

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

CRIMINAL APPEAL NO.186 OF 2006

1. Kashinath Bhata Dhangar,
Age : 32 years,
2. Bhata Shrawan Dhangar, (abated)
Age : 57 years
3. Sanjay Bhata Dhangar,
Age : 29 years,
4. Rekhabai alias Chandrabhagabai
Chhotu Dhangar,
Age : 28 years,
5. Sou.Jijabai Bhata Dhangar,
Age : 54 years,

All occ. Agriculture and Labour .. Appellants
All r/o. Malpur, Tq. Shindkheda, (Ori. Accused.)
Dist. Dhule

Vs.

The State of Maharashtra .. Respondent
(Prosecution)

Mr.Chaitanya C. Deshpande, Advocate i/b.Mr.C.R.
Deshpande, Advocate for appellants

Mr.S.N.Morampalle, APP for respondent

AND

CRIMINAL APPEAL NO.591 OF 2006

The State of Maharashtra,
Through Police Station Officer,
Dondaicha, Dist. Dhule ..Appellant
(Prosecution)

Vs.

Kashinath Bhata Dhangar,
Age : 28 years, Occ. Agri.,
r/o. Malpur, Tq. Shindkheda,
Dist. Dhule

.. Respondent
(Orig. accused no.1

Mr.S.N.Morampalle, APP for appellant

Mr.Chaitanya C. Deshpande, Advocate i/b.Mr.C.R.
Deshpande, Advocate for respondent

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

**RESERVED ON : NOVEMBER 24, 2017
PRONOUNCED ON : DECEMBER 08, 2017**

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

Both of the above-numbered appeals have been filed against the judgment and order dated 28.02.2006 passed in Sessions Case No.39 of 2002 by the learned III Additional Sessions Judge, Dhule. Hence, they are decided by this common judgment.

2. Criminal Appeal No.186 of 2006 has been filed by original accused nos.1 to 5 challenging their conviction and sentence for the offences punishable under Sections 306 and 498-A read with 34

of the Indian Penal Code ("I.P.C.", for short), while Criminal Appeal No.591 of 2006 has been filed by the State/prosecution assailing acquittal of the accused persons of the offence punishable under Section 302 of the I.P.C.

3. For the sake of convenience, the parties i.e. the prosecution and the accused, have been referred to by the same nomenclatures in this judgment by which they were described before the trial Court.

4. Accused no.1 is the husband, accused no.2 is the father-in-law, accused no.3 is the brother-in-law, accused no.4 is the sister-in-law, while accused no.5 is the mother-in-law of the deceased Rekhabai.

5. The deceased Rekhabai and accused no.1 got married prior to about 8 to 9 years of the incident that took place on 21.11.2001 in which she sustained burn injuries and died as a result thereof. She has begotten a daughter namely, Rupali and a son namely, Ravindra from this wedlock. The deceased Rekhabai

and accused no.1 were residing jointly with accused nos.3 to 5. It is alleged that accused no.1 used to pick up quarrels with the deceased Rekhabai to compel her to give him money for playing cards and consuming liquor. Therefore, she was residing at her maternal home, which was in the same village where her matrimonial home was i.e. Malpur, Tq. Shindkheda, District Dhule, since before 2 to 3 months of the incident.

6. On 21.11.2001, at about 12.00 noon, accused no.1 went to the maternal home of the deceased Rekhabai and took her to his house on the say that his baniyan was not found. He then poured kerosene on her person and accused no.2 set her on fire by igniting a match-stick. The deceased Rekhabai raised shouts. The other persons of the family and neighbors extinguished the fire by pouring water. She was taken to the hospital at Dondaicha, from where she was referred to the Civil Hospital, Dhule. The statement

of the deceased Rekhabai was recorded by A.S.I. Fulpagare, after getting it verified from the Medical Officer that she was in a fit condition to give statement. The said statement was treated as the First Information Report (F.I.R.) and after her demise, it assumed the character of dying declaration.

7. On the basis of that F.I.R., Crime No.89 of 2001 was registered in Police Station, Dondaicha for the offence punishable under Section 307 of the I.P.C. On the same day, dying declaration of the deceased Rekhabai was recorded by Ratnakar Vasaikar (PW 5), who was working as Awal Karkoon in Tahsil office. Rekhabai died in the hospital on the same day at 5.00 p.m. Inquest panchnama of the body of the deceased Rekhabai was prepared. Her body was sent to the Medical Officer for post mortem. Dr.Pathak and Dr.Ruikar, who conducted post-mortem, found 86% burns on the body of the deceased Rekhabai. They opined

that she died due to shock following thermal burns which were possible by pouring kerosene and setting her ablaze. After demise of Rekhabai, the offence under Section 307 of the I.P.C. came to be substituted by the offence under Section 302 of the I.P.C.

8. The statements of witnesses were recorded. The burnt pieces of saree, petticoat and blouse of the deceased Rekhabai were produced by her father, which came to be seized under a panchnama. The spot panchnama was prepared. A green coloured kerosene can, a match box of Red Horse brand and two burnt match-sticks came to be seized. Sample of kerosene was taken from that can in a bottle. The seized articles were sent to Chemical Analyst for analysis and report. After completion of the investigation, the accused came to be charge-sheeted in the Court of the learned Judicial Magistrate F.C., Dondaicha. The offence punishable under Section 302 of the I.P.C. being exclusively triable by the Court of Session,

the learned Magistrate committed the case to the Sessions Court.

9. The learned trial Judge framed Charges against the accused for the offences punishable under Sections 498-A, 323 and 302 read with 34 of the I.P.C. and also for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961. The learned trial Judge explained the contents of the Charges to the accused persons to which they pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication. According to them, the father of the deceased Rekhabai had taken a loan of Rs.45,000/-. When accused no.2 demanded back that amount, the father of the deceased Rekhabai himself set her on fire with a view to avoid repayment thereof.

10. The prosecution examined thirteen witnesses to establish guilt of the accused persons. The accused examined two witnesses in their defence.

After evaluating the evidence of the prosecution as well as that of the accused, the learned trial Judge came to conclusion that no offences punishable under Sections 302 and 323 of the I.P.C. and Section 4 of the Dowry Prohibition Act, 1961 have been established against the accused. However, the learned trial Judge found sufficient evidence on record to hold them guilty for the offences punishable under Sections 306 and 498-A read with 34 of the I.P.C. Accordingly, he convicted them and sentenced each of them to suffer rigorous imprisonment for 8 years and to pay a fine of Rs.3,000/- in respect of the offence under Section 306 of the I.P.C. and to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.750/- in respect of the offence under Section 498-A of the I.P.C.

11. The learned Counsel for the accused submits that there is neither the case of the prosecution nor the Charge has been framed against the accused to the effect that they abetted the deceased Rekhabai to

commit suicide and thereby committed an offence punishable under Section 306 of the I.P.C. There is absolutely no evidence to show that the accused abetted the deceased Rekhabai to commit suicide. Therefore, according to him, the conviction of the accused for the offence punishable under Section 306 of the I.P.C. is *ex-facie* illegal. Relying on the judgment in the case of **Sangaraboina Sreenu Vs. State of Andhra Pradesh, LEX(SC) 1997 4 54**, he submits that the offence under Section 306 of the I.P.C. cannot be said to be a minor offence in relation to the offence under Section 302 of the I.P.C. within the meaning of Section 222 of the Code of Criminal Procedure. Therefore, in the absence of the Charge for the offence under Section 306 of the I.P.C., the accused could not have been convicted for the said offence. The learned Counsel for the accused further submits that the dying declarations of the deceased Rekhabai recorded by A.S.I. Fulpagar and Awal Karkoon Ratnakar Vasaikar are not believable. The said dying

declarations have been recorded at the instance of the father of the deceased Rekhabai. He submits that the house of the father of the deceased Rekhabai is situate in the same village in which the accused are residing. The deceased Rekhabai had gone to her maternal home. She sustained burns at her maternal home only. The burnt pieces of her clothes were produced by her father since she had sustained burns at his house. However, the accused have been falsely implicated with a view to avoid repayment of Rs.45,000/- to accused no.2, which was borrowed by the father of the deceased Rekhabai. The learned Counsel submits that the trial Court committed a grave error in convicting the accused for the offences punishable under Sections 306 and 498-A of the I.P.C.

12. On the other hand, the learned A.P.P. submits that the dying declarations of the deceased Rekhabai were given by her voluntarily. They are truthful. Therefore, the conviction of the accused

for the offence under Section 302 of the I.P.C. could have been based on these dying declarations, even without further corroboration. In support of this contention, he relies on the judgment in the case of **Sakhari alias Shakuntala Mundala Nayak Vs. State of Maharashtra, 2004(2) Mh.L.J.952**. The learned A.P.P. further submits that the learned trial Judge committed mistake in convicting the accused for the offence punishable under Section 306 of the I.P.C., when there is sufficient evidence to establish guilt of the accused for the offence punishable under Section 302 of the I.P.C. He, therefore, submits that the accused may be convicted for the offence punishable under Section 302 of the I.P.C. He supports conviction of the accused for the offence punishable under Section 498-A of the I.P.C.

13. In the case of **Sakhari alias Shakuntala Mundala Nayak** (supra) cited by the learned A.P.P., after considering various judgments relating to the dying declarations, it was observed in paragraph 29

of the judgment by the Division Bench of this Court, that there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. It is further observed that the dying declaration can be accepted even if it is not corroborated by other evidence and the Court must not look for corroboration unless it suffers from any infirmity and once the Court comes to the conclusion that the declaration is a truthful version, there is no question of further corroboration.

14. In the present case, the prosecution is relying on the written as well as the oral dying declarations of the deceased Rekhabai. Subhash (PW10) (Exh.74), who resides at a distance of about 150 to 200 meters from the house of the accused persons, deposes that on 21.11.2001 at about 12.00 noon, after hearing shouts, he went to the house of the accused. Many persons had gathered there. He found that the deceased Rekhabai was burning. He tried to extinguish

the fire by sprinkling water with the help of the other villagers. The parents of the deceased Rekhabai came there. The father of the deceased Rekhabai i.e. Murlidhar (PW 11) asked her, as to how she got burnt, whereon she told that accused no.1 and other accused were demanding money for the business of she-goats and as she did not bring that amount from her parents, her husband i.e. accused no.1 and father-in-law i.e. accused no.2 set her on fire.

15. Murlidhar (PW 11)(Exh.75), father of the deceased Rekhabai, states that since accused nos.1 to 5 used to illtreat the deceased Rekhabai with a view to compel her to bring Rs.50,000/- from him, he had brought her to his house prior to about 2 months of the incident. On 21.11.2001 at about 10.00 a.m., accused no.1 came to his house and asked the deceased Rekhabai to search out his baniyan from his house. She was not ready to go with accused no.1, however, he forcibly took her to his house. Then at about 12.00 noon to 1.00 p.m., one Devidas Bagul came to

his house and informed that all the accused beat the deceased Rekhabai, poured kerosene on her person and set her on fire. When he went to the house of the accused, he saw that the deceased Rekhabai was lying on the ground in the house. Many persons had gathered there. On being asked by him, the deceased Rekhabai told that she was beaten by accused nos.1 to 5 for money for the business of she-goats, playing cards and drinking alcohol by accused no.1. Since the said amount was not given to them, accused no.1 poured kerosene on her person and accused no.2 set her on fire.

16. A.S.I. Fulpagare (PW 9)(Exh.71) deposes that after receiving the written order (Exh.72) from the Police Station Officer of Dhule City Police Station, he went to the Civil Hospital, Dhule and after getting it verified from the Medical Officer about fit condition of Rekhabai to give statement, he recorded her statement (Exh.69) on 21.11.2001 between 5.10 p.m. and 5.30 pm. as per her say. He read over

the contents thereof to her and when she admitted them to be correct, he obtained her left hand thumb impression thereon. The Medical Officer again examined her and opined that she was in a fit condition to give the statement. The said statement has been treated as F.I.R. and after her demise, it assumed the character of dying declaration. In the said dying declaration, the deceased Rekhabai mentioned that on 21.11.2001 at about 12.00 noon, accused no.1 came to her maternal home where she was residing since before 2 to 3 months, because of the quarrel with accused no.1. He asked her to search out his baniyan from his house. He took her to his house where he poured kerosene on her person and accused no.2 set her ablaze by igniting a match-stick. She states that accused nos.3 to 5 also were present in the house. However, she did not allege anything against them.

17. Ratnakar Vasaikar (PW 5)(Exh.49), who was working as Awal Karkoon in the Tahsil Office, states

that the Tahsildar had empowered him to record dying declarations. On 21.11.2001, he received a memorandum from the police for recording dying declaration of the deceased Rekhabai. Accordingly, he went to the Civil Hospital, Dhule and after getting it verified from the Medical Officer that Rekhabai was in a fit condition to give statement, he recorded her statement as per her say, read over the contents thereof to her and when she admitted correctness thereof, he obtained her left hand thumb impression thereon. Thereafter also, the Medical Officer examined her and opined that she was in a fit condition to give statement. The said dying declaration is at Exh.56. In that dying declaration, the deceased Rekhabai states that accused no.1 used to demand money from her for playing cards and for consuming liquor, but since she was not giving money to him, he sent her to her maternal home. She then states that on 21.11.2001, accused no.1 came to her maternal home and took her to his house on the say

that his baniyan was to be traced out. Accused no.1 poured kerosene on her person and set her ablaze. She then refers to the fact that accused nos.2 to 5 were present in the house.

18. Dr.Rajput (PW 8)(Exh.68) deposes that firstly A.S.I. Fulpagare (PW 9) approached him with a request to examine the deceased Rekhabai and opine whether she was in a fit condition to give statement. Accordingly, he examined her and found that she was in a fit condition to give statement. A.S.I. Fulpagare (PW 9) recorded her dying declaration (Exh.69) in his presence. He again examined her and found that she was in fit condition to give statement. The dying declaration (Exh.69) bears his endorsement to that effect, which has been made at 5.30 p.m. on 21.11.2001. Dr.Rajput (PW 8) further states that on the same day at about 5.30 p.m., dying declaration (Exh.56) was recorded by the Executive Magistrate. At that time also, he examined the deceased Rekhabai and found that she was conscious to

give statement. Accordingly, he made endorsement under his signature on that dying declaration. The Executive Magistrate then recorded the dying declaration of the deceased Rekhabai. He then again examined her and opined that she was conscious to give statement. Accordingly, he made endorsement on the dying declarations. The dying declaration (Exh.56) bears the endorsement to that effect given by Dr.Rajput (PW 8) prior to and after recording it i.e. at 5.30 p.m. and 5.45 p.m. respectively on 21.11.2001.

19. The deceased Rekhabai was initially admitted in Cottage Hospital, Dondaicha, from where she was referred to Civil Hospital, Dhule. Dr.Rajput (PW 8) (Exh.68) deposes that the deceased Rekhabai was admitted in Civil Hospital, Dhule at 4.10 p.m. on 21.11.2001. She had sustained 88% of burn injuries. When she was admitted, she told him that she was burnt by her husband i.e. accused no.1 by pouring kerosene at about 12.00 noon. It has come in

paragraph 4 of his cross-examination that he asked history of the incident to the deceased Rekhabai when she was admitted in the hospital. He scribed that history, as stated by the deceased Rekhabai, at page 9 of the case papers and obtained her left hand thumb impression thereon. It has further come in his cross-examination that the deceased Rekhabai told him that she sustained burn injuries due to pouring of kerosene by her husband on 21.11.2001 at 12.00 noon. After recording the history of the incident in writing, Dr.Rajput (PW8) obtained thumb mark of the deceased Rekhabai thereunder. This evidence has not only remained unchallenged, but has been got confirmed by the learned Counsel for the accused in the cross-examination of Dr.Rajput (PW 8). There is nothing in the cross-examination of Dr.Rajput (PW 8) suggesting that the above-mentioned history of the incident was given by the deceased Rekhabai either at the instance of her father Murlidhar (PW 11) or anybody else. As such, the deceased Rekhabai was not

influenced by anybody at the time of giving the said statement. Since the said statement pertains to the cause of injuries sustained by her leading to her death, it is admissible under Section 32(1) of the Evidence Act, being the dying declaration. This dying declaration has been given by the deceased Rekhabai voluntarily. The contents thereof have not been challenged. There is no reason to raise suspicion about truthfulness thereof. As such, it is not only voluntary but truthful as well.

20. As stated above, there are multiple dying declarations which are inconsistent with reference to the roles attributed against accused no.2 as also against accused nos.3 to 5. Therefore, it will have to be considered as to which of these dying declarations is believable.

21. Here reference may be made with convenience to the judgment in the case of **Raju Devade Vs. State of Maharashtra AIR 2016 SC 3209**, wherein it has

been held that when there are multiple dying declarations, each dying declaration has to be considered independently on its own merits so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In the cases where there are more than one dying declarations, it is the duty of the Court to consider each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs.

22. In the case of ***Shudhakar Vs. State of M.P.*** ***AIR 2012 SC 3265***, it is observed that in the cases involving multiple dying declarations, for determining which of the various dying declarations should be believed by the Court, the test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness

of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters.

23. The the case papers (Exh.70) show that Murlidhar (PW 11) had brought the deceased Rekhabai to the Civil Hospital at Dhule. There is every possibility of his influencing the deceased Rekhabai to involve the names of the other accused persons and particularly, that of accused no.2 in the incident of burning. There is no mention in her dying declaration recorded by Dr.Rajput (PW 9) himself at page 9 of the case papers (Exh.70) as well as in the dying declaration (Exh.56) recorded by Vasaikar (PW 5), that accused no.2 actually set her ablaze by igniting a match-stick. Therefore, the oral dying declaration of the deceased Rekhabai given before Subhash (PW 10) and Murlidhar (PW 11) involving accused nos.2 to 5 as well as the written dying declaration (Exh.69)

recorded by A.S.I. Fulpagare (PW 9) involving accused no.2 or other accused persons, in the incident of burning, being not consistent with her dying declaration recorded at page 9 of the case papers (Exh.70) and dying declaration (Exh.56), will have to be discarded from consideration.

24. All the dying declarations are consistent in respect of the role played by accused no.1. The dying declaration (Exh.70) and the dying declaration (Exh.56) clearly and clinchingly disclose that accused no.1 poured kerosene on her person and set her ablaze. These dying declarations create a great confidence to the extent of the role played by accused no.1 in the incident of burning the deceased Rekhabai. So far as accused nos.2 to 5 are concerned the dying declarations of the deceased Rekhabai are not consistent to prove their involvement in the incident in question. There is no sufficient and dependable evidence to connect them with the said incident.

25. Dr.Pathak (PW 6)(Exh.62) conducted post-mortem of the body of the deceased Rekhabai on 23.11.2001 between 10.30 a.m. and 11.30 a.m.. He found the following external injuries :-

Superficial to deep thermal burns on -

Front of trunk	-	15%
Right upper limb	-	9%
Left upper limb	-	9%
Right lower limb	-	18%
Left lower limb	-	18%
Back	-	18%
External genitals and perineum	-	1%
Total	-	86%

He states that the said injuries were ante-mortem. He opined that Rekhabai died due to shock following thermal burns. He states that the said injuries were possible by pouring kerosene and setting the deceased Rekhabai ablaze. According to him, the said injuries were sufficient to cause death of a person in the ordinary course of nature.

26. Murlidhar (PW 11) states that he produced the pieces of burnt saree, petticoat and blouse of the deceased Rekhabai in Dondaicha Police Station. The said burnt clothes were seized under panchnama (Exh.48) by P.S.I. Shukla (PW 13). Though Rama (PW 3) (Exh.46) and Jatan (PW 4)(Exh.47), who happened to be the panchas to the seizure panchnama (Exh.48), turned hostile, the evidence of Murlidhar (PW 11) and P.S.I. Shukla (PW 13) coupled with the contents of panchnama (Exh.48), sufficiently prove that the said clothes were produced by Murlidhar (PW 11) and the same were seized by P.S.I. Shukla (PW 13). The said clothes were sent for chemical analysis with the letter (Exh.67) with Police Constable Sonawane (PW7). Borse (PW 12)(Exh.83), the Chemical Analyst, who examined the said clothes, found residues of kerosene thereon. Accordingly, he prepared report (Exh.86). It is, thus, clear that the deceased Rekhabai sustained burns due to pouring of kerosene on her person.

27. Popat (PW 1) is the panch to the spot of the incident from where a green coloured kerosene can, a match-box of Red Horse brand and two burnt match-sticks were seized. However, the sample of kerosene that was taken in a glass-bottle from the kerosene can was actually sent to the Chemical Analyst. Though the match-box of 'Red Horse' brand was seized under panchnama (Exh.43), the match-box of 'Super' brand was actually sent for chemical analysis. The prosecution has not explained this anomaly. Therefore, the C.A. report in respect of the sample of kerosene and match-box would not be helpful to the prosecution. However, even after discarding the said evidence, there would be no adverse effect on the case of the prosecution in view of the above-referred concrete evidence to connect accused no.1 with the incident in question.

28. The defence of accused no.1 is not at all consistent and believable. In answer to question

no.22, accused no.1 states in his examination under Section 313 of the Code of Criminal Procedure that accused no.2 had lent Rs.45,000/- to Murlidhar (PW11) for purchasing she-goats. Accused no.2 demanded back that amount from Murlidhar (PW 11), but he refused to pay the same. According to accused no.1, Murlidhar (PW 11) took the deceased Rekhabai to his house and set her on fire and filed a false case. However, Gopichand (DW 1)(Exh.104) examined by accused no.1 in his defence, states that on the day of the incident at about 12.00 noon, one boy from the lane of accused persons, came to his house and informed that Rekhabai was burnt. Therefore, he went to the house of accused no.1 along with accused nos.1, 3 and 5 and saw that the deceased Rekhabai was lying on the ground in the house of the accused. This evidence shows that the deceased Rekhabai was not at the house of Murlidhar (PW11) at the time of the incident. The defence of accused no.1 that Murlidhar (PW11), who is none other than the father of the

deceased Rekhabai, himself set her on fire is totally false and baseless.

29. From the above facts of the case as well as the evidence on record, it is clear that accused no.1 took the deceased Rekhabai to his house from the house of Murlidhar (PW 11) on 23.11.2001 and then set her on fire after pouring kerosene on her person at about 12.00 noon. There is absolutely no evidence to suggest that the deceased Rekhabai committed suicide. There is no evidence to indicate that the accused persons in any manner abetted the deceased Rekhabai to commit suicide. In paragraph 52 of the impugned judgment, the learned trial Judge observed that there are inconsistencies in the dying declarations of the deceased Rekhabai and therefore, the prosecution failed to establish beyond doubt, that the accused set the deceased Rekhabai on fire by pouring kerosene on her person. He then observed that, on the contrary, in his opinion, possibility of committing suicide by the deceased Rekhabai by pouring kerosene

on her person and setting herself on fire, cannot be ruled out and the death of Rekhabai is suicidal death. It is neither the case of the prosecution that the deceased Rekhabai committed suicide nor is there any evidence indicating that she committed suicide. Thus, the opinion of the learned trial Judge is totally contrary to the evidence. It is not only strange and baseless but perverse as well.

30. The evidence of Dr.Pathak (PW 6) shows that the injuries sustained by the deceased Rekhabai were sufficient in the ordinary course to cause death. Accused no.1 being husband of the deceased Rekhabai was under an obligation to take care and caution for safety of the deceased Rekhabai. Instead of caring for her safety, he set her ablaze causing her serious injuries, to which, ultimately, she succumbed on 22.11.2001 at 5.00 p.m. He did not try to extinguish fire from her person. He did not take her to the hospital for treatment. It is, thus, clear that accused no.1 set the deceased Rekhabai on fire with

intent to cause her death. As such, the prosecution established that accused no.1 committed culpable homicide as defined under Section 300 punishable under Section 302 of the I.P.C.

31. So far as the offence under Section 498-A of the I.P.C. is concerned, the evidence on record is not sufficient to prove guilt of the accused for the said offence. As per the evidence of Murlidhar (PW11), the deceased Rekhabai was residing at his house since before two months of the incident in question. Nobody had complained against accused no.1 including Rekhabai, prior to the date of the incident, about having subjected her to cruelty on any count. The dying declarations of the deceased Rekhabai simply refer to the quarrels between accused no.1 and herself on the count of his demand for money from her for playing cards and for consuming liquor. There is no mention that she was beaten by accused no.1 at any point of time so severely as to cause grave injury or danger to her life, limb or health or

acted in such a manner that she was likely to be driven to commit suicide. The evidence on record in respect of the alleged illtreatment prior to the date of the incident being hearsay, would not be admissible under Section 32(1) of the Evidence Act, since it does not pertain to the cause of death of Rekhabai or any of the circumstances of the transaction which resulted in her death. In the circumstances, the conviction of accused no.1 and that of accused nos.2 to 5 for the offence punishable under Section 498-A of the I.P.C. cannot be said to be legal and sustainable.

32. In view of the aforesaid discussion, we hold accused no.1 only guilty for the offence punishable under Section 302 of the I.P.C. The judgment convicting accused nos.1 to 5 for offences punishable under Sections 306 and 498-A of the I.P.C. is liable to be quashed and set aside. Criminal Appeal No.186 of 2006 filed by the accused is liable to be allowed to the extent of holding the accused persons guilty

for the offences punishable under Sections 306 and 498-A read with 34 of the I.P.C. However, Criminal Appeal No.591 of 2006 filed by the prosecution is liable to be allowed partly, since the prosecution established guilt of the respondent/accused no.1 only for the offence punishable under Section 302 of the I.P.C. only. The said appeal is liable to be dismissed against accused no.1 for the remaining offences and against the remaining accused for all the offences.

33. Though accused no.1 is liable to be convicted and sentenced for the offence punishable under Section 302 of the I.P.C., this being not the rarest of rare case, capital punishment is not warranted. Consequently, the only alternate punishment, i.e. imprisonment for life, will have to be inflicted against accused no.1 besides fine. In our view, accused no.1 should be sentenced to pay a fine of Rs.25,000/- so that some amount could be awarded to the father of the deceased Rekhabai as

compensation. In the result, we pass the following order :-

- (1) The impugned judgment and order convicting accused nos.1 to 5 for the offences punishable under Sections 306 and 498-A read with Section 34 of the Indian Penal Code are quashed and set aside. They are acquitted of the said offences. Instead, accused no.1 alone is convicted for the offence punishable under Section 302 of the Indian Penal Code.
- (2) Accused no.1 is sentenced to suffer imprisonment for life and to pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand), in default to suffer rigorous imprisonment for six months for the offence punishable under Section 302 of the Indian Penal Code.
- (3) Accused no.1 shall surrender to his bail bonds by appearing before the trial Court

within a period of two weeks from today for suffering the sentence passed against him by this order.

- (4) In case accused no.1 fails to appear before the trial Court within a period of two weeks from today, the trial Court shall issue coercive process against him for securing his presence.
- (5) If the fine amount is recovered, an amount of Rs.20,000/- (Rupees Twenty Thousand) be paid to Shri.Murlidhar Baliram Bagul, r/o. Malpur, Tq.Shindkheda, Dist. Dhule, as compensation.
- (6) Criminal Appeal No.591 of 2006 is dismissed against accused nos.3 to 5. They are acquitted of all the offences.
- (7) Bail bonds of accused nos.3 to 5 are cancelled. They are set at liberty.

(8) Both the Criminal Appeals are accordingly disposed of.

[SANGITRAO S. PATIL, J.]

[SUNIL P. DESHMUKH, J.]

kbp