

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.451 OF 1995

SOMNATH YESHWANT SHIRSAT

Age 22 yrs, r/o Nehru Nagar,
Block No.16, Room No.924,
Nashik Road,

.. Appellant

*Versus***THE STATE OF MAHARASHTRA**

.. Respondent

Mr.Kayval P. Shah i/b Mr.PB. Shah, Advocate for the appellant,
Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 26th JUNE, 2015

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ORAL JUDGMENT :-

1 Savita, the wife of the appellant caught fire on 20th December 1994, and had an unnatural death on 25th December 1994 due to the burn injuries. On 21st December 1994, Sakhubai (PW 2), mother of Savita lodged a report with the police, alleging that the appellant and his parents had treated Savita with cruelty, and that Savita had committed suicide due to the cruel treatment given to her by the appellant and his parents. On the basis of this report which was treated as the First Information Report,

investigation commenced. On completion of investigation, a police report under section 173 (2)(i) came to be filed against the appellant, and his parents – Kamlabai Shirsat and Yeshwant Shirsat, alleging commission of offences punishable under section 498A of the IPC, 304 of the IPC and 306 of the IPC read with section 34 of the IPC. Kamlabai was arraigned as the accused no.1, Yeshwant as accused no.2 and the present appellant as accused no.3. The learned Addl. Sessions Judge, Nashik after holding a trial, found Kamlabai and Yeshwant (original accused nos.1 and 2) not guilty, but found the appellant guilty of the offences punishable under section 498A of the IPC and 306 of the IPC. The appellant was acquitted of an offence punishable under section 304 B of the IPC. The learned Addl. Sessions Judge sentenced the appellant to suffer Rigorous Imprisonment for 2(two) years, and to pay a fine of Rs.500/- with respect to the offence punishable under section 498A of the IPC, and to suffer RI for 5(five) years, and to pay a fine of Rs.500/- with respect to the offence punishable under section 306 of the IPC.

Being aggrieved by his conviction and the sentence imposed upon him, the appellant has approached this Court by filing the present Appeal.

2 I have heard Mr.Kayval P. Shah, the learned counsel for the appellant. I have heard Mr.Deepak Thakre, learned APP for the State.

3 I have gone through the entire evidence – oral and documentary – adduced during the trial.

4 Totally, 12 witnesses were examined by the prosecution during the trial. The accused persons did not examine themselves in their defence and did not adduce any defence evidence.

5 Before proceeding to discuss the evidence of the witnesses, one broad feature of the case need to be kept in mind. The broad feature is that Savita had made statements before her death as to how she had caught fire. Since she died due to the burn injuries sustained by her, and as these statements relate to her death, they were admissible under section 13(1) of the Indian Evidence Act. The admissibility of these statements is not in dispute.

6 These statements are not consistent. In other words, the version of Savita, as reflected in these statements, is not uniform. Savita had first made an oral dying declaration to Sakhubai in which she had said that she had caught fire accidentally. Later on, however, she told Sakhubai that fire was caught by her not accidentally, but that she had poured kerosene over her person, and set herself on fire. Savita had also made a statement to the police which was recorded by Head Constable Bagul, but this statement of Savita, though admissible under section 32(1) of the Evidence Act, was not contained in the charge-sheet. It was also not got produced before the Court during the trial, and was not tendered in evidence. There were two other statements made by Savita which were also orally made, but were reduced to writing by two different Special Judicial Magistrates. In one of these – the one recorded by Special Judicial Magistrate Sayyed on 20th December 1994 itself – Savita stated that she had caught fire accidentally. In her statement recorded by Special Judicial Magistrate Deore (PW 9) on the next day i.e. 21st December 1994, Savita stated that she had poured kerosene on her person, and had set herself on fire. The prosecution did not examine Special Judicial Magistrate Sayyed, but the statement of Savita recorded by him was tendered in evidence, and marked as

Exhibit-25. Thus, there were conflicting versions of Savita as to what had happened, and more particularly, whether she had caught fire accidentally, or whether she had intentionally set herself on fire.

7 The first witness Baban Palde is a panch in respect of the spot panchnama. In his evidence, he does not give any timings of the panchnama. It was not asked to him and he did not say anything about it. His evidence shows that on the spot, he saw a stove, a match-box and some partly burnt cloth pieces. That the same were seized by the police in his presence. In the cross-examination, it is revealed that the place of occurrence was shown to him and the other panch by the police, and that except that the police asked him and the other panch to see the spot, there was no talk between him and the police, or between him and anybody else, or between the police and anybody else. He also says that the key of the house where the panchnama was drawn, was with the police. The evidence of this witness is significant, and may be discussed at an appropriate place.

8 The second witness is the First Informant Sakhubai – mother of Savita. She and the third witness Shridhar – brother of Savita are the most important witnesses on the point of the

allegation that Savita was being treated with cruelty by the appellant and the other accused. According to Sakhubai, Savita's marriage with the appellant had taken place on 18th March 1994 at Nashik Road, and that, the parents of Savita had incurred the marriage expenses of about Rs.70,000/- to Rs.80,000/- out of which an amount of Rs.21,000/- was given as dowry. That, after the marriage, Savita went to co-habit with the appellant, and when she came back to her parents house after about 8 days as per the custom, Savita told Sakhubai that a refrigerator which was agreed to be given to the appellant in marriage, had not been given and that for that reason, Savita was assaulted. Sakhubai and Shridhar then went to the appellant, and told him that since expenses of marriage had been incurred, they were not in a position to purchase a refrigerator, but that in due course, the same would be purchased and given to him. The appellant, thereafter, on some day, came to Sakhubai's house and said that a refrigerator may not be given to him, but instead, he be advanced a loan of Rs.50,000/-. That, because of the failure to pay the loan to the appellant, the appellant continued to ill-treat Savita. Savita's brother Shridhar (PW 3) once went to the house of Savita, and found that she was not keeping good health and therefore, Savita had been got admitted in a hospital. She was required to be

operated for appendicitis. The expenses for the surgery etc. were incurred by Savita's parents. That on 18th December 1994, (i.e. just two days before Savita caught fire), Savita came to Sakhubai's house along with the appellant when Shridhar was also there. Appellant said to Shridhar that he should take his sister back and that, the appellant was ready to make re-payment of all the expenses of the marriage, and that the appellant be given a divorce. On 19th December 1994, Sakhubai went to the house of the appellant, and inquired if Savita was really suffering at her in-laws' place. She spoke to the appellant asking the reason for his wanting to divorce Savita, and requested him to tell her if he had any complaint against Savita, and that, she would then try to ask Savita to correct herself. The appellant then left the house without saying anything. Sakhubai convinced Savita that she should behave well, and that in due course of time, everything would be alright. Sakhubai then comes to the incident on 20th December 1994 when she learnt from a neighbor of the appellant who came to her, that Savita had suffered burn injuries, and was admitted in Bytco hospital at Nashik. She immediately went to hospital, and saw that Savita was having burn injuries all over her body. When Sakhubai inquired with Savita, Savita told that she had suffered burn injuries because of flaring up of flames of a stove. Later on,

however, when Savita was suffering in pain, she told Sakhubai that she was wrong, and that she had poured kerosene over her person, and set herself on fire. On the next day, Sakhubai lodged a report to the police which was treated as the First Information Report (Exhibit-14).

9 In her cross-examination, it was revealed that Savita was got admitted in the hospital in connection with the abdominal pain and the treatment for appendicitis, by the appellant only. Sakhubai also admitted that Savita used to complain of abdominal pain. It is also revealed that the house of the appellant is at about half hours walking distance from the house of Sakhubai. It is also revealed in the cross-examination that after the marriage of Savita, the appellant's parents had shifted to another place i.e. a house in CIDCO. It was suggested to Sakhubai that she used to frequently visit Savita's house, and used to instigate her that she used to pick up quarrels with the in-laws and drive them from the house. Such suggestions, however, were denied by Sakhubai. In the cross-examination of Sakhubai, her omission to state before the police in the First Information Report that they (Savita's parents) had agreed to give a refrigerator to Savita, has been brought on record. Sakhubai denied the suggestion that Savita used to come to her

regularly, and claimed that she had come only twice or thrice, but in her further evidence, she has said that when Savita *used to come* to her, sometimes the appellant *used to fetch her back* and sometimes, Sakhubai's son *used to reach her*. The phrase 'used to' as repeatedly used by Sakhubai is a little inconsistent with Savita having come to Sakhubai's place only twice or thrice. Sakhubai also said that Savita did not stay in her house overnight at any time, but this is contradictory to what Shridhar says. According to Shridhar, Savita had on one occasion, stayed back for a week or two, and then she was reached to the matrimonial house. From the cross-examination of Sakhubai, it becomes quite clear that Sakhubai never thought the disputes between Savita and her husband and in-laws, serious, needing any action to be taken. She moreover, admitted that it was *her desire and that of her son* that a refrigerator be given to Savita.

10 Some suggestions were given to Sakhubai in the cross-examination to the effect that she and her sons had been interfering with the investigation and during the trial, and that, Advocate for the appellant was assaulted in the Court premises and that, the matter had been reported to the police, etc., but the same have been denied by Sakhubai. What is significant, however,

is that as per Sakhubai, she went to the hospital immediately on learning about the burn injuries caused to Savita, and that, she reached the hospital by about 6.45 p.m on the same day. Sakhubai was in the hospital all the time till Savita died. She also agreed having learnt about one Ramabai Wagh (PW 10) accompanying the appellant when Savita was got admitted in the hospital. According to Sakhubai, she learnt about 'Savita having earlier given a false version of how she had caught fire about one and half hour after she had made the said false statement', but Sakhubai did not ask any of her sons to inform the police at that time. She also admitted in the cross-examination that the FIR was read over to her before she had entered the witness box for giving evidence.

11 The evidence of Shridhar (PW 2) is similar to the evidence of Sakhubai with respect to the expenses incurred for the marriage, giving of a cash of Rs.21,000/- to the appellant, and Savita's telling him about the harassment caused to her by the appellant and his parents for bringing a refrigerator. According to Shridhar, however, when he went to the house of Savita and told the appellant and his parents though refrigerator could not be given at that time for want of money, it would be given, as and when cash would be available, and that Savita be not harassed,

the harassment of Savita stopped. He has categorically said that thereafter, for some time, Savita was happy till on some day Somnath came to their (Sakhubai's & his) house and requested for a loan of Rs.50,000/-. According to him, on account of their failure to advance the hand loan, the appellant and his parents again started assaulting and abusing Savita. He then speaks about the incident on 18th December 1994, and states that the appellant brought Savita to their house and said that he was not interested in co-habiting with her, and that he would make good the expenses that were incurred by Savita's parents for the marriage. Shridhar then convinced the appellant, and sent Savita back with him.

12 In the cross-examination, it is revealed that this witness and the appellant both work in the Security Printing Press. From the evidence of this witness, and particularly that in the cross-examination, it appears that like Sakhubai he also never perceived the alleged cruel treatment given to Savita to be sufficiently serious so as to take any step in the matter, or to keep Savita away from the appellant's place.

13 The fourth witness Dr. Mrs.Pooja is the one who had performed post mortem examination on the dead body of Savita

on 25th December 1994. It appears that Savita had sustained 99% burn injuries and the cause of her death was opined to be '*due to septicemic shock due to deep extensive burns 99%*'. There is no dispute on this aspect.

14 The fifth witness Sriram Khairnar is the rickshaw driver by whose rickshaw Savita was taken to Bytco hospital after the incident. According to this witness, on 20/12/1994, at about 6.00 - 6.30 p.m, in the normal course of his business, he was stopped by 4 - 5 persons who told him that a patient suffering burn injuries was to be carried to hospital. That, then the injured person, a man and a woman were taken by him to Bytco hospital. On the way, he heard discussion to the effect that "if you are to live married life, I shall treat you well". He did not, however, remember having heard anything else, except this sentence. In the cross-examination, it was suggested to him that he was giving false evidence at the instance of the brothers of Savita who were rickshaw drivers. The evidence of this witness has not been relied upon by the Addl. Sessions Judge and rightly so, in my opinion. In fact, though this witness claimed that he did not know who were the persons to whom he had taken to hospital, in the cross-examination, *he admitted that the brother of deceased Savita owns a*

rickshaw. Now, this knowledge, it was impossible for him to have unless he knew who Savita was. It is also not clear as to *when* his statement was recorded by the police. Apparently, the evidence of this witness is supposed to explain the inconsistency between the two different versions of Savita, as reflected in different dying declarations allegedly made by her. The sentence that 'if you are to live a married life, I shall treat you well', (which is the only sentence, which this witness remembers) if believed, to have been indeed heard by this witness and is further believed to have been uttered by the appellant provides an explanation as to why Savita initially stated a lie that the fire was accidental. Since this witness has not been believed by the learned Addl Sessions Judge, and since his evidence is clearly unreliable, particularly in view of the evidence of Ramabai Wagh (PW 10), it is not necessary to discuss the same further.

15 The sixth witness Hiranman is the neighbour of the appellant. He was present in his house when the incident of Savita catching fire took place. This witness heard shouts and commotions, and found the appellant shouting to the effect that Savita was ablaze. Hiranman then went inside the house of the appellant, saw the appellant extinguishing the fire by a curtain.

Since Hiranman refused to say that Savita was being treated with cruelty, he was declared hostile and questions in the nature of cross-examination were put to him with the permission of the Court by the Addl. PP. The witness, however, denied that appellant and his parents used to abuse and assault Savita. The prosecution had gone to the extent of expecting this witness to say that Savita had earlier also once tried to set herself on fire – a fact not stated even by Sakhubai or Shridhar – but, Hiranman has denied the same. Since it was the case of the appellant that there has been much interference in the investigation, and also in the trial proceedings on behalf of the brothers of Savita and Sakhubai's brother who is an Advocate, it was asked to the witness in the cross-examination on behalf of the accused that he had been threatened to depose as they desire, by the brothers of Savita, but he denied that also. He however, admitted that a message was received by him from one Advocate Jagtap that he should see him. Though this witness was declared hostile, it does not appear that he was disposed to depose in favour of the appellant and other accused. In fact, he appears to be an impartial and independent witness.

16 The seventh witness Ujwala is also a neighbour of the appellant. According to her, she used to hear the quarrels between

the appellant and his wife, and that Savita used to tell her that the appellant and his parents required her to bring a refrigerator, and that she used to be assaulted for that reason. Regarding the incident that took place, on 20th December 1994, Ujwala says that when she heard commotions, she went to the house of the appellant and saw the appellant extinguishing the fire caught by Savita by using a quilt. The appellant then hired a rickshaw and took Savita to the hospital. In the cross-examination, she said that she did not go to the hospital to see Savita, and that, she had no discussion with any of her family members, or with the neighbors (regarding the incident). She, however, knew that Savita had three brothers and even admitted their presence in the Court premises and outside the Court hall.

17 The eighth witness Anant Jagtap, an Advocate is the maternal uncle of Savita. His evidence is to the effect that when he went to the hospital on 20/12/1994, on seeing him, Savita tried to rise from the bed and said that “it is only because of your name and fame that I suffered less harassment”. Nothing turns on the evidence of this witness. However, it appears that during his cross-examination, he had a serious argument with the counsel for the accused persons. He denied the suggestion that he had taken

the initiative, and played an active role in managing the bogus dying declarations of Savita, and had used pressurizing and threatening tactics.

18 The ninth witness Deore is the Special Judicial Magistrate who recorded the dying declaration of Savita on 21st December 1994 at about 5.20 p.m. It has already been observed also that this dying declaration (Exhibit 24) supports the prosecution case to the effect that Savita's death was suicidal. However, interestingly, the reason for setting herself on fire, as given by Savita in this declaration is that, her '**mother-in-law always quarrelled with her, and that it was under that tension that Savita had set herself on fire**'. It is quite easy to see that this statement does not implicate the appellant. On the contrary, it implicates the mother-in-law i.e. the accused no.1 – Kamlabai, who has been acquitted. Anyway, what is significant is that he admits that he knew about the earlier dying declaration of Savita recorded by Special Judicial Magistrate – Sayyed, and that he had read the contents thereof, but that still, he did not ask any question to Savita in that regard.

19 The tenth witness Ramabai Wagh – also a neighbor of appellant – is the one who had accompanied Savita and the

appellant to the hospital. This witness also refused to say that Savita was being treated with cruelty, and was therefore, declared hostile. Questions in the nature of cross-examination were put to her by the learned APP with the permission of the Court. Ramabai, however categorically denied that Savita was not being treated well by the appellant and his parents. Ramabai categorically denied that on the way to hospital, Savita was saying that 'because of the ill-treatment and frustration arising out of it, she had set herself on fire'. The evidence of this witness is significant in respect of another – and quite important – aspect. It is revealed in her cross-examination taken on behalf of the accused persons that the appellant had given the key of his house to her, and that, some two to three persons had come to her house, and had obtained the key from her. Ramabai had given the key to those persons. This evidence has not been challenged. After the disclosure of this, no attempt was made by the Public Prosecutor to question this witness further regarding her story about the key of the appellant's house being handed over to 2 – 3 persons who had come to collect the same from her. Based on this, the suggestion of the defence (which was put to the witness) is that the persons who had come and taken the key, had taken away the stove that was in the house of Somnath, and had replaced it by

another. It must be kept in mind in this context, that according to Baban Palde (PW 1), a panch in respect of the spot panchnama, the key of the house was with the police who had opened the same at the time of panchnama. It is significant because it is largely due to the position of the house, as reflected in the spot panchnama, that the learned trial Judge has come to a conclusion about the death being suicidal, and not accidental.

20 The eleventh witness Laxman Bagade is the one who had treated Savita on her admission to the hospital. *He confirms that Ramabai had accompanied the appellant and Savita.* He states about the history of the incident being given as “accidental burn injuries”, but this does not benefit the appellant, in any manner, as according to him, this history was given by the appellant and Ramabai. In the cross-examination, he admitted that no note had been made by him while noting the history given as to who had given it.

21 The last witness Shaligram Patil (PW 12) is the Investigating Officer. In the examination in chief itself, he said that a statement of Savita was recorded by Constable Bagul, and then Special Judicial Magistrate Sayyed was requested to record the statement of Savita and that, accordingly, Special Judicial

Magistrate Sayyed recorded the statement of Savita. Shaligram Patil thereafter says that after that statement was recorded, relatives of Savita started insisting that the statement was 'required to be changed', and so the same be got recorded before another Judicial Magistrate. According to him, it is under these circumstances, that the statement of Savita came to be recorded by Deore. Certain contradictions in the statement of Hiranman were brought on record in the evidence of this witness. In the cross-examination, he admitted that one Baban Vaze was a relative of the appellant and the other accused, and had made a complaint in the police station that on arrest of the accused persons, one of the relatives of Sakhubai who is an Advocate, made efforts to see that the accused persons did not get any legal assistance, and that, Vaze had been assaulted. With respect to non-production of the statement of Savita recorded by Head Constable Bagul, along with the charge-sheet, he said that he did not find it 'to be of importance' and so kept it back.

22 The learned Addl. Sessions Judge framed the following points for determination, and answered them as follows :-

Points :-

- 1 Whether the prosecution proves that the accused persons treated Savita with cruelty ? If yes, Whether the cruelty was of such a nature and to such an extent as was sufficient to drive Savita to commit suicide ?
- 2 Whether the prosecution proves that Savita committed suicide and/or died an unnatural death due to sufference of burn injuries ?
- 3 Whether the prosecution proves that soon before her death Savita was subjected to cruelty in connection with the demand of the accused persons for dowry ?
- 4 Whether commission of suicide by Savita was abetted by the accused persons by subjecting her to cruelty on account of her failure to fulfil their unlawful demands for a Freeze and a cash amount ?

Findings

- 1 Yes. By accused No.3 Somnath only.
- 2 Yes.
- 3 Yes. Soon before her death Savita was subjected by Somnath only to cruelty, but not in connection with the demand for dowry.
- 4 Yes. Abetted by accused Somnath only.

23 The learned Addl. Sessions Judge has not accepted that the alleged demand of refrigerator, or a loan of Rs.50,000/- could be treated as a demand of dowry. He also came to the

conclusion that such demand, if any, could not be called as unlawful. He came to the conclusion that from the evidence of Sakhubai, it was clear that it was her desire, and that of Shridhar to give refrigerator to Savita. He, therefore, held that Savita was not subjected to cruelty on account of a demand of dowry. The conclusion arrived at, by the learned trial Judge in that regard, is proper.

24 With respect to the other findings, interestingly, the learned Addl. Sessions Judge has not placed reliance on the dying declarations of Savita. There appears to be some confusion in the thought process of the learned Addl. Sessions Judge while dealing with the statement of Savita (Exhibit-24) recorded by Deore (PW 9) which states the reason for setting herself on fire, *as the frequent quarrels by the mother-in-law and tension caused to Savita on that account.* However, he did not hold the mother-in-law responsible for the act of Savita, and acquitted her. Evidently, the charge of cruelty that has been held to be proved by him, is not on basis of this statement of Savita. The learned Judge observed that 'this statement was not sufficient to indicate cruelty on the part of Kamlabai and the recurrence of quarrels picked by Kamlabai over domestic affairs, would not be sufficient to prove cruelty, and no

conclusion as to the reason for picking up the quarrels, could be drawn'. The learned Judge did not discuss the reasons for his coming to the conclusion on the point no.2 i.e. whether Savita had committed suicide, separately, and therefore, what exactly led to his believing that is not entirely clear. The dying declarations being conflicting have been discarded by him, and though it is not possible to accept the entire reasoning of the learned Judge as correct, on the whole, the dying declarations could not have been acted upon. In fact, the possibility of the subsequent dying declarations being false, was quite apparent inasmuch as Sakhubai, Shridhar and relatives of Savita had, after knowing what Savita had stated before the Special Judicial Magistrate Sayyed, insisted that '*the statement was required to be changed*'. The changed statement also, in no way, implicates the appellant and speaks only of frequent quarrels between Savita and her mother-in-law Kamlabai. At the most, the said dying declaration even if accepted would have been sufficient only to implicate Kamlabai (the accused no.1), but she has been acquitted. Even if the first dying declaration made by Savita is not accepted as true, and therefore, that her death was accidental and not suicidal, is not accepted, still, the fact remains that when the dying declarations are excluded from consideration, there is

nothing to show whether the death was suicidal or accidental. That it was suicidal, appears to have been ruled by the learned Judge, only on the basis of 'certain circumstances'. The first circumstance, according to the learned Judge is that Somnath was just shouting that 'Savita was on fire', instead of trying to extinguish the fire. This is based on a stray statement appearing in the evidence of Hiranman. It is impossible to accept this. The evidence shows that the appellant did try to extinguish the fire. Moreover, logically, this conduct of the appellant is not relevant for judging whether it was suicidal or accidental. The learned Judge seems to be of the view that in case of accidental catching of fire, the appellant would have immediately extinguished the fire, and in case of suicidal death, he would have allowed Savita to remain burning. If the appellant did not want Savita to stay with him as seems to be the the opinion held by the learned Judge, and if he was not interested in extinguishing the fire caught by Savita for that reason, he would refrain himself from trying to extinguish it, even if the fire would have been caught accidentally. Reliance on this circumstance, which in my opinion, itself was not proved, was not relevant for deciding whether the death was accidental or suicidal. All that it would show that the appellant did not take sufficient interest in saving Savita. This would be because of what

he felt about Savita and not because the fire was accidental or suicidal. It is nobody's case that Savita had been set on fire by the appellant. Had that been the allegation, or the prosecution case, perhaps from the conduct of the appellant in not trying to extinguish the fire immediately, appropriate inference could have been drawn.

25 The learned Judge has placed almost complete reliance on the spot panchnama to conclude the death to be suicidal. Interestingly, the learned Judge has relied not on the evidence of the panch witness, but on the contents of the panchnama which were never spoken to by the panch Baban Palde (PW No.1). The learned Judge has observed that the witnesses to the panchnama say that there was a kitchen platform on which the stove with blue colour oil container was found, that there was a match-box and on the floor there was a burnt match-stick. The learned Judge observed that the witnesses to the panchnama saw that on the floor, there were some half burnt pieces of clothes and kerosene mixed water, and that the witnesses could smell the kerosene oil. The panch witness has no where stated so. I have re-read the evidence of the panch witness with the assistance of the learned APP, in view of this observation of the learned Judge, but I do not find that the witness has made even a reference to

there being kerosene mixed water on the floor. All that he says that he saw a stove and a match-box and some half burnt clothes, and that the police seized the same. Apparently, the learned Judge has simply read the panchnama and treated that as the oral evidence of the panch witness. This was, clearly, not in accordance with law. The panchnama could not be substantive evidence which was 'what was stated by the panch before the Court'. Panchnama is a contemporaneous record of what the panch observed, and could be used for the purpose of contradicting or corroborating a panch witness. It could also be used by a panch for refreshing his memory if the conditions mentioned in section 159 of the Evidence Act, are fulfilled. However, to treat the panchnama as substantive evidence, and to take the facts recorded therein, as having said by the panch witnesses, was contrary to law.

26 The learned Judge observed that 'the fact that kerosene oil mixed water was found on the floor in the kitchen, and it was smelling of kerosene oil, rules out the possibility of accidental burning when Savita was cooking food'. (para 31 of the judgment) Now, this is the basis on which the learned trial Judge ruled out the possibility of accidental burning, but there is

absolutely no evidence to the effect that kerosene oil mixed water was found on the floor or that it was smelling of kerosene oil. It is surprising that without there being any evidence and though the panch never said anything about it, the learned Judge came to a conclusion to that effect (perhaps by reading the panchnama) and solely on that basis, held the death to be suicidal.

27 Even otherwise, it was difficult to place much reliance on the panchnama for ascertaining what was the position when the fire was caught. As aforesaid, the key of the premises was with the police. How it had gone to the police is unexplained. Who had locked the premises, is not clear. Ramabai's evidence shows that the key had been taken from her by 2 - 3 persons. Who were those 2 - 3 persons has not been brought on record. Since there was no evidence as to *who had locked the premises and in what condition, who were the persons who had taken away the key from Ramabai and for what purpose, and more particularly, how the key had gone to the police*, to give much importance to what was written in the panchnama and to come to a conclusion of accidental catching of fire being ruled out only on that basis, was not proper. Anyway, as observed, there is actually no evidence of the existence of the circumstances on the basis of which the

learned Judge concluded the death to be suicidal and apparently, the learned Judge simply read the recitals in the panchnama to come to a conclusion about the existence of such circumstances. If that was the basis of coming to the conclusion of the death being suicidal, the conclusion simply fails because what has been read by the learned trial Judge, is not in the evidence at all. The learned Judge has then referred to the incident dated 18th December 1994 when appellant had gone with Savita to the house of Savita's parents, and had said that he did not want to cohabit with her, and that he shall make good the expenses of marriage and return the gifts; and that he be given a divorce. The learned Judge has probably construed this as 'abetment to commit suicide'. The learned Judge observed that the appellant caused mental torture to Savita by giving a threat of divorce which led Savita to end all her miseries for good by ending her life.

28 It is not possible to agree with this reasoning. A communication of the desire to take a divorce cannot be construed as abetting the commission of suicide even if as a result of the expression of this desire, the spouse commits suicide. There is nothing to show, in the first place, that the appellant, if he had said that he wanted divorce, had said so just to lead Savita to commit suicide.

29 As aforesaid, there was no satisfactory evidence of cruelty. The evidence adduced by the prosecution was conflicting. There is sufficient evidence on record to show that an active part was taken by the relatives of Savita in the investigation. There was an insistence on the necessity of 'changing Savita's statement'. Investigation is supposed to be for the purpose of ascertaining the truth and the conclusion about what is the truth in a given matter, is supposed to be arrived at after collection of evidence. In such cases, however, what conclusion is ultimately to be arrived at, is already dictated – so to say – to the Investigating Officer and therefore, the tendency would be only to collect evidence as would support the conclusion that is anyway to be arrived at. The objectivity of the Investigating Agency would be lost by aggressive interference by the relatives of the victim. It also appears that pressure was brought on the counsel for the accused persons not to appear for them. It is quite likely that an atmosphere was created during the trial which made it difficult for the trial Judge to view the matter dispassionately and objectively. It was quite easy to see that the evidence of Sakhubai or Shridhar was not of such a quality, so as to place implicit reliance thereon. It cannot be forgotten that after the death of Savita which had taken place

within a short time from her marriage, it was quite easy to level the allegations of previous ill-treatment given to her. In fact, the learned trial Judge has not believed these allegations of ill-treatment, otherwise he would have convicted atleast the accused no.1 against whom serious allegation of cruelty was made. The only act which was attributed separately to the appellant was of his expressing a desire to divorce Savita. This has been held as proved by the learned Judge, and without disturbing that conclusion of the learned trial Judge, it may be observed that this by itself would not constitute either cruelty or abetment to commit suicide. In fact, it is indeed doubtful whether the death of Savita was suicidal.

30 This was a case where neither the cruelty was satisfactorily established nor the fact of suicide was satisfactorily established. The reasoning of the learned Addl. Sessions Judge and the appreciation of evidence, as done by the Addl. Sessions Judge, and the conclusion arrived at by him is not in accordance with law.

31 The Appeal is allowed.

32 The conviction of the appellant as recorded by the Addl.Sessions Judge, and the sentences imposed upon him are set aside.

33 The appellant is acquitted.

34 His bail bonds are discharged.

35 Fine, if paid, be refunded to him.

(ABHAY M. THIPSAY, J)