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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO.526 OF 2014

Ashok Laxman Bhagyawant
of Pune, aged about 26 years,
Indian Inhabitant,
R/at Shriram Colony,
Haveli, Pune.
(Currently incarcerated at Yerwada
Central Prison, Pune).

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra
[Dehuroad Police Station)

...Respondent

Mr. D. G. Khamkar, for the Appellant.

Mr. H. J. Dedhia, A.P.P. for the Respondent - State.

***CORAM : REVATI MOHITE DERE &
M. S. KARNIK, JJ.***

DATE : 26th AUGUST, 2020

JUDGMENT (Per Revati Mohite Dere, J.):

1. This appeal is directed against the Judgment and Order dated 16th January, 2014, passed by the learned Additional Sessions Judge, Pune in Sessions Case No.336 of 2011, convicting and sentencing, the appellant as under:-

- for the offence punishable under Section 302 of the Indian Penal

Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer further rigorous imprisonment for six months;

- for the offence punishable under Section 498A of the Indian Penal Code, to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default to suffer further rigorous imprisonment for two months.
- Both the aforesaid sentences were directed to run concurrently.
- The appellant was, however, acquitted of the offence punishable under Section 304B of the Indian Penal Code.

2. The prosecution case in brief is as under:-

PW 9 - Ulhas Shankarrao Yadav attached to the Dehu Road Police Station, Pune, as Assistant Sub-Inspector was on duty as a Police Station Officer, at the relevant time. He has stated that on 23rd January, 2011 at about 21:35 hours, Police Head Constable - Ravikant Jadhav (PW 7) from the YCM Hospital Police-outpost, informed him on phone that a married woman by the name – Ashwini Ashok Bhagyawant was brought to the hospital in an injured condition and the doctor on duty, on examination, had declared her to be dead; that Ashok Bhagyawant (appellant) had brought the said patient (Ashwini) and had informed the doctor that he had

assaulted his wife – Ashwini (deceased). PW 9 - Ulhas Yadav has further stated that PHC – Ravikant Jadhav had also informed him that Ashok Bhagyawant (appellant) had banged his head against a glass frame of the police outpost, resulting in him sustaining an injury on his head. He has stated that pursuant to the said information received from PHC – Ravikant Jadhav, he noted down the same in the station diary on 23rd January 2011, at about 21:35 hours being Station Diary Entry number 43 of 2011 (Exhibit - 71).

PW11 – Nitinkumar Nilkanth Gokave, Police Inspector attached to the Dehu Road Police Station, has stated that on receiving the said information (Exhibit – 71), he visited the YCM Hospital, Pune and prepared the inquest panchanama. The clothes of the deceased were seized under a panchanama. Thereafter, PW11 – Nitinkumar visited the spot and prepared the spot panchanama and seized certain articles from the spot i.e. anklets, toe rings, broken glass bangles, 4 pieces of wooden logs, clothes and blood stains from the spot. PW11 – Nitinkumar Gokave, has stated that when they returned to the police station, after the spot panchanama, PW 1 – Kusum was present and that the Station Officer, Head Constable – Sawant recorded her complaint vide C.R. No. 35 of 2011 alleging offences punishable under Sections 302 and 498A of the Indian Penal Code, as against the appellant, his brother – Rahul and appellant's mother –

Kaushalya @ Kausabai. On 24th January, 2011, the appellant was arrested and his clothes were seized. The appellant was initially treated for his forehead injury in YCM hospital and after his arrest was sent for his medical examination. Thereafter, PW11 – Nitinkumar recorded the statements of the witnesses in connection with the said case and after completion of investigation filed a charge-sheet as against the appellant, his brother – Rahul and mother – Kaushalya @ Kausabai, for the offences punishable under Sections 302, 304B and 498A r/w 34 of I.P.C., in the Court of the learned Judicial Magistrate First Class, Pune. As the offences were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, Pune, for trial.

The learned Additional Sessions Judge was pleased to frame charge as against the appellant and two others for the offences punishable under Sections 302, 304B, 498A r/w 34 of I.P.C. The appellant and two others pleaded not guilty to the said charges and claimed to be tried.

The prosecution in support of its case examined as many as 12 witnesses. After the 313 statements of the accused were recorded, the accused examined Rahul as DW 1 (appellant's brother, who was also an accused in the said case).

The learned Judge after considering the evidence on record and after hearing the parties was pleased to convict the appellant, for the

offences punishable under Sections 302 and 498A of I.P.C. The appellant was however acquitted of the offence punishable under Section 304B of I.P.C. The trial Court also acquitted the appellant's brother – Rahul and mother – Kaushalya @ Kausabai, of all the offences.

3. Learned Counsel for the appellant assailed the Judgment of the Trial Court on several counts. He submitted that the prosecution had not proved the circumstances as against the appellant beyond reasonable doubt and that each of the circumstance as against the appellant, being unreliable and doubtful, could not have been relied upon. He submitted that the extra-judicial-confession allegedly made by the appellant to PW 5 – Jagannath Kushaba Walke, PW 6 - Dr. Sanjay Pandurang Sonekar and PW 7 - PHC, Ravikant Akaram Jadhav could not have been accepted, having regard to the omissions that had come on record, with respect to the extra-judicial-confession, allegedly made by the appellant to the said witnesses. He submitted that the allegations with respect to demand are general and vague and that the evidence of the witnesses with respect to the same, i.e. of PW 1 – Kusum Suryabhan Nisargandh and PW 2 – Suryabhan Vitthal Nisargandh suffered from several infirmities. According to the learned counsel for the appellant, the finding of blood on the clothes of the appellant cannot be said to be an incriminating circumstance, inasmuch as, the appellant himself had

sustained an injury and that the C.A. report does not reflect the appellant's blood group. He further submitted that the FIR was also lodged belatedly i.e. on the next day. He submitted that the trial Court had failed to consider the defence of the appellant, that there was a theft/dacoity in his house, in which the deceased sustained injuries and that the appellant was not the author of the same. Alternatively, learned counsel for the appellant submits that having regard to the injuries sustained by the deceased as well as appellant's conduct, the offence if any, would fall under Section 304 Part II and not under Section 302 of I.P.C., and as such the appellant's conviction be altered from Section 302 to Section 304 Part II of I.P.C.

4. Learned APP supported the Judgment and Order of conviction and sentence and prayed for dismissal of the appeal. Learned APP submitted that the evidence on record was sufficient to convict the appellant for the offences with which he is charged. He submitted that the prosecution had proved all the circumstances as against the appellant and that each of the circumstance unerringly points to the guilt of the appellant.

5. Admittedly, the prosecution case rests on circumstantial evidence. The law on circumstantial evidence is well settled. In ***Sharad***

Birdhichand Sarda v. State of Maharashtra¹, it was held that the onus is on the prosecution to prove that the chain of circumstances is complete and that falsity or untenability of the defence set up by the accused cannot be made the basis for ignoring any serious infirmity or lacuna in the case of the prosecution. The Apex Court then proceeded to indicate the conditions which must be fully established before a conviction can be made on the basis of the circumstantial evidence. These are :-

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

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

Thus, in a case of circumstantial evidence, the prosecution must establish the incriminating circumstances, by reliable, cogent and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the

1 (1984) 4 SCC 116

accused can be reached.

6. We have given our anxious considerations to the submissions advanced by the learned counsel for the Appellant and the learned APP for the State and after going through the evidence on record and keeping in mind the cardinal principles to be considered in a case resting on circumstantial evidence, we find that the prosecution has proved all the circumstances as against the appellant, which unerringly points to his guilt.

7. As far as homicidal death of deceased - Ashwini is concerned, learned counsel for the appellant does not seriously dispute that deceased – Ashwini died a homicidal death. The deceased had sustained 17 injuries. PW 8 – Dr. Prakash Dnyanoba Rokade who performed the postmortem on deceased - Ashwini has opined that the probable cause of death is *'Traumatic and Heamorrhagic Shock due to head injury and multiple contusions over the both upper and lower limbs'*. Thus, there is no dispute about the fact that deceased – Ashwini died a homicidal death. The question is whether the appellant is the author of the said injuries caused to deceased – Ashwini.

8. As noted earlier, the defence of the appellant is that of denial and false implication; and that he was not responsible for the injuries sustained by deceased - Ashwini. According to the appellant, deceased – Ashwini sustained injuries at the hands of some other persons who had attempted to commit robbery in his house. It is also argued by the learned counsel for the appellant that the appellant had not brought/carried his wife Ashwini (deceased) to the hospital but, it was his brother – Rahul who had brought her to the hospital and that the appellant came later on. Learned Counsel relied on the Medical Certificates (Exhibits – 60 and 62), in support of his said submission.

9. In order to bring home the charge under Section 302 of I.P.C. the prosecution sought to examine PW 3 - Krishna Dnyandev Kadam, a neighbour of the appellant, who allegedly heard the cries of deceased – Ashwini and had seen the appellant carrying deceased - Ashwini to the hospital. The said witness having turned hostile, his evidence will have to be excluded from consideration. It is the prosecution case that the appellant made extra-judicial-confession to PW 5 – Jagannath Walke, PW 6 - Dr. Sanjay Sonekar and PW 7 - PHC, Ravikant Jadhav. At the outset, we may state that the alleged extra-judicial-confession made to PW 5 – Jagannath cannot be considered and will have to be excluded from

consideration, as there is a material omission with respect to the same in his 161 statement. Although, PW 5 – Jagannath, a watchman in the YCM Hospital has stated that the appellant came out running from OPD ‘saying that he has committed a mistake and that he has beaten up his wife’, the said omission has come on record, only to that extent, will have to be excluded from consideration.

10. Although, the evidence of PW 5 – Jagannath with respect to the alleged extra-judicial-confession made to him is omitted from consideration, the fact remains, that there is nothing in the evidence of the said witness to disbelieve his presence at the spot at the relevant time, when the appellant brought his wife to the hospital and when the appellant caused an injury to himself. PW 5 – Jagannath was serving as a watchman in the YCM Hospital at the relevant time. He has stated that on 23rd January, 2011 at about 8.30 p.m. the appellant had brought his wife to the YCM Hospital and that the appellant had carried her and taken her to the OPD Section of the hospital, from the OPD gate. He has stated that he was at the said spot. He has stated that after some time the appellant came out running and banged his head on the glass of the cabin resulting in the appellant sustaining an injury on his head. PW 5 – Jagannath has stated that he, one Amar, Mahesh and one Gawade, lifted the appellant and took

him to the OPD Section, where PW 6 - Dr. Sonekar was on duty. He has stated that PW 6 - Dr. Sonekar examined and treated the appellant for his injury, after which he went near the OPD gate, for his duty. PW 5 – Jagannath has identified the appellant in the Court as the being the very same person.

11. There is nothing elicited in the cross-examination of the said witness to disbelieve his presence at the spot at the relevant time i.e. of having seen the appellant carrying deceased – Ashwini in his arms; taking her to the OPD Section and thereafter running out of the OPD Section and banging his head on the glass of the cabin, resulting in an injury on his head. As noted above, only the alleged extra-judicial-confession made to the said witness is kept out of consideration, since there is an omission with respect to the same in his 161 statement. The said witness has identified the appellant as being the same person who brought his wife to the hospital.

12. As far as PW 7 - PHC, Ravikant Jadhav is concerned, he has stated that he was serving as a Police Head Constable and was attached to Pimpri Police Station, at the relevant time. He has stated that he was on duty in the YCM police outpost on 23rd January, 2011 and that at about 9.00 p.m, he was sitting in the said outpost of the YCM Hospital. He has stated

that the appellant came running inside the outpost and banged his head against a glass frame and disclosed that he had killed his wife. He has stated that as a result of the same, the appellant sustained a bleeding injury on his head. He has stated that on seeing that the appellant had sustained an injury, the watchmen on duty in the surrounding area gathered and that he and the watchman took the appellant to the OPD, where PW 6 - Dr. Sonekar, the doctor on duty, who was present in the casualty section. He has stated that when PW 6 - Dr. Sonekar was treating the appellant for his injury, the appellant disclosed to the doctor, when asked, that he had assaulted his wife physically, and as she became unconscious, he had brought her to the hospital for treatment, where she was declared dead on examination. PW 6 – Dr. Sonekar was also informed that on learning of his wife's demise, he had banged his head on the glass. The said information was taken down by the said witness in the Khabari Register (Information Book) maintained in the said outpost. The said entry is marked at Exhibit – 65. The said information given by the appellant is reproduced in Exhibit – 65. The said entry was made at 9:20 p.m. on 23rd January, 2011. The cross-examination of the said witness has gone unchallenged with respect to the appellant running out of the OPD section and banging his head on the glass of the cabin, thereby resulting in an injury, and the disclosure made by the appellant to the doctor, which

disclosure was reduced into writing in the Khabari Register (Exhibit – 65). The evidence of PW 7 - PHC, Ravikant clearly shows the presence of the appellant at the YCM Hospital at about 8.30 - 9.00 p.m. and of the appellant having brought his wife to the hospital, the appellant sustaining an injury on his head and scribing the information received by the doctor from the appellant, in the Khabari Register.

13. The said evidence with respect to the presence of the appellant at the YCM Hospital and of having brought his wife – Ashwini, is again corroborated by PW 6 – Dr. Sanjay Sonekar, an independent witness. PW 6 – Dr. Sonekar was the Medical Officer in the Casualty Hospital in the YCM Hospital, Pimpri, Pune, at the relevant time. He has stated that on 23rd January, 2011, whilst on duty in the casualty department, at about 8.30 to 8.45 p.m. one person by name – Ashok (appellant) had brought his wife – Ashwini for treatment. He has stated that Ashwini was in an unconscious state and that on examining her, he found that she was dead. He has stated that accordingly, he informed the same to the appellant, after noting the same in the case paper i.e. Exhibit – 60. He has stated that on disclosing Ashwini's death, the appellant started running out of the OPD and shouting simultaneously. He has stated that after some time security personals brought him back to the casualty department. According to PW 6 – Dr.

Sonekar the appellant had sustained a bleeding injury on his forehead and that blood was oozing from the said injury. He has stated that when he asked the appellant what had happened, the appellant disclosed that there was a quarrel between him and his wife and that in the said quarrel, his wife became unconscious, pursuant to which, he brought her to the hospital for treatment. The appellant also disclosed that because of him, his wife had died. PW 6 – Dr. Sonekar treated the appellant for his injuries. The said medical report is at Exhibit – 61. During trial, PW 6 – Dr. Sonekar identified the appellant, as the said person who got the deceased to the hospital. Nothing is elicited in the cross-examination of PW 6 – Dr. Sonekar, to discard or disbelieve his testimony. Much ado has been made by the learned counsel for the appellant with respect to scoring of the name – Rahul and the word ‘relation’ and substituting the same by ‘Ashok’ (appellant) in place of ‘Rahul’ and the word ‘husband’ in place of ‘relation’. The said medical certificates are at Exhibits – 60 and 62. It is pertinent to note that PW 6 – Dr. Sonekar has explained the circumstances in which the name (Rahul) and relation (relation) was written initially. He has specifically stated that when he asked the appellant his name, he disclosed his name as ‘Rahul’ and relation as ‘relation’. However, soon thereafter, on realizing that the information given by the appellant was incorrect, the same was corrected by PW 6 – Dr. Sonekar. The explanation offered by

PW 6 – Dr. Sonekar appears to be bonafide and genuine. It appears that the appellant even at that stage, to screen himself from the offence, disclosed his name as ‘Rahul’ and relation as ‘relation’ to the doctor. There is nothing on record to show that the appellant’s brother – Rahul had brought deceased – Ashwini to the hospital or that he was present in the hospital, when the appellant banged his head on the glass cabin and sustained an injury. It is pertinent to note that no suggestion was given to any witness (prior to PW 6 – Dr. Sonekar) with regard to Rahul’s presence, at the spot. It appears that only when the said medical certificates (Exhibits – 60 and 62) came on record and on realizing the scoring, that the appellant had taken the said defence. The timing on the certificate assumes significance and is crucial. The timing on the certificates (Exhibits – 60 and 62) showing death of deceased is 8.55 p.m. It is stated in the said certificates that the patient was brought dead. The timing mentioned on the medical certificate of the appellant (Exhibit – 63), when the appellant was examined for his injury on his forehead, is 9.00 p.m. The certificate at Exhibit – 63 issued by PW 6 – Dr. Sonekar shows that the injury sustained by the appellant was a self induced injury on the forehead i.e. small cut wound on forehead. It is mentioned in the certificate that the appellant was smelling of alcohol. The entry made in Khabari Register (Exhibit – 65) is at 9:20 p.m. on the same day. The aforesaid timings and the evidence that has come on record,

completely belies the defence of the appellant that it was his brother – Rahul who had brought Ashwini to the hospital and that he came later and that he was assaulted by the police, when he went to lodge a complaint of theft in his home.

14. No doubt, it is settled position of law that the defence witnesses evidence is to be considered at par with the prosecution evidence. However, in the facts, although the appellant had examined his brother – Rahul as a defence witness, the said defence is palpably false on the face of it, having regard to the overwhelming evidence that has come on record, showing the appellant's complicity.

15. The appellant's brother – Rahul Bhagyawant (original accused no.2) examined himself as DW 1. According to DW 1 – Rahul, he, his mother – Kaushalya @ Kausabai and brother – Ashok (appellant) were not at home, at the relevant time. DW 1 – Rahul has stated that when he reached home after 7.00 p.m. he found the door open and saw that the household articles were scattered and found Ashwini lying on the floor. He has stated that he rushed to arrange for a vehicle and carried Ashwini to the hospital in an auto rickshaw. He has stated that on the way, he informed the appellant about what had happened. He has stated that he informed the

doctor that he had found Ashwini lying in an unconscious condition at home, and also informed the doctor his name, pursuant to which the doctor noted his name and relation. He has further stated that after the doctor informed him that Ashwini had expired, he informed Ashwini's parents. He has also stated that the appellant was assaulted by the police as they did not believe that there was a theft committed in their house resulting in the appellant sustaining an injury on his forehead. The said defence appears to be clearly an after thought and appears to have been taken after the medical certificates were produced by PW 6 – Dr. Sonekar and after noticing the corrections made in the same. First and foremost, no specific suggestion was given to any witness including PW 6 – Dr. Sonekar and PW 7 - PHC, Ravikant that the appellant's brother – Rahul had brought the deceased and had given information. Secondly, no suggestion has been made to PW 1 – Kusum and PW 2 – Suryabhan by the appellant that they were informed by Rahul, about their daughter – Ashwini being admitted in the hospital and of her demise. It is pertinent to note that PW 1 – Kusum and PW 2 – Suryabhan have categorically stated that it was the police who informed them about the demise of their daughter – Ashwini. Thirdly, the evidence of PW 5 – Jagannath, PW 6 – Dr. Sonekar and PW 7 - PHC, Ravikant, clearly shows the presence of the appellant at the hospital; that it was the appellant who brought Ashwini to the hospital; and that on

learning of her death, the appellant ran out and banged his head on the glass cabin and sustained one injury on the forehead. It is pertinent to note that there is no suggestion made to any of the witnesses i.e. PW 5 – Jagannath, PW 6 – Dr. Sonekar and PW 7 - PHC, Ravikant that the appellant's brother – Rahul was present at the spot and that he had brought Ashwini to the hospital. The false defence of the appellant is an additional circumstance, which connects the appellant to the other circumstances proved by the prosecution. It is also pertinent to note that although it is alleged that there was a theft/dacoity in the appellant's house, in which Ashwini sustained injuries, no valuables were found to be missing. On the contrary, the spot panchanama reveals that Ashwini's ornaments were found at the spot, belying the case of theft/dacoity. The appellant appears to have criminal antecedents, which fact has not been denied in his 313 statement. It appears that Ashwini was assaulted by a wooden log by the appellant. The postmortem report reveals that deceased - Ashwini had sustained as many as 17 injuries. The cause of injuries is stated to be with a hard and blunt object. PW 8 – Dr. Prakash Rokade, Medical Officer at YCM Hospital, Pimpri, Pune who performed the postmortem examination of the dead body, on internal examination found injuries under scalp and contusion on frontal temporal parietal and occipital region. Right and left lungs were found to be partially collapsed. In the column of 'Organ of

Generation' it was noted that *'Single gravid uterus with dead male fetus of more than 24 weeks and amniotic fluid 300 cc and coverings around, intact umbilicus and placenta found attached to uterus posteriorly, faetus length 38 cms. Head circumference – 27 cms, Chest and Abdomen circumference – 22 and 17 cms. Humerus and femur length 7 cms and fe length.'* According to the doctor, 'all the injuries with corresponding internal injuries were collectively responsible to cause death in ordinary course of nature'. Although, learned counsel for the appellant stated that there is a discrepancy in the inquest panchanama and the postmortem report with respect to the injures, it may be noted that the inquest panchanama is on a visual examination, whereas the postmortem is a detailed examination. Infact, even the inquest panchanama shows swelling on the forehead of deceased – Ashwini. The doctor has given his opinion as to the probable cause of death being, *'Traumatic and Heamorrhagic Shock due to head injury and multiple contusions over the both upper and lower limbs'*. It is thus evident that the appellant had mercilessly assaulted deceased – Ashwini, resulting in her death.

16. As far as CA Report is concerned, the said report shows that blood group of the deceased was 'A' and that the blood group found on the appellant's clothes i.e. shirt and pant, was also 'A'. Learned counsel for the

appellant submits that the blood group of the appellant has come as inconclusive, and as such the finding of blood on the appellant's clothes cannot be said to be incriminating, as the appellant himself had sustained an injury. A perusal of the injury certificate of the appellant (Exhibit – 63) shows that the appellant had sustained a minor injury which is a small cut wound 1x0.02cm, whereas the blood stains found on the appellant's clothes shows that several blood stains were found on the clothes i.e. pant and shirt. The clothes of the appellant seized under a panchanama shows that there were several blood stains on the appellant's pant and shirt. It is pertinent to note that there is no suggestion given to any of the witnesses that blood stains found on the appellant's clothes were on account of the injury sustained by him. Thus, finding of blood stains on the clothes of the appellant is also an additional circumstance as against the appellant.

17. The prosecution has also examined two witnesses to show the cruelty meted out by the appellant to the deceased. PW 1 – Kusum, mother of deceased – Ashwini, a resident of Taluka - Manwat, District – Parbhani had stated that her daughter - Ashwini was married to the appellant on 20th May, 2010 and that the marriage was solemnized at their village Vazur, Taluka - Manwat, District – Parbhani. She has stated that after marriage Ashwini went to reside with her husband at Pune. She has stated that the

appellant, his brother – Rahul and mother – Kaushalya @ Kausabai, were also staying at Pune. According to PW 1 – Kusum, her daughter - Ashwini lived with the accused persons at Pune for about one month and thereafter came to their village along with her husband and started living with them. She has stated that when Ashwini and the appellant were living with them, the appellant would assault Ashwini on account of demand of money for building a house at Pune; and that despite assuring the appellant that she would get the money, the appellant did not stop harassing Ashwini. She has stated that Ashwini and her husband lived with them for some time and thereafter, went to live at Pune. She has stated that at Pune, the appellant, his brother – Rahul and mother – Kaushalya @ Kausabai, were demanding money from Ashwini and that she was assaulted on account of the same. She has stated that after about 8 days Ashwini and her husband again returned to the village and that Ashwini complained to her that the accused were harassing her on account of non-fulfillment of demand of money and at that time, Ashwini was weeping. She has stated that after about 10 days, after she assured to pay money and after persuading them to return to Pune, Ashwini and the appellant went back to Pune. She has stated that after 14 days she received a call from the Pune Police, who disclosed to her that Ashwini was killed by the accused and that she was in the hospital. She has stated that pursuant thereto, she, her husband (PW 2 – Suryabhan

Nisargandh) and other relatives went to Pune from Parbhani. She has stated that when she visited YCM Hospital, they saw that there were injury marks on Ashwini's dead body i.e. on her head and all over her body, pursuant to which, she went to the Dehu Road Police Station and lodged a complaint as against the appellant and others, under Sections 302 and 498A of I.P.C. The FIR has been exhibited at Exhibit – 48. She has stated that after the postmortem was done, they took the dead body of Ashwini to village Vazur and performed her last rites.

18. In the cross examination, certain suggestions were put to the said witness which have been denied by her i.e. Ashwini was feeling home sick and was insisting that the appellant take her to her maternal village to stay, pursuant to which, the appellant took Ashwini to her village. PW 1- Kusum has also denied the suggestion, that Ashwini was not happy with her marriage with the accused no. 1 i.e. the appellant.

19. Although much capital is made by the learned counsel for the appellant that there is an omission with respect to the appellant physically assaulting Ashwini in their village, the fact remains that the evidence with respect to harassment of Ashwini on account of demand of money, is consistent. Deceased - Ashwini also complained to PW 1 – Kusum, that

the appellant was harassing her on account of non-fulfillment of demand of money. Nothing material is elicited in the cross examination of the said witness to disbelieve the said witness or doubt her credibility.

20. The evidence of PW 2 – Suryabhan Nisargandh, father of deceased – Ashwini is consistent with the evidence of PW 1 – Kusum with respect to the ill-treatment and harassment meted out by the appellant to Ashwini on account of demand of money. PW 2 – Suryabhan in his evidence has specifically stated that in his presence the appellant had assaulted Ashwini when they were living at their house. Thus, PW 2 – Suryabhan's evidence corroborates the evidence of PW 1 – Kusum with respect to the alleged demand, harassment and ill-treatment by the appellant to deceased – Ashwini on account of non-fulfillment of demand of money.

21. From the aforesaid evidence on record, it is evident that the prosecution has clearly established each and every circumstance as against the appellant. The circumstances so established are of a conclusive nature and point to the complicity of the appellant and form a complete chain and excludes every hypothesis of innocence of the appellant. In other words, the circumstances so established are capable of only one conclusion i.e. of the appellant and the appellant alone having committed the murder of

Ashwini. The circumstances on record in the present case as adverted to by us, form a complete chain and excludes every hypothesis of innocence of the appellant and proves the guilt of the appellant beyond reasonable doubt.

22. Accordingly, we conclude that the appellant alone is responsible for the alleged offence and as such no interference is warranted in the impugned Judgment and Order.

23. Accordingly, we pass the following order:-

“The appeal is dismissed. Accordingly, the conviction and sentence of the appellant stands confirmed”.

(M. S. KARNIK, J.)

(REVATI MOHITE DERE, J.)