

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 202 OF 2000

The State of Maharashtra .. Appellant
through PSO of Police Station
Parali (Rural), Dist. Beed

Versus

1. Hanumant S/o. Sitaram Andhale, .. Respondents
Age-30 years, Occu-Agri, (Orig. accused)
R/o. Helamb, Tq. Parli, Dist. Beed
2. Shrirang S/o. Bapural Holambe
Age-60 years, Occu-Retired from service,
R/o. As above

Mr.P.G. Borade, APP for the appellant/State
Mr.S.S. Rath, Advocate for respondent Nos. 1 and 2

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.
DATED : 27.06.2017**

J U D G M E N T [PER:S.M. GAVHANE, J.] :-

. This appeal is directed against the judgment and
order dated 18.02.2000 in Sessions Case No.67 of 1998

passed by the Additional Sessions Judge, Ambejogai, thereby acquitting both the accused of the offences punishable under Sections 498-A and 302 r/w 34 of the Indian Penal Code (for short "the IPC").

2. Shortly stated the facts of the prosecution case, are as under:-

A. The informant Dattu Vaijinath Phad (PW-4) and Bhimrao Vaijinath Phad (PW-5) are respectively uncle and father of deceased Urmila. They were residing at Deokara, Tq. Ahmedpur, Dist. Latur while accused No.1 and his maternal uncle accused No.2 were residing at Helamba, Tq. Parali, Dist. Beed at the time of incident.

B. The deceased was married to accused No.1 four years prior to the incident and after marriage she started cohabiting with accused No.1. After one year of the marriage accused No.1 started making demand of Rs. 70,000/- for purchasing the jeep. He was insisting the

deceased to bring the said amount from her parents. Whenever the deceased used to visit her parents house, she used to make such complaint to her parents and others. When she had been to her parents house for delivery, she disclosed that accused No.1 often insisted her to bring the said amount and for fulfillment of the same, he used to assault her. She stayed at her parents house for one year. Six months prior to the incident deceased Urmila had been to the house of her parents, and complained that her husband demanded Rs.70,000/- for purchasing the jeep and for fulfillment of the same, he assaulted her. Therefore, she left the house of accused. After some days accused Nos.1 and 2 came there and demanded Rs.70,000/- for purchasing the jeep. They assured the parents of deceased Urmila that if the amount is paid they would not give any ill-treatment to the deceased. In order to avoid such ill-treatment and for the happy life of daughter, the father of deceased Urmila paid Rs.50,000/- to accused Nos.1 and 2 in presence of Sarpanch of the village Deokara namely Janardhan Phad

(PW-10), Namdeo Gite and Shivram Gite, resident of same village. Thereafter, the deceased went to her in-laws house alongwith the accused.

C. Thereafter, accused No.1 and deceased went to Bombay and stayed there for four to five months for their earning. Thereafter, they returned from Bombay at their village for about 15 days. The accused warned that she should bring Rs.20,000/- and a cooler, from her parents and for complying said demand accused No.1 assaulted deceased. Then she left the house and went to the house of her parents. Accused No.2 promised the parents of the deceased that if the demand of a cash amount of Rs. 20,000/- and a cooler has been given up and in future there would be no any ill-treatment to the deceased. Thereafter, he took the deceased to the house of her husband and at that time PW-5 father of the deceased had also accompanied her.

D. The deceased was taken to her husband's house on

09.06.1998 in the evening and on the same day there was quarrel between her and accused No.1. On the next day i.e. 10.06.1998 also there was quarrel between them and accused No.1 told her that she should tell her father to re-convey his land which was sold to her father for Rs. 70,000/- as accused No.1 was in need of said amount. Further it is alleged that on 11.06.1998 early in the morning at about 07.00 am the quarrel took place between deceased and accused No.1. At that time also accused No.1 told her to tell her father to re-convey the land in his name.

E. On 12.06.1998 while informant (PW-4) and PW-5 were at their village, one Prabhu Palvade from the village of accused came to them and told them that the deceased is killed in the field. Thereupon, PW-4 Uncle, father (PW-5), mother of the deceased and other relatives including Sarpanch came to field of accused No.1 in Helamb Shivar which is known as Buruj field and they saw dead body of the deceased lying under Moha tree. They saw

axe lying near the dead body and deceased was stained with the blood. They came to know that on 11.06.1998 in the morning at 09.00 am the deceased and her husband accused No.1 had gone to their field. It is alleged that accused No.1 was demanding Rs.50,000/- for purchasing jeep since last two years. So also, accused No.2 was saying accused No.1 to take that amount. The father of the deceased was not in a position to give the said amount. Therefore, since last two years the accused were harassing the deceased. It is alleged that on 11.06.1998 in the evening under Moha tree accused No.1 killed the deceased by the axe by assaulting on her cheek and neck. PW-4 uncle of the deceased lodged the complaint on 12.06.1998 against accused in the Police Station, Parali (Rural) making above said allegations. Treating the said complaint as FIR. PSI Chavan (PW-13) registered the Crime No.186/1998 against the accused for the offences punishable under Sections 498-A and 302 read with Section 34 of the IPC and commenced the investigation.

F. During the investigation PSI Chavan on 12.06.1998 prepared the inquest panchanama in presence of Panchas Balaji Andhale, Pralhad Andhale and Laxmibai Murkute and panchanama of seizure of clothes on the person of the deceased which are not disputed by the accused. Then the dead body was sent to Primary Health Center, Ghatnandur for postmortem examination and Dr. Anant Gite (PW-12) and Dr. Ghule conducted the postmortem on 12.06.1998 between 04.00 to 05.00 p.m. and issued postmortem report (Exh.36). They opined that the cause of death was due to hemorrhagic shock secondary to rupture of left common carotid artery due to incised neck injuries. So also, they had issued the provisional postmortem report (Exh.35). Thereafter, PSI Chavan visited the spot of incident i.e. Buruj field of accused No.1 on 12.06.1998 and prepared panchanama in presence of the panchas Mr. Balaji Andhale and Mr. Pralhad Andhale. He seized the axe, earth mixed with blood and simple earth from the spot of incident under the same panchanama with map. He recorded the statements of father, mother of

the deceased and Sarpanch of village of father of the deceased. He also recorded statements of uncle and brother of accused No.1.

G. The Investigating Officer PIS Chavan on 30.06.1998 prepared memorandum of panchanama of accused No.1 while said accused was in the police custody, in presence of panchas Vitthal Phad and Madhukar Dahiphale that he has hidden his shirt and pant along the canal and said clothes were accordingly seized and panchanama (Exh. 39) was prepared. On the same day PSI Chavan prepared memorandum of panchanama of accused No.1 that he would show the spot where he had left the axe and accordingly said memorandum of panchanama (Exh.40) was prepared in presence of panchas Balaji Andhale and Pralhad Andhale. He then sent the seized weapon and clothes of the deceased and accused No.1 to the Chemical Analyzer for analysis and collected the report of the Chemical Analyzer. On completion of the investigation he submitted charge-sheet in the Court of Judicial Magistrate, First

Class, Ambejogai who committed the case to the Court of Additional Sessions Judge, Ambejogai as the offence under Section 302 of the IPC is exclusively triable by the Sessions Court.

3. Learned Additional Sessions Judge, Ambejogai framed the charge against the accused for the offences punishable under Sections 498-A and 302 read with Section 34 of the IPC to which they pleaded not guilty and claimed to be tried. Their defence as it appears from the trend of cross-examination of the prosecution witnesses and their statements under Section 313 of the Code of Criminal Procedure is that accused No.1 was in need of money therefore, he sold his land to PW-5 father of deceased for Rs.70,000/- and accused No.1 is cultivating said land. There is a dispute between him and his step-brother in respect of land. As one of his real brother is missing since long his step-brothers had started claiming his (his brother's) share. On advise of his father-in-law Bhimrao (PW-5) he transferred his land

in the name of his (PW-5's) son. In order to grab the property his father-in-law implicated him in this false case. Accused No.2 in his statement under Section 313 of the Code of Criminal Procedure stated that Shankar Andhale, Ex-Police Patil is in inimical terms with him, so he managed to implicate him falsely. There are civil litigation pending between him and Shankar Andhale. In order to take revenge, he implicated him falsely. It was transpired during the investigation that the accused No.1 sustained injuries and on 12.06.1998 Dr. Ramgopal Madanlal Biyani (PW-14) examined accused No.1 and issued injury certificate (Exh.64).

4. To prove the charge against the accused, the prosecution has examined as many as fourteen witnesses and relied upon the above said panchanamas. On considering the evidence adduced by the prosecution the learned trial Court held that the prosecution has failed to prove the offences under Sections 498-A and 302 r/w Section 34 of the IPC against the accused and acquitted

them of the said offences by the judgment and order dated 18.02.2000. Therefore, this appeal by the State against the acquittal of the respondents/accused.

5. We have heard the learned APP appearing for the appellant/State and counsel appearing for the respondents/accused and with their able assistance we have perused the evidence and we have gone through the impugned judgment and order.

6. Learned APP appearing for the appellant/State submitted that incident occurred within seven years of marriage of the deceased with accused No.1. There is evidence of father (PW-5), mother (PW-11), uncle (PW-4) of the deceased and Sarpanch (PW-10) of the village of PW-5 showing that the accused caused cruelty to the deceased for demanding of Rs.70,000/- and the amount of Rs.50,000/- was paid to the accused. There is evidence on record that for remaining amount of Rs. 20,000/- accused ill-treated the deceased. Therefore, the trial Court

ought to have accepted evidence of these prosecution witnesses to prove offence under Section 498-A against both the accused. Learned APP further submitted that there is evidence of PWs.6,7 and 8 that they had seen the deceased in the company of accused No.1 on the day of incident between 02.00 to 03.00 p.m. and then admittedly dead body was found. As such, when deceased was lastly seen in the company of accused No.1 he is responsible for the death of deceased. Thus, learned APP has prayed to allow the appeal and to convict the accused for the offences with which they were charged.

7. On the other hand learned counsel appearing for the respondents/accused submitted that there is no consistency in the evidence of PWs.4,5,10 and 11 who have been examined by the prosecution to prove the alleged cruelty to the deceased by the accused. As regards the evidence of PWs.6,7 and 8 they have not supported the prosecution case and therefore, it cannot be said that the deceased was lastly seen in the company of the

accused No.1 and therefore, accused No.1 is responsible for death of the deceased. Learned counsel appearing for the accused further submitted that the view taken by the trial Court is possible view and there is no error in appreciating the evidence by the trial Court. As such according to him there is no ground to infer with the impugned judgment and order of acquittal of the accused and accordingly he has claimed to dismiss the appeal.

8. Since this appeal is against the acquittal, before examining the evidence adduced by the prosecution to see whether the acquittal of the accused is proper and the view taken by the trial Court was reasonable and probable or otherwise it is necessary to bear in mind the principle in this respect laid down by the Apex Court in the case of **Murlidhar alias Gidda and another Vs State of Karnataka, 2014(4)Mh.L.J.(Cri)353** wherein in para No.12 the Apex Court has held thus:

"12. The approach of the appellate Court in

the appeal against acquittal has been dealt with by this Court in Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR 1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K,

(1997) 7 SCC 677, Sambasivan Vs State of Kerala,
(1998) 5 SCC 412, Bhagwan Singh Vs State of
M.P., (2002) 4 SCC 85, Harijana Thirupala Vs
Public Prosecutor, High Court of A.P., (2002) 6
SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003)
1 SCC 1, State of Karnataka Vs K. Gopalkrishna,
(2005) 9 SCC 291, State of Goa Vs Sanjay
Thakran, (2007) 3 SCC 755 and Chandrappa,
Chandrappa Vs State of Karnataka, (2007) 4 SCC
415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against

acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence

is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

9. We have carefully considered the submissions made by the learned APP appearing for the appellant/State and learned counsel appearing for the respondents/accused and evidence adduced by the prosecution. As regards the offence under Section 498-A of the IPC the prosecution has mainly relied upon the evidence of PWs. 4,5,10 and 11. In his evidence PW-4 who is uncle of deceased has stated that the deceased Urmila was married to accused No.1 four years prior to the incident. After the marriage she was continuously cohabiting with accused No.1 and thereafter because of some differences she had been to her parents house. After one year of the marriage

accused No.1 started demanding an amount of Rs.70,000/- for purchasing the jeep and often insisted the deceased to bring that much amount from her parents. He deposed that his brother (PW-5) told him that he paid Rs. 50,000/- to accused No.1. When amount was paid he was out of station. After the amount was paid the deceased went to her in-laws' house for cohabitation. Thereafter for some days the accused gave good treatment to the deceased. The incident took place after one and half month of the amount was paid. He stated that Sarpanch of their village, Namdeo Gutte and Narhari Gutte were present when the amount was paid to accused No.1. Further he deposed that the deceased had come to her parents house for delivery and son was born to her. She did not disclose him anything when she had come for delivery. Four days prior to the incident the accused took the deceased from their house. When the deceased had occasion to meet him she complained that accused No.1 used to assault her and used to ill-treat her.

10. PW-4 stated that one Prabhu Palvade had been to their house and informed that the deceased has been killed in the field. Thereafter, he, his brother Bhimrao (PW-5), wife of PW-5 and other relatives went to Helamb village of the accused and they saw dead body under Moha tree in the field. Axe was lying by the side of the dead body. The deceased had bleeding injuries. His brother (PW-5) became unconscious. Therefore, he went to police station and made report to the police, it was reduced into writing, as per Exh.24.

11. PW-4 further stated that when lastly the deceased was taken to the house of her husband accused No.1 and his maternal uncle accused No.2, at that time he was out of station and his brother told the same to him. So also, his brother told him that when he paid Rs. 50,000/- to accused No.1 he was accompanied by accused No.2. He stated that when the deceased had come to delivery she made a complaint that her husband used to demand money and she did not disclose him that accused

No.2 had also demanded Rs.70,000/- and for fulfillment of the said demand he gave ill-treatment to her. The APP cross-examined PW-4 and in the said cross-examination he has denied that the deceased had also disclosed him that accused No.2 gave her ill-treatment and he is deposing false to save accused No.2.

12. In the cross-examination on behalf of accused PW-4 stated that on the day he lodged the report. His brother disclosed him that accused No.1 often demanded Rs.50,000/- and he had also told him that accused No.1 demanded cash for purchasing the jeep. He stated that his brother also disclosed him that he has no capacity to pay amount and so amount was not paid. He also stated that he has no personal knowledge and he narrated the facts to the police as disclosed by his brother and denied that his brother did not disclose anything to him and he is deposing false.

13. From the above evidence of PW-4 it appears that

according to him after one year of the marriage accused No.1 started demanding an amount of Rs.50,000/- for purchasing jeep and often insisted the deceased to bring that much amount from her parents. But he has not stated that the deceased had told the same to him. On the contrary he stated that when the deceased had come for delivery to their house she did not disclose anything to him. So also, it is clear from his evidence that an amount of Rs.50,000/- which was allegedly paid to accused No.1 by his brother (PW-5) was not paid in his presence and PW-5 told him about the same. So also, it is clear from his evidence that only on the day of lodging FIR (Exh.20) his brother disclosed him that accused No.1 often demanded an amount of Rs.50,000/- for purchasing the jeep and that his brother told him that he has no capacity and so no amount was paid. So also, he stated that he has no personal knowledge and he narrated the facts to the police as disclosed by his brother. Thus, he has no direct knowledge about the demand of money by accused No.1 from the parents of the deceased. So also,

as referred earlier he stated that deceased did not disclose to him that accused No.2 demanded an amount of Rs.20,000/- and for fulfillment of the same ill-treated her. Thus the evidence of PW-4 uncle of the deceased is not sufficient to infer that the accused caused cruelty to the deceased for fulfillment of their demand of money.

14. PW-5- Bhimrao father of the deceased has also stated that marriage of the deceased with accused No.1 was solemnized four years prior to the incident and about relationship of accused No.1 with accused No.2 as per the case of the prosecution. He stated that at the time of incident the deceased had son aged 1 to 1^{1/4} years. The accused had given good treatment to the deceased upto one year after the marriage. After one year accused No.1 started demanding Rs.70,000/- for purchasing jeep and often insisted deceased for bringing the amount from her parents. He stated that six months before the incident deceased had been to his house. She complained to him that her husband accused No.1 demanded Rs.70,000/- for

purchasing jeep and for fulfillment of the same he assaulted her. Therefore, she left her house. After some days of her coming to his house both accused had come to him. They demanded Rs.70,000/- for purchasing jeep. They assured that if he gives the amount they would not ill-treat the deceased. He stated that only to avoid ill-treatment and that his daughter should live happy life, he called two persons and in their presence paid Rs. 50,000/- to both the accused. That amount was paid in presence of Janardhan Phad Sarpanch of their village, Namdeo and Shivram. Thereafter, the deceased was sent to her in-laws house alongwith accused.

15. PW-5 has further deposed that two years after the marriage the deceased had been to his house and stayed for one year. She stayed with him for one year because accused No.1 often insisted her for bringing the amount and for fulfillment of his demand he gave her ill-treatment. The deceased had been to his house for her delivery. When she had been to his house she complained

him that at the time of leaving her in-laws house her husband accused No.1 and his maternal uncle accused No.2 warned her that if she wanted to return back she should bring Rs.20,000/- cash and one cooler. He did not give any cash or a cooler to the deceased. Thereafter, the deceased and her husband went to Bombay for earning and stayed there for 4 to 5 months. From Bombay the deceased directly came to his house. At that time she complained that her husband told her to bring Rs.20,000/- and a cooler and for fulfillment of said demand he gave ill-treatment to her.

16. In the cross-examination PW-5 stated that he had stated before police that when two years after the marriage the deceased had been to him, she complained him that both the accused used to demand Rs.70,000/- for purchasing jeep and for this they gave ill-treatment to her. So also, he stated that he had stated before police that when the deceased had been to his house for delivery she complained that the accused No.1 warned her that she

should bring Rs.20,000/- and a cooler. So also, he stated before the police that the deceased directly came to him from Bombay and complained that her husband often demanded Rs.20,000/- and a cooler and for this he gave ill-treatment. He could not assign the reason of absence of above all the facts in his statement before police. Thus his evidence that the accused demanded Rs.70,000/- and a cooler and caused ill-treatment to the deceased for fulfillment of the said demand amounts to material omissions in his statement before the police and improvement while deposing before the Court. So also, it is pertinent to note that PW-5 stated about demand of a cooler by the accused while PW-4 uncle of the deceased has not stated in respect of the said demand by the accused.

17. It has further come in the evidence of PW-5 that he got transferred 6-Acres land of accused No.1 in the name of his son Ashruba. This transaction took place three years before. Those days were of summer season. As accused No.1 was indebted, he was intending to dispose of

the property with an intention to retain property for accused No.1 and his son he paid Rs.70,000/- to him (accused No.1) and got the land transferred in the name of his son. Both the accused were present at the time of said transaction and they had told him that accused No.1 was indebted. They had also told him that accused No.1 raised the loan for marriage of his sister and he intended to dispose of the property to others. He further stated that he does not know for what purpose he (accused No.1) spent that amount. He had paid Rs.70,000/- to accused No.1 at his house. 10 to 15 days after payment he got executed the registered document. Pandit Sopan Gutte resident of Deokara, Namdeo Sitaram Palvade resident of Helamb were present at the time of this document. These persons attested the said document. Pandit Sopan is a cousin of his wife. Narhari Gutte and Namdeo Gutte and Pandit are brothers interse. He denied that said persons are real brothers of his wife. He stated that he does not re-collect the day, date, month and year of which the amount was paid to accused No.1 for purchasing jeep. He

stated that amount was with him and some was borrowed from others. He denied that he deposed false that Rs. 50,000/- were paid to accused No.1 for purchasing jeep and Rs.70,000/- were paid for discharging debt. Moreover, he stated that he did not make enquiry with accused No.1 and deceased as to why he has not purchased the jeep. When as per the evidence of PW-5 he paid Rs.50,000/- to accused No.1 for purchasing jeep, in fact he should have asked accused No.1 as to whether he has purchased the jeep. But, admittedly he did not ask the same to accused No.1. When as per his above evidence he got the land of accused No.1 transferred in the name of his son and gave Rs.70,000/- to accused No.1 as he was indebted possibility that he paid only Rs.50,000/- out of said Rs. 70,000/- and an amount of Rs.20,000/- was due to him to accused No.1 cannot be denied. But PW-5 is deposing that he paid Rs.50,000/- to accused No.1 on his demand for purchasing the jeep as alleged by the prosecution. In the above circumstances the evidence of PW-5 is not believable to hold that the accused caused cruelty to the

deceased.

18. The next witness on cruelty is Janardhan Ramrao Phad (PW-10) the Sarpanch of village of PW-5 father of the deceased. He stated about marriage of the deceased with accused No.1. He stated that the deceased complained him that accused No.1 used to give ill-treatment to her and used to demand cash amount for purchasing jeep and she made such complaint some days prior to the incident. Thereafter, PW-5 father of the deceased told him that accused No.1 demanded Rs.70,000/- for purchasing jeep. Thereafter, accused No.1 came to house of PW-5. PW-5 called him at his house. He went there and PW-5 disclosed him that accused No.1 demanded Rs.70,000/- and he paid Rs.50,000/-. According to him PW-5 paid Rs.50,000/- to accused No.1. Accused No.2 was also there. After PW-5 paid Rs.50,000/- to accused both the accused assured that in future no any harassment, ill-treatment would be caused to the deceased. Thereafter, accused took Urmila the deceased. After some days the deceased came back to

her parents house. He had no occasion to meet her.

19. In the cross-examination PW-10 stated that he was not present at the time of settlement of marriage of the deceased with accused No.1. He does not remember the day, date and month on which the amount was paid. Besides the accused, he, PW-5 and Shivram were only present at that time of payment and nobody else was there. According to him that was rainy season when the payment was made to the accused. As referred earlier it has come in the cross-examination of PW-5 that an amount of Rs.50,000/- was paid to the accused in Summer season while this witness has stated that it was rainy season when amount was paid. Thus, there is no consistency in the evidence of PW-5 and PW-10 as to when amount of Rs.50,000/- was paid to the accused. So also, as referred earlier it has come in the evidence of father of the deceased that when the amount was allegedly paid to the accused Janardhan Phad (PW-10), Nandeo Gutte and Narhari were present and he has not stated that Shivram was present at that time.

Therefore, the evidence of PW-10 that except he, Bhimrao Phad (PW-5) and Shivram nobody else was present at the time of payment to accused, is not believable.

20. So also, in the cross-examination PW-10 has stated that police recorded his statement 8 to 10 days after the incident. He stated that he stated before police that the deceased Urmila disclosed him that accused used to demand cash for purchasing the jeep and for that they used to give ill-treatment to her. So also, he stated before police that PW-5 father of the deceased disclosed that accused demanded Rs.70,000/- for purchasing jeep. Moreover, he stated that he had stated to police that two days prior to the incident both accused had came to Deokara and assured that he will not give any ill-treatment to the deceased in future. He could not assign why above said facts are not appearing in his statement before police. Moreover, he has stated that he had not stated to police as per the portion marked in his statement that PW-5 told him that accused

No.1 demanded Rs.70,000/- but he had only Rs.50,000/-. So also, he stated that he had not stated before police that Narhari and Namdeo were not present when the amount was paid to the accused. Thus, evidence of PW-10 referred to above is amounting to material omission in his statement before police and improvement while deposing before the Court. Therefore he being a Sarpanch of village of PW-5 possibility of his supporting PW-5 without any knowledge of cruelty to the deceased cannot be ruled out. Therefore, his evidence is not sufficient to infer that accused caused cruelty to the deceased on account of demand of money as claimed by him.

21. The next evidence on cruelty is of Anusayabai Phad (PW-11) mother of the deceased. Her evidence is that marriage of the deceased was performed with accused No.1 before four years of the incident. Since two years prior to the incident in-laws of the deceased had started ill-treatment to the deceased. Two years prior to the incident the deceased had come to her house for delivery

at that time she disclosed to her that both the accused used to give ill-treatment to her. She has also disclosed that accused No.1 husband of deceased made a demand of Rs.70,000/- for purchasing jeep. She stated that six months prior to the incident they paid Rs.50,000/- to both the accused. They had been to their house and assured that they would not give ill-treatment to the deceased in future and thereafter the amount was paid. The said amount was paid in presence of Shivram and Sarpanch Janardhan. Therefore, accused No.1 and deceased went to Bombay for 5 to 6 months. After they returned from Bombay they stayed at Helamb for 15 days. Thereafter, both accused assaulted deceased and drove away her. The deceased was driven out to 10 to 12 days prior to the incident. The deceased came to their house and complained that accused assaulted and drove away her threatening that she should bring Rs.20,000/- and a cooler. Three days prior to the incident accused No.2 came to their house and said that the demand of cash Rs. 20,000/- and a cooler is given-up and no such demand will

be made and that good treatment would be given in future and asked them to send the deceased. Thereafter, the deceased was sent with both the accused and PW-5 also accompanied them. She stated that for the first time two years prior to the incident when the deceased had come to their house complained that the accused made demand of Rs.70,000/- for purchasing jeep and for that they assaulted her. The deceased stayed at their house for one year when she had come for delivery and she stayed at their house, as there was demand of cash for purchasing jeep. She has also stated that the deceased has one son. Thereafter, she had stated about the message given by one Prabhu Palvade about death of the deceased.

22. In the cross-examination PW-11 has stated that fifteen days prior to the incident the deceased complained that the accused made a demand of Rs.20,000/- and a cooler. 2 to 4 days after payment of Rs.50,000/- accused No.1 and the deceased left for Bombay. Narhari and Namdeo her brothers were present while making payment

and no any document was got executed from accused No.1 as a security for payment of Rs.50,000/-. She stated that she had not stated as per the portion marked-A in her statement before police. She stated that it did not happen that when her daughter the deceased had been to her house for delivery she made a complaint that accused demanded Rs.20,000/- and a cooler and for that accused No.1 used to assault her. She stated that she had not stated as per portion marked-B in her statement before police. Both the portions marked-A and B have been proved by the Investigating Officer PSI Chavan (PW-13).

23. Moreover PW-11 has stated that she had stated before police that when the deceased had been to her house for delivery the accused demanded Rs.70,000/- for purchasing jeep. So also, she stated before the police that six months prior to the incident Rs.50,000/- was paid to the accused. So also, she had stated before police that Bhimrao was present at the time of payment to the accused. She had stated before police that at the

time of payment to the accused, the accused assured that they would not give ill-treatment to the deceased. She stated that she had stated before police that the deceased complained her that she was driven out by the accused. So also, she stated that she had stated before police that when the deceased had been to their house for her delivery she complained that accused made a demand of Rs.50,000/- for purchasing jeep. She could not assign reason why the above facts are not mentioned in her statement before police. Thus, the evidence of PW-11 regarding demand of Rs.50,000/- by the accused for purchasing jeep, they had paid Rs.50,000/-, that at that time Shivram was present, that at that time accused said that they would not ill-treat the deceased and when the deceased had come to their house (paternal house) for delivery she complained about demand of Rs.50,000/- by the accused for purchasing jeep amounts to material omission in her statement before police and improvement while deposing before the Court and hence the evidence of PW-11 in all above respect is not believable.

24. It has further come in the evidence of PW-11 that about 3 months before accused No.1's 6-Acres land was got transferred in the name of her son Ashruba. Accused No.1 is cultivating that land and mother of accused No.1 was cultivating when the evidence of this witness was recorded. Accused had come to them (witness and others) and told that they are indebted to Rs. 70,000/- and that they are in need of money. So, to discharge the debt, they put the land for sale, she and her husband thought that if accused No.1 sold the land there would not be any earning source to their daughter the deceased and her son, therefore, they paid Rs. 70,000/- to the accused and got executed the sale deed of 6-Acres land of accused No.1 in the name of their son Ashruba. After execution of sale deed so many times accused No.1 had been to their house. She stated that he did not disclose to whom he was indebted and how much amount he applied for discharging the debt. She stated that she does not recollect in which Marathi month the

amount was paid. The amount was paid in the month of Sankrant. From the above evidence of PW-11 it is clear that as accused No.1 was indebted to Rs.70,000/- he transferred his 6-Acres land in the name of his brother-in-law Ashruba son of PW-5 & 11 and sale deed was executed and PW-5 and 11 had paid Rs.70,000/- to accused No.1. Therefore, it cannot be said that PW-5 and 11 in-laws of accused No.1 had paid Rs.50,000/- to accused No.1 for purchasing jeep or that accused were making demand of Rs.70,000/- for purchasing jeep as alleged by the prosecution. As stated earlier PW-4 has stated that alleged amount of Rs.50,000/- was paid to the accused in Summer season while PW-5 stated that it was paid in Rainy season and PW-11 states that said amount was paid in the month of Sankrant which is usually in the month of January. Therefore, the evidence of all these witnesses as to when amount of Rs.50,000/- was paid to accused No.1 for purchasing jeep is not believable. Therefore, there is substance in the defence of the accused that whatever amount was paid by PW-5 to the accused was paid as

accused No.1 was indebted and for the security of the said amount accused No.1 had transferred his 6-Acre land in the name of his brother-in-law Ashruba.

25. Another aspect to be noted is that admittedly the prosecution has not examined witnesses Narhari and Shivram in whose presence allegedly PW-5 father of the deceased had given Rs.50,000/- to the accused for purchasing jeep on their demand and as noted earlier there is also no consistency in the evidence of PWs-4,5 and 11 as regards the presence of above witnesses at the time of payment and about season when the said amount was paid. Therefore, it cannot be said that accused caused cruelty to the deceased for fulfillment of their unlawful demand of Rs.70,000/- for purchasing jeep as alleged by the prosecution. Therefore, we hold that the prosecution has failed to prove offence under Section 498-A r/w Section 34 of the IPC against the accused. Trial court has rightly held so.

26. The case of the prosecution is that death of the deceased was homicidal. To prove the same the prosecution has mainly relied upon the evidence of Dr. Anant Gite (PW-12) and postmortem report (Exh.36) issued by him. Dr. Anant Gite in his evidence stated that on 12.06.1998 a dead body of deceased Urmila was brought for autopsy in Primary Health Centre, Ghatnandur. He and Medical Officer B.M. Ghule conducted postmortem between 04:00 to 05:00 pm and following external injuries were found on the dead body.

1. incised injury over left cheek in line of L+ mandible having size 6x2x2cm causing fracture of left mandible.
2. incised wound over neck anteriorly extending from mid line to left side, size 4 x 2 x 2 cm causing fracture of hyoid bone and causing rupture of left common carotid artery.
3. incised injury over neck anteriorly below injury No.2 3 x 2 x 2 cm.
4. Multiple abrasions and contusions over

right upper extremity.

5. contusion over left arm posteriorly,
size 6 x 2 cm.

. Dr. Anant Gite further stated that above injuries were ante mortem. Brain matter liquified. Trachia was injured. Both lungs were congested. Stomach found containing semi solid food, small intestine found containing liquid food. The large intestine found containing fecal matter. Vicera was not send for Chemical Analyzer. According to him the cause of death was due to hemorrhagic shock secondary to rupture of left common cartiod artry due to incised wound. There is no suggestion to the Doctor on behalf of the accused that death of the deceased was accidental or suicidal. Postmortem report (Exh.36) issued by above said Doctors also shows the above said cause of death as deposed by Dr. Gite. Thus, on the basis of above evidence we hold that death of the deceased was homicidal. The trial Court has rightly held so.

27. Now the question arises whether the accused are responsible for death of the deceased. There is no direct evidence to connect the accused with the death of the deceased and the case is based on circumstantial evidence. Before considering the circumstances relied upon by the prosecution to connect the accused with the crime in question, it is necessary to refer settled legal position as regards appreciation of circumstantial evidence, laid down by the Apex Court, in the case of **Sharad Badrichand Sarda Vs State of Maharashtra (AIR 1984 Supreme Court 1662)** which has been reiterated by the Apex Court in **Kishore Chand VS State of Himachal Pradesh (1990 Cr.L.J. 2289 (SC))**, wherein it was held as under:-

"(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' not 'may be' established.

(2) the facts so established should be consistent only with the hypothesis of the guilt

of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except that one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

28. Now coming to the circumstantial evidence, the prosecution has relied upon the following circumstances, to connect the accused with the death of the deceased.

1. On 11.06.1998 the deceased was lastly seen in the company of accused No.1 and on the next day she was found dead.

2. Finding of injury on the person of accused No.1

3. Seizure of axe from the spot of incident and seizure of clothes of deceased and accused No.1.

4. Finding of the human blood on clothes i.e. Sari, Blauz and petticoat of the deceased seized as per panchanama (Exh.18) and the clothes i.e. shirt and pant of the accused as per panchanama (Exh.39).

29. Now we shall proceed to consider whether the prosecution has proved the above said four circumstances and established chain of the said circumstances. As regards the first circumstance that the deceased was lastly seen in the company of accused No.1, to prove the said circumstance the prosecution has relied upon the evidence of PWs.-6,7 and 9. Allegedly Balaji Holambe (PW-6) is having land adjacent to the land of accused No. 1 and on the day of incident i.e. 11.06.1998 in the

morning he was in his field. He saw the deceased and accused No.1 collecting the woods in their field and thereafter at about 02.00 to 03.00 pm he had seen them taking meal under a Moha tree standing in the field of Vaijanath Andhale (PW-7) under which tree the dead body of the deceased was found. This witness has only stated that on the day of incident in the morning he was in his field and on that day till 10.00 am he was plying pali operation in his field. He has not supported the prosecution case as he has denied portion marked-A in his statement before police that on the day of incident he saw accused No.1 and the deceased collecting wood in their field and that he saw them taking meal under a Moha tree at about 02.00 to 03.00 pm. The said portion marked-A in his statement before police is of course proved by PSI Chavan (PW-13) as per Exh.48. However, as PW-6 has not supported the prosecution case the truth of the said portion marked at Exh.48 is not proved.

30. Next witness on the last seen theory is Dattu

Andhale (PW-9) who is brother of accused No.1. Allegedly on the day of incident accused No.1 and the deceased alongwith their meal had gone to the field for collecting the woods, this witness had seen the same and also axe found in the field was showed to him and identified the same. He has not supported the prosecution case as he has denied portion marked A,B and C in this respect in his statement before police. These portions marked A,B and C have been proved by PSI Chavan as per Exh. 45,46 and 47. But as this witness has not supported the prosecution case truth of portion marked Exh.45,46 and 47 has not proved.

31. Third witness on the last seen theory is Vaijanath Andhale (PW-7) who is uncle of accused No.1. Allegedly on the day of incident he had been to Parli and after he returned he came to know that the accused No.1 and the deceased had gone to their field for collecting wood and the deceased Urmila did not return from the field. This witness has also not supported the

prosecution case as he has denied portions marked-A and B in this respect in his statement before police. The said portions marked-A and B have been proved by PSI Chavan and marked at Exh. 49 and 50. However, as this witness has not supported the prosecution case the truth of the said portion marked at Exh. 49 and 50 has not been proved.

32. For the reasons discussed above the evidence of PWs. 6,7 and 9 and portion marked noted above in their statements before police are of no help to the prosecution to prove that the deceased was lastly seen in the company of accused No.1. Therefore, we hold that the prosecution has failed to prove circumstance No.1 in this respect.

33. As regards the second circumstance, it is the case of the prosecution that the injuries were noticed on the person of accused No.1 and therefore, he is responsible for causing injuries to the deceased and

death of the deceased. To prove this circumstance the prosecution has relied upon the evidence of Dr. Biyani (PW-14) and injury certificate (Exh.64) of accused No.1 issued by the said Doctor. Dr. Biyani in his evidence stated on 12.06.1998 at 11.00 am the injured who disclosed his name as Vishnu Andhale came to rural hospital, Gangakhed. After words the injured told his name as Hanumant Andhale i.e. accused No.1. He examined the said injured-accused No.1 and found following injuries on his person.

1. Abrasion 7 x 6 cm over right side of the chest in mid axillary line, red in color tenderness over the part was present. I took x-ray of the chest and found fracture of ribs No. 3,4 and 5 of right side. Injury was grievous.
2. Abrasion size 5 x 3 cm over supra scapular region red in colour, nature of injury was simple.
3. Abrasion 2 x 1 cm over left ankle joint later side red colour.

. Dr. Biyani further stated that above three injuries are possible by hard and blunt object. Age of the injuries was within 24 hours and accordingly he issued injury certificate Exh. 64. He also stated that accused No.1 before the court is the same person to whom he had examined on that day and found the above injuries. He stated that by jump in cannal such injuries are possible. He stated that injury No.3 is possible if a person assaulted another and while doing so there was resistance. In the cross-examination he stated that injury No.2 is not possible if he has fallen from front side. He stated that he does not agree with the suggestion that by single fall injury Nos. 1 and 2 are not possible at a time. He stated that all these injuries are possible by assault with hard and blunt object.

34. The injury certificate (Exh.64) shows that it is a certificate of Vishnu Andhale and said patient after words told his name as Hanumant Andhale. The certificate

also shows three abrasions on the person of accused No.1 as deposed by Dr. Biyani. In the statement under section 313 of Code of Criminal Procedure accused No.1 has admitted in answers to the questions Nos. 31 to 34 that Dr. Biyani examined him and noticed above injuries and issued certificate (Exh.64) and at that time only under wear was on his person and then as there was chest injury he was referred to SRTR Medical College Hospital, Ambejogai for further treatment. It is the case of the prosecution that on 30.06.1998 when the accused No.1 was in the police custody he made statement in presence of Panchas Vitthal and Madhukar (PW-3) and PSI Chavan (PW-13) that he would show the spot where he had kept the clothes on the bank of cannal and jumped in the cannal. Then at his instance said spot was discovered and so also his clothes Shirt and Pant having blood stains were seized. Panch (PW-3) has not supported the prosecution case. PW-13 Investigating Officer PSI Chavan has stated in respect of preparing this panchanama and seizure of clothes i.e. shirt and pant of accused No.1 at his

instance as alleged by the prosecution. Thus it is seen that after putting pant and shirt on the bank of the cannal accused No.1 jumped in the cannal. In the examination-in-chief itself Dr. Biyani has stated that by jumping in the cannal such injuries i.e. injuries noticed on the person of accused No.1 are possible. In the absence of evidence that the deceased resisted the accused at the time of alleged incident by hard and blunt object, it cannot be said that the injuries on the person of accused No.1 were caused to him in the alleged incident. Therefore, we hold that the prosecution has proved circumstance No.3 regarding finding of injuries on the person of accused No.1. But said circumstance is of no help to the prosecution to connect accused No.1 with the death of the deceased.

35. The third circumstance relied upon by the prosecution is seizure of axe from the spot of incident and seizure of clothes of deceased and accused No.1 by PSI Chavan in presence of panchas. PW-1 Panch has stated

that on 12.06.1998 dead body of the deceased was near Moha tree and one axe was near the dead body. It was having blood stains. That axe was having handle. It was seized as per panchanama (Exh.20) which bears his signature and signature of another panch. PW-2 has not supported the prosecution case. PW-13 PSI Chavan has stated about seizure of axe from the spot of incident as per panchanama (Exh.20) as well as seizure of clothes of deceased as per Panchanama (Exh.18) and seizure of clothes of accused as per panchanama (Exh.39). On the basis of his evidence it can be said that prosecution has proved circumstance No.4 regarding seizure of axe, clothes of the deceased and clothes of the accused.

36. The forth and last circumstance is regarding finding of human blood on the seized axe, the clothes i.e. Sari, Blouse and petticoat of the deceased and clothes i.e. full shirt and full pant of the accused as per report (Exh. 43) of the Chemical Analyzer. This report shows that blood detected on Exh.1,2,3,4 and 6

i.e. Sari, Blouse, petticoat, axe was human as well as it shows that no blood was detected on Exh. 7 and 8 i.e. full shirt and full pant of the accused. There is no report of Chemical Analyzer showing blood group of the deceased or the accused. Therefore, mere finding of human blood on the clothes of the deceased and seized axe is of no help to the prosecution to prove that the accused used the axe in assaulting the deceased. Another reason to hold this is that the axe was seized from the spot of incident which is open space and it is not the case of the prosecution that it was seized at the instance of the accused. Therefore, the report of Chemical Analyzer (Exh.43) is of no help to the prosecution to connect the accused with the death of the deceased.

37. For the reasons discussed above, we hold that the prosecution has not proved the circumstances No.1 that the deceased was lastly seen in the company of accused No.1 and it has proved circumstance Nos. 2,3 and 4. But for the reasons discussed above, mere finding of

injuries on the person of accused No.1 and finding of human blood on the seized axe and seized clothes of accused No.1 and deceased as per the Chemical Analyzer's report (Exh.43) is not sufficient to connect the accused with the death of the deceased as the prosecution has not established the chain in the circumstances relied upon by it. So also, as observed earlier the prosecution has failed to prove cruelty under Section 498-A of the IPC against the accused which was alleged motive behind committing murder of deceased. Therefore, we hold that the accused are not responsible for death of the deceased. As such, the prosecution has failed to prove offence under Section 302 r/w Section 34 of the IPC against the accused.

38. On re-appreciation of the entire evidence on record, we find that the learned trial judge on carefully considering the evidence adduced by the prosecution held that the death of the deceased is homicidal and the prosecution has failed to prove that the accused in

furtherance of their common intention caused cruelty to the deceased and committed her murder and failed to prove the offences punishable under Sections 498-A and 302 r/w Section 34 of the IPC. The said view taken by the trial Court is reasonable and possible view. We find that there is no reason to take other view than the view taken by the trial Court. Therefore, appeal being devoid of merits the same is liable to be dismissed. Accordingly we dismiss the same. The bail bonds, if any of the accused, shall stand cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]