2026:BHC-AUG:52735

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 310 OF 2017

1. Sayyad Babu Sayyad Mehboob
   Age: 32 years, Occu.: Agri.

2. Sayyad Mehboob Sayyad Maulasab
   Age: 55 years, Occu.: Agri.

3. Sayyad Ibrahim Sayyad Mehboob
   Age: 50 years, Occu.: Agr.

   All are resident of
   R/o. Rawangaon, Tq.Bhokar,
   District Nanded. ….Appellants

Versus

1. The State of Maharashtra …..Respondent

…..

Mr.Santosh C.Bhosle, Advocate for Appellants.
Mr.G.O.Wattamwar, APP for Respondent.

…..

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28-10-2026
Pronounced on : 29-10-2026

JUDGMENT :

1. Instant appeal is directed against judgment and order dated 17-06-2017 rendered by learned Additional Sessions Judge, Bhokar in Sessions Case No.43 of 2013 convicting accused Nos.1, 2 and 3 for offence under Sections 498-A, 307, 323 read with Section 34 of the Indian Penal Code (IPC).

BRIEF FACTS OF THE PROSECUTION CASE

2. Case of prosecution in brief is that, Rubina was married to accused No.1 Sayyad Babu. For a period of one and half year, there was proper treatment, but thereafter, accused husband and in-laws beat and harassed Rubina for demand of sewing machine and motorcycle. On 04-07-2013 when Rubina accompanied by her sister Shabana had been to the market, at that time, there was stomach ache to Rubina and consequently, both sisters went to Government Hospital at Bhokar at 04:00 p.m. While they were collecting slip from the hospital, at that time, husband Sayyad Babu came there and told Rubina that, he and his parents, brother want to talk with her and accordingly, he took her out of hospital, where it is alleged that, accused persons questioned her for not arranging motorcycle and saying that they will kill her, there was beating by fists blows. When informant fell down, husband administered medicine to her. Her sister Shabana, one Laxmibai and one Govind rushed to the spot and they immediately admitted Rubina in the hospital, where she gave statement on the basis of which Crime bearing No.117 of 2013 was registered for offence under Sections 307, 498-A, 323, 506 read with 34 of the IPC.

After completion of investigation, accused persons were chargesheeted and finally tried by above said Court, who appreciated

oral and documentary evidence and accepted the case of prosecution and held accused husband and in-laws guilty for above offence vide judgment and order dated 17-06-2017. Hence, instant appeal.

SUBMISSIONS

On behalf of appellants :

3. Learned counsel for appellants would submit that, there is false implication. That, there are vague, geneal and omnibus allegations against all family members regarding demand and ill treatment. He pointed out that, testimonies of all witnesses are full of material omissions and contradictions. He would point out that, alleged incident of administering medicine never took place. That, even the independent witnesses named by informant are not examined. That, merely family members like sister and father of victim are examined.

4. He further pointed out that, though there allegation of administration of medicine, there is no scientific evidence about administration of poison. That, it is doubtful whether container of the medicine was at all seized and in absence of evidence about administration of poison in the vomit or stomach wash, Doctor has surprisingly named the poison, but there is no supportive scientific evidence. Thus, he raises serious doubt about prosecution story about

administration of poison.

5. Lastly, he submitted that, there is incorrect appreciation of evidence by the learned trial Court and no sound reasons are assigned while accepting the case of prosecution and for such reason, he prays to allow the appeal by setting aside the impugned judgment.

On behalf of State :

6. Per contra, learned APP would support the judgment passed by the learned trial Court. He took this Court through evidence of informant, her sister as well as medical expert and he would submit that theses witnesses lend support to prosecution witnesses and as such, learned trial Court committed no error in accepting case of prosecution for recording guilt. For want of merits, he prays to dismiss the appeal.

BRIEF ACCOUNT OF PROSECUTION EVIDENCE

In support of its case, prosecution has adduced evidence of in all seven witnesses. Sum and substance of their evidence is as under :

7. **PW1** Rubinabegum, wife of accused No.1, in her evidence at Exhibit 41 gave date of her marriage as 23–04-2009. That, after

marriage, she went to reside with husband and in-laws. According to her, for about one and half year, accused Nos.1 to 4 treated her properly, but thereafter, they started demanding sewing machine from her parents and used to keep her as well as child starving and used to beat and ill treat her. That, she had lodged complaint to Police, who gave understanding to accused, after which she was treated properly for further one and half year, but thereafter again accused No.1 demanded motorcycle from her parents and she was taken and left at her parents' place alongwith her son. That, on 04-07-2013 at around 03:00 p.m. she went with her sister Shabana to the market, but after returning from there, as there was stomach ache, they both went to Rural Hospital, Bhokar at 04:00 p.m., but husband came there, picked up her son and told her that accused nos.2 to 4 had also come and took her towards them. According to her, when she went there, accused husband questioned her why motorcycle is not arranged and saying that he would kill her as well as her son, her husband, brother-in-law, mother-in-law, father-in-law punched her, gave her kicks, due to which she fell. Then she states that her father-in-law caught hold of her legs, mother-in-law caught hold of her hands, brother-in-law made her mouth open forcibly and thereafter, her husband poured some medicine in her mouth which was kept in a plastic bottle. That, she shouted, her sister Shabana

came there, one Laxmibai and Govind also came there, after which accused ran away. That, those persons took her back to the Rural Hospital. That, she was given primary treatment and thereafter, referred to Government Hospital at Nanded. On the next day, while she was hospitalized, Police recorded her statement as well as FIR, which she identified at Exhibit 42.

While under **cross-examination** she admitted that, accused are labours, but volunteered that they owned 7-8 acres land and that her husband sold Kulfey and fruits. She admitted that husband does not do tailoring work.

8. **PW2** Babakhan is the pancha to spot panchanama, which he identified at Exhibit 44.

9. **PW3** Shabanabegum, sister of informant, deposed at Exhibit 45 that, for one and half year after marriage, her sister was treated properly but thereafter, all 4 accused started ill treating and assaulting her for demand of dowry by way of sewing machine and motorcycle. That, her father called a meeting of elderly persons and gave understanding to them, but accused continued ill treatment to her sister for demand of dowry as a result of which, complaint was lodged at S.P. Office, Nanded. On 04-07-2013, when she

accompanied her sister and her son to the market for purchasing clothes, Rubina had stomach ache and hence, they went to Rrural Hospital at 04:00 p.m. and while they were collecting slip for going towards hospital, at that time, accused No.1 came there, lifted the son and convinced her sister Rubina to speak to his brother, father and mother and took her out of hospital. She claims that, she kept waiting near steps of hospital. That, after 10-15 minutes, she heard shouts of hers sister and hence went in that direction and claims to have seen all accused assaulting her sister by fists and kicks blows and also saw accused No.1 administering some liquid from bottle to her sistre Rubina. That, she, Laxmibai and Govind ran towards Rubina and at that time, all accused ran away and with the help of some persons, her sister was brought at Rural Hospital and further referred to Government Hospital, Nanded. Police recorded her statement.

While under **cross-examination**, she admitted that, she resides in the neighbourhood of her parents and as her husband had married second time, she was residing with her son. She answered that her father knew the persons, who were came to give understanding to accused. She is unable to give date and month of the meeting. She answered that, her sister told regarding ill treatment many times. Omission is brought to the extent that accused Nos.1 to 4 dropped her sister at her parents' place. She is unable to state whether slip of the

hospital was handed over to Police. Omission is brought to the extent that accused No.1 took her sister and her son outside the hospital while she was present in the hospital and she went there after hearing shouts. Rest is all denial.

10. **PW4** Laxmibai in her evidence at Exhibit 46 deposed that, on that day, she took her husband to Rural Hospital on account of suffering burn injury and after treatment, when they were coming out, husband of Rubina took her son and Rubina followed him and he took them outside the hospital. She identified accused in the Court to be also present in the Hospital. According to her, accused Nos.1 to 3 forced Rubina on the ground and accused No.1 took out a bottle from his pocket and administered something from bottle to Rubina and ran away. That, as Rubina shouted, she rushed towards her with her husband and they brought Rubina to hospital in Auto Rickshaw and even sister of Rubina was there and they took Rubina to the hospital.

While under **cross-examination** she admitted cordial relations with Rubina and they helping each other. She admitted that, she did not see accused No.1 picking up son of Rubina and taking Rubina and her son outside. She also admitted that, as she was in the hospital, she did not see accused Nos.1 to 3 administering anything to Rubina. Rest is denial.

11. **PW5** Shaikh, father of informant, in his evidence at Exhibit 47 deposed that, after marriage, his daughter went to reside at her matrimonial house. That, for about 2 years, there was proper treatment, but thereafter accused Nos.1 to 4 demanded dowry of sewing machine and used to beat Rubina, which she informed over telephone. That, he had a meeting of elderly persons whom he named for giving understanding to accused. According to him, after 2 months after resumption of cohabitation, accused again demanded motorcycle and ill treated his daughter and left her at his place and so complaint is filed at Women Redressal Cell and accused took her back to their house, but again after 2 months, accused left Rubina alongwith son to his house and demanded motorcycle. In paragraph 5, he deposed that, 4 years back when Rubina went to Rural Hospital, accused took her as well as her son outside hospital to meet accused Nos.2 to 4, where accused Nos.1 to 4 assaulted Rubina, forced her on ground and forcibly administered some liquid and ran away. He learnt about incident over phone.

While under **cross-examination** he admitted that accused had agricultural land and they have sufficient means to maintain themselves. He also admitted that accused No.1 did not do tailoring work but he volunteered that his daughter does tailoring. He answered that, after 2 years of marriage, he learnt about ill treatment

and demand. He is unable to state when accused lastly drop his daughter at his house. He admitted that, he was not present at the time of incident dated 04-07-2013. Rest is all denial.

12. **PW6** Dr.Rahul Kokare is the Medical Officer at Rural Hospital, Bhokar and he in his evidence at Exhibit 49 deposed that, he was on duty on 04-07-2013. That, at around 05.20 p.m. Rubina was brought to his hospital by her relatives. According to him, it was the case of consumption of unknown poison and patient was suffering giddiness and salivation. He noted her vitals, gave injection, medicines and also gave gastric lavage (stomach wash), but as patient was critical, he referred her to Government Hospital, Nanded. He deposed that, relatives of patient stated that she was administered poison namely imidacloprid. He identified medical legal papers at Exhibit 50.

While under **cross-examination** he admitted that he was informed by staff members that some incident took place at the hospital. He admitted that patient did not vomit when she was brought but he volunteered that they had induced her to vomit for stomach wash. He also admitted that name of the insecticide was informed to him by relative of patient and they have shown him bottle which was in the hands of relative of patient. He admitted giving mere primary treatment.

13. **PW7** Punjaji Pohale is the Investigating Officer, who narrated about all steps taken by him during investigating till filing of the chargesheet.

ANALYSIS AND CONCLUSION

14. Here, there is conviction under Sections 307, 498-A, 323 read with 34 of he IPC. Accused No.4 is acquitted from all the charges. Prosecution case is rested on evidence of as many as seven witnesses.

PW1 is victim herself, PW2 is spot pancha, PW3 is her sister, PW4 is neighbour, PW5 is father of informant and rest both witnesses are PW6 Medical Officer and PW7 Investigating Officer respectively.

Now it is to be seen whether offence of Section 498-A of IPC is made out by prosecution in trial Court. For attracting charge under Section 498-A of the IPC, it is expected of prosecution to demonstrate that accused persons maltreated victim only for demand that too in consistent manner. It is fairly settled position that details of the infliction of ill treatment are to be supplied. Prosecution version comes under shadow of doubt when allegations are general and vague. Law to this extent is propounded by the Hon'ble Apex Court in the case of ***Rajesh Chaddha v. State of Uttar Pradesh*** [*2025 SCC OnLine SC 1094*]. The Hon'ble Apex Court has observed in paragraph

14 as under :

> *"The term "cruelty" is subject to rather cruel misuse by the parties, and cannot be established simpliciter without specific instances, to say the least. The tendency of roping these sections, without mentioning any specific dates, time or incident, weakens the case of the prosecutions, and casts serious suspicion on the viability of the version of a Complainant. ……"*

Likewise, in the case of ***Manju Ram Kalita v. State of Assam****, (2009) 13 SCC 330,* the Hon'ble Apex Court has observed that, it must be established that the woman has subjected to cruelty continuously or in close proximity of time of lodging the complaint.

15. In above legal backdrop evidence of **PW1** informant herself, her sister **PW3** and her father **PW5** is appreciated. Equally important is evidence of **PW4** as she resided in very neighbourhood.

On going through evidence of **PW1** informant, she seems to be testified at Exhibit 41 that, for one and half year of marriage, accused treated her properly but thereafter, according to her, they started demanding sewing machine and in that backdrop, they used to starving her and beat her. Then she levelled allegation against accused No.1 for demanding motorcycle and thereafter, she narrated the incident of forceful administration of poison, which would be

dealt at a later point of time. While under cross-examination, she has admitted that, accused are labours, they owned 7-8 acres agricultural land and she also admitted that husband did not do tailoring work.

Informant's own sister **PW3** also stated that, after one and half years of marriage, accused ill treated her sister and assaulted her for dowry by way of demanding sewing machine and motorcycle. Her father called a meeting of elderly persons to give understanding to accused, but accused continued ill treatment. Then she narrated incident of 04-07-2013. This witness has admitted in cross-examination that she is unable to give names of those persons, who attended meeting for giving understanding and she is unable to remember the date and month when meeting took place and according to her, her sister told about ill treatment many times.

PW5 Father of informant at Exhibit 47 deposed that after 2 years of marriage, accused Nos.1 to 4 started demanding dowry for sewing machine and used to beat Rubina and he learning about it over telephone. But no CDR is gathered by the Investigating Officer about any conversation between informant and father. Father of informant also stated that, after 2 months, accused again demanded motorcycle and ill treated his daughter. Then he deposed about incident dated 04-07-2013. In his cross-examination, PW5 father of informant admitted that, accused husband does not work as tailor,

but his own daughter does tailoring. Omission is brought about his daughter left at his house by accused.

PW4 in spite of being a neighbour, has not uttered anything about any ill treatment or cruelty to informant on account of demand of sewing machine.

Thus, what is emerging on appreciation of above evidence is that, there are general and vague allegations. Allegations are levelled against all accused persons without specifying the role or stating when demand was raised and who beat informant. Moreover, witnesses are admitting that accused did not do tailoring work and father of informant himself admitted that his daughter did tailoring work. Informant and her sister speak about commencement of demand and ill treatment after one and half years, but their own father deposed that, there was ill treatment after 2 years of marriage. Therefore, witnesses are not lending support to each other and are levelling general allegations against all accused. Hence, there is weak evidence on the point of cruelty being inflicted. None of the witnesses speak about continuous ill treatment in the backdrop of demand. Form of ill treatment is not specified by any of them. Hence, in the considered opinion of this Court, charge under Sections 498-A of the IPC fails.

16. As regards to offence under Section 323 of the IPC is concerned, neither informant victim nor her sister or her father is in position to state whom amongst the accused Nos.1 to 4 beat and assaulted informant. Moreover, there is injury Certificate at Exhibit 50 and the same is also silent about any injuries inspite of allegations that all four accused beat informant outside the hospital itself where she was immediately examined. Therefore, absolutely there is no evidence on the point of charge of Section 323 of the IPC.

17. Another charge for which there is conviction is Section 307 of the IPC i.e. attempt to commit murder. Specific allegation of prosecution is that, accused persons forcibly administered medicine to informant on 04-07-2013 in the afternoon near the premises of Rural Hospital, Bhokar, thus there was attempt to commit her murder. In support of said charge, prosecution has relied on testimony of informant PW1, her sister PW3, her neighbour PW4, her father PW5 and Medical Officer PW6, Admittedly PW5 father of informant has hearsay information and therefore, his evidence is of no help to the prosecution.

PW1 informant, whose testimony is reproduced above, in her examination-in-chief in paragraph 4, has stated that on

04-07-2013 at around 03:00 p.m. when she was with her sister PW3 in Rural Hsopital for treatment of her complaint regarding stomach ache, at that time, accused husband came, picked her son and told her that remaining accused Nos.2 to 4 had also come and took them towards them and there, accused husband asked why motorcycle is not arranged and saying that he would kill her as well as her son, all accused persons gave kicks and fists blows and when she fell, she claims that father-in-law caught hold of her legs, whereas mother-in-laws caught hold of her hands, brother-in-law made her mouth forcibly open and her husband poured medicine in her mouth and that initially she was taken to Rural Hospital, where primary treatment was given and then referred to Government Hospital, Nanded.

In cross-examination, informant admitted that distance between spot of incident and Rural Hospital must be 150 meters and according to her, accused Nos.2 to 4 who were waiting on road were not holding anything.

PW3 sister of informant claims that while she and her sister were in the hospital and collecting slip, accused No.1 came, picked up the son, convinced her sister to speak with family members, who were outside the hospital. She has categorically stated that she kept waiting at the hospital itself and after 10-15 minutes, when she heard

cries and shouts, she went in that direction and claims to have spotted all accused beating her sister and accused No.1 administering her liquid from a bottle.

Thus, this witness PW3 sister of informant has merely attributed administration of to accused husband, but she has not stated like her informant sister, who deposed about father-in-law and mother-in-law catching her limbs and brother-in-law made open her mouth after which husband poured medicine in her mouth. In cross-examination, she admitted that, when accused No.1 took her sister and her son out of hospital that time she remained in hospital.

PW4 neighbour of informant also in her evidence stated that accused Nos.1 to 3 forced Rubina on the ground while accused 1 took out a bottle from his pocket and administered something to Rubina. Even she does not speak about role attributed to parents-in-law and brother-in-law which is coming in the evidence of informant. In cross-examination, this witness has admitted that, she was in the hospital and she did not see accused Nos.1 to 3 administering anything.

Next witness, who is important on this aspect is PW6 Medial Officer, who has stated about hospitalization of PW1 informant by her relatives but he does not speak about administration of poison informed to him, rather he speaks of consumption of unknown

poison. In examination-in-chief, he further stated that he learnt from relatives of the lady that she has been administered poison and surprisingly they also provided name of poison as “imidacloprid”, but while in cross-examination, he admits about hearing from staff members about the incident outside the hospital. He again admitted in cross-examination that name of insecticide was informed by relatives of patient and they had also shown bottle to him and the said bottle was in the hands of relative of patient.

Question arises how relative of patient was in possession of alleged bottle of medicine when none of the witnesses namely sister of informant PW3 or neighbour of informant PW4 speak of any plastic container being found at the spot after it was allegedly administered by accused No.1. Even spot pancha is silent on this point.

18. In the light of PW6 Medical Officer’s evidence, it is clear that only relatives have provided the name of insecticide and relative was holding a plastic container, but that is not shown to be seized immediately at the instance of Medical Officer. Infact it was expected of him to report it to Police and get the seizure of bottle done, but the same does not seem to have happened. Moreover, this witness though claims to have collected stomach wash, the same is not preserved or sent for analysis for ascertaining poison. Resultantly, the

allegation of administration of poison is not free from doubt. As stated above, Medical Officer has given name of poison, which was surprisingly even prior to scientific analysis, provided by the relatives of patient. Admittedly, there is no Chemical Analyzer report on examination of the plastic bottle.

19. For attracting offence under Section 307 of the IPC, it is incumbent upon prosecution to prove that accused had *mens rea* and clear motive to kill. This aspect is patently missing from prosecution evidence. Unless it is established that, what was the poison and whether it could have been fatal or not, had there been no medical intervention, it cannot be held that there was attempt to commit murder. Crucial evidence like nature of poison is itself rendered doubtful for above reasons.

20. Perused the judgment under challenge. It is noticed that learned trial Court has, up to paragraph 25 of the judgment, discussed on respective cases of both sides as well as law, and analysis and summation is in paragraph 26, 27, 28 and 29. It is held by the learned trial Court that, there is evidence of three witnesses, who are corroborating each other. However, this does not seem to be the fact as witnesses are not consistent on the point of time since ill treatment

was inflicted and none of them is specific about role played by each of accused persons.

Surprisingly, inspite of above shortfall about no scientific evidence confirming existence of any poison either in stomach wash or vomit, finding has been recorded that there is strong corroboration on the point of administration of poison and without ascertaining answers in cross-examination, medical expert's evidence is directly accepted. The reasons assigned are cryptic and therefore, such judgment and order cannot be allowed to be sustained. Accordingly, following order is passed :

ORDER

I. The appeal is allowed.

II. The conviction awarded to the appellants (1) Sayyad Babu Sayyad Mehboob, (2) Sayyad Mehboob Sayyad Maulasab and (3) Sayyad Ibrahim Sayyad Mehboob by learned Additional Sessions Judge, Bhokar, in Session Case No.43 of 2013 under Sections 307, 498-A, 323 read with Section 34 of the Indian Penal Code, on 17-06-2017 stands quashed and set aside.

III. The appellants stand acquitted of the offence punishable under Sections 307, 498-A, 323 read with Section 34 of the Indian Penal Code

IV. The bail bonds of the appellants stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.

VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

SPT