



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

CRIMINAL APPEAL NO. 453 OF 2005

1. Satish S/o Changdeo Kolhe
Age: 24 yrs., Occu.: Agriculturist,
R/o. Shekaiwadi, Tal.Akole,
Ahmednagar.
 2. Mathurabai W/o Changdeo Kolhe
Age: 70 years, Occu.: Household,
R/o. Shekaiwadi, Tal.Akole,
Ahmednagar.
-Appellants

Versus

- . State of Maharashtra
(through Akole Taluka Police Station,
Sangamner, Dist.Ahmednagar)
-Respondent

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Advocate for Appellants : Mr. A.S.Bajaj a/w. Mr.PP. Patni
APP for Respondent : Mr.S.M.Ganachari

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 NOVEMBER, 2024

PRONOUNCED ON : 19 NOVEMBER, 2024

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order of conviction rendered by learned Adhoc Additional Sessions Judge, Sangamner dated 04-06-2005 in Sessions Case No.23 of 2003 holding appellants guilty for offence under Section 498-A read with 34 of the Indian Penal Code (IPC).

2. Before Adverting to the merits of the appeal, it needs to be noted that during pendency of appeal, appellant no.2 Mathurabai W/o Changdeo Kolhe expired on 18-10-2022. Death Certificate Exh.- 'X' issued by Nagar Panchayat, Akole is placed on record. In view of said death certificate, appellant no.2 Mathurabai having died, instant appeal stands abated as against such appellant.

PROSECUTION CASE IN BRIEF

3. In short, prosecution was launched against present appellant no.1 and deceased appellant no.2 by Akole Taluka Police Station, Sangamner, who registered Crime bearing No.45 of 2003 on the basis of dying declaration of deceased Chhaya. Subsequently, on account of over 90% burns, deceased succumbed and therefore, charge was added for offence under Section 302, 498-A, 504, 506, 323 read with 34 of the IPC.

Investigation was conducted by PW8 Ukirde (PI) and after gathering sufficient evidence, he chargesheeted both accused.

Learned trial Judge to whom case was committed, framed and explained charge and on denial, conducted trial. Prosecution has examined as many as eight witnesses. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded.

Accused also adduced evidence of two witnesses i.e. DW1 Balasaheb and DW2 Indubai. After appreciating oral and documentary evidence adduced by prosecution and defence, learned trial Judge held charges to be proved but only to the extent of Section 498-A read with 34 of the IPC and acquitted accused for rest of the charges i.e. under Sections 302, 323, 504 and 506 read with Section 34 of the IPC.

Aggrieved by the judgment and order of conviction, instant appeal has been preferred.

SUBMISSIONS

On behalf of appellants :

4. According to learned Counsel for the appellants, there is false implication. That allegations are general in nature. That role of both accused are not defined. He pointed out that witnesses are merely speaking about demand of amount, but neither of them are quoting the amount of demand. He submitted that accusations were raised that for demand, there use to be ill-treatment by beating, but specific instances are not quoted. He submitted that learned trial Court has already discarded dying declaration and acquitted both appellants from said charge. However, charge of Section 498-A of the IPC is

accepted as proved even when there is no cogent and reliable evidence.

5. It is pointed out that infact it has come in the evidence that parties have reached to a compromise. In such backdrop, allegations of offence under Section 498-A of the IPC levelled for the first time after demise, ought not to have been accepted.

For all above reasons, learned Counsel prays to allow the appeal by setting aside the impugned judgment.

Learned Counsel seeks reliance on the judgment of this court in *Dnyaneshwar s/o. Ajeba Dalvi and others v. State of Maharashtra* reported in 2006 (2) Mh.L.J. (Cri.) 147.

On behalf of State :

6. In answer to above, learned APP pointed out that barely after two months of marriage, there was ill-treatment. Both husband and mother in law ill-treated deceased in backdrop of demand of money for purchase of plot. That parents, who are examined, are consistent about learning about it from their deceased daughter when she visited them. That twice amount was raised and paid to the accused, but still demand continued followed by beating by husband. He

pointed out that the person from whom amount was raised and maternal uncle of deceased, who was party to the demand and acceptance of amount, are examined. That witnesses are consistent on that count. That their evidence about repeated beating by husband has remained unshaken.

He also invited attention of this Court to the contents of the dying declaration and submitted that therein also deceased had reported ill-treatment and beating and therefore, according to learned APP, learned trial Court has rightly accepted prosecution version with regard to said charge and he prays to dismiss the appeal on the ground that there is no merit.

BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT

In support of its case, prosecution has adduced evidence of eight witnesses. Sum and substance of their evidence is as under :

7. **PW1** Baburao Bhaguji Jadhav is pancha to spot panchanama exh.26. Spot panchanama is drawn in his presence at the spot i.e. house of accused.

8. **PW2** Shobha Machhindra Naik is mother of deceased Chhaya.

She deposed that after marriage of her daughter Chhaya with accused no.1 Satish, her daughter went to reside with accused husband and mother-in-law at Shekaiwadi. That for about two months after marriage Chhaya was kept well, but after two months, both accused started beating Chhaya and picking up quarrels with her. Accused persons were asking her to bring Rs.10,000/- from her parents for purchase of plot. That during her visit to the house of this witness, Chhaya told about demand as well as ill-treatment. This witness and her husband assured to pay amount after two months. Accordingly, this witness and her husband took Chhaya alongwith Rs.10,000/- to the house of accused and paid the amount to accused. She further deposed that out of Rs.10,000/-, Rs.5,000/- was borrowed by them from neighbour Ramnath Naik and remaining Rs.5,000/- was their own contribution. That after payment, accused treated Chhaya properly for 1-2 months, but again she was subjected to ill-treatment. That again for demand of money, accused persons beat and abused Chhaya. She deposed that amount of Rs.10,000/- was paid by them on 16th. She further deposed that Chhaya used to call them on telephone of shop of their neighbour Ramnath Naik and she also told that there was again demand of Rs.10,000/- and on such count, there was ill-treatment. Then accused no.1 had been to

their house. That brother of this witness namely Anil Ramnath Bulkunde paid Rs.10,000/- to accused no.1. Out of the said amount, Rs.5,000/- was with her brother and remaining was borrowed. That again for 2-3 months, Chhaya was stayed with accused, but again she was beaten and so she came back to their house and therefore, this witness, her husband and relatives reached Chhaya at the house of accused persons and a meeting was called, which was attended by her brother and maternal uncle Dashrath Mandlik and understanding was given to accused. That 2-4 days thereafter, incident of burns took place and in the hospital, she claims that Chhaya told that mother-in-law poured kerosene and husband ignited her and also told that both accused ill-treated her.

9. **PW3** Ramnath Namdeo Naik at exh.28 stated that he was cousin of Machhindra and his daughter Chhaya being given at Shekaiwadi. He deposed that Macchindra is his neighbour and he runs Kirana shop namely Mira Kiran and also has telephone connection and he gave its number as 228660. He deposed that whenever telephone calls were received from relatives of Macchindra, he used to pass message and accordingly, Macchindra and his wife used to come and talk. He deposed that three telephone

calls were received from Chhaya and that Macchindra told him that husband and mother-in-law of Chhaya were ill-treating her for demand of money for purchase of plot. He also deposed that once Macchindra has borrowed Rs.5,000/- from him for payment to the accused persons. He gave date as 16-07-2002 and further stated that by adding Rs.5,000/- in the amount given by him, Macchindra paid amount to accused. He also deposed that 2-3 times again telephone calls were received from Chhaya regarding demand of money from accused and he informed about it to Macchindra. He further stated that again by calling accused no.1, Macchindra paid Rs.10,000/- to him and the said amount was borrowed by Macchindra from his brother-in-law. He also deposed that Chhaya alongwith her husband and her mother-in-law had been to Pandharpur and accused persons were demanding Rs.1,000/- towards expenses of the said tour from Chhaya. He stated that due to ill-treatment to Chhaya for about 1 to 1 and ½ months she was kept at Kasarwadi and later she was sent by her parents and maternal uncle to the house of accused. On 31-05-2003, news of burn was received.

10. **PW4** Macchindra Dhondiba Naik is father of deceased Chhaya.

He stated that after marriage, his daughter Chhaya was treated properly for two months and thereafter, he received telephone call from Chhaya regarding demand of Rs.10,000/- for purchase of plot and she was sent to his house. She further told this witness about one Guntha plot to be purchased from Somnath Shinde, maternal uncle of accused no.1. He deposed that he borrowed Rs.5,000/- from his cousin Ramnath Naik and Rs.5,000/- from the Society and he and his wife went to house of accused and paid Rs.10,000/- and requested accused to treat Chhaya properly. However, again telephone call of Chhaya was received in the shop of Ramnath about requirement of Rs.10,000/- for purchase of plot and this witness assured that he would arrange. Then he called accused no.1 at his house and through his brother-in-law paid Rs.10,000/- to accused no.1 and even thereafter, Chhaya was sent back to the house of this witness and she stayed with them for 15 days. Thereafter, this witness alongwith his brother-in-law Dashrath Mandlik, Balasaheb and others went to Shekaiwadi and there a meeting was called. After one and half month, he got news of burns from his father-in-law.

11. **PW5** Chandrashekhar Sampatrao Deshmukh, Naib Tahsildar, has recorded dying declaration exh.32. He deposed that deceased

reported the cause of incident that she was taken to Pandharpur and her husband and mother-in-law were demanding Rs.1,000/- from the father of the patient and her mother-in-law was not ready to keep her in the house. That deceased also told this witness that quarrels were always used to take place and persons from her house were demanding money. Regarding ill-treatment, deceased told that her husband used to beat her. That deceased also made grievance against mother-in-law and not much against her husband.

12. **PW6** Anil Ramnath Bulkunde is maternal uncle of deceased. He stated that his niece was treated well for two months after marriage. That when he had been to house of his sister at that time, Chhaya told that her husband and mother-in-law want to purchase one Guntha plot from maternal uncle of accused no.1 namely Somnath Shinde for Rs.50,000/- and so they were asking her to bring Rs.10,000/- as hand-loan from her father. According to him, after 15 days thereafter, when he had been again to Kasarwadi, he learnt from his sister that 4-5 days back, Chhaya had come and disclosed that for non-payment of Rs.10,000/-, she was subjected to ill-treatment by her husband and mother-in-law. That her sister also told that they obtained Rs.5,000/- from Ramnath Naik and they were having

Rs.5,000/- and thus, by taking Rs.10,000/- they reached Chhaya at Shekaiwadi and paid said amount to husband of Chhaya on 16-07-2002 and they also gave understanding to accused. He again deposed that when he again went to Kasarwadi, his sister told that after about 4 months of payment of Rs.10,000/-, telephone call of Chhaya was received demanding more money to the tune of Rs.10,000/- and his sister and mother-in-law asked him to arrange Rs.10,000/-. That on 22-11-2002, husband of Chhaya had come to Kasarwadi and he was duly informed by his brother-in-law to come to Kasarwadi with Rs.10,000/- and so he came to Kasarwadi with Rs.10,000/- with his friend Namdeo Dighe and the amount was paid to husband of Chhaya. He further deposed that after about three months, Chhaya alongwith her relatives had been to Pandharpur and after returning back, Chhaya had been to Kasarwadi and her relatives were asking her to pay Rs.1,000/- spent for Pandharpur tour, but without paying any amount, Chhaya was sent back to Shekaiwadi. That 8-10 days thereafter, again there was beating by husband and mother-in-law for non-payment of Rs.10,000/- and Chhaya was sent back to her parents and she stayed there for one and half month and later on this witness alongwith parents of Chhaya and maternal uncle of this witness namely Dashrath Mandlik went to Shekaiwadi,

understanding was given to accused and they dropped Chhaya at Shekaiwadi and returned back. That on 31-05-2003 he received telephone call about burns suffered by Chhaya. He claims to have interacted with Chhaya in the hospital and claims to have heard from her that on 31-05-2003 in the evening, husband and mother-in-law of Chhaya quarreled with her and beat her and she was abused and after altercation, mother-in-law poured kerosene on the person of Chhaya and husband set her on fire.

13. **PW7** Sandip Sitaram Kacheriya is the Medical Officer, who gave endorsement about fitness to record dying declaration on being approached by Deshmukh on 01-06-2003.

14. **PW8** Rakhamaji Jijaba Ukirde (PI) is the Investigating Officer.

DEFENCE WITNESS

15. **DW1** Balasaheb Bhikaji Abhang stated that he knew both the accused. They stayed 100 feet away from his house. That the incident took place in the month of May. That he heard noise from the house of accused persons so he went there and saw Chhaya in burnt condition. That he was alone male member present there and ladies present there asked him to break open the door. Therefore, he

gave kicks to the door and after opening it, they went inside, but he stated that both accused were not present in the house and on the say of ladies, he went to field of accused on Motorcycle to inform them, which is 2-3 kms away from spot. That till accused persons reached spot, Chhaya was taken to the hospital.

16. **DW2** Indubai Madhav Gaikwad also stated that while she was talking to Ramnath, smoke was seen emanating from the house of Mathurabai so she went there. That front door was opened but other door was closed and Balasaheb Abhang by kicking the door opened it and she saw Chhaya was burning in the room. Even according to this witness, fire was doused and at that time, both the accused were in the field and so DW1 Balasaheb went to call them.

ANALYSIS

17. Principal grounds on which exception has been taken are that, there is no cogent and reliable evidence on the point of demand and cruelty, and allegations are general and non-specific regarding the occurrences of ill-treatment and demand.

18. After carefully going through the evidence of **PW2** Shobha and **PW4** Machhindra i.e. mother and father of deceased, it is noticed

that they are consistent that after two months of marriage, deceased was asked to bring Rs.10,000/- for purchase of plot. Both speak about raising the amount by borrowing Rs.5,000/- from neighbour PW3 Ramnath and contributing their own amount of Rs.5,000/- and they both claim to have visited accused and had paid the said amount. They are also specific about amount being paid on 16th. In spite of such demand being met, they claim that after 1-2 months, when their daughter came, she again reported about another demand of Rs.10,000/- being made. Even said demand was met through PW6 Anil, maternal uncle of deceased. Parents of deceased have spoken about husband beating deceased in the backdrop of demand. Parents of deceased are unanimous that in spite of demand of Rs.20,000/- met in two installments, deceased Chhaya was sent back to maternal house and was required to be taken back to the house of accused by conducting a meeting.

19. **PW3** Ramnath, in his evidence, deposed that he runs a grocery shop and about having telephone connection. At the beginning, he deposed about phone calls received from deceased and he passing messages to her parents. He also testified that PW4 Macchindra, father of deceased, reported him about demand and ill-treatment by

accused. He also stated that PW4 Macchindra, father of deceased borrowed Rs.5,000/- from him to meet the demand of accused. He also stated that subsequently also demand was made and PW4 Macchindra, father of deceased, borrowed money from his brother-in-law PW6 Anil. He has also stated that amount was paid on 16-07-2002.

20. Likewise **PW6** Anil, maternal uncle of deceased, also deposed about hearing from his sister PW2 Shobha regarding demand of amount for purchase of plot from maternal uncle of accused no.1 namely Somnath Shinde. He also claims to have heard from his niece regarding demand of Rs.10,000/- and she being subjected to ill-treatment by her husband and mother-in-law. He also stated that amount of Rs.5,000/- was raised from PW3 Ramnath and parents contributing Rs.5,000/- and paying it to accused while reaching deceased Chhaya to accused husband. He also stated that after four months of payment, there was again demand and his sister asked him to arrange Rs.10,000/- and he alongwith his friend, whom he has named as Namdeo Dighe, went to Kasarwadi and amount being paid to accused and understanding being given to accused.

21. Therefore, not only PW2 Shobha and PW4 Macchindra i.e. parents of deceased but PW3 Ramnath and PW6 Anil are lending support to each other and are thus corroborating on the point of demand and beating by accused no.1 husband. Though learned trial Court has discarded dying declaration on the ground that it is not inspiring confidence, the authority, who recorded dying declaration i.e. PW5 Deshmukh (Naib Tahsildar) has deposed about deceased telling him that her husband was beating her. Consequently, on the point of beating by accused no.1 husband, there is convincing evidence. Evidence to that extent has remained unshaken.

22. Learned Counsel for the appellants has relied on the ruling in *Dnyaneshwar s/o. Ajeba Dalvi and others* (supra), but on carefully going through the same, in the considered opinion of this Court, appellants cannot take aid of the same as firstly facts in those case were distinct and there, on appreciation, it was observed that there was no iota of evidence that after 03-06-1990, accused persons had beaten, ill-treated or subjected deceased therein to cruelty.

Here mere meeting for giving understanding to accused cannot be termed as a compromise. Therefore, said ruling cannot be taken recourse to.

SUMMATION

23. To sum up, here there is consistent testimony of not only PW2 Shobha and PW4 Macchindra i.e. parents of deceased, but even PW3 Ramnath and PW6 Anil, who are party to the compliance of demand. They are also lending support to prosecution version about beating to deceased in the backdrop of demand. PW5 Deshmukh, an independent witness, also claims to have recorded dying declaration wherein role of accused husband has been defined. Therefore, charge is brought home.

24. Perused the judgment under challenge. Learned trial Judge has appreciated entire evidence properly and has committed no error in accepting prosecution version. There is no infirmity, perversity in the findings and conclusion reached at by the learned trial Court. However, it is noticed that learned trial Judge has awarded sentence of three years for offence under Section 498-A r/w 34 of the IPC.

25. Apparently in the case in hand, there are allegations of beating by husband. Even before her unnatural death, both parents have deposed that she was beaten and sent back home and was required to be taken back by her parents and her relatives. Considering such evidence, this Court did not find any error or infirmity on the part of

trial Judge in holding charge of Section 498-A of the IPC as proved. Consequently, on the allegations of beating, charge of Section 498-A of the IPC has been fastened and even upheld by this Appellate Court.

26. The Hon'ble Apex Court in Suo-Motu Writ Petition (C) No.3 of 2023 in the case of Right to Privacy of adolescents with Criminal Appeal No.1451 of 2024, had made following observations in paragraph 13 as regards to judgment of appellate court and for ready reference, the observations are borrowed and reproduced as under :

*“13. When a Court deals with an appeal against an order of conviction, the judgment must contain (i) a concise statement of the facts of the case, (ii) the nature of the evidence adduced by the prosecution and the defence, if any, (iii) the submissions made by the parties, (iv) the analysis based on the reappreciation of evidence, and (v) the reasons for either confirming the guilt of the accused or for acquitting the accused. The appellate court must scan through the evidence, both oral and documentary, and reappreciate it. After reappreciating the evidence, the appellate court must record reasons for either accepting the evidence of the prosecution or for disbelieving the evidence of the prosecution. The Court must record reasons for deciding whether the charges against the accused have been proved. **In a given case, if the conviction is confirmed, the Court will have to deal with the legality and***

adequacy of the sentence. In such a case, there must be a finding recorded on the legality and adequacy of the sentence with reasons. The ultimate object of writing a judgment is to ensure that the parties before the Court know why the case is decided in their favour or against them. Therefore, judgment must be in a simple language. Then conclusions recorded by the Court in the judgment on legal or factual issues must be supported by cogent reasons.

27. In view of above observations, it is expected of the Appellate Court that when conviction is confirmed, then also to ascertain the legality and adequacy of the sentence and as such Appellate Court is also called upon to get it satisfied as to whether the quantum of sentence awarded is in consonance with the nature of accusations proved and as per sentencing policy, it should always commensurate with the nature of charge proved.

In the present case, sentence of three years for allegations of beating seems to be on higher side. Therefore, as regards to quantum of sentence is concerned, in the considered opinion of this Court, interference to the extent of quantum of sentence only is called for. Further, it is to be borne in the mind that 19 years i.e. almost two decades have already lapsed since judgment of conviction has been rendered. Consequently, the quantum of sentence only is required to be reduced. Hence, the following order :

ORDER

I. The **conviction** awarded to appellant no.(1) Satish S/o. Changdeo Kolhe, by the Adhoc Additional Sessions Judge, Sangamner in Sessions Case No.23 of 2003 for offence punishable under Section 498-A read with 34 of the Indian Penal Code on 04-06-2005 **is hereby maintained and kept intact.** However, the sentence awarded to appellant no.(1) to suffer rigorous imprisonment for three years is hereby modified as under :

“The appellant no.(1)- Satish S/o. Changdeo Kolhe is hereby sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default, he shall suffer rigorous imprisonment for one month. ”

II. It is clarified that rest of the operative order passed by the trial Court is maintained.

III. The appeal is disposed of in the above terms.

(ABHAY S. WAGHWASE)
JUDGE

28. On pronouncement of this Judgment, learned Counsel for appellant no.(1) prays for six weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

29. Learned APP strongly opposes the same.

30. Considering the above request made by learned Counsel for appellant no.(1), six weeks time is granted for appellant no.(1) to surrender.

(ABHAY S. WAGHWASE)
JUDGE

SPT