

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

CRIMINAL APPEAL NO. 85 OF 2002

1. Tatyarao s/o Vithalrao Surwase,
Age : 23 years, Occu.: Labourer
- (2.) Anjanabai w/o Vithalrao Surwase, (Abated)
Age : 46 years, Occu.: Household,

Both residing at Bharaswada,
Tq. and Dist. Parbhani

**.. APPELLANTS
(Orig.Accused)**

VERSUS

State of Maharashtra

.. RESPONDENT

Mr. S.S. Rathi, Advocate for the appellants
Mr. P.N. Kutti, A.P.P. for the respondent/State

**CORAM : SANGITRAO S. PATIL, J.
DATE : 27th JULY, 2017**

ORAL JUDGMENT :

The appellants have challenged their conviction and sentence for the offences punishable under Section 498-A read with 34 of the Indian Penal Code ("IPC", for short), recorded by the learned 2nd Ad-hoc Additional Sessions Judge, Parbhani in Sessions Trial No.10 of 2001 on 08.02.2002.

2. It was alleged that on 11.12.2000 and prior to that the appellants, being the husband and mother-in-law

respectively of the deceased – Renukabai, subjected her to cruelty and abetted her to commit suicide by jumping into a well on 11.12.2000.

3. The prosecution examined five witnesses to establish guilt of the appellants for the above-mentioned offences. After evaluating the evidence of the witnesses, the learned Trial Judge held that the prosecution failed to prove that the deceased – Renukabai committed suicide. However, he held that the prosecution established guilt of the appellants for the offence of subjecting the deceased – Renukabai to cruelty made punishable under Section 498-A of the IPC. The learned Trial Judge, therefore, acquitted the appellants of the offence punishable under Section 306 of the IPC, convicted them for the offence punishable under Section 498-A of the IPC and sentenced each of them to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for one month.

4. The prosecution did not challenge the judgment and order acquitting the appellants of the

offence punishable under Section 306 of the IPC. The said part of the judgment and order passed by the learned trial Court has attained finality.

5. During the pendency of the appeal, appellant No.2 expired, hence the appeal came to be abated against her.

6. The learned counsel for the appellant No.1 submits that the prosecution has relied on the evidence of Babu (PW1) (Exh.25), Indubai (PW2) (Exh.27) and Aruna (PW3) (Exh.28), who are the father, mother and sister respectively of the deceased – Renukabai to establish that appellant No.1 subjected the deceased Reunkabai to cruelty. He submits that all these witnesses have stated about the alleged cruelty meted out to the deceased – Reunkabai, on the basis of what she had informed them whenever she had an occasion to meet them. None of these witnesses is the eye witness to the alleged illtreatment. He submits that the learned Trial Judge held that the death of the deceased – Renukabai was not suicidal. It is not the case of the prosecution that her death was homicidal. In the circumstances, relying on the

judgment in the case of **Bhairon Singh V. State of M.P. AIR 2009 Supreme Court 2603**, he submits that the statements of the father, mother and sister of the deceased – Renukabai would not be admissible in evidence to prove that the deceased– Renukabai was subjected to cruelty by appellant No.1. He submits that the learned trial Judge wrongly relied on their evidence and wrongly convicted the appellants.

7. The learned A.P.P. supported the impugned judgment and order. He submits that the evidence about the physical and mental torture of the deceased coming from the near relatives of the deceased like mother, brother etc. cannot be discarded simply on the score of absence of corroboration by independent witnesses.

8. In the case of the **Bhairon Singh** (supra), the following question arose for consideration of the Hon'ble the Apex Court, which reads as under :-

“In a case where accused has been acquitted of the offence punishable under Sections 304-B and 306, IPC, and the death of wife is neither homicidal nor suicidal but

accidental, whether the oral evidence of witnesses about what the deceased had told them against the accused about the treatment meted out to her is admissible under Section 32(1) of the Evidence Act to sustain conviction under Section 498-A, IPC ?"

The Hon'ble the Apex Court answered this question in para 11 of the judgment, thus:-

"The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated under Section 498-A, IPC. In our considered view, the evidence of PW-4 and PW-5 about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32 (1) of the Evidence Act and such evidence cannot be looked into for any purpose. Except Section 32 (1) of the Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the

cause of death comes into question. What has been deposed by PW-4 and PW-5 has no connection with any circumstance of transaction which resulted in her death. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498-A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32 (1) of the Evidence Act does not get attracted."

9. In the present case, the learned Trial Judge acquitted the appellants of the offence punishable under Section 306 of the IPC, holding that the death of Renukabai was not suicidal. Admittedly, her death is not homicidal. The learned Trial Judge observed, on the basis of the medical evidence, that the possibility of accidental death of Renukabai cannot be ruled out. In the circumstances, the evidence of Babu (PW1), Indubai (PW2) and Aruna (PW3) about the alleged illtreatment meted out to her by the appellants, as narrated to them by the deceased – Renukabai whenever

she had an occasion to meet them, would not be admissible under Section 32(1) of the Indian Evidence Act to establish the guilt of the appellants for the offence punishable under Section 498-A of the IPC in view of the above cited judgment. There is nothing in the evidence of these witnesses to show that they actually saw any of the appellants illtreating the deceased – Renukabai in any manner. If the evidence of these three witnesses is discarded on the ground that it is not admissible, there would be nothing to prove the guilt of the appellants for the offence under Section 498-A of the IPC.

10. The learned Trial Judge wrongly relied on the evidence of Babu (PW1), Indubai (PW2) and Aruna (PW3), which was not legally admissible and wrongly held the appellants guilty of the offence punishable under Section 498-A of the IPC. The impugned judgment and order convicting and sentencing the appellants for the said offence are not legal, proper and correct. Consequently, the appeal will have to be allowed and accordingly allowed. In the result, I pass the following order:-

O R D E R

- (i) The appeal is allowed.
- (ii) The impugned judgment and order of conviction and sentence passed against appellant No.1 are quashed and set aside.
- (iii) Appellant No.1 is acquitted of the offence punishable under Section 498-A of the Indian Penal Code.
- (iv) The Appeal stood abated against appellant No.2 – Anjanabai.
- (v) The bail bonds of the appellant No.1 are cancelled. He be set at liberty.
- (vi) Fine amount, if deposited by appellant No.1, be refunded to him.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE