



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 141 OF 2018

Sanjay Popat Tuwar
Age 38 years, Occupation Labour,
R/o. 11 Chari Nimgaonwadi,
Helipad Road, Shirdi,
Taluka Rahata, District Ahmednagar. ... Appellant

Versus

The State of Maharashtra
Through the P.S.O. Shirdi,
Taluka Rahata, District Ahmednagar. ... Respondent

.....
Mr. H. A. Karad h/f Mr. Ashwin V. Hon, Advocate for the Appellant.
Mr. V. V. Jahagirdar, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.10.2026

Pronounced on : 13.10.2026

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order dated 23.01.2018 passed by learned 2nd Additional Sessions Judge, Kopargaon in Sessions Case No. 44 of 2015 convicting appellant for offence under Section 498-A of IPC.

CASE OF PROSECUTION IN TRIAL COURT

2. Case of prosecution in trial court was that, informant's daughter Seema was married with appellant-accused in 2000 and out of their

wedlock they had three daughters. Specific case of prosecution is that, appellant husband, after consuming liquor, used to suspect fidelity of deceased wife and also expressed his annoyance for failing to deliver male child. On that count, he beat her and subjected her to ill-treatment. On 14.11.2014, Seema immolated herself. Therefore on report of father Ashok, crime was registered which was investigated by PW9 and he chargesheeted accused, who was tried vide above referred Sessions Case for offence under Sections 306 and 498-A of IPC. The trial ended up in acquittal from charge of Section 306, but appellant came to be convicted for offence under Section 498-A which is now the subject matter of appeal.

SUBMISSIONS

On behalf of the Appellant-Accused :

3. Learned counsel for the appellant would submit that, there is false implication. That, case of prosecution is not proved beyond reasonable doubt. That, crime is registered on hearsay information. That, there is no convincing, legally acceptable evidence on the point of cruelty or harassment by raising suspicion over character or for not bearing male child. Learned counsel pointed out that, accused has examined defence witness and has probalilized his defence. However, though learned trial court rightly held that prosecution failed to bring

home the charge under Section 306, however learned trial court erred in convicting the accused for offence under Section 498-A even when its essential ingredients were patently missing. According to him, allegations are vague, general and not substantiated by adducing clear, cogent and convincing evidence. Thus, finding fault with the manner of appreciation at the hands of learned trial court, learned counsel prays to allow the appeal by setting aside the impugned judgment.

On behalf of the Respondent-State :

4. Per contra, while justifying the judgment and order of conviction for above offence, learned APP took this Court through the contents of complaint as well as evidence of informant. According to him, complaint finds corroboration from the testimony of informant which, according to him, has remained intact on the point of cruelty for suspicion of character and for not bearing male child. He further pointed out that, accused was present when deceased suffered burns. That, he did not go to her rescue or help and therefore, learned trial court, according to him, committed no error whatsoever in convicting the accused for offence under Section 498-A of IPC.

BRIEF ACCOUNT OF EVIDENCE BEFORE THE TRIAL COURT

5. Re-appreciated the entire evidence. It seems that prosecution has adduced evidence of in all nine witnesses. There is also one defence witness examined by accused-appellant. Their role and status as well as the sum and substance of their evidence can be summarized as under :

6. **PW1** father deposed at Exhibit 11 regarding marriage of his daughter Seema in the year 2000 with accused who worked in a hotel. According to him, under intoxication of liquor, accused used to say anything to his daughter, beat her and used to be suspicious on his daughter and make accusations that she misbehaved with him. That, accused harassed her as she was unable to beget a son. That, his daughter used to inform him. He used to go sometimes to her place and she also used to come to his place sometimes and inform him about ill-treatment. He named Dharma, Yama and Hari giving understanding to accused. Then he deposed about telephonic call received from Dhanraj on 14.11.2014 asking him to come immediately at Shirdi and he accordingly went and found his daughter lying outside the house in completely burnt condition. This witness claims to have inquired with accused but accused told that he knew nothing. When his daughter was taken to the hospital, she was

declared dead and therefore he gave complaint which he identified at Exhibit 12.

While under cross, he denied that his daughter underwent family planning operation. He is unable to state when the above named persons went to given understanding to the accused and how many times they went. Omission is brought about receiving phone calls from Dhanraj. He admitted that while dead body of his daughter was being taken to the hospital, at that time police were accompanying him but, according to him, police made no inquiry with him. Rest is all denial.

7. **PW2** brother at Exhibit 13 stated that accused used to quarrel with his sister as she could not bear male child. That, he used to raise suspicion on his sister and used to beat her and whenever she came to his house, she used to inform about ill-treatment to grandmother. That, in spite of understanding given to accused, there was no change. According to him, on 14.11.2014 one Gursale came and informed them that they were called at Shirdi immediately and so he and his father went and found Seema lying in burnt condition and that, on inquiry, accused said that he knew nothing.

While under cross, he admitted that he did not go for giving understanding to accused. He is also ignorant about his sister undergoing family planning operation. He does not know whether accused and his sister joined any job. He denied police to be with them when they took his sister to hospital. He denied that his sister suffered accidental burns.

8. **PW3** maternal uncle of deceased at Exhibit 14 deposed that, accused who worked as a waiter, used to consume liquor, quarrel with Seema under intoxication as Seema did not bear male child. He claims that PW1 informed him about it on phone and that when he went to the house of Seema, she told him that accused consumes liquor, ill-treats her and beats her. He also claims to have learnt about burns.

While under cross he is unable to give date when they went to give understanding to accused. He claims that understanding was given in 2012-2013. He denied stating portion marked 'A' in his police statement.

9. **PW4** is the pancha to spot panchanama.

10. **PW5** is great-grandfather. He deposed at Exhibit 18 that accused used to tell Seema that she will never beget a son and on such count he used to beat her and when she came to her parent's home, she used to inform him about it. This witness further deposed that Seema poured kerosene on herself and set herself on fire. That, in spite of understanding given to accused, he did not change. According to him, deceased committed suicide getting fed up of the ill-treatment at the hands of accused.

While under cross, he is unable to state the day and date when he went with others to give understanding to accused.

11. **PW6**, friend of father PW1, at Exhibit 19 stated that, whenever deceased came to the house of PW1, he met her and according to him, she told him that accused used to beat her under influence of liquor as she was not able to beget a son.

While under cross, he is unable to state when he went to give understanding to accused and that one and half months prior to death of Seema, he had talked with her. He is unable to state why portion marked 'A' is appearing in his police statement.

12. **PW7** is the landlord of accused. In his evidence at Exhibit 20 he stated that, accused used to beat his wife under influence of liquor and therefore he asked accused to vacate the room. On 14.11.2014 from neighbour of accused, namely Dnyaneshwar, he learnt that Seema has suffered burns and so he went to there. He is unable to state how she suffered burns.

While under cross he admitted that the room occupied by accused was half kilometer away from his house. Rest is all denial.

13. **PW8** is the autopsy surgeon who issued opinion about death due to hypovolaemic and neurogenic shock due to burns.

14. **PW9** is the Investigating Officer who narrated all steps taken by him during investigation till filing of chargesheet.

15. Accused has also adduced evidence of **DW1**, a medical expert, who deposed at Exhibit 32 that, as per the record, Seema Sanjay Tuwar had undergone family planning operation at the hands of Doctor Tuse on 30.04.2008 and he identified certificate Exhibit 33 issued on the basis of entries in register.

ANALYSIS AND CONCLUSION

16. Therefore, on complete re-appreciation, here, prosecution witnesses, i.e. father, brother, uncle, great-grandfather and landlord, all claim that accused used to beat deceased under influence of liquor. Reason of beating is, not begetting male child, and secondly, suspicion of character. However, prosecution witnesses are not clear on above aspect. Father states that, accused used to suspect his daughter, but on what count, has not been stated by him. On the contrary, he states that accused raised allegations that deceased misbehaved with him. PW2 brother, like father, only speaks about suspicion, but on what count suspicion was raised is not stated by him. Rather he claims that his sister informed it to her grandmother. Grandmother is not examined here. Apparently this witness has hearsay information.

17. Both, PW1 father and PW2 brother, deny about deceased undergoing family planning operation, on which point accused has examined DW1, who has deposed about family planning operation being done at Sub-District Hospital Nashik on 30.04.2008. Incident of burns is of 2014 i.e. after six years. As stated above, father and brother are making general, non-specific allegations about beating for not bearing child. But if there is evidence to show that Seema had

undergone tubectomy operation in 2008 itself, then there was no question of she bearing any child thereafter.

18. PW3 and PW5 are maternal uncle and great-grandfather and both are silent about accused suspecting deceased. Therefore, they do not lend support to father and son, who deposed about that accused used to be suspicious. PW6 is friend of informant father and he is also silent about suspicion of character and he merely deposed about beating under influence of liquor for not begetting a son. Though this witness stated that he went to give understanding to accused, in cross he is unable to state when exactly he went.

19. The essential ingredients of offence under Section 498-A IPC are as follows:

- (1) A woman was married,
- (2) She was subjected to cruelty,
- (3) Such cruelty consisted in -
 - (i) Any willful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life,
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the unlawful demand;

(iii) the woman was subjected to such cruelty by her husband or any relation or her husband

20. There are series of judgments wherein Hon'ble Apex Court has repeatedly observed and held that in case of general, vague and omnibus allegations without specifying role or giving specific instances of cruelty, charge of Section 498-A would not automatically get attracted. Such observations are reflected in ***Kans Raj v. State of Punjab and others*** [Appeal (crl.) 688-90 of 1993 decided by the Hon'ble Apex Court on 26.04.2000]; ***State of Andhra Pradesh v. M. Madhusudhan Rao*** (2008) 15 SCC 582; ***Neelu Chopra and another v. Bharti*** (2009) 10 SCC 184; ***Geeta Mehrotra Vs. State of U.P.*** (2012) 10 SCC 741; ***Bhaskar Lal Sharma and Anr. v. Monica and Ors*** AIR 2014 SC (Supp) 1310; ***K. Subba Rao v. The State of Telangana*** ; (2018) 14 SCC 452 wherein, as to what constitutes offence under Section 498-A and when it can be said to be made out has been dealt and discussed.

Even the Hon'ble Apex Court, in the case of ***Naresh Kumar v. State of Haryana*** (2024) 3 SCC 573 observed that, to constitute offence of cruelty, there has to be incessant or continuous form of cruelty.

In the case of ***Yashodeep Bisanrao Vadode v. State of Maharashtra*** (2024) SCC Online SC 2989, the Hon'ble Apex Court observed that, by way of evidence, specific acts and role of accused has to be demonstrated for attracting Section 498-A IPC.

Very recently in ***Rajesh Chaddha v. State of Uttar Pradesh*** [2025 SCC OnLine SC 1094] the Hon'ble Apex Court has observed in para 14 as under :

“The term "cruelty" is subject to rather cruel misuse by the parties, and cannot be established simpliciter without specific instances, to say the least. The tendency of roping these sections, without mentioning any specific dates, time or incident, weakens the case of the prosecutions, and casts serious suspicion on the viability of the version of a Complainant.”

21. Hear, in the case in hand, evidence on behalf of prosecution witnesses is that there was beating under influence of liquor. Marriage is apparently of the year 2000. Deceased had died due to burns in 14.11.2014 i.e. after 14 years. Occurrence of morning of 14.11.2024 is reported in the afternoon hours of 15.11.2024. When such instances of beating or suspicion of character took place, has not come on record. Therefore, with such weak evidence, learned trial court ought not to have held that suspicious nature of accused

regarding character of deceased itself amounts to cruelty. Even the observation of trial court in para 19 that, merely because deceased underwent tubectomy has no relevance with respect to offence of 498-A, in the considered opinion of this Court, is incorrect because very core of prosecution case was that accused beat Seema for not bearing male child. Resultantly, said observations of trial court, in the opinion of this Court, are erroneous.

22. Thus, in the instant case, though there was charge under Section 306 of IPC, and though learned trial court acquitted appellant from said charge, on the same evidence, conviction for offence under Section 498-A is recorded. There are apparently general and omnibus allegations of beating without specifying when such instances took place. There is apparently 14 years of cohabitation. Hence, appellant succeeds. Accordingly, following order is passed :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Sanjay Popat Tuwar by learned 2nd Additional Sessions Judge, Kopergaon in Sessions Case No. 44 of 2015 for offence under Section 498-A of IPC on 23.01.2018 stands quashed and set aside.

- III. The appellant Sanjay Popat Tuwar stands acquitted of the offence punishable under Section 498-A of IPC.
- IV. The bail bonds of the appellant stand cancelled.
- V. 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 regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

vre