



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

CRIMINAL APPEAL NO.544 OF 2003

1. Shankar s/o Dagdu Gholap
(Abated)
 2. Sou. Pushpa w/o Sadashiv Gholap,
Age : 36 years, Occu.: Agriculture,
R/o.: Nandur Pathar, Tq. Parner,
District : Ahmednagar
- APPELLANTS
(Original Accused)

VERSUS

The State of Maharashtra

.... RESPONDENT
(Original Complainant)

....

Mr. Vishal A. Chavan, Advocate for Appellants
Mr. S. J. Salgare, APP for Respondent-State

....

**WITH
CRIMINAL APPEAL NO.664 OF 2003**

The State of Maharashtra
Through Public Prosecutor,
High Court Bench at Aurangabad

.... APPELLANT
(Original Complainant)

VERSUS

1. Shankar Dagdu Gholap,
(Abated)
 2. Sou. Pushpa Sadashiv Gholap,
Age : 35 years, Occu.: Agriculture,
R/o.: Nandur Pathar, Tq. Parner,
District : Ahmednagar
- RESPONDENTS
(Original Accused)

....
Mr. S. J. Salgare, APP for the Appellant-State
Mr. Vishal A. Chavan, Advocate for Respondents
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**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

RESERVED ON : 02/12/2025

PRONOUNCED ON : 10/12/2025

JUDGMENT : (Per : Sandipkumar C. More, J.)

1. Both these appeals arise from the same judgment, i.e. judgment and order dated 02/08/2003 passed by the learned First Ad-hoc Additional Sessions Judge, Ahmednagar (hereinafter referred to as “the learned trial Judge”) in Sessions Case No.93 of 2002. The accused in the said case were charged under Sections 302 and 498-A read with Section 34 of the Indian Penal Code (for short, “IPC”). The learned trial Judge acquitted both accused of the offence under Section 302 read with Section 34 IPC, but convicted them for the offence punishable under Section 498-A read with Section 34 IPC, sentencing them to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,500/- each, with a default clause.

2. Accordingly, the appellants in Criminal Appeal No.544 of 2003 (the original accused) have preferred this appeal challenging their conviction under Section 498-A read with Section 34 IPC. The State has filed Criminal Appeal No. 664 of 2003 challenging the acquittal of the accused for the offence under Section 302 read with Section 34 IPC. It is to be noted that original accused No.1 – Shankar Dagdu Gholap, who is appellant No. 1 in Criminal Appeal No.544 of 2003 and respondent No. 1 in Criminal Appeal No.664 of 2003, died during the pendency of the appeals. Consequently, the appeals stand abated as against him.

3. According to the prosecution, Sadu Belkar (PW-4), a resident of Pemdara, has three brothers, including Baban Belkar. Baban Belkar has four daughters and a son. One of his daughters, Savita, is the deceased in the present case. Savita's marriage was solemnized with original accused No. 1 – Shankar Dagdu Gholap, resident of Nandur Pathar, Taluka Parner, District Ahmednagar. About four months prior to the incident, Savita went to village Nandur Pathar for cohabitation, where she resided with accused No.1 Shankar; his brother Vishwanath and Vishwanath's wife; and the wife of another brother, Pushpa, i.e., original accused No.2. The

husband of accused No.2 Pushpa was working as a porter in Mumbai, but Pushpa herself resided at Nandur Pathar.

During the first year of marriage, Savita cohabited peacefully with her husband. However, thereafter, both the accused allegedly started ill-treating and beating her, as Savita objected to their illicit relationship. According to the prosecution, both accused would also deprive Savita of food. Whenever Savita visited her parental home, she used to inform her family members about the said ill-treatment. Due to the continued harassment by both accused, Savita was compelled to reside at her father's house in village Pemdara, where she stayed for more than one year.

Subsequently, both the accused, along with their relative Balkrishna Choudhari, visited her parental home. Though the informant and other family members were reluctant to send Savita back with the accused, Balkrishna Choudhari assured them that she would be treated properly. Relying on this assurance, Savita was sent back to her matrimonial home.

However, about 10 to 15 days thereafter, i.e. on 31/05/2002, one Shekhar Jejurkar from village Nandur Pathar came to village Pemdara and informed the informant that Savita had sustained burn injuries & requested to accompany with him. Consequently, the

informant Sadu Belkar, along with his wife Chandrabhaga, his niece Kondabai Belkar, his son Balu, and their relative Dilip, proceeded to Nandur Pathar.

Upon reaching Savita's matrimonial house, they found her in a completely burnt state, though she was still conscious and speaking. No one else was present in the house. Savita identified the informant and the accompanying relatives and asked for water. The informant, Sadu Belkar, gave her water and inquired how she had sustained the burns. Savita informed him that her husband (accused No. 1) and accused No. 2 had tied her hands with a rope, poured kerosene over her body and set her ablaze. After making this disclosure, Savita succumbed to her burn injuries at about 4:00 p.m. in her matrimonial home itself.

4. Accordingly, the incident was reported to the police and AD No.37 of 2002 was registered. Thereafter, on the basis of the complaint lodged by PW-4 Sadu Belkar, Crime No.113 of 2002 for the offences under Sections 302 and 498-A read with Section 34 of the IPC was registered against both accused. Further investigation was carried out and ultimately the accused were charge-sheeted for the aforesaid offences. After conducting the trial, the learned trial Judge convicted the accused for the offence under Section 498-A

read with Section 34 IPC, as stated earlier, but acquitted them of the charge under Section 302 IPC. Hence, these appeals.

5. Learned counsel for the appellant–accused Pushpa in Criminal Appeal No.544 of 2003 submitted that though the learned trial Judge rightly acquitted her of the charge under Section 302 of the IPC, but he erred in convicting her for the offence under Section 498-A of the IPC. According to him, there are so many contradictions, omissions and improvements in the evidence of the prosecution witnesses. He contended that though the prosecution alleged illicit relations between both accused, there is absolutely no independent evidence supporting the allegation and therefore no motive can be attributed to accused Pushpa. He specifically pointed out that none of the witnesses stated that Savita's hands and legs were tied when they entered the matrimonial house. He further pointed out certain omissions in the testimony of Dilip Date (PW-5), rendering his evidence unreliable. He argued that Savita's death was not homicidal and that there were no prior complaints regarding the alleged ill-treatment. According to him, the prosecution failed to examine any neighbours to establish harassment or cruelty. He also pointed out contradictions on material aspects in the alleged oral dying declarations as narrated

by the witnesses. Therefore, he submitted that there is no sufficient evidence against the appellant–accused Pushpa to sustain her conviction under Section 498-A IPC, as the cruelty contemplated therein is not proved. He accordingly prayed for her acquittal. He also relied on the decision in ***Heikujam Chaboba Singh v. State of Manipur, (1999) 8 SCC 458.***

6. On the contrary, the learned APP vehemently argued that the prosecution examined 11 witnesses, out of whom the informant Sadu Belkar (PW-4), Dilip Date (PW-5) and Sunanda Dukare (PW-6) established the fact of ill-treatment of Savita at the hands of the accused. He submitted that the prosecution case is also supported by three oral dying declarations, which substantiate the charge of murder against the accused. He pointed out that due to the illicit relationship between both the accused, the deceased was compelled to stay at her parental house for more than one year and when she was brought back, the incident occurred within ten days. He further argued that Savita died unnaturally and as per her dying declarations, accused No. 1 (her husband) tied her hands and poured kerosene on her, while accused Pushpa set her ablaze. Though the defence case was that the accused were not present in the house at the time of the incident and that Savita committed

suicide, their own conduct indicates otherwise, as they absconded immediately after the incident on 31/05/2002. He pointed out that they were arrested on 02/06/2002, which, according to him, shows a guilty mind. He further referred to the recovery of rope pieces and a kerosene container from the spot, suggesting the commission of a criminal act by the accused. Accordingly, he prayed for converting the acquittal of accused Pushpa into a conviction under Section 302 IPC while maintaining her conviction under Section 498-A IPC. He relied upon the following judgments:

- A) *Laxman v. State of Maharashtra, 2002 AIR SCW 3479;***
- B) *Kuldeep Choudhary and another v. State of Madhya Pradesh, AIROnline 2021 MP 103;***
- C) *Varikuppal Srinivas v. State of Andhra Pradesh, 2009 AIR SCW 975; and***
- D) *Vijay Pal v. State (GNCT) of Delhi, AIR 2015 SC 1495.***

7. Heard rival submissions. Perused the entire oral and documentary evidence, along with the record and proceedings of the original Sessions case.

8. Admittedly, the respondents – accused were acquitted of the charge under Section 302 read with Section 34 of IPC by the learned trial Judge, but were convicted for the charge under Section 498-A read with Section 34 of IPC. Against the aforesaid acquittal of the respondents – accused, the State has filed an appeal seeking to convert the acquittal into conviction. It is to be noted that the entire case of the prosecution, to the extent of the charge under Section 302 of IPC, is based on oral dying declarations. The prosecution witnesses, namely PW-4, informant Sadu Belkar, who is also the uncle of the deceased Savita; PW-5, Dilip Date, brother-in-law of the deceased; and PW-6, Sunanda Dukare, sister of the deceased, have claimed that when they reached the house of Savita, she was found completely burnt but alive and conscious. According to them, she stated that accused No.1 tied her hands with a rope and poured kerosene on her and then accused No.2 set her on fire with the help of a matchstick.

9. Learned APP has relied on the observations of the Hon'ble Apex Court as well as the High Courts of Madhya Pradesh, Andhra Pradesh and Delhi, in the cases of ***Laxman vs. State of Maharashtra (supra)***, ***Kuldeep Choudhary and another vs. State of Madhya Pradesh (supra)***, and ***Vijay Pal vs. State***

(GNCT) of Delhi (supra). On perusal of the observations in the aforesaid cases, it is clear that when a case is based on a dying declaration, it can form the sole basis for conviction of the accused. However, for convicting an accused solely on the basis of a dying declaration, the statement must inspire confidence. Under such circumstances, the evidence of the aforesaid witnesses, coupled with the evidence of PW-2, must be scrutinized with great caution.

10. The learned trial Judge has disbelieved the evidence of these witnesses by drawing the inference that it did not inspire confidence, as the contradictions and omissions in their evidence gave the impression that Savita had already died when these witnesses reached the spot. Therefore, the alleged dying declarations were found untrustworthy.

11. According to Sadu Belkar (PW-4), the incident of burning took place approximately 10 to 12 days after Savita was sent to her matrimonial home. He deposed that one Balkrishna Choudhari of village Kotwal had come to village Pemdara and informed him about the incident at around 12.00 to 12.30 p.m. Thereafter, he, along with his wife Chandrabhaga, his son Balu and Sunanda (PW-6), went to village Nandur Pathar and Dilip Date (PW-5) was

also present. However, in cross-examination, he stated that witnesses Kailas Belkar and Ganpat Popat Gunjal were also present with him, but he was not aware if those two persons had informed Rangnath Wahval (PW-2) about the incident. He specifically denied the suggestion that Kailas Belkar, Krishna Belkar, Rangnath Wahval (PW-2) and Ganpat Popat Gunjal were present with him when he went to Nandur Pathar. According to him, Rangnath (PW-2) had come to village Nandur Pathar but did not meet him on the day of the incident. He also could not state that Rangnath (PW-2) arrived when he had opened the middle door of the accused's house and found Savita being dead and nobody was present there.

12. On this background, if we peruse the evidence of Rangnath (PW-2), it is evident from his cross-examination that on 31/05/2002, he had gone to village Nandur Pathar on receiving information from Kailas Belkar and Ganpat Gunjal about the death of Savita. According to him, he got knowledge of death of Savita around 3.45 to 4.00 p.m in his village and thereafter proceeded to village Nandur Pathar by tempo. He specifically stated that it did not happen that when he opened the door of the house, nobody was present there. He admitted that the 'Khabar' (Exhibit-23) was given by him, wherein it was stated that upon enquiry with her

housemate, nobody was present. Though this witness stated in cross-examination that the complainant, Sadu Belkar (PW-4), was present in the house when he went there, he denied that Sadu Belkar accompanied him from his village to village Nandur Pathar. He further stated that there was no communication between himself and the complainant prior to giving the Khabar (Exhibit-23) to the police. He also stated in cross-examination that he was not present at village Nandur Pathar from 31/05/2002 to 01/06/2002, but again stated that he was present at Parner and Nandur Pathar on 31/05/2002 and returned to his village at 8.30 p.m.

13. In this backdrop, if we peruse the Khabar (Exhibit-23), it is evident that it was given by Rangnath (PW-2) on 31/05/2002 and was reduced into writing by the Police Head Constable of Outpost – Takli. The Khabar (Exhibit-23) indicates that on 31/05/2002, Rangnath (PW-2) was present in his village, Pemdara and at the relevant time, Kailas Belkar, Gulab Belkar and Ganpat Popat Gunjal had arrived there and informed him that Savita Shankar Gholap of village Nandur Pathar had expired in noon. It is further stated that after attending a marriage function, he and others went to the house of the deceased in village Nandur Pathar and at that time, the door of her house was closed. Upon opening it, he found

Savita Shankar Gholap in a completely burnt condition and she had already died. The Khabar (Exhibit-23) also indicates that Savita had expired at about 4.00 p.m. Thus, the evidence given by Sadu Belkar (PW-4) and Rangnath (PW-2) before the Court is contradictory to the contents of Khabar (Exhibit-23). Rangnath (PW-2) himself appears to have misrepresented the contents of his own Khabar (Exhibit-23). When the Khabar clearly indicates that Rangnath (PW-2) received information from Kailas Belkar and Ganpat Popat Gunjal that Savita had already died around noon, it is highly improbable to accept the prosecution's story that when the informant, Sadu Belkar (PW-4), reached the spot at about 1.30 p.m., Savita was conscious and made oral dying declarations before PW-4, PW-5 and PW-6.

14. Further, it is significant to note that despite reaching to the spot of the incident around 1.30 p.m., PW-4, PW-5, and PW-6 made no effort to take Savita to the hospital if, according to them, she was alive at that time. This gives rise to a reasonable doubt that Savita had already expired when these persons arrived, which explains why no attempt was made to take her to the hospital. Therefore, the learned trial Judge, after considering the evidence of PW-2, PW-4, PW-5, and PW-6 in detail, concluded that their

evidence did not inspire confidence regarding the of dying declarations made by the deceased, Savita. Considering the overall evidence, the story of oral dying declarations is unreliable, as the story mentioned in Khabar (Exhibit-23) is contradictory to the prosecution case. Moreover, the conduct of the witnesses, the contradictions in their versions and their failure to save the deceased Savita create a reasonable doubt regarding the prosecution story. Consequently, the benefit of doubt must go in favour of the accused.

15. In view of the above, we do not find any merit in the appeal against acquittal insofar as it relates to the charge under Section 302 read with Section 34 of IPC against the accused. Accordingly, the appeal against acquittal must fail.

16. So far as Criminal Appeal No.544 of 2003 is concerned, it is filed by the appellants-accused for setting- aside their conviction under Section 498-A read with Section 34 of the Indian Penal Code. Admittedly, the appellants- accused were convicted for offence under Section 498-A and sentenced to suffer rigorous imprisonment for three years along with a fine of Rs. 2500/- each. However, the appeal against appellant No.1, husband of the

deceased, has already been abated and therefore, only accused No.2 is before the Court for challenging her conviction.

17. It is the case of the prosecution that both the appellants—accused began ill-treating and beating the deceased Savita after about one year of her marriage. The alleged reason for such cruelty was the purported illicit relationship between the appellants. According to the prosecution, the appellants denied Savita food, harassed her and beat her. In support of these allegations, the prosecution relied upon the evidence of Sadu Belkar (P.W. 4), the informant and uncle of the deceased; Dilip Date (P.W. 5), the brother-in-law of the deceased; Sunanda Dukare (P.W. 6), the sister of the deceased; and Sushila Belkar (P.W. 7), the mother of the deceased. It appears that the learned Trial Judge convicted the appellants on the basis of the testimonies of the aforesaid witnesses, finding them believable and probable. The Court also noted that deceased Savita resided at her parental home for a prolonged period more than one year and observed that no married woman would remain at her parental home for such a long duration unless compelled to do so due to severe harassment at her matrimonial home. The learned Trial Judge further observed that the absence of a prior police complaint regarding the harassment

was attributable to the family's desire to preserve its dignity, as families often avoid immediately reporting matrimonial cruelty. It was also remarked that cruelty occurring within the four walls of a house cannot be easily detected by others. However, the learned Trial Judge acknowledged that certain witnesses had made improvements in their versions but held that their evidence remained unshaken regarding the harassment of the deceased. In these circumstances, a detailed scrutiny of the evidence of the aforesaid witnesses is necessary to determine whether the cruelty contemplated under Section 498-A of the Indian Penal Code was established in the present case.

18. Admittedly, the aforesaid witnesses are close relatives of the deceased and therefore, they may be inclined to depose against the appellants–accused. From the evidence of Sadu Belkar (P.W. 4), the complainant and uncle of the deceased, it is revealed that though deceased Savita resided with the appellants for about one year, she was not happy and whenever she visited her parental home, she disclosed that both the appellants were having illicit relations with each other and for that reason, used to beat her and deny her proper food. This witness also alleged that whenever Savita objected to the alleged illicit relationship between the appellants,

she was beaten by them. He further referred to one Balkrishna, the brother-in-law of accused No. 2, who had allegedly assured him that Savita would not be harassed in the future. However, the evidence of this witness does not contain any specific instances of ill-treatment. He merely stated that the appellants used to beat Savita on account of their alleged illicit relationship. It appears that no independent witness was examined by the prosecution to substantiate the allegation of illicit relations between the appellants. No neighbour was examined to speak about the alleged ill-treatment or the motive for the acts. This witness specifically admitted that some persons were residing in the houses adjoining to the house of the appellants and therefore the prosecution could have examined them; however, no such effort was made.

19. Further, the evidence of Dilip Date (P.W. 5), the brother-in-law of the deceased, is also in line with the prosecution case. However, in his cross-examination, he made significant admissions, stating that he had not provided specific details to the police regarding when and where the incidents of harassment had taken place. He did not furnish detailed particulars of the alleged ill-treatment of the deceased and appeared to have exaggerated the prosecution story by introducing additional material. He specifically admitted

that though he was aware of the alleged harassment of Savita on account of the purported illicit relationship between the appellants–accused, he did not make any inquiry at Nandur Pathar, despite it being only 6 to 7 kilometres from his village, Pemdara. He further admitted that he did not verify the information supplied to him by Savita. Thus, whatever he stated regarding the alleged ill-treatment of the deceased was solely based on what Savita had told him and he neither confirmed the same nor avoided making improvements in his testimony.

20. The same is the case with the evidence of Sunanda Dukre (P.W. 6), the sister of the deceased. Though she supported the prosecution version in her examination-in-chief, but she admitted in her cross-examination that she had suppressed from the police the fact that Savita had resided at her parental home for about two to two and a half years after one year of marriage. She further admitted that she had not informed the police that appellant No.1 had sent a message one year prior to the incident, assuring that the deceased would not be ill-treated. Like the earlier two witnesses, she also failed to mention specific dates or occasions of the alleged ill-treatment.

21. The evidence of Sushila (P.W. 7), the mother of the deceased, also suffers from material infirmities. In her cross-examination, she admitted that she had not stated to the police that Savita was asked to sleep outside the house or that accused No.1 had sent a message asking that Savita be sent back. She further admitted that she had not stated that Savita had returned to her house after one month and informed her that she was harassed. Likewise, Savita had never told her that she was harassed during that one-month period because she had opposed the alleged illicit relations. This witness also failed to disclose to the police that Savita had stayed with her for about two and a half years. The alleged assurance given by the appellants and one Balkrishna Chaudhari that they would treat Savita properly has also come on record by way of addition. Thus, the evidence brought on record regarding the alleged ill-treatment of Savita is largely hearsay in nature. All these witnesses are close relatives of the deceased and the vital admissions elicited from them during cross-examination create serious doubt about the prosecution's case of harassment. No independent witness has been examined to prove the alleged illicit relationship between the appellants, which is the very motive suggested for the offence. It is extremely significant that none of these witnesses has furnished particulars as to when and where

the appellants allegedly ill-treated Savita. Several improvements have been made by the witnesses to support the prosecution story, which were never a part of their police statements.

22. It is also pertinent to note that the learned Trial Judge has already acquitted the appellants of the offence punishable under Section 302 r.w. 34 of the Indian Penal Code on the very same set of evidence. The learned Trial Judge found this evidence insufficient to sustain a conviction for the graver offence of murder, yet considered the same evidence trustworthy while convicting the appellants under Section 498-A r.w. 34 of the Indian Penal Code. Such an approach is clearly impermissible. Therefore, upon considering the evidence relating to the offence under Section 498-A r.w. 34 of the Indian Penal Code, we are of the view that it is neither reliable nor sufficient to sustain the conviction of the appellants. The cruelty as contemplated under Section 498-A has not been proved beyond all reasonable doubt. After such a long lapse of time, it would not be proper to confirm the conviction of the appellants, particularly when the husband of the deceased is no longer alive. It is also relevant that appellant Pushpa has her own family, including her husband and children and in the circumstances of the present case, she deserves the benefit of

doubt. Accordingly, we intend to allow Criminal Appeal No.544 of 2003 and set aside the conviction of appellant No.2, Pushpa Sadashiv Gholap. In the result, we pass the following order:—

ORDER

- I) The Criminal Appeal No.664 of 2003 is hereby dismissed, whereas Criminal Appeal No.544 of 2003 stands allowed and the conviction recorded by the learned Trial Judge against the appellant - Pushpa Sadashiv Gholap, for the offence punishable under Section 498-A of the Penal Code is hereby set aside by quashing the impugned judgment and order dated 02/08/2003 in Sessions Case No.93 of 2002.
- II) Her bail bond stands cancelled.
- III) The fine amount, if any paid by the appellant – Pushpa Sadashiv Gholap, be refunded to her.
- IV) Both the appeals are accordingly disposed of.

(MEHROZ K. PATHAN, J.)

(SANDIPKUMAR C. MORE, J.)