



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

CRIMINAL APPEAL NO. 342 OF 2018

The State of Maharashtra
Through P.S.O., Police Station,
Deoni, Tal.Deoni, District Latur.

....Appellant

Versus

- 1) Uttam S/o. Sangram Bamne
Age : 38 years, Occu.: Labour.
- 2) Savitribai W/o Sangram Bamne
Age: 65 years, Occu.: Household,
Both R/o. Bamni, Tal.Udgir,
District Latur.

.....Respondents
(Ori. Accused)

.....
Mr.G.O.Wattamwar, APP for Appellant.
Mr.Ajinkya S.Reddy, Advocate for Respondents.

.....
CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 07-10-2026

Pronounced on : 08-10-2026

JUDGMENT :

1. State hereby questions Judgment and order dated 14-07-2016 passed by learned Additional Sessions Judge, Udgir in Sessions Case No.30 of 2010 acquitting respondents from charges under Sections 498-A, 306, 504, 506 read with 34 of the Indian Penal Code (IPC).

BRIEF FACTS OF THE PROSECUTION CASE

2. On the strength of dying declaration Exhibit 28 of deceased

Laxmibai, PW1 Police Head Constable, Police Station Deoni, registered Crime bearing No.13 of 2010. Case of prosecution is that, deceased was married to accused No.1 Uttam and there was cohabitation for a decade or so. That, accused No.2 is mother-in-law of deceased. Accused No.1 husband subjected deceased to cruelty and accused No.2 instigated him. That, on 12-02-2010 deceased woke up in the morning as usual and kept water for warming and she went to take bath by using the said water and again kept water for warming for her husband. Then, accused No.1 husband came from outside, abused her for keeping water for heating for a long time and thereby burning the fuel. It is alleged that accused No.1 beat her by fists and kicks blows. That, accused No.2 abused her. Getting fed up by continuous harassment, deceased set herself on fire. While undergoing treatment, she gave statement/dying declaration Exhibit 28, on the strength of which crime was registered and duly investigated by PW13 Investigating Officer and after gathering sufficient evidence, accused came to be chargesheeted and tried for offence under Sections 498-A, 306, 504, 506 read with Section 34 of the IPC. Accused faced trial vide above referred sessions case and by Judgment and order dated 14-07-2016 both accused came to be acquitted from all the charges. Hence, instant appeal by State.

3. Learned APP would submit that, case of prosecution is based on evidence of 14 witnesses. He would point out that, there was cruelty and ill treatment by accused No.1 husband, who continuously suspected the character and beat deceased. That, deceased had given dying declarations, which were voluntary and inspiring confidence. He pointed out that, PW2 father of deceased and PW3 Bhagirathibai, mother mother of deceased have also deposed about cruelty and ill treatment to deceased. That, accused No.1 husband and accused No.2 mother-in-law are solely responsible for death of deceased, however, learned trial Court incorrectly appreciated the evidence and acquitted the accused. Hence, he prays to set aside the impugned Judgment and order by allowing the appeal.

4. Per contra, learned counsel for respondents/original accused would justify Judgment and order of acquittal. He also took the Court through the prosecution evidence and would submit that, case is not proved beyond reasonable doubt i.e. both on the point of cruelty, harassment and ill treatment as well as abetment to commit suicide. For such reasons, he prays to dismiss the appeal for want of merits. He relied on the judgment of the Hon'ble Apex Court in the case of *Govind Narain and Another v. State of Rajasthan*, AIR 1993 SC, 2457.

SUM AND SUBSTANCE OF EVIDENCE

5. Re-appreciated the evidence. **PW1** Rathod seems to be PHC, who registered crime on the statement of victim and entrusted investigation to PW13 Vasudeo.

6. **PW2** Venkaji, father of deceased deposed at Exhibit 30 that marriage of his daughter was performed with accused No.1 13 years back and out of such wedlock, they had a son. According to him, after few years of marriage, both accused started ill treating deceased on trifle grounds. That, accused No.1 beat her and it was reported by his daughter to him when she came to his house for festivals. According to him, accused No.1 was ill treating her by raising suspicion on her character. He claims to have learnt about ill treatment on telephone. On 12-02-2010 news of admission of his daughter Laxmi in hospital on account of burns was received and he claims that, in the hospital, she told that as usual she woke up in the morning, ignited the stove and kept water for warming and she went to take bath by using the said water and again kept water for warming. He claims that she told that accused No.1 came from outside, abused her for keeping water for heating for a long time and thereby burning the fuel and saying so, he allegedly abused her. On the instigation of his mother, husband beat her and getting fed up of

the cruelty, she set herself on fire.

Witness is subjected to **cross-examination** about educational qualification of victim, for few years, daughter residing at Udgir, about no previous complaint for ill treatment or harassment to be lodged. He denied whether on that day accused no.1 left for duty at 7 to 7.30 p.m. i.e. at village Bamni which was 5 km away from Udgir. He denied that, accused No.1 was residing separately with deceased. He claims to have learnt about cruelty after one and half months after the marriage. Though he stated that he gave understanding to accused, he is unable to state when. He denied that victim was sentimental and emotional. He denied that his daughter did not give any oral dying declaration. In paragraph 13, omissions are brought on the point of giving understanding to accused at Udgir, about accused No.1 husband beating deceased on the say of accused No.2. Rest is all denial.

7. **PW3** Bhagirathibai, mother of deceased also in her evidence at Exhibit 33 stated that there was proper treatment for initial 2 years after marriage but thereafter accused used to ill treat her daughter on trifle grounds and her daughter used to inform whenever they meet, after which understanding was given to accused. She also claims that ill treatment was informed by use of mobile phone. She also claims

that, in the hospital, her daughter disclosed that she took bath with warm water after warming it over kerosene stove and when she kept another pot of water for her husband, accused Nos.1 and 2 quarreled with her questioning how many times she was warming water on stove and wasting kerosene and that, as the ill treatment becomes unbearable, her daughter told that she poured kerosene on her person and ignited herself.

Though witness is extensively **cross-examined**, relevant cross is in paragraph 4 wherein omissions are brought about continuous abuse to deceased by accused. She admitted that, they insisted accused to enter name of children of Laxmi in the landed properties. Rest is all denial.

8. **PW4** Bhimrao Jadhav is the Executive Magistrate, who after receiving requisition from Police, visited hospital at Udgir and recorded dying declaration Exhibit 41.

While under **cross-examination** he denied that patient by was not speaking clearly and was replying by taking gaps. He virtually denied all suggestions.

9. **PW5** Shrikant Chandekar is the Doctor, who conducted autopsy and issued opinion regarding death due to “septic shock due to

burns”.

10. **PW6** Deepak Mallikarjun Bhalke, is pancha to inquest panchamana Exhibit 47.

11. **PW7** Dr.Ramprasad Narsingdas Lakhotiya, is Medical Expert who gave endorsement of fitment and Special Executive Magistrate recorded dying declaration. He identified endorsement on Exhibit 28. To a Court question, whether patient was mentally fit and was responding to oral commands, he answered in affirmative.

12. **PW8** Maulana Untwale is pancha to seizure panchanama Exhibit 54, but he did not support prosecution.

13. **PW9** Babarao Shankarrao Inchure, is pancha to spot panchanama Exhibit 56.

PW10 Umabai Madhavrao Bamne, is neighbour. She did not support prosecution.

14. **PW11** Udhav Bamne is brother-in-law of deceased. He also did not support prosecution as he merely stated that relations between accused and deceased were normal and he denied accused No.1

beating deceased on instigation of accused No.2.

15. **PW12** Uttam Sidram Rawankole (PHC), PW13 Namdeo Laxman Vasudeo (PSI) and **PW14** Shaikh Chand Pasha Rustum Ali, are police officials.

ANALYSIS AND CONCLUSION

16. Here, on analyzing above evidence, it is noticed that, parents of deceased i.e. PW2 and PW3 are making omnibus and general allegations about ill treatment and cruelty. The solitary incident they speak about is of 12-02-2010. They both claim that they received oral dying declaration but it is noticed that PW2 father of deceased and PW3 mother of deceased are not consistent. According to PW2 father of deceased, accused No.1 husband came and questioned deceased for burning the fuel kerosene for keeping water for warming for longer time but PW3 mother of deceased stated that both accused No.1 as well as accused No.2 quarreled with her saying how much time she was warming the water. Thus, PW2 father names only accused No.1 husband whereas PW3 mother names both accused Nos.1 and 2 for questioning deceased.

17. Here, apart from above evidence of parents of deceased, there

are two dying declarations; one is at Exhibit 28 and other one at Exhibit 41.

On the strength of Exhibit 28 crime was registered by PW1 Rathod (PHC). In the said dying declaration, victim reported that husband used to suspect her character and on instigation of his mother, accused No.1 husband used to beat and abuse her. Regarding the incident, she stated that on 12-02-2010, in the morning she used the water warmed on the stove for bath and kept another pot for warming water for husband and at that time, accused No.1 husband came from outside and questioned her for how much time she was warming the water and burning the fuel, and therefore, he beat her. She claims that, getting fed up of such ill treatment, she poured kerosene on her person and set herself on fire.

As pointed out by learned counsel for respondents, though on the strength of above statement Exhibit 28, crime was registered, who actually recorded this dying declaration is not clear as scribe of said dying declaration is not examined by prosecution in the trial Court.

18. The another dying declaration is at Exhibit 41, which is in question answer form, however, the same is recorded by the Executive Magistrate PW4 Bhimrao Jadhav and he identified it. However, it is noticed that said dying declaration was recorded at

11:30 a.m. on 12-02-2010 and the dying declaration which is at Exhibit 28 is shown to be recorded at 18:40 hours on 13-02-2010 i.e. subsequent. Surprisingly, crime is not recorded on the strength of Exhibit 41 which is earlier in point of time and crime is shown to be registered on the next day. Be it so, even in Exhibit 41, deceased has stated that getting fed up of the ill treatment at the hands of husband and mother-in-law, she poured kerosene and set herself on fire.

PW4 Bhimrao Jadhav also in his evidence at Exhibit 39 claims that when he enquired about incident, deceased disclosed that quarrel taking place between herself and her husband and mother-in-law and getting annoyed, she poured kerosene upon her person and set her on fire.

Consequently, dying declarations are about immolation in anger only on account of alleged questioning and beating by husband for burning fuel for long time. The said act of accused No.1 cannot be said as abetment or inducement to commit suicide. There was other course available to victim, if at all she was beaten by husband that day, which she apparently did not adopt and rather seems to have taken extreme step of immolating herself.

As regards to charge of Section 498-A of IPC is concerned, both parents i.e. PW2 father and PW3 mother of deceased merely speak about cruelty and ill treatment inflicted to their daughter, but they

have not given specific instances or form of ill treatment except stating that husband used to suspect character of deceased. With such quality of evidence, charge of Section 498-A of IPC cannot be attracted.

Similarly, on solitary episode of beating by husband in the morning of 12-02-2010, charge of abetment, inducement or instigation cannot be attracted. There is nothing to show that accused desired with the result of suicide.

19. Consequently, in the light of above discussion, evidence on behalf of prosecution both on the count of cruelty and abetment is weak and feeble in nature and not sufficient to attract the charges.

20. Learned trial Court seems to have correctly appreciated oral and documentary evidence and has committed no error in holding that case of prosecution has not been proved beyond reasonable doubt. With such quality of evidence, no fault can be found in the manner of appreciation of evidence by the learned trial Court. Appeal being devoid of merits, deserves to be dismissed. Accordingly, following order is passed :

ORDER

The Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

SPT