



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

CRIMINAL APPEAL NO. 610 OF 2003

1. Uttam Narayan Wathore
Age: 24 years, Occu.: Labour,
R/o. Nur Patel Vasti,
Jogeshwar Shivar,
Tq.Gangapur,
Aurangabad.

2. Gautam Narayan Wathore
Age: 20 years, Occu.: Labour,
R/o. As above.

....Appellants
(Orig Accu. Nos.1 & 2)

Versus

. The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr. Nilesh S. Ghanekar
APP for Respondent : Mrs.Uma S.Bhosale

.....
CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24 JULY, 2024

PRONOUNCED ON : 09 AUGUST, 2024

JUDGMENT :-

1. Appellants assail judgment and order passed by the learned Sessions Judge, Aurangabad in Sessions Case No.58 of 2001 dated 21-08-2003 thereby convicting both appellants for offence under Sections 498-A, 307 read with 34 of the Indian Penal Code (IPC).

CASE OF PROSECUTION IN BRIEF

2. Victim Manisha @ Vandana was married to appellant no.1 Uttam on 07-03-1999. She went to cohabit with him at Waluj and there she resided with appellant no.1 husband as well as brother-in-law i.e. appellant no.2. According to prosecution, marriage was decided to perform by fixing dowry of Rs.16,000/- and out of it, Rs.15,000/- was paid at the time of marriage and Rs.1,000/- remained balance. After about a month or two, husband suspected fidelity of victim and even took her for medical check up i.e. suspecting her pregnancy. Thereafter, both appellants put up demand of Rs.10,000/- for purchase of Auto Rickshaw, which they wanted victim to bring it from her father and on such count, there was ill-treatment. They beat her by fist and kick blow. On 16-05-1999, in the backdrop of above demand, accused no.1 husband poured kerosene on person of victim and his brother accused no.2 incinerated her. When she raised hue and cry, out of fear, she was taken to hospital. When undergoing treatment, statement exh.14 was recorded. Crime was registered, investigated and on completion, both appellants were chargesheeted and tried by the learned Sessions Judge, who appreciated oral testimonies of as many as eight witnesses and also relied on documentary evidence. After answering

questions under Section 313 of the Code of Criminal Procedure, accused also adduced evidence of two witnesses.

Learned Trial Judge analyzed and appreciated the evidence adduced by both the parties and reached to a conclusion that prosecution has succeeded in bringing home the charges for offence under Sections 498-A as well as 307 read with 34 of the IPC and sentenced them to suffer rigorous imprisonment for five years and to pay fine. Such judgment dated 21-08-2003 is questioned by filing instant appeal.

SUBMISSIONS

On behalf of appellants :

3. Taking exception to the conviction, learned Counsel for the appellants would point out that here prosecution has failed to establish the charges beyond reasonable doubt. According to learned Counsel, there is weak or no evidence on the point of cruelty. Learned Counsel took this Court through the testimony of PW4 Manisha / victim and her father PW6 Datta and submitted that they are making vague and omnibus allegations of demand. He pointed out that when out of alleged demand of Rs.16,000/- fixed as dowry, Rs.15,000/- were admittedly paid, why could there be demand of

remaining Rs.1,000/- only. Learned Counsel pointed out that there are allegations of demand for purchasing Auto Rickshaw, but according to learned Counsel, there are allegations of demand of only Rs.10,000/-, so he questions whether such vehicle can at all be purchased at such price. Therefore, he alleges false allegations on fabricated and concocted version. Taking this Court through the testimony of father i.e. PW6 Datta, it is pointed out that father does not speak about suspicion of character as alleged by his victim daughter. That even allegation of demand of Rs.10,000/- are attributed by father to only appellant no.1 and not to appellant no.2, who is named by victim and therefore, learned Counsel submits that evidence of PW6 Datta / father and PW4 Manisha / victim is not consistent and not lending support to each other.

4. He next submitted that here in this case, victim was not happy with the marriage. She had written a chit exh.17 to her father. Witness in whose presence and at whose instance, the chit was marked, is examined by defence. That the contents of the chit show that victim herself was unhappy and was planning to end up her life. That father has admitted receiving such chit and therefore, learned Counsel pointed out that when the contents of the chit itself show

that she was herself on her own accord planning to end up her life, how prosecution could allege offence of Section 307 of the IPC.

5. Learned Counsel further pointed out that DW1 Ramdas independent witness i.e. neighbour is not marking presence of accused no.2 at the spot. Accused no.1, who had reached the spot at the time of incident from duty and doused the fire and he has also suffered injury to his hands and even Police Officer admitted that at the time of arrest, accused no.1 had burns. On the strength of same, learned Counsel pointed out that when husband himself has doused the fire and suffered injury, and when he himself has taken her to hospital, whether case of prosecution that accused no.1 poured kerosene and set victim on fire, could at all be believed.

Learned Counsel also questions the so called statement of victim exh.14 by stating that firstly, it is not recorded promptly and secondly, it was recorded during presence of parents of victim on the next day and therefore, there is every possibility of victim being tutored to falsely implicate the appellants husband and brother-in-law.

6. Lastly, criticizing the findings and observations of learned trial Court, learned Counsel submits that learned trial Court has failed to

appreciate the available evidence in its correct perspective. That inspite of weak and fragile evidence, prosecution case has been accepted. That law on appreciation of evidence has not been applied and therefore, prayers are raised for allowing the appeal.

On behalf of State :

7. Countering the above submissions, learned APP submitted that prosecution had cogently and firmly established the charges. She pointed out that barely after one month, husband suspected fidelity of victim. That demand of Rs.10,000/- was made and both accused, who are brothers and resided jointly, had put up the demand. That victim has alleged beating at their hands. Thus there is evidence of both physical and mental cruelty. That victim was set to fire on account of refusing to bring Rs.10,000/- for purchase Auto Rickshaw. That her father to whom she had reported about demand and ill-treatment is also examined by prosecution. Therefore, according to learned APP, there is sufficient evidence in support of charge of Section 498-A of the IPC.

As regards to charge of Section 307 of the IPC is concerned, she pointed out that victim has categorically stated in her statement that husband poured kerosene and brother-in-law set her on fire.

That though they doused the fire, it was merely out of fear and that victim has stated to that extent. That victim has suffered 40% burns. That it was a clear offence of attempt to commit murder and therefore, learned trial Court has rightly upheld the charges as proved and hence, she prays to dismiss the appeal for want of merits.

PROSECUTION WITNESSES

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

PW1 Syed Ayub Syed Noor is Pancha to spot panchanama exh.9 deposed that on 18-05-1999, in his presence, Police drew panchanama and seized pieces of saree, pieces of bangle, match box, stole, a plastic can.

PW2 Sindhubai w/o Ramdas Kuvar claimed to be a neighbour and deposed that hearing shouts and commotion, she and her husband arrived to the house of appellants. That victim was in the flames. That she and her husband doused the fire. Thereafter, she deposed that she had not seen accused nos.1 and 2 and therefore, she became hostile and subjected to cross-examination by learned APP and learned Counsel for defence.

PW3 Dhondappa Bhaurao Kamale (PSI) is the Police Official, who visited spot and drew spot panchanama exh.9.

PW4 Manisha Uttam Wathore is the victim. She deposed that after a month or two, husband as well as his brother started suspecting her fidelity. She was taken to the hospital at Pandharpur for physical examination on suspicion of pregnancy. Thereafter, both accused asked her to bring Rs.10,000/- as their income was said to be insufficient. Accused no.3 also on 2-3 occasions asked her to bring Rs.10,000/- for purchasing Auto Rickshaw. On 16-05-1999, husband and brother-in-law, at around 06:00 p.m., asked her to go to her father's place and to bring Rs.10,000/- for purchasing Auto Rickshaw. On refusal, they both beat her by kick and fist blows and on same night, at 10:00 p.m. husband poured kerosene and brother-in-law ignited her.

PW5 Damodhar Vithoba Adhane, Police Head Constable, who recorded exh.14 deposed about visiting hospital and recording statement of victim.

PW6 Datta Nagoji Ghodke, father of victim stated that after 8-10 days of marriage, his daughter told about demand of Rs.10,000/-

by accused no.1 for purchasing Rickshaw. That after 15 days, again she came with her husband and both demanded amount for purchasing Rickshaw. He stated that she informed that she was ill-treated by husband and brother-in-law. He learnt about the incident and went to the hospital. On the next morning, at around 08:00 a.m. to 09:00 a.m., she told that husband poured kerosene on her person and brother-in-law ignited her.

PW7 Shabbir Abbasali Kazi is the Investigating Officer.

PW8 Dr.Satish Ramnarayan Mundada is the Doctor, who gave treatment to victim.

DEFENCE WITNESSES

9. Defence has also adduced evidence of two witnesses :

DW1 Ramdas Bhivsan Patil is neighbour of accused. He stated that he was residing in the neighbourhood of accused. That night, there was no electricity supply. That while he was sitting outside the house, there was burst of stove and Manisha was caught by fire. That he and his wife rushed to the spot, at that time, one Ayub came and extinguished the fire. That time, accused Uttam returned from the duty and Manisha was taken to hospital at Waluj as well as Pandharpur, but they refused to take her and so she was taken to

Dr.Mundada.

DW2 Tulshiram Ramrao Narvade is relative of accused. He stated that on 16-05-1998 while he and one Ramesh Salve visited house of Nagorao, some talks were going on regarding a chit, which he identified and was marked as exh.17.

ANALYSIS

10. As regards to charge of Section 498-A is concerned, the evidence of PW4 Manisha / victim and her father PW6 Datta is of significance.

PW4 Manisha, victim in her evidence at exh.13 deposed that her husband earned Rs.1,500/- per month and his brother earned Rs.1,000/- per month and on such income, they were leading happy life. However, according to her, after a month or two, husband and his brother started suspecting her fidelity. That husband suspected that she was carrying pregnancy and he took her to the hospital at Pandharpur. Thereafter, she alleges that both accused told that income from their work is insufficient and she should demand Rs.10,000/- from her father for purchasing Auto Rickshaw. She has alleged that cousin of accused husband namely Shamrao also raising demand of Rs.10,000/- and instigating husband to put up such

demand. Then she has levelled allegations regarding occurrence taking place in the evening and night of 16-05-1999. She claimed that in the evening, both accused asked her to go to her father and bring Rs.10,000/-. She alleges that on refusal, they both gave her kick and fist blows. Then, she narrated about the occurrence of burns at 10:00 p.m.

While under **cross-examination**, she is unable to state to which Doctor she was taken by accused at Pandharpur for examination. She denied that marriage was against her will and wish. She denied writing exh.17 letter. She expressed her ignorance about husband calling any quotation for purchasing Auto Rickshaw.

Omission is brought regarding accused no.3 on 2-3 occasions asking her to bring Rs.10,000/-. Remaining cross-examination is on the points of burns suffered by her.

11. **PW6** Datta, father of victim, who is examined at exh.21 stated that after 8-10 days after marriage, his daughter came and told that husband has demanded Rs.10,000/- for purchasing Auto Rickshaw. It is to be noted that allegation of demand of Rs.10,000/- are restricted and levelled only against appellant no.1 husband and not against appellant no.2 brother-in-law as reported by victim. He merely

speaks that his daughter narrated that there was ill-treatment to her. In what form, there was ill-treatment and when has not been stated by him.

In paragraph no.5 of **cross-examination**, he admitted that during first visit of his daughter, she did not tell that accused were demanding amount and she simply told that there was ill-treatment.

Therefore, on careful analysis, it is emerging that evidence of PW4 Manisha, victim and her father PW6 Datta on the point of offence under Section 498-A of the IPC is ambiguous in nature. They are not quoting specific instances. PW4 Victim is alleging beating by kick and fist blows, whereas PW6 father does not utter about it. PW6 father alleges demand only to accused no.1 husband and not to accused no.2, brother-in-law, as is deposed by his daughter. Therefore, with such quality of evidence, cruelty as contemplated under law, has not been proved beyond reasonable doubt.

12. As regards charge of Section 307 of the IPC is concerned, it is seen that apart from evidence of victim, there is also evidence of neighbours, who are examined both by prosecution as well as by defence. On the point of charge of Section 307 of the IPC, victim has

stated that on 16-05-1999, husband and brother-in-law did not go for work. That at around 06:00 p.m. they both said her to go to father's place and bring Rs.10,000/- for purchasing Auto Rickshaw. When she refused to go, she alleges that both accused beat her with kick and fist blows. That she did not receive any visible injury. On same night at 10:00 p.m. she alleges that while she was sitting, accused no.1 husband poured kerosene on her person from a Can and accused no.2 brother-in-law ignited her by match stick. That only when she raised shouts, out of fear, husband poured water and extinguished fire. That neighbours also came and tried to extinguish the fire and she was taken to hospital. She deposed that on the next day i.e. on 17-05-1999, at around 09:30 a.m., her statement was recorded by Police, which she identified to be at exh.14.

On the point of occurrence, in paragraph 8 of cross-examination she admitted that husband poured water but volunteers that it was due to fear. She also admitted that husband also sustained burn injuries while extinguishing the fire and that both accused and two neighbours took her to the hospital. In cross-examination, she answered that she narrated Doctor about the burns and that husband set her on fire. Therefore, while under cross-examination, she has not attributed any role to appellant no.2 -

brother-in-law.

13. **PW6** Datta, father of victim claimed that he learnt from accused no.3 about burns suffered by his daughter and so they rushed to hospital. According to him, she was not in a position to speak. On next morning at around 08:00 a.m. to 09:00 a.m. she was able to talk and at that time, she narrated that husband poured kerosene on her person and his younger brother ignited her by a match stick. He stated that Police came there and they asked him to go out of the hospital.

While under **cross-examination**, he has admitted that accused persons were sitting near his daughter in the hospital. He denied having stated portion marked "A" and answered that he did not inform Police in his statement about meeting his daughter on next day. He answered that he saw Police for the first time in the hospital on the next day morning.

14. Apart from above oral account, here there is statement of victim recorded by **PW5** Adhane, Police Head Constable and the same is marked as exh.14 and the translated version of the same is as under :

"Exhibit No. 14

STATEMENT**Date : 17.05.99**

Myself Manisha w/o Uttam Wathore, Age 19 yrs, occupation: household work, r/at farm Nur Patel, in front of ZP Gate, Waluj, Aurangabad.

I do hereby state in written that, my marriage took place on 7th March, 1999 with Uttam Narayan Wathore, as per the Hindu rituals at my maternal house, Mukundwadi. At the time of marriage amount of Rs. 16000/- was fixed as dowery to be paid by father and we paid Rs. 15000/- due to poor condition and said that the remaining amount of Rs. 1000/-he will pay later. As my husband was working with contractor at Bajaj Company, my brother-in-law Gautam and we both husband and wife started living in the room in the farm of Nur Patel. My husband was getting Rs. 1500/-p.m. and my brother-in-law Gautam was earning Rs. 1000/-p.m., on this we were maintaining our livelihood.

After marriage, my husband and brother-in-law started suspecting my chastity/fidelity. Then my husband got me examined at the Doctor at Pandharpur, as he was suspecting my character. My husband and my brother-in-law told me that the income from their work was insufficient and I should demand Rs. 10,000/- from my father for purchasing auto rickshaw. I told my husband that since our marriage was performed soon before and my father was not having good financial condition, he would not be able to pay the amount. Shamrao Wathore, my husband's cousin instigating my husband for asking me to demand amount of Rs. 10,000/- and also he was telling something about me to my husband.

On 16.05.1999 my husband did not go to the work and he was at home from morning and my brother-in-law Gautam had his duty for half day and he returned to the house. At about 6.00 pm in the evening my husband and brother-in-law Gautam told me that I should go to the house of my father and bring amount of Rs. 10,000/- for purchasing a auto rickshaw. I refused to go then both my husband and my brother-in-law started beating me with the fist blows and kicks and around 10.00 o'clock in the night, I was sitting in the house, then my husband took out kerosene

can and poured it on my person and my brother-in-law, Gautam ignited the fire with match stick and set ablaze me. I raised the shouts and came out of the house, so, my husband and brother-in-law out of fear poured water on my person and extinguished me.

When my husband and brother-in-law asked me to bring Rs. 10,000/- from my father, I refused to bring the money, so I was burnt (by them) with kerosene around 10 p.m.

The above statement of mine is read over to me and it is true and correct as per my narration.

Before Me

Sd/-

Police Amaldar, PS Waluj

hence given statement

TI Sau. Manisha W/o Uttam Wathore.

Registered on Date : 17.05.99 St. D. No. 138, Record No. 53, Time 21.30, Crime Reg. No. I 0046/99, u/s 307, 498-A, 323,34 of IPC, PSI Kamale are investigating the same.

Registered on Date : 18.05.99 St. D. No. 137, Record No. 76, Time 14.05, Crime Reg. No. I 0053/99, u/s 307, 498-A, 323,34 of IPC, API is investigating the same.

sd/-

Sign

PSMIDC, Waluj”

(As translated by Sr. Translator, High Court Bench at Aurangabad)

15. On appreciating the contents of exh.14, she has reported that at around 10:00 p.m., husband poured kerosene, whereas, brother-in-law ignited her.

It needs to be noted that inspite of being taken to the hospital on same night, surprisingly her statement exh.14 appears to be recorded by **PW5** Adhane (PHC), who already deposed that he had

paid visit on the very night itself but he deposed that as parents of deceased told that victim is sleeping, without recording statement, he went back and then he claims to have come back to record statement at 06:30 a.m. But father in his evidence has stated that Police came to record statement at around 09:00 a.m. Further this witness PW5, who recorded above statement, has admitted in cross-examination that Doctor was not available when he recorded statement exh.14. Prosecution does not deny that before PW5 went, there is MLC regarding burns on account bursting of stove.

16. Victim herself has narrated that husband had doused the fire by water and that he too suffered burns. PW2 neighbour has not supported prosecution because she did not mark presence of accused.

DW1 Ramdas, another neighbour has deposed that at around 10:00 p.m. to 10:30 p.m. there were no lights and at that time, there was sudden bursting of stove and Manisha catching fire. He stated that he and his wife both went to extinguish fire and at that time, accused no.1 was returning from duty.

Though subjected to **cross-examination** by learned APP, version of DW1 regarding he and his wife extinguishing fire and at that time, accused husband returning from duty has not been touched or

shaken.

17. Here there is seizure of exh.17, a chit allegedly written by victim herself. Trial Court has marked it as exh.17. The translated version of exh.17 is as under :

“Exhibit No. 17

STATEMENT

Date : 17.05.99

Convey my regards to my parents, Vandana, Jai Bhim. Dad this is my last letter to you, because I am going to end my life, Dad, be good, and take care of Akka. You have only one son and daughter. Mom(Aai) I am fed up with my life and am going to commit suicide. I got married but I have no happiness in my married life as I can not bear anything in the married life. At present I have no problem, my husband is good. My brother-in-law and sister-in-law are also good but I can tolerate everything but not this. This marriage is solemnized against my wish. I could not hurt you. I am feeling sad only because I am leaving you. Mom, I do not know what married life is and as I do not understand the meaning of this, I am fed up of it.

I have done nothing to disgrace you, I owe your duty. You had no choice but to do something between us, so I am leaving the world. You will be very sad to read this letter. I did not know the meaning of marriage. I have understood the meaning of marriage since one month. I have decided to commit suicide because I can not live without seeing you all.

Your Daughter,
Vandana Manisha.”

(As translated by Sr. Translator, High Court Bench at Aurangabad)

SUMMATION

18. The sum total of above discussed evidence is that here there is

very weak evidence on the point of cruelty and demand. As regards to charge of attempt to commit murder, except version of PW4 Manisha, victim to which there is no corroboration, there is no other distinct evidence. MLC exh.30 is about burst of stove. Appellant no.1, husband, whose role of extinguishing fire is admitted by very victim goes to show that he not only attempted to douse the fire but he even shifted her to hospital. Had he carried any sinister motive to commit offence, circumstances would have been otherwise. There is failure to promptly record statement of victim. Chit exh.17, which is reproduced above, clearly indicates that it is act of attempt to commit suicide. Taking such material into consideration, offence of Section 307 cannot be said to be made out.

There are several doubts coupled with the chit of letter exh.17, which PW6 father admitted that it was given to him by his victim daughter PW4.

19. Perused the judgment under challenge. Above aspects are not appreciated by the learned trial Court. In spite of no cogent, reliable and trustworthy evidence, charge of Section 498-A is held as proved. Likewise, learned trial Court has also failed to consider and appreciate creditworthiness of prosecution version on the point of

attempt to commit murder and hence, it is a fit case to interfere.

Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.610 of 2003 is allowed.
- II) The conviction awarded to appellant nos.(1) Uttam Narayan Wathore and (2) Gautam Narayan Wathore in Sessions Case No.58 of 2001 by the learned Sessions Judge, Aurangabad on 21-08-2003 for the offence punishable under Sections 498-A and 307 read with 34 and of the Indian Penal Code, stands quashed and set aside.
- III) The appellant nos.1 and 2 stand acquitted of the offence punishable under Sections 498-A and 307 read with 34 of the Indian Penal Code.
- IV) **The bail bonds of appellant nos.1 and 2 stand cancelled.**
- V) The fine amount deposited, if any, be refunded to the appellant nos.1 and 2 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**)
JUDGE