

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.840 OF 2008**

1. Manik Ankush Pol,
Age 30 years, Occ : Business,
(At present detained in Kalamba
Central Prison, Kolhapur)

2. Sou. Pushpa Ankush Pol,
Age 50 years, Occu : Household,
Both R/o. Wangi, Tal. Kadegaon,
District : Sangli
(At present detained in Yerwada
Central Prison, Pune)

..Appellants.
(Orig. accused)

versus

State of Maharashtra,
C.R.NO.24/2007,
Registered at Chinchani Wangi
Police Station, Dist. Sangli

..Respondent.

.....
Mr. Umesh R. Mankapure with Mr. Vinod Sangurkar for the Appellants.
Mrs. A.A. Mane, Addl. P.P. for the State.

.....
CORAM : A.S. GADKARI, J.

1st April, 2015.

ORAL JUDGMENT :

The Appellants have preferred the present Appeal against the judgment and order dated 7th August, 2008 passed by the Ad-hoc Additional Sessions Judge-2, Sangli in Sessions Case No.209/2007 thereby convicting the Appellants for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code and

sentencing them for rigorous imprisonment for the period of three years and to pay fine of Rs.2,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for three months. The Appellants have also been convicted under Section 306 read with Section 34 of the Indian Penal Code and are sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.3,000/- each and in default of payment of fine, the Appellants are directed to further undergo rigorous imprisonment for six months. The learned Trial Court by the said judgment and order dated 7th August, 2008 was pleased to acquit the Appellants under Section 304-B read with Section 34 of the Indian Penal Code. The said judgment and order dated 7th August, 2008 is impugned herein.

2. The facts which are necessary for the decision of the present Appeal can briefly be stated thus :

i) P.W.1 – Ashok Arjun Katke is the father of deceased Sunita. Deceased Sunita was his third daughter. The marriage of Sunita with the Appellant No.1 was solemnized in December 2001. The Appellant No.2 is the mother of the Appellant No.1. The Appellants are residents of village Wangi, District Sangli. After the marriage Sunita went to the house of the Appellant No.1. Two daughters have begotten out of the wedlock and their names were Komal – aged two years and Kirti aged

about ten months on the date of the incident. The Appellant No.1 was having the business of drilling bore wells. The Appellant No.1 was also indulging in the business of selling vegetables in rainy season. As per the version of P.W.1 – Ashok Katke since February 2002 he started receiving phone calls from his daughter Sunita that accused Nos.1 and 2 were ill-treating her. He, therefore, sent his wife to the house of the accused to advise the accused and also to his daughter Sunita. After returning from the house of Sunita the wife of Ashok Katke i.e. the mother of Sunita informed P.W.1 – Ashok Katke that the Appellant No.1 assaulted Sunita in her presence and also abused her. She further informed that the Appellant No.1 drove her out of his house. P.W.1 – Ashok Katke started receiving phone calls from his daughter Sunita about demand of money from the Appellant No.1. The said demand was for purchase of bore machine and for construction of the house. It is the further case of P.W.1 – Ashok Katke that his wife told him that the Appellant No.1 assaulted Sunita thereby suspecting her character. The wife of Ashok Katke i.e. P.W.4 also told P.W.1 that the Appellant No.1 abused her. The wife of P.W.1 asked him to arrange for money. That on 4th July, 2007 the accused No.2 came to Dharavi, Mumbai. The wife of P.W.1 pledged her ornaments and availed an amount of Rs.10,000/- from a goldsmith. The said amount was paid to the accused No.2 at Mumbai on 10th July, 2007. The accused No.1 also came to Mumbai and told him that an amount of Rs.10,000/- is

insufficient and therefore, on 10th July, 2007 again the ornaments were pledged with Shilpa Jewellers and the loan of Rs.15,000/- was availed of and the amount of Rs.15,000/- was given to the accused No.1 Manik. Thereafter on 14th July, 2007 or 15th July, 2007 P.W.1 - Ashok Katke received a phone call of Sunita. She informed that the accused persons were demanding Rs.50,000/- and P.W.1 has only paid Rs.25,000/-. The accused persons were demanding balance of Rs.25,000/-.

ii) On 19th July, 2007 P.W.1 - Ashok Katke received a phone call of the accused No.1 at Dharavi. The accused No.1 asked P.W.1 to come to Wangi immediately saying that Sunita has left the house and went somewhere. P.W.1 - Ashok Katke along with his wife P.W.4 reached village Wangi on 20th July, 2007 at about 7.00 a.m. They searched Sunita and thereafter the accused No.1 lodged a missing report in the local police. There were rains on the earlier day. P.W.1 - Ashok Katke noticed the foot prints of a child near the well. Therefore, he suspected some foul play. The accused No.1 thereafter informed to the police. The police arrived there and with the help of the villagers they took search in the said well by putting hook in the well. The dead bodies of the two daughters of Sunita were found when search was taken with the help of a hook in the well. On 21st July, 2007 the dead body of Sunita was found floating on the water in the well at

about 8.00 a.m. The accused No.1 informed the police accordingly. The dead body of Sunita was sent to the Government Hospital for postmortem. The dead body was brought to Wangi after postmortem and the same was cremated. Thereafter P.W.1 – Ashok Katke went to Chinchani-Wangi and lodged a complaint with the police. The said complaint was treated as First Information Report and C.R. bearing No.24/2007 under Sections 498-A and 306 read with Section 34 of the Indian Penal Code came to be registered.

iii) P.W.8 – Rajendra Hindurao Rajmane, API took over the investigation in Crime No.24/2007 on 21st July, 2007. During the course of investigation he sent the dead body of Sunita for postmortem to the Rural Hospital, Chinchani-Wangi wherein P.W.5 – Dr. Shashikant Bhise conducted the autopsy of the said body. Dr. Bhise gave opinion that the cause of death of the deceased was due to asphyxia due to drowning. The autopsy reports of the two daughters of deceased Sunita viz. Komal – 2 years and Kirti – ten months were also received by the Investigating Officer. During the course of investigation, P.W.8 – API Rajmane recorded the statement of various witnesses and after completing the investigation submitted a charge-sheet under Sections 498-A, 304-B, 306 read with 34 of the Indian Penal Code in the Court of Judicial Magistrate, First Class, Vita, District Sangli.

iv) The Judicial Magistrate, First Class, Vita committed the case to the Court of Sessions as contemplated under Section 209 of the Criminal Procedure Code as the offences punishable under Sections 304-B and 306 of the Indian Penal Code were being exclusively triable by the Court of Sessions. After the case was committed to the Court of Sessions at Sangli, the learned Trial Court framed charge below Exhibit 7. The said charges were read over and explained to the Appellants in a language known to them. The Appellants denied the charges and claimed to be tried. The learned Trial Court after recording the evidence and after hearing the parties to the said sessions case was pleased to convict the Appellants as stated herein above by the impugned judgment and order dated 7th August, 2008.

3. Heard Mr. Mankapure, learned counsel appearing for the Appellants and Mrs. Mane, APP for the State. With the help of the learned counsel appearing for the respective parties, I have also perused the entire record made available before this Court. Mr. Mankapure, learned counsel for the Appellants during the course of his arguments submitted that the prosecution has failed to prove that there was a dowry demand as contemplated under Section 498-A of the Indian Penal Code. He submitted that it has come in the evidence

that the financial position of the accused No.1 was not only sound, but was also better than that of the P.W.1 - Ashok Katke. He has further submitted that P.W.1 - Ashok Katke in his cross-examination has admitted the said fact. He, therefore, submitted that in view of the admissions given and omissions brought on record by and on behalf of the accused persons, the offence under Section 498-A has not been proved and the Appellants are entitled for acquittal from that particular Section. He further submitted that the evidence of P.W.1 i.e. the father of Sunita is full of omissions. Mr. Mankapure further contended that P.W.1 - Ashok Katke in his cross-examination and D.W.1 - Ulhas Ankush Pol in his examination-in-chief have categorically stated that the accused No.1 was residing separately after about one to one and half months from the marriage of the accused No.1 with Sunita. He further submitted that though it is alleged by the prosecution that the dowry or an amount was demanded by the accused No.1 for construction of the house, from the evidence it transpires that the said house was constructed by the accused No.1 in the year 2005 itself. He further contended that the First Information Report was lodged by the father of deceased Sunita i.e. P.W.1 belatedly. He lastly contended that P.W.1 i.e. the father of deceased Sunita who had also taken part in searching Sunita, after finding the dead body of Sunita in the well did not mention about the harassment which was allegedly caused to said Sunita at the hands of the

Appellants. He further contended that neither P.W.1 nor P.W.4 i.e. the father and mother of deceased Sunita respectively before cremation of the dead body of Sunita have lodged any protest or mentioned the said fact of harassment and demand of dowry to any close relatives and therefore, he contended that the First Information Report which was lodged subsequent to the cremation of deceased Sunita was an afterthought and it was lodged only with a view to harass and take revenge of the suicide of Sunita. Mr. Mankapure, therefore, urged before this Court that taking into consideration the evidence available on record, the Appeal deserves to be allowed by quashing and setting aside the conviction of the Appellants.

4. Mrs. Mane, learned APP on the other hand supported the impugned judgment and order. She submitted that in the present case apart from the death of Sunita the death of two minor innocent girls have occurred. She further contended that the said two minor girls have died even before knowing what the world is. The learned APP by relying on paragraph 20 in the case of **Chitresh Kumar Chopra v. State (Government of NCT of Delhi)** reported in **(2009) 16 SCC 605** submitted that it is because of torture which was meted out to deceased Sunita by the accused No.1, Sunita was tempted to and forced to commit suicide. She further submitted that immediately prior to commission of the suicide, the accused No.1 had mercilessly

beaten Sunita which prompted her to put an end of her life as she could not sustain the torture made at the hands of the accused No.1. She lastly urged before the Court that the judgment and order passed by the Trial Court may be sustained thereby maintaining the conviction and sentence of the Appellants.

5. With a view to appreciate the rival submissions made by the learned counsel appearing for the Appellants and the Respondents, it is necessary to evaluate the evidence of the prosecution witnesses in brief.

6. P.W.1 – Ashok Arjun Katke is the father of deceased Sunita. In his testimony he has stated that Sunita was his third daughter. Her marriage was solemnized in December 2001 with the accused No.1. The accused No.2 is the mother of the accused No.1. The accused persons were residents of village Wangi. After the marriage, Sunita went to the house of the accused for co-habitation. The father-in-law of Sunita was also residing with the accused at that time. Sunita was blessed with two daughters by name Komal – aged about 2 years and Kirti aged about ten months at the time of incident. The accused No.1 was doing the business of drilling bore well. The accused No.1 was also doing the business of sale of vegetables in rainy season. P.W.1 – Ashok Katke in his testimony has further stated that in February 2002

he started receiving phone call of his daughter Sunita that the accused Nos.1 and 2 are ill-treating her. He, therefore, sent his wife P.W.4 to the house of the accused to advice the accused and also to his daughter Sunita. His wife went to the house of the accused persons at Wangi and returned to his house at Mumbai. His wife informed him that the accused No.1 assaulted Sunita in her presence and also abused her (P.W.4). She told him that the accused No.1 drove her (P.W.4) out of his house. P.W.1 has further stated that he received a phone call from his daughter Sunita and she told him that the accused No.1 is demanding money in order to purchase bore machine and for construction of the house. He advised Sunita and her husband that I am father of five daughters. His daughter Sunita asked him to send the amount so that there will be decrease in the harassment to her. P.W.1 has stated that his wife informed him that the accused No.1 assaulted Sunita thereby suspecting her character. His wife also told him that the accused No.1 abused her. His wife asked him to arrange for money anyhow. His wife further told him that there will be reduction in the ill-treatment after the money is paid. P.W.1 has further deposed that on 4th July, 2007 the accused No.2 came to Dharavi, Mumbai. His wife pledged her ornaments and availed a loan of Rs.10,000/- from a goldsmith. The said amount of Rs.10,000/- was paid to the accused No.2 at Mumbai on 10th July, 2007. On 10th July, 2007 the accused No.1 came to Mumbai and told P.W.1 that an amount

of Rs.10,000/- is insufficient. Therefore, on 10th July, 2007 again the ornaments were pledged with Shilpa Jewellers and a loan of Rs.15,000/- was availed. The amount of Rs.15,000/- was given to the accused No.1 Manik. P.W.1 - Ashok Katke has proved the receipts which are at Exhibits 29 and 30 issued by Sangam Jewellers and Shilpa Jewellers dated 4th July, 2007 and 10th July, 2007 respectively.

P.W.1 - Ashok Katke has further deposed that on or about 14th July, 2007 or 15th July, 2007 he received a phone call from Sunita, informing him that the accused Nos.1 and 2 were demanding an amount of Rs.50,000/-. However, P.W. 1 has paid an amount of Rs.25,000/- only. The accused persons were demanding balance amount of Rs.25,000/- He has stated that he did not fulfill the said demand. P.W.1 has further deposed that on 19th July, 2007 he received a phone call of the accused No.1 at Dharavi. The accused No.1 asked P.W.1 to come to village Wangi immediately saying that Sunita has left his house and went somewhere. P.W.1 - Ashok Katke along with his wife reached village Wangi on 20th July 2007 at about 7.00 a.m. They took search of Sunita and thereafter the accused No.1 lodged a report with the local police. The said missing report is at Exhibit 49. There were rains on the earlier day. P.W.1 - Ashok Katke noticed the foot prints of a child near the well and therefore, he got suspicious. He has further deposed that the accused No.1 went near the well and

therefore he suspected more. He suspected that Sunita might be in the well. The accused No.1 informed the police and the police arrived at the spot. The villagers also gathered near the well. The police personnel and villagers searched in the well with the help of a hook. The dead bodies of two daughters of Sunita were found during the course of the said search. He has further deposed that the dead body of Sunita was not found in the well on that day. That on 21st July, 2007 the dead body of Sunita was found floating in the water of the said well at about 8.00 a.m. The accused No.1 immediately informed the said fact to the police on phone. The dead body of Sunita was removed from the well and was sent to the Government Hospital for postmortem. The dead body of Sunita was brought to village Wangi after the postmortem was completed. The postmortem of daughters of Sunita viz. Komal and Kirti was also effected. Deceased Sunita was cremated at village Wangi. P.W.1 – Ashok Katke has further deposed that thereafter he went to Chinchani-Wangi and lodged a complaint with the police. The said complaint was treated as First Information Report and the same is at Exhibit 31. P.W.1 – Ashok Katke has proved the said Exhibit 31.

P.W.1 – Ashok Katke was cross-examined at length by the defence. During the course of cross-examination material omissions and vital admissions have been brought on record by the accused. In

the cross-examination P.W.1 - Ashok Katke has admitted that the accused persons were having bore machine, but the accused No.1 did not tell him that the same was owned by him. P.W.1 - Ashok Katke in unequivocal terms has admitted the fact that, the financial position of the accused was better than him. P.W.1 - Ashok Katke has further admitted that after one and half months of marriage of Sunita, accused No.1 and Sunita started residing separately in rented premises. Though with minor correction, P.W.1 has further admitted that they started residing separately in rented premises after one year. He has further admitted that the new house was constructed by the accused No.1 after the birth of Komal. He himself and his daughter Surekha attended the 'Vastu Shanti' ceremony of the accused No.1. He further admitted that in the month of Sharavan 2005, the said ceremony of 'Vastu Shanti' (house warming ceremony) was performed by the accused No.1. P.W.1 - Ashok Katke has further admitted that the accused No.1 informed him on phone twice that Sunita applied tobacco to her teeth and therefore the accused No.1 had assaulted her. He has further admitted that he did not advice Sunita in that regard. He has further admitted that his wife has advised Sunita not to apply tobacco to teeth as the accused No.1 dislikes the same. P.W.1 - Ashok Katke has further admitted that on 21st July, 2007 (i.e. the date on which the dead body of Sunita was found) in the morning he did not take search of Sunita personally. He further admitted that he himself

and his wife were residing at the house of the accused No.1 at that time. It is the further admission of P.W.1 that his relatives were present at the time of cremation of Sunita. That after the cremation, he himself and his relatives went to the police station and lodged a complaint against the Appellants.

Apart from the aforesaid admissions given by P.W.1 - Ashok Katke in his cross-examination, various other omissions though of minor in nature have been brought on record by the Appellants.

7. P.W.2 - Ramchandra Namdeo Vhanmane is a panch witness to the spot panchanama i.e. the well (spot of incident). Though his evidence i.e. examination-in-chief is of formal in nature, in the cross-examination certain admissions have been extracted by the Appellants. In the cross-examination this witness has admitted that the accused No.1 owns bore machine since long time. That the accused No.1 started residing separately after about one to one and half months from the date of the marriage. He has further admitted that when the incident occurred, the accused No.1 was residing in new house with his wife and his parents were residing in the old house.

8. P.W.3 - Vinayak Ashok Katke is the younger brother of deceased Sunita. P.W.3 in his testimony has stated that Sunita was his sister.

After completion of 8th standard examination in the month of May, he had been to the house of the accused. Namrata, his sister's daughter was also with him. When he went to the house of the accused, he was there for about one and half months. He has further deposed that one day after the dinner, the accused No.1 started beating his sister Sunita by means of pipe. He requested the accused No.1 not to beat his sister. The accused No.1 told him that P.W.3 has no business and asked him not to interfere in them. He went near his sister's daughter Namrata and went to sleep due to fear. In the cross-examination this witness has admitted that whenever he used to visit the house of the accused, he himself and his sister Sunita and her family used to be very happy. This witness has further denied the various suggestions put to him during the course of cross-examination.

9. P.W.4 – Nanda Ashok Katke is the mother of deceased Sunita and the wife of P.W.1 – Ashok Katke. The examination-in-chief of this witness is mostly the repetition of the evidence of P.W.1. Apart from the repetition of evidence of P.W.1 this witness has stated that when she went to the house of the accused with Sunita, the accused Nos.1 and 2 abused Sunita in her presence and the accused No.1 beat Sunita. She tried to interfere but the accused Nos.1 and 2 abused her and therefore, she did not interfere. This witness has also repeated about the demand of an amount of Rs.50,000/- and pledging of

ornaments with the jewellers. This witness was cross-examined at length by the Appellants. During the course of cross-examination this witness has admitted that after the birth of Komal the accused No.1 came to Mumbai with a golden bracelet, ear tops and silver anklets. As far as the abusing to Sunita by the accused No.2 is concerned, the said omission has been brought on record in paragraph No.10 at page No.162 of the paper-book. The said omission is a material omission as far as the abuses which were allegedly hurled by the accused No.2, to Sunita, is concerned. The said omission has been proved by the defence in the cross-examination.

10. P.W.5 - Dr. Shashikant Shamrao Bhise is the doctor who has conducted autopsy on Sunita on 21 July, 2007. P.W.5 in his testimony has stated that on 21st July, 2007 he was working as Medical Officer at Rural Hospital, Chinchani- Wangi. On that day the dead body of Sunita was brought to the Rural Hospital by Police Constable A.A. Patil for performing postmortem. He conducted autopsy of the dead body of Sunita between 10.00 a.m. to 11.45 a.m. on the same day. On external examination, he noticed the following injuries :

- “1. CLW on the left nipple on the upper border, 1 x 1 x 1 cm with bleeding.
2. Multiple contusion on the back.
 1. 7 x 6 inch on left shoulder.
 2. 4 x 1 inch on right shoulder.

3. 3 x 1 inch on right scapular region.
4. 3 x 1 inch on right infra scapular region.
5. 2 x 1 inch on left infra scapular region.
6. 1 x 1 inch on left para spinal region.
7. 4 x 1 inch on right infra scapular region.
8. 3 x 1 inch on right para spinal region.

CLW left supra orbital region, transverse.

4 x 1 inch, insect bite on both pinna of ear, abdomen, chin and lower lip, right eyebrow and left infra orbital region.”

P.W.5 – Dr. Bhise opined that the said injuries were ante mortem injuries except insect bite mentioned above.

On internal examination P.W.5 found the following injuries :

- “1. Pericthoal hemorrhage below the wound No.3. There was no fracture.
2. Both the lungs were congested and filled.
3. CLW-left-supra.
fluid and froth with bluish discoloration.”

P.W.5 – Dr. Bhise has further deposed that after taking into consideration all the features, he was of the opinion that the probable cause of death was due to asphyxia due to drowning. He prepared the postmortem report accordingly. P.W.5 has proved the said postmortem report which is at Exhibit 41. The advance death certificate at Exhibit 24 has also been proved by P.W.5.

In the cross-examination this witness has specifically denied the suggestion that the contusion was not possible by falling on hard surface like stone. He has further stated in the cross-examination that there were injuries on multiple parts of the body and considering the conditions of the injuries as the same being of ante mortem, the same were not possible by falling in the water. An admission has been brought on record that those injuries were not related to the cause of death of the deceased.

It is to be noted here that as far as the postmortem reports of Ms. Komal and Ms. Kirti are concerned, the same are at Exhibits 20 and 21 and the Appellants / defence have admitted the same as contemplated under the provisions of Section 294 of the Criminal Procedure Code.

11. P.W.6 – Pradeep Jaysing Mane is a panch witness to the recovery of a stick at the instance of the accused No.1. This witness has proved the memorandum statement of the accused No.1 Manik which is at Exhibit 43 and the recovery panchanama of the stick which is at Exhibit 44. By the said recovery panchanama the accused No.1 produced the stick which was kept behind a barrel which was located in front of his house. It appears from the record that the cross-examination of this witness has proceeded in a routine manner

thereby putting him general suggestions to which he has denied.

12. P.W.7 - Akaram Ramchandra Mane is the Assistant Sub Inspector then attached to Chinchani - Wangi Police Station. P.W.7 in his testimony has stated that on 20th July, 2007 he was police station officer of Chinchani - Wangi Police Station. His duty hours were 8.00 a.m. to 8 p.m. That the accused No.1 came to the police station on that day and lodged a missing complaint of his wife Sunita and two daughters - Komal and Kirti. He recorded the said missing complaint lodged by the accused No.1 which is at Exhibit 38. The record discloses that the Appellants did not cross-examine this witness. It appears that evidence of P.W.7 is of formal nature and therefore, the defence has not cross-examined this witness.

13. P.W. 9 - Vishnu Ananda Kale was working at Chinchani - Wangi Police Station as PSO on 20th July, 2007. The accused No.1 came to the police station in the afternoon and informed him that his wife with two daughters are missing since the earlier day and were not found. The accused No.1 told him that his wife applied tobacco (mishri) to her teeth and that as he did not like the same, he abused his wife and gave two slaps to her. He recorded the complaint as stated by the complainant. The said complaint is at Exhibit 49. This witness has stated that subsequently he registered A.D.No.14/2007 and handed

over the investigation of the same to API Rajmane (P.W.8). This witness was cross-examined by the Appellants at length. However, no material fruitful to the Appellants has been brought on record.

14. P.W.8 - Rajendra Hindurao Rajmane, Assistant Police Inspector then attached to Chinchani - Wangi Police Station in his testimony has stated that on 21st July, 2007 the Police Station Officer handed over investigation in Crime No.24 of 2007 to him. He recorded the statement of the witnesses. He arrested the accused Nos.1 and 2. That the accused No.1 during the police custody gave memorandum statement that he will point out the place where he had kept the stick and he will produce the same. Accordingly a stick came to be recovered at the instance of the accused No.1 by effecting a detailed panchanama under Section 27 of the Indian Evidence Act. He recorded the statement of other witnesses and after receipt of the postmortem reports and other relevant documents, he submitted a charge-sheet against the accused persons in the Court of Judicial Magistrate, First Class, Vita. This witness was also cross-examined at length by the accused persons including putting stock questions and suggestions to him to which this witness has denied. The record discloses that no material which is useful to the accused persons have been brought on record during the course of cross-examination.

15. After the closure of evidence of the prosecution, the accused examined two witnesses as defence witnesses.

16. Defence Witness No.1 - Ulhas Ankush Pol is the brother of the accused No.1. D.W. 1 in his testimony has stated that his native place is village Wangi. His parents are residing at Wangi. He has one brother and one sister. The accused No.1 is his brother. He has further deposed that his parents and the accused No.1 were residing separately. He has further deposed that he himself and his parents and the accused were residing together at the time of marriage of the accused No.1 in the old house. After about one to one and half months after the marriage of the accused No.1, the accused No.1 started residing separately. He and his parents were not on visiting terms with the accused No.1 since then. He has further deposed that the accused No.1 was having business of drilling bore well and sale of vegetables. That the accused No.1 was doing the said business since long. He has further deposed that the accused owns the said machinery required for his business. The accused was having two machines. He has further deposed that the accused No.1 completed the construction of his house in the month of Shravan 2005. That he attended the house warming ceremony of the accused No.1. At that time the relatives of the accused No.1 including his in-laws were present. The accused No.1 had told him to accompany with him to Mumbai as Rs.40,000/-

were to be given by him for getting service in Mumbai Corporation. On enquiry the accused No.1 told him that he has withdrawn the amount from his account. He has further deposed that he went to the house of father-in-law of the accused No.1 and the accused No.1 paid Rs.40,000/- to him. He has further deposed that in November 2006 the accused No.1 again paid Rs.20,000/- to his father-in-law (P.W.1). This witness was cross-examined at length by the learned APP. However, the version of this witness with respect to the fact that his parents were residing separately from the accused No.1 has not been disturbed. In other words, his testimony with respect to the said version remains unshaken.

17. D.W.2 - Bhaskar Gorakhanath Shinde is an officer who was working with Ambika Pat Sanstha, Village Wangi. This witness in his testimony has stated that deceased Sunita and her husband - accused No.1 were having account in the said Pat Sanstha. The deceased was having pension deposit account with Pat Sanstha. The accused No.1 used to deposit the amount in her account. The witness was cross-examined by the learned APP. However, it appears that his version in the examination-in-chief has not been disturbed at all.

18. Thus, after taking the overall purview of the evidence on record, it is clear that P.W.1 - Ashok Katke in his cross-examination had

admitted about the sound financial position of the accused No.1. He has further admitted that the accused No.2 was residing separately from the accused No.1 after about one and half months of the marriage of the accused No.1 with deceased Sunita. He has further admitted in his cross-examination that the accused had constructed a new house on a piece of land in the month of Shravan 2005. He has further admitted about the habit of deceased Sunita of application of tobacco to her teeth. He has further admitted that at the time of cremation of Sunita, his relatives were present and after the cremation, he lodged a First Information Report against the accused persons. P.W.2 - Ramchandra Namdeo Vhanmane though cited as a panch witness to the spot panchanama, in his cross-examination has admitted that the accused No.1 was already having a bore machine and the accused No.1 was also residing separately from his parents.

19. P.W.3 - Vinayak Ashok Katke, younger brother of Sunita in his cross-examination has admitted that when he went to reside in his sister's house in May vacation, he found the said family to be happy. P.W.4 - Nanda the mother of deceased Sunita in her cross-examination has admitted that after the birth of elder daughter Komal, the accused No.1 came to Mumbai with a golden bracelet, ear tops and silver anklets. This shows that the financial position of the accused No.1 was sufficiently sound so as to give valuable gifts to his daughter.

20. It is to be noted here that P.W.5 - Dr. Shashikant Bhise has proved the postmortem report of Sunita which is at Exhibit 41. The defence have admitted under Section 294 of the Criminal Procedure Code the postmortem report of Ms.Komal which is at Exhibit 20 and the postmortem report of Kirti which is at Exhibit 21.

21. Taking into consideration the admissions given by the witnesses P.W.1, P.W.2 and P.W.4, I am of the considered opinion that the alleged demand of an amount of Rs.50,000/- at the behest of the accused No.1 is an exaggerated version of P.W.1 and P.W.4. The evidence on record discloses that the accused No.1 was having sufficiently sound position to carry on his own business and to construct his own house and in that circumstances, it is not probable that the accused No.1 will make a demand of Rs.50,000/- and will accept Rs.25,000/- in two installments for the same. The learned counsel appearing for the Appellants submitted that as a matter of fact the Appellants had paid an amount of Rs.60,000/- to P.W.1 for getting job in the Mumbai Corporation and the amount of Rs.25,000/- which was paid by pledging the ornaments with the jewellers was towards repayment out of the said amount. I find substance in the submissions of Mr. Mankapure, learned counsel appearing for the Appellants. In the circumstances, I hold that the prosecution has failed to prove the

charge under Section 498-A read with Section 34 of the Indian Penal Code and I hereby hold that the Appellants are not guilty of the charge under Section 498-A read with Section 34 of the Indian Penal Code.

22. As far as the offence punishable under Section 306 is concerned, the Appellant himself while lodging the missing complaint has mentioned therein that he got angry with Sunita because Sunita had applied tobacco to her teeth which he used to dislike. Out of anger, he slapped her and went to the market. The said missing report is at Exhibit 49. The accused No.1 stated that as Sunita has applied tobacco to her teeth, he gave her light beating and because of the said anger his wife left the house on 19th July, 2007 between 4 to 5 p.m. along with his two daughters. As stated herein above, the dead body of deceased Sunita was found on 21st July, 2007 in the well. P.W.5 – Dr. Bhise who conducted the autopsy in his testimony has specifically stated about the injuries which he noticed on the body of deceased Sunita. He has opined that the said injuries which he had mentioned in column No.17 of the postmortem notes were ante mortem injuries. The evidence on record discloses that on earlier occasions also the accused No.1 had beaten Sunita on account of her application of tobacco to her teeth. P.W.1 – Ashok Katke has stated that P.W.4 – Nanda Katke had informed him that the accused No.1 was suspicious about the character of deceased Sunita. In the circumstances, when

on 19th July, 2007 the accused No.1 beat Sunita, it appears that the said beating was merciless which prompted her to put an end of her life in agony. It appears to me that the thrash by the accused No.1 to Sunita was so reprehensible that Sunita did not withhold the said beating and must have decided to put an end of her life and in the said fit of rage Sunita has committed suicide along with her two children. The evidence on record clearly discloses that the accused No.1 was the only person instrumental in forcing Sunita to commit suicide in the present case. As the witnesses in the present case have deposed that the accused No.2 was residing separately from the accused No.1 and no role of the accused No.2 has been brought on record in the commission of offence under Section 306, this is a fit case where the accused No.2 deserves to be acquitted for an offence under Section 306 of the Indian Penal Code. The nature of injuries found on the body of deceased Sunita indicates that the merciless beating was of such a nature which had driven Sunita to commit suicide. In the circumstances, I am of the confirm opinion that the accused No.1 is guilty of the offence punishable under Section 306 of the Indian Penal Code.

23. In view of the above, I pass the following order :

- i) The appeal is partly allowed.
- ii) Accused No.1 - Manik Ankush Pol, is found guilty for the offence

punishable under Section 306 of the Indian Penal Code and he is sentenced to rigorous imprisonment for a period of seven years and to pay a fine of Rs.3,000/-. In default of payment of fine, the accused No.1 - Manik Ankush Pol, shall suffer further rigorous imprisonment for six months;

iii) Accused No.2 - Pushpa Ankush Pol, is acquitted from the offences under Sections 498-A and 306 read with Section 34 of the Indian Penal Code. She be released from jail forthwith, if not required in any other case. It is informed that accused No.2 - Pushpa Ankush Pol, is on bail. Her bail bond stands cancelled and she is acquitted from all the charges levelled against her;

iv) Accused No.1 - Manik Ankush Pol is acquitted for the offences punishable under Section 498-A read with Section 34 of the Indian Penal Code;

v) The judgment and order passed by the learned Trial Court dated 7th August 2008 is modified accordingly.

(A.S. Gadkari, J.)