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**(2019) 11 BOM CK 0083**

**In the Bombay High Court**

**Case No :** Revision Application No. 332 Of 2017

Vinod Babaso Bhosale And Anr

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

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**Date of Decision :** 22-11-2019

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 304B, 306, 498A  
Code Of Criminal Procedure, 1973 — Section 173, 216, 216(1), 216(2), 216(3),  
216(4), 216(5), 217  
Dowry Prohibition Act, 1961 — Section 2  
Evidence Act, 1872 — Section 113B

**Citation :** (2019) 11 BOM CK 0083

**Hon'ble Judges :** N.J. Jamadar, J

**Bench :** Single Bench

**Advocate :** Wasim Najirahamed Samlewale, N.B. Patil

**Final Decision :** Dismissed

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**Judgement**

1. With the consent of the learned Counsels for the parties, heard finally at the admission stage.

2. This revision is directed against an order dated 10th April, 2017, passed by the learned Sessions Judge, Sangli, in Sessions Case No.148 of 2015, whereby an additional charge for the offence punishable under Sections 304-B read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code", for short), was directed to be framed against the applicants - accused.

3. Shorn of superfluities the background facts leading to this application can be stated as under:

(a) The applicant/accused no.1 is the son of Sou. Chaya, the applicant/accused no.2. The marriage of applicant no.1 was solemnized with Jyoti @ Pooja (hereinafter referred to as 'the deceased'), the daughter of Sou. Lalita, the first informant, on 24th December, 2014, at Kupwad, District Sangli. After marriage, the deceased joined accused no.1 at her matrimonial home at Ambarnath,

District Thane. The accused allegedly subjected the deceased to cruelty in order to coerce her to meet the unlawful demand of articles like gold ring and bed and also for failure to treat the bride-groom's relatives with honour, in the marriage ceremony. The deceased used to narrate her woes to the first informant. Accused no.1 allegedly subjected the deceased to physical harassment as well for her failure to meet the demands. The deceased returned to her parental home on 23rd March, 2015. On 18th April, 2015, the deceased left the home on the pretext of bringing ice-cream. The deceased, however, did not return. At about 8.45 pm. the dead body of the deceased was found on the railway tracks. On 6th May, 2015, a chit was allegedly found in the bag of the deceased. It revealed that the deceased had decided to commit suicide on account of the harassment at the hands of the accused over her failure to meet the demands of gold ring and bed.

(b) Thereupon, first informant lodged report. A crime was registered for the offences punishable under Sections 498A and 306 read with Section 34 of the Penal Code. After finding the complicity of the accused, charge-sheet came to be lodged against them for the offences punishable under Sections 498A, 306 read with 34 of the Penal Code. Upon committal of the case, the learned Sessions Judge framed charge for the offences punishable under Sections 306 and 498A read with Section 34 of the Penal Code, on 9th March, 2016.

(c) Trial commenced. Four witnesses were examined by the prosecution including Sou. Lalita (PW-1), the first informant. Thereafter, on 26th August, 2016, the learned Public Prosecutor filed application (Exhibit 32) seeking the addition of the charge for the offence punishable under Section 304-B of the Penal Code. The accused opposed the said prayer.

(d) By the impugned order, the learned Additional Sessions Judge was persuaded to allow the application holding, inter alia, that the material on record, especially the suicide note indicated that there was a prima facie case to show that soon before her death, the deceased was subjected to cruelty or harassment for or in connection with the demand of dowry, namely, gold ring and bed. As the deceased had met an unnatural death and the death had occurred under four months of the marriage, the ingredients of offence of dowry death were, ex facie, made out and, therefore, it was necessary to add the charge for the offence punishable under Section 304B of the Penal Code.

4. Being aggrieved by and dissatisfied with the impugned order the accused have preferred this revision.

5. I have heard Mr. Samlewale, the learned Counsel for the applicants and Mr. Patil, the learned APP for the State/ Respondent, at some length. With the assistance of the learned Counsels I have perused the material on record including the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code"), the depositions of the witnesses and the suicide note Article 'A', which constitutes the foundation for adding charge under Section 304B of the

Penal Code.

6. Mr. Samlewale took a slew of exceptions to the impugned order. Mr. Samlewale submitted that the impugned order suffers from grave error as the charge under Section 304-B of the Penal Code has been directed to be added without there being any material to support the same. A concerted effort was made by Mr. Samlewale to draw home the point that in the backdrop of the material on record, especially the deposition of Sou. Lalita (PW-1), the first informant, which is conspicuously silent about the alleged demand of dowry, the learned Additional Sessions Judge could not have mechanically ordered addition of the charge under Section 304-B. Mr. Samlewale forcefully advanced a submission that since there was no agreement to give any property before or at the time of marriage or after the marriage, for or in connection with the marriage, the alleged demand of gold ring and bed does not fall within the dragnet of dowry, within the meaning of Section 2 of the Dowry Prohibition Act, 1961. Thus, a pivotal ingredient of the offence punishable under Section 304-B is explicitly absent. Lastly, it was submitted that the circumstances in which the suicide note was allegedly recovered also dent the veracity of the prosecution case. In this backdrop, the learned Additional Sessions Judge could not have directed the addition of the charge under Section 304-B, especially after four witnesses were examined and nothing could be brought on record in proof of the complicity of the accused.

7. Per contra, Mr. Patil, the learned APP stoutly submitted that all the ingredients for the offence punishable under Section 304-B were made out. Firstly, the deceased died in the circumstances, which were not normal. Secondly, the deceased died under four months of marriage. Thirdly, there is adequate material on record to demonstrate that the deceased was subjected to harassment in order to coerce her to meet the demand of gold ring and bed. Fourthly, the short span of time establishes the element of harassment soon before the death of the deceased. Thus, according to the learned APP, presumption contained in Section 113-B of the Evidence Act, 1872, is attracted with full force. The learned Sessions Judge was thus justified in adding the charge under Section 304-B, and this Court in exercise of the limited revisional jurisdiction ought not interfere with the exercise of the discretion by the learned Sessions judge, urged the learned APP.

8. Evidently, the learned Sessions Judge has invoked the powers contained in Section 216 of the Code to add the charge under Section 304-B of the Penal Code. From the text of Sub-section (1) of Section 216, which does not prescribe any restriction on the power of the Court to alter or add charge, the exercise of the discretion to alter or add the charge is in a sense of wide amplitude. The use of the words "may alter or add" and "at any time before judgment" indicates the unrestricted nature of the power and the stage at which it can be exercised.

9. The power vested in Court to alter or add the charge is, however, required to be exercised judiciously. There has to be a justifiable material either to alter or add the charge. If the Court comes to the conclusion that on account of some

inadvertence or mistake, proper charge was not framed, the Court is empowered to alter or add the charge. Likewise, if certain material is brought before the Court either by way of evidence or otherwise, which necessitates the framing of an additional charge, the provisions of Section 216(1) equip the Court to add the charge. The aforesaid position is well neigh settled.

10. It would be suffice to make a reference to the judgment of the Supreme Court in the cases of Jasvinder Saini and others vs. State (Govt. of NCT of Delhi) (2013) 7 Supreme Court Cases 256., wherein upon construction of the provisions of Section 216 of the Code, the following observations were made:

"11. A plain reading of the above would show that the Court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the Court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the Court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the Court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the Court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the Court."

(emphasis supplied)

11. The question which thus crops up for consideration in this revision is; whether in the facts of the instant case, the learned Sessions Judge was justified in adding the charge under Section 304-B. It is imperative to note that the suicide note, which was allegedly recovered on 6th May, 2014, in fact, propelled the first informant to lodge the First Information Report ("FIR"). It is not the case of the prosecution that the suicide note came to be recovered subsequent to the conclusion of the investigation or, for that matter, framing of the charge against the accused for the offence punishable under Sections 306 and 498-A read with Section 34 of the Penal Code. It is also indisputable that the prosecution sought the addition of the charge after examination of the four witnesses.

12. In the aforesaid premise, it was strenuously urged by Mr. Samlewale that the cross-examination of Sou. Lalita - the first informant, demolishes the prosecution case and establishes that there was no agreement for giving of the property, before marriage. Inviting the attention of the Court to the admissions in the cross-examination of Sou. Lalita (PW-1) that a yadi (list of the offerings) was prepared before marriage and it was agreed between the parties that the accused no.1 would bear the expenses of his clothes and the marriage chain (mangalsutra) and that gold ring and bed were not agreed to be given therein, it

was urged that the charge under Section 304-B of the Penal Code becomes totally groundless.

13. In the light of the aforesaid material, it was submitted by the learned Counsel for the applicants that in the absence of the agreement to give the property, at the time of marriage, the alleged demand subsequently made by accused no.1 does not fall within the mischief of dowry, as envisaged by the definition under Section 2 of the Dowry Prohibition Act, 1961, which has been adopted for the purpose of the offence punishable under Section 304-B. To lend support to this submission, Mr. Samlewale placed strong reliance upon following two judgments of this Court.

14. In the case of Jayawantabai Satyadeo Sadafale vs. State of Maharashtra 2008(Supp.1) Bom.C.R.256, a learned Single Judge of this Court, after referring to the definition of 'dowry' under the Dowry Prohibition Act, 1961 had observed as under:

"8. It is thus clear that the dowry is any property given or agreed to be given before or at the time of marriage or after the marriage in connection with the marriage. Thus, what is necessary is that one party must have agreed to give it in connection with the marriage. If it was not agreed to be given in connection with the marriage, that may become unlawful demand at the most, but cannot be treated as a demand for dowry."

(emphasis supplied)

15. In the case of Dattatraya s/o. Prabhu Mangale vs. State of Maharashtra 2016 ALL MR (Cri) 4908., another learned Single Judge of this Court, in the context of a submission that there was no allegation that the dowry was agreed to be given and thus the offence under Section 304-B of the Penal Code was not made out, observed as under:

"12. The offence punishable under Section 304-B of Indian Penal Code is made out only when any dowry is agreed between the parties and over said dowry, death in unnatural circumstances of the wife, is caused. Here, as per the prosecution case itself, no dowry was agreed in the marriage and therefore, the offence punishable under Section 304-B of Indian Penal Code could not have been attracted in the present case."

(emphasis supplied)

16. Laying emphasis on the aforesaid enunciation, which records that the offence under Section 304-B would only be made out when dowry was agreed to be given between the parties and there was harassment for or in connection with the said dowry, it was submitted that the facts of the instant case unmistakably indicate that no property was agreed to be given, and, thus, the addition of the charge under Section 304-B is wholly unsustainable.

17. I find it rather difficult to accede to the aforesaid submission. Undoubtedly,

the explanation to Section 304-B refers to the definition of dowry under Section 2 of the Dowry Prohibition Act, 1961. However, the expression cannot be construed in the restricted sense as is sought to be urged on behalf of the applicants. The definition under the Dowry Prohibition Act, 1961, was amended by amending Act 63 of 1984 and Act 43 of 1986. The intention of the legislature was to arrest the scourge of dowry. Construed through the prism of legislative intention, the broad submission that unless the property, for which the victim is subjected to cruelty or harassment, was agreed to be given, at the time of or before the marriage, it does not fall within the tentacles of the term dowry, cannot be countenanced. The provision, if so construed, would loose all its force and vigour.

18. The controversy sought to be raised is no longer *res integra*. In the case of *State of Andhra Pradesh vs. Raj Gopal Asawa and another* (2004)4 SCC 470., the Supreme Court after adverting to the provisions contained in Section 2 of the Dowry Prohibition Act, 1961 and its import on the word 'dowry' under Section 304-B of the Penal Code, expressly repelled the submission that there must be an agreement for dowry so as to bring the conduct of the accused within the mischief of Section 304-B. Paragraphs 8 and 9 are instructive. They read as under:

"8. The Explanation to Section 304-B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is: what is the periphery of the dowry as defined therein? The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in *Pawan Kumar and Ors. v. State of Haryana* (1998 (3) SCC 309).

9. The offence alleged against the respondents is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence, that could be either direct or indirect. It is significant that Section 4 of the Act was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry, is

misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry."

(emphasis supplied)

19. In the case of Vidhya Devi and another vs. State of Haryana (2004) 9 Supreme Court Cases 476., the Supreme Court again considered the challenge based on absence of agreement to give dowry and expounded the legal position as under:

"7. What is the periphery of the word "dowry" came to be considered by this Court in the decision in Pawan Kumar v. State of Haryana (1998) 3 SCC 309) and in the teeth of the extended definition and meaning of the term as brought about by the Dowry Prohibition (Amendment) Act, 1986 (Central Act 43 of 1986) w.e.f. 19-11-1986 the earlier meaning confining and limiting the same to the time at or before the marriage got enlarged and extended even to the period after the marriage and that there be no need to also show any agreement for payment of such dowry to make it punishable as an offence. The plea on behalf of the appellants to the contrary does not merit to be countenanced in our hands."

(emphasis supplied)

20. The matter was again considered by the Supreme court in the case of Ashok Kumar vs. State of Haryana (2010) 12 Supreme Court Cases 350. and the legal position was postulated as under:

"14. The expressions "or any time after marriage" and "in connection with the marriage of the said parties" were introduced by amending Act 63 of 1984 and Act 43 of 1986 with effect from 2-10-1985 and 19-11-1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression "in connection with the marriage" cannot be given a restricted or a narrower meaning. The expression "in connection with the marriage" even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be "in connection with the marriage" and not so customary that it would not attract, on the face of it, the provisions of this section.

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17. This Court, in Madhu Sudan Malhotra v. Kishore Chand Bhandari [1988 Supp. SCC 424], held that furnishing of a list of ornaments and other household articles

such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, prima facie amounts to demand of dowry within the meaning of Section 2 of the Act. The definition of "dowry" is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands, was the dictum of this Court in *State of Andhra Pradesh v. Raj Gopal Asawa* [(2004) 4 SCC 470]."

21. In the backdrop of the aforesaid legal position, the reliance placed by the learned Counsel for the applicants on the cases *Jayawantabai Satyadeo Sadafale* and *Dattatraya s/o. Prabhu Mangale* (supra) does not advance the cause of the applicants. It is pertinent to note that the aforesaid pronouncements of the Supreme Court in the cases of *Raj Gopal Asawa* and *Vidhya Devi* (supra) were not brought to the notice of the learned Single Judge in the cases of *Jayawantabai Satyadeo Sadafale* (supra). Nor the above judgments and the subsequent judgment of the Supreme Court in the case of *Ashok Kumar* (supra) were noticed by the learned Single Judge in the case of *Dattatraya s/o. Prabhu Mangale* (supra).

22. It appears that in both the cases, this Court had considered the definitions of the dowry under Section 2 of the Dowry Prohibition Act, 1961, in a restricted sense, without advertting to the context in which the said definition was initially introduced on the statute book and further amended. It is trite that context is as important as the text. Thus, in view of the judgments of the Supreme Court in the cases of *Raj Gopal Asawa*, *Vidhya Devi* and *Ashok Kumar* (supra), it cannot be said that the observations made by this Court in the cases of *Jayawantabai Satyadeo Sadafale* (supra) and *Dattatraya s/o. Prabhu Mangale* (supra), extracted above, lay down the correct position of law.

23. Having dealt with the principle challenge of the applicants, re-adverting to the consideration of the rest of the submissions, it is pertinent to note that the alleged suicide note, refers to the demand of gold ring and bed at multiple occasions. The circumstances in which the demand was made, the precedence given to material life (gold and money) over the person of the deceased and the harassment at the hands of accused no.1, even at the instance of accused no.2, find mentioned therein. The endeavour of the learned Counsel for the applicants to impress upon the Court that the alleged recovery of the suicide note does not inspire confidence cannot be countenanced as it is a matter for trial. Even otherwise, the first informant Sou. Lalita (PW-1) has testified to the fact that on two occasions the deceased had complained to her about the demand of gold ring and bed by the accused. The veracity of the said claim, in the backdrop of the manner in which the first informant fared in the cross-examination is again a matter for trial.

24. Thus, at this stage, it cannot be said that there is no material to demonstrate that the accused had allegedly harassed the deceased for or in connection with the demand of gold ring and bed. Since the other elements, namely unnatural

death of the deceased under four months of the marriage and the allegations of cruelty or harassment soon before the death of the deceased are, prima facie, made out, the learned Sessions Judge cannot be said to have committed any error in passing an order to add the charge under Section 304-B of the Penal Code.

25. Undoubtedly, the learned Sessions Judge will have to scrupulously follow the procedure prescribed by the Code consequent to the addition of the charge under Section 304-B of the Penal Code in the matter of proceeding with the trial further.

26. For the foregoing reasons, I am not impelled to interfere with the impugned order in exercise of revisional jurisdiction. The application, therefore, deserves to be dismissed.

27. Hence, the following order.

The revision application stands dismissed.