

(1993) 02 BOM CK 0127

In the Bombay High Court

Case No : Criminal Appeal No. 440 of 1986

Ravindra Pyarelal Bidlan and others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (1993) CriLJ 3019 : (1993) 1 MhLj 658 : (1993) MhLj 658 : (1993) 3 RCR(Criminal) 57

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : S.G. Deshmukh, for the Appellant; S.B. Patil, Public Prosecutor, for the Respondent

Judgement

1. On 21st January, 1986 at about noon time Rukmini, the wife of accused No. 1, committed suicide by pouring kerosene on her person. The incident occurred when none else was present in their house, at Aundha Road, Ambedkar Nagar, Khadaki, Pune. As a result of the said suicide the present accused, who are her husband (accused No. 1), mother-in-law (accused No. 2) and brother-in-law (accused No. 3) i.e. the younger brother of accused No. 1, were prosecuted under Ss. 306 and 498A read with S. 34 of the Indian Penal Code. By the impugned order the accused have been acquitted of the offence under S. 306, I.P. Code but have been convicted for the offence under S. 498A of the Indian Penal Code. Accused Nos. 1 and 3 have been sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for three months. Accused No. 2 has been sentenced to suffer six months' simple imprisonment and to pay a fine of Rs. 500/-, in default to suffer further simple imprisonment for three months. The said order of conviction and sentence is impugned in the present appeal.

2. PW 1 Thandiram Tak is the father of Rukmini. He is the resident of Jaijawan Nagar in Yerawada. He has five sons and four daughters. Rukmini was one of

them. While his daughters were minors and of tender age he got three of them married on one single day. His elder daughter Sukhadevi was married to PW 4 Sevaram who is also a resident of Pune. His second daughter Rukmini was married to accused No. 1 and his third daughter Meena was married to accused No. 3 who is none else but the brother of accused No. 1. Rukmini and Meena were barely aged 6 to 7 years at the time of their marriage. Since they had not reached their age of puberty they continued to reside with Thandiram. Sometime in the year 1982 when Rukmini attained her age of puberty she was sent to the house of the accused. She stayed there for a period of about three months and thereafter returned to her parents. At that time she complained to her father that the accused were beating and ill-treating her and were demanding several articles as they were not given at the time of the marriage. Rukmini continued to remain with her parents for about three years. During this period no efforts were made by the accused to secure the return of Rukmini. On the 8th of January, 1985 an Advocate's notice (Exhibit-19) was issued on behalf of Rukmini calling upon the accused No. 1 to take her back for cohabitation. Similar notice was issued to accused No. 3 on behalf of Meena. It appears that certain efforts were made to refer the disputes to Panchas. Thandiram was insisting that accused No. 1 should execute a writing assuring that he would treat Rukmini well. Accused No. 1 declined to execute any writing. He, on the 25th of June, 1985, addressed a letter to his brother-in-law Sevaram stating that he will not execute any writing, and will not submit himself before the Panchas and that Rukmini should be sent back to him. Thereafter, accused No. 1 came to the house of Thandiram and took Rukmini as also Meena to their house. At this stage, Meena appears to have gone to the house of the accused for the first time after her marriage. Her stay in the house of the accused was for a short period. After about 2 1/2 months i.e. around October-November, 1985 accused No. 3 brought Meena back to the house of her parents and dropped her there saying that he was required to go to Delhi.

3. On the Sankrant, which fell on the 14th of January, 1986, Ganesh - brother of Rukmini - went to the house of the accused to bring her to her parental house. She was, however, not sent by the accused. Then followed the fateful event which occurred on the 21st January, 1986 while none else was present in the house. Rukmini locked herself in the house, poured kerosene on her person and set herself ablaze. She sustained hundred percent burn injuries and succumbed to the burns almost immediately. The flames attracted the attention of the neighbours which include PW 3 Ramesh Kasare. The house was broken open and the fire was extinguished. Rukmini was found dead. A message regarding the event was sent to the parents of Rukmini. They came to the spot. One Bhagwan reported the matter to the Bopodi Police Chowki. PW 6, P.S.I. Salvi, who was attached to the Khadaki Police Station, immediately went to the spot. P.S.I. Salvi prepared inquest Panchanama (Exhibit-17) on the spot and sent corpse of Rukmini to the hospital. He prepared a Panchanama in respect of the scene of offence (Exhibit-18). He made enquiries with Thandiram. He did not make any

statement as according to him they were mourning. Salvi made an entry in the station diary.

4. On the 22nd of January, 1986 P.S.I. Salvi recorded the statement of several witnesses which include the statement of PW 2 Meena, a sister of Rukmini, PW 3 Ramesh, their neighbour, PW 4 Sevaram, the husband of the elder sister of Rukmini, Sukhalal, son of PW 1 Thandiram, Anguribai, wife of PW 1 Thandiram and others.

5. On the 24th of January, 1986 Salvi recorded the statement of PW 1 Thandiram. He treated this statement as a complaint and registered the instant offence. After completing the investigation he, on the 12th of February, 1986, filed the instant charge-sheet against the accused.

6. The accused pleaded not guilty to the charge framed against them. They denied that they had made any demands. They denied that they had harassed, ill-treated or beaten Rukmini or her sister Meena at any time. According to them, the present case has been filed on account of suspicion, the relations of Rukmini had against them.

7. The learned Additional Sessions Judge by his impugned judgment and order dated the 21st of May, 1986 has found that the prosecution has failed to prove that the accused, in furtherance of their common intention, had abetted the commission of suicide. He, therefore, proceeded to pass an order acquitting the accused for the offence under S. 306 read with S. 34 of the Indian Penal Code. The learned Judge further found that the evidence of the prosecution failed to establish that the accused were guilty of cruelty that the accused were guilty of cruelty as defined under S. 498A(a) of the Indian Penal Code. He, however, found that the evidence was sufficient to hold that the accused were guilty of subjecting Rukmini to such cruelty as is defined in sub-clause (b) of S. 498A, I.P. Code. Consequent upon the said finding, the learned Judge has proceeded to pass the impugned order of conviction and sentence against the accused. The said order is impugned in the present appeal.

8. I have, with the assistance of Shri S. G. Deshmukh, the learned Advocate appearing on behalf of the accused and Shri S. B. Patil, the learned Public Prosecutor, gone through the entire evidence on record. I have critically examined the material evidence which has been led by the prosecution. The evidence consists of the evidence of Rukmini's father PW 1 Thandiram and PW 2 Meena, the younger sister of Rukmini who was given in marriage to accused No. 3, the younger brother of accused No. 1. Meena has had an opportunity to reside in the house of the accused when Rukmini was also residing there. I have also considered the evidence of PW 4 Sevaram, who is the husband of the elder sister of Rukmini. He has participated in negotiating a settlement in the strained relations between the accused on the one side and the parents of Rukmini on the other. I have also considered the surrounding circumstances. In my judgment, the evidence of the aforesaid witnesses does not inspire confidence. Their

evidence lacks the necessary assurance which is required in a criminal trial to bring home the guilt especially in respect of offences of the present nature. According to me, the accused are entitled to a benefit of doubt.

9. I will first examine the events which have taken place immediately after Rukmini was found dead having sustained hundred percent burn injuries. Amongst the neighbours who immediately came to the scene was PW 3 Ramesh Kasare. He has helped extinguishing the fire. He noticed one cloth tied round the mouth of Rukmini which was probably tied by Rukmini in order to ensure that she does not shout and thereby attract neighbours before her object of suicide is accomplished. That cloth was removed by accused No. 2. This witness, though a neighbour, does not speak of any incidents prior to the fateful day when Rukmini met her last.

10. P.S.I. Salvi also arrived at the scene soon after the accident. He prepared the inquest on the corpse. He prepared the Panchanama in respect of the scene of offence. He made enquiries with Thandiram while he was in the Sasoon Hospital. P.S.I. Salvi wants us to believe that Thandiram declined to make a statement stating that they were mourning. Let us examine this conduct of Thandiram. He had seen that his daughter had burnt herself to death. If he knew that the accused were responsible for ill-treating her or were beating her and were making demands of various articles from her, would he have kept quiet ? In my view, Thandiram would not have failed to disclose these allegations against the accused. The inaction on the part of Thandiram speaks volumes. I am not prepared to accept the explanation that he declined to make a statement for three full days till his statement was recorded on the 24th January, 1986 because he was mourning.

11. On the 22nd of January, 1986, P.S.I. Salvi recorded statements of several persons which include the statements of the accused as also the statements of Meena, Ramesh, Sevaram and others. Despite the fact that statements of these material witnesses were recorded on the 22nd of January, 1986 P.S.I. Salvi did not register any offence against the accused. In my view, it will be reasonable to infer that he had not come in possession of sufficient material to make out an offence against the accused. On the 23rd January, 1986 no further steps were taken in investigation. It is only on the 24th January, 1986 that the statement of Thandiram was recorded. This statement, which is to be found at Exhibit-9, is treated as the First Information Report and P.S.I. Salvi has registered an offence on the strength of that statement. It requires no exercise to hold that this statement cannot be treated as the First Information Report. Information in regard to the commission of the present cognizable offence was received at the police station on the 21st January, 1986 and steps in aid of investigation were taken on the 21st January, 1986 itself. These put forth include the preparation of the inquest and sending the corpse to the Sasoon Hospital. They include the preparation of the Panchanama regarding the scene of offence. They also include inquiries being made with Thandiram, the father of Rukmini. Moreover, several

statements of witnesses were recorded on the 22nd of January, 1986. These witnesses are material witnesses whose evidence is put forth in order to bring home the guilt against the accused. It is futile, in the present circumstances, to style the statement of Thandiram (Exhibit-9) as the First Information Report. In my view, the learned Judge of the trial Court has erred in treating this statement as the First Information Report. The said statement cannot, therefore, corroborate or lend assurance to the evidence of Thandiram. If at all the delay in recording the statement would weaken the varacity of the evidence of Thandiram. If what is deposed to by Thandiram in Court is true I do not see any reason why he should not have come out with the details at the first possible opportunity. This is a circumstance which casts an element of doubt in the case of the prosecution. This is to be viewed in conjunction with the fact that till the recording of this statement, no offence was registered against the accused. Hence, for three full days, after the incident, no material was forthcoming to justify the registration of an offence against the accused.

12. I will now proceed to examine the oral evidence led by the prosecution. Before I do so I would like to observe that the prosecution case rests solely on evidence of witnesses who are close relations of Rukmini and witnesses who are hostile towards the accused. It has come in the evidence of Thandiram that there are several houses located near the house of the accused. There is a common water-tap outside their house. They also visit the common latrine. The prosecution has not sought to collect or has not adduced evidence of the neighbours who may have thrown some light on the treatment which was meted out to Rukmini and Meena. This, by itself, may not be conclusive but is a factor which can be taken into account. It will now turn to the evidence of Thandiram. He has spoken in terms of the prosecution case. He has stated that when Rukmini attained puberty accused No. 1 had come and taken her to his house. Initially Rukmini stayed in her matrimonial house for two or three months. She then returned to her parental house. At that time she was complaining that accused Nos. 1, 2 and 3 were beating her and ill-treating her. They were not allowing her to sleep. They were demanding gold, TV, bicycle etc. The accused were saying that she should not come back to them and should continue to stay at her parental house. Rukmini continued to stay in the parental house for a couple of years. During this time the accused did not come to fetch her. He, therefore, arranged to send a notice through Advocate Tambe. He did not receive any reply but accused No. 1 came and stated that he would take her. The witness asked for a writing assuring good treatment. Accused did not give a writing but addressed a letter to Sevaram. They sent Rukmini along with the accused. They also sent Meena alongwith Rukmini.

13. After about 2 1/2 months, accused No. 3 came alongwith Meena and left her at her parent's house saying that he was going to Delhi. At that time Thandiram offered him tea but he did not accept it. The witness inquired with Meena. Meena said that her in-laws were ill-treating and making many demands. Meena continued in the parental house till the incident in question. Thandiram has

further deposed that his son Ganesh had gone to the accused to bring Rukmini for Sankrant festival but they had not sent her. This part of the evidence, I am afraid, is hearsay as Ganesh is not examined. The evidence of this witness in regard to the aforesaid event cannot be read in evidence and will have to be kept out of consideration. The witness, thereafter, deposes to the incident of the 21st January, 1986. When at about 4.30 or 5.00 p.m. he was informed of the incident by Anand, the younger brother of the accused. The witness went to the house of accused along with Meena and found Rukmini lying dead. He states that a Panchanama was made and the body was taken to the Sasoon Hospital. He accompanied the dead body to the hospital. The last rites were performed by the accused and the witness has stated that he did not attend it. According to Thandiram he did not attend the cremation as at that time their relations had gathered in his house. He has further deposed that on the 22nd January, 1986 he attended the police chowki. According to him, police recorded his statement on that day. He has further stated that on the 23rd of January, 1986 he had gone to the police station. He had gone there of his son. He simply talked with the police. It is, thereafter, i.e. on the 24th of January, 1986 that the police recorded his statement (Exhibit-9).

14. If the police had recorded as statement of Thandiram on the 22nd of January, 1986 as has been stated by the witness, and if the said statement is not forthcoming, the same casts a shadow of doubt. It casts an aspersion on the veracity of the statement which is recorded three days after the incident. The fact that the statement of the 22nd January, 1982 is withheld gives rise to a suspicion that the same was not in tune with the prosecution case which is set up in Court. I am not prepared to dub the evidence of Thandiram and the other evidence to which I will presently comment upon, as totally false and got up. The witness are close relation of Rukmini. It does appear that relations between the accused No. 2 and Rukmini were not happy. Similarly, relations between the families were strained. Hence, it is possible that these witnesses have a natural grouse against the accused. Their tendency to exaggerate cannot be ruled out as such a tendency is natural, it is a part of human nature. It, therefore, becomes necessary to examine the evidence more critically especially because in the present case no independent evidence is forthcoming. One therefore naturally looks for some assurance for holding that the evidence is genuine and deserves to be accepted. With these remarks I will proceed to examine the further evidence of Thandiram. He has stated that he had accompanied Rukmini to Advocate Tambe for giving instructions for issuing notice to the accused. The notice which was issued by Advocate Tame on the instructions of Rukmini and the witness, is to be found at Exhibit-19. In the notice serious allegations are made. It is alleged that after Rukmini went to cohabit with accused No. 1, he allowed her to cohabit with him somehow for two months but after accused No. 1, started beating her on minor reasons. It is further alleged that the accused forcibly took off all the ornaments on the person of Rukmini and drove her out of the house with only the clothes on her person. Accused No. 1 beat her severally

and threatened that he had no need for her and that he is going to perform second marriage and in case she returned back to his house he will kill her. The notice further avers that Rukmini came to her father and narrated everything to him. It further states that the father went to the house of the accused along with Rukmini but the accused No. 1 insulted him and stated that he had no need for her and that he is going to perform a second marriage. He, thus, clearly refused to allow Rukmini to cohabit in his house. Rukmini, therefore, returned along with her father to her parental house. Such visits were repeated for two or three times but accused No. 1 refused to take her back. The notice calls upon the accused to take her back within a period of eight days.

15. It is pertinent to note that the notice makes no reference to any demands made by the accused as deposed by the prosecution witnesses. If the notice has gone as far as to allege that the accused had forcibly removed all the ornaments on the person of Rukmini and had driven her out of the house with only the clothes on her person, it is unlikely that the notice would omit to make a reference to the demands made by the accused as deposed to by the witness. The improvement on this aspect is not immaterial or inconsequential. The same can be attributed to a desire to bring home an offence against the accused. When asked whether accused Nos. 2 and 3 had gone to Delhi during the period 23rd December, 1985 and 16th January, 1986 when Meena was left behind in his house, he stated that he did not know. This has some relevance as it is the specific defence of the accused that accused No. 3 had deposited Meena in her parental house because he as also the accused No. 2 were required to go to Delhi. I will now advert to the contents of the letter written by accused No. 1 to Sevaram on the 25th January, 1985. This letter Exh. 13 was written at a time when Rukmini was lodged in the house of Thandiram and after Thandiram had issued a notice (Exhibit 19) dated the 8th of January, 1985 calling upon the accused No. 1 to take back Rukmini. The letter (Exhibit 13) makes it clear that the parents of Rukmini desired to refer the disputes to the panchas at Pune. The accused has strongly opposed the move and has refused to submit himself to the Panchas. He has further refused to give any writing as desired by Sevaram. He strongly demanded that Rukmini should be sent back without insisting on a writing being issued by him. The accused No. 1 has opposed the proposal of Sevaram to come along with 50 to 60 persons to the house of the accused. He has dared them to come even with 500 to 600 people. He has stated that they, namely Sevaram and Thandiram have lot of money to waste but they refuse to hear him. They should listen to him as he is not a thief, nor has he committed any crime. He has therefore refused to give any writing and has refused to subject himself to the Panchas. He has advised not to make public their domestic problems.

16. The tenors of the said letter shows the defiant mood of accused No. 1. It does not even remotely indicate that he was making any demands as is sought to be made out in the evidence of the prosecution witnesses. There is not even the remotest suggestions that he is expecting any gifts. On the contrary, his

defiant mood he is seen to insist upon the return of Rukmini without any pre-conditions. The said letter, therefore, does not lend any assurance to the case of the prosecution at least in respect of demands. Even in respect of alleged harassment or ill-treatment there is no indication that he has accepted the allegations. On the contrary he has refused to give any writing and has thereby denied the allegation of ill-treatment. The letter, however, makes it clear that the relations between the two families were far from being cordial. In view of the present state of things, I would be hesitant to place reliance on the evidence of Thandiram unless the same is corroborated by some independent source.

17. I would now turn to the evidence of P.W. 2 Meena. She undoubtedly is a material witness in the case. Apart from her being in the house of Thandiram when Rukmini returned after her stay with the accused for a couple of months, she has had the opportunity to stay in the house of the accused for about three months before she was returned to her parents.

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She was married to accused No. 3 When she was just a child. At the same time Rukmini was also married to accused No. 1. The witness had gone to stay with the accused No. 3. Prior to that Rukmini had gone to stay with accused No. 1 and she had stayed there for about 2 to 3 months. Accordingly to the witness Rukmini was saying that accused Nos. 1, 2 and 3 and their relations were demanding several articles and were ill-treating her and they were saying that they would not maintain her till the articles are given. After Rukmini had returned to her parents after her stay with the accused for two or three months, she stayed with them for three years. Thereafter accused No. 1 had come and taken the witness as also Rukmini to their house. They both stayed in the house of the accused for about six months. The witness has further gone on to state that the accused were giving them food only once in a day. This part of her evidence is an improvement over her police statement and the improvement has been proved in the evidence of P.W. 6, P.S.I. Salvi. The witness has further gone on to state that accused Nos. 1, 2 and 3 and other relations were beating her and Rukmini as they were not bringing articles. They were saying that till they did not bring the articles from her parents they would ill-treat them. Thereafter accused No. 3 left her at her parents. The witness told her parents about the ill-treatment and demands made by the accused. 15 day thereafter, Anand had come to them and told them about the burning of Rukmini. This is her evidence in examination-in-chief. In cross-examination she has conceded that during her stay with the accused, i.e. during the period of about 2 1/2 months, she had visited her parents on four occasions. Rukmini had also visited the parents on three occasions. It is not her case that on each of her visit to her parents she had informed her parents about the demands made by the accused and the ill-treatment for not meeting the demands. Her examination in chief suggests that she had complained after accused No. 3 had left her at her parent's place. Nor is it the case of Thandiram that Rukmini or Meena had on each of these visits had

complained about the conduct of accused. If the allegations of the prosecution in respect of demands and ill-treatment were true one would have expected both Meena and Rukmini to report about this to their parents on each of such visits. This is not the case put up either by Thandiram or Meena. The witness has further proceeded to state that during such visits accused No. 3 used to accompany her to the house of her parents. She never went alone. Usually she and Rukmini were going together. Her brothers were also coming to see her while she was with the accused. She used to go in the morning and return in the evening. This part of her evidence, in my view, is consistent with the cordial relations between the parties and inconsistent with there being strained relations on account of ill-treatment and beating on account of ill-treatment and beating on account of the demands not being fulfilled. The witness has further admitted that in the house of the accused they had a tape recorder, a radio and a set.

18. As already observed, the police recorded the statement of Meena on the 22nd of January, 1986. However, no offence came to be registered on the basis of her statement. As is the case in the evidence of Thandiram the evidence of Meena is of an interested nature.

19. We next have the evidence of P.W. 4 Sevaram who is the husband of the elder sister of Rukmini. He has generally spoken in terms of the evidence of Thandiram and Meena. He has stated that after Rukmini had returned to her parents after her two months' stay with the accused he had met her. Rukmini was saying that the accused were beating and ill-treating her as she was not taking different articles from her parents to the accused. According to the witness, they made efforts for reconciliation. He has stated that on the 24th or 25th of June, 1985 he had gone to the house of the accused and asked him to bring his wife. The accused was saying that they were not getting demanded articles and they would not bring the wife. This part of the evidence is a clear improvement over his previous statement and he has admitted that he had not so stated the he had gone to the accused and asked him to take his wife. Hence, the question of the accused telling him at that time that he would not bring back his wife because he was not getting the demanded articles does not arise. According to the witness, he gave some assurance to the accused No. 1 and then accused agreed to take back his wife. Thereafter, accused No. 1 came along with some persons and took away Rukmini and Meena. He stated that accused No. 1 wrote a chit in his presence and gave that chit in a folded condition to him to give it to his father-in-law. This chit apparently was not given to him at the time when accused No. 1 had taken back Rukmini and Meena along with him as appears from his oral testimony. I have already reproduced a gist of the chit. This chit was sent on a later date when he had protested against the move on the part of Thandiram and Sevaram to refer the disputes to the Panchas and when they were demanding a writing assuring of good treatment to Rukmini for the purpose of the return of Rukmini to his house. The witness has further gone on to state that on 22nd January, 1986 he had gone to the police. He had taken his chit along with him. Before that he had made Xeroxed copy of the chit and

taken it along with him. This conduct shows the animosity the witness has towards the accused. He was in all readiness to make allegations against the accused and to implicate them in the instant crime. Moreover, the chit (Exhibit 13) also bears out the animosity which existed between the accused No. 1 and the witness.

20. This is all the evidence on the material issue involved in the case. The question which arises for consideration is, whether the evidence is trust for consideration is, whether the evidence is trustworthy and worthy and worthy of belief ? In offences, as in the allegations are very easily made and once made it is very difficult to dislodge them. If the evidence fails in inspires confidence, as in the present case, it is advisable to look for corroboration from some independence source. This is not to suggest that no conviction can be based without independent corroboration because there is no presumption, as is in the case of accomplice witness, that their evidence cannot be accepted unless corroborated. However, one has to be satisfied that the evidence is such which can lead to an unhesitating conclusion that the same is true, unbiased and unexaggerated. The evidence has to be such that it inspires confidence and no which an order of conviction can safely be based. After giving my anxious consideration to the above evidence I find myself unable to arrive at an unhesitating finding that the same can be safely relied upon. The house of the accused consist of about three rooms. The inmates of the house are required to use a common tap and a common latrine. It is, therefore, reasonable to except that Rukmini and Meena were going out to their houses for using the common water tap and the latrine. They would, in ordinary course meet their neighbours. If the allegation of serious ill-treatment were true they would have talked to the neighbors whom they would have be friend during their stay. No such evidence is forthcoming.

21. During their stay with the accused both Rukmini and Meena used to visit their parents. Accused No. 3 to accompany Meena during her visits. Their brothers used to visit them while they were with the accused. All these visits indicate cordial relations. If all allegations of demands, ill-treatment and beating were true such visits would be improbable. At least there would have been evidence regarding bickerings during such visits. It is not the case of any of the witnesses that on each such occasion Rukmini and Meena complained about the conduct of the accused to their parents and relations.

22. We next have two writings, one in the form of notice (exhibit 19) and the other in the form of chit (Exhibit 13). Neither of the documents bear out the so-called demands raised by the accused. In the notice (Exhibit 19) the reason for the ill-treatment is entirely different i.e. The desire of accused No. 1 to marry a second wife. If this reason could find place in the notice I fail to see why the allegation of demands does not find a place in the notice. It is possible that this improved version has been set up in order to bring the present incident within the four corners of S. 306 and section 498A of the Indian Penal Code.

23. The events which have been taken place after the incident of suicide also cast an element of doubt on the veracity of these witness. On the day after the incident P.S.I. Salvi recorded the statements of witness which include P.W. 2 Meena, P.W. 3 Ramesh, and P.W. 4 Sevaram, Sukhalal, the son of Thandiram and Anguribai, the wife of Thandiram. Despite the According of these statements of no offence statements cannot be reasonably ruled out. After the aforesaid statements were recorded on the 22nd of January, 1986 there was a lull on the 23rd of January, 1986 and no steps in investigation were taken. On the 24th January, 1986 statements of Thandiram was recorded and it is only thereafter that the present offences was registered against the accused. We have it from the evidence of Thandiram that on the 22nd of January, 1986 he had attended the police chowky. He had attended the police chowky also on the 23rd of January, 1986. He had simply had talk with the police. On the 23rd of January, 1986 he had gone to the police on his own. If this is the case, one is left wondering what prevented the police to record his statements at the first possible opportunity. The possibility of the matter being discussed and a case being built up for the purposes of lodging a complaint against the accused, in my view, cannot be ruled out. The belated statements of Thandiram which is recorded on the 24th of January, 1986 becomes suspect. It is for these reasons that I am seeking corroboration from some independent source so as to lend assurance to the evidence of witness whose evidence is of a highly interested nature. I have however been unable to find any such evidence which would lend assurance to their evidence.

24. There is one more reason why I am not inclined to place implicit faith in the allegations of demand for article and the consequent ill-treatment and bearing on account of the demands not being fulfilled. The entire evidence in this respect is of general allegations. No specific instances of demands and ill-treatment have been given. General allegation are made against all the accused. An omnibus statements is made regarding demands, harassment and beating. An improved version is also made regarding Rukmini and Meena being starved and not being given proper meals. I am, not inclined to place reliance on the above evidence.

25. The learned Judge of the trial court has already found the accused not guilty the offences under S. 306 of the Indian Penal Code and has acquitted the accused. He has found that the prosecution has failed to make good its case in respect of cruelty as explained under Clause (a) of S. 498A, I.P. Code. He has based his order of conviction on the cruelty as explained in clause (b) of S. 498A, I.P. Code. Section 498A provides that when a husband or a relative of the husband of a woman subjects such woman to cruelty he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. The term cruelty has been defined in the explanation to S. 498A. Hence, it is not any and every cruelty that it is made punishable but only the cruelty as defined under the explanation. Explanation (a) provides that cruelty means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of the woman. Hence, under Clause (a) the cruelty has to be of such a gravity as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. If cruelty is by itself established and the fact of suicide is also establish and the fact of suicide is also establish, it would be sufficient to bring home the guilt of committing cruelty as defined in explanation (a). A reasonable nexus had to be established between the cruelty and the suicide in order to make good the offence of cruelty. Alternately, the cruelty establish has to be of such a gravity as is likely to drive a woman to commit suicide etc. If sufficient is established it has further to be establish it has further to be establish that it was occasioned on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide. Since the trial Court has found the evidence in this behalf wanting it is not necessary to dilate further on his matter.

26. Sub-clause (b) of the expansion to S. 498A provides that cruelty means harassment of the woman where such harassment is with a view to correcting her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Sub-clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to corers the woman or any person related to her to meet harassment by itself is not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section. In other words, it is not every harassment or every type of cruelty that would attract Section 498-A. It must be established that the berating or harassment was with a view to force the wife to commit suicide or to fulfill illegal demands of the husband or the in-laws.

27. In the instant case I have found on evidence that the prosecution has not proved beyond reasonable doubt that the accused had demanded many articles from Rukmini or Meena that the accused had harassed or brightened them for the purpose of the coercing them to meet those demands. In view of this findings I hold that the accused are entitled to a benefit of doubt. In the result, appeal is allowed and the impugned order of conviction and sentence passed by the Additional Session Judge, Pune, on the 21st of May, 1986, in Session Case No. 83 of 1986 is set aside the appellants-original accused are acquitted. Fine, if paid shall be refunded to them. Their bails bonds shall stand cancelled.

28. Appeal allowed.