



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO 73 OF 2003**

1. Satish s/o. Dhanaji @ Janardhan Pawar,  
Age : 36 years, Occu. : Agriculture,  
R/o. Manejawalaga, Tq. Nilanga,  
Dist. Latur.
2. Manohar s/o. Dhanaji @ Janardhan Pawar,  
Aged : 39 years, Occu. : Agriculture,  
R/o. Manejawalaga, Tq. Nilanga,  
Dist. Latur.
3. Dattu @ Dattatraya s/o. Rangrao Pawar,  
Aged : 66 years, Occu. : Agriculture,  
R/o. Manejawalaga, Tq. Nilanga,  
Dist. Latur.
4. Hirakanbai w/o Dhanaji Pawar,  
Aged : 71 years, Occu. : Household,  
R/o. Manejawalaga, Tq. Nilanga,  
Dist. Latur.
5. Balaji s/o. Dattu Pawar,  
Aged : 28 years, Occu. : Agriculture,  
R/o. Manejawalaga, Tq. Nilanga,  
Dist. Latur.
6. Vaijanta w/o. Satish Pawar,  
Aged : 31 years, Occu. : Household,  
R/o. Manejawalaga, Tq. Nilanga,  
Dist. Latur.

**... Appellants.**  
(Orig. Accused)

**Versus**

The State of Maharashtra,  
Through the Police Station Officer,  
Police Station Kasar – Shirshi, Tq. Nilanga,  
Dist. Latur.

**... Respondent.**

...  
Mrs. Rekha Choudhari h/f. Mr. S. S. Choudhari, Advocate for Appellants.  
Mr. K. K. Naik, APP for Respondent – State.  
...

**CORAM : ABHAY S. WAGHWASE, J.**  
**RESERVED ON : 8<sup>th</sup> MARCH, 2024**  
**PRONOUNCED ON : 18<sup>th</sup> MARCH, 2024**

**JUDGMENT :**

1. Judgment and order passed by Additional Sessions Judge, Nilanga dated 15.01.2003, thereby convicting husband and in-laws (appellants) for offence punishable under section 498A read with section 34 and recording guilt of husband accused no.1 alone for offence punishable under section 494 of Indian Penal Code (IPC), is hereby assailed by filing instant appeal.

Learned counsel for appellants submits that, during pendency of appeal appellant No.3 - Dattatraya Rangrao Pawar has expired. She placed on record death certificate issued by Government of Maharashtra, Health Department, which shows that, he died on 12.12.2016. Therefore, appeal as regards to appellant no.3 stands abated.

**PROSECUTION STORY IN NUTSHELL IS AS UNDER**

2. Kasar-Shirshi Police Station charge-sheeted accused on allegations that, accused husband and in-laws of Phulabai subjected her to physical and mental cruelty in the backdrop of demand of 2 tola gold and also for second marriage of accused husband during subsisting of first marriage with Phulabai. Because

of the maltreatment, she end up her life by jumping in the river. Hence report was lodge by PW1 Tanaji brother, on the strength of which, crime was registered bearing No.164 of 2001 for offence punishable under sections 306, 498A, 494, 323, 504 read with section 34 of IPC.

After appreciation of the evidence, learned trial court convicted accused for offence punishable under section 498A and 494 of IPC only.

Hence the appeal.

### **SUBMISSION**

#### **On behalf of Appellants :**

3. Learned counsel for appellants would submit that, prosecution failed to establish the charges beyond reasonable doubt. Secondly, there is no independent evidence and only interested witnesses are examined. That, testimonies of witnesses are full of inconsistencies, variances, material omissions and contradictions. It is pointed out that, specific instances and nature of ill treatment is not stated by any witness. There was no previous complaint anywhere. That, deceased spent maximum time at her parents house, and therefore, there is no question of any demand or maltreatment.

4. Learned counsel pointed out that, charge of 494 of IPC

is also misplaced. That, there is no legally acceptable evidence about accused husband performing second marriage with accused No.6. That, there is no evidence about any marriage ceremony. Essential ingredients for attracting section 494 of IPC are not available on record and hence according to learned counsel, conviction is for the same is also unwarranted.

**On behalf of State :-**

5. Per contra, learned APP would submit that, in spite of cohabitation for 7 to 8 years, there was consistent ill treatment on account of demand of gold. Deceased Phulabai promptly reported about treatment meted out, to her family members. She was kept starved. There was physical as well as mental cruelty. Accused husband had candidly admitted in section 313 of Cr.P.C. regarding performance of second marriage with accused no.6. Therefore, all charges are cogently proved and hence he prays to dismiss the appeal.

**EVIDENCE IN TRIAL COURT**

6. In the light of challenge and grounds, evidence on record is put to scrutiny. Prosecution seems to have rested its case on testimonies of following witnesses :-

**PW1** Tanaji, brother - informant. According to him, marriage of his sister Phulabai performed with accused no.1 Satish

15 years prior to the incident. He deposed that, initially for 5 to 6 months his sister cohabited happily. Thereafter accused subjected his sister to mental and physical cruelty. They used to beat her, not provide her meal and demanded two tola gold. During festivals, his sister informed them about ill treatment and demand. Therefore, they had been to give understanding to the accused and that time they learnt about second marriage of accused husband. While at their house, his sister went to answer call of nature, but she did not return and her dead body was found in the river. Hence he lodged report (Exh.26).

**PW2** Datta, another brother, stated that, for 2 to 4 months there was good treatment to Phulabai, but thereafter, accused beat, threatened Phulabai and put up a demand of two tola gold. His sister informed about it when she came for festival. Persons of repute went to give understanding to accused, that time, they came to know about second marriage performed by accused husband with accused no.6. One month prior to incident, she had come to their house and had narrated about demand and ill treatment and that she become nervous and uneasy. She left house for answering call of nature, but did not return and her dead body found in the river.

**PW3** Pandurang is an acquaintance. This witness claims that he along with others went to the house of accused and gave understanding to him and further states that he had also requested accused no.1 to allow Phulabai to cohabit with them properly. This witness further states that, on 2 to 3 occasions he had gone to the house of accused and tried to convince all accused.

**PW4** Damyanta, sister of deceased also stated that, after one to two months, there was ill treatment. All accused were abused Phulabai for two tola gold. They kept her starved and threatened to drive her out of the house. She reported about understanding being given to the accused.

In cross, she stated that, she cannot state when second marriage was performed with accused no.6. She also stated that Satish and Tanaji were real brother, but they were residing separately.

**PW5** Balika another sister deposed that, Phulabai was treated well for 4 to 5 months. Thereafter, ill treatment began. Accused did not provide food to Phulabai. They beat her, abused her for two tola gold. Whenever her sister met at common place of washing at river, she narrated about ill treatment. One month prior to the death of Phulabai, she was driven out of the house and

she came to stay her parents place. Her sister committed suicide because she was nervous.

**PW6** Ashok deposed that, Phulabai was not happy at matrimonial house. He learnt about ill treatment to her at the hands of accused. Therefore, he went to give understanding to the accused. Satish demanded gold from father and brother of Phulabai. Accordingly, her father gave two tola gold to accused Satish. He further deposed about ill treatment to be continued and so he and others gave understanding to accused.

**PW7** Venkat stated that, accused no.1 beat Phulabai. Accused asked her to bring gold, abused and beat her. He learnt from parents of Phulabai and so he accompanied other to give understanding and convinced accused, however, ill treatment continued.

**PW8** Balaji Tondare PSO lodged report given by PW1 Tanaji, carried out investigation and charge-sheeted accused.

### **ANALYSIS**

7. Three charges were framed and explained i.e. section 498A, 306 and 494 of IPC. Learned trial Judge on complete appreciation, reached to a finding that there is no evidence about abetment to commit suicide and thereby all accused were acquitted

for the said charge. However, all are held guilty for offence punishable under sections 498A read with 34 of IPC and only husband is held guilty for offence punishable under sections 498A read with 34 and 494 of IPC.

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.”*

8. Accused husband is convicted for offence under section 494 of IPC. For bringing home the said charge, it is duty of prosecution to prove the following essential ingredients :-

- “(1) The accused had already been married to some other person;*
- (2) The marriage was a valid one;*
- (3) The spouse was alive;*
- (4) The accused married again;*
- (5) The marriage was void under the law”*

9. In view of above legal requirements, if we scrutinize the evidence, obviously it being a matrimonial offence, only family members could be best witnesses being aware of the state of affairs.

PW1 Tanaji informant stated that, after 5 to 6 months all accused started subjecting Phulabai to mental and physical cruelty. According to him, they used to beat her, they did not provide meal and even demanded two tola gold. In chief itself, he has deposed that marriage of sister with accused no.1 was 15 years old. However, in cross, he candidly admitted that, he is unable to state the day, date and year, on which his sister went to reside with accused, as he has already spoken in chief that in spite of marriage, Phulabai resided at her parents place for 7 to 8 years. He has not stated that, which of the accused out of six had put up a demand, beaten her, and kept her starved. Omnibus allegations are levelled against all.

10. PW2 Datta another brother stated that his sister treated properly for 2 to 4 months. His own brother PW1 has deposed about proper treatment for around 6 months. Therefore, they are not consistent. According to PW2 Datta, they beat her and gave threats on account of demand of two tola gold. Informant has

not spoken about any threats. Even he does not speak as to which of the accused and exactly when subjected Phulabai to ill treatment.

11. PW4 Sister Damyanta stated that, ill treatment begun after 1 to 2 months, which is contrary to her own brothers PW1 and PW2. According to her, all accused abused Phulabai and asked her to bring two tola gold. They kept her starved. According to her, they also threatened to drive her out of the house. Regarding drive out PW1 Tanaji and PW2 Datta are silent.

12. PW5 Balika, another sister deposed that, for initial 4 to 5 months everything was smooth, but thereafter ill treatment began. They did not provide food to Phulabai. They beat her, abused her and demanded two tola gold. Even she does not give specific period during which such instances took place. PW6 Ashok and PW7 Venkat an acquaintances, both claim that, they learnt from father and mother of Phulabai about ill treatment and they went to give understanding. Therefore, apparently they have hearsay information.

### **SUMMATION**

13. Therefore, on taking overall survey of prosecution witnesses on the point of 498A of IPC, apparently witnesses are not

consistent about since exactly when ill treatment began. It appears that, in spite of marriage, Phulabai stayed her parents house for 7 to 8 years. All brothers and sister are making general and omnibus allegations. Distinct roles are not defined. Therefore, evidence on the point of cruelty and ill treatment is weak or fragile. It has also come in the evidence that some of the accused are residing separately. Therefore, it was expected of prosecution to give specific instances, but evidence to that extent is missing.

14. Second charge is of 494 of IPC. According to prosecution, accused husband performed second marriage, even in spite of subsistence of previous marriage with Phulabai. Learned trial Judge has acquitted all accused. There is no evidence about accused nos.2 to 6 for abetting or aiding second marriage. Resultantly, husband is held guilty for said offence. Apparently, there is no distinct evidence regarding performance of second marriage. For such charge, independent evidence could have been readily available, if there had been second marriage being performed. When the alleged marriage took place has not been substantiated. Even learned trial court admits that, there is no distinct evidence, but what seems to have prevailed over learned trial Judge is the admission given by accused while answering under section 313 of Cr.P.C..

15. Law is fairly settled that, sole admission under section 313 of Cr.P.C. in absence other corroborative piece of evidence, cannot be made basis of conviction. Relevant citation on this point is a recent judgment of the Hon'ble Apex Court in the case of ***Indrakunwar v. The State of Chhattisgarh***, 2023 LiveLaw (SC) 932, wherein Hon'ble Apex Court has enunciated principles evolving from various judgments viz. ***Premchand v. State of Maharashtra***, (2023) 5 SCC 522; ***Jai Dev v. State of Punjab***, AIR 1963 SC 612; ***Asraf Ali v. State of Assam***, (2008) 16 SCC 328. The observations of Hon'ble Apex Court in paragraph no.34.7 as under :

*“34.7. This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge, but reduce the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution case.*

*34.8 This statement to be read as whole and one part cannot be read in isolation.”*

Therefore, there is no distinct evidence of performance of marriage between accused no.1 with accused no.6. No necessary rituals of ceremony are said to be performed so as to hold performance of second marriage. Essentials ingredients of section 494 of IPC are patently missing from the prosecution evidence. Consequently, it was not open for the learned trial Judge to record

guilt of husband merely on the basis of admission given to a question put under section 313 of Cr.P.C.. There is no other foundation. Hence, even this charge is not proved beyond reasonable doubt by the prosecution.

16. To sum up, here, there is little, weak or no evidence on the point of ill treatment. Learned trial court has already acquitted accused for 306 of IPC. There is no iota of evidence whatsoever in support of charge of 494 of IPC. Therefore, as none of the charges are cogently proved, case of prosecution cannot stand.

17. On going through the judgment, it seems that, learned trial court has not properly appreciated the evidence as well as law. Therefore, interference is called for. Hence, I proceed to pass the following order :-

### **ORDER**

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellants, (i) Satish s/o. Dhanaji @ Janardhan Pawar, (ii) Manohar s/o. Dhanaji @ Janardhan Pawar, (iv) Hirakanbai w/o Dhanaji Pawar, (v) Balaji s/o. Dattu Pawar, (vi) Vaijanta w/o. Satish Pawar in Sessions Case No. 9 of 2002 by the Additional Sessions Judge, Nilanga on 15.01.2003 for the offences punishable under Sections 498A read with 34 and section 494 of Indian Penal Code, stands quashed and set aside.

- III) The appellants stand acquitted of the offence punishable under Sections 498A read with section 34 and section 494 of Indian Penal Code.
- IV) Bail bonds furnished by the appellants stand cancelled.
- V) The 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 in respect of disposal of muddemal.

**(ABHAY S. WAGHWASE, J.)**