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	<p style="text-align: center;">IN THE COURT OF SESSIONS COURT, BORIVALI DIVISION, DINDOSHI, MUMBAI.</p> <p style="text-align: center;">Present : HER HONOUR ADDL. SESSIONS JUDGE SMT.S.M.TAKALIKAR, (C.R.NO.12) Dated: 03-02-2023</p> <p style="text-align: center;"><u>SESSION CASE NO. 191 OF 2012</u> <u>(C.N.R. No. MHCC05-001386-2012)</u></p>
Complainant/ Prosecution	The State of Maharashtra (Through Samta Nagar Police Station Vide their C.R. No.416/2011)
Represented By	Ld. APP Shri. Ambekar
accused	1. 2. 3. 4. 5.
Represented By	Ld. Advocate Shri.Nilesh Mishra

Date of Offence	Since 2009
Date of FIR	02.12.2011
Date of Chargesheet	12.12.2012
Date of framing of charge	08.06.2018
Date of commencement of evidence	07.03.2019

: 2 : Judgment in Session Case No.191/2012

Date on which judgment is reserved	31.01.2023
Date of Judgment	03.02.2023
Date of the sentencing order, if any	--

DETAILS OF accused

Accd No.	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428, Cr.P.C.
1		02.12.2011	02.11.2012	498A, 306,406, 304B r/w.34 IPC	Acquitted	---	---
2		02.12.2011	02.11.2012	498A, 306,406, 304B r/w.34 IPC	Acquitted	---	---
3		30.12.2011	02.11.2012	498A, 306,406, 304B r/w.34 IPC	Acquitted	---	---
4		30.12.2011	02.11.2012	498A, 306,406, 304B r/w.34 IPC	Acquitted	---	---
5		30.12.2011	02.11.2012	498A, 306,406, 304B r/w.34 IPC	Acquitted	---	---

(DICTATED AND PRONOUNCED IN OPEN COURT)

JUDGMENT

The accused has been prosecuted for the offences punishable under 498A, 306, 406, 304B r/w.34 of the Indian Penal Code, 1860.

2. Facts, in nutshell, leading to the prosecution of the accused are thus:

(a) Complainant is a maternal uncle of the deceased. The deceased is daughter of his sister. Marriage of deceased with a accused No.1 took place in 2006. After marriage of deceased, resided in her maternal home for 3 years as per custom in their community. Thereafter Gauna ceremony was performed at the matrimonial home of Accused No.1 is working as marketing agent. Prior to 2 years from lodging complaint, went to her matrimonial home for cohabitation. After some days she was pregnant, therefore she was taken to maternal home. delivered a female child. After one year, went to her matrimonial home. Her matrimonial members were not talking with during her delivery. Thereafter the maternal members of sent her daughter to matrimonial home. At that time they gave Golden ornaments, clothes to the newly born daughter and other articles.

(b) It is stated that prior to 6 months came to his house at Kalyan along with her mother. At that time she was so weak. He asked whether she has any problem in matrimonial home. But she has not told anything. His sister told that the husband of is getting call of the girls at night time, therefore there is tension and quarrel started between and her husband. Her matrimonial members also blamed They were beating her. They were saying to her that they were not honored properly after delivery of They were taunting her. His sister also told that matrimonial members of were harassing her on account of amount of policy of her father. was remaining ill and her matrimonial members were saying that she is suffering from some evil shadow. They were not giving medical treatment to her. She

was sent to maternal home. The matrimonial members were harassing her physically and mentally. At the time complainant stated that he will give understanding to the accused but refused for it.

(c) It is stated that on 02.12.2011 he came to know that committed suicide by hanging. He went to matrimonial home of Dead body was sent to Bhagwati hospital, thereafter he came to police station, lodged complaint of the incident. On the basis of his complaint, CR No. 416/ 2011 under section 498-A, 306 read with Section 34 of IPC came to be registered against the accused persons.

3. Daniel Luis Torne (PW-07) API of Samta Nagar police station carried investigation during the course of investigation he went to the spot, prepared for panchnama. He prepared inquest panchnama, arrested the accused. Recorded statement of witnesses obtained PM notes of the deceased and thereafter submitted charge-sheet against the accused.

4. Accused are on bail.

5. My Learned predecessor Smt. H.C.Shende, Additional Sessions Judge, framed charge against the accused for offences punishable under Sections 498-A, 306, 406, 304-B r/w.34 of the Indian Penal Code, 1860 vide charge Exhibit-15. Contents of the charge were read over and explained to the accused in vernacular to which they pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication. Accused has not examined any witness on his behalf.

6. To prove its case, prosecution has examined in all 7 witnesses

and thereafter closed its oral evidence. After the closure of evidence of prosecution witnesses, the incriminating circumstances appearing in the evidence of prosecution witnesses has been put to the accused in his statement recorded under Section 313 of the Code of Criminal Procedure. The answers given by the accused has been recorded therein. His defence is that of total denial and false implications.

7. I have heard Ld. APP and Ld. Advocate for the accused.

8. In the light of charge framed against the accused and from the facts, circumstances and evidence adduced by the prosecution, from the statement of accused recorded under Section 313 of Cr.P.C. following points arise before me for determination and I have recorded my findings against them for the reasons stated here-in-under;

Sr. No.	POINTS	FINDINGS
1.	Does prosecution prove that the death of is suicidal death ?	In the Affirmative
2.	Does prosecution prove that accused from 2009 to 2011 in furtherance of their common intention, subject of the deceased, to cruelty on account of demand of dowry ?	In the Negative
3.	Does prosecution prove that the accused from 2009 to 2011 in furtherance of their common intention, misappropriated the golden and silver ornaments given to by her maternal members?	In the Negative
4.	Does prosecution prove that the accused in furtherance of their common intention abeted to commit suicide ?	In the Negative
5.	Does prosecution proved that the accused in furtherance of their common intention committed dowry death of deceased?	In the Negative

6.	What offence if any has been proved by the prosecution against the accused ?	In the Negative
7.	What Order?	As per final order

REASONS

9. In order to prove the guilt of the accused, prosecution has examined following witnesses;

A. Prosecution:

Rank	Name	Nature of Evidence
PW-1	Pradumankumar Upadhyay	Maternal uncle of the deceased
PW-2	Rekhadevi Pandey	Mother of the deceased
PW-3	Ashokkumar Tripathi	Relative of the deceased
PW-4	Jaya Rajesh Dubey	Relative of the deceased
PW-5	Deendayal Pandey	Brother of the deceased
PW-6	Kiran Upadhyay	Neighbour of the deceased
PW-7	Daniel Luis Torne	Investigating Officer

10. Accused has not examined himself or any defence witness on his behalf.

B. Defence witness, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

C. Court witness, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

and closed it's oral evidence vide Evidence closure pursis.

11. Prosecution relied on following documents -

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS :

A. Prosecution:

Sr.No.	Exhibit Number	Description
1.	Exh.29	Complaint
2.	Exh.32	11 photographs with list
3.	Exh.37	Death certificate issued by doctor
4.	Exh.44	Post mortem report
5.	Exh.49	Spot cum inquest panchanama
6.	Exh.50	Arrest panchanama
7.	Exh.51	Arrest panchanama
8.	Exh.52	Arrest panchanama
9.	Exh.53	Arrest panchanama

B. Defence :

Sr.No.	Exhibit Number	Description
1.	Nil	Nil

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
1.	Nil	Nil

D. Material Objects :

Sr.No.	Material Objection Number	Description
1.	Nil	Nil

As to Point No.1:-

12. Prosecution came with the theory that the death of is

suicidal. Upon perusal of the cross examination of prosecution witnesses, it is not the case of the accused that the death of is accidental. From the evidence of prosecution witnesses it appears that the deceased hanged herself. It is not the case of the prosecution that death of deceased is homicide.

14. I have gone through the evidence of the maternal uncle, brother, mother of the deceased They also stated that deceased committed suicide. Upon perusal of the inquest panchnama at Exhibit-49 it appears that there were ligature marks around neck of the deceased PM notes has been admitted by the defence. Cause of death is mentioned as auspecia, evidence of ligature at neck. Cause of death certificate shows the death due to auspecia. That means the death of the deceased is due to hanging herself. Therefore, prosecution has proved that the deceased committed suicide. Hence, I answer Point No.1 in affirmative.

As to point No.2, 4 and 5 :

15. Prosecution has examined complainant, mother of the deceased, friend of the deceased, relatives, and brother of the deceased. Complainant PW1 testified that married with the Accused, No.1 in 2006. After 3 years of marriage, went to her matrimonial home. At that time Gaunna ceremony was performed. After about one month was brought to the maternal home. She was pregnant. She delivered a female child. After one year she was sent back to her matrimonial home for co-habitation. At that time silver and golden ornaments were given to the child. He further testified that matrimonial members of were harassing her on small count. They were not giving proper medical treatment to her, beating her, were demanding

amount from the deceased. They asked her to bring amount from the policy amount received to her maternal members. They were not allowing her to talk with her maternal members. Her husband was talking on phone till late night. There used to be quarrel. Matrimonial members were saying that she is suffering from some evil power. On 02.12.2011 he came to know that committed suicide. Therefore he went there. All accused were harassing He lodged complaint. It is at Exhibit-29. His supplementary statement was recorded by Police.

16. In his cross-examination, he stated that marriage of was performed in 2007. He admitted that FIR was given after consultation with each other. He does not know for what reason committed suicide. has not lodged any complaint during her lifetime against the accused. Brother of is running an auto and earning Rs.10,000/- to Rs.15,000/- monthly.

17. PW2 to Rekha is the mother of the deceased She testified that at the time of marriage of with the Accused No.1 her matrimonial members demanded dowry of Rs.50,000/- through Mr Dubey. They gave Rs.50,000/- to Mr.Hiralal and thereafter marriage was performed. She testified that in the said marriage they gave golden necklace of 3 tola, mangalsutra of 3 grm, silver painjan 15 tola, silver patta 5 tola, golden ring of 6 grm to accused No.1 and one wristwatch of Rs.10000/-. They also gave Rs.5000/- to accused No.1 for clothes and utensils. On 26.11.2009 after gaunna ceremony, they sent to maternal home. Accused demanded golden chain, earring, golden ring, silver, ornaments, TV, bed, fridge, utensils, and 40 sarees. Though she was not in a financial condition, but she arranged money from her

relatives and gave all these articles to accused. At that time all accused were residing together. After 15 days, her son went to matrimonial home and brought to their house. was pregnant. She informed this fact to matrimonial members of At that time, they demanded Rs.3,00,000/- and said if you have not given Rs.3 lakhs then to keep your daughter and to bear the expenses of her child.

18. On 01.09.2010 delivered a female child. She informed this fact to accused Hiralal. At that time she stated as daughter is born and cut down phone. Accused Sumitra made a call to and demanded washing machine, Godrej cupboard. said to her that her mother is not in a financial condition to give it. Accused Sumitra was making call to and was abusing her. She told Sumitra that they are not in a condition to give washing machine and cupboard. Thereafter they sent to her maternal home. They gave silver painjan of 2 tolas to the newly born daughter of She further testified that on one day, Sumitra called her and said to her that since entry of in their house, all members or remaining ill. They asked her to take back to her house. They stated that is suffering from some evil shadow. said that the matrimonial members were ill treating her on account of demand of washing machine, Godrej cupboard. Accused Renu and Suman where ill treating her, abusing her. Accused were beating her and harassing her on various grounds. Thereafter, told to her family members that accused used to beat her and used to demand money from her. They brought to their house. Thereafter the father of the Accused No.2 went to her maternal home, brought deceased to her matrimonial home. On 02.12.2011 she came to know that committed suicide by hanging. They all came to matrimonial home of, performed funeral ceremony.

19. In her cross-examination, she admitted that one Dubey is the mediator. She admitted that the amount of Rs.50,000/- was given by her to her brother. On 04.12.2011 she was with her brother. Her statement was recorded on 04.12.2011 and thereafter she gave detailed statement to the police. She admitted that her son was earning Rs.12,000/- to Rs.15,000/- by auto driving and maintaining his family. She admitted that she has no any receipt. The receipt produced by her are not in her name. The relatives gave ornaments to She also admitted that whenever fatherinlaw of coming to her house to take back her, at that time, she was willingly sending to her matrimonial home for co-habitation. She admitted that prior to the marriage of the deceased with accused, accused Suman was married and she was residing with her husband in village.

20. PW3Ashok testified that he know was daughter of Prabhat Pandey. In November 2009, at the time of gaunna ceremony, he gave fridge, DVD and TV to said to him that her matrimonial members were demanding Godrej cupboard, Motorcycle and washing machine and were harassing her, beating her. In his cross-examination, he admitted that he has not attended marriage of He also admitted that matrimonial members of were demanding money but he has not stated this fact to the police.

21. PW4 is cited as friend of deceased She testified that was telling to her that her matrimonial members were harassing her, beating her on the account that she brought few articles from her maternal home. They were making demands. They were not providing proper medical treatment to told her that her matrimonial

members were demanding motorcycle, washing machine, cupboard and amount of LIC of her father. In her cross-examination, she stated that she had not been to the house of at any time during the lifetime of

22. PW-5 is the brother of the deceased. He testify that at the time of marriage of with Accused No.1, accused demanded Rs.50,000/ dowry. They gave Rs.50,000/- to Mangesh in the presence of Dubey. At the time of marriage, they gave a golden necklace of 3 tolas, mangalsutra of 3 grams, silver ornaments of 15 tola, painjan of 5 told, golden ring to Mangesh and wristwatch. They gave Rs.5,000/- to Mangesh for clothes. On 26.11.2009, after gaunna ceremony, they sent the deceased to her matrimonial home. At that time they gave a golden ring of 6 gram, golden bindi, silver Painjan of 10 tola, golden chain of 50 grams, TV, fridge, bed, fan and sent his sister to matrimonial home. After 15 days he again went to the matrimonial home of and brought her to maternal home. was pregnant. She resided in her maternal home for one year. On 01.11.2010 delivered a female child. They took to her matrimonial home. At that time thereafter accused asked to bring Godrej cupboard, washing machine. The accused were not giving medical treatment to the deceased. His mother went to the house of accused, he also went to the house of accused, at that time deceased told that accused asked her to bring cupboard and washing machine, and harassing her, abusing her, taunting her, beating her.

23. He further testified that thereafter he took the deceased to his house. Accused Hiralal went their, brought the deceased to his house. Thereafter, also accused were not giving proper medical treatment to

the deceased. On one day, he received call from his sister. She told to him that accused is beating her and to take her back. On 02.12.2011, committed suicide due to harassment of the accused.

24. In his cross-examination, he stated that on 04.12.2011, he came to Mumbai. He cannot tell when he went to police station. He gave statement to the police. He admitted that his maternal uncle lodged complaint against the accused.

25. PW -6 Kiran is cited as neighbour. He simply stated that he came to know that hanged herself and committed suicide. He has been declared hostile. Nothing fruitful has been gained from his cross-examination.

26. PW-7 is the investigating officer. He testified that he recorded complaint of the complainant, registered crime, went to the spot, prepared spot panchnama, prepared inquest panchnama, recorded statement of witnesses, arrested the accused and thereafter submitted charge-sheet against accused.

27. In cross-examination, he stated that on 12.12.2011 one ADR No. 134/2011 was registered in which Harish gave statement. He is uncle of the deceased. In his statement, he stated that he has no any complaint against any of the person.

28. In the light of above evidence, I have heard Ld.APP. Ld. APP in his argument submitted that death of deceased is within 7 years of her marriage. Presumption of Section 113-A of the Evidence Act is

applicable. He further stated that evidence of PW-5 is material evidence. Accused abetted the deceased commit suicide. He submitted that from the evidence on record, prosecution has proved that accused treated the deceased with cruelty on account of demand of money and abetted her to commit suicide and misappropriated the golden and silver ornaments given to the deceased at the time of her marriage, at the time of gaunna ceremony. Hence, prayed, that accused be convicted.

29. Ld. Advocate for the accused in his arguments submitted that there is no any eye witness. Evidence of prosecution witnesses are hearsay evidence. The deceased has not lodged any complaint during her lifetime. He invited my attention towards each and every line of the cross-examination of all the prosecution witnesses and submitted that even there is delay in recording the statement of prosecution witness is, spot panchnama has not been prepared, mediator has not been examined. Evidence of PW-2 and PW-5 suffers from material improvements. There is no investigation on the point that Accused No.1 has affair with one lady as there was no such affair. Therefore, the investigating officer has not found girls who were making calls to do accused at the night time. He further submitted that PW-6 is neighbour of the deceased. He is material witness but he has not stated anything against the accused. According to him there is no cogent, reliable evidence. Therefore, benefit of doubt be given to the accused.

30. Perused the evidence adduced by the prosecution. In this case, prosecution came with a theory that deceased married with accused No.1 in 2007. She committed suicide in 2011. Therefore, the death of the deceased is within 7 years of marriage. That does not mean that the presumption under Section 113-A of the Evidence Act is automatically

applicable. Under section 498-A, 306, 304-B of the IPC the common point is cruelty. Prosecution has to prove that the deceased was treated with cruelty on account of demand of money. Then it is necessary to see whether from the evidence available on record prosecution has succeeded in proving that the deceased was harassed physically and mentally by the accused persons.

31. I have gone through the evidence of PW-1. In his chief-examination, it is stated that when he asked, what had happened, whether she is having any problem, that time she has not told anything to him. In his entire chief-examination he has not stated that at any time during the period of 2 years of her matrimonial life, the deceased has informed PW-1 about the ill-treatment at the hands of the accused. He stated that he came to know about the ill treatment from his sister. PW-2 mother of the deceased, nowhere stated that she told about the ill treatment of the deceased to her brother. Therefore, it is difficult to believe that PW-1 came to know about the alleged ill-treatment of the deceased from PW-2. Even for the sake of argument it is presumed that, he came to know about the alleged ill-treatment from his sister PW-2. Then also his FIR is based on hearsay to hearsay evidence. That means deceased told about the ill treatment to her mother and her mother in turn told it to PW-1. Therefore, at this very aspect, his evidence is not reliable.

32. As per the evidence of PW-1 maternal uncle of the deceased, even though was married then also she resided at her maternal home for 3 years that means deceased resided in her matrimonial home till 2010 and thereafter within one month deceased was brought to the

maternal home and she resided there for one year. That means deceased resided in the maternal home till February 2011. PW-1 though stated that accused were harassing the deceased, but not stated what kind of harassment has been given to the deceased. He stated that accused beat the deceased, but nowhere he stated the date, year or month in which the accused beat the deceased. Nowhere he stated the name of the accused who beat the deceased. Further, he stated that accused were demanding money out of the amount of LIC. His evidence is vague evidence. He has not stated in which year the LIC amount was received to the maternal members of the deceased, how much amount was received, how much amount was demanded, by which accused demand was made. He stated that accused was talking on the phone. This cannot be said to be harassment. Upon perusal of his entire evidence, it appears that he is the near relative of the deceased. He was present at the time of marriage of the deceased with accused. Nowhere he stated that what ornaments were given to the deceased, what amount was demanded by accused towards dowry. His evidence is vague. He made general and vague allegations against all the accused. Therefore, his evidence cannot be taken into consideration.

33. PW-2 is the mother of the victim. She stated that accused made demand of Rs.50,000/- to mediator Dubey. That means accused persons have not directly demanded money from mother and brother of the deceased. Further mediator Dubey to whom the alleged demand was made, has not been examined. Moreover, PW-2 and her son has not given amount of Rs.50,000/- directly to the accused. PW-2 admitted that she gave this amount to her brother. Whether this amount was given to the accused by her brother has not brought on record. PW-1 has not stated that any such demand was made by the accused.

Therefore, the evidence of PW-2 that accused demanded Rs.50,000/- towards dowry, does not appears to me believable.

34. PW-2 stated that they gave golden ornaments at the time of marriage of deceased. But PW-1 has not stated that any such ornaments were given by PW-1 to the deceased at the time of marriage. Therefore, it is difficult to believe that any such ornaments as stated by PW-2 has been given to the deceased at a time of her marriage. Further, PW-2 stated that at the time of gaunna ceremony, they gave golden ornaments, silver ornaments to the deceased. She stated that though she was not in a financial condition to give, she arranged money from her relatives and purchased those ornaments and given it to the accused. Her evidence is vague. Nowhere she stated name of the relatives who has given money to her, when the said amount was demanded, when they gave said amount, who received the amount of PW-2 from her relatives. The purchase receipts of those articles has not produced. Therefore, it is difficult to believe that at the time of gaunna ceremony the articles alleged by PW-2 has been given to the deceased.

35. Further, as per the evidence of PW-2, after 26.11.2009, deceased went to the matrimonial house for the first time after marriage. She stated that she resided there for 15 days and was pregnant, therefore, taken to maternal home. That means in the year December 2009 deceased was taken to the maternal home. Admittedly, deceased resided in her maternal home for one year. That means till December 2010, the deceased resided at her maternal home.

36. PW-2 stated that when she informed the maternal members of the deceased about pregnancy of the deceased, that time they said that

you have not given Rs.3 lakhs and articles in the marriage as per their demand, therefore to keep your daughter in the house. There is new story brought by PW-2. Nowhere PW-1 stated that accused demanded Rs.3 lakhs. PW-2 who is the mother of the deceased even not stated that accused demanded Rs.3 lakh. Further she has not stated the month when she made call to maternal members of the deceased, when they put such demand, therefore, this part of her evidence is vague evidence.

37. Further, PW2 stated that thereafter she sent to her matrimonial home along with newly born child. Again accused asked her to take back the deceased as she is remaining ill. She took her to her maternal home. At that time deceased stated to her that accused were ill treating her on account of washing machine and cupboard. This part of evidence of PW-2 is vague evidence. She has not stated when her daughter told this fact to her, when the accused made demand of washing machine and cupboard, name of the accused who demanded the articles has not been stated. She stated that accused Renu and Suman were ill treating the deceased.

38. Admittedly, Suman married prior to the marriage of the deceased. She is residing at her matrimonial home. When she came to the house of deceased, when she ill treated the deceased is not specifically stated. She further stated that all accused were beating her daughter. When the accused beat her daughter has not been stated, which accused beat her daughter is not stated. It is highly impossible that all the five accused would beat the deceased at one time. Allegations of ill-treatment, beating, abusing are made against the accused, and they are vague and general in nature.

39. Further, PW-2 stated that deceased was remaining ill, accused were saying them to take her back for medical treatment. This cannot be said to be ill treatment. Moreover, evidence of PW-2 that Dubey is the mediator is her improved version. She stated that she gave Rs.10,000/- in cash to the accused No.1 as also her improved version. The evidence of PW-2 that accused demanded Rs.3,00,000/- is her improved version. Further her evidence that when she informed the accused that female child is born, that time accused said daughter born, is her improved version. Her evidence that Renu and Suman were mixing something in the food prepared by the deceased, scattering utensils is the improved version. Her evidence that accused were not allowing to make call to her maternal members is improved version.

40. Upon perusal of entire evidence, it appears that she has made vague and general allegations against the accused. Main grievance is that accused were not taking the deceased to the hospital. This main grievance cannot be said to be cruelty likely to commit suicide. Hence, the evidence of PW-2 does not appears to me believable.

41. PW-3 admitted that she was not present at the time of marriage of the deceased but, he stated that he gave fridge, DVD, TV to the add gaunna ceremony. His evidence that he gave DVD and TV is his improved version. Therefore, it cannot be taken into consideration.

42. Further he has given fridge to the deceased. There was no any demand of fridge by the accused persons. Therefore, though he gave fridge to the deceased that does not mean that it is demanded by the accused. Further, he stated that told to him that her maternal members were demanding cupboard, washing machine, motor cycle

from her, and on that count, they were harassing her, beating her. This part of evidence is vague evidence.

43. PW-1 and PW-5 brother of the deceased stated that accused made demand of cupboard and washing machine. Nowhere they stated that motorcycle was also demanded. Further he has not stated month or year when deceased met him and told him about the demand. There are in all 5 accused. Which accused made demand of those articles are not stated by this witness. Therefore, their evidence appears to be vague and general in nature.

44. PW- 4 Jaya dubey is cited as friend of the deceased. She stated that accused were beating the deceased, demanded articles from her. They were harassing the deceased as she has not brought few articles from her parental home. She simply stated that was telling to her. When told this fact to her is not brought on record. She also made general allegations about harassment. It is not the case of the prosecution that the accused were harassing the deceased that she has brought few articles from her parental home. Therefore, it is difficult to believe the evidence of PW-4.

45. Further she stated that the deceased told to her that accused were not providing medical treatment to her. This act cannot be said to be ill-treatment. She also stated that deceased told to her that her matrimonial home demanded motorcycle, washing machine and cupboard and demanded amount received from LIC. But this part of the evidence is vague evidence. The date, month and year when deceased met to this witness, told this fact has not brought on record. Her evidence is vague and general in nature. Therefore, her evidence cannot

be taken into consideration.

46. PW-5 is brother of the deceased. There are material contradictions in the evidence of both these witnesses PW-1 and PW-5. PW-5 stated that accused made demand of Rs.50,000/- to them. PW-2 stated that this amount was demanded to Dubey and not directly to them. PW-2 stated that they gave amount to her brother and PW-5 stated that they gave amount to accused. PW-1 has not uttered a single word about the dowry demand of Rs.50,000/-. Therefore being contradictory evidence, same cannot be taken into consideration.

47. PW-5 has given description of golden and silver ornaments given to the deceased at the time of her marriage but except bare words of PW-2 and PW-5, there is no any evidence brought on record to show that any such articles demanded by them were given to the accused. No, any receipt of purchase of those articles has been produced on record. The receipt produced does not show name of the brother and mother of the deceased. Photographs have not been proved. Therefore, it is difficult to believe that any such articles alleged by this witness has been given. Further, this witness stated that though golden ornaments, silver, ornaments, TV, fridge were given to the deceased at the time of gaunna ceremony but nowhere stated that TV and fridge where also given to the deceased at the time of gaunna ceremony. No any purchase receipt has been produced about the purchase of the articles. No any individual witness from the side of the maternal members of the deceased to show that those articles were given has been examined. Therefore, it is difficult to believe that all those articles were given to the deceased at the time of gaunna ceremony.

48. PW-5 stated that accused demanded cupboard, washing machine. As per PW-2, when she made call that time accused made demand. No where she stated that she told this fact to her son. Further this witness stated that accused were demanded money out of the LIC amount. This evidence is vague and general allegations does not amount that there was any such demand. PW-5 stated that accused were beating his sister, abusing her, not providing medical treatment to her. He has not stated the month, year when accused beat and abused the deceased, which of the accused beat and abused the deceased, when his sister told to him. His evidence is vague evidence and general in nature. Therefore, it cannot be taken into consideration.

49. PW-6 is neighbour of the deceased. He turned hostile, not supported prosecution. Therefore, his evidence is not helpful.

50. PW7 is the investigating officer. His evidence is that of formal character.

51. In view of the above discussion on record, prosecution has failed to prove that accused made demand of Rs.50,000/-, made demand of Rs.3 lakh, demanded money from the LIC amount. Mere fact that accused has not provided medical treatment to the deceased does not mean that there was cruelty to her. Further general wear and tear in the family does not amount to cruelty to the deceased. Evidence of PW-1, PW-2, PW-3 and PW-4 is vague and general in nature. No specific overact has been stated by any of the witness. Therefore, vague and general evidence does not prove that accused treated the deceased with cruelty. Hence, prosecution has failed to prove that the accused treated

the deceased with cruelty and they abetted the deceased to commit suicide and committed dowry death. Hence, answer point number 2, 4 and 5 in the negative.

As to point No.3:-

52. In order to sustain conviction under section 406, the prosecution has to prove entrustment of the property and then the question of misappropriation arises. In the case PW-1 has not stated about golden ornaments, Silver ornaments alleged to be given to the deceased. He is near relative of the accused. Father of the accused died prior to her marriage. He was present at the time of marriage. In such circumstances, PW-1 is material witness who can throw light on the ornaments given to the deceased. His evidence is silent. Even he has not stated at the time of gaunna ceremony, the ornaments as alleged by PW-2 and PW-5 have been given.

53. Further it is admitted fact on record that PW-5 is only earning member in the family. He was running an auto rickshaw. Earning Rs.10,000/- to 15,000/- per month. In such circumstances, it appears that the financial condition is poor. Therefore, it is difficult to believe that, they would have given golden and silver ornaments worth Rs.2,00,000/-. No any receipt is produced of ornaments. No, any independent witness from the side of maternal has been examined. Therefore, the prosecution has failed to prove that the golden and silver ornaments, articles, utensils to the deceased at the time of her marriage, at the time of gaunna ceremony. As prosecution failed to prove entrustment, there is no question of misappropriation. Therefore, prosecution has failed to prove that the accused misappropriated the

golden, silver, ornaments, articles given to the deceased. Hence, answer point No.3 in the negative.

As to Point No. 6:-

54. In the background of the findings recorded against points Nos.2 to 5 in the negative, no any offence is made out against the accused. Hence, I answer point No.6 in the negative.

As to Point No. 7:-

55. In view of the above discussion on record, I come to the conclusion that the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt. Resultantly, the accused deserves to be acquitted. Consequently, I proceed to pass following order;

: ORDER :

1. Accused No.1. **Mangesh Hiralal Mishra, 2. Hiralal Rajnarayan Mishra, 3. Sumitra Hiralal Mishra, 4. Renu Hiralal Mishra, All R/at. Jalik Mishra Chawl, Mankameshwar Society, Gangabavdi Marg, Hanuman Nagar, Akurli Road, Kandivali-E, Mumbai 5. Suman Ashok Mishra, residing at : C-502, Rekha Ristrit Society, Shanti Park, Mira Road, Dist-Thane** are acquitted under Section 235 (1) of the Code of Criminal Procedure for the offences punishable under Sections 498-A, 306, 406, 304-B r/w.34 of the Indian Penal Code, 1860 of the Indian Penal Code, 1860.
2. The accused is on bail. Bail bonds of the accused shall stand cancelled.

Cash bail if any deposited by the accused and lying in the Court, it be refunded to the accused on his demand and on due verification and identification, after appeal period is over.

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3. As there is no muddemal filed in this case by the prosecution. Hence, there is no order to that effect.
4. Any unmarked articles or wrappers, being worthless, be destroyed after appeal period is over.
5. Accused are directed to furnish P.B. and S.B. of Rs.15,000/- each with solvent surety in like amount under Section 437-A of Cr.P.Code. Said bail bond shall remain in force for the period of 6 months from the date of passing judgment.
6. The Judgment is pronounced in the open Court in presence of the Learned APP, Learned Advocate for accused and the accused.
7. Copy of Judgment be kept in Session Case 191 of 2012.

(S. M. TAKALIKAR)
Special Judge, under the POCSO Act
Borivali (Div), Dindoshi,
Goregaon, Mumbai.

Date : 03.02.2023

Dictated on : 03.02.2023

Transcribed on : 03.02.2023

Signed on : 06.02.2023

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CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

06.02.2023, 11.30 am

Mrs. Revati V. Kadam

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Smt. S. M. TAKALIKAR ,(C.R.No.12) Addl. Judge.,City Civil & Sessions Court, Dindoshi
Date of pronouncement of /Order	03.02.2023
Order signed by P.O. on	06.02.2023
order uploaded on	06.02.2023