

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.105 OF 2008**

|                                 |   |                     |
|---------------------------------|---|---------------------|
| Dattatraya Jagannath More,      | ] |                     |
| Age : 25 Yrs., Occu.: Labourer, | ] |                     |
| R/o. Laxmi Nagar, Jinti,        | ] | .... Appellant /    |
| Tal. Phaltan, Dist. Satara.     | ] | (Org. Accused No.1) |

***Versus***

|                                        |   |                    |
|----------------------------------------|---|--------------------|
| The State of Maharashtra,              | ] |                    |
| At the instance of Phaltan Taluka      | ] | .... Respondent /  |
| Police Station, Phaltan, Dist. Satara. | ] | (Org. Complainant) |

***ALONG WITH***

**CRIMINAL APPEAL NO.1068 OF 2007**

|                              |   |                     |
|------------------------------|---|---------------------|
| Chandrabhaga Jagannath More, | ] |                     |
| Age : About 60 Yrs.,         | ] |                     |
| Occu.: Household,            | ] |                     |
| R/o. Laxmi Nagar, Jinti,     | ] | .... Appellant /    |
| Tal.: Phaltan, Dist. Satara. | ] | (Org. Accused No.2) |

***Versus***

|                                       |   |                    |
|---------------------------------------|---|--------------------|
| The State of Maharashtra,             | ] |                    |
| At the instance of Phaltan Taluka     | ] | .... Respondent /  |
| Police Station, Phaltan, Dist. Satara | ] | (Org. Complainant) |

Mr. R.V. Bansode for the Appellant in  
both the Appeals.

Mrs. S.S. Kaushik, A.P.P., for the  
Respondent/State in both the  
Appeals.

**CORAM : SMT. V.K. TAHILRAMANI &  
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

**RESERVED ON : 31<sup>ST</sup> JULY, 2015**

**PRONOUNCED ON : 11<sup>TH</sup> AUGUST, 2015**

**JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]**

1. Both these Appeals take an exception to the Judgment dated 20<sup>th</sup> September, 2007 of Additional Sessions Judge, Satara in Sessions Case No.57 of 2007. By the impugned Judgment, both the Appellants are convicted for the offences punishable under Sections 498-A and 323 r/w. 34 of the IPC and sentenced to suffer R.I. for two years and to pay fine of Rs.3,000/- each, in default to suffer R.I. for three months, on the first count, and R.I. for three months and to pay fine of Rs.1,000/- each, in default to suffer further R.I. for one month, on the second count. The Appellant/husband is further convicted for the offence punishable under Section 302 of the IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default to suffer further imprisonment for six months.
2. For the sake of convenience, Appellants are referred to as *"Accused No.1 and Accused No.2"*.

3. Facts, as are necessary, for deciding these Appeals can be stated as follows :-

Deceased Jyoti, the daughter of PW-4 Kamal Suryawanshi, was married with Accused No.1 about four years prior to the incident. Accused No.2 is the mother of Accused No.1. After the marriage, she was residing jointly along with Accused Nos.1 and 2. She had two children out of the said wedlock and at the time of incident, on 2<sup>nd</sup> June, 2006, she was four months pregnant. Her marital life was, however, not happy. From time to time, she had complained about the demand of Rs.5,000/- and Ganthan made by Accused No.1 to her and also the beating and physical torture on that count. Just few days before the incident, she was staying in the house of her mother for two - three months on account of the said ill-treatment. Her husband, at that time, was demanding Rs.10,000/- for getting the employment. When her mother assured to give the said amount after two months, her husband took Jyoti to his house. However, on 2<sup>nd</sup> June, 2006, her mother received the message that Jyoti was burnt and admitted in Rural Hospital at Phaltan. When she went there to meet Jyoti, she found burn injuries on her face, hand and chest. On enquiry,

Jyoti told her that her husband and her mother-in-law beat her for whole night and in the morning, her husband poured kerosene on her and set her ablaze.

4. Meanwhile, on the receipt of requisition from Satara City Police Station, PW-1 Shivaji Nalawade, Special Judicial Magistrate, recorded the Dying Declaration of Jyoti vide Exhibit-19, in which Jyoti reiterated whatever she has told to her mother. PW-9 API Ramdas Taware of Phaltan Police Station also went to Civil Hospital, Satara, on 4<sup>th</sup> June, 2006 and recorded the statement of Jyoti, implicating, both, her husband and mother-in-law, for the cause of her death. The said statement (Exhibit-36) was treated as F.I.R. and PW-9 API Taware registered C.R. No.177 of 2006 on the said F.I.R. against Accused Nos.1 and 2 for the offences punishable under Sections 302, 498-A, 323 and 504 r/w. 34 of the IPC.

5. Further investigation of the case was taken over by PW-11 PSI Ranjit Sawant. He took the search of the Accused and arrested them on 14<sup>th</sup> June, 2006. On 10<sup>th</sup> July, 2006, he recorded further statement of Jyoti (Exhibit-34) in the hospital. Jyoti succumbed to the burn injuries in the course of medical

treatment at hospital on 15<sup>th</sup> July, 2006. After the Inquest Panchanama (Exhibit-24), her dead body was sent for postmortem examination. The cause of her death was found to be *"52% superficial to deep burn injuries"*. The Postmortem Report (Exhibit-25) was obtained accordingly. The statements of witnesses were recorded. The seized muddemal articles from the spot of incident, like, the plastic kerosene can and match box, were sent to Chemical Analyzer vide requisition letter (Exhibit-39). The C.A. Report is produced at Exhibit-43. Further to completion of investigation, Charge-Sheet came to be filed in the Court against both the Accused.

6. On committal of the case to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-9. The Accused pleaded not guilty and claimed trial.

7. In support of its case, the prosecution examined in all 12 witnesses and on appreciation of their evidence, the Trial Court was pleased to convict and sentence Accused Nos.1 and 2, as aforesaid.

8. This Judgment of the Trial Court is challenged in these

Appeals by learned Counsel for the Appellants submitting that though the entire case of the prosecution is based on the evidence of Dying Declarations alone, these multiple Dying Declarations are not consistent with one another and as a result thereof, the prosecution case cannot be said to have been proved beyond reasonable doubt. According to learned Counsel for the Accused, the allegations as to demand and ill-treatment are general, vague and omnibus in nature. No specific instances of the harassment and ill-treatment have been given. In view thereof, according to him, the Trial Court has committed an error in convicting the Appellants, as aforesaid.

9. Per contra, learned A.P.P. has supported the Judgment of the Trial Court by submitting that though there are multiple Dying Declarations, all of them are consistent as to substratum of the case. They unerringly attribute the cause of burn injuries to Accused No.1 by pouring kerosene on Jyoti and setting her on fire. The evidence of PW-4 Kamal, Jyoti's mother, and other relatives also goes to prove that Jyoti was since beginning subjected to, both, physical and mental torture in order to coerce her to meet the unlawful demands of Accused persons.

Therefore, according to learned A.P.P., the Trial Court has rightly convicted and sentenced the Appellants. These Appeals, in opinion of learned A.P.P., hold no substance.

10. As aforesaid, this case stands on the evidence of Dying Declarations. There are in all three written Dying Declarations. First in time is (Exhibit-19) recorded by PW-1 Shivaji Nalawade, Special Judicial Magistrate. The second Dying Declaration (Exhibit-36) is recorded by PW-9 API Ramdas Taware in the form of F.I.R. In addition thereto, there is one more Dying Declaration (Exhibit-34) recorded by PW-11 PSI Sawant on 10<sup>th</sup> July, 2006. There are also oral Dying Declarations made by deceased Jyoti before her mother PW-4 Kamal, her maternal uncle PW-5 Janardan Shinde, her sister PW-6 Aarati and her aunt PW-7 Suvarna Joshi. The evidence relating to Dying Declaration is also supported and corroborated with the oral evidence of her mother and other relatives as to the demand of Rs.5,000/- and ill-treatment meted out to Jyoti during her life-time.

11. As per facts on record, as deposed by her mother, marriage of Jyoti with Accused No.1 was performed about four years prior to the incident and since marriage, she was residing jointly along

with her husband and mother-in-law. Though she had two children out of the wedlock and she was carrying pregnancy of four months for the third time, her marital life was not at all happy or smooth. From time to time, she was driven out of the house after beating and harassment, to coerce her to meet the unlawful demands of the Accused. Initially, the Accused were demanding Rs.5,000/- and Ganthan and thereafter Rs.10,000/- for securing employment to Accused No.1. Resultantly, on several occasions, after the harassment, being driven out of the house, Jyoti had to come and stay in the house of her mother. Ultimately, when her mother assured Accused No.1 that she would make some arrangement for satisfying the demand, she was accepted in the house of the Accused. But thereafter, her mother got the message of Jyoti sustaining the burns and being admitted in the hospital, where, on enquiries, Jyoti told her that Accused Nos.1 and 2 beat her for whole night and then set her on fire by pouring kerosene on her.

12. There is also corroborating evidence of PW-5 Janardan, Jyoti's maternal uncle, who has deposed that four months after the marriage, Jyoti was sent by her husband to parent's house

with a demand of money and gold ornaments and for satisfying these demands, Accused were beating and harassing her. This witness acted as a Mediator and tried to convince Accused Nos.1 and 2 to behave properly with Jyoti and left Jyoti in their house, but thereafter also, her harassment and demands of the Accused continued. As per evidence of this witness, Accused No.1 had come to his house and demanded Rs.10,000/- for securing employment in the Port Trust. As there was Fixed Deposit Receipt of Rs.5,000/- in the name of Jyoti, he somehow assured Accused No.1 that the said amount will be paid after the maturity of the Fixed Deposit Receipt. With this assurance, Jyoti was sent to the house of the Accused. However, thereafter he received the phone call that Jyoti has sustained the burn injuries and admitted in the hospital. When he went there and made enquiries with her, Jyoti told him that there were quarrels in the house. In the morning her husband beat her by wooden stick and then poured kerosene on her and set her on fire. Thereafter her husband, Accused No.1, and Accused No.2 went out of the house. Then, at the instance of the neighbours, Accused No.1 extinguished her fire by pouring water and brought her to the hospital.

13. Lastly, there is evidence of real sister of Jyoti, PW-6 Aarati and PW-7 Suvarna, her maternal aunt, who have also deposed about the demands and harassment to Jyoti, initially, for the purpose of Ganthan and thereafter for cash amount of Rs.10,000/-. Jyoti has informed to them also about this harassment and beating. When, after the message, they went to meet Jyoti in the hospital, there also Jyoti told them that it was Accused No.1, who has poured kerosene on her and set her ablaze.

14. In cross-examination of these witnesses, it is true that, Defence Counsel has succeeded in eliciting some inconsistencies or discrepancies, but, in our considered opinion, they do not affect the core of their testimony as to the demands and harassment meted out by Accused Nos.1 and 2 to Jyoti. Instead of making their evidence suspect in any way, these discrepancies act as inbuilt guarantee of their truthfulness. Considering that marital life of Jyoti was about four to five years and there were several instances of the cruelty meted out to her and also of the unlawful demands, it is but natural that the evidence of witnesses cannot be a parrot like version. To brush

aside the evidence of these witnesses on the ground that the allegations are of general and omnibus nature, is to adopt totally an unrealistic and insensitive approach to the plight of a married woman who is at the mercy of her husband and in-laws and whose married life consists not of one or two isolated instances of cruelty but is of constant cruelty. In our considered opinion, therefore, the evidence of these witnesses is more than sufficient to prove the cruelty and harassment, which was meted out to Jyoti at the hands of Accused Nos.1 and 2, so as to prove the charge under Section 498-A r/w. 34 of the IPC.

15. Now coming to the evidence relating to Dying Declaration, the evidence of PW-1 Shivaji Nalawade, Special Judicial Magistrate, goes to prove that on 3<sup>rd</sup> June, 2006, he received requisition (Exhibit-18) at 11:45 pm for recording Dying Declaration of Jyoti. Hence, on the next day, he went to Civil Hospital, Satara and after verifying from the Doctor, who was on duty, as to whether Jyoti was in a condition to give the statement, he has recorded her statement. He has deposed that Doctor was present there and confirmed that she was in a condition to give the statement. At the time of recording the

statement, except for the Doctor, no one else was present near Jyoti. He explained to Jyoti that he was a Special Judicial Magistrate and asked her question as to how it happened. Then whatever she has stated before him, he has recorded it in writing as per her narration. As she was unable to sign due to burn injuries, he obtained her thumb impression at the foot of the statement. He himself signed on it and then handed over the original statement to Chief Judicial Magistrate, Satara. The said Dying Declaration is at Exhibit-19.

16. In this Dying Declaration (Exhibit-19), Jyoti has stated that, on the previous night, her husband has told her to get up at 5 am. When she asked him for what purpose, her husband gave her two slaps. Then on the next day, in the morning, her husband again picked-up a quarrel with her and severely assaulted her with stick. When she shouted, he again slapped her. Then he picked-up the kerosene can, poured kerosene on her and set her ablaze with match stick. When she shouted, her husband and mother-in-law went out of the house. The persons nearby shouted that she was ablaze. Then her husband returned to the house and poured water on her. Both, her husband and

her mother-in-law, gave her abuses and threatened her not to disclose the true facts. She has further stated that her husband and mother-in-law were always harassing her and beating her like they were beating to dog.

17. There is absolutely no cross-examination of PW-1 Shivaji Nalawade, Special Judicial Magistrate, to challenge his evidence in any way. The only infirmity brought out in his cross-examination is that there is no endorsement of the Doctor on the Dying Declaration (Exhibit-19) that Jyoti was in a physically and mentally fit state to give the statement. In our considered opinion, absence of such endorsement does not constitute a lacunae in Dying Declaration, because his evidence that Doctor was present and he confirmed from the Doctor that she was in a position to give the statement, is not at all shattered in the cross-examination.

18. Moreover, the evidence on record proves that the burn injuries sustained by Jyoti were only 52% and she has survived thereafter for more than one and a half month. Therefore, it is not the case that she had sustained 100% burns and, therefore, her condition can be said to be critical so as to disbelieve the

Dying Declaration merely because it does not bear the endorsement of a Doctor.

19. There is also one more Dying Declaration of Jyoti recorded by PW-9 API Ramdas Taware on 4<sup>th</sup> June, 2006. As per his evidence also, he met the Doctor, who was present in the Burn Patients' Ward, and confirmed that Jyoti was in a position to give the statement. Doctor opined that she was conscious and oriented to give the statement. Doctor also made an endorsement to that effect on the said statement and then, in the presence of the Doctor, he recorded the statement of Jyoti, as narrated by her. He read over the said statement to her in order to verify whether it is recorded as per her narration. She admitted it to be correct and then he obtained her thumb impression at the foot of the statement and signed below it.

20. This statement (Exhibit-36), which is subsequently treated as F.I.R., clearly bears the endorsement of the Doctor that she was conscious and oriented to give the statement. This statement reveals that she was subjected to harassment and ill-treatment by her husband and mother-in-law since three months after the marriage. The demand was of Rs.5,000/- initially. They

were abusing and beating her. On 1<sup>st</sup> June, 2006, her husband beat her and when she got up in the morning on 2<sup>nd</sup> June, 2006, he again beat her by stick, asking as to why she did not get up early in the morning. Then he poured kerosene on her and set her on fire. He went out of the house, but, at the instance of neighbours, he again returned and extinguished her fire. Thereafter, she was taken to the hospital.

21. This statement (Exhibit-36) thus completely supports and corroborates the Dying Declaration (Exhibit-19) as to the core substance.

22. There is one more Dying Declaration of Jyoti recorded by PW-11 PSI Ranjit Sawant on 10<sup>th</sup> July, 2006 i.e. few days before her death on 15<sup>th</sup> July, 2006. In this statement (Exhibit-34) also, which was recorded in the presence of PW-8 Dr. Jeevan Lahoti, Jyoti has attributed the cause of her burn injuries to her husband. PW-8 Dr. Lahoti has proved recording of this Dying Declaration by PW-11 PSI Sawant and also proved that at the relevant time, Jyoti was conscious and well oriented to give the statement.

23. Further, there is evidence relating to oral Dying

Declarations of Jyoti before her mother PW-4 Kamal, her maternal uncle PW-5 Janardan, her sister PW-6 Aarati and her maternal aunt PW-7 Suvarna.

24. In this case, therefore, though there are multiple Dying Declarations, all of them are consistent with one another as to the inculpatory act attributed to Accused No.1 of pouring kerosene on her and setting her ablaze. Since the time of incident till the last, Jyoti was consistent about the cause of her burns. These Dying Declarations are also thoroughly consistent as to the harassment and ill-treatment in her marital life and also as to the beating with stick on the night before and on the day of incident. We have, therefore, absolutely no hesitation to place implicit reliance on these Dying Declarations to prove the guilt of Accused Nos.1 and 2 for the offence punishable under Section 498-A r/w. 34 of the IPC and of guilt of Accused No.1 for the offence punishable under Section 302 of the IPC.

25. If at all any corroboration is required, then there is also corroborating evidence of the Inquest Panchanama (Exhibit-24) and the Postmortem Report (Exhibit-25), which are admitted in evidence by learned Counsel for the Accused, and they go to

prove that the cause of Jyoti's death was “52% *superficial to deep burns*”. The Accused have also not set out any case of accidental burns. No such suggestions have been given to any of the witnesses. The presence of burn injuries on the back and lower limbs also goes to prove the case of homicidal burns. The Spot Panchanama (Exhibit-23), proved through the evidence of PW-2 Panch Shamrao Aadagale, and the C.A. Report (Exhibit-43) goes to further prove that the burn injuries were caused to Jyoti by pouring kerosene from the can.

26. Thus, prosecution case, taken as a whole, leaves no manner of doubt about the complicity of Accused Nos.1 and 2. The entire evidence brought on record points to the guilt of Accused No.1 alone for the offence punishable under Section 302 of the IPC and of Accused Nos.1 and 2 for the offences punishable under Sections 498-A and 323 r/w. 34 of the IPC. Hence, as regards the Appeal preferred by Accused No.1, Jyoti's husband, we find no reason at all to make any interference therein. Hence, it deserves to be dismissed.

27. As regards the Appeal preferred by Accused No.2, the mother-in-law of Jyoti, she is held guilty only for the offences

punishable under Sections 498-A and 323 r/w. 34 of the IPC. The maximum sentence imposed on her is of R.I. for two years. The impugned Judgment of the Trial Court reveals that she was in Jail for four months from 14<sup>th</sup> June, 2006 to 13<sup>th</sup> October, 2006. After conviction, she was again in Jail from 20<sup>th</sup> September, 2007 to 21<sup>st</sup> February, 2008. Therefore, the total period of imprisonment already undergone by her is of nine months. Hence, considering that the incident had taken place in the year 2006 and at the relevant time also, she was of the age of 45 years, the submission advanced by learned Counsel for the Appellants that punishment already undergone by her be considered sufficient, deserves to be accepted. Hence, the order.

### **“O R D E R”**

- (1) Criminal Appeal No.105 of 2008 preferred by Appellant No.1 / husband - Dattatraya Jagannath More stands dismissed.
- (2) Criminal Appeal No.1068 of 2007 preferred by Appellant No.2 / mother-in-law - Chandrabhaga Jagannath More is allowed

partly. Her conviction for the offences punishable under Sections 498-A and 323 r/w. 34 of the IPC is maintained. Sentence of imprisonment imposed on her by the Trial Court is, however, modified to the period of imprisonment already undergone in Jail. Fine amount and the default sentence, as imposed by the Trial Court, is, however, maintained. Her Bail Bonds stand cancelled.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]    [SMT. V.K. TAHILRAMANI, J.]**