



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 565 OF 2025

Abdul Rashid Abdul Musamiya (Kotwal),
Age : 60 years, Occu. : Labour,
R/o : R. B. Patil Nagar, Chakur,
Taluka Chakur, District Latur.

... Appellant
[Victim]

Versus

1. Khuddus s/o Maheboobsab Jargar,
Age : 42 years, Occu. : Vegetable seller,
2. Maksud s/o Maheboobsab Jargar,
Age : 40 years, Occu. : Mechanic,
3. Jamilabee @ Munni w/o Maheboobsab Jargar,
Age : 69 years, Occu. : Household,

All are R/o : Khadkali Galli, Udgir,
Taluka Udgir, District Latur.

4. The State of Maharashtra,
Through Police Station Officer,
City Police Station, Udgir,
Taluka Udgir, District Latur.

... Respondents

.....
Mr. V. P. Golewar, Advocate for the Appellant.
Mr. R. V. Gunale h/f Mr. V. D. Gunale, Advocate for Respondent Nos.
1 to 3.
Mr. S. G. Sangle, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 30.01.2026

Pronounced on : 02.02.2026

JUDGMENT :

1. This appeal is by original informant, who is aggrieved by the judgment and order of acquittal dated 06.03.2025 passed by learned Additional Sessions Judge, Udgir in Criminal Appeal No. 21 of 2016 arising out of judgment and order of conviction dated 05.11.2016 passed by learned Assistant Sessions Judge, Udgir in Sessions Case No. 31 of 2009.

2. Above referred Sessions Case emanates from chargesheet filed by City Police Station, Udgir against present respondents for commission of offence under Sections 498-A, 306, 109 r/w 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act.

The above chargesheet is as a result of crime registered on the FIR filed by PW1 Abdul alleging that, his daughter Atiyabee was married with present respondent Khuddus on 15.05.2008. After few days of marriage, accused put up demand of Rs.50,000/- for business and for fulfillment of such demand, it is alleged that, husband and in-laws of his daughter maltreated her. Finally, because of the cruelty and harassment meted out to her, she immolated herself and therefore, above charges were slapped.

Initially trial of Sessions Case No. 31 of 2009 was conducted and concluded by learned Assistant Sessions Judge, Udgir, who, vide his judgment and order dated 05.11.2016, held charges proved and convicted the accused.

The above order of conviction was assailed by the accused by filing Criminal Appeal before the Court of Additional Sessions Judge, Udgir, who overturned the order of conviction and acquitted the accused. Aggrieved by the same, original informant has preferred instant appeal by invoking Section 372 of Cr.P.C.

3. Learned counsel for the appellant-original complainant would point out that, few months after the marriage, there was demand of Rs.50,000/-. Deceased informed it to her father/informant and other family members. There was ill-treatment on account of non-fulfillment of demand, like providing insufficient food. That, in spite of understanding given to the accused, they did not improve and finally, when the demand and ill-treatment was continued, she committed suicide. According to learned counsel, accused persons, who are husband and in-laws, are totally responsible for her suicide.

4. He further pointed out that, learned trial court correctly appreciated the evidence adduced by the prosecution, and by applying settled law, convicted the accused. That, there was no reason to disturb such findings by the learned first appellate court. According to him, there was consistent evidence of father, mother and other siblings of deceased as well as grandmother and an independent witness. But the same has not been correctly appreciated. He pointed out that, presumption available under Section 113-B of the Evidence Act has been overlooked by the first appellate court. For all above reasons, he prays to set aside the order of acquittal and restore the conviction passed by the trial court.

Learned APP supported the above submissions.

5. On the other hand, learned counsel for accused would criticize the judgment of learned Assistant Sessions Judge on the ground that there was incorrect appreciation. That, only interested witnesses' account was appreciated. That, there were general and omnibus allegations regarding cruelty and therefore, learned first appellate court correctly appreciated the available evidence. He further pointed out that, so far as Section 306 of IPC is concerned, there was no

evidence regarding abetment to commit suicide and therefore learned first appellate court rightly acquitted the accused from both the charges as well as charges under the Dowry Prohibition Act. For above reasons, he urges to dismiss the appeal for want of merits.

6. Here, informant has come up in appeal, getting dissatisfied by order of acquittal of the accused who are husband and in-laws of his deceased daughter. The sum and substance of the evidence in trial court, for proper comprehension and appreciation is reproduced as under :

PW1 Informant Abdul Rashid, in his evidence at Exhibit 41, gave the date of marriage of his daughter as 15.05.2008 with present respondent Khuddus. He narrated that, by paying dowry of Rs.50,000/- and giving gold ornaments, said marriage was performed. That, husband was running grocery shop as well as selling vegetables. That, for said business, he and his family members raised demand of Rs.50,000/-. His daughter, when was brought for Eid festival, she narrated about the above demand and that she was not given sufficient food, apart from giving ill-treatment to her. He claims that, with the help of mediator, he tried to give understanding to the accused but still there was demand as well as ill-treatment and finally, he got news that his daughter has suffered burns and she succumbed to the same.

- PW2** Shaikh is the pancha to spot panchanama.
- PW3** Ziya is the mediator, a ex municipal councilor, and he in his evidence at Exhibit 51 deposed that, Atiyabee suffered burns and the reason for the same was that her mother-in-law, husband and his younger brother ill-treated her for demand of Rs.50,000/-. He also seems to have acted as panch to the spot panchanama Exhibit 47.
- PW4** Shahajadbee, who seems to be sister of deceased, in her evidence stated that, there was ill-treatment to her sister at the hands of husband, mother-in-law and younger brother-in-law on account of demand of Rs.50,000/- for business. They did not provide timely food to Atiyabee. That, her father could not meet the above demand and she further stated that, in her presence, her deceased sister stated about ill-treatment and that it had become unbearable. That, on 04.03.2009, she learnt that Atiyabee suffered burns. She deposed that, her sister was compelled to burn herself on the ground of demand of Rs.50,000/-.
- PW5** Nazmabee, another sibling, in her evidence Exhibit 53, also stated that there was demand of Rs.50,000/- for business of grocery shop and vegetable shop and on its non-fulfillment, there was ill-treatment. Eight days after the Eid, she had come and narrated about it to them.
- PW6** Dr. Gudde is the autopsy surgeon, who opined cause of death due to shock due to 100% burns.

PW7 Abdul Hamid, uncle of deceased Atiyabee, also acted as pancha of inquest panchanama. However, he also deposed that, due to ill-treatment inflicted to his niece, she had suffered burns.

PW8 Khuttejabee is the grandmother of deceased and she also, in her evidence Exhibit 60 stated that, after two months of marriage there was ill-treatment on account of Rs.50,000/-. There was understanding given to the accused. According to her, eight days after Eid, when she was to be sent off, she was weeping and she told that she suffered ill-treatment on account of demand.

PW9 Police Constable Chavan is the carrier.

PW10 PSI Mahemoodkhan Pathan is the Investigating Officer (IO).

7. On re-appreciation of the evidence of above witnesses, it is clearly emerging that they all are consistent about demand of Rs.50,000/-. Except grandmother, all speak about demand for business. Though informant father claims that he sought indulgence of ex-councilor to give understanding to the accused, and though said ex councilor is examined as PW3, except stating that there was ill-treatment and demand of Rs.50,000/-, he has not deposed anything. He has also not deposed about his indulgence sought in mediation. He was the sole independent witness, but his evidence is only to the

above extent. Though witnesses are speaking about ill-treatment, only allegations are that insufficient food was given. In fact, one of the witnesses, i.e. sister of deceased, merely speaks about food not being given on time. Thus, as regards to ill-treatment is concerned, there is weak or little evidence.

8. So far as Section 498-A of IPC, the Hon'ble Apex Court, in the case of ***Manju Ram Kalita v. State of Assam***, reported in (2009) 13 SCC 330, has clarified as to what is meant by "cruelty" which is contemplated under Section 498-A of IPC. It is held that, cruelty must be assessed contextually which is distinct from its usage in other statutes. The germane of the accusation which is expected to be established is that, the woman was subjected to cruelty "continuously" or "persistently" or at least in close proximity to the time of lodging complaint. There has to be willful conduct to drive the woman to commit suicide or to cause grave injury to her life, limb or health (mental and physical). It has to be demonstrated that there was harassment with the view to coercing her or her relatives to meet any unlawful demand and harassment was on account of failure to meet the same. The above propositions are also echoed and reiterated in the recent judgment of the Hon'ble Apex Court in the case of ***Smt. Bhagwati Devi v. State of Uttarakhand*** reported in 2025 INSC 1051.

9. Consequently, keeping in mind the above legal requirements and comparing it with the above evidence of prosecution, the said essential requirements are patently found to be missing. Except stating giving insufficient food or not giving food on time, none of the witnesses have clarified who amongst three accused indulged in what. Omnibus and general allegations seem to be raised regarding ill-treatment for non-fulfillment of demand of Rs.50,000/-. On the contrary, informant himself in his cross has admitted that husband earned handsome income from his business. Therefore, with such crucial admission, the allegation of demand raised first time after the death, creates doubt about the credibility and veracity of the allegations. Therefore, learned first appellate court committed no error in acquitting the accused from the charge of Section 498-A of IPC.

10. The other story of prosecution is that, only because of above cruelty, deceased burnt herself and committed suicide by immolation. Again, for attracting charge of Section 306 IPC, it is incumbent upon prosecution to establish that there was inducement, abetment or enticement to commit suicide. Law to that extent is repeatedly reiterated by the Hon'ble Apex Court in numerous cases, and the few

cases which can be named are *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, *S. S. Chheena v. Vijay Kumar Mahajan and Others* (2010) 12 SCC 190 as well as *M. Mohan v. The State represented by The Deputy Superintendent of Police* MANU/SC/0161/2011, wherein standard of “instigation” is elaborately dealt and discussed.

Even, recently in the case of *Abhinav Mohan Delkar v. State of Maharashtra and others*, MANU/SC/1103/2025 the Hon’ble Apex Court has reinforced “proximate trigger” doctrine emphasizing that there has to be close temporal and casual connection between the conduct of accused and the alleged suicide. Continuous harassment, without recent instigation, is held to be not sufficient to sustain the charge.

11. Here, all witnesses have merely learnt that deceased suffered burns and she was admitted. What happened in proximity to the episode of burns was expected to be proved by prosecution in view of specific charge. However, there is no evidence in that regard.

12. Learned counsel for the appellant would point out that, learned first appellate court ought not to have interfered and also failed to

invoke presumption available under Section 113-B of the Evidence Act. However, for invoking such presumption, it is first expected of prosecution to prove the foundational facts and only then it is available for prosecution or this Court to apply said presumption. Here, for above reasons, there being no evidence about either cruelty or abetment, said presumption would not get automatically attracted.

13. Perused the order of trial court as well as first appellate court. Learned trial court had failed to appreciate the evidence of prosecution in view of settled legal position and had committed error in convicting the accused. On complete re-appreciation, learned first appellate court rectified the error by allowing the appeal. On merits, no ground being made to interfere in the order of acquittal, and considering the principles to be borne in mind while dealing with an appeal against acquittal, the instant appeal is required to be dismissed as devoid of merits. Hence, the following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]