

(2015) 10 BOM CK 0008

In the Bombay High Court

Case No : Criminal Appeal Nos. 620 and 726/2015

Baliram and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428

Evidence Act, 1872 — Section 101, 106, 113B, 113-B

Penal Code, 1860 (IPC) — Section 161, 195-A, 201, 202, 304B

Citation : (2015) 10 BOM CK 0008

Hon'ble Judges : A.B. Chaudhari and I.K. Jain, JJ.

Bench : Division Bench

Advocate : M.D. Thube-Mhase, Advocate, for the Appellant; A.S. Shinde and S.B. Yawalkar, APPs, for the Respondent

Judgement

A.B. Chaudhari, J.—Criminal Appeal No. 620/2015 has been filed by Baliram Gurling Palapure - the complainant against the judgment and order dated 1.6.2015 passed by the learned 4th Additional Sessions Judge, Aurangabad, in Sessions Case No. 388/2010, by which he acquitted all the accused persons, who were charged for various offences punishable u/ss. 498-A , 323 , 504 , 506 , 304-B , 306 , 201 , 202 and 195-A of the Indian Penal Code.

2. Criminal Appeal No. 726/2015 has been filed by the State of Maharashtra against the same judgment and order of acquittal of all the accused persons.

3. Both these appeals were taken up for final hearing with the consent of learned counsel for the rival parties. Pursuant to the order dated 15.9.2015 made by this Court while granting bail, the learned counsel for the parties agreed to have final hearing in these appeals instead of seeking adjournment.

FACTS :

The prosecution case in brief is as under:

4. On 2.5.2010 at about 00-30 hours, Police Station, CIDCO, Aurangabad City

received information from Bembde Plastic Surgery and Burns Hospital, Aurangabad, that one Suchita Nitin Patil was admitted in the hospital by her husband Dr. Nitin Patil at about 10-30 p.m. in burnt condition. The Police Station Officer took the entry of the information in Station Diary No. 122/2010, which was given MLC No. 105/2010 and the case was handed over to PW6 ASI Vinayak Rathod. PW6 Vinayak Rathod went to Bembde Hospital and gave a letter (Exh. 110) to find out the condition of the patient Suchita. At about 1-30 a.m., the patient was found oriented and conscious. He recorded her statement (Exh. 221). Thereafter, he gave letter (Exh. 116) to PW5 Shri Mendke, Naib Tahsildar, who went to the hospital at about 10-00 a.m. and recorded her statement (Exh. 118). In these two statements to PW6 Vinayak Rathod and PW5 Mendke, Suchita had stated that on 1.5.2010, her husband had gone to the hospital. Her son was sleeping in the bed room. Her father-in-law and mother-in-law were also in the house. There was one cooler in the hall. She had kept one bisleri bottle containing petrol for her Scooty on cooler. At the time of Aarati of Lord Shri Ganesh, by oversight she had a dash to the cooler, when the bisleri bottle containing petrol fell down on the floor and the petrol spread. Meanwhile, she had an already lighted copper lamp in her hand and when she was about to lift the bisleri bottle containing petrol, there was flame of fire and she got fire. In the said incident, she sustained burn injuries to her both the hands, face, stomach and legs.

5. The Police Station Officer then handed over further investigation to PW19 Shri K.K. Shinde who obtained papers from ASI Rathod and both the aforesaid statements recorded by Vinayak Rathod and Mendke - the Naib Tahsildar. He called two panchas i.e. PW1 Deepak Jaiswal and Vishwanath Swami and went to the spot namely the ground floor of the house of Dr. Dhanwai at Ranjanwan Society, N-9, CIDCO, Aurangabad. He found some burnt pieces of clothes lying on the floor of hall as well as bedroom. He found black spot of burns over the wall and floor of the bedroom. He found one mobile handset in the bedroom, one match box lying on the floor. There were two cupboards. He inspected the cupboards and found one spiral diary (Exh. 131). He seized the articles and also caused the photography done. He came to the hospital when he was handed over a letter (Exh. 186) by PW18 Baliram Palapure (PW18) - the appellant - the father of Suchita in which he made a request for recording the statements of Suchita on the ground that they were recorded in his absence and he had a suspicion about the same. PW19 K.K. Shinde asked the Medical Officer to certify about the condition of the patient. The doctor examined her at 5-00 p.m. and certified that she was conscious, oriented and able to give statement. He then recorded her statement (Exh. 221) with the help of his Writer as per his dictation. Thereafter, he gave another letter (Exh. 119) to Shri PW5 Shri Mendke for recording her statement who again went to the hospital. Shri Mendke then recorded her statement (Exh. 120) in question and answer form. In the statement (Exh. 221) recorded by Shri K.K. Shinde, Suchita had stated that she was married with Dr. Nitin Patil - accused No. 1 in June, 2005. She was a Dentist and they were

residing in the house of Dr. Dhanwai at Ranjanwan Society, N-9, CIDCO, Aurangabad. Her father-in-law, mother-in-law and brothers-in-law i.e. Kailas and Jitendra were visiting her house intermittently. She was treated well for about six months after her marriage. Thereafter, her husband, father-in-law and mother-in-law started giving her ill-treatment stating that she was not fair looking and she should bring amount for construction of hospital for her husband from her parents. On that, her husband used to beat and abuse her. They were saying that her father had plenty of amount and, therefore, were demanding money for the purpose of construction of hospital for Dr. Nitin Patil. They were threatening to drive her out of her house in case she failed to bring the money. Her brother-in-law was also instigating her husband. Due to constant ill-treatment given to her, she was fed up. On 1.5.2010, it is on the fateful night, she informed her father on phone about the ill-treatment. She poured petrol on her person and set herself on fire on 1.5.2010 at about 21-45 as it was very difficult for her to continue to bear the ill-treatment.

6. In the statement recorded by PW5 Mendke, she stated that in the evening at about 6-00 to 7-00 p.m., the incident had taken place namely that her husband had accused her of taking Rs. 2,500/- from his pocket about which she felt insulted and, therefore, she poured petrol on her person and set herself on fire and that her husband was always treating her in that manner.

7. On 9.5.2010, the Police Station received MLC (Exh. 222) about the death of Suchita Nitin Patil on 9.5.2010. PW19 K.K. Shinde visited Bembde Hospital, prepared inquest panchanama and requested the Medical Officer to conduct the post mortem. PW7 Shri Jadhav, Medical Officer, conducted the post mortem and handed over the report to Shri K.K. Shinde.

8. On 10.5.2010, PW18 Baliram Palapure lodged the report to the Police Station (Exh. 185) alleging that Suchita was married to Dr. Nitin Patil on 3.6.2005. She was a Dentist. Deceased Suchita and Dr. Nitin Patil both were practising at Siddhivinayak Hospital. The native place of Dr. Nitin Patil is Sawargaon Rokda Tq. Ahmedpur Dist. Latur. The parents and brothers of Dr. Nitin Patil were residing at their native place. After the marriage, they were visiting the house of Suchita and used to stay for 2/3 days. At that time, they used to tell his daughter deceased Suchita that her father had plenty of money and, therefore, he can very well pay them money for construction of hospital. Her brother-in-law Jitendra used to tell her that they should bear the expenses of their village. Her brother-in-law Kailas was instigating others. In order to compel deceased Suchita, accused Nos. 1 to 5 were taunting, using oblique words and used to tell her that she was black in complexion, dwarf and was unable to do household work. She was not fair looking and, therefore, they were giving insulting treatment to her. They used to abuse her. Her in-laws used to instigate Dr. Nitin Patil and therefore, he used to beat her at their instigation. Whenever PW18 Baliram Palapure had been to the house of his daughter, Suchita used to tell him about the ill-treatment. She had also told him that her father i.e. PW18 Baliram

should do something to fulfill the demands, otherwise they would not permit her to live happily and, therefore, he was giving moral support and convincing her. At one point of time, in order to convince the family members of Dr. Nitin Patil, he went to her matrimonial house, but then they reiterated their demand of money for construction of hospital for Dr. Nitin Patil and not only that Dr. Nitin Patil had threatened that otherwise he should take his daughter with him. He then requested them to give him some time to manage the amount, but thereafter also they continued to ill-treat her. PW18 Baliram then alleged that in January, 2009, he had paid an amount of Rs. 12,00,000/- for purchasing a plot at Aurangabad. But thereafter also, the demand for money from deceased Suchita was being made for construction of hospital and on that count, she was being assaulted several times. For some or the other reason, she was being harassed and ill-treated including the charge of commission of theft of the amount. He, however, continued to pay money to them from time to time, but the attitude did not change and the ill-treatment was increasing. He then stated that on 1.5.2010 at about 9-00 a.m., he had received a telephonic call from his daughter Suchita, who told him that her in-laws asked her to bring money from him and that on that count, they were ill-treating her. She also told him that her family members were making allegations of theft of money and that they were mentally and physically torturing her and making demand for money. He, therefore, made a telephone call to her father-in-law and tried to convince them not to ill-treat his daughter. It is then stated that on 1.5.2010 at about 11-30 p.m. in the night when he was at his village, he received a phone call from his relatives that his daughter Suchita was burnt and admitted at Bembde Hospital, Aurangabad. He, therefore, came to Bembde Hospital and saw his daughter Suchita, who had received 95% burn injuries. When he enquired from her, she told him about the injuries that due to constant ill-treatment by her family members, it was difficult for her to bear the same and, therefore, she set herself on fire after pouring petrol on her person on 1.5.2010 at about 21-45 hours. She also told him that the friend of her husband namely Dr. Sunil Patil - accused No. 6 told her that she had sustained only 10% to 15% burn injuries and she would be alright very soon and it was a household matter and that she should look after her son and was given oath of her son to tell the Police that at the time of Aarti of Lord Shri Ganesh, the petrol bottle which was on the cooler fell on floor, petrol therein spread on floor and due to explosion of fire, she was burnt and not to make any complaint against anyone. Accordingly, she had given statement to Police as well as to the Magistrate. She also told him that she had noted down about all this in her diaries. The complaint PW18 Baliram told that his daughter died on 9.5.2010 at about 22-40 hours. He stated that family members of Suchita were not present during the treatment. He was looking after deceased Suchita. As he was in shock and, therefore, there was delay in lodging the report to the Police Station.

9. PSO on duty on the basis of report registered Crime NO.I-180/2010 under Sections 498-A , 304-B , 323 , 504 , 506 r/w 34 of the Indian Penal Code and

handed over further investigation to PSI Shri K.K. Shinde.

10. PW19 Shri K.K. Shinde took investigation and recorded the statements of PW 15 Chandrashekhar Desai and other witnesses. He seized certain registers. He collected the information from the bank. After some investigation, he handed over investigation to PW20 Shri Dabbewad, who visited Siddhivinayak Hospital of Dr. Nitin Patil. He was given one diary (Exh. 133), which was seized. Then he sent Articles 7, 8 and 9 alongwith spiral diary for opinion of Handwriting Expert. He then arrested the accused persons. He also recorded supplementary statements of witnesses. He collected the C.A. Reports. He collected the information of the bank accounts of the accused Dr. Nitin Patil so also the deceased Suchita from the concerned banks. Since he found sufficient evidence against the accused, he filed the charge-sheet on 27.8.2010. The report of the Handwriting Expert was also produced on record. The case was committed thereafter to the Sessions Court. After hearing both the sides, the charge u/ss. 498-A , 304-B , 306 , 323 , 504 and 506 r/w 34 of the Indian Penal Code was framed against the accused persons.

11. The prosecution in all examined 20 witnesses and relied on several documents. The defence of the accused is of total denial and false implication. The accused No. 1 produced on record several documents and photographs. The defence is that deceased Suchita was a very hot tempered lady and was born and brought up in a pampered condition, her father being an Executive Engineer in Irrigation Department of the State. On trifle grounds, she was getting angry and sometimes it was very difficult to control her anger. It is further defence that on the date of the incident, accused No. 1 found that an amount of Rs. 2,500/- was missing from his pocket and, therefore, he questioned her whether she took that amount. Deceased Suchita took it otherwise and started blaming him whether he would call her thief. On that count, she became angry and then he explained the circumstances as to how she left the house and committed suicide. The defence contended that the deceased Suchita could not control her anger and as such set herself on fire. Immediately after getting the information, he took her to the hospital and admitted her there and bore all the expenses. But informant by filing application to the Police, compelled them to leave the hospital. It is their further defence that father-in-law, mother-in-law and brother-in-law of deceased Suchita were residing at their native place though they used to occasionally visit Aurangabad, but none of them ill-treated her for the money as alleged. In fact, they did not receive any money from the informant - complainant. The amount that was received by Dr. Nitin Patil was towards N.A. Charges of the plot jointly purchased by Dr. Nitin Patil and son of PW 18 by name Suhas Palapure. They have produced number of photographs on record saying that Suchita was treated well by Dr. Nitin Patil as they have visited several places together in order that they were leading happy married life, but for the unfortunate incident in question, which took place in an anger of deceased Suchita.

12. In support of the appeal filed by PW18 Baliram Palapure - the complainant as well as the appeal filed by the State, the learned counsel in both these appeals made the following submissions :

"a] The learned trial Judge has recorded a finding on evidence that the theory of the accidental death of deceased Suchita is completely ruled out and on the contrary, a categorical finding is recorded that she committed suicide by pouring petrol on her person and by setting her ablaze, is proved by the prosecution. Even the defence at a later point of time conceded the theory of commission of suicide by deceased Suchita and admitted that the theory of accident was not true. The evidence on record shows that the deceased Suchita had committed suicide.

b] The prosecution tendered voluminous evidence on record to prove the offences u/ss. 304-B , 498-A , 201 , 202 and 195-A of the Indian Penal Code in the form of oral as well as documentary evidence. The oral evidence that was brought on record was of PW18 Baliram, PW 14 Manmath Patil, PW12 Rohidas Naikwade, PW15 Chandrashekhar Desai, PW16 Laxman Usturge, PW17 Narsing Sangve in respect of the demand of money and the ill-treatment that was given to deceased Suchita by the accused persons. The documentary evidence in the form of dying declaration (Exh. 221) recorded by PW19 K.K. Shinde and the spiral diary (Exh. 131) written by the deceased Suchita upto the date of the incident. The evidence about the payment of money by PW18 Baliram to the accused has been brought on record by the witnesses by name PW13 Tukaram Kale; PW9 Sandip Tayde, Assistant Manager at SBI Erandvana branch, Pune; PW14 Amogh Kolhatkar, Assistant Branch Manager at HDFC Bank, Aurangabad and PW11 Anil Tatode, Branch Manager at SBI branch Jadhavwadi, Aurangabad.

c] The learned counsel for the appellants then submitted that in all, amount of Rs. 70,00,000/- was paid to the accused No. 1 - Dr. Nitin Patil by PW18 Baliram with the hope that his daughter will be treated well after satisfying their demand, but then the money for construction of hospital was again an issue, which was being raised.

d] The learned counsel then submitted that the learned trial Judge committed an error in disbelieving oral evidence of these witnesses for flimsy reasons and he ignored the documentary evidence brought on record about the actual payment of money by PW18 Baliram to the accused No. 1. It is not the case of the defence that the money was paid by PW18 Baliram out of love and affection for his daughter Suchita or for the accused No. 1, but on the contrary, the evidence shows that it was purely out of compulsion. PW18 Baliram submitted to the demand in order to save ill-treatment to his daughter Suchita and went on making payment of money and ultimately when the plot was purchased, it was purchased in the joint name of his son and Dr. Nitin Patil. PW18 Baliram did not want to take risk and, therefore, he jointly purchased the plot in the name of his son and the accused Dr. Nitin Patil.

e] The accused No. 1 did not have any money to his credit nor cash in hand, but then he and his family members were not justified in ill-treating Suchita for demand of money from her father, which amounts to serious offences u/s. 304-B and 498-A of the Indian Penal Code. The learned trial Judge has casually dealt with the evidence of these witnesses so also the documentary evidence and has not looked into the manipulations made at the beginning by the accused persons when Suchita was taken to hospital and the Police and the Tahsildar had recorded her statements.

f] The learned counsel for the appellants then submitted that the spiral diary (Exh. 131 clearly proves the reason for taking ultimate decision to commit suicide and the diary itself shows continuous ill-treatment to her by the accused persons over the demand of money from her father. The defence theory that she had herself committed suicide because she was a woman with uncontrollable anger is a fake story and clearly disproved from the oral evidence and the diary that was written by her, which if seen carefully, would clearly show that the suicide was committed by Suchita because of continuous ill-treatment to her by the accused persons over the demand of money from her father for purchase of plot and for construction of hospital for Dr. Nitin Patil.

g] The theory of defence about her commission of suicide in the anger is completely ruled out and as a matter of fact must be held to be false and bogus in view of the fact that the deceased Suchita had a two and half years son namely Parth and it would be impossible to hold that with a son to whom she loved a lot, which is clear from the evidence, suddenly she would commit suicide due to her anger as propagated by the defence. At any rate, the prosecution having once shifted the burden to the defence, particularly in the light of presumption u/s. 113-B of the Indian Evidence Act read with Section 304-B of the Indian Penal Code, the defence was equally under obligation to prove their defence in accordance with law, also in the light of Section 106 of the Indian Evidence Act, but none of the accused entered the witness box and the defence witnesses were examined on the point which did not rebut the evidence regarding continuous ill-treatment after six months of the marriage of deceased Suchita with Dr. Nitin Patil.

h] The learned trial Court made a lot of confusion while discussing the evidence of PW14, PW16, which shows the casual attitude on the part of the learned trial Judge in inferring about the inconsistencies when there were none. The defence story that money paid to Dr. Nitin Patil in the sum of Rs. 27,00,000/- till June, 2008, was towards development charges must be held to be bogus since for a plot of 14,000 Sq.Ft., the development charges could not be Rs. 27,00,000/- and secondly unless the process for conversion of non-agricultural status is actually started, the question of payment of development charges would not arise.

i] The learned counsel for the appellants in both the appeals then contended that PW18 Baliram proved the amounts, which were also paid in cash. The witness DW3 Vasudha was in fact the Police witness, but did not turn up to give evidence

for prosecution on three occasions, when she was summoned, but then entered as a defence witness at the fourth time and deposed contrary to her statement to Police recorded u/s. 161 of the Indian Penal Code. At any rate, the defence witnesses are of no relevance insofar as the offences committed by the accused persons are concerned. The defence did not at all probabalize their case and, therefore, the defence was required to be rejected by the learned trial Judge.

j] Though PW19 K.K. Shinde brought fourth dying declaration (Exh. 221) recorded by him after registration of the offence, there is strong evidence on record to show that Exhibit 221 was recorded by him on 2.5.2010 itself and there is no reason to doubt the said dying declaration. According to the learned counsel for the appellants in these appeals, for the fault of Investigating Officer PW19 K.K. Shinde in not producing the dying declaration or not registering the offence immediately after recording, the prosecution cannot be asked to suffer and for that no injustice can be done to the prosecution as the Investigating Officer's fault should not affect the case of the prosecution. There is strong evidence of PW18 Baliram on record to show that deceased Suchita had told her father by way of oral dying declaration that accused No. 6 Dr. Sunil had prevailed upon her to give false statement giving her oath about her son in order to screen the offenders and, therefore, he is also guilty of the offence punishable u/s. 195-A of the Indian Penal Code.

k] The learned counsel for the appellants in both the appeals prayed for reversal of the order of acquittal and for recording conviction."

13. Per contra, Shri N.S. Ghanekar, learned counsel for the respondents - accused made the following submissions:--

"i] That these appeals against acquittal cannot be entertained in the light of the rigors applicable for hearing and disposal of the appeals against acquittal. He relied on certain decisions.

ii] In fairness, Shri N.S. Ghanekar, learned counsel for the respondents - accused stated that though two dying declarations (Exhs. 122 recorded at 1-30 a.m. and at Exhibit 118 recorded at 11-05 a.m. by PW6 ASI Rathod and PW5 Dhulaji respectively indicating accident as the cause for fire and burn injuries to deceased Suchita, the defence does not rely on the said theory, but concedes that the death of Suchita was due to commission of suicide by her. He then submitted that the deceased Suchita was a hot tempered woman and was brought in a pampered atmosphere and used to go in the anger uncontrolled and then take steps to the extreme. That is why, she committed suicide on the fateful night by burning herself upon pouring petrol from a plastic water bottle and even the petrol was brought by her in the bottle.

iii] The learned counsel for the defence then contended that the initial burden to prove that the death of Suchita was due to ill-treatment or cruelty for demand of dowry or demand of money, has not been discharged by the prosecution at all and on the contrary, the evidence relied upon by the prosecution is infirm apart

from being inconsistent and untrustworthy. He submitted that the prosecution relied on spiral diary (Exh. 131) and with the consent of the defence, the entire diary was allowed to be read in evidence including the exhibited portion thereof. The diary was regularly maintained by deceased Suchita. If the diary is carefully perused, in entirety or even the exhibited portion, the same does not at all show mention about any demand of money for construction of hospital or for purchase of plot for hospital or otherwise and cruel treatment or harassment or ill-treatment for that purpose. Similar is the case with the dying declarations, three in number, viz. Exhibits 221, 118 and 120, which do not at all show a word about the demand or the ill-treatment or the cruelty to her when the prosecution itself relies on these dying declarations. The learned counsel, therefore, submitted that non-mention of any ill-treatment in these dying declarations and the spiral diary (Exh. 131), which is a contemporaneous evidence clearly shows that the case of the prosecution is inconsistent with the charge framed against the respondents.

iv] The learned counsel for the respondents then contended that Exhibit 221 recorded by PW19 K.K. Shinde at 5-00 p.m. was only after the intervention made by the father of the deceased PW18 Baliram making a complaint about or showing suspicion about recording of earlier dying declarations (Exhs. 118 and 122) and, therefore, the said dying declarations contain the mention about the ill-treatment, demand etc. There are reasons and reasons for rejecting Exhibit 221. Exhibit 221 was said to have been recorded on 2.5.2010 at 5-00 p.m., but then the same did not see the light of the day till the lodging of the FIR on 10.5.2010, for which PW19 K.K. Shinde, who was holding the said paper of dying declaration (Exh. 221) did not have any explanation much less plausible explanation. Therefore, the dying declaration can be said to have been manipulated.

v] The oral evidence of the witnesses who deposed on behalf of the prosecution before the Court as has been found by the trial Court is wholly inconsistent and do not support each other. The theory propounded by the witnesses about the demand of money from the father of the deceased Suchita has not been proved since the evidence about payment of money is too vague to be accepted. Perusal of the entire oral evidence will show that not a single witness has deposed as to what exact amount of money was demanded by the accused persons for construction of hospital or for purchase of plot, as the case may be. The trial Court has not acted upon such a vague evidence of general nature and, therefore, there is no perversity in the finding recorded by the learned trial Judge.

vi] The FIR was lodged on 10.5.2010 i.e. after almost eight days clearly showing that it was afterthought and with a view to take revenge of the respondents. There is no plausible explanation from the prosecution as to the delay in lodging the FIR and explanation from PW18 Baliram that he was in shock does not satisfy the mind of the Court. As a matter of fact, he had lodged protest earlier with the Police machinery and, therefore, it is no gain saying that the delay has been explained.

vii] The existence of multiple dying declarations with no consistency at all about

the charge in question must enure to the benefit of the accused by giving benefit of doubt and, therefore, the learned trial Judge was right in extending the benefit of doubt to the accused persons.

viii] The defence that the deceased Suchita went in anger on the fateful day because of the alleged charge made by her husband about theft of Rs. 2,500/- from his pocket by her is very well and fully corroborated by PW17 Narsing, who has given several admissions to that effect about the abnormal behaviour of the deceased on that particular day when she came back to the house and went back and after few hours burnt herself by pouring petrol. The defence was thus fully probabalized and there is no reason why the same should be rejected. The defence witnesses examined by the defence are required to be believed and in the matter of appreciation of evidence, they should also be treated at par with prosecution witnesses. The aspect of theft of Rs. 2,500/- from the pocket of the accused No. 1 is also highlighted from the other evidence, which the trial Court found probable and, therefore, recorded the order of acquittal.

ix] For Section 304B of the Indian Penal Code, what is required is the live link and in the instant case, there is no evidence whatsoever on record that on 1.5.2010 or 2.5.2010, there was any ill-treatment or cruelty on the part of the accused persons to the deceased Suchita that she had to commit suicide and, therefore, in the absence of any live link, ingredients of Section 304-B of the Indian Penal Code are not satisfied. When the ingredients of Sections 304-B and 498-A of the Indian Penal Code are not satisfied by satisfactory evidence before the trial Court, the question of raising presumption u/s. 113-B of the Evidence Act does not arise. That is the finding recorded by the learned trial Judge, which is legal, correct and proper.

x] Though the dying declaration (Exh. 221) is said to have been written by a Writer and not personally by PW19 K.K. Shinde, but the Writer was not examined and, therefore, the same is required to be rejected by this Court. Exhibit 221 was admittedly not read over to the deceased nor she admitted the same to be correct and, therefore, is liable to be discarded for which the learned counsel cited some decisions so also on the offence u/s. 304-B of the Indian Penal Code.

xi] There is voluminous evidence on record in the form of photographs and from the cross-examination to show that the accused No. 1 had 24 tours at different places with deceased Suchita and she was thus kept happy by her husband and, therefore, it is wrong to say that she was ill-treated. On the contrary, an amount of Rs. 5,00,000/- was spent by accused No. 1 for purchasing the Dentist chair for her.

xii] The payments made by PW18 Baliram as shown by the prosecution were towards the half share in the plot of Suhas, the son of PW18 Baliram, that was purchased for total agreed consideration of Rs. 98,00,000/-, which is evident from the Bharna Pavti. The amount paid by PW18 Baliram by cheques from the account of his daughters or some other accounts, therefore, were clearly towards

the half share that was purchased in the plot, whose total consideration was Rs. 98,00,000/-. The learned counsel for the respondents - accused, however, fairly stated that about remaining half share, the accused persons have not produced any evidence as to the payments made by them.

xiii] the said Bharna Pavti is a document admissible in evidence in a criminal trial since the prosecution has not seriously disputed the execution thereof and on the contrary, the same has been proved by the defence. At any rate, the prosecution is guilty of not bringing Suhas Palapure, who signed the said document and whose signature was duly proved in the evidence.

xiv] the learned counsel for the respondents then contended that there is absolutely no evidence about Section 195-A of the Indian Penal Code pertaining to Dr. Sunil Patil.

xv] Insofar as the accused persons are concerned, also there is no reliable evidence and consequently no interference in the order of acquittal should be made by this Court. He, therefore, prayed for dismissal of the appeals preferred by PW18 Baliram as well as by the State.

xvi] The learned counsel for the respondents, inter alia, cited following decisions:

- 1] Aftab Alam Abdul Hamid Ansari Vs. The State of Maharashtra,
- 2] Manju Ram Kalita Vs. State of Assam,
- 3] Dnyaneshwar Vs. State of Maharashtra-->
- 4] Muralidhar @ Gidda and Another Vs. State of Karnataka,
- 5] Murugesan & 16 others v. State through Inspector of Police 2012 DGLS (Soft) 487"

CONSIDERATION :

14. We have heard the learned counsel for the rival parties at length for a few days. We have read the entire evidence tendered by the prosecution as well as by defence. We have carefully seen all the documents proved by the prosecution before the Court. We have seen the reasons recorded by the learned trial Judge.

15. This case unfolds unfortunate story of a girl and a daughter of an Executive Engineer in the Irrigation Department of the Government of Maharashtra, about whom the accused No. 1 and his family members carried a concrete impression that PW18 Baliram - the father of deceased Suchita must be and is a man of plenty of money, he being the Executive Engineer in the Irrigation Department of the State. This is fortified from the fact that the deceased Suchita has written in her diary (Exh. 131) asking her husband as to whether he married looking at her or her father. PW18 Baliram himself claims that he paid over Rs. 70,00,000/- to the accused No. 1 to satisfy the demand by the accused No. 1 and his family members in order that his daughter Suchita is not ill-treated by them. The Bharna Pavti shows total consideration of the amount of plot at Rs. 98,00,000/-

though the sale deed of the plot in the name of the accused No. 1 and son of PW18 Baliram is at almost half of the said price. There is whatsoever no evidence on record to show that the accused No. 1 - Dr. Nitin Patil paid a single rupee for purchase of the said plot though the plot is in his joint name with Suhas and that gives a reason to hold that the entire amount of Rs. 98,00,000/- must have been paid by PW18 Baliram. PW18 Baliram tried to show his agricultural income, but there is no satisfactory evidence on record about his agricultural income and there is a reason to believe that whatever he paid was his income while working as an Executive Engineer in the Irrigation Department of the Government of Maharashtra. This is also happening in many of the Departments and establishments. It is in fact the case of the prosecution and the deposition of PW18 Baliram that the accused No. 1 and his relatives were saying that PW18 Baliram has plenty of money and could easily pay for construction of hospital for the accused No. 1. Thus, it is clear that this facet of disproportionate assets has become a social evil and as a result thereof accused No. 1 and his family members were looking at PW18 Baliram as the treasury of money, he being in the Irrigation Department, but the victim of all this was the unfortunate girl Dr. Suchita Patil. Similarly, the inane desire to have a hospital by doctors like the accused No. 1 out of greed for money is on the increase and has also spoiled the moral fabric of the medical profession. Here the accused No. 1, a post graduate doctor, wanted that his father-in-law being in Irrigation Department was obligated to satisfy his desire. With the above prelude, we proceed to deal with these appeals further.

16. As rightly argued by the learned counsel for the parties before us, the initial burden of proof is on the prosecution to prove its case beyond reasonable doubt. At the same time, the death of deceased Dr. Suchita being within seven years of her marriage, principles of law and the Will of the Parliament expressed through Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act must be appropriately applied. The evidence of PW17 Narsing, who is related to PW18 Baliram and who resides at Aurangabad, clearly shows that on 1.5.2010 at about 11-00 a.m. to 12-00 noon, he received a phone call from the complainant - Baliram to go to the house of Suchita and find out what are the problems and accordingly he went and found that Suchita was weeping and told him that she was being blamed about theft of Rs. 2,500/- by her husband and that she was being ill-treated though she had packed the luggage for in-laws who wanted to go to pilgrim. He convinced her and left her house at 4-00 p.m. At about 7-00 p.m., he again received a call from the complainant Baliram and he again went to her house, but she was not in the house and her mother-in-law told him that she had gone in an auto-rickshaw without informing where she was going. He stayed there for some time when at about 9-00 p.m., Suchita came back to the house and then he left her house at about 9-30 p.m. At about 10-00 to 10-30 p.m., he again received a call from the complainant Baliram asking him to again go to her house and accordingly he went to her house to learn that Suchita was burnt, which fact he informed to the complainant Baliram that she

was admitted to Bembde Hospital. He was not allowed to talk to her.

17. Learned counsel for the respondents submitted that PW17 Narsing was residing at Aurangabad and was in close relation and, therefore, deceased Suchita would have told him about the ill-treatment and demand of money, but that is not his evidence, which is unnatural. He then submitted that PW17 does not say a word about any ill-treatment or demand of money and on the contrary, he supports the case of the defence about the charge of theft of Rs. 2,500/- allegedly made by accused No. 1 and her anger to leave the house without telling anybody and then coming back again in the house and then setting herself on fire indicates that she committed suicide in her anger.

18. This witness, in our opinion, has not been examined by the prosecution for proving the demand of money or for ill-treatment and, therefore, we do not agree with the learned counsel for the respondents that he should be having knowledge about the same. The prosecution examined many other witnesses on the said point and, therefore, we do not give any credence to the said submission. As to the theory of anger due to the charge of theft of Rs. 2,500/-, we will deal with the same at a later point of time. After her admission in the Bembde Hospital and report of MLC to the Police Station Officer, CIDCO, Aurangabad, PW5 ASI Rathod recorded her dying declaration (Exh. 221) at 1-30 a.m. in which she stated about the accidental fall of plastic bottle containing petrol and the lighted lamp falling down on her and she catching fire. Thereafter, at 11-05 a.m., Exhibit 118 was recorded by PW5 Dhulaji, Executive Magistrate, and similar statement about the accidental fire was recorded. We have earlier stated that the prosecution as well as the defence are at ad-idem that there was no accidental death, but that Suchita committed suicide. We, therefore, really wonder as to under what circumstances, the theory of accidental fire was introduced in Exhibits 221 and 118. It is amply clear that deceased Suchita was admitted to hospital by her husband - accused No. 1 and others and these two dying declarations were recorded while she was in the custody of accused No. 1 and his friends. There is a reason to have a needle of suspicion on the accused No. 1 as to these two dying declarations (Exhs. 122 and 118) in which accidental fire theory has been propagated. It is noteworthy that the same PW5 Dhulaji, Executive Magistrate, also recorded the last dying declaration (Exh. 120) after Exhibit 221 was recorded by PW19 K.K. Shinde.

19. Be that as it may. Since the theory of suicidal death is now being accepted by both the sides, we proceed to examine the evidence further.

20. PW12 Rohidas Gunaji Naikwade is the co-brother of PW18 Baliram. He deposed thus in paragraph Nos. 3 and 4 of his evidence as under:

"3. In the month of December 2007 when I was on the way to Nanded from Narayangaon, I met Suchita at Aurangabad. At that time her father-in-law and mother-in-law were present at the house. I noticed that they are not properly behaving with Suchita. The mother-in-law of Suchita at that time in presence of

Suchita told me that they had hope that the parents of Suchita would provide money for the construction of hospital, but their hopes have gone in vain, it would have been better, if they would have performed marriage with other girl. After hearing this Suchita wept much, I convinced her. Because of the illtreatment Suchita committed suicide on 1st May 2010 by pouring petrol on her person and setting herself on fire. She had illtreatment of accused Nos. 1 to 5. Police recorded my statement on 15.5.2010. At that time I was in grief and therefore, I could not tell all the things in detail to police. So on 23.7.2010 I gave my supplementary statement to the police.

4. On 2.12.2007 we were assembled at Aurangabad for the religious function of Parth, the son of Dr. Nitin Patil. On that day I halted at Aurangabad. Accused Nos. 1 to 5 were present in the said function. On 3.12.2007 I went to the house of Suchita for breakfast. Accused were telling that the parents of Suchita should repay the loan amount and construct hospital. The above said incident referred to above as December 2007 was taken place on 3.12.2007. Suchita was narrating her illtreatment to me, so also her father. Suchita disclosed her illtreatment to me when she had been to her parental house. Suchita by nature was calm."

The learned trial Judge did not accept his evidence stating that on the point of demand of money, his evidence is of general nature and vague and that there is no evidence to show that Suchita had narrated him about illtreatment during his 2/3 visits and that the demand of money by mother-in-law and father-in-law at the house of Suchita is an omission. This finding recorded by the learned trial Judge about this witness, in our opinion, is perverse since the evidence above in paragraph Nos. 3 and 4 clearly shows it was Suchita who disclosed him about the illtreatment and by nature, she was calm. He also describes the demand of money for construction of hospital by accused No. 1. He also describes about the role of father-in-law and mother-in-law of Suchita in paragraph No. 3 above in the evidence in saying that they were expecting money for construction of hospital, but their hopes have gone in vain and it would have been better had they performed the marriage of accused No. 1 with some other girl.

21. Next is the evidence of PW14 Manmath Patil. PW14 Manmath Patil deposed thus in paragraph No. 1 of his evidence before the Court and the extracted portion from this paragraph is as under:

"Her family members were illtreating her, so that her parents would help them to construct hospital. Whenever Suchita had been to village, she used to narrate me her illtreatment. Her father told her that they would come to her house to convince her family members. At the time of Dipawali of 2007 I alongwith Baliram had been to village Savargaon to convince the family members of Suchita. We met there Dr. Nitin, his brothers Jitendra and Kailash so also his parents. Baliram raised the issue of the illtreatment of Suchita and asked them as to why they are doing so. They told us that their hospital is in a rented premises, they requested amount for hospital and to repay the loan amount.

Baliram told them that it is not possible for him to fulfill all the demands, but he will try to help them. He humbly requested them not to illtreat his daughter."

22. That Baliram raised an issue of illtreatment of Suchita and that it was not possible for Baliram to fulfill all the demands is the omission brought in his evidence. However, his evidence that in Dipawali of 2007, he alongwith Baliram had gone to the village of accused persons. They met the members of the family and that they told them that their hospital is in rented premises and, therefore, they requested the amount for the hospital and that Baliram requested them not to illtreat his daughter, is consistent and has not been shattered in the cross-examination and then his evidence has been corroborated by Baliram in his evidence in paragraph No. 5 that Baliram had gone with PW14 Manmath Patil at the village of the accused persons where the demand was made. The learned trial Judge has, however, not accepted the evidence of these witnesses on the ground that he did not specify the amount that was demanded and that the requirement of amount for repayment of loan and that he being a friend of complainant Baliram, he must have deposed to favour him. In our opinion, the reason is perverse. It is true that he exaggerated by saying that the amount was demanded for repayment of loan amount but then fact remains that the amount was demanded for hospital, which was in rented premises and that Baliram requested not to illtreat his daughter is consistent and is not an improvement. As to what amount was demanded or an amount was not quantified is the reason recorded by the learned trial Judge in respect of all the witnesses with which we do not agree. The reason is that the demand was for having own hospital and, therefore, the question of quantifying the amount at that stage did not arise. Demand for money from PW18 Baliram for construction of hospital cannot be said to be vague or of general nature. It would be too harsh to reject the evidence of these witnesses on such a flimsy ground.

23. The next witness is PW16 Laxman Usturge. He stated thus in paragraph Nos. 1 to 3 of his evidence as under:

"1. I know Baliram Palapure of my village. His daughter Suchita was married with Dr. Nitin Patil. Since then she was residing at Aurangabad with her husband. The family members of Suchita were demanding amount to Suchita for construction of hospital. On that count they were giving her mental and physical torture. When Suchita had been to the village, at that time she was narrating her illtreatment to me.

2. I know Dr. Nitin Patil. He is present before the court. At once I myself, Baliram Palapure and Manmat Palapure had been to village Rokdasavargaon to convince the family members of Suchita as Suchita had more illtreatment from the accused. We went to the house of accused at the time of Dipawali of 2009. When we went there the in-laws and brother-in-laws namely Jitendra and Kailas were at the house. We convinced accused Nos. 2 to 5 not to illtreat Suchita and treat her nicely. At that time accused told that the hospital of Dr. Nitin Patil is in rented premises, they should help Nitin Patil to construct his hospital as Nitin Patil is

already indebted. Manmat Palapure at that time told them that he will ask Baliram Palapure to pay amount to them and treat Suchita nicely. I learnt that Baliram Palapure paid amount time to time for construction of hospital to Dr. Nitin Patil. On 3.5.2010 I learnt that Suchita is burn and succumbed to burn injuries on 10.5.2010.

3. On 30.8.2010 accused Jitendra and Kailas had been to my house and threatened me not to depose against them or face the consequences. To that effect I lodged report to Chakur Police Station on 31.8.2010. The office copy of application produced by the witness is taken on record and marked Exh. 176."

His evidence has been rejected by the learned trial Judge on the ground that he is not corroborated by PW14 Manmath Patil. As rightly contended by the learned counsel for the appellants, the learned trial Judge has made confusion in this. The reason is that PW14 Manmath Patil had gone with PW18 Baliram in Dipawali of 2007 while PW16 Laxman Usturge had gone with Baliram in Dipawali of 2009. Hence, the question of PW14 Manmath Patil corroborating PW16 Laxman does not arise. This is, therefore, a clear perversity. That apart, his evidence is recorded because the particulars of the amount demanded has not been stated or that the particulars about illtreatment were not given, which was told to him by Suchita. What particulars are expected by the learned trial Judge about illtreatment of Suchita when his evidence is that they were giving her mental and physical torture and she was narrating illtreatment to him. As it is, the testimony of PW16 Laxman Usturge has not been shaken in the cross-examination and he is not related to PW18 Baliram but he is an independent witness. There was no reason to reject his evidence.

24. The next witness is PW15 Chandrashekhar Desai. He is the brother of mother of deceased Suchita and accused No. 2 - Baburao is the cousin brother of his mother. He deposed thus in paragraph No. 2 of his evidence as under:

"2. Their marital life was happy for first 5 to 6 months. Thereafter Dr. Nitin Patil, her in-laws, and brother-in-laws Jitendra and Kailash @ Kuldeep asked Suchita to bring money from her parents for purchasing plot for hospital. On that count they started giving her illtreatment by giving abuses and assaulting her. Baliram Palapure had given one plot to the accused. Her mother-in-law Shardabai used to tell Suchita that she could not prepare food well, she is not behaving properly, she is of black complexion and dwarf and if they would have married with another girl, it would have been better and on that count they were giving her insulting treatment. Suchita was well educated and she felt that on one or the other day the nature of the accused will change and, therefore, she tolerated the illtreatment. Since the illtreatment was increased Baliram and Manmath Patil had been to the accused and convinced them not to illtreat Suchita. I know accused Nos. 1 to 5. Since prior to the marriage of my sister with Baliram, accused are from my relatives and, therefore, I know them. Accused No. 2 Baburao is cousin brother of my mother."

His evidence has been rejected by the learned trial Judge stating that he made a general statement about demand of money and about illtreatment and that information by Suchita to him about demand of money is a material omission and, therefore, his evidence does not inspire confidence. We find that this witness is her real Mama (maternal uncle) and he deposed that Suchita had told him that her husband and in-laws were demanding money to her and on that count, they were giving illtreatment to her. The trial Court says that these are the general statements and material omissions. We do not think that this could be material omission in the light of his visits and his relationship with the accused Nos. 1 to 5 and Suchita and grievance made to him by Suchita is not unnatural. That apart, what we find at the end of paragraph No. 2 that all the accused Nos. 1 to 5 are closely related to him. In that, the accused No. 2 - Baburao - the father of accused No. 1, is cousin brother of his mother. He thus is closely related to accused persons also and no enmity is alleged against him by the accused persons. He has honestly deposed in his evidence about the illtreatment given to the deceased Suchita by the accused persons namely the accused No. 1, accused No. 2 - his father Baburao and accused No. 3 Sou. Shardabai - his mother. The cryptic reasons with which this evidence is rejected does not at all satisfy us and the reasons are obviously perverse. This is the sum and substance of the oral evidence tendered before the Court. We have no hesitation in accepting the evidence of all these witnesses.

25. The above oral substantive evidence has been strongly corroborated by the evidence about the payments made by PW18 Baliram to the accused No. 1 through bank transactions. Though Baliram had claimed that in all he had paid Rs. 70,00,000/-, we have found that the entire amount of Rs. 98,00,000/- for purchase of plot appears to have been paid by PW18 Baliram. We find that some payments were made as under by negotiable instruments and not by cash from the accounts of other daughters of PW18 Baliram namely Pooja and Jayashri and his friend Mr. V.S. Kale as under:

Note: In addition, he claims to have paid cash Rs. 8,00,000/- to accused No. 1.

[II]

In the saledeed, there is a mention about the payment of money by two Demand Drafts in the sum of Rs. 21,00,000/- plus Rs. 12,00,000/- i.e. Rs. 33,00,000/-, thus totaling to Rs. 60,00,000/-.

At any rate, the payment of amount of Rs. 27,00,000/- as indicated above is not in dispute. The learned counsel for the respondents submitted that since the plot was purchased on half share basis, the contribution by Suhas s/o PW18 Baliram was only to the extent of half while rest of the half was obviously paid by accused No. 1. Looked from that point of view, the amount shown by Demand Drafts in the saledeed namely Rs. 21,00,000/- and Rs. 12,00,000/- even if assumed to the credit of accused No. 1, the accused No. 1 is clearly expected to show minimal evidence of the payment of half share of total consideration of Rs.

98,00,000/- . To a repeated query to the learned counsel for the respondents as to minimal evidence about payment of money towards the purchase of the plot, the answer was given that there was absolutely no evidence given by the defence either payment by way of cash or by banking instruments. The learned counsel also could not show even before us any bank statements or any other oral evidence that any amounts were paid in cash nor the cash income or cash at hand was even suggested to any witness. On the contrary, no income is seen to his credit. We are, therefore, compelled to draw a conclusion that the respondent Nos. 1 to 3 or the respondent No. 1 for that matter did not have a single pie at their hand to claim to have contributed for purchase of half share in the plot purchased having an area of 14,000 Sq.Ft. That means the accused Nos. 1 to 3 had no bank balance. There is no semblance of evidence to that effect. In our opinion, the prosecution having discharged its burden of showing the payment by banking instruments, the burden of proof obviously shifted on the accused to show that contribution of money was made by the accused persons for purchase of the plot. In such a situation, it is clear that the prosecution has firmly proved payment of moneys by PW18 Baliram as aforesaid to the accused No. 1 Dr. Nitin Patil. The natural question is as to why PW18 Baliram would pay such a huge amount to the accused No. 1 Dr. Nitin Patil. There is no suggestion in the form of explanation by the accused on this aspect. There is no explanation from the accused on this aspect that out of any love and affection for Suchita or for Dr. Nitin Patil, all these huge moneys were paid. There is no suggestion that these huge moneys were paid towards the share of Suchita in the property of PW18 Baliram or as the case may be. On the contrary, Suchita's impression and expression that the accused No. 1 - Dr. Nitin Patil married her looking at her father's treasury of money he being in Irrigation Department of the State is fortified."

26. In the case of Sher Singh Vs. State of Haryana , as to the ingredients of Section 304-B and shifting of burden of proof, the Supreme Court stated thus in paragraph No. 16 as under:--

"16. As is already noted above, Section 113B of the Evidence Act and Section 304B of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304B to distinguish this provision from the others. In actuality, however, it is well nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word "shown" is used as synonymous to "prove" and the word "presume" as freely interchangeable with the word "deemed". In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word "deem" to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, and State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd., , requiring the Court to

ascertain the purpose behind the statutory fiction brought about by the use of the word "deemed" so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word "shown" in Section 304B of the IPC as to, in fact, connote "prove". In other words, it is for the prosecution to prove that a "dowry death" has occurred, namely,

(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(ii) within seven years of a marriage,

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) in connection with any demand for dowry and

(v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

We are aware that the word "soon" finds place in Section 304B ; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word "deemed" was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113B of the Evidence Act and Section 304B of the IPC, in our opinion, is to counter what is commonly encountered - the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in Court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to Common Law systems, and beyond the contemplation of the Cr.P.C."

The learned counsel for the respondents having admitted to have received only Rs. 27,00,000/- propagated the theory of receipt thereof towards development charges. That is the only explanation given by the accused. We are unable to understand how an amount of Rs. 27,00,000/- was required to make payment of development charges for a plot worth Rs. 98,00,000/-. Further, the question of payment of development charges would arise only if the agricultural land is converted into non-agricultural use and thereafter the development of the plot by construction of hospital is undertaken. We, therefore, find that explanation is false and cannot be accepted.

27. The dying declaration (Exh. 221) was recorded on 2.5.2010 at 5-00 p.m. by PW19 K.K. Shinde. But then he kept the said document with him without submitting the same to the Station Officer or without registering the offences though the same were disclosed. The submission that this dying declaration (Exh. 221) is a manipulated document in collusion with PW18 Baliram will have to be examined carefully. What we find is that after recording of this dying declaration, PW19 K.K. Shinde gave a requisition (Exh. 119) to PW5 Dhulaji, the Executive Magistrate, to record dying declaration again for which he gave the reasons in Exhibit 119 as to what was stated to him by the deceased. This requisition was received by PW5 Dhulaji about which there is endorsement at Exhibit 119 with time and date. This is not in dispute. We are, therefore, of the clear opinion that the dying declaration (Exh. 221) was written at 5-00 p.m. on 2.5.2010 itself and not thereafter. However, it is a fact that PW19 K.K. Shinde did not submit this dying declaration (Exh. 221) to his Station Officer nor he himself registered any offence on the basis thereof, but kept it with him till the offence was registered on 10.5.2010 for which he does not have any satisfactory explanation. We have already made an order on 19th October, 2015, asking the Home Department to make departmental inquiry against him. But then the question is whether for the fault of Investigating Officer, the prosecution should suffer. There is a catena of decisions that the prosecution should not suffer in such a case. Having thus proved that the dying declaration (Exh. 221) was recorded on 2.5.2010 itself and was not manipulated or brought on record thereafter, we think that Exhibit 221 is not a manipulated document. Reading of Exhibit 221, to our mind, clearly shows the description about the repeated illtreatment by the accused Nos. 1, 2 and 3, demand of money etc. The next objection to this dying declaration is that the same does not show that it was read over and admitted to be correct by the deceased, for which certain decisions of this Court were cited. On the contrary, at the end of Exhibit 221, following is the portion written before her toe impression:

"This my statement is read over to me and the same has been written as per my say and is correct and true."

Apart from that, this Court has made a reference order (Per A.B. Chaudhari, J.) since the requirement of reading over the dying declaration and then getting the same admitted from the declarant is never stated anywhere much less in the

judgment of the Supreme Court in the case of Shaikh Bakshu and Others Vs. State of Maharashtra--> , which was relied upon by the Division Bench. We, therefore, find that if the evidence of PW19 K.K. Shinde is to be believed about recording of dying declaration or that whatever he recorded was as per the say of deceased Suchita, there is no other reason why her dying declaration should be rejected on such a hyper technical ground that the same was not read over and admitted by her to be correct. The next objection to this dying declaration is that it was written by the Writer of Shri K.K. Shinde, who was not examined. The evidence of PW19 K.K. Shinde shows that he asked the information from the declarant Suchita and she gave the answers or information to him which he accordingly dictated to the Writer who wrote it down accordingly and finally he obtained her thumb impression and he also signed has not been shattered in the cross-examination. In other words, it is PW19 K.K. Shinde who has personal knowledge as to what declaration was given by deceased Suchita to him and as per his dictation, the Writer wrote the dying declaration, which he signed. It is not the case of the defence that the Writer wrote something than what was dictated by K.K. Shinde. We, therefore, do not agree with the learned counsel for the respondents that non-examination of Writer would be fatal to the prosecution as regards Exhibit 221. Now reading of Exhibit 221 in our opinion is a very strong piece of evidence about the illtreatment meted out to her over the demand of money and that fully corroborates the oral evidence of all the witnesses which we have discussed above.

This dying declaration (Exh. 221) which we have believed is a very strong piece of evidence against the accused No. 1 - Dr. Nitin Patil, the accused No. 2 - Baburao and the accused No. 3 - Sharda. We quote following portion from paragraph No. 2 of Exhibit 221 as under:

"After my marriage and after I was treated well for six months, my husband, father-in-law, mother-in-law started harassing me by saying that I was not good. You bring money from your parents for having a hospital for us and on that count my husband Nitin used to assault me and hurl abuses at me and were demanding money. My father-in-law and mother-in-law used to say that my father had plenty of money and, therefore, should bring money from him for hospital. Otherwise I should be driven out and thus they were instigating. Similarly, my other two brothers-in-law used to instigate. I was fully fed up with the harassment meted out to me. On 1.5.2010 I made a phone call to my father and informed him about the harassment and illtreatment to me. On 1.5.2010 at about 21-45 hours I at my residence N-9, CIDCO, poured petrol on my person due to the harassment and set myself on fire because it became difficult to bear the illtreatment."

28. The next submission made by the learned counsel for the respondents is that the last declaration (Exhibit 120) which was recorded at 8-30 p.m. by PW5 Dhulaji, the Executive Magistrate, after receipt of requisition (Exh. 119) again does not speak of illtreatment and, therefore, it can be presumed that there was

no ill-treatment for demand of money. We have seen Exhibit 120 carefully. We find the same to be in question and answer form. PW5 Dhulaji does not claim to have asked the questions to her about illtreatment or demand of money and, therefore, the question of answering the same such information not being asked to her would not arise.

29. As against Exhibit 221 where she was asked to state what she wanted to declare and she went on stating about the demand of moneys and illtreatment etc., which was duly recorded by the Writer as per the dictation about which PW19 K.K. Shinde was told by her. We, therefore, do not think that Exhibit 120 can be utilized by the defence to buttress the point that it did not reflect any illtreatment for demand of money. As a sequel, we reject the said submission.

30. As to the delay in recording the First Information Report, at the outset we find that PW19 K.K. Shinde recorded her dying declaration only after PW18 Baliram made a complaint to the Police Station expressing doubt about recording of earlier dying declaration and, therefore, PW19 K.K. Shinde, the Police Officer who was deputed in response to his complaint, having recorded the dying declaration, there was no reason for PW18 Baliram to lodge the report on the same day and it was for PW19 K.K. Shinde to register the FIR. We do not think, therefore, that PW19 K.K. Shinde having failed to register the FIR, the prosecution should suffer due to delay in registration of the offence. At any rate, PW18 Baliram has explained that he went under shock due to the incident and, therefore, it is only after the funeral, he lodged the report immediately, which explanation is good enough.

31. We have then seen spiral diary (Exh. 131) and examined the defence submission about commission of suicide by her in utter anger due to the false charge of theft on her as understood by her. We quote the true translation of the contents of her diary of 13.4.2010 i.e. 18 days before the incident, which reads thus:

"After my death, keep my Parth with my mother and father till they are alive. Thereafter, when he will grow and will become major, then Nitin will look after him. If any wrong is done with him or with me, persons from my in-laws will only be guilty. (Persons from in-laws instigate and Nitin tries to finish me). Out of them, my mother-in-law is most cruel. My mother-in-law instigates Nitin and my marital life is controlled by Mummy and Anna. Otherwise, Nitin behaved with me very good in the first year. This is not liked by them and specially my mother-in-law. My marital life is destroyed by her. Anna/Mummy/Daddy. If anything wrong happens to me, then nobody from in-laws side shall give me either milk or water."

The above contents of the diary (Exh. 131) (translated) hardly disputed by the defence are in the nature of complete answer to the defence. The above contents show that she had made up her mind to commit suicide on 13.4.2010 but continued to live till she got burnt. The theory of commission of suicide due to uncontrolled anger suddenly due to the charge of theft in the morning of

1.5.2010 is, therefore, clearly demolished.

32. That apart, even on this theory of defence, we find that she had calmed down as she had come back to the house at 9-00 p.m. after having gone out at about 7-00 p.m. though without informing. PW17 Narsing says that he was at her house from 7-00 p.m. When she returned at 9-00 p.m., he found that she had calmed down; had taken her child in her arms and started hugging the child. It is only thereafter he left her house at 9-30 p.m. It is thus clear to us that she did not commit suicide because of the anger on 1.5.2010 over the charge of alleged theft, but she was being continuously ill-treated by the accused No. 1 - Dr. Nitin, his father the accused No. 2 and his mother the accused No. 3 over the demand of money for construction of hospital for the accused No. 1 Dr. Nitin Patil. She was taunted and was given names by them and was physically and mentally tortured by them. It is in the light of the above evidence now, we think that presumption u/s. 113-B of the Indian Evidence Act would arise as her death occurred within seven years of her marriage. The accused are entitled to rebut the said presumption but then as discussed by us above, the accused have not brought evidence in rebuttal, but propagated the theory of anger of that day, which we have discarded and rejected. The writing in the diary of 13.4.2010 is a contemporaneous writing 18 days before the commission of alleged suicide. The said writing is depiction of the entire case of the prosecution and the said writing is not seriously disputed by the defence and on the contrary the prayer of the defence as is clear from the judgment of the trial Court was that the entire diary should be read in evidence.

33. As to the evidence of defence witnesses, we find that the same is mostly on the theory of anger for the alleged charge of theft of Rs. 2,500/-. There is no rebuttal evidence by the defence about the evidence of illtreatment, cruelty, demand of money for construction of hospital and, therefore, according to us, the evidence tendered by the defence does not help the defence on that score by way of rebuttal. The defence witnesses obviously could not depose about the same because they were not having any knowledge about the illtreatment, demand of money etc. and, therefore, we do not think that the evidence of defence witnesses is of any relevance in the context of the evidence of the dowry death.

34. The next submission made by the learned counsel for the respondents is that the diary did not mention about the illtreatment will have to be rejected. In our opinion, the diary contains the description about the incidents which clearly reflect her disapproval to the conduct of the respondents treating her with mental and physical cruelty by assaulting her also so much so that once her cheek had swollen red because of the assault made by the accused No. 1 Dr. Nitin Patil. We think that there is no direct mention in the diary about demand of money for hospital because she could not take the risk of writing those things as she would have suffered serious assault had the diary been seen by the accused persons. We, therefore, do not attach any importance to the said submission.

The learned counsel for the rival sides have cited several decisions before us, but we need not cite them to burden this judgment as the law is well settled.

35. The next question is who is guilty of the offences for which they are charged. In the first place, we take the case of the accused No. 6 - Dr. Sunil Dhanraj Patil. We must say that there is no satisfactory evidence on record to hold him guilty of any of the offences and particularly u/s. 195-A of the Indian Penal Code. We, therefore, must confirm his acquittal by the learned trial Judge and we accordingly do so.

36. Then there are other accused namely the brothers of the accused No. 1 i.e. the accused No. 4 - Jitendra s/o Baburao Patil and the accused No. 5 - Kailash @ Pundlik s/o Baburao Patil. Upon perusal of the entire evidence and the discussion above, we find no credible evidence against these two brothers of the accused No. 1 Dr. Nitin Patil and, therefore, we must also confirm the acquittal of the accused No. 4 - Jitendra s/o Baburao Patil and the accused No. 5 - Kailash @ Pundlik s/o Baburao Patil. As a sequitur, we dismiss both the appeals against them.

37. The last question is about the accused No. 1 Dr. Nitin Baburao Patil, accused No. 2 Baburao Shankarrao Patil and accused No. 3 Sou. Sharda @ Anupama w/o Baburao Patil. The evidence discussed by us above clearly points out that the accused No. 1 Dr. Nitin Patil had a leading role in making the demand of money, assaulting and treating his wife cruelly and giving her illtreatment. His father - accused No. 2 Baburao Patil and his mother Sharda @ Anupama also had equal role in illtreating Suchita mentally if not physically for making demand of money for construction of hospital for their son i.e. the accused No. 1 Dr. Nitin Patil. They were instigating the accused No. 1 - Dr. Nitin to illtreat her. But then they being the senior citizens and responsible elderly persons were not expected to torture her or cause to torture her for their demand for money for construction of hospital for their doctor son as if the accused No. 1 was made doctor by them for earning dowry. If they refused to understand the concept of institution of marriage, the accused No. 1 - Dr. Nitin ought to have revolted against dowry demand, but he had an ugly desire to have his hospital building by way of dowry. We, therefore, hold the accused Nos. 1 to 3 i.e. Dr. Nitin Baburao Patil, Baburao Shankarrao Patil and Sharda @ Anupama Babaurao Patil guilty of the offences punishable u/ss. 304-B , 498-A r/w 34 of the Indian Penal Code. We, however, acquit them of the charge u/s. 323 , 504 , 506 , 306 , 201 and 202 of the Indian Penal Code.

38. Having thus held the accused No. 1 - Dr. Nitin Baburao Patil, the accused No. 2 - Baburao Shankarrao Patil and the accused No. 3 Sharda @ Anupama Baburao Patil guilty of the offences punishable u/ss. 304-B and 498-A r/w 34 of the Indian Penal Code, they will have to be heard on the question of sentence. We, therefore, postpone the hearing of these appeals on the point of sentence.

39. We have heard the learned counsel for the rival parties on the question of

award of sentence.

40. Learned counsel for the appellant - Baliram Gurling Palapure and the learned APP strenuously contended that the deceased Suchita was also a Dentist and the accused No. 1 - Nitin Patil is M.D. Thus, the highly educated accused No. 1 was living in the town of Aurangabad and, therefore, the minimum civilization was expected from all the accused. They submitted that the accused Nos. 2 and 3 being elderly persons should have behaved responsibly, but they did not do so and, therefore, the highest sentence contemplated by Section 304-B of the Indian Penal Code namely the life imprisonment and three years rigorous imprisonment u/s. 498-A of the Indian Penal Code should be awarded.

41. Per contra, Shri N.S. Ghanekar, learned counsel for the convicted accused persons namely the accused Nos. 1, 2 and 3 submitted that the prosecution did not prove that the alleged illtreatment or harassment was for a continuous period of five years and, therefore, no inference of any harshness can be drawn. He further submitted that the accused No. 1 - Dr. Nitin Patil was equally loving his wife the deceased Suchita, which is evident from the tour programmes, photographs etc. and, therefore, that he was taking her care is explicit. He then submitted that the accused Nos. 2 and 3 are suffering from old age ailments and till they were acquitted by the trial Court, they were deprived of the custody of their grand-son Parth and it is only after the order of acquittal was passed, the visitation rights were given to them. He, therefore, prayed that the minimum sentence could be the solution in the present matter.

42. Upon hearing the learned counsel for the rival parties on the question of sentence, we find that the convicted accused persons i.e. accused Nos. 1 to 3 have not behaved in terms of the required responsibility, but had an oblique motive to satisfy their greed for the accused No. 1's hospital being constructed by his father-in-law. That is not the spirit of the institution of marriage in this country, but of late, there has been repeated incidents of the said type. Even then, we find that the period of about 10 years have already passed and further the respondent Nos. 2 and 3 being on the eve of growing older age and the period of seven years rigorous imprisonment for them should serve the deterrence to the society in general and the accused Nos. 1 to 3 in particular. We, therefore, hold that the minimum sentence provided by Section 304-B of the Indian Penal Code of seven years rigorous imprisonment with fine and rigorous imprisonment of two years for the offence punishable u/s. 498-A of the Indian Penal with fine should sub-serve the interest of justice. In that view of the matter, we proceed to make the following order.

"a] Criminal Appeal No. 620/2015 and Criminal Appeal No. 726/2015 both are partly allowed.

b] Criminal Appeal No. 620/2015 is dismissed against the respondent No. 5 - Jitendra s/o Baburao Patil, the respondent No. 6 - Kailash @ Pundlik s/o Baburao Patil and the respondent No. 7 - Sunil s/o Dhanraj Patil.

c] Criminal Appeal No. 726/2015 is dismissed against the respondent No. 4 - Jitendra s/o Baburao Patil, the respondent No. 5 - Kailas @ Kuldip s/o Baburao Patil and the respondent No. 6 - Sunil s/o Dhanraj Patil.

d] The judgment and order dated 1.6.2015 passed by the learned 4th Additional Sessions Judge, Aurangabad, in Sessions Case No. 388/2010 acquitting the accused No. 1 - Dr. Nitin s/o Baburao Patil, the accused No. 2 - Baburao s/o Shankarrao Patil and the accused No. 3 - Sharda @ Anupama Baburao Patil, is set aside, and instead, the accused No. 1 - Dr. Nitin s/o Baburao Patil, the accused No. 2 - Baburao s/o Shankarrao Patil and the accused No. 3 - Sharda @ Anupama Baburao Patil are convicted for the offence punishable u/s. 304-B r/w 34 of the Indian Penal Code and they are sentenced to undergo rigorous imprisonment for seven years with fine in the sum of Rs. 10,000/- each, in default to suffer further rigorous imprisonment for six months.

e] The accused No. 1 - Dr. Nitin s/o Baburao Patil, the accused No. 2 - Baburao s/o Shankarrao Patil and the accused No. 3 - Sharda @ Anupama Baburao Patil are further convicted for the offence punishable u/s. 498-A r/w 34 of the Indian Penal Code and they are sentenced to undergo rigorous imprisonment for two years with fine in the sum of Rs. 5,000/- each, in default to suffer further rigorous imprisonment for three months.

f] The sentences against the accused Nos. 1 to 3 shall run concurrently.

g] The convicted accused Nos. 1 to 3 shall be taken into custody forthwith.

h] The accused Nos. 1 to 3 shall be given benefit of set-off u/s. 428 of the Code of Criminal Procedure, 1973.

i] The Registry shall supply the copies of the judgment to the convicted accused Nos. 1 to 3 on or before 3-00 p.m. today itself."

At this stage, Shri N.S. Ghanekar, learned counsel for the respondents - accused prays for suspending the sentence awarded against the accused Nos. 1 to 3 in order to approach the higher Court.

The prayer for suspension of sentence is rejected.