



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 302 OF 2003

The State of Maharashtra
Through Virgaon Police Station,
Tq. Vaijapur, Dist. Aurangabad

... Appellant
(Ori.
Complainant)

VERSUS

1. Nandkumar s/o Maruti Chavan
Age 29 years, Occu: Nil
R/o Bhagur Tq. Vaijapur
Dist. Aurangabad

2. Vijay s/o Maruti Chavan
Age 30 years, Occu: Agri.
R/o As above

3. Sunanda s/o Vijay Chavan
Age 25 years, Occu: Agril.
R/o As above

4. Parigabai w/o Chandrabhan Mohite,
Age 35 years, Occu: Household
R/o Ayodhyanagar, Aurangabad

5. Sunil s/o Parshuram Avhale,
Age 28 years, Occu: Service
R/o As above

... Respondents
(Orig. Accused)

Mr. S. P. Sonpawale, Addl. PP for the Appellant-State
Mr. Niesh S. Ghanekar, Advocate for the Respondents-accused

CORAM : SANDIPKUMAR C. MORE &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 02.12.2025

PRONOUNCED ON : 21.01.2026

JUDGMENT (Per: Y. G. Khobragade, J.)

1. By the present appeal under Section 378(1) of the Criminal Procedure Code, the prosecution takes exception to the judgment and order dated 10.01.2003 passed by the learned Adhoc Additional Sessions Judge, Aurangabad, in Sessions Case No. 224 of 2000, whereby, the respondents/accused are acquitted for the offences punishable under sections 498-A and 304-B read with section 34 of the Indian Penal Code in connection with Crime No. 16/2000, registered with Virgaon Police Station, Tq. Vaijapur District Aurangabad.

2. Heard Mr. S. P. Sonpawale, learned Addl. PP. for the appellant/State, and Mr. Nilesh Ghanekar, learned counsel for the respondents/accused.

3. It is the case of the prosecution that, on 20.05.2000, a report was received by the Virgaon Police Station regarding MLC No. 7462/VMK/ 20-5-2000/12.00, that accused No. 2 Vijay Maruti Chavan, r/o Bhagur, Tq. Vaijapur brought the injured Savita Nankumar Chavan under unconscious state in accident ward of Ghati hospital informing that said patient consumed poison. However, at about 12.20 p.m., on examination by the Casualty Medical Officer, the patient was declared dead. Accordingly, the ASI Shri. Musle attached with the Ghati Outpost passed an information about accidental death of the patient. Accordingly accidental death entry No. 15/2000 was registered and the Head

Constable Shri Sopan Nikam was directed to conduct the investigation. The said Head Constable then visited the Vasti of Chavan at village Bhagur and drawn spot Panchanama and seized one insecticide poison box under seizure panchanama. On 21.05.2000, Zero Crime was registered with CIDCO police station and it was then transferred to Virgaon police station, on the basis of which Crime No.16/2000 was registered.

4. Thereafter, the informant Shivaji Madhavrao Kankale, father of deceased Sivata, lodged a report on 20.05.2000 with CIDCO Police Station alleging that, on 08.05.1999, marriage of his daughter Savita was solemnized with accused No.1 Nandkumar Maruti Chavan and after marriage, his daughter Savita was visiting at her parental house and was telling that her husband-accused no.1 was demanding Rs.50,000/- for securing employment and said amount was out of dowry dues. The informant further alleged that accused no.1- husband of his deceased daughter, accused No.2 Vijay Maruti Chavan- brother in law of deceased, Accused No.3 Sunanda -wife of Vijay Chavan, accused No.4 Parigabai sister-in-law of deceased and accused No.5 Sunil- maternal uncle of the accused nos.1 and 2 were pressuring the deceased Savita to bring money from her father to secure job of teacher for accused No.1 and on that count, she was being harassed. It is further alleged that during the period from 16.04.2000 to 18.04.2000, his daughter Savita had visited his house

to appear for examination and at that time she disclosed him that on 14.04.2000, her husband/accused no.1, her brother-in-law/accused No.2 abused her and beaten by saying that, though one year had been passed, but neither remaining amount of dowry has been paid nor job was secured for accused no.1. At that time, the complainant told his daughter that in July, new post would be created and by making efforts, job would secured and payment also would be made. Thereafter his daughter Savita was sent back with her mother-in-law on 20.04.2000.

5. On 09.05.2000, the accused No.2 Vijay, accused No.1 Nandu, accused No.4 Parigabai and accused No.5 Sunil Avhale had demanded money from him at the time of land transaction at Gangapur by saying that so many days have been lapsed and they are in need of money for registration of sale deed. At that time, he (Informant) promised to pay the same in future. However, on 19.05.2000, Shri Deepak, the son of accused No.4 visited at his house and informed him that, he has been called to the house of accused No.4 Smt. Parigabai. Therefore, he visited house of accused No.4 Parigabai. At that time the Accused no. 4 told him that accused No.1 Nandu gone to Vaijapur for job and amount required to be deposited. Therefore, he (Informant) promised to make payment and left house of accused no.4, however, he came to know that, on 20.05.2000, accused No.4 Parigabai had gone to Bhagur and he was informed by the person working in the Depot to visit Aurangabad

immediately saying that his daughter is serious. Therefore, he immediately visited Ghati Hospital at Aurangabad, where all the relatives had gathered. Thereafter, he asked his son-in-law accused no.1 about the health of his daughter. Initially, the accused no.1 did not say anything but later on he disclosed that he did bad thing and was weeping, however, his another brother told him that, his daughter Savita died and her body lying in mortuary. After he saw the dead body of his daughter, he noticed while oozing blackish blood from nose, mouth and injuries on left leg, right knee, marks of beating on back and smell was emitting from her mouth and he was handed over dead body his druther after conducting the postmortem.

6. The complainant further alleged that all the accused persons, who are close relatives of his son-in-law/accused no.1, had demanded amount of Rs.50,000/- and due to non fulfillment of the said illegal demand, they harassed the deceased and administered poison and committed her murder. On the basis of said complaint, a Crime No. 16 of 2000 came to be registered against the accused persons for the offences punishable under section 302, 498-A read with Section 34 of the Indian Penal Code.

7. The PSI Baburao Kanje carried out investigation and recorded statements of witnesses and arrested the accused persons. He sent viscera

for chemical examination to the Chemical Analyzer, including poison box and drawn sketch map of the spot of incident, however, due to his transfer, further investigation handed over to PSI Shri Patil.

8. On due completion of investigation, charge-sheet was filed against the accused on 10.16.2000 before the learned Judicial Magistrate and on compliance of section 209 of Cri. P. C., trial was committed to the Sessions Court at Aurangabad.

9. On 03.09.2000, the learned 3rd Adhoc Additional Sessions Judge framed charges at Exh.6 against the accused for the offences punishable under sections 498-A, 304-B read with Section 34 of the Indian Penal Code. But no charge was framed under section 302 IPC. The accused pleaded not guilty and claimed for trial.

10. In order to bring home guilt of the accused, the prosecution examined following witnesses:

PW No.	Names of witness	Exh. No.
PW1	Shivaji Madhavrao Kankale-informant	Exh.14
PW-2	Ramesh Shankar Admane	Exh.16
PW-3	Arjunkumar Shivajirao Pankade	Exh.18
PW4	Mangalabai Shivajirao Pankade	Exh.19
PW5	Bhanudas Rambhau Khandare	Exh. 21
PW6	Sopan Dattatraya Nikam,	Exh. 24
PW7	Dr. Varsha Madhukar Kalyankar	Exh.26
PW8	Baburao Kondiram Kanje, PSI	Exh. 29
PW9	Dr. Bhushan Vilasrao Jain	Exh.37

11. Besides the oral evidence, the prosecution proved following documentary evidence:

Sr. No.	Documentary Evidence	Exhibit No.
1	Report/FIR	Exh. 15
2	Spot Panchanama	Exh. 17
3	Inquest Panchanama	Exh. 22
4	MLC Report	Exh. 25
5	Request letter dated 25.05.2020 issued to Chemical Analyzer	Exh.30
6	Sketch map	Exh. 31
7	C.A. Reports	Exh.32, Exh.33
8.	Postmortem Report	Exh.38
9.	Opinion of Medical Officer about injuries sustained to the deceased	Exh.40

After the evidence is over, statements of the accused were recorded under section 313 of the Criminal Procedure Code.

12. On 10.01.2003, the learned trial Court passed the impugned order and acquitted the respondents/accused for the offences punishable under Sections 498-A and 304-B read with section 34 of the Indian Penal Code in Crime No.16 of 2000.

13. Learned APP canvassed that, the Respondent/accused No.1 is the husband of deceased, accused No.2 Vijay Maruti Chavan is brother in law of deceased, accused No.3 Sunanda is wife of Vijay Chavan (accused no.2), accused No.4 Parigabai is real sister-in-law of deceased

and accused No.5 Sunil is maternal uncle of the accused nos.1 and 2. The marriage between deceased Savita and Accused no. 1 was solemnized on 08.05.1999. After marriage, the deceased Savita cohabited with her husband accused no. 1 at her matrimonial house. At the time of fixing marriage terms, an amount of Rs.1,50,000/- was agreed to be paid, but the informant only paid Rs. One lakh to the accused and Rs.50,000/- remained to be paid and for demand of said remaining amount, the deceased was mentally and physically tortured and said fact was disclosed by the deceased to the complainant and her mother PW-4, when the deceased visited her parental house to appear for BA examination but at that time, the informant had assured to make payment of the remaining amount and he would arrange funds for securing a job for his daughter's husband. i.e. accused No.1.

14. Learned APP invited our attention to the examination-in-chief of PW-1 informant wherein, he deposed that, on 16.04.2000, his daughter Savita had visited his house for the purpose of appearing for B.A. examination and at that time she disclosed about increase of harassment at the hands of accused and there is danger to her life, hence, she was requested him to arrange a job for her husband. Thereafter, again the daughter of complainant visited his house for attending one marriage and at that time his daughter was weeping and was not willing

to go at her matrimonial house. Therefore it proves that, on account of demand of dowry the deceased was subjected cruelty.

15. Learned APP further canvassed that as per the evidence of PW1, on 30.04.2000, Maruti, father-in-law of his daughter had visited him and disclosed that he has purchased a land and registration of sale deed is to be executed on 01.05.2000 and asked him to be present on that day. Accordingly, the complainant went to Gangapur on 01.05.2000 but on that day, no document was registered and on the next day, accused No.2 Vijay, accused No.4 Parigabai, accused No. 3 Sunanda were present for registration of sale deed and at that time the accused demanded remaining Rs.50,000/- out of total dowry amount but due to non fulfillment of said demand of dowry, all the accused persons administered poison to the deceased, due to which informant's married daughter died.

16. It is further canvassed that as per the postmortem report Exh. 38, the cause of death of deceased is shown due to poisoning, however, the learned trial court wrongly recorded findings and acquitted the accused, therefore, prayed to quash and set aside the impugned judgment and order.

17. The learned APP further canvassed that marriage of deceased was solemnized with accused No.1 on 08.05.1999 and the deceased Savita

died on 20.05.2000 due to administration of poison within one year from the date of marriage, therefore, there is presumption under Section 113-B of the Evidence Act that, due to harassment on account of non-fulfillment of such demand, the deceased committed suicide.

18. In support of this submissions, the learned APP placed reliance on the following cases.

(1) State of Madhya Pradesh Vs. Jogendra and anr., (2022) 5 SCC 401

(2) Suresh Kumar Vs. State of Haryana, (2013) 16 SCC 353.

19. Per contra, the learned counsel appearing for the respondents/accused has filed written notes of argument and orally argued the matter for a considerable period. The learned counsel appearing for the respondents/accused canvassed that, the FIR Exh.15 does not disclose about demand of dowry but only incident of assault on deceased on 14.04.2000 has been described. In evidence, PW1 Shivaji has stated that marriage of his daughter Savita was solemnized with accused no.1 on 08.05.1999 and initially for five months, she was treated well. PW1 stated that his daughter deceased Savita told him about ill-treatment for the first time at the time Mahalaxmi festival. However, the incident of raising demand of dowry has not been described in the FIR. Though the prosecution examined witness PW-1 Shivaji father of deceased, PW-2 Ramesh Admane, PW-4 Mangala Pankade-mother of the deceased,

however, they are the interested witnesses and no independent witnesses have been examined to prove the mental and physical cruelty raised against deceased for non fulfillment of demand of dowry. It is further canvassed that, the medical evidence as well as CA Report indicate that the cause of death of the deceased was due to consumption of poisonous substance. The evidence of PW-1 and PW-4 narrates different story than the story narrated in the FIR. In FIR, the informant, PW-1 has not disclosed about any settlement of dowry amounting to Rs.1,50,000/- at the time of marriage, and amount of Rs.50,000/- was remained unpaid. The FIR Exh. 15 refers only to an amount of Rs.50,000/- allegedly towards dowry but the fact of settlement of dowry of Rs. 1,50,000/- not disclosed and said fact is not proved by the prosecution. Further, evidence of PW-3 and PW-4 is silent on the point of dowry of Rs.1,50,000/- and payment of Rs. 1,00,000/- at the time of solemnizing marriage. Therefore, the learned trial court held that, the complainant has inserted the story about securing job for his son-in-law/accused no.1 and demand of Rs.50,000/- for the job for accused No.1. Therefore, the prosecution failed to prove beyond reasonable doubt about raising demand of dowry and ill-treatment against the deceased Savita for non fulfillment of the said demand. Therefore, the findings recorded by the learned trial court are just and proper. Hence, prayed for dismissal of the appeal.

20. Having regard to the submissions canvassed on behalf of both sides, we have gone through the paper book and record and proceedings. It is not in dispute that marriage of deceased Savita was solemnized with accused No.1 on 08.05.1999 and she died due to consumption of poisonous substance on 20.05.2000 soon after one year of marriage i.e. within seven years from marriage. Since the learned trial court framed charge against the accused for the offence punishable under sections 498-A and 304-B read with section 34 of the Indian Penal Code, the burden lies upon the prosecution to prove that -

- (1) Death of deceased Savita was otherwise than under normal circumstance, by consuming poison.
- (2) Deceased Savita was subjected to cruelty on non-fulfillment of demand of dowry.

21. PW-9 Dr. Bhushan Vilasrao Jain deposed at Exh.37 that he conducted postmortem on dead body of deceased Savita and opined about cause of death due to organochloro insecticide Indosulfan Thioden poisoning. So also, he found following external injuries :

- (1) abrasion over left knee anteriorly 2 x 1 c.m. reddish directed medially and upwards.
- (2) Multiple abrasions over left foot dorsum in an area of 4 x 2 c.m. reddish directed upwards.

22. PW6- Head Constable Sopan Dattatraya Nikam deposed at Exh.24 about drawing spot panchanama Exh.17 and seizure of one insecticide box from middle room. C.A. report Exh. 32 corroborates about detection of organochloro insecticide Indosulfan Thioden and petroleum hydrocarbons in tin box that is seized from the spot of incident. As per C.A. report Exh. 33, insecticide organochloro Indosulphan (Thioden) are found in viscera, liver, spleen and kidney. The substance of said insecticide also found in blood of the deceased. Therefore, as per evidence of PW-9, death of deceased caused due to organochloro insecticide Indosulfan Thioden poisoning which is unnatural death of the deceased. However, evidence of the prosecution does not reveal that the accused persons administered said poisonous substance to the deceased. It is pertinent to note that there is no charge against the respondents accused about committing murder of deceased by administering poisonous substance. Similarly, it is also not the defence of the respondents/accused about accidental poisoning, however, act of committing suicide falls under the category of death other than in normal circumstance and for the charges against accused, the prosecution is required to discharge the burden about subjecting deceased to cruelty for non fulfillment of demand of dowry as alleged.

23. No doubt the prosecution came with the case of demand of dowry due of Rs.50,000/- by the accused persons and for non fulfillment

of the said demand of dowry, physical and mental cruelty was raised against deceased Savita. On perusal of evidence of the prosecution witness, particularly PW1, PW-3 and PW-4, who are the parents and brother of the deceased, they deposed about raising demand of dowry of Rs. 50,000/- for securing job to accused no.1. However, the FIR Exh. 15 does not disclose about the settlement of dowry of Rs.1,50,000/- at the time of marriage and Rs. 1,00,000/- (Rs. One lakh) was paid at the time of marriage and balance Rs.50,000/- was to be paid in future. The prosecution has not examined any independent witnesses to prove about the settlement of dowry of Rs.1,50,000/- at the time of marriage and Rs. 1,00,000/- (Rs. One lakh) was paid at the time of marriage and balance Rs.50,000/- was to be paid in future. In evidence, PW-1 and PW4 improved the story and narrated the facts other than the FIR. The version/story narrated by PW-1 and PW-3 not been corroborated by the FIR. Further, the prosecution witnesses have not cited any instances about harassment of the deceased on account of non-fulfillment of the alleged dowry demand.

24. Indeed, the death of deceased Savita was caused due to poisoning, soon after one year from her marriage. Section 113 B of the evidence Act reads as under:

29. Section 113-B of the Act reads as follows:

"113-B. Presumption as to dowry death.- When the question it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. -For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Penal Code, 1860."

25. Section 304-B of the Indian Penal Code Reads as under:

"304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.— For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)."

26. In the case of *State of Madhya Pradesh Vs. Jogendra and another*, cited supra, the Hon'ble Supreme Court considered case of *Surinder Singh Vs. State of Punjab*, (2014) 12 SCC 582 and observed as follows:

"17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain, etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab where this Court considered

*the term "soon before". The relevant observations are as under:
(SCC pp. 222-23, para 15)*

15.... "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too

remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

(emphasis supplied)

27. In case of **Suresh Kumar**, cited supra, the Hon'ble Supreme Court considered the scope of Section 113-B of the evidence Act and Section 304-B of the Indian Penal Code. In the said case, the issue was whether the death of deceased was caused due to electrical shock or electrocution and Electric shock was accidental or not. Considering scope of Section 113-B of the Evidence Act as well as Section 304-B of the Indian Penal Code the Hon'ble Supreme Court held that Section 304 B IPC would attract and accidental death occurred otherwise than under normal circumstances.

28. However, in the case in hand, the evidence laid down by the prosecution does not corroborate about the demand of dowry or settlement of marriage for Rs.1,50,000/- and only Rs. One lakh was paid at the time of marriage and Rs.50,000/- were to be paid in future. On

perusal of evidence of PW-1, PW3 and PW4, it appears that accused persons raised demand of Rs.50,000/- for securing job to accused no.1. Therefore, there are material discrepancies in evidence of PW-4 Mangalabai and PW-3 Arjun Kumar. The learned trial court disbelieved the evidence of prosecution witnesses and acquitted the accused for the offences punishable under sections 498-A, 304-B read with Section 34 of the Indian Penal code which appears to be just and proper. The prosecution has not make out substantial ground to interfere with the said findings.

29. In view of the above, the present appeal deserves to be dismissed. Accordingly, present appeal is dismissed. R & P, if any, be remitted back to the trial Court.

(Y. G. KHOBRAGADE, J.)

(SANDIPKUMAR C. MORE J.)

JPChavan