

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 01/08/2019****Judgment delivered on : 20/08/2019****CRA No. 2295 of 1996**

- Madhusudan son of Ramsahay Tamboli, aged 32 years, R/o Bajrang Nagar, Takhatpur, P.S. Takhatpur, District Bilaspur (MP) (Now CG)

---- Appellant**Versus**

- State Of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	:	Shri B.P. Sharma and Shri M.L. Saket, Advocates.
For Respondent/State	:	Shri Santosh Bharat, P.L.

Hon'ble Shri Gautam Chourdiya, J**C A V Judgment**

This appeal arises out of judgment of conviction and order of sentence dated 17th December, 1996 passed by V Additional Sessions Judge, Bilaspur (M.P.) in ST No.24/96 whereby the appellant has been convicted under Sections 498A and 304B of IPC and sentenced to undergo RI for seven years under Section 304B of IPC.

02. Brief facts necessary for adjudication of this appeal are that marriage of appellant Madhusudan was solemnized with deceased Aarti Tamboli in the year 1990 i.e. about five years prior to her death on 19th April, 1995. As per Ex.P/9 merg intimation lodged by Constable Ram Naresh Dwivedi, death of Aarti Tamboli was due to burn injuries. After merg enquiry, FIR (Ex.P/10) was registered on 9.5.1995 under Section 304B of IPC by Sub Inspector of Police Station – Takhatpur. During investigation statements of the witnesses were recorded which revealed that after marriage and prior to death of the deceased, she

was being subjected to cruelty and harassment by the accused/appellant and his family members for demand of dowry as a result of which she committed suicide by pouring kerosene on her body and setting herself ablaze. Postmortem on the body of the deceased was conducted on 20.4.1995 vide Ex.P/4 by PW-6 Dr. R.K. Verma who noticed 90% superficial burn on the body of the deceased. In his opinion, the cause of death was extensive ante-mortem burn resulting in hypovolumic shock. After completion of usual investigation, charge sheet was filed against the appellant Madhusudan (husband), Rameshwar Tamboli (brother-in-law), Rukhmani Tamboli (sister-in-law) and Brijbai (mother-in-law) under Section 304B/34 of IPC. The trial Court framed charges under Sections 498A and 304B of IPC against the accused persons, which were denied by them, they pleaded innocence and prayed for trial.

03. So as to hold the accused persons guilty, the prosecution examined as many as 10 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, they examined five witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting Rameshwar Tamboli (brother-in-law), Rukhmani Tamboli (sister-in-law) and Brijbai (mother-in-law) of all the charges, convicted and sentenced the accused/appellant as mentioned

in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that from the statements of the prosecution witnesses it is quite clear that there has never been any demand of dowry on the part of the appellant or his family members from the deceased or her family members at any point of time.
- That the letters (Ex.D/2 to D/8 & D/22 to D/47) written by the deceased and the appellant to each other and other family members go to show that relations between the appellant and the deceased were cordial.
- That as regards the offence under Section 304B of IPC, the basic ingredient for attracting this offence i.e. soon before her death she was subjected to cruelty, is missing in this case. After the burn incident, it is the appellant and his family members who got her admitted in hospital after giving intimation in this regard to her family members.
- That the said incident took place on 19.4.1995 when the deceased was getting ready for going to her parental house for attending some family function and as per her own dying declaration (Ex.D/220) recorded by DW-3 R. Tigga, Sub Inspector, she caught fire accidentally from a burning lamp as at the relevant time the electricity had gone off. This fact has been duly proved by DW-1 P. Nageshwar Rao and DW-2 Punnilal Sahu.
- That this apart there is also oral dying declaration made by the

deceased before DW-5 Dr. U.S. Benerjee wherein she categorically stated to have sustained burn injuries accidentally while lighting chimney and the said evidence remains unrebutted and lends support to the defence of the appellant.

- That it has come in the evidence of father of the deceased PW-1 Lakhan Lal Pasari that the deceased had earlier suffered two miscarriage and for the third time when she conceived, she was anxious and afraid of her miscarriage again.
- That the statement of PW-3 Bhupendra, maternal uncle of the deceased, being not in consonance with the other oral and documentary evidence available on record cannot be believed.
- That presumption as to dowry death would only get activated upon the proof of the fact that the deceased was subjected to cruelty or harassment for or in connection with any demand of dowry by the accused and that too, in the reasonable contiguity of death.
- That on the same set of evidence available on record, other co-accused namely Rameshwar Tamboli (brother-in-law), Rukhmani Tamboli (sister-in-law) and Brijbai (mother-in-law) have been acquitted of all the charges by the trial Court and no appeal against their acquittal has been preferred either by the complainant party or the State.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Bajinath and others Vs. State of MP, (2017) 1 SCC 101; Banarsi Dass and others Vs. State of Haryana, (2014) 15 SCC 485; Major Singh and another Vs.***

State of Punjab, (2015) 5 SCC 201; Sher Singh Vs. State of Haryana, (2015) 3 SCC 724 and the decision of this Court in ***Deepak Kumar Mishra Vs. State of MP (Now CG), 2011 (4) CGLJ 156***.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant, which needs no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. In this case, it is not in dispute that marriage of the deceased Aarti Tamboli was solemnized with the appellant Madhusudan on 20.6.1990 as per Hindu rites and customs and she died in her matrimonial home on 19.4.1995 due to burn injuries under unnatural circumstances. For bringing home offence under Section 304B of IPC, the following ingredients are required to be proved beyond reasonable doubt:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances and

(ii) is within seven years of her marriage and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under [Section 498A](#) of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The explanation to this Section expositis “cruelty” as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

09. So far as offence under Section 304B of IPC is concerned, the first two ingredients i.e. death of the woman concerned by burn injury other than in normal circumstances within seven years of her marriage have undoubtedly been proved by the prosecution. However, now it is to be seen from the evidence on record whether the third ingredient i.e. soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry, has been proved by the prosecution or not.

10. Section 113B of the Evidence Act enjoins a statutory presumption as to dowry death in the following terms:

“113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, “dowry death” shall have the same meaning as in [section 304B](#) of the Indian Penal Code (45 of 1860)”

Noticeably this presumption as well is founded on the proof of

cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

11. Keeping in view the above settled legal position, this Court proceeds to appreciate the evidence, oral and documentary, available on record.

12. In this case, all the family members of the appellant including the appellant, his elder brother Rameshwar Tamboli, sister-in-law (Bhabhi) Rukhmani and mother Brijbai were reported to have committed cruelty against the deceased in connection with demand of dowry, thereby compelling her to commit suicide.

13. The prosecution case is mainly based on oral evidence of PW-1 Lakhan Lal Pansari (father of the deceased), PW-3 Bhupendra Kumar Mahobiya (maternal uncle of the deceased), PW-4 Sushila Pansari (mother of the deceased), PW-5 Dilip Pansari (brother of the deceased) and PW-6 Dr. Rajnikant Verma, autopsy surgeon.

14. It is not disputed by the parties that on the same set of evidence, accused Rameshwar Tamboli (brother-in-law), Rukhmani Tamboli

(sister-in-law) and Brijbai (mother-in-law) have been acquitted of all the charges by the trial Court and no appeal against their acquittal has been preferred either by the complainant party or the State. In these circumstances, the evidence on record needs to be scrutinized with great care and caution to see whether the prosecution has been able to prove guilt of the appellant/husband beyond all reasonable doubt.

15. According to PW-1 Lakhan Lal Pansari, father of the deceased, during about five years of her matrimonial life, the deceased visited her parental home 8-10 times and at no point of time she made any complaint regarding cruelty being meted out to her by the appellant or his family members or any dispute with them. No report was made by them to the police regarding cruelty or harassment by the appellant or his family members to the deceased nor any social meeting was ever convened in this regard. In his deposition, he does not speak about any demand of dowry by the appellant. In para-5 he admits that he has no knowledge as to how the deceased died and further expresses his apprehension that she might have been set on fire for dowry.

16. From the statements of PW-1 Lakhan Lal Pansari, PW-3 Bhupendra Kumar Mahobiya (maternal uncle of the deceased) and PW-4 Sushila Pansari (mother of the deceased), it is seen that from the date of marriage of the deceased i.e. 20.6.1990 up to two years, no any cruelty was committed by the appellant or his family members, meaning thereby that from June, 1990 to June, 1992 there was no dispute between the appellant and the deceased regarding any demand of dowry and no cruelty was committed during this period

against the deceased.

17. PW-1 Lakhan Lal, in para-2 states that about four months prior to her death, the deceased had come to their home as she was not well, she was got treated by Dr. Baldau Soni (PW-2) who informed that she is suffering from phobia and she was treated for that. PW-2 Dr. B.R. Soni states that Munnibai (deceased) was brought to him in December, 1994 and during examination he noticed one bluish contusion over her abdomen and on being asked, she did not disclose as to how she suffered that injury. However, there is no medical paper to show as to how old was the said contusion over the abdomen of the deceased. He has denied the suggestion in cross-examination that in his police statement Ex.D/189 he had stated that Munni was very much afraid. He states that since all the tests were normal, he treated her for phobia. However, his evidence is silent on the point as to for what kind of phobia she was being treated for. He further states that the injury found on the abdomen of the deceased could be caused due to rubbing, falling or for any other reasons.

18. PW-3 Bhupendra Kumar Mahobiya, maternal uncle of the deceased, states that on being informed by PW-2 Dr. B.R. Soni that the deceased has some family problems, when he enquired from the deceased she disclosed that her mother-in-law has kept all her jewellery and once she had also beaten her for *Mangalsutra* and she is also demanding Rs.25,000/- for business or service. However, it is to be noted here that in his statement PW-2 Dr. B.R. Soni has not stated that he was informed by the deceased about ill-treatment being meted

out to her in her matrimonial home.

PW-3 Bhupendra Kumar further states that the deceased was being harassed by the appellant and his mother for bringing less gold in dowry and that her mother-in-law Brijbai used to ask for her *Mangalsutra* and on her refusal, she used to beat her (deceased). When the appellant used to beat the deceased, the other accused persons including father of the appellant Ramsahay would not interfere. According to him, this fact was narrated to him by the deceased when she came to Bilaspur for delivery.

19. In para-18 PW-1 Lakhan Lal states that the deceased was invited for a family function i.e. *Samdhan Bhent* to be held on 20.4.1995. Since the appellant Madhusudan was busy in Ph.D. work, on 19.4.1995 at about 11.30 am his brother Rameshwar (acquitted accused) informed telephonically at the parental home of the deceased that Madhusudan would not be able to come and therefore, brother of the deceased be sent for taking the deceased to her parental home, to which mother of the deceased agreed and said that she is sending brother of the deceased. It is worthwhile to note here that at this point of time there was no dispute or quarrel between the appellant or his family members and the deceased.

20. PW-5 Dilip Pansari, brother of the deceased, admits in para-6 that on the date of incident i.e. 19.4.1995 acquitted accused Rameshwar had telephoned and asked for taking the deceased to her parental home and on the same day he went to Takhatpur. However, when he reached Takhatpur, he came to know through Brijbai

(acquitted accused) that the deceased had suffered burn injuries and is admitted in Bilaspur hospital, on which he rushed to Bilaspur hospital. He further states that on being asked, the deceased told him that he got late by half an hour otherwise she would not have been in such a condition and further looking at her husband told that they should not have done so and thereafter, closed her eyes.

21. From the evidence of PW-1 Lakhan Lal, PW-3 Bhupendra Kumar Mahobiya, PW-4 Sushila Pansari and PW-5 Dilip Pansari, it is clear that no any specific date, time or place or incident regarding demand of dowry or cruelty in connection therewith has been mentioned by these witnesses either in their diary statements or the Court statements. There is no evidence to show that the appellant ever demanded any dowry from the deceased or her family members. Only general and omnibus allegations regarding harassment and cruelty in connection with dowry have been leveled by these witnesses. From the evidence on record, it transpires that at the time of marriage, no demand of dowry was made by the appellant or his family members; after marriage in June, 1990 till June, 1992 when one male child was delivered, there was no quarrel or dispute with respect to demand of dowry; on the date of incident i.e. 19.4.1995 no any quarrel or dispute took place between the appellant and the deceased and that on the request of Rameshwar (acquitted accused), brother of the deceased was coming to Bilaspur to take his sister/deceased for attending some family function at her parental home.

22. In para-21, PW-1 Lakhan Lal admits that landline number of his

house is 24082 and as per Ex.D/50 on the same day after the deceased got burnt and was taken for treatment to hospital when she was alive, information regarding the burn incident was conveyed to her family members. PW-5 Dilip Pansari also admits that when he reached hospital the deceased was alive. Thus, soon after the incident, family members of the deceased were duly informed about the same. This apart, immediately after the burn incident DW-5 Dr. U.S. Benerjee was called for treatment of the deceased at home. He states that just after the burn incident, father of the appellant came to his home and informed that his daughter-in-law has got burnt and on his request, he immediately rushed to the spot and found her lying on cot with her whole body covered with a bedsheet except the face. On being asked she informed that while she was lighting chimney, she caught fire accidentally. He states that on his advice she was taken to Bilaspur for better treatment.

DW-5 was cross-examined by the prosecution and various questions were put to him where he explained that looking to serious condition of the deceased and the medical facility available at Community Health Center, Takhatpur, he did not treat her and advised for taking her to Bilaspur for better treatment.

23. As per PW-5 Dilip Pansari, in paras 6 & 7 he admits that when he reached Takhatpur for taking the deceased to her parental house for attending *Samdhan Bhent* family function, her mother-in-law Brijbai (acquitted accused) informed him about the burn incident and taking of the deceased to Bilaspur hospital for treatment and when he reached

Bilaspur hospital he found his sister/deceased lying there alive in burnt condition. Thus, the statement of DW-5 Dr. Benerjee that looking to the serious condition of the deceased she was advised to be taken to Bilaspur finds corroboration from the statement of PW-5 Dilip Pansari.

PW-5 has further stated that in the hospital on being asked by him, the deceased told him that he got late by half an hour otherwise she would not have been in such a condition and further looking at her husband (appellant) told that they should not have done so. However, no such statement was made by this witness before the police vide Ex.D/217 when his statement was recorded on 7.5.1995. Thus, this improvement in the Court statement makes his evidence doubtful. In his statement Ex.D/217, no any specific allegation, specific date, time or place is mentioned and only it is mentioned that Rameshwar (brother-in-law), sister-in-law, mother-in-law Brijbai and husband of the deceased used to commit *marpeet* with her and were demanding Rs.80,000/- for repayment of loan. However, no any statement is made by the prosecution witnesses that Rs.80,000/- was being demanded to repay the loan amount.

24. During approximately five years of marriage, no any physical or mental cruelty is proved to have been caused to the deceased by the appellant. As per evidence, she never left her matrimonial home for long time. During five years of marriage, she visited her parental home only for 8-10 times occasionally. Her father (PW-1 Lakhan Lal) admits that the letters of Ex.D/2 to D/8 were written by her daughter/deceased. He also admits that the letters/greetings of Ex.D/22 to D/47 were

written by him to the deceased, the appellant and parents of the appellant. He also admits that greetings/letter of Ex.D/48 & D/49 were written by the appellant.

25. PW-4 Sushila Pansari, mother of the deceased, also admits in para-13 that in her entire matrimonial life, the deceased visited her parental home to attend Teej-Tyohar (festivals) and other family functions alongwith her husband. PW-5 Dilip Pansari states that the deceased had complained about the ill-treatment by the accused persons many times but he did not lodge any report against them nor did give any notice to them or convene any social meeting in this regard. In para-13 he admits that letter of Ex.D/6 was written by the deceased. It is to be noted here that in this letter dated 7.5.1994 the deceased has nowhere mentioned about any ill-treatment being meted out to her by the appellant or any of his relatives.

26. From perusal of the letters/greetings Ex.D/2 to D/47 and from Ex.D/90 to D/215 written by the appellant, deceased, father-in-law of the appellant, one Seema and other relatives, it is seen that not even a single word is mentioned in these documents to suggest that there had ever been any demand of dowry by the appellant or his family members. All these letters/greetings go to show that relations between the family of the appellant and that of the deceased were cordial.

27. DW-4 Surinder Kaur Maddad also belongs to Raipur where the parental home of the deceased is situated. Both the deceased and this witness were college friends. She resides beside the house of the accused persons at Takhatpur. According to her, the deceased never

complaint against the accused persons and they were living happily. She states that she being Ward Member (Parshad) has good relations with all the people of the locality.

28. As per DW-5 Dr. U.S. Benerjee, when he reached the spot the deceased made oral dying declaration before him that she caught fire accidentally while lighting the chimney. It is the defence of the accused persons that on the date of incident while the deceased was getting ready for going to her parental home for attending some family function and was lighting chimney as electricity had gone off at that time, she caught fire accidentally and suffered burn injuries which unfortunately led to her death. It is a settled principle of law that defence is required to be proved on the basis of preponderance of probabilities, nor beyond reasonable doubt. In this case, the said defence of the accused persons appears probable in view of statements of DW-5 Dr. U.S. Benerjee, DW-1 P. Nageshwar Rao & DW-2 Punnilal Sahu, employees of Electricity Board who have proved that at the relevant time, electricity had gone off in the locality and they went there to repair the same. Further, the letters/greetings exchanges between the appellant, deceased and their family members lend support to the defence because in all these documents there is not even a whisper of cruelty or ill-treatment by the accused to the deceased. From the overall evidence available on record and the manner in which the incident occurred, the conduct of the appellant also appears to be natural where soon after the incident a local doctor DW-5 Dr. U.S. Benerjee was called and on his advice the deceased was shifted to Bilaspur hospital for better treatment and in the meanwhile, family

members of the deceased were also telephonically informed about the incident. If the intention of the appellant had been otherwise, he would have caused delay in getting treatment to the deceased and informing her family members whereas he acted promptly to save the life of the deceased and according to PW-5 Dilip Pansari when reached hospital, the deceased was alive.

29. It is not in dispute that on the date of incident, brother of the deceased (PW-5) was coming from Raipur to Takhatpur to take his sister/deceased to her parental house for attending some family function. Had there been any dispute or quarrel between the appellant and the deceased, she would not have been allowed to go to her parental home on the same day.

30. So far as the injury noticed by PW-2 Dr. B.R. Soni on the body of the deceased i.e. one bluish contusion over her abdomen, is concerned, the doctor has nowhere stated in his evidence about its nature, whether it was danger to life, limb or health and rather in cross-examination admitted that the said injury could be caused by rubbing, falling or for any other reasons. The entire evidence on record goes to show that during her five years matrimonial life, no such incident occurred or no such injury which is danger to life, limb or health (whether mental or physical) was caused by the appellant to the deceased which was likely to drive her to commit suicide. Though as per PW-3 Bhupendra Kumar Mahobiya once the deceased was beaten by the accused as she had kept *Pata* (a wooden piece) on the Fridge but the injury so sustained by the deceased was not of grievous nature

and not caused in connection with demand of dowry. Such dispute or quarrel are common in every household and the same cannot be considered as cruelty against the deceased compelling her to commit suicide.

31. One of the main arguments of learned counsel for the appellant is that dying declaration of the deceased was recorded by R. Tigga, Sub Inspector, who has been examined as DW-3 wherein she has stated to have sustained burn injury accidentally. However, the said dying declaration is not acceptable due to conduct of DW-3. The trial Court has not accepted the dying declaration recorded by him. It is not disputed by the prosecution that DW-3 was directed to reach hospital after receiving information from Chief Hospital, Bilaspur on 19.4.1995 regarding burning of Aarti Tamboli vide Ex.D/218 and thereafter, DW-3 reached the hospital and recorded dying declaration Ex.D/220 of the deceased. Thereafter, DW-3 wrote a letter Ex.D/221 to Tehsildar for recording dying declaration but when Tehsildar reached the hospital, the deceased was not in a position to give statement and accordingly, the Tehsildar made endorsement to this effect on Ex.D/221. He admits that said dying declaration was not sent to concerned police station and was kept by himself. For this act of DW-3, he was line attached and thereafter no enquiry was conducted. No allegation is leveled against the accused persons by the deceased as per entry made in Rojnamchasanha No.1128 by DW-3. Thus, in the facts & circumstances of the case, conduct of DW-3 appears to be doubtful and the trial Court has rightly not believed the said dying declaration. Though the said dying declaration being doubtful due to conduct of

DW-3 is not acceptable, however, the oral dying declaration made before DW-5 Dr. U.S. Benerjee by the deceased that she caught fire accidentally while lighting chimney cannot be doubted for the reasons as discussed above.

32. I have gone through the judgments relied upon by learned counsel for the appellant wherein the settled principle of law has been reiterated that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to bring home charge under Section 304B and 498A of IPC and presumption u/s 113B of Evidence Act can be invoked only when the prosecution proves beyond all reasonable doubt that soon before her death the deceased was subjected to cruelty or harassment in connection with dowry demand.

33. In the case in hand, what emerges from the appreciation of the overall evidence adduced by the prosecution and the defence is that no any demand prior to marriage or at the time of marriage was made by the accused/appellant or his family members from the deceased or her family members. Even after 2 ½ years of marriage, there was no such demand. Only general and omnibus allegations regarding demand of dowry have been leveled by father, mother, brother and maternal uncle of the deceased. No specific date, time or place has been mentioned by them in this regard. They admit that no report was made by them to the police against the accused persons regarding demand of dowry, no notice was ever given to them and also no social meeting was convened in this respect.

As per postmortem report, no injury was found on the person of

the deceased which could suggest that soon before her death she might have been subjected to cruelty or ill-treatment. One old contusion found on her body by PW-2 Dr. B.R. Soni is not conclusive in nature and as discussed above, the same cannot be considered as cruelty against the deceased. Number of letters/greeting, as detailed in the preceding paragraphs, exchanged between the appellant, the deceased and her relatives, have been filed by the defence which reflect that relations between the appellant and the deceased were cordial. However, no such letter has been produced by the prosecution to establish that the deceased was being harassed or ill-treated by the appellant or his family members for dowry.

34. The un rebutted evidence on record goes to show that on the date of incident the deceased was getting ready for going to her parental home for attending some family function and her brother Dilip Pansari (PW-5) was coming from Raipur to take her and at that point of time, electricity of the locality had gone off. In these circumstances, presumption under Section 113B of the Evidence Act cannot be invoked as there is nothing on record to show that soon before her death the deceased was subjected to cruelty/harassment in connection with demand of dowry. Further, considering the conduct of the appellant where soon after the burn incident, a local doctor (DW-5 Dr. U.S. Benerjee) was called, on his advice she was immediately shifted to Bilaspur hospital for better treatment and meanwhile, information about the said incident was conveyed to family members of the deceased, the defence of the accused that at the relevant time the deceased while lighting chimney caught fire accidentally appears to be

probable one.

35. On the same set of evidence, other accused persons namely Rameshwar Tamboli (brother-in-law), Rukhmani Tamboli (sister-in-law) and Brijbai (mother-in-law) have been acquitted of all the charges by the trial Court and no appeal against their acquittal has been preferred either by the complainant party or the State and as such, the judgment of their acquittal has attained finality. There is also no evidence against the appellant proving his involvement in the crime in question. Though the manner in which the incident occurred raises suspicion against the appellant but it is a well settled principle of law that graver the offence is, higher is the degree of proof and the suspicion howsoever strong, cannot take the place of proof. In this case, the prosecution has failed to prove guilt of the appellant beyond all reasonable doubt and being so, the benefit of doubt has to be credited to the appellant, thereby entitling him of acquittal of all the charges.

36. Resultantly, the appeal succeeds and is allowed. The impugned judgment, insofar as it relates to the appellant herein, is set aside and he is acquitted of the charges under Sections 498A and 304B of IPC. He is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.P.C.

**Sd/
(Gautam Chourdiya)
Judge**