

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

CRIMINAL APPEAL NO.298 OF 2002

Sanjay s/o Nivrutti Sathe,
Age : 26 years, Occu.: Labour,
R/o.: Jawala (Bk.),
Tq. and Dist. Latur

**.. APPELLANT
(Orig. Accused)**

VERSUS

The State of Maharashtra
Through the Public Prosecutor

.. RESPONDENT

Mr. B.N. Patil, Advocate for the appellant
Mr. P.N. Kutti, A.P.P. for the respondent/State

**CORAM : SANGITRAO S. PATIL, J.
RESERVED ON : 27th JULY, 2017
PRONUNCED ON : 3rd AUGUST, 2017**

JUDGMENT :

The appellant was prosecuted for the offences punishable under Sections 498-A and 306 of the Indian Penal Code ("IPC", for short). The Trial Court, as per the judgment and order dated 29th April, 2002 passed in Sessions Case No. 20 of 2001, acquitted him of the offence punishable under Section 306 of the IPC, but convicted him for the offence punishable under Section

498-A of the IPC and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for one month. The appellant paid the fine amount in the Trial Court. He has challenged his conviction and sentence for the offence punishable under Section 498-A of the IPC, by this Appeal.

2. It is the case of the prosecution that the deceased Savita had married to the appellant prior to four years of the incident. From this wedlock, she gave birth to a son namely Suraj, who was aged about two years, at the time of the incident. The appellant used to illtreat the deceased – Savita on the ground that he was not given good garments in the marriage and even thereafter. He used to consume liquor and torture her mentally as well physically. On 7th October, 2000, the appellant and one Pandit Shinde started consuming liquor in the presence of the deceased – Savita in the house of the appellant. Thereafter, both of them went away from the house. The appellant came back after consuming liquor after some time and started hurling abuses and beating the

deceased – Savita. The said beating continued till 11.00 a.m. Being fed up with that illtreatment and torture, the deceased – Savita poured kerosene on her person at about 11.15 a.m. and set herself ablaze. She started running out of the house with flames around her body. The persons residing in the vicinity extinguished the fire. She sustained burns to her neck, chest, abdomen, hands, back etc. Her father-in-law and mother-in-law took her to the Civil hospital at Latur in an Auto Rickshaw and admitted her there for treatment.

3. On the same day, ASI Sonawane of Gandhi Chowk Police Station, Latur visited the Civil Hospital, Latur and recorded the statement of the deceased – Savita at about 3.30 p.m. He treated that statement as the First Information Report ("F.I.R.", for short) and on the basis thereof registered Crime No.61 of 2000 against the appellant for the offences punishable under Sections 498-A, 323 and 504 of the IPC and started further investigation. After the death of Savita the said F.I.R. assumed the character of Dying Declaration.

4. On being requested by ASI Sonawane, Naib Tahasildar Dudhale also visited the Civil Hospital, Latur on 9th October, 2000 at about 11.45 a.m., got it confirmed from the Medical Officer about the fitness of the deceased – Savita to give statement and recorded her statement as to the cause of injuries sustained by her.

5. The deceased – Savita died on 4th October, 2000. Inquest panchanama of her dead body was prepared and postmortem was conducted. The Medical Officer opined that she died of cardio respiratory arrest due to septicemia due to 45% superficial and deep burns. The statements of the parents and sister of the deceased – Savita also were recorded. After completion of the investigation, the appellant came to be chargesheeted for the above mentioned offences.

6. The acquittal of the appellant of the offence punishable under Section 306 of the IPC has not been challenged by the prosecution. The judgment and order passed by the Trial Court, acquitting the appellant of

that offence, has attained finality. Therefore, it will have to be seen whether the prosecution established the guilt of the appellant for the offence punishable under Section 498-A of the IPC.

7. Section 498-A of the IPC, reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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."

8. The prosecution has relied on the dying declarations (Exh.22 and 20) of the deceased – Savita, which were recorded by ASI Sonawane (PW8) on 7th October, 2000 at 3.30 p.m. and Naib Tahasildar Dudhale (PW2) on 9th October, 2000 between 12.00 noon and 12.30 p.m. ASI Sonawane (PW8) states that when he recorded the F.I.R./dying declaration (Exh.22) of the deceased – Savita, he had asked the relatives of the deceased – Savita to go out of the room where she was admitted. He then closed the door of that room and recorded the statement of the deceased – Savita as per her say. After recording her statement, he read over it to her and then obtained her thumb impression thereon. There is nothing in the cross examination of this witness to indicate that the deceased – Savita was not in a fit condition to give statement. There is nothing in his cross examination to indicate that the deceased Savita was influenced by any of her relatives to narrate the facts demonstrating the ill-treatment meted out to her by the appellant. The deceased-Savita had sustained only 45% burns. She survived till 4th November, 2000

i.e. after about 28 days of the occurrence of the incident. In the circumstances, it cannot be held that she was not in a fit condition to give a statement when ASI Sonawane (PW8) recorded her dying declaration (Exh.22) on 7th October, 2000.

9. In the dying declaration (Exh.22), the deceased — Savita has specifically mentioned that after the marriage, the appellant treated her properly for one year. Thereafter, he started illtreating her physically and mentally on the ground that he was not provided good garments in the marriage and even after the marriage. In respect of the event that took place on 7th October, 2000, she states that the appellant and one Pandit Shinde started consuming liquor in her house and in her presence, at about 8.00 a.m. Both of them then went away. The appellant came back after some time after consuming liquor and started hurling abuses against her and beating her continuously till 11.00 a.m. She then states that because of the frequent beating and ill-treatment given by the appellant and because he had beaten her on that day, she got annoyed, poured kerosene on her person and set

herself ablaze. She, thereafter, got frightened and started running out of the house. The persons in the vicinity extinguished fire. She sustained burn injuries on her neck, chest, abdomen, both hands and back. Her in-laws took her to the Civil Hospital at Latur in an Auto Rickshaw and admitted her there. Thus, the deceased – Savita specifically alleged that the appellant was always beating and subjecting her to cruelty and therefore, she was driven to commit suicide.

10. Naib Tahasildar Dudhale (PW2) states that on 9th October, 2000, he visited the Civil Hospital at Latur at about 11.45 a.m., enquired with Dr. Patil whether the deceased – Savita was in a fit condition to give statement, whereon Dr. Patil (PW7) examined her and opined that she was in a fit condition to give statement. He, therefore, recorded the statement (Exh.20) of the deceased – Savita as per her say. He states that the statement of the deceased – Savita was read over to her and thereafter he obtained her left big toe impression thereon.

11. Dr. Patil (PW7) also states that on being requested by Naib Tahasildar-Dudhale (PW2), he examined the deceased – Savita and found that she was conscious and able to give statement. Accordingly, he made endorsement on Exh.20 prior to recording thereof. After completion of recording the statement of deceased – Savita, he again endorsed under his signature below that statement that she was conscious and able to give statement.

12. There is absolutely nothing in the cross-examinations of Naib Tahasildar – Dudhale (PW2) and Dr. Patil (PW7) to show that the deceased – Savita was not in a fit condition to give statement when the dying declaration (Exh.20) was recorded by Dudhale (PW2). In that dying declaration (Exh.20) also, the deceased – Savita narrated about the illtreatment meted out to her by the appellant. She specifically stated that on the day of the incident i.e. on 7th October, 2000, the appellant started beating her right from the morning under the influence of liquor. Her in-laws tried to rescue her. However, the appellant still continued to beat her. She stated that the

appellant was not paying any heed to his parents advice. She then states that she got annoyed and in the heat of anger, she poured kerosene on her person and set herself ablaze. This dying declaration (Exh.20) cannot be said to have been given by the deceased – Savita at the instance of any of her maternal relations. It is consistent with the dying declaration (Exh.22) on all material points. Both these dying declarations have been given by the deceased – Savita voluntarily without being influenced by anybody else. They inspire a great confidence. The learned Trial Judge rightly relied on the dying declaration (Exh.22). However, he wrongly disbelieved the dying declaration (Exh.20) recorded by Naib Tahasildar (PW2). Both these dying declarations clearly show as to how the appellant was subjecting the deceased – Savita to physical and mental cruelty.

13. The deceased Savita had a son aged about 2 years at the time of the incident. Being the mother, she must have great love and affection for him. She did not even care for her son also and decided to finish her life. One can imagine how it must have been

difficult for her to take decision to finish herself by forgetting her lovely son. It is only because the cruelty meted out to her by the appellant had become so unbearable that she was constrained to take such an extreme decision. The appellant created such circumstances which left the deceased Savita with no alternative but to commit suicide. This amounts to cruelty as explained under Section 498-A of the IPC.

14. The conduct of the appellant after the incident of burning is worth noting. He did not try to extinguish fire that was on the person of the deceased Savita. He did not take her to the Hospital for treatment. This subsequent conduct speaks about the cruel attitude of the appellant against the deceased Savita and shows his guilt.

15. The learned counsel for the appellant submits that Ayub (DW1) and Pandit (DW2) are the independent witnesses examined by the appellant in his defence. The trial Court has wrongly disbelieved their evidence. I am not inclined to accept this contention. Both of these witnesses state that the deceased Savita

was residing happily with the appellant and there was no dispute between them. However, they made a contradictory statement to suggest that she was not happy because, as told to them by the appellant, she wanted to reside at Latur. Both of these witnesses had no occasion to hear the deceased Savita insisting upon the appellant to reside at Latur. Pandit (DW2) is the same person, who has been named by the deceased – Savita as the person drinking liquor with the appellant at his house since morning on the day of the incident. Both of these witnesses were not present when the incident of burning took place. They seem to have deposed in favour of the appellant at his instance. Their evidence does not inspire confidence. Their evidence has been rightly disbelieved by the trial Court.

16. The prosecution relied on the evidence of Subhash (PW5), Shantabai (PW6), Anita (PW4) (Exh.23), who are the father, mother and sister respectively of the deceased – Savita. It has come in their evidence that the appellant used to beat and illtreat the deceased-Savita under the influence of liquor and that

the deceased Savita used to tell them about that illtreatment whenever she used to meet them. The evidence of these witnesses corroborates the dying declarations (Exh.20 and 22). In fact, these witnesses are not the eye witnesses to the illtreatment meted out by the appellant to the deceased – Savita. Even if the evidence of these witnesses is kept out of consideration, still in view of the dying declarations of the deceased Savita, which are believable being made voluntarily, in my view, the prosecution has established guilt of the appellant beyond reasonable doubt for the offence punishable under Section 498-A of the IPC.

17. The prosecution has established that the appellant subjected the deceased – Savita to cruelty. The Trial Court has rightly convicted the appellant for the offence punishable under Section 498-A of the IPC.

18. The appellant was in the habit of consuming liquor and beating the deceased-Savita. Because of the illtreatment meted out to her by the appellant, she was driven to commit suicide. The result of misdeeds

of the appellant has been proved to be very fatal. The son of the appellant is deprived of the love and affection of his mother. In the circumstances, I am not inclined to extend the benefit of the Probation of Offenders Act to the appellant.

19. The incident took place in the year 2000. The period of about 17 years has been elapsed after the date of the incident. It has come in the evidence of Anita (PW4) that the son of the appellant, born from the deceased – Savita, is residing with him. The appellant is not a previous convict. The appellant has deposited the amount of fine in the Trial Court. In the circumstances, leniency will have to be shown to him in the matter of punishment. In my view, if the sentence of rigorous imprisonment of three years imposed by the Trial Court is reduced to rigorous imprisonment for one year, it would meet the ends of justice. Hence, the order:-

O R D E R

(i) The Appeal is partly allowed.

(ii) The impugned order of conviction of the appellant for the offence punishable under Section 498-A of the Indian Penal Code is confirmed.

(iii) The impugned order of sentence of imprisonment passed against the appellant is modified and the appellant is sentenced to suffer rigorous imprisonment of one year.

(iv) The sentence of fine is maintained as it is.

(v) The appellant be given set off for the period of his detention in respect of the present case.

(vi) The appellant shall surrender to his bail bonds and appear before the trial Court on or before 10th August, 2017 for serving the sentence of imprisonment.

(vii) In case the appellant fails to surrender as stated above, the Trial Court shall issue coercive process to secure his presence.

(viii) The Criminal Appeal stands disposed off accordingly.

Sd/-
[SANGITRAO S. PATIL]
JUDGE