



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 235 OF 2003

[1] Nanabhau s/o Eknath Bangar
Age : 33 years, Occ : Agri,
R/o : Matawalli, Tq. Ashti,
Dist. Beed.

[2] Eknath s/o Shankar Bangar
Age : 66 years, Occ : Agri,
R/o : Matawalli, Tq. Ashti,
Dist. Beed.

**Appeal abated against Appellant
No. 2 vide order dated 25.06.2024.**

[3] Raosaheb s/o Eknath Bangar
Age : 41 years, Occ : Agri,
R/o : Matawalli, Tq. Ashti,
Dist. Beed.

[4] Bhamabai w/o Eknath Bangar
Age : 61 years, Occ : Agri
R/o : Matawalli, Tq. Ashti,
Dist. Beed.

... Appellants
[Orig. Accused Nos. 1 to 4]

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station Ashti, Tq. Ashti,
District Beed.

... Respondent

.....
Ms. Harsha R. Lomte h/f Mr. V. D. Salunke, Advocate for the
Appellants.

Mrs. Uma S. Bhosale, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.07.2024

Pronounced on : 22.07.2024

JUDGMENT :

1. In the instant appeal, appellants-original accused are taking exception to the judgment and order of conviction passed by learned IVth Adhoc Additional Sessions Judge, Beed dated 20.03.2003 in Sessions Case No. 68 of 1999, holding them guilty for commission of offence punishable under Sections 498-A, 306 and 304-B r/w 34 of the Indian Penal Code [IPC].

2. At the outset, it needs to be mentioned that appellant no.2 Eknath s/o Shankar Bangar died during pendency of this appeal and hence, by order dated 25.06.2024, the appeal stands abated as against him, and now only appeal of appellant nos. 1, 3 and 4 remains for consideration.

FACTS IN BRIEF, LEADING TO TRIAL

3. In nutshell case of prosecution is that, Keshar @ Manisha was married to appellant-accused no.1 Nanabhau in June 1998. Dowry of Rs.45,000/- and one tola gold was fixed and out of it, Rs.35,000/- and one tola gold was paid at the time of marriage. As such,

Rs.10,000/- had remained unpaid. For two months after marriage, Keshar was treated well, but thereafter accused persons subjected her to harassment and ill-treatment for remaining Rs.10,000/-. Said remaining amount was also paid on 13.12.1998, but still further demand of Rs.50,000/- was made for purchase of motorcycle and on such count, she was assaulted and ill-treated. She reported it when she visited parents' house. On 01.02.1999, news was received that she committed suicide by jumping in well and therefore, PW5 paternal uncle of deceased lodged report, on the basis of which PW11 registered crime for offence under Sections 498-A, 306 and 304-B of IPC.

4. On gathering sufficient evidence, PW11 chargesheeted accused and on committal of case before learned Adhoc Additional Sessions Judge, Beed, accused came to be tried vide Sessions Case No. 68 of 1999.

5. Case of prosecution was rested on evidence of in all 11 witnesses apart from reliance on documentary evidence comprising of FIR, various panchanamas, postmortem report etc. Defence denied to lead evidence and therefore, learned trial Judge appreciated the prosecution evidence and on analyzing the same, reached to a finding

that prosecution established all the charges and by judgment and order dated 20.03.2003, held husband his parents and brother guilty as above, which is now subject matter of the appeal before this Court.

SUBMISSIONS

On behalf of the Appellants :

6. Learned counsel for the appellants read the charge and appraised this Court about the nature of allegations. According to her, here, prosecution has miserably failed to establish the charges by leading cogent and reliable evidence. She submits that initially, there were allegations of only ill-treatment for unpaid dowry. That, there were general and vague allegations about ill-treatment without specifying the instances, nature or form of ill-treatment. Then, she pointed out that prosecution developed the case of demand of Rs.50,000/- for motorcycle. She pointed out that here, FIR is at the instance of PW5 uncle Ajinath, but his testimony is full of material omissions, contradictions and the same is evident from his cross para 14. She further pointed out that his evidence shows that he has got complaint prepared and typed by engaging a legal advisor. That, he has admitted that there was no previous complaint at any point of time. She pointed out that in spite of claiming to have learnt that there were life threats, deceased was allowed to go to the house of

accused, and according to learned counsel, such conduct of complainant party is itself unusual. According to her, their improvised versions in the witness box are liable to be discarded.

7. She next took this Court through the testimony of PW4, a relative, and would submit that this witness has hearsay information and he has no direct knowledge about alleged state of affairs and relations between deceased and accused party. She pointed out that though prosecution claimed that there was dowry demand, according to her, this aspect is not substantiated by adducing clear and cogent evidence. She pointed out that prosecution witnesses are claiming that amount of Rs.10,000/- was raised and paid, but the witnesses who allegedly went to pay the remaining amount, are not examined. She further pointed out that very Investigating Officer in cross has also admitted that in spite of recording statements of villagers and neighbours, they are not examined merely because they did not support prosecution. Thus, according to learned counsel, adverse inference needs to be drawn against prosecution for suppressing truth.

8. Pointing to the evidence of PW8 Sadhna, learned counsel strenuously and fervently submitted that though she seems to be a

cousin and close friend of deceased, and through her, prosecution has attempted to fabricate and manufacture the letter purported to be written by deceased, however, according to learned counsel, such attempt gets exposed from her cross which shows that so called letter subsequently tendered with investigating machinery was written after the death. Therefore, it is her submission that, there was desperation on the part of complainant party to falsely implicate accused by hook or by crook. On this point, she further brought to the notice of this Court that though the letter is exhibited in trial court, the same has not been referred by the Investigating Officer to the hand-writing expert. Therefore, even though the contents of the letter were not supporting prosecution, she pointed out that desperate attempts are made by complainant party to falsely implicate the appellants.

9. As regards death of Keshar is concerned, it is her submission that, here, prosecution has not cogently proved that death was only and only suicidal and not otherwise. According to her, prosecution's own evidence suggests death to be accidental one. She invited attention of the Court to the postmortem report, and more particularly column no. 17, and would point out the injuries noticed and noted by autopsy doctor comprising of abrasions and so, she further submits that, there is possibility of accidental fall and suffering

abrasions. That, learned trial court has overlooked the circumstances at the well which were showing steps to be improper, and therefore, there is more possibility of accidental fall. She pointed out that, had it been a case, as is tried to be put forth, about jumping, then, according to her, there was no occasion for deceased to come in contact with rough surface to suffer abrasion injuries. For all above reasons, she questions prosecution version about commission of suicide.

10. Even on the point of alleged suicide, it is her submission that no one has seen deceased going and jumping in the well. There is no evidence suggesting any inducement, abetment or any active role being played by accused in abetting commission of suicide, and therefore, she finds fault in the findings reached at by learned trial court for recording guilt under Section 306 of IPC.

11. Lastly, she submits that merely because death has taken place within seven years, it was not open for the investigating agency to employ and invoke Section 304-B IPC and not also open for the trial Judge to record guilt when there was no material suggesting cruelty being meted out in the backdrop of dowry demand and when in fact prosecution had failed to prove beyond reasonable doubt, it to be a case of dowry demand. Thus, she criticizes the findings recorded by

learned trial Judge and prays to interfere by allowing the appeal.

12. Learned counsel for the appellants relied on the decision of the Hon'ble Apex Court in the case of ***Bhola Ram v. State of Punjab*** reported in (2013) 16 SCC 421/2013 DGLS(SC) 897.

On behalf of the State :

13. Learned APP, while canvassing in favour of the judgment passed by learned trial Judge, pointed out that PW4, PW5 and PW7 to PW10, who are family members of deceased Keshar @ Manisha, have consistently deposed that marriage was fixed and it was settled for Rs.45,000/- and one tola gold. At the time of marriage, Rs.35,000/- were paid and remaining Rs.10,000/- were agreed to be paid within two months. That, for said unpaid dowry, accused subjected Keshar to ill-treatment. That, all these witnesses deposed that said demand of remaining Rs.10,000/- was fulfilled in December. Shortly thereafter, there was demand of Rs.45,000/- for employment and subsequently, Rs.50,000/- were demanded for purchase of motorcycle. Thus, according to her, accused persons went on mounting demands. They pressurized her to bring money from her father. There was ill-treatment by keeping her starved. That, she was reluctant to go back

to cohabit and she had expressed apprehension of ill-treatment and beating on account of non-fulfillment of demand of Rs.45,000/- and Rs.50,000/-. Ill-treatment and cruelty continued and therefore she committed suicide by jumping in the well. That, accused persons are solely responsible for the suicide. According to her, learned trial court has rightly considered that death having taken place in the backdrop of dowry demand, Section 304 IPC was also attracted. Thus, she supports the findings and conviction recorded by learned trial Judge and prays to dismiss the appeal.

ROLE AND STATUS OF THE PROSECUTION WITNESSES.

14. Prosecution has adduced evidence of following 11 witnesses in support of their case :

PW1 Suresh acted as pancha to spot panchanama Exhibit 53.

PW2 Sopan is pancha to seizure of clothes of deceased vide panchanama Exhibit 55.

PW3 Dr. Tarte is the autopsy surgeon, who conducted postmortem and issued report Exhibit 57.

PW4 Gorakh Lad is brother-in-law of uncle Gorakh Gite [PW7].

PW5 Ajinath Gite is the informant and paternal uncle of deceased.

PW6 ASI Giri is the PSO who registered crime.

PW7 Gorakh Gite is another uncle of deceased.

PW8 Sadhna Gite is cousin sister of deceased.

PW9 Navnath is father of deceased.

PW10 Vijayabai is wife of informant Ajinath [PW5].

PW11 PSI Dhole is the Investigating Officer.

ANALYSIS

Charge under Section 498-A IPC :

15. Here, in all six accused were chargesheeted. Learned trial Judge has convicted husband, father-in-law, brother-in-law and mother-in-law for offence under Sections 498-A, 306 and 304-B of IPC, whereas accused nos. 5 and 6 are acquitted from all charges. As mentioned above, on account of death of original accused no.2 Eknath, appeal stands abated as against him.

16. As regards charge under Section 498-A is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *State of West Bengal v. Orilal Jaiswal* [(1994) 1 SCC 73], *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5

SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152 and *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

17. On the aspect of offence of Section 498-A IPC, though testimonies of PW4, PW5, PW7, PW8, PW9 and PW10 are relied by prosecution, on visiting testimony of PW4, he seems to have hearsay information, and rest of them are family members of deceased. Therefore, testimonies of such family members are required to be carefully appreciated.

18. PW5 uncle deposed that out of fixed dowry of Rs.45,000/-, Rs.35,000/- were paid at the time of marriage and Rs.10,000/- were to be paid within two months. After 2 and ½ months, i.e. in the last week of September, accused assaulted Keshar and sent her to parents house i.e. for remaining unpaid dowry. His niece reported that accused used to assault her and they did not provide her meal. Father-in-law, mother-in-law, husband and wife of brother-in-law ill-treated her and kept her starved. Amount of Rs.10,000/- was paid after one month but at that time, demand of Rs.45,000/- was raised

for employment of husband. According to him, one month thereafter, again Keshar was assaulted and sent back for demand of Rs.45,000/- for employment of her husband. She reported that she was ill-treated. Rs.45,000/- was arranged and paid on 13.12.1998. Again after one month, she was assaulted and sent by raising demand of Rs.50,000/- for purchase of motorcycle. Thereafter, news was received on 01.02.1999 about suicide committed by Keshar.

19. PW7 Gorakh Gite, brother of PW5 and uncle of deceased Keshar, in his testimony at Exhibit 72 stated that, out of Rs.45,000/- dowry, Rs.35,000/- were paid at the time of marriage and Rs.10,000/- had remained unpaid. For 2 and ½ months, they treated Manisha (Keshar) properly but thereafter ill-treated her i.e. her husband and all family members. They were assaulting, not providing meals and taunting for not paying remaining dowry. He and his brother i.e. PW5 went to the house of accused and paid Rs.10,000/- but at that time, accused said that Rs.45,000/- are required for employment of Nanabhau (accused no.1). After one month, Keshar told that she was frequently assaulted for money and to either meet the demand or not to send her. On 13.12.1998, Rs.45,000/- were paid but in January 1999 she was again sent with demand of Rs.50,000/- for purchase of motorcycle.

20. PW8 Sadhna, first cousin, also stated about Rs.35,000/- being paid out of Rs.45,000/- fixed and Rs.10,000/- remained unpaid. For said unpaid amount, after 2 and ½ months, there was ill-treatment by husband, and in-laws. According to her they were taunting, assaulting, not providing food and making Keshar do extra work. Rs.10,000/- were paid by her uncle and at that time, demand of Rs.45,000/- was raised for employment of accused no.1. Said demand was met after one month because Keshar was ousted, assaulted and ill-treated. She reported nagging, insulting and ill-treatment. According to this witness, she was again ousted for Rs.45,000/- for motorcycle.

21. PW9 father also re-iterated about, out of dowry amount of Rs.45,000/-, Rs.35,000/- were paid at the time of marriage and Rs.10,000/- to be paid within 2 months. After 2 and ½ months, his daughter informed about ill-treatment. They were assaulting, not providing food and taunting her. After one month, his two brothers went and met the demand of Rs.10,000/-, but that time accused again demanded Rs.45,000/-. One month thereafter his daughter was ousted for Rs.45,000/-. Said demand was met, but again after one month, she was ill-treated and sent for demand of Rs.50,000/- for

purchase of motorcycle. After two days, she was taken to the house of accused, but she was not willing to go.

22. PW10, wife of PW5, also deposed about fixed dowry demand to the tune of Rs.45,000/-, Rs.35,000/- paid at the time of marriage, for remaining Rs.10,000/- there was ill-treatment after two months, said demand was met but again Rs.45,000/- were demanded for job of husband and there was ill-treatment on that count. Said demand was also met, but there was ill-treatment for further demand of Rs.50,000/- for motorcycle.

23. All above witnesses are subjected to cross. It is noticed that testimonies to the extent of dowry fixed to the tune of Rs.45,000/-, Rs.35,000/- being paid at the time of marriage and Rs.10,000/- were to be paid after two months, which is consistently stated, has remained intact. However, it is pertinent to note that on minute scrutiny of testimonies of above witnesses, it is noticed that, none of the above witnesses have clarified or specified which amongst the six accused did what and who ill-treated in what form and manner. Distinct roles allegedly played by each of the accused are not stated by any of them. Apparently, sweeping allegations seem to be levelled against all, saying that Keshar reported that there was ill-treatment

like not providing meals, keeping starved and taunting.

24. On carefully going through the testimonies of uncles and father, it is emerging that marriage is of June 1998. After 2 and ½ months, demand of unpaid dowry was made. Then, this should be around September. PW5 and PW7 visited house of accused and assured to meet the demand of unpaid dowry of Rs.10,000/- and according to them, they paid Rs.10,000/- after one month, which means it should be around October 1998. That day itself, they allege that, there was demand of Rs.45,000/-, however, they are not alleging any ill-treatment till she was sent back after one month, i.e. in November 1998, in the backdrop of demand of Rs.45,000/- for alleged employment of accused no.1. Their evidence further shows that since then, Keshar was with her parents up to 13.12.1998 i.e. the day on which compliance of Rs.45,000/- was said to be made. Then again witnesses speak about she being sent back after one month with demand of Rs.50,000/- for motorcycle. This suggests that, such demand, if at all raised, has to be around January 1999. Admittedly, suicide is allegedly committed on 31.01.1999/01.02.1999. The above period is deduced as is emerging from the testimonies of PW5 and PW7 to PW10.

25. Consequently, three instances are reported alleging ill-treatment, assault, starvation and taunting, without defining as to who amongst them beat her, who amongst them kept her starved, when, and who taunted in what manner. Prosecution has not demonstrated and substantiated that at relevant point all accused were residing under one roof. As stated above, roles or overt acts are also not distinctly specified by any of the witnesses. All are using words that accused ill-treated, kept her starved and ousted her. Apparently, therefore, this amounts to omnibus allegations. During cohabitation from June 1998 to 30 January 1999, only three instances are quoted about ill-treatment in backdrop of three various demands. Consequently, as required, there is no consistent or incessant demand or cruelty.

26. Defence case is that Rs.70,000/- were paid to PW7 Gorakh Gite to arrange employment, though it is denied by him in cross para 8. While answering question no. 85 under Section 313 of Cr.P.C., accused husband has answered that he had paid Rs.70,000/- to Gorakh Gite (PW7) for his employment. He had demanded said amount back. Said witness had proposed marriage of Keshar with him. He did not pay dowry amount but he promised that he would provide some employment. PW5 in para 15 of the cross, has admitted

that Keshar was given to appellant no.1 husband with a view that their marital life would be happy. Therefore, this witness seems to be instrumental in fixing marriage. Defence taken in appeal is that at the instance of PW5, complaint has been lodged and not by father, only to avoid repayment of Rs.70,000/- allegedly taken by him. Above material indicates that above defence of false implication to avoid repayment is attempted to be probalilized. Law is fairly settled that accused need not adduce evidence to prove his defence. He is merely expected to probalilize it. Here, in view of above discussed material, he has done it. Consequently, when none of the witnesses are giving specific instances and form of ill-treatment except starvation, it is unsafe to accept prosecution version on the count of charge of 498-A IPC.

Charge under Sections 306 and 304-B IPC :

27. Apart from Section 498-A IPC, appellants were made to face trial for above offences. Case of prosecution is that, because of cruelty in the backdrop of demand, deceased jumped in the well and committed suicide. Having come with such specific case, it is incumbent upon prosecution to substantiate that there was abetment to commit suicide. Prosecution has to prove necessary ingredients incorporated in Section 107 of IPC which deals with abetment. In

umpteen judgments, Hon'ble Apex Court has time and again expounded legal requirements for attracting the charge of 306 IPC i.e. in the known cases, which are time and again referred to till date.

28. 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.

29. 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.

30. 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 IPC along with the definition of abetment under Section 107 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 correlation 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.”

31. 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.”

32. 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.”

33. 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 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

34. 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.”

35. 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 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 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.

36. In very recent case of ***Naresh Kumar v. State of Haryana*** [Criminal Appeal (No.) 1722 of 2010 decided by the Hon'ble Supreme Court on 22.02.2024] 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)."

37. 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.”

38. Keeping above settled legal proposition in mind, if the case in hand is tested, here, it is noticed that deceased was at her matrimonial place since 13.12.1998. Witnesses speak that one month after that, she was sent back to parental house for demand of Rs.50,000/-. She was kept for two to four days and then taken back to accused as Matawali. That time, request was made to the accused not to ill-treat her. Informant claims that news of suicide was received on 01.02.1999. Very father in chief itself, para 5, stated that his brothers took his daughter to matrimonial house and thereafter deceased never returned back to the parents' house. Informant's evidence

suggests that she was sent back to parents' house for Rs.50,000/- for purchasing motorcycle after one month since she was dropped on 13.12.1998. If his such version is considered, then deceased must have come back and stayed for two to four days and she went back to accused. Then, this should be around 13.01.1999. Admittedly, suicide is of 31.01.1999/01.02.1999 i.e. after almost more than two weeks. During such period what exactly transpired, has not come on record. In absence of any evidence, it is unsafe to draw any inference or even draw presumption. Admittedly, there is no material suggesting demand, cruelty in proximity to death of Keshar.

39. At the first count, it is realized that here, prosecution has not proved beyond reasonable doubt that Keshar committed only and only suicide by jumping in well. Circumstances at the scene of occurrence, as pointed out by defence, does create other possibility also, because in spot panchanama there is reference of articles like footwear, sickle and *dhoti* a piece of cloth. As pointed out by learned defence counsel, in spot panchanama, there is text that husband gave information that in the afternoon his deceased wife went to the field for cutting grass. Admittedly, sickle is found lying near the well. Therefore, information given by appellant husband is finding corroboration in the panchanama.

40. When prosecution has come with a case of suicide, then primary burden is on prosecution to substantiate abetment, inducement or active participation by accused persons in either goading, inducing, abetting Keshar to end up her life or it is to be demonstrated that in the backdrop of the demand, circumstances were created by accused which were of such nature that deceased was left with no other alternative but to commit suicide. Such essential material is not finding place in the prosecution evidence.

41. Even as pointed out, autopsy doctor has noticed abrasion injuries on palm as well lateral abdominal part, apart from three abrasion injuries. If at all it was suicide, then there would be jumping directly in the water and there is no possibility of deceased coming in contact with other part of the well to get abrasion injuries on her person. The above discussed circumstances at the scene of occurrence, like availability of footwear and sickle, creates other possibility also, and therefore, in such circumstances, benefit of doubt has to go to accused.

42. Learned trial Judge has accepted prosecution charge of Section 304-B IPC and recorded guilt of appellants. However, here, in view of above discussion, either cruelty as contemplated under law for

attracting Section 498-A, or suicide on abetment of accused, having being not proved beyond reasonable doubt, mere death taking place within seven years itself cannot be a ground to record guilt for offence under Section 304-B IPC. This penal section contemplates infliction of cruelty in the backdrop of dowry demand and further *sine qua non* is that, such cruelty or harassment should be soon before alleged unnatural death. Evidence to this extent is not coming on record. At the cost of repetition, what happened prior to death is not coming on record and therefore it is unsafe to presume and even apply Section 113-A/B available under the Indian Evidence Act.

43. Perused the judgment under challenge. Learned trial Judge has surprisingly considered testimonies of PW4, PW5, PW7 to PW10 who are apparently, though unanimously, are speaking about ill-treatment by all accused even when it has not been substantiated that all of them resided under one roof. Learned trial Judge has not considered that general allegations of ill-treatment, harassment and starvation are made against entire family. Therefore, for above reasons and discussions made in aforesaid paragraphs, such judgment cannot be allowed to be sustained. Hence, appellants succeed. Accordingly, I proceed to pass following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant nos. [1] Nanabhau s/o Eknath Bangar, [3] Raosaheb s/o Eknath Bangar and [4] Bhamabai w/o Eknath Bangar, by learned IVth Adhoc Additional Sessions Judge, Beed in Sessions Case No. 68 of 1999 under Sections 498-A, 306 and 304-B r/w 34 of IPC on 20.03.2003 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 498-A, 306 and 304-B 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.]