

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1531 OF 2003

The State of Maharashtra
(Through Umbraj Police Station,
Tal. Karad, Dist. Satara)

...Appellant

V/s.

1. Kamal Nivrutti Kadam
Age 61, Occ. Household.
(Abated as per order dated 06.03.2025)

2. Shobha Sampat Yadav,
Age 36, Occ. household
Both R/o. Indoli, Tal. Karad,
Dist. Satara.

...Respondents

Ms. R. S. Tendulkar, APP, for the Appellant-State.

Ms. Dhrushti Gala, Appointed Advocate, for the Respondent No.2.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 10th MARCH, 2025

PRONOUNCED ON : 22nd APRIL 2025

JUDGMENT:-

. Present appeal filed by the Appellant-State seeking an exception to the Judgment and Order dated 24.07.2003, in Sessions Case No.13 of 2002, passed by the learned 2nd Ad-Hoc Assistant

Sessions Judge, Karad, Dist. Satara, thereby Respondent Nos. 1 and 2 (**“Accused Nos. 1 and 2”**) were acquitted of the charge of the offences punishable under Sections 498A and 306 read with 34 of the Indian Penal Code (**“I.P.C.”**).

2) Heard Ms. Tendulkar, the learned APP for the Appellant-State and Ms. Gala, the learned appointed Advocate for Respondent No.2. Perused the record.

3) The prosecution story is that, on dated 02.11.2001, at about 12:00 noon, Mrs. Anjana Tanaji Kadam, R/o. Indoli, Taluqa Karad, Dist. Satara (**“Anjana”**) was admitted in Krishna Hospital for sustaining burns due to kerosene. At that time, PW3-Jagannath Vitthal Bhakare, then Police Head Constable at Karad City Police Station, was present on duty in the police chowky, at the campus of Krishna Hospital, Karad. The PSO of Karad City Police Station ordered PW3 to record a dying declaration of Anjana. At about 12:45 p.m, PW3 went to the hospital in Ward No.11 and informed PW5-Dr.Shrikant Dnyaneshwar Ankolikar (Exh.26) that he was required to record a statement of Anjana and asked PW5 to certify as to whether Anjana was conscious. In turn, PW5 medically examined Anjana and orally informed that she was conscious, oriented and able to give a statement and gave the fitness certificate (Exh. 27). Therefore, PW3

recorded the statement-cum-dying declaration (Exh.20) of Anjana therein she narrated as under :

“I am residing at the above address jointly with my husband, mother-in-law Sau. Kamal Nivrutti Kadam, father-in-law Nivrutti Kondiba Kadam and sister-in-law Sau. Shobha Sampat Yadav. My paternal house is at village *Pali*, Taluqa Karad. I got married about one year ago. My husband Tanaji has been serving in *Grampanchayat Indoli*, my father-in-law has been in service in Mumbai. My sister-in-law Sau. Shobha has not been cohabiting (with her husband) and since last 7 years she has been residing with us. Since the marriage, I did not conceive. Both the accused used to repeatedly quarrel with me by causing me to starve and abusing on account of not having a child and nor have I been going to work in agricultural land. I was informing my aforesaid plight to my mother by visiting my paternal village *Pali*, from time to time.

On 02.11.2001 at about 10:00 a.m., mother-in-law Sau. Kamal, sister-in-law Shobha and I were present at home. At that time, suddenly a dog entered in the house. Mother-in-law Sau. Kama, therefore, said to me as, “Although a dog entered in the house, can’t you see” and abused me. On hearing the said talk, sister-in-law Sau. Shobha came there and said me as, “she cannot see dogs, cats entered in the house, she only wants to eat sitting idle, not to go to the field”. Then they both went outside the house. I got angry due to the today’s quarrel and I was fed up with the daily quarrels by both the accused. I, therefore,

poured kerosene on my person and set myself on fire. Then I shouted due to the burns. Hearing my shouts, my husband Tanaji and neighbour came there. Tanaji dowsed my fire. Then, Tanaji and neighbour removed me to Krishna Hospital, Karad.”

4) The police treated the Dying Declaration (Exh.20) as first information and registered the same at FIR bearing Crime No.161 of 2001, under Sections 498A, 504 and 34 of the I.P.C. against the accused. The deceased succumbed to her injuries at about 1:00 p.m. On dated 03.11.2001 the police visited the spot and recorded the Spot Panchanama. Then the police recorded the Inquest Panchanama (Exh.9) of the body of Anjana and sent the body for postmortem examination. The Autopsy Surgeon held the postmortem at Cottage Hospital, Karad and opined that Anjana died due to shock due to 98% burns. Thereafter, the offence of Section 306 was added to the crime. During investigation the police recorded the statements of witnesses. The investigation revealed that, from 11.02.2001 to 02.11.2001, both accused, in furtherance of their common intention, subjected Anajana to mental and physical cruelty by taunting, abusing and causing her to starve from time to time, on account that she could not conceive a child, did not go to the field to work and did not cook properly. Anjana was fed up with that cruelty.

Therefore, Anajana committed suicide. The said act of both the accused was an offence punishable under Sections 498A, 306, 504 and 34 of I.P.C. Accordingly, the police submitted chargesheet before the Judicial Magistrate, First Class Court at Karad. The said learned Magistrate committed the case to the Court of Sessions at Karad, as the offence punishable under Section 306 of I.P.C. was exclusively triable by the Court of Sessions.

5) The learned Judge of the trial Court framed the charge to which the accused pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined all seven witnesses. It was followed by recording the statements of the accused under Section 313 of the Code of Criminal Procedure ("Cr.P.C."). The defence of the accused was of total denial and false implication.

6) After considering the evidence and rival submissions, the trial Court held that the dying declaration is suspicious. The evidence on the point of cruelty suffering from material inconsistencies and omissions. The evidence is not sufficient to constitute the offences stated in the charge. Therefore, the trial Court acquitted the accused.

7) Ms. Tendulkar, the learned APP, vehemently submitted that the dying declaration and the evidence of the relatives of Anjana clearly show that, since Anjana was cohabiting at her marital house,

both accused subjected her to mental harassment by continuously taunting and quarreling with her because she did not conceive a child and was not going to the field to work. Said act of the accused was the offence of cruelty, as defined in Section 498A of I.P.C. The said mental cruelty and harassment made the life of deceased very stressful and intolerable. As a result, she committed suicide by setting herself on fire. Therefore, offences of Sections 498A and 306 of I.P.C. were clearly proved. However, the trial Court unnecessarily doubted the truthfulness of the dying declaration and the testimony of the relative witnesses without just reasons and wrongly held that the evidence presented by the prosecution is not sufficient to prove the charge. Hence, the impugned judgment and order be set aside.

8) In contrast, Ms. Gala, the learned appointed Advocate for the Respondent No.2 submitted that the evidence on the point of cruelty is vague and insufficient to bring home the charge of Section 498A of I.P.C. She empathetically submitted that the ingredients of abetment to commit suicide are absolutely absent in the evidence of the prosecution. She submitted that as per the prosecution case the deceased was admitted at about 12:00 p.m. As per the evidence of PW3, he went to the hospital at 12:45 p.m. The fitness certificate appearing on the dying declaration was allegedly given at 12:00 p.m.

However, it is not clear as to when the recording of the dying declaration started and finished. She submitted that Anjana had sustained 98% burn injuries. It was, therefore, highly impossible for her to give the two page long dying declaration. Therefore, according to Ms. Gala, the trial Court has rightly disbelieved the dying declaration and held that the evidence on record is not sufficient to constitute the offences of Section 498A, 306 and 34 of I.P.C. To support her submissions, Ms. Gala relied upon the following decisions.

- (i) *Mahendra Singh and Another Gayatribai vs. State of M.P.*¹,
- (ii) *Prakash and Others vs. State of Maharashtra and Anr.*²,
- (iii) *Narendra Sahebrao Patil and Ors. vs. The State of Maharashtra*³.

9) In view of the rival submissions, I have carefully considered the charge and the evidence on record. It gave rise to two questions, i.e., whether the prosecution proved that Anjana was subjected to cruelty and whether both the accused abated Anjana to commit suicide by causing her constant cruelty. But before adverting to said questions, reference is needed to the undisputed/admitted facts.

1. 1995 Supp (3) SCC 731

2. 2024 SCC OnLine SC 3835

3. 2024:BHC-AUG:1357

9.1) It is not disputed by the accused that Anjana was the daughter of PW1. Anjana married Tanaji on dated 11/02/2001. Accused No.1 was the mother-in-law and Accused No.2 was the sister-in-law of Anjana. After the marriage, Anjana was jointly residing with Tanaji and both the accused, in her marital house at village *Indoli*. That, Anjana committed the suicide within seven years of the marriage in her marital house.

10) Now turning to the prosecution evidence. According to the prosecution, Anjana set herself on fire at about 10 a.m. on dated 02/11/2001. Then, she was taken to the hospital. However, the medical case papers of Anjana were not produced to show the exact time when she was admitted in the hospital and exactly at what time her dying declaration was recorded. As noted by the learned Judge of the trial Court, a photocopy of death certificate of Anjana issued by Krishna hospital was enclosed with the Misc.Application No.106 of 2001 for bail, filed by the accused. As mentioned in the said death certificate, Anjana was admitted in the hospital at about 11.10 a.m. on 02/11/2001 and she expired at 1.30 p.m.

11) According to PW3-Bhakre, he went to the said hospital at about 12.45 p.m. Then, he met with PW5 there. Thereafter PW5 examined Anjana and informed that she was conscious and oriented.

However, there is no document on record to indicate that Anjana was conscious and oriented at 12.45 p.m. and soon thereafter. Even, the evidence of PW5 is silent in that regard. The fitness certificate recorded by PW5 on the dying declaration states that Anjana was conscious and oriented at 12 noon. PW5 also deposed that when he examined to Anjana, she was conscious, oriented and able to give the statement. However, PW5 has not deposed the time of the examination and giving the fitness certificate as 12 noon. The dying declaration does not mention the exact time of commencing and completing the same. Therefore, as rightly noted by learned Judge of the trial Court even assuming that the fitness certificate was correctly recorded, still it was not clear whether Anjana was conscious and oriented at 12.45 p.m. or not, when her dying declaration was allegedly recorded.

12) Admittedly, PW3 first attended the deceased at about 12.45 p.m. PW5 admitted that Anjana had suffered 100% burns; that, Anjana had difficulty in breathing and therefore, she was put on oxygen through nasal prongs; that, Anjana was in shock due to the burns; that, in such a situation, a patient can become unconscious and may not be able to give a statement. Considering the burns, it can be presumed that Anjana must be in extreme pain. Therefore, it is

probable that after 12.45 p.m., the physical and mental health of Anjana became more critical and serious. Admittedly, Anjana expired at about 1.30 p.m., i.e., after 45 minutes of when PW3 visited at the hospital. The dying declaration is of two pages. As such, PW3 would have taken at least 20 minutes to record the dying declaration. Yet, PW3 has not stated the time of commencing and finishing the dying declaration. PW5 has not specifically deposed that Anjana was conscious and oriented after 12.45 p.m. and thereafter, during recording of the dying declaration.

13) Anjana's dying declaration was not recorded through the Executive Magistrate. However, the dying declaration of her husband was recorded through the Executive Magistrate on the same day between 1.00 p.m. and 1.30 p.m. The Order of the PSO Karad Police Station (Exh.29) indicates that said Order was issued at 12.40 p.m. thereby PW3 was directed to record the dying declaration of Anjana. Therefore, it is probable that the dying declaration of Anjana was recorded only after 12.50 p.m. to 1.00 p.m. Around this very time, the Executive Magistrate was present in the hospital. It is not the case that Tanaji had suffered more severe burns than Anjana. However, first, the Executive Magistrate was not required to record the dying declaration of Anjana. This circumstance is not explained by the

prosecution. As noted above, the condition of Anjana became more serious after 12.45 p.m. Therefore, the evidence of PW3 and PW5 is not sufficient to hold that at the relevant time, Anjana was conscious and oriented to give the dying declaration.

14) In so far as the evidence on the point of cruelty is concerned, PW1 deposed that after ten days of the marriage, Anjana had come to her parental house. At that time, Anjana disclosed that the accused were ill-treating her and taunting that she was not properly cooking, not doing work in agricultural land and she was unable to conceive. However, this evidence appears insufficient and exaggerated. In this regard, it must be noted that, it is not the case that during the said ten days period, everyday, the accused were taunting Anjana that she was not properly cooking and doing work in agricultural land. Secondly, it is highly improbable that within ten days after the marriage, the accused would ask the deceased to work in the agricultural land. Thirdly, it is difficult to understand as to how one can think that a newly married woman should conceive a child just within ten days after her marriage, when she stayed with her husband only for ten days.

15) PW2, sister of Anjana, deposed that after ten days of the marriage, Anjana disclosed to her that accused were ill-treating her

alleging that she was using more wood-fuel and sugar than required. But this fact is not deposed by PW1 nor it is stated in the dying declaration. Moreover, said evidence by PW2 is vague and insufficient to constitute an act of cruelty defined in Section 498A.

16) PW1 deposed that Anjana had visited the parental house at the time of *Ashadh* month and *Nagpanchami* festival. She deposed that, at that time Anjana disclosed that the accused were ill-treating her and quarreling with her frequently on trivial issues. However, PW1 has not informed the nature of the said ill-treatment and quarrels on trivial issues.

17) PW1 deposed that Anjana had also disclosed that the accused were taunting her that she could not conceive and cursing her that she was incapable of conceiving a child. This evidence is supported by PW2. However, both PW1 and PW2 have not informed as to since when both the accused were taunting and cursing so. Normally, Marathi month *Ashadh* and *Nagpanchmi* festival come around the English calendar month July/August. Till then, Anjana and Tanaji had stayed together only for 5/6 months. It is common experience that every married woman does not get pregnant within 5/6 months of her marriage. That apart, at the time of the incident, Anjana was three months pregnant. The incident occurred on dated

02/11/2001. As such, it is safe to presume that Anjana became pregnant around the month of August, i.e., Marathi month *Ashadh* and *Nagpanchmi* festival. As such, there was no reason for the accused to taunt and curse Anjana for she was unable to conceive. The dying declaration does not mention that the accused were cursing Anjana, as above. Hence, the aforesaid evidence of PW1 and PW2 that Anjana was taunted and cursed by the accused as above, does not inspire confidence.

18) It has come in the evidence of PW1 that she used to visit the house of the accused frequently. Anjana and her husband also used to visit her house frequently. The relation between the families were cordial. Anjana was taking medical treatment and her care was being taken. This evidence also nullifies the story of the cruelty, harassment, taunting and cursing to Anjana.

19) PW4, who is the maternal uncle of Anjana, deposed that after the marriage, once, Anjana and her husband visited his house in the village *Nagthane*. At that time, Anjana told him that the accused were ill-treating and frequently quarreling with her alleging that she was wasting water and adding more sugar in tea than required. However, this evidence by PW4 is also vague because, from the said evidence, the nature of the ill-treatment and quarreling by the

accused is not discernible. Besides, PW4 did not inform exactly when Anjana had visited his home and disclosed about her ill-treatment.

20) There is no evidence that after the month of *Ashadh* and *Nagpanchami* festival, Anjana was ever ill-treated by the accused, till her death.

21) Now turning back to the dying declaration. Firstly, the dying declaration alleged that, both the accused used to repeatedly quarrel with Anjana by causing her to starve and abusing on account of not having a child and nor was she going to work in agricultural land. However, in the cross-examination PW1 admitted that as Anjana was pregnant her care was taken at her marital house. As such, it is doubtful that Anjana was caused to starve. The rest part of the dying declaration pertains to usual domestic quarrels. Therefore, said part of the dying declaration is not sufficient to constitute the abetment defined in Section 107 of I.P.C. In other words, on the strength of the said material it cannot be concluded that the conduct of both the accused had created such a situation for Anjana that she was left with no other option but to commit suicide. On the contrary, the dying declaration indicates that Anjana herself got angry due to the small dispute and usual quarrels. Therefore, she set to herself on fire in the fit of the anger.

22) Conspectus of the above discussion is that the evidence adduced by the prosecution is not sufficient, cogent and worthy of confidence so as to depend upon the same and hold that the offences of Sections 498A and 306 of I.P.C. proved. The dying declaration itself is not sufficient to hold that the offence punishable under Section 306 of I.P.C. is proved. Because it provides for abetment of suicide. If any person commits suicide, whoever abets the commission of such suicide, shall be punished as provided in said Section 306. Abetment has been defined in Section 107 of I.P.C. to mean that a person abets the doing of a thing who firstly 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. Neither of the ingredients of abetment are attracted on the statement of the deceased. Therefore, the impugned judgment and order of acquittal does not warrant an interference by this Court As a result, the Appeal fails and liable to be dismissed and is dismissed, accordingly.

[SHYAM C. CHANDAK, J.]