



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 409 OF 2004

- 1) Bansilal S/o Kautik Mali
Age: 25 years, Occu.: Business/Panshop
(As per Court order dated 13-08-2024,
appeal is abated against appellant no.1)
- 2) Pramelabai W/o Kautik Mali
Age: 35 years, Occu.: Labourer
- 3) Narmadabai W/o Kautik Mali
Age: 49 years, Occu.: Labourer
- 4) Ravindra S/o Kautik Mali
Age: 23 years, Occu.: Labourer
(As per Court order dated 18-11-2024,
appeal is abated against appellant no.4)

..Appellants
(Orig. Accused)

Versus

. The State of Maharashtra

..Respondent

...
Advocate for Appellants : Mr.C.C.Deshpande h/f. Mr. C.R.Deshpande,
APP for Respondent : Mr.K.K.Naik
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 DECEMBER, 2024

PRONOUNCED ON : 03 JANUARY, 2025

JUDGMENT :-

1. By invoking Section 374 of the Code of Criminal Procedure,

original convicts for offence under Section 498-A, 306, 304-B read with Section 34 of the Indian Penal Code (IPC) and under Section 4 of the Dowry Prohibition Act, are taking exception to the judgment and order passed by learned 2nd Ad-hoc Assistant Sessions Judge, Dhule dated 14-06-2004.

PROSECUTION CASE IN BRIEF

2. In all five accused were chargesheeted by Songir Police Station, Tq. and Dist. Dhule, which was in consequence to Crime No.53 of 2002 registered by informant PW2 Bhagwat. In short, charge was framed on accusations that five accused, who were husband and in-laws of deceased Ashabai subjected her to harassment and ill-treatment in the backdrop of demand of money. Ashabai getting fed up of the same, committed suicide by jumping in the well. As it was dowry demand and death had taken place within seven years of marriage, appellants were indicted of charge at exh.3 for the offence under Section 498-A read with 34, 304-B read with 34 and 306 read with 34 of the Indian Penal Code (IPC).

Trial was conducted by 2nd Ad-hoc Assistant Sessions Judge, Dhule vide Sessions Case No.167 of 2002 and learned trial Court appreciated evidence of in all thirteen witnesses and also sought

reliance on documentary evidence. After appreciating oral and documentary evidence, learned trial Court accepted prosecution case, but only against accused nos.1 to 4 and by judgment and order dated 14-06-2004, convicted accused nos.1 to 4 for offence under Sections 498-A, 306, 304-B read with Section 34 of the IPC and under Section 4 of the Dowry Prohibition Act. Accused no.5 came to be acquitted.

Being aggrieved by above judgment and order, appeal has been preferred.

SUBMISSIONS

On behalf of appellants :

3. Learned Counsel for appellants pointed out that there is false implication. That case of prosecution has not been proved beyond reasonable doubt. According to him, there are general, vague and omnibus allegations are levelled. That witnesses are not consistent or supporting to each other. That their testimonies are full of material omissions, contradictions and variances. That there is no convincing or legally acceptable evidence, however, learned trial Court has accepted prosecution case.

At the outset, learned Counsel for the appellants pointed out that out of five accused, four were convicted, but during pendency of appeal, appellant nos.1 and 4 expired and as such matter stood

abated against them. He further pointed out that he received information that appellant no.3 Narmadabai Kautik Mali is also no more, however, he could not get her death certificate. But when the information is sought from Police, they got information from Grampanchayat Kapadane, Tq. and Dist.Dhule that said appellant no.3 Narmadabai has expired, but there is no entry in the register to that extent. According to him, now only surviving appellant no.2 Pramelabai Kautik Mali is sister-in-law of deceased and she was already married, however, on account of divorce, she was put-up with parents' place. That merely because she was present in the house, she was named. That no specific allegations are raised against her nor her role is crystallized by any of the witnesses and hence, he prays for allowing the appeal.

On behalf of State :

4. Learned APP objected on the ground that witnesses were consistent. That they were corroborated each other. That there was demand of money for setting up a Pan Stall. That for meeting such demand, there was cruelty and harassment. That only because of harassment, deceased Ashabai committed suicide by jumping in the well. That suicidal death is within seven years of marriage. That

offence under Section 304 got attracted. Thus, according to learned APP, learned trial Court has correctly appreciated the available evidence and has come to the right conclusion. Therefore, he prays to dismiss the appeal for want of merits.

STATUS AND ROLE OF PROSECUTION WITNESSES

5. In support of its case, prosecution has examined as many as thirteen witnesses. The sum and substance of their evidence is as under :

PW1 Bhagwan Daga Pawar is Police Patil of village Kapadane. He deposed at exh.15 as under :

1) Since 1-9-2000 I am working as Police Patil of village Kapadane till today. I know the accused Nos. 1 to 5 before the court. They are resident of Kapadane village. Deceased Ashabai was the wife of the accused No. 1 Bansilal Mali. On 22-6-2002 at about 9 a.m. I was proceeding from my house towards the S.T. Stand. I noticed the crowd near the well of water supply near the river of my village. The people told me that, there is one dead body of a female in the well. Bandu Patil Dy. Sarpanch of my village, Naval Damu Mali, Bapu driver and Mandabai Shivram Mali were amongst the crowd. With the help of the iron hooks known (Biladi) and with the help of above mentioned persons the dead body of the woman floating in the well was taken out of the well. Mandabal told me that, the dead body removed from the well was of Ashabai w/o accused No.1. Thereafter I went to Songir Police Station in order to lodge First Information Report, The police recorded First Information Report as stated by me.

The contents were read over to me. Thereafter I signed the said First Information Report. Now I see the same before Court. It bears my signature. The contents are true and correct. It is marked at Exh.16.”

PW2 Bhagwat Mahadu Mali is father of deceased. At exh.17, he deposed as under :

“I have 4 daughters. My second daughter Ramabai has given in marriage at Kapadane. Deceased Ashabai was the wife of accused No. 1. She is my fourth daughter. The marriage of Ashabai was solemnized with accused No. 1 on 15 June 2001 at village Kapadane.

2. The accused treated Ashabai properly till the period of visit of Ashabai to my house for second time after her marriage. The accused No.1 thereafter started demanding Rs.15000/- to expand his shop and to purchase the material for the pan shop from deceased Ashabai. They started harassing her and assaulting the deceased Ashabai for the said demand. Third time I went to the house of accused at Kapadane. At that time my daughter Ashabai told me about the demand of the accused and harassment subjected to her by the accused. I also advised my daughter and the accused and told her that, I am not in a position to fulfil the demand of the accused. At that time I did not brought my daughter with me. At that time, the accused told me that, after the ceremonies of annual death anniversary of uncle of accused No.1 they will send my daughter Ashabai to my house for the eve of Akshay Tritiya. My daughters Ashabai and Ramabai came to my house after 10 to 12 days after Akshay Tritiya. I had talk with Ashabai at that time. The deceased Ashabai told me at that time that, the accused are demanding Rs.15,000/- for his panshop and that they are harassing her and administering the beatings to her on the said count. I advised my daughter Ashabai and expressed my inability to fulfill the demand of the accused. Thereafter, I sent my both daughters to the house of

their in-laws.

3. On 22-6-2002 at about 9 a.m. I was in house at village Paladhi. At that time I received a phone call of Subhash Nimba Mali of Kapadane. He told me that. Ashabai fall in the well and died. Thereafter myself along with my relatives went to Kapadane. There I came to know that, my daughter was removed to Civil Hospital Dhule, and therefore I went there. I saw the dead body of my daughter Ashabai. Her hands were bent inside. Her face was blackish. The post mortem was conducted in the Civil Hospital Dhule. Thereafter the dead body was handed over to us. We brought the dead body to Kapadane village. The dead body was cremated at village Kapadane. The same was performed at about 4 to 4.30 p.m. on that day. Thereafter I went to Songir police station. I lodged the complaint with the police."

PW3 Vimal w/o Bhagwat Mali is mother of the deceased. She deposed at exh.19 as under :

"I had 5 daughters. Out of them Ramabai and Ashabai were given in marriage at Kapadane. The marriage of Ashabai was performed with accused No.1. We met the expenses of Rs. 40,000/- for her marriage. After the marriage, Ashabai went to her husband's house at Kapadane. The accused 2 to 4 were also residing with accused No. 1 at that time. The accused treated Ashabai properly for about two religious ceremonies known as "Mul". Thereafter accused started demanding Rs.15,000/- from Ashabai. The accused used to demand the said amount for the purchase of material of the panshop. The accused used to subject Ashabai to physical and mental cruelty, on the ground of said demand. My daughter Ashabai when used to visit my house, she used to tell me about the demand of Rs. 15,000/- by the accused and the harassment subjected to her by the accused. Before the day of Akshay Tritiya, my husband went to the house of

accused to bring Ashabai to my house. At that time, the accused told my husband that, they will send my daughter Ashabai after the annual death anniversary of the uncle of Accused no. 1. After Akshay Tritiya about 15 days latter, Ashabai with my another daughter Ramabai came to my house. Ashabai started weeping as she came to my house. My daughter Ashabai told me that, accused No.1 used to beat her and subject her to harassment on the ground of demand of Rs. 15,000/-. My daughters Ramabai and Ashabai stayed at my house for about 4 days and thereafter I sent them to their house of in-laws. I told Ashabai that, we are not in a position to fulfil the demand of money of the accused.

2) *On 22-6-2002 at about 9 a.m. when I was in my house, there was a phone call from Kapadane, of Subhash Nimba Mali. He told that, Ashabai was found in the well. Therefore, we along with our relatives went to Kapadane. There we came to know that, Ashabai was removed to Dhule. Therefore we came to Dhule. I saw my daughter in the hospital, she was dead."*

PW4 Kashinath Daulat Mali is cousin brother of informant. He deposited at exh.21 as under :

"The complainant is my cousin brother. PW-3 is the wife of PW-2. Deceased Ashabai was the daughter of PW-2. The marriage of Ashabai was solemnized with accused No.1 at village Kapadane, about 2 years back. The marriage was solemnized at Kapadane and my brother PW-2 spent Rs. 40,000/- for the marriage of Ashabai. The second daughter of PW-2 is also given in marriage at Kapadane. After the marriage, Ashabai went to the house of her husband at village Kapadane. The accused Nos. 2, 3 and 4 were also residing with accused No. 1 at that time. Ashabai was visiting her parents house after her marriage. She used to meet me at that time. The accused treated the complainant properly for 2 years and thereafter started

demanding Rs. 15,000/- from Ashabai. The accused used to insist Ashabai to bring Rs. 15,000/- from her parents for panshop business, and that, they used to harass her, as the demand was not fulfilled. The deceased Ashabai told me about the same, when she met me. I used to coax the deceased Ashabai saying that, she is married and used to send her to her husband's house after advice. The incident took place about 1 ½ years back. On that day at about 9 to 10 a.m. I was in my house. At that time PW-2 came to my house. She told me that a phone call was received from Kapadane, saying that, his daughter Ashabai fell in the well and died. He also told me that, we have to go to Kapadane. Thereafter we booked a matador and myself, PW-2 and 3 and some people of our village went to Kapadane. There we came to know that, Ashabai was removed to Civil Hospital Dhule. I stayed at Kapadane, and my brother PW-2 went to Dhule. At about 2 to 2.30 p.m. the dead body of Ashabai was brought from Civil Hospital Dhule at Kapadane. The dead body of Ashabai was cremated at Kapadane thereafter. Thereafter my brother went to Songir police station and lodged the complaint with the police.”

PW5 Ramabai w/o Rajendra Mali is sister of deceased. At exh.22 she deposed as under :

“ The complainant PW-2 is my father and PW-3 is my mother. PW-4 is my uncle. Ashabai was my younger sister. About 3 years back the marriage of deceased Ashabai was solemnized. The marriage of Ashabai was solemnized with accused No. 1, at village Kapadane, but I do not know his name. I know accused Nos. 1 to 5 before the court. Accused No.2 is the sister of accused No.1. The accused No. 3 is the mother of complainant. The accused No.4 is the brother of accused No. 1. The accused No. 2 and 3 and myself also used to go to the land of accused No. 5 for work and therefore I know him.

2) After the marriage Ashabai went to her husband's house at

Kapadane. The accused Nos. 2 to 4 were residing with accused No. 1 at that time. After the marriage, Ashabai and her husband once came to my house for meal. The accused 1 to 4 treated Ashabai properly till 2 to 3 religious ceremonies known as "Mul". The accused Nos. 1 to 4 used to demand Rs. 16,000/- from Ashabai for panshop of accused No. 1. They also used to harras her on the said count. The accused Nos. 1 to 4 also used to threaten her over her life and injuries to limbs and legs. The female members residing in the lane of the house of accused No.1 used to tell me about the harassmt subjected to Ashabai by accused Nos.1 to 4 when they used to meet me in the field at work. My father came to Kapadane in order to bring myself and Ashabai for Akshay Tritiya. At that time, in my house and in the house of Ashabai also there were religious ceremony of death anniversary of our relative, and therefore we were not went to the house of our father at that time. After 8 days later of Akshay Tritiya, myself and Ashabai went to our father's house at Paladhi. At that time, Ashabai told myself, my parents, uncle and his wife that, the accused Nos. 1 to 4 are demanding Rs. 15,000/- from Ashabai and that, they are maltreating her on the said count. She also told us that, the accused threatened her saying that, in case she failed to bring the said amount from her parents they will not allow Ashabai to reside in their house. We resided for about 8 days at our parents house, and my parents gave myself and Ashabai Garments and we were sent to our parents house.

3) On 22-6-2002 at about 6 a.m. the accused No. 3 Narmadabai came to my house. She enquired with me as to whether Ashabai has come to my house. I told her that, she has not come to my house. I told my in-laws that, my sister Ashabai is not in the house of accused Nos. 1 to 4, and asked them to enquire. Some boys told me that, Ashabai fell in the well behind Mahadeo Temple and that, the slippers are also lying near the well. Thereafter myself, my in laws and some persons of the lane went near the well. I noticed the pair of slippers near the well. I

identify the said slippers. The same were of my sister Ashabai. The pair of slippers is marked as Article No.1. The dead body of Ashabai was lifted outside with the help of hooks known as (Biladi), outside the well. I identified the dead body of Ashabai. Thereafter the dead body was removed to Civil Hospital, Dhule. The dead body was brought to Kapadane, after post mortem. The dead body was cremated at Kapadane. Thereafter my father went to Songir police station and lodged the complaint.”

PW6 Pandit Vanji Mali is pancha to inquest panchanama exh.25.

PW7 Mandabai Shivram Mali is resident of the same village. She deposited at exh.26 as under :

“I know the accused Nos. 1 to 5 before the court. They are resident of Kapadane. I also know deceased Ashabai w/o. accused No. 1. I also know Ramabai the elder sister of deceased Ashabai. Ramabai is resident of Kapadane. The parents of Ashabai are resident of Paladhi, Tal. Dharangaon, Dist. Jalgaon. The accused No. 1 is the husband of deceased Ashabai. The accused No. 12 is sister of accused No. 1. The accused Nos. 3 and 4 are mother and brother of accused No. 1. Ashabai was cohabiting with accused 1 to 4. The accused treated Ashabai properly till the first religious ceremony known as "Mul". The accused 1 to 4 thereafter started insisting Ashabai to bring Rs. 15,000/- from her parents. The accused assaulted Ashabai and subjected her to cruelty on that count. I also know PW2 complainant. I met PW2 when he visited Kapadane. He told me that, the accused are demanding Rs.15,000 from him, for panshop, and that he is unable to fulfil their Demand as he suffered a paralytic attack. He also told me that, he is requesting the accused and that, they are not in a mood to listen the same. Thereafter, I went to the house of accused nos.1 to 4 in order to advice them. I told them that, am

elected from Ward No.3, and asked them as to why they are harassing Ashabai . Ashabai used to tell me that, the accused are harassing her severally, saying that, "Atyabai te malal Pharach Tras Detat". After Akshay Tritiya Ramabai and Ashabai went to their father's house. After 8 to 10 days, they returned to their husbands house. Thereafter Ashabai met on the well when I was there to bring the water. Ashabai told me that, the accused Nos. 1 to 4 are harassing her severely, as she failed to bring Rs. 15,000/- from her parents, and requested me to visit her house. Accordingly on 13-6-2002 I went to the house of Ashabai. I told the accused Nos. 1 to 4 not to harass Ashabai, but they told me that, it is their domestic matter and that, if you are elected do the work outside. I again enquired Ashabai as to why the accused are harassing her. She told me that, the accused Nos. 1 to 4 alongwith accused No. 5 are insisting for the marriage of her sister Bharati, aged 15 years, with the son of accused No. 5. She also told me that, she did not want Bharati should be given to the son of accused No. 5 as he was aged 25 years and mentally sick. The accused No. 5 instigate the accused Nos. 1 to 4 on 21-6-2002 at about 8 to 8.30 p.m. and told the accused 1 to 4 saying that, kill Ashabai or throw her in the well. I was present at that time in the courtyard of the house of Sakhawarbai, who is residing just near the house of accused Nos. 1 to 4. Thereafter I went to my house.

2) On 22-6-2002 the people in the village told me that, Ashabai is not there in the house of accused Nos. 1 to 4. The people told me that, near the well the slippers are lying. Therefore I Went to the well near the river behind Mahadeo temple. I noticed one while slipper pair near the well. I can identify the slippers if shown to me. These are the slippers I saw near the well. The same are of Ashabai. The same are at article No. 1. The dead body was lifted upto water level with the help of hook, and thereafter it was lifted and brought out with the help of cot. I identify the dead body, it was of Ashabai w/o accused No. 1. Thereafter the father of Ashabai went to Songir Police station and

lodged the complaint.”

PW8 Sakhwarbai Dattatraya Mali is a neighbour. She deposed at exh.28 as under :

1) I know the accused in this case. They are residing near my house. I was also knowing deceased Ashabai. The accused No. 1 is the husband of deceased Ashabai. Accused No. 2 is the sister of accused no. 1 and accused No. 3 is the mother. The accused No. 4 is brother of accused No. 1. After the marriage, the accused 1 to 4 treated Ashabai properly for about 6 months. Thereafter the accused 1 to 4 started abusing her and assaulting her. I tried to advice the accused 1 to 4 not to do so. The accused told me that, it is their personal matter and asked me to go to my house. After Akshay Tritiya about 15 days latter, Ashabai went to her parents house. She returned to husband's house after 3 days. The accused No. 1 used to insist Ashabai to bring Rs. 15,000/- from her parents. He was insisting the same for his panshop. Ashabai brought Rs. 10,000/- from her father at the time of returning to her husband's house after Akshay Tritiya. Inspite of bringing the amount the accused Nos. 1 to 4 used to assault her saying that, as to why she has not brought entire amount.

2) On 21-6-2002 at about 9 p.m. I visited the house of the accused in order to advice them as they were assaulting and beating Ashabai. On 22nd in the morning one Monabai of our village went to the house of Ashabai to call her to go to work. Monabai told me that the mother in-law of Ashabai told that, Ashabai left her house at about 5 a.m. for the natural call, and that she has not returned. Inspite of search she was not found upto 8 a.m. Therefore the villagers tried to search Ashabai. Ashabai was found in the well which is behind the Mahadeo Temple.”

PW9 Minal Gangaram Mali is acquaintance of deceased Ashabai. At

exh.29, she deposed as under :

“I know deceased Ashabai. I know Ashabai as myself and Ashabai used to go to work in the same field. I know all the accused before Court. They are resident of Kapadane. The accused No. 1 is the husband of Ashabai. Accused No. 2 is her sister in law, accused No. 3 is her mother in law and accused No. 4 is her bother in law. At the time of incident accused No. 1 was running a panshop. On 23-6-2002 Ashabai died. Prior to the death of Ashabai, 2 days earlier myself and Ashabai went to the land of Yashwantrao Mali, resident of Kapadane, for work. On that day we were in the field for agricultural work of removing grass. Ashabai was weeping. She told me that, accused Nos. 1 to 5 are assaulting her. Ashabai showed me the weal marks on her forehead, back and on her thies. The deceased Ashabal told me that, accused No. 1 insisting her for the marriage of the son of accused No. 5 with her sister.

2) Ashabai was refusing for the marriage of her sister with the son of accused No. 5 stating that, she is very young and aged about 13 years only. Therefore, all the accused were harassing her. On the next also she met me in the field. On the next day also she told me that, the accused beat her. We worked in the field upto 12.30 noon from the morning on that day. Ashabai also told me that on the next day, she does not know she will be in the field or in the well. On 23rd I went to the house of Ashabai at about 6 a.m. as to enquire whether she is coming to work. When I reached there the accused No. 2 was heating the water. I enquired with her about Ashanai. She told me that Ashabai is not there and that, she left the house at 5 a.m. itself for natural call. Thereafter I went to the house of Sakhwarbai. I told her that Ashabai is not in her house. She told me to inform to the women in the lane in that regard. Thereafter I told my mother that, Ashabai is not in her house. Thereafter, the accused No. 3 went to the house the sister of Ashabai, residing at Kapadane. Accused No. 3 enquired with her as to whether Ashabai had come to her house. Thereafter, accused

No. 3 returned to her house, as she was not there. I noticed the people were running towards the well near the river. Therefore, I also went there. I noticed the pair of chappal of Ashabai. It were slippers. I know in that regard because she was working with me. The same were of Ashabai. The dead body from the well was removed with the help of hooks. I saw the dead body it was of Ashabai.

PW10 Namdeo Parbat Mali is acquaintance of deceased Ashabai. He deposed at exh.31 as under:

“I was knowing deceased Ashabai. I know the accused in this case. The accused are husband, sister in law, mother in law, brother in law of deceased Ashabai and accused no. 5 belongs to the community of other accused. The accused Nos. 1 to 4 reside adjacent to my house. They are my neighbour. She used to attend agricultural field work. The incident took place in the year 2002. On the day of incident I was sick. On that day at about 1.30 a.m. at night, I had been to natural call by the side of the play ground of the high school. It was dark. I noticed 4 persons carrying most probably a lady, holding hands and legs. I saw the person carried was wearing Sari. The said persons were moving from our lane and crossed the road. I do not identify anybody due to the dark. When I was returning to my house, after natural call, I noticed the backdoor of the house of the accused 1 to 4 was open. I noticed accused Nos. 2 and 3 were sitting in their house. Thereafter I returned to my house and went to sleep. On the next day at about 8 to 8.30 I came to know that, deceased Ashabai wife of accused No. 1 lying in the well and that, the people are removing her out from the well. Therefore, I went near the well. I noticed the people were trying to remove Ashabai with the help of hook from the well. The dead body was removed out from the well. It was of Ashabai.

PW11 Deepak Santosh Mali is relative of deceased Ashabai. At exh.32 he deposed as under :

“Ashabai was the sister of Ramabai. Ramabai is the wife of my brother Rajendra. I know the accused Nos. 1 to 5 before the court. Deceased Ashabai was doing agricultural labour work.

2) On 21-6-2002 I returned with my she goats at about 5 p.m. to my house. I kept the said she goats in the shade. Thereafter I went to S.T. Stand, in order to have a walk. At about 11 p.m. my father came over there and told me that, one she goat is missing. I searched the she goat in the vicinity of our community. It was about 1.45 a.m. at that time, in the night, I was returning to my house from Bhilati. At that time, I noticed 4 persons carrying one person, holding hands and legs and hanging and were proceeding from village to temple by the side of river. I noticed the sari of the person carried was hanging down. I was on the other end of the river. I noticed the said persons threw the person carried in the well. When I saw the same, I was frightened and therefore I returned to my house. Thereafter I went to sleep. On the next day I went to in the field to bring grass for my she goats. It was 7 a.m. I returned to my house at about 8 to 8.30 a.m. There was nobody in my house. From the people residing in my lane, I came to know that, the sister of my sister in law was thrown in the well, and all my family members had gone there. Therefore, I rushed near the well. At that time, I felt that, the lady carried in the night must have been Ashabai, when I noticed earlier night.”

PW12 Sandeep Chhabu Patil was Lecturer at Civil Hospital Dhule. He and Dr.Ajit Pathak conducted post mortem of the dead body of deceased Ashabai.

PW13 Sambhaji Sudam Sawant (API) is Investigating Officer, who carried out all necessary steps and chargesheeted accused.

ANALYSIS

6. Thus, here, in all five persons were chargesheeted and present appellant no.2, who is said to be the sole surviving appellant, was said to be married sister-in-law of deceased and on account of marital discord with her husband, she was residing at her parents' place.

7. Here, there are two sets of evidence i.e. one of family members and secondly, acquaintances or neighbour of informant. In short, accusations are that there was demand of Rs.15,000/- for expansion of pan shop and on its non-fulfillment, there was said to be cruelty. This Court has already reproduced the sum and substance of all prosecution witnesses in aforesaid paragraphs. On placing evidence of immediate family members in juxtaposition and on comparing the same, the following is emerging :

PW2 Bhagwat, informant and father of deceased, in paragraph 2 gave evidence that accused no.1 demanded Rs.15,000/- to expand his pan shop and to purchase material for pan shop. Then he deposed that "they started harassing her and assaulting deceased

Ashabai for said demand and she reported about it”. Thus, informant father names only husband for putting up demand, but further he is attributing harassment to all accused without specifying the form of harassment.

PW3 Vimal, mother of deceased and wife of PW2 informant, in paragraph 1 of her examination-in-chief, deposed that, “after two religious ceremonies, accused started demanding Rs.15,000/- from Ashabai”. She has not specified like her husband that accused husband put up demand of said amount. Her evidence is also silent to the extent that demand was made for expansion of pan stall or for purchase of material. Even she alleges that Ashabai was subjected to physical and mental cruelty, but she has not elaborated or specified as to which amongst the five accused performed what role and what was the act amounting to physical cruelty or mental cruelty. Her evidence is also distinct than that of her husband as according to her, accused husband beat Ashabai in the backdrop of demand, however, as regards to beating is concerned, her husband informant is silent.

PW4 Kashinath, cousin brother of informant also claims that deceased was treated properly for two years but thereafter, accused started demanding Rs.15,000/- and insisted her to bring from her parents and according to him, they used to harass. Again even this

witness does not specify the role of each of the accused. Like parents PW2 and PW3, he does not name husband.

PW5 Ramabai, sister of deceased Ashabai attributes demand of Rs.15,000/- to all four accused and even she merely alleges harassment without specifying its nature and who amongst the five harassed Ashabai and in which form. Her evidence is also distinct then her own parents as she alleges that they used to issue life threats and threats to injure her limbs and legs. Such is not the version of her own parents. She also alleges that accused threatened that they will not allow Ashabai to cohabit unless their demand is made. Again such is not the version of her parents i.e. PW2 and PW3 and PW4 cousin brother of informant.

8. The second set of evidence is of acquaintances i.e. PW7 Mandabai, PW8 Sakhwarbai, PW9 Minal, PW10 Namdeo and PW11 Deepak. They also all claim of hearing from Ashabai about demand of Rs.15,000/- for expansion of pan shop. Apparently they seem to have hearsay information.

Evidence of PW7 Mandabai appears to be improvised to the extent of accused persons saying that they would kill Ashabai by throwing her in the well. Her cross-examination shows that there are

material omissions to the above extent.

Similarly, PW8 Sakhwarbai, neighbour, though stated that accused nos.1 to 4 started abusing and assaulting Ashabai, she claims that only accused no.1 used to insist her to bring Rs.15,000/- and that Ashabai brought Rs.10,000/- from her father and gave it to accused. Such is not stated by very parents or real sister of deceased Ashabai. Even her cross-examination shows that above is the material omission, which is not finding place in her statement before police.

Similarly, evidence of PW9 Minal, who is also a neighbour, is distinct ad in her very examination-in-chief, she has not uttered about demand of Rs.15,000/- for pan shop. She merely states accused nos.1 to 5 assaulted Ashabi, but her cross-examination shows that whatever she stated in examination-in-chief is also improved version as it is same to be material omission which is brought in para 3 of the cross-examination.

PW10 Namdeo and PW11 Deepak claim about seeing 4 persons carrying a lady on the dead-night and being taken towards the well, in the examination-in-chief itself they have stated that they could not identify, who were the persons or the lady. Even they have admitted not reporting it to anyone till their statements were

recorded by Police at belated stage.

SUMMATION

9. Therefore, to sum up, as regards to sole surviving appellant No.2 Pramelabai is concerned, none of the above witnesses has defined her role. Prosecution does not deny that she has come to stay with parents after being divorced. But as stated above, no specific role is attributed to her of either putting up demand of Rs.15,000/- or in its backdrop, inflicting particular nature of harassment. Allegation against all accused persons by prosecution witnesses are general and sweeping in nature. Therefore, with such material on record, it is unsafe to hold charge of Sections 498-A or 306 or 304-B read with 34 of the IPC and charge of Section 4 of the Dowry Prohibition Act, to be proved. For above reasons, appellant no.2 succeeds.

10. Perused the judgment under challenge. Learned trial Court has adopted erroneous approach and has accepted the above version without ascertaining the legal requirements or without ascertaining the answers given by these witnesses while under cross-examination, which are full of material omissions. Therefore, it is a fit case for interference at the hands of this Court. Accordingly, I proceed to pass

following order :

ORDER

- I) Criminal Appeal No.409 of 2004 is allowed.
- II) The conviction awarded to appellant no.2 Pramelabai w/o Kautik Mali in Sessions Case No.167 of 2002 by the learned 2nd Ad-hoc Asstt. Sessions Judge, Dhule on 14-06-2004 for the offence punishable under Sections 498-A, 306, 304-B r/w 34 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act, stands quashed and set aside.
- III) The appellant no.2 Pramelabai w/o Kautik Mali stands acquitted of the offence punishable under 498-A, 306, 304-B r/w 34 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.
- IV) **The bail bonds of appellant no.2 stand cancelled.**
- V) The fine amount deposited, if any, be refunded to appellant no.2 Pramelabai w/o Kautik Mali after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- VII) Appeal stands abated against appellant no.3 - Narmadabai w/o Kautik Mali.

(**ABHAY S. WAGHWASE**)
JUDGE