

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.17 of 2002

The State of Maharashtra
Through P.S.I., Parner Police
Station, Parner, for the
complainant Sau.Sunita
Atmaram Kale.

.. APPELLANT
(ORIGINAL COMPLAINANT)

VERSUS

1. Atmaram Bajirao Kale,
Age : 24 years,
2. Smt. Parubai Bajirao Kale,
Age : 55 years,
3. Nanda d/o Bajirao Kale,
Age : 27 years,
All resident of Burudgaon,
Tq. & Dist. Ahmednagar.

.. RESPONDENTS
(ORIGINAL ACCUSED)

Mr.S. J. Salgare,APP for Appellant/State
Mr.Joydeep Chatterji,Advocate for respondents No.1 to 3.

CORAM : T.V. NALAWADE AND
S. M. GAVHANE, JJ.

DATE : 13th September,2017

JUDGMENT : [PER : S. M. GAVHANE, J.]

The Appellant-State has filed this appeal against the Judgment and order dated 08-10-2001 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 171 of 2000 thereby acquitting the respondents-accused Nos. 1 to 3 of the offences punishable under

Sections 498-A and 302 of the Indian Penal Code (For short 'the IPC')

(2) Facts of the prosecution case as it reveals from the police papers are as under :-

(A) Madhukar Ramchandra Mande (P.W.1) who is a resident of Ahmednagar is father of the deceased Sunita. She was married to accused No.1 on 26-12-1999. After the marriage, she started residing with the accused at their village Burudgaon, Taluka Nagar. It is alleged that within a month of her marriage, all the accused i.e. accused No. 1 her husband, accused No. 2 her mother-in-law and accused No. 3 sister of her husband started illtreating deceased saying that they did not like her. They started starving her. P.W. 1, her father attempted to convince the accused, but none of them paid any heed to it. The accused subjected deceased to cruelty continuously for about six months.

(B) Further it is alleged that, accused No. 1, one fine morning took the deceased to the house of P.W. 1 and at that time she resided with P.W. 1 for about eight to ten days. At that time, the deceased disclosed to P.W. 1 that the accused were consistently saying that

they did not like her and on that count she was all the while subjected to cruelty.

(C) Accused No. 1 was an employee of M.S.E.B. at village Supa. He got the residential quarter at village Supa. He took deceased with him to village Supa and they started residing there in the quarter of M.S.E.B.

(D) On 01-09-2000, at about 09.30 p.m. P.W. 1 received phone message of his brother-in-law that accused No. 1 did not like the deceased and he has threatened that something would be definitely happened. Therefore, on 02-09-2000 P.W.1 went to village Supa and reached at the quarter of the accused No.1 at about 9.45 a.m.. At that time he saw deceased in burnt condition and she was sitting in the house of her neighbour. No medical aid till that time was given to the deceased by accused No.1.

(E) Thereafter P.W. 1 immediately arranged the jeep from village Supa and took the deceased to Civil Hospital, Ahmednagar in injured condition, at about 11.15 a.m. on 02-09-2000. On the way to Civil Hospital, Ahmednagar allegedly the deceased disclosed to her father P.W. 1 that "the accused No. 1 poured kerosene on her person and set her on fire." So also, on the same

day i.e. on 02-09-2000 between 2.00 to 2.45 p.m. dying declaration (Exh.32) of the deceased came to be recorded by P.W. 2, stating that "on the said date at about 08.30 a.m., her husband, the accused No. 1 said her that he did not like her and on that ground the accused No. 1 poured kerosene on her person and set her on fire. Her mother-in-law and sister-in-law had constantly harassed her."

(F) It appears that in the meantime, accused No. 1 went to Parner Police Station and lodged information/Khabar Exh.55. Said information was received by Parner Police Station at 11.00 a.m. and PSI, Parner Police Station immediately directed Police Head Constable Piraji Kusalkar (P.W.4) to inquire into the matter as to how the deceased sustained burn. On that day PHC Kusalkar was at Supa as he was given Bandobast duty at Supa as there was Grampanchayat Election. He immediately went to the scene of offence and recorded the spot panchanama (Exh.38). Then he went to Civil Hospital, Ahmednagar and recorded dying declaration (Exh.39) of the deceased on 02-09-2000 at about 11.45 p.m. wherein the deceased stated that, "after her marriage while she was cohabiting at the house of

accused at Burudgaon, Taluka Nagar, her mother-in-law, sister-in-law and husband used to harass her saying that they did not like her and they used to taunt and starve her. So also, two months before her husband had taken her to village Supa at the place of his service, in M.S.E.B.Colony and while she was cohabiting with her husband, on 02-09-2000 at 8.30 a.m. she and her husband were in the house, at that time her husband said that he did not like her and poured kerosene in the Can in the house on her person and set her on fire by lighting the match-stick. She herself extinguished the fire. She sustained burns to her chest, stomach and legs. After she was set on fire, her husband went away. Thereafter her father Madhukar Ramchandra Mande came and he brought her in the Government Hospital at Nagar from Supa. Further she stated that while she was cohabiting at Burudgaon at her in-laws' house since January 2000 and at Supa, Taluka Parner, her husband, mother-in-law and sister-in-law caused her mental and physical cruelty by harassing and starving her and on 02-02-2000 at 08.30 a.m. at the house in M.S.E.B. Colony, Supa, her husband poured kerosene on her person and set her on fire and attempted to kill her." Treating the said dying

declaration Exh. 39 as FIR, Crime No. 199 of 2000 was registered by Police Head Constable Kusalkar against the accused for the offences punishable under Sections 498-A and 307 read with Section 34 of the IPC. The PSI Chabu Dhakarao (P.W.6) started investigation in the said crime.

(G) During the investigation PSI Dhakrao arrested all the accused on 03-09-2000. He requested Tahsildar to draw map of scene of offence. Accordingly P.W. 3 Vijay Umap had drawn the map of scene of offence Exh. 34. On 14-09-2000 while taking treatment in the Government Hospital, Ahmednagar, Sunita died. P.S.I. Dhakrao prepared inquest panchanama of the dead body. P.W. 5, Dr. Ranade conducted Post-mortem examination of the dead body and issued Post-mortem Report Exh.42. The Investigating Officer also sent seized articles to Chemical Analyser for examination and analysis. The report was received. The Investigating Officer recorded statements of witnesses.

(3) After completion of the investigation the Investigating Officer PSI Dhakrao submitted charge-sheet in the Court of Judicial Magistrate First Class, Parner

against the accused for the offences punishable under Sections 498-A and 302 read with Section 34 of the IPC. As the offence under Section 302 of the IPC was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court, Ahmednagar, which was subsequently allotted to the Additional Sessions Judge, Ahmednagar.

(4) The charge was framed against all the accused for the offences punishable under Section 498-A read with Section 34 of the IPC and against accused No. 1 for the offence punishable under Section 302 of the IPC, to which the accused pleaded not guilty and claimed to be tried. Their defence is denial. They have not examined any witness in defence.

(4A) At the time of their statement under Section 313 of the Code of Criminal Procedure, the accused have filed written reply (Exh.62) stating that false case is filed against them. The deceased committed suicide by closing the door of kitchen room from inside. Accused Nos. 2 and 3 had never come to Supa. The deceased was not liking to stay with accused Nos. 2 and 3 and

therefore prior to 10-15 days of getting residential quarter at Supa, accused No. 1 and the deceased resided at the house of Sunita (deceased) at Nagar. The deceased had said that accused No. 1 should not go and meet his mother and sister. On her say, accused No. 1 went to Supa to reside. On 01-09-2000 he had gone to Ahmednagar at his house for installing idol of Ganpati and at that time it was the say of the deceased that he should not go to house at Nagar and on that ground she had quarreled with him. But as there was no other male member in his house, accused No. 1 had gone to Nagar for festival against her wish. Prior to going to Nagar, he was willing to take the deceased with him and he said so to her. But she said that she is not coming with him and that he also should not go. On the same day after installing Ganpati Idol, in the night he returned to Supa. On the next day morning also, she picked up quarrel on the same ground and out of anger, closed the door of the kitchen from inside. Accused No. 1 heard the noise of kerosene Can, he thought that she would do something and therefore, he broke open the door and she was seen inflame. Accused No. 1 extinguished the fire and removed the clothes on her person and in that his

fingers of both hands and lips were burnt. At that time, Sow. Surekha Sham Kurle had come to help and she also sustained burns to her legs. At that time the deceased was saying, "what she has done and what would happen with her child and that she should be taken to Hospital." Thereafter, he (accused No.1) and Sow. Surekha Kurle asked her son to call the Doctor. Doctor Magar came and gave primary treatment. After some time, father of the deceased came and started assaulting to accused No.1. Therefore, persons had come there and they asked accused No. 1 to go away. Therefore, accused No. 1 went away from there and gave information in Parner Police Station. Father of the deceased had taken her to Nagar by the jeep and on the way to Nagar, he tutored her to give her statement. So also, while going to Nagar they had halted about $\frac{1}{2}$ hour to 45 minutes at their house. They prepared false dying declarations. Deceased Sunita was beautiful and therefore, there was no question of accused not liking her. On the contrary, accused No. 1 is not good looking, but he had got beautiful wife and therefore, he was behaving as per her say. Therefore, it is incorrect that the accused were causing cruelty to the deceased as

they did not like her. As the deceased had lost hopes of surviving, to harass them (accused) false case was filed against them.

(5) To prove charge against accused, the prosecution has examined in all eight witnesses, two witnesses have been examined as a Court witnesses and it has relied upon oral and written dying declaration referred to above, P.M. report and the panchanamas. On considering the evidence adduced by the prosecution and the defence of the accused, the trial Court on holding that the prosecution has failed to prove that the accused either individually or in furtherance of their common intention subjected the deceased to cruelty, that the accused No. 1 caused death of the deceased and that the prosecution has failed to prove that death of the deceased was homicidal, acquitted all the accused of the offences punishable under Sections 498-A and 302 read with Section 34 of the IPC by the impugned judgment and order. Therefore, this appeal against acquittal of the accused by the State, on several grounds mentioned in the memorandum of appeal.

(6) We have heard the learned APP appearing for the appellant/State and the learned advocate appearing for the respondents-accused and with their assistance we have perused the evidence adduced by the prosecution. We have perused the impugned judgment and order.

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

(8) There is no dispute that the deceased was married with the accused No.1 on 26.12.1999 and after marriage, she went to the house of accused at village Burudgaon, Taluka and District Nagar for cohabitation. At the relevant time of incident, accused No. 1 was

serving as helper in the M.S.E.B. at village Supa, Taluka Parner, District Ahmednagar and accused Nos. 2 and 3 were residing at Ahmednagar. On the day of incident i.e. on 02-09-2000 accused No. 1 and the deceased were residing at village Supa in the residential quarter of the M.S.E.B. and on that day at about 08.30 a.m., the deceased sustained 50 % burns. On the same day P.W.1, father of the deceased had come to Supa at about 8.45 a.m. and on seeing the deceased in injured condition in the house of neighbour Surekha Sham Kurle, witness No. 2 for the Court, he admitted the deceased in injured condition in the Civil Hospital at Ahmednagar at about 11.20 a.m. While the deceased was taking treatment she succumbed to the injuries on 14-09-2000 at 00.15 hours.

(9) The case of the prosecution is that, death of the deceased is homicidal, accused No. 1 is responsible for her death and that all the accused caused cruelty to the deceased. Denying the same, the accused have come with the case that death of the deceased is suicidal and therefore, accused No. 1 is not responsible for her death. Therefore, it is necessary to see whether the

death of the deceased is homicidal or suicidal. There is no direct evidence to show the involvement of the accused for the alleged offences. The prosecution has relied upon the following evidence and circumstances :

(a) Oral dying declaration of deceased to her father Madhukar Mande (P.W.1) and dying declarations Exh. 32 and Exh.39,

(b) Panchanama of, spot of incident (Exh. 38) and Chemical Analyser's Report (Exh.48),

(c) The evidence of P.W. 1 about cruelty to the deceased,

(d) False plea in defence of the accused.

(10) Before considering the dying declarations, it is necessary to refer principles regarding appreciation of evidence in the form of dying declaration laid down by the Supreme Court and this Court.

(a) In the case of **Jand Another V/s State of Maharashtra reported in (2013) 2 Supreme Court Cases 224**, it was held that in case of multiple dying declarations, they can be believed and each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its

evidentiary value and one cannot be rejected solely because of certain variations in another declaration.

(b) In the case of **Anwar Shah Babu Shah Fakir and others Vs. State of Maharashtra reported in 2012 to ALL MR (Cri) 2774**, it was held that in case of more dying declarations, each dying declaration needs to be considered separately and it becomes duty of the Court to find out, whether the other evidence is consistent with the dying declarations. If the other evidence is consistent with one dying declaration, that dying declaration can be safely accepted and relied upon and other dying declaration can be discarded.

(c) In the case of **Sudhakar vs. State of Madhya Pradesh reported in (2012) 7 Supreme Court Cases 560**, it was held that where multiple dying declarations made by the deceased are either contradictory or at variance with each other to a large extent, test of common prudence would be to first examine which dying declaration is corroborated by other prosecution evidence. Moreover, attendant circumstances, condition of deceased at the time of making of each statement concerned, medical evidence, voluntariness and genuineness of statement

made by deceased, physical and mental fitness of deceased and possibility of deceased being tutored are some of the factors which would guide exercise of judicial discretion by Court in such matters.

(11) Bearing in mind, the above principles regarding appreciation of evidence, we proceed to scan the evidence on record to see whether the oral dying declaration to P.W. 1, father of the deceased and written dying declarations -Exh.32 and 39 made by the deceased are truthful, voluntary and free from any tutoring and that they are reliable. As regards oral dying declaration to P.W.1, father of the deceased is concerned, his evidence (Exh.27) is that, on 01-09-2000 at about 09.30 p.m. he received message of his brother-in-law i.e. husband of his sister namely Bhattu alias Asaram Sake, that the accused No. 1 did not like the deceased and he gave threat that something would happen on the next day. He deposed that therefore, immediately on the next morning he went to village Supa to see his daughter and he reached at Supa at about 9.45 a.m. None of the accused was seen in their house. He saw his daughter in burnt condition in the house of neighbour.

At that time door of the house of accused was found intact and he could not notice any damage to the house. Further he deposed that his daughter/deceased, that time did tell him that she had desire of living and requested him to save her. Further she added that accused No. 1 poured kerosene on her person and set her on fire and then ran away. He stated that there they could see accused No.1. He abused him and told him that why medical treatment was not arranged to his daughter by that time. The incident took place at about 08.30 a.m., village Supa is about one and half kilometer away from the residential house of accused No.1. He went to village Supa on motor-bike and arranged jeep. He took his daughter in jeep and brought her to Civil Hospital, Ahmednagar at about 11.15 a.m. and she was then hospitalized. She died on 14-09-2000 in the Hospital.

(12) In the cross-examination of P.W. 1 stated that it did not happen that when he reached to the house of accused at Supa, he saw persons gathered at the door of the house of accused. He stated that portion marked -B in his statement before police, in this respect was not correctly recorded. Said portion marked 'B' is proved

by the Investigating Officer PSI Dhakrao (P.W.6) and marked at Exh.50. Therefore it can be said that when P.W. 1 visited the house of accused No.1 at Supa, he saw persons gathered at the door of the house of the accused. Further he has deposed that he does not know as to who were neighbours of accused at village Supa. He has denied that, on that day he assaulted accused No.1. He admits that he abused accused No.1. He stated that he does not know whether Abhijit who happens to be the son of Kurle called a Medical Practitioner by name Dr.Magare and he had given some treatment to the deceased or otherwise. He admits that neighbour of accused No.1 asked accused No. 1 to quit the place because they had apprehension that he may assault accused No.1 that point of time and therefore, accused No. 1 had left the premises. He denied that Dr. Magare had given injection to the deceased. He stated that he does not know whether accused No.1 went to Parner Police Station and informed the incident to police or otherwise. He denied that, door of kitchen of accused No.1 was found broken. He stated that he has not stated before police that when he reached Supa the house of accused No.1 was found intact and no damage to it was

noticed. He stated that police recorded his supplementary statement on 14-09-2000 and even on that day he did not state before police the aforesaid fact. He denied that doors of the house of accused were not intact. He stated that for the first time before the Court he stated that doors of the house of accused were intact. He has denied that he personally tutored his daughter/deceased that she should tell that her husband poured kerosene on her person and set her on fire. He denied that, deceased closed the door of the kitchen and sprinkled kerosene on her person and set her on fire. He denied that accused No. 1 started to break open the door of kitchen since he heard the noise of drum of kerosene and then he could entered the kitchen and attempted to extinguish the fire. He denied that at the same time Kurl bai came and attempted to extinguish the fire. He denied that when the deceased was brought out of the house she gave statement before neighbour that she set herself on fire and now what would happen to her child and she also uttered words, "Mi He Kay Karun Ghetale." He has denied that since the deceased died due to burn injuries, he and his relatives cooked the false case against the accused with a view to

harass them.

(13) From the above evidence of P.W.1, an inference can be drawn that on 02-09-2000 he had come to the house of accused No. 1 at village Supa at about 8.45 to 09.00 a.m. He saw the deceased in injured condition in the house of neighbour of accused No.1. Accused No. 1 was also there. He abused accused No.1. People also gathered there. Due to fear of assaulting accused No. 1, the neighbours asked accused No. 1 to leave the place and then accused No. 1 went to Parner Police Station. Thereafter P.W. 1, alone was with the deceased and the deceased disclosed to him that accused No.1 poured kerosene on her person and set her on fire. Moreover, his evidence that when he went to the house of accused, doors of the house of accused were intact is not believable as he stated the same before the Court for the first time and did not state in his statement before police. As the deceased alone was with P.W. 1, when he took her in the Civil Hospital at Ahmednagar from Supa for about two hours and as P.W. 1 was annoyed, he abused accused No.1, possibility of his tutoring the deceased to implicate the accused to say that accused

No.1 poured the kerosene on her person and set her on fire, cannot be ruled out. Therefore, before accepting or rejecting oral dying declaration allegedly made by the deceased to P.W. 1 it is necessary to refer written dying declarations relied upon by the prosecution and other evidence on record.

(14) Now coming to the first dying declaration (Exh.32), it was recorded on 02-09-2000 by Naib Tahsildar, Executive Magistrate Dharma Laxman Aaru (P.W.2) between 02.00 p.m. to 2.45 p.m. when the deceased was taking treatment in Civil Hospital Ahmednagar. P.W. 2 has deposed that on that day he received letter Exh. 31 from police, requesting him to record dying declaration of the deceased Sunita Kale. On receipt of said letter he went to the Government Hospital, Nagar. He met to Medical officer in the Hospital. He showed aforesaid letter to the said Medical officer and requested him to allow him to record dying declaration of the deceased. The Medical officer then took him to the bed of the patient, whose statement he had to record. The Medical Officer on duty examined the patient first. On clinical examination, Medical Officer

put his endorsement and told him that patient was conscious and capable to give statement physically and mentally. The Medical Officer made endorsement on top of the dying declaration in his presence. He stated that he could reach in the Hospital at 2.00 p.m. He recorded statement of deceased in question and answer form. He recorded answer of the deceased as per her own version to the questions which he put to her. He stated that according to statement of the deceased, "on 02-09-2000 her husband told her that he did not like her and then he poured kerosene on her person and set her on fire. She also ventilated her grievance against accused No.2 and 3 and to that effect, she has stated that they gave trouble to her." On completion of her statement he read over to the entire statement to her, she admitted it to be true and then she signed the statement in his presence. The Medical Officer then clinically examined the deceased and opined that declarant was conscious and capable to give declaration throughout physically and mentally. He stated that dying declaration Exh. 32 shown to him is the same and it was lasted at about 2.45 hours.

(15) In the cross-examination, P.W. 2 has stated that he might have recorded 50 dying declarations till that time. He does not know names of most of the doctors. Medical Officer was with him for half an hour from 2.00 to 2.30 p.m. but he could not tell his name. He could not tell as to how Medical Officer clinically examined the deceased. He could not tell what sort of test Medical Officer performed to arrive at a particular conclusion. According to him, the Medical Officer examined the patient i.e. deceased for long time. He denied that parents of deceased had also accompanied them that time. He denied that he recorded dying declaration of deceased as per the say of her father. He denied that, handwriting on dying declaration is not his handwriting. He denied that, he did not go to Hospital and that police brought written dying declaration to his office and he had signed the same. He denied that Medical Officer did not put his endorsement at the top and bottom of dying declaration in his presence. He stated that he has no documentary evidence to show that Tahsildar gave him permission, because he was given oral permission. Thus, the evidence of P.W. 2 regarding material particulars of

dying declaration Exh. 32 that the deceased told him that her husband poured kerosene on her person on 02-09-2000 and set her on fire and she also made grievance against accused No. 2 and 3 is not shattered in his cross-examination. He could not tell name of the Medical Officer who examined the deceased before and after recording the dying declaration. Considering the said aspect and the fact that P.W. 1, father of the deceased was with the deceased in the Hospital on 02-09-2000 and before they reached in the Hospital, son and wife of P.W.1, had already reached in the Hospital and none from the family of the accused was with the deceased in the Hospital, possibility of tutoring the deceased cannot be ruled out and hence before accepting or rejecting written dying declaration Exh. 32 recorded by P.W. 2, other evidence on record is to be considered.

(16) Dr. Borade (P.W.8) who had examined the deceased before and after recording dying declaration Exh. 32 by P.W. 2 has deposed that on 02-09-2000 deceased was admitted in Civil Hospital, Ahmednagar at 11.20 a.m. She had burn injuries. On that day around 2.00 p.m. Special Executive Magistrate met him in the

Hospital, since he had to record dying declaration of the deceased. According to him, he examined the deceased and found that patient was conscious, well oriented to give statement. Accordingly he put endorsement on top of dying declaration. So also he deposed that thereafter Executive Magistrate recorded dying declaration (Exh.32). Then he examined the patient. She was found conscious and well oriented. He put such endorsement at the bottom of said dying declaration (Exh.32). Though he has been cross-examined at length on behalf of the accused nothing is found in favour of the accused to state that the patient/deceased was not conscious and well oriented to give statement. Thus, on the basis of P.W. 2 and Dr. Borade (P.W.8) it can be said that deceased was conscious and well oriented when dying declaration Exh. 32 was recorded. Merely because accused P.W. 2 could not tell name of P.W. 8, Dr. Borade, it cannot be said that said Doctor did not examine the deceased before and after recording her dying declaration (Exh.32).

(17) Exh.39 is the dying declaration recorded by P.H.C. Piraji Kusalkar (P.W.4) on 02.09.2000 between

11.30 p.m. to 11.45 p.m. in presence of Dr. Rajguru (P.W.7), the Medical Officer in Civil Hospital, Ahmednagar. As regards, the condition of the injured at the relevant time of recording said dying declaration, P.W. 4 has deposed that he went to Civil Hospital, Ahmednagar and met Medical Officer on duty to whom he told that he has to record statement of the deceased. He (Doctor) examined the deceased and opined that she was capable to give statement and then he recorded her statement as per her version. He stated that, on completion of statement of the deceased again the Medical Officer examined the deceased and put the endorsement to that effect at the bottom of the statement. In the cross-examination, he denied that, he obtained an endorsement of the Medical Officer at one time that too in his cabin and that he obtained the endorsement of the Medical Officer in the manner aforesaid and therefore, he does not have the requisition letter. His evidence that Medical Officer examined the deceased and opined that she was capable to give statement has not been specifically challenged in the course of his cross-examination.

(18) Similarly, Dr. Rajguru (P.W.7) deposed that the police official came to record statement of the deceased around 11.00 to 11.30 p.m. on 02-09-2000. He had examined patient/deceased. According to him on clinical examination he could notice that she (deceased) was conscious and capable to give declaration. He put endorsement on top of Exh.39 dying declaration. He claims that after having completed the statement of the patient/deceased he again examined her and found that she was conscious and oriented to give statement and accordingly put endorsement at the bottom of the statement with his signature. In the cross-examination he denied that statement of the deceased came to be recorded in his room at the instance of father of the deceased and he issued both the certificates at one time. His evidence that on clinical examination , he noticed that the deceased was conscious and capable to give declaration has not been specifically challenged. The deceased had sustained 50 percent burns on 02-09-2000 at about 8.30 a.m. and in the night of said date Exh.39, dying declaration was recorded between 11.00 to 11.30 p.m. Considering above all evidence of P.W. 4 and P.W.7 Dr. Rajguru it can be said that, the deceased was

conscious and capable to give dying declaration (Exh.39).

(19) As regards, contents of dying declaration (Exh.39) PHC Kusalkar (P.W.4) deposed that he recorded said statement/dying declaration as per her version. She made statement before him that her husband did not like her and therefore he poured kerosene on her person and set her on fire. Deceased also stated to him that accused No.2 and 3 also used to illtreat her. He deposed that he read over statement to her, she admitted it to be true, then he obtained her signature at the bottom of dying declaration and he also signed the same. He stated that Exh.39 dying declaration is same. In the cross-examination he (P.W.4) has denied that he recorded statement of deceased as per the version of her father and not as per her version. Therefore, his evidence regarding recording of dying declaration Exh. 39 as above of the deceased is not shattered in the cross-examination on behalf of the accused. P.W.7 Dr. Rajguru in his cross-examination denied that he was not present near the patient when her dying declaration was being recorded. He could not state whether relatives of the

patient/deceased were in ward prior to recording of her statement or otherwise. He stated that the statement of the patient/deceased was recorded in question and answer form. P.W. 4 PHC Kusalkar has not stated that the statement/dying declaration of the deceased was recorded in question and answer form. Exh. 39 dying declaration shows that it is in narrative form and it is not in question and answer form. Therefore, it is clear that, the evidence of Dr.Rajguru that statement/dying declaration (Exh.39) of the deceased was recorded in question and answer form is contrary to Exh. 39. Therefore, it is doubtful whether said dying declaration was really recorded in presence of Dr. Rajguru (P.W.7). Considering the same and the evidence of Dr. Rajguru that he could not tell as to whether relatives of the deceased were present in the ward prior to recording her statement or otherwise the possibility of presence of relatives of the deceased prior to recording of dying declaration and tutoring her to implicate the accused cannot be ruled out. Therefore, it is doubtful whether dying declaration Exh. 39 is genuine.

(20) Now coming to the evidence of Surekha Sham

Kurle, witness No.2 for the Court, who is admittedly neighbour of the accused No.1 and the deceased. Her evidence (Exh.61) shows that on 02-09-2000 at about 08.00 to 08.15 a.m., she was at her house. She was busy in cooking. That time she heard the shouts of the persons. Therefore, she thought that her children might have returned back from their school and therefore, she had opened the door of her quarter. No sooner she opened the door of her quarter, she saw that the deceased Sunita was almost burning in the flames and accused was attempting to ruin up the burnt clothes of the deceased Sunita. She could see the aforesaid incident from the distance of 2 to 3 ft. That time she could heard the words of the deceased that is “हे मी हे काय करुन घेतले माझ्या हातानी, मला दवाखान्यात घेउन चला, आपल्या बाळाचे कसे होईल” According to her, the deceased uttered the aforesaid sentence twice. She immediately took bed-sheet from her house and attempted to extinguish the fire of the deceased. At that time, deceased had showed her willingness or desire that she wanted to be in her house. She therefore, took deceased in her house. By that time her son reached to her house to whom Kale told to go and arrange for the doctor. She deposed that since she was

alone, she was afraid and therefore, she informed the abovesaid incident in M.S.E.B. sub-station. She deposed that, father of the deceased happened to come to her house to whom she was not knowing. Father of the deceased made grievance as to how incident occurred. At that time deceased told her father that she be taken to Hospital and thereafter she came to know that, person who made grievance was the father of the deceased. Then he left the quarter and brought a vehicle and took the deceased with him in the vehicle. After 15 days she came to know that Sunita died. She stated that she also attempted to extinguish the fire and she sustained burn injuries to her leg. She stated that she stated to police only once that the deceased Sunita uttered words as referred earlier. She also stated that after 2 to 4 days of the incident she went to Civil Hospital, Ahmednagar and meet the deceased and the deceased only told her that she had much pains. Thus, it is clear from the evidence of this witness that this witness is the next door neighbour of the deceased and accused No.1 on the date of incident that is 02-09-2000 and immediately at the time of incident i.e. at about 08.00 to 08.15 a.m. after the deceased sustained burns, this

witness saw the deceased, to whom the deceased first in time disclosed that, "हे मी हे काय करुन घेतले माझ्या हातानी, मला दवाखान्यात घेउन चला, आपल्या बाळाचे कसे होईल" which shows that deceased herself set her on fire which necessarily shows, that deceased committed suicide. This witness Surekha Kurle who came to the deceased at the relevant time is an independent witness and she has no reason to depose against the prosecution or in favour of the accused. Her evidence if considered it suggests that death of the deceased is suicidal. Therefore, it is doubtful whether accused No.1 poured kerosene on the person of the deceased and set her on fire, on 02-09-2000 at about 08.30 a.m. as alleged by the prosecution and as claimed by P.W.1 father of the deceased and stated in dying declarations Exh. 32 and 39.

(21) Now coming to the circumstantial evidence in the form of spot panchanama Exh. 38, map of spot of incident Exh.34 and Chemical Analyser's Report at Exh.48, as regards Exh. 38 panchanama of spot of incident, P.H.C. Kusalkar (P.W.4) has deposed that accused No. 1 had shown the spot of incident. He seized plastic Can containing some kerosene and half match-box,

partially burnt pieces of white petticoat, and burnt red pieces of Gown as per panchanama Exh 38. Panchanama Exh. 38 shows that in the West-North corner, there was 8 x 10 sq.ft. room in the house of accused and said room has door of plank. Half portion of plank of said door was found broken and the said room was a kitchen room. P.W. 3, Vijay Umap who was Circle Inspector, Supa, at the relevant time has deposed that he prepared map Exh.34 of the scene of offence. In the cross-examination he stated that a broken door is shown in the map and for that his explanation is upper portion of the door was broken. Exh. 34 map also shows that when the said map was prepared, door of the kitchen room was found broken. Thus, from the spot of incident panchanama (Exh. 38) and map (Exh.34), the circumstance that door of the kitchen of house of the accused was found broken after the incident. This circumstance supports the defence plea of the accused that the deceased closed the door of the kitchen from inside and set herself on fire after pouring the kerosene and on hearing the noise of the Can of kerosene, accused No.1 had broken the door and attempted to extinguish the fire of the deceased. This circumstance therefore, creates

doubt about the allegation of the deceased in dying declarations Exh.32, Exh. 39 and in oral dying declaration to her father P.W.1 that accused No.1 her husband poured kerosene on her person and set her on fire. The evidence of court witnesses and other evidence do not corroborate the oral or written dying declarations' Exh.32 and 39.

(22) The prosecution has relied upon Chemical Analyser's Report Exh. 48. This report is in respect of analysis of articles referred to above seized under panchanama Exh. 38 of the spot of incident which were sent to the Chemical Analyser for analysis. This report shows that no kerosene was detected on articles at Exhs. 2,3 and 4 respectively. Match-box, burnt small cloth pieces and partially burnt small orange coloured cloth pieces. As no kerosene was detected on the above articles this C.A.report is of no help to the prosecution to state that kerosene was poured on the person of the deceased by accused No. 1 and then she was set on fire by the said accused as alleged.

(23) The case of the prosecution is that, all the

accused caused cruelty to the deceased saying that they did not like her and that was the motive to the accused No. 1 to commit murder of the deceased. To prove the said cruelty, prosecution has mainly relied upon the evidence of P.W. 1, father of the deceased. P.W.1, in his evidence at Exh. 27 deposed that within one month of marriage of the deceased, all the accused started illtreating her. They were saying her that they did not like her and they started starving her. He came to know about the same from the deceased whenever she met him. He personally tried to convince all the accused as well as deceased and this practice was continued for number of times. He deposed that inspite of above torturous treatment deceased resided at village Burudgaon for about six months. All the accused in spite of his convincing them subjected the deceased to cruelty continuously for six months. Then accused No. 1 took the deceased and brought her to his (P.W.1's) house. She stayed at his house for about 8 to 10 days. Then accused No. 1 intermittently came to his house. At that point of time deceased ventilated her grievance before him that accused illtreated her and they were saying her that they did not like her. Accused No. 1 brought

deceased to his (P.W.1's) house as he did not like her. He stated that his relatives then convinced the accused and accused thereafter gave assurance that they would not cause any illtreatment to the deceased. Thereafter, accused No. 1 took deceased to Supa. At that time he was serving in MSEB as helper. He stated that thereafter, deceased came to his house for Rakshabandhan Festival and she told him that accused Nos. 2 and 3 intermittently used to visit Supa and they abused her and accused No. 1 repeatedly was saying that he did not like her. Then accused No. 1 took her again to village Supa.

(24) In the cross-examination P.W. 1 has stated that all the accused were knowing to him even prior to marriage of his daughter. The marriage of his daughter was arranged with the help of mediators of both sides. Accused No.1 is helper in M.S.E.B. and he is permanent. Accused No. 3 is working as a nurse in private hospital of Nagar since 15-16 years. The family of the accused No.1 is consisted of his mother and sister only. Before arrange marriage of the deceased he got himself satisfied with the family of the accused and then he

gave invitation to them to see his daughter. Accused No.1 had first seen his daughter, he had approved his daughter and then talk of marriage had taken place. He stated that, his daughter was studied upto IX Std. He did not receive any letter of his daughter. He stated that he has not stated before police that accused No. 1 did not like the deceased and on that count he had brought the deceased to his house. He stated that he has not stated to police that his relatives attempted to convince the accused and accused assured that he would not cause any trouble to the deceased. Thus, above referred evidence of P.W. 1 that accused No. 1 did not like the deceased and therefore, he had brought the deceased to his house and that P.W. 1 and his relatives attempted to convince the accused and accused assured that he would not cause any trouble to the deceased is an improvement while deposing before the Court, and it is material omission in his statement before police. Considering said aspect and the above referred evidence of P.W. 1, that marriage of the deceased and accused No.1 was arranged marriage. He was knowing the accused prior to marriage of the deceased and only after accused No.1 approved the deceased, talk of marriage had taken

place, the fact that accused No.1 and the deceased started residing at Supa separately from accused No. 2 and 3 within six months of their marriage, at the place of service of accused No.1, the uncorroborated and vague evidence of P.W.1 is not sufficient to infer that the accused caused cruelty to the deceased within the meaning of cruelty defined under Section 498-A of the IPC as they were not liking the deceased as alleged. Therefore, it cannot be said that accused No.1 had motive to commit murder of the deceased due to said cruelty.

(25) Now coming to the defence of the accused, their defence is as stated in paragraph 4 and 4A (supra). However, at the cost of repetition their defence is that death of the deceased is suicidal. They have not caused cruelty to the deceased. The deceased poured kerosene on her person and set herself on fire by closing the door of kitchen from inside. Accused No. 1 broke open the door and extinguished the fire and at that time he sustained injuries to fingers of his hands. He gave information of the same in police station and that they have not committed any offence. False case is filed

against them.

(26) It has come in the evidence of Medical officer Mr. Andhale (Exh.59) a Court witness No.1 that on 02-09-2000 at 11.30 p.m., accused No. 1 had come in the Primary Health Centre, Parner. He examined him and found following injuries on his person :

- 1) Blisters and ulcer over both right and left fingure of and palm, hand.
- 2) Ulceration of both libs of mouth.

And then he issued Injury Certificate (Exh.60). Considering said injuries to both the hands and fingers and palm of accused No.1, it can be said that he tried to extinguish the fire of the deceased and therefore sustained burns. If accused No. 1 had intention to kill the deceased as alleged by the prosecution, he would not have extinguished the fire. Moreover, Exh. 55 Khabar lodged by accused No.1 in the police Station Parner shows that on the day of incident i.e. 02-09-2000 at 08.30 a.m. there was quarrel between accused No. 1 and the deceased. At that time the deceased went in the kitchen room and closed the door from inside. He heard the noise of the kerosene Can in her hand. He then

broke open the door of kitchen and the deceased was seen inflames and she had poured kerosene on her person and set her on fire. He removed the burning clothes on her person. Neighbor Kurlebai had come and she worn another sari to the deceased and the deceased sustained injury to her stomach and chest. Moreover, it is mentioned in the Khabar that accused No. 1 sustained burns to his fingers of both the hands and palm. This Khabar was given at 11.00 a.m. on 02-09-2000. From the above evidence, it can be said that there is substance in the defence of the accused that death of the deceased is suicidal, and that they have caused no cruelty to her.

(27) For all the reasons discussed above, on considering the above evidence, we hold that oral dying declaration allegedly made by the deceased to her father (P.W.1) and written dying declaration Exhs. 32 and 39 are not truthful, voluntary and free from any tutoring and as such they are not reliable. Therefore, the evidence adduced by the prosecution in the form of these dying declarations is not sufficient to state beyond reasonable doubt that death of the deceased is homicidal, and accused No. 1 is responsible for her

death and possibility of her death being suicidal, cannot be ruled out. So also, the evidence of P.W.1, father of the deceased is not sufficient to infer that accused caused cruelty to her. Therefore, we hold that prosecution has failed to prove offence under Sections 498-A read with Section 34 of IPC against all the accused and offence under Section 302 of IPC against accused No.1 beyond reasonable doubt. The Trial Court has rightly held so and rightly acquitted the accused of the said offences by the impugned Judgment and Order. The said view taken by the Trial Court is a reasonably possible view. Moreover, there is no error in appreciating the evidence by the Trial Court. Thus, there is no justifiable ground to infer with the impugned Judgment and Order. Therefore, appeal being devoid of merits, the same is liable to be dismissed. Accordingly we dismissed the same. Bail bonds, if any, of the accused stand cancelled.

[S. M. GAVHANE, J.]

[T. V. NALAWADE J.]