

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 69 OF 2001

The State of Maharashtra	}	Appellant (Orig. Complainant)
Versus		
1. Narayan Rohidas Pednekar,	}	Respondents (Orig Accused)
2. Smt. Hiravati Rohidas Pednekar.		
Both R/at. Navjivam Chawl, Room No. 10, Dhobi Ghat, Santacruz (East), Mumbai – 55.		

Mrs. M.M. Deshmukh, APP for Appellant – State.

Mr. Narayan Kumar i/by Mr. Avinash R. Rasal a/w Mr. Milind D. Dhande, Ms. Anushree A. Rasal, Mr. Akshay A. Salvi, Mr. Siddhesh V. Rane and Ms. Divya R. Tiwari for Respondent.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : FEBRUARY 16, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No. 193/1998, dated 01st August, 2000, whereby Respondents herein were acquitted for the offences punishable under Sections 304(b) of Indian Penal Code (for short “IPC”) and Section 3 of Dowry Prohibition Act,

1961, but convicted the Respondent No. 1 for the offence under Section 498-A of IPC and sentenced to suffer R.I. for a period of 3 years and to pay fine of Rs. 1,000/-. In default of payment of fine he shall further undergo simple imprisonment for a period of two months. In so far as Respondent No. 2 is concerned, Respondent No. 2 was sentenced to suffer imprisonment whatsoever undergone i.e. period of her custody from 16.12.1997 to 03.02.1998 along with fine of Rs. 500/-, in default of payment of fine shall suffer simple imprisonment for two weeks, the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. The case of prosecution, in brief, can be summarized as under:

Marriage between Accused no. 1 – Narayan was solemnized with Krishni (for short ‘deceased’) sister of Ganesh Jadhav (PW 1 – First Informant) on 24.01.1996. Post her marriage, deceased got her matrimonial name as Laxmi. It is further the case of prosecution that as per terms settled between the parties Ganesh gave one necklace of 10 gms, earrings of 5 gms, ring of 15 gms and clothes to the newly wed couple. The expenses of marriage were also borne by Ganesh (PW 1).

For the initial period of nearly 5-6 months the couple was enjoying a peaceful and happy matrimonial life, after that deceased was subjected to ill-treatment and harassment at the hands of Accused no. 1 and Accused No. 2 who happens to be mother of accused no. 1 (mother-in-law of deceased). It is further the case of prosecution that whenever deceased used to visit her parental home, she made complaints to her brother i.e. Ganesh (PW 1) about ill-treatment suffered by her at the hands of accused persons on the count of bringing some ornaments, money and purchase of television set. The neighbours residing at the parental home of deceased were also aware of the ill-treatment suffered by deceased. Deceased was carrying pregnancy and at the stage of 1 ½ months pregnancy she came to her parental home. Accused No. 1 followed her and asked Ganesh (PW 1) to send deceased to her matrimonial home. Ganesh (PW 1) refused to send deceased to her matrimonial home because of ill-treatment suffered by her. Deceased came to her parental home sometime in the month of August, 1996.

3. It is the case of prosecution that Accused No. 1 was frequently visiting the house of Ganesh (PW 1) and asking him to send deceased back to matrimonial home. Ganesh (PW 1) told Accused No. 1

to give an assurance in writing that he will not ill-treat deceased and if such undertaking is given by accused no. 1 he is ready to send deceased to her matrimonial home. Accused No. 1 flatly denied to give any undertaking. On the contrary, he gave threats to Ganesh (PW 1) for not sending deceased to her matrimonial home. Enraged due to the threats Ganesh (PW 1) lodged report against the accused no. 1 at Vakola Police Station. Deceased gave birth to female child on 31.07.1997. In the naming ceremony of the child accused no. 1 by using force made an attempt to snatch child from deceased. The act of accused no. 1 was resisted by deceased. As Ganesh (PW 1) was not allowing deceased to go to her matrimonial home accused no. 1 was desirous of initiating some proceeding and accordingly he filed an application before the Legal Aid Services Authority Office at Bandra. Deceased and Ganesh both attended the office of Legal Aid Services at Bandra before the competent Authority and accused no. 1 submitted before the competent Authority that he is ready and willing to cohabit with deceased. He further submitted before the Authority that he is ready to forget the past. On such assurances given by Accused No. 1, Ganesh (PW 1) permitted deceased to go to her matrimonial home. Deceased was also satisfied with

the assurances given by accused no. 1 and accordingly returned back to her matrimonial home. Though, accused persons assured for change in behaviour, but in fact there is no change in behaviour of accused no. 1 and even on return of deceased accused no. 1 started harassment of deceased on account of demanding articles and money.

4. On 14.12.1997 the couple visited the house of Ganesh (PW 1). Deceased told to her brother Ganesh that there is no change in behaviour of accused no. 1 on the contrary, now accused no. 1 was ill-treating and harassing and this harassment was to the extent of confining her in the house. Accused no. 1 also started doubting character of deceased. On 16.12.1997 accused no. 1 made a phone call to Ganesh (PW 1) informing him that the deceased is admitted in V.N. Desai General Hospital. Accused no. 1 also told to Ganesh that it may be last talk of deceased. On receiving this information Ganesh (PW 1) immediately rushed to the hospital and unfortunately found that deceased was no more alive.

5. Duty constable attached to V.N. Desai General Hospital recorded an entry in the A.D.R register maintained by police. One lady

officer who was attached to Vakola Police Station was informed about the accidental death. This information was forwarded to the police station through a duty constable attached to V.N. Desai General Hospital. Smt. Karmarkar (PW 9) the lady police officer on reaching hospital made inquiry. Accused no. 1 led Smt. Karmarkar along with some other police personnel to the place of incident i.e. his residence. The necessary formalities in the nature of drawing panchnamas and recording statements were undertaken by Smt. Karmarkar (PW 9). As death of deceased was not in natural course it was necessary to send body of deceased for conducting postmortem. Dr. Manik Sangale (PW 8) carried out postmortem and issued pm notes. Spot panchnama was carried out. The complaint lodged by Ganesh (PW 1) was recorded in the police station at about 09.45 pm. Certain necessary formalities in the course of investigation were carried out such as, drawing panchnama, storing muddemal articles. The investigating officer had taken over the charge of the matter took further steps in the process of investigation such as, effecting arrest of the accused persons. Meantime the investigating agency was also in receipt postmortem report.

6. On completion of process of investigation, charge-sheet came to be filed before the Court of Magistrate. As offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The accused persons pleaded not guilty and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. Learned Trial Judge framed 3 points for consideration as follows:

Point No. 1 : Does prosecution prove that deceased Laxmi died un-natural death?

Point No. 2 : Does prosecution prove that the accused no. 1 Narayan Rohidas Pednekar and Accused No. 2 Smt. Hiravati Rohidas Pednekar subjected deceased Laxmi to the cruelty and caused her death on 16.12.1997 at 7 p.m. at Navjivan Chawl, Room No. 10, Dhobighat, Santa Cruz (E) Mumbai-55 and thereby committed offence under Section 304-B of I.P.C.?

Point No. 3 : Does Prosecution prove that accused No. 1 Narayan Rohidas Pednekar and Accused no. 2 Smt. Hiravati Rohidas Pednekar subjected deceased Laxmi to the cruelty for the period from May 1996 to December 1997 for the demand of money and ornaments and thereby committed offence under Section 498-A of I.P.C. and under

Section 3 of Dowry Prohibition Act?

7. Learned APP vehemently submitted that the learned Trial Court committed serious error in not appreciating the evidence in proper perspective and acquitting the accused persons for the offence punishable under Section 304(b) of IPC. It is also the submission of learned APP that though the learned Trial Court found that the evidence brought by the prosecution in support of its case against the accused persons sufficient enough to convict them for the offence under Section 498-A, but discarded the very material evidence against the accused persons for commission of offence under Section 304(b) read with Section 34 of IPC. It is also the submission of learned APP that the prosecution has brought clinching evidence in the nature of independent witnesses apart from other witnesses who were the relatives of deceased. Learned APP then submitted that though the appeal is principally challenging the judgment and order of acquittal of the accused, but at the same time appeal also raises an issue of inadequacy of sentence awarded to them. The submission of learned APP is, when Trial Court arrived at the conclusion that the prosecution has established its case against the accused for commission of offence punishable under Section 498-A of

IPC and the learned Trial Court accepted the evidence in awarding the conviction to the accused under Section 498-A, the sentence ought to have maximum sentence to the Respondents which could have been in proportion to the crime committed by them. Learned APP submitted that deceased lost her life at young age and as such the sentence awarded to the Respondents is inadequate. Learned APP in support of her submissions invited our attention to the grounds raised in appeal namely, 3(a) and (b). Learned APP also placed reliance on the judgments of Hon'ble the Apex Court in the case of K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others¹ and Dalbir Singh Vs. State of U.P.². Hence, learned APP prayed for allowing the appeal.

8. *Per contra*, learned Counsel appearing for the Respondents supported the judgment of the Trial Court. It is the submission of learned Counsel for Respondents that learned Trial Court committed no error in appreciating the evidence and arrived at just and proper conclusion. Learned Counsel for the Respondents submitted that learned Trial Court on appreciation of evidence of prosecution arrived at conclusion of acquitting the Respondents for the offence punishable

¹ (2003) 1 SCC 217

² (2004) 5 SCC 334

under Section 304(b) read with Section 34 of IPC drew support from the judgment of the Apex Court. Learned Counsel for the Respondents submitted that the learned Trial Judge assigned cogent reasons while awarding the sentence. This is not a case to entertain the appeal filed by the State on the ground of inadequacy of sentence is the submission of learned Counsel for Respondents. Hence, learned Counsel for Respondents prayed for dismissal of appeal.

9. With the assistance of learned Counsel appearing for the respective parties, we have gone through the record.

10. As the prosecution came out with the case of unnatural death of deceased and also submitted that the death of deceased is result of an ill-treatment and harassment caused at the hands of respondents, it may be necessary for us to refer to the evidence of Dr. Manik Sangle (PW 8) firstly.

11. Dr. Manik Sangle (PW 8) in his testimony before the Court stated that in the year 1996 had at Cooper Coroner's Court as Medical Officer and further stated that he might have conducted around 5000 postmortem. Considering this fact, it can safely be stated that Dr. Sangle

was experienced medical officer. Then he deposed that on 17.12.1997 dead body of Smt. Laxmi Pednekar was brought to him for conducting postmortem and he conducted the postmortem between 2.00 pm to 03.30 pm. He further deposed that he had noticed the following external injuries and these injuries were antemortem :

- i) Reddish ligature mark of 6 cms x 0.5 cm from chin along line of left mandible.
- ii) Parchment like, reddish, faint ligature mark of 10 cms. x 0.5 cm on left side of neck, starting at angle of left mandible, going obliquely downwards towards midline of neck, just above the adam's apple.
- iii) An oval abrasion of 1 cm diameter, reddish just above and towards right side of neck of injury no. 2 above. Mandible means the bottom portion of the jaws. Adam's apple means the prominent part on the neck at front side at about the middle.

He further stated that there was no specific internal injury noticed by him. Then he opined that the cause of death was due to asphyxia due to ligature compression of neck. Then he stated that the death was unnatural.

In the cross-examination he stated that the injuries around

the neck were because of ligature. There were no other injuries on the body of the deceased. Then he stated that such injuries are possible if a lady attempts to commit suicide. Then to a specific question this witness stated that it is true that the accumulation of body fluid and congestion of the organs is common in the cases of hanging.

12. Learned APP submitted before the Court that the compression of neck if read with the opinion in respect of cause of death due to asphyxia it indicates the death of deceased was not a natural one and the learned Trial Court on consideration of the evidence of Dr. Manik Sangle (PW 8) gave an affirmative finding to point no. 1 i.e. prosecution was successful in proving that the deceased died an unnatural death.

13. Now the next important aspect of consideration is, as to whether the finding of the learned Trial Judge on the point no. 2 are just and proper. Though it was vehemently submitted by the learned APP that the prosecution with the help of sufficient evidence proved its case against the accused persons for charge of commission of offence under Section 304(b) of IPC. On going through the evidence, we find that the

no error is committed by the learned Trial Judge in arriving at negative finding and thereby recorded the judgment and order of acquittal of respondents for commission of offence under Section 304(b) of IPC.

14. Now we may refer to the evidence of Ganesh Jadhav (PW 1). Ganesh is the brother of deceased and first informant. It may not be necessary for us to refer to all the details in the version of Ganesh and we may refer to certain important aspects of his evidence only. Ganesh (PW 1) deposed before the Court that the marriage between deceased and accused no. 1 was solemnized on 24.01.1996. It would be interesting to note that Ganesh in his examination-in-chief deposed that the expenses of marriage were borne by both the parties equally. Now it is admitted fact that in the family of accused no. 1 he and his mother accused no. 2 are the only members. Accused no. 2 was in her advance age at the time of marriage of accused no. 1. Though accused no. 1 was the only earning members in his family and it can safely be stated that the 50% of the marriage expenses were borne by accused no. 1. Ganesh (PW 1) deposed before the Court that for the initial period of 6 months the couple was residing happily and thereafter deceased made complaints of ill-treatment and demands at the hands of accused no. 1 and his mother accused no. 2.

He stated that he expressed his inability to fulfill the demands due to his financial condition. Then he refers to an incident of assault to deceased at the hands of accused persons which came to his knowledge through deceased. Ganesh further deposed before the Court that after this incident he brought back deceased to his house in the month of July, 1996. Then in the month of August, 1996 accused persons came to his house along with two relatives and requested him to send deceased back to her matrimonial home and Ganesh then told accused no. 1 to give an assurance in writing in presence of two respectable persons that he and his mother (Accused no. 2) would not ill-treat deceased. Now this suggestion was refused by accused no. 1 and accused no. 1 returned back to his home.

In the month of February, 1997 deceased gave birth to female child and she was staying with her brother Ganesh till August, 1997. Then there is a reference to an incident after about 2-3 months i.e. of snatching of child by the accused no. 1 and giving threats. The complaint was lodged against the accused. Then there is a reference of proceeding initiated by accused no. 1. Ganesh then stated that he and deceased were called in the office of Legal Aid Services at Bandra.

Accused No. 1 gave an assurance before the authority that he is ready to cohabit peacefully and was ready to forget past. On assurance, Ganesh send deceased back to her matrimonial house. Then there is a reference to an incident took place on 14.12.1997 when accused no. 1 visited house of Ganesh along with deceased and his child. On that day a friend of deceased in presence of Ganesh asked accused no. 1 as to whether they are residing happily. Due to this question accused no. 1 felt insulted and left the house of Ganesh in anger. Ganesh (PW 1) requested accused no. 1 to take food but he refused. On 16.12.1997 Ganesh received a phone call informing him that deceased is admitted in hospital.

15. Perusal of cross-examination of Ganesh (PW 1) shows that the defence Counsel made an attempt to submit before the Court that there was delay in lodging the first information report by Ganesh (PW 1). Learned Trial Judge was right in not accepting the ground of delay raised by the defence. In so far as the reference made to the version of Ganesh (PW 1) is concerned, the version of Ganesh (PW 1) clearly indicates that for the initial period of 6 months the couple was residing happily, then deceased was subjected to an ill-treatment and thereafter she was brought back to her parental home by Ganesh (PW 1) and for a

period of nearly a year deceased was staying in the house of Ganesh (PW 1). In the month of June, 1997 on an assurance given by the accused no. 1 before the authority of legal aid office at Bandra, Ganesh (PW 1) sent deceased back to her matrimonial home. Till 14th December, 1997 there was no complaint of any ill-treatment or harassment at the hands of accused persons. The incident of 14.12.1997 only show that on a query made by the friend of deceased the accused no. 1 felt insulted and returned back to his house along with deceased.

16. Seema Gopinath Jadhav (PW 2) is sister of deceased. This witness deposed before the Court that her younger sister i.e. deceased was married to accused no. 1 on 24.01.1996. The marriage was arranged one and it was performed in traditional manner. She further stated that she know accused persons. This witness also stated that after the marriage, deceased resided happily for about 4-5 month. Thereafter her mother-in-law and her husband used to harass and ill-treat her. They were asking deceased to bring money and gold ornaments from her parental home. She further stated that deceased used to told her that her husband and mother-in-law used to bear her, on that count this witness came to know from deceased that accused persons were not providing

food. This witness further stated that she used to visit frequently house of accused to meet deceased, however accused persons were not allowing to talk in private. She further stated that as deceased was tortured and harassed, deceased lodged complaint at Vakola Police Station on 13.06.1996. She further stated that on 16.12.1997 deceased died. She could not know the reason of death.

In the cross-examination this witness stated that marriage between deceased with accused no. 1 was performed after making all necessary inquiries. She further stated that after the marriage accused no. 1 and deceased were residing happily. She further stated that it is true accused no. 1 was not liking deceased to be away from him. She further stated that she was unable to tell the exact time, date of the torture caused by accused persons to deceased.

17. Avinash Jadhav (PW 3) is the brother deceased. It may not be necessary for us to refer to examination-in-chief of this witness, as this witness stated on the same line of Ganesh (PW 1) and Seema (PW 2).

Avinash (PW 3) stated in cross-examination that this witness was in bombay after 16.12.1997 and was attending his work regularly. He further stated that accused no. 1 suspecting the character of deceased

after 4-5 months of marriage. He further stated that though deceased was younger than Seema (PW 2), she was married prior to her. He further stated that he was not aware about whom accused no. 1 was suspecting.

18. Then there are other witnesses namely, Richard Bastian (PW 4), Supriya Tulaskar (PW 5) and Vishwas Kambli (PW 6), Laxman Agari (PW 7) who are the neighbours.

19. Richard Bastian (PW 4) is neighbour of accused no. 1. He states about ill-treatment suffered by deceased after 4-5 month of her matrimonial life. He stated that accused no. 1 and 2 were treating deceased like a servant and accused no. 2 was not giving food to her. Then he stated that Ganesh took deceased to his place. Then he stated that he do not remember when deceased delivered a child. There was no occasion to deceased to come and meet him. Then he stated that on 16.12.1997 his classes were going on he heard commotion outside and public gathering over their and deceased was taken to the hospital. Now the version of this witness that deceased was treated like a servant and accused no. 2 was not providing food to deceased is brought on record by way of an omission.

20. Supriya Tulaskar (PW 5) stated before the Court that deceased and her husband was residing peacefully for about 4-5 months after their marriage. Thereafter some incident occurred in their house and deceased used to tell this witness that her mother-in-law is not providing her food and accused no. 1 and 2 asking her to bring ornaments and money.

In the cross-examination this witness stated that on 16.12.1997 she learnt about the death of deceased.

21. Vishwas Kambli (PW 6) is neighbour of Ganesh and also acted as panch witness. This witness stated about the ill-treatment suffered by deceased after 4-5 months after her marriage. He stated that on 16.12.1997 when he returned back to his home in the evening he heard voices of crying and some chaos from the house of Ganesh. Then it came to his knowledge that deceased was removed to hospital. Then he rushed to the hospital where he came to know that deceased was no more alive.

22. Laxman Agari (PW 7) is a witness examined by the prosecution in dual capacity i.e. neighbour as well as panch witness to the

scene of offence.

23. Perusal of version of these witnesses show that these witness states about the ill-treatment suffered by deceased after 4-5 months of her matrimonial life and till she left her matrimonial home and stayed with Ganesh (PW 1) for a period nearly a year. Learned Trial Court thus arrived at the conclusion that the evidence brought by the prosecution against the accused persons for commission of offence under Section 304(b) of IPC falls too short. Learned Trial Court was justified in considering this aspect on the backdrop of necessary pre-requisites for proving an offence under Section 304(b) and more particularly, phraseology used i.e. soon before death.

24. Suresh Kale (PW 10) is the police officer attached to Vakola police station at the relevant time. In examination-in-chief this witness deposed that the investigation of the present case was marked to him on 17.12.1997. He had gone through the entire case papers of the investigation, which was carried by Smt. Karmarkar (PW 9). Then he stated about the necessary steps taken by him in the process of investigation such as, recording the complaint, taking photographs of the

dead body, drawing various panchanamas, recording statement of witnesses, effecting arrest of the accused, recovery of the articles, conducting the medical examination of the accused through the medical officers, conducting postmortem on the dead body, forwarding the material to the chemical analysis, obtaining the CA reports and filing of charge-sheet in the Court on 14.01.1998 in the Court of learned Magistrate.

In the cross-examination this witness stated that he had assisted Smt. Karmarkar (PW 9) when they had an occasion to go to residence of accused no. 1. He further stated that he is not aware when settlement between accused no. 1 and deceased took place before free legal aid committee.

25. Learned Trial Judge thus on appreciation of evidence recorded his findings in negative to point no. 2, whereas recorded affirmative finding to point no. 3. It may not be out of place to refer to relevant observations of the learned Trial Court in paragraph 24 of the judgment which reads thus:

24.

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However, these 3 witnesses did not speak of instance of ill-treatment of demand for dowry on the part of Accused no. 1 Narayan and Accused No. 2 Smt. Hiravati after May, 1997 till her death. The other ingredients of Section 304-B are referred to in their own manner differently by these 3 witnesses. The sum and substance was that accused no. 1 Narayan was harassing and ill-treating deceased Laxmi for money and ornament to be brought from her parental house. It is established that death of Laxmi was caused by such bodily injuries which are otherwise than under normal circumstances. It is also established that death of Laxmi has occurred within 7 years of her marriage. It is also brought on record that Laxmi was subjected to cruelty and harassment by her husband Narayan (Accused No. 1) for demand of dowry. However failing to establish that there was such cruelty subjected to the deceased soon before her death the provisions of Sec. 304-B can not be attracted for want of establishing material ingredients. Since it is not established that cruelty and harassment was soon before the death of Laxmi, the presumption under Section 113(b) of Evidence Act, 1972 can not be drawn. It appears from the testimony of Ganesh that due to harassment caused to Laxmi he refused to send her to

her husband's house. It also came in his ocular testimony that Accused Narayan was required to file reconciliation proceeding before Competent Authority, praying for sending his wife for cohabitation. It is also admitted fact that P.W. 1 Ganesh sent his sister to Narayan's house after the settlement before the authority on 14th December, 1997. The most important aspect is that there is no evidence suggestive of the fact that Narayan subjected Laxmi to cruelty after reconciliation, meaning thereby, there was no harassment or cruelty after the settlement. This fact establish that there was no cruelty soon before the death to be precise after settlement and before the death. Therefore, provisions of section 304B can not be attracted.

26. Learned Trial Court was also justified in making the following observations:

26. Since Section 304-B, 498-A of I.P.C. can not be held mutually exclusive and the provisions deal with two distinct offences. Therefore, I answer second point in negative.

27. As stated above, though the defence Counsel at the Trial made an attempt to submit that the delay caused in lodging the report

creates a doubt and suspicion over the prosecution case. These submissions were not accepted by the Trial Court and the Trial Court was justified for not accepting the submissions on account of delay in lodging report on following reasons:

30. Mr. Rasal then contended that recording of F.I.R. itself cast doubt as it is came to be recorded after much delay which shows that prosecution case is cooked up against the accused. Deceased Laxmi was taken to hospital by Narayan about 7.00 p.m. The inquest panchnama was drawn between 7.25 to 8.10 p.m. The scene of offence panchnama was drawn between 8.40 p.m. and 9.05 p.m. and F.I.R. came to be recorded thereafter at 9.45 p.m. The timings of events and its occurrence speaks for itself. In my thoughtful consideration there is no delay in recording the F.I.R. and no doubt can be cast on the F.I.R. and no inference can also be drawn that F.I.R. shows the case is cooked up against the accused. In case the F.I.R. could have been recorded after a day or two then in that eventuality it would be valid argument on the part of Mr. Rasal who contends that cooked up case is brought up before the court against the accused persons.

28. Though, there cannot be any dispute on the proposition of

law reflected in the judgment of the Apex Court relied on by learned APP. In our opinion, considering the above referred facts and the evidence brought before the Trial Court the judgments relied on by the learned APP are not applicable to the present case.

29. Learned APP also made an attempt to submit before this Court that the sentence awarded to the accused persons is inadequate and Trial Court ought to have awarded maximum sentence to the accused persons for commission of offence punishable under Section 498-A of IPC. In our opinion, learned Trial Court was justified in awarding the sentence to the Accused Nos. 1 and 2. It is an admitted fact that the family of accused no. 1 consisting of three members initially namely, he, his mother and deceased. Subsequently, deceased gave birth to a child and at the time of decision child i.e. daughter was of three years of age and she was shifted to remand home. The accused no. 2 mother of accused no. 1 was in her advance age i.e. 70 years of age at the time of decision of trial and as such considering this fact the learned Trial Court awarded the sentence to suffer rigorous imprisonment for a period of 3 years with fine in default simple imprisonment of 2 months to accused no. 1. Learned Trial Court also observed that though the prosecution

claims age of accused no. 2 around 65 years but she appears to be a lady of 75 years of age considering her constitution and physique and as such observed that she deserved to be convicted to undergo punishment whatsoever undergone till date. She was arrested on 17.12.1997 and she was in custody for 2 months, and ends of justice would meet if she is sentenced to suffer whatsoever already undergone with fine of Rs. 500/-.

30. Thus, we see no error either in appreciation of evidence by the Trial Court or in arriving at final conclusion. We are unable to find any illegality or perversity in the judgment. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)