

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

CRIMINAL APPEAL NO.145 OF 1995

1. Sau.Kasturabai Dnyandev Shelar
Aged 46 years, residing at
Palasdev, Taluka Indapur,
District Pune.
2. Tukaram Dnyandev Shelar,
Aged about 31 years, Occupation
residing at Palasdev, Taluka
Indapur, District Pune. ... **Appellants**

V/s.

The State of Maharashtra ... **Respondent**

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Ms.Tejesweeta Kadam i/b. Rahul S. Kate, Advocate for the
Appellants
Mr.Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 23RD JULY 2015

ORAL JUDGMENT :

1. The appellant No.2, who passed away during the pendency of this appeal is the son of the appellant No.1. The appellants and one Dnyandev – father of the appellant No.2 and husband of appellant No.1- were prosecuted on the allegations of having committed offences punishable under Section 302 of the

Indian Penal Code (For short, “the IPC”) read with Section 109 thereof and Section 498A of the IPC read with Section 34 thereof. The learned Additional Session Judge, Baramati, after holding a trial, acquitted the appellants and the said Dnyandev of the offence punishable under Section 302 of the IPC read with Section 109 of the IPC. He acquitted Dnyandev of the offence punishable under Section 498A of the IPC read with Section 34 of the IPC also. He, however, held the appellants guilty of the offence punishable under Section 498A of the IPC read with Section 34 of the IPC and sentenced each of them to suffer Rigorous Imprisonment for three years and to pay a fine of Rs.200/-. Being aggrieved thereby, the appellants have appealed to this Court.

2. Though the appellant No.2 has passed away during the pendency of the appeal, since the sentence imposed upon him is also of fine, the appeal, even in so far as it relates to the appellant No.2, does not abate, and needs to be decided on merits.

3. I have heard Ms.Tejasweeta Kadam, the learned counsel for the appellants. I have heard Mr.Deepak Thakre, the Additional Public Prosecutor for the respondent/State. With their assistance, I have gone through the relevant evidence.

4. Smt.Sangeeta – wife of the original appellant No.2 died an unnatural death due to burn injuries. She caught fire on

18/08/1993 and was taken to hospital. Before her death, her statement was recorded by a Special Executive Magistrate, in which she stated that she had been set on fire by the appellant No.1. She also stated about the ill-treatment given to her by the appellants and their relatives.

5. Evidently, the statements made by Sangeeta in her Dying Declaration have not been believed by the learned Additional Sessions Judge. That is why, the charge of the offence punishable under Section 302 of the IPC was held to be not proved.

6. In the course of arguments, the learned counsel for the appellants submitted that in view of the fact that there is some previous record of the deceased Sangeeta, having made allegations of ill-treatment against the appellant No.2 -her husband- and her sister-in-law, in the form of the assertions made in an application for maintenance filed by Sangeeta, she would not press the appeal, so far as the finding that Sangeeta was being treated with cruelty by the appellants, is concerned. She, however, submitted that the allegations that had been made by the Sangeeta in the maintenance proceedings were basically against her husband and her sister-in-law, and not against appellant No.1. She also submitted that the appellant No.1 had already remained in custody for a period of more than one year and five months and

considering the facts and circumstances of the case, the substantive sentence imposed upon the appellant No.1 be reduced.

7. I have carefully considered the matter.

8. As per the prosecution case, the original appellant No.2 was mainly responsible for the alleged cruelty to deceased Sangeeta. Undoubtedly, a serious allegation had been made against the appellant No.1 to the effect that she had set Sangeeta on fire, but the same has been found to be unacceptable and not believed. The appellant No.2 is already dead and cannot be made available to undergo the sentence imposed upon him. The incident has taken place more than 20 years back and the conviction has been recorded about 20 years back. The appellant No.1 is now 65 years of age. Moreover, the case does not seem to be of such an extreme cruelty warranting the maximum punishment provided for that offence to be imposed upon the appellant No.1.

9. In view of the concession made by the learned counsel for the applicant, I have proceeded on the basis that the allegation of cruelty, had indeed been satisfactorily proved. However, even on the basis that it had been satisfactorily established, the sentence imposed upon the appellant No.1, by the learned Additional Sessions Judge appears to be rather harsh. In any case,

in the present circumstances, the same is liable to be reduced to the period already undergone.

10. The appeal is partly allowed.

11. The conviction of the appellants in respect of the offence punishable under Section 498A of the IPC read with Section 34 of the IPC, is maintained.

12. However, the substantive sentence imposed upon the appellant No.1 is reduced to the period already undergone.

13. Since the appellant No.2 is dead and is, anyway not available to undergo the substantive sentence, the sentence imposed upon him is not interfered with.

14. The bail bonds of the appellant No.1 stand discharged.

15. Appeal is disposed of accordingly.

(ABHAY M. THIPSAY J.)