IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 168 OF 2004

Vinayak Anantrao Kanade,
Age : 30 years, Occ : Service,
R/o Vidyanagar,
Behind Angheti Hotel,
Jalna Road, Aurangabad.

...Appellant/ accused No.1

-VERSUS-

The State of Maharashtra.

...Respondent

…

Shri Nilesh S. Ghanekar, Advocate for the appellant/ accused.
Shri A.A.A. Khan, APP for the respondent/ State.

…

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 11 September 2026

Pronounced on : 02 November 2026

JUDGMENT :-

1. Heard the learned advocate for the appellant and the learned APP for the respondent/State.

2. The appellant, original accused No.1, has preferred this appeal challenging the judgment and order dated 04.03.2004

passed by the learned III Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.218 of 2000, thereby convicting him for the offences punishable under Sections 498-A and 306 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- on each count and in default, to further suffer rigorous imprisonment for six months. The substantive sentences were directed to run concurrently.

3. The prosecution case, in brief, is that the marriage of deceased Pratibha was solemnized with the appellant on 01.02.1996. After marriage, she started residing with the appellant and his family members at Vidyanagar, Aurangabad. The appellant was serving at Pune and, after his transfer to Aurangabad, the deceased again started residing with him. It is the case of the prosecution that initially the deceased was treated properly. However, thereafter, the appellant and other accused, namely, accused No.2 Anatrao s/o Dattatray Kanade, accused No.3 Vimalbai w/o Prabhakar Wakhare and accused No.4 Dwarkabai w/o Anatrao Kanade, started subjecting her to cruelty on account of unlawful demands. It was alleged that they were

demanding colour television, fridge and money from her parents. The deceased used to inform her parents and brother (Pravin Ingle) about the ill-treatment meted out to her.

4. It is the case of the prosecution that on 06.12.1998, the appellant and other accused assaulted the deceased and drove her out of the matrimonial house. She was thereafter taken to her parental house at Beed. According to the prosecution, on 19.02.2000, the appellant informed Pravin Ingle, brother of the deceased, about an incident of burns sustained by Pratibha. She was admitted to Shushrut Hospital at Aurangabad. On 22.02.2000, Pravin Ingle lodged the report with Mukundwadi Police Station, on the basis of which Crime No.29 of 2000 came to be registered against the appellant and other accused for the offences punishable under Sections 498-A, 323, 504 r/w 34 of the Indian Penal Code.

5. During the course of investigation, dying declarations of the deceased were recorded on 23.02.2000. One dying declaration was recorded by Head Constable Salve and another by the Special Executive Magistrate, Dhaneshwar (PW-8). The deceased succumbed to her burn injuries on 01.03.2000.

Therefore, the offence punishable under Section 302 r/w 34 of the Indian Penal Code was added.

6. After completion of investigation, the charge-sheet came to be filed before the learned Magistrate. The case was thereafter committed to the Court of Sessions. The charge was framed at Exhibit 13 against the appellant and other accused for the offences punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code. They pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. It was also their defence that Pratibha was hot-tempered and had committed suicide in a fit of anger.

7. In order to establish its case, the prosecution examined ten witnesses, namely, PW-1 Ajaykumar Shinde (neighbour of accused), PW-2 Shankuntalabai Kathavi (neighbour of accused), PW-3 Pravin Ingle (brother of deceased), PW-4 Dr. Anil Jinturkar (who conducted post-mortem on 01.03.2000), PW-5 Uttam Ingle (father of the deceased), PW-6 Dhananjay Auti (friend of PW-3), PW-7 Pradeep Joshi (panch witness of inquest panchanama), PW-8 Dhaneshwar, Special Executive Magistrate, who recorded dying declaration at exhibit

49, PW-9 Aruna Kinikar and PW-10 Syed Shaukat Husain, Investigating Officer.

8. The learned Trial Court, after appreciating the evidence on record, convicted the appellant for the offences punishable under Sections 498-A and 306 of the Indian Penal Code. The remaining accused, namely, accused Nos.2 to 4, were acquitted of the charges. Being aggrieved by the said judgment and order of conviction, the appellant has preferred the present appeal.

9. The learned advocate for the appellant submitted that the learned Trial Court has not properly appreciated the evidence on record. The neighbouring witnesses, namely, PW-1 Ajaykumar Shinde and PW-2 Shakuntalabai Kathavi, have not supported the allegations of ill-treatment or cruelty. It is further submitted that the articles allegedly demanded by the appellant were already available in his house. The learned advocate further submitted that the evidence of PW-3 Pravin Ingle, brother of the deceased, suffers from material omissions and improvements. The conduct of the appellant in informing the brother of the deceased about the incident, remaining present in the hospital

and bearing the expenses of her treatment has also been pointed out.

10. The learned advocate further submitted that the oral and written dying declarations do not inspire confidence. The alleged oral dying declaration is not corroborated by medical evidence and the possibility of tutoring cannot be ruled out. The evidence of PW-4 Dr. Jinturkar also does not support the allegation that the hands and legs of the deceased were tied. It is further submitted that the dying declaration recorded by Head Constable Salve has not been duly proved.

11. The learned advocate also pointed out material omissions and contradictions in the evidence of the prosecution witnesses. Lastly, he submitted that the appellant was convicted under Section 306 of the Indian Penal Code, though no specific charge for the said offence was framed against him. He, therefore, submitted that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt and prayed for allowing the appeal.

12. *Per contra*, the learned APP strongly opposed the appeal. He submitted that the prosecution has examined ten

witnesses and has duly established the guilt of the appellant through their evidence and the dying declarations of the deceased. He submitted that the learned Trial Court has properly appreciated the evidence and has rightly convicted the appellant. Merely because certain omissions or contradictions have been brought on record, the otherwise reliable evidence of the prosecution witnesses cannot be discarded. He, therefore, prayed for dismissal of the appeal.

13. I have considered the submissions advanced on behalf of the parties and gone through the impugned judgment and the material on record. The prosecution case is mainly based upon the evidence of the relatives of the deceased and the oral and written dying declarations. So far as the allegations of cruelty are concerned, PW-1 Ajaykumar Shinde and PW-2 Kathavi, who were residing in the same building, have not stated about any ill-treatment meted out to the deceased. The evidence of these witnesses is relevant, particularly when the prosecution has alleged that the deceased was subjected to cruelty in the matrimonial house. PW-1 Shinde has also admitted that the articles, namely, television and fridge, were available in the

house of the appellant.

14. The prosecution has mainly relied upon the evidence of PW-3 Pravin Ingle, brother of the deceased, PW-5 (father of deceased) and PW-6 Auti (friend of the informant). However, the defence has pointed out material omissions and improvements in their evidence. PW-5 admitted that the household articles were already available in the house of the deceased. It is also brought on record that the appellant informed PW-3 about the incident and that the appellant and his family members remained present in the hospital and bore the expenses of treatment of the deceased.

15. The prosecution has placed considerable reliance upon the oral and written dying declarations of the deceased. It is well settled that a dying declaration can form the sole basis for conviction if the Court is satisfied that it is voluntary, truthful and made in a fit state of mind. However, in the present case, the defence has pointed out certain circumstances which create doubt about the reliability of the alleged oral dying declaration. The possibility of tutoring is also required to be considered in the background of the presence of the relatives of the deceased in the

hospital. The evidence of PW-4 Dr. Jinturkar assumes importance in this regard. According to the defence, the doctor has admitted that there were no marks on the wrists and legs of the deceased and there was no evidence to show that her hands and legs were tied. This circumstance is relevant while considering the allegation that the appellant had tied the hands and legs of the deceased before setting her on fire. Another important circumstance is that the dying declaration allegedly recorded by the Head Constable Salve has not been proved through his evidence. The Investigating Officer has also admitted that the said dying declaration was not made part of the charge-sheet. The prosecution has not examined Head Constable Salve to explain the circumstances in which the said statement was recorded.

16. The defence has also pointed out material omissions and contradictions in the evidence of PW-5, father of the deceased, PW-6 Auti (friend of the informant), PW-7 Pradeep Joshi and PW-9 Aruna Kinikar. It is true that every omission or contradiction would not affect the prosecution case. However, when such omissions relate to material aspects of the prosecution case, they assume importance while appreciating the credibility

of the witnesses.

17. It is also necessary to consider that the learned Trial Court has acquitted accused Nos.2 to 4 on the same piece of evidence. So far as the offence punishable under Section 306 of the Indian Penal Code is concerned, the prosecution was required to establish that the deceased committed suicide and that the appellant abetted the commission of such suicide within the meaning of Section 107 of the Indian Penal Code. The mere fact that a married woman died an unnatural death or that there were matrimonial differences would not be sufficient to establish the offence under Section 306 of the Indian Penal Code. There must be evidence establishing the necessary ingredients of abetment.

18. In the present case, the prosecution has relied upon the dying declarations (exhibits 49 and 51) to establish the involvement of the appellant in the incident. However, the circumstances surrounding the recording of the dying declarations, the medical evidence and the omissions pointed out in the evidence of the prosecution witnesses create doubt about the prosecution version. It is also pointed out that the appellant was not specifically charged for the offence punishable under

Section 306 of the Indian Penal Code. The original charge was framed for the offences punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code.

19. On an overall consideration of the evidence, I find that the prosecution has not been able to establish its case against the appellant beyond reasonable doubt. The evidence regarding the alleged cruelty is not sufficiently convincing. The dying declarations, in the circumstances brought on record, do not inspire such confidence as would be necessary to sustain the conviction. The material omissions and contradictions in the evidence of the prosecution witnesses also cannot be ignored. It is well settled that the accused is entitled to the benefit of every reasonable doubt arising out of the evidence on record. In the present case, the prosecution has failed to establish the charges against the appellant beyond reasonable doubt. The learned Trial Court has not properly appreciated the material circumstances and the evidence brought on record. Therefore, the conviction recorded against the appellant cannot be sustained. The appellant deserves to be acquitted by extending him the benefit of doubt.

20. Now, it would be apposite to refer to some

judgments. The Hon'ble Supreme Court in ***Rajendra s/o Ramdas Kolhe v. State of Maharashtra, 2024 INSC 422 : [2024] 6 S.C.R. 740***, reiterated the principles governing appreciation of dying declarations and held that their reliability must be examined in the light of the surrounding circumstances. In ***Mahendra Awase v. State of Madhya Pradesh, 2025 INSC 76 : 2025 SCC OnLine SC 107 : (2025) 4 SCC 801 : AIR 2025 SC 568***, it is held that conviction under Section 306 of the Indian Penal Code requires proof of instigation or intentional aid coupled with the requisite mens rea. In ***Abhinav Mohan Delkar v. State of Maharashtra, 2025 INSC 990 : 2025 SCC OnLine SC 1725***, the Hon'ble Supreme Court reiterated that the essential ingredients of abetment under Sections 306 and 107 of the Indian Penal Code must be established by the prosecution. The principles laid down in the aforesaid judgments are applicable while appreciating the evidence in the present case.

21. In view of the above, the appeal deserves to be allowed. Hence, the following order:

ORDER

(a) The Criminal Appeal is allowed.

(b) The judgment and order dated 04.03.2004 passed by the learned III Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.218 of 2000, convicting the appellant for the offences punishable under Sections 498-A and 306 of the Indian Penal Code, is quashed and set aside.

(c) The appellant is acquitted of the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

(d) The bail bond of the appellant, if any, stands cancelled and the surety, if any, stands discharged.

(e) The fine amount, if paid by the appellant, be refunded to him.

(f) The record and proceedings be sent back to the concerned Court.

kps (SUSHIL M. GHODESWAR, J.)