

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 392 OF 2014

Madhav Dhondiba Wadwale
Age 25 years, Occ. Agriculture
R/o. Kapsi (Bk), Tq. Loha
District Nanded
Now in jail

...Appellant
(Ori. Accused No.1)

versus

The State of Maharashtra
Through the Secretary Home Department
Mantralaya Mumbai
and
The Police Station Officer,
Osmanagar,
Tal. Kandhar, Dist. Nanded

...Respondent

.....
Mr. K. C. Sant, Advocate for the appellant
Mr. R. D. Sanap, A.P.P. for respondent-State
Mr. A.M. Gaikwad, assist to A.P.P.

.....

AND
CRIMINAL APPEAL NO. 294 OF 2014

1. Dhondiba Devrao Wadwale
Age 55 years, Occ. Agriculture
2. Chandrakalabai w/o Dhondiba Wadwale
Age 50 years, Occ. Household,

Both R/o. Kapsi (Bk), Tq. Loha
District Nanded

...Appellants
(Ori. Accused No.2 & 3)

versus

The State of Maharashtra
Through the Secretary Home Department
Mantralaya Mumbai
and
The Police Station Officer,
Osmanagar,
Tal. Kandhar, Dist. Nanded

...Respondent

.....
Mr. Mukul Kulkarni h/f Mr. R.R. Sancheti, Advocate for the appellants
Mr. R. D. Sanap, A.P.P. for respondent-State
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

**Date of Reserving
the Judgment : 29.11.2021**

**Date of pronouncing
the Judgment : 06.01.2022**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Being aggrieved and dissatisfied with the judgment and order of conviction passed by the Additional Sessions Judge, Kandhar dated 23.5.2014 in Sessions Case No.23 of 2004, the appellant - original-accused No.1 Madhav Dhondiba Wadwale preferred criminal appeal No. 392 of 2014 and appellants-accused No.2 and 3 i.e. Dhondiba Devrao Wadwale and Chandrakalabai Dhondiba Wadwale, respectively, preferred criminal appeal No. 294 of 2014.

2. Brief facts giving rise to the prosecution case are as follows:-

a) P.W.2 Savita (victim) is the wife of appellant-accused No.1 Madhav whereas the appellant accused Nos.2 and 3 i.e. Dhondiba and Chandrakalabai, respectively, are the parents of appellant accused No.1 Madhav. The marriage of P.W.2 Savita (victim) was performed with appellant-accused No.1 Madhav on 26.3.2003. At

the time of marriage, though dowry amount of Rs.1,21,000/- was fixed, however, an amount of Rs.1,00,000/- was paid in cash alongwith motor cycle and ornaments of two and half Tola gold were also given and balance amount of dowry for Rs.21,000/- remained unpaid. After the marriage, P.W.2 Savita (victim) had gone to her matrimonial house at Kapsi (Bk), Tq. Loha, District Nanded. She was treated well for a period of three months after the marriage. Thereafter, she was subjected to ill-treatment on account of remaining unpaid dowry amount for Rs.21,000/-. P.W.2 Savita (victim) was also subjected to insulting treatment for the reason that she is having black complexion. P.W.2 Savita (victim) has thereafter became pregnant. However, there are various instances quoted by P.W.2 Savita (victim) which indicate that she was also subjected to ill-treatment for aborting foetus. There was an attempt to kill her in her matrimonial home but she has fortunately saved herself.

b) On 20.01.2004 at noon when P.W.2 Savita (victim) was cleaning the paddy rice grains in kitchen room, at that time appellant accused No.1 Madhav entered in the room and by closing the door of kitchen room from inside, had given two kicks on the abdomen of P.W.2 Savita (victim). The parents of appellant accused No.1 Madhav i.e. accused Nos. 2 and 3, who are appellants in criminal appeal No. 294 of 2014 also entered in the said kitchen room. The appellant accused No.2 Dhondiba had given a nylon rope to appellant accused No.1 Madhav and appellant accused No.1 Madhav wrapped the

said nylon rope around the neck of P.W.2 Savita (victim) and started twisting it. The appellant accused No.2 Dhondiba caught hold of the hands of P.W.2 Savita (victim) and appellant accused No.3 Chandrakalabai caught hold of her legs. The appellants accused persons have attempted to strangle P.W.2 Savita (victim). P.W.2 Savita (victim) had made efforts to loose the rope wrapped around her neck. She was succeeded in removing the rope from her neck. Thereafter, the appellants accused had taken her in another room. The appellant accused No.1 Madhav given shock on her both the buttocks by soldering machine. Though P.W.2 Savita (victim) had raised shouts, but at that time the volume of TV was deliberately increased by the accused persons. Further the appellant Madhav had given electric shock on the thigh of P.W.2 Savita (victim) and she became unconscious.

c) P.W.2 Savita (victim) was taken to Apex hospital at Nanded on 20.1.2004 at 4.25 p.m. The concerned treating doctor has given M.L.C. intimation to Vajirabad police station, Nanded. P.W.2 Savita (victim) was unconscious when she was admitted in the said hospital. Her condition was critical. There was bleeding from her nose and ears. Blood was clotted in her eyes. Froth was coming from her mouth. The treating doctor has noted one lenier contused wound on her throat which was extending from right to left ear. The treating doctor has noted another injury on her both hips and the third injury was contused lacerted wound on left thigh. In the cross examination,

the treating doctor has admitted that there was swelling on lungs. P.W.2 Savita (victim) was all the while unconscious when admitted in the Apex Hospital, Nanded. P.W.2 Savita (victim) thereafter was referred to Apollo Hospital at Hyderabad and on 26.1.2004 P.W.2 she was admitted in the said Hospital at Hyderabad. She regained her consciousness after 4/5 days of her admission in the said hospital. On her examination, the treating doctor has noted that baby in her womb was dead. In the said Apollo Hospital at Hyderabad, external injuries on the person of P.W.2 Savita (victim) were also noted. P.W.2 Savita (victim) was discharged from the said hospital on 16.2.2004.

d) Meantime, P.W.1 Devidas Jadhav, father of P.W.2 Savita (victim) had lodged complaint Exh.42 against the appellants accused persons. On the basis of the said complaint, crime No. 14 of 2004 came to be registered against the appellants accused for the offences punishable under Section 498-A, 307 r.w. 34 of I.P.C.

e) On the basis of the said complaint Exh.42, P.W. 8 A.S.I. Sudhakar Shelke registered crime No. 14 of 2004 and investigation was entrusted to P.W.10 P.I. Bhagwat Jaybhaye. Meanwhile, P.W.9 P.S.I. Ganesh Choure had repeatedly tried to record the statement of P.W.2 Savita (victim) in the hospital at Nanded from 21.1.2004 to 23.1.2004, however, on every such occasion, the treating doctor had given written opinion that P.W.2 Savita (victim) was not able to give

her statement. P.W. 10 P.I. Bhagwat Jaybhaye has carried out investigation in connection with the said crime. On 26.1.2004 he had visited the spot and carried out spot panchanama Exh.84 in presence of panchas. Though he had tried to find out accused persons but they could not be traced out. He has recorded the supplementary statement of P.W. 1 complainant Devidas Jadhav and further recorded the statement of some other witnesses. On 15.2.2004 he was transferred and therefore, further investigation was entrusted to P.W.12 A.P.I. Milind Khodve. P.W. 12 A.P.I. Milind Kondve has recorded the statement of P.W.2 Savita (victim) when they received information that the victim had reached to Kedar Wadgaon and also collected injury certificate from the Apex Hospital, Nanded. During that period search of the accused was going on and accordingly the accused persons were arrested by drawing arrest panchanama Exh.99 and 100 respectively. On 20.3.2004 the appellant accused No.1 has disclosed certain information and on the basis of which memorandum panchanama was prepared. The appellant accused has pointed out the weapon used in the commission of offence concealed in his field. Those weapons are soldering machine, electric wire and one nylon rope. Memorandum panchanama was drawn which is at Exh.101 and the said articles came to be seized at the instance of accused No.1 by drawing recovery panchanama Exh.102. Article 1 to 3 are those articles produced before the Court during trial. He has further recorded the supplementary statement. On completion of investigation, on 23.4.2004 P.W. 12 A.P.I. Milind

Khodve has submitted charge sheet against the appellants-accused.

f) The learned Additional Sessions Judge, Kandhar has framed charge at Exh.4 under Section 498-A, 307, 316 r.w. 34 of I.P.C. against the appellants. The contents of the charge were read over and explained to the appellants-accused persons and the appellants-accused pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is of total denial and false implication. As per their defence, appellant accused No.1 Madhav was suffering from diabetes and therefore, P.W.2 Savita (victim) was under impression that the baby in her womb may also be the patient of diabetic. The P.W.2 Savita (victim) therefore attempted to commit suicide and in that attempt she fallen down and sustained injuries and the baby in her womb was died. As per their defence, at the time of alleged incident, they were not present at their house and they have been falsely implicated in the case.

g) The prosecution has examined in all 12 witnesses to substantiate the charges levelled against the appellants-accused. After completion of prosecution evidence, statements of the appellants-accused came to be recorded under Section 313 of Cr.P.C. The appellants accused also examined one defence witnesses viz. Gangadhar Uppalwad.

h) Learned Additional Sessions Judge, Kandhar by judgment and

order dated 23.5.2014 has convicted the appellants accused for the offence punishable under Sections 498-A r.w. 34, 307 r.w. 34, 316 r.w. 34 of I.P.C. The learned Additional Sessions Judge, Kandhar has convicted all the appellants accused in the following manner. The operative part of judgment and order of conviction reads as under:-

ORDER

“01. Accused Nos.

- 01- Madhav Dhondiba Wadwale,
- 02- Dhondiba Devrao Wadwale,
- 03- Chandrakalabai Dhondiba Wadwale,

are hereby convicted for commission of offence punishable u/sec, 498-A r.w. sec. 34 of IPC and they are sentenced to suffer rigorous imprisonment for three years each and to pay fine of Rs.10,000/- each, in default to suffer further rigorous imprisonment for three months each.

02. Accused Nos. 1 to 3 are also convicted for commission of offence punishable u/sec. 307 r.w. sec. 34 of IPC and they are sentenced to suffer imprisonment for life each and to pay fine of Rs.25,000/- each, in default to suffer further rigorous imprisonment for six month each.

03. Accused Nos. 1 to 3 are also convicted for the commission of offence punishable u/sec. 316 r.w. sec. 34 of IPC and they are sentenced to suffer rigorous imprisonment for ten years each and to pay fine of Rs.25,000/- each, in default to suffer further rigorous

imprisonment for six month each.

04. The sentences awarded in above said sections shall run concurrently.

05. Accused are entitled for set off according to provisions of Section 428 of Cr.P.C.

06. On realizing of the fine amount Rs.1,50,000/- be paid to victim as the compensation u/sec. 357(1) Cr.P.C.

07. Seized articles being worthless be destroyed after the period of appeal is over.

08. Declared and pronounced in open Court.”

3. Mr. Sant, learned counsel for the appellant in criminal appeal No. 392 of 2014 submits that the prosecution has mainly relied upon the evidence of P.W.1 father of P.W.2 Savita (victim), P.W.2 Savita (victim), P.W.4 Dr. Shubhangi Patange, from Apex Hospital, Nanded where the victim was initially admitted and P.W.11 Dr. Jaganmani Vendantam from Apollo Hospital, Hyderabad. Learned counsel Mr. Sant submits that as per the prosecution story, the appellants accused persons have tried to electrocute the victim with an intention to commit her murder. The appellants accused have used soldering machine for causing injuries on the buttocks of victim and further they tried to commit murder of victim by strangulation with nylon rope of fertilizer gunny bag. The prosecution case rests upon three articles i.e. article No.1 electric wire, article No.2 soldering machine and

article No.3 Nylon rope prepared from fertilizer gunny bag.

4. Mr. Sant, learned counsel for the appellant-accused Madhav submits that the evidence of P.W.1 Devidas, P.W.2 Savita (victim) is full of omissions, contradictions and improvements. As per the exerts evidence i.e. P.W.4 Dr. Shubhangi Patange and P.W.11 Dr. Jaganmani Vendantam that no burn injuries were found on the person of P.W.2 Savita (victim). Further, the allegations about giving shock by electric wire are concerned, except oral evidence of P.W.2 Savita (victim), there is no corroboration. As per the medical evidence, there are no injuries on the person of P.W.2 Savita (victim) caused by electric current. Learned counsel for the appellant Madhav further submits that P.W.4 Dr. Shubhangi Patange has deposed that when P.W.2 Savita (victim) was admitted in Apex hospital at Nanded, she did not notice any ligature marks, however, she noticed ligature marks on second day. Whereas P.W.1 Devidas (father of P.W.2 Savita) deposed that he noticed such ligature marks on the day of admission of P.W.2 Savita (victim) in the hospital. Learned counsel submits that the prosecution has not even attempted to send all these articles for chemical analysis to prove that those were used in commission of crime. The prosecution has miserably failed to establish that the ligature marks were present and as such, the case falls under Section 307 of I.P.C. Though there are allegations by P.W.2 Savita (victim) that the appellant accused Madhav has given kicks on her abdomen, however, there is no corroboration for the same. It is the prosecution story that appellant accused No.2

Dhondiba and accused No.3 Chandrakalabai and one sister of the appellant Madhav (who is no more) entered into kitchen from another door is falsified by the contents of spot panchanama. Learned counsel submits that evidence of P.W.1 Devidas is full of improvement and omissions. Learned counsel submits that the allegations that P.W.2 Savita (victim) was having black complexion and therefore, accused did not like her and further she was all the while ill-treated for non fulfillment of unpaid dowry amount, does not inspire confidence.

5. Mr. Sant, learned counsel for the appellant accused Madhav submits that P.W.4 Dr. Shubhangi Patange has deposed that the injury and ligature marks can be caused by throttling whereas the nature of article allegedly used suggests the case of strangulation. Learned counsel submits that both the doctors have not deposed about direction of ligature marks in injury No.1. Even P.W.4 Dr. Shubhangi Patange has admitted in her cross examination that she did not feel it necessary to inform the police as she suspected the case to be of shooting of B.P. during the pregnancy and she noticed the ligature marks on 21.01.2004. P.W.11 Dr. Jaganmani Vendantam has deposed that the injury can be caused by throttling and further admitted that he did not find any impression of rope around the neck of P.W.2 Savita (victim). He has further deposed that injury caused to ankle of mandible is not possible by Article No.3. He has also accepted that in case of strangulation by article

No.3 there should have been fracture of hyoid bone.

6. Mr. Sant, Learned counsel for the appellant accused Madhav submits that the prosecution has utterly failed to establish the case of strangulation and also throttling and further both the cases cannot go together. The learned Additional Sessions Judge has expressed that it was a case of throttling. There are no ligature marks around the neck of P.W.2 Savita (victim) caused by rope. The use of rope is also not proved by sending the same to chemical analysis. Further, the length and width of ligature marks are not on record. Learned counsel for the appellant Madhav submits that evidence of P.W.2 Savita (victim) is totally by way of improvement and full of omissions. The appellant accused Madhav allegedly bolted the door of kitchen from inside and thereafter the other accused persons came in the kitchen cannot be believed as there is only one door to the kitchen. Learned counsel submits that it is not possible to commit murder by using soldering machine. Further the injuries caused were not on the vital part of the body of P.W.2 Savita (victim). Learned counsel submits that the said soldering machine, by any stretch of imagination, cannot be said to be the weapon used for committing murder of P.W.2 Savita (victim). Learned counsel submits that case does not fall under Section 307 of IPC. In the alternate, at the most, it can be a case under Section 323 or 325 of IPC. Learned counsel submits that if at all there was an intention to kill P.W.2 Savita (victim), the appellants accused would not carry P.W.2 Savita (victim) to the

hospital. Learned counsel submits that so far as the charge under Section 316 of I.P.C. is concerned, the prosecution has utterly failed to prove the ingredients of Section 316 of I.P.C.

7. Mr. Sant, learned counsel for the appellant-accused Madhav submits that the prosecution has failed to examine the material witness i.e. Dr. Shirsath, who has examined P.W.2 Savita (victim) for the first time in his dispensary, which is just opposite to the house of the appellant. The said doctor Shirsath would have been the best witness. The prosecution has further failed to examine witness Gangadhar Uppalwad. Though said Gangadhar Uppalwad was cited as prosecution witness, the prosecution has examined him as defence witness. D.W. Gangadhar Uppalwad has deposed that the appellant accused persons came from the field and thereafter the appellants accused immediately took P.W.2 Savita (victim) to the hospital in Rickshaw. The appellants accused gave information about the victim to her parents and they were also present in the hospital. There was no intention to commit murder of P.W.2 Savita (victim).

8. Mr. Sant, learned counsel for the appellant accused Madhav submits that so far as the sentence part is concerned, the case of the prosecution is far stretched. There is no sufficient evidence to prove the guilt of appellant-accused. The prosecution case clearly based on the evidence of P.W.1 Devidas and P.W.2 Savita (victim). The appellants accused have clearly made out a case that victim herself

had tried to commit suicide. Thus, harsh punishment has been imposed. The appellants accused Madhav has already undergone the sentence of more than six and half years. Further the victim is sufficiently compensated by directing the accused persons to make payment of Rs.1,50,000/- to her and on this count also the punishment needs to be reduced. Learned counsel thus submits that criminal appeal No. 392 of 2014 deserves to be allowed and the appellant Madhav may be acquitted by giving benefit of doubt. In the alternate, the sentence may be reduced to the extent that appellant accused No.1 Madhav as already undergone.

Learned counsel for the appellant accused Madhav, in order to substantiate his contentions, placed reliance on the following cases:-

- i) Sarju Prasad vs. State of Bihar, reported in AIR 1965 (1) Cri.L.J. 766;
- ii) Hari Kishan & State of Harayana vs. Sukhbir Singh and others, reported in AIR 1988 SC 2127;
- iii) Hari Mohan Mandal vs. State of Jharkhand, reported in AIR 2004 SC 3687;
- iv) Jabbar and others vs. State, reported in 1965 SCC Online All 337.

9. Mr. Kulkarni h/f Mr. Sancheti, learned counsel for the

appellants (original accused 2 and 3) in criminal appeal No. 294 of 2014 submits that as per the prosecution story P.W.2 Savita (victim) was in the kitchen where she was assaulted. Learned counsel submits that entire incident is in four stages, each with different intention by different persons and at different locations within the house. Those four stages are as follows:-

- (I) So far as the first part of assault is concerned, the accused No.1 husband i.e. the appellant in criminal appeal No. 392 of 2014 has entered in the kitchen and kicked P.W.2 Savita (victim) twice on her abdomen. These appellants have no role to play so far as this part of assault is concerned.
- (II) So far as the second part of assault is concerned, P.W.2 Savita (victim) has deposed that the appellants herein alongwith her sister-in-law, entered in the kitchen from another door and the appellant accused Dhondiba (father-in-law) had handed over one rope prepared from fertilizer gunny bag to husband accused No.1 Madhav and Madhav put the rope around her neck and tried to twist it. Learned counsel submits that the prosecution has examined two doctors, who have treated P.W.2 Savita (victim). P.W.4 Dr. Shubhangi Patange has deposed that there was a linear contused wound on her throat, which was extending from right to left ear. The size of said injury was 1 ½ cm to 4.5 cm. According to P.W.4 Dr.

Shubhangi, they have radiologically examined P.W.2 Savita (victim) in the hospital. In the said examination, it was found that there was swelling on lungs. The MRI of P.W.2 Savita (victim) was also done. It reveals cerebral ischemic lesion. P.W.4 Dr. Shubhangi has stated in her cross examination that she did not agree with the proposition that in case of throttling the ligature marks will be around the neck. P.W.4 Dr. Shubhangi volunteers that in such case the patient would die certainly. P.W.4 Dr. Shubhangi has admitted that she has not described the direction of injury No.1 Exh.82. P.W.4 Dr. Shubhangi has further admitted that initially she was suspecting about shooting of B.P. during pregnancy and therefore, intimation was not given to the police. However, when ligature marks were found, intimation was given to the police. She has accordingly noted ligature marks on the person of P.W.2 Savita (victim) on 21.01.2004.

Learned counsel for the appellants submits that P.W.11 Dr. Vendantam has deposed that there was one red colour mark on her neck below the angle of mandible. In his cross examination, P.W.11 Dr. Vendantam has deposed that on perusal of Exh.82, it reveals that it may be a case of throttling. He has not found any impression of rope around the neck of P.W.2 Savita (victim). P.W.11 Dr. Vendantam has further agree with the proposition that in case of throttling marks

around the neck of P.W.2 Savita (victim) are equal to the width of ligature used. P.W.11 Dr. Vendantam has further admitted in clear words that injury of 2 cm on angle of mandible is not possible by Article 3 as he has not mentioned the width of ligature marks on the person of P.W.2 Savita (victim). He has accepted that if there is manual strangulation with Article 3 there is fracture of hyoid bone.

Mr. Kulkarni, learned counsel for the appellants submits that the prosecution has failed to establish as to whether it was a case of strangulation or throttling. Learned Additional Sessions Judge has convicted the appellants by holding that it is a case of throttling. There are no ligature marks around the neck of P.W.2 Savita (victim). The direction of ligature marks is not on record. Further, recovery of rope is not legally proved. Length and width of the alleged rope is not on record. It is thus not clear as to whether it is case of strangulation or throttling. Thus, the conviction of the present appellants aiding the offences is illegal and arbitrary. Learned counsel submits that evidence of P.W.2 Savita (victim) is full with contradiction and the medical evidence does not corroborate her version. Learned counsel submits that it would not safe to rely upon uncorroborated testimony of P.W.2 Savita (victim). Thus, only on the basis of her evidence the conviction cannot be maintained. Learned counsel submits that when there is only

one door to the kitchen, it is not clear as to how the appellants entered in the kitchen when the door of kitchen room was closed from inside and these appellants were sitting in TV room.

- (III) Learned counsel for the appellants submits that so far as third part of assault i.e. shock with soldering machine on buttocks is concerned, as per the prosecution story the husband accused gave shock while the appellants assisted him in the said assault. Learned counsel submits that part of body where the injury was inflicted and the nature of injury is not at all sufficient to invoke the provisions of Section 307 of I.P.C.
- (IV) Learned counsel for the appellants submits that so far as fourth part of assault i.e. shock with electric wire on left thigh is concerned, P.W.2 Savita (victim) has stated that the present appellants have caught hold of her while the husband tried to electrocute her. Learned counsel submits that nature of the injury and further part of body is again not be sufficient to convict the appellants under Section 307 of I.P.C.

10. Learned counsel for the appellants submits that so far as the charge under Section 316 of I.P.C. is concerned, although the appellants had no role to play so far as the first assault, still they are convicted for 10 years for the offence punishable under Section 316

of I.P.C. None of the acts allegedly committed by the appellants, even if taken as it is, the case does not fall within the ambit of Section 316 of I.P.C. against the present appellants. The prosecution has not even alleged that the present appellants had shared common intention of husband accused.

11. Learned counsel for the appellants submits that so far as conviction under Section 498-A of I.P.C. is concerned, the allegations are about unpaid dowry of Rs.21,000/-. Learned counsel submits that on the face of it the version is so improbable and no man of ordinary prudence would go to such extent for recovery of meager amount of Rs.21,000/- which remained to be unpaid. There was no complaint in respect of demand. The prosecution has not examined any independent witness on the point of cruelty.

12. Learned counsel for the appellants submits that the subsequent conduct of the accused is relevant. As per the prosecution story, after the incident, an auto rickshaw was called wherein P.W.2 Savita (victim) was taken to the neighbouring hospital of Dr. Chondekar by the accused persons and thereafter as per the advise of Dr. Chondekar, P.W.2 Savita (victim) was taken to the Apex Hospital, Nanded for treatment. The father of P.W.2 Savita (victim) was informed by the accused persons and the accused persons also present in the hospital, where P.W.2 Savita (victim) was admitted. Further during the course of investigation, statement of

persons viz. Balu, who has called auto rickshaw for taking P.W.2 Savita (victim) to the hospital from Dr. Chondekar, who was the first doctor to examine P.W.2 Savita (victim) after the incident. Further, the statements of neighbours of the appellants were not recorded. Though during the course of investigation, investigating officer had recorded the statement of auto rickshaw driver viz. Gangadhar, who had carried P.W.2 Savita (victim) to the hospital, however, the prosecution has not examined the said person as prosecution witness and defence has examined him as defence witness. The recovery of alleged articles used for commission of crime is itself shrouded with doubts, as the recovered articles were never sent for chemical analysis.

13. Learned counsel for the appellants submits that at present appellant No.1 i.e. accused No.2 Dhondiba is 71 years whereas appellant No.2 accused No.3 Chandrakalabai is 70 years of age, approximately. The physical condition of both the appellants are as such that they cannot bear the rigorous imprisonment for life in jail. Considering this, the leniency may be shown. These appellants have already undergone two years of imprisonment. The learned Additional Sessions Judge has already awarded the compensation to P.W.2 Savita (victim). Learned counsel for the appellants submits that in the alternate without prejudice to the merits of the contentions, the appellants are ready to give consent for increasing the compensation to be paid to P.W.2 Savita (victim) instead of sending

the appellants in jail.

14. Learned A.P.P. submits that the prosecution has proved the case against appellants beyond doubt. The prosecution has proved its case on the basis of evidence of P.W.1 Devidas Jadhav, P.W.2 Savita (victim), P.W.4 Dr. Shubhangi Patange from Apex Hospital, Nanded and P.W.11 Dr. Jaganmani Vendantam from Apollo Hospital, Hyderabad. P.W.2 Savita is the victim and she has deposed her suffering in detail about the incident occurred on 20.1.2004. Her evidence is consistent, reliable and trustworthy. There is no reason for P.W.2 Savita (victim) to implicate falsely her husband and in laws. P.W.2 Savita (victim) was subjected to cruelty for various reasons, including the amount of unpaid dowry. She was forced to abort the foetus under one or another pretext and also subjected to cruelty on that count. Learned A.P.P. submits that even conviction of the appellants accused is sustainable on the basis of testimony of P.W.2 Savita (victim) alone. However, her evidence is well corroborated by P.W.1 Devidas Jadhav, who happened to be her father and also by P.W.4 Dr. Shubhangi Patange and P.W.11 Dr. Vendantam. Learned A.P.P. submits that there is direct evidence about strangulation with the help of rope. Thus, even if any confusion arises due to admission given by doctors, however, the ocular evidence would always prevail, medical evidence is usually hypothetical. Learned A.P.P. submits that P.W.11 Dr. Vendantam has given clear opinion that external injuries on the person of P.W.2 Savita (victim) are

sufficient in normal circumstances to cause her death if no immediate medical help was given. The external injuries are dangerous to life in normal circumstances. Learned A.P.P. submits that P.W.2 Savita (victim) is suffering from various consequences of the said injuries and as such the appellants are not entitled for any lenient view so far as the quantum of sentence is concerned. Learned A.P.P. submits that there is no substance in both these appeals. Both the appeals are liable to be dismissed.

15. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses; the statement of the appellants-accused recorded under Section 313 of Criminal Procedure Code and the impugned judgment.

16. In the instant case, the sole evidence was that of P.W.2 Savita (victim) herself. No other person was present at the time of incident to corroborate her statement. P.W.2 Savita (victim) was cohabiting in her matrimonial home at the time of incident and apparently there was no reason for her to falsely implicate the appellants. Thus, conviction could be based on her sole testimony.

17. The marriage of P.W.2 Savita (victim) with the appellant-accused Madhav was performed on 26.3.2003. According to P.W.2 Savita (victim) and P.W.1 Devidas (father of P.W.2 Savita (victim)), the dowry amount of Rs.1,21,000/- was settled and out of the said

amount, an amount of Rs.1,00,000/- with some other articles, including golden ornaments were given to the appellant-accused Madhav at the time of marriage. However, remaining unpaid dowry was agreed to be paid at the time of harvesting of turmeric crop during the month of March/April, 2004. P.W.2 Savita (victim) has deposed that she was treated well for 2/3 months after the marriage and thereafter she was subjected to ill-treatment by asking her to bring the balance amount of dowry.

18. It appears from the evidence of P.W.2 Savita (victim) and P.W.1 Devidas that P.W.2 Savita (victim) was subjected to cruelty for following two reasons:-

- (i) Non Payment of balance amount of dowry for Rs.21,000/-.
 - (ii) P.W.2 Savita (victim) was having black complexion.
- (a) The appellants accused did not like P.W.2 Savita (victim) because of her black complexion. P.W.2 Savita (victim) has further deposed that the appellant accused Madhav did not like her as she did not look a person befitting to sit on motor cycle. She was subjected to teasing and scolding for household works and also beatings. She was being subjected to physical and mental torture. P.W.2 Savita (victim) has deposed about the instances. The appellant accused Madhav took P.W.2 Savita (victim) to

her parental house on account of *Ashadi* (a marathi month) on motor bike. She was dropped there around 1 to 1.30 p.m. The appellant accused Madhav had taken tea and left that place angrily. At that time, P.W.2 Savita (victim) has disclosed to her mother about the ill-treatment being extended to her on account of unpaid dowry and that she is having dark complexion and therefore, they did not like her. She has also disclosed about the nature of ill-treatment being extended to her. P.W.2 Savita (victim) had stayed with her parents for about one month. Thereafter, her father and her uncle dropped P.W.2 Savita (victim) to her matrimonial home. At that time, they had convinced accused persons that remaining amount of Rs.21,000/- will be paid in the month of March/April, 2004 after harvesting of turmeric crop. They also requested the accused persons not to ill-treat P.W.2 Savita (victim) and treat her properly. However, P.W.2 Savita (victim) was subjected to ill-treatment even thereafter for the same reason continuously. The appellants-accused were asking Savita as to why she has not returned to their house with amount. At that time, P.W.2 Savita (victim) was found pregnant and she was carrying second month of her pregnancy.

(b) P.W.2 Savita (victim) was also subjected to cruelty for

one another reason. P.W.2 Savita (victim) deposed that 20 days after she has come back to her matrimonial home, accused appellant- Madhav took her to Nanded in one Mauli Hospital on his motor cycle. The appellant accused Madhav told her that he is diabetic patient and their children would also be a diabetic patient and as such, they would not be in a position to bear the expenses of two diabetic patients. The appellant accused Madhav thus insisted her that she should abort the foetus, however, P.W.2 Savita (victim) has refused that proposal. At Mauli Hospital, Nanded she was examined by Dr. Shinde. He had opined that she should not abort the foetus for the said reason. The appellant accused Madhav thereafter took her to her cousin brother and disclosed them about the same. Thus, the aunt of P.W.2 Savita (victim) took her to another hospital viz. Vinayak Hospital. P.W.2 Savita (victim) was again subjected to examination by Dr. Sangeeta Masare at Vinayak hospital and said doctor also opined that there is no need for abortion and there would be no adverse effect on the foetus in view of the fact that the appellant accused Madhav is diabetic. However, the appellant accused Madhav left her in her cousin's room at Nanded and returned from Nanded alone angrily. On the next day morning, cousin brother of P.W.2 Savita (victim) viz.

Ambadas took her to her matrimonial home.

- (c) Some days after the aforesaid incident, in the morning time the appellant accused Madhav has asked P.W.2 Savita (victim) to wash his handkerchief. In the bathroom, a bucket full of water was kept. As soon as P.W.2 Savita (victim) has tried to wash the handkerchief in the said bucket, she got electric shock. She had seen one live wire in the bucket. Thus, she had raised hue and cry. Then her sister-in-law removed the said wire from the bucket. P.W.2 Savita (victim) had made phone call to her parents from S.T.D. booth. Thereafter her father and uncle had been to her matrimonial home and assured that they would pay the unpaid dowry amount in the month of April, 2004. After they returned to their village, accused persons again started pestering P.W.2 Savita (victim) as to why her father and uncle did not bring the amount.
- (d) P.W.2 Savita (victim) has further deposed that when she was in 5th month of her pregnancy, her father took her to Kedarwadgaon (parents home). At that time, she had stayed with her parents for about 4/5 days. She has again disclosed about the ill-treatment at the hands of appellants-accused and the reasons thereof. Then there was first Dipawali after the marriage. Her father invited

her husband for Dipawali festival. Thus, P.W.2 Savita (victim) went to her parents house with her father for Dipawali festival. Her husband had been to her parents house at the time of Padwa after Dipawali. The husband was offered new clothes and P.W.2 Savita (victim) was also offered new clothes and thereafter she returned to her matrimonial home.

- (e) After Dipawali festival, the appellants accused persons continued to pester P.W.2 Savita (victim) for balance amount of dowry for Rs.21,000/-. At that time, she was carrying 7th month of her pregnancy. She was taken to her parents home where she had stayed for about 15 days and she returned to her matrimonial home alongwith her father. At that time also the father had tried to convince the accused and assured that he would pay the balance amount of dowry.
- (f) Some 8 days thereafter the appellant accused Madhav took P.W.2 Savita (victim) to Nanded on his motor cycle to Vinayak Hospital. The appellant accused Madhav again insisted her to abort the foetus. On the way, the appellant accused also threatened her that if she did not abort the foetus he would push her from bridge alongwith all articles gifted to him by her parents. At Nanded, they

had been to the hospital of Dr. Masare for abortion. At that time, doctor advised that it was not the stage to abort as there would be danger to her life. Thus, they returned to her matrimonial home on motor cycle. Thereafter the main incident dated 20.1.2004 had taken place.

- (g) We have carefully gone through the evidence of P.W.2 Savita (victim), as discussed above. We do not find any exaggeration. P.W.2 Savita (victim) has plainly deposed about the incident as taken place. It is well settled that the cruelty for the purpose of offence under Section 498-A of I.P.C. need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case. Mental cruelty, of course, varies from person to person, depending upon intensity and the degree of endurance. P.W.2 Savita (victim) was continuously subjected to cruelty as defined under Section 498-A of I.P.C. on account of her failure or failure by her parents to meet the unlawful demand of unpaid dowry. Further, she was subjected to taunting and teasing for the reason that she was having dark complexion and she does not match to the status of appellant-accused Madhav. P.W.2 Savita (victim) was also subjected to cruelty to abort the foetus under the pretext that the appellant accused Madhav was diabetic

person. In our considered opinion, the appellants accused persons did not like P.W.2 Savita (victim) a woman with dark complexion and also because of failure on her part and also on the part her family members to meet the demand of unpaid dowry and as such, wanted to abort the foetus. The said harassment/cruelty has gone to such an extent that there was an attempt on her life by keeping a live wire in the bucket of full of water. We are of the opinion that ingredient of Section 498-A r.w. 34 of I.P.C. are fully attracted. The trial court has thus rightly found the appellants accused guilty of the offence punishable under Section 498-A r.w. 34 of I.P.C.

19. So far as the charge under Section 307 r.w. 34 of I.P.C. is concerned, P.W.2 Savita (victim) has deposed as follows:-

- (a) On 20.1.2004 in the noon, she was cleaning paddy grains by sitting in the kitchen. At that time, her father-in-law, mother-in-law and sister-in-law (now she is no more) were present in the T.V. room. At that time, her husband came from outside in the kitchen where she was sitting. He closed the door of kitchen and then appellants accused Madhav kicked on two occasions in her abdomen. Meanwhile, her father-in-law, mother-in-law (the appellants in criminal appeal No. 294 of 2014)

and sister-in-law rushed to the kitchen. They entered in the kitchen room from another door. At that time, her father-in-law raised the volume of TV. The father-in-law handed over one rope which was prepared by fertilizer gunny bag. The appellant accused Madhav put the said rope around her neck. Her father-in-law caught hold of her both the hands and her mother-in-law caught hold of her both the legs and her sister-in-law (now no more) caught hold of her hairs. Her husband had started twisting the rope around her neck. P.W.2 Savita (victim) had tried to loose the ligature and also attacked on her husband to save herself with her hands. Any how she has removed the rope from her neck. However, she was taken to another room by her husband, father-in-law and mother-in-law, where the TV set was kept.

- (b) P.W.2 Savita (victim) has further deposed that in the said TV room, the appellants accused persons rolled her saree upward and her husband given her shock on her buttocks with electric solder which is used for soldering the parts of radio. At that time, her father-in-law, mother-in-law caught hold of her hands and legs. P.W.2 Savita (victim) has further deposed that due to the said shock her skin was burnt and pain developed at the said place and therefore, she started raising hue and cry.

- (c) P.W.2 Savita (victim) has further deposed that her husband had given some shocks on her left thigh by electric wire by putting current in it. She thereafter become unconscious. She has regained her consciousness at Apollo Hospital, Hyderabad. She was unconscious for almost 15 days. After she regained the consciousness she has narrated the incident to her parents and uncle. She has further deposed that she was operated in Apollo Hospital, Hyderabad and child was taken out in still born condition as it was died in stomach. She was in Apollo hospital for about one month and thereafter she went to her parents home.
- (d) P.W.2 Savita (victim) has deposed that after 20.1.2004 she was unable to do her daily routine work. She could not walk and could not button her clothes so also comb her hairs. She cannot eat the food as she has lost control on her fingers. It is not out of place to mention that the trial court has taken a note in her deposition itself that P.W.2 Savita (victim) was brought in the court hall by her father and other persons by lifting her in their arms and kept her on the stool kept in the witness box as the fingers of both of her hands and legs are flexed.

- (e) We have found the evidence of P.W.2 Savita (victim) as consistent, reliable and trustworthy. There is no reason for her to make exaggeration to falsely implicate the appellants accused persons in the crime. Her evidence is assailed on the ground that there is no corroboration to her evidence. It is also submitted on behalf of the appellants in both the appeals that the medical evidence does not support the prosecution case.
- (f) P.W.4 Dr. Shubhangi Patange attached to Apex Hospital, Nanded has deposed that P.W.2 Savita (victim) was admitted in her hospital on 20.1.2004 at about 4.25. p.m. There is no reference in her evidence nor in the medical papers of Apex Hospital, Nanded, as to who has brought P.W.2 Savita (victim) in the Apex Hospital, Nanded. Even in M.L.C. intimation Exh.81 there is no reference as to who has brought P.W.2 Savita (victim) in the hospital. P.W.4 Dr. Shubhangi has deposed that P.W.2 Savita (victim) was unconscious when she was admitted in the hospital. There was froth oozing from her mouth and bleeding from her ears. The blood was also found clotted in her eyes. P.W.4 Dr. Shubhangi has noted following injuries on the person of P.W.2 Savita (victim):-

- i) One lenier contused wound on her throat extending from right to left ear, size 1 ½ cm to 4.5 cm.
 - ii) Contused lacerted wound on her both hips, size of first injury 2x3 cm and second injury 3x3 cm.
 - iii) contused lacerted wound on left thigh size 3.3 cm.
- (g) According to her, injury No.1 may be possible by rope. Injury Nos. 2 and 3 may be caused by any blunt object. In the hospital, P.W.2 Savita (victim) subjected to radiological examination and it was found that there was swelling on her lungs. Her M.R.I. was also done. Cerebral ischemic leisin was revealed. It can be caused by throttling and accordingly P.W.4 Dr. Shubhangi Patange has issued certificate Exh.82, which bears her signature. Thereafter, P.W.2 Savita (victim) was referred to Apollo Hospital, Hyderabad. All the while, P.W.2 Savita (victim) was unconscious and even when she was discharged from Apex Hospital, Nanded, she was unconscious. P.W.4 Dr. Shubhangi has further deposed that injury No.1 in Exh.82 is possible by rope article 3, injury No.2 is possible by soldering machine and injury No.3 is possible by electric current. In her opinion, injury No.1 if not treated in time is sufficient to cause death. In her opinion, oozing froth from mouth and bleeding from ears may be possible due to throttling. In radiological

examination, P.W.2 Savita (victim) was found pulmonary edema, which is possible due to throttling. According to her, due to throttling there is possibility of becoming the person physically handicapped. In cross examination, she had denied with proposition that injury No.1 in Exh.82 is possible in an attempt to commit suicide. She has further admitted that she has not described direction of ligature marks of injury No.2. She has also admitted that there was no burn injury on the person of P.W.2 Savita (victim) and she has also not noticed any injury on the person of P.W.2 Savita (victim) live electric wire. She has further admitted that if the electric shock is given to a person there are two injuries, one injury at the place where the electric shock with live wire is given and second injury on that part from that electric current discharges from his body. She however, denied that injury No.3 is not possible if electric current is given.

- (h) P.W.11 Dr. Jaganmani Vendantam attached to Apollo Hospital, Hyderabad, who is physician, has deposed that P.W.2 Savita (victim) was admitted in his hospital on 26.1.2004 in unconscious state. On examination, he found that fetal heart sound were absent. He has also observed that there was a red colour mark on her neck 2 cm below the angle of mandible. There was also

abrasion below hyoid. There was also electrocuted marks on the inner aspect of left thigh. During ultrasound examination, he had noticed that foetus heart beats are absent and there was over riding of the bones of the skull of the baby. Therefore, he came to the conclusion that baby was dead and thus he has removed the foetus. P.W.2 Savita (victim) regained consciousness after 4/5 days of her admission in the hospital. P.W.11 Dr. Vendantam discharged P.W.2 Savita (victim) in haemodiamical stable condition. He has issued discharge summary which is about 13 pages. It bears his signature and which is marked Exh.96. According to P.W.11 Dr. Vendantam external injuries on the person of P.W.2 Savita (victim) are sufficient to cause death if not treated immediately. These external injuries are dangerous to life in normal circumstances. He has further deposed that due to these injuries patient may become handicap as nervous system was adversely affected. The external injuries may have contributed to death of foetus which was dead prior to 5 days of her admission.

- (i) The discharge summary as per admission and discharge papers of the Apollo Hospital, Hyderabad produced by P.W.11 Dr. Vendantam, marked at Exh.96 is re-produced

herein-below, which speaks for itself:-

“22 years old lady, primigravida with 8 months amenorrhoea, was allegedly throttled by her in-laws at Nanded on 21.01.2004 at 12.00 p.m. was brought to the emergency room in an unconscious state. She was initially treated at a local hospital and was shifted to Apollo for further management. On admission, patient was unconscious, not responding to pain, GCS – 3/15, bilateral subconjunctival hemorrhage present. All limbs were flaccid grade 0/5. Tendon reflexes are absent. Plantars mute. Per abdomen – Fundal height 28-30 weeks. FHS absent. Abrasions over front of neck, below hyoid bone were noted. Electrocuted mark over inner aspect of left thigh was noted. 3 days later patient expelled a dead female foetus. Patient was in sepsis and pre-renal azotemia. 5-6 days after admission, patient began to respond to SVC. Gradually began to move lower limbs and then upper limbs. Speech was clear by next 1 week. She was being given hematinic supplement for pallor. She was accepting oral feeds. Physiotherapy was being given. As she developed bed sore over gluteal region, regular dressing was done. Patient was discharged in a stable condition.”

- (j) In the cross examination, P.W.11 Dr. Vendantam has admitted that he has not seen the impression of rope around the neck of P.W.2 Savita (victim). On perusal of Exh.82, in his opinion, it may be a case of throttling. In his opinion, injury of 2 cm on angle of mandible is not possible by Article 3, as he has not mentioned the width of that ligature mark on the person of P.W.2 Savita (victim). He has agreed that if there is manual

strangulation with Article 3, there is fracture of hyoid bone. However, he has not noticed fracture of hyoid bones of P.W.2 Savita (victim). He was put a specific question as to whether when P.W.2 Savita (victim) was discharged she was not handicapped? To which P.W.11 Dr. Vendantam has answered that handicapped is a very vague term and when he discharged P.W.2 Savita (victim) she was haemodynamically stable but her extremities were weak and the problems like this would take a longer time for achieving partial recovery. Again complete recovery may not be possible and this progress would be periodically assessed by the neurologist and physiotherapy.

- (k) P.W.2 Savita (victim) has deposed that the appellant accused Madhav has tried to constrict her neck with the help of rope and at that time she was caught hold by her father-in-law, mother-in-law. P.W.2 Savita (victim) has explained as to how she has tried to resist the said attempt and succeeded in removing the said ligature from her neck. Even she had tried to assault her husband for that purpose. In these circumstances, there may not be any possibility of fracture of hyoid bone. Further, there may not be any complete ligature around the neck. It is well settled that the medical evidence cannot be allowed

to override the direct evidence about assault. Unless the medical evidence in its term goes so far it completely rules out the possibility whatsoever of the manner takes place in the manner alleged by the victim. The testimony of eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

(l) There are following types of strangulation:-

- (i) Ligature strangulation,
 - (ii) Throttling (manual strangulation-compressing with hand),
 - (iii) Mugging (compressing with forearm or foot or wrist),
 - (iv) *Bansdola* (wooden stick is used to compress the neck),
 - (v) Garrotting (a rope or a loincloth and a wooden stick as a lever to tighten the ligation is used),
 - (vi) Accidental strangulation.
- (m) So far as the ligature marks are concerned, in some cases, the marks in the neck may not present at all or may be very slight if the ligature is removed after some time. Even if it is slight confusion as to whether it is case

of throttling or strangulation, however, in the given set of allegations, it may not be possible to give clear medical opinion as to whether it is case of strangulation by ligature or manual strangulation by throttling. The medical evidence may corroborate the prosecution witnesses or in some it may not. The court, however, cannot apply any universal rule whether ocular evidence would be relied upon or the medical evidence, as the same will depend upon facts and circumstances of each case and no hard and fast rule can be laid down therefor. In the instant case, we believe the ocular evidence and we find no error committed by the trial court in relying upon the ocular evidence of P.W.2 Savita (victim).

- (n) So far as the other external injuries on the person of P.W.2 Savita (victim) are concerned, those injuries corroborate her evidence. There were injuries on her buttocks which might have been caused by soldering machine as accepted by the experts. So far as injury on thigh is concerned, which is allegedly caused by live electric wire, however, it cannot be ignored that P.W.2 Savita (victim) was surrounded by four persons at the time of incident i.e. three appellants-accused persons before us and one accused, who died before filing of charge sheet. So far as injuries on the buttocks are

concerned, the same may not be resulted in the burn injuries. Even P.W.4 Dr. Shubhangi has also deposed that the same depends upon as to how long the soldering machine is kept on the part of body.

- (o) In the considered opinion of both the doctors i.e. P.W.4 Dr. Shubhangi Patange and P.W.11 Dr. Vendantam that external injuries on the person of P.W.2 Savita (victim) are sufficient to cause death if not treated immediately, as the said injuries are dangerous to life in normal circumstances.
- (p) Learned counsel for the appellants in criminal appeal No. 294 of 2014 so also learned counsel for the appellant-accused Madhav in criminal appeal No. 392 of 2014 have vehemently submitted that the appellant accused Madhav entered in the kitchen room and closed the door from inside and as such, it was not possible for the appellants accused i.e. father-in-law and mother-in-law to enter in the kitchen room. There is no another door to the kitchen room. We find no substance in the submissions made on behalf of the appellants accused in this regard.
- (q) We have carefully gone through the contents of spot panchnama Exh.84. The house of the appellants

accused is consisting of four rooms i.e. (i) kitchen, (ii) Devghar, (iii) sleeping room and (iv) drawing room. It has been specifically mentioned in the spot panchnama Exh.84 that kitchen room is facing towards east and there is one door towards eastern side. So far as the Devghar is concerned, the same is towards western side of the kitchen. It is also mentioned in the panchnama that towards western side of the kitchen there is one another door. It is thus clear from the contents of spot panchnama Exh.84 that there are two entrances (doors) to the kitchen room. One opens towards eastern side and another opens towards western side. P.W.2 Savita (victim) has deposed that when she was cleaning the paddy grains by sitting in the kitchen room her husband came from outside. It is not out of place to repeat here that said kitchen room faces towards east and door opens towards eastern side. There is no another room towards eastern side of the kitchen room. Her husband came to the kitchen when she was sitting and he closed the door of kitchen room from inside. He had given two kicks of blow on her abdomen. Meanwhile, her father-in-law, mother-in-law and sister-in-law (now no more) rushed to the kitchen room. They entered in the kitchen from another door. She has also deposed that at that time her father-in-law raised the volume of T.V. We

have carefully gone through the map drawn of the spot panchnama Exh.84. It appears that the drawing room is towards southern side of the kitchen room and sleeping room is also towards southern side adjacent to drawing room and Devghar. The said drawing room has also door opens towards eastern side. Thus, it appears that the house faces towards east and as such, entrance of the house is also towards east side for access to the drawing room and also to the kitchen. It further appears that from the drawing hall, there is door opens towards the sleeping room and one another door to the sleeping room opens towards Devghar. We have already discussed that there is another door between Devghar and kitchen. It is thus possible for the father-in-law, mother-in-law and sister-in-law to use the said door to enter in the kitchen. It is rather obvious to have internal access to all rooms despite the access from outside to the drawing room and the kitchen room.

- (r) It is well settled that intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances.

- (i) nature of the weapon used;

- (ii) whether the weapon was carried by the accused or was picked up from the spot;
 - (iii) whether the blow is aimed at a vital part of the body;
 - (iv) the amount of force employed in causing injury;
 - (v) whether the act was in the course of sudden quarrel or sudden right or free for all fight;
 - (vi) whether the incident occurs by chance or whether there was any pre-meditation;
 - (vii) whether there was any prior enmity or whether the deceased was a stranger;
 - (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;
 - (ix) whether it was in the heat of passion;
 - (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;
 - (xi) whether the accused dealt a single blow or several blows.
- (s) In the instant case, after considering all facts it appears that assault was made on P.W.2 Savita (victim) with premeditation and pre-planning. The appellant accused Madhav has entered in the kitchen room from outside, closed the door from inside and given two kicks blows on the abdomen of P.W.2 Savita (victim). It is not out of

place to repeat here that P.W.2 Savita (victim) was subjected to cruelty on the count to abort the foetus under the pretext that the appellant accused Madhav suffers from diabetic and the baby in the womd would also the be patient of diabetic. Immediately, thereafter, father-in-law, mother-in-law and sister-in-law entered in the kitchen from another door. The appellant accused Dhondiba (father-in-law) brought with him a rope which he had handed over to appellant accused Madhav. Thus, considering these facts of entering simultaneously in the kitchen and assaulting P.W.2 Savita (victim) in the manner as discussed above, clearly indicates that the assault was made after premeditation and pre-planning. There was prior concert of mind for making the assault. P.W.2 Savita (victim) was helpless. Though she was succeeded in removing the ligature pressed around her neck, however, she could not foil the other attempts on her life. She has become unconscious when she was taken to another room and subjected to further torture. The appellants accused have acted in cruel and unusual manner. P.W.2 Savita (victim) was carrying 7th month and some odd days of her pregnancy. Even then appellant accused No.1 Madhav kicked on her abdomen twice and all the appellants in furtherance of their common intention tried to kill her. It is a clear case of attempt to commit murder. There is no

scope to draw any other inference. The court is bound to consider the act, irrespective of its result, so done with an intention or knowledge and under the circumstances mentioned in Section 307 of I.P.C. So far as the injury is concerned, it is on vital part and dangerous to life as stated by both the doctors. Thus, the trial court has rightly held that the appellants accused are guilty of the charge for the offence punishable under Section 307 r.w. 34 of I.P.C.

20. So far as the charge under Section 316 r.w. 34 of I.P.C. is concerned, any act or omission of such a nature and done under such circumstance as would amount to offence of culpable homicide, if the sufferers were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence under Section 316 of I.P.C. We have confirmed in the foregoing paras the findings recorded by the trial court that assault on P.W.2 Savita (victim) was done with intention or with knowledge, which brings it within the purview of Section 299 of I.P.C. and in view of the same, because of the death of a quick unborn child has resulted from an act against P.W.2 Savita (victim) attracted the ingredients of Section 316 of I.P.C. It is well known that foetus gets life after 12 weeks of conception. It is not disputed that P.W.2 Savita (victim) was carrying 28th week of her pregnancy. We would like to repeat here the opinion expressed by P.W.11 Dr. Jaganmani Vendantam that external

injuries on the person of P.W.2 Savita (victim) may have contributed to the death of foetus, who died prior to five days of admission of P.W.2 Savita (victim) in Apollo Hospital, Hyderabad. The incident had taken place on 20.01.2004 whereas P.W.2 Savita (victim) was admitted in Apollo Hospital, Hyderabad on 26.01.2004. It thus appears that immediately after the incident, death of foetus was occurred. We find no fault in the finding recorded by the trial court that the appellants accused are guilty of the offence punishable under Section 316 of I.P.C.

21. Though P.W.6 Vishwanath and P.W.7 Keshav, who are the panch witnesses to memorandum pancahnama Exh.101 and recovery panchnama Exh.102, have not supported the prosecution case, however, P.W.12 Dy. S.P. Milind Khodve (the then A.P.I.) has deposed about the statement made by the appellants accused Madhav showing his willingness to point out the weapons used in the commission of offence concealed in his field Gat No.247. On the basis of the said disclosure statement, memorandum panchnama Exh.101 was prepared in presence of panchas and the appellant accused Madhav led the team towards one canal. As per his direction, they have stopped the jeep and covered a distance of 1 to 2 furlong. The appellant accused Madhav led them to his field Gat No.247. There was one heap of dried stems of Tur crop. The appellant accused Madhav took out three articles. Those Articles are soldering machine with wire attached to it, electric wire of yellow

colour and one ligature which was about 9 feet in length made from gunny bag of chemical fertilizer. Accordingly, seizure panchnama was prepared vide Exh.102. Article No.1 is electric soldering machine, Article No.2 is electric wire of yellow colour and Article No.3 is nylon rope prepared by fertilizer gunny bag. We find no substance in the submissions made on behalf of the appellants-accused that recovery at the instance of the appellants-accused is not proved. Further, so far as the soldering machine and electric wire are concerned, there is no reason to send those articles for chemical analysis. Even Article No.3 rope prepared from fertilizer gunny bag was also not required to be sent to the chemical analysis for any purpose since P.W.2 Savita (victim) has succeeded in removing the said nylon rope from her neck by resisting the attempt to kill her.

22. We are also not impressed by the submissions made on behalf of the appellants accused to the effect that the evidence of P.W.2 Savita (victim) suffers from contradictions, omissions and improvements. There are some minor contradictions and omissions, however, those are not material. Furthermore, P.W.1 Devidas, father of P.W.2 Savita (victim) and P.W.3 Shivaji, uncle of P.W.2 Savita (victim) have duly corroborated her evidence about the ill-treatment being extended to her as disclosed to them by P.W.2 Savita (victim).

23. In the case of **Sarju Prasad vs. State of Bihar, (supra)**; relied upon by learned counsel for the appellant in criminal appeal No. 392

of 2014 in para Nos. 7, 9 and 10, the Supreme Court has made the following observations:-

“7. Having said all this we must point out that the burden is still upon the prosecution to establish that the intention of the appellant in causing the particular injury to Shankar Prasad was of any of the three kinds referred to in Section 300, Indian Penal Code. For, unless the prosecution discharges the burden the offence under Section 307, I. P. C. cannot possibly be brought home to the appellant. The state of the appellant's mind has to be deduced from the surrounding circumstances and as Mr. Kohli rightly says the existence of a motive to cause the death of Shankar Prasad would have been a relevant circumstance. Here, the prosecution has led no evidence from which it could be inferred that the appellant had a motive to kill the victim of his attack. On the other hand he points out that as the appellant had no enmity with Shankar Prasad that neither of them even knew each other and that as the appellant inflicted the injury on Shankar Prasad only to make him release the wrist of Sushil while Sushil was in the act of stabbing Madan Mohan he cannot be said to have had the motive to kill Shankar Prasad and, therefore, no intention to cause murder or to cause any injury which may result in death could be inferred. Now, it is the prosecution case that about a week before the incident Sushil, for certain reasons, had given a threat to Madan Mohan to the effect that he would be taught a lesson and according to the prosecution Sushil and the appellant Sarju were lying in wait for Madan Mohan in the chowk on the day in question with chhuras with the intention of murdering him. The prosecution wants us to infer that these two persons also had the intention of murdering any one who went to the rescue of Madan Mohan. It seems to us that from the facts established it cannot be said that the appellant had the

intention of causing the death of Shankar Prasad or of any one who went to Madan Mohan's rescue. If such were his intention then another significant fact would have possibly, though not necessarily, deterred him and that is that Madan Mohan and Shankar Prasad were not the only persons there at that time but were accompanied by some other persons. Moreover the incident occurred in broad day light in a chowk which must be a well-frequented area. It is not easy to assume that in such circumstances the appellant could have intended to commit a crime for which the law has provided capital punishment.

8.....

9. *It is true that the witnesses say that the appellant used a chhura. It is also true that the injury was inflicted on a vital part of the body but the fact remains that no vital organ of the body was injured thereby. Again, we do not know how big the chhura was and, therefore, it cannot be said that it was sufficiently long to penetrate the abdomen deep enough to cause an injury to a vital organ which, would in the ordinary course of nature be fatal. The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size. We are, therefore, unable to say with anything near certainty that the appellant had such intention or knowledge. Incidentally we may point out that Shankar Prasad does not say that after he released the wrist of Sushil the appellant inflicted or even tried to inflict any further injury on him.*

10. *In this state of the evidence we must hold that the prosecution has not established that the offence committed by the appellant falls squarely under Section 307, I. P. C. In our opinion, it amounts only to an offence under Section 324,*

I. P. C.”

In the facts of the cited case, the Supreme Court has made observations in para 9 as above. In the instant case, however, the prosecution has proved beyond doubt the murderous intention of the appellants accused to eliminate P.W. Savita (victim).

24. In the case of ***Hari Kishan & State of Harayana vs. Sukhbir Singh and others (supra)*** relied upon by learned counsel for the appellant in criminal appeal No. 392 of 2014 in para 7, the Supreme Court has made the following observations:-

“7. On the first question as to acquittal of the accused under s.307/149 IPC, some significant aspects may be borne in mind. Under s.307 IPC what the Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary (to) constitute' murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under s. 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.”

It is well settled that the intention is to be gathered from all

circumstances and not merely from the consequences that ensue. The ratio laid by the Supreme Court in the aforesaid case, cannot be applied to the facts and circumstances of the instant case, as we find murderous intention on the part of the appellants accused herein.

25. In the case of ***Hari Mohan Mandal vs. State of Jharkhand, (supra)*** relied upon by learned counsel for the appellant in criminal appeal No. 392 of 2014 in para No. 17 the Supreme Court has made the following observations:-

“17. The first injury was certainly on a vital part and taking into account the injuries on the various parts of the body. Section 307 IPC has been rightly invoked. The accused has been rightly convicted for offences punishable under Section 307, IPC. However, taking into account the fact that the altercations took place at the time of husking paddy and there was no pre-meditation or planning of the attack, custodial sentence of five years would meet the ends of justice. It is to be noted that scope for consideration in the appeal was limited to the nature of offence and consequently the sentence.”

26. In the case of ***Jabbar and others vs. State, (supra)*** relied upon by learned counsel for the appellant in criminal appeal No. 392 of 2014 in para No. 12, the Supreme Court has made the following observations:-

“12. It is clear that Section 316, I.P.C. can only apply if the action resulting in a death was capable of amounting to

culpable homicide. The section does not specifically state that the action must be directed against the mother and not the quick unborn child. From the illustration to the section, which is intended to clarify the meaning of the "act", it appears that the act must be of such a nature that the offence committed against the mother herself would be culpable homicide if the mother had died as a result of it. If the act is intended only to cause miscarriage without the consent of the mother, it could fall under Sections 312 and 313, I.P.C. or under Section 314, I.P.C. If the act is intended to cause the death of the child before its birth or to cause it to die after its birth it is an offence punishable under Section 315, I.P.C. Hence, an offence under Section 316, I.P.C. must be deemed to refer to acts directed against the mother. And these acts have to be of such a character that the offender would have been guilty of culpable homicide if she had died. The resulting injury to the child carried in the womb of the mother may be quite unintended and yet an offence under Section 316, I.P.C. would be made out. The action must be such that it results in the death of a "quick unborn child" instead of the death of the mother which could have been caused by the action."

So far as two cases i.e. ***Hari Mohan Mandal vs. State of Jharkhand, (supra)*** and ***Jabbar and others vs. State, (supra)*** are concerned, the ratio laid down in those cases is not disputed.

27. So far as the sentence part is concerned, we are not inclined to reduce the sentence only for the reason that the appellants accused persons are ready to give their consent to grant more compensation to P.W.2 Savita (victim) for reducing the sentence. However, at the same time, we cannot ignore that the trial court has given maximum

punishment to all the appellants accused. The trial court has observed that P.W.2 Savita (victim) was newly married girl and within one year of her marriage, she was assaulted in a very brutal manner. P.W.2 Savita (victim) cannot stand and walk herself. She was actually brought in the court room by lifting her. The fingers of her hands and legs are flexed. However, appellant accused No.1 Madhav was 23 years of age at the time of incident. Furthermore, the appellant-accused Dhondiba and Chandrakalabai are at present more than 70 years of age. Thus, on this backdrop reducing the sentence appropriately passed against them would meet the ends of justice.

28. Though we have given thoughtful consideration to the submissions made on behalf of the appellant accused No.2 Dhondiba (father-in-law) and appellant accused No.3 Chandrakalabai (mother-in-law) for reducing their sentence for the reason that the main role has been attributed to appellant accused No.1 Madhav and they have merely assisted him, however, it is clear case of pre-meditation and common intention. The manner in which appellant accused No.2 Dhondiba and appellant accused No.3 Chandrakalabai alongwith their daughter (who is no more alive) entered in the kitchen room from another door as soon as appellant accused No.1 Madhav entered in the kitchen from outside door and given blows of kicks on the abdomen of P.W. 2 Savita (victim) and further appellant accused No.2 Dhondiba had handed over nylon rope prepared from fertilizer

gunny bag to appellant accused No.1 Madhav, the case of the appellant accused No.2 Dhondiba and appellant accused No.3 Chandrakalabao cannot be separated even for reducing the sentence substantially by paying more compensation.

29. In view of the discussion and the observations made in the foregoing paras, we proceed to pass the following order:-

O R D E R

- I. Criminal appeal Nos. 392 of 2014 and 294 of 2014 are hereby partly allowed.
- II. The impugned judgment and order passed by the Additional Sessions Judge, Kandhar dated 23.05.2014 in Sessions Case No.23 of 2004, convicting thereby appellant-original accused No.1 Madhav Dhondiba Wadwale, appellant original accused No.2 Dhondiba Devrao Wadwale and appellant original accused No.3 Chandrakalabai Dhondiba Wadwale, for the offences punishable under Sections 498-A r.w. 34, 307 r.w. 34 and 316 r.w. 34 of I.P.C. stands confirmed.

Instead of

- III. The sentence to suffer imprisonment for life each under Section 307 r.w. 34 of I.P.C. and sentence to suffer R.I. for 10

years each under Section 316 r.w. 34 of I.P.C. the same is reduced to the extent as follows;

- (a) The appellant-original accused No.1 Madhav Dhondiba Wadwale, appellant-original accused No.2 Dhondiba Devrao Wadwale and appellant-original accused No.3 Chandrakalabai Dhondiba Wadwale are hereby sentenced to suffer imprisonment for 10 years each and to pay fine of Rs.25,000/- (Twenty five thousand) each i/d to suffer further R.I. for six months each under Section 307 r.w. 34 of I.P.C.
- (b) The appellant-original accused No.1 Madhav Dhondiba Wadwale, appellant-original accused No.2 Dhondiba Devrao Wadwale and appellant-original accused No.3 Chandrakalabai Dhondiba Wadwale are hereby sentenced to suffer imprisonment for 05 years each and to pay fine of Rs.25,000/- (Twenty five thousand) each i/d to suffer further R.I. for six months each under Section 316 r.w. 34 of I.P.C.

IV. Rest of the order stands confirmed.

V. The bail bonds furnished by the appellants in criminal appeal No. 294 of 2014 i.e. original accused No.2 Dhondiba Devrao Wadwale and original accused No.3 Chandrakalabai Dhondiba Wadwale in terms of order dated 08.01.2016

passed by this Court while releasing them on bail, stands cancelled. The appellant accused No.2 Dhondiba Devrao Wadwale and appellant accused No.3 Chandrakalabai Dhondiba Wadwale shall undergo remaining part of their respective sentences in terms of the order passed in this appeal.

VI. Criminal appeal Nos. 392 of 2014 and 294 of 2014 are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

rlj/