



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.483 OF 2017

1. Latif Khan Maheboob Khan Pathan
Age: 60 years, Occu.: Labour,
2. Mannabi w/o Latif Khan Pathan
Age: 55 years, Ocu.: Household,
3. Iftanabi w/o Jawed Khan Pathan,
Age: 30 years, Occu.: Household,

All R/o. Ajijpura, Kaij,
Taluka Kaij, District Beed.

.. Appellants

Versus

- . The State of Maharashtra
Through Police Station Officer,
Police Station Kaij, Taluka Kaij,
District Beed.

.. Respondent

...

Mr. Manish P. Tripath, Advocate for the appellants.
Mr. S. M. Ganachari, 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 of conviction dated 13.09.2017 rendered by the learned Additional

Sessions Judge, Ambejogai in Sessions Case No.97 of 2012 thereby convicting the appellants for offence under Section 498-A read with Section 34 of Indian Penal Code [IPC].

BRIEF FACTS OF THE PROSECUTION CASE

2. Crime No.38 of 2012 was registered by Kaij Police Station, District Beed for offence under Section 307 of the IPC on dying declaration of deceased Naseem Pathan, who reported that on 13.03.2012, her in-laws abused her, beat her for failing to arrange for gas and it is alleged that, she was incinerated. While being admitted and undergoing treatment at Civil Hospital, Ambejogai, her above dying declaration was recorded and on the strength of it, above crime was registered. As deceased died due to burns, offence was converted to Section 302 of the IPC and after investigation, parents-in-law, husband and in-laws were duly charge-sheeted with above Sessions Case. By judgment and order dated 13.09.2017, the accused Nos.1 to 3 came to be acquitted from offence under Sections 302, 504 read with Section 34 of IPC. Accused No.4 came to be acquitted from all the charges, whereas accused No.1 i.e. father-in-law, accused No.2 wife of accused No.1 and accused No.3 came to be convicted for offence under Section 498-A read with Section 34 of IPC. Hence, instant appeal at their instance.

SUBMISSIONS

On behalf of appellants :-

3. At the outset, learned Counsel for the appellants submits that appellant No. 2, Mannabi Latif Khan Pathan, died on 19.10.2021. He has tendered a pursis along with death certificate of appellant No.2. The same is taken on record. In view of the said pursis, the appeal stands disposed of as abated against appellant No.2.

4. As regards to appellant Nos.1 and 3 are concerned, learned Counsel for the appellants pointed out that the prosecution has miserably failed to bring home the charges. He would submit that offence is registered on the basis of dying declaration, but the dying declaration is not voluntary and moreover, is a product of tutoring. That, second dying declaration is contrary to the first dying declaration and is at variance. That, there was no demand or harassment as alleged. He would point out that there is already acquittal from Sections 302, 504 of the IPC. According to him, allegations on the point of demand are general, omnibus and non specific. There is no independent witness account. That learned Trial Court ought not to have convicted accused on the same evidence, on the basis of which they are acquitted. Hence, he prays to allow the appeal.

On behalf of respondent/State :-

5. Per contra, learned APP would support the judgment and order of conviction. According to him, the incident of burning has taken place in the house of accused. That, in the dying declaration deceased had specified the role of each of the accused. There being correct appreciation of evidence, he prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT AND ANALYSIS**Oral/ocular evidence :-**

6. Visited and studied the evidence on record. **PW1** seems to be the panch to spot, but he did not support. Likewise, **PW2** is the another panch, who did not support on the point of memorandum of disclosure and recovery of kerosene can as well as matchbox from the accused. **PW3** is the second panch to recovery, who also has not supported the prosecution. **PW4**, who is panch to seizure of plastic bottle and burned cloth, also did not support prosecution.

7. **PW5** mother of the deceased, in her evidence at Exhibit-49, deposed that, her deceased daughter married to accused Sattarkhan and after marriage, she went to reside with accused in-laws. That, after first delivery, accused did not take her daughter back and on indulgence of relatives, she was taken back. In paragraph No.2 of her examination-in-chief, she deposed that accused persons were

demanding Rs.50,000/- for purchasing **tempo and gas connection** and accused Nos.1 to 4 beat her on that count. A meeting was held to give understanding to the accused, following which her daughter was sent back to cohabit with the accused. However, on the eve of Ramzan-Eid, the accused-husband again dropped her at her parental home, where she stayed for eight months. The husband did not take her back to the matrimonial home. He used to visit her fortnight and there was beating 20 to 22 days prior to the incident, during which matter was settled. On 13.03.2012, phone call was received from accused No.1 that deceased had set herself on fire. They all went to the hospital, but according to her, she died on 14.03.2012. She claims that, while offering juice to her daughter in the burn ward, she inquired with her daughter, who told her that there had been a quarrel at home over gas, as they were asking her to bring it from her parental home. She further stated that her mother-in-law had poured kerosene on her, whereas her father-in-law and sister-in-law had abused her, and thereafter, her father-in-law had set her on fire with a matchstick.

. While under cross-examination, in paragraph No.13, she answered that her statement was recorded by police on 15.03.2012, wherein omission is brought to the extent of accused No.3 to be

divorcee, about daughter informing about quarrel at her house on account of gas and about her daughter telling her mother-in law poured kerosene, father-in-law and sister-in-law abusing her and father-in-law igniting her. Therefore, these are material omissions and her examination-in-chief is apparently improvised.

8. Except above evidence of mother, there is no other evidence of any other relative or even immediate neighbour.

9. Apart from above total account, prosecution is also based on two Dying Declarations, one is at Exhibit-54 and another is at Exhibit-76.

10. **PW6** seems to have recorded dying declaration Exhibit-54 and this police official, in his evidence at Exhibit-53, deposed about requisition for recording dying declaration and accordingly visiting hospital, approaching doctor to check the patient and to verify the fitness and he accordingly named the doctor. He claims that after obtaining endorsement, he asked all relatives to leave and then recorded the statement, regarding which, in paragraph No.3 of his examination-in-chief, he narrated about deceased informing him that on 13.03.2012 at about 10.00 to 10.30 a.m., father-in-law, mother-in-law and sister-in-law quarreling with her for not bringing gas from

her parental house. She reported that mother-in-law Manna poured kerosene on her person and father-in-law ignited her. That time husband came from outside and brought her to the hospital. According to him, after the recording, he obtained her thumb impression, again took certificate of doctor about fitness and read over the statement to her. This witness identified the dying declaration at Exhibit-54, the requisition letter at Exhibit-55, his signature on the inquest panchanama at Exhibit-45, and the postmortem report.

. While under cross-examination, he stated that he did not record dying declaration in question answer form. He admitted that thumb impression of deceased is not attested.

11. **PW7** is the doctor, who issued certification of fitness Exhibit-72A and Exhibit-72-B. In paragraph No.5 of his cross-examination, he admitted that as per case papers, history was of suicidal burns.

12. Contents of Dying declaration Exhibit-54 :-

“On 13.03.2012, around 10.00 to 10.30 a.m., in laws quarreled and abused her for not bringing gas from parental house and according to her, mother-in-law poured kerosene, sister-in-law and father-in-law abused her and then father-in-law ignited her.”

13. Thus, what is emerging from above contents of dying declaration Exhibit-54 is that role of sister-in-law is of hurling abuses, whereas father-in-law ignited after mother-in-law poured kerosene.

14. **Second dying declaration** is at **Exhibit-76**, which is recorded by **PW8** and he, in his evidence at Exhibit-75, deposed about receiving requisition, visiting hospital, meeting doctor, obtaining endorsement of fitness and then recording her statement. According to him, deceased reported that she resides with her husband and in-laws and the kid. That, her mother-in-law happens to be her maternal aunt in relation. She reported that mother-in-law and sister-in-law always raise quarrels with her. In the morning on the day of incident, there was quarrel with mother-in-law and mother-in-law poured kerosene and she only set her fire, due to which she sustained burns. This witness has identified dying declaration Exhibit-76.

. While under cross-examination, he stated that deceased told that at the time of incident husband and father-in-law were not present in the house.

15. **Contents of Dying Declaration Exhibit-76 are that :-**

“After marriage she resides with husband and in-laws. She reported that mother-in-law, father-in-law and sister-in-law

always quarrel with her by picking the quarrels on small counts. That, in the morning on the day of incident, mother-in-law picked up quarrel and even father-in-law and sister-in-law joined her. That time, mother-in-law poured kerosene and ignited her and thereby, she gave full names of father-in-law, mother-in-law and sister-in-law.”

16. Thus, on placing Exhibit-54 in juxtaposition with Exhibit-76, as submitted, both are found to be at complete variance with each other. In Exhibit-54, the deceased had named her mother-in-law as the person who poured kerosene on her and her father-in-law as the person who ignited her. However, contrary to this, in Exhibit-76, she attributed both the acts of pouring kerosene and igniting her to her mother-in-law alone. Resultantly, though both dying declarations, Exhibits-54 and 76, were recorded in quick succession, they are contrary to each other for the reasons stated above.

17. It is noticed that, on above oral testimony and dying declarations, learned Trial Court has convicted accused persons for only offence under Section 498-A read with Section 34 of the IPC. The learned Trial Court, in paragraph No. 47, has clearly recorded a finding that the deceased herself gave two versions and, therefore, the prosecution case cannot be said to have been proved beyond reasonable doubt. However, merely by observing in paragraph No. 48

that accused Nos. 1 and 3 were present at the spot and were duty-bound to explain the cause of the deceased's death, the learned Trial Court held that they were required to be convicted for offence under Section 498-A read with Section 34 of the IPC. Apparently, learned Trial Court has erred while drawing above conclusion. It is fairly settled position that each of the charge to be distinctly proved. Here, in one dying declaration, role is attributed to all the three accused, but in other dying declaration, role is attributed solely to mother-in-law. There is no distinct evidence in the form of independent witness to show that all three accused were also present in the morning hours on the day of occurrence. There is no evidence to show that the accused persons maltreated deceased in the backdrop of demand for a gas connection. What is stated in the dying declarations is that there was a quarrel. In both dying declarations, except stating that there was quarrel and that abuses were hurled, there is no further clarification. Even otherwise, it is a solitary incident and not a case of continuous harassment so as to attract the provisions of Section 498-A of the IPC. Resultantly, evidence on the point of Section 498-A of the IPC is also patently missing. Hence, the judgment and order of learned Trial Court to that extent is also required to be quashed and set aside. Hence, the following order is passed :-

ORDER

- I. The Criminal Appeal stands allowed.
- II. The Criminal Appeal stands disposed of as abated as against appellant No.2.
- III. The conviction awarded to the appellants viz. (1) Latif Khan Maheboob Khan Pathan and (3) Ifranabi w/o Jawed Khan Pathan by learned Additional Sessions Judge, Ambajogai in Sessions Case No.97 of 2012 vide judgment and order dated 13.09.2017, for the offence under Section 498-A read with Section 34 of the IPC, stands quashed and set aside.
- IV. The appellants viz. (1) Latif Khan Maheboob Khan Pathan and (3) Ifranabi w/o Jawed Khan Pathan stand acquitted of the offence punishable under Section 498-A read with Section 34 of the IPC.
- V. The bail bonds of the appellants stand cancelled.
- VI. Fine amount deposited, if any, be refunded to the appellants 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.]