

(2006) 12 BOM CK 0084
In the Bombay High Court
Case No : Criminal Appeal No. 370 of 1995

Sahebsingh Mali and Rajasingh Mali

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294, 313
Evidence Act, 1872 — Section 113(A)
Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2006) 12 BOM CK 0084

Hon'ble Judges : M.G. Gaikwad, J

Bench : Single Bench

Advocate : N.N. Chitlange, S.B. Talekar, for the Appellant; R.D. Reddy, APP, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Gaikwad, J.—Heard learned counsel, appearing on behalf of respective parties.

2. This appeal is directed against the judgement dated 06-12-1995 in Sessions Case No. 53 of 1992, whereby the learned IInd Additional Sessions Judge, Nanded convicted these appellants/original accused Nos. 1 and 4 for the offence punishable under Sections 498A and 306 read with Section 34 of IPC and sentenced them to suffer simple imprisonment for six months and fine of Rs. 500/- in default simple imprisonment for two months, for the offence u/s 498A of IPC and simple imprisonment for one year and fine of Rs. 300/- each in default simple imprisonment for two months, for the offence u/s 306 read with Section 34 of IPC.

3. The facts relevant for the purpose of this appeal are as under.

4. The incident in question was alleged to have occurred on 13-08-1991. On account of burn injuries, deceased Nirankar Kaur was admitted in General

Hospital at Nanded at 1625 Hours and she died on the next day i.e. on 14-08-1991 at 1840 Hours. After her death, inquest panchanama (Exh-22) came to be recorded and the dead-body was sent for post-mortem. After post-mortem, doctor issued post-mortem notes (Exh-23), genuineness of which came to be admitted by the accused when notice u/s 294 of the Code of Criminal Procedure was served on them. By issuing these post-mortem notes, doctor opined cause of death as neurogenic shock due to toxemia and early septicemia due to extensive burns 92%.

5. The marriage of the deceased with accused No. 1 (present appellant No. 1) was celebrated sixteen months prior to her death. Accused No. 4 (appellant No. 2) is her father-in-law. Acquitted accused Nos. 2 and 3 are the mother-in-law and sister-in-law of the deceased, respectively. At the time of marriage, all four accused were staying together. After marriage, deceased was staying with the accused in their joint family. For early 3-4 months after the marriage, she was treated well. Thereafter, she was being harassed by all four accused. Four months before this incident, she was severely beaten by all four accused on the ground that she should obtain scooter from her parents. After that incident, as she was driven away, she stayed at the house of her sister, PW 3 Kulwant Kaur who resides at Nanded. Thereafter, a meeting of the respectable persons from the community was held and in the said meeting, accused gave assurance of good treatment to the deceased and took the deceased to their house. On the earlier day of the incident i.e. on 12-08-1991, in the afternoon, deceased came to the house of her sister PW 2 Baljit Kaur while weeping and informed her that she was assaulted by all four accused on the ground that she should fetch an amount of Rs. 10,000/- from the sister for the purpose of business of her husband. That time also, they gave threat that in case arrangement of that cash is not made, she will not be allowed to cohabit with her husband. She stayed at the house of her sister PW 2 Baljit Kaur till evening and in the evening, returned back to her house. On 13-08-1991, at about 5p.m., PW 2 Baljit Kaur got information that the deceased set herself on fire and on account of burn injuries, she was admitted in the hospital. On that information, she alongwith her another sister PW 3 Kulwant Kaur and brother PW 4 Sarjitsingh rushed to the hospital. Nirankar Kaur, the deceased, who was taking treatment, made oral dying declaration with them that on account of harassment from the husband and inlaws, she set herself on fire. While she was taking treatment in the hospital, DW 2 Police Head Constable Shivappa Chandrapatle who was on duty in the hospital got information of admission of Nirankar Kaur in the hospital for treatment on account of burn injuries. He, therefore, approached her and recorded her statement/dying declaration (Exh-69). By that statement, she disclosed that on the date of incident, in the morning, present appellant No. 2 (accused No. 4) on account of some trifle matters, abused her and also gave threat to stab. She intimated that fact to her husband - present appellant No. 1/ accused No. 1, but her husband did not take any cognizance thereof. Hence, she was annoyed and in the afternoon, at about 4 p.m., by pouring kerosene on her

body, set herself ablazed. After the said dying declaration was recorded by the Police Head Constable, a requisition was sent to the Special Judicial Magistrate for recording dying declaration. PW1 Narayan Balatkar, the Special Judicial Magistrate visited the hospital at 6.30 p.m. and confirmed from the Medical Officer on duty as to whether deceased Nirankar Kaur was in a fit condition to give statement and doctor opined that she was fit to give statement. He thereafter recorded dying declaration (Exh-38) of Nirankar Kaur. In the same night, PW 2 Baljit Kaur lodged complaint (Exh-45) in Vazirabad Police Station. On the said complaint, PW 5 PSI Mohammad Khan registered the offence u/s 498A vide CR No. 308/1991. He then visited the spot and recorded spot panchanama (Exh-21). On 14-08-1991, he received inquest panchanama (Exh-22) and post-mortem report (Exh-23). Therefore, he converted the offence u/s 306 of IPC. After completing other formalities of investigation, he submitted chargesheet against all four accused i.e. present appellants and acquitted two accused for the offence punishable under Sections 498A and 306 of IPC in the court of Chief Judicial Magistrate at Nanded, who in turn committed the case to the Court of Sessions at Nanded.

6. The learned IInd Additional Sessions Judge, Nanded framed charge at Exhibit-8 for the offence punishable u/s 498A and 306 of IPC against all four accused. All four accused pleaded not guilty and claimed to be tried. Their defence was of total denial. u/s 313 of the Code of Criminal Procedure, accused also put forth a defence that accused Nos. 2 to 4 were staying at Kinwat on account of service of accused No. 4. Accused No. 1 put forth a defence that his wife always used to visit the house of one Preetamsingh and he used to take objection for the same. The deceased was a hot tempered girl and in his absence, she set herself ablazed.

7. At the trial, the prosecution examined five witnesses. PW1 Special Judicial Magistrate Narayan Balatkar proved dying declaration (Exh-38). On behalf of the accused, retired Police Head Constable DW 2 Shivappa Chandrapatle was examined to prove the dying declaration (Exh-69). As such, at the trial, there were two dying declaration of the deceased i.e. Exh-38 and Exh-69. In proof of cruelty, the prosecution placed reliance on the evidence of three relatives, PW 2 Baljit Kaur and PW 3 Kulwant Kaur, the sisters of the deceased and PW4 Sarjitsingh, brother of the deceased. PW5 Mohammad Khan is the PSI who registered the offence and completed the formalities of investigation. On behalf of the accused, one more defence witness DW 1 Sunderabai Ekalre is examined. She is the tenant in the house of accused No. 1. According to her, while she was at her house, she heard shouting of Nirankar Kaur, hence, she rushed towards the house of the deceased and noticed that she was burning. She therefore rushed to the shop of accused No. 1 and gave intimation to him. Both of them then returned back and extinguished the fire and carried injured Nirankar Kaur to the hospital. She also further claims that in the hospital, Nirankar Kaur made oral dying declaration with her that she was mentally disturbed, hence, she set herself ablazed. According to her, during her stay in the house of accused No. 1

as tenant, she never noticed any quarrel between deceased Nirankar Kaur and her family members.

After considering the evidence of the relatives, learned Additional Sessions Judge held that their evidence inspires confidence and proved the cruelty to the deceased prior to her death. Relying upon the written dying declaration (Exh-38), recorded by PW1 Special Judicial Magistrate Narayan Balatkar and the dying declaration (Exh-69) recorded by DW 2 Police Head Constable Shivappa Chandrapatle, the death of the deceased is held to be a suicidal death and same is held abated by accused Nos. 1 and 4 and accused Nos. 1 and 4 - husband and father-in-law of the deceased have been held guilty of the offence punishable u/s 498A and 306 of IPC. However, the evidence led by the prosecution is held not sufficient to prove the offence against accused Nos. 2 and 3 and they came to be acquitted.

8. Feeling aggrieved with the order of conviction, present appellants/original accused Nos. 1 and 4 preferred present appeal, which came to be admitted by order dated 08-01-1996. Acquittal of accused Nos. 2 and 3, recorded by the trial court is not challenged by the State.

9. On behalf of the appellants, learned advocate Shri Chitlange made submission that the incident of assault two months prior to the death of the deceased is alleged by the prosecution and a meeting of respectable persons was also alleged to have been held, but none from those respectable persons who had allegedly attended that meeting is examined. Hence, non-examination of an independent witness who attended that meeting, the evidence of the relatives about that meeting cannot be accepted. According to Shri Chitlange, the offence u/s 498A is held proved relying upon the evidence of sisters and brothers of the deceased who are closely related. They alleged cruelty on account of demand of money or demand of scooter. But that story of demand and cruelty on that count is not supported by both dying declarations (Exh-38 and Exh-69) as deceased did not disclose a single word about demand and cruelty on account of any illegal demands in the dying declaration. Hence, the evidence of the relatives about demand and harassment on account of demand cannot be relied upon. According to him, the evidence of relatives being interested witnesses, is not sufficient to record conviction u/s 498A of IPC. As regards the offence of abatement of suicide, it is submitted that said conviction is recorded relying upon the evidence of PW1 Narayan Balatkar and DW2 Shivappa Chandrapatle and the written dying declarations (Exh-38 and Exh-69). According to learned advocate Shri Chitlange, the dying declaration recorded by DW 2 Shivappa Chandrapatle is prior in time. It does not make any reference of any cruelty. PW1 Narayan Balatkar admits that when he reached to the hospital for recording dying declaration (Exh-38), relatives were present. Hence, possibility of tutoring cannot be ruled out. Hence, second dying declaration (Exh-38) cannot be said to be genuine statement made by the deceased. It is clear from the dying declaration (Exh-38) that leading questions were put to the injured Nirankar Kaur and answers are extracted from

her. Hence, said dying declaration cannot be said to be genuine and it does not inspire confidence. According to him, both the dying declarations do not inspire confidence and cannot be treated to be genuine statements of the deceased made with the witnesses voluntarily. The order of conviction for the offence u/s 306 of IPC, therefore, is also not sustainable. An attempt is also made to prove defence of alibi of accused No. 4 by making submission that in those days, accused No. 4 was serving at Kinwat and the very fact is admitted by the prosecution witnesses.

On the other hand, learned APP Smt. Reddy, appearing on behalf of the State submitted that two dying declarations (Exh-38 and Exh-69), one proved by prosecution witness and another by defence witness are consistent and there are not circumstances to doubt these statements of the deceased. Perusal of both dying declarations makes it clear that deceased committed suicide on account of cruelty to her. As regards the offence of cruelty, it is submitted that three relatives gave consistent version about the illegal demand of money and harassment on account of non-fulfillment of demands. There is evidence of deceased making a statement on the earlier day of incident that she was being assaulted. That statement is within proximate time of death of the deceased, made with her sister. That incident did occur on the earlier day also shows the conduct of the accused which amounts to abatement to suicide. According to learned APP, the order of conviction recorded relying upon the evidence of three witnesses and supported by two dying declarations does not suffer from any infirmities and needs no interference.

10. The accused/appellants have been held guilty for the offence punishable u/s 498A of IPC relying upon the evidence of three relatives i.e. PW2 Baljit Kaur, PW 3 Kulwant Kaur and PW4 Sarjitsingh as well as written dying declarations (Exh-38 and Exh-69), recorded by Special Judicial Magistrate PW 1 Narayan Balatkar and second one recorded by defence witness DW 2 Police Head Constable Shivappa Chandrapatle. On behalf of the appellants, submission is advanced that the dying declaration first in time i.e. Exhibit-69 does not make reference of any harassment or cruelty. Hence, the cruelty referred in second dying declaration (Exh-38) can be said to be tutored one and not reliable. In view of this submission, evidence of three relatives needs to be considered to find out as to whether prior to the incident in question, there was any type of cruelty to the deceased or not.

11. PW 2 Baljit Kaur and PW3 Kulwant Kaur are the sisters of the deceased and both of them reside at Nanded where the accused and deceased were staying. PW4 Sarjitsingh is the brother of the deceased and he resides at Dharmabad in Nanded district. All of them have deposed that the marriage of the deceased with accused No. 1 was performed sixteen months prior to her death. This fact is not disputed on behalf of the accused. It is clear that death of the deceased did occur within sixteen months of her marriage because of burn injuries. As regards the alleged cruelty, all three witnesses have deposed that for four months from

the marriage, married life of the deceased was happy and she never made any complaint during that period about any type of harassment. All the witnesses have consistently deposed that after four months, present appellants and acquitted accused started harassment to the deceased on account of demand of money and scooter. According to them, they came to know this fact from the deceased. Question remains as to whether this statement made by the witnesses is reliable. In the cross-examination of PW 2 Baljit Kaur, one omission has been attempted to be brought on record. It was asked to her as to whether she has alleged in the complaint that after four months of the marriage, ill-treatment was increased and she has stated that she made such allegations in the complaint. On perusal of her complaint (Exh-45), there appears no omission because in the complaint (Exh-45), it has been specifically alleged by PW2 Baljit Kaur that after 3-4 months of the marriage, harassment was being made to the deceased. In the cross-examination of PW 3 Kulwant Kaur, attempts are made to bring on record certain omissions, but it was not on the point of harassment being started after four months of the marriage. Evidence of PW4 Sarjitsingh is also not found shattered on this point. Hence, version of all these three witnesses is consistent that after four months of the marriage on account of demand of money and scooter, deceased was being harassed by the accused persons.

According to PW 2 Baljit Kaur, four months before this incident, her sister deceased Nirankar Kaur came to her house and made a statement that there was ill-treatment to her by way of beating on account of demand of scooter and she assured to fulfill that demand. In her complaint (Exh-45), said fact is recorded. Hence, the statement made by deceased with PW2 Baljit Kaur four months before the death of the deceased is not found to be an improvement. PW3 Kulwant Kaur also narrated that four months before the incident, on account of demand of scooter, deceased was being assaulted and they drew her away. Hence, deceased had gone to the house of PW 2 Baljit Kaur. Though an attempt is made to falsify her version about that incident, no material could be brought on record on behalf of the defence in her cross-examination. Same is the position of evidence of PW 4 Sarjitsingh. Evidence of all these three witnesses is consistent that four months before the death of deceased, deceased was being assaulted on account of non-fulfillment of demand and she was driven out of the house and she had therefore gone to the house of PW 2 Baljit Kaur.

According to all the three witnesses, two months before this incident, a meeting of respectable persons from their community was held and before them, appellant No. 1 had given assurance of good treatment to the deceased and on that assurance, deceased was sent to stay with her husband. In the cross-examination, there is reference of a meeting or respectable persons wherein an assurance of good treatment to the deceased by the accused was given. Only omission that could be brought on record in respect of that meeting, in the cross-examination of PW2 Baljit Kaur, was that in the said meeting, panch witnesses convinced accused No. 1 not to give any type of ill-treatment to Nirankar Kaur, the deceased. But it was not complete omission about the meeting which came

to be held two months before the death of the deceased. PW 3 Kulwant Kaur about the said meeting, gave a statement that a meeting of panchas was called. All accused were called in the meeting and accused gave assurance of good treatment to the deceased, and deceased had gone to cohabit with her husband. Again, in the cross-examination of this witness, only omission that could be brought on record was about the role of panchas to advise the appellants/accused not to give harassment and on that advice, an assurance came to be given by the accused about good treatment to the deceased. Again, this is not found to be a complete omission and the fact of meeting being held and matter being discussed in that meeting and thereafter, deceased going to cohabit with accused No. 1 is consistent version of all these three witnesses.

12. The last visit of the deceased with the relatives was alleged to be on the earlier day of this incident i.e. 12th August, 1991. PW 2 Baljit Kaur has specifically stated that on 12-08-1991 at about 1.00 p.m. her sister - the deceased came to her house while weeping and told that an amount of Rs. 10,000/- was demanded by the accused for running the business and threat was given that if that demand was not fulfilled, she will not be allowed to cohabit with her husband. Except a suggestion in the cross-examination that deceased did not approach the witness on 12th August, 1991, no material could be brought on record to falsify that visit of the deceased to the house of PW2 Baljit Kaur on 12th August, 1991. PW 3 Kulwant Kaur did not give evidence of this visit of the deceased. However, PW4 Sarjitsingh has stated that the incident dated 12th August, 1991 was disclosed to him by his sister PW 2 Baljit Kaur. Admittedly, PW4 Sarjitsingh resides at Dharmabad. This incident did occur in Nanded. On the next day, he received a message of his sister being burnt and he rushed to Nanded,. Under these circumstances, his statement that he got knowledge of the incident dated 12-08-1991 from PW 2 Baljit Kaur is a natural event. As such, from the evidence of PW2 Baljit Kaur, it is established that on the earlier day of the incident, deceased met her sister PW2 Baljit Kaur and made a statement of harassment to her by the accused on account of illegal demand. An attempt is made on behalf of the accused to show that accused No. 1 is a businessman and is already possessing one vehicle Moped. Hence, there is no possibility of demand of scooter being made by the accused. It is admitted that accused No. 1 runs a shop and is possessing a Moped vehicle, but on that ground, the evidence of the witnesses that he was demanding an amount of Rs. 10,000/- and there was also a demand of scooter cannot be said to be a false story. The human nature and his expectations depend upon his own thinking. It may defer from person to person. It cannot be said that a rich person will not make demands from the in-laws. The evidence of the three relatives is found consistent and reliable that within a span of married life of sixteen months, the girl was found harassed on account of illegal demands of amount and scooter. An attempt is made to show that their evidence about the demand is a general version. But this submission is without any merit. The facts revealed from their evidence are clear that initially, demand was made and when demand was not fulfilled, four

months before the incident, she was driven out of the house.

Thereafter, a meeting of respectable persons from the community was held and on an assurance of good treatment to the deceased, she was sent back to stay with her husband. Even on the earlier day of the incident of burn, deceased met her sister PW 2 Baljit Kaur and while weeping, she disclosed that she was being treated with cruelty by the accused on account of that demand. Their evidence is cogent and consistent that till the incident, she was being harassed and treated with cruelty and that evidence is sufficient in proof of the offence of cruelty punishable u/s 498A of IPC, as the harassment was on account of illegal demands.

13. The order of conviction for the offence u/s 306 of IPC came to be recorded relying upon the written dying declarations (Exh-38 and Exh-69) and oral dying declaration made by the deceased with the relatives. In respect of these dying declarations, submission is advanced that the second dying declaration (Exh-38) does not inspire confidence and it can be said to be a tutored one, because in the first dying declaration (Exh-69), recorded by DW2 Police Head Constable Shivappa Chandrapatle, there are no allegations of cruelty. From the evidence of three witnesses, it is revealed that after receiving a message of the incident of burns, they had rushed to the hospital and met the deceased. It is also admitted by PW3 Kulwant Kaur that on receiving a message, she had gone to the hospital. Her sister PW 2 Baljit Kaur was already present there and deceased disclosed them that she was being beaten by the accused, hence, she attempted to commit suicide. In the cross-examination, she admitted that she reached the hospital at 5 p.m. PW 2 Baljit Kaur also narrated that in the hospital, deceased had disclosed her that since morning, the quarrel had arisen on account of demands and she was being assaulted, hence, she set herself ablaze. In the cross-examination, an omission in her statement in her complaint (Exh-45) is brought on record. In Exhibit-45, there are no allegations that deceased had made dying declaration with her about assault on her on that day. Thus, as regards exact disclosure made by her in the hospital, there are material omissions. Therefore, that oral dying declaration made with relatives is not worthy to be relied upon.

14. Let us now consider the alleged written dying declarations (Exh-38 and Exh-69). It is not the contention of the appellants that deceased was not in a condition to give statement because the accused themselves have examined DW 2 Shivappa Chandrapatle, the Police Head Constable to bring on record dying declaration (Exh-69) of the deceased. DW 2 Shivappa has stated that when he was in the police station, he got information that one woman was admitted in the hospital in a burnt condition. He had gone to the hospital and recorded statement of the deceased i.e written dying declaration (Exh-69). By examining this defence witness, the appellants are not challenging mental condition of the deceased at the time of recording this dying declaration. On perusal of Exhibit-69, which was the first dying declaration brought on record by the

defence, it is revealed that deceased had disclosed that in the morning on 13-08-1991, accused No. 2, her father-in-law on account of some quarrel, started abusing her and also gave threat to stab her. This dying declaration further discloses that she narrated these facts to her husband, but the husband did not take any cognizance thereof. The dying declaration further mentions that as her husband did not take cognizance of the threats given by her father-in-law, she was annoyed and at 4 p.m., she poured kerosene on her body and set herself on fire. She mentions in this dying declaration that that day, there was no quarrel between her and her husband. This dying declaration also inspires confidence. The deceased narrated events occurred that day. In the morning, she was being abused and threat to stab was given by the appellant No. 2. She narrated these facts to her husband, but he did not take cognizance thereof. Hence because of these facts, the girl who was frustrated set herself ablaze. The act of her father-in-law to give threat to stab her is a positive act which drove her to commit suicide. The omission on the part of the husband not to take cognizance of her complaint also led her to set herself ablaze. Thus, the act and omission on the part of the accused amounts to abatement to suicide.

15. The second dying declaration (Exh-38) came to be recorded by PW 1 Narayan Balatkar, the Special Judicial Magistrate. It is in question-answer form. According to PW1 Narayan, on a requisition from the police by letter (Exh-37), he had gone to the hospital and confirmed that injured Nirankar Kaur was in a fit condition to give statement. That time, some relatives of the deceased were present there. He removed them out of the ward and then recorded this dying declaration (Exh-38). In his cross-examination, it has come on record that when he reached the hospital, one lady and one man were present and they were of Sikh community. Because of this statement, an attempt is made to show that they must have tutored the deceased to give the statement. But this story cannot be relied upon. Because earlier to this dying declaration also, dying declaration (Exh-69) came to be recorded by DW 2 Police Head Constable Shivappa Chandrapatle wherein she has narrated the incident which did occur that day and brought the circumstances on record as to under which, she set herself ablaze. Perusal of dying declaration (Exh-38) also makes it clear that deceased disclosed before PW1 Narayan that on the date of incident in the morning, accused No. 4, the father-in-law abused her and also gave threat to stab her. She could not bear this, hence, at 4 p.m., she got an opportunity that no-one was present in the house and poured kerosene on her body and set herself ablaze. No doubt, in this dying declaration (Exh-38), there is no reference that her husband did not take cognizance of the act of his father, but the positive act of accused No. 4 to abuse the deceased and give threat to stab her led her to commit suicide and that amounts to abatement to commit suicide. In respect of this dying declaration, submission is made that leading questions were put to the patient/deceased by the Special Judicial Magistrate PW1 Narayan Bolatkar and extracted her answers. According to learned advocate Shri Chitlange, such dying declaration, therefore, cannot be relied upon. In this

contention, there is no substance. It is not a rule of law that the dying declaration should be recorded in a particular form. The Special Judicial Magistrate admitted that he put questions to the deceased and the answers given by her were recorded by him. In this procedure, to record the dying declaration in question-answer form, no illegality is found committed by him. No doubt, in the first dying declaration, there is no reference about earlier cruelty. However, when the Special Judicial Magistrate put a question to her as to whether she was having any cruelty at her home. IN reply to that question, she disclosed that there was harassment to her from her inlaws and the husband also used to beat her at their instance. However, this answer given by the patient cannot be said to be a false story narrated by her. By the evidence of three relatives, whose evidence is found cogent and consistent, it is established beyond doubt that prior to this incident, deceased was all the while treated with cruelty by her husband and inlaws. On behalf of appellant No. 2, the genuineness or trust worthiness of this dying declaration (Exh-38) is challenged on the ground that accused No. 4 was serving at Kinwat. It is an admitted fact that he was serving at Kinwat, but on that ground alone, directly it cannot be concluded that on the date of incident, he was not present at Nanded or at the house. It is not the case that accused No. 4 is separate from his son.

On behalf of the accused, DW1 Sunderabai, a tenant in the house is examined as defence witness. DW1 Sunderabai claims to be a tenant in the house of the accused. According to her, on the day of incident, she was taking break-fast. She heard shouts of Nirankar Kaur, the deceased. Hence, she came out of her house and saw from outside that Nirankar Kaur had caught fire inside the house. Hence, she rushed to the shop of accused No. 1 and returned back with him and they extinguished the fire and shifted her to the hospital. She did not disclose the time of this incident, but according to her, this incident took place at the time of break-fast. The incident of burn did occur at 4 p.m. The story narrated by her, therefore, does not appear to be genuine. Apart from this fact, she has not uttered a single word about absence of accused No. 4 that day at the house of accused No. 1 at Nanded. This witness also corroborates the story narrated in the written dying declaration as she has stated that she made an inquiry with Nirankar Kaur, the deceased in the hospital and Nirankar Kaur told her that she was mentally disturbed, hence, she set herself on fire. It is not the defence of the accused that there was any mental disorder or deceased was suffering from any mental disease. Hence, the statement made with this defence witness Sunderbai (DW 1) also shows that deceased disclosed that she was mentally disturbed and therefore, she had set herself ablaze. For mental disturbance, the cause disclosed by her at the time of both written dying declarations was the act of accused Nos. 1 and 4. This defence witness who is a tenant in the house, has not claimed that accused No. 1 was staying alone and his family members were not staying with him, nor she states anything about the absence of accused No. 4 at the house that day. On the ground that he was serving at Kinwat, directly his absence at Nanded on the alleged day cannot be presumed. In support of this

defence of alibi, no material could be brought on record on behalf of accused No. 4. Hence, his statement that he was serving at Kinwat does not prove anything, particularly the defence of alibi. 16] Both the dying declarations were found genuine and trustworthy. Those were voluntary statements of the deceased, one was made with Special Judicial Magistrate PW 1 Narayan Bolatkar who is examined by the prosecution and another dying declaration made with Police Head Constable DW2 Shivappa Chandrapatle, who is examined as a defence witness. As regards the event occurred on the day of incident, both the dying declarations (Exh-38 and Exh-69) are consistent. It is not the defence of the accused that deceased was not in a sound state-of-mind to give statement. The evidence of both these witnesses proved the trustworthiness of these dying declarations. Both dying declarations inspire confidence. From those dying declarations coupled with earlier cruelty, it is established by the act and omission of accused Nos. 1 and 4 that they abated the commission of suicide. Hence, no infirmity is found in the judgement of conviction for the offence u/s 306 of IPC.

17. On re-appreciation of evidence of the relatives and both the dying declarations (Exh-38 and Exh-69), the finding recorded by the trial court that deceased was treated with cruelty by the present appellants is found justified. The evidence also establishes that the death of the deceased occurred within one and half year of the marriage. All the while, she was being treated with cruelty. Hence, presumption u/s 113A of the Evidence Act also available in this case to conclude that the appellants/original accused Nos. 1 and 4 abated the commission of suicide. Besides the said presumption, which is rebuttable one, the evidence referred above proved their positive act as well as omission on their part which led the deceased to commit suicide. Hence, the judgement of conviction u/s 306 of IPC is found justified. The appeal preferred by these appellants is found to be an appeal without merit. Hence, same needs to be dismissed confirming the conviction and sentence for the offences u/s 498A and 306 of IPC, recorded by the learned Additional Sessions Judge, Nanded in Sessions Case No. 53/1992.

18. In the result, the appeal preferred by the appellants/original accused Nos. 1 and 4 is dismissed. The judgement of conviction and sentence passed by the IInd Additional Sessions Judge, Nanded against these appellants, in Sessions Case No. 53/1992 is confirmed. The appellants/accused No. and 4 who are on bail are ordered to surrender themselves before the learned Sessions Judge at Nanded within a period of four weeks from the date of this judgement. On their failure to surrender as ordered, learned Sessions Judge is directed to secure their presence by issuing non-bailable warrants and commit them to jail for undergoing the sentence.