



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.433 OF 2004

. Dnyandeo Pandurang Yadav,
Age: 35 years, Occ.: Salesman,
R/o.: Shivaji Nagar, Kedgaon,
Tq. and Dist. Ahmednagar

**.. Appellant
(Orig. Accused No.1)**

Versus

. The State of Maharashtra

.. Respondent

...
Advocate for Appellant: Mr. R. N. Dhorde, Senior Advocate a/w. Mr.
Sanjay S. Dudhane i/b. Mr. V. R. Dhorde
APP for Respondent / State: Mr. A. A. A. Khan
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 23.07.2024
Pronounced on : 02.08.2024

JUDGMENT:

1. Judgment and order of conviction dated 03.07.2004, passed by Second Additional Sessions Judge, Ahmednagar in Sessions Case No.29 of 1998, convicting appellant for offence under Sections 498-A, 306 of the Indian Penal Code is questioned by filing instant appeal.

FACTS LEADING TO TRIAL

2. Appellant – Dnyandeo was married to deceased Lalita. After marriage she went to cohabit with accused husband. One month after

marriage when informant father and others paid visit to Lalita, that time Lalita cried and informed that family members of her husband are subjecting her to cruelty, taunting, compelling her to do excess domestic work. Informant and his wife both console her. Accused persons were disgruntled for giving more customary honour in the marriage of second daughter Manisha. During visit at the time of Nagpanchami Festival she reported about ill treatment at the hands of husband, in-laws and they taunting and quarreling with her. There was also demand of Rs.50,000/- for business. Complainant requested accused not to ill treat his daughter but there was repeated ill treatment. On 18.09.1997, news of Lalita to be serious was received and, therefore, he and his brother went to house of accused. There they noticed dead body of Lalita in a room. After postmortem and funeral, he lodged report Exhibit-59 on the basis of which crime was registered.

PW-8 and PW-9, who were entrusted with the investigation completed the same and chargesheeted accused for commission of offence under Section 498-A, 302, 306 read with Section 34 of the IPC.

In support of it's case, prosecution adduced in all 8 witnesses and accused also adduced evidence of 4 witnesses.

On analysis and appreciation of evidence adduced by the parties, learned trial judge reached to a finding that no case has been made out against accused Nos.1, 3 to 10 for offence under Section 302

read with 34 of the IPC; no case is made out against accused Nos.3 to 10 for offence under Section 498-A and 306 of the IPC; however, prosecution did succeed in establishing the charge of Sections 498-A and 306 of the IPC as against appellant / husband alone and vide judgment and order dated 03.07.2004, guilt came to be recorded to his extent and the same is questioned by instant appeal.

SUBMISSIONS

On behalf of the Appellant:

3. Learned Senior Advocate appraised this court about the nature of charge. Then, he took this court to the testimony of informant – father PW-2; cross faced by his father; testimony of mother PW-3; answers given by her in cross; testimony of maternal uncle PW-4; testimony of paternal aunt of deceased PW-5 and would submit that none of the family members have specified, elaborated or quoted instances of ill treatment. According to him, mere omnibus and general allegations are levelled about taunting, quarreling without specifying for what there was taunting and who amongst the numerous accused said what and when. He submitted that even witnesses are not consistent or lending support to each other on material counts.

Learned Senior Advocate further pointed out that prosecution witnesses are quoting about solitary instances of demand of

Rs.50,000/-. Therefore, according to him, when there is no consistent and incessant demand or harassment, charge of Section 498-A of IPC ought not to have been invoked by learned trial court.

4. As regards to suicide, he pointed out that, on same set of evidence remaining accused are given clean chit by the learned trial court, as necessary ingredients like abetment, inducement were not found by the learned trial court. Further, he pointed out that same evidence is used to record guilt of appellant / husband alone without assigning plausible reason for singling out husband. He pointed out that, admittedly, Lalita had consumed pesticide by closing the doors of the room and the same was required to be forced open as were locked from inside and, therefore, why and who abated alleged consumption having not been proved by prosecution. According to him, it was incumbent upon prosecution to prove beyond reasonable doubt that there was presence of the accused husband at the time of alleged consumption so as to implicate him on the charge of abetment or inducement. He pointed out that there was no material suggesting any active role played by husband in abetting the suicide and, therefore, according to him, findings of trial court are not sustainable. He pointed out that in this case suicide note was laid hands by the investigating machinery. That, in the said suicide note, deceased had clearly conveyed that nobody should be held

responsible for the same. With such material, he questions the appreciation of the trial court, more particularly, paras 63, 64 and 65 of the Judgment. For all above reasons, he prays to interfere by setting aside the impugned judgment.

On behalf of the State:

5. In answer to above, learned APP pointed out that barely after one month of marriage deceased Lalita was subjected to cruelty. She promptly reported it to her parents, uncles. Accused husband indulged in subjecting deceased to maltreatment. There was continuous physical and mental harassment coupled with demand of Rs.50,000/-. That, only because of such cruelty and harassment deceased Lalita was constrained to consume poison. Said consumption is in the very house of accused and while she was in their custody. That, there is no explanation for the unnatural death taking place in their house. Accordingly, in view of Section 106 of the Evidence Act, there is no explanation from their side. Under Section 313 of Cr.P.C. there is simplicitor denial. Therefore, learned trial court has correctly accepted prosecution version as regards the husband is concerned. He is responsible for the death and, hence, according to him, there is no illegality or perversity and no reason for interference.

SUM AND SUBSTANCE OF EVIDENCE ON RECORD

6. It seems that prosecution has adduced evidence of in all 9 witnesses. Their role and status and the sum and substance of their evidence is as under :

PW-1 Uttam Gavali / Panch to seizure of suicide note Exhibit-55.

PW-2 Ramkisan Waghaskar / Father deposed about marriage with accused. Some and substance of his testimony is that there was cruelty to his daughter in the backdrop of demand of Rs.50,000/-, making her do extra domestic work.

PW-3 Suman Waghaskar / Mother also stated that marriage of both daughters deceased Lalita and Manisha were solemnized together. According to her, after one month when she and her husband went to meet deceased daughter she cried and informed ill treatment by taunting for giving less customary honour compared to other daughter, and on account of demand of Rs.50,000/- of business and about receiving news about daughter to be serious.

PW-4 Ashok Waghaskar/ Maternal Uncle also claims that after one month his niece cried and informed ill treatment by humiliation for not giving respect in the marriage, making her do excess domestic work and demand of Rs.50,000/-.

PW-5 Aubhadra Gaikwad / Aunt of deceased stated that on the eve of Satyanarayan Pooja she had been to the house of accused. That time Lalita was happy. One month after marriage she was seen nervous and while crying she informed that in-laws, husband, brother-in-law and sister-in-law ill treated by humiliating her for not giving proper respect in the marriage. She told that she was compelled to do excess domestic work and nobody assisted her in the domestic work. She claims that she came to know about demand of Rs.50,000/- from her brother and there is further threat if demand is not met with. She went along with brother and relatives to give understanding to the accused but they did not listen. On 18.09.1997, news was received that she was admitted in the hospital. On enquiry, it was learnt that she had died. None of the accused had attended the funeral.

PW-6 Police Officer, who conducted A.D., drew inquest panchanama and spot panchanama Exhibits 19 and 55 respectively. Drawing panch to seizure of chit Exhibit 56 and noted the complaint lodged by father, which was made base of registration of crime bearing no.255/97.

PW-7 Prakash / Medical Officer, who conducted postmortem and issued opinion about cause of death as aspecia due throttling.

PW-8 Investigating Officer

PW-9 Investigating Officer

ANALYSIS

7. Evidence of parents of Lalita, her maternal uncle and paternal aunt is of relevance out of 9 witnesses examined by prosecution.

PW-2 Informant / Father in his evidence at Exhibit-58

deposed as under:

“(1) after marriage, Lalita went to stay with accused. 8 to 10 days after the marriage Lalita came back to my house and within few days again she went to the house of accused. One month thereafter myself, my wife and other relatives i.e. my brother Balasaheb, Ashok, son Dipak, cousin brother Kotkar visited house of accused. When alongwith my wife I had gone to see Lalita she started crying and she told me that the accused person and the family members of her husband are subjecting her to cruelty by giving her taunt and compelling her to do excess domestic work. She also told me that family members of her husband are often aggrieved against her. She told me that she being newly wedded wife she does not speak anything to any accused..... accused persons were subjecting my daughter to cruelty on the ground that at the time of marriage more customary honours were performed pertaining to my daughter Manisha and in comparison to that, less customary honours were performed in the family of husband of Lalita.

(2) at the time of Nagpanchami Festival my daughter Lalita came to Bhingar for one day. She stayed at the house of my mother and disclosed about ill treatment to my mother and brother. On same day she came to Loni and stayed for 8 to 10 days. During that period Lalita told me about ill treatment to her at the hands of the accused. She also told that her husband, in-laws, sister-in-law, brother-in-law gave taunt and often quarreling with her. She told me that accused persons are asking her to do excess domestic work. She also told that accused persons are demanding Rs.50,000/- for business and they further asked to bring the

said amount from her parents. After festival of Rakshabhandhan husband of Lalita came to take her back at that time also husband of Lalita demanded money from me. I had shown my inability to fulfill his demand and assured him to consider his demand later on.

(3) eight days thereafter myself, my wife went to Kedgaon to see Lalita. On seeing us Lalita started crying. She had repeated her ill treatment, which she had earlier disclosed to me.

(4) on 13.09.1997, I went to Kedgaon to extend invitation of Satyanarayan Pooja on the eve of festival of Lord Ganesha. Accused persons accepted my invitation. On 14.09.1997 neither Lalita nor accused came.

(5) on 18.09.1997, at 02:00 p.m., Police Constable Vinayak informed about phone call from Kedgaon outpost about serious condition of Lalita.”

PW-3 Wife of PW-2 deposed at Exhibit 62 as under:

“Lalita was given in marriage at Kedgaon to accused Dnyandeo. 16 days after the marriage there was Satyanarayan Pooja at the house of accused and, therefore, myself, my husband had gone to the house of Lalita. Other family members had also came with us for Satyanarayan Pooja. One month thereafter again myself and my husband gone to the accused to meet Lalita. On seeing us Lalita started crying. Therefore, we enquired to her the reason. Lalita told us that husband, in-laws, brother-in-law and sister-in-law started ill treating her by saying that they were given less customary honour in comparison to customary honour given to Manisha. She also told that accused persons asked her to to more domestic work and gave her taunts and humiliate her.”

“During Nagpanchami Festival when she came at Loni she told “that her husband and family members in the house ill treat her and subjected her to cruelty. She also told that accused persons demanded Rs.50,000/- to her for business.”

“Accused Dnyandeo too demanded Rs.50,000/- for business. He got annoyed when we showed our inability to pay Rs.50,000/- and, therefore, in the hit of anger he took Lalita with him. One month thereafter again we went to Kedgaon to meet Lalita. On seeing us Lalita started crying and accused persons demanded money to us in presence of

Lalita. Accused persons did not attend Satyanarayan Pooja even when invitation was extended. On 18th news was received.”

PW-4 Maternal Uncle deposed that,

“16 days after marriage of Lalita I have gone to the house of accused along with brother and other family members. Thereafter Lalita told me that her husband and family members are subjecting her to cruelty by saying that they were given less customary honour in comparison to customary honour given to Manisha at the time marriage and she also told that she has been asked to do more household work and accused persons are taunting her. During festival of Nagpanchami she was nervous, crying and she told that accused family members are subjecting her to cruelty. They asked her to bring Rs.50,000/- for business and further threatened to ill treat her if demand is not fulfilled.”

PW-5 Paternal Aunt deposed that

“ on the eve of Satyanarayan Pooja I had gone to the house of accused. When I had been to the house of accused I saw Lalita was happy. One mother after marriage of Lalita along with my husband I had been to the house of accused. That time we saw Lalita in nervous mood and she was crying. Myself and my husband were mediators of the marriage of Lalita and I was residing near the house of Lalita we went to the house of accused one month after the marriage. On enquiring with Lalita she told that her in-laws, husband, brother-in-law and sister-in-law ill treat her by giving humiliating treatment and taunting by saying that accused persons were not properly respected at the time of marriage ceremony. Lalita also told that her sister-in-law compelled her to do excess domestic work and did not assist in the domestic work. When I had been to the house of my brother I came to know that accused demanded Rs.50,000/- to Lalita for business and further threatened her not to cohabit with them if their demand is not fulfilled. On 18.09.1997, while she was in school, she learnt that Lalita was admitted.”

8. On critical analysis of above discussion, oral evidence of parents, maternal uncle and paternal aunt, it is noticed that they are

merely speaking about deceased Lalita after one month of marriage reporting that family members i.e. husband, in-laws, brother-in law and sister-in-law ill treating her, there was taunting for not giving due honours in the marriage as like that given in the marriage of her sister. Second allegation is that she was made to do excess domestic work. Therefore, entire accusation is only on above 2 counts.

Informant in cross is unable to state the nature of ill treatment or cruelty and which amongst the 10 accused, who were made to face the trial, subjected Lalita to ill treatment. Who amongst them taunted is also not stated by, either father or mother. Only paternal aunt, who was a mediator levels allegation against the sister-in-law of making Lalita work excessively and not assisting her in domestic work. She is the mediator who has arranged the said marriage and resident of the same place. But, surprisingly, claims to have heard from her brother about demand of Rs.50,000/- for business. Admittedly, learned trial court has already acquitted sister-in-law from all charges. Even no details for which proposed business demand was raised and when has not come on record.

Apparently, allegations are omnibus, general, vague in nature.

9. Only twice there seems said to be reporting by Lalita i.e. first time, one month after marriage only on being asked by informant and his

wife and second reporting seems to be when Lalita came for Nagpanchami Festival. Therefore, apparently, only 2 instances are quoted. In fact, PW-5, who is a mediator and paternal aunt of deceased has herself deposed in chief that when she went to meet her on the eve of Satyanarayan Pooja Lalita was found to be happy. Therefore, taking above material into consideration, cruelty as contemplated under law for attracting Section 498-A is not finding place in the testimony of parents, uncle and aunt.

10. Husband / Appellant alone is also held guilty for offence under Sections 306 and 498-A of IPC. Before advertng to the law on abetment to commit suicide, it is profitable to give brief account of the settled legal position when there is a charge of Section 306 of IPC.

In umpteen judgments, Hon'ble Apex Court has time and again expounded legal requirements for attracting the charge of 306 IPC i.e. in the known cases, which are time and again referred to till date.

11. In State of **West Bengal v. Orilal Jaiswal [(1994) 1 SCC 73]**, the Hon'ble Supreme Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing

suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

12. In **Ramesh Kumar v. State of Chhatisgarh (2001) 9 SCC 618**, it is observed that, “Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

13. In **Geo Varghese v. State of Rajasthan and another (2021) 19 SCC 144**, the Hon’ble Supreme Court has considered the provision of Section 306 IPC along with the definition of abetment under Section 107 IPC and observed as under :

“14. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

. . .

15. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618, has defined the word 'instigate' as under :-

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’.”

16. The scope and ambit of Section 107 IPC and its correlation with Section 306 IPC has been discussed repeatedly by this Court. In the case of *S.S. Cheena v. Vijay Kumar Mahajan and Anr* (2010) 12 SCC 190, it was observed as under : -

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

14. In ***M. Arjunan v. State, represented by its Inspector of Police***, (2019) 3 SCC 315, while explaining the necessary ingredients of Section 306 IPC in detail, observed as under :-

“7. The essential ingredients of the offence under Section 306 I.P.C. are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the

deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.”

15. In **Ude Sing & others v. State of Haryana (2019) 17 SCC 301**, the Hon’ble Supreme Court held that in order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under :-

“ 16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act

of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

16. In **Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200**, the Hon’ble Apex Court observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107 IPC, the state of

mind to commit a particular crime must be visible, to determine the culpability.

17. In **Mariano Anto Bruno & another v. The Inspector of Police, 2022 SCC OnLine SC 1387**, after referring to the above referred decisions rendered in context of culpability under Section 306 IPC, the Hon'ble Supreme Court observed as under :

“44. . . . It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

18. In **Kashibai & Others v. The State of Karnataka, 2023 SCC OnLine SC 575**, it is observed that to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

19. In very recent case of **Naresh Kumar v. State of Haryana [Criminal Appeal (No.) 1722 of 2010]** decided by the Hon'ble Supreme Court on 22.02.2024] it is observed that, had there been any clinching

evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test)."

20. In another recent case of **Kumar @ Shiva Kumar v. State of Karnataka [Criminal Appeal No. 1427 of 2011 decided by the Hon'ble Apex Court on 01.03.2024]**, following observations are made :

"39. Reverting back to the decision in M. Mohan (2011) 3 SCC 626 , this Court observed that abetment would involve a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide."

21. Here, prosecution does not dispute that on 18.09.1997, deceased was found in dead condition in a room, which was locked from

inside and was required to be break opened. Witnesses, who were employed to break open the door are also examined by defence and, as such, there is no dispute that it is a case of consumption by closing door. Prosecution alleges suicide because of demand, ill treatment and cruelty.

Here, Exhibit 56 is the vital piece of evidence, which is laid hands on by very investigating machinery i.e. suicide note. Reference to seizure of said note is finding place in the very spot panchanama dated 18.09.1997. PW-1 Panch deposed that in the room of which panchanama was drawn, one chit was lying on the chair and the same was seized. PW-6 who conducted A.D. enquiry deposed about seizure of chit and he identified to be at Exhibit 56. In cross pra 3 this police officer has admitted and answered that chit sized by him was written by deceased prior to the death. Therefore, this is a crucial piece of evidence.

For proper comprehension and appreciation suicide note Exhibit 56 in translated form is as under:

“ This is my last salute to omkar. Also I did not suffer from anyone or anyone tortured me. I have taken this decision by my own. Because I want freedom from this life. Even if I don't go home, nobody will mind and bother it. Because man is alone in life. He has to come alone and go alone. It is ok. You take care of yourself. Get another strong wife for you. I could not give you any happiness or peace. Bring a good wife then. Moreover, you keep saying that you have two wives in your life. Forgive me if I have done anything wrong and take care of yourself. I express my gratitude to all and forgive me if I have done anything wrong. I could not give you any pleasure. On the contrary, I gave you

sorrow. My greetings to all relatives. Don't sit and mourn for too long, uncle and aunt.

Sessions Case No. 29/1998 Exhibit No. 56

Referred to Cross Examination in PW No. 1

Hence Exhibited.

Before me

Signatures of Panchas

Date.18.9.97

sd/-

ASI, Kotwali, Police Station.

1) sd/-

2) sd/-

”

22. The contents of above suicide note clearly shows that she is holding no one responsible and claims to have not been subjected to any suffering or torture at anybody's hand.

Consequently, there is no element of abetment, inducement or any participation by husband in any form due to which she was compelled to consume insecticide. This piece of evidence knocks the very prosecution version on Section 306 of IPC at the bottom itself.

23. To sum up, there is either weak or no evidence on the point of 498-A. Only two allegations and two instances are quoted, which by no stretch of imagination can be brought in the ambit of Section 498-A of IPC. Offence under Section 306 of IPC is also fails on account of seizure of Exhibit 56.

24. Perused the judgment impugned herein. Apparently, as pointed out, even when there are vague and omnibus allegations against

all accused, husband alone is chosen to be held guilty. Observations of learned trial court, more particularly, in paras 62, 63, 64, 65 have no foundation and are apparently assumptions and presumptions amounting to conjunctures. Consequently, the findings and judgment convicting appellant alone for both the charges cannot be allowed to be sustained. Hence, following order.

ORDER

- I) Criminal Appeal No.433 of 2004 is allowed.
- II) The conviction awarded to appellant Dnyandeo Pandurang Yadav in Sessions Case No.29 of 1998 by the learned Second Additional Sessions Judge, Ahmednagar, on 03.07.2004 for the offence punishable under Sections 498-A and 306 of the Indian Penal Code stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of the Indian Penal Code.
- IV) The bail bonds of appellant stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

[ABHAY S. WAGHWASE, J.]

marathe