

(2006) 12 BOM CK 0051

In the Bombay High Court

Case No : Criminal Appeal No. 369 of 1996 Bombay Criminal Appeal No. 454 of 1995

Vijay Narhar Pathak, Anil Narhar Pathak and Nalinibai Narhar Pathak

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 113A

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

Citation : (2007) 109 BOMLR 44

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

Bench : Single Bench

Advocate : D.R. Shelke, for the Appellant; D.V. Tele, APP, for the Respondent

Judgement

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

2. This appeal is directed against the judgement in Sessions Case No. 125/1994 whereby the learned IInd Additional Sessions Judge, Dhule convicted accused Nos. 1 to 3 (present appellants) for the offences punishable u/s 498A, 306 read with 34 of IPC. Accused No. 1 Vijay came to be sentenced to suffer rigorous imprisonment for two and half years and fine of Rs. 500/- for the offence u/s 498A and sentenced to rigorous imprisonment for six years and fine of Rs. 2000/- for the offence u/s 306 of IPC.

Accused No. 2 Anil and accused No. Nalinibai are sentenced to suffer rigorous imprisonment for one year and fine of Rs. 500/-, each for the offence u/s 498A and sentenced to rigorous imprisonment for three years and fine of Rs. 1000/- for the offence u/s 306 of IPC.

3. The facts of this case, in brief, are as under.

Deceased Vasudha alias Vaishali married with accused No. 1 Vijay on 18-05-1993. After their marriage, she was cohabiting with accused No. 1. Accused No. 2 is real brother of accused Nos. 1 and accused No. 3 is their mother. After the marriage, occasionally, she used to come to her parents' house at Chopda from her matrimonial house at Dhule. At the time of her visits to her parental house, she used to make disclosure with her father PW1 Udhav Kulkarni and sister PW3 Madhuri Dixit and mother PW4 Vastsalabai that there was ill-treatment to her from her husband as well as inlaws. Said ill-treatment was on the ground that she was unable to do household work properly and does not know cooking. It was also disclosed that accused Nos. 2 and 3 used to instigate accused No. 1 and she was beaten by her husband - accused No. 1 on many occasions. They also used to give threat that she will be killed by setting her on fire and were ready to go in jail. When she was staying at the house of her husband, on 09-02-1994, her father PW1 Udhav had gone to her house and at that time, deceased Vasudha while weeping disclosed that on earlier day, she was beaten by accused No. 1. On her request, he took her back and sent her to Sakri to the house of PW3 Madhuri as their mother PW4 Vatsalabai in those days was staying at Sakri. At Sakri, she was treated by Dr. Gulab Marathe (PW8). He noticed in all five injuries on her person and had issued certificate (Exh-57). From Dhule, PW4 Vatsalabai alongwith her daughter Vasudha returned back to Dhule.

As her married life was disturbed, a complaint came to be filed in a Conciliation Centre, namely, Kalyani Kautombik Salla Kendra, at Dhule, run by PW5 Vijaya Chowk. On that complaint, PW5 Vijaya called the accused and in a meeting dated 11-03-1994, the matter was settled and from there only, deceased Vasudha had gone to the house of the accused. As Vasudha had directly gone to her matrimonial home from the Conciliation Centre, PW1 Udhav and his wife PW4 Vatsalabai had gone to her house on 15-03-1994 carrying her clothes, ornaments, etc. That time, accused Nos. 1 and 2 gave insulting treatment to PW1 Udhav and asked him not to visit their house. PW1 Udhav pleaded apology and executed a deed (Exh-43) for his mistake of lodging the complaint with Conciliation Centre and returned back. On 31-03-1994, in the morning at 7 a.m. Vasudha poured kerosene on herself and set herself on fire. After receiving message, her father and other relatives rushed to Civil Hospital at Dhule, but she was found dead. PW1 Udhav lodged complaint (Exh-30), on which offence came to be registered vide C.R. No. 56/1994 u/s 498A and 306 r.w. 34 of I.P.C. After receiving message of her death from the Civil Hospital, PW6 Police Head Constable Dnyandeo Upadhye, who was then the incharge of Station Diary gave intimation to PSI Pralhad Kotwal (PW7). PW7 PSI Kotwal then immediately rushed to the hospital and he came to know that dying declaration of the deceased came to be recorded by the Executive Magistrate. After her death, PSI Kotwal (PW7) prepared the inquest panchanama (Exh-9) and forwarded the dead-body for post-mortem. PW9 Dr. Avinash Ruikar, the Associate Professor in Government Medical College, Dhule conducted autopsy on the dead body of

Vasudha. He noticed 95 per cent burn injuries on the body and issued post-mortem notes (Exh-10).

During investigation, PW1 Udhav produced some letters in his custody. Statements of other witnesses came to be recorded. In the investigation, from the spot, burnt pieces of saree and blouse, one can containing kerosene and match stick were seized and same were sent to Chemical Analyser. Thereafter, completing other formalities of investigation, charge-sheet came to be filed in the court of Judicial Magistrate First Class, Dhule, who committed the case to the Court of Sessions at Dhule.

4. At the trial, learned Additional Sessions Judge, Dhule framed charge at Exh-2 for the offence punishable under Sections 498A, 306 r.w. 34 of I.P.C. The accused pleaded not guilty and claimed to be tried. The accused put forth a defence of total denial. In their statement recorded u/s 313 of the Code of Criminal Procedure, they have denied that deceased Vasudha was ever ill-treated with cruelty. They admitted her suicidal death, but according to them, they are not aware about the cause as to why she committed suicide.

5. At the trial, the prosecution did examine nine witnesses. PW1 Udhav, PW3 Madhuri PW4 Vatsalabai gave evidence about the alleged cruelty to deceased Vasudha. PW2 Rajesh Kapadnis and PW5 Vijaya Chowk gave evidence about the alleged conciliation and produced an application (Exh-22) and a deed of settlement (Exh-25). PW6 Head Constable Upadhye and PW7 PSI Kotwal were examined to prove the formalities of investigation. PW8 Dr. Gulabrao Marathe was examined to prove the fact that on 09-02-1994, he had examined injured Vasudha and she was found sustained injuries as certified in certificate (Exh-57). Dr. Avinash Ruikar (PW9) proved post-mortem notes (Exh-10). Relying upon the evidence of three relatives and the letters produced on record by the prosecution witnesses and the accused persons, the learned Additional Sessions Judge held all three accused guilty for the offence of cruelty and also for the offence of abatement to suicide. At the trial, a dying declaration (Exh-41) alleged to have been recorded by the Executive Magistrate is produced on record and defence admitted its genuineness. In the said dying declaration (Exh-41), though deceased Vasudha made a statement that she attempted to commit suicide because of frustration and though there were no allegations of cruelty, the learned Judge observed that said dying declaration (Exh-41) shows that it was made by the deceased to forgive her husband and ultimately, the accused have been convicted and sentenced as stated above, for the offence u/s 498A and 306 of IPC.

6. Feeling aggrieved with the said judgement of conviction and sentence, this appeal came to be filed by the accused, which came to be admitted on 11-09-1995.

7. On behalf of the appellants/accused, learned advocate Shri Shelke advanced submission that the evidence of the relatives PW1 Udhav, PW3 Madhuri and PW4

Vatsalabai on the point of cruelty is a vague statement and it was found to be an improvement made at the trial. Hence, their evidence is not sufficient to record finding that deceased Vasudha was treated with cruelty. From the letters on record, he made attempts to show that no allegations were made against the accused that at any point of time, they made any illegal demand or treated the deceased with cruelty. Only grievance made in the letters is about her inability to do the household work and to prepare the food. Even from her dying declaration (Exh-41) also, it appears that she had no complaints of any type of ill-treatment, but she was found to have frustrated and was nervous and committed suicide. According to Shri Shelke, there is absolutely no evidence in proof of cruelty or the offence of abatement to suicide.

On the other hand, learned APP Shri Tele supports the order of conviction and sentence. According to him, the evidence of the relatives and the various documentary evidence i.e. letters of deceased and accused on record prove the cruelty. The death of the deceased is occurred within one year of the marriage. It was a suicidal death. Cruelty is also proved. According to learned APP, the presumption u/s 113A of the Evidence Act is available in this case that the accused abated the commission of suicide. On these grounds, he supports the order of conviction and sentence for both the offences.

8. It is not disputed that the marriage of the deceased took place on 18-05-1993 and she committed suicide on 31-03-1994 and her married life is of less than one year and her death occurred within one year. The evidence of PW9 Dr. Ruikar who conducted autopsy on her body shows that she had sustained 95 per cent burns all over the body. He has prepared post-mortem notes (Exh-10) and according to him, the death is due to shock following the thermal burns. The evidence of Dr. Ruikar (PW9) and the post-mortem notes are not challenged. In addition to this, there is also evidence of seizure of burnt pieces of saree at the time of recording spot panchanama (Exh-8). The genuineness of the spot panchanama is admitted by the defence. These articles were sent to Chemical Analyser with covering letter (Exh-54). The Chemical Analyser's report (Exh-11) which is admitted by the defence proves that kerosene recedes were detected on those burnt pieces. Hence, by this evidence, it is established that when the deceased was staying at the house of her husband, she set herself ablaze and sustained 95 per cent burns and ultimately, she died. Thus, this is proved to be a suicidal death.

9. The death of the married girl occurred within a year of marriage. The father and other relatives came with a case that she was treated with cruelty, hence she committed suicide. The learned Judge accepted the evidence of the relatives and also the documentary evidence - letters on record and came to the conclusion that the girl was treated with cruelty and accused came to be convicted for the offence u/s 498A of IPC. Let us first consider the evidence led by the prosecution to ascertain as to whether the conviction recorded for the offence u/s 498A against all three accused is justified or not.

10. PW1 Udhav has stated that at the time of marriage of deceased Vasudha with accused No. Vijay, he incurred expenses of an amount of Rs. 15, 551/-for clothes and ornaments and also paid Rs. 2000/-in cash to accused No. 1 for travelling expenses. He has not uttered a single word about the payment of any dowry. Even in his complaint (Exh-30), lodged after the death of the daughter, he has not made any allegations of payment of dowry or harassment on account of unpaid dowry. Hence, the death is not a dowry death.

In his complaint (Exh-30), PW1 Udhav alleged that whenever his daughter Vasudha used to meet them, she used to disclose that from all accused, she was having harassment. The mother-in-law of deceased had made allegations that Vasudha was unable to do any household work and not able to cook the food and on that count, her husband and his brother used to beat her and used to tell her to leave their place otherwise they will kill her by setting her on fire and they were ready to face the consequences of going in jail. A specific instance of assault on 09-02-1994 to the deceased was alleged stating that when her father PW1 Udhav had gone to meet Vasudha at her house, she was weeping and insisting him to allow her to accompany him and while they were coming back, she disclosed that on the earlier day, she was assaulted by her husband and thereafter, a complaint came to be filed in Conciliation Centre. In the witness box also, PW1 Udhav has stated that on 2-3 occasions, his daughter told him that all three accused were not satisfied with her work and they were making allegations that she was unable to cook food properly. As regards the incident dated 09-02-1994, he deposed that he had been to her house and on her insistence, he took her back and on way, she disclosed him that on the earlier day, she was beaten and he sent her to Sakri to the house of PW3 Madhuri as PW4 Vatsalabai was then staying there. As regards the disclosure made by the deceased with him that all three accused were not satisfied with her work and they were making allegations that she was unable to do household work, no omission or contradiction is found in his statement. The evidence of the witnesses on the point of incident dated 09-02-1994, may be considered later on independently, but on perusal of the statement of PW1 Udhav, it is found that after the marriage while she was staying at the house of her husband, the accused were making allegations that she was unable to do any household work. The father also gave statement that after two months of the marriage, accused No. 1 alongwith deceased Vasudha came to his house and that time, he told PW1 Udhav to teach Vasudha to do the household work properly. Hence, only complaint as disclosed by the husband is that accused were making grievance that she was unable to do the household work and could not cook the food. According to PW1 Udhav, the father of the deceased, in the month of September/October, 1993, Vasudha was admitted in Commerce College at Chopda where her father was residing. He also stated that after Diwali, she had gone to stay with her husband and returned back to Chopda in the month of December, 1993 for filling up her examination form and again she was sent to her house in January, 1994. Hence, this statement of the father shows that accused had grievance that she was unable to

cook the food. At this stage, reference to correspondence in the form of letters on record is necessary.

11. PW1 Udhav has produced on record a letter (Exh-26) dated 02-05-1993. This is a letter prior to the marriage and there is reference of offering a golden ring at the time of marriage, but it is nobody's case that on that count, there was any harassment after the marriage. Hence, this letter is not material.

Exhibit-32 is the second letter dated 17-07-1993 which appears to be a letter written by PW1 Udhav to accused No. 3 and part of the letter is also in the handwriting of the deceased. This letter was sent immediately within two months of the marriage. In this letter, there is reference that deceased Vasudha returned to Chopda from Sakri on 11-07-1993. It was intimated that there was some surgery on Vasudha and after one or two days, the surgical wounds would be required to be dressed; however, it was informed that her health was good. The father-in-law of the deceased informed by this letter that on one Sunday, he has arranged a pooja to be performed by deceased Vasudha and her husband accused No. 1 Vijay and also informed that after that pooja, he will send her. Thus, in this letter, which appears to be the first letter after the marriage, there is no complaint of any type of harassment, but fact remains that she had undergone some surgery after two months of the marriage. At this stage, a reference to the recitals in this letter which are in the handwriting of the deceased is necessary. In this letter, she mentions that the surgical wound is not filled in, but nothing to be worried. There are no allegations of any type of harassment.

Exhibit-35 is a letter dated 12-07-1993 addressed to deceased Vasudha from her husband, in which he makes a complaint about her behaviour with the family members and he advises her to learn as to how the behaviour with the husband and his family members should be. According to him, his younger brothers had some expectations from their sister-in-law, but she has not understood the same and had desire to stay at parents' house because of which the expectations of his younger brother never came to be true. From this letter, it is clear that in the family, the atmosphere was not adjustable. In this letter, there are no complaints of any demand or any harassment.

On 20-08-1993, Vasudha sent a letter (Exh-34) to her husband. The very opening words of the letter show the love and affection between the couple. In this letter, she states thus : "After reading your letter, I became very happy. I cannot express my joy or happiness in words and I also thank you for the advice or guidance given by you. I am very lucky that I could get husband like you. I hope that you would take me back with a right with which you had sent me to Sakri from Dhule. I am ready and willing to act as per your advice and I feel that it is my duty.

However, in the later part of this letter, she pleads apology for non-fulfillment of his expectations on her part and that the husband will excuse her for that. She

has further mentioned in this letter that she was taking utmost care to adjust in the family and in future also, she would be taking such efforts. According to her, on settlement of marriage, she had her own dreams, but those can not turn into reality and she blames herself for the same. She further expressed that she had utmost desire to treat every member in the family as per their wish and will, but failed in those efforts.

On perusal of this letter (Exh-34), it is clear that their marital life was happy, but there was some misunderstanding about the adjustment with the family members and it can be said to be a case of mal-adjustment.

12. The third letter on record is dated 23-10-1993. It is a letter sent by deceased Vasudha to her husband. The very opening words of this letter mention that as to why her husband was too much annoyed and she also seeks explanation as to what type of offence she has committed because of which her husband was not forgiving her. She also mentions that an opportunity be given to her to improve herself. She further states that she has taken admission in F.Y.B.A. and for typing class. She also made request to her husband to give reply of the letter and invited him to her father's house for Diwali festival. She also informs that she was to appear for the test from 1st of November. She has, however, not made any grievance about any type of harassment, in this letter.

There is another letter dated 17-12-1993 (Exh-27), sent by the accused No. 1 addressed to PW1 Udhav and it appears that it is in reply of letter dated 11-12-1993 sent by PW1 to accused No. 1. In the very opening paragraph of this letter (Exh-27), accused No. 1 mentions that deceased Vasudha was being sent to her parents' house to Chopda and he made a complaint that as per earlier talk between them, till that date, Vaishali was not taking interest in any of the family affairs and was not adjusting herself and he was unaware of the cause therefore and she was also not disclosing any cause. However, she was not sent to the parents' house on that count as letter specifically mentions that she was to fill up her examination form for F.Y. B.A. He also makes a complaint that he tried to advise her to adjust with the family members and also made inquiry with her as to whether she was having any harassment or trouble from other family members or she had desire to live separate, but without disclosing any reasons, always she remained annoyed. By this letter, he asked his father-in-law that Vaishali should be kept with him till she was ready to adjust with the family members and in case, she is not ready to accommodate with the family, then she should inform accordingly. However, in the same letter, he makes a request to his father-in-law to search for job for him and he was sending his biodata and marks-sheet with Vasudha. He also mentions that as he was born in that family, he was also required to take care of his family members including mother, brother, etc.

From the correspondence in the form of letters, referred to above, it is clear that from July, 1993 till December, 1993, there were no allegations of any harassment to deceased Vasudha, but in all the letters, a complaint was being made about her behaviour that she was not adjusting herself with the other family members

of the accused. Even this fact is clear from the letter sent by Vasudha herself in which, she has mentioned that always she was trying to adjust herself with the family members, but could not succeed in it. Considering the contents of all these letters, this is found to be a case of mal-adjustment and misunderstanding in the family though there was no harassment on account of any illegal demands.

13. Let us now consider the evidence of other two relatives, PW3 Madhuri and PW4 Vatsalabai because they were examined to prove cruelty to the deceased. PW3 Madhuri has stated that after two months of the marriage, there was surgery on deceased Vasudha at Sakri because of some abscess in the chest of Vasudha and that time, Vasudha made disclosure with her that medical aid was not being provided to her by the husband and his family members. However, she admits in the cross-examination that at the time of her earlier statement, she has not stated that Vasudha had disclosed her that family members were not providing medical aid. The fact that Vasudha had undergone some surgery is not disputed, but the statement of the sister PW3 Madhuri that Vasudha made a complaint that medical aid was not provided to her by the accused is found to be an improvement. Hence, it cannot be relied upon. PW3 Madhuri claims that at the time of Diwali of 1993, Vasudha disclosed her that she was being beaten by her husband. However, she also admits that she has not stated this fact at the time of her earlier statement. Hence, that was also found to be an improvement.

PW4 Vatsalabai, the mother of the deceased has stated that in August, 1993, Vasudha came to her house and stayed for fifteen days and informed that her husband always was beating her and she was perturbed and the reason for assault as disclosed was that Vasudha was unable to prepare food. This statement is also found to be an improvement because she admits in the cross-examination that she has not stated at the time of her earlier statement that husband of Vasudha beats her on the ground of his complaint that she was unable to prepare the food.

Thus, as regards assault or harassment, the evidence of PW3 Madhuri and PW4 Vatsalabai was found to be an improvement though it is clear from their evidence that deceased was complaining that her family members always had a grievance that she was unable to prepare the food or do the household work. This fact is also corroborated by the letter correspondence, referred to above.

14. Let us now consider the evidence of the relatives about the incident which did occur in the year 1994. All of them gave evidence in relation to the incident which did occur on 09-02-1994. Admittedly, in the month of December, 1993, she was sent to the parents' house for filling up the examination form. PW1 Udhav has stated that in the month of January, 1994, accused No. 1 sent a telegram and called Vasudha. Hence, she had gone to stay with them. On 09-02-1994, he had gone to the house of the accused. Before him, Vasudha started weeping and she disclosed him that she wanted to return with him. Hence, he obtained permission of the accused and took her back and sent her to Sakri as her mother had gone to Sakri to the house of PW3 Madhuri. According

to him, on way, she disclosed that on the previous night, she was severely beaten by her husband. Both PW3 Madhuri and PW4 Vatsalabai have stated that on 09-02-1994, Vasudha came to the house of PW3 Madhuri. There were injuries on her person. Hence, Madhuri took her to the hospital for treatment. In support of this, the prosecution did examine Medical Officer Dr. Marathe (PW8), attached to Rural Hospital at Sakri. It is not disputed that Madhuri is a staff nurse in that hospital. Hence, it is obvious that she would take Vasudha to the hospital where she was working for medical treatment. According to PW8 Dr. Marathe, on 09-02-1994, Vasudha was treated as an OPD patient. He noticed swelling on the left eye and bruise on left half of lower back. He noticed tenderness on the back and left upper scapular region and she was complaining pain. He has issued certificate (Exh-57). Certain questions were asked to this doctor about the identity of the patient as to whether he noted identification, etc, which cross-examination is not relevant at all. The only suggestion given to him that as PW3 Madhuri was a staff nurse in that hospital, he issued false certificate, but no material is there to show that he had issued a false certificate.

Thus, fact is established by the evidence of three relatives that on 09-02-1994, deceased Vasudha was brought back from the house of the accused and she was found to have sustained injuries as noticed by Dr. Marathe and noted in the certificate (Exh-57). The disclosure made by her is that on the earlier night, she was beaten by accused No. 1. This time also, she has not made any complaint against accused Nos. 2 and 3, nor she alleges that at their instigation, husband assaulted her. This incident of assault on 09-02-1994 is thus established by the statement made by the deceased with her parents which statement is corroborated by medical evidence.

From this incident, it can be said that the accused had grievance since beginning that deceased Vasudha was unable to cook food and was not able to do household work and was not accommodating herself in the family and all the while she was living in tense atmosphere. By this incident of assault on her on 09-02-1994 by her husband, it can be held that she was being treated with cruelty by her husband, though it was not on account of any illegal demands. As regards accused Nos. 2 and 3, general allegations are made that at the instigation of accused Nos. 2 and 3, accused No. 1 used to beat her. On examination of the evidence, that story was found to be an improved one. Thus, there is no evidence to show that she was being treated with cruelty by the accused Nos. 2 and 3.

15. After the alleged assault on 09-02-1994, deceased who was then staying at the house of her parents approached Conciliation Centre, run by PW5 Vijaya Chowk. PW2 Rajesh Kapadnis who was Councilor in Kalyani Kautombik Salla Kendra at Dhule, run by PW5 Chowk, produced on record settlement deed (Exh-25) which shows that a settlement had been arrived at on 11-03-1994 between the accused No. 1 and deceased Vasudha. PW5 Vijaya Chowk, Director of that Conciliation Centre produced on record the application dated 26-02-1994

submitted by the deceased in the said Centre. On that application, accused were summoned and finally, a settlement took place between them and it was reduced into writing at Exh-25. After this settlement, deceased Vasudha from that Centre itself had gone to stay with the accused. On perusal of application (Exh-22), submitted by the deceased in the Conciliation Centre, it is clear that complaint was made that on 09-02-1994, she was assaulted by the husband and was sent with her father. The alleged assault was by fists and kicks. These allegations made in the application are corroborated by the evidence which has been already discussed. By executing the settlement deed (Exh-25), the husband accused No. 1 admitted that on account of some domestic reasons, there used to be quarrel between accused No. 1 and the deceased. In anger, he had assaulted his wife and he assured that he will not commit such mistake in future. Hence, on the same day, he was taking his wife to cohabit with him. Vaishali alias Vasudha also signed this deed and assured that she will behave properly with the husband and other family members. This settlement deed executed by the couple makes it clear that because of some domestic problems, quarrel used to take place and deceased was assaulted by fists and kicks by her husband and was sent back with the father. The husband admitted that incident of beating dated 09-02-1994, however, after giving assurance of good treatment by the accused No. 1 and assurance by the deceased about good behaviour, she had gone to stay with her husband. Hence, the settlement deed proves the incident dated 09-02-1994 and assault to Vasudha by her husband - accused No. 1. Though it was not on account of any illegal demands, but it was a discord and differences in domestic life, on account of domestic quarrels and non-adjustment and misunderstanding.

16. Deceased Vasudha directly had gone to stay with her husband from the Conciliation Centre on 11-03-1994. On 15-03-1994, her parents had gone to see her and to provide her clothes, ornaments and other articles which she had kept at their house. PW1 Udhav, as regards said visit, has stated that he himself and his wife had gone to the house of the accused carrying garments and other articles of Vasudha; however, an insulting treatment was given to them by the accused. Not only this, but he has stated that accused No. 1 told him that Vasudha will be burnt away and they were ready to go in jail. In the cross-examination on behalf of the accused, an omission was brought on record and it is admitted by PW1 Udhav that he has not disclosed in his complaint that accused gave threat to kill Vasudha by ablazing her and were ready to go in jail. So, that was found to be an improvement made by him and that appears to be his natural conduct as his daughter had committed suicide. Apart from this fact, one document (Exh-43) was produced on record by the accused themselves and PW1 Udhav admitted that it is in his handwriting. On perusal of Exh-43, the writing of PW1 Udhav, it is clear that after Vasudha had gone to her house from Conciliation Centre directly, her parents, as stated by PW1 Udhav, had gone to her house. In Exh-43, he admitted his mistake in approaching the Conciliation Centre instead of approaching accused No. 3 and other family members and for

that act, he pleaded apology and expressed that thereafter, his daughter and son-in-law should live happily. Thus, this letter in the handwriting of PW1 Udhav brought on record by accused themselves corroborates the version of PW1 Udhav that on 15-03-1994, he had gone to the house of the accused and there, he was insulted, and therefore, he pleaded apology, but neither this writing nor the evidence of PW1 Udhav makes mention of any disclosure made by the deceased on that day with the father or mother about any type of harassment to her after she went to stay with her husband from the Conciliation Centre.

After the incident dated 15-03-1994, PW1 Udhav received a letter (Exh-21) which was a letter in the handwriting of Vasudha. This letter also corroborates the story narrated by PW1 Udhav. In this letter, she pleads apology with her parents because of insulting treatment given to them by the accused at her house, she expressed that she feels that during entire life of her father, nobody must have insulted him, but because of her, he was required to face insulting treatment and on that count, she felt too much and was also feeling that as to why she was born to them. She further expressed her feelings that instead of baring such an insulting treatment to the parents, better she would die. She also further mentions that she has committed mistake to marry accused No. 1. She further wrote that she would not have felt too much if she would have been punished, instead of insulting her father. This letter also mentions that because of that incident, she was completely depressed. In spite of these facts, she also mentions in that letter that her husband is not bad and informs her father that she was happy. From this letter (Exh-21), sent by the deceased, it is clear that because of insulting treatment given to the father by accused No. 1, she was too much annoyed and depressed and had feeling to die. But in that letter, she is not making any allegation of any type of harassment to her.

17. After the alleged incident dated 15-03-1994, on the unfortunate day i.e. on 31-03-1994, Vasudha set herself ablaze in her house in the morning. Her husband himself shifted her to the hospital. A message was given to her parents. When they reached the hospital, she was found dead. From the evidence of Police Head Constable Upadhye (PW6) and PW7 PSI Kotwal, it is clear that an intimation was received by them that deceased was admitted in the hospital on account of burn injuries. PW6 Upadhye took entry in the Station Diary and informed the matter to his superior PSI Kotwal (PW7). PW7 PSI Kotwal had gone to the hospital and there, he came to know that before his arrival, the Executive Magistrate had recorded the dying declaration of deceased Vasudha. He admits in his cross-examination that dying declaration (Exh-41) is not recorded in his presence. He stated that when the work of recording of dying declaration of the patient was going on inside the ward, he was recording statements of accused Nos. 1 and 3 outside the ward. The father of the deceased PW1 Udhav admits that Exhibit-41 is the dying declaration recorded in the hospital. The material portion of the said dying declaration (Exh-41) runs as under.

I was unable to do any household work. I was frustrated to the life. I had no

trouble from anyone in the house. But I was always remaining in nervous mood. I was fed up with my life though I can not express reason for the same. My marriage had taken place prior to one year and I have no child. As in my mind, due to the reason that I am unable to do any household work, a feeling of nervousness had arisen. Hence, in the morning, due to that feeling, I poured kerosene on my person and set myself ablaze. Hearing my shouts, my husband and in-laws extinguished the fire.

On perusal of this dying declaration (Exh-41), it can be said that no-one in the family of the accused induced deceased Vasudha to commit suicide. But it is clear that she was depressed and had developed a feeling that she was unable to do any work in the house and in nervous mood, ultimately, she set herself ablaze. The story narrated in this dying declaration is consistent with the earlier incidents.

18. The evidence referred to above made it clear that she was not being adjusted in the family. The grievance was that she was unable to do any household work. All the while, it was the complaint of husband that she was not accommodating herself in the family, and on 09-02-1994, she was beaten by the husband. Thereafter, the incident of insulting her father after the alleged settlement did occur. It is clear that thereafter, she was too much depressed and ultimately, committed suicide. However, there is no direct evidence to show that her suicidal death was abated by any one of the accused by their any positive act or any omission on their part which drove her to commit suicide.

19. On behalf of the appellants, in support of their contention that it is not a case that the deceased was being treated with cruelty, though there were some bickering incidents, reliance has been placed on the decision of This court in the case of Shivaji Janaba Patil, Chandrakant Janaba Patil and Bayakka Janaba Patil Vs. State of Maharashtra, , in which This court held as under.

Every petty bickering or disagreement cannot be treated to be "cruelty", but the harassment, ill-treatment or cruelty should be of such an extent which would make her disinterested in living in matrimonial tie or in matrimonial home and that would be sufficient enough to prompt her to commit suicide. There has to be nexus between such harassment, ill-treatment, cruelty and the death.

On this point, there is a decision of the Apex Court in the case of Ramesh Kumar Vs. State of Chhattisgarh, . In that case, there was one dying declaration on the basis of which the accused came to be exonerated. While considering the effect of such dying declaration, the Apex Court held that such a dying declaration cannot become unreliable unless there is material showing that deceased was trying to conceal the truth. The dying declaration in the said case was found recorded by the Executive Magistrate wherein she has stated that previously, there had been quarrel between the deceased and her husband and on the day of occurrence also, she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Considering the effect of this dying

declaration, the Apex Court held that because of disinclination on the part of the accused to drop the deceased at her sister's residence, the deceased felt disappointed, frustrated and depressed. She was overtaken by a feeling of shortcoming which she attributed to herself. She was overcome by a forceful feeling generating within her that in the assessment of her husband she did not deserve to be his life partner. The circumstance that the accused trying to put off the fire and taking his wife to the hospital also improbabilises the theory of his having abetted suicide. The Apex Court also observed that there is no evidence and material available on record wherefrom an inference of the accused having abetted the commission of suicide by his wife may necessarily be drawn. When the abatement of suicide can be said to be there, the Apex Court observed thus:

Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

The dying declaration (Exh-41) in the present case, as referred to above, does not indicate any instance of quarrel on the day on which deceased set herself ablaze. The alleged incident of insulting treatment to her father occurred fifteen days prior to the incident of suicide. However, on that day also, she has not made any statement with her father about any type of cruelty to her. What had happened after that incident within fifteen days before death is unknown as there is no material on that point. However, the dying declaration made by her before the Executive Magistrate shows that she was hypersensitive and because of discord and differences in domestic life, she set herself ablaze. Nothing is there on record to show any type of instigation at the hands of her husband from which an inference can be drawn that accused by their acts or omission or by a continued course of conduct created by such circumstances that deceased was left with no other option except to commit suicide. The facts in the case before Their Lordships of the Apex Court, particularly the dying declaration, referred above and the dying declaration in the present case are very identical and as held by the Apex Court, this dying declaration does not suggest any instigation,

act or omission on the part of the husband to infer that he has abetted the commission of suicide.

20. As regards the marital life of this couple, it was found that there were differences between the couple. All the while, the husband had grievance that the deceased was unable to do any household work. The very fact is appearing in the dying declaration (Exh-41) and also in the earlier letter correspondence. In the case before Their Lordships of the Apex Court in the matter of Ramesh Kumar also, there was suicidal note and also a letter correspondence. In the letters, nothing was there indicating any demand of dowry having made by the accused. In the case before Their Lordships, there was also one incident of assault four months before the suicidal death. In the case before me also, there is an incident of assault to the deceased two months before this incident of suicide by the deceased. In the present case also, there are letters written by the deceased acknowledging the love and affection which the accused No. 1 had for her and she expressed deficiency in herself. As she was not of a adjustable temperament, the accused used to get annoyed on minor mistakes of his wife. On account of the above facts, it can be said that it is not a case of cruelty on account of any illegal demands, but the husband was found always making grievance about her attitude. He used to annoy and illtreat for her mistake which could have been pardoned and on one occasion, she was also assaulted by accused No. 1. On similar facts, the Apex Court, in the case of Ramesh Kumar (supra) held that that much evidence is sufficient to uphold the conviction u/s 498A of IPC. The facts in the case in hand also make it clear that during a span of twelve months of marriage, because of the mistakes of deceased that she was unable to do household work and could not prepare the food properly, all the while, the husband was annoyed and used to make complaints with the parents of the deceased though he had love and affection for her. He could have pardoned for such minor mistakes. There is also evidence of the parents of the deceased that same grievance was made by the deceased with her parents. Finally, complaint came to be filed in Conciliation Centre from where she had gone to stay with the husband. In the settlement deed (Exh-25), husband admitted assault by him on the deceased by fists and kicks. When the parents of the deceased had gone to meet her, they were insulted. From these facts, it can be presumed that because of some minor mistakes, she was being ill-treated by her husband and that conduct of the husband amounts to "cruelty", punishable u/s 498A of IPC.

21. As referred to above, the husband had assaulted the deceased on one occasion. He was expecting that deceased Vasudha should accommodate herself with his family members. The parents of the deceased who were examined at the trial have not made any allegations against in laws that they used to assault her. Vague allegations were made that they used to instigate their son accused No. 1. But such vague allegations are not sufficient to treat as cruelty at the hands of the in laws. Even in the incident of assault on 09-02-1994, which is established by evidence on record, the accused Nos. 2 and 3 have no role. Under these

circumstances, the conviction against accused Nos. 2 and 3 is not justified and same needs to be set aside.

23. In view of the facts, circumstances and the legal position, discussed above, the conviction of the accused/appellant No. 1 for the offence u/s 498A of IPC is justified. However, the evidence discussed in detail above is not sufficient in proof of offence of abatement to suicide. No circumstances are on record which would suggest that any one of the accused/appellants instigated her by any act or omission on their part to commit suicide. The dying declaration (Exh-41) itself negatives any such instigation. Hence, the conviction against accused/appellants No. 1 to 3 for the offence u/s 306 of IPC is not justified and same needs to be set aside. The conviction against accused/appellants No. 2 and 3 for the offence u/s 498A of IPC is also not found justified. The accused/appellants No. 2 and 3, therefore, need to be acquitted of the offences under Sections 498A and 306 of IPC, by allowing their appeal. The appeal of the accused/appellant No. 1 also needs to be allowed partly, and acquit him of the offence u/s 306 of IPC, setting aside the conviction and sentence as recorded by the trial court against him. However, the conviction for the offence u/s 498A of IPC as recorded against accused No. 1 needs to be maintained, as it is found justified.

24. On behalf of the appellants, learned advocate Shri Shelke made alternative submission that considering lapse of time, the accused/appellant No. 1 may be shown leniency and he be released by imposing sentence of fine. However, this submission cannot be accepted. All the while, the accused/appellant No. 1 was making a grievance against the behaviour of his wife. He was expected to ignore her mistakes in domestic matters and pardon the deceased. Instead, he used to continuously make a grievance and he also assaulted her on one occasion. Ultimately, the unfortunate incident of suicide by her occurred. Under these circumstances, accused/appellant No. 1 who is held guilty of the offence u/s 498A of IPC is not entitled for any leniency.

25. In the result;

a] Appeal of accused/appellants No. 2 and 3, namely, Anil Narhar Pathak and Nalinibai Narhar Pathak, respectively is allowed. The conviction and sentence recorded as against accused/appellants No. 2 and 3 for the offence u/s 498A and 306 r.w. 34 of IPC in Sessions Case No. 125/1994 is hereby set aside. The accused/appellants No. 2 and 3 are acquitted of the offence u/s 498A and 306 r.w. 34 of IPC. Their bail bonds shall stand cancelled.

b] Appeal of accused/appellant No. 1, namely, Vijay Narhar Pathak is partly allowed. The order of conviction and sentence recorded as against accused/appellant No. 1 for the offence u/s 306 of IPC in Sessions Case No. 125/1994 is hereby set aside. Accused/appellant No. 1 is acquitted of the offence u/s 306 of IPC. The order of conviction and sentence recorded as against accused/appellant No. 1 for the offence u/s 498A of IPC in Sessions Case No. 125/1994 is confirmed.

c] The accused/appellant No. 1 Vijay Narhar Pathak, who is on bail, is hereby ordered to surrender to his bail within four weeks before the trial court from the date of this judgement for undergoing sentence as imposed for the offence u/s 498A of IPC. On his failure to surrender as ordered, the trial court is directed to secure his presence by issuing non-bailable warrant and commit him to the jail for undergoing the sentence for the offence u/s 498A of IPC.

d] The fine amount if found paid by the accused/appellants No. 2 and 3 be refunded to them. The fine amount if found paid by the accused/appellant No. 1 for the offence u/s 306 of IPC, be refunded to him.