

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.345 OF 2009

The State of Maharashtra
(At the instance of Sahakar
Nagar police station)

... Appellant.

V/s.

1. Chetan Vijay Shah
Age about 28 years
Occupation business

...

2. Vijay Sukhchand Shah
Age about 60 years
Occupation Well to do

...

3. Sau.Shobhaben Vijay Shah
Age about 28 years.
Occupation business

...

All are R/a Flat No.13,
Vishnu Vihar Society
Bibwewadi Kondhwa Road
Pune - 37.

.... Respondents

Mrs.Anamika Malhotra, APP for the Appellant-State.

Mr.Nitin P. Deshpande for Respondent Nos.1 to 3.

CORAM : MADHAV J. JAMDAR, J.

DATE OF RESERVE : 10TH DECEMBER, 2020
DATE OF PRONOUNCEMENT : 22ND DECEMBER, 2020
(THROUGH VIDEO CONFERENCING)

JUDGMENT :

1. By this appeal, the judgment and order dated 16/09/2008 passed by the learned Assistant Sessions Judge-7, Pune in Session Case No.560 of 2005 is challenged. By the said Judgment and Order, the accused were acquitted of offences punishable under section 498-A, 306 read with Section 34 of Indian Penal Code (for short "IPC").

2. The prosecution case as revealed from the record is as under :

(i) On 30/06/2001, marriage took place between deceased – Swapnali Chetan Shah and Accused No.1 - Chetan Vijay Shah. The said marriage took place at Nipani. On 16/05/2002 daughter Kashmira was born. Accused No.1 is husband, accused No.2 is father-in-law and accused no.3 is mother-in-law of deceased Swapnali.

(ii) It is prosecution case that deceased was treated well initially for a period of 1 ½ years, however, thereafter she was ill treated and she was harassed and tortured continuously and as a result of said harassment and torture the Deceased committed suicide. The reasons or occasions or instances of said harassment and torture are as follows :

(a) Not giving appropriate and proper gifts in the marriage and not giving proper honour to the guests.

(b) The deceased complained about mental and physical harassment during pregnancy.

(c) According to the accused, in the marriage of Abhijit, cousin of deceased, appropriate gifts were not given to them and, therefore,

accused demanded Rs.10,000/- and accepted Rs.5,000/- from P.W.2.

(d) Not giving appropriate invitation on occasion of house warming ceremony of Maternal Uncle of the deceased.

(e) The accused made demand of Rs.1,00,000/- for purchase of the car and P.W.1 paid Rs.25,000/- to the accused. and, therefore, the deceased was subjected to further harassment as lesser payment was made than demand.

(f) The deceased was tortured on the pretext of not performing the work properly and not looking after financial affairs properly.

(g) The deceased was subjected to cruelty on account of birth of daughter.

(iii) It is the prosecution case that on 14/06/2005 at about 10.30 am accused no.1 telephonically called the parents of deceased. The phone call was answered by mother of deceased and at that time accused no.1, complained about the deceased, in respect of not performing household work properly and that she was not looking after finance properly. At that time the mother of deceased expressed her desire to talk with deceased, however, accused no.1 disconnected the phone call.

(iv) It is further case of the prosecution that on 15/06/2005 at about 12.15 pm, accused no.1 telephonically informed the parents of the deceased about consumption of poisonous substance by the deceased. The parents of deceased along with relatives reached Rao Nursing Home at Pune at about 5.30 pm where deceased was hospitalised. The deceased was in ICU and

was undergoing treatment and at that time through gestures, she indicated that she committed suicide due to cruelty and torture inflicted to her by accused persons.

(v) It is further case of the prosecution that during the course of treatment deceased expired on 22/06/2005 and after her funeral, her father – Popatlal Gujar i.e. P.W. 1 lodged FIR (Exhibit-14) with Sahakar Nagar police station, Pune and, accordingly, offence under section 498-A, 306 read with 34 of IPC was registered against accused vide C.R.No.530 of 2005.

3. During the course of investigation, the police recorded statements of various persons. The police authorities drew spot panchnama (Exhibit-48) and seized bottle of poison vide seizure panchnama (Exhibit-49). The accused were arrested on 27/06/2005. As offence under section 306 of IPC was exclusively triable by the Court of Sessions, the matter was committed to the Sessions Court by order dated 18/10/2005 passed by the Learned J.M.F.C., Court No.8, Pune, and registered as Sessions Case No.560/2005.

4. The charge under sections 498-A, 306 read with section 34 of IPC was framed against accused on 30/11/2005. The accused did not plead guilty and claimed to be tried.

5. During trial, the prosecution examined eight witnesses. The relatives of the deceased examined as witnesses are P.W. 1 – Popatlal Ramchandra Gujar, father of deceased, P.W.2 – Bandulal Gujar, Uncle of the deceased, P.W.3 – Abhijit Bandulal Gujar, cousin of deceased and P.W.8 – Manisha Rajesh Shah, Maternal Aunt of deceased. The prosecution also examined as P.W.4 - Dr.Upendra Mohol, who conducted post-mortem of deceased and P.W.5 – Dr.Naripalli P.Rao, doctor who treated the deceased. The

prosecution examined P.W.6 – Dnyandev Maruti Sathe, who is the Investigating Officer and P.W.7 – Sanjeev Ramchandra Patil, P.S.I., who recorded the FIR. Thereafter, the statement of accused under section 313 of Code of Criminal Procedure was recorded on 05/06/2008.

6. The accused did not examine themselves, however, they examined four witnesses in their defence. D.W.1 – Dr.Himani Tapasvi, who conducted sonography. D.W.2 – Sagar Bansod, Manager of Chowgule Industries Pvt. Ltd. to show that accused no.1 purchased Maruti Omni car by taking loan from State Bank of India, D.W. 3 – Kirti Raka, who is neighbour of the accused and staying in same building where the deceased was staying with the accused and where the incident took place. D.W.4 - Soma Abaji Ide, who collected certificate from Rao Nursing Home to the effect that deceased was not in position to speak.

7. The prosecution apart from the oral evidence, relied on documents such as, Postmortem report (Exh.34), telephone bill (Exh.32), Medical certificate issued by Rao Nursing Home (Exh. 36 & 37), Medical case papers in respect of treatment of the deceased (Exh.38) as well as certificates (Exh. 39, 40, 41, 42), Spot Panchnama (Exh. 48), Seizure Panchanama (Exh. 49), communication dt. 13/07/2005 in respect of sending the samples for Chemical Analysis (Exh. 50), (Exh.51), Chemical Analysis Report (Exh.52) respectively.

8. The accused also placed reliance on certain documents such as., Ultra Sound Sonography Report (Exh. 72), Receipts (Exh. 74, 75, 76), Certificate dt. 26/06/2008 (Exh. 77), Certified Copy of order of Family Court (Exh. 109) and 30 documents along with list (Exh. 69). The accused also produced album of photographs at Exhibit-17 containing 36 photographs.

9. As set out hereinabove, learned Assistant Sessions Judge, Pune after considering the evidence on record, acquitted all the accused of the offence punishable under section 498-A, 306 read with section 34 of IPC. The State of Maharashtra has filed leave application to file an appeal and, accordingly, by the order dated 16/09/2008, this Court granted leave and admitted the appeal.

10. I have heard Mrs. Anamika Malhotra, learned APP for the State and Mr. Nitin P. Deshpande, learned Advocate for Respondent Nos. 1 to 3.

11. Mrs. Anamika Malhotra, learned APP submitted that evidence on record clearly shows that the deceased was harassed and tortured by the accused and as a result of the same she tried to commit suicide by consuming poison on 15/06/2005 and she expired on 22/06/2005. According to her submission the learned Trial Court has failed to consider the evidence on record in proper perspective. She submitted that in the facts and circumstances of the case, the appeal be allowed and accused be held guilty and they be directed to undergo appropriate sentences.

12. Mr. Nitin Deshpande, learned Advocate appearing for the Respondents submitted that evidence of the prosecution witnesses is totally unreliable as there are several improvements and there is considerable delay in lodging the FIR. He submitted that evidence on record clearly demolishes the case of the prosecution of harassment and torture. He submitted that the photographs on record at Exhibit-17 (photo album) clearly show that the deceased was properly treated and her relationship with all accused were cordial. He submitted that the prosecution has miserably failed to prove the

case of demand of money as well as the case of mental and physical harassment of deceased. He, therefore, supported the impugned order. He has filed written submissions as well as filed compilation of judgments, particularly regarding power of the Appellate Court dealing with Appeal against acquittal and also on the aspect that for establishing offence under section 306 mere proof of cruelty and suicide is not enough but there must be nexus between the two, as also on the aspect of material improvements by the prosecution witness make their evidence unreliable. I will consider the necessary authorities as and when occasion arises, if required.

13. Before considering the rival submissions and evidence on record, as also the impugned judgment and order it is necessary to note the general principles to be followed by the Appellate Court while dealing with the appeal against acquittal. The said principle have been succinctly culled out in the judgment of the Hon'ble Supreme Court in the case between **Chandrappa vs. State of Karnataka** reported in **2007 (4) SCC 415**. The Hon'ble Supreme Court laid down the following general principles in paragraph 42 regarding powers of the Appellate court while dealing with an appeal against order of acquittal :

“(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling

reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

14. In the light of above principles regarding powers of the Appellate Court, I will examine the evidence on record.

15. The evidence of PW 1 Popatlal Gujar, father of the deceased, shows that initially for a period of one year after marriage everything was all right. Thereafter the Deceased used to tell her parents on phone from time to time that accused were saying that in marriage appropriate gifts were not offered

and their guests were not properly honoured and were taunting her and ill treating her. He deposed that they used to persuade her to tolerate the said behaviour of the accused and also used to tell her that in future after some days, after she delivers a child, everything would be all right. He further stated that thereafter deceased told him that there was no improvement in behaviour of accused and during pregnancy the deceased was subjected to physical and mental torture and therefore since 7th month of pregnancy she was advised bed rest by the doctor.

16. He deposed that on 23/06/2004, there was marriage of his nephew – Abhijit and although they had invited all the accused, only accused no.1 and deceased attended the marriage. At that time when his niece enquired about her married life, the deceased started crying and told her that she was subjected to the ill treatment and that she was fed up with the ill treatment. P.W.1 further deposed that in the said marriage, the gifts were given to accused no.1 and also to accused nos.2 and 3 although they had not attended the marriage. Thereafter after four days, the deceased called them and told that gifts given in the marriage of Abhijit were not liked by accused and on that count they were scolding, taunting and ill treating her. The Accused also were taunting her on the ground that proper invitation was not given to their close relatives. Therefore, his elder brother – P.W.2 and son Avinash went to the house of accused at Pune. After P.W.2 brother of P.W.1 returned to Nipani, he informed P.W.1 that father in law of the deceased threw on the ground all articles of gifts and told that those articles were not liked by them and he made demand of Rs.10,000/- and as P.W.2 was not having that much amount, he paid Rs.5,000/- and returned.

17. He further narrated that in or about January 2005, there was Vastu Shanti function at the house of his brother in law and invitation card was

sent to accused, however, neither Swapnali nor accused attended the said function. P.W.1 stated that when they made enquiry on phone about their absence, the deceased told that only invitation card was sent and personal invitation was not given and, therefore, there was quarrel.

18. P.W.1 further deposed that after four days, the deceased again called and told that accused intended to purchase car and was demanding Rs.1,00,000/- and ill treatment had increased. P.W.1 deposed that he and his brother arranged for Rs.25,000/- and came to Pune and gave the same to accused. He stated that thereafter in March 2005, accused purchased the car.

19. P.W.1 deposed that taunting and ill treatment continued for the reason that less amount was paid. He deposed that on 14/06/2005 at about 9.30 to 10 am he received phone call from accused no.1 and the same was answered by his wife. At that time accused no.1 was talking loudly on phone and was complaining against deceased that she was not working properly, was not looking after monetary affairs, that Fixed Deposits were matured but were not renewed by her and she is not attentive to work. He deposed that at that time his wife was asking accused no.1 that she wanted to speak with deceased but accused no.1 disconnected the phone. P.W.1 further stated that on the next day on or about 15/06/2005 at about 12 to 12.15 noon accused no.1 made phone call and the same was answered by his brother, when accused no.1 told that the deceased had consumed poisonous medicine and is admitted at Rao Nursing Home at Bibvewadi. P.W.1 further stated that he himself, his brother and his wife came to Pune and rushed to hospital at about 5 pm. She was admitted in ICU. In the hospital, his signature was obtained on some medical papers as accused no.1 informed them that treatment of deceased was going on but her condition was serious and in case anything happens to her, the doctor

would not be held responsible. The said writing is at Exhibit-27. Mr.Deshpande, learned Advocate of the Respondents has relied on said Exhibit-27 very heavily to submit that the FIR lodged is after thought. I will deal with his submission regarding Exhibit-27 later on.

20. The deceased was in the hospital from 15/06/2005 to 22/06/2005. P.W.1 has stated that she was not talking during said period and there was mask on her face, however, by hand gesture she was trying to tell them that accused had ill treated her and, therefore, she had consumed poison. This part of evidence was attacked by the learned Advocate of the Respondent on the ground that the evidence establishes that the hands of the deceased were tied to the knot. However, there is nothing to indicate that inspite of this position she could not have made gestures by hand. Apart from that there is other evidence of the harassment and torture to which the deceased was subjected to and she had told P.W.5 – Doctor that she consumed poison as she was fed up with life. He deposed that on 22/06/2005 the deceased expired and thereafter immediately he lodged FIR which is at Exhibit-14. He further deposed that when the deceased was in hospital, police were asking them whether they wanted to make any complaint and at that time he told them that their daughter was serious and after she regains consciousness, they would make enquiries with her and then decide.

21. P.W.1 was extensively cross examined by the defence. In the cross examination P.W.1 had stated that accused had given four gold bangles, two flat bangles, gold chain, necklace and ganthan to his daughter in marriage. In the cross examination much emphasis was given to portion marked Exhibit “A” in the FIR at Exhibit-14 wherein P.W.1 has stated that deceased had co-habited happily at matrimonial house for about 1 ½ years. P.W.1 has stated in the cross examination that prior to eight days of delivery

and thereafter also for eight days his wife stayed with the deceased and she stayed in the hospital and at the house of accused. During cross examination Exhibit-17 an album containing 36 photographs of deceased – Swapnali, her husband, P.W.1 and family members of accused no.1 were shown to him. He has admitted that the said photographs show marriage anniversary programme of the Deceased which was attended by P.W.1, his wife etc. P.W.1 further admitted that after delivery of daughter, accused came to their house and attended function of grand-daughter and they had given gold ring, gold chain and clothes to their grand daughter.

22. P.W.1 accepted in the cross examination that accused is conducting business for more than 25 years and they are having three servants. He admitted that financial condition of the accused is sound. The said cross examination revealed that accused no.1 had kept total amount of Rs.26,000/- in fixed deposit in the name of deceased during the period from 23/11/2001 to 10/01/2005. It is further revealed that Accused No.1 obtained mediclaim policies for himself and deceased from 1/11/2001 to 2005. It is further revealed that during the period from 26/5/1999 to 15/06/2005 accused had deposited Rs.1,000/- per month in his PPF account and that on 15/06/2005 the balance in said account was Rs.98,000/-. The total amount upto 7/05/2005 in the PPF Account of the Accused No.2 was Rs.98,400/-.

23. It was also brought on record during cross examination of P.W.1 that in the year 2003, 2004 and 2005, accused no.1 along with deceased and daughter – Kashmira went for trip at Ahmedabad and Rajasthan, Mahableshtar and Goa respectively. It was also brought on record that on the birthday of Deceased on 6/05/2003 the accused had given party in Durvankur Hotel at Pune and P.W.1 and his wife had attended the same. It is also brought on record that on 16/05/2004 the birthday of grand daughter

of P.W.1 was celebrated and he along with his wife attended the same. The photograph in that behalf was produced at Exhibit-31. It is also brought on record that nephew of P.W.1, namely, Abhijit and other nephew were called at the house of accused on occasion of marriage of Abhijeet, and all of them were seen taking lunch together and photograph in that behalf is produced at Sr.No.35 and 36 of photo album at Exhibit-17.

24. Thereafter, the P.W.1 was cross examined with respect to various instances of harassment including at the time of marriage of Abhijit and gifts given in that marriage, the demand of money for purchase of car etc. P.W.1 denied that he told Dr.Rao that he did not want to lodge any police complaint. He had further stated that accused no.1 filed an application for custody of his grand daughter. He denied that the deceased was of reserve nature and short temper and intended to reside separately with her husband and daughter. He stated in the cross examination that all facts were told to the police but police informed them that they would be recording the complaint in short and all the details should be told to the Court.

25. The deposition of P.W.1 i.e. father of the deceased clearly show that it is well established that the Deceased was subjected to cruelty by the Accused. The contradiction on which learned Advocate of the Respondent has emphasised regarding whether the harassment started after 1 year or 1 ½ year is not of much significance. In fact the evidence on record clearly establishes that the harassment started immediately after the marriage. The improvements which the learned Advocate of the Appellant has emphasised are not the material improvements. The P.W.1 in his cross examination has given adequate explanation regarding aspect of improvement. It is specifically mentioned that the police told them that they would record the complaint in short and all the details should be told to the Court. Thus, there

is no substance in the contention regarding improvements.

26. The delay in filing FIR is also not of much significance as initially the parents and other relatives were of the opinion that after the Deceased delivers child there would be improvement in the relationship between the Deceased and Accused and after birth of daughter they were hoping that relations would improve and harassment and torture would stop. Thus, there is no substance in the contention that there is delay in lodging the FIR.

27. However, it is to be noted that this is not a case where evidence on record shows that the Deceased was only subjected to harassment and torture throughout. The evidence on record also shows that the Accused celebrated the birthday of the Deceased, birthday of the grand-daughter, celebrated marriage anniversary, Accused No.1 took Deceased and daughter to trips at various places, sometimes accused nos.2 and 3 also accompanied them. Thus, the life of the Deceased was consisting of happy moments as well as she was subjected to harassment and cruelty.

28. The learned Advocate of the Respondents also relied on the evidence showing that the Accused kept money in Fixed Deposit in the name of the Deceased, Accused No.1 had taken health policies and that the Deceased was nominee in some Life Insurance policies. However these aspects do not disprove that she was subjected to cruelty and torture.

29. The prosecution thereafter examined P.W.2 - Bandulal Ramchandra Gujar i.e. real brother of P.W.1 and Uncle of Deceased – Swapnali. P.W.2 stated that after about one year of marriage, the Deceased started complaining about trouble and ill treatment at her matrimonial house. She used to tell about ill treatment on phone. She used to tell that accused used

to trouble her by taunting oftenly by saying that in the marriage proper honour was not offered and her parents did not know how to pay respect. P.W.2 further stated that marriage of his son Abhijit was performed on 23/06/2004 at Karad and the Deceased and Accused No.1 came to attend the said marriage. P.W.2 stated that he had given proper gifts to all the accused but immediately within two days Deceased called him and told that the articles of gift given in the marriage were not liked by the accused and he should immediately come to Pune. He further narrated that he came to Pune and at that time the father-in-law of Deceased had thrown all articles of gift before him and told that those articles were not liked by the accused and he should take back the same. P.W.2 further deposed that if any mistake is committed by them, he should forgive them and should not return back the gift articles. P.W.2 has further deposed that, at that time father-in-law told him that they do not want any gift and that they should give Rs.10,000/- in cash. P.W.2 has further narrated that he was having Rs.6,000/-, at that time he kept Rs.1,000/- with him for expenses and gave Rs.5,000/- in cash to the father-in-law and returned back. He further deposed that, however, thereafter also ill treatment and torture continued.

30. P.W.2 thereafter narrated about his telephonic conversation with Accused No.1 when he informed him that the deceased had consumed poison and admitted to Rao Nursing Home, Bibvewadi. Then he stated that he had signed writing at Exhibit-27 after reading the same. He narrated that the deceased by gestures of moving hands stated that she was having trouble and it was unbearable for her and, therefore, she consumed poison. P.W.2 stated that during that period they were staying in Pune at the house of their relative Ramesh Shah.

31. In the cross examination, he has stated that it is wrongly mentioned in his statement that deceased cohabited happily for 1 ½ years instead of one year. Certain omissions were put to him in the cross examination, however, recording of the same in paragraph 10 of the examination in chief shows that the said contradictions are not very major and material. P.W.2 was further cross examined on various aspects regarding signing of medical papers, health condition of deceased in hospital, the manner in which daughter of deceased – Kashmira was taken to Nipani by him, Exhibit-29 regarding return of ornaments. He denied the suggestions put to him regarding behaviour of deceased of being short temper and dominating nature and her demand of staying separately from her in-laws. He denied the suggestion that accused no.1 used to persuade her that as his parents are old, it would not be possible for them to stay separately and, therefore, she was angry and annoyed and because of that frustration she committed suicide.

32. P.W.3 – Abhijit Gujar who is cousin brother of deceased deposed that on 15/06/2005, he called deceased for giving invitation for naming ceremony of his daughter and at that time the deceased told him that since 2-3 days quarrels were going on in her house and she was being harassed physically and mentally by accused and she was taunted and beaten by in-laws. He further stated, how the phone was disconnected and no further talk could be made. He stated that on the same day at about 12.30 noon, phone call was received regarding consumption of poison by the deceased. He has produced in the evidence at Exhibit-32 telephone bill showing trunk call made to Pune. He deposed about further incident regarding the gifts given in his marriage were returned back to his father as they were not liked by the accused when his father and brother went to the house of deceased. In the cross examination, he admitted that when he went to the house of accused for invitation of his marriage, the function of offering meals to the

person getting married known as “Kelvan” was performed. He admitted photographs bearing Nos.35 and 36 from the album.

33. The prosecution has also examined P.W.8 – Manisha Rajesh Shah. She stated that deceased was daughter of her sister. She narrated about ill treatment of the deceased and stated that she learnt about ill treatment to deceased from her sister. Thereafter, she has stated that when she had talk with deceased on phone, the deceased disclosed her about ill treatment by her husband, mother-in-law and father-in-law. She had narrated in her evidence about various instances of cruelty. She was extensively cross examined by the defence. P.W.8 is Advocate by profession and, therefore, she was cross examined whether she appeared in the proceedings filed regarding custody of daughter of deceased – Kashmira and regarding other aspects. She was cross examined on aspect of omissions but the omissions as set out in paragraph 4 of her cross examination are not major and material.

34. As far as the evidence of P.W.4 – Dr.Upendra Mohol is concerning conduct of post mortem of deceased by him and, therefore, not much relevant, however, deposition of P.W.5 – Dr. Naripalli Pattabhiramarao is important as he is doctor who treated deceased. He deposed that on 15/06/2005, deceased was brought to hospital at about 11.45 am by her husband and mother-in-law. He deposed that she was not in complete conscious condition but was understanding and he asked certain questions i.e. what was the name of insecticide consumed by her ? whether the bottle of said insecticide was available ?, why she consumed said insecticide ? etc. The examination in chief reveals that although deceased was not in complete conscious condition but was in condition of understanding and was attempting to give answers. The deposition of P.W. 5 further reveal that the deceased informed P.W.5 that she did not know name of insecticide and

she dropped the bottle of insecticide under stair-case of house and further she stated that she consumed insecticide as she was fed up with her life. P.W.5 further deposed that she was having breathing problem within 10-15 minutes of consumption of insecticide and was unable to breathe and, therefore, she was put on ventilator. P.W.5 has stated that deceased was admitted in hospital from 15/06/2005 to 22/06/2005 and she expired in the hospital at 9.45 am on 22/06/2005. P.W.5 deposed that on the basis of examination of patient and symptoms noticed and also from reports of blood test and clinical examination in his opinion, the patient had consumed the poison organo phosphorus compound. He further deposed that bottle which was dropped by the deceased under stair-case of her house was brought to him for his examination and it was found that the said bottle was of Malathion plus chloriphoes. He deposed that said Malathion plus chloriphoes are fatal poisons and consumption of the same in little quantity is sufficient to cause death.

35. In the cross examination P.W.5 stated that in the talk deceased had with himself and his wife, the deceased told them that she do not want to live. The same is consistent with whatever he has stated in the examination in chief. P.W.5 has deposed that hands of deceased were tied to the cot as she was intubated and for avoiding removal of tube by the deceased. He further deposed that as she was having fits she was given Atropine and pam and the doses were repeated. He further deposed that after admission she was not in condition to speak and she was intubated and after that tracheostomy was done. He further deposed that since admission of deceased, police from Sahakar Nagar police station used to visit hospital to see condition of patient to record her statement, however, as the patient was not in condition to speak and give statement, certificates to that effect were given to the police as per Exhibit-39 to Exhibit-43. P.W.5 has further deposed that

when father, Uncle and relatives of deceased arrived, he asked them whether they want to lodge police complaint and they stated that they are from reputed family and therefore they do not want to make any complaint to police. P.W.5 was re-examined by learned APP regarding contents of Exhibit-27 and the learned trial Court has also asked one question. The said portion is reproduced hereinbelow for ready reference :

“11. I cannot tell in whose handwriting the contents in Exhibit-27 are written. Generally in a hospital in case the patient is in critical condition a consent for treatment is obtained in the prescribed form. The relatives of the patient refused to sign, which is on the backside of page 1 of Exh.38. Then I had also talked to the doctor referred by the relatives of the patient and the said doctor had told me that unless and until he comes the information to police should not be given and therefore, before starting treatment I had asked my staff to get it written on separate paper about intimating to the relatives of the patient about the critical condition of the patient and their consent for starting of the treatment as per Exh.27 and that is in regard to the condition of the patient and the responsibility of the hospital in case of any mishap happening and since the relatives were refusing to sign initially I had asked to add last sentence that they do not want to lodge any police complaint.

12. The last sentence about police complaint is in reference to complaint against anybody.

Court Q : The patient was intubated and put on ventilator at about 11.45 am after I had taken history from her note thereof is taken in the case papers on page 16 and 17 in the handwriting of any Asstt. Dr.Reena Aswale.”

36. Mr. Deshpande, learned Advocate for the Respondents have emphasized on the writing dated 15/06/2005 (Exhibit-27) which was signed by the father and uncle of the deceased and the same was also signed by the accused No. 1 and accused No. 3. A bare perusal of said Exhibit-27 clearly shows that the said document was written on 15/06/2005 at about 12 noon and the same was at that time signed by husband i.e. accused No. 1 and mother-in-law i.e. accused No.2. As it is admitted position that the said document was written on 15/06/2005 at 12 noon, there is no question of execution of the same at that time by P.W.1 and P.W.2 as they reached the Rao Nursing Home, Bibvewadi, Pune at about 5.30 pm in the evening on 15/06/2005. The said writing is to the effect that deceased had consumed poison and her condition was very serious, she was also pregnant and consent was given to the Doctors for giving her necessary treatment and that Doctors had given idea that anything could happen to her life during treatment. It is further mentioned that thereafter if any untoward incident happens then in that event Doctors treating her would not be blamed and that they do not want to register any police case. It appears that on said document the Accused No.1 and the Accused No.3 put signatures, either before starting the treatment or immediately after starting the treatment of the Deceased. The said document was already prepared and signed by the accused No. 1 and accused No.3 at 12 noon on 15/06/2005 and thereafter signatures of P.W. 1 i.e. father and P.W. 2 i.e. uncle of deceased obtained on the same at about 6.30 p.m. The said writing by no stretch of imagination will help the accused for contending that the F.I.R lodged was after thought as the main emphasis of the said writing was that the Doctors treating the deceased would not be held responsible.

37. In any case, the situation at 6.30 p.m. on 15/06/2005 is required to be taken into consideration. At that particular period, the deceased was in the

hospital and she was put on the ventilator and therefore, the mental condition of father of the deceased and the uncle of the deceased at the relevant time is required to be taken into consideration. It is significant to note that their priority at that point of time was to see that proper treatment is provided to the deceased. It is not expected that at that point of time, they would lodge police complaint. Therefore, no reliance can be placed on Exhibit-27 to contend that the deceased was not treated with cruelty and was not tortured and the F.I.R lodged was after thought.

38. P.W.6 is the Investigating Officer and P.W.7 PSI who recorded FIR. Their cross examination is mainly from the point of view of omissions, additions and contradictions in the statements recorded of the witnesses.

39. In this case, the defence have examined total four witnesses. D.W.1 Himani Sachin Tapasvi stated that on 1/06/2005, the deceased was referred to her for pregnancy sonography and sonography test revealed that she was two months pregnant. The report of the said sonography test is at Exhibit-72.

40. D.W.2 – Sagar Ravindra Bansod was working as manager in Chowgule Industries Pvt. Ltd., Tawade Colony, Pune. He deposed that in the year 2005, he was working in the said company in the capacity of an Accountant. He deposed that Chowgule Industries was engaged in business of sales and services of Maruti vehicles. He produced Exhibit 74, 75 and 76 receipts in respect of payment and Exhibit-77 - certificate. The said documents show that accused no.1 purchased Maruti Omni vehicle as per invoice dated 25/03/2005 for total cost of vehicle as Rs.2,35,239/-, R.T.O. charges are Rs.10,860/- and total is Rs.2,46,004/-. The said document further reveal that vehicle was hypothecated to the State Bank of India and

accused no.1 has paid by cheque Rs.11,000/- and Rs.35,004/- and Rs.2,00,000/- appears to be loan advanced by State Bank of India. In any case the said evidence failed to disprove the evidence of demand of Rs.1,00,000/-, payment of Rs.25,000/- in cash by the P.W.1 to the Accused No.1 and harassment for less payment.

41. The main evidence of defence was of D.W.3 – Smt. Kirti S. Raka, who was neighbour of the accused and staying in the same building where the incident had taken place. She deposed that she was staying for 1st 8 years in the said Vishnu Vihar Building where the accused were staying. Her deposition was recorded in June-2008, therefore, it is clear that she was staying in the same building atleast since 2001. She has deposed that she stays on 5th floor and accused stays on 4th floor. She deposed that she used to frequently visit house of the accused as well as accused and Swapnali i.e. Deceased used to visit her house. She deposed that nature of Deceased was hot temper and she used to beat her daughter and used to confine her on the terrace. She deposed that accused used to treat deceased with love and affection. She narrated the incident of 15/06/2005. She deposed that she was examined as witness in the Family Court matter regarding custody of granddaughter - Kashmira. She was extensively cross examined including on the aspect of hot temper nature of deceased and deceased used to confine and beat her daughter etc.

42. The evidence on record particularly of P.W. 1 i.e. father of deceased, P.W. 2 i.e. uncle of deceased, P.W. 3 cousin of deceased establishes that the deceased was treated with cruelty and she was harassed. All the witnesses are consistent in their evidence regarding harassment and torture. As set out hereinabove, the P.W. 1 father, P.W. 2 Uncle and P.W. 3 cousin of the deceased have narrated about the various instances of cruelty and torture

which the accused subjected to the Deceased and their depositions are not shaken in the cross examination. However, the factual position emerging from their cross examination particularly the evidence to show that function of marriage anniversary was celebrated, function of celebration of birthday of deceased was arranged which was attended by the parents of deceased, when P.W. 3 went to the house of accused for inviting them for his marriage a dinner i.e. “kelvan” was arranged for him. After birth of daughter also accused participated in the function. Further evidence shows that the accused No. 1 took deceased and daughter for trips at Ahmadabad, Rajasthan, Mahabaleshwar and Goa etc. and sometimes Accused Nos.2 and 3 accompanied with them. All these aspects show that although the Deceased was subjected to cruelty and harassment, her life was mixture of happy moments and the said instances of cruelty and harassment. It is also established that all accused have contributed in creating happy moments in the life of the Deceased. The evidence of D.W.3 indicate that the Deceased was treated with love and affection by the Accused and that the Deceased was of hot tempered and dominating nature. In these circumstances the accused are entitled for benefit of doubt.

43. There is one more aspect which is required to be taken into consideration. When the incident took place, daughter - Kashmira was hardly three years old and she was taken by P.W.1, P.W.2 and their family members at Nipani. However, the Respondent No.1 filed proceedings in Family Court, Pune seeking his custody and the learned Judge, Family Court, Pune granted custody to the Respondent No.1 and the Family Court Appeal challenging the same was also dismissed. Daughter Kashmira is presently staying with the Respondents and Mr.Deshpande, learned Advocate submitted that Respondent No.1 is looking after Kashmira very well and she is doing very well in her education career.

44. In any case, it is settled legal position that if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. According to me, the view taken by the learned Trial Court is also possible view on the basis of evidence on record. This is not a case where it can be said that the view taken by the learned Trial Court could not have been taken at all. In any case the evidence on record show that the Accused are entitled for benefit of doubt.

45. As I am not interfering with the judgment and order of the learned trial Court, I am not burdening this judgment by consideration of the authorities cited by Mr.Deshpande, learned Advocate for Respondent Nos.1 to 3.

46. In view of the above discussion, the Criminal Appeal is dismissed, however with no order as to costs.

[MADHAV J. JAMDAR, J.]