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**(2014) 06 BOM CK 0210**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 191 of 2002**

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|----------------------------------------|------------|
| Deepak Ramchandra Choudhary and Others | APPELLANT  |
| Vs                                     |            |
| State of Maharashtra                   | RESPONDENT |

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**Date of Decision :** 26-06-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 294 — Evidence Act, 1872 - Section 32 — Penal Code, 1860 (IPC) - Section 306, 323, 34, 498A, 504

**Citation :** (2015) ALLMR(Cri) 1339

**Hon'ble Judges :** Sadhana S. Jadhav, J.

**Bench :** Single Bench

**Advocate :** Mandar Goswami, Advocate, for the Appellant; S.S. Pednekar, APP, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sadhana S. Jadhav, J.?The appellants herein are convicted of the offence punishable under Section 498A read with 34 of the Indian Penal Code and are sentenced to suffer R.I. for 2 years and to pay fine of Rs. 2,000/- each i.d. of payment of fine to suffer further R.I. for 4 months by 3rd Ad hoc Addl. Sessions Judge, Nashik vide Judgment and Order dated 11/2/2002 in Sessions Case No. 56 of 2001. They are also convicted for offence punishable under Section 306 read with 34 of the Indian Penal Code and are sentenced to suffer R.I. for 3 years and to pay fine of Rs. 3,000/- each i.d. to suffer further R.I. for 6 months. Hence, this Appeal. Such of the facts necessary for the decision of this appeal are as follows:

"On 29/5/2000 Pooja wife of Deepak Choudhary was admitted to Unity Hospital with burn injuries. The Medical Officer had informed Bhadrakali Police Station about the admission of burnt patient. It being medico legal case, the police constable of Bhadrakali Police Station had requested the Special Executive Magistrate of Nashik City to record the statement of the injured. Pursuant to the said intimation, the Special Executive Magistrate had been to Unity Hospital and

had recorded the statement of the injured at 9.45 p.m. The injured had disclosed to the Special Executive Magistrate that on the day of incident at about 3.15 p.m. she was filling in lantern in anticipation that the electricity supply would go off. She had pulled the wick of the lantern and had tried to light it and at that time the lantern had burst and her veil had caught flames. The flame had flared and her veil had caught. Hence, she sustained burn injuries. When she raised hue and cry, her father-in-law and neighbours arrived there and covered her with quilt and extinguished fire. She was taken to hospital. She had specifically stated that her statement was not recorded in the Hospital at Ghoti where she was taken at the first instance. She has specifically stated that she had no complaints or grievance against anybody. The statement was read over to the injured and she had affirmed to be true and correct. The doctor had given opinion that she was conscious, oriented and was able to give statement. Her statement was recorded at rural hospital at Ghoti where she was admitted in the first instance. At Ghoti also her statement was recorded by P.W. 4 Ashok Gaud. The said statement recorded by the constable is at Exh. 17. He has obtained the consent of the doctor in respect of her consciousness and orientation. Before the constable also, the injured had specifically stated that she had caught fire accidentally and she had no grievance against anybody. She was under treatment."

2. On 30th May, 2000 her parents came from Ahmadabad and visited her in Unity Hospital. By then she was unconscious. She succumbed to the burn injuries on 31st May 2000. Initially Accidental Death was registered at Bhadrakali Police Station. After her demise her father namely Shravan Patil lodged a report at Ghoti Police Station on 31st May, 2000 alleging therein that his daughter Pooja was married to the appellant on 21st December, 1999. Soon after the marriage she had complained to her parents that her husband and her in-laws were demanding Rs. 50,000/- for purchasing the computer. They were also demanding a golden ring. Pooja had informed him telephonically that she was being harassed and ill-treated by her laws and her husband. On 29/5/2000 at about 5 to 5.30 p.m. he had received a phone call that Pooja is admitted in Unity Hospital as she has sustained burn injuries. He immediately left for Nashik. She was fully burnt. She was unconscious and therefore, she did not speak to anybody. On 31st May, 2000 at about 7 a.m. she has succumbed to the burn injuries. He had alleged that there was a demand of Rs. 50,000/-. She was meted out with cruelty and harassment and ill-treatment and that she could not bear the same and therefore, immolated herself. On the basis of the report of Shravan Patil Crime No. 62 of 2000 was registered at Ghoti Police Station against the appellants and acquitted accused i.e. the mother in law for offence under Section 323, 504 read with Section 34 of the Indian Penal Code. Investigation was set in motion. After completion of investigation, chargesheet was filed on 31st July, 2000. The case was committed to the Court of Sessions and registered as Sessions Case No. 56 of 2011. The prosecution examined five witnesses to bring home the guilt of the accused.

3. P.W.I is the first informant i.e. the father of the deceased. He has deposed before the Court that Pooja was married on 21st December, 1999 and she was treated well only for one and half month after the marriage. However, soon thereafter she was subject to harassment and ill treatment on account of demand of Rs. 50,000/- for purchasing computer and golden ring. He has further deposed inconsonance with the first information report and has proved the contents of the same. The first information report is at Exh. 12. It is elicited in the cross-examination that he did not see the police in Unity Hospital at Nashik. He had no knowledge that there a police chowky near hotel Dwarka. According to him, on the next day, the police had come to the hospital but he had not enquired within him in the Unity Hospital and he had also not converse with the police on his own. He had no knowledge that the statement of Pooja was recorded by the Special Executive Magistrate or the Police Head Constable of Ghoti Police Station. He had not disclosed anything to the police in the A.D., enquiry since they had not enquired with him. The inquest panchanama and the spot panchanama would reveal that the parents and relatives were present. He had given instances in respect of the disclosure made by Pooja of various occasions in respect of ill-treatment meted to her. According to him, Pooja had come to Ahmadabad on 29th April, 2000 for Akshaytrutiya and his son Vinod had reached her on 11th May, 2000. He has admitted in the cross-examination that the accused No. 1 Deepak is running a fabrication shop at Ghoti and his brother is working in Mahindra Company. Accused No. 2 was serving as supervisor in Janta Vidyalaya Ghoti and elder brother of accused No. 1 was taking computer classes at Ghoti. He has feigned ignorance about there being five computers with the elder brother of the accused No. 1. Similarly, he has feigned ignorance about the fact that the accused has purchased Maruti Esteem after the marriage. He has specifically admitted that the financial condition of the accused was sound.

4. P.W. 2 Mangesh Kashinath Kale is the panch for scene of offence. He has proved the scene of offence, which is at Exh. 14.

5. P.W. 3 Radhabai Patil is the mother of deceased Pooja. She has deposed before the Court that accused Nos. 2 and 3 had come to take back Pooja at the time of engagement of younger daughter Vidya which took place on 2nd January, 2000. Pooja had disclosed to them on 10/2/2000 that the accused person had insisted her to fetch Rs. 50,000/- for purchasing computer and to bring a golden ring. She has narrated several instances wherein the deceased had disclosed to her about the ill-treatment meted out to her in her matrimonial home. There are inherent omissions and contradictions in the substantive evidence of P.W. 3.

6. P.W. 4 is Ashok Gandhe who was serving at Ghoti Police Station. On 29/5/'2000 at about 4.10 p.m. medical officer had given telephonic message that one lady patient was admitted in the hospital with history of burns. The medical officer had requested him to come urgently in the hospital for recording statement of the injured patient. He therefore went to the hospital at about 4.30 p.m. Prior to recording the statement, he had taken abundant caution that the

patient was examined by Doctor Dighole who certified that the patient was conscious and was able to give statement. He recorded the statement of burnt patient. She has disclosed to him that on the day of incident at about 3.45 p.m. electric supply was cut off and therefore, she started lighting the kerosene lantern. While lighting said lamp it had flared and her saree had caught fire. Hence, she was burnt. He had obtained thumb impression of Pooja and had attested the same. He has specifically stated that the Medical Officer Dr. Dighole and accused No. 2 Ramchandra were present in the hospital at the time of recording of above statement of Pooja. It is elicited in the cross-examination that he had not made any endorsement on the statement of Pooja that it was recorded in the presence of accused No. 2.. He had prepared spot panchanama and at that time had noticed on the spot one burnt match stick, one glass bottle of Coco Cola smelling of Kerosene, pieces of burnt saree. All these articles were seized at the time of spot panchanama. He has specifically stated that since no offence was made out in the statement of the injured he had not registered any offence. He has proved the contents of Exh. 17, which is the first dying declaration recorded in first point of time.

7. P. W. 5 Babaji Budhwant is the Investigating Officer. He has deposed before the Court about steps taken by him in the course of investigation. He has proved the omissions and contradictions in the evidence of the witnesses.

8. The case rests upon the two dying declarations which are at exh. 24 and Exh. 17. It is pertinent to note that the dying declaration which is at Exh. 24 was admitted by the defence under Section 294 of the Code of Criminal Procedure. Both the dying declarations are consistent to the extent that the injured had sustained accidental burns. Besides the statement of the first informant and the mother of the deceased, there is no evidence worth, to even doubt that the victim had not suffered accidental burns since the statement under Section 32 of the Indian Evidence Act appears to be voluntary and truthful and therefore, inspires confidence. There is no scope to even doubt the credence of the said statement. The learned Sessions Judge has presumed that the said statements were recorded in the presence of father-in-law of the deceased and therefore, they must have been tutored. There is no reasons to presume that the said statements were tutored since there is no evidence to that effect. Presumption can not be made in the absence of any link evidence. The prosecution has failed to establish the guilt of the accused for offence punishable under Section 306 or Section 498A of the Indian Penal Code. A person could be convicted for an offence punishable under Section 306 of the Indian Penal Code only if there is evidence to prove that the deceased has committed suicide. In the present case, there is cogent evidence to show that it is a case of accidental death. Hence, the charge for offence punishable under Section 306 of the Indian Penal Code has to necessarily fail. It is apparent on the face of the record that the Judgment of conviction is passed on surmise and conjecture and the learned Sessions Judge has not appreciated the evidence in the form of Exh. 24 and Exh. 17 which are in the form of Dying Declarations. In the eventuality that the dying declarations had

implicated the accused and there was no corroborative evidence, then the accused could be convicted on the sole basis of the dying declarations. Similarly, since entire case rests upon the dying declarations which do not even remotely implicate the accused, the accused are entitled to acquittal.

9. Hence, the Judgment and Order passed by the Third Ad hoc Additional Sessions Judge, Nashik dated 11.2.2002 convicting the accused appellants for offence punishable under Section 306 and 498A read with Section 34 of the Indian Penal Code is hereby quashed and set aside. The appellants accused are acquitted of all the charges levelled against them. The fine be refunded. Since the appellants are on bail, their bail bonds stand cancelled. The appeal is allowed and disposed of accordingly. Writ be issued.