

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 33 OF 2006

1. Vijay s/o Goroba Shinde,
Age : 24 years, Occu. Agri.
2. Goroba s/o Baliram Shinde,
Age : 61 years, Occu. Agri.,
3. Dwarkabai w/o Goroba Shinde,
Age : 41 years, Occu. Agri.
4. Sarika w/o Maruti Chavan,
Age : 26 years, Occu. Household
5. Dipali d/o Goroba Shinde,
Age : 19 years, Occu. Student

Accused Nos. 1 to 3 and 5
are r/o Rajeshnagar, Dhoki,
Tq. And District Osmanabad
and accused No. 4 is r/o
Ruibhar, Taluka and District
Osmanabad

**APPELLANTS
(Orig. Accused)**

VERSUS

The State of Maharashtra

**RESPONDENT
(Prosecution)**

Mr. Satej S. Jadhav, Advocate for the appellants
Mr. S.D. Ghayal, A.P.P. for the Prosecution/State

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

JUDGMENT RESERVED ON : 22nd SEPTEMBER, 2017
JUDGMENT PRONOUNCED ON : 29th SEPTEMBER, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Heard the learned counsel for the appellants and the learned A.P.P., representing the State/ Prosecution.

2. The appellants have impugned their conviction and sentence for the offences punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code ("IPC", for short), recorded in Sessions Case No. 83 of 2004 by the learned 1st Adhoc Additional Sessions Judge, Osmanabad on 7th January, 2006.

3. Appellant No.1 is the husband of the deceased Lata. Their marriage was performed in the month of March, 2002. Appellant No. 2 is the father-in-law, appellant No. 3 is the mother-in-law, while appellant Nos. 4 and 5 are the sisters-in-law of the deceased Lata. The deceased Lata sustained 94% of burns on various parts of her body when she was residing in her matrimonial house on 24th May, 2004 at about 6.00 a.m. She was admitted in the Civil Hospital at Osmanabad for treatment where she succumbed to her injuries on 11th June, 2004.

4. It is the case of the prosecution that the appellants were demanding 3 to 4 tolas of gold from her maternal home and in order to compel the deceased Lata to fulfill their demand, used to subject her to cruelty. Ultimately, on 24th May, 2004, at about 06.00 a.m., appellant No. 4 caught hold of the deceased Lata and poured kerosene on her person, while appellant No. 5 ignited a matchstick and set the deceased Lata on fire. At that time, appellant No. 3 was standing outside the door of the house so as to restrain the deceased Lata from running out of the house. Appellant No. 1 was standing outside the house after latching the door from outside. Appellant No. 2 was in another room to ensure that the deceased Lata should not run away through the another room. The deceased Lata raised shouts. The neighbours gathered there. At that time, all the appellants pretended that they were extinguishing fire. The deceased Lata was taken to the Civil Hospital at Osmanabad by appellant No. 2.

5. The father of the deceased Lata namely Raosaheb Laxman Jagtap, resident of Parali lodged FIR against the appellants in Police Station, Dhoki on 25th May, 2004. On the basis of that FIR, Crime No. 53 of 2004 came to

be registered against them for the offences punishable under Sections 307 and 498-A read with Section 34 of the IPC. The investigation followed. The spot panchanama was prepared. The burnt pieces of the clothes of the deceased Lata came to be seized.

6. The dying declaration of the deceased Lata was recorded by PHC Naikwadi of Police Station, Osmanabad on 24th April, 2004 between 11.30 a.m. and 12.00 noon. The parents of the deceased Lata met her in the Civil Hospital, Osmanabad on that day at about 5.30 p.m. The deceased Lata gave oral dying declaration before them, alleging that the appellants set her on fire. Similar oral dying declarations were made by her before her sister Shivkanya and maternal uncle Rajabhau (PW4). Her dying declaration was recorded by Mulla (PW8), who was serving as a Senior Clerk in the Civil Court at Paranda and was empowered to work as a Special Judicial Magistrate, on the same day between 6.45 p.m. And 7.20 p.m.

7. After the death of Lata on 11th June, 2004, the offence punishable under Section 302 of the IPC came to be substituted for the offence punishable under Section 307 of the IPC.

8. The inquest panchanama of her dead-body was prepared. Her dead-body was subjected to post-mortem. The Medical Officers opined that Lata died of shock due to burns.

9. Statements of witnesses were recorded. After completion of the investigation, the Investigating Officer chargesheeted the appellants for the above mentioned offences.

10. The learned Trial Judge framed charges against the appellants for the above mentioned offences vide Exh-15 and explained the contents thereof to them in vernacular. The appellants pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication. According to them, the deceased Lata sustained burns accidentally.

11. The prosecution examined ten witnesses to establish guilt of the appellants for the above mentioned offences. After evaluating their evidence, the learned Trial Judge found that the prosecution proved guilt of the appellants for the above mentioned offences beyond reasonable doubt. The learned Trial

Judge, therefore, convicted them for the said offences and sentenced each of them to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/- in respect of the offence under Section 498-A read with Section 34 of the IPC and to suffer imprisonment for life and to pay a fine of Rs. 500/- in respect of the offence under Section 302 read with Section 34 of the IPC.

12. The learned counsel for the appellants submits that there is no direct evidence to connect the appellants with the alleged offences. The case of the prosecution is entirely based on the dying declaration (Exh-44) recorded by Mulla (PW8) and the oral dying declarations brought through the evidence of Raosaheb (PW1), Shashikala (PW2), Shivkanya (PW3) and Rajabhau (PW4) i.e. the father, mother, sister and maternal uncle, respectively of the deceased Lata. He submits that after the incident, the deceased Lata was brought to the Civil Hospital at Osmanabad by appellant No.2. The dying declaration of the deceased Lata was recorded on that day between 11.30 a.m. and 12.00 noon by PHC Naikwadi of Police Station, Osmanabad, in question-answer form. In that dying declaration, she

specifically stated that she sustained burns accidentally while clearing spider-nets attached to the house. She stated that appellant Nos.2 and 3 extinguished the fire that was on her person. She stated that since appellant No.1 was not keeping good health, appellant Nos.3 to 5 used to ask her to reside at her maternal house for some days. She specifically stated that she had no complaint to make against anybody. The learned counsel further submits that after the parents of the deceased Lata met her in the hospital along with Advocate Khot, who was their relative, they instructed the deceased Lata as to how and what she should state. He submits that because of the tutoring of the deceased Lata by her parents and Advocate Khot, she gave contradictory version in her dying declaration recorded by Mula (PW8). The said dying declaration and her oral dying declarations allegedly made before Raosaheb (PW1), Shashikala (PW2), Shivkanya (PW3) and Rajabhau (PW4), who are interested witnesses, being not made voluntarily, cannot be believed. He submits that the inconsistent dying declarations given by the deceased Lata before Mulla (PW8) and PHC Naikwadi, in the circumstances of the case, cannot be believed.

13. The learned counsel further submits that there is nothing on record to show that the deceased Lata sustained injuries because of pouring of kerosene. There is no Chemical Analyst's report to show that there were traces of kerosene on her burnt clothes. No kerosene container or matchbox has been seized from the house of the appellants.

14. The learned counsel submits that the FIR (Exh-26) was lodged against the appellants at the instance of Advocate Khot after having discussions with him. It cannot be considered to seek corroboration to the version of Raosaheb (PW1).

15. He submits that the evidence of the witnesses about the alleged illtreatment meted out to the deceased Lata being hearsay, cannot be relied on. Moreover, there is nothing on record to show that the deceased Lata was subjected to cruelty as explained under Section 498-A of the IPC. According to him, the learned Trial Judge did not appreciate the evidence of the prosecution correctly and properly and wrongly convicted the appellants.

16. As against this, the learned A.P.P. submits

that PHC Naikwadi, who is stated to have recorded the dying declaration (Exh-56) of the deceased Lata, has not been examined. Therefore, dying declaration (Exh-56) cannot be said to have been proved. Consequently, the said dying declaration would not come to the rescue of the appellants. He submits that there is no medical evidence to show that the deceased Lata was in a fit state of mind to give statement at the time of recording the dying declaration (Exh-56). On this count also, the said dying declaration cannot be said to be believable. He submits that the dying declaration (Exh-44), recorded by Mulla (PW8), after getting it verified from the Medical Officer that the deceased Lata was in a fit condition to give statement, inspires great confidence. It is corroborated by the oral dying declarations of the deceased Lata given before her parents, sister and maternal uncle. From the evidence of these witnesses, it is clear that the deceased Lata was being subjected to cruelty by the appellants in connection with their unlawful demand for gold. The dying declaration of the deceased Lata, recorded by Mulla (PW8), being voluntary and truthful, has been rightly believed by the learned Trial Judge. The learned Trial Judge rightly appreciated the evidence of the witnesses, coupled with the dying

declaration (Exh-44) and rightly convicted the appellants for the above mentioned offences.

17. API Ranjankar (PW55) deposes that he was assigned investigation into the present case. It has come in his cross-examination that he received two dying declarations of the deceased Lata. The first dying declaration (Exh-56) was received by him on 26th May, 2004 from the P.S.O., who was on duty. Since genuineness of the said dying declaration was admitted by the appellants, it was marked exhibit and admitted in evidence. The contention of the learned A.P.P. that because PHC Naikwadi, who recorded the dying declaration (Exh-56) was not examined, this dying declaration cannot be said to have been proved, is not at all acceptable. The person, who records the dying declaration, is required to be examined before the Court in order to establish that the deceased was in a fit state of mind to give statement when it was recorded. Whatever narration of the facts recorded by him cannot be contradicted since the deceased would not be available. When the defence side accepts that the dying declaration was recorded when the deceased was in a fit state of mind and that it was recorded as per her/his say, it

would not be necessary to examine the person who recorded that dying declaration. The person who records the dying declaration is not supposed to depose before the court in verbatim as to what had been stated before him by the deceased. He would simply depose about fitness of the deceased to give statement and the procedure that was followed by him in recording the dying declaration. He would state that whatever was stated by the deceased, has been correctly recorded by him. Section 58 of the Evidence Act states that the facts admitted need not be proved. If the defence side admits the dying declaration (Exh-56), in our view, the examination of the person who records the dying declaration would not be necessary.

18. The learned A.P.P. relied on an unreported judgment in the case of **Deorao s/o Sonbaji Bhalerao and another Vs. The State of Maharashtra (Criminal Appeal No. 103 of 2003)**, decided by the Nagpur Bench of this Court on 30th June, 2008, on the point of proof of dying declaration through the person who records it. As stated above, in the present case, the dying declaration (Exh-56) has been admitted by the defence side and therefore, it would not be necessary to examine the

person who recorded it for its formal proof. Thus, this judgment would be of no help to the prosecution in the present case.

19. The dying declaration (Exh-56) is in question-answer form. Dr. Sow R.N. Mane has certified that the deceased Lata was fully conscious and in a condition to give statement when the said dying declaration was recorded. The said certificate is annexed to the dying declaration (Exh-56). It has come in the evidence of Dr. Karanjkar (PW9) that Dr. Sow R.N. Mane was the Medical Officer, attached to Civil Hospital, Osmanabad. From the certificate issued by Dr. Mane, it is clear that the deceased Lata was in a fit state of mind to give statement when the dying declaration (Exh-56) was recorded. From the answers given by the deceased Lata to the questions put to her also, it would be clear that she was in a fit state of mind to give statement. In answer to question No.13, she replied that on 24th May, 2004 at about 6.00 a.m., when she was clearing the spider-nets attached to the house, she got burnt but did not know as to how she got burnt. In answer to question No.15, she replied that appellant Nos.2 and 3 placed quilt on her person and extinguished the fire. In

answer to question No.16, she states that appellant Nos.2 and 3 took her to the hospital for treatment. In answer to question No.10, she states that since appellant No.1 was not keeping good health, appellant Nos.3 to 5 were asking her to reside at her maternal home i.e Dhoki for some days. In reply to question No.17, she states that respondent Nos.3, 4 and 5 were of the view that she should not reside at Dhoki, but she added that she has no suspicion or complaint against anybody. The dying declaration (Exh-56), thus, does not connect appellant Nos.1 to 5 with the alleged incident of setting aside the deceased Lata on fire by them. The deceased Lata did not at all attribute any overt act against the appellants which would incriminate them.

20. The second dying declaration has been recorded by Mulla (PW8) (Exh-47) on 24th May, 2004 between 6.45 p.m. and 7.20 p.m. It is in narrative form and not in question-answer form. From the evidence of Mulla (PW-8) and Dr. Waghmare (PW7) (Exh-43), it seems that the deceased Lata was conscious, oriented and in a condition to give statement when the dying declaration (Exh-44) was recorded. In that dying declaration, it is stated that the appellants treated the deceased Lata properly

for about one and half month after the marriage and thereafter started to illtreat her. They withdrew all the ornaments which were on her person. They were asking her to bring ornaments from her parents. She sent a chit to her father since she was being illtreated by the appellants. Thereafter, her father took her to Parali (i.e. her maternal home). She resided there for 7 to 8 months. Thereafter, appellant No. 1 assured that he would treat her properly and took her to his house after obtaining her signatures on some papers in the Court at Osmanabad. She then states that on 24th May, 2006, at about 6.00 a.m., appellant Nos. 2 to 5 brought a kerosene container (dabba) from the hosue of appellant No.4 Sarika, appellant Nos. 4 and 5 latched the door from inside, appellant No.3 stayed near the middle door, appellant No. 1 was outside the house, appellant No.2 had latched the door from outside. Appellant Nos. 4 and 5 jointly poured kerosene on her person and set her on fire by matchstick. Then all of them rushed outside the the room. She raised shouts. The neighbours gathered there. Appellant Nos. 1, 2, 4 and 5 broke down the outer door of the house to make a show that she herself had latched the door from inside for setting herself ablaze. Then they placed blanket on her person and poured water

as well to extinguish the fire. On the say of the neighbours, she was brought to the hospital. She alleged that all the appellants collectively set her on fire.

21. The learned Trial Judge, in paragraph No.42 at page 30 of the impugned judgment, has reproduced the principles of law relating to the dying declaration, laid down in ***Khushal Rao Vs. State of Bombay AIR 1958 SC 22***, which read as under:-

“(1) That it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated.

(2) That each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made.

(3) That it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence.

(4) That a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence.

(5) That a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human

character, and

(6) That in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances, like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control, that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

22. The dying declaration (Exh-44) as well as the oral dying declarations of the deceased Lata coming through the evidence of her parents, sister and maternal uncle will have to be tested on the touchstone of the above mentioned principles of law.

23. Raosaheb (PW1) (Exh-25), the father of the deceased Lata states that his wife Shashikala (PW2) and himself reached the Civil Hospital, Osmanabad at about 5.30 p.m. on 24th May, 2004 to see the deceased Lata. It has come in the cross-examination of Shashikala (PW2) and also that of Shivkanya (PW3) (Exh-28), the sister of the deceased Lata, that Advocate Ajit Khot of Osmanabad is their relative. Raosaheb (PW1) initially, in

paragraph No.9 of his deposition, denies that he knows Advocate Ajit Khot and his family members. However, in the next breath, he states that he knows Advocate Ajit Khot and states that the said Advocate Khot was present in the court hall when his evidence was recorded. He then states that he met Advocate Ajit Khot. He further states that since Advocate Ajit Khot was his relative, his wife Shashikala (PW2) and himself discussed with Advocate Ajit Khot about the incident. Thereafter, Advocate Ajit Khot visited the Civil Hospital along with them. They met the deceased Lata in the Civil Hospital. They instructed her as to how and what to state. He further states that Shashikala (PW2) and himself were in the Civil Hospital, Osmanabad for 19 days from 5.30 p.m. of 24th May, 2004. During that period, he was visiting the house of Advocate Ajit Khot for taking food, etc. He specifically states that when a person came to record the statement of the deceased Lata, Advocate Ajit Khot, Shashikala (PW2) and himself were present there. Then on the next day, at about 11.00 a.m. to 11.30 a.m., Advocate Ajit Khot and himself went to the Police Station to lodge FIR (Exh-26). He then specifically states that he had discussions as to what report should be lodged.

24. If the above evidence of Raosaheb (PW1) is considered, it would be clear that the deceased Lata was tutored by Advocate Ajit Khot, Shashikala (PW2) and Raosaheb (PW1) as to what she should state about the incident. These persons were present when the dying declaration (Exh-44) was recorded by Mulla (PW8), as has been stated by Raosaheb (PW1) himself. In the circumstances, the dying declaration (Exh-44) of the deceased Lata recorded by Mulla (PW8) cannot be said to have been made voluntarily. If that be so, the oral dying declarations of the deceased Lata coming through the evidence of Raosaheb (PW1), Shashikala (PW2), Shivkanya (PW3) and Rajabhau (PW4), who are interested witnesses, on the lines the dying declaration (Exh-44) cannot be believed. It is quite clear that Raosaheb (PW1), Shashikala (PW2) and Advocate Ajit Khot made the deceased Lata to change her version that was recorded in her dying declaration (Exh-56) and instructed her to implicate the appellants. The dying declaration (Exh-44), which is not only inconsistent with her earlier dying declaration (Exh-56), but also is the result of tutoring by the interested witnesses, i.e. her parents and Advocate Ajit Khot. Such a dying declaration cannot

be held to be trustworthy and cannot be believed. The learned Trial Judge did not properly appreciate the facts under which the dying declaration (Exh-44) came to be recorded and wrongly believed the same as truthful.

25. Once the dying declaration (Exh-44) and the evidence of Raosaheb (PW1), Shashikala (PW2), Shivkanya (PW3) and Rajabhau (PW4) about the oral dying declarations of the deceased Lata, are discarded, the appellants cannot be connected with the incident in question. Consequently, the dying declaration (Exh-56) recorded by PHC Naikwadi, first in point of time, wherein the deceased Lata did not state that the appellants set her on fire, being probable, will have to be accepted and accordingly accepted.

26. There is no positive and dependable evidence on record to establish that the appellants were demanding gold ornaments from the parents of the deceased Lata. The appellants have not been prosecuted for or charged with the offences punishable under Sections 306 or 304-B of the IPC. Therefore, the presumptions under Sections 113-A or 113-B of the Evidence Act would not be applicable to the facts of the present case. There are five appellants. Appellant No.4 was not residing

jointly with Appellant Nos.1 to 3 and 5. It is not the case of the prosecution that any particular appellant only was in the company of the deceased Lata at the time of the incident. Therefore, the burden as provided in Section 106 of the Evidence Act also cannot be placed on any particular appellant to explain the circumstances under which the deceased Lata was caught by fire. Moreover, in view of her dying declaration (Exh-56), no such burden can be placed on any of the appellants to explain those circumstances.

27. The genuineness of the contents of the post-mortem report (Exh-31) have been admitted on behalf of the appellants. Column No.17 thereof shows that the deceased Lata had sustained 94% of burns on various parts of her body. The said burns were ante-mortem. Except those burns, no injuries were noticed on her person. The Medical Officer opined that she died of shock due to burns.

28. Dr. Karanjkar (PW9) (Exh-50) and one Dr. P.R. Kulkarni had conducted the post-mortem of the deceased Lata. Dr. Karanjkar (Pw9) states that on 24th May, 2004 at about 7.45 a.m., appellant No. 2 brought the deceased Lata to the Civil Hospital at Osmanabad for medical

treatment as she had sustained burns. He examined her and found that she had sustained 90% of burns. He got her admitted in burns ward and extended medical treatment. He produced the case-papers (Exh-52) in respect of the deceased Lata. He admits that he did not record anywhere in the case-papers that the deceased Lata or her clothes were smelling of kerosene. He admits that one may sustain burns by coming into contact with the flames of an electric oven. He further admits that he cannot state with certainty that the burn injuries found on the body of the deceased Lata were caused by pouring kerosene on her person and setting her on fire.

29. Gautam (PW5) (Exh-33), who happened to be the panch to the panchanama (Exh-34) in respect of the spot of the incident, states that small pieces of saree were noticed on the spot of the incident. However, the said cloth pieces have not been seized by PHC Shinde (PW6) (Exh-35), who prepared the spot panchanama (Exh-34). The said cloth pieces certainly would have been helpful to the prosecution to prove that kerosene was poured on the person of the deceased Lata for setting her on fire. Had those cloth pieces been subjected to chemical

analysis, traces of kerosene certainly would have been noticed thereon. There is absolutely nothing on record to show that the clothes of the deceased Lata, which were on her person at the time of the incident, were seized and sent to the Chemical Analyst for analysis and report. Thus, the material evidence, which could have been collected and produced by the prosecution to establish that kerosene was poured on the person of the deceased Lata at the time of the incident, has not been collected and produced by the prosecution without any reason. With this deficiency, the evidence of Dr. Karanjkar (PW9) that he cannot state with certainty that the deceased Lata sustained burn injuries because of setting her on fire after pouring kerosene on her person, certainly would create a great doubt about the cause of the injuries sustained by her as has been assigned by the prosecution. Thus, the medical evidence does not show it positively and clinchingly that the deceased Lata sustained burns due to her setting on fire after pouring kerosene.

30. The prosecution, thus, failed to establish that the death of deceased Lata was homicidal and that the appellants set her ablaze leading to her death. If that

be so, in view of the judgments in the cases of ***Inderpal Vs. State of M.P. (2001) 10 SCC 736***, cited by the learned counsel for the appellants before the Trial Court, the evidence of Raosaheb (PW1), Shashikala (PW2) and Shivkanya (PW3) in respect of the alleged illtreatment meted out to the deceased Lata, which, according to them, was narrated by her when she had been to her maternal home, being hearsay, would not be admissible to prove that she was subjected to cruelty since it would not come within the ambit of sub-section (1) of Section 32 of the Evidence Act. The same principle of law has been followed in the case of ***Bhairon Singh Vs. State of Madhya Pradesh (2009) 13 SCC 80***.

31. The learned Trial Judge relied on the evidence of Rajabhau (PW4) (Exh-29) to hold the appellants guilty of the offence punishable under Section 498-A of the IPC. It has come in his evidence that once he took the deceased Lata to the house of the appellants. All the appellants were present there. They asked Lata whether she had brought gold and quarreled with her. He convinced all of them and after leaving the deceased Lata at their house, went away. According to him, the

said incident took place prior to about five days of the incident of burning. Here, it would be necessary to refer to the Explanation given under Section 498-A of the IPC, which reads as under:-

"Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

32. Even if the evidence of Rajabhau (PW4) is accepted as it is, it would not meet the requirements of "cruelty", as contemplated under Section 498-A of the IPC. Moreover, the evidence of Rajabhau (PW4) is very vague, general and omnibus. It does not appear to be natural and probable that all the appellants would ask the deceased Lata simultaneously whether she brought gold and then would quarrel with her in the presence of Rajabhau (PW4). The word "quarrel", used by Rajabhau (PW4) is very vague and general. There is absolutely nothing in his evidence to show that the deceased Lata

was either beaten or mentally tortured by all the appellants or either of them, in such a way that it would amount to cruelty as explained under Section 498-A of the IPC. The learned Trial Judge has wrongly relied on the evidence of Rajabhau (PW4) to connect the appellants with the offence punishable under Section 498-A of the IPC.

33. Considering the above facts and circumstances of the case, we are of the view that the learned Trial Judge did not appreciate the facts of the case as well as the evidence on record correctly and properly and wrongly convicted the appellants. The impugned judgment and order are liable to be quashed and set aside. The appellants deserve to be acquitted. In the result, we pass the following order:-

O R D E R

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment and order dated 7th January, 2006 are quashed and set aside.
- (iii) The appellants are acquitted of the offences punishable under Sections 302 and 498-A of the Indian

Penal Code.

(iv) The bail bonds of the appellants are cancelled.
They are set at liberty.

(v) The fine amount, deposited by the appellants,
be refunded to them.

(vi) The appeal is accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

npj/criapl33-2006