
(1991) 05 BOM CK 0002

In the Bombay High Court

Case No : Criminal Appeal No. 143 of 1990 with Suo Motu Notice No. 2 of 1990

Ashok Baburao Kadam

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-05-1991

Acts Referred:

Evidence Act, 1872 — Section 27, 3, 8
Penal Code, 1860 (IPC) — Section 302

Citation : (1991) 3 BomCR 95

Hon'ble Judges : S.S. Dani, J;H.H. Kantharia, J

Bench : Division Bench

Advocate : S.M. Parangape, for the Appellant; V.K. Tahilramani, for the Respondent

Judgement

S.S. Dani, J.—Criminal Appeal No. 143 of 1990 is filed by Ashok Baburao Kadam original accused No. 1 against the order dated 25th January, 1990 passed by the Additional Sessions Judge, Dhule, in Sessions Case No. 1 of 1989 holding him guilty for the offences punishable u/s 498-A and 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life.

2. The present appellant-accused Ashok is the son of one Baburao Maruti Kadam, who was accused No. 2 in Sessions Case No. 1 of 1989 and both these accused were charged for having committed the offences, punishable under sections 498-A and 302 read with 34 of the Indian Penal Code. On appreciation of evidence on record the learned Additional Sessions Judge held that there was no evidence against accused No. 2 Baburao Maruti Kadam so as to prove any of these two alleged offences and in the result acquitted accused No. 2 Baburao Maruti Kadam of both the offences. Accused No. 1, therefore, is the only appellant before us. While admitting his Criminal Appeal No. 143 of 1990, this Court by order dated 23rd April 1990 ordered to issue a notice to the appellant accused for enhancement of sentence and called upon him to show cause as to why the death penalty should not be inflicted for the alleged two offences in place of

sentence of life imprisonment passed by the lower Court. Criminal Appeal No. 143 of 1990 and Suo Motu Notice No. 2 of 1990 have therefore, being clubbed together and both have been ordered to be treated as confirmation case.

3. The deceased involved in the present case was one Meena, wife of the appellant accused Ashok, and the incident is alleged to have been taken place on 24th September, 1988 between 5.00 a.m. and 6.00 p.m. The deceased Meena and the accused Ashok married about 10 to 12 years prior to the incident and were living in Oke Chawl within the limits of Dhule city. Deceased Meena hailed from Dhule district and her maiden surname was Babar and used to stay with her parents in Lane No. 4 at Dhule. During the married life the deceased Meena gave birth to two children and their married life was smooth and happy for a couple of years. The appellant accused Ashok was gainfully employed as Junior Engineer in the Maharashtra State Electricity Board, Dhule but came to be suspended 4-5 years ago. Because of the loss of job accused Ashok developed the vice of drinking and as he had no other ostensible source of income he used to demand money from the deceased Meena as the deceased Meena was gainfully employed as a clerk in the Judicial Department of District and Sessions Court, Dhule. It is alleged by the prosecution that on many occasions the deceased Meena used to be driven out of her house but because of the intervention of the relations she used to come and stay with her husband again.

4. As per case of the prosecution, on 18th September 1988 P.W. 4 Subhash Vasant Babar, exhibit 18, a relation of deceased Meena, came to the house of the accused and requested the accused to take back Meena in his house. It is further alleged that the accused had at that time disclosed about the unchastity of his wife Meena. However, deceased Meena thereafter stayed with her husband, the appellant accused. P.W. 2. Vasant Pandurang Mohite, exhibit 15, resides in room No. 9 in the same Oke Chawl and he was approached by deceased Meena on 23rd September, 1988 at about 8.30 in the night and deceased Meena disclosed about the ill-treatment to her at the hands of the appellant-accused P.W. 2 Vasant, therefore, went to the house of the appellant-accused and persuaded him to behave properly. The fateful incident is alleged to have taken place on 24th September, 1988 at the residential room of the accused in the early morning. It is the case of the prosecution that the premises of the accused consists of three rooms including a covered verandah. On the fateful night the accused, his wife and two children were sleeping in the kitchen room. It is further case that the accused inflicted blows with an iron pestle on the head of the deceased Meena and thereafter he set her on fire. P.W. 2 Vasant, a resident of room No. 9 of that chawl, was cleaning his teeth at about 6.00 a.m. on that day and he saw the room of the accused on fire and smoke coming out of it. P.W. 2 Vasant, therefore, raised shouts and himself rushed to the room of the accused. Because of his shouts more persons collected over there and they all tried to open the door of the room but were unsuccessful. It was the case of the prosecution that P.W. 2 Vasant was accompanied by Ashwin, Gorwadkar and Kumbhar at that time. On finding that the rear door of the room could not be

opened, Ashwin went to the front of the said premises of the accused but could not open it and returned. Thereafter both these persons then broke the rear door of the room of the accused and rushed inside. It is the case of the prosecution that the room was filled with smoke and Meena was lying on bed gutted by fire. It is the further case that the accused was found standing near the sink at a distance of about four paces away from Meena along with his two kids. It is the specific case of the prosecution that the accused was standing on stand-still and did nothing at that time. P.W. 2 Vasant then poured water on the body of Meena and also noticed blood injury-behind her ears. P.W. 2 Vasant then came out of the room and rushed to remove injured Meena to the hospital. P.W. 2 Vasant after directing a rickshaw to the room of the accused goes to the parents of Meena and meets her uncle and narrates the whole incident to him. P.W. 4 Subhash Vasantrao Babar is related to Meena in as much as he is her cousin. P.W. 4 Subhash stays in Oos Galli at Dhule and is the neighbour of the parents of Meena. On 24th September, 1988 P.W. 4 Subhash came to his place of employment i.e. Municipal Council at about 6.30 a.m. to take muster call and to allot duties to the municipal servants. P.W. 4 Subhash there came to know that Meena was burnt. He in his turn therefore, reaches the police station and reaches the room of the accused along with police constable in the police jeep. P.W. 2 Vasant and P.W. 4 Subhash then removed the injured Meena in the police jeep to the civil hospital at Dhule. Injured Meena had sustained 91% burn injuries and ultimately succumbed to the injuries at about 12.00 noon in the civil hospital at Dhule. P.W. 4 Subhash then lodged a report, Exhibit 19, at the police station. P.S.I. Wadnekar attached to the Dhule Police Station reduces the said FIR exhibit 19 into writing as per the version of P.W. 4 Subhash and then registers the offence at R. No. 292 of 1988 under sections 498-A and 307 of the Indian Penal Code.

5. The investigation was then taken over by P.W. 11 Bhaskar Shankar Bagul, Exhibit 37, and during the investigation it came to be transpired that accused No. 2, the father-in-law of deceased Meena and father of the accused Ashok, was also involved in the offence. P.W. 11 Bhaskar, therefore, arrested both of them and brought them to the police station. Accused No. 1, the present appellant, had put on a banian, Article No. 9/2, on his person at that time. P.W. 11 Bhaskar attached it under a panchanama, Exhibit 33, in the presence of two panchas including P.W. 10 Bharat Kashinath Jambhale, Exhibit 32. Original Accused No. 2 was also taken search at the police station and under a panchanama Exhibit 27, two ear rings (Article 8) came to be attached from his person in the presence of two panchas including P.W. 7 Prakash Jagannath Deshmukh, Exhibit 26. The appellant-accused Ashok, while in police custody, made a voluntary statement that he shall show the place in his house where the iron pestle, a tin box and a match box have been kept. The voluntary statement was made in the presence of two panchas including P.W. 10 Bharat Kashinath Jambhale. The accused Ashok then led the panchas and the police to his house and pointed out the place where the iron pestle, tin box and match stick box were lying. All these articles 1 to 3

came to be attached under a panchanama, Exhibit 35, in presence of the very two panchas. P.W. 11 Bhaskar effected the panchanama of the scene of offence, Exhibit 36, in presence of two witnesses and attached the burnt mattress, two burnt match sticks, blood mixed sold and burnt pieces of bangles (Articles 4, 5 and 6) from the scene of offence. The injured Meena was removed to the civil hospital along with her bed and after her admission in the hospital the Police Constable Pawar produced the bed, pillow, petticoat, saree and blouse of deceased Meena in the police station which came to be attached under a panchanama, Exhibit 10. P.W. 11 Bhaskar then came to know about the death of Meena in the hospital and he then in his turn converted the offence u/s 302 of the Indian Penal code against the accused. P.W. 11 Bhaskar then forwarded the dead body of Meena to the civil hospital for post mortem examination where P.W. 5 Dr. Devendrasingh Pratapsingh Pawar, Exhibit 21, carried out post mortem on the dead body between 3.00 p.m. and 3.45 p.m. on 24th September, 1988 itself. The Medical Officer found two external and internal injuries as mentioned in the post mortem notes, and also noticed 91% burn over the body of deceased Meena. P.W. 5 prepared the post-mortem notes as per Exhibit 22 and advance certificate of the cause of death, Exhibit 23. As per the Medical Officer the probable caused of death was cordiorespropic due to head injury with associated burns 91%.

6. On the next day i.e. 25th September 1988 P.W. 11 Bhaskar Bagul then recorded statements of witnesses and sent the property before the Court to chemical analyser for examination on 29th September, 1988. On receiving the chemical analyser's report and on completion of other necessary investigation P.W. 11 Bhaskar Bagul charge-sheeted both the accused on 23rd December, 1988, Exhibit 39, in the Court of the Chief Judicial Magistrate, Dhule, for the alleged offences and the learned Magistrate committed both the accused to stand their trial in Sessions Case No. 1 of 1989.

7. The Additional Sessions Judge, by order dated 20th April, 1989, framed the charges as per Exhibit 1 against both the accused for the offences punishable under sections 498-A and 302 read with 34 of the Indian Penal Code. Both the accused pleaded not guilty to the charge and claimed to be tried. On consideration of evidence on record the Additional Sessions Judge, Dhule, found original Accused No. 1 Ashok guilty of both the offences and, by his judgment and order dated 25th January, 1990, sentenced the appellant-accused Ashok to life imprisonment for the offences punishable u/s 302 of the Indian Penal Code. Even though the Additional Sessions Judge held the present appellant guilty also for the offence punishable u/s 498-A of the Indian Penal Code, no separate sentence was passed. As stated above, original accused No. 2 Baburao Maruti Kadam, father of the present appellant-accused, came to be acquitted of both the offences. Criminal Appeal No. 143 of 1990 has, therefore, been filed by Ashok Baburao Kadam original accused No. 1 and this Court has issued notice to him as to why the sentence of life imprisonment should not be enhanced and instead a penalty of death should not be imposed on him.

8. In order to prove the alleged offences against the accused the prosecution has adduced evidence of as many as eleven witnesses in this case. P.W. 1 Raghunath Murlidhar Pawar, Exhibit 13, is the maintenance surveyor in Survey Department, who had visited the scene of offence on 30th September, 1988 and drew the map, Exhibit 14. P.W. 2 Vasant Pandurang Mohite, P.W. 3 Pramila Maruti Shevatkar and P.W. 4 Subhash Vasantrao Babar are the witnesses to whom the deceased Meena alleged to have disclosed the ill-treatment to her at the hands of her husband and these are the witnesses who were present at the scene of offence at the material time. P.W. 5 Dr. Devendrasingh Pratapsingh Pawar and P.W. 6 Dr. Subhash Rajendra Puri are the Medical Officers at Civil Hospital, Dhule, who have carried out the postmortem over the dead body of deceased Meena and have examined the accused on 27th January, 1988 respectively. P.W. 7 Prakash Jagannath Deshmukh and P.W. 10 Bharat Kashinath Jambhale are the panch witnesses, while P.W. 8 Ananda Pitamber Pawar, Exhibit 28, and P.W. 11 Bhaskar Shankar Bagul, Exhibit 37, are the investigating officers. The accused also adduced the evidence of D.W. 1 Ashok Shriman Jain, Exhibit 46, who produced various vouchers to show the payment of salary made to the accused (Exhibits 47 to 87). Various panchanamas such as production of articles seized, inquest panchanama and the chemical analyser's reports were not disputed by the defence and the same came to be exhibited in the case.

9. It is an admitted position that the present case is not blessed with the evidence of eye-witness and the case exclusively hangs on circumstantial evidence. It need not be stated that in such case the prosecution will not only have to prove the chain of circumstances but also will have to prove the continued and unbroken link between the various circumstances so as to point out the guilt of the accused. It may also be noted that in case of circumstantial evidence, motive plays an important part.

10. The prosecution in the present case mainly relies on the evidence of three witnesses viz., P.W. 2 Vasant Pandurang Mohite, Exhibit 15, P.W. 3 Pramila Maruti Shevatkar, Exhibit 17, and P.W. 4 Subhash Vasantrao Babar, Exhibit 18. It is on the basis of the evidence of these three witnesses that the prosecution desires to fasten the criminal liability on the shoulders of the present appellant-accused for proving his complicity in the crime of both the alleged offences. The evidence of these witnesses is relied upon by the prosecution mainly in proving the alleged ill-treatment to deceased Meena at the hands of the present appellant and also to prove the clinching circumstances involving the accused as a culprit. P.W. 2 Vasant Pandurang Mohite states in his evidence that deceased Meena used to tell him and his wife about the ill-treatment and harassment to her at the hands of the accused. This witnesses resides at Room No. 9 in the same chawl and as such is a neighbour. In his evidence he states that on the prior day of the incident i.e. on 23rd September, 1988 deceased Meena had come to his house at about 8.30 p.m. and narrated about the harassment to her and requested him and his wife to accompany her so as to persuade the accused to desist from extending the ill-treatment to her. He further states in his evidence that he and

his wife accordingly accompanied Meena to her house and had talks with the accused and requested him to behave properly and thereafter they returned back. So far as this point is concerned, it may be noted that P.W. 2 Vasant Pandurang Mohite himself admits in his cross examination that he has not stated in his statement before the police about the disclosure of the ill-treatment to him by deceased Meena. He is emphatic in his evidence that his statement was recorded on 24th September, 1988. Further it may be noted that this witness admits the position that he has no personal knowledge about the alleged treatment to deceased Meena by the present accused. It is further important to note that he admits not to have stated before the police that on 23rd September, 1988 he went along with Meena to her house with his wife. He also did not state in his statement before the police in respect of the alleged talks between himself and the accused at the scene of offence. Even though it is tried to be proved through the evidence of this witness in the examination-in-chief that when he and his wife went to the room of deceased Meena, accused was talking irrelevantly and was uttering the words that he would kill or beat, however the witness admits the position that he did not state accordingly in his statement before the police.

11. P.W. 3 Pramila Maruti Shevatkar resides near the house of the mother of deceased Meena and has adduced evidence at Exhibit 17 so as to prove the alleged ill-treatment to deceased Meena at the hands of the accused. The witness has stated in her examination-in-chief that whenever Meena used to visit her mother she used to tell the witness that she was being tortured by her husband and her husband also beat her. It is pertinent to note that this witness admits the position that she had once visited the house of the accused and she received a very cool treatment from the inmates of the house and no body talked with her on any of the occasions. She is, therefore, positive in her evidence that there was inhuman treatment to her by the accused and his family members. It would, therefore, be not unreasonable to conclude that the relationship between this witness and the accused were strained. It is further pertinent to note that this witness is the neighbour of the mother of deceased Meena and strangely enough there is no iota of evidence on record even to indicate that deceased Meena had complained about the ill-treatment on any occasions to her parents. It is an admitted position that the prosecution has resiled from examining the parents of the deceased Meena for proving the alleged ill-treatment to her at the hands of the accused. It need not be stated that the parents of deceased Meena would be the most natural persons to whom deceased Meena would tell about the ill-treatment. Instead of this, the prosecution desires to prove the alleged ill-treatment through the evidence of the witnesses who are admittedly either not related to her or having strained relations with accused.

12. The third witness is P.W. 4 Subhash Vasantrao Babar, Exhibit 18. Deceased Meena was his cousin and this witness stays in Oos Galli i.e. in the locality where the parents of deceased Meena are residing. This witness has stated in his evidence, Exhibit 18, that deceased Meena used to come to him and used to tell

that the accused was ill-treating and assaulting her. The witness is emphatic in respect of visit of deceased Meena to him on 17th September 1988 and as per his evidence he and the mother of Meena rushed to the house of the accused on 18th September 1988. It is in his evidence that at that time the accused asked the mother of the deceased to take Meena back to her house and accordingly deceased Meena then stayed with her mother for about 2-3 days. As per his evidence he came to know about the incident on 24th September, 1988 early morning when he was attending to his duties. P.W. 4 Subhash is the person who reaches the police station first and lodges the report, Exhibit 19. It is pertinent to note that this witness admits the position even in his evidence at Exhibit 18 that whatever has been stated by him in the examination in chief is conspicuously absent in his FIR, Exhibit 19. He admits the position that he has not mentioned in his FIR, Exhibit 19, in respect of his visit to deceased Meena along with her mother and the talk which they had with the accused at that time. It may be noted at this juncture that P.W. 4 Subhash narrates the incident of burning to the police and P.W. 8 Anand Pawar, Exhibit 28, the police constable of Dhule Police Station, reduced that information into writing in the station diary. The extract of the station diary has been placed on record at Exhibit 29. It is material to note that as per the entries at Serial No. 12 it is only mentioned that Subhash Vasant Babar told that his sister Meena Ashok Kadam is burnt. It is pertinent to note that no suspicion has been raised against the accused by this witness when he narrated the information at the police station. This entry in the station diary, therefore, contradicts whatever has been mentioned by the witness in his FIR, Exhibit 19. As stated above, the parents of deceased Meena are the natural and more reliable persons to prove the alleged ill-treatment to deceased Meena at the hands of the accused. Admittedly, no evidence has been led by any of the parents of deceased Meena. P.W. 3 Premila admits to have cordial relations with the members of the family of deceased Meena and as stated above P.W. 2 Vasant had bad experience and treatment at the hands of the accused during his visit. In view of this evidence on record discussed above, it is difficult to hold that the prosecution has proved the alleged case of ill-treatment at the hands of the accused to deceased Meena.

13. The criminal liability for both the offences is tried to be fastened on the shoulders of the accused on the basis of number of circumstances. One of the circumstances urged by the prosecution is the alleged discovery of certain articles at the instance of the accused u/s 27 of the Indian Evidence Act. P.W. 10 Baharat Kashinath Jambhale has acted as a panch on 24th September 1988. The appellant-accused, while in police custody, is alleged to have voluntarily stated that he shall show the place where match stick, iron pestle and tin container has been placed in his house. P.W. 11 Bhaskar Shankar Bagul, PSI of the concerned police station, was the investigating officer at that time. Panchanama, Exhibit 34, came to be recorded of the alleged voluntary statement of the accused. It is the case of the prosecution that the accused in pursuance to his voluntary statement led the panchas and the police to his own house and took them to Room No. 4

and pointed out the iron pestle kept on the wall of the sink. This article along with kerosene tin container and the match stick box (Articles 1, 2 and 3) then came to be attached under the panchanama, Exhibit 35. It is on the basis of this alleged discovery of these articles that the criminal guilt is tried to be proved. At the outset it may be stated that all these articles are admittedly recovered from the scene of offence itself. Admittedly, they were not concealed and were openly visible to any one. Further it may be noted that immediately after the alleged discovery a panchanama of scene of offence came to be effected attaching the articles before the Court. Further it may be noted that when the incident of burning was reported to the police station a police personnel came to the house of the accused and the accused, was taken in the police jeep. This would therefore, mean that this place was already visited and inspected by the police before the alleged discovery of these articles. Further it is pertinent to note that none of these articles can prove any incriminating role on the part of the accused. These three articles have been sent to the chemical analyser for examination. Article No. 2 iron pestle, which is alleged by the prosecution as the weapon of attack in the incident, does not bear any blood stains. The chemical analyser's report, Exhibit 38, is placed on record and it positively shows absence of any blood on Article 2 before the Court.

14. Another piece of circumstance relied on behalf of the prosecution is in respect of recovery of banian, Article No. 9/2 from the person of the appellant-accused at the time of his arrest. On 24th September, 1988 in the presence of panchas including P.W. 10 Bharat Kashinath Jambhale, the banian, Article 9/2 is alleged to have been recovered from the person of the appellant-accused at the police station under panchanama, Exhibit 33. It may be noted that initially even if P.W. 10 Bharat Kashinath states in his evidence, Exhibit 32, that the banian, Article 9/2 was recovered from the person of the appellant-accused, he admits the position in his cross-examination that the article 9/2 was kept on the table and in the presence of two panchas it came to be attached under a panchanama. This being so, it cannot be held that the article is recovered from the person of the appellant-accused. It may also be noted that as per the C.A. report, Exhibit 11, nothing incriminating has been found on this article. In view of this evidence on record the alleged recovery of article 9/2 from the person of the appellant-accused cannot connect the accused in the commission of the alleged offence.

15. It is the specific case of the prosecution that the appellant-accused on the fateful night inflicted blows with iron pestle, Article 2, on the head of deceased Meena and thereafter set her on fire. This is the specific charge labelled against the appellant-accused. It would, therefore, be useful to ascertain from the evidence on record as to whether the medical evidence corroborates the alleged theory of the prosecution. It need not be stated that Article No. 2, iron pestle, is a household article and it is heavy and solid. It can be safely said, considering the weight and solid nature of the article, that if it is used as a weapon of attack and if, as per the prosecution, the appellant-accused inflicted blows on the head of the deceased Meena, one would normally expect the crushing of the skull into

pieces like a coconut. It may, however, be noted at this juncture that as per the post-mortem notice contused lacerated wounds came to be noted on the head of the deceased Meena. Medical Officer P.W. 5, Dr. Devendrasingh Pratapsingh Pawar, admits in his evidence, Exhibit 21, that if Article No. 2, iron pestle, is used in the attack, it must have some blood stains on its while causing injuries as mentioned in columns 17 and 18 of the post mortem notes, Exhibit 22. As stated above, the C.A. report at Exhibit 38 negatives the presence of any blood on this Article No. 2. Further it may be noted that the Medical Officer admits the position in his evidence that two injuries described as contused lacerated wounds over the skull of the deceased Meena are possible in case a person falls on a protein of stone of the wall and if a person falls on it in burnt condition then both these injuries on the right and left of the skull are possible. The medical evidence adduced in the shape of post-mortem notes, Exhibit 22, and the sworn testimony of the medical officer, Exhibit 25, therefore, run contrary to and inconsistent with the story of the prosecution. As stated above, Article No. 2 is alleged to have been recovered at the instance of the appellant-accused in pursuance of his voluntary statement from the place which was already visited and known both to the panchas and the police and the story of the prosecution, therefore, in respect of use of Article No. 2 as a weapon of assault in the present case cannot be believed in as much as it is not corroborated and supported by medical evidence on record read with the chemical analyser's report

16. There are number of lacunas in the case of the prosecution. It may be stated firstly that admittedly deceased Meena came to be removed to the Civil Hospital, Dhule, immediately after the incident at about 6.00 a.m. on the date of offence. It is further not in dispute that she had sustained 91% burn injuries and she succumbed to those injuries. Admittedly, the prosecution has resiled from placing on record any hospital record so as to show the condition of the patient at the time of admission and during the period till her death. It may be noted that as per the entry in the station diary, Exhibit 29, when deceased Meena came to be admitted in the hospital having burn injuries on her person, action was contemplated for immediate arrangement for recording her dying declaration. It is clear, after reference to the entry, Exhibit 29, that it was also thought fit and necessary to record dying declaration considering the serious condition of the patient and as per the evidence of P.W. 8 Ananda Pitambar Pawar, a police constable who made station diary, Exhibit 29, arrangements were being made to record the dying declaration of injured Meena. We are, however, left with imagination and guess thereafter and nothing has been placed on record even to indicate as to what happened thereafter. It may also be noted that the prosecution has adduced evidence of two medical officers who have carried out the post-mortem examination and the examination of the accused respectively but has not adduced evidence of any witness or has not produced on record any material to show the condition of the patient from the time of her admission till she breathed last. It is the submission on behalf of the prosecution that an application was made in the trial Court for permission to lead evidence of the

medical officer and to place on record the concerned hospital papers. It may however be noted that this was admittedly made on 22nd January, 1990 and the application, Exhibit 90, was preferred by the State in the trial Court after the conclusion of the arguments. The trial Court was, therefore, right and justified in rejecting that application. It may also be noted that in this Court before us an application has been preferred on behalf of the State for permission to adduce additional evidence. Admittedly, evidence sought to be led by the prosecution at this stage was available to it earlier. Additional evidence cannot be allowed to fill in the lacunas in any case. Prayer for additional evidence was made in the trial court at the fag end of the arguments. This being the position, the application made in this Court for the same relief is, therefore, belated and deserves no consideration and as such has to be rejected as it was done in the trial Court. The position is, therefore, clear that there is no evidence on record to show the mental condition of deceased Meena and no arrangements were made to record the dying declaration even though she lived for about six hours in the Civil Hospital, Dhule.

17. Another circumstance, strongly relied on behalf of the prosecution, is in respect of the presence of the appellant-accused at the material time at the scene of offence. It is not in dispute that on the night prior to the incident the deceased Meena, the appellant-accused and their two children were alone present in the kitchen and had retired to bed in that room. It may be noted at this juncture that the appellant-accused does not dispute this position. In his replies to various questions in his statement recorded u/s 313 of the Code of Criminal Procedure, the appellant-accused admits the situation that he was all the while present and it is not even the case of the appellant-accused or the State that except the accused and two small children any other any other person was present in the house of the appellant-accused. The Trial Court has also held that original Accused No. 2, the father of the appellant and father-in-law of the deceased Meena, was also not present in the house. It is on the basis of this circumstantial evidence that criminal liability is tried to be fastened against the appellant-accused.

18. Before we consider as to whether the case made out by the accused in his statement recorded u/s 313 of the Criminal Procedure Code is probable and reasonable, it would be useful to refer to the medical evidence on record. P.W. 5 Dr. Devendrasingh Pratapsingh Pawar, the Medical Officer, has admitted in his evidence, Exhibit 21, that every individual reacts to the shock in different manner. He further says that some become dumb and some become freezed. The Medical Officer is emphatic in his evidence that if a person awakes from deep sleep and finds his wife burning he might get the severe shock and he may freeze. He further stated that freezing, in such a case, means that he is unable to do anything. It is, therefore, clear from the evidence of this medical officer that on awaking from sleep and finding his own wife gutted in fire the appellant-accused must be have received severe shock and his movements must have been freezed. This would explain the conduct on the part of the accused in not

doing anything and standing still near the basin when the witness rushed into the room. As per the evidence of P.W. 2 Vasant, when he entered the room of the accused after opening the rear door forcibly, he saw the accused standing still along with his two children. At this juncture a reference may be made to the answer given by the accused to this specific question in his statement u/s 313 of the Criminal Procedure Code. While answering the last question No. 33 the appellant-accused states :

"Thereafter I slept. At about 5.30 or 6.00 a.m. all of a sudden I heard the sound of fall. I at once saw Mina was engulfed in the flames. Her bed was by the side of my bed. When I saw her burning, I went in shock. By that time my children also got up. They started crying. I lifted them and took them arise. My son was catching me by leg. I lifted him and-put him on the sink. In the meantime, the door was broken and people entered."

It may also be noted that as per the case of the prosecution itself the accused did not run away. It is true that the accused did not accompany his wife Meena while she was being taken to the civil hospital but suggestion has been made to the witness that when he tried to accompany his wife, he was asked to remain at the house as both the small children were at the house. The presence of the appellant-accused, therefore, at the scene of offence, in view of the evidence disclosed above, cannot be said to be a clinching circumstance so as to hold the appellant-accused a killer in the present case. At the most this circumstances can cast a suspicion, however, strong it may be, cannot substitute the proof.

19. It is urged on behalf of the prosecution that the appellant-accused was jobless at the time of the incident and as such was demanding money from his wife so as to satisfy his lust of liquor. It is, therefore, urged that this circumstance may lead to prove the alleged motive on the part of the appellant-accused to do away with his wife. It is an admitted position that deceased Meena was gainfully employed with the District and Sessions Court, Dhule, at the time of incident. However, it cannot be forgotten that the accused was not jobless for the total period as alleged by the prosecution. The appellant-accused has adduced evidence of D.W. 1 Ashok Shrimal Jain at Exhibit 45. This defence witness is a partner in the firm Kanti Cables and as per his evidence the appellant-accused was in his service as Laboratory Assistant from 1981 onwards. Different vouchers have been placed on record at Exhibits 47 to 87 and they have been proved by the evidence of this witness so as to show the payment of salary for the appellant-accused for his job. It is, therefore, from this documentary evidence apparent that the appellant-accused was in service from January 1986 to December 1986, from January 1987 to July 1987 and from 21st May 1988 to September 1988. It is, therefore, not the case, as alleged by the prosecution, that the appellant-accused was jobless for a substantial period. It is also alleged on behalf of the prosecution that the material witness P.W. Vasant stated in his evidence that the accused was sacked from his service. However, that does not appear to be true recording of evidence in as much as what has

been recorded in Marathi is "Tyachi Naukri Sutli".

20. Summarising the evidence on record it would mean that evidence of P.W. Nos. 2, 3 and 4 cannot be accepted in view of the admissions given by them in the cross examination. The point in respect of ill-treatment by the appellant-accused to deceased Meena, tried to be proved by the sworn statement of P.W. 2 Vasant, P.W. 3 Pramila and P.W. 4 Subhash loses its efficacy in as much as nothing has been stated accordingly by these witnesses during the investigation and the fact that the mother of deceased Meena, though alive, is not examined to prove the alleged ill-treatment or even disclosure of ill-treatment by deceased Meena and instead strangers have stepped into witness box to prove the alleged fact of ill-treatment P.W. 4 Subhash, as stated above, does not even raise a suspicion against the accused while narrating the incident to the police and while station diary, Exhibit 29, came to be made. The alleged discovery of Article Nos. 1, 2 and 3 and the recovery of banian, Article 9/2, are also insufficient to prove any of the alleged offences against the appellant-accused. The medical evidence as disclosed runs contrary to the case of the prosecution and the alleged use of article No. 2 as a weapon in the attack is also falsified by the absence of any blood stains on it. The presence of the accused in the room is also insufficient to implicate him as the culprit for the reasons stated above.

21. It may also be noted that before proving the guilt against the accused, the prosecution will have to prove that the crime as alleged by it has been committed. The appellant-accused stands charged for the offence of murder punishable u/s 302 of the Indian Penal Code and as such it will have to be proved by the prosecution firstly that the death in the present case is nothing but homicidal. In other words the possibility of accidental or suicidal death will negative the story of murder and criminal liability for such an act cannot be fastened atleast u/s 302 of the Indian Penal Code. In this case it would be material to refer to the panchanama of the scene of offence, Exhibit 36. As per the said panchanama it has been found that there were utensils near the door containing of food articles. It has also been found at there were utensils near the door containing of food articles. It has also been found at the scene of offence a lantern (Chimney) without glass and there were burnt sticks near it. Further it has been found that by the side of the sink there were household utensils and there was one stove. It may be noted at this juncture that the incident is alleged to have taken place at about 6.00 a.m. in the morning. Admittedly deceased Meena was working as a clerk in the Court. It would, therefore, be not unreasonable to hold that she must have started household duties at the early morning. It may further be noted that as per the medical evidence on record she sustained 91% burn injuries and use of article No. 2 as a weapon has to be eliminated in view of the evidence discussed above. In view of these circumstances and facts on record the possibility of an accidental death cannot therefore, be completely ruled out. In any case it cannot be held positively that deceased Meena died a homicidal death and, even if it is so, it was not at the instance and because of involvement of the appellant/accused. In this view of the

matter and in view of the evidence and circumstances as discussed above, we are, therefore, of the opinion that the prosecution has been unsuccessful in proving the guilt of the accused beyond reasonable doubt. Disagreeing with the views and reasonings of the trial Court we, therefore, hold that none of the offences alleged has been safely brought to the home of the appellant/accused.

22. In the result, Criminal Appeal No. 143 of 1990 is allowed and the order dated 25th January 1990 passed by the Additional Sessions Judge, Dhule, in Sessions Case No. 1 of 1989 holding the appellant guilty for offences punishable u/s 302 and 498-A of the Indian Penal Code and sentencing him to suffer R.I. for life is hereby set aside and quashed. The appellant/accused shall be released forthwith if not required in any other case.

23. Consequently, suo motu Notice No. 2 of 1990 for enhancement of sentence does not survive and stands disposed of.