

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

CRIMINAL APPEAL NO.432 OF 2001

. The State of Maharashtra .. Appellant

Versus

1. Kisanchand Mihamal Hasrani, .. Respondents
Age-57 years
2. Rukhmani Kisanchand Hasrani,
Age-50 years
3. Lalchand Kisanchand Hasrani,
Age-32 years
4. Girdharilal Kisanchand Hasrani,
Age-29 years
5. Maheshkumar Kisanlal Hasrani,
Age-25 years
6. Sushila Kisanchand Hasrani,
Age-21 years
7. Kavita Kisanchand Hasrani,
Age-19 years
All R/o. Sindhi Colony,
Bhusawal, Dist. Jalgaon

Mr.S.J.Salgare, APP for the appellant/State
Mr.V.J.Dixit, Advocate for the respondent Nos. 1 to 7

**CORAM : T.V.NALAWADE &
S.M. GAVHANE, JJ.**

DATED : 14.09.2017

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

. This appeal is directed against the judgment and order dated 21.07.2001 in Sessions Case No.216 of 1996 passed by the Sessions Judge, Jalgaon thereby acquitting the respondents/original accused Nos. 1 to 7 of the offences punishable under Sections 302 and 498-A r/w Section 34 of the Indian Penal Code (for Short IPC).

2. The prosecution case is as under:-

A. The marriage of Barkha the deceased was solemnized at Bhusawal on 15.02.1996 with accused No.5 Maheshkumar. The parental house of the deceased was at Dhule. Accused No.1 Kisanchand is the father, accused No. 2 Rukhmni is the mother, accused Nos.3 & 4 are brothers and accused Nos.6 and 7 are sisters of accused No.5.

B. On 28.05.1996 the deceased Barkha sustained burns at about 04.30 pm while cohabiting at the house of accused. Accused No.1 reported the matter to Bhusawal Bazaar Peth Police Station. On the basis of said report of Kisanchand/accused No.1, AD No.22/1996 came to be registered in the said police station. Police Inspector Jadhav made enquiry into the same. During his enquiry, he went to the place of incident i.e. the house of accused

which was shown by accused No.1 Kisanchand. Police Inspector Jadhav prepared inquest panchanama and referred the dead body for conducting the postmortem examination to the Municipal Hospital, Bhusawal. However at the instance of Jitendra (PW-6) brother of deceased, the dead body was sent for postmortem examination at Civil Hospital, Jalgaon where Dr. Suresh Wani (PW-2) and Dr.M.K.Rathod conducted postmortem examination and opined that cause of death of the deceased was shock due to 100% deep burn. The postmortem report showed that there was a ligature mark around the neck of the deceased Barkha.

C. Police Inspector Jadhav prepared panchanama of spot of incident and attached kerosene can, matchbox and pieces of burnt clothes under said panchanama. He made enquiry with the persons in the vicinity. On 29.05.1996 he made enquiries with the relatives of the deceased Barkha. After he received advance certificate of cause of death and postmortem report, he made certain queries to Dr. Wani as he had noticed the finding of ligature mark around the neck of the deceased in the postmortem report. Dr.Wani opined that the strangulation was made before death and it was made clear that death was caused due to burns. Police Inspector Jadhav received reply from Dr. Wani on 29.05.1996.

D. It is after the receipt of above report Police Inspector Jadhav on 29.05.1996 lodged the compliant on behalf of State and registered the Crime No.50/1996 against the accused for the offences punishable under Sections 302,201,498-A, 323, 304 and 506 r/w Section 34 of the IPC and carried further investigation. During investigation he recorded the statements of witnesses and arrested the accused. He attached clothes on the person of the deceased which were produced by the Police Constable under panchanama. He collected sample of hair of accused. He referred the attached articles and viscera of the deceased to the Chemical Analyzer, Aurangabad for analysis and report. On 03.06.1996 he attached articles from the house of accused under panchanama. He also requested City Survey Officer to prepare sketch of place of incident and included the same in the investigation papers after he received the same. He had taken four photographs of the place of incident.

E. After completion of the investigation Police Inspector Jadhav submitted the charge-sheet in the Court of JMFC, Bhusawal for the offences punishable under Sections 302, 201, 498-A, 323, 504, 506 r/w Section 34 of the IPC and under Sections 3 & 5 of the Dowry Prohibition Act. The learned Magistrate committed the case to the Sessions Court, Jalgaon as the offence under Section 302

and 304-B of the IPC were exclusively triable by the Sessions Court.

3. The charge was framed against the accused for the offences under Sections 498-A and 302 r/w Section 34 of the IPC to which they pleaded not guilty and they claimed to be tried. Their defence is denial.

4. To prove the charge against accused, the prosecution has examined in all 11 witnesses and relied upon the panchanamas, postmortem report and opinion of Dr.Wani referred to above. The trial Court on considering evidence and on holding that the prosecution has failed to prove that death of the deceased is homicidal, that it has failed to prove that the accused in furtherance of their common intention caused cruelty to the deceased and that it has further failed to prove that accused in furtherance of their common intention committed murder of the deceased Barkha acquitted all the accused of the offences punishable under Sections 302 and 498-A r/w Section 34 of the IPC by the impugned judgment and order. Therefore, this appeal against acquittal of the respondents/accused by the appellant/State.

5. We have heard learned APP appearing for the appellant/State and learned Senior Counsel appearing for

the respondents/accused and with their able assistance we have perused the evidence adduced by the prosecution. We have also perused the impugned judgment and order.

6. Since this is an appeal against acquittal it is necessary to refer ratio laid down by the Apex Court in the case of **Murlidhar alias Gidda and another Vs State of Karnataka** (2014) 5 SCC 730, regarding approach of appellate Court in such appeal, 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."

7. The case of the prosecution is that death of the deceased is homicidal and the accused are responsible

for her death. There is no direct evidence to connect the accused with the crime and the case is based on circumstantial evidence. Therefore, before considering the circumstantial evidence it is necessary to refer the 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 1622, wherein it has been held that following conditions must be fulfilled before a case against accused based on circumstantial evidence can be said to be fully established:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully 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."

8. The prosecution has relied upon the following evidence and circumstances to connect the accused with the offences alleged against them.

a] The evidence of Pws.1,3,4,6 and 7 on cruelty to the deceased. The List of Gift Articles (Exh.62 & 63) regarding purchase of articles.

b] The evidence of Dr. Wani postmortem report (Exh.53) and opinion (Exh.54) as regards homicidal death of the deceased.

c] Panchanama of spot of incident (Exh.39) and Map of spot of incident (Exh.67) and CA report Exh.45 to 48.

d] Defence plea of the accused is false and their failure to explain circumstances under which death of the deceased was caused.

9. There is no dispute that parental house of the deceased was Dhule and accused are resident of Bhusawal, Dist. Jalgaon. The deceased Barkha was married to the accused No.5 Maheshkumar on 15.02.1996 at Bhusawal. After marriage she started cohabiting with the said accused in the joint family of the accused. While she was cohabiting at the house of the accused on 28.05.1996 she sustained 100% burns at about 04.30 pm and scummed to burns on the spot. There is no dispute about the *interse* relationship

of the accused as mentioned earlier

10. As regards the cruelty to the deceased it is alleged by the prosecution that accused in furtherance of their common intention harassed the deceased by making illegal demands referred earlier and as deceased and her relatives failed to fulfill the said demands they have committed alleged offences. To prove said cruelty prosecution has mainly relied upon the evidence of Pws. 1,3,4,6 and 7.

11. The evidence of PW.1 Prakash Tolani who is trader from Dhule is that he was present at the time of marriage of the deceased and accused No.5 as Parshuram brother of the deceased is his friend. At the time of marriage an amount of Rs.1,50,000/- was given as dowry. One Amar Jodharam Wadhwani is his brother-in-law (Sister's husband) and he resides at Bhusawal opposite to the house of the accused. He stated that on 28.05.1996 the deceased died and on that day he was at Bhusawal and he was at Bhusawal since 26.05.1996. On 26.05.1996 in the evening Amar told him that there was ill-treatment to Barkha on account of demand of Rs.10,000/-. Amar also told him that in-laws of the deceased were assaulting and harassing the deceased on account of money and were threatening desertion. His evidence further shows that on

27.05.1996 in the morning the deceased was sweeping the court-yard of her house. He asked the deceased as to how she was. She told him that there was ill-treatment to her at the hands of her in-laws since the date of marriage and that he should inform her brother. The deceased told him that there was danger to her life. The deceased started crying. He told deceased that he was to go to Dhule on the next day and that he would inform her brother. He stated that on 28.05.1996 in the evening when he was to leave for Dhule he noticed crowd in front of house of the deceased and he came to know that the deceased was expired. Thereupon he entered the house of the deceased and saw that the deceased sustained burn injuries and she was dead. There was odhani around her neck. There was a knot to it. The odhani was half burnt. He felt that the deceased was murdered by throttling and an evidence was created to show that she died of burning. He also signed on inquest panchanama.

12. In the cross-examination PW-1 has stated that he was an accused in Criminal Case No.405/1993 and it was alleged that on 05.08.1991 he committed theft at Satsang temple of Kumar Nagar, Dhule. He stated that he was acquitted in the said case on 18.12.1996. So also, he stated that Summary Criminal Case No.380/1996 is pending against him in the Court at Bhusawal and it is alleged

that he committed trespass in the house of Pratap Sevlani. He assaulted him. Last date in the said case was 26.06.2000. So also, criminal case has been filed against him for making an attempt to commit suicide in front of the office of the District Collector, Dhule and the same is pending and it is case No.326/2000. He admitted that on 20.04.1996 deceased Barkha and accused No.5 Maheshkumar had been to honey-moon to Bangalore and Hyderabad and it is so written in his article. He stated that he does not know if the marriage of deceased with accused No.5 was performed as per her wish or not. So also he does not know if the deceased was not ready to keep her feet in the Thali and hence the ladies from her side forcibly put her feet in the Thali in which bride has to put her feet in the Thali at the time of marriage. Moreover, he stated that he had been to Bhusawal on 2 to 3 occasions at the house of his brother-in-law Amar Jodharam Wadhwani and on those occasions he did not meet the deceased. He stated that before proceeding to Bhusawal on those occasions he did not contact father and mother of the deceased to ascertain as to whether they had any message for the deceased. He stated that he did not meet the deceased at Dhule during 20.04.1996 to 20.05.1996. He stated that after the deceased spoke to him he did not feel that he should contact her father on phone as the matter was serious and after the deceased

spoke to him so, he did not tell about it to his brother-in-law Amar or any person related to his brother-in-law. He stated that during the period of two hours when he was at the house of accused on 28.05.1996 he informed the Police Officer about the talk between him and the deceased which took place on 27.05.1996 in the morning. The Police Officer did not reduce the same into writing. He stated that Police recorded his statement on 30.05.1996. He has denied that he had been to Bhusawal on 28.05.1996 at about 04.30 pm or so.

13. On perusal of above evidence of PW-1 it is clear that his statement was recorded by the police on 30.05.1996 thus there was delay in recording his statement. Moreover, the information given by him was not reduced in to writing by police on 28.05.1996 in respect of talk between him and the deceased on 27.05.1996, when he was present at the house of accused for two hours at the time of Panchanama. Thus, when he did not disclose about the alleged ill-treatment to the deceased by her in-laws, to his brother-in-law Amar and his family members and when there were number of criminal cases against him his presence at Bhusawal and meeting to the deceased on 27.05.1996 in the morning as claimed by him is not believable and possibility of his deposing against accused because he is friend of brother of the deceased

cannot be ruled out.

14. PW-3 Lata sister of the deceased has stated that after two days of marriage the deceased phoned them from Bhusawal. She told them that her in-laws were harassing her for cooler and cupboard. She stated that her father gave her cooler and cupboard. On 20.04.1996 deceased had been to Dhule. She stayed there for about one month. She was sad during her stay as her in-laws were harassing her. The in-laws of the deceased were greedy. She stated that the in-laws of the deceased were insisting the deceased to bring money for scooter from her father. Her in-laws were abusing and beating her. She stated that the deceased was saying them that her husband had raised loan for the shop and her husband was asking for money to repay the loan. She stated that the deceased was saying that her husband was assaulting her. She further stated that on 20.05.1996 the deceased Barkha went back to Bhusawal. On 28.05.1996 they received a phone call informing that the deceased Barkha died of burning. Her father, mother, brother, his friends had been to Bhusawal.

15. In the cross-examination of PW-3 stated that police have recorded her statement on 16.06.1996 i.e. after twenty days of the incident at Dhule. She was at

Dhule during 28.05.1996 to 16.06.1996. She admitted that she knows Prakash Nanumal Tolani, the friend of her step brother Parashram and that after 20.04.1996 the deceased and accused No.5 Mahershkumar had been to honey-moon at Bangalore and Hyderabad. She further stated that on 20.04.1996 the deceased had been to Dhule for Mul ceremony. She informed her father, mother and brother Jitendra that the deceased Barkha told her that the in-laws were demanding money for scooter and for repaying loan of shop. Her father, mother and Jitendra said to her that no one had talked about money for scooter or repayment of loan of shop. She told them that the deceased was saying so. The deceased told her about the money for scooter and for repayment of loan of shop after 10 or 12 days of her coming to Dhule on 20.04.1996. She stated that she did not suggest her that since she was young, it would be better if the deceased would talk with her father, mother or Jitendra about the money for scooter and shop. Her father, mother and Jitendra did not tell her that they did not tell to the police that there was demand of money for scooter and shop. She stated that she has not stated before the police that during the stay of Barkha the deceased at Dhule she appeared sad. She denied that she was stating false that the deceased Barkha told her that there was ill-treatment to her at the hands of her in-laws, she was being abused and

assaulted, that there was demand of money for scooter and for repayment of loan of shop.

16. Amar Wadhwani (PW-4) stated that he knows the accused before the Court. They are staying opposite to his house. Prakash (PW-1) is his brother-in-law. Prakash Nanumal Tolani is friend of Parashram the brother of deceased. The deceased was married to accused Mahesh. He had attended the marriage. After the marriage Barkha the deceased started staying with Mahesh at Bhusawal. The accused treated the deceased well after the initial period of marriage. Thereafter, the accused started assaulting her. The accused were demanding money from her. The demand of money was for scooter and for the marriage of sister of Mahesh. Four or five days before the incident the door of the house of accused was closed. People had gathered near the house as there was noise of assault. He stated that after some time Mahesh came out of the house. He told the persons who had gathered around that it was his family matter and that the persons should leave the place. The persons left the place. He also stated that on 28.05.1996 at about 05.30 pm many persons had gathered near the house of the accused. The police were there. He asked the persons as to what had happened. He was told that Barkha died of burning. When he saw the dead body of Barkha he noticed knot of dupatta around her

neck and her face had become ugly. He could not stand there anymore. He came home.

17. In the cross-examination PW-4 stated that marriage between Prakash and his sister took place on 31.12.1981. Accused are staying in front of his house even before the marriage of Prakash. He stated that he did not know Barkha the deceased, her father, mother, brother and sister before her marriage with Mahesh. The marriage settlement talk of Barkha and Mahesh did not take place in his presence. His brother-in-law Prakash used to come to Bhusawal even before the marriage between Barkha and Mahesh. He stated that it did not happen that the proposal for marriage of Barkha and Mahesh was suggested by Prakash. He was introduced to the father and brother of Barkha by Prakash at the time of marriage of Barkha. He stated that Jitendra, brother of Barkha had been to the house of the accused on one or two occasions after the marriage of Barkha. On those occasions Jitendra did not come to his house for a cup of tea. When Jitendra had been to the house of the accused, the accused did not invite him for a cup of tea. Whenever, Jitendra had been to Bhusawal, he did not meet him anywhere. It did strike to me to tell Jitendra about the ill-treatment of Barkha at the hands of accused. He did not tell about it to Jitendra as such things (ill-

treatment) are noticed in every house. He stated that his brother-in-law Praksh had been to Bhusawal on 2 or 3 occasions during 15.02.1996 to 28.05.1996. He did not know if on these occasions Prakash had been to the house of Barkha or Barkha had been to his house to see Prakash. He had informed Prakash about the ill-treatment of Barkha. He told him only once about the ill-treatment. He had informed about the ill-treatment of Barkha to Prakash two days prior to it. He had informed Prakash about the incident of persons gathering in front of the house of the accused prior to 4 to 5 days of the incident. He stated that he did not suggest Prakash to inform immediately to the father and mother of Barkha about the ill-treatment. He denied that he never noticed any ill-treatment to Barkha at the hands of the accused and that he is deposing false at the instance of Prakash.

18. Jitendra Asija (PW-6) stated that they are three brothers. He has five sisters. Barkha the deceased was his forth sister. Barkha was given in marriage to Mahesh on 15.02.1996. After marriage Barkha started staying at Bhusawal. On 17.02.1996 Barkha told him on phone that her in-laws were harassing her for cooler and cupboard. The deceased was crying on phone. He further stated that on 19.02.1996 they gave cooler and cupboard worth Rs.7,800/- to Barkha the deceased. On 20.04.1996 he had been to

Bhusawal to take back Barkha for Akshaya Tritiya. At that time his brother-in-law Thakurdas Tulsija of Poona was with him. At that time father-in-law of Barkha told him that the cupboard given by them was not of good quality and that they gave the cupboard 10 days late. He told him that had he sent money, he would have purchased the cupboard at Bhusawal. On the very day he, Thakurdas, Barakha, Mahesh and brother-in-law of Mahesh came to Dhule. Vinodkumar, Brother-in-law of Mahesh, stayed at Dhule for two days and then went back to Akola. After 4 or 5 days his sister Bina and her husband came from Ulhasnagar to Dhule. They had planned trip to Shirdi, Shani-Shingnapur and Saptashrungi Gad. They took Barkha and Mahesh with them. He again say that after 2 or 3 days Mahesh went back to Bhusawal. Barakha contacted Mahesh on phone after Bina had been to Dhule. Mahesh came to Dhule. He engaged a private car for the trip. The two couples had been to the three places and came back to Dhule. On the next day Mahesh went to Bhusawal. At that time Barkha told him crying that Mahesh had asked her to bring Rs. 10,000/- with her while coming back to Bhusawal. He consoled Barkha saying that he would see to it when she will go back to Bhusawal. He further stated that on 17.05.1996 Mahesh had been to Dhule to take back Barakha. Lalchand, elder brother of Mahesh was with him at that time. On 20.05.1996 in the morning he noticed that

Barakha was crying. He asked her why she was crying. Barakha did not tell him anything. He left the house at 08.30 am and went to his shop. On 20.05.1996 in the evening Barakha went back to Bhusawal with Mahesh. He also stated that on 28.05.1996 at about 05.00 pm when he was in his shop, Girdhari, brother-in-law of Barakha informed him on phone that Barakha died of burning. When he asked him as to how and what has happened, he did not say anything and disconnected the phone. He contacted Mohansing Talwani, a Social worker from Dhule on phone. His brother-in-law is from Bhusawal. He asked Mohansing to inquire with his brother-in-law about Barakha and informed him. He asked his elder brother Suresh to go and inform his parents about Barakha. After some time Mohansingh informed him on phone that Barakha had expired.

19. He stated that on that day he, his father, mother and other relatives went to Bhusawal and reached Bhusawal at about 11.00 pm. Further he stated that when he saw the dead body of Barakha he noticed that Barakha had sustained burn injuries on her entire body and clothes on her person were burnt. He noticed that there was dupatta around the neck of Barakha. There was a knot of the dupatta near throat of Barakha. The dupatta was half burnt. Her face had become ugly. Blood was oozing

from her nose and mouth. He stated that he felt that the accused harassed Barakha for money, murdered her with the help of dupatta and later on burnt her body by pouring kerosene. They were at the Municipal Dispensary till 01.00 am. When he enquired he came to know that there was only one Medical Officer at the Municipal Dispensary. As opinion of two Medical Officer is necessary he went to police station. He told the police that he had suspicion about the death of Barakha and that the dead body of Barakha be sent to Jalgaon for postmortem examination. Accordingly, he submitted an application before the police. The application was written by Prakash Nanumal Tolani. He submitted the application to police after signing it. The police referred the dead body of Barakha to Jalgaon for postmortem examination.

20. In the cross-examination PW-6 has stated about giving application (Exh.50) to Police to send the dead body of Barakha to Jalgaon. He had fear in mind that the Medical Officer at Municipal Dispensary, Bhusawal may not conduct the post-mortem examination properly. He, Suresh, Parashram, his father and mother have not lodged any complaint against the accused. He does not know if police have recorded statements of his father and mother on 29.05.1996 and statement of himself and his brothers on 30.05.1996. The police have recorded his statement on

30.05.1996. He, Parashram, his father and mother were at Bhusawal from 28.05.1996 and no one from them lodged complaint at the police station till 03.30 pm on 29.05.1996 PSI Parbt Jadhav (PW-11) has lodged complaint on behalf of State. On 28.05.1996 at night they had seen the dead body of Barakha. He denied that as they did not suspect anything about the death of Barakha they have not lodged complaint against the accused. He further admitted that Exh.62 list does not bear any date. He cannot say as to when Exh.62 was prepared. When the police asked him as to what articles were given to Barakha he prepared the list at Exh.62. Exh.62 was written on 30.05.1996 or thereabout. Exh.62 was prepared with the help of some papers in the house and his memory. Exh.63 list was prepared on 20.05.1996. It was written when Barakha had been to Dhule for Mul ceremony. When he prepared list Exh.62, panch witnesses were not present. Police did not tell him or anyone of them to sign Exh.62. He has submitted bills of cooler, cupboard and transport receipt before the police along-with list Exh.62. The police took all these documents without preparing panchanama.

21. PW-6 further admitted that he had been to Bhusawal only on 20.04.1996 during 15.02.1996 to 28.05.1996. On 20.04.1996 father of Mahesh told him that the cupboard sent by him was received late by him by 10

days. He stated that it did not happen that the cupboard was sent from Ulhasnagar to Bhusawal. The cooler was purchased at Dhule. It did not happen that the cooler was purchased at Jalgaon and that the cupboard was purchased at Ulhasnagar. He had informed his parents about father of Mahesh telling him regarding receipt of cupboard and cooler late. He had informed his father and mother that Barakha was telling him that Mahesh told her to bring Rs.10,000/- with her while coming back to Bhusawal. He further admitted that Mahesh and Barakha had been to honeymoon at Bangalore and Hyderabad prior to 20.04.1996. They were out for honeymoon for 12 to 15 days. Mahesh had been to Dhule on three occasions during 20.04.1996 to 20.05.1996. Mahesh had been to Dhule on three occasions as our relatives with Mahesh were cordial. Accused No.4 Girdhari told him on phone that on 28.05.1996 Barakha set herself on fire. He informed him so at about 05.00 pm. Mohansing did not tell him that he was already informed by Prakash Nanumal or his cousin brother Shamlal about the death of Barakha. He further admitted that he was not present when the police recorded statement of his mother.

22. PW-6 further admitted that he was not present at the time of pair mojana ceremony which took place at the time of marriage of Barakha. He has seen the video

cassett of the marriage ceremony of Barkha and Mahesh. He could not say whether Barkha was reluctant to keep her foot in a Thali and that she was forced to keep her feet in the Thali. He could not say if it is clear from the video cassett. He stated that it did not happen that marriage of Barakha with Mahesh was performed against her will. He denied that he is stating false that Barakha was being harassed for cooler and cupboard, that Barakha told him that Mahesh told her to bring Rs.10,000/- with her.

23. PW-7 Sunita Wadhava stated that Barakha was her friend. Barakha met her after her marriage when she had been to Dhule. Barakha told her that her in-laws were greedy. She told her that her in-laws were assaulting her for money. Barakha told her that her husband had taken loan for his shop and that he was asking her to bring money to repay the loan.

24. In the cross-examination PW-7 admitted that on the day when Barakha expired she was at Dhule. She was continuously at Dhule after her death. Bhusawal police had been to Dhule after 3 or 4 days of the death of Barakha for enquiry. Police have recorded her statement on 16.06.1996 after 20 days of death of Barakha. She could not tell why police have recorded her statement so late. Police recorded her statement at her house. The

police did not serve her with any notice informing the date on which her statement was to be recorded. She did not inform the police that she was willing to give statement. She does not know as to whether the police came to her house at the instance of father, mother and brother of Barakha or on its own. She further admitted that Barakha told her about the behavior of her in-laws 8 to 10 days prior to her death. She again stated that Barakha told her about it 20 to 25 days prior to her death. Barakha told her about her in-laws at her house. Her house is at a distance of about 3 to 4 houses from the house of father of Barakha. She did not tell father, mother, brother or sister-in-law of Barakha about the complaint made by Barakha against her in-laws. She told the police for the first time on 16.06.1996 that Barakha complained to her against her in-laws. She denied that as Barakha did not make any complaint to her, she kept quiet for nearly about 40 days from the death of Barakha. She also denied that she is stating false at the instance of the relatives of Barakha.

25. We have carefully considered the evidence of Pws.1, 3,4,6 and 7 there is no consistency in the evidence of these witnesses as regards demand made by the accused to the deceased because PW.1 has stated that his brother-in-law Amarlal told him about ill-treatment to

the deceased on account of demand of Rs.10,000/-, PW-3 has stated regarding harassment to the deceased by her in-laws for cooler and cupboard, PW-4 has stated that accused were demanding money from the deceased for scooter and for marriage of accused No.6, PW-6 stated that on 17.02.1996 the deceased had told him that her in-laws were harassing for cooler and cupboard and on 19.02.1996 they gave cooler and cupboard worth of Rs. 7,800/- to the deceased and evidence of PW-7 shows that the deceased told her that her in-laws were greedy and they were assaulting her for money and that her husband had taken loan for his shop and he was asking the deceased to bring money to repay the loan. Thus, the evidence as above of Pws.1,3,4,6 & 7 regarding cruelty to the deceased is of vague nature and same is not believable. Moreover, admittedly the marriage of the deceased was performed on 15.02.1996 and she died on 28.05.1996 due to burns. The deceased died within three months and thirteen days after her marriage with accused No.5. It has come in the evidence of PW-3 younger sister of the deceased that out of said period for a period of one month the deceased stayed at the house of her father. If said period is considered the oral evidence of above witnesses is not sufficient to state that the accused in furtherance of their common intention caused cruelty to the deceased. Another reason to hold so is that

considering said one month when the deceased resided at her father's house and period of 12 to 15 days during which she had gone with her husband accused No.5 and other relatives at Hyderabad and Bangalore it appears that she resided at the house of accused hardly for one and half month. Therefore it cannot be said that during said period accused had caused cruelty to her. Moreover from the evidence of PW-6 brother of deceased it is clear that their relation with accused No.5 were cordial. Admittedly, no relative of the deceased had lodged complaint against accused about ill-treatment or the incident in the case. For the above reasons we hold that the prosecution has failed to prove that the accused caused cruelty to the deceased for fulfillment of their unlawful demand of money or articles as alleged.

26. As regards homicidal death, the evidence of Dr.Wani (PW-2) is that on 29.05.1996 he conducted the postmortem examination between 01.00 pm to 02.00 pm on the dead body of the deceased. According to him on examination of dead body he noticed that there were Gr.II and Gr.III 100% deep burns. There was a ligature mark around the neck 2" x 9". Deep ligature mark due to knot of Dupatta, transverse with knot at centre. There was contusion on left shoulder 1/2" x 1/4" on superior surface at centre and 1" x 1/4" on lateral surface on

left shoulder. There were planter surface at both feet burns. According to Dr. Wani above injuries noticed by him were antemortem. He stated that on internal examination, nothing abnormal was detected, at the scalp. There was no fracture of skull. Nothing abnormal was detected near walls, ribs and cartilages. Pleura was congested. The larynx, trachea and bronchi were congested. There was contusion around larynx and trachea. Right lung and left lung were congested. There was evidence of smoke particles in alveoli. The weight of right lung was 350 grams. The weight of left lung was 330 grams. The peritoneum was congested. The heart was congested. Further he stated that ligature marks noticed by him in column No.17 are possible by Article No.13 Dupatta. In his opinion cause of death is not due to injuries caused by ligature mark. The evidence of smoke particles in the internal organs indicates that the patient was breathing while she was suffering burn injuries.

27. Dr.Wani has further deposed that PSI of Bazarpeth Police Station, Bhusawal had given him a letter on 29.05.1996 and making certain queries to him. He replied said letter as per Exh.54. Exh.54 replied on five points which are as under:-

- Point No.1 : Death is within 24 hours and after the
6 hours of her last meal.
Point No.2 : Death is due to 100% deep burn, but
Point No.3 : Strangulation is given before death.
Point NO.4 : Deceased died after burn.
Point No.5 : Deceased is not pregnant.

28. Dr.Wani in the cross examination stated that inquest panchanama does not show that there was any ligature mark around the neck of the deceased. It did strike to him before conducting the postmortem examination. He did not inquire with the PSI as to how there is no mention of ligature mark in the inquest panchanama. The inquest panchanama shows that there was bunch of hair in the clenched fist. However, he did not notice any such bunch of hair while conducting the postmortem examination. He did not hand over bunch of hair to constable Anil. He stated that accompanying form shows that the dead body was seen by the Officer on 28.05.1996 at about 05.40 pm. Therefore, in his opinion the death must have taken place some time between 03.30 pm to 04.00 pm. He stated that the inquest panchanama shows that the eyes of the dead body were closed. In column No.13 of PM report (Exh.53) he has mentioned that eyes were half open. He stated that before conducting the postmortem examination it did not strike to him as to how the eyes were half open when the dead body was brought for postmortem examination. He did not collect the froth

oozing from the nose for the purpose of chemical examination.

29. Dr.Wani further in his cross-examination stated that he has not used the word "strangulation" in the postmortem report (Exh.53). He has mentioned the word "strangulation" in Exh.54 (opinion) as he noticed ligature mark in the external examination and contusion to larynx and trachea in the internal examination. Exh.53 provides column "Additional remarks". He could have mentioned 'strangulation' in the column of additional remarks. He could not tell as to why he did not write "strangulation" in the column of additional remarks in Exh.53. He stated that in case of hanging there can be ligature mark. So also, he stated that there can be contusion to larynx and trachea in case of hanging. He could not tell if the medical science has no answer to the theory that soon after somatic death, if an injury is caused it would resemble to the injury caused antemortem. He stated that he agreed with the opinion of the Author i.e. Tailor's principles of natural justice of medical jurisprudence, Vol.I. He agreed with the opinion of the Author to the effect that "Without circumstantial evidence, the bare medical opinion in these cases will amount to nothing". Ligature on neck should preferably be photographed before commencement of postmortem. The age

of ligature can be given only if its colour is mentioned. He stated that in the instant case he has not taken the photograph of ligature and he has also not mentioned the colour of ligature. He stated that while describing injury No.2 in column No.17, though he has mentioned that the knot was at the centre, he has not mentioned as to whether the centre was that of throat or neck (front or back). He has mentioned 100% burns means burns from top to bottom, from back to front, all over the body. He could not say as to why the dupatta was not completely burnt, when all other clothes were burnt. He stated that the inquest panchanama does not mention injury No.3 mentioned by him in column No.17 of Exh.53. He stated that since evidence of smoke particles inside the trachea was seen, the same must have passed through larynx cavity. Larynx is common for air and food. Where foreign material is found in any part of the respiratory track, the whole track must be investigated. Since evidence of smoke particles was seen in trachea, it can be said that the lady was lying in carbon mixed atmosphere for a long time. The fact that the tongue was seen between the teeth and the mouth was not gagged by means of cotton ball, etc. He did not notice any marks on the hands or feet of the lady to show that they were tied. Left chamber of the heart has to be examined and noted in case of suspicion of asphyxia. He has not mentioned condition of left

chamber of heart. It was necessary in the instant case.

30. PM report (Exh.53) shows external as well as internal injuries on the person of the deceased as deposed by Dr.Wani. As regards cause of death it shows that probable cause of death was shock due to 100% burns. This postmortem report does not show that strangulation was given before death as mentioned in opinion (Exh.54) given by Dr.Wani.

31. As regards injury No.2 mentioned in column No.17 of postmortem report (Exh.53) though Dr.Wani has mentioned that knot was at the centre but he has not mentioned as to whether centre was that of throat or neck (front or back), it cannot be said that the deceased was strangled because in case of strangulation centre of the said knot ought to be at throat. Moreover, as noted above Dr.Wani has stated that in case of hanging there can be ligature mark and there can be contusion to larynx and trachea in case of hanging therefore, as Dr.Wani has not used the words strangulation in the postmortem report (Exh.53), it cannot be conclusively said that ligature mark and contusion to larynx and trachea noticed by him were necessarily due to strangulation to state that strangulation was given to deceased before death. In the above circumstances having regard to the evidence of

Dr.Wani that there can be ligature mark and contusion to larynx and trachea in case of hanging, possibility of the deceased hanging herself cannot be ruled out. As mentioned earlier death was caused due to shock due to 100% deep burns as mentioned in the postmortem report (Exh.53) and opinion (Exh.54). Moreover, as it is mentioned in Exh.54 against point No.4 that deceased died after burns it can be said that death was caused due to burns. Another reason to hold so is that as noted earlier Dr.Wani has stated that he noticed smoke particles inside the trachea and since the evidence of smoke particles was seen in the trachea it can be said that lady was lying in the carbon atmosphere for a long time it cannot be said that the deceased was strangulated and then she was set on fire. For the reasons discussed above before drawing inference on the basis medical evidence that death of the deceased is homicidal and not suicidal or vice versa other evidence on record i.e. circumstantial evidence in the form of spot of panchanama and map of spot of incident is to be considered.

32. Exh.39 Panchanama of spot of incident i.e. house of the accused is prepared by PSI Jadhav (PW-11) in presence of Prakash Tolani (PW-1) and Raju Jagtap during enquiry of AD case. PW-11 has stated that kerosene can, match box pieces of burnt clothes were seized under said

panchanama on 28.05.1996. PW-1 has not specifically stated that panchanama (Exh.39) was prepared in his presence but as referred earlier he stated that the deceased Barakha was lying in the bath room. The evidence of PSI Jadhav (PW-11) shows that the place of incident was shown by accused No.1 Kisanchand. Exh.39 panchanama shows that the spot of incident is house No.389, situated at Bhusawal City. The said house consisting of dining hall of 10x12 fts, to its East side there is room of 9x9 fts i.e. bed room, to the East of the said room there is store room adm. 9X8 fts, to the East of said room there is 15 fts wide passage and to the South of passage there are North facing initially store room, then bath room then latrine and then again store room. The spot of incident was in the bath room which is to the Eastern side of the store room and the said bath room is 5x4 fts and height of its roof is 8 fts. Along Western wall of the said bath room one can containing three liters kerosene was found. Walls and roof of bath room were seen dark due to burnt. The pieces of burnt clothes of the deceased were found in the bath room. So also, burnt match stick was also seen. Above articles were seized by Investigating Officer. From the above circumstances noticed by the Investigating Officer recorded in the panchanama of spot of incident it is clear that the deceased sustained burns in the aforesaid bath room of

the house of the accused.

33. Exh.67 is the map. It was prepared by Mr.Govind Aherrao and P.N.Sarwade, City Surveyor of Bhusawal. Said Sarwade has not been examined by the prosecution and it has been got exhibited in the evidence of Govind (PW-8) who is working as City Surveyor at Bhusawal. In the cross examination he stated that there is door to the Northern side of bath room. The planks of the door open in the passage. He could not tell if there is a ventilator above the door or not. He stated that he has not personally seen the house. Therefore, his evidence is not sufficient to state that the prosecution has proved the truth of the contents of the map (Exh.67). Thus this map is of no help to the prosecution.

34. As stated earlier incident took place in the bath room of the accused. The size of the said bath room is 5x4 fts. Considering the said small size of bath room it is not possible for all the seven accused or any of them to commit murder of the deceased by pouring kerosene on her person and setting on her fire or to strangulate her as alleged. Therefore, considering the fact of finding of the articles i.e. can containing three liters kerosene, burnt match stick and burnt pieces of clothes on the person of the deceased which were seized

from the bath room, the possibility of the deceased committing suicide after pouring kerosene on her person and setting herself on fire cannot be ruled out. As mentioned earlier Dr. Wani in his opinion (Exh.54) opined that strangulation was given before death, death is due to 100% burns and that the deceased died after burnt and his evidence that in case of hanging also there can be ligature mark and contusion to larynx and trachea and having regard to the fact that dupatta was found around the neck of the deceased, there is possibility that the deceased initially attempted to commit suicide by hanging and on failure she set herself on fire after pouring kerosene on her person for the reasons known to her cannot be ruled out.

35. Exh.45 to 48 are the reports of the Chemical Analyzer in respect of analysis of plastic can containing kerosene, partially burnt and broke Kasturi brand match-box, partially burnt brownish coloured cloth pieces, Bunch of hair, partially burnt bunch of hair, partially burnt yellowsih coloured lid of plastic can, having blackish coloured partially burnt hair sticked to it, seized from the spot of incident. It appears from the Chemical Aalyzer's report (Exh.47) that on Exh.3- partially burnt cloth pieces kerosene was found and it was not found on Exh.2,4,5 & 6. The report (Exh.48) of

the Chemical Analyzer shows that Exh.5 & 6 hairs are human hairs. Exh.5 appears similar hairs to hair in Exh.4 and dissimilar to hair in Exh.1 to 7. Therefore, it cannot be said that hairs found at the spot i.e. Exh.4 & 5 hairs are similar to the hairs in Exh.1 to 7 i.e. hair of accused. Therefore, it cannot be said that the accused were present at the spot of incident. Therefore, above referred C.A. Reports are of no help to the prosecution to connect the accused with the alleged offences.

36. As regards motive to the accused to commit the murder of the deceased, it appears that according to the prosecution the accused caused cruelty to the deceased for unlawful demands as referred earlier and therefore, she was murdered. As discussed earlier, the prosecution has failed to prove that the accused caused cruelty to the deceased. Moreover, as observed earlier the deceased resided at the house of the accused for a period of one and half month only. It was suggested to PW-6 brother of the deceased that as to whether the marriage of the deceased was performed with accused No.5 against her will and he replied that it was not so happened. Considering the said fact, for the reasons discussed above and the fact that the possibility of death of the deceased by suicidal cannot be ruled out. It cannot be said that accused had motive to commit murder of the deceased.

37. Now coming to the defence plea of the accused, their defence is denial and it appears from the trend of cross-examination of the prosecution witnesses and report given by accused No.1 in the Police Station regarding death of the deceased, defence of the accused appears that death of the deceased is suicidal. The prosecution has not established that all the accused were in the house at about 04.30 pm when alleged incident has been taken place. The incident of sustaining burns to the deceased and her death took place at about 04.30 pm. And as such said incident has not taken place in the night. It is observed on the basis of circumstances noted in the panchanama of spot of incident that the deceased sustained burns in the bath room in which can containing three liters kerosene and match sticks were found. So also, it is observed that there is possibility of the deceased setting herself on fire after pouring kerosene on her person after her attempt to commit suicide by hanging was failed. In such circumstances, there is substance in defence plea of the accused that death of the deceased is suicidal. Therefore, it cannot be said that plea in defence of the accused is false.

38. Learned APP submitted that death of the deceased due to burns took place in the house of the accused at

about 04.30 pm. The deceased was in custody of the accused at the relevant time. They have not explained the circumstances under which death of the deceased was caused within three months of her marriage with the accused No.5. Learned APP submits that therefore, there is strong presumption that accused murdered the deceased. To support his submissions the learned APP has relied upon the ratio laid down by the Supreme Court in the case of State of Rajasthan Vs Thakur Singh reported in (2014)12 Supreme Court Cases 211 and in the case of The State of Maharashtra Vs Syed Rahim Syed Janimiya and others in Criminal Appeal No.318/2001 dated 04.08.2017 decided by this Court. The facts of both the cases relied upon by the learned APP are different. In both the cases death of the deceased had taken place in the night. Here it is not the case that deceased was in the exclusive custody of her husband in the night and in the night her death was caused due to burns. It appears that in the house of accused there are more than seven family members and as observed earlier it is not specifically brought on record by the prosecution that the particular accused were present in the house at the material time of incident. As stated earlier report (Exh.76) lodged by the accused No.1 to the police station regarding death of the deceased shows that deceased set herself on fire on pouring kerosene on her person and died. In the said

report he cannot tell why she set herself on fire after pouring kerosene. The said information was given in the Police Station, Bhusawal at 05.30 pm immediately after the incident. In such circumstances, it can be said that the accused have explained the circumstances under which death of the deceased was caused. Therefore, no presumption under section 106 of the Evidence Act that the accused have committed murder of the deceased can be raised in favour of the prosecution as argued by the learned APP. As such ratio laid down in the case State of Rajasthan (Supra) and State of Maharashtra (Supra) relied upon by the learned APP can not be made applicable to this case.

39. For all the reasons discussed above on considering the evidence referred to above adduced by the prosecution including the Medical evidence i.e. postmortem report (Exh.53) and opinion (Exh.54) given by Dr.Wani (PW-2) we hold that the prosecution has failed to prove beyond doubt that the death of the deceased was homicidal and on the basis of evidence possibility of death of the deceased being suicidal cannot be ruled out. So also, we hold that the prosecution has failed to prove that accused caused cruelty to the deceased, as discussed earlier. Moreover, it has failed to prove beyond doubt that the accused are responsible for death

of the deceased. We, therefore, hold that the prosecution has failed to prove the offences under Section 498-A and 302 r/w Section 34 of the IPC beyond reasonable doubt. The trial Court has rightly held so. So also, it has rightly held that the prosecution has failed to prove that the death of the deceased was homicidal and it has rightly acquitted the accused of the offences under Sections 498-A and 302 r/w Section 34 of the IPC by the impugned judgment and order. The said view taken by the trial Court is reasonable and possible view. There is no error in appreciating the evidence by the trial Court. Therefore, there is no justifiable ground to interfere with the impugned judgment and order of acquittal of the accused for the offences with which they were charged. Therefore, appeal being devoid of merits, the same is liable to be dismissed. Accordingly we dismiss the same. The bail bonds of the accused are cancelled.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]