
(2017) 03 BOM CK 0194

In the Bombay High Court

Case No : 415 of 2015 with Criminal Appeal No 65 of 2007

Rukhmaji S/o Devrao Galande

APPELLANT

Vs

The State of Maharashtra Through Police Station Officer

RESPONDENT

Date of Decision : 29-03-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#), [Section 306](#) - Acts done by several persons in furtherance of common intention - Husband or relative of husband of a woman

Citation : (2017) 03 BOM CK 0194

Hon'ble Judges : V.L. Achliya

Bench : SINGLE BENCH

Advocate : Niteen V. Gaware, K.S. Patil, U.B. Bilolikar, G.R. Ingole

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order dated 16/2/2007 passed in Special Case No.53/2006 by I-Adhoc Additional Sessions Judge, Nanded. By the impugned judgment, the appellants are held guilty of offence under Sections 498-A and 306 r/w. Section 34 of I.P.C. The accused-appellant no.1 is held guilty of offence punishable u/s 306 r/w 34 of IPC and sentenced to suffer R.I. for five years and to pay fine of Rs.2500/- and in default to undergo R.I. for one year. He is also held guilty of offence u/s 498-A of IPC and sentenced to suffer R.I. for one year and fine of Rs.500/- in default to undergo further R.I. for one month. The accused no.2,3 and 4 are also held guilty of offence u/s 306 r/w Section 34 of IPC sentenced to suffer R.I. for one year each and fine of Rs.1000/- each and in default to undergo R.I. for two months. They are also held guilty of offence u/s 498-A r/w Section 34 of IPC and sentenced to suffer R.I. for six months and fine of Rs.250/- each and in default to undergo R.I. for fifteen days. 2. In brief the facts leading to filing of appeal are summarized as under : On 22/4/2003 the complainant-Shivaji Ghorpade (PW3) the maternal uncle of deceased Suvarnamala visited police station, Ardhapur and lodged complaint

alleging therein that the marriage of his niece Suvarnamala was solemnized with accused on 18/5/2000. After marriage Suvarnamala went to cohabit with accused no.1. Soon after the marriage the accused started mental harassment to his niece. They told Suvarnamala that they will not allow her to cohabit with accused no.1 unless she secure job for herself and also asking to secure job for accused no.1. The accused was not eating food cooked by Suvarnamala. So also he was not wearing clothes washed by her. Since 6 to 7 months prior to lodging of complaint the accused were demanding Rs. One lakh for purchasing tempo. Due to continuous ill treatment and harassment at the hands of accused Suvarnamala committed suicide on 21/4/2003. 3. On the basis of the complaint lodged by Shivaji Ghorpade P.W.3, the maternal uncle of deceased the offence under Section 498-A, 306 r.w. 34 of IPC came to be registered against appellants-accused vide C.R.No.64/2003. A.S.I. Ramrao Gadekar P.W.9 conducted the investigation. From the spot of incident, he seized one container containing "Endosulfan". The dead body of the deceased was referred for post mortem. During the course of investigation, statements of Chandrakala P.W.2 maternal aunt of the deceased, Gangadhar P.W.4 maternal uncle of deceased, Prayag Teli P.W.5 maternal aunt of the deceased, Ramchandra P.W.6 maternal uncle of the deceased, Dnyanoba Teli P.W.7 maternal uncle of the deceased came to be recorded. 4. On completion of investigation charge sheet came to be filed in the Court of JMFC, Ardhapur, Dist.Nanded. In due course, case was committed to Sessions Court, Nanded. Charge under Section 498-A, 306 r.w. 34 of IPC came to be framed against appellants-accused. All of them pleaded not guilty and claimed to be tried. To prove its case, prosecution examined nine witnesses and further proved certain documents with the consent of defence counsel. Defence of accused appears to be of total denial and false implication at the instance of Shivaji Ghorpade (PW-3) and other relatives of the deceased. On conclusion of trial, learned Ad-hoc Additional Sessions Judge, Nanded has held appellants-accused guilty of offence under Section 498-A, 306 r.w. 34 of IPC and convicted them as stated above. Being aggrieved, appellants-accused have preferred this appeal. 5. I have heard submissions advanced at length by learned counsel representing the appellants and APP for the State and further perused the record and proceedings. 6. If we consider the over all facts of the case then the fact is not in dispute that the deceased married with accused-appellant no.1 on 18/5/2000. The fact is also not in dispute that the deceased committed suicide on 21/4/2003 by consuming insecticide i.e. Endosulfan. The crucial question posed for consideration is whether the prosecution has proved beyond reasonable doubt that the deceased was subjected to cruelty as defined under Section 498-A of IPC and accused have aided and abetted the commission of suicide by the deceased. 7. In order to prove its case, prosecution has examined nine witnesses which includes Shivaji Ghorpade (PW-3) the complainant and maternal uncle of the deceased. Besides the complainant, prosecution has examined Chandrakala (PW-2) maternal aunt of the deceased, Gangadhar (PW-4) maternal uncle of deceased. Prayag Teli (PW-5) maternal aunt of the deceased, Ramchandra (PW-6) maternal uncle of the deceased, Dnyanoba Teli

(PW-7) maternal uncle of the deceased. Besides said witnesses, prosecution has examined Hyder Pinjari (PW-1) the panch witness to the inquest panchanama (Exh.18) and Vilas Dawane (PW-8) the witness to spot panchanama (Exh.29). Further the prosecution has examined (PW-9) ASI Ramrao Gadekar, Investigating Officer who conducted the investigation and filed charge sheet. 8. On due appreciation of evidence, the trial Court has found the testimony of (PW-2) to (PW-7) as reliable to prove the case of the prosecution that deceased was subjected to cruelty as defined under Section 498-A of IPC and further the evidence is sufficient to establish that the accused have aided and abetted the commission of suicide by the deceased. It is observed that as the deceased has committed suicide within a period of seven years of her marriage and there is evidence to show that deceased was subjected to ill treatment and harassment soon after the marriage, the presumption under Section 113-A of Indian Evidence Act raises in favour of the prosecution to infer that the deceased committed suicide due to the ill treatment and harassment at the hands of the appellants-accused. 9. Learned counsel for the appellants assailed the reasons and findings recorded by the trial Court with contention that the trial Court has committed gross error in appreciating the evidence and convicting the appellants-accused. By referring the evidence adduced by the prosecution, the learned counsel submits that if entire evidence relied by the prosecution even if taken to its face value and accepted in its entirety to be correct, still no conviction under Section 498-A and 306 of IPC can be awarded. By referring to Section 498-A of IPC the learned counsel submits that in order to attract offence under Section 498-A of IPC the "cruelty" to be established must be cruelty as explained in Clause (a) or (b) of Explanation Clause to Section 498-A of IPC. He submits that as per the case of the prosecution the accused had demanded Rs.1 lakh for purchasing tempo i.e. goods carrier vehicle and on account of non fulfilment of demand, the deceased was subjected to ill treatment and harassment which has resulted into commission of suicide by her. By referring to testimony of Shivaji Ghorpade (PW-3) the complainant and the maternal uncle of the deceased it is pointed out that he has categorically deposed that the tempo was already purchased and for the repayment of the loan, the alleged demand was made. Whereas other witnesses have given altogether different version about the alleged demand. Some of them have deposed that they have heard about such demand being made by accused. They had no personal knowledge about such demand being made. Some of them deposed that the accused asked her relatives to contribute Rs.20000/- each for purchasing the tempo. He therefore, submits that there is no consistency in the evidence as to demand of amount on the part of accused. By referring the testimony of (PW-2) to (PW-7) the learned counsel pointed out that the testimony of these witnesses are full of omissions, contradictions and material improvements and no reliance can be placed on their testimony. 10. So far as other allegations are concerned, the learned counsel submits that even if it is presumed that appellant-accused no.1 was not eating the food prepared by deceased and refusing to wear the clothes washed by deceased, still allegations even if accepted and proved, still make out no offence

under Section 498-A of IPC. The acts alleged even if accepted do not fall within the meaning of word "cruelty" as defined/explained in said provision. It is further pointed out that in order to attract offence under Section 306 of IPC there must be direct or indirect evidence to establish that the accused have committed certain act of abetment to commit suicide by deceased or instigated the deceased to commit suicide. It is contended that even if the allegations are taken in its entirety to be true still no act of aiding or abetting of commission of suicide by deceased can be inferred under the facts and circumstances of the case as well as evidence as adduced by prosecution. He further submits that the incident was occurred on 21/4/2003. It has come on record that P.W.3 and other relatives were present in the hospital. On 21/4/2003 the body of the deceased was taken from hospital by accused no.2 for performing last rites. Police were present at the time of inquest as well as post mortem conducted on the dead body of deceased. None of the relatives of the deceased including P.W.3 lodged complaint against the accused. On the next day, the complaint was lodged at about 4.30 p.m. by Shivaji Ghorpade (PW-3). He therefore submits that in view of delay in lodging complaint, possibility of false complaint being lodged after due deliberation and discussion cannot be ruled out under the facts and circumstances of the case. 11. Learned counsel further submits that reasons and findings recorded by trial Court are perverse and not sustainable in law. He submits that the trial Court has completely ignored the material omissions and contradictions in the testimony of witnesses examined by the prosecution and duly proved through investigating officer. Learned counsel submits that in order to attract presumption under Section 113-A not only the prosecution is required to prove that suicide has been committed within seven years of marriage and also required to prima facie establish that the deceased was subjected to ill treatment and harassment soon before the death. 12. On the other hand, learned Additional Public Prosecutor has supported the judgment and order passed by trial Court. He submits that though (PW-2) to (PW-7) are the relatives of the deceased, their evidence cannot be brushed aside and discarded only for the reason that they are interested witnesses. He submits that in the case of such nature, the persons closely related with the deceased are alone expected to know about the matrimonial life of deceased. He further submits that in the instant case, (PW-2) to (PW-7) have consistently deposed that few months after the marriage, deceased was subjected to ill treatment and harassment by accused. The appellant-accused no.1 the husband of the deceased has caused mental harassment to the deceased by refusing to cohabit with her. He submits that the witnesses examined by the prosecution have consistently deposed that accused no.1 was not eating the food cooked by deceased. So also the accused no.1 was not wearing the clothes washed by her. Accused no.3 was not talking with deceased. He therefore, submits that the accused have behaved as such that they had boycotted the deceased. He submits that the witnesses examined by the prosecution have consistently deposed that the accused were making demand of Rs.1 lakh for purchasing tempo. He therefore, submits that prosecution has proved that there was ill treatment and harassment to deceased

and for non fulfilment of the demand the deceased was subjected to mental and physical harassment. He submits that judgment and order passed by the trial Court is well reasoned and the view taken by the trial Court is a possible view in the matter and urged to dismiss the appeal. 13. In order to appreciate the submissions advanced I have carefully scrutinised the evidence as adduced by prosecution and also perused the reasons and findings recorded by the trial Court. As discussed, the fact is not in dispute that deceased was wife of accused no.1 and daughter in law of accused no.2 and 4 and sister in law of accused no.3. So also there is no dispute as to the fact that the marriage between the accused no.1 and deceased was solemnized on 18/5/2000 and she died on 21/4/2003 by consuming poison i.e. the insecticide endosulphan. The appellant-accused were charged for committing offence under Section 498-A and 306 r.w. 34 of IPC. 14. In order to appreciate the submissions advanced it is necessary to consider Section 498-A of IPC and its purport. Section 498-A of IPC reads as under : "Section 498-A] 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 purpose of this section, "cruelty" means - (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; 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. The purport of Section 498-A has been considered in detail by the Apex Court in the case of Giridhar Shankar Tawade v. State of Maharashtra reported in (2002) SC 2078. In para 3 the Court has observed as under : "The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A." 15. Thus if we consider purport of Section 498-A of IPC, then it is not all type of ill-treatment and harassment to be treated as cruelty as referred in Section 498-A of IPC. The term "cruelty" has been explained and restricts to acts explained in clause (a) or (b) of Section 498-A. If we consider the cruelty as defined in explanation (a) as well as explanation (b) of Section 498-A, then it is

not that every cruelty is made punishable. In order to establish the offence under Section 498-A it is incumbent upon prosecution to establish cruelty as explained either in Clause (a) and (b) of Section 498-A of IPC. 16. In the instant case, prosecution has approached with a case that immediately after marriage with accused no.1, the deceased was subjected to ill treatment and harassment by accused persons so as to coerce her to fulfil demand of Rs.1 lakh made to purchase the tempo as well as to secure employment for the accused no.1. Although the prosecution has come up with the case that the demand was made to purchase the tempo for accused no.1, there is no cogent, convincing and reliable evidence to prove the demand on the part of accused. In this context it is useful to refer testimony of Shivaji Ghorpade (PW-3) who is crucial witness for the prosecution. 17. P.W.3 has deposed that deceased was his niece and since her birth, she was staying with him as financial condition of her parents was very poor. Her marriage with accused no.1 was also performed by him. He made the expenses of her marriage. He deposed that deceased was educated upto 12th standard and for a period of six months from marriage, the deceased was leading happy marital life. At the time of first Diwali after marriage the deceased came to his house. When he enquired from her as to whether there was any good news, she started weeping and disclosed that accused 2,3 and 4 did not allow her and her husband to enjoy conjugal happiness. She further disclosed that accused no.1 refused to eat food cooked by her and accept the food provided by his mother. He further deposed that on enquiry the deceased told that accused no.2,3 and 4 had warned them that unless and until both of them get employed, they would not allow them to cohabit with each other. He deposed that after some time, the deceased was sent back to her matrimonial house and few days thereafter, he visited the house of accused and met accused no.3 who in turn assured him that he would ensure that the deceased cohabit peacefully with her husband. He also met accused 1,2 and 4 and made similar request to them. He further deposed that accused no.1 was acting under the orders of his father, mother and brother i.e. accused no.2 to 4. The accused no.1 told him that he had to obey the orders of his parents and brothers. He further deposed that after 1½ month of said incident, his brother Ramchandra (PW-6) received telephone call from Suvarnamala (deceased). She disclosed that accused have increased ill treatment and harassment to her. He therefore, talked to accused no.3 on phone and requested him not to subject Suvarnamala to ill treatment and harassment. Accused no.3 assured to give nice treatment to Suvarnamala. He further deposed that 4 to 6 months thereafter, they learnt about purchase of carrier tempo by accused no.1. Accused no.3 Rukhmaji made telephone call to him and asked him and his two brothers and two sisters to contribute Rs.20,000/- each towards price of tempo purchased by accused no.1 and also gave threat that unless and until they contribute said amount, deceased will not be allowed to cohabit with accused no.1. The accused escalated the torture to Suvarnamala. He further deposed that there was no improvement in the conduct and behaviour of the accused. He therefore lodged complaint vide Exh.22. 18. In the cross examination, P.W.3 has admitted that the father of the deceased was not invited

during the settlement of marriage. He further admitted that the Kanyadan of Suvarnamala was performed by him. He admitted that accused no.3 was serving in school at Hadgaon. He also admitted that the deceased was residing with accused no.1 in her matrimonial house and accused no.1 owns agriculture land and he was agriculturist by profession. He also admitted that Suvarnamala used to attend agricultural work along with accused no.1. He also admitted that accused no.2 owns 5-6 acres of agriculture land. He admitted that at the time of first Diwali deceased had come along with accused no.2 and both of them stayed for 4-5 days at his residence. He gifted clothes to Suvarnamala and her father in law. He further admitted that the visit of both of them was pleasant occasion for him and his family. He admitted that personally Suvarnamala did not disclose that there was no cohabitation between her and accused no.1. He admitted that before lodging complaint on 22/4/2003 no complaint was lodged against accused nor any letter disclosing ill treatment and torture received from Suvarnamala. He admitted that after first Diwali Suvarnamala never came to him either at Parbhani or at Aurangabad. 19. P.W.3 has further admitted in cross examination that he has not stated before the police that Suvarnamala had disclosed that accused persons were not allowing her to cohabit with accused no.1. He has admitted that he has not stated before police that accused no.1 used to accept the food provided by his mother only. He has stated that he has disclosed before the police that accused no.2 to 4 threatened Suvarnamala that they would not allow her to cohabit with accused no.1 unless and until he secure employment for her and accused no.1. but failed to explain as to why same not find place in his complaint Exh.22. He has also admitted that he has not stated before the police that he visited the matrimonial house of Suvarnamala to persuade accused not to ill-treat her. He has also admitted that he has not stated about telephone call received from Suvarnamala to his brother Ramchandra (PW6) telling him about ill treatment and harassment at the hands of accused persons. 20. Thus if we consider the testimony of P.W.3 then it is full of omissions and contradictions. He has not only contradicted his own complaint Exh.22 but also contradicted the case of prosecution that the demand of Rs.1 lakh was made by accused to purchase tempo. In his testimony before the Court P.W.3 has deposed that the tempo was already purchased and alleged demand was made to pay the price of the tempo by contributing Rs.20,000/- each by himself, his two brothers and two sisters. In complaint Exh.22 the complainant P.W.3 has nowhere stated that he was personally asked to pay for purchase of tempo. Omission being material omission and totally inconsistent with the case of the prosecution the testimony of P.W.3 on the point of demand deserves to be discarded. If the tempo was already purchased and that too by obtaining loan, there was no reason to make demand on the part of accused to provide money to purchase the tempo and deceased being coerced to fulfil their demand. 21. If we consider the testimony of other witnesses i.e. P.W.2, P.W.4 to 5, P.W.6 to 7, then there is no cogent, convincing and reliable evidence to accept the case of the prosecution that the demand of Rs. One lakh was made for purchase of tempo and on account of non fulfilment of demand, the deceased was subjected to ill treatment and

harassment. If we consider the testimony of Chandrakala (PW-2) the maternal aunt of the deceased then she has given altogether different story. She has deposed that for a period of one or two years there was no complaint from deceased against accused. Thereafter accused 1 to 4 started ill treatment to deceased. As discussed above, Shivaji (PW-3) has deposed that for initial period of six months the deceased had no ill treatment and she was living happy married life. Whereas in complaint Exh.22 lodged by complainant it is stated that soon after the marriage the deceased was subjected to ill treatment. It is pertinent to note that the total span of married life of deceased with accused was about three years. If we accept the testimony of P.W.2 as correct then for a period of one or two year, there was no ill treatment to deceased. Therefore, in the light of testimony of P.W.2 the testimony of P.W.3 needs to be discarded as it runs contrary to the testimony of P.W.2. as well as complaint lodged vide Exh.22. 22. PW-3 has deposed that initially for the period of six months from marriage there was no ill treatment to deceased and ill treatment started six months after marriage. However, he deposed that when Suvarnamala came first time for Diwali, the deceased disclosed about ill treatment and harassment. It is pertinent to note that the marriage of deceased with accused no.1 was solemnized on 18/5/2000. In the cross examination, P.W.3 has deposed that deceased was accompanied with her father in law i.e. accused no.2 and they stayed for a period of 4- 5 days at his house. He has further deposed that their visit was a happy occasion for them and both of them were respected by offering gifts. He further admitted that after first Diwali deceased never visited him. If we consider the testimony of P.W.3 then the fact deposed by him that the deceased made disclosure about ill treatment after she first time visited after Diwali then in the light of material brought in cross examination, his testimony deserves to be discarded as deceased visited the accused for first Diwali within six months of her marriage. If we consider the testimony of P.W.2 and accept that deceased was living happy married life for one to two years of marriage, even then entire testimony of P.W.3 needs to be discarded. 23. If we consider testimony of Chandrakala P.W.2 then according to her accused no.1 asked to bring Rs.20,000/- each from her maternal uncle and aunts to purchase tempo and on account of non payment of amount to purchase tempo the deceased was subjected to ill treatment and harassment and accused no.1 stopped talking to Suvarnamala. If the testimony of P.W.2 is scrutinised in the light of the testimony of P.W.3 then the facts deposed by P.W.3 about alleged ill treatment and for harassment found to be altogether different. As discussed P.W.3 has deposed that accused has purchased tempo and lateron asked to contribute Rs.20,000/- each for price of tempo. Thus there is inconsistency as to facts deposed by P.W.2 and P.W.3 as to demand of money by the accused. 24. If we consider the testimony of P.W.4 Gangadhar, then he has deposed that accused no.3 demanded Rs.20,000/- from Chandrakala P.W.2 for purchasing tempo. If we peruse the testimony of P.W.2 then she has not uttered a single word that she received demand from accused no.3 to pay Rs.20,000/- for purchasing tempo. On the contrary she deposed that the demand was made by accused no.1. Similarly, if

we consider testimony of Prayag Teli P.W.5 then she has deposed that accused had purchased carrier tempo and for making repayment of loan, the accused no.1 used to ask Suvarnamala (deceased) to bring money from her relatives. Thus P.W.5 has given altogether different version in respect of demand of Rs.1 lakh. She has deposed that for repayment of loan of tempo which was already purchased by accused, the demand was made. Thus, this is another version as to demand of money by accused persons. Moreover the fact deposed by P.W.2 and P.W.5 as to demand and all other facts proved to be first time stated before the Court and by way of material improvement. 25. Ramchandra Ghorpade P.W.6 the maternal uncle of the deceased deposed that the accused asked deceased to bring Rs.20,000/- from her three maternal uncles and two aunts to purchase tempo and for non payment of that amount leads to ill treatment and harassment to the deceased. On refusal to pay the amount, accused made her to do labour work in the field. P.W.6 has gone to the extent of deposing that accused no.1 used to deny the status of wife to deceased and refused to give conjugal happiness. He was not accepting food served by Suvarnamala and also refused to wear the clothes washed by her. It is proved that all the material facts deposed by P.W.6 as to demand as well as harassment were stated first time before Court and by way of improvement. 26. Dnyanoba P.W.7 has deposed that for a period of two years there was no problem in the matrimonial life of the deceased with accused no.1. He deposed that after the period of two years of marriage, the accused no.4 used to say that unless and until Suvarnamala get employed accused no.1 he would not allow her to cohabit with accused no.1. He has not deposed a single word about alleged demand of Rs.1 lakh and ill treatment on account of non fulfilment of demand. Thus if we consider the testimony of P.W.7 on the alleged point of non fulfilment of the demand the deceased was subjected to ill treatment and harassment, then there is no cogent, convincing reliable and consistent evidence to establish that the deceased was subjected to ill treatment for non fulfilment of demand of Rs.1 lakh. Moreover, the fact deposed by him as to ill treatment proved to be first time deposed before the Court and same was by way of improvement. 27. Thus there is no consistency amongst the testimony of witnesses examined by prosecution to prove demand as well as harassment and ill treatment. P.W.2 and P.W.7 have said that for a period of two years from marriage, the matrimonial life of the deceased was going on smoothly and there was no ill treatment and harassment to the deceased. Whereas P.W.3 has deposed that for initial period of six months there was no ill treatment and harassment and ill treatment started after six months. Whereas in complaint Exh.22, P.W.3 has stated that soon after marriage the deceased was subjected to ill treatment. As discussed, the testimony of P.W.3 found to be not reliable as he has admitted that when deceased visited his house for first Diwali, accused no.2 was accompanied her and they have stayed for 4-5 days. It is difficult to believe that the accused no.2 would have visited and stayed for a period of 4-5 days at the house of P.W.3 if really there was such ill treatment and harassment to deceased and even not allowed to cohabit with her husband. Therefore, there is no cogent and

convincing credible evidence in respect of ill treatment harassment as well as demand to prove the guilt of accused u/s 306, 498-A r/w Section 34 of IPC. 28. If we consider the other evidence, then it is the case of the prosecution that the deceased was subjected to ill treatment and harassment for the reason that the accused were insisting deceased to secure employment for herself as well as accused no.1 through her maternal uncle P.W.3 who was then serving with M.S.R.T.C. It is difficult to believe that P.W.3 was in a position to secure employment for the deceased as well the accused no.1. The accused were fully aware about the financial condition of the deceased and her family. In fact she was looked after by her maternal uncle i.e. P.W.3 since her birth. She was educated and brought up by P.W.3. Her marriage was also performed by P.W.3. On the contrary, the financial condition of the accused was better in comparison to family of deceased. It has come on record that accused no.1 was looking after agricultural land. It has also come on record that the accused no.2 had 5-6 acres of land. P.W.2 has deposed that accused no.1 was owner of 20-25 acres of agricultural land. It has also come on record that accused no.1 as well as the deceased were working on agricultural land owned by him. It is therefore, difficult to believe that in order to coerce the deceased and her relatives to secure an employment for accused no.1, the deceased was subjected to ill treatment and harassment. 29. There was no physical harassment to the deceased. Whatever allegations made and facts deposed are in respect of mental harassment. It has come on record that only allegation made against accused no.4 that she was not talking to deceased. The accused no.3 was serving as Teacher and posted at Hadgaon and residing there with his family. There are no specific allegations made against accused no.2 that he ill treated and harassed the deceased. P.W.3 has deposed that accused no.1 was listening to his parents. He was eating food prepared by his mother and not eating food served by deceased. It is further case of the prosecution that accused was not wearing clothes washed by deceased. In my view, such allegations even if accepted as truthful same cannot be termed as cruelty either within the meaning of Clause (a) or (b) of Section 498-A of IPC form basis to convict a person for offence u/s 498-A of IPC. As discussed, all types of humiliation, harassment, not amounts to cruelty within the ambit of Section 498-A of IPC. Only the act specified in Clause (a) and (b) of Section 498-A of IPC if proved then only the person can be punished under section 498-A of IPC. As discussed, there is no cogent, convincing evidence about demand of Rs. One lakh and harassment of deceased on account of non fulfilment of demand. Failure to prove that deceased was subjected to ill treatment and harassment on account of non fulfilment of demand and there is no sufficient evidence to establish that deceased was subjected to any mental or physical harassment or torture, the prosecution has failed to prove guilt under Section 498-A of IPC. 30. The fact regarding the deceased has committed suicide by consuming poison has not been disputed by defence. Only for the reason the deceased committed suicide the accused cannot be convicted u/s 306 of IPC. In order to attract the offence under Section 306 of IPC it is incumbent upon the prosecution to establish that there was act of aiding

or abetting on the part of accused so as to make deceased to commit suicide. The Apex Court in the case of *Amalendu Palaias Jhantu v. State of West Bengal* reported in AIR 2010 SC 512 has categorically observed that before holding accused guilty of offence u/s 306 of IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim and had left the victim with no other alternative except to put an end to her life. Thus there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. To attract offence u/s 306 of IPC, there must be positive act on the part of the person who is said to have abetted the commission of suicide. The person must have played an active role either to instigate or to facilitate the commission of suicide by the person committing suicide. 31. In the instant case, there is no evidence to show as to what was transpired soon before the deceased committed suicide. If we consider the case of prosecution and testimony of complainant, then the alleged harassment started soon after marriage. The incident of the commission of suicide has taken place about three years from the marriage. It was incumbent upon prosecution to have established that the accused were consistently pursuing demand of Rs.1 lakh which leads to commission of suicide. 32. As discussed there is no cogent, convincing and credible evidence to prove that deceased subjected to ill treatment and harassment and that too of nature to drive a woman of ordinary prudence and independent capacity to commit suicide. It has come on record that the deceased was looked after by her uncle i.e. P.W.3 who was then working in M.S.R.T.C. Since her birth, the deceased was residing with P.W.3. The deceased was grown up in the shelter of P.W.3 who provided her education upto 12th standard and also discharged responsibility to perform her marriage. She had lost her mother in childhood and condition of her father was so poor that he was not able to take care of his daughter. The witnesses have deposed that deceased had studied upto 12th standard and in the course of employment maternal uncle of deceased i.e. P.W.3 was posted at places like Parbhani, Aurangabad. She was most lived and educated in the environment of city. It has come on record that accused no.1 was not much educated. So also accused no.1 and his family were residing in village. Thus there was difference as the education and life style of the deceased and accused. The accused no.1 was working in the agricultural field. It has come on record that deceased was also required to work in agricultural field. As deposed by P.W.7 deceased was forced to work in the agricultural field. In this view, the inference can be drawn that the deceased may not be happy with her marital life and particularly marriage with the accused no.1. She was brought up in urban environment. After marriage she was required to adjust with the rural life. Therefore, the possibility of deceased may not be happy with her matrimonial life and due to this reason she might have committed suicide cannot be ruled out in the facts and circumstances of the

case. 33. It is pertinent to note that on 21/4/2003, P.W.3 and other witnesses examined by prosecution were present in hospital when the post mortem on the dead body of the deceased was performed. Police personnel were also present. The body of the deceased was taken by accused no.2 to his village. The last rites was performed at the village of accused. If really there was such ill treatment and harassment to the deceased as deposed by P.W.2 to P.W.7 then in natural course, they would have lodged complaint immediately after visiting hospital and knowing that the deceased has committed suicide. They would have objected handing over of body of deceased to accused no.2 if really the deceased was ill treated and harassed by accused and they were responsible to cause her to commit suicide. The complaint was lodged on next day at about 4.30 p.m. i.e. on 22/4/2003. No doubt mere delay in lodging the complaint itself not fatal to the case of prosecution. It is quite settled position of law that the significance of delay in lodging complaint is to be examined in the light of the facts of each case. In the case in hand, the conduct of the P.W.3 and other persons to lodge the complaint on next day raises serious doubt. The possibility of complaint being lodged after due deliberation and discussion amongst the relatives of the deceased cannot be ruled out in the facts and circumstances of the case. I am constrained to observe this for the reason that different versions about the alleged demand, cause of harassment, ill treatment have been given by P.W.2 to P.W.7. If really the deceased was ill treated and harassed and P.W.3 and other relatives fully aware about such ill treatment and harassment then in natural course such inconsistencies would not have occurred in their testimony. I am therefore, of the view that the delay in lodging of the complaint also fatal to the case of prosecution as the possibility of the complaint being lodged after due deliberation and discussion to implicate accused cannot be ruled out in the facts and circumstances of the case due to anger amongst the relatives of the deceased. 34. So far the presumption u/s 113-A of the Indian Evidence Act is concerned, position is quite settled by the Apex Court. Mere death of a woman within seven years of marriage not automatically attracts presumption u/s 113-A of the Indian Evidence Act. In order to attract presumption u/s 113-A of the Act, besides the death of the married woman occurred by suicide within seven years there must be some evidence to show that the husband of the deceased or any relative of her husband have subjected deceased to cruelty. "Cruelty" to be proved necessary means the "cruelty" of a nature as explained in Explanation Clause (a) or (b) of Section 498-A of IPC. As observed above there is no cogent, convincing and credible evidence to establish cruelty within the meaning of Section 498- A of IPC. In absence of any evidence of cruelty the presumption u/s 113-A of Indian Evidence Act is not attracted in the matter. In this context, it is useful to refer the decision of Apex Court in the case of Mangal Ram v. State of Haryana reported in AIR 2014 SC 1782 wherein in para 26 the Apex Court has observed as under : "26. We are of the view that the mere fact if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within

seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act. In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana* (2004) 12 SCC 257, wherein this Court has examined the scope of Section 113A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. This Court held that, under Section 113A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subjected her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113A therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A of IPC." 35. Thus on re-appreciation of evidence, I have no hesitation to hold that the reasons and findings recorded by trial Court are based upon improper appreciation of evidence. Trial Court appears to be swayed away by the reason that the suicide was occurred within a period of seven years from marriage. As observed, the evidence of Prosecution Witnesses 2 to 7 found to be not consistent and reliable. Their testimony found to be full of omissions and contradictions. There is no consistency amongst the testimony of witnesses examined by prosecution on the alleged aspect of ill treatment and harassment to the deceased. There is no credible evidence to prove that the accused ill treated and harassed the deceased with intention to drive her to commit suicide. So also there are no circumstances to establish that the ill treatment and harassment caused to the deceased by accused was of such nature that the deceased was left with no other option except to commit suicide. In this view, the reasons and findings recorded by the trial Court are not sustainable. The accused deserves to be given benefit of doubt. In this view, Appeals deserve to be allowed and the conviction of the appellants is liable to be set aside. I am therefore, inclined to allow the appeals and pass following order : ORDER Criminal Appeals 415/2015 and 65/2007 are allowed in terms of prayer clause "B". The impugned judgment and order dated 16/2/2007 passed in Special Case No.53/2006 by I-Adhoc Additional Sessions Judge, Nanded convicting the

accused appellants for offences u/s 498-A, 306 r.w. 34 of IPC is hereby set aside. The accused-appellants stand acquitted. Fine if any paid be refunded to the accused. Bail bonds of the accused-appellants stand discharged. Record and proceedings be sent back to trial Court. Appeals allowed.