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Cri.Appeal No.173-18

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

CRIMINAL APPEAL NO. 173 OF 2018

Ganesh s/o Bhaurao Shinde,
Age 42 years, Occu. Nil,
R/o. Daregaon Tq. Naigaon,
Dist. Nanded.

... Appellant
[Ori. Accused]

VERSUS

The State of Maharashtra,
Through Police Station, Naigaon,
Tq. Naigaon Dist. Nanded.

... Respondent
[Ori.complainant]

...

Mr.Chetan T.Jadhav, Advocate (appointed) for the
appellant-accused
Mr. P.N. Kutti, APP for the respondent-State

...

CORAM : S.M.GAVHANE, J.
RESERVED ON : 02.05.2019
DECIDED ON : 19.07.2019

J U D G M E N T :-

. The appellant-accused, who has been convicted for the offence punishable under Section 306 of Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months, by the Additional Sessions Judge, Biloli, as per the judgment and order dated 04.02.2016 passed in

(2)

Cri.Appeal No.173-18

Sessions Case No.15/2015, has filed this appeal challenging the said conviction and sentence recorded against him.

2. Facts giving rise to this appeal, are as under:

a) Deceased Ranjana Ganesh Shinde was married with the accused 15 years before the incident dated 12.12.2014. They were residing at Daregaon, Tq.Naigaon Dist.Nanded. While the deceased was residing at the house of the accused, in the evening on 12.12.2014, she sustained 93% burns. The information of the incident was given to her mother and uncle. They came and they had taken the deceased in the injured condition by ambulance to Civil Hospital, Nanded for treatment.

b) In the Civil Hospital, Nanded, on the same day i.e. on 12.12.2014, the concerned doctor informed the fact of admitting the deceased at 9.05 pm in the hospital, to the Police Inspector of Naigaon Police Station. Thereafter, police constable Kendre (PW-7)

went to the Civil Hospital, Nanded. He met Dr.Chavan (PW-11) and said doctor had taken police constable Kendre in Ward No.14, in which the deceased was admitted. Dr.Chavan examined the patient and informed police constable Kendre that the patient was conscious and she was in a position to make statement. Accordingly, Dr.Chavan made endorsement on the paper. Thereafter, police constable Kendre recorded statement of the injured patient/the deceased. The deceased disclosed to him that her husband-the accused is addicted to liquor and he consumes liquor daily. One Maroti Tukaram Shinde and Madhav Vyankat Shinde from the village of the accused instigated the accused and provided money to the accused for consuming liquor with an intention to purchase agricultural land of the accused. She further stated that the accused used to consume liquor daily and used to abuse and beat her daily. Two days prior to the incident i.e. on 10.12.2014, the accused had sent her to her parental home. Immediately on the next day, he came to her parental house and she was brought to Daregaon by the accused.

In the night on that day, the accused had beaten her severely under the influence of liquor. Further, she stated that on the next day i.e. on 12.12.2014, again the accused severely beaten her by the handle of an axe and that daily there was harassment to her. Therefore, she was fed-up with the conduct and behaviour of the accused her husband. Therefore, she poured kerosene on her person from a can and set herself on fire. She sustained burn injuries. Therefore, she made shouts. The accused, who was outside the house came and he poured one bucket water on her person and tried to extinguish the fire. Said incident was informed to her parental home. Her mother and uncle came and they had taken her in the Civil Hospital at Nanded. She stated that action be taken against her husband-the accused. After recording statement as above by police constable Kendre, again Dr.Chavan examined the patient and found that the patient was conscious/oriented and mentally fit after the statement. Copy of said statement/dying declaration (Exh.21) was sent to Police Station, Naigaon by police constable Kendre.

Moreover, Special Executive Magistrate (PW-14) recorded dying declaration (Exh.40) regarding involvement of the accused as stated by the deceased, as above. On the basis of copy of said statement/dying declaration (Exh.21) of the deceased, Crime No.77/2014 was registered against the accused for the offence punishable under Section 498-A of the IPC. While the deceased was undergoing treatment, on 15.12.2014, she died due to burn injuries. Thereafter, offence under Section 306 of the IPC was added in the crime registered against the accused.

c) The investigating officer prepared the inquest panchanama and got post mortem examination done on the dead body. Dr.Chavan opined that the deceased died due to septicaemia due to burns. The investigating officer went to the spot of incident i.e. house of the accused and drew panchanama of spot of incident in presence of panchas. He seized plastic can, match-stick, some pieces of burnt saree and kerosene mixed soil. The investigating officer recorded statements of witnesses from the parental

home of the deceased as well as the witnesses from the village of the accused. He submitted charge-sheet in the court of JMFC, Biloli, who committed the case to the Court of Additional Sessions Judge, Biloli, as the offence punishable under Section 306 of the IPC was triable by the Sessions Court.

d) The learned Additional Sessions Judge framed charge against the accused for the offences punishable under Sections 498-A, 306, 323 and 504 of the IPC. The accused pleaded not guilty to the charge and claimed to be tried. His defence is denial.

e) To prove charge against the accused, the prosecution has examined in all 14 witnesses and it has relied upon the panchanamas, post mortem report and reports of the Chemical Analyzer. Statement of accused under Section 313 of Cr.P.C. was recorded. He has not examined any witness in defence.

f) Considering the evidence adduced by the prosecution, the Trial Court held that the prosecution has failed to prove the offences under

Sections 498-A, 323 and 504 of the IPC against the accused and it has held that the prosecution has proved the offence punishable under Section 306 of the IPC against the accused and accordingly, convicted and sentenced him for the said offence as said earlier by the impugned judgment and order. Therefore, this appeal by the appellant-accused. There is no appeal against the acquittal of the accused of the aforesaid offences by the State.

3. I have heard Mr. Jadhav, learned Advocate for the accused and Mr.Kutti, learned APP for the respondent-State and with their assistance, I have perused the evidence adduced by the prosecution and the impugned judgment and order.

4. Mr.Jadhav, learned Advocate for the appellant-accused submitted that the deceased was married to the accused about 15 years prior to the incident. No single complaint was lodged against the accused by the deceased, making any allegations against him. The deceased was daughter of maternal uncle of the accused. It is the case of the

prosecution that the accused was assaulting the deceased after consuming liquor. But it is not the case of the prosecution that the accused was addicted to liquor and continuously he was causing cruelty to the deceased by beating her under the influence of liquor and as such, he was causing physical cruelty to her. Therefore, case of the prosecution that due to frustration, due to said act of the accused, the deceased committed suicide is not acceptable. It is submitted that no specific incident of harassment of the deceased at the hands of the accused is alleged by the prosecution. The deceased had no issue from the marriage with the accused, even after 15 years of her marriage and therefore, the accused has incurred huge expenses for her treatment to conceive. Therefore, it cannot be said that the accused was indebted due to habit of consuming liquor. Thus, according to the learned Advocate as the deceased did not conceive and she did not deliver child, even after 15 years of her marriage with the accused, she committed suicide out of said frustration.

5. Mr.Jadhav, learned Advocate for the accused further submitted that the accused was charged for the offences punishable under Sections 498-A, 306, 323 and 504 of the IPC. By the impugned judgment, he was acquitted of the offences under Sections 498-A, 323 and 504 of the IPC. According to the learned Advocate, when the prosecution has failed to prove the offence of cruelty against the accused, the conviction and sentence of the accused for the offence punishable under Section 306 of the IPC i.e. abetment to commit suicide by the deceased is not legal and proper. Once the prosecution has failed to prove that the accused has caused cruelty to the deceased, it cannot be said that the accused abetted the deceased to commit suicide due to cruelty caused to her by the accused. It is submitted that the trial court has not properly considered the aspect that the evidence of PWs 5 and 6 on harassment to the deceased was not sufficient to attract the offence of cruelty and still, the trial court held that the prosecution has proved the offence under Section 306 of the IPC. It is further submitted that the dying declarations

(Exh.21 and 40) do not disclose anything that the accused abetted the deceased to commit suicide. It is submitted that the marriage of the accused with the deceased was performed prior to 15 years of the incident and therefore, presumption of abetting the deceased to commit suicide under Section 113-A of the Evidence Act is also not available in the present case. It is submitted that the accused extinguished the fire of the deceased and immediately took the deceased to the hospital. Therefore, it cannot be said that he was harassing the deceased, which harassment, as per the prosecution case has led the deceased to commit suicide. Thus, according to the learned Advocate for the accused, reasons given by the Trial Court and findings recorded by the Trial Court that the prosecution has proved the offence punishable under Section 306 of the IPC against the accused are not correct and sustainable and therefore, conviction and sentence recorded against the accused for the offence under Section 306 of the IPC by the impugned judgment is liable to be set aside by allowing the appeal.

6. To support his submissions that once the prosecution has failed to prove the offence of cruelty under Section 498-A of the IPC against the accused conviction of the accused for the offence under Section 306 of the IPC is not sustainable and it is illegal, the learned Advocate for the accused has relied upon the following decisions:

(i) In the case of **Heera Lal and another V/s. State of Rajasthan, Criminal Appeal No.790/2017** decided on 24th April 2017 (Supreme Court), the appellants, in-laws of the deceased were tried for the offences punishable under Sections 498-A and 306 of the IPC. The trial court relied upon the evidence of PWS 4 and 5, who were neighbours, on the harassment. The deceased had sustained 90% burns. There was dying declaration made before Special Divisional Magistrate, both the trial court and the High Court referred the dying declaration, which states that the deceased had told the Special Divisional Magistrate that she was sleeping. Her husband-accused and in-laws were quarreling every

day. On the day of dying declaration also, they quarreled with her. They asked her to leave the house. Her husband is not responsible for anything. The trial court held that the offence under Section 498-A of the IPC was not made out, but convicted the appellants for the offence punishable under Section 306 of the IPC and sentenced them to imprisonment for three years. In appeal, by them to the High Court, the High Court relying upon the aforesaid dying declaration dismissed the appeal. In the appeal before the Hon'ble Supreme Court by Special Leave in paragraph 8, the Hon'ble Supreme Court observed as follows:

"8. We find that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498A, the third ingredient for application of Section 113A is missing, namely, that the relatives i.e., the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113A would apply, it has been fully rebutted, for the reason

that there is no link or intention on the part of the in-laws to assist the victim to commit suicide."

It was further observed that on the facts, therefore, in view of the facts, the appellants have not been convicted for the offence punishable under Section 498-A of the IPC, that abetment of suicide under section 306 of the IPC is not made out. Ultimately, the appeal was allowed and the impugned judgment of the High Court was set aside.

(ii) In the case of **Vashim Vs. State of M.C.T.Delhi, Criminal Appeal No.365/2017** decided on 24th May, 2018 (Delhi High Court), the appellant was convicted for the offence punishable under Sections 498-A and 306 of the IPC. In the appeal before the High Court in paragraph Nos.22, 23 and 24, it was observed, as under:

"22. On the facts of the present case, it is apparent that the deceased suspected her husband to be in an extramarital relation which fact she stated to her family members also, however there is no evidence that in order to seek divorce from the deceased there was cruelty to the extent that she was driven to commit suicide. Thus, this Court finds that the prosecution has not made out

any case for raising a presumption that on account of mental cruelty by being involved in an extramarital relationship Wasim abated the commission of suicide by the deceased.

23. This brings the Court to another facet of facts of the case i.e. whether the acts of Wasim had a live and proximate link to the death of the deceased as admittedly prior to the incident the appellant was not in Delhi. Nothing has been shown that before the death of the deceased she was subjected to such a mental and physical cruelty by the appellant which abated her committing suicide. There is no proximate and live link between the cruelty or demand of dowry and the suicide committed as already held by the learned Trial Court.

24. However in view of the fact that though not soon before death but soon after the marriage there was demand of dowry and money was taken, this Court deems it fit to uphold the conviction under Section 498A IPC. Consequently the conviction and order on sentence of the appellant for offence punishable under Section 306 IPC is set aside however, for offence punishable under Section 498A IPC is maintained."

(iii) In the case of **Shrinivasa Gowda Vs. State of Karnataka in Criminal Appeal No.355 of 2010** decided on 28th February, 2018 (**High Court of Karnataka at Bengaluru**), the appellant was convicted and sentenced for the offence punishable under Section 498-A of the IPC. He was charged for the

offences punishable under Sections 498-A and 306 read with Section 34 of the IPC. He was acquitted of the offence punishable under Section 306 of the IPC. PWS 1, 3 and 6 were vital witnesses examined by the prosecution to prove the guilt of the accused. The evidence of DW-2, the sister of the deceased was contrary to the evidence of these material witnesses. The evidence of all these witnesses found full of inconsistencies and was contrary to each other relating to physical as well as mental harassment given by the accused to the deceased. Therefore, it was held that said evidence does not constitute an offence under Section 498-A of the IPC. Except the evidence of PWS-1, 3 and 6 who are the father, mother and brother respectively of the deceased, there was no other corroborative evidence to prove the guilt of the accused and the evidence of the other witnesses was only hearsay. Marriage of the deceased with the accused was performed on 03.06.1994. Deceased led a happy marital life with the accused for a long duration of 11 years prior to death on 09.09.2005. It was held that under such circumstances, an

inference can be drawn that deceased committing suicide by consuming pesticides was not on account of ill-treatment or cruelty given by the accused. Trial Court based the conviction of the accused for the offence under Section 498-A of the IPC slightly on the ground that the accused did not allow the deceased to go to her parental house and the same would amount to cruelty. In the absence of any material evidence on record, the Trial Court was not at all justified in coming to such a conclusion. In the appeal against conviction of the appellant on re-appreciation of the entire material on record, it was held that the trial Court has committed an error in appreciating the evidence on record in a proper perspective and that the learned Judge of the Trial Court was not justified in convicting the accused for the offences alleged against him. As such, the appellant was acquitted of the charges levelled against him and conviction under challenge was set aside.

(iv) In the case of **Mohan Gangaram Kesade Vs. The**

State of Maharashtra, Criminal Appeal No.595 fo 2017

(Bombay High Court) decided on 26th November, 2018, the appellant filed appeal against his conviction for the offences punishable under Sections 498-A and 306 of the IPC. The appellant was married with the deceased prior to incident on 16.04.2005. Suicidal death of the deceased in the said case was not much in dispute. The appellant was suspecting character of the deceased wife and he was frequently quarrelling with the deceased after consuming liquor during married life of the deceased of seventeen years. In para 14, it was observed as under:

"14 Apart from this oral evidence, there is evidence of dying declaration of deceased Sushila. Her dying declaration at Exhibit 26 was recorded on 17/04/2015 by P.W.No.6 Anant Gurav Nayab Tahsildar. Deceased Sushila has stated in the said dying declaration (Exhibit 26) that her husband used to suspect her character and used to beat her regularly. Being fed up with regular beating on suspicion as stated by Sushila, she poured kerosene on her person and set herself ablaze. Deceased Sushila also stated in her officially recorded dying declaration that the appellant/accused was very much present at the time of the incident. He was saying that he do not need her. Deceased Sushila has further stated in her dying declaration

that when she set herself ablaze, the appellant/accused extinguished the fire and ran away. Thus, we have two sets of evidence in order to ascertain whether the deceased was subjected to cruelty and was driven to commit suicide by the appellant/accused. One is oral evidence which also includes dying declaration of Sushila and another is that of her officially recorded dying declaration. If both these sets of evidence are carefully scrutinized, coupled with the case of the prosecution reflected in the FIR lodged by P.W.No.1 Indu Kamble, then it becomes clear that even after seventeen years of married life and after having begotten three children from the said wedlock, the appellant/accused used to suspect character of his deceased wife Sushila. He used to beat her frequently by picking a quarrel with her. However, P.W.No.3 Rani Dhanwade, who is neighbourer of the couple though had spoken about addiction of liquor of the appellant/accused and frequent quarrel between him and deceased Sushila, has not spoken about beating by the appellant/accused to deceased Sushila. Thus, though close relatives of the deceased are speaking about addiction to liquor, picking up the quarrel by suspecting the character and frequent beating by the appellant/accused to deceased Sushila, P.W. No.3 Rani Dhanwade, who appears to be the independent witness having an occasion to watch events happening in the matrimonial life of the couple, has not spoken about suspicion about the character of the deceased Sushila by the appellant/accused so also beating by the appellant/accused to the deceased Sushila because of such suspicion. Thus, in the wake of this variance and shortcoming in the evidence of closely related witness to the deceased and that of the independent witness, the appellant/

accused is certainly entitled for benefit of doubt so far as suspicion about the character of the deceased wife and frequent beating is concerned. If these aspects are ignored, then what remains is addiction to liquor and frequently quarreling with the deceased. Though such frequent quarrels with a married woman after consuming the liquor during married life of seventeen years may amount to cruelty as such conduct is harsh and harmful conduct of requisite intensity and persistence, the same may not be sufficient to infer abetment. The allegations which are established from evidence of P.W.No.3 Rani Dhanwade are not of such a nature which would drive the deceased to commit suicide, forming a natural result of normal conduct of a married woman. That apart, evidence regarding mens rea is missing. Without knowledge or intention, there cannot be abetment and the knowledge and intention must relate to the crime in question. In the instant case, as soon as Sushila set herself ablaze, the appellant/accused extinguished the fire on her person and ran away may be because of fear. This evidence of the prosecution reflected from the officially recorded dying declaration negates the case of abetment by the appellant/accused to the deceased for driving her to commit suicide."

7. Mr.Kutti, learned APP, on the other hand submitted that there is sufficient evidence to attract offence under Section 306 of the IPC against the accused. The Trial Court has considered said evidence in paragraphs 15, 16 and 17 of the judgment.

In paragraphs 19 and 21 of the judgment, the Trial Court has considered the aspect of the accused abetting the deceased to commit suicide. There is no reason to reject the dying declarations relied upon by the prosecution. According to the learned APP, there is no ground to interfere with the impugned judgment of the conviction and sentence of the accused for the offence under Section 306 of the IPC and claimed to dismiss the appeal. To support his submissions on dying declarations and the conclusion of the trial court, the learned APP has relied upon the Full Bench decision of this Court in Criminal Appeal No.186 of 2013 decided on 26th February, 2018 in the case of **Ganpat Bakaramji Lad V/s. State of Maharashtra**. The learned APP invited my attention to paragraphs 4 and 43 of the judgment, which read as under:

"4. After expressing its disagreement, the Division Bench in Ganpat Lad's case framed the question for reference to the Larger Bench as under :

"Whether a Dying Declaration can be rejected merely because the same is not read over to the declarant and the

declarant admitting the same to have been correctly recorded?"

43. In the decision of the Apex Court in the case of State of H.P.V.Lekh Raj, reported in (2000) 1 SCC 247, it is observed that the legal trial is conducted to ascertain the guilt or innocence of the accused. In arriving at the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the Court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The Courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial."

8. I have carefully considered the submissions made by the learned Advocate for the accused and the learned APP.

9. There is no dispute that the deceased was

married to the accused about 15 years prior to the incident. She sustained 96% burns on 12-12-2014 in the house of accused and that she succumbed to the burn injuries on 15-12-2014. There is also no dispute that the death of the deceased was suicidal as it is the defence of the accused that the deceased committed suicide out of frustration, as she had no issue.

10. In the above circumstances, considering the conviction of the accused for the offence under Section 306 of the IPC, the only aspect which is required to be considered is whether the finding of the Trial Court convicting the accused for the offence punishable under Section 306 of the IPC is sustainable? As mentioned earlier, charge was framed against the accused for the offences under Sections 498-A, 306, 323 and 504 of the IPC and by the impugned judgment, he came to be acquitted of all the said offences, except offence under Section 306 of the IPC. Case of the prosecution is that, the deceased committed suicide due to cruelty caused to

her by the accused as the accused was harassing her by beating under the influence of liquor. When the Trial Court has held that the prosecution has failed to prove cruelty punishable under Section 498-A of the IPC against the accused, it is difficult to accept the finding of the trial Court that the prosecution has proved that the accused abetted the deceased to commit suicide which offence is punishable under Section 306 of the IPC as submitted by the learned Advocate for the accused. However, it is necessary to see whether the accused has abetted the deceased to commit suicide. To prove the same, the prosecution has relied upon the evidence of PWs 3, 4, 5, 6 and dying declarations Exh.21 and 40 of the deceased on the alleged harassment of the deceased, which amounts to cruelty to her, which abetted the deceased to commit suicide.

11. Now coming to the evidence of above witnesses, both PWs 3 and 4, who are cousins of the accused and to whom the deceased made oral dying declaration have not supported the prosecution case

as they have denied that on hearing the shouts of the deceased "वाचवा ! वाचवा !", immediately, they rushed towards the house of the deceased and that on their asking to her, she (deceased) told them that due to harassment of the accused, she herself set her on fire. Thus, the evidence of both these witnesses is of no help to the prosecution to state that the accused harassed the deceased and thus, abetted her to commit suicide.

12. The evidence of Maroti Shinde (PW-5), who is from the village of the accused is that on the date of incident on 12.12.2014, he came to his house from the field at 7.00 pm and came to know that there was quarrel between the accused and the deceased. Further, he deposed that habit of liquor was the cause of quarrel. The accused used to harass the deceased under the influence of liquor and due to harassment of the accused, the deceased poured kerosene on her person and set her on fire. In the cross-examination, he admitted that in the year 2007, the accused met with an accident. He was admitted in

Dabhekar Hospital. When the accused was admitted in the hospital, they both approached him and demanded money for medical expenses. The accused assured him that he would return money and they were ready to hand over land to him. He admitted that he paid Rs.50,000/- as first installment and Rs.1,00,000/- as second installment. The accused was maintaining his family by doing labour work. He denied that the accused was not in the habit of consuming liquor and that there was no quarrel before him. He denied that he is deposing false that there was regular quarrel between the accused and the deceased. He denied that due to non-conception, the deceased herself poured kerosene and set herself on fire. He stated that he does not know that due to non-conception of 11 years, the deceased was nervous. This witness has not deposed about specific instance of harassing the deceased by the accused on consuming liquor and his evidence that the accused used to harass the deceased under the influence of liquor is quite vague and is not sufficient to infer that there was continuous harassment to the deceased by the accused. It

appears from his evidence that he had given an amount of Rs.1,50,000/- to the accused and the deceased at the time of treatment of the accused, when the accused met with an accident.

13. The evidence of Ananda Tekale (PW-6), who is brother of the deceased is that the deceased was married to the accused in the year 1996. She had no issue. The accused harassed the deceased under the influence of liquor. Her marital life was not happy. The accused sold his land to consume liquor and under the influence of liquor, he used to harass the deceased. He and his relatives tried to convince the accused but he has not heard. Further, he has stated that on 08.12.2014, the accused sent the deceased to his house saying that he is attending the sugar factory. Again on 11.12.2014, the accused returned to his house and the accused had taken the deceased along with him. The accused had promised that he would not harass the deceased and his brother (brother of the witness) sent the deceased along with the accused. On 12.12.2014, his cousin received phone

of the accused that the deceased sustained burn injury. He went to the house of the accused and saw that door was closed. There was nobody, except the deceased, his sister. He asked the deceased, what had happened and the deceased told him that the accused beat her severely and the harassment was unbearable, therefore, she herself poured kerosene and set her on fire. Further, he stated that he called ambulance and took the deceased to Nanded for treatment. She was admitted in hospital for 2-3 days and she died on 14.12.2014.

14. In the cross-examination, Ananda Tekale (PW-6) has stated that there was accident to the auto of the accused. He stated before police that the accused severely beaten his sister/the deceased and it is not recorded in the said statement. He could not assign any reason of absence of said fact in his statement before police. Therefore, his evidence that the accused severely beaten his sister-the deceased is amounting to omission in his statement before police. Moreover, he stated that he made a

complaint to Naigaon Police Station about harassment by the accused to his sister-the deceased and police registered crime against the accused. He stated that the copy of that complaint is available, he will produce the same. However, it appears that he has not produced the copy of said complaint nor he has produced the record showing that crime was registered against the accused on the said complaint allegedly lodged by him about harassment to the deceased. In fact, it was possible for him to produce the complaint as above or to produce the material showing the fact that really crime was registered against the accused on the complaint of harassment to the deceased. Ananda (PW-6) has admitted that the deceased was treated at various places to conceive. As referred earlier, there is no dispute that the deceased was daughter of the maternal uncle of the accused. In the above circumstances, the evidence of Ananda (PW-6) regarding harassment to the deceased by the accused is not believable. Similarly, his evidence that the deceased told him that the accused severely beat her and the harassment was unbearable

and therefore, she committed suicide is not believable.

15. Exhibit 21 statement/dying declaration of the deceased was recorded by police naik (PW-7) on 12.12.2014, after the deceased was examined by Dr.Chavan. Police Naik Kendre (PW-7) has stated that on 12.12.2014, after receiving information from Civil Hospital that the deceased received burn injuries and that she was admitted in Civil Hospital, Nanded, he immediately went to said hospital and met Dr.Vilas Chavan. Said doctor came with him to the patient. He examined the patient and put his endorsement. Thereafter, Ranjanabai-the deceased made statement to him that her husband was addicted to liquor and her husband used to harass her and beat her and due to harassment of the accused, she poured kerosene on her person and set herself on fire. She immediately made shouts and her husband came and extinguished her. In the cross-examination, he has denied that the deceased has not given statement Exh.21 and that he is deposing false. Dr.Chavan (PW-11) has also stated

that he made endorsement (Exh.32) on dying declaration recorded by head constable and according to him, the patient was conscious and mentally fit to give a statement. He also stated about second endorsement made on dying declaration (Exh.21) by him after the dying declaration was recorded by the police. In the cross-examination, he has denied that the patient was not in a position to speak real and voluntarily. Dying Declaration/Statement (Exh.21) shows that it was recorded by Kendre (PW-7) and Dr.Chavan (PW-11) made two endorsements as deposed by said doctor, on the said statement. Thus, on the basis of above evidence, it can be said that PW-7 recorded dying declaration (Exh.21) and at the time of making said dying declaration, the deceased was admitted in injured condition in the hospital and she was in a position to make statement. It is stated in the said dying declaration (Exh.21) that on 12.12.2014, as the accused assaulted the deceased after consuming liquor and as he was assaulting her, she committed suicide on boiling to the said harassment by pouring kerosene on her person and

setting herself on fire in the house and that her husband is responsible for the said incident.

16. Now, coming to the second dying declaration Exh.40 recorded by Shaikh Hayder (PW-14), Special Judicial Magistrate, Nanded on the same day i.e. on 12.12.2014, after the deceased was examined by Dr.Chavan (PW-11), it has come in the evidence of PW-14 that after receiving letter on 12.12.2014 of police constable, Kendre, he went to Civil Hospital, Nanded in Ward No.14. He contacted Dr.Chavan, who was in-charge. Dr.Chavan came along him to the patient. Dr.Chavan examined the patient and made endorsement. He stated that, he (doctor) informed that patient was conscious and she was in a position to give a statement. According to him, the patient/deceased told him that their marriage was solemnized 18 years back. There was quarrel between her and her husband for landed property. The accused beat her by handle of an axe. The accused under the influence of liquor used to harass her daily and on the day of incident she herself set on fire due to harassment at the

hands of the accused. She made shouts and neighbouring persons came to her home and they poured water on her person and extinguished fire. Maroti Shinde and Manohar Shinde provided liquor to her husband with an intention to purchase the land of Ganesh and she opposed to said transaction. She was fed-up with the behaviour of her husband and set herself on fire. She further told him that her husband extinguished the fire by pouring water on her person. The neighbouring persons came on the spot and they admitted her in Civil Hospital, Nanded for treatment. She further told him that her husband is responsible. In the cross-examination, he has denied that patient was in critical condition and before recording statement, he collected all informations of the patient from relative and that only to help the prosecution, he recorded false dying declaration. Dr.Chavan (PW-11) has also stated that, on the same day i.e. on 12.12.2014, Special Judicial Magistrate made him request to examine the patient and accordingly, he examined the patient and put endorsements (Exh.33 and 34) and the Special

Judicial Magistrate recorded dying declaration of the patient. In the cross-examination, he denied that the patient was not in a position to speak real and voluntarily and to help the prosecution, he deposes false. Thus, on the basis of the evidence of PW-14 and PW-11, it can be said that on 12.12.2014 between 10.35 pm to 11.05 pm, PW-14 recorded dying declaration (Exh.40) of the deceased and at the time of recording said dying declaration, the deceased was conscious.

17. On perusal of dying declarations Exh.21 and 40, it appears that in Exh.21, the deceased as referred earlier states that on boaring to harassmt caused to her by her husband and her husband assaulted her after consuming liquor on 12.12.2014 and as he used to assault her, she committed suicide. Whereas, in dying declaration Exh.40, it is stated that there was quarrel between her and her husband for landed property. The accused beat her by handle of an axe. The accused used to harass her daily under the influence of liquor and therefore, she

committed suicide. The neighbours as well as her husband came and extinguished fire. Thus, it is seen that dying declaration (Exh.21), which was prior in time as it was recorded on 12.12.2014 between 9.30 pm. to 10.00 pm, it is not stated that there was quarrel between the deceased and her husband on account of landed property. Thus, there is no consistency in both the dying declarations (Exh.21 and 40) in respect of quarrel between the deceased and the accused for landed property. It is true that in both the dying declarations, it is stated that the accused used to harass her, after consuming liquor and therefore, she committed suicide. But, said statement in both the dying declarations is not sufficient to state that there was really continuous harassment to the deceased by the accused and thus, the accused caused cruelty to the deceased, which was of such a nature that there was no alternative to the deceased than to commit suicide, because admittedly, the deceased was daughter of maternal uncle of the accused and their marriage was performed about 18 years prior to the incident of sustaining burn to the

deceased on 12.12.2014 as deposed by her brother and when it has come on record, particularly, in the evidence of brother of the deceased that the deceased was treated at various places to conceive. Therefore, above-referred both the dying declarations and solitary incident of 12.12.2014 of beating the deceased by the handle of an axe, which is not accepted and believed by the trial Court, are not sufficient to state that the accused caused harassment to the deceased, which amounts to cruelty within the meaning of Section 498-A of the IPC and thus, accused abetted the deceased to commit suicide.

18. As regards defence of the accused is concerned, it is his defence that the deceased had no issue even after 18 years of her marriage. The deceased was nervous and therefore, she committed suicide and that he has not abetted her to commit the same. As referred earlier, Ananda (PW-6) brother of the deceased has admitted that his sister was treated at various places to conceive her. Moreover, Maroti Shinde (PW-5) has stated that he does not know that

due to non-conception for 11 years, deceased was nervous. As referred above, it has come in the evidence of PW-7, who recorded dying declaration Exh.21 that the deceased told him that immediately, after she made shouts, the accused came and extinguished fire. She has also stated the same in dying declaration (Exh.40). This shows that the accused tried to save the deceased and he had no intention to abet the deceased to commit suicide. Therefore, there is substance in the defence of the accused that the deceased committed suicide as she was nervous, as she had no issue, as it appears from the trend of cross-examination of the prosecution witnesses.

19. There is presumption as per Section 113-A of the Evidence Act, as to abetment of suicide by a married woman. As per said provision, when the question is whether the commission of suicide by a married woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from

the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation under said section says that for the purpose of this section, "cruelty" shall have the same meaning in Section 498-A of the Indian Penal Code. In the present case, there is no dispute that the death of the deceased is suicidal. So also, there is no dispute that marriage of the deceased with the accused was performed in 1996 and she sustained injuries on 12.12.2014 and she died on 15.12.2014. Thus, she died after about 18 years of her marriage. Therefore, it is not the case that the deceased committed suicide within a period of seven years from the date of her marriage with the accused. So also, as observed above, the prosecution has failed to prove that the accused caused cruelty to the deceased by harassing her by beating her, while under the influence of liquor. The trial Court has acquitted the accused of the offence of cruelty

punishable under Section 498-A of the IPC. Therefore, no presumption as to abetment of suicide by the deceased under Section 113-A of the Evidence Act can be drawn in favour of the prosecution and against the accused in the present case.

20. Considering the facts of the present case and the facts of the decision in the case of **Mohan Gangaram Kesade** (*supra*) relied upon by the learned Advocate for the accused, ratio led down in the said decision is applicable to the present case, to state that the evidence adduced by the prosecution is not sufficient to establish the offence of abetment of suicide under Section 306 of the IPC against the accused.

21. On perusal of the impugned judgment and order, after referring the evidence of PWs 3, 4, 5 and 6 and dying declarations Exh.21 and 40, the trial Court has not accepted the said evidence of the prosecution to hold that the prosecution has proved the offence under Section 498-A of the IPC against the accused. However, the trial Court observed that

the evidence of PW-6 brother of the deceased is believable and there is no any other reason to discard the evidence of the said witness. In paragraph 19 of the judgment, the trial Court made certain observations and concluded that the accused abetted the deceased to commit suicide. Observations in said paragraph 18, are thus:

"19- If we considered the statement recorded by P.C. Kendre both the statements are not inconsistent. At Exh.32 in dying declaration she made a statement that on 11-12-2014 her husband called back. He personally taken her from her parental home and on that night he under the influence of liquor was beat her. On next day i.e. 12-12-2014 again he given a blow of wooden handle of axe under the influence of liquor. This statement itself suggest that on 11-12-2014 and 12-12-2014 on both the days this accused was consumed the liquor and under influence of liquor he has bet to her wife. These two days incidents between these two is sufficient evidence of instigating and beating to commit the suicide and according to me, the prosecution has proved both the dying declaration much is made by learned counsel for accused Mr.Kuncholikar. As per the evidence of doctor, the patient was on that day having high teperature, high blood pressure and high pulse rate and therefore, she was not in a positition. There are Catena of judgment that medical evidence is not material in absence of medical evidence the court can rely upon the dying declaration

but it would be subject to confirmation of the person who recorded that statement is material. In this case, police constable Kendre and Spl.Judicial Magistrate Hamid clearly stated before the court that they get confirmed her physical condition is good and she is able to give a statement before them, then they recorded the statement and this evidence of these two witnesses is sufficient to believe in absence of evidence of doctor and therefore, I am not giving much weightage to doctor and I am not agree with the submission of learned counsel for accused. Therefore, I believe the dying declarations which was rightly recorded after due confirmation. There is no inconsistency it is supported by the brother of deceased and one Shinde from same village and regular harassment of beating and habit of liquor is duly proved by the prosecution and according to me, the accused Ganesh Shinde is responsible for the death of his wife Ranjana and he instigated to commit the suicide. For sake of argument apart from the evidence on record if we perused the conduct of the present accused after the incident the Ranjana made a statement before police constable Kendre that he was present there he thrown some water on her person and he left the place thereafter, no one has pointed the presence of accused it means after throwing water he left the house. The panch witness who came before the court made a statement that when they were visited to the incident spot accused was not present. The door was closed and which was opened by the police with panchanama. So far as the second seizure panch is concerned, that witness also supported the prosecution case that when the accused was arrested he produced one wooden handle of axe in presence of panchas in police station and that was seized and that handle was

identified this witness before the court. Not only that, the panch witness who came before the court he also identified again matchstick and burn piece of saree. Both the panchanamas are duly proved by the prosecution. In these circumstances, seizure of wooden handle of axe and the statement of deceased that on the day of incident i.e. 12-12-2014 the accused had given blow of handle of axe that was seized by the police in presence of panchas. Prior to this there is also harassment and beating that is called as a continuously beating and harassment and mental torture to the deceased and he instigate and abet to commit the suicide if in case he was present on the spot after the incident he extinguished he taken the deceased to the hospital then the fact would be otherwise but no presence of accused after the incident clearly indicate that he was not interested to survival of deceased. Hence, according to me, I conclude by saying that accused has committed the offence and he should be punished. I heard the accused on the point of sentence."

22. From the above observations of the trial Court, it is seen that the trial Court has believed the statement of the deceased in the first dying declaration Exh.21 (which is mentioned as Exh.32 in the judgment) that on 11.12.2014, the accused had taken the deceased to his house from her parental house and in the night, under the influence of liquor beat her and on the next day i.e. on 12.12.2014,

again the accused gave a blow of wooden handle of an axe to the deceased under the influence of liquor and as such according to the trial Court, these two incidents are sufficient to state that the accused instigated the deceased to commit suicide. As discussed earlier, there is inconsistency in two dying declarations Exh.21 and 40 regarding quarrel between the deceased and the accused on account of land. So also, in dying declaration Exh.40, the deceased has not stated consistently with the contents of dying declaration Exh.21 that in the night of 11.12.2014, she was assaulted by the accused under the influence of liquor and on the next day i.e. on 12.12.2014 in the morning also, she was beaten by the accused, by the handle of an axe. Thus, there is no consistency in two dying declarations regarding act of assaulting to the deceased in the night, on 11.12.2014 under the influence of liquor. In the above circumstances, when the trial Court did not accept the oral evidence of PWs 5 and 6 and dying declarations Exh.21 and 40 to attract the offence under Section 498-A of the IPC

of causing cruelty to the deceased by the accused, the trial Court erred in accepting the dying declaration (Exh.21) without properly appreciating the contents of dying declaration (Exh.40) recorded by Special Judicial Magistrate (PW-14), immediately after Exh.21, to hold that the accused has abetted the deceased to commit suicide, particularly, when the prosecution case was that the accused harassed the deceased by beating her under the influence of liquor, which harassment abetted her to commit suicide. The observations of the trial Court in paragraph 19 reproduced (*supra*) that absence of the accused after the incident clearly indicates that he was not interested in survival of the deceased and hence, the accused has committed the offence under Section 306 of the IPC are not correct because in both the dying declarations referred earlier, the deceased said that the accused put off the fire by pouring water on her person. This conduct of the accused very well shows that he tried to save the deceased. There is possibility of his leaving the spot after the incident due to fear of an action

against him at the instance of relatives of the deceased.

23. For all the reasons discussed above, oral evidence of PWs 3, 4, 5 and 6 and dying declarations (Exh.21 and 40) are not sufficient to infer that the accused harassed the deceased on consuming liquor and thus, abetted the deceased to commit suicide. Therefore, I hold that the prosecution failed to prove the offence under Section 306 of the IPC against the accused beyond reasonable doubt. The finding of the trial Court that the prosecution has proved the said offence against the accused is not correct and sustainable and the same is liable to be set aside. Naturally, therefore, conviction and sentence recorded against the accused for the offence punishable under Section 306 of the IPC is not sustainable and the same is liable to be set aside and the accused is entitled to be acquitted of the said offence by allowing the appeal. In the result following order is passed.

O R D E R

- (1) Appeal is allowed.
- (2) The judgment and order dated 04-02-2016 passed by the Additional Sessions Judge, Biloli in Sessions Case No.15/2015, convicting and sentencing the appellant-accused for the offence punishable under section 306 of the IPC is set aside and the appellant-accused is acquitted of the said offence.
- (3) Appellant-accused Ganesh s/o Bhaurao Shinde, who is in jail, be released forthwith, if not required in any other case or crime.
- (4) Fine, if paid by the appellant-accused as per the impugned judgment shall be refunded to him.
- (5) In view of disposal of Criminal Appeal No.173/2018, Civil Application 2964 of 2018 stands disposed of.
- (6) Record and proceeding in Sessions Case No.15 of 2015 be sent to the trial court forthwith for necessary compliance.
- (7) Order regarding disposal of muddemal property is maintained.
- (8) Mr.Chetan T.Jadhav, Advocate was appointed to represent the appellant-accused through Legal Aid. I appreciate his sincere efforts in conducting the matter to arrive at a proper conclusion, I quantify his fees at Rs.7,500/-.
- (9) Appellant-accused to furnish bail as per Section 437-A of Code of Criminal Procedure before the trial court.

[S.M.GAVHANE, J.]