

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

CRIMINAL APPEAL NO. 267 OF 2000

The State of Maharashtra .. Appellant
Through Chaklamba Police Station,
Georai, Dist. Beed.

Versus

1. Krishna Shahadeo Pawar .. Respondents
Age. 21 years, Occ. Agri., [original
Warangalwadi, Tq. Georai, accused]
Dist. Beed.
2. Shahadev Pandurang Pawar
Age. 45 years, Occ. Labour,
R/o. As above.
3. Smt. Dwarkabai w/o. Shahadev Pawar
Age. 40 years, Occ. & R/o.
As above.
4. Sow. Urmila w/o. Ashok Rasal,
Age. 19 years, Occ. Household,
R/o. Jodwadi, Tq. Georai,
Dist. Beed.

[Leave as against respondent
Nos.2 to 4 rejected vide Court's
order dated 06.10.2000]

Mr.S.D. Ghayal, A.P.P. for the appellant/State.
Mr.M.V. Salunke, Advocate for respondent No.1.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.
DATED : 22.06.2017**

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

1. This appeal is directed against judgment and order dated 01.03.2000 passed by the IV Additional Sessions Judge, Beed, in Sessions Case No.182 of 1999 acquitting the respondents/original accused Nos.1 to 4 of the offences punishable under sections 498-A, 302, 201 read with section 34 of the Indian Penal Code [for short the "IPC"]. As per order dated 06.10.2000 passed by this Court, leave to file appeal against respondent Nos.2 to 4/original accused Nos.2 to 4, came to be rejected and as such this appeal proceeded only against the respondent No.1/original accused No.1.

2. The facts of the prosecution case are as under:-

A] Accused No.1 is husband of deceased Yamunabai alias Radhabai. Accused Nos.2 and 3 are father and mother of accused No.1, while accused No.4 is sister of accused No.1. At the relevant time of the incident, all the

accused along with deceased were residing at village Warangalwadi, Tal. Georai, Dist. Beed.

B] On 03.05.1998 one Arjun Jarange [PW-3] went to his field in the morning and he saw corpus of a woman aged about 25 years, buried in his field and that there was foul smell emanating from the corpus, which was highly decomposed. Thereafter, PW-3-Arjun Jarange reported the said incident to Shaikh Abbas Shaikh, Police Patil of village Matori, Tq. Georai, Dist. Beed on the same day. Thereupon, police patil made written report on 03.05.1998 to API Gaikwad [PW-11] of Chaklamba Police Station, Tq. Georai and informed that after getting information as above from PW-3-Arjun Jarange, he along with Sarpanch and other people from the village visited the place where the dead body was lying. He informed that it was dead-body of a female. Upon report as above by the police patil, API Gaikwad took entry in the station diary and proceeded to the spot. He found that the dead-body was buried in the irrigation canal covered

with stem of Bajra crop. The dead-body was taken out. It was found decomposed. He prepared panchanama of the spot of incident as well as inquest panchanama. He requested the Medical Officer of Chaklamba Primary Health Center to depute two Medical officers for doing post-mortem examination and to give information as to the cause of death, by letter dated 03.05.1998. Thereupon, Dr.Saundale and Dr.Dhoot [PW-5] attached to Primary Health Center, Chaklamba conducted post-mortem examination of the dead body and issued post-mortem report [Exh.27]. As regards opinion as to cause of death, they had opined that the probable cause of death is Cardio Respiratory Arrest. In their opinion, as the body was decomposed, the exact cause of death cannot be given and viscera was preserved for medical analysis.

C] Accordingly, API Gaikwad [PW-11] on 03.05.1998 lodged complaint/First Information Report on behalf of the State in Chaklamba Police Station, against unknown persons alleging that on committing murder the dead-body

was buried. Thereupon, Crime No.45 of 1998 for the offences punishable under sections 302 and 201 of the IPC was registered and he commenced the investigation. API Gaikwad recorded the statements of some witnesses. It was transpired that the corpus was of the deceased Yamunabai and that after six months of the marriage of the deceased with accused No.1, all the accused harassed and illtreated the deceased to meet their unlawful demand of getting cash amount from her parents, for making up the loss sustained by accused No.1, as his house was burnt. It is alleged that parents of the deceased had paid an amount of Rs.90,000/- as dowry to accused No.1. Moreover, on account of subsequent demand made by accused No.1, the deceased was subjected to every kind of illtreatment and again an amount of Rs.20,000/- was paid to accused No.1. Moreover, it was transpired during the investigation that on 30.04.1998, around 11.00 a.m. PW-9-Shaikh Karim had seen accused No.1 and his wife [deceased] proceeding towards village Pargaon and thereafter the dead-body was found in the field of PW-3-

Arjun Jarange. The accused Nos.1 and 3 were arrested and released on bail, while other accused were granted anticipatory bail. PW-11-API Gaikwad was transferred and hence further investigation was handed over to PW-12-PSI Waghmare. After completion of investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class, Georai, who committed the case to the Sessions Court, Beed as offence punishable under section 302 of the IPC is triable by the Court of Sessions.

D] The IV Additional Sessions Judge framed charge against the accused for the offences punishable under sections 498-A, 302 and 201 read with section 34 of the IPC, to which they pleaded not guilty and claimed to be tried. Their defence is total denial. Accused No.1 in his statement under section 313 of the Code of Criminal Procedure, stated that after his marriage, he and his wife had a normal happy life. The deceased was never beaten, nor any demand was made. His house was not burnt and no any demand was made. After Diwali, the deceased

started behaving like insane person. She was medically treated and Doctor informed that the deceased was mentally ill and would recover after some days. Accused No.1 informed parents of the deceased and they called the accused persons to their village. The parents of the deceased said that the deceased was not ill but possessed by evil. They got her treated from witch craft. The accused persons returned to village and after eight days the deceased again had the attacks and under the attacks she used to go to field and remain there and used to be brought by uncle of accused No.1. Accused No.1 also informed brother-in-law about it and to take her care. After fifteen days, accused No.1 gave message but they did not come. Again a person practicing witch-craft was brought and the said person after treating her went away. The attacks of the deceased continued. Accused No.1 after fifteen days left for Pune. After a month, he got message from village about death of his wife and arrest of his mother and delivery of a baby girl to his sister. Accused No.1 proceeded to his village. On reaching

house, he found that there was nobody. He went to police station. He was detained there for about a day and on the next day, police arrested him. After his arrest, his father and sister were granted anticipatory bail by High Court.

E] To prove the charge against the accused, the prosecution has examined in all 12 witnesses and relied upon panchanamas and post-mortem report referred earlier. After considering the evidence adduced by the prosecution, the Trial Court held that the prosecution has failed to prove that death of the deceased was homicidal and further on holding that the prosecution has failed to prove the offence against the accused, with which they were charged and acquitted them of the said offences by judgment and order dated 01.03.2000. Therefore, this appeal is only against accused No.1, as leave to appeal against rest of the accused was rejected.

3. We have heard Mr. S.D. Ghayal, learned APP

appearing for the appellant/State and Mr. M.V. Salunke, learned Counsel appearing for respondent No.1 and with their assistance, we have perused the record and evidence adduced by the prosecution. Learned A.P.P. submitted that there is direct evidence to connect accused with the crime. He submitted that evidence of PW-6-Shamrao Dhole, PW-7-Lilabai Dhole and PW-10-Mahadeo Jadhav, respectively father, mother and brother-in-law of brother of the deceased, is sufficient to connect the accused with the offence of cruelty punishable under section 498-A of the IPC. Further he submitted that the deceased was lastly seen in the company of accused No.1 on 30.04.1998 and then PW-3-Arjun Jarange saw dead body near the field of the accused. Therefore, it is accused No.1, who committed murder of the deceased and buried the dead-body. Therefore, according to learned APP, the view taken by the Trial Court acquitting accused No.1 for the offences punishable under sections 498-A, 302 and 201 read with section 34 of the IPC is not correct and as such accused No.1 is liable to be convicted for the said

offences by allowing the appeal.

4. Mr.M.V. Salunke, learned Counsel appearing for accused No.1, on the other hand submitted that PW-8-Sk. Ayub, who allegedly lastly seen the deceased in the company of accused No.1 did not support the prosecution. Allegedly the deceased was seen in the company of accused No.1 on 30.04.1998 and the dead-body was found on 03.05.1998. As such, there is time gap when the deceased was lastly seen in the company of accused No.1 and recovery of dead-body. Hence, the said evidence is of no help to connect accused No.1 with the offence punishable under section 302 and 201 of the IPC. To support his submissions, learned Counsel appearing for accused No.1 has relied upon ratio laid down by the Apex Court in the case of Nizam and another Vs. State of Rajasthan, 2015 AIR (SC) 3430, wherein in para 18, the Apex Court has observed thus :-

"18. In view of the time gap between Manoj left in the truck and the recovery of the body and also the place and circumstances in which

the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that appellants and deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory."

. The learned Counsel appearing for accused No.1 further submitted that PW-6-Shamrao Dhole, PW-7-Lilabai Dhole and PW-10-Mahadeo Jadhav, who are related to deceased are interested witnesses. Therefore and as there are improvements in their evidence, their evidence is not sufficient to attract offence punishable under section 498-A of the IPC against accused No.1. The learned Counsel thus submitted that the view taken by the Trial Court acquitting the accused No.1 of the offences with which he was charged is possible view and as such as there is no ground to interfere with the view taken by

the Trial Court, the appeal deserves to be dismissed. Accordingly, he prayed to dismiss the same.

5. Since this appeal is against the order of acquittal, before examining the evidence, it is necessary to refer to the decision of the Apex Court in the case of Murlidhar alias Gidda and another Vs State of Karnataka, 2014(4) Mh.L.J. (Cri.) 353, in which the Apex Court has given guidelines in the matter of appeal against acquittal and in particular, the Apex Court in para-12 observed as under :-

"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."

6. As regards the offence under section 498-A of the IPC is concerned, to establish the said offence, the prosecution has mainly relied upon the evidence of PW's- 6,7 and 10. There is no dispute that the marriage of the deceased and accused No.1 was performed 13 to 14 months prior to the incident of her death on 03.05.1998. The evidence of PW-6 - Shamrao - father of the deceased is that at the time of marriage, an amount of Rs.90,000/- was given as dowry to accused No.1. After marriage, the deceased was treated properly by the accused for 4-5 months. Thereafter, accused No.1 started harassing her. He used to beat her, to tell her that he does not require

her and to go back to her father. After 6 to 7 months of the marriage, the house of accused No.1 was burnt and therefore he started blaming the deceased, saying that she turned out to be a bad woman for him. PW-6 further deposed that accused No.1 came to him and told him that he sustained heavy loss and he [PW-6] told him that he would give him Rs.10,000/- for meeting his requirements. Upon which he [accused No.1] demanded Rs.50,000/- from him. Thereupon, he told accused No.1 that he could not give this much amount to him. He stated that his daughter [deceased] was brought to their village and she stayed with them for three days. His daughter told him to provide some financial help to her and that they were facing crisis and he assured her that he would extend financial help to her after 10-15 days as he was not in a position to give her amount immediately. Then he took her back to her in-laws house. At that time accused No.1 told him to provide some amount on account of the crisis and he assured him that he would pay the amount within 10-15 days. He stated that then he returned to his

village. He further deposed that after his departure, his son-in-law [accused No.1] severely beat the deceased saying that 'why she has not brought money from him [PW-6] despite sound financial condition'. He stated that accused snatched away keys, beat her [deceased] and then she went to field. He stated that he came to know about above incident through accused No.1. He stated that then he and his wife along with accused No.1 returned to his village. His daughter told him that she is in great crisis and has no money for food and asked for Rs.20,000/-, which he paid to her immediately on that day. He stated that he paid the said amount to accused No.1 and again took back his daughter [deceased] with him. He stated that after 10-12 days, he again reached the deceased to the house of the accused and at that time accused No.1 told him that he had only brought back his daughter and not the remaining amount of Rs.30,000/-. He stated that he told accused No.1 that he would not pay the said amount to him and he could do whatever he wants to do. Thereupon, accused No.1 said him to see as to

what would happen and then he returned to his village.

7. In the cross-examination PW-6 stated that after marriage, the deceased had not come to his house on the eve of first Diwali. He had gone to bring her but she was not sent. He denied that she was not sent as parents of accused No.1 had left the village for their livelihood and there was nobody in the house to look after accused No.1 and his brother. According to him, the deceased was not sent because she was *Laxmi* of their house. He further stated that after 7-8 days of Diwali, deceased along with accused No.1 and his brother visited his house. They stayed with them for 4-5 days. At that time he had presented clothes to the accused No.1, his brother as well as his parents and then his daughter [deceased] returned with them. He stated that whenever his daughter visited him, she used to show her desire to go back to her in-laws and sometimes he used to reach her to her in-laws and sometimes they used to come to take her back. The above said evidence in the cross-examination of PW-6

shows that relations between accused No.1 and the deceased were cordial. So also, relations between accused and the parents of the deceased were cordial. Moreover, from the above evidence, it can be said that there was no harassment to the deceased and therefore whenever she was visiting the house of her father, she used to show her desire to go back to her in-law's house.

8. Further in the cross-examination, PW-6-Shamrao stated that he had stated to police that after marriage, his daughter was treated properly for 4-5 months and thereafter her husband started harassing her. So also, he had stated to police that he [accused No.1] used to beat her and tell her that he does not require her and to go back to her father. He further stated that accused No.1 informed him about fire incident and sustaining heavy loss and told him of giving Rs.20,000/- to him, but he [accused No.1] demanded Rs.50,000/-.

9. The Investigating Officer, API Gaikwad [PW-11]

in para 12 of the cross-examination stated that PW-6-Shamrao did not state as above before him. Therefore, above said evidence of PW-6 that accused No.1 used to beat the deceased and used to tell her that he does not require her and that she should go back to her father, is material omission in his statement before police and amounts to improvement while deposing before the Court. So also, in his cross-examination, PW-6 stated that he had not stated to police that house of accused No.1 was burnt and he started blaming his daughter [deceased] saying that she turned out to be a bad woman for him. Therefore, this amounts to material omission in the statement before police and improvement while deposing before the Court. Therefore, above referred evidence of PW-6 that accused No.1 was blaming the deceased after his house was burnt, that he was beating the deceased saying that he does not require her, that she should go back to her father and about demand of Rs.50,000/- from him as accused No.1 suffered loss on account of burning of his house, is not believable.

10. Another aspect to be noted is that in para 13 of his cross-examination, PW-6-Shamrao deposed that his daughter [deceased] used to demand amount from him for meeting crisis and on his refusal she used to get annoyed as he was not helping her in their need. So also he stated that even thereafter whenever she used to visit him, she used to go back to her in-laws and he also used to reach her. This evidence shows that the deceased used to demand money from her father whenever she had difficulty and whenever he was not helping her, she used to get annoyed and thereupon she used to go to her in-law's house. This shows that there was no demand of money from the accused No.1 and thereafter as relations of the deceased with the accused were good, she used to go to her in-law's house. For the above reasons, the evidence of PW-6-Shamrao – father of the deceased is not believable and sufficient to infer that accused No.1 caused cruelty to the deceased on account of any demand of money or caused mental cruelty to her by beating or

taunting her as alleged, as house of accused No.1 was burnt, immediately after her marriage.

11. The evidence of PW-7-Lilabai – mother of the deceased is that after marriage of the deceased with accused No.1, she was treated properly by the accused for six months. She stated that thereafter in the *Sankrant* month, house of the accused was burnt. Accused No.1 personally came and informed them about the same. He demanded an amount of Rs.50,000/- from them saying that his house was burnt and that he has no money to fulfill his needs. She stated that she and her husband explained to him that they are not in a position to pay this much amount, but they would pay Rs.20,000/- and that her husband paid an amount of Rs.20,000/- to the accused. She further stated that accused No.1 continued to beat her daughter. He also beat her four days prior to *Shimga* and drove her out. She stated that accused No.1 informed that the deceased left the house since three days. Thereafter, PW-6-Shamrao – her husband and accused No.1

searched the deceased. Thereafter, the deceased was found staying on the branch of a tree without food for three days. PW-7 further deposed about some incidents of the deceased and further stated that accused said that they wanted money at any cost but her husband told them that he is not in a position to pay the amount in lump-sum and would pay money in installments.

12. In the cross-examination PW-7-Lilabai stated that she stated to police that for the first six months after marriage, her daughter was treated properly by the accused. She stated to police about demand of Rs.50,000/- by accused No.1, that his house was burnt and further she stated to police that an amount of Rs.20,000/- was paid to accused No.1 and at that time, she informed about not having demanded amount, upon which accused demanded entire amount and said what was their purpose. Moreover, she stated that she had stated to police that even thereafter accused continued to beat their daughter and that her daughter was driven out of the house four days

prior to *Shimga*. API Gaikwad [PW-11] in para 13 of his cross-examination stated that PW-7-Lilabai has not stated as above before him. PW-7 has stated that she had not stated to police that the house of accused No.1 was burnt in the month of *Sankrant*. Thus, above referred evidence of PW-7-Lilabai regarding demand of Rs.50,000/- by accused No.1, that his house was burnt and that she and her husband paid Rs.20,000/- to accused No.1 and that accused No.1 demanded entire amount, is not believable. It has come in the evidence of PW-7-Lilabai that whenever her daughter deceased visited them, she used to insist for reaching her back to her in-law's house and sometimes her in-laws used to come and take her [deceased] back. This shows that relations between the deceased with the accused were cordial and were not strain. Therefore, above referred evidence of PW-7-Lilabai – mother of the deceased is not believable and sufficient to infer that accused caused cruelty to the deceased on account of demand of money or harassed her by beating as alleged.

13. PW-10-Mahadeo, who is brother-in-law of Dattu [brother of deceased] in his evidence stated that for 5 to 7 months after marriage the deceased was treated properly by the accused and thereafter she was harassed and illtreated. He stated that she was asked to get the amount and she was taunted of being disliked and of being unwanted. He stated that he got knowledge about these facts as he used to visit their house. According to him on 2-3 occasions, he convinced the accused No.1, the deceased and her in-laws for not entering into quarrel and abstain from repeating such acts.

14. In the cross-examination, PW-10 has stated that he has not stated to police that the accused treated deceased properly for 5-7 months after marriage. He stated to police about illtreatment and harassment of the deceased by the accused and that she was asked to get the amount and she was taunted of being disliked and of being unwanted. In the cross-examination, API Gaikwad [PW-11] in para 14 stated that PW-10-Mahadeo has not stated as

above before him. Therefore, evidence of PW-10 as above is material omission in his statement before police and amounts to improvement while deposing before the Court. Therefore, his evidence as above regarding illtreatment and harassmt of the deceased by the accused is not believable and sufficient to infer that the accused caused cruelty to the deceased. For all the reasons discussed above, the evidence of PW-6, PW-7 and PW-10 is of no help to the prosecution so state that accused No.1 caused cruelty within the meaning of cruelty defined in section 498-A of the IPC to the deceased. The Trial Court, on proper appreciation of evidence of these witnesses concluded that the prosecution has failed to prove cruelty allegedly caused to the deceased by the accused.

15. Case of the prosecution is that the death of the deceased is homicidal and the accused are responsible for the same. There is no direct evidence to connect the accused with the murder of the deceased and the case is

based on circumstantial evidence. Before considering the circumstantial evidence relied upon by the prosecution to connect the accused with the murder of the deceased, at the outset it is necessary to refer to the ratio laid down by the Apex Court in the case of **Rama Nand & Ors. Vs. State of Himachal Pradesh, AIR 1981 S.C. 738**, wherein it was held thus :-

"It is well settled that where the inference of guilt of an accused person is to be drawn from circumstantial evidence only, those circumstances must, in the first place be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused, and in their totality, must unerringly lead to the conclusion that within all human probability the offence was committed by the accused and none else."

16. The circumstances relied upon by the prosecution to connect the accused with the murder of the deceased are as under :-

(i) The relations between the deceased and accused No.1 were strain on account of cruelty caused by accused No.1 for unlawful demand of money.

(ii) The deceased was lastly seen in the company of accused No.1 on 30.04.1998 by PW-2-Bhaskar Jarange, PW-8-Sk. Ayub Sk. Mohammad and PW-9-Sk. Karim Sk. Fatru Kotwal and her dead body was found on 03.05.1998.

(iii) The death of the deceased was homicidal.

17. Now let us consider whether the prosecution has proved the above circumstances. As regards the first circumstance regarding strain relation between the accused No.1 and the deceased, for the reasons discussed above, the evidence of PW-6, PW-7 and PW-10 is not sufficient to infer that the accused No.1 caused cruelty to the deceased for fulfillment of demand of Rs.50,000/- as his house was burnt and it is observed that the relations between the deceased and accused No.1 were cordial. So also, it is observed that whenever the deceased used to come to the house of her parents, she was insisting to go back to her in-law's house, which indicates that she had no trouble at the house of her in-laws and she was happy with her husband – accused No.1. Therefore, it cannot be said that the relations between

the deceased and her husband – accused No.1 were strain on account of demand of money by her husband. As such, the prosecution has failed to prove circumstance No.1 in this respect.

18. As regards the second circumstance, the prosecution alleges that PW-2-Bhaskar Jarange had seen the couple i.e. accused No.1 and the deceased on 30.04.1998, proceeding from the S.T. Stand, Matori to Pargaon quarreling with each other and after three days, dead body of the deceased was found in the field. He has not supported the prosecution case as he has denied portions marked "A" and "B" in this respect in his statement before police. Said portion marks were of-course proved by the Investigating Officer – API Gaikwad [PW-11] as per Exh.41. But, as PW-2-Bhaskar Jarange has denied truth of said portions marked Exh.41, it cannot be said that PW-2-Bhaskar Jarange had seen the deceased in the company of accused No.1 on 30.04.1998 and that she was found dead after three days. Moreover, the

prosecution claims that on 30.04.1998, PW-8-Sk. Ayub Sk. Mohammad had seen accused No.1 and the deceased quarreling near S.T. Stand, Matori at 8.15 a.m. and then dead body of the deceased was found. He has also not supported the prosecution case as he has denied portions marked "A" & "B" in this respect in his statement before police, which are not proved by API Gaikwad. Therefore, his evidence is of no help to the case of the prosecution to state that the deceased was lastly seen in the company of accused No.1 on 30.04.1998 and then she was found dead on 03.05.1998.

19. Similarly, the prosecution has relied upon evidence of PW-9-Sk. Karim Sk. Fatru Kotwal to prove the circumstance of 'last seen theory'. He has stated in his evidence that the dead body of a woman was found in the field in Matori village and three days prior to it he had seen accused No.1 and his wife [deceased] proceeding towards village Pargaon at 10 to 11 a.m., while he was in front of his house, which is by the side of the road.

Further he stated that he had seen the dead body of a woman which was of wife of accused No.1, whom he had seen on that day. In the cross-examination, he stated that he is not acquainted with the husband and the wife, who had gone on that day by the road in front of his house and he had seen their faces and saw them from their back, proceeding towards Pargaon. He states that the corpus was not identifiable as it was highly decomposed. Considering his evidence that he was not acquainted with the husband and wife i.e. accused No.1 and his wife [deceased], who had gone by the road from the front side of his house and the fact that he had seen them from their back and that the corpus was not identifiable as it was decomposed, his evidence that he had seen accused No.1 and the deceased proceeding towards Pargaon and then he saw the dead body of the deceased is not believable. Assuming for the sake of argument that he had seen accused No.1 and his wife [deceased] proceeding towards Pargaon and after three days dead body of the deceased was found in the field and it was the dead body of a

woman, who was wife of accused No.1, there was gap of three days when he saw accused No.1 and the deceased proceeding towards Pargaon and finding of the dead body of the deceased. There is no evidence to show that during all these three days, the deceased was in the company of accused No.1. As such, when the time gap is long when accused No.1 and the deceased were seen together and noticing the dead body of the deceased in the field, the prosecution should have ruled out the possibility that the deceased was not in the company of anybody else than accused No.1 during said three days period. Therefore, applying the ratio laid down by the Apex Court in the case of Nijam & Anr. (Supra), we hold that even if it is held that the prosecution has proved circumstance No.3, that the deceased was seen in the company of accused No.1 on 30.04.1998 and that her dead body was found on 03.05.1998, the said circumstance when not corroborated is not sufficient to connect accused No.1 with the death of the deceased. The Trial Court has carefully considered the evidence adduced by the

prosecution on last seen circumstance and rightly disbelieved the said evidence of the prosecution. Therefore we hold that the prosecution has failed to prove that the deceased was lastly seen in the company of accused No.1, as per circumstance No.2.

20. The last circumstance No.3 relied upon by the prosecution is that the death of the deceased is homicidal. To prove this circumstance, the prosecution has relied upon evidence of Dr.Santosh Dhoot [PW-5], who conducted post mortem examination along with Dr. Saundale and issued post-mortem report [Exh.27] and who had taken viscera. Dr.Dhoot [PW-5] has stated that the dead body was highly decomposed and according to him the death must have occurred 4-6 days back i.e. prior to 04.05.1998. He stated that the probable cause of death was Cardio Respiratory Arrest. Further, he stated that in their opinion as the body was decomposed, exact cause of death cannot be given and that the viscera was preserved for chemical analysis. Moreover, he stated that he could not

ascertain the exact cause of death as being suicidal, accidental or homicidal as the dead body was highly decomposed. In the cross-examination, he stated that since there was no fracture all over the body, that by itself would not be sufficient to conclude or opine that it was not homicidal death. He stated that even an opinion cannot be given that it was a natural death. The Chemical Analyzer's report [Exh.28] of viscera shows that general and specific chemical testing of viscera does not reveal any poison. Considering the above all evidence, it cannot be definitely said that the death of the deceased was homicidal and as such we hold that the prosecution has failed to prove the third circumstance in this respect. The Trial Court referring the above evidence in paragraph 20, 21 and 24 of the impugned judgment rightly held that the prosecution has failed to prove that the death of the deceased was homicidal.

21. For all the reasons discussed above, the circumstantial evidence referred to above relied upon by

the prosecution is not sufficient to hold that accused No.1 is responsible for death of the deceased. Once it is held that the death of the deceased is not homicidal and accused No.1 is not responsible for the same, it cannot be said that the accused No.1 knowing that offence of murder has been committed, which is punishable with death or life imprisonment, caused disappearance of corpus of the deceased, so as to attract offence punishable under section 201 of the IPC. We, therefore, hold that the prosecution has failed to prove offences punishable under sections 498-A, 302 and 201 of the IPC, individually or in furtherance of common intention with other accused against the accused No.1. Therefore, the said view taken by the Trial Court is a reasonably possible view. There are no strong and compelling circumstances to rebut the presumption of innocence in favour of the accused No.1, which has been strengthened by his acquittal by the Trial Court. Needless to state that the impugned judgment and order of acquittal cannot be said to be perverse or against the weight of evidence.

Therefore, there is no ground to interfere with the impugned judgment and order of acquittal of the respondent No.1/accused No.1. Accordingly, the appeal being devoid of merits, same is liable to be dismissed. Accordingly, we dismiss the same. The bail bond of accused No.1/respondent No.1 stands canceled.

[S.M.GAVHANE, J.]

[S.S. SHINDE, J.]