
(1997) 08 BOM CK 0022

In the Bombay High Court

Case No : Criminal Appeal No. 106 of 1997

Haribai @ Hirabai Narayan Gaikwad

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 294
Evidence Act, 1872 — Section 113, 3, 32, 59, 61
Penal Code, 1860 (IPC) — Section 302

Citation : (1998) 1 BomCR 568 : (1998) BomCR(Cri) 201 : (1998) 1 DMC 94

Hon'ble Judges : V.P. Tipnis, J;A.B. Palkar, J

Bench : Division Bench

Advocate : C.S. Joshi, for the Appellant; Mhaispurkar, Addl. P.P., for the Respondent

Judgement

A.B. Palkar, J.—The appellant Haribai @ Hirabai Narayan Gaikwad original accused No. 1 in Sessions Case No. 18 of 1993 before the Court of Additional Sessions Judge, Satara has filed this appeal challenging her conviction and consequent sentence passed against her by the learned Sessions Judge, Satara by his judgment and order dated 14-2-1997. The appellant who is referred to hereinafter as the accused No. 1 was prosecuted alongwith two other accused i.e. her son Sanjay accused No. 2 aged 26 years and her daughter Manisha accused No. 3 aged 19 years. Accused Nos. 2 and 3 were acquitted whereas the present accused No. 1 appellant was convicted for offences punishable under sections 498A, 306, 304B of I.P.C. and for offence u/s 498A of I.P.C. she was sentenced to suffer R.I. for one year and to pay a fine of Rs. 500/- in default to suffer further R.I. for one month; for offence u/s 306 of I.P.C. she was sentenced to suffer R.I. for 5 years and to pay a fine of Rs. 2,000/- in default to suffer further R.I. for six months and for offence punishable u/s 304B of I.P.C. she was sentenced to suffer R.I. for 7 years, however, no fine was imposed on that count.

2. The story of the prosecution in brief is as under:

3. Deceased Asha was married to accused No. 2 Sanjay on 25-4-1992 at village Panchwad, Taluka Wai, District Satara. After the marriage she started living with her husband accused No. 2 and his family i.e. accused No. 1 Hirabai his mother and accused No. 2 Manisha his sister accused No. 3. Another sister of her husband named Sharda who had been married long back to one Vijay Jadhav but was deserted by her husband as she had some mental problems and it appears from record that either she was suffering from fits or was lunatic, she was also living with the accused. Asha's husband accused No. 2 was in service in Bombay and therefore Asha was living with her mother-in-law and other family members as stated above.

4. According to the prosecution at the time of marriage of Asha with Sanjay it was agreed that dowry of Rs. 20,000/- was to be paid and some utensils and garments were to be given to the family of bridegroom and out of this Rs. 10,000/- were paid at the time of marriage and the balance of Rs. 10,000/- were agreed to be paid within a period of one year.

5. After about 15 days of marriage of Asha, Shivaji P.W. 1 had gone to her house to meet her and her family members. In that visit Asha disclosed to him that as the entire dowry amount was not paid and some articles promised to be given in the marriage were not given her mother-in-law and sister-in-law i.e. accused Nos. 1 and 3 were taunting her. Shivaji tried to convince her to live peacefully and probably also promised her that everything would be done as per the requirements.

6. After the visit of Shivaji, Asha's parents visited her house and to them also she made similar complaint about the ill treatment meted out to her in her husband's house. At the time of Panchami Asha had gone to her parents house and at that time also she disclosed them about the ill-treatment meted out to by her the accused for non payment of dowry.

7. The incident in question took place on 15-8-1992. Deceased Asha was fed up with the ill-treatment meted out and the constant taunting by the accused. Similarly her husband's sister Sharada was also fed up with the taunting of her mother and they decided to commit suicide by pouring kerosene and setting fire to themselves. Accordingly after accused left the house and went to the field, deceased Asha and deceased Sharada committed suicide. It is the case of the prosecution that both of them poured kerosene and set fire to themselves as they had decided to commit suicide. Asha's parents and her brother Shivaji came to know about this and went to the civil hospital at about 10 to 11 a.m. where both the girls were taken by the neighbours together. In the hospital Asha told them that she was ill-treated by the accused for non payment of dowry and for not" satisfying their demands in respect of certain articles. The statements of deceased Asha and Sharada were recorded by police constable Mulani P.W.10 and thereafter a requisition was sent to the Executive Magistrate for recording the dying declarations. The Executive Magistrate reached the hospital and he recorded the dying declaration of Asha. He is examined as P.W. 6.

8. On the basis of the statement (dying declaration) recorded by the Executive Magistrate RW. 6 offence was registered at zero number at Satara City Police Station and the dying declaration was forwarded to Bhujinj Police Station where offence was registered at C.R. No. 18 of 1993. Thereafter further investigation was carried on by P.S.I. Mandlik. P.S.I. Mandlik RW. 9 had already received the message from Satara City Police Station about the admission of two burn cases in the hospital i.e. Asha and Sharada and therefore he visited the house of the accused and he prepared the panchanama of the scene of offence Exh. 21 and from there he seized one sari, kerosene can, match box, match sticks, bangle pieces, half burnt hair and cloth pieces as well as two chits one Exh. 16 allegedly written by Asha to her husband informing him that she was committing suicide as she was fed up with the ill-treatment meted out to her by the accused. The other chit is kept on record as Article A as the handwriting of the same could not be identified and it could not be proved.

9. On 19-8-1992 Asha died in the hospital and Sharada died on 23-8-1992. Post mortem examination of both the dead bodies was carried out after drawing inquest panchanama. Accused No. 1 came to be arrested on 29-8-1992 whereas accused Nos. 2 and 3 were arrested on 5-9-1992.

10. During the course of investigation the police seized marriage invitation card and list of articles prepared at the time of marriage Exhibit 17 and the letter written by the father of the deceased Asha Exh. 26. The chit found in the house of the accused allegedly written by Asha was also seized. Statements of various witnesses came to be recorded during the course of investigation and after the entire investigation was over, the present appellant and the other two accused i.e. son and daughter of appellant were charge-sheeted in the Court of Learned Judicial Magistrate, First Class, Wai. The learned Magistrate committed the case to the Sessions as the offence u/s 306 as well as u/s 304B are triable exclusively by the Court of Sessions.

11. Charge was framed under sections 498A, 306 and 304B read with section 34 of I.P.C. against all the accused persons. They pleaded not guilty and contended that deceased Sharada was a lunatic and while cooking food deceased Sharada as well as Asha caught fire and in that incident Asha also sustained burn Injuries. They also contended that they always treated deceased Sharada and Asha property with love and affection and they never subjected them to cruelty or ill-treatment and they have not committed any offence nor they are responsible for the death of Asha even if she is found to have committed suicide.

12. The prosecution examined 12 witnesses including Shivaji P.W. 1 who is brother of Asha, her mother Shantabai P.W. 3, her father Tukaram P.W. 5, one of Asha's distant relative Shankar P.W. 2. As regards the dying declarations RW. 6 the Executive Magistrate as well as the head constable Mulani RW. 10 were examined and the evidence of Medical Officer Dr. Shinde P.W. 8 was also adduced: P.S.I. Mandlik who conducted the investigation was examined as P.W. 9 and Dr. Sawant who conducted autopsy on the dead bodies as P.W. 11. P.S.I.

Patil who conducted further investigation was examined as P.W. 12.

13. After scrutiny of the entire evidence on record and other material as well as arguments of the learned Public Prosecutor and the Learned Advocate for the accused, the learned Addl. Sessions Judge, Satara came to the conclusion that it was the accused No. 1 alone against whom aforesaid offences were proved and finding her guilty, passed the impugned order of conviction and sentence against her and by the same judgment and order the learned Sessions Judge acquitted the other accused.

14. In this appeal we have heard Shri C.S. Joshi learned Advocate for the appellant accused No. 1 and Shri Mhaispurkar learned Additional Public Prosecutor for the State.

15. The entire evidence of the prosecution can be conveniently classified into three parts as under:

- 1) Evidence regarding ill-treatment or cruelly meted out, given by the close relatives of Asha and one person who was acquainted with her and her family.
- 2) The evidence of dying declarations of Sharada and Asha. The dying declarations are recorded in the case of Asha by the Executive Magistrate as well as by police constable and in the case of Sharada it is recorded only by the police constable.
- 3) Evidence of investigating Officers and medical evidence P. M. notes are admitted in evidence u/s 294 Cri.P.C.

16. So far as the evidence of cruelty is concerned, it may be noted at the outset that there is no direct evidence of any witness having seen Asha being ill-treated. We are conscious of the fact that normally such direct evidence is not available inasmuch as ill-treatment is meted out within the four walls of a house. Therefore the evidence of relatives of Asha and her close acquaintance is in the nature of complaint, which Asha made from time to time to them regarding the ill treatment meted out to her by the accused. Such evidence is required to be considered only as conduct showing that immediately there was complaint to the close relatives who could if found necessary take action on her behalf or could at least mitigate the situation by pacifying her husband and his family members. P.W. 1 Shivaji is the real brother of Asha. He has stated that after marriage of Asha on 25-4-1992 although Rs. 10,000/- and some utensils etc. were given to the accused family, Rs. 10,000/- were yet to be paid to her in laws and it was agreed that the said amount would be paid within a year. Asha started residing with her husband at Panchwad and after about 15 days P.W. 1 Shivaji went to her house. There Asha started weeping and when asked for the reasons she told him that she was being taunted by her mother-in-law (accused Haribai) for the reasons that the entire amount of dowry was not paid and certain articles like cooker etc. were not given to her in laws. She also told that she had reported about this to her husband Sanjay. During this visit accused Haribai also asked

Shivaji whether there was system of "solave" in their family because he had not given dress and ring in marriage to Sanjay. Thereupon he paid Rs. 300 to Haribai as tailoring charges and she again asked him to pay Rs. 500/- as price of shoes. He however returned back and later on he informed about this to his parents. After two days his parents went to the house of Asha in the evening. Thereafter Asha and Sanjay came to their house and stayed with them for about 2-4 days. Even during this visit Asha disclosed to him about her sufferings and he told her that he would pay the remaining amount and cooker etc. at the time of Diwali. Thereafter at the time of Panchami he went to her house to bring her back as per the custom and at that time also he told her family members that he would pay Rs. 10,000/- and give the articles at the time of Diwali. During this 2nd visit also Asha stayed with them for about 2-3 days and in this visit also she told them about the ill-treatment and the demands i.e. non payment of Rs. 20,000/- in lumpsum.

17. In the cross examination P.W. 1 Shivaji stated that the family of the accused was financially better than his own family and the marriage was performed at Panchwad i.e. at the village of accused and they had taken a truck load of people for marriage. Although he has stated that it was performed in simple manner his mother Shantabai P.W. 3 had admitted that it was performed properly and she and her relatives and villagers had gone in truck and all were properly honoured. She has also admitted that the marriage was performed at Panchwad because of their poverty. Even Shivaji has admitted that because of their financial condition the marriage was performed in a simple manner. He further stated in cross examination that after the marriage Asha and Sanjay had gone to a tour to different places for about 15 days. Thereafter his marriage was settled and Asha had resided at his house for about 4-5- days. He also admitted that in his statement recorded by the police on 17-8-1992 he did not state that Hirabai was demanding price of shoes and he paid her tailoring charges and this is a clear improvement. He further admitted that in the statement of 17-8-1992 he did not state that Asha had disclosed that her husband was informed by her about the ill-treatment or taunting but he did not pay any heed to her complaint. He further stated in his cross examination that in his statement before the police he had stated that he had informed his parents about the disclosure of ill-treatment by Asha but he could not assign any reason why this portion is not recorded. It is pertinent to note that the statement of this witness was recorded twice firstly on 16th August and secondly on 21st August 1992 i.e. after death of Asha and this 2nd part of admission of non disclosure clearly shows that even in his statement on 21st August he did not disclose about this and it is clear from his admissions that there is an attempt to improve his statement" and our later discussion would show that this was deliberate and that too after the brother of P.W. 5 Tukaram who is in service of Police department reached there.

18. P.W. 3 Shantabai who is the mother of Asha has stated in her examination-in-chief that Shivaji, and Asha were coming to their house in 8-15 days and at the time of Panchami Asha had stayed with them for 8 days. We have already

referred to some of her admissions while discussing the evidence of P.W. Shivaji and the same need not be repeated. She admitted that she cannot assign any reason why in her statement before the police it is not recorded that she and her husband had visited the house of accused two months after the marriage and this also shows clear attempt to improve the earlier version. She also stated that brother of her husband Tukaram P.W. 5 is in the police department and after he came to their village, police recorded their statements. Recording of evidence in this regard does not appear to be correct because what should have been recorded was that the police recorded their statements again.

19. The third family member of Asha is her father P.W. 5 Tukaram and he has also admitted that in his statement recorded on 17-8-1992 he did not state that Shivaji had disclosed about the ill-treatment and therefore they (he and his wife) went to the house of accused at Panchwad. He also could not explain why in his statement before the police he has not stated that at the time of Panchami when Asha had come she told something and at that time she was weeping. The fact that she was weeping when she complained to them is absent in the statement recorded u/s 161 of the Cr.P.C. and is therefore an improvement. Similarly in his statement dated 17-8-1992 he did not state that Asha has disclosed about the ill-treatment at the hands of accused Nos. 2 and 3 i.e. Sanjay and his sister who have been acquitted. He even could not explain as to why this does not find place in his latter statement recorded on 21-8-1992. He also could not explain as to why he did not state before the police that in the hospital Asha made disclosure after seeing around that nobody was there i.e. after taking precaution to see that there is nobody else to listen. Evidence of this witness clearly shows that he is competent to involve accused Nos. 2 and 3 at a later stage even though in his earlier statement he did not even whisper that they were responsible for any type of ill-treatment to deceased Asha. There is a letter or a chit in his hand writing marked Exh. 26 which appears to be a letter addressed by him to his son-in-law (Sanjay) and his mother requesting them that he has received the message conveyed to him by Asha and the remaining articles and the amount would be given to them in a short time. However, they should not talk about it to Asha and should be rest assured that he would keep his word. This document is very mysterious one. Although he claims to be the author of it. The investigation nowhere disclose as to how this document came in possession of the police. It is not in the panchanama nor has the witness said as to who produced it before the police. He has denied the suggestion that he prepared Exh. 26 and handed over to the police. It is therefore curious to know as to how this document came on record when it is not shown to be attached from the house of accused. It is difficult to understand as to how this came to be exhibited in evidence without making inquiry even when the Investigating Officer was examined to find out as to who has handed over this document to the police.

20. The prosecution has examined one more witness on this point who is neighbour of Tukaram namely Shanker Yadav P.W. 2. His evidence is that he learnt from Tukaram that Asha is suffering ill-treatment is clearly hearsay. He

however, stated that at the time of Panchami when Asha was brought to village Atit he saw her standing at the door and while passing by the road asked her as to how the things were going on, whereupon she started weeping and saying that she was suffering ill-treatment severely. The evidence clearly shows that he is a chance witness and it is extremely unnatural that even though he was acquainted and was having good relations with Tukaram either that he would enquire from Asha while passing by the road or that Asha would complain to him about the ill-treatment when she was just standing at the door and this appears to be an attempt of adducing evidence of a got up witness. Therefore in the cross examination he had to admit that in his statement before the police he had not stated that when he was going towards the field he had reason to talk to Asha and he could not explain why in his statement before the police he did not mention that Asha had disclosed to him about severe ill-treatment. Above discussion of evidence about the ill-treatment shows that these witnesses have deliberately made improvements in their version and have stated number of facts to support the case of ill-treatment to Asha at the hands of accused persons which at the earliest opportunity before the police they had not disclosed.

21. Another aspect of the matter is that whatever evidence they have given is vague and all of them have categorically stated that Asha was complaining about ill-treatment or harassment or cruelty. Not a single instance has been disclosed by any of them including Shivaji who visited her house and stayed with her and brought her back on Panchami to village Atit. In order to prove that particular treatment meted out to Asha amounts to cruelty in law as is required to be proved under the provisions of section 498A of I.P.C. it is necessary for the prosecution to lead evidence of specific instance so that the Court can objectively examine it and come to conclusion that the conduct is of such type that it does amount to cruelty in law for which the accused could be held guilty. In this case not only that the evidence is not specific but whatever vague evidence is adduced is also afterthought and therefore unreliable.

22. In addition to this prosecution has relied upon a letter Exh. 16 alleged to have been written by Asha to her husband Sanjay informing him that she would commit suicide as she was tired of day to day disputes in the house and nobody is responsible and liable to be blamed for her suicide. According to the prosecution this letter was found in the house of the accused at the time of drawing panchanama. However, P.W. 1 Shivaji clearly stated that it is not in the hand writing of Asha whereas Asha's father Tukaram was categorical in stating that it is in the hand writing of Asha. This would show the anxiety of Tukaram to involve accused in the crime. Had it been in Asha's hand writing then Shivaji who is her real brother would have recognised her handwriting or signature of Asha therein. P.W. 5 Tukaram even went to the extent of saying that even another chit which is the list of articles alleged to be found in the house of the accused is also in the handwriting of Asha. A bare perusal of the said two documents i.e. Exh. 16 and Exh. 17 would show even to naked eyes that the handwriting of both the documents is entirely different. In spite of this Tukaram

went on to assert that both documents are in the handwriting of Asha and it further fortifies our conclusion regarding his anxiety to some how or other involve the accused. The other document already referred to above Exh. 26 which he claims to be in his handwriting and regarding which the prosecution has not disclosed as to how it came in possession of the police there is one more aspect. The entire writing is in different handwriting and the signature of Tukaram below it is in different handwriting.

23. Another set of evidence consists of dying declarations. Apart from some oral statement made by deceased Asha when her relatives i.e. Shivaji P.W. 1, Shantabai P.W. 3 and Tukaram P.W. 5 visited her in hospital, there are written dying declarations and it would be desirable to refer to them. The dying declaration of Asha is recorded twice. RW. 10 Mulani head constable was on duty in the civil hospital at Satara on 15-8-1992. He was informed by the medical officer regarding two medico legal cases i.e. deceased Asha and deceased Sharda who were admitted as burn cases and he claims to have recorded statement of Asha in the presence of medical officer after getting certified that she was in a condition to give her statement, i.e. she was conscious and well oriented. It is very much relevant to notice that he also approached Sharada in order to record her statement on 15-8-1992 but she was not ready to speak anything. Therefore on 15-8-1992 he has only recorded the statement of Asha Exh. 47 and on the next day, i.e. 16-8-1992 he recorded the statement of Sharada. Since he was on duty at the hospital it may appear that he was first to record the statement of Asha but the circumstances on record clearly shows very high probability that the statement recorded by him is not the one which is earlier in point of time. Another statement or dying declaration of Asha is recorded by the Executive Magistrate Vishwanath Revkhane P.W. 6. It is on the basis of the statement recorded by the Executive Magistrate copy of which was forwarded to Satara City Police Station that crime under zero number was registered at Satara Police Station as the incident had not taken place within the area of Satara Police Station it was further sent to Bhuinj Police station for regular registration of the crime in their crime register and it is on the basis of the copy of the statement of dying declaration of Asha which was sent to Bhuinj police Station that offence came to be registered and investigation commenced.

24. If it is to be accepted that the head constable Mulani P.W. 10 was the first person who recorded the dying declaration of Asha then question arises as to whether it was immediately sent either to Satara City Police Station or to Bhuinj Police Station for registration of offence. Mulani has no doubt stated that after recording the statement of Asha at Exh. 47 he dispatched it to the police station but there is no evidence to show that this statement was in fact sent to police station inasmuch no forwarding letter is produced and as already pointed out above, if it had been immediately forwarded the offence would have been registered on that basis and not on the basis of the statement recorded later and it is therefore doubtful as to whether in fact Mulani recorded the dying declaration of Asha earlier than the dying declaration recorded by the Executive

Magistrate some time between 1.30 to 2.30 p.m. on 15-8-1992. P.W. 10 Mulani has no doubt stated in his cross examination that he reached hospital at about 11 a.m. on 15-8-1992 and immediately went to record statement. The statement or dying declaration recorded by him nowhere mentions the time when he started recording the statement and time required for the same. As stated earlier if he had recorded the same prior to the Executive Magistrate i.e. before 1.30 p.m. on the same day, then it would have reached the police station earlier. It is therefore not possible that his statement was earlier in point of time and in fact what appears to be more plausible is that the dying declaration was earlier recorded by the Executive Magistrate.

25. Another aspect of the matter is that admittedly according to P.W. 10 Mulani, Sharda sister of P.W. 1 Shivaji was not ready to give any statement on 15-8-1992 and he recorded her statement on 16-8-1992. Now when on the earlier date the Executive Magistrate was called to the hospital for recording the dying declarations and when it was known that Sharda had refused to give any statement then if, on the next day Sharda showed her willingness to give statement, then in the normal course the Executive Magistrate should have been called for but was not called and statement or dying declaration was recorded by the head constable Mulani and same is at Exh. 48. Here also he has not mentioned the time when it was recorded.

26. Both these dying declarations i.e. one recorded by the Executive Magistrate and the other by Shri Mulani P.W. 10 are not recorded in question and answer form as is required to be recorded as per the rules. They are in narrative form. However, if in substance the statements are found to be trustworthy then for non observance of certain procedure or rules will not have much effect on its reliability.

27. We will consider the dying declaration of Sharda Exh. 48 recorded by Mr. Mulani P.W. 10 first. In this statement Sharda has stated that she was suffering from fits and therefore even though she was married to Vijay Jadhav 9 to 10 years back, she was residing with her parents for last about 6 years. Therefore she has stated that her mother Haribai (appellant) asked her not to live in their house and as she was not doing any work vkbZ gfkckbZ ukjk;.k xk;dokM gh eyk rs ;sFks jkgw udksl rw dke/kank djhr ukgh Eg.kwu Hkyk lkj[kh cksyr gksrh her mother used to scold her of and on. Her mother was also scolding Asha because the remaining amount had not been paid to her parents. She has also stated that her mother was scolding Asha even for the reasons that Asha was slow in doing household work (dke mjdr ulsy eqys cksyr gksrh). What is more important to point out first is that after this she narrated the instance of 15-8-1992 stating that at about 10.50 a.m. since her mother was scolding her continuously and as this could not be tolerated by her and Asha, she poured kerosene on herself and lighted it with match stick and similarly Asha poured kerosene on herself and set herself on fire. What is important to note is that she does not even say that since her mother was scolding Asha that day since morning they decided to commit

suicide and thereafter both of them poured kerosene on their person and set themselves on fire. Therefore even taking at best, the dying declaration of Sharda first it will be clear that there was no immediate cause at least for Asha to go to such an extent to commit suicide even if it is accepted that her mother-in-law (appellant) was of and on scolding her. On the date of incident as stated above the appellant was scolding her own daughter which was not tolerated by her and may be which even Asha did not tolerate. Apart from this, dying declaration of Sharda is relevant so far as it concerns to the case of her death and is not relevant so far as it concerns death of Asha.

28. The Executive Magistrate P.W. 6 Revkhande has stated that he was called at about 1.10 p.m. He received report of police station regarding burn cases admitted in civil hospital Satara. He went to the hospital, consulted the medical officer regarding their condition and thereafter proceeded to record their statements. The report sent to him is produced at Exh. 34 and that is why we have pointed out earlier that head constable Mulani has not produced any letter nor has the Investigating Officer tried to ascertain whether there was any letter sent by Mulani to the police station while sending the dying declaration which are admittedly recorded by him on two consecutive days. P.W. 6 Revkhande has clearly admitted in cross examination that he did not ask any question to Asha and the dying declaration recorded by him is also not in the question and answer form as stated earlier. This apart the dying declaration recorded by him in the case of Asha is in our opinion the most material piece of evidence. In this dying declaration Asha (deceased) has stated that her mother-in-law (appellant) used to quarrel with her because of dowry. She was also harassing her daughter Sharda as Sharda was living in her parental house eventhough she was married. Thereafter she has stated that on the date of incident at about 10.30 a.m. her sister-in-law i.e. Sharda poured kerosene on herself and noticing that she (Asha) went towards her (Sharda) for extinguishing the fire, therefore she also caught fire and as she was wearing tericot saree it immediately caught fire and thereafter she has stated one sentence that she also poured kerosene on herself and burnt herself. Admittedly nobody was in the house and the appellant and her husband had gone to the field earlier in the morning. In this dying declaration Asha has specifically stated that she had absolutely no problem with her husband and father in law. She has not even named her sister-in-law. Therefore the said two accused were involved on the basis of the statement of witnesses recorded afterwards i.e. after the visit of Tukaram's brother Harishchandra who is in service of police department. In the case of Sharda even the Executive Magistrate has stated that she avoided giving any statement and therefore, he could not record it. In the circumstances as discussed earlier it was necessary for the police to requisition the services of the Executive Magistrate when on the next day Sharda showed her willingness to give her statement.

29. Another aspect of the matter is that even if we go by the two dying declarations i.e. the dying declaration of Asha recorded by the Executive Magistrate and the dying declaration of Asha and Sharda recorded by Mulani, one

thing is clear that even in those statements none of them has attributed a single specific act of cruelty to the appellant or any other accused and therefore so far as the cruelty is concerned the case of the prosecution is extremely vague. The expression that the appellant was scolding or taunting is not sufficient to hold appellant guilty of cruelty as defined in section 498A of I.P.C. Moreover this has to be considered on the background of the fact that Asha led married life hardly for 4 months and out of that for about 15/20 days she must have spent with parents. Being newly married it would be natural for her to visit her parents and that is also the evidence on record. In the circumstances when Asha's husband was in service at Bombay and she was living with her parents in law, some scolding or taunting on occasions by the mother-in-law would not be sufficient to hold her guilty of cruelty as contemplated u/s 498A of I.P.C. From the dying declaration it is clear that she was also scolding her daughter and that appears to be her nature. May be that she was using some pungent language but that will amount to cruelty only if it falls within the four corners of section 498A of I.P.C. A reference to the provisions of section 498A of I.P.C. would show what is required to be proved by the prosecution in order to bring home the offence punishable under that section. The Division Bench of this Court has pointed out in 1993 (1) BCR 473, Arjun Dhondiba Kamble and others v. The State of Maharashtra, that the harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property will amount to cruelty punishable u/s 498A of the I.P.C. It is also observed by the Madhya Pradesh High Court in 1987 CLJ 1573, Smt. Padmabai v. State of M.R., in paragraph 14 as under:

"Stray domestic quarrels, perfunctory abuses by mother-in-law, to her daughter-in-law in the Indian society, crude and uncultured behaviour by the in laws or the husband towards his wife being mundane matters of normal occurrence in the traditional joint Hindu families, will not go to form and constitute "abatement" unless these acts of conduct singly or cumulatively, are found to be of such formidable and compelling nature as may lead to the commission of suicide or may facilitate in a singular and prime manner, the commission of the same."

30. The evidence in this case even if considered in its totality and accepted would show that it does not go beyond scolding and taunting by the appellant to Asha as well as her own daughter Sharda and therefore it is not possible to come to the conclusion that the cruelty was caused to get her demands fulfilled immediately or coerce them to commit suicide. Therefore even though Sharda and Asha have died as a result of burn injuries it is clear that even in the case of Sharda the reason for setting herself on fire was that her mother was scolding her from the morning and it is the prosecution case that Sharda was not mentally, normal and balanced person and for that reason her husband had deserted her. In such circumstances when the family of Sharda was belonging to a low income group of agriculturists and Sharda was also not working in the field nor was doing any work in the house it would be natural if at times she is scolded by her mother. In any case such scolding or taunting by the mother cannot be

said to be of such gravity as to "coerce" her to commit suicide. Moreover Sharda was her daughter and section 498A applies to cruelty by husband or in laws and in order to prove that accused abated the commission of suicide by her, the presumption u/s 113A or 113B of the Indian Evidence Act does not come into play at all as it is only in the case of death of a married woman living with her parents and the provisions of sections 113A and 113B are very clear in this regard. The judgment of this Court referred to above also makes it clear. In the case of Sharda therefore in order to prove that the appellant abetted her in the act of commission of suicide. It is all the more necessary for the prosecution to show some positive act of aiding and abetting by the appellant and merely because she was scolding or taunting her daughter it will not be sufficient to hold her guilty of offence u/s 306 of the I.P.C. More over Sharda had been deserted by her husband and had her own frustrations in life. She was also not mentally normal person as per the evidence on record though actually the disease she was suffering from is not known.

31. So far as Asha is concerned the above referred dying declaration of Asha clearly shows that it was Sharda who set fire to herself first and Asha went towards her for extinguishing the fire and therefore she got burn injuries and if this is the case then other part in her statement that she also poured kerosene on herself and set herself on fire cannot be accepted. In any case earlier statement would create a doubt in the mind of any reasonable person regarding the cause of death of Asha and it is highly probable that Asha caught fire when she was trying to extinguish fire which Sharda caught on setting herself on fire and if that be so then the death of Asha cannot be said to be the result of suicide or self inflicted burns and it may be due to accidental fire caught while extinguishing fire to the person of Sharda. If the death of Asha is not proved to be the result of suicide then the accused cannot be held guilty of offence punishable u/s 306 of I.P.C. and also for offence u/s 304B of I.P.C. It is not worthy to point out that in the short period of four months Asha was not at any time even asked by her parents in law to return to her parental home and to bring the articles leave alone not to join them unless their demands are fulfilled. When the evidence on record shows high degree of probability of Asha having died of accidental death no offence could be held to have been established against the appellant. Further more the injuries found on the person of Asha were all to the front portion like face, chest and stomach etc. Dr. Chavan who conducted the autopsy has stated in his evidence in the examination-in-chief that burn injuries on Asha could be caused while extinguishing fire and this evidence coupled with the dying declaration of Asha shows that there is every possibility of her having caught fire while extinguishing the fire of her sister-in-law Sharda and fortifies the earlier conclusion.

32. A reference to section 304B of I.P.C. would show that where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her

husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death. This obviously does not include accidental death and therefore merely because death was caused within 7 years from the date of the marriage no presumption could be raised under amended section 113 of the Indian Evidence Act.

33. We have already pointed out the attempt of Tukaram and his wife to involve the husband and his sister and how improvements have been made in their statements after Tukaram's brother Harishchandra who is in police service joined them. The mystery which shrouds the chit Exh. 26 as it is not shown to have been seized under any panchanama and the doubt created by the evidence of Shivaji that the suicidal note Exh. 16 is not in the hand writing of his sister Asha are additional factors which cast doubt on the entire investigation carried on by the police and we are therefore convinced that the learned Addl. Sessions Judge was not justified in coming to the conclusion that as against present accused (appellant) offences are proved and the conviction is therefore not legally sustainable.

34. In the result appeal succeeds and is hereby allowed. The conviction and consequent sentence recorded by the Addl. Sessions Judge, as against accused appellant are set aside and the appellant- accused is acquitted of all the charges levelled against her and we direct that the appellant accused be set at liberty forthwith.

35. Appeal allowed.