



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

CRIMINAL APPEAL NO.576 OF 2018

Dnyaneshwar Balu Dukare,
Age-28 years, Occu:Agri.,
R/o-Hanuman Vasti, Akola,
Tq-Pathardi, Dist-Ahmednagar.

**...APPELLANT
(Ori. Accused No.1)**

VERSUS

The State of Maharashtra,
Through Police Station Pathardi,
Tq-Pathardi, Dist-Ahmednagar.

...RESPONDENT

...
Mr. Joydeep Chatterji Advocate h/f. Mr. Prashant R. Nangare
Advocate for Appellant.
Ms. Uma Bhosale, A.P.P. for Respondent – State.
Mr. N.B. Narwade Advocate for assist to P.P.

...

WITH

CRIMINAL APPEAL NO.884 OF 2022

The State of Maharashtra,
Through the Police Station Officer,
Pathardi Police Station,
Dist-Ahmednagar.

...APPELLANT

VERSUS

- 1) Dnyaneshwar S/o Balu Dukare,
Aged-28 years, Occu:Agriculture,
R/o-Hanuman Wasti, Akola,
Tq-Pathardi, Dist-Ahmednagar,
- 2) Balu S/o Natha Dukare,
Aged-55 years, Occu:Agriculture,
R/o-Hanuman Wasti, Akola,
Tq-Pathardi, Dist-Ahmednagar,
- 3) Baburao @ Mithu Balu Dukare,
Aged-26 years, Occu:Agriculture,
R/o-Hanuman Wasti, Akola,
Tq-Pathardi, Dist-Ahmednagar,
- 4) Smt. Nanda W/o Balu Dukare,
Aged-50 years, Occu:Household,
R/o-Hanuman Wasti, Akola,
Tq-Pathardi, Dist-Ahmednagar.

...RESPONDENTS
(Ori. Accused Nos. 1 to 4)

...

Ms. Uma Bhosale, A.P.P. for Appellant – State.
Mr. Joydeep Chatterji Advocate h/f. Mr. Prashant R. Nangare
Advocate for Respondent Nos. 1 to 4.

...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 28th NOVEMBER, 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Both these Appeals arise out of the same Judgment and

therefore, proposed to be disposed of by this common Judgment.

2. Criminal Appeal No. 576 of 2018 is filed by original accused No.1 – Dnyaneshwar Balu Dukare, to challenge his conviction in Sessions Case No. 415 of 2016 dated 14th June 2018 by the learned Additional Sessions Judge, Ahmednagar for the offence punishable under Section 302 of the Indian Penal Code.

3. Criminal Appeal No. 884 of 2022 is filed by the State Government i.e. prosecution under Section 378 of the Code of Criminal Procedure to challenge the acquittal of original accused No.1 – Dnyaneshwar Balu Dukare from the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and the acquittal of original accused No.2 – Balu Natha Dukare, original accused No.3 – Baburao @ Mithu Balu Dukare and original accused No.4 – Smt. Nanda Balu Dukare from the offence punishable under Sections 498-A, 302, 323, 504, 506 read with Section 34 of the Indian Penal Code. The said Appeal came to be admitted by this Court by order dated 17th November 2022.

4. Heard learned Advocate Mr. Joydeep Chatterji holding for learned Advocate Mr. Nangare appearing for the appellant in Criminal Appeal No. 576 of 2018 and respondents – original accused in Criminal Appeal No. 884 of 2022, learned APP Ms. Uma Bhosale appearing for the State in both the Appeals, assisted by learned Advocate Mr. Narwade for the original informant.

5. What is not in dispute is that deceased Savitra was the daughter of informant PW-2 Saraswati Pandurang Jaybhaye, resident of Hanuman Vasti, Akola, Taluka-Pathardi, District-Ahmednagar. The houses of the informant and accused are opposite to each other. The marriage took place on 10th July 2016 and deceased Savitra was found dead on 2nd September 2016 in her matrimonial home. Original accused No.1 i.e. appellant in Criminal Appeal No. 576 of 2018 is the husband of deceased Savitra, whereas original accused Nos.2 and 4 are the parents of accused Nos.1 and 3. In other words, accused Nos.1 and 3 are the real brothers.

6. PW-2 Saraswati lodged the First Information Report (for short "FIR") on 4th September 2016 contending that original accused Nos.2 and 4 placed marriage proposal between Saraswati and accused No.1 stating that since Savitra is beautiful the marriage can be performed in simple manner. But after the date of marriage was fixed, accused Nos. 2 to 4 stated that unless dowry is paid, the marriage will not be performed and therefore, Saraswati was constrained to pay Rs.41,000/- as dowry. Thereafter accused No.1 disclosed that he has love affair with a girl from his relation and he has plan to marry her, however, due to the insistence by accused Nos.2 and 4 and their relationship with the informant he has decided to marry Savitra. The marriage was performed in the simple manner in front of the house of the accused. After the marriage, Savitra went for cohabitation. There was no complaint for about 10 to 12 days. However, thereafter it was informed by Savitra to the informant, her husband and son that one Ajinath Jadhavar, who is relative of her husband, used to visit her matrimonial home and his visits have increased after the marriage and on that count all the accused used to suspect her by stating that why said Ajinath talks with her and that there is something fishy about their

relationship. All the accused used to state that Savitra should give divorce to accused No.1. On that count the accused persons used to give threats to Savitra. Thereafter Savitra had gone to her parental house for the festival of *Nagpanchami*. At that time she told to the informant and her sister, father that her husband is having love affair with another lady. Savitra has seen them talking in an isolated place and since then accused No.1 is harassing her. Informant and relatives visited the house of the accused and told that they should not harass Savitra. Two days prior to the festival of *Pola*, around 11.00 a.m. informant had found accused No.1 giving slaps and manhandling to Savitra and at that time the informant asked accused No.1 not to assault Savitra, then accused No.1 told that Savitra should give him divorce. On the same day Savitra when came out of the house under the pretext of answering nature's call, disclosed the informant that since last three days the husband is harassing her, he is not sleeping in the house and there is danger to her life. On the day of *Pola* festival, the informant and her sister-in-law were at home. Her son and husband had gone out of the station. In the evening, they had seen Savitra going to temple taking *Naivadya* and coconut. Around 10.00 p.m. the informant

and her sister-in-law were taking dinner. At that time mother-in-law of Savitra came to the house of the informant and then went back around 10.30 p.m. In the midnight, mother-in-law of Savitra came to the house of the informant and asked for the milk of she-goat, which was given by the informant and she again slept. On the next day i.e. 2nd September 2016 around 6.00 a.m. when informant got up, she found that all the accused persons were sitting in front of the room of their house by placing their hands to their heads. Informant asked them as to what had happened. Accused No.4 told her that Savitra has become unconscious and she should see what has happened. Informant went inside the room in the house of accused. She found Savitra in prone condition on carpet. Her hairs were disorganized and froth was coming out of the mouth, her hands and legs had become stiff. When informant tried to woke her up, informant could realize that Savitra was dead and therefore informant started crying loudly. Neighbouring relatives arrived and then suggestion was given that Savitra should be taken to the hospital. Savitra was shifted to Government hospital in a Jeep where, after examining, doctor declared her dead. Thereafter the dead body was taken to Ghati Hospital at

Aurangabad around 3.00 p.m. The postmortem could be performed only on 3rd September 2016 and thereafter the funeral took place. As informant was in grief, she lodged the report on 4th September 2016.

7. After the FIR was lodged and crime was registered, investigation was undertaken. Prior to that accidental death was registered on the basis of Medico-legal Case (MLC) given by the doctor. Inquest panchnama was prepared and dead body was sent for postmortem. Even the panchnama of the spot was got executed on 2nd September 2016 during the inquiry under Section 174 of the Code of Criminal Procedure. After the offence was registered, the statements of the witnesses were recorded. Seized articles and samples were sent for investigation by the Chemical Analyzer. Accused came to be arrested and they were medically examined. While in custody, accused No.1 gave memorandum and discovered a pillow which he had concealed in the same room under the articles of decoration. After completion of investigation, charge-sheet was filed.

8. After committal of the case, the prosecution conducted the

trial. In all eight witnesses have been examined to bring home the guilt of the accused and after considering the evidence on record and hearing both the sides, accused No.1 came to be convicted as aforesaid and accused Nos. 2 to 4 came to be acquitted as aforesaid. Hence both these Appeals.

9. It has been vehemently submitted on behalf of the appellant – original accused No.1 that the learned trial Judge has not appreciated the evidence properly. On the same set of facts the learned trial Judge has acquitted accused Nos.2 to 4 and therefore the conviction of accused No.1 is not at all justified. Similar treatment ought to have been given to accused No.1. He cannot be differently considered only on the ground that he was the husband of the deceased. It appears from the testimony of the informant as well as her FIR itself that accused No.1 was posing them (as alleged by them) that accused No. 1 was having love affair with some other lady and this was disclosed by him even prior to the marriage between deceased and accused No.1. Still it appears that the marriage has been performed. In fact there was suggestion to PW-2 Saraswati which was initially admitted but later on corrected that there was love affair

between deceased and accused No.1 and therefore, the marriage was performed and this fact stood supported in the cross-examination of PW-4 Shankar, who is the brother of the deceased. If this fact is to be considered, then there is absolutely no substance in the statement made now that accused No.1 was loving some other lady and wanted to marry her and for that purpose he was harassing deceased. There is no evidence to support the statement of these two witnesses i.e. PW-2 Saraswati and PW-4 Shankar that the accused persons had demanded dowry amount of Rs.41,000/- and it was paid prior to the marriage. In fact the suggestions have been admitted by these two witnesses that financial condition of the accused is much better than the financial condition of the informant and only due to love affair between deceased and accused No.1 the marriage was performed and the expenses were incurred by the accused persons. There is delay in lodging the FIR. It appears that PW-3 Dr. Manisha Hange, who was the medical officer in Sub-District Hospital, Pathardi where Savitra was taken immediately and was examined around 7.10 a.m. of 2nd September 2016, had declared her dead, yet the FIR has been lodged around 17.58 hours of 4th September 2016. The said

delay has not been properly explained. It has been stated by PW-3 Dr. Manisha as well as there is document on record i.e. Exhibit-55 dated 2nd September 2016 given by PW-3 Dr. Manisha stating that the relatives were insisting that the postmortem of Savitra should be performed at Aurangabad. Nobody is explaining as to why there should be such insistence. The postmortem has been done by PW-5 Dr. Ganesh Niturkar between 8.30 a.m. to 10.00 a.m. on 3rd September 2016. According to him, the probable cause of death was "asphyxial death due to smothering". PW-5 Dr. Ganesh admits in his cross-examination that smothering is one type of asphyxia, in rare condition in epilepsy, smothering may occur. He further admits that if the attack of epilepsy is suffered in the sleeping condition of the person, in that case there is possibility of smothering, if body is in reverse condition. He also admitted that there is possibility of occurring suffocation in heart disease.

10. Learned Advocate for the appellant has placed reliance upon the decision in ***Subramaniam vs. State of Tamil Nadu and another, 2009 AIR (SCW) 3550: 2009 (14) SCC 415***, wherein the difference between suffocation by smothering and

asphyxia by smothering has been explained. It has been observed that the High Court had erred in considering usual symptoms that would be available in case of death due to asphyxia by smothering. Corresponding absence of evidence was not considered. A reference was taken from Modi's Medical Jurisprudence and Toxicology wherein the learned author defined the application of the term 'suffocation' to that kind of death that results from the exclusion of air from the lungs, by means other than that of the compression of the neck. Further taking note of the external appearances and internal appearances in the postmortem, it has been observed that external appearances may appear due to cause producing suffocation or to asphyxia. It is also observed that in cause producing suffocation, as noted, in homicidal smothering, affected by the forcible application of the hand over the mouth and the nostrils, bruises and abrasions are often found on the lips and on the angles of the mouth, and alongside the nostrils. Learned Advocate representing original accused No. 1 has therefore, submitted that the case in hand is the result of suffocation / asphyxia due to epilepsy attack in sleeping condition to Savitra. Learned trial Judge, therefore, erred in holding that it was homicidal death. He further

submitted that the alleged discovery of pillow cannot be said to be admissible and even if it is admitted, then it has not been proved by the prosecution that the said suffocation was caused with the help of said pillow. Merely because accused No.1 being husband, could not have been convicted even if it would have been proved that he was with Savitra at night time. In his statement under Section 313 of the Code of Criminal Procedure, accused No.1 has stated that since he was supposed to water the field, he was not in the house at the relevant time. Learned Advocate for original accused No.1 also submitted that the alleged injuries on the person of accused No.1 cannot be considered as PW-3 Dr. Manisha, who examined him also, has stated the age of the injuries. Those injuries cannot be connected to the alleged incident in the intervening night of 1st September 2016 to 2nd September 2016 and therefore, the Appeal deserves to be allowed by setting aside the conviction awarded to the appellant – original accused No. 1.

11. Learned APP Ms. Bhosale well assisted by learned Advocate Mr. Narwade for the informant, strongly submitted that all the accused persons were residing in the same house. The death of

Savitra has taken place in the intervening night. None of the accused have taken the plea of alibi and have not proved it by way of adducing cogent evidence. Though informant says that accused No.1 had disclosed about his alleged affair with another lady prior to the marriage between deceased and accused No.1, yet he is not denying the fact that he is married to deceased. The harassment was on account of giving divorce but it has been misinterpreted by the learned trial Judge. Even the demand of dowry was illegal. It has been categorically stated by the informant and her son that an amount of Rs.41,000/- was paid as dowry. Informant was residing opposite to the accused and therefore, her presence in the house of the accused in the morning hours when she found that all the accused persons were sitting in front of their house in concern, appears to be natural. Her testimony is further supported by PW-6 Vimal Jadhavar who resides in the neighbourhood. Accused No.1 is not explaining the injuries to his person, as the prosecution has done its duty by examining PW-3 Dr. Manisha, who had clinically examined him. Under which circumstances he had received those injuries was for him to explain, as it was within his knowledge as to how he received those injuries. The alleged delay is not at all fatal

when immediately after Savitra was declared dead, her brother had raised objection for postmortem to be performed at Sub-District Hospital, Pathardi. PW-3 Dr. Manisha has written the said letter Exhibit-55. It is not only on the point that the relatives had expressed suspicion over death of Savitra but she also found that the postmortem was complicated and requires experts opinion than her. Testimony of PW-5 Dr. Ganesh Niturkar would show that how his team of in all four doctors, after noticing the injuries on the person of the deceased, came to the conclusion that the probable cause of death is 'asphyxial death due to smothering' and he clearly opines that it was homicidal in nature. He had noted five external injuries, which were around mouth and face. No doubt a pillow has been discovered which is stated to be the weapon used for smothering, yet the injuries which were noted by PW-3 Dr. Manisha and PW-5 Dr. Ganesh are important and therefore, the learned trial Judge was justified in holding the accused No.1 responsible for the death, however, erred in acquitting accused Nos.2 to 4. They acted in concert and therefore, also ought to have been held responsible for the death of Savitra.

12. In respect of Appeal challenging the acquittal of accused Nos.2 to 4, learned Advocate representing them supported the reasons given by the learned trial Judge to that extent. He submitted that the ingredients of Section 498-A of the Indian Penal Code with Section 323, 504, 506 of the Indian Penal Code were absolutely not proved. Even as regards Section 302 of the Indian Penal Code as against accused Nos.2 to 4 is concerned, it has not been positively brought on record by the prosecution that at night time these three accused persons had gone in the room occupied by the deceased and then the alleged overt-act is done. Therefore, the acquittal of accused No.1 from other Sections and accused Nos.2 to 4 from all the Sections is justified.

13. At the outset it is required to be seen, as to whether the death of Savitra was homicidal or not. It is not in dispute that she died in the house of the accused persons. In his statement under Section 313 of the Code of Criminal Procedure, accused No.1 has stated that he would give written statement. His written statement is at Exhibit-97. In respect of the incident, he has stated that his parents had slept in the old house which was

near the cattle-shed and as the electricity would be available at night time, he had gone to give water to the sugarcane crop in the field. However, to this statement in respect of his own plea of alibi, he has not led any positive evidence. No background has also been laid in the cross-examination of PW-2 Saraswati, PW-4 Shankar or PW-6 Vimal. He has not examined the electricity persons to prove that the electricity was available or comes at night time only where his field is situated. He has not produced 7 X 12 extract to prove that sugarcane crop was taken in his field in the relevant year. He has not entered the witness box nor he has asked the other accused persons to enter the witness box and state about his absence from the house. The accused persons have not given reason or explained under which circumstance Savitra's death has occurred, who had noticed the condition of Savitra first etc. Thus, it is certain that there is no proper explanation by the accused persons as to how Savitra's death has occurred. Whether accused Nos.2 to 4 were bound to explain those circumstances is then required to be seen separately, but certainly the burden would be on accused No.1, who is husband of the deceased. It is presumed that the husband and wife would be in one room at night time unless it is

proved that either of them was away for some reason. The plea of alibi has to be proved by the accused persons by leading cogent evidence or even by taking help of the prosecution evidence. Here, as aforesaid, there is no suggestion also to the prosecution witnesses regarding the absence of accused No.1 from the house and as aforesaid, there is no positive evidence led by accused No.1 to prove his plea of alibi. It is not much in dispute that around 6.00 a.m. of 2nd September 2016, PW-2 Saraswatibai made inquiry with the accused persons and then entered in the room where Savitra was lying. Her testimony stood supported by PW-6 Vimal. PW-6 Vimal had entered the house of accused in the morning after she heard shouts of PW-2 Saraswati and found Savitra lying on the carpet of the floor.

14. PW-2 Saraswati and PW-4 Shankar have stated that the people gathered decided to shift Savitra to hospital and then Savitra was taken to Sub-District Hospital, Pathardi where she was examined by PW-3 Dr. Manisha, around 7.10 a.m. of 2nd September 2016. PW-3 Dr. Manisha has stated that Savitra was brought dead in the hospital and she confirmed the same. It appears that she had not noted the injuries on the dead body

but vide Exhibit-55 dated 2nd September 2016, she gave letter to Departmental Head of Forensic Science that since objection has been raised by the relatives of Savitra regarding suspicious death, as well as that postmortem would involve complications and therefore she was of the opinion that it should be done by the Forensic expert, the postmortem should be done accordingly. Along with the said letter, it appears that the dead body was taken to Ghati Hospital, Aurangabad wherein, under the supervision of four experts including PW-5 Dr. Ganesh Niturkar, the postmortem has been carried out. During the postmortem, following external injuries were noted:-

"1. Abraded contusion of size 0.8 cm x 0.6 cm, irregular, present over nose, in midline, upper 3rd, reddish brown, contusion confirmed on cut section.

2. Abraded contusion of size 0.5 cm x 0.4 cm, irregular present over right nasal ala, reddish brown, contusion confirmed on cut section.

3. Abraded contusion of size 2 cm x 1.5 cm, irregular, present over zygomatic region of face on right side, reddish brown, contusion confirmed on cut section.

4. Abraded contusion present over the medial aspect of upper 1/3rd of right thigh over an area of size 6 cm x 0.5 cm, reddish brown, contusion confirmed on cut section.

5. Abraded contusion present over the medial aspect of upper 1/3rd of left thigh over an area of size 5 cm x 0.5 cm, reddish brown, contusion confirmed on cut section."

15. PW-5 Dr. Ganesh Niturkar stated that all the external injuries were ante mortem. There was no fracture of thyroid bone and hyoid bone. The brain was intact and congested. Brain grossly congested and oedematous, on cut section – pinpoint sized petechial hemorrhages present within the white matter at places. PW-5 Dr. Ganesh has stated that on the basis of his findings during postmortem and environmental condition, the death could have caused within 18 to 36 hours before the commencement of postmortem examination and the cause of death was 'asphyxial death due to smothering'. It has been harped upon that no external injuries were mentioned in the inquest panchnama which has been admitted by him and on the basis of this, it was tried to be submitted that both the documents i.e. inquest panchnama and the postmortem report do not support each other. To this, we are of the opinion that inquest panchnama is always done by rustic persons i.e. who are not experts and the postmortem is always done by the expert persons. The external injuries of even small dimensions can be

noted by the experts and not by the rustic persons. PW-5 Dr. Ganesh has categorically denied that all the injuries mentioned in Column No. 17 were on the basis of cut sections. It has been volunteered by him that the cut sections were given for confirmation which would be after the injuries were noted and not before that. If we consider the position of the external injuries, then those were around nose, nasal area, face. There was also external injury to both the thighs. Therefore, when there were such injuries, then it cannot be said that the smothering was result of any other cause. The distinction that has been drawn on the basis of noted book on Medical Jurisprudence by Modi in ***Subramaniam vs. State of Tamil Nadu and another*** (supra) is binding on this Court, but in the said case itself on the basis of same book, the distinction has been drawn when there are bruises and abrasions in or around nasal area, lips, mouth etc. In specific words, therefore, PW-5 Dr. Ganesh has stated that the death of Savitra was homicidal in nature. It is also to be noted that this expert has admitted that in rare condition in epilepsy, smothering may occur and if the attack of epilepsy is suffered during sleeping condition then there is possibility of smothering if the body is in prone

condition. A suggestion was tried to be given to PW-2 Saraswati that Savitra was suffering from epileptic attacks. She has denied the said suggestion. There is absolutely no evidence on record adduced by the accused to show that Savitra was suffering from epilepsy. If the epilepsy attack was there at the intervening night, then how the accused persons came to know about it and whether they had made any attempt to take Savitra to hospital, would be the consequential questions, to which we do not find any answer. It is not suggested to PW-2 Saraswati and PW-4 Shankar that Savitra was under medical treatment of a doctor for the illness of epilepsy. Since when she was suffering, is also not suggested. Even PW-5 Dr. Ganesh says that in rare condition smothering may occur in epilepsy patient. But what was that rare condition has not been suggested or extracted so as to bring it on record that similar condition existed. Under the said circumstance, the accused persons have failed to take out the case from homicidal death to natural. From the evidence that is adduced by the prosecution, there is sufficient evidence on record to support the prosecution case that death of Savitra was homicidal in nature.

16. Now turning towards the allegations, we would like to consider the acquittal of the accused persons first. It is to be noted that according to PW-2 Saraswati and PW-4 Shankar, an amount of Rs.41,000/- was given as dowry though it was not agreed. Here there was no attempt by the prosecution to have charge settled against all the accused under the Dowry Prohibition Act. Therefore, as regards the said demand and payment of Rs.41,000/- is concerned, which was prior to the marriage, it cannot be taken as cruelty as contemplated under Section 498-A of the Indian Penal Code because the said amount was demanded and paid prior to the marriage and there was no allegation and proof in respect of harassment for the non-fulfillment of the alleged illegal demand of dowry. The cruelty has been tried to be posed on two counts, one is allegation in respect of raising finger at the chastity on account of alleged frequent visits of one Ajinath to the house of the accused and he talking to the deceased, and second is the alleged love affair between accused No.1 and another lady. As regards the point of raising finger at chastity is concerned, the cross-examination of PW-2 Saraswati would show that Ajinath is not only the cousin brother of accused No.1 but he is also grand-son of PW-2 Saraswati.

That means said Ajinath is related from both sides. Under the said circumstance, it is hard to believe that such allegations would have been levelled. PW-2 Saraswati clearly admits that accused No.1 and her daughter were having conversation and love affair, but thereafter she corrected herself by saying that the said love developed after marriage. If this is so, then question of harassing her daughter will not arise. She has also admitted that her daughter was happy at the time of *Pola* festival. If whatever she has stated was true then, when Savitra had told that she has fear to her life why Saraswati had not brought her to parental house, would be a question. In her FIR Exhibit-30, Saraswati has stated that two days prior to *Pola* festival, Savitra had told that her husband was harassing since three days prior to that day. On what count, has not been stated by her. As regards the alleged love affair between accused No.1 and a lady from his relation is concerned, in the FIR as well as in the examination-in-chief itself PW-2 Saraswati has stated that said fact was disclosed by accused No.1 prior to the marriage. If that disclosure was so made, then why the marriage was performed. It has ruined the lives of three persons then. In the cross-examination, PW-6 Vimal has admitted that there was love

affair between Savitra and accused No.1 and therefore, with the consent of the families, their marriage was performed. Under this circumstance when there was already love-affair between accused No.1 and deceased, it was not expected that the such allegations would have been levelled after death of deceased. Even if for the sake of arguments it is then accepted that deceased had seen accused No.1 talking to the said lady in an isolated place, what she had conveyed to her mother was that accused No.1 was harassing her. The nature of harassment has not been stated. It is also tried to be said that the accused persons were telling that Savitra should give divorce to accused No.1. We will have to go by law and it cannot be only at the behest of wife the divorce can be granted. Even husband can approach for the divorce. None of the prosecution witnesses have then stated that taking seriousness of the dispute into account some respectable persons had meeting and they tried to resolve the dispute, which is the way usually taken in rural areas. Therefore, there was no concrete evidence adduced by the prosecution to prove the ingredients of Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and

therefore, the acquittal of the accused persons in those offences is justified. We confirm the same.

17. Turning to the charges of murder, the prosecution has examined PW-1 Jagannath, who is panch to the spot panchnama. He has proved the spot panchnama and seizure of articles from the said place. Though he has been cross-examined at length, there is nothing which will discard the contents of the spot panchnama Exhibit-28. PW-7 Police Constable Yashwant Thombare is the carrier who has taken the seized articles to the Chemical Analyzer. C.A. reports are neither supporting prosecution nor to the accused. The only thing is that the samples had not revealed any poison. As aforesaid, the death was homicidal i.e. by smothering. The prosecution story does not show that the smothering was by in all four persons or it was necessary for the involvement of four persons that could be the conclusion that can be arrived at on the basis of postmortem report. If we consider the spot panchnama, then the house consists of three rooms and in the cross-examination of PW-2 Saraswati, it has come on record that one room was exclusively for the deceased and accused No.1. Since the incident has taken

place in the intervening night and accused No.1 failed to prove the plea of alibi, we take help of Section 106 of the Indian Evidence Act. It was for accused No.1 to prove or explain the circumstances in which his wife was found dead in their room.

18. It was tried to be harped upon by the appellant – accused No.1 that there is delay in lodging the FIR. We are not convinced with the ground for the simple reason that even as per the testimony of PW-3 Dr. Manisha who proved Exhibit-55 and also PW-4 Shankar i.e. brother of the deceased who proved Exhibit-62, who had given said complaint Exhibit-62 to PSI, Pathardi, at 3.50 p.m. on 2nd September 2016 itself. According to both these letters i.e. Exhibit-55 and 62, suspicion over the death of Savitra was raised, then only the dead body was taken to Aurangabad where the postmortem was performed between 8.30 a.m. to 10.00 a.m. on 3rd September 2016 and in the FIR as well as testimony of PW-2 Saraswati and PW-4 Shankar, it has come on record that when the dead body was received after postmortem, then funeral was performed. The ashes were collected in the morning of 4th September 2016 and then in the afternoon the FIR has been recorded. We can understand that

the girl i.e. deceased Savitra was only 18 years of age whose marriage was performed on 10th July 2016 and within merely two months she has been murdered. It would be big shock to the parents and the brother. Taking into consideration the above said events, we do not find that there is any delay in lodging the FIR. Whatever delay is there, it has been properly explained. No benefit can be given to the accused.

19. When accused No.1 was arrested on 4th September 2016, he was subjected to medical examination and at that time three injuries were noted on his person. It has been stated by PW-3 Dr. Manisha that injury No.1 i.e. scratch abrasions 3 in number over dorsum of left hand was of more than 24 hours and within five days of the incident. Age of injury No.2 i.e. contusion over right palm on hypotghenar eminence was more than 24 hours and age of injury No.3 i.e. abrasion with scab fallen off over chin left side was more than four days. According to her the probable weapon of injury Nos.1 and 3 could be sharp and rough edged object and injury No.2 could be due to hard and blunt object. We cannot co-relate these injuries and it cannot be said that these injuries were in the intervening night of 1st September 2016 to

2nd September 2016, as involvement of sharp edged weapon is not here.

20. The prosecution has also come with the case that accused No.1 had discovered a pillow at the time of execution of spot panchnama and the alleged memorandum Exhibit-84 with panchnama appeared to be in the form of confessional statement, which cannot be said to be admissible in nature from any angle.

21. Thus, the re-appreciation and scrutiny of the evidence would show that accused No.1, who is the husband of deceased Savitra, has failed to explain the circumstances in which his wife was found dead in their room in the intervening night, when in fact he ought to have knowledge about the same as he has failed to prove the plea of alibi. As regards the motive is concerned, at many times the motive is buried in the heart of the accused. We cannot insist proof of motive in each and every case, especially when it is between husband and wife. What happened between them in the night time before they went to bed is well within their knowledge and therefore, we hold that the prosecution had

proved the charge for the offence punishable under Section 302 of the Indian Penal Code. The conviction of original accused No.1 by the learned trial Judge is justified and there is no error or illegality in the same. The trial Court was justified in acquitting accused Nos.2 to 4 from the offence punishable under Section 302 read with Section 34 of the Indian Penal Code also as their involvement is not clearly coming on record. As a result of which there is no merit in both the Appeals and the same deserve to be dismissed.

22. Accordingly, both the Appeals are dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC23