



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 604 OF 2005**

1. Dattatraya s/o Jyotiram Nakate,  
Age : 45 years, Occ: Driver,
2. Sow. Kamalbai w/o Dattatraya Nakate,  
Age : 40 years, Occ: Household,

Both R/o. Jalkot, Taluka Tuljapur,  
District Osmanabad.

... Appellants  
[Orig. Accused]

Versus

State of Maharashtra  
Through Jayashri w/o Angad Nakate,  
Age : 23 years, Occ: Household,  
R/o. Jalkot, Taluka Tuljapur,  
District Osmanabad.

... Respondent  
[Orig. Complainant]

.....

Ms. J. R. Nawale h/f Mr. V. D. Salunke, Advocate for the Appellants.  
Mr. N. D. Batule, APP for Respondent-State.

**CORAM : ABHAY S. WAGHWASE, J.**

**DATED : 25.02.2025**

**JUDGMENT :**

1. The appellants-convicts hereby questioned the judgment and order dated 01.08.2005 recording guilt in Sessions Case No. 77 of 2000 for offences punishable under Sections 498-A and 306 r/w 34 of IPC.

2. At the threshold, it is to be noted that during pendency of appeal, appellant no.1 Dattatraya is reported to have died and as such, appeal stands abated against him. Therefore, appeal survives only to the extent of appellant no.2 Kamalbai.

3. On the strength of two dying declarations, PW8 registered crime bearing no. 160 of 1990 i.e. on the statement of deceased Jayashri that, because of ill-treatment at the hands of her in-laws Dattatraya and Kamalbai, she immolated herself. Investigation was carried out and both appellants were tried by learned III<sup>rd</sup> Adhoc Additional Sessions Judge, Osmanabad vide Sessions Case No. 77 of 2000.

During trial, prosecution adduced evidence of in all eight witnesses and also relied on documentary evidence like FIR, dying declarations, postmortem report etc.

After appreciating the oral and documentary evidence, learned trial Judge accepted the case of prosecution as proved and held both appellants guilty for offence punishable under Sections 498-A and 306 r/w 34 of IPC and sentenced them to suffer imprisonment as spelt out in the operative part of the order.

4. Feeling aggrieved by the same, instant appeal has been preferred on various grounds spelt out in the appeal memo.

### **SUBMISSIONS**

#### **On behalf of the Appellants :**

5. Learned counsel for the appellant would submit that there is apparently false implication. That, there are general, baseless and omnibus allegations of ill-treatment. She pointed out that statement of father of deceased is recorded, but his evidence does not specify the form or nature of ill-treatment and when it was inflicted. She pointed out that, there are allegations of demand of articles, but in the dying declarations, on the basis of which crime has been registered, there is no whisper by deceased herself about any demand and on account of its non-fulfillment she being maltreated. Learned counsel also questioned the veracity and reliability of two dying declarations which, according to her, inspite of being of same date, are not consistent. She pointed out that in the second dying declaration (Exhibit 40) recorded by PW2, there is no whisper about any demand of articles, whereas in first dying declaration (Exhibit 52) recorded on the same day, there is detail story which is apparently false and afterthought and on being tutored by family members. Both dying declarations being inconsistent, she prays to discard the same.

6. It is further submitted that, though father claims that there was demand, it is on the basis of hearsay information of the neighbour, but evidence of such neighbour has been shaken during cross-examination. Therefore, according to learned counsel, there was no evidence about offence under Section 498-A of IPC and moreover, deceased having immolated herself without any instigation or abetment, both the charges had virtually failed, but learned trial Judge failed to consider and appreciate the same as well as the settled legal position and erred in recording conviction. Hence, she prays to allow the appeal by setting aside the impugned judgment.

**On behalf of the State :**

7. Per contra, learned APP supported the judgment submitting that there was harassment by in-laws. Deceased was not allowed to go to her parents' place unless their demand of articles was met. Initially, grandfather of deceased was sent to bring her, but she was not allowed to go. Subsequently, neighbours were sent and they learnt from deceased herself that, she was not allowed to go unless demand was met. Therefore, according to learned APP, there is not only evidence of father, but also independent witness. Moreover, according to learned APP, there are dying declarations naming

present appellant to be responsible for the suicide. Therefore, learned APP prays to not to disturb the well reasoned judgment passed by the learned trial Judge.

### **EVIDENCE BEFORE THE TRIAL COURT**

8. In support of its case, prosecution has examined as many as eight witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

**PW1** Ambadas is father of deceased Jayashri. His evidence at Exhibit 34 reads as under :

“1. Deceased Jayashri was my daughter, and her marriage was solemnized with son of accused Dattatraya namely, Angad, in the year 1999. I have given Rs.41,000/- dowry. One tola gold, fan, cupboard, cot, utensils in the marriage. The said marriage was performed at village Jalkot, which is at the distance of 25 to 30 K.M. from Murum. Angad was a tempo driver and his father accused Dattatraya was also a tempo driver. After marriage, Jayashri went to the house of Angad for cohabitation. After marriage, I sent my father to Jalkot for bringing Jayashri to my house. My father returned back and told me that Jayashri had gone to other village for religious purpose. Then after 8 days, I again sent my father to Jalkot for bringing Jayashri and my father returned back as Jayashri did not return from the religious place. Then after 5-6 days, my

father again went to Jalkot to bring Jayashri. At that time my father returned back alone and told me that Angad and his father has demanded 2 tola gold, clothes and also told that they will not send Jayashri on failure to bring the gold and clothes. Then I myself went to Jalkot. At that time, Jayashri was present in her house alongwith husband and in-laws. Then accused Dattatraya brought some persons namely Patne Basha to his house. Accused Dattatraya told me that the articles shown to him in the marriage, was not actually given to him in the marriage. I replied accused Dattatraya that I have given the articles which are shown in the marriage. Accused did not sent Jayashri with me and so I returned back alone to my village. Then I again went to the house of accused and at that time, Jayashri told me in presence of her in-laws that there is ill-treatment to her on account of the demands of 2 tola gold and clothes, and her signatures are obtained on blank paper. Accused did not sent Jayashri with me. Then I returned back to my village. Thereafter I sent Dattu Chavan and Atmaram Wagh of my village to the house of accused to pacify the accused. Accordingly Dattu Chavan and Atmaram Wagh went to the house of accused, and returned back and told me that accused Dattatraya had gone to Mumbai and they will go to Jalkot on 30<sup>th</sup> day. On 30<sup>th</sup> day, Balaji Wagh of my village informed me that Jayashri has set herself on fire. Then I myself, Dattu Chavan, Atmaram Wagh and other persons including my wife went to village Jalkot by jeep. We came to know at Jalkot that Jayashri is referred to the hospital at Solapur. So we went to civil hospital Solapur, I saw Jayashri there in burnt condition. Jayashri was in conscious condition. I

asked her about the incident and she told me that due to ill treatment of her in laws, she set herself on fire. Then after 8 days, Jayashri died. Accused present before the court are in-laws of Jayashri. ....”

**PW2** Ashok Afzalpurkar, Special Executive Magistrate who recorded dying declaration of Jayashri [Exhibit 40]. Relevant portion of his evidence at Exhibit 35 is as under :

“1. I am working as Head Clerk in north Solapur Tahsil Officer since 1997. Since 1999 I am working as Special Executive Magistrate. .... I asked questions to the patient and she answered it and she told the incident before me. Said patient told her name as Jayashri Angad Nakate. Said patient Jayashri told before me that due to ill-treatment of her in-laws, she fed up and poured kerosene on her person and set herself on fire. I reduced the statement of patient Jayashri into writing as per her say. The statement of patient Jayashri now shown to me is the same and it is in my handwriting, and it bears my signature and signature of Patient Jayashri, and its contents are correct. Patient Jayashri put her signature after reading over her statement to her and after admitting the said statement. Then Doctor made endorsement at the bottom of the said statement. The statement bears the signature of Medical Officer at the top and bottom of the statement. Except myself, Doctor and patient, nobody was present at the time of recording statement. The statement of patient Jayashri is at Exhibit 40.”

**PW3** Dattoba, an acquaintance of father of deceased, gave following evidence at Exhibit 43 :

“1. I know Ambadas Shinde and his deceased daughter Jayashri and the accused. Jayashri was given in marriage to the son of accused in the year 1999. I was present for the settlement of marriage of Jayashri. It was settled to give Rs.41,000/- dowry, 2 tola gold and utensils in the marriage, and accordingly the said articles were given in the marriage. After 2-4 months of marriage, Ambadas Shinde told me that the accused did not send his daughter Jayashri though he sent his father, son to bring Jayashri to his house. Ambadas Shinde told me prior to 15 to 20 days of the death of Jayashri that accused did not send Jayashri to his house. Then I myself and Atmaram Wagh went to the house of accused at village Jalkot. I again say that I myself and Atmaram Wagh went at the house of Patne at Jalkot. Patne sent one person to the house of accused, and said person informed Patne that the father in law of Jayashri had gone to Mumbai. Then I myself and Atmaram Wagh went to the house of accused as we were called to the house of accused. At that time, Jayashri and her husband and mother in law were present in their house. I asked the mother in law of Jayashri why Jayashri was not sent towards her parental house. The mother in law of Jayashri told me that the father of Jayashri did not give utensils, cot and ‘Aaher’ (Gift) and also told that old utensils were given. I asked the mother in law of Jayashri when her husband will return from Mumbai and she replied that within 2-4 days her husband will return

from Mumbai. Jayashri told me to inform her father about the ill treatment and also tell her father to bring the gift (Aaher). Then we returned back to our house. I informed the incident to Ambadas Shinde. Then after 8 days, we received an information that Jayashri set herself on fire. So I myself, Atmaram Wagh and parents and grand father of Jayashri went to Jalkot. We came to know at Jalkot that Jayashri is referred to Civil Hospital Solapur for treatment. So we went to Solapur Hospital. We saw Jayashri in the hospital at Solapur in burn condition. I asked Jayashri about the incident and she told me that due to ill treatment of accused on account of the demand of gold, she fed up and set herself on fire by pouring kerosene oil on her.”

**PW4** ASI Sidram Sontakale, who recorded dying declaration (Exhibit 52), deposed at Exhibit 51 as under :

“1. .... I recorded the statement of said patient into writing as per her say. I read over the said statement to her and she admitted it and then put her signature on it. I also signed the said statement. Doctor again examined the said patient Jayashri and made endorsement about the conscious condition of patient Jayashri. The Statement of patient Jayashri now shown to me is the same and it bears my signature and signature of patient Jayashri. It also bears the endorsement and signature of Doctor at beginning and at bottom. Its contents are correct and it is at Exhibit 52. Then I sent the said statement to Sadar Bazar Police Station, Solapur.”

**PW5** Dr. Sudhir Terkar, Medical Officer, who conducted postmortem and claims to have noticed burn injuries to the extent of 91%. He identified the postmortem report to be at Exhibit 54.

**PW6** Shankar Surwase, pancha to spot panchanama, who did not support prosecution.

**PW7** Dr. Yogesh Kokadwar, Medical Officer, who endorsed certification of fitness to give statement on both dying declarations Exhibits 40 and 52.

**PW8** PSI Devidas Patil was the Investigating Officer.

On trial, charge under Sections 498-A and 306 of IPC is held to be proved by prosecution.

## ANALYSIS

### Charge under Section 498-A IPC :

9. 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/[2008] 14 S.C. R. 1170; ***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. Relevant observations of the Hon'ble Supreme Court in the case of ***Manju Ram Kalita v. State of Assam*** (2009) SCC 330 are borrowed and quoted below :

*“13. The provisions of Section 498A IPC read as under :*

*"498A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

*Explanation. - For the purposes of this section 'cruelty' means -*

*(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;*

*(b) harassment of the woman where such harassment is with a view to coercing her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

*Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment.*

14. *In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the explanation. The elements of cruelty so far as clause (a) is concerned, have been classified as follows :*

*(i) any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or*

*(ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or*

*(iii) any 'wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.*

15. *In **S. Hanumantha Rao v. S. Ramani**, AIR 1999 SC 1318, this Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that :*

*"8. .... mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."*

16. *In **V. Bhagat v. Mrs. D. Bhagat**, AIR 1994 SC 710, this court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under :*

*"16. ....It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties,*

*the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.*

17. ....

18. .... The context and the set up in which the word 'cruelty' has been used in the section seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. ...."

17. In **Mohd. Hoshan v. State of A.P.**; (2002) 7 SCC 414, this Court while dealing with the similar issue held that mental or physical torture should be "continuously" practiced by the accused on the wife. The Court further observed as under :

"6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

18. In **Raj Rani v. State (Delhi Administration)**; AIR 2000 SC 3559, this Court held that while considering the case of cruelty in the context to the provisions of Section 498A I.P.C., the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

19. In **Sushil Kumar Sharma vs. Union of India**, AIR 2005 SC 3100, this Court explained the distinction of cruelty as provided under Section 306 and 498A IPC observing that under Section 498A cruelty committed by the husband or his relation drive woman to commit suicide etc. while under Section 306 IPC, suicide is abated and intended. Therefore, there is a basic difference of the intention in application of the said provisions.

20. In **Girdhar Shankar Tawade v. State of Maharashtra**, AIR 2002 SC 2078; this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

21. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to

*commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."*

10. Here, evidence of PW2 father and PW3 Dattoba is crucial. PW1 father Ambadas, in his evidence at Exhibit 34, which is discussed above, has stated that twice-thrice he sent his father to fetch his daughter after marriage, but he returned without her and he claims to have heard from his father about demand of 2 tola gold and clothes. He has alleged demand to husband Angad and his father Dattatraya. However, here husband is not chargesheeted and father is said to be dead. He has named Dattu Chavan (PW3) and Atmaram Wagh, i.e. his neighbours, to be also sent to fetch his daughter, but they also returned without her and allegedly informed him that appellant no.1 Dattatraya (deceased) had gone to Mumbai. PW1 father thus does not speak about hearing from Dattu or Atmaram about any demand as allegedly informed to him by his own father. Father of PW1, from whom he claims to have received information about demand, is also not examined. Therefore, apparently as regards the demand is concerned, father has hearsay information. He merely speaks that

when he met his daughter in the hospital, she told that she was ill-treated at the hands of her in-laws. As submitted, this is general and omnibus allegation without specifying nature and form of ill-treatment meted out to her.

11. Another witness who is crucial for prosecution is PW3 Dattoba. This witness in his evidence at Exhibit 43 has stated that, he was party to the settlement of marriage and it was decided to give Rs.41,000/- dowry, 2 tola gold and utensils in the marriage. However, in his examination-in-chief itself, he stated that all such articles were given in the marriage. Therefore, question arises is, on what count there was demand as alleged by the informant father, when entire dowry amount and ornaments alleged to be agreed were given at the time of marriage itself. This witness claims to have gone to Jalkot along with Atmaram to bring deceased, and he claims to have questioned mother-in-law of deceased, i.e. present appellant Kamalbai, as to why deceased was not sent. However, according to him, mother-in-law told that utensils, cot and *aaher* (gifts) were not given. Therefore, his version is totally different than that of the prosecution case and moreover, the testimony of Ambadas (father). He claims that during such visit, deceased herself told him to inform her father about ill-treatment and further to bring the gifts. Again, he

is also not speaking about any specific form or nature of ill-treatment allegedly given to deceased and further reported by her to him. He too claims to have met her in the hospital after burns and claims to have heard that due to ill-treatment at the hands of accused on account of demand of gold, she got fed up and set herself on fire. Resultantly, his version is diametrically opposite than that of PW1 father and even the contents of dying declarations, on the basis of which crime is registered.

12. Therefore, oral evidence as discussed above, does not inspire confidence and is weak and fragile. Neither PW1 nor PW3 specified the form of ill-treatment, nor they had given instances and which of the accused ill-treated and in what manner. Apparently general allegations are levelled. Law is fairly settled and the Hon'ble Apex Court has, in a line of judgments, repeatedly held that for attracting Section 498-A IPC, not only instances and form of ill-treatment are required to be stated by the witnesses, but specific instances are also to be narrated. Further it is to be shown by prosecution that cruelty meted out as well as demand was continuous and on account of its non-fulfillment, there was harassment. Here, evidence to this extent is patently missing.

### **DYING DECLARATIONS**

13. Now, let us appreciate the two dying declarations, translated versions of which are as under :

#### **Dying Declaration at Exhibit No. 52**

Patient is conscious to give her statement  
Sd/- [30/10/99] 11.55AM  
Medical officer, Casualty Ward  
SCSM Sarvopchar Hospital,  
Solapur

Statement Date: 30/10/99

I, Mrs. Jayashri Angad Nakate, age- 17 yrs., Occu-  
Household, R/o Jalkot, Tq. Tuljapur,

Upon asking I do hereby state that, I am living with my husband, mother in law and father in law at the above mentioned place. My husband works as a driver. My father in law works as a driver. My marriage took place on 29/04/1999. I have completed my education up to 10th Std. My maternal home is in Murum, Tq. Omerga.

Ever since I got married, my mother in law Kamal and father in law Dattatraya used to nag me about some trivial matter and abused me. My husband used to convince me. I am not being harassed by my husband.

Fifteen days ago, I received an anonymous letter from my maternal hometown. It was not written who the letter was from. It was like a love letter. My in laws asked me to tell them who the letter was from. Otherwise, they would not let me stay in the house and therefore, they were abusing me, harassing me and giving minor beatings. I was tolerating it just because of my husband. My father was supposed to come yesterday for inquiry regarding this matter.

Today at about 9.30 AM, my mother-in-law and I were at home. My husband and father-in-law were out for work as a driver. My mother-in-law asked me to fill water; I was going to fetch water. However, my mother-in-law asked me if you will not bring water, who will come for you? As I could not bear that and fed up with the previous harassment of my mother-in-law, and father-in-law, I poured kerosene on my person and set myself on fire in the house. As a result, I sustained burn injuries on my face, hands, chest, legs and back as the Saree on my person caught fire. I do not know who extinguished the fire on my person. My mother in law and neighbours carried me in private vehicle and admitted me in Civil Hospital, Solapur for the treatment.

I am undergoing the treatment and I am fully conscious.

Therefore, today at about 9.30 AM in my residential house, I poured kerosene on my person and set myself on fire over the reason of harassment caused by my mother in law Kamal and father in law Dattatraya. Therefore, I received burn injuries. Therefore, this is my legal complaint against my mother in law Kamal and father in law Dattatraya.

Before,  
Signed/-  
A.S.I. C.P.C.

Patient was conscious throughout the statement from 11.55 AM to 12.05 PM on 30/10/99.

Sd/-  
[30/10/99] Medical officer,  
Casualty Ward C.S.M.  
Sarvopchar Hospital, Solapur

**Dying Declaration at Exhibit No. 40**

(Patient is conscious to give her statement)

Sd/- 30-10-99 / 12:05 p.m.

MO, Casualty Ward, Sarvopchar Hospital, Solapur.

**Dying Declaration 30-10-99**

I, Mrs. Jayshri Angad Nakate, aged – 17 years,  
R/o – Jalkot, Tq. Tuljapur.

Today on 30-10-99, at around 10 a.m. my in-laws asked me to tell them whose love letter I was receiving. I said I don't know. When my in-laws asked me who these love letters were from. I said I don't know. My in-laws were harassing me, I was not being harassed by my husband. Due to the harassment of my in-laws I poured kerosene on my person and set myself on fire. Due to this fire I have received burn injuries all over my body.

I got married six months ago. My husband's name is Angad Dattatraya Nakate. I have not had any children. I do not know who extinguished the fire on my person. I have completed my education up to 10th std. My in-laws had been harassing me regarding this matter for a long time. My husband works as a tempo driver. The neighbours came forward and carried me in a rickshaw and admitted me in the hospital. I am undergoing the treatment at the Civil hospital and I am fully conscious to record this statement.

Before, Sd/-  
Sd/-, (North Solapur)  
Solapur. (Ashok Bapuji Abjalpurkar)

Patient is conscious throughout the statement from  
12:05 p.m. to 12:15 p.m on 30-10-99.

Sd/-  
30-10-99/12:15 p.m.  
MO, Casualty Ward, SCSM Sarvopchar Hospital, Solapur.

14. On keeping above dying declarations in juxtaposition, apparently they are not consistent. In dying declaration (Exhibit 40), deceased has stated that on 30.10.1999, she was questioned by parents-in-law as to from whom she had received love letter and then she has stated that when she did not answer, parents-in-law ill-treated her. But even as pointed out, dying declaration is silent about the form of ill-treatment. She claims that because of ill-treatment, she immolated herself. Thus, this dying declaration is silent about any demand which is the core of prosecution case.

15. Another dying declaration (Exhibit 52) recorded by PW4 is apparently lengthy and therein, deceased has stated that 15 days back, she had received one letter and it was like a love letter and her parents-in-law were questioning her as to who sent it and that she would not be allowed to stay.

Apparently, from such dying declaration, it is further emerging that 15 days after receipt of said letter, around 9.30 a.m., when husband and deceased father-in-law were out of the house, she claims that, mother-in-law asked her as to when will she go to fetch water and further allegedly asked her whether anybody is coming to visit her, and therefore, getting angry by the same, she claims to have

immolated herself. Thus, the very aspect of abetment, inducement or instigation are patently missing from this dying declaration also.

**Legal Precedents on Sections 306 IPC :**

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

17. 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.

18. 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.

19. 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.”*

20. 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.”*

21. 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.

22. 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 of 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.”*

23. 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.”*

24. 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.

25. 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)."

26. 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.”*

27. Keeping above judicial precedents in mind, here, above discussed evidence falls grossly short of essential requirement on the

point of inducement, instigation or abetment. Further, only mother-in-law is shown to be in the house. Mere questioning by her as to whom deceased was waiting for, itself would not tantamount to abetment or inducement to commit suicide. Resultantly, ingredients of Section 306 of IPC are patently missing.

### CONCLUSION

28. Here, taking overall survey of the evidence of PW1 and PW3 on the point of Section 498-A IPC, evidence is weak in nature. On the point of abetment to commit suicide also, dying declarations do not carry any material to show instigation or abetment to end up life or making life so miserable that deceased was left with no other alternative but to end up her life. Resultantly, required ingredients to attract Sections 498-A as well as 306 of IPC are completely missing from the prosecution evidence.

29. Perused the judgment. Learned trial court has apparently failed to appreciate the evidence in correct perspective and even when essential ingredients for attracting the charges were not available, case of prosecution is straightway accepted by ignoring the law, and hence it needs interference. Accordingly, following order is passed :

**ORDER**

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Kamalbai w/o Dattatraya Nakate by learned III Adhoc Additional Sessions Judge, Osmanabad, in Sessions Case No. 77 of 2000 under Sections 498-A r/w 34 and 306 r/w 34 of IPC, on 01.08.2005 stands quashed and set aside.
- III. The appellant Kamalbai w/o Dattatraya Nakate stands acquitted of the offence punishable under Sections 498-A r/w 34 and 306 r/w 34 of IPC.
- IV. The bail bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant 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.]**