

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

CRIMINAL APPEAL NO.185 OF 2002

The State of Maharashtra .. Appellant
Through the Police Station Officer (Ori.Complainant)
Police Station Chaklamba,
Tq. Georai, Dist. Beed

Versus

1. Arun Appasaheb Narute, .. Respondents
Age-25 years, Occu-Agriculture,
R/o.Khalegaon, Tq. Georai,
Dist. Beed
2. Appasaheb S/o. Dhulaji Nartute,
Age-52 years, Occu. & R/o as above
3. Sau. Vithabai W/o. Appasaheb Narute,
Age-45 years, Occu-House Hold,
R/o. As above
4. Sau. Sangeeta W/o. Raosaheb Chormale,
Age-27 years, Occu-Household,
R/o.Revki, Tq.Georai,
Dist. Beed
5. Sau. Gangabai Ganesh Takle,
Age-23 years, Occu-House hold,
R/o. Bangali, Pimpla,
Tq.Georai, Dist. Beed

Mr.S.D.Ghayal, APP for the appellant
Mr.Shakil U. Shaikh, Advocate h/f Mr.R.D.Biradar,
Advocate for respondent Nos. 1 to 5

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

DATED : 07.09.2017

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

. The appellant/State has filed this appeal against the judgment and order dated 25.10.2001 passed by the Additional Sessions Judge, Beed in Sessions Case No. 82/2000 thereby acquitting the respondents (original accused Nos. 1 to 5) of the offences punishable under Sections 498-A, 302 and 201 r/w Section 34 of the Indian Penal Code (for short the IPC).

2. The prosecution case, in short, is as under:-

A] The informant Pramod PW-2 is the brother of the deceased Sandhya, who is resident of Dist. Beed. She was married to accused No.1 Arun on 04.05.1998. Accused Nos. 2 to 5 are respectively father, mother and married sisters of the accused No.1. The deceased was treated properly at the house of the accused for about 3-4 months after her marriage. It is alleged that after 3-4 months of her marriage whenever the deceased came to her parental house she disclosed that accused were ill-treating her saying that she could not do household work

and could not cook properly. Accused Nos. 4 and 5 were also harassing the deceased whenever they used to come to their matrimonial home i.e. house of accused Nos. 1 to 3. However, the deceased was convinced and sent to the house of the accused. She was brought for Diwali festival of the year 1999 at the house of PW-2 her brother. After one month of Diwali festival PW-2 reached the deceased to the house of accused. Accused Nos. 1 to 3 refused to accept her and asked for divorce. However, they were convinced and she was left at their house.

B] Further it is alleged that, on 10.04.2002 PW-2 had gone to the house of accused to bring the deceased Sandhya for the marriage of his cousin. At that time she told that accused asked her to bring Rs.50,000/- from her parental house for purchasing agricultural land and on that count they were harassing and ill-treating her. At that time she was pregnant of four months. So also, she disclosed that she was frustrated due to ill-treatment and harassment at the hands of accused. She was not sent with PW-2 at that time.

C] On 01.05.2000 PW-2 received message that deceased fell in the well and died. PW-2 lodged the complaint in Police Station Chaklamba alleging that deceased committed suicide due to frustration due to ill-

treatment and harassments to her at the hands of the accused for fulfilling their unlawful demand of Rs. 50,000/-. After receiving the said complaint, treating the same as FIR Police registered Crime No.15/2000 under Section 498-A and 306 r/w Section 34 of the IPC against the accused.

D] Prior to registering the crime as above Police Patil of village Khalegaon registered death of Sandhya (deceased) to Police Station Chaklamaba on 01.05.2000 vide his report (Exh.55), on the basis of which AD No. 8/2000 was registered. During enquiry of said AD case Police prepared inquest panchanama (Exh.41) and spot of panchanama (Exh.42). Dead body was referred for postmortem examination to the Primary Health Centre, Umapur. The Medical Officer Mr. Rajeshkumar Shinde (PW-3) conducted the postmortem examination and opined that death was caused due to cardio, respiratory arrest due to asphyxia due to throttling. After knowing said cause of death PW-2 Pramod gave his supplementary statement and on the basis of the same offence already registered under Section 306 of the IPC was converted to that under Section 302 and 201 of the IPC. The statements of other relatives of the deceased were also recorded by the Investigating Officer PSI-Ramesh Waghmare (PW-10).

E] After completion of the investigation police submitted charge-sheet against the accused in the Court of JMFC, Georai for the offence under Section 302, 498-A and 201 r/w Section 34 of the IPC. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Sessions Court, Beed.

F] The charge for the offence punishable under Sections 498-A, 302 and 201 r/w 34 of the IPC was framed against the accused to which they pleaded not guilty and claimed to be tried. Their defence is total denial. According to them deceased was married to accused No.1. They have not disputed relationship of accused Nos.2 to 5 with accused No.1. According to them death of the deceased was accidental as she fell in the well while fetching the water and that the brother and mother of the deceased demanded marriage expenses from them, after the death of the deceased and as they (accused) refused for the same, brother and mother of the deceased have falsely involved them in the case. They have not examined witness in defence.

G] The prosecution has examined in all 10 witnesses to bring home the guilt of the accused. Considering the said evidence, evidence in the form of Panchanama and

postmortem report (Exh.46) the trial Court held that prosecution has failed to prove the offences against accused with which they were charged and acquitted all the accused of the said offences by the impugned judgment and order, which is challenged by the appellant/State in this appeal.

3. We have heard learned APP appearing for the appellant/State and the learned Advocate appearing for the respondents/accused and with their able assistance we have perused the evidence adduced by the prosecution. So also, we have gone through the impugned judgment and order.

4. Since this is an appeal against the acquittal, before considering the evidence adduced by the prosecution, it is necessary to refer the guide lines given by the Apex Court in the case of Murlidhar alias Gidda and another Vs State of Karnataka, 2014(4)Mh.L.J. (Cri)353 regarding appreciation of evidence in case of appeal against acquittal and in the para-12 the Apex Court has held as under:-

"12. The approach of the appellate Court in the appeal against acquittal has been dealt with by this Court in Tulshiram Kanu Vs State, AIR 1954 SC 1, Madan Mohan Singh Vs State of U.P., AIR 1954 SC 637, Atley Vs State of U.P., AIR

1955 SC 807, Aher Raja Khima Vs State of Saurashtra, AIR 1956 SC 217, Balbir Singh Vs State of Punjab, AIR 1957 SC 216, M.G. Agrawal Vs State of Maharashtra, AIR 1963 SC 200, Noor Khan Vs State of Rajasthan, AIR 1964 SC 286, Khedu Mohton Vs State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade Vs State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav Vs State of Bihar, (1973) 2 SCC 424, Khem Karan Vs State of U.P., (1974) 4 SCC 603, Bisan Singh Vs State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai Vs State of Gujrat, (1978) 1 SCC 228, K. Gopal Reddy Vs. State of A.P., (1979) 1 SCC 355, Tota Singh Vs State of Punjab, (1987) 2 SCC 529, Ram Kumar Vs State of Haryana, 1995 Supp (1) SCC 248, Madan Lal Vs. State of J & K, (1997) 7 SCC 677, Sambasivan Vs State of Kerala, (1998) 5 SCC 412, Bhagwan Singh Vs State of M.P., (2002) 4 SCC 85, Harijana Thirupala Vs Public Prosecutor, High Court of A.P., (2002) 6 SCC 470, C. Antony Vs K.G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka Vs K. Gopalkrishna, (2005) 9 SCC 291, State of Goa Vs Sanjay Thakran, (2007) 3 SCC 755 and Chandrappa, Chandrappa Vs State of Karnataka, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate Court must bear in mind the following : (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate Court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate

Court is generally loath in disturbing the findings of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanor of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate Court in interfering with such conclusions is fully justified, and (iv) Merely because of the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate Court in the judgment of the trial Court."

5. There is no dispute that the deceased was married to accused No.1 on 04.05.1998. After marriage she went to the house of the accused at Khalegaon, Tq. Georai, Dist. Beed for cohabitation. While she was cohabiting at the house of the accused on 30.04.2000 her dead body was found in the well, in the field of the accused. The accused Nos. 4 and 5 are married sisters of accused No.1 and they had married prior to the incident. As per prosecution case the accused in furtherance of their common intention caused cruelty to the deceased. Death of the deceased is homicidal and that the accused

are responsible for her death.

6. In the first place we shall consider the evidence of Pws.2,4,5,6 and 7 on cruelty to the deceased. The evidence of PW-2 Pramod brother of the deceased is that after marriage the deceased was treated nicely for 2-3 months and thereafter, the father-in-law (accused No. 2), mother-in-law (accused No.3) of the deceased were ill-treating and beating her saying that she could not do the household work. The husband of the deceased was also ill-treating her on the said count. He stated that he came to know about the said ill-treatment from the deceased Sandhya when she had come to Beed after about 3-4 months of her marriage. His evidence further shows that he reached the deceased to her matrimonial house. At the time of Dipawali festival he brought deceased to his house. That time the deceased told him that her husband (accused No.1) father-in-law and mother-in-law were making demand of Rs.50,000/- for purchasing field. He took deceased to the village of accused after Dipawali, but accused No.1 her husband declined to allow her to stay at his house. Her husband insisted for divorce. He reached the deceased to the house of accused and returned to Beed. PW-2 also stated that on 10.04.2000 there was marriage of cousin, therefore, he had gone to bring the deceased for that marriage. The accused declined to send

the deceased and demanded Rs.50,000/- and accused did not send the deceased with him. On 30.04.2000 one Shinde from village of the accused came and told that the deceased expired by falling in the well. Then he alongwith his brother, mother, uncle and sister went to Khalegaon. The dead body was taken out of well and it was cremated after postmortem examination. He had given complaint/FIR (Exh. 44).

7. In the cross-examination PW-2 has stated that his sister Jyoti is given in marriage at the village Bangali Pimpla which is at the distance of 7 to 8 km. from the village Khalegaon of the accused. The marriage of the deceased was settled on mediation of his brother-in-law i.e. husband of his sister Jyoti. He stated that he had gone to the village Khalegaon to see the house and field of accused and after his satisfaction he decided the marriage of the deceased. Further he stated that after marriage deceased and accused No.1 her husband had come to his house for "Yeti-Jati" and thereafter both of them were sent after offering the presents. After the marriage the deceased and her husband had come to his house for about 3-4 times. That time they were staying at his house as per their convenience and wish and then he used to send at their house. The deceased and her husband were coming to his house after intervals of 3-4

months after marriage. They had come to his house for first Dipawali festival after marriage. That time he requested accused No.1 to keep (to allow her to stay) the deceased at his house for one month and accordingly she was allowed. The deceased never told him that she was not ready to go and reside at the house of the accused and she never said so. Accused No.1 was not coming to take the deceased to his house. He stated that sometimes he and sometimes his brother Pradeep (PW-7) used to go to the deceased at the house of accused. His brother PW-7 had gone to Khalegaon after 5 to 6 months of marriage. There was no talk between him and PW-7 after his coming from Khalegoan in respect of the deceased. PW-7 did not tell him anything about the deceased. He was telling things known to him about the deceased to his brother PW-7 and to his mother (PW-4). He stated that he did not lodge any complaint against the accused when the accused asked for divorce of the deceased. So also, he could not assign reason of absence of fact in the complaint regarding ill-treatment to the deceased on account of demand of Rs.50,000/- of the accused. He stated that he came to know about said demand of the accused before six months of the incident. So also, he could assign reason of absence of fact in complaint that on 10.04.2000 when he had gone to bring the deceased, the accused declined to send her and demanded Rs.50,000/-. Thus, the evidence

of PW-2 regarding demand of Rs.50,000/- by the accused on 10.04.2000 and earlier to that is material omission in the FIR lodged by PW-2. Moreover, PW-2 did not lodge any complaint about demanding divorce by accused from the deceased. Therefore, evidence of PW-2 regarding cruelty to the deceased on the grounds referred to above is not sufficient to state that any of the accused had caused cruelty to the deceased. On the contrary from his evidence it appears that relation between the deceased and the accused particularly the accused No.1 her husband were good and therefore, they (husband and wife) used to come to the house of PW-2 and used to stay at his house as per their convenience and wish and this was continued for about one year and hence evidence of PW-2 that deceased was treated nicely only for 2-3 months and then accused started ill-treating the deceased is not believable.

8. The evidence of PW-4 mother of the deceased is that the deceased was treated nicely for about 3 months after the marriage. Thereafter, the deceased was brought to their house and at that time she told that accused were ill-treating her on the ground that she could not do the household work properly. After panchami festival deceased went to her matrimonial home and again thereafter at the time of Dipawali festival she was

brought to her (witness's) house and it was first Dipawali after her marriage. Accused No.1 and deceased had come for that Dipawali. The deceased told that she was harassed and ill-treated by accused. PW-4 further deposed that her son Pramod (PW-2) reached deceased to her matrimonial home and PW-2 told that accused were beating the deceased. After the second Dipawali festival deceased was reached to the house of accused, that time accused refused to accept her saying that they did not desire to allow her to reside at their house. Accused asked to take the deceased back to their house. PW-2 told this fact to her on his returning. She stated that thereafter, PW-2 had gone to bring the deceased for marriage of her nephew. Accused refused to send her and asked for amount of Rs.50,000/-to purchase field. Accused No.1 demanded the said amount. PW-2 told her about the said demand. Then after 15 days deceased died. In the cross-examination PW-4 stated that she could not assign the reason why it is not mentioned in her statement dated 1.5.2000 before the Police that accused demanded Rs. 50,000/- to purchase the field. So also, she denied that she has deposed false that deceased was subjected to cruelty and was harassed by accused. She has also denied that accused never demanded money to purchase the field.

9. The evidence of PW-5 uncle of the deceased is

that deceased was treated nicely for 5-6 months after marriage. Deceased told her mother that accused were harassing her on the ground that she could not do the domestic work properly. At the time of Dipawali festival deceased was brought to her parental home and that time she told that accused demanded Rs.50,000/- to purchase field and PW-4 mother of the deceased told him about the said demand. In the cross examination he could not say that how many occasions he came to Beed and so also, he could not state the particular days, dates and months when he came to Beed. Admittedly, this witness is residing at Gade Pimpalgaon, Tq. Parali, Dist. Beed and parental house of the deceased is at Beed. When he could not tell days, dates and months when he had come to Beed, it cannot be said that he had occasion to meet the deceased or her mother (PW-4). So also, he does not claim that the deceased had told him about harassment to her by any of the accused on account of demand of Rs.50,000/- or on the ground that she could not do the domestic/household work properly. Therefore, his evidence is of no help to state that accused caused cruelty to the deceased.

10. The evidence of PW-6 who also appears to be relative of the deceased and who resides at Beed is that the deceased was treated nicely for 2-3 months after

marriage. Thereafter, she came to his house and told about the ill-treatment to her at the hands of accused Nos.1 to 5. He claims that the deceased told that accused were ill-treating for purchasing the field and that they were demanding Rs.50,000/-. Thereafter, she went to her matrimonial home and came for Dipawali festival to her parents house. At that time also she came to his house and told that all accused Nos. 1 to 5 were demanding Rs. 50,000/- for purchasing the field and on that count they were ill-treating her. In the cross-examination he could not tell the date on which the deceased had come to his house. He deposed that he stated in his statement dated 07.05.2000 recorded by police that after 2-3 months deceased came to his house and told about ill-treatment at the hands of accused on account of their demand of Rs. 50,000/- to purchase the field. But, he could not assign reason of absence of same in his said statement. Thus, his evidence regarding ill-treatment to the deceased for Rs.50,000/- by the accused is material omission in his statement before police and improvement while deposing before the Court.

11. The evidence of PW-7 Pradeep who is another brother of the deceased is that deceased was treated nicely for 3-4 months. Thereafter, she was ill-treated by her father-in-law (accused No.2) and mother-in-law

(accused No.3). He stated that when the deceased was brought to his house she told that her in-laws were ill-treating her saying that she could not do the household work properly. Further, he stated that at the time of second Dipawali festival when the deceased was brought to their house she told that her father-in-law and mother-in-law were demanding Rs.50,000/- and were ill-treating her on that count. The deceased was convinced and sent to the house of the accused. In the cross-examination he stated that deceased had come to his house for three times after marriage, but he could not give specific days, dates, months and year of her coming to his house. He denied that deceased was not ill-treated by the accused and accused did not make any demand of amount.

12. On perusal of the above evidence of Pws.2, 4 to 7 it is clear that according to PW-2 accused No.2 and 3 in-laws of the deceased ill-treated her saying that she could not do the household work, her husband also ill-treated her on the said count. Her in-laws were making demand of Rs.50,000/- for purchasing field and her husband accused No.1 insisted for divorce. Whereas the evidence of PW-4 is that accused were ill-treating the deceased on the ground that she could not do the household work properly and deceased was harassed by the accused and the accused were beating the deceased and

that accused No.1 demanded Rs.50,000/-. The evidence of PW-5 shows that all the accused demanded Rs.50,000/- and harassed her on the ground that she was not doing household work properly. The evidence of PW-6 is that all the accused ill-treated the deceased for demand of Rs. 50,000/- for purchasing the field. The said witness does not claim that she was harassed as she could not do the household work. The evidence of PW-7 shows that only accused Nos.2 and 3 demanded Rs.50,000/- and harassed the deceased as she could not do the household work properly. Thus, there is no consistency in the evidence of above all the witnesses in respect of demand of Rs.50,000/- by the particular accused for purchasing the field and causing ill-treatment to the deceased on the ground that she could not do the household work properly. It has come in the evidence of PW-1 Baburao that accused No.2 (father-in-law of the deceased) had purchased the Bagayat land at the time of marriage of accused No.1, that the said accused has sufficient income, he is well to do and his financial position is sound. This shows that land was already purchased at the time of marriage of deceased and therefore it was not necessary for accused to demand money from deceased. There is no dispute that the accused Nos. 4 and 5 are married sisters of the accused No.1. They are residing at their matrimonial house. Above said witnesses have not specifically stated about their

alleged role in causing cruelty to the deceased. No specific instance is given by the said witnesses stating that on a particular day and date accused Nos. 4 and 5 had come to their parental house and in a particular manner caused cruelty to the deceased.

13. It has come in the evidence of PWs-2,4 and 7 that the deceased and her husband used to come to the house of these witnesses. This shows that relation between deceased and accused No.1 her husband were cordial and therefore they used to come to the house of above witnesses i.e. parental house of the deceased.

14. For the reasons discussed above oral evidence of PWs-2,4,5,6 and 7 is not sufficient to infer that all accused or any of the accused caused cruelty within the meaning of Section 498-A of the IPC to the deceased. Therefore, we hold that prosecution has failed to prove that the accused have caused cruelty to the deceased. The trial Court has rightly held so.

15. Case of the prosecution is that death of the deceased was homicidal. To prove the same prosecution has relied upon the evidence of Dr.Shinde (PW-3) who has deposed that on 01.05.2000 he was Medical Officer at Primary Health Centre, Umapur. The police of Chaklamba

referred one dead body of the woman for postmortem examination. The dead body was of Sandhya the deceased. He conducted the postmortem examination on that day between 3.30 to 4.30 pm. On examination he found external injuries as follows:

Irregularly distributed bruises (finger marks) and crescentric abrasion on neck, on right side (finger nails marks) on front and side of the neck on right side and single brushed and single crescentric abrasion over left side of neck.

16. According to him on external examination he found that there was extra vasation of blood beneath of bruise. There was no evidence of other injuries. The above said injuries were antemortem. He stated that in his opinion cause of death was due to cardio respiratory arrest due to asphyxia due to throttling and accordingly he issued postmortem report (Exh.46). In the cross-examination his evidence as regards the cause of the death is not shattered as he has denied that, he issued false and incorrect report in collusion with the informant (PW-2) and that it was not a case of throttling. Exh.46 postmortem report also shows cause of death as deposed by Dr. Shinde and it also shows that the external injuries noticed by Dr. Shinde were found on the person of the deceased.

17. Dr. Shinde (PW-3) in the cross-examination

further stated that he could not say if a dead body, if thrown in the water will float over the water. He follows the medical jurisprudence of Parekh. As per medical jurisprudence if a man falls in a well the body will drawn and again come upside on the water for 4 to 3 times till the air in the body totally expels. Thereafter, the body sinks under water and floats over the water after about 8 to 10 hours. He stated that as per inquest it was a case of drowning. But according to him it was a case of throttling. He stated that it was necessary to examine the lungs to ascertain the cause of death in the present case. He denied that he did not mention about the detail examination of the lungs, and about the floating test of the lungs, though it was important. He stated that in view of the injuries mentioned in the column No.17 of the postmortem report particularly side of thumb and that of fingers, the person causing injury might have used his left hand. The nail injuries of fingers and thumb reveals the minor abrasion, but it reveals that sufficient force was used. He stated that in order to consider the nature of injuries, it is necessary to mention the position, and dimensions as well as directions of the injuries noted. He stated that it is not necessary that there should be fracture of hyoid bone in case of application of sufficient force. According to him when sufficient force

is used for throttling, the condition of hyoid bone, larynx, trachea and thyroid gland are to be noted. In the present case he has not noted the same. He admits that in case of throttling the position and condition of heart chambers plays an important role. In case of throttling one side chamber will be full of blood and another will be completely empty. He deposed that he has not noted that position in the postmortem report. In order to ascertain throttling the position and the condition of heart chamber is one of the important and material aspects. He has not noted the position beneath the trachea and larynx. There was no injury to the nose. He stated that there must be injury to larynx and trachea in case the blood was found oozing from nostrils and when there was no injury to the nose. In case of throttling there must be a evidence of synosis to over face, lips and tongue. This is also one of the important aspects to ascertain throttling. He stated that he has not noted the same in the postmortem report.

18. Doctor Shinde further deposed that eyes of the victim of throttling are generally protruded but when the dead body in the present case was brought to him, its eyes were closed. The eyes are always closed in the case of drowning. He has stated that he has not mentioned in the postmortem report as to if the tongue was swollen or

not. He admits that the position of tongue is important factor to ascertain the drowning. He has denied that he has noted the findings in postmortem report without examination of the dead body and only on going through the findings mentioned in the book. He also admits that provisional certificate showing cause of death must be issued immediately after the completion of postmortem examination. But, he has not issued the provisional certificate showing the cause of death. Considering the above evidence of the doctor the fact that initially PW-2 brother of the deceased had lodged FIR (Exh.44) that the deceased committed suicide and the accused abetted her to commit suicide and the fact that the prosecution has failed to prove that the accused in furtherance of their common intention caused cruelty to the deceased and as such they had motive to commit the murder of the deceased the above evidence is not sufficient to state beyond doubt that death of the deceased was homicidal. Considering the circumstances noted in the panchanama of spot of incident that there was a bucket with rope, one pitcher, one basket and one sickle lying near the well the possibility of falling in the well of deceased while fetching the water and as such her death being accidental cannot be ruled out.

19. Once it is held that prosecution has failed to

prove that death of the deceased is homicidal and possibility of her accidental death cannot be ruled out it cannot be said that the accused are responsible for death of the deceased. Assuming for the sake of arguments that prosecution has proved that death of the deceased is homicidal, let us consider whether prosecution has proved that the accused are responsible for her death. There is no direct evidence to show that the accused caused death of the deceased. To connect the accused with death of the deceased the prosecution has relied upon the cause of death given in the postmortem report (Exh.46). The said cause of death is, death due to cardio respiratory arrest due to asphyxia due to throttling. The said has been disbelieved as discussed above. As discussed earlier the evidence of Pws. 2,4,5,6 and 7 also does not show that the accused caused death of the deceased by throttling and then threw the dead body in the well.

20. The prosecution has relied upon the evidence of PW-8 Krishna who had allegedly seen accused No.1 near the well in which the dead body was found in frightened condition on the day of incident. Said witness has not supported the prosecution and he has simply stated that on that day nobody came to the well when he was working there. He has also denied the portion marked-A in his statement before Police that accused No.1 had come to the

well and he was frightened. The said portion marked-A is not proved by the prosecution. Therefore, evidence of said witness is of no help to the prosecution to connect the accused with the death of the deceased. It has come in the evidence of PW-1 that at the time of incident accused No.1 had gone to Aurangabad for B.P.Ed. examination. So also Investigation Officer has admitted that during enquiry of A.D. it was transpired that accused No.2 and his wife accused No.3 had gone for weekly Bazar. Moreover, on the day of incident accused Nos.4 and 5 were residing at their matrimonial house. Therefore, it cannot be said that accused are responsible for death of the deceased. We, therefore, hold that prosecution has failed to prove that the accused have caused death of the deceased.

21. As prosecution has failed to prove that the accused have caused death of the deceased it cannot be said that they threw the dead body of the deceased in the well with intention of screaming themselves from the legal punishment of offence of murder of the deceased, so as to attract offence under Section 201 of the IPC against the accused.

22. Thus, we hold that the prosecution has failed to prove offences under Sections 498-A, 302 and 201 r/w

Section 34 of the IPC against the accused beyond reasonable doubt. The trial Court has properly appreciated the evidence and rightly held that the the prosecution has failed to prove said offence against the accused beyond reasonable doubt and acquitted the accused of the said offence by the impugned judgment and order. The view taken by the trial Court is reasonably possible view and it is not the case that there is an error in appreciating the evidence. Therefore, there is no ground to interfere with the impugned judgment and order acquitting accused. Therefore, appeal being devoid of merits the same is liable to be dismissed. Accordingly we dismiss the same. The bail bonds, if any, furnished by the accused shall stand cancelled.

[S.M. GAVHANE, J.]

[T.V. NALAWADE, J.]