
(2014) 04 BOM CK 0072

In the Bombay High Court

Case No : Criminal Appeal No. 771 of 1997 and Criminal Appeal No. 468 of 1998
and Criminal Revision Application No. 21 of 1998

Balwant Daulat Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 306, 34, 498A

Citation : (2014) ALLMR(Cri) 1818 : (2015) 1 BomCR(Cri) 524 : (2014) 3 DMC 135

Hon'ble Judges : P.V. Hardas, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : S.V. Marwadi a/w Mr. Jayant Bardeshkar and Mr. Katik Garg in Criminal Appeal No. 771/1997, Mr. Nitin Pradhan and Ms. S.D. Khot in Cri. Revn. No. 21/1998, Advocate for the Appellant; F.R. Shaikh, APP for State, Advocate for the Respondent

Judgement

P.V. Hardas, J.—Criminal Appeal No. 771 of 1997 has been filed by the appellant, Original Accused No. 1, who stands convicted for offence punishable u/s 498A of the Indian Penal Code and sentenced to SI for six months and to pay a fine of Rs. 1000/-, in default of which to undergo further SI for two months, by the Additional Sessions Judge, Nashik, by judgment dated 12/12/1997, in Sessions Case No. 49 of 1993.

Criminal Appeal No. 468 of 1998 has been filed by the appellant-State against acquittal of respondent/original accused No. 1 for offence punishable under Sections 302, 306 and 304B read with Section 34 of the IPC. Criminal Revision Application No. 21 of 1998 has been filed by the applicant/original complainant against acquittal of respondents/original accused Nos. 1 to 5. Since the proceedings before us arise from the same judgment of the trial court, they are being disposed of by this common judgment. Facts, as are necessary for the decision of the appeals and the revision application, may briefly be stated thus:--

P.W. 9 - PSI Rajendra Bhamare who, on 2/6/1989, was attached to Satana Police Station, received the FIR which was registered as 0 number. On the basis of the said FIR lodged by P.W. 1 - Mukund Patil, he registered an offence vide Crime No. 94 of 1989 under Sections 302, 498A read with Section 34 of the IPC. The aforesaid FIR had been scribed by Head Constable Shinde of the Bhadrakali Police Station. On being entrusted with the investigation, on the basis of the FIR at Exh. 90, he visited the scene of the incident and drew the scene of the incident panchanama on 3/6/1989 at Exh. 17. He recorded the statements of witnesses. On 6th and 7th June, 1989, he recorded the statements of other witnesses and while drawing the scene of the incident panchanama, he had seized one match-box, kerosene plastic can, pieces of burnt clothes and half burnt match-stick. The sketch of the incident was drawn by the Circle Officer at Exh. 82. The inquest panchanama had also been received along with the case papers from the Sakharda Police Station. The investigation was thereafter entrusted to PSI Pardeshi. Meanwhile, the seized articles were referred to C.A.

P.W. 10 - PSI Jaising Pardeshi, who was attached to the CID Branch, was entrusted with further investigation of Crime No. 94 of 1989. On 28/6/1989, he recorded the statements of witnesses and on 24/7/1989 recorded the supplementary statement of the complainant. On 26/6/1989 he had also recorded the supplementary statement of P.W. 2 - Sulbha. On 3/11/1989 he handed over the investigation to PSI Ahire. He had seized the natural handwriting of deceased Bharti from Pachora College at Jalgaon.

P.W. 8 - Dy. S.P. Ramchandra Jadhav, who was Dy. S.P. CID, State Crime at Nashik, was entrusted with the further investigation of Crime No. 94 of 1989. He verified the statements of the witnesses which had been recorded by the Investigating Officers. He referred the questioned documents along with natural handwriting for comparison to the Handwriting Expert, Pune on 18/11/1989. Further to the completion of investigation, a charge-sheet against the accused was filed.

P.W. 5 - Dr. Sharad Wagh, who was serving as the Medical Officer at the Cottage Hospital, examined Bharti, who had been brought by a taxi at about 12.25 p.m. On examining her, he found that she had sustained burns. Accused No. 1 came to the Cottage Hospital after some time on his motorcycle. P.W. 5 -Dr. Wagh gave tetanus toxoid injection to Bharti, who, while giving the injection had remonstrated P.W. 5 - Dr. Wagh as to why she was being injected. Saline was also administered and other life saving drugs were also administered to Bharti. Since there was no arrangement for treating the burnt patient at Satana, P.W. 5 - Dr. Wagh advised that Bharti be taken to the Civil Hospital at Nashik. The history which was recorded is at Exh. 80. The history at Exh. 80 reflects that injured Bharti had been brought at about 12.45 p.m. and her general condition was poor and pulse was not palpable at wrist. The history that was given was burns due to flames and the history was given by persons who had accompanied Bharti. Bharti had sustained 92% burns and was, therefore, referred to the Civil Hospital.

Postmortem on the dead body of deceased Bharti was performed by the Medical Officer at the Civil Hospital, Nashik. The postmortem report is at Exh. 162. As per the postmortem report, Bharti had sustained 93% burns which were deep extensive burns. As per the postmortem report at Exh. 162, the cause of death was deep extensive burns 93% with shock with cardio respiratory failure.

2. On committal of the case to Court of Sessions, trial court vide Exh. 43 framed charge against accused Nos. 1 to 5 for offence punishable under Sections 304B, 302 read with Section 34, 306 and 498A of IPC. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case examined 10 witnesses. The defence of the accused was of denial. The trial court upon appreciation of the evidence of the prosecution, convicted and sentenced the appellant/original accused No. 1 as afore-stated, while acquitting the other accused. The accused No. 1 thus being aggrieved by his conviction and sentence has filed Criminal Appeal No. 771 of 1997, while the State has filed Criminal Appeal No. 468 of 1998 being aggrieved by the acquittal of the respondent/original accused No. 1 for offences punishable under Sections 302, 306 and 304B read with Section 34 of IPC. The complainant has filed Criminal Revision Application No. 21 of 1998 questioning the acquittal of the respondents/accused.

3. We have heard Mr. S.V. Marwadi, learned counsel for the appellant in Criminal Appeal No. 771 of 1997, learned APP on behalf of the appellant--State in Criminal Appeal No. 468 of 1998 and Mr. Nitin Pradhan, learned counsel for the applicant in Criminal Revision Application No. 21 of 1998.

4. In order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

5. Prosecution has examined P.W. 1--Mukunda, father of deceased Bharti, who deposes that Bharti was married to accused No. 1 - Balwant on 27/5/1984 at Pachora. Accused No. 1 was a B.A.M.S. and was practicing at Satara. P.W. 1-Mukunda had spent for the marriage and had also agreed to pay an amount of Rs. 20,000/- for purchase of motorcycle and had also agreed to give money for certain other purposes in the marriage. According to P.W. 1 - Mukunda after about a month of the marriage he had taken his daughter to the house of the accused. 4 to 5 days thereafter, he and P.W. 2 - Sulbha had gone to the house of the accused. Certain other articles were also gifted in the marriage. According to P.W. 1-Mukunda, accused No. 2 - Narmadabai had pleaded with P.W. 1 - Mukunda that she was in need of money for purchasing agricultural land and, therefore, P.W. 1-Mukunda should advance the money. According to P.W. 1--Mukunda, he informed her that he would not be in a position to advance the money to the accused for purchase of the land. According to P.W. 1 - Mukunda, the accused had also requested that a dinning table be provided to deceased Bharti. P.W. 1-Mukunda did not promise to give the dinning table. According to P.W. 1 - Mukunda, thereafter, Bharti was subjected to illtreatment Bharti addressed letters at Exhs. 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79. According to P.W.

1 - Mukunda on 15/10/1984, he had received a letter informing him that Bharti had been assaulted by fist and kick blows by accused No. 1. Mukunda had requested Bharti to accompany him to his house but Bharti had declined as there was examination and it would be inappropriate on her part to accompany P.W. 1-Mukunda. According to P.W. 1-Mukunda thereafter he had sent his son who had brought Bharti to his house. According to P.W. 1-Mukunda he had made several attempts at ensuring that the accused had treated Bharti well. P.W. 1 - Mukunda further states that he along with one Shivaji Bhamare had gone to the house of the accused at Satana. Accused No. 2, it appears, had said that they would bring Bharti back to their house only in the event P.W. 1 - Mukunda gave in writing that he would not complain if something went wrong with Bharti as Bharti was suffering from fits. Accordingly, on 19/4/1985, P.W. 1 - Mukunda accompanied by his wife and Bharti went to the house of accused No. 1 at Satana. It appears that the accused had agreed for getting Bharti medically examined at Nashik. Subsequently, Bapu Bhamare informed P.W. 1 - Mukunda that they need not go to Nashik as the accused had agreed to take Bharti to Vajirkhede. Accordingly, P.W. 1 - Mukunda took Bharti to Nashik on 3/5/1985. They waited for accused No. 1 to come, but accused No. 1 did not come and, therefore, P.W. 1 - Mukunda returned back to Pachora. It appears that the accused were not willing to take Bharti because Bharti was suffering from fits. Accused No. 2 specifically desired that she should be satisfied about health of Bharti. P.W. 1--Mukunda was transferred to Dhule. It further appears that the accused had requested Mukunda to advance loan to accused No. 1 for constructing a bungalow. P.W. 1 - Mukunda informed them that he did not have money for giving loan to accused No. 1. After about two days, accused No. 1 came to Dhule and pleaded with P.W. 1 - Mukunda to advance him money for the purpose of construction of the bungalow. Accused No. 1 further informed P.W. 1-Mukunda that he intended to sell the ornaments in order to raise money for the construction of bungalow. P.W. 1--Mukunda promised him to advance money to him to be paid in convenient installments. Accused No. 1 and Bharti thereafter went to Vajirkhede.

6. In October, 1985, Mukunda was invited to Vajirkhede as there was a discussion in respect of construction of the hospital of accused No. 1. Due to pressure of work, P.W. 1-Mukunda could not go to Satana. 15 days thereafter the accused had come to Dhule but P.W. 1 - Mukunda was not available. On his return, he was informed by P.W. 2 -Sulbha that accused No. 5 had asked for Rs. 50,000/- for the purpose of construction of the hospital. In Diwali of 1985, Bharti was brought to Dhule and at that time he she was in the family way. According to P.W. 1 - Mukunda after Bharti returned to the house of the accused for a period of two to three months, there was no ill-treatment. On 23/4/1986 Bharti gave birth to a daughter. After delivery, Bharti returned back to Vajirkhede and was residing with accused No. 1 at Satana. According to P.W. 1-Mukunda, the accused used to ill-treat Bharti.

7. The second daughter of P.W. 1 - Mukunda was married in May 1987 and in the marriage P.W. 1 - Mukunda gifted a colour T.V. to his second daughter. According

to P.W. 1; - Mukunda, accused No. 1 was aggrieved because colour T.V. had not been gifted to him. Bharti had delivered a boy in June 1987. According to P.W. 1--Mukunda, Bharti was ill-treated on account of not giving of a colour T.V. Set. In Diwali of 1987, the accused and Bharti had come to Nashik where P.W. 1-Mukunda was transferred and insisted on a colour T.V. Set being provided. P.W. 1-Mukunda assured accused No. 1 that he would give them the amount equal to the black and white T.V. set and the rest of the amount would be borne by-accused No. 1. P.W. 1--Mukunda, accordingly, purchased the colour T.V. worth Rs. 10,800/-. According to P.W. 1 - Mukunda the accused, however, did not pay the amount as promised. According to P.W. 1 - Mukunda, he had also not demanded the money from accused No. 1. In June 1988, accused No. 1 visited Nashik and had requested P.W. 1-Mukunda to come to Satana in connection with the purchase of the plot. P.W. 1-Mukunda had accordingly gone to Satana and accused No. 1 had demanded the amount for purchasing of the plot. P.W. 1-Mukunda contacted his friend Mr. Kharote who advised that the plot chosen by accused No. 1 was not suitable and he would find out another suitable plot. According to P.W. 1 - Mukunda, Bharti was ill-treated thereafter. P.W. 1 - Mukunda also deposes that when Bharti and accused No. 1 had visited him at Nashik, Bharti had complained that she was ill-treated. According to P.W. 1 - Mukunda, in August, 1988, accused No. 1 had come to Nashik and had paid the difference of the price of the colour T.V. set and had offered Rs. 5000/- which P.W. 1 - Mukunda declined to accept. Accused No. 1, however, insisted and P.W. 1 - Mukunda thereafter accepted the amount of Rs. 5000/-.

8. According to P.W. 1-Mukunda in August, 1988, he started construction of his house at Nashik and had asked loan of Rs. 15,000/- from the accused. Accused No. 1 had accordingly sent the DD in the name of the son of P.W. 1 - Mukunda in August 1988. After the loan for the construction of the house of P.W. 1 - Mukunda was sanctioned, P.W. 1 - Mukunda sent a draft for Rs. 20,000/- along with his son to accused No. 1. The amount of Rs. 20,000/- included the loan of Rs. 15000/- given by accused No. 1 as well as the amount of Rs. 5000/- paid by accused No. 1 towards the difference in the cost of the colour T.V. Accused No. 1, however, declined to accept the DD for Rs. 20,000/- and asked the son of P.W. 1 - Mukunda that only Rs. 15000/- be paid. Accordingly, P.W. 1-Mukunda thereafter sent a DD for Rs. 15000/- to accused No. 1. According to P.W. 1 - Mukunda, the accused thereafter again started ill-treating Bharti. In one instance, Bharti had complained that accused No. 1 used to say that since her father was well-off, P.W. 1--Mukunda should gift something to the grandson. P.W. 1-Mukunda deposes that on one occasion, the accused had come and had demanded Rs. 1,00,000/-. Mukunda had informed the accused No. 1 that he did not have that much money and would be willing to give Rs. 20,000/-. Accused No. 1 got annoyed and went away. P.W. 1 - Mukunda further deposes that on one occasion Bharti had telephoned and had informed him that "she was manhandled by accused No. 1 and, therefore, she had not attended the marriage at Deola". P.W. 1-Mukunda further deposes that when he had gone to the house of accused No.

1, Bharti had informed him that P.W. 1--Mukunda should not pay the amount to accused No. 1.

9. In respect of the incident, P.W. 1 - Mukunda deposes that on 2/6/1989 at about 2.30 p.m. he had learnt that Bharti was admitted at Civil Hospital, Nashik. Along with family members, he had gone to the Civil Hospital and had learnt that Bharti had succumbed to her injuries. On the same day, he lodged his report at Exh. 90.

10. In cross-examination, he has admitted that the letters at Exhs. 92 and 93 are in the handwriting of Bharti. He has also admitted that letter at Exh. 94 dated 27/9/1988 is in the handwriting of Madhuri i.e. daughter of accused No. 3. He has admitted that the certificate issued by Dr. Wadia is at Exh. 113. He has admitted that in December, 1982, he had gone to Dr. Wadia for his examination. He has admitted that he had not got Bharti examined by Dr. Sardesai. Bharti was examined by Dr. Gangwal from Pune in 1982-83. He has admitted that Dr. Gangwal had advised him to get Bharti examined by Dr. Wadia. The medical case papers of examination of Bharti by Dr. Wadia is at Exh. 114. The other documents are at Exhs. 115 and 116. The certificates issued by Dr. Gangwal is at Exhs. 118 and 119. He has admitted that earlier marriage of Bharti was settled with a boy from Aurangabad, but the marriage proposal was broken sometime in 1982. He has admitted that cross-examination as true that the medical case papers reveal that the temporal lobe was damaged. He has denied the suggestion that because of this the earlier marriage of Bharti was broken. He has admitted that the doctor had advised that the deceased was not serious and there was no problem if Bharti was married. He has admitted that he had informed the relatives of accused No. 1 in respect of ailment of Bharti as well as the break up of the proposed marriage of Bharti. He has further admitted as correct that mother of accused No. 3, as also the other relatives, were demanding a writing from him on a stamp paper that he would not complain in case Bharti get attack of fits and does something during those fits. He has also admitted that the accused were demanding the written document in order to safeguard their interest if Bharti suffers from some serious injuries because of fits. He has also admitted as correct that Bharti was not used to working in the agricultural land. He has further admitted as correct that the accused were agriculturists who used to get the work done through the labourers but used to supervise the agricultural operations.

11. Omission has been duly proved that he had not stated about demand for a dinning table and other articles. He has admitted not to have stated in the FIR about paying Rs. 20,000/- for motorcycle and Rs. 10,000/- for other incidental purpose. He has admitted that at the time of retirement, he was drawing salary of Rs. 6000/-. Omission has also been proved that he had not stated about money being demanded for construction of bungalow for accused No. 1. Omission has also been elicited that he had not stated about accused No. 1 informing him that he would sell the ornaments of Bharti and about P.W. 1-

Mukunda advising him not to do so and that Mukunda would pay him Rs. 15,000/- to Rs. 20,000/-. Omission has also been duly proved that he had not stated about accused No. 1 telephoning him to come to Satana for paying the money for the construction of the hospital of accused No. 1. Omission is also proved that he had not stated that his wife had informed him that accused No. 5 was demanding Rs. 50,000/-. Omission is also proved that he had not stated that accused No. 1 demanded colour T.V. from him. Omission is also proved that he had not stated that accused No. 1 had called him in June 1988 and had asked him to give money for purchase of plot and that one Kharote had informed that the plot was not suitable.

12. Prosecution has examined P.W. 2 - Sulbha, mother of deceased Bharti. According to P.W. 2 - Sulbha, Bharti had disclosed that she was assaulted by shoes by accused No. 1 and that accused No. 1 used to make her sleep in the kitchen. In cross-examination, omission has been elicited that she had not stated about accused No. 2 demanding money for purchasing agricultural field. Omission has also been elicited that she had not stated in her previous statement that Bharti had informed her that she was assaulted by accused No. 1 by shoes. She has admitted that in none of the letters addressed to accused No. 1 they had made a grievance about ill-treatment or the accused asking for money. Omission has been duly proved that she had not stated in her previous statement about accused No. 1 demanding money for purchase of plot. She has admitted that in none of the letters addressed by her, she had made any grievance about any ill-treatment being given to Bharti or the accused making any demand for money.

13. Prosecution has examined P.W. 3 - Prabhakar who was present when the demand for money for the construction of the hospital was made by accused No. 1 to P.W. 1-Mukunda on phone. P.W. 3 - Prabhakar states that P.W. 1 - Mukunda had informed him that accused No. 5 was demanding money for the purpose of construction of the hospital. The aforesaid evidence is completely hear-say evidence as P.W. 1 - Mukunda does not depose about informing P.W. 3 - Prabhakar about it.

14. Prosecution has examined P.W. 4 - Nayamanhali, who claims to be present during the negotiations for taking deceased Bharti back to the house of the accused. He has admitted in cross-examination that after talking to accused No. 1, he learnt that Bharti was suffering from fits. He admits that he had also learnt that Bharti was suffering from fits from one Hire, who was relative of P.W. 1-Mukunda. He has also admitted that during the meeting at Nashik, accused No. 3 was complaining that Bharti was suffering from fits. He has also admitted as correct that the accused No. 3 was demanding some writing on stamp paper.

15. Prosecution has examined P.W. 6 - Dr. Deepa Pawar who claims that deceased Bharti was her friend since childhood. P.W. 6 - Dr. Deepa Pawar further deposes that she used to meet Bharti frequently and had once inquired as to why Bharti was nervous. According to P.W. 6 - Dr. Deepa Bharti had disclosed to her

that she was being harassed by accused No. 1 and her mother-in-law. She has also deposes that Bharti had informed her that accused No. 1 was demanding money for purchasing T.V. and a plot. Bharti had also disclosed to her that accused No. 1 was not giving her ornaments for wearing. According to P.W. 6 -Dr. Deepa about two months prior to death of Bharti, Bharti had disclosed to her that accused No. 1 had questioned her as to why Bharti was standing by putting hand on the shoulder. According to Dr. Deepa, the accused No. 1 was suspecting the character of deceased Bharti. In cross-examination, omission has been elicited that she had not stated in her previous statement that accused No. 1 was not permitting to Bharti to wear ornaments. Similarly, omission has been elicited that she had not stated about Bharti disclosing to her just two months prior to the incident about accused suspecting her character and that accused No. 1 had questioned her as to why she was talking by keeping hand on the shoulder. She has admitted that when she had met Bharti, Bharti had disclosed to her that her father had purchased a T.V. set for accused No. 1.

16. Prosecution has examined P.W. 7 - Shivaji, who was also present at the negotiations for taking Bharti back to the house of the accused. This witness was declared hostile by the prosecution.

17. The evidence of P.W. 1-Mukunda and the evidence of P.W. 2 - Sulbha only reveals that whenever Bharti had come to their house, Bharti had only complained that she was "ill-treated" or "harassed". Though Bharti had occasions to come to the house of P.W. 1 - Mukunda and Mukunda claims that Bharti had informed him, yet neither P.W. 1-Mukunda nor P.W. 2 - Sulbha depose about specific instances of cruelty. The allegations regarding demand of money are so vague and there are several material omissions in that regard. From the evidence of P.W. 1 - Mukunda and the evidence of P.W. 2 - Sulbha, we do not find that the prosecution has led any evidence which would indicate that the accused had ill-treated Bharti and the ill-treatment was of such a degree as would drive Bharti to either commit suicide or cause an injury to herself. In fact, P.W. 1 - Mukunda admits that the accused had advanced him loan for construction of his own house and the accused had sent the DD immediately when a request was made by P.W. I - Mukunda. Even in respect of the construction of the house/hospital, P.W. 1-Mukunda has admitted that the accused had asked for a loan. The disputes between accused No. 1 and deceased Bharti were the normal differences which arise between husband and wife and which would be the normal wear and tear of married life. The evidence does not conclusively establish that deceased Bharti was ill-treated and the ill-treatment was of such a degree as would amount to ill-treatment within the meaning of Section 498A of the IPC. The reluctance of the accused to take Bharti to their house was obvious from the fact that deceased Bharti was suffering from fits and the accused had apprehended that in the event Bharti causes some injuries to herself, the accused would be blamed and for that the accused were insisting P.W. 1 - Mukunda to execute a stamp paper which would exonerate the accused in the event Bharti sustained some injuries while suffering from fits. The evidence does

not, in our opinion, lead to an inference that Bharti was subjected to ill-treatment and the ill-treatment was on account of demand for payment of dowry or the ill-treatment was because of failure of P.W. 1 - Mukunda to meet the illegal demands of the accused. There is no evidence that soon before her death, Bharti was ill-treated. The instances, as narrated by P.W. 6 - Dr. Deepa in her evidence, have been elicited by way of omission. P.W. 6 - Dr. Deepa deposes about Bharti informing her that the accused was suspecting her character and chastity. Curiously, if Bharti could inform P.W. 6 - Dr. Deepa, we find it inexplicable as to why Bharti did not inform P.W. 1 - Mukunda or P.W. 2 - Sulbha. None of them referred to any ill-treatment by the accused. In any event the said statement of Bharti made to P.W. 6 - Deepa has been elicited by way of omission. Thus, on an overall assessment of the evidence of the prosecution witnesses, we find that apart from bald allegations that Bharti was ill-treated or was harassed, in our opinion, would not amount to cruelty within the meaning of Section 498A of the IPC. The recitals in the letters by themselves would not amount to proof that Bharti was indeed subjected to cruelty without there being other corroborative evidence in the form of disclosures being made by Bharti to other prosecution witnesses. All the prosecution witnesses only depose about ill-treatment without specifying nature of the ill-treatment which was given by the accused to deceased Bharti.

18. In respect of Section 302 of the IPC, we find that there is absolutely no evidence in support of the said charge. The judgment of the trial court reveals that even the Public Prosecutor in the trial court had conceded that there was no evidence in respect of the offence punishable u/s 302 of the IPC. In respect of the offence punishable u/s 306 of the IPC, we find that there is no evidence of the accused instigating deceased Bharti to commit suicide. We have earlier observed, in our judgment, that there is no evidence in respect of an offence punishable u/s 498A of the IPC and consequently we find that there is no evidence at all that the accused had instigated deceased Bharti to commit suicide or had in any manner ill-treated Bharti thereby creating a situation which would drive deceased Bharti to commit suicide.

19. In our opinion, therefore, the prosecution has miserably failed to prove the offence alleged against the accused. There is no evidence that soon before her death, Bharti was subjected to ill-treatment on account of any demand being made for dowry. The trial court has appreciated the evidence and has given reasons for acquitting the accused for offence punishable under Sections 302, 306, 304B of the IPC and acquitting the other accused, except accused No. 1, for offence punishable u/s 498A of the IPC. With the assistance of the learned counsel for the parties, we have minutely perused the findings recorded by the trial court. Upon such perusal, according to us, the view taken by the trial court appears to be a possible view to be taken on the basis of the evidence on record. We do not notice any perversity in the reasoning of the trial court to warrant any interference in an appeal against acquittal at the behest of the State. So far as conviction of accused No. 1 for offence punishable u/s 498A of the IPC is

concerned, for the reasons stated above, according to us, accused No. 1 would be entitled to be acquitted by giving the benefit of doubt as the evidence adduced by the prosecution is short of proving the offence against the accused beyond reasonable doubt.

20. Mr. Nitin Pradhan, learned counsel for the original complainant in Criminal Revision Application No. 21 of 1998 has urged before us that P.W. 5 - Dr. Wagh had deliberately not informed the police about medicolegal case when he had initially examined Bharti. According to Mr. Pradhan since the investigation was completely flawed, the accused would not be entitled to be given the benefit of doubt. According to us, there is no material on record to record a finding that P.W. 5 - Dr. Wagh had deliberately not informed the police. It is true that P.W. 5 - Dr. Wagh has admitted that he had informed the police after four hours, but an inference cannot be drawn that he had deliberately not informed the police as accused No. 1 was his friend. Mr. Pradhan has referred to the judgment of the Supreme Court in *State of Madhya Pradesh Vs. Mansingh and Others*, . The Supreme Court in the said judgment has held that deficiencies in the investigation cannot be a ground for discarding the prosecution version which was otherwise authentic, credible and cogent. Mr. Pradhan has also referred to the judgment of the Supreme Court in *Allarakha K. Mansuri Vs. State of Gujarat*, . In the said judgment, the Supreme Court has held that defective investigation by itself cannot be a ground for acquittal. Mr. Pradhan also referred to the judgment of the Supreme Court in *Chandrakant Luxman Vs. State of Maharashtra*, . The Supreme Court in the said judgment has also held that laxity by the Investigating Officer in causing certain inconsistencies in the prosecution case cannot inure to the benefits of the accused when the story of the prosecution witnesses was consistent. The ratio of the aforesaid judgments, in our opinion, is not applicable to the facts of the present case. We have not given benefit of doubt to accused on the ground of infirmities or deficiencies in the investigation. On an overall assessment of the evidence of the prosecution, we have reached to a conclusion that the prosecution has failed to prove the offence against the accused beyond reasonable doubt. In that view of the matter, therefore, the ratio of the said judgments would not apply to the facts of the present case. Accordingly Criminal Appeal No. 771 of 1997 is allowed and conviction and sentence of the appellant-original accused No. 1 is hereby quashed and set aside and he is acquitted of the offence with which he was charged and convicted. Fine, if paid by the appellant, be refunded to him. Bail bond of appellant/original accused No. 1 stands cancelled.

Criminal Appeal No. 468 of 1998 filed by the appellant-State against acquittal of respondent/original accused No. 1 and Criminal Revision Application No. 21 of 1998 filed by the applicant-original complainant against acquittal of respondents/original accused Nos. 1 to 5 are dismissed, confirming the acquittal of the respondents/accused. Bail bonds of respondents/accused stand cancelled.