

Bombay High Court

State Of Maha vs Vijay Kolhe And Ors on 11 March, 2021

Bench: R.V. Ghuge, B. U. Debadwar

CrApl-293-03.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 293 OF 2003

The State of Maharashtra
Through Public Prosecutor
High Court Bench at
Aurangabad.

... Appellant
(Ori. Complainant)

Vs.

1. Vijay Dattatraya Kolhe
Age : 30 yrs., Occu. Labourer
 2. Dattatraya Maruti Kolhe
Age : 58 yrs., Occu. Pensioner.
 3. Jankabai w/o Dattatraya Kolhe
Age 48 yrs., Occu. Household work
(Abated since died)
 4. Prakash Baburao Pawar,
Age : 39 yrs., Occu. Service
 5. Sharda w/o Prakash Pawar
Age : 30 yrs., Occu. Household
- All r/o Joshiwadi, Tq. Shirur, Dist. Pune

... Respondents
(Ori. Accused)

...
APP for Appellant - State : Shri R. V. Dasalkar
Advocate for Respondents No. 1, 2, 4 & 5 : Shri Amol Joshi
(Appointed)
...

CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.

RESERVED ON : 15TH FEBRUARY, 2021 PRONOUNCED ON : 11TH MARCH, 2021 JUDGMENT
[PER: B. U. DEBADWAR, J.]:

1. This appeal has been directed under Section 378(1) of Code of Criminal Procedure, 1973 (hereinafter referred to as 1 of 49 CrApl-293-03.odt "Cr.P.C."), against the judgment and order dated 26-12-2002 passed by the learned IInd Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No.230 of 1999, whereby acquitted all the five accused for the offences punishable under Sections 498-A, 304-B and 306 read with Section 34 of Indian Penal Code (hereinafter referred to as "I.P.C.")

2. Facts giving rise to present appeal in nutshell are as under :

a) Respondent No.2 Dattatraya Maruti Kolhe and respondent No.3 Jankabai w/o Dattatraya Kolhe are the husband and wife inter se. Respondent No.1 Vijay Dattatraya Kolhe and Respondent No.5 Sharda w/o Prakash Pawar are their son and daughter, respectively. Respondent No.4 Prakash Baburao Pawar is the husband of respondent No.5 Sharda. All the respondents are residents of Joshiwadi, Tq. Shirur, Dist. Pune.

b) Deceased Jyoti @ Kavita was the daughter of Haribhau Laxman Karkhile and Shakuntala Haribhau Karkhile, resident of Plot No.16, Shahu Nagar, Kedgaon, Dist. Ahmednagar. Karkhile family and Kolhe family originally hail from Parner Taluka, District Ahmednagar. The native place of Haribhau Karkhile was village Ralegan Therpal, whereas native place of respondent No.2 Dattatraya Kolhe was village Loni Haveli.

c) With the intervention of close relatives of both the 2 of 49 CrApl-293-03.odt families, marriage of deceased Jyoti with respondent No.1 Vijay was settled. As per the terms of settlement, marriage was to be solemnized on 01-02-1998 at Kedgaon, which would be convenient for both the families and their relatives. At the time of settlement of marriage, respondents had expressed their desire that marriage should be solemnized in a grand manner. Respondents did not demand any gift or dowry. Haribhau and his family members agreed for performance of marriage of deceased Jyoti and accused No.1 Vijay at Kedgaon in the best of possible manner.

d) Upon settlement of marriage and fixing the date and venue, Haribhau got printed and distributed wedding invitation cards amongst relatives and well wishers.

e) Four to five days prior to 01-02-1998, respondent No.1 Vijay and respondent No.2 Dattatraya reached to Kedgaon, at the house of Haribhau and said him that unless dowry of Rs.75,000/- and ornaments of five tolas gold is given, the marriage of Jyoti would not be performed with Vijay. Besides, they told Haribhau that marriage should be performed at Ramling Temple of Shirur, Pune and not at Kedgaon. After consulting with wife Shakuntala, Haribhau accepted aforesaid conditions, put forth by respondent No.1 Vijay and respondent No.2 Dattatraya. However, he expressed his ability to pay dowry of Rs.50,000/- out of Rs.75,000/- and gold ornaments of five tolas, at the time of marriage and sought 3 of 49 CrApl-293-03.odt permission to pay balance dowry amount of Rs.25,000/- after marriage, in due course. Respondent No.1 Vijay and respondent No.2 Dattatraya both agreed for the same.

f) Accordingly, on 01-02-1998, marriage of deceased Jyoti was solemnized with respondent No.1 Vijay at Ramling Temple, Shirur as per Hindu rites and customs prevailing in their community.

g) After marriage deceased Jyoti went to her matrimonial house situated at Joshiwadi, Shirur and started residing and cohabiting with husband Vijay there, in joint family of all accused.

h) Matrimonial life of deceased Jyoti was normal for about 10 months after marriage. Thereafter, husband and father-in-law started insisting her for bringing balance dowry amount of Rs.25,000/-

and subjecting her to cruelty for that, in the form of beating and starving her. Respondent No.4 Prakash and respondent No.5 Sharda, residing in their neighbourhood, also started taunting Jyoti on account of remainder dowry amount of Rs.25,000/-. Deceased Jyoti used to disclose about harassment and ill treatment meted out by husband and in-laws on account of remainder dowry amount of Rs.25,000/- to her parents and brothers, whenever she visited her parental house.

i) Meanwhile, Jyoti became pregnant and gave birth to a girl child Kranti. Three to four months prior to the delivery, Jyoti 4 of 49 CrApl-293-03.odt had been to her parental house. During her stay at parental house before and after delivery, Jyoti reminded his father Haribhau for arranging remainder dowry amount of Rs.25,000/-, for which her husband and in-laws were harassing and ill treating her. Jyoti was afraid of returning back to matrimonial house after delivery, without the dowry amount of Rs.25,000/-. However, after getting convinced and assured by Haribhau that soon he would arrange the money and pay Rs.25,000/- to her husband and in-laws, she agreed to go to her matrimonial house with the new born girl child Kranti. By accompanying Jyoti to her matrimonial house at Joshiwadi, Shirur, Haribhau assured accused regarding payment of remainder dowry amount of Rs.25,000/- soon, and requested them not to harass and ill treat Jyoti for that reason.

j) However, Haribhau could not arrange the money, despite due efforts taken for the same. Consequently, accused went on harassing and ill treating Jyoti on account of non payment of remainder dowry amount of Rs.25,000/-. Jyoti disclosed the same to her parents and brothers on her visiting to parental house on the occasion of Rakhi Poornima.

k) On 06-09-1999, Babasaheb Karkhile and Arun Karkhile came to Kedgaon and informed Haribhau and Shakuntala, parents of Jyoti, that accused No.2 Dattatraya informed them, by coming to their village Ralegan Therpal, that Jyoti along with daughter Kranti 5 of 49 CrApl-293-03.odt is missing. On receiving the said information, Haribhau rushed to the house of accused situated at Joshiwadi, Shirur and inquired with them about Jyoti and Kranti and conducted search for them. Accused No.1 Vijay did not give proper response when PW7 Sudam Dagadu Fatangare went to his flat at Pune for knowing whether Jyoti had reached there.

l) Despite due search, Jyoti and her daughter Kranti could not be traced out. Therefore, on 08-09-1999, Haribhau approached Shirur Police Station and lodged the missing report. When, in spite of lodging the missing report, Jyoti and her daughter Kranti were not found, on 13-09-1999 Haribhau approached the Shirur Police Station and submitted an application expressing doubt about accused Nos. 1 to 3.

m) Meanwhile, on 15-09-1999, Balu Santaji Barde (PW6), fisherman noticed two dead bodies in decomposed condition under the shrubs in the Ghod river. Upon receiving such information, Police Officers of Shirur Police Station proceeded to the said place, and made arrangements for fishing out both the dead bodies from the bed of the river with the help of PW6 Balu Barde. Accordingly, inquest panchanama of the said dead bodies were drawn, then both the dead bodies were sent to the Rural Hospital, Shirur for postmortem with requisition. Thereafter, spot panchanama of the place where dead bodies were found was drawn. After postmortem, 6 of 49 CrApl-293-03.odt dead bodies

were given in the custody of Haribhau. On 16-09-1999 funeral and last rituals were performed on Jyoti and her daughter Kranti at Shirur.

n) On 17-09-1999 Haribhau lodged the report narrating over all conduct of the accused to Shirur Police Station. Treating that report as FIR, S.H.O. of Shirur Police Station registered Crime No. I-213/1999 against all the accused for the offences punishable under Sections 498-A, 304-B and 306 read with Section 34 of I.P.C.

o) Investigation of the said crime was carried out by PW11 Kisan Bhagwan Gawali, Police Inspector. During the course of investigation, papers of missing case and A.D. were collected. Statements of material witnesses were recorded. Viscera, preserved at the time of postmortem, was forwarded to the Forensic Science Laboratory. All the accused were arrested and after completion of investigation they were charge-sheeted for the aforesaid offences.

p) After committal of the case, on 15-12-2001, learned II nd Ad-hoc Additional Sessions Judge, Ahmednagar framed charge vide Exhibit-21, conducted trial when accused pleaded not guilty, and after trial, acquitted all the accused for the offences punishable under Sections 498-A, 304-B and 306 read with Section 34 of I.P.C., vide Section 235(1) of Cr.P.C., holding that prosecution has failed to prove demand of dowry and harassment of Jyoti by the accused for 7 of 49 CrApl-293-03.odt non-fulfillment of demand of remainder dowry amount. Being aggrieved by the impugned judgment and order of acquittal, after seeking leave, State has preferred the present appeal.

q) During the pendency of this criminal appeal, respondent No.3 died, therefore, appeal was abated to her extent.

3. Heard Mr. R. V. Dasalkar, learned APP for State and Mr. Amol Joshi, learned advocate for respondents No. 1, 2, 4 and 5.

4. Mr. Dasalkar, learned APP, while taking us through the oral and documentary evidence adduced by the prosecution, vehemently argued that Jyoti @ Kavita, the unfortunate young girl, died of unnatural death along with her tender aged daughter Kranti, only after one and a half year of her marriage solemnized with accused No.1 Vijay. It is evident from record that she was subjected to cruelty on account of remainder dowry amount of Rs.25,000/- by the accused persons, who happens to be her husband and in-laws i.e. father-in-law, mother-in-law, sister-in-law and husband of sister-in-law. Since the marriage, Jyoti used to reside at her matrimonial house situated at Joshiwadi, Shirur along with accused Nos. 1 to 3. The house of accused Nos. 4 and 5 was also situated in the same locality. Jyoti along with daughter Kranti was missing from 06-09-1999, and on 15-09-1999, their dead bodies were found floating in the Ghod river within the limits of 8 of 49 CrApl-293-03.odt village Gavhanewadi, Tq. Shrigonda, Dist. Ahmednagar, near the bridge on Pune Highway road.

5. Mr. Dasalkar, learned APP further argued that the Inquest panchanamas and postmortem reports make it clear that Jyoti had committed suicide by jumping into the Ghod river, after tying her tender aged daughter Kranti on her chest by string.

6. It is pertinent to note that, after knowing about missing of Jyoti along with daughter Kranti, instead of informing the same directly to her father Haribhau, accused No.2 Dattatraya informed the same to Babasaheb Karkhile and Arun Karkhile (nephews of Haribhau), residents of village Ralegan Therpal, and in turn, they informed the same to Haribhau, father of Jyoti, by approaching at his house at Kedgaon. After knowing about the missing of daughter Jyoti along with grand daughter Kranti, Haribhau rushed to Shirur, met accused Nos. 2 and 3, and then conducted a search for daughter Jyoti and grand daughter Kranti with his relatives including Babasaheb and Arun.

7. Mr. Dasalkar, learned APP also agreed that, since the efforts to trace out Jyoti and Kranti failed, on 08-09-1999 Haribhau approached Shirur Police Station and lodged missing report. When Jyoti and Kranti were not found, alive or dead, in spite of lodging 9 of 49 CrApl-293-03.odt the missing report, Haribhau once again approached the Shirur Police Station on 13-09-1999, and lodged the report raising suspicion against the accused.

8. According to Mr. Dasalkar, learned APP, on 17-09-1999, after performing last rituals on the dead bodies of Jyoti and Kranti, Haribhau approached to Shrigonda Police Station and lodged the FIR Exhibit-72 against accused. Haribhau died after submission of charge-sheet and before the commencement of trial, therefore, the FIR Exhibit-72 came to be proved in the evidence of PW3 Mahadeo Pathare, Police Head Constable, who recorded the same as per the version of Haribhau. Ocular and documentary evidence on record proves beyond doubt that only after one and a half year of marriage with accused No.1 Vijay, Jyoti along with tender aged daughter Kranti committed suicide after getting frustrated due to cruelty meted out by accused, on account of non-fulfillment of remainder dowry of Rs.25,000/-.

9. It is also submitted by Mr. Dasalkar, learned APP, that the ocular evidence of PW2 Deepak Karkhile and PW5 Shakuntala Karkhile, who happens to be the real brother and mother of Jyoti, respectively, unequivocally established not only the demand of dowry but also harassment meted out by the accused for fulfillment of the same. They both have deposed in one voice that accused 10 of 49 CrApl-293-03.odt had demanded dowry of Rs.75,000/- and ornaments of five tolas gold, out of which Rs.50,000/- and ornaments of five tolas gold were given by them to accused at the time of marriage of Jyoti with accused No.1 Vijay. Accused persons, only after five months of marriage, started harassing Jyoti by way of abusing, taunting etc., so as to compel Haribhau to pay remainder dowry of Rs.25,000/-. The evidence of PW2 Deepak and PW5 Shakuntala is consistent on the material aspects of dowry demand and ill treatment meted out by the accused persons to Jyoti for fulfillment of the same. Their ocular evidence gets full support from the FIR Exhibit-72 lodged by Haribhau.

10. According to Mr. Dasalkar, learned APP, there is no reason to discard the evidence on record about suicidal death of Jyoti along with her tender aged daughter Kranti and cruelty meted out to her by the accused for non-fulfillment of demand of remainder dowry of Rs.25,000/- and the nexus between the two. The evidence of PW7 Sudam Dagadu Fatangare throws light on the conduct of the accused persons. From his evidence, it is clear enough that before commencement of the trial, accused No.1 Vijay approached the mother and brother of Jyoti through Sudam, and offered Rs.3 to 4 lakhs to them for settlement.

11. Lastly, Mr. Dasalkar, learned APP submitted that, the 11 of 49 CrApl-293-03.odt learned IInd Ad-hoc Additional Sessions Judge, Ahmednagar failed to appreciate the evidence on record in proper perspective, and by giving undue importance to minor omissions and contradictions, discarded material evidence of PW2 Deepak and PW5 Shakuntala. Besides, learned IInd Ad-hoc Additional Sessions Judge failed in considering provisions of Sections 113-A and 113-B of the Evidence Act and consequently acquitted all the five accused. Therefore, appeal deserves to be allowed.

12. Per contra Mr. Joshi, learned advocate, vehemently argued that Jyoti, an educated young woman, did not commit suicide with her tender aged daughter Kranti. Upon close scrutiny of the evidence on record, it can be gathered very well that on 06-09-1999, Monday, at about 11:00 a.m. Jyoti along with her tender aged daughter Kranti left the matrimonial house situated at Joshiwadi, Shirur, by applying lock to the door of the house, as nobody from the family members was present in the house, and had gone to the temple of God Shiva situated on hill side, for performing Pooja and Darshan. While going upstairs, accidentally she fell into the river and died due to drowning along with daughter Kranti. According to Mr. Joshi, evidence adduced by the prosecution is not at all sufficient to establish that Jyoti died of suicidal death, but it gives scope to infer that Jyoti died of accidental death.

12 of 49 CrApl-293-03.odt Autopsy surgeon has not denied the possibility of accidental death of Jyoti by falling into the river. Therefore, it cannot be said that prosecution has proved the nature of death of Jyoti as suicidal.

13. Mr. Joshi, further argued that matrimonial life of Jyoti was happy and peaceful. Though her matrimonial house was situated at Joshiwadi, Shirur, she used to reside with her husband accused No.1 Vijay at Pune. Vijay was a press reporter. His headquarter was at Pune. He used to reside at Pune along with wife Jyoti. Since, elections of Lokasabha and Vidhan Parishad, 1999 were fast approaching, he had sent Jyoti and Kranti to Shirur at the house of his parents, so that he would be able to stay away from house for covering the news by moving place to place without any botheration. Soon after knowing that Jyoti was missing, he rushed to Shirur. Along with parents and relatives, he tried his level best to trace out wife Jyoti and daughter Kranti. There was no reason for the accused to harass or ill treat Jyoti. After dead bodies of Jyoti and Kranti were found floating in Ghod river, parents and brothers of Jyoti were annoyed very much, and out of that annoyance, brother Sandip along with his friends committed attack not only on their house but also burnt household articles and motorcycle of accused, which was parked outside the house. The officials of Shirur Police Station, suo motu took the cognizance of the said 13 of 49 CrApl-293-03.odt incident and lodged FIR against Sandip and others on 16-09-1999. On the next day of lodging the said FIR, as a counter blast, Haribhau, father of Jyoti, lodged false and afterthought FIR against accused.

14. Mr. Joshi further argued that the evidence of two material witnesses, viz PW2 Deepak and PW5 Shakuntala, is not at all worthy of credence, as it is full of material omissions. All those omissions are duly proved in the evidence of I.O. PW11 Kisan Gawali. Since, the evidence on the aspect of demand of dowry and harassment of Jyoti by accused for fulfillment of remainder dowry becomes doubtful, accused cannot be convicted either for offences under Section 498-A or for Section 304-B

of I.P.C., by invoking the presumptions contemplated in Section 113-A and 113-B of Evidence Act.

15. Mr. Joshi has also strenuously submitted that accused No.5 Sharda is the married sister of accused No.1 Vijay and accused No.4 Prakash is the husband of accused No.5 Sharda. Accused No.4 Prakash was in service of Forest Department. In relevant period, he was posted at Madhegaon, Tq. Shrigonda. Though accused Nos. 4 and 5 are permanent residents of Joshiwadi, Shirur, they used to reside at Madhegaon, Tq. Shrigonda. Accused Nos. 4 and 5 have adduced sufficient documentary evidence on this 14 of 49 CrApl-293-03.odt aspect during the course of their statements recorded under Section 313(1)(b) of Cr.P.C. They both had no reason to harass or ill treat Jyoti. Knowing well all these aspects, along with other accused, they too have been falsely implicated in the crime.

16. According to Mr. Joshi, after having considered the totality of evidence, including the fact that since marriage Jyoti used to reside at Pune with her husband Vijay and not at Shirur along with husband and parents-in-law, husband Vijay was searching a suitable job for wife Jyoti, as she was qualified young woman, there was no matrimonial discord between husband and wife, lodging the FIR by Haribhau after police registered crime against his son and other persons for serious offence of destruction of property by fire, accused Nos. 4 and 5 having no concern with the affairs of accused Nos. 1 to 3, and the fact that Jyoti neither wrote letter to her father or brother, or lodged report of making complaint of any kind against accused after marriage till her death, learned IInd Ad-hoc Additional Sessions Judge, Ahmednagar rightly acquitted the accused persons. Therefore, Mr. Joshi urged for dismissal of appeal.

17. In the light of aforesaid submissions made at bar by the learned advocates representing both the sides, we have carefully gone through the record and proceedings. Before turning to the 15 of 49 CrApl-293-03.odt core issues, we would like to note down admitted facts and they are as follows :

- i) Accused Nos. 1 and 5, Vijay and Sharda are son and daughter of accused Nos. 2 and 3, Dattatraya and Jankabai, respectively, whereas accused No.4 Prakash is the husband of accused No.5 Sharda.
- ii) Deceased Jyoti was the daughter of Haribhau Laxman Karkhile and Shakuntala Haribhau Karkhile, residents of Shahu Nagar, Kedgaon.
- iii) Jyoti's marriage with accused No.1 Vijay was solemnized on 01-02-1998 at Ramling temple, Shirur, as per Hindu rites and customs prevailing in their community.
- iv) Kranti was the daughter of Jyoti and accused No.1 Vijay.
- v) Birth of Kranti took place in December, 1998.
- vi) Jyoti along with daughter Kranti found missing on 06-09-1999.
- vii) On 08-09-1999, Haribhau, father of Jyoti, lodged missing report at Shirur Police Station.

viii) On 13-09-1999, Haribhau submitted application to the Shirur Police Station, raising doubt against the accused.

ix) Dead bodies of Jyoti and Kranti found floating in Ghod river, within the jurisdiction of Shrigonda Police Station, District Ahmednagar.

x) On 15-09-1999, at about 02:25 p.m. soon after fishing out dead bodies of Jyoti and Kranti from the bed of Ghod river, A.D. No.0/1999 under Section 174 of Cr.P.C. was registered at Shrigonda Police Station.

16 of 49 CrApl-293-03.odt

xi) During the course of inquiry of A.D., inquest panchanama of dead bodies of Jyoti and Kranti were drawn.

xii) On 17-09-1999 at about 06:30 p.m. Haribhau lodged FIR Exhibit-72, on the basis of which Crime No. I-213/1999 under Section 498-A, 304-B read with Section 34 of I.P.C. was registered against accused at Shrigonda Police Station.

xiii) Haribhau Karkhile died before commencement of trial.

18. The crux of the matter lies in the following issues :-

i) Whether Jyoti committed suicide, along with tender aged daughter Kranti, by drowning into Ghod river;

ii) Whether, soon before the death, Jyoti was subjected to cruelty or harassment by the accused in connection with demand of dowry ;

OR

iii) Whether, by their willful conduct, accused had driven Jyoti to commit suicide along with daughter Kranti.

19. To prove guilt of the accused, prosecution has examined as many as 11 witnesses, out of which PW2 Deepak, PW5 Shakuntala, PW7 Sudam, PW10 Dr. Ravindra Sonar, Autopsy Surgeon and PW11 Kisan Gawali, Investigating Officer are the material witnesses.

20. According to the prosecution, Jyoti, along with Kranti has committed suicide, whereas according to the accused, Jyoti along with Kranti died of accidental death. To resolve this 17 of 49 CrApl-293-03.odt controversy about the nature of death of Jyoti, it would be necessary to go through the inquest panchanama, postmortem report and ocular evidence of PW1 Meera Parande, PW4 Janku Vidhate, PW8 Sakharam Abaji Dalvi, PW10 Dr. Ravindra Sonar, Autopsy Surgeon, PW11 Kisan Gawali, Investigating Officers.

21. Inquest panchanamas at Exhibit- 43 and 74, proved in the evidence of PW1 Meera Parande and PW4 Janku Vidhate, reveals that on 15-09-1999 dead bodies of Jyoti and Kranti were found floating in the bed of Ghod river. Dead body of Kranti was found tied on the chest of Jyoti, by a string as well as pallu of the saree. After separating them, most of the parts of the dead bodies were found eaten by marine life. Skin from the entire body found almost loosened. However, both the dead bodies were identifiable.

22. It has come on record though cross examination of PW1 Meera that Jyoti was her niece. Merely for the reason that PW1 Meera was closely related with Jyoti from her parental side, her evidence as to the inquest panchanama Exhibit-43, cannot be discarded, when nothing is brought on record through her cross examination indicating that she was not present when inquest panchanama Exhibit-43 was drawn and she signed the same thereafter.

18 of 49 CrApl-293-03.odt

23. PW10 Dr. Sonar, vide his deposition at Exhibit-100, deposed that on 16-09-1999, initially he along with Senior Medical Officer Dr. Reddy conducted postmortem on the dead body of deceased Jyoti and then Dr. Reddy alone conducted postmortem on the dead body of Kranti. He identified his signature and the signature of Dr. Reddy, appearing on the postmortem report of Jyoti at Exhibit-101, and also the signature of Dr. Reddy appearing on the postmortem report of Kranti at Exhibit-102. Besides, he has identified his signature on Death Certificate of Jyoti at Exhibit-40 and Death Certificate of Kranti at Exhibit-41. According to him, the probable cause of the death of Jyoti and Kranti, both, was asphyxia secondary due to drowning.

24. It is evident from record that after postmortem, opinion as to the probable cause of death of Jyoti was reserved till receipt of C.A. report of viscera and subsequently after receiving the C.A. report, PW10 Dr. Sonar gave his aforesaid opinion as to the cause of death of Jyoti and Kranti vide Death Certificates at Exhibit- 40 and 41.

25. Through the cross examination of PW10 Dr. Sonar, it has come on record that dead body of Jyoti was completely decomposed and some of the parts of the dead bodies were bitten by marine life. In further cross examination he has admitted that 19 of 49 CrApl-293-03.odt asphyxia secondary due to drowning is possible if a person falls in the water accidentally.

26. According to accused Jyoti was a religious woman. On 06-09-1999 she had been to temple of Lord Shiva for offering Pooja. Through the cross examination of PW11 Kisan Gawali, I.O., it has come on record that on 06-09-1999, deceased Jyoti had left the house for Darshana of Lord Shiva by leaving key with Bharati Awatade, neighbour. From the testimony of PW4 Janku Vidhate, it can only be gathered that Panjarapol land was situated adjacent to the south of Ghod river where dead bodies of Jyoti and Kranti were found floating. However, he has very clearly denied that the portion of the bed of Ghod river near the spot was properly constructed so as to facilitate the devotees either to take bath or wash the feet. Upon scrutiny of PW4 Janku Vidhate, it reveals that temple of Lord Shiva was situated within the vicinity of bed of Ghod river where dead bodies of Jyoti and Kranti found, but absolutely it cannot be gathered from his evidence that the way to the said temple passes from

the spot of incident.

27. Though PW8 Sakharam Palvi, during his cross examination, admitted about existence of temple of Lord Shiva in the vicinity of spot, however, he has very clearly denied that the temple of Lord Shiva was situated on hill side near the spot i.e. bed 20 of 49 CrApl-293-03.odt of Ghod river and devotees go to that temple by stairs which connects the temple and Ghod river.

28. Thus, taking into considering the evidence on record in its entirety as discussed above, it can only be gathered that Jyoti along with Kranti committed suicide by drowning into Ghod river and not at all fell accidentally therein. Therefore, we have no hesitation to hold that Jyoti died of suicidal death.

29. Once it is proved that Jyoti along with her tender aged daughter Kranti committed suicide by drowning into Ghod river, the next question arises about the case of prosecution pertaining to demand of remainder dowry of Rs.25,000/- and subjecting Jyoti to cruelty by accused for coercing her to fulfill the said demand.

30. We have already stated in paragraph supra that PW2 Deepak, PW5 Shakuntala and PW7 Sudam are material witnesses to prove the case of prosecution pertaining to demand of remainder dowry of Rs.25,000/- and harassment of Jyoti by accused on that count. Admittedly, these three witnesses are elder brother, mother and uncle (maternal aunt's husband) of Jyoti, respectively. It is not in dispute that Haribhau Karkhile, first informant and father of Jyoti, died after submission of charge-sheet and before commencement of the trial. Record speaks volumes that FIR Exhibit-72 has been 21 of 49 CrApl-293-03.odt proved by the prosecution in the evidence of PW3 Mahadeo Pathare, Police Head Constable, who recorded the same. It is settled position of law that FIR is not substantive evidence and it can only be used either for contradiction or corroboration. On this backdrop, we would proceed to consider the evidence of the aforesaid three material witnesses, one by one.

31. PW2 Deepak vide his testimony at Exhibit-44 testified that marriage of Jyoti with accused No.1 Vijay was solemnized on 01-02-1998 at Ramling Temple, Shirur. Initially, as per the desire of the accused, marriage ceremony was to be solemnized in a marriage hall at Kedgaon in a grand manner. After their proceeding in that direction, when they printed and dispatched wedding cards to some of the relatives living at the places far away from their town Kedgaon, accused Nos. 1 and 2, Vijay and Dattatraya, approached and told them that they want to perform the marriage in a simple manner at Shirur and demanded Rs.75,000/- and ornaments of five tolas gold. Besides, they told that if their aforesaid demand is not fulfilled, then they would not be ready for marriage of accused No.1 Vijay with Jyoti. Therefore, his father Haribhau agreed to the aforesaid proposal made by the accused. He agreed for payment of Rs.50,000/- and ornaments of five tolas gold soon and sought time for payment of balance dowry amount of 22 of 49 CrApl-293-03.odt Rs.25,000/-. When accused shown their readiness for the same, his father Haribhau gave Rs.50,000/- and ornaments of five tolas gold to accused, at the time of marriage of Jyoti and Vijay.

32. After marriage Jyoti went to her matrimonial house at Shirur and started cohabiting and living with husband and in-laws there. The house of accused Nos. 4 and 5, Prakash and Sharda, is situated adjacent to their house at Shirur. For about five to six months after marriage, the matrimonial life of Jyoti was normal and accused treated her with love and affection. However, thereafter accused Nos. 1 and 2 i.e. Vijay and Dattatraya started demanding balanced dowry amount and ill treating Jyoti for bringing the said amount from us. They used to harass Jyoti by saying that "her father has deceived them". Besides, they used to beat her. Jyoti used to disclose about the harassment meted out by the accused for fulfillment of demand of remainder dowry amount. Father Haribhau used to give understanding and tell Jyoti that anyhow he would arrange the amount and pay the same to the accused at the time of Diwali festival. In the mean time, in the month of December, 1998, Jyoti gave birth to a female child by name Kranti. After giving birth to the female child, harassment of Jyoti by accused aggravated. Accused Nos. 1 to 3 started saying that they would not allow her to return back to their house, unless their 23 of 49 CrApl-293-03.odt demand of remainder dowry amount of Rs.25,000/- is fulfilled. Accused No.5 Sharda used to interfere in the marital affairs of Jyoti and Vijay and also used to harass Jyoti by taunting her for her father's not paying remainder dowry amount of Rs.25,000/- to accused Nos. 1 to 3.

33. Jyoti had been to their house lastly at the time of festival of Rakhi Poornima of 1999. At that time also, Jyoti had disclosed them about the harassment being meted out by the accused for non-fulfillment of their demand of Rs.25,000/-. She was telling them that she would not return back to her matrimonial house without money. However, after convincing Jyoti, father Haribhau reached her to her matrimonial house at Shirur after ten to twelve days of the festival of Rakhi Poornima and informed accused that he is in financial crises, however, assured him that he would pay Rs.25,000/- as soon as arrangement of collecting the same is made.

34. In cross examination, he has admitted that accused Vijay stayed at Pune. However, he expressed his ignorance as to whether accused No.1 owns a flat at Pune. In further cross examination he has admitted that Jyoti stayed with Vijay for some time at Pune but denied that she stayed at Pune till coming to their house at Kedgaon for delivery. It has come on record through cross 24 of 49 CrApl-293-03.odt examination of PW2 Deepak that in the month of June, 1999, election programme of Parliament and State Assembly Members was declared. He has also admitted that accused persons own agricultural land at Loni Haveli and the financial position of accused was sound. However, again he said that the financial position of accused was normal. It has come on record from further cross examination of PW2 Deepak that the family of the accused was leading normal happy life having no debts. PW2 Deepak, in his cross examination, very clearly admitted that they fixed marriage of Jyoti with accused No.1 Vijay after verifying the financial condition of accused. The cross examination of PW2 Deepak also reveals that accused wanted to perform registered marriage of Jyoti with accused No.1 Vijay. However, his parents were interested in performing marriage of Jyoti in a grand manner, as Jyoti was their only daughter. Notice of intended marriage Exhibit-46, proved in his evidence, makes it clear that accused were not interested in grand performance of marriage ceremony, but they were interested to perform registered marriage.

35. In further cross examination, PW2 Deepak has very clearly admitted that they denied performance of registered marriage of Jyoti and Vijay. He has also admitted that marriage was

agreed to be solemnized at Shirur as it was convenient for 25 of 49 CrApl-293-03.odt relatives of both the families. He has also admitted that the expenses of the new clothes purchased for Jyoti were borne by the accused. In next part of the cross examination, PW2 Deepak has very clearly admitted that talks, in respect of customary gifts and expenses of marriage, did not take place in his presence. He has further very clearly admitted that money transaction did not take place in his presence. He has very clearly stated in further cross examination that the talks, pertaining to giving and taking dowry of Rs.75,000/-, did not take place in his presence. He learnt about the same through his father.

36. Following are the omissions brought on record through his cross examination (either admitted by PW2 Deepak or proved in the evidence of PW11 Kisan Gawali, I.O.) :

i) He did not state to the police that on the day of marriage his father paid Rs.50,000/- to accused persons.

ii) His stating to the police about payment of Rs.50,000/- to the accused persons by his father on the day of marriage.

iii) His not stating to the police that Jyoti committed suicide since she was subjected to cruelty by the accused persons, over the demand of dowry.

iv) His deposing for the first time in the Court that Jyoti committed suicide.

v) His not disclosing to the police that after the marriage Jyoti went to her matrimonial house at Shirur.

26 of 49 CrApl-293-03.odt

vi) His disclosing to the police, about Jyoti's telling that Haribhau gave her understanding that at present he has no money, however, he would fulfill the demand of the accused at the time of Diwali festival, when she disclosed them about insistence for payment of Rs.25,000/- by accused.

vii) His not disclosing to police, about the cruelty meted out by the accused to Jyoti was aggravated when she gave birth to a female child Kranti.

viii) His not stating to the police that accused told Jyoti not to come to their house without Rs.25,000/-.

ix) His stating before police that at the time of festival of Rakhi Poornima, Jyoti told them that he would not return back to the house of accused, if Rs.25,000/- is not arranged and paid.

x) His stating before the police that after ten to twelve days of festival of Rakhi Poornima, father Haribhau reached Jyoti to the house of accused and explained them about his financial condition.

xi) His not stating before the police that after conversation with PW7 Sudam when he had been to the house of accused, accused No.2 Dattatraya said to him that they should search for Jyoti as she is their daughter.

xii) He had not stated before the police that on his contacting Vijay on phone he refused to tell anything about Jyoti.

xiii) His not stating before the police about accompaniment of Arun and Babasaheb with them when they were conducting search of Jyoti in Ghod river in boat.

37. In the next part of the cross examination PW2 Deepak has very clearly admitted that accused No.1 Vijay reached Jyoti to 27 of 49 CrApl-293-03.odt Shirur, at the time of elections of Parliament and Assembly Members of 1999, as he was required to move out of the house at Pune every day. This admission makes it clear that Jyoti used to reside at Pune with husband Vijay and not at Shirur, along with father-in-law and mother-in-law. It has also come on record through the cross examination of PW2 Deepak that Jyoti was an educated woman, having acquired B.A., B.Ed. qualifications. She had completed graduation from Ahmednagar and did B.Ed. at Pune. For the purpose of education, Jyoti used to reside at Ahmednagar and Pune in a private hostel. Jyoti was strong headed and firm in nature. He has also admitted in cross examination about the FIR, for the offence of destroying household articles and motorcycle of the accused by fire, registered at Shirur Police Station against his brother Sandip and his friends on 16-09-1999, when dead bodies of Jyoti and Kranti found floating in Ghod river.

38. Having considered evidence of PW2 Deepak in its totality, it becomes clear enough that his evidence on material aspects of agreement of giving and taking dowry of Rs.75,000/- and ornaments of five tolas gold and giving and taking of Rs.50,000/- and ornaments of five tolas gold by his father to accused at the time of marriage, is hearsay. The aforesaid omissions, which are either admitted by him or proved in the 28 of 49 CrApl-293-03.odt evidence of PW11 Kisan Gawali, I.O. are material omissions. Therefore, those cannot be overlooked. Once the improved version is separated, what remains from the testimony of PW2 Deepak would not at all said to be sufficient to establish the case of demand of dowry by accused and harassment of Jyoti by them for not fulfillment of remainder dowry of Rs.25,000/-.

39. The evidence of PW5 Shakuntala, mother of Jyoti is somewhat identical with the evidence of PW2 Deepak, on material aspects of harassment of Jyoti by accused on account of non- fulfillment of remainder dowry amount of Rs.25,000/-. PW5 Shakuntala in her evidence at Exhibit 81 stated that her husband Haribhau took amount of Rs.50,000/- from her and gave the same to accused by proceeding to their house, whereas PW2 Deepak states that amount of Rs.50,000/- with ornaments of five tolas gold were given to accused at the time of marriage. This inconsistency, as to the payment of part amount of agreed dowry, cannot be overlooked in the backdrop that the evidence of PW2 Deepak and PW5 Shakuntala both is full of material omissions, amounting to contravention. The evidence of PW5 Shakuntala that accused Nos. 1 and 2, Vijay and Dattatraya, used to suspect the character of Jyoti and keep her starving for coercing her to bring remainder dowry amount of Rs.25,000/-, is neither supported by evidence of 29 of 49 CrApl-293-03.odt PW2 Deepak nor by the

FIR Exhibit-72. Therefore, it would be difficult to rely on said version.

40. PW5 Shakuntala, though states in her evidence that four to five days before 01-02-1998 accused Nos. 1 and 2 came to their house and demanded dowry and change in venue of the marriage, by that time their printing and distributing of wedding cards to the relatives who are residing at a long distance was done, but the same does not find place in her statement under Section 161 of Cr.P.C. This material omission has been proved in the evidence of PW11 Kisan Gawali, I.O. Evidence of PW5 Shakuntala, as to her husband collecting Rs.50,000/- from her and giving the same to accused by proceeding to their house, is also in the form of omission and the same is proved in the evidence of PW11 Kisan Gawali, I.O. Evidence of PW5 Shakuntala reveals that Dnyandev Karkhile, brother of Haribhau was accompanied with him when he had been to the house of accused, for giving Rs.50,000/-. Since Haribhau, the first informant and a star witness unfortunately died before commencement of the trial, it would have been necessary on the part of the prosecution to examine Dnyandev Karkhile to prove the aforesaid aspect. His non examination, though available, is a fatal lapse. It has also come on record through the cross examination of PW5 Shakuntala that after birth of Kranti, accused 30 of 49 CrApl-293-03.odt Nos. 3 and 5 came to their house to see the newly born child with customary articles / gifts.

41. Aforesaid evidence coupled with documentary evidence brought on record by the accused showing that accused No.1, father of Kranti, deposited Rs.50,000/- in her name with Bank of Maharashtra, Ghorpadi Branch, completely rules out the possibility of accused getting annoyed when Jyoti gave birth to a daughter and started harassing Jyoti more. On the contrary, the aforesaid evidence reflects that they were happy.

42. Through the further cross examination of PW5 Shakuntala, it has come on record that she did not tell any relative that accused were ill treating Jyoti for insisting her to fulfill their demand of remainder dowry amount of Rs.25,000/-. This conduct of PW5 Shakuntala cannot be lost sight of. In normal course, every mother shares such aspects with kith and kin or relatives. The statement of PW5 Shakuntala, about her husband's immediately proceeding to Shirur upon knowing that Jyoti is missing, is in the form of omission. She has not stated the same to police when her police statement was recorded. This omission and other omissions brought on record through further cross examination of PW5 Shakuntala that, after festival of Rakhi Poornima, she along with husband Haribhau reached Jyoti to her matrimonial house, gave 31 of 49 CrApl-293-03.odt understanding to all the five accused, promised them about payment of money soon, Jyoti's visiting to their house at Kedgaon three to four times and making complaint of ill treatment, after seven to eight days of missing of Jyoti, somebody's informing them on telephone that dead bodies of Jyoti and Kranti are seen floating in Ghod river and thereafter her husband's reaching to Shirur along with son and some villagers, Jyoti's resuming cohabitation with husband Vijay at her matrimonial house at Joshiwadi, Shirur, Vijay's demanding remainder dowry amount of Rs.25,000/-, Vijay and Dattatray visiting to the matrimonial house of Jyoti intermittently and reminding them about remainder dowry amount, harassment of Jyoti went on increasing, Jyoti's asking them, on her visiting to their house on the occasion of Diwali festival, as to when they would arrange the remainder amount of dowry, Jyoti's disclosing them that on account of non payment of remainder dowry amount, accused were not giving her food and accused No.1 Vijay's burning her educational certificates and B.Ed. degree

certificate, and on her visit to their house at the time of Diwali festival Jyoti disclosed her that accused Nos. 4 and 5, Prakash and Sharda, also harassed her by way of talking her in an offending manner for money, are fatal omissions and creates every doubt about truthfulness of her version.

32 of 49 CrApl-293-03.odt

43. It has come on record through further cross-examination of PW5 Shakuntala that after delivery, accused No.1 Vijay had been to their house at Kedgaon for fetching Jyoti. However, PW5 Shakuntala states her ignorance as to the place where Vijay taken Jyoti and Kranti, i.e. at Shirur or Pune. PW5 Shakuntala has conveniently avoided to state anything about the criminal act done by her another son Sandip along with his friends on 16-09-1999.

44. Thus, having regard to the totality of the evidence of PW5 Shakuntala discussed above, we are of the view that the her evidence, as to the demand of dowry and harassment of Jyoti by all the accused, on account of remainder dowry amount of Rs.25,000/-, is not worthy of credence.

45. PW7 Sudam, uncle of Jyoti (maternal aunt's husband) is also the important witness. Admittedly, in the relevant period, he was in Military Service and posted at Meerut, Uttar Pradesh. Neither he attended the meeting, in which marriage of Jyoti with accused No.1 Vijay was settled, nor attended the marriage of Jyoti with accused No.1 Vijay, solemnized on 01-02-1998 at Shirur. His evidence is important on two aspects, one is about Jyoti's disclosing him pertaining to the conduct of accused, on his visit to Pune, and another is about accused No.1 Vijay's proposing him to forget 33 of 49 CrApl-293-03.odt everything by accepting Rs. 3 to 4 lakhs, by visiting his house at Pune, on 13-09-1999.

46. Vide his deposition at Exhibit-87 on aforesaid aspects, PW7 Sudam deposed that after ten to twelve months of marriage, when he had come to his house at Pune from Meerut, Jyoti came to his house and disclosed him that all the accused harass and ill treat her on account of remainder dowry amount of Rs.25,000/-, and also, suspected her character. At that time, Jyoti had stayed at his house for one day and on the next day he left Jyoti to her matrimonial house at Joshiwadi, Shirur and informed Haribhau about what Jyoti said to him, by visiting his house at Kedgaon.

47. PW7 Sudam had further stated that seven to eight months after the aforesaid visit, again he visited Pune, by taking leave for 20 days. At that time, he learnt about missing Jyoti from Haribhau on telephone, then, as per the instructions of Haribhau, on the next day at about 08.00 p.m., he rushed to the house of accused No.1 Vijay situated at Mundwa Road, Pune, inquired Vijay as to whether Jyoti has reached Pune, since yesterday she was missing, in response, accused No.1 Vijay said him that, "You conduct search of Jyoti". He informed about the aforesaid conversation, that took place between him and accused No.1 Vijay, to Haribhau on telephone, soon after coming out from the flat of 34 of 49 CrApl-293-03.odt accused Vijay.

48. PW7 Sudam has also stated in his evidence that on 13-09-1999 at about 04:00 p.m. accused No.1 Vijay visited his house at Pune and put a proposal of compromise by accepting Rs. 3 to 4 lakh. On the next day, he informed the same to Haribhau by coming to Kedgaon from Pune. He has also

stated about fishing out dead bodies of Jyoti and Kranti from Ghod river and shifting those dead bodies to hospital by police officials, after drawing inquest panchanama. It has also come in his evidence that Jyoti had tied Kranti on her chest by pallu of saree and a string.

49. Like the evidence of PW2 Deepak and PW5 Shakuntala, evidence of PW7 Sudam is also full of omissions. The material omissions brought on record though his cross examination are as under :

i) Haribhau's disclosing him on phone that accused Vijay and Dattatray visited Haribhau's house at Kedgaon, four days prior to the marriage of Jyoti with accused Vijay and demanded amount of Rs.75,000/- and ornaments of five tolas gold as dowry, and also, told him for changing the venue of marriage from Kedgaon to Ramling Temple, Shirur.

ii) His stating to police about his disclosing to Haribhau whatever Jyoti disclosed to him at Pune, by staying for one day at his house, and then his proceeding to Kedgaon at the house of Haribhau and advised Haribhau to settle the matter.

35 of 49 CrApl-293-03.odt These omissions cannot be ignored while appreciating the evidence of PW7 Sudam in totality.

50. During further cross examination, PW7 Sudam has admitted that he did not state before police about his giving understanding to Jyoti, when she visited his house at Pune, and his proceeding to the flat of accused No.1 Vijay situated at Mundwa Road, Pune and inquiring with him whether Jyoti had come to him and in response, accused No.1 Vijay's telling him to search for Jyoti as she is their daughter and he does not want Jyoti, and that he disclosed aforesaid conduct of Vijay to Haribhau, immediately after coming out from the flat of accused No.1 Vijay, and his asking Haribhau as to why he has not lodged report. These admitted omissions add to the suspicion about the truthfulness of the version of PW7 Sudam.

51. It is pertinent to note that, like PW5 Shakuntala, PW7 Sudam has also avoided to state about the criminal act committed by Sandip (younger son of Haribhau) along with his friends on 16-09-1999 and cognizance of the said act taken by the police. Thus, having regard to the totality of evidence of PW7 Sudam, discussed in para supra, we are not inclined to rely on his version.

52. It is evident from the record that on 08-09-1999 i.e. after two days of missing of Jyoti, Haribhau lodged missing report 36 of 49 CrApl-293-03.odt Exhibit-39 upon which, Missing Case No.14/1999 was registered at Shirur Police Station on. Thereafter, on 13-09-1999, second time Haribhau visited Shirur Police Station and lodged the report at Exhibit-93, inter alia contending that upon inquiring about Jyoti and Kranti, accused Nos. 2 and 3 are giving evasive replies stating that Jyoti being their daughter they should search for her and therefore, he is suspecting accused Nos. 1 to 3 for causing death / harm to Jyoti, and thereafter on 17-09-1999 Haribhau lodged the FIR at Exhibit-72 at Shrigonda Police Station, on the basis of which all the five accused were charge-sheeted.

53. When Haribhau, Deepak, Shakuntala and Sudam were well aware about the fact that since more than one year accused were harassing Jyoti, on account of non payment of remainder dowry of

Rs.25,000/-, in normal course it was expected on their part to disclose the same to police immediately, however, they did not disclose anything about the aforesaid conduct of the accused, to police either on 08-09-1999, at the time of lodging missing report or on 13-09-1999, at the time of one more missing report, and disclosed the same for the first time on 17-09-1999, through the FIR Exhibit-72.

54. One can understand about not informing the police about the said incident on 08-09-1999 while lodging the missing 37 of 49 CrApl-293-03.odt report, but the conduct of Haribhau not informing the police about alleged conduct of the accused on 13-09-1999 while lodging the report at Exhibit-93, when strong suspicion raised in his mind about either killing or harming Jyoti by accused Nos. 1 to 3, appears to be the abnormal conduct.

55. It is pertinent to note that during the course of evidence, in addition to notice of intended marriage at Exhibit-46, accused have also produced on record original degree certificate of Bachelor of Arts issued in the name of Jyoti by the University of Pune in December, 1975 at Exhibit-48, original passing certificate of B.Ed. (Gen.) New Exam issued by University of Pune in April, 1997 at Exhibit-49, issued in the name of Jyoti, original mark memo of B.Ed. Examination issued by University of Pune on 7 th May, 1997 at Exhibit-50, original Higher Secondary Certificate issued by Divisional Secretary, Maharashtra State Board of Secondary and Higher Secondary Education in the name of Jyoti at Exhibit-51. Prosecution witnesses have not disputed the genuineness of those certificates. On the contrary, accused have admitted the same. Existence of all these original certificates of Jyoti completely negatives allegations made in the FIR Exhibit-72 and testimony of PW5 Shakuntala that after birth of Kranti accused No.1 Vijay destroyed the file containing all original certificates of Jyoti in front 38 of 49 CrApl-293-03.odt of her, by fire.

56. During the course of recording the statement under Section 313 of Cr.P.C., accused No.1 not only stated that after birth of daughter Kranti he deposited Rs.50,000/- in the Bank of Maharashtra, Ghorpadi Branch, Pune, in the name of Kranti in fixed deposit account, but also produced on record xerox copy of the said fixed deposit receipt. Prosecution witnesses have not disputed genuineness of the said receipt. Thus, the conduct of the accused in taking care of future of Kranti, immediately after her birth, by way of depositing substantial amount in her name in bank in fixed deposit account, creates every doubt about the case set out in the FIR and deposited by PW2 Deepak, PW5 Shakuntala and PW7 Sudam that after the birth of Kranti gravity of harassment of Jyoti by accused increased.

57. While appreciating the evidence of PW2 Deepak, PW5 Shakuntala and PW7 Sudam, we have already observed that the case of the prosecution as far as Jyoti's continuously staying at Shirur, is not worthy of acceptance. When ocular evidence of all these three witnesses is clear enough and establish that accused No.1 Vijay was a journalist, his headquarter was at Pune and he used to reside in a flat situated at Mundhwa road Pune, contention of Jyoti's continuously residing at Shirur appears to be not probable.

39 of 49 CrApl-293-03.odt On this backdrop, contention of the accused that Jyoti used to reside with her husband Vijay at Pune and only few days prior to the incident accused No.1 Vijay had

reached Jyoti to his parent's house at Joshiwadi, Shirur, as elections of Parliament and State Assembly were fast approaching and he was required to stay away from the house continuously to cover the news pertaining to said elections, appears to be probable. From this angle also, physical and mental harassment of Jyoti by accused Nos. 1 to 5, on account of non payment of remainder dowry of Rs.25,000/-, appears doubtful.

58. Moreover, the allegations of harassment of Jyoti by accused are vague and omnibus. Nobody from three material witnesses viz. PW2 Deepak, PW5 Shakuntala and PW7 Sudam had deposed about the nature of harassment. When Jyoti was well educated young woman, certainly, she should have taken effective steps against the accused, had there been her harassment at the hands of the accused. Admittedly, Jyoti did not write any letter to her father or brother, either from Pune or from Shirur, complaining that accused are insisting her for bringing remainder dowry of Rs.25,000/- and consistently harassing her physically or mentally on account of the same. PW2 Deepak and PW5 Shakuntala, both in their evidence deposed that whenever Jyoti used to come to their 40 of 49 CrApl-293-03.odt house at Kedgaon, she used to disclose to them about the harassment meted out by the accused, but no details of the visits of Jyoti to their house found place in their evidence. No doubt, PW2 Deepak deposed in his evidence that Jyoti had been to Kedgaon on the occasion of Rakhi Poornima festival and at that time she had complained against accused that they are demanding remainder dowry of Rs.25,000/- and harassing her on that account. Whereas, PW5 Shakuntala deposed that Jyoti made complaint of aforesaid nature against the accused when she had visited their house at the time of Diwali and Rakhi Poornima festivals.

59. When the evidence as to the agreement of giving and taking dowry of Rs.75,000/- and ornaments of 5 tolas gold, out of which Haribhau agreed to pay dowry of Rs.50,000/- and ornaments of five tolas gold to accused at the time of marriage of Jyoti with accused No.1 Vijay, appears to be doubtful in nature for the various reasons stated in paragraph supra, the evidence of PW2 Deepak, PW5 Shakuntala and PW7 Sudam as to the demand of remainder dowry of Rs.25,000/- and harassment of Jyoti by accused for coercing her to fulfill the same, holds no water and cannot be accepted.

60. Having regard to the facts that Haribhau, prior to lodging FIR at Exhibit-72 on 17-09-1999, did not make complaint 41 of 49 CrApl-293-03.odt against accused to the police alleging harassment of Jyoti on account of remainder dowry of Rs.25,000/-, though he had many occasions to make the complaint. At least Haribhau could have mentioned all these facts in missing report lodged on 08-09-1999, or in the second report dated 13-09-1999 in which he raised suspicion of causing harm to Jyoti by accused, but in vain. This conduct of Haribhau and his family members creates every doubt about allegations made in the FIR Exhibit-72 lodged on 17-09-2021.

61. It is evident from the record that, on the next day, on finding dead bodies of Jyoti and Kranti floating in Ghod river and fishing out the same by police with the aid of PW6 Balu, fisherman, i.e. on 16-09-1999, Sandip, younger son of Haribhau and PW5 Shakuntala and younger brother of PW2 Deepak and Jyoti, got furious and visited the house of accused at Joshiwadi, Shirur along with his friends, broke opened the door with stone, entered therein, and robbed the ornaments of Jyoti, thrown household articles including telephone, clothes kept in cupboard, food grains, etc. outside

the house and set the same on fire, along with motorcycle lying outside the house. Taking cognizance of the said act of Sandip and his friends, police officials of Shirur Police Station registered FIR bearing Cr. No.109/1999 against them for the 42 of 49 CrApl-293-03.odt offences punishable under Sections 143, 147, 148, 451, 435 and 427 of I.P.C.

62. Though PW5 Shakuntala and PW7 Sudam avoided to admit the above, certified copy of the charge-sheet pertaining to the said crime brought on record by the accused during the course of their statement recorded under Section 313 of Cr.P.C, confirms the same. Copy of the charge-sheet reveals that in pursuance of the aforesaid FIR, police officials of Shirur Police Station carried the investigation and after investigation charge-sheeted Sandip Haribhau Karkhile and his friends namely Pappu Barase, Dattatray Chaudhari, Raju Sole, Rajesh Kakade, have been charge sheeted for commission of aforesaid crime on 16-09-1999 at about 05.00 p.m. Admittedly, one day after registration of the aforesaid crime, that is on 17-09-1999, at about 06:30 p.m. Haribhau lodged the FIR Exhibit-72 against accused at Shrigonda Police Station on the basis of which accused have been charge-sheeted and prosecuted under Section 498-A, 304-B read with Section 34 of IPC.

63. Looking to the events that took place from 06-09-1999 onwards, discussed in para (supra), the defence of the accused that Haribhau lodged FIR Exhibit-72 as a counter blast to the aforesaid FIR, registered against his son Sandip and his friends on 16-09-1999 at Shirur Police Station, cannot be said to be wholly 43 of 49 CrApl-293-03.odt unsustainable and rejected outrightly.

64. Admittedly, as far as accused Nos. 5 and 4, Sharda and Prakash, sister-in-law and husband of sister-in-law of Jyoti, are concerned, it is evident from record that accused No.4 Prakash Pawar was a Government Servant serving in Forest Department. In relevant period, his posting was at Madhegaon, Tq. Shrigonda. His own house was situated in Joshiwadi, Shirur near the house of accused Nos. 1 to 3. It is the contention of accused Nos. 4 and 5, Sharda and Prakash, that they along with their children used to reside at Madhegaon, where accused No.4 was posted, and after transfer from Madhegaon they left the Government quarter at Madhegaon and shifted to Shirur in June, 2001. They never stayed in their own house situated at Joshiwadi, Shirur and they had rented out the same to Smt. Bharati Awatade.

65. Prosecution witnesses have not disputed genuineness of papers brought on record by accused Nos. 4 and 5. The said papers clearly reveal that from 1998 to June, 2001, accused No.4 was posted at Madhegaon, Tq. Shirur and from June, 2001 onwards he was transferred to Shirur. He occupied Government Quarters at Madhegaon as well as at Shirur. From the year 1999 to 2000, their son Prashant Pawar was studying in 6 th standard at New English 44 of 49 CrApl-293-03.odt School, Madhegaon, Tq. Shrigonda. Having regard to all the papers brought on record by accused Nos. 4 and 5, during the course of their statement recorded under Section 313 of Cr.P.C., possibility of arraying accused Nos. 4 and 5 in the case only because they are son-in-law and daughter of accused Nos. 2 and 3 and brother-in- law and sister of accused No.1 Vijay, cannot be ruled out. When accused Nos. 4 and 5 were not residing in their own house at Joshiwadi, Shirur in the relevant period and when there are no allegations that, either they used to harass Jyoti at the time of their visit to the house of accused Nos. 1 to 3 or they used to call Jyoti on phone and taunt her for not paying remainder dowry by parents, evidence of their complicity in the incident cannot be accepted.

66. Having regard to the totality of the evidence discussed above, though it is clear enough that Jyoti had committed suicide within seven years of marriage with accused No.1 Vijay, accused cannot be held guilty, either for the offence punishable under Sections 498-A, 304-B or 306 read with Section 34 of I.P.C., as evidence on the aspect of subjecting her to cruelty by accused persons on account of remainder demand of dowry of Rs.25,000/- soon before her death or driving her to commit suicide by their willful conduct, is doubtful for various reasons as stated in the foregoing paragraphs.

45 of 49 CrApl-293-03.odt

67. Since, evidence on the aspect of subjecting Jyoti to cruelty on account of dowry demand is doubtful and not worthy of credence as stated above, presumption contemplated in Section 113A or Section 113B of the evidence Act would not support the prosecution, for holding the accused guilty, either for offences punishable under Sections 498-A, 304-B or 306 read with Section 34 of the I.P.C., only on the ground that Jyoti with her daughter Kranti committed suicide within seven years of marriage with accused No.1 Vijay.

68. It is true that reason for committing suicide by Jyoti has not come on record, but that alone cannot be a ground to hold accused guilty for offences punishable under Sections 498-A, 304-B or 306 read with Section 34 of I.P.C., on suspicion, when the evidence as to the demand of dowry and harassment of Jyoti by accused for the same, adduced by the prosecution is doubtful and not worthy of credence.

69. In the matter of Smt. Shanti and another Vs. State of Haryana [AIR 1991 Supreme Court 1226] , while discussing the scope and ambit of Sections 304-B and 498-A of I.P.C., the Hon'ble Supreme Court, in paragraph 6 of the said judgment, has held as under :-

46 of 49 CrApl-293-03.odt "6. Now we shall consider the question as to whether the acquittal of the appellants of the offence punishable under Section 498-A makes any difference. The submission of the learned counsel is that the acquittal under Section 498-A, I.P.C. would lead to the effect that the cruelty on the part of the accused is not established. We see no force in this submission. The High Court only held that S. 304D and S. 498-A, I.P.C. are mutually exclusive and that when once the cruelty envisaged in S.498-A, I.P.C. culminates in dowry death of the victim, S. 304B alone is attracted and in that view of the matter the appellants were acquitted under S. 498-A, I.P.C. It can therefore be seen that the High Court did not hold that the prosecution has not established cruelty on the part of the appellants but on the other hand the High Court considered the entire evidence and held that the element of cruelty which is also an essential of S. 304B, I.P.C. has been established. Therefore the mere acquittal of the appellants under S. 498-A, I.P.C. in these circumstances makes no difference for the purpose of this case. However, we want to point out that this view of the High Court is not correct and Ss. 304B and 498-A cannot be held to be mutually exclusive. These provisions deal with the two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved. The Explanation to S.498-A gives the meaning of "cruelty". In S.304B there is no such

explanation about the meaning of "cruelty" but having regard to the common back-ground to these offences we have to take the meaning of "cruelty or harassment" will be the same as we find in the explanation to S.498-A under which "cruelty" by itself amounts to an offence and is punishable. Under S.304B as already noted, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in S.498-A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under S.304B can be convicted u/S. 498-A without charge being there, if such a case is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charge under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be 47 of 49 CrApl-293-03.odt awarded under S. 498-A in view of the substantive sentence being awarded for the major offence under S.304B."

70. The facts of the case in hand are different. The prosecution has proved only that Jyoti committed suicide within 7 years of marriage with accused No.1 Vijay, however, failed to prove, by adducing cogent evidence, that accused Nos. 1 to 5 subjected Jyoti to cruelty on account of remainder dowry amount of Rs.25,000/-. Therefore, ratio led down by the Hon'ble Supreme Court would not support the prosecution to hold the accused guilty for the offences punishable under Sections 498-A, 304-B and 306 read with Section 34 of the I.P.C.

71. In the matter of State of Uttar Pradesh Vs. Satish [AIR 2005 SC 1000], the Hon'ble Supreme Court, while discussing law pertaining to appeal against acquittal contemplated in Section 378 of Cr.P.C., has held as under :

"There is no embargo no the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible 48 of 49 CrApl-293-03.odt evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not."

72. In the case in hand, after re-appreciating the evidence, we do not find that the view taken by learned Additional Sessions Judge is incorrect or improbable. Therefore, we concur with his view.

73 . In view of the above, we do not find any fault on the part of learned IInd Ad-hoc Additional Sessions Judge, Ahmednagar, granting acquittal to the accused by giving them the benefit of doubt. Therefore, this appeal is liable to be dismissed.

74. Accordingly, this appeal is dismissed.

75. Since this Court has appointed Shri Amol Joshi to represent respondent Nos. 1, 2, 4 and 5, his fees are quantified at Rs.15,000/- (Rupees Fifteen Thousand Only) which is to be paid to him through the High Court Legal Services Sub-Committee, Aurangabad.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

SVH

49 of 49