
(2014) 02 BOM CK 0249

In the Bombay High Court

Case No : Criminal Appeal No. 525 of 2011

Bappasaheb Bhaskar Aware and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313, 428
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 103, 106, 113B
Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34, 498A

Citation : (2014) ALLMR(Cri) 3989 : (2014) 2 BomCR(Cri) 1

Hon'ble Judges : V.M. Deshpande, J; S.S. Shinde, J

Bench : Division Bench

Advocate : N.S. Ghanekar, Advocate for the Appellant; K.M. Suryawanshi, A.P.P, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—This appeal is filed challenging the judgment and order passed by the Additional Sessions Judge, Beed in Sessions Case No. 44 of 2010 on 4-7-2011. Originally there were five accused persons, who faced the trial. Out of them, original accused No. 1 Bappasaheb Bhaskar Aware i.e. appellant No. 1 herein and original accused No. 3 Bhaskar Tukaram Aware i.e. appellant No. 2 herein, (for the sake of brevity hereinafter they will be referred as the appellants") are convicted for the offence punishable u/s 302 read with section 34 of the Indian Penal Code and are sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs. 1000/-. In default of payment of fine, they shall undergo further rigorous imprisonment for six months. Both the appellants are further convicted for the offence punishable u/s 304B read with section 34 of the Indian Penal Code and are sentenced to suffer Rigorous Imprisonment for eight years and to pay fine of Rs. 1000/-, in default of payment of fine, they shall further suffer R.I. for six months. They are also convicted for the offence punishable u/s 498A read with section 34 of the Indian Penal Code and are

sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs. 1000/-, in default of payment of fine, they shall undergo further R.I. for six months. They are also convicted for the offence punishable u/s 201 read with section 34 of the Indian Penal Code and are sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs. 1000/-, in default of payment of fine, they shall undergo further R.I. for six months. The Sessions Court ordered that, all the sentences shall run concurrently. The Sessions Court also ordered that, they are entitled for set off u/s 428 of the Code of Criminal Procedure for pre-detention period in respect of appellant No. 1 from 25-12-2009 to 4-7-2011 and in respect of appellant No. 2 from 25-12-2009 to 23-4-2010. The Sessions Court acquitted remaining original accused No. 2 Ramhari Bhaskar Aware, accused No. 4 Suvarna Dattatraya Wagh and accused No. 5 Kalpana Uttreshwar Shinde of the offence punishable under sections 302, 304B, 498A and 201 read with section 34 of the Indian Penal Code. The prosecution case, in nutshell, is as under :

Original accused Nos. 1 to 3 are resident of Malewadi and accused Nos. 1 and 2 are brothers inter se. Accused Nos. 1 and 2 are sons of accused No. 3, while accused Nos. 4 and 5 are daughters of accused No. 3. Deceased Sangita was daughter of PW2 Dashrath Babasaheb Yede. The marriage between deceased Sangita and appellant No. 1 Bappasaheb was settled and solemnized on 12-6-2009 at Vaijala by giving dowry of Rs. 1,00,000/- alongwith one Tola gold and daily utensils as per Hindu rites and custom. Huge expenditure of Rs. 3,00,000/- was done at the instance and pressure of the accused in the said marriage though PW2 Dashrath was not in a position to make the said expenditure.

After one month of the marriage, PW2 Dashrath went to Malewadi. Appellant No. 1 Bappasaheb expressed displeasure over arrangement in the marriage and also told that due respects were not given in the said marriage. The appellant No. 1 demanded Rs. 1,00,000/-. PW2 Dashrath told that, he was poor and could not satisfy his demand. At that time, accused No. 2 Ramhari and sister in laws i.e., accused No. 4 Suvarna and accused No. 5 Kalpana assaulted deceased Sangita in his presence by fist and kick blows. Appellant No. 1 Bappasaheb caught hold collar of PW2 Dashrath, locally called as and asked PW2 Dashrath to give divorce. Appellant No. 1 Bappasaheb also told that, he did not need his daughter. She was not good looking, therefore, he did not like her. He asked PW2 Dashrath to bring Rs. 1,00,000/-, and in case amount is not given, gave threat to Dashrath that, he would see what can be done.

PW2 Dashrath came back to his village and narrated the incident to PW5 Chhagan. During the Diwali festival of 2009, PW2 Dashrath and PW5 Chhagan went to Malewadi and met accused and requested them to give proper treatment to his daughter Sangita. He expressed that, he could not pay money due to poor financial position. Accused were not in a position to listen to their request. Deceased Sangita also told him that, she had severe trouble at the hands of the

accused. She was not given proper treatment. She was always subjected to starvation by making demand of money. PW2 Dashrath gave assurance to deceased Sangita and returned to his village.

Thereafter, after lapse of one month deceased Sangita came with her cousin father-in-law namely Dnyanoba Aware to Vaijala. On inquiry with her, she told that, she was beaten by all accused persons for not bringing Rs. 1,00,000/-. She was told by the accused that, unless Rs. 1,00,000/- are brought, she would not be allowed to cohabit with the accused. She was also given threat that, if amount is not brought, they would kill her. She narrated all these things in presence of PW4 Sitaram and wife of PW2 Dashrath. Sangita stayed with PW2 Dashrath for 10 to 12 days. Thereafter, PW2 Dashrath, PW5 Chhagan and PW4 Sitaram took Sangita to the house of accused, and requested accused to give proper treatment to her and then left Sangita in the company of accused and went to their village.

On 22-12-2009 phone message was received by Kailas Yede in his grocery shop that, Sangita was missing. Therefore, PW2 Dashrath alongwith PW4 Sitaram and PW5 Chhagan, Kailas Nivrutti, Pandit Shamrao went to Malewadi. They reached Malewadi at 1130 in the night. Appellant No. 1 Bappasaheb told that, Sangita left house at 1100 a.m. for collecting grass and thereafter she did not return. On following day, extensive search was undertaken but in vain. On 24-12-2009 appellant No. 1 Bappasaheb lodged complaint with Jamkhed Police Station about missing of Sangita. On 24-12-2009 Patoda Police Station informed that, in Yewalwadi area in the field of Sahebrao Vithal, dead body of lady was floating on the water in the well. Accordingly, accused and PW2 Dashrath alongwith PW5 Chhagan and PW4 Sitaram went to the spot and identified that, it was dead body of deceased Sangita.

It is further case of the prosecution that, Patoda Police Station received information from Sahebrao Vithal Nagargoje vide Exhibit-68 that, dead body was floating in his well at village Yewalwadi. At about 1000 a.m. A.D. No. 66/2009 was registered u/s 174 of the Code of Criminal Procedure by Head Constable Manjare. Investigation was given to PW6 Rajabhau Landge. PW6 Rajabhau Landge and PW7 Suresh Budhwant in the capacity of Police Inspector went to the spot. Dead body was taken out of the well. After taking photographs in the well, photographs were also taken outside the well of the dead body. Inquest panchnama vide Exhibit-57 was drawn. Spot panchnama vide Exhibit-56 of the well in question was also drawn. PW6 Rajabhau Landge after registration of the crime, handed over investigation to PW7 Suresh Budhwant.

PW7 Suresh Savleram received the complaint which was reduced into writing by his writer. Crime No. 117/2009 was registered by him. He took the investigation and recorded the statements of witnesses and arrested the accused. Letter was issued to the Doctor vide Exhibit-77 as to when death occurred. Doctor opined that, death of deceased Sangita occurred before 36 hours to 72 hours vide Exhibit-65. The viscera was sent to Chemical Analyser with carrier PW6 Rajabhau

alongwith letter vide Exhibit-72.

PW7 Suresh also issued letter to Revenue Circle Inspector for drawing map by issuing letter at Exhibit-38. Accordingly, map at Exhibit-69 was prepared. The 7/12 extract of the land where dead body was found was collected vide Exhibit-70. 7/12 extract of the land of accused was also collected vide Exhibit-71. PW7 Suresh Budhwant also received C. A. report vide Exhibit-66 which discloses no poison. After completing investigation, PW7 came to the conclusion that, accused have committed offence punishable u/s 302, 304B, and 498A read with section 34 of the Indian Penal Code. He further came to the conclusion that, accused have also committed the offence so as to disappear the cause of crime and threw dead body of deceased Sangita in the well of Sahebrao Nagargoje.

2. The Judicial Magistrate, First Class, Patoda committed the case to the Court of Sessions, Beed being exclusively triable by the Court of Sessions.

3. After appearance of the accused, the said case was initially assigned to the Additional Sessions Judge-2 for disposal according to law. Later on, the said case was transferred to Court of Additional Sessions Judge, Beed.

4. Initially, charge was framed Vide Exhibit-37 against the accused. However, after completion of hearing, it was found that, the period covered regarding allegations of ill-treatment starts after one month from 12-6-2009 till 24-12-2009 and therefore, with necessary modification, again charge was framed vide Exhibit-37/A. The accused pleaded not guilty and claimed to be tried.

5. The prosecution led the evidence of the following witnesses.

On the point of illtreatment and harassmet material evidence is of PW2 Dashrath Babasaheb Yede vide Exhibit-61, PW4 Sitaram Mahadeo Yede vide Exhibit-72 and PW5 Chhagan Narayan Yede vide Exhibit-73.

PW1 Bhausahab Panditrao Yede (Ex-hibit-55) is the panch witness on the spot panchnama vide Exhibit-56 and inquest panchnama vide Exhibit-57. Seizure of clothes of deceased under panchnama (Ex-hibit-58) is admitted by defence.

The evidence of PW3 Dr. Kailas Hiranman Dudhal vide Exhibit-63 regarding autopsy which was done by him and his fellow Medical Officer Dr. Sonwane.

PW6 Rajabhau Mahadeo Landge vide Exhibit-74 carried out initial investigation in A.D. No. 66/2009 and drew spot panchnama and inquest panchnama. PW7 Suresh Savleram Budhwant was Police Inspector and Investigation Officer, whose evidence is at Exhibit-76

6. The incriminating circumstances did arise from the evidence on record, therefore, statement of the accused u/s 313 of the Code of Criminal Procedure was recorded. The defence of the accused was of total denial with contention that, false case was filed. The accused have also submitted their written statement of defence separately vide Exhibit-84 to 87. The defence of the accused Nos. 1 and 3 was that, they only reside at Malewadi. Accused No. 2

Ramhari was serving in Gurukrupa Packaging Company, Pune. Accused No. 4 was resident of Dashked and was residing with Dattatraya Wagh, which was in Patoda Taluka. Accused No. 5 Kalpana was residing with her husband at Padvi, Taluka Jamkhed.

According to them, deceased Sangita did not co-habit with even for three months. She used to sit idle in a corner of the house and used to go to river for bath. She used to go to her maternal home after 8-10 days. Similarly, she went and was searched and later on found at Vaijala. Any how, she was brought back by giving understanding but she did not improve her behaviour. On 21-12-2009 accused Nos. 1 and 3 went for providing milk to their customers and remained at Patoda upto 500 p.m., as motor of Nana Aware was to be repaired. On returning home, they got knowledge that, deceased Sangita went in the morning and did not return, therefore, on 22-12-2009 information was given to Kailas Yede on phone and search was undertaken. Accused went to give missing complaint to Patoda but police directed that, the complaint was to be filed in Jamkhed Police Station. Later, dead body of deceased Sangita was found in the area of Yawalwadi in the well of Sahebrao Nagargoje. According to the accused, they did not commit any crime and they are innocent.

7. The Sessions Court appreciated the entire evidence on record and after hearing learned Counsel for the parties convicted the accused Nos. 1 and 3 i.e. appellants herein, and sentenced them as stated in paragraph 1 hereinbefore and acquitted remaining accused Nos. 2, 4 and 5. Hence this appeal by the appellants against the conviction.

8. Learned Counsel appearing for the appellants submits that, PW2 Dashrath Yede-father of the deceased, PW4 Sitaram Yede-cousin of deceased, and PW5 Chhagan Yedematernal uncle of deceased were examined by the prosecution for proving the charge for the offence punishable under sections 498A and 304B of the Indian Penal Code. They have stated in their examination-in-chief that, marriage of Sangita was settled with appellant No. 1 Bappasaheb on giving an amount of Rs. 1,00,000/-towards dowry, one tola gold and other utensils. They have also deposed that, the marriage of Sangita with Bappasaheb took place on 12-6-2009. They further deposed that, all the accused were giving illtreatment to Sangita as they have not properly given respect to them at the time of marriage and therefore, demanded Rs. 1,00,000/-. Learned Counsel further submitted that, section 304B of the Indian Penal Code clearly states that, there should be harassment and cruelty for demand of dowry just before the death of married lady. However, in the present case, there is no evidence adduced by the prosecution which would show that, there was demand of dowry which was settled at the time of marriage and therefore, in absence of such evidence, the conviction and the sentence of the appellants for the offence punishable u/s 304B of the Indian Penal Code has resulted into grave miscarriage of justice and hence, the appellants deserve to be acquitted. Learned Counsel further submitted that, PW3 Dr. Kailas Dudhal, who conducted autopsy of Sangita, has

deposed that, he found two ligature marks below hyoid bone and the said injury was ante mortem. He further deposed that, the cause of death was cardio respiratory arrest due to asphyxia; he further deposed that, this was an unnatural death. However, in his cross-examination, he admits that, he cannot tell by which instrument said ligature mark was made. He further admits that, no abrasion was found on neck. Dimension of ligature mark cannot be mentioned as it was faint. He further admits that, ligature mark was partial. He further admits that, hyoid bone was not fractured, size of scarf and size of ligature mark are not correlated , therefore, it cannot be said that, the deceased was strangled by scarf by the appellants and this fact is not proved by the prosecution beyond reasonable doubt, and hence, benefit of doubt goes in favour of appellants. Learned Counsel further submits that, the prosecution case rest upon the circumstantial evidence. The prosecution has failed to prove the circumstances which would show that, proved circumstances unerringly point out the guilt of the accused. The only circumstance against the accused-is that, he has not explained the cause of the death of Sangita and that itself would not sufficient to prove the offence punishable u/s 302 of the Indian Penal Code. Therefore, learned Counsel appearing for the appellants submits that, the conviction and sentence of the appellants deserve to be quashed and set aside in the interest of justice. Learned Counsel appearing for the appellants submits that, the appeal may be allowed.

9. Learned Counsel appearing for the appellants relying upon the exposition of the Supreme Court in the case of Subramaniam Vs. State of Tamil Nadu and Another, submits that, if the medical opinion as to the cause of death is expressed by the Medical Officer and if symptoms are absent, in such a situation the Supreme Court held that, opinion cannot be relied upon. Learned Counsel further invited our attention to the reported judgment of the Supreme Court in the case of Dasari Siva Prasad Reddy Vs. The Public Prosecutor, High Court of A.P., and in particular paragraphs 22 and 23 thereof, and submits that, the facts and circumstances unerringly should point the presence of the accused at the crucial time in the house, however, in the facts of the present case, the prosecution has not placed any evidence on record which would suggest that, the appellants were last seen in the company of the deceased soon before the occurrence. He further invited our attention to the reported judgment of Bombay High Court in the case of Manik Dhotre, Shamrao Gunjal, Bhikaji Shankar Thorat and Vinod Shinde Vs. The State of Maharashtra, and submitted that, if the accused were not last seen together with the deceased, either soon before or soon after the incident, the prosecution case based upon circumstantial evidence deserves to be disbelieved. Learned Counsel further invited our attention to the reported judgment of the Supreme Court in the case of Sawal Das Vs. State of Bihar, and in particular paragraphs 9 and 10 thereof. It is submitted that, burden of proving a plea specifically set up by an accused certainly lies upon him. But neither section 103 nor section 106 can absolve prosecution from discharging its general or primary burden of proving its case beyond reasonable doubt. For the

said proposition, he further invited our attention to the reported judgment of Bombay High Court in the case of (Abdul Karim S/o Jabbar Sheikh @Indumiya Sheikh Vs. State of Maharashtra) 2013 (8) L.J. SOFT 43 and also judgment of the Supreme Court in the case of Sohail Mehaboob Shaikh Vs. State of Maharashtra, . Therefore, he submits that, the appeal deserves to be allowed.

10. Learned A.P.P. relying upon the reasons recorded by the Sessions Court, Beed in the impugned judgment and order submits that, all the circumstances have been firmly established by the prosecution. It is submitted that, deceased Sangita was in the company of the accused persons soon before occurrence and therefore, they are bound to state under which circumstances the incident occurred. It is submitted that, since the entire case rest upon the circumstantial evidence and each circumstance has been firmly established by the prosecution, the trial Court has rightly convicted the appellants. There was demand of dowry and on account of non-fulfillment of dowry amount, there was ill-treatment at the hands of the accused to the deceased Sangita and therefore, in view of the provisions of section 304B of the Indian Penal Code read with section 114B of the Indian Evidence Act, the accused are rightly convicted by the Sessions Court. Therefore, learned A.P.P. submits that, appeal sans merits, hence same may be dismissed.

11. Learned A.P.P. invited our attention to the judgment of Bombay High Court in the case of The State of Maharashtra Vs. Laxman Narsinhrao Ganti, Narsinhrao Narayan Ganti and Rajlaxmi Narsinhrao Ganti, and in particular paragraphs-13 to 16 thereof. He further invited our attention to the reported judgment of Bombay High Court in the case of Eknath More (Bhil) Vs. The State of Maharashtra and submits that, before the incident it is admitted position that, deceased Sangita was in matrimonial house. Therefore, the accused persons are bound to disclose the facts which are in their special knowledge that, how Sangita died. However, even probable defence taken by the accused could not meet the test of approving same by a prudent man. Therefore, learned A.P.P. submits that, the appeal may be dismissed.

12. We have heard the learned Counsel appearing for the appellants and learned A.P.P. for the State at length and also perused the entire documents placed on record and also original record and proceedings. We would like to reappreciate the entire evidence on record. There is no eye-witness to the incident and therefore, the entire case rest upon the circumstantial evidence. PW2 Dashrath Yede, PW4 Sitaram Yede and PW5 Chhagan Yede have deposed before the Court that, the accused persons were demanding Rs. 1,00,000/- and on non-fulfillment of the said demand by the father of the deceased Sangita, they were illtreating her. As it appears from the perusal of record that, the marriage of Sangita with Bappasaheb Bhaskar Aware was solemnized on 12-6-2009, and dead body of Sangita was found in the well on 24-12-2009. The dead body of deceased Sangita was recovered from the well situated in the field of one Mr. Sahebrao Nagargoje on 24-12-2009. It has come on record that, soon before occurrence,

deceased Sangita was in her matrimonial house. It is the contention of the accused persons that, Sangita left her matrimonial home on 22-12-2009 at about 11.00 a.m. to collect the grass and she did not return. However, upon perusal of the entire evidence placed on record, the accused persons have not placed on record any material to probalise their defence which would be accepted by prudent man. It appears that, they told the father of deceased Sangita that, she left at 11.00 a.m. from their house to collect the grass. Therefore, admittedly Sangita was lastly in the company of the accused before occurrence, since according to them, she left matrimonial home on 22-12-2009. It appears that, the case of the accused is that, deceased Sangita died by accidental fall in the well of Mr. Sahebrao Nagargoje since she had habit of leaving house after 1520 days without telling family members. Therefore, it is necessary to find out whether death of Sangita was accidental, suicidal or homicidal.

13. It has come in the evidence of PW2 Dashrath that, Sangita knew swimming. It has also come on record that, diameter of well was 15 feet, depth was 12 feet and water level was 7 feet. The said well is in dilapidated condition and uriconstructed. It has also come in the spot panchnama that, foot wears of Sangita were lying nearby well. Even in the complaint PW2 has specifically mentioned that, deceased Sangita knew swimming. The contents of the complaint have been proved by PW2 by his version before the Court. The Medical Officer has not given opinion that, it was a drowning death though dead body was found in the well. It appears from the spot panchnama that, there is arrangement of steps to enter the well. Therefore, in view of the fact that, Sangita knew swimming and steps were available to enter the well and also the fact that, depth of the well is only 15 feet, the possibility of accidental slip is completely ruled out.

14. The contention of the accused appears to be that, there was possibility that, the deceased might have gone for fetching water and might have slipped her leg and scarf might have tightened around her neck as it is reflected in the judgment of the Sessions Court. However, as already observed, the distance from the house of accused and said well is around 1 to 1.5 kms. Therefore, by any stretch of imagination, there was no question of going Sangita to fetch water from the said well.

15. The memorandum of post-mortem examination of the deceased Sangita was held at Rural Hospital, Patoda District Beed on 24-12-2009. It appears that, post-mortem was began at 500 p.m. and was completed at 600 p.m. In the post-mortem in Column No. 9, it is mentioned thus; "2 faint ligature mark below hyoid bone." In Column No. 10 while mentioning the condition of body, it is written "well nourished." In Column No. 12 i.e. extent and signs of decomposition etc., it is written that "P.M. lividity present over buttocks, loins, back and thigh". In Column No. 13 i.e. features, it is mentioned that, "eyes are closed, tongue inside the mouth". In Column No. 16 it is mentioned that, "both upper and lower limbs are in Relaxed position". In Column Nos. 17 and 18 as many as 8 injuries have

been mentioned which are as under:

- (1) Post-mortem Artifact upper & lower right eye lid.
- (2) Post-mortem Artifact upper & lower left eye lid.
- (3) Post-mortem Artifact over right half ear.
- (4) Post-mortem Artifact over left half ear.
- (5) Post-mortem Artifact over upper & lower lip.
- (6) Post-mortem Artifact superficially at right iliac region.
- (7) Post-mortem Artifact 23 cm. superficial horizontal to left side of neck.

Margins are non bleeding. In all above no cellular reaction present. These all are due to squalio Animal.

- (8) Two faint ligature mark below hyoid bone.

It is further mentioned that, injuries (1) to (7) are post-mortem injuries. Injury No. 8 is ante mortem in nature. The cause of death is stated as "Cardio Respiratory Arrest due to Asphyxia due to strangulation."

PW3 Dr. Mr. Kailas Hiran Dudhal was examined at Exhibit-63 and in his deposition he stated that, he is qualified MS. Gen. Surgeon. From 1987 he was working as Medical Officer. He carried out near about 2000 post-mortem. On 24-12-2009 dead body of Sangita Bappasaheb Aware was brought in his hospital for autopsy. He received copy of inquest panchnama alongwith dead body. Approximately age of deceased was 20-23 years. Deceased was having pink Saree on her person and orange colour blouse and black scarf around neck. He deposed that, he found the injuries as mentioned in Column No. 17 in the post-mortem report which are given above in paragraph-14 of this judgment. He further deposed that, injury No. 8 was ante mortem. He further deposed that, he carried out internal injury examination of dead body. Her heart at left side was empty and right was full of blood. Large vessel contains dark blood. Stomach was empty. Small intestine distended. Large intestine distended. Greenish discoloration of caecum. Viscera was preserved. He further deposed that, provisional certificate was issued by him. He further deposed that, certificate was issued by two doctors as post-mortem was conducted by two doctors. He further deposed that, he certified that, Smt. Sangita Bappasaheb Aware R/o. Malewadi died due to cardio respiratory arrest due to asphyxia and this is unnatural death, however viscera was preserved for chemical analysis. Certificate bears his signature at Serial No. 2 and it bears signature of Dr. Sonwane at Serial No. 1. Provisional certificate was at Exhibit-64. Second doctor issued another certificate that, they have done post-mortem examination of dead body of Sangita. Time since dead body was more than 36 hours and less than 72 hours. Said certificate (Exhibit-65) bears signature of Dr. Sonwane and he identified his signature and he stated that, contents are correct. C.A. report is at Exhibit-66. Result of

analysis is to the effect that, general and specific chemical testing does not reveal any poison in Exhibit- No. 1 and 2. He further deposed that, as per P.M. Notes cause of death was cardio respiratory arrest due to asphyxia due to strangulation. P.M. notes (Exhibit-67) bears his signature and signature of Dr. Sonwane and contents of P.M. notes are true and correct. He further deposed that, such death can be caused if person's neck was pressed by hands or by scarf. (Underlines added).

16. In the cross-examination of PW3 Dr. Mr. Kailas Hiranman Dudhal, he has firmly stated that, he saw ligature mark around neck of dead body. He further stated that, viscera was preserved to see whether it was a case of poisoning. It is further stated that, he did not find any other injury mark on the rest of the body. It appears that, suggestion was given to him by the defence that, he cannot tell whether ligature mark was accidental or suicidal. The said suggestion has been firmly denied by him. He stated that, it is not true to say that, he cannot tell whether it was accidental or suicidal ligature mark. He further stated that, hyoid bone was not fractured. He specifically stated; that, size of scarf and size of ligature mark are not correlated . He specifically denied that, whatever he deposed reference to accidental strangulation on neck. He further denied the suggestion that, C.A. report has nothing to do with the final cause of death.

It is the contention of learned Counsel appearing for the appellants that, the Medical Officer admitted in his cross-examination that, he cannot tell by which instrument said ligature mark was made, no abrasion was found on neck, dimension of ligature mark cannot be mentioned as it was faint, ligature mark was partial and hyoid bone was not fractured. Therefore, it is the contention of learned Counsel appearing for the appellant that, prosecution has not proved beyond reasonable doubt that, death of deceased Sangita was homicidal. In this respect, it is required to be mentioned that, he has carried out near about 2000 postmortem as stated by him. He has firmly stated in his evidence that, size of scarf and size of ligature mark are not correlated and in his cross-examination he voluntarily stated that, it was homicidal ligature mark. The contention of learned Counsel appearing for the appellants is that, no any injury or abrasion was found on neck or on any other part of the body and therefore, case in hand is not homicidal. In every case of strangulation and homicidal death, it is not necessary that, there should be abrasion or injuries on the person of the deceased.

Learned Counsel appearing for the appellants relying upon the post-mortem report would contend that, it is observed in postmortem report that, no abnormality is detected. However, upon perusal of the post-mortem report and in particular paragraph Nos. 19 and 20, the word "congested" appears on many places. Therefore, opinion expressed by the Medical Officer that, cause of death is Cardio Respiratory Arrest due to Asphyxia due to strangulation. In this respect, it is also necessary to mention that, Medical Officer was not specifically confronted with the aforesaid contention of the appellants and therefore, he had no opportunity to explain. There may be possibility of injuries or violence in case

of throttling by unknown person.

17. In the light of evidence discussed herein above it is firmly established by the prosecution that, death was homicidal. However, question is who is responsible for Sangita's death. Therefore, it is necessary to discuss the evidence of other witnesses.

18. PW2 Dashrath Babasaheb Yede deposed before the Court that, he is having two daughters namely Savita and Sangita and son Maruti. His daughter Sangita was given in marriage to accused No. 1 Bappasaheb Bhaskar Aware. Chhagan Yede, Sitaram Yede, Pandit Yede, Sadashiv Yede, he himself and Dnyanoba Tukaram Aware were mediators of marriage. Marriage of Sangita with accused Bappasaheb took place on 12-6-2009. Rs. 1,00,000/- dowry, one tola gold, daily utensils with all respects were given to the accused in marriage. He made expenditure of Rs. 3,00,000/- due to pressure and demand of the accused. Customary visits of Sangita were done. Sangita started cohabiting with accused at Malwadi, Taluka Jamkhed. Accused Bappasaheb, father-in-law Bhaskar, Ramharibrother-in-law, two sister in laws Suvarna and Kalpana were residing in the same village. Suvarna was residing towards western side of the house of rest of the accused. Kalpana was given in marriage at Jikari Padali, Taluka Jamkhed. She came for termination of delivery at the time of said marriage between Sangita and accused Bappasaheb. Kalpana was residing with accused till death of his daughter Sangita with accused.

PW2 Dashrath Yede also deposed before the Court that, after one month he went to Malwadi. Accused No. 1 Bappasaheb asked him that, proper respects locally called as "Manpan" not done to him and demanded Rs. 1,00,000/-. He told him that, heavy expenditure was made in the marriage and he could not pay any amount. He further deposed that, in his presence accused Bappasaheb, Bhaskar. Ramhari and Suvarna and Kalpana assaulted Sangita by fist and kick blows. He further deposed that, accused Bappasaheb caught hold his collar locally called as "Gachure Dharle". The accused gave threat that, he should pay Rs. 1.00.000/-. Accused Bappasaheb told him that, he did not like his daughter. She was not looking fair. Accused gave threat that. he would say what would be done in future. Thereafter, PW2 came back alone to his house and told the said Incident to all mediators.

(Underlines added).

PW2 further deposed that, he and Chhagan Yede went to Malwadi and he requested all accused not to beat his daughter, give her good treatment. Sangita told him that, accused used to beat her repeatedly and making repeated demands of Rs. 1,00,000/-. Accused used to assault her. They keep her starve. PW2 further stated in his deposition that, he asked accused and Sangita to behave properly and came back to his village.

(Underlines added).

PW2 further deposed before the Court that, one month prior to her death, Sangita was brought to his village by Dnyanoba Aware. He asked Sangita how she came. She told that, accused beat her and asked her to bring Rs. 1,00,000/- from him and only thereafter accused would allow her to reside with them. She further told that, accused gave threat that, if she won't bring money, they would commit her murder and drove her out of the house. For 10 to 12 days Sangita was with them. PW2 further stated in his deposition that, he himself, Chhagan Yede, Sitaram Yede took Sangita to Malewadi to the house of accused. He made sincere request to accused that, they should properly behave with his daughter and left her in the custody of accused and then they came back to their village.

(Underlines added).

PW2 further deposed before the Court that, on 22-12-2009 Kailas, a grocery shopper told him that, he received phone from Malewadi that, Sangita is missing. Therefore, he, Kailas Yede, Chhagan Yede, Sitaram Yede went to Malewadi and reached there at 11.30 p.m. He asked the accused Bappasaheb where Sangita went. Accused Bappasaheb told him that, Sangita went to the field at 11.00 a.m. for collecting grass. Thereafter, they made halt at Belakwadi. Extensive search was made on following day but Sangita was not found. Accused did not make any complaint to Police Station about missing. On third day of missing of Sangita, accused Bappasaheb went to Police Station and gave missing report. They received information from police that, in Yeolwadi area in one well dead body of one female was floating in the well water. Thereafter, they went to that spot. That was the dead body of his daughter Sangita. Police were present there. He told the police that, Sangita knew swimming. He asked the police to take his complaint. He saw strangulation mark around neck of Sangita. Police told him until post-mortem was done, they cannot take his complaint. Panchnama was done on the spot. Dead body was taken to hospital. Post-mortem was done there. Funeral was done at Malewadi at about 12.30 midnight.

(Underlines added).

PW2 further deposed that, in the morning he approached Patoda Police Station and lodged complaint. He put his thumb impression on the complaint. Said complaint was read over to him. He identified his thumb impression on the complaint (Exhibit-62) before the Court. He further stated that, accused subjected to his daughter to cruelty and committed her murder as he could not pay Rs. 1,00,000/-. He identified the accused persons before the Court,

He stated in his cross-examination that, he visited the house of accused on four occasions after marriage of Sangita. The defence Counsel in order to show that, financial condition of the complainant, did ask him certain questions. He stated that, he is having three acres irrigated land and two buffaloes and two cows and accused are having 7 to 8 acres land. They are also having 3 acres irrigated land and one buffalo.

19. However, this Court is of the opinion that, such admission of this witness

would not necessarily lead to the conclusion that, financial position of accused is good and therefore, there could not have been demand of dowry from the complainant. After all, it depends upon conduct, tendency and grid of money.

PW2 Dashrath refused the suggestion that, Sangita had been to his house at the time of festival of Mahalaxmi. He has further denied that, Sangita was visiting on interval of 15 days to his house without intimation to the accused. He has specifically denied that, Sangita was suffering from mental disease. He has specifically denied other suggestions also. He stated that, he did not lodge complaint that, his daughter was beaten by the accused since daughter was required to be cohabited in the matrimonial house. He further specifically stated that, on 22-12-2009 when he was in the house he received information of missing of his daughter. He alongwith Chhagan Yede and others went to Malewadi. He himself and other three persons went to Malewadi. The accused Bappasajheb and his father were in the house. This witness specifically stated that, it is not true to say that, accused Bappasaheb and Bhaskar were searching Sangita alongwith them. He has denied the suggestion that, the accused persons and complainant alongwith other three persons made search of Sangita in Bedukwadi, Vaijala, Daskhed and Malewadi. He stated that, he did not go with the accused to the Police Station, Patoda for giving missing report. He stated that, on receiving information on 24-12-2009 that, dead body of Sangita is in the water of the well of Sahebrao Nagargoje, they reached to the spot. He further stated that, he did not see scarf on the person of dead body. He further stated that, he has seen strangulation mark around the neck and some injuries on mouth. He got suspicion that, murder of his daughter was committed as he saw strangulation mark around the neck. He attended funeral process. Accused No. 1 was present but accused Bhaskar was not present in the funeral. He went alongwith his brother and wife to Patoda Police Station and lodged complaint. This witness has specifically denied the suggestion that, his daughter Sangita was mentally ill and still the accused were maintaining her. He has specifically denied that, the accused having no any concern with the death of his daughter. He firmly deposed before the Court that, accused are responsible for death of Sangita. PW2 Dashrath's cross-examination has not yielded any material which could be said to be favourable to the defence.

(Underlines added).

20. PW4 Sitaram Mahadeo Yede (Exhibit-72) has deposed that, deceased Sangita was his cousin sister. Her husband is accused No. 1 Bappasaheb who was before the Court. He know all the accused who were present in the Court. He further deposed that, Pandit Yede, Chhagan Yede, Kailas Yede, Dnyanoba Tukaram Aware were the mediators of the marriage between Sangita and Bappasaheb. The marriage was settled by giving Rs. 1,00,000/- towards dowry plus one tola gold. Marriage of Sangita and Bappasaheb took place on 12-6-2009. Rs. 2,00,000/- to Rs. 3,00,000/- were arranged for the marriage due to demand of accused. After marriage traditional visits were given by Sangita to maternal home. He further

deposed that, before one month of the incident, Dnyanoba Aware brought Sangita to their village. He asked Sangita how she came back. Sangita told him that, her in laws and husband were giving her illtreatment as proper respect was not extended to them in the marriage. They were demanding Rs. 1,00,000/- and she was driven out of the house. He further deposed that, after 10-12 days Sangita was sent back by giving some understanding. Before 15 days of the incident, he himself, Chhagan Yede, Kailas Yede and Dashrath Yede took Sangita to the house of accused. He requested accused that, recently Rs. 2 to 3 lakhs were spent in the marriage, they should not give ill-treatment to Sangita, they should not keep her starve. He further deposed that, they requested to give proper treatment to Sangita and came back to their village and Sangita was left in the company of the accused.

PW4 Sitaram further deposed that, shopkeeper Kailas Yede received phone on 22-12-2009 that, Sangita was missing and he gave said message to him. Said message was to him by his uncle. Therefore, he himself, Kailas Yede, Pandit Yede, Chhagan Yede and Dashrath Yede went to Malewadi. They reached there at 11.00 p.m. in the night. He asked accused Bappasaheb where Sangita was. He further deposed that, Bappasaheb told that, Sangita went at 11.00 a.m. for collecting grass but thereafter he did not know her whereabouts. They searched Sangita in the area of Malewadi. He further deposed that, on 23-12-2009 they searched Sangita in and around Malewadi. He asked accused Bappasaheb on 24-12-2009 at least to go to police and give report that, Sangita was missing. At about 1.00 p.m. they received message from Patoda police that, in Yeolwadi area in the field of Saheba Vithal Nagargoje one dead body of lady was floating on the water of well. Therefore, they went to Yeolwadi. Police were present there. Many people gathered around the well. Said dead body was of Sangita. He further deposed that, he found ligature mark around the neck of Sangita. Police recorded his statement on 25-12-2009. Accused subjected deceased Sangita to cruelty and illtreatment as they could not pay Rs. 1,00,000/- to them and they have committed murder of Sangita and threw dead body in the well. The clothes of deceased were seized under panchnama (Exhibit-58).

(Underlines added).

21. In his cross-examination before the Court, he deposed that, he is agriculturist and personally cultivates his land. The house of Dashrath is adjacent to his house. When phone was received, he was in the village. Said message was received at 7.00 p.m. Five to seven persons went to Malewadi in jeep. This witness has denied the suggestion that, accused Bappasaheb told him that, he searched Sangita in the fields and during that search, he met Sunanda Shahaji Aware and Keshav Wagh. He further denied the suggestion that, Sunanda Shahaji Aware and Keshav Wagh told accused Bappasaheb: that, Sangita went to the house of Suvarna and therefore, he made phone call to this witness and others. He specifically deposed that, he became suspicion as he saw ligature mark around the neck of Sangita. He specifically stated that, "it is not true to say

that Sangita did not tell me about illtreatment and demand of Rs. One lakh. It is false that Sangita was not having any trouble at the hands of accused. It is false that Sangita was mentally ill lady." He denied the suggestion that, he is deposing false on the say of the complainant. As it is apparent that, PW4 Sitaram's cross-examination has not yielded any material which could be said to be favourable to the defence.

22. PW5 Chhagan Narayan Yede deposed at Exhibit-73 that, he know deceased Sangita and Dashrath of his village. Bappasaheb Aware is husband of deceased Sangita. He know him and rest of the accused, who were present in the Court. Pandit Yede, Sitaram Yede, Dnyanoba Aware and he himself were the mediators for the said marriage between Sangita and Bappasaheb. Marriage of Sangita and Bappasaheb took place on 12-6-2009. Rs. One lakh dowry, one tola gold was given to accused. Utensils in all respect as demanded were given to the accused. He further deposed that, in Deepawali he went to Malewadi with Dashrath Yede. He asked the accused to give proper treatment to Sangita and not to give her trouble. Accused were demanding Rs. One lakh therefore, he went to give understanding to them. He met Sangita. Sangita told him that, she was having trouble at the hands of accused. Accused asked her to bring Rs. One lakh from the complainant. Accused keep her starve. Therefore, they came back to their village.

PW5 Chhagan Yede further deposed that, Dnyanoba Aware brought Sangita to Vaijala and left her with her parents. Sangita told him that, accused gave her illtreatment, they beat her. Accused demanded Rs. One lakh and drove her out of the house.. For 10 to 12 days Sangita was at Vaijala. After 10 to 12 days he himself, Dashrath Yede, Sitaram Yede took Sangita to the house of accused. They requested accused to give proper treatment to Sangita. Thus, they left Sangita to Malewadi and came back to Vaijala.

He further deposed that, on 22-12-2009 Kailas Yede received phone from Malewadi that, Sangita was missing. Therefore, he himself, Sitaram, Pandit and Dashrath went to Malewadi. He asked Bappasaheb where Sangita was. Bappasaheb told that, Sangita went in the field to collect grass but did not return. They searched Sangita in the fields at Malewadi but in vain. He further deposed that, on following day also they searched Sangita in and around the village. On 24-12-2009 police informed that, in Yeolwadi area in the field of Sahebrao Nagargoje, in well, one dead body of a lady was floating on the well. It was dead body of Sangita. He further deposed that, he saw ligature mark around the neck of Sangita. Police drew panchnama and sent dead body for autopsy to the hospital. Police recorded his statement on 25-12-2009. He further deposed that, according to him, accused committed murder of Sangita and threw her dead body in the well as they could not pay Rs. One lakh.

23. PW5 Chagan Yede in his cross-examination stated that, Dashrath i.e. complainant is his brother: He went to Malewadi to bring Sangita after marriage. At that time, he was in the house of the accused for one hour. He did not take

tea. In his cross-examination he stated that, he must inform Dnyanoba Aware about ill-treatment and harassment given by the accused to Sangita as he was mediator in the marriage, but he could not meet Dnyanoba Aware. He has specifically denied that, Sangita was mentally ill lady. He further stated that, the accused did give illtreatment to Sangita and make demand of dowry. The cross-examination of PW5 Chhagan Yede has not yielded any material which could be said to be favourable to the defence.

At this juncture it is relevant to mention that, accused Bappasaheb in his statement recorded u/s 313 of Code of Criminal Procedure admitted that, Chagan Yede, Sitaram Yede, Pandit Yede, Sadashiv Yede and Dnyanoba Tukaram Aware were mediators of his marriage with deceased Sangita.

24. PW6 Rajabhau Mahadeo Landge, Police Head Constable deposed at Exhibit-74 that, on 24-12-2009 an information was received that, one dead body of lady was found in Yewalwadi area in well. Land owner gave that Khabar. Head Constable Mr. Manjare registered A.D. The investigation of A.D. No. 66/2009 was given to him. He further deposed that, he himself and Police Inspector Mr. Budhwant went to the spot. Dead body was taken out of the well. It was the dead body of Sangita Bappasaheb Aware. He drew spot panchnama in presence of panchas. He identified his signature and signature of panchas on the panchnama (Exhibit-56). He further deposed that, the contents of the panchnama are true and correct. He drew inquest panchnama in presence of panchas. He identified his signature and signature of panchas and thumb impression of lady panch on the inquest panchnama. (Exhibit-57). He further deposed that, contents of the inquest panchnama are true and correct. He further deposed that, said dead body was sent for autopsy to Rural Hospital, Patoda. As crime was registered, he handed over A.D. enquiry papers to Police Inspector Mr. Budhwant.

He further deposed that, Police Inspector Mr. Budhwant issued one letter to Chemical Analyser at Aurangabad. Doctor has given viscera which was to be sent to Chemical Analyser. He handed over said viscera and sent letter to Aurangabad and obtained signature on office copy and stamp of the said office, office copy of the said letter (Exhibit-75) was handed over to P.I. Mr. Budhwant and he recorded his statement.

This witness was not cross-examined by the defence.

25. The evidence of PW7 Mr. Suresh Savleram Budhwant is important; At the relevant time, from November 2009, he was attached to Patoda Police Station as Police Inspector. He deposed before the Court that, on 24-12-2009 they received information of a dead body floating on the water in the well belonged to Sahebrao Nagargoje. He and Landge went to the said spot. Thereafter, they went to Yawalwadi where the spot of well. It was survey No. 406. He further deposed that, dead body was taken out of the well. On enquiry it was revealed that, said dead body was of Sangita Bappasaheb. Landge drew inquest panchnama and

spot panchnama. Dead body was taken to Rural Hospital, Patoda for autopsy. He further deposed that, maternal relatives of deceased were insisting him to take complaint on the spot but he requested them that, first post-mortem was to be done and thereafter he would take their complaint. It is further stated that, P.M. was concluded in the evening time. Funeral took place at Malewadi in the night at about 100 a.m. Doctor endorsed that, death occurred due to strangulation. On 25-12-2009 Dashrath Yede came to Police Station at about 700 a.m. and his writer wrote the complaint as per his say. Dashrath Yede put his thumb impression on complaint and he signed complaint as "before me". He further deposed that, complaint (Exhibit-62) bears his signature and thumb impression of complainant Dashrath. He stated that, the contents of the complaint are true and correct.

PW7 Mr. Suresh Budhwant further deposed that, he registered Crime No. 117/2009 u/s 302, 498A, 304B read with section 34 of Indian Penal Code. He took up investigation in the matter and he recorded statements of witnesses as per their say. He arrested the accused on 25-12-2009. He drew arrest panchnama. He issued one letter to Doctor asking when death occurred. Office copy of the said letter is at Exhibit-77. He further deposed that, Doctor gave opinion that, death might have occurred before 36 to 72 hours. Said reply is at Exhibit-78. He further deposed that, he again recorded statements of some witnesses. Photographs of dead body were taken. He further deposed that, he sent viscera to the office of Chemical Analyser, Aurangabad with carrier Constable Landge alongwith letter (Exhibit-75). Landge deposited viscera in that office and obtained endorsement on office copy of Exhibit-75 and Landge submitted the said office copy to him and he recorded the statement of Landge as per his say.

This witness further deposed before the Court that, he requested Revenue Circle Inspector to draw map of the spot by issuing letter (Exhibit-78). Map was accordingly prepared (Exhibit-69). He obtained 7/12 extract of the land in which well dead body was found (Exhibit-70). He also collected 7/12 extract of the accused (Exhibit-71). He further deposed that, complainant produced marriage invitation card and marriage photographs. He received P.M. Notes. Papers were sent for verification to Superior Officer. After verification of investigation papers by superior, he lodged charge-sheet against the accused. He deposed that, accused before the Court are same. He stated that, his investigation transpired that, for demand of money the accused subjected deceased to cruelty and committed her murder.

26. He was cross-examined at length by the defence. He deposed that, he received missing report submitted by the accused. It is made part of investigation. Said missing report is at Exhibit-80. He stated that, it is not true to say that, accused Bappasaheb and complainant Dashrath came in the Police Station on 23-12-2009 for filing missing report. He further stated that, it is not true to say that, the accused did not give illtreatment to the deceased. He

further stated in his cross-examination that, it is not true to say that, the accused have no concern with death of deceased. He denied the suggestion of the defence that, there was no illtreatment to Sangita at their hands and that they have no concern with the death of deceased Sangita.

27. Originally five accused persons were tried and the Sessions Court, Beed acquitted three accused persons and convicted the present appellant No. 1 Bappasaheb and his father appellant No. 2 Bhaskar. Upon scrutiny of evidence of PW2 Dashrath, there are specific allegations against appellant No. 1 Bappasaheb. PW2 Dashrath in his examination-in-chief deposed that, after one month of marriage, he went to Malewadi, accused No. 1 Bappasaheb asked him that, proper respects locally called as "Manpan" was not done to him and demanded Rs. One lakh. So far allegations that, fist and kick blows were given are attributed to all five accused. However, there are specific allegations against appellant No. 1 Bappasaheb that, he caught hold collar of PW2 Dashrath. He demanded Rs. One lakh thereby extending threat that, in case said amount is not paid, he would see what would be done in future. There are also specific allegations against appellant No. 1 Bappasaheb that, he told the complainant Dashrath that, he did not like his daughter i.e., Sangita. She was not looking fair. Even in further visits of complainant alongwith PW4 Sitaram and PW5 Chhagan, it appears that, there are no specific allegations as such against appellant No. 2 Bhaskar about illtreatment. There are allegations, however those allegations are general in nature against all five original accused persons. PW2 Dashrath stated in his evidence that, appellant No. 2 Bhaskar did not attend funeral. Except this, specific reference to appellant No. 2 Bhaskar, all allegations in the complaint against appellant No. 2 Bhaskar are general in nature and not specific as such and therefore, in our opinion, since other three accused are acquitted against whom general allegations like against appellant No. 2 Bhaskar were levelled, and in absence of specific allegations against appellant No. 2 Bhaskar about illtreatment, appellant No. 2 Bhaskar is entitled for benefit like other three accused. However, as already observed there are specific allegations against appellant No. 1 Bappasaheb for demand of Rs. One lakh and on not fulfillment of such demand, threat was given to PW2 Dashrath that, in case such amount is not given, in that case he will see what is to be done in future. Not only that, he told PW2 Dashrath that, Sangita is not good looking and he did not like her. Therefore, so far appellant No. 1 Bappasaheb is concerned, there is cogent, clinching and sufficient evidence so as to sustain his conviction for giving illtreatment to deceased Sangita.

28. The provisions of section 498A of the Indian Penal Code are squarely applicable in case of appellant/accused No. 1 Bappasaheb. The provisions of section 498A of Indian Penal Code reads thus :

Section 498A. Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term

which may extend to three years and shall also be liable to fine.

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

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

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

29. Upon reading of specific evidence against appellant No. 1 Bappasaheb in the light of provisions of section 498A of Indian Penal Code reproduced hereinabove, it will have to be held that, conviction of appellant No. 1 Bappasaheb for the offence punishable u/s 498A of Indian Penal Code is perfectly sustainable.

30. The marriage of appellant No. 1 Bappasaheb with deceased Sangita was solemnized on 12-6-2009 and death of Sangita as per prosecution case, was on 24-12-2009. Therefore, death of Sangita is within seven years from the date of her marriage. Therefore, in the facts of the present case and in the light of cruelty and harassment at the hands of appellant No. 1 Bappasaheb to deceased Sangita, the provisions of section 304B of the Indian Penal Code and section 113B of the Indian Evidence Act, 1872 gets attracted and squarely applicable to appellant No. 1 Bappasaheb. The provisions of section 304B of the Indian Penal Code and section 113B of the Indian Evidence Act, 1872 reads thus :

Section 304B. Dowry death.

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this subsection, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

"Section 113B. Presumption as to dowry death, When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.--For the purposes of this section," dowry death" shall have the same meaning as in section 304B of the Indian Penal Code.

31. It is submission of learned Counsel appearing for the appellants that, so as to attract the provisions of section 304B of the Indian Penal Code, there should be cruelty and harassment by the husband soon before the death. However, in the facts of the present case, even according to the prosecution witnesses, they met Sangita one month prior to date of occurrence and therefore, provisions of section 304B of Indian Penal Code are not attracted. We cannot accept the submission of learned Counsel for the appellants. The said submission deserves to be rejected.

32. In the light of evidence of the prosecution witnesses on record, what is required is that, demand should not be stale one. As already observed, the marriage between appellant No. 1 Bappasaheb and Sangita had taken place on 12-6-2009. As stated by PW2 Dashrath in his evidence, after one month of marriage, Sangita was subjected to cruelty and also harassment by her husband. There was demand of Rs. One lakh by appellant No. 1 Bappasaheb to the complainant with threat that, in case such demand is not met, he will see that, what is to be done in future. It appears that, deceased Sangita was subjected to cruelty and also harassment. As per prosecution case, Sangita died on months from the date of marriage. Therefore, in the present case so far appellant No. 1 Bappasaheb is concerned, the provisions of section 304B of Indian Penal Code and section 113B of the Indian Evidence Act gets attracted and squarely applicable and therefore, conviction of appellant No. 1 Bappasaheb for the offence punishable u/s 304B of Indian Penal Code is perfectly sustainable.

33. So far appellant No. 2 Bhaskar Tukaram Aware is concerned, as already observed there are no specific instances or individual allegations that, Sangita was subjected to cruelty by him, are not stated by the prosecution witnesses and therefore, in our considered view, conviction so far appellant No. 2 Bhaskar Tukaram Aware is concerned, for the offence punishable under sections 498A and 304B of Indian Penal Code cannot sustained and like other three accused who are acquitted by the Sessions Court, he is also entitled for acquittal.

34. So far death of Sangita is concerned, the prosecution case entirely rest upon the circumstantial evidence inasmuch as, there is no eye-witness. However, the important circumstance i.e., deceased Sangita was last seen in the company of appellant No. 1 Bappasaheb assumes importance. It is true that, the accused can raise probable defence and it is for the prosecution to establish case beyond reasonable doubt. In the present case, three different versions have been stated by appellant No. 1 Bappasaheb about missing of Sangita. As deposed by PW4 Sitaram in his evidence that, on coming to know on 22-12-2009 that, Sangita is missing, he himself, complainant PW2 Dashrth, PW5 Chagan and other persons went to Malewadi i.e., village of accused persons and reached there at 11.30 p.m. He asked Bappasaheb where Sangita went. Accused Bappasaheb told him that, Sangita went to field at 11.00 a.m. for collecting grass. The appellant

lodged missing report on 24-12-2009 with Police Station, Jamkhed. In the said report it is stated that, on 22-12-2009 (Tuesday) at 11.00 a.m. his wife named Sangita Bappasaheb Aware aged 19 years, without saying anything left the house. The description of Sangita is also stated in the said report. The relevant portion of said report in vernacular reads thus :

This report is given by appellant No. 1 Bappasaheb. Third version of appellant Bappasaheb about missing of Sangita from the house as appearing in written statement in defence given before the Sessions Court at Exhibit-84 in which it is stated that, on 21-12-2009 in the morning Bappasaheb alongwith Nana Aware went to Patoda for supplying milk and thereafter they stayed in shop upto 5.00 p.m. to repair motor cycle of Nana Aware. Thereafter, they came back. After returning back, appellant Bappasaheb learnt that Sangita left house in the morning and has not returned till evening. On 22-12-2009 Bappasaheb made phone call to the shop of Kailas Yede at Vaijala about missing of Sangita and thereafter from Vaijala, Dashrath Yede and others came to Malewadi and therefore, search of Sangita was taken. The relevant statement in the said written statement in vernacular reads thus :

35. Therefore, upon reading three different versions of the appellants about missing of Sangita from their house, it is abundantly clear that, Bappasaheb told to PW2 Dashrath that, Sangita went at 11.00 a.m. for collecting grass in the field but thereafter Bappasaheb did not know her whereabouts. In his second version in his report to the police on 24-12-2009, he stated that, Sangita left house at 11.00 a.m. on 22-12-2009 without informing in the house. The third version as stated by appellant Bappasaheb in his written statement in defence before the Court on 20-4-2011 that, on 21-12-2009 he went to village Patoda in the morning for supplying milk and stayed there up to 5.00 p.m. to repair motor cycle of Nana Aware and after returning to his house, he came to know that, Sangita left house in the morning and did not return even in the evening and therefore, on 22-12-2009 he informed in the spot of Kailas Yede at Vaijala about missing of Sangita from the house and thereafter the complainant and others came to Malewadi i.e., village of the accused. Therefore, appellant No. 1 Bappasaheb has stated three different versions about missing of Sangita from the house and that is the strong circumstance which is appearing against appellant No. 1 Bappasaheb. Appellant No. 1 Bappasaheb is husband of deceased Sangita and as already observed even according to the appellants, she left their house at 11.00 a.m. In the light of three different versions stated by appellant Bappasaheb, it was for him to establish/place on record how Sangita died. The said facts are within special knowledge of appellant Bappasaheb being a husband and custodian of his wife Sangita. Therefore, on careful perusal of three versions as stated by appellant Bappasaheb and the fact that, medical evidence clearly indicates the death of Sangita is unnatural and homicidal and there is nothing on record that, some other persons were interested to kill Sangita. In his written statement in defence he has nowhere stated that, from 21-12-2009 when he came to know after returning from Patoda to his house that, Sangita is missing

from morning and did not return till evening and thereafter also on 22-12-2009 she did not return to their house, there was no attempt on the part of appellant Bappasaheb to know whereabouts of Sangita or search of Sangita.

It has come in the evidence on record that, message was received in the shop of Kailas Yede at 7.00 p.m. on 22-12-2009 that, Sangita is missing from the house of appellants and thereafter, the complainant and other persons went to Malewadi at about 11.30 p.m. The conduct of appellant No. 1 not to search his wife or not to have sincere efforts to know whereabouts and also the fact that, he did not try to search Sangita alongwith PW2 Dashrath and others as stated by PW2 Dashrath and PW4 Sitaram in their evidence, there cannot be slightest room for doubt that, appellant Bappasaheb is author of the commission of offence of murder of his wife Sangita. It is impossible to fathom that, as it is appearing in three different versions of appellant Bappasaheb on record about missing of Sangita, appellant Bappasaheb did not take any steps to lodge report with the Police Station. It is only on 24-12-2009 report is lodged with Police Station, Jamkhed. Though the appellant Bappasaheb stated that, on 23-12-2009 he went to lodge report, however, the officials of concerned Police Station refused to accept the complaint since said Police Station has no jurisdiction, nevertheless belated attempt even on 23-12-2009, clearly reflects upon the conduct of appellant Bappasaheb being husband and custodian of Sangita at the relevant time, he alone would have thrown light on the death of Sangita since those facts were within his special knowledge and even according to him, Sangita left house and no other person had seen her thereafter. The important circumstance that, deceased was last seen/was in the company of the appellant is fully established and therefore, upon considering the case of prosecution in its entirety, right from demand of Rs. One lakh, harassment and illtreatment to deceased Sangita at the hands of appellant No. 1, disliking of Sangita since she was not fair looking as stated by PW2 in his evidence, death of Sangita is homicidal, three different versions about missing of Sangita given by appellant Bappasaheb, death was within 6 to 7 months from the date of marriage and the fact that, in spite of knowing that, Sangita is missing from 21-12-2009 morning as it is reflected in the written statement in defence of appellant No. 1 Bappasaheb and not taking search of Sangita, defence in statement that, Sangita might have died accidental death is falsified in view of the medical evidence and also the fact that, Sangita knew swimming and dead body was found in the well which is situated at more than 1 km. from the house of accused, there is no slightest room for doubt that, appellant No. 1 Bappasaheb has killed his wife Sangita. We are fully aware about law laid down by the Supreme Court and various High Courts about appreciation of circumstantial evidence. In the light of law laid down by the Supreme Court in the judgments cited supra, we have carefully reappreciated the entire evidence on record and we are of the firm view that, each circumstance in the chain of circumstances has been firmly proved by the prosecution beyond reasonable doubt. The chain of circumstances is complete and it leads to only conclusion that, appellant appasaheb-husband of deceased Sangita has committed murder

of Sangita.

37. Upon reappreciation of entire evidence, we find that, appellant No. 2 Bhaskar Tukaram Aware has little role in the entire commission of offence and therefore, he deserves to be given benefit like other three accused who are acquitted by the Sessions Court, Beed. Though it is stated by PW2 Dashrath that, appellant No. 2 Bhaskar did not attend funeral of Sangita, however, considering the evidence in its entirety, in our considered opinion, conviction of appellant No. 2 Bhaskar Tukaram Aware for the offence punishable under sections 302, 304B, 498A and 201 of the Indian Penal Code is not sustainable. The aforesaid discussion leads us to pass following order:--

ORDER:

(1) The appeal is partly allowed.

(2) The judgment and order passed by the Additional Sessions Judge, Beed in Sessions Case No. 44 of 2010 dated 4-7-2011 is modified as under :--

(a) The conviction and sentence awarded to appellant No. 2 Bhaskar Tukaram Aware for the offence punishable under sections 302, 304B, 498A and 201 of the Indian Penal Code is hereby quashed and set aside. He be released forthwith, if not required in any other case. Fine amount, if any, paid by him be refunded.

(b) The judgment and order of conviction convicting appellant No. 1 Bappasaheb s/o Bhaskar Aware is hereby confirmed.