. However, contradictory to this, P. W. 1 is saying that only accused no.2 threatened him. This witness has specifically stated that Satyabhama, at the time of Diwali, had told him that she was receiving illtreatment on account of failure to give cot and mattress to the appellants. However, P. W. 1 has admitted in his cross examination that he did not know whether Satyabhama had spoken to P. W. 2 about the illtreatment.

12           As against this, if we peruse the evidence of P. W. 4 – Neelabai i.e. mother of the deceased, she has deposed that appellant no.1 i.e. husband of Satyabhama was assaulting her

for cot and mattress and appellant no.3 – mother-in-law used to slap her and insult her by saying that she was having black complexion and not performing the household work properly. However, this fact, according to P. W. 4, was told to her by the deceased in the month of *Ashadh*. However, evidence of P. W. 1 and P. W. 2 is completely silent in respect of Satyabhama's visit to her parental house in the month of *Ashadh*. Even in the complaint, there is mention of only one incident of visit of Satyabhama to her parental house i.e. at the time of Diwali festival. Further, though P. W. 1 stated that he himself took Satyabhama to her maternal house after Diwali festival, but P. W. 4 i.e. her own mother is saying that Satyabhama was taken to her maternal house by appellant-accused no.2. She has specifically stated that appellant no.2 had come to their house to take back Satyabhama. Moreover, it appears that this witness has made improvement by making allegations of illtreatment at the hands of appellants since narration by her daughter about the illtreatment on account of cot and mattress by Satyabhama does not find place in her statement before the police. Therefore, evidence of prosecution definitely

suffers from contradictions and discrepancies on the aspect of illtreatment to Satyabhama by the appellants-accused.

13            Learned Counsel for the appellants-accused heavily relied on the judgment of the Hon'ble Apex Court in the case of **Charan Singh @ Charanjit Singh Vs. The State of Uttrakhand** (*supra*), wherein dowry death, on account of cruelty and harassment is discussed. The Hon'ble Apex Court, in para 11 of the judgment, has made following observations:

“11            The interpretation of Sections 304B and 498A IPC came up for consideration in ***Bajjnath's*** case (2017 ALL SCR (Cri) 104 (*supra*)). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:-

"25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

- (i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and
- (ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted *qua* the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) 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), or

(ii) 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty",

as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.”

It is further observed by the Hon’ble Apex Court, in para 12, as follows:

12 As the aforesaid case was also pertaining to dowry death, presumption under Section 113B of the Indian Evidence Act was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:-

"29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence.

The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable

contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof.

If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life

within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty".

The Hon'ble Apex Court, in para 16, has also observed thus:

16. The cruelty or harassment has to be soon before the death. In his evidence, Pratap Singh (PW-1), father of the deceased stated that two months after the marriage his daughter came to the parental home stating that the appellant was demanding motorcycle, however, she was sent back. Thereafter, she again came and apprised him that the demand of motorcycle was being pressed by the appellant. Besides motorcycle, land was also demanded.

There is nothing in the statement that any such demand was raised immediately before the death as the incidents sought to be referred to are quite old. He admitted in his cross examination that at the time of funeral, his mother-in-law and two

brothers-in-law were present. However, they were threatened not to lodge the complaint. Balbir Singh (PW-2), maternal uncle of the deceased, merely stated that at the time of marriage sufficient dowry was given by the father of the deceased.

However, later he heard that the appellant had demanded the motorcycle. In his cross-examination, he admitted that he was living at the distance of about one furlong from the house of the appellant. No dowry was demanded at the time of marriage of the deceased. He did not state that the deceased ever shared with him about the demand of dowry or any harassment on account of non-fulfilment thereof though he was living close to the matrimonial house of the deceased.

14           Thus, by considering the aforesaid observations, it is crystal clear that the Hon'ble Apex Court ultimately held that mere death of deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Sections 304B and 498A of the Indian Penal Code. In the instant case, death of Satyabhama is unnatural but in the light of aforesaid

observations, there is no evidence on record that there was cruelty to the deceased soon before her death. This fact can be conveniently confirmed since in the *post mortem* report, not a single external injury was found on the person of deceased Satyabhama.

15 Further, in the second judgment relied upon by the learned Counsel for the appellant, in the case of **Devidas Dhansingh Mali** (*supra*), this Court has referred the judgment of the Hon'ble Apex Court in the case of **Mariano Anto Bruno and another Vs. The Inspector of Police**, 2022 AIR (SC) 4994. In the said judgment, the Hon'ble Apex Court has discussed about the requirement of proof for convicting a person for the offences under Sections 306, 304B and 498A of the Indian Penal Code. For securing conviction under Section 306 of the Indian Penal Code, the Hon'ble Apex Court has made following observations:

“This Court has time and again reiterated that before convicting an accused under Section 306 of IPC, the Court must scrupulously examine

the facts and circumstances of the case and also assess the evidence adduced before it. In order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable.”

16            Similarly, the Hon’ble Apex Court has also made observations in respect of convicting a person for the offence under Section 498A of the IPC, which reads thus:

“Now, so far as conviction under Section 498A of IPC is concerned, except the statement of the prosecution witnesses PW-1 to PW-3 recorded after the incident, there is no other evidence to establish the allegation of any demand of dowry or ill treatment meted out to the deceased during her marriage. The fact that there were cordial relations between the families of

Appellant No.1 and the deceased is not disputed. The deceased committed suicide on 05/11/2014 and the complaint against the appellants were filed on 24/11/2014 i.e. 3 weeks after the death of the deceased.”

17 This Court, in para 13 of the judgment in the case of **Devidas** (*supra*), has made following observations:

“Though in the present case there was no delay in lodging complaint, but except statement of prosecution witnesses recorded after the incident there is no other evidence on record to establish allegations of any demand of dowry or ill-treatment meted out to deceased during her marriage. This can be evident from the fact that after her marriage till the unfortunate incident of committing suicide, not a single complaint was lodged before an appropriate authority either by her or her parents about such unlawful demand and her ill-treatment. Therefore, as per the aforesaid observations, the evidence brought on record by the prosecution as regards the ill-treatment of deceased Mangla at the hands of the appellant, is not sufficient to convict him under the aforesaid sections.

18           As such, from the aforesaid observations, it is clear that for securing conviction under Sections 498A, 304B and 306 of the Indian Penal Code, the prosecution has to establish the case beyond all reasonable doubts with the help of reliable and trustworthy evidence. Merely because the death of the wife is unnatural and within seven years of her marriage, the abetment to her suicide or her dowry death cannot be established, especially when the cruelty within the meaning of Section 498A of IPC is not proved beyond reasonable doubt.

19           Here in this case, though the father, uncle and mother of deceased Satyabhama deposed before the Court about the alleged cruelty or illtreatment to her at the hands of appellants, but there are so many contradictions and discrepancies among their versions. Moreover, certain exaggeration, on their part, is also there and it has come on record that though they deposed about the alleged illtreatment, but the same was not stated by them in their police statements. Thus, considering these contradictions, omissions and discrepancies on record and specially when the

informant, despite having knowledge about the alleged illtreatment, failed to make complaint of the same to the police, it cannot be said that the prosecution has established cruelty or abetment to suicide or dowry death of Satyabhama.

20           Therefore, considering all these aspects and in the light of the observations of the Hon'ble Apex Court in the aforesaid cases, I come to the conclusion that the learned trial Court has definitely erred in convicting the appellants-accused for the offences under Sections 498A, 304B and 306 read with Section 34 of the Indian Penal Code. As such, the appellants-accused are entitled for benefit of doubt.

21           In the result, following order is passed:

(i)           Criminal Appeal is hereby allowed.

(ii)          The impugned judgment and order dated 03.12.2002, passed by the learned Sessions Judge, Jalna in Sessions Case No.109/1999 is hereby quashed and set aside.

(iii) All the appellants-accused are hereby acquitted from the offences punishable under Sections 498A, 304B and 306 read with Section 34 of the Indian Penal Code. Their bail bonds stand cancelled.

(iv) The find amount paid by the appellants be refunded to them.

**SANDIPKUMAR C. MORE**  
**JUDGE**

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