

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

CRIMINAL APPEAL NO.44 OF 2017

1. Kiran S/o Sukhdeo Patekar,
Age.25 years, Occu.Agri.
2. Latabai W/o Sukhdeo Patekar,
Age.52 years, Occu. Household,

Both R/o. Manur Colony, Majalgaon
Tq. Majalgaon, Dist. Beed

**... APPELLANTS
(Accused Nos.1 & 2)**

VERSUS

The State of Maharashtra

... RESPONDENT

Mr.S.J.Salunke, Advocate for the appellants
Mr.A.V.Deshmukh, APP for the respondent/State.

**CORAM : S.M.GAVHANE, J.
RESERVED ON : 15.10.2018
PRONOUNCED ON : 07.12.2018**

J U D G M E N T :-

By this appeal the appellants-original accused Nos.1 and 2 have assailed the judgment and order dated 17.12.2016 in Sessions Case No. 53 of 2015, passed by the Additional Sessions Judge, Majalgaon, thereby convicting and sentencing them for the offences punishable under Sections 498-A

and 326 read with Section 34 of the Indian Penal Code (For short IPC) and sentence recorded against them is thus;

(a) The accused No.1 was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2000 and in default of payment of fine to suffer simple imprisonment for six months for the offence punishable under Section 498-A r/w Section 34 of the IPC and he was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2000/- in default of payment of fine to suffer simple imprisonment for one year for the offence punishable under Section 326 r/w Section 34 of the IPC.

(b) The accused No.2 was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000 and in default of payment of fine to suffer simple imprisonment for six months for the offence punishable under Section 498-A r/w Section 34 of the IPC and she was sentenced to undergo rigorous imprisonment for three years and to pay a fine of

Rs.1,000/- in default of payment of fine to suffer simple imprisonment for three months for the offence punishable under Section 326 r/w Section 34 of the IPC.

(c) Sentence recorded against the appellants/accused was ordered to run concurrently. Both the accused have been given set off as per Section 428 of the Code of Criminal Procedure and since 14.10.2015 they were in jail.

2. By order dated 07.03.2017 hearing of the appeal was expedited. Accused No.2 is on bail since 07.03.2017. Accused No.1 is in jail. Thus the appeal is taken up for final hearing as the accused No.1 is in jail.

3. Facts giving rise to this appeal, in short, are as under:

(a) The informant Panchshila w/o. Kiran Patekar (PW-3) married to accused No.1 two years prior to the

incident in question. Accused Nos.2 and 3 are parents, accused Nos.4 and 5 are brothers of accused No.1 and accused No.6 is son of accused No.4. After marriage the informant started cohabiting with the accused No.1 at the house of accused at Manur colony, Majalgaon, Tq. Majalgaon, Dist. Beed.

(b) According to the informant the accused have treated her nicely for some days and thereafter they have started illtreating her on the ground that no articles were given to them in the marriage and they have started demanding of Rs.50,000/- for purchasing motorcycle from her father and mother. They were beating and starving her. Her parents and relatives tried to convince the accused but in vain and illtreatment was continued.

(c) It is alleged that on 21.06.2015 at about 11.00 a.m. after completion of household work while the informant was in the house the accused No.2 her mother-in-law told her to bring Rs.50,000/- from her

parents and abused her. She forcibly took her in the house. Her father-in-law accused No.3 and both brother-in-laws held her, her husband accused No.1 brought kerosene Can and gave it in the hands of accused No.2 and accused No.2 poured kerosene in Can on her person and set her on fire. The wife of brother of accused No.1 closed the door from outside. After the informant was set on fire all the accused ran away from the house. Thereafter accused No.3 father-in-law of the informant opened the door of the house and on saying that the informant herself got burnt, threw water on her person and neighbours also came there and extinguished the fire.

(d) After the above incident on 21.06.2015 immediately the informant was taken to Government Hospital, Majalgaon, Dist. Beed and she had sustained injuries to her stomach, right leg, right hand and left hand and she was taking medical treatment. Her statement as above was recorded by the Police in the Hospital and treating the same as FIR Crime No.92 of

2015 was registered against all the six accused for the offences punishable under Sections 498-A and 307 r/w Section 34 of the IPC in Police Station, Majalgaon (Rural) and the investigation was carried by API Jarhad (PW-5).

(e) During investigation API Jarhad recorded statements of witnesses, prepared panchnama spot of incident and seized polyester saree, match box and other articles from the spot of incident. So also, he arrested accused on 14.10.2015. While accused No.1 was in Police custody he made statement (Exh.46) that he would produce the Can kept in his house and then Can was seized from the spot of incident as per panchnama (Exh.47). Accused Nos.1 and 2 were in jail since their arrest. The Investigating Officer also collected injury certificate of the informant. After completion of the investigation he submitted charge-sheet in the Court of JMFC, Majalgaon, who committed the case to the Court of Additional Sessions Judge, Majalgaon as the offence under Section 307 of the IPC

was exclusively triable by the Court of Sessions.

(f) The Additional Sessions Judge, Majalgaon framed charge against all the accused for the offences punishable under Sections 498-A and 307 r/w Section 34 of the IPC. Accused pleaded not guilty to the charge and claimed to be tried. Their defence is denial and that the informant sustained burns accidentally while preparing the food and she has falsely implicated them as her mother-in-law was requesting to record house in her name.

(g) Prosecution has examined in all six witnesses and it has relied upon the panchnamas referred earlier. On considering the evidence adduced by the prosecution the trial Court acquitted the accused Nos.3 to 6 for the offences punishable under Sections 498-A and 326 r/w Section 34 of the IPC and convicted appellants/accused Nos.1 and 2 for the offences punishable under Sections 498-A and 326 r/w Section 34 of the IPC as mentioned in the

introductory para of this judgment and the trial Court has observed that the prosecution has failed to prove offence under Section 307 of the IPC against the accused. Therefore, this appeal by the appellants.

4. Mr.Salunke, learned counsel for appellants/accused Nos.1 and 2 submitted that the prosecution has failed to prove both the offences against accused Nos.1 and 2 for which they have been convicted. It is submitted that the evidence of PWs No.1 and 3 (the informant) is not sufficient to state that the prosecution has proved offence under Section 498-A against these accused. It is submitted that the prosecution has not examined parents of the informant and neighbours of the accused to prove alleged cruelty to the informant. According to the learned counsel the conviction recorded by the trial Court against accused Nos.1 and 2 for the offence punishable under Section 498-A of the IPC is illegal and liable to be set aside. Learned counsel further

submitted that the informant suffered burns accidentally. Recovery of Can at the instance of accused No.1 is delayed one. The articles seized were not sealed. Therefore there are chances of tampering of the said articles and hence the reports of the Chemical Analyzer cannot be used against the accused. To support said submission the learned counsel has relied upon the decision in the case of Tulshiram Bhanudas Kambale & Ors. Vs. The State of Maharashtra, reported in 1999 All MR (Cri) 1593. As such according to learned counsel prosecution has failed to prove offence under Section 326 of the IPC for which the accused Nos.1 and 2 have been convicted. He therefore prayed to set aside the impugned judgment and order. Alternatively he submitted that in case it is held that the prosecution has proved offences under Sections 498-A and 326 r/w Section 34 of the IPC against the appellants/accused the period undergone by the accused/appellants would be the proper sentence and accordingly sentence be reduced by modifying the

order under challenge by allowing the appeal.

5. Mr.Deshmukh, learned APP for the respondent/ State supported the impugned judgment. He submitted that the evidence of informant (PW-3) is corroborated by PW-1 as regards offence under Section 498-A of the IPC and her evidence as regards suffering burns is corroborated by medical evidence. The evidence of informant is not shattered in the cross examination on behalf of the accused. Admittedly the State has not filed appeal against acquittal of accused Nos.3 to 6 and appeal against the appellants/accused Nos.1 and 2 for enhancement of sentence. According to the learned APP there is no reason to interfere with the impugned judgment. Thus, he has claimed to dismiss the appeal.

6. I have carefully considered the submissions made by the learned counsel appearing for the appellants/accused Nos.1 and 2 and the learned APP. With their assistance I have perused the evidence

adduced by the prosecution. So also, I have perused the impugned judgment and order.

7. Admittedly the informant Panchshila Kiran Patekar (PW-3) was married to accused No.1 two years prior to the incident dated 21.06.2015. After marriage she started residing in the joint family of the accused at village Manur Colony, Majalgaon, Tq. Majalgaon, Dist. Beed and the parents of the informant are also residing in the same village. While cohabiting at the house of the accused on 21.06.2015 at about 11.00 a.m. the informant suffered 31% burns i.e. 9% on right upper limb, 10% on chest and abdomen, 4% near elbow joint, 6% on right lower limb and 2% on left lower limbs.

8. As regards offence under Section 498-A of the IPC is concerned it is alleged that after marriage the informant was treated properly for some days and thereafter on the ground that articles were not given in the marriage and for fulfillment of

demand of Rs.50,000/- for purchasing motorcycle from her parents the accused started beating and starving her and caused cruelty to her and furthermore accused No.2 her month-in-law on the date of incident i.e. on 21.06.2015 told the informant to bring Rs.50,000/- from her parents and abused her. To prove these allegations of cruelty the prosecution has relied upon the evidence of the informant (PW-3) and Laxman Sambhaji Dhage (PW-1).

9. Now coming to the evidence of above witnesses, the evidence of the informant (PW-3) is that after two months of her marriage all the accused persons started to illtreat her on account of not giving household articles. So also, they were demanding Rs.50,000/- for purchasing motorcycle and on failure they were beating and illtreating her continuously. They also kept her without food and were threatening her. According to her she stated her parents about illtreatment. She also stated that on 21.06.2015 at about 11.00 a.m. after completing

household work she was sitting and that time accused No.2 her mother-in-law said her to bring Rs.50,000/- and pulled her in the house. In the cross examination she stated that house of parents of her mother-in-law is at 2-3 houses from their house. She admitted that house of her mother-in-law and her mother Rajubai are adjacent and they are residing in their respective half share. She admitted that her parents as well as accused persons have no landed property. Both families are doing labour work. She stated that she could not state the day, month and year of demand of Rs.50,000/- of accused for motorcycle and assaulting her on that count. So also, she could not tell the date, month and year when accused have said that her parents have not given articles in marriage. She has denied that accused persons never illtreated her on account of giving insufficient articles and they never demanded Rs.50,000/- for purchasing motorcycle and on that count assaulted and threatened to kill her and kept her without food.

10. From the above evidence of the informant it is clear that she of course deposed consistently with the case of the prosecution that accused illtreated her as they were not given articles in the marriage and for demand of Rs.50,000/- for purchasing motorcycle, but as she could not tell date, month and year when accused made aforesaid demand and assaulted her the evidence of the informant about illtreatment for the aforesaid demand is vague. Therefore before accepting or rejecting the evidence of the informant on the cruelty to her other evidence on record is to be considered.

11. The evidence of Laxman Dhage (PW-1) is that he knows the informant Panchshila. He does not know the names of husband, mother-in-law, father-in-law, brother-in-law and sister-in-law of the informant. All the accused persons illtreated the informant on account of dowry amount of Rs.50,000/- and on that count they were beating to her. He claims that he convinced them to treat her well and the accused

assured to treat the informant well, but they have not treated her properly. In the cross-examination he stated that father of the informant is his friend. He could not tell day, date, month and year when he convinced the accused persons to treat the informant well. So also, he could not tell day, date, month and year when accused persons demanded dowry amount of Rs.50,000/- to the informant. He denied that accused persons never demanded Rs.50,000/- from the parents of the informant through her and he never convinced accused to treat the informant well. He denied that accused persons never illtreated or beat the informant. He denied that he is deposing false being friend of father of the informant.

12. On perusal of evidence of PW-1 it is clear that he is from the village of the accused. He claims that accused illtreated the informant on account of dowry amount of Rs.50,000/- and he convinced the accused to treat the informant properly. He could not tell when the accused made aforesaid demand to the

informant. He has not stated as to how he came to know that the accused made demand of dowry amount of Rs.50,000/-. He has not stated that either informant told him about the said demand or that the said demand was made by the accused in his presence. So also it is pertinent to note that the informant (PW-3) deposed that accused demanded Rs.50,000/- for purchasing motorcycle and PW-1 deposed that accused demanded dowry amount of Rs.50,000/- from the parents of the informant through her. Thus, there is no consistency in the evidence of PWs 1 and 3 regarding the purpose behind demand of Rs.50,000/- of the accused from the informant. Therefore and as PW-1 has not deposed on what basis he is deposing that the accused demanded dowry amount of Rs.50,000/- and illtreated the informant for the said amount his evidence is not believable to hold that the accused illtreated the informant. Admittedly he is friend of father of the informant. In such circumstances possibility of his deposing false about demand of dowry amount by the accused and illtreating the

informant at the instance of father of the informant cannot be ruled out and ignored.

13. As referred earlier it has come in the evidence of the informant that she stated about illtreatment to her parents. Admittedly the prosecution has not examined the parents of the informant. In fact the prosecution should have examined the parents of the informant or at least the prosecution should have examined the father of the informant as the statements of her parents were recorded during the investigation as deposed by the Investigating Officer API Jarhad. If the prosecution would have examined the parents of the informant they would have thrown light on the aspect whether the accused had demanded Rs.50,000/- as a dowry amount as deposed by PW-1 or that said amount was demanded for purchasing motorcycle as deposed by the informant and as to when said demand was made. Thus, non examination of the parents of the informant is fatal to the prosecution case.

14. Another aspect to be noted is that the informant was married to the accused No.1 prior two years of the incident dated 21.06.2015 and according to her the accused started illtreating her for the demands referred earlier after two months of her marriage. Considering said evidence it is clear that she was married to accused No.1 in the year 2013. If the accused had started illtreating her after two months of her marriage she would have definitely lodged complaint against the accused in respect of illtreatment in the Police Station, but she does not claim that she lodged such complaint against the accused in the Police Station. It has come in the evidence of the Investigating Officer API Jarhad that during investigation he has collected documents regarding complaint filed by the complainant/informant before Woman Redressal Forum and copies of said documents /complaints are as per Articles A and B. However, the informant/complainant has not stated that she made complaint/s as per Articles A and B before Woman Redressal Forum. In fact if really she

would have made said complaint/s before the Woman Redressal Forum she would have definitely deposed in respect of said complaint/s. But when she has not stated about said complaints and when complaints/documents articles A and B are not proved, it cannot be said that the complaints were made by the informant before the Woman Redressal Forum in respect of alleged illtreatment caused to her by the accused.

15. No doubt in the FIR as well as while deposing before the Court the informant has stated that on the date of incident of sustaining burns by her on 21.06.2015 her mother-in-law accused No.2 said her to bring Rs.50,000/- and pulled her in the house and then the incidence of sustaining burns to her has taken place. But for the reasons discussed hereinabove, said uncorroborated evidence of the informant is not sufficient to infer that either the accused No.2 or accused No.1 individually or both of them in furtherance of their common intention caused cruelty to the informant within the meaning of

explanation A and B to Section 498-A of the IPC. Therefore the evidence of the informant referred earlier is not believable to hold that the appellants/accused Nos.1 and 2 caused cruelty to her. Therefore I hold that the prosecution has failed to prove offence under Section 498-A r/w Section 34 of the IPC against accused Nos.1 and 2.

16. In the above circumstances observations of the trial Court in paragraph No.24 of the judgment on the basis of evidence of the informant (PW-3) and PW-1 that the prosecution has proved offence under Section 498-A r/w Section 34 of the IPC against the appellants/accused Nos.1 and 2 are not correct and in accordance with the evidence on record. Therefore finding of the trial Court that the prosecution has proved offence under Section 498-A r/w Section 34 of the IPC against accused Nos.1 and 2 is not correct and sustainable.

17. The second charge framed against the accused

was under Section 307 r/w Section 34 of the IPC. Considering the evidence of the informant (PW-3), the medical evidence i.e. of Dr.Sumant Wagh (PW-6) and injury certificate (Exh.54) of the informant showing 31% burn injuries, the trial Court has held that the prosecution has not proved offence under Section 307 r/w Section 34 of the IPC against the accused but the offence under Section 326 r/w Section 34 of the IPC is proved only against the appellants/accused Nos.1 and 2. As said earlier admittedly the prosecution has not preferred appeal against the finding of the trial Court of not holding the accused guilty for the offence punishable under Section 307 r/w Section 34 of the IPC or appeal against the appellants/accused Nos.1 and 2 for enhancement of sentence for the offence under Section 326 r/w Section 34 of the IPC. Therefore, this being an appeal of the appellants challenging the conviction and sentence recorded against them, the only aspect which is required to be considered is whether the conviction and sentence recorded against the appellants for the offence under

Section 326 r/w Section 34 of the IPC is sustainable?

18. To arrive at the above conclusion, it is necessary to re-appreciate the evidence of the injured informant (PW-3) and the medical evidence. The evidence of the informant as regards the material incident of her sustaining burn injuries is that on 21.06.2015 at about 11.00 a.m. after completing household work she was sitting. At that time her mother-in-law accused No.2 stated her to bring Rs. 50,000/- and pulled her in the house. Her two brother-in-laws and father-in-law caught hold her both hands, sister-in-laws closed the door from outside. Her husband brought kerosene can and gave it to her mother-in-law. Thereafter, her mother-in-law poured kerosene can on her person and set at fire to her and they all went away by closing the door. Thereafter her father-in-law opened the latch and threw water on her person saying that she herself set at fire and extinguished the fire. She has further deposed that immediately her parents rushed there and

removed the saree from her person, extinguished the fire. In the said incident to her chest, stomach, right leg, right hand near elbow and left hand she sustained burn injuries. In the cross-examination her evidence as above regarding role attributed to the accused in the incident of sustaining burn injuries to her had not been specifically challenged and she has denied suggestion put to her on behalf of the accused that she sustained burn injuries accidentally while cooking the food as she threw kerosene on the wood and lighted the match stick, in the light of defence of the accused. Moreover, she has denied that she was willing that her mother-in-law should transfer the room in her name in which room she and her husband used to reside and that at the time of incident her father-in-law, mother-in-law, brother-in-laws, sister-in-laws had been to agricultural field for labour work. Thus, the evidence of the informant regarding sustaining burns to her has not been shattered in the course of her cross-examination. Thus, there is no reason to disbelieve

her evidence. Thus, on the basis of above referred evidence of the informant, it can be said that on the date of incident i.e. on 21.06.2015 at about 11.00 a.m. she sustained burn injuries as deposed by her due to act of the accused.

19. There is no dispute that the informant sustained 31% burns on different parts of her body as mentioned earlier in detail in paragraph No.7 (Supra). Dr. Sumant Wagh (PW-6) has also stated that on 21.06.2015 he was Medical Officer in Government Rural Hospital, Majalgaon and he found 9% burn on right upper limb, 10% burn on chest and abdomen, 4% burn near elbow joint, 6% burn on right lower limb and 2% burn on left lower limbs i.e. total 31% burns on the person of the informant Panchshila and issued certificate (Exh.54). In the cross-examination he has stated that the informant has not stated the history that her husband, father-in-law, brother of her husband and wife of the brother of her husband have poured kerosene on her person and that the injuries

mentioned in the medical certificate are not fatal to human being. He has also stated that the injuries mentioned in the aforesaid medical certificate are possible due to burn while cooking the food and lighting the fire thresh. But when the informant has denied that she sustained said burn injuries accidentally as mentioned earlier mere possibility expressed by the Doctor that above referred injuries are possible while cooking the food, is not sufficient to state that the informant sustained burn injuries accidentally. Thus, the evidence of Dr. Sumant Wagh and injury certificate (Exh.54) have corroborated the evidence of the informant regarding sustaining injuries to her in the incident as deposed by her. Thus, on the basis of evidence of the informant and the above referred medical evidence, it can be said beyond doubt that the appellants/accused Nos.1 and 2 caused grievous hurt by means of fire as observed by the trial Court in paragraph No.25 of the judgment.

20. For the reasons discussed above there is no substance in the defence of the accused that the informant sustained burn injuries accidentally. Therefore, on the basis of above evidence and for the the aforesaid reasons, I hold that the offence under Section 326 r/w Section 34 of the IPC, as observed by the trial Court is proved beyond doubt against the appellants.

21. In view of the above discussion, as the prosecution has failed to prove offence under Section 498-A r/w Section 34 of the IPC against the appellants they are required to be acquitted of the said offence by setting aside the impugned judgment and order to the extent of offence under Section 498-A r/w Section 34 of the IPC and the appellants conviction and sentence under Section 326 r/w Section 34 of the IPC as per impugned judgment needs to be maintained/confirmed. Learned counsel for the appellants has submitted that in case conviction recorded against the appellants is maintained

sentence awarded to them be reduced to the period undergone by them by modifying the impugned order. The trial Court has imposed rigorous imprisonment for five years and to pay a fine of Rs.2,000/- in default of payment of fine to suffer simple imprisonment for one year on accused No.1 and imposed rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- in default of payment of fine to suffer simple imprisonment for three months on accused No.2 for the offence under Section 326 r/w Section 34 of the IPC and already shown leniency in imposing punishment and therefore sentence imposed for the said offence by the trial Court cannot be reduced to the period undergone by them as submitted by their learned counsel.

22. Before closing this judgment it is necessary to mention that though the trial Court found that the prosecution has not proved offence under Section 307 r/w Section 34 of the IPC against the accused and recorded the conviction against the appellants for

the offence under Section 326 r/w Section 34 of the IPC, in the impugned order the trial Court has not specifically recorded acquittal of all the accused of the offence under Section 307 r/w Section 34 of the IPC and in fact it should have specifically recorded the same.

23. For the forgoing reasons appeal needs to be partly allowed in the light of discussion in paragraph No.21 (Supra). In the result following order is passed:-

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and order dated 17.12.2016 in Sessions Case No.53 of 2015 passed by the Additional Sessions Judge, Majalgaon to the extent of convicting and sentencing the appellants-original accused Nos.1 and 2 for the offence punishable under Section 498-A r/w Section 34 of the IPC is quashed and set aside and they are acquitted of the said offence. Fine amount in respect of said

offence if paid by the appellants as per the impugned judgment be refunded to them.

(iii) The conviction and sentence recorded against the appellants/accused Nos.1 and 2 for the offence punishable under Section 326 r/w Section 34 of the IPC and rest part of the impugned judgment are confirmed.

(iv) The bail bond of appellant/accused No.2 Latabai w/o Sukhdeo Patekar stands cancelled and she shall surrender before the Additional Sessions Judge, Majalgaon to undergo the sentence for the offence under Section 326 r/w Section 34 of the IPC.

(v) Record and proceedings in Sessions Case No. 53 of 2015 be sent to the Additional Sessions Judge, Majalgaon forthwith for necessary compliance.

[S.M.GAVHANE, J.]