



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 112 OF 2002

1. Ijaj Ahmad Riyaz Ahmed Qureshi,
Age-25 years, Occ : Agri,
2. Riyaz Ahmad Mahbubsab Qureshi,
Age-55 years, Occ : Agri,
3. Mumtaj w/o Riyaz Ahmed Qureshi,
Age-50 years, Occ: Agri,
All R/o Naldurg, Tq. Tuljapur,
District : Osmanabad. ... Appellants

Versus

The State of Maharashtra ... Respondent

.....
Mr. S. G. Ladda, Advocate for the Appellants.
Mrs. Uma S. Bhosle, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13.06.2024
Pronounced on : 19.06.2024

JUDGMENT :

1. The appellants have take exception to the judgment and order of conviction recorded by Ad-hoc Additional Sessions Judge, Osmanabad in Sessions Case No. 111 of 2001, convicting present appellants for offence punishable under Sections 498-A and 306 r/w 34 of the Indian Penal Code [IPC] and sentencing them to undergo imprisonment for one year and two years respectively, for each of the offences.

FACTS LEADING TO TRIAL ARE AS UNDER

2. Crime was registered at Naldurg Police Station on report by father of deceased Nasimabee, namely, Mohd. Khalid (PW1), who reported that marriage of his daughter Nasimabee was performed with accused no.1 Ijaj on 14.06.2001 and after marriage, she went to cohabit with her husband at Naldurg. 10 days after marriage, when she visited her parents' house, she informed that there is demand of Rs.1,00,000/- for making payment towards land consideration along with demand of *maher*. Informant father claims that on 07.07.2001, telephonic message was received that Nasimabee has hanged herself. Therefore, they all rushed to Naldurg. After postmortem, last rituals were conducted and thereafter, he lodged complaint Exhibit 26, on the strength of which, police registered crime for offence punishable under Sections 498-A and 306 of IPC.

3. PW7 P.S.I. Patil, who was entrusted with investigation, carried out the same and on gathering sufficient evidence against the accused persons, he chargesheeted them, i.e. husband and parents-in-law. Learned Ad-hoc Additional Sessions Judge, who conducted trial, recorded evidence of in all 7 witnesses, whose testimonies were adduced by prosecution. On appreciating the same as well as the

documentary evidence, learned trial Judge reached to a finding that prosecution has succeeded in proving the charges and consequently sentenced all three accused by its judgment and order dated 14.02.2002.

Precisely above judgment and order of conviction is now taken exception to, by filing instant appeal on various grounds raised in the appeal memo.

SUM AND SUBSTANCE OF THE EVIDENCE IN TRIAL COURT

4. Role and status of the prosecution witnesses and the sum and substance of their evidence is as under:

PW1 Mohd. Khalid is father of deceased Nasimabee. In his evidence at Exhibit 25, he deposed that Nasimabee was married to accused no.1 Ijaj on 14.06.2001. After marriage, she went to cohabit with her husband and in-laws at Naldurg. 10 days after marriage, his daughter was sent to his house. That time, she stated that there was demand of Rs.1,00,000/- for making payment towards consideration of land and said demand was raised by husband, mother-in-law and father-in-law. He further deposed that she also told him that she was asked not to come unless she brings Rs.1,00,000/-. That, he tried to collect the amount during two to four days. Father-in-law of Nasimabee came to take her and she was sent with him. This witness paid

her meher amount of Rs.5,051/-. On 07.07.2001, Jamil telephoned him in the afternoon at 2.00 p.m. and informed him that his daughter has died due to hanging. Therefore, he and family members went to Naldurg. When they reached there, nobody was present in the house of accused. All family members had fled. He further deposed that they peeped through the window of the house of accused and saw dead body of his daughter. Police opened the door. They entered the house. Dead body was seen lying on the ground with a rope around the neck. After conducting inquest panchanama and spot panchanama, body was sent for postmortem. After postmortem, he approached police and lodged report Exhibit 26.

PW2 Dr. Wadne is the autopsy doctor, who deposed that he noted external and internal injuries and after conducting postmortem, he opined that cause of death is due to asphyxia due to hanging. He identified the postmortem report Exhibit 30.

PW3 Fardulanbegum is mother of deceased. In her evidence at Exhibit 31, she deposed about marriage of her daughter with accused Ijaj and about articles given in marriage. According to her, after 10 days of marriage, her daughter was brought to the house as per custom. At that time, she informed that her husband and in-laws were asking her to bring Rs.1,00,000/- for purchase of land. According to this witness, her daughter was told that unless the amount is brought, she would not be allowed to come back. All family members made efforts to raise the amount but they could not collect such amount. Father-in-law of deceased came to take her back. After four to six days,

phone call was received that their daughter died due to hanging. They all went to the house of accused, but nobody was present there. They saw through the window as the three doors were latched from inside. She also noticed that one tin sheet from the roof was removed. Thereafter police came. Funeral was done. According to her, there was ill-treatment to her daughter for Rs.1,00,000/- and she could not bear the ill-treatment and so she hanged herself.

PW4 Chunumiya is the paternal uncle of deceased. He also deposed about marriage of Nasimabee with accused Ijaj. That, Nasimabee was called after 10 days of marriage. He claims that he and his wife went to the house of his brother after arrival of Nasimabee there, and at that time she told in nervous mood that father-in-law, mother-in-law and husband have asked her to bring Rs.1,00,000/-. After eight days, father-in-law came and took her back. They could arrange Rs.5,051/- and same was given when she was sent to her matrimonial house. That, phone call was received that Nasimabee hanged herself. He also deposed that they reached her matrimonial house and saw that accused persons were not in the house. All doors were latched from inside. They saw dead body with a rope tied around neck. Police prepared inquest panchanama and spot panchanama. Even according to him, as amount of Rs.1,00,000/- was not paid, Nasimabee committed suicide.

PW5 Police Head Constable Nagarsonge is the PSO who was working at Naldurg Police Station. On 07.07.2001, he registered crime and handed over investigation to PW7.

PW6 Police Head Constable Ghule noted Accidental Case [AD] No. 38/2001.

PW7 P.S.I. Patil is the Investigating Officer and he deposed about all steps taken during investigation till filing chargesheet.

SUBMISSIONS

On behalf of the appellants:

5. Alleging false implication, learned counsel for the appellants pointed out that prosecution had miserably failed to establish the charges beyond reasonable doubt. According to him, there is no convincing, cogent and reliable evidence in support of any of the charge i.e. under Sections 498-A and 306 of IPC. Learned counsel took this court through the testimony of parents and uncle of deceased and would submit that none of the prosecution witnesses have defined or elaborated as to what was the ill-treatment or harassment. He pointed to the legal requirements of Section 498-A IPC as contemplated in law and would submit that in the prosecution evidence in this case, necessary ingredients to attract cruelty are patently missing. He pointed out that neither father nor mother of deceased have uttered or whispered about manner or mode of alleged ill-treatment. Thus, according to him, very charge under Section 498-A IPC in absence of evidence is misplaced.

6. He submitted that though there is accusation of demand of Rs.1,00,000/- for purchase of land, very Investigating Officer in his cross has admitted that land was purchased way back in 2000 and therefore, there was no question of demanding Rs.1,00,000/- towards consideration for purchase of land and hence, according to him, such allegations are apparently false and afterthought, to merely implicate on account of annoyance. On the contrary learned counsel for the appellants would emphatically and strenuously submit that deceased Nasimabee herself was not happy with the marriage. That, her conduct post marriage, brought on record from her own mother while under cross, is indicative of the fact that she did not like appellant husband. That, she did not accompany accused father-in-law back to the matrimonial house when he himself went to take her. That, in fact she was forcibly taken by her uncle and she was not willing to alight from the vehicle. That, cross of parents and uncle is on such lines and defence has succeeded in eliciting factual aspects from their testimony. Nasimabee was not ready to cohabit. According to learned counsel, marriage seems to be against her wish and will and therefore she might have hanged herself.

7. As regards the charge under Section 306 of IPC, he pointed out that there is no element of abetment or inducement. Roles of

appellants are not defined. That, husband and father in law were not available in the house. He pointed out that, from the very prosecution evidence it is emerging that doors of the room, in which deceased hanged herself, were bolted from inside and the tin roof was required to be dismantled and removed to gain entry. Witnesses are admitting to that extent. Therefore, it is submitted that, it is clear that accused were not around when deceased hanged herself by closing the doors of the room. According to him, there is no piece of evidence about any inducement or abetment or even ill-treatment or cruelty in proximity to said hanging. Consequently, it is his submission that under such circumstances, none of the appellants ought to have been charged for abetment of suicide.

8. Learned counsel for the appellants further pointed out that independent witnesses like neighbours are not examined. Even the person who passed telephonic message, namely, Jamil, as well as the son Nasirmiya with whom deceased came after marriage, are not examined. He pointed to the cross-examination of complainant father, more particularly para 7, and would submit that father had merely entertained suspicion and complaint was lodged. He elaborated that suspicion has no place in the eyes of law and it can never take place of proof. Therefore, he criticized the very prosecution case as well as

the findings and reasons assigned by learned trial Judge. According to him, there was no convincing, reliable or legally acceptable evidence in support of any of the charges and hence according to him, learned trial court erred in accepting the case of prosecution as proved and resultantly, he beseeches acquittal of all accused persons.

On behalf of the State:

9. In answer to above, learned APP while supporting the judgment, would submit that barely after few weeks of marriage, accused persons had put up demand of Rs.1,00,000/-. During her very first visit, deceased had promptly reported about it to her family members. Her both parents and uncle, to whom there was disclosure about demand and ill-treatment, have stepped into the witness box and they are all consistent about demand and ill-treatment. That, within few weeks of marriage, Nasimabee had hanged herself in the very house of accused. There is no plausible explanation from any of the accused as to how and in what circumstances Nasimabee met unnatural death. According to learned APP, accused persons being solely responsible, were named and on investigation and after gathering sufficient evidence against them, they have been duly chargesheeted. That, learned trial court has correctly appreciated the evidence on record. Finding ingredients of Sections 498-A and 306 of

IPC available, learned trial Judge committed no error whatsoever in returning the guilt and hence, according to her, the judgment under challenge being based on sound reasons, need not be disturbed.

LEGAL POSITION

10. Here, conviction is for offence punishable under Sections 498-A and 306 of IPC.

Law is fairly settled that, for attracting the charge under section 498A of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in -*
 - (i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (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 lawful demand ;*
 - (iii) the woman was subjected to such cruelty by her husband or any relation of her husband.”*

JUDICIAL PRECEDENT :

11. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held as under:

“The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. 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 in 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.” [emphasis added]

Similar views are echoed in ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, wherein it is held as under:

“Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582, the Hon’ble Apex Court has observed that, *“Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC”.*

In *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604, the Hon’ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452, following observations are made:

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

12. Keeping above legal position in mind, evidence of prosecution is to be scrutinized.

ANALYSIS

Charge under Section 498-A IPC:

13. Undisputed facts are that deceased Nasimabee was married to appellant husband on 14.06.2001. There is no dispute that Nasimabee hanged herself on 07.07.2001 in the house of accused.

14. Precise allegation of father and other family members is that there was demand of Rs.1,00,000/- by accused persons for payment of land consideration and *maher*. That, demand was put up by husband and parents-in-law. Father, mother and uncle of deceased Nasimabee have been examined by prosecution as PW1, PW3 and PW4. On evaluating their evidence, it is noticed that they are all speaking about Nasimabee coming back to the house after ten days of marriage as per custom and during such visit, she reported about above demand of accused. They are all further consistent that deceased informed them that accused had stated that she should bring the amount of Rs.1,00,000/-, otherwise she should not come back. These three witnesses further consistently deposed that attempts were made to collect and raise the amount and they even paid *maher* amount of Rs.5,051/-.

15. PW1 father, PW3 mother and PW4 uncle also further have deposed that after getting news, when they went to her place, they found that nobody was present in the house of accused. They peeped through the window. Doors of the room were required to be opened by police. Deceased had hanged herself and she was lying on the ground.

16. PW1, while under cross, answered that when deceased came as per custom, she stayed for four to five days and that time she stated that she was asked to bring Rs.1,00,000/- for consideration of agricultural land and the amount of *maher* and that she should not come back except bringing the amount. But in chief itself PW1 has himself deposed that father-in-law of Nasimabee had come to take her during her first visit and Nasimabee was sent with him. He further admitted in cross that accused no.2, when had come to take his daughter, she did not go with the him. He admitted that accused no.1 had made telephone call to his daughter before arrival of accused no.2 to take her back. He answered that his brother Chunumiya and Hanibee took her on the next day to her matrimonial house in Tata Sumo. He denied that his daughter was not ready to go back to Naldurg with Chunumiya. He further denied that deceased was sent next day against her will. He further denied that she did not alight

from the Tata Suma for one hour even after reaching the house of accused. He denied that Chunumiya forcibly caught hold of her hands and took her inside the house of accused. He admitted that no complaint was made to police regarding demand of Rs.1,00,000/-. In para 6 of his cross, he admitted that though he did not pay amount of Rs.1,00,000/-, accused persons allowed his daughter to come back to their house and further admitted that accused persons did not talk regarding Rs.1,00,000/- with Chunumiya and Hanibee when they went to drop her. He denied knowing whether accused persons had purchased agricultural land worth Rs.1,60,000/- one year back itself, and whether accused had already paid entire consideration amount prior to purchase of land.

In further cross, para 7 he admitted that when they went to Naldurg, door of the room where deceased was lying, was latched from inside. He further answered that one tin of the roof was removed and police had asked one person to get down in the house and open the door i.e. after removing the tin sheet. He answered that when they entered the house, none of the accused were present there. He further answered and admitted that considering the situation of the dead body, i.e. rope around the neck, **they suspected** that persons of the family of accused have ill-treated and therefore he lodged

complaint. Lastly he denied that he performed marriage of Nasimabee against her will. He denied that his daughter did not like accused husband and that she did not allow him to come near her. He candidly answered that Nasimabee was not intending to go for marriage of her brother-in-law and that she was taken against her wish.

17. PW3 mother is found to have deposed in chief that there was ill-treatment to her daughter for demand of Rs.1,00,000/- . However it is pertaining to note that informant father has not uttered about ill-treatment as he merely deposed about demand. Therefore, both husband and wife i.e. parents of Nasimabee are not lending support to each other. Mother in cross also denied that her daughter told appellant husband that she did not want to reside with him. She admitted that accused father-in-law came to take her daughter back and she candidly admitted that Nasimabee did not go with him on that day but she went on the next day in Tata Sumo. She further candidly admitted that when accused father-in-law came to take her, she did not offer him salam and was asked to do so. She also admitted that when her daughter went on the next day, she was taken in the house.

18. PW4 uncle deposed that when deceased came back after 10 days of marriage, she was found to be nervous and she said that husband and parents-in-law have asked her to bring Rs.1,00,000/-. He does not specify, as is done by PW1 and PW3, the purpose of demand of Rs.1,00,000/- to be towards land consideration. He also did not speak about ill-treatment which is solely stated by PW3 and not by PW1 informant. In chief itself he stated that when he went to the house of accused, all doors were latched from inside and none of the family members were present. He admitted that police were present during their such visit. Lastly he deposed that as Rs.1,00,000/- were not paid, she committed suicide.

While under cross, he admitted that when he made inquiries with deceased about herself and her husband as well as his parents, she stated that all was OK. In cross he answered that deceased told that Riyaz has purchased agricultural land and that he was in need of Rs.1,00,000/-. He further stated that when he went to house of accused to drop Nasimabee, her father-in-law had talk with him. He volunteered that father-in-law had asked whether amount of Rs.1,00,000/- was brought, but subsequently answered that he do not remember whether he had stated so in his statement to police. He admitted that there was no complaint of demand.

19. On analyzing testimony of parents and uncle, it is emerging that specific defence of accused persons is that deceased Nasimabee was unhappy on account of performing her marriage with accused no.1. She was not willing to stay there. She was forcibly brought by her uncle . The tenor of the entire cross of all three witnesses clearly suggests that such defence has been probabalized. PW3 mother, whose cross para 4 is discussed above, categorically shows that, accused no.2 father-in-law had come to take her back and she did not go with him that day but she went on the next day in a Tata Sumo. Uncle and father have already stated that uncle and Hanibee had been to drop her in Tata Sumo. PW3 further admitted that when father-in-law came to their house to take her daughter, she did not offer him salam. Though denied, there are suggestions to father that PW4 Chunumiya forcibly held deceased and made her get down from the Tata Sumo and took her in the house and at such time, Tata Sumo was standing in front of house of accused for almost one hour. Therefore attempt has been made to suggest that in spite of reaching house of accused, deceased was not ready to go inside the house.

20. Though allegations are that deceased was directed not to come back empty handed, i.e. without bringing Rs.1,00,000/-, witnesses have admitted that deceased was taken in the house. Therefore, here,

there is material suggesting and supporting defence version that Nasimabee was unhappy with the marriage and was not willing to cohabit. As stated above, informant and uncle have not whispered about any ill-treatment, either mental or physical. They merely speak about she being asked to bring Rs.100,000/- towards consideration of land. PW3 alone has stated about ill-treatment, but she too has not elaborated either its form or when such instance took place. Therefore, essential ingredients of Section 498-A as contemplated under law are patently missing from the prosecution evidence.

21. Though in unison, witnesses are speaking about demand of Rs.1,00,000/- for purchase of land, the first Investigating Officer PW7, while under cross, has answered that he collected copies of sale deed of agricultural land. He admitted that the sale deed was executed in July 2000 itself and he further admitted that in the sale deed there was recital about sale consideration of Rs.1,60,000/- already being paid prior to registration of deed. Taking such material into consideration, it is axiomatic that allegations of demand are unsupported and apparently false and afterthought.

Offence under Section 306 IPC :

22. Accused are also convicted for offence under Section **306** of IPC i.e. abetment to commit suicide. Before advertng to the merits of the

evidence, it would also be fruitful to spell out essentials for attracting charge of abetment to suicide and the settled legal position. For bringing home the said charge, it is duty of prosecution to prove that there was abetment to commit suicide. As to what amounts to abetment is also fairly settled. Section 107 of the IPC deals with abetment. It reads thus:

“107. Abetment of a thing- A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Section 306 of the IPC deals with abetment of suicide.

Ingredients of this section are as under :

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

JUDICIAL PRECEDENT :

23. In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to establish **incitement, instigation,**

aiding or abetment to commit suicide. Law to this extent has been fairly settled in series of cases. Scope of Sections 107 and 306 IPC has been time and again decided by the Hon'ble Apex Court in the cases viz; *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *Ramesh Kumar v. State of Chhatisgarh* reported in (2001) 9 SCC 618; *Sanju @ Sanjay Singh Sengar v. State of M.P.* reported in (2002) 5 SCC 371; *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *State of West Bengal v. Indrajit Kundu and others* (2019) 10 SCC 188; *Rajesh v. State of Haryana* (2020) 15 SCC 359; *V.P.Singh etc. v. State of Punjab and others* 2022 SCC Online SC 1999 and very recently in the case of *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided on 01.03.2024],

24. In above series of cases, it has been held and reiterated that court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. Principle that is culled out is that accused persons should specifically intend that deceased should end up her life. With that sole object in mind, they must have deliberately created circumstances, which are

of such nature, that deceased is left with no other alternative but to end up her life. Only in such circumstances charge of abetment to commit suicide can be said to be successfully brought home.

25. There is no dispute that deceased Nasimabee hanged herself in the very house of accused. Specific defence is that accused nos. 1 and 2 i.e. husband and father-in-law were out of station. PW1 father, PW3 mother and PW4 uncle are candidly admitting that when they reached the village, at that time house/room in which deceased hanged herself was latched from inside. They had peeped through the window and seen her dead body. All three witnesses are candidly admitting that police were required to remove the tin sheet to enter in the room and open the door.

26. AD (Exhibit 37), which was reported, in translated form, is as under :

**“Date : 07.07.2001
Exhibit 37**

STATEMENT

Myself, Mehboob Allauddin Qureshi, Age 75 years, occupation: Business, residence at Bajar Galli, Naldurg, giving statement by remaining present at Police station that I am resident of above mentioned village. My

grandson Izaz Riyaz Ahmed Qureshi got married to Naseem Bi from Basavkalyan on 14.06.2001.

Today i.e on 07.07.2001 husband of Naseem Bi, Izaz and her father-in-law, have gone for the business of leather to Solapur and Yedashi respectively. Naseem Bi was alone at home. She was living separately with her husband at home. In the afternoon after offering the Namaz (prayer) the daughter-in-law Mumtaz said to me that, Naseem Bi went to the room to pray (offer the Namaz) but did not come out yet, so she (Mumtaz) approached to the house and knocked on the door, but Naseem Bi did not answer from inside. So I asked my grandson Sarfaraz to climb on the roof of the house and peep inside by removing the tin. Then he looked inside after removing the tin and informed that grand daughter-in-law Naseem Bi had hanged herself with a rope and she had fallen on the ground. I, told about the above incident to daughter-in-law Mumtaz and relatives in our lane. The said incident took place during 13.30 hrs to 14.00 hrs (in the afternoon).

However, it is requested that the body be taken into custody for the funeral after taking further action.”

27. In the light of above circumstances emerging from the evidence, it is seen that deceased hanged herself in the afternoon. There is no independent evidence showing accused to be available in the house in

proximity to the occurrence. There is no contemporaneous evidence to that extent. Consequently what exactly preceded the episode of hanging is a mystery. Father has candidly admitted that seeing the dead body, they entertained suspicion. Therefore, apparently complaint is on the basis of mere suspicion. There is no evidence about abetment or inducement to commit suicide. On the contrary, above discussed evidence shows that deceased was unhappy with the marriage. Mother has candidly answered in cross that she did not accompany father-in-law who came to take her back. She did not wish him when he came to take her, is also admitted by mother. When uncle went to drop her on the next day she was required to be forcibly taken inside the house. Therefore, in the light of such answers, there is force in the submission of learned counsel for appellants that deceased was unhappy with the marriage and was not willing to cohabit. Father has also admitted that she was not willing to even attend marriage of her brother-in-law at Nilanga and was forcibly taken. Hence, there are reasons to opine that deceased herself was unhappy with the marriage. Therefore, there is every possibility of she hanging herself on getting upset.

28. Recently, the Hon'ble Apex Court in the case of ***Naresh Kumar v. State of Haryana*** (2024) 3 SCC 573 held that “*basic ingredients to*

constitute an offence under S. 306 are suicidal death and abetment thereof. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Thus, without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Thus, in order to convict a person under S. 306 there has to be a clear mens rea to commit the offence and mere harassment, cannot be sufficient to hold an accused guilty of abetting the commission of suicide. Prosecution has to prove an active act or direct act which led the deceased to commit suicide. Ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.”

29. Resultantly, here, neither essential ingredients to attract 498-A nor essential ingredients to attract 306 IPC are available so as to invoke the same to hold appellants guilty.

30. Perused the judgment under challenge. In the considered opinion of this Court, the above discussed aspects are not taken into consideration by the learned trial judge. Answers given by witnesses while under cross are not properly appreciated before accepting the case of prosecution as worthy of credence. Apparently, opinion seems to have been drawn on surmises and conjectures. Such judgment

cannot be allowed to be sustained. Hence, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants i.e. (1) Ijaz Ahmad Riyaz Ahmed Qureshi, (2) Riyaz Ahmad Mahbubsab Qureshi and (3) Mumtaz w/o Riyaz Ahmed Qureshi, by learned Ad-hoc Additional Sessions Judge, Osmanabad in Sessions Case No. 111 of 2001 under Sections 498-A and 306 r/w 34 of IPC on 14.02.2002 stands quashed and set aside.
- III. All the appellants stand acquitted of the offence punishable under Sections 498-A and 306 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.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]