



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 85 OF 2005

1. Santosh s/o Vishnupant Kalyankar
Aged : 30 years, Occ : Agriculturist,
R/o Rampuri, Tq. Manwath,
Dist. Parbhani.
2. Vishnupant s/o Nanabhau Kalyankar
Aged : 55 years, Occ : Agriculturist,
R/o Rampuri, Tq. Manwath,
Dist. Parbhani.
3. Shrimatibai w/o Vishnupant Kalyankar
Aged : 50 years, Occ : Household & Agri.,
R/o Rampuri, Tq. Manwath,
Dist. Parbhani.
[Appeal abated against respondent no.3
vide order dated 07.10.2024]

... Appellants
[Orig. Accused]

Versus

The State of Maharashtra
Through the Police Station
at Manwath, Dist. Parbhani.

... Respondent
[Orig. Complainant]

.....

Mrs. Rekha Mohale - Chaudhari h/f Mr. S. S. Chaudhari, Advocate for
the Appellant.

Mrs. Chaitali Chaudhari Kutti, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08.10.2024

Pronounced on : 15.10.2024

JUDGMENT :

1. By instant appeal, challenge is to the judgment and order of conviction dated 05.01.2005 passed by learned 2nd Adhoc Additional Sessions Judge, Parbhani in Sessions Trial No. 223 of 2001 recording conviction for offence under Sections 304-B and 498-A of the Indian Penal Code [IPC].

Since appellant no.3 Shrimatibai w/o Vishnupant Kalyankar died during pendency of this appeal, i.e. on 18.08.2021, the appeal is abated as against such appellant by order dated 07.10.2024.

FACTS IN BRIEF, LEADING TO TRIAL

2. In nutshell, in trial court, prosecution chargesheeted accused on the premise that, deceased Manjusha was married to appellant Santosh on 10.07.1999. Out of agreed dowry of Rs.25,000/-, Rs.15,000/- were paid and Rs.10,000/- were agreed to be paid at the time of Diwali. Manjusha was treated properly for one and half month. But thereafter husband and parents-in-law ill-treated Manjusha for remaining Rs.10,000/-. She reported it when she visited parents PW2 and PW3 at the time of Rakhi Pournima and Mahalaxmi festivals. On 21.10.1999, Manjusha suffered extensive burns and

succumbed. Therefore, PW2 mother lodged report which culminated into registration of crime.

3. Accused persons came to be chargesheeted and tried by learned 2nd Adhoc Additional Sessions Judge Parbhani, who on appreciation of evidence of six witnesses and documentary evidence, accepted the case of prosecution and passed the impugned judgment on 05.01.2005. Hence, the appeal.

EVIDENCE BEFORE THE TRIAL COURT

4. The role and status of the six witnesses examined by prosecution in support of its case and the sum and substance of their evidence can be summarized as under:

PW1 Dr. Subhash Rathod, autopsy surgeon is examined at Exhibit 36 and according to him, cause of death was cardio respiratory arrest due to peripheral circulatory failure due to burns 100% superficial to deep. He identified P.M. notes to be at Exhibit 37, which were issued by him along with another doctor i.e. Prakash Dake (PW4). He also identified CA report Exhibit 38.

PW2 Satyabhama Bhale is mother of deceased. In her evidence at Exhibit 43, she deposed as under :

“1. Marriage of my daughter Manjusha was performed with accused Santosh on 10.7.99. It was agreed that in the marriage Rs.25000/- in cash, five grams golden ring, two dresses, and cot and bed and household articles. Wrist watch shall be offered in the marriage. Prior to marriage Rs.15000/- were given as a dowry. Remaining Rs.10000/- was agreed to be given before Diwali festival. Other articles were given at the time of marriage. After marriage Manjusha went to house of accused for cohabitation and was maintained properly by in laws for the period of one or one and half month. Thereafter father in law and mother in law of Manjusha started to give ill-treatment to her by directing her to bring Rs.10000/-. Accused Santosh, his father Vishnupant and mother Shrimatibai were giving ill-treatment. Husband Santosh used to beat and mother in law Shrimatibai used to give abuses insulting Manjusha. Father in law Vishnupant was soliciting to have illicit relation with Manjusha. Said fact came to my knowledge when Manjusha visited my house for Rakhi Pournima at Hatta. Manjusha told Vithal Bajirao Chatte about the attempts made by her father in law with her self. Vithal Chatte could not tolerate such statement and he informed me about the same. Manjusha had told Vithal about ill-treatment by demanding remaining amount of Rs.10000/- as well as about misbehaviour of her father in law which was informed to me by Vithal Chatte.”

2. Prior to 2 to 3 days of Mahalaxmi festival, Manjusha and Santosh came to my house. Manjusha told me that ill-treatment is still going on and that compulsion is being made to her to allow accused Vishnupant to have sexual access with her. Manjusha also told that her husband Santosh and mother in law Shrimatibai are giving her ill-treatment directing to bring Rs.10000/- from parent for doing business by Santosh. She told that in the ill-treatment, she is insulted by using filthy language by directing her to bring money.

3. On 21.10.99 accused Vishnupant came to Hatta. He told my husband Bhanudas and son Santosh that Manjusha's hands and legs are burnt and for treatment she is admitted in hospital. Then my husband and son went to Civil Hospital Parbhani. That time I was out of station and I returned to home by 4 p.m. and was informed about visit of Vishnupant by my neighbour. Then myself also came to Civil Hospital Parbhani. By the time of my arrival in the hospital, Manjusha was no more and I was told that dead body is sent for post-mortem. I say Manjusha committed suicide because of misbehaviour of her father in law and because of ill-treatment by accused for bringing remaining amount of Rs.10000/- as ill-treatment could not be tolerated by Manjusha.”

PW3 Bhanudas Bhale is the father of deceased Manjusha. He is examined at Exhibit 47, wherein he deposed as under :

“1. My youngest daughter Manjusha was married with accused Santosh. Said marriage was performed on 10.07.99 at Hatta. At the time of marriage it was settled to provide Rs.25000/- by way of dowry, gold ring of 5 grams, wrist, cot, bed and household articles. Talk about providing said articles took place at the house of accused at village Rampuri. That time myself, Balasaheb Salpe, Vithal Chatte and one Balaji Limbekar were present. Dowry amount to the extent of Rs.15000/- was provided at the house of accused itself and that time I was accompanied by Vithal Chatte, Balasaheb Salpe and Balaji Limbekar. After providing Rs.15000/- I told accused that remaining Rs.10000/- will be provided at the time of Diwali and then after taking lunch we returned to our village. In the marriage I provided gold finger ring of 5 grams, cot, bed, house articles as per talk.

2. After marriage, Manjusha resumed cohabitation at Rampuri for the period of 1 and ½ months she was maintained properly. Prior to two days of Rakhi Pournima husband of Manjusha and she herself came to Hatta. It was Tuesday. She visited house of vithal Chatte for taking tea whereat she informed Vithal that her father in law with intention to have sexual access with herself is giving her physical and mental ill-

treatment. Vithal Chatte had informed said fact to my wife.

3. *Prior to two days of Mahalaxmi festival, Manjusha and her husband came to my house. She disclosed my wife that outstanding amount of Rs.10000/- are needed for the business. She further told my wife that for said amount she is being ill-treated by her father in law, mother in law and husband. She also told my wife that her father in law is again giving her physical and mental ill-treatment as was previously attempted by him. Then myself and Balasaheb convinced accused Santosh assuring to provide remaining Rs.10000/- at the time of Diwali. By convincing them I sent Manjusha with Santosh for cohabitation and they went to Rampuri.*

4. *On 21.10.99 at noon time when I was on duty, father in law of Manjusha accused Vishnu came to my office in a jeep. By calling me outside he told me that hands and legs of Manjusha are sustained in burns and for treatment she is admitted in Civil Hospital at Parbhani.”*

PW4 Dr. Prakash Dake, another autopsy doctor, who conducted postmortem along with PW1 Dr. Subhash Rathod. He also identified P.M. notes Exhibit 37 as well as C.A. report Exhibit 38.

PW5 Balaji Salpe is examined at Exhibit 51 and relevant portion of his evidence is as under :

“1. I know accused no.1 to 3 present in the dock. I also know PW Satyabhamabai Bhale. PW Satyabhama is accepted sister of me. I am residing at Wadad and PW Satyabhama is residing at Hatta. I know PW Satyabhama from 8 years. Husband of PW Satyabhama i.e. PW3 is Ex-employee of District Central Co-operative bank branch Hatta. I used to visit said bank for my work. Therefore we were acquainted with each other. On account of the same I was on visiting terms at the residence of Satyabhama. At the time of marriage negotiation of Manjusha I was present. In the said marriage it was settled that Rs.25,000/-, 5 gram gold ring, two dresses and one H.M.T. watch were agreed to be provided.

2. For 3 months Manjusha cohabited at the house of accused and came to house of father at time of Rakhi Festival. That time accused Santosh was also with her. Manjusha and Santosh both told me that his parents are demanding Rs.10000/- remaining outstanding and same shall be provided. She also told that for payment of above amount there is ill-treatment to herself. She told that she is given ill-treatment by her in laws, accused no.2 and 3 for money. I convinced Santosh and Manjusha by assuring them to provide money at the time of Diwali. Then They went to Rampuri.

3. *Again for Mahalaxmi festival Santosh and Manjusha came to Hatta and they met me. That time also I convinced them to provide money at the time of Diwali. At that time of Mahalaxmi festival Manjusha told me that her father in law is demanding money and same shall be provided. At the time of Rakhi festival I did not make inquiry with Manjusha about her matrimonial life. She told me that by demanding money her father in law is giving ill-treatment. She told me that there is ill-treatment by her father in law and mother in law. She also told me that her husband also give ill-treatment. Thereafter, Manjusha and Santosh went to Rampuri.*

4. *On 21.10.99, I had been to Parbhani for my work. Brother of Manjusha by name Santosh met me at Parbhani. He told me that Manjusha had sustained burns and is admitted in the hospital. I had been to hospital and I saw that Manjusha was burnt to major extent.”*

PW6 Vithal Chatte, another acquaintance of parents of deceased, deposed that :

“1. I know the accused present in dock. I also know deceased Manjusha. Mother of deceased Manjusha is my accepted sister. In the marriage of Manjusha at the time of settlement with Santosh it was decided amongst

parties Rs.25,000/- in cash, golden ring, wrist watch, cot, bed and two dresses will be offered in the marriage. Marriage was performed at Hatta. In the marriage articles stated earlier were provided together with money and Rs.10000/- were agreed to be provided at the time of Diwali festival. After marriage Manjusha resumed cohabitation with accused. For the period of one and half months she was maintained happily. Prior to 2 days of Rakhi pournima, Manjusha came to Hatta. I had asked her about her health upon which she told me that her father in law is seeking sexual access to her. By saying so she started to weep. I narrated said fact to the mother of Manjusha.

2. *Thereafter before 2 days of Mahalaxmi, Manjusha again visited Hatta. That time Manjusha met me and told me that her in laws and husband are giving her ill-treatment by demanding remaining amount of Rs.10000/- and same shall be arranged. She told that she was being ill-treated by beating. I convinced Manjusha to make arrangement of money at the time of Diwali. After that Manjusha went to Rampuri for cohabitation. On 21.10.99 I was in the market at Hatta. I returned home after purchasing articles. That time I came to know that Manjusha had sustained burn injuries and is admitted in hospital at Parbhani.”*

SUBMISSIONS**On behalf of the appellants :**

5. Learned counsel would submit that, case has not been proved beyond reasonable doubt. According to her, necessary ingredients for attracting the charges are not available in the prosecution evidence. Learned counsel pointed out that parents merely speak about ill-treatment being meted out in the backdrop of demand of remaining Rs.10,000/- dowry, but according to her, at the first count, there is no independent evidence that any dowry was decided to be given prior to marriage. She pointed out that even there is no supportive evidence that Rs.15,000/- by way of part payment were paid to the accused.

6. Learned counsel emphatically submitted that parents are merely alleging cruelty without specifying instances. Allegation of beating is attributed to husband alone, but whenever deceased went to her parents' place, he accompanied her but was never questioned by either of the parents of deceased.

7. As regards to demand of Rs.10,000/- is concerned, learned counsel submitted that parents and other witnesses themselves speak of settlement that said amount was agreed to be given at the time of

Diwali and therefore there was no question of demand or ill-treatment in the month of August during which festival of Rakhi or Mahalaxmi fell. Consequently, it is her submission that allegations are false and baseless.

8. Learned counsel also pointed out that PW5 and PW6, who claim that they had brotherly relations with informant, are not consistent about talks of settlement and dowry. That, even they both speak of merely ill-treatment, without elaborating role and as to when exactly and what type of ill-treatment was meted out to Manjusha.

9. Learned counsel pointed out that in this case, very Investigating Officer, who was material witness, has not been examined in spite of availability. Consequently, according to her, defence is deprived of opportunity to question the testimonies, the material omissions and contradictions in their testimonies.

10. Lastly, it is submitted that important witnesses who were party to the marriage settlement and dowry, are not examined. Informant's son and daughter are also not examined to corroborate the testimony of parents. She pointed out that there is acquittal of all accused from charge of Section 306 IPC. Therefore, according to her, when

evidence on both count, i.e. Sections 498-A and 304-B, being weak, learned trial court ought not to have recorded guilt and hence she prays for interference by allowing the appeal.

On behalf of the respondent State :

11. Opposing the above submissions as well as appeal, learned APP would point out that barely after two months, there was ill-treatment. Deceased visited during Rakhi festival as well as Mahalaxmi festival and reported treatment meted out to her by husband and parents in law. She pointed out that there are specific allegations against husband for beating, allegations of abuse in filthy language to mother in law where as, father in law is attributed allegation of seeking sexual favours. That, deceased reported the same to PW6 Vithal, who had brotherly relations with her mother. Said witness duly informed informant and her husband. That, informant visited place of accused to question the same and there was assurance that such instances would not be repeated, and therefore Manjusha was allowed to cohabit.

12. Learned APP further submitted that in spite of so, husband and in laws continued there previous behaviour. They again raised demand of remaining Rs.10,000/- and maltreated deceased. Only

because of such ill-treatment, Manjusha immolated herself. The incident took place while she was in custody of appellants. They were answerable for the burns. They have not offered plausible explanation and therefore she supports conviction recorded by learned trial Judge and prays to uphold it.

13. In support of above submissions, learned APP seeks reliance on the following rulings :

1. *Ananta s/o Ashroba Alse v. State of Maharashtra* 2014 (2) ABR (CRI) 634,
2. *Gurmeet Singh v. State of Punjab* AIR 2021 SC (CRI) 1296,
3. *V. K. Mishra and another v. State of Uttarakhand and another* (2015) 9 SCC 588,
4. *State of Karnataka by Gandhinagar P.S. v. Basavaraja* AIR OnLine 2024 SC 343,
5. *Munna Lal v. State of Uttar Pradesh* AIR 2023 SC 634,
6. *Ram Gulam Chaudhury and others v. State of Bihar* AIR 2001 SC 2842.

ANALYSIS

14. Here appellants faced trial for commission of offence under Section 498-A, 306 and 304-B r/w 34 of IPC. Learned trial Judge acquitted all 3 accused from charge of Section 306 IPC. Therefore, in appeal, it is to be seen whether above remaining charges for which conviction is recorded are proved beyond reasonable doubt. Admittedly, only six witnesses are examined. Two of them are medical experts.

Crucial evidence is therefore of parents i.e. PW2 and PW3 as well as PW5 and PW6 who allegedly had brotherly relations.

Charge under Section 498-A IPC

15. Before adverting to the evidence, and re-appreciating the same, it would be apt to reproduce the essential ingredients for attracting charge of Section 498-A IPC as below :

- (1) A woman was married
- (2) She was subjected to cruelty;
- (3) Such cruelty consisted -
 - (i) Any willful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life,

- (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the unlawful demand;
- (iii) the woman was subjected to such cruelty by her husband or any relation of her husband

16. In a landmark case of ***Girdhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, this Court gave succinct enumeration of the object and ingredients of Section 498-A IPC as under :

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is

latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."

The above requirements are insisted upon and discussed in numerous pronouncements and a few which could be named are, ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108; ***State of Andhra Pradesh v. M. Madhusudhan Rao*** (2008) 15 SCC 582 ; ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604 and ***K. Subba Rao v. The State of Telangana*** (2018) 14 SCC 452.

17. On meticulous examination of evidence of **PW2 informant** mother, it is emerging that after giving date of marriage as 10.07.1999 and deposing about Rs.25,000/- decided by way of dowry and Rs.15,000/- paid at the time of marriage and remaining Rs.10,000/-, according to her, was to be given before Diwali, her evidence shows that Manjusha was treated properly for one and half months and thereafter, she paid two visits i.e. at the time of Rakhi Pournima and Mahalaxmi festivals. As per Indian calender of year 1999, both these festivals fell in August and September respectively. Her evidence is that, father-in-law and mother-in-law gave ill-treatment. As pointed out, except deposing this much, she neither

speaks of its nature nor quotes any instances nor specifies role of each of the parents in law. Then she alleges beating at the hands of husband, and hurling abuses are attributed to mother-in-law and against father-in-law, she alleges that he sought sexual favours. But about this she claims to have learnt from PW6 Vithal. It is surprising that neither she, in spite of being mother, nor her husband PW3 were reported directly by Manjusha regarding the above. If she has learnt from PW6 Vithal, then obviously informant has mere hearsay information. She claims to have paid visit, on the very next day of hearing about it, to the house of accused to question and claims to have sought assurance of proper treatment. During her such visit, she claims that she was accompanied by her daughter Manjusha and even accused Santosh said to be accompanying her. During second visit of Manjusha at the time of Mahalaxmi, she claims to have learnt that ill-treatment was continued and she attributes demand of Rs.10,000/- raised by parents-in-law for business of accused no.1. thus, only evidence is that there was ill-treatment by way of insults, abuses and she does not quote when husband beat Manjusha.

While under cross, she is unable to state distance between her village Hatta and village of accused i.e. Rampuri. She answered that proposal for marriage was suggested by one Balasaheb Limbekar, but

this person is not examined, who was said to be the mediator. His evidence was essential on both counts, i.e. alleged dowry decided, part paid and part agreed to be paid. She admitted that prior to settlement of marriage, information was received that accused were well off. She answered that she was not present at the time of marriage negotiations which, according to her, took place at **Rampuri**. Therefore, obviously she was not present at the time of settlement of marriage during which talks of dowry were said to be held.

In further cross para 6 she answered that Rs.15,000/- were paid by her husband in presence of her son, and one Balasaheb Salpe, but even said person is not examined to corroborate part payment. She is unable to give date of making part payment and also admitted that she was not present personally at the time of paying Rs.15,000/-. She is unable to state in which month she learnt about ill-treatment to Manjusha. She answered that after coming to know about attempts of accused father-in-law seeking sexual access from Manjusha, she asked her son and husband to visit Rampuri and make inquiry. Her such answer appears to be contrary to the one which she stated in chief, as in para 1, she deposed that after hearing from Vithal about above, she could not tolerate and on the next day itself, she herself, her daughter Manjusha and accused Santosh went to Rampuri to question father-

in-law. She admitted that she even did not request PW6 Vithal to go and inquire or question father-in-law about the above even when she claims that she had brotherly relations with him and it is through him she had learnt about sexual favours sought by father-in-law. She claims that after hearing from Manjusha at the time of Mahalaxmi regarding ill-treatment in the backdrop of Rs.10,000/-, she deputed Balaji to convince accused. Rest of the cross is on getting news of burns, going to Rampuri.

18. On analyzing evidence of **PW3 father**, he deposed that it was settled to provide Rs.25,000/- by way of dowry. During the talks he himself, Balasaheb, Vithal Chatte and Balaji Limbekar were present. Dowry amount to the extent of Rs.15,000/- was provided at the house of accused itself and accused were told that remaining Rs.10,000/- would be provided at the time of Diwali. Even according to him, Manjusha was maintained properly for one and half month. Two days prior to Rakhi Pournima, accused husband and daughter came to Hatta. She visited house of PW6 Vithal and informed him about intention of father-in-law to have sexual access and on such count, she was given **physical and mental ill-treatment**. According to him, his wife, Balasaheb Salpe, daughter and her husband together went to Rampuri and after wife's return, he claims to have learnt that father-

in-law apologized and assured to treat properly. Two days prior to Mahalaxmi festival, he has deposed that, Manjusha and her husband both came to their house. His daughter disclosed to his wife that outstanding amount of Rs.10,000/- was needed for business and she also reported to his wife that there was ill-treatment by father-in-law, mother-in-law and husband. He claims to have given understanding to accused Santosh, who was accompanying his daughter, and she was sent back and then on 21.10.1999 news of burns was received. He claims that in the hospital, she told that due to ill-treatment of accused, she immolated herself.

While under cross, he answered that Balaji Limbekar mediated the marriage negotiations, but he admitted that, fact of ill-treatment was not informed to the mediators, nor he made attempt to ask them to convince accused to not to give ill-treatment. He too is unable to give date and month of narration made to him by his wife. He answered that after attending funeral, on that very day they returned to Hatta and in spite of there to be police station, he did not lodge report. In cross, he is also unable to state exactly when, i.e. on which date and month Rs.15,000/- were paid to accused. Rest is all denial.

19. Therefore, on re-appreciation of evidence of parents of Manjusha, it is clear that after marriage dated 10.07.1999, only two visits were paid by Manjusha. During both visits, husband was accompanying her. PW2 and PW3 are not even consistent about ill-treatment. PW2 is silent about physical and mental ill-treatment as deposed by PW3. According to them, said ill-treatment was for remaining Rs.10,000/- dowry, but as discussed above, both are not in a position to state when part payment of Rs.15,000/- was made. As pointed out, mediators at the time of settlement namely, Balaji Limbekar and Balasaheb are not examined for the best reasons known to prosecution. Both parents are categorical that remaining Rs.10,000/- were agreed to be paid at the time of Diwali. If it was so, then it is doubtful as to why in spite of such settlement, demand was raised in the month of August and September only. Informant does not speak about Balasaheb Salpe accompanying her to question father-in-law for seeking sexual favours, however her husband PW4 names this person for accompanying his wife to question father-in-law. As stated above, so called Salpe is not examined even when he was important witness.

20. Cross of both above witnesses i.e. parents shows that they are unable to state when and in what form ill-treatment was inflicted.

There are mere allegations that husband beat, but when, is not stated. Likewise when and in what manner mother-in-law abused and for what count, is not clarified by both the witnesses. It is surprising that allegations against father-in-law are not reported to parents by Manjusha, rather are reported to PW6 Vithal, who was not in relation and also has not mediated or negotiated the marriage.

21. Now on appreciating evidence of PW5 Balaji and PW6 Vithal, it is noticed that **PW5 Balaji** is resident of Wadad. He also claims to have brotherly relations with informant. In para 2, he deposed that for three months, Manjusha cohabited with accused and she had come for Rakhi festival to her father's house with her husband. He states that both, Manjusha as well as her accused husband, told him that his parents are demanding Rs.10,000/- which was remaining outstanding. Therefore, this witness is attributing demand to even deceased. He has not stated in his chief that he had come to Hatta and had met both of them. It was expected of him to elaborate about his visit to Hatta because he is resident of Wadad and not Hatta. It is noticed that this witness has not uttered a word about alleged sexual favours sought by father-in-law and he merely deposed that during Rakhi festival and during Mahalaxmi festival there was demand of money and father-in-law used to give ill-treatment. Therefore, as

regards to allegation against father-in-law for seeking sexual favours are concerned, the same are not finding support from this independent witness. He has admitted in cross that he himself and Vithal Chatte mediated the marriage, but he is unable to state on which date and day settlement of marriage took place, date on which Rs.15,000/- were provided. He answered that at the time of disclosure by Manjusha about demand of accused and giving ill-treatment, he himself and Vithal Chatte were present, but PW6 Vithal does not name him to be present when Manjusha came for Rakhi Pournima or for Mahalaxmi.

Even this witness PW5 stated that it was agreed that remaining Rs.10,000/- would be provided at the time of Diwali. PW6 also deposed about such decision and agreement. Therefore, again question arises that when it was decided and agreed that alleged remaining amount was to be paid at the time of Diwali, why would there be demand by father-in-law alone for remaining Rs.10,000/- two months prior to Diwali itself.

22. **PW6 Vithal**, also a crucial witness, claims that during Rakhi festival, when Manjusha came to her father's house, she visited his house too, and when he questioned her about her well being, she

allegedly told him that father-in-law is seeking sexual access and therefore, he reported this to informant. Resultantly, unlike mother of deceased, testimony of this witness, who is also very important witness for prosecution, is silent about demand of Rs.10,000/-. He merely speaks of father-in-law seeking sexual favour and access, that too only when he questioned her well being. He deposed that he learnt from her at the time of visit of Mahalaxmi that she was ill-treated by beating, but by which of the accused, has not been clarified by him. This witness who claims to be party to the negotiations, is giving contrary version to that of informant, as according to him, marriage negotiations took place at Hatta. But informant deposed about settlement taking place at Rampuri. Therefore, who amongst them is giving correct version is a question. His cross shows that he had been to police station along with informant on 23.10.1999 but he did not give statement that day, rather he admitted that he gave statement after two to three days. There is omission in his testimony to the extent that there was beating to Manjusha by accused and same was disclosed to him by Manjusha.

23. Therefore sum total of evidence of above four witnesses is that after marriage, only 2 visits were paid by deceased, that too in the company of her husband. Witnesses are alleging ill-treatment in the

form of beating, without specifying when, and abuses hurled but of what sort and on what count is not coming on record. Testimony of very mediator Balaji PW5 is silent about allegation of sexual favour sought by father-in-law. On the contrary, father in law is the person who has come in the jeep to inform informant about the burns and he took PW3 father to Parbhani. Funeral is conducted at village of accused. In spite of police station available, report is not lodged on the day of funeral. Rather, FIR is lodged on 23.10.1999. Trial court has already disbelieved prosecution version regarding abetment to suicide. Episode of burns is of 21.10.1999. Last visit of deceased to complainant was during Mahalaxmi festival which fell in August-September. There is a gap of more than one month between her last visit and episode of burns. There is no material suggesting ill-treatment in proximity to episode of burns triggering suicide.

24. Learned trial Judge has recorded guilt for offence under Section 304-B IPC which provides for punishment for dowry death when unnatural death takes place within seven years of marriage. Before analyzing evidence on that count, it would be fruitful to reproduce and deal as well as discuss the settled law on said charge.

“304-B. Dowry death. -

(1) Where the death of a woman is caused by any burns or

bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

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

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

25. In ***Bansi Lal v. State of Haryana***, (2011) 11 SCC 359, the Hon'ble Apex Court has held that, while considering case under Section 304-B, **cruelty has to be proved during close proximity of time of death** and it should be continuous and such continuous harassment, physical or mental, by accused, should make life of deceased miserable, which may force her to commit suicide.

26. In ***State of Rajasthan v. Girdhari Lal***, (2013) 15 SCC 269, the Hon'ble Apex court has observed that the period which can come within the term “soon before” cannot be put within the four corners of

time-frame. It is left to the court for its determination depending upon the facts and circumstances of each case. On facts, though in the past there was cruelty and harassment in connection with dowry demand, yet there was no evidence on record to come to a definite conclusion that soon before her death the cruelty and harassment which the deceased suffered was for or in connection with any demand of dowry, in such situation the presumption under Section 113-B of the Evidence Act also cannot be drawn.

27. Likewise, in ***Manohar Lal v. State of Haryana***, (2014) 9 SCC 645, the Hon'ble Apex Court has observed that, as per definition of "dowry death" in S. 304-B IPC and wording in presumptive S.113-B, Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". The Hon'ble Apex Court further observed that the proximity test has to be applied keeping in view the facts and circumstances of each case and the facts must show existence of a proximate live link between effect of cruelty based on dowry demand and death of the victim.

28. Similarly, in ***Sher Singh v. State of Haryana***, (2015) 3 SCC 724, the Hon'ble Apex Court held that there must be live link and

proximity between cruelty emanating from dowry demand and death of woman. The words “soon before her death” indicate that there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words “soon before her death”, to bring Section 304-B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time. The demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC.

29. The Hon’ble Apex Court in ***Dinesh v. State of Haryana*** (2014) 12 SCC 532, para 15 to 17, crystallized what is meant by phrase “soon before death”, which reads as under:

“15. The expression “soon before” is a relative term as held by this Court, which is required to be considered under the specific circumstances of each case and no straitjacket formula can be laid down by fixing any time of allotment. It can be said that the term “soon before” is synonymous with the term “immediately before”. The determination of the period which can come within term “soon before” is left to be determined by the courts

depending upon the facts and circumstances of each case.

16. *In Kans Raj v. State of Punjab (2000) 5 SCC 207, it was held that in case of dowry death the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand of dowry is shown to have persisted, it shall be deemed to be “soon before death”.*

17. *Prima facie we are of the view that neither definite period has been indicted in the aforementioned section nor the expression “soon before” has been defined. In Dhian Singh v. State of Punjab (2004) 7 SCC 759, this Court held that :*

“7. The contention of the appellant’s counsel is that even if it is proved that there was cruelty on account of demand of dowry, such cruelty shall be soon before the death and there must be proximate connection between the alleged cruelty and the death of the deceased. It is true the prosecution has to establish that there must be nexus between the cruelty and the suicide and the cruelty meted out must have induced the victim to commit suicide. The appellant has no case that there was any other reason for her to commit suicide. The evidence shows that the first appellant had demanded dowry and he had sent her away from his house and only after mediation she was taken back to the appellants’ house and death happened within a period of two months thereafter. These facts clearly show that the suicide was the result of the harassment or cruelty meted out to the deceased. The presumption under Section 113-B of the Evidence

Act could be invoked against the appellant and the Sessions Court rightly found the appellant guilty of the offence punishable under Section 304-B IPC and Section 201 IPC.”

30. The germane of above provision is that soon before death, i.e. in close proximity, deceased must have been shown to be subjected to cruelty in the backdrop of dowry demand and consequently, death must have been unnatural one.

31. Keeping in mind above legal precedent, as stated above, after festival of Mahalaxmi, there was no meeting between informant and deceased for a period of over one month, as occurrence had taken place on 21.10.1999. What Section 304-B IPC contemplates is harassment for dowry soon before the unnatural death. Here, there is nothing in support of dowry demand in proximity to the episode of 21.10.1999. Resultantly, in the considered opinion of this Court necessary ingredients for attracting said charge are also missing in the case in hand.

32. Learned APP has relied on the judgment of this Court in **Ananta s/o Ashroba Alse** (supra). However, facts in that case are distinct. There was convincing evidence that deceased therein had committed suicide and the theory of defence that burns were accidental was not

acceptable. Evidence of PW2 and PW3 in that case was found to be convincing on the point of Section 498-A IPC. There was no plausible explanation from husband for the burns and therefore, appeal was partly allowed. Judgment under challenge was found to be well reasoned and most possible view that could emerge on appreciation.

In the rulings of Hon'ble Apex Court in ***Gurmeet Singh*** (supra) and ***State of Karnataka by Gandhinater P.S.*** (supra) relied by learned APP, legal proposition as regards Sections 498-A and 304B IPC has been discussed of which there is no dispute, as it is settled legal position.

The judgment of Hon'ble Apex Court in ***Munna Lal*** (supra), relied by learned APP was on the point of delayed recording of statements of witnesses, of which no explanation was offered by the Investigating Officer. On what count such ruling comes to the aid of prosecution has not been elaborated.

In the case of ***Ram Gulam Chaudhury*** (supra), relied by learned APP, in the facts of the said case, the Hon'ble Apex Court has held that non-examination of Investigating Officer does not cause prejudice to the accused.

Even otherwise, facts in the above referred rulings relied by learned APP differ materially than the facts in the case in hand and each case has a distinct feature.

33. In view of the above discussion, appellants succeed. Hence, following order is passed :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants, i.e. appellant no.1 Santosh s/o Vishnupant Kalyankar and appellant no.2. Vishnupant s/o Nanabhau Kalyankar, by learned 2nd Adhoc Additional Sessions Judge, Parbhani in Sessions Trial No. 223 of 2001 under Sections 304-B and 498-A r/w 34 of IPC on 05.01.2005 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 304-B and 498-A r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.

[ABHAY S. WAGHWASE, J.]