



Judgment

492 appeals717.04 & 37.05

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**CRIMINAL APPEAL NO.717 OF 2004
WITH
CRIMINAL APPEAL NO.37 OF 2005**

CRIMINAL APPEAL NO.717 OF 2004

Suraj s/o Jaynarayan Jaiswal,
aged about 34 years,
occupation : labourer,
r/o Sant Dnyaneshwar Ward,
Opp.Mohta Garden,
Hinganghat, district Wardha. **Appellant.**

:: VERSUS ::

State of Maharashtra,
through PSO PS Butibori, Nagpur. **Respondent.**

Mrs.S.H.Bhatia, Counsel Appointed for the Appellant.
Mrs.Sneha Dhote, Additional Public Prosecutor for the
State.
Shri R.M.Daga, Counsel to Assist the Prosecution.

CRIMINAL APPEAL NO.37 OF 2005

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aged about 34 years,
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**Mrs.Sneha Dhote, Additional Public Prosecutor for the
Appellant/State.**

Mrs.S.H.Bhatia, Counsel Appointed for the Respondent.

Shri R.M.Daga, Counsel to Assist the Prosecution.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 03/10/2025

PRONOUNCED ON : 17/10/2025

COMMON JUDGMENT (Per : Urmila Joshi-Phalke)

1. The judgment and order dated 4.11.2004
passed by learned 9th Ad-hoc Assistant Sessions Judge,
Nagpur (learned Judge of the trial court) in Sessions Trial
No.301/2023 is under challenge in both these appeals.

2. By the said judgment impugned in these
appeals, appellant Suraj s/o Jaynarayan Jaiswal (the

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accused) in Criminal Appeal No.717/2004 is convicted for offence under Section 304-B of the IPC and sentenced to suffer rigorous imprisonment for 7 years and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for 1 year.

He is also convicted for offence under Section 498-A of the IPC and sentenced to suffer rigorous imprisonment for 2 years and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for 3 months.

Whereas, the State has preferred Criminal Appeal No.37/2005 for enhancement of the sentence.

3. Brief facts of the prosecution case are as under:

The accused is husband of Suchita (the deceased). The marriage of the accused and the deceased was performed on 5.2.1997. After the marriage, she resumed the cohabitation. As per the allegations, the

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accused has demanded money from time to time either for purchasing truck or for other reasons and was subjecting the deceased with cruelty. As per the allegations, on twice, the mother of the deceased (the informant) paid amount Rs.50,000/- after ten months of the marriage and Rs.30,000/- for running a STD Booth in the year 2000. However, there was no change in the behaviour of the accused and he was continuously harassing the deceased and, therefore, she committed suicide by hanging herself in intervening night of 12.2.2003 to 13.2.2023. On the basis of the said report, the police registered the crime against the accused.

4. After registration of the crime, the investigating officer has visited the alleged spot of the incident and drawn spot panchanama. He has drawn inquest panchanama, recorded various statements of the

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witnesses and after completion of the investigation, filed chargesheet against the accused.

5. Learned Judge of the trial court framed the charge vide Exh.2. The accused pleaded not guilty and claimed to be tried.

6. The prosecution, in support of its case, has examined in all 9 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Shantabai Jaiswal, the mother of the deceased and informant	7
2	Neeta Jaiswal, sister of the deceased	12
3	Venubai Kale	14
4	Girish Kurhewar	28
5	Anil Jaiswal	29
6	Dilip Dhurve	31
7	Sunilkumar Jaiswal, brother of the deceased	38
8	Wasudeo Surywanshi, IO	43
9	Sopan Esankar, who investigated the merg report	45

7. Besides the oral evidence, the prosecution placed reliance on report Exh.8, FIR Exh.9, inquest panchanama Exh.16, seizure memo Exh.20, postmortem report Exh.23, arrest panchanama Exh.24, seizure memo Exh.25, spot panchanama Exh.30, and merg report Exh.46.

8. The incriminating evidence is put to the accused in order to obtain his explanation. The defence of the accused is of total denial and of false implication.

9. Learned Judge of the trial court, after appreciating the evidence, held the accused guilty and convicted him as the aforesaid.

10. Being aggrieved and dissatisfied with the same, the accused has filed preferred Criminal Appeal

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No.717/2004. Whereas, the State has preferred Criminal Appeal No.37/2004 for enhancement of the sentence.

11. Heard learned counsel Mrs.S.H.Bhatia for the accused, learned Additional Public Prosecutor Mrs.Sneha Dhote for the State, and learned counsel Shri R.M.Daga who assists the prosecution.

12. Learned counsel for the accused submitted that the marriage between the accused and the deceased was performed on 5.2.1997. They have begotten one daughter. Their daughter was suffering from heart ailment and, therefore, the deceased was frustrated. She was pregnant at the time of the incident and she was taking treatment. The evidence on record shows that the deceased was worried about ill-health of her daughter and she was again taking treatment during her second pregnancy. She was having an apprehension as to

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whether she can deliver a normal child and, therefore, under stress, she has committed suicide. As far as ill-treatment is concerned, the entire evidence is *omnibus* and general in nature. No specific instances are narrated by any of witnesses. She submitted that to prove aspect of the cruelty, the prosecution has examined PW1 Shantabai Jaiswal, the mother of the deceased and informant and PW2 Neeta Jaiswal, sister of the deceased. Their evidence is not consistent. Though they have stated that they have fulfilled the demand, no specific instances are narrated by them. On the contrary, admission given during the cross examination shows that the accused has purchased a plot in the name of the deceased. This conduct of the accused purchasing the plot itself shows that the matrimonial life between both of them was cordial. She further submitted that no evidence is brought on record to show that what was source of

income of the informant to arrange the amount. There is no evidence when the said amount is paid. There was no occasion for her to visit the house of the deceased on 5.2.2003. The evidence of PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal is not consistent. Though PW1 Shantabai stated that the last rites were performed before she arrived at the spot. However, receipt by which dead body of the deceased was handed over shows that she was present when the last rites were performed. The evidence of PW7 Sunilkumar Jaiswal, brother of the deceased, also shows that she was present. Thus, the evidence of PW1 Shantabai is not trustworthy. She further submitted that being the deceased was suffering prenatal depression, she has committed suicide. There is no evidence that prior to the incident, there was any quarrel between the accused and the deceased and due to which the deceased committed suicide. Thus, the entire

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evidence adduced by the prosecution is not sufficient to warrant conviction against the accused. She further submitted that to prove the offence under Section 498A, the prosecution has to prove willful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty and such willful conduct which is likely to cause grave injury is danger to life or health. The evidence on record is not sufficient to prove the said cruelty. In view of that, the findings recorded by learned Judge of the trial court is liable to be quashed and set aside.

In support of her contentions, she placed reliance on the decisions in the cases of **State of Uttarakhand vs. Sanjay Ram Tamta alias Sanju Alias Prem**, reported in (2025)3 SCC 433 and **Shoor Singh and anr vs. State of Uttarakhand**, reported in (2025)2 SCC 815.

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13. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that the evidence of PW1 Shantabai Jaiswal is corroborated and PW2 Neeta Jaiswal, as far as the demand is concerned. The evidence of both these witnesses show that they have fulfilled the said demand, but the accused was not satisfied. On fulfilling the said demand also, the accused used to harass the deceased which drove her to commit suicide. The death of the deceased is caused in the house in suspicious circumstances. The aspect of the harassment is further corroborated by the evidence of PW3 Venubai Kale to whom the deceased has disclosed about the harassment. It is further corroborated by PW4 Girish Kurhewar, PW5 Anil Jaiswal, PW6 Dilip Dhurve, and PW7 Sunilkumar Jaiswal. She also invited our attention towards the spot panchanama which shows that the dead body of the

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deceased was found in sitting position. She submitted that an attempt was made to show that she committed suicide by tying dupatta to the iron rod of shower which is highly impossible. The rod of iron cannot carry the weight of the deceased and, therefore, the death of the deceased is in suspicious circumstances. In view of that, as the offence was inside the house in a secrecy, the burden is on the accused to explain the said circumstances. There is no explanation by the accused. She, therefore, prays that the appeal filed by the State be allowed.

In support of her contentions, she placed reliance on the decision in the case of **V.K.Mishra and anr vs. State of Uttarakhand and anr**, reported in (2105)9 SCC 588.

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14. Learned counsel Shri R.M.Daga, who is assisting the prosecution, reiterated the said contentions and submitted that a fact that the position of dead body in sitting condition itself is sufficient to raise doubt as to the death of the deceased and, therefore, the evidence is sufficient to establish the charge against the accused. In support of his contentions, he placed reliance on the decision in the case of **Harijan Bhala Teja vs. State of Gujarat, reported in (2016)12 SCC 665.**

15. The prosecution case is entirely rested upon the circumstantial evidence. As far as the death of the deceased is concerned, admittedly, the prosecution has not examined any witnesses to prove the postmortem notes. The said postmortem notes are already admitted by the defence and, therefore, it is exhibited as Exh.23. As per the postmortem report, the death of the deceased is caused due to asphyxia due to hanging. In column No.17,

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the injury i.e. ligature mark is present over front of neck obliquely placed running upward and backward 7 cm below chin. Ligature mark on right side 1 cm below teeth of right mastoid process, on left side present over tip of left mastoid process. The ligature mark is absent over neck. The length of ligature is 24 cm breadth of ligature is 3 cm dry.

16. Besides the postmortem report, the inquest panchanama was also admitted by the defence which also shows injuries on her neck, as mentioned above. The spot panchanama which is proved by the prosecution shows that when the investigating officer visited the spot of the incident, on receipt of the information from the accused, the said spot of occurrence is in the residential house of the informant and dead body of the deceased was found in sitting position in the bathroom. There is fiber door to the bathroom. The screws of the latch of the door have

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come out. The height of the said bathroom from the floor is 82 inches. There is an open window having grill to the southern wall. There was a shower at a height of 71 inches from the ground and shower wall was of height of 28 inches to the eastern wall. A black colour "Odhani" is seen strangled to the neck of the deceased and tied to the shower. Thus, as far as the finding regarding cause of death of the deceased due to hanging is supported by the inquest panchanama as well as the spot panchanama. The injury mentioned in column NO.18 as above are ligature marks oblique. The hanging is form of asphyxia which is caused by suspension of the body by ligature which encircles the neck. The postmortem appearances show that in case of hanging, ligature mark are oblique and do not completely encircle the neck, usually seen high up in the neck between chin and larynx.

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17. The similar observations are noted by the medical officer while conducting the postmortem. Therefore, as far as cause of death is concerned, there is no dispute that the death of deceased is caused due to hanging. Though learned counsel Shri R.M.Daga who is assisting the prosecution submitted that the dead body of the deceased was in sitting condition and it is highly improbable that iron rod attaches with the shower will carry weight, but as far as the evidence is concerned, there is no other material to show that the death of the deceased is caused due to some other reasons. On the contrary, the medical findings are consistent with the medical jurisprudence which show that the postmortem appearances in case of hanging and, therefore, there is no hesitation to hold that the death of the deceased is due to hanging.

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18. To prove the prosecution case that the death of the deceased is caused in the matrimonial house in suspicious condition within seven years of marriage. Admittedly, the alleged incident has taken place on 13.2.2023. The marriage was performed between the accused and the deceased on 5.2.1997. Thus, the death of the deceased is caused in matrimonial house within seven years of marriage. To prove the fact that the deceased was subjected mental as well as physical cruelty by the accused by demanding unlawful demand which resulted into the death of the deceased. To prove the said fact, the prosecution placed reliance on the evidence of PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal.

As per the evidence of PW1 Shantabai Jaiswal, the deceased is her daughter whose marriage was performed with the accused. The deceased was having five years daughter from the said wedlock and she was

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pregnant of five months at the time of the incident. Her evidence further shows that she has incurred expenses for the marriage of her daughter, but after ten months of the marriage, the accused demanded Rs.50,000/- for new medical store. She has paid Rs.50,000/- to the accused and to collect that amount, the deceased had been to her house. After payment of the said amount, again, after one and half year, the accused demanded Rs.30,000/- for installation of STD Booth. She has paid the said amount also. Thereafter, in the year 2000, again, the accused demanded Rs.50,000/- and she gave Rs.30,000/- to the accused. She had been to the house of the accused to attend birthday of her granddaughter Ayushi. At that time, the accused demand Rs.47,000/- for construction and her husband has given the amount to the deceased and, thereafter, the accused has demanded Rs.50,000/- for purchasing a truck. Her evidence shows that prior to

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the incident, on 5.2.2003, she came to the house of the deceased. She stayed there for 2-3 days at the house of the accused. She has given an understanding to the accused, but on 13.2.2003, she received a message that the deceased died due to strangulation. She further stated that the accused had already completed funeral process before she reached there. The alleged incident has taken place on 13.2.2003. Whereas, FIR is lodged on 21.2.2003.

The evidence of PW2 Neeta Jaiswal is also on the similar line.

They both are cross examined. As far as the evidence that the funeral rituals of daughter were already performed, is in the nature of omission, which is proved by the defence. The evidence regarding explanation behind the delay in lodging of the FIR is also proved

omission. As to the availability of the money, she testified that she used to take amount from their business and some amount from the bank. She maintained account of business. However, she is unable to state as to whether she has withdrawn the amount from the bank at the time of making the payment to the accused. She has also shown her ignorance whether the accused has obtained the loan from the bank for medical store, but she has admitted that a plot was purchased by the accused in the name of the deceased. She further admitted that the daughter of the deceased was suffering from heart disease and the deceased was worried about her daughter Ayushi.

Thus, an attempt was made to bring on record that the deceased was worried about ill-health of her daughter who was suffering from heart disease. The deceased was also taking treatment during her pregnancy

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and the accused has purchased the plot in the name of the deceased.

PW2 Neeta Jaiswal, who is sister of the deceased, whose cross examination shows that she is unable to tell the exact date when the amount of Rs.50,000/- was paid to the deceased. She further admitted that after one year of the marriage, the deceased started running STD Booth.

On this count, learned counsel for the accused submitted that, as per the allegations, the accused demanded the amount for starting the STD Booth after the marriage i.e. one and half year when the first demand was fulfilled, admission given by PW2 Neeta Jaiswal shows that prior to that the deceased started running the STD Booth and, therefore, the allegations itself are falsified by the said admission. Her further cross

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examination shows that she has not stated before the police as to the demand of Rs.50,000/- for purchasing of truck. The evidence of PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal is also contradictory as PW1 Shantabai Jaiswal has denied that Neeta had been to the house of the deceased after she left the house of the deceased on 8.2.2003. Whereas, PW2 Neeta Jaiswal stated that she had been to the house of the deceased on 9.2.2003 and she stayed there for one day. The evidence of both these witnesses nowhere shows that what was the source of income for them to fulfill the demand. The evidence is also silent when the amounts were paid. The evidence is further contradictory as PW2 Neeta Jaiswal stated that she had been to the house of the deceased from 9.2.2003 to 10.2.2003. Whereas, PW1 Shantabai Jaiswal has denied the said fact.

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19. To corroborate the version of PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal, the prosecution has examined independent witness PW3 Venubai Kale who testified that she was acquainted with the accused and the deceased. The deceased met her prior to 15 days of the incident at Koradi Deosthan and disclosed to her that she was beaten by the accused and also disclosed that the accused has demanded Rs.50,000/- from her parents. This evidence entirely is in the nature of the omission which is brought on record during the cross examination. She has not stated this fact before the police while recording her statement. Her evidence is in the nature of the omissions.

20. PW4 Girish Kurhewar, is another independent witness. As per his evidence, in the year 1998, he was called for work by the accused at Butibori. In his presence, there was a quarrel between the accused and

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the deceased on account of domestic reasons. During that period, the accused has beaten his wife in his presence. His evidence narrates about the facts that in his presence there was quarrel and the accused has beaten his wife is also in the nature of omission which is brought on record during the cross examination.

21. PW5 Anil Jaiswal, is cousin brother of the deceased. His evidence shows that he acted as a pancha on the spot panchanama. His further evidence shows that when he visited the spot, the door of the bathroom was not opened and, therefore, door was broken. He also stated that there was knot of dupatta to the shower and he released that knot. During his cross examination, he admitted that he and PW7 Sunilkumar Jaiswal are in relationship with the deceased. He specifically admitted that the sister and brother of the deceased reached

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Butibori and they were accompanied with the dead body for the postmortem.

Thus, his evidence shows that the relatives of the deceased were present at the time of performing the last rites of the deceased.

22. PW6 Dilip Dhurve, is another independent witness, who also deposed that the accused was annoyed with the deceased on trifle reasons. Therefore, there was quarrel between the accused and the deceased on account of money. The accused used to ask his wife to bring money from parents. The accused was running the medical store. His evidence nowhere describes the specific instances as far as ill-treatment is concerned.

23. PW7 Sunilkumar Jaiswal, is another cousin brother of the deceased, who testified that at the time of the marriage, the accused was running the medical store

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and, thereafter, started running telephone booth. In the year 2002, the accused and the deceased had come to their house for dinner and during hot exchange of words, the accused has slapped the deceased. In the year 1997, the accused wanted to start a business to STD Booth and in his presence amount Rs.10,000/- was given to the accused. The amount of Rs.40,000/- was also given to the accused in his presence.

His above evidence is also in the nature of the omission which is brought on record during the cross examination.

24. Thus, as far as the evidence, regarding the fulfillment of demand is concerned, is in the nature of the omission i.e. improvement during his evidence before the court.

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25. PW8 Wasudeo Surywanshi, who is investigating officer, has narrated about the investigation carried out by him. His cross examination shows that initially the merge report was registered. One brother of the deceased was PSI and one was Advocate at Paratwada. He met them on 13.2.2003. He made enquiry with them and asked them if they had any suspicion against anybody else and they told that they were not in a position to state anything. His cross examination shows that initially the relatives of the deceased made enquiry, but they have not made any grievance as far as the incident and ill-treatment at the hands of the accused.

26. The omissions came in the evidence PW1 Shantabai Jaiswal, PW2 Neeta Jaiswal, PW3 Venubai Kale, PW4 Girish Kurhewar, and PW7 Sunilkumar Jaiswal are

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proved by the defence during the cross examination of the investigating officer.

27. PW9 Sopan Esankar, is another police officer who enquired into the merg report. His evidence shows that the dead body of the deceased was in sitting position when he visited the spot. He also admitted that the deceased was under treatment and she was pathologically examined by the doctor for her pregnancy regarding the investigation of child in womb whether the child is suffering from any ailment.

28. Thus, as per the evidence of witnesses, the deceased was subjected for cruelty by the accused and, therefore, she committed suicide.

29. Firstly, provisions of Section 498-A of the IPC must be examined. The said provisions read as under:

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Section 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 willful 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or 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.

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30. The section provides a broad and inclusive definition of cruelty encompassing both physical and mental harm to the women body or health. It also covers acts of harassment designed to coerce the woman or her family into fulfilling unlawful demands for property or valuable security, including demands related to dowry.

31. The definition of "harassment" under the Explanation to Section 498-A is specifically outlined in clause (b), independent of the "willful conduct" described in clause (a), which clearly indicates that "cruelty" for the purposes of Section 498-A can either involve willful conduct that causes mental or physical harm or harassment related to unlawful demands, such as dowry. Moreover, these forms of cruelty can co-exist, but the absence of a dowry related demand does not preclude the application of the section in cases where there is mental or physical harassment unrelated to the dowry. The

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introduction of Section 498A in the IPC is not only to curb cruelty relating to dowry demand but also cases of cruelty to married woman by their in-laws. A reasonable interpretation of this would be that cruelty within this section goes beyond the definition of cruelty relating just to dowry demand. Ingredients of Section 498-A of the Penal Code are; (a) The woman must be married; (b) she must be subjected to cruelty or harassment; and (c) such cruelty or harassment must have been shown either by the husband of the woman or by the relative of her husband.

32. From the above ingredients, it is clear that an unlawful demand for dowry is not a per-requisite element to constitute "cruelty" under Section 498-A IPC. The conduct falls within either of the two broad categories i.e. willful conduct likely to cause grave injury or mental

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harm or harassment intended to coerce the woman or her family to meet any unlawful demand.

33. Thus, Section 498-A recognizes two distinct forms of cruelty; (1) involving physical or mental harm in clause (a) and (ii) other involving harassment meet unlawful demand for property or valuable security in clause (b).

34. The term “willful conduct and injury” as used in clause (a) and terms “harassment” and “unlawful demand” as used in clause (b) emphasize, the scope and ambit of the said clauses. It is not every type of cruelty i.e. made punishable under Section 498-A of the IPC. The conduct which is alleged to be cruel must be willful and it must be of such a gravity as as likely to drive a woman to commit suicide or to cause grave injury to life, limb or health. The word "likely" is interpreted to show

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probability and stands on higher footing than a mere "possibility".

35. In the light of the above well settled legal position, if the evidence of the prosecution witnesses is appreciated, the conduct which requires to be willful on the part of the accused and to show the same, there is no such evidence to show that there was no alternative before the deceased to commit suicide. The conduct must be such on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.

36. Section 498-A of the IPC, cruelty refers to specific behaviours or actions that are intentionally inflicted upon woman by her husband or relatives.

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37. The definition of “cruelty” not only covers the acts of harassment designed to coerce the woman or her family into fulfilling unlawful demands of dowry but also recognizes the acts which involve mental or physical harm to the deceased.

38. On appreciation the evidence adduced by the prosecution, admittedly, there were no previous complaints against the accused as far as the unlawful demands or harassment at the hands of the accused. No specific instances are narrated either by PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal or other prosecution witnesses. The entire evidence as to the cruelty is general in nature. Therefore, as far as the offence under Section 498-A of the IPC is concerned, except *omnibus* allegations levelled against the accused, no other evidence is brought on record.

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39. As per the prosecution case, the accused was continuously harassing the deceased by demanding the amounts to bring from her parents and the death of the deceased is caused in her matrimonial house in suspicious circumstances.

40. Learned counsel Shri R.M.Daga, who is assisting the prosecution, placed reliance on the decision in the case of **Harijan Bhala Teja vs. State of Gujarat**. On going the facts of the said case, it shows that the appellant had got hurriedly buried body of his wife before anyone from the parental side of his wife could reach.

However, in the present case, not only the receipts of hand over the dead body to the relatives of the deceased but the evidence of PW5 Anil Jaiswal shows that at the time of performing the last rites, the relatives

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of the deceased were present. He specifically admitted that the brother and sister of the deceased were when the dead body was handed over. The receipts by which the dead body was handed over bear the signatures of PW7 Sunilkumar Jaiswal and one Sachin Jaiswal i.e. the brother of the deceased. Therefore, the said judgment on which learned counsel Shri R.M.Daga placed reliance is not helpful for the prosecution.

41. Learned counsel for the accused placed reliance on the decision in the case of **Shoor Singh and anr vs. State of Uttarakhand** wherein aspect of dowry death and cruelty was considered by the Hon'ble Apex Court and it has been observed that indisputedly, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self-inflicted, the accused suffered any other ante-mortem

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injury. Moreover, the presence of the accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal.

42. Before entering into the merits of the case, it is necessary to see ingredients which are required to attract the offence under Section 304-B of the IPC.

43. Essential of Section 304-B of the IPC and the most fundamental constituent for attracting the provisions of the said Section is that the death of a woman must be a dowry death. The ingredients of Section 304-B have been reiterated in catena of decisions. Pre-requisites for convicting an accused for the offence under Section 304-B are that; (1) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances ; (2) such death must have occurred within seven years of

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her marriage ; (3) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband ; and (4) such cruelty or harassment must be in connection with the demand for dowry.

44. The word “dowry” has been defined in Section of the Dowry Prohibition Act, 1961, which is as under:

“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage.

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45. The definition of “dowry” means any property or valuable security given at the time of marriage by one party to the other.

46. There is no evidence on record to show that any dowry was fixed at the time of the marriage and something was remained to be paid and, therefore, there was harassment. Thus, there must be nexus between the demand of dowry, cruelty, or harassment based upon such demand and the date of death.

47. The test of proximity will have to be applied. But it is not the rigid test.

48. Section 304-B of the IPC defines dowry death of woman. It provides that dowry death is where death of woman is caused by burning or bodily injuries or occur otherwise than under normal circumstances within seven of marriage and it is shown that soon before she was

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subjected to cruelty or harassment by her husband or any relatives of her husband in connection with demand for dowry.

49. To sustain the conviction under Section 304-B of the IPC, ingredients to be established are that; (1) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance; (ii) such a death should have occurred within seven years of her marriage; (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband, (iv) such cruelty or harassment should be for or in connection with demand of dowry, and (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

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50. What is pivotal to the above determination is establishment of the proximate and live link between the cruelty and the consequential death of the victim.

51. The Hon'ble Apex Court has interpreted phrase "soon before the death" in the case of **Satbir Singh vs. State of Haryana, reported in AIR 2021 SC 2627** and summarized the law under Section 304-B of the IPC read with Section 113-B of the Evidence Act, that (i) Section 304-B of the IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand; (ii) the prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B of the IPC. Once these ingredients are satisfied, the rebuttable presumption of causation, provided under Section 113-B of the Evidence Act operates against the accused; (iii) the phrase "soon before" as appearing in Section 304-B cannot be

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construed to mean “immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives; (v) Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances can, in cases, be homicidal or suicidal or accidental: (v) due to the precarious nature of Section 304-B of the IPC read with 113-B of the Evidence Act, prosecution and defence should be careful during conducting of trial; (vi) it is a matter of grave concern that, often, trial courts record the statement under Section 313 of the Code in a very casual and cursory manner, without specifically questioning the accused as to his defence. It ought to be noted that the

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examination of an accused under Section 313 of the Code cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principles of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution; (vii) the court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defence since the inception of the trial with due caution, keeping in consideration the peculiarities of Section 304-B of the IPC read with Section 113-B of the Evidence Act; (viii) Section 232 of the Code provides that, if, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and

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the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal". Such discretion must be utilized by the Trial Courts as an obligation of best efforts; (iv) once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232 of the Code, it must move on and fix hearings specifically for "defence evidence", calling upon the accused to present his defence as per the procedure provided under Section 233 of the Code, which is also an invaluable right provided to the accused; (x) in same breath, trial courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics; (xi) apart from the above, the presiding Judge should follow the guidelines laid down by this court while sentencing and

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imposing appropriate punishment, and (xii) undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the court need to be cautious in its approach.

52. Thus, there is proximity test as far as phrase “soon before” is concerned. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B of the IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. The evidence in that regard has to be laid by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straight jacket formula

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can be laid down as to what would constitute period or soon before the occurrence. It would be hazardous to indicate any fixed period and that brings in the importance of proximity test.

53. The expression “soon her before her” used in substantive Section 304-B of the IPC and Section 113 of the Evidence Act is present with idea of proximity test.

54. The view expressed in the cases of **Thakkan Jha and ors vs. State of Bihar**, reported in **MANU/SC/1192/2004** and **Baldev Singh vs. State of Punjab**, reported in **MANU/SC/7907/2008** in which the Hon’ble Apex Court has laid down the proximity test that there must be material to show “soon before her death” the woman was subjected to cruelty or harassment for or in connection with dowry. The fact must show the existence of proximate live link between the effect of

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cruelty based on dowry demand and death of victim. “Soon before death” is a relative term and no straight jacket formula can be laid down fixing any time limit.

55. In the light of the above principles, from the evidence of PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal it emerges that after ten months of the marriage, there was demand by the accused. Learned defence counsel submitted that except bare words, there is no other evidence to show that the deceased subjected to cruelty in connection with demand of dowry by the accused. No specific instances are narrated as far as the demand is concerned. In our view, there is force in the submission of learned counsel for the accused.

56. In cases related to dowry death, the circumstances showing cruelty or harassment are not restricted to particular instance, but normally referred to

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course of conduct. Such conduct or cruelty or dowry harassment must be “soon before death”. There should be nexus between her death and dowry related harassment or cruelty inflicted upon her.

57. Though the prosecution relied upon the evidence of independent witnesses, it is evident that the said evidence of independent witnesses is in the nature of improvement. They have not stated the same before the investigating officer. There is no evidence showing any persistent dowry demand or conduct of the accused subjecting the deceased to cruelty or harassment for or in connection dowry. On the contrary, the evidence shows that the accused has purchased the plot in the name of the deceased. In our considered view, the alleged demand is not proved by the prosecution. There is no evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry

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“soon before the death” by the appellant. On the contrary, there is substance in the contention of learned defence counsel that as the deceased was worried about ill-health of her elder daughter who was suffering heart ailment. She was also undergoing transition as she was pregnant at the relevant time.

58. Learned counsel for the accused placed reliance on Article regarding prenatal depression. The said Article shows that prenatal depression is a depression that happens during pregnancy. The depression causes on going or extreme sadness. It can also cause anxiety and trouble sleeping. The said Article also states about how common is prenatal depression. It also states many factors play role in who gets depression during the pregnancy. One of main factors is having history of mood disorders. During pregnancy, hormones level shift which

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can affect mood and depression can be resulted from imbalance of chemical levels in the brain.

59. This contention is further substantiated by the cross examination which shows that PW1 Shantabai Jaiswal has admitted that the elder daughter of the deceased was suffering from heart ailment and she was worried about her health of her elder daughter. The evidence further shows that the deceased was taking treatment during her second pregnancy also.

60. Coming to the facts of the present case, we find that the defence set up by the accused appears to be probable and sufficient to rebut the presumption against him in the light of the facts that the evidence adduced by the prosecution which is omnibus and vague in nature.

61. In the aforesaid evidence laid by the prosecution, none of the witnesses has stated about the

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cruelty or harassment which was in the nature to drive her to commit suicide.

62. On collective appreciation of the evidence, laid by the prosecution, we are of the considered view that prerequisites to raise presumption under Section 304-B of the IPC and Section 113-B of the Evidence Act, having not been fulfilled, the conviction of the accused cannot be justified. Mere the death of the deceased being unnatural in the matrimonial house within seven years of marriage will not be sufficient to convict the accused under Sections 304-B and 498-A of the IPC. The cruelty or harassment has to be seen before the death. The evidence of PW1 Shantabai Jaiswal, the mother of the deceased and informant, shows that she has stated about the demands at the hands of the accused. There is nothing in the statement that any such demand was raised immediately before the death as the instances referred are

quite old. The evidence of PW8 Wasudeo Surywanshi, who is investigating officer, also shows that at the time of drawing spot panchanama and inquest panchanama, the relatives of the deceased were present. They were enquired, but they have not raised any grievances as to the ill-treatment at the hands of the accused. As to the ill-treatment also, there is no specific evidence regarding the nature of the ill-treatment which is caused to the deceased. There is nothing to suggest that “soon before the death” any cruelty or harassment was made to the deceased by the accused. All what is stated is regarding the demands. There are no details of any cruelty or harassment though PW1 Shantabai Jaiswal and PW2 Neeta Jaiswal visited the house of the deceased on various occasions.

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The FIR is rather delayed. The explanation given that PW1 Shantabai was not well is not acceptable in absence of any material.

63. For the reasons mentioned above, in our opinion, the judgment and order dated 4.11.2004 passed by learned 9th Ad-hoc Assistant Sessions Judge, Nagpur in Sessions Trial No.301/2023 convicting and sentencing the accused under Sections 304-B and 498-A of the IPC cannot be legally sustained and, therefore, the appeal filed by the accused deserves to be allowed.

64. The prosecution failed to raise grounds for enhancement of the sentence. In fact, basic foundational facts itself are not proved by the prosecution and, therefore, the appeal filed by the

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State for enhancement of the sentence deserves to be dismissed.

65. In this view of the matter, we proceed to pass following order:

ORDER

(1) Criminal Appeal No.717 of 2004 filed by the accused is **Allowed**.

(2) The judgment and order dated 4.11.2004 passed by learned 9th Ad-hoc Assistant Sessions Judge, Nagpur in Sessions Trial No.301/2023 is hereby quashed and set aside.

(3) The accused is acquitted of offences for which he was convicted and sentenced.

(4) The bail bonds of the accused stand discharged.

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(5) Muddemal property Articles-1-5 being worthless be destroyed.

(6) Criminal Appeal No.37 of 2005 filed by the State is **dismissed**.

(7) Fees of learned counsel appointed for the accused are quantified and the same be paid to her as per rules.

(8) R&P be sent back to the trial court.

Appeals stand **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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