

Mithailal and Others Vs. State of Maharashtra

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Court : Mumbai

Decided On : Apr-30-1993

Reported in : 1994(2)BomCR720; 1993CriLJ3580

Judge : B.U. Wahane and ;W.M. Sambre, JJ.

Appeal No. : C.A. No. 214 of 1992

Appellant : Mithailal and Others

Respondent : State of Maharashtra

Advocate for Def. : Mr. M.L. Somalwar, Special Govt. Adv.

Advocate for Pet/Ap. : Mr. N.K. Deshpande and ;Mr. S.B. Badar, Adv.

Judgement :

B.U. Wahane, J.

1. Yatra Naryantu, Pujyate, Tatra Ramante Devatah. This is one facet of our Indian society towards the women while the other is that Dhola, Gavar, Shudra, Pashu, Nari yah sub Tadan ke Adhikari. The true translations whereof are - (i) Wherever woman are highly respected, society prospers and moves forward, fast with stability and (ii) The drum, the rustic, the Shudra, the animal and the woman are all entitled to receive beating. Besides this Indian philosophy regarding the woman folk, we speak of modernisation and humanitarianism, but barbarism and

in humanitarianism is still experienced, day in and day out. In this case we have to deal with an episode of a young married woman who died of starvation in the cattle shed of her in-laws' house.

2. The original accused preferred this appeal against their conviction for the offence punishable under Sections 342 and 302 read with Section 34 of the Indian Penal Code passed by the 2nd Additional Sessions Judge, Bhandara on 13-5-1992 in Sessions Trial No. 24/90. The facts leading to the institution of the case against the appellants may be described in brief as under :-

3. Deceased Sitabai, sister of Motilal Mahadeo Shahu (P.W. 4) of Nagpur was married with the appellant/accused no. 1 Mithailal s/o Rajaram Sahu, resident of Deori, District Bhandara on 20-2-1975. The appellant No. 2 Pappu alias Hiralal is brother of the appellant No. 1 Mithailal. Appellant/accused No. 3 Rampyaribai is mother of the appellants 1 and 2, whereas the appellant/accused No. 4 Shivkumari is the wife of the appellant/accused No. 2.

Deceased Sitabai was the only sister of five brothers including Motilal (P.W. 4). All the brothers and the mother spent considerable amount in the marriage of deceased Sitabai. They had presented golden ornaments and cash of Rs. 10,000/- to the accused No. 1 during the said marriage. After marriage, Sitabai went to reside with accused No. 1 Mithailal at Deori. At Deori, the appellants/accused has a big Wada (big residential house), agricultural and other joint property. For few days, Sitabai was treated cordially. Thereafter the appellants persuaded her to demand and bring money from her brothers. On refusal of record, she was subjected to cruelty and torture. She was not even provided with food and at the instance of other accused, the appellant No. 1 used to beat her. The appellant No. 2 had molested her in the house. On that occasion, Sitabai had reported the matter to the Police Station and the offence was registered against him under Section 354 of the Indian Penal Code.

4. Sometimes in the year 1984 a telephonic message was received by the uncle of Motilal (P.W. 4) at Hansapuri, Nagpur to the effect that Sitabai was hospitalised at Deori. Consequently, Motilal and his brothers as also some other relations went to Deori. However, they found that the message was false. Sitabai had complained to

her brothers and others about ill-treatment at the hands of the accused Nos. 1 and 2 viz. Mithailal and Pappu. Anyhow, the brothers persuaded the accused not to ill-treat her. Motilal again received another telegram dated 7-7-1984 from Deori and, therefore, he and other brothers went to Deori and found the condition of their sister Sitabai serious. The brothers tried to persuade Sitabai to accompany them. However, she refused to accompany with them and told them that she would like to live and cohabit with her husband at Deori only. In their presence, Sitabai was kept in a room in another house of the appellants situated near Laxmi Talkies at Deori. However, considering the plight of Sitabai, she was brought to Nagpur where she stayed till 19th January, 1989. Before deceased Sitabai had left the abode of her husband in the year 1984, she had sent letters addressed to her brothers expressing her own plight. The letters have been placed on record. In those letters she had specifically stated that the accused had directed her to bring considerable money from her brothers and on refusal, she was subjected to ill-treatment, cruelty and harassment. She was not provided with food and other necessities of life. She was neglected. Anyhow, as a Hindu woman she wanted to live with her husband only.

5. On 20-1-1989 Sitabai was reached to Deori at the house of the accused with the help of police. At that time the Deputy Superintendent of Police, Bhandara had directed the Police Station Officer, Deori to extend co-operation to the destitute lady Sitabai by reaching her to her husband's house and persuade her husband and other family members to allow her to live in their house with her husband. Manda (P.W. 21), a Lady Constable reached Sitabai to the residential house of the accused on 20-1-1989. It has come on record that prior to 20-1-1989, the brothers of Sitabai on many occasions had tried to send her back, but the accused were not ready to keep her and maintain her. Sitabai had sent several letters, post cards, inland letters and chits complaining about the ill-treatment at the hands of the accused persons and demand of Rs. 1 lakh and five tolas of gold.

6. On 20-1-1989 initially the accused were not ready to keep back the deceased Sitabai. However, due to intervention of police and panchas of Deori, they allowed Sitabai to live, but not in the ancestral house. She was kept in a room of another house of the accused near Laxmi Talkies, Deori. Sitabai was, therefore, forced to

live separate from her husband.

6A. On 27-1-1989, appellant/accused No. 1 Mithailal filed petition for divorce in the Court of the Civil Judge, Senior Division, Bhandara. The accused No. 1 had given address of Sitabai of Nagpur in the said petition though she was residing with him at Deori. Motilal (PW4), brother of deceased Sitabai received summons at Nagpur on behalf of his sister Sitabai. The case was fixed on 8-9-1989. In connection with the summons issued to Sitabai, Motilal (P.W. 4) came to Bhandara. However, he did not find his sister Sitabai in the court and, therefore, he went to Deori on the next day. At Deori he learnt from the villagers that Sitabai was killed and buried. Consequently, he lodged report at Deori Police Station. The offence was registered against the appellants/accused under Sections 342 and 302 read with Section 34 of the Indian Penal Code. The body was exhumed on 12-9-1989 and an autopsy on the body of deceased Sitabai was performed by Dr. Anant Dehadrai (P.W. 19). He found the body highly decomposed and, therefore, he could not give the cause of death. Exhibit 168 is a post-mortem report.

It is necessary at this stage to revert back to mention that on 8-9-1989, accused Pappu lodged a written report to Police Station, Deori informing that Sitabai was lying in the cattle shed in the neighbourhood of their house. He expressed that he had no knowledge whether she was dead or alive. The report was registered and requisition letter was sent to the Medical Officer, Rural Hospital, Deori for post-mortem. Dr. Gedam (P.W. 20) went to the spot along with the Police Patil, held the medical examination and declared that Sitabai was dead. The body of Sitabai was sent for post-mortem. ASI Lakhan Shahare who had registered the report and sent requisition, then recorded statement of P.W. 2 Karu. The statements of other witnesses were recorded by PSI Nale. Thereafter the body was given to the appellants/accused for cremation.

7. During the investigation, the Investigating Officer, PSI Murlidhar Nale (P.W. 26) recorded the statements of neighbourers and other visitors to the house and relations of the deceased Sitabai as also seized about 13 post cards, 11 inland letters, 4 letters written on plain papers and about 20 chits written by deceased Sitabai to her brother Motilal (P.W. 4) and other relations.

8. The prosecution examined in all 26 witnesses to bring the guilt forth against the appellants/accused. The defence of the accused is a denial. The appellants contended that in fact, the appellant No. 1 Mithailal always wanted to maintain his wife Sitabai. Neither he nor any family members ever ill-treated her by beating or in any other manner, as alleged by the prosecution. According to the appellants, Sitabai herself was adamant and she herself invited death to falsely implicate them. From time to time Sitabai had lodged false reports implicating the entire family of the appellants. Police used to harass them by calling in Police Station quite often. Once appellant/accused No. 1 was beaten by PSI Pande. Thus, it is tried to urge that the Police being interested in Sitabai, they falsely involved the appellants/accused in this case.

9. The learned Trial Judge after scrutinising the evidence, reports lodged by deceased Sitabai and accused from time to time and the letters written by Sitabai during her life time, arrived at a conclusion that the accused in furtherance of their common intention wrongfully confined deceased Sitabai and intentionally caused her death by ill-treating, beating and by not providing food to her. He held the appellants guilty for both the offences and resultantly sentenced them to suffer rigorous imprisonment for six months and to pay a fine of Rs. 300/-, in default to further suffer rigorous imprisonment for two months for the offence punishable under Section 342 read with Section 34 of the Indian Penal Code, and to suffer imprisonment for life for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

10. Shri Deshpande, the learned counsel for the appellants made many fold submissions, such as -

(1) Prior to the death of Sitabai, the appellants/accused were prosecuted in many cases. The charge-sheets are filed in the courts and the cases are pending. Shri Deshpande urged that this circumstance should not be given weightage as incriminating factor.

(2) Shri Deshpande contended that the post cards, in-land letters, chits and other letters (exhibits 97 to 145) are not admissible as those letters have not been proved and also not sent to the Hand-writing Expert for comparison with the

admitted hand-writing of deceased Sitabai.

(3) The Police, not only of Deori, but also the Superintendent of Police and Deputy Superintendent of Police showed special interest in Sitabai and thereby harassed the appellants/accused.

(4) Sitabai was trusted in the house of the appellant/accused by police on 20-1-1989 against their wishes. Thus, the Police had developed a bias towards the appellants/accused. It is in the evidence that for some days Sitabai was kept in another house of the appellants/accused near Laxmi Talkies. Though it is alleged that she was subjected to cruelty and ill-treatment, no neighbourer including Dr. Chute who was tenant in the same building has not been examined by the prosecution and thus, adverse inference be drawn.

(5) Even assuming that deceased Sitabai was living in a cattle shed, it had no doors. Similarly, she was free to move and, therefore, it cannot be construed that she was wrongfully confined in the house to attract the ingredients of Section 342 of the Indian Penal Code.

(6) The appellants were within their right to obstruct Sitabai's entry in their residential house. If she was really aggrieved, she ought to have knocked the doors of the Court for redressal. Under these circumstances, if they have man-handled her and at times not provided her with food and other essentials, they have committed no offence muchless to lead her to death. Thus, they are not liable for the death of Sitabai.

(7) The husband is liable to maintain the wife, it only a civil liability. If he and other family members, of his family omitted to provide her with food, it cannot be construed that they intended to cause death of Sitabai.

(8) From the evidence of the two doctors, viz. Dr. Anant Gopalrao Dehadrai and Dr. T. G. Gedam, it is apparent that they did not notice any injury either internal or external on the person of the deceased. This circumstance gives go-bye to the allegation that deceased Sitabai was ill-treated and beaten till her death.

(9) Dr. Gedam (P.W. 20) in his report stated that the cause of death cannot be given while in the Court he deposed that Sitabai died due to starvation. Thus, there is no cogent and reliable evidence to establish the cause of death of Sitabai.

(10) Lastly he submitted that if two views are possible, the view beneficial to the accused be adopted and the accused be set at liberty.

11. Shri Deshpande, the learned counsel for the appellants/accused and Shri Somalwar, the learned counsel for the State, took us through the evidence on record, rival reports lodged with police and higher authorities, and the letters. We have heard both the learned counsel at length.

12. Since the issues raised by the learned counsel for the appellants/accused are interlinked, they need not be dealt with separately. Firstly, we shall deal with the submission of the learned counsel in respect of the various letters written by Sitabai to her brothers and other relations. The letters are at exhibits 97 to 145. It is seen from the record that exhibits 97 to 109 are the post cards, exhibits 109 to 125 are the in-land letters and exhibits 126 to 145 are the chits written by Sitabai to her brother P.W. 4 Motilal. On perusal of the letters, it can be gathered that Motilal (P.W. 4) was looking after the welfare of his sister Sitabai. After marriage, he along with his brothers and other relations had many times visited Deori after receiving the information and telegram regarding the ill health of Sitabai. Motilal (P.W. 4) deposed that whenever he had an occasion to visit Deori, Sitabai used to tell him as regards her plight. She used to explain that she was beaten, ill-treated and was kept without food by the appellant No. 1 and other family members. He deposed that as the condition of Sitabai was bad, she was taken to Nagpur where she stayed with them from 1984 till 19th Jan., 1989. During the aforesaid period also, he and other relations had made efforts to reach Sitabai to the house of the appellants, but they did not allow her. On the contrary, Sitabai being infatuated in love with her husband, all the time she expressed that she wants to cohabit with her husband and with the help of police, she was reached to Deori on 20-1-1989. This Motilal (P.W. 4) specifically stated that Sitabai in person or through the letters apprised him and other brothers that the appellants/accused are demanding money and on her refusal, she was given a cruel treatment, beating and that she

was not provided with food. We have gone through the letters and to know the contents thereof.

13. On 6-7-1984 she wrote an in-land letter to her brother Motilal wherein she disclosed that she was beaten by her mother-in-law, brother-in-law Pappu and her husband too, closing the doors. Brother-in-law used to say that they are interested in divorce. She further disclosed that they were forcing her to go to Nagpur. She referred to a telegram dated 3-7-1987 in the said letter and lastly she expressed her desire that he should come to Deori and try to persuade her husband and other family members not to ill-treat her and beat her. She specifically expressed her desire to stay with her husband only and whatever may be the consequences, she would not leave his house. She expressed that she is not interested to come to Nagpur as the appellants may take it as a pretext for divorce.

There is another letter dated 7-7-1984 (Ex. 113) in which also she has expressed the same agony. She expressed that accused were demanding Rs. 5000/- from her to be brought from her brothers. In this letter she has expressed her desire to come to Nagpur.

There is yet another letter (Ex. 117) wherein deceased Sitabai had made allegations against Deori police. She alleged that the police and the accused are having hand-in-glove with each other. In that letter she requested Motilal to come to Deori and have a talk with police and the appellants so that there may be improvement in their attitude. She stated that accused Pappu used to press her neck and the mother-in-law used to take out burning fire wood and direct sister-in-law (accused No. 4) to assault her. The appellants/accused used to direct her to bring money from her brothers to enable her to maintain herself. In this letter itself she expressed that unless she brought Rs. 1 lakh, they were not ready to maintain her. Other letters also speak in the same directions. From these letters, it is crystal clear that Sitabai was subjected to cruelty, ill-treatment, harassment and beating and she was not provided with food and other essentials of life.

14. The learned counsel for the appellants/accused submitted that these documents have been wrongly admitted by the learned Trial Court without referring to those documents to the Hand-writing Expert for comparison P.W. 4

Motilal is the brother of Sitabai. Sitabai had in all five brothers including Motilal. She was the only sister. Motilal (P.W. 4) deposed that he had received several letters from Sitabai and some letters were received by his brother Nandlal. The letters were shown to him which he identified to have been written by his sister Sitabai, because he is conversant with her hand-writing. Letters were accordingly exhibited. This aspect has not been challenged in the cross-examination suggesting that Motilal is not conversant with the hand-writing of his sister Sitabai and her signature. In his statement under Section 313, Cr.P.C questions 15 and 16 on this aspect were put to accused Pappu. The questions along with answers thereto are as under :-

'Question No. 15 :

It has been further deposed by P.W. 4 that Sitabai had sent post-cards Exhibits 97 to 109 and inland letters Exhibits 110 to 125 and she had complained about ill treatment by beating and not providing sufficient food etc. What have you to say

Answer : It is false.

Question No. 16 :

It has been further deposed by P.W. 4 that Sitabai had also sent 20 letters (chits) Exhibits 126 to 145 in one envelope and again complained about ill-treatment by you accused Nos. 1, 2 and others by beating. What have to say

Answer : It is false.'

Under the circumstances, there was no reason or rhyme to send those letters to the Hand-writing Expert for examination and his opinion. One of the modes to prove the documents is to call the person acquainted with the hand-writing and signature by whom the document is supposed to be written or signed. In this case, Motilal (P.W. 4) being the real brother of deceased Sitabai, she sent so many letters to her brothers Motilal and also to Nandlal expressing her plight in the house of her husband. Therefore, according to us, the prosecution has proved the documents exhibits 97 to 145 having been written by deceased Sitabai in which she expressed her plight regarding ill-treatment, beating and non-supply of food

and medical aid to her. In the instant case, Sitabai died due to starvation. The voluminous evidence in the form of letters sent by Sitabai to her brothers expressing her plight viz. constant torture, beating, non-supply of food and other necessities, shows that it ultimately resulted in her death. In the circumstances, the statements which she made in the letters which led to her death, are admissible under Section 32 of the Evidence Act. The proposition that emerges from Section 32(1) of the Evidence Act is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 of the Evidence Act and, therefore, admissible.

15. The crucial period of repetition of ill-treatment, harassment and cruelty begins with 20th January, 1989 till Sitabai's death i.e. 8th September, 1989. During this period too deceased Sitabai sent letters to her brother. In one of her letters dated 20th April 1989 (Exh. 124), she specifically expressed that her condition became bad to worse due to constant cruelty, non-supply of food and beating at the hands of the appellants/accused. She disclosed that the appellants/accused 1 and 2 are planning to kill her either in wada or any other place. Even though she lodged report with the police, they merely recorded her statement and thereafter they have taken no steps. She disclosed that she belongs to a respectable family and, therefore, she had no other go than to bear the atrocities. Further she requested her brother that since he could only persuade, he should come and convince the appellants/accused and police high-ups so that both the husband and wife could live happily.

Exhibit 137 is another letter which speaks about the atrocities committed by the appellants/accused. She described major role of the appellant No. 2 Pappu i.e. her brother-in-law. She described that all other members used to beat her by means of bamboo sticks by closing the door. She, therefore, again requested with folded hands to her brother Motilal to come and convince her husband and other family

members. She disclosed that for the last four weeks she is living alone. She specifically expressed that -

(Brother, you rehabilitate my matrimonial life which is barren in absence of my husband. I will keep apathy to my brothers if I am given back my husband and I will send Raksha-bandhan. Brother, I am dying for my husband's return and bearing the atrocities).

16. Shri Deshpande, the learned counsel for the appellants/accused attracted our attention to the case of Sharad Birdhichand Sarda v. State of Mah., : 1984 CriLJ1738 and in particular paragraphs 103 and 214 thereof. In the case cited supra, the letters exhibits 30, 32 and 33 not being connected with the suicide, they were held by their Lordships not admissible under Section 32(1) of the Evidence Act.

In the present case, it cannot be said that the statements in the letters (some of them having been reproduced above) have no relation to the cause of death. The statements made in the letters, in our view, have proximate direct relation to cruelty, ill-treatment and harassment etc., and thus admissible under Section 32(1) of the Evidence Act.

17. The learned counsel further placed reliance on State of Mah. v. Vasant Shankar Mhasane, 1993 Mah LJ 36 and submitted that in that case the prosecution did not prove letters (Exhibits 25, 26 and 27) as per law laid down through the Hand-writing Expert and, therefore, it was held by Their Lordships that the appellate Court's action to send the documents to the State Examiner for his opinion was permissible. In that case, serious dispute was raised regarding authorship of the letters in question and the learned Appellate Court not being satisfied with the evidence led by the prosecution, they thought it proper in the interest of justice to record the additional evidence under Section 391, Cr.P.C. However, in the instant case, this is not the position. The letters from Exhibit 97 to Exhibit 145 are well proved by Motilal (P.W. 4) and after close scrutiny we found his evidence, trust-worthy. We could not find any infirmity in his evidence. It cannot be accepted by any stretch of imagination that the letters which have been produced by different relatives of Sitabai, were all concocted as they were

disposed towards the appellants/accused. It would also be hazardous to observe that the investigating agency might have fabricated the whole series of documents. A visual comparison and careful consideration of the hand-writing on all letters (Exhibits 97 to 145) led no doubt in our mind that these letters were written only by deceased Sitabai and none else. In view of this, the case referred to supra has no relevance to the instant case.

18. Besides the documentary evidence in the form of letters which are admissible under Section 32(1) of the Evidence Act, the prosecution led evidence regarding cruelty, ill treatment, beating and non-supply of food to Sitabai by the appellants/accused, and thereby led her to starve.

Karu Sayam (P.W. 2) who was working earlier as servant with the appellants/accused, stated that he being servant he used to go to cattle shed. Sitabai was residing alone in the cattle shed which is adjacent to the house of the accused. He saw her lying in the cattle shed. Accordingly, he informed the accused No. 2 about the same. He deposed that there was no mattress, bed sheet or bed available for Sitabai and that there were no utensils with her. In the cross-examination nothing is brought on record to discard his testimony.

Smt. Kusumbai Dhaniram Badagaye (P.W. 3) deposed that she had seen accused Nos. 1 and 2 beating Sitabai about 3-4 days prior to her death. The house of accused is visible from her house. She stated that the dead body of Sitabai was lying in the cattle shed. The evidence of this witness is also trust worthy.

Smt. Laxmibai wd/o Paiku Wasake (P.W. 10) deposed that Sitabai used to tell her that her husband and other family member were not providing her with food. She deposed that Sitabai had disclosed to her that her husband did not want to maintain her and the accused persons did not allow her to reside in the house. Further, she deposed that she had given for food as Sitabai was hungry. However, in cross-examination she has given go-bye to the version stated in the examination-in-chief. However, her evidence is corroborated by other witnesses.

Radhubai Masaji Wadgure (P.W. 11), an old lady of 60 years and resident of Deori, stated that Sitabai used to come to her house occasionally and asked for

food. She used to disclose that her family members did not provide her with food and foodgrains and used to beat her. She deposed that 21 days thereafter Sitabai died. We do not find any material to discard her testimony.

Ushabai Ashok Gurumargi (P.W. 14) deposed that she was residing at Deori with her father in Sept. 1989. She saw on 3-9-89 at about 4.00 p.m., the accused 1 to 3 beating Sitabai and number of villagers had gathered that time. Her husband was saying that Sitabai should be driven out of the house. Sitabai requested that she should be allowed to stay with them till her death. Accused Nos. 1 and 2 caught her hair and beat her and accused Nos. 3 and 4 were also beating Sitabai. Sitabai was dragged by beating towards the cattle shed. She deposed that Sitabai was heavily beaten and so she was not able to walk properly. She was complaining severe pain in her waist and the accused were saying that they would not provide her with food. Sitabai died after about 8 days thereafter. Except as regards the role played by accused Nos. 3 and 4, no other omission or contradiction has been brought on record. Thus, there is no material infirmity in her evidence to discard her testimony.

The evidence of Ushabai (P.W. 14) is corroborated by the evidence of P.W. 17 Fulanbai Mukaji Nandeshwar who deposed that she is required to attend the labour work near the house of the appellants/accused. On the day of incident she saw accused Nos. 1 to 4 beating Sitabai. While describing the incident she stated that accused No. 1 had caught hair lock of Sitabai, accused Nos. 2 to 4 were beating her by kicks and fist blows, Sitabai was lying in the court-yard in front of their house and then she was taken to the cattle shed. She was not provided with food and water and that Sitabai, according to her, died 8-15 days thereafter. No material infirmity has been shown from her evidence.

Malanbai Motiram Waghmare (P.W. 15) who is president of the same ward, stated that she had gone to the house of accused for applying oil to the wife of appellant/accused No. 2 as she had just delivered a child. That time Sitabai asked for water to drink from the appellant/accused No. 3. However, she refused to give and said that she would not give water even if she dies. Upon this, according to this witness. Sitabai started going inside, but the accused No. 1 caught her hair

and did not allow her to go inside. Accused then assaulted Sitabai by giving kicks. After five minutes this witness found Sitabai lying in the cattle-shed on the ground. She deposed that there were no clothes over her person at that time. Sitabai died 21 days thereafter. In the cross-examination, she has given more details of her visit. She deposed that she had been to the house of the accused 3-4 days of Gokul Ashtami, which comes in the month of August, and Sitabai died on 8th September 89. She denied all adverse suggestions. The evidence of this witness is also unshaken.

Kamlabai Parasram Sirsam (P.W. 16) deposed that Sitabai used to come to her house for demanding food with a plea that her family members were not providing her with food. In cross-examination, she deposed that Sitabai died 15 days after she had demanded food from her. No infirmity is brought to our notice to discard her evidence too.

Hiranbai Mansaram Sakhare (P.W. 18) deposed that she has to go from near the house of accused for attending her labour work. On one Saturday while she was returning home, she found Sitabai saying that she should be allowed to stay in the house. According to her, Sitabai was living in the cattle shed and she was not provided with food. According to her, Sitabai died on the next day. This witness also appears to be straight-forward and nothing abnormal has been shown to discard her testimony.

19. Dr. Kamalnarayan Agrawal (P.W. 22) who was working as Medical Officer with the Rural Hospital Deori at the relevant time, deposed that on 12-2-89 he examined Smt. Sitabai on the call of PSI Pande, in front of the house of the accused. On examination he found that she had not consumed food for four days and according to him, she was complaining of fever with rigour. She was lying near the well in front of the house. In cross-examination he deposed that the general condition of deceased Sitabai was not good and though no injury was found on her person, she could not move from that place of her own without any support.

Prosecution also examined Police Constable Lakhan Ramji Shahare (P.W. 23) who deposed that on 9-9-89 Motilal (P.W. 4) had brought written report at Deori

Police Station on the basis of which he registered the offence. He has proved inquest panchanama (Ex. 40) and spot panchanama (Ex. 74). He further deposed that dead body of Sitabai was sent to the Rural Hospital, Deori for post-mortem. He further recorded the statement of Karu (P.W. 2) and he had ultimately handed over further investigation to PSI Nale on 9-9-1989.

Bharatram Pande, PSI (P.W. 25) deposed that on 7-5-1989 Sitabai had lodged report at Deori Police Station which is at Exhibit 185. He had sent Sitabai to the Rural Hospital for examination and treatment. On the very day Sitabai had lodged another report against the appellant/accused No. 2 Pappu. Both the above reports are respectively at Exhibits 186 and 187. Sitabai was sent for medical examination and treatment at Rural Hospital, Deori. Similarly, this witness had sent one letter on 16-5-1989 to Motilal (P.W. 4) which is at exhibit 1991. He had registered offence under Sections 341, 294 and 506 of the Indian Penal Code on 24-1-1989 against the appellant/accused 1, 2 and 4. Similarly, another offence was registered against the appellants/accused on 7-4-1989 for the offence punishable under Section 498A of the Indian Penal Code. After investigation into both the above offences, charge-sheets were filed in the court of the Judicial Magistrate, First Class, Sakoli.

20. Considering the evidence of all the witnesses, it is clear that the cruelty was sustained continuously for a considerable time i.e. from 20-1-1989 till death. Considering all the above aspects and general picture of the whole episode that emerges is that the ill-treatment was for a considerable time, firstly before 1984 and subsequently from 20-1-1989 till her death which demonstrates that the appellants/accused were intending to end the life of Sitabai. It appears from the contents of her letters and evidence that she had ardent love for her husband and she was all the while willing and ready to live and cohabit with her husband, accused No. 1. She was not interested to leave Deori for Nagpur. She tolerated all sorts of torture hoping against hope, with sole motive to correct her husband, and his relations. She wrote letters to her brothers requesting them to come to Deori and persuade the appellants and also lodged reports with police against the appellants/accused time and again. Thus, merely she being desirous to live with her husband and share his bed does not show that she was bored and digested

with her life. But as a true Indian woman, she kept hoping that a day will dawn and everything would be set right and woes will have an end. Thus, it is difficult to gulf that she entertained a spirit of revenge as suggested by defence, because no such circumstances have been pointed out either from ocular evidence or contents of letters.

21. The prosecution led clinching evidence and proved beyond doubt that the appellants/accused treated Sitabai with cruelty and she died of starvation.

22. Shri Deshpande the learned counsel for the appellants/accused strenuously contended that allowing wife in the house or providing food and other essentials of life to her, is not and cannot be said to be the legal duty of the husband. In case husband of any married woman or his family members commit breach by not allowing the woman to live in the house and maintain, she cannot be forcibly inducted either by police or her relations. Similarly, assuming that it is the duty of the husband or other family members to provide such woman with food and other essentials of life, on failure such woman can take legal recourse against them. He further contended that the appellant/accused No. 1 Mithailal had made separate provision of living for the deceased Sitabai which is evident from the evidence of the witnesses examined by the appellants/accused in defence.

The appellants/accused have examined in all three witnesses in defence viz. Niranjanalal (D.W. 1), Ramesh Astekar (D.W. 2) and Tiratsingh Khanuja (D.W. 3). D.W. 1 Niranjanalal Agrawal is owner of a grocery shop. He has proved the slips (Exh. 211) collectively. According to him, Sitabai had purchased the grocery items contained in the slips. However, from his evidence and documents, it becomes clear that the grocery articles were supplied to her up to 12-3-89 only.

Ramesh Astekar (D.W. 2) is tenant in a house owned by the appellants/accused since last 7-8 years. He deposed that in the month of January 1989 Sitabai was reached to the house of Mithailal by a Lady Constable. Appellant Hiralal did not allow her to enter the house as Mithailal was not residing in that house. Mithailal was residing in a room near Laxmi Talkies at Deori. Other members of the family also did not allow her to enter the house. However, due to intervention of police and panchas, she started initially in the house near Laxmi Talkies and

subsequently in the ancestral house. This witness is examined to show that Sitabai was a quarrelsome lady and he had an occasion to lodge report against her on 27-8-1989. His evidence is contrary to the case of defence his remaining evidence is not relevant and, therefore, the learned Trial Judge rightly rejected the same.

Tiratsingh (D.W. 3) examined by the appellants-accused is not useful to the defence raised by the appellants/accused. From the evidence of the defence witnesses, it can be gathered that the appellants had made provision for Sitabai only up to 12-3-1989. No evidence has been led by the appellants/accused as regards the period subsequent to 12th March, 1989 to show that the provision was made for her maintenance. Thus, the fact remains that Sitabai was not supplied with food and other essentials of life after 12th March, 1989.

22A. Hindus conceive their marriage as a holy and sacramental tie and not a contractual union. The intention of the sacrament is to make the husband and the wife one, physically and psychically, for secular and spiritual purposes, for this life and for after lives. Marriage, whether considered as a contract or sacrament, confers a status of husband and wife on the parties to the marriage and gives rise to certain mutual rights and obligations of spouses. The man is incomplete without his wife who completes him. She is ardhangini (half of him). The wife is verily the half of the husband. Those who have wives can fulfil their due obligations in this world; those that have wives can be happy, those that have wives can lead a full life. Wife is not just a patni but dharmapatni (partner in the performance of spiritual as well as secular duties). Thus, Hindus conceived their marriage a sacramental union - a sacrosanct, permanent, indissoluble and eternal union. For Hindus, the marriage is not a contract, but it is a tie which once tied cannot be untied.

Undoubtedly, marriage as a social institution is regarded solemn all over the civilized world. Thus, marriage came to be regarded as a sacrament, as an indissoluble union; only death can put it asunder. The institution of marriage is hedged with many legal protections. Therefore, not only in the interest of the couple, but in the interest of the society, the marriage tie should not be broken. On the contrary, it is to be seen that every couple must live happily and enjoy the

marital bliss. The law should, therefore, recognise the reality and re-deem the parties from situation that has become intolerable. As marriage is said to be the security, it is irrevocable. Marriage is believed to have been ordained in heaven. The religious rights performed at the marriage altar clearly indicates that the man accepts the woman as his better half, by assuring her the protection as guardian, ensuring food and necessities of life as the provider, guaranteeing companionship as the mate and by resolving the pleasure and sorrows in the pursuit of life shall be shared with her and Dharma shall be observed.

23. According to the principles of Hindu Law, marital duties indicate that the wife is bound to live with her husband to submit herself to his authority. Similarly, the husband is bound to live with his wife and maintain her. Husband is a lawful guardian of his wife. If a man wants to be aloof and away from such moral and legal duties of maintenance of wife and children, he must keep his eyes wide open before marriage and half shut afterwards.

In view of the moral and legal principles laid down under the Hindu Law and various Statutes, we do not find any substance in the submission of Shri Deshpande, the learned counsel for the appellants/accused. In the instant case, deceased Sitabai reiterated her desire in all the letters sent to her brothers that she wanted to live and cohabit with her husband and enjoy the marital bliss and for that only she was facing all the ill-treatment, torture and even starvation. From the evidence as discussed above, the appellant/accused Mithailal and other appellants/accused did not allow Sitabai to enjoy and live with them in the same ancestral house where Sitabai had a legal right to live and cohabit with her husband Mithailal. Similarly, she was entitled to be maintained by her husband as also by the other appellants/accused, because the entire family was joint in mess and residence.

24. Shri Deshpande, the learned counsel for the appellants/accused further submitted that the appellants/accused were providing Sitabai with separate room in another house near Laxmi Talkies at Deori, but she was not ready and willing to live there. At the cost of repetition, we have to state that it was the desire of deceased Sitabai to live and cohabit with her husband and not to live separately.

Therefore, she was interested to live with her husband in the ancestral house where all the appellants were residing. According to the defence, though Sitabai was provided with necessities, as is evident from the version of defence witnesses, she was adamant and wanted anyhow to commit suicide and falsely implicate the appellants/accused. We have given our conscious thought to the submissions and considering the evidence as also facts and circumstances of the case, we do not find any merit in the submissions.

25. Shri Deshpande, the learned counsel for the appellants/accused successfully submitted that there is no clinching and reliable evidence to substantiate the findings recorded by the learned Trial Judge for the offence punishable under Section 342 read with Section 34 of the Indian Penal Code. The prosecution led evidence to the effect that deceased Sitabai was confined initially in the room of the house owned by the appellants/accused near Laxmi Talkies at Deori. Subsequently, she was shifted to residential house where her husband along with other appellants were residing. Though deceased Sitabai was shifted to their ancestral house, but she was not allowed to stay with them and she was kept in the cattle shed. The prosecution witnesses deposed that Sitabai was residing in the cattle shed. This fact is also not disputed by them. The spot panchanama and the evidence of witnesses shows that there were no doors to the cattle shed. Similarly, from the evidence of the witnesses, it is clear that Sitabai was going out of the court-yard of their Wada to meet other ladies or to get food. Various entries in the Station diary have also been placed on record and we have perused those entries. From the entries it is clear that Sitabai lodged reports against the appellants/accused whenever the torture was unbearable to her. Similarly, it is evident from the contents of the spot panchanama that the cattle shed in question had no doors and therefore, it was open from all sides. Under the circumstances, it is very difficult to hold that deceased Sitabai was either wrongfully restrained and also she was unlawfully confined. The wrongful restraint is defined under Section 339 of the Indian Penal Code, which is as under :-

'339. Wrongful restraint. - Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception. - The obstruction of a private way over land or water which a person in good faith believes himself to have lawful right to obstruct, is not an offence within the meaning of this section'.

A bare reading of the definition makes it clear that voluntary obstruction is a necessary ingredient. The offence of wrongful restraint can be committed even by mere words and physical obstruction is not necessary. It is enough if reasonable apprehension is created in the mind of the person restrained that he is not free to depart. From the facts and the circumstances of the case, it is established that Sitabai was not restrained wrongfully at all.

Wrongful confinement is defined under Section 340 of the Indian Penal Code, which reads as under :-

'340. Wrongful confinement. - Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person.'

The essential ingredients of the offence of wrongful confinement are - (1) Wrongful restraint, and (2) within certain circumscribing limits. To support a charge of wrongful confinement, proof of actual physical obstruction is not essential. It must be proved in each case that there was at least such an impression produced in the mind of the person confined, as to lead him, reasonably to believe that he was not free to depart, and that he would be forthwith restrained, if he attempted to do so. What is important in such cases is the reasonable apprehension of force rather than its actual use. The coercion of the mind can, in certain circumstances, be as effective as coercion of the body, in order to bring the conduct of the wrong doer within the ambit of Section 341 or under Section 342 of the Indian Penal Code. Such a restraint may arise out of words, acts, gestures or the like, sufficient to induce a reasonable apprehension that failure to submit will result in the use of force. It is not necessary to constitute the offence under Section 341 or under Section 342, that the person to be deprived of his liberty, should be touched or assaulted or actually arrested or confined within walls. Under the circumstances, having regard to the facts of the case, according to us, there was neither the wrongful restraint nor the wrongful confinement of deceased Sitabai. Therefore,

the conviction awarded by the learned Trial Judge against the appellants/accused for the offence punishable under Section 342 read with Section 34 of the Indian Penal Code is hereby set aside.

26. Now, the crucial issue to be discussed is, whether the starvation assuming to be at the instance or by the appellants/accused would attract the provisions of Section 299 of the Indian Penal Code to hold them responsible for the offence of causing death of Sitabai. Dr. Gedam (P.W. 20) who had been to the cattle shed at the instance of police, declared Sitabai dead and opined that the cause of death was starvation. Starvation may result from total deprivation of food, partial deprivation of food, and from the use of unsuitable food, e.g. lacking in proteins and vitamins. It has been sufficiently brought on record that deceased Sitabai was not provided with food by the appellants/accused and Sitabai was compelled to beg for food and this fact has also come on record through the oral evidence. Contents of the letters (Exhs. 97 to 145) are also self-explanatory. In the letters also, Sitabai had disclosed to her brothers that she was kept without food. In the first instance, hunger pain is felt in the stomach which is relieved by pressure. In acute starvation, the feeling of hunger is lost after about forty-eight hours but thirst becomes intense. Apathy is pronounced and fatigue comes on easily. There is progressive loss of body weight. Emaciation, due to loss of subcutaneous fat, begins to take place and the bones stand out. The person appears pale due to nutritional anaemia; the skin is thin, dry, sometimes fissured and ulcerated due to superadded infection, and drawn tight like parchment over the bony prominencies; the lips are dry and cracked; the cheeks hollow; eyes sunken and glistening; abdomen carinated; and legs and arms like broomsticks. The loss of forty per cent of the body weight ordinarily ends in death. According to medical science, as a rough average, an adult may survive for about ten days without food and water, whereas if water be supplied, he may live about fifty or sixty days. Females can withstand starvation better than males on account of more fat in their bodies.

It is our usual experience that suicide as a result of complete starvation is rare, for the person cannot usually resist the intolerable thirst or the desire for food when placed within his reach. However, it may occur in the insane or in prisoners who may go on hunger strike. In those cases many times forcible feeding is applied. In

the life, occasionally instances are there where the person may decide to starve for a certain cause particularly in the name of public interest.

27. In the instant case, we have doubt that Sitabai was not provided with food by the appellants. The spot panchanama (Exh. 74) clearly shows the dead body of Sitabai as lying in a cattle shed on empty gunny bag. In the cattle shed, stumps were fixed in a row on the ground for tying the cattles. One small white cloth was laying near the dead body as also one big white cloth. One handkerchief was also found near the gunny bag. It is thus clear that Sitabai was not provided with wearing apparels, bedding or utensils to cook the food. Not only that, but even no provision was made for her drinking water.

28. Criminal law fastens liability on the persons who omit to perform the duty required by law such as to provide food, clothing, shelter, or medical aid to another, but a refusal to perform acts of mere charity or mercy not coupled with a legal duty does not entail legal punishment even if death ensure from such refusal or neglect. Thus, where the wife is in a helpless state and unable to appeal elsewhere for aid and the husband and his relations like that of appellants, who had the means to provide necessities for existence, deliberately withhold them with the intention to kill her, they commit murder and are guilty of murder as that of parents towards infant or of a jailer towards a prisoner or of a person in charge of lunatic asylum towards its inmates.

Circumstances of the transactions include evidence of sustained cruelty extending for a considerable period i.e. from 20th January, 1989 to 8th September, 1989 i.e. till her death, interspersed with exhortation to the victim Sitabai to end her life. The evidence of cruelty was one continuous chain, several links of which were touched up by the exhortation to die. Thus, evidence of cruelty, ill-treatment and exhortation to end her life is overwhelming against the appellants/accused and thus the prosecution has proved beyond reasonable doubt that the appellants/accused have committed offence of murder punishable under Section 302 read with Section 34 of the Indian Penal Code. The Trial Court has gone into meticulous and minutest matters pertaining to the circumstances leading to the alleged murder of Sitabai and rightly rendered the finding of conviction.

29. Shri Deshpande, the learned counsel for the appellants repeatedly urged that the police officers attached to Deori Police Station and senior officers of Police Department showed over enthusiasm in supporting Sitabai. The learned counsel urged that the police trusted the entry of Sitabai in the joint family house of the appellants/accused on 20th January, 1989. Similarly, they unnecessarily entertained the false reports lodged by Sitabai. Moreover, it is clear from the testimony of PSI Pande that he was instructed by the superior police officers to extend all sort of co-operation to Sitabai as she was desirous to cohabit with her husband. Shri Pande, P.S.I. also admitted that he had directed a lady police constable to reach Sitabai to the house of appellants/accused.

The way in which the police machinery acted in the instant case from time to time, cannot be said to be deliberately adverse to the appellants/accused. It is well established on record that deceased Sitabai was subjected to cruelty, ill-treatment and harassment by the appellants/accused. They kept her without food and shelter. Democratic society is governed by the concept of rule of law. The police are essentially a law enforcing agency. It is he who enforces the liability, maintains the public order, regulates traffic, keeps the lawless elements in check, brings the offenders to book and so on and so forth. Police after advent of independence of India and becoming a parliamentary democracy, practically became a servant of people. Now whilst maintaining law and order as servants of the democracy, it has to act as guide of the people, to counsel them towards the responsible civic life. Police service is essential and police have to spend most of their time in working with the people from whom they too expect co-operation. The police instead of being ante are now of the People and for the People. In the instant case, the police have taken the action rightly from time to time and their courtesy and co-operation is worth-applauded. The aspect of courtesy is important particularly when the victim is woman. Lack of courtesy brings discredit to the police force. Suffice to say that the Police in the instant case were quite courteous, co-operative and fully determined. We expect such high profile from police force to create the atmosphere where 'the head is held high'.

30. Before we conclude, we must mention that in Indian Society a woman has always been viewed as an ideal. She has been considered to be the ultimate force

of the family and the ultimate protector of culture, heritage and religion. She is the one who is responsible for building up of the future of humanity. She is considered to be ideal of love, affection, kindness and sacrifice. She has always catered to the interest of the family and society and has sacrificed her own selfish interest. In most cases she has confined herself to the four walls of her house, her husband, her children. Even then she has emerged as the uniting force for the family. It is because of the woman, in the role of mother that all the members of the family remain linked and emotionally tied-up with each other, however distant they may be from their family. But in reality this image has been shattered and the same woman has been subjected to derogatory allegations. However, the case which we have decided now is a glaring example where the woman was subjected to cruelty, ill-treatment and harassment.

31. In the result, we partly allow this appeal. The conviction and sentence against the appellants/accused for an offence punishable under Section 342 read with Section 34 of the Indian Penal Code is set aside.

However, order of conviction and sentence passed by the learned Trial Court against the appellants/accused for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code is hereby confirmed.

32. Appeal partly allowed.