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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1007 OF 2009**

1. Damodar Jairam Patil	]	
(At present in custody at	]	
at Thane Central Prison)	]	
	]	
2. Gangubai Jairam Patil	]	
Age 50 years, Occ: Housewife	]	
Both residing at Palsundegaon	]	
Taluka Mokhada, Dist.Thane	]	
(At present in Kalyan Jail)	]	)..Appellants
		[Ori. Accused Nos. 1 & 3]
Vs.		
State of Maharashtra	]	
(At the instance of Inspector of	]	
Police Mokhada Police Station,	]	
Thane)	]	).. Respondent

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Ms. Rohini Dandekar Advocate appointed for the Appellants
Smt. V.R. Bhonsale A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J. &
SHRI.A.S.GADKARI, J.**

DATED : SEPTEMBER 23, 2015

ORAL JUDGMENT: [PER ACTING CHIEF JUSTICE]

1 This appeal is preferred by the appellants-original
accused nos.1 and 3 against the judgment and order dated
28.8.2009 passed by the learned 3rd Additional Sessions Judge,
Thane in Sessions Case No. 433 of 2007. By the said

judgment and order, the learned Sessions Judge convicted both the appellants under Sections 302 and 498-A read with Section 34 of IPC. For the offence under Section 302 r.w. of 34 IPC, each of the appellants has been sentenced to life imprisonment and fine of Rs. 1000/- i/d imprisonment for three months each and for the offence under Section 498-A r.w. 34 of IPC, each of the appellants has been sentenced to R.I. for one year and fine of Rs. 1000/- i/d imprisonment for three months each.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Chandrakala was the daughter of PW 1 Sulabai and sister of PW 3 Devidas. PW 2 Murlidhar was the maternal uncle of Chandrakala. The marriage of Chandrakala and appellant no.1 Damodar took place on 29.2.2007. At the time of marriage, father of appellant no.1 Damodar had given a sum of Rs.8,000/- to PW 1 Sulabai the mother of Chandrakala. This amount was given to meet the marriage expenses and the understanding was that thereafter the amount would be returned back by Sulabai to appellant Damodar. After the marriage, Chandrakala went to reside in her matrimonial home at village Palsundegaon in District Thane. She was residing in

her matrimonial home along with her husband appellant no.1 Damodar, her mother in law i.e. appellant no.2 Gangubai and her father-in-law original accused no.2 Jairam. Sometime after the marriage, the appellants started demanding back the amount of Rs.8000/- which was lent by them to Sulabai. In addition, all the accused persons made a demand of Rs.1 lakh. As the demand was not met, the accused persons ill-treated and harassed Chandrakala.

(ii) The incident occurred on 18.6.2007. It is the prosecution case that on that day at about 11 a.m. the appellants poured kerosene on Chandrakala and set her on fire. Chandrakala was taken to the hospital. In the hospital, two dying declarations of Chandrakala were recorded. The first dying declaration is at Exh. 26/1. This dying declaration was recorded by PW 9 ASI Domare. This dying declaration was treated as FIR. Thereafter investigation commenced. The second dying declaration (Exh. 24/1) was recorded by PW 7 Police Constable Gaikwad. Chandrakala expired on 21.6.2007. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellants along with co-accused Jairam Patil under Sections 302 and 498-A read with Section 34 of IPC. The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced both the appellants as stated in para 1 above, hence, this appeal. It may be stated here that the learned Judge acquitted original accused no.2 Jairam Patil of the offences under Sections 302 and 498-A of IPC.

4 We have heard the learned counsel for the appellants and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the prosecution has proved its case against appellant no.1 - Damodar Patil only for the offence under Section 302 IPC.

5 The conviction is mainly based on two dying declarations Exhs. 24/1 and 26/1. Dying declaration Exh. 24/1 was recorded by PW 7 Police Constable Gaikwad and dying declaration Exh. 26/1 was recorded by PW 9 ASI Domare. The dying declaration Exh. 26/1 was recorded first in point of time and it was treated as FIR. In relation to dying declaration Exh. 26/1 PW 9 ASI Domare who recorded it, has stated that he received message from rural hospital Mokhada that one lady who had sustained burn injuries, was admitted in the hospital, hence, he went to the rural hospital Mokhada at about 12.00 noon. When he reached there, he was told that patient has to be immediately taken to Nashik civil hospital, hence, he returned back to the police station. On the next day, he went to the Nashik civil hospital. He met Dr. Patil (PW 8). He requested Dr. Patil to examine patient Chandrakala. Doctor examined Chandrakala and gave an endorsement that she was conscious and was able to give a statement. In the presence of Medical Officer, PW 9 ASI Domare recorded the dying declaration of Chandrakala. In this dying declaration, Chandrakala has stated that her marriage took place with

appellant no.1 about five months prior to the incident. In the marriage, Rs.8000/- was given by her father-in-law to her mother to meet the marriage expenses. Some days after the marriage, her father-in-law Jairam and husband Damodar started continuously asking her to go to her mother and bring back Rs.8000/-. As the amount was not paid by her mother, she was ill-treated and harassed by her husband and in-laws . Thereafter on 18.6.2007 at about 11 a.m. her husband poured kerosene on her and set her on fire. At that time, her mother-in-law was present.

6 PW 7 police constable Gaikwad recorded the second dying declaration. This dying declaration was recorded on 19.6.2007. Police constable Gaikwad has stated that he was informed that patient Chandrakala was admitted in Nashik civil hospital with 90% burn injuries. He then gave a letter to the Medical Officer on duty as to whether the patient was conscious and able to give a statement. The Doctor gave his endorsement that the patient was conscious. Thereafter police constable Gaikwad recorded the statement of Chandrakala. Chandrakala told him that in order to meet her marriage

expenses, her father-in-law had given Rs.8000/- to her mother. She has further stated that thereafter they started pressing for the refund of the money and additional amount of Rs. 1 lakh. As the amount was not refunded, she was assaulted. She has further stated that her husband (appellant no.1) poured kerosene on her and set her on fire.

7 PW 8 Dr. Patil is the doctor who examined Chandrakala before dying declarations were recorded and thereafter gave endorsement that she was in a fit condition to give a statement. Thereafter PW 9 ASI Domare and PW 7 police constable Gaikwad recorded the dying declarations.

8 In addition, the prosecution is relying on three oral dying declarations, the first one was made to PW 1 Sulabai who is the mother of Chandrakala, second oral dying declaration was made to PW 2 Murlidhar who is the maternal uncle of Chandrakala and third dying declaration was made to PW 3 Devidas who is the brother of Chandrakala. PW 1 Sulabai has stated that at the time of settlement of the marriage, Jairam (original accused no.2) told her that he would pay Rs.8000/- to

her to meet the marriage expenses of Chandrakala and thereafter she should return the said amount back to him. After taking Rs.8000/- from Jairam, Sulabai performed the marriage of Chandrakala. After the marriage, when Chandrakala met her, she complained that she was being ill-treated as Rs.8000/- was not returned. She also complained that she was being beaten. Sulabai has further stated that on 18.6.2007 she received a message on telephone that Chandrakala had sustained burn injuries and she was taken to civil hospital at Nashik. She found that Chandrakala had sustained burn injuries. On enquiry, Chandrakala told her that in the morning, her father-in-law quarreled with her and left the house and at about 11 a.m. her husband poured kerosene on her and set her on fire. She further stated that even though her mother-in-law was present, her mother-in-law made no attempt to save her. Chandrakala told Sulabai that she extinguished the fire by pouring water on her person.

9 Ms. Dandekar submitted that as far as appellant no.2 Gangubai is concerned, Sulabai has stated that Chandrakala told her that after her husband set her on fire, though her

mother-in-law was there, she made no attempt to save her. However, this averment in relation to the mother-in-law i.e. appellant no.2 Gangubai, is found to be an omission. In paragraph 7 of the evidence of PW 1 Sulabai, she has admitted that she had not stated to the police that Chandrakala told her that her mother-in-law made no attempt to save her.

10 PW 2 Murlidhar has stated that on 18.6.2007 they received a message on telephone that Chandrakala had sustained burn injuries and was admitted in the hospital at Nashik. When they reached the hospital, they found that Chandrakala had sustained burn injuries. Chandrakala told them that in the morning her father-in-law quarreled with her and left the house. Thereafter her husband poured kerosene on her and set her on fire. Though her mother-in-law was present, she did not do anything. Chandrakala told him that because of non-refund of amount of Rs.8000/-, her husband and mother-in-law set her on fire.

11 PW 3 Devidas is the third witness who has deposed about the oral dying declaration of Chandrakala. He has stated

that on 18.6.2007 he received a message on telephone that Chandrakala had sustained burn injuries and was admitted in the civil hospital at Nashik. When they went to the hospital, Chandrakala told him that for non-refund of amount of Rs.8000/-, her husband and mother-in-law set her on fire.

12 Ms. Dandekar pointed out that according to PW 2 Murlidhar, Chandrakala told him that her husband set her on fire and her mother-in-law was present there, but she did nothing, however, the cross-examination of PW 2 Murlidhar shows that the averment that "mother-in-law of Chandrakala was present" is an improvement. Thus, as far as appellant no.2 Gangubai being present at the spot is concerned, we find no incriminating evidence against appellant no.2 Gangubai in the evidence of PW 1 Sulabai and PW 2 Murlidhar.

13 As far as the evidence of PW 3 Devidas is concerned, Ms. Dandekar pointed out the averment of Devidas in examination-in-chief that for non-refund of amount of Rs.8000/-, her husband and mother-in-law set her on fire is an improvement. Besides this averment in examination in chief,

we find nothing more in the evidence of PW 3 Devidas which implicates any of the accused persons. Thus, it is seen that as far as the involvement of appellant no.2 Gangubai is concerned, the evidence of PW 1 Sulabai, PW 2 Murlidhar or PW 3 Devidas cannot be relied upon on account of material improvements made by them in their examination-in-chief in relation to appellant Gangubai. Even as far as two dying declarations Exhs. 24/1 and 26/1 are concerned, in Exh. 24/1 Chandrakala has not stated specifically about any role being played by her mother-in-law in the incident. As far as dying declaration Exh. 26/1 is concerned, Chandrakala has only stated that at the time of incident, her mother-in-law was present, beyond that, in relation to appellant no.2 Gangubai, Chandrakala has not stated anything. Looking to all the above facts, it is difficult to hold that appellant no.2 Gangubai had played any part in the incident of setting Chandrakala on fire. However, as far as appellant no.1 Damodar is concerned, two dying declarations Exhs. 24/1 and 26/1 and the evidence of PW 1 Sulabai and PW 2 Murlidhar shows the involvement of appellant no.1 Damodar in setting Chandrakala on fire.

14 Both the appellants have also been convicted under Section 498-A read with Section 34 of IPC. As far as PW 1 Sulabai, PW 2 Murlidhar and PW 3 Devidas are concerned, Sulabai speaks only of ill-treatment to Chandrakala as the amount of Rs.8000/- was not returned by Sulabai to the father of appellant no.1. Sulabai has not given any specific instances of ill-treatment. The averments in relation to ill-treatment are found to be vague. It is pertinent to note that PW 2 Murlidhar also states that Chandrakala complained to them against the accused that they ill-treated her and used to abuse and beat her on account of non-refund of amount of Rs.8000/-, however, this averment in relation to ill-treatment and harassment is also found to be blissfully vague. Not one specific instance has been stated by Murlidhar in relation to ill-treatment and harassment to Chandrakala. As far as the evidence of PW 3 Devidas is concerned, he does not state about any specific instance of ill-treatment or harassment by any of the accused persons to Chandrakala.

15 As stated earlier, there are two dying declarations of Chandrakala on record i.e. Exh. 24/1 and Exh. 26/1. In Exh.

24/1 Chandrakala has stated that her father-in-law was demanding the amount of Rs.8000/- which he had given to her mother. Demand was also made for Rs.1 lakh and as the amount was given, she was mentally and physically harassed and ill-treated. Here new story has been introduced of the demand of Rs.1 lakh which is not there in the dying declaration Exh. 26/1 nor have PW 1 Sulabai, PW 2 Murlidhar and PW 3 Devidas who are mother, maternal uncle and brother of Chandrakala, stated about demand of Rs.1 lakh. None of these witnesses have made any reference to any demand of Rs. 1 lakh. On the other hand, all the three witnesses only speak of demand of Rs.8000/- which was given by the father of appellant no.1 to PW 1 Sulabai with the understanding that the amount was to be returned back to the father of appellant no.1. In such case, we find it difficult to believe that a demand of Rs.1 lakh was also made by any of the accused persons. In relation to the offence under Section 498-A, according to the prosecution, there was ill-treatment and harassment to Chandrakala as the amount of Rs.8000/- which was lent by the father of appellant no.1 Damodar to Sulabai the mother of Chandrakala, was not being returned by Sulabai. Thus, it is

clear that the accused persons were asking for return of the amount which had been lent by them to the mother of Chandrakala. Moreover, as far as the evidence relating to ill-treatment and harassment is concerned, it is found to be blissfully vague and no specific instances have been stated either by the deceased or by any of the witnesses. Looking to all these facts, we are of the opinion that Section 498-A of IPC would not be attracted.

16 It is the prosecution case that appellant no.1 Damodar set Chandrakala on fire, due to which, she died. The medical evidence also supports the same. The evidence of PW 5 Dr. Shimpi who conducted the post-mortem, shows that Chandrakala had sustained 90% superficial to deep burn injuries and all the injuries were ante-mortem and all these injuries were sufficient to cause the death of Chandrakala.

17 On going through the evidence on record, we are of the opinion that the prosecution has proved its case beyond reasonable doubt in relation to the offence under Section 302 of IPC only in relation to appellant no.1 Damodar. As far as the

offence under Section 498-A read with Section 34 of IPC is concerned, the prosecution has not proved its case against both the appellants. Hence, the following order is passed.

ORDER

- (1) The conviction and sentence under Section 302 of IPC imposed on appellant no.1 Damodar Patil vide judgment and order dated 28.8.2009 in Sessions Case No. 433 of 2007 passed by the learned 3rd Additional Sessions Judge, Thane, is confirmed. However, he is acquitted of the offence under Section 498-A of IPC.
- (2) The conviction and sentence under Sections 302 and 498-A of IPC imposed on appellant no.2 Gangubai Patil is set aside. She is acquitted thereunder. She is on bail. Her bail bonds shall stand canceled.
- (3) Appeal is partly allowed in above terms.
- (4) Office to communicate this order to appellant no.1 through the concerned Jail Superintendent.
- (5) We quantify legal fees to be paid to Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5,000/-.

A.S.GADKARI, J.

ACTING CHIEF JUSTICE

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment.