

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

CRIMINAL APPEAL NO. 292 OF 2021

Snehalata w/o Dattatray Londhe
Age-50 years, Occupation - Household,
R/o. Hadolti, Tq. Ahmedpur,
Dist. Latur

... APPELLANT

[Mother of informant as
informant is deceased/PW-1]

VERSUS

- 1] The State of Maharashtra
- 2] Anant s/o Narsing Vhandale
Age: 36 years, Occupation: Service,
R/o. Anandwadi [Hadolti],
Tq. Ahmedpur, Dist. Latur
- 3] Narsing s/o Kishanrao Vhandale
Age - 62 years, Occupation - Agriculturist,
R/o. Anandwadi [Hadolti],
Tq. Ahmedpur, Dist. Latur
- 4] Sojarbai w/o Narsing Vhandale
Age - 50 years, Occupation - Housewife,
R/o. Vitthal Nagar, Hadolti,
Tq. Ahmedpur, Dist. Latur
- 5] Maina w/o Madhav Pattewad
Age- 43 years, Occupation-Labourer,
R/o. Vitthal nagar, Hadolti,
Tq. Ahmedpur, Dist. Latur

... RESPONDENTS

[Respondent No.2 to 5 are
original accused]

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Mr. Amar V. Lavte, Advocate for appellant
Ms. V. S. Chaudhari, APP for respondent No.1-State
Mr. Sandeep C. Swami, Advocate for respondent Nos.2 to 4
Mr. P. S. Pawar, Advocate for respondent No.5

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 02.03.2023.

ORDER [PER Y. G. KHOBRAGADE, J.] :

The present appeal under Section 372 of the Code of Criminal Procedure filed by the mother of deceased Mayuri, challenging the judgment and order of acquittal of the original accused/respondent Nos. 2 to 5 passed by the learned Additional Sessions Judge, Ahmedpur, District Latur on 29.07.2020 in Sessions Case No.16/2018 for the offence punishable under Sections 498-A, 306 and 304-B read with 34 of the Indian Penal Code.

2. Heard Mr. A. V. Lavte, the learned Advocate appearing for the appellant, Advocate Mr. V. S. Choudhari for the State and Advocate Mr. Sandip C. Swami for the respondent Nos. 2 to 4 as well as Advocate Mr. S. S. Pawar for respondent No.5 at length at the stage of admission.

3. With able assistance of the learned Advocates appearing for the parties, we have gone through the record.

4. In nutshell, the prosecution story is that the marriage of Mayuri was solemnized with respondent No.2 on 09.12.2013 and

after marriage, Mayuri was cohabiting with respondent No.2 in joint family with her in-laws - respondent Nos. 3 and 4. It is alleged that the accused Nos. 1 to 3/respondent Nos. 2 to 4 have subjected physical and mental cruelty to the deceased Mayuri on the ground that the appellant i.e. mother of the deceased has not gifted articles at the time of marriage, so also the accused raised demand of money against Mayuri for securing job for respondent No.2 - husband. After 2 - 3 months of the marriage, respondent No.2 brought his wife Mayuri at her parental house and told her that unless she brings money, she should not come for cohabitation with him. Since then, Mayuri was staying at her parental house at village Hadolti, Taluka Ahmedpur, District Latur. It further alleged that the respondent No.5 - accused No.4 and her daughter Vaishnavi, who are neighbours at her parental house, were always taunting Mayuri on account of abandonment and desertion by respondent No.2 - accused No.1 for want of her proper behavior. On 09.01.2018, Mayuri came to know about performing second marriage by her husband (accused No.1), due to which Mayuri was enraged and when she was alone at her parental house, on 09.01.2018 at about 11.30 a.m., she poured kerosene on her person and set herself ablaze. Due to which, she suffered burn injuries and she was admitted in Government Medical

College and Hospital (G.M.C.H.) at Latur. Soon after her admission, her statement was recorded by PW4 Police Naik Shahaji Bapusaheb Shinde. The victim Mayuri stated in her statement that on 09.01.2018 she came to know about performing of second marriage by her husband respondent No.2 - accused No.1. Hence, she was enraged and poured kerosene herself and set fire. The victim Mayuri further stated that the respondent Nos. 2 to 5 - original accused Nos. 1 to 4 are responsible for her suicide. On the basis of such statement, Crime No.20/2018 registered against the respondent Nos. 2 to 5 for the offence punishable under Sections 498A read with 34 of the Indian Penal Code.

5. On the face of record, it further revealed that on 10.01.2018 at about 2.00 p.m., PW-5 Shivaji Maruti Palewad Nayab Tahsildar cum Executive Magistrate, recorded second dying declaration of the victim Mayuri after compliance of formalities and the victim Mayuri succumbed on 15.01.2018. Therefore, offence under Section 304 of the Indian Penal Code added in Crime No.20/2018. PW-7 Assistant Police Inspector Mr. Yunus Musa Shaikh conducted investigation, drawn spot panchanama and seized plastic bottle, matchstick and half burnt pieces of clothes under seizure

panchanama Exh-43. The Investigating Officer also seized one mobile of Samsung company with SIM card under seizure panchanama Exh.61. The Investigating Officer collected death information report of Mayuri Exh-33 and arrested the accused persons. During the investigation, it was transpired that respondent Nos. 2 to 4 - accused Nos. 1 to 3 have subjected physical and mental cruelty to deceased Mayuri on account of demand of dowry and abetted her to commit suicide. After due investigation, the Investigating Officer filed charge-sheet against the accused for the offence punishable under Sections 498-A, 306, 304-B read with 34 of Indian Penal Code vide Exh.18. After due compliance of Section 207 of the Code of Criminal Procedure, the learned Judicial Magistrate, First Class committed trial under Section 209 of the Code of Criminal Procedure to the learned Sessions Judge, Ahmedpur. The learned trial Court framed the charge at Exh.18 against the respondent Nos. 2 to 4/accused Nos. 1 to 4 for the offence punishable under Sections 498-A, 306 and 304-B read with 34 of the Indian Penal Code. Accordingly, plea of accused recorded. The accused pleaded not guilty and claimed for trial. In order to bring home to the guilt for the charges, the prosecution examined total seven witnesses. The statement of accused recorded under Section 313 of the Code of Criminal Procedure. The

defense of the accused is that at the instance of the appellant false dying declarations were prepared in order to harass them and they have been falsely implicated in the crime.

6. Since the criminal law was set in motion on the basis of two dying declarations, we would like to consider those two dying declarations first. It is submitted that on 09.01.2018 at about 11.00 a.m. Mayuri was alone on her parental house and she came to know about performing second marriage by her husband respondent No.2 (accused No.1), due to which she was enraged and poured kerosene on her person and set her ablaze. She sustained severe injuries and the neighbours after hearing hue and cry of Mayuri, extinguished the fire by pouring water and admitted her in G.M.H.C. Latur. Soon after hospitalization of Mayuri, the Medical Officer issued a letter Exh.45 to Gandhi Chowk Police Station and passed the intimation about admission of patient Mayuri due to burn injuries in burn ward. Thereafter, PW4 Police Naik Shahaji Bapusaheb Shinde visited at burn ward of G.M.C.H. Latur and sought opinion from the Medical Officer- PW-6 about consciousness of Mayuri for recording her statement. Accordingly, the Medical Officer PW6 Dr. Sagar Ramesh Kalwale issued a letter Exh.46 certifying about fitness of Mayuri to record her

statement. Accordingly, PW4 - Police Naik Shahaji Bapusaheb Shinde recorded the statement of Mayuri Exh.47 i.e. dying declaration of Mayuri w/o Anant Vhandale.

7. In order to prove first dying declaration Exh.47, the prosecution examined PW4 Shahaji, who deposed that the victim gave her name as Mayuri w/o Anant Vhandale, age about 22 years and her marriage was solemnized in the year 2014 with accused No.1 Anant Narsing Vhandale, resident of Anandwadi [Hadolti], Taluka Ahmedpur, District Latur. Initially her husband (accused No.1), her father-in-law (accused No.2) and mother-in-law (accused No.3) gave her good treatment for some days, but thereafter they used to harass her on trifling grounds and they used to demand money from her in order to obtain employment for her husband (accused No.1). Mayuri further told that she was subjected to physical and mental cruelty by accused Nos. 1 to 3 and after 2-3 months of her marriage, she was sent at her parental house by her husband and told her that she shall bring money from her parental house in order to obtain employment to him. She also told that her neighbours Vaishnavi Pattewad and respondent No.5 - Maina Pattewad used to taunt her that her behavior is not good and her husband deserted her. On 09.01.2018 in morning, she came to know that her husband solemnized second

marriage, due to which she was enraged and she was alone at her parental house, she poured kerosene on her person from the can and set her ablaze with matchstick and due to pains of the flames of burn, she raised hue and cry, due to which her neighbours extinguished the fire and she was brought in hospital by ambulance. While her admission in hospital the neighbours gave her name as Mayuri Dattatrya Londhe. She sustained injuries to her face, chest, throat, stomach, back, both the legs and both the hands. Mayuri further gave her statement that her husband and in-laws as well as her neighbour Maina and Vaishnavi are responsible for the incident.

8. It is apparant on face of record that on 10.01.2018 at about 1.30 p.m., PW-5 Shivaji Maruti Palewad Naib Tahsildar Cum Executive Magistrate recorded second dying declaration Exh-51 of the victim Mayuri after obtaining mental fitness certificate of the victim. In order to prove second dying declaration Exh.51 the prosecution examined PW-5 Shivaji at Exh.50. While recording statement Exh.51, the victim Mayuri gave her name, age, address and stated that in the year 2014 her marriage was solemnized with respondent No.2/accused No.1 - Anant Narsing Vhandale and after marriage, for some days, her husband and in-laws gave her good treatment, but subsequently they harassed her on trifling issues and raised demand

of money in order to secure job for her husband (accused No.1) and subjected her physical and mental cruelty. Victim Mayuri further stated that after 2-3 months of her marriage, she was sent at her parental house by her husband and she was told by her husband that she should bring money from her parental home in order to secure employment for him. While recording statement, the victim Mayuri further stated that accused No.4 Maina Pattewad and her daughter Vaishnavi used to told her that her behaviour is not good and she shall not go for cohabitation with her husband and they used to abuse her. Victim Mayuri further stated while recording her statement to PW-5 that on 09.01.2018 in the morning, she came to know about performing second marriage by her husband. Hence, she was enraged and she was along at her parental house at Hadolti and she poured kerosene on her person from the can and set her ablaze by matchstick. Victim Mayuri further stated while recording her statement that she raised hue and cry and the neighbours extinguished the fire and brought her at G.M.C.H. Latur in Ambulance. She sustained burn injuries to her face, chest, throat, stomach, back, both the legs and both the hands and her husband (accused No.1) her in-laws accused Nos. 3 and 4 as well as neighbour Maina accused No.4 and her daughter are responsible for the

incident. The dead body of Mayuri was returned for autopsy and on 16.01.2018 Dr. M. M. Noman and Dr. M. A. Giri conducted autopsy and issued postmortem report Exh.34, which proves that the injured Mayuri has sustained following burn injuries:

17	<u>BODY PARTS</u>	<u>PERCENTAGE OF BURN</u>
	H NF	09%
	Rt Upper limb	09%
	Rt Lower limb	12%
	Lt Upper limb	09%
	Lt Lower limb	18%
	Anterior trunk	18%
	Posterior trunk	08%
	Perineum	01%
	Total	84%

9. The accused have not challenged sustaining 84% burn injuries to the deceased Mayuri. The inquest panchanama Exh.31 of dead body Mayuri proves about sustaining burn injuries to her head, face, neck, chest stomach, both hands and legs. The death cum information sent by the Medical Officer to the Police Station Exh.33 proves cause of death of deceased Mayuri was due to septicemic shock due to burn. The spot panchanama and seizure panchanama Exh.43 proves about seizure of plastic kerosene bottle, matchstick and half burnt pieces of clothes from the place of incident.

10. It is an admitted fact that at the time of incident the victim Mayuri was alone at her parental house i.e. house of appellant at village Hadolti, Taluka Ahmedpur, District latur. The sketch copy Exh.64 prepared by Revenue Circle Officer also corroborate about occurrence of incident at the house of mother of the deceased Mayuri. The report of F.S.L. Exh.63 proves that even of bottle Exh.1 containing kerosene residues were detected on matchstick Exh.2.

11. On perusal of both the dying declarations Exh.47 and Exh.51, it proves on 09.01.2018 at about 11.30 a.m. the victim Mayuri had poured kerosene on her person and set herself ablaze. The postmortem report Exh.34 proves that deceased Mayuri had sustained 84% superficial deep burn injuries all over the body. On careful perusal of both the dying declarations Exhs.47 and 51, no rooms of doubt that on 09.01.2018 she came to know about solemnization of second marriage by her husband when she was alone at about 11.30 a.m. due to enrage she poured kerosene on her person and set on fire by lightening matchstick and committed suicide.

12. In cross examination, PW-1, the mother of victim admitted that after marriage, her daughter Mayuri cohabited with her

husband - accused No.1 at her matrimonial house for a period of one month and she had not lodged any complaint against the accused No.1 with the police when the accused No.1 had allegedly taken the gold ornaments and amount of Rs.60,000/-, so also she does not know the exact date when the accused No.1 has taken gold ornaments and amount of Rs.60,000/-. PW-1 admitted in her cross examination that on 21.02.2014 the accused No.1 had sent legal notice to her daughter Mayuri and had called for restitution of conjugal right. So also, again on 17.11.2016, the accused No.1 sent notice to her daughter Mayuri and had called for restitution of conjugal right. But, in spite of service of both the notices, her daughter had not joined the company of accused No.1. The PW-1 further admitted that the accused No.1 had filed H.M.P No.69/2014 for restitution of conjugal right against her daughter. So also accused No.1 filed another H.M.P No.60/2016 before the learned Civil Judge, Senior Division, Ahmedpur for decree of divorce against her daughter Mayuri and her daughter Mayuri was appeared in said proceedings. Therefore it prima-facie proved that the victim Mayuri was residing at her parental house by deserting her husband respondent No.2/accused No.1 due to matrimonial dispute.

13. The record further reveals that deceased Mayuri had filed a complaint bearing Regular Criminal Case No.155/2014 against the present respondent Nos. 2 to 4 (Original accused Nos. 1 to 3) before the learned Judicial Magistrate, First Class, Ahmedpur, for the offence punishable under Section 498A read with 34 of the Indian Penal Code and after filing of the said complaint deceased Mayuri was not cohabiting with respondent No.2/accused No.1 in joint family with the respondent Nos. 3 and 4/accused Nos.2 and 3. Therefore, there is no cogent and substantial evidence available on record that soon before the death of Mayuri, she was subjected to guilt of harassment at the hands of the respondent Nos. 2 to 4/accused Nos. 1 to 3 any demand of dowry.

14. Section 498-A of the Indian Penal Code provides as under:

498-A - *Husband or relative of husband of a woman subjecting her to cruelty:- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation – For the purpose of this section, “cruelty” means-
(a) *any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 107 of the Indian Penal Code provides about abetment that if a person abets doing of a thing, who – instigate any person to do that thing or engages with one or more other person in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or by any act or illegal omission takes place in pursuance of that conspiracy and in order to doing of that thing, thirdly – intentionally aids, by any act or illegal omission, the doing of that thing.

15. Section 113-B of the Evidence Act provides presumption as to dowry death, if it is shown that soon before her death, such woman had been subjected by such person to cruelty of harassment or in connection with any demand of dowry. However, in case in hand, it apparently shows that on 09.12.2013 the marriage of deceased Mayuri was solemnized with accused No.1, but after 2 - 3 months due to some matrimonial discord, Mayuri started residing at her parental house and had filed proceeding bearing Regular Criminal Case No.155/2014, against the present respondent Nos. 2 to 4. It is not in dispute that the Regular Criminal Case No.155/2014 was pending on the file of learned J.M.F.C. Ahmedpur and during pendency of said criminal complaint the accused No.1 sent two

notices on 21.02.2014 and 17.11.2016 to the victim Mayuri so also the accused No.1 instituted two matrimonial proceedings i.e. H.M.P No.69/2014 which were pending on the file of learned Civil Judge, Ahmedpur and victim Mayuri had filed her written statement.

16. In order to constitute raising physical and mental cruelty for illegal demand of dowry, it is necessary on the part of the prosecution to prove that the married woman was subjected to physical and mental cruelty for non fulfillment of demand of dowry.

17. On perusal of impugned judgment, it appears that the learned trial Court has considered the case of ***Rukhmaji Devrao Gulande Vs. State of Maharashtra – All MR(Cri.) 3036***, wherein it has been observed that:

“14. The purport of Section 498-A has been considered in detail by the Apex Court in the case of Girdhar Shankar Tawade V/s. State of Maharashtra reported in (2002) SC 2078 [2002 All MR (Cri) 1669 (S.C.)]. In para 3 the court has observed as under;

“The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz. (I) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of

physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A."

15] Thus if we consider purport of Section 498-A of IPC, then it is not all type of ill-treatment and harassment to be treated as cruelty as referred in Section 498-A of IPC. The term 'cruelty' has been explained and restricts to acts explained in clause (a) or (b) of Section 498-A. If we consider the cruelty as defined in explanation (a) as well as explanation (b) of Section 498-A, then it is not that every cruelty is made punishable. In order to establish the offence under Section 498-A it is incumbent upon prosecution to establish cruelty as explained either in Clause (a) and (b) of Section 498-A of IPC".

18. In order to bring home to the guilt for the offence under Section 304-B of the Indian Penal Code, it is necessary on the part of the prosecution to prove that the accused must have subjected the woman to cruelty in connection with demand of dowry soon before her death and this ingredient is required to be proved by the prosecution beyond reasonable doubt and the Court will presume that the accused has committed offence of dowry death. The presumption of dowry death can be raised if the prosecution satisfied that;

- (1) The woman was subjected to cruelty or harassment by her husband or his relatives;
- (2) Such a cruelty or harassment was for or in connection by her husband or his relatives;
- (3) Such cruelty or harassment was soon before death.

19. In the case of Baijnath and others Vs. State of Madhya Pradesh, MANU/SC/1501/2016, the Hon'ble Supreme Court held thus:

35. This court while often dwelling on the scope and purpose of Section 304B of the Code and Section 113B of the Act have pronounced that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in Shindo Alias Sawinder Kaur and Anr. V/s. State of Punjab MANU/SC/0499/2011: (2011) 11 SCC 517 and echoed in Rajeev Kumar V. State of Haryana MANU/SC/1144/2013: (2013) 16 scc 640. In the latter pronouncement, this court propounded that one of the essential ingredients of dowry death Under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under section 113B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao V. Yadla Srinivasa Rao MANU/SC/0890/2002:(2003) 1 SCC 217 to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

20. The case of the prosecution based on two dying declarations Exh.47 and Exh.51. First dying declaration Exh.47 recorded on 09.01.2018 at about 11.00 a.m. by PW-4 Police Naik Shahaji Bapusaheb Shinde and second dying declaration Exh.51 recorded by PW-5 Shivaji Maruti Palewad Naib Tahsildar Cum

Executive Magistrate on 10.01.2018 at about 2.00 p.m. However, both dying declarations are consistent in respect of conduct of the accused respondent Nos.2 to 5 / accused Nos. 1 to 4 that they were not present at the time of alleged incident. Both the dying declarations Exh.47 and Exh.51 are absolutely silent about how much was the demand of accused for securing the job. Though the PW1 deposed that her daughter Mayuri was subjected cruelty on the ground of not receiving any gift articles from parental home and the accused No.1 demanded money for securing employment for him. However, the evidence of PW-1 does not suggest any quantum of money and the date on which said demand was raised. Therefore, allegations of cryptic demand without specification does not attract the ingredients under Section 498-A of the Indian Penal Code and mere using of words “mental and physical harassment” will not be sufficient to prove the ingredients of Section 498-A of the Indian Penal Code. So also there is no substantial evidence that “soon before the incident” the accused i.e. respondent Nos. 2 to 4 raised any demand of dowry and subjected the victim cruelty for non fulfillment of demand of dowry. It would be worthwhile that the respondent No.5 / accused No.4 impleaded as accused only on ground that the accused No.4 and her daughter juvenile conflict with law were

taunting for want of proper behavior of victim's husband abandoned and deserted her, which does not constitute to abet the victim to commit suicide and as such there is no specific allegations as against respondent No.5 / accused No.4 in which manner the respondent No.5 abetted the victim.

21. On perusal of the impugned judgment and order, it appears that the learned trial Court has considered the evidence available on record as well as the ratio of various case laws cited therein, and acquitted the respondent Nos. 2 to 5 / accused Nos. 1 to 4 for the offence punishable under Sections 498-A, 306, 304-B read with Section 34 of the Indian Penal Code, which does not warrant any interference at the hands of this Court. So also there is no merit in the grounds stated in the present appeal. Hence, it is liable to be dismissed at the stage of admission.

22. Accordingly, the present Criminal Appeal is hereby dismissed.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]