

(2001) 06 BOM CK 0082
In the Bombay High Court
Case No : Criminal Appeal No. 193 of 1986

The State of Maharashtra

APPELLANT

Vs

Ganpat Dinkar Shinde and Another

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Constitution of India, 1950 — Article 20, 20(1), 6
Criminal Procedure Code, 1973 (CrPC) — Section 378(1), 386, 397(1)
Dowry Prohibition Act, 1961 — Section 2
Penal Code, 1860 (IPC) — Section 10, 113, 34

Citation : (2001) ALLMR(Cri) 1359 : (2002) BomCR(Cri) 313 : (2001) 4 BOMLR 258 : (2001) 2 DMC 456 : (2001) 4 MhLj 184

Hon'ble Judges : T.K. Chandrashekhara Das, J;Pratibha Upasani, J

Bench : Division Bench

Advocate : A.S. Gadkari, app, for the Appellant; Usha Andewar, for the Respondent

Final Decision : Partly Allowed

Judgement

Pratibha Upasani. J.

1. This Criminal Appeal is filed by the Appellant, State of Maharashtra, being aggrieved by the Judgment and Order, dated 15th October. 1985 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 71 of 1985. By the impugned Judgment and order, the learned Additional Sessions Judge, Ahmednagar, acquitted both the Respondents/original accused Nos. 1 and 2 for the offence punishable u/s 302 read with Section 34 of the Indian Penal Code. He also acquitted Respondent No. 1 /original accused No. 1 for the offence punishable u/s 498A of the Indian Penal Code.

2. In short, the prosecution story can be stated as follows :

Deceased Sunita was the wife of Respondent No.1 Ganpat Dinkar Shinde. Their marriage took place on 12th June, 1984. Respondent No.2 Chagabai Dagadu Shinde was the aunt (kaki) of Respondent No.1. Her house was adjacent to the

house of Respondent No. 1. Respondent No.2 was a widow. The prosecution case is that there was illicit relationship between both the accused. It is also further alleged by the prosecution that accused No. 1 Ganpat was harassing wife Sunita for dowry. After Ganpat's marriage with Sunita, Sunita was brought to her parent's house for staying there for the month of Ashad. She stayed there for about 30 to 40 days, and was sent back to her matrimonial home. After Dasara festival, she was again brought to her parent's place. The prosecution story further is that it was at this time that deceased Sunita started complaining about her miseries. Sunita's complaint was that there was illicit relationship between her husband Ganpat and accused No.2 Chagabai. It was also her complaint that accused No. 1 Ganpat was demanding unpaid cash amount of dowry, as well as 20 grams of gold. Father of Sunita. Madan (P.W.3), so also, her uncle Suryakant (P.W.2) assured Sunita that they would pay to accused No. 1 the remaining amount of dowry, so also, 20 grams of gold, as agreed. They also advised her to bear with the situation, and lead a happy matrimonial life. Accordingly, Sunita was reached back to her matrimonial home.

The prosecution story further goes that on 10th December, 1984 i.e. about six months after Sunita's marriage with Ganpat, at about 6.00 a.m., Sunita's uncle Suryakant (P.W.2) learnt from one Baliram Dhavale (not examined) that Sunita's father-in-law had come to village Boregaon, and had left message with his daughter Dropada Sandipan about Sunita lying in serious condition. The distance between Boregaon where Dropada, so also, parents of deceased Sunita were residing, and Dhondpargaon, where the matrimonial home of Sunita was situated, was about 40 kilometers. When Suryakant learnt this news about Sunita, to get more details, he rushed to the house of Dropada, but she was unable to furnish any details. She simply told Suryakant that her father (father-in-law of deceased Sunita) had just left her house. Suryakant then immediately picked up his motorbike and went towards Karmada-Boregaon Road. He confronted Sunita's father-in-law and questioned him as to why he did not come to Suryakant's house to inform about the condition of Sunita. He also questioned father-in-law of Sunita as to whether Sunita was killed. Suryakant, however, was told by father-in-law of Sunita that Sunita died, as she was having pain in her stomach.

Suryakant then went to Karmada, and conveyed the information to his brother Madan (P.W.3). Thereafter, a truck was hired and Suryakant (uncle of Sunita), Madan (father of Sunita) and other family members of Sunita, along with sixty to seventy persons from village Boregaon went to Dhondpargaon. There, in her matrimonial house, they saw Sunita's dead body, which was lying with her tongue protruding. Swelling was noticed on her neck, so also, there were blackish and bluish marks on her neck. Seeing this condition of Sunita, Suryakant and Madan became suspicious about the cause of her death. The Police Patil Ramchandra Shinde (P.W.1) of Village Dhondpargaon was immediately summoned. The Police Patil came there and saw the condition of the dead body of Sunita. Parents of Sunita made grievance before him and

expressed doubt about the cause of death of Sunita. The Police Patil Ramchandra Shinde (P.W.1) prepared his report (Exhibit 9) and asked the Kotwal of the village to hand it over to P.S.I. Jamkhed. Police Head Constable Nivrutti Kuthe (P.W.6) received the said report (Exhibit 9). He then went to village Dhondpargaon in a police jeep along with a police constable. After arriving at the scene, Kuthe drew the inquest panchnama and directed the police constable Alhat to send the dead body of Sunita to the Medical Officer, Primary Health Centre, Jamkhed, for post-mortem examination. Thereafter, panchnama of scene of offence was drawn. On 11th December, 1984, investigation was handed over by Kuthe (P.W.6) to P.S.I. Khilari (P.W.7), who recorded the statements of witnesses including that of the mother of accused No.1, Janabai and statements of several other witnesses. After getting clarification from Dr. Subhash Goyal, Medical Officer (P.W.4), and after post-mortem report was received, in which it was revealed that the cause of death of Sunita was asphyxia due to strangulation, as per the prosecution, needle of suspension was pointed towards Ganpat and Chagabai, and it was suspected that they were found to be involved in murdering Sunita. Accordingly, Khilari filed his complaint on behalf of the State, on the basis of which, offence at crime No.93/84 came to be registered on 15th December, 1984 against both the accused u/s 302 r/w Section 34 of the Indian Penal Code. On the same day statements of Suryakant Kisan Dhavale and Kisan Ramchandra Dhavale also were recorded. Statements of other witnesses also were recorded between 16th December, 1984 to 10th May, 1985. Routine investigation followed and charge-sheet came to be filed against the accused persons on 26th April, 1985 in the Court of the Judicial Magistrate, First Class, Jamkhed, who by his order dated 18th May, 1985, committed the accused persons to the Court of Sessions, Ahmednagar to stand their trial. In the Court of Sessions, Ahmednagar, charge u/s 302 read with Section 34 of the Indian Penal Code against both the accused, so also, charge u/s 498A of the Indian Penal Code against accused No.1 was framed. Both the accused, however, pleaded not guilty, and claimed to be tried. Their defence was that of denial.

3. The learned Additional Sessions Judge, after recording evidence and after hearing both the sides, came to the conclusion that the prosecution had failed to prove that death of Sunita Ganpat Shinde was homicidal. The learned Additional Sessions Judge also came to the conclusion that the prosecution had failed to prove that the accused persons, in furtherance of their common intention, committed murder of Sunita by intentionally or knowingly causing her death by pressing her throat. The learned Additional Sessions Judge also gave a finding that the prosecution had failed to prove that accused No. 1 namely, husband of deceased Sunita, had ill-treated his wife. Thus, giving his finding in the negative on all the points, he acquitted both the accused of the charges which were framed against them. Being aggrieved, the State has now approached this Court by way of filing the present Criminal Appeal u/s 378(1) of the Code of Criminal Procedure, 1973.

4. We have heard Mr. A. S. Gadkari, the learned A. P. P. appearing for the

Appellant/State, so also. Ms Andewar, the learned Advocate (appointed) appearing for the Respondents/original accused. We have also gone through the entire evidence on record, so also the impugned Judgment and Order passed by the Additional Sessions Judge, Ahmednagar, and we are of the considered opinion that this Appeal will have to be partly allowed with respect of finding of acquittal u/s 498A of the Indian Penal Code, recorded against accused No. 1 Ganpat. and the order of the learned Additional Sessions Judge, Ahmednagar, will have to be Interfered with to that extent, as the said finding of acquittal has been given by the Trial Court, without discussing the evidence on this aspect.

5. The prosecution, to prove its case, has examined as many as seven witnesses. P.W.1 Ramchandra Shinde is the Police Patil of Village Dhondpargaon, who came to the scene of offence, immediately after getting the message from the village Kotwal. He stated in his deposition that he rushed to the house of accused No. 1 and saw the dead body of Sunita. He also noticed a blackish spot on the left side of her neck, so also, swelling on her face. After examining Sunita's dead body, he send his report (Exhibit 9) to the police, through Kotwal of the Village Dhondpargaon. He also stated in his deposition that as soon as Sunita's parents and the Villagers appeared, the parents of Sunita made grievance by raising suspicion about Sunita's death.

6. P.W.2 Suryakant Dhavale was the uncle of deceased Sunita. He stated in his deposition that Sunita's marriage with accused No. 1 Ganpat took place on 12th June, 1984. He further stated that the marriage negotiations ended with an agreement that Sunita's father (Madan-P.W.3) would give Rs. 12,500/- in cash, 20 grams of gold and also would bear marriage expenses of both the sides. He further stated that when Sunita for the first time, came to her parent's place, in the month of Ashad, she did not make any complaint, however, when she was brought again to her parent's house after Dasara festival, and before Diwali, Sunita complained before him that her husband i.e. accused No.1 Ganpat was having illicit relationship with accused No.2 Chagabai. He further stated that Sunita also told him that accused No.1 asked her to bring 20 grams of gold and remaining cash amount of dowry. He further deposed that Sunita also complained that she was receiving ill-treatment from her husband and that, accused No.2 had issued a threat to kill her (Sunita), in case, she disclosed about illicit relationship between accused No.1 and accused No.2. P.W.2 Suryakant further deposed that he asked Sunita to bear with the time, and to lead happy married life with her husband.

Thereafter, Suryakant deposed about the happenings that took place on the day of the incident i.e. 10th December, 1984. He stated that on 10th December, 1984, when he was going to attend nature's call, Baliram Dhavale met him and told him about the arrival of Sunita's father-in-law and also about his going back, leaving a message that Sunita was in a serious condition. Suryakant then immediately took his motorcycle and went to the house of Dropada (sister of accused No. 1) to enquire for more details. Dropada was, however, unable to

give full details. Suryakant therefore left her house. He found Sunita's father-in-law on the Karmada-Boregaon Road. He put his motorcycle before him and asked him as to why he did not come to their house to inform about the serious condition of Sunita. He also asked him as to whether he had killed Sunita. Suryakant deposed that father-in-law of Sunita was seen nonplused. When some more questions were put by Suryakant, father-in-law of Sunita told him that Sunita died as she was having pain in her stomach and she was vomiting blood. Suryakant then went to Karmada, and informed the incident to his brother Madan. A truck was then hired and all of them, i.e. Suryakant, Madan, Sunita's mother and 70 to 80 persons from Village Boregaon went to Dhondpargaon in that truck. They all went to Sunita's house. P.W.2 Suryakant deposed that he saw Sunita, lying dead. Her tongue was seen protruding and there was swelling on the neck. There was a blackish and bluish coloured spot on the left side of her neck, and wheel marks were also noticed on her neck, Suryakant stated that after seeing her condition, he felt that Sunita's death was not a natural one. He called the village Police Patil and made oral complaint before him.

In the cross-examination also, this witness has reiterated what he has stated in his examination-in-chief. He stated that Sunita had made a grievance to him on two counts, i.e. about illicit relationship between accused No. 1 and accused No.2, and about the demand of dowry made by accused No. 1 and the consequential ill-treatment meted out to her from accused No.1.

7. Sunita's father Madan is examined as P.W.3. He stated in his deposition that he had agreed to pay dowry in cash, amounting to Rs. 12,500/- and 30 grams of gold, one wrist watch and the bear the entire expenses of the marriage. He stated that a sum of Rs. 9,600/- in cash was paid to accused No.1, and the balance amount of Rs. 2,900/- and 20 grams of gold was to be given subsequently. He further stated that when Sunita came to her parent's place for the first time, in the month of Ashad, she did not make any complaint, however, when she was brought back after Dasara festival, she started narrating her miseries. Madan deposed that Sunita told him that her husband was having illicit relationship with accused No.2 and that, he was demanding the remaining cash amount of dowry and gold. On this, Madan assured his daughter that he would come with the balance amount of dowry and gold along with five to six persons and would talk to her husband. Thereafter, he reached her back to her matrimonial home,

Madan further narrated as to how he learnt about the tragic death of Sunita from his brother Suryakant (P.W.2) and how after hiring a truck. (sic) of them went to Dhondpargaon and saw the dead body of Sunita.

In the cross-examination also, there is no dent to Madan's deposition though attempts were made by the Advocates to assail his testimony. This attempt of defence, however has totally failed.

8. P.W.4 was Dr. Subhash Goyal, who conducted post-mortem examination of the

dead-body of Sunita on 11th December, 1985. In his deposition, he stated that he noticed following external injuries on her dead-body.

- "1. Abrasion on left submandibular region 1" x 1/4" skin deep oblique.
2. Multiple blisters on anterior of neck.
3. Abrasion on right tibia middle 1/3 oval shape 1/2" x 3/4" anteriorly."

Dr. Goyal stated that injury No.1 was caused by hard and blunt object. It was grievous in nature. Injury No.3 was also caused by hard and blunt object, however, it was simple in nature. The age of injuries was within 48 to 72 hours. Dr. Goyal further stated that injury No. 1 might be possible by pressure with the help of hard and blunt substance. After being shown the rope (article 6), he stated that injury No. 1 was possible by use of article 6 also. He stated that cause of death of Sunita was asphyxia due to strangulation, and that, injury No.1 mentioned by him above, was sufficient to cause death of Sunita in the ordinary course of nature.

9. P.W.5 Janabai Shinde Was the mother -in-law of deceased Sunita, and mother of accused No. 1 Ganpat. She naturally turned hostile and her deposition was of no use to the prosecution except that, some omissions and contradictions were brought on record by the A. P. P. when he put questions to her in the nature of cross-examination, after seeking permission to that effect from the Court. From her deposition, what one gathers is that Sunita was in her matrimonial house on that fateful night. Janabai stated that she had gone out at about 1.30 a.m. to answer the call of nature, and when she came back, she saw the door of Sunita's room closed, and that, when she called out her name, there was no response, and hence, with the help of her brother's son Pinu, the door was opened and when they entered the room, they found Sunita with a rope around her neck. There are contradictions which have been brought on record. It appears that the rope was produced by Janabai.

10. P.W.6 Nivrutti Kuthe was attached at the relevant time to Jamkhed Police Station. He stated in his deposition that the 10th December, 1984, at about 3.00 p.m., report (Exhibit 9) of Police Patil of Dhondpargaon was produced before him, on the basis of which, crime came to be registered. He then went to Dhondpargaon in the police jeep along with police constable Alhat. He went to the place where dead body of Sunita was lying, drew inquest panchnama and sent the dead-body to the Medical Officer for postmortem. He also drew scene of offence panchnama, and thereafter, handed over investigation to P.S.I. Khilari.

11. P.S.I. Khilari (P.W.7), in his deposition, narrated the entire chain of evidence, and the steps in the investigation taken by him. The omissions and contradictions in the deposition of Janabai (P.W.5) were proved through this witness.

12. This, then is the prosecution evidence. The learned Additional Sessions Judge, Ahmednagar, however, came to the conclusion that though the death of Sunita was due to strangulation, it could not be said that she was murdered

either by accused No.1 or 2, or by both of them, having common intention to murder her. According to him, there was no iota of evidence to show that they pressed Sunita's neck with the help of the rope article 6. He also disbelieved the production of rope by Janabai from her house, as there was no panchnama to that effect. He also observed that though the statements of persons residing in the vicinity of the scene of offence were recorded, none of them was examined to support the prosecution case, and that, in the absence of any cogent and convincing evidence on record, the possibility of Sunita's committing suicide could not be ruled out. He also found fault with the late recording of statements of Suryakant, Madan and other witnesses.

13. Mr. A. S. Gadkari, the learned A.P.P., appearing for the State, vehemently argued that there is nothing to disbelieve the evidence of the P.W.2 Suryakant and P.W.3 Madan about the demand of the dowry made by accused No. 1 and the complaint made to both of them by Sunita prior to her death, when Sunita had gone to her parent's house after Dasara. He highlighted the evidence of both these witnesses on this aspect, pointing that Sunita had made a grievance about the ill-treatment meted out to her at the hands of accused No.1.

14. Mr. Andewar, the learned Advocate (appointed), appearing for the Respondents, on the other hand, argued that in an appeal against acquittal. the scope of powers of High Court in reversing the said finding of acquittal is limited, and that, this Court should not disturb the finding of acquittal on the ground that if this Court was in the position of the Trial Court, it could have taken another view and had convicted the accused. To substantiate this argument, she relied upon *Antar Singh v. State of M.P.*, and also, *Ramesh B. Doshi v. State of Gujarat*. She argued that when clear, cogent and convincing reasons were given by the Trial Court for disbelieving the evidence of prosecution witnesses, interference of this Court is not justified.

15. There is no quarrel with the propositions of law advanced by Ms Andewar, who is appearing for the Respondents/original accused. We are conscious that this is an appeal filed by the State against the acquittal of Respondents and we are also conscious of the scope of Section 386 and 397(1) of the Code of Criminal Procedure, 1973. However, after going through the depositions of all the prosecution witnesses, and the impugned Judgment of the Trial Court, we find that the Trial Court has not at all dealt with the charge framed u/s 498A of the Indian Penal Code, against accused No.1. As far as charge of Section 302 read with Section 34 of the Indian Penal Code is concerned, we feel that acquittal of the Respondents on that count was proper, as there was no material to convict the Respondents for the charge of murder, and the Respondents were rightly acquitted for the offence punishable u/s 302 read with Section 34 of the Indian Penal Code. However, as far as acquittal of accused No.1 for the offence punishable u/s 498A of the Indian Penal Code is concerned, we are constrained to say that the depositions of P.W.2 and P.W.3, which are so cogent, convincing and graphic, have not been dealt with at all by the Trial Judge on this aspect.

P.W.2 Suryakant and P.W.3 Madan are the uncle and father respectively of the deceased Sunita. Both of them have stated that during the talks of negotiations of the marriage of Sunita with accused No.1 Ganpat, it was agreed that father of Sunita would pay dowry in cash amounting to Rs. 12,500/-, 30 grams of gold, a wrist watch and that, he would bear the entire marriage expenses. It was further stated by both of them that some amount of dowry had in fact remained unpaid. When Sunita came to her parent's house, after Dasara, she narrated to her uncle and to her father that accused No.1 demanded that Sunita should bring the remaining unpaid cash amount of dowry and 20 grams of gold, and that on this issue, he was ill-treating her. She also told them that her husband was having illicit relationship with accused No.2 Chagabai, who was residing in the adjacent room. She told them that she was very unhappy because of both these things. She was somehow assured by her father that for the time being, she should go back to her husband, that he would come with the remaining amount of the unpaid dowry and 20 grams of gold along with five to six persons to her matrimonial home, and would talk to accused No.1.

16. Thus, there is a convincing account given by both P.W.2 and P.W.3 in their depositions about the miseries narrated by Sunita to them. There is no dent to their testimony in the cross-examination at all, and we find no reason to disbelieve their testimony. It appears that Sunita committed suicide, as she was extremely unhappy on account of both these things, and she was driven to commit suicide because of demand of dowry made by accused No. 1. She was being ill-treated as she had not brought the unpaid amount of remaining dowry and 20 grams of gold. As she was convinced that there was illicit relationship between her husband and accused No.2, she was distressed. Thus, both clauses (a) and (b) to Explanation to Section 498A of the Indian Penal Code are fully complied with.

17. Section 498A of the Indian Penal Code defines what type of conduct amounts to cruelty. It states as follows :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, "cruelty" means -

(a) 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; or

(b) harassment of the woman where such harassment is with a view to coercing 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."

As far as clause (a) to the Explanation is concerned, the fact of illicit relationship between accused No.1 and accused No.2 was of such a nature, which was likely to drive her to commit suicide. As far as clause (b) is concerned, Sunita was being harassed with a view to coerce her to meet the unlawful demand of dowry made by accused No. 1. Thus, all the ingredients of Section 498A of the Indian Penal Code are fully covered. Though the accused cannot be convicted for murder of Sunita, the conduct of accused No.1 in harassing Sunita, demanding dowry, falls within clause (b) and his illicit relationship with accused No.2 Chagabai also was of such a grave nature as to drive any married woman to commit suicide. No married woman can bear illicit relationship of her husband with another woman.

18. The Trial Court, however, has dealt very cursorily with charge of 498-A of the Indian Penal Code framed against accused No. 1. In fact, he has observed in para 15 of his Judgment that the possibility of Sunita's committing suicide cannot be ruled out and has left the matter only at that point without taking into account the ingredients of Section 498A of the Indian Penal Code, which was brought on the Statute by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). This was for the first time that concept of mental cruelty was given recognition in the criminal jurisprudence of our country. If the conduct of the husband in having illicit relationship with another woman is not cruelty then what else can be called cruelty? if the husband coerces his wife to bring the unpaid amount of cash promised by her father and 20 grams of gold, as the dowry and ill-treats her for not bringing it, this conduct has to be called cruelty as envisaged by Section 498A of the Indian Penal Code. Section 498A has been inserted in the Indian Penal Code, precisely to take cognizance of this type of cruelty and to bring to book those who practise such cruelty.

19. In fact, after going through the evidence of P.W.2 Suryakant and P.W.3 Madan, and the medical evidence, we find that there is material on record which would have been sufficient to convict accused No. 1 for dowry death i.e. Section 304B of the Indian Penal Code, but we cannot do so. The reason is that Section 304B (Dowry Death) was inserted in the Indian Penal Code by Act 43 of 1986, Section 10 w.e.f. 19th November, 1986. Along with Section 304B, suitable amendment was also made in the Indian Evidence Act, 1872, and Section 113B also was inserted therein by Act 43 of 1986 w.e.f. 19th November, 1986. Section 304B defines dowry death as follows:

"304-B. Dowry death. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purposes of this sub-section, "dowry" shall have the same

meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

20. The simultaneous and consequential amendment of Section 113B introduced in the Indian Evidence Act, 1872 lays down presumption as to dowry death, which states as follows :

"113-B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, "dowry death" shall have the same meaning as in Section 304B of Indian Penal Code (45 of 1860)."

21. While going through the evidence and the impugned Judgment, we observed that the incident took place on 10th December, 1984, charge was framed on 22nd August, 1985, and the Judgment was delivered by the Additional Sessions Judge, Ahmednagar on 15th October, 1985. Considering the dates and the chronology thereof, we find that the offence of Section 304B was not on the Statute Book at all when the incident took place on 10th December, 1984. Thus, we would not have been able to convict accused No.1 for the offence of dowry death, which was not on the Statute Book on the date of the incident, as it would have been violative of Article 20(1) of the Constitution of India. Article 20, sub-clause (1) states as follows:

"20. Protection in respect of conviction for offences. - (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2)

(3)".

Thus, there is a constitutional prohibition against ex post facto penal law. However, we cannot shut our eyes to the cogent evidence through which Mr. A.S. Gadkari, the learned A.P.P. appearing for the State have taken us. The evidence of P.W.2 Suryakant and P.W.3 Madan is very convincing and cogent, and it would be injustice to brush it aside. We find no reason to disbelieve them. We have already observed that the learned Trial Judge has not discussed the evidence of P.W.2 and P.W.3 or any evidence with respect to charge framed against accused No. 1 u/s 498A of the Indian Penal Code. Here is a young girl of 20 years of age, whose life was made to suffer at such a tender age, and her husband, who

was responsible for her death, and who was driven to commit suicide because of the conduct of her husband, should not be allowed to go scot-free.

22. Ms Andewar, learned Advocate appearing for the Respondents, submitted that the incident is almost sixteen years old and accused No.1 might have remarried and might be having children, etc. We are not concerned with that. If there is delay in hearing this matter, that is the fault of the system, of which, advantage should not be given to the accused, whose guilt is squarely established beyond all reasonable doubts. On the point of 498-A, we find that the learned Trial Judge has not discussed the evidence at all and has completely overlooked it. The said appeal therefore deserves to be partly allowed, and accused No. 1 has to be convicted for the offence punishable u/s 498A of the Indian Penal Code. Therefore, though we uphold the order of acquittal of both the accused u/s 302 read with Section 34 of the Indian Penal Code, we convict accused No.1 Ganpat Dinkar Shinde for offence punishable u/s 498A of the Indian Penal Code. The only latitude which we can show to accused No.1 is with respect to quantum of sentence. The maximum punishment that this Section enjoins is three years. We, however, considering the totality of circumstances, feel that ends of justice will be met if the quantum of punishment is one year, and if he is also directed to pay fine of Rs. 1,000/-. Hence, the following order : The appeal is partly allowed.

The order acquitting the Respondents for the offence u/s 302 of the Indian Penal Code is confirmed.

The order acquitting first Respondent for offence u/s 498A is set-aside: instead, the first Respondent Shri Ganpat Dinkar Shinde is convicted for offence u/s 498A of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, to suffer simple imprisonment for three months.

The bail-bond of the first respondent stands cancelled. The police is directed to take the First Respondent into custody immediately.