

ATU/RMA

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 120 OF 2013
WITH
INTERIM APPLICATION NO. 392 OF 2020**

Sitaram Dada Sarode

Age – 49 Years, Occ. - Medical Practitioner,
R/o. Thardi, Tal. Nandgaon,
Dist. Nashik.
(At present lodged in Paithan Open Prison)

.. **Appellant**
(Org. Accused)

Vs.

The State of Maharashtra

(Through Inspector of Police, Chatushrunji
Police Station, Dist. Pune)

.. **Respondent**
(Org. Complainant)

Mr. Pawan Mali, Advocate appointed for Appellant
Mr. H.J. Dedhia, APP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

**Reserved on : 27th SEPTEMBER 2022.
Pronounced on : 03rd OCTOBER, 2022.**

JUDGMENT [PER : MILIND N. JADHAV, J.]

. This Criminal Appeal questions the legality of Judgment and Order dated 30.01.2012 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 816 of 2008 (for short “**Trial Court**”) convicting Appellant under Section 235(2) of Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”), for offence punishable under:-

- (i) Section 302 of the Indian Penal Code, 1860 (for short “**IPC**”) and sentencing him to suffer life imprisonment

along with fine of Rs. 1,000/-, in default, to suffer further rigorous imprisonment for six months;

(ii) Section 498-A IPC and sentencing him to suffer rigorous imprisonment for two years along with fine of Rs. 500/-, in default, to suffer further rigorous imprisonment for three months; both sentenced to run concurrently.

2. Appellant is convicted for committing murder of his wife Sangita by assaulting with a lid of autoclave and throwing acid on her person.

3. By Order dated 26.07.2019, Mr. Pawan Mali, Advocate was appointed to espouse the cause of Appellant. By Order dated 20.09.2022, Appellant was produced before us in person as he expressed his desire to conduct proceedings in person.

4. Initially we heard the Appellant in person as he expressed his desire to conduct his case in person. He attempted to make submissions for sometime but thereafter requested us that since Mr. Pawan Mali, learned Advocate was appointed by the High Court Legal Services Committee to espouse his cause, he be allowed to conduct his matter and represent him. He submitted that, he has no objection for Mr. Mali in conducting present Appeal on his behalf.

5. Facts of the prosecution case which emerge from record are as follows:-

5.1. Appellant is a medical practitioner. He married Sangita in the year 1993. Initially both resided at Manmad. Appellant practiced his vocation in Manmad. About eight years prior to the incident, Sangita secured job of pharmacist in Pune Municipal Corporation and therefore came to reside at Pune along with her two children, Mrunalini and Shantanu in her mother Shantabai's (first informant) house.

5.2. Incident occurred on 30.08.2008 at Pune. It was the practice of Appellant to visit his family in Pune every fortnight. Appellant always informed Sangita and his children in advance about his visit.

5.3. On 30.08.2008 Appellant was in Pune. At around 06:00 p.m. Shantabai went out to visit Hanuman Mandir at a distance of 5 to 7 minutes. After some time one neighbour Sarika Kokne rushed to Shantabai and informed her that there was a quarrel between Appellant and Sangita. Shantabai rushed back to her residence and saw Sangita lying in burnt condition. Sangita told her that Appellant assaulted her on the back of her head with some hard object and thereafter poured a substance like acid on her body due to which she sustained burn injuries. Shantabai along with her neighbour took

Sangita initially to Ratna Hospital and thereafter shifted her to Surya Hospital on medical advice.

5.4. On her admission to Surya Hospital, PW-7 - Dr. Govind Kamble recorded statement of Sangita (Exh. 77) in the presence of Shantabai. In this statement Sangita stated that Appellant suspected her chastity and therefore assaulted her and ran away thereafter. On the basis of this statement complaint was given by Shantabai and C.R. No. 404 of 2008 was registered against Appellant for offences punishable under Section 307, 498-A and 504 of IPC. Appellant was arrested on the same night.

5.5. According to prosecution, PW-8 - Shantanu, son of Appellant and Sangita (deceased) is an eye witness to the incident. Prosecution case is further based upon oral dying declaration made to PW-3 – Shantabai (mother of Sangita) and two written dying declarations (Exhs. 77 & 42). Exh. 77 was recorded by PW-7 - Dr. Kamble whereas Exh. 42 was recorded by PW-2 on 30.08.2008. In both dying declarations, Sangita stated that Appellant suspected her character, hence, he poured / doused her with some liquid substance like acid and attempted to kill her.

5.6. Statements were recorded by Investigating Officer (IO); spot panchanama (Exh. 70) was prepared and articles like lid of autoclave (weapon), burnt curtain, one plastic bottle and burnt gown were

recovered and seized from the spot and sent to the Chemical Analyzer for analysis.

5.7. During treatment Sangita succumbed to burn injuries on 05.09.2008. After death, inquest panchanama (Exh. 74) was prepared and the dead body of Sangita was sent for autopsy. Charge under Section 302 IPC was subsequently added.

5.8. PW-10 - Dr. Ajay Taware conducted autopsy and prepared postmortem report (Exh. 91). He noted the following injuries in PM report:-

A. “External Injuries:-

1. *Injection mark over right side of neck (therateotic)*

2. *Superficial to deep burn seen in following areas of body:-*

Head, neck, face : 5%

Right upper limb : 8%

Left upper limb : 8%

Right lower limb : 1%

Left lower limb : 2%

Abdomen & chest : 9%

Back : 7%

Genitals : 0%

Total burn injuries : 40%

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3. *Fasciotomy would seen over both upper limbs (therateotic)*

4. *Eight stitched would over occipital region mid-line vertical*

having size of 9 x 1 cm,

5. *Four stitched would over left occipital horizontally oblique of size 5 x 1 cm*

All above mentioned injuries were ante-mortem.

B. Internal injuries:

1. ***In head*** : *haematoma in the scalp over right occipital region having size of 4 x 4 cm., and left occipital region 4 x 4 cm, pale red in colour.*

2. ***In brain*** : *sub-arachnoid hemorrhage seen all over, both temporal region, all over occipital region, posterior aspect of both parietal region, pale red in colour.*

PW-10 also noticed ink mark over right great toe.”

6. Investigating Officer received reply from the Chemical Analyzer that articles sent for investigation got burnt in a fire at the laboratory and therefore he could not give his report and identify the liquid used in the crime as to whether it was acid or any other substance. After completion of investigation chargesheet was filed against Appellant in the Court of Judicial Magistrate First Class. Since the offence is punishable under Section 302 IPC and exclusively triable by Court of Sessions, JMFC committed the case to the Sessions Court for trial.

7. Charge (Exh. 10) was framed against Appellant for offences punishable under Sections 302, 504 and 498-A IPC. It was read over and explained to him in vernacular; he denied the charge, pleaded not guilty and claimed to be tried. Defence of Appellant being that, the alleged incident occurred on the day of Pola festival; that Sangita was preparing puranpoli (a sweet item) and food at the time of the incident and he was about to leave for Manmad as usual; that Sangita

sustained burn injuries due to over-flaming of the stove; that Appellant was married to Sangita since 1993 and most importantly he did not have cordial relations with Shantabai and his brother-in-law Bajirao Masal (PW-4); hence they falsely implicated him in the case and also tutored PW-8 (son – Shantanu) to depose against him.

8. To bring home the guilt of Appellant, prosecution has examined 13 witnesses.

9. We have heard Mr. Pawan Mali, learned Advocate appointed for Appellant and learned APP for the State and with their able assistance perused the evidence and record in the present case.

10. In the present case, prosecution has heavily relied upon the evidence of PW-7 - Dr. Govind Kamble who recorded the first dying declaration (Exh. 77). Sangita's right leg thumb impression was taken on this statement. This clearly showed that her hands and fingers were burnt. The statement bears the signatures of PW-3 and PW-4 as witnesses to the dying declaration. This statement is recorded on the printed form and has been endorsed and recorded by PW-7. However the endorsement which is also in a printed form has been signed by PW-7 at 09:30 p.m. In the evidence of PW-7, it has come on record that this dying declaration was recorded at about 06:30 p.m. and hence the timing of recording this statement is a glaring discrepancy and contradiction. In this statement Sangita has stated that Appellant

suspected her chastity and therefore inflicted acid burns on her body. In this context, Mr. Mali appearing for Appellant has drawn our attention to Exh. 78 from the record and proceedings of the case. Exh. 78 are the combined medical casepapers of Sangita, *inter alia*, pertaining to her entire timeline of treatment after she was admitted to the hospital and until her death 6 days later. These case papers reveal that on her admission dressing was done with silver sulfate by Dr. Pandit and Dr. Shinde and it is noted that she had 45% burns which appeared to be 'flame burns' than 'acid burns' and out of that 25% burns appear to be deep and fasciotomy is done on both her upper limbs. Incidentally, Dr. Pandit and Dr. Shinde as also the anesthetist Dr. Sarala Soham Gandhi who treated Sangita immediately on her admission to Surya Hospital have not been examined by prosecution. Hence the statement recorded by PW-7 in Exh. 77 that Sangita suffered acid burns clearly militates against the hospital record (Exh. 78).

11. The second dying declaration (Exh. 42) was recorded between 9:30 p.m. to 10.30 p.m. by PW-2 Police Head-Constable. He has deposed that he received instructions to reach Surya Hospital to record statement of Sangita and accordingly went there; that he met the concerned Doctor and was informed that Sangita was in a position to give her statement and he was allowed to record her statement. He

has deposed that Sangita narrated the entire incident of assault by Appellant and he recorded the same. That, thereafter he read over the said statement to her and at that time the Doctor was with him. In his examination-in-chief he has next deposed that he obtained Sangita's signature on the statement and the Medical Officer (PW-7) also read the statement and put his signature on the same thereafter. He has further stated that Shantabai was also present in the ward when he recorded the statement. In his cross-examination PW-2 has stated that he reached Surya Hospital at about 09:00 p.m. and met PW-7 - Dr. Govind Kamble. That, at that time treatment of Sangita was underway and saline was given to her. He has categorically deposed that both hands of Sangita were burnt. This categorical admission by PW-2 in his cross-examination clearly contradicts his own deposition in his examination-in-chief that he obtained Sangita's signature on the statement. Further reading of the medical case papers (Exh. 78) alongwith the medical evidence (PM Report – Exh. 91) reveal that Sangita's hands and palms were burnt, then in that view of the matter PW-2 obtaining her signature on the second dying declaration (Exh. 42) is therefore shrouded with suspicion. Hence the second dying declaration thus is unbelievable and need to be kept aside from consideration.

12. Next we come to the ocular evidence of PW-8 Shantanu, son

of Appellant and Sangita, which is also heavily relied upon by prosecution to prove homicidal death of Sangita. On the date of incident, Shantanu was eight years old and therefore, in view of the settled law relating to deposition of a child witness, his evidence will have to be evaluated and scrutinized with greater circumspection as also it will have to be seen if his deposition would require corroboration from the evidence of other prosecution witnesses. According to prosecution, PW-8 Shantanu is an eye witness to the incident. He has deposed that on 30.08.2008 Appellant assaulted Sangita in his presence. This proves that there was a quarrel between them. He has deposed that at about 06:00 p.m., his mother Sangita was cooking food and Appellant asked him to fetch thread and fevikwik from outside. He bought fevikwik from the shop and returned home and as he was entering the door of his house, he saw Appellant pouring something from the bottle on Sangita's body. He has further deposed that he saw that Sangita sustained an injury on her head and there was blood on the floor. At that time Appellant pushed him aside and left the house. He thereafter called his neighbour Madhavi and went to call Mrunalini (sister) who had gone for tuition. He narrated the entire incident to her tuition teacher and returned back, when he noticed Shantabai taking Sangita to the hospital.

13. It will also be pertinent to refer to the deposition of PW-4 –

Bajirao Masal cousin brother of Sangita. PW-4 has deposed that Appellant used to visit Sangita and her children at her mother's place every fortnight and stay with them for two days. He has specifically deposed that there used to be quarrels between them on the ground of Appellant suspecting Sangita's chastity; that these quarrels used to result in physical abuse of Sangita. PW-4 has further deposed that he was called on several occasions by his aunt Shantabai and he witnessed Appellant threatening them that he would finish them. Incidentally on the date of incident at about 4:30 p.m. Appellant called PW-4 at Lalit Mahal Hotel, Shivaji Nagar. They both met and Appellant informed him that Sangita had booked a flat and was demanding money from him. He also told PW-4 that because of this reason there was a dispute between them. Thereafter at about 6:20 p.m. PW-4 received a phone call from Appellant and he informed him that Sangita was burnt and that he should come there since he was going to the police chowky. In his cross-examination, PW-4 has stated that he rushed to the house of Shantabai and saw the children standing frightened outside the house. He opened the latch and saw blood splattered on the kitchen platform and floor and one blood stained autoclave (weapon used by Appellant) lying there. Thereafter he rushed to Surya Hospital to see Sangita and in his presence the first dying declaration was recorded by PW-7 – Dr. Govind Kamble. It is pertinent to note that he has deposed that after the dying declaration

Exh. 77 was obtained, Sangita's right leg thumb impression was taken since both her hands were burnt. This is an important admission of fact. If both hands of Sangita were indeed burnt, then PW-2's deposition about obtaining her signature on the second dying declaration (Exh. 42) is rendered unbelievable. Hence the second dying declaration cannot be countenanced.

14. That apart, one more aspect becomes clear from the deposition of PW-4 i.e. Appellant used to suspect chastity of Sangita and used to quarrel with her. At this stage, we may point out that PW-8 - Shantanu, in his deposition has stated that Appellant used to physical abuse and beat him, Sangita and PW-9 – Mrunalini. He has further categorically deposed that Sangita was also beaten by Appellant on 30.08.2008 i.e. on the date of incident and at that time he was present in the house. The evidence of PW-9 – Mrunalini i.e. elder sibling of Shantanu and daughter of Appellant and Sangita is also relevant in this aspect. In her deposition she has deposed that Appellant visited them every 10 - 15 days and whenever he came he used to abuse, quarrel and assault her mother Sangita. She has further deposed that on the fateful day, after the incident PW-8 rushed to her first and informed her that Appellant had quarreled with Sangita and thereafter poured something from the bottle on her body resulting in severe injury. PW-3 - Shantabai has also in her evidence stated that

whenever Appellant used to visit Pune he would torture Sangita by abusing and beating her and used to take suspicion on her character and further issue threats to kill her. She has deposed that Sangita had lodged a complaint before the Woman's Organization at Pashan in this respect.

15. From the aforesaid depositions given by PW-3 - Shantabai, PW-4 – Bajirao Masal, PW-8 – Shantanu and PW-9 – Mrunalini, all four close relatives of deceased Sangita, it is clearly discernible that quarrels used to frequently take place between Appellant and Sangita as he suspected her character. It is also perceptible that Appellant used to physically abuse Sangita whenever he visited at Pune. This apparently in all probability must have been the norm for eight years after Sangita shifted from Manmad to Pune and started serving in the Pune Municipal Council as Pharmacist. It is seen that on the date of incident also Appellant had a quarrel with Sangitra and physically abused her in the presence of PW-8 - Shantanu. The spot panchanama Exh. 39) shows recovery and seizure of the weapon used by the Appellant i.e. the autoclave lid. This object is a circular steel plate used as the cover to the autoclave vessel used by doctors and pharmacists for boiling water and sterilizing needles / syringes in medical parlance. Hence from a marshaling of the evidence and deposition of the prosecution witnesses it is clearly observable that

there was a sustained and continuous provocation of the issue harboured by Appellant over a period of time presiding the offence. The incident was the last act, word and gesture comprising of the sudden and provocative conduct and demeanor of Appellant sufficient for causing a reactive loss of his self-control. It is seen that the question of loss of self-control by grave and provocation is a question of fact. In this context, it will be useful for us to refer to a recent decision of the Hon'ble Supreme Court delivered on 02.08.2022 in the case of *Dauvaram Nirmalkar Vs. State of Chhattisgarh*, in Criminal Appeal No. 1124 of 2022 wherein this aspect of law, *inter alia*, pertaining to the gravity of provocation to be assessed by taking into account the history of abuse is discussed. It is held therein that the provocation need not be confined to the gravity of the final provocative act committed by the accused. The Supreme Court has referred to the provisions of Exception I of Section 300 IPC which recognizes that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing his self-control, going astray and committing the offence. In this context, it is pertinent to note that there is no premeditation or planning on the part of Appellant to kill or murder his wife Sangita. However since he was the last person seen alongwith Sangita by PW-8 – Shantanu, he would be the only person who could explain the injury on Sangita's head (temporal – occipital region) with the only object

lying next to her body i.e. autoclave lid. Though it has come on record that the autoclave lid had blood stains, in this case the CA Reports have not been produced in evidence. Nevertheless from the deposition of the four related witnesses of deceased Sangita and the first dying declaration recorded by PW-7 - Dr. Govind Kamble, it is clear that circumstantial evidence proved by prosecution points and indicts the role of Appellant as the author of crime in the present case. However even though it is discernible that the Appellant committed the act of killing Sangita, it is not proved in evidence as to what was the liquid that was used because of which Sangita suffered burn injuries. As seen the CA Reports have not been proven by prosecution. Spot panchanama reveals recovery and seizure one plastic mirinda bottle and assuming for the sake of arguments that the said bottle was containing the alleged liquid with which Sangita was doused, it is improbable that the plastic bottle would hold a liquid chemical such as concentrated acid. Hence keeping this in mind and the medical case papers (Exh. 78) which have been discussed at length and alluded to hereinabove in para No.10, it is clear that prosecution has not been able to prove its case beyond all reasonable doubts and the chain of circumstances snaps in between and does not explain the above discussed issue. That apart, applying the ratio in the case of *Dauvaram Nirmalkar* (supra), it is clear that there used to be a litany of quarrels between Appellant and Sangita.

16. It is seen that the ratio of *Dauvaram Nirmalkar (supra)* clearly applies to the facts and circumstances of the present case. In our considered opinion, the present case will fall under Exception 1 to Section 300 IPC. Exception 1 to Section 300 IPC states that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. Exception 1 applies when due to grave and sudden provocation, the offender loses his self-control and causes the death of a person who gave the provocation. The Supreme Court in the above case has stated that the question of loss of self-control by grave and sudden provocation is a question of fact. The observations of the Supreme Court in paragraph Nos. 12 and 13 in this respect, expanding the meaning and scope of the defence of provocation under Exception 1 are directly relevant. Paragraph Nos. 12 and 13 reads thus:-

“12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the Indian Penal Code. First, whether there was an intervening period for the passion to cool and for the Accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. The first part lays emphasis on whether the Accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the Accused, placed in the same

situation in which the Accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the Accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the Accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the Accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the Accused's reaction, should be identified to show that there was temporary loss of self-control and the Accused had acted without planning and premeditation. This has been aptly summarised by Ashworth in the following words:

"[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the Accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the Accused – and indeed the relation of the retaliation to that act – can be neither understood nor evaluated without reference to previous dealings between the parties."

Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be

available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.”

16.1. Thus from the above, it is seen that gravity of provocation need not be confined to the singular incident but can be assessed by taking into account the history of the abuse culminating in the final act of the accused if it is shown that the said act occurred due to temporary loss of self-control and the accused had acted without planning and premeditation. In the present case, it is seen that Appellant was staying away from Sangita for almost eight years prior to the incident; that he was on visiting terms to Pune where Sangita and the children were residing along with Shantabai on a regular (fortnightly) basis; that prosecution witnesses have categorically deposed that frequent quarrels used to take place between Appellant and Sangita, PW-3 and PW-4 have deposed that Appellant used to suspect the chastity of Sangita and that used to be the reason for their quarrels. This deposition of prosecution witnesses corroborates with the contents of the first dying declaration given by Sangita to PW-7 - Dr. Govind Kamble wherein she has categorically stated that immediately prior to the incident, Appellant had accused her chastity. Deposition of PW-8 - Shantanu who was present in the house when the quarrel between Appellant and Sangita took place immediately before the incident also corroborates the above fact. That apart, deposition of PW-4 - Bajirao Masal, cousin brother of Sangita in one other aspect

also becomes relevant i.e. Appellant calling him at 4:30 p.m. i.e. two hours before the incident and informing him that Sangita had booked a flat and was demanding money from him for the same. These factual circumstances having come in evidence will all have to be considered from the perspective of the provocation of Appellant in committing the act of wrongdoing i.e. the incident. While evaluating and considering the circumstances discussed hereinabove from the deposition of the prosecution witnesses, it is reasonably concluded that Appellant lost his power of self-control temporarily and committed the offence in the proximity to the time of provocation i.e. the quarrel that ensued between Appellant and Sangita before the time of incident. There is no material brought on record by prosecution to show that the act of Appellant was a premeditated and planned act. Thus, there was sudden loss of self-control as observed by the Supreme Court on account of 'slow burn' reaction followed by the final and immediate provocation and there was temporary loss of self-control. Hence, applying the exception 1 of Section 300 IPC, we would convert the conviction of Appellant from Section 302 IPC to Part I of Section 304 IPC.

16.2. That apart, on considering the evidence given by the immediate family members namely PW-8 and PW-9, children of Appellant and PW-3 and PW-4, mother and cousin brother of Sangita, it is seen that none of the prosecution witnesses have complained

about any demand of money by Appellant. Appellant and Sangita were married since 1993 and eight years prior to the date of incident had cohabited together at Manmad. It is only when Sangita obtained a job of pharmacist in Pune, she was compelled to shift to Pune. It is also seen from the deposition of prosecution witnesses that Appellant regularly visited them at Pune. In this context, deposition of PW-8 Shantanu, son of Appellant is relevant and on reading his deposition, it is seen that Appellant was also a doting father. Thus, we find that no case whatsoever is made out by the prosecution for applicability of Section 498-A IPC against the Appellant in the present case.

17. We have been informed that Appellant has already suffered incarceration for over 14 years and he has been in custody since 31.08.2008.

18. In view of the above discussion and findings, we pass the following order:-

- (i) The conviction and sentence imposed upon Appellant under Section 498-A is hereby quashed and set aside;
- (ii) The conviction of Appellant under Section 302 IPC is set aside, instead Appellant is convicted under Section 304 (Part I) of IPC and sentenced to 10 years of imprisonment and fine of Rs. 50,000/-, in default, to undergo further imprisonment for a period of two

years.

Since the Appellant has already undergone the aforestated sentence awarded along with the default sentence, he shall be released forthwith unless required in any other case / cases;

(iii) Appeal is partly allowed in the aforesaid terms;

(iv) Interim Application No. 392 of 2020 does not survive and accordingly stands disposed of.

19. Before parting with the Judgment, we would wish to place on record appreciation for the efforts put in by Mr. Pawan Mali, learned Advocate appointed by High Court Legal Services Committee, Mumbai for espousing the cause of the Appellant; he was thoroughly prepared in the matter and rendered proper and able assistance to this Court.

20. All concerned to act on an authenticated copy of this Order.

21. According to record, Appellant is lodged in Paithan Open Prison. The Secretary, High Court Legal Services Committee is hereby directed to communicate this Order to the Appellant and also to the Superintendent of Paithan Open Prison forthwith expeditiously by all possible modes.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]