

(1992) 02 BOM CK 0064

In the Bombay High Court

Case No : Criminal Appeal No. 410 of 1987

State of Maharashtra

APPELLANT

Vs

Vasant Shankar Mhasane and another

RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1973 (CrPC) — Section 211, 212, 213, 313, 391
Evidence Act, 1872 — Section 113A, 33
Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (1994) 1 BomCR 84 : (1993) CriLJ 1134 : (1992) 1 DMC 424

Hon'ble Judges : S.M. Daud, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : C.M. Kothari, app, for the Appellant; S.S. Gupta and Dhiraj Mirajkar, for the Respondent

Judgement

Saldanha, J.—To what extent would instances of ill-treatment of a wife, repeated over a period of time and of a nature sufficiently serious, justify a conviction under S. 498A of the Indian Penal Code, is the central issue canvassed before us in this appeal. After an amendment of the Indian Penal Code and the introduction of S. 498A with effect from 25-12-1983, cruelty, which is likely to drive a woman to commit suicide or to cause grave injury to life, limb or health (whether mental or physical) of the woman, is an offence inviting a sentence which could extend to 3 years" rigorous imprisonment and a fine. It was at one time contended that the definition of "cruelty" is rather vague and omnibus and that, therefore, S. 498A of the Indian Penal Code is violative of Art. 14 of the Constitution of India inasmuch as it conferred arbitrary powers on the Police as well as on the Courts, but this contention has been repelled by the Delhi High Court in the case of Inder Raj Malik and Others Vs. Sunita Malik, . Undoubtedly, for the invocation of this section, something far more serious than petty matrimonial disputes or rights between husband and wife would be necessary, and it is for this reason that the Legislature has provided that the cruelty must be of such gravity as is likely to

drive the woman to an extremity of a suicide, or that it should be of such intensity as to result in grave injury to life, limb or health.

2. Of some relevance is another aspect of S. 498A of the Indian Penal Code, namely, the issue as to whether instances of cruelty in the not too distant past can be taken into account even though the section came into effect only on 25-12-1983. S. 113A of the Indian Evidence Act, 1872, which is an amendment of the same date, was specifically enacted for the purposes of removing this ambiguity. The statement of objects and reasons clarifies that if an offense under S. 498A of the Indian Penal Code comes to be committed and the facts indicate that the unfortunate incident was a build-up of what had been happening over a period of time prior to 25-12-1983, that those facts could be taken into consideration. Undoubtedly, this gave rise to the argument that it would be tantamount to retrospective application of S. 498A of the Indian Penal Code, which is impermissible in criminal jurisprudence. The legal position has, however, been set at rest through a decision of this High Court in the case of *Vasanta v. State of Maharashtra* 1987 Cri LJ 901, wherein, after an elaborate consideration of the law on the point and after summarizing the ratio laid down by the Supreme Court in a series of cases, it has been conclusively held that the earlier incidents and facts prior to 25-12-1983 are relevant. Exclusion of this material would, in a number of cases, render S. 498A of the Indian Penal Code nugatory because it would deprive the prosecution of an opportunity of establishing the chain of events that culminated in the last unfortunate act. Having cleared the air with regard to the legal position, we proceed with the facts of the present case to the extent they are essential for decision of this appeal.

3. The respondent No. 1 before us is a Sub-Inspector of Police, who, at the material time, was attached to the Yellow Gate Police Station Greater Bombay. His mother was originally cited as accused No. 2. Though the present appeal is directed against an order of acquittal passed in favour of both the accused, original accused No. 2-the mother, having died during the pendency of the appeal and, consequently, the appeal having abated as against her, we are only concerned with accused No. 1, who is the respondent No. 1 before us. He was married to Sadhana on 22-4-1983. Sadhana was aged about 19 years when she got married and had studied up to the 9th standard and was able to read and write Marathi, Hindi and English. The alliance was brought about by one Haibati Ganpat Kamble after the girl Sadhana was brought from her native village Kalambi, Taluka Balapur, District Akola, where her parents reside. The mother of Sadhana, Kaushalyabai (P.W. 17) and her father, Vishwanath Wankhede (P.W. 16), reside at Kalambi; whereas the maternal aunt of the girl, Satyabhama Tayade (P.W. 5), and her husband Sawanji Tayade (P.W. 3), reside at Hariyali Village, Vikhroli, Bombay. The relations are of some consequence because these persons figure in the list of witnesses and there are certain communications that have been addressed to some of these witnesses. Another maternal aunt of the deceased Sadhana by the name of Narmadabai stays at the Nashik Thermal Power Station, Nashik, along with Gajanan, who is her son. There is also a

reference at some places to the daughter of Satyabhama Tayade, by the name of Shobha, a girl who is the cousin of the deceased Sadhana.

4. After the marriage, Sadhana was staying with the two accused in a block at "Aasara" building, Brahminwadi, Kurla, Bombay. Rajendra, the younger a brother of the respondent No. 1 was also staying with them. It appears that for the first two months after the marriage, Sadhana was treated cordially by both the accused, but it is alleged that thereafter Sadhana was subjected to harassment, torture and assault by the two accused, who constantly found fault with her domestic work. In or about July-August, 1983, Sadhana ran out of the matrimonial home without the knowledge of both the accused and came to the house of her aunt Satyabhama Tayade, ostensibly because she had been assaulted by the accused. Satyabhama and Sawanji noticed weal marks on the thigh and back of Sadhana. After about 15 days" stay with the aunt, Sadhana was sent back to the house of the accused on the assurance that she would be treated cordially by them. Around Diwali of 1983, Satyabhama, Kaushalya and Narmadabai went to the house of the accused and Sadhana was taken to her native place at Kalambi. She complained about harassment and torture suffered by her at the hands of the accused. On the return journey, her father Vishwanath Wankhede, on hearing of the harassment and torture to which his daughter had been subjected, broke journey at Nashik and left Sadhana at her maternal aunt"s house there, it was only in February, 1984 that Sadhana was brought back to the house of the accused. Undoubtedly, the parents hoped for improvement but none there was, and as subsequent events disclosed, Sadhana in her desperation was placed in a quizzical situation that started her in the face like Hamlet and queried "to be or not to be". The cruel treatment provided the latter answer.

5. Sadhana wrote two letters to her uncle Sawanji on 5th and 7th April, 1984 (Exhibits 11 and 12) complaining about the harassment meted out to her by the accused and stated that she would commit suicide on 11th April, 1984 if she was not taken away from the house of the accused on 10-4-1984. Thereupon, Sawanji, along with one Digambar, went to the house of the accused on 10-4-1984. While giving a glass of water to Sawanji, Sadhana surreptitiously handed over to him a small chit (Exhibit 13) in which she had written once again that she would commit suicide. Sawanji requested the accused to send Sadhana with him for Ambedkar Jayanti, which fell on 14-4-1984, but the accused refused to allow her to go on that day, though he agreed to sent her 14-4-1984. On 14-4-1984, Sawanji and his daughter Shobha went to the house of the accused to bring Sadhana; whereupon an altercation took place between the accused and Sawanji and Sadhana was not allowed to go. Sawanji thereupon called her father from Kalambi, who, along with Sawanji and Kisan Sankpal, went to the house of the accused to bring Sadhana on 17-4-1984. It is alleged that accused No. 1 demanded Rs. 10,000/- for allowing Sadhana to be taken away and her father came back without Sadhana.

6. On 18-5-1984 at about 2.30 p.m., Satyabhama received a message from accused No. 2 that Sadhana had received burn injuries and that she was admitted in the Sion Hospital. She rushed there along with her daughter Shobha and visited Ward No. 29 where she met Sadhana, who made a statement to them regarding the cause of the injuries, that she had already written two letters which contained everything. Immediately after her admission in the Sion Hospital, Sadhana made a dying declaration before a Police Officer, Sub-Inspector Shaikh of the Kurla Police Station, which was recorded in the presence of Dr. Kumtha. In the dying declaration, Sadhana did not state that she committed suicide, but, on the other hand, mentioned that she received burn injuries while she was cooking food on a kerosene stove. Sadhana died on the same day, i.e., on 18-5-1984 at 4.15 p.m. The two letters referred to by Sadhana in her statement to Satyabhama and Shobha are the letters which were received by Shobha on 19-5-1984 at Vikhroli, Bombay, and Gajanan on 19-5-1984 at Nashik Thermal Station, namely, Exhibits 14 and 28 respectively. The prosecution placed reliance on three more letters dated 24-11-1983, 2-12-1983 and 22-12-1983 (Exhibits 25, 26 and 27 respectively), ostensibly written by Sadhana on these dates, as also a letter 25-1-1984 written by Sadhana from Nashik to the accused at Bombay. This last document (Exhibit 30) is admitted by the accused; whereas the defence has raised a serious challenge with regard to the genuineness of the earlier correspondence. This issue is of crucial importance and we shall deal with that spent of the matter presently.

7. After the death of Sadhana on 18-5-1984, Satyabhama lodged her First Information Report, pursuant to which an offence came to be registered and investigations commenced. The Police having already been apprised of the incident, the defence point out with some justification that this complaint cannot be treated as the First Information Report. Though the defence plea is justified, on the facts of this case, however, that issue is of little consequence.

8. The Panchanama of the scene of offence indicated that there was a Primus Stove, one empty plastic can smelling of kerosene oil in the kitchen along with half-burnt pieces of saree and burnt cloth pieces as also a pot containing half-cooked rice on the stove. At the material time, i.e., at 11.45 a.m. on 18-5-1984, when the incident took place, only the mother, accused No. 2, was in the house with Sadhana; whereas accused No. 1 was on duty. One Kishor Paknikar, who is a next door neighbour, saw Sadhana standing with her clothes on fire. He brought a quit from his house and extinguished the flames, after which he and the mother of the accused No. 1 removed Sadhana to the Sion Hospital. There is a reference made by Sadhana in her last two letters to a suicide note, but even, though the Police searched the residence of the accused, on such note was found. The investigations having been completed, the two accused were charge-sheeted and put on trial. The learned trial Judge, at the end of the trial, acquitted both the accused of the charges under sections 306 and 498A read with S. 34 of the Indian Penal Code. The State of Maharashtra has preferred the present appeal against that order of acquittal.

9. Mr. C. M. Kothari, the learned A.P.P. appearing on behalf of the State, has taken us through the oral deposition as also the dying declaration and the other documentary evidence consisting mainly of the letters attributed to Sadhana which are referred to above. Mr. Kothari prefaced his arguments with the submission that this is a case in which there was material before the Court to indicate that Sadhana was being subjected to ill-treatment which would come within the ambit of the legal definition of "cruelty" and that it extended over a sufficiently long period of time, that it constituted both physical cruelty as also mental cruelty, the sum total of which was that Sadhana was driven to the verge of suicide. For this purpose, Mr. Kothari relied on the evidence of Kaushalyabai and Vishwanath, the parents of Sadhana, who have deposed to the effect that Sadhana repeatedly complained to them about the cruelty meted out to her by the accused. Mr. Kothari also drew our attention to the evidence of Satyabhama, her husband Sawanji, the fact that Sadhana had to virtually flee from the matrimonial home, the fact that she was thereafter required to be taken away for sometime, that she had been persistently mentioning in her letters and in the chit handed over to Sawanji that she would commit suicide. Mr. Kothari submitted that the cumulative effect of this evidence would indicate that Sadhana had ultimately, out of sheer desperation, ended her life and that the two accused in these circumstances were accessories to the crime.

10. As against this position, Mr. Mirajkar, learned counsel appearing on behalf of the respondent No. 1 accused, contended before us that there is a serious dispute with regard to the authorship of the letters in question. He points out that the references made with regard to the demand for Rupees 10,000/- are an obvious and deliberate fabrication and that the material on record does not justify a conclusion that Sadhana committed suicide in the first instance. He relies heavily on the dying declaration which is of some consequence and the relevant parts of which are reproduced below :-

"Today, i.e., on 18-5-1984 at about 11.45 a.m. or so, while I was cooking rice on stove and the stove started glowing, I thought that there is no kerosene in it and hence I tried to pour kerosene by means of a tin, the stove was glow and kerosene fell on me and my saree which was of Gazi Silk caught fire and I ran here and there my mother came by hearing my shouts but she was helpless, as I had completely caught fire.

One of neighbours came there and put gaddi on me by the time I had completely burnt and fallen on ground. My mother-in-law and our neighbours brought me to Sion Hospital, where I was admitted.

I do not suspect any foul play and has no complaints either against my mother-in-law, my husband Vasantrao and brother-in-law Rajendra.

My husband was on duty and my brother-in-law was not at home."

11. Mr. Mirajkar contends that there is nothing on record from which a conclusion that Sadhana committed suicide is warranted and he further points out that

assuming that Sadhana was in a desperate or depressed mood because of acts attributable to the accused, she would most certainly have stated in her dying declaration that she had ended her life because of what they had done. On the other hand, Mr. Kothari insists that one circumstance alone would be clinching for this purpose, namely, that the evidence reveals that when Sadhana was found burning, Kishor Paknikar, the neighbour, does not refer to her having screamed. He submits that if her clothes caught fire by accident, as alleged in the dying declaration, that she would have screamed for help and out of pain and agony, but, on the other hand, if it was a case of self-immolation, her silence is explained. The reaction of a person whose clothes are on fire and who is in a state of shock and panic would depend upon a number of factors and the fact that Sadhana did not scream would not necessarily indicate that this was not a case of accidental death. The evidence on record indicates that Sadhana was obviously in a depressed and desperate condition, and under these circumstances, it would be equally difficult to record a definite conclusion that the burning was as a result of an accident. In the first instance, the can of kerosene oil was found empty which could well mean that all of it had been poured by Sadhana on her clothes. On the other hand, since it appeared that a pot of half-boiled rice was on the stove and Sadhana herself states that the flames flared up when she tried to pour oil into the stove, there is an equal possibility that the burning took place conclusions recorded by the learned trial Judge with regard to the first charge, namely, the one relating to abetment of suicide under S. 306 of the Indian Penal Code are liable to be sustained.

12. We shall now proceed to consider the validity of the challenge by the State to the order of acquittal passed in favour of the respondent-accused on the second charge by the learned trial Judge. Conscious as we are of the position in law that such an order ought not to be lightly interfered with, even if another view is possible, we have examined the record before us in the light of the submissions made by Mr. Gupte, learned counsel who has argued the matter on the subsequent dates of hearing. We prefix this consideration with the observation that after hearing the learned A.P.P. and learned counsel appearing on behalf of the respondent-accused, we were of the view that the order of acquittal was not justified where this head of charge was concerned. We have referred earlier to a series of letters that have been exhibited and which the prosecution has attributed to the deceased Sadhana as also to a note containing a statement that she intends to commit suicide. Except for Exhibit 30, which was written by the deceased Sadhana from Nashik on 25-1-1984, the defence has attacked the veracity of the remaining documents. It was contended, with a degree of seriousness, that all these letters have been produced by different relatives of the deceased Sadhana, all of whom were not well disposed towards the respondent-accused, that these documents have surfaced at a point of time after her death and that, consequently, it would be impossible for a Court to conclusively hold that they were written by Sadhana since she is not available as a witness. It was also contended that these documents ought not to have been

admitted in evidence for want of proper proof in so far as the witnesses who have produced them are themselves not competent to conclusively identify a handwriting before a Court of law.

13. An examination of this correspondence indicates that the deceased Sadhana for several months prior to her death, which covers the period of these letters and the chit, was seriously contemplating suicide and that the reason for this desperate decision was the ill-treatment and cruelty to which she was being subjected to by the accused. Sadhana has consistently stated that she would commit suicide and had even named the dates by which she would do so unless her relatives took her away from that place. The letters have been written to different persons and are mainly on inland forms, which bear the postal-mark, address, sender's name, etc. A visual comparison and a careful consideration of the handwriting on all these documents with the admitted letter (Exhibit 30) left little doubt in our minds that they had been written by Sadhana. We also took cognizance of the circumstance that the family belonged to the lower middle class and that it would be too hazardous to even allege that the relations or for that matter the investigating agency would be capable of fabricating a whole series of documents and even if they were inclined to do so, obtaining the requisite postal endorsements would be a rank impossibility. Faced with this situation, the inevitable question arises as to why the documents had not been forwarded to a handwriting expert for a conclusive opinion. To our mind, this ought to have been done for purposes of completion of the record and in order to be fair to both the parties, we decided to adopt the unusual procedure of recording additional evidence at the hearing of the appeal. The documents were, therefor, sent to the State Examiner of Documents, C.I.D., M.S., Bombay, and on obtaining his opinion, copies of the opinion, reasons, xerox copies of the enlargements, etc., were furnished to both the parties, after which the evidence of Court Witness Bhalchandra Shidagonda Biradar was recorded by us.

14. Learned counsel representing the respondent-accused objected to the recording of additional evidence, principally, on the ground that the prosecution cannot be allowed to fill in a lacuna long after the conclusion of the trial, and secondly, on the ground that the respondent-accused would be prejudiced through such a procedure. We have heard learned counsel on both sides and passed a speaking order at the stage of referring the documents to the expert, but in view of the objections raised, it is essential to deal with them.

15. S. 391 of the Code of Criminal Procedure invests the appellate Court with the discretion of recording additional evidence "if it thinks additional evidence to be necessary" The criterion for determination is the aspect of necessity which presupposes that a fair decision of the appeal would, as of obligation, require such additional evidence. To our mind, the objection raised by the defence that the reception of additional evidence would offend the doctrine of finality is without substance to the extent that the law presupposes a situation where an essential requirement has not been complied with, and obviously instead of

providing for a de novo trial, it permits such a corrective step. On the aspect of the alleged prejudice, the objection is again devoid of merit because the defence is permitted to cross-examine the witnesses as it would have done before the lower Court and we have also taken the necessary precaution of putting the material elicited to the respondent-accused and recorded his further statement under S. 313 of the Code of Criminal Procedure at which time it is open to him to explain circumstances or material appearing against him. The procedure under S. 391 of the Code of Criminal Procedure contemplated a situation where an appeal Court may record additional evidence provided it is satisfied that such evidence is necessary. That these instances would be extremely few and that the necessity will have to be demonstrated is obvious.

16. The expert, Mr. Bhalchandra Biradar, has examined the documents and submitted his opinion which reads as follows :-

"OPINION

The documents of this case have been carefully and thoroughly examined with the aids of scientific equipments.

2. The red enclosed writings marked Q1, Q2, on Exh. 11; Q3, Q4, Q4, Q5, Q6, on Exh. 12; Q7, on Exh. 13; Q8, Q9, Q10, Q11, on Ex. 14; Q12, Q13, on Exh. 25; Q15, Q16, Q17, on Ex. 26; Q18, Q19, Q21, on Ex. 27; Q22, Q23, Q24, on Ex. 28 and A1, A2 on Ex. 30 have all been executed by one and the same person.

3. It has not been possible to express any definite opinion on rest of the items marked Q9A, Q14, and Q25, for want of suitable material for comparison."

He has supported this opinion with detailed reasons which we have taken on record. The oral evidence of this witness has been recorded in open Court and he was thereafter cross-examined in some detail by learned defence counsel. A serious attempt was made to assail the opinion of the expert on the ground that he has not followed an accepted procedure of comparison, such as not having used a protractor for measuring the slant, etc., but on a perusal of his evidence, we find that the defence has been unable to establish that he lacks either the qualifications or the skill that are expected of such an expert. We have ourselves carefully checked each of the heads under which he has based his opinion and, to our mind, there can be no dispute about the correctness thereof. Coupled with other circumstances, we unhesitatingly conclude that the letters in question are attributable to the deceased Sadhana.

17. Mr. Gupte, learned counsel appearing on behalf of the respondent-accused, challenged the acceptance of the evidence relating to statements made by the deceased or for that matter the correspondence referred to by us above on the ground that it is all hearsay and, for this purpose, he drew our attention to a few passages from the Commentary on the Sarkar's Law of Evidence. Relying on the provisions of S. 33 thereof, Mr. Gupte contended that except for the dying declaration, which did not in any way incriminate the respondent-accused, a

Court is precluded from relying on all this material in the absence of the author being available for cross-examination. We do not consider any merit in this contention because witnesses have deposed to what they saw and observed and have referred to the statements made to them personally and not to third parties. Sadhana having died, she is relegated to the category of witnesses who are no longer available and if the correspondence is otherwise proved to have been addressed by her, it is clearly admissible in evidence and would not be hit by the rule of hearsay. We have on record the evidence of Sadhana's mother, Kaushalyabai; her father Vishwanath, her maternal aunt Satyabhama and her husband Sawanji, both from Bombay, as also the maternal aunt Narmadabai and her son Gajanan, both of whom live at Nashik, and Satyabhama's daughter Shobha, the cousin of the deceased Sadhana. These witnesses have very clearly deposed to one fact that appears uninterruptedly in all their statements, namely, that the deceased Sadhana was extremely unhappy over a period of time, that she complained of harassment and cruelty, which was not sporadic but was incessant, and that they had also on some occasions seen injury marks on her person. It is these very witnesses who have the first hand knowledge of the torment that Sadhana went through and of the fact that she was heading for a suicide. Their evidence is more than corroborated by the repeated threats addressed to them and in the chit from Sadhana, indicating that she was being driven to suicide. It was a desperate plea of a tormented girl who was beseeching their help as the only option to her from suicide.

18. In the face of this overwhelming material, Mr. Gupte has submitted that the Court cannot reconcile the dying declaration of Sadhana wherein she has refrained from complaining about or holding the respondent-accused responsible for what happened, with the situation projected in the letters wherein Sadhana states that she is single-mindedly determined to end her life as it was obviously her only escape. Mr. Gupte submits that if this position cannot be reconciled that the Court will have to rely on the fact that in the letter dated 25-1-1984 addressed from Nashik, Sadhana appeared to be in a relaxed and happy mental frame. That letter cannot assist the defence because the subsequent letters from Sadhana in April and May of that very year after her return to the matrimonial home clearly indicate that she was back to the old position. We do not consider anything surprising that Sadhana did not implicate the respondent-accused in her dying declaration, the reason for it being that the evidence indicates that she was virtually terrified of her husband and that he did make full use of his position as a Police Officer vis-a-vis Sadhana and the rest of her relatives. In her precarious condition in the hospital, it is obvious that Sadhana would have preferred to say as little as possible and to adopt the posture of a submissive pious Hindu wife and accept her martyrdom with a degree of helplessness rather than to have spoken out. On the contrary, we would prefer to attach greater importance to the bunch of documents written over a period of time when the girl was in full possession of her mental faculty and when she communicated her feelings with a degree of frankness, though clandestinely, to her relatives. In

these circumstances, we do not consider the dying declaration to be destructive of the other evidence. As indicated earlier, though it is difficult to hold that Sadhana had committed suicide, it can be safely established that she was heading for it when she sustained the burns on 18-5-1984.

19. The last aspect that falls for consideration is the question as to whether the material before us establishes the gravamen of a charge under S. 498A of the Indian Penal Code in its entirety. Mr. Gupte submits that instances of matrimonial disharmony or temperamental incompatibility are numerous and that there is nothing to rule out these being the origin of Sadhana's complaint. He states that it is the first requirement in civil law where he quotes a parallel of a matrimonial suit, that specific instances of cruelty must be established and not a generalized charge that a course of conduct led to physical or mental suffering. He, therefore, submits that there is a degree of vagueness with regard to the allegations against the respondent-accused and that he would be entitled to the benefit of doubt.

20. The evidence indicates that Sadhana had been quite specific about the fact that she was not treated with a degree of kindness and consideration by the respondent-accused. It was never her complaint that she did not like the respondent-accused as a person or that they did not agree with each other. She has specifically stated that she was harassed and tortured, that she physically assaulted, that she was virtually bullied, that as a cumulative effect of these acts whereby she was never appreciated, never loved or allowed to be happy; that she was suffering both physically and mentally and that this pain was continuous and that she was left with little option except to commit suicide, if she was not removed from this situation. These factors, in our considered judgment, would clearly constitute cruelty within the ambit of S. 498A of the Indian Penal Code. The acts of the accused constituted cruelty as defined in the section in so far as they caused serious mental injury to the deceased Sadhana and were impelling her to commit suicide.

21. Mr. Gupte has canvassed a point of law, namely, that the charge framed against the respondent-accused is defective. Relying on a Division Bench decision of this Court in Confirmation case No. 4 of 1986 with Criminal Appeal No. 288 of 1986 Reported in 1987 Cri LR 164. The State of Maharashtra v. Ashok Chotelal Shukla, Mr. Gupte has submitted that it is a requirement of law that the charge must unambiguously set out the specific acts of cruelty so that the accused can meet these allegations. Relying on the provisions of S. 213 of the Code of Criminal Procedure, the Division Bench in that appeal held that the charge was vague and did not convey to the accused the specific allegations made against him and the particular offences which he was called upon to defend. We have no quarrel with this proposition with which we are in complete agreement. We have, therefore, examined the charge framed in the present case which, to our mind, is in complete conformity with the provisions of Sections 211-213 of the Code of Criminal Procedure. It is undisputed that in a criminal trial, the charge must be

clear, specific and it must also set out the provisions of law that have been infringed. The charge in this case meets with those requirements.

22. Though an Appeal Court would not lightly interfere with an order of acquittal, it is well crystallized law that where the trial Court has been in obvious error in arriving at a conclusion, that the appeal Court, as of necessity, must interfere with that verdict. Where the material before the appeal Court unequivocally indicates that conclusions of the trial Court are inconceivable and cannot pass the test of legal scrutiny, such a case presents adequate justification for interference, in fact, a reversal of the verdict is essential to prevent a miscarriage of justice. This duty cast upon the Court becomes all the more sacrosanct while dealing with cases of the present type and, in particular, ones under S. 498A of the Indian Penal code involving a horrifying degree of cruelty on a wife. We, accordingly, allow the appeal as far as the charge under S. 498A of the Indian Penal Code is concerned and set aside the order of acquittal on this count.

23. We have heard learned counsel on the question of sentence. Mr. Kothari insists on a deterrent sentence on the ground that the respondent-accused, who is a Police Officer, has indulged in conduct that is unpardonable. He submits that this is virtually a crime against society and that the maximum sentence prescribed under S. 498A of the Indian Penal Code be awarded. Mr. Mirajkar, on the other hand, has contended that there are several grounds on which this Court ought not to impose a jail sentence against the responded-accused and he has summarized them as follows :-

Firstly, he has contended that the consideration with regard to the conviction under S. 498A of the Indian Penal Code should be independent and de hors of the other charge, namely, the one under S. 306 of the Indian Penal Code in so far as both the trial Court and this Court have exonerated the respondent-accused of this charge. He has advanced a strong plea that there should be no carry over of any prejudice with regard to the circumstances under which Sadhana met with her end. We agree with this submission that is being advanced, but it is necessary to clarify that we have very clearly set out in this judgment that the material before us may not justify a conclusive finding with regard to the allegation that Sadhana committed suicide, but, at the same time, we have not accepted that this is definitely a case of accidental death. Regardless of this fact, however, the conviction under S. 498A of the Indian Penal Code does require independent consideration, which is precisely what we propose to do.

24. Mr. Mirajkar has thereafter pointed out that the respondent-accused before us is neither a habitual criminal nor does he have any criminal antecedents. This is hardly an argument available while dealing with matrimonial cruelty because, undoubtedly, in most cases, the husband will not have a criminal record. The more important question is the track record of the marriage which in this case is anything but good this happened to be the respondent-accused's third marriage. He submits that at the highest what is alleged against the respondent-accused is in relation to his behaviour pertaining to a purely domestic and personal issue,

namely, the relationship between him and his late wife. Mr. Mirajkar points out that the inevitable consequence of this conviction would, in all probability, result in a total loss of the respondent-accused's job because he was employed as a member of the police Force and the necessary fall out of this situation would be a loss of livelihood on the one hand and the bleak prospect of finding it extremely difficult to be re-employed on the other. As a corollary of this submission, Mr. Mirajkar also points out that the incident had taken place 8 years back, i.e., in May, 1984, and that the respondent-accused was for sometime receiving only subsistence allowance and was thereafter dismissed from service. What he lays emphasis on is the basic fact that the respondent-accused has been undergoing the trauma of this litigation, namely a criminal prosecution for the last 8 years on the one hand and on the other that he has lost his remuneration for this long period of time. It is true that the unfortunate length of this litigation is not something for which the respondent-accused is at all responsible. Mr. Mirajkar also drew considerable support from some of the observations made by a Division Bench of this Court at an earlier point of this litigation when the question of suspension of the present respondent-accused came up for consideration. The Division Bench did at that stage categorise the appeal relating to the suspension as thoroughly frivolous, but the Division Bench obviously was not dealing with the merits of the criminal appeal that has been decided by us.

25. Cumulatively, Mr. Mirajkar contends that there are compelling reasons in support of his submission that the respondent-accused should not be inflicted with a jail sentence. He relies on the concept that even as far as the theory of sentencing is concerned that the reformatory aspect should be predominant as against the deterrent one. Even as regards this last aspect, he contends that even if the respondent-accused is to be punished, it should be done in such a way that he will not be a loss to society by relegation to prison in the company of hardened criminals; whereas he should be given a chance regardless of what has happened, to reform himself. To this extent, Mr. Mirajkar has relied on a passage from Russell's "The Magistrate" at page 104 wherein the object of affording an accused person the benefit of probation has been highlighted :

"(1) that many offenders are not expert or dangerous criminals but are weak characters who have surrendered to temptation or through misfortune or improvidence, have been brought within the operations of the police and the Courts;

(2) in assigning this type of offender to the care of a probation officer, the Court not only saves him from the stigma and possible contamination of persons of prison, but also encourages his own sense of responsibility for his future : if he co-operates with the probation officer, he will be able to continue his normal life and his record will still be clean;

(3) such a practice not only assists the offender and has a social value to the community, but, by relieving the prisons of large numbers of first offenders, short-term prisoners, and other classes of quasi-criminal offenders, it results in

economy and allows the prison service to apply themselves to their true function - that of segregation or providing suitable treatment for the vicious and dangerous criminal".

26. Apart from this, Mr. Mirajkar has also drawn our attention to a reference made to the case of *State ex rel, Gidwell v. Skinner*, 238 NW 149 at p. 152 : 59 SD 68, as follows :-

"Law permitting probation, parole indeterminate sentence, suspension of sentence, etc. are manifestations of a comparatively modern shift in criminological theory; the trend being away from the rule of so-called strict law, which demanded a fixed and positive penalty for every crime and the infliction thereof in every case to which it might be applicable, and toward the theory that some degree of discretion should be vested in a Judge, probation officer, or other board or body, permitting an adjustment of the penalty to the character of the particular criminal and circumstances of his individual case. This latter method has come to be known to criminologists as individualization of punishment and its real foundation lies, not in the desire to deal kindly or charitably with an individual defendant, not in humanitarianism or sympathy, but primarily in the belief that the welfare of the state and of organized society will be better served by adjusting the treatment of the criminal to his character and circumstances of his crime rather than to the mere nature and classification of the crime itself. Benefit to the individual criminal is incidental. It is a mere means to an end. The chief end is the welfare of the society. It is conceived that in many cases, particularly with first offenders, by such measures the incipient development of a criminal character may be aborted and society thereby relieved, that his reformation may be accomplished and he may become a useful member of society rather than a perpetual menace, burden and expense to society as a chronic criminal offender".

27. We have carefully taken note of these factors, but it is equally essential, to our mind, to balance the objectives behind the induction of S. 498A into the Indian Penal Code and apply those objectives in the light of the present record. The cruelty that is attributable to the present respondent-accused has taken place over a period of time. It was persistent and it was sufficiently grave as to virtually drive the deceased Sadhana to a point of desperation whereby she was left with no option except to contemplate suicide. We have also held that the cruelty was grave enough to have caused serious mental injury to the deceased Sadhana. The respondent-accused is an educated person and in the circumstances of this case, it would be improper, in our judgment, to impart any degree of undue leniency on the facts of the present record. The circumstances and the submissions advanced by Mr. Mirajkar have, undoubtedly, weighed with us and we have taken all of them into account.

28. Section 498A has been engrafted on to the Indian Penal Code in a situation where the national conscience was disturbed by the intensity and volume of instances of wife beating, bride burning and cruelty of different degrees and

variations directed against women that necessitated a law to punish such acts. Whereas religion and custom prescribed marriage to be a bond founded on love and the concept of sharing, local experience indicated, in some strata of society particularly, that it had been transformed into a license to ill-treat. Law as an instrument of fostering social order is also required to be used as a channel for doing good and conversely for curbing evil. The essence of prescribing a punishment for matrimonial cruelty in a Penal Code will be frustrated if in proven instances of cruelty a Court were to bend to the multifarious pleas for leniency. In our view, a proper and meaningful application of the law will not permit misguided clemency. This does not mean that our indignation, howsoever righteous, precludes us from taking cognizance of factors which do require consideration, but we refuse to be unduly swayed by them.

29. While considering as to what, according to our judgment, would constitute a fair and adequate sentence on the facts of this case, to our minds having regard to the seriousness of the matter, the position in which the respondent-accused is placed, his status in life and the manner in which he had treated the deceased wife, a sentence of 2 years" rigorous imprisonment would meet the ends of justice. Apart from this sentence, in our view, it would also be essential to impose a fine in the sum of Rs. 10,000/- on the respondent-accused, which amount, if paid, shall be made over to the next-of-kin of the deceased Sadhana. We do not for a moment share the view that money can compensate for what has happened, but we note that there are financial overtones to the genesis of the harassment and to this extent the imposition of fine is an essential corrective.

30. After the hearing was concluded and the judgment was pronounced at the stage of applying for leave to appeal to the Supreme Court, Mr. Mirajkar contended that the filing of this appeal was time-barred and that no application for condonation of delay has been preferred by the State. We have gone through the earlier orders passed in this proceeding and we find that the earlier Division Bench on a consideration of the material placed before it had granted to the State leave to prefer an appeal and, furthermore, that the appeal thereafter was admitted. The condonation of delay is a discretionary order and certainly cannot come in the way of the administration of justice, neither is it an overriding or insurmountable obstacle. We consider that the earlier orders are quite explicit and that even though there is no formal orders specifying that the delay was condoned that it was implicit in the earlier order. On this ground, the maintainability of this appeal cannot be questioned and that too virtually after it has been decided. It is significant to record that the respondent-accused had not canvassed this point at any earlier stage.

31. In the result, the appeal partially succeeds. The acquittal of the respondent-accused u/s 306 of the Indian Penal Code stands confirmed. The respondent-accused is convicted for the offence u/s 498A of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for 2 (two) years" and to pay a fine in the sum of Rs. 10,000/-, in default, to undergo simple imprisonment for 6

(six) months. The fine amount, if recovered, to be paid over in its entirety to the next-of-kin of the deceased Sadhana which, undoubtedly, excludes the present respondent-accused.

32. At this stage, Mr. Mirajkar prays that the operation of this judgment be stayed for a period of 8 (eight) weeks. The application is granted. On the expiry of the period of 8 weeks, the bail bonds of the respondent-accused to stand cancelled and the respondent-accused to surrender to his bail.

33. Mr. Mirajkar also applies for a certificate praying that this Court should grant leave to appeal to the Supreme Court in view of the fact that the present case involves determination of several points of law of considerable public importance. We have heard Mr. Mirajkar, but we do not consider this to be a fit case in which such leave should be granted. The application is accordingly rejected.

34. Order accordingly