



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.417 OF 2005

Bhagwat Yadav Wagh,
Age : 21 years,
Occupation : Labourer,
R/o Nehta, Taluka Raver,
District Jalgaon.

...Appellant/ accused

- *Versus* -

The State of Maharashtra.

...Respondent/ State.

...

Shri N.K. Kakade, Advocate for the appellant/ accused.
Ms. Anuradha S. Mantri, APP for the respondent/ State.

...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 13 November 2025

Pronounced on : 19 November 2025

JUDGMENT :-

1. By this appeal filed under Section 374(2) of the Code of Criminal Procedure (for short, 'the CrPC'), the appellant/ accused challenges the judgment and order dated 13.06.2005 passed by learned 1st Ad-hoc Additional Sessions Judge, Jalgaon, in Sessions Case No.185/2004 by which, he has been convicted for offences punishable under Sections 498-A and 306 of the Indian Penal Code, 1860 (for short, 'the IPC') and he

is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/-, in default of payment of fine, he is directed to suffer further rigorous imprisonment for one month, for the offence u/s 498-A. He is further sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5000/- and in default, to suffer rigorous imprisonment for five months, for offence u/s 306. Both the sentences were directed to run concurrently.

2. The brief facts leading to filing of the present appeal are as under:

(a) The prosecution case is that the marriage of appellant/ accused with deceased Jyoti took place on 12.02.2003. They are residents of same village Nehta and there are five to six houses between their respective houses. After marriage, Jyoti cohabited at her marital house along with the appellant and his family members for eight days. Thereafter, she had been to her parents house and informed her parents and relatives that the appellant used to raise suspicion about her character and on that count, he used to abuse and beat her. She informed her parents that the appellant is in habit of drinking liquor. She stayed at her

parents house for the period of about two months and thereafter, due to mediation by some villagers, deceased Jyoti again started cohabitation with the appellant. However, after few days, the appellant again started harassing her and he drove her out of the house and, therefore, she started residing with her parents. However, the appellant used to meet Jyoti in the house of her parents whenever she was alone and used to threaten her to cohabit with him or else face dire consequences.

(b) It is further case of the prosecution that on 19.08.2004 at about 06:30 am in morning, the complainant (PW-1) Brijlal Shamrao Dhanke (father of deceased Jyoti) along with his wife had gone to village Nimbhor and when they returned back to village Nehta at about 01:30 pm, they were informed at bus stand that Jyoti consumed poison and she was admitted in Municipal Hospital at Raver. They rushed to the hospital, where medical treatment was going on. On enquiry, Jyoti told PW-1 complainant that when she was alone in the house, the appellant came there and abused her in filthy language and also threatened her that in case she would not join his company till evening, she should consume poison and should die. It is, therefore, alleged

that due constant ill treatment and harassment, Jyoti consumed insecticide (Monocrotophos). When Jyoti started vomiting after consumption of poison, her uncles namely Suresh Shamrao Dhanke (PW-3), Sopan Shamrao Dhanke (PW-4) and aunt Manisha Sopan Dhanke (PW-5) reached to the house of the complainant PW-1 and Jyoti was taken in jeep of Arun Sitaram Sable (PW-6) to the Municipal Hospital, Raver, where Dr. Mansur Kadri (PW-7) treated her. On getting information that Jyoti consumed poison and admitted in hospital, the Police Station In-Charge ASI Shri Pawar of Raver Police Station directed ASI Venkat Tukaram Patil (PW-8) to record her statement and accordingly, her statement came to be recorded, which is first dying declaration at exhibit 35. Thereafter, he went to Police Station and took entry of recording the statement and then, he reached to the spot and seized the bottle of Monocrotophos insecticide from the house of complainant vide seizure/spot panchanama at exhibit 17.

(c) It is further case of the prosecution that in view of the intimation from the Police Station, Raver, the Executive Magistrate Baban Kakade (PW-9) reached to Municipal Hospital,

Raver and he also recorded the statement of Jyoti, which is the second dying declaration at exhibit 38. As the condition of Jyoti was deteriorating, the Medical Officer of Municipal Hospital, Raver, asked her relatives to shift her to Civil Hospital, Jalgaon. Therefore, she was being taken at about 05:00 pm to the Civil Hospital, Jalgaon, however, on way, she expired. The Medical Officer at Civil Hospital, Jalgaon, on examining her, declared her as dead. Intimation along with papers of death of Jyoti were sent to the Police Station and consequently, A.D. No.34/2004 was recorded in the Police Station, Raver. On next day i.e. on 20.08.2004, Dr.Udaysingh Patil (PW-12) conducted autopsy and issued the postmortem report. In his opinion, probable cause of death was due to cardio respiratory arrest due to consumption of poison. Last rites on the dead body were performed on 21.08.2004 and thereafter, PW-1 complainant Brijlal lodged the report with the Police Station, Raver. API Sambhaji Wagh (PW-11) reduced the oral report of PW-1 into writing vide exhibit 14 and then, registered offence vide Crime No.42/2004. He also recorded the statements of witnesses. The seized bottle of poison and viscera were sent to the Chemical Analyst, Regional Forensic Laboratory, Pune.

3. After completion of investigation, the charge-sheet was filed. Since offences were triable by the Sessions Court, the case was committed to the Sessions Court. The learned Additional Sessions Judge framed charge at exhibit 5 against the appellant/ accused for offences punishable under Sections 498-A and 306 of the Indian Penal Code. The appellant/ accused pleaded not guilty and claimed to be tried. The prosecution has examined in all 12 witnesses as under:-

PW No.	Name of witness	Significance/ role
PW-1	Brijlal Shamrao Dhanke	Complainant and father of the deceased Jyoti.
PW-2	Namdeo Sukdev Tayde	Panch witness.
PW-3	Suresh Shamrao Dhanke	Uncle of deceased
PW-4	Sopan Shamrao Dhanke	Uncle of deceased
PW-5	Manisha Sopan Dhanke	Aunt of deceased
PW-6	Aurun Sitaram Sable	Jeep driver
PW-7	Dr.Mansur Kadri	Medical Officer at Raver
PW-8	ASI Venkta Tukaram Patil	ASI. Recorded first statement of deceased
PW-9	Baban Punjanth Kakade	Executive Magistrate. Recorded second statement of deceased
PW-10	Jawansingh Rajput	Spot panch
PW-11	API Sambhaji Wagh	Investigating Officer
PW-12	Dr. Udaysingh Patil	Conducted postmortem

4. After recording evidence and hearing the appellant and prosecution side, learned 1st Ad-hoc Additional Sessions Judge was pleased to pass the impugned judgment.

5. Learned advocate Shri Kakade appearing for the appellant submitted that the learned Sessions Judge committed grave error by convicting the appellant as it has not properly appreciated evidence brought on record. The prosecution has failed to prove guilt of the appellant beyond reasonable doubt. Learned advocate submitted that the prosecution case is mainly based on two dying declarations, one is at exhibit 35 and another is at exhibit 38. The prosecution case is based on interested witnesses i.e. PW-1 Brijlal (father of deceased), PW-3 Suresh (uncle), PW-4 Sopan (uncle) and PW-5 Manisha (aunt) and these interested witnesses have improved their versions before learned Sessions court. The deceased Jyoti herself is educated upto 09th standard and while recording dying declarations, she has not at all blamed the appellant for her death. However, interested witnesses in order to falsely implicate the appellant in the crime, have deliberately lodged false report against him.

6. Learned advocate for the appellant took me through

evidence of two dying declarations i.e. at exhibits 35 and 38. The first dying declaration exhibit-35 was recorded on 19.08.2004 by PW-8 ASI Venkat Patil and in his deposition at exhibit-34, PW-8 Venkat Patil stated that he reached at hospital at about 03:00 pm and met the Medical Officer in hospital. When he recorded the statement of deceased Jyoti, at that time, along with him, the Medical Officer was present there. In dying declaration at exhibit-35, the deceased stated that since last two months she was residing with her parents because her husband i.e. present appellant used to suspect her character and beat her. She stated that the appellant was not taking her back to her marital house. Therefore, on 19.08.2004 in morning at about 09:00 am, when she was alone at home and her parents had gone to field, she consumed poisonous insecticide. She stated that after consumption of poison, she started vomiting and thereafter, her relatives came there and took her to hospital in vehicle. She has not accused anybody in dying declaration and she stated that she did not have any grievance against anybody.

7. Learned advocate for the appellant also drew my attention to the second dying declaration at exhibit 38 recorded

by the Executive Magistrate Baban Kakade (PW-9). PW-9 also reached to the hospital and recorded the said dying declaration in question and answer format. He has specifically stated that she asked the deceased Jyoti as to why she consumed poisonous substance, upon which she replied that there is no reason for it.

8. Learned advocate for the appellant thereafter, took me through depositions of witnesses and particularly interested witnesses, who are relatives of the deceased Jyoti i.e. PW-1 Brijlal (father of deceased), PW-3 Suresh (uncle), PW-4 Sopan (uncle) and PW-5 Manisha (aunt). PW-1 improved his statement given to the police and stated that the appellant had come to his house in his absence and met the deceased and also threatened her that she should reach to his marital house by evening or else, she should consume poison and die. Admittedly, the said fact is not stated by the deceased Jyoti in her both dying declarations. Thus, evidence of PW-1 is not corroborated with two dying declarations. Similarly, PW-3, PW-4 and PW-5 have also improved their versions and stated that the deceased, while being taken to the hospital, had disclosed them that the appellant had been to her house and threatened her that she should come to his

house by evening for cohabitation, otherwise she should consume poison and die. Their versions are not corroborated with dying declarations of the deceased Jyoti.

9. Learned advocate for the appellant specifically invited attention of this Court to the deposition of PW-6 Arun Sable, who is jeep driver and who took the deceased to hospital. He also deposed that he has not heard that the deceased Jyoti spoke anything with her relatives in the said jeep. Thus, this independent witness PW-6 is not supporting PW-1, PW-3, PW-4 and PW-5.

10. Learned advocate further submitted that though the statements of neighbourers were recorded by the Investigating Officer, however, they were not examined by the prosecution and only interested witnesses came to be examined. Therefore, the impugned judgment is based on assumption and presumption as learned Sessions Judge has failed to consider discrepancies and omission in the evidence of PW-1, PW-3, PW-4 and PW-5. Since last two months prior to incident, the deceased was staying with her parents, however, her parents have not made any complaint of harassing or ill-treatment at the hands of the appellant. The

deceased in her dying declaration specifically stated that nobody is responsible for her death. The prosecution has also failed to explain the delay caused in filing the complaint. There is no evidence on record to prove the cruelty and harassment at the hands of appellant. Therefore, learned advocate submitted that the prosecution has failed to prove guilt of the appellant. As such, the appeal needs to be allowed and the appellant be acquitted.

11. In support of his above submissions, learned advocate for the appellant has relied upon following judgments:-

- (a) Rajendra Dongar Patil vs. State of Maharashtra, 2009(3) Bom. C.R. (Cri.) 723 (Bombay High Court, Aurangabad Bench).
- (b) Sarla Prabhakar Waghmare vs. State of Maharashtra and others, 1990 Cri. L.J. 407 (Bombay High Court, Nagpur Bench).
- (c) Ravindra Pyarelal Bidlan and others vs. State of Maharashtra, 1993(1) Mh.L.J. 658. (Bombay High Court).
- (d) Ramaiah alias Rama vs. State of Karnataka, AIR 2014 SC 3388.
- (e) Wakil Ahmad Khan vs. State of Maharashtra,

2010 (5) ABR (NOC) 558 (BOM). (Bombay High Court, Nagpur Bench).

- (f) Vajabai Vikram Sonawane vs. State of Maharashtra, (2013) 7 ALL MR (NOC) 73 (BOM). (Bombay High Court, Aurangabad Bench.)
- (g) Ramu Shankar Wagh vs. State of Maharashtra, (2014) 2 Bom CR (Cri) (NOC) 270 (BOM). (Bombay High Court, Nagpur Bench).
- (h) Heera Lal vs. State of Rajasthan, AIR 2017 SC 2425.

12. *Per contra*, learned APP Ms. Mantri strongly opposed the submissions of Shri Kakade. According to learned APP, the statements of witnesses proved the guilt of the appellant beyond all reasonable doubts and, therefore, their evidence cannot be discarded. Merely because some witnesses are family members of deceased Jyoti, they cannot be termed as interested witnesses and, therefore, their evidence cannot be thrown aside particularly when nothing adverse has been pointed out by the defence. Learned Sessions Judge has rightly considered evidence on record and rightly convicted the appellant. Learned APP,

therefore, prayed for dismissal of the appeal.

13. After hearing the submissions of learned advocates and with their assistance, after going through evidence on record carefully, it is clear that evidence of PW-1, PW-3, PW-4 and PW-4 is not corroborated with two dying declarations of the deceased Jyoti. It has been rightly pointed out by learned advocate Shri Kakade that there are lot of discrepancies in evidence of these interested witnesses and nobody has firmly stated about cruelty or harassment at the hands of the appellant, which has resulted in the deceased consuming poison. On the contrary, the deceased Jyoti in her two dying declarations specifically stated that nobody is responsible for her act of suicide. In such circumstances, it becomes impossible to ascertain conclusively as to how the appellant has harassed the deceased so as to compel her to commit suicide.

14. Having carefully considered the testimony of witnesses, this Court finds substantial contradictions regarding cruelty and harassment at the hands of the appellant due to which, the deceased consumed poison. The prosecution has failed to establish a consistent and trustworthy version. In cases

under Section 306 IPC, the prosecution must establish cruelty or harassment and positive act of instigation or abetment. Mere discord or domestic quarrels are insufficient. On this count as well, the prosecution has failed to prove its case.

15. The presumption under Section 113-A of the Evidence Act arises only when the prosecution proves cruelty within the meaning of Section 498-A IPC. In the present case, both dying declarations specifically negate any harassment or instigation. The evidence of relatives suffers from omissions and improvements and does not establish cruelty as defined under law. Hence, the statutory presumption under Section 113-A cannot be invoked against the appellant.

16. In *Rajendra Dongar Patil* (supra), *Sarla Prabhakar Waghmare* (supra), and *Heera Lal v. State of Rajasthan* (supra), the well-settled principle is reiterated that that when dying declaration does not attribute any overt act or instigation to the accused, and when the oral testimony of relatives suffers from material improvements or contradictions, conviction under Sections 498-A and 306 IPC cannot be sustained. The Supreme Court has repeatedly held that for abetment of suicide, there must

be clear evidence of instigation. In the present case, neither dying declarations attribute such instigation nor does the oral testimony inspire confidence. Therefore, the judgments cited by the appellant squarely apply to the facts of the present case.

17. In view of the foregoing discussion and in the absence of any trustworthy and cogent evidence establishing cruelty or instigation, this Court is unable to sustain the conviction of the appellant. Both dying declarations categorically exonerate the appellant, and the oral testimony of the relatives suffers from material omissions and improvements, rendering it unreliable. The prosecution has failed to establish the ingredients of Sections 498-A and 306 IPC beyond reasonable doubt. Consequently, **this Criminal Appeal is allowed and the impugned judgment and order is quashed and set aside.** The appellant/accused is acquitted for the said offence. As the appellant is on bail, he need not surrender. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The record and proceedings be sent back to the concerned Court.