

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 134 OF 2016

Umesh Ganesh Patil

Aged about 28 years,
Occupation Labourer,
Residing at Jagadamba Wadi,
Washi, Taluka Pen,
District Raigad.
Presently lodged at Taloja Central Prison,
Taloja.

...Appellant

Versus

The State of Maharashtra

...Respondent

....

Mrs. Pooja Sejpal i/by Mr. Nitin Sejpal Advocate for Appellant.

Mrs. M. H. Mhatre, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

**DATE OF RESERVING JUDGMENT : 6th DECEMBER 2023.
DATE OF PRONOUNCING JUDGMENT : 22nd DECEMBER 2023.**

JUDGMENT:- (Per : Prakash D. Naik J.)

1. The Appellant has preferred this Appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') challenging the Judgment and Order dated 2nd January 2016 passed by learned Additional Sessions Judge, Raigad-Alibaug in Sessions Case No. 74 of 2013 thereby convicting him for offence punishable under Sections 302, 201 and 498-A

of the Indian Penal Code, 1860 (for short "IPC"). The Appellant is sentenced to suffer life imprisonment for offence under Section 302 of I.P.C. for committing murder of his wife Chaitali and daughter Aarya. The Appellant is also sentenced to suffer imprisonment for a period of three years for offence under Section 201 of I.P.C. and one year for offence under Section 498-A of I.P.C. Substantive sentence of imprisonment was directed to run concurrently.

2. The prosecution case is as under :-

(i) The marriage of deceased Chaitali was solemnized with accused No.1. Accused No.2 and Accused No.3 are parents of Accused No.1. The deceased Chaitali started residing with Accused Nos.1 to 3 after her marriage. She gave birth to female child namely, Aarya.

(ii) Accused No.1 was not doing any work. He used to raise quarrells frequently with Chaitali and demand money from her. He used to assault Chaitali. Accused Nos. 2 and 3 were also assaulting Chaitali.

(iii) Deceased Chaitali had narrated the incident of ill-treatment given by Accused to the informant. The matter was referred to Tanta Mukti Samiti. After the dispute was resolved, the deceased Chaitali was sent to the house of Accused. The ill-treatment continued.

(iv) The deceased Chaitali was assaulted by Accused. She made

complaint about it to the Member of Tanta Mukti Samiti. Meeting of said Samiti was conducted. At that time, the Accused No.1 had threatened Chaitali that he would assault her. She was assaulted during the meeting. The Accused No.1 also threatened Chaitali in the meeting that he will kill her and her daughter by setting them on fire. The Member of Samiti pacified the informant and Accused No.1.

(v) The Accused No.1 started demanding money from deceased Chaitali. She informed about it to the informant. Accused assaulted her for not satisfying their demand.

(vi) Chaitali had joined her service at Pen. She used to keep her daughter Aarya at the house of informant and pick up her while returning home. Chaitali went for work on 28th February 2013 by keeping her daughter at the house of informant and she returned back from her work at about 07:00 to 07:30 p.m. while returning she took her daughter to her house.

(vii) At about 01:15 a.m. Accused No.3 came to the house of informant and inquired whether Chaitali had come to his house. He also informed that there was quarrel in the house and hence, she came to search Chaitali. Accused No.3 was followed by Accused No.2. Informant accompanied them to search Chaitali.

(viii) Accused Nos.2 and 3 took the informant to the spot where the

dead bodies of Chaitali and Aarya were lying. The informant saw that blood was oozing from the mouth and nose of deceased Chaitali and her tongue was stuck in her teeth. Her body was burnt. The informant also saw the dead body of Aarya near the body of Chaitali. Blood was oozing from her nose and the body was burnt. The informant approached president of Tanta Mukti Samiti and narrated the incident to him. Report was lodged with Wadkhal Police Station in Crime No. 12 of 2013 under Sections 302, 201 read with 34 of the I.P.C.

3. Pursuant to registration of First Information Report (for short "FIR"), investigation was conducted. Incriminating articles were recovered. On completing investigation, charge-sheet was filed.
4. Charge was framed against the accused vide order dated 9th December 2015 for offence under Sections 302, 201, 498-A read with 34 of I.P.C.
5. The defence of the Accused Nos.1 to 3 is that the deceased had committed suicide along with her daughter. The prosecution has examined 12 witnesses. The statement of accused were recorded under Section 313 of Cr.P.C. Accused No.1 (Appellant) was convicted. Accused Nos.2 and 3 were acquitted.

6. Learned Advocate for the Appellant submitted as under :-
- (i) The prosecution has failed to prove the charge beyond reasonable doubt.
 - (ii) The trial Court ought to have appreciated the evidence on record and extended the same benefit of doubt to the Appellant as extended to accused Nos.2 and 3 and the Appellant ought to have been acquitted of all the offences.
 - (iii) On careful perusal of the post-mortem notes, it is evident that, the death of deceased was suicidal and not homicidal.
 - (iv) PW-1 Pradeep Mhatre did not like marriage of the deceased Chaitali with Appellant. Chaitali used to remain under pressure. She has attempted suicide twice.
 - (v) There were serious lapses in recording inquest panchnama. Two inquest panchanamas were drawn. The cause of death was strangulation and burns. The Medical Officer, who conducted post-mortem on the person of deceased Aarya has not mentioned percentage of burns. Post-mortem report does not mention ligature marks on the neck of deceased Chaitali and Aarya.
 - (vi) The evidence of PW-1 Pradeep Mhatre, PW-2 Chatanya Mhatre, PW-3 Geeta Mhatre and PW-9 Gorakhnath Mhatre are not corroborating intersay on the point of mental torture, cruelty and

harassment to the deceased Chaitali during her lifetime. There were many contradictions in the testimonies of these witnesses.

(vii) There is no evidence to arrive at conclusion that the Appellant had tried to destroy the evidence. The conviction under Section 201 of I.P.C. is bad in law.

(viii) The case is based on circumstantial evidence. The prosecution has failed to establish the circumstances. The Accused cannot be convicted on the basis of inferences.

(ix) The case of the prosecution is that there is recovery of Dupatta from the house of the Accused. The recovery is not sufficient to prove that the Appellant had strangled the deceased with Dupatta. It was recovered from the spot which was an open place. Such evidence should have been discarded by the trial Court.

(x) The tests required in case of circumstantial evidence to hold the accused guilty is that there could be a strong circumstances which would lead to the conclusion that the accused is involved in commission of crime the circumstance must be fully established. The circumstance should be conclusive in nature. There must be a chain of evidence so complete as not to leave any reasonable ground from the conclusion consistent with the innocence of the Accused and must show that in all human probability the act must have been done by

the Accused.

(xi) The panchas to the inquest panchnama are relatives of the informant. Police did not make any entry about inquest panchnama in the station diary.

(xii) The Medical Officer has admitted that from commencing postmortem till its completion, he did not come out from the mortuary while conducting autopsy on the dead bodies of the deceased. It is not clear how he received the letter at 11:40 a.m. from PI. Tidar. The post-mortem reports do not show the percentage of burns of Chaitali and Aarya. The Medical Officer did not bring rough notes along with him at the time of evidence. The medical officer did not visit the spot of incident and he applied whitener in the post-mortem report. He was unable to tell the number of cartilage fracture. The post-mortem report do not mention the ligature marks on the body of deceased. The Medical Officer did not perform autopsy properly.

(xiii) It is the settled law that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts established should be consistent only with the hypothesis of the guilt of the deceased.

7. Learned APP submitted that the offence is of serious nature. There is strong evidence against the Appellant. The prosecution has established that

the deceased Chaitali and Aarya were killed by the Appellant/Accused. Although, there is no eye witness to the incident, there are strong circumstances which proved beyond doubt that the Appellant is involved in committing the murder. The deceased was ill-treated by the Accused. PW-3 was panch witness to the inquest panchnama of the dead bodies of the deceased Chaitali and Aarya which was drawn on the spot of incident. PW-11 was panch witness to the inquest panchnama of dead bodies of deceased Chaitali and Aarya which was drawn in the Hospital. The medical officer found that the tongue of deceased Chaitali was protruded from her mouth and oral mucosa was congested and blood was presented in trachea. The medical officer observed fracture of hyoid bone and fracture of cricoid cartilage. The evidence of Panch witness PW. 3 and PW. 11 corroborate each other. The injuries mentioned in the inquest panchnamas are as per injuries on the dead bodies. The oral evidence of PW-3, PW-11 corroborates the evidence of Medical Officer. The Medical evidence corroborate oral evidence of other witnesses. Appellant is rightly convicted by trial Court. Hence Appeal may be dismissed.

8. To substantiate the charge, the prosecution has examined the informant/father of deceased Mr. Pradeep Mhatre as PW-1, Brother of deceased Mr. Chaitanya Pradeep Mhatre as PW-2, Panch witness Ms. Geeta Motiram Mhatre as PW-3, Uncle of deceased Mr. Naresh Vilas Mhatre as

PW-4, Panch witness Mr. Mangesh Chandrakant Mhatre as PW-5, Panch witness Dashrath Damodar Mhatre as PW-6, Panch witness Santosh Devji Mhatre as PW-7, Medical Officer Dr. Manisha Rajesh Mhatre as PW-8, Mr. Gorakhanath Pandurang Patil, Chairman Tanta Mukti Committe as PW-9, Mr. Ravsaheb namdev Doltade, Medical Officer as PW-10, Panch witness Mr.Manoday Parshuram Mhatre as PW-11 and Investigating Officer Mr. Pradip Girjinath Tidar as PW-12.

9. The prosecution has adduced the documentary evidence such as FIR at Exh.48, inquest panchnamas of dead bodies at Exhs.45, 93 and 94, spot panchnama at Exh.59, arrest cum seizure panchnama of clothes of accused No.1 at Exh.60, house search panchnama of the accused persons at Exh.63, memorandum given by accused No.1 at Exh.66, seizure panchnama of Dupatta at Exh.67, injury certificates of Accused Nos. 1 to 3 are at Exh.75 to 77, Post-mortem Reports of deceased Chaitali and Aarya are at Exh. 84 and 85, Advanced death certificates of deceased Chaitali and Aarya are at Exhs. 86 and 87. Rough sketch map of the spot of incident is at Exh. 108, C.A. Reports are at Exhs. 110 to 116. Arrest cum surrender form of accused Nos. 1 to 3 are at Exhs. 120 to 122.

10. PW-1 Pradeep Vilas Mhatre is the first informant. He is the father of deceased Chaitali. He stated that marriage of Chaitali was solemnized with Accused No.1 (Appellant) four years before the incident. Chaitali gave birth

female child namely Aarya from the wedlock. Aarya was one and half year old at the time of incident. Accused No.1 was not doing any work. Chaitali was harassed by all the Accused. Accused No.1 used to demand money from Chaitali. He assaulted Chaitali. Whenever Chaitali visited the house of complainant, she used to narrate the ill-treatment. The complainant had approached Tanta Mukti Samiti. The harassment continued. In one of the meeting Accused No.1 has threatened Chaitali and also assaulted her. Accused No.1 had threatened that he would kill Chaitali and her daughter Aarya by setting them on fire. The Accused Nos. 2 and 3 were also assaulting Chaitali. Accused No.1 was having love affair with girl from the village. There was quarrel between Accused No.1 and Chaitali on that count. Relatives of the said girl had assaulted Chaitali and Accused No.1. While Chaitali was going for work, she used to keep her daughter Arya in his house and collect her while returning home. On 28th February 2013, Chaitali joined the work and in the evening she returned home after collecting child from the house of informant. Thereafter, at about 01:15 am in night, the mother-in-law of Chaitali came to informant's house for enquiring whether Chaitali had come to his house. Father-in-law of Chaitali also came there. All of them went in search of Chaitali. Father-in-law and mother-in-law of Chaitali took him to the spot where dead bodies of Chaitali and Arya were lying. Blood was oozing from the mouth and nose of Chaitali and her tongue was fixed with her teeth. Her body was found

burnt. Dead body of Aarya was also found burnt. Blood was oozing from her nose. The spot was open place and it was at the distance of 50 feet from the house of father-in-law of Chaitali. Accused No.1 was not present. PW-1 approached President of Tanta Mukti Samiti. Information was given to the Police. FIR was registered. In the cross-examination, it was stated by him that marriage of Chaitali with the Appellant was love marriage. He had lodged the complaint against the accused No.1. Accused Nos. 2 and 3 had performed marriage of accused No.1 with Chaitali. Chaitali was strong and well-built. She was karate champion. He did not lodge any written complaint with Police regarding ill-treatment of accused to Chaitali prior to incident. Chaitali had assaulted girl with whom the appellant was having love affair.

11. PW-2 Chaitanya Pradeep Mhatre has reiterated the version of PW-1. He is the brother of deceased Chaitali. He was cross-examined. In cross-examination, it was stated that his statement was recorded on 1st March 2013. He went to rural Hospital, Pen after 08:00 am to 09:00 a.m.. Post-mortem was completed and till that time police did not record his statement. Accused were arrested. He did not go to search Chaitali immediately when accused No.3 visited his house. The complaint was made to Tanta Mukti Samiti. He used to go to Pen for his education. The timing of his college was in morning.

12. PW-3 Geeta Motiram Mhatre was called by the Police on 1st March 2013 for recording panchnama. According to her, Chaitali was found burnt to some extent and blood was oozing from her nose and her tongue had come out of her mouth. Daughter Aarya was also found burnt to some extent and her tongue had come out of her mouth and blood was oozing from her nose. Panchnama of dead bodies of Chaitali and Aarya in her presence and signed by her and other panchas Asha Mhatre. In the cross-examination, she stated that her house is located in Washi Mavlatali where the house of complainant is located. Her house is at some distance from the house of complainant. She went to the spot after receipt of information about the incident.

13. PW-4 Naresh Vilas Mhatre is the uncle of deceased Chaitali. He has narrated the version of PW-1. He stated that the complainant had narrated the ill-treatment by the accused to Chaitali. Accused No.1 had threatened Chaitali in the meeting. On 1st March 2013, he received phone call from complainant informing that Chaitali and Aarya were killed and thrown in front of Boudhawadi in the land of Vinayak Sitaram Mhatre. He along with his wife came to the village and went to the spot where dead bodies of Chaitali and Aarya were lying. He saw the dead bodies in burnt condition to some extent. Police came there. In the cross-examination he stated that, he did not go to the spot where Chaitali was serving. The house of accused

is at Boudhawadi. The spot where the dead bodies were found lying was nearer to his house than the house of complainant. He stated before the police that Chaitali was beaten on the day of Chaitrapornima. He cannot assign any reason as to why these facts are not mentioned in his statement. The complainant narrated to him the ill-treatment of Chaitali by accused. Chaitali did not narrate him the ill-treatment. He personally did not lodge complaint to Tanta Mukti Kamiti. He did not pacify accused No.1. He personally did not visit Chaitali.

14. PW-5 Mangesh Chandrakant Mhatre is the panch witness for spot panchnama. He stated that, he went to the spot and found smell of kerosene. He saw two plastic bottles, match stick, mobile, chappal, frock and pieces of bangles on the spot. Frock was partly burnt. Wearing shirt of accused No.1 was found smelling kerosene oil. He was called again by police on 1st March 2013 to act as panch witness. There were injury mark i.e. nail scratches on the face and neck of accused No.1. He was wearing track pant and shirt. It was seized. In the cross-examination it was stated that, father of the deceased was present with him since morning. His house is located at Vanaspatiwadi and Jagdambawadi. The distance between his house and house of complainant is 100 to 125 feet. He was member of Tanta Mumkti Committee. He was called by president of Committee. He signed the panchnama. Police did not obtain prints from the articles found

on the spot. The president of Tanta Mukti Committee has shown the place of incident.

15. PW-6 Dashrath Damodar Mhatre is the panch witness for the house search of the accused. According to him, no article was seized. Panchnama was prepared. He went to the said place as there was rush of people. Police did not open cupboard of the house of accused. PW-7 Santosh Devji Mhatre acted as panch witness for recovery of Odhani. He stated that accused No.1 showed his readiness to produce the odhani used in the crime. Memorandum of the accused was prepared. Accused went to his house. He took them near the heap of stones situated near his house. He produced odhani from the heap of stones in his presence. It was smelling with kerosene oil. It was seized by police.

16. PW-8 Dr. Manisha Rajesh Mhatre is the Medical Officer. She was attached to Public Health Centre, Gadab. On 1st March 2013, accused No.1 was referred to Public Health Centre Gadab for Medical Examination. Police Constable from Wadkhal Police Station had brought accused No.1. She examined him. There was four injuries on the person of the accused No.1. Injury No.1 was nail mark on right side of neck sized 4cm x 3cm reddish black in colour. Injury No.2 is the nail mark on left side of cheek 4cm x 3cm redish black in colour. Injury No.3 is superficial abrasion on left ear 2cm x 2cm reddish black in colour. Injury No.4 is the nail mark on right shoulder

3cm x 2cm reddish black in colour. Age of all injuries were 20 to 24 hours. All these injuries were simple in nature. Injury certificate is in her hand writing and signed by her. It was marked at Exh. 75. She examined accused Nos. 2 and 3 as they were brought by Wadkhal Police to PHC Gadab. No injuries were found on there persons. Certificate was issued by her. She produced original MLC register. The injuries on the accused No.1 were on upper limbs of the body. While resisting the attack from victim such injuries are possible on the upper limbs of attacking person. In the cross-examination it was stated that the accused were brought at PHC Gadab. She was called by Police. Fingers of hands of a person are not equal.

17. PW-9 Gorakhnath Pandurang Patil is the Chairman of Tanta Mukti Committee. He stated that he was a member of the said committee in 2013. Chaitali was the daughter of complainant. Chaitali had love affair with accused No.1. Their marriage was performed. There was quarrel between Accused No.1 and Chaitali. Prior to Hanuman Jayanti, there is a Palakhi in the village. At that time, Chaitali had gone to meet Rajesh Patil, who is the member of Tanta Mukti Committee. She had made complaint. Accused Nos.1 and 2 had beaten her. Rajesh Patil had called him by making phone call. He and the other member went to meet Rajesh Patil. They went to house of accused No.1. Father of Chaitali was present. Chaitali told that there was quarrel with husband. She was assaulted by accused No.1 At that

time accused No.1 abused Chaitali. Accused No.1 threatened that he would kill Chaitali. Dispute was settled. In the night at about 01:00 am, Chairman of Tanta Mukti Committee made a phone call to him and told about the incident. He was called at the place of incident. Chaitali and her daughter were found in burnt condition. Phone call was made to the police. Father of the deceased lodged the complaint. Father of the deceased is residing next to his lane. From April 2012 till the date of incident, no complaint was received from deceased Chaitali. He stated to the police that Accused No.2 had participated in the quarrel.

18. PW-10 Ravsaheb Namdev Doltade is the Medical Officer. He was attached to Sub-District Hospital, Pen. He conducted postmortem on the dead body of Chaitali. He stated that, eyes of the victim were closed, pupils fully dilated, tongue protruding, oozing of bloody fluid from nostrils. He found superficial to deep burns (dermo epidermal burns) all over body except small area over scalp. The burn injuries were 95%. It was grade III burns. Besides these injuries he found fracture of hyoid bone and fracture of cricoid cartilage. He found internal injuries such as mucosa congested and blood present in trachea. Injuries mentioned in column No.20 (C) is related to the injuries mentioned in column No.18. Tongue was protruding from mouth and oral mucosa was congested and blood present in pharynx. Semisolid food material were found in stomach. Within 5/6 hours death

had occurred from last meal. He had given cause of death due to asphyxia secondary to strangulation. The symptoms of strangulation were protruding of tongue and oozing of bloody fluid from nostrils. The postmortem report is in his hand writing and he signed it. Dr. Achala Patil was also with him. He conducted autopsy of Aarya. On examination of dead body, he found that eyes of dead body were closed, pupils fully dilated, mouth slightly opened, tongue protruding and cyanosed. No oozing from ear and nose. He found external injuries such as superficial to deep burns all over body except small area over left side of abdomen and left lower back about 85% burns. He found fracture of hyoid bone at cornu and fracture of cricoid cartilage. He found mucosa congested, blood present in trachea. Injury mentioned in column No. 20(C) is related to the injuries mentioned in column No. 18. There was semisolid food material in stomach. Death was caused within 5 to 6 hours from last meal. Cause of death is due to asphyxia secondary to strangulation. In case of asphyxia the lungs are congested and oedematous. Death is possible by pressing the neck by hands or by strangulation by Dupatta. Normally in case of strangulation, some wheel marks or ligature marks are found on the neck. Due to burn condition of dead body, said signs are not possible to visualize. Dupatta was shown to him. Strangulation can be caused by dupatta. He issued advance death certificate of Chaitali and Aarya on 1st March 2013. He was cross-examined. He stated that no lady doctor was available at hospital in 2013.

Dr. Achala Patil is working as Medical Officer at PHC Washi. She was called by Medical Superintendent. All facilities and equipments are available in the hospital for conducting postmortem. He visited the spot of incident when the dead bodies were lying on the spot. In the postmortem, he had not mentioned the percentage and measurements of burning. In burn cases, injuries are deep. The ligature marks would be there on the neck if there is throttling by dupatta. The ligature mark does not come on the neck. He is unable to tell as to how strangulation had taken place. He is unable to say whether there were ligature marks due to nylon dupatta. It is not possible that common carotid artery cut in strangulation. He is unable to tell even if the dead body is burnt then there will be the ligature mark on the dead body. He is unable to tell which number of cartilage is fractured. There is overwriting in column No. 18. In burn cases, there can be asphyxia. Witness volunteers that carbon particles and soot particles come in throat and larynx, if person is burnt live. It cannot be said that in burn case tongue will be protruded. Injuries mentioned in column No. 20 can be caused due to other reasons also.

19. PW-11 Manoday Parashuram Mhatre, is the panch witness for inquest panchnama. He stated that, he knows the complainant. He was knowing Chaitali and her daughter. He was called by Police for inquest panchnama. On the dead body of the Chaitali, he noticed that tongue was protruded

from her mouth. Blood was oozing from her nostril and there was smell of kerosene on her body. Inquest panchnama was prepared. Signatures were obtained. Body of Aarya was also burnt. The clothes on her person were half burnt. Her tongue had partly protruded from her mouth. Inquest panchnama was prepared. In the cross-examination, it is stated that his house is adjoining to the house of Santosh Devji Mhatre. There were no clothes on the person of the deceased Chaitali. There were half burnt on body of Aarya.

20. PW-12 Pradip Garjinath Tidar is the Investigating Officer. He was attached to Wadkhal Police Station. He provided the details of investigation, collection of evidence, recording of panchnama, recording of statements of witnesses and filing of charge-sheet. He was cross-examined by the defence.

21. The trial Court has given benefit of doubt to accused Nos. 2 and 3. The said accused were acquitted whereas the appellant was convicted for the aforesaid offences. The State of Maharashtra had challenged the judgment of acquittal of accused Nos. 2 and 3 by preferring Criminal Application No. 69 of 2019. State had sought leave under Section 378(3) of Cr.P.C. to file appeal against Judgment and Order of acquittal qua accused Nos. 2 and 3. This Court vide order dated 28th February 2019 dismissed the said Appeal.

22. The question which arises for consideration is whether conviction of the appellant would sustain. There is no debate that the incident is not witnessed by any person. The case is based on circumstantial evidence. The appellant (accused No.1) is husband of Chaitali. The marriage between them was performed about four years ago. The prosecution has brought on record that the relationship between appellant and the deceased Chaitali was strained. There was incident of assault. The deceased Chaitali was abused and threatened by the appellant. The disputes were referred to Tanta Mukti Committee. On account of interventions, the dispute were pacified in the past. The witnesses have deposed that there was ill-treatment at the hands of accused No.1 to 3 to Chaitali. Out of the wedlock, daughter Aarya was born. On the day of incident, the deceased Chaitali as well as Aarya were in custody of accused No.1. They were found dead near the house of the accused. Dead bodies were partly burnt. There was smell of kerosene. The tongue was protruding. It was stuck within the teeth. There was blood oozing from nostrils. There was congestion on Mucosa. The cause of death was asphyxia due to strangulation. At the place of incident, there was grass. It was not burnt. This indicates that the victims were burnt and their bodies were thrown out at the spot of incident. The complainant has stated that, there were frequent quarrels between the accused and the deceased. The deceased was working on the day of incident. She returned home. She picked up the child from the house of

complainant and then went to her matrimonial home. In the night at about 01:30 am the accused Nos.2 and 3 visited the house of PW-1. They took him to the spot where the bodies were found. FIR was registered. There is consistent evidence of the witnesses that the accused No.1(Appellant) was continuously ill-treating the deceased. She was assaulted. She was threatened and assaulted in the past. The examination of Accused No.1 (Appellant) indicates that there were injuries on his person. Injuries indicate that either the deceased Chaitali had assaulted Accused No.1 or retaliated against the attack upon her. Cross-examination of witnesses was not effective to destroy the evidence of prosecution. Trial Court has given benefit of doubt to Accused Nos. 2 and 3. However, there are strong circumstances to show the involvement of the appellant in ill-treating the deceased and committing the murder of the victim. Child was aged around one and half year. The bodies of the wife of the appellant and the child were found in burnt condition. There was smell of kerosene to the clothes of the deceased. The evidence of medical officer, who examined the accused No.1 and conducted postmortem report on the bodies of Chaitali and Aarya could not be discarded. The evidence establishes the guilt of the appellant. The appellant has not been able to give any explanation for the death of the victims, who were in his custody in accordance with Section 106 of the Evidence Act. Though, the case is based on circumstantial evidence, there are strong circumstances against the appellant and the

prosecution has been able to establish the link via all these circumstances which proves that the appellant has committed the crime. The offences is heinous where two innocent persons were murdered. Defence of the accused is that victims have committed suicide. However, there is no semblance of evidence that it was the case of suicide. The death were not suicidal but homicidal. The cause of death is asphyxia due to strangulation. The accused had tried to destroy the evidence by burning victims. Offences against the accused are proved. There is no reason to deviate from the findings of the trial Court.

23. The evidence of PW-1 shows that deceased Chaitali used to inform him about the ill-treatment given to her by accused No.1. The deceased used to go to the house of informant to keep her daughter Arya in his house as she used to work in Raigad-bazar, Pen. Accused No.1 has not brought any material on record to show that informant did not keep relation with his daughter after marriage. Accused did not produce any document to show about his educational qualification. The omissions which were brought on record from the evidence of witnesses were minor which would not effect their evidence in any manner. Their evidence is truthful and does not suffer from doubt qua the involvement of the appellant. The evidence of PW-2 & PW-4 corroborates the evidence of PW-1.

24. The evidence discloses that Chaitali had not fulfilled the demand of money made by accused No.1. There were quarrel in the past. She was assaulted and threatened in the past. There was strong motive to the accused to commit the crime. There are overwhelming circumstances against the appellant to show his involvement in the crime.

25. P.W. 5 is the panch to the spot panchnama. From his evidence it is seen that the incident had occurred on the land of Mhatre and he went to the spot and found smelling of kerosene. He saw two plastic bottles, match stick, mobile, pieces of bangles, chappal lying on the spot. The frock was found partly burn. He has identified the muddemal article which was seized before him at the time of spot panchnama. He has proved the spot panchnama at Exh.59. On perusing his cross examination it is seen that, he was unable to tell the distance between the two articles lying on the spot of incident. One cannot expect that the witness should state the distance between the two articles on the spot as it is not a memory test of witness. P.W. 5 was the member of Tanta Mukti Samiti and President of Tanta Mukti Samiti called him on the spot. So his presence on the spot of incident was natural. P.W. 5 is residing near the house of informant does not mean that he is interested witness as he is member of Samiti and in cross examination accused has not given suggestion to P. W. 5 that he has enmity with accused persons and he is the relative of informant. In cross examination the

accused has not brought any material on record to show that important article which was lying on the spot and the same was not seized at the time of spot of panchnama as the said article was favourable to accused No.1. The panch witness did not count the match sticks which were in the match box and the same were not expected from him. The important fact is that the police had seized match box from the scene of offence. The panch witness had stated that he had seized the grass smelling kerosene oil from the spot. In cross examination the accused persons had not brought any material fact on record to show that the spot panchnama at Exh. 59 was not prepared as per the scene of offence. The police had prepared the spot panchnama as per the scene of offence. Kerosene, Petrol, Diesel oil can be smelled easily and the smell of each oil is different from each other. The mentioning of smell of kerosene oil on the grass which was on the scene of offence and on Dupatta by the police does not cause prejudice to accused No. 1 as the said oil has smell.

26. The accused No. 1 had injury on his person at the time of his arrest and the clothes found on his person had smell of kerosene oil. Accused No 1 was medically examined from the medical officer. The accused No.1 has not explained those injuries in his statement under Section 313 of Cr.PC.

27. The evidence of P.W. 5 shows that police had called him and Sameer Mhatre to the police station Wadkhal on 1st March 2013. The accused Nos.

1 to 3 were present at the police station. The wearing shirt of accused Umesh was found smelling kerosene oil. They found injury marks i.e. Nail scratches on the face and neck of accused Umesh. Accused Umesh has worn track pant. The police has seized the shirt and the track pant of accused No. 1 under the seizure panchnama which is at Exh. 60. P.W. 5 has identified the clothes muddemal article 12 track pant and article No.13 shirt in the Court.

28. The important fact is that deceased Chaitali had taken deceased Aarya from the house of informant in the evening at 8:00 p.m. and went to the house of accused persons. Deceased Chaitali and Aarya were in the custody of accused persons. So it is for the accused to explain as the how deceased Chaitali and Aarya had sustained internal fractures. If really deceased Chaitali had committed suicide along with her daughter Aarya in the agricultural land of Shanidas Mhatre in that case naturally she and her daughter would have shouted when they were burning. Moreover, the grass in the agricultural land would have burnt at various places and on listening their shouts the people residing nearby would have come to rescue them. Moreover, both of them would have jumped in the channel/stream to save their life.

29. The investigating officer had given a letter to the Medical officer on 1st February 2013 at Exh. 89 and had asked the medical officer to take the nail clips and blood sample of deceased Chaitali and Aarya. The post

mortem report of deceased Chaitali at Exh.84 shows that the medical officer had taken the nail clips of hands of deceased Chaitali and also taken the body hair of deceased Chaitali in a bottle for chemical analysis. The investigating officer collected blood sample and nail clips, hair from the medical officer. The investigating officer had produced the muddemal property which was seized from the spot of incident on 1st March 2013 in the police station and on the same day prepared muddemal receipt vide Exh.98. The investigating officer had also produced the Dupatta in the police station which was recovered from accused No. 1 on 8th March 2013 and on the same day prepared the muddemal receipt vide Exh.100. The investigating officer had sent the muddemal property within 8 to 15 days to the Forensic Lab by letter dated 15th March 2013 at Exh. 102 for chemical analysis. Nothing is brought on record to show that the police had tamper the muddemal properties in the police station.

30. C. A. reports Exh. 111 states the blood group of accused No. 1 as blood group B. C.A. Report at Exh.115 states the blood group of accused No. 3 as blood group B. C.A. Report at Exh. 116 states the blood group of accused No. 2 as unsuitable for blood grouping. C.A. Report at Exh. 109 is unsuitable for blood grouping. C.A. Report at Exh. 110 states in the finger nails of deceased Chaitali stains of human blood with inconclusive grouping are found. Finger nails clip of deceased Chaitali which were taken by the

medical officer were sent for chemical analysis. In the finger nail clips of deceased Chaitali human blood was found. Accused No. 1 had sustained injuries on his person as per the evidence of prosecution witnesses in the commotion which had taken place between accused No. 1 and deceased Chaitali. Accused No. 1 sustained simple injuries from the hand of deceased Chaitali. At that time blood stains of accused No. 1 were in the nail clips of deceased Chaitali due to injuries on the person of accused No.1.

31. C.A. Report at Exh. 114 states that detection of kerosene residues on full sleeve Shirt and dupatta. The full sleeve shirt of accused No. 1 was seized at the time of his arrest panchnama and it was sent for chemical analysis. The Dupatta of deceased Chaitali was disclosed by accused No. 1 as per the memorandum given by him and the same was seized under the seizure panchnama and it was sent by the investigating officer for chemical analysis. C. A. report at Exh. 112 states that body hair of deceased Chaitali had detection of kerosene residues. In the evidence it has come on record that deceased Chaitali was using Dupatta. The Medical Officer had given confirm opinion that death is possible by strangulation/throttling the neck by Dupatta. Accused No.1 had used Dupatta while committing the murder of deceased Chaitali and Aarya. In order to destroy the evidence accused No.1 poured kerosene on the dead bodies of deceased Chaitali and Aarya and while pouring kerosene oil on the dead bodies the kerosene oil was

poured on Dupatta and smell of kerosene came on the shirt of accused No.1.

32. The above C.A. Reports are additional incriminating circumstance against accused No. 1. He has not explained as to how the residues of kerosene came on his shirt in his statement under section 313 Cr.P.C. He has also not given explanation as to how human blood stains came in the finger nail clipping of deceased Chaitali.

33. Considering the aforesaid evidence, we do not find any reason to interfere in the impugned judgment of conviction and we are of the considered opinion that the prosecution has succeeded in establishing the charges against the appellant by cogent evidence. Hence, Appeal is devoid of merits and deserves to be dismissed.

ORDER

- (i) Criminal Appeal No. 134 of 2016 stands dismissed.
- (ii) Judgment and Order dated 2nd January 2016 passed by learned Additional Sessions Judge, Raigad-Alibag in Sessions Case No. 74 of 2013 convicting the Appellant for offence under Sections 302, 201 and 498-A of the Indian Penal Code, 1860 is confirmed.
- (iii) Appeal is disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)