HARISH VITHAL CHAUDHARI
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 670 OF 2022

Hanmant Dadaso Khandekar, ...Appellant
Age 29 years, Occu.
R/o Devale, Post Methawade,
Taluka Sangola, Dist. Solapur
(At present languishing in the custody of Yerwada Central Prison, Pune)

V/s.

The State of Maharashtra, ...Respondent
Through the Sangola Police Station,
Taluka Sangola, District Solapur.

...

Mr. Satyavrat Joshi (Through V.C.) a/w Vaibhav Halake & Sairaj Suryavanshi for the Appellant.
Dr. A. A. Takalkar, APP for the Respondent-State.

...

Coram : SHARMILA U. DESHMUKH & NEERAJ P. DHOTE, JJ.

RESERVED ON : September 17, 2026
PRONOUNCED ON : November 03, 2026

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This is an Appeal under section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") against the judgment and order dated 26.05.2022 passed by the learned Additional Sessions Judge, Pandharpur in Sessions Case No. 86 of 2020 convicting and sentencing the

Appellant as follows:

1 *U/s. 235(2) of Cr.P.C., accused Hanmant Dadaso Khandekar, is convicted for the offence punishable U/s.302 of I.P.C. and sentenced to suffer life imprisonment with fine of Rs. 10,000/- (Rs. Ten Thousand only) and in default he is to suffer S.I. for one year.*

2 *U/s. 235(2) of Cr.P.C., accused Hanmant Dadaso Khandekar, is further convicted for the offence punishable U/s.201 of I.P.C. and sentenced to suffer R.I. for 03 (Three) years with fine of Rs.5,000/- (Rs. Five Thousand only) and in default he is to suffer S.I. for six months.*

3 *U/s. 235(2) of Cr.P.C., accused Hanmant Dadaso Khandekar, is further convicted for the offence punishable U/s.498A of I.P.C. and sentenced to suffer R.I. for 01 (One) years with fine of Rs. 2,000/- (Rs. Two Thousand only) and in default he is to suffer S.I. for two months.*

4 *All the substantive sentences shall run concurrently.*

5 *In view of provision of Section 428 of Cr. P. C. the period of detention undergone by accused during the investigation, enquiry or trial of the same case, before this date of conviction, shall be set off against the term of imprisonment imposed on him.*

6 *Muddema article at Sr. No. 1 Hero Company HF Delux Black Colour Motorcycle No.MH-45/W-0336, be returned to accused, after appeal period is over."*

7 *…….."*

8 *…….."*

9 *…….."*

10 *…….."*

2. The prosecution's case, as revealed from the police report, is as

under:

(A) The Appellant and Shubhangi (hereinafter referred to as "the deceased") got married on 19.05.2014. The Appellant's father was the maternal uncle of the father of deceased. Initially, the Appellant and the deceased were residing at Solapur. In the year 2018, the deceased came to her parents' house due to ill health. At that point of time, the Appellant shifted from Solapur to the native place Devle without the consent of deceased. Thereafter, the Appellant and the deceased started residing at Devle. They both were taking medical treatment for conception. The Appellant used to harass the deceased since his medical reports were not normal. The parents of deceased gave understanding to the Appellant, however, in vain. For medical treatment, the Appellant asked for Rs. 50,000/-from the parents of deceased and accordingly the deceased's parents provided financial assistance to the Appellant.

(B) On 08.12.2019, the Appellant and the deceased came to the house of the deceased's parents in the afternoon. They all had lunch. The Appellant and the father of deceased went to the agricultural field. The Appellant was in need of Rs. 50,000/- for medical treatment and so the demand was made to the parents of deceased. Since it was Sunday and the banks were closed, the parents of deceased told the Appellant that, they will provide money on the next day. The Appellant got annoyed and

left with the deceased around 6:00 p.m. on the motorcycle for home. Around 7:30 p.m., the mother of deceased made a phone call on the phone of deceased, which was found switched off. They tried to establish contact with the deceased and the Appellant, however, there was no response. After some time, the parents of deceased came to know that the Appellant and deceased met with an accident near Manjri village. The parents of deceased rushed to the government hospital at Sangola. The body was referred for post-mortem. They came to know that, the motorcycle fell in the river and in the accident, Shubhangi died and Appellant was hospitalized for treatment. The parents of deceased made inquiry with the Appellant. The Appellant did not receive any injury. The motorcycle on which Appellant and the deceased were travelling was not damaged. The parents of deceased became suspicious and the mother of deceased lodged the report on 17.12.2019 with the Sangola Police Station and Crime No.25/2019 came to be registered against the Appellant for the offence punishable under Section 302, 201 and 498-A of the Indian Penal Code, 1860 (for short,"IPC").

(C) During Investigation, the spot panchanama was done. The statements of witnesses were recorded. The Appellant came to be discharged from hospital. The Appellant came to be arrested. The seized articles were sent for chemical examination. The necessary documents

were collected. On completion of investigation, the Appellant came to be charge-sheeted.

(D) On committal, the learned trial Court framed the charge against the Appellant for the offence punishable under Section 498-A, 302 and 201 of IPC below Exhibit 8. The appellant pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined in all Seventeen (17) witnesses and brought on record the relevant documents, such as the report/FIR, the panchanamas, the post-mortem (P.M.) report, the relevant communications, the medical papers, Chemical Analysis (CA) reports, etc. After the prosecution filed the evidence closure pursis, the statement of the Appellant came to be recorded under Section 313(1)(b) of Cr.P.C. The Appellant denied the prosecution's case and stated that, they met with an accident and he tried his level best to save the deceased, however, as it was dark, she was not traceable and he came out by swimming. Appreciating the evidence on record, the learned trial Court passed the impugned Judgment and Order.

3. Heard the learned counsel for the Appellant and the learned APP for the State. Scrutinized the evidence on record.

(A) It is submitted by the learned counsel for the Appellant that, the deceased died due to drowning. It is the case of prosecution that, the Appellant pushed the deceased into the water. However, the evidence

brought on record do not prove the charge against the Appellant. The circumstances brought on record do not establish the charge. Initially, the accidental death report was lodged and after delay of 10 days, the FIR was lodged. The spot where the accident took place was used by the villagers for crossing the river. The spot was accident-prone. Though the evidence goes to show that, more than one (1) person had come on the spot to rescue the Appellant and the deceased, only one witness was examined by the prosecution and therefore adverse inference is to be drawn against the prosecution. The evidence of the investigating officer shows that, during the investigation it was revealed that, the incident was an accident. No one had raised any suspicion that, the Appellant had killed the deceased till 10 days from the date of accident. The evidence on record shows that, there was water in the reservoir which led to the death of deceased. The Appellant was hospitalized and was under treatment in the Intensive Care Unit (ICU). The Appellant, in fact, had provided financial help of Rs. 50,000/- to the brother of deceased. The Appellant was having sufficient means and therefore there was no question of taking financial help from the parents of deceased. The bank account statement of the appellant was at Exhibit 61 showing sufficient amount in the bank account of the Appellant. The accident took place on a public place and therefore there is no question of attracting the provisions of Section 106 of the Indian

Evidence Act, 1872. Till recording of the evidence of the medical officer, there was no final cause of death of deceased. The viscera do not show poison. The explanation (g) of Section 114 of the Indian Evidence Act is to be considered. Every circumstance is to be proved independently. Since the prosecution failed to prove the charge, the Appellant be acquitted and the appeal be allowed. In support of his submissions, he relied on the following judgments:

- *Shankarlal Gyarasilal Dixit vs. State of Maharashtra, [(1981) 2 SCC 35];*
- *Sudam Alias Rahul Kaniram Jadhav vs. State of Maharashtra, [(2011) 7 SCC 125];*
- *S. Harnam Singh vs. The State (Delhi Administration), [(1976) 2 SCC 819];*
- *Sujit Biswas vs. State of Assam, [(2013) 12 SCC 406].*

(B) It is submitted by the learned APP that, the spot panchanama shows the height of the wall of the reservoir. Though it is the defense of the Appellant that, it was an accident, there was no damage to the motorcycle. The chappals were found on the spot. Had it been an accident, the chappals would have drowned. The spot of incident was shown by the Appellant. The reservoir was not having sufficient water and therefore the articles were found at one place. The Appellant pushed his wife from the wall of reservoir and thereafter thrown the motorcycle. The evidence on

record shows that, the Appellant had the motive to commit the crime. The ornaments of the deceased were not found and this shows the motive behind the crime. There were no injuries on the person of the Appellant. Since the Appellant knows how to swim, he could have saved the deceased. There were ante-mortem injuries on the deceased. The Appellant was examined by the medical officer, whose evidence shows that, the Appellant was normal. The prosecution proved the charge against the Appellant and the learned trial Court has rightly passed the Judgment of conviction and sentence and no interference was called for in the same. In support of her submissions, she relied on the following decisions:

- *Trimukh Maroti Kirkan vs. State of Maharashtra, [2006 AIR SCW 5300];*
- *Chetan Dashrath Gade vs. The State of Maharashtra, [2026 LiveLaw (SC) 526].*

4. The prosecution's case is entirely based on circumstantial evidence. The aforesaid decisions in ***Sudam alias Rahul Kaniram Jadhav*** (supra) and ***Shankarlal Gyarasilal Dixit*** (supra) relied upon by the learned counsel for the Appellant reiterates the principles in respect of the cases based on circumstantial evidence. It is reiterated therein that, to bring home the guilt on the basis of circumstantial evidence, the prosecution has to establish that, the circumstances proved lead to one and the only

conclusion towards the guilt of the accused. The circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that, there is no escape from the conclusion that, the crime was committed by the accused and none else. It has to be considered within all human probability and not in a fanciful manner. In order to sustain conviction, the circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused, but inconsistent with his innocence.

5. The following are the factual aspects on which there is no dispute:

i. The deceased was the wife of the Appellant.

ii. On the day of incident, they had gone to the house of the parents of the deceased.

iii. The incident took place while the Appellant and the deceased were returning home on the two-wheeler.

iv. The incident occurred on the embankment having water.

6. One of the charges is for the offence punishable under Section 498-A of IPC. The said Section reads as under:

> *"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

7. PW1-Rani Tanaji Patil and PW-4 Tanaji Dattu Patil are the parents of the deceased. The evidence of PW-1 Rani Tanhaji Patil shows that, the deceased was more qualified than the Appellant and therefore the Appellant used to pick quarrels with the deceased. After marriage, the Appellant and the deceased were residing at Solapur. When the deceased had come to her parental house in 2018 due to illness, the Appellant shifted the household articles from Solapur to his native place Devle without the consent of the deceased. The deceased and the Appellant were undergoing treatment for conception. As it was found that, there was low sperm count in the Appellant, he was grumpy with the deceased. The Appellant had withdrawn the mobile phone from the deceased. The Appellant used to ask for Rs.50,000/- towards medical treatment from the deceased. According to PW4-Tanaji Dattu Patil, the Appellant used to beat and mentally harass the deceased. The evidence of PW4-Tanaji Dattu Patil that the Appellant used to beat and mentally harass the deceased is not

corroborated by the evidence of PW-1 Rani Tanaji Patil.

8. The cross-examination of PW1-Rani Tanaji Patil shows that, the marriage between the Appellant and the deceased was by their consent. She admitted that, when the Appellant and the deceased were residing at Solapur, there was no complaint of harassment against the Appellant. She admitted that, the deceased was working as a teacher on her own wish. She further admitted that, the Appellant never harassed the deceased to give up the service/job. She admitted that, for going to the job at Kamti, which was 40 km from Solapur, sometimes the deceased used to travel by bus and sometimes with the Appellant. She further admitted that, during that period the Appellant was also working. She further admitted that, there was partition of the property in the family of the Appellant, and the Appellant and the deceased together used to look after the land and the cattles. She further admitted that, the marriage between the Appellant and the deceased was of the year 2014 and till 2018 they both resided at Solapur. She further admitted that, during the said four(4) years period, the Appellant and the deceased together were taking medical treatment from the doctor at Solapur. She further admitted that, when they came to know about the same, they advised them to come for treatment at Akluj and accordingly both of them went to Dr. Doshi at Akluj.

9. Undisputedly, PW1-Rani Tanaji Patil and PW4-Tanaji Dattu Patil

were not residing with the Appellant and the deceased. The evidence of both the aforesaid witnesses does not constitute harassment or cruelty as contemplated under Section 498-A of IPC. It is the settled position under the law that, to attract the offence punishable under Section 498-A, the harassment should be of such a nature so as to drive the victim to commit suicide. The above evidence of PW1-Rani Tanaji Patil and PW4-Tanaji Dattu Patil is far from establishing the offence punishable under Section 498-A. The grumpy behavior of the Appellant due to non-conceiving cannot be considered as cruelty as contemplated under the provisions of Section 498-A of IPC. The evidence of the parents of the deceased, even if accepted as it is, does not constitute the offence punishable under Section 498-A of IPC. Further, the charge for the offence punishable under Section 498-A of IPC framed by the learned trial Court is only for 08.12.2019, i.e. for one day. The prosecution's evidence does not fulfill the essential requirements for the offence punishable under Section 498-A of IPC, and therefore the conviction recorded by the learned trial Court for the offence punishable under Section 498-A of IPC is liable to be set aside.

10. For the charge under Section 302 of IPC, it becomes necessary for the prosecution to establish that, the death is homicidal. There is no dispute that, on the day of incident, i.e. 08.12.2019, the deceased and Appellant were travelling on the motorcycle towards their village from the

house of PW1-Rani Tanaji Patil and PW4-Tanaji Dattu Patil. According to PW1-Rani Tanaji Patil and PW4-Tanaji Dattu Patil, on 08.12.2019 the Appellant and the deceased had come to their home in the afternoon and they all had lunch together. Thereafter, the Appellant and PW4-Tanaji Dattu Patil had gone to the agricultural field and returned back. According to PW1-Rani Tanaji Patil, as the deceased and the Appellant wanted to visit Dr. Deshpande on the next day, they asked for Rs.50,000/-. According to PW4-Tanaji Dattu Patil, the deceased asked for Rs.50,000/- from him at the instance of the Appellant. The evidence of both the witnesses is not that, only the Appellant demanded money from them. The evidence of both these witnesses in respect of the demand of Rs.50,000/- is vague and does not corroborate each other. According to these witnesses, since it was a holiday, they told the Appellant that, they will give the money on the next day, and the Appellant got annoyed and left their house with the deceased on the motorcycle in the evening. The evidence of these two witnesses shows that, to inquire as to whether deceased and Appellant reached home, they made a phone call on their mobile, which was switched off. Their evidence shows that, in the night PW4-Tanaji Dattu Patil received a phone call from his brother PW8-Shahaji Dattu Patil that, the Appellant and deceased met with an accident near Manjri village.

11. The evidence of PW1-Rani Tanaji Patil and PW4-Tanaji Dattu Patil

shows that, they had gone to the Rural Hospital, Sangola. After the postmortem, the dead body was handed over to the in-laws of the deceased and the last rites were completed. Their further evidence goes to show that, they visited the spot of incident. They found that, the spot of incident was the narrow road, and there was no damage to the motorcycle. On suspicion, PW1-Tanaji Dattu Patil lodged the report below Exhibit 18 with the Sangola Police Station and crime came to be registered against the Appellant. It is clear from the evidence of both these witnesses that the report was lodged only on suspicion.

12. The cross-examination of PW1- Rani Tanaji Patil shows that, the spot of incident was near the house of the Appellant. She admitted that, the nearest road for going to the house of the Appellant was to cross the embankment. It has come in her cross-examination that, the motorcycle on which the deceased and the Appellant were travelling was in the water of the embankment. It has come in her cross-examination that the dead body of her daughter was in the water. However, in her examination in chief, she deposed that, she had gone to the hospital. Therefore this evidence of PW1- Rani Tanaji Patil that, motorcycle and deceased were in the water is required to be seen with doubt. Her evidence shows that, there was water on both the sides and the embankment was on the Maan river which flows from west to east.

13. The prosecution examined the spot panch as PW2-Ashok Baba Khandekar. His evidence shows that, the spot of incident was on the embankment between Manjri to Deole road. There was water on both sides of the embankment. The width of the embankment was five (5) to seven (7) feet and height from water level was seventeen (17) to eighteen (18) feet. It has come in his cross-examination that, the said wall of the embankment was used for crossing the embankment. The embankment was 25 years old and the villagers used to cross the said embankment on day-to-day basis.

14. The evidence of PW6-Audumbar Kondiba Shriram shows that, he was the resident of Deole village and neighborer of the Appellant. His evidence shows that, on the date of incident, between 8:00 p.m. to 8:30 p.m., while he was present at his house, he heard loud call of a male person for help. He contacted his nephew Sahadev. His nephew Sahadev came. His evidence shows that, he along with his nephew Sahadev went on the motorcycle with the battery towards the embankment on the Maan river. His evidence shows that, he noticed that the Appellant and the deceased were in the water. His nephew made a phone call to his brother Sachin and he called Datta Khandekar. Both the said persons came to the spot. Some villagers reached the spot. Sachin Khandekar and Datta Khandekar removed the deceased from the water. The police had come on

the spot and deceased was taken to the hospital. His evidence shows that, there was sufficient water in the river. It has come in his cross-examination that, the Appellant became unconscious after he was removed from the water. His evidence corroborates the testimony of PW2 that, the narrow width of the embankment was used by the villagers as the road. His evidence further shows that, prior to the incident in question, the persons by name Changdeo Ghodke, Maruti Khandekar, and Laxman Barge met with an accident on the same spot by falling from the embankment.

15. The evidence of PW14-Salim Qutbuddin Wadgaonkar shows that, he was posted as the Sub-Divisional Officer of the Irrigation Department, Sangola. The spot of incident was within the jurisdiction of his office. Pursuant to the communication from the Sangola Police Station, the Canal Inspector Shri. Bansode conducted the spot inspection. At that point of time, the embankment was 100% full with water. It was having 67.58 metric ton (दसलक्ष घनफुट) water. The depth below the water was 4.50 meter. The depth of flowing water was 2.50 meter. He deposed that if a person not knowing how to swim falls in the said water, it would be fatal.

16. The evidence of PW13-Prashant Tukaram Hule, Investigating Officer, shows that, the embankment was the Kolhapuri pattern embankment, used for blocking the water. The small vehicle can go from the wall of the embankment. There was water on both sides of the

embankment. The evidence of PW8-Shahaji Dattu Patil, the uncle of the deceased, shows that, deceased did not know swimming and when once he had gone to the house of his maternal uncle, he had crossed the said embankment to reach the house of his maternal uncle on the motorcycle.

17. It is clear from the above evidence that the spot of incident was the wall of the embankment having sufficient width to cross the embankment by using the motorcycle. There is overwhelming evidence on record to show that, the spot of incident was frequented by the villagers to cross the river. There is ample evidence on record to show that, at the time of incident, there was sufficient water in the river.

18. The evidence of PW2-Ashok Baba Khandekar, the spot panch shows that, the motorcycle was lifted from the pillar of the embankment. The spot panchanama below Exhibit 42 is brought on record in the evidence of the spot panch. The spot panchanama shows that, there was damage to the motorcycle. Though the evidence of PW13-Prashant Tukaram Hule shows that, during investigation he got the technical inspection of the motorcycle done, however, did not include the report in that regard in the case papers. There is no explanation as to why the said report was not brought on record. Thus, adverse inference is to be drawn against the prosecution that, the said report was not favorable to their case.

19. The evidence of PW7-Dr. Pooja Ramchandra Sale shows that, she

conducted the post-mortem on 09.12.2019 and opined that, the probable cause of death was due to drowning. The post-mortem report below Exhibit-71 shows the cause of death as "death probably due to drowning". Her evidence shows that, the body was found cold, rigour mortis was present all over the body, eyes were closed, tongue was inside oral cavity, watery yellowish fluid found coming from the mouth and nose, body was supine, limbs were parallel to the body and earth was noticed in the nail. Her evidence shows that, on the surface of the body she noticed *abrasion over left elbow, redness over right shoulder and contusion over left thigh*. Those injuries were ante-mortem. Appearance of the brain was oedematious, congested, thorax pleura was intact but congested, both the lungs were oedematious, congested, over both the lungs multiple hemorrhagic spots were noticed, there was cracking sign on squeezing at lungs tissues, heart was intact, large vessel was intact and both were empty and congested. There was fullness in abdomen, peritoneum was congested, abdominal cavity containing water approximately 100 ml, stomach containing yellowish semi solid undigested food particles in liquid form approximately 200 ml, there was no foul odour, large intestine was loaded with gases and faces, liver, pancreas, spleen, kidney, bladder all were intact but congested, uterus non-pregnant and congested. She deposed that, from all the said aspects, the probable cause of death was

drowning and presence of cracking in the lungs is the typical sign of drowning. She further deposed that, there was redness over the right shoulder and abrasion over left elbow can happen if someone is forcibly carried by holding shoulder to do some act, and if someone is pushed forcibly and falls down, such injuries can happen.

20. PW7-Dr. Pooja Ramchandra Sale was cross-examined. It has come in her cross-examination that, if a person falls into water on the surface of earth below the water, injuries noted in column No. 17 can happen. She admitted that she do not know exact cause of death. This cross-examination shows that, the injuries found on the deceased were possible due to fall in the water and not necessarily due to forcible manhandling and pushing from certain height. Though PW1-Rani Tanaji Patil and PW4-Tanaji Dattu Patil deposed that, the neck of deceased was broken, the said evidence is not corroborated by the medical evidence.

21. The evidence of PW11-Dr. Aashish Giridhari Bhutada shows that, the Appellant was referred to the Yashodhara Super Specialty Hospital, Solapur, where he was attached, on 9.12.2019. The evidence shows that, initially the Appellant was admitted in an unconscious condition. While examining his level of consciousness, he found that, the Appellant was not opening his eyes and upon forcible opening of the eyes, the Appellant was trying to close the eyes. When tried free fall of the hand over the face, the

Appellant avoided the same. He concluded that, the Appellant was not truly unconscious. The Appellant was given symptomatic treatment. There were no injuries on the Appellant. From 10.12.2019, the Appellant started opening his eyes and behaving normally and started eating food. The examination-in-chief of this witness goes to show that, he was not certain that if a person falls from a height in the water, he may sustain injuries. He deposed that, it depends upon the depth of the water and height from which the fall is caused.

22. The cross-examination of PW11-Dr. Aashish Giridhari Bhutada goes to show that, the Appellant was admitted as the indoor patient for seven (7) to eight (8) days and for the entire period, the Appellant was in the ICU. He admitted that, after examining the Appellant, it was decided to admit him in the ICU. He admitted that, only those patients are kept in ICU who require constant monitoring. The re-examination of this witness shows that, upon noticing the symptoms of not opening the eyes by the Appellant, he was referred to the psychiatrist who prescribed two medicines to reduce the anxiety and other mental stress. This medical evidence shows that, after the Appellant was removed to the hospital from the spot of incident, he was admitted as the indoor patient and was kept in the ICU. In cross-examination of PW1- Rani Tanaji Patil it has come that four (4) to five (5) days after the report, they had gone to the hospital

where Appellant was admitted and she admitted that, the Appellant was admitted in ICU. It is nobody's case that the Appellant did not require treatment. The evidence that, the Appellant was kept in the ICU itself shows that, the doctors felt it necessary to keep him under observation. Therefore, absence of the injuries on the Appellant will not be the factor in favour of prosecution. The absence of the injuries on the Appellant rules out the possibility of a scuffle with the deceased, as it the case of prosecution that deceased was pushed.

23. The evidence of PW17-Nagesh Bhagwan Nimbalkar, who investigated the fatal accident Case No. 25/2019 shows that, from 8.12.2019 till 17.12.2019, he did the investigation of the fatal accident case. No complaint was made by anyone till 17.12.2019 that the incident was not an accident, but was the murder (घातपात). He admitted that in his investigation, the incident was found to be an accident. The evidence of PW-13 Prashant Tukaram Hule, the Investigating Officer, shows that, on 20.12.2019 he recorded the statements of witnesses who reached the spot at the first instance. His evidence show that, he did not record the statement of the persons who removed the dead body from the water during his investigation from 13.12.2019 to 17.12.2019. However, only PW6-Audumbar Kondiba Shriram has been examined. His evidence show that, till 17.12.2019, neither the parents of the deceased nor any relative

lodged the complaint/report that the incident was not an accident, but a case of homicidal death. This evidence of the Investigating Officer shows that, on the ninth (9) day from the date of incident, the report was lodged by PW1-Rani Tanaji Patil, mother of the deceased. The said delay is not explained by the prosecution.

24. The evidence of PW13-Prashant Tukaram Hule, Investigating Officer, and PW-3 Vishal Jagade, the panch witness, shows that, the Appellant volunteered to demonstrate the happening of the incident and show the spot of incident. The cross-examination of PW-3 Vishal Jagade shows that, the appellant did not state in his presence that, he wants to volunteer or tell something voluntarily. Undisputedly, the spot of incident was known to the investigating machinery and the witnesses. Further, there is nothing to show that any incriminating article was seized at the instance of the Appellant from the spot of incident. It is nobody's case that pursuant to the voluntary statement by the Appellant, incriminating material/article was seized. Thus, the said evidence will not be relevant under Section 27 of the Indian Evidence Act.

25. The evidence of PW13-Prashant Tukaram Hule, Investigating Officer, shows that, the ornaments of the deceased were brought by the brother of the Appellant. The said brother of the Appellant is not examined by the prosecution. The evidence of PW-1 Rani Tanaji Patil

shows that, the ornaments of the deceased, which she was wearing when she had come to her house, were received through the Court. The evidence of PW13- Prashant Tukaram Hule that, the said ornaments and the clothes of the Appellant were made available by the brother of the Appellant in presence of PW1-Rani Tanaji Patil is not corroborated by the evidence of PW1-Rani Tanaji Patil. The evidence available on record nowhere makes out the case for the offence punishable under Section 201 of the IPC against the Appellant.

26. The other witnesses examined by the prosecution are PW5-Savita Bhagwan Kolekar, who is the sister of the informant. Her evidence shows that, she acted as the panch for the inquest panchnama. The evidence of PW9-Sambhaji Vyankatrao Shinde shows that, he was the police photographer and clicked the photographs during the course of investigation. The evidence of PW10- Dhananjay Bharat Irkar and PW16-Ankush Panjabrao Chavan shows that they carried the samples to the Chemical Laboratory. PW12-Dr. Satish Jambukumar Doshi deposed of providing medical treatment to the deceased and the Appellant for conception. The evidence of these witnesses takes the prosecution's case no further in establishing the charge.

27. In ***Sujit Biswas*** (supra), it is observed that, suspicion, however grave it may be, cannot take the place of proof, and there is a large difference

between something that “may be” proved, and something that “will be proved”. It further refers to the Judgment in ***Kali Ram v. State of H.P., [(1973) 2 SCC 808]***, wherein it is observed that: "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

28. The Judgments in ***Trimukh Maroti Kirkan*** (supra) and ***Chetan Dashrath Gade*** (supra) cited by the learned APP are on the point of dowry death and Section 106 of the Indian Evidence Act. It is observed that, if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence are insisted upon by the Court. The facts and circumstances of both the said cases are completely distinct from the facts and the evidence in the case at hand. Thus, the said Judgments are of no assistance for the prosecution.

29. The circumstances brought on record by the prosecution do not conclusively establish the charge against the Appellant. The circumstantial evidence available on record does not form a complete chain to establish

the charge against the Appellant. The evidence on record is far from establishing the homicidal death of the Appellant's wife. The incriminating circumstances were put to the Appellant by the learned trial Court. He denied the charge and stated that he and the deceased met with an accident and he tried to save the deceased, and since it was dark, she could not be seen as there was much water, and he came out by swimming. He stated that a false crime was registered against him. The overall evidence on record and particularly the medical evidence do not establish that, the death was homicidal. The overall evidence available on record makes the defence of accidental death probable. As per the settled position under the law when two views are possible, the one which is favourable to the accused is to be accepted. The circumstantial evidence on record is not conclusive to establish the charge. In the case based on circumstantial evidence, the motive assumes importance. The prosecution miserably failed to prove the motive on the part of the appellant to kill the deceased. The re-appreciation of the evidence on record shows that, the circumstances, taken individually and cumulatively, are not conclusive in nature so as to prove the charge against the Appellant. The prosecution failed to prove the charge against the Appellant for the offence punishable under Sections 302, 201 and 498A of the IPC. Therefore, the conviction and sentence awarded by the learned trial Court is liable to be quashed

and set aside and resultantly, the Appellant is entitled to acquittal. Hence, we proceed to pass the following order:

ORDER

I. Appeal is allowed.

II. The conviction and sentence recorded by the learned trial Court for the offence punishable under Sections 302, 201 and 498A of the IPC against the Appellant is quashed and set aside.

III. The Appellant is acquitted of the offence punishable under Sections 302, 201, 498A of the IPC.

IV. The Appellant is behind bars. He be released if not required in any other offence.

V. The endorsement below the operative order of the impugned Judgment in the paper book shows that, the fine is not paid; therefore, there is no question of directing a refund.

VI. The muddemal property be dealt with as per the operative order of the impugned Judgment.

VII. The record and proceedings be sent back to the learned trial Court.

[NEERAJ P. DHOTE, J.] [SHARMILA U. DESHMUKH, J.]