



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 413 OF 2004

1. Satish Bhagwan Patil,
Age : 25 years, Occu. : Agri.,
2. Bhagwan Khandu Patil,
Age : 56 years, Occu. : Agri.,
3. Sow. Meerabai Bhagwan Patil,
Age : 55 years, Occu. : Agri.,
4. Vijay Bhagwan Patil,
Age : 19 years, Occu. : Agri.,

All are R/o. Jamod, Tq. Jalgaon,
Dist. Jalgaon.

5. Kailas @ Diwanji Bhagwan Patil,
Age : 30 years, Occu. : Service,
R/o. Nashik Road, Nashik,
Dist. Nashik

... Appellants

Versus

The State of Maharashtra

... Respondent

.....
Mr. Himmatsinh D. Deshmukh, Advocate for Appellants.
Mrs. Ashlesha S. Deshmukh, APP for Respondent - State.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26 NOVEMBER 2024

PRONOUNCED ON : 14 DECEMBER 2024

JUDGMENT :

1. The judgment and order dated 17.06.2004 passed by learned IInd Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No. 178 of 2002 recording guilt of the appellants for offence

punishable under sections 498-A and 306 read with section 34 of Indian Penal Code (IPC) is questioned here by filing instant appeal.

2. Learned counsel for appellants, at the outset, submits that, during pendency of appeal, appellant No.2 Bhagwan Khandu Patil and appellant no.5 Kailas @ Diwanji Bhagwan Patil have expired. He has also placed on record the copies of death certificates. In view of the same, appeal stands abetted as against such appellants.

FACTUAL MATRIX

3. In short, prosecution's case in trial court is that, deceased Manisha alias Jayashri alias Munni was married to appellant no.1 on 18.04.2001. After marriage, she went to reside with husband and in-laws. According to prosecution, during her visit to the house of her parents, for *Raksha Bandhan*, deceased Manisha reported about demand raised by husband, in-laws and her brothers-in-law regarding articles like T.V. etc., which were supposed to be given on the occasion of "Mul". On instigation of mother-in-law, husband used to beat her. Subsequently, she was not sent for delivery in the backdrop of demand of above articles or amount of Rs.40,000/- to Rs.50,000/- for purchasing of such articles. Thus, according to prosecution, there was ill treatment and cruelty meted out to her. Deceased wrote letters. Deceased was not permitted to go even for

delivery. On 09.03.2002, news of Manisha committing suicide by setting herself on fire, was received. After last rituals, report was lodged.

Crime was duly registered, investigated and after gathering evidence, husband and in-laws were charge-sheeted before learned Ad-hoc Additional Sessions Judge, Jalgaon, who conducted trial vide Sessions Case No. 178 of 2002 and by judgment and order dated 17.06.2004 accepted the prosecution case and convicted the accused for above offences.

Feeling aggrieved by the same, appellants have preferred instant appeal.

SUBMISSIONS

On behalf of Appellants :-

4. Pointing to the evidence, learned counsel for appellants submitted that, admittedly marriage is of 18.04.2001. He pointed out that, during pendency of appeal, two accused had died, i.e. appellant no.2 Bhagwan Khandu Patil, father-in-law and appellant no.5 Kailas @ Diwanji Bhagwan Patil, brother-in-law and as such matter remains for consideration against remaining accused. According to him, there is false implication. That, there was no dowry demand nor there was any demand of articles. He specifically submitted that, allegations are about demanding articles at the time of first visit of married girl to

her parent's house. It is a customary visit and as such it does not amount to any dowry demand or illegal demand. He pointed out that, sweeping allegations are levelled against entire family members. That, no specific instances are also quoted. Thus, according to him, evidence regarding cruelty so as to attract section 498-A of IPC is patently missing. He also pointed out that, deceased was willing to go her parent's house for delivery, but her parents did not take her for delivery and as such she was upset. Therefore, she immolated herself at 4:00 a.m. in the early hours of morning while everybody was sleeping. That, none of the appellants are responsible. He pointed out that, immediately prior to suicide, there was no allegations of any harassment or demand. That, only piece of evidence before the trial court is letters, but letters are firstly undated and secondly there are annoyance expressed by deceased for not being permitted to go for delivery. Therefore, appellants cannot be held responsible for alleged suicide. For all above reasons, learned counsel questions the legality, maintainability and sustainability of impugned judgment and he prays to set aside the judgment under challenge.

In support of his submissions, learned counsel seeks reliance on the following rulings :

- (i) *Naresh Kumar v. State of Haryana, 2024 (3) SCC 573;*
- (ii) *Kashibai and Ors. v. State of Karnataka, 2023 (3) Supreme 452;*

- (iii) *Mariano Anto Bruno and Another v. Inspector of Police, 2022 AIR (SC) 4994;*
- (iv) *Gurcharan Singh v. State of Punjab, 2020 (10) SCC 200;*
- (v) *M. Arjunan v. State Rep. By its Inspector of Police, 2019 AIR (SCW) 43;*
- (vi) *Ramesh Kumar v. State of Chattisgarh, 2001 AIR (SC) 3837;*
- (vii) *Yashodeep Bisanrao Vadode v. State of Maharashtra and Anr., 2024 DGLS (SC) 1025;*
- (viii) *Preeti Gupta and Anr. v. State of Jharkhand and Anr. 2010 DGLS (SC) 597;*
- (ix) *Dnyandeo Pandurang Yadav v. State of Maharashtra, 2024 DGLS (Bom.) 3085;*

On behalf of Respondent – State :

5. On the other hand, learned APP submitted that apparently, after marriage, demand was raised by husband and in-laws. On instigation of mother-in-law and brothers-in-law, husband beat her. That, there was demand of articles or in lieu of it, cash for purchasing articles. That, deceased reported it when she visited parent's house. She also wrote letters. Therefore, according to learned APP, there is ample evidence on record in support of charge under section 498-A of IPC.

6. According to learned APP, only because of the harassment, deceased set herself on fire. That, there was no other reason. That, suicide is in the house of husband and in-laws. Learned

APP fairly submitted that, there is no evidence in the trial court about deceased to be pregnant and in support of all such contention, she pointed out that even doctor's evidence and *post mortem* report to be silent about it. However, according to her, essential ingredients for attracting the charges under sections 498-A and 306 of IPC are available and hence she prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE TRIAL COURT

7. The prosecution has examined following 8 witnesses in support of its case. Their role and status are as under :-

PW1 Nilkanth, father informant, who set law into motion vide Exh.43.

PW2 Shiwaji is the brother of informant father.

PW3 Ravindra is Police Constable, who carried sealed envelop (Exh.54) to hand it over to handwriting expert.

PW4 Shobha, a nurse from Health Department, who prepared Mata Bal Saurakshan Card (Exh.57) of deceased Manisha.

PW5 PSI Dhanraj, who recorded crime and recorded statement of a nurse, namely, Shobha.

PW6 API Sambhaji, Police Officer, who investigated AD and prepared inquest panchanama (Exh.32) and further investigated on the report lodged by father.

PW7 Sanjay is the handwriting expert.

PW8 Dr. Kiran Patil, Medical Officer, who conducted post mortem.

8. In trial court, prosecution rested its case primarily on the oral evidence of father PW1 Nilkanth, uncle PW2 Shiwaji and inland letters purported to be authored by deceased at Exhs.44, 45 and 46.

Admittedly, deceased was married with appellant husband on 18.04.2001 and she died due to burns on 09.03.2002. The gist of prosecution case is that, after marriage, accused persons put up demand of articles, which even prosecution does not deny, are customarily paid by way of gift by parents to husband, either during her first or second visit to her parent's house or at the time of delivery. Prosecution claims that, for articles like T.V. etc. there was ill treatment. Specific case of prosecution is that they refused to send deceased Manisha @ Munni in spite of she being pregnant unless their above expectations were met.

9. Here while advancing submissions, learned APP fairly pointed out that prosecution's evidence in trial court does not show deceased Manisha to be pregnant. Therefore, at the threshold it is required to be ascertained as to whether it is so. It assumes

significance because very prosecution version is that deceased was not sent for delivery unless their alleged demand was met.

10. In above backdrop, it has become imperative for this court to first study the evidence in that regard and for the same evidence of medico - legal expert, i.e. PW8 Dr. Kiran Patil is required to be visited. His evidence at Exh.74. While under examination-in-chief deposed about conducting post mortem (Exh.41) and testifying about contents therein to be true and correct. He deposed that, if a lady was carrying pregnancy is ablazed and if she sustains burns, she could get aborted because of such burns, immediately.

However, while under cross at the hands of defence, he answered that, on the basis of post mortem report, it is his say that, the patient Manisha was not carrying pregnancy.

11. Apart from above evidence, if we visit post mortem report (Exh.41), in paragraph no.21 as regards to organs of generation and state of contents of stomach, remark is **“uterus empty”**. In trial court, Exh.40 is finding place which is certificate issued by autopsy surgeon in response to letter dated 08.08.2002 communicating that “as per your letter received on 08.08.2002 in 462/2002, PM No.152 OF 2002 Manisha @ Munni Satish Patil A/P Jamod was found not pregnant, “uterus empty” at P.M. and final

cause of death is “shock due to 100% mixed thermal burns.”

PW4 Shobha, a nurse, who is also examined by prosecution to show that deceased was pregnant and accordingly card (Exh.57) was issued by Primary Health Centre, in examination-in-chief, stated that, deceased was examined in “Shibir” (Health Camp). That, her mother-in-law had informed that, her menstruation cycle had stopped. Witness stated that, on examining Manisha, she found her to be carrying pregnancy, but while under cross she answered that, she has studied up to 12th standard. She answered that, after putting her palm on the stomach of Manisha, she could “**guess**” that she was carrying pregnancy. She admitted that, when pregnant woman expires, autopsy is conducted, then there must be mentioned the fact of pregnancy in post mortem report. She further answered that, she did not make enquiry with Manisha whether she was prescribed any medicine by any doctor. She answered that, as her belly was found in bigger size, she deposed that, she was pregnant. She also answered that, she has not brought a book carrying record of issuance of card.

12. Taking into account above discussed material on behalf of very prosecution, here there are serious doubts about alleged pregnancy of deceased Manisha. More particularly, autopsy surgeon

has in writing as well as before the court, admitted that, uterus was empty. Meaning thereby, there was no fetus and as such no pregnancy.

ORAL EVIDENCE

13. In father/informant's evidence, his daughter paid first visits during Raksha Bandhan and second visit during Diwali and during her such visits she reported about demand of husband and in-laws and the relevant testimony given by father at Exh.42 is as under :-

"Marriage of Manisha took place on 18.04.2001.

... After marriage she used to visit my house occasionally. I also used to visit her house. When my daughter had been to my house for Raksha Bandhan festival, she told us that her in-laws, brother-in-laws, husband make demand of household articles like T.V. etc. in "Mul". Mother-in-law and brother-in-law used to instigate husband, who consequently used to beat her. I told my daughter that due understanding will be given to them. That time she was carrying pregnancy of two months.

Thereafter, she was also brought by me for Diwali festival. That time also my daughter told us that all accused persons insist her to bring 'Mul' i.e. household articles from her parents and as she did not satisfy their demand, she was being beaten, harassed and ill treated by them. Thereafter I had been to her house 2 to 3 times and that time also she requested me to give 'Mul'; to which I told my daughter that Rs.40,000/- to 50,000/- would be required for purchase of those articles, because of paucity of funds, I showed inability to give them 'Mul' that time and gave understanding that after selling house property 'Mul' would be given to her. On 04.02.2002 my brother Barikrao Patil went to drop her daughter's house, he stayed there for 4 days and my daughter sent a letter to him mentioning about ill treatment which she was facing at her house. In presence of Barikrao, husband abused and beat her.

On 19.02.2002, brother Shiwaji was sent to bring my daughter, who was carrying pregnancy of seven months, but she was not sent and was asked to bring 'Mul' and then only she would be sent. On 03.03.2002, when I met my daughter at a marriage, she informed me about ill treatment and harassment and further told that gravity of the cruelty has increased to a larger extent.

On 09.03.2002, news of burns was received."

While under cross he admitted that, besides of husband of his daughter, only parents-in-law and brother-in-law Vijay were resided in the village Jamod, whereas, brother-in-law Kailas since last 10 to 15 years was resided at Nashik. He volunteered that, he used to visit intermittently. He denied knowing father-in-law cultivating 10 acres land. He admitted that, accused Meerabai worked as a teacher in Balwadi and that he and Meerabai were classmates. He denied his daughter to be hot tempered. He answered that, in report he told that, on instigation of mother-in-law and brother-in-law, husband beat Manisha. He candidly answered about not telling in report that all accused used to beat Manisha on the ground of demand of 'Mul'. He admitted about not indulging relatives to give understanding to accused nor making any complaint with anybody against accused persons despite receiving letters. He admitted that, financially accused persons were rich than him and he knew it since prior to the marriage. He denied that his daughter was not pregnant.

14. The second material witness on behalf of prosecution is **PW2** Shiwaji, who is brother of PW1. In his testimony at Exh.50 he deposed as under :-

*“Marriage of Manisha took place with accused **11.04.2001**. She cohabited with her husband at Jamod. She visited my brother’s house for festival and that time there was occasion for me to meet her. **She used to make complaint about cruelty at the hands of accused persons to her.** She used to tell that, husband used to beat her on the ground of non compliance of ‘Mul’. On 19.02.2002, I had been to Jamod to fetch Manisha. As some function was arranged as she was carrying seven months pregnancy. Accused persons were insisting either to give ‘Mul’ or to give Rs.50,000/- towards price of ‘Mul’ and then only Manisha would be taken back. Thereupon, Manisha asked me to go back home alone as her in-laws were disinterested to send her along with me and subsequently she will send letter to father. I consequently returned back alone. On 09.03.2002 there was telephonic message about the incident of ablazing Manisha.”*

While under cross, he answered that, he and his brother stayed separately. Manisha used to visit his house also. He denied Manisha to be hot tempered or about picking quarrels on flimsy ground. He denied that she was insisting her husband that they both should reside separately from other family members. Rest is all denial.

DOCUMENTARY EVIDENCE

15. Apart from oral evidence of father and uncle, prosecution is heavily banking on letters purportedly written by deceased herself,

which are handed it over by informant father to police, which are at Exhs.44, 45 and 46. The translated versions of the said letters are as under :-

(Exh.44)

“ Jamod

Shriram

Date: 25.02.02

*Greetings to Taty from Munni. The reason for a letter is, you had sent Appa to take me. But my mother-in-law did not send me. She will going to send me after 9th month . My mother-in-law, husband, and brother-in-law have made a condition that first we will take 50,000 rupees for **mool** (one ritual after marriage), only then will they send me to my maternal house.*

[Note: My in-laws have sold all the gold gifts you gave me at my wedding and spent the money. All the things on my person are of Bentex. They are behaving like this deliberately.]

*Tell your uncle like this and send a message to your father. My father had requested Vaccha Tai, about my maternal situation, that even if my niece's **otibharan ((ceremony held on an auspicious day in the 7th or the 9th month of pregnancy))** is done, you should convinced her in-laws and help Munni get on her way. However, Vaccha Tai did not feel any pity, on the contrary, both, my mother-in-law and daughter-in-law, used to tell bad things about me to the people in the house and make them abuse and beat me. My mother-in-law, father-in-law, husband and brother-in-law all beat and abused me to pay 50,000/- rupees. My father-in-law has completely broken down and sold the gold worth 55,000/- rupees that you gave me in marriage. They play cards every day. They drink alcohol. And they torture me, you spent 1,50,0000/- rupees for my marriage. They are not satisfied with that. They are begging for money like a beggar without considering your financial situation. But please, for my life, we should sell the house and give them the money. All these four people are giving me a lot of trouble. And they are playing with my life. Are they so monstrous that*

they will kill me for money? I am afraid. Because when I am 8 months pregnant, they beat me mercilessly. My mother-in-law is so evil that she is giving me bad advice like aborting the fetus in my womb. And she keeps saying that we don't want a daughter-in-law with children. We only wanted a daughter-in-law who can work in agriculture/field. There are so many monstrous people. They beats me in front of everyone in Dilip Aaba's house viz.Vallabh Appa, Vaccha Tai, etc. But they don't show any mercy.

*[Tatya, if I were alone and had no relatives in this house, my mother-in-law and the Patil would add salt and pepper to my problems. If I had been tortured and beaten, I would have blamed my fate, but what should I do? Tatya, Atmaram Bepari of our village Dheku and all these four have cheated on us a lot by putting me in this demonic family. I pray to the Lord that I will be free from their torture, but what should I do? The wood for the stove will burn in the stove, so I am bearing all. I am remaining as if God has placed me to live. Please take me with Rs. 50,000/- in exchange for **mool (ritual after marriage)**, otherwise my mother-in-law will not send me. I feared that one day my mother-in-law, father-in-law, husband, and brother-in-law all will kill me.*

Yours obediently,

*Give my regards to Sau. Aai, Tai, Jija,Aapi.
Good wishes to Bharti.”*

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

(Exh.45)

“Give my regards to Aai from Munni, I am writing a letter , reason is that, My father has fulfilled my wish by spending a lot on my wedding. But Atmaram Bepari, who claims to be our close friend, and his relatives, son-in-law, sister, and daughter have deceived us a lot. My father-in-law has a family of 5 siblings and the virgin daughters of Maschindra Aaba and Sur Dada have had miscarriages. In all these

cases, Dilip Vallabh had huge contribution in hiding everything from birth to death. Also, while the father-in-law named Sur Dada was a bad person, drinking alcohol, selling alcohol, being drunk, etc., Bepari, Vallabh Appa, Dilip Aaba, Vaccha Tai, and Chhaya Tai have deliberately done this to make us suffer. Because my father, uncle, and brothers should always keep their minds down in front of them. For this purpose, they have ruined my fate. Dilip Aaba used to say that my husband is very virtuous, but I have experienced that he has very bad qualities. But what to do now, I must face it. In all this, I feel that Bepari and his relatives(**Vyahi**) must have taken brokerage from my father-in-law, because my father-in-law is also a broker. If any trouble/mishap happens in this village, my father-in-law's family and Vallabh's family take care of the police station. Dilip Aaba and Police Patil's grandfather taking care of the practical matters. The boss of all of them is Police Patil. These bad people commit various types of theft, gambling, and even abortions of virgin girls. I know how I would be living in such a terrible environment, by the grace of God. Mother and Tatyia don't tell to my brothers anything about this letter because they have managed a lot and spent a lot for my wedding. They will be very sad. Don't tell them. Send my father to visit me often so that my fear will go away. Finally, my destiny. I will live as God has planned. Give my regards to Tatyia. Best wishes to Bharti. Please tell Bepari about the trouble I am facing and tell him to warn my mother-in-law and in-law. This is my humble request. I am bearing it.

Forgive me for mistakes. In hurry.

Yours obediently,

Munni.”

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

(Exh.46)

“Give my regards to Aai and Tatyia, best wishes to Bharti, the reason for the letter is that received Bharti's greeting, I read the letter and greeting and was happy. Another thing is that we were supposed to go

*to the hospital on January 7, but we didn't go. So, on February 1, we went to the hospital in Jalgaon, but we went to Nandra. We went to the hospital but didn't take any pills or medicines. My mother-in-law said that only very sick people need medicines, but we are fine. My health is still not good. I was prescribed a tonic. I didn't bring that either. My mother-in-law says that those pills are of no use. And they told me that they didn't bring the pills to the house. And they told me that it will take 9 months, or they will send it and they don't even take the pills or medicines. I have become very helpless. You didn't meet me when you came. I am not getting any work done. My mother-in-law is taking my exams (testing my patience) do this, do that, I can't do anything. They are going to fill my **Otibharan (ceremony held on an auspicious day in the 7th or the 9th month of pregnancy)** on the 12th. However, come and take me on the 14th or 15th. My mother-in-law says, ask me to tell you to bring both the **zoli** and **the things of Mool**, otherwise she will not send me. Now my mother-in-law is showing her children the way to ask for the things to be given on **Mool**. I cannot write much.*

Give my regards to Aappa and Jija. And to Grandma also.

All of you take care of your health. Send my brothers to take me or else you come. Don't send Dada, because Dada drinks alcohol and plays cards. Otherwise, send Gotu."

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

APPRECIATION OF EVIDENCE AND ITS ANALYSIS

16. On meticulous re-appreciation of above evidence of father PW1 Nilkanth and uncle PW2 Shiwaji, it is emerging that, after marriage in April 2001, deceased Manisha paid two visits to parent's house i.e. firstly during Raksha Bandhan and secondly, during Diwali and she also met father in one marriage on 03.03.2002. Father's

evidence discussed above shows that accused persons put up demand of articles at the time of customary occasion of 'Mul'.

On court query learned APP clarified that 'Mul' is a customary process of giving gifts in the form of articles to husband at two occasions i.e. *firstly*, when newly married bride pays visits to her parent's house or the first time after marriage and *secondly*, when she visits her parent's house for delivery. Therefore, the articles demanded are due to customs prevailing in community.

SUMMATION ON CHARGE UNDER SECTION 498-A IPC

17. Re-appreciating the above oral evidence of father and uncle, it is noticed that, informant father claims that during visit of deceased for Raksha Bandhan after four months of marriage, she reported that, in-laws, brother-in-law and husband made demand of household articles, like T.V. etc. in "Mul". Specific allegations is that mother-in-law and brother-in-law used to instigate husband, who consequently beat her. But, very Investigating Officer while under cross admitted that informant did not state in his report that mother-in-law and brother-in-law instigating husband and so he used to beat deceased. She also reported about demand during visit of Diwali. He deposed about daughter beaten, harassed and ill treated by **them**.

18. PW2 Shiwaji, uncle, claims to have heard from deceased

that husband used to beat her on the ground of non compliance of 'Mul'. Even during his visit to her on 19.02.2002 to take her, he alleges that, deceased was not sent with him, saying that, either 'Mul' should be given or Rs.40,000 to 50,000/- be paid. But, he also is attributing mere allegations of demand to all accused and he does not specify who amongst them put up the above demand. However, allegations about husband beating is also deposed by him too and to that extent he supports his brother PW1 informant. It is also emerging that, as regards to mother-in-law is concerned, only informant father speaks about instigation by mother-in-law as a result of which husband beat her. PW2 Shiwaji does not attribute role of instigation to mother-in-law.

Therefore, on complete re-analysis only allegation of beating by husband are surfacing in the evidence of both, father as well as uncle and from the letters reproduced above.

19. As regards to other accused i.e. brothers-in-law are concerned, as discussed above, there are general and omnibus allegations. Apparently, allegations are directed against husband for beating, though on instigation of mother-in-law. However, it is pertinent to note that, at the time of judgment, age of accused Vijay is noted as 19 years. Judgment is passed on 17.06.2004. FIR is of 10.03.2002. This shows that, on the day of occurrence, accused Vijay

was merely 17 years of age and thus a minor. It is also emerging that accused no.5 Kailas @ Diwanj was resident of Nashik. Informant has admitted that, he had shifted there since 10 to 15 years. However, though he has volunteered that he used to visit Jamod intermittently, specific visits are not coming on record. Therefore, as regards to allegations against both brothers-in-law are concerned, there are omnibus allegations about instigation. Even as against mother-in-law allegations are non specific except stating that she instigated.

The Hon'ble Apex Court in the very recent case of *Kahkashan Kausar alias Sonam and others v. State of Bihar and others* ; (2022) 6 SCC 599, observed that, general, sweeping and omnibus allegations without giving specific role and distinct allegation does not warrant prosecution itself.

20. Learned counsel for appellants would submit that, whatever allegations are made about demand, is not illegal demand towards any dowry. According to him, demand was towards customary rituals which are acknowledged in the community. Hence, according to him, rigors of section 498-A of IPC would not be attracted.

21. Here, father and uncle of deceased have both deposed

about demand of “Mul”. As stated above, learned APP herself clarified that, when newly wedded bride visits her parent’s place for the first time or during first visit after conception and delivery, there is a custom of giving articles. Informant narrated that on 19.02.2002, his brother PW2 Shiwaji was sent to fetch deceased, but she was not allowed to go, saying that, said customary ‘Mul’ is not given.

22. Though above demand of articles is customary, the Hon’ble Apex court in the case of *Rajinder Singh v. State of Punjab* reported in *AIR 2015 SC 1359*, observed that, any demand made by husband or his relatives before, during or after the marriage are considered as a dowry. This view is again reiterated in the case of *State of Madhya Pradesh v. Jogendra and Ors.* reported in (2022) 5 SCC 401.

In view of above, though demands are termed as ‘customary’ in view of above ruling, every demand is to be held as dowry demand.

23. Consequently, here, role of husband alone is getting crystallized. Though there are three letters (Exh.44, 45, and 46) as regards to maltreatment is concerned, only Exh.44 carries material regarding conduct of accused husband and mother-in-law. Allegations

against mother-in-law is coming to the extent of instigation, but for what is not clear. Therefore, there is no convincing evidence as regards to section 498-A is concerned against both, brothers-in-law as well as mother-in-law and as such it would be unjust and improper to involve brothers-in-law and mother-in-law by invoking section 34 of IPC.

CHARGE UNDER SECTION 306 OF IPC :

24. As regards to offence of section 306 of IPC is concerned, case of prosecution is that, accused abetted deceased Manisha to commit suicide on 09.03.2002. Whereas, according to appellants, very essential ingredients and evidence to the extent of abetment, inducement, incitement or any positive role in proximity to suicide is palpably missing from entire prosecution evidence.

Before advertng to such charge, it would be desirable to reproduce and quote settled judicial precedent for holding charge under section 306 as proved.

In *State of West Bengal v. Orilal Jaiswal* (supra), the Hon'ble Supreme Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and 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. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

In *Ramesh Kumar v. State of Chhatisgarh* (2001) 9 SCC 618, it is observed that, "Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

In *M. Arjunan v. State, represented by its Inspector of Police*, (2019) 3 SCC 315, while explaining the necessary ingredients of Section 306 IPC in detail, observed as under :-

"7. The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language

will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.”

In ***Ude Sing & others v. State of Haryana*** (2019) 17 SCC 301, the Hon’ble Supreme Court held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under :-

“ 16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to

hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

In ***Gurcharan Singh v. State of Punjab***, (2020) 10 SCC 200, the Hon’ble Apex Court observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 of IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

In ***Geo Varghese v. State of Rajasthan and another*** (2021) 19 SCC 144, the Hon’ble Supreme Court has considered the provision of Section 306 of IPC along with the definition of abetment under Section 107 of IPC and observed as under :

“14. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

. . .

15. The ordinary dictionary meaning of the word ‘instigate’ is to bring about or initiate, incite someone to do something. This Court in Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, has defined the word ‘instigate’ as under :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’.”

16. The scope and ambit of Section 107 IPC and its co-relation with Section 306 IPC has been discussed repeatedly by this Court. In the case or S.S. Cheena v. Vijay Kumar Mahajan and Anr (2010) 12 SCC 190, it was observed as under : -

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

In ***Mariano Anto Bruno & another v. The Inspector of Police***, 2022 SCC OnLine SC 1387, after referring to the above referred decisions rendered in context of culpability under Section 306 IPC, the Hon’ble Supreme Court observed as under :

“44. . . . 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 their 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 IPC is not sustainable.”

In ***Kashibai & Others v. The State of Karnataka***, 2023 SCC OnLine SC 575, it is observed that to bring the case within the purview of ‘Abetment’ under Section 107 of IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 of IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

In very recent case of ***Naresh Kumar v. State of Haryana*** 2024 DGLS (SC) 224/(2024) 3 SCC 573 it is observed that, had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).”

In another recent case of ***Kumar @ Shiva Kumar v. State of Karnataka*** [Criminal Appeal No. 1427 of 2011 decided by the Hon'ble Apex Court on 01.03.2024], following observations are made :

“39. Reverting back to the decision in M. Mohan (2011) 3 SCC 626 , this Court observed that abetment would involve a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.”

25. On re-appreciating evidence in this context, it is emerging that, PW2 Shiwaji who had been to fetch deceased returned without her on 19.02.2002. Deceased allegedly met father on 03.03.2002 and reported that ill treatment and harassment to be aggravated. Again no specifications or details as to in what form was the ill treatment and at whose hands has not come on record. Thus, allegations are omnibus. Even, there is no reference in this regards in the alleged letters authored by deceased. Deceased suffered burns on 09.03.2002. There is a gap of almost a month or so, since deceased met father on 19.02.2002. There is total vacuum from 19.02.2002 up to 09.03.2002. It is pertinent to note that, deceased herself has conveyed in the letter that mother-in-law would send her

after 9th month of pregnancy. Such material indicates that it is not so as claimed by prosecution that, deceased was not to be send unless their demand is met. Consequently, what exactly happened on or in proximity to 09.03.2002 is not coming on record. Unless there is evidence suggesting positive and active participation by husband and other in-laws in abetting, instigating or inciting deceased to end up her life or that they desired that she should commit suicide and with such sole intention they maltreated her; or there was creation of such circumstances by them, due to which deceased was left with no other alternative but to end up her life, charge of section 306 of IPC cannot be said to be made out. More particularly, in the backdrop of legal requirements spelt out in the above reproduced numerous judicial pronouncements, here there is no live-link in proximity to suicide to connect either husband or in-laws. Hence, in the considered opinion of this court, as essential ingredients for attracting section 306 of IPC, not being available, it is unsafe to attribute suicide to any of the accused including husband.

26. To sum up, on complete re-appreciation, in the considered opinion of this court, only charge of section 498-A of IPC has been substantiated and proved that too only against husband and not against other accused persons. Charge of section 306 of IPC has not been proved beyond reasonable doubt against any of the appellant.

27. Perused the impugned judgment under challenge, more particularly, observations of learned trial Judge, in paragraph no.17 that, defence side has not brought any iota of material on record to point out that for any specific reasons Jayashri had committed suicide, are primarily against settled principle of criminal jurisprudence that it is for prosecution to prove the charges and it is fairly settled that accused can choose to remain silent. Entire burden falls on prosecution to establish the charges. Though presumption available under evidence is available, the same can be invoked and brought into play only when prosecution discharges its initial burden of proving its case in entirety. Therefore, above findings and observations being contrary to the settled cardinal principles of criminal jurisprudence and learned trial court having not considered that there are no specific allegations against in-laws, nor their particular role is getting crystallized under sections 498-A or 306 of IPC, case for interference as regards to such accused are concerned, is made out.

28. Learned trial court has convicted and sentenced husband for 498-A and awarded sentence of two years. This Court, in above discussion has reached to a conclusion that there is enough material suggesting beating by husband. But for his such act, sentence

awarded by learned trial Judge seems to be on higher side and hence the same is required to be modified. Hence, the following order is passed :-

ORDER

(i) Criminal Appeal is partly allowed.

(ii) The conviction awarded to the appellant No.(1) Satish Bhagwan Patil by learned IInd Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No.178 of 2002 on 17.06.2004 for the offence punishable under section 498-A of IPC is hereby confirmed and maintained. **However**, he is acquitted from offence punishable under section 306 of IPC and therefore, conviction and sentence awarded to him under section 306 of IPC is hereby quashed and set aside.

(iii) Sentence awarded to the appellant No.(1) Satish Bhagwan Patil for offence punishable under section 498-A of IPC is modified and reduced and instead of rigorous imprisonment of two (2) years, **he is sentenced to suffer rigorous imprisonment for a period of one (01) year and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for three months.**

(iv) Set off as provided under section 428 of Cr.P.C., if entitled to, be given to the appellant no.1.

(v) The conviction and sentence awarded to appellant Nos. 2 to 5 in Sessions Case No.178 of 2002 by learned IInd Ad-hoc Additional Sessions Judge, Jalgaon on 17.06.2004 for the offence punishable under Sections 498-A and 306 read with section 34 of IPC, stand quashed and set aside.

(vi) The appellant nos.2 to 5 stand acquitted of the offence punishable under Sections 498-A and 306 read with section 34 of IPC and their bail bonds stand cancelled.

(viii) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)