



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 253 OF 2017

. The State of Maharashtra
Through City Police Station, Sangamner,
Tal. Sangamner, District Ahmednagar. Appellant

Versus

1. Javed Kallu Shaikh
Age: 25 years, Occu.: Labour.
2. Jamilabi Kallu Shaikh
Age: 45 years, Occu.: Labour,
3. Kallu Abdul Raheman Shaikh
Age: 60 years, Occu.: Labour.

All R/o. Amodi Ves Mohalla,
Akot, Tal.Akot, District Akola.

**(Appeal is dismissed against
Respondent Nos.2 and 3 as per
Court's order dated 29-08-2017.)**

.....Respondent
(Ori. Accused Nos.1 to 3)

.....
Mrs.Chaitali Chaudhari Kutti, APP for Appellant.
Mr.S.K.Shinde ,Advocate for Respondent No.1
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 07-10-2026

Pronounced on : 08-10-2026

JUDGMENT :

1. State hereby challenges Judgment and order dated 01-04-2016
passed by learned Additional Sessions Judge, Sangamner in Sessions

Case No.52 of 2013 acquitting respondents from charges under Sections 498-A, 306, 323, 504 read with Section 34 of the Indian Penal Code (IPC).

CASE OF PROSECUTION IN BRIEF

2. PW1 brother of deceased Nilophar lodged report Exhibit 45 alleging that, his sister was married to accused No.1 Javed on 14-12-2009. That, for 3-4 months she was properly treated, however, thereafter, there was harassment and ill treatment to her in the backdrop of demand of dowry of Rs.50,000/-. That, Nilophar reported it to her family members. According to him, on 09-08-2013, at 11:00 a.m. a phone call was received from Nilophar by his younger brother Arif and she was complaining severe ill treatment and she put up a request to take her back. At around 04:00 p.m. telephonic information was received that Nilophar died due to burns. Hence, above report, resulting into registration of crime, its investigation, filing chargesheet, and trial being conducted vide above sessions case which ended up in acquittal. Hence, appeal by State.

SUBMISSIONS

On behalf of Appellant State :

3. Learned APP would point out that, after 3-4 months of marriage, deceased Nilophar was subjected to mal-treatment by her

husband and in-laws on account of demand of dowry of Rs.50,000/- and as the said demand was not met, ill treatment was aggravated. She would point out that, deceased duly informed to her brothers and other family members. That, they all are examined by prosecution. That, they all are consistent about demand and harassment. Learned counsel pointed out that, even on the day of burns, deceased had telephoned her brother Arif and informed to come and take her away. That, on the same day at 04:00 p.m., she committed suicide. Thus, according to learned APP, there was reason for committing suicide and accused were solely responsible for the same. Moreover, Nilophar met unnatural death in the house of accused and therefore, they were bound to offer explanation, but they failed to offer any explanation under Section 313 of the Code of Criminal Procedure and therefore, such circumstance, goes against them. That, such crucial aspect has not been considered and appreciated by the learned trial Court and therefore, she urges to set aside impugned judgment by allowing the appeal.

On behalf of Accused/Respondent No.1:

4. Per contra, learned counsel for respondent No.1 would justify the judgment and order of acquittal by pointing out that, prosecution has miserably failed to prove its case beyond reasonable doubt and

that, the learned trial Court committed no error in acquitting accused.

SUM AND SUBSTANCE OF EVIDENCE

5. Re-appreciated the evidence. Prosecution case is rested on evidence of as many as seven witnesses. Crucial evidence is of **PW1** brother of deceased and informant, **PW2** mother of deceased, **PW3** Maternal uncle of deceased and another brother **PW4**. Rest witnesses are Police officials and Investigating Officer.

6. On analyzing evidence of **PW1** Mohamad Latif, informant and brother of deceased at Exhibit 44, it seems that according to him, after 3-4 months of marriage, he claims that, accused abused and beat his sister and she reported about ill treatment and that accused demanded dowry of Rs.50,000/-. According to him, on 09-08-2013 his younger brother Arif received a phone call from Nilophar complaining about ill treatment.

While under **cross-examination** on this point, in paragraph 3 of cross-examination, omission is brought to the extent that accused demanding Rs.50,000/- and accused persons being given understanding. Therefore, there is material omission.

7. **PW2** Khorshidbee Mohamad Rafik, mother of deceased in her

evidence at Exhibit 46 deposed that, after marriage, her daughter resided at Akot with accused and thereafter, shifted to Akola. According to her, thereafter, for 3-4 months, Nilophar was treated properly but thereafter she claims that accused demanded amount and there was ill treatment to her in the backdrop of such demand.

However, as pointed out, this witness has not uttered a word about dowry demand of Rs.50,000/- as is deposed by her son PW1 informant. Further as opposed to PW1 informant, she merely stated that Nilophar made a phone call on the phone of her son.

While under **cross-examination** she admitted that police did not record her statement.

8. **PW3** Shaikh Muktar Mohamad, maternal uncle of deceased, at Exhibit 47 deposed that, after marriage, accused treated Nilophar well for 4 months and thereafter, Nilophar reported about accused ill treating her by saying that no dowry was given in the marriage and they were asking dowry of Rs.50,000/- and for said demand, there was ill treatment to Nilophar.

Contrary to his own sister PW2, this witness stated that Nilophar made a phone call to her Mother. In fact PW2 mother has stated that phone call being received by her son.

Above witness in **cross-examination** has admitted that, he has

not stated to Police that accused were demanding Rs.50,000/-.

9. **PW4** Mohamad Salim, another brother of deceased, deposed that, after 3-4 months of proper treatment, accused complained of not giving dowry and they were asking her to bring Rs.50,000/- and beating deceased on that count. He claims that, on 09-08-2013, his sister made a phone call, which was attended by her mother and she complained of ill treatment.

While under **cross-examination**, omission is brought about demand of Rs.50,000/-. He admitted that, he had never been to his sister's place. In paragraph 3 of the cross-examination, he answered that Nilophar did not have mobile and the call she made was on the phone number of his brother Mohamad Latif. But Mohamad Latif has not stated about he receiving a phone call.

ANALYSIS AND CONCLUSION

10. Therefore, on appreciation of evidence of PW2 mother and PW1 and PW4 brothers of deceased as well as PW3 maternal uncle of deceased, they are not found to be consistent. Here, there are three accused, who raised demand and when has not been stated. Moreover, material omission is brought in the evidence of above witnesses about demand of Rs.50,000/-. Thus, not only vague and

sweeping allegations are levelled but even there are variance and material omissions in the testimony of family members of deceased.

Charge under Section 498-A :

11. Essential ingredients for attracting charge of Section 498-A of the IPC are as under :

- (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 relatives of her husband

Judicial Precedent :

In a landmark case of *Girdhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177, the Hon'ble Apex Court gave succinct enumeration of the object and ingredients of Section 498-A IPC as under :

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."

12. Here, witnesses are merely deposing about proper treatment for 3-4 months and thereafter, Nilophar being subjected to ill treatment. None of them has stated form of ill treatment nor have given specific instances or role of any of the accused in what form they subjected her to cruelty. Therefore, apparently evidence on the point of charge of Section 498-A of the IPC is weak.

Charge under Section 306 :

13. Though there are allegations that accused abetted commission of suicide, there is no iota of evidence whatsoever to show that accused abetted, instigated the suicide. What positive role accused played in the episode of burns suffered by deceased Nilophar has not come on record. Consequently, even this charge fails.

14. Perused the judgment under challenge. The learned trial Court has considered and appreciated evidence of prosecution in its entirety. There is correct appreciation of evidence while reaching to the conclusion. Sound reasons are assigned while acquitting the accused. There being no infirmity in the impugned judgment and further no merits in the appeal, it deserves to be dismissed. Accordingly, following order is passed :

ORDER

The Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]