



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 587 OF 2002

01. Amrut s/o Pundalik Marathe,
Age : 42 years.
02. Gokul s/o Pundalik Marathe,
Age : 35 years.
03. Usha w/o Gokul Marathe,
Age : 30 years.
04. Latabai w/o Amrut Marathe,
Age : 36 years.
05. Shevantabai w/o Pundalik Marathe,
Age : 60 years.

All residents of Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.

... Appellants

[Orig Accused nos. 1 to 5]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Uday S. Malte, Advocate for the Appellants [appeared through
video conference].

Mr. N. D. Batule, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 06.03.2024

Pronounced on : 12.03.2024

JUDGMENT :

1. Convicts for offence under Sections 498-A, 306 r/w 34 of the Indian Penal Code [IPC] are hereby assailing the judgment and order of conviction recorded by learned Additional Sessions Judge, Jalgaon in Sessions Case No. 56 of 2002 vide judgment and order dated 03.10.2002.

FACTS LEADING TO TRIAL

2. Dharangaon police station chargesheeted in-laws of deceased Shobhabai i.e. mother-in-law, brothers-in-law and their wives for above offence. Allegations that are levelled are that, accused persons persistently and continuously ill-treated Shobhabai physically as well as mentally i.e. hurling abuses, doubting her character and asking her to leave the house premises. The ill-treatment was of such degree that finally she was forced to immolate herself by pouring kerosene. Thus, accused having abetted the said suicide, police chargesheeted them for above offences and they were made to face trial before learned Additional Sessions Judge, Jalgaon, who permitted prosecution to adduce evidence. After appreciating the oral and documentary evidence, learned trial Judge got convinced and vide judgment and order dated 03.10.2002, held that accused have ill-treated deceased

and they have also, with common intention, further abetted her to commit suicide, and thereby recorded conviction.

Feeling aggrieved by the same, instant appeal is filed.

SUBMISSIONS

On behalf of the appellants:

3. Questioning the legality and maintainability of the judgment, learned counsel for the accused/appellants would point out that here is a unique case where there are charges both, under Section 498-A as well as Section 306 of IPC. However, according to him, husband is not made an accused, rather, only in-laws are roped in, even when prosecution itself has come with a case that appellants in-laws were residing separately. He further pointed out that marriage of deceased was already 25 years old and she has three teen aged sons. He pointed out that deceased immolated herself on 09.01.2002 for the best reasons known to her. That, it has come in the evidence of prosecution itself that deceased was short-tempered. That, there is no material in proximity to alleged suicide to link accused further alleging cruelty, ill-treatment or even abetment.

4. Learned counsel took this court through the dying declarations Exhibits 30 and 43 and would point out that in both dying declarations, deceased merely informed that all accused abused her and accused Usha cursed her. He further pointed out that by no stretch of imagination, mere such solitary episode of alleged utterance or curse could at all be said to be amounting to abetment. He specifically pointed out that in both dying declarations, there are general and omnibus allegations. That, what role each of the accused played has also not been clearly spelt out.

5. He next submitted that here, very capacity of deceased to give two dying declarations in quick succession on the same day, having suffered 100% burns, also is a mysterious question. He invited attention to the evidence of doctor, who allegedly examined victim, and pointed out that firstly, this doctor has not recorded the vitals of deceased before recording her dying declaration and secondly, there is no certification at the beginning of dying declarations regarding fitness to give statement. He pointed out that doctor has admitted that with such degree of burns, a person could be in a confused state. Therefore, according to him, with such evidence emanating from the prosecution witnesses, it is doubtful whether deceased Shobhabai was in a fit state, physical and mental, to give any dying declaration.

6. He next criticized the dying declarations by pointing out that same cannot be said to be voluntary for the simple reason that here, doctor as well as authorities who have recorded dying declaration are admitting in cross that relatives of patient were around at the time of recording dying declaration and therefore, according to him, aspect of voluntariness itself comes under shadow of doubt, and there to be possibility of deceased being tutored. Therefore he submits that such dying declarations ought not to have been relied by learned trial court.

7. He further pointed out that though incident has taken place in the house, no independent neighbour has been examined and rather only interested witnesses, who are husband and sons of deceased, and who in fact were not available, have been examined and their testimonies are unfortunately relied and accepted by learned trial Judge.

8. Lastly, he submitted that none of the ingredients for attracting either Section 498-A or Section 306 of IPC are available in the evidence and moreover, according to him, there is no evidence suggesting formation of common intention and thereafter gathering and they inflicting cruelty or abetting suicide.

9. Consequently, it is his submission that, evidence of prosecution was apparently weak. According to him, learned trial court has failed to consider and appreciate the same in correct perspective and has also lost sight of settled legal position and has thereby rendered erroneous judgment which he prays to set aside by allowing the appeal.

10. Learned counsel for the appellants has placed reliance on the decision in the case of *Heera Lal and another v. State of Rajasthan* (2018) 11 SCC 323.

On behalf of the State :

11. In answer to above, learned APP pointed out that it is true, as pointed out by learned counsel for the appellants, that this is a unique case, but according to him, very sons and husband of deceased have deposed against appellants in-laws. He pointed out that husband of deceased was working in another State for livelihood. That, in-laws accused persons were indulging in harassing deceased both, physically as well mentally. That, deceased has categorically named them in both dying declarations which are consistent. Learned APP pointed out that apart from two consistent, trustworthy dying

declarations, very husband and sons of deceased have stepped into the witness box and held accused persons responsible for burns of Shobhabai. That they all have supported each other. Thus, it is his submission that, all necessary ingredients for attracting Sections 498-A as well as 306 r/w 34 of IPC being available, learned trial court has committed no error whatsoever in holding case of prosecution as proved and recording guilt. Hence, he prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

12. On going through the papers which were before the trial court, it is emerging that case of prosecution in trial court is rested on the testimony of in all 13 witnesses. That apart, prosecution also seems to have relied on two dying declarations allegedly given by deceased which are at Exhibits 30 and 43 respectively. Before ascertaining the veracity of the dying declarations, it would be desirable to first deal with and discuss the oral evidence to find out whether testimonies are truthful and inspiring confidence.

PW1 Chudaman is the pancha who unfortunately has not supported prosecution.

PW2 Vijay is the pancha to inquest panchanama. He identified the same to be at Exhibit 21.

PW3 Banti, PW4 Jitendra, PW5 Aba and PW6 Pratap seem to be the main witnesses for prosecution i.e. sons and husband of deceased and friend of son Jitendra (PW4)

PW3 Banti, at Exhibit 22 stated that he, his mother and they both brothers resided at Dharangaon. On 09.01.2002, around 8.00 a.m., accused persons came and abused his mother saying that she commits sorcery and they went away. He claims that thereafter he went for tuition at 9.00 a.m. and returned at 10.00 a.m. According to him, then all accused came to his house and again started abusing his mother saying that she should not reside there and went away. According to him, accused no.4 Latabai slapped his mother and thereafter all accused went away. When he went for urination, meantime, his mother came out of the house in burning condition. Her fire was extinguished. He identified all accused persons in the court.

While under cross, he is questioned about their arrival at Dharangaon and about ancestral land. He admitted that when they

started residing at Dharangaon, his father was staying at Lalbag and he was at Lalbag on the day of occurrence. He admitted that accused nos.1 and 4 resided together whereas accused nos. 2, 3 and 5 resided separately. He answered that 7 to 8 months prior to the incident, they had come to the new house. He admitted that accused were interested in purchasing said house and therefore there were disputes between accused and his father on such count. He also admitted that two months back, his mother had consumed poison. He answered that both instances which took place in the morning, lasted for 15 minutes and at that time his brother was out of the house. He answered that he visited hospital on the next morning. Omission is brought to the extent that accused saying to his mother to go away from the place.

PW4 Jitendra, another son of deceased deposed that accused used to abuse his mother since three to four months prior to the incident. They used to utter filthy abuses and blame his mother. On 09.01.2002, while he was at work, he received message and therefore he returned back to civil hospital. He deposed that his mother told him that all accused came and abused her in filthy language, whereas accused no.4 slapped her. He stated that earlier also accused had abused his mother. Therefore she was mentally disturbed and hence she poured kerosene.

In cross, he stated that in his presence, the Tahsildar had come to record his mother's statement and he was present when her such statement was recorded. He is unable to state whether he informed police regarding his mother informing him that all accused abused her and accused no.4 slapped her and that they abused her earlier also but she said nothing and therefore she was mentally upset and hence she poured kerosene and set herself on fire.

PW5 Aba, claims that he knew deceased because her son Jitendra was his friend. According to him, on 09.01.2002, he heard commotion and so he went there and saw Shobhabai in burnt condition and that she asked him to inform police, who came and then deceased told police that all accused abused her.

In cross he admitted that deceased was hot tempered. He admitted that he personally did not see the incident. He also admitted that police had not recorded his statement previously.

PW6 Pratap, husband of deceased, at Exhibit 25 stated that while he had visited Dharangaon, his wife told that accused persons abused her and quarreled with her. Then he deposed that he had taken the house on mortgage but accused Gopal and his father

Pundalik met the landlord and asked him to sell the said house to them for Rs.50,000/- and drive out family of this witness. He stated that accused used to abuse and blame his wife and she used to tell about it to him. On 12.12.2001, his wife told that all accused used to abuse her and used to blame her on character. On 09.01.2002, he got news and he came to the civil hospital and there his wife told that accused should not be spared.

In cross, he admitted that he did not lodge report previously to police regarding abuse by accused, but volunteered that he did not do so because accused no.2 requested him. He admitted that after receiving dead body, he did not immediately lodge report. In para 10, following omissions are brought:

- i. Explaining accused no.2 that this witness was keeping his family there because of accused and now it is improper that accused misbehave with her as above.
- ii. That accused no.2 approached landlord and asked landlord to drive out family of this witness.
- iii. He stated that he further told police that he had come to Dharangaon on 12.12.2001 and that his wife told that accused abused her and blamed her on character.

PW7 Dr. Alka Patil is the autopsy doctor who noticed 100% burns and attributed death due to shock due to 100% burns.

PW8 Police Head Constable Solanki, who recorded Exhibit 30 i.e. first dying declaration.

PW9 Police Head Constable Pardeshi, who drew spot panchanama, recorded statements of witnesses, obtained postmortem report, inquest panchanama and death certificate etc.

PW10 Sau. Nalini Joshi, the Special Executive Magistrate, who recorded Exhibit 43 i.e. the second dying declaration.

PW11 Dr. Pathan, who treated deceased and issued certification of fitness to record statement.

PW12 Dr. Vidya Deshmukh, another doctor who examined deceased and issued certification of fitness to record statement.

PW13 P.I. Sitaram Jadhav is the Investigating officer who narrated all steps taken by him during investigation.

13. Appellants were made to face trial on charge under Section 498-A and 306 of IPC.

LEGAL POSITION

Law is fairly settled that, for attracting the charges under section 498A of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in -*
 - (i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand ;*
 - (iii) the woman was subjected to such cruelty by her husband or any relation of her husband.”*

14. Accused are also convicted for offence under Section 306 of IPC i.e. abetment to commit suicide. Before advertng to the merits of the evidence, it would also be fruitful to spell out essentials for attracting charge of abetment to suicide and the settled legal position. For bringing home the said charge, it is duty of prosecution to prove that

there was abetment to commit suicide. As to what amounts to abetment is also fairly settled. Section 107 of the IPC deals with abetment. It reads thus:

“107. Abetment of a thing- A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons 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

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Section 306 of the IPC deals with abetment of suicide.

Ingredients of this section are as under :

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to establish **incitement, instigation, aiding or abetment to commit suicide**. Law to this extent has been fairly settled in series of cases. Scope of Sections 107 and 306 IPC has been time and again decided by the Hon'ble Apex Court in the cases

viz; *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *Ramesh Kumar v. State of Chhatisgarh* reported in (2001) 9 SCC 618; *Sanju @ Sanjay Singh Sengar v. State of M.P.* reported in (2002) 5 SCC 371; *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *State of West Bengal v. Indrajit Kundu and others* (2019) 10 SCC 188; *Rajesh v. State of Haryana* (2020) 15 SCC 359; *V.P.Singh etc. v. State of Punjab and others* 2022 SCC Online SC 1999 and very recently in the case of *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided on 01.03.2024],

In above series of cases, it has been held and reiterated that court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. Principle that is culled out is that accused persons should specifically intent that deceased should end up her life. With that sole object in mind, they must have deliberately created circumstances, which are of such nature, that deceased is left with no other alternative but to end up her life. Only in such circumstances charge of abetment to commit suicide can be said to be successfully brought home.

Keeping above legal position in mind, evidence of prosecution is to be scrutinized.

15. Here, reliance by prosecution is on both, dying declarations as well as oral testimonies. First, creditworthiness of dying declarations is put to scrutiny.

ANALYSIS OF DYING DECLARATIONS

16. In the instant case, there are two dying declarations. Since the judgment of *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, on numerous occasions law on manner of appreciation of dying declaration has been propounded and certain principles have been culled out from plethora of judgments by the Hon'ble Supreme Court. Very recently the Hon'ble Supreme Court in the case of *State of Uttar Pradesh v. Veerpal and Another*, (2022) 4 SCC 741, while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as follows :

- “1. It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

2. Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;
3. It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;
4. A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;
5. A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character : and
6. In order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

Other celebrated and water-shedding judgments on above aspects are *Paniben v. State of Gujarat* ; (1992) 2 SCC 774, *Laxman v. State of Maharashtra* ; (2002) 6 SCC 710, *Ganpat Bakaramji Lad v. State of Maharashtra* ; 2011 ALL MR Cri. 2249 *Surendrakumar v. State of Punjab* ; (2012) 12 SCC 120, *Jagbir Singh v. State (NCT of Delhi)* ; (2019) 8 SCC 779 and *Madan v. State of Maharashtra* ; (2019) 13 SCC 464.

17. In the light of above legal position, dying declarations are put to scrutiny. For better comprehension and ready reference, translated version of both dying declarations, Exhibits 30 and 43, is reproduced below :

Dying declaration at Exhibit 30 :

Rural Hospital, Dharangaon

Dated 9-1-2002.

STATEMENT

I, Mrs. Shobhabai Pratap Marathe, aged 40 years, Occ.: Housewife, R/o Dharangaon, near Teli Lake, do hereby state in person and in writing that, I reside at the above mentioned place with my three children. My husband is in service of a cloth mill at Burhanpur. My father is dead and I have three brothers, 1. Kailas Parbat Sonwane, 2. Bhagwan Sonwane and 3. Prakash Sonwane.

Today, on 9-1-2002, my mother-in-law Shevantabai Pundalik Marathe, brothers-in-law Gokul Pundalik Marathe, Amrut Pundalik, Latabai Amrut Marathe came to my house at about 10:15 hrs. They started abusing me and Ushabai, wife of Gokul also came and cursed me, therefore, I said to her why she has cursed me and she abused me again without listening to me. My marriage took place twenty-five years ago and since then the above mentioned persons harassed me mentally and physically and after the quarrel they left my home at about 10:15 hrs in the morning, I, in the fit of anger, poured kerosene on my person and set myself ablaze. Then I came in the front-yard and started shouting and then my neighbours doused the fire and I was lying in front of the house and police came there and took me to the Civil Hospital for treatment by putting in a rickshaw and admitted.

Therefore, today on 9-1-2002 at about 10:15 hrs, in my house near Dharangaon Teli Lake, my mother-in-law Shevantabai Pundalik Marathe, brothers-in-law Gokul Pundalik Marathe, Amrut Pundalik, Latabai Amrut Marathe and Ushabai Gokul Marathe came to my home and abused me and cursed me and as these persons have been harassing me physically and torturing mentally always, I poured kerosene on my person and have set myself ablaze in a fit of anger. No one has set me ablaze.

I have made the statement in full consciousness and same is true and correct as narrated by me.

Patient is conscious
and given to the statement
Signed/- 9-1-2002 at 11.45 PM

Dharangaon Police Stn.
Part V, Crime No. 6/2002
u/s 498 [A], 504, 34 of IPC registered and Station Diary Entry
no. 9/2002 at inward no. 24 at 12.20 hrs taken. Signed/- SHO,
PS Dharangaon.

Before,
Signed/- Police Head Constable

Hence deposed
Thumb impressions of
Mrs. Shobhabai Pratap
Marathe.

Dying Declaration at Exhibit 43:

BEFORE THE EXECUTIVE MAGISTRATE, JALGAON AT
THE CIVIL HOSPITAL, JALGAON AT 9-1-2002

Statement commenced at 2.00 PM.

Question: What is your name? Where do you live? How
old are you?

Answer: My name is Shobhabai Pratap Marathe, aged
40 years, I reside at Dharangaon.

Question: Can you tell me when and how the incident
took place?

Answer: Yes. The incident took place at my house at
about 10:10 to 10:30 Hrs. I and my children reside in the
house. My husband stays at Burhanpur due to job. He
visits us once or twice a month. My children were not

present in the house when the incident occurred. I was in quarrel with my brother-in-law Gokul Marathe, co-sister Lata Amrut Marathe, Asha Gokul Marathe, Pundalik Marathe, Shevantabai Marathe, all my in-laws, from last five to six months. **They were harassing me much out of suspicion and were raising quarrels.** Therefore, I poured kerosene on my person at 10:00 to 10:30 hrs **in a fit of anger** and set myself ablaze being fed up by the quarrels with my in-laws. My neighbours rushed and doused the fire off by water after hearing my shouts and took me to Dharangaon Hospital. I have also made statement there.

The statement is made by in full consciousness and without any pressure from anyone. I again state that, Vandana had beaten me two months back. That time also I had consumed poison. Therefore, maximum punishment be awarded to these relatives. Hence the statement. The recording of statement concluded at 2:15 hrs on 9-1-2002.

Before,

Signed/-

Left hand Thumb impression of Shobhabai

Executive Magistrate, Jalgaon.

Copy received/-

Patient is in condition to give
statement. Signed/-
2PM 9-1-2002

18. On placing both dying declarations in juxtaposition to each other, it is noticed that in first dying declaration, which is recorded by Police Head Constable at about 11.45 p.m., declaration is given that

accused persons came at 10.15 a.m., abused her and accused Usha uttered curses and even earlier there was abuse. She claims that in anger, she poured kerosene on herself and set herself on fire. In this dying declaration, it is pertinent to note that role of slapping, as is attributed by PW3 Banti and PW4 Jitendra, is not finding place in the dying declaration.

19. In second dying declaration at Exhibit 43, which is recorded at 2.00 p.m., she has informed that since 5 to 6 months, there used to be quarrel with accused persons. She informed that they suspected her and troubled her much and raised quarrel and therefore in anger, she poured kerosene.

20. Version in second dying declaration is not like the one given in first dying declaration which is, though recorded on the same day. The aspect of suspicion of character spelt out in second dying declaration is missing from first dying declaration. Therefore, dying declarations cannot be said to be consistent.

21. Law is clear on the manner of appreciation of dying declaration, that dying declaration should be firstly, voluntary and secondly, it should inspire confidence of the court. Here, as regards the first

aspect is concerned, PW3 son admits that Tahsildar recorded dying declaration in his presence. Husband is not there to tutor her. Second aspect, as pointed out is that there is apparent inconsistency as discussed above and therefore, dying declarations cannot be said to be consistent so as to act upon it.

22. Therefore, in the totality of all circumstances discussed above, here, unfortunately mother of PW3 and PW4 has suffered 100% burns, while her husband PW6 was out. Charge is under Section 306 of IPC, but further unfortunately, it is not the case which could attract abetment to commit suicide. On petty count, in a fit of anger, deceased Shobhabai has immolated herself. Mere an episode of quarrel in the morning of 09.01.2002, including allegations of being slapped by one of the accused amongst five, which also is shown to be a material omission, by no stretch of imagination can it be held as amounting to abetment to commit suicide.

23. Now let us advert to the oral evidence i.e. of husband, sons and other witnesses.

24. Evidence of PW3 Banti, PW4 Jitendra, PW5 Aba and PW6 Pratap is crucial. This court has already reproduced the sum and

substance of their testimonies above. On re-appreciation, this court found that at the time of incident, deceased Shobhabai and her sons PW3 Banti and PW4 Jitendra were residing together whereas, PW6 husband was residing at other place. Admittedly, he had reached later on and therefore, he is not aware of the actual occurrence.

25. According to PW3 Banti, younger son, on 09.01.2002, there were two visits by accused i.e. at 8.00 a.m. and 10.00 a.m. Regarding first visit, he says that they came and abused his mother saying that she commits sorcery and they went away. During second visit, he has deposed that, they abused his mother and accused no.4 slapped his mother and they all went and thereafter, he found his mother in burning condition. His cross shows that prior to the incident in question, deceased had attempted suicide by consuming poison. Answers given by him in cross para 10 show that after first episode, deceased had resumed her daily course. But, according to him, there was second incident which lasted for 15 minutes. In dying declaration Exhibit 43, in fact deceased gave statement that her children were out of house. Therefore, presence of PW3 in house has come under shadow of doubt.

26. Whereas evidence of PW4 Jitendra, another son, goes to show that he was at Jalgaon and he had reached Dharangaon around 1.00 p.m., but according to him, he learnt from his mother that accused came and abused her in filthy language and accused no.4 slapped her. He went ahead and stated that because of abuse, his mother was mentally disturbed and therefore she set herself on fire.

27. Therefore, on carefully scrutinizing evidence of PW3 Banti and PW4 Jitendra, though they speak of abuse in filthy language, details of it are not finding place in the testimony of either of the witnesses. However, they both are speaking about accused no.4 slapping his mother. In chief itself, elder son speaks about his mother getting mentally disturbed and setting herself on fire. Except said episode on 09.01.2002, there is nothing on record to show that there was consistent harassment by way of abuses and that too, of such degree and extent that deceased was left with no other alternative but to end up her life. It was open for deceased to retaliate or even take recourse to police authorities and lodge report, but in stead, she seems to have poured kerosene on herself and in anger, set herself on fire. PW3 Banti, who was in the vicinity of the house, does not speak about accused to be present at that spot at that moment when he saw his mother coming out. He has already stated that after second episode of

abuse and alleged slapping, accused persons had already left. Therefore, the moot question that arises is, what prompted Shobhabai to ignite herself is not clear.

28. PW4 admittedly had reached later. However, according to him, when he met his mother in the civil hospital, he claims to have merely learnt from her that accused abused in filthy language. Here, there are in all five accused persons. Who amongst them actually abused and what was the utterance has not come on record. Cross of PW4 shows that it is full of material contradictions and omissions on crucial points, more particularly answers given in para 6.

29. Evidence of PW5 Aba, an independent witness, is of no avail to the prosecution because though he has claimed about hearing deceased informing police about she being abused, there is no direct information to this witness as he has merely allegedly overheard the information by deceased. Moreover, he went to the extent of admitting in cross that deceased was short tempered. Furthermore, he also admitted that his statement under Section 161 of Cr.P.C. was not recorded by police.

30. Likewise, PW6 husband was obviously at Lalbag in Barhanpur, i.e. in another State, and though he claims that during his previous visits, his wife used to tell about abuses and quarrels, in cross para 10 omission is brought to that extent in his statement. Therefore, his testimony in examination-in-chief is apparently an improved version. Even otherwise, he merely speaks of hearing from his deceased wife that accused persons should not be spared. What they did, is not stated by him in his evidence.

31. Consequently, though there is oral dying declaration to PW4 Jitendra, it is merely about accused persons abusing. In the considered opinion of this Court, the cumulative effect of evidence of PW3 Banti, PW4 Jitendra, PW5 Aba and PW6 Pratap is that, it is doubtful whether said episode in the morning of 09.01.2002 can be said to be the trigger point abetting suicide.

32. It is settled law that to attract abetment, prosecution has to demonstrate and establish existence of above essential ingredients. Keeping in mind the legal requirements of provisions of Section 107 IPC, and testing the testimonies discussed above in the light of such requirements, in the considered opinion of this court, by no means act of accused could be brought under definition of abetment. Therefore,

the residue that falls on scrutiny of oral evidence is that there is weak or no evidence on the point of abetment. Mere hurling abuses with intention to compel deceased leave the dwelling in which they were interested, would not mean that they intended her to end up her life. Prosecution's own witness PW5 Aba has admitted in cross that deceased was hot tempered. Therefore, the episode seems to have taken place in the heat of anger.

33. On going through the impugned judgment, learned trial Judge does not seem to have appreciated the settled legal position before recording guilt. What has come before trial court was a solitary episode of the day in question. There is nothing to infer that the harassment was incessant in nature. Quarrels and abuses without intending the consequences would itself not attract instigation or abetment to commit suicide. Apparently, erroneous conclusion is reached at. Therefore, such findings cannot be allowed to be sustained. Hence appellants succeed. Appeal deserves to be allowed. Accordingly, I proceed to pass the following order :

ORDER

I. The appeal is allowed.

- II. The conviction awarded to the appellants i.e. 1. Amrut s/o Pundalik Marathe, 2. Gokul s/o Pundalik Marathe, 3. Usha w/o Gokul Marathe, 4. Latabai w/o Amrut Marathe and 5. Shevantabai w/o Pundalik Marathe, by learned Additional Sessions Judge, Jalgaon in Sessions Case No. 56 of 2002 under Sections 306, 498-A r/w 34 of IPC on 03.10.2002 stands quashed and set aside.
- III. All the appellants stand acquitted of the offence punishable under Sections 306, 498-A r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]