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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.656 OF 2005

Yogesh Dinesh Bharadwaj	]
age: 26 years, Occn. Service	] <u>Appellant</u>
R/at V/3/9/0: 4, Sector No.2.	] (Original
Vashi, Navi Mumbai	] Accused)

V/s.

State of Maharashtra	]
at the instance of Turbhe	] .. Respondent
Police Station, Navi Mumbai	]

WITH
CRIMINAL REVISION APPLICATION NO.220 OF 2005.

Shri. Dinkar Martand Kausadikar,	]
age: 62 years, Occn. Advocate,	] .. <u>Applicant</u>
r/o at 12, Archen Co-op Hsg. Society	] (Original
Sector 4, Vashi, Navi Mumbai	] Complainant)

-vs-

- | | |
|---------------------------------|-------------------------|
| 1. Shri. Yogesh Dinesh Bhardwaj |] |
| age: 28 years, |] .. <u>Respondents</u> |
| r/o V/e/9/0-4, Sector -2 |] (Respondent |
| Vashi Navi Mumbai |] No. 1 original |
| |] Accused) |
| 2. The State of Maharashtra |] |

Mr. Naveen Chomal i/by Dinesh D. Tiwari & Associates,
Adv.for the Appellant in Criminal Appeal No.656 of 2005
Mr. B. R. Patil, Advocate for the applicant in Revision Application
No.220 of 2005
Smt. V. R. Bhonsale, APP for the State.

**CORAM : SMT. V.K. TAHILRAMANI, ACTING CJ &
DR. SHALINI PHANSALKAR-JOSHI, J.**

RESERVED FOR JUDGMENT : 27th JANUARY, 2016.

JUDGMENT PRONOUNCED ON : 5th FEBRUARY, 2016

JUDGMENT: [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. The appellant, who stands convicted by the judgment and order dated 16th June, 2005, of Second Additional Sessions Judge, Thane, in Sessions Case No.142 of 2004, for the offence punishable under Section 302 and 201 of Indian Penal Code, and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one year and rigorous imprisonment for 3 years and to pay fine of Rs.3,000/- in default to suffer rigorous imprisonment for six months, respectively; by this appeal, challenges his conviction and sentence.

2. As by the said judgment and order itself, the appellant is acquitted, for the offence under Section 498A of Indian Penal Code,

being aggrieved thereby the original complainant has preferred Revision Application, for setting aside the said order of acquittal and also for enhancement of sentence of appellant from life imprisonment to death penalty.

3. Brief facts of the appeal and Revision Application, can be stated as follows:-

Appellant, is the husband of P.W.2 Dinkar Kausadikar's daughter Prachi, since deceased. It was a love marriage performed in August, 2000 despite the parents of Prachi initially not willing for the same to give consent and on her insistence gave consent. Prachi was Architect and appellant was in private service. After marriage, they resided with his parents for about three months. Thereafter they started residing in a rented house at Flat No.4 at Anadam Co-operative Housing Society at Koparkhairane. Within 3 to 4 months, P.W.2 Dinkar purchased the said flat in the name of his wife Sandhya and daughter Prachi. P.W.6 Rashmi, the elder sister of Prachi was also residing in the same building, on the 4th floor. Within few days after the marriage, the appellant became addicted to liquor and started illtreating Prachi. He also developed an affair with his ex-colleague Preeti Surange. She used to visit his house in the absence of Prachi. That created a rift in the

relationship between the appellant and Prachi. Her parents attempted to persuade and convince the appellant, but it was in vain.

4. In August/September 2001, in the midnight, Prachi informed her parents on phone that the appellant was in drunken condition and beating her. They reached her home to find the appellant under the influence of liquor. They took Prachi to their home. On the next day, the appellant apologised to her for that incidence and therefore, Prachi again returned to his house. However, there was no improvement in the conduct of appellant. He was also arrested by Vashi Railway Police, in connection with robbery. P.W.2 Dinkar, Prachi's father got him released on bail. This conduct of the appellant ultimately drove the parties to take decision of divorce by mutual consent. The petition to that effect was filed in the Civil Court at Thane in April, 2002. On filing such petition, Prachi shifted to the house of her parents; whereas appellant left for Delhi. His girl friend Preeti followed him. The appellant's father then approached P. W.2 Dinkar, to make efforts for Prachi to resume cohabitation with appellant. Hence Prachi went to Delhi to convince the appellant. In November, 2002, appellant returned to Navi Mumbai and both of them started residing together on the assurance of appellant that he will improve his conduct.

5. Flat No.304 in Konkan Housing Co-operative Society, Sector No.15, was taken on rent by them. P.W.2 Dinkar, Prachi's father, paid Rs.40,000/- towards deposit of the said flat and appellant and Prachi started residing there. However, the conduct of the appellant did not improve. He resumed his relationship with Preeti. Hence once again the relations between the spouses became strained. On 18th March, 2003, Preeti was seen in the house of appellant by Rashmi, the elder sister of Prachi. She informed Prachi about the same and then Preeti was driven out of the house.

6. In this backdrop, on 31st March, 2003 at odd hours of 4.00 a.m., Prachi's father P.W.2 Dinkar received two blank calls. Hence he became worried and tried to contact Prachi on phone. Instead of Prachi answering the said call, appellant responded and told that Prachi had gone for her work in Intelenet Global Services for her shift hours from 5.30 p.m. to 2.30 a.m. However, within 15 minutes thereafter, the appellant made another phone call to her father and informed that Prachi was no more; she was dead and put the phone down. Prachi's parents, then immediately contacted their daughter Rashmi who was residing near her house and instructed her to go to Prachi's house. P.W.6 Rashmi, then rushed to house of Prachi in her car. The door of the house was

open and appellant was sitting in the hall. Prachi's body was stuffed in the cabinet which was within the wall of the hall below the window. P.W.6 Rashmi, in a frightened state of mind, urged appellant to take Prachi out and to give her medical aid. Appellant was reluctant saying that Prachi was already dead. P.W.6 Rashmi, then threatened to contact police, hence appellant took out Prachi's body from the cabinet and threw in the backside of Rashmi's car. They took her body to MGS Hospital. The Doctor on duty, on examination, declared that Prachi was dead. In the meantime Prachi's parents after contacting their family friend Dr. Motwani, rushed to the house of Prachi. On coming to know that Prachi was already taken to the hospital, they also rushed there. They found marks of violence and blood oozing from nostril and mouth of dead body of Prachi.

7. The information of the incident was given by the hospital to Turbhe police station. Initially A.D. No.46 of 2003 was registered on the said information. PSI Kaldade, then conducted inquest panchnama (Exh.15) and sent the dead body for postmortem. P. W. 4 Dr. Bhushan Jain, attached to Navi Mumbai Municipal Corporation Hospital, Vashi, performed postmortem and found the cause of death as head injury with attempted throttling. Within few hours after sending the dead body for

postmortem, P.W.9 PSI Nalavade, conducted spot panchnama vide exh.46. On the spot, P.W. 10 API Surve found blood stains on the wall, curtain and computer cover. The metal flower pot lying there, was having dents and blood stains thereon. All these articles came to be seized. Similarly some hair lying on the floor were also seized alongwith hand written notes (Exh.51 and 52) which were found below the mattress.

8. On the same day P.W.2 Dinkar, Prachi's father, lodged complaint (Exh.17) against the appellant. On his complaint C.R.No.80 of 2003 came to be registered against appellant for the offence punishable under Sections 498A, 302 and 201 of the Indian Penal Code. P.W.10 API Nalavade took over investigation of the case. He arrested the appellant on the same day. On the next day, during police custody at the instance of appellant, his blood stained clothes came to be recovered under panchnama Exh.20 from the washing machine in his house. As a part of further investigation, statements of witnesses were recorded. The clothes of deceased Prachi were seized under panchnama. All the seized Muddemal articles were sent to Chemical Analyzer. The Chemical Analyzer's Reports are produced in the case vide Exh.26 to 28 and the postmortem notes vide exh.25. Further to completion of investigation,

chargesheet is filed against the appellant in the court of J.M.F.C. Vashi.

9. On committal of the case to the Sessions Court, trial Court framed charge against the appellant vide exh.5. The appellant pleaded not guilty and claimed trial, raising defence of denial and false implication.

10. In supports of it's case, prosecution examined 10 witnesses including P.W.2 Dinkar, P.W.5 Sandhya and P.W.6 Rashmi, parents and sister of Prachi, respectively; P.W.7Ashok, the panch witness to the inquest panchnama and recovery panchnama of the clothes of appellant; P.W.4 Dr. Bhushan Jain, who conducted postmortem, P.W.8 Vilas, friend of appellant and two police Officers namely, P.W.9 Nalawade and P.W.10 API Surve. Uttamkumar Mishra, the watchman of the society where appellant and deceased were residing and Fatima Sayyed who was working as Team Leader in Intelenet Global Services where Prachi was serving, were examined as Court witnesses.

11. In the light of this evidence, statement of appellant under Section 313 of Code of Criminal procedure was recorded. The appellant submitted his written statement to substantiate his defence. On appreciation of this oral and documentary evidence on record, the trial Court was pleased to hold the guilt of appellant to be proved beyond

reasonable doubt for the offence punishable under Section 302 and 201 of Indian Penal Code and convicted & sentenced him as aforesaid; whereas acquitted him for the offence under Section 498A of IPC.

12. This judgment and order of the trial Court is challenged in this appeal by learned counsel for appellant; whereas supported by learned APP. The finding of acquittal, as recorded by the trial Court in respect of offence punishable under Section 498A of the IPC is challenged by learned counsel for the Revision Applicant and also asked for enhancement of sentence of appellant from life imprisonment to death penalty, considering the gravity of the offence.

13. In our considered opinion, before adverting to the rival submissions advanced at bar by learned counsels and learned APP, it would be useful to refer to the evidence on record.

14. In order to prove the homicidal death of Prachi, prosecution has relied upon the inquest panchnama Exh.15, proved through evidence of P.W.1 panch Dinkar Kale which shows the presence of various abrasions and injuries on the dead body of Prachi with blood oozing from nostril and mouth and the black and red spots also seen on the forehead, behind left ear, on the left side on neck.

15. P.W.4 Dr. Bhushan Jain has conducted postmortem on her

dead body. On external examination, he found the following injuries.

- ➔ Injury No.1: Contusion (CT) over left forehead near middling 3 x 2 cm.
- ➔ Injury No.2 : Contusion over right forehead 2.5 x 2 cm.
- ➔ Injury No.3: Contusion over left occipital region involving left ear upto left face in front of tragus 10 x 6 reddish
- ➔ Injury No.4 : Abraded contusion (Ab.Ct) over tip of left shoulder superiorly 3 x 2 cm reddish
- ➔ Injury No.5: Abrasion over left arm posteriorly near elbow joint 4 x 2.5 cm.
- ➔ Injury No.6: Two abrasions over left elbow joint posteriorly and medially of size 2 x 1 cm and 1 x 1 cm.
- ➔ Injury No.7 : Abrasion over dorsum of left hand medially and at the base of little finger of size 1 x 1 cm.
- ➔ Injury No.8 : Contusion over left palm at hypothermia region 5 x 3 cm.
- ➔ Injury No.9 Two parallel linear scars over left wrist anteriorly of length 4 cm each.
- ➔ Injury No.10 Abrasion over right shoulder posteriorly 4 x 3 cm.
- ➔ Injury No.11: Abrasion over right elbow joint posteriorly 7 x 5 cm.
- ➔ Injury No.12 : Abrasion over right forearm postero-medially near elbow joint 3.5 x 2 cm.
- ➔ Injury No.13: Multiple Contusions seen over right forearm involving dorsum of the hand of size -varying from 1 x 1 cm to 3

x 2 cm.

- ➔ Injury No.14: Contusion over right palm over hypothenar region 5 x 3 cm.
- ➔ Injury No.15: Two contusions seen over right thigh anteriorly near knee joint one below another of size 3 x 3.
- ➔ Injury No.16: Abrasion over right leg anteriorly below knee joint 1 x 1 cm.
- ➔ Injury No.17: Contusion over right leg medially below knee joint 4 x 2.5 cm.
- ➔ Injury No.18 : Abrasion over right ankle joint antero laterally 1 x 0.5 cm.
- ➔ Injury No.19 : Abrasion over dorsum of right foot at the base of little toe 1 x 1 cm.
- ➔ Injury No.20 : Abrasion contusion dorsum of left foot laterally 1 x 0.5 cm.
- ➔ Injury No.21: Abrasion contusion left knee laterally 4 x 3 cm.
- ➔ Injury No.22 : Ulcer seen over left back above gluteal region of size 6 x 4 cm.
- ➔ Injury No.23 : Two abrasions seen over right back near mid-line below thoracic cage one below another of size 1x 0.5 cm.
- ➔ Injury No.24: Abrasion over right back lat to above injury of size 1 x 0.5 cm.

On internal examination, he found following injuries.

➔ Subgadial contusion seen over:-

1. Left frontal region of size 2 x 2 cm.
2. Right occipital region of size 7x5 cm.
3. Lt. Temporo occipital region of size 11 x 7 cm.

Brain showed contusions over left temporal left parietal, right parietal and right occipital lobe of size 2 x 1 cm, 1x1 cm and 2 x 1 cm each reddish.

In thorax walls multiple tiny haemorrhagic contusions seen over anterior walls in sternal in an area of 8 x 6 cm reddish on internal examination of neck haemorrhagic contusion seen over left side of the neck of size 5 x 3 cm in middle 1/3 rd region antero. Laterally strap muscle contused irregularly tracheal mucosa congested .

Both congested and edematous with petechial haemorrhage.

16. In his opinion, the cause of death was head injury with attempted throttling. The postmortem notes are prepared accordingly vide Exh.25. He is cross examined at length by learned defence counsel. However, nothing worthwhile is elicited in his cross examination to challenge his opinion that it was a case of homicidal death. He has been categorical about the fact that the injuries found to the head and trachea were sufficient in the ordinary course of nature to cause death and those injuries cannot be either self inflicted or accidental one. He has further

ruled out the possibility of these injuries being caused while body being stuffed or pushed into cabinet. According to him, having regard to the size of cabinet and gravity of the injuries, Injury Nos 1 to 3 as mentioned in Column No.17 of the postmortem report could not be possible. He has remained unequivocal and firm in his opinion about the cause of death being homicidal and has thus, totally ruled out the possibility of accidental or suicidal death.

17. Even otherwise, from the fact that the dead body of Prachi with antemortem injuries thereon was found in the cabinet leaves no manner of doubt about the death being homicidal. There is no possibility of person committing suicide by confining him or her in the cabinet. The presence of as many as 24 injuries on her person with the evidence of attempted throttling, necessarily leads to irresistible inference that the cause of her death was homicidal alone.

18. Now turning to the marital life of appellant and Prachi, admittedly it was not smooth one. As deposed by her father P.W. 2 Dinkar, her mother P.W.5 Sandhya and P.W.6 her sister Rashmi, that it was a love marriage between the appellant and Prachi which was solemnized even despite initial resistance from her parents. After the marriage, the relations between Prachi and appellant became strained as

appellant became addicted to liquor and became jobless. The evidence of her father proves that 2 ½ months after the marriage, appellant and Prachi started residing in a rented house in Anadam Co-operative Housing Society. Within 3 to 4 months thereafter, he purchased the said house in the name of his wife P.W.5 Sandhya and Prachi. After purchase, he permitted Prachi and appellant to continue to reside in the said flat. However, within 2 to 4 months thereafter he came to know from Prachi that appellant was beating her often by drinking liquor.

19. P.W.6 Rashmi who was residing in the same society, on the second floor, had also deposed that once she saw injury below left eye of Prachi and Prachi told her that she has received it during quarrel with the appellant. After some days, she again noticed some injury marks on the person of Prachi and asked her about it, at that time Prachi did not give clear answer, but stated that it was her fate. P.W.6 Rashmi had also deposed about providing at time food to Prachi as Prachi was not having anything to eat in the house. Further she has deposed about incident of broken pieces of glass found in the house of Prachi and Prachi being taken to hospital as she has sustained injury to her feet. According to Rashmi, when the appellant's father came to the house of Prachi, she found that Prachi was informing him about beating and harassment at

the hands of the appellant. Prachi had also come to know about appellant's having relations with his colleague Preeti Surange. She has further deposed about the incident when Prachi had called her and informed about severe beating at the hands of the appellant and feeling danger to her life from him.

20. It is undisputed fact, as admitted by appellant himself also in his statement recorded under Section 313 of Code of Criminal Procedure, that a petition for divorce by mutual consent was filed in the Court. The reason for the same was on account of the marital discord between the appellant and Prachi which went to such an extent due to unruly conduct of the appellant, of being drunk, beating her on several occasions and having affair with Preeti, that ultimately a decision was taken by Prachi and appellant to separate amicably by filing petition for divorce by mutual consent. Thereafter, as deposed by her father P.W.2 Dinkar and mother P.W.5 Sandhya, Prachi came to reside in their house.

21. As per evidence of her father, just before the decision of taking divorce by mutual consent was taken, at one night Prachi informed him on phone that appellant was beating her and that he would kill her. Hence he alongwith his wife P.W.5 Sandhya, went there by rickshaw. When they reached her society, on the ground floor itself,

they heard cries for help from Prachi. When they went to the flat and knocked the door, the appellant did not open the door. They forcibly got the door of the flat opened and found that the appellant was beating Prachi with kicks and fists. Her father intervened and took Prachi to their house with her clothes and other belongings as they were apprehending danger to her life. According to their evidence, at that time appellant was in drunken condition. Prachi stayed with them for two days and thereafter the appellant apologised to Prachi on mobile phone. He also apologised to her mother P.W.5 Sandhya. Hence Prachi again went to reside with him. However, thereafter also the appellant did not improve his conduct and continued to beat and assault Prachi.

22. This conduct of appellant of harassment and beating and his affair with Preeti, led ultimately Prachi to come to her parent's house by the end of April, 2002 and express her desire for divorce. As per evidence of her father, he called upon the appellant and persuaded him to give divorce by mutual consent as there was no improvement in their relations. The appellant agreed and in May, 2002, divorce petition was filed in the Court at Thane. Thereafter, Prachi started residing in the house of her parents. However, on 29th May, appellant's father came to P.W. 1 Dinakar Prachi's father and informed him that the appellant was

arrested by Railway Police, in connection with robbery and kidnapping, he was in police custody. The appellant's father requested to provide legal assistance and accordingly Prachi's father got him released on bail. Further, as a result of this criminal case, appellant was removed from the service and he went to Delhi. There, he stayed for three months. However, as Preeti also followed him to Delhi and insisted on marrying with him, his father again came to the house of Prachi's father and requested to send Prachi to Delhi. Prachi went there and returned back.

23. Meanwhile in October 2002, Prachi's father sold his property for Rs.55 lacs. Some of the amount was deposited by him in the name of Prachi. As per his evidence, when appellant came to know about it, he called upon Prachi on phone and expressed his repentance. In November, 2002, he came to the house of Prachi's parents and stayed with them, exhibiting his repentance in the conduct and hence Prachi agreed to resume cohabitation.

24. Then Prachi and appellant started residing together in the flat of his sister at Vashi. As per evidence of Prachi's parents, in January, 2003 Prachi's father took one flat at Konkan Co-operative Housing society on rent by paying deposit of Rs.40,000/-. This fact is also admitted by appellant in his statement under Section 313 of Code of

Criminal Procedure. As per their further evidence, Prachi and appellant started residing in the said flat at Konkan Co-operative Housing Society, but within 1 ½ months thereafter dispute started between them. At that time appellant was unemployed whereas Prachi was serving in Intelenet Company, in the II nd shift from 5.30 p.m. to 2.30 a.m. The appellant continued to beat Prachi and illtreat and harass her. Just few days before incident, on the night of 18th March, 2003, the appellant and Prachi came to the house of her parents, at that time, appellant was drunk.

25. There is also evidence relating to the incident of once Preeti coming to the appellant's house in absence of Prachi, as deposed by P.W.6 Rashmi. When she saw Preeti coming to the house of Prachi, she immediately informed her mother and when her mother P.W.5 Sandhya came there, they obstructed to Preeti remaining in the house and removed her therefrom. They also called Prachi on phone. The appellant was present in the house. He gave abuses and became violent. On the same day, Prachi came to the house of her parents and informed that she was receiving frequent calls from Preeti on her mobile in obscene language.

26. As per evidence of her parents they made several attempts again to improve the conduct of appellant, but it was of no use.

Ultimately it resulted into the incident dated 31st March, 2003. When they received two blank calls at about 4.45 a.m. on their mobile phone with the gap of 15 minutes. Being apprehensive about safety of Prachi, they called the appellant and asked him where Prachi was. Initially appellant told that she was on duty. However, her mother asked him to search for Prachi as her duty hours were over by 2.30 a.m. itself. She instructed appellant to make enquiry about Prachi and make effort to call upon her.

27. The evidence of Court Witness No.2 Fatima Sayyed reveals that Prachi has not reported to duty on 31st March in the night shift. However, in the morning of 31st March at about 4.30 a.m. she received phone call from her husband enquiring that Prachi has not returned to the home. As per her evidence, she informed him on phone that Prachi has not come to the duty on that day. The appellant did not inform this fact to her parents immediately and Prachi's mother again called appellant after 10 to 15 minutes. At that time appellant told her simpliciter that Prachi was no more and she was dead. The appellant then disconnected the phone call. Immediately Prachi's mother made phone call to her elder daughter P.W.6 Rashmi who was residing nearby and called upon her to see what has happened.

28. The evidence of P.W.6 Rashmi proves that on receipt of phone call from her mother, she rushed to the house of appellant and Prachi and found the door of the house to be open and the appellant was present. She asked where Prachi was and he pointed to the cabinet in the wall below window. She saw Prachi stuffed inside the cabinet. With the hope that Prachi may be alive, she urged the appellant to take her to Doctor and to give her medical aid. However, the appellant was insisting that Prachi was dead. Rashmi then threatened him that she will call police, if Prachi was not taken to the hospital. Thereafter appellant took out Prachi from the cabinet to downstairs and threw her body in the backside of Rashmi's car. Prachi was then taken to MGM hospital where she was declared dead.

29. The evidence of these three witnesses, who are naturally close relatives of Prachi, is thoroughly cogent and consistent. There is absolutely no reason to disbelieve them in any way as they have lost their daughter and sister respectively. As to the evidence of P.W.6 Rashmi, she was very much residing near the house of appellant and Prachi and she was witness to all major incidents or happenings in their life. The conduct of the appellant of becoming jobless, then getting habituated to drinking, his involvement in criminal cases, having affair

with Preeti and on that count subjecting Prachi to beating and assaulting is sufficiently proved on record through the evidence of these three witnesses.

30. All these details of the harassment of Prachi at the hands of appellant are also found reflected in the complaint which is lodged immediately by her father on the very day at 1.30 p.m. after death of Prachi was found to be homicidal one. The very fact that divorce petition came to be filed in the Court, may be by mutual consent so as to avoid bitterness and to help the parties to move ahead in their life, is also sufficient to prove that this decision was taken not easily, but only because the life of Prachi has become miserable due to the conduct of the appellant.

31. If at all any further corroboration is required to this evidence, then it is also sufficiently coming from the hand written notes of Prachi which were found in the flat at the time of spot panchnama itself. These hand written notes of Prachi are totally 6 in number and were marked as Exh.51. They are proved through the evidence of P.W.6 Rashmi, who has identified the handwriting of Prachi thereon. There was one more chit Exh.52 which is in the handwriting of appellant. These chits were seized by the Investigating Officer at the time of spot

panchnama, in the presence of P.W.7 panch Ashok. The appellant in his statement recorded under Section 313 of Code of Criminal Procedure had admitted these hand written notes and not disputed the fact that notes at Exh.51 are in the handwriting of Prachi and note at Exh.52 is in his handwriting.

32. These hand written notes of Prachi are eloquent and self speaking to prove that Prachi was subjected to beating at the hands of appellant; they also also speak about the appellant's love affair with Preeti, which was a cause of lot of mental torture and physical harassment to Prachi. These notes are written in short in the form of SMS language and some portion of these notes can be reproduced as under:-

33. In one of the note, Prachi has written that, *“Yogesh, I really don't want me to feel that you are stuck with me. You are under no obligation from my side. If you are with me because of what my parents have done for you and what I have done for you, please forget all that. If you do not want to be here, you are free to leave me. Only remember that this time there could be no coming back. I will not accept you back ever. I have done maximum possible for you. I have*

accepted more than any normal person would”.

34. In another note, written on 26.01.2003, just two months before the incident, she has stated, *“Something has happened between her and him. what should I do? Should I let it go? I do not understand. Am I so ugly that he feels he needs her. She has SMSed me that she is the only one who can quench his sexual hunger”.*

35. In the note dated 30.1.2003, she has written that, *“Not within 15 days into this house, he has hit me twice.I have totally lost interest in the marriage, in him. He is definitely seeing her. I know that”.*

36. In the note dated 16.1.2003, Prachi has written that, *“I do not feel this house is mine. She haunts every moment. She is not leaving me in piece even for a moment. Keeps SMSing the whole day. I have seen him get up at night just to check her SMS. I think he is still obsessed. I feel like a intruder. I do not trust him. Not even a bit. He lies a lot”..*

37. In further note she has stated that, *“It is getting*

unbearable. It is my father who without hesitation made this house in your name, paid deposit despite knowing that bitch spent five nights in the house”... Do not go behind my back and talk to her. Do not lie about it then. As I saw the way you stuck to her. You were talking so nicely and sweetly to her. You were saying please and all. I am asking you, abuse her, you were not. You do not need any excuse to abuse me”.

38. In the next note, Prachi has written that, *“I have reached saturation point, when it has come to your drinking everyday and beating me senselessly. You really have no idea how hard and how much. I mean please Yogesh, I am ready to jump from the Kinetic running at full speed rather than go home with you in drunk condition. Can you understand what must have been my state of mind that made me do it? Just do not hit me any more”.*

39. In the note dated 22nd January, 2003, Prachi has written that, *“I do not trust him about her. I know he is obsessed with her. He actually looks forward to her calls and SMSes. How do I know she does not come here when I am not here. He does not control his*

drinking urge, but if he can't control his drinking, how do I know he can control himself about her?".. ... Please change Yogesh. Please do.... .. Please God make him change." Please, please please stop abusing me in the dirty language, nobody in my life has abused me like you. I mean I am your wife not a sex worker. Do not abuse and hit me. It will only make the cracks deeper".

40. Thus, even a cursory glance to the notes written by Prachi, few months before her death reveal the pathetic state of affair prevailing between Prachi and the appellant. The very fact that she has urged again and again to the appellant not to beat her, not to abuse her and get over with his obsession for Preeti makes it clear that it was not merely a marital discord between the parties but it was a clear case of harassment and cruelty. Prachi was beaten, assaulted and abused in filthy language by appellant. These notes also make it clear that the appellant was addicted to liquor and was having an affair with Preeti, the another woman in his life.

41. In our considered opinion if this is not cruelty as contemplated under Section 498A of Indian Penal Code, then nothing

can come in the purview of cruelty. The trial Court has, therefore, committed an error in discarding this evidence of physical abuses, harassment and cruelty, merely calling it as a 'marital discord' between the spouses and acquitting the appellant of the charge under Section 498A of IPC. The trial Court has also committed grave error in rejecting the evidence of Prachi's parents and sister on the ground of so called inconsistencies, which are of very minor nature. Their evidence is consistent interest and completely stand supported and corroborated from the hand written notes of Prachi. The finding of the trial Court of acquitting the appellant, for offence under Section 498A of the IPC, is therefore, required to be quashed and set aside holding the appellant guilty for the same.

42. According to learned counsel for the appellant the hand written notes of Prachi help the case of appellant as they depict Prachi's deeply frustrated state of mind. An attempt is made to submit that the notes are eloquent to prove that Prachi was on the verge of committing suicide and therefore, it rules out the possibility of her death being homicidal in nature.

43. However, this argument cannot be accepted for the simple reason that the manner in which dead body of Prachi was found in the

cabinet, with injuries to her head and attempted throttling, does not in any way probabilise the theory of suicide. The person committing suicide will not cause 24 injuries to oneself, including attempt of throttling and head injuries and thereafter put body in the cabinet. We have already held that the presence of these multiple injuries on her body and presence of evidence proving attempted throttling, coupled with unequivocal opinion of P.W.4 Dr. Bhushan Jain, leaves no manner of doubt that her death was homicidal one. The motive for the same may be because of Prachi's mentally disturbed condition and resistance which was coming in the way of appellant's relations with Preeti. Her constantly objecting his relations with Preeti and his unruly conduct must have prompted the appellant to eliminate her from his life. These hand written notes, thus, also explain the cause and motive for the appellant to commit murder.

44. Much argument is advanced by learned counsel for the appellant as to the timing of death. It is urged that according to P.W.4 Dr. Bhushan Jain, who has conducted postmortem on the dead body of Prachi, the death might have occurred 12 to 24 hours prior to time of postmortem. As the postmortem was conducted in between 11.40 a.m. to 1.30 p.m. on 31.3.2003, it is urged that the death might have taken place

at any time much prior to 4.30 a.m. when her dead body was found by appellant and Rashmi. Reliance is placed on the fact that Dr. Jain has found rigor mortis was well marked all over the body and the abdomen was found to be empty.

45. Learned counsel for appellant has, by placing reliance on the observations, in **Medical Jurisprudence, Forensic Medicine and Toxicology**, submitted that the presence and extent of rigor mortis puts the approximate time of her death after 11.30 a.m. on 30.3.2003. According to him, therefore, contents of the charge framed against the appellant that the offence was committed in the night between 30th and 31st March, 2003 prior to 4.00 a.m. is not giving the correct particulars of the offence. The death of Prachi might have occurred much prior to the night of 30th, might may, be in the day time also. As per evidence of P. W.8 Vilas, a friend of appellant, appellant was with him on that night from 9.30 p.m. to 10.30 p.m; whereas evidence of the Court witness No.1 watchman Uttamkumar Mishra, proves that the appellant has left the house on that day at 2.30 p.m. itself and he returned home in the next morning at 4.00 a.m. Thus, as per learned counsel for the appellant, the presence of appellant in the house at the approximate time of Prachi's death is not proved to implicate him with charge of her murder.

46. It is urged by learned counsel for appellant that in a case based on circumstantial evidence, prosecution has to prove each and every circumstance, by bringing convincing and reliable evidence on record. To substantiate his submission, learned counsel for appellant has relied upon the cases of **Gambhir -vs- State of Maharashtra (1982) 2 SCC 351**, and **Shankarlal Gyarasilal Dixit -vs- State of Maharashtra, (1981) 2 SCC 35**, which lay down the guiding principles for appreciation of evidence when the case rests on circumstantial evidence. The tests laid down are to the effect that (i) the circumstances from which inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency and unerringly pointing towards guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

47. As per learned counsel for appellant, here circumstances established by prosecution are not such, so as to exclude the possibility of any other person committing the murder. In his written statement

under Section 313 of Code of Criminal Procedure, the appellant has urged possibility of some intruder coming to the house in his absence and Prachi hiding herself in the cabinet out of fear of injuries from that person. He has stated that, such person might have come to their flat to commit certain theft or for some other reason. However, to say the least, in our opinion this possibility is totally ruled out from the evidence of Prachi's parents, who have deposed that after the incident on 7th April, when they visited the flat of Prachi and appellant, they found that none of the articles in the flat, including gold ornaments was missing or stolen therefrom. Therefore, the possibility of some third person entering into the house with the intention of committing theft is totally ruled out.

48. Secondly, if at all any intruder has entered into flat, Prachi would have raised hue and cry, called watchman or tried to escape herself from the flat, instead of confining herself in the cabinet. Moreover, in that case she would not have antemortem injuries on her person like attempted throttling. Thus, this defence is so farfetched that it hardly deserves any merit.

49. Indisputably the incident had taken place in the house where the appellant and Prachi were cohabiting together. The spot panchnama Exh.46, proved through the evidence of P.W.7 panch Ashok, reveals that

the blood stains were seen on the curtain, on the floor, wall and also on the cover of keyboard of computer. Hair were also seen on the floor. All these articles including cigarette butt were seized by the police under panchnama. The flower-pot with dents thereon was also seized under panchnama. Therefore, when the incident has taken place very much in the house where the appellant and Prachi were residing together and nothing is brought on record to show that during this span of 12 to 24 hours in which Prachi's death might have occurred, there was no possibility of the appellant not being in the house, the onus naturally was shifted on the appellant to explain the circumstances under which her homicidal death has occurred; especially in the light of the fact that when her dead body was found, he was very much present there and in the light of his conduct, as deposed by Rashmi and her parents that he was confirmed that Prachi was already dead. On phone itself, he has informed her parents that Prachi was no more and she was dead. Thereafter even when Rashmi urged appellant that Prachi should be taken to the Doctor, the reluctance on the part of the appellant to do so makes it very clear that he was aware and certain about her death. If it is so, then it was for him to explain the circumstances in which her death has occurred.

50. The plea taken by him of Prachi committing suicide is proved to be false. The another plea taken by him that some intruder might have entered into the house is also falsified. Therefore, as held in **Rajkumar Prasad Tamarkar -vs- State of Bihar and anr (2007) SCC (Cri) 716** and **Dnyaneshwar -vs- State of Maharashtra, (2007) 10 SCC 445**, relied upon by learned counsel for Revision Petitioner, an irresistible inference has to be drawn about the involvement of the appellant husband in the cause of her death. He cannot escape from the liability. As held in **Trimukh Maroti Krkan -vs- State of Maharashtra (2007) 10 SCC 681**, “where accused is alleged to have committed murder of his wife and the prosecution succeeds in leading evidence to show that shortly before commission of crime they were seen together or the offence takes place in dwelling home where the husband also normally resides, it has been consistently held that if accused does not offer any explanation, how wife received injuries or offers explanation which is found to be false, it is strong circumstance which indicate that he is responsible for commission of the crime”. Here in the case, having regard to the entire facts and circumstances and evidence on record, no other hypothesis except that of the guilt of the

appellant can be drawn. The circumstances are consistent only with his guilt and inconsistent with his innocence.

51. The last plea raised by learned counsel for the appellant is about alleged error in framing of charge by the trial Court. It is submitted that in the charge, time of the offence is mentioned as, “In the night between 30th and 31st March, 2003 prior to 4.00 a.m.”. According to learned counsel for appellant, the evidence on record does not necessarily prove that incident has taken place in the night and therefore, this error in framing of charge has resulted in violation of justice.

52. Learned counsel for appellant in this respect relied on **Main Pal -vs- State of Haryana (2010) 10 SCC 130**. However, the facts of this authority clearly prove that the appellant was charged with offence of trespassing the house of “P” with intent to assault “P” and for having assaulted her by outraging her modesty. However, appellant was convicted for outraging modesty of “S”, who was also present at the time of alleged incident. In the said fact situation, it was held that the appellant was misled by error in charge which caused prejudice to him, thereby resulting in failure of justice.

53. Here in the case the charge nowhere specify the exact time. It merely says prior to 4.00 a.m. of 31st March. Even if the words, “night

in between 30th and 31st March” are there in the charge, the cross examination conducted on behalf of appellant and the evidence adduced in the case including written statement filed by the appellant under Section 313 of Code of Criminal Procedure, nowhere shows that he has been in any way misled by the said words in the charge or it has caused prejudice to the appellant. He was fully aware of what prosecution case is against him and has led evidence accordingly. In the above referred authority also, it was held that “there will be no prejudice or failure of justice, where there was any error in the charge and accused was aware of the error. Such knowledge can be inferred from the defence of the accused and if defence of accused showed that he was defending himself against real and actual charge and not erroneous charge, it will not result into causing any prejudice to him”. It was further held that, “In judging the question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities. The Court has to see whether accused knew for what he was being tried for, whether the main facts sought to be established against accused were explained to him and whether he was given full and fair chance to defend himself”. All these conditions are clearly satisfied in the instant case and therefore, this last leg of argument advanced by learned counsel for

appellant also fails.

54. The net result of our discussion is that the prosecution has succeeded in proving its case against the appellant beyond reasonable doubt. The trial Court, has therefore, rightly convicted and sentenced him, for the offence under Section 302 and 201 of the Indian Penal Code. As to the acquittal of the appellant, for the offence punishable under Section 498A of IPC, by the trial Court, we find that said acquittal needs to be altered into conviction as the finding recorded by the trial Court to that effect falls in the category of “perverse”.

55. Learned counsel for the original complainant in the Revision also made a prayer to the effect that the life imprisonment awarded by trial Court be converted into death penalty. We are not inclined to grant the said prayer because the facts of this case do not fall in the category of “rarest or rare” and in the parameters laid down by the Apex Court from time to time.

56. Consequently, appeal stands dismissed.

57. The Criminal Revision Application filed by complainant is allowed partly to the extent of quashing and setting aside appellant's acquittal for the offence punishable under Section 498A of the Indian Penal Code. The appellant is convicted for the said offence and

sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.10,000/- in default to rigorous imprisonment for six months. The substantive sentences for all the offences to run concurrently.

58. The bail bonds of the appellant stand cancelled and the appellant is directed to surrender before the trial Court within 10 weeks from today, failing which the trial Court to take appropriate steps to have him arrested to serve the sentence.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original
signed judgment